



Department of Conservation and Development

County Planning Commission

Tuesday, December 15, 2015 – 7:00 .P.M.

STAFF REPORT

Agenda Item # _____

Project Title:	Wireless Telecommunication Facilities Ordinance Chapter 88-24
County File(s):	ZT13-0001
Applicant/Owner:	Contra Costa County
Zoning/General Plan:	Countywide
Site Address/Location:	Countywide
California Environmental Quality Act (CEQA) Status:	Negative Declaration SCH #2013032035
Project Planner:	Stan Muraoka, AICP, Senior Planner (925) 674-7781
Staff Recommendation:	Adopt a motion recommending Board of Supervisors approval (See Section II for Full Recommendation)

I. PROJECT SUMMARY

This is a County initiated proposal to adopt an amendment to the County Ordinance Code Chapter 88-24 that will establish procedures, conditions, and requirements for the establishing and locating wireless telecommunication facilities within unincorporated areas of Contra Costa County.

II. RECOMMENDATION

Staff recommends that the County Planning Commission adopt a motion recommending that the Board of Supervisors:

- A. CERTIFY the Negative Declaration, California State Clearinghouse Number #2013032035, finding it to be adequate and complete, finding that it has been prepared in compliance with the California Environmental Quality Act (CEQA) and the State and County CEQA Guidelines, and finding that it reflects the County's independent judgment and analysis, and specify that the Department of Conservation and Development (located at 30 Muir Road, Martinez, CA) is the custodian of the documents and other material which constitute the record of proceedings upon which this decision is based.
- B. FIND that the proposed zoning amendment, Code Chapter 88-24, is consistent with the County General Plan.
- C. ADOPT the proposed zoning amendment that adds Chapter 88-24, to the County Ordinance Code.
- D. Direct staff to file a Notice of Determination with the County Clerk.

III. BACKGROUND

The Telecommunications Act was approved by the U.S. Congress and was signed into law by President Clinton in 1996. The Telecommunications Act affected regulations on the communications industry that had been in place since the Communications Act of 1934. The Act purported to facilitate competition in communication markets, reduce local government regulation, and promote better service for consumers.

In response to the Telecommunications Act and the attendant changes in the wireless telecommunications industry, the Board of Supervisors adopted the Contra Costa County Telecommunications Policy in July 1998. The 1998 Telecommunications Policy has been the only County adopted document that provides guidance to the public and to County staff for processing wireless telecommunication facilities.

Since the Board adoption of the 1998 Telecommunications Policy, a number of federal and state laws have been enacted that have affected the telecommunications industry, such as:

- California Senate Bill SB1627 approved in September 2006, which provided for ministerial approval of collocation facilities;

- Various FCC rulings in 2009, 2010, and 2014 on the approval process for wireless facilities by local governments and the allowable time period (the "Shot Clock") for consideration. Among other requirements, this Act, requires jurisdictions to make a decision on a wireless facility project within 150 days (for new facilities) and within 60 days (for existing ones).
- Section 6409 of the Spectrum Act (Title VI of the Middle Class Tax Relief and Job Creation Act approved in February 2012) that affects local government processing of modifications to existing wireless facilities, and FCC Report and Order 14-153 released in October 2014 that clarified the rules for facilitation of wireless deployment under Section 6409 of the Spectrum Act. In essence Section 6409 states that a local jurisdiction shall not deny a non-substantial change to an eligible wireless facility.

The federal and state laws that have been adopted since adoption of 1998 County Telecommunications Policy have added requirements for the permitting of wireless facilities that are not in the Telecommunications Policy.

On October 25, 2011, the Board authorized the Department of Conservation and Development to conduct a study of the 1998 Telecommunications Policy and the current federal and state laws as a basis for creating a new Wireless Telecommunication Facilities Ordinance.

The Wireless Telecommunications Facilities Ordinance was scheduled for consideration by the County Planning Commission on July 21, 2015. Prior to the meeting, staff received four comment letters on July 21 on the proposed Ordinance from the Busch Law Firm on behalf of American Tower, Paul O'Boyle on behalf of Crown Castle, Mackenzie & Albritton on behalf of Verizon Wireless, and AT&T. Previously, on July 17, 2015, staff received a comment letter from Save Mount Diablo. The County Planning Commission continued the proposed Ordinance in order to consider the four comment letters that were submitted on the day of the July 21 meeting. The comment letters are attached as Exhibit 6.

