CITY OF AGOURA HILLS

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

DATE: **JUNE 30, 2011**

TO: **PLANNING COMMISSION**

FROM: **ALLISON COOK, PRINCIPAL PLANNER**

SUBJECT: **WIRELESS TELECOMMUNICATIONS FACILITIES ORDINANCE**

Attached for your review and consideration are the following:

1. Comment letter on the Draft Ordinance from AT&T
2. Response to AT&T letter from the City Attorney
3. Comment letter on the Draft Ordinance from CalWA
4. Response to CalWA letter from the City Attorney

No other comments have been submitted to the City on this item.

at&t

AT&T California
1150 South Olive Street
Room 2801
Los Angeles, CA 90015

Via Electronic Mail: acook@ci.agoura-hills.ca.us.

and Via Hand Delivery

June 6, 2011

Ms. Allison Cook,
Principal Planner,
City of Agoura Hills,
Planning and Community Development
Department, 30001 Ladyface Court,
Agoura Hills, CA 91301

Re: Initial Study/ Negative Declaration (IS/ND) for the City of Agoura Hills Wireless Telecommunications Facilities Ordinance

Dear Ms. Cook:

On behalf of New Cingular Wireless PCS, LLC dba AT&T Mobility (hereinafter "AT&T" or "AT&T Mobility"), this letter and its enclosure are submitted as a comment on the above-referenced draft Initial Study/ Negative Declaration (IS/ND) .

For reasons described in the enclosure, AT&T objects to the adoption of the draft IS/ND and approval of the proposed ordinance until such time as the City adequately addresses AT&T's concerns. Without limitation as to the issues addressed in the enclosure, AT&T believes that the draft IS/ND fails to describe and analyze the reasonably foreseeable impacts of the proposed project.

APPLICABLE LAW

The federal Telecommunications Act of 1996, 47 U.S.C.A. 151 et seq. (1996) regulates the deployment of wireless telecommunication service. Section 332(c)(3) gives the FCC certain authority that is exclusive and which preempts conflicting acts by state or local governments. At Section 332(c)(3)(7),the Act, while recognizing that local zoning authority is preserved, requires that local regulation not "unreasonably discriminate among providers of functionally equivalent services" and not "prohibit or have the effect of prohibiting the provision of personal wireless services."

California state law also impacts placement of communication facilities within the public rights-of-way. As you are aware, wireless and wireline carriers, as "telephone corporations," have access rights to the public rights-of-way under Section 7901 of the California Public Utility Code. A telephone corporation enjoys a vested right under Section 7901 to construct "telephone lines" and "necessary fixtures" "along and upon any public road." California courts have long

upheld this vested right to enter and use the public right-of-way. In our view, the City possesses only a limited right to curtail the rights of telephone corporations under Section 7901. Section 7901.1(a) grants to the City only the ability to exercise "reasonable control as to the time, place and manner in which roads . . . are accessed." Section 7901.1(b) provides that any municipal regulations "at a minimum, be applied to all entities in an equivalent manner," thereby imposing a duty on the City to regulate in a non-discriminatory manner.

ISSUES

Among the issues identified that must be addressed are:

1) The proposed ordinance indicates that any modification will require at least a minor CUP application and possibly even a full CUP application. Even an antenna swap presumably would require such an application process. Our experience in the Southern California market suggests that this process could be lengthy and upwards of 12 months or so including the Building Permit process. This ordinance also apparently requires stealthing/screening of all sites, including sites which are going to be modified. (Section 9661.3, 9661.4, 9661.5). This would impose unnecessary additional expenses in some cases.

2) There is a 10 year sunset clause on all approvals, where a renewal of s0uch approval will be required and all sites will have to conform to the ordinance at the time of renewal. (Section 9661.15). This proposed requirement is not imposed on other property uses.

3) Some requirements of the CUP application may require carriers to disclose proprietary information such as the carrier master build plan for the City of Agoura Hills. (Section 9661.4 #16) Some of the material required is proprietary. Other required information either isn't available or is for too long a time period.

4) Carriers are to submit RF emission tests of proposed facilities including the cumulative effect from nearby sites. This includes any site even from other carriers. (Section 9661.4 #11). This requirement is preempted by(the Telecom Act.

5) City's may use various experts to contest carrier findings, all at carrier cost. There appears to be no limit on the use of such experts. It is at discretion of the Planning Director. (Section 9661.4 D)

6) City can require applicants to construct full mock ups of any proposed facility. (Section 9661.4 E). This requirement could impose substantial additional costs with no attendant benefit to city residents.

7) There are various noise conditions that must be met that appear to single out wireless facilities without reason. (Section 9661.5 #11)

8) It appears that the City is enforcing the CUP application process in the Public ROW. (Section 9661.6). This appears to be inconsistent with AT&T's understanding of applicable law, including Section 7901.1 of the Public Utilities Code.

9) There is a height limitation in the proposed ordinance at a maximum height of 60 feet. (Section 9661.5 #B 6 (b)). This limitation could make it impossible to serve some parts of the city.

10) City appears to want to stealth or screen all cables, equipment, etc. and use underground stealthing if possible. This could mean the use of underground vaults in many instances, thus substantially increasing costs and creating maintenance and service issues. (Section 9661.5 #B (7)).

The cited provisions would add substantial time and expense to deployment of wireless facilities in the city, with possible commercial and public safety consequences. AT&T requests that the draft IS/ND and proposed ordinance be modified to address these and the other concerns as identified in the enclosure. AT&T is eager to discuss these concerns further with the City and would be pleased to work with the City toward that end. If you have any questions about these comments, please contact me at (213) 743-7013.

Very truly yours,

Dan Revetto
Director, AT&T External Affairs
1150 S. Olive St., Suite 2801
Los Angeles, CA 90015

Enclosure

COMMENTS ON PROPOSED ORDINANCE # 11:

"A new Division 11 entitled **"THE WIRELESS TELECOMMUNIICATIONS FACILITIES" to Part 2, Chapter 6 of Article IX (Zoning) of the Agoura Hills Municipal Code**

Comments and questions are noted in bold, italicized language below.

9661.2

Regardless of date approved, Facility immediately subject to these sections of Ord11:

- 9661.13 radio frequency emissions monitoring (owners of facility must submit a monitoring report every two years showing the facility is in compliance w/ federal regulations, the facility is in compliance with provisions of this section and it s condition of approval, and the bandwidth of the facility has not been since the original application or last report)

Foregoing may be precluded by Telecom Act

All modifications require a minor condition use permit or condition use permit.

This would impose substantial unnecessary delays and expense on relatively minor projects.

§9661.3 - WTF Permit Requirements – any modification requires an amended permit.

§9661.4 – Application for Permit
Some new requirements which are non-standard requirements and appear to be problematic.

9) accurate visual impact analysis showing max. silhouette, viewshed analysis, color and finish palette, proposed screening, & scaled photo simulations. ***(Most sites in this jurisdiction would require stealthing- this isn't always necessary);***

11) If not categorically excluded, a technically detained report certified by qual. radio frequency engineer indicating: amount of RF emissions expected, the cumulative impacts of other existing and foreseeable facilities in the area, and stating that emissions from proposed Facility individually and combined w/ cumulative effects of nearby facilities will not exceed FCC standards. Director may require City rep to be present for verification testing, and that applicant pay City costs for observing and verifying. ***This requirement may go beyond the scope of AT&T/carrier's proposed site. Some of this information may not be obtainable by AT&T/Carriers. It is difficult to ascertain foreseeable facilities in the area. This requirement also goes beyond City's authority under the Telecom Act.***

15) Description of maintenance and monitoring program/plan. ***This would impose new and unnecessary requirements, involving additional expenses with no benefit to***

community. **16)** written description identifying the geographic service area for the subj. install, and master plan that identifies location of the proposed facility in relation to all existing and planned facilities maintained by each applicant, owner and operator, if different. Mast0er plan to reflect all locations anticipated for new construction and/or MODs to existing, w/in 20 years of app submittal, and long range concepts for 5 years. (This may be proprietary information.). ***Build plans of this sort would be speculative and of no value to decision-makers ;***

and

20) any other info or studies determined by Director may be required. ***(Significant discretionary power for planning director.)***

D. Independent Expert. Director is authorized to retain for City an independent qualified consultant to review technical aspects of any application for permit for WTF or WTCF, addressing the following ***(all of these experts are at the cost of applicant), with no cap on such expenses:***

1. compliance with RF emissions standards ***(proscribed by Federal law);***
2. Whether requested exception is necessary;
3. accuracy and completeness of submissions;
4. technical demonstration of unavailability of alternative sites/configurations and/or coverage analysis;
5. the applicability of analysis techniques and methodologies;
6. the validity of conclusions reached/claims made by applicant;
7. the viability of alternative sites and alternative designs;
8. any other specific issues designated by City.

Cost of review to be paid by applicant per fee schedule resolution. ***No cap on these costs?***

E. Story Poles. At DISCRETION OF DIRECTOR, applicant may be req'd to erect temporary story poles to demonstrate height and mass of potential facility. ***Unnecessary costs added to project, not required of other land users.***

§9661.5 – req'ts for **FACILITIES NOT WITHIN THE PUBLIC RIGHT OF WAY**. **Applies to all facilities.**

A. Permit required.

B. Design & Development Standards. All WTF or WTCFs located outside the Public ROW must be designed & maintained so as to minimize visual, noise, and other impacts on the surrounding community, and must be planned, designed, located, and erected according to the following:

1. General Guidelines. Stealthing required on all sites. ***As noted above, Stealthing shouldn't always be required. If facility not visible to public, not Stealthing should be required.***

6. Ground mounted facilities - ***These limitations could make it impossible to serve some parts of the city.***

a. must be located in close prox. to existing above ground utilities & in areas where they won't detract from the appearance of City

b. must be designed as minimum functional height and width required to adequately support proposed facility & meet FCC requirements, AND no higher than nearby existing poles, structures or trees or 60 feet, whichever is lower.

d. ALL cables run w/in interior of telecom tower and/or must be fully camouflaged or hidden

7. **Accessory Equipment** – ALL accessory equip. assoc. w/ WTF&CFs located & screened to minimize its visibility to max. possible.

11. NOISE –

Is this consistent with requirements for other land uses?

a. ALL facilities must be operated to minimize disruption by noise

b. back-up generators ONLY USED during periods of power outage; no testing during weekends/holidays, or b/t hours of 7pm & 7am.

c. if Facility located in business, commercial, manufacturing, utility or school zone, or planned development zone permitting those uses, Exterior noise max. = 55 dB at facility property line. ANY facility located w/in 500 feet of any property zoned residential or improved w/ a residential use, noise cannot be audible at the residential property line. ANY facility located w/in residential zone, noise cannot be audible at res. property line.

d. ALL air conditioning units/any other equip that makes noise that would be audible from beyond facility's property line must be enclosed or equipped w. noise attenuation devices to ensure compliance under this Code.

13. MODIFICATIONS.

Is this required of any other land use?

At time of MODIFICATION of WTF&CFs, existing equipment must be replaced, to extent feasible, w/ equipment that reduces visual, noise and other impacts, including undergrounding and replacing big w/ smaller -

C. Conditions of Approval – in addition to design and development standards, ALL facilities subject to following conditions of approval or any amendments thereto by RA (reviewing authority)

2. if feasible, as new tech becomes available, must (1) place above ground facilities below ground, including but not limited accessory equipment mounted to tower or on ground, AND (2) replace larger/visually intrusive facilities w/ smaller/less intrusive facilities after receiving all permits and applications required by Agoura Hills Muni Code. ***Is this required of any other land use?***

10. If nearby property owner files noise complaint and it is verified by CITY, CITY can hire consultant to review at permittee's expense. If D determines sound attenuation measures are required for compliance, D may impose new conditions after notice and public hearing. Applicable noise limitations must be in the conditions of approval. ***Is this required of any other land use?***

11. Permittee Indemnity Clause – including but not limited attorney fees, City to notify Permittee of any claim. CITY has option of coordinating defense including but not limited to choosing counsel. ***Is this required of any other land use?***

9661.6 Requirements for Facilities w/in PROW – here, "located w/in the PROW" includes any facility in whole or in part that rests upon, in or over the PROW.

Much of the following appears to be inconsistent with restrictions of 7901.1.

A. PERMIT REQ'D

1. in addition to any other permit required under this Code, the install or MOD of any facility in the PROW of arterial roadways, exceptions listed in 9661.20, require a CUP.

2. in addition to any other permit required under this Code, the install or MOD of any facility in the PROW and is listed in section 9661.20(A) requires a CUP & an Approval of Exception.

3. need to prove right to use PROW.

B. Design & Development Standards – All WTF&CF in the PROW REQUIRES STEALTHING.

1. General Guidelines

a. screen and camouflage techniques in placement of facility to make as visually inconspicuous as possible, prevent from dominating surrounding area, hide facility from predominant views in way that achieves compatibility.

b. screening must be architecturally compatible w/ surrounding to minimize visual impact as well as be compatible w/ architectural character.

2. Traffic Safety – All designed to avoid adverse impacts on traffic

3. Blending methods – aterials

4. ANTENNA MOUNTS – must use the least visible antennas to accomplish the coverage objective. Elements to be flush mounted to extent feasible. Not to preclude possible future collocation. Must be situated as close to ground as possible to reduce visual impact w/o compromising function.

5. Poles –

a. ONLY pole-mounted antenna shall be permitted in the ROW. All other telecom towers are prohibited, and NO NEW POLES are permitted that are not replacing an existing pole.

b. NO facility shall be placed on a pole that is less than 25 ft. in height

c. Utility poles. Max height of any ANTENNA shall not exceed 24 inches above the height of an existing utility pole, nor less than 18 ft. above any drivable road surface. All installs must comply w/ CA Public Utilities Commiss. General orders

d. Light Poles. Max of antenna = 6 ft. above height of existing light pole, no less than 18 ft. above any drivable road surface.

e. Replacement Poles. If replacing to accommodate facility, pole must match appearance of OG pole to extent feasible. If replacement pole exceeds height of original pole, antennas cannot extend above top of replacement pole for more than "X" feet, where "X" = 6 feet minus the difference in height b/t the old and new poles.

f. pole mounted equipment must not exceed 6 cubic ft. in dimension.

g. All poles must be designed to be minimum functional height/width required to support antenna install & meet FCC requirements. poles/ANTENNAS/similar structures no greater in diameter or cross sectional dimensions than necessary for proper function of Facility; must provide director proof of compliance.

h. If exception if granted to placement of new pole in ROW, new pole must be designed to resemble existing pole nearby, w/exception of existing poles that are scheduled to be removed and not replaced. New Poles that are not replacement poles MSUT BE AT LEAST 90 FEET AWAY FROM ANY EXISTING POLE TO EXTENT FEASIBLE

i. ALL cables run w/in interior of pole and/or must be fully camouflaged or hidden to extent feasible w/o jeopardizing physical integrity of pole.

6. Facility must be designed to occupy least space n ROW technically feasible.

7. must withstand high wind loads. Evaluation of load capacity must include impact of modification to existing

8. Each part of facility must not cause any physical or visual obstruction to pedestrian or vehicular traffic inconvenience to the public's use of the ROW, or safety hazards to pedestrians/drivers, AND must comply w/ 9661.14.

9. Cannot be located w/n any Portion of PROW interfering w/ access to any vital public health and safety facility.

10. IN no case shall ground mounted facility, above ground accessory equip, or walls, fences, landscaping, or other screening methods be less than 18 inches from curb.

11. ALL CABLES b/t pole and accessory equip. must be placed underground.

12. facility must be built in compliance w/ ADA.

13. Accessory Equip. – W/ exception of electric meter, all accessory equip to be underground.

a. unless CITY determines no room in PROW for underground or just not feasible underground, exception is required to place above ground.

b. if above ground is only feasible location and cannot be pole mounted, must be enclosed in structure, not higher than 5 ft. and a total footprint of 15 sq. ft. and fully screened/camouflaged. Required electrical meter cabinets must be screened/camouflaged. subdued colors & non reflective materials that blend w/ surrounding colors & m

17. NOISE – essentially the same as non public right of way.

Is this requirement imposed on other uses?

19. MODIFICATIONS. essentially the same as non-public right of way.

Is this requirement imposed on other uses?

9661.8 Agreement For Facilities on City-Owned Property or Public Right Of Way.

Appears to be inconsistent with restrictions of 7901.1.

No approval for locating facility on City owned or public right of way is effective until App and CITY have executed written agreement establishing terms under which right shall be used or maintained. Said Agreement shall include but not limited to:

1. inspection & Maintenance requirements
2. indemnification of CITY
3. INSURANCE Requirements
4. Waiver of Monetary damages against CITY
5. Removal, restoration, and cleanup requirements
6. Requirement to pay possessory interest taxed, if any.

9661.10 WIRELESS TELECOMM COLLOCATION FACILITIES

Ambiguous whether a permit is necessary for a collocation.

D. Notwithstanding any other provision of this division, a subsequent collocation on a WTCF will be permitted if:

F. EXCEPT AS OTHERWISE PROVIDED ABOVE, APPROVAL OF A NEW OR AMENDED FACILTIY PERMIT IS REQ'D WHEN THE FACILITY IS MODIFIED OTHER THAN BY COLLOCATION in accord w/ this section, OR WHEN PROPOSED COLLOCATION:

1. INCREASES THE HEIGHT of the existing permitted facilities or otherwise changes the bulk, size, location, or any other physical attributes of the existing permitted WTCF unless specifically permitted under the conditions of approval applicable to such WTCFs; OR

2. ADDS any MICROWAVE DISH OR OTHER ANTENNA NOT EXPRESSLY PERMITTED TO BE INCLUDED IN A Collocation Facility by the conditions of approval.

9661.15 PERMIT EXPIRATION

Is this type of limitation imposed on any other land use?

A. 10 years from the date of issuance, unless pursuant to other prov. of this Code it lapses sooner or is revoked;

9661.20 LOCATION RESTRICTIONS –

These provisions might make it impossible for carriers to serve certain areas of the City.

A. WTF&CFs cannot locate in the following w/o an exception:

1. zoning districts other than BP-M, BP-OR, CN, CRS, CS-MU, CS, CR, PD, U, and SH districts; however, can be in PROW arterial roadways w/in those other districts w/o exception;

2. PROW of collector of roadways as identified in general plan;

3. PROW of local streets as identified in the general plan if w/in the BP-M, BP-OR, CN, CRS, CS-MU, CS, CR, PD, U, and SH districts;

0 4. PROW if mounted to new pole that's not replacing an existing pole, regardless of location; or

5. Bldg mounted or Roof mounted on bldg. owned in common by HOA, even if located in residential zone;

6. regardless of the above, can't locate w/in OS-DR or OS-R zoning districts, including PROW of arterial or collector roadways/in those districts, w/o an exception; however, app must also get approval under sections 9487 & 9821.5 of Code.

B. Regardless of Section 9661.19, exception can't be granted for location of WTF or WTCF in any of the following:

1. any location in residential district, except for PROW of arterial or collector roadways and those locations listed in section 9661.20(A)(5);

2. any location w/in 100 ft. from residential district, with exception of PROW art & collector roadways, or bldg. or roof-mounted facilities in the BP-M, BP-OR, CN, CRS, CS-MU, CS, CR, PD, U, or SH districts.

3. Any location that would significantly obstruct or diminish views in scenic corridors;

4. any location on or near a ridge such that a silhouette of facility would be seen against the sky; or

5. planned development zones anywhere where zone or plan prohibits facilities.

C. if could qualify as both permissible location and one enumerated in this section, this section controls. If could qualify as either a location requiring an exception under Para A of this section or a location where no exception is allowed under Para B, B controls and no exception granted.

PART 12. NONCONFORMING WTFs
"9711. NONCONFORMING WTF&CFs

***AT&T is concerned that this provision will limit the ability of carriers to provide the full range of available services in areas of the City served by sites affected by this* section.**

A. Nonconforming WTF&CFs are those that do not conform to Division 11 of part 2 of chapter 6 of Article IX of this Code.

B. 10 yrs from date of nonconformance, to bring facility in conformance w/ all requirements of this article; however, if owner wants to expand or modify, intensify use, or make other changes in a conditional use, owner must comply w/ all applicable provisions of Code at such time;

Staff Response to AT&T Mobility (Cingular) Letter and Attachment (June 6, 2011) Regarding Wireless Telecommunications Facilities Ordinance

A letter dated June 6, 2011, from Dan Revetto, Director of External Affairs for AT&T, writing on behalf of New Cingular Wireless PCS, LLC dba AT&T Mobility (AT&T), was received by the City of Agoura Hills on June 6, 2011. Excerpts of his comments on the non-environmental public policy aspects of the Ordinance and staff's responses, are below.

(The excerpts of AT&T comments have been indented and numbered for ease of reference.)

AT&T LETTER

> **AT&T Comment 1 (Letter)**: The proposed ordinance indicates that any modification will require at least a minor CUP application and possibly even a full CUP application. Even an antenna swap presumably would require such an application process. Our experience in the Southern California market suggests that this process could be lengthy and upwards of 12 months or so including the Building Permit process. This ordinance also apparently requires stealthing/screening of all sites, including sites which are going to be modified. (Section 9661.3, 9661.4, 9661.5). This would impose unnecessary additional expenses in some cases.

