

CALIFORNIA COASTAL COMMISSION

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June 27, 2012

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TO: COMMISSIONERS AND INTERESTED PERSONS

**FROM: SHERILYN SARB, DEPUTY DIRECTOR, SAN DIEGO COAST DISTRICT
DEBORAH LEE, DISTRICT MANAGER, SAN DIEGO COAST DISTRICT
TONI ROSS, COASTAL PROGRAM ANALYST, SAN DIEGO COAST DISTRICT**

**SUBJECT: STAFF RECOMMENDATION ON CITY OF OCEANSIDE MAJOR LCP
AMENDMENT 2-10 (Wireless Communication Facilities) for Commission
Meeting of July 11-13, 2012**

SYNOPSIS

The subject LCP Implementation Plan Amendment No. 2-10 was filed as complete on August 1, 2011. A one-year time extension was granted on September 7, 2011. As such, the last date for Commission action on this item is September 29, 2012. This report addresses the entire LCP Major Amendment No. 2-10 submittal.

SUMMARY OF AMENDMENT REQUEST

The City of Oceanside is requesting to amend its certified implementation plan to repeal Section 3025 of Article 30 and to add two new articles (Articles 39 and 39A) in its place. The two new articles address wireless communication facilities, satellite dishes and antenna standards, amateur radio antennas and support structure standards. The proposed revisions would modify the City's certified implementation plan only.

Currently, the City's certified Local Coastal Program contains only one policy that mentions communication facilities (Section 3025). Section 3025 was written prior to the wide use of cellular phones; and, therefore, the existing language does not include an up-to-date permitting process for wireless communication facilities. Therefore, the City is proposing a detailed permitting process, including design standards and required findings, as well as establishing an "order of preference" for determining the preferred location of any proposed facility. All of these new policies will facilitate the City's ability to review, condition, and permit wireless communication facilities.

SUMMARY OF STAFF RECOMMENDATION

Staff is suggesting approval with several suggested modifications. Article 39(A) of the proposed amendment which addresses amateur radio antennas and raises no concerns and can be approved as submitted. However, there are potential Land Use Plan (LUP) inconsistency concerns associated with Article 39. As such, eight suggested modifications have been proposed. Some of the changes (two) are for clarity and do not change the intent of the City's language. However, six of the suggested modifications address the inconsistencies the proposed Article 39 has with the City's certified LCP. The most prominent concern is that, based on the City's proposed language, it is unclear how the coastal development permit process will be included in the review of wireless communication facility proposals. As proposed, the City has exempted all wireless communication facilities located within the City's rights-of-way from permit review. Additionally, it is unclear if there's a conflict between Article 39 and the LCP, which provision would be controlling. As such, staff is recommending language be added, through the incorporation of suggested modifications, to clarify that a coastal development permit process may still be necessary for any proposed facility. An additional suggested modification clarifies that should policies within Article 39 & 39A conflict with any policy certified as a component of the City's LCP, the LCP policies would be controlling. Lastly, staff is recommending a modification to allow some flexibility in determining what the appropriate sound emissions levels should be for these facilities. The City's language establishes an exact decibel level; however, this may not be appropriate if a proposed facility is located adjacent to nesting birds or any other sensitive wildlife.

BACKGROUND

In February 2007, the Commission reviewed an appeal for a City-issued CDP permitting the construction of a wireless facility in Oceanside (ref. Appeal No. A-6-OCN-07-018). One of the contentions listed by the appellant was that these types of facilities were not a permitted use. The Commission reviewed the grounds of the appeal and found that, previous to this appeal, the City of Oceanside had not updated its LCP to accommodate advances in technology such as cellular communication facilities, etc., and none of the definitions incorporated into its LCP adequately defined the Co-User Communication Facilities developed to promote better reception on cellular phones. In this absence, the definition that most closely fit these types of developments was the general Communication Facilities definition (Section 3025). As the appellant contended, Communication Facilities were not a permissible use within the district where the appeal site was located.

Given that these land uses are becoming increasingly common, the City and the Commission determined that an update to the City's certified LCP would be the most consistent method for facilitating these projects. In consultation with the appellant, the appeal was delayed until the City submitted and the Commission approved language that

would address any concerns associated with these types of proposals. On January 24, 2008, the City submitted LCPA 1-08 (Telecommunication Facilities). However, LCP Amendment 1-08 only included language to address telecommunication facilities located in the City's Downtown "D" District. The subject LCP Amendment is intended to address wireless communication facilities for the rest of the City.

The appropriate resolutions and motions begin on Page 5. The suggested modifications begin on Page 6. The findings for denial of the Implementation Plan Amendment as submitted begin on Page 9. The findings for approval of the plan, if modified, begin on Page 15.

ADDITIONAL INFORMATION

Further information on the City of Oceanside LCP Amendment No. 2-10 (Wireless Communication Facilities) may be obtained from Toni Ross, Coastal Planner, at (619) 767-2370.

PART I. OVERVIEW

A. LCP HISTORY

The City of Oceanside first submitted its Local Coastal Program Land Use Plan (LUP) to the Commission in July 1980, and it was certified with suggested modifications on February 19, 1981. This action, however, deferred certification on a portion of the San Luis Rey River valley where an extension of State Route 76 was proposed. On January 25, 1985, the Commission approved with suggested modifications the resubmitted LUP and Implementing Ordinances. The suggested modifications related to the guaranteed provision of recreation and visitor-serving facilities, assurance of the safety of shorefront structures, and the provision of an environmentally sensitive routing of the proposed Route 76 east of Interstate 5. The suggested modifications to the Zoning/Implementation phase resulted in ordinances and other implementation measures that were consistent with the conditionally certified LUP policies.

With one exception, the conditionally certified LUP and Implementing Ordinances were reviewed and approved by the City on May 8, 1985. The City requested that certification be deferred on one parcel adjacent to Buena Vista Lagoon designated by the City for "commercial" use; the Commission's suggested modification designated it as "open space." On July 10, 1985, the Commission certified the City's Local Coastal Program as resubmitted by the City, including deferred certification on the above parcel.

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 for the City of Oceanside as submitted.*

STAFF RECOMMENDATION OF REJECTION:

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

RESOLUTION TO DENY CERTIFICATION OF THE IMPLEMENTATION PROGRAM AS SUBMITTED:

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

II. MOTION II: *I move that the Commission certify the Implementation Program Amendment for the City of Oceanside 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 Oceanside 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 carryout the certified Land Use Plan as amended. 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 revisions to the proposed Implementation Plan be adopted. The underlined sections represent language that the Commission suggests be added, and the ~~struck-out~~ sections represent language which the Commission suggests be deleted from the language as originally submitted.

1. Modify Section 3901 – Purpose and Intent as follows:

3901 Purpose and Intent

This Article is intended to promote and provide for the following:

- A. Establish development standards for Wireless Communications Facilities, Satellite Dish Antennas and all other forms of antennas and accessory wireless equipment consistent with federal and state law and the City's certified LCP, taking into account the general welfare of City residents and visual compatibility with the existing surroundings while effectively serving the communication needs of the community.
- B. Require all Wireless Communications Facilities to be as unobtrusive as possible, minimizing the number of freestanding and non-camouflaged Communications Facility and establishing standards and policies to ensure that Wireless Communications Facilityies development within the City ~~are developed in harmony~~ is visually compatible with the character of with the surrounding environment through regulation of location and design.
- C. The provisions of this Article are not intended and shall not be interpreted to prohibit or to have the effect of prohibiting wireless communications services, nor shall this Article be applied in such a manner as to unreasonably discriminate among providers of functionally equivalent wireless communications services.

2. Modify Section 3902 - Definitions (Antenna Height) as follows:

Antenna Height. For ground mounted antenna, t~~The vertical distance measured from the adjacent existing ground surface~~ adjacent to the base of the antenna support structure to the tip of the highest point of the proposed antenna support structure or antenna, whichever is higher. For building mounted antenna, the vertical distance

measured from the adjacent building material upon which the base of the antenna support structure is mounted to the tip of the highest point of the proposed antenna support structure or antenna, whichever is higher.

3. Modify Section 3903 – Applicability, by adding a new sub-section “E”, as follows:

[...]

E. Notwithstanding the aforementioned exemptions in this section, if the provisions of this section conflict with the provisions in the City’s certified LCP governing exemptions or any other LCP provisions, the City’s certified LCP provisions shall control.

4. Modify Section 3904 – Conditional Use Permit Required, as follows:

3904 Conditional Use Permit Required

A. A Wireless Communications Facility that is not exempt pursuant to Section 3903, or other provision of this Article, shall be required to obtain one or more Conditional Use Permits pursuant to Article 41, a Coastal Development Permit pursuant to the City’s certified LCP, if applicable, and in accordance with this Article as follows...

5. Modify Section 3906 – Application Submittal Requirements, subsection “G” as follows:

G. Proof of any existing significant gap(s) in the carrier’s own service coverage, and the radius of area from which an antenna may be located to eliminate the significant gap(s).

