

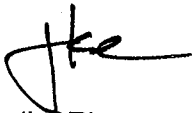


COUNTY OF SAN MATEO
Inter-Departmental Correspondence
Planning and Building Department



DATE: April 26, 2010
BOARD MEETING DATE: May 11, 2010
SPECIAL NOTICE/HEARING: 10-Day Notice
VOTE REQUIRED: Majority

TO: Honorable Board of Supervisors

FROM: Jim Eggemeyer, Interim Director of Community Development 

SUBJECT: Consideration of an amendment to the Local Coastal Program (LCP) and to Chapter 24.5 of Division VI, Part One, of the San Mateo County Ordinance Code (Zoning Regulations), Regulations for Wireless Telecommunication Facilities, to incorporate modifications proposed by the California Coastal Commission.

County File Number: PLN 2008-00048 (Planning and Building Department)

RECOMMENDATION

1. Adopt a resolution accepting modifications requested by the California Coastal Commission amending the San Mateo County Local Coastal Program Implementation Plan by modifying Chapter 24.5 to Division VI, Part One, of the San Mateo County Ordinance Code (Zoning Regulations), Regulations for Telecommunication Facilities, and directing staff to transmit this resolution to the Coastal Commission for certification.
2. Adopt an ordinance amending Chapter 24.5 to Division VI, Part One, of the San Mateo County Ordinance Code (Zoning Regulations) for Wireless Telecommunication Facilities.

BACKGROUND

Proposal: County Planning staff is recommending that your Board accept modifications to the Local Coastal Program (LCP) Implementation Plan and to the San Mateo County Zoning Regulations for wireless telecommunication facilities that were recommended by the California Coastal Commission at its December 10, 2009 meeting. These regulations had been previously approved by your Board on December 9, 2008. The proposed text amendment to the Zoning Regulations would modify existing regulations and permitting requirements for telecommunication facilities that currently apply to

unincorporated areas of the County. Accepting the modifications proposed by the Coastal Commission means that these regulations would be extended to the Coastal Zone for the first time. The proposed amendments would go into effect if your Board approves the modifications proposed by the Coastal Commission, and if the Commission then determines that the County's approval is legally adequate.

Board of Supervisors Action: The Board originally approved the zoning text amendment to establish regulations and permitting requirements for wireless telecommunication facilities at its December 9, 2008 meeting.

Report Prepared By: Matt Seubert, Project Planner, Telephone 650/363-1829

Applicant: San Mateo County

Location: Countywide

Environmental Evaluation: Exempt from environmental review under CEQA. Your Board certified the Negative Declaration for the original adoption of the zoning text amendment on December 9, 2008. See Section F of this report for further discussion.

Zoning: Applies to wireless telecommunication facilities in all zoning districts.

Land Use: Existing land use varies. Applies to all wireless telecommunication facilities.

DISCUSSION

A. BACKGROUND

On December 9, 2008, your Board approved a zoning text amendment establishing regulations for wireless telecommunication facilities for the unincorporated areas of San Mateo County. However, these regulations will not become effective in the Coastal Zone until approved by the Coastal Commission. For the past year, the County has had two separate sets of regulations for wireless telecommunication facilities: the new regulations in Chapter 24.5 adopted by the Board on December 9, 2008 have applied outside the Coastal Zone, while the older Use Permit regulations in Chapter 24 have continued to apply within the Coastal Zone. After the Board's approval of Chapter 24.5, County Planning staff submitted this new regulation for telecommunication facilities to the Coastal Commission as an amendment to the County's Local Coastal Program (LCP). At a public hearing on December 10, 2009, the Coastal Commission proposed modifications to this amendment. The amendments will go into effect if your Board accepts the modifications, and the Coastal Commission then finds that the County's approval is legally adequate.

B. PURPOSE

The amendment would extend, for the first time, zoning regulations for wireless telecommunication facilities to the Coastal Zone. It would also incorporate suggested modifications proposed by the Coastal Commission to the existing zoning regulations for wireless telecommunications that would apply to all unincorporated areas of the County.

C. SUMMARY OF COASTAL COMMISSION PROPOSED MODIFICATIONS

During the course of the preparation of the report to the Coastal Commission by their staff, San Mateo County staff worked with Coastal Commission staff to resolve outstanding issues on all proposed modifications. The Coastal Commission letter indicating the four suggested modifications is included at the end of this report, with proposed additions in underline, and deletions in ~~strikethrough~~.

