

Telecommunications Program Briefing

Santa Barbara County
Board of Supervisors Hearing
October 20, 2009

Purpose

- County's Telecommunications Program
 - Permitting framework
 - General update
- BOS is the final local appeal authority
 - Not an appeal hearing
 - Not project-specific

Ordinance History

- *1990s – Initial wave of applications*
- 1995 – SB County Ordinance
- **1996 – Telecommunications Act**
- 1997 – Ordinance Amendment
- 1998 – Ordinance Amendment
- *2000s – Second wave of applications*
- 2001 – Ordinance Amendment
- 2005 – Ordinances Amendments (3)
- *2009 – Third wave of applications*

Ordinance Authority

- General local zoning authority preserved “over decisions regarding placement, construction, and modification of personal wireless service facilities” 47 USCA § 253(b)
- Local Authority Limitations

EXCERPTS FROM 47 USC 332(c)(7)

(7) Preservation of local zoning authority.

(A) [General authority]

(B) **Limitations.**

(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof—

(I) shall **not unreasonably discriminate among providers** of functionally equivalent services; and

(II) shall **not prohibit or have the effect of prohibiting** the provision of personal wireless services.

(ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities **within a reasonable period of time** after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be **in writing** and **supported by substantial evidence** contained in a **written record**.

(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the **environmental effects of radio frequency emissions** to the extent that such facilities comply with the Commission's regulations concerning such emissions.

(v) [Enforcement by court or FCC]

Ordinance Intent

- Promote orderly development
- Ensure compatibility
- Protect public safety
- Protect visual resources
- Reduce proliferation (encourage collocation)
- Reduce visibility
- Encourage creative design solutions
- Streamlined permitting approach

Permit Tiers

- Tier 4: Major CUP (PC hearing)
- Tier 3: Minor CUP (ZA hearing)
- Tier 2: Director DVP
- Tier 1: LUP/CDP



Heightened
Decision-
Maker Level



County Development Standards

Placement & Siting



County Development Standards

Architectural Design

3/2/2004

Photosimulation of view looking southeast from across Camino Del Sur at Estero Rd.



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Previsualists
Visual Communication Graphics, Inc.

County Development Standards

Material Specifications



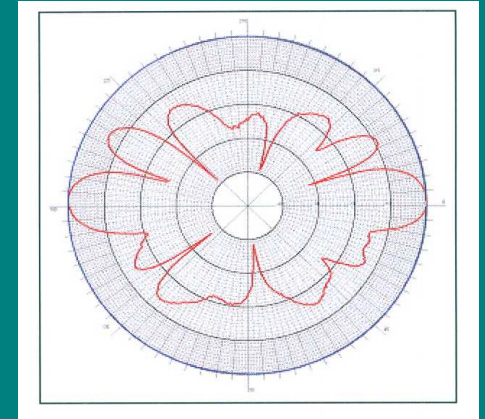
County Development Standards

Landscaping



County Development Standards

RF Emissions Monitoring



- Reporting requirements:
 - Initial application; RF projection
 - Post-installation measurement
 - Continual monitoring (measurements every 5 yrs)
- Technical review
 - Prepared by qualified professionals
 - Peer review by consultant, as needed