6. Modify Section 3907- Findings For Approval, Subsection “A,” as follows:

A. In addition to any general findings otherwise required by this Article or any other provision of the Zoning Ordinance and the City’s certified Local Coastal Program, the following findings must be made prior to the approval of a Conditional Use Permit or Administrative Conditional Use Permit for Wireless Communications Facilities (except for Amateur Radio Antennas):

1. The placement, construction, or modification of a Wireless Communications Facility in the proposed location is necessary for the provision of wireless services to City residents, businesses, and their owners, customers, guests or other persons traveling in or about the City;
2. The proposal demonstrates a reasonable attempt to minimize stand-alone facilities, is designed to protect the visual quality of the City, and will not have an undue adverse impact on historic resources, scenic views, or other natural or man-made resources;

3. Where an applicant claims a significant gap in its coverage, that gap must be geographically defined and the gap proved by clear and convincing evidence. The burden of objectively proving a significant gap in its coverage rests solely with the applicant. Where a significant gap in the applicant's coverage is so proven, the applicant must also prove by clear and convincing evidence that the facility proposed is the least intrusive means of closing the significant gap in coverage;
4. That at least one of the following is true:
 - a. All applicable requirements and standards of this Article have been met;
 - b. A variance has been granted from any requirement or standard of this Article which has not been met;
 - c. Strict compliance with the requirements and standards of this Article would prevent a Telecom Operator from closing a proven significant gap in its service, and no other alternative and less intrusive design of the facility that would meet the development standards is feasible; or
 - d. Strict compliance with the requirements and standards of this Article would prohibit or have the effect of prohibiting the provision of personal wireless services or would unreasonably discriminate among providers of functionally equivalent wireless communications services.
7. Modify Section 3909 – Operation and Maintenance Standards, Subsection “E,” as follows:

E. A Wireless Communication Facility shall be operated to minimize noise impacts to surrounding residents and persons using nearby facilities and recreation areas. All equipment that may emit noise in excess of the levels permitted by Article 38 of the City Municipal Code (noise ordinance) shall be enclosed to attain compliance with Article 38 or any other decibel level necessary to comply with the City's certified LCP provisions. Backup generators shall only be used during periods of power outages or for testing.
8. Modify Section 3911 – Wireless Communication Facility Standards, as follows:

The following development and design standards shall be used to review any application for a Conditional Use Permit or Administrative Conditional Use Permit for a Wireless Communication Facility pursuant to this Article and Article 41. Additionally, if any facility is proposed to be sited in the Coastal Zone, as defined by the City's certified Local Coastal Program (LCP), such facility must also comply with all applicable provisions of the City's certified LCP. Should there be any conflict between the provisions in this Article and any provision in the City's certified LCP, the City's certified LCP shall be controlling. All Wireless Communication Facilities (except amateur radio antennas) shall be planned, designed, located, erected, operated, and maintained in accordance with the following standards:...

**PART IV. FINDINGS FOR REJECTION OF THE CITY OF OCEANSIDE LCP
IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED**

A. AMENDMENT DESCRIPTION

The City of Oceanside is requesting to amend its certified implementation plan to repeal Section 3025 of Article 30 and to add two new articles (Articles 39 and 39A) in its place. The two new articles address wireless communication facilities, satellite dishes and antenna standards, amateur radio antennas and support structure standards. The proposed revisions would modify the City's certified implementation plan only.

Currently, the City's Local Coastal Program contains only one policy that mentions communication facilities (Section 3025). Section 3025 was written prior to the wide use of cellular phones; and, therefore, the existing language does not include an up-to-date permitting process for wireless communication facilities. Therefore, the City is proposing a detailed permitting process, including design standards and required findings, as well as establishing an "order of preference" for determining the preferred location of any proposed facility. All of these new policies will facilitate the City's ability to review, condition, and permit wireless communication facilities.

B. SPECIFIC FINDINGS FOR REJECTION

The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP.

a) Purpose and Intent of the Ordinance. The purpose and intent of new Articles 39 and 39(A) is to facilitate the approval of wireless communication facilities. To date, the City's implementation plan contains only one policy addressing "Communication Facilities." This provision, (Section 3025), is outdated, and can no longer serve to facilitate the review and approval of modern wireless communication facilities.

b) Major Provisions of the Ordinance. Article 39 includes new definitions, specific application submittal requirements, including floor plans, photo simulations, landscape, and maintenance plans; proof of existing gaps in coverage; a justification study indicating the rationale for selection of the proposed site; documentation that the proposed facility complies with all applicable FCC rules, regulations, and standards; a description of the facility's capacity for future co-location and a description of the services that will be offered in conjunction with the facility. Included in the proposed Article 39 are also a number of stringent operational and maintenance standards that each facility operator will need to adhere to, including an execution of a maintenance and facility removal agreement. Article 39 also includes an "order of preference" for locating wireless communication facilities in various zones giving preference to city-owned, commercial, or industrially zoned properties, giving lower preference to open space, agricultural properties, and lowest preference to residential properties, or any properties located in the coastal zone, regardless of its land use designation.

The ordinance also includes safety and monitoring standards, including demonstrated compliance with FCC regulations for emissions, as well as compliance with noise and sign ordinances. It encourages technology upgrades and anticipates future green technologies, by allowing deviations from specific design requirements on a case-by-case basis if the facility has no carbon footprint, or produces power through solar or wind generated means.

c) Adequacy of the Ordinance to Implement the Certified LUP Segments. The City's LCP has numerous policies pertaining to potential coastal resource impacts associated with the construction of wireless communication facilities. These policies are listed below:

City of Oceanside LCP Land Use Policies for Visual Resources

Findings.

[...]

2. The City's grid street pattern allows public views of these water bodies from several vantage points. Most east-west streets in the Coastal Zone offer views of the ocean...

Policies.

VI. Visual Resources and Special Communities

1. In areas of significant natural aesthetic value, new developments shall be subordinate to the natural environment.
3. All new development shall be designed in a manner which minimizes disruption of natural land forms and significant vegetation.
4. The city shall maintain existing view corridors through public rights-of-way.
(emphasis added)

[...]

8. The City shall ensure that all new development is compatible in height, scale, color and form with the surrounding neighborhood.

VII. New Development and Public Works

1. The City shall deny any project which diminishes public access to the shoreline, degrades coastal aesthetics, or precludes adequate urban services for coastal-dependent, recreation, or visitor serving uses.

City of Oceanside LCP – Design Standards for Preserving and Creating Views

The visual orientation to the Pacific Ocean is a major identity factor for the City of Oceanside. Traditional view corridors should be preserved and reinforced in the placement of buildings and landscaping. Additionally, some views not presently recognized deserve consideration in the design and location of further coastal improvements.

City of Oceanside LCP Land Use Policies for the protection of marine resources

The City's LCP Land Use Plan (LUP) has policies for the protection of marine resources that state in part:

Prior to approving any developments on dry lands adjacent to Buena Vista Lagoon, the City shall consult the State Department of Fish and Game to ensure that adequate measures are provided to protect and enhance the lagoon's sensitive resources. Such measures shall include, where appropriate:

- a. Provision for adequate buffers between development and the lagoon
- b. Erection of barriers – such as fences – to prohibit access to sensitive portions of the lagoon
- c. Incorporation of native riparian plant species into project design to enhance habitat value
- d. Construction of informational signs/kiosks educating the public on the value of the lagoon, and listing the regulations for public use.

The city shall continue to cooperate with other agencies including the State Department of Fish and Game, the Cities of Carlsbad and Vista through the Joint Powers Committee, US Fish and Wildlife Service, San Diego Association of Governments, and the Regional Water Quality Control Board in seeking ways to lessen the current impacts on the lagoon. Siltation and water pollution are two such impacts which are particularly critical.

The City of Oceanside's LCP also contains a document titled "City of Oceanside Coastal Permit Handbook – Local Coastal Program," and is included as a certified part of the City's Land Use Plan. This Handbook includes what projects can be exempted from a coastal development permit and states, in part:

City of Oceanside LCP Land Use Policies, Coastal Permit Handbook – Local Coastal Program

III. PROJECT PERMIT CATEGORY DETERMINATION

A. Exempt Projects:

The following projects are exempt from the requirements of a Regular or Administrative Coastal Permit:

1. Repair and maintenance of seawalls;
2. Maintenance dredging of existing navigation channels;
3. The replacement of any structure destroyed by a natural disaster;
4. Improvements and Additions to existing structures and buildings except where:
 - a. The structure or improvement would encroach within 50 feet of the edge of a coastal bluff; and
 - b. Where the improvement or addition is located within the appeal area as shown on the City of Oceanside Post LCP certification Map on file in the Planning Division

The following exclusions are allowed (except as provided for in subsections (a) and (b) above:

- a. **All appurtenances and other structures including decks, directly attached to the structure;** [emphasis added]
 - b. For residential uses, structures on the property normally associated with residences, such as garages, swimming pools, fences and storage sheds; but not including guest houses or self-contained residential units;
 - c. Landscaping on the lot;
 - d. Additions resulting in an increase of less than 10% of the internal floor area of an existing structure.
5. Tentative subdivision or tentative parcel maps brought about in conformance with the purchase or annexation of land by a public agency for recreational purposes which are consistent with Sections 30106 of the Coastal Act of 1976.
 6. Repair and maintenance activities other than the repair and maintenance of seawalls or other shore protection structures that do not result in an addition

to, or enlargement or expansion of, the object of such repair or maintenance activities.

7. Activities of public utilities as specified in the Repair, Maintenance and Utility Hook-up Exclusion adopted by the Coastal Commission on September 5, 1978. See division 20, Chapter 7, Section 30610 (f) of the Public Resources Code.
8. Issuance of business licenses.
9. Approval of leases and subleases.

Over the two past decades, local jurisdictions and the Coastal Commission have both seen an increasing number of proposals for the placement of Wireless Communication Facilities. Companies such as Sprint, Verizon, AT&T, etc. are constantly striving to increase and improve their cellular phone reception capabilities. Proposals include stand alone structures as well as locating these communication facilities on a variety of existing structures ranging from commercial and residential buildings to lamp posts, electrical towers, artificial trees, etc. In order to process these proposals within the coastal zone, many cities have developed policies, siting criteria, and conditions of approval, and incorporated these provisions into their Local Coastal Programs through the certification of an LCP amendment. The subject amendment is the City of Oceanside's proposed process for the review and approval of wireless communication facilities.

