



BOARD of CLALLAM COUNTY COMMISSIONERS MINUTES for the week of April 5 – 9, 2021

1b
4/13/21

WORK SESSION – 9 a.m.

The work session convened at 9 a.m., Monday, April 5, 2021. Present were Commissioners Ozias (video), Johnson and Peach, and Deputy Administrator Reyes.

Items of discussion per the agenda published April 1 were:

- Calendar/Correspondence
- Notice of call for bids to be received no later than 10 a.m., Tuesday, May 25, 2021 for Jail Control Room Upgrade and Improvement Project
- Agreement with Washington State University Extension to provide educational programs in the Extension Program
- Bullman Beach Water System update and next steps
- Agreement with Clallam Conservation District for the National Estuary/Department of Health Pollution Identification and Correction Grant
- Agreement amendment with US Department of Transportation – Federal Highway Administration for the Spruce Railroad Trail Segment B Project
- Discussion on Measuring the Impact of Economic Development Efforts
- Dungeness water exchange pricing update
- Resolution appointing Robert Knapp to the Marine Resources Committee
- Letter of Support for Jamestown S'Klallam Tribe - Traffic Calming and Pedestrian Safety in Blyn, Washington

Meeting adjourned at 11:12 a.m.

REGULAR MEETING OF THE BOARD OF CLALLAM COUNTY COMMISSIONERS

Chair Ozias (video) called the meeting to order at 10 a.m., Tuesday, April 6, 2021. Also present were Commissioners Johnson and Peach and Deputy Administrator Reyes.

REQUEST FOR MODIFICATIONS/APPROVAL OF AGENDA

1e Added: Letter of Support for Jamestown S'Klallam Tribe - Traffic Calming and Pedestrian Safety in Blyn, Washington

ACTION TAKEN: CRJm to adopt the agenda as modified, CMOs, mc

PUBLIC COMMENT

- Ed Bowen, Clallam Bay, sent in written comments on item 1e (see attached).

CONSENT AGENDA

- 1a Approval of vouchers for the week of March 29
- 1b Approval of minutes for the week of March 29
- 1c Letter to Natural Resources Conservation Service regarding the Dungeness Off-Channel Reservoir Project
- 1d Proclamation recognizing April 6, 2021 as National Service Recognition Day

ACTION TAKEN: CRJm to adopt the consent agenda, CMOs, mc

ADMINISTRATION

- 1e Letter of Support for Jamestown S'Klallam Tribe - Traffic Calming and Pedestrian Safety in Blyn, Washington

ACTION TAKEN: Discussion was held and CMO noted no action will be taken. The Board will bring a revised letter back at a later date

BOARD of CLALLAM COUNTY COMMISSIONERS
MINUTES for the week of April 2 – 9, 2021
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REPORTS AND PRESENTATIONS

- CMO read Proclamation recognizing April 6, 2021 as National Service Recognition Day
 - Sarah McWilliams, United Way, commented on the Proclamation.
- CRJ commented on Emergency Operation Center, House Bill regarding Coroner
- CMO commented on Olympic Area Agency on Aging Meeting, Conservation Futures Program Advisory Board

HEARING(S)

H1 Charter Review Recommendation Hearings:

- 1) Consider an Ordinance ensuring franchises comply with the National Environmental Protection Act (NEPA)
- 2) Consider a resolution calling on the state legislature to pass legislation, which would enable the County (and other Jurisdictions in the state) to adopt ranked-choice voting for local elections, if they so choose
 - Commissioner Ozias read the agenda item summary into the record.
 - Sue Erzen, 2020 Charter Review Commission Chair, provided a brief summary of the Charter Review recommendations (see attached).

ACTION TAKEN: CRJm to open the public hearing, CMOs, mc

First Hearing:

- 1) Consider an Ordinance ensuring franchises comply with the National Environmental Protection Act (NEPA)
 - The following made comments:
 - Ed Bowen, Clallam Bay
 - Jim McEntire, Sequim
 - Tony Corrado, Sequim
 - The following sent in written testimony: Ocean Mist, Patricia Schroeder-Nell, William Kildall, Therese Stokan, Hope Fellows, Tony Corrado, Debra Koich, Margie Weaver, Rick Marschall, Kraig Kylo, Brett Romano, Lisa Romano, Anne Pelayo, Ronald Underwood, Ed Bowen, Judy Larson, Rose Marschall, Jane Hielman, Mary Doherty (see attached).

Second Hearing:

- 2) Consider a resolution calling on the state legislature to pass legislation, which would enable the County (and other Jurisdictions in the state) to adopt ranked-choice voting for local elections, if they so choose
 - The following made comments:
 - David Mattern, Port Angeles
 - Kristina Holtrop, Sequim
 - Brett Eiland, Port Angeles
 - Ed Bowen, Clallam Bay
 - Jim McEntire, Sequim
 - The following sent in written testimony: H. William (Bill) Dettmer, Karen Fink, Janis Whipple, John Cosmez, Christine Cosmez, Patrick Russell, Bobbie Piety, Elizabeth (Beth) C. Glick, Bruce Liebsch, Mary Liebsch, Gary DeKorte, Norma Steinbacher, Shelby DePas, Therese Stokan, Ed Bowen, Rose Marschall, Jane Hielman, Mary Doherty, Brian Hogan, Don Carey, Judy Larson, Sue Forde, Betsy Robins, Candace Pratt

ACTION TAKEN: CRJm to continue the hearing to Monday, April 12, 2021 at 1 p.m., CMOs, mc

CMO noted there will also be a hearing on Monday, April 12, 2021 at 5 pm.

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CONTRACTS AND AGREEMENTS

2a Contract amendment 1 with Morningside for Developmental Disabilities

ACTION TAKEN: CRJm to approve, CMOs, mc

2b Contract amendment 1 with Pierce, Jones & Associates for Developmental Disabilities

ACTION TAKEN: CRJm to approve, CMOs, mc

2c Contract amendment 1 with Concerned Citizens for Developmental Disabilities

ACTION TAKEN: CRJm to approve, CMOs, mc

2d Agreement with Peninsula Daily News for legal advertising

ACTION TAKEN: CRJm to approve, CMOs, mc

ADMINISTRATION

3a Resolution and form for designation of the Associate Development Organization

ACTION TAKEN: CRJm to adopt, CMOs, mc

3b Resolution regarding Peninsula Housing Authority

ACTION TAKEN: CRJm to adopt, CMOs, mc

3c Notice of hearing to be held Tuesday, April 20, 2021 at 10:30 a.m. for amending Clallam County Policy 952- Boards and Committees

ACTION TAKEN: CRJm to issue, CMOs, mc

PUBLIC COMMENT

- Ed Bowen, Clallam Bay, commented on item 1e letter of support, Charter Review Commission recommendation hearings.
- Cheryl T. Woodward, sent in written comment (see attached).

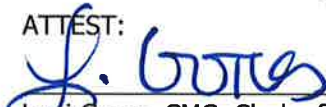
Meeting concluded at 11:37 a.m. and continued to 9 a.m., Monday, April 12, 2021.

There are no BlueJeans chat logs for the week of April 5.

The Board of Commissioners attended WSAC Virtual Assembly – COVID 19 update, and a COVID-19 Briefing during the week of March 29.

PASSED AND ADOPTED this thirteenth day of April 2021

ATTEST:



Loni Gores, CMC, Clerk of the Board

KEY TO ABBREVIATIONS:

ARS Administrator Rich Sill
CMO Commissioner Mark Ozias
CRJ Commissioner Randy Johnson
CBP Commissioner Bill Peach



BOARD OF CLALLAM COUNTY COMMISSIONERS


Mark Ozias, Chair


Randy Johnson


Bill Peach

m moved
mc motion carried
s seconded

Gores, Alanna

Ed Bowen
Public Comment
Item 1e 4/6/21

From: Ed Bowen <rockypt@olypen.com>
Sent: Monday, April 05, 2021 7:50 AM
To: Peach, Bill; Johnson, Randy; Ozias, Mark
Cc: Gores, Alanna
Subject: Opposition to worksession and board meeting agenda for highway letter of support

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

Commissioners,

Your topic of a letter of support for the earmark to build a roundabout on Hwy 101 at Blyn I totally oppose, at this time, for the purpose and the devastating impact this will have to all citizens of this county. Have you reached out to we the people to get our input before doing this, I certainly haven't heard a peep from my representatives.

This violates the comprehensive planning of arterial traffic flow that I have brought to your attention on many occasions. Understand that Hwy 101 is our only interstate highway traffic arterial flow model on the peninsula; we are not afforded the luxury that urban areas of the state allow.

I already spend five hours getting to my health care; this fluffy fix for an individual entity that already has the corridor blocked from other solutions will not only extend that trip but will put me in harm's way for the traveling visiting public that don't get it, the roundabout on a major corridor. The people of this country are not educated on roundabouts and the sociological effect of such options to a local entity wanting to access a trail system at the expense of a safe traffic flow will add the mental health impact to the drivers of vehicles forced in to this poor management of the arterial system. In tune with if you decided to put a four way stop at this location.

So no on this earmark support, get to this when you and the remainder of the representative governments develop an affective comprehensive plan because this letter is contraire to such planning that the rest of the citizens are bound to use as the process to live and survive.

I protest this approach.

Ed Bowen
P.O. Box 111
Clallam Bay, WA 98326

Gores, Alanna

Ed Bowen
Public Comment
Item 1e 4/6/21

From: Ed Bowen <rockypt@olypen.com>
Sent: Tuesday, April 06, 2021 10:05 AM
To: Ozias, Mark; Johnson, Randy
Cc: Gores, Alanna; Peach, Bill
Subject: Not being able to stay connected today Public Comment to BOCC 6APR2021 item 1e

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

I cannot get on to Blue Jeans or the phone call in, it keeps kicking me off, so please take this as my public comment on the agenda at the beginning of the meeting today. I believe you still have listed agenda item 1e Letter of Support. I am asking you to delay the letter approval for the unknowns that are now popping out at the last minute, short notice. In speaking with WSDOT regional administrator their process is to treat this as a "developer's project", and only relies on the proponent/developer to reach out to the public; at best complete SEPA. WSDOT's commitment to a roundabout is in review only and has not "selected a preferred alternative". Since they do not have a public process to engage the affect user groups of this limited access arterial highway, the only arterial highway through this reach of the north peninsula, the county is the only public known process at this meeting today. Are you willing to accept that responsibility with the moving forward for a project in the form of this letter of support.

Please do not approve this letter.

Ed Bowen
P.O. Box 111
Clallam Bay, WA 98326



Virus-free. www.avg.com

March 28, 2021

Public Comment
Cheryl Woodward
4/6/2021

To: Board of Clallam County Commissioners
223 East 4th Street. Room 160
Port Angeles, WA.

RECEIVED
CLALLAM CO. COMMISSIONERS

MAR 30 2021

1...2...3...A...

From: Cheryl T. Woodward
172 Moonkist Ter.
Sequim, WA. 98382

RE: Tuesday, March 2, 2021. 10.00 a.m. Community Meeting:

Dear Commissioners and interested parties,

I, Cheryl T. Woodward am responding to remarks and accusations made against myself and my husband, Val D. Woodward during your March 2, 2021 10.00 a.m. community meeting by the following individuals who are residents of Clallam county; Greg Madsen, Cheryl Weekes and Priscilla Hudson.

The before mentioned individuals did willfully and publicly spread lies, half truths, hearsay, false information and slander regarding ourselves and our privately owned property located in the East Sequim Bay area. They also without our permission have taken photographs of our persons and property which they presented to you during the meeting.

Located within our 6 acre property is a lower portion that has been designgated by Clallam county as wetlands. We are at this time just finishing a lengthy mitigation with the Clallam county planning committee and the county attorney, in preparation of obtaining permits for our future home site which is not located in the wetland or buffer zone location on our property.

To move forward in obtaining our building permits it was deemed neccesary by ourselves and the planning committee that our wetland and buffer zone be resurveyed by a wetland expert. This we did at our own expense. His findings and recommendations are a part of the mitigation process and are on file with the counties planning committee. We have been following and have since completed the counties guidelines which includes; planting trees, shrubs, and other vegetation in the buffer zone surrounding said wetland and weed removal and maintenance. This process also included preparing the ground in the buffer zone for planting which has involved a large tractor to remove invaisive non-native black berries, thisel, scotch broom, tansey, and stinging nettle.