Staff Response to AT&T Comment 1:

Any burden or expense is outweighed by the City's legitimate aesthetic and noise concerns regarding future installations at the same site. Commenter does not explain what is meant by an "antenna swap." No additional permit is required to replace an existing antenna with the same model of antenna so long as the new antenna does not, for example, alter, expand, enlarge, intensify, reduce or augment the use or change the facility's appearance. (See definition of "modification" in Section 9661.1.)

(See also staff response to AT&T Comment 13, below.)

Additionally, an applicant can apply for an Exception at the time of application if they believe a provision of Division 11 would violate state or federal law, or if such provision as applied to applicant would deprive applicant of its rights under state and/or federal law. It should be noted, however that an Exception is not available for certain locations listed in Section 9661.20.B.

> **AT&T Comment 2 (Letter)**: There is a 10 year sunset clause on all approvals, where a renewal of such approval will be required and all sites will have to conform to the ordinance at the time of renewal. (Section 9661.15). This proposed requirement is not imposed on other property uses.

Staff Response to AT&T Comment 2:

It is permissible under state law to impose a ten-year term on conditional use permits for wireless telecommunications facilities pursuant to Gov't Code § 65964(b). Section 65964(b) provides that cities shall not "[u]nreasonably limit the duration of any permit for a wireless telecommunications facility. Limits of less than 10 years are presumed to be unreasonable absent public safety reasons or substantial land use reasons. However, cities and counties

may establish a build-out period for a site." The ordinance includes procedures to extend the term of a permit, including an administrative procedure if the facility is up to code.

Additionally, an applicant can apply for an Exception at the time they apply for a permit extension if the applicant believes a provision of Division 11 would violate state or federal law, or if such provision as applied to applicant would deprive applicant of its rights under state and/or federal law. It should be noted, however that an Exception is not available for certain locations listed in Section 9661.20.B.

> **AT&T Comment 3 (Letter)**: Some requirements of the CUP application may require carriers to disclose proprietary information such as the carrier master build plan for the City of Agoura Hills. (Section 9661.4 #16) Some of the material required is proprietary. Other required information either isn't available or is for too long a time period.

Staff Response to AT&T Comment 3:

It is highly doubtful that requiring applicants to disclose generalized plans for expansion in the City would harm any business interests of the applicant. On a case-by-case basis, a carrier can request that the information be protected as proprietary.

Based upon comments received by the City, staff has redrafted that provision to read as follows:

> [new language is underlined, deleted language is ~~struck out~~]
>
> Section 9661.4(C)(16)
>
> "A written description identifying the geographic service area for the subject installation, accompanied by a master plan, including maps, that identifies the location of the proposed facility in relation to all existing and planned facilities maintained within the city by each of the applicant, operator, and owner, if different entities. The master plan shall reflect all locations anticipated for new construction and/or modifications to existing facilities, including collocation, within two years of submittal of the application~~, as well as~~. Longer range conceptual plans for a period of five years shall also be provided, if available."

> **AT&T Comment 4 (Letter)**: Carriers are to submit RF emission tests of proposed facilities including the cumulative effect from nearby sites. This includes any site even from other carriers. (Section 9661.4 #11). This requirement is preempted by(the Telecom Act.

Staff Response to AT&T Comment 4:

Based upon comments received by the City, staff has redrafted the provision to read as follows:

> [new language is underlined, deleted language is ~~struck out~~]

Section 9661.4(C)(11)

"For a facility that is not categorically excluded, the applicant shall also provide a technically detailed report certified by a qualified radio frequency engineer indicating the amount of radio frequency emissions expected from the proposed facility and associated accessory equipment, as well as the cumulative impacts of the other existing ~~and foreseeable~~ facilities ~~in the area~~ at the site to the extent permitted by federal law, including co-located facilities, and stating that emissions from the proposed facility individually and combined with the cumulative ~~effects~~ emissions of ~~nearby~~ on-site facilities will not exceed standards set by the Federal Communications Commission. ~~The director may require that a city representative be present for verification testing, and that the applicant reimburse the city for its actual costs in observing and verifying that testing.~~"

AT&T Comment 5 (Letter): City's may use various experts to contest carrier findings, all at carrier cost. There appears to be no limit on the use of such experts. It is at discretion of the Planning Director. (Section 9661.4 D)

Staff Response to AT&T Comment 5:

As indicated in the ordinance, the fee charged to the applicant for the cost of the expert will be determined by the City Council at a later date. At the end of Section 9661.4(D) it states: "The cost of this review shall be paid by the applicant through a deposit pursuant to an adopted fee schedule resolution." Prior to adopting the fee, the City will provide public notice and the City Council will hold a public hearing on the matter, as required by state law.

AT&T Comment 6 (Letter): City can require applicants to construct full mock ups of any proposed facility. (Section 9661.4 E). This requirement could impose substantial additional costs with no attendant benefit to city residents.

Staff Response to AT&T Comment 6:

The requirement to erect temporary story poles to demonstrate the height and mass of a potential facility will enable City residents, Planning Commission, City Council and staff to evaluate the visual impact of a proposed project.

AT&T Comment 7 (Letter): There are various noise conditions that must be met that appear to single out wireless facilities without reason. (Section 9661.5 #11)

Staff Response to AT&T Comment 7:

Wireless facilities are unique uses and are operational twenty-four hours a day, seven days a week. The regulations regarding noise mitigate noise impacts potentially created by these facilities. The commenter does not indicate that it is unable to meet the proposed noise standards.

Additionally, an applicant can apply for an Exception at the time if they believe the noise standards would violate state or federal law or if a provision of Division 11, as applied to applicant, would deprive applicant of its rights under state and/or federal law.

AT&T Comment 8 (Letter): It appears that the City is enforcing the CUP application process in the Public ROW. (Section 9661.6). This appears to be inconsistent with AT&T's understanding of applicable law, including Section 7901.1 of the Public Utilities Code.

Staff Response to AT&T Comment 8:

AT&T's understanding is incorrect. It is permissible to require a conditional use permit as part of the "time, place and manner" controls imposed by a city pursuant to Public Utilities Code Section 7901.1 and to date, no court has ruled otherwise. Further, Public Utilities Code Section 7901 limits the construction of telephone lines in the right-of-way. Such facilities must be constructed "in such manner and at such points as not to incommode the public use of the road or highway."

Cities may regulate wireless telecommunications facilities for aesthetic and other reasons so that such facilities do not "incommode" the public use of roads. *See Sprint PCS Assets, LLC v. City of Palos Verdes Estates*, 583 F. 3d 716 (9th Cir. 2009). Thus, under state law, cities have discretion to deny permits based upon aesthetic concerns and impose reasonable time, place and manner regulations – including regulations to prevent telephone corporations from using the right-of-way to incommode the public use of roads – provided those regulations do not violate state or federal law. (See also staff response to AT&T Comment 13, below.)

Additionally, an applicant can apply for an Exception at the time of application if they believe a regulation in Division 11 would violate state or federal law or if such regulation as applied to applicant would deprive applicant of its rights under state and/or federal law. It should be noted, however that an Exception is not available for certain locations listed in Section 9661.20.B.

AT&T Comment 9 (Letter): There is a height limitation in the proposed ordinance at a maximum height of 60 feet. (Section 9661.5 #B 6 (b)). This limitation could make it impossible to serve some parts of the city.

Staff Response to AT&T Comment 9:

This comment asserts without data, documentation, or analysis that the proposed regulation could make it "impossible" to serve some parts of the City. The comment does not explain how the cited regulation makes it "impossible." Even with this regulation in place, there will be plenty of locations within the City where wireless telecommunication facilities and wireless telecommunication collocation facilities may be installed.

The proposed regulations are designed to preserve the semi-rural character of the City and its visual viewshed. The City is limiting the height of antennas to encourage lower profile, less intrusive facilities. (See also staff response to AT&T Comment 13, below.)

An applicant can apply for an Exception at the time of application if they believe the height regulation in Division 11 would violate state or federal law, or if such regulation as applied to applicant would deprive applicant of its rights under state and/or federal law.

AT&T Comment 10 (Letter): City appears to want to stealth or screen all cables, equipment, etc. and use underground stealthing if possible. This could mean the use of underground vaults in many instances, thus substantially increasing costs and creating maintenance and service issues. (Section 9661.5 #B (7)).

Staff Response to AT&T Comment 10:

Section 9661.5.B.7 does not require the use of underground vaults. Instead, undergrounding accessory equipment in vaults is one of the options along with others, such as locating accessory equipment inside a building or inside a structure with appropriate screening to visually integrate the structure. Section 9661.5.B.7 provides the design and development standards for property outside the ROW and states:

7. Accessory Equipment. All accessory equipment associated with the operation of any wireless telecommunications facility or wireless telecommunications collocation facility shall be located and screened in a manner that is designed to minimize its visibility to the greatest extent possible, including utilizing the following screening methods for the type of installation:

a. Accessory equipment for building-mounted or roof-mounted facilities may be located underground, inside the building, or on the roof of the building that the facility is mounted on, provided that both the equipment and screening materials are painted the color of the building, roof, and/or surroundings. All screening materials for each roof-mounted facility shall be of a quality and design that is architecturally integrated with the design of the building or structure.

b. Accessory equipment for ground-mounted facilities shall be visually screened by locating the equipment within a nearby building or in an underground vault, with the exception of required electrical panels. If a building is not located near the facility or placement of the equipment in an existing building is not technically feasible, accessory equipment shall be located in an enclosed structure, and shall comply with the development and design standards of the zoning district in which the accessory equipment is located. The enclosed structure shall be architecturally treated and/or adequately screened from view by landscape plantings, walls, fencing or other appropriate means, selected so that the resulting screening will be visually integrated with the architecture and landscaping of the surroundings.

Section 9661.6.B.13 provides the design and development standards for wireless telecommunications facilities in the City's public right-of-way. Undergrounding is the preferred method for dealing with accessory equipment in the right-of-way in order to reduce, if feasible, the addition of new above-ground structures. New above-ground structures in the right-of-way have aesthetic impacts, impede pedestrian access through the right-of-way, and interfere with maintenance of the right-of-way, and for these and other reasons, are disfavored.

(See also staff response to AT&T Comment 13, below.)

Additionally, an applicant can apply for an Exception at the time of application if they believe a design standard in Division 11 would violate state or federal law, or if such regulation as applied to applicant would deprive applicant of its rights under state and/or federal law.

AT&T ATTACHMENT

Staff Explanation:

In addition to AT&T's letter, AT&T included an attachment. The attachment appeared to summarize certain sections of the ordinance, and pose questions. Staff has not reviewed AT&T's summary for accuracy nor were typographical errors or abbreviations changed. AT&T noted that its ***comments and questions are noted in bold, italicized language.*** That formatting has been retained.

AT&T Comment 11 (Attachment):

9661.2

Regardless of date approved, Facility immediately subject to these sections of Ord11:

- 9661.13 radio frequency emissions monitoring (owners of facility must submit a monitoring report every two years showing the facility is in compliance w/ federal regulations, the facility is in compliance with provisions of this section and it s condition of approval, and the bandwidth of the facility has not been since the original application or last report)

Foregoing may be precluded by Telecom Act

Staff Response to AT&T Comment 11:

The comment states that the requirement in Section 9661.13 of the ordinance may be precluded by the federal Telecommunications Act (TCA), but did not cite to a specific provision. The TCA provides that "[n]o State or local government or instrumentality thereof may regulate the placement, construction, or 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 regulation concerning such emissions." 47 U.S.C. § 332(c)(7).

Section 9661.13 of the proposed Ordinance does not regulate radio frequency emissions. Instead, it requires a bi-annual filing by the owner demonstrating that the facility is in compliance with its conditions of approval, federal regulations concerning radio frequency emissions, and that the bandwidth hasn't been changed. Nothing precludes cities from verifying that wireless telecommunications facilities within its jurisdiction are in compliance with the foregoing.

Specifically, Section 9661.13 requires the following:

> The owner and operator of a facility shall submit within ninety (90) days of beginning operations under a new or amended permit, and every two years from the date the facility began operations, a technically sufficient report ("monitoring report") that demonstrates the following:

A. The facility is in compliance with applicable federal regulations, including Federal Communications Commission RF emissions standards, as certified by a qualified radio frequency emissions engineer;

B. The facility is in compliance with all provisions of this section and its conditions of approval.

C. The bandwidth of the facility has not been changed since the original application or last report, as applicable, and if it has, a full written description of that change.

AT&T Comment 12 (Attachment):
All modifications require a minor condition use permit or condition use permit.

This would impose substantial unnecessary delays and expense on relatively minor projects.

Staff Response to AT&T Comment 12:

Repeats prior comment. See staff response above to AT&T Comment 1 (Letter).

AT&T Comment 13 (Attachment):

§9661.3 - WTF Permit Requirements – any modification requires an amended permit.

§9661.4 – Application for Permit
Some new requirements which are non-standard requirements and appear to be problematic.
9) accurate visual impact analysis showing max. silhouette, viewshed analysis, color and finish palette, proposed screening, & scaled photo-simulations. ***(Most sites in this jurisdiction would require stealthing- this isn't always necessary);***

Staff Response to AT&T Comment 13:

Any burden or expense on applicants is outweighed by legitimate aesthetic concerns, including the need to preserve the semi-rural character of the City and its visual viewshed. The City is surrounded by scenic mountains, including Ladyface Mountain and the Santa Monica Mountains National Recreation Area. Protection of the view to these special scenic resources is a priority in the City.

For example, Goal NR-2 of the Agoura Hills General Plan states:

> Preservation of significant visual resources as important quality of life amenities for residents and as assets for commerce, recreation and tourism.

And Goal NR-3 states:

> Maintenance and enhancement of the visual quality of City roads that have valuable scenic resources in order to create a special awareness of the environmental character and natural man-made resources of the community.

Additionally, an applicant can apply for an Exception at the time of application if they believe a provision of Division 11 would violate state or federal law, or if such provision as applied to applicant would deprive applicant of its rights under state and/or federal law. It should be noted, however that an Exception is not available for certain locations listed in Section 9661.20.B.

AT&T Comment 14 (Attachment):

§9661.4 – Application for Permit

11) If not categorically excluded, a technically detained report certified by qual. radio frequency engineer indicating: amount of RF emissions expected, the cumulative impacts of other existing and foreseeable facilities in the area, and stating that emissions from proposed Facility individually and combined w/ cumulative effects of nearby facilities will not exceed FCC standards. Director may require City rep to be present for verification testing, and that applicant pay City costs for observing and verifying. ***This requirement may go beyond the scope of AT&T/carrier's proposed site. Some of this information may not be obtainable by AT&T/Carriers. It is difficult to ascertain foreseeable facilities in the area. This requirement also goes beyond City's authority under the Telecom Act.***

Staff Response to AT&T Comment 14:

Repeats prior comment. See staff response above to AT&T Comment 4 (Letter).

AT&T Comment 15 (Attachment):

§9661.4 – Application for Permit

15) Description of maintenance and monitoring program/plan. ***This would impose new and unnecessary requirements, involving additional expenses with no benefit to community.***

Any burden or expense on applicants is outweighed by legitimate aesthetic and nuisance concerns, including the need to preserve the scenic and semi-rural character of the City and to prevent such facilities from becoming a visual nuisance due to lack of upkeep and maintenance. An applicant can apply for an Exception at the time of application if they believe a provision in Division 11 would violate state or federal law or if such provision as applied to applicant, would deprive applicant of its rights under state and/or federal law.

(See also staff response to AT&T Comment 13.)

AT&T Comment 16 (Attachment):

§9661.4 – Application for Permit

16) written description identifying the geographic service area for the subj. install, and master plan that identifies location of the proposed facility in relation to all existing and planned facilities maintained by each applicant, owner and operator, if different. Master plan to reflect all locations anticipated for new construction and/or MODs to existing, w/in 20 years of app submittal, and long range concepts for 5 years. (This may

be proprietary information.). ***Build plans of this sort would be speculative and of no value to decision-makers ;***

Staff Response to AT&T Comment 16:

Repeats prior comment. See staff response above to AT&T Comment 3 (Letter).

AT&T Comment 17 (Attachment):

§9661.4 – Application for Permit
And 20) any other info or studies determined by Director may be required. ***(Significant discretionary power for planning director.)***

Staff Response to AT&T Comment 17:

Each project is different and will have unique features and issues created by the specific site chosen. This discretion allows the planning director to respond to those unique issues.

AT&T Comment 18 (Attachment):

§9661.4 D. Independent Expert. Director is authorized to retain for City an independent qualified consultant to review technical aspects of any application for permit for WTF or WTCF, addressing the following ***(all of these experts are at the cost of applicant), with no cap on such expenses:***

1. compliance with RF emissions standards ***(proscribed by Federal law);***
2. Whether requested exception is necessary;
3. accuracy and completeness of submissions;
4. technical demonstration of unavailability of alternative sites/configurations and/or coverage analysis;
5. the applicability of analysis techniques and methodologies;
6. the validity of conclusions reached/claims made by applicant;
7. the viability of alternative sites and alternative designs;
8. any other specific issues designated by City.

Staff Response to AT&T Comment 18:

The ordinance does not set the fee amount. Prior to adopting the fee, public notice will be given and a public hearing will be held by the City Council, as required by state law. See staff response above to AT&T Comment 5 (Letter). With regards to the second comment, cities may verify that wireless telecommunications facilities comply with federal RF emissions standards. See staff response above to AT&T Comment 11 (Attachment).

AT&T Comment 19 (Attachment):

§9661.4 D. Independent Expert. Cost of review to be paid by applicant per fee schedule resolution. ***No cap on these costs?***

Staff Response to AT&T Comment 19:

The costs for the independent expert will be determined at a later date by the City Council, after appropriate notice and a public hearing. See staff response above to AT&T Comment 5 (Letter) and AT&T Comment 18 (Attachment).

AT&T Comment 20 (Attachment):
§9661.4 D. E. Story Poles. At DISCRETION OF DIRECTOR, applicant may be req'd to erect temporary story poles to demonstrate height and mass of potential facility. ***Unnecessary costs added to project, not required of other land users.***

Staff Response to AT&T Comment 20:

See staff response above to AT&T Comment 6 (Letter).

AT&T Comment 21 (Attachment):

§9661.5 – req'ts for FACILITIES NOT WITHIN THE PUBLIC RIGHT OF WAY. Applies to all facilities.

A. Permit required.

B. Design & Development Standards. All WTF or WTCFs located outside the Public ROW must be designed & maintained so as to minimize visual, noise, and other impacts on the surrounding community, and must be planned, designed, located, and erected according to the following:

1. General Guidelines. Stealthing required on all sites. ***As noted above, Stealthing shouldn't always be required. If facility not visible to public, not Stealthing should be required.***

Staff Response to AT&T Comment 21:

Section 9661.5.B.1 of the proposed Ordinance requires screening and camouflage design techniques to ensure, among other things, "that the facility is as visually inconspicuous as possible . . . [to] achieve[] compatibility with the community." Specifically, Section 9661.5.B.1 provides that:

1. General Guidelines.

a. The applicant shall employ screening and camouflage design techniques in the design and placement of wireless telecommunications facilities and wireless telecommunication collocation facilities in order to ensure that the facility is as visually inconspicuous as possible, to prevent the facility from dominating the surrounding area, and to hide the facility from predominant views from surrounding properties, all in a manner that achieves compatibility with the community.

b. Screening shall be designed to be architecturally compatible with surrounding structures using appropriate techniques to camouflage, disguise, and/or blend into the

environment, including landscaping, color, and other techniques to minimize the facility's visual impact as well as be compatible with the architectural character of the surrounding buildings or structures in terms of color, size, proportion, style, and quality.

Any burden or expense on applicants is outweighed by legitimate aesthetic concerns, including the need to preserve the scenic and semi-rural character of the City and its visual viewshed. (See also staff response to AT&T Comment 13.)

An applicant can apply for an Exception at the time of application if they believe a provision of Division 11 would violate state or federal law, or if such provision as applied to applicant would deprive applicant of its rights under state and/or federal law. It should be noted, however that an Exception is not available for certain locations listed in Section 9661.20.B.

Additionally, based on this and other comments, City staff made changes to part of Section 9661.5.B.5 as follows:

5. Building-Mounted and Roof-Mounted Facilities. Building-mounted and roof-mounted facilities shall be designed and constructed to be ~~fully~~ camouflaged, concealed or screened in a manner compatible with the existing architecture of the building the wireless telecommunications facility or the wireless telecommunications collocation facility is mounted to in color, texture and type of material.

a. Each building-mounted facility shall be ~~fully~~ incorporated into the design elements of the building architecture.

AT&T Comment 22 (Attachment):

§9661.5(B) 6. Ground mounted facilities - ***These limitations could make it impossible to serve some parts of the city.***

a. must be located in close prox. to existing above ground utilities & in areas where they won't detract from the appearance of City

b. must be designed as minimum functional height and width required to adequately support proposed facility & meet FCC requirements, AND no higher than nearby existing poles, structures or trees or 60 feet, whichever is lower.

d. ALL cables run w/in interior of telecom tower and/or must be fully camouflaged or hidden

7. Accessory Equipment – ALL accessory equip. assoc. w/ WTF&CFs located & screened to minimize its visibility to max. possible.

Staff Response to AT&T Comment 22:

The comment asserts without data, documentation, or analysis that the proposed regulations could make it "impossible" to service some parts of the City. The comment does not explain how these regulations make it "impossible." Even with these regulations in place, there will be plenty of locations within the City where wireless telecommunication facilities and wireless telecommunication collocation facilities may be installed.