As a whole, the language proposed by the City addresses the majority of concerns associated with wireless communication facilities. As proposed, the ordinance requires that all wireless communication facilities be as unobtrusive as possible and ensures that the facility will be visually compatible with the character of the surrounding environment. Additionally, the City's language included an order of preference for locating such facilities. Of the seven proposed locations Open Space, Agricultural and Residential areas are the lowest priority. In addition, the City listed the "coastal zone" as an area that wireless communication facilities are restricted, and shall only be permitted if: 1) it's located within the City's rights-of-way, 2) is designed to be a stealth facility, or 3) the law otherwise requires the City to permit such a location. As such, outside of public rights-of-way, construction of wireless communication facilities will be nominal. Article 39 also promotes the use of alternative energy sources such as wind and solar to power the facility and requires that the facilities be upgraded as technology advances.

As proposed by the City, most of the wireless communication facilities would require a permit; however, the City would exempt proposals for radio/television antennas, satellite dishes, amateur radio antennas, and wireless communication facilities within the public rights-of-way from any permit requirements. While the first three development types do not raise concerns, exempting wireless communication facilities could result in developments inconsistent with the policies of the City's LCP.

The City's definition of Wireless Communication Facilities includes, "an installation that sends or receives wireless radio frequency signals or electromagnetic waves, including, but not limited to, directional, omni-directional and parabolic antennas, structures or towers to support receiving and/or transmitting devices, supporting equipment and structures, and the land or structure on which they are all situated." This definition is broad, and thus there are a number of possible structures that would not require permit review if located in public rights-of-way. In addition, wireless communication facilities can certainly result in impacts to coastal resources from a number of aspects. The facility itself can block public views of the coast and the ocean. The placement of these facilities within or immediately adjacent to ESHA can result in both direct and indirect impacts to surrounding habitat and wildlife, such as creating a predator perch, shadow effects or noise disturbance. Lastly, the technology industry is rapidly changing and improving, and new technology is becoming available. Without establishing a process to upgrade or remove outdated facilities, these potential visual or habitat impacts are extended.

Article 39 would require wireless communication facilities located within the City's rights-of-way be subject to an "encroachment permit" only. These encroachment permits include three required findings, one of which states that, "the proposed demonstrates reasonable attempt to minimize stand-alone facilities, is designed to protect the visual quality of the City, and will not have an undue adverse impact on historical resources, scenic views, or other natural or man-made resources." While this required finding begins to address the concerns of exempting a wireless communication facility in public rights-of-way, the language is not as specific or protective as other LCP provisions and thus could result in impacts to coastal resources, inconsistent with the City's LCP.

An additional concern is that, while Article 39 clearly identifies the types of developments that require a permit and a comprehensive process for reviewing and approving such developments, it is unclear how the coastal development permit is incorporated into this process. As such, it is unclear when a coastal development permit would also be required. The City's Coastal Permit Handbook, a certified part of the City's LCP, lists development exempt from permit requirements and includes nine development types, of which new wireless facilities attached to existing structures could be included; however, new *stand-alone* facilities could not. This could lead to interested parties interpreting this section to mean that the proposed facility would be exempt for all permit review. Thus, to be consistent with the City's LCP, the potential requirement of a coastal development permit should also be clearly included within the proposed article.

Lastly, it is unclear if policies within the proposed article and the policies of the City's LCP are conflicting, which would be controlling. For example, if, through the encroachment permit review process as outlined above, a facility was approved in an area containing sensitive habitat, and would result in impacts to the habitat, that development could not be found consistent with the City's certified LCP. Therefore, in situations such as this, it must be clearly indicated that should a conflict between Article 39 and the City's LCP arise, the LCP is controlling.

In conclusion, the intent of the City was to modernize the City's implementation plan to facilitate the placement of wireless communication facilities within the City. However, the City's proposed language 1) would exempt certain development that could result in impacts to coastal resources, 2) does not clearly include the coastal development permit process, and 3) fails to determine a resolution if there are conflicts between the proposed article and the City's LCP. As such, the amendment as proposed does not fully address the potential impacts of these facilities, and, thus, it cannot be found consistent with the certified Land Use Plan.

**PART V. FINDINGS FOR APPROVAL OF THE CITY OF OCEANSIDE
IMPLEMENTATION PLAN AMENDMENT, IF MODIFIED**

As previously discussed, the primary concerns associated with the proposed LCP amendment include that the City's proposed language would exempt certain development that could result in impacts to coastal resources, it does not clearly include the coastal development permit process, and it fails to resolve conflicts between the proposed article and the City's LCP. As such, Commission has suggested six modifications that will address the above listed concerns. In addition, the Commission is also suggesting two modifications (Suggested Modification Nos. 2 and 5) that are related to clarifying definitions.

Suggested Modification #1 includes within the purpose and intent section of new Article 39, that any wireless communication facility proposal must not only be found consistent with the subject article, but must also be found consistent with the City's certified LCP. The proposed revision would reinforce that the review and approval of wireless communication facilities may also be subject to the provisions of the City's LCP. Suggested Modification #6 includes language similar to Suggested Modification #1, but is included within the section of the article titled "Findings for Approval." This, again, has been included to reinforce that the approval of a wireless communication facility is still subject to the standards of the LCP.

Suggested Modification Nos. 3 & 8 include revisions to the proposed article in order to clarify that if any standards of Article 39 and the City's LCP are conflicting, the City's LCP is controlling. Specifically, Suggested Modification #3 has been included in the section of the article that includes wireless communication facilities within public rights-of-way as exempt. As such, it is clear that simply because the development can be considered exempt from a conditional use permit, it does not imply its exemption from coastal development permit review and approval. Suggested Modification #8 includes similar language within the Wireless Communications Standards section, and was included to clarify that any non-exempt facility must meet both the proposed standards and any applicable LCP provisions, thereby restricting any potential impacts to public views, or sensitive habitat as provided for in the certified LCP.

Additionally, Suggested Modification #7 includes language that specifically addresses the potential impacts of noise emissions from any wireless communication structure.

Currently, the City's language dictates a level of permitted noise emission based on a section of the City's zoning ordinance that has not been certified by the Commission. Thus, it is unclear what decibel level that section of the ordinance would permit, potentially resulting in the approval of noise emissions that could impact sensitive wildlife. Additionally, if the decibel level is permitted ubiquitously, it may not be appropriate for every bird species or appropriate for all times of year (nesting versus non-nesting seasons). The City's LCP allows for discretion, based on input from the resources agencies, for acceptable noise levels. As such, Suggested Modification #7 has been included to clarify that the decibel levels need also be consistent with the City's LCP policies in order to provide adequate protection for nesting and protected bird species.

Lastly, Suggested Modification #4 has been included within the "Conditional Use Permit Required" section of proposed Article 39. This section of the article lists the types of development that would require a conditional use permit. Suggested Modification #4 includes that the issuance of a conditional use permit does not preclude the requirement for a coastal development permit. Again, this revision has been suggested to reinforce that the entire permitting process for approval of wireless communication facilities is not solely contained within Article 39.

In conclusion, through the incorporation of the above listed suggested modifications, it is clear to all interested parties, that wireless communication facilities 1) must be found consistent with the City's certified LCP; 2) may require the issuance of a coastal development permit; and 3) if the policies of Article 39 conflict with any policies of the City's LCP, the City's LCP is controlling. It is only through these suggested modifications that the subject LCP plan amendment can be found consistent with the City's certified Land Use Plan. Therefore, the concerns associated wireless communication facilities, have been adequately addressed through the suggested modifications listed above and, as modified by the Commission, can be found consistent with the City's certified LCP.

PART VI. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 21080.9 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program. 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 an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, as amended, does conform with CEQA provisions. As outlined in the staff report, the IP amendment, as proposed, is inconsistent with the land use policies of the certified LUP. Concerns include consistency with the

City's CDP issuance process, and potential impacts to coastal resources. However, if modified as suggested, the amendment can be found in conformity with and adequate to carry out all of the land use policies of the certified LUP. Therefore, the Commission finds that approval of the LCP amendment as modified will not result in significant adverse environmental impacts under the meaning of CEQA. Therefore, the Commission certifies LCP Amendment 2-10 if modified as suggested herein.

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RESOLUTION NO. 11-R0137-1

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
OCEANSIDE MODIFYING THE LOCAL COASTAL PROGRAM
WITH AMENDMENTS TO VARIOUS SECTIONS OF THE 1986
OCEANSIDE ZONING ORDINANCE TO REGULATE AMATEUR
RADIO ANTENNA STANDARDS AND REQUESTING
CALIFORNIA COASTAL COMMISSION CERTIFICATION OF
SAID AMENDMENT**

**(City of Oceanside –Applicant)
(LCPA-10-00001 Revision)**

WHEREAS, the California Coastal Act (Public Resources Code §30000, et seq.) (the "Coastal Act") requires that the City adopt a Local Coastal Program (LCP) which meets the requirements of the Coastal Act at the local level and implements its provisions and policies;

WHEREAS, on January 25, 1985, the California Coastal Commission ("Commission") approved, with suggested modifications, the City's Land Use Plan ("LUP") and, pursuant to Public Resources Code §30512.2, found the City's LUP to be consistent with the policies and requirements of Chapter 3 of the Coastal Act and to meet the basic stated goals specified in Public Resources Code §30001.5;

WHEREAS, On August 23, 2010, the Planning Commission conducted a duly advertised public hearing as prescribed by law to consider said application;

WHEREAS, on February 23, 2011, the City Council conducted a duly noticed public hearing as prescribed by law to amend the Local Coastal Program (LCPA-10-00001 Revision) through the adoption of zoning amendments applicable to the Zoning Ordinance, as specified within Exhibits "A" (Article 39) and "B" (Article 39A), and as attached hereto and incorporated herein by reference;

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EXHIBIT #1

Resolution of Approval

LCPA #2-10 Wireless Communication
Facilities
California Coastal Commission

1
2 WHEREAS, a Negative Declaration was prepared by the Resource Officer of the City of
3 Oceanside for this project pursuant to the California Environmental Quality Act of 1970 and the
4 State Guidelines thereto as amended to date and hereby approved by the Planning Commission
5 in conjunction with its recommendations on the application; and

6 WHEREAS, the City Council finds that the Local Coastal Program Amendment (LCPA-
7 10-00001 Revision) conforms with and is adequate to carry out the land use plan of the Local
8 Coastal Program.

