ORDINANCE 2001-9

SANTA FE COUNTY, NEW MEXICO

INTRODUCED BY:

1922214

AN ORDINANCE

RELATING TO WIRELESS COMMUNICATIONS ANTENNAS, TOWERS AND OTHER FACILITIES; PRESCRIBING REGULATIONS FOR LOCATION, PLACEMENT, APPEARANCE AND DESIGN

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY THAT:

1. SHORT TITLE. This ordinance may be cited as the "Wireless Communications Facility Ordinance."

2. AUTHORITY. This ordinance is adopted pursuant to NMSA 1978, Section 3-21-1 *et. seq.* and 4-37-1 *et. seq.* and the Telecommunications Act of 1996 § 704, 47 U.S.C. § 332(c)(7).

3. LEGISLATIVE FINDINGS AND PURPOSE. The Board of County Commissioners wishes to allocate the county's aesthetic resources in a fair, logical, consistent and intelligent manner, as well as to encourage wireless communications infrastructure while protecting the health, safety, welfare and property of the citizens of Santa Fe County. The intent of this ordinance is as follows:
   A To encourage the availability of wireless telecommunications and development of its corresponding infrastructure in Santa Fe County to ensure that a competitive and broad range of telecommunications services and a high quality telecommunications infrastructure are provided to serve the community.
   B To protect the unique and beautiful viewshed in Santa Fe County and its rural communities and highway corridors, maintain the county's rural character and discourage unnecessary impacts to the community.

C To encourage and where appropriate and technically feasible require carriers to locate their facilities on existing structures in order to limit the number of Support Structures necessary.

D To expedite the approval process and limit the cost to applicants of establishing wireless telecommunications infrastructure in Santa Fe County.

E To provide a uniform set of standards for the development of commercial wireless telecommunications facilities.

F To facilitate master planning of an overall comprehensive telecommunications network based on encouraging partnerships to determine community, consumer and industry needs.

G To comply with the 1996 Telecommunications Act while retaining local zoning jurisdiction, as permitted by that Act.

4. DEFINITIONS. As used in this ordinance, the following words have the meaning assigned below. Any words not defined herein shall have their ordinary dictionary meaning unless they are otherwise defined in the *Land Development Code* or other county ordinances.

A Antenna Array. An Antenna Array is one or more rods, panels, discs or similar devices used for transmission or reception of radio frequency signals, which may include omni-directional antenna (whip or rod), directional antenna (panel) and parabolic antenna (dish). The Antenna Array does not include the Support Structure, defined below, or Existing Vertical Infrastructure to which it is attached.

B Architecturally Integrated - A facility which is visually integrated into the landscape or Existing Vertical Infrastructure by means of height, texturing, architecture, treatment, massing, placement, size, design, and/or shape so as not to appear as a WCF to the naked eye.

C Attached Wireless Communication Facility (AWCF) - An Antenna Array that is attached to Existing Vertical Infrastructure along with any accompanying device for attaching the Antenna Array to the Existing Vertical Infrastructure, and Equipment Facility, which may be located either inside or outside of the Existing Vertical Infrastructure. A typical example would be an Antenna Array located on an existing building.

D Board - shall mean the Board of County Commissioners of Santa Fe County.

E Co-location - Use of a common Support Structure by two (2) or more wireless carriers or by one wireless carrier for more than one type of Antenna Array.

F Equipment Facility - An Equipment Facility is any structure used to contain equipment for a WCF including, but not limited to, cabinets, shelters, an expansion of Existing Vertical Infrastructure, ice bridges, pedestals or any other similar structures.

G Existing Vertical Infrastructure - Existing Vertical Infrastructure is any vertical infrastructure in existence at the time of application, including but not limited to buildings, utility poles, light poles, signs, towers, monopoles, water towers and tanks, any structure for which a permit has been issued by the county but has not been constructed as long as approval by the county has not expired, and any legal nonconforming structure.

H FCC - FCC shall mean the Federal Communications Commission.

