BOARD OF SUPERVISORS
AGENDA LETTER

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Agenda Number:

Department Name:	Planning & Development
Department No.:	053
For Agenda Of:	5/17/11
Placement:	Departmental
Estimated Tme:	1 hour
Continued Item:	No
If Yes, date from:	
Vote Required:	Majority

TO: Board of Supervisors

FROM:

Department Director(s)	Glenn Russell Ph.D., Director, 568-2085 Planning & Development
Contact Info:	Alice McCurdy, Deputy Director, 568-2518 Development Review Division- South County

SUBJECT: **Telecommunications Ordinance Amendments**

County Counsel Concurrence
As to form: Yes

Auditor-Controller Concurrence
As to form: N/A

Other Concurrence: N/A
As to form: N/A

Recommended Actions:

That the Board of Supervisors consider the recommendation of the Montecito and County Planning Commissions, to approve Case Nos. 11ORD-00000-00005, 11ORD-00000-00006, and 11ORD-00000-00007 which would amend the County Land Use and Development Code, Montecito Land Use and Development Code, and the Coastal Zoning Ordinance processing requirements for commercial telecommunications facilities, and take the following actions:

A. **Case No. 11ORD-00000-00005 (County LUDC Amendment)**

1. Make the findings for approval, including CEQA findings, of the proposed ordinance amendment as shown in Attachment A;
2. Adopt the Addendum dated March 4, 2011 to the previously adopted Negative Declaration (97-ND-02) as adequate environmental review pursuant to CEQA Guideline section 15164, both included as Attachment B; and
3. Approve Case No. 11ORD-00000-00005, an ordinance amending Section 35-1, the Santa Barbara County Land Use and Development Code, of Chapter 35, Zoning, of the County Code included as Attachment C.

B. **Case No. 11ORD-00000-00006 (Montecito LUDC Amendment)**

1. Make the findings for approval, including CEQA findings, of the proposed amendment as shown in Attachment A;
2. Adopt the Addendum dated March 4, 2011 to the previously adopted Negative Declaration (97-ND-02) as adequate environmental review pursuant to CEQA Guideline section 15164, both included as Attachment B; and
3. Approve Case No. 11ORD-00000-00006, an ordinance amending Section 35-2, the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the County Code included as Attachment D.

C. **Case No. 11ORD-00000-00007 (Coastal Zoning Ordinance Amendment)**

1. Make the findings for approval, including CEQA findings, of the proposed amendment as shown in Attachment A;
2. Adopt the Addendum dated March 4, 2011 to the previously adopted Negative Declaration (97-ND-02) as adequate environmental review pursuant to CEQA Guideline section 15164, both included as Attachment B; and
3. Approve Case No. 11ORD-00000-00007, an ordinance amending Article II, the Coastal Zoning Ordinance, of Chapter 35, Zoning, of the County Code included as Attachment E.

Summary Text:

At the January 19, 2010 Board of Supervisors hearing, the County Board of Supervisors directed Planning & Development to revisit the County's regulation of telecommunications facilities and revise the Commercial Telecommunications Ordinance. The Board directed staff to address three specific objectives: 1) requiring public hearings for Tier 1 facilities as currently defined, 2) increasing public noticing, and 3) establishing requirements for coverage and alternative siting information. In addition to the goals provided above, Planning & Development took the opportunity to address various items that have arisen in the past several years. Such items include making provisions for mobile temporary telecommunications facilities, and network server "hub" sites, addressing fire protection goals, and restructuring processing of colocated facilities to meet the "Shot Clock" requirements of the FCC Declaratory Ruling of November 18, 2009. As discussed in the March 4, 2011 Addendum, none of the conditions described in CEQA Guideline section 15162 calling for preparation of a subsequent EIR or negative declaration have occurred.

Processing

The work plan for the ordinance amendment was approved for the 2010-2011 fiscal year budget. Staff conducted two public briefings which provided opportunity for public input. A briefing was first given at the Montecito Planning Commission hearing on January 26, 2011, followed by a second briefing at the County Planning Commission on February 2, 2011. These briefings provided opportunity for the public and the Planning Commissions to comment on the proposed changes and provide input prior to the completion of the final draft ordinance. At these briefings, staff received feedback from residents and commissioners. However, no substantial issues were identified. In addition to the public hearing

notices, the ordinance amendment project information was also posted on the Planning and Development website for additional public notification. After providing these briefings, staff returned to both Planning Commissions with the formal ordinance amendment packages.

The Montecito Planning Commission reviewed the proposed ordinance amendment at its hearing on March 23, 2011. No members of the public attended or gave input. At this hearing the Montecito Planning Commission adopted a resolution recommending that the Board of Supervisors approve the MLUDC ordinance amendment (included as Attachment I) and recommended that the Planning Commission recommend that the Board of Supervisors approve the Article II ordinance amendment. The Montecito Planning Commission's action also included a recommendation for one minor change to the ordinance amendment. The Commission suggested staff consider including provisions for decision makers to consider whether project proposals offer not only the least intrusive siting and design options but also utilize the least intrusive technology as well. Staff recommends against adding the language as it may be considered a "prohibition of service" against carriers who utilize one type of technology over another. The language is not included in the ordinances proposed for Board adoption.

