



COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES

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MEMORANDUM

DATE: JULY 12, 2016

TO: BOARD OF SUPERVISORS

FROM: JULIA ACKER, PLANNER III

RE: CASE NO. OA_2015-0003, WIRELESS COMMUNICATIONS FACILITIES
REVIEW AND CONSIDER AN AMENDMENT OF THE COASTAL ZONING CODE (TITLE 20,
DIVISION II) TO MODIFY THE PERMIT PROCESS FOR CERTAIN TYPES OF WIRELESS
COMMUNICATION FACILITIES.

INTRODUCTION:

Staff is submitting a proposed ordinance amendment to the County Coastal Zoning Code (Title 20 – Division II of the Mendocino County Code). The proposed ordinance amendment is similar to the ordinance amendments previously reviewed by the Planning Commission and, in 2015 adopted by the Board of Supervisors, which amended the County Inland Zoning Code (Title 20 – Division I). The Planning Commission recommends the Board adopt this Ordinance to better define where and how wireless communications facilities may be installed in the unincorporated areas of Mendocino County within the Coastal Zone. The proposed ordinance describes the circumstances in which wireless facilities may be exempt from discretionary review, subject to Coastal Development Permits, and when a Coastal Development Use Permit will be required. The proposed ordinance amendment is not applicable to the County Town of Mendocino Zoning Code (Title 20 – Division III).

BACKGROUND:

At times, wireless communication facilities (WCF), such as cell towers, have been a contentious issue in Mendocino County. In 1996 the County adopted Ordinance Number 3953 amending the Inland and Coastal Zoning Codes in part by declaring that, *Radio, telephone, and other communication and transmission structures, towers, and antennas ("towers and antennas") are conditional uses subject to approval of a conditional use permit in all zoning districts....* By requiring discretionary review for the approval of wireless communication facilities, the County is able to exercise additional controls over the location and design of these types of facilities and address public concerns and environmental impacts. The most controversial topic raised by the public continues to be the potential for the wireless facilities to be an environmental health hazard. The Telecommunications Act of 1996 limits the authority of local governments when regulating the environmental effects of radio frequency emissions.

As the wireless industry rapidly evolves, Mendocino County's governance of the industry must adapt to meet new demands. Keeping up with the changes to industry needs has, at times, left the County in the position of incrementally dealing with issues on a case by case basis, causing a need to adapt and re-interpret the *Guidelines for the Development of Wireless Communication Facilities* (Wireless Guidelines). This has left staff, the Commission, Board of Supervisors, the industry, and/or the public sometimes at odds.

Staff has attempted to resolve issues that the public and the wireless industry have with the current process. The public has voiced many diverse opinions; some of the key areas of concern are aesthetics, local control, long-range plan of the industry, maintaining zoning integrity and access to sites. For years, the wireless industry has

expressed a strong desire for streamlining the process to make it more practical to establish and maintain wireless infrastructure. More recently, local broadband providers have also expressed concerns that the current use permit application fees and process act as a hindrance to operating a profitable small business and providing cheap broadband service to rural areas of our County. Past discussions have focused on providing a streamlined process for the industry for minor modifications to existing facilities and encouraging more stealth designs to screen new facilities. It was felt that in exchange for compliance with stricter standards that the County could consider a more expeditious processing method.

The “counter” argument to this approach is that regardless of mitigating factors such as stealth designs within structures (the application for an antenna designed to appear as a support beam below a deck near Mendocino and the U.S. Cellular application for an antenna hidden within a chimney at the Stanford Inn) individual cases seem to generate some controversy regardless of the “good faith” efforts to screen or disguise the development.

Staff has also worked with industry representatives to encourage co-location of sites; however this too has gained mixed results since sites proposed that incorporate facilities that will be able to house other providers are, by their nature, taller and generally more visually intrusive.

At the Board of Supervisors and Commission’s direction, staff initiated review of the County’s ordinances and guidelines for WCF. This review initially centered on the Inland Zoning Code and involved creating a separate permit process for certain less intensive projects including the addition of various antennas to existing legal permitted structures whether that structure is a tower, monopole, house, barn, billboard, sign etc... as well as new wireless communication facilities less than 50 feet in height. The Inland WCF Ordinance was adopted on August 4, 2015 as Ordinance No. 4341. At the time of approval of the Inland ordinance, the Board requested that a similar process be adopted for the Coastal Zone.