Additionally, an applicant can apply for an Exception at the time of application if they believe a provision of Division 11 would violate state or federal law, or if such provision as applied to applicant would deprive applicant of its rights under state and/or federal law. It should be noted,

provided, however that an Exception is not available for certain locations listed in Section 9661.20.B.

AT&T Comment 23 (Attachment):

§9661.5(B) 11. NOISE –
Is this consistent with requirements for other land uses?
a. ALL facilities must be operated to minimize disruption by noise
b. back-up generators ONLY USED during periods of power outage; no testing during weekends/holidays, or b/t hours of 7pm & 7am.
c. if Facility located in business, commercial, manufacturing, utility or school zone, or planned development zone permitting those uses, Exterior noise max. = 55 dB at facility property line. ANY facility located w/in 500 feet of any property zoned residential or improved w/ a residential use, noise cannot be audible at the residential property line. ANY facility located w/in residential zone, noise cannot be audible at res. property line.
d. ALL air conditioning units/any other equip that makes noise that would be audible from beyond facility's property line must be enclosed or equipped w. noise attenuation devices to ensure compliance under this Code.

Staff Response to AT&T Comment 23:

Repeats prior comment. See staff response above to AT&T Comment 7 (Letter).

AT&T Comment 24 (Attachment):

§9661.5(B) 13. MODIFICATIONS.
Is this required of any other land use?
At time of MODIFICATION of WTF&CFs, existing equipment must be replaced, to extent feasible, w/ equipment that reduces visual, noise and other impacts, including undergrounding and replacing big w/ smaller -

Staff Response to AT&T Comment 24:

Repeats prior comment. See staff response above to AT&T Comment 1 (Letter) and AT&T Comment 12 (Attachment).

AT&T Comment 25 (Attachment):

§9661.5(C) Conditions of Approval – in addition to design and development standards, ALL facilities subject to following conditions of approval or any amendments thereto by RA (reviewing authority)
2. if feasible, as new tech becomes available, must (1) place above ground facilities below ground, including but not limited accessory equipment mounted to tower or on ground, AND (2) replace larger/visually intrusive facilities w/ smaller/less intrusive facilities after receiving all permits and applications required by Agoura Hills Muni Code.
Is this required of any other land use?

Staff Response to AT&T Comment 25:

Section 9661.5.C.2 imposed a condition of approval that required a facility owner to update its facility as certain new technology became available. In response to this and other comments, this requirement is no longer an automatic condition of approval for a CUP or a minor CUP and has been deleted from Section 9661.5.C. Instead, a similar requirement will be imposed at the time of permit renewal. A new paragraph C has been added to Section 9661.15, and the remaining provisions re-lettered.

> 9661.15.C.[new] If feasible at the time of permit expiration, the permittee shall (1) place above-ground wireless telecommunications facilities below ground, including, but not limited to, accessory equipment that has been mounted to a telecommunications tower or mounted on the ground, and (2) replace larger, more visually intrusive facilities with smaller, less visually intrusive facilities, after receiving all necessary permits and approvals required pursuant to the Agoura Hills Municipal Code.

AT&T Comment 26 (Attachment):

§9661.5(C) 10. If nearby property owner files noise complaint and it is verified by CITY, CITY can hire consultant to review at permittee's expense. If D determines sound attenuation measures are required for compliance, D may impose new conditions after notice and public hearing. Applicable noise limitations must be in the conditions of approval. ***Is this required of any other land use?***

Staff Response to AT&T Comment 26:

Repeats prior comment. See staff response above to AT&T Comment 7 (Letter) and AT&T Comment 23 (Attachment).

AT&T Comment 27 (Attachment):

§9661.5(C) 11. Permittee Indemnity Clause – including but not limited attorney fees, City to notify Permittee of any claim. CITY has option of coordinating defense including but not limited to choosing counsel. ***Is this required of any other land use?***

Staff Response to AT&T Comment 27:

Yes, conditions of approval requiring a permittee to indemnify City, etc., is required of other land uses.

AT&T Comment 28 (Attachment):

9661.6 Requirements for Facilities w/in PROW – here, "located w/in the PROW" includes any facility in whole or in part that rests upon, in or over the PROW.

Much of the following appears to be inconsistent with restrictions of 7901.1.

A. PERMIT REQ'D

1. in addition to any other permit required under this Code, the install or MOD of any facility in the PROW of arterial roadways, exceptions listed in 9661.20, require a CUP.

2. in addition to any other permit required under this Code, the install or MOD of any facility in the PROW and is listed in section 9661.20(A) requires a CUP & an Approval of Exception.

3. need to prove right to use PROW.

B. Design & Development Standards – All WTF&CF in the PROW REQUIRES STEALTHING.

1. General Guidelines

a. screen and camouflage techniques in placement of facility to make as visually inconspicuous as possible, prevent from dominating surrounding area, hide facility from predominant views in way that achieves compatibility.

b. screening must be architecturally compatible w/ surrounding to minimize visual impact as well as be compatible w/ architectural character.

2. Traffic Safety – All designed to avoid adverse impacts on traffic

3. Blending methods – aterials

4. ANTENNA MOUNTS – must use the least visible antennas to accomplish the coverage objective. Elements to be flush mounted to extent feasible. Not to preclude possible future collocation. Must be situated as close to ground as possible to reduce visual impact w/o compromising function.

5. Poles –

a. ONLY pole-mounted antenna shall be permitted in the ROW. All other telecom towers are prohibited, and NO NEW POLES are permitted that are not replacing an existing pole.

b. NO facility shall be placed on a pole that is less than 25 ft. in height

c. Utility poles. Max height of any ANTENNA shall not exceed 24 inches above the height of an existing utility pole, nor less than 18 ft. above any drivable road surface. All installs must comply w/ CA Public Utilities Commiss. General orders

d. Light Poles. Max of antenna = 6 ft. above height of existing light pole, no less than 18 ft. above any drivable road surface.

e. Replacement Poles. If replacing to accommodate facility, pole must match appearance of OG pole to extent feasible. If replacement pole exceeds height of original pole, antennas cannot extend above top of replacement pole for more than "X" feet, where "X" = 6 feet minus the difference in height b/t the old and new poles.

f. pole mounted equipment must not exceed 6 cubic ft. in dimension.

g. All poles must be designed to be minimum functional height/width required to support antenna install & meet FCC requirements. poles/ANTENNAS/similar structures no greater in diameter or cross sectional dimensions than necessary for proper function of Facility; must provide director proof of compliance.

h. If exception if granted to placement of new pole in ROW, new pole must be designed to resemble existing pole nearby, w/exception of existing poles that are scheduled to be removed and not replaced. New Poles that are not replacement poles MSUT BE AT LEAST 90 FEET AWAY FROM ANY EXISTING POLE TO EXTENT FEASIBLE

i. ALL cables run w/in interior of pole and/or must be fully camouflaged or hidden to extent feasible w/o jeopardizing physical integrity of pole.

6. Facility must be designed to occupy least space n ROW technically feasible.

7. must withstand high wind loads. Evaluation of load capacity must include impact of modification to existing

8. Each part of facility must not cause any physical or visual obstruction to pedestrian or vehicular traffic inconvenience to the public's use of the ROW, or safety hazards to pedestrians/drivers, AND must comply w/ 9661.14.

9. Cannot be located w/n any Portion of PROW interfering w/ access to any vital public health and safety facility.

10. IN no case shall ground mounted facility, above ground accessory equip, or walls, fences, landscaping, or other screening methods be less than 18 inches from curb.

11. ALL CABLES b/t pole and accessory equip. must be placed underground.

12. facility must be built in compliance w/ ADA.

13. Accessory Equip. – W/ exception of electric meter, all accessory equip to be underground.

a. unless CITY determines no room in PROW for underground or just not feasible underground, exception is required to place above ground.

b. if above ground is only feasible location and cannot be pole mounted, must be enclosed in structure, not higher than 5 ft. and a total footprint of 15 sq. ft. and fully screened/camouflaged. Required electrical meter cabinets must be screened/camouflaged.

subdued colors & non reflective materials that blend w/ surrounding colors & m

Staff Response to AT&T Comment 28:

Repeats prior comment. See staff response above to AT&T Comment 8 (Letter).

AT&T Comment 29 (Attachment):

9661.6(A) 17. NOISE – essentially the same as non public right of way.
Is this requirement imposed on other uses?

Staff Response to AT&T Comment 29:

Repeats prior comment. See staff response above to AT&T Comment 7 (Letter).

AT&T Comment 30 (Attachment):

9661.6(A) 19. MODIFICATIONS. essentially the same as non-public right of way.
Is this requirement imposed on other uses?

Staff Response to AT&T Comment 30:

Repeats prior comment. See staff response above to AT&T Comment 1 (Letter), AT&T Comment 12 (Attachment) and AT&T Comment 24 (Attachment).

AT&T Comment 31 (Attachment):

9661.8 Agreement For Facilities on City-Owned Property or Public Right Of Way.
Appears to be inconsistent with restrictions of 7901.1.

No approval for locating facility on City owned or public right of way is effective until App and CITY have executed written agreement establishing terms under which right shall be used or maintained. Said Agreement shall include but not limited to:

1. inspection & Maintenance requirements
2. indemnification of CITY
3. INSURANCE Requirements
4. Waiver of Monetary damages against CITY
5. Removal, restoration, and cleanup requirements
6. Requirement to pay possessory interest taxed, if any.

Staff Response to AT&T Comment 31:

Repeats prior comment with regards to the ROW. See staff response above to AT&T Comment 8 (Letter).

Comment does not object to such a requirement for property owned by the City not in the ROW.

AT&T Comment 32 (Attachment):

9661.10 WIRELESS TELECOMM COLLOCATION FACILITIES
Ambiguous whether a permit is necessary for a collocation.
D. Notwithstanding any other provision of this division, a subsequent collocation on a WTCF will be permitted if:

F. EXCEPT AS OTHERWISE PROVIDED ABOVE, APPROVAL OF A NEW OR AMENDED FACILTIY PERMIT IS REQ'D WHEN THE FACILITY IS MODIFIED OTHER THAN BY COLLOCATION in accord w/ this section, OR WHEN PROPOSED COLLOCATION:

1. INCREASES THE HEIGHT of the existing permitted facilities or otherwise changes the bulk, size, location, or any other physical attributes of the existing permitted WTCF unless specifically permitted under the conditions of approval applicable to such WTCFs; OR

2. ADDS any MICROWAVE DISH OR OTHER ANTENNA NOT EXPRESSLY PERMITTED TO BE INCLUDED IN A Collocation Facility by the conditions of approval.

Staff Response to AT&T Comment 32:

Section 9661.10 is not ambiguous. It provides that a permit is not required for collocation on a wireless telecommunications collocation facility (WTCF) unless the proposed modifications were not studied and expressly authorized by the conditional use permit (CUP).

When an applicant applies for a wireless telecommunications collocation facility CUP under the proposed ordinance, the applicant must describe and depict the facility at full build-out. The equipment authorized for collocation by the CUP, using the design and screening techniques specified in the CUP, may be added without having to obtain a discretionary permit (a minor CUP or a CUP) to modify the facility. If the "collocation" would exceed what was studied and permitted under the WTCF permit, then additional discretionary review would be required.

AT&T Comment 33 (Attachment):

9661.15 PERMIT EXPIRATION
Is this type of limitation imposed on any other land use?
A. 10 years from the date of issuance, unless pursuant to other prov. of this Code it lapses sooner or is revoked;

Staff Response to AT&T Comment 33:

Repeats prior comment. See staff response above to AT&T Comment 2 (Letter)

AT&T Comment 34 (Attachment):

9661.20 LOCATION RESTRICTIONS –
These provisions might make it impossible for carriers to serve certain areas of the City.

A. WTF&CFs cannot locate in the following w/o an exception:

1. zoning districts other than BP-M, BP-OR, CN, CRS, CS-MU, CS, CR, PD, U, and SH districts; however, can be in PROW arterial roadways w/in those other districts w/o exception;

2. PROW of collector of roadways as identified in general plan;

3. PROW of local streets as identified in the general plan if w/in the BP-M, BP-OR, CN, CRS, CS-MU, CS, CR, PD, U, and SH districts;

0 4. PROW if mounted to new pole that's not replacing an existing pole, regardless of location; or

5. Bldg mounted or Roof mounted on bldg. owned in common by HOA, even if located in residential zone;

6. regardless of the above, can't locate w/in OS-DR or OS-R zoning districts, including PROW of arterial or collector roadways/in those districts, w/o an exception; however, app must also get approval under sections 9487 & 9821.5 of Code.

B. Regardless of Section 9661.19, exception can't be granted for location of WTF or WTCF in any of the following:

1. any location in residential district, except for PROW of arterial or collector roadways and those locations listed in section 9661.20(A)(5);

2. any location w/in 100 ft. from residential district, with exception of PROW art & collector roadways, or bldg. or roof-mounted facilities in the BP-M, BP-OR, CN, CRS, CS-MU, CS, CR, PD, U, or SH districts.

3. Any location that would significantly obstruct or diminish views in scenic corridors;

4. any location on or near a ridge such that a silhouette of facility would be seen against the sky; or

5. planned development zones anywhere where zone or plan prohibits facilities.

C. if could qualify as both permissible location and one enumerated in this section, this section controls. If could qualify as either a location requiring an exception under Para A of this section or a location where no exception is allowed under Para B, B controls and no exception granted.

Staff Response to AT&T Comment 34:

This comment alleges that the exception provisions of Section 9661.20 make it "impossible" for carriers to serve certain areas. The comment does not explain how these provisions make it "impossible." Even with the provisions contained in Section 9661.20 in place, there will be plenty of locations within the City where wireless telecommunication facilities and wireless telecommunication collocation facilities may be installed.

Section 9661.20(A) lists areas where the City prefers that wireless telecommunications facilities not locate, but if the carrier applies for and provides the required level of proof to obtain an exception, a carrier could locate in those areas. With regards to OS-DR and OS-R, a two-thirds vote of approval by the public who are voting on the question would also be required.

While Section 9661.20(B) lists areas that wireless telecommunications facilities cannot locate within (no exception is permitted), the comment does not explain why those areas cannot be served by antennas located in other areas. These restrictions help preserve the scenic and semi-rural character of the City and its visual viewshed.

Based upon comments received by the City, staff has redrafted Section 9661.20 to create additional opportunities for ground-mounted facilities to be located within 100 feet of residential zones if an exception is requested and granted. It has been revised to read as follows:

[new language is underlined, deleted language is ~~struck-out~~]

9661.20 Location Restrictions.

A. Locations Requiring an Exception. Wireless telecommunications facilities and wireless telecommunications collocation facilities shall not locate in any of the following districts, areas or locations without an exception:

1. Zoning districts other than BP-M, BP-OR, CRS, CS, CR, SP, U, and SH districts; provided however, facilities may be located in the public right-of-way of arterial roadways within those other districts without an exception;

2. Public right-of-way of collector roadways as identified in the general plan;

3. Public right-of-way of local streets as identified in the general plan if within the BP-M, BP-OR, CRS, CS, CR, SP, U, and SH districts;

4. Public right-of-way if mounted to a new pole that is not replacing an existing pole, regardless of location~~; or~~

5. Building-mounted or roof-mounted on a building owned in common by a homeowners' association, even if located in a residential zone.;

6. A ground mounted facility that is not in the right-of-way but is within one hundred (100) feet of a residential district in the BP-M, BP-OR, CRS, CS, CR, SP, U, and SH districts; or

7. Notwithstanding any of the above, no facility shall locate within OS-DR or OS-R zoning districts, including the public right-of-way of arterial or collector roadways within those

districts, without an exception; provided, however, applicant must also obtain approval pursuant to sections 9487 and 9821.5 of this Code.

B. No Exception Allowed. Notwithstanding the provisions of section 9661.19, in no case shall an exception be granted for the location of a wireless telecommunications facility or wireless telecommunications collocation facility in any of the following districts, areas or locations:

1. Any location within a residential district, with the exception of the public right-of-way of arterial or collector roadways and those locations set forth in section 9661.20(A)(5);

2. Any public right-of-way location within one hundred (100) feet from a residential district, with the exception of ~~(i)~~ the public right-of-way of arterial or collector roadways~~, or (ii) building-mounted facilities or roof-mounted facilities in the BP-M, BP-OR, CRS, CS, CR, SP, U, or SH districts~~;

3. Any location that would significantly obstruct or diminish views in scenic corridors;

4. Any location on or near a ridgeline such that the facility would appear silhouetted against the sky; or

5. Specific Plan zones in any location where the zone or specific plan prohibits such facilities.

C. If a district, area or location could qualify as both a permissible location and a location enumerated in this section, it shall be deemed a location covered by this section and the provisions of this section shall control. If a district, area or location could qualify as either a location requiring an exception pursuant to paragraph (A) of this section or a location in which no exception is allowed pursuant to paragraph (B) of this section, it shall be deemed a location covered by paragraph (B) and no exception shall be granted.

AT&T Comment 35 (Attachment):

PART 12. NONCONFORMING WTFs
"9711. NONCONFORMING WTF&CFs
***AT&T is concerned that this provision will limit the ability of carriers to provide the full range of available services in areas of the City served by sites affected by this* section.**

A. Nonconforming WTF&CFs are those that do not conform to Division 11 of part 2 of chapter 6 of Article IX of this Code.

B. 10 yrs from date of nonconformance, to bring facility in conformance w/ all requirements of this article; however, if owner wants to expand or modify, intensify use, or make other changes in a conditional use, owner must comply w/ all applicable provisions of Code at such time;

Staff Response to AT&T Comment 35:

The ordinance attempts to balance the public's interests with the carriers' need for antenna locations. In doing so, the City seeks to protect the scenic and semi-rural character of the City, address aesthetic impacts caused by wireless telecommunications facilities, and prevent such

facilities from becoming public nuisances. The tipping point for balancing those interests is ten years. (See also staff response to AT&T Comment 13.)

Technology is rapidly changing, and smaller, less visually intrusive facilities will be possible as technology evolves. Screening and camouflage design has significantly improved in the last ten years, and we expect that blending techniques will evolve as well during the next ten years.

Safeguards are built into the Ordinance. An aggrieved person may appeal the decision of the planning director with regards to nonconforming facilities. If the appeal alleges that the ten (10) year amortization period is not reasonable as applied to a particular property, the City Council may consider the amount of investment or original cost, present actual or depreciated value, dates of construction, amortization for tax purposes, salvage value, remaining useful life, the length and remaining term of the lease under which it is maintained (if any), and the harm to the public if the structure remains standing beyond the prescribed amortization period, and set an amortization period accordingly for the specific property.

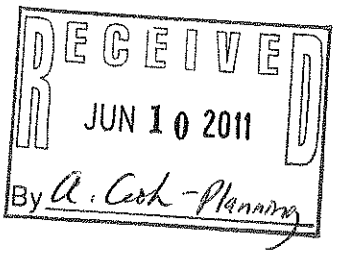
Further, to help limit the number of existing facilities that might be considered nonconforming, staff made changes to part of Section 9661.5.B.5 as follows:

5. Building-Mounted and Roof-Mounted Facilities. Building-mounted and roof-mounted facilities shall be designed and constructed to be ~~fully~~ camouflaged, concealed or screened in a manner compatible with the existing architecture of the building the wireless telecommunications facility or the wireless telecommunications collocation facility is mounted to in color, texture and type of material.

a. Each building-mounted facility shall be ~~fully~~ incorporated into the design elements of the building architecture.

June 10, 2011

City of Agoura Hills
30001 Ladyface Court,
Agoura Hills, CA 91301



Attention:
Allison Cook, Principal Planner

Via Electronic Mail

RE: Agoura Hill's Proposed Wireless Telecommunications Facilities Ordinance

Dear Ms. Cook:

The California Wireless Association ("CalWA")[1] writes in response to the City's proposed amendment to its Wireless Telecommunications Facilities ("WTF") Ordinance. CalWA appreciates the effort of the City and its staff to create a comprehensive and reasonable amendment to the City's WTF Ordinance. We are grateful for the opportunity to participate in this discussion, and hope to continue our participation as the process progresses. To more fully consider our attached comments, we respectfully request that any hearings proposed on this matter be postponed until after representatives from CalWA and other interested wireless industry professionals, that may be seriously impacted by this proposed legislation, be afforded an opportunity to meet and confer with your staff first.

While we believe that your staff has conducted a thoughtful examination and review of this possible amendment to the City's WTF Ordinance, there are still several issues that we believe are important for the City to address.

Below, we highlight the major areas of interest we wish to further discuss with your agency before this matter is scheduled for any public hearings. In addition, we have attached a copy of the proposed amendment with sections that highlighted areas of particular concern. If you are unable to accommodate this request please carefully consider the comments presented herein.

Prior to presenting our "top 5" themes to convey to your agency for inclusion in this ordinance we would first like to provide some basic more general information that should be considered in your deliberation on the proposed land use regulations of this critical utility infrastructure.

