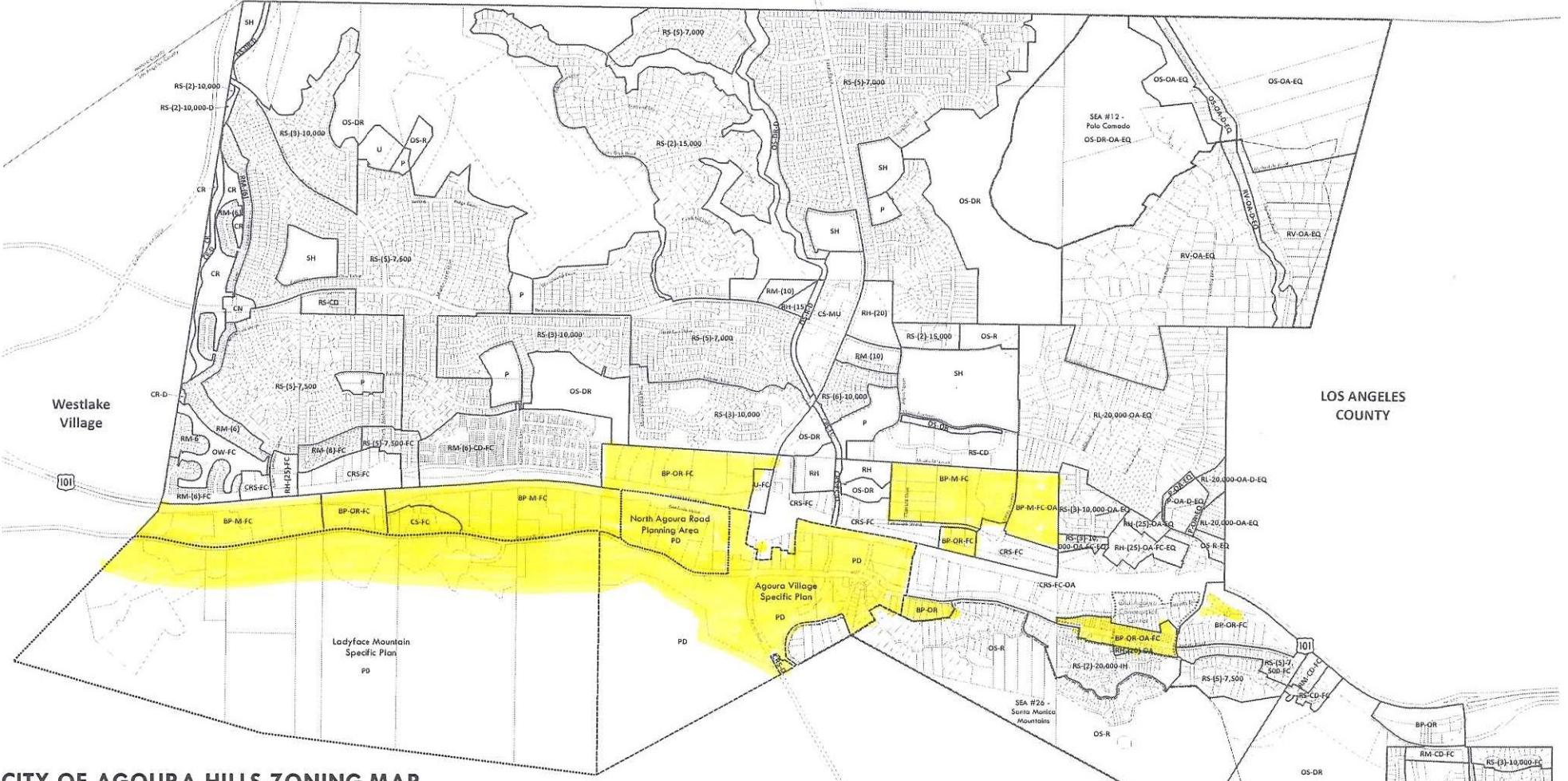


VENTURA COUNTY

Santa Monica Mountains National Recreation Area



CITY OF AGOURA HILLS ZONING MAP

- Description of Basic Districts**
- RV - Very Low Density Residential
 - RL - Low Density Residential
 - RS - Single Family Residential
 - RM - Medium Density Residential
 - RH - High Density Residential
 - CN - Commercial Neighborhood
 - CS - Commercial Shopping Center
 - CRS - Commercial Retail Service
 - CS-MU - Commercial Shopping Center-Mixed Use
 - CR - Commercial Recreation
 - BP-OR - Business Park-Office Retail
 - BP-M - Business Park-Manufacturing

- Description of Overlay Districts**
- D - Drainage Way, Floodplain, Watercourse
 - FC - Freeway Corridor
 - QA - Old Agoura Design
 - IH - Infill Hills Design
 - CD - Cluster Development
 - EQ - Equestrian

- Other Additive Symbols**
- The numerical suffix after the basic residential district (RL, RS, RM, and RH) indicates the density per acre, i.e., 10,000 sq ft minimum lot size, four units per gross acre
- SEA (Significant Ecological Area) #12 - Palo Camado
 - SEA (Significant Ecological Area) #26 - Santa Monica Mountains
 - Old Agoura Commercial Center

- Description of Special Districts**
- P - Local Park
 - PD - Planned Development
 - SH - School
 - U - Utility
 - OW - Open Water
 - OS-R - Open Space - Restricted
 - OS-DR - Open Space-Deed Restricted