Staff has reviewed the submitted comments, and has met with some of the commenters regarding the issues raised in the comments. Subsequently, staff has revised some portions of the proposed Ordinance in order to address issues/concerns raised.

IV. CALIFORNIA ENVIRONMENTAL QUALITY ACT

A Draft Negative Declaration/Initial Study (ND), State Clearinghouse SCH #2013032035, was prepared for the proposed Ordinance pursuant to applicable CEQA Guidelines. The Draft ND was made available for a 30-day public review period that started on March 12, 2013 and extended to April 11, 2013. The Draft ND assessed potentially significant adverse environmental impacts that could arise from implementation of the Ordinance and included a determination that the proposed Ordinance could not have a significant adverse effect on the environment. (See Exhibit 3 – Draft Negative Declaration).

A total of four letters and one email were received by the Department in response to the publication of the Draft ND. During the March 12 to April 11, 2013 public review period, staff received three letters and one email. After the close of the public review period, one additional letter was received on January 5, 2015. A Final ND, dated December 8, 2015, (See Exhibit 2 – Final Negative Declaration) has been prepared which includes a response to all the comments received. The comment letters and email are included as attachments to the Final ND. Consideration of some of the comments received and staff revisions of the proposed Ordinance have resulted in five text revisions of the Draft ND. The text revisions are also included in the Final ND; however, there are no substantive changes to the Draft ND and the findings of the ND are unchanged.

V. AGENCY REVIEW

The public review draft Ordinance and Draft ND were made available for public and agencies' review on March 12, 2013. Since then, staff has made changes to the original draft Ordinance in order to address concerns raised by agencies and comments received on the environmental document.

VI. PROJECT DESCRIPTION

The project is the proposed Wireless Telecommunication Facilities Ordinance (Chapter 88-24 of the County Code) that sets forth criteria for the location, design, and approval of wireless facilities throughout Contra Costa County. The Ordinance provides processing guidelines for the application and approval of planning permits for wireless facilities. The Ordinance is intended to facilitate the provision of high quality wireless telecommunications by the various service providers in the County while avoiding adverse visual and aesthetic impacts, as well as protecting and enhancing public health, safety, and welfare. The Ordinance is consistent with

applicable federal and state law regulating wireless telecommunications service. Upon its adoption by the Board of Supervisors, the Ordinance will supersede the County's 1998 Telecommunications Policy. The Ordinance covers various topics, among which are the following items.

Exempt Facilities. Certain telecommunication facilities are exempt from the proposed Ordinance, such as amateur radio facilities, microwave/satellite dish antennas that only receive signals, and facilities operated by public emergency providers/911. Existing towers and other existing wireless facilities are also exempt from the Ordinance. The Ordinance would only apply to an existing facility if a wireless service provider or tower owner is proposing to modify, remove, replace, or relocate the facility or if the existing land use permit has expired. The Ordinance does not require changes to any existing facility, and moreover, does not terminate any approved permit.

Permit Types. As illustrated on the table on the following page, the proposed Ordinance allows for a total of four types of wireless facilities permits, including a land use permit, a wireless facility access permit for a facility within a County right-of-way, a minor alteration permit (alteration permit), and a collocation permit.

The two permits that the County currently processes are land use permits and condition of compliance reviews (alteration permits). This Ordinance adds two new permits:

Access Permit: The wireless facility access permit (access permit) is specifically for a wireless facility within a County right-of-way. Currently, a wireless service provider seeking to locate a facility in the right-of-way is required to obtain a land use permit and an encroachment permit. The access permit would be the only County permit required for the placement and maintenance of a facility within a County right-of-way. An example of where a wireless facility access permit could be applied is an application to update an existing facility within County right-of-way mounted on a PG&E utility pole with new antennas and new equipment. A wireless facility access permit may be approved ministerially after notification to property owners within a 300-foot radius of the proposed facility site; however if a public hearing is requested, the access permit may be approved at a public meeting of the Zoning Administrator.