1. All telecommunications facilities including wireless are defined as a "utility" under state law;

---

[1] CalWA is a non-profit organization made up of volunteers who work in the wireless/telecommunications industry throughout California. Its goal is to raise awareness about the benefits of and to promote the wireless industry, to educate the public and political leaders on issues of importance to the wireless industry, and to cultivate working relationships within and between the industry, the public and political leaders.

a. No other utility is required to address "aesthetics" in nearly the same manner that is forced upon the wireless telecommunications industry.

b. Whenever other "utilities" are required to underground (in an effort to address aesthetics and the visual impacts of the utility), the costs associated with this requirement are required to be shared by the jurisdiction and private property owners via direct assessments, and is not borne by the utility purveyor.

c. We all rely on local government to apply regulations on similar land uses equitably and fairly. Please consider this fundamental tenant of government as you deliberate on this matter.

2. President Obama in his most recent "State of the Union" address has identified the deployment of broadband wireless infrastructure as an urgent need and immediate priority for this country;

   a. By not streamlining the review and processing of **all applications** that are designed in a manner that is consistent with your more rigorous development and design standards, the City is behaving inconsistently with the President's directive.

3. The unique technology employed by wireless telecommunications must be considered more prominently in the development of land use regulations;

   a. By strictly limiting the height and locations of wireless facilities (two (2) zoning districts only, Commercial and Business Park) you indirectly drive the need for many more facilities that will need to be located in the public rights of way directly adjacent to more sensitive land uses, in particular near single family residential zones.

4. Wireless infrastructure is becoming critical in the provision of public safety and emergency services as well as serving as the new platform of our economy and new ways to manage and provide healthcare.

   a. Certainly "aesthetics" is part of the equation; however the discussion needs to be more balanced and cannot solely focus on this one element at the expense of the functional requirements of the technology and all other considerations.

   b. Please consider the broader issues of public safety and emergency services, economic development, and future critical healthcare applications as you continue to deliberate on the land use regulations you are considering.

   c. Public safety should not be jeopardized in favor of "aesthetics".

5. **Finally, there is no real understanding of how this proposed ordinance will impact existing facilities. Unless additional time is taken to better understand the impacts on the existing wireless infrastructure within the City, the proposed nonconforming regulations should be stricken.**

   a. More than 25% of existing California residents no longer have a traditional hard line telephone and rely completely on the wireless network for their communications and safety.

   b. Any negative impact to the existing infrastructure needs to be carefully considered so as to not jeopardize this critical service to the businesses, residents, and emergency preparedness/first responders living/working in and serving the City of Agoura Hills.

The Ordinance Should Provide a Streamlined Siting Process for Concealed Facilities that Meet the Design and Development Standards

The proposed amendment requires that all new WTFs whether they are completely stealthed or not, or whether they are modifications to existing facilities requires either a Minor Conditional Use Permit or Conditional Use Permit. It is not clear in the proposed ordinance if the Minor CUP process is discretionary or ministerial/administrative. It appears both the Minor CUP and CUP both require a public hearing and therefore both are discretionary. In order to facilitate the deployment of concealed/stealthed facilities, applications for new, freestanding concealed/stealthed WTFs and certainly building mounted concealed/stealthed WTF's should be subject to a streamlined review process and not the Minor Conditional Use Permit or Conditional Use Permit process currently proposed in the amended Ordinance.

Collocations on Existing Facilities Should Be Encouraged and Ministerial

The proposed ordinance does appear to recognize that collocations are an important and effective method for allowing the provision of wireless service that also has a minimal visual impact on the community. However, the ordinance is not clear on the process for collocation facilities and appears to be inconsistent with Government Code Section 65850.6 in that regardless of when and how the existing facility was approved, that existing WTF must also meet the current/proposed regulations and even with that must also still be issued a Minor CUP (discretionary entitlement).

Siting on City Property Should be Encouraged and Streamlined

The proposed amendment is unclear on how proposed facilities would be processed on City Owned property, if permitted at all. Siting on City property allows the City to both generate a new revenue stream, and minimize the impact of WTFs on private property. It appears that WTF's are only permitted in Commercial and Business Park zoning designations which would preclude the opportunity to utilize City properties.

Proposed WTF's on City Property should be encouraged and afforded a streamlined process to further "incentivize" the revenue opportunity for the City and address the coverage needs of the greater community and in particular the residential neighborhoods that are under considerable pressure for additional wireless services.

WTF's Should be Permitted within Residential Zoning Districts

The proposed amendment does not allow the utilization of residential zoning districts for the siting of WTF's. It is simply necessary to provide better coverage of these critical areas. Also, the City of Agoura Hills is predominantly a residential community with severe slopes and topography, future making wireless coverage difficult.

There are numerous indirect and direct benefits to locating WTF's within residential zoning districts, including the traffic demand management impact that results from more commercial activities occurring from home, thereby reducing the need for trips to the more traditional office locations. Also by improving coverage in residential zoning districts you can provide the option for a greater number of Agoura Hills residents to reduce living expenses by eliminating the need for a traditional "land line".

There are many jurisdictions throughout the State that allow this critical utility infrastructure within Residential Zoning districts and CalWA can provide a list to review with your staff. Also

there are also many jurisdictions that permit WTF's on properties that are not developed residentially but are residentially zoned.

Finally, the movement of the health industry towards "e-medical" solutions for monitoring health and other critical services is becoming a reality and robust services within residential neighborhoods is critical to the functionality of these near future health industry breakthroughs.

CalWA strongly urges the City to reconsider this proposed prohibition.

Existing WTF's Deemed Nonconforming Should Not Be Amortized Out

The proposed amendment appears to have a significant impact on existing WTF's that are located in many areas where they will not be permitted if this ordinance is approved as is. It is unclear to what extent the removal or significant modifications of these existing WTF's would have on the wireless coverage of the City. Until it can be better determined how the proposed nonconforming regulations will impact critical wireless services upon the City those proposed nonconforming regulations should be removed.

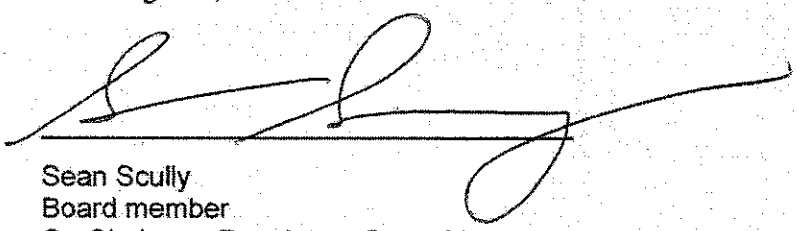
Conclusion

CalWA certainly understands and applauds the efforts of your agency to consider the aesthetic character of the City, while continuing to allow for the limited deployment of wireless infrastructure and the services it enables. However we also feel the City has elevated the issue of "aesthetics" above all other factors and needs to further consider additional amendments in order to strike a more balanced, equitable, and reasonable regulatory environment that will better facilitate the required deployment of this critical "utility" infrastructure to serve all our future needs.

Also the impact of this proposed ordinance on existing facilities could seriously jeopardize the public's health and safety and those sections of the proposed ordinance dealing with nonconforming facilities should be stricken at this time.

Thank you for taking the time to review our comments. We look forward to participating in this process as it progresses. Please contact me at your convenience to discuss this further.

Best Regards,



Sean Scully
Board member
Co-Chairman Regulatory Committee
California Wireless Association
800 S. Pacific Coast Hwy #448
Redondo Beach, CA 90277
(818) 426-6028
permittech@verizon.net

Attachment:
Annotated Comments of Proposed Ordinance

ORDINANCE NO. 11-_____

AN ORDINANCE OF THE CITY OF AGOURA HILLS, CALIFORNIA, ADDING A NEW DIVISION 11 ENTITLED "WIRELESS TELECOMMUNICATIONS FACILITIES" TO PART 2, CHAPTER 6 OF ARTICLE IX (ZONING) OF THE AGOURA HILLS MUNICIPAL CODE TO PROVIDE UNIFORM AND COMPREHENSIVE REGULATIONS AND STANDARDS, ALONG WITH PERMIT REQUIREMENTS, FOR THE INSTALLATION OF WIRELESS TELECOMMUNICATIONS FACILITIES, INCLUDING INSTALLATIONS IN THE PUBLIC RIGHT-OF-WAY, MAKING CONFORMING AMENDMENTS TO ARTICLE IX OF THE AGOURA HILLS MUNICIPAL CODE, AND REPEALING ORDINANCE NO. 09-369U, AN INTERIM URGENCY ORDINANCE RELATING TO WIRELESS COMMUNICATION FACILITIES

A. Recitals.

(i) The purpose of this Ordinance is to amend the City's Municipal Code to provide uniform and comprehensive standards and regulations, along with permit requirements, for the installation of wireless telecommunications facilities in the City, including installations on private property, public property and in the public right-of-way.

(ii) On October 14, 2009, the City Council adopted Ordinance No. 09-369U establishing a moratorium on wireless communication facilities in the City. On November 10, 2009, Ordinance No. 09-370U extended that moratorium through September 25, 2010. On August 25, 2010, Ordinance No. 10-378U further extended that moratorium, which is scheduled to expire on September 25, 2011.

(iii) On _____, the Planning Commission of the City of Agoura Hills held a duly noticed public hearing to consider Ordinance 11-____, and received testimony from City staff and all interested parties regarding the proposed amendments. Following the close of the public hearing, the Planning Commission adopted Resolution No. 11-___ recommending approval of Ordinance 11-____.

(iv) On _____, the City Council of the City of Agoura Hills conducted and concluded a duly noticed public hearing concerning the zoning code amendments contained herein as required by law, and received testimony from City staff and all interested parties regarding the proposed amendments.

(v) All legal prerequisites to the adoption of the Ordinance have occurred.

B. Ordinance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AGOURA HILLS DOES ORDAIN AS FOLLOWS:

SECTION 1. The facts set forth in the Recitals, Part A of this Ordinance, are true and correct.

SECTION 2. Environmental Review

A. Pursuant to the California Environmental Quality Act ("CEQA"), as amended, the CEQA Guidelines promulgated thereunder, and the City's local CEQA Guidelines, City staff prepared an Initial Study of the potential environmental effects of this proposed Ordinance and the Municipal Code amendments contained herein (the "project"). On the basis of the Initial Study, City staff for the City of Agoura Hills, acting as Lead Agency, determined that there was no substantial evidence that the project could have a significant effect on the environment; as a result, City staff prepared a Negative Declaration for the project and provided public notice of the public comment period and of the intent to adopt the Negative Declaration.

B. The City Council has independently reviewed (1) the Negative Declaration and Initial Study (both of which are attached hereto as Exhibit "A" and incorporated by this reference) and (2) all comments received, both written and oral, regarding the Negative Declaration and Initial Study, and based upon the whole record before it finds that those documents were prepared in compliance with CEQA, the CEQA Guidelines and the City's local CEQA Guidelines, that City staff has correctly concluded that there is no substantial evidence that the project will have a significant effect on the environment, and that the findings contained therein represent the independent judgment and analysis of the City Council. Based on these findings, the City Council hereby approves and adopts the Negative Declaration for this project.

C. The custodian of records for the Initial Study, Negative Declaration and all materials which constitute the record of proceedings upon which the City Council's decision was based is the City Clerk of the City of Agoura Hills. Those documents are available for public review in the Office of the City Clerk located at 30001 Ladyface Court, Agoura Hills, California 91301.

SECTION 3. Ordinance No. 09-369U establishing a moratorium on wireless communication facilities and Ordinance Nos. 09-370U and 10-378U extending that moratorium are hereby repealed as of the effective date of this Ordinance.

SECTION 4. The "W" list in Section 9312.2 Commercial Use Table 1, Part 2, Chapter 3, Article IX of the Agoura Hills Municipal Code is hereby amended by replacing the "W" list in its entirety as follows:

	USE, SERVICE OR FACILITY	COMMERCIAL			BUSINESS PARK	
W.		*CS*	*CRS*	*CR*	*BP-OR*	*BP-M*
1.	Watches, sale, repair	X	X		E, G, U	G
2.	Welding shop					J
3.	Wholesale distributor's service					J
4.	Wholesale store		X			X
5.	Wig sales and service	X	X			
6.	Wireless telecommunications collocation facility	BB	BB	BB	BB	BB
8.	Wireless telecommunications facility	BB	BB	BB	BB	BB
8.	Winery sales facility/tasting room	W	W			W

SECTION 5. Item 19 in the "P" list in Section 9312.2 Commercial Use Table 1, Part 2, Chapter 3, Article IX of the Agoura Hills Municipal Code is hereby amended by deleting "a. Wireless Telecommunication Facilities" and "b. Other" and replacing Item 19 in its entirety as follows:

	USE, SERVICE OR FACILITY	COMMERCIAL			BUSINESS PARK	
19.	Public utility and public service	K	K	K	K, U	K

SECTION 6. Paragraph BB of Section 9312.3. Special conditions, Part 2, Chapter 3, Article IX of the Agoura Hills Municipal Code is amended by replacing "BB" in its entirety as follows:

BB. Permitted subject to issuance of either a minor conditional use permit or a conditional use permit as specified in Division 11 "Wireless Telecommunications Facilities" of this Part, beginning at section 9661 and subject to the required findings as stated in that Division.

SECTION 7. Division 11 "Wireless Telecommunications Facilities" is hereby added to Part 2, Chapter 6, Article IX of the Agoura Hills Municipal Code beginning at Section 9661 to read as follows:

"DIVISION 11. WIRELESS TELECOMMUNICATIONS FACILITIES

9661. Purpose.

The purpose and intent of this division is to provide a uniform and comprehensive set of regulations and standards for the permitting, development, siting, installation, design, operation and maintenance of wireless telecommunications facilities in the city. These regulations are intended to prescribe clear and reasonable criteria to assess and process applications in a consistent and expeditious manner, while reducing the impacts associated with wireless telecommunications facilities. This division provides standards necessary (1) for the preservation of land uses and the public right-of-way in the city, (2) to promote and protect public health and safety, community welfare, visual resources and the aesthetic quality of the city consistent with the goals, objectives and policies of the General Plan, (3) to provide for the orderly, managed and efficient development of wireless telecommunications facilities in accordance with the state and federal laws, rules and regulations, and (4) to encourage new and more efficient technology in the provision of wireless telecommunications facilities.

9661.1 Definitions.

"Accessory equipment" means any equipment associated with the installation of a wireless telecommunications facility, including but not limited to cabling, generators, air conditioning units, electrical panels, equipment shelters, equipment cabinets, equipment buildings, pedestals, meters, vaults, splice boxes, and surface location markers.

"Antenna" means that part of a wireless telecommunications facility designed to radiate or receive radio frequency signals.

"Building-Mounted" means mounted to the side of a building, to the façade of a building, or similar structure, but not to include the roof of any structure.

"Cellular" means an analog or digital wireless telecommunications technology that is based on a system of interconnected neighboring cell sites.

"Collocation" means the addition of wireless telecommunications facilities to an existing wireless telecommunications facility so that one site is shared amongst the same or different carrier.

"COW" means a "cell on wheels," which is a wireless telecommunications facility temporarily rolled in or temporarily installed.

"Facility(ies)" means both wireless telecommunications facilities and wireless telecommunications collocation facilities, unless the context specifically limits it to one or the other.

"Ground-Mounted" means mounted to a telecommunications tower.

"Modification" means a change to an existing wireless telecommunications facility that involves any of the following: collocation, expansion, alteration, enlargement, intensification, reduction, or augmentation, including, but not limited to, changes in size, shape, color, visual design, or exterior material. "Modification" does not include repair, replacement or maintenance if those actions do not involve a change to the existing facility involving any of the following: collocation, expansion, alteration, enlargement, intensification, reduction, or augmentation.

"Monopole" means a structure composed of a single spire, pole, or tower used to support antennas or related equipment. A monopole also includes a monopine, monopalm and similar monopoles camouflaged to resemble faux trees or other faux objects attached on a monopole.

"Mounted" means attached or supported.

"Pole" means a single shaft of wood, steel, concrete or other material capable of supporting the equipment mounted thereon in a safe and adequate manner and as required by provisions of this Code.

"Public right-of-way" means any public street or public way now laid out or dedicated, and the space on, above or below it, and all extensions thereof, and additions thereto, under the jurisdiction of the city.

"Reviewing Authority" means the director or the planning commission, as applicable, who has the authority to review and either grant or deny a permit required by this division prior to installation or modification of a wireless telecommunications facility or wireless telecommunications collocation facility.

"Roof-Mounted" means mounted directly on the roof of any building or structure.

"Telecommunications tower" means a freestanding mast, pole, monopole, guyed tower, lattice tower, free standing tower or other structure designed and primarily used to support wireless telecommunications facility antennas.

"Utility Pole" means any pole or tower owned by any utility company that is primarily used to support wires or cables necessary to the provision of electrical or other utility services regulated by the California Public Utilities Commission.

"Wireless telecommunications collocation facility" means a wireless telecommunications facility specifically designed for subsequent collocation as a permitted use as set forth in section 9661.10.

"Wireless telecommunications facility" means any facility that transmits and/or receives electromagnetic waves. It includes, but is not limited to, antennas and/or other types of equipment for the transmission or receipt of such signals, telecommunications towers or similar structures supporting such equipment, related accessory equipment, equipment buildings, parking areas, and other accessory development.

Exceptions: The term "wireless telecommunications facility" does not apply to the following:

(a) A facility that qualifies as an amateur station as defined by the FCC, 47 C.F.R. Part 97, of the Commission's Rules, or its successor regulation.

(b) Any antenna facility that is subject to the FCC Over-The-Air-Receiving Devices rule, 47 C.F.R. Section 1.4000, or its successor regulation, including, but not limited to, direct-to-home satellite dishes that are less than one meter (39.37") in diameter, TV antennas used to receive television broadcast signals and wireless cable antennas.

(c) Portable radios and devices including, but not limited to, hand-held, vehicular, or other portable receivers, transmitters or transceivers, cellular phones, CB radios, emergency services radio, and other similar portable devices as determined by the Director.

(d) Government owned and operated telecommunications facilities.

(e) Emergency medical care provider-owned and operated telecommunications facilities.

(f) Mobile services providing public information coverage of news events of a temporary nature.

(g) Any wireless telecommunications facilities exempted from this Code by federal law or state law.

"Wireless telecommunications services" means the provision of services using a wireless telecommunications facility or a wireless telecommunications collocation facility, and shall include, but not limited to, the following services: personal wireless services as defined in the

CalWA Comment No. 1: The arbitrary identification of existing facilities as "nonconforming" thereby requiring that some facilities ultimately be significantly modified or removed is not advisable. The existing critical facilities serve as the backbone to the existing wireless network and to require the redesign could result in significant impacts to the existing network and could seriously jepordize the publics health, safety and welfare.

federal Telecommunications Act of 1996 at 47 U.S.C. §332(c)(7)(C) or its successor statute, cellular service, personal communication service, and/or data radio telecommunications.

9661.2 Applicability.

This division applies to all wireless telecommunications facilities and wireless telecommunications collocation facilities, as follows:

A. All facilities for which applications were not approved prior to _____, shall be subject to and comply with all provisions of this division;

B. All facilities for which applications were approved by the city prior to _____ shall not be required to obtain a new or amended permit until such time as a provision of this Code so requires. Any wireless telecommunication facility or wireless telecommunications collocation facility that was lawfully constructed prior to _____ that does not comply with the standards, regulations and/or requirements of this division, shall be deemed a nonconforming use and shall also be subject to the provisions of section 9711.

CalWA Comment No. 2: What are the dates to be identified within these sections. This has signficant upon existing facilties.

C. All facilities, notwithstanding the date approved, shall be subject immediately to the provisions of this division governing the operation and maintenance (section 9661.12), radio frequency emissions monitoring (section 9661.13), , cessation of use and abandonment (section 9661.16), removal and restoration (section 9661.17) of wireless telecommunications facilities and wireless telecommunications collocation facilities and the prohibition of dangerous conditions or obstructions by such facilities (section 9661.14); provided, however, that in the event a condition of approval conflicts with a provision of this division, the condition of approval shall control until the permit is amended or revoked.

D. Notwithstanding (B) above, no modification shall be made to any facility that was approved prior to _____, unless the permits required by this division have been obtained from the city.

9661.3 Wireless Telecommunications Facility Permit Requirements.

A. *Permit Required.* No wireless telecommunications facility or wireless telecommunications collocation facility shall be located within the city on any property, including the public right-of-way, unless the permits required by this division have been obtained from the city. No modification to a wireless telecommunications facility or wireless telecommunications collocation facility shall be made unless the permits required by this division have been obtained from the city.

B. *Type of Permit Required.* Either a minor conditional use permit or a conditional use permit is required, depending upon location and type of facility proposed, as set forth in sections 9661.5, 9661.6, and 9661.10. If a facility has been permitted pursuant to a minor conditional use permit or a conditional use permit, any modification to the facility shall require either an amended permit, or if the type of permit required has changed, a new permit of the type set forth in this division.

C. A wireless telecommunications facility, wireless telecommunications collocation facility, and/or a telecommunications tower or other wireless telecommunications support structure, which is built on speculation and for which there is no wireless tenant is prohibited within the city.

9661.4 Application for Permit.

A. *Purpose.* This section sets forth the application submittal requirements for all permits required by this division. The purpose of this section is, in part, to ensure that this division is implemented to the full extent permitted by the Telecommunications Act of 1996.