During the preparation of the Ordinance Amendment for the Inland Zoning Code, County staff met with the Broadband Alliance to review the amendment process and get feedback on staff’s efforts. The proposed Ordinance Amendment provides an alternative permit process for certain types of WCF applications, along with strict criteria and standards, for the Coastal Zone. The proposed Ordinance tracks the adopted streamlined processes in the Inland Code in regards to types of WCF applications receiving streamlined processes. A public workshop was held in Fort Bragg on December 3, 2015 to gather ideas and help form the proposed ordinance language. Attendees of both meeting were in favor of the proposed changes. The Planning Commission recommended approval of the proposed Ordinance to the Board at their May 19, 2015 hearing with no proposed modifications. Staff discussed with the Commissioners the potential for some additional revisions to the Inland code that will create clarity and continuity between the Inland and Coastal zoning codes.

RELATED CASES:

The Board of Supervisors approved Ordinance Amendment #OA 2014-0003 on August 4, 2015 (Ordinance No. 4341) to modify the Inland Zoning Code and create an alternative permit process for certain wireless communication facilities. The major change in the application process was the introduction of the administrative permit to streamline the process. Upon approving #OA 2014-0003, the Board directed staff to prepare a separate ordinance amendment to provide for similar changes in the Coastal Zone.

Guidelines for the Development of Wireless Communication Facilities were also adopted by resolution of the Board of Supervisors on August 4, 2015 (Resolution No. 15-121).

PROJECT DESCRIPTION:

Alternative Permit Process: Under current regulations all WCF located in the Coastal Zone require issuance of a coastal development use permit, regardless of the scale or type of the WCF project. Under the proposed ordinance amendment, certain WCF projects may be considered exempt or eligible for an alternative permit process. The proposed application process for WCF will now include exemptions from the proposed development standards and, in some instances, the need to obtain a discretionary permit and coastal development permits (CDP) for certain types of improvements. This change reduces the application cost for establishment of such facilities, allows for faster processing times on applications for WCF projects that meet the applicable development

standards, and also encourages providers to establish visually unobtrusive and smaller scale WCF within the Coastal Zone. WCF projects that do not meet the applicable standards for a streamlined permit process will be subject to obtaining a coastal development use permit.

To qualify for an exemption from the proposed development standards the applicant will need to qualify for one or more of the six types of exempt projects. The first type recognizes private communication equipment for personal use, such as private radio, television, internet, or ham radio reception antennas. The second type was added to encourage the use of existing structures and recognizes commercial antenna additions to existing legal structures subject to restrictions on the number of times this exemption can be utilized on a particular site. The third type recognizes small scale, low powered, short-range, and visually inconspicuous wireless internet transmitters/receivers (e.g. "wi-fi hotspots"). The fourth type recognizes temporary facilities erected and operated for use in emergency situations. The fifth type recognizes facilities that are specifically exempt under federal or state law. The sixth type recognizes the discretion of the Director of Planning and Building Services to exempt minor modifications to existing legal wireless communication facilities if limited to replacing equipment with similar, smaller or less visible equipment. The six proposed exemption types are subject to certain limitations and may still require the issuance of a discretionary permit if the proposed location has particular features that may involve a risk of adverse environmental effects, adversely affect public access, or involve a change in use contrary to any policy of the applicable division (e.g. highly scenic areas, within fifty feet of the edge of a coastal bluff, environmentally sensitive habitat areas, etc.).

To qualify for a CDP process the applicant will need to meet the criteria for one or more of the four WCF classes along with the standards identified for each. The first WCF class recognizes the importance of utilizing co-location and allows for co-location applications to be approved by a CDP if the changes are minor. The second and third WCF classes, building and roof mounted antennas, were added to encourage the use of existing structures without substantially changing the appearance or function of the structure and minimizing the need for new towers. The fourth WCF class is included as an incentive for the wireless industry to construct wireless communication facilities less than 50 feet in height that are visibly unobtrusive and effectively unnoticeable rather than the typical 100 foot tall and higher self-support structures that are often proposed. If a project does not meet one of the four classes along with applicable criteria then the applicant must apply for a coastal development use permit.

