



**COUNTY OF HUMBOLDT**  
**PLANNING AND BUILDING DEPARTMENT**  
**LONG RANGE PLANNING**

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Date: Meeting of April 7, 2022

To: Humboldt County Planning Commission

From: John H. Ford, Director of Planning and Building Department

Subject: **Continued Public Hearing on the Draft Wireless Telecommunications Facilities Ordinance  
Case Number PLN-2021-17452**

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Please contact Keenan Hilton, at 707-268-3722 or khilton@co.humboldt.ca.us, if you have any questions about the Telecommunications ordinance.

**Note:** This staff report is the same as what was provided at the February 17, 2022 Planning Commission hearing except what is highlighted in Attachments 1, 2 and 3, which respond to comments, in particular those from County Counsel - Public Works.

## AGENDA ITEM TRANSMITTAL

Meeting Date	Subject	Contact
April 7, 2022	Draft Wireless Telecommunications Facilities Ordinance	Keenan Hilton

**Project Description:** The purpose and intent of this Wireless Telecommunications Ordinance is to provide a uniform and comprehensive set of standards for the development, siting and installation of wireless telecommunications facilities in the Zoning Ordinance (Section 91.1 of Chapters 3 and 4 of Division 1 of Title III of Humboldt County Code). These standards do all of the following: protect and promote the public health, safety and welfare of the residents of the unincorporated areas of Humboldt County; protect aesthetic values in accordance with the guidelines and intent of the Telecommunications Act of 1996; encourage siting in preferred locations to help preserve the County's rural character, including the protection of scenic, natural and cultural resources; and minimize the intrusion of these uses into residential areas. The proposed ordinance uses a tiered approach to permitting communication facilities: the lowest tier ("Tier 1") applies a streamlined permit process to easily allow telecommunication facilities least likely to have any impacts. Conversely, the highest tier ("Tier 3") requires a public review process through conditional use permits for projects most likely to have impacts. The new ordinance proposes all the following:

1. Adds section 314-91, amends the tables in section 314-7, and amends sections 314-84, 314-138, and 314-171 in Chapter 4 of Division 1 of Title III of the County Code for the inland areas of the County
2. Adds section 313-65 and amends sections 313-138, and 313-171 in Chapter 3 of Division 1 of Title III of the County Code for the coastal areas of the County.

**Project Location:** All of the unincorporated areas of Humboldt County, including the Coastal Zone.

**Present Plan Designations:** All land use designations.

**Present Zoning:** All zoning districts.

**Environmental Review:** The proposed ordinance amendments are exempt from environmental review under §15307 and §15308 of the California Environmental Quality Act (CEQA). Also, for the coastal zoning regulations, pursuant to 21080.5 and 21080.9 of the Public Resources Code and Sections 15250, 15251(f) and 15265 of the California Environmental Quality Act (CEQA) Guidelines, CEQA does not apply to the activities of a local government for the preparation and adoption of a Local Coastal Program, and therefore the County adoption of the Coastal Wireless Telecommunications Facilities Ordinance is statutorily exempt; and Local Coastal Program Amendments are exempt subject to approval by the California Coastal Commission, a regulatory program certified by the Secretary of Resources as being the functional equivalent of the environmental review process required by CEQA).

**State Appeal Status:** This project is located in part within the Coastal Zone and is therefore appealable to the California Coastal Commission. Changes proposed to the Local Coastal Program (zoning ordinance provisions in 313-91 and other sections of Chapter 3) must receive final certification from the California Coastal Commission before they may become effective.

## WIRELESS TELECOMMUNICATIONS FACILITIES ORDINANCE

### Recommended Commission Action

1. Open the public hearing.
2. Request that staff present the staff report.
3. Receive public testimony.
4. Deliberate and comment on the draft Wireless Telecommunications Facilities ordinance and alternatives presented.
5. Take the following action:

*"Based on evidence in the staff report and public testimony, make all the required findings and adopt the Resolution recommending that the Humboldt County Board of Supervisors find that the proposed ordinance is exempt from CEQA pursuant to §15307 and §15308 of the State CEQA Guidelines and adopt the proposed Wireless Telecommunications Facilities ordinance (as modified by the Planning Commission) along with its related zoning code amendments"*

### EXECUTIVE SUMMARY:

This Wireless Telecommunications Facilities Ordinance implements measure **T-IM1. Communications Facilities Ordinance** of the Humboldt County General Plan which seeks a Communications Facilities Ordinance that ensures compatibility of communications facilities with nearby land uses, is proactive in the design and siting of wireless communications facilities, provides incentives for unobtrusive and compatible wireless antennas, and establishes clear standards for such facilities.