I Height - The distance measured from finished grade at the base of the Existing Vertical Infrastructure or Support Structure to the highest point on the WCF, including the Antenna Array, except when referring to a building, in which case it shall mean the distance from finished grade to the top of the

main structure (generally the roof), and shall not include and chimneys, pipes or vents.

J Highway Corridor District - Districts defined in Article VI, Section 1 of the *Land Development Code*, as amended.

K Highway Corridor Plan - Any planning document adopted by the Board, such as the *Santa Fe Metro Area Highway Corridor Plan*, Resolution 2000-113

L Private Wireless Communications Facility (Private WCF) - A facility designed solely and specifically for amateur (ham) radio, citizens band radio or other private, non-commercial communications systems or for the user end of a commercial system (i.e., small antennas located on residences so that the occupants may use a wireless service in the residence).

M Residential Subdivision - Includes Type I, Type II and Type III subdivisions greater than 5 lots, as defined in the *Land Development Code*. Does not include Type IV and Type V subdivisions.

N Ridgetop - A long, narrow land form with slope less than fifteen percent (15%) that includes the prominently visible portion of a hill or mountain that sits above an area having an average slope greater than twenty percent (20%) on one or more sides.

O Support Structure - A structure designed and constructed primarily to support one or more Antenna Arrays (i.e., a tower).

P Wireless Communication Facility (WCF) - A WCF is a facility used or intended for the transmission and/or reception of wireless communications signals, usually consisting of an Antenna Array, connection cables, attachment device, Equipment Facility and either a Support Structure or Existing Vertical Infrastructure to achieve the desired elevation.

5. APPLICABILITY.

A This ordinance applies to any new WCF, new AWCF, co-location of a WCF or new Support Structure. This Ordinance does not apply to routine maintenance and replacement of existing equipment approved by the County with equipment of substantially similar or lesser size, weight and quantity, but it does apply to more substantial changes and upgrades of the WCF or AWCF.

B This ordinance applies to communications facilities used primarily and substantially for public police, fire, ambulance or other emergency dispatch uses and which are no higher than technically required only to the extent specified within this ordinance.

C This ordinance does not apply to Private WCF's. These facilities are regulated by the *Land Development Code.*

D This ordinance does not apply to utility line transmission and distribution poles or towers, except to the extent that those poles or towers are used for siting of WCF's. These facilities are regulated by the *Land Development Code.*

E This ordinance applies to all land located in the County but outside areas within the territorial limits of a municipality, unless an area is zoned pursuant to the provisions of NMSA 1978, Sections 3-21-3 and 4 (Extraterritorial Zoning) and as agreed to by an incorporated municipality and the County of Santa Fe in a Joint City/County Extraterritorial Zoning and/or Subdivision Agreement. This ordinance shall apply to lands owned by the Federal, State, Municipal and Tribal governments to the full extent permitted by law unless the Board and such government agree otherwise. All regulations under this ordinance that would otherwise apply to lands owned by the Federal, State,

Municipal and Tribal governments, except for their status as such, shall apply to those lands immediately upon their passing into private ownership.

6. SITING

A Discouraged Locations.

(1) Discouraged Locations are those scenic areas, scenic corridors and viewpoints, identified in the *Santa Fe County Visual Resources Inventory & Analysis* (October 1995), *A Treasured Resource, Santa Fe County Open Places Plan Recommendations* (October 1997) or any other Santa Fe County planning document, including the Master Plan provided for in this section.

(2) Location of WCF's which are not Architecturally Integrated in Discouraged Locations shall be by Conditional Use Permit only. Location of Architecturally Integrated WCF's and Architecturally Integrated AWCF's in Discouraged Locations may, in the Code Administrator's discretion, be approved administratively if the applications are otherwise in compliance with this ordinance.

B Encouraged Locations.

(1) Encouraged Locations shall meet the following criteria:

(a) Not in established view points, scenic areas or scenic corridors, as defined above

(b) No facilities other than small Architecturally Integrated WCF's or ground mounted Antenna Arrays on Ridgetops.

