



County of Santa Cruz

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July 23, 2002

Agenda: August 6, 2002

Board of Supervisors
County of Santa Cruz
701 Ocean Street, Room 500
Santa Cruz, California 95060

Re: Proposed Moratorium on Approvals of Wireless Communication Facilities

Dear Members of the Board:

On June 18, 2002, your Board considered whether to adopt a moratorium on the approval of new Wireless Communication Facilities while a revised WCF ordinance is finalized for your Board's consideration. At that time, County Counsel reported on the implications under Federal law of adopting such a moratorium. A copy of that Staff Report is attached hereto as Exhibit A.

As reflected in that Staff Report, County Counsel opined that it was possible to justify such a moratorium in light of differences between the existing Interim Ordinance and the then-current draft of the proposed revised ordinance. Your Board directed staff to prepare a moratorium ordinance for consideration at your June 25, 2002 meeting.

During the presentation at the June 25 Board Meeting, County Counsel reported that several cellular telephone providers had objected to the proposed moratorium, and had, in one case, threatened to bring a legal challenge if a moratorium was adopted. A copy of the June 25 Staff Report is attached hereto as Exhibit B. Since there was only one application for a new wireless communication facility scheduled to be considered for approval between that June 25 meeting and your August 6 meeting, your Board deferred consideration of the proposed moratorium to the August 6 meeting.

Should the Board Adopt a Temporary Moratorium on New Approvals of Wireless Communication Facilities?

The issue before your Board at this time is whether to adopt the proposed moratorium on the approval of new wireless communication facilities. For the reasons set forth below, staff and County Counsel recommend against the adoption of such a moratorium at this time.

1. The Planning Director's Recent Interpretation of the Interim Ordinance Obviates the Need for the Ordinance.

The Interim Ordinance identifies several categories of information that wireless communication facilities applicants must provide when applying for a Wireless Communication Facility Use Permit. The Interim Ordinance also authorizes the Planning Director to require "other information" as is reasonably required.'

The Planning Director has adopted a formal written interpretation of the existing Interim Ordinance which lends specificity to certain of the requirements in the Interim Ordinance and which identifies additional submittal information that applicants must provide with their applications for such permits. A copy of the Planning Director's Interpretation is attached hereto as Exhibit C.

As noted above, the purpose of the proposed moratorium was to provide the County time to review its regulations to address issues relating to the siting of cellular phone facilities in a manner that addressed local concerns, particularly since there were substantive differences between the Interim Ordinance and the then-current draft of the final ordinance. However, the Planning Director's interpretation provides additional clarity on several key issues, particularly clarifications concerning required application materials and alternatives analysis. As a result, County Counsel and Planning Staff believe a moratorium is not necessary while revision of the final ordinance is completed.

2. Adoption of a Moratorium Could Result in Unnecessary Litigation.

As noted above, a law ~~firm~~ representing one cellular company (AT&T Wireless) has already implied that it would challenge a moratorium if it is adopted. (A copy of the letters received from the attorneys for AT&T and for Verizon Wireless are attached hereto as Exhibit D.) County Counsel believes that, if a moratorium was limited to six

¹ Santa Cruz County Code § 13.10.659(g)(2)(xii).

months in duration and specifically allowed new applications to be received and processed during its pendency, a moratorium would not necessarily result in the delay in processing or approval of applications by AT&T Wireless or others.

Nevertheless, if the moratorium were adopted, it is possible that AT&T or other wireless communication facilities may challenge the moratorium out of concern that it could delay their pending or future applications. In that event, the County would, at a minimum, be forced to defend against the action.

Given that the Planning Director's intervening interpretation of the Interim Ordinance has reduced the need for a moratorium, and given the possibility that unnecessary litigation could result from the adoption of a moratorium, County Counsel and Planning Staff recommend against the adoption of a moratorium at this time.

3. A Moratorium May Not Be Used to Avoid or Reduce the A Perceived Risk of RF Emissions.

Some constituents have urged the Board and County Staff to consider risks associated with radio frequency (RF) emissions in making decisions about wireless communication facilities. However, Federal law prohibits the County from regulating the placement of wireless communication facilities on the basis that the facility will result in RF emissions as long as the facilities comply with Federal Communications Commission standards. County Counsel believes that the Federal law would apply to a moratorium if the moratorium was adopted for such a purpose.

As noted in the June 25, 2002 Staff Report, a moratorium may be justified on grounds wholly independent of RF emissions. However, concerns about the possible risks that may be associated with RF emissions would be an improper basis under Federal Law to justify a moratorium.


The County's Interim Wireless Communication Facilities Ordinance already requires providers to establish that proposed facilities will comply with FCC standards.

IT IS THEREFORE RECOMMENDED THAT:

1. The Board receive this report; and
2. The Board take no action to adopt a moratorium on the approval of wireless communication facilities at this time.

Very truly yours,

DANA McRAE, COUNTY COUNSEL

By 
DAVID KENDIG
Assistant County Counsel

RECOMMENDED:


SUSAN A. MAURIELLO
County Administrative Officer

Attachments:

- A. June 18, 2002 Staff Report
- B. June 25, 2002 Staff Report
- C. Planning Director's Interpretation of the Interim Ordinance
- D. Letters from Counsel for cellular phone companies



County of Santa Cruz

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June 13, 2002

Agenda: June 18, 2002

Board of Supervisors
County of Santa Cruz
701 Ocean Street, Room 500
Santa Cruz, California 95060

Re: Informational Report on Wireless Telecommunication Facilities

Dear Members of the Board:

As you recall, on June 11, 2002, your Board requested that County Counsel research two issues relating to Wireless Telecommunication Facilities: (1) whether the County may adopt a temporary moratorium on the approval of new wireless communication facilities? and (2) Whether the County may require owners and operator of new and existing wireless communication facilities to identify the location and emission levels of wireless communication facilities?

This memorandum responds to those two questions.

1. May the County adopt a temporary moratorium on the approval of new wireless communication facilities?

A short-term, wireless communication facility moratorium may be utilized, where necessary, when the County needs time to review and possibly amend its regulations to address issues relating to the siting of cellular phone facilities in a manner that addresses local concerns, provides the public with access to wireless services for its safety, convenience and productivity, and complies with the Federal Telecommunications Reform Act of 1996. ("FTRA")

On August 5, 1998, the Federal Communication Commission's Local and State Government Advisory Committee, ("LSGAC") the Cellular Telecommunications Industry Association (CTIA), the Personal Communications Industry Association, and the American Mobile Telecommunications Association entered into an agreement addressing issues relating to moratoria on the siting of wireless telecommunications facilities. This agreement sets out recommended guidelines for local governments and carriers to follow in connection with moratoria, and it establishes a non-binding alternative dispute resolution procedure that either carriers or local governments may invoke. In addition, CTIA agreed to withdraw its pending Petition for Declaratory Ruling seeking preemption of certain local moratoria.

Those Guidelines acknowledge that moratorium may be "utilized, where necessary, when a local government needs time to review and possibly amend its land use regulations to adequately address issues relating to the siting of wireless telecommunications facilities in a manner that addresses local concerns, provides the public with access to wireless services for its safety, convenience and productivity, and complies with" the FTRA.²

The Guidelines also provide that once a moratorium is adopted, the County must "work together" with affected wireless service providers "to expeditiously and effectively address issues leading to the lifting of the moratorium." Moratoria should be for a fixed (as opposed to open ended) period of time, with a specified termination date. The length of the moratorium should be "that which is reasonably necessary for the local government to adequately address" the valid issues giving rise to the need for the Moratorium. The Guidelines also suggest that a 180 day limit is appropriate "in many cases."

The Guidelines also caution that "Moratoria should not be used to stall or discourage the placement of wireless telecommunications facilities within a community, but should be used in a judicious and constructive manner."

Finally, the Guidelines provide that during the time that a moratorium is in effect, the local government should, "within the frame work of the organization's many other responsibilities," continue to accept and process applications (e.g., assigning docket

¹ The LSGAC is a body of elected **and** appointed local and state officials, appointed by the Chairman of the Federal Communications Commission ("FCC").

² A copy of the Agreement from the FCC website is attached hereto as Exhibit A. The Agreement may also be reviewed at <http://www.fcc.gov/statelocal/agreement.html>.

numbers and other administrative aspects associated with the filing of applications), subject to ordinance provisions as may be revised during the moratorium.”

It is also clear that the moratorium may not be adopted in such a way as to violate the FTRA. County Counsel believes the moratorium would violate the FTRA: (a) if it was adopted to avoid or reduce environmental effects of radio frequency emissions, or (b) if it unreasonably discriminated among providers of functionally equivalent services; or (c) if it had the effect of prohibiting the provision of personal wireless services. Also, applications that the County has already received must be acted upon “within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.”³ Thus, the County should carefully consider whether to apply such a moratorium to existing applications in order to comply with the FTRA requirement to act upon the such applications within a “reasonable period of time.”

Reading the Guidelines and the Act together, County Counsel believes that a Moratorium would **be** proper as long as four key criteria are met: (a) the moratorium is of a fixed length, preferably 180 days or less; (b) it provides for the continuing acceptance and processing of applications during the moratorium; (c) it is adopted for an allowable purpose, and not simply to stall or discourage the placement of wireless communication facilities within the community; and (d) it still allows applications to be acted upon within a reasonable period of time.

Based on discussions with Planning Staff, it appears that a moratorium could be justified on the grounds that the County needs time to review and possibly amend its regulations to address issues relating to the siting of cellular phone facilities in a manner that addresses local concerns. Specifically, the most recent draft of the final Wireless Communications Facility Ordinance (“Draft Final Ordinance”), which has been circulated for public review and input, would better accomplish siting objectives than the provisions of the Interim Wireless Communications Facility Ordinance (“Interim Ordinance”) through a number of measures, including, but not limited to:

- a. The Draft Final Ordinance would require measures to determine whether adequate coverage already exists in a given area, rendering the additional facilities unnecessary;
- b. The Draft Final Ordinance would broaden and detail provisions concerning the analysis of feasible and environmentally superior project alternatives;

³ 47 U.S.C. § 332(c)(7).

- c. The Draft Final Ordinance contains enhanced radio-frequency (“RF”) radiation monitoring to better ensure compliance with Federal standards;
 - d. The Draft Final Ordinance contains sufficient set-back requirements from property lines and structures to create safe fall zones for towers;
 - e. The Draft Final Ordinance contains measures to more effectively encourage co-location, and incentives for older towers to be dismantled and their antennas to be co-located on to newer, less obtrusive towers;
 - f. The Draft Final Ordinance would require additional engineering detail on project plans and maps to allow greater understanding of the design and aesthetic impacts of the projects, and to allow more accurate independent third-party review by RF/telecommunications engineers; and
 - g. The Draft Final Ordinance would expand notification requirements to owners and residents of parcels neighboring proposed facilities.
2. May the County Require owners and operator of new and existing wireless communication facilities to identify the location and emission levels of wireless communication facilities?

Yes. The Interim Ordinance prohibits the operation of a wireless communication facility in such a manner that it poses, either by itself or in combination with other such facilities, a potential threat to the public health, and to that end, no such facility may produce power densities that exceed FCC-adopted standards.⁴ This requirement applies to all cellular phone towers, whether or not they were permitted under the Interim Ordinance.

In a report to the Board on November 20, 2001, County Counsel advised the Board that the County may require wireless service providers (e.g., cellular phone companies) to measure the cumulative radio frequency radiation (RFR) emissions from all wireless communication facilities in the vicinity of proposed new towers/facilities, to ensure the new and existing facilities are in compliance with the Federal Communications Commission (“FCC”) RFR exposure standards. As noted in that memo, the Federal Telecommunications Reform Act of 1996 (“FTRA”) does not prohibit local jurisdictions from requiring wireless services providers to prove they are in compliance with the FCC

⁴ Santa Cruz County Code § 13.10.659 subd. (i)(1).

RFR exposure standards, or to prove that the ambient background RFR levels at a proposed site are within FCC standards.

Similarly, County Counsel concludes that nothing in the FTRA prohibits a County from requiring all wireless service providers - new and existing - from providing information concerning the locations and emission levels of their existing facilities, so long as the requirement (1) does not unreasonably discriminate among providers of functionally equivalent services, (2) does not prohibit or have the effect of prohibiting the provision of personal wireless services, and (3) advances a legitimate governmental interest.

County Counsel believes that the first two criteria (no unreasonable discrimination and no prohibition of wireless services) would be satisfied so long as the requirement is applied uniformly to all similar services, and so long as the burden associated with complying with the requirement (e.g., the cost of preparing the required submissions) was not so burdensome as to have the effect of precluding wireless services.

County Counsel also concludes that, depending on the type and scope of information sought, such a requirement could reasonably advance several legitimate government interests, including but not limited to:

- (a) To enable the County and applicants to identify co-location opportunities in order to advance the objectives of co-location emphasized in the Interim Ordinance;
- (b) To enable the County to establish an appropriate mechanism to ensure that all existing facilities are monitored to ensure compliance with FCC-adopted RF exposure standards;
- (c) In the event violations of FCC-adopted exposure standards are detected, to quickly identify the owners/operators of violating facilities to ensure immediate corrective measures are implemented;
- (d) To better assess the degree of, and impacts of, proliferation of wireless service facilities; and
- (e) To aid the County in assessing whether particular areas of the County are adequately served by comparable wireless communication facilities.

In addition, in the event the Board elects to pursue such a requirement, care will need to be taken to ensure that such an ordinance will not unnecessarily impinge on carriers' trade secret rights. If the Board directs staff to prepare such an ordinance, County Counsel will work with Planning Staff and carrier representatives to address this issue.

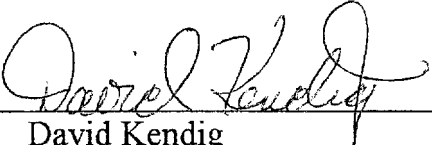
Assuming a new provision was tailored in these ways, County Counsel concludes that an ordinance requiring all wireless service providers to submit information concerning the location and emission levels of new and existing wireless communication facilities would not violate the FTRA.

IT IS THEREFORE RECOMMENDED that your Board:

1. Adopt the Ordinance extending the duration of the existing Interim Wireless Communications Facilities Ordinance by twelve (12) months (from June 11, 2002 until June 11, 2003) to allow sufficient time for the proposed permanent Wireless Communications Facilities Ordinance to be fully processed and to become effective;
2. Direct Planning staff to complete the processing of the permanent ordinance within the term of the extended Interim Ordinance, including Coastal Commission review; and
3. Accept and file this informational report.

Very truly yours,

DANA McRAE, COUNTY COUNSEL

By 
David Kendig
Assistant County Counsel

RECOMMENDED:

SUSAN A. MAURIELLO
County Administrative Officer

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[Text | WordPerfect]

THE FOLLOWING GUIDELINES FOR FACILITIES SITING IMPLEMENTATION AND INFORMAL DISPUTE RESOLUTION PROCESS ARE AGREED TO BY THE FEDERAL COMMUNICATIONS COMMISSION'S LOCAL AND STATE GOVERNMENT ADVISORY COMMITTEE (LSGAC), THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION (CTIA), THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION (PCIA) AND THE AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION (AMTA). THE LSGAC IS A BODY OF ELECTED AND APPOINTED LOCAL AND STATE OFFICIALS, APPOINTED BY THE CHAIRMAN OF THE COMMISSION IN MARCH, 1997. A ROSTER OF LSGAC MEMBERS IS ATTACHED. CTIA, PCIA AND AMTA ARE TRADE ASSOCIATIONS REPRESENTING THE WIRELESS INDUSTRY.

I. GUIDELINES FOR FACILITY SITING IMPLEMENTATION

A. Local governments and the wireless industry should work cooperatively to facilitate the siting of wireless telecommunication facilities. Moratoria, where necessary, may be utilized when a local government needs time to review and possibly amend its land use regulations to adequately address issues relating to the siting of wireless telecommunications facilities in a manner that addresses local concerns, provides the public with access to wireless services for its safety, convenience and productivity, and complies with the Telecommunications Act of 1996.

B. If a moratorium is adopted, local governments and affected wireless service providers shall work together to expeditiously and effectively address issues leading to the lifting of the moratorium. Moratoria should be for a fixed (as opposed to open ended) period of time, with a specified termination date. The length of the moratorium should be that which is reasonably necessary for the local government to adequately address the issues described in Guideline A. In many cases, the issues that need to be addressed during a moratorium can be resolved within 180 days. All parties understand that cases may arise where the length of a moratorium may need to be longer than 180 days. Moratoria should not be used to stall or discourage the placement of wireless telecommunications facilities within a community, but should be used in a judicious and constructive manner.

C. During the time that a moratorium is in effect, the local government should, within the frame work of the organization's many other responsibilities, continue to accept and process applications (e.g., assigning docket numbers and other administrative aspects associated with the filing of applications), subject to ordinance provisions as may be revised during the moratorium. The local government should continue to work on the review and possible revisions to its land use regulations in order that the moratorium can terminate within its defined period of time, and that both local planning goals and the goals of the Telecommunications Act of 1996 with respect to wireless telecommunications services be met. Wireless service providers should assist by providing appropriate, relevant and non-proprietary information requested by the local government for the purposes of siting wireless telecommunications facilities.

D. Local governments are encouraged to include both the community and the industry in the development of local plans concerning tower and antenna siting. Public notice and participation in

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accordance with the local government's standard practices should be followed.

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II. INFORMAL DISPUTE RESOLUTION

A. The parties have agreed to an informal dispute resolution process for the wireless industry and local governments to utilize when moratoria may seem to be adversely affecting the siting of wireless telecommunications facilities. The purpose of the process is to expeditiously resolve disputes in a manner consistent with the interests of all parties.

B. The LSGAC will publicize and promote the moratoria guidelines reflected in Part I of this document and the availability of this informal dispute resolution process in a press release, and will also urge the national organizations working with the LSGAC to promote and publicize the guidelines and the dispute resolution process to their respective members. CTIA, PCIA and AMTA also will publicize and promote the guidelines and informal dispute resolution process utilizing their respective websites, and in subsequent forums and educational materials.

C. Local government experts in the area of land use siting of wireless telecommunications facilities in accordance with Section 704 of the Telecommunications Act, as well as industry representatives will be encouraged to serve as volunteers to assist in the resolution of problems relating to moratoria. The process will work as follows:

1. Two volunteers, one representing local government and one representing the wireless industry, shall be assigned to each case. Any company seeking to locate wireless telecommunications facilities, that felt it was being adversely impacted by a moratorium that does not comply with the guidelines described above, could contact the Wireless Telecommunications Bureau ("WTB") and ask for the name of a volunteer to review the matter. Any local government seeking advice on zoning moratoria issues may also contact the WTB for volunteers. The LSGAC will provide the FCC with a list of volunteers representing local governments. The list will be maintained at the FCC by the WTB. A list of volunteers representing wireless service providers will be selected and maintained by their national associations (CTIA, PCIA, and AMTA).

2. Best efforts will be exercised in attempting to select volunteers who reflect a range of experience with different forms and sizes of local government and wireless service providers. Efforts will be used to assign volunteers whose experience has been with similarly situated local governments to those at issue. After the individual's name is provided it will be moved to the bottom of the list, so as to create a procedure where volunteers do not have a disproportionate number of cases to review. Volunteers cannot mediate a dispute if they have a direct interest of any type in the geographic area under review.

3. If, for any reason, the volunteer[s] was [were] not able to review the issue at that time, the complainant may contact the WTB and obtain the next name [or names] on the list. It is anticipated that the amount of time that will be spent by the volunteers reviewing and opining on these issues will be one to three hours per case.

4. The local government volunteer will review and listen to the local government's explanation of the issues. The wireless service provider volunteer will review and listen to the wireless service provider's explanation of the issues. If necessary, the volunteers will

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EXHIBIT "A"

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ask appropriate follow-up questions, then will make appropriate contacts, as [they] he or she deems necessary. The volunteers will then discuss the issues as they understand them, and attempt to reach a mutually agreeable proposed course of action. The volunteer[s] will then contact each party individually, (the local government volunteer contacting the local government, and the wireless service provider volunteer contacting the wireless service provider) and will inform each party of his or her opinion as to whether the present activities comply with the moratoria guidelines, making recommendations as may be appropriate. The recommendation and mediation process by the volunteers should be concluded within 60 days.

5. Neither party is bound by the recommendations of the volunteer[s]. Should the complaining part[ies] be dissatisfied with the result, the part[ies] retain the option to bring legal action.