The draft ordinance provides a uniform and comprehensive set of standards for the development, siting and installation of wireless telecommunications facilities. These standards protect and promote the public health, safety and welfare; protect aesthetic values in accordance with federal and state guidelines, encourage siting in preferred locations to help preserve the County's rural character, including the protection of scenic, natural and cultural resources; and minimize the intrusion of these uses into residential areas. The proposed ordinance uses a tiered approach to permitting communication facilities: the lowest tier ("Tier 1") applies a streamlined permit process with no public hearings required to easily allow telecommunication facilities least likely to have any impacts. Tier 2 facilities are allowed with a Special Permit, and the highest tier ("Tier 3") requires conditional use permits for projects likely to have impacts.

The draft ordinance responds to and incorporates the following guidelines:

- Federal law occupies most of the regulatory arena for wireless telecommunication facilities. For example, local regulations are prohibited from regulating radiation emitted from telecommunication facilities.
- Federal law identifies a "shot clock" for review of applications for wireless telecommunication facilities, and failure to meet the identified timeframes may result in automatic approval of the application.
- The General Plan identifies the following standards for the draft ordinance:
  - A. Tiered Permitting. Utilize permit processes that vary depending upon the physical characteristics of the facility, its location, and its compliance with specific development and performance standards, and include provisions for expanded noticing.
  - B. Performance Standards. Standards for siting design, visibility, construction impacts, noise, on-going operation, and other characteristics that affect the compatibility and environmental and safety impacts of proposed facilities.
  - C. Site Co-location. When feasible, communications facilities shall be located adjacent to, on, or incorporated into existing or proposed buildings, towers, or other structures. The

County shall require new facilities to accommodate future co-location to the maximum extent feasible.

- D. Public Health and Safety. Applicants shall demonstrate that proposed facilities operate within Federal Communications Commission (FCC) emission regulations and guidelines including initial and ongoing monitoring for compliance with FCC regulations.
- E. Location and Siting.
  - 1. When designing and siting towers, screening should be used, if possible, to minimize visual impacts.
  - 2. Stealth siting methods should be used, if possible, within views of scenic highways, public parks, cultural facilities and coastal scenic areas.
  - 3. Stealthing and/or setbacks shall be used to ensure community compatibility.
  - 4. An alternatives analysis may be required at the time of application that documents why the proposed project is the best way to accomplish project alternatives while minimizing project impacts.
- F. Design and Screening.
  - 1. Support structures shall be designed to minimize their visibility with a preference towards each of the following in the order so listed: 1) use of existing structures, 2) stealth designs for concealment, and 3) monopoles.
  - 2. Component parts, equipment cabinets, buildings, and security fencing shall be designed to achieve a minimum profile through painting, screening, landscaping, and architectural compatibility with surrounding structures.
  - 3. Photo simulations or balloon tests with views from various vantage points may be required to show visual impact of the proposed facility.
- G. Removal of Un-used Facilities. Require the timely removal of communications towers and equipment when they are no longer needed, as a condition of approval.
- H. Independent Review. Applicants may be required to pay the cost of independent review to evaluate siting alternatives, necessity based on adequacy of coverage or evaluation of radio frequency emissions in relation to FCC Maximum Permissible Exposure Limits.
- I. Waiver or Modification of Standards. Allow for a waiver or modification to standards and requirements based on specific findings showing non- detriment and necessity or that strict compliance would result in noncompliance with applicable federal or state law.

- Co-location of telecommunication facilities is incentivized through streamlined permit review process.
- Commercial and industrial zones are preferred locations where telecommunication facilities are encouraged.
- Telecommunication facilities involving lattice towers and “guyed towers” are not allowed in Residential zones, and require a Conditional Use Permit in Timberland Production Zone (TPZ) and Agriculture Exclusive (AE) Zone. (Presently these are allowed without a discretionary permit in the TPZ Zone.)

**RESOLUTION OF THE PLANNING COMMISSION  
OF THE COUNTY OF HUMBOLDT**

**Resolution Number 22-**

**Wireless Telecommunications Facilities Ordinance**

**Makes the required findings for certifying compliance with the California Environmental Quality Act; recommends adoption by the Board of Supervisors of the Wireless Telecommunications Facilities Ordinance.**

**WHEREAS**, the Telecommunications Act establishes the broad authority of Federal Communications Commission over telecommunications and directs that agency to promote competition and reduce regulation in order to secure lower prices and higher quality of service for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies; and

**WHEREAS**, the Middle Class Tax Relief and Job Creation Act (the Spectrum Act) establishes that a State or local government may not deny, and shall approve any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station; and

**WHEREAS**, California Government Code Section 65850, et seq. authorizes counties to regulate land use, and to adopt and amend zoning ordinances for such purposes, and sets forth procedures governing the adoption and amendment of such ordinances; and

**WHEREAS**, California Government Code Sections 65850.6 requires discretionary co-locations of facilities initially approved by ministerial action; and