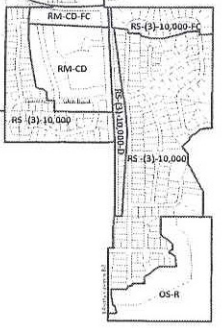


Currently Allowed Locations Wireless Telecommunications Facilities

LOS ANGELES COUNTY

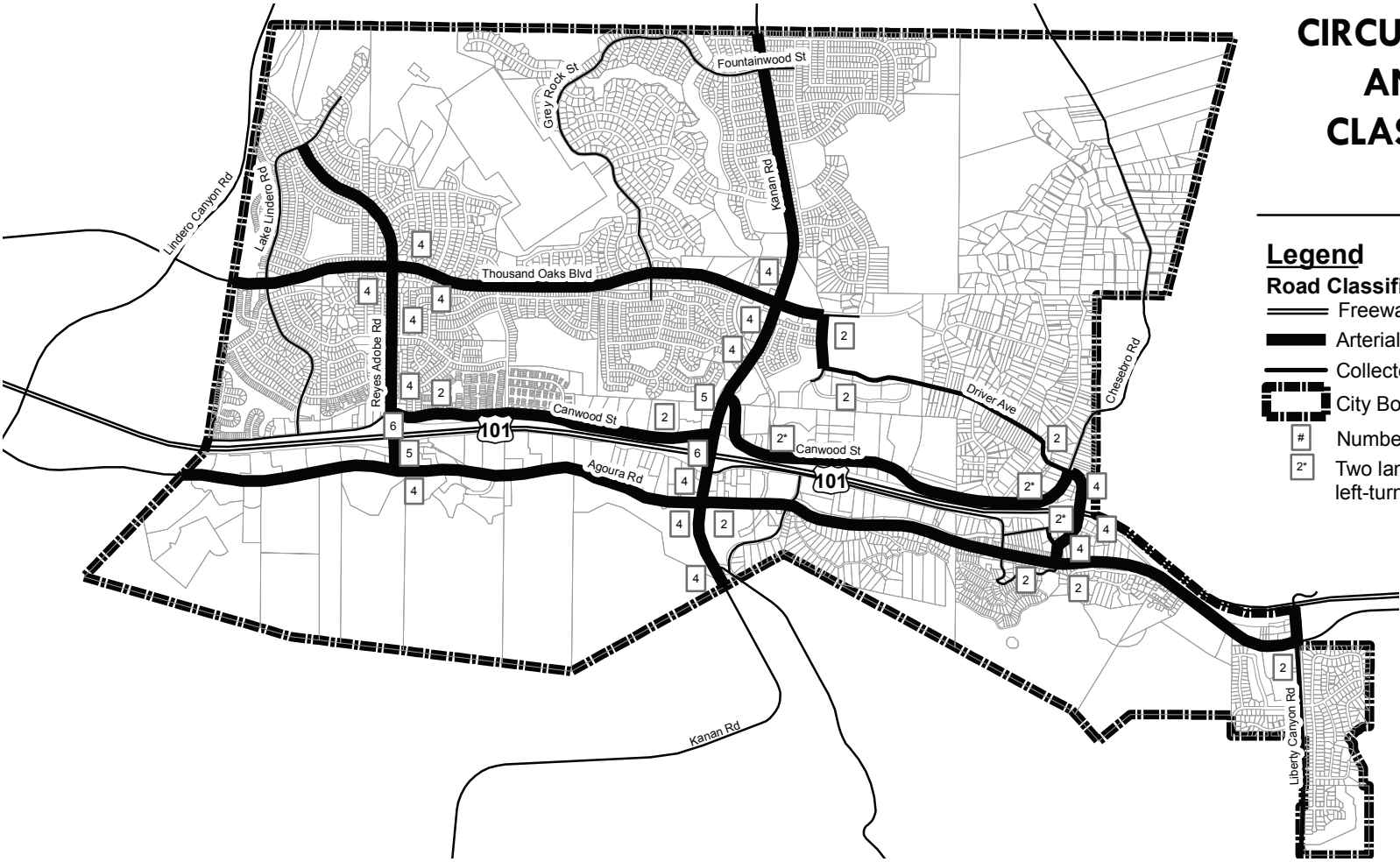
Santa Monica Mountains National Recreation Area

LOS ANGELES



**CITY of AGOURA HILLS
General Plan Update**

**CIRCULATION PLAN
AND STREET
CLASSIFICATION**



Legend

Road Classification

- Freeway
- Arterial
- Collector
- City Boundary
- # Number of Lanes
- 2* Two lanes plus continuous left-turn lanes



Source: Fehr & Peers, 2009.

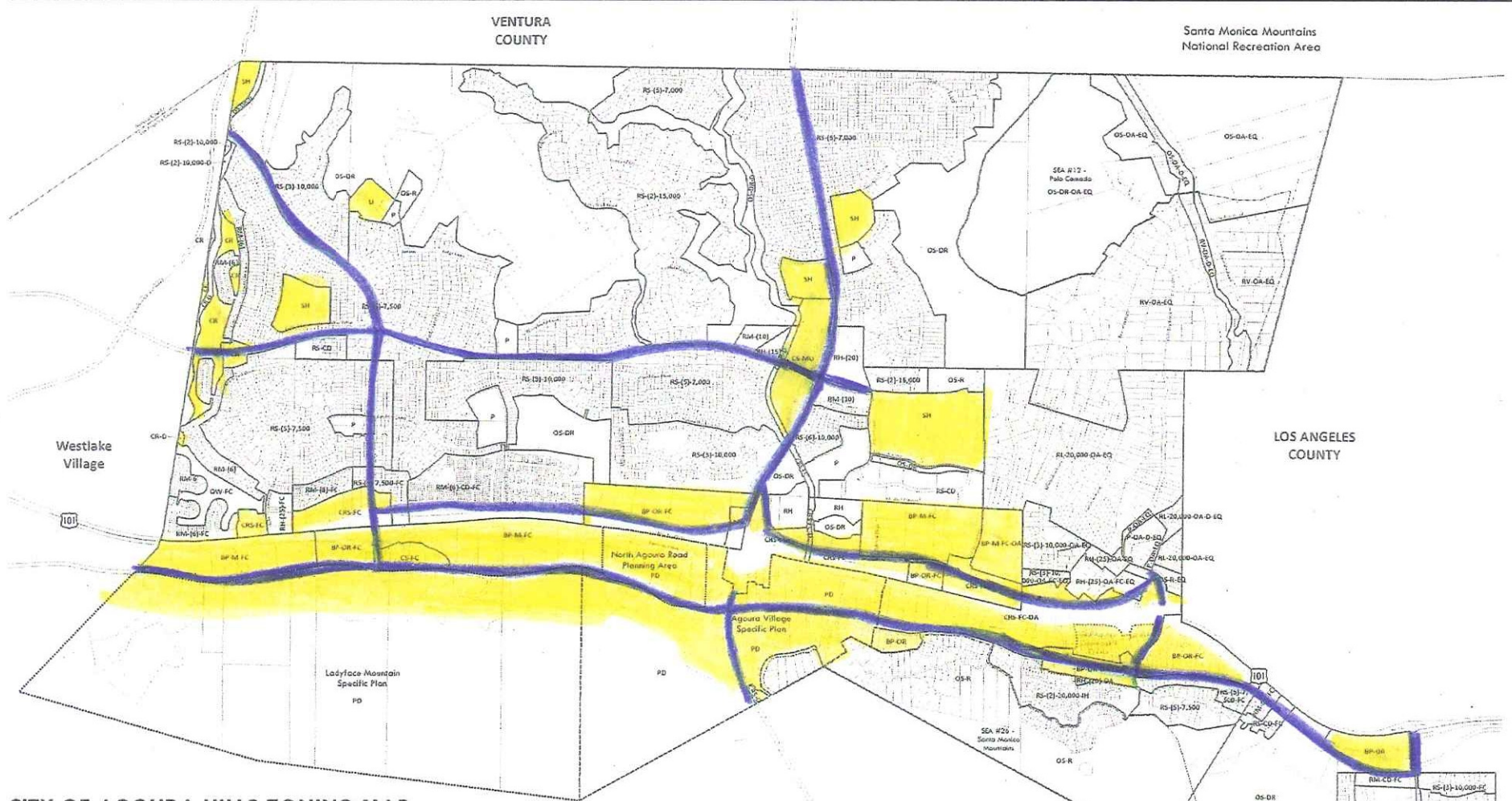
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VENTURA COUNTY

