



**CITY OF HUNTINGTON BEACH  
SUPPLEMENTAL COMMUNICATION**

**Joan L. Flynn, City Clerk  
Office of the City Clerk**

**TO:** Honorable Mayor and City Council  
**FROM:** Joan L. Flynn, City Clerk *JLF*  
**DATE:** February 6, 2012  
**SUBJECT:** **SUPPLEMENTAL COMMUNICATION TO THE CITY COUNCIL FOR THE  
FEBRUARY 6, 2012, REGULAR CITY COUNCIL/PFA MEETING**

---

Attached is the Supplemental Communication to the City Council (received after distribution of the Agenda Packet):

**Public Hearing**

**#9.** PowerPoint communication received from Ken Small, Police Chief, dated February 6, 2012, entitled *Supplemental Law Enforcement Services Fund (SLESF)*.

**#10.** Communications received regarding Environmental Impact Report (EIR) No. 10-004 (Beach and Ellis Mixed Use Project):

Edmond M. Connor of Connor, Fletcher & Williams LP  
Barbara Ilizaliturri  
Michele Metivier

Denise Nevin

Gwen Evans

**#11.** Communications received regarding Zoning Text Amendment 09-002 (Wireless Communication Facilities):

Peggy Tracy  
Dianne Larson (2)

John Anderson  
Florence Pagliassotti

Gay Infanti

# Supplemental Law Enforcement Services Fund (SLESF)



February 6, 2012

# FY 11/12 SLESF

- 1996 Citizen's Options for Public Safety Program (COPS)
- Funding for "front end" police services
- Administered by County of Orange
- Estimated 2011/2012 \$200,000
- City Council approved acceptance and expenditures in August 2011
- Public hearing required

# Proposed Expenditures

- Leica ScanStation C10 (\$170,106)
  - Easy to use 3D laser scanning system
  - Panoramicly photograph scene
  - Laser scan (measure) crime scenes and traffic collision scenes
- FY 10/11 fund balance \$131,580
- FY 11/12 \$38,526



# Proposed Expenditures

- Motorola Astro Digital XTS-5000 Radios
- Required upgrade of current 800MHz radios (2012-2018)
- Radios cost \$4000
- Currently have 455 vehicle and hand-held non-compliant radios
- Overall cost of radio system upgrade included in 2012 Strategic Plan

# Recommendations

- Approve acceptance of FY 2011/2012 SLESF grant
- Authorize Chief of Police to expend \$200,000 plus accrued interest
- Approve proposed change to FY 2010/2011 SLESF grant
- Appropriate funding to purchase laser scanning system and Motorola radios

Questions?

**Esparza, Patty**

---

**From:** Flynn, Joan  
**Sent:** Sunday, February 05, 2012 10:56 AM  
**To:** Esparza, Patty; Lugar, Robin  
**Subject:** Fw: Fwd: OVSD's Letter of Objections to Proposed Certification of FEIR 10-004  
**Attachments:** Ltr to HB City Council 2-3-12.pdf; ATT209803.htm

**SUPPLEMENTAL  
COMMUNICATION**

Joan L. Flynn, CMC  
Huntington Beach City Clerk

Meeting Date: 2-6-2012

**From:** Wilson, Fred  
**Sent:** Sunday, February 05, 2012 10:54 AM  
**To:** Hess, Scott  
**Cc:** Hall, Bob; Flynn, Joan  
**Subject:** Fwd: OVSD's Letter of Objections to Proposed Certification of FEIR 10-004

Agenda Item No. 10

Sent from my iPad

Begin forwarded message:

**From:** Ed Connor <[econnor@businesslit.com](mailto:econnor@businesslit.com)>  
**Date:** February 3, 2012 5:08:07 PM PST  
**To:** "[dhansen@surfcity-hb.org](mailto:dhansen@surfcity-hb.org)" <[dhansen@surfcity-hb.org](mailto:dhansen@surfcity-hb.org)>, "[Devin.Dwyer@surfcity-hb.org](mailto:Devin.Dwyer@surfcity-hb.org)" <[Devin.Dwyer@surfcity-hb.org](mailto:Devin.Dwyer@surfcity-hb.org)>, "[connie.boardman@surfcity-hb.org](mailto:connie.boardman@surfcity-hb.org)" <[connie.boardman@surfcity-hb.org](mailto:connie.boardman@surfcity-hb.org)>, "[kbohr@surfcity-hb.org](mailto:kbohr@surfcity-hb.org)" <[kbohr@surfcity-hb.org](mailto:kbohr@surfcity-hb.org)>, "[jcarchio@surfcity-hb.org](mailto:jcarchio@surfcity-hb.org)" <[jcarchio@surfcity-hb.org](mailto:jcarchio@surfcity-hb.org)>, "[matthew.harper@surfcity-hb.org](mailto:matthew.harper@surfcity-hb.org)" <[matthew.harper@surfcity-hb.org](mailto:matthew.harper@surfcity-hb.org)>, "[joe.shaw@surfcity-hb.org](mailto:joe.shaw@surfcity-hb.org)" <[joe.shaw@surfcity-hb.org](mailto:joe.shaw@surfcity-hb.org)>  
**Cc:** "[fred.wilson@surfcity-hb.org](mailto:fred.wilson@surfcity-hb.org)" <[fred.wilson@surfcity-hb.org](mailto:fred.wilson@surfcity-hb.org)>  
**Subject:** OVSD's Letter of Objections to Proposed Certification of FEIR 10-004

I am counsel for the Ocean View School District. Please find attached the electronic version of OVSD's letter of objections to the proposed certification of FEIR 10-004, which is scheduled for consideration at the City Council meeting scheduled for February 6, 2012. Duplicate originals of this letter are being sent to each of you via overnight courier for delivery on Monday.