(c) Not in existing or planned Residential Subdivisions or traditional, traditional historic or contemporary communities.

(d) Located so as to be of maximum utility to users and carriers.

(2) Location of WCF's meeting the established criteria in any encouraged location shall be by administrative approval.

(3) Site specific criteria, including height and design standards shall be developed for Encouraged Locations pursuant to subsection (C) below.

C WCF Master Plan.

(1) The Board shall, by resolution, provide for the manner of establishing and amending encouraged and Discouraged Locations based on particular criteria, and updating the locations on a regular basis. Such criteria may provide for different heights or different types of facilities in different locations.

(2) The Board shall adopt a master plan in accordance with the above criteria based on staff recommendation including input from citizens and the industry.

D Locational Hierarchy. The Code Administrator, Development Review Committee or Board of County Commissioners shall consider the following hierarchy for siting of WCF's. Applicants must make a showing based on technical, practical or financial considerations in order to move down the list and locate in areas of lower preference. Note that the following are for policy guidance and are not mutually exclusive. The Code Administrator shall assist applicants in complying with this section.

(1) Encouraged areas, as defined in this section and in accordance with a plan adopted by the Board, Architecturally Integrated WCF's and Architecturally Integrated AWCF's.

(2) AWCF's, Co-location on existing WCF's, Utility Substations, and Public Structures or Public Lands;

(3) Existing Legal Conforming Commercial Districts;
(4) Existing Legal Nonconforming Commercial Areas and Eligible Unzoned Commercial Districts;
(5) Highway Corridor, Residentially Zoned Areas, Residential Subdivisions or Traditional, Traditional Historic or Contemporary Communities.

7. DESIGN STANDARDS

A Setbacks:

(1) Fall Zone - New Support Structures shall be set back from the property line a distance equal to at least the potential fall radius, as certified by a registered New Mexico Professional Engineer.
(2) Residential Setbacks - New WCF's shall be set back a minimum of 100 feet or a distance equal to twice the tower height, whichever is greater, from the property line of any property on which a residence is located.
(3) Architecturally Integrated WCF's less than twenty four (24) feet in height - No setback shall be required.
(4) AWCF's - No setback shall be required.
(5) Highway Corridor - No WCF shall be located in *the required setback* of any Highway Corridor Plan or Highway Corridor District. Location of WCF's in the *desired setback* of any Highway Corridor Plan shall be by Conditional Use Permit only.

B Physical Design:

(1) Visual impact: Antenna Arrays shall be low profile or flush mount where technical, practical or financial considerations reasonably permit. WCF's shall eliminate work platforms and other infrastructure devices where technical, practical or financial considerations reasonably permit.
(2) Designed capacity: Support Structures shall be designed to support additional Antenna Arrays (co-locators) where technical, practical or financial considerations reasonably permit.

C Color and Material:

(1) WCF's shall be left a natural non-reflective galvanized finish or painted a neutral shade or other color required by the Code Administrator.
(2) AWCF's shall be Architecturally Integrated with the structure on which they are located as technical, practical and financial considerations permit.
(3) Equipment Facilities shall be Architecturally Integrated as technical, practical and financial considerations permit.

D Screening and Landscaping:

(1) Trees or other landscaping vegetation shall be used to screen site/fence from public roads and residential areas, if required by the Code Administrator.
(2) All disturbed areas shall be revegetated and/or stabilized as necessary to control erosion and dust.
(3) If landscaping is required, a landscaping maintenance agreement with a minimum duration of three years shall be required. The Maintenance plan may be terminable prior to its expiration pursuant to approval by the Code Administrator and certification by a landscape architect (or other appropriate level landscape professional) that the installed

landscaping has achieved a naturalized self-sustaining level.