B. *Supplemental Application.* In addition to the information required of an applicant for a minor conditional use permit or conditional use permit, each applicant requesting approval of the installation or modification of a wireless telecommunications facility or a wireless telecommunications collocation facility, regardless of location, shall fully and completely submit to the city a written supplemental application on a form prepared by the director.

C. *Supplemental Application Contents.* The supplemental application form shall request the following information, in addition to all other information determined necessary by the director:

1. The name, address and telephone number of the owner and the operator of the proposed facility, if different from the applicant.

2. The type of facility.

3. If the applicant is an agent, a letter of authorization from the owner of the facility. If the owner will not directly provide wireless telecommunications services, a letter of authorization from the person or entity that will provide those services.

4. If the facility will be located on the property of someone other than the owner of the facility, written authorization by any and all property owners authorizing the placement of the facility on the property owner's property.

CalWA Comment No. 3: What is the purpose of this level of specificity for a discretionary planning entitlement?

5. A full written description of the proposed facility, its purpose, and specifications, including the height and diameter of the facility, together with evidence that demonstrates that the proposed facility has been designed to the minimum height and diameter required from a technological standpoint for the proposed site.

6. A detailed engineering plan of the proposed facility created by a qualified licensed engineer and in accordance with requirements set by the director, including a photograph and model name and number of each piece of equipment included.

7. A site plan containing the exact proposed location of the facility.

8. If the applicant requests an exception to the requirements of this division, the applicant shall provide all information and studies necessary for the city to evaluate that request.

9. An accurate visual impact analysis showing the maximum silhouette, viewshed analysis, color and finish palette and proposed screening for the facility, including scaled photo simulations.

10. Completion of the radio frequency (RF) emissions exposure guidelines checklist contained in Appendix A to the Federal Communications Commission's (FCC) "Local Government Official's Guide to Transmitting Antenna RF Emission Safety" to determine whether the facility will be "categorically excluded" as that term is used by the FCC.

11. For a facility that is not categorically excluded, the applicant shall also provide a technically detailed report certified by a qualified radio frequency engineer indicating the amount of radio frequency emissions expected from the proposed facility and associated accessory equipment, as well as the cumulative impacts of the other existing and foreseeable facilities in the area, including co-located facilities, and stating that emissions from the proposed facility individually and combined with the cumulative effects of nearby facilities will not exceed standards set by the Federal Communications Commission. The director may require that a city representative be present for verification testing, and that the applicant reimburse the city for its actual costs in observing and verifying that testing.

12. Documentation certifying that the applicant has obtained all applicable licenses or other approvals required by the Federal Communications Commission to provide the services proposed in connection with the application.

13. A noise study prepared by a qualified acoustic engineer documenting the level of noise to be emitted by the proposed facility and its potential effects on surrounding uses.

CalWA Comment No. 4: Long range plans beyond 1-2 years are simply unknown.

14. A conceptual landscape plan showing existing trees and vegetation and all proposed landscaping, concealment, screening and proposed irrigation with a discussion of how the chosen material at maturity will screen the site.

15. A description of the maintenance and monitoring program for the facility.

16. A written description identifying the geographic service area for the subject installation, accompanied by a master plan, including maps, that identifies the location of the proposed facility in relation to all existing and planned facilities maintained within the city by each of the applicant, operator, and owner, if different entities. The master plan shall reflect all locations anticipated for new construction and/or modifications to existing facilities, including collocation, within two years of submittal of the application, as well as longer range conceptual plans for a period of five years.

17. A written statement of the applicant's willingness to allow other carriers to collocate on the proposed wireless telecommunications facility wherever technically and economically feasible and aesthetically desirable.

18. If the application is for a facility that will be located within the public right-of-way, the applicant shall certify that it is a telephone corporation or state the basis for its claimed right to enter the right-of-way. If the applicant has a certificate of public convenience and necessity (CPCN) issued by the California Public Utilities Commission, it shall provide a copy of its CPCN.

19. An application fee, a deposit for a consultant's review as set forth in paragraph D of this section, and a deposit for review by the city's attorney, in an amount set by resolution by the City Council.

20. Any other information and/or studies determined necessary by the director may be required.

D. *Independent Expert.* The director is authorized to retain on behalf of the city an independent, qualified consultant to review any application for a permit for a wireless telecommunications facility or wireless telecommunications collocation facility. The review is intended to be a review of technical aspects of the proposed wireless telecommunications facility or wireless telecommunications collocation facility and shall address any or all of the following:

CalWA Comment No. 5: This is simply to arbitrary and not defined.

1. Compliance with applicable radio frequency emission standards;

2. Whether any requested exception is necessary to close a significant gap in coverage and is the least intrusive means of doing so;

3. The accuracy and completeness of submissions;

CalWA Comment No. 6: How will this be confirmed? Arbitrarty and proprietary. There are economic considerations associated with the development of a site that make in infeasible. This is not a technical issue it's a business issue.

4. Technical demonstration of the unavailability of alternative sites or configurations and/or coverage analysis;

5. The applicability of analysis techniques and methodologies;

6. The validity of conclusions reached or claims made by applicant;

7. The viability of alternative sites and alternative designs; and

8. Any other specific technical issues designated by the city.

The cost of this review shall be paid by the applicant through a deposit pursuant to an adopted fee schedule resolution.

E. *Story Poles.* At the discretion of the director, the applicant may be required to erect temporary story poles to demonstrate the height and mass of a potential facility.

9661.5 Requirements for Facilities Not within the Public Right-of-Way.

The provisions of this section shall apply to wireless telecommunications facilities and wireless telecommunications collocation facilities that are located outside the public right-of-way.

CalWA Comment No. 7: CalWA strongly recommends that wireless communications facilities that can be stealthed should also be permitted in residential zones, particularly multifamily residential zones and those residential zones that do not have residential land uses existing.

A. *Permit Required.*

1. BP-M District.

CalWA Comment No. 8: Clarification. If you are collocating on an existing faux tree in this zoning district you are required to gain a CUP? If so this may be inconsistent State Law on collocations pursuant to "Government Code Section 65850.6 Collocation Facilities"

a. In addition to any other permit required pursuant to this Code, the installation or modification of a wireless telecommunications facility or wireless telecommunications collocation facility, which will be building-mounted or roof-mounted in the BP-M district, or mounted to an existing telecommunications tower in the BP-M district, except for those locations listed in section 9661.20, shall require a minor conditional use permit.

b. In addition to any other permit required pursuant to this Code, the installation or modification of a wireless telecommunications facility or wireless telecommunications collocation facility, which will be mounted to a new telecommunications tower in the BP-M district, except for those locations listed in section 9661.20, shall require a conditional use permit.

2. BP-OR, CN, CRS, CS-MU, CS, CR, PD, U, and SH districts.

a. In addition to any other permit required pursuant to this Code, the installation or modification of a wireless telecommunications facility or wireless telecommunications collocation facility in the BP-OR, CN, CRS, CS-MU, CS, CR, PD, U, and SH districts, except for those locations listed in section 9661.20, shall require a conditional use permit.

3. All other districts, areas and locations.

a. In addition to any other permit required pursuant to this Code, the installation or modification of a wireless telecommunications facility or wireless telecommunications collocation facility, which will be located in a location listed in section 9661.20(A), shall require a conditional use permit and approval of an exception.

B. *Design and Development Standards.* All wireless telecommunications facilities and wireless telecommunications collocation facilities that are located outside the public right-of-way shall be designed and maintained so as to minimize visual, noise and other impacts on the surrounding community and shall be planned, designed, located, and erected in accordance with the following:

1. General Guidelines.

a. The applicant shall employ screening and camouflage design techniques in the design and placement of wireless telecommunications facilities and wireless telecommunication collocation facilities in order to ensure that the facility is as visually inconspicuous as possible, to prevent the facility from dominating the surrounding area, and to hide the facility from predominant views from surrounding properties, all in a manner that achieves compatibility with the community.

b. Screening shall be designed to be architecturally compatible with surrounding structures using appropriate techniques to camouflage, disguise, and/or blend into the environment, including landscaping, color, and other techniques to minimize the facility's visual impact as well as be compatible with the architectural character of the surrounding buildings or structures in terms of color, size, proportion, style, and quality.

2. Traffic Safety. All facilities shall be designed and located in such a manner as to avoid adverse impacts on traffic safety.

3. Blending Methods.

a. All facilities shall have subdued colors and non-reflective materials that blend with the materials and colors of the surrounding area and structures.

b. Site location and development shall preserve the pre-existing character of the site as much as possible, and facilities shall be designed and located where the existing topography, vegetation, buildings, or other structures provide the greatest amount of screening to minimize the visual impact and be compatible with existing architectural elements, building materials and other site characteristics.

c. Existing vegetation shall be preserved or improved, and disturbance of the existing topography of the site shall be minimized, unless such disturbance would result in less visual impact of the site on the surrounding area.

4. Antennas. The applicant shall use the least visible antennas possible to accomplish the coverage objectives. Antenna elements shall be flush mounted, to the extent feasible. All antenna mounts shall be designed so as not to preclude possible future collocation by the same or other operators or carriers. Antennas shall be situated as close to the ground as possible to reduce visual impact without compromising their function.

5. Building-Mounted and Roof-Mounted Facilities. Building-mounted and roof-mounted facilities shall be designed and constructed to be fully concealed or screened in a manner compatible with the existing architecture of the building the wireless telecommunications facility or the wireless telecommunications collocation facility is mounted to in color, texture and type of material.

a. Each building-mounted facility shall be fully incorporated into the design elements of the building architecture.

i. The width and height of the facility shall be the minimum functionally necessary.

ii. Each facility shall not exceed more than eighteen (18) inches out from the building façade or other support structure, and no cable or antenna mounting brackets or any other associated equipment or wires shall be visible above, below, or to the side of the facility.

iii. The reviewing authority may consider a projection of more than eighteen (18) inches if the projection is architecturally integrated with the design of the building or structure or if it is otherwise designed to minimize its visibility.

iv. Any building-mounted facility that is within one hundred (100) feet of a residential district shall be located on the building or structure as far from the nearest residential use as is feasible.

b. Each roof-mounted facility shall be located and designed in an area of the roof where the visual impact is minimized and shall be no taller than necessary to meet the operator's service requirements.

i. In no case shall roof-mounted equipment on a flat roof exceed the top of the parapet or the top of the mansard measured from the roofline, and on a slope roof shall not extend above the top of roofline.

ii. Each roof-mounted facility shall also be screened from above if visible from higher elevations.

iii. Any roof-mounted facility that is within one hundred (100) feet of a residential district shall be located on the roof of the building or structure as far from the nearest residential use as is feasible.

6. Ground-Mounted Facilities.

a. Each ground-mounted facility shall be located in close proximity to existing above-ground utilities, such as electrical tower or utility poles (which are not scheduled for removal or under grounding for at least 18 months after the date of application), light poles, trees of comparable heights, and in areas where they will not detract from the appearance of the city.

b. Each ground-mounted facility shall be designed to be the minimum functional height and width required to adequately support the proposed facility and meet Federal Communications Commission requirements, and

shall be no higher than the existing poles, structures or trees near the placement of the proposed ground-mounted facility location. Even if existing poles, structures or trees are higher, no ground-mounted facility shall exceed sixty (60) feet.

c. All installations shall be properly engineered to withstand high wind loads; an evaluation of high wind load capacity shall include the impact of modification of an existing facility.

d. All cables, including, but not limited to, electrical and utility cables, shall be run within the interior of the telecommunications tower and/or shall be fully camouflaged or hidden.

e. Each ground-mounted installation shall be situated so as to utilize existing natural or man-made features including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening.

f. Monopoles and antennas and similar structures shall be no greater in diameter or other cross-sectional dimensions than is necessary for the proper functioning of the facility. The applicant shall provide documentation satisfactory to the director establishing compliance with this subsection.

g. If a faux tree is proposed for the monopole installation, it shall be of a type of tree compatible with those existing in the immediate areas of the installation. If no trees exist within the immediate areas, the applicant shall create a landscape setting that integrates the faux tree with added species of a similar height and type. Additional camouflage of the faux tree may be required depending on the type and design of faux tree proposed.

7. Accessory Equipment. All accessory equipment associated with the operation of any wireless telecommunications facility or wireless telecommunications collocation facility shall be located and screened in a manner that is designed to minimize its visibility to the greatest extent possible, including utilizing the following screening methods for the type of installation:

a. Accessory equipment for building-mounted or roof-mounted facilities may be located underground, inside the building, or on the roof of the building that the facility is mounted on, provided that both the equipment and screening materials are painted the color of the building, roof, and/or surroundings. All screening materials for each roof-mounted facility shall be of a quality and design that is architecturally integrated with the design of the building or structure.

b. Accessory equipment for ground-mounted facilities shall be visually screened by locating the equipment within a nearby building or in an underground vault, with the exception of required electrical panels. If a

building is not located near the facility or placement of the equipment in an existing building is not technically feasible, accessory equipment shall be located in an enclosed structure, and shall comply with the development and design standards of the zoning district in which the accessory equipment is located. The enclosed structure shall be architecturally treated and/or adequately screened from view by landscape plantings, walls, fencing or other appropriate means, selected so that the resulting screening will be visually integrated with the architecture and landscaping of the surroundings.

8. Landscaping. Where appropriate, each facility shall be installed so as to maintain and enhance existing landscaping on the site, including trees, foliage and shrubs, whether or not utilized for screening. Additional landscaping shall be planted, irrigated and maintained by applicant where such vegetation is deemed necessary by the city to provide screening or to block the line of sight between facilities and adjacent uses.

9. Signage. No facility shall bear any signs or advertising devices other than certification, warning or other signage required by law or permitted by the city.

10. Lighting. No facility may be illuminated unless specifically required by the Federal Aviation Administration or other government agency. Lightning arresters and beacon lights are not permitted unless required by the Federal Aviation Administration or other government agency. Legally required lightning arresters and beacons shall be included when calculating the height of facilities. Any required lighting shall be shielded to eliminate, to the maximum extent possible, impacts on the surrounding neighborhoods, and a lighting study shall be prepared by a qualified lighting professional to evaluate potential impacts to adjacent properties.

11. Noise.

    a. Each facility shall be operated in such a manner so as to minimize any possible disruption caused by noise.

    b. Backup generators shall only be operated during periods of power outages, and shall not be tested on weekends or holidays, or between the hours of 7:00 PM and 7:00 AM.

    c. At no time shall equipment noise from any facility exceed an exterior noise level of fifty-five (55) dBA at the facility's property line if the facility is located in a business, commercial, manufacturing, utility or school zone or a planned development zone that permits those uses, provided, however, that for any such facility located within five hundred (500) feet of any property zoned residential or improved with a residential use, such equipment noise shall at no time be audible at the property line of such residential property. For any facility located within a residential

zone, such equipment noise shall at no time be audible at the property line of any residentially improved or residential zoned property.

d. All air conditioning units and any other equipment that may emit noise that would be audible from beyond the facility's property line shall be enclosed or equipped with noise attenuation devices to the extent necessary to ensure compliance with applicable noise limitations under this Code.

12. Security. Each facility shall be designed to be resistant to, and minimize opportunities for, unauthorized access, climbing, vandalism, graffiti and other conditions that would result in hazardous situations, visual blight or attractive nuisances. The reviewing authority may require the provision of warning signs, fencing, anti-climbing devices, or other techniques to prevent unauthorized access and vandalism when, because of their location and/or accessibility, a facility has the potential to become an attractive nuisance.

13. Modification. At the time of modification of a wireless telecommunications facility or wireless telecommunications collocation facility, existing equipment shall, to the extent feasible, be replaced with equipment that reduces visual, noise and other impacts, including, but not limited to, undergrounding the equipment and replacing larger, more visually intrusive facilities with smaller, less visually intrusive facilities.

C. *Conditions of Approval.* In addition to compliance with the design and development standards outlined in this section, all facilities shall be subject to the following conditions of approval, as well as any modification of these conditions or additional conditions of approval deemed necessary by the reviewing authority:

1. The permittee shall submit an as built drawing within ninety (90) days after installation of the facility.

2. Where feasible, as new technology becomes available, the permittee shall (1) place above-ground wireless telecommunications facilities below ground, including, but not limited to, accessory equipment that has been mounted to a telecommunications tower or mounted on the ground, and (2) replace larger, more visually intrusive facilities with smaller, less visually intrusive facilities, after receiving all necessary permits and approvals required pursuant to the Agoura Hills Municipal Code.

3. The permittee shall submit and maintain current at all times basic contact and site information on a form to be supplied by the city. The permittee shall notify the city of any changes to the information submitted within seven (7) days of any change, including change of the name or legal status of the owner or operator. This information shall include, but is not limited to, the following:

a. Identity, including the name, address and 24-hour local or toll free contact phone number of the permittee, the owner, the operator, and the agent or person responsible for the maintenance of the facility.

b. The legal status of the owner of the wireless telecommunications facility, including official identification numbers and Federal Communications Commission certification.

c. Name, address and telephone number of the property owner if different than the permittee.

4. Upon any transfer or assignment of the permit, the director may require submission of any supporting materials or documentation necessary to determine that the proposed use is in compliance with the existing permit and all of its conditions of approval including, but not limited to, statements, photographs, plans, drawings, models, and analysis by a qualified radio frequency engineer demonstrating compliance with all applicable regulations and standards of the Federal Telecommunications Commission and the California Public Utilities Commission. If the director determines that the proposed operation is not consistent with the existing permit, the director shall notify the permittee who shall either revise the application or apply for modification of the permit pursuant to the requirements of the Agoura Hills Municipal Code.

5. The permittee shall not place any facilities that will deny access to, or otherwise interfere with, any public utility, easement, or right-of-way located on the site. The permittee shall allow the city reasonable access to, and maintenance of, all utilities and existing public improvements within or adjacent to the site, including, but not limited to, pavement, trees, public utilities, lighting and public signage.

6. At all times, all required notices and signs shall be posted on the site as required by the Federal Communications Commission and California Public Utilities Commission, and as approved by the City. The location and dimensions of a sign bearing the emergency contact name and telephone number shall be posted pursuant to the approved plans.

7. At all times, the permittee shall ensure that the facility complies with the most current regulatory and operational standards including, but not limited to, radio frequency emissions standards adopted by the Federal Communications Commission and antenna height standards adopted by the Federal Aviation Administration, and shall timely submit all monitoring reports required pursuant to section 9661.13 of the Agoura Hills Municipal Code.

8. If the director determines there is good cause to believe that the facility may emit radio frequency emissions that are likely to exceed Federal Communications Commission standards, the director may require post-installation testing, at permittee's expense, or the director may require the permittee to submit a technically sufficient written report certified by a qualified radio frequency

emissions engineer at other than the regularly required intervals specified in Section 9661.13 of the Agoura Hills Municipal Code, certifying that the facility is in compliance with such FCC standards.

9. Permittee shall pay for and provide a performance bond, which shall be in effect until the facilities are fully and completely removed and the site reasonably returned to its original condition, to cover permittee's obligations under these conditions of approval and the City of Agoura Hills Municipal Code. The bond coverage shall include, but not be limited to, removal of the facility, maintenance obligations and landscaping obligations. (The amount of the performance bond shall be set by the director in an amount rationally related to the obligations covered by the bond and shall be specified in the conditions of approval.)

10. If a nearby property owner registers a noise complaint and such complaint is verified as valid by the city, the city may hire a consultant to study, examine and evaluate the noise complaint and the permittee shall pay the fee for the consultant. The matter shall be reviewed by the director. If the director determines sound proofing or other sound attenuation measures should be required to bring the project into compliance with the Code, the director may impose that condition on the project after notice and a public hearing. (A condition incorporating the applicable noise limitations of this Chapter shall also be included in the conditions of approval.)

11. Permittee shall defend, indemnify, protect and hold harmless city, its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees, and volunteers from and against any and all claims, actions, or proceeding against the city, and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees, and volunteers to attack, set aside, void or annul, an approval of the city, planning commission or city council concerning this permit and the project. Such indemnification shall include damages, judgments, settlements, penalties, fines, defensive costs or expenses, including, but not limited to, interest, attorneys' fees and expert witness fees, or liability of any kind related to or arising from such claim, action, or proceeding. The city shall promptly notify the permittee of any claim, action, or proceeding. Nothing contained herein shall prohibit City from participating in a defense of any claim, action or proceeding. The City shall have the option of coordinating the defense, including, but not limited to, choosing counsel for the defense at permittee's expense.

12. "Permittee" shall include the applicant and all successors in interest to this permit.

13. A condition setting forth the permit expiration date in accordance with Section 9661.15 shall be included in the conditions of approval.

If a wireless telecommunications collocation facility is being approved, the phrase "wireless telecommunications collocation facility" shall be substituted in the above conditions wherever the phrase "wireless telecommunications facility" appears.

9661.6 Requirements for Facilities within the Public Right-of-Way

The provisions of this section shall apply to wireless telecommunications facilities and wireless telecommunications collocation facilities that are located within the public right-of-way. For purposes of this section, "located within the public right-of-way" shall include any facility which in whole or in part, itself or as part of another structure, rests upon, in or over the public right-of-way.

A. *Permit Required.*

1. In addition to any other permit required pursuant to this Code, the installation or modification of a wireless telecommunications facility or wireless telecommunications collocation facility, which will be located within the public right-of-way of arterial roadways, as identified in the general plan, except any locations listed in section 9661.20, shall require a conditional use permit.