**WHEREAS**, Humboldt County initiated the zoning ordinance changes herein to implement its General Plan Telecommunications Element, which directs the County to develop a Wireless Telecommunications Facilities Ordinance as set forth in T-IM1; and

**WHEREAS**, the proposed ordinance and related code amendments may be approved if findings can be made that: (1) the proposed change is in the public interest; and (2) the proposed change is consistent with the General Plan; (3) amendments to the Local Coastal Plans are in conformity with the policies of the Coastal Act and approved Local Coastal Plans; and

**WHEREAS**, adoption of the Wireless Telecommunications Facilities Ordinance is exempt from environmental review pursuant to the California Environmental Quality Act, under CEQA Guidelines §15307 and §15308; and

**WHEREAS**, pursuant to 21080.5 and 21080.9 of the Public Resources Code and Sections 15250, 15251(f) and 15265 of the California Environmental Quality Act (CEQA) Guidelines, CEQA does not apply to the activities of a local government for the preparation and adoption of a Local Coastal Program, and therefore the County adoption of the Coastal Wireless Telecommunications Facilities Ordinance is statutorily exempt; and Local Coastal Program Amendments are exempt subject to approval by the California Coastal Commission, a regulatory program certified by the Secretary of Resources as being the functional equivalent of the environmental review process required by CEQA); and

**WHEREAS**, Exhibit A to this resolution includes substantial evidence in support of making all the required findings for approving the proposed amendments to the zoning text; and

**WHEREAS**, a public hearing was held on the matter before the Humboldt County Planning Commission on March 3, 2022 and April 7, 2022.

**NOW, THEREFORE**, be it resolved, determined, and ordered by the Humboldt County Planning Commission that the following findings are hereby made:

1. The proposed ordinance to implement the General Plan is in the public interest; and
2. The proposed ordinance to implement the General Plan is consistent with the General Plan; and
3. The proposed ordinance does not reduce the residential density for any parcel below that utilized by the Department of Housing and Community Development in determining compliance with housing element law.
4. The Planning Commission makes the findings in Exhibit A of this resolution, which is incorporated fully herein, based on the evidence provided.

**BE IT FURTHER RESOLVED** that the Planning Commission recommends that the Board of Supervisors of the County of Humboldt:

1. Hold a public hearing in the manner prescribed by law.
2. Adopt the ordinance amending the Zoning Regulations of the Inland Zoning Ordinance (Section 314 of Title III, Division 1, Chapter 4 of Humboldt County Code) as shown in Attachment 2 of this staff report and summarized as follows:
  - (a) Sets forth standards for the Inland Zone, in accordance with federal and state law, for the development of Wireless Telecommunications Facilities.
3. Adopt the ordinance amending the Zoning Regulations of the Coastal Zoning Ordinance (Section 313 of Title III, Division 1, Chapter 3 of Humboldt County Code) as shown in Attachment 3 of this staff report and summarized as follows:
  - (a) Sets forth standards for the Coastal Zone, in accordance with federal and state law, for the development of Wireless Telecommunications Facilities.
4. Direct the Planning Staff to prepare and file a Notice of Exemption with the County Clerk and Office of Planning and Research.

Adopted after review and consideration of all the evidence on April 7, 2022. The motion was made by Commissioner \_\_\_\_\_ and second by Commissioner \_\_\_\_\_ and the following vote:

AYES:  
NOES:  
ABSTAIN:  
DECISION:

I, John Ford, Secretary to the Planning Commission of the County of Humboldt, do hereby certify the foregoing to be a true and correct record of the action taken on the above entitled matter by said Commission at a meeting held on the date noted above.

\_\_\_\_\_  
John H. Ford, Director  
Planning and Building Department

**Exhibit A – Required Findings of Approval**

**A. Required Findings for Amendments to the Zoning Regulations**

State Planning and Zoning Law (Government Code Section 65000 et seq.), and Section 312-50 of the Humboldt County Code (HCC) state the following findings must be made to approve changes in the Zoning Maps and Regulations:

- (1) The proposed amendment is in the public interest;
- (2) The proposed amendment is consistent with the General Plan;
- (3) The amendment is in conformity with the policies of Chapter 3 (commencing with Section 30200) of the Coastal Act
- (4) The proposed amendment does not reduce the residential density for any parcel below that utilized by the Department of Housing and Community Development in determining compliance with housing element law.

**B. California Environmental Quality Act (CEQA)**

The proposed Inland and Coastal Ordinances are exempt from environmental review under §15307 and §15308 of CEQA, as detailed in the Evidence section below.

**Evidence Supporting the Required Findings**

**A. Findings for Zoning Ordinance Amendment:**

The following table identifies evidence which supports finding that the proposed zoning ordinance is in the public interest, is consistent with the General Plan, and does not reduce the residential density to below the requirements set by the Department of Housing and Community Development.