6. This process is intended as a mechanism to resolve issues short of court action, if possible. As a result, none of the discussions, statements, or information conveyed in the informal process, or even the fact that the informal process was undertaken, are subject to discovery, or admissible in a judicial or quasi-judicial proceeding.

D. Upon agreement with LSGAC on the moratoria guidelines and informal dispute process described herein, CTIA will withdraw without prejudice its petition seeking preemption of zoning moratoria, docket number DA96-2140, FCC97-264.

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EXHIBIT "A"

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County of Santa Cruz

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June 21, 2002

Agenda: June 25, 2002

Board of Supervisors
County of Santa Cruz
701 Ocean Street, Room 500
Santa Cruz, California 95060

Re: Urgency Ordinance Adopting Temporary Moratorium on Approval of
Applications for Wireless Telecommunication Facilities

Dear Members of the Board:

On June 18, 2002, your Board directed staff to prepare an urgency ordinance to establish a temporary moratorium on the approval of new wireless communication facilities. Attached as Exhibit A is the proposed urgency ordinance.

A.. The Key Provisions of the Proposed Urgency Ordinance.

1. Duration of Moratorium.

As an urgency ordinance, the proposed moratorium is limited in its initial duration to 45 days. (Cal. Gov't Code 65858.) In the likely event the revised wireless communication facilities ordinance is not completed within that 45 day period, staff contemplates returning to your Board with a similar ordinance at your August 6, 2002 meeting extending the moratorium to a total of 180 days.

2. Exceptions.

In order to clarify that the regulatory scope of the Interim Zoning Regulations Regarding Wireless Communication Facilities (the "Interim Ordinance") is not being extended by the moratorium, the ordinance excludes those facilities which are currently exempt under the Interim Ordinance.

The second exception was included in response to a provision in the Federal Telecommunications Reform Act of 1996 ("FTRA") that states that applications must be acted upon "within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request." In light of that Federal requirement, the moratorium would not apply to the two applications which County Staff has deemed to be complete, and which have not yet been approved or denied.

Finally, according to General Services staff, the County, jointly with other local agencies, is pursuing grant funds arising under homeland security initiatives which may to improve communication facilities for public safety purposes. General Services staff expressed a desire not to encumber such a time-sensitive and selective process with questions about the scope of the County's moratorium on wireless communications facilities. As a result, although the Interim Ordinance already exempts publically operated facilities used solely for public safety purposes, the proposed moratorium ordinance clarifies that it does not apply to public agency facilities to be used for public safety or homeland security purposes. After reviewing the last exemption with County Counsel, Sheriff Tracy has indicated no objections to the proposed ordinance.

3. Processing of New Applications.

In accordance with Guidelines agreed upon among the Federal Communication Commission's Local and State Government Advisory Committee, the Cellular Telecommunications Industry Association, the Personal Communications Industry Association, and the American Mobile Telecommunications Association (discussed below), the ordinance provides that the County will continue to accept and process applications during the pendency of the moratorium on approvals.

4. Appeals Procedure.

Federal law forbids counties from regulating the placement, construction, and modification of personal wireless service facilities in a manner which discriminates among providers of functionally equivalent services or which prohibits or has the effect of prohibiting the provision of personal wireless services. Although County Counsel does not believe that the moratorium would violate these (or any other) provisions of Federal law, a procedure has been included in the draft ordinance to allow applicants to petition to the Planning Director for relief from the moratorium if an applicant is able to establish that the moratorium - as applied to his or her application - would violate the law.

¹ 47 U.S.C. § 332(c)(7).

This procedure should provide the County with an early warning in the unlikely event the moratorium is unlawfully burdensome on a particular applicant and, in such a exceptional case, should avoid the need to litigate the issue.

B. The Legality of a Temporary Moratorium on Wireless Telecommunication Facilities.

For your convenience, the following discussion repeats a portion of the staff report which was prepared for your Board's June 18, 2002 meeting which discussed the legality of a temporary moratorium the approval of new applications for wireless telecommunications facilities. Several provisions in the urgency moratorium are based on the restrictions discussed in that analysis.

A short-term, wireless communication facility moratorium may be utilized, where necessary, when the County needs time to review and possibly amend its regulations to address issues relating to the siting of cellular phone facilities in a manner that addresses local concerns, provides the public with access to wireless services for its safety, convenience and productivity, and complies with the Federal Telecommunications Reform Act of 1996. ("FTRA")

On August 5, 1998, the Federal Communication Commission's Local and State Government Advisory Committee, ("LSGAC")² the Cellular Telecommunications Industry Association (CTIA), the Personal Communications Industry Association, and the American Mobile Telecommunications Association entered into an agreement addressing issues relating to moratoria on the siting of wireless telecommunications facilities. This agreement sets out recommended guidelines for local governments and carriers to follow -- in connection with moratoria, and it establishes a non-binding alternative dispute resolution procedure that either carriers or local governments may invoke. In addition, CTIA agreed to withdraw its pending Petition for Declaratory Ruling seeking preemption of certain local moratoria.

Those Guidelines acknowledge that a moratorium may be "utilized, where necessary, when a local government needs time to review and possibly amend its land use regulations to adequately address issues relating to the siting of wireless telecommunications facilities in a manner that addresses local concerns, provides the public with access to wireless services for its safety, convenience and productivity, and

² The LSGAC is a body of elected and appointed local and state officials, appointed by the Chairman of the Federal Communications Commission ("FCC").

complies with” the FTRA.³

The Guidelines also provide that once a moratorium is adopted, the County must “work together” with affected wireless service providers “to expeditiously and effectively address issues leading to the lifting of the moratorium.” Moratoria should be for a fixed (as opposed to open ended) period of time, with a specified termination date. The length of the moratorium should be “that which is reasonably necessary for the local government to adequately address” the valid issues giving rise to the need for the Moratorium. The Guidelines also suggest that a 180 day limit is appropriate “in many cases.”

The Guidelines also caution that “Moratoria should not be used to stall or discourage the placement of wireless telecommunications facilities within a community, but should be used in a judicious and constructive manner.”

Finally, the Guidelines provide that during the time that a moratorium is in effect, the local government should, “within the frame work of the organization’s many other responsibilities,” continue to accept and process applications (e.g., assigning docket numbers and other administrative aspects associated with the filing of applications), subject to ordinance provisions as may be revised during the moratorium.”

It is also clear that the moratorium may not be adopted in such a way as to violate the FTRA. County Counsel believes the moratorium would violate the FTRA: (a) if it was adopted to avoid or reduce environmental effects of radio frequency emissions at levels allowed by the FCC, or (b) if it unreasonably discriminated among providers of functionally equivalent services; or (c) if it had the effect of prohibiting the provision of personal wireless services. Also, applications must be acted upon “within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.”⁴

Reading the Guidelines and the Act together, County Counsel believes that the proposed Moratorium would be proper as long as four key criteria are met: (a) **the** moratorium is of a fixed length, preferably 180 days or less; (b) it provides for **the** continuing acceptance and processing of applications during the moratorium; (c) it is adopted for an allowable purpose, and not simply to stall or discourage the placement of

³ A copy of the Agreement from the FCC website is attached hereto as Exhibit A. The Agreement may also be reviewed at <http://www.fcc.gov/statelocal/agreement.html>.

⁴ 47 U.S.C. § 332(c)(7).

wireless communication facilities within the community; and (d) it still allows applications to be acted upon within a reasonable period of time.

Based on discussions with Planning Staff, it appears that the proposed moratorium would be justified on the grounds that the County needs time to review and possibly amend its regulations to address issues relating to the siting of cellular phone facilities in a manner that addresses local concerns. Specifically, the most recent draft of the final Wireless Communications Facility Ordinance (“Draft Final Ordinance”), which has been circulated for public review and input, would better accomplish siting objectives than the provisions of the Interim Wireless Communications Facility Ordinance (“Interim Ordinance”) through a number of measures, including, but not limited to:

- a. The Draft Final Ordinance would require measures to determine whether adequate coverage already exists in a given area, rendering the additional facilities unnecessary;
- b. The Draft Final Ordinance would broaden and detail provisions concerning the analysis of feasible and environmentally superior project alternatives;
- c. The Draft Final Ordinance contains enhanced radio-frequency (“RF”) radiation monitoring to better ensure compliance with Federal standards;
- d. The Draft Final Ordinance contains sufficient set-back requirements from property lines and structures to create safe fall zones for towers;
- e. The Draft Final Ordinance contains measures to more effectively encourage co-location, and incentives for older towers to be dismantled and their antennas to be co-located on to newer, less obtrusive towers;
- f. The Draft Final Ordinance would require additional engineering detail on project plans and maps to allow greater understanding of the design and aesthetic impacts of the projects, and to allow more accurate independent third-party review by RF/telecommunications engineers; and
- g. The Draft Final Ordinance would expand notification requirements to owners and residents of parcels neighboring proposed facilities.


Some carriers have expressed reservations about the potential burdens associated with some of these objectives. Other members of the public indicate that the proposed measures would not be sufficiently protective against their concerns. In either case, a moratorium would help ensure that there would be adequate time to review and amend these measures and to fully consider the competing perspectives on these issues.

IT IS THEREFORE RECOMMENDED that your Board:

1. Adopt the attached Ordinance establishing a temporary moratorium on the approval of applications to construct, modify or place Wireless Communication Facilities as an urgency measure;
2. Direct Staff to report back to your Board on August 6, 2002 on the status of the revisions to the Interim Ordinance and, if necessary, to return at that time with **an** ordinance extending the moratorium to provide additional time (up to a total of **180** days) to complete approval of the revisions to the Interim Ordinance.

Very **truly** yours,

DANA McRAE, COUNTY COUNSEL

By  _____

David Kendig

Assistant County Counsel

RECOMMENDED:

SUSAN A. MAURIELLO
County Administrative Officer

Attachments:

1. Proposed Moratorium Ordinance

AN ORDINANCE OF THE COUNTY OF SANTA CRUZ
ESTABLISHING A TEMPORARY MORATORIUM ON THE
APPROVAL OF APPLICATIONS TO CONSTRUCT, MODIFY
OR PLACE WIRELESS COMMUNICATION FACILITIES

WHEREAS, on June 26, 2001, the County adopted Ordinance 4631 which added Section 13.10.659 to the ~~Santa~~ Cruz County Code, setting forth the County's Interim Zoning Regulations Regarding Wireless Communication Facilities (the "Interim Regulations"); and

WHEREAS, citizens of Santa Cruz County have expressed significant concerns relating to the location of wireless communication facilities within the County under the provisions of the Interim Regulations. The concerns relate to potential aesthetic and other effects of the continued proliferation of such facilities on the community as a whole; and

WHEREAS, citizens of Santa Cruz County have also expressed a desire that the County receive adequate wireless telecommunication services provided that the facilities are designed and located to minimize aesthetic and related concerns; and

WHEREAS, since the adoption of the Interim Regulations, the County has approved many applications to construct, modify or place Wireless Communication Facilities within the County; and

WHEREAS, drawing from its experience since the adoption of the Interim Regulations and based on input received from the public and wireless communication companies, County Staff has drafted revisions to the Interim Regulations, conducted several public meetings with representative of the wireless telecommunications industry and with the public, and, has further refined the draft regulations in order to formulate zoning regulations which are better reflective of the County's siting and regulatory objectives for wireless telecommunication facilities; and

WHEREAS, on June 18, 2002, the Board of Supervisors acted to extend the Interim Regulations while County staff continues its review and revisions of the draft provisions; and

WHEREAS, County staff and the Board need time to review and possibly amend the County's Interim Regulations to address issues relating to the siting of cellular phone facilities in a manner that addresses local concerns. Specifically, the most recent draft of the Wireless Communications Facility Ordinance ("Draft Revised Ordinance"), would better

accomplish siting objectives than the provisions of the Interim Ordinance through a number of measures, including, but not limited to:

- a. The Draft Revised Ordinance would require measures to determine whether adequate coverage already exists in a given area, rendering the additional facilities unnecessary;
- b. The Draft Revised Ordinance would broaden and detail provisions concerning the analysis of feasible and environmentally superior project alternatives;
- c. The Draft Revised Ordinance contains enhanced radio-frequency ("RF") radiation monitoring to better ensure compliance with Federal standards;
- d. The Draft Revised Ordinance contains sufficient set-back requirements from property lines and structures to create safe fall zones for towers;
- e. The Draft Revised Ordinance contains measures to more effectively encourage co-location, and incentives for older towers to be dismantled and their antennas to be co-located on to newer, less obtrusive towers;
- f. The Draft Revised Ordinance would require additional engineering detail on project plans and maps to allow greater understanding of the design and aesthetic impacts of the projects, and to allow more accurate independent third-party review by RF/telecommunications engineers; and
- g. The Draft Revised Ordinance would expand notification requirements to owners and residents of parcels neighboring proposed facilities; and

WHEREAS, the Board of Supervisors has determined that a temporary moratorium on the approval of applications to construct, modify or place Wireless Communication Facilities will allow the County time to complete its review and revisions of its Wireless Communication Facilities ordinance while ensuring to the maximum extent feasible that the siting and other objectives of the revised ordinance may be achieved. The Board finds that a temporary Moratorium prohibiting uses which may be in conflict with the contemplated changes to the interim zoning ordinance which planning department staff is studying is necessary and appropriate to protect the public health, safety and welfare; and

WHEREAS, the Board of Supervisors is cognizant that two applications to construct, modify or place Wireless Communication Facilities have been deemed complete but have not yet been acted upon for approval or denial, and that fairness to such applicants suggests that action to approve or deny those completed applications should not be delayed by a moratorium; and

WHEREAS, the Board of Supervisors is aware that efforts are being undertaken by Federal, State and local agencies to protect the public and to ensure homeland security, and the Board finds that it is not the purpose of this moratorium to limit or otherwise affect those efforts.

NOW, THEREFORE, the Board of Supervisors of the County of Santa Cruz ordains as follows:

SECTION II

(a) Moratorium. No applications to construct, modify or place Wireless Communication Facilities shall be approved during the 45 day period extending from June 25, 2002 to August 9, 2002, except as provided in Section II(b) below.

(b) Exceptions. The moratorium set forth in Section II(a) shall not apply to the following:

- (1) Exempt facilities, as described in Subsection (e) of Santa Cruz County Code section 13.10.659;
- (2) Applications for Wireless Communications Facilities which have been deemed complete on or before June 25, 2002;
- (3) Wireless Communication Facilities to be used for public safety or homeland security purposes, installed and operated by authorized Federal, State or local public safety agencies (e.g., County 911 Emergency Services, police, sheriff, and/or fire departments, etc.)

(c) New Applications. During the pendency of the Moratorium, the Planning Department shall continue to accept and process applications to construct, modify or place Wireless Communication Facilities. Those submitting or completing applications after June 25, 2002 shall be informed that standards for project approval or denial will be those standards in effect at the time of project approval or denial.

(d) Petition for Relief from Moratorium. Any person who has applied to construct, modify or place a Wireless Communication Facility which would be affected by this Moratorium, and who contends that the Moratorium as applied to him or her would be unlawful under Federal, State, or local law or regulation, may submit a written application to the Planning Director requesting relief from the Moratorium. The request for relief from moratorium shall identify the name and address of the applicant, the affected application number, and shall state how the Moratorium as applied to him or her would be unlawful under Federal, State, or local law or regulation. Within fourteen (14) calendar days of receipt of the completed request for relief, the Planning Director shall mail to the applicant a written determination accepting or rejecting the request for relief from Moratorium.

(e) Completion of Revised Ordinance. County staff shall work together with affected wireless service providers and the public to expedite completion of the revised Zoning Regulations Regarding Wireless Communication Facilities.

SECTION III

Severability. If any provision of this section or its application to any person or circumstance is declared invalid or unenforceable by a court of competent jurisdiction, this section, to the extent it can be given effect, or the application of this section to persons other than the person to whom it is held invalid, shall not be affected thereby, and to this end, the provisions of this section are severable.

SECTION IV

This ordinance shall take effect immediately based on the findings by the Board of Supervisors that this ordinance is adopted consistent with Government Code Section **65858**, and is necessary for the protection of the public health, safety, and general welfare. Pursuant to Government Code Section **65858**, this ordinance shall be in full force and effect for **45** days from the date of its adoption by the Board of Supervisors, unless, following a public hearing noticed pursuant to Government Code Section **65090** and four-fifths vote of its members, the Board of Supervisors extends the interim ordinance in accordance with the provisions of Government Code Section **65858**.

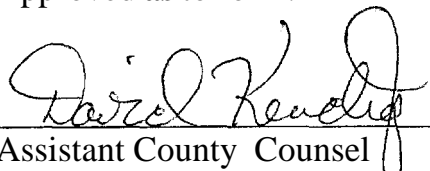
PASSED AND ADOPTED this _____ day of June, 2002, by the Board of Supervisors of the County of Santa Cruz by the following vote:

AYES: SUPERVISORS
NOES: SUPERVISORS
ABSENT: SUPERVISORS
ABSTAIN: SUPERVISORS

Chairperson of the Board of Supervisors

Attest: _____
Clerk of the Board

Approved as to form:



Assistant County Counsel

SANTA CRUZ COUNTY PLANNING DEPARTMENT POLICY/ORDINANCE INTERPRETATION

Interpretation No.: IWCF-01 (Interim Wireless Communication Facilities Ordinance)
 Effective Date: 6/28/02
 Originally Issued: 6/28/02
 Revised: 7/31/02

Issue

It has been determined that additional and more detailed submittal information is needed to adequately evaluate Wireless Communication Facility (WCF) applications. Additional application submittal requirements are allowed under County Code Section 13.10.659(g)(2)(xii), which empowers the Planning Director to require additional information at the time of submission of wireless communication facility applications, above and beyond the submittal requirements specified in the County's Interim Wireless Communication Facilities Ordinance.

Purpose

To clarify and make more specific the application submittal requirements of the Interim Wireless Communication Facilities Ordinance during the time in which the County's Final Wireless Communication Facilities Ordinance is being developed and processed, thereby eliminating the need for the proposed temporary moratorium on new wireless communication facilities.

Applicable Ordinance Section(s) and/or General Plan/LUP Policy(ies)

§ 13.10.659

INTERPRETATION:

A. The following additional application submittal information shall be required for all new Wireless Communication Facilities (WCFs):

1. More Detailed Project Map/Plan/Drawing Submittal Requirements:

More detailed maps of proposed facility site and vicinity must be submitted for all WCFs so as to facilitate evaluation of the alternative sites analysis. Signal propagation and radio-frequency studies, plots and related materials shall be prepared, clearly identified and signed by a qualified radio-frequency engineer. The following maps are required at the time of application submittal:

- a. Location Map – copy a portion of the most recent U.S.G.S. Quadrangle map, at a scale of 1:24,000, indicating the proposed towed facility site, and showing the area within at least two miles from the proposed site.

- b. Vicinity Map – at an appropriate scale (approximately 1"=416' or 1:5000) showing the entire vicinity within a 2,500' radius of the towed facility site, and including topography, public and private roads and driveways, buildings and structures, bodies of water, wetlands, landscape features, historic sites. Indicate property lines of the proposed tower/facility site parcel and of all abutters to the tower site parcel. Indicate any access easement or right-of-way needed for access from a public way to the tower, and names of all abutters or property owners along the access easement or who have deeded rights to the easement.
- c. Proposed Site Plan – Proposed facility site layout, grading and utilities at an appropriate scale (e.g., approximately 1"=40' or 1:480), showing existing utilities, property lines, existing buildings or structures, walls or fence lines, wooded areas, existing water wells, springs, and the boundaries of any wetlands, watercourses and/or floodplains.
 - 1. Proposed towed facility location and any appurtenances, including supports and guy wires, if any, and any accessory building (communication equipment shelter or other). Indicate property boundaries and setback distances to the base(s) of the towed facility and to the nearest corners of each appurtenant structures to those boundaries, and dimensions of all proposed improvements.
 - 2. Indicate proposed spot elevations at the base of the proposed tower/facility, and at the base of any guy wires, and the corners of all appurtenant structures.
 - 3. Proposed utilities, including distance from source of power, sizes of service available and required, locations of any proposed utility or communication lines, and whether underground or above ground.
 - 4. Limits of area where vegetation is to be cleared or altered, and justification for any such clearing or alteration.
 - 5. Any direct or indirect wetlands alteration proposed.
 - 6. Detailed plans for drainage of surface and/or subsurface water; plans to control erosion and sedimentation both during construction and as a permanent measure.
 - 7. Plans indicating locations and specifics of proposed screening, landscaping, ground cover, fencing, etc; any exterior lighting or signs.
 - 8. Plans of proposed access driveway or roadway and parking area at the towed facility site. Include grading, drainage, and traveled width.