The before mentioned indivduals have taken offense to our replanting efforts. Greg Maden and Cheryl Weekes have resorted to aggressive harassment and hostility and covert surveillance, towards us whenever we are planting or preparing the ground for planting in the buffer zone and also if we are working in our non wetlands area.

Their ongoing harassment has become very ugly their actions and behavior is mean, aggressive, face-to-face confrontations toward us while trespassing on our property. They have resorted to badgering, bullying, and threatening tactics which usually become mean, nasty, hateful episodes with them becoming manic, with them screaming and shouting using vulgar and obscene language and gestures. We do our best not to engage with them and try to ignore their actions.

The harassment has become so constant and threatening that we had to call the Sheriff's department to intervene. A deputy was dispatched and paid a visit to Greg Madsen, to no avail. He continues with his hostile and offensive harassment. This all occurred before he and his fellow harassers spoke at your meeting and still is occurring at this time.

Our efforts to inform these individuals that what we are doing is legal and is a restoration of the buffer which will benefit the wetland area is futile as they refuse to listen.

We have also been accused of killing off wildlife in the area, which is false. We own no weapons and are not hunters. Native deer and elk cross through our property as well as our neighbors. Quail, song birds, eagles, hawks, ravens, black birds, woodpeckers, flickers, humming birds, sea birds, owls, coyotes, frogs, lizards, banana slugs, snakes, salamanders and even bats are our neighbors and we respect them.

We are not cutting trees down in the buffer zone or wetland area. We are taking down a few trees in the area where our home is to be built which is not located in the restricted buffer or wetland area.

As stated previously we are in the process of getting all the required permits from the county to build our retirement home in the area of our property that is above said buffer and wetlands. Unfortunately we are also being harassed as we work in our non wetland portion of our property.

In regards to the accusations made about our building a road through the wetlands to the East Sequim Bay road is another fabrication and a lie. So is the statement that we drive a tractor through said wetlands to the East Sequim Bay road which would be impossible as anything that would attempt to cross through it would sink or get stuck in the swamp.

We want to be good stewards for our beautiful property and especially for our wetlands. I must publicly state that our land is private property. We are following the legal proper channels to have our future home built without harming our wetland area.

We feel that we have been unjustly targeted with a hate campaign of harassment and covert surveillance which infringe on our personal privacy, safety, and peace of mind.

Please add this correspondence to your meeting minutes.

We also would like to request a copy of the meeting minutes and copies of any photos that the above said individuals gave to you.

Thank You.

Cheryl T Woodward

Val D. Woodward

cc: Challam County Planning Department
Eric M. Swinyard, Attorney at Law
Challam County Superior Court

RANKED-CHOICE VOTING COMMENTS

BOARD OF CLALLAM COUNTY COMMISSIONERS PUBLIC HEARING

H1 Consider a resolution calling on the state legislature to pass legislation, which would enable the County (and other Jurisdictions in the state) to adopt ranked-choice voting for local elections, if they so choose

I declare under penalty of perjury under the laws of the State of Washington that any testimony that I give is true and accurate.

No	PRINTED NAME	SIGNATURE	ADDRESS
1	Darrel Mattern	Darrel Mattern	716 W 9th St Port Angeles WA 98126-2
2	Kristina Holtrop	Kristina Holtrop	94 Rowland Drive Sequim, WA
3	Brett Eiland	Brett Eiland	418 S Cherry St Port Angeles
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Signed on April 6, 2021 in Port Angeles, Washington

Hearings on EMF & RCV

An introduction from Sue Erzen, Chair of 2020 CRC

Tuesday 4/6/20 10:30, Monday 4/12/20 1:00 & 5:00

Sue Erzen
2020 CRC Chair
Public Hearing H1
4/6/21

Thank you for attending this public hearing about 2 proposals that the Charter Review Commission sent to the Board of County Commissioners in 2020.

I'd like to make two points about the 2020 CRC:

(1) It took place during the COVID 19 Pandemic. The final in-person meetings, for both the Charter Review Commissioners and the public, was March 12, 2020. All CRC meetings thereafter were virtual.

(2) Our decisions about what to put on the ballot was partly based on the difference between the Clallam County Home Rule Charter, an ordinance, a resolution, a code and policies.

Here is a short summary of the Commissions actions regarding (1) **Franchises/EMF** and (2) Rank Choice Voting (RCV).

1. **The topic of Franchises/ EMF** was raised in January of 2020 and several members of the public spoke in support of an amendment to our Charter. An amendment about Franchises and EMF was presented at the end of February.

CRC Members discussed 5g/EMF/Franchises and whether this topic fits within the County Charter.

We requested and received 2 Legal opinions from deputy Prosecuting Attorney Stanley on whether Clallam County has authority over the denial of franchises for new telecommunications equipment, whether Clallam County has franchise jurisdiction over Washington State highways and whether the county needs to require applicants for franchises to comply with NEPA. One legal opinion was issued in April and another in June because the amendment proposal was changed over time. You can read the entire Legal opinions on our county website. My summary of the legal opinions is that our county has limited ability to regulate telecommunications equipment and that Federal Regulations already require NEPA compliance for an Environmental Assessment.

In July, a motion was made that the Commission approve the EMF/Franchise Amendment and place it on the ballot. The Commissioners voted to change the proposed amendment. The commissioners voted that the proposed amendment not be placed on the ballot as an amendment, but be sent to the County Commissioners to consider it as an ordinance.

EMF was addressed by 43 individuals from the Public. 40 supported an amendment and 3 opposed it.

2. Now I'll summarize actions in regards to **Rank Choice Voting**.

14 years ago in 2007, an amendment to the Charter to adopt Instant Runoff Voting (the same concept as RCV) was defeated by the voters in Clallam County. State law later changed and now our State mandates a "Top Two" primary system for all jurisdictions.

In early November 2020, a Recommendation was proposed to ask the County Commissions to write in support of a bill in the state legislature to allow counties to adopt RCV for their elections if they so choose. A public meeting about RCV was held virtually on November 5.

At the November 12th Charter Review Commission meeting, Fair Vote WA gave a presentation in support of RCV. A motion was made to send the recommendation on RCV to the BOCC.

The recommendation was amended to remove "Local Options Bill" and substitute "legislation". With that change, the Commission unanimously voted to send the recommendation to the BOCC.

Six years ago, the 2015 CRC passed an amendment to our Charter that was approved by the voters. It mandated that the BOCC hold hearings about any Recommendations from the CRC and, after the hearings, provide a written response explaining their decisions. That is why you are here for these public hearings. Now is your time to share your opinions about these two Recommendations.

Thank you for participating today.

Gores, Alanna

From: Bill Dettmer <gsi@goalsys.com>
Sent: Thursday, December 10, 2020 8:41 AM
To: Gores, Alanna
Subject: Instant Runoff Voting

This was rejected by a 56% margin in 2007. It hasn't changed since then.
There is no reason to bring it up again.

I strongly oppose Instant Runoff Voting.

H. WILLIAM DETTMER

Port Angeles, WA

Gores, Alanna

From: ckfink@olympen.com
Sent: Thursday, December 10, 2020 7:58 PM
To: Gores, Alanna
Subject: voting

Dear Commissioners,

I do not want Ranked-Choice Voting

Thank you,

Karen Fink
343 Pierson RD
Sequim, WA 98382

Gores, Alanna

From: ckfink@olympen.com
Sent: Thursday, December 10, 2020 8:01 PM
To: Gores, Alanna
Subject: Voting

Dear Commissioner,

I do not want Ranked-Choice Voting

Thank- you,
Karen Fink
343 Pierson Rd.
Sequim, WA 98382

Gores, Alanna

From: ckfink@olypen.com
Sent: Thursday, December 10, 2020 8:04 PM
To: Gores, Alanna
Subject: Voting

Dear Clerk,

I do not want Ranked-Choice Voting

Thank- you,
Karen Fink
343 Pierson Rd.
Sequim, WA 98382

Gores, Alanna

From: Janis Whipple <jsw1047@gmail.com>
Sent: Friday, December 11, 2020 8:54 AM
To: Gores, Alanna
Subject: Voting Rights and Proposed Changes in Clallam County

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

Dear Commissioners:

It is with great dismay that I learned of your most recent plan to interfere with our “one person, one vote” voting right, and your extreme attempt to allow a candidate with 50%+1 of the votes to actually be put into office. Our voting laws, while faulty, have always given Americans a voice and that you would consider at any level taking that away is appalling. Don’t you think there’s enough distrust and discontent in our country, state and county already? Are we to become the Communist State of Washington?? I urge you to unanimously throw out these issues at your hearing for the garbage they are and remember that you have been elected to “represent the PEOPLE” of your county, not your selective partisan politics.

Respectfully,
Janis Whipple
Clallam County Resident

Gores, Alanna

From: Ozias, Mark
Sent: Friday, December 11, 2020 9:58 AM
To: John Cosmez
Cc: Gores, Alanna
Subject: RE: Ranked Choice Voting

Mr. and Mrs. Cosmez,

We will not be voting on ranked choice voting. The Charter Review Commission forwarded a formal recommendation relating to ranked choice voting to the County Commissioners and they will be presenting that recommendation at tomorrow's work session. Our Charter proscribes a response process to these formal recommendations (this year there were five) which include public meetings and a written response.

Sincerely,

Mark Ozias
Clallam County Commissioner

P.S. I have included our Clerk on this response to ensure your comment is attached to the record for this topic.

From: John Cosmez [cosmez1@att.net]
Sent: Friday, December 11, 2020 9:03 AM
To: Ozias, Mark
Subject: Ranked Choice Voting

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

Dear Mr. Ozias,

Please vote against Ranked Choice Voting. This type of voting is an invitation for fraud. The current system is not broken, so let's don't change it.

Thank you!

John and Christine Cosmez
Port Angeles
(360) 477-4403

Gores, Alanna

From: Patrick Russell <prussell7@hotmail.com>
Sent: Saturday, December 12, 2020 10:19 PM
To: Gores, Alanna
Subject: I Oppose Instant Runoff Voting (IRV)

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

To The Clallam County Commissioners Clerk:

I'm writing to voice my opposition to the resolution on Instant Runoff Voting (IRV), otherwise known as "Ranked-Choice Voting". This system does not follow the "one-person, one-vote" premise that is part of our founding principles.

This proposal was voted down by approximately 56% of voters in 2007.

Per the League of Women Voters:

- 1) We'll be required to change our voting systems and machines at great expense to us, the taxpayers.
- 2) The "vetting" process seems to be unclear and subjective.
- 3) It's possible that you'll still fail to obtain a candidate with a majority of the vote.
- 4) The process of determining who will be allowed on the ballot seems to be complicated.

This IRV system has either been rejected outright or approved and subsequently repealed in many counties around the country.

Let's not make the same mistake here in Clallam County.

Thank you for your opposition to this proposal.

Patrick Russell

Clallam County Resident and Voter

PO Box 1868

Sequim, WA 98382

Gores, Alanna

From: Bobbie <bobbiep89@gmail.com>
Sent: Sunday, December 13, 2020 7:28 AM
To: Gores, Alanna; Ozias, Mark; Johnson, Randy; Peach, Bill; Gores, Alanna
Subject: Rank Choice Voting - Please oppose

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

Dear Commissioners,

I strongly believe that Rank Choice Voting fails to truly represent the voters' will, and should NOT replace plurality voting, which everyone understands clearly and which better represents their will.

Please do not approve it.

Bobbie Piety, Sequim, WA

Gores, Alanna

From: Beth Glick <robeth@olypen.com>
Sent: Sunday, December 13, 2020 10:06 AM
To: Gores, Alanna
Cc: Johnson, Randy; Ozias, Mark; Peach, Bill; Gores, Alanna
Subject: RESOLUTION RE: RUNOFF VOTING

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

After the doubt created about the legitimacy of our recent national election, mostly due to unnecessary changes in the voting process, it is unbelievable that this resolution to change a voting system that is working here is being brought forth at this time. It creates doubt as to what the real agenda is behind this proposal!