Santa Monica Mountains National Recreation Area

LOS ANGELES COUNTY



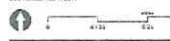
CITY OF AGOURA HILLS ZONING MAP

- Description of Basic Districts**
- RV - Very Low Density Residential
 - RL - Low Density Residential
 - RS - Single Family Residential
 - RM - Medium Density Residential
 - RH - High Density Residential
 - CR - Commercial Neighborhood
 - CS - Commercial Shopping Center
 - CBS - Commercial Retail Service
 - CS-MU - Commercial Shopping Center-Mixed Use
 - CP - Commercial Recreational
 - BP-OR - Business Park-Office Retail
 - BP-M - Business Park-Manufacturing

- Description of Overlay Districts**
- O - Drainage Way, Floodplain, Watercourse
 - FC - Freeway Corridor
 - CA - Old Agoura District
 - SH - Shell Hill Overlay
 - CD - Cluster Development
 - ED - Elevation

- Description of Special Districts**
- P - Local Park
 - PD - Planned Development
 - SH - School
 - U - Utility
 - OW - Open Water
 - OS-R - Open Space - Residential
 - OS-DR - Open Space-Drainage Restricted
- Other Additive Symbols**
- SEA #12 - Significant Ecological Area #12 - Palo Verde
 - SEA #20 - Significant Ecological Area #20 - Santa Monica Mountains
 - CA - Old Agoura Commercial Center
- The numerical suffix in brackets when affixed to the RL, RS, RM, and RH districts indicates the density per acre, i.e., 10,000 sq ft minimum lot size, four units per gross acre.

- Description of Special Districts**
- P - Local Park
 - PD - Planned Development
 - SH - School
 - U - Utility
 - OW - Open Water
 - OS-R - Open Space - Residential
 - OS-DR - Open Space-Drainage Restricted



Santa Monica Mountains National Recreation Area

LOS ANGELES COUNTY

- Arterial ROW
- Parcels

Tiers I and II Locations Wireless Telecommunications Facilities Ordinance



Wireless Telecommunications Facilities Ordinance

Final Initial Study/Negative Declaration

Prepared by:

City of Agoura Hills
Planning and Community Development Department
30001 Ladyface Court
Agoura Hills, CA 91301

Contact:
Allison Cook, Principal Planner
(805) 597-7310

June 21, 2011

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INTRODUCTION

This Initial Study/Negative Declaration (IS/ND) addresses the potential environmental effects from a Zoning Ordinance Amendment (ZOA) to establish standards and regulations, along with permitting requirements, applicable to the installation and modification of wireless telecommunications facilities in the City of Agoura Hills.

LEGAL AUTHORITY

This Initial Study/Negative Declaration has been prepared in accordance with the California Environmental Quality Act (CEQA) Guidelines, the City's CEQA Guidelines, and relevant provisions of CEQA of 1970, as amended.

Initial Study. Section 15063(a) of the CEQA Guidelines provides that an Initial Study is the proper preliminary method of analyzing the potential environmental consequences of a project. The purposes of the Initial Study set forth in Section 15063(c) include in part:

- (1) To provide the Lead Agency with the necessary information to decide whether to prepare an Environmental Impact Report (EIR), a Negative Declaration (ND), or a Mitigated Negative Declaration (MND);
- (2) To enable the Lead Agency to modify a project, mitigating adverse impacts, thus avoiding the need to prepare an EIR; and
- (3) To provide documentation of the factual basis for the finding in a Negative Declaration, based on the record as a whole, that the project will not have a significant effect on the environment.

Negative Declaration or Mitigated Negative Declaration. Section 15070 of the CEQA Guidelines states that a public agency shall prepare a Negative Declaration or Mitigated Negative Declaration for a project subject to CEQA when:

- (1) The Initial Study shows that there is no substantial evidence, in light of the whole record before the agency, that the project may have a significant effect on the environment; or
- (2) The Initial Study identifies a potentially significant effect on the environment; but
 - (b) Revisions in the project plans or proposals made by, or agreed to by, the applicant before a proposed Mitigated Negative Declaration and Initial Study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur; and
 - (c) There is no substantial evidence, in light of the whole record before the agency, that the project as revised may have a significant effect on the environment.