Include a cross section of the access drive indicating the width, depth of gravel, paving or surface materials.

9. Plans showing any changes to be made to an existing facility's landscaping, screening, fencing, lighting, drainage, wetlands, grading, driveways or roadways, parking, or other infrastructure as a result of a proposed modification of the facility.

d. Proposed Tower/Facility and Appurtenances:

1. Plans, elevations, sections and details at appropriate scales, but no smaller than 1"=10'.
2. Two cross sections through proposed tower/facility drawn at right angles to each other, and showing the ground profile to at least 100 feet beyond the limit of clearing, and showing any guy wires or supports. Dimension the proposed height of the tower/facility above average grade at tower/facility base. Show all proposed antennas including their location on the tower/facility.
3. Details of the proposed tower/facility foundation, including cross sections and details. Show all ground attachments, specifications for anchor bolts and other anchoring hardware.
4. Detail proposed exterior finish of the tower/facility.
5. Indicate relative height of the tower/facility to the tops of surrounding trees as they presently exist, and the height to which they are expected to grow in 10 years.
6. Illustration of the modular structure of the proposed tower/facility indicating the heights of sections which could be removed or added in the future to adapt to changing communications conditions or demands (including potential future co-location).
7. A Structural Professional Engineer's written description of the proposed tower/facility structure and its capacity to support additional antennas or other communication facilities at different heights and the ability of the tower to be shortened if future communication facilities no longer require the original height.
8. A description of the available space on the tower, providing illustrations and examples of the type and number of Personal Wireless Service Facilities which could be mounted on the structure.

- e. Proposed Communications Equipment Shelter – including 1) Floor plans, elevations and cross sections at a scale of no smaller than $\frac{1}{4}"=1'$ (1:48) of any proposed appurtenant structure, and 2) Representative elevation views, indicating the roof, facades, doors and other exterior appearance and materials.

f. Proposed Equipment Plan:

1. Plans, elevations, sections and details at appropriate scales but no smaller than $1"=10'$.
2. Number of antennas and repeaters, as well as the exact locations, of antenna(s) and all repeaters (if any) located on a map as well as by degrees, minutes and seconds of Latitude and Longitude.
3. Mounting locations on tower or structure, including height above ground.
4. A recent survey of the facility site at a scale no smaller than $1"=40'$ (1:480) showing horizontal and radial distances of antenna(s) to nearest point on property line, and to the nearest dwelling unit.
5. Antenna type(s), manufacturer(s) and model number(s).
6. For each antenna, the antenna gain and antenna radiation pattern,
7. Number of channels per antenna, projected and maximum.
8. Power input to the antenna.
9. Power output, in normal use and at maximum output for each antenna and all antennas as an aggregate.
10. Output frequency of the transmitter(s).
11. For modification of existing facility with multiple emitters, the results of an intermodulation study to predict the interaction of the additional equipment with existing equipment.

B. The following additional application submittal information shall be required for all new Wireless Communication Facilities (WCFs) that are proposed to be located in any of the restricted areas/zoning districts as described in County Code Section 13.10.659(f)(2) and (3), including:

- Single Family Residential (R-1) zoning district,
- Multi-Family Residential (RM) zoning district,

- Ocean Beach Residential (RB) zoning district,
- Residential Agriculture (RA) zoning district,
- Rural Residential (RR) zoning district,
- Special Use (SU) zoning district with a Residential General Plan designation,
- Historic Landmarks (L), Combining Zone district,
- Mobile Homes (MH), Combining Zone district,
- Salamander Protection (SP) Combining Zone district, and
- Areas that lie between the coastline and the first through public road parallel to the coastline.

1. Additional Alternative Site Analysis Requirements:

For WCFs proposed for the restricted areas/zones listed above, the Alternative Site Analysis must include:

- Photo-simulations and preliminary/conceptual facility diagrams/plans of all technically feasible and potentially environmentally superior alternative designs and sites.
- Documentation of attempts to rent, lease, purchase or otherwise obtain the use of technically feasible alternative sites which may be environmentally superior to the proposed project site.


 Alvin James, Planning Director

Page Omitted

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RECEIVED

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SANTA CRUZ
COUNTY COUNSEL

June 24, 2002

VIA FACSIMILE AND FIRST CLASS MAIL

David Kendig, Esq.
Assistant County Counsel
Office of the County Counsel
701 Ocean Street, Room 505
Santa Cruz, California 95060

Re: **Proposed Santa Cruz County Moratorium on the Placement of
Wireless Telecommunication Facilities.**

Dear Mr. Kendig:

I understand that you recently spoke with Sarah Burbidge and Paul Albritton of this office regarding the objection of our client, AT&T Wireless, to the County's proposed moratorium on wireless telecommunications facility permits. I am writing to follow up on that discussion in order to place our client's concerns on the record and to provide you with legal authority for our position that the proposed moratorium would violate state and federal law.

AT&T Wireless is a telephone corporation providing wireless telecommunications services to the general public. It has been issued a Certificate of Public Convenience and Necessity by the California Public Utilities Commission and is also licensed and regulated by the Federal Communications Commission ("FCC"). Because AT&T is charged with providing adequate service to the public, we are concerned about any delays caused by a moratorium on approval of wireless facilities.

I. There is no Urgency to Justify the Moratorium Under State Law.

First, as a matter of state law, it is not necessary or "urgent" within the meaning of the Government Code that the County suspend the issuance of permits while revising its existing wireless ordinance. Government Code Section 65858(c) states in part that the County may not adopt or extend any moratorium absent a finding of a "current and immediate threat to the public health, safety, or welfare" and that approval of additional use permits "would result in that threat to public health, safety, or welfare." (Emphasis added.) In other words, there must be some urgency supporting the imposition of the moratorium.

Adoption of a moratorium is neither necessary nor urgent. While the County works to revise the current wireless ordinance, it has at its disposal detailed interim wireless regulations adopted only a year ago. Only a few days ago, on June 18, 2002, the Board of Supervisors extended these interim regulations because it found that doing so was urgent, in order to protect the public health, safety, and welfare. It now seems incredible (and inconsistent) to say that these same interim regulations are inadequate to protect the very same interests, and therefore the County needs a moratorium! The interim regulations already include extensive and detailed provisions to minimize aesthetic impact, ensure compliance with FCC standards, encourage co-location, and protect any other legitimate

County (or public) interest. Under the interim regulations, the County may impose reasonable site-specific conditions to minimize aesthetic and any other impacts within the County's police power.

Your letter dated June 21, 2002, to the Board attempts to justify the moratorium by listing several supposed weaknesses in the interim ordinance to be remedied in the permanent ordinance. As explained in Section IV, below, several of the proposed remedies would violate the federal Telecommunications Act of 1996. In the remaining cases, the concern in question could be adequately addressed under the interim ordinance. (We defer this discussion to a later point in the letter because it involves issues of both state and federal law.)

Since the County has adequate existing regulations, there is no urgency to justify adopting a moratorium.

11. The Moratorium, if Adopted, Should Not Apply in Public Rights-of-way.

In addition, the proposed moratorium, if applied within public rights-of-way, would violate the state franchise that permits AT&T Wireless to place its facilities within the public rights-of-way. AT&T Wireless is entitled as a matter of law under Section 7901 of the California Public Utilities Code to install equipment facilities "along any public road and highway," subject only to reasonable local restrictions as to the time, place and manner in which such roads and highways are accessed.' Section 7901 provides:

Telegraph or telephone corporations may construct lines of telegraph or telephone along and upon any public road or highway, along or across any of the waters or lands within this State, and may erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters.

AT&T Wireless is a telephone corporation as defined under the Public Utilities Code. A "telephone corporation" includes:

every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state. . . .

Public Utilities Code § 234.

"Telephone line" includes:

all conduits, ducts, poles, wires, cables, instruments, and appliances, and all other real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate communication by telephone, whether such communication is had with or without the use of transmission wires.

Public Utilities Code § 233 (emphasis added).

AT&T Wireless is therefore a "telephone corporation" as defined in the Public Utilities Code, and its installation of antennas and cable runs necessary to provide wireless service fall within the Code's definition of "telephone line." The California Public Utilities Commission ("PUC") has ruled that a wireless telephone carrier is a type of "telephone

¹ Public Utilities Code § 7901.1(a).

corporation,” and has the right, under Code Section 7901, to install wireless facilities “along any public road and highway.” In re: GTE MobilNet of San Jose, L.P., etc., 22 C.P.U.C. 2d 25 (Cal. Pub. Util. Comm. 1986). There, the PUC squarely held that the town of Los Gatos had no authority to deny GTE Mobilnet use of the public right of way for a wireless antenna site:

The local agency, under the guise of denying a Conditional Use or other permit, cannot attempt to determine whether, where, or what utility constructions may be made. It is well settled that no city has power to prevent a State-regulated utility from commencing its business or extending its plant (Pac. Tel & Tel. Co. v. City of Los Angeles, supra). When considered in conjunction with P.U. Code Section 7901, this legal principle has particular applicability to a situation such as that initially presented to us in this proceeding, where the facility involves erection of a pole to support an antenna -- a necessary fixture for radiotelephone cellular communications Any other result would defeat the very purpose of P.U. Code Section 7901, as it would interfere substantially with the ability of communication utilities to provide necessary mobile radiotelephone cellular service to the people of this State in the local, vicinity at issue.

1986Cal. PUC LEXIS 568, at *18 - *19 (emphasis added).

In addition, the California Supreme Court has held that in view of § 7901, local jurisdictions cannot exclude telephone corporations from installing equipment within the right-of-way:

Applying the above stated rules of law to the facts of the present case, it is apparent that because of the interest of the people throughout the state in the existence of telephone lines in the streets in the city, the right and obligation to construct and maintain telephone lines has become a matter of state concern. For this reason the city cannot today exclude telephone lines from the streets upon the theory that “it is a municipal affair.”

Pacific Telephone And Telegraph Co., v. City And County Of San Francisco, 51 Cal. 2d 766, 774 (1959)(emphasis added).

Section 7901.1(a) gives municipalities the right to exercise reasonable control as to the time, place and manner in which roads, highways and waterways are accessed. Reasonable control means that all entities are treated “in an equivalent manner.” 7901.1(b). Accordingly, reasonable regulation that relates to the time, place and manner of placement is appropriate if applied in an equivalent manner to all telephone corporations (including those installing traditional poles and wires). The problem here of course is that the proposed moratorium does not constitute reasonable regulation and does not operate equally. In reality the moratorium acts as a very serious impediment, preventing application of the state franchise rights granted under Section 7901. The proposed moratorium is inconsistent with the franchise granted under Section 7901, and should therefore not apply in public rights-of-way.

III. The Moratorium Would Violate the Telecommunications Act of 1996.

AT&T Wireless is a telephone utility, and therefore subject to the Telecommunications Act of 1996 (the “FTA”). To promote consistent national standards for siting telecommunications facilities, Congress included the National Wireless Telecommunications Siting Policy as Section 704 of the FTA. This Section, while preserving

local government control over traditional land use issues, sets forth certain important limitations:

- The County must act on siting requests “within a reasonable period of time,” taking all relevant factors into consideration. (47 U.S.C. § 332(c)(7)(B)(ii).)
- The County’s land use controls “shall not prohibit or have the effect of prohibiting the provision of personal wireless services.” (47 U.S.C. § 332(c)(7)(B)(i)(II).)

Based on the foregoing provisions, courts have almost uniformly held that local moratoria violate the FTA. “Generally, courts have found that the institution of moratoriums violates the Telecommunications Act.” Sprint Spectrum, L.P. v. Town of North Stonington, 12 F. Supp. 2d 247, 256 (D. Conn. 1998). “[A] moratorium against the expansion of personal wireless services would violate the Telecommunications Act.” Omnipoint Communications, Inc. v. City of Scranton, 36 F. Supp. 2d 222, 232-233 (M.D. Pa. 1999).

In fact, moratoria both long and short have been struck down by courts throughout the country. In Sprint Spectrum, L. P. v. Town of Farmington, 1997 WL 631104, *6 (D. Conn. 1997), the federal district court held that a nine month moratorium violated the FTA. ~~See also~~ Sprint Spectrum, L. P. v. Jefferson County, 968 F. Supp. 1457 (N. D. Ala. 1997)(court struck down third in series of moratoria); Sprint Spectrum, L. P. v. Town of West Seneca, 659 N.Y.S. 2d 687, 172 Misc. 2d 287, 289 (N.Y. Sup. 1997)(six month time period from application date without decision – including 90-day moratorium -- deemed unreasonably long).

One early case did permit a city to institute a six-month moratorium upon the issuance of permits for the installation of telecommunications equipment. See Sprint Spectrum v. City of Medina, 924 F. Supp. 1036 (W.D. Wash. 1996). However, the Medina decision has in every instance been strictly limited to its facts. The most critical fact relied upon by the court is that the City of Medina imposed its six-month moratorium just five days after enactment of the Telecommunications Act of 1996, when the City expected a sudden “flurry of applications.” Medina, supra, 924 F. Supp. at 1037. The courts in Farmington and Jefferson County reviewed the Medina decision and found it inapplicable to moratoria enacted fifteen months and sixteen months after the passage of the FTA.

In the present case we are dealing with a moratorium imposed six years after the FTA, and under state law (as discussed above), the moratorium is neither necessary nor urgent. Under all the cases since Medina, the proposed moratorium violates the FTA.

The County is subject to suit in federal court for violating the FTA, with liability for a prevailing plaintiff’s costs and attorney’s fees. See 47 U.S.C. § 332(c)(7)(B)(v); AT&T Wireless v. City of Atlanta, 210 F.3d 1322 (11th Circuit, 2000).

IV. The Proposed Ordinance Revisions Are Either Illegal or Unnecessary.

Several of the justifications you offer (at page 5 of your letter to the Board) for the proposed moratorium – in the form of proposed ordinance revisions – would themselves violate the FTA. Foremost among these is the proposal “to determine whether adequate coverage already exists in a given area, rendering the additional facilities unnecessary.” This is a clear-cut violation of 47 U.S.C. § 253(a), which provides:

No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

Under controlling court decisions, this provision precludes any local regulations that create undue barriers to entry, including burdensome submittal requirements. See City of Auburn v. Owest Corporation, 260 F.3d 1160 (9th Cir., 2001). The requirement that carriers document and prove the need for each site is an undue and costly intrusion into their business, and beyond the County's regulatory power.

The proposed monitoring of FCC compliance falls into the same category. We understand that the County proposes to require third-party verification of FCC compliance using the so-called "Cobb protocol." The FCC, of course, has exclusive authority over RF levels, and has established procedures to verify compliance with its RF standards. As far as we are aware, the FCC has not reviewed or approved the Cobb protocol. A requirement to use it therefore intrudes on the FCC's exclusive authority in violation of the FTA.

The proposed set-back requirements to create "free-fall zones" are both unnecessary and illegal. We represent AT&T Wireless throughout a large portion of the State of California, and have never heard of a single antenna pole or tower falling down. These facilities are carefully engineered in order to protect the carrier's substantial investment (typically several hundred thousand dollars) in the site. Furthermore, since the County is not proposing to apply set-backs to similar structures used by direct competitors -- such as telephone poles -- this provision would discriminate unreasonably in violation of the FTA.

Providing incentives for older towers to be dismantled is, as a general matter, within the County's authority, but we fail to see how this can justify a moratorium on new towers. If the County proposes that applicants for new towers pay to dismantle older towers, you run afoul of Nollan v. California Coastal Commission, 483 U.S. 825, 107 S.Ct. 3141 (1987), which requires a nexus between the proposed activity and any development exactions. Similarly, if the County proposes that applicants for co-location on existing towers pay to replace older towers, you run afoul of Dolan v. City of Tigard, 512 U.S. 374, 114 S.Ct. 2309 (1994) where there is no "rough proportionality" between the mitigation imposed and the impacts which result from the co-location.

The remaining justifications offered in your letter -- analysis of alternatives, encouragement of co-location, more detailed project plans, and public notice -- are all covered in the interim ordinance, some in quite exhaustive detail. The only one of these for which the interim and proposed ordinances differ in any objective fashion is the public notice requirement, which would go from 300 feet to 500 feet. We do not believe this minor difference comes close to creating any urgency.

Conclusions

In sum, there is no urgency to justify a moratorium, and adoption of the proposed moratorium would violate the Telecommunications Act. For these reasons, we respectfully submit that the County should not adopt the moratorium. If the County does adopt a moratorium, it should not apply to public rights-of-way.

Sincerely,



James A. Heard

cc: John McDonough, Esq.
Alan J. Smith, Esq.
Paul B. Albritton, Esq.



0551

June 24, 2002

VIA FACSIMILE to (831) 454-2327

1740 Technology Drive

Suite 250

San Jose, CA 95110

408 441-7800

Fax 408 441-7502

Clerk of the Board
 Santa Cruz County Board of Supervisors
 704 Ocean Street, Room 500
 Santa Cruz, CA 95060

Re: **Agenda Item No. 72 on the June 25, 2002 Board of Supervisors' Agenda**

**Verizon Wireless Opposition to Proposed Urgency Ordinance Imposing
 a Moratorium on Approval of Wireless Telecommunications Facilities**

Norman E. Matteoni

Peggy M. O'Laughlin

Bradley M. Matteoni

Barton G. Hechtman

Dear Clerk of the Board:

Attached is a letter from the **undersigned** Verizon Wireless' counsel, **addressed** to the **Board of Supervisors for Santa Cruz County**, regarding **Agenda Item No. 72 on the Board's June 25, 2002 agenda**. Would you **please see** that the Chairperson and each Member of the Board of Supervisors receives a copy of this letter prior to the meeting. I apologize for the lateness in getting this letter to you, but we did not receive until **Friday** afternoon, June 21, 2002, the **Proposed Urgency Ordinance and County Counsel's letter** to the Board regarding that ordinance. We also ask that this letter **be** made a part of the **administrative** record for **Agenda Item No. 72**. Thank, you for your assistance in **this** matter. **Please** do not hesitate to call **me** if you have any questions regarding this request.

Allan Robert Saxe

Of Counsel

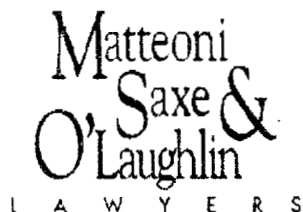
Very truly yours,

PEGGY O'LAUGHLIN
 Attorney for Verizon Wireless

PMO:jg

Attachment

cc: Peter Maushardt, Verizon Wireless
 Robert E. Smith, Crown Castle



0552

June 24, 2002

The Honorable Jan Beautz, Chair
Board of Supervisors, **and** Members
 701 Ocean Street, Room 500
 Santa Cruz, CA 95060

Re: Opposition to Proposed Urgency Ordinance Imposing a Moratorium on
Approval of Wireless Telecommunications Facilities

(Agenda Item No. 72, June 25, 2002 Agenda)

1740 Technology Drive

Suite 250

San Jose, CA 95110

408 441-7800

Fax 408 441-7302

Norman E. Matteoni

Peggy M. O'Laughlin

Bradley M. Matteoni

Barton G. Hechman

Dear Honorable Chair **and** **Members** of the Board of Supervisors:

This law firm represents Verizon Wireless **and**, on its behalf, is submitting **this** letter of opposition to the County's **proposed** ordinance to place a moratorium on the approval of applications for **wireless** telecommunications facilities. It is Verizon **Wireless'** position that the **proposed** moratorium is not necessary where the County already has an interim zoning regulation governing **wireless** communications facilities which can **simply be** extended without resorting to the **more** drastic **measure** of a moratorium. Given the **lack** of need for the moratorium, its adoption would violate the Telecommunications Act of 1996 ("TCA") and **Gov. Code** §65858.

Allan Robert Saxe

Of Counsel

I. THE PROPOSED MORATORIUM VIOLATES THE TELECOMMUNICATIONS ACT OF 1996

Pursuant to the **Federal Telecommunications Act of 1996**, (TCA), local government is required to **act** on **any** request for authorization to place, construct, or modify personal wireless **service** facilities within a *reasonable time* after the request is **duly** filed with such government or instrumentality taking into account the nature **and** scope of such request. (47 U.S.C. §332(c)(7)(B)(ii).) The **delay** which would occur in the processing of applications **due** to a moratorium **may** constitute a violation of **the** reasonable time provision.