If the Commissioners are truly concerned about One Person One Vote integrity in our local elections, then perhaps they should be considering THESE actions to strengthen election integrity:

1. Be sure the voter rolls are cleared up every 30 days as required by law
2. Make sure only legal citizens are voting
3. Return to regular polling places where identity can be ascertained by photo ID
4. Get rid of ballot harvesting

This Runoff Voting Proposal should be rejected now just as Runoff Voting was rejected in 2007 by the residents of Clallam County. It was a bad idea then, it is a bad idea now.

Elizabeth C. Glick
280 Brittany Lane
Sequim, WA
robeth@olypen.com

Gores, Alanna

From: lavender221 <lavender221@olypen.com>
Sent: Sunday, December 13, 2020 8:34 PM
To: Johnson, Randy
Subject: FW: Instant Runoff Voting

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: lavender221 <lavender221@olypen.com>
Date: 12/12/20 10:34 PM (GMT-08:00)
To: mozias@co.clallam.wa.us
Subject: Instant Runoff Voting

We are opposed to having IRV in Clallam County!

We have already voted against having this in 2007. Please do not approve it. It is a bad idea.

Bruce and Mary Liebsch
Sequim Resident

Sent from my Verizon, Samsung Galaxy smartphone

Gores, Alanna

From: Patrick Russell <prussell7@hotmail.com>
Sent: Sunday, December 13, 2020 11:28 PM
To: Gores, Alanna; Ozias, Mark; Gores, Alanna
Subject: I Oppose Instant Runoff Voting (IRV)

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

To The Clallam County Commissioners and Clerk Loni Gores:

I'm writing to voice my opposition to the resolution on Instant Runoff Voting (IRV), otherwise known as "Ranked-Choice Voting". This system does not follow the "one-person, one-vote" premise that is part of our founding principles.

This proposal was voted down by approximately 56% of voters in 2007.

Per the League of Women Voters:

- 1) We'll be required to change our voting systems and machines at great expense to us, the taxpayers.
- 2) The "vetting" process seems to be unclear and subjective.
- 3) It's possible that you'll still fail to obtain a candidate with a majority of the vote.
- 4) The process of determining who will be allowed on the ballot seems to be complicated.

This IRV system has either been rejected outright or approved and subsequently repealed in many counties around the country.

Let's not make the same mistake here in Clallam County.

Thank you for your opposition to this proposal.

Patrick Russell

Clallam County Resident and Voter

PO Box 1868

Sequim, WA 98382

Gores, Alanna

From: Ozias, Mark
Sent: Monday, December 14, 2020 8:38 AM
To: GBDeKorte@hotmail.com
Cc: Gores, Alanna
Subject: RE: Instant Runoff Voting, a.k.a. Ranked-Choice Voting

Mr. and Mrs. DeKorte,

Thank you for taking the time to write. We will not be voting on ranked choice voting. The Charter Review Commission forwarded a formal recommendation relating to ranked choice voting to the County Commissioners and they will be presenting that recommendation at today's work session. Our Charter proscribes a response process to these formal recommendations (this year there were five) which include public meetings and a written response.

Sincerely,

Mark Ozias
Clallam County Commissioner

P.S. I have included our Clerk on this response to ensure your comment is attached to the record for this topic.

From: GB DeKorte [GBDeKorte@hotmail.com]
Sent: Friday, December 11, 2020 3:12 PM
To: Ozias, Mark; Peach, Bill; Johnson, Randy
Subject: Instant Runoff Voting, a.k.a. Ranked-Choice Voting

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

Dear Sirs:

My wife Becky S. DeKorte and I are firmly ***opposed*** to the consideration of Instant Runoff Voting for many reasons, I will list our top objections to keep the letter brief.

1. IRV is an expensive system that has been tried by many cities and counties, only to be repealed later.
2. IRV in addition to being an expensive system for ballot costs and ballot counting, is a complicated system.
3. IRV effectively removes the "one person, one vote" premise that our Constitutional Republic was founded upon.
4. IRV is a proposition that is sponsored by George Soros and his Open Society Foundation, both agents for one-world Socialism.
5. During this time of Constitutional crisis and the unanswered voter fraud questions, this IRV consideration would be madness.

Thank you,

Gary DeKorte
Becky S. DeKorte
162 Heron Hill Road

Sequim, WA. 98382

360-808-9498

Gores, Alanna

From: Ozias, Mark
Sent: Tuesday, December 15, 2020 8:33 AM
To: ryka@olympen.com
Cc: Gores, Alanna
Subject: RE: Ranked Choice Voting

Ms. Steinbacher,

Thank you for taking the time to write. We will not be voting on ranked choice voting. The Charter Review Commission forwarded a formal recommendation relating to ranked choice voting to the County Commissioners and they presented that recommendation at yesterday's work session. Our Charter proscribes a response process to these formal recommendations (this year there were five) which include public meetings and a written response.

Sincerely,

Mark Ozias
Clallam County Commissioner

P.S. I have included our Clerk on this response to ensure your comment is attached to the record for this topic.

From: ryka@olympen.com [ryka@olympen.com]
Sent: Monday, December 14, 2020 11:11 PM
To: Johnson, Randy
Subject: Ranked Choice Voting

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

Wl was shocked that you would even consider an action such as ranked choice voting! When I cast my ballot, I expect it to be counted for the individual I have chosen to support. To, at any time, move that vote to another individual (or cause) is a direct violation of the Constitution of the United States. Nowhere in the Constitution is anyone given the right to negate or dilute or increase the weight another's vote except by having cast an opposing ballot in that same election.

I am appalled that the county commissioners would even consider such a thing. Needless to say, anyone who supports this action will never again receive my vote!

Norma Steinbacher
3394 MT. Pleasant Rd.
Port Angeles, WA

Gores, Alanna

From: Ozias, Mark
Sent: Tuesday, December 15, 2020 12:56 PM
To: Shelby DePas
Cc: Gores, Alanna
Subject: RE: Instant run off voting resolution

Dear Shelby,

Thank you for taking the time to write. We will not be voting on ranked choice voting. The Charter Review Commission forwarded a formal recommendation relating to ranked choice voting to the County Commissioners and they presented that recommendation at yesterday's work session. Our Charter proscribes a response process to these formal recommendations (this year there were five) which include public meetings and a written response.

Sincerely,

Mark Ozias
Clallam County Commissioner

P.S. I have included our Clerk on this response to ensure your comment is attached to the record for this topic.

From: Shelby DePas [shdepas@gmail.com]
Sent: Tuesday, December 15, 2020 8:56 AM
To: Ozias, Mark; Johnson, Randy; Peach, Bill; kevin.vandewege@leg.wa.gov; steve.tharinger@leg.wa.gov; mike.chapman@leg.wa.gov
Subject: Instant run off voting resolution

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

Dear county commissioners, and district representatives :

I wanted to express my strong disagreement with pursuit of an instant runoff voting resolution. I unfortunately missed yesterday's meeting. This proposal is completely contradictory to our one citizen, one vote system. The cost and complexity is exactly opposite of the direction our voting system in this state should be going. Our current mail in voting system lacks transparency and as noted by Jimmy Carter is the most vulnerable to fraud. The electronic voting system is in itself high risk. Why can we not go back to going to the polls? Showing your ID, getting scratched off the list and submitting your ballot for a count. Allow this to happen over a seven day period with extended hours so everyone can easily find time to vote. Allow people to request an absentee ballot in specific circumstances. If people do not value voting enough to put at least a little effort into such an important thing, then they should not be voting. It is nice to get to research all the stuff on the ballot before deciding so the Voter Info pamphlet is very helpful. Mail them only to those who request to save money. The vast majority can review online. An amendment needs to be made to submissions to the voter pamphlet. Loren Culp's team submitted his information three times prior to the deadline but the SOS servers were having issues all three times (hmmm interesting). He got penalized for this by not having a writeup, when it was the SOS mess up. That is wrong. State representatives please amend that to make exception for SOS issues in receiving.

I would like a mechanism to look up my ballot choices that were registered to confirm what I submitted was what was registered (vs just accepted). Computer systems are hackable and really not hard to do.. How can machines not be connected to the internet as we watch live tallies of voting in our country? MIT supposedly has a system with full transparency and highest level security. Nothing connected to our voting process should

be made or touched by anyone outside of this country. There are too many handlers in the current WA system. Our vote is one of our most precious rights and we need to trust it.

I would also like to see a statewide, county based electoral system for statewide offices. This state is a perfect example of what would happen if the national electoral system were eliminated. The power to decide leadership sitting within the most populous areas of the state/country. Jay Inslee wins twelve counties (one within one-tenth of a percent) and Loren Culp wins **twenty-seven** counties. Please tell me how Inslee can represent this state with only 12 counties approving of him? He represents the corridor of special interest. How about one vote per county minimum and then added electoral votes in counties by population of the county. I would beg all of you to sit down and read the constitution and do a refresher of our amazing history. Maybe something online from Hillsdale college for free. This is one of the most profound, divinely inspired documents of the ages. It is what I believe all of you have taken an oath to uphold. Our government at all levels has gotten too big and too powerful.

I also encourage you to read the Epoch Times newspaper for actual investigative journalism with more insight into China as a very bad actor around the world and especially within the US. The US is following how socialism took over other countries. The push to divide us by race, social class etc. The systemic racism narrative is infuriating.

Our governor proposing more tax dollars be spent to study and address "equity". Taxpayer dollars to investigate and prosecute the police that are here to protect us? How messed up is that? That should be handled by the department, unions, and their lawyers. Equity is a utopian communist failed ideology but it does not want to die because power and money are to be had. It is against human nature and the foundation of working hard and ability to better oneself that this country has been founded on. Watch Candace Owens and Larry Elders or Thomas Sowell for some black american insights into the real challenges for the black community. Clarence Thomas documentary "Created Equal" is also wonderful.

Empower groups by creating an economy where good jobs are available, innovation and business ownership is simplified vs regulated and taxed to death. We need outstanding schools and school choice (dollars follow student). The public schools are a joke. They have become platforms for propaganda and socialist thought vs academic excellence and high expectations. Lowest ACT scores ever is a testament to the failure they have become.

I beg all of you to consider your oath of office, what your roll is as a public servant. Keep it simple. Less government is better. More money in tax payer hands is better for everyone.

If you made it to the end of this, thank you.

Shelby DePas
380 Ridge View Dr
Sequim WA 98382
360-301-8769

Gores, Alanna

From: THERESE STOKAN <hermanabaheda@aol.com>
Sent: Wednesday, December 16, 2020 11:46 AM
To: Gores, Alanna
Cc: suerzen@gmail.com
Subject: Thank you/Follow-up on "Recommendation in Favor of Legislation for Ranked-Choice Voting" - BOCC Meeting. Please forward to BOCC.

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

Hello Clallam County Commissioners Mark Ozias, Randy Johnson and Bill Peach,

Thank you for the opportunity to present the Charter Review Commission's (CRC) proposal, "Recommendation in Favor of Legislation for Ranked-Choice Voting" on Monday, 12/14/2020, at your Work Session.

Cognizant of the fact that you had a very full agenda planned for the morning, we are grateful for the amount of time that was provided for Charter Review Commissioner Vice-Chair Norma Turner and myself to speak, as well as our two guests from FairVote Washington.

Your attention and excellent questions were much appreciated. In case you or others have additional questions, our guests have graciously offered their contact information.

Also, they are glad to help draft a "Resolution" for our state legislature, if you would like assistance with that, at some point in time. They are quite proficient and experienced in doing this.

Again, our guests were:

Lisa Ayrault, Executive Director, lisa.ayrault@fairvotewa.org

Marc Miller, MD, Board Member

Commissioner Ozias asked about the best approach to educating the public on what Ranked-Choice Voting is, so that members of our community can judge for themselves, whether this approach to elections should be considered in Clallam County.

That process is already beginning. As you know, many people stepped forth to endorse this proposal, once alerted about the CRC's "Recommendation" regarding Ranked-Choice Voting. As a result, interest is growing here, and Lisa reports to me that they are preparing to work with local supporters to arrange more informational sessions for groups in our area.

I was thinking about other groups that might enjoy having a virtual presentation on Rank-Choice Voting, hosted by FairVote Washington volunteer speakers - one of whom is a resident of Sequim. I think both of the major political parties (Republican and Democrat), the libraries, the business associations, and native communities would be great places to start.

Another idea is to coordinate a county-wide informational session on Zoom or BlueJeans, that could be advertised widely. On Monday evening, Lisa and volunteers in Spokane were hosting a virtual meeting with 50 people in attendance, including their County Auditor!