For the most part, the modifications are clarifications in language that Coastal Commission staff thought important and do not change the policy intent of the existing regulations. Suggested Modifications 1 and 4 would add additional requirements for wireless facilities in the Coastal Zone, and would not apply outside the Coastal Zone. Suggested Modification 2 would add additional requirements for locating wireless facilities in sensitive habitats, and would apply Countywide. Suggested Modification 3 clarifies how the regulations interact with State and Federal laws, and would apply Countywide. Staff recommends accepting all of the Commission's modifications as proposed.

D. NEXT STEPS

The County has six months from the date of the December 10, 2009 Coastal Commission's action (that is, until June 10, 2010) to adopt a resolution accepting and agreeing to the Commission's proposed modifications to the amendment. Adopting the attached resolution and approving the attached ordinance, as recommended by staff, would comply with the Coastal Commission's requested amendments. Following this Board action, County staff would then transmit this resolution and supporting materials to the Coastal Commission. If the Coastal Commission's Executive Director determines that the County's resolution addresses the Coastal Commission's concerns and the Coastal Commission does not object, Coastal Commission staff would then file that determination with the Secretary of Resources, and the proposed amendment would be effectively certified and have legal force.

E. PUBLIC COMMENT

There was no public comment at the December 10, 2009 Coastal Commission hearing, and no further public comment has been received by County staff since that date.

F. ENVIRONMENTAL REVIEW

Under Section 21080.9 of the California Public Resources Code, environmental review in the preparation of an LCP amendment is not required at a local level. Responsibility for environmental review is shifted from the local government to the Coastal Commission under Section 15265 of CEQA. Review by the Coastal Commission is considered to be functionally equivalent to the environmental review that would be required by CEQA. Your Board certified the Negative Declaration for the original adoption of the zoning text amendment on December 9, 2008.

Livable Communities 2025 Shared Vision: The proposed amendment will establish regulations in the Coastal Zone that consider the impacts of telecommunication facilities on the environment and surrounding communities, require such facilities to minimize and mitigate impacts on scenic resources, and consider the future impacts of these facilities.

County Counsel has reviewed and approved the resolution and ordinance as to form and content.

FISCAL IMPACT

It is not anticipated that this proposed action would have any fiscal impact.

CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2 219
VOICE AND TDD (415) 904-5 260
FAX (4 15) 904-5 400



RECEIVED

2010 JAN -4 P 4: 24

SAN MATEO COUNTY
PLANNING DIVISION

December 30, 2009

Lisa Grote
Director of Community Development
County of San Mateo
Planning and Building Department
455 County Center, 2nd Floor
Redwood City, CA 94063

RE: Local Coastal Program Amendment No. SMC-MAJ-1-09 (Wireless Facilities)

Dear Lisa:

This is to formally notify you of the Coastal Commission's action on the San Mateo County LCP amendment 1-09. As you are aware, the Commission completed its action on this LCP amendment at its December 10, 2009 public hearing. The Commission rejected the amendment as submitted and then approved the amendment with four suggested modifications. The resolutions of certification and the suggested modifications as adopted by the Commission are listed in the staff report dated November 20, 2009, enclosed with this letter.

Pursuant to Section 13544 of the California Code of Regulations, effective certification of the LUP amendment will occur after:

1. The County acknowledges receipt of the enclosed resolutions as adopted by the Commission, and within six months of the December 10, 2009 action, through an adopted resolution:
 - a. accepts and agrees to the modifications that are suggested;
 - b. takes whatever formal action is necessary to implement the modifications; and
 - c. agrees to issue coastal development permits subject to the approved Local Coastal Program;
2. The Commission does not object to the Executive Director's determination that the resolution by the County is legally adequate; and

3. That determination is filed with the Secretary of Resources by the Coastal Commission staff.

If the County decides to accept and agree to the modifications as suggested, pursuant to no. 1(a) described above, it is important for the County to reprint the LCP, incorporating the suggested modifications into the document. Upon the submission of the resolution and supporting materials to the Commission, staff will then be able to review the document to determine whether it is legally adequate pursuant to no. 2 above and agendize the item for the Commission.