Moreover, a moratorium **may** also violate **the** Telecommunications Act requirement that **forbids** local government from **taking actions** "that prohibit

The Honorable Jan Beautz, Chair

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or have the effect of prohibiting the provision of **personal** wireless service." (47 U.S.C. §332(c)(7)(B)(II).) It is correct **as stated** in County counsel's memo that moratoriums may **be** utilized **by** local government which **needs** time to review **and amend** its **land use regulations** to adequately **address the** siting of telecommunications **facilities** and to ensure **its** regulations **comply** with the Telecommunications Act. Where the court **has** found such a moratorium to be permissible under the TCA, it involved an ordinance moratorium of **six months** and which was **adopted** within **days after the** Telecommunications Act **became law**. (*Sprint Spectrum, L.P. v. City of Medina* 924 F. Supp. 1036(WD Wash 1996.) Here, the **County of Santa Cruz** has a comprehensive, interim telecommunications facility ordinance on the siting and placement of such facilities within **the** County. The County cannot establish **the** need or urgency for a moratorium when it **has a** wireless ordinance to govern the **placement of** wireless facilities while new regulations **are** being **processed** and **this** action takes place **well** after the **passage of the** TCA.

In the case of *Sprint Spectrum v. Jefferson County* 1968 F.Supp. 1457 (N.D. Ala. 1997), the court **held that the** County's moratorium violated the TCA because it had the **effect of** prohibiting the provision of the **new digital** wireless service (42 U.S.C. §332(c)(7)(B)(i)(II)) and because it prevented **wireless** service providers from **having their zoning requests processed** within a reasonable period of **time** (42 U.S.C. §332(c)(7)(B)(ii)). Jefferson County's moratorium **was** the third moratorium of about three months in duration which followed the county's adoption of zoning regulations **on wireless** facilities to implement the TCA's requirements. In **its** ruling, the court **said** it was not clear exactly what **the** County was trying to **accomplish** in its continued moratorium. **As in the Jefferson County case, it is** not clear **under** the circumstances here, what **the** County of **Sant Cruz** can accomplish by a moratorium.

II. THE PROPOSED MORATORIUM VIOLATES GOV. CODE §65858

Gov. Code Section 65858 provides that a city shall not **adopt** an urgency ordinance **unless it finds that there is a** current **and** immediate threat to the **public** health, **safety, or welfare, and** that the approval of additional subdivisions, use permits, **variances, building** permits, or any other applicable entitlement for use which is **required** in order to comply with zoning ordinance would **result in a** threat to **public** health, **safety, or welfare**. The County cannot **make** the requisite **showing that the approval of use permits for the establishment of telecommunications site is an immediate threat to the public**

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The Honorable Jan Beautz, Chair

June 24, 2002
Page 3

health, safety, or **welfare**. As discussed above, the County **already has** in place an interim ordinance governing the siting **and** approval of **wireless** facilities. There **is simply** no emergency of need justifying a moratorium.

III. CONCLUSION

Verizon **supports** the County's **effort** to improve its **wireless** ordinance. **And**, it **hopes** to continue its **cooperative** working relationship with the County to **establish an** ordinance which **addresses** the County's **land use** concerns, meets the **wireless carriers'** goal of providing **quality and reliable wireless service** to the County's **residents and complies** with the Telecommunications Act of 1996.

Verizon **respectfully requests** that the Board not adopt the **proposed** urgency moratorium ordinance, but rather that it **extend** its existing interim ordinance.

Very truly yours,


PEGGY M. O'LAUGHLIN

PMO:jm

cc: David Kendig, Deputy County Counsel (via fax to (831) 454-2115)
Peter Maushardt, Verizon (via fax to (925) 279-6580)
Robert E. Smith, Crown Castle (via fax to (831) 623-1884)

In, Vlaesheene door openden te beautilen wvd

833 Front Street #321
Santa Cruz, CA 95060

July 31, 2002

Santa Cruz County Board of Supervisors
Governmental Center Building
701 Ocean Street Room 525
Santa Cruz, CA 95060

To the Board:

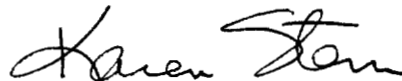
Enclosed please find documentation related to our concerned citizens' request for a temporary moratorium on the placement, construction, and modification of cellular towers/wireless communication facilities.

We believe that the inevitable result of the rapid and unregulated buildout of wireless infrastructure is a land use/quality of life/public health crisis of staggering proportions. Recently 2,000 cellular installations were dismantled in Spain*due to public outcry after several cases of antenna-related childhood cancer were reported. In the U.S., federal law has shifted liability away from telecom providers and toward landowners and local officials making siting decisions. Therefore for your own protection as well as the public's, please take the time to review the enclosed materials before making your decision on Tuesday.

We are requesting that you post these materials on your website in addition to adding them to Tuesday's packet.

Thank you very much for your time and attention.

Sincerely,



Karen Stern
Santa Cruz Antenna Moratorium


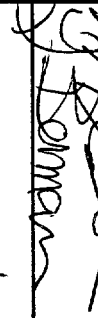
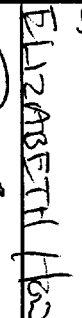




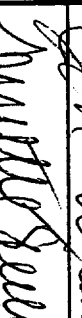





Attachments:

1. Petition, "Urgent Call for a Moratorium on Cell Towers/WCFs"
2. Flyer, same name
3. Letters, The Mendocino Beacon, 7/18/02
4. p. 44, B. Blake Levitt, ed., "Cell Towers: Wireless Convenience or Environmental Hazard?", "Liability"
- *5. "2,000 Antennas Dismantled in Spain," p. 12, No Place to Hide, Arthur Firstenberg, editor, Box 1337, Mendocino, CA
6. WHO Director Gro Harlem Bruntland sensitive to cell phones, p. 1, ibid.
7. Cell phones, towers cause health, environmental hazards, p. 7, Green Press, 5/10/02, by Karen Stern
8. Cell phones present real health threat, Santa Cruz Sentinel 8/5/01 by Laura Valaitis

Urgent Call for a Moratorium on Cell Towers/Wireless Communication Facilities

To the Santa Cruz County Board of Supervisors and to the City Councils of Santa Cruz, Watsonville, Capitola, and Scotts Valley:

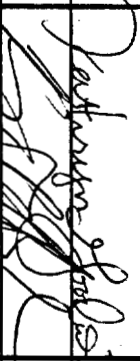
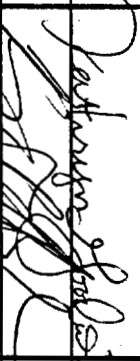






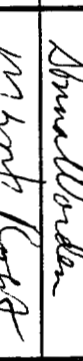
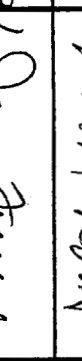

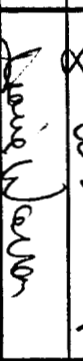
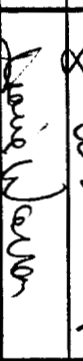
We, the undersigned, support a temporary moratorium on the placement, construction, and modification of cellular towers/wireless communication facilities until a strong permanent wireless communications facilities ordinance has been developed and established. We request that the recommendations of the citizens of Santa Cruz County be considered to the fullest extent. We request an evening hearing on this important zoning and land use issue to insure that all residents of Santa Cruz County will have the opportunity to participate.

Name (Print Legibly)	Signature	Address (Print Legibly)	email	Phone	Contact me with updates?	I want to volunteer
PAUL ESTERSON		794 ESTERSON APTS	SEH@CERO.ORG	662 3778		
Linda Berman		7000 Viewpoint Rd.	Aptos			
Elizabeth Huse		4096 Fairway Drive	SQUEL	476 6805		
Josh Corne		1140 N. Branciforte	Santa Cruz	427-1622		
Vanessa Lopez		3451 E. LEONARD	APTOS			
GAIL ADAMS		101374 Altos Road Apt 1				
Ten Waller		2003 Monterey Ave.	APT 705			
Annette Steiner		19 ATTG Dr Lasella Bn	USB	662-0656		
Bert Russak		P.O. BOX 1873 Aptos 95001	brussak@earthlink.net	688 5430	✓	
Dirk Christensen		9012 Sycamore Dr Apt 3	rather not	662 6922		
Jennifer C. Ewa		607 Cedar St. APTS CA 95003				
Daniel Hlybe		2813 Kasadwick Apt 103				
Deanne Hlybe		630 Middlefield	APTOS			

Urgent Call for a Moratorium on Cell Towers/Wireless Communication Facilities

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Name (Print Legibly)	Signature	Address (Print Legibly)	email	Phone	Contact me with updates?	I want to volunteer
KATHRYN GOODWIN		Santa Cruz, CA 95064 1156 HIGST - CASES	kathryn@pcuemail.com			
KEVIN HILLMAN		224 Biddle St WEST CASES 1156 High St Santa Cruz				
Elizabeth Trust		PO BOX 2 Aptos CA 95061				
Price Foster		107 E. Maple St Alexandria Va				
Victoria Rader		885 Labraet #2 SC, 95060				
Bella Hoffman		3144 47th St. SC 95060				
Sarah Helmreich		3030 Santa Fe Santa Cruz 95062		475-1498	Yes	
Justin Burrows		544 Debbie Ct. Boulder Creek CA 95066				
Donna Worden		134 Maran Way, Santa Cruz, CA 95062	dcwww@greens.org marte@attcruz.com	338-0818	Yes	
Mart. Roberts		2600 Highway #103 S.C. 95069				
ANE FERRER		164 Sprentis Ave SC 95066				
Stafford Lomen		164 Sprentis Ave SC 95066		831 461 9638	No	
Diane Lomen						

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Name (Print Legibly)	Signature	Address (Print Legibly)	email	Phone	Contact me with updates?	I want to volunteer
Kate Hitt	Kate Hitt	1961 Main #244 Watsonville		728-4302	<input checked="" type="checkbox"/>	
Michael E. Smith	Michael E. Smith	102 Brownwood Dr		429-6869	<input checked="" type="checkbox"/>	
Charles Baranco	Charles Baranco	244 Tyler Ct S.C.		428-1782	<input checked="" type="checkbox"/>	
Rosanne Jeffries	Rosanne Jeffries	246 Tyler Ct SC		425-1752		
Ar S. G. G.	Arison Lloyd	675 Prospect Heights SC				
Kathy Doll	Kathy Doll	201 Barson St. apt 8				
Peter Reinhard	Peter Reinhard	200 Lodge Road BC		338-2817		
Mikiko Iwaki	Mikiko Iwaki	260 Lakeland B.C.				
MICHAEL BRADLEY	Michael Bradley	(MAILING) PLEASANTON 9 CASTLEWOOD DR.				
Stephanie Liang	Stephanie Liang	1003 Carnegie St #2		471-2476		
Paul Benjamin	Paul Benjamin	223-B Washburn Dr.		426-2347	<input checked="" type="checkbox"/>	
Pat Page	Pat Page	535 Spruce SC 95060	Pat Page Oceanside, CA		<input checked="" type="checkbox"/>	
Allegra David	Allegra David	921 Parcel 9 SC 95062				

Urgent Call for a Moratorium on Cell Towers/Wireless Communication Facilities

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Name (Print Legibly)	Signature	Address (Print Legibly)	email	Phone	Contact me with updates?	I want to volunteer
Gabriela Cardelino	Gabriela Cardelino	1119 Escalante Drive Santa Cruz	gmc66@hotmail.com		X	
Suzanne Wood	Suzanne Wood	1015 Kang St.	Ruthann Wood	427-2234		
TIM PLATT	T. Platt	3204 California St. Santa Cruz				
CHRIS DICKERSON	Chris Dickerson	3003 N. COSEVILLE DR. SANTA CRUZ		426-8333		
Chris Dickerson	Chris Dickerson	1219 Laurel St				
Grace Blakeley	Grace Blakeley	1505 Dugan St.				
Sarah Moore	SM Moore	310 Davis Ave	na			
Block Borstein	Block Borstein	227 Alvarado St				
Jessy Wolete	Jessy Wolete	131 Donna Court	jessywolete@hotmail.com	831-4237-7911	X	
LAD ANANEZ	Lad Ananez	"	lad@neverever.net	831-429-0120		
Michael Cross	Michael Cross	1314 River St Santa Cruz				
Candice Dunston	Candice Dunston	2395 Delaware Ave #12 Santa Cruz	candicedunston@yahoo.com			
Golden Datter	Golden Datter	1010 Columbia St Santa Cruz	golden.datter@yahoo.com			

Return to C.P.E. P.O. Box 8467 Santa Cruz, 95061 by August 5, 2002. For more information call 688-4603 or 423-3489

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Name (Print Legibly)	Signature	Address (Print Legibly)	email	Phone	Contact me with updates?	I want to volunteer
William Magister	[Signature]	1245 Laurel St 1834 Ocean St #9, SC 95061		425-0375	No	
William Simmons	[Signature]	302 Emerson Dr 95060		426-3882	No	
Lin Nelson	[Signature]	470 SWANTON RD.	DAVENTPORT		No	
Lin Forsyth	[Signature]	232 Walnut St #4		427-0969	No	
Michael Price	[Signature]	508 Koshland Way	Michael @yahoo.com	469-3468	Yes	
H. Bartels	[Signature]	1118 Mission St.				
Emily Hall	[Signature]	739 Thorne St.			No!	
Andrea Lowman	[Signature]	517 Buena Vista			No	
Zoe Elizabeth	[Signature]	518 Beret Circle S.E.	95060		No	
George Smith	[Signature]	9650 Low (reft n.) Ben Lamon				
Joanna Eskola	[Signature]	1151 A BUCHANAN Santa Cruz 95060		426-1699	No	
Angel Smith-Ball	[Signature]	1131/1/2 Sycamore		429-6804	No	

URGENT CALL FOR A MORATORIUM ON NEW CELL TOWERS IN SANTA CRUZ COUNTY

Are you concerned about the proliferation of cell towers in our community and the growing body of evidence which shows that the radiation emitted from these towers/antennas is harmful to the health of all living beings?

In fact, there is extremely strong evidence showing that cell towers/antennas are risk factors for **cancer, brain tumors, leukemia, cardiac arrhythmia, heart attack, reproductive problems (including miscarriage and congenital malformation), neurological damage, and reduced immune system competency.**

Of course, the ultimate proof that cell technology is biologically harmful is the fact that the Federal Telecommunications Act of 1996 forbids local governments to consider health effects when siting new cell towers/antennas. A later Act exempts telecommunications companies and **their corporate officers** from lawsuits over health effects from cell phones and towers! Isn't that special!

Fortunately, it is still possible to craft a strong county ordinance which would minimize the numbers of future towers and set strict guide-

lines on where they could be placed. To do that, we need to know where all the existing cell towers in the county are currently located, and what their radiation emission levels are. Surprisingly, 18 months after this question was raised before the Board of Supervisors in January, 2001, the *County still does not have a complete list or map of what cell towers have been installed!* New cell towers are still being authorized under the county's weak Interim Wireless Communication Facilities Ordinance, which Industry wants to extend for another 12 months. We need a moratorium while we assemble a strong permanent ordinance.

Tell the Supervisors that we need to know what radiation levels we are currently being exposed to, and we need to know how other communities are handling this issue, as well as what the latest court rulings are regarding our rights of regulation. ***Tell them we need a moratorium to carefully plan our county's cell antenna policy. Ask for the moratorium hearing to be in the evening so working people can attend.***

What you can do!!

1. Come to the next Supervisors' meeting **Tuesday, August 6th**, Supervisors' Chambers, 5th floor of County Bldg. (corner of Ocean & Water) Call 454-2200 on Fri., Aug. 2, or Mon., Aug. 5, to confirm the time this agenda item will be heard.
2. Attend your Supervisor's constituent meeting and speak with them personally (See schedule to the right. Call 454-2200 to confirm meeting times.)
3. **Call your Supervisor and also leave a message for all the Supervisors @ 454-2200.**
4. Send an Email to your Supervisor (see right)
5. Share this information with others.
6. Educate yourself about this issue. Here are some websites: www.EMRNetwork.org and www.waveguide.org and <http://pages.britishlibrary.net/orange/cherryonbasestations.htm>, and www.planwireless.com

Email and/or Meet Your Supervisor

Jan Beautz Mon. 5:30 @ Cheese Factory
jan.beautz@co.santa-cruz.ca.us

Tony Campos by appointment
tony.campos@co.santa-cruz.ca.us

Ellen Pirie Weds 9 @ Aptos Sheriff's Station
ellen.pirie@co.santa-cruz.ca.us

Jeff Almquist Weds 9 @ Felton Sheriff's Station
jeff.almquist@co.santa-cruz.ca.us

Mardi Wormhoudt Mon. 5 @ Java Junction (Seabright)
mardi.wormhoudt@co.santa-cruz.ca.us

**For more info, contact SCRAM
 Santa CRuz Antennae Moratorium
 Marilyn @ 688-4603
 Stephanie @ 662-8565**



THE MENDOCINO BEACON

A Coast Paper For Coast People Since 1877

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Website: www.rnendocinobeacon.com

Letters to the Editor

'Progress, Mr. Koepf'

EDITOR — **Mr. Koepf's** letter on Wireless (Beacon, July 11), added yet another member to that honored company (growing since the time of the prophets) of those attacked for speaking out for peace, fairness, the environment, or human health.

He could also have included the Spanish judge who ordered a mobile phone antenna removed from a condominium to protect an 8-year-old with **ADHD**.

He should have included Dr. Andrew Weil, who says that because it is invisible and omnipresent, wireless may become the greatest health threat of all pollutants — and the Director General of the World Health Organization (formerly prime minister of Norway), who gets headaches from cell phones, cannot use cordless phones, gets electrical pains from laptops, and does not use the desktop computer in her office.

Returning from two weeks in the city was like coming out from under an umbrella of toxic energy; it's taken a month to recover from heart-skips and eye-aches caused by cell phones on buses and wireless devices on stores and banks.

Emotionally it's taking longer to recover from two hours spent at 4th and Mission waiting for a bus. On Mission Street young people in snappy business dress stride from Starbucks to work, hoping they won't need a bodyguard like those getting off Bart at lower Market Street.

The hungry, sick and despairing lie on the sidewalk, or rave, or accost you for money, while across the concrete, the giant crane raises the high rise higher still.

In Berkeley homelessness threatens those earning under \$35,000 a year. In Fremont, 35 percent of homeless are college graduates.

Not surprised

EDITOR — Disrespect for "other" is pretty common in our culture so I wasn't surprised by Michael Koepf's letter accusing electrosensitive people of being psychosomatics and mythomaniacs. 'Trust Us, We're Experts, How Industry Manipulates Science and Gambles With Your Future,' by muck-raking journalists Rampton and Stauber, exposes the huge revenues the multi-billion dollar telecommunication industry pours back into a sophisticated campaign of phony reassurances that being irradiated by microwaves 24 hours a day is safe. Meanwhile in Valladolid, Spain an outbreak of cancer in a primary school recently provoked a court order for removal of the wireless antenna held responsible. Similarly childhood leukemia clusters around antennas in Italy, Wales and Devon are currently raising alarm. Paul Brodeur of "The New Yorker" wrote "The Zapping of America" in 1977 warning of the dangers of microwave exposure. This is nothing new. After being evaluated by multiple doctors, I was recently granted disability by the California State Teachers' Retirement System (which doesn't give money away) for electromagnetic hypersensitivity triggered by exposure to a 2.4 GHz wireless antenna at Mendocino High School. Mike Koepf only reveals his own ignorance and complacency when he attacks the messenger.

Christy Wagner
Mendocino

The whole planet was once as beautiful as where we live. What happened?

Progress, Mr. Koepf. progress.

Virginia Cross.
Mendocino

Only one out of every 100 cases submitted to the Supreme Court are accepted. However, since the case was not tried on its merits, the legal points are still cogent and waiting to be heard in the proper venue, at another time.