Edmond M. Connor  
Connor, Fletcher & Williams LLP  
2211 Michelson Dr., Ste. 1100  
Irvine, CA 92612  
949-622-2600  
Fax: 949-622-2626  
E-Mail: [econnor@businesslit.com](mailto:econnor@businesslit.com)

\*\*\*\*\*

The information in this e-mail is intended for the named recipients only. It may contain privileged and confidential matter. If you have received this mail in error, please notify the sender immediately by replying to this e-mail or by collect call. Please do not disclose the contents to anyone.

CONFIDENTIAL  
CONFIDENTIAL

CONFIDENTIAL  
CONFIDENTIAL

EDMOND M. CONNOR  
MATTHEW J. FLETCHER  
MICHAEL R. WILLIAMS  
DOUGLAS A. HEDENKAMP  
SHIRY TANNENBAUM  
MICHAEL SAPIRA



**CONNOR, FLETCHER & WILLIAMS LLP**  
**ATTORNEYS AT LAW**

February 3, 2012

**VIA E-MAIL AND OVERNIGHT COURIER**

Members of City Council  
City of Huntington Beach  
2000 Main Street  
Huntington Beach, California 92648

Re: *Appeal of Planning Commission's Denial of Certification of FEIR 10-004  
For Beach and Ellis Mixed Use Project*

Dear Council Members:

We represent the Ocean View School District (the "School District"), and we respectfully request that the City of Huntington Beach (the "City") cease and desist from its recent, and entirely unlawful, practice of separating the EIR certification process from the project approval process. Specifically, the School District requests that, at Council's upcoming meeting on February 6, 2012, the City Council deny Mayor Don Hansen's appeal of the Planning Commission's failure to certify Final Environmental Impact Report No. 10-004 ("FEIR 10-004") for the Beach and Ellis Mixed Use Project (the "Project").

Except for one other occasion when the City Council certified FEIR No. 10-003 for the Beach/Warner Mixed Use Project less than two months ago on December 19, 2011, the certification of FEIR 10-004, without the simultaneous approval of the Project, would be unprecedented in the annals of the City. More importantly, just like the City's certification of FEIR 10-003 which is now the subject of a lawsuit, the proposed certification of FEIR 10-004 would clearly be illegal.

Section 21003(a) of the California Environmental Quality Action ("CEQA") and CEQA Guidelines section 15004(c) explicitly require EIR certifications and project approvals to **"run concurrently, not consecutively."** Indeed, as expressly noted by the California Supreme Court in *Laurel Heights Improvement Assn. v Regents of University of California* (1993) 6 Cal. 4th 1112, 1132, "[i]n 1976, the Legislature enacted legislation to **require CEQA review to be integrated with, and run concurrently with, other planning processes (§21003)** . . . ." (Emphasis added.)

At the Planning Commission hearing that was held on December 13, 2011, three Planning Commissioners openly questioned the propriety of being asked to certify FEIR 10-004 without being allowed to review and comment on, and propose modifications to, and mitigation measures for, the actual Project. For example, Commissioner Farley stated that the Project and

FEIR 10-004 needed to move together through the planning process and he lamented the fact that the Planning Commission could not craft reasonable measures to mitigate the impacts of the Project because no one knew what the Project was actually going to look like.

In addition, Commissioner Farley noted that, if, the actual Project had been presented to the Planning Commission for its consideration, then FEIR 10-004 could have (and should have) analyzed (a) the speed of the streets, not just the capacity of the intersections, (b) the site distances lines to account for the fact that Main Street curves at the Beach/Ellis intersection, and (c) the internal access points and internal circulation of the Project. Finally, Commissioner Farley expressed his concern that, if the Planning Commission were to certify FEIR 10-004, then, if and when the actual Project were processed for approval at some unknown date in the future, the claim would be made that "you all ready certified the EIR, so you cannot deny the Project."

Along these same lines, Commissioner Bixby expressed a number of concerns about the adequacy of the environmental analysis set forth in FEIR 10-004 and he said that there were so many unresolved issues relating to the proposed Project that, if FEIR 10-004 were certified, these issues would not be resolved, if at all, until sometime much later in the site plan review process. Echoing these sentiments, Commissioner Peterson voiced his concerns about the traffic impacts that would be generated by the proposed Project and he took issue with the fact that the Planning Commission was being asked to certify FEIR 10-004 without any project approval being processed at the same time. Commenting on this novel procedure, Commissioner Peterson stated "[w]e've done this once, and I hope to stop it."