<b>Finding and Section(s)</b>	<b>Summary of Applicable Goal, Policy or Standard</b>
<b>1. Public Interest</b> §312-50 of Humboldt County Code	The proposed Wireless Telecommunications Facilities Ordinance is in the public interest.
<b>Evidence Supporting Finding 1.</b> The proposed ordinance would allow Wireless Telecommunications Facilities in all zones. The type of facility and the proposed location will determine the potential for adverse impacts. Those proposed projects with low potential for adverse impacts would be processed as ministerial permits; those proposed projects with potential to cause adverse impacts on the health, safety and welfare of the public, on the aesthetic values, and on the County's rural character would require discretionary review. The direction given to the FCC by Congress to (1) promote competition and reduce regulations; and (2) encourage the rapid deployment of new telecommunications technologies. The proposed ordinance advances these goals and the local goals as identified in the General Plan, and is therefore in the public interest.	

Finding and Section(s)	Summary of Applicable Goal, Policy or Standard
<p><b>2. General Plan Consistency</b> §312-50 of Humboldt County Code</p>	<p>The proposed ordinance must be consistent with the General Plan. Applicable policies and measures of the Telecommunications Element, Chapter 6 of the General Plan include:</p> <p>T-P1 Development of Communications Infrastructure and Services;</p> <p>T-P2 Broadband Service Reliability;</p> <p>T-P3 Communications Facility Siting;</p> <p>T-IM1 Communications Facilities Ordinance.</p>
<p><b>Evidence Supporting Finding 3.</b> The Wireless Telecommunications Facilities Ordinance implements the Telecommunications Element. The proposed ordinance incorporates the federal and state regulations, as directed in implementation measure T-IM1. Policy T-P1 directs the County to support the development of communications infrastructure and services to facilitate use of the best available technology for business, households, and government. The proposed ordinance does this by clarifying the requirements for telecommunications applications and streamlining the review process for applications except in the TPZ and AE zones where agricultural and forest resources are protected. T-P2 calls for support for efforts to increase reliability and continuity of service by multiple means, including diversification of providers and system modernization. The proposed ordinance meets these objectives by establishing a ministerial pathway for the new small-cell wireless infrastructure that will support the 5G network. T-P3 states that design and siting for all facilities ought to minimize visibility, visual clutter and reduce conflicts with surrounding land uses while recognizing that all communities in Humboldt County should have access to communications infrastructure. The proposed ordinance meets these objectives by identifying a streamlined pathway for large telecommunications facilities in commercial and industrial zones, while at the same time encouraging smaller, less visible telecommunications facilities in residential zones through more restrictive development standards.</p>	
<p><b>3. Consistency with the Coastal Act</b> §312-50 of Humboldt County Code</p>	<p>That the proposed Telecommunications Facilities Ordinance is consistent with the policies of Chapter 3 (commencing with Section 30200) of the Coastal Act. Chapter 3 of the Coastal Act sets forth policies regarding the following issues:</p> <p>a) Access (including provisions for access with new development projects, public facilities, lower cost visitor facilities, and public access)</p> <p>b) Recreation (including protection of water-oriented activities, ocean- front land protection for recreational uses, aquacultural uses, and priority of development purposes)</p> <p>c) Marine Resources (including protecting biological productivity, prevent hazardous waste spills, diking, filling and dredging, fishing, revetments and breakwaters, and water supply and flood control)</p> <p>d) Land Resources (including environmentally sensitive habitats, agricultural lands, timberlands, and archaeological resources)</p> <p>e) Development (including scenic resources, public</p>