EVALUATION OF ENVIRONMENTAL IMPACTS

(Requirements specified in CEQA Guidelines, Appendix G)

The following sections of this IS/ND provide discussions of the possible environmental effects of the proposed project for specific issue areas that have been identified in the CEQA Initial Study Checklist. For each issue area, potential effects are discussed and evaluated.

A "significant effect" is defined by Section 15382 of the CEQA Guidelines as "a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by a project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance." According to the CEQA Guidelines, "an economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant."

The following information applies to the Initial Study Checklist:

- 1) A brief explanation is required for all answers except "No Impact" answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. A "No Impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g. the project falls outside a fault rupture zone). A "No Impact"

answer should be explained where it is based on project-specific factors as well as general standards (e.g. the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis).

- 2) All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.
- 3) Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. "Potentially Significant Impact" is appropriate if there is substantial evidence that an effect may be significant. If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.
- 4) "Negative Declaration: Potentially Significant Unless Mitigation Incorporated" applies where the incorporation of mitigation measures has reduced an effect from "Potentially Significant Impact" to a "Less Significant Impact." The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level.
- 5) Earlier analysis may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration. Section 15063 (c) (3) (D). In this case, a brief discussion should identify the following:
 - (a) Earlier Analysis Used. Identify and state where they are available for review.
 - (b) Impacts Adequately Addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.
 - (c) Mitigation Measures. For effects that are "Less than Significant with Mitigation Measures Incorporated," describe the mitigation measures that were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.
- 6) Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g. general plans, zoning ordinances). Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages where the statement is substantiated.
- 7) Supporting Information Sources: A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.
- 8) This is only a suggested form, and lead agencies are free to use different formats; however, lead agencies should normally address the questions from this checklist that are relevant to a project's environmental effects in whatever format is selected.
- 9) The analysis of each issue should identify: (a) the significance criteria or threshold used to evaluate each question; and (b) the mitigation measure identified, if any, to reduce the impact to less than significance.

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED

The proposed project may have an impact on the environmental factors listed below, and would have at least one "Potentially Significant Impact" on the environment as indicated by the checklist on the following pages.

Aesthetics	Greenhouse Gases	Population/Housing
Agricultural Resources	Hazards & Hazardous Materials	Public Services
Air Quality	Hydrology/Water Quality	Recreation
Biological Resources	Land Use/Planning	Transportation/Traffic
Cultural Resources	Mineral Resources	Utilities/Service Systems
Geology/Soils	Noise	Mandatory Findings of Significance

DETERMINATION

On the basis of this initial evaluation:

I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.	X
I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.	
I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.	
I find that the proposed project MAY have a "potential significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect (1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and (2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.	
I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards and (b) have been avoided or mitigated pursuant to an earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.	

Report Preparer:

Signature: _____

Name: Allison Cook

Title: Principal Planner
City of Agoura Hills

Date: April 27, 2011

Issues and Supporting Information	Potentially Significant Impact	Less Than Significant Impact with Mitigation Measures	Less Than Significant Impact	No Impact
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(1) LAND USE AND PLANNING. Would the project:

a) Physically divide an established community?				X
b) Conflict with an applicable land use plan, policy or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?				X
c) Conflict with any applicable habitat conservation plan or natural communities conservation plan?				X

DISCUSSION:

- a) The project is an Ordinance that applies Citywide, and is therefore not a physical development capable of dividing an established community. As such, the project would result in **no impact**. Wireless telecommunications facilities (facilities) are currently allowed to be located in the City. The Ordinance would continue to allow the facilities, and would establish certain standards and requirements for their location. It is currently unknown where or when such facilities might be proposed, thus each individual proposal for a facility would be analyzed per CEQA, separate from this IS/ND.
- b) The Ordinance would be consistent with the General Plan, which calls for access to state of the art wireless technology resources and adequate coverage, while ensuring the appropriate design and location of wireless facilities. It is also consistent with General Plan policies to minimize visual impacts on the surrounding environment and neighborhood, and for facilities to be as unobtrusive as possible. (Goal U-6, Policies U-6.1 through U-6.3).The Ordinance amends the Municipal Code (Title IX) to establish appropriate standards and regulations for facilities, the facilities being already allowed in the Municipal Code in certain zoning districts of the City. The Ordinance provides that the facilities may not be located in locations prohibited by a Specific Plan. As noted above in Item a), it is speculative where and when new facilities will be proposed and each proposed facility would be analyzed per CEQA as an individual project application is proposed. Therefore, there would be **no impact** from the Ordinance adoption.
- c) There are no habitat conservation plans or natural communities conservation plans applicable to the City, or adjacent to the City, so the project would result in **no impact**.

Issues and Supporting Information	Potentially Significant Impact	Less Than Significant Impact with Mitigation Measures	Less Than Significant Impact	No Impact
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(2) BIOLOGICAL RESOURCES. Would the project:

a) Have an adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U. S. Fish and Wildlife Service?				X
b) Have an adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or U. S. Wildlife Service?				X

c) Have an adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?				X
d) Interfere with the movement of any resident or migratory fish or wildlife species or with established native resident migratory wildlife corridors, or impede the use of native wildlife nursery sites?				X
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?				X
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Conservation Community Plan, other approved local, regional, or state habitat conservation plan?				X
g) Result in damage to, loss of, or removal of native oak trees or other locally identified specimen trees of significance?				X

DISCUSSION:

