



MEMORANDUM

DATE: SEPTEMBER 18, 2014
TO: MENDOCINO COUNTY PLANNING COMMISSION
FROM: DUSTY DULEY, PLANNER
SUBJECT: DRAFT WIRELESS GUIDELINES UPDATE

Purpose: The purpose of this memo is to update the Commission on staff's revisions to the Guidelines for the Development of Wireless Communication Facilities (Wireless Guidelines) since the April 17, 2014 Commission meeting.

Background: On April 17, 2014, the Commission took public comments and reviewed the draft wireless guidelines prior to continuing the item at the request of County Counsel as well as representatives for Verizon Wireless to allow them additional time to review the wireless guidelines. A review of staff's changes to the wireless guidelines is provided.

Applicability: As has been the case since their initial adoption in 2001, the wireless guidelines continue to apply countywide to all "Wireless Communication Facility" (WCF) projects subject to a discretionary permit. However, at the direction of the Commission, staff continues to work on an ordinance amendment to the County Inland Zoning Code to identify an alternative permit process for certain WCF projects provided they meet the accepted standards. Upon adoption of the ordinance, should it be approved as written in current draft, the wireless guidelines would then only apply to those WCF projects subject to a Major Use Permit. It is important to note that until similar revisions are made to the County Coastal Zoning Code, all WCF projects located in the Coastal Zone would still need to obtain a Major Use Permit and would continue to be subject to the Wireless Guidelines.

Proposed Revisions:

1. A definition of "flush-mounted" has been added to Section D of the wireless guidelines. Standard C(2)e states that *flush mounted antennas are preferred in visually sensitive settings*. The definition provided does not identify a maximum separation distance between the antennas and the supporting structure but does define how that separation distance will be measured. When choosing to require an applicant to flush mount their antenna, it will be necessary to identify an appropriate separation distance.
2. The definition of a "Temporary wireless communication facility" was deleted as the term is not found in the guidelines. Staff recognizes the need for temporary facilities during times of emergencies but is unsure as to why a definition was included in current wireless guidelines. Staff is proposing that language be added to Section 20.236.015 (to be renamed Exempt Facilities) of the Inland Zoning Code to allow for the use of temporary facilities in emergency situations. As proposed, Code would include provision to allow, *Temporary facilities erected and operated for use in emergency situations which are approved in writing in advance of installation by the Director. Use of such facilities shall not exceed two weeks unless an extension is granted by the Director.*

3. Staff relocated sections in the wireless guidelines to provide better document organization. Language in Section B(4) was relocated to Section B(1)(d) and new language was inserted into Section B(4). Also see Item 4 below. Section B(9)(f) was incorporated into Section B(9)(e) and Section B(9)(g) was relocated to Section C(5)(e).
4. New language has been added to Section B(4) which would require an applicant to provide, *a statement of the communication objectives sought for the proposed location, whether the proposed facility is necessary to prevent or fill a significant gap or capacity shortfall in the applicant's service area, whether it is the least intrusive means of doing so, and whether there are any alternative sites that would have fewer aesthetic impacts while providing comparable service.*

Primary objective of recent applications for new WCF appear to be more about improving internet capabilities "3G" and now "4G" to support "smart phones" rather than improving phone service to carriers unserved areas. The Commission is often charged with balancing potential visual impacts versus improved communication service when making a decision. This language attempts to gather additional information from the applicant to help the Commission make an informed decision.

5. Section C(1)(p) was deleted as modifications to legally permitted WCF's will be reviewed under the provisions of the Inland Zoning Code upon adoption of the wireless ordinance.
6. Section B(10) was modified by deleting *and how it interacts with the coverage area of connecting sites*. Staff determined that this requirement was duplicating information requested in Section B(1)a which obliges the applicant to submit a plan to include *all of the provider's existing wireless communication facilities, by size, type, and their coverage areas*.
7. Section B(17) was modified by deleting language pertaining to the potential need for an engineer to certify the results of the analysis required by Section B(16). A prospective applicant is made aware of potential requirement for independent peer review of submitted information in Section B(20). Staff notes that language in Section B(20) was previously included in Section B(19).
8. Language provided in the first "whereas" in the guidelines is repeated at the beginning of Section C "Standards". A common misconception of the guidelines is that a project must always be consistent with the identified standards. This is not the case; rather the guidelines are inheritably flexible and include language to express that intent.