As it turns out, the Planning Commission did, in fact, "stop" the unwarranted attempt by City staff to separate the certification of FEIR 10-004 from the approval of the actual Project. Indeed, the motion made by Commissioner Ryan, and seconded by Commissioner Shier Burnett, to certify FEIR 10-004 failed to gain the necessary four votes to pass. Ironically, in supporting the motion, both Commissioners Ryan and Shier Burnett conceded that the proposed Project, if and when it were ever presented to the Commission, would need a lot of fine tuning in the areas of traffic, remediation of contaminated soils, project density, etc.

What is quite surprising, however, is that, in preparing the staff report regarding the issues raised by Mayor Hansen's appeal, City staff chose to **completely ignore** the above-described comments made by Commissioners Farley, Bixby, and Peterson in questioning why the Planning Commission was being asked to certify FEIR 10-004 without being allowed to review and comment on the Project at the same time. However, merely pretending that those comments were not made does not make them magically disappear from the record.

Although staff's silence on this point is deafening, the fact remains that state law prevents the City from certifying FEIR 10-004 without **concurrently** processing the proposed Project for approval. The School District submits that this procedural defect, which was underscored by the comments of Commissioners Farley, Bixby, and Peterson at the December 13th Planning Commission hearing, cannot be cured unless and until the EIR certification process is started over again and proceeds concurrently with the review and approval process for the proposed Project.

Although the School District believes that FEIR 10-004 suffers from a number of major technical deficiencies, these inadequacies have essentially been rendered moot in light of the insurmountable procedural impediment that the City faces in trying to push forward and certify FEIR 10-004 without simultaneously processing the proposed Project for approval. Nevertheless, in an attempt to assist the City in correcting the deficiencies in EIR 10-004 so that it will be free from these errors and omissions when it is recirculated for public review and comment when the actual Project is processed for approval, the School District offers the following comments:

No Notice of Preparation. In trying to explain why the City chose to blatantly violate CEQA Guidelines section 15082, which requires a Notice of Preparation ("NOP") to be prepared and sent out whenever a city decides to prepare an EIR, City staff has asserted that no NOP was required for FEIR 10-004 because the proposed Project is the same project that was described in the NOP that was prepared for the EIR for the Beach and Edinger Corridor Specific Plan ("BEC Specific Plan"). The problem is, however, that the Project described in FEIR 10-004 is **materially different** from the project described in the NOP for the EIR for the BEC Specific Plan (the "BECSP EIR"). The project analyzed in the BECSP EIR included a two-level health club of approximately 71,000 square feet. The proposed Project analyzed in FEIR 10-004 replaces the health club with a 30,000 square foot market, which was described at the Planning Commission hearing on December 13, 2011 as a "high-end market".

The City's failure to prepare a NOP for FEIR 10-004 means that the City did not use the correct baseline for analyzing impacts associated with the Project that would be reflective of 2011 environmental conditions. At the DEIR Public Information Meeting held on October 6, 2011, Tipton Wright asked when the traffic counts were taken for the traffic study used for FEIR 10-004. In the FEIR Response to Comments, at page 10-36, it states that the traffic counts included in the BECSP Traffic Study were used as the baseline for FEIR 10-004. Those traffic counts were performed in late 2005 and early 2006, some six years ago. This same outdated data was used for the Air Quality analysis and the Noise Study in FEIR 10-004. The use of this outdated material has irreparably skewed and distorted the environmental analysis set forth in FEIR 10-004.

Inadequate Traffic Study. The traffic study in FEIR 10-004 did not truly analyze the "Existing Plus Project" because the existing conditions used were those that occurred in 2006, not August 15, 2011, when the Cumulative Project list was prepared that is set forth in the DEIR, at pages 3-11 through 3-13. Inexplicably, the traffic study for the Project was prepared on July 21, 2011, prior to the Cumulative Project list even being prepared.

Furthermore, the traffic study used a "general commercial" trip generation rate for the proposed Project. However, the proposed Project now includes a 30,000 square foot market similar to a "supermarket". A supermarket has a significantly higher trip generation rate than "general commercial". Therefore, the traffic analysis fails to adequately analyze the traffic impacts of the proposed Project.

Inadequate Air Quality Analysis. The data used for the air quality analysis in FEIR 10-004 was the same as what was used for the BECSP EIR. The study states:

Members of City Council  
February 3, 2012  
Page 4

The emissions estimates are based on the estimated trip generation presented in Table 4.13-6 (Existing Year [2008] and Project Trip Generation Comparison) in Section 4.13 (Transportation/Traffic) of this EIR...

Therefore, an incorrect baseline of existing conditions was used for FEIR 10-004. In addition, since the traffic analysis was inadequate, the data used for the air quality analysis was also inadequate.

Inadequate Noise Analysis. The data used for the noise analysis in FEIR 10-004 was the same as what was used for the BECSP EIR. The study states:

As the noise environment within the project site vicinity has not substantially changed since the analysis prepared for the BECSP EIR, the measurements taken for the BECSP area are appropriate for this analysis.