Seymour's brief argues that although the federal government has the power to set health standards in areas relating to interstate commerce, that where it has defaulted on its obligations to protect public health, the federal government may not simultaneously prevent the states from taking action to do so. It further argues that with the FCC and the EPA hobbled by Congress in their respective regulatory roles, the power and responsibility to protect the public health reverts to the people of the states as part of their inviolable sovereignty. The legal arguments are a classic federal v. states rights case. Many other important points were also made in the brief, which go directly to the heart of the problem.

Numerous municipalities across the country, as well as several congressional offices filed amicus briefs in support of the petition, but the Supreme Court declined to hear the case. It was a big disappointment to

Association of Parties Concerned About The Federal Communications Commission

Radio Frequency Health and Safety Rules, and the Communications Workers of America, AFL-CIO, CLC, *et al.* These had been three separate, but related suits that were combined for review by the Second Circuit. Each petitioner came at the subject from a different angle. The Cellular Phone Task Force, headed by Arthur Firstenberg and represented by attorneys John Schulz of Colorado and Edward Collins of Massachusetts, argued that the FCC was in violation of the Americans With Disabilities Act in not taking those with electrical sensitivities into consideration with RF exposures, among other points. The Ad-Hoc Association of Parties Concerned... headed by Libby Kelly of California (a former consultant in the U.S. Department of Health and Human Services and now President of the California Council On Wireless Technology Impacts in Novato, CA.), and David Fichtenberg, a public health statistician in Olympia, Washington, represented by James Hobson, Esq. of Washington, D.C., argued that the FCC was not enforcing its own National Environmental Protection Act (NEPA) regulations which it is required to do by law, among many other points. And the Communication Workers of America, represented by Howard Symons, Esq. of Washington, D.C., argued that in setting a two-tiered exposure standard, that communication workers were being discriminated against because they were subjected to higher exposures than non-professionals. Intervenor included most of the telecommunications and broadcast industries and adjunct others. There were hundreds of amicus briefs filed in support of the various petitions. The briefs and supporting materials were voluminous and the case complex. It is difficult to sue a federal agency but there was a narrow window of opportunity after the FCC adopted new regulations in 1996. The Second Circuit courtroom was packed during oral arguments. The ruling, which was finally handed down in April of 1999, went against all petitioners and in favor of the FCC.

the many people who had hoped for relief from the highest court. (In declining to hear the case, the Supreme Court essentially bounced the solution to the problem back onto the legislative branch that created it in the first place.) Three other Petitions for Certiorari were also filed at that time over other legal points originating from the Second Circuit case. All were declined.

There is now conflicting case law at the appellate level in the U.S. Fourth Circuit Court of Appeals concerning constitutional questions about the Telecom Act that have yet to be resolved. The Fourth Circuit is considered among the most conservative in the country and is often the last step before cases go to the Supreme Court. The issues raised in the Seymour brief are not over by any means. They are just waiting for another spoke of the wheel to ride.

Liability

Liability issues can be significant for municipalities and individually site owners alike. Keep in mind that the industry has been successfully shifting liability away from itself and onto others in numerous ways — including rigged science, controlling the standards-setting committees, buying influence at the political level, co-opting key regulatory agencies, and getting industry-friendly riders through the E-911 bill, to name a few.

Unbeknownst to most people at the local level, this liability has been shifted downward to those making land-use decisions. The federal preemptions against taking the environmental effects of RF into consideration do not necessarily protect local officials who can still be named individually in lawsuits for poor siting decisions. Despite the preemptions, it is still their legal obligation to do everything possible to protect the health, safety, and welfare of the community and its citizens.

The same is true of churches and private landowners that lease space to telecom providers. There is no statute of limitations on health claims for EMF damage! Everyone with a stake in siting decisions can be sued if adverse health effects turn up. With more and more science circling around the problem and coming up with significant data, such siting decisions near populated areas are lawsuits waiting to happen.

Municipalities are increasingly seeing applications from independent tower companies like SBA and American Tower Corporation. These are not service providers but rather companies looking to establish towers wherever they can in order to lease space to RF industries. Towers can

legally disallow towers built on speculation. The Telecom Act only permits for providers of the service, not independent speculators.

Such independent tower companies are invariably set up as limited liability corporations (LLC). High-risk businesses always do this. SBA at least acknowledges in its investment portfolios that RF may turn out to be a risk for investors in company stock. American Tower Corporation has been fined \$212,000 by the FCC for antenna structure violations at various sites around the country. The fines relate to 36 separate violations that include failure to notify the FCC of ownership changes; failure to register towers with the FCC, and failure to properly light towers during construction, among other problems.

With a limited liability company, most of the financial assets are in other holding companies and are therefore out of reach. If a town, or individual gets into trouble with a LLC, they may end up owning a tower, but not much else. Many service providers are selling their own towers to such companies. It is yet another way of shifting the liability away from themselves. No one wants to be responsible for damage at the local level for property devaluation and for health claims. That puts the liability squarely on individual planners and zoners, as well as the landowners where installations are sited, if citizens need legal redress.

A Note About The Precautionary Principle and Prudent Avoidance

Several European countries, having taken a look at the recent data, are taking a different approach to the RF question. They are recommending prudent avoidance when siting antenna installations near schools, residences, hospitals or wherever people congregate. For cell phone use, they are recommending that children below the age of 16 be advised not to use cell phones for anything other than emergencies.⁴⁹

This approach is part of what is referred to as the Precautionary Principle, which has been adopted by many countries, including the U.S.

⁴⁹ Thus far, groups making this recommendation include: the Independent Expert Group On Mobile Phones and Health – commonly called “The Stewart Report” in the UK, The Greater Glasgow Board of Health in Scotland, The German Pediatric Society, The Ecological Institute in Hanover Germany, The European Parliament Directorate General for Research, the Italian government, and The Royal Society of Canada. Other countries have instituted far more stringent RF regulations than the U.S. See Sage Associates chart, Carl Blackman’s presentation, Chapter 2.

for various applications in international treaties. It is not a radical or new way of going about situations that deal with environmental uncertainty.

The Precautionary Principle holds that when questions of safety are concerned, precautions should be taken to protect the public health even if scientific data is incomplete, or mechanisms of action are not understood. It is the only approach that makes sense given what we already know about RF, and given the situation in America with industry influence at all levels. Prudent avoidance should be the driving motivation for town siting antenna installations near the population.

What Towns Can Do: Planning and Zoning Regulations

Something municipalities fail to keep in mind is the basic legal fact that it is up to the providers of a service or product to prove that their wares are safe. It is not up to us to prove that they are unsafe. The telecommunications industry has largely failed to do that. Just because they are within the FCC guidelines for RF emissions, does not prove safety.⁵⁰

No town today should allow itself to be intimidated by telecom service providers or adjunct industries like tower companies. Despite the preemptions, there is still a lot of power reserved to the municipalities, and there ~~is~~ growing volume of good case law to back up local decisions. But those in decision-making positions need to understand that this form of land use regulation is very different than traditional forms. Telecom regulation needs to be understood from a completely different vantage point. This is NOT just an aesthetic issue. It is a medical one.

Good zoning regulations are still the best protection but this kind of regulation can be complicated.⁵¹ Here are some key provisions that should be included:

- Monitoring for RF emissions is essential, both before an installation goes on line, and afterward. It is the only way to determine what was changed in the environment, and to document the date of that change. Pre- and post testing will give a community a baseline of data in case problems turn up later. It will also assist with liability issues because it will demonstrate that the town was truly paying attention. Regular, annual monitoring should be instituted by

⁵⁰ See Andrew Marino’s presentation for a fuller discussion of this point, Chapter 5.

⁵¹ See Anthony Blair’s presentation, Chapter 13, for sample regulations from Great Britain. Mass – the first community to write this kind of land-use by-law

this widely and saying that it had never happened to them before. They said it did not matter who was teaching, the children would still act disruptive.

On August 29, 2001, the *Japan Times* reported that employees' mental health was on the decline, with significant deterioration since 1996, and anxiety and obsessive behavior on the rise—this according to a survey by a private mental health research institute affiliated with the Japar Productivity Center for Socioeconomic Development which polls 100,000 company employees annually. The mental state of men was deteriorating in 19 categories, that of women, in 20. The article blamed it on the current gloomy corporate climate. (I guess the coincidental timing with the widespread introduction of cell phone systems has no significance?)

On December 30, 2001, TBS television did a program on how Japanese perceive themselves and their nation changing. Parents reported less communication with their children, who are always chatting with their friends on their cell phones. Many Japanese did not really feel themselves to be "Japanese." Maybe space aliens?

In your last *No Place To Hide* you described many cases of diseases among trees. I can add something from Japan. Japan's lovely pine trees are dying. Trees that just a year ago were healthy and well maintained, which have stood for centuries, are suddenly dead. Ostensibly, it is due to beetles carrying a disease, but one Japanese activist says scientists are still puzzled at the scope and timing. He told me some are saying global warming is to blame. In other cases, I've heard of ozone loss being blamed. I think all these theories have merits, but so does ours, and it deserves to be considered, especially in relationship to the timing.

Spain

Popular Revolt Against Antennas - More than 2,000 Installations dismantled

On the first day of winter in 2001, a Spanish judge ordered 49 cell phone antennas removed from a rooftop near a school in downtown Valladolid. It was the second time in 2001 that a Spanish court had ordered antennas removed for health reasons (see *No Place To Hide*, November 2001). This time the fight was led by parents of children at Garcia Quintana primary school, where three children had contracted acute lymphoblastic leukemia and one Hodgkins lymphoma, since the antennas were installed.

"This school was founded during the second republic," explained physician Luis Martin, spokesman for the parents, "and it has its original structure and materials. In 32 years there had not been a single cancer and, since the antennas were installed at the beginning of 2000, there have been 4 cases."

Word spread like wildfire throughout Spain, with reports about the controversy appearing daily in the major media. Environmental groups and neighborhood associations got together to cooperate in the fight against what some began to call "mad waves disease": headache, memory loss, dizziness, insomnia, chronic fatigue, etc. This was a dramatic reversal, since only a few years ago, most apartment cooperatives had been welcoming such installations as a source of good income.

Here is a small sample of headlines and quotations from the Spanish newspaper *El Mundo* earlier this year:

December 28: "The telecommunications industry asks for calm because the levels are safe."

January 4: "Antennas shut down near a public school in Teruel."

January 8: "The judge orders the re-opening of the Valladolid school...Meanwhile, other municipalities are echoing the controversy, some commissioning studies and

"If the truth comes to light, we may have to talk about crimes against humanity, and logically those responsible will have to be sought."

others directly ordering the electric supply cut to installations of this type. To Ciudad Rodrigo, Salamanca, Soria and Alcañiz was added yesterday Torrejón de la Calzada."

January 9: "The mayor of Torrejón de la Calzada orders a telecommunications antenna removed from a school courtyard."

January 9: "Eleven antennas in Valladolid will be removed near sensitive locations, such as schools, day care centers, hospitals, and nursing homes."

January 9: "In Sevilla, 300 antennas lack licenses, according to the Association of People Affected by Electromagnetic Fields."

January 11: "Alarm in Ronda about a number of cases of cancer in three schools near antennas."

January 13: "About 40 residents of the Madrid District of la Ciudad de Los Angeles yesterday blocked the installation of a telecommunications antenna on the roof of their building, located at #11, Calle Pan y Toros. The municipal police answered the call of a resident and asked for the papers of the crane operators. After determining that they lacked proof of a work permit, the two agents required the operators to stop the machine."

January 13: "Residents of Mataro prevent the installation of an illegal cell phone antenna."

January 13: "Four large municipalities in Madrid take measures against antennas."

January 15: "Minister of Science and Technology Birulés orders antenna emissions reduced near schools."

January 16: "The Socialist Party says the public has been deceived about antennas."

January 17: "The IU group in the municipal government of Madrid asks for a moratorium on the installation of telecommunication antennas...and a distance of safety of at least 1,000 meters from educational centers, hospitals, nursing homes, and so forth, and 500 meters from homes, businesses or environmentally sensitive areas."

January 18: "A judge requires unanimous consent to install antennas on a building. A decision of the majority of the residents is without effect."

January 23 (letter to the editor): "If the truth comes to light, we may have to talk about crimes against humanity, and logically those responsible will have to be sought."

January 25: "Demonstration against cell phone antennas in Vilassar de Mar...The residents talk about the health risk but also about the loss of value of their homes, which they calculate at about 30%."

January 26: "The European Union confirms that the antennas pose no risk if they comply with the law."

The Taskforce contacted Arturo Soria, author of one of the opinion pieces published in *El Mundo*. He wrote us a letter containing some insights into the genesis of the situation in his country:

'The "Information Society" in Spain

by Arturo Soria y Puig

In the political program of President Aznar, telecommunications occupy an important place. After winning in 2000 by an absolute majority, he created a "Secretariat of State of Telecommunications and for the Information Society" and integrated it into a ministry, also newly created, called "Science and Technology." As the complete name of the new Secretariat of State indicates, the "information society" was identified with telecommunications; an identification that was reinforced by naming as minister Ana Birulés, a person without previous political experience and outside the governing party, whose only qualification consisted of being the CEO of a mobile telephone company. The political objective, proclaimed repeatedly, was for Spain to be integrated into, and occupy a prominent place in, said "Information Society".

On the other hand, the popular response to the rapid and chaotic installation of some 30,000 mobile phone antennas in Spain has been impressive. Because of judicial rulings (in a few cases) and because of pressure on municipal authorities (in the majority of cases) the mobile phone providers have had to disconnect or dismantle more than 2,030 already-installed antennas. In addition, plans for new installations have been notably slowed: in the year 2001 they were only able to deploy 42.5% of the planned antenna: (information published April 10 in *El Mundo*). There are cities like Valladolid and provinces like Castellón and

Murcia where for some time they have not succeeded in putting up a single additional antenna.

Given the political decision of the Popular Party in favor of deploying mobile telephony, how can one explain such opposition, when the party continues enjoying a good electoral outlook and the use of mobile phones in Spain is very intense? Why is something like this happening in Spain before or more than in other countries? The answer is not easy but I will throw out a hypothesis:

Knowing that they have a lot of political support, the providers have installed the antennas without worrying about complying with any administrative formalities—the majority don't have municipal licenses—and without attending to any consideration other than their own interests. That is to say, they didn't worry much about reducing emissions, respecting minimal distances, avoiding large concentrations of antennas, etc. Perhaps on this point their colleagues in other European countries have been more cautious? In their eagerness to secure particular rooftops, they



L'Hospitalet de Llobregat, Barcelona

have not hesitated to threaten the owners, telling them that if they sign a rental contract, they will have an interesting economic income—the owner of the building next to the famous Valladolid school that filled its roof with more than 40 antennas earned some 150,000 euros (\$132,000) per year—and will avoid the direct radiation, while if they refuse to rent the rooftop, the antenna will be installed on the building opposite, leaving them *without this income and with the radiation*. So the providers themselves have contributed to the worries of people who neither knew about nor feared electromagnetic fields.

As far as the popular reaction, one could speculate about particular theories that are difficult to prove, for instance that nations that are more ancient are often less credulous

No Place To Hide

Volume 3, Number 3

June 2002

Gro Harlem Brundtland, Director of World Health Organization: “Cell Phones, Computers Make Me Ill”

“It’s not the sound, but the waves I react to. My hypersensitivity has gone so far that I even react to mobile phones closer to me than about four meters,” says Gro Harlem Brundtland.

She is the Director-General of the World Health Organization (WHO), and she was talking to Aud Dalsegg, who interviewed her for the cover story of the Norwegian newspaper *Dagbladet* on March 9, 2002.

The former Prime Minister of Norway never owned a mobile phone herself, but she often received calls on her associates’ phones. Now she says there is reason to be cautious about the technology.

“In the beginning I felt a local warmth around my ear,” she told Dalsegg. “But the problem grew worse, and turned into a strong discomfort and headaches every time I used a mobile phone.” At first she tried to avoid the pain by cutting her calls short, but this did not work. Nor was it sufficient to stop using the phones herself, because everyone around her, including at her workplace at the WHO in Geneva, uses them.

“I gradually understood that I had developed a sensi-



She also spoke about her reactions to computers:

“If I hold a laptop in order to read what is on the screen, it feels as if I get an electric shock up through my arms. So I must keep portable computers away from me. I have a regular desktop computer in my office, but only the secretary uses it. I have not noticed the same symptoms near it, but I turn it off as soon as I come in.”

The headaches she gets from mobile phone radiation subside about a half hour to an hour after the exposure stops, she said.

A medical doctor and master of public health, Brundtland gained international recognition in the 1980s for championing the principle of sustainable development as chair of the World Commission on Environment and Development (the Brundtland Commission). In October 1996 she stepped down as Prime Minister of Norway, after being head of her government for more than ten years. She has headed the World Health Organization since July 12, 1998.

Brundtland was careful, in the interview, to say that the danger from mobile phones has not been scientifically proven: “We do not at present have enough scientific evi-

continued on page 6

**The Work of
Dr. William
Morton, p. 19**

**2000 Antennas
Dismantled in
Spain, p. 12**

tivity to this type of radiation.

“And in order not to be suspected of being hysterical—that someone should believe that this was only something I imagined—I have made several tests: People have been in my office with their mobile phone hidden in their bag or pocket. Without my knowing whether it was off or on, we have tested my reactions. I have always reacted when the phone has been on—never when it is off. So there is no doubt.”

As for wireless home phones, Brundtland said, “I get an instant reaction if I touch such a phone.”

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alarming rate. It seems they sit in the trees with their necks so flaccid they hang down below their feet, they eventually die. They think it's a virus, same old excuse! On the same programme they were concerned why our orca whale population has diminished greatly since 1996.

Gordon Herrmann, at Industry Canada in Kelowna, told me in essence that once the cell tower companies get a license, no one really checks up to see if they are observing safety regulations. After I wrote him regarding this and my concern over the apparent number of brain tumours and aneurisms per capita in the Okanagan he changed his tune, sent me their propaganda brochure, enclosed. He refuses to deal with me any more.

Re: the enclosed article by Joey Walker. She is a most intelligent woman who became ES while producing a movie. Not to cell towers and she doesn't hear the noise, but fluorescent lights and motors, etc. She lives in a very remote area, east and south of Osoyoos (I can hear the noise there). She swears by the Teslar watch. Have you tried one? I borrowed one, but had to remove it after a few hours as it seemed to cause my heart to go more out of rhythm than it usually is. People I know say it enables them to work on

their computers without as much stress and get through the day easier?

I keep meaning to ask, are you in touch with Schatzie Hubbell on a regular basis, if so, how is she faring?

So glad you are feeling a little better, congratulations on getting rid of the high school antenna, a huge victory!

I hope your personal life has picked up too, the loneliness and limitations with this affliction are hard to take, one of the reasons I took off.

Regards,
Joan

January 11, 2002

Dear Arthur,

Please find enclosed draft in the amount of \$40.00 U.S. Sorry it can't be more at this time. It would be such a great deal for you if you could find "a place" in Canada with the exchange rate advantage you have. Will write soon.

Regards,
Joan

Gro Harlem Brundtland

(continued from cover)

dence to put out a clear warning. It is not established, for example, that the radiation can cause brain cancer. WHO has a large ongoing study, and in two to three years we will have better answers to all these questions."

But she told her interviewer that "I understand the scientists who warn us. I think there is reason to be cautious, and not to use these phones more than necessary." "Some people," she said, "develop sensitivity to electricity and radiation from equipment such as mobile phones and personal computers. Whether this sensitivity can lead to serious outcomes such as cancer or other diseases, we still do not know, but I am convinced this must be taken seriously."

She especially regrets that she herself once gave her grandchild a mobile phone as a gift. "The younger you are, the more reason to take this seriously. One should in any case be careful with their use. But children are extra vulnerable."

Brundtland recently spoke about the relationships between health, environment, economics and society. In an address delivered in Amsterdam at the Conference on Innovation for Sustainability on March 13, 2002, she said, "societies whose health status is good are societies where people are able to learn to their full potential, earn their living and nurture others — be they children, older people or those with disabilities. Health is no longer the domain only of Health Ministers. It must be seen in a wider social and

political context." And she added, "it is not only the infectious diseases that spread with globalization."

At the WHO, the coordinator for the International EMF Project is Australian biologist Michael Repacholi. He belittled his boss's concerns. In the Swedish newspaper *Arbetsliv* of March 18, he is quoted as saying:

"There have been many studies in this area. In the laboratory environment it has been investigated, as to whether hypersensitive persons can detect mobile phone radiation. The results until now have shown that this is not the case.