Collocation Permit: The collocation permit facilitates approval of applications to place a wireless service provider's antenna and equipment on an existing antenna support structure of another service provider, pursuant to recently adopted federal

and state law. An example of where a collocation permit could be applied is for a monopole (antenna support structure) for a wireless service provider that has been established with a land use permit and with an adopted negative declaration that includes environmental assessment of multiple antenna locations on the monopole. A second wireless service provider may submit a collocation permit application to locate antennas and equipment on the monopole at a location that has been addressed in the negative declaration. A collocation permit, like the minor alteration permit, can be approved ministerially as long as a facility is found to be a collocation eligible facility.

Permit Type	Eligibility for Permit	Permit Pre-requisites	Public Notification	Ministerial Approval
Existing Permits:				
Land Use Permit	New facility or a substantial change to an existing facility.	Valid land use permit required for a substantial change to an existing facility	Yes	No
Alteration Permit	Minor alteration to an existing facility.	Valid land use permit	No	Yes
New Permits:				
Access Permit	New facility or substantial change to an existing facility within a County right-of-way.	Valid land use permit* required for a substantial change to an existing facility (*valid wireless facility access permit required upon adoption of Ordinance)	Yes	Yes, unless hearing is requested
Collocation Permit	Collocation of a wireless service provider's antenna and equipment on a collocation-eligible facility of another wireless service provider.	(1) Valid land use permit (2) Certified environmental document	No	Yes

Facilities in Residential Zoning Districts: No new high visibility facility or new tower is allowed in or within 300-foot from residential districts; however a low visibility facility can be located in or within 300 feet of a residential district. As defined in the Ordinance a low visibility facility is:

- A ground-mounted antenna or antenna support structure that does not exceed 10 feet in height,
- A roof-mounted antenna or antenna support structure that does not extend more than 10 feet above the surface of the roof or exceed the maximum height for the zoning district by more than 10 feet,
- A facade-mounted antenna that does not extend more than 36 inches above the roofline,
- A facility or antenna installed on an existing high-voltage electricity transmission tower or on an existing electricity distribution pole,
- A stealth facility or antenna,
- A distributed antenna system (DAS) facility, and
- A minor alteration to an existing facility.

Specific Location and Design Requirements That Would Apply in Any Zoning District:

- Encouragement of Collocation facility. A collocation-eligible facility is a facility that is designed to accommodate future collocation that has been issued a valid permit and has undergone CEQA environmental review [Section 88-24.204(e)].
- No new wireless telecommunications tower may be located within 1,000 feet of an existing tower, unless the Zoning Administrator finds that the tower will have less than significant aesthetic and visual impacts and also that collocation is not possible. [Section 88-24.406(b)].
- No wireless facility may be located on a peak or ridge unless the facility is required to close a significant coverage gap, as determined by the Zoning Administrator based on information provided by the applicant in accordance with the Ordinance. Further, no wireless facility may be located within 50 feet of any scenic ridge, including any ridge or peak within the Mount Diablo area, and any scenic ridge located in a non-urban area, unless the Zoning Administrator finds that the facility will have less than significant aesthetic and visual impacts [Section 88-24.406(c)].

- Siting of a high-visibility facility would be required to be sited at a location that the Zoning Administrator determines will have the least visual and aesthetic impact to surrounding properties [Section 88-24.406(e)].
- A facility must limit visual and aesthetics impacts with a non-reflective finish and be painted/texture to match predominant background; portion of the facility that is visible to the sky must be painted light gray, or similar color, with reflectivity less than 55%, and/or camouflaged [Section 88-24.408(a)].
- A tower and any equipment enclosure and all ancillary equipment must be screened and surrounded by a wall or fence, at least 6 feet in height [Section 88-24.408(e)].
- Facilities within the County Right-of-way must be designed to not impede traffic, parking, and pedestrian circulation, restricted to have up to four antennas on a single pole within or adjacent to residential zone. Equipment must be installed underground or camouflaged if above ground, and restricted from exceeding more than 10 feet of the height of the pole [Section 88-24.408 (f)].