Evolving Industry

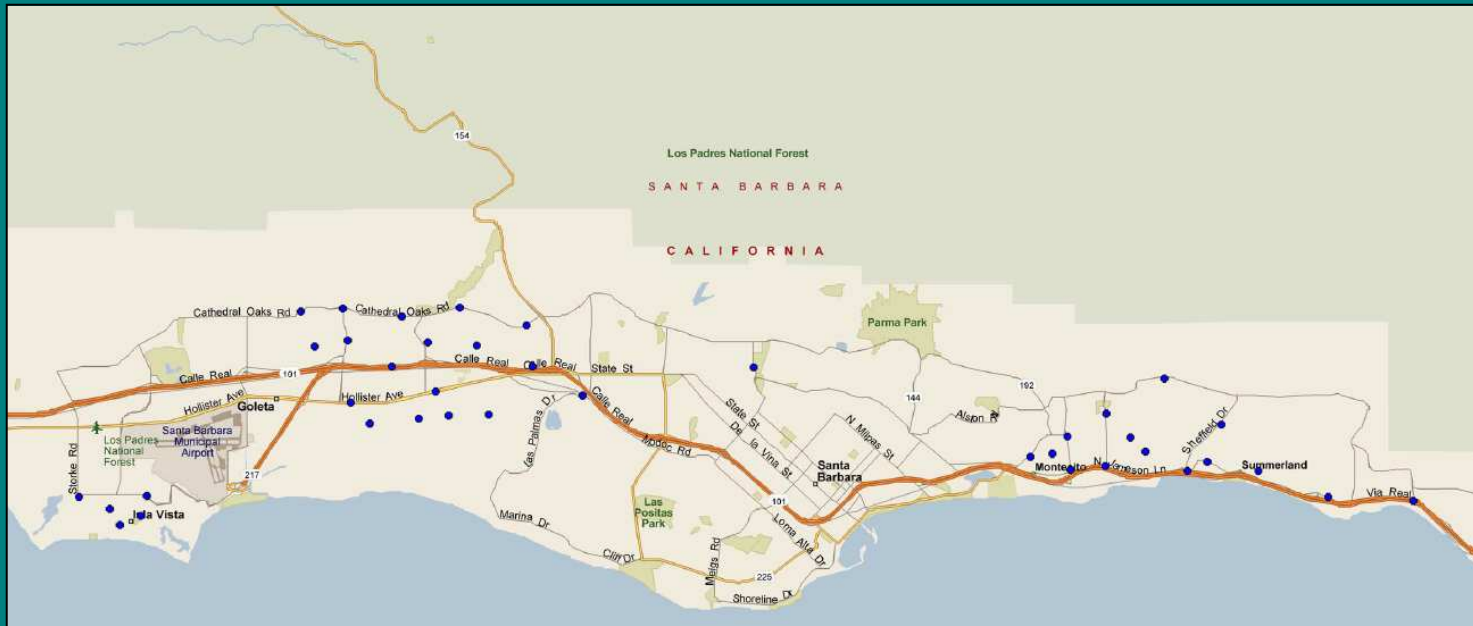
- Carrier changes
 - New, merging, consolidating
- Increasing service demands
 - More users, increasing capacity need
 - Common usage, increasing coverage areas
- New technologies
 - Data services, smart-phones, internet, etc.
- New design approaches
 - “Monopoles” to Distributed Antenna System

EXAMPLE: DAS Network

- Distributed Antenna System network
- Multiple antenna sites
- Mounted on utility poles
- Tier 1 facilities
 - Small equipment
 - All zone districts
 - LUP/CDP/CDH



DAS EXAMPLE: NextG Networks



	LUP	CDP	CDH	Total
Antennas	24	12	3	39
Trenching	0	7	2	9
Total permits	24	19	5	48

Questions?

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(v) [Enforcement by court or FCC]

Litigation Framework

“[A] locality can run afoul of the TCA’s ‘effective prohibition’ clause if it prevents a wireless provider from closing a ‘significant gap’ in service coverage.”
MetroPCS, Inc. v City & County of San Francisco, 400 F.3d 715, 725 (9th Cir. 2005). (Underlining added.)

In order to meet its burden, Applicant must show that they:

- Are prevented from filling a significant gap in their own service coverage; and
- Their proposed way to fill that significant gap is the “least intrusive means.” *T-Mobile USA, Inc. v. City of Anacortes*, 572 F.3d 987, 995-996 (9th Cir. 2009). (Underlining added.)

If Applicant makes the above showing, County must then show:

- “[S]ome potentially available and technologically feasible alternative sites;” and
- These sites “close the gap” in coverage. *T-Mobile*, at 998-999. (Underlining added.)