"I know that Mrs. Brundtland says that she has made several tests of her own that show that she can detect the radiation. As researchers we are aware that certain people are more sensitive than others, and research should concentrate on studying this group and their symptoms. A parallel example is air pollution, which has little health effects in the general population, but hits the subgroup of asthmatics hard."

Repacholi's division of the WHO has published a fact-sheet which states that there is no scientific reason to recommend special precautions with mobile phone use. "Our recommendations are based on scientific results. There needs to be more research in this area. If a clear link is shown between mobile phone radiation and negative health effects, I guarantee we will change our recommendations," he said.

Those who wish to contact Gro Harlem Brundtland may write to her at the World Health Organization, Avenue Appia 20, 1211 Geneva 27, Switzerland.

Cell phones, towers cause health, environmental hazards

by K: ren Stem

If you've noticed a mysterious purple phantom scurrying across Front Street in a hooded cape, you may have wondered what she's up to. Take your pick

1. She's a Druid rushing to a Stonehenge ritual
2. She's a Sorcerer's Apprentice late for work
3. She's Super Girl fleeing Kryptonite
4. She's an electro-sensitive Earth woman in a radiation-proof cape slashing through a harmful microwave field. Apparently the average American finds it easier to believe 1, 2, and 3 than 4, —which is why we're in dire straits.

Cell phones are perhaps the fastest growing adult toy on the market today with 2,500,000 more users since 1996 and another huge increase since 9/11. Some think we need them for safety and others think they're a nuisance. However, few are aware of the ominous dangers that are deliberately being hidden from us.

Cell phones operate on radio frequency radiation in the UHF (ultra high frequency) bands, where human brain tissue is known to reach peak absorption. They broadcast in the 870 Megahertz range, very close to the frequencies of microwave ovens. A plume of radiation emanates from the antenna every time the phone is used — slow-cooking the user's brain and harming others nearby. Furthermore, cell phones depend on a network of antennas (rows sprouting on churches, schools, hospitals, and other public buildings) and towers, marring natural landscapes everywhere. These all beam radiation at us 24 hours a day

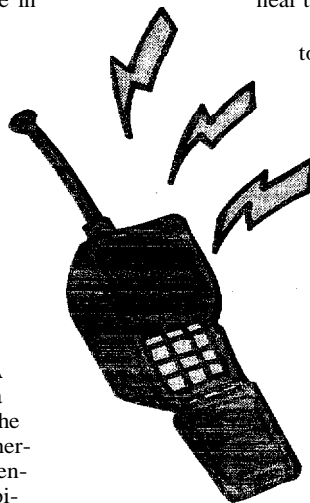
Studies have already shown cancer clusters around TV, radio and radar towers. Now we're increasing the general background radiation exponentially while adding more unfriendly frequencies. Nationwide, the number of registered towers jumped from 1,000 in 1970 to 77,700 in 2000, with 100,000 more planned in the next few years. This doesn't include hundreds of thousands of unregistered antennas. To quote B. Blake Levitt, editor of *Cell Towers: Wireless Convenience or Environmental Hazard*, "The build-out of the wireless infrastructure is creating a seamless blanket of microwave exposures for the first time in our evolutionary history in close proximity to the population...long-term exposures are thought to be cumulative. We are, in effect, engaging in a mass biological experiment. With cell phones," she continues, "one could argue that these exposures are somewhat voluntary. But with cell towers, these are involuntary exposures forced on people by the government."

All wireless devices depend on wireless infrastructure, including pagers, police radio, 911, and wireless Internet. Most tower output fluctuates with user volume. This means that every time you use a cell phone, you increase the radiation coming from the towers. However, the most toxic towers are the constant, non-fluctuating pager towers because they work by "blanket saturation."

There are two of them on the Palomar Hotel rooftop, making downtown Santa Cruz one of the hottest downtowns anywhere. Studies have shown DNA damage occurring in human cells at RFR level: far below the FCC limit for public exposure. Also documented is cellular loss of melatonin, serotonin and calcium. This leads to insomnia, depression, increase in permeability of the blood-

brain barrier, increased incidence of fatigue, headache, memory loss, heart palpitation, nausea—and in extreme cases, stroke, heart attack and leukemia.

Animals are also affected. Researchers repeatedly bred mice in several locations around a cell tower. Their offspring were progressively smaller and were sterile. Also observed was decreased milk production and calving problems in cows, disorientation and death of migrating songbirds and adverse effects on frogs and salamanders. Even the vegetation near towers suffer.



The research available today on the effects of RFR exposure has led most other countries to tighten their public exposure standards (i.e., the amount of radiation a tower may put out) to levels 50 to 1000 times stricter than ours. Compare our 380 microwatts per square centimeter to Russia's and Italy's 10, Switzerland's 4, and China's 6. The only country with a standard more outrageous than ours is Great Britain at 5800.

So what's our problem? Dollars and cents—or dollars and no sense. The U.S. government sold out our right to control our health when it passed the Telecommunications Act of 1996, which slid through Congress greased by \$29 million in lobbying expenditures by the wireless industry. This Act forbids local governments to consider health concerns in making tower-siting decisions. On top of that, the industry got itself declared an emergency response "public utility," entitling them to the same liability protection as wired carriers, even though the known health risks of wireless technology are much greater.

Illness, outrage, protests and lawsuits are already happening worldwide. Recently, a Spanish court set a new precedent when it ordered a cell tower removed because of adverse effects on the health of a child with ADHD in a residence ten feet away. In Golden, Colorado, 2,000 residents signed a petition demanding a moratorium on tower sitings on nearby Lookout Mountain, which already holds over a thousand!

A bill, introduced by Senators Leahy and Jeffords of Vermont, would give power of refusal back to the states, but it has failed to gain any support in Congress. "Dynasty" star Linda Evans hit the road to spread the word after she tried unsuccessfully to prevent a supertower from being sited less than a half mile from her home. "We couldn't stop it...I have a lawyer, I have resources. I can just imagine what the average American is going to come up against when they try to stop this..."

Sweden, home of cell phone giant Ericsson, has an advanced wireless system and some of the highest exposures anywhere. Not coincidentally, electrosensitivity is now a recognized disability in Sweden; an estimated 2% of the population affected. Per Sagerbeck, former senior engineer for Ericsson became so disabled he must wear a full-

body radiation suit just to go out in his yard. He lives in a lead-lined room. Sagerbeck, described by co-workers as "very brilliant," was recently fired from his company after appearing in the video expose "Public Exposure" in his suit.

In Santa Cruz, protest has been mounted against the proposed addition of two new supertowers to the existing one at DeLaveaga Stroke Center (remember, cell phone radiation weakens the blood-brain barrier!). This application is still pending, as are several more including one for a tower at 7th Avenue and Eaton. The County is now developing a new ordinance on siting regulations, which should take effect next September. County Planner Frank Barron is aware of the health issues and has worked hard to draft a strong ordinance. More public hearings will be held in the coming months and public input is sorely needed. Please call Wireless Free Santa Cruz at 458-4505 for more information.

There is no definitive map or even a tally of all wireless facilities in Santa Cruz County, but for those concerned, here is a fairly good list. The higher powered facilities are near the top: Palomar Hotel, Highway One South between Bay/Porter and Park Ave. exits, DeLaveaga Stroke Center, Dominican Hospital, Cabrillo College, County Building, Civic Auditorium and Fire Station, Horsnyder Pharmacy on Soquel Ave., the Park Place Building at 7th and East Cliff—and the fake tree near the entrance to Highway One North in Aptos.

More hot spots

Big chain stores are now using surveillance equipment that causes microwave readings throughout the store. Some of the worst are OSH, K-Mart, Rite Aid, and Mervyn's. Here's the saddest news, you're not even safe at the beach! Water conducts microwaves and radiation is apparently being funnelled across the bay from Monterey causing strong readings across even wide beaches. The readings only start at about 4 feet above the ground, so the more time you spend horizontal, the better. You're fine at Davenport and above.

If you wish to practice avoidance, your best course is to purchase a MicroAlert, available from LessEMF (1-888-lessemf) for about \$85. Or you can call Wireless Free Santa Cruz at 458-4505 for microwave testing of your home or workplace.

LessEMF sells conductive fabric and paint for shielding. Other ways to minimize the effect of radiation on your body include bathing in natural clay or sea salt and baking soda (one pound each) and eating fermented foods, such as yogurt, miso, and kombucha. But the most important ways to minimize your exposure are: 1) Avoid cell phones and all wireless devices 2) Let your Congressman know you support the Leahy-Jeffords bill 3) Speak your mind at public hearings on local tower sitings and the upcoming ordinance, and 4) Take to the streets.

Resources: For information about research and current news updates, visit www.emfnetwork.org. To order the video "Public Exposure" which won first prize at Santa Cruz Community TV's Earth Visions festival, call 707-937-3990 or visit www.energyfields.org. Also, read "No Place to Hide" a Newsletter published by the Cellular Phone Taskforce edited by Arthur Firstenberg and the book "Cell Towers: Wireless Convenience or Environmental Hazard" edited by B. Blake Levitt.

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8-5-01 Santa Cruz Sentinel

Cell phones present a real health threat

By LAURA VALAITIS

Recent articles (Sentinel, July 22) on cell phone use in Santa Cruz seriously neglected the major point of concern related to cell towers, cell phones and other wireless technology, which isn't about poor cell-phone reception areas, service provider plan choices, or the aesthetic unsightliness of the cell towers themselves, but rather about public health and safety issues.

Scientific research studies on cell phone radiation show that it mimics the biological and epidemiological studies for other electromagnetic radiation conducted throughout the world for more than three decades.

Results have shown: DNA strand breakage, chromosome aberrations, increased oncogene activity in cells, reduced melatonin, altered calcium efflux, altered blood pressure, altered brain activity, sleep disturbance, refractive eye problems and learning disabilities.

Dr. Neil Cherry, in his research citing over 40 studies, concludes that cell phone radiation shows a strong risk factor for diseases such as leukemia and brain cancer, for neurological disorders, cardiac arrhythmia, congenital malformations, miscarriages and reduced immune system competence. Children are particularly vulnerable because of the increased rate at which their cells divide (which makes them more susceptible to genetic damage) and their still-developing nervous systems; the size of their heads and the thinness of their skulls cause them to absorb more radiation than do adults.

The U.S. maximum permissible human exposure standards are among the highest in the world. The U.S. standard of 580-1000 microwatts of radiation per square centimeter for cellular phone frequencies compares to: Australia's 200, Poland's 10, Russia's 10, Italy's 10, China's 10, Toronto, Canada's 10, Salzburg, Austria's 0.1, and New Zealand's proposed 0.02. Ironically, there are two U.S. military research bases with a standard of 100, 10 times more protective than for the general public.

This is thanks to Congress, which passed the Telecommunications Act of 1996, with Section 704 prohibiting state and local governments from regulating cellular base stations based on health concerns: then in a subsequent act

amended the Communications Act of 1934, which granted the multimillion-dollar telecommunications industry protection from all but minimal liability for placement of its cell towers.

The Santa Cruz County Board of Supervisors is considering adoption of an ordinance governing the siting of future cell towers in our community. However, under FCC rules, the board has no authority over the health aspect of cell towers. In fact the county risks being sued by the telecommunications companies for being seen taking residents' health into account when denying an antenna permit and for not siting the towers in a timely fashion.

Exactly how many cell towers currently exist in Santa Cruz County and where are they? No one at the county knows for sure. The county's confusing map of wireless communication tower/facility sites (June 2001) shows 49 sites, and doesn't include "some or all Verizon, Cellular One, AT&T, Skytel, Metricom and other wireless facilities." In addition the county has no information on radio-frequency emissions we're being subjected to from currently existing towers.

An international effort is under way to protect the public from radio-frequency radiation. Last month the United Kingdom Department of Health issued leaflets urging parents "to limit mobile phone use by children age 16 and younger," and advising adults "to keep calls short and to purchase phones with relatively low specific absorption rate values."

In Italy, residents can monitor radiation levels from cell phone towers via the Internet, and Scottish officials proposed a regulation to ban wireless transmitters from schools, hospitals and most public buildings.

In the U.S., public safety standards regarding cell phones and cell towers lag behind those of other countries, though there is a growing movement of interest and concern, nationally as well as locally.

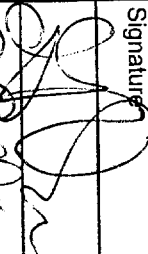

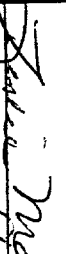





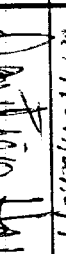




The Santa Cruz County Board of Supervisors will meet at 9 a.m. Tuesday. To contact your supervisor regarding this issue prior to the meeting, call 454-2200 or send an e-mail through the county's Web site at www.co.santa-cruz.ca.us.

Laura Valaitis is an independent researcher on environmental issues.

Urgent Call for a Moratorium on Cell Towers/Wireless Communication Facilities

To the Santa Cruz County Board of Supervisors and to the City Councils of Santa Cruz, Watsonville, Capitola, and Scotts Valley:

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Name (Print Legibly)	Signature	Address (Print Legibly)	email	Phone	Contact me with updates?	I want to volunteer
Alfred Dele		1228 Niles 95940 Facility Grove				
Shannon Sullivan		1401 83rd St Mortgage Building	shannon.sullivan@gmail.com			<input checked="" type="checkbox"/>
Leslie Marconi		207 Gaudenzio Mt. Shasta, CA				
Monica Stewart		1401 83rd St Santa Cruz 95060				
Naomi Brauner		325 High St. Santa Cruz 95060				
Ray Glock-Greenwich		1190 7th Ave #83 Santa Cruz 95060	nglock@comcast.com	831-462-3419	<input checked="" type="checkbox"/>	
Nancy Glock-Greenwell		1190-7th Ave #83 Santa Cruz 95060	"	"		
A. Romanoff		Santa Cruz, CA				
Cheshire Hawley		122 Kilmist St SC 95060				
Tom Armstrong		121 Anthony St. SC 95060				
Shelley Davis		1712 King St. San Jose				
Jacob Dison		1720 Niles 95940 525 May Ave Santa Cruz 95060				
William A. Van Son		Santa Cruz County				




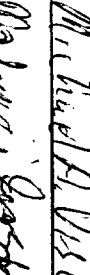





Return to C.P.E. P.O. Box 8467 Santa Cruz, 95061 by August 5, 2002. For more information call 688-4603 or 423-3489

Urgent Call for a Moratorium on Cell Towers/Wireless Communication Facilities

#63

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Name (Print Legibly)	Signature	Address (Print Legibly)	email	Phone	Contact me with updates?	I want to volunteer
Sarah Rungler		1175 7th Ave		462-0360		
Julie Colligan		4456 Parkers		462-0360 915-5945		
Wassot 6847		P.O. Box 8600				
Michael A. Vasey		619 9th Ave	mvasely@gmail.com	425-3122	✓	
Makuria G. G. G. G.		26 X 17th Ave #174				
Erica Jean Clark		132 Alturas Way, Pajaro		479-8774	✓	
KARLY						
ELAINE						
Chris Quinn		30132nd Ave	gunner@comcast.net	767-7014		
Greg Smith		29 E. Middlefield		650-625-8874		
Julia Bacher		2435 Felt St.		476-7900		

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Name (Print Legibly)	Signature	Address (Print Legibly)	email	Phone	Contact me with updates?	I want to volunteer
JOHN ANDERBEG	<i>[Signature]</i>	305 HIGHTVIEW CT SANTA CRUZ, CA				
Cerie Ascani	<i>[Signature]</i>	997 Old Santa Cruz Rd. #11 Sequel CA 95073				
JANICE MURKIN	<i>[Signature]</i>	2107 MONTICORN LN S.C. CA 95062				
MIRA MALKIN	<i>[Signature]</i>	P.O. Box 831 Capitola Sequel CA 95016				
Bob	<i>[Signature]</i>	1416 South Hampton St				
TONY FLORES	<i>[Signature]</i>	1555 Maribel St SC.				
Michelle Clift	<i>[Signature]</i>	2420 Palm Mimic				
NANCY WILSON	<i>[Signature]</i>	330 Palmer Ave Apt 5				
Stephen Ginn	<i>[Signature]</i>	510 Oak Dr.				
Melinda Hodges	<i>[Signature]</i>	2914 Loane Ln Sequel				
Amy E. Cooper	<i>[Signature]</i>	403 Laurel Glen Rd Sequel				
<i>[Signature]</i>	<i>[Signature]</i>	3327 Vistas Dr Sequel				
<i>[Signature]</i>	<i>[Signature]</i>	351 Redwood Hills Rd, CA		688-4603		

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Name (Print Legibly)	Signature	Address (Print Legibly)	email	Phone	Contact me with updates?	I want to volunteer
Joanne Katzen	Joanne Katzen	106 Sesta St, Aptos	jokat9@hotmail.com	688-3724		
Doris Katzen	Doris Katzen	1448 Day Valley Rd, Aptos	-	-		
Beth Katzen	Beth Katzen	1448 Day Valley Rd, Aptos				
Harbert Katzen	Harbert Katzen	1448 Day Valley Rd, Aptos				
Danna Atkins	Danna Atkins	725 E El Camino Rd, Salinas				
Cindy Bacon	Chaeon	1001 E El Dorado Ave, Salinas				
Bill Foley	Bill Foley	2360 Foster St, Salinas				
Judy Brewer	Judy Brewer	Ades				
Brett Miller	Brett Miller	1956 Canyon Rd, Aptos				
Shirley	Shirley	1577 Main St, Salinas				
Craig Paul	Craig Paul	1720 14th St, Salinas				
Faune Miller	Faune Miller	3911 Tanager				
Carol Jones	Carol Jones	315 Miller St				

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Name (Print Legibly)	Signature	Address (Print Legibly)	email	Phone	Contact me with Updates?	I want to volunteer
Jamie Litter	Jamie Litter	351 Redwood Heights Rd. Apt 5 CA 95005	j.litter@yahoo.com	684-1354		
Genevieve Kraus	Genevieve Kraus	854WE Oaks RD Royal Oaks, 95076		724-3844		
Sherry Bucklew	Sherry Bucklew	10 Mar 8083 Santa Cruz, CA 95061		423-0225		
Shelly Adams	Shelly Adams	308 Coldbrook Ln, Colquhoun CA 95073		464-4601	NO	NO
Del Stronger	Del Stronger	328 Coldbrook Ln, Colquhoun 95073		464-4601	NO	NO
Donna Delaney	Donna Delaney	400 Pinefield Rd S.C. CA 95060			NO	NO
Carla Decker	Carla Decker	214 Pearl St. S.C. CA 95060				
Heather Brady	H Brady	930 Rancifile Ave Santa Cruz, CA 95062			NO	NO
Frankie DeWitt	Frankie DeWitt	728 Western Dr. Santa Cruz, CA 95062				
Joe Curry	Joe Curry	301 Duval St Santa Cruz, CA 95062				
Marta Kries	Marta Kries	POB 3346 SC 95063		426-		
Jesse Lewis	Jesse Lewis	110 Fern St B Santa Cruz, CA 95060		426-4443		
Jennifer Gaylord	Jennifer E. Gaylord	344 Washington St Apt C Santa Cruz, CA 95060		469-3357	NO	NO

Return to C.P.E. P.O. Box 8467 Santa Cruz, 95061 by August 5, 2002. For more information call 688-4603 or 423-3489

Aug 05 02 03:42p

Paul Blue

031-684-1401

P.2

Aug 05 02 01:38p

Tomorrow Media

415 457 5893

P.1

SAN ANSFIMO CONCERNED CITIZENS

AUGUST 5, 2002.

TO: MARILYN GARRETT (688-4603) TOTAL PAGES: 6
FROM: JANE HALL

Hi Marilyn,

Thanks for your phone call today and the faxes. Much appreciated.
Here is a copy of the moratorium language used here.

Wishing you and your group good luck tomorrow.