2. In addition to any other permit required pursuant to this Code, the installation or modification of a wireless telecommunications facility or wireless telecommunications collocation facility, which will be located within the public right-of-way and is in any location listed in section 9661.20(A), shall require a conditional use permit and approval of an exception.

3. Only applicants who have been granted the right to enter the public right-of-way pursuant to state or federal law, or who have entered into a franchise agreement with the city permitting them to use the public right-of-way, shall be eligible for a permit to install or modify a wireless telecommunications facility or a wireless telecommunications collocation facility in the public right-of-way.

B. *Design and Development Standards.* All wireless telecommunications facilities and wireless collocation telecommunications facilities that are located within the public right-of-way shall be designed and maintained as to minimize visual, noise and other impacts on the surrounding community and shall be planned, designed, located, and erected in accordance with the following:

1. General Guidelines.

a. The applicant shall employ screening and camouflage design techniques in the design and placement of wireless telecommunications facilities and wireless telecommunication collocation facilities in order to ensure that the facility is as visually inconspicuous as possible, to prevent the facility from dominating the surrounding area and to hide the facility from predominant views from surrounding properties all in a manner that achieves compatibility with the community.

b. Screening shall be designed to be architecturally compatible with surrounding structures using appropriate techniques to camouflage, disguise, and/or blend into the environment, including landscaping, color, and other techniques to minimize the facility's visual impact as well as be

compatible with the architectural character of the surrounding buildings or structures in terms of color, size, proportion, style, and quality.

2. Traffic Safety. All facilities shall be designed and located in such a manner as to avoid adverse impacts on traffic safety.

3. Blending Methods. All facilities shall have subdued colors and non-reflective materials that blend with the materials and colors of the surrounding area and structures.

4. Antenna Mounts. The applicant shall use the least visible antennas possible to accomplish the coverage objectives. Antenna elements shall be flush mounted, to the extent feasible. All antenna mounts shall be designed so as not to preclude possible future collocation by the same or other operators or carriers. Unless otherwise provided in this section, antennas shall be situated as close to the ground as possible to reduce visual impact without compromising their function.

5. Poles.

   a. Only pole-mounted antennas shall be permitted in the right-of-way. All other telecommunications towers are prohibited, and no new poles are permitted that are not replacing an existing pole.

   b. No facility shall be located on a pole that is less than twenty five (25) feet in height.

   c. Utility poles. The maximum height of any antenna shall not exceed twenty four (24) inches above the height of an existing utility pole, nor shall any portion of the antenna or equipment mounted on a pole be less than eighteen (18) feet above any drivable road surface. All installations on utility poles shall fully comply with the California Public Utilities Commission general orders, including, but not limited to, General Order 95, as revised.

   d. Light poles. The maximum height of any antenna shall not exceed six (6) feet above the existing height of a light pole. Any portion of the antenna or equipment mounted on a pole shall be no less than eighteen (18) feet above any drivable road surface.

   e. Replacement poles. If an applicant proposes to replace a pole in order to accommodate the facility, the pole shall match the appearance of the original pole to the extent feasible. If the replacement pole exceeds the height of the existing pole, the antenna(s) shall not extend above the top of the replacement pole for more than "X" feet, where "X" is calculated by subtracting the difference in height between the original and replacement poles from six feet.

   f. Pole mounted equipment shall not exceed six (6) cubic feet in dimension.

g. All poles shall be designed to be the minimum functional height and width required to support the proposed antenna installation and meet Federal Communications Commission requirements. Poles and antennas and similar structures shall be no greater in diameter or other cross-sectional dimensions than is necessary for the proper functioning of the facility. The applicant shall provide documentation satisfactory to the director establishing compliance with this paragraph.

h. If an exception is granted for placement of new poles in the right-of-way, new poles shall be designed to resemble existing poles in the right-of-way near that location, including size, height, color, materials and style, with the exception of any existing pole designs that are scheduled to be removed and not replaced. Such new poles that are not replacement poles shall be located at least ninety (90) feet from any existing pole, to the extent feasible, to prevent pole clustering in the public right-of-way.

i. All cables, including, but not limited to, electrical and utility cables, shall be run within the interior of the pole and shall be camouflaged or hidden to the fullest extent feasible without jeopardizing the physical integrity of the pole.

6. Each facility shall be designed to occupy the least amount of space in the right-of-way that is technically feasible.

7. Each facility shall be properly engineered to withstand high wind loads. An evaluation of high wind load capacity shall include the impact of modification of an existing facility.

8. Each component part of a facility shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, inconvenience to the public's use of the right-of-way, or safety hazards to pedestrians and motorists and in compliance with section 9661.14.

9. A facility shall not be located within any portion of the public right-of-way interfering with access to fire hydrants, fire stations, fire escapes, water valves, underground vaults, valve housing structures, or any other vital public health and safety facility.

10. In no case shall any ground-mounted facility, above-ground accessory equipment, or walls, fences, landscaping or other screening methods be less than eighteen (18) inches from the front of curb.

11. All cables, including, but not limited to, electrical and utility cables, between the pole and any accessory equipment shall be placed underground.

12. Each facility shall be built in compliance with the Americans with Disabilities Act (ADA).

13. Accessory Equipment. With the exception of the electric meter, which shall be pole-mounted to the extent feasible, all accessory equipment shall be located underground.

CalWA Comment No. 9: The inclusion of strict sizing requirements is not recommended due to changing technologies and the variations that exist in current equipment sizes. Remove and simply require that equipment must be screened.

a. Unless city staff determines that there is no room in the public right-of-way for undergrounding or that undergrounding is not feasible, an exception shall be required in order to place accessory equipment above-ground.

b. When above-ground is the only feasible location for a particular type of accessory equipment and cannot be pole-mounted, such accessory equipment shall be enclosed within a structure, and shall not exceed a height of five (5) feet and a total footprint of fifteen (15) square feet, and shall be fully screened and/or camouflaged, including the use of landscaping, architectural treatment, or acceptable alternate screening. Required electrical meter cabinets shall be adequately screened and/or camouflaged.

14. Landscaping. Where appropriate, each facility shall be installed so as to maintain and enhance existing landscaping on the site, including trees, foliage and shrubs, whether or not utilized for screening. Additional landscaping shall be planted, irrigated and maintained by applicant where such vegetation is deemed necessary by the city to provide screening or to block the line of sight between facilities and adjacent uses.

15. Signage. No facility shall bear any signs or advertising devices other than certification, warning or other signage required by law or permitted by the city.

16. Lighting. No facility may be illuminated unless specifically required by the Federal Aviation Administration or other government agency. Lightning arresters and beacon lights are not permitted unless required by the Federal Aviation Administration or other government agency. Legally required lightning arresters and beacons shall be included when calculating the height of facilities such as towers, lattice towers and monopoles. Any required lighting shall be shielded to eliminate, to the maximum extent possible, impacts on the surrounding neighborhoods, and a lighting study shall be prepared by a qualified lighting professional to evaluate potential impacts to adjacent properties.

17. Noise.

a. Each facility shall be operated in such a manner so as to minimize any possible disruption caused by noise.

b. Backup generators shall only be operated during periods of power outages, and shall not be tested on weekends or holidays, or between the hours of 7:00 PM and 7:00 AM.

c. At no time shall equipment noise from any facility exceed an exterior noise level of fifty-five (55) dBA three (3) feet from the source of the noise if the facility is located in a business, commercial, manufacturing, utility or school zone or a planned development zone that permits those uses; provided, however, that for any such facility located within five hundred (500) feet of any property zoned residential or improved with a residential use, such equipment noise shall at no time be audible at the property line of any such residential property. For any facility located within a residential zone, such equipment noise shall at no time be audible at the property line of any residentially improved or residential zoned property.

d. Any equipment that may emit noise that would be audible from beyond three (3) feet from the source of the noise shall be enclosed or equipped with noise attenuation devices to the extent necessary to ensure compliance with applicable noise limitations under this code.

18. Security. Each facility shall be designed to be resistant to, and minimize opportunities for, unauthorized access, climbing, vandalism, graffiti and other conditions that would result in hazardous situations, visual blight or attractive nuisances. The reviewing authority may require the provision of warning signs, fencing, anti-climbing devices, or other techniques to prevent unauthorized access and vandalism when, because of their location and/or accessibility, a facility has the potential to become an attractive nuisance.

19. Modification. At the time of modification of a wireless telecommunications facility or wireless telecommunications collocation facility, existing equipment shall, to the extent feasible, be replaced with equipment that reduces visual, noise and other impacts, including, but not limited to, undergrounding the equipment and replacing larger, more visually intrusive facilities with smaller, less visually intrusive facilities.

C. *Conditions of Approval.* In addition to compliance with all applicable provisions of this division, all facilities in the public right-of-way shall be subject to the conditions of approval set forth in subsection 9661.5(C), the following conditions of approval, and any modification of these conditions or additional conditions of approval deemed necessary by the reviewing authority:

1. The wireless telecommunications facility shall be subject to such conditions, changes or limitations as are from time to time deemed necessary by the city engineer for the purpose of: (a) protecting the public health, safety, and welfare; (b) preventing interference with pedestrian and vehicular traffic; and/or (c) preventing damage to the public right-of-way or any property adjacent to it. The City may modify the permit to reflect such conditions, changes or limitations by following the same notice and public hearing procedures as are applicable to the grant of a wireless telecommunications facility permit for similarly located facilities, except the permittee shall be given notice by personal service or by

registered or certified mail at the last address provided to the City by the permittee.

2. The permittee shall not transfer the permit to any person prior to completion of construction of the facility covered by the permit.

3. The permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement or property without the prior consent of the owner of that structure, improvement or property. No structure, improvement or property owned by the city shall be moved to accommodate a wireless telecommunications facility unless the city determines that such movement will not adversely affect the city or any surrounding businesses or residents, and the permittee pays all costs and expenses related to the relocation of the city's structure, improvement or property. Prior to commencement of any work pursuant to an encroachment permit issued for any facility within the public right-of-way, the permittee shall provide the city with documentation establishing to the city's satisfaction that the permittee has the legal right to use or interfere with any other structure, improvement or property within the public right-of-way to be affected by applicant's facilities.

4. The permittee shall assume full liability for damage or injury caused to any property or person by the facility.

5. The permitee shall repair, at its sole cost and expense, any damage including, but not limited to subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to city streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals, improvements of any kind or nature, or utility lines and systems, underground utility line and systems, or sewer systems and sewer lines that result from any activities performed in connection with the installation and/or maintenance of a wireless telecommunications facility in the public right-of-way. The permittee shall restore such areas, structures and systems to the condition in which they existed prior to the installation or maintenance that necessitated the repairs. In the event the permittee fails to complete such repair within the number of days stated on a written notice by the city engineer, the city engineer shall cause such repair to be completed at permittee's sole cost and expense.

6. Prior to issuance of a building permit, the applicant shall obtain the director's approval of a tree protection plan prepared by a certified arborist if the installation of the wireless telecommunication facility will be located within the canopy of a street tree, or a protected tree on private property, or within a ten (10) foot radius of the base of such a tree. Depending on site specific criteria (e.g., location of tree, size and type of tree, etc.), a radius greater than ten (10) feet may be required by the director.

7. Insurance. The permittee shall obtain, pay for and maintain, in full force and effect until the facility approved by the permit is removed in its entirety from the public right-of-way, an insurance policy or policies of public liability insurance,

with minimum limits of Two Million Dollars ($2,000,000) for each occurrence and Four Million Dollars ($4,000,000) in the aggregate, that fully protects the city from claims and suits for bodily injury and property damage. The insurance must name the city and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers as additional named insureds, be issued by an insurer admitted in the State of California with a rating of at least a A:VII in the latest edition of A.M. Best's Insurance Guide, and include an endorsement providing that the policies cannot be canceled or reduced except with thirty (30) days prior written notice to the city. The insurance provided by permittee shall be primary to any coverage available to the city, and any insurance or self-insurance maintained by the city and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers shall be excess of permittee's insurance and shall not contribute with it. The policies of insurance required by this permit shall include provisions for waiver of subrogation. In accepting the benefits of this permit, permittee hereby waives all rights of subrogation against the city and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers. The insurance must afford coverage for the permittee's and the wireless provider's use, operation and activity, vehicles, equipment, facility, representatives, agents and employees, as determined by the city's risk manager. Before issuance of any building permit for the facility, the permittee shall furnish the city risk manager certificates of insurance and endorsements, in the form satisfactory to the city attorney or the risk manager, evidencing the coverage required by the city.

8. Indemnification. To the fullest extent permitted by law, the permittee, and every permittee and person in a shared permit, jointly and severally, shall defend, indemnify, protect and hold the city and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers harmless from and against all claims, suits, demands, actions, losses, liabilities, judgments, settlements, costs (including, but not limited to, attorney's fees, interest and expert witness fees), or damages claimed by third parties against the city for any bodily or personal injury, and for property damage sustained by any person, arising out of, resulting from, or are in any way related to the wireless telecommunications facility, or to any work done by or use of the public right-of-way by the permittee, owner or operator of the wireless telecommunications facility, or their agents, excepting only liability arising out of the sole negligence or willful misconduct of the city and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers.

9. Should any utility company offer electrical service that does not require the use of a meter cabinet, the permittee shall at its sole cost and expense remove the meter cabinet and any related foundation within thirty (30) days of such service being offered and reasonably restore the area to its prior condition.

10. Relocation. The permittee shall modify, remove, or relocate its facility, or portion thereof, without cost or expense to city, if and when made necessary by (i) any public improvement project, including, but not limited to, the construction, maintenance, or operation of any underground or above ground facilities including but not limited to sewers, storm drains, conduits, gas, water, electric or other utility systems, or pipes owned by city or any other public agency, (ii) any abandonment of any street, sidewalk or other public facility, (iii) any change of grade, alignment or width of any street, sidewalk or other public facility, or (iv) a determination by the director that the wireless telecommunications facility has become incompatible with public health, safety or welfare or the public's use of the public right-of-way. Such modification, removal, or relocation of the facility shall be completed within ninety (90) days of notification by city unless exigencies dictate a shorter period for removal or relocation. Modification or relocation of the facility shall require submittal, review and approval of a modified permit pursuant to the Code. The permittee shall be entitled, on permittee's election, to either a pro-rata refund of fees paid for the original permit or to a new permit, without additional fee, at a location as close to the original location as the standards set forth in the Code allow. In the event the facility is not modified, removed, or relocated within said period of time, city may cause the same to be done at the sole cost and expense of permittee. Further, due to exigent circumstances as provided in the Code, the city may modify, remove, or relocate wireless telecommunications facilities without prior notice to permittee provided permittee is notified within a reasonable period thereafter.

11. Prior to the issuance of any encroachment or building permits, permittee shall enter into a right-of-way agreement with the city in accordance with Agoura Hills Municipal Code Section 9661.8.

If a wireless telecommunications collocation facility is being approved, the phrase "wireless telecommunications collocation facility" shall be substituted in the above conditions wherever the phrase "wireless telecommunications facility" appears.

9661.7 Findings.

A. In addition to findings necessary to approve a conditional use permit or minor conditional use permit, as applicable, no permit shall be granted for a wireless telecommunications facility or a wireless telecommunications collocation facility unless all of the following findings are made by the reviewing authority:

1. The proposed facility has been designed and located in compliance with all applicable provisions of this division.

2. The proposed facility has been designed and located to achieve compatibility with the community.

3. The applicant has submitted a statement of its willingness to allow other carriers to collocate on the proposed wireless telecommunications facility wherever

technically and economically feasible and where collocation would not harm community compatibility.

4. Noise generated by equipment will not be excessive, annoying nor be detrimental to the public health, safety, and welfare and will not exceed the standards set forth in this division.

B. In addition to the findings in (A) above, approval of a permit for a wireless telecommunications facility or a wireless telecommunications collocation facility that will be located in the public right-of-way may be granted only if the following findings are made by the reviewing authority:

1. The applicant has provided substantial written evidence supporting the applicant's claim that it has the right to enter the public right-of-way pursuant to state or federal law, or the applicant has entered into a franchise agreement with the city permitting them to use the public right-of-way.

2. The applicant has demonstrated that the facility will not interfere with the use of the public right-of-way and existing subterranean infrastructure and will not interfere with the city's plans for modification of such location and infrastructure.

9661.8 Agreement for Facilities on City-Owned Property or Public Right-of-way.

A. No approval granted under this division for locating facilities on city-owned property or in the public right-of-way shall be effective until the applicant and the city have executed a written agreement establishing the particular terms and provisions under which the right to occupy city-owned property or the public right-of-way, or both, shall be used or maintained. Such agreement shall include, but not be limited to, the following:

1. Inspection and maintenance requirements.

2. Indemnification of the city.

3. Insurance requirements.

4. Waiver of monetary damages against the city.

5. Removal, restoration and clean-up requirements.

6. Requirement to pay possessory interest taxes, if any.

9661.9 Nonexclusive grant.

No approval granted under this division shall confer any exclusive right, privilege, license or franchise to occupy or use the public right-of-way of the city for delivery of telecommunications services or any other purposes. Further, no approval shall be construed as any warranty of title.

CalWA Comment No. 10: Clarification required. For those facilties that were approved post January 1, 2007 via discretionary permit with the necessary environmental documentation, they too must comply in every way with the site location and development standards of this ordinance? If so this would not comply with the cited Government Code Section 65850.6.

9661.10 Wireless Telecommunications Collocation Facilities

A. *Purpose.* The purpose of this section is to comply with the requirements of California Government Code Section 65850.6. This section provides the requirements, standards and regulations for a wireless telecommunications collocation facility for which subsequent collocation is a permitted use. Only those facilities that fully comply with the eligibility requirements set forth in California Government Code Section 65850.6, or its successor provision, and which strictly adhere to the requirements and regulations set forth in this section shall qualify as a wireless telecommunications collocation facility.

B. In addition to any other permit required by this Code, a wireless telecommunications collocation facility shall be subject to either a minor conditional use permit or a conditional use permit as provided for in this division.

C. All requirements, regulations and standards set forth in this division for a wireless telecommunications facility shall apply to a wireless telecommunications collocation facility; provided, however, the following shall also apply to a wireless telecommunications collocation facility:

1. The applicant for a wireless telecommunications collocation facility permit shall answer each question or request on the supplemental application provided for in section 9661.4 of this division so as to describe or depict:

   a. the wireless telecommunications collocation facility as it will be initially built, and

   b. all collocations at full build-out, including, but not limited to, all antennas, antenna support structures and accessory equipment.

2. Any collocation shall use screening methods substantially similar to those used on the existing wireless telecommunications facilities unless other optional screening methods are specified in the conditions of approval.

3. A wireless telecommunications collocation facility permit shall not be approved unless an environmental impact report, negative declaration, or mitigated negative declaration was prepared and approved for the wireless telecommunications collocation facility.

D. Notwithstanding any other provision of this division, a subsequent collocation on a wireless telecommunications collocation facility shall be a permitted use if:

1. The wireless telecommunications collocation facility:

   a. was approved after January 1, 2007 by discretionary permit;

   b. was approved subject to an environmental impact report, negative declaration, or mitigated negative declaration; and

c. otherwise complies with the requirements of Government Code Section 65850.6(b), or its successor provision, for addition of a collocation facility to a wireless telecommunications collocation facility, including, but not limited to, compliance with all performance and maintenance requirements, regulations and standards in this division and the conditions of approval in the wireless telecommunications collocation facility permit; and

d. provided, however, only those collocations that were specifically considered when the relevant environmental document was prepared are a permitted use.

2. Before collocation, the applicant seeking collocation shall obtain all other applicable non-discretionary permit(s), as required pursuant to this Code.

E. Although subsequent collocation under the conditions specified in paragraph (D) above is a permitted use, the owner of the facilities that will be collocated may voluntarily submit a wireless telecommunications facility application for the proposed collocation for the director's determination whether the collocation is a permitted use that meets the requirements of this division. Any collocation facility that does not meet the requirements of this division and is installed without first obtaining a wireless telecommunications permit is subject to immediate abatement and all other remedies available to the city pursuant to this Code.

F. Except as otherwise provided above, approval of a new or amended facility permit shall be required when the facility is modified other than by collocation in accordance with this section, or the proposed collocation:

1. Increases the height of the existing permitted facilities or otherwise changes the bulk, size, location, or any other physical attributes of the existing permitted wireless telecommunications collocation facility unless specifically permitted under the conditions of approval applicable to such wireless telecommunications collocation facility; or

2. Adds any microwave dish or other antenna not expressly permitted to be included in a collocation facility by the conditions of approval.

9661.11 Emergency Deployment.

A COW shall be permitted in all zoning districts for the duration of an emergency declared by the city or at the discretion of the director.

9661.12 Operation and Maintenance Standards.

All wireless telecommunications facilities and wireless telecommunications collocation facilities must comply at all times with the following operation and maintenance standards. All necessary repairs and restoration shall be completed by the permittee, owner, operator or any designated maintenance agent within forty-eight (48) hours (i) after discovery of the need by the

permittee, owner, operator or any designated maintenance agent or (ii) after permittee, owner, operator or any designated maintenance agent receives notification from a resident or the director.

A. Each permittee of a wireless telecommunications facility or wireless telecommunications collocation facilities shall provide the director with the name, address and 24-hour local or toll free contact phone number of the permittee, the owner, the operator and the agent responsible for the maintenance of the facility ("contact information"). Contact information shall be updated within seven (7) days of any change.