E Fencing: WCF's shall be entirely enclosed by a secure opaque fence or wall no more than eight (8) feet in height constructed of wood, stuccoed block, brick or chain link screened by vegetation. The Code Administrator may exempt any WCF's that do not require fencing (or require different fencing or fence screening) for security or aesthetic reasons. All access gates shall be secured by means of a Knox lock or similar device approved by the Fire Marshall. This requirement shall not apply to ground-mounted Antenna Arrays with secure buildings. Exemption from this section shall not prohibit an applicant from installing necessary security fencing.

F Access Road: All WCF's shall have access approved by the Fire Marshal.

G Terrain Management:

(1) Applicants must provide a stormwater retention system sufficient to protect against a 100 year storm of 24 hour duration.

(2) No Equipment Facilities in the form of sheds or buildings shall be located on slopes greater than 30%.

(3) Support Structures and Equipment Facilities in the form of cabinets may be located on slopes greater than 30% only by approval of the Code Administrator and proof that the disturbance will not increase erosion to the hillside and/or create a visual scar.

(4) All power source lines and communication lines to the proposed facility shall be underground.

H Noise: All WCF's shall comply with the *Land Development Code* noise standards. Emergency backup generators in use only during times of power outages and testing/maintenance shall comply with those standards where technical, practical and financial considerations permit.

I Lighting: Outdoor lighting of a WCF shall be limited to the use of motion sensing lights, such lights as are needed while a site is manned, and any lights needed to comply with other rules, ordinances or laws.

J Immediate Necessity: Any application shall include proof that the proposed WCF or Support Structure will be used by at least one carrier.

8. REVIEW PROCESS

A Pre Application Conference: Prior to filing an application, the applicant shall schedule a pre-application meeting with Development Review staff.

B Required Submittals: The following items are required to form a complete application. All of the following required items must be provided by the applicable submittal date for staff to review the application. Not all of the following items may be applicable in all cases, and the Code Administrator has the authority to waive individual submittal requirements for legitimate technical or practical reasons. The Code Administrator shall provide application materials, including forms, checklists and explanations of requirements.

(1) Completed development permit application form (one copy).

(2) Review Fee.

(3) Proof of property ownership (one copy).

(4) Proof of permission to locate on site, if applicable and certification from the landowner that the landowner has received a copy of this ordinance and an informational letter regarding the landowner's responsibilities, prepared by the Code Administrator (one copy).

(5) Proof of authority to make application (one copy).

(6) Proof of legal lot of record (one copy).

(7) Proof of current property tax payments (one copy).
(8) Vicinity Map (six copies) (scale 1"=2000') showing contours at twenty (20) foot intervals, the relationship of the site to its general surroundings, the location of all existing drainage channels, water courses and water bodies located on the parcel and within three miles of the parcel and the locations of all federal, state or county roads within one thousand (1,000) feet of the parcel.
(9) Existing Site Data (six copies) (Scale 1"=100') showing boundary lines, bearings and distances, the location, width and purpose of easements, streets or roads on and immediately adjacent to the tract, name and right-of-way width, utilities on and immediately adjacent to the tract, owners of record of unplatted land and existing subdivision plats by name and recordation and present tract designations according to official records in the county clerk's office.
(10) Site Plan (six copies) (scale 1"=100') showing the proposed development including:
  (a) Driveway
  (b) Setback from slopes & property lines
  (c) Location of Support Structure
  (d) Equipment Facility
  (e) Generator/power supply
  (f) Walls/fences
  (g) Landscaping
  (h) Lighting
(11) Application Report (six copies) containing:
  (a) Description of the project; acreage; location; existing development; adjacent property; description of project; access; terrain management; outside lighting; fire protection; visibility of all structures and proposals to minimize visibility; the need for the site and which sites it will connect to; color, material, size, height and dimensions of all structures including Equipment Facilities, Support Structure, Antenna Arrays, dishes; type of Support Structure proposed (e.g. monopole, self supported lattice, Existing Vertical Infrastructure).
  (b) Landscaping plan and maintenance agreement, if applicable.
  (c) Impacts to the community from the proposed development
  (d) Type of fuel and where will it be stored (if liquid fuel there must be a catchment basin under the storage tank), if applicable.
(12) Proof of legal access to the site (six copies).
(13) Elevations with heights and dimensions of all structures (six copies).
(14) Topography and Slope Plan which identifies all slopes of 30% or greater and ridgetops (six copies).
(15) Drainage and grading plan including drainage calculations and retention ponding location and design, stamped by a professional engineer (six copies).
(16) Propagation maps for existing coverage and coverage with the proposed WCF (six copies).
(17) Certification that the WCF meets or will meet FCC requirements (copy of FCC Compliance Statement, any other relevant FCC submittals, and any other necessary documentation) (six copies).
(18) Provision of the following information (six copies):