Recommended Action:

Based on County Counsel review of applicable codes and statutes, staff is now advising that the Planning Commission recommend that the Board of Supervisors adopt a resolution approving the proposed Guidelines for the Development of Wireless Communication Facilities and find that the Guidelines are exempt from the provisions of CEQA as a Class 8 exemption.

6. Regular Calendar.

6a. **APPLICANT: MENDOCINO COUNTY (Continued from 7/17/2014)**

AGENT: PLANNING & BUILDING SERVICES

REQUEST: Adopt a resolution approving the proposed revised Guidelines for the Development of Wireless Communication Facilities, and discuss proposed amendments to Chapter 20.236, "Towers and Antennas" Division 1, Title 20 of the Mendocino County Inland Zoning Code, to allow certain types of wireless communication facilities requests to be reviewed under the Administrative Permit process.

LOCATION: All unincorporated areas within Mendocino County, excluding the city limits of Ukiah, Fort Bragg, Willits and Point Arena.

PROJECT COORDINATOR: DUSTY DULEY

RECOMMENDED ACTION: Recommend that the Board approve a resolution adopting the Guidelines for the Development of Wireless Communication Facilities and direct staff to prepare a Zoning Code Amendment to add the recommended "Administrative Permit Process" to Chapter 20.236 of the Zoning Code for the Planning Commission's consideration.

Mr. Gustavson noted there were 2 components to the discussion and asked County Counsel to advise the Commission of their action.

Matt Kiedrowski, Deputy County Counsel, noted that the current guidelines had been adopted by the Planning Commission; however upon researching the matter, he felt the proper procedure would be for the Planning Commission to make a recommendation to the Board of Supervisor. He noted the Board would formally adopt the resolution approving the Wireless Guidelines.

Dusty Duley, Project Coordinator, reviewed the report and discussed the modifications, noting the change to the motion, as indicated by County Counsel. He discussed the correspondence received from Michael Maltis, concerned with the discretion of the Director, government exemptions, and the 35 foot height limit for an Administrative Permit (AP), Linda Mountanos was also concerned with the 35 foot height limit and felt all wireless communication facilities should be subject to a use permit so the Planning Commission was informed of the project. She also asked that the antenna map be updated consistently. Other emails had been received from Karen Bowers, Shirley Freriks, and Tom Woodetski, congratulating the County on revising the process. Mr. Duley continued and discussed several changes in the memo, including the definition of flush mounted, however he noted the separation distance from the base of the tower had not been given. Also the temporary wireless definition had been deleted since it was not referenced in the guidelines. He discussed new language, found in 4B, regarding the location/capacity for an application and stated the redundant section had been deleted since it was included in the Inland Zoning Code. Last, Mr. Duley noted the action for the Commission had been modified so that a recommendation could be presented to the Board of Supervisors for approval.

Commissioner Holtkamp noted some of the correspondence mentioned mesh networks and asked staff to elaborate.

Mr. Duley deferred the definition of mesh networks to the various industry representatives in the audience. He felt the revisions to the guidelines and ordinance would allow for the potential expansion of new technology.

The public hearing was declared open.

Mike Ireton, Willits Online, discussed broadband in the County and made a generalized comment that he did not see a mention of the Federal Communication Commission's (FCC) new device rule, OTARD (over the air reception devices), which had been added to the Telecommunication Act of 1996 in the documents. He noted the OTARD stated that no entity could create a rule to prevent a person from receiving the wireless signal(s) of their choice. He felt there were opportunities to include modifications of antennas in the guidelines to be compatible with OTARD regulations. He suggested adding clarifying language to specify the height of installation from the roof, size of units, or other measures to address FCC regulations. He also disagreed with the blanket exemption for the government, and felt only Emergency Services, those providing health or safety services, should be exempt and recommended adding "exclusively used to protect health and public welfare". Mr. Ireton also noted that broadband, by nature of the device, did not tend to create facilities that could be collocated on due to the size of the structure or service application and did not think the location

should be public information. He agreed that use permit applicants and other large structures that could house a collocation should be made available to the public.