Please let me and/or Lisa know how we can assist you and our residents. We know you have a lot on your plate, and your employees are stretched thin with the added strain of COVID19.

Thanks again for your review of this proposal.

Therese Stokan
Charter Review Commissioner, District 3

Gores, Alanna

From: Ozias, Mark
Sent: Tuesday, January 26, 2021 3:36 PM
To: Ed Bowen
Cc: Gores, Alanna
Subject: RE: CRC Recommendation and the means the BOCC is addressing the topics

Follow Up Flag: Follow up
Flag Status: Flagged

Ed,

We have a series of public hearings scheduled on 4 of the 5 CRC recommendations in April; the March meeting kicks off the process to schedule and notice the hearings. Each hearing will focus on two recommendations, and each hearing will be continued so that citizens will have multiple day/time options for participation. We will also continue to accept written comment through the end of the month of April.

There will be some kind of similar public process around the DCD recommendation but I don't have additional details at this time.

Mark O

From: Ed Bowen [rockypt@olympen.com]
Sent: Tuesday, January 26, 2021 11:10 AM
To: Ozias, Mark; Johnson, Randy; Peach, Bill
Subject: CRC Recommendation and the means the BOCC is addressing the topics

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

Where has the BOCC met the requirements of the Charter regarding we the people and the recommendations from the CRC?

The BOCC letter regarding March 15th is not the requirements of the Charter for we the people, explain your position and authority to take this action.

I insist on representation, I am filing a grievance for lack of representation for me, I insist on a response made to record to hold this BOCC accountable for the clear and present danger of not abiding by the county Charter and creating a legal flaw.

Ed Bowen
Aggrieved Citizen



Virus-free. www.avg.com

Gores, Alanna

From: Jane Hielman <sunsetswestcoop@gmail.com>
Sent: Sunday, March 14, 2021 7:29 PM
To: Gores, Alanna
Subject: Randy Johnson, Bill Peach, Mark Ozias

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

Clallam County Commissioners

Please consider having at least two Public Hearings, to discuss the Charter Review Commission Recommendations, in the evening, so “working people” can participate more readily?

Also, please consider the purchase of the tiny piece of land allowing walking access to the West Park from Clallam Bay residential area. It is of great value to our population and the Lion's Club who built the access path to the beach.

Jane Hielman

Chair for the Planning Commission and
President to the Chamber of Commerce Clallam Bay/Sekiu

16795 Hwy 112
Clallam Bay WA 98326
1 (360) 963 2189
www.sunsetswestcoop.weebly.com

Gores, Alanna

From: Mary Margaret Doherty <mmdoherty441@gmail.com>
Sent: Sunday, March 14, 2021 11:43 PM
To: Gores, Alanna
Subject: Request to BOCC

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

Dear County Commissioners,

The idea of hearings for gathering public opinion around the CRC Recommendations is seemingly defeated by offering hearings when citizens are more likely to be employed and unable to attend. I urge you to hold at least one session in the evening to increase citizen participation by access to broaden the voice and input you receive on these important ideas.

Thank you for listening.

Peace, Mary Doherty

Gores, Alanna

From: Tree Stokan <treejstokan@gmail.com>
Sent: Sunday, March 14, 2021 5:40 PM
To: Ozias, Mark; Johnson, Randy; Peach, Bill
Cc: Gores, Alanna
Subject: We need to have at least two Charter Review Commission Public Hearings in the evening, please!

Hello BOCC Commissioners Mark Ozias, Randy Johnson and Bill Peach,

In reviewing tomorrow's (March 15) BOCC work session agenda and the proposed times for Public Hearings for the Charter Review Recommendations, I am noting that there are no options for working people to easily participate.

April 6, 12, 13, and 19 are two Mondays and two Tuesdays at either 10:30 AM or 1 PM. I realize that these times and dates are consistent with your work schedules.

However, the goal for these Public Hearings should really be to provide ample opportunity for all residents of Clallam County, including working individuals, to participate on the issues that are important to them.

I am urging the BOCC to consider having two evening Public Hearings, with an opportunity for working people to reading participate. Two Recommendations could be discussed at one evening Hearing and the two (or three) Recommendations could be discussed at the other. I believe that one of the Recommendations (DCD) is going to be discussed at a later time?

I would suggest 6 PM, which was the typical meeting time that the 2020 Charter Review Commission met.

I trust that your goal in serving the needs of the public and our county would include making participation in Public Hearings accessible to all members of our community, including working people.

Thank you,
Therese Stokan
Former 2020 Charter Review Commissioner, District 3

Gores, Alanna

From: Rose Marschall <rosemarschall@gmail.com>
Sent: Monday, March 15, 2021 12:52 PM
To: Gores, Alanna
Subject: Charter Review Commission

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

3/15/21

Dear Commission,

I highly recommend that you offer as PRIORITY evening meetings so working people can attend them. Your second time for meeting should be during the day. This is the right and respectable way to have your meetings, so a higher percentage of people can attend.

Thank you.

Marvelous Monday to you,

Rose Marschall

Gores, Alanna

From: Ozias, Mark
Sent: Thursday, March 25, 2021 3:48 PM
To: Brian Hogan
Cc: Gores, Alanna
Subject: RE: Upcoming Hearings

Mr. Hogan,

Thanks for writing and for the information. We won't actually be voting to allow, or not to allow, ranked choice voting. The CRC Recommendation reads:

THEREFORE, THE CHARTER REVIEW COMMISSION RECOMMENDS that the Clallam County Board of County Commissioners pass a resolution calling on the state legislature to pass legislation, which would enable the County (and other jurisdictions in the state) to adopt ranked-choice voting for local elections, if they so choose.

Eventually the BOCC will prepare a formal response to this formal recommendation, and that response will either be to pass such a resolution, or not. But even if we were to pass the resolution as recommended by the CRC, it would only be encouragement for the state legislature to change RCW and would have no immediate impact in Clallam County. It would take a vote of county residents - probably via an actual change to our county Charter - for us to actually adopt ranked choice voting.

Sincerely,

Mark Ozias
Clallam County Commissioner

From: Brian Hogan [bhogan@olypen.com]
Sent: Thursday, March 25, 2021 2:44 PM
To: Ozias, Mark
Subject: Upcoming Hearings

Mark,

I hope that when the County Commissioners hold hearings on the Charter Review Commission's recommendations you will oppose the recommendation to use ranked-choice voting in local elections.

I'm not sure which of the variations of ranked-choice voting was recommended, but each of them raises a number of issues. Game theory and other articles on the subject are plentiful. I have attached one such article. If you have a contact in Pierce County, you might ask what prompted it to repeal ranked-choice voting.

One fundamental problem is that ranked choices are not linear. For example: in a voter's view, the substantive difference between his/her second- and third-ranked candidates may differ significantly from the substantive difference between his/her third- and fourth-ranked candidates. Nor are rankings comparable among voters: one voter may feel as strongly about his/her choices down to third as another feels about his/her first choice.

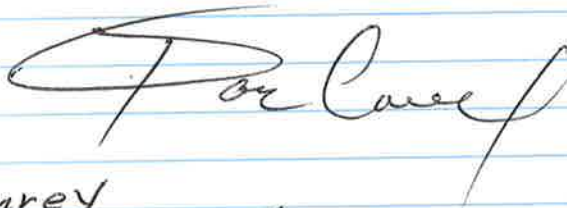
A run-off election is a small price to pay to accurately reflect the voters' will.

Brian Hogan

Board of Commissioners April 4-21
RE: "Rank choice voting"

As a citizen of Clallam County,
I am opposed to "Rank choice voting"!

This is an abhorrent attack upon
Our most cherished Right of Liberty,



Don Carey
10 Erving Jacobs Rd
Port Angeles WA 98362

RECEIVED
CLALLAM CO. COMMISSIONERS

APR 05 2021

1...2...3...A...

Gores, Alanna

From: larjdyng@olypen.com
Sent: Monday, April 05, 2021 1:27 PM
To: Gores, Alanna
Subject: 4/6/21 BOC consideration of CCCRC Ranked-Choice Voting (RCV) recommendation

*I have read and endorse the 12-14-2020 CCCRC recommendation for the CCBOC to pass a resolution asking our state legislature to permit the option of the RCV in local elections.

*In tracking the status of the referenced HB 1722 & SB 5708 bills pertaining to "local options," I have learned that those 2019-2020 session bills did not move forward and that a related 2020-2021 HB 1156 did not move forward from the "house rules" committee.

*However, I do request that the BOC pass a resolution to ask the WA legislature to provide the needed permitting option for a Clallam County RCV in WA House/Senate 2021-2022 session.

Thank you for your consideration.

Judy Larson
1070 W. Palo Verde Loop
Sequim, WA 98382

Gores, Alanna

From: Mary Margaret Doherty <mmdoherty441@gmail.com>
Sent: Monday, April 05, 2021 7:38 PM
To: Gores, Alanna
Subject: Comment for 4/6 BOCC

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

Dear County Commissioners: The CRC's Recommendation on Ranked Choice Voting was thoroughly discussed and passed on to you with overwhelming support after careful and detailed consideration. I hope you will likewise see the benefit of this more beneficial, efficient, cost effective and better nuanced contemporary methodology of voting!

Thank you!

Peace, Mary Margaret Doherty

Gores, Alanna

From: Sue Forde <sueforde@outlook.com>
Sent: Monday, April 05, 2021 10:05 PM
To: Gores, Alanna
Subject: Statement re: Ranked Choice Voting

To: commissioners@co.clallam.wa.us (Commissioners' Office)

This message was sent via the Clallam Website Email Form 04-05-2021.

Name: Sue Forde

Email: sueforde@outlook.com

Subject: Statement re: Ranked Choice Voting

Comments: Commissioners,

Ranked Choice Voting (RCV) requires all voters to fill out 3 ballots and tabulates each race three times. This completely removes the concept of majority wins and will be almost impossible to audit in a recount. Proponents of this state they can "guarantee" equity because more minorities will win.

Instant Runoff Voting (IRV) now called "Ranked Choice Voting" (RCV) was originally brought to the Home Rule Charter Commission in 2007, where it was placed on the ballot – and was defeated by almost 56% of the voters. Testimony by proponents disclosed that to change our voting machines and system to an Instant Runoff Voting (IRV/RCV) system would be very expensive to the taxpayers. It is also a complicated system.

According to various studies, it effectively removes the "one man, one vote" premise upon which our nation was founded.

It was tried at one time in Pierce County and repealed. A Pierce County newspaper's editorial board's statement issues a warning:

""Look back to the 2006 charter review cycle for an example of a commission taking a wrong turn. Ranked-choice voting was the next cool election idea, winning the support of the commission, the voters and this newspaper's editorial board. But instead of being as "easy as 1-2-3," RCV caused rampant confusion and was repealed a few years later. It would behoove this year's review panel to remember that mistake."

The national League of Women Voters (LWV), in their promotion of the idea, also point out a number of flaws in the system, including;

- The ballots and the counting of the ballots will be more expensive;
- The "vetting" is less clear;
- You could still fail to get a candidate with a majority; and
- it may be complicated to determine who will be allowed on the ballot.

There are other examples and reasons that the RCV is not a good idea.

Please vote against passing any resolution to enable it or calling on the state legislature to do so.

Thank you for your consideration.

Sue Forde
P. O. Box 3457
Sequim WA 98382

Gores, Alanna

From: Betsy Robins <betsyrobins114@gmail.com>
Sent: Tuesday, April 06, 2021 7:08 AM
To: Gores, Alanna
Subject: Ranked Choice Voting

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

I support the Clallam Charter Review recommendation that the Clallam County Board of County Commissioners pass a resolution calling on the state legislature to pass legislation, which would enable the County (and other jurisdictions in the state) to adopt ranked-choice voting for local elections, **if they so choose.**

Thank you,
Betsy Robins
114 N Peabody Street
Port Angeles, WA 98362

Gores, Alanna

From: Candace Pratt <cpratt7545@gmail.com>
Sent: Tuesday, April 06, 2021 10:12 AM
To: Gores, Alanna
Subject: I support RCV

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

Dear Commissioners,

I fully support RCV as a healthy advancement of our election options. Please urge the State Legislature to support SHB1156 so we Clallam citizens can consider the possibility of implementing it.