Section 13542(b) of the Commission's Regulations states that the Commission's certification of an LCP amendment with suggested modifications shall expire six months from the date of the Commission's action, unless the deadline is extended by the Commission pursuant to Section 30517 of the Coastal Act and Section 13535(c) of the Commission's Regulations.

If you have any questions, please don't hesitate to contact me at (831) 427-4887 or mcavaleri@coastal.ca.gov.

Sincerely,



Madeline Cavalieri
Coastal Planner
North Central Coast District

cc: Matt Seubert

Enclosure (1)

CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT OFFICE
45 FREMONT STREET, STE. 2000
SAN FRANCISCO, CA 94105
(415) 904-5260



Th18c

DATE: Prepared 11/20/2009 for Meeting of 12/10/2009

TO: Commissioners and Interested Parties

FROM: Peter Douglas, Executive Director
Charles Lester, Deputy Director
Ruby Pap, North Central Coast District Supervisor
Madeline Cavalieri, Coastal Program Analyst

SUBJECT: County of San Mateo LCP Amendment No. SMC-MAJ-1-09 (Wireless Facilities Ordinance)

SUMMARY OF AMENDMENT REQUEST

The proposed LCP Amendment would amend the Implementation Plan (IP) to establish regulations and permitting requirements for wireless telecommunication facilities. The proposed regulations contain standards requiring wireless towers and other facilities to be located outside the public viewshed and east of Highway 1, unless no other alternative exists, to be designed to blend in with the surroundings, and to be as short as technically feasible. Under the proposed regulations, use permits for wireless facilities would be limited to a ten-year development authorization period.

Under the proposed regulations, all new wireless telecommunication facilities would continue to require a coastal development permit (CDP) in all districts. Therefore, the CDPs issued for wireless telecommunications facilities would be appealable to the Commission because wireless telecommunications facilities are not the principally permitted use in any district.

The proposed regulations would also encourage collocation of new wireless telecommunication facilities on existing facilities, in an attempt to minimize visual impacts by reducing the total number of wireless facility sites in the County. New facilities would be required to accommodate future collocated facilities, and new collocated facilities would not be required to obtain a new use permit and CDP, as long as the underlying facility has a valid use permit and CDP that provided for the collocation. The collocated facility would be required to adhere to the terms and conditions of the underlying use permit and CDP. Collocated facilities that do not require a new use permit or CDP would not be appealable to the Commission.

The proposed regulations have been drafted to conform to the Federal Telecommunications Act, which prohibits local governments from discriminating among

providers and from applying regulations that have the effect of prohibiting the provision of personal wireless services. For example, the proposed regulations allow development of wireless telecommunication facilities in sensitive habitat areas when no other sites are feasible and where adverse impacts are minimized to the greatest extent feasible. Also, in conformance with the Telecommunications Act, the proposed amendment would not attempt to regulate the placement of wireless service facilities on the basis of the environmental effects of radio frequency emissions. The proposed amendment would not affect regulations for radio or television towers.

The full text of the IP Amendment request can be found in Exhibit 2.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission reject the proposed amendment and approve it only if modified to ensure that the ordinance is in conformance with and adequate to carry out the certified LUP visual resources and sensitive habitats policies. The motion can be found on page 3 of this report.

Although the proposed regulations would protect visual resources by restricting new development of wireless facilities in scenic areas and requiring facilities to be designed to blend in to the surroundings, additional provisions are necessary to ensure that in the future, obsolete technological design is replaced by available, feasible, technological designs that further reduce visual impacts. Therefore, Staff recommends that the Commission adopt **Suggested Modification 1**, which requires, at the time of renewal or amendment to the permit, that applicants further reduce visual impacts if new, feasible, technologies are available to do so. This approach is consistent with the Commission's past actions on similar amendments

The proposed IP amendment states that if the application of LUP sensitive habitats policies would prohibit siting facilities in sensitive habitats, that action is preempted by the Federal Telecommunications Act if there are no other alternatives. Although it is accurate for the regulations to state that the Telecommunications Act may preempt state and local laws and require development in sensitive habitats under certain circumstances, this section must be modified to ensure all feasible alternatives are considered before allowing such a development. Therefore, staff recommends **Suggested Modification 2**, which would require the reviewing authority to make a series of findings when allowing development of wireless telecommunication facilities in sensitive habitat areas, including finding that there is no other feasible location or alternative facility configuration that would avoid impacts to sensitive habitat areas and that prohibiting the facility would be inconsistent with federal law.