(a) Make and model of the transmitter, duty cycle, type of emissions, frequencies, number of channels and their power in watts for each of all transmitted signals
(b) Antenna input and output in watts and gain in db
(c) Both horizontal and vertical radiation patterns including distances from the support structure and the computed distances the installation will cover.

(19) Technical data including fall radius, proof of technical necessity for height adjustments, WCF mounting type and Co-locator capacity (six copies).
(20) Photographic simulation (six copies)
(21) Noise study, required if the project has an air conditioning unit or primary power source is a generator (six copies).
(22) List of provider's existing sites in Santa Fe County (six copies).
(23) Proof of secured Co-locators, if applicable (one copy).

C Visual Models: The following visual models may be required:

(1) Photographic Simulation: A photographic simulation is required for all applications. The Code Administrator shall direct the views at the initial site visit. The Code Administrator may waive this requirement.
(2) Site-located Height Model or Balloon Test
(a) A height model, which shall be a pole or other object that reasonably demonstrates the proposed height of a WCF, may be required by the Code Administrator for a Conditional Use Permit application.
(b) The Code Administrator may waive this requirement if it is determined that the photographic simulation is adequate to address visual impact issues.
(c) The applicant shall submit photographs of the height model or balloon test from neighboring residential areas and public roadways, as directed by the Code Administrator at the initial site visit.
(d) Photographs shall be submitted no less than ten (10) days prior to the scheduled hearing date.
(e) Height models and balloon tests shall be erected for a minimum of forty eight (48) hours no less than fourteen (14) days prior to the scheduled hearing date. The legal notice shall state the time period during which the height model or balloon test will be erected.
(f) The Code Administrator shall issue any permit necessary for a temporary height model for staff and public inspection purposes.

D Notice:

(1) Format: Notices shall include the applicant's name; brief description of the project; location of site; dates and times of height models or balloon tests; date, time and place of the public hearing; contact information for County Land Use Department.
(2) Location: Posted notice shall, when the applicant can secure the legal right to do so, be posted prominently:
(a) At the site in such a way as to give reasonable notice to persons interested in the application;
(b) At the intersection of the access road and the nearest public road if not immediately adjacent to the site;

(c) In a commercial node, at least one notice board shall be readable from one of the roads that creates the qualifying intersection.

(3) Verification: Applicants shall provide written and photographic verification of the posting of notice, mailing and receipt of certified letters, and publication in newspapers (as provided below) to the Code Administrator prior to the public hearing or administrative decision date.

(4) Administrative Approvals:

(a) Posted Notice: At least fifteen (15) calendar days prior to the date of the administrative decision, the applicant shall post notice, provided by the Code Administrator, of the filing of the application.

(b) Mailed Notice: At lease fifteen (15) calendar days prior to the date of the administrative decision, certified letters, prepared by the Code Administrator, shall be mailed return receipt requested to all property owners within 500 feet (excluding rights-of-way) of the subject lot. The written notice shall request that recipients inform any renters or employees who frequent the property.

(5) Conditional Use Permits and Variances:

(a) Posted Notice: At least twenty one (21) calendar days prior to the date of the public hearing, the applicant shall post notice, provided by the Code Administrator, of the filing of the application.