JANE HALL, CINDY GOEFFT AND HELIE ROBERTSON

San Anselmo Concerned Citizens

c/o 31 Nokomis Avenue / San Anselmo California 94960

Tel 415.453.3373/Fax 415.457.5893

63

Aug-05-02 01:13P Town of San Anselmo

459 2477

P.02

URGENCY INTERIM ORDINANCE NO. 1025

AN ORDINANCE OF THE TOWN OF SAN ANSELMO EXTENDING ORDINANCE NO. 1023 TEMPORARILY PROHIBITING THE CONSTRUCTION OR INSTALLATION OF WIRELESS COMMUNICATIONS FACILITIES PENDING REVIEW FOR MODERNIZATION AND ADDITION OF RULES FOR THE CONSTRUCTION AND INSTALLATION OF WIRELESS COMMUNICATION FACILITIES

THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO DOES ORDAIN AS FOLLOWS:

SECTION 1. FINDINGS AND DECLARATION OF PURPOSE

WHEREAS, this Ordinance is found to be exempt from environmental review per the provisions of Section 15061(b)(3) of the California Environmental Quality Act of 1970 as amended.

WHEREAS, the current San Anselmo Municipal Code provisions found at § 10-3.2810 through 10-3.2819 do not contain adequate provisions necessary to insure that the construction and installation of wireless communication facilities are consistent with the public health, safety and welfare, of the citizens of and visitors to the Town of San Anselmo, and therefore need to be amended.

Potential changes and additions to current Code provisions include: an updated facilities plan, including appropriate site locations; description and explanation of technology required for installation, construction and use of wireless communication facilities; 'Listing of the carriers' facilities sites; peer review and costs; financial security provisions; removal of obsolete facilities; improved noticing of wireless communication applications; indemnity provisions; permit duration, monitoring and technological upgrades.

WHEREAS, Government Code § 65858 (f) provides that upon termination of a prior interim ordinance, the Town Council may adapt another interim ordinance provided the new interim ordinance is adopted to protect the public safety, health, and welfare from an event, occurrence, or set of circumstances different from the event, occurrence, or set of circumstances that led to the adoption of the prior interim ordinance.

The prior urgency interim ordinance, no. 985, made the following findings:

1. "The Town has been recently called Upon to respond to inquiries concerning applications for wireless

Aug-05-02 01:13P Town of San Anselmo

459 2477

P.03

communication facilities in Marin County near the Town of San Anselmo corporate limits in highly visible hillside areas near open space lands. During the course of said application process, questions arose regarding the applicability of Marin County Community Development Agency Interim Standards and Criteria for Wireless Communications Facilities approved by the Marin County Board of Supervisors November 12, 1996.

2. "A draft wireless communication facilities ordinance, patterned after the Marin County Interim Standards and Criteria, had been approved by the Town Planning Commission and was pending Town Council action at the time questions arose regarding the County applications referenced above. This prompted the Town Council to continue the ordinance adoption until sensitive land use and zoning issues were resolved.
3. "Because of the topography and geography of the Ross Valley, the proximity of San Anselmo is an important link in the receiving and transmitting network of wireless communication facilities.
4. "A potential conflict exists between the land use and zoning policies of the Town in that no specific guidelines or criteria currently exist within these documents to evaluate wireless communication facilities.
5. "As a result of the above, there exists a threat to public health, safety and welfare posed by processing and approval of use permits, variances, design review approvals, building permits or other applicable entitlements for the construction and/or use of wireless communication facilities such that processing and approval of such use permits, variances, design review approvals, and building permits or other applicable entitlements for the construction and/or installation of wireless communication facilities would lead to potential inconsistencies with the San Anselmo General Plan and Zoning Ordinance, and a decline in residential neighborhoods due to effects on aesthetics and property value. It is necessary that the Town Council and the Planning Commission conduct further study to address the issues identified in subsections 1 through 4 inclusive.

6. "A moratorium on the processing and approval of use permits, variances, building permits and/or applicable uses and entitlements for the construction of wireless communication facilities is necessary to protect the public health, safety and welfare.
7. "A moratorium is consistent with the objectives, policies and general land uses specified in the Town's General Plan and Zoning Ordinance.
8. "A moratorium will not adversely affect the orderly development, and will in fact, enhance the orderly development of property and/or the preservation of property values in the Town."

WHEREAS, ORDINANCE NO. 1023, adopted by the Town Council at its regular meeting on March 12, 2002, expires in 45 days thereafter,

WHEREAS, the Town Council desires to extend Ordinance No. 1023 to September 9, 2002 for a total of 180 days based on the findings made and the reasons given in Ordinance No. 1023,

THEREFORE, the Town Council finds that this ordinance, extending Ordinance no. 1023 is needed to protect the public safety, health, and welfare from an event, occurrence and set of circumstances different from the event, occurrence and set of circumstances that led to the adoption of prior Urgency Interim Ordinance No. 985.

SECTION 2. APPLICATION OF ORDINANCE

This ordinance shall apply to every owner of real property within the Town.

SECTION 3. PROHIBITION ON CONSTRUCTION OF COMMERCIAL ANTENNAE

Except as provided below, it is unlawful for any person to construct or install any further wireless communication facilities. Pending the review contemplated herein, the Town shall not process or approve any application(s) for permits, variances, building permits, encroachment permits, or other applicable uses or entitlements for the construction, installation or use of wireless communication facilities.

Aug-05-02 01:13P Town of San Anselmo

459 2479

P.05

SECTION 4. EXEMPTION

The following shall be exempt from the provisions of this urgency interim ordinance:

Installation of wireless communication facilities or personal communications service (PCS) facilities for which applications are currently pending before the Town of San Anselmo.

SECTION 5. VIOLATION

The violation of any provision of this ordinance is hereby declared unlawful and shall constitute a misdemeanor and a public nuisance.

SECTION 6. EFFECTIVE DATE

This Ordinance shall take effect immediately, and shall be of no further force and effect 180 days from the date of adoption to September 9, 2002, unless and until again extended as set forth as provided in Government Code Section 65858 by further action of the Town Council of the Town of San Anselmo.

Copy of the foregoing ordinance shall be published or posted according to law; if posted, shall be posted in three public places in the Town of San Anselmo, to wit: 1) Bulletin Board in front of Town Hall; 2) Town of San Anselmo Library; 3) Isabelle Cook Community Center; at places designated for that purpose.

I hereby certify the Urgency Interim Ordinance No. 1025 was duly passed and adopted at the regular meeting of the Town Council held on April 9, 2002, by the following vote:

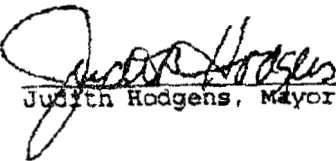
AYES: Breen, Chignell, Hodgins, Kilkus, Kroot

NOES: (none)

ABSENT: (none)

ATTEST:


Debbie Stutsman, Town Clerk
SA-Own Urgency Interim Ordinance


Judith Hodgins, Mayor

The following individuals have called the office of the Board of Supervisors to express their opinion regarding consideration of a moratorium regarding wireless communications facilities:

Name : Teresa Schneider
670 Swanton Road
Davenport, CA 95017

Comment: The moratorium on cell towers is a good idea. Evidence has proven the health risks associated with cell towers.

Name : Jill Belfry
233 Mountain View Avenue
Santa Cruz, CA 95062

Comment: I support a moratorium on cell phone towers.

Name : Dick and Ramona Andre
310 Kingsbury Drive
Aptos, CA 95003

Comment: We support the moratorium on cell towers.

Name : Linda Beil
1114 Pacific Avenue, #206
Santa Cruz, CA 95060

Comment: Please support the moratorium on cell phone towers until a strong ordinance is in place.

Name : Phil Kaplan
100 N. Rodeo Gulch Road, #29
Soquel, CA 95073

Comment: I support a moratorium on new construction of cell towers.

Name : Sally Sherriff
P.O. Box 1305
Soquel, CA 95073

Comment: I support a moratorium on cell towers because there should be more investigation into the health effects.

Name : Cindy Bacon
1001 El Dorado Avenue
Santa Cruz, CA 95062

Comment: I support a moratorium on cell towers.

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Name : Dea Davis
3455 Main Street
Soquel, CA 95073

Comment: I support a moratorium on cell towers. For many years people thought X-rays were safe until Mr. Roentgen lost all his fingers.

Name : Richard and Dida Merrill
4200 Fairway Drive
Soquel, CA 95073

Comment: Vote yes on cell tower moratorium.

Name : Lynn Gai
318 Ocean Street
Santa Cruz, CA 95060

Comment: I support the addition of more cell antennas. Dead point has been going on too **long** in Aptos area.

Name : Lucette Spitzer
7160 Aptos View Road
Aptos, CA 95003

Comment: In favor of moratorium until health affects are addressed. European countries do not accept currently. We are exposed to radiation from the sun alone and need to work to limit man-made types. Hold moratorium hearing in the evening so that I can attend.

Name : Karen Gutt
750 Mystery Spot Road
Santa Cruz, CA 95065

Comment: I support a moratorium **so** that citizens have a say with policy. Hold moratorium meeting in the evening so working citizens can attend.

Name : Deborah Watters
P.O. Box 559
Felton, CA 95018

Comment: I support a moratorium on cell towers.

Name : Harriett Blue
351 Redwood Heights
Aptos, CA 95003

Comment: I support a moratorium until health effects of such are known.

URGENT CALL FOR A MORATORIUM ON CELL TOWERS, WIRELESS COMMUNICATION FACILITIES

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Name (Print Legibly)	Signature	Address (Print Legibly)	e-mail	Phone	Contact me if I am unable to reach you
IAN TRILFMAN	[Signature]	200 Estab	TRILFMAN@CSC	296-2160	
CHRISTINE NADEL	[Signature]	934 Plymouth		425-7825	
ROSEFRANKLIN	[Signature]	Santa Cruz		440-8777	
LOUISE DAVIS	[Signature]	135 Monterey St Santa Cruz CA 95060		423-1976	
PHYLLIS REYNOLDS	[Signature]	4121 Locust St Santa Cruz CA 95060		420-1276	
Helen Jean Story	[Signature]	1110 Pacific Ave 205 Santa Cruz 95060		425-1292	
MARGEN S. ROBLES	[Signature]	721 BAY ST #218 SANTA CRUZ CA 95060		423-1451	
Terry T. Thorman	[Signature]	200 ESTABROOK DR SC. COMOD CA 95065		336-2160	
Janet Blue	[Signature]	359 Highway 17 #103 Santa Cruz CA 95060		831-6841	
Art Moss	[Signature]		home@mcclintock		
Barbara Smuck	[Signature]	4801 E. Watsonville	Barbara@readline	777-5528	
Sandra Brown	[Signature]	108 Oxford Way Santa Cruz CA 95060	Sandra@amzico.com	246-0777	

11

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Name (Print Legibly)	Signature	Address (Print Legibly)	email	Phone	Contact me with updates?	I want to volunteer
James Snook	<i>[Signature]</i>	228 Wilkes Cir	clavesnuckeel	457-9291	<input checked="" type="checkbox"/>	
Paul Ransere	<i>[Signature]</i>	927 Stewart St.				
Susie Kendie	<i>[Signature]</i>	250 Duhan St SE	Kendie@phases	458-6988	<input checked="" type="checkbox"/>	
Timmy Tonger	<i>[Signature]</i>	1630 Maric Sr #204	Timmy@hotmail	684-6144		
Cecile Mills	<i>[Signature]</i>	307 Logan Rd Wt	seascald@hotmail	724-7861		
Linda Stinger	<i>[Signature]</i>	154 Blaine St #13	Santa Cruz	458-9216		
Gail Crocco	<i>[Signature]</i>	3 Cottage Dr. Wat.		724-4691		
Mika Crocco	<i>[Signature]</i>	3 Cottage Dr	mikebry@aol.com	724-4691		
ALAN BRADY	<i>[Signature]</i>	206 BIRTON ST SCLB		425-0861		
Carol Epstein	<i>[Signature]</i>	120 Tenth St				
Scott T. Lind	<i>[Signature]</i>	1445 Folsom Rd		768-0613		
Margam Shafaghin	<i>[Signature]</i>	800 Fox 1091 Bc CA				
Tony Kerfoot	<i>[Signature]</i>	809 Vista Del Mar Dr	ARTOS, CA			

Return to C.P.E. P.O. Box 8467 Santa Cruz, 95064 by August 5, 2002. For more information call 688-4603 or 423-3489

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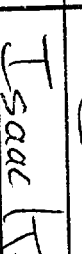




Name (Print Legibly)	Signature	Address (Print Legibly)	email	Phone	Contact me with updates?	I want to volunteer
Peter Cery	<i>[Signature]</i>	326 Collias Cir. SC, 95060	<i>[Signature]</i>		<input checked="" type="checkbox"/>	
Cristina Saper	<i>[Signature]</i>	131 GEORGE DE HOLSTE	<i>[Signature]</i>	704-3461	<input checked="" type="checkbox"/>	
James Richmond	<i>[Signature]</i>	" "	<i>[Signature]</i>	" "	<input checked="" type="checkbox"/>	
Angela Vautier	<i>[Signature]</i>	1621 Schaefer Ct. SC	<i>[Signature]</i>			
Mary Perlotti	<i>[Signature]</i>	4515 Cherryvale Dr				
Nick Ascarelli	<i>[Signature]</i>	1053363 SC				
Aaron Schmidt	<i>[Signature]</i>	6850 Freedom Aptos 3rd				
Sharon Westlake	<i>[Signature]</i>	127th Sutherland Ave				
Tudy Lukaszewicz	<i>[Signature]</i>	2888 Sandy Lane SC				
D Pender	<i>[Signature]</i>	726 Redwood 95003				
Elia Seneres	<i>[Signature]</i>	340 Redwood Dr. B.C.				
Paul Macklin	<i>[Signature]</i>	195 El Solys Ave				
Lisa Marie Vanni	<i>[Signature]</i>	117 El Camacho Mar Apt 5				

Return to C.P.E. P.O. Box 8467 Santa Cruz, 95061 by August 5, 2002. For more information call 688-4603 or 423-3489

Urgent Call for a Moratorium on Cell Towers/Wireless Communication Facilities

To the Santa Cruz County Board of Supervisors and to the City Councils of Santa Cruz, Watsonville, Capitola, and Scotts Valley:

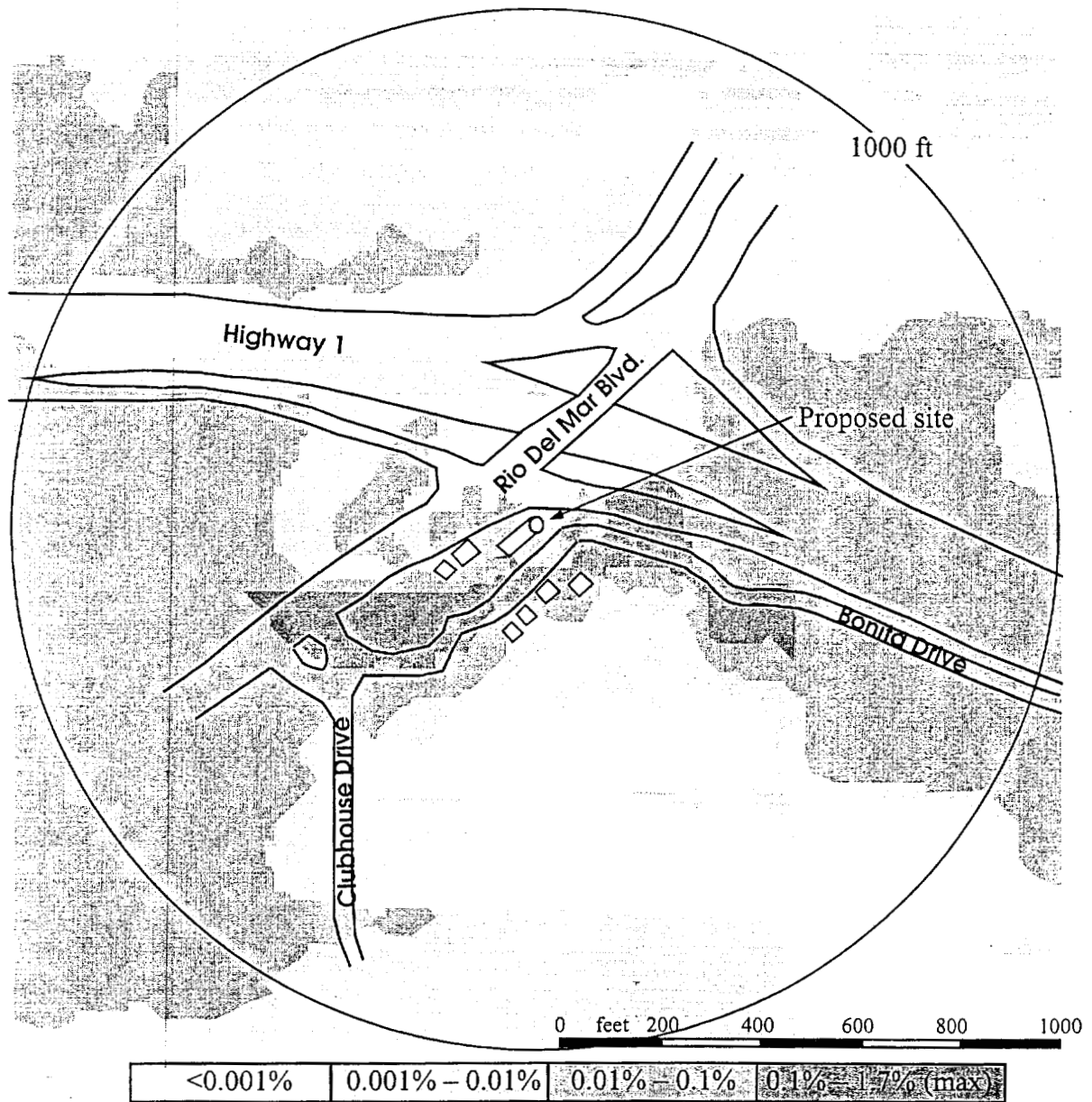
We, the undersigned, support a temporary moratorium on the placement, construction, and modification of cellular towers/wireless communication facilities until a strong permanent wireless communications facilities ordinance has been developed and established. We request that the recommendations of the citizens of Santa Cruz County be considered to the fullest extent. We request an evening hearing on this important zoning and land use issue to insure that all residents of Santa Cruz County will have the opportunity to participate.

Name (Print Legibly)	Signature	Address (Print Legibly)	email	Phone	Contact me with updates?	I want to volunteer
Robert Parsons		10863 Madeline Ct Rd Los Gatos CA	RParsons@aol	408-356-8701		
Helen Lacey	Helen Lacey	268 73 Herberly Rd Los Gatos				
Kathryn Nene		1522 Laurel St.				
Sharon Delgado		335 Bethany Dr.		440-9247		
John Goversky		Po Box 7624 SC, CA 95014				
Victoria May		1902 Delaware Ave Santa Cruz 95060		831-466-9737		
Rebecca Sullivan		121 Felix St, #10, Santa Cruz	rebeccasullivan@comcast.net			
Lea Bryant		1111 Mission St St CA	Walking the Redwoods@hotmail.com			
Nisa O'Connor		1219 Laurel St SC 95060	Cheryl32@yahoo			
Isaac Tipt		1550 Lockhart Gulch Rd Scotts Valley CA 95066	IsaacTipt@hotmail	335-3319		
Jane Baer		210-A Chelton St Santa Cruz CA 95060	lynnebaer@cs.com	423-0170		
Philip Baer		210-A Chelton St Santa Cruz CA 95060	lynnebaer@cs.com	423-0170		
William Van Dine		3637 Grand Ave	Seandick	462-0814		

Return to C.P.E. P.O. Box 8467 Santa Cruz, 95061 by August 5, 2002. For more information call 688-4603 or 423-3489

**Sprint PCS • Proposed Base Station (Site No. SF54xc440A)
311 Bonita Drive • Aptos, California**

**Numeric Values for Exposure Levels within 1,000 feet of Proposed Site at Ground Level
(using topography for subject and adjacent properties)**



Notes:

Calculations performed according to
OET Bulletin No. 65, August 1997.

Results expressed as percent of
applicable FCC public limit.

See Figure 3B for numeric values
at neighboring residences.