The "Purpose" section of the proposed ordinance states that the regulations are intended to conform to applicable Federal and State laws. To ensure such conformance, staff recommends **Suggested Modification 3**, which would expand this

section to include the specific requirements of the Federal Telecommunications Act of 1996 prohibiting local governments from unreasonably discriminating among providers of functionally equivalent services, from taking actions that have the effect of prohibiting personal wireless services within the County, and from prohibiting the siting of wireless communication facilities on the basis of the environmental/health effects of radio frequency emissions, to the extent that the regulated services and facilities comply with the regulations of the Federal Communications Commission concerning such emissions.

Finally, staff recommends **Suggested Modification 4** to clarify that CDPs for wireless telecommunication facilities are subject to the ten-year development authorization period that the use permits must adhere to, and that new co-located facilities must obtain a CDP, except if there is an underlying CDP that has already authorized the new co-located facility.

As modified as recommended above, Staff believes the IP amendment would conform with and adequately carry out the certified LUP.

Additional Information

For further information about this report or the amendment process, please contact Madeline Cavalieri, Coastal Planner, at the North Central Coast District Office of the Coastal Commission, North Central Coast District, 45 Fremont St., Ste. 2000, San Francisco, CA 94105; telephone number (415) 904-5260.

EXHIBIT LIST

1. Board of Supervisors Resolution
2. Proposed Ordinance

1. STAFF RECOMMENDATION

COMMISSION RESOLUTION ON COUNTY OF SAN MATEO IMPLEMENTATION PLAN AMENDMENT 1-09

Following a public hearing, staff recommends the Commission adopt the following resolution and findings.

Motion #1

I move that the Commission reject Implementation Program Amendment No. SMC-MAJ-1-09 for the County of San Mateo as submitted.

Staff Recommendation of Rejection:

Staff recommends a **YES** vote. Passage of this motion will result in rejection of the implementation plan amendment and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Resolution for denial:

The Commission hereby denies certification of the Implementation Program Amendment No. SMC-MAJ-1-09 as submitted for the County of San Mateo and adopts the findings set forth below on grounds that the implementation plan amendment as submitted does not conform with, and is inadequate to carry out, the provisions of the certified land use plan as amended. Certification of the implementation plan amendment would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the implementation program amendment as submitted.

Motion #2

I move that the Commission certify Implementation Plan Amendment No. SMC-MAJ-1-09 for the County of San Mateo if it is modified as suggested in this staff report.

Staff Recommendation for Certification

Staff recommends a **YES** vote. Passage of this motion will result in certification of the implementation program amendment with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Resolution for Certification with Suggested Modifications

The Commission hereby certifies the Implementation Plan Amendment SMC-MAJ-1-09 for the County of San Mateo if modified as suggested and adopts the findings set forth below on grounds that the implementation plan amendment with the suggested modifications conforms with, and is adequate to carry out, the provisions of the certified land use plan as amended. Certification of the implementation plan amendment if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the implementation plan amendment on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

2. SUGGESTED MODIFICATIONS

Staff recommends the following suggested modifications to the proposed LCP amendment be adopted. The language shown in underline represents language that the Commission suggests be added and the language shown in ~~strike-through~~ represents language that the Commission suggests be deleted from the language as originally submitted.

Suggested Modification 1:

SECTION 6512.4. ADDITIONAL REQUIREMENTS AND STANDARDS FOR WIRELESS TELECOMMUNICATION FACILITIES IN THE COASTAL ZONE.

...

C. At the time of renewal of the Use Permit in accordance with Section 6512.6 or the Coastal Development Permit in accordance with Section 6512.4.C, or at the time of an amendment to the Use Permit or Coastal Development Permit, if earlier, the applicant shall incorporate all feasible new or advanced technologies that will reduce previously unavoidable environmental impacts, including reducing visual impacts in accordance with Section 6512.2.E, to the maximum extent feasible.

Suggested Modification 2:

SECTION 6512.2. DEVELOPMENT AND DESIGN STANDARDS FOR NEW WIRELESS TELECOMMUNICATION FACILITIES THAT ARE NOT CO-LOCATION FACILITIES.