- a) The project consists of an Ordinance, and therefore is not a physical development that could adversely affect sensitive biological species. Therefore, there would be **no impact**. It is unknown where or when such facilities might be proposed, and any proposal to construct a facility would be analyzed separately under CEQA as part of project specific application and environmental review, which would need to consider the specific site's habitat further.
- b), c) Refer to the discussion above in Item a). The project is not a physical development that could adversely affect wetlands, riparian habitat or other sensitive natural communities regulated by the California Department of Fish and Game or the U.S. Fish and Wildlife Service or the Army Corps of Engineers. Therefore, there would be **no impact**. Any future proposals to develop facilities would be separate applications and projects under CEQA, and would undergo environmental review, including considering the site's particular habitat, as a specific proposal comes forward for review. Currently, it is unknown where or when such facilities might be proposed.
- d) Refer to the discussion in Item a) above. Because the project is not a physical development, it does not have the potential to interfere with the movement of fish or wildlife. Any future proposal for a facility would be a separate project under CEQA, and would undergo environmental review, including considering wildlife movement, as a specific proposal comes forward for review. Therefore, there would be **no impact**.
- e), g) Since the project is not a proposal for a physical development in the City, there would be no impacts to oak trees in the area. The Ordinance does not alter existing ordinances that govern the protection of oak trees and includes provisions to facilitate the protection and preservation of trees. Any future proposals for facilities, the timing and location of which are speculative at this time, would be a separate application and project under CEQA, and at that time, oak trees would be considered. However, the Ordinance does not adversely affect the oak trees, and there would be **no impact**.
- f) There are no habitat conservation plans (HCPs) or Natural Communities Conservation Plans (NCCPs) or other conservation plans in or near the City, so there would be **no impact**.

Issues and Supporting Information	Potentially Significant Impact	Less Than Significant Impact with Mitigation Measures	Less Than Significant Impact	No Impact
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(3) **AIR QUALITY.** Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:

a) Conflict with or obstruct implementation of the applicable air quality plan?				X
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?				X
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is in non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?				X
d) Expose sensitive receptors to substantial pollutant concentrations?				X
e) Create objectionable odors affecting a substantial number of people?				X

DISCUSSION:

- a)-c) The City of Agoura Hills is located within the South Coast Air Basin, and is governed by the South Coast Air Quality Management District (SCAQMD). Since the project is not a proposal for a physical development, there would be no impacts to air quality as a result of the Ordinance adoption. In any case, according to the Air Quality Management Plan (AQMP), a project must conform to the local General Plan and must not result in or contribute to an exceedance of the City's projected population growth forecast. As described in the discussion of Item (1) LAND USE AND PLANNING of this document, the Ordinance is consistent with the General Plan's goals and policies, and does not propose a type of development that was not anticipated in the General Plan. The location and timing of such future facilities are speculative. Thus, as each facility application is submitted and reviewed by the City, the project would be analyzed per CEQA, separate from this document, regarding potential air quality impacts from the particular project. Therefore, there would be **no impact** from adoption of the Ordinance. It should be noted, nonetheless, that wireless telecommunications facilities do not normally contribute substantially to pollutant concentrations.
- d)-e) The Ordinance does not include a physical development that could result in air quality emissions. Therefore, there would be **no impact** from the Ordinance adoption. It is unknown where and when such facilities might be proposed. As individual facilities projects are proposed, they would be assessed separately from this document as part of environmental review, including being evaluated for potential air quality impacts, such as exposing sensitive receptors to substantial pollution concentrations and creating objectionable odors. Also, as stated above in Items a)-c), it should be noted that wireless telecommunications facilities do not normally contribute substantially to pollutant concentrations nor do they create objectionable odors.

Issues and Supporting Information	Potentially Significant Impact	Less Than Significant Impact with Mitigation Measures	Less Than Significant Impact	No Impact
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(4) CULTURAL RESOURCES. Would the project:

a) Cause an adverse change in the significance of a historical resource as defined in Section 15064.5?				X
b) Cause an adverse change in the significance of an archaeological resource pursuant to Section 15064.5?				X
c) Directly or indirectly destroy a unique paleontological resource or site, or unique geologic feature?				X
d) Disturb any human remains, including those interred outside of formal cemeteries?				X
e) Result in physical disruption of an identified sacred place or other ethnographically documented location of significance to native Californians?				X

DISCUSSION:

- a)-e) The project is an Ordinance, not a physical development capable of impacting cultural resources that may exist on or under the ground. It is unknown at this time where and when such facilities might be proposed. Any proposal to construct a facility would be analyzed separately under CEQA as part of project specific environmental review as a proposal is submitted to the City, which would need to consider potential site specific cultural resources. The Ordinance does not contain any regulations, requirements or standards that would prevent the proper treatment of cultural resources, if found, under CEQA. Therefore, the Ordinance adoption would result in **no impacts**.

Issues and Supporting Information	Potentially Significant Impact	Less Than Significant Impact with Mitigation Measures	Less Than Significant Impact	No Impact
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(5) **GEOLOGY AND SOILS.** Would the project:

a) Expose people or structures to potential adverse effects, including the risk of loss, injury or death involving:				X
(i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area, or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.				X
(ii) Strong seismic ground shaking?				X
(iii) Seismic-related ground failure, including liquefaction?				X
(iv) Landslides?				X
b) Result in substantial soil erosion or the loss of topsoil?				X
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?				X
d) Be located on expansive soil, as defined in Table 18-a-B of the Uniform Building Code (1994), creating substantial risks to life or property?				X
e) Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of waste water?				X

DISCUSSION:

- a)-e) Per the City's General Plan and Program EIR, there are no active or inactive faults within the City limits, and so potential hazard from fault rupture is remote. There are several active and/or potentially active faults in the surrounding region, however, that could produce ground shaking in the area. Other geologic or soil conditions are specific to individual sites. Nonetheless, the Ordinance is not a physical development with the potential for causing adverse impacts in the area of geology and soils. None of the proposed regulations, standards or requirements of the Ordinance would create general geologic or soils safety concerns. The timing and location of future facilities is speculative. Any proposal to construct a facility would need to be analyzed separately under CEQA as part of project specific environmental review. The site specific geologic and soils conditions and the type of facility would be assessed at that time for the actual development project. Therefore, the Ordinance adoption would result in **no impact**.