Finding and Section(s)	Summary of Applicable Goal, Policy or Standard
	<p>works facilities, safety, and priority of coastal dependent developments)</p> <p>f) Industrial Development (including location and expansion, use of tanker facilities, oil and gas development and transport (both onshore and off), and power plants).</p>
<p><b>Evidence Supporting Finding 3.</b></p>	
<p>a) Access (including provisions for access with new development projects, public facilities, lower cost visitor facilities, and public access)</p> <p>As with the current regulations, the proposed ordinance requires coastal development permits for telecommunications facilities within the coastal zone which provides the necessary discretion to local decision makers to ensure proposed facilities do not impair public access. Aside from coastal development permits, the framework for local agency permits is proposed to use a tiered approach to permitting communication facilities: the lowest tier ("Tier 1") applies a streamlined permit process to easily allow telecommunication facilities least likely to have any impacts. Conversely, the highest tier ("Tier 3") requires a public review process through conditional use permits for projects most likely to have impacts.</p> <p>b) Recreation (including protection of water-oriented activities, ocean- front land protection for recreational uses, aquacultural uses, and priority of development purposes)</p> <p>The framework for local agency permits is proposed to use a tiered approach to permitting communication facilities: the lowest tier ("Tier 1") applies a streamlined permit process to easily allow telecommunication facilities least likely to have any impacts including impacts on recreation uses. Conversely, the highest tier ("Tier 3") requires a public review process through conditional use permits for projects most likely to have recreation impacts. The current zoning ordinance requires coastal development permits for telecommunications facilities within the coastal zone which provides the necessary discretion to local decision makers to ensure proposed facilities do not impair recreation uses.</p> <p>c) Marine Resources (including protecting biological productivity, prevent hazardous waste spills, diking, filling and dredging, fishing, revetments and breakwaters, and water supply and flood control)</p> <p>The framework for local agency permits is proposed to use a tiered approach to permitting communication facilities: the lowest tier ("Tier 1") applies a streamlined permit process to easily allow telecommunication facilities least likely to have any impacts including impacts on marine resources. Conversely, the highest tier ("Tier 3") requires a public review process through conditional use permits for projects most likely to have marine resource impacts. In addition, the current and proposed zoning ordinances require coastal development permits for telecommunications facilities within the coastal zone which provides the necessary discretion to local decision makers to ensure proposed facilities do not impair marine uses or resources.</p> <p>d) Land Resources (including environmentally sensitive habitats, agricultural lands, timberlands, and archaeological resources)</p> <p>Presently Telecommunication facilities are allowed in all zones with a conditional use permit as well as a coastal development permit. The proposed changes will use a tiered approach to permitting communication facilities: the lowest tier ("Tier 1") applies a streamlined permit process to easily allow telecommunication facilities least likely to have any impacts including impacts on marine resources.</p>	

Finding and Section(s)	Summary of Applicable Goal, Policy or Standard
	<p>Conversely, the highest tier ("Tier 3") requires a public review process through conditional use permits for projects most likely to have land resource impacts. In addition, the current and proposed zoning ordinances require coastal development permits for telecommunications facilities within the coastal zone which provides the necessary discretion to local decision makers to ensure proposed facilities do not impair land resources.</p> <p>e) Development (including scenic resources, public works facilities, safety, and priority of coastal dependent developments)</p> <p>The framework for local agency permits is proposed to use a tiered approach to permitting communication facilities: the lowest tier ("Tier 1") applies a streamlined permit process to easily allow telecommunication facilities least likely to have any impacts including impacts on marine resources. Conversely, the highest tier ("Tier 3") requires a public review process through conditional use permits for projects most likely to have marine resource impacts. In addition, the current and proposed zoning ordinances require coastal development permits for telecommunications facilities within the coastal zone which provides the necessary discretion to local decision makers to ensure proposed facilities do not impair marine uses or resources.</p> <p>f) Industrial Development (including location and expansion, use of tanker facilities, oil and gas development and transport (both onshore and off), and power plants).</p> <p>The proposed zoning ordinance amendments use a tiered approach to permitting communication facilities whereas the existing regulations simply require conditional use permits for those facilities. Under the proposed regulations, the lowest tier ("Tier 1") applies a streamlined permit process to easily allow telecommunication facilities least likely to have any impacts including impacts on industrial development. Conversely, the highest tier ("Tier 3") maintains the current public review process through conditional use permits for projects most likely to have impacts. In addition, the current and proposed zoning ordinances require coastal development permits for telecommunications facilities within the coastal zone which provides discretion to ensure new telecommunication facilities do not impact industrial development.</p>

Finding and Section(s)	Summary of Applicable Goal, Policy or Standard
<p><b>4. Consistency with Housing Element Densities</b> §312-50 of Humboldt County Code</p>	<p>That the proposed ordinance will not reduce the residential density for any parcel below that utilized by the Department of Housing and Community Development in determining compliance with housing element law (the midpoint of the density range specified in the plan designation)</p>
<p><b>Evidence Supporting Finding 4.</b> The proposed ordinance involves parcels that are included in the residential land inventory used the by the Department of Housing and Community Development in determining compliance with housing element law. The ordinance is structured to provide a streamlined process in zoning districts that are relatively more compatible with the use including industrial and commercial districts. Where applied in residential zoning districts, the ordinance would not preclude or limit future residential development. The ordinance would have no direct effect on residential densities, and under no circumstances would it decrease densities. Therefore, it would not reduce the residential density for any parcel below that used by the Department of Housing and Community Development in determining compliance.</p>	

#### **D. Environmental Review.**

The proposed Wireless Telecommunications Facilities Ordinances are exempt from environmental review pursuant to CEQA, under CEQA Guidelines §15307, actions by regulatory agencies for protection of natural resources, and §15308, actions by regulatory agencies for protection of the environment.