The noise study did not analyze the actual environmental impacts of the proposed Project. Rather, it analyzed the 30,000 square foot market as a "strip mall". The operational characteristics of a 30,000 square foot market are significantly different than those associated with a strip mall. For example, the noise generated from multiple deliveries, nighttime deliveries, nighttime stocking of the market and noise from high-capacity refrigeration units were not analyzed.

\* \* \*

In closing, the School District sincerely hopes that the City Council will follow the lead of the Planning Commission and reject staff's recommendation that FEIR 10-004 be certified. To do otherwise would be to openly violate CEQA and the CEQA Guidelines. There is no practical need, nor is there any legal authority, for the City to be certifying a Project EIR without considering an actual project for approval at the same time. To avoid possible litigation regarding this matter, the School District respectfully requests that the City Council follow state law and decline to certify FEIR 10-004.

Very truly yours,



Edmond M. Connor

cc: Fred A. Wilson

**Esparza, Patty**

---

**From:** Surf City Pipeline [noreply@user.govoutreach.com]  
**Sent:** Sunday, February 05, 2012 9:27 PM  
**To:** CITY COUNCIL; agendaalerts@surfcity-hb.org  
**Subject:** Surf City Pipeline: Comment on an Agenda Item (notification)

**Request # 10399 from the Government Outreach System has been assigned to Johanna Stephenson.**

---

**Request type:** Comment

**Request area:** City Council - Agenda & Public Hearing Comments

**Citizen name:** Barbara Ilizaliturri

**Description:** I am opposed to 6 story apartment complex at Beach and Ellis because it will be totally out of place with the look in Huntington Beach. We already know that the building at Warner and Beach is the only "tall" building in the area and God only knows who approved that oddity. Do not place more tall building on Beach with more and more traffice for Ellis. I live at Newland and Ellis. Please do not approve.

**Expected Close Date:** 02/06/2012

[Click here to access the request](#)

Note: This message is for notification purposes only. Please do not reply to this email. Email replies are not monitored and will be ignored.

**SUPPLEMENTAL  
COMMUNICATION**

Meeting Date: 2-6-2012

Agenda Item No. 10

**Esparza, Patty**

---

**From:** Surf City Pipeline [noreply@user.govoutreach.com]  
**Sent:** Sunday, February 05, 2012 10:30 PM  
**To:** CITY COUNCIL; agendaalerts@surfcity-hb.org  
**Subject:** Surf City Pipeline: Comment on an Agenda Item (notification)

**Request # 10400 from the Government Outreach System has been assigned to Johanna Stephenson.**

---

**Request type:** Comment

**Request area:** City Council - Agenda & Public Hearing Comments

**Citizen name:** Denise Nevin

**Description:** I am a retired teacher and have been a resident of Huntington Beach for over 30 years.

The property I own and live in backs to Ellis near Newland. In the more than 30 years I have lived here, tremendous changes have occurred in both traffic and noise. Currently, it is difficult to exit my complex and enter Ellis because of heavy traffic. I leave no windows open due to noise. Several years ago, a second left-turn lane on Beach Blvd. was opened allowing even more traffic to travel eastbound on Ellis. Heavy trucks that should not be using Ellis in fact do use it. My house, which has been sinking, shakes as they pass by, inviting more sinkage. Motorcycles love the hill, and all emergency vehicles use Ellis. Now it seems that a developer wants to impact us even more with a new complex at the corner of Beach and Ellis.

I encourage you to support we citizens of Huntington Beach who live in this area, and please do NOT allow this developer to build this massive structure and destroy our area. I invite any of you to my home day or night to experience the unbelievable current traffic and noise that we taxpayers contend with daily. Please take a stand for us and don't let the developer's promises of revenue sway your vote.

I am thanking you in advance for your support. I hope I can count on you. This encompasses safety and quality of life.

**Expected Close Date:** 02/06/2012

[Click here to access the request](#)

Note: This message is for notification purposes only. Please do not reply to this email. Email replies are not monitored and will be ignored.

## **SUPPLEMENTAL COMMUNICATION**

**Meeting Date:** 2-6-2012

**Agenda Item No.** 10

**Esparza, Patty**

---

**From:** Surf City Pipeline [noreply@user.govoutreach.com]  
**Sent:** Monday, February 06, 2012 12:55 PM  
**To:** CITY COUNCIL; agendaalerts@surfcity-hb.org  
**Subject:** Surf City Pipeline: Comment on an Agenda Item (notification)

**Request # 10405 from the Government Outreach System has been assigned to Johanna Stephenson.**

---

**Request type:** Comment

**Request area:** City Council - Agenda & Public Hearing Comments

**Citizen name:** GWEN EVANS

**Description:** Please do not allow this project to be built and please do not change the zone to mixed.

**Expected Close Date:** 02/07/2012

[Click here to access the request](#)

Note: This message is for notification purposes only. Please do not reply to this email. Email replies are not monitored and will be ignored.