Ted Williams commented that it was life changing to have high speed internet capabilities from home. He noted he would like to find a way to share his connection with his immediate neighbor's, but the current permitting types were too expensive and burdensome. He had been working with staff to create policies to protect the view shed without impeding broadband deployment throughout the County. He also had several small scale antenna's to illustrate his point that small scale rural family sharing of broadband would have little impact to the adjacent surroundings.

The Commission discussed the antenna's application with Mr. Williams and asked him to describe it for the record.

Mr. Williams stated the antenna was approximately 14 inches long.

Commissioner Ogle asked how far and how many neighbors could be reached with such a device.

Mr. Williams noted the signal would be compromised by terrain and obstacles and had to be installed with enough line of sight to "see" each individual antenna.

Commissioner Ogle asked how a "node" compared to an "antenna".

Mr. Williams commented that a node could be a phone, a laptop with an antenna, a consumer wifi box, a repeater on a tower or mix of all of the above. He felt it was more difficult to determine who the provider was and the source with each additional node on a network. He also noted that with the current wireless guidelines, each node would require a major use permit.

Commissioner Nelson asked if Mr. Williams was suggesting that mesh networking be exempt from the wireless guidelines.

Mr. Williams noted the focus had been on permitting towers and antennas, and wondered if something like a view shed easement might be appropriate. He felt there were safety concerns associated with the installation of towers and noted that if a small antenna could not be seen by the public and was exempt it might promote more broadband in the County.

Commissioner Hall asked what kind of exemption should be allowed.

Mr. Williams felt the most important asset to protect in the County was the views and felt that if the antenna was not visible to the naked eye, and was installed inside an attic space, or flag pole, or was too small to be seen from a neighbor's property would qualify as an allowable exemption.

The public hearing was declared closed.

Mr. Gustavson commented that the Commission should discuss the guidelines first as the regulations would be a different discussion.

Commissioner Nelson asked if "exclusively" should be added to 2C.

Mr. Duley did not have an objection and felt the addition would meet the intent of the exemption.

Commissioner Nelson referenced Mr. Williams's comments and asked if wording to exempt unobtrusive small devices providing service from house to house, or something other language, should be added.

Mr. Duley commented that there was room for improving the guidelines and there was the ability to interpret the exemptions. He noted that if a project was eligible for the Alternate Permitting Process, it would not be subject to the Wireless Guidelines. He stated he had been working with Mr. Williams to improve the guidelines and match the appropriate level of review to the level of development.

Chair Warner asked staff's interpretation of the OTARD.

Mr. Duley stated he had received the document from Mr. Ireton and there were exemptions for private reception antennas, but it did not exempt relay or hub antennas. He stated the County cannot deny the installation of a satellite dish, as it is a private receptor.

Mr. Ireton felt there was a fundamental misunderstanding in broadband deployment. He stated that a person's satellite dish would transmit broadband; it was only a difference of software in the device. He felt the primary focus of the OTARD was the customer receiving the signals of their choice and broadband can send and receive through multiple devices.

Commissioner Hall asked if there was an increased footprint to consider with increased sending and receiving of data.

Mr. Duley stated he was not an expert in size and intensity of antenna signals, but commented that similar antennas to satellite dishes typically did not have environmentally adverse impacts. He felt aesthetics might need review.

Chair Warner commented on the small antenna boxes located under the seats at 49ers stadium and noted there must have been an environmental review completed. She thought staff might be able to find similar documents that could detail cumulative impacts, if any, of RF emissions.

Commissioner Hall commented he was happy with the final edits made to the Wireless Guidelines.

Commissioner Holtkamp asked staff if the language was flexible enough to keep up with the changing technology and accommodate new information as it was received. She asked if staff had any concern with the distinction between transmitting versus receiving a signal.

Mr. Duley felt the guidelines would allow for future technology and thought mesh networks might be exempt from the guidelines. He was not sure how the OTARD would change the permitting process for transmitting antennas, and was not completely clear on what would be exempt from Administrative Permit review. He noted that adding "exclusively" to provision Ci for public agencies would not affect the intent.

Mr. Kiedrowski commented that there were towers that may host other uses, such as county antennas and thought the language should state exclusively for County use.

Mr. Ireton disagreed with changing the language to allow exclusive access to the County. He felt emergency services should be the only exemption.

Mr. Kiedrowski commented that communication for the County should be exempt.

Chair Warner suggested adding "not for profit" to the exemption language.