Obtaining a CDP does not necessarily require a public hearing and the process would be utilized to permit only those projects that are consistent with identified standards and would have a negligible impact to the site and surrounding area. All other WCF projects that do not qualify for either an exemption or a CDP will be required to obtain a coastal development use permit.

This draft ordinance amendment attempts to meet both the goals of streamlining the permit process for the wireless industry and provide needed WCF coverage to underserved communities. By allowing the cellular and broadband providers the option of applying for an CDP for a new tower under 50 feet, if the project is adequately stealthed, and giving them greater flexibility for minor modifications of existing facilities and other structures, the planning process will be quicker and more cost effective.

New FCC regulations: On January 8, 2015, the Federal Communications Commission (FCC) published, in the Federal Register, new rules and order pertaining to the deployment of wireless telecommunication facilities. These rules in part affect how applications to modify an existing "wireless" telecommunication facility may be processed. Section 20.522.020 of the Ordinance is intended to accommodate the streamlined procedure required by the Code of Federal Regulations for the expansion of certain facilities. Projects that meet the definition and requirements of the Federal regulation will be reviewed and approved pursuant to the Federal procedures.

CEQA Review: Public Resources Code section 21080.9 provides that the California Environmental Quality Act (Public Resource Code § 21000 *et seq.*, "CEQA") does not apply to activities and approvals by a local government as necessary for the preparation and adoption of a local coastal program pursuant to the California Coastal Act, and as provided by section 15265 of the CEQA Guidelines (14 Cal. Code Regs. Section 15000 *et seq.*), the burden of CEQA compliance for local coastal plans is shifted from the County to the Coastal Commission. However, the Department of Planning and Building Services prepared an initial study to help ensure that a future project, subject to the new WCF regulations, would not result in a significant impact to the environment. The initial study concluded that a negative declaration could be adopted. This review may help to expedite the Coastal

Commission's review of the requested LCP amendment. The Planning Commission reviewed the attached Negative Declaration at its public hearing and on a 6-0 vote recommended that it be certified by the Board.

RECOMMENDATION:

Recommend that the Board of Supervisors adopt Ordinance Amendment No. OA 2015-0003, to amend the Coastal Zoning Code (Title 20, Division II) and modify the permit process for certain types of wireless communication facilities as recommended by the Planning Commission finding that: (1) That an Initial Study has been prepared for the project in accordance with the California Environmental Quality Act; and that a Negative Declaration be adopted, and (2) That the proposed amendment is consistent with the applicable goals and policies of the Local Coastal Plan. Adopt a resolution authorizing Planning and Building Services to submit a Local Coastal Program Amendment to amend Title 20, Division II for the authorized changes approved under Ordinance OA_2015-0003.

FINDINGS:

That the Board of Supervisors find:

1. That an Initial Study has been prepared for the project in accordance with the California Environmental Quality Act and that potential environmental impacts identified for the project can be adequately addressed by the identified development standards so that no significant adverse environmental impacts will result from adoption of the proposed amendment; and that a Negative Declaration be adopted by the Board of Supervisors.
2. That the proposed amendment is consistent with the applicable goals and policies of the Local Coastal Plan.