**SUPPLEMENTAL  
COMMUNICATION**

Meeting Date: 2/6/2012

Agenda Item No. 10

**Esparza, Patty**

---

**From:** Surf City Pipeline [noreply@user.govoutreach.com]  
**Sent:** Monday, February 06, 2012 12:45 PM  
**To:** CITY COUNCIL; agendaalerts@surfcity-hb.org  
**Subject:** Surf City Pipeline: Comment on an Agenda Item (notification)

**Request # 10404 from the Government Outreach System has been assigned to Johanna Stephenson.**

---

**Request type:** Comment

**Request area:** City Council - Agenda & Public Hearing Comments

**Citizen name:** Michele Metivier

**Description:** As a homeowner in the area near the proposed Beach and Ellis Mixed User Project, I would like to express my concerns about this project. 1) A six-story building would ruin the open air atmosphere that is currently available at that intersection. One of the things that is so appealing about Huntington Beach is the open air and open skyling that we enjoy. I don't think this should be a luxury extended to those who live on the shoreline. 2) Traffic at that intersection is already congested. Moving the main entrances away from the intersection will just cause backups on Ellis which will back up onto the intersection. Adding 150 more residents to such a small area will definitely increase traffic - even if there is only 1 car per unit, which is likely the minimum. Please do not approve this project. Think of the people that actually live in this area and will have to deal w ith the consequences of your decision for years to come. Thank you for considering my comments.

**Expected Close Date:** 02/07/2012

[Click here to access the request](#)

Note: This message is for notification purposes only. Please do not reply to this email. Email replies are not monitored and will be ignored.

**SUPPLEMENTAL  
COMMUNICATION**

Meeting Date: 2/6/2012

Agenda Item No. 10

**Esparza, Patty**

---

**From:** Surf City Pipeline [noreply@user.govoutreach.com]  
**Sent:** Monday, February 06, 2012 2:02 PM  
**To:** CITY COUNCIL; agendaalerts@surfcity-hb.org  
**Subject:** Surf City Pipeline: Comment on an Agenda Item (notification)

**Request # 10406 from the Government Outreach System has been assigned to Johanna Stephenson.**

---

**Request type:** Question

**Request area:** City Council - Agenda & Public Hearing Comments

**Citizen name:** Florence Pagliassotti

**Description:** I live at La Cuesta, at Ellis and Newland we do not need more housing and traffic we have an accident almost every month on the corner of Ellis and Newland because of the High Volume of traffic and speed...

**Expected Close Date:** 02/07/2012

[Click here to access the request](#)

Note: This message is for notification purposes only. Please do not reply to this email. Email replies are not monitored and will be ignored.

**SUPPLEMENTAL  
COMMUNICATION**

Meeting Date: 2/6/2012

Agenda Item No. 10

# SUPPLEMENTAL COMMUNICATION

Esparza, Patty

**From:** Surf City Pipeline [noreply@user.govoutreach.com]  
**Sent:** Wednesday, February 01, 2012 11:19 AM  
**To:** CITY COUNCIL; agendaalerts@surfcity-hb.org  
**Subject:** Surf City Pipeline: Comment on an Agenda Item (not for agenda)  
Meeting Date: 2/6/2012  
Agenda Item No. 11

**Request # 10370 from the Government Outreach System has been assigned to Johanna Stephenson.**

**Request type:** Comment

**Request area:** City Council - Agenda & Public Hearing Comments

**Citizen name:** Peggy Tracy

**Description:** Honorable Mayor and City Council Members,

Please consider these issues before voting on Zoning Text Amendment No. 09-002, Wireless Communication Facilities, which will strongly affect the general well-being and property values of Huntington Beach residents.

RETAIN Zoning Ordinance requirements for wireless provider's proof of

- 1) significant gap in coverage;
- 2) least obtrusive location; and
- 3) alternate location research.

- When City ordinances contain regulations governing WCFs, City decisions based on those regulations are upheld by Federal courts. (Sprint PCS v Palos Verdes Estates)
- The requirements should be submitted before an application is considered 'complete'.
- If these current ZO requirements are deleted, unneeded WCFs that meet Design Review and Co-location requirements would be approved.
- The burden of monitoring wireless providers would fall on HB residents.
- The proposed ZTA would grant permits without these current requirements; appeals would require these proofs; permits would be revoked if providers could not prove what was NOT previously required to grant permits ('significant gap', etc.)... Result: more lawsuits.

- Telecommunications Act (TCA) does not guarantee 'seamless' wireless coverage free of small 'dead spots' (Sprint PCS v Palos Verdes Estates).

Least Intrusive Means Standard (T-Mobile v Anacortes)

- Provider has burden of showing lack of available technologically feasible alternatives.
- Provider must show that the manner to fill gap in coverage is least intrusive.
- Provider must consider less sensitive sites, alternate designs, co-location on existing structures.

Planning Commission Meeting Modifications to ZTA (December 13, 2011)

- Hr:Min 2:14 – Mr. Farley proposed/PC approved that “any wireless facility within 1200 feet of residential” zoning requires a ZA CUP.
  - o <therefore, Public Notice and Public Hearing>
- Hr:Min 2:16 – Mr. Bixby proposed/PC approved to extend the co-location requirement for new ground mounted WCFs from 1,000 to 2,500 feet when feasible.

o This should apply to ALL WCFs to avoid new facilities being proposed for every roof and wall within that 2,500 foot co-location requirement.