Mr. Ireton felt the Commission should add, "public health, safety, and welfare" versus allowing a blanket exemption for government.

Commissioner Ogle agreed that government services should follow the same rules as other entities receiving a permit.

Mr. Duley noted even if some government services, such as the Sheriff's Office, received an exemption from the planning process, they would still be required to obtain building permits for construction.

Commissioner Krueger recommended that the government follow the same guidelines as everyone else; if they go through the permit process, then they need approval like everyone else.

Mr. Gustavson noted that the Board could adopt policy language outside of the Ordinance that would direct government agencies to abide by the adopted guidelines.

Chair Warner commented that she felt it was important for agencies to follow the guidelines.

Commissioner Nelson asked staff how to accomplish adherence to the guidelines.

Mr. Duley noted the Commission could delete "I" from the guidelines and allow agencies to be exempt by features of the Zoning Code, such as height limitations, etc.

Mr. Gustavson noted that the document would be back for a recommendation to the Board of Supervisors once the environmental document had been prepared. He thought it might be better to direct staff to investigate how to accomplish adherence to the guidelines from government agencies, rather than deleting a portion of the ordinance.

Chair Warner noted Page 3, #13 had an extra comma, and the first paragraph of the third sentence "prior to development of the site" should have "private road" deleted as well as the next paragraph. Also page 4, #16 had some numbering issues, and discussed the intent of #18 on page 5.

Mr. Duley noted that the language could be modified if it was unclear.

Chair Warner commented that the intent would be clearer by deleting the last sentence in #18.

Commissioner Krueger discussed page 2, #B, in the first paragraph and noted that the reference to submittal of the plan changes between County and Department and should be consistent. He also noted that on page 3 that elevation maps with a distance of 200 feet were needed, however the fire safe standard was 100 feet; he felt one consistent map should be submitted.

Mr. Duley noted the justification for tree removal was 100 feet; however the buffer for vegetation was more useful at 200 feet to minimize impacts.

Commissioner Krueger discussed the road assessment condition.

Mr. Duley stated that a pre-assessment of the road was required and then, if repairs were necessary, that the road has been repaired to better than the condition prior to beginning construction.

The Commission discussed revising the language of the road condition requirements to be clearer to an applicant.

Mr. Gustavson noted that staff would clarify; however the intent is that the access road be restored to equal or better condition after a tower is constructed.

Commissioner Krueger commented that the last sentence on page 3 should reflect that PBS is providing the notice.

[Break 10:27 AM - 10:37 AM]

Chair Warner asked if there were further comments from the Commission.

Mr. Gustavson noted that staff would resolve the issue regarding 5i and bring back the guidelines as well as an environmental document to be processed to the Board concurrently.

The Commission moved to discuss the ordinance.

Mr. Duley noted the staff memo to address changes from the previous version.

Commissioner Nelson noted some diesel generators did not create excessive noise.

Mr. Duley noted the reference could be changed to "fuel".

Commissioner Holtkamp asked about fire suppression for the generators using fuel.

Mr. Duley noted a previous discussion with a tower in Leggett, stating the main precaution was explosion.

Commissioner Nelson noted the applicant would have to meet fire safe standards.

Mr. Duley noted he would follow up with the standards.

The public hearing was declared open.

Mike Ireton, Willits Online, noted most generators used for broadband have low power requirements and use solar power. He stated there was no onsite storage of fuel and most sites were located on bare ground. He was concerned with the permitting requirements and felt the height limit of 35 feet was unreasonable. He noted broadband would not be able to reach the over trees and would require a major use permit in most instances.

Commissioner Nelson asked if ridge top sites were a "may" or "shall" be discouraged.

Mr. Duley noted the language was shall be discouraged on ridge top sites.

Mr. Gustavson noted there was room for discretion based on the application.

Mr. Ireton noted that most of his customers were "off the grid" and height would be an issue. He noted an option was to have an exemption based on personal tower receiver antennas and felt there should be a process to allow for greater height.

Ray Gifford, Ukiah Wireless, noted there was a difference between type of personal antennas and receivers; some could reach 1-2 miles, and others much further.

Ted Williams asked if the Commission knew how many applications had been processed, excluding cell carriers.

Mr. Duley responded that numerous collocation services have been processed, but no broadband; some applications have been for installation on gas station signs and other structures.