9 NOW, THEREFORE, the Oceanside City Council of the City of Oceanside DOES
10 RESOLVE as follows:

11 1. Pursuant to Public Resources Code §30510(a), the Oceanside City Council
12 hereby certifies that the Local Coastal Program Amendment (LCPA-10-00001 Revision) is
13 intended to be carried out in a manner fully in conformity with the Coastal Act.
14

15 2. Pursuant to the California Environmental Quality Act of 1970, and the State
16 Guidelines thereto amended to date, a Negative Declaration has been issued for the project by
17 the Resource Officer for the City of Oceanside.

18 3. Pursuant to Coastal Commission Local Coastal Program Regulations 14 CCR
19 §13551(b), this amendment shall take effect upon Coastal Commission approval.

20 4. Notice is hereby given that the time within which judicial review must be sought
21 on the decision is governed by Public Resources Code §30801.

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2 PASSED AND ADOPTED by the Oceanside City Council this 23rd day of

3 February, 2011, by the following vote:


4 AYES: FELIEN, FELLER, KERN, SANCHEZ

5 NAYS: NONE

6 ABSENT: WOOD

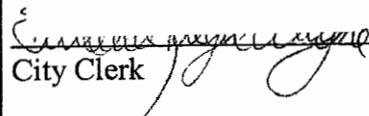
7 ABSTAIN: NONE

8  *Signature on File*

9 
Mayor of the City of Oceanside

10
11 ATTEST:

12 *Signature on File*

13 
City Clerk

APPROVED AS TO FORM:

Signature on File

14 
City Attorney

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25 RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE MODIFYING THE LOCAL
26 COASTAL PROGRAM WITH AMENDMENTS TO VARIOUS SECTIONS OF THE 1986 OCEANSIDE
27 ZONING ORDINANCE TO REGULATE WIRELESS COMMUNICATION FACILITIES, SATELLITE
28 DISHES, AND ANTENNA STANDARDS AND REQUESTING CALIFORNIA COASTAL COMMISSION
CERTIFICATION OF SAID AMENDMENT

RECEIVED

APR 12 2011

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

ORDINANCE NO. 11-OR0194-1

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
OCEANSIDE APPROVING ZONE AMENDMENT (ZA-10-00001
REVISION) ADDING ARTICLE 39A AND MODIFYING
ARTICLE 39 TO THE OCEANSIDE ZONING ORDINANCE
REGARDING AMATEUR RADIO TOWER STANDARDS

WHEREAS, on October 20, 2010, the City Council of the City of Oceanside, following a duly advertised public hearing, repealed Article 30, Section 3025 of the 1992 Oceanside Zoning Ordinance and approved Zone Amendment Application ZA-10-00001, amending the text of the Oceanside Zoning Ordinance by adding a new Article 39 regarding Wireless Communications Facility, Satellite Dish and Antenna Standards;

WHEREAS, at the public hearing on said Zone Amendment, concerns were expressed regarding standards for amateur radio towers, including whether regulations regarding amateur radio facilities should be contained in the same article of the Zoning Ordinance as regulations concerning other wireless communication facilities;

WHEREAS, in response to said concerns a new Article 39A is proposed to be added to the Oceanside Zoning Ordinance and Article 39 is proposed to be amended, by Zone Amendment ZA-10-00001 Revision, in order to modify certain provisions regarding amateur radio facilities and to clarify which provisions of Article 39 apply to amateur radio facilities;

WHEREAS, on February 23, 2011, the City Council of the City of Oceanside held a duly advertised public hearing to consider Zone Amendment ZA-10-00001 Revision, and heard and considered written evidence and oral testimony regarding the proposed Zone Amendment; and

WHEREAS, based upon such evidence, testimony and staff reports, this Council finds that Zone Amendment ZA-10-00001 Revision conforms to the General Plan and Local Coastal Program of the City of Oceanside.

NOW, THEREFORE, the City Council of the City of Oceanside does ordain as follows:

SECTION 1. Zone Amendment Application ZA-10-00001 Revision, amending the text of the Zoning Ordinance as specified in Exhibits "A" (Article :

EXHIBIT #2

Ordinance of Approval

LCPA #2-10 Wireless Communication
Facilities



California Coastal Commission

1 specified by this Ordinance.

2 SECTION 2. This Ordinance shall not be codified.

3 SECTION 3. Severability. If any section, sentence, clause or phrase of this Ordinance is
4 for any reason held to be invalid or unconstitutional by a decision of any court of competent
5 jurisdiction, such decision shall not affect the validity of the remaining portions of this
6 Ordinance. The City Council hereby declares that it would have passed and adopted this
7 Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any
8 one or more sections, subsections, sentences, clauses or phrases be declared invalid or
9 unconstitutional.

10 SECTION 4. The City Clerk of the City of Oceanside is hereby directed to publish this
11 ordinance, or the title hereof as a summary, pursuant to state statute, once within fifteen (15)
12 days after its passage in the North County Times, a newspaper of general circulation published
13 in the City of Oceanside.

14 SECTION 5. This ordinance shall take effect and be in force on the thirtieth (30th) day
15 from and after its final passage.

16 INTRODUCED at a regular meeting of the City Council of the City of Oceanside,
17 California, held on the 23rd day of February, 2011 and, thereafter,

18 PASSED AND ADOPTED at a regular meeting of the City Council of the City of
19 Oceanside, California, held on the 16th day of March, 2011, by the following vote:

20 AYES: FELIEN, FELLER, KERN, SANCHEZ

21 NAYS: NONE

22 ABSENT: NONE


23 ABSTAIN: WOOD

Signature on File)

24 ~~MAYOR OF THE CITY OF OCEANSIDE~~

25
26 ATTEST: 

27 *Signature on File*

28 CITY CLERK 

APPROVED AS TO FORM:

Signature on File

CITY ATTORNEY  2 ASST.

ARTICLE 39**Wireless Communications Facility, Satellite Dish and Antenna Standards****3901 Purpose and Intent**

This Article is intended to promote and provide for the following:

- A. Establish development standards for Wireless Communications Facilities, Satellite Dish Antennas and all other forms of antennas and accessory wireless equipment consistent with federal and state law taking into account the general welfare of City residents and visual compatibility with the existing surroundings while effectively serving the communication needs of the community.
- B. Require all Wireless Communications Facilities to be as unobtrusive as possible, minimizing the number of freestanding and non-camouflaged Communications Facilities and establishing standards and policies to ensure that Wireless Communications Facilities within the City are developed in harmony with the surrounding environment through regulation of location and design.
- C. The provisions of this Article are not intended and shall not be interpreted to prohibit or to have the effect of prohibiting wireless communications services, nor shall this Article be applied in such a manner as to unreasonably discriminate among providers of functionally equivalent wireless communications services.

3902 Definitions

Amateur Radio, Amateur Radio Service. A radiocommunication service for the purpose of self-training, intercommunication and technical investigations carried out by amateurs, that is, duly authorized persons interested in radio technique solely with a personal aim and without pecuniary interest.

Antenna. A device used in communications which radiates and/or receives any radio or television signals for commercial or other purposes, including but not limited to, commercial cellular, personal communication service, wireless model signals, and/or data radio signals.

Antenna Array. Two or more antennas having active elements extending in one (1) or more directions, and directional antennas mounted upon and rotated through a vertical mast or tower interconnecting the beam and antenna support, all of which elements are deemed to be part of the antenna.

Antenna, Building Mounted. Antennas which are mounted to or above a building; or mounted upon or to the side of another facility or structure such as clock towers, sports field lighting, etc.

Antenna Height. The vertical distance measured from the adjacent existing ground surface to the tip of the highest point of the proposed structure.

Antenna Support Structure. A pole or similar structure that supports an antenna.

Cabinet. Enclosure containing equipment used by telecommunication providers, or providing electricity or telephone service to a facility.

Camouflage or Camouflaged Facility. A Wireless Communications Facility in which the antenna, monopole, uni-pole, and/or tower, and as possible the support equipment, are hidden from public view, or effectively disguised as may reasonably be determined by the City Planner or Planning Commission as applicable, in a faux tree, monument, cupola, or other concealing structure which either mimics or which also serves as a natural or architectural feature. Concealing communications facilities in ways that do not mimic or appear as natural or architectural features to the average observer is not within the meaning of this definition.

Co-location. The placement or installation of Wireless Communications Facilities on existing structures upon which communications facilities already exist.

"COW" (Cell on Wheels). A mobile wireless telecommunications site that consists of a cellular antenna tower and electronic radio transceiver equipment on a truck or trailer, designed to be a part of a cellular network. Other types of temporary, mobile wireless telecommunications sites are included in this definition.

Distributed Antenna Systems (DAS). A telephone corporation operating pursuant to a Certificate of Public Convenience and Necessity issued by the California Public Utilities Commission in the business of installing distributed antenna system equipment and connecting facilities including without limitation fiber optic cables, powering locations, and hub locations.

District. A zoning district as defined in the Zoning Ordinance of the City of Oceanside.

FCC. The Federal Communications Commission or any successor to that agency.

Front-yard Visibility. The facility is visible from the front yard of any existing residential unit. Except that, a wireless facility located within the public right-of-way along rear yards of residential units is not considered to have "front yard visibility" even if a portion of the facility can be viewed from a front yard. To qualify under this exception, a solid wall or fence at least five feet in height must exist between the wireless facility and the rear yard of the residential unit.