(b) Mailed Notice: At least twenty one (21) calendar days prior to the date of the public hearing, certified letters, prepared by the Code Administrator, shall be mailed return receipt requested to all property owners within 500 feet (excluding rights-of-way) of the subject lot. The written notice shall request that recipients inform any renters or employees who frequent the property.

(c) Published Notice: A notice prepared by the Code Administrator shall be published in the legal section of a newspaper of general circulation in the area in which the project is located at least twenty one (21) calendar days prior to the public hearing.

(6) Neighborhood Notification: The applicant shall notify by certified mail all groups and individuals which have requested notice of an application in the intended area. The Code Administrator shall keep a record of the name and address of all neighborhood or community groups and individuals wishing to receive notice of any proposed facilities, and the Township(s) and Range(s) in which they are interested and provide the applicant the list.

E Special Review Districts - All applications shall conform with Article VI of the *Land Development Code*, as amended.

9. APPROVAL PROCESS AND CRITERIA

A Administrative Reviews:

(1) *Authority*: The Code Administrator shall approve the following applications, subject to conformance with this Ordinance:

(a) A WCF or AWCF that meets the height limitations defined in this section and the locational criteria and other requirements of this ordinance.

(b) Approval of height adjustments for each of up two [2] Co-located facilities on any proposed or existing WCF, each of which shall equal the minimum amount technically necessary, not to exceed fifteen (15) feet. This adjustment shall not apply to ridgetops. Proof of secured Co-locator shall be through a contract with a carrier.

(c) A Co-located WCF that:

1) Is in accordance with an approved master plan or Conditional Use Permit; or

2) Does not exceed the height of the Support Structure on which it is to be located by more than the amount permitted by this section.

(d) Replacement of Antenna Arrays or other equipment on an existing Support Structure.

(e) Replacement of Support Structures or WCF's with equipment of similar or lesser size, weight and quantity that does not significantly change the visual appearance.

(f) A WCF that is located in an Encouraged Location and otherwise complies with this ordinance and the Encouraged Location criteria.

(g) A public emergency dispatch facility used primarily for such public purpose, provided that such facility is no higher than technically necessary, and that the public agency applicant has provided any of the above submittals required by the Code Administrator.

(2) *Authority, Ridgetops:* The Code Administrator may approve Architecturally Integrated WCF's less than twenty (20) feet in height located on a Ridgetop. All other locations on Ridgetops shall be pursuant to a Conditional Use Permit.

(3) *Time:* The Code Administrator shall render his or her decision or recommendation within thirty (30) days of the time a complete submittal is made. Failure to render a timely decision or recommendation shall result in approval of the application or a recommendation of approval.

(4) *Appeal:* Any party aggrieved by a decision of the Code Administrator may appeal that decision pursuant to the *Land Development Code*, however the Appellant must state with particularity the section(s) of this ordinance with which he or she believes the Code Administrator has not complied.

FACILITIES PERMITTED BY ADMINISTRATIVE APPROVAL			
DISTRICT/LOCATION	WCF	Architecturally Integrated WCF	AWCF[1]
Residential/Agricultural	36'	45'	+10'
Neighborhood or Local Center Commercial	45'	56'	+10'

Major or Community Center Commercial	60'	75'	+10'
Traditional, Traditional Historic or Contemporary Community	All locations by Conditional Use Permit only		
Highway Corridor Plan or District	All locations by Conditional Use Permit only		+10' in desired setback
Utility Substation	10' above height of any structure within 100'		
Residential Subdivisions	All locations by Conditional Use Permit only		
Encouraged Locations	Site Specific Criteria Pursuant to County Master Plan		
Community College	otherwise allowable height	125% of WCF	+10'

[1] Height shall not exceed the height of the Existing Vertical Infrastructure on which the AWCF is located by more than the minimum amount technically necessary, not to exceed the listed figure.