- Hr:Min 0:53 – Mr. Bixby asked about the ZTA E4 Design Review section and if there was an ‘any’/’all’ ‘typo’. (Design Review is not required for ‘Director approved’ WCFs that “have any appurtenant facilities and equipment located underground or within an existing building or existing enclosure.”)
  - o Please request that the word “all” be substituted for “any” for clarification and to avoid loopholes.

PLEASE WRITE THE ORDINANCES ONCE AND FOR ALL TO PROTECT OUR BEAUTIFUL CITY. DON'T MAKE IT EASIER FOR TOWERS TO BE PUT WHERE THEY DO NOT BELONG!!!!!!

Sincerely,

Margaret Tracy

**Expected Close Date:** 02/02/2012

[Click here to access the request](#)

Note: This message is for notification purposes only. Please do not reply to this email. Email replies are not monitored and will be ignored.

**Esparza, Patty**

---

**From:** Surf City Pipeline [noreply@user.govoutreach.com]  
**Sent:** Sunday, February 05, 2012 10:34 PM  
**To:** CITY COUNCIL; agendaalerts@surfcity-hb.org  
**Subject:** Surf City Pipeline: Comment on an Agenda Item (notification)

**Request # 10401 from the Government Outreach System has been assigned to Johanna Stephenson.**

---

**Request type:** Question

**Request area:** City Council - Agenda & Public Hearing Comments

**Citizen name:** John Anderson

**Description:** Dear Council Members

Once again on FEB. 6, 2012 cell tower regulations will be discussed again. How many times do we have go through this?

I am against making permits easier. Gaps in coverage should still be proven, and there should be no towers in parks, or near schools, and not in residential areas. And keep them out of the wetlands, too.

**Expected Close Date:** 02/06/2012

[Click here to access the request](#)

Note: This message is for notification purposes only. Please do not reply to this email. Email replies are not monitored and will be ignored.

## SUPPLEMENTAL COMMUNICATION

Meeting Date: 2-6-2012

Agenda Item No. 11

**Esparza, Patty**

---

**From:** Flynn, Joan  
**Sent:** Sunday, February 05, 2012 10:56 AM  
**To:** Esparza, Patty; Lugar, Robin  
**Subject:** Fw: Zoning Text Amendment 09-002 (Wireless Communication Facilities)

**SUPPLEMENTAL  
COMMUNICATION**

Joan L. Flynn, CMC  
Huntington Beach City Clerk

Meeting Date: 2-6-2012  
Agenda Item No. 11

---

**From:** Gay Infanti [mailto:ginfanti@verizon.net]  
**Sent:** Sunday, February 05, 2012 10:20 AM  
**To:** Hansen, Don; Dwyer, Devin; Boardman, Connie; Bohr, Keith; Carchio, Joe; Harper, Matthew; Shaw, Joe; Flynn, Joan  
**Cc:** Fikes, Cathy; larsondj@verizon.net <larsondj@verizon.net>; 'Chacon, Shelley' <shelleyhb@socal.rr.com>  
**Subject:** RE: Zoning Text Amendment 09-002 (Wireless Communication Facilities)

Ms. Joan Flynn, Honorable Mayor, and Members of the City Council,

After reading through the staff report and the revised version of the ZTA based on Planning Commission Recommendations, I've concluded that the HBZSO must retain the requirements for WCF permit applicants to demonstrate a significant gap in coverage, investigate feasible alternatives, and select the least obtrusive site to fill the coverage gap.

The elimination of these requirements, for which the Planning Department wants to substitute the Denial of Effective Service Appeal process, will also eliminate an aggrieved party's ability to appeal a decision to grant a permit because an applicant failed to meet them. Only if the applicant is denied a permit is it likely to assert Federal Preemption and file the Denial of Effective Service Appeal. Otherwise, there is no provision in the ZTA for an appellant to question either the need or the placement of a WCF and compel the applicant to provide the evidence that an appellant would need to establish that a significant gap in coverage does not exist, or that the least obtrusive site was not selected to fill a demonstrated gap after evaluation of feasible alternatives.

A Denial of Effective Service Appeal, which is considered concurrently with wireless or conditional use permit appeal before the Planning Commission, would only be filed by an applicant who is denied a permit by the City. If, however, the City approves the permit, and another (aggrieved) party, e.g., a HB resident, appeals the decision to the planning commission, there is no basis for the appellant to cite a lack of gap in service or failure to select the least obtrusive site as a reason for the appeal, since the applicant is no longer required to supply that information when seeking a permit. The Denial of Effective Service appeal process would not come into play at all because, in this case, there would be no reason for the applicant to file one of these appeals.

In his decision re T-Mobile USA v. Anacortes, Federal District Court Judge Callahan stated that when enacting the Federal Telecommunications Act, Congress was determined to preserve the authority of State and local governments over zoning and land use matters except in the limited circumstances where they would prohibit or have the effect of prohibiting the provision of wireless services. Judge Callahan also stated that the State or local government would have to provide evidence to support the denial of a special use permit under applicable State and local laws.