VII. STAFF ANALYSIS

A. Consistency with General Plan: The proposed Wireless Telecommunication Facilities Ordinance allows wireless facilities in any General Plan land use designation. The Ordinance implements a number of General Plan goals and policies, such as the following:

- ***Land Use Goal 3-A***: *To coordinate land use with circulation, development of other infrastructure facilities, and protection of agriculture and open space, and to allow growth and the maintenance of the County's quality of life. In such an environment all residential, commercial, industrial, recreational and agricultural activities may take place in safety, harmony, and to mutual advantage.*
- ***Land Use Goal 3-C***: *To encourage aesthetically and functionally compatible development which reinforces the physical character and desired images of the County.*

The proposed Ordinance outlines the requirements and procedures for any type of application permit. Application requirements, including engineered drawings, visual simulations or images, and information on facility site selection, together with location requirements such as required setbacks

and design requirements to minimize visual and aesthetic impacts and to blend in with the surrounding area. These requirements will assist the implementation of the land use goals and policies for residential areas.

- **Roadway and Transit Policy 5-5:** *Right of way shall be preserved to meet requirements of the Circulation Element and to serve future urban areas indicated in the Land Use Element.*

The proposed Ordinance includes application requirements for obtaining a wireless facility access permit such as submittal of a traffic control plan and documentation of how the facility would be installed and maintained without interfering with traffic and circulation within the County right-of-way. The Ordinance also includes design requirements for a facility within a County right-of-way such as a limit of no more than four antennas per utility pole and prohibiting an antenna from extending over the paved street travel. These requirements implement the roadway and transit policy.

- **Open Space Goal 9-B:** *Carefully study and review any development projects which would have the potential to degrade the scenic qualities of major significant ridges in the County or the bay and delta shoreline.*
- **Scenic Resources Goal 9-11:** *To protect major scenic ridges, to the extent practical, from structures, roadways, or other activities which would harm their scenic qualities.*
- **Scenic Resources Policy 9-21:** *The construction of new structures on the top of major scenic ridges or within 50 feet of the ridgeline shall be discouraged.*

The proposed Ordinance includes location requirements that restrict the proximity of a telecommunication tower within 1,000 feet of an existing tower and the location of a facility within 50 feet of a scenic ridge or to extend above the height of the scenic ridge or peak. The Ordinance also includes design requirements for a non-reflective finish, camouflaging or painting, and low light-reflectivity to limit the facility's aesthetic and visual impacts. These requirements implement the open space and scenic resources goals and policy.

- **Safety Element Goal 10-N:** *To provide for a continuing high level of public protection services and coordination of service in a disaster.*

The proposed Ordinance includes exemption to facilities that are owned or operated by one or more federal, state, or local government, including but not limited to any regional emergency communication systems, and any facility for a 911 system. Allowing exemption to these facilities will provide for lower costs and allow for expeditious installation of facilities that are related to the public emergency system.

- B. Consistency with Zoning: A wireless telecommunication facility has not been restricted from any of the zoning districts throughout the County, either within private or public properties, and this will remain with the proposed Ordinance. Within private properties, a *land use permit* will be processed for either a new or substantially modified facility. For a non-substantial change to an existing facility, a *collocation permit* and *minor alteration permit* may be processed accordingly. For a facility within a County right-of-way, the Department will process an *access permit*, after which Public Works issues an encroachment permit. The wireless *access permit* will be approved administratively, except that the public would have an opportunity to request a public hearing on the application.

As proposed, the new ordinance provides for clear parameters for the location and design components of a wireless facility to ensure health, safety and general welfare of the community and it will not conflict in any manner with the County Zoning Code.

- C. Appropriateness of Use: Adoption of the Ordinance will provide for the installation of wireless telecommunication facilities with minimal visual and aesthetic impacts, and for facilities in a County right-of-way, without interfering with traffic and circulation. As assessed in Negative Declaration, the adoption of the proposed Ordinance will not result in any significant adverse environmental impacts.

VIII. CONCLUSION

The proposed Wireless Telecommunication Facilities Ordinance includes criteria for the location, design, and approval of wireless facilities in a manner consistent with enacted federal and state law. Staff recommends adoption of a motion to the Board of Supervisors for approval of the Ordinance.

ATTACHMENTS

- Exhibit 1: December 2015 Draft Ordinance
- Exhibit 1a: Definition of "Substantial Change"
- Exhibit 2: December 2015 Final Negative Declaration/Initial Study
- Exhibit 3: March 2013 Draft Negative Declaration/Initial Study
- Exhibit 4: March 2013 Draft Ordinance
- Exhibit 5: 1998 Telecommunications Policy
- Exhibit 6: Comment Letters received prior to the July 21, 2015 County Planning Commission Meeting