B Development Review Committee Reviews:

(1) *Authority*: A Development Review Committee shall have the following authority:

(a) Approval of Conditional Use Permits for a WCF or AWCF that meets the height limitations defined in this section.

(b) Approval of height adjustments for each of up four [4] Co-located facilities on any proposed or existing WCF, each of which shall equal the minimum amount technically necessary, not to exceed fifteen (15) feet. This adjustment shall not apply to ridgetops, residential subdivisions or traditional, traditional historic or contemporary communities. Proof of secured co-locator shall be through a contract with an FCC approved carrier.

(c) Recommendations on applications for which the Board of County Commissioners has final approval authority.

(d) Replacement Support Structures or WCF's other than those approvable administratively.

(e) WCF's located on Ridgetops that otherwise comply with this Ordinance.

(2) *Time:* The Development Review Committee shall render its decision within ninety (90) days of the time a complete submittal is made. Failure to render a timely decision shall result in either approval of the application, or a recommendation of approval to the Board.

(3) *Tabling*: A Development Review Committee shall not table an application more than once, and must take action on that item by the end of the second meeting for which it appears on the agenda unless the applicant agrees otherwise.

(4) *Appeal:* Any party aggrieved by a decision of the Review Committee may appeal that decision pursuant to the *Land Development Code*.

FACILITIES PERMITTED BY DEVELOPMENT REVIEW COMMITTEE APPROVAL			
DISTRICT/LOCATION	WCF	Architecturally Integrated WCF	AWCF[1]
Residential/Agricultural	36'	45'	+10'
Neighborhood or Local Center Commercial	45'	56'	+10'
Major or Community Center Commercial	60'	75'	+10'
Traditional, Traditional Historic or Contemporary Community	20'	24'	+6'
Highway Corridor Plan or District	Otherwise permissible height +10'		
Utility Substation	10 feet above height of any structure within 100'		
Residential Subdivisions	20'	24'	+6'
Community College	otherwise allowable height	125% of WCF	+10'

[1] Height shall not exceed the height of the Existing Vertical Infrastructure on which the AWCF is located by more than the minimum amount technically necessary, not to exceed the listed figure.

C Board of County Commissioners Reviews:

(1) *Authority*: The Board of County Commissioners shall have the authority for:

(a) Approval of Conditional Use Permits of heights greater than those approveable by a Development Review Committee where the application is appropriate pursuant to the Conditional Use Permit criteria and otherwise complies with this Ordinance.

(b) Variances from the provisions of this ordinance, pursuant to Section 11 of this Ordinance

(c) Decision of appeals from a Development Review Committee

(2) *Time:* The Board of County Commissioners shall render its decision within ninety (90) days after a Development Review Committee makes its recommendation, but in no case more than 180 days after a complete application is made, unless by agreement with the Applicant. Failure to render a timely decision shall result in approval of the application.

10. CONDITIONAL USE PERMITS:

(1) The Code Administrator shall make a recommendation to a Development Review Committee and the Board of County Commissioners based on the criteria in subsection 2.

(2) The Development Review Committee and the Board of County Commissioners shall consider the following criteria in making determinations and recommendations for approval of Conditional Use Permits.

(a) Technical need for the facility and whether a less visually intrusive facility could meet the applicant's needs.
(b) Evidence of effect on property values.
(c) Nature of ownership of the property upon which the WCF is to be located (i.e., private/public).
(d) Whether the application complies with any relevant growth or comprehensive plans, including established view points, scenic areas, scenic roads and highway corridors.
(e) The geographic location of the proposed WCF and its proximity to other WCF's, Support Structures, utility substations and distribution lines, etc.
(f) Whether the WCF will be designed to accommodate Co-locators, the utility of the location to other carriers, the applicant's proposed lease terms and whether the applicant has entered into a contractual relationship with any other carriers.
(g) Whether the application employs Architecturally Integrated design.
(h) Visibility from adjacent public roads and residential areas
(i) Use of renewable energy.
(j) Evidence of potential effect on migratory birds.
(k) The locational hierarchy in Section 6 of this Ordinance.
(l) Distance from residential properties.