Distance	RF Level (%FCC Public Limit)	
	First Floor	Second Floor
<25 ft	0.43%	1.4%
50 ft	0.15%	0.80%
100 ft	0.79%	3.1%
140 ft (max)	1.7%	3.5%
200 ft	0.51%	0.53%
400 ft	0.22%	0.22%
600 ft	0.094%	0.095%
800 ft	0.055%	0.055%
1,000 ft	0.036%	0.035%



HAMMETT & EDISON, INC.
CONSULTING ENGINEERS
SAN FRANCISCO

990204.3-440A
Figure 3A

EXHIBIT M

Item #63

8/6/02

To Board of Supervisors, Santa Cruz County,

Re: Moratorium on Cell Towers/Wireless communications facilities

Your Board packet includes over 135 signatures for an „Urgent Call for a Moratorium on Cell Towers/Wireless Communicationg Facilities". More signatures are being given to you today. Copies will soon be delivered to the City Councils within our county: Santa Cruz, Watsonville, Capitola, and Scotts Valley. Quoting, "We, the undersigned, support a temporary moratorium on the placement, construction, and modification of cellular towers/wireless communication ~~facili~~ facilities until a strong permanent wireless communications facilities ordinance has been developed and established. We request that the recommendations of the citizens of Santa Cruz County be considered to the fullest extent. We request an evening hearing on this important zoning and land use issue to insure that all residents of Santa Cruz County will have the opportunity to participate." County Counsel David Kendig provides the industry/government agreement upon which your legal authority is based.

I understand that hundreds of moritoria agreements exist. Yesterday I spoke with Jane Hall, San Anselmo Concerned Citizens, where their town council voted to give their town time to go through the ordinance process by unanimously voting for a moritorium. She kindly faxed me the actual wording and I believe you received copies as well.

Why do we need a moritoriwn here? County Counsel Kendig states that the "final draft ordinance would better accomplish siting objectives than the provisions of the Interim Wireless Communications Facilities Ordinance (upon which permit decisions are now based). Page 3 of his 6/13/02 letter to you contains a comprehensive list. If better siting objectives can be required, wouldn't you be derelict in your responsibilities to select known problematic direction from the interim ordinance? For instance, "The Draft Final Ordinance would require measures to determine whether adequate coverage already exists in a given area, rendering the additional facilities unnecessary." Had this provision been in place, the lengthy Planning Commission meeting (7/23/02) re: antenna & base station on the Rummonds Bldg. in Aptos @ 311 Bonita need not have taken place.

That meeting demonstrates the need for a moritorium.. while a permanent Ordinance is in process. In this case the two families who reside across the street showed that "faulty and incomplete information was supplied by Sprint." Sprint claimed (here I am citing my notes of that meeting) "they need to have even better coverage," according to Carrie Horton their attorney. Specifically, along a one mile stretch of Hwy. one between 5 and 6 pm. that takes 1/2 minute to drive. Another kind of coverage would also take place were this approved. The planning staff map of radiofrequency radiation (microwave) within a 1,000 foot radius (done by Hammett & Edison, Inc) showed the highest exposures would be in their homes twenty four hours a day. No one in that exposure area, except the few who read the staff report, was ever informed that Mr Rummonds would get paid while they got microwaved.

Such a map should be required with every application, ~~with~~ and every staff report' All within that area deserve the right to know, participate, & be notified of the public hearing. § .

So it was left to these neighbors to prove adequate coverage already existed. Doing some investigation requiring enormous hours and some money out of pocket, they put together their own research in a rather professional report for the Bd. of Supervisors and the Planning Commission. They discovered that Sprint had not contacted owners of alternative sites as stated in Sprint's report. They took photos of 10 existing sites within a one mile radius of the proposed site. Drawing with a compass from the nearby towers, they found an actual Hwy. I overlap in coverage in the Aptos area. These creative citizen investigators took it upon themselves to drive the Hwy one route in Sprint's map between 5:00 & 6:00 p.m. with a video camera and cell phone. They phoned a person in Scotts Valley @ 5:50. In their humorous conversation with this man, he stated he could hear them fine and there was "no static," They showed five minutes of this video to the Planning Commission. Gee, Sprint didn't need that coverage and it was stated that "Sprint's technology has roaming capabilities." Now, isn't that interesting, Is there some undisclosed motivation for what appears to be oversaturation? Does this apparent fraudulent data indicate their typical deceptions? - Some other provisions not included in the interim ordinance that many of us feel are crucial:

- * notification of public hearing beyond the present 300' to 1500' or to all those who will receive this involuntary microwave exposure - how far does it range? Isn't an American value to be safe in one's own home? Isn't microwave intrusion ~~and~~ invasion of privacy?
- * Include the recommendations of SNAFU (San Francisco Antenna Free Union) for the Santa Cruz Co. Ordinance, which was given to the Planning Dept.
- * Require sufficient liability insurance as a precondition for receiving a permit. If these facilities are as safe as claimed, they should have ~~not~~ objections to waiving their exemption of liability under the Telecommunications Act. At the present time, you as planners, property owners where cell towers are located, and those who approve the permits are liable for damages.
- * Very importantly, "Only allow signal strengths that will provide for adequate coverage and adequate capacity, not blanket coverage. The right to determine signal strength at the local level has been upheld in federal case law in U.S. Sprint v. Willoth, and by the FCC, which only requires approximately 75% coverage of an area. ")p.47 B.Blake Levitt Bk.

Much is at stake. We are being called upon to protect our communities as never before. Tourism, our quality of life, our scenic vistas, and our property values are all at risk from a burgeoning wireless technology. Please show moral leadership in representing the public you are to serve. Enact a moratorium.

Please,

Thank you,
Marilyn Garrett 688-4603

Property devaluation comments from Cell Towers: Wireless Convenience or Environmental Hazard? edited by B. Blake Levi

Call 413-229-7935 to order book

(the following is from p. 11 & 12 footnotes)

- Item #63
10. According to "Couple Wins \$1 Million in Suit Over Cell Tower Near Home," Microwave News, March/April 1999, a jury in Harris County, Texas ordered GTE Wireless to pay a Houston couple with a cellular tower installation 20 feet from their property line: \$720,000 compensation for nuisance and invasion of privacy; \$225,000 for mental anguish; \$28,000 for property devaluation; \$230,000 for legal fees plus interest - for a total of 1.5 million dollars.
 11. Estimates range from 2% to 40% devaluation, depending on location and other factors. In "Property reassessments can be controversial call," by Phil Brozynski, Pioneer Press Barrington Courier Review, Jan 28, 1999, a 26-year Chicago real estate appraisal firm, Howard Richter & Associates, found as much as 15% devaluation in a home within 270 feet of a cell tower. Twenty-one residents of North Barrington, IL sued the Village of North Barrington and Ameritech Mobile Communications for property devaluation. Ameritech paid half of the town's legal expenses thereby pitting the industry and the municipality against the citizens.

In other studies, it has been found that the more expensive the home, the greater the impact. In one survey, a \$200,000 home lost 2% of its value, while a 400,000 home lost 10%. In some cases, homes remain unsellable at any price. (See "Cell Phone Towers Are Sprouting in Unlikely Places" by Christine Woodside, New York Times, Connecticut, Section 14, January 9, 2000.) When sales offers simply do not come in for a property, there is no way to measure percentage losses in value. People are stuck with properties they cannot sell. Furthermore, properties are often taxed & before-tower evaluations, forcing citizens to sue their towns for reevaluations. Lower real estate values generate less tax revenue for host towns.

These footnotes are in the section titled Democracy Undermined: Property Devaluation; Neighbor Pitted Against Neighbor; Citizens Against Their Towns

We are paying a steep price at the local level for the Telecom Act and an activist FCC. Not since the buildout of the railroads at the turn of the last century has there been such a landgrab in favor of one industry. Some of our most democratic rights are at stake.

The price of democracy is very real to those whose property has been devalued - in some instances up to 40% - when a cell tower is located nearby." Often citizens are pitted against their own local governments when their towns form alliances with industry.

Item #63

8/14/01 resubmitted 8-6-02

The Telecommunications Act of 1996 bars municipalities from considering the health effects of microwave radiation in the siting of cell tower wireless communication facilities. Subsequent legislation went a step further and released telecommunications corporations from many liabilities stemming from health risk factors created by their cell towers. Over 40 cell phone radiation studies * worldwide have drawn careful conclusions Which indicate the telecommunication industries have serious liability issues which will come due in the future. Once these issues become quantified, property values surrounding cell towers may plummet on the order of such other environmental disasters as Love Canal and Three Mile Island.

In order to protect the people of Santa Cruz County, any telecommunications corporation desiring to site a cell tower/wireless communications facility should be required to waive their exemption of liability under the Telecommunications Act and carry sufficient liability insurance as a precondition for receiving a permit. If these facilities are as safe as the industry claims, then they should have no objections to these requirements. If, on the other hand, there is data which is being suppressed or ignored, then we can expect them to hide behind this special interest legislation.

Any other business in Santa Cruz County, with the exception of a nuclear power plant (similarly exempted by the Price-Anderson Act) would be considered derelict in its corporate responsibility if it did not carry sufficient insurance to protect the public from accidents or mishaps.

We are asking the Santa Cruz County Board of Supervisors⁴⁵⁴⁻²²⁰⁰ to not grant any permits for cell tower/wireless communication facilities unless Sprint, Cingular, Nextel, Verizon, Cellular One, AT&T, Skytel, Metricom, etc. have agreed to these insurance liability conditions,

Sincerely,
Marilyn Garrett
688-4605

* Dr. Neil Cherry 8 June 2000 Environmental Management and Design Division, Lincoln University, New Zealand, in citing these studies concludes:

They show that cell phone radiation mimics the biological and epidemiological studies for EMR over the past 4 decades. This includes DNA strand breakage, chromosome aberrations, increased oncogene activity in cells, reduced melatonin, altered brain activity, altered blood pressure and increased brain cancer.

<http://pages.britishlibrary.net/orange/cherryonbasestations.htm>

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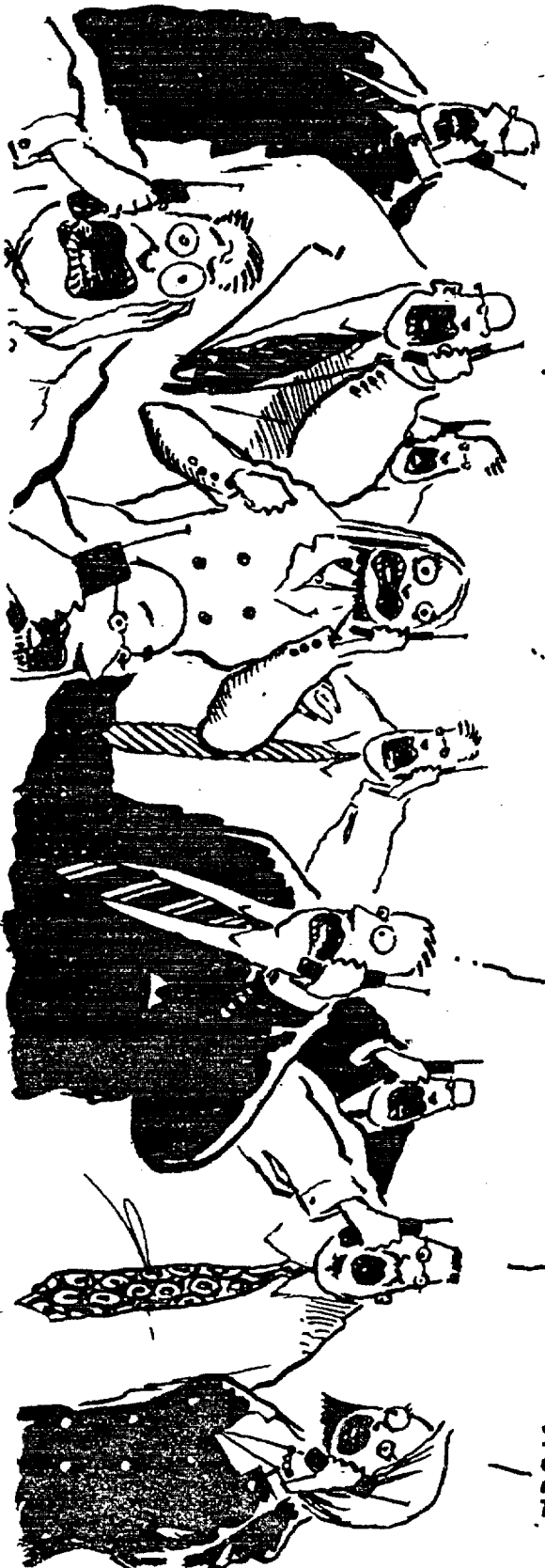
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Jack Ohman
The (Portland) Oregonian

Santa Cruz Draft Wireless Communication Facilities Ordinance

Recommendations Submitted to the Santa Cruz County Telecom Policy Advisory Committee
by Doug Loranger, San Francisco Neighborhood Antenna-Free Union (SNAFU)

March 14, 2002

The following recommendations are based upon Santa Cruz County's legal authority to:

- (1) Minimize the number of wireless antenna facilities required to provide wireless communication services in the County.
- (2) Require proof of necessity by wireless carriers prior to approving any proposed wireless antenna facility.
- (3) Protect public health, safety and welfare by requiring radiofrequency (RF) emissions testing protocols that inform and notify the public to the fullest extent reasonably possible of the ambient RF radiation conditions in Santa Cruz County. These protocols should also test for any actual or potential interference with public safety and other wireless frequencies in Santa Cruz County.
- (4) Minimize, negative impacts, including attractive nuisance.

The authority for (1) derives from the Federal Appeals Court decision *Sprint Spectrum L.P. v. Willoth*, 176 F.3d 360 (2nd Cir. 1999), which states, "A local government may also reject an application that seeks permission to construct more towers than the minimum required to provide wireless telephone services in a given area. A denial of such a request is not a prohibition of personal wireless services as long as fewer towers would provide users in the given area with some ability to reach a cell site." (See Exhibit A.)

The authority for (2) and (4) rests in standard land use and zoning law.

The authority for (3) follows from Section 704 of the Telecommunications Act of 1996, which denies local governments the authority to "regulate the *placement*, construction *and modification* [emphasis added] of personal wireless services facilities on the basis of the environmental effects of RF emissions to the extent that such facilities comply with the [Federal Communications] Commission's regulations concerning such emissions," but is silent on the question of public notification. The public has a right to know, to the fullest extent reasonably possible, the cumulative environmental effects of wireless facilities in their community. This is of particular importance when a federal preemption over local decision-making related to a health and environmental issue of some concern may leave members of the public with little recourse to protect their own health and safety but an individual decision to relocate based upon available information about ambient RF levels where they live, work, attend school, etc. Santa Cruz County has a responsibility to members of the public to provide this information in a form as complete, objective, and scientifically rigorous as possible.

County-supervised testing for interference with public safety and other frequencies is both legal and reasonable in light of the FCC's inadequate staffing to conduct such testing in the field. Should interference, or the potential for interference, be detected, any such information may then be submitted to the FCC for appropriate regulatory action. (See Exhibit B.)

With these four principles in mind, the current draft of the ordinance should be strengthened and improved in the following ways.

1. **Carriers Should Be Required to Identify Their Wireless Networks in the Region in Their Entirety and in as Much Detail as Possible.** All Base Transceiver Stations, Base Station Controllers, Mobile Telephone Switching Offices, and Transit Switching Centers should be identified. All of the actual equipment -- not simply antennas or radomes -- to be utilized by an individual wireless facility should be listed by manufacturer, model number and type, catalogue number, power output, etc. This information should be provided so that any expert the County brings in to determine a carrier's claim(s) of necessity has as much information at his/her disposal as possible to evaluate such claim(s).
2. **Before Granting a Permit for a Wireless Facility in a Zoning District Where Such Facilities Are Otherwise Prohibited, a Carrier Should Be Required to Demonstrate That No Other Carrier Currently Provides Service in the Proposed Service Area.** In 13.10.659(f)(2) and (3), there are two slightly different -- but actually quite significant -- requirements governing exceptions to prohibitions of wireless facilities in certain zoning districts, one limited to the provider's own network 13.10.659 (f)(2), and one more broadly construed 13.10.659 (f)(3). Federal Appeals Court rulings argue in favor of making the definition in 13.10.659 (f)(3) the same as in 13.10.659(f)(2). In the case *APT Pittsburgh Partnership v. Penn Township*, 196 F.3d 469 (3rd Cir. 1999), the Court ruled that ". . . an unsuccessful provider applicant must show . . . that its facility will fill an existing significant gap in the ability of remote users to access the national telephone network. . . . Not all gaps in a particular provider's service will involve a gap in the service available to remote users. The provider's showing on this issue will thus have to include evidence that *the area the new facility will serve is not already served by another provider.*" (Emphasis added.)
3. **A Setback of at Least 1,500 Ft. from the Perimeter of Any School Should Be Required.** Cellular towers provide an 'attractive nuisance' in that they afford children a temptation to climb such structures. Under California law, the principle of 'attractive nuisance' has been superceded by the more broadly construed principle of 'foreseeability'; i.e., if it is foreseeable that under some circumstances children might attempt climb a cellular tower located in proximity to their school, Santa Cruz County has the authority to render this possibility less likely.
4. **Inter-Carrier Service Agreements Should Be Required to Assist in Minimizing the Number of Wireless Facilities Necessary to Provide Communication Services in the County.** Carriers sharing frequency ranges and common network access technologies are capable, via network service identifiers (SIDs) or Preferred Roam Lists (PRLs), of sharing available infrastructure for services provided to their wireless customers.

Proposed Changes to Draft Ordinance

13.10.659 (d): "Definitions" section should contain a definition for "BSC - Base Station Controller" and "TSC - Transit Switching Center," two crucial components of wireless networks.

13.10.659 (f)(2): Replace ". . .that adequate coverage is not already provided to proposed service area by existing wireless communications facilities in the service provider's network" with ". . .that adequate coverage is not already provided to proposed service area by existing wireless communications facilities."

13.10.659 (f): Add a section prohibiting the placement of wireless facilities within 1,500 A. of the perimeter of any school based upon the land use principle of attractive nuisance and/or foreseeability.

13.10.659 (f)(7): Add a section requiring inter-carrier service agreements prior to consideration of co-location.

13.10.659 (g)(2)(v): "Evidence of Need" section: The "description of existing network" requirement should be spelled out in greater detail (i.e., carriers should be required to identify any and all Base Station Controllers, Mobile Telephone Switching Offices, Transit Switching Centers, etc.) Also, equipment should be required to be identified by actual manufacturer, model number and type, catalogue number, etc.

13.10.659 (g)(2)(xvi)(d): "Proposed Equipment Plan" should require all equipment, not simply antennas and radomes, to be identified (by manufacturer, model number and type, power output, etc.)

San Francisco Neighborhood Antenna-Free Union (S.N.A.F.U.)

Cellular Wireless Antennas: Federal Appeals Court Case Law Citations and Excerpts

Sprint Spectrum L.P. v. Willoth

176 F.3d 360 (2nd Cir. 1999)

“We do not read the [Telecommunications Act of 1996] to allow the goals of increased competition and rapid deployment of new technology to trump all other important considerations, including the preservation of the autonomy of states and municipalities.”

“A local government may also reject an application that seeks permission to construct more towers than the minimum required to provide wireless telephone services in a given area. A denial of such a request is not a prohibition of personal wireless services as long as fewer towers would provide users in the given area with some ability to reach a cell site.”

“Furthermore, once an area is sufficiently serviced by a wireless service provider, the right to deny application\$ becomes broader.”

“We hold only that the Act’s ban on prohibiting personal wireless services precludes denying an application for a facility that is the least intrusive means for closing a significant gap in a remote user’s ability to reach a cell site that provides access to land-lines.”

APT Pittsburgh Partnership v. Penn Township

196 F.3d 469 (3rd Cir. 1999)

“...[A]n unsuccessful provider applicant must show ... that its facility will fill an existing significant gap in the ability of remote users to access the national telephone network. ... Not all gaps in a particular provider’s service will involve a gap in the service available to remote users. The provider’s showing on this issue will thus have to include evidence that the area the new facility will serve is not already Served by another provider.”

AT&T Wireless PCS v. City Council of City of Virginia Beach

155 F.3d 431 (4th Cir. 1998)

“The [Telecommunications] Act explicitly contemplates that some discrimination ‘among providers of functionally equivalent services’ is allowed. Any discrimination need only be reasonable.”

“It is not only proper but even expected that a legislature and its members will consider the views of their constituents to be particularly compelling forms of evidence, in zoning as in all other legislative matters. These views, if widely shared, will often trump those of bureaucrats or experts in the minds of reasonable legislators.”

Cellular Telephone Co. v. Zoning Board of Borough of Ho-Ho-Kus

197 F.3d 64 (3rd Cir. 1999)

Local governments can consider “quality of existing wireless service” in rejecting an application

S.N.A.F.U. 1835 Broderick Street, San Francisco, CA 94115 (415) 885-1981