Lattice Tower. An open framework freestanding structure used to support one (1) or more antennas, typically with three (3) or four (4) support legs on main vertical load-bearing members.

Mast. Same as Antenna support structure.

Monopole. A structure composed of a single pole used to support antennas or related equipment.

Mounted. Attached or supported.

Nonresidential Use. Uses such as churches, schools, residential care facilities that are not a residential use but may be allowed in a residential zone typically with a conditional use permit.

Operator or Telecom Operator. Any person, firm, corporation, company or other entity that directly or indirectly owns, leases, runs, manages, or otherwise controls a telecom facility or facilities within the City.

Radio Frequency. Electromagnetic waves in the frequency range of three hundred (300) kHz (three hundred thousand cycles per second) to 300 Ghz (three hundred billion cycles per second).

Radome. A visually opaque, radio frequency transparent material which may be flat or cylindrical in design and is used to visually hide antennas.

Roof Mounted. Mounted above the eave line of a building.

Search Ring. The area of service deficiency within which a new facility is proposed to address the network deficiency.

Stealth Facility. A Wireless Communications Facility designed to blend into the surrounding environment and to be minimally visible. It may appear as a natural feature, such as a tree or rock or other natural feature or may be incorporated into an architectural feature such as a steeple, parapet wall, light standard, or be screened by an equipment screen, landscaping or other equally suitable method.

Support Equipment. The physical, electrical and/or electronic equipment included within a Wireless Communications Facility used to house, power, and/or process signals to or from the facility's antenna(s).

Telecommunications Facility, Telecom Facility, Wireless Telecommunications Facility, Wireless Communications Facility or Facility. An installation that sends and/or receives wireless radio frequency signals or electromagnetic waves, including, but not limited to, directional, omni-directional and parabolic antennas, structures or towers to support

receiving and/or transmitting devices, supporting equipment and structures, and the land or structure on which they are all situated. The term does not include mobile transmitting devices, such as vehicle or hand-held radios/telephones and their associated transmitting antennas.

Uni-pole. A monopole that does not have antenna elements other than the pole itself or the antenna elements are concealed inside a radome of the same diameter as the pole or exceeding the pole diameter by no greater than six (6) inches.

3903 Applicability

This Article shall apply to all Wireless Communications Facilities providing voice and/or data transmission, including but not limited to, mobile telephone services, fixed microwave services, mobile data services, and limited digitized video transmissions and services, except as provided below:

- A. Exempt by State and/or Federal Regulations. A Wireless Communications Facility shall be exempt from the provisions of this Article if and to the extent state or federal law preempts local regulation of the Facility.
- B. Exempt Subject to Locational Requirements. The following are exempt from the provisions of this Article if such facilities meet all required setbacks and development standards as outlined in the particular zoning district in which the facility will be sited.
 - 1. Radio or Television Antenna. Any single ground or building mounted receive-only radio or television antenna for the sole use of owners or occupants of the parcel or common interest development on which such antenna is located. The maximum height of such antenna shall not exceed ten (10) feet higher than the building height prescribed for the zone in which the antenna is located.
 - 2. Satellite Dish Antenna. Up to three (3) ground or building mounted receive-only radio or television satellite dish antennas, not exceeding one meter in diameter for the sole use of owners or occupants of the parcel or unit in the common interest development, apartment building or mobile home park on which the antenna is located.
 - 3. Citizen Band Antenna. Any ground or building-mounted citizens' band radio antenna not exceeding thirty-six (36) feet above existing grade, including any mast.
 - 4. Amateur Radio Antenna. Any antenna support structure such as a mast, tower and/or building, and including the antenna(s) affixed thereto used by authorized amateur radio stations licensed by the FCC provided that the maximum height shall not exceed the greater of (a) fifty-one (51) feet above existing grade or (b) fifteen (15) feet above the height of the building to which

the antenna and/or mast is attached, or (c) fifteen (15) feet above the maximum structure height prescribed for the zone in which the antenna is located.

- C. City Antennas. Antennas, antenna masts, and ancillary structures owned and operated by the City.
- D. Wireless Communication Facilities located within the public right-of-way, except as provided in Section 3910.

3904 Conditional Use Permit Required

Wireless Communications Facilities located on parcels in any zoning designation in the City shall be required to obtain one or more Conditional Use Permits pursuant to Article 41, and in accordance with this Article unless such Facilities are:

- A. exempt pursuant to Section 3903, or other provision of this Article;
- B. entirely located in a public right-of-way;
- C. co-located; or
- D. sited on parcels owned or controlled by the City.

3905 Administrative Conditional Use Permit

Unless a Wireless Communication Facility is exempt pursuant to Section 3903 or requires one or more Conditional Use Permits pursuant to Section 3904, an Administrative Conditional Use Permit shall be required for all other proposed Wireless Communications Facilities, including, but not limited to, the following:

- A. Wireless Communication Facilities located on property owned or controlled by the City.
- B. Temporary facilities operated by Wireless Communication providers, such as Cell on Wheel (COW) or other temporary and mobile facilities, for a maximum period of 60 days.
- C. Co-located wireless facilities located on an approved Wireless Communication Facility, except as may be permitted by Government Code section 65850.6(a).
- D. Amateur Radio Antennas and Support Structures, as provided in Article 39A.

3906 Application Submittal Requirements

In addition to other application submittal requirements that are imposed by this Article, the City Planner shall develop and update as necessary an application form to permit the City to develop a suitable written administrative record in wireless planning cases. The form shall include, but not be limited to, the following for any application for a Wireless Communications Facility:

- A. Site plan, drawn to scale, indicating all existing and proposed features of the proposed site;
- B. A complete project description, including the following information regarding the proposed Wireless Communication Facility:
 - 1. Number, size and approximate orientation of antennas;
 - 2. Heights of proposed facilities;
 - 3. Equipment enclosure type and size;
 - 4. Construction timeframe for equipment enclosure;
 - 5. Materials and colors of antennas;
 - 6. Description of structures necessary to support the proposed antennas and to house ancillary equipment;
 - 7. Description of lighting;
 - 8. Description of noise/acoustical information for equipment such as air conditioning units and back-up generators;
 - 9. Description of identification and safety signage;
 - 10. Description of access to the facility;
 - 11. Description of utility line extensions needed to serve the facility;
 - 12. Backup power sources, if proposed;
 - 13. Proposed radio frequency emissions information.
- C. Floor plans, elevations and cross-sections of any proposed equipment shelter or other appurtenant structure at a scale no smaller than one-fourth inch equals one foot with clear indication of all exterior materials and colors. Paint and materials samples shall be provided.
- D. Photo simulations depicting the actual size of the proposed Facility, including all antennas and equipment shelters, shall be submitted for review. The number of photo simulations required to fully depict the impact of the facility on the surrounding area shall be at the discretion of the City Planner.
- E. A landscape plan including but not limited to landscaping or vegetation replacement and maintenance consistent with the type of facility proposed and the zone in which it is located.
- F. A plan for maintenance of the site, including trash removal, graffiti removal within 48 hours, and facility upkeep.
- G. Proof of any existing gap(s) in coverage, and the radius of area from which an antenna may be located to eliminate the gap(s).
- H. A justification study with a search ring indicating the rationale for selection of the proposed site, in view of the relative merits of any feasible alternative site within the service area. This study shall also include the applicant's master plan which indicates the proposed site in relation to the provider's existing and proposed network of sites within the City and surrounding areas, including map and narrative description of each site. For modifications or alterations to existing

facilities, the applicant shall submit a justification study limited to the need to modify, alter or expand the facility.

- I. Documentation that the proposed Facility complies with all applicable FCC rules, regulations and standards.
- J. A statement that includes a declaration regarding the facility's capacity for future co-location, supporting information regarding why the proposed wireless facility location is required, and an explanation as to why the site was not co-located. In the case of non co-located ground-mounted facilities, applications shall state the alternative sites considered and provide substantial evidence why they were rejected. The applicant shall demonstrate good faith to co-locate on existing facilities.
- K. A description of services offered in conjunction with the proposed facility.
- L. At the discretion of the City Planner, the City may hire an independent, qualified consultant (the "Technical Consultant") to evaluate any technical aspect of the proposed Communication Facility, including but not limited to: drive test data that indicate current site coverages and proposed coverages; potential for interference with existing or planned public safety emergency response telecommunication facilities; analysis of feasibility of alternate screening methods or devices; or, alternate (more suitable) locations. Where the City Planner elects to hire a Technical Consultant, the applicant shall deposit with the City a sum equal to the expected fee of the Technical Consultant and shall promptly reimburse the City for all reasonable costs associated with the consultation exceeding the expected fee. Any unexpended deposit held by the City at the time of withdrawal or final action on the application shall be promptly returned to the applicant.
- M. Any additional items deemed necessary by the City Planner to make the findings required in Section 3907.

3907 Findings For Approval

- A. In addition to any general findings otherwise required by this Article or any other provision of the Zoning Ordinance, the following findings must be made prior to the approval of a Conditional Use Permit or Administrative Conditional Use Permit for Wireless Communications Facilities (except for Amateur Radio Antennas):
 - 1. The placement, construction, or modification of a Wireless Communications Facility in the proposed location is necessary for the provision of wireless services to City residents, businesses, and their owners, customers, guests or other persons traveling in or about the City;
 - 2. The proposal demonstrates a reasonable attempt to minimize stand-alone facilities, is designed to protect the visual quality of the City, and will not have

an undue adverse impact on historic resources, scenic views, or other natural or man-made resources;

3. Where an applicant claims a significant gap in its coverage, that gap must be geographically defined and the gap proved by clear and convincing evidence. The burden of objectively proving a significant gap in its coverage rests solely with the applicant. Where a significant gap in the applicant's coverage is so proven, the applicant must also prove by clear and convincing evidence that the facility proposed is the least intrusive means of closing the significant gap in coverage;
4. That at least one of the following is true:
 - a. All applicable requirements and standards of this Article have been met;
 - b. A variance has been granted from any requirement or standard of this Article which has not been met;
 - c. Strict compliance with the requirements and standards of this Article would prevent a Telecom Operator from closing a proven significant gap in its service, and no other alternative and less intrusive design of the facility that would meet the development standards is feasible; or
 - d. Strict compliance with the requirements and standards of this Article would prohibit or have the effect of prohibiting the provision of personal wireless services or would unreasonably discriminate among providers of functionally equivalent wireless communications services.