B. All facilities, including, but not limited to, telecommunication towers, poles, accessory equipment, lighting, fences, walls, shields, cabinets, artificial foliage or camouflage, and the facility site shall be maintained in good condition, including ensuring the facilities are reasonably free of:

1. General dirt and grease;

2. Chipped, faded, peeling, and cracked paint;

3. Rust and corrosion;

4. Cracks, dents, and discoloration;

5. Missing, discolored or damaged artificial foliage or other camouflage;

6. Graffiti, bills, stickers, advertisements, litter and debris;

7. Broken and misshapen structural parts; and

8. Any damage from any cause.

C. Graffiti shall be removed from a facility as soon as practicable, and in no instance more than twenty-four (24) hours from the time of notification by the city.

D. All trees, foliage or other landscaping elements approved as part of the facility shall be maintained in good condition at all times, and the permittee, owner and operator of the facility shall be responsible for replacing any damaged, dead or decayed landscaping. No amendment to any approved landscaping plan may be made until it is submitted to and approved by the director.

E. The permittee shall replace its facilities, after obtaining all required permits, if maintenance or repair is not sufficient to return the facility to the condition it was in at the time of installation.

F. Each facility shall be operated and maintained to comply at all times with the noise standards of this Code and the facility's conditions of approval, and shall be operated and maintained in a manner that will minimize noise impacts to surrounding residents. Except for emergency repairs, any testing and maintenance activities that will be audible

beyond the property line shall only occur between the hours of 7:00 a.m. and 7:00 p.m. on Monday through Friday, excluding holidays, unless alternative hours are approved by the director. Backup generators, if permitted, shall only be operated during periods of power outages or for testing.

G. If a flagpole is used for camouflaging a wireless telecommunications facility, flags shall be flown and shall be properly maintained at all times.

H. Each owner or operator of a facility shall routinely inspect each site to ensure compliance with the standards set forth in this section and the conditions of approval.

9661.13 RF Emissions and Other Monitoring Requirements.

The owner and operator of a facility shall submit within ninety (90) days of beginning operations under a new or amended permit, and every two years from the date the facility began operations, a technically sufficient report ("monitoring report") that demonstrates the following:

A. The facility is in compliance with applicable federal regulations, including Federal Communications Commission RF emissions standards, as certified by a qualified radio frequency emissions engineer;

B. The facility is in compliance with all provisions of this section and its conditions of approval.

C. The bandwidth of the facility has not been changed since the original application or last report, as applicable, and if it has, a full written description of that change.

9661.14 No Dangerous Condition or Obstructions Allowed

No person shall install, use or maintain any wireless telecommunications facility or wireless telecommunications collocation facility which in whole or in part rests upon, in or over any public sidewalk or parkway, when such installation, use or maintenance endangers or is reasonably likely to endanger the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such facility unreasonably interferes with or impedes the flow of pedestrian or vehicular traffic including any legally parked or stopped vehicle, the ingress into or egress from any residence or place of business, the use of poles, posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street furniture or other objects permitted at or near said location.

9661.15 Permit Expiration.

A. A permit for any wireless telecommunications facility or wireless telecommunication collocation facility shall be valid for a period of ten (10) years, unless pursuant to another provision of this Code it lapses sooner or is revoked. At the end of ten (10) years from the date of issuance, such permit shall expire.

B. A permittee may apply for extensions of its permit in increments of ten (10) years no sooner than six (6) months prior to expiration of the permit; provided, however, if a request to modify an existing permit for a facility is submitted during the last two (2) years of a ten (10) year permit, the permittee may request an extension at that time.

C. If a permit has not expired at the time application is made for an extension, the director may administratively extend the term of the permit for subsequent ten (10) year terms upon verification of continued compliance with the findings and conditions of approval under which the application was originally approved, as well as any other applicable provisions of this Code that are in effect at the time the permit extension is granted.

1. At the director's discretion, additional studies and information may be required of the applicant.

2. If the director determines that the facility is nonconforming or that additional conditions of approval are necessary to bring the facility into compliance with the provisions of this Code that are then in effect at the time of permit expiration, the director shall refer the extension request to the appropriate reviewing authority.

3. The reviewing authority and public hearing procedures for such extension requests shall be the same as if a new permit was requested. After notice and a public hearing, the reviewing authority may approve, conditionally approve or deny the extension.

D. The request for an extension shall be decided by the planning commission if the permit expired before the application is made for an extension or if the director refers the matter to the planning commission. After notice and a public hearing, the planning commission may approve, conditionally approve or deny the extension.

9661.16 Cessation of Use or Abandonment

A. A wireless telecommunications facility or wireless telecommunications collocation facility is considered abandoned and shall be promptly removed as provided herein if it ceases to provide wireless telecommunications services for ninety (90) or more consecutive days. If there are two (2) or more users of a single facility, then this provision shall not become effective until all users cease using the facility.

B. The operator of a facility shall notify the city in writing of its intent to abandon or cease use of a permitted site or a nonconforming site (including unpermitted sites) within ten (10) days of ceasing or abandoning use. Notwithstanding any other provision herein, the operator of the facility shall provide written notice to the director of any discontinuation of operations of thirty (30) days or more.

C. Failure to inform the director of cessation or discontinuation of operations of any existing facility as required by this section shall constitute a violation of any approvals and be grounds for:

1. Prosecution;

2. Revocation or modification of the permit;

3. Calling of any bond or other assurance required by this article or conditions of approval of the permit;

4. Removal of the facilities by the city in accordance with the procedures established under this Code for abatement of a public nuisance at the owner's expense; and/or

5. Any other remedies permitted under this Code.

9661.17 Removal and Restoration – Permit Expiration, Revocation or Abandonment

A. Upon the expiration date of the permit, including any extensions, earlier termination or revocation of the permit or abandonment of the facility, the permittee, owner or operator shall remove its wireless telecommunications facility or wireless telecommunications collocation facility and restore the site to its natural condition except for retaining the landscaping improvements and any other improvements at the discretion of the city. Removal shall be in accordance with proper health and safety requirements and all ordinances, rules, and regulations of the city. The facility shall be removed from the property, at no cost or expense to the city. If the facility is located on private property, the private property owner shall also be independently responsible for the expense of timely removal and restoration.

B. Failure of the permittee, owner or operator to promptly remove its facility and restore the property within thirty (30) days after expiration, earlier termination or revocation of the permit, or abandonment of the facility, shall be a violation of this Code, and be grounds for:

1. Prosecution;

2. Calling of any bond or other assurance required by this division or conditions of approval of permit;

3. Removal of the facilities by the city in accordance with the procedures established under this Code for abatement of a public nuisance at the owner's expense; and/or

4. Any other remedies permitted under this Code.

C. *Summary Removal.* In the event the director or city engineer determines that the condition or placement of a wireless telecommunications facility or wireless telecommunications collocation facility located in the public right-of-way constitutes a dangerous condition, obstruction of the public right-of-way, or an imminent threat to public safety, or determines other exigent circumstances require immediate corrective action (collectively, "exigent circumstances"), the director or city engineer may cause the facility to be removed summarily and immediately without advance notice or a hearing. Written notice of the removal shall be served upon the person who owns the facility within five (5) business days of removal and all property removed shall be preserved for the owner's pick-up as feasible. If the owner cannot be identified following reasonable

effort or if the owner fails to pick-up the property within sixty (60) days, the facility shall be treated as abandoned property.

D. *Removal of Facilities by City.* In the event the city removes a facility in accordance with nuisance abatement procedures or summary removal, any such removal shall be without any liability to the city for any damage to such facility that may result from reasonable efforts of removal. In addition to the procedures for recovering costs of nuisance abatement, the city may collect such costs from the performance bond posted and to the extent such costs exceed the amount of the performance bond, collect those excess costs in accordance with this Code. Unless otherwise provided herein, the city has no obligation to store such facility. Neither the permittee, owner nor operator shall have any claim if the city destroys any such facility not timely removed by the permittee, owner or operator after notice, or removed by the city due to exigent circumstances.

9661.18 Appeals.

A. Any aggrieved person may appeal a decision of the director made pursuant to this division to the planning commission.

B. Any aggrieved person may appeal a decision of the planning commission made pursuant to this division to the city council.

9661.19 Exceptions.

A. Exceptions pertaining to any provision of this division, including, but not limited to, exceptions from findings that would otherwise justify denial, may be granted by the reviewing authority at a noticed public hearing if the reviewing authority makes the finding that (i) denial of the facility as proposed would violate state and/or federal law, or (ii) a provision of this division, as applied to applicant, would deprive applicant of its rights under state and/or federal law. An applicant may only request an exception at the time of applying for a wireless telecommunications facility permit or wireless telecommunications facility collocation permit.

B. Notwithstanding any other provision of this division, a conditional use permit shall be required for a facility when an exception is requested.

C. The applicant shall have the burden of proving that denial of the facility as proposed would violate state and/or federal law, or the provisions of this division, as applied to applicant, would deprive applicant of its rights under state and/or federal law, using the evidentiary standards required by that law at issue. The city shall have the right to hire an independent consultant, at the applicant's expense, to evaluate the issues raised by the exception request and shall have the right to submit rebuttal evidence to refute the applicant's claim.

9661.20 Location Restrictions.

A. *Locations Requiring an Exception.* Wireless telecommunications facilities and wireless telecommunications collocation facilities shall not locate in any of the following districts, areas or locations without an exception:

1. Zoning districts other than BP-M, BP-OR, CN, CRS, CS-MU, CS, CR, PD, U, and SH districts; provided however, facilities may be located in the public right-of-way of arterial roadways within those other districts without an exception;

2. Public right-of-way of collector roadways as identified in the general plan;

3. Public right-of-way of local streets as identified in the general plan if within the BP-M, BP-OR, CN, CRS, CS-MU, CS, CR, PD, U, and SH districts;

4. Public right-of-way if mounted to a new pole that is not replacing an existing pole, regardless of location; or

5. Building-mounted or roof-mounted on a building owned in common by a homeowners association, even if located in a residential zone.

6. Notwithstanding any of the above, no facility shall locate within OS-DR or OS-R zoning districts, including the public right-of-way of arterial or collector roadways within those districts, without an exception; provided, however, applicant must also obtain approval pursuant to sections 9487 and 9821.5 of this Code.

B. *No Exception Allowed.* Notwithstanding the provisions of section 9661.19, in no case shall an exception be granted for the location of a wireless telecommunications facility or wireless telecommunications collocation facility in any of the following districts, areas or locations:

1. Any location within a residential district, with the exception of the public right-of-way of arterial or collector roadways and those locations set forth in section 9661.20(A)(5);

2. Any location within one hundred (100) feet from a residential district, with the exception of (i) the public right-of-way of arterial or collector roadways, or (ii) building-mounted facilities or roof-mounted facilities in the BP-M, BP-OR, CN, CRS, CS-MU, CS, CR, PD, U, or SH districts;

3. Any location that would significantly obstruct or diminish views in scenic corridors;

4. Any location on or near a ridgeline such that the facility would appear silhouetted against the sky; or

5. Planned development zones in any location where the zone or specific plan prohibits such facilities.

C. If a district, area or location could qualify as both a permissible location and a location enumerated in this section, it shall be deemed a location covered by this section and the provisions of this section shall control. If a district, area or location could qualify as either a location requiring an exception pursuant to paragraph (A) of this section or a location in which no exception is allowed pursuant to paragraph (B) of this section, it shall be deemed a location covered by paragraph (B) and no exception shall be granted.

9661.21 Effect on Other Ordinances.

Compliance with the provisions of this division shall not relieve a person from complying with any other applicable provision of this Code. In the event of a conflict between any provision of this division and other sections of this Code, this division shall control.

9661.22 Effect of State or Federal Law.

A. In the event it is determined by the city attorney that state or federal law prohibits discretionary permitting requirements for certain wireless telecommunications facilities or wireless telecommunication collocation facilities, the permits required by this division for those facilities shall be deemed to be ministerial permits. Such a determination by the city attorney shall be in writing with citations to legal authority and shall be a public record. For those facilities, in lieu of a minor conditional use permit or a conditional use permit, a ministerial permit shall be required prior to installation or modification of a wireless telecommunications facility or a wireless telecommunications collocation facility, and all provisions of this division shall be applicable to any such facility with the exception that the required permit shall be reviewed and administered as a ministerial permit by the director rather than as a discretionary permit. Any conditions of approval set forth in this provision or deemed necessary by the director shall be imposed and administered as reasonable time, place and manner rules.

B. If subsequent to the issuance of the city attorney's written determination pursuant to (A) above, the city attorney determines that the law has changed and that discretionary permitting is permissible, the city attorney shall issue such determination in writing with citations to legal authority and all discretionary permitting requirements shall be reinstated. The city attorney's written determination shall be a public record."

SECTION 8. Part 12 Nonconforming Wireless Telecommunications Facilities is hereby added to Chapter 7, Article IX of the Agoura Hills Municipal Code to read as follows:

PART 12. NONCONFORMING WIRELESS TELECOMMUNICATIONS FACILITIES

"9711. Nonconforming Wireless Telecommunications Facilities and Wireless Telecommunications Collocation Facilities

CalWA Comment No. 11: Does the City of Agoura Hills know how many existing wireless communicaitons facilities will be impacted by the implementation of this ordinance in terms of those facilities that will now be classified as "Nonconforming Facilties"?

A. Nonconforming wireless telecommunications facilities and/or nonconforming wireless telecommunications collocation facilities are those facilities that do not conform to division 11 of part 2 of chapter 6 of article IX of this Code.

B. Nonconforming wireless telecommunications facilities and wireless telecommunications collocation facilities shall, within ten (10) years from the date such facility becomes nonconforming, bring the facility into conformity with all requirements of this article; provided, however, that should the owner desire to expand or modify the facility, intensify the use, or make some other change in a conditional use, the owner shall comply with all applicable provisions of this Code at such time.

C. When a nonconforming wireless telecommunications facility or wireless telecommunications collocation facility is abandoned or vacated for a continuous period of ninety (90) days or more days, such facility shall conform to the regulations of the district in which the property is located or shall be removed in accordance with section 9661.17 of this Code if it cannot be made to conform.

D. An aggrieved person may file an appeal to the city council of any decision of the director made pursuant to this section. In the event of an appeal alleging that the ten (10) year amortization period is not reasonable as applied to a particular property, the city council may consider the amount of investment or original cost, present actual or depreciated value, dates of construction, amortization for tax purposes, salvage value, remaining useful life, the length and remaining term of the lease under which it is maintained (if any), and the harm to the public if the structure remains standing beyond the prescribed amortization period, and set an amortization period accordingly for the specific property."

SECTION 9. Section 9804.3 of Part 1, Division 4, Article IX of the Agoura Hills Municipal Code is hereby amended in its entirety as follows:

"**9804.3 Zoning administrator public hearings.**

A. The following matters shall be considered by the director after a public hearing:

1. Minor modifications; and

2. Minor conditional use permits for wireless telecommunications facilities and/or wireless telecommunications collocation facilities.

3. Amendments to minor conditional use permits for wireless telecommunications facilities and/or wireless telecommunications collocation facilities.

B. The director shall make the same findings required for a conditional use permit before approving or amending a minor conditional use permit. The procedures set forth in division 3 of part 3 of chapter 6 of this article applicable to conditional use permits shall apply to minor conditional use permits, except that where the planning commission is authorized to perform certain acts, the provision shall instead be read to authorize the director to perform those acts, and where the city council is authorized to perform certain

acts, the provision shall be read to authorize the planning commission to perform those acts; provided, however, that any appeal of the director's decision decided by the planning commission may be appealed to the city council within the prescribed fifteen-day period. Furthermore, any hearing on a proposed revocation shall be before the planning commission and appealable to the city council."

SECTION 10. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remainder of this ordinance. The City Council hereby declares that it would have adopted this ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 11. Effective Date. This ordinance shall go into effect on the 31st day after its passage.

SECTION 12. Certification. The city clerk of the City of Agoura Hills shall certify to the passage and adoption of this ordinance and shall cause the same or a summary thereof to be published and posted in the manner required by law.

PASSED, APPROVED AND ADOPTED this ____ day of ____ 2011, by the following vote to wit:

Harry Schwarz
Mayor

ATTEST:

Kimberly M. Rodrigues, MMC
City Clerk

APPROVED AS TO FORM:

Craig A. Steele
City Attorney

Staff Response to CalWA Letter and Attachment (June 10, 2011) Regarding Wireless Telecommunications Facilities Ordinance

A letter dated June 10, 2011, from Sean Scully, a Board member of the California Wireless Association (CalWA), was received by the City of Agoura Hills on June 10, 2011, which was after the close of the CEQA comment period on the Initial Study/Negative Declaration (IS/ND). Thus, the City is not required to respond to his comments. Further, Mr. Scully's comments on behalf of CalWA raised no questions regarding the IS/ND and identified no inadequacies or errors in the IS/ND. His comments were solely on the Ordinance, so we are treating his letter as a comment on the policy aspects of the Ordinance. Excerpts of his policy comments, and staff's responses, are below.

(The excerpts of CalWA's letter comments have been numbered by staff and are indented. For ease of reference, comments appearing in CalWA's attachment have been included after CalWA's letter comments, and sequentially re-numbered to follow the comments in the letter.)

CalWA Letter

CalWA Comment 1 (Letter): Prior to presenting our "top 5" themes to convey to your agency for inclusion in this ordinance we would first like to provide some basic more general information that should be considered in your deliberation on the proposed land use regulations of this critical utility infrastructure.

1. All telecommunications facilities including wireless are defined as a "utility" under state law;

    a. No other utility is required to address "aesthetics" in nearly the same manner that is forced upon the wireless telecommunications industry.

    b. Whenever other "utilities" are required to underground (in an effort to address aesthetics and the visual impacts of the utility), the costs associated with this requirement are required to be shared by the jurisdiction and private property owners via direct assessments, and is not borne by the utility purveyor.

    c. We all rely on local government to apply regulations on similar land uses equitably and fairly. Please consider this fundamental tenant of government as you deliberate on this matter.

Staff Response to CalWA Comment 1:

The comment asserts without citation or foundation that "[a]ll telecommunications facilities including wireless are defined as a 'utility' under state law." To the extent that some wireless providers might qualify as a "telephone corporation" under state law (see staff response to AT&T Comment 8), nothing in state law requires the City or nearby property owners to pay for undergrounding of wireless telecommunications facilities or wireless telecommunications collocation facilities.

Unlike traditional utilities that serve specific properties, wireless telecommunications facilities serve customers who are mobile. Users of the facilities may not own property, live or work within the City's jurisdiction. The property owners nearest the facility may not use that particular

provider's service, and should not be required to bear the cost for the multitude of providers that seek to establish facilities and service in the City. Thus, the use of assessment districts to pay for future undergrounding is not feasible or reasonable. The costs of undergrounding should be borne by those who use the service, and the wireless providers are in the best position to pass those costs on to the users.

The comment also asserts, without foundation, that "no other utility is required to address 'aesthetics' in nearly the same manner that is forced upon the wireless telecommunications industry." On the contrary, the City requires undergrounding of utilities. Developers are required to underground utilities, and they generally pass those costs on to their customers. Further, wireless telecommunications facilities and wireless telecommunications collocations facilities can have aesthetics, noise and other nuisance impacts on the community, and thus it is reasonable and prudent for the City to mitigate those impacts.

CalWA Comment 2 (Letter):

2. President Obama in his most recent "State of the Union" address has identified the deployment of broadband wireless infrastructure as an urgent need and immediate priority for this country;

    a. By not streamlining the review and processing of **all applications** that are designed in a manner that is consistent with your more rigorous development and design standards, the City is behaving inconsistently with the President's directive.

Staff Response to CalWA Comment 2:

The ordinance balances the need for broadband infrastructure with its impact on City residents, businesses and visitors. The President's statements were of a general nature, and do not create a legal obligation for the City.

CalWA Comment 3 (Letter):

3. The unique technology employed by wireless telecommunications must be considered more prominently in the development of land use regulations;

    a. By strictly limiting the height and locations of wireless facilities (two (2) zoning districts only, Commercial and Business Park) you indirectly drive the need for many more facilities that will need to be located in the public rights of way directly adjacent to more sensitive land uses, in particular near single family residential zones.

Staff Response to CalWA Comment 3:

The comment incorrectly states the zoning districts in which wireless telecommunications facilities are allowed under the proposed ordinance. Wireless telecommunications facilities will be allowed in the Business Park-Manufacturing (BP-M), Business Park-Office Retail (BP-OR),

Commercial Retail Service (CRS), Commercial Shopping Center (CS), Commercial Recreation (CR), Utility (U) and School (SH) zoning districts with either a minor conditional use permit or a conditional use permit (see Section 9661.5 and 9661.6). An Exception is required for any location in those zones that is within 100 feet of residential zone if ground mounted (towers, poles, etc.) (see Section 9661.20). Additionally, the ordinance permits facilities in Specific Plan (SP) zones with a conditional use permit, provided the specific plan in question does not prohibit such facilities.