A. ~~New wireless telecommunication facilities shall be allowed~~ prohibited in a Sensitive Habitat, as defined by Policy 1.8 of the General Plan (Definition of Sensitive Habitats) for facilities proposed outside of the Coastal Zone, and by Policy 7.1 of the Local Coastal Program (Definition of Sensitive Habitats) for facilities proposed in the Coastal Zone, except when all of the following written findings are made by the reviewing authority: (1) There is no other feasible location(s) in the area; and (2) There is no alternative facility configuration that would avoid impacts to environmentally sensitive habitat areas; and (3) Prohibiting such facility would be inconsistent with federal law; when the Federal Telecommunications Act preempts State and local law.; Location in sensitive habitat shall only be allowed when it can be demonstrated that other sites are not feasible, and (4) where Adverse impacts to the sensitive habitat are minimized to the maximum greatest extent feasible possible; and (5) Unavoidable impacts shall be are mitigated so that there is no loss in habitat quantity or biological productivity.

Suggested Modification 3:

6510. PURPOSE.

...

~~E. Conform to applicable Federal and State laws. The regulations in this chapter are intended to be consistent with state and federal law, particularly the Federal Telecommunications Act of 1996, in that they are not intended to: (1) be used to unreasonably discriminate among providers of functionally equivalent services; (2) have the effect of prohibiting personal wireless services within San Mateo County; or (3) have the effect of prohibiting the siting of wireless communication facilities on the basis of the environmental/health effects of radio frequency emissions, to the extent that the regulated services and facilities comply with the regulations of the Federal Communications Commission concerning such emissions.~~

Suggested Modification 4:

SECTION 6512.4. ADDITIONAL REQUIREMENTS AND STANDARDS FOR WIRELESS TELECOMMUNICATION FACILITIES IN THE COASTAL ZONE.

...

C. New wireless telecommunication facilities shall obtain a CDP, pursuant to Section 6328.4, and the period of development authorization for any such CDP shall be limited to ten years.

SECTION 6513.3. ADDITIONAL REQUIREMENTS AND STANDARDS FOR CO-LOCATION FACILITIES IN THE COASTAL ZONE.

...

B. Co-location facilities shall comply with all applicable policies, standards, and regulations of the Local Coastal Program (LCP) and the CZ or CD Zoning Districts, ~~except that no public hearing shall be required.~~

C. Pursuant to Public Resources Code sections 30106 and 30610(b) as well as Title 14, Section 13253(b)(7) of the California Code of Regulations, the placement of co-located facilities on an existing wireless telecommunication facility shall require a CDP, except that if a CDP was issued for the original wireless telecommunication facility and that CDP authorized the proposed new co-location facility, the terms and conditions of the underlying CDP shall remain in effect and no additional CDP shall be required.

3. STANDARD OF REVIEW

Pursuant to Section 30513 of the Coastal Act, the Commission may only reject zoning ordinances or other implementing actions, as well as their amendments, on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan (LUP). The Commission must act by majority vote of the Commissioners present when making a decision on the implementing portion of a local coastal program.

4. FINDINGS AND DECLARATIONS

4.1. Visual Resources

LUP Policies

8.5 Location of Development

a. Require that new development be located on a portion of a parcel where the development (1) is least visible from State and County Scenic Roads, (2) is least likely to significantly impact views from public viewpoints, and (3) is consistent with all other LCP requirements, best preserves the visual and open space qualities of the parcel overall. Where conflicts in complying with this requirement occur, resolve them in a manner which on balance most protects significant coastal resources on the parcel, consistent with Coastal Act Section 30007.5.

Public viewpoints include, but are not limited to, coastal roads, roadside rests and vista points, recreation areas, trails, coastal accessways, and beaches.

...

8.15 Coastal Views

Prevent development (including buildings, structures, fences, un-natural obstructions, signs, and landscaping) from substantially blocking views to or along the shoreline from coastal roads, roadside rests and vista points, recreation areas, and beaches.

LUP policy 8.5 requires development to be located where it is least visible from scenic roads, where it is least likely to impact views from public viewpoints, and where it best preserves the visual qualities of the parcel. LUP policy 8.15 prohibits development from substantially blocking views to or along the shoreline.