Issues and Supporting Information	Potentially Significant Impact	Less Than Significant Impact with Mitigation Measures	Less Than Significant Impact	No Impact
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(6) GREENHOUSE GASES. Would the project:

a) Generate greenhouse gas emissions, either directly or indirectly?				X
b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?				X

DISCUSSION:

- a)-b) The project is an Ordinance, and not a physical development capable of emitting greenhouse gases. It is unknown when or where facilities might be proposed in the future. Any proposal submitted to construct a facility would be analyzed separately under CEQA, and the potential for greenhouse gas emissions evaluated, as part of project specific environmental review. The Ordinance does not contain any provisions that are in conflict with plans or policies to reduce greenhouse gases, and the Ordinance does not conflict with the goals and policies of the General Plan to reduce emissions within the City boundaries to help mitigate the impact of climate change (Goal NR-10, Policies NR-10.1 – 10.3).

Issues and Supporting Information	Potentially Significant Impact	Less Than Significant Impact with Mitigation Measures	Less Than Significant Impact	No Impact
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(7) HAZARDS AND HAZARDOUS MATERIALS. Would the project:

a) Create a hazard to the public or the environment through the routine transport, use or disposal of hazardous materials?				X
b) Create a hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the likely release of hazardous materials into the environment?				X
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?				X
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?				X
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?				X
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?				X
g) Impair implementation of, or physically interfere with an adopted emergency response plan or emergency evacuation plan?				X

h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wild lands?				X
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DISCUSSION:

- a)-c) Because it is not a physical development proposal, the project would not result in the use of hazardous materials, nor their storage, disposal or transport. The project, being an Ordinance adoption, would also not cause an accidental release or upset of such materials. Any future facility proposal would be considered for potential hazardous effects as a separate project under CEQA, and would need to undergo separate project and environmental review per CEQA, aside from this IS/ND, where these issues would be further analyzed. Currently, the location and timing of such proposals is speculative. Therefore, the Ordinance adoption would result in **no impact**.

The Ordinance has been prepared in light of the following Federal Telecommunications Act requirement:

No state or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's [Federal Communications Commission] regulations concerning such emissions. 47 U.S.C. 332©(7)(B)(iv)

The Ordinance requires that a technical report assessing the expected radio frequency emissions from a given facility be submitted as part of the application for approval. The radio frequency emissions must be found to be within the acceptable range pursuant to the Federal Communication Commission (FCC) standards prior to the City approving a project. The Ordinance includes measures to ensure that the emissions levels remain within FCC standards. It also includes measures to ensure that potential hazards from the facilities are minimized through design and development requirements, and includes provisions to ensure they are properly maintained.

- d) Because it is not a physical development proposal, the Ordinance adoption would not result in a development located on a hazardous materials site compiled per Government Code Section 65962.5. As noted in the prior discussion items, any future proposed facility would be evaluated for potentially significant hazards as part of an individual application review and CEQA process, separate from this IS/ND. Therefore, the project would result in **no impact**.
- e)-f) There are no airports or airstrips within or in the vicinity of the City. Therefore, the Ordinance would result in **no impact**.
- g) The Ordinance, not being a physical development, would not interfere with an adopted emergency response plan or evacuation plan. The provisions of the Ordinance would not conflict with any emergency response or evacuation plan. Therefore, the project would result in **no impact**. In any case, the Ordinance contains provisions stipulating that no dangerous conditions or obstructions are allowed relating to wireless telecommunications facilities, including those affecting pedestrian and vehicular access. It is unknown where and when facilities might be proposed. As specific facility applications are proposed, they would be analyzed under separate CEQA review to ensure that they do not conflict with such plans. Additionally, the Ordinance specifically permits the use of "cells on wheels" during declared emergencies, facilitating communications during implementation of an emergency plan.
- h) The project does not include a specific physical development proposal. The timing and location of any future facility is speculative. Any future facility proposal would be considered a separate project under CEQA, and would need to undergo separate project and environmental review. Therefore, the project would result in **no impacts**.

Issues and Supporting Information	Potentially Significant Impact	Less Than Significant Impact with Mitigation Measures	Less Than Significant Impact	No Impact
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(8) HYDROLOGY AND WATER QUALITY. Would the project:

a) Violate any water quality standards or waste discharge requirements?				X
b) Degrade groundwater supplies or interfere with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?				X
c) Alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off site?				X
d) Create or contribute runoff which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?				X
e) Otherwise degrade water quality?				X
f) Place housing within a 100-year floodplain, as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?				X
g) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?				X
h) Expose people or structures to risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?				X
i) Inundation by seiche, tsunami, or mudflow?				X

DISCUSSION:

- a)-e), i) The Ordinance is not a physical development with the potential for causing adverse impacts in the areas of hydrology and water quality. Additionally, the Ordinance does not contain provisions that are in conflict with ensuring adequate hydrology resources and water quality in the City. As noted previously in this document, it is unknown where or when facilities might be proposed, and any proposal to construct a facility would undergo separate project and environmental review per CEQA, with any hydrology and water quality concerns assessed at that time. Therefore the project would result in **no impact**.
- f)-h) The Ordinance adoption is not a physical development that could cause flood concerns. None of the proposed provisions in the Ordinance would conflict with providing adequate flood protection in the City. Each specific future facility proposal would be considered a separate project under CEQA that would undergo separate environmental review, including flood impact analysis. The timing and location of such future proposals is speculative. Therefore, the Ordinance adoption would result in **no impact**.