Under the Class 7 exemption, CEQA does not apply when a regulatory agency acts to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment. Under the Class 8 exemption, CEQA does not apply when a regulatory agency acts to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Presently the zoning ordinance allows ministerial permitting of new telecommunications facilities in the AE and TPZ zones. The combined area of TPZ and AE zoned property within Humboldt County is 3,000,477 acres. The proposed ordinance protects timberlands and agricultural lands and the environment in these areas zoned TPZ and AE by requiring a conditional use permit for new telecommunication facilities in areas zoned AE and/or TPZ, providing for environmental review and consideration of impacts on natural resources and the environment, and appropriate mitigation.

Also, for the coastal zoning regulations, pursuant to 21080.5 and 21080.9 of the Public Resources Code and Sections 15250, 15251(f) and 15265 of the California Environmental Quality Act (CEQA) Guidelines, CEQA does not apply to the activities of a local government for the preparation and adoption of a Local Coastal Program, and therefore the County adoption of the Coastal Wireless Telecommunications Facilities Ordinance is statutorily exempt; and Local Coastal Program Amendments are exempt subject to approval by the California Coastal Commission, a regulatory program certified by the Secretary of Resources as being the functional equivalent of the environmental review process required by CEQA).

## ATTACHMENT 1

### Staff Analysis

#### Telecommunications Law highlights

The federal government defines the scope of how states and local jurisdictions may regulate telecommunications facilities. State laws also limit local control over telecommunications facilities. County regulations must fit within and conform to the substantive and procedural limits on local authority prescribed by federal law. Highlights of federal and state law include:

#### **Telecommunications Act of 1996**

- Applies to all applications for “personal wireless services facilities.”
- Establishes FCC as national authority in setting radio frequency limits
- Preempts all states and local governments from regulating the placement, construction and modification of personal service wireless facilities based on environmental effects of radio frequency emissions if they comply with the set emissions standards

#### **Middle Class Tax Relief and Job Creation Act (the Spectrum Act)**

- Mandates approval for “eligible facilities requests,” which includes any request for the modification of an existing wireless tower or base station that involves:
  - Co-location of new transmission equipment; or
  - Removal of transmission equipment; or
  - Replacement of transmission equipment
- Eligible facility request is deemed granted if reviewing authority fails to issue decision within 60-day period.

#### **FCC Declaratory Ruling, November 18, 2009**

- Establishes 90-day period as a generally reasonable timeframe for State and local governments to process an application for a co-location of non-SCWF.
- Establishes 150-day period as a generally reasonable timeframe for State and local governments to process an application for new non-SCWF.

#### **FCC Declaratory Ruling and Third Report and Order, September 27, 2018**

- Small Cell Wireless Facility (SCWF) defined:
  - The facilities—
    - Are mounted on structures 50 feet or less in height including their antennas as defined in section 1.1320(d), or
    - Are mounted on structures no more than 10 percent taller than other adjacent structures, or
    - Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

- Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in section 1.1320(d), is no more than three cubic feet in volume;
- All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;
- The facilities do not require antenna structure registration under part 17 of this chapter;
- The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and
- The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in section 1.1307(b).
- Clarifies that state and local jurisdictions may not prohibit or effectively prohibit provision of wireless telecommunications services. This test is met when filling a coverage gap and when densifying a wireless network, introducing new services or otherwise improving service capabilities.
- All applications for SCWF on existing poles must reach decision within 60 days. Taking more than 60 days is considered a material prohibition.
- All applications for SCWF on new poles must reach decision within 90 days. Taking more than 90 days is considered a material prohibition.
- Establishes maximum application fee amounts—subject to adjustment according to regional costs variances:
  - \$500 for up to 5 five batched SCWF on existing poles, and \$100 for each additional SCWF
  - \$1,000 for a new pole supporting one or more SCWF
  - \$270 maximum recurring fee per SCWF per year, including any access fee or fee for attachment to county equipment in the right-of-way

### **California Planning and Land Use Code**

- Section 65850.6 of the Government Code requires ministerial review for co-location on facilities subject to previous discretionary approval
- Section 65850.6 of the Government Code requires discretionary review for co-location on facilities subject to previous ministerial approval
- Section 65964.1 of the Government Code deems granted those co-locations or siting applications for a wireless telecommunications facility for which the reasonable period of time defined by the FCC ("shot clock") has run out if the following conditions have been met:
  - The city or county fails to approve or disapprove the applications in accordance with the FCC reasonable period of time. The reasonable period of time may be tolled to accommodate timely requests for information, or may be extended by mutual agreement, consistent with FCC rules;
  - The applicant has provided all public notices regarding the applications that the applicant is required to complete under applicable laws;
  - The applicant has provided notice to the city or county that the reasonable time period has lapsed and that the application is deemed approved pursuant to this section;
  - Within 30 days of the notice, the city or county may seek judicial review

## **California Public Utilities Code**

- Section 7901 of the Public Utilities Code allows wireless communication companies to construct and maintain telecommunications antennas within the public right-of-way if they do not “incommode” or inconvenience public use of the road.