Mr. Williams was concerned that the process not being used and felt something should be designed that would work for everyone.

The public hearing was closed.

Commissioner Nelson commented he liked the suggestion that fuel generators be monitored and allowing exemptions for schools.

Commissioner Holtkamp agreed and also noted that she felt height was flexible. She agreed that aesthetics were the main concern and did not want towers to be approved above 35 feet without review; however she felt an administrator's discretion would be sufficient.

Commissioner Nelson asked if there was any wording to allow flexibility.

Mr. Gustavson noted page 4, #D1 discussed restrictions and special circumstances. He noted the Zoning Administrator or Director may allow flexibility.

Mr. Duley noted that the 35 foot height limit was the typical height allowed in the zoning code and offered that the Commission could create a new tier, so that towers less than XX feet were exempt from major use permits. He noted location would be important and felt a more remote setting was ideal.

Commissioner Holtkamp stated she wanted to make the exemption possible for broadband, but did not want to annoy the neighbors or put anyone at risk.

Commissioner Ogle noted that utility poles were all over and did not appear to be an issue for the County.

David Haddick, Verizon, commented that he has presented applications where antennas were collocated on PG&E towers and lattice towers. He noted in some neighborhoods, small facilities on wood poles have been installed due to restrictions.

Commissioner Krueger commented he was hesitant to have a definite footage height with the average tree being 100 feet in the more remote areas.

Chair Warner noted "qualified" should be added to #D on page 2 of the ordinance permit process and noted on page 4, #6 that towers shall not require FAA lighting.

Mr. Duley commented that staff would not know the plausibility of a tower needing FAA markings.

Commissioner Ogle noted half way down page 7 "the" should be deleted.

Commissioner Krueger discussed temporary facilities and noted it would be difficult to receive advance notice if the facility was installed for an emergency. He felt notifying the department would be sufficient, rather than receiving permission.

Mr. Gustavson agreed and noted the intent was to notify the County of a temporary facility for emergency situations.

Commissioner Krueger stated page 5 should contain the same information as previously discussed for road condition.

Mr. Duley asked the Commission's preference on prohibiting fuel power or monitor continuously.

Commissioner Nelson commented he was in favor of having a person monitor the facility.

Mr. Duley noted emergency towers were an exception and allowed through the APP, he asked if mesh networks should also be exempt.

The Commission agreed to exempt mesh networks.

Staff noted an environmental review document would be prepared and the Wireless guidelines would be revised and returned for a recommendation to the Board of Supervisors.

6c. CASE#: A 4-2013

DATE FILED: 8/2/2013

OWNER/APPLICANT: DAVID SCHNEIDER

AGENT: RYAN SCHNEIDER

REQUEST: Placement of 5660 +/- acres into Williamson Act (Agricultural Preserve).

LOCATION: Approximately 4 +/- miles southeast of Covelo Town Center, lying 2.25 miles southeast of the intersection of CR 327 B (Hill Road) and CR 329 (Dobie Lane), and bordering the north bank of the Middle Fork Eel River. Located at 71891 Judge Webber Lane, Covelo, CA 95428; APN's 034-141-02, 04, 05, 06, 09, 034-145-02, 03, 04, 05, 034-146-06, 26, 27, 28, 29, 30, 034-147-05, 07, 13, 14, 034-150-10, 035-090-01, 05, 12, 19, 37, 46, 48, 49, 50, 51, 52, 53, 54, 55, 56, 035-100-02, 13, 14, 035-230-23, 24, 25, 035-240-23, 035-240-24.

PROJECT COORDINATOR: SCOTT PERKINS

RECOMMENDED ACTION: Recommend denial to Board of Supervisors

Scott Perkins, Project Coordinator, reviewed the staff report and discussed the location, surrounding zoning and previous Certificates of Compliance on the parcels. He noted it was a lack of reporting statements for the parcels that had resulted in the roll out of the Agricultural Preserve Contract in 2011. Since then, the Resource Lands Protection Committee (RLPC) had reviewed the contract and applicants request to establish a new Ag Preserve and noted reporting issues with the quantity of acres and minimum number of animal units required, per Chapter 22 of the Inland Zoning Code. He discussed the photos on Page PC 7, noting much of the terrain was unable to produce food for animals and stated that his research had resulted in the need to verify the applicants request through