Issues and Supporting Information	Potentially Significant Impact	Less Than Significant Impact with Mitigation Measures	Less Than Significant Impact	No Impact
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(9) AESTHETICS. Would the project:

a) Have an adverse affect on a scenic vista?				X
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b) Damage scenic resources including, but not limited to trees, rock outcroppings, and historic buildings within a state scenic highway?				X
c) Degrade the existing visual character or quality of the project site and its surroundings?				X
d) Create a new source of light or glare which would adversely affect day or nighttime views in the area?				X
e) Impact any existing streetscape or public space which has been designed to provide areas of public assembly and congregation?				X

DISCUSSION:

- a)-e) The Ordinance contains several provisions to ensure that facilities are compatible with the character of Agoura Hills and that address the issue of aesthetics. In particular, these include: design and development standards (size, height, color, materials, blending methods, lighting, signage); monitoring and maintenance requirements; and location requirements. In particular, the Ordinance requires that no lighting be allowed related to a wireless telecommunications facility unless specifically required by a government agency, such as the Federal Aviation Administration. In any case, the project consists of an Ordinance, and is not a physical development proposal. The project does not involve any direct physical changes to the environment. For existing facilities, the Ordinance provides maintenance standards to ensure that existing facilities are maintained to avoid an aesthetic impact on the community. The Ordinance also has provisions for removal of abandoned facilities for the same reason. As such, it would result in **no impacts** to aesthetics with regard to scenic vistas, scenic resources, degrading the existing visual character, creating new sources of light or glare, or affecting areas of public assembly and congregation. The timing, extent and location of future facilities are speculative. Individual applications for facilities would be reviewed and assessed for CEQA consistency as they are submitted for review, separate from this IS/ND. At that time, the specific details of the facility being proposed and the physical changes would be assessed for aesthetic impacts per CEQA and also assessed for compliance with the provisions of the Ordinance.

Issues and Supporting Information	Potentially Significant Impact	Less Than Significant Impact with Mitigation Measures	Less Than Significant Impact	No Impact
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(10) **NOISE.** Would the project:

a) Exposure of persons to, or generation of, noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?				X
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?				X
c) A permanent increase in ambient noise levels in the project vicinity above levels existing without the project?				X
d) An increase in ambient noise levels (including temporary or periodic) in the project vicinity above levels existing without the project?				X
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?				X
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?				X

DISCUSSION:

- a),c),d) The project would not result in any physical development. It is unknown where or when facilities might be proposed, and any proposal for a facility in the City would be analyzed separately under CEQA as part of project specific environmental review. The site specific noise conditions and the type of facility would be assessed, as necessary, at that time. Therefore, the Ordinance adoption would result in **no impact**. In any case, the proposed Ordinance does not include any provisions that would conflict with the noise standards and requirements of the City, as outlined in the General Plan and Municipal Code. Rather, the Ordinance requires the preparation of a noise study as part of the facility application. It also contains specific noise standards and requirements, consistent with the General Plan and Municipal Code noise provisions, to minimize noise impacts from the facilities, including accessory equipment.
- b) Because it is not a physical development, the proposed project would not result in any impacts related to excessive groundborne vibration. Future development is speculative. As specific facilities are proposed, along with information about construction, these projects would need to undergo separate CEQA review, including analysis of this issue area. Therefore, there would be **no impact** from the Ordinance adoption.
- e), f) The City is not located within the vicinity of an airport or private airstrip, and would not be affected by air traffic noise impacts. There would be **no impact**.

Issues and Supporting Information	Potentially Significant Impact	Less Than Significant Impact with Mitigation Measures	Less Than Significant Impact	No Impact
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(11) POPULATION AND HOUSING. Would the project:

a) Result in direct or indirect population related growth inducement impacts (significantly expand employment opportunities, remove policy impediments to growth, or contribute to potential extensions of growth inducing infrastructure)?				X
a) Displace existing housing, necessitating the construction of replacement housing elsewhere?				X

DISCUSSION:

- a),b) The Ordinance adoption does not consist of a physical development, and so would not cause increases in population or the displacement of exiting housing, nor induce growth. Individual proposals for facilities are not expected to include provisions for housing or employment, or otherwise impact population in the City. Nonetheless, as facility applications are processed through the City, environmental review per CEQA would be undertaken, including the evaluation of any potential impacts to population and housing from the specific proposal. The timing, extent and locations of such future proposals are speculative. Therefore, the Ordinance adoption would result in **no impact**.

Issues and Supporting Information	Potentially Significant Impact	Less Than Significant Impact with Mitigation Measures	Less Than Significant Impact	No Impact
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(12) PUBLIC SERVICES. Would the project result in adverse physical impacts associated with the provision or construction of new or physically altered government facilities in order to maintain acceptable service ratios, response times or other performance objectives for any of the following public services?

a) Fire protection				X
b) Police protection				X
c) Schools				X
d) Parks				X

e) Other public facilities				X
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DISCUSSION:

a)-e) Since the project is an Ordinance adoption, not a development proposal, the project would not contribute to the demand for public facilities, such as fire protection, police protection, schools, and parks. There are no provisions of the Ordinance that would present conflicts with the continued provision of such services in the City, nor increase the demand for such facilities. Furthermore, the Ordinance includes security provisions for facilities to minimize the opportunity for unauthorized access, vandalism, etc. As an individual facility proposal comes forward, it would undergo site specific environmental review and be assessed for the above noted public services impacts. It is currently unknown where and when such facilities will be proposed. Therefore, there would be **no impact** from the Ordinance adoption.

Issues and Supporting Information	Potentially Significant Impact	Less Than Significant Impact with Mitigation Measures	Less Than Significant Impact	No Impact
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(13) RECREATION. Would the project:

a) Increase the use of existing neighborhood or regional parks or other recreational facilities such that physical deterioration of the facility would occur or be accelerated?				X
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities that could cause adverse impacts?				X

DISCUSSION:

a),b) Since the Ordinance adoption is not a particular development proposal, there would be **no impacts** to recreational facilities. The Ordinance includes no provisions that would conflict with the continued availability of recreational facilities in the City. It is unknown where and when wireless telecommunications facilities might be proposed. As individual facilities are proposed, separate CEQA review would be undertaken to determine the specific project's impact to recreation. It should be noted, however, that wireless telecommunications facilities do not contribute to the use or expansion of parks or other recreational facilities.