Respectfully,
Candace Pratt
893 N Oxford Way
Sequim WA 98382

Sent from Mail for Windows 10



Virus-free. www.avg.com

EMF COMMENTS

Hearings on EMF & RCV

An introduction from Sue Erzen, Chair of 2020 CRC

Tuesday 4/6/20 10:30, Monday 4/12/20 1:00 & 5:00

Sue Erzen
2020 CRC Chair
Public Hearing H1
4/6/21

Thank you for attending this public hearing about 2 proposals that the Charter Review Commission sent to the Board of County Commissioners in 2020.

I'd like to make two points about the 2020 CRC:

(1) It took place during the COVID 19 Pandemic. The final in-person meetings, for both the Charter Review Commissioners and the public, was March 12, 2020. All CRC meetings thereafter were virtual.

(2) Our decisions about what to put on the ballot was partly based on the difference between the Clallam County Home Rule Charter, an ordinance, a resolution, a code and policies.

Here is a short summary of the Commissions actions regarding (1) **Franchises/EMF** and (2) Rank Choice Voting (RCV).

1. **The topic of Franchises/ EMF** was raised in January of 2020 and several members of the public spoke in support of an amendment to our Charter. An amendment about Franchises and EMF was presented at the end of February.

CRC Members discussed 5g/EMF/Franchises and whether this topic fits within the County Charter.

We requested and received 2 Legal opinions from deputy Prosecuting Attorney Stanley on whether Clallam County has authority over the denial of franchises for new telecommunications equipment, whether Clallam County has franchise jurisdiction over Washington State highways and whether the county needs to require applicants for franchises to comply with NEPA. One legal opinion was issued in April and another in June because the amendment proposal was changed over time. You can read the entire Legal opinions on our county website. My summary of the legal opinions is that our county has limited ability to regulate telecommunications equipment and that Federal Regulations already require NEPA compliance for an Environmental Assessment.

In July, a motion was made that the Commission approve the EMF/Franchise Amendment and place it on the ballot. The Commissioners voted to change the proposed amendment. The commissioners voted that the proposed amendment not be placed on the ballot as an amendment, but be sent to the County Commissioners to consider it as an ordinance.

EMF was addressed by 43 individuals from the Public. 40 supported an amendment and 3 opposed it.

2. Now I'll summarize actions in regards to **Rank Choice Voting**.

14 years ago in 2007, an amendment to the Charter to adopt Instant Runoff Voting (the same concept as RCV) was defeated by the voters in Clallam County. State law later changed and now our State mandates a "Top Two" primary system for all jurisdictions.

In early November 2020, a Recommendation was proposed to ask the County Commissions to write in support of a bill in the state legislature to allow counties to adopt RCV for their elections if they so choose. A public meeting about RCV was held virtually on November 5.

At the November 12th Charter Review Commission meeting, Fair Vote WA gave a presentation in support of RCV. A motion was made to send the recommendation on RCV to the BOCC.

The recommendation was amended to remove "Local Options Bill" and substitute "legislation". With that change, the Commission unanimously voted to send the recommendation to the BOCC.

Six years ago, the 2015 CRC passed an amendment to our Charter that was approved by the voters. It mandated that the BOCC hold hearings about any Recommendations from the CRC and, after the hearings, provide a written response explaining their decisions. That is why you are here for these public hearings. Now is your time to share your opinions about these two Recommendations.

Thank you for participating today.

BOARD OF CLALLAM COUNTY COMMISSIONERS PUBLIC HEARING

H1 Consider an Ordinance ensuring franchises comply with the National Environmental Protection Act (NEPA)

I declare under penalty of perjury under the laws of the State of Washington that any testimony that I give is true and accurate.

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Signed on April 6, 2021 in Port Angeles, Washington

Gores, Alanna

From: oceannmist <oceannmist@aol.com>
Sent: Wednesday, October 28, 2020 9:18 AM
To: Ozias, Mark; Johnson, Randy; Peach, Bill; Gores, Alanna; Breitbach, Tami; zDCDbldg; Breitbach, Tami; Unthank, Allison; dclawley@msn.com; gbsjrm@sisna.com; jeanne@910rtc.com; bberezowsky@sequimwa.gov; warmacost@sequimwa.gov; tferrell@sequimwa.gov; bjanisse@sequimwa.gov; skincaid@sequimwa.gov; mpence@sequimwa.gov; dsmith@sequimwa.gov; jeffg@forkswashington.org; johnh@forkswashington.org; joes@forkswashington.org; juanitaw@forkswashington.org; mikeg@forkswashington.org; timf@forkswashington.org; council@cityofpa.us; kdexter@cityofpa.us; ncarr@cityofpa.us; mfrench@cityofpa.us; cmccaugh@cityofpa.us; lswawrin@cityofpa.us; losuggs@cityofpa.us; bmeyer@cityofpa.us; Corrado, Tony; Morris, Patti; Murray, Joseph; Lotzgesell, David; Richards, Nina; Stokan, Therese
Subject: 5G Detrimental Effects....Please Read and Educate Yourself and Others...

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

I write to you as a concerned citizen who moved to the Olympic Peninsula twenty years ago in order to live in a clean and healthy environment, among other beneficial aspects of our great geographical area. Please help keep our people, physical environment, and insects and animals safe:

Detrimental Health Effects

5G – The Global Human Experiment without Consent

5G “Small Cell” Proliferation Takes a Hit in Cambridge MA

5G AirGig- What is It and Should You Be Worried-

5G and Wireless Technology Health Effects

5G Fiasco at Mission Viejo Commissioners Hearing

5G Wireless May Lead to Inaccurate Weather Forecasts

AC Against 5G

After Decision Upholding FCC’s 5G Rules, Cities Now Weighing Appeal

An Apple Patent reveals their Wireless 5G NR Sub-6 GHz Architecture designed for Human Safety while Remaining Powerful

Apple’s Big Surprise — No New Products Include 5G Compatibility

Big Tech 'Small Cell' Proliferation Takes a Hit in Cambridge, MA

[Cellular and Wi-Fi radiation kills flies and other insects](#)

[CHD Holds Press Conference on Evidentiary Brief Filing in CHD V. FCC Lawsuit](#)

[CHD's 5G and Wireless Harms Project- Monthly Summary, July 2020](#)

[CHD's Dafna Tachover, Talks About 5G Dangers With RT America](#)

[Closer Than Ever on FCC Accountability for Wireless Harms and Protection for 5G!](#)

[Do 5G Promises Come with Real Human Costs-](#)

[Durban residents eject 5G towers on their property \(South Africa\)](#)

[Easton CT is Saying NO THANKS to 5G, and We Can Too!](#)

[Employees at France's Biggest Phone Company Undermine Country's 5G Push](#)

[Epoch Times Covers CHD Case Against FCC, Quoting Robert F. Kennedy, Jr. and Petitioner](#)

[FCC still ignores wireless harms](#)

[Federal Judge Rules Against City's Cellphone Radiation Warning Law](#)

[Global 5G Protest Day—Uniting to Protect Life on Earth](#)

[Global 5G Protest Warns of Health and Ecological Costs](#)

[Government and industry combine to downplay the science on cell phone danger](#)

[Group asks Clallam County to review 5G impacts](#)

[Hawaii's Big Island Called Upon Telecom to Cease and Desist 5G Deployment](#)

[Health impacts of 5G on board of health agenda](#)

[If 5G is not deemed safe in the USA, and nowhere in the rest of the world, by the insurance industry ... why is it by the Danish government-](#)

[Join Dafna Tachover, Esq. to Stop 5G](#)

[Mayor in Alpine Silicon Valley Wants France to Hit Brakes on 5G](#)

[o is on a Mission to Educate About 5G Harms and Protect his Mom](#)

[Portland's Face-Recognition Ban Is a New Twist on 'Smart Cities'](#)

[Press Conference- Response Brief Filed in Landmark Case Against FCC](#)

[Press Conference CHD Filed Its Response Brief in Its Case Against the FCC](#)

[Proposal to Nationalize 5G Revitalized](#)

[Radiall proposes 'massive modular' 6G mesh networks with tiny antennas](#)

[Radio Frequency Radiation Health Risks- Implications for 5G \(Grand Rounds, UC San Francisco\)](#)

[Read the short press release](#)

[researches 5G](#)

[Response Brief Filed in Landmark Case Against FCC on 5G and Wireless Health Impacts](#)

[Russia Considers Ban on Smart Phones and Wi-Fi in Schools to Protect Children's Brains](#)

[Sounding the Alarm About Wireless Radiation and 5G](#)

[Starlink is the wrong path to broadband](#)

[The Dangers of 5G to Children's Health](#)

[The FCC Just Approved 6 GHz Frequency Band for Wi-Fi and Why You Shouldn't Use It](#)

[Washington Post Is Right That 5G Is a Lie, But Wrong About the Reason](#)

THANK YOU!

Gores, Alanna

From: CP <cnell@earthlink.net>
Sent: Wednesday, November 18, 2020 9:05 AM
To: Gores, Alanna
Subject: Clallam County Charter Review Commission: Recommendation on Nuclear Weapons

Follow Up Flag: Follow up
Flag Status: Completed

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

Good Morning,
Hope all is well with you all & your families as we move through COVID.

The COVID is a reminder that we do not have control over this health disaster but we must plan & alert & inform & prepare residents.

It has given myself and others time to give attention & urgency to another specific & extreme & highly probable disaster: Nuclear Weapons.

We began collaborating & preparing this Resolution several weeks ago.

We expected to submit it to the Charter Review Commission in November 2020 giving the Commission time to address this before their term ends on December 31, 2021.

Today is November 18, 2020 & we request a review AS the the year of service commitment has not come to a close.

We value the service & purpose of the Clallam County Review Commission & look to the Commissioners to review this Recommendation.

Clallam County residents need to be alerted & informed & prepared for nuclear weapon disasters AS we live in area with the largest collection of deployed weapons in Western Hemisphere.

Thanks to you all for your service to the residents of Clallam County! We look to you to review this Recommendation.

All best from Patricia Schroeder-Nell

1417 S D Street
Port Angeles

**Clallam County Charter Review
Commission: Recommendation on Nuclear Weapons**

WHEREAS, All Forms of Disaster require County Public Emergency attention with Safety and Medical Plans & Responses that alert & inform & prepare residents. Clallam County must thoroughly address & include efforts to prevent a Nuclear Disaster in Clallam County. A Plan on Nuclear Disaster & Emergency Risks & Consequences to Public Safety & Health needs to be fully developed & communicated to all residents of Clallam County; and

WHEREAS, nearly 14,500 nuclear weapons still exist in the world & pose an intolerable risk to human survival, and the United States has roughly 6,450 of these nuclear weapons, constituting the world's most lethal nuclear weapons capability; and

WHEREAS, Washington state has the largest collection of deployed nuclear weapons in the Western Hemisphere, at the Strategic Weapons Facility Pacific (SWFPAC) or commonly referred to as Naval Base Kitsap-Bangor on Hood Canal, just 20 miles from Seattle, WA; AND just 50 miles from Sequim, Clallam County; just 70 miles from Port Angeles, Clallam County; just 127 miles from Forks, Clallam County & just 141 miles from Neah Bay, Clallam County; and

WHEREAS, Port Angeles Harbor is the home of a US Navy Maritime Protection Unit for Trident Nuclear Submarine/Missiles (MFPU). A single submarine carries an estimated 90 warheads on its 20 onboard missiles. Each "boomer" sub packs an explosive force equivalent to roughly 1,000 Hiroshima-sized nuclear bombs. About 540 of these warheads is the estimated # deployed on active Bangor-bases submarines. MFPU in Port Angeles serves them. Thus Clallam County is directly invested in nuclear weapons; and

WHEREAS, the use and detonation of even a small number of nuclear weapons could have catastrophic human, environmental and economic consequences globally; and

WHEREAS, these weapons pose a threat simply by existing, due to the possibility of accidents and miscalculations, many of which have been documented in the past; and

WHEREAS, a single nuclear detonation in any city in WA could cause devastating & immediate fatalities, injuries and illnesses from radiation, devastating destruction of agricultural land and natural resources for decades; and

WHEREAS, these nuclear weapons installations, added to Washington state's large city centers and many other military installations, makes our State a target in the event of a nuclear exchange; and