## **Wireless Telecommunications Facilities in the Coastal Zone**

To ensure consistency with the Coastal Act, the proposed ordinance amendments in the coastal zone propose to require approval of a coastal development permit for all wireless telecommunications facilities in the coastal zone. Otherwise, the tiered permitting system will be the same as in the non-coastal areas.

## **Proposed Humboldt County approach**

This ordinance seeks to clarify the regulatory framework for telecommunications facilities, to streamline review and approval of new facilities in commercial and industrial zones, and to broadly encourage small cell wireless facilities in developed areas. The ordinance implements the Telecommunications Element of the General Plan which documented a demand for a better quality of service, wider deployment of service, and to prepare for future innovations such as the deployment of the next generation of wireless telecommunications—small cell wireless facilities (also known as the “5G network”).

The Telecommunications Element recognized that infrastructure and services are critical to residents who rely on these services for quality of life, education, research, and access to healthcare and government services. Businesses rely on telecommunications for economic growth and job creation. As a relatively rural area with a dispersed population base, Humboldt County lags in its access to reliable telecommunications services as compared to urban centers such as the San Francisco Bay Area. In fact, several communities on the Yurok Reservation are still without basic telephone services. This proposed ordinance addresses these deficiencies by streamlining and clarifying the permit review and approval process for construction of new telecommunications facilities.

## **Existing Regulations**

The existing regulations for the inland areas of the County are confused in their treatment of telecommunication facilities. For some zoning districts, Telecommunication facilities are specifically enumerated. For example, Telecommunications Facilities are listed as a principally permitted use in TPZ and in Timberland Exclusive (TE) zone. TPZ does not list a maximum height limitation; to build a facility of any height in TPZ, all that is currently required is a radiofrequency report and a building permit. This has made TPZ a very popular zone for the location of Wireless Telecommunications Facilities. The TE zone has not yet been applied to any lands, but includes a similar relaxed approach to regulation of telecommunications facilities.

The ordinance becomes confusing in its treatment telecommunications facilities through the Quasi-Public Use provisions of section 314-85.1 of Humboldt County Code. The Quasi-Public use is a broad category that includes churches, private schools, universities, meeting halls and private hospitals, and public utility transmission and distribution lines among others uses. This section of the zoning ordinance provides that if a proposed facility meets the height limit and property line setbacks of the applicable zoning district, then it can be principally permitted in all commercial zoning districts (C-1, C-2, C-3, C-4, CH), all industrial zoning districts (MB, ML, MH), the Unclassified zone (U), the Agriculture General zone (AG), the Agriculture Exclusive Zone (AE), and Apartment Professional zone (R-4).

This is an important point to emphasize – in some zones telecommunications facilities are specifically enumerated in the description of the zone. However, the Quasi-Public Use section also identifies zones where telecommunications facilities are allowed. And sometimes those two sections say different things.

For instance the TPZ Zone specifically enumerates communication transmission facilities as a principally permitted use, but that zone is not identified in the Quasi-Public Use section of the zoning ordinance which list the zones where public utility transmission and distribution lines are allowed. And conversely, the Agriculture Exclusive (AE) zone is included in the list of zones allowing Quasi-Public uses ministerially, but the AE Zone contradicts those provisions and requires a conditional use permit for communications facilities (314-7.1). The proposed zoning ordinance amendment removes these contradictions.

The zoning ordinance is further confused in its approach by regulating telecommunications as "Communication Transmission Facilities," which are specifically enumerated in some zones, and regulating them as "public utility transmission and distribution lines" in the Quasi-Public Use section of the zoning ordinance.

In the Coastal Zone the ordinance is more clear. "Communication Transmission Facilities" are considered Minor Generation and Distribution Facilities which are allowed with a Conditional Use Permit in Neighborhood Commercial (CN), Light Industrial (ML), Public Facilities (Urban - PF1), Public Recreation (PR), Residential Single Family (RS), and the Agriculture Exclusive (AE) zone.

The inland and coastal zoning ordinances fall short of the County's needs in several other ways. First, the regulations do not facilitate review of telecommunication facilities applications in time to meet the strict "shot clock" guidelines established in federal regulations so there is currently no effective local regulation of applications with short shot clocks including Small Cell Wireless Facilities<sup>1</sup> (SCWF's), "eligible facility" co-locations where more than one telecommunications facility is located on a common structure, and other co-locations. Also the regulations encourage telecommunications facilities in TPZ zoned areas without regard to the impacts on timber productivity. Third, the existing regulations do not provide a comprehensive, uniform set of aesthetic guidelines and location incentives.