Thus, for HB to defend itself from a charge of preemption of the Federal Telecommunications Act, the HBZSO must include the gap in service, consideration of alternative sites, and least obtrusive location requirements in order to preserve HB's ability to deny a wireless or conditional use permit on any of these bases.

Thank you,  
Gay Infanti

COMMUNICATIONS  
PROJECT ADMINISTRATION

1000 ...  
1000 ...

**Esparza, Patty**

---

**From:** Flynn, Joan  
**Sent:** Wednesday, February 01, 2012 6:23 AM  
**To:** Esparza, Patty  
**Subject:** Fw: ZTA 09-002 - Modification Requests - CC Meeting - Feb 6, 2012

**SUPPLEMENTAL  
COMMUNICATION**

Joan L. Flynn, CMC  
Huntington Beach City Clerk

Meeting Date: 2/6/2012

---

**From:** larsondj@verizon.net [mailto:larsondj@verizon.net]  
**Sent:** Tuesday, January 31, 2012 10:44 PM  
**To:** CITY COUNCIL  
**Cc:** Flynn, Joan; Ramos, Ricky  
**Subject:** ZTA 09-002 - Modification Requests - CC Meeting - Feb 6, 2012

Agenda Item No. #11

Honorable Mayor and City Council Members,

Please consider these issues before voting on Zoning Text Amendment No. 09-002, Wireless Communication Facilities, which will strongly affect the general well-being and property values of Huntington Beach residents.

**RETAIN Zoning Ordinance requirements for wireless provider's proof of**

- 1) significant gap in coverage;**
- 2) least obtrusive location; and**
- 3) alternate location research.**

- When City ordinances contain regulations governing WCFs, City decisions based on those regulations are upheld by Federal courts. (Sprint PCS v Palos Verdes Estates)
- The requirements should be submitted before an application is considered 'complete'.
- **If these current ZO requirements are deleted, unneeded WCFs that meet Design Review and Co-location requirements would be approved.**
- The burden of monitoring wireless providers would fall on HB residents.
- **The proposed ZTA would grant permits without these current requirements; appeals would require these proofs; permits would be revoked if providers could not prove what was NOT previously required to grant permits ('significant gap', etc.)... **Result: more lawsuits.****
- **Telecommunications Act (TCA) does not guarantee 'seamless' wireless coverage free of small 'dead spots'** (Sprint PCS v Palos Verdes Estates).

**Least Intrusive Means Standard (T-Mobile v Anacortes)**

- Provider has burden of showing lack of available technologically feasible alternatives.
- Provider must show that the manner to fill gap in coverage is least intrusive.
- Provider must consider less sensitive sites, alternate designs, co-location on existing structures.

**Planning Commission Meeting Modifications to ZTA (December 13, 2011)**

- Hr:Min 2:14 – Mr. Farley proposed/PC approved that **"any wireless facility within 1200 feet of residential" zoning requires a ZA CUP.**
  - <therefore, Public Notice and Public Hearing>
- Hr:Min 2:16 – Mr. Bixby proposed/PC approved to extend the co-location requirement for **new ground mounted** WCFs from 1,000 to 2,500 feet *when feasible*.
  - **This should apply to ALL WCFs to avoid new facilities being proposed for every roof and wall within that 2,500 foot co-location requirement.**

- Hr:Min 0:53 – Mr. Bixby asked about the ZTA E4 Design Review section and if there was an 'any'/'all' 'typo'. (Design Review is not required for 'Director approved' WCFs that "have any appurtenant facilities and equipment located underground or within an existing building or existing enclosure.")
  - **Please request that the word "all" be substituted for "any" for clarification and to avoid loopholes.**

Thank you.

Respectfully,  
Dianne Larson

*[Faint, illegible signature]*

*[Faint, illegible text]*

*[Faint, illegible text]*

**Esparza, Patty**

---

**From:** Flynn, Joan  
**Sent:** Sunday, February 05, 2012 10:33 PM  
**To:** Esparza, Patty; Lugar, Robin  
**Subject:** Fw: CC Mtg - ZTA 09-002, Wireless Communication Facilities - Feb 6, 2012  
**Attachments:** Larson\_ZTA\_09-002\_20120206.pptx

Joan L. Flynn, CMC  
Huntington Beach City Clerk

---

**From:** larsondj@verizon.net [mailto:larsondj@verizon.net]  
**Sent:** Sunday, February 05, 2012 09:14 PM  
**To:** Flynn, Joan; Ramos, Ricky; CITY COUNCIL  
**Cc:** Fikes, Cathy  
**Subject:** CC Mtg - ZTA 09-002, Wireless Communication Facilities - Feb 6, 2012

Hello Ms. Flynn, Honorable Mayor, Councilmembers, and Mr. Ramos,

Attached is a Powerpoint document for the City Council meeting on Monday, Feb 6. Please include it in the Public Record documents for this issue.

Thank you.