WHEREAS, Washington state is home to many other nuclear weapons sites and nuclear reactor facilities, including: the Hanford Nuclear Site, the most contaminated nuclear site in the Western Hemisphere, The Midnit

e Mine, a former nuclear weapons uranium mine located on the Spokane Tribe of Indians Reservation, and one of the largest populations of Marshall Islanders in the United States, whose home was the site of 67 atmospheric nuclear weapons tests during the Cold War; and

WHEREAS, these nuclear weapons sites and activities disproportionately affect communities of color and indigenous people, none of whom have been adequately compensated for the environmental and health consequences of nuclear weapons activities pursued by the United States government during the 50 years of the Cold War; and

WHEREAS, these nuclear weapons and nuclear-related activities make this a uniquely local issue in Washington state; and

WHEREAS, Washington residents benefit from the safety and security of preventing the New START treaty from expiring on February 5, 2021; and

WHEREAS, in July 2017, 122 nations called for the elimination of all nuclear weapons by adopting the Treaty on the Prohibition of Nuclear Weapons, which was ratified on October 24, 2020 and will enter into force on January 22, 2021; and

WHEREAS, the United States Constitution gives Congress the sole power to declare war; and

WHEREAS, the United States could lead a global effort to prevent nuclear war by:

- renouncing the option of using nuclear weapons first
- ending the President's sole, unchecked authority to launch a nuclear attack
- taking U.S. nuclear weapons off hair-trigger alert
- canceling the plan to replace its entire arsenal with next-generation nuclear weapons
- actively pursuing a verifiable, multilateral agreement among nuclear-armed states to eliminate their nuclear arsenals & move towards the Treaty of the Prohibition of Nuclear Weapons; and

WHEREAS, the United States is currently planning to spend at least \$1.2 trillion rebuilding our entire nuclear weapons arsenal. If we move this money we can begin to address conventional military needs and social programs like education, health care, and infrastructure; and the plan for nuclear weapons abolition while ensuring environmental restoration & clean energy conversion.

THEREFORE, THE CHARTER REVIEW COMMISSION RECOMMENDS:

The Clallam County Board of County Commissioners produce a Nuclear Disaster Emergency Plan to alert & prepare the public for consequences to this emergency that impacts their health & safety; and

The Clallam County Board of County Commissioners call on Congress to take appropriate steps to move back from the brink of nuclear war by establishing a system of checks and balances to ensure

that the President shall no longer have the sole, unchecked authority to launch nuclear weapons, except in circumstances of retaliation to a nuclear attack, and making it the policy of the United States to not use nuclear weapons first, and to move forward toward nuclear disarmament; and

The Clallam County Board of County Commissioners transmit copies of this Recommendation to the President and Vice President of the United States, to the Speaker of the House of Representatives, to Majority Leader of the Senate, and to each Senator and Representative from Washington in the Congress of the United States.

<Clallam County Charter Review Commission Recommendation on Nuclear Weapons.docx>

Gores, Alanna

From: Patricia Schroeder <cnell@earthlink.net>
Sent: Wednesday, November 18, 2020 11:16 AM
To: Gores, Alanna
Subject: Clallam County Charter Review Commission could complete their full term if they reconsidered?

Follow Up Flag: Follow up
Flag Status: Completed

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

Please forward to Commissioners for their information & for them to explain why they concluded the term they were elected to EARLY - 43 days early.

And this important Commission will not return after a new election in 5 years, is that accurate.

Very disheartening & discouraging- could they not consider continuing for the rest of this term?

Please forward to the Commissioners.

Thank- You,
Patricia Schroeder-Nell

Sent from my iPhone

On Nov 18, 2020, at 9:14 AM, Gores, Alanna <agores@co.clallam.wa.us> wrote:

Patricia Schroeder-Nell,

Thank you for your email below.

The Charter Review concluded their term for 2020 by a vote of 13 in favor and 1 opposed on November 12, 2020.

Your email will stay part of the County electronic records.

Loni

*Loni Gores
Clerk of the Board
Commissioners Office
223 East 4th Street, Suite 4
Port Angeles, WA 98362
Phone: 360-417-2256*

From: CP [mailto:cnell@earthlink.net]
Sent: Wednesday, November 18, 2020 9:05 AM

To: Gores, Alanna

Subject: Clallam County Charter Review Commission: Recommendation on Nuclear Weapons

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1417 S D Street
Port Angeles

**Clallam County Charter Review
Commission: Recommendation on
Nuclear Weapons**

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Plans & Responses that alert & inform & prepare residents. Clallam County must thoroughly address & include efforts to prevent a Nuclear Disaster in Clallam County. A Plan on Nuclear Disaster & Emergency Risks & Consequences to Public Safety & Health needs to be fully developed & communicated to all residents of Clallam County; and

WHEREAS, nearly 14,500 nuclear weapons still exist in the world & pose an intolerable risk to human survival, and the United States has roughly 6,450 of these nuclear weapons, constituting the world's most lethal nuclear weapons capability; and

WHEREAS, Washington state has the largest collection of deployed nuclear weapons in the Western Hemisphere, at the Strategic Weapons Facility Pacific (SWFPAC) or commonly referred to as Naval Base Kitsap-Bangor on Hood Canal, just 20 miles from Seattle, WA; AND just 50 miles from Sequim, Clallam County; just 70 miles from Port Angeles, Clallam County; just 127 miles from Forks, Clallam County & just 141 miles from Neah Bay, Clallam County; and

WHEREAS, Port Angeles Harbor is the home of a US Navy Maritime Protection Unit for Trident Nuclear Submarine/Missiles (MFPU). A single submarine carries an estimated 90 warheads on its 20 onboard missiles. Each "boomer" sub packs an explosive force equivalent to roughly 1,000 Hiroshima-sized nuclear bombs. About 540 of these warheads is the estimated # deployed on active Bangor-bases submarines. MMPU in Port Angeles serves them. Thus Clallam County is directly invested in nuclear weapons; and

WHEREAS, the use and detonation of even a small number of nuclear weapons could have catastrophic human, environmental and economic consequences globally; and

WHEREAS, these weapons pose a threat simply by existing, due to the possibility of accidents and miscalculations, many of which have been documented in the past; and

WHEREAS, a single nuclear detonation in any city in WA could cause devastating & immediate fatalities, injuries and illnesses from radiation, devastating destruction of agricultural land and natural resources for decades; and

WHEREAS, these nuclear weapons installations, added to Washington state's large city centers and many other

military installations, makes our State a target in the event of a nuclear exchange; and

WHEREAS, Washington state is home to many other nuclear weapons sites and nuclear reactor facilities, including: the Hanford Nuclear Site, the most contaminated nuclear site in the Western Hemisphere, The Midnite Mine, a former nuclear weapons uranium mine located on the Spokane Tribe of Indians Reservation, and one of the largest populations of Marshall Islanders in the United States, whose home was the site of 67 atmospheric nuclear weapons tests during the Cold War; and

WHEREAS, these nuclear weapons sites and activities disproportionately affect communities of color and indigenous people, none of whom have been adequately compensated for the environmental and health consequences of nuclear weapons activities pursued by the United States government during the 50 years of the Cold War; and

WHEREAS, these nuclear weapons and nuclear-related activities make this a uniquely local issue in Washington state; and

WHEREAS, Washington residents benefit from the safety and security of preventing the New START treaty from expiring on February 5, 2021; and

WHEREAS, in July 2017, 122 nations called for the elimination of all nuclear weapons by adopting the Treaty on the Prohibition of Nuclear Weapons, which was ratified on October 24, 2020 and will enter into force on January 22, 2021; and

WHEREAS, the United States Constitution gives Congress the sole power to declare war; and

WHEREAS, the United States could lead a global effort to prevent nuclear war by:

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WHEREAS, the United States is currently planning to spend at least \$1.2 trillion rebuilding our entire nuclear weapons arsenal. If we move this money we can begin to

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<Clallam County Charter Review Commission Recommendation on
Nuclear Weapons.docx>

Gores, Alanna

From: William Kildall <drwmkildall@gmail.com>
Sent: Friday, November 20, 2020 10:02 AM
To: Gores, Alanna
Subject: Fwd: Clallam County Charter Review Commission (CRC) - Recommendation on Nuclear Weapons - Do you have time to review proposal and send e-mail to the CRC

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

Dear Alanna,

Please copy this e-mail to all of our CRC members and County Commissioners my message of support for the proposed Recommendation on Nuclear Weapons. This resolution speaks to the clear and ever-present danger of nuclear weapons that hangs over our heads here in Clallam County. I urge passage of this resolution by the Commission Members and the County Commissioners to begin to alert our elected leaders to start to reclaim a major guarantee for a portion of the quality of life for all of our residents of this County, State, and Nation.

Respectfully,

Bill Kildall

On Thu, Nov 19, 2020 at 6:33 PM THERESE STOKAN <hermanabaheda@aol.com> wrote:
Hi Everyone!

Actually, I think this is a tremendous proposal and if anyone is willing to send an email in support of it, to the Charter Review Commission (CRC), please do so. It would be much appreciated and every email in support really does influence whether the CRC considers proposals! Please ask your other contacts in Clallam County to do so, also!

Send your e-mails to the Clerk of the Board:
Alanna Gores

agores@co.clallam.wa.us

Ask Alanna to share your email with all of the Charter Review Commissioners, and let you know that she received your email.

***This is how we educate the Charter Review Commissioners (and County Commissioners) and the community! It is another Platform to do so! Perhaps Anne and others can help with other proposals, like the ones initiated in Jefferson County. It is all good! It cannot hurt to try and even if it fails to be discussed by the Charter Review Commission, it will have provided quite an education!

***Why is this issue relevant to the CRC? Their job is to look at our Charter...which is our county's constitution. You may recall the Bill of Rights? The Bill of Rights are the first 10 amendments to the US Constitution and they deal with "quality of life" issues. I have discussed this issue repeatedly with a Constitutional Attorney, who agrees with this and the relevance/appropriateness of these type of proposals to the Clallam County Charter.

***Part of the problem, is that some of the CRC members have "limited vision" on what can be done with and in the Charter. As it stands, this would not be an "amendment proposal" because it would require more time

than this CRC is willing to meet. This is being proposed as a "Recommendation". Hope this helps explain why the CRC can and should consider this proposal!

This year, the CRC passed a "Recommendation" on "Affordable Housing" and on "Franchises/NEPA - National Environmental Protection Act...and compliance with it regarding EMF (electromagnetic field) and new technology".

These are "Quality of Life" issues. The issue of nuclear weapons is certainly a "quality of life" issue that merits a "Recommendation", in my opinion, as a Charter Review Commissioner.

Thanks for your review and, if you do send an e-mail in support of this proposal (or otherwise), could you please let me know? There was some difficulty in Pat getting confirmation that Alanna had shared her email with the Charter Review Commissioners.

Thanks!

Therese (Tree) Stokan

Charter Review Commissioner

District 3

Sent from my iPhone

On Nov 19, 2020, at 3:30 PM, Anne Hastings Murray <murray@olympus.net> wrote:

The issue of nuclear weapons is of crucial importance, and I appreciate the effort to engage the county government. However, I do not believe this proposal is appropriate for the Charter Review Commission. I do think there is a need to garner significant community support and then present a resolution to the Commissioners. Port Townsend provided us with a means of gathering that support, but I am unaware of their initiative being pursued in Clallam County.

Anne Murray

On Nov 17, 2020, at 11:46 PM, THERESE STOKAN <hermanabaheda@aol.com> wrote:

Hi Everyone!

Here is the most recent draft, as of Tuesday evening, 11/17/2020! Pat did a tremendous job today, combining input that she, Carly and Doug wrote.

I did a few edits...Please let us know what you think. Any corrections, changes, modifications?

Thanks!

Tree

Clallam County Charter Review Commission: Recommendation on Nuclear Weapons

WHEREAS, All Forms of Disaster require County Public Emergency attention with Safety and Medical Plans & Responses that alert & inform & prepare residents. Clallam County must thoroughly address & include efforts to prevent a Nuclear Disaster in Clallam County. A Plan on Nuclear Disaster & Emergency Risks & Consequences to Public Safety & Health needs to be fully developed & communicated to all residents of Clallam County; and

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The Clallam County Board of County Commissioners transmit copies of this Recommendation to the President and Vice President of the United States, to the Speaker of the House of Representatives, to Majority Leader of the Senate, and to each Senator and Representative from Washington in the Congress of the United States.

