



**Contra  
Costa  
County**

To: Board of Supervisors

From: John Kopchik, Director, Conservation & Development Department

Date: May 24, 2016

Subject: Hearing to Consider Adopting Ordinance No. 2016-11 to Regulate Wireless Telecommunication Facilities in the Unincorporated Area of Contra Costa County

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### **RECOMMENDATION(S):**

1. OPEN the public hearing on Ordinance No. 2016-11; RECEIVE testimony and CLOSE the public hearing.
2. FIND that, on the basis of the whole record (including the initial study and any comments received), there is no substantial evidence that the project will have a significant effect on the environment, and the Negative Declaration reflects the County's independent judgment and analysis.
3. ADOPT the Negative Declaration 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.
4. ADOPT Ordinance No. 2016-11 to regulate wireless telecommunication facilities in the unincorporated area of Contra Costa County.

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☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY  
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD  
COMMITTEE

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Action of Board On: **05/24/2016** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

**VOTE OF SUPERVISORS** I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: May 24, 2016

Contact:  
925-674-7783

David Twa, County Administrator and Clerk of the Board of Supervisors

By: , Deputy

cc:

5. DIRECT the Director of Conservation and Development, or his designee, to file a CEQA Notice of Determination with the County Clerk; and AUTHORIZE the Director of Conservation and Development, or his designee, to arrange payment of a \$50 filing fee to the County Clerk.

## FISCAL IMPACT:

The cost of preparing this ordinance has been funded by the Department of Conservation and Development's Land Development Fund. The costs of processing wireless telecommunication facilities will be 100% funded by application fees.

## BACKGROUND:

On October 25, 2011, the Board of Supervisors authorized the Department of Conservation and Development (DCD) 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.

### Federal and State Laws

In preparing this ordinance, DCD staff reviewed relevant federal and state law that regulates wireless telecommunication facilities, including the 1996 Federal Telecommunications Act, and recent federal and state laws that affect the wireless telecommunication industry.

The 1996 Federal Telecommunications Act affected regulations on the communications industry that had been in place since the federal Communications Act of 1934. In response to the Telecommunications Act and the attendant changes in the wireless telecommunications industry, the Board adopted the Contra Costa County Telecommunications Policy in July 1998. This policy has been the only County adopted document that provides guidance to staff for processing wireless telecommunication facilities.

Since the Board's adoption of the 1998 Telecommunications Policy, a number of federal and state laws have been enacted, such as:

- Government Code section 65850.6, which provided for ministerial approval of collocation facilities;
- 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.
- Title 47 of the United States Code, section 1455 which affects local government processing of modifications to existing wireless facilities, and Title 47 of the Code of Federal Regulations, section 1.40001, effective May 18, 2015, that clarified the rules for facilitation of wireless deployment under Section 6409 of the Spectrum Act.
- Public Utilities Code sections 7901 and 7901.1, which provide a statewide franchise to telecommunications companies to locate facilities in public rights of way, subject

to time place and manner restrictions.

These federal and state laws have added requirements for the permitting of wireless facilities that are not in the Telecommunications Policy. The proposed Wireless Telecommunication Facilities Ordinance is consistent with applicable federal and state law regulating wireless telecommunications service.

### Purpose of the Wireless Telecommunication Facilities Ordinance

The Wireless Telecommunication Facilities 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. Upon its adoption by the Board, the ordinance will supersede the County's 1998 Telecommunications Policy.

### Description of the Proposed Wireless Telecommunication Facilities Ordinance

The proposed Wireless Telecommunication Facilities Ordinance would add Chapter 88-24 to the County Code. This Chapter sets forth criteria for the processing and approval of wireless facilities throughout unincorporated Contra Costa County.

The proposed ordinance allows for four types of wireless telecommunication facilities permits, including a land use permit, a wireless facility access permit for a facility within a County right-of-way, a minor wireless facility alteration permit, and a wireless facility collocation permit.

- A land use permit is required for a new facility or substantial modification to an existing facility that does not qualify for any other type of permit.
- A minor alteration permit is required for any change to an existing facility that qualifies as a minor alteration under federal laws and regulations.
- A collocation permit is required to collocate a new facility on an existing collocation-eligible facility, pursuant to the requirements of Government Code section 65850.6.
- A wireless facility access permit is required for a new facility or a substantial modification to an existing facility located within the County's rights of way.

The proposed ordinance includes specific location and design requirements for wireless telecommunication facility applications such as distance restrictions for new towers, placement of a wireless facility on a scenic ridge, siting of high-visibility facilities, reduction of visual and aesthetic impacts, and considerations for location in or within 300 feet of a residential district.

Existing towers and other existing wireless facilities are exempt from the Ordinance. The Ordinance does not require changes to any existing facility, and moreover, does not terminate any approved permit. The Ordinance would only apply 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.