The County Planning Commission reviewed the proposed ordinance amendments to the LUDC and Article II at its hearing on April 6, 2011. No members of the public attended or gave input. At this hearing the County Planning Commission adopted two resolutions (included as Attachment H and Attachment J) recommending that the Board of Supervisors approve the ordinances as proposed. The County Planning Commission did not propose any changes to the ordinance language proposed by staff.

Summary of Ordinance Amendments Responding to Board of Supervisors Objectives

In response to the Board's objectives regarding public hearings and noticing, staff proposes a reorganization of where certain facilities fall within the current tier system. Since the higher tier levels require increased public noticing and opportunity for public hearings by virtue of their permit requirements, the ordinance amendments would move the facilities currently defined in Tier 1 (i.e. very small facilities and tenant improvements) into Tier 2, which would require a Director Level Development Plan, as opposed to a Land Use/Coastal Development Permit. Director Level Development Plans require that a notice be mailed 10 days prior to the Director's decision (similar to the notice mailed 10 days before a public hearing). If during this time a public hearing is requested, the Director will not take an action on the project and the project will be heard by the Zoning Administrator or Montecito Planning Commission instead. The Zoning Administrator or Montecito Planning Commission hearing would also be noticed prior to the hearing itself. If a public hearing is not requested, the hearing is waived, and the Director may take action on the project. The Director's decision is appealable for 10 days from the decision date. Moving these facilities into Tier 2 would keep the processing requirements minimal, while providing the additional noticing required for discretionary projects as well as opportunity for a public hearing upon request as desired.

Although this change would effectively eliminate the current Tier 1 category, the amended ordinance would retain this tier to provide for two types of minor facilities not currently captured in the ordinance. In the past several years, P&D has received requests for two types of facilities that were not addressed in the current ordinance: temporary mobile telecommunications facilities and hub sites. Since neither of these facilities require new construction and are more effectively "use" permits, the proposed revisions would add them into Tier 1.

In addition to moving "very small facilities" and "tenant improvements" into Tier 2, the proposed amendments would require all facilities in residential zone districts to be processed under Tier 4, which requires a Major Conditional Use Permit approval by the Planning Commission. This change is suggested in response to the Board's expressed interest to address heightened public awareness of facilities proposed to be located in residential zone districts.

In response to the Board's request regarding coverage and alternative siting information, the proposed amendments would add two findings to the "Additional Findings" (LUDC 35.44.010.G/MLUDC 35.444.010.G/Art. II 35-144F.7):

1. *"The applicant has demonstrated a need for service (i.e. coverage or capacity) and the area proposed to be served would not otherwise be served by the carrier proposing the facility."*

2. *"The applicant has demonstrated that the proposed facility design and location is the least intrusive means feasible for the carrier proposing the facility to provide the needed coverage."*

The first finding proposed to be added would ensure against redundant coverage by a single carrier by requiring the applicant to demonstrate their need for service. The second finding proposed to be added would ensure that alternative site locations and alternative designs are explored prior to project approval, and that the applicant has demonstrated that the project being considered is the least intrusive means feasible for providing coverage.

Summary of Ordinance Amendments to Achieve Consistency with Recent State and Federal Legislation and Action

Recent legislation and judicial and administrative decisions have provided clarification of state and federal requirements for the permitting of telecommunications facilities. The proposed ordinance amendments attempt to provide consistency with recent legislation such as the California "Kehoe Act" 2007 (SB1627, regarding colocation); the FCC Declaratory Ruling of November 18, 2009 (regarding permit processing time requirements); the "Omnipoint Communications Enterprises v. Newtown Township" decision (regarding assessment of coverage gaps); and the Presidential Proclamation of December 8, 2009 (regarding the protection of cellular facilities, which were deemed "critical infrastructure," during emergencies and natural disasters).

To address the new requirements regarding colocation and processing deadlines, the proposed amendments include the addition of a new category under Tier 2, specifically for colocation applications. This category would encompass all the types of facility designs that qualify as "colocation" under the FCC's definition.[1] Under Tier 2, these types of facilities would require a

[1]The November 18, 2009 Declaratory Ruling clarified the FCC's definition of what qualifies as a "colocated facility." According to the FCC, "colocation" is defined as "the addition of an antenna to an existing tower or other structure." This definition appears to consider the placement of as little as one antenna onto any existing structure (i.e. utility pole, stop light, building) as colocation, even if no other antennas currently exist on the structure. This definition of colocation is much broader than the County's current definition. To comply with these new processing standards, the ordinance amendments would revise the County's definition of "colocated telecommunications facility" to reflect the FCC's definition.

Director Level Development Plan, which would allow opportunity for a public hearing should one be requested, but would otherwise be approved by the Director. Without the additional time constraints of a public hearing process, these types of applications could then feasibly achieve the 90 day processing requirement imposed by the FCC Declaratory ruling (see "Background" below).