Issues and Supporting Information	Potentially Significant Impact	Less Than Significant Impact with Mitigation Measures	Less Than Significant Impact	No Impact
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(14) TRANSPORTATION/TRAFFIC. Would the project:

a) Cause an increase in traffic beyond the capacity of the street system (i.e., result in an increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)?				X
b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?				X
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in safety risks?				X

d) Increase hazards related to existing intersections or roadway design features (e.g., sharp curves or dangerous intersections), or to incompatible uses (e.g., residential traffic conflicts with farm equipment)?				X
e) Result in inadequate secondary or emergency access?				X
f) Result in inadequate parking capacity?				X

DISCUSSION:

- a) Since the project is not a particular development proposal, there would be **no impacts** to traffic and circulation. The Ordinance contains no provisions that would conflict with transportation and circulation in the City. However, the Ordinance contains provisions that would prevent obstructions in the ROW and impacts to pedestrian and vehicular flow. It is unknown where and when facilities might be proposed. As individual facility projects are proposed, separate CEQA review would be undertaken to determine the specific project's impacts to traffic and circulation.
- b) The Los Angeles County Congestion Management Plan (CMP) requires a regional traffic impact analysis when a project adds 150 or more trips in each direction to a freeway segment. Based on the discussion in item a) above, there would be **no impacts**.
- c) There are no airports or airfields in the project vicinity, so the Ordinance adoption would result in **no impacts**. Also refer to the discussion in item a) above.
- d),e),f) Refer to the discussion under item a) above. The Ordinance adoption would result in **no impacts**.

Issues and Supporting Information	Potentially Significant Impact	Less Than Significant Impact with Mitigation Measures	Less Than Significant Impact	No Impact
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(15) UTILITIES AND SERVICE SYSTEMS. Would the project:

a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?				X
b) Require or result in construction of new water or wastewater treatment facilities or expansion of existing facilities that could cause adverse impacts?				X
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities that could cause adverse impacts?				X
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?				X
e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?				X
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?				X
g) Comply with federal, state, and local statutes and regulations related to solid waste?				X

DISCUSSION:

- a)-e) As the project is not a physical development proposal, it would not result in impacts to wastewater, water or stormwater. The Ordinance regulations would not conflict with the continued provision of water, waste water, solid waste or storm drain facilities in the City. While wireless telecommunications facilities normally do not effect issues of water supply, wastewater treatment, storm water drainage, or solid waste disposal,

as individual facility projects are proposed in the project area, separate CEQA review would be undertaken to determine, as necessary, the specific project's impacts to these services. It is currently unknown where and when facilities will be proposed. The current project would result in **no impacts**.

- f),g) As noted above, the Ordinance adoption would not constitute a development proposal, and so would not result in impacts to solid waste. The location and timing of future facilities is speculative. As individual facility projects are proposed, separate CEQA review would be undertaken to determine if the specific projects' impacts to these services is significant. The Ordinance adoption would result in **no impacts**.

Issues and Supporting Information	Potentially Significant Impact	Less Than Significant Impact with Mitigation Measures	Less Than Significant Impact	No Impact
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(16) MANDATORY FINDINGS OF SIGNIFICANCE.

a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory?				X
b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of the past projects, the effects of other current projects, and the effects of probable future projects)?				X
c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?				X

DISCUSSION:

- a) The project is the adoption of an Ordinance, which is not a physical development. Where and when the wireless telecommunications facilities might be proposed is unknown at this time. When such a proposal is made, the facilities project would be analyzed as part of a separate, specific CEQA analysis, where the particular site and action would be assessed for its potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory. Therefore, adoption of the Ordinance would result in **no impact**.
- b) In all of the environmental issue areas discussed throughout this Initial Study, the adoption of the Ordinance was found to have no impacts. Therefore, there would be **no cumulatively considerable impacts** from the project as well.
- c) As noted above in Item b), in all of the environmental issue areas discussed throughout this Initial Study, the adoption of the Ordinance was found to have no impacts. Adoption of the Ordinance is not a physical development. As such, there would be **no impact** with regard to environmental effects that would cause substantial adverse effects on human beings, either directly or indirectly. Where and when the wireless telecommunications facilities might be proposed is unknown at this time. When such a proposal is made, the facilities project would be analyzed as part of a separate, specific CEQA analysis, where the particular site and action would be assessed for its potential to cause substantial adverse impacts on human beings.

References:

Agoura Hills, City of. *General Plan 2035*. March 2010.

Agoura Hills, City of. *General Plan 2035 Final EIR*. February 2010.

Agoura Hills, City of. *Municipal Code*.

Federal Communications Commission. *A Local Government's Official Guide to Transmitting Antenna RF Emissions Safely: Rules Procedures, and Practical Guidelines*.

47 U.S.C. 332, Federal Communications Act.

PUBLIC COMMENTS AND RESPONSES TO COMMENTS

The Draft IS/ND was circulated for public comment from May 5, 2011 through June 6, 2011. One comment letter was received during this period, a letter from Dan Revetto, Director, AT&T California External Affairs (dated June 6, 2011). The letter and responses to the comments in the letter are included as Attachment 2 to this document. None of the comments in the letter, or the responses to the letter, warrant changes to the IS/ND.

Minor changes to the Wireless Telecommunications Facility Ordinance policies have been made for clarification purposes or to address comments received on the Ordinance itself. None of these revisions, however, change the Ordinance significantly, and no changes to, or recirculation of, the IS/ND are required. The proposed revised Ordinance is shown in “track changes” mode in Attachment 1 of this document.



CITY OF AGOURA HILLS

2011 JUN -6 PM 4: 01

CITY CLERK

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:

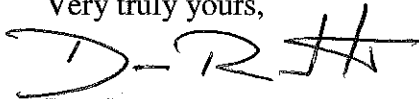
- 1) The proposed ordinance indicates that any modification will require at least a minor CUP application and possibly even a full CUP application. Even an antenna swap presumably would require such an application process. Our experience in the Southern California market suggests that this process could 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 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.
- 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,

A handwritten signature in black ink, appearing to read 'D-R-H' with a stylized flourish at the end.

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 TELECOMMUNICATIONS 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 FACILITY 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;

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 its 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:

E. EXCEPT AS OTHERWISE PROVIDED ABOVE, APPROVAL OF A NEW OR AMENDED FACILITY 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;

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.

Craig A. Steele
City Attorney