Staff has reviewed comments received on the Negative Declaration prepared for the Ordinance, and comments received at the July 21, 2015 and December 15, 2015 meetings of the County Planning Commission. Staff also had a series of meetings, discussions and communications with representatives of the wireless service providers, including Verizon, AT&T, Crown Castle, and American Tower, as well as with other interested members of the public. Public input resulted in significant modifications to various early drafts of the proposed Ordinance in order to address issues/concerns raised, such as definitions of substantial change and minor alterations, the submittal requirements for permits, and location and design criteria for wireless facilities.

### County Planning Commission Hearing

On July 21, 2015, DCD staff introduced the proposed ordinance at a meeting of the County Planning Commission. Four comment letters were received on July 21, 2015, and therefore, the County Planning Commission continued its consideration of the proposed ordinance. Staff discussed the comments received from representatives of Verizon, AT&T, American Tower, and Crown Castle and made certain revisions to the ordinance based on the comments received.

On December 15, 2015, DCD staff returned to the County Planning Commission and made a presentation of the proposed ordinance to the Commission. The Commission then opened the public hearing and took testimony from two persons, including a representative of Verizon and a representative of American Tower. Prior to the meeting, staff received three comment letters, including a letter in support of the ordinance from the Delta Protection Commission, and letters from Verizon and Crown Castle requesting further changes to the ordinance. As requested by staff, the County Planning Commission continued the hearing to February 9, 2016 in order to allow further staff sufficient time to review the additional comments. After reviewing the additional comments received, staff revised the proposed ordinance.

On February 9, 2016, the County Planning Commission took testimony from the representatives of Verizon and American Tower, and then voted to recommend approval of the ordinance.

### California Environmental Quality Act

On March 12, 2013, a Draft Negative Declaration/Initial Study (ND) was circulated for 30-day public review period that ended on April 11, 2013. The Draft ND included an evaluation of the potential environmental effects of the proposed ordinance and a finding

that there would be no significant adverse impacts. DCD staff received a total of four letters and one email during the public review period. One additional letter was received after the close of the public review period.

A Final ND, dated December 8, 2015, has been prepared that includes responses to all comments received on the adequacy of the Draft ND. Consideration of some of the comments received and staff revisions of the proposed ordinance have resulted in five text revisions, which are included in the Final ND; however, there are no substantive changes to the Draft ND and the findings of the Draft ND are unchanged.

On February 9, 2016, the County Planning Commission found the Negative Declaration, consisting of the Draft ND and Final ND, to be adequate and complete, prepared in compliance with the California Environment Quality Act and the State and County CEQA Guidelines, and reflected the County's independent judgement and analysis, and recommended that the Board certify the Negative Declaration.

### Application Fees

Applicants seeking permits under this Ordinance will be required to pay fees and deposits consistent with those currently required for land use permits and encroachment permits. Staff is preparing a subsequent recommendation to the Board that will be considered in June to create new fee and deposit amounts for wireless facility access permits, collocation permits, and minor alteration permits.

### Conclusion and Recommendation

The Wireless Telecommunication Facilities Ordinance is consistent with federal and state law that governs how local jurisdictions regulate such facilities. The proposed ordinance includes locational standards for where wireless facilities are located, as well as standards that regulate the design of these facilities, in order to promote the public health, safety, and welfare of the citizens of the County. In addition, adoption of the proposed ordinance will not result in a significant impact on the environment. Staff recommends that the Board of Supervisors adopt Ordinance No. 2016-11 for establishing and locating wireless telecommunication facilities within unincorporated areas of the County.

### CONSEQUENCE OF NEGATIVE ACTION:

The County will not have an ordinance that regulates wireless telecommunication facilities.

### CLERK'S ADDENDUM

*Speaker: Kim Allen, American Tower. CLOSED the public hearing; FOUND there is no substantial evidence that the project will have a significant effect on the environment, and the Negative Declaration reflects the County's independent judgment and analysis; ADOPTED the Negative Declaration and specify that the Department of Conservation and Development is the custodian of the documents and other material, which constitute the record of proceedings upon which this decision is based; ADOPTED Ordinance No. 2016-11 to regulate wireless telecommunication facilities in the unincorporated area of Contra Costa County; and DIRECTED the Director of Conservation and Development, or his designee, to file a CEQA Notice of Determination with the County Clerk; and AUTHORIZED the Director of Conservation and Development, or his designee, to arrange payment of a \$50 filing fee to the County Clerk.*

#### ATTACHMENTS

CPC Resolution 7-2016

Ordinance No. 2016-11

Staff Report - County Planning Commission 12-15-15

Staff Report - County Planning Commission 02-09-16

Draft ND ZT13-0001 03-12-13

Final ND ZT13-0001 12-08-15

PowerPoint Presentation