Lastly, to comply with the Presidential Proclamation regarding protection of critical infrastructure, now including cellular facilities, Planning & Development is working with the Fire Department to ensure that these facilities are defensible during fires. The development standards requiring landscaping around telecommunications facilities have been amended to include provisions for vegetation clearance required by the Fire Department.

Summary of Ordinance Amendments to Address Emerging Issues

In addition to the goals provided above, Planning & Development proposes to address various items that have arisen in the past several years. Such items include making provisions for mobile temporary telecommunications facilities, and network server "hub" sites, and updating language.

Temporary facilities are not currently addressed in the ordinance. However, recent events have generated several requests by carriers to put up temporary facilities during natural disasters (i.e. fires) or large events (e.g. Halloween in Isla Vista) when cell service is relied upon for the community's health and safety. Since these facilities would only operate on temporary basis over a short period of time, they would be added to Tier 1.

Current technologies, such as Distributed Antenna System networks, require support equipment "hub" sites that comprise computer servers that connect to the larger network, without antennas. Hub sites are typically located in existing buildings. Should the hub site require construction of a new building or structure to house the equipment, the new structure would be subject to the zone district regulations, County policies and permit requirements. Although these facilities qualify as part of a telecommunications facility, they are not addressed in the current ordinance. These facilities would be added to Tier 1.

The "Post-Installation Provisions" section establishes the County's standards for long-term management of telecommunications facilities. These standards ensure that the facilities provide opportunity for colocation, maintain compliance with federal emissions standards, and are generally maintained or properly abandoned. To ensure compliance with these standards, these provisions are adapted into conditions of approval and applied to projects. The changes proposed would modify the language in the post-installation provisions to give greater flexibility in adapting them as conditions, while maintaining their purpose.

Background:

Federal Telecommunications Act Limitations

The County's jurisdictional authority over telecommunications facilities stems from the Federal Telecommunications Act of 1996 which preserves local zoning authority "over decisions regarding

placement, construction, and modification of personal wireless service facilities,"(47 U.S.C.A. § 332 (c)(7)). However, the Federal Telecommunications Act also includes specific limitations on how local authorities go about regulating these facilities. Specifically, the purview of local agencies to apply zoning requirements is limited by the Federal Telecommunications Act as follows:

> *"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."(47 U.S.C.A. § 332 (c)(7)(B).)*

FCC Declaratory Ruling of November 18, 2009, "Shot Clock" Requirements

On November 18, 2009, the Federal Communications Commission adopted and released its Declaratory Ruling concerning provisions in 47 U.S.C. Sections 253 and 332(c)(7), regarding state and local review of wireless facility siting applications. This Declaratory Ruling provided direction that affects the County's processing requirements. The Declaratory Ruling defined what is a presumptively "reasonable time" beyond which a local jurisdiction's inaction on a siting application may constitute a prohibited "failure to act" under 47 U.S.C. Section 332(c)(7). The FCC found that a "reasonable period of time" is, presumptively:

- 90 days to process personal wireless service facility siting applications requesting collocations; and
- 150 days to process all other applications.

Accordingly, if state or local governments do not act upon applications within those timeframes, then a personal wireless service provider may claim that a prohibited "failure to act" has occurred and personal wireless service providers may seek redress in court within 30 days, as provided in 47 U.S.C. Section 332(c)(7)(B)(v). The state or local government, however, would have the opportunity to rebut the

presumption of reasonableness. It is important to note however, that these timeframes commence upon determination of application completeness.

The Declaratory Ruling also clarified that state or local government cannot deny an application solely because service is available from another provider. Therefore, each carrier has the right to apply for a site where other carriers already exist to provide their own service. Lastly, the FCC Declaratory Ruling affirmed that local governments do not have the flexibility to deny or delay action on applications based on perceived health effects of RF emissions.

Performance Measure:

N/A

Fiscal and Facilities Impacts:
Budgeted: Yes

Fiscal Analysis:
Funding for this ordinance amendment work effort is budgeted in the Administration program of the Development Review South Division on page D-328 of the adopted Planning and Development Department's budget for fiscal year 2010-2011.

Special Instructions:

The Clerk of the Board shall send a copy of the signed and numbered ordinance and minute order to the Planning and Development Department, attention Megan Lowery.

Attachments:

A) Findings
B) Addendum, with Negative Declaration 97-ND-02
C) County LUDC Amendment – Clean Copy
D) Montecito LUDC Amendment – Clean Copy
E) Coastal Zoning Ordinance Amendment – Clean Copy
F) County Planning Commission Staff Report dated March 18, 2011
G) Montecito Planning Commission Staff Report dated March 4, 2011
H) County LUDC Resolution and Ordinance – Tracked Changes
I) Montecito LUDC Resolution and Ordinance – Tracked Changes
J) Article II Resolution and Ordinance – Tracked Changes

Authored by:

Megan Lowery, Planner – Planning & Development

cc:

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