B. The following additional findings must be made prior to approving a Conditional Use Permit increasing the allowable height as provided in this Article (except amateur radio antennas):

1. Alternatives have been provided to staff, including but not limited to additional and/or different locations and designs, and staff has determined that the application as approved would have a lesser impact on the aesthetics and welfare of the surrounding community as compared to other alternatives;
2. Based on evidence presented the additional height greater than ten (10) feet above the maximum building height for the applicable zone is reasonably necessary for co-location of facilities for the efficient operation of the proposed facility. (This finding is not applicable to stand-alone Facilities that exist on the effective date of this Ordinance and that are in full compliance with the conditions of approval and all other applicable federal, state and local laws.); and
3. Any negative impacts of the proposed facility are properly mitigated.

3908 Standard Conditions of Approval

Each Wireless Communications Facility or antenna which is approved through a conditional use permit shall be subject to the following standard conditions of approval, in addition to any other condition deemed appropriate by the City Planner or Planning Commission, as the case may be:

- A. The Wireless Communications Facility permitted by this Section shall be erected, operated and maintained in compliance with this Article.
- B. Within thirty (30) calendar days following the installation of any Wireless Communications Facility permitted by this Article, the applicant shall provide FCC documentation to the City Planner indicating that the unit has been inspected and tested in compliance with FCC standards. Such documentation shall include the make and model (or other identifying information) of the unit tested, the date and time of the inspection, the methodology used to make the determination, the name and title of the person(s) conducting the tests, and a certification that the unit is properly installed and working within applicable FCC standards. As to DAS installations, the required FCC documentation certification shall be made only by the wireless carrier(s) using the DAS system rather than the DAS system provider.
- C. The installation of any Wireless Communications Facility shall be in compliance with all applicable provisions of the State Building Standards Code and any applicable local amendments thereto.
- D. Any substantial change in the type of antenna and/or facility installed in a particular location shall require the prior approval of the City Planner or his designee. Failure to obtain the prior approval of the City Planner or his designee may be grounds for institution of use permit revocation proceedings as well as grounds to institute any other enforcement action available under federal, state or local law.
- E. Co-location of Wireless Communications Facilities pursuant to this Article shall be required whenever feasible.

3909 Operation and Maintenance Standards

Wireless Communication Facilities shall comply with the following operation and maintenance standards at all times. Failure to comply shall be considered a violation of the conditions of approval and constitute a violation of this Article subject to any remedy available under the Zoning Ordinance or other applicable law as well as a basis for institution of revocation proceedings of a permit pursuant to this Article, Article 41 and Article 47.

- A. Except for exempt facilities, a maintenance and facility removal agreement shall be executed by the operator and the property owner (if other than the City). No permit shall become effective until such agreement has been executed. Said

agreement shall bind the operator and property owner and their successors and assigns to the facility to the following:

1. Maintain the appearance of the facility;
 2. Remove the facility when required by this Article or by any condition of approval, or when it is determined that the facility will not have been used during any current consecutive six month period, or if the facility will be abandoned;
 3. (Except for Amateur Radio Antennas) Pay all costs the City reasonably incurs to monitor a facility's compliance with conditions of approval and applicable law;
 4. Reimburse the City for any and all costs incurred for work required by this Article, applicable law, or the conditions of a permit issued by the City for the Facility which the operator and property owner fail to perform within 30 days after written notice from the City to do so or sooner if required by the City for good cause;
 5. In the case of a freestanding tower or monopole (except for an Amateur Radio Antenna) the agreement shall obligate the operator and owner to lease space on the tower, at a fair market rent, to other Wireless Communication providers to the maximum extent consistent with the operational requirements of the facility, and shall further require that the permittee shall not prohibit the installation of other Wireless Communications Facilities on the same property;
 6. Where the City Planner or Planning Commission or City Council, as the case may be, determines that it is necessary to ensure compliance with the conditions of approval or otherwise provide for removal of a Facility that is temporary in nature or upon its disuse, the operator or owner may be required to post a performance bond, cash or a letter of credit or other security acceptable to the City Planner in the amount of ten thousand dollars (\$10,000), or such higher amount as the City Planner reasonably determines is necessary to ensure compliance with the maintenance and facility removal agreement. This requirement shall not apply to an amateur radio antenna.
- B. Each Wireless Communication Facility shall include signage approved by the City Planner identifying the name and phone number of a party to contact in the event of an emergency. Such signage must comply with any applicable provisions of this Article and Article 33 (sign ordinance).
- C. Wireless Communication Facilities and the sites on which they are located shall be maintained in good repair, free from trash, debris, litter and graffiti and other forms of vandalism. Any damage from any cause shall be corrected within five

days of written notice by the City. Graffiti shall be removed as soon as practicable, and in no event longer than 48 hours after notice by the City.

- D. The owner or operator of a Wireless Communication Facility shall maintain landscaping in accordance with an approved landscape plan and shall replace dying or dead trees, foliage or other landscape elements shown on the approved plans within 30 days of written notification by City. Amendments or modifications of the approved landscape plan shall not be made without written City approval.
- E. A Wireless Communication Facility shall be operated to minimize noise impacts to surrounding residents and persons using nearby facilities and recreation areas. All equipment that may emit noise in excess of the levels permitted by Article 38 of the City Municipal Code (noise ordinance) shall be enclosed. Backup generators shall only be used during periods of power outages or for testing.
- F. Temporary power may be allowed during the initial construction or major repair of a Facility for the minimal amount of time necessary to complete the work. The operator shall provide a timeline to the City Planner and keep staff updated as to the time of completion.
- G. Radio Frequency Emissions Safety. No Wireless Communication Facility may, by itself or in conjunction with other Wireless Communication Facilities generate radio frequency emissions in excess of the standards for permissible human exposure, as provided by applicable federal regulations including 47 C.F.R. 1.1307 *et seq.*

3910 Public Rights-of-Way

- A. Wireless Communication Facilities located in the City rights-of-way shall be required to obtain an encroachment agreement prior to installation and shall be subject to the jurisdiction of the City Engineer or his designee who shall, consistent with California Public Utility Code Sections 7901 and 7901.1, determine the time, place and manner of construction for all facilities located within public rights-of-way. If the City Engineer determines that a substantial portion of the Facility will be located outside the right-of-way, then the Facility shall be required to comply with this Article.
- B. Placement of a Wireless Communication Facility in a public right-of-way shall require approval of an encroachment agreement by the City Council. No encroachment agreement shall be approved where the applicant fails to satisfy the City Council, in its sole discretion, that the standards set forth in Section 3907.A.1 through 3907.A.3 are met.

3911 Wireless Communication Facility Standards

The following development and design standards shall be used to review any application for a Conditional Use Permit or Administrative Conditional Use Permit for Wireless Communication Facility pursuant to this Article and Article 41. Additionally, if any facility is proposed to be sited in the Coastal Zone as defined by the Local Coastal Program (LCP), such facility must also comply with all applicable provisions of the LCP. All Wireless Communication Facilities (except amateur radio antennas) shall be planned, designed, located, erected, operated, and maintained in accordance with the following standards:

- A. Wireless Communication Facilities shall comply with all development standards within the applicable zoning district of the subject site, except parking and landscape coverage.
- B. Height limits for all Wireless Communication Facilities shall be in accordance with this Article.
- C. All Wireless Communication Facilities and Accessory Wireless Equipment shall comply with the applicable provisions of Articles 33 (sign ordinance) and 38 (noise ordinance) of the City's Municipal Code.
- D. Visual Impact Screening Standards: All Wireless Communication Facilities shall to the greatest extent reasonably possible employ Camouflage design techniques to minimize visual impacts and provide appropriate screening. The Facility shall be maintained at all times in a "like new" condition and such techniques shall be employed to make the installation, operation and appearance of the facility as visually inconspicuous as possible. Depending on the proposed site and surroundings, certain Camouflage design techniques may be deemed by the City as ineffective or inappropriate and alternative techniques may be required. The following Camouflage design techniques shall be considered based on different installation situations.
 - 1. For building-mounted installations.
 - a. Screening materials matched in color, size, proportion, style, texture, and quality with the exterior design and architectural character of the structure and the surrounding visual environment.
 - b. Facility components, including all antenna panels, shall be mounted either inside the structure or behind the proposed screening elements and not on the exterior face of the structure.
 - c. The Camouflage design techniques applied shall result in an installation that is camouflaged and prevents the facility from visually dominating the surrounding area. Camouflage design techniques should be used to hide the installation from predominant views from surrounding properties.
 - 2. For Structure-Mounted Installations excluding Monopole Installations
 - a. All antenna panels and accessory components mounted on the exterior of the structure shall be painted and textured or otherwise

coated to match the predominant color and surface texture of the mounting structure.

- b. When required by the City, antenna panels shall be located and arranged on the structure so as to replicate the installation and appearance of the equipment already mounted to the structure.
- c. The Camouflage design techniques applied shall result in an installation that is camouflaged and prevents the facility from visually dominating the surrounding area. Camouflage design techniques should be used to hide the installation from direct view from surrounding properties.
- d. Antennas shall not be mounted on above ground water storage tanks.