The proposed IP amendment requires new wireless telecommunication facilities to avoid and minimize impacts to visual resources. Proposed section 6512.2.E requires facilities to be sited outside of the public viewshed whenever feasible, and, when facilities must be in the public viewshed, it requires them to be designed to blend into the surroundings through the use of landscaping and appropriate paint colors. This section also requires towers to be no taller than necessary to provide adequate coverage. Views of the shoreline are given additional protection through Section 6512.4, which restricts development of new wireless telecommunication facilities between the first public road and the sea in urban areas, and between Highway 1 and the sea in rural areas.

Despite the important provisions described above, additional requirements are necessary to ensure that in the future, obsolete technological designs are replaced by current technological designs that further reduce visual impacts that may have been previously unavoidable. In previous wireless facilities ordinances (including those for Santa Cruz County and Monterey County) the Commission has certified provisions that ensure visual impacts are reduced or eliminated at the time of amending or renewing permits, when future technological advances render such modifications feasible. The language used in these regulations is similar to that used in a condition the Commission typically employs when granting permits for wireless telecommunication facilities. Therefore, the Commission adopts **Suggested Modification No. 1**, which adds this requirement to the ordinance.

As modified as described above, the Commission finds the proposed IP amendment would conform with and be adequate to carry out the visual policies of the LUP,

including policy 8.5, preserving visual and open space qualities, and policy 8.15, protecting views of the shoreline.

4.2. Sensitive Habitats

LUP Policies

7.3 Protection of Sensitive Habitats

a. Prohibit any land use or development which would have significant adverse impact on sensitive habitat areas.

b. Development in areas adjacent to sensitive habitats shall be sited and designed to prevent impacts that could significantly degrade the sensitive habitats. All uses shall be compatible with the maintenance of biologic productivity of the habitats.

7.4 Permitted Uses in Sensitive Habitats

a. Permit only resource dependent uses in sensitive habitats. Resource dependent uses for riparian corridors, wetlands, marine habitats, sand dunes, sea cliffs and habitats supporting rare, endangered, and unique species shall be the uses permitted in Policies 7.9, 7.16, 7.23, 7.26, 7.30, 7.33, and 7.44, respectively, of the County Local Coastal Program on March 25, 1986.

b. In sensitive habitats, require that all permitted uses comply with U.S. Fish and Wildlife and State Department of Fish and Game regulations.

LUP policy 7.3 prohibits development that has significant adverse impacts on sensitive habitat areas and LUP policy 7.4 permits only resource dependent uses in sensitive habitat areas.

Proposed Section 6512.2.A states that if the application of LUP policies, including LUP policies 7.3 and 7.4, prohibiting facilities in sensitive habitats is preempted by the Federal Telecommunications Act, then development in sensitive habitats would be allowed. As described below in Section 4.3, the Federal Telecommunications Act only preempts state and local laws that prohibit development in certain areas if no feasible alternatives exist and denial of the application would constitute either discriminating among providers or prohibiting the provision of personal wireless services. Therefore, it is accurate for the regulations to state that the Telecommunications Act may preempt state and local laws and require development in sensitive habitats under certain circumstances. However, the proposed section does not specify the circumstances under which this preemption may occur. This lack of specification may lead to

unnecessary impacts to sensitive habitat areas, inconsistent with the above-mentioned policies.

Therefore, the Commission adopts **Suggested Modification 2**. This modification would require the reviewing authority to make a series of findings when allowing development of wireless telecommunication facilities in sensitive habitat areas. These findings would ensure that there is no other feasible location or alternative facility configuration that would avoid impacts to sensitive habitat areas and that prohibiting such facility would be inconsistent with federal law.

The Commission finds that, as modified, the IP amendment conforms with and is adequate to carryout the LUP policies 7.3 and 7.4.

4.3. Other Federal and State Laws

Federal Telecommunications Act

The subject IP amendment proposes to regulate wireless services facilities, which are also regulated by other federal and state laws. Under section 307(c)(7)(B) of the Telecommunications Act of 1996, state and local governments may not unreasonably discriminate among providers or apply regulations that have the effect of prohibiting the provision of personal wireless services. Any decision to deny a permit for a personal wireless service facility must be in writing and must be supported by substantial evidence. Also, the Telecommunications Act prevents state and local governments from regulating the placement of wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the regulations of the Federal Communications Commission concerning such emissions.