Gores, Alanna

From: Tree Stokan <treejstokan@gmail.com>
Sent: Monday, December 14, 2020 11:20 AM
To: Gores, Alanna
Cc: Tony Corrado
Subject: Coconut Creek Florida Commission Passes 5G Resolution on Health and Environmental Effects of Wireless Radiofrequency - Environmental Health Trust

Please forward to the BOCC, (and Charter Review Commissioners), in anticipation of review of the Franchises/EMF/NEPA proposal, in January 2021.

Thanks,
Therese Stokan
Charter Review Commissioner
District 3

<https://ehtrust.org/coconut-creek-florida-commission-passes-resolution-on-health-and-environmental-effects-of-wireless-radiofrequency/>

Sent from my iPhone

Gores, Alanna

From: Hope Fellows <hopefellows@gmail.com>
Sent: Sunday, January 03, 2021 4:03 PM
To: Gores, Alanna
Subject: Please share this email with all members of the BOCC

The BOCC shall take all required and necessary legal actions to ensure that any franchise associated with new radio frequency devices or systems operating in the micro or millimeter wave frequency range, be accompanied by a scientific study determining that such law, regulation or franchise is in compliance with the National Environmental Protection Act (NEPA) prior to the enactment or granting of any franchise.

To date there's been no environmental testing of this network to know that it is safe. Thousands of scientists and doctors around the world have come out against this EMF technology as a public health threat.

Fiber optics are a proven to be safe alternative. That's the way we should be going.

Sincerely

Hope Fellows
2062 Spruce St
Port Townsend, Wa. 98368

Sent from my iPhone

Gores, Alanna

From: Tony Corrado <tony.corrado@gmail.com>
Sent: Monday, January 04, 2021 9:14 AM
To: Alex Fane; Gores, Alanna
Subject: 5G Comments
Attachments: 210104--EMF BOCC.pdf

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

Ms. Gores,
Kindly forward this email and attachment to the BOCC. Thank you.

Commissioners,
Attached please find a submittal regarding my personal opinion regarding the 5G ordinance you will be considering at your work session this month. This attachment represents a summary of related issues and factual representations that you might choose to consider in your deliberations. As I am not sufficiently erudite to present the moral and ethical arguments regarding this issue, perhaps this excerpted quote from Thomas Paine can add perspective. "These are the times that try men's souls. The summer soldier and the sunshine patriot will in this crisis turn from the service of his country, but he that stands it now deserves the love and thanks of man and woman."

Respectfully Submitted,
Tony Corrado

A Perspective on The Electro Magnetic Fields (EMF) Issue

This document has been prepared to summarize the primary issues that the BOCC of Clallam County should consider when determining their positions on a potential ordinance related to EMF deployments in Clallam County. Text in *italics* have been copied from the referenced documents.

EMF is a very complex issue. It has technical, legal and political ramifications. Regardless, the protection of the health and safety of citizens should be based on science, not politics, greed nor propaganda.

As a means of simplifying the technical aspects, the following clarifications are offered:

1. Technical

- a. 5G is deliberatively discussed by the Federal Communications Commission (FCC) and telecommunications industry as a benign, principally cellphone, related technology. That posit is simply not factual. 5G, as a term used herein, actually encompasses all the RF frequencies from 300 MHz to 300 GHz in the RF spectrum. It includes smart meters, WIFI (2.45 GHz band), 3,4 and 5G cellphones, automotive sensors, security scanners, satellite up/down links, commercial and industrial applications of communication technology and tracking and detection systems.
- b. The prefix micro- in microwave is not meant to suggest a wavelength in the micrometer range. Rather, it indicates that microwaves are "small" (having shorter wavelengths), compared to the radio waves used prior to microwave technology. The boundaries between far infrared, terahertz radiation, microwaves, and ultra-high-frequency radio waves are fairly arbitrary and are used variously between different fields of study. Reference: <https://en.wikipedia.org/wiki/Microwave>
- c. Zero health related studies have been supplied for peer review at the higher frequency portions of the spectrum.
- d. The impact of microwaves and related EMF is verifiable in these latest reports of weaponized microwave induced effects at diplomatic embassies.
 - i. https://www.washingtonpost.com/world/national-security/report-finds-microwave-energy-likely-made-us-diplomats-ill/2020/12/05/71c2b818-3768-11eb-9699-00d311f13d2d_story.html
- e. This reference points to a new DARPA initiative and report on EMF causing severe reactions to young, experienced and well-trained USAF pilots.
 - i. <https://emf-experts.news/emf-exposre-in-cockpits/>
- f. This reference points to a German study documenting the effects of microwaves on insect life as researched in Germany.
 - i. <https://citizensfor5gawareness.org/2020/09/17/mobile-phone-radiation-may-be-killing-insects-german-study/>

2. Legal

- a. It has been suggested that the existence of a Federal law, the National Environmental Protection Act (NEPA) obviates the need for a Clallam County ordinance requiring its compliance. This argument is both sophomoric and disingenuous. It posits that the mere existence of a law is sufficient to ensure its compliance. If this were an accurate posit, then major budget reductions could be realized by not enforcing driving regulations since speed limits constitute "existing law".

- b. The FCC has attempted to obtain a ruling exempting them from the NEPA as they have universally failed to comply with the existing law. In a recent case, the courts have ruled that the FCC/industry must comply with the NEPA. Reference: <https://ehtrust.org/for-immediate-release-appeals-court-unanimously-overturms-fcc-effort-to-eliminate-nepa-and-historic-review/> and <https://scientists4wiredtech.com/2019/08/federal-court-overturms-fcc-order-bypassing-environmental-review-for-4g-5g-wireless-small-cell-densification/>
- c. The reason both “micro” and “millimeter” wave terms were defined for inclusion in the suggested ordinance is to prevent definitional differences enabling noncompliance based on a loose definition of frequencies of compliance. We reference the essential elements of any ordinance in the last paragraph of this missive.
- d. A Clallam County ordinance would simply ensure compliance for the submittal of Environmental Assessments and Environmental Impact studies prior to the issuance of a franchise.

3. Health and environmental issues.

This section contains excerpts (italicized) from Dr, Martin Pall’s extensive research relating the technology of 5G to biological effects. Dr, Pall is a Professor Emeritus of Biochemistry and Basic Medical Sciences, Washington State University. He is a recognized international resource related to EMF issues. His entire book is available free online at:

<https://peaceinspace.blogspot.com/files/5g-emf-hazards--dr-martin-l.-pall--eu-emf2018-6-11us3.pdf>

a. Summary of health effects

- 1. Attack our nervous systems including our brains leading to widespread neurological/neuropsychiatric effects and possibly many other effects. This nervous system attack is of great concern.*
 - 2. Attack our endocrine (that is hormonal) systems. In this context, the main things that make us functionally different from single celled creatures are our nervous system and our endocrine systems – even a simple planaria worm needs both of these. Thus the consequences of the disruption of these two regulatory systems is immense, such that it is a travesty to ignore these findings.*
 - 3. Produce oxidative stress and free radical damage, which have central roles in essentially all chronic diseases.*
 - 4. Attack the DNA of our cells, producing single strand and double strand breaks in cellular DNA and oxidized bases in our cellular DNA. These in turn produce cancer and also mutations in germ line cells which produce mutations in future generations.*
 - 5. Produce elevated levels of apoptosis (programmed cell death), events especially important in causing both neurodegenerative diseases and infertility.*
 - 6. Lower male and female fertility, lower sex hormones, lower libido and increased levels of spontaneous abortion and, as already stated, attack the DNA in sperm cells.*
 - 7. Produce excessive intracellular calcium [Ca²⁺]_i and excessive calcium signaling.*
 - 8. Attack the cells of our bodies to cause cancer. Such attacks are thought to act via 15 different mechanisms during cancer causation.*
- There is also a substantial literature showing that EMFs also cause other effects including life threatening cardiac effects (Chapter 3). In addition substantial evidence suggests EMF causation of very early onset dementias, including Alzheimer’s, digital and other types of dementias (Chapter 3); and there is evidence that EMF exposures in utero and shortly after birth can cause ADHD and autism (Chapter 5).*

b. Mechanism of interactions with biological cells

- i. *Each of these effects is produced via the main mechanism of action of microwave/lower frequency EMFs, activation of voltage-gated calcium channels (VGCCs) (Chapter 2). The extraordinary sensitivity of the VGCC voltage sensor to the forces of the EMFs tells us that the **current safety guidelines allow us to be exposed to EMF levels that are something like 7.2 million times too high. That sensitivity is predicted by the physics.** Therefore, the physics and the biology are each pointing to the same mechanism of action of non-thermal EMFs.*
- c. Lack of governmental action
 - i. *The European Commission has done nothing to protect European citizens from any of these very serious health hazards and the U.S. FDA, EPA and National Cancer Institute have done nothing to protect American citizens. **The U.S. FCC has been much worse than that, acting vigorously with wanton disregard for our health.***
- d. Safety Guidelines
 - i. *It can be seen, in summary, that we are far beyond the issue whether there are non-thermal EMF effects. Our current safety guidelines are based only on heating (thermal) effects. Heating is produced predominantly by forces on singly charged groups in the aqueous phases of the cell but the forces on the voltage sensor are approximately 7.2 million times higher. **Therefore, our current safety guidelines are allowing us to be exposed to EMFs that are approximately 7.2 million times too strong.***
- e. Cumulative and irreversibility effects
 - i. *Two questions that must be raised about the effects of these low-intensity EMFs producing biological effects is are they cumulative and are they reversible? **I am aware of several different types of evidence for cumulative effects and also for irreversible effects.***
- f. Factual nature of government-based positions
 - i. *The first set of flaws, is that SCENIHR (Scientific Committee on Emerging and Newly Identified Health Risks) is perfectly willing to make statements which they know or should have known are false. There is a vast literature, both in the review literature and in the primary literature studies, that disagrees strongly with the SCENIHR positions and is completely ignored by SCENIHR. Finally, we have three additional considerations which interact with each other to produce the completely bogus logic used by SCENIHR and by other organizations that have taken positions similar those taken by SCENIHR. **One of those considerations comes from our knowledge that pulsation pattern, cell type, polarization and frequency can all influence biological effects and that there are exposure windows that produce much larger effects than are seen with either lower or higher intensities.***
- g. Total absence of “pulsed” EMF studies
 - i. *All wireless communication devices put out polarized EMFs that carry information via pulsations. Both the pulsations and the polarization make these EMFs much more biologically active. The only data we have, to my knowledge, on millimeter wave frequencies of 5G used non-pulsed*
 - ii. *The only data we have, to my knowledge, on millimeter wave frequencies of 5G used non-pulsed EMFs in the millimeter frequency range of 5G, not genuine 5G*

- iii. *Switzerland has safety guidelines that are 100 times more stringent than ours, Russia has safety guidelines that are 1000 times more stringent than ours.*
- h. Lack of regulatory agency transparency
 - i. *We in the U.S. often take great pride in our scientific research. That is, of course, especially true of U.S. scientists, of which I am one. We have far more Nobel laureates than any other country so we think of ourselves as being the #1 science country in the world. **But we have had, over the past 20 years, almost no scientific primary literature studies, either laboratory studies or epidemiological studies, on non-thermal microwave frequency EMF effects.***
- i. Attacks by the Telecommunications Industry on U.S. Scientists
 - i. *Dr. Henry Lai from the University of Washington and a collaborator, NP Singh were using the alkaline comet assay, discussed earlier in this document to measure single stranded breaks in cellular DNA. They found a substantial elevation of the levels following low level EMF exposure in late 1994. **Before that finding had even been published, they found that they were targets of a severe attack from the telecommunications industry.***
- j. Scientific references related to the environmental effects on plants
 - i. *In any case, these surface effects of 5G will have especially strong impact on organisms with much higher surface to volume ratios. Consequently, I predict that many organisms will be much more impacted than we will. This includes insects and other arthropods, birds and small mammals and amphibia. It includes plants including even large trees, because trees have leaves and reproductive organs that are highly exposed. I predict there will be major ecological disasters as a consequence of 5G. This will include vast conflagrations because EMF exposures make plants much more flammable.*
 - ii. References:
 1. <https://ehtrust.org/tree-damage-caused-mobile-phone-base-stations-observation-guide-helmut-breunig/>
 2. <https://pubmed.ncbi.nlm.nih.gov/25050479/>
 3. <https://pubmed.ncbi.nlm.nih.gov/27552133/>
- k. International leaders with knowledge
 - i. *One question that can be asked is whether there are any major international political figures who appear to have a good understanding of the EMF/health issue? When I was asked that question, I was able to come up with only one person. That person is President Vladimir Putin of Russia. This inference comes from an interview of Dr. Dietrich Klinghardt, who practices in Seattle, by Dr. Joseph Mercola, that occurred in December 2017, an interview that was entirely focused on EMF health effects [117]. In that context Dr. Klinghardt states that a lecture that Putin gave to the Russian assembly said, **"We do not need to go to war with America. America is committing collective suicide by the way they are using electricity. We just have to wait until they are all in the psychiatric hospital."** When I saw that, I asked myself whether it is plausible that Vladimir Putin has a deep understanding of the neuropsychiatric effects of the EMFs? And then I thought, of course, Vladimir Putin was the head of the KGB when the latter studies reviewed by Dr. Karl Hecht*