3. For Monopole Installations

- a. Monopole installations shall be situated so as to utilize existing natural or man-made features including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening.
- b. All antenna components and support equipment shall be treated with exterior coatings of a color and texture to match the predominant visual background and/or adjacent architecture so as to visually blend in with the surrounding development. Subdued colors and non-reflective materials that blend with surrounding materials and colors shall be used.
- c. In certain conditions, such as locations that are readily visible from residential or open space areas where there is heightened sensitivity for visual impacts and compatibility, the measures described above may not be sufficient to create an effectively camouflaged installation. In these cases, additional measures may be required by the City, including but not limited to enclosing the Wireless Communications Facility entirely within a vertical screening structure (suitable architectural feature such as a clock tower, bell tower, icon sign, lighthouse, windmill, etc.) may be required through the permit process. All facility components, including the antennas, shall be mounted inside the structure.
- d. Camouflage design techniques employed shall result in an installation that either will blend in with the predominant visual backdrop or will disguise the facility so it appears to be a decorative or attractive architectural feature. If Camouflage design techniques for monopoles do not adequately hide or prevent direct viewing of the facility, then the permit may be denied.

4. Co-location Facilities. Co-location installation shall use screening methods similar to those used on the existing Wireless Communication Facility. If the

City Planner determines existing screening methods do not conform to the Camouflage design standards herein, additional screening methods may be required for the co-located facilities. Use of other appropriate screening methods may be considered through the substantial conformity process.

5. "Cell on Wheels" (COW): A COW or other similar temporary and mobile Wireless Communications Facility installation may require screening to reduce visual impacts depending on the duration of the permit and the setting of the proposed site. If screening methods are determined to be necessary, the appropriate screening methods, considering the temporary nature and length of the permitted use, will be determined through the Conditional Use Permit or administrative review (including but not limited to the Administrative Conditional Use Permit or Substantial Conformity process.)
6. For Accessory Wireless Equipment: All accessory wireless equipment associated with the operation of any Wireless Communication Facility shall be screened. The following screening techniques shall be considered based on the type of installation:
 - a. Accessory wireless equipment for building mounted facility may be located underground, inside the building, or on the roof of the building that the facility is mounted on, provided that both the equipment and screening materials are painted the color of the building, roof, and/or surroundings. All screening materials for roof-mounted facilities shall be of a quality and design that is architecturally compatible and consistent with the design of the building or structure.
 - b. Accessory wireless equipment for freestanding facilities, not mounted on a building, may be visually screened by locating the equipment within a fully enclosed building or in an underground vault. For above ground installations not within an enclosed building, screening shall consist of walls, landscaping, or walls combined with landscaping to effectively screen the facility at the time of installation. All wall and landscaping materials shall be selected so that the resulting screening will be visually integrated with the architecture and landscape architecture of the surrounding area.
 - c. All accessory wireless equipment shall be placed and mounted in the least visually obtrusive location possible.
- E. All freestanding Wireless Communication Facilities to be located in any zone district adjacent to a residential zone district shall be located on a site so as to provide a minimum distance equal to 110 percent of the height of the facility from the residential property line.

3912 Locational and Siting Standards

- A. General. Wireless Communications Facilities (except amateur radio antennas) shall be installed on properties in the following order of preference (the greatest preference is listed first):
 - 1. City-owned or controlled property;
 - 2. Parcels located in Industrial Districts;
 - 3. Parcels located in Commercial Districts;
 - 4. Parcels located within Public and Semi Public Districts;
 - 5. Parcels located in Open Space Districts;
 - 6. Parcels located in Agricultural Districts, *subject to the locational criteria described herein (i.e., not on or near primary residences);
 - 7. Parcels located in Residential Districts.
- B. Wireless Communication Facility installation in a less-preferred zone shall not be permitted unless the applicant demonstrates by clear and convincing evidence that it would be infeasible to install the facility in a more preferred zone and still close a proven significant gap in coverage by the least intrusive means.
- C. Wireless Communication Facilities shall be co-located where technologically feasible and where co-location would be visually superior to the otherwise necessary non-co-located facility.
- D. Wireless Communication Facilities located on vacant lots shall be considered temporary and when the site is developed, the city may require such facilities be removed, and if appropriate, replaced, with building-mounted facilities.
- E. Restricted Locations. No Wireless Communication Facility (except amateur radio antennas) shall be permitted in any of the residential zones or areas designated as within the coastal zone (excluding rights-of-way) unless:
 - 1. The facility is designed as a stealth facility; and
 - 2. The law otherwise requires the City to permit such location

3913 Site Development Standards

- A. General Development Standards. All Wireless Communication Facilities shall comply with the following:
 - 1. The maximum height of any Wireless Communication Facility, other than roof mounted facilities and amateur radio antennas, located on private property shall be ten feet above the maximum height allowed in the zoning district in which the facility is located. A Conditional Use Permit may be granted to exceed the height limitation as described in Article 41 and Section 3707.
 - 2. Height shall be measured as follows:

- a. Ground mounted antennas. The height of the antenna structure shall be measured from the natural undisturbed ground surface below the center of the base of the antenna support (i.e., tower) to the top of the tower or from the top of the highest antenna or piece of equipment attached thereto, whichever is higher.
 - b. Building mounted antennas. The height of the antenna structure shall be measured from the top of the building roof the antenna is mounted on to the top of the antenna or screening structure, whichever is higher.
 - c. Utility Tower/Pole Mounted Antennas. The height of the antenna structure shall be measured from the base of the utility tower/pole, not the grade of the climbing leg foundation of the structure if the climbing leg foundation of the utility tower/pole structure is not at grade due to exposed footings.
3. Facilities located on properties owned or controlled by the City shall not exceed fifteen (15) feet above the height prescribed for the zone in which the antenna is located.
4. Wireless Communication Facilities shall conform to all building setback requirements, and all equipment associated with their operation shall comply with the development standards for the zone in which they are located.
5. Monopoles, antennas, and support structures for antennas shall be no greater in diameter or any other cross-sectional dimension that is reasonably necessary for the proper functioning and physical support of the Wireless Communication Facility.
6. All Wireless Communication Facilities must at least meet all current standards and regulations of the FCC as to radio frequency emissions, or any successor agency, and any other agency of the state or federal government with the authority to regulate Wireless Telecommunication Facilities.
7. All Wireless Telecommunication Facilities shall be designed, located and operated to avoid interference with the quiet enjoyment of adjacent properties, and at a minimum shall be subject to the noise standards of Article 38 of the Municipal Code. If the City Planner or Planning Commission as the case may be finds that the noise of such facility may have a detrimental effect on an adjacent property, they may require an independent acoustical analysis, at the applicant's expense, to identify appropriate mitigation measures.
8. Excluding amateur radio antennas and those facilities that are co-located, located within the public rights-of-way, or located on publicly owned or controlled property or utility infrastructure, Wireless Communication Facilities shall be separated from each other as follows, unless the applicant proves by clear and convincing evidence that the separation requirement would prevent the provider from closing a significant gap in its coverage:

- B. Any new ground mounted Wireless Telecommunication Facility located within a quarter mile (1,320 feet) of an existing ground-mounted facility must be of camouflaged design, regardless of the zone in which it is located.

3914 Safety and Monitoring Standards

- A. At all times, Wireless Communications Facilities shall comply with the most current regulatory and operational standards including but not limited to radio frequency (RF) radiation exposure standards adopted by the FCC as provided in 47 C.F.R. § 1.1307, et seq. and FCC Office of Engineering & Technology Bulletin 65 and antenna height standards adopted by the Federal Aviation Administration (FAA). The applicant shall maintain the most current information from the FCC regarding allowable RF emissions and all other applicable regulations and standards. The applicant shall file an annual report to the permit file advising the City of any regulatory changes that require modifications to the Wireless Communication Facility and of the measures taken by the applicant to comply with such regulatory changes.
- B. Upon or prior to installation, and prior to activation, of any Wireless Communications Facility the applicant shall submit to the City certification in a form acceptable to the City that the Facility will operate in compliance with all applicable FCC regulations including, but not limited to radio frequency (RF) emissions limitations. Thereafter, upon any proposed increase of at least ten percent in the effective radiated power or any proposed change in frequency use, the applicant shall submit updated certifications for review by the City. Both the initial and update certifications shall be subject to review and approval by the City Planner. At the City's sole discretion, a qualified independent radio frequency engineer, selected by and under contract to the City, may be retained to review said certifications for compliance with FCC regulations. All costs associated with the City's review of these certifications shall be the responsibility of the applicant. Absent any modifications to a Wireless Communications Facility that would cause a change to the effective radiated power or frequency use, the applicant shall submit an annual letter to the Community Development Department certifying that no such changes have been made to the site and that the facility continues to operate within the range allowed by FCC regulations.
- C. A Wireless Communication Facility is to be installed and maintained in compliance with the requirements of the Uniform Building Code, National Electrical Code, noise ordinance and other applicable codes, as well as other restrictions specified in this Article. The Facility operator and the property owner shall be responsible for maintaining the facility in good condition, which shall include but not be limited to regular cleaning, painting, and general upkeep and maintenance of the site.

- D. Public access to a Wireless Communication Facility shall be restricted. Required security measures may include but not be limited to fencing, screening, and security signage, climbing prevention systems, as deemed appropriate by the City.
- E. Safety lighting or colors, if prescribed by the City or other approving agency (i.e. FAA) may be required for antenna support structures.