The County's proposed ordinance is consistent with the Federal law summarized above, and the Purpose section of the proposed ordinance states that the regulations are intended to conform to all applicable Federal and State laws. But to ensure such conformance, the Commission adopts **Suggested Modification 3**, which would expand this section to include the specific requirements of the Federal Telecommunications Act of 1996 prohibiting local governments from unreasonably discriminating among providers of functionally equivalent services, from taking actions that have the effect of prohibiting personal wireless services within the County, and from prohibiting the siting of wireless communication facilities on the basis of the environmental/health effects of radio frequency emissions, to the extent that the regulated services and facilities comply with the regulations of the Federal Communications Commission concerning such emissions.

The limitations upon a state and local government's authority with respect to telecommunications facilities contained within the Telecommunications Act of 1996 (TCA) do not state or imply that the TCA prevents public entities from exercising their

traditional prerogative to restrict and control development based upon aesthetic or other land use considerations. Other than the enumerated exceptions, the TCA does not limit or affect the authority of a state or local government. Though Congress sought to encourage the expansion of telecommunication technologies, the TCA does not federalize telecommunications land use law. Instead, Congress struck a balance between public entities and telecommunication service providers. Under the TCA, public entities retain control "over decisions regarding the placement, constructions, and modification of telecommunication facilities." 47 U.S.C. section 332(c)(7)(A).

Laws Governing Local Regulatory Authority Over Telecommunication Facilities

Government Code section 65964 addresses a local government's ability to limit the duration of a local permit for a telecommunication facility to less than 10 years. Government Code section 65850.6 limits a local government's local regulation of collocation facilities, prohibiting local governments from requiring a discretionary permit for wireless facilities that are collocated on existing wireless facilities that have received a discretionary permit and undergone environmental review. Although the suggested modifications adopted herein are consistent with Government Code sections 65964 and 65850.6, when acting on a coastal development permit, neither the Commission nor the County are operating pursuant to such local law authority. In fact, as with most laws governing local regulatory authority, section 65850.6 expressly acknowledges the ability of a local government to regulate consistent with state laws, such as the Coastal Act.

A fundamental purpose of the Coastal Act is to ensure that state policies prevail over the concerns of local government. (See *City of Chula Vista v. Superior Court* (1982) 133 Cal.App.3d 472, 489 [Commission exercises independent judgment in approving LCP because it is assumed statewide interests are not always well represented at the local level].) Under the Coastal Act's legislative scheme, the LCP and the development permits issued by local agencies pursuant to the Coastal Act are not solely a matter of local law, but embody state policy. (*Pratt v. California Coastal Commission* (2008) 162 Ca. App.4th1068.) Once the LCP is certified, it does not become a matter of local law.

The Coastal Act specifically requires that local governments assume a regulatory responsibility that is in addition to their responsibilities under other state laws. In section 30005.5 of the Coastal Act, the Legislature recognized that it has given authority to local governments under section 30519 that would not otherwise be within the scope of the power of local governments. Section 30005.5 provides:

Nothing in this division shall be construed to authorize any local government...to exercise any power it does not already have under the Constitution and the laws of this state or that is not specifically delegated pursuant to section 30519. (Emphasis added.)

Thus, when deciding whether an applicant for a CDP has complied with the requirements of a certified LCP, a city or county is not acting under its "police power" authority but rather under authority delegated to it by the state. LCP provisions regulating development activities within the coastal zone are an element of a statewide plan, and are not local in nature. In exercising the development review authority delegated to it under the Coastal Act, with the attendant obligations to comply with Coastal Act policies and the certified LCP, the local government implements a statewide statutory scheme to which all persons, including state and local public agencies, are subject.

4.4. Permitting Requirements

CCC Regulations

Section 13253. Improvements that Require Permits.

...

(b) Pursuant to Public Resources Code Section 30610(b), the following classes of development require a coastal development permit because they involve a risk of adverse environmental effect, adversely affect public access, or involve a change in use contrary to the policy of Division 20 of the Public Resources Code:

...

(7) Any improvement to a structure which changes the intensity of use of the structure;

...

IP Sections

SECTION 6328.4. REQUIREMENT FOR COASTAL DEVELOPMENT PERMIT.