Dianne Larson

**SUPPLEMENTAL  
COMMUNICATION**

Meeting Date: 2/6/2012

Agenda Item No. 11

# Zoning Text Amendment 09-002

## Wireless Cell Facilities

Huntington Beach City Council Meeting  
February 6, 2012

Dianne Larson

# Federal Court Rulings

## Sprint PCS v Palos Verdes Estates

- When City ordinances contain regulations governing WCFs, City decisions based on those regulations are upheld by Federal courts.
  - Proof of ‘significant’ gap in coverage
  - Least intrusive/obtrusive location
  - Alternate location evaluation
- Telecommunications Act (TCA) does not guarantee ‘seamless’ wireless coverage free of small ‘dead spots’

# Federal Court Rulings

## T-Mobile v Anacortes

- Least Intrusive Means Standard

Provider has the burden to:

- show lack of available alternatives.
- show manner/location is least intrusive.
- consider less sensitive sites, alternate designs, and co-location on existing structures.

- Congress – determined to preserve **State and local** authority over zoning & land use.

# Proof of Need/Location for WCF Permits

<u>Permit Requirements</u>	<u>Current ZO</u>	<u>Proposed ZTA</u>
Significant gap in service	Yes	No
Least obtrusive location	Yes	No
Alternate location evaluation	Yes	No

<u>Basis for Appeal</u>	<u>Current ZO</u>	<u>Proposed ZTA</u>
Significant gap in service	Yes	Provider Only
Least obtrusive location	Yes	-----
Alternate location evaluation	Yes	Provider Only

# TCA Section 704 = Proposed HB ZTA

## Health Effects = Gap / Location

- Proposed ZTA would have the same effect as TCA Section 704 –
- You could talk about
  - Health Effects of RF Radiation
  - Gap in Service, Least Obtrusive Location, and Alternate Locations
- But none of these would be considered when the City is approving/denying WCF permits.
- ***Keep these protective requirements in our ZO!***

# Co-location – *when feasible*

<u>Requirements</u>	<u>Staff</u>	<u>PC</u>
Ground mounted only*	Yes	Yes
Distance from any existing wireless antennas	1,000 ft	2,500 ft

\* *Why not ALL WCF types – when feasible?*

## Potential Results

WCFs per linear mile	5.28	2.11
WCFs per square mile	27.88	4.46

*Does HB really need 27 WCF sites per square mile?*

*WCF coverage exceeds 1/2 mile radius (T-Mobile propagation maps)*

*Can HB legally deny unnecessary WCFs without a 'gap in coverage' ZO?*

# CUP and WP Permits

## Permit Requirements

## CUP

## WP

Approval

ZA

Director

Public Notification

Yes – 500 ft

No

Public Hearing

Yes

No

Design Review

Yes

Sometimes

## Results

Public Awareness

Surprise!!

Harbour View Park  
Landmark Liquor

*PC proposes CUPs for WCFs within 1,200 ft of residential*

# ZTA Approvals

<b><u>WCF Category</u></b>	<b><u>Approval</u></b>	<b><u>Design</u></b>	<b><u>+10 ft Ht</u></b>
<b>Ground mounted</b>	<b>CUP</b>	<b>-----</b>	<b>Permit</b>
<b>Roof/wall mounted</b>	<b>WP</b>	<b>Stealth</b>	<b>Automatic</b>
<b>Co-location</b>	<b>WP</b>	<b>Stealth</b>	<b>Automatic</b>
<b>Modification</b>	<b>WP</b>	<b>Stealth</b>	<b>Automatic</b>

***PC proposes CUPs for WCFs within 1,200 ft of residential***

# CUPs within 1,200 ft Residential

- Property values drop within 1,200 ft of WCFs.
- Require CUPs for any WCFs 1,200 ft of residential.
- Increase notification distance to 1,200 ft (radius).
- All residents should be allowed to voice their concerns before WCF applications are considered.
- Increase application fee to offset costs.
- Increase notification period to 3-4 weeks.
- Wireless providers have months to prepare.
- Residents should also have time to prepare.

# Additional 10 ft Height Over ZO

## Requirements

## Current

## ZTA

Approval

CUP

Automatic

Public Notification

Yes – 500 ft

No

Public Hearing

Yes

No

## Results

Public Awareness

Surprise!!

CUMC

# Cumulative RF Radiation Totals

- How many WCF antennas on this building?
- At Huntington Beach HS across the street?
- Each antenna is emitting RF radiation.
- What is the cumulative total of RF radiation you are exposed to all day, every day?
- Is this accumulation considered by HB ZO?
- SCE PSA: minimize exposure whenever possible.
- Mission Viejo requires measurement and mitigation if cumulative RF total is too high.
- <http://cityofmissionviejo.org/CommunityDevelopment/>
- [Wireless Telecommunication Facility Application Submittal Guidelines](#)

# Retain Local Control of WCFs

- Do not give up control by removing ZO reqmts.
- Require proof of significant gap in service, least obtrusive location, alternate locations.
- Extend co-location distance to 2,500 feet.
- Require CUPs for WCFs within 1,200 ft residential.
- Increase notification distance to 1,200 ft.
- Increase notification period to 3-4 weeks.
- Require CUPs for additional 10 ft height; do not grant it automatically for WPs.
- Add cumulative RF radiation measurement and mitigation procedures.