Overall, the proposed Ordinance opens up more locations in the City to facilities than is currently provided in the Municipal Code. With the exception of the freeway corridor and the shopping centers clustered along Kanan Road near Thousand Oaks Boulevard, most of the City is occupied by residential uses north of the freeway. Under the current Municipal Code, facilities can only be located in the BP-M zone and portions of the BP-O zone. The only place at this time where it is permissible to locate facilities north of the freeway is on school property, and there are only a few schools. It was clear in preparing the Ordinance that additional locations for facilities were needed, particularly in the northern portion of the City to ensure adequate wireless telecommunications services. Allowing them in the shopping centers only would likely not be adequate, since these centers are congregated in one discrete area along Kanan Road. Thus, the City recognized that allowing facilities within the public right-of-way (ROW) of arterial roadways on existing poles was one way to address the predominantly residential portions of the City, while excluding residential lots.

Additionally, an applicant can apply for an Exception at the time of application if they believe a provision of Division 11 would violate state or federal law, or if such provision as applied to applicant would deprive applicant of its rights under state and/or federal law; provided, however that an Exception is not available for certain locations listed in Section 9661.20.B.

CalWA Comment 4 (Letter):

4. Wireless infrastructure is becoming critical in the provision of public safety and emergency services as well as serving as the new platform of our economy and new ways to manage and provide healthcare.

    a. Certainly "aesthetics" is part of the equation; however the discussion needs to be more balanced and cannot solely focus on this one element at the expense of the functional requirements of the technology and all other considerations.

    b. Please consider the broader issues of public safety and emergency services, economic development, and future critical healthcare applications as you continue to deliberate on the land use regulations you are considering.

    c. Public safety should not be jeopardized in favor of "aesthetics".

Staff Response to CalWA Comment 4:

The comment makes broad policy statements about the importance of wireless infrastructure and asserts that public safety should not be jeopardized in favor of aesthetics, but does not offer any explanation of how these comments relate to the proposed Ordinance.

The City is not jeopardizing public safety. Wireless telecommunications facilities will be permitted within the City under the proposed Ordinance. Indeed, to the extent there is a public safety need for more facilities, the proposed Ordinance serves that purpose by opening up more locations in the City to such facilities than is currently provided in the Municipal Code. The proposed regulations are reasonable due to the City's legitimate aesthetic, noise and nuisance concerns, including the need to preserve the scenic and semi-rural character of the City and to prevent such facilities from becoming a nuisance due to lack of upkeep and maintenance.

Additionally, the ordinance does not apply, for example, to "[e]mergency medical care provider-owned and operated telecommunications facilities." See Section 9661.1.

CalWA Comment 5 (Letter):

5. Finally, there is no real understanding of how this proposed ordinance will impact existing facilities. Unless additional time is taken to better understand the impacts on the existing wireless infrastructure within the City, the proposed nonconforming regulations should be stricken.

    a. More than 25% of existing California residents no longer have a traditional hard line telephone and rely completely on the wireless network for their communications and safety.

    b. Any negative impact to the existing infrastructure needs to be carefully considered so as to not jeopardize this critical service to the businesses, residents, and emergency preparedness/first responders living/working in and serving the City of Agoura Hills.

Staff Response to CalWA Comment 5:

As detailed in Section 9661.2 of the proposed Ordinance, existing facilities must abide by the following provisions: operation and maintenance (section 9661.12), radio frequency emissions monitoring (section 9661.13), cessation of use and abandonment (section 9661.16), and removal and restoration (section 9661.17) of wireless telecommunications facilities and wireless telecommunications collocation facilities, and the prohibition of dangerous conditions or obstructions by such facilities (section 9661.14). If a condition of approval conflicts with a provision of those regulations, the condition of approval controls until the permit is amended or revoked.

The commenter assumes, without facts or analysis, that the proposed regulations would have a negative impact on wireless infrastructure.

These are reasonable regulations to ensure that such facilities do not become a public nuisance or dangerous condition, and to ensure that they are maintained and operated in a manner that is compatible with the community. With regards to nonconforming facilities, please refer to the staff response to AT&T Comment 35.

CalWA Comment 6 (Letter):

The Ordinance Should Provide a Streamlined Siting Process for Concealed Facilities that Meet the Design and Development Standards

The proposed amendment requires that all new WTFs whether they are completely stealthed or not, or whether they are modifications to existing facilities requires either a Minor Conditional Use Permit or Conditional Use Permit. It is not clear in the proposed ordinance if the Minor CUP process is discretionary or ministerial/administrative. It appears both the Minor CUP and CUP both require a public hearing and therefore both are discretionary. In order to facilitate the deployment of concealed/stealthed facilities, applications for new, freestanding concealed/stealthed WTFs and certainly building mounted concealed/stealthed WTF's should be subject to a streamlined review process and not the Minor Conditional Use Permit or Conditional Use Permit process currently proposed in the amended Ordinance.

Staff Response to CalWA Comment 6:

See staff response to AT&T Comment 1 and AT&T Comment 13.

CalWA Comment 7 (Letter):

Collocations on Existing Facilities Should Be Encouraged and Ministerial

The proposed ordinance does appear to recognize that collocations are an important and effective method for allowing the provision of wireless service that also has a minimal visual impact on the community. However, the ordinance is not clear on the process for collocation facilities and appears to be inconsistent with Government Code Section 65850.6 in that regardless of when and how the existing facility was approved, that existing WTF must also meet the current/proposed regulations and even with that must also still be issued a Minor CUP (discretionary entitlement).

Staff Response to CalWA Comment 7:

Section 9661.10 of the proposed Ordinance deals with wireless telecommunication collocation facility requirements and is consistent with Government Code Section 65860.6. Basically, Government Code Section 65860.6 provides that if a facility qualifies as a wireless telecommunications collocation facility, additional collocations are a "permitted use" not subject to further discretionary review, provided the facility complies with certain City requirements for such a facility.

For a collocation to qualify as a permitted use, Government Code Section 65860.6 states that a wireless telecommunications collocation facility must meet the following requirements:

- The facility was subject to a discretionary permit issued on or after January 1, 2007;

- Either an environmental impact report, a negative declaration or a mitigated negative declaration was certified or adopted for the project; and

- The collocation facility incorporates required mitigation measures.

Additionally, to qualify for collocation as a permitted use, the proposed collocation must not trigger the requirements of Public Resources Code Section 21166 (specifying when supplemental environmental review is required, e.g., substantial changes to the proposed project).

As indicated above, a wireless telecommunications collocation facility must be subject to a discretionary permit for it to qualify for the benefits of that Section. The proposed ordinance requires a discretionary permit if the applicant seeks to build a wireless telecommunications collocation facility where additional collocation is a permitted use.

From January 1, 2007, to the present, no wireless telecommunications facilities that were issued discretionary permits in the City were subject to one of the required environmental documents. Thus, none of those facilities qualify as a wireless telecommunications collocation facility under Government Code Section 65860.6.

See also staff response to AT&T Comment 32.

CalWA Comment 8 (Letter):

Siting on City Property Should be Encouraged and Streamlined

The proposed amendment is unclear on how proposed facilities would be processed on City Owned property, if permitted at all. Siting on City property allows the City to both generate a new revenue stream, and minimize the impact of WTFs on private property. It appears that WTF's are only permitted in Commercial and Business Park zoning designations which would preclude the opportunity to utilize City properties.

Proposed WTF's on City Property should be encouraged and afforded a streamlined process to further "incentivize" the revenue opportunity for the City and address the coverage needs of the greater community and in particular the residential neighborhoods that are under considerable pressure for additional wireless services.

Staff Response to CalWA Comment 8:

The City is not obligated under state or federal law to allow wireless telecommunications facilities to locate on City-owned property, such as City Hall. Any applicant who desires to locate on City-owned property would first have to obtain permission from the City in its proprietary capacity, by negotiating an agreement for such entry onto City property. Additionally, the applicant would have to apply for and obtain the appropriate discretionary permit required for the project. For example, City Hall is located in the Specific Plan. Wireless telecommunications facilities in the SP zones are subject to a CUP (with certain exceptions).

CalWA Comment 9 (Letter):

WTF's Should be Permitted within Residential Zoning Districts

The proposed amendment does not allow the utilization of residential zoning districts for the siting of WTF's. It is simply necessary to provide better coverage of these critical areas. Also, the City of Agoura Hills is predominantly a residential community with severe slopes and topography, future making wireless coverage difficult.

There are numerous indirect and direct benefits to locating WTF's within residential zoning districts, including the traffic demand management impact that results from more commercial activities occurring from home, thereby reducing the need for trips to the more traditional office locations. Also by improving coverage in residential zoning districts you can provide the option for a greater number of Agoura Hills residents to reduce living expenses by eliminating the need for a traditional "land line".

There are many jurisdictions throughout the State that allow this critical utility infrastructure within Residential Zoning districts and CalWA can provide a list to review with your staff. Also there are also many jurisdictions that permit WTF's on properties that are not developed residentially but are residentially zoned.

Finally, the movement of the health industry towards "e-medical" solutions for monitoring health and other critical services is becoming a reality and robust services within residential neighborhoods is critical to the functionality of these near future health industry breakthroughs.

CalWA strongly urges the City to reconsider this proposed prohibition.

Staff Response to CalWA Comment 9:

The commenter acknowledges in CalWA Comment 3 that single family residential zones are more sensitive land uses. In CalWA Comment 9, the commenter recommends that the City open up these sensitive land use areas to wireless telecommunications facilities and wireless telecommunications collocation facilities.

The City has balanced the desire to maintain attractive and orderly development in the City, including preservation of the City's scenic, semi-rural and residential character, with the needs of wireless providers to access more locations for their facilities. Rather than opening up all residentially zoned private property, the proposed Ordinance makes certain ROW locations available to these facilities within residential zones. The proposed Ordinance also permits location of a building-mounted or roof-mounted facility on a building owned in common by a homeowners' association. See also staff response to CalWA Comment 3 above.

CalWA Comment 10 (Letter):

Existing WTF's Deemed Nonconforming Should Not Be Amortized Out

The proposed amendment appears to have a significant impact on existing VVTF's that are located in many areas where they will not be permitted if this ordinance is approved

as is. It is unclear to what extent the removal or significant modifications of these existing WTF's would have on the wireless coverage of the City. Until it can be better determined how the proposed nonconforming regulations will impact critical wireless services upon the City those proposed nonconforming regulations should be removed.

Staff Response to CalWA Comment 10:

See staff response to AT&T Comment 35.

CalWA Comment 11 (Letter):

CalWA certainly understands and applauds the efforts of your agency to consider the aesthetic character of the City, while continuing to allow for the limited deployment of wireless infrastructure and the services it enables. However we also feel the City has elevated the issue of "aesthetics" above all other factors and needs to further consider additional amendments in order to strike a more balanced, equitable, and reasonable regulatory environment that will better facilitate the required deployment of this critical "utility" infrastructure to serve all our future needs.

Also the impact of this proposed ordinance on existing facilities could seriously jeopardize the public's health and safety and those sections of the proposed ordinance dealing with nonconforming facilities should be stricken at this time.

Staff Response:

Commenter's conclusion repeats previous comments. See staff response to CalWA comments 1-9.

CalWA Attachment

CalWA Comment 12 (Originally Attachment Comment No. 1): The arbitrary identification of existing facilities as "nonconforming" thereby requiring that some facilities ultimately be significantly modified or removed is not advisable. The existing critical facilities serve as the backbone to the existing wireless network and to require the redesign could result in significant impacts to the existing network and could seriously jeopardize the public's health, safety and welfare.

[Comment appears on Page 6 of 38 and refers to Sections 9661.2.A and B]

Staff Response to CalWA Comment 12 (Originally Attachment Comment No. 1):

Repeats prior comment. See staff response to CalWA Comments 5 and 10 above, and AT&T Comment 35.

CalWA Comment 13 (Originally Attachment Comment No. 2): What are the dates to be identified within these sections. This has significant upon existing facilities. This has significant upon existing facilities.

[Comment appears on Page 6 of 38 and refers to Sections 9661.2 A, B and D]

Staff Response to CalWA Comment 13 (Originally Attachment Comment No. 2):

The blanks provided in Section 9661.2 would be filled in with the effective date of the ordinance.

CalWA Comment 14 (Originally Attachment Comment No. 3): What is the purpose of this level of specificity for a discretionary planning entitlement?

[Comment appears on Page 7 of 38 and refers to Section 9661.4.C.6.]

Staff Response to CalWA Comment 14 (Originally Attachment Comment No. 3):

Section 9661.4.C.6 requires that, as part of an application for a permit, a wireless telecommunications facility applicant must provide "[a] detailed engineering plan of the proposed facility created by a qualified licensed engineer and in accordance with requirements set by the director, including a photograph and model name and number of each piece of equipment included."

This information is necessary so that the conditional use permit accurately reflects what equipment is permitted at the site, and allows staff to monitor the site for compliance with the City's ordinance.

CalWA Comment 15 (Originally Attachment Comment No. 4): Long range plans beyond 1-2 years are simply unknown.

[Comment appears on Page 8 of 38 and refers to Section 9661.C.16.]

Staff Response to CalWA Comment 15 (Originally Attachment Comment No. 4):

This comment refers to the supplemental application that applicants for wireless telecommunication facilities must complete. Applicants are required to provide a written description identifying the geographic area served by the installation, as well as a master plan. Section 9661.C.16 has been modified to address this concern. See staff response to AT&T Comment 3.

CalWA Comment 16 (Originally Attachment Comment No. 5): This is simply too arbitrary and not defined.

[Comment appears on Page 9 of 38 and refers to Section 9661.4.D.2 and .4.]

Staff Response to CalWA Comment 16 (Originally Attachment Comment No. 5):

This comment refers to that part of the proposed Ordinance which authorizes City staff to hire an independent consultant to assist with the review and evaluation of a wireless telecommunications facility or wireless telecommunications collocation facility application. Section 9661.4.D.2 and .4 provide that the independent consultant may review the technical aspects of the proposed facility and address any number of issues, including "[w]hether any requested exception is necessary to close a significant gap in coverage and is the least intrusive means of doing so," and/or review the applicant's "[t]echnical demonstration of the unavailability of alternative sites or configurations and/or coverage analysis."

The terms used in Section 9661.4.D.2 and .4 are not arbitrary or undefined. Wireless service providers are well acquainted with those terms. Those terms have been used in numerous federal court opinions deciding claims brought by wireless service providers against local and state governments pursuant to the Federal Telecommunications Act of 1996 (TCA).

Under the TCA, the city retains its land use and general police powers authority over the placement, construction and modification of wireless telecommunications facilities. However, those powers are subject to certain limitations set forth in the TCA. The TCA provides in part that:

> 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. (Section 704(a)47 U.S.C. § 332(7)(B)(i).)

A city regulation has the effect of prohibiting wireless services when it prevents a wireless service provider from closing a significant gap in its service coverage or imposes a regulation that effectively prohibits wireless facilities. The burden is on the service provider to show there is a significant gap in its service. If the provider makes the required showing, the provider must "show that the manner in which it proposes to fill the significant gap in services is the least intrusive on the values that the denial sought to serve." *MetroPCS v. City and County of San Francisco,* 400 F.3d 715, 734 (9th Cir. 2005). This requires an inquiry into alternative facilities or site locations.

If a wireless service provider requests an Exception to Division 11 based upon a federal law claim that it has a significant gap in its service, the City has a right to evaluate and rebut such a claim. Because of the technical nature of such an analysis, City staff will require the assistance of an independent, qualified consultant who is trained in the technical aspects of such facilities.

Thus, the proposed Ordinance incorporates terms used by federal courts, with the intent that an independent consultant assist City staff in evaluating whether a permit should be granted to prevent the City from running afoul of federal law. For example, the consultant would review whether a requested exception is necessary to close a significant gap in service and whether the wireless service provider is using the least intrusive means of filling the gap. The consultant might also be called upon to evaluate and analyze any technical demonstration put forth by the provider regarding the unavailability of alternative sites or configurations, and review any coverage analysis presented by the provider, along with the other tasks listed in Section 9661.4.D.

CalWA Comment 17 (Attachment No. 6): How will this be confirmed? Arbitrary and proprietary. There are economic considerations associated with the development of a site that make in infeasible. This is not a technical issue it's a business issue.

[Comment appears on Page 9 of 38 and refers to Section 9661.4.D.7.]

Staff Response to CalWA Comment 17 (Attachment No. 6):

This comment refers to that part of the proposed ordinance which authorizes City staff to hire an independent consultant to assist with the review and evaluation of a wireless telecommunications facility or wireless telecommunications collocation facility application. Section 9661.4.D.7 adds that the independent consultant may be used to review "[t]he viability of alternative sites and alternative designs."

As discussed in the staff response to CalWA Comment 16, under federal law, if a wireless provider claims that it has a significant gap in its service, the provider must show that the manner in which it proposes to fill the significant gap in service is the least intrusive on the values that denial of the project would otherwise serve. The City has the right to rebut such a claim by evaluating the viability of alternative sites and alternative designs to those proposed by the provider. This is not simply a business issue, and if the provider puts its proprietary information at issue by claiming that it needs an Exception to a provision of Division 11, City staff will need the assistance of an independent consultant to research and evaluate those alternatives.

CalWA Comment 18 (Attachment No. 7): CalWA strongly recommends that wireless communications facilities that can be stealthed should also be permitted in residential zones, particularly multifamily residential zones and those residential zones that do not have residential land uses existing.

[Comment appears on Page 10 of 38 at the beginning of Section 9661.5]

Staff Response to CalWA Comment 18 (Attachment No. 7):

There are not many multifamily residential zones in the City of Agoura Hills. Those multifamily residential zones that do exist in the City are mostly near the business and commercial zones – the zones in which facilities would be permitted as a conditional use. Adding multifamily residential zones would not significantly increase locations available to wireless telecommunications facilities and wireless telecommunications collocation facilities.

With regards to those residential zones that are undeveloped, allowing such facilities to locate in those areas would interfere with the planned development of those areas.

CalWA Comment 19 (Attachment No. 8): Clarification. If you are collocating on an existing faux tree in this zoning district you are required to gain a CUP? If so this may be

inconsistent State Law on collocations pursuant to "Government Code Section 65850.6 Collocation Facilities."

[Comment appears on Page 10 of 38 and refers to 9661.5 A 1.b., 2.a., 3.a.]

Staff Response to CalWA Comment 19 (Attachment No. 8):

A wireless telecommunications facility, such as an existing faux tree, is not automatically entitled to collocation as a right. A "wireless telecommunications collocation facility" is a wireless telecommunications facility specifically designed for subsequent collocation as a permitted use and must meet the requirements set forth in Section 9661.10 to be eligible for such collocation. Section 9661.10 of the proposed Ordinance is consistent with Government Code Section 65860.6, and addresses the concerns raised by this comment.

See also staff response to CalWA Comment 7

CalWA Comment 20 (Attachment No. 9): The inclusion of strict sizing requirements is not recommended due to changing technologies and the variations that exist in current equipment sizes. Remove and simply require that equipment must be screened.

[Comment appears on Page 21 of 38 and refers to Section 9661.6.B.13.b.]

Staff Response to CalWA Comment 20 (Attachment No. 9):

This comment relates to design and development standards for facilities within the City's ROW. Maximum sizing of above-ground accessory equipment is set forth to reduce the impact of such equipment on the ROW. New above-ground structures in the right-of-way have aesthetic impacts, impede pedestrian access through the right-of-way, and interfere with maintenance of the right-of-way, and for these and other reasons, are disfavored.

See also staff response to AT&T Comment 10.

CalWA Comment 21 (Attachment No. 10): Clarification required. For those facilities that were approved post January 1, 2007 via discretionary permit with the necessary environmental documentation, they too must comply in every way with the site location and development standards of this ordinance? If so this would not comply with the cited Government Code Section 65850.6.

[Comment appears on Page 27 of 38 and refers to 9661.10 A.]

Staff Response to CalWA Comment 21 (Attachment No. 10):

No such wireless facilities exist in the City that were both (1) approved by a discretionary permit process after January 1, 2007, and (2) were subject to an environmental impact report, negative declaration, or mitigated negative declaration. Thus, no current facilities in the City qualify for collocation as a permitted use pursuant to Government Code Section 65850.6.

See also staff response to AT&T Comment 32.

CalWA Comment No. 22 (Attachment No. 11): Does the City of Agoura Hills know how many existing wireless communications facilities will be impacted by the implementation of this ordinance in terms of those facilities that will now be classified as "Nonconforming Facilities"?

[Comment appears on Page 36 of 38 and refers to 9711. A]

Staff Response to CalWA Comment No. 22 (Attachment No. 11):

City staff has not performed that level of study and we do not know how many will be nonconforming. There are currently twelve sites in the City, consisting of twenty wireless telecommunications facilities that have been built to date.

Nonconforming facilities have ten years to be brought into compliance with the proposed Ordinance, unless the owner seeks to expand or modify the facility, intensify the use, or make some other change in a conditional use, in which case the owner must comply with all applicable provisions of the Agoura Hills Municipal Code at such time.

To help limit the number of existing facilities that might be considered nonconforming, staff made changes to part of Section 9661.5.B.5 as follows:

5. Building-Mounted and Roof-Mounted Facilities. Building-mounted and roof-mounted facilities shall be designed and constructed to be ~~fully~~ camouflaged, concealed or screened in a manner compatible with the existing architecture of the building the wireless telecommunications facility or the wireless telecommunications collocation facility is mounted to in color, texture and type of material.

a. Each building-mounted facility shall be ~~fully~~ incorporated into the design elements of the building architecture.

See also staff response to AT&T Comment 35.