(3) Conditional Use Permits may be granted for specific time periods and carry specific renewal criteria.

(4) Conditional Use Permits shall have no effect on the zoning of the property and no future zoning application shall rely on the existence of a Conditional Use Permit.

11. VARIANCES. In instances where strict compliance with the ordinance would result in a violation of a clearly established, applicable provision of the Telecommunications Act of 1996 or other federal law, a minimal easing of the provisions of this ordinance may be granted to the extent required to comply with such law.

12. TEMPORARY FACILITIES. Temporary WCF's, of any type, may be permitted by the Code Administrator for a term of not more than ninety (90) days for emergency replacement, special event and radio frequency testing purposes. In the event of an emergency, the facility may be erected immediately, but application shall be made to the Code Administrator by the end of the next business day.

13. ABANDONMENT, REMOVAL AND HEIGHT REDUCTION. Any WCF that is not operated by any user for a continuous period of twelve (12) months shall be considered abandoned and the WCF owner shall remove the WCF within ninety (90) days after notice from the county of Santa Fe. If the abandoned WCF is not removed within ninety (90) days, the county of Santa Fe may remove it or have it removed and recover all costs from the WCF owner, including all reasonable attorney's fees and court costs that may arise while collecting these costs. If the owner of an abandoned WCF cannot be located, is no longer in business, or is otherwise unable to be held accountable, the requirements of this section shall be the responsibility of the landowner on whose property the WCF is located. If at any time a WCF is reconfigured or its use changes such that the technically necessary height of the highest currently-used Antenna Arrays on the WCF is lower than any point at which the Support Structure may feasibly be disassembled (i.e., a junction between two tower sections) and the higher portion of the Support Structure remains unoccupied, with no reasonable potential for occupation in the near future, for greater than twelve (12) months, the Support Structure shall be lowered to that height. The provisions of this section may be modified pursuant to a Conditional Use Permit.

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14. RF EMISSIONS AND MONITORING. All Antenna Arrays shall conform with applicable FCC requirements for radio frequency emissions. In the case of nonconformance, the facility operator and/or owner shall be notified immediately and given seven (7) days in which to bring the facility into conformance. RF monitoring requirements, such as use of the Cobb protocol on a reasonable basis, in accordance with applicable law, may be imposed pursuant to a Conditional Use Permit.

15. ENFORCEMENT. This ordinance shall be enforced pursuant to the enforcement provisions of the *Land Development Code.*

16. REPEAL AND SAVING CLAUSE. This ordinance specifically supercedes any prior ordinance provisions that directly conflict with its provisions. The remainder of existing ordinance provisions remain unaffected by this ordinance.

17. SEVERABILITY. If any part or application of this ordinance is held invalid, the remainder or its application to other situations or persons shall not be affected. This ordinance shall be interpreted, wherever possible, to be in accordance with applicable constitutional, statutory and case law provisions.

18. COMPILATION. This ordinance may be compiled and any section number or identification reference changed and any substantive provisions moved or incorporated into such compilation so long as the regulations contained herein do not change substantively.

PASSED, APPROVED AND ADOPTED this 12 day of JUNE, 2001, in open session in Santa Fe, New Mexico.

BOARD OF ~~COUNTY COMMISSIONERS~~,
SANTA FE COUNTY NEW MEXICO

~~Paul Duran~~,
Chairperson

Attest:

Rebecca "Becky" Bustamante,
County Clerk

Approved as to legal form and sufficiency:

By:
Steven Kopelman,
County Attorney

1160.039

COUNTY OF SANTA FE
STATE OF NEW MEXICO } SS

I hereby certify that this instrument was filed for record on the 14 day of June A.D. 20 01 at 2:09 o'clock p m and was duly recorded in book 214 page 228 of the records of Santa Fe County.
Witness my Hand and Seal of Office
Rebecca Bustamante
County Clerk, Santa Fe County, NM
Deputy