3915 Duration, Revocation And Discontinuance

- A. Two-year expiration. A permit for a Wireless Communication Facility shall expire two years after permit approval unless the applicant has obtained a Building Permit and has requested an initial building inspection.
- B. Duration of Permits and Approval.
 - 1. Permits for Wireless Communications Facilities shall be valid for an initial period of ten (10) years from the date of approval unless for a shorter period as authorized by California Government Code section 65964(b), or as specified by the approving body.
 - 2. A permit issued pursuant to this Article may be extended at the discretion of the City Planner for a maximum of three two-year terms by the City Planner upon the applicant proving by clear and convincing evidence that the facility continues to comply with all conditions of approval under which the permit was originally approved.
 - 3. A permit may be revoked pursuant to Article 47 of the Zoning Ordinance.
 - 4. All costs reasonably incurred by the City in verifying compliance and in extending or revoking an approval shall be borne by the applicant and/or permit holder.
- C. Abandonment or Discontinuance of Use. Any Telecom Operator who intends to abandon or discontinue the use of any wireless facility shall notify the City of such intention no less than 60 days prior to the final day of use.
- D. Wireless Facilities with use discontinued shall be considered abandoned 90 days following the final day of use.
- E. All abandoned facilities shall be physically removed by the Telecom Operator no more than 90 days following the final day of use or of determination that the facility has been abandoned, whichever occurs first. When a wireless facility has been abandoned, but not removed, the City may cause such facilities to be removed and charge all expenses incurred in such removal to the provider.

3916 Existing Facilities

All equipment and improvements associated with a Wireless Communication Facility permitted as of the date of the adoption of this Article may continue as they presently

exist, but shall constitute a legal nonconforming use to the extent they do not conform to the standards of this Article. Routine maintenance on existing, operational equipment and facilities at a legal non-conforming Wireless Facility shall not require compliance with this Article. However, replacement of any mainlines, jumpers, antennas, primary or secondary equipment or modification of any kind from a legal non-conforming Wireless Facility or expiration of an existing Conditional Use Permit or Administrative Conditional Use Permit shall require issuance of a permit pursuant to, and in compliance with this Article.

3917 Upgrades With New Technology

The City finds that the technology associated with Wireless Communications equipment is subject to rapid changes and upgrades as a result of industry competition and customer demands, and anticipates that telecommunications antennas and related equipment with reduced visual impacts will be available from time to time with comparable or improved coverage and capacity capabilities. The City further finds that it is in the interest of the public health, safety, and welfare that telecommunications providers be required to replace older facilities with newer equipment of equal or greater capabilities and reduced visual impacts as technological improvements become available. Therefore, any modifications requested to an existing facility shall permit the City Planner or his designee to review the carrier's existing facility to determine whether requiring newer equipment or applying new screening techniques that reduce visual impacts is appropriate if technically feasible.

3918 Green Technology

The City anticipates that the design of "green" sites (i.e., facilities that utilize alternative energy sources and/or employ technologies that leave a smaller carbon footprint than traditional methods) will be introduced as a design alternative in the near future. New facilities that are proposed using "green" technology may not be capable of strictly complying with this Article. To accommodate these facilities and therefore balance the multiple needs of the community for energy efficiency, adequate telecommunications service and aesthetics, the City may consider factors such as whether the facility has no carbon footprint and/or whether the facility produces power through solar or wind generated means.

However, any such proposals shall not eliminate the need to comply with any or all sections of this Article and even "green" facilities shall require a Conditional Use Permit or Administrative Use Permit, as appropriate. Staff shall review each "green" application on a case by case basis and in an appropriate case, may endorse deviations from the specific design requirements of this Article when staff finds that the benefit of being "green" outweighs the potential negative impacts of not meeting all requirements of this Article.

Notwithstanding the endorsement of staff, the Planning Commission shall remain the decision-making body for all Conditional Use Permits, including those determined to be

"green," unless the matter is appealed to, or called for review by the City Council, in which case the City Council shall be the decision-making body.

3919 Distributed Antenna Systems

Distributed Antenna Systems Installations shall conform to the requirements of this Article.

3920 Federal Preemption

Notwithstanding any other provision of this Article to the contrary, if any provision(s) of this Article would give rise to a claim by an applicant that a proposed action by the City would "prohibit or have the effect of prohibiting the provision of personal wireless services" within the meaning of 47 U.S.C. Section 332(c)(7) or would "prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service" within the meaning of 47 U.S.C. Section 253 then, at or prior to the public hearing on the application, the applicant shall submit clear and convincing evidence attesting to all specifics of the claim. If such evidence is submitted, the decision-making body shall determine if this is the case, and if so, shall, as much as possible, keep the intent of the ordinance the same while applying the provisions in such a manner as to avoid any violation of federal law. If that is not possible, the decision-making body shall find that the provision(s) cannot be implemented in a manner that does not violate federal law, and shall override the offending provisions to the extent necessary to comply with federal law.

ARTICLE 39A**Amateur Radio Antenna and Support Structure Standards****3901A Purpose, Scope and Intent**

This Article is intended to provide standards for Amateur Radio antennas and support structures (hereinafter an "Amateur Facility"), consistent with federal and state law, taking into account the general welfare of City residents and visual compatibility with the existing surroundings. All definitions set forth in Article 39 are hereby incorporated and made a part of this Article 39A.

3902A Administrative Conditional Use Permit, When Required

1. Only a ministerial building permit shall be required for an Amateur Facility such as a mast, tower and/or building, and including the antenna(s) affixed thereto used by authorized amateur radio stations licensed by the FCC, as long as the maximum height of such Amateur Facility including all elements (including without limitation, antennas, masts, booms, arms, cables, and rotors attached thereto) does not exceed the greater of:
 - a. fifty-one (51) feet above existing grade, or
 - b. fifteen (15) feet above the height of the building to which the antenna and/or mast is attached, or
 - c. fifteen (15) feet above the maximum structure height prescribed for the zone in which the antenna is located.
2. An Amateur Facility exceeding the maximum height set forth in Section 3902A.1 shall be required to obtain one or more Administrative Conditional Use Permits pursuant to Article 41 and the provisions of this Article 39A. In order to issue such an Administrative Conditional Use Permit, the Planning Director, in addition to any other required findings, must also find that:
 - a. The application is submitted by an amateur radio operator licensed by the FCC; and
 - b. The permitted location is listed by the FCC as the address associated with the amateur radio operator or is the residence of the amateur radio operator; and
 - c. Allowance of the additional height and/or width is necessary to reasonably accommodate amateur radio service communications; and
 - d. Based on technical showings by the amateur radio operator applicant, no lesser antenna heights and no alternative antenna structures would reasonably accommodate the amateur radio operator's needs; and

- e. The conditions of approval, if any, constitute the minimum practicable regulation to accomplish the City's goal of promoting public health, safety, and welfare; and
 - f. The conditions of approval, if any, do not preclude amateur radio service communications; and
 - g. The Amateur Facility as proposed will facially comply with all adopted Building Codes and all other adopted health and safety codes.
3. Amateur Facilities shall be subject to City building permit requirements, as well as all construction and post-installation permit inspections by the City to determine compliance therewith.

3903A Operation and Maintenance Standards

1. An Amateur Facility requiring an Administrative Conditional Use Permit shall comply with the following operation and maintenance standards at all times. Failure to comply shall be a violation of the conditions of approval and constitute a violation of this Article subject to any remedy available under the Zoning Ordinance or other applicable law as well as a basis for institution of revocation proceedings of a permit pursuant to this Article, Article 41 and Article 47.
2. A maintenance and facility removal agreement shall be executed by the operator and the property owner (if other than the City). No building permit shall become effective until such agreement has been executed and attached to the building permit as a continuing condition thereof. Said agreement shall bind the operator and property owner and their successors and assigns to the facility to the following:
 - a. Maintenance of the Amateur Facility to ensure compliance with the Administrative Conditional Use Permit and the building permit;
 - b. Maintenance of the Facility in safe and good repair;
 - c. Removal of the Amateur Facility when required by this Article or by any condition of approval, or when it is determined that the Amateur Facility will not have been used during any current consecutive six month period, or if the Facility will be abandoned;
 - d. Reimbursement to the City for any and all costs incurred for work required by this Article, applicable law, or the conditions of a permit issued by the City for the Amateur Facility which the operator and property owner fail to perform within 30 days after written notice from the City to do so or sooner if required by the City for good cause.

3904A Site Development Standards

General Development Standards. All Amateur Radio Antennas shall comply with the following:

1. Height shall be measured as follows:
 - a. Ground mounted Amateur Facilities (which may include those side-braced to a building). The height of the antenna and support structure shall be measured from the natural undisturbed ground surface below the center of the base of the antenna support (i.e., tower) to the top of the tower or from the top of the highest antenna or piece of equipment attached thereto, whichever is higher.
 - b. Building mounted Amateur Facilities. The height of the antenna and support structure shall be measured from the highest point of the building roof on which the Amateur Facility is mounted, to the top of the Amateur Facility.
2. Amateur Facilities (including without limitation, antennas, masts, booms, arms, cables, wires, and rotors attached thereto) attached thereto, shall conform to all building setback requirements, and all equipment associated with their operation shall comply with the development standards for the zone in which they are located. The building setback requirements shall not apply to Amateur Facility guy wires and guy anchors, or to antenna radial wires, or to ground wires and ground rods.
3. Amateur Facilities shall, in the opinion of the City's Chief Building Official, be no greater in diameter or any other cross-sectional dimension than is reasonably necessary for proper physical support.
4. All Amateur Facilities shall be designed, located and operated to avoid disturbing the quiet enjoyment of adjacent properties and at a minimum shall be subject to the noise standards of Article 38 of the Municipal Code.

3905A Duration, Transfer, Revocation And Discontinuance

1. Two-year expiration for non-exercise of an Administrative Conditional Use Permit. An Administrative Conditional Use Permit for an Amateur Facility shall expire two (2) years after permit approval unless the applicant has obtained a Building Permit and has requested an initial building inspection.
2. Duration of Approvals and Permits.
 - a. Any Administrative Conditional Use Permit and/or building permit for an Amateur Facility shall be personal to the amateur radio operator to whom the permit is granted, and shall not run with the land, and shall be transferrable only to another amateur radio licensee taking possession of the property where the permitted Amateur Facility is