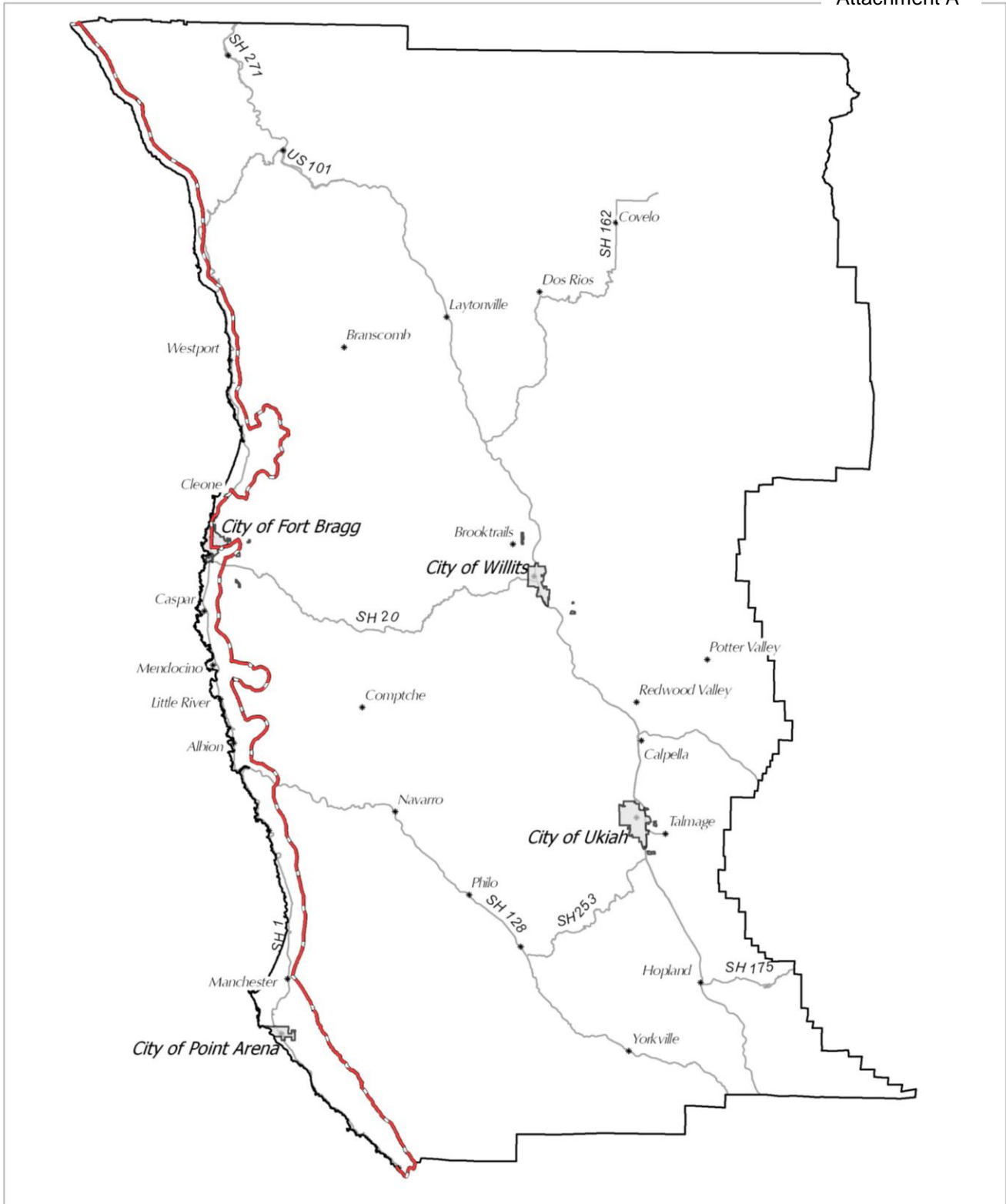
Prepared by:

DATE

JULIA ACKER
PLANNER III

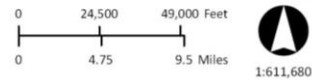
ATTACHMENTS:

- Attachment A – County of Mendocino Map
- Attachment B – Draft Ordinance #OA 2015-0003
- Attachment C – Initial Study
- Attachment D – Resolution
- Attachment E – Draft May 19, 2016 Planning Commission Minutes
- Attachment F – May 19, 2016 Planning Commission Packet
- Attachment G – Ordinance No. 4341 (adopted August 4, 2015)



Coordinate System: NAD 83, Calif. State Plane Zone II
 Projection: Lambert Conformal Conic
 Parcel Data: Mendocino County Info. Svcs., October, 2014
 Aerial Imagery: US Dept. of Agriculture, NAIP series,
 unless otherwise indicated
 Topographic Data: USGS 7.5 minute quad series
 Flood Data: FEMA FIRMS Maps, June 2014
 AP & Situs numbers subject to change or correction at any time.

- Coastal Zone Boundary Line
- Incorporated City Limits
- * Major Towns & Places
- Highways



COUNTY OF MENDOCINO

Map produced by the Mendocino County Planning & Building Services, March, 2015
 All spatial data is approximate. Map provided without warranty of any kind.
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