Except as provided by Section 6328.5, any person, partnership, corporation or state or local government agency wishing to undertake any project, as defined in Section 6328.3(r), in the "CD" District, shall obtain a Coastal Development Permit in accordance with the provisions of this Chapter, in addition to any other permit required by law. Development undertaken pursuant to a Coastal Development Permit shall conform to the plans, specifications, terms and conditions approved or imposed in granting the permit.

SECTION 6328.3. DEFINITIONS. For the purpose of this Chapter, certain terms used herein are defined as follows:

...

(r) "Project" means any development (as defined in Section 6328.3(h)) as well as any other permits or approvals required before a development may proceed. Project includes any amendment to this Part, any amendment to the County General Plan, and any land division requiring County approval.

...

Coastal Act sections 30106 and 30610(b) as well as Section 13253(b)(7) of the Commission's regulations requires a coastal development permit for any improvement to a structure which changes the intensity of use of the structure. And, existing IP section 6328.4 requires any entity who wishes to undertake a project in the Coastal Zone to obtain a CDP. Section 6328.3(r) defines "project" as being any development, and any other permits or approvals required before a development may proceed.

The proposed IP amendment establishes a ten-year development authorization period for Use Permits, but does not specify whether the associated CDP would also be limited to the ten-year period. However, because an approval of a renewed use permit meets the definition of a "project" according to Section 6328.3 of the zoning regulations, a new CDP would be required. To avoid confusion and ensure the proposed IP amendment is carried out in conformance with CDP requirements, the Commission adopts **Suggested Modification 4**, clarifying that CDPs are also limited to the ten-year development authorization period.

The addition of a co-located facility to an existing wireless telecommunication facility results in a change in the intensity of use of the existing facility and therefore requires a CDP under Coastal Act sections 30106 and 30610(b) as well as Section 13253(b)(7) of the Commission's regulations. However, because new wireless telecommunication facilities are required under the proposed regulations to anticipate future co-located facilities, it is possible that the addition of new co-located facilities was authorized under the existing permit. Any co-located facility that has been authorized by an existing, valid CDP would not require an additional CDP. Therefore, **Suggested Modification 4** clarifies that new co-located facilities require a CDP except when there is an underlying CDP that has already provided the necessary authorization. New co-located facilities are required to comply with the terms and conditions of the underlying CDP.

5. California Environmental Quality Act

Section 21080.9 of the California Public Resources Code – within the California Environmental Quality Act (CEQA) – exempts local government from the requirement of

preparing an environmental impact report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of a local coastal program. Therefore, local governments are not required to prepare an EIR in support of their proposed LCP amendments, although the Commission can and does use any environmental information that the local government submits in support of its proposed LCPA. Instead, the CEQA responsibilities are assigned to the Coastal Commission and the Commission's LCP review and approval program has been found by the Resources Agency to be the functional equivalent of the environmental review required by CEQA, pursuant to CEQA Section 21080.5. Therefore the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required, in approving an LCP amendment submittal, to find that the approval of the proposed LCP, as amended, does conform with CEQA provisions, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternative or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. 14 C.C.R. §§ 13542(a), 13540(f), and 13555(b).

The County's LCP Amendment consists of an Implementation Plan (IP) amendment. The Commission incorporates its findings on land use plan conformity into this CEQA finding as it is set forth in full. The Implementation Plan amendment as originally submitted does not conform with and is not adequate to carry out the policies of the certified LUP with respect to visual resources and sensitive habitat policies.

The Commission, therefore, has suggested modifications to bring the Implementation Plan amendment into full conformance with the certified Land Use Plan. As modified, the Commission finds that approval of the LCP amendment will not result in significant adverse environmental impacts under the meaning of the California Environmental Quality Act. Absent the incorporation of these suggested modifications to effectively mitigate potential resource impacts, such a finding could not be made.

The Commission finds that the Local Coastal Program Amendment, as modified, will not result in significant unmitigated adverse environmental impacts under the meaning of the CEQA. Further, future individual projects would require coastal development permits, issued by the County of San Mateo, and in the case of areas of original jurisdiction, by the Coastal Commission. Throughout the coastal zone, specific impacts to coastal resources resulting from individual development projects are assessed through the coastal development review process; thus, an individual project's compliance with CEQA would be assured. Therefore, the Commission finds that there are no other feasible alternatives or mitigation measures under the meaning of CEQA which would further reduce the potential for significant adverse environmental impacts.