### **Proposed Approach**

To address all of these issues, the draft ordinance includes a tiered permitting approach. The creation of tiers allows for a streamlined process for those proposed facilities that would have relatively few impacts, and a more robust, discretionary process for those project that would be more likely to have impacts on aesthetic values, resource lands and residential uses.

#### **Tier 1**

Tier 1 projects do not require a public hearing because these projects are not likely to cause a significant impact on aesthetics, residential uses, or natural resources. These types of projects would only require a building permit and a completed checklist to be constructed. In some limited instances, design review would be required, but the Planning Director would have authority to approve the design review without the possibility of a public hearing except those decisions would be subject to appeal to the Board of Supervisors. Projects that would qualify for Tier 1 permit include:

- Most co-location of SCWF and non-SCWF
- Most new non-SCWF in Commercial and Industrial zoning districts
- Invisible non-SCWF except in residential zoning districts, AE zone, and TPZ.
- New SCWF's

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<sup>1</sup> Small Cell Wireless Facilities are telecommunication facilities no more than three cubic feet in volume mounted on structures 50 feet or less in height including their antennas, or are mounted on structures no more than 10 percent taller than other adjacent structures, or do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

## **Tier 2**

Tier 2 projects require a Special Permit with a public hearing before the Zoning Administrator. Projects that would qualify for a Tier 2 permit include:

- All projects that do not meet the criteria for Tier 1 or Tier 3

## **Tier 3**

Tier 3 projects require a Conditional Use Permit with a public hearing before the Planning Commission. These projects may have impacts on aesthetics, residential uses or resource lands. Projects that would qualify for a Tier 3 permit include:

- New non-SCWF in Residential zoning districts,
- New SCWF and non-SCWF in areas zoned AE or TPZ, and
- Most new non-SCWF that exceed height limits in underlying zone,
- Most new, high-visibility non-SCWF,
- New non-SCWF on ridgetops or hilltops

### **Department of Public Works Land Use and Aviation Division Additions**

Humboldt County Department of Public Works Land Use Division regulates land uses within the county rights-of-way, and as rights-of-way will be high-priority locations for the deployment of SCWF's, Public Works has provided text to be added to the proposed ordinance to ensure that the deployment of SCWF does not disrupt the uses and values of the right of way for the public. Those changes to the draft ordinance from the ordinance in the earlier staff report are shown in strikethrough and underline and in yellow highlight.

The Aviation Division has not finalized their comments at the time this staff report was written. When they are received they will be presented in a supplemental staff report.

## **Public participation**

The public participation efforts included solicitations for comment from wireless telecommunications providers on December 13, 2021. On January 26, 2022, a webpage was added to the Humboldt County website featuring the draft ordinance and providing a means to send feedback to planning division staff. In response to the solicitation for questions and comments, staff received several comments, including one comment since the February 17 hearing, which are included in Attachment 5. The latest comment highlights the tradeoff between optimizing for fewer, tall co-location towers versus a greater number of towers that are shorter and better integrated into the natural and built environment.

### **Referral Agency and Tribal Consultation**

The project is exempt from CEQA and thus not subject to formal tribal consultation beyond the standard referral process. In order to include tribal governments in the process of the development of the ordinance, county staff sent a copy of the draft to all of the Tribal Historic Preservation Officers (THPO) in Humboldt County on December 13, 2021. Also on January 26, 2022, staff circulated drafts of proposed inland and coastal Wireless Telecommunications Facilities ordinances to reviewing agencies including the tribes. As of the date of this staff report, none of the THPOs provided questions of comments. Agency comments have been included in attachment 5. Since February 17, County Counsel has provided additional comments. These have been incorporated into the draft ordinance attached hereto. The previous packet erroneously included an email from the County Counsel office which is confidential. That correspondence has been removed from this packet.



## **Environmental Review**

The proposed Wireless Telecommunications Facilities Ordinances are exempt from environmental review pursuant to CEQA, under CEQA Guidelines §15307, actions by regulatory agencies for protection of natural resources, and §15308, actions by regulatory agencies for protection of the environment.

Under the Class 7 exemption, CEQA does not apply when a regulatory agency acts to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment. Under the Class 8 exemption, CEQA does not apply when a regulatory agency acts to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Presently the zoning ordinance allows ministerial permitting of new telecommunications facilities in the AE and TPZ zones. The combined area of TPZ and AE zoned property within Humboldt County is 3,000,477 acres. The proposed ordinance protects timberlands and agricultural lands and the environment in these areas zoned TPZ and AE by requiring a conditional use permit for new telecommunication facilities in areas zoned AE and/or TPZ, providing for environmental review and consideration of impacts on natural resources and the environment, and appropriate mitigation.