*[28] were being done in the Soviet Union. The most important effects that were shown to be produced by the EMFs, in those studies, were the neuropsychiatric effects. Furthermore, the Putin statement apparently shows not only a substantial understanding of those effects but **also the fact that they are cumulative and become irreversible, as shown** in those studies [28] and in other studies discussed in Chapter 4. One thing that I would add is that President Putin apparently practices what he preaches. He avoids smart phones [118].*

4. Essential elements to be included in an ordinance:
 - a. The hardware operational frequency range should be defined as 300 MHz through to 300 GHz of the RF spectrum.
 - b. Compliance with the National Environmental Protection Act (NEPA) should be required prior to the enactment or granting of any franchise by the BOCC.
 - c. NEPA compliance shall require submission of environmental assessment (EAs) and environmental impact statements (EISs). All reports submitted by the requesting agency should be peer reviewed by scientists.

Respectfully Submitted,

Tony Corrado

Gores, Alanna

From: Debra Koich <debrakoich@hotmail.com>
Sent: Tuesday, January 05, 2021 3:53 AM
To: Gores, Alanna
Subject: Consider an Ordinance Ensuring Franchises Comply with the National Environmental Protection Act (NEPA)

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

Good Morning

This communication is intended to exhibit my staunch support for an ordinance ensuring franchises comply with the National Environmental Protection Act (NEPA). Considering what I already know about millimeter wave frequencies, and perhaps more importantly, what I may not know (it could be even worse, but I already know that the effects on human, animal, and plant life is devastating), I can't think of anything that is more important than this. I hope that you agree with me that life is precious and should be protected from harm by those who are in a position to do just that. Please share my email with all members of the BOCC and if you could, please confirm that you have received this. Thank you so much for your time and attention.

Sincerely,

Debra Koich

Gores, Alanna

From: Margie Weaver <margie@yogamojo.com>
Sent: Tuesday, January 05, 2021 9:19 AM
To: Gores, Alanna
Subject: Request for action...

Dear Alanna Gores,

Please share this email with the Clallam County Board of County Commissioners (BOCC).

I am urging the BOCC to consider an ordinance ensuring franchises comply with the National Environmental Protection Act (NEPA).

Please support the Recommendation made by the 2020 Charter Review Commission, on this issue. I look forward to your prompt response to this Recommendation:

“The BOCC shall take all required and necessary legal actions to ensure that any franchise associated with new radio frequency devices or systems operating in the micro or millimeter wave frequency range, be accompanied by a scientific study determining that such law, regulation or franchise is in compliance with the National Environmental Protection Act (NEPA) prior to the enactment or granting of any franchise.”

To date there's been no environmental testing of this network to know that it is safe. Thousands of scientists and doctors around the world have come out against this EMF technology as a public health threat.

Please let me know that you have received this email.

Thank you,
Margie Weaver
Resident of Port Angeles, Clallam County's

Gores, Alanna

From: Rick Marschall <rikmarsh5@gmail.com>
Sent: Tuesday, January 05, 2021 10:17 AM
To: Gores, Alanna
Subject: EMF technology health threat

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

Hello Alanna Gores,

Could you please share this email with the Clallam County Board of County Commissioners (BOCC)?

I am urging the BOCC to consider an ordinance ensuring franchises comply with the National Environmental Protection Act (NEPA).

I strongly support the Recommendation made by the 2020 Charter Review Commission, on this issue. I look forward to your prompt response to this Recommendation:

“The BOCC shall take all required and necessary legal actions to ensure that any franchise associated with new radio frequency devices or systems operating in the micro or millimeter wave frequency range, be accompanied by a scientific study determining that such law, regulation or franchise is in compliance with the National Environmental Protection Act (NEPA) prior to the enactment or granting of any franchise.”

To date there's been no environmental testing of this network to know that it is safe. Thousands of scientists and doctors around the world have come out against this EMF technology as a public health threat.

Please let me know that you have received this email.

Thank you,
Rick Marschall
Resident of Port Angeles

Gores, Alanna

From: William Kildall <drwmkildall@gmail.com>
Sent: Tuesday, January 05, 2021 11:29 AM
To: Gores, Alanna
Subject: Radio Frequency Devices

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

Dead Alanna Gores, Clerk of the BOCC,
Please share this email with all of the Clallam County Commissioners.
I am urging the BOCC to consider and pass an ordinance ensuring any franchise operating within the County complies with the National Environmental Protection Act (NEPA) including Radio Frequency Devices which I strongly supported when the 2020 Charter Review Commission recommended such action be taken by the BOCC.

" The BOCC shall take all required and necessary legal action to ensure that any franchise associated with the new frequency devises or systems operating in the micro millimeter frequency range, be accompanied by a scientific study determining that such law, regulation or franchisee complies with the National Environmental Protection Act (NEPA) before the enactment or granting of any franchise. "

To this day there has been no reputable testing of this system in question to be guaranteed that it is safe. Thousands of scientists and physicians around the world have taken a stand against this EMF technology as a threat to public health. It is a matter of record that microwave technology when directed at certain U.S. Embassies in Cuba and China has caused U.S. diplomatic staff to have suffered permanent injury in the past few years according to official governmental reports.

Thank You,

William Kildall, Ed. D.

A resident of Port Angeles, WA. 98362

Gores, Alanna

From: K Kylo <kskylo@yahoo.com>
Sent: Tuesday, January 05, 2021 9:04 PM
To: Gores, Alanna
Subject: Attn: Alanna Gores Please forward this email to the Clallam County Board of County Commissioners

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

Hello Alanna Gores,

Could you please share this email with the Clallam County Board of County Commissioners (BOCC)?

I am urging the BOCC to consider an ordinance ensuring franchises comply with the National Environmental Protection Act (NEPA).

I strongly support the Recommendation made by the 2020 Charter Review Commission, on this issue. I look forward to your prompt response to this Recommendation:

“The BOCC shall take all required and necessary legal actions to ensure that any franchise associated with new radio frequency devices or systems operating in the micro or millimeter wave frequency range, be accompanied by a scientific study determining that such law, regulation or franchise is in compliance with the National Environmental Protection Act (NEPA) prior to the enactment or granting of any franchise.”

To date there's been no environmental testing of this network to know that it is safe. Thousands of scientists and doctors around the world have come out against this EMF technology as a public health threat.

Please let me know that you have received this email.

Thank you, Kraig Kylo
Resident of Clallam County

Gores, Alanna

From: Tony Corrado <tony.corrado@gmail.com>
Sent: Wednesday, January 06, 2021 9:07 AM
To: Gores, Alanna
Subject: NEPA Requirement by Federal Appeals Court
Attachments: 210106-Legal 5G actions.pdf

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

Ms. Gores,
Kindly forward the attachment hereto to the BOCC re: 5G Ordinance.

Thank you,
Tony Corrado

Commissioners, Clallam County, WA:

This ruling is specific to the issue of NEPA Compliance for 5G deployments.

1. COURT REQUIREMENT FOR NEPA COMPLAINT:

a. United States Court of Appeals FOR THE DISTRICT OF COLUMBIA CIRCUIT Argued March 15, 2019 Decided August 9, 2019 No. 18-1129 UNITED KEETOOWAH BAND OF CHEROKEE INDIANS IN OKLAHOMA, INDIVIDUALLY AND ON BEHALF OF ALL OTHER NATIVE AMERICAN INDIAN TRIBES AND TRIBAL ORGANIZATIONS, ET AL.

b. Reference: <https://ehtrust.org/wp-content/uploads/Court-Opinion.pdf>

Gores, Alanna

From: Brett Romano <blrunnion@gmail.com>
Sent: Wednesday, January 06, 2021 5:53 PM
To: Gores, Alanna
Subject: Recommendation for BOCC

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

Dear Alanna Gores,

Would you be so kind to please share this email with the Clallam County Board of County Commissioners (BOCC)?

I am requesting that the BOCC endorse an ordinance ensuring telecommunication franchises comply with the National Environmental Protection Act (NEPA).

I strongly support the recommendation made by the 2020 Charter Review Commission, on this issue. I look forward to your prompt response to this Recommendation:

“The BOCC shall take all required and necessary legal actions to ensure that any franchise associated with new radio frequency devices or systems operating in the micro or millimeter wave frequency range, be accompanied by a scientific study determining that such law, regulation or franchise is in compliance with the National Environmental Protection Act (NEPA) prior to the enactment or granting of any franchise.”

To date there's been no environmental testing to know that it is safe. Thousands of scientists and doctors around the world have come out against this EMF technology as a public health threat.

Respectfully,
Brett and Lisa Romano
Resident of Sequim

Gores, Alanna

From: Annie Pelayo <pelayohk@gmail.com>
Sent: Thursday, January 07, 2021 4:46 PM
To: Gores, Alanna
Subject: 5g

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

Hello Alanna Gores,

Could you please share this email with the Clallam County Board of County Commissioners (BOCC)?

I am urging the BOCC to consider an ordinance ensuring franchises comply with the National Environmental Protection Act (NEPA).

I strongly support the Recommendation made by the 2020 Charter Review Commission, on this issue. I look forward to your prompt response to this Recommendation:

“The BOCC shall take all required and necessary legal actions to ensure that any franchise associated with new radio frequency devices or systems operating in the micro or millimeter wave frequency range, be accompanied by a scientific study determining that such law, regulation or franchise is in compliance with the National Environmental Protection Act (NEPA) prior to the enactment or granting of any franchise.”

To date there's been no environmental testing of this network to know that it is safe. Thousands of scientists and doctors around the world have come out against this EMF technology as a public health threat.

Please let me know that you have received this email.

Thank you,

Anne Pelayo
2411 S Lincoln St, Port Angeles, WA 98362

Gores, Alanna

From: Roland Underwood <lynnunderwood1@hotmail.com>
Sent: Friday, January 08, 2021 6:19 AM
To: Gores, Alanna
Subject: National Environmental Protection Act (NEPA)

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

Hello Alanna Gores,

Could you please share this email with the Clallam County Board of County Commissioners (BOCC)?

I am urging the BOCC to consider an ordinance ensuring franchises comply with the National Environmental Protection Act (NEPA).

I strongly support the Recommendation made by the 2020 Charter Review Commission, on this issue. I look forward to your prompt response to this Recommendation:

“The BOCC shall take all required and necessary legal actions to ensure that any franchise associated with new radio frequency devices or systems operating in the micro or millimeter wave frequency range, be accompanied by a scientific study determining that such law, regulation or franchise is in compliance with the National Environmental Protection Act (NEPA) prior to the enactment or granting of any franchise.”

To date there's been no environmental testing of this network to know that it is safe. Thousands of scientists and doctors around the world have come out against this EMF technology as a public health threat.

Please let me know that you have received this email.

Thank you,
Roland Underwood
Resident of Sequim

Gores, Alanna

From: Ozias, Mark
Sent: Tuesday, January 26, 2021 3:36 PM
To: Ed Bowen
Cc: Gores, Alanna
Subject: RE: CRC Recommendation and the means the BOCC is addressing the topics

Follow Up Flag: Follow up
Flag Status: Flagged

Ed,

We have a series of public hearings scheduled on 4 of the 5 CRC recommendations in April; the March meeting kicks off the process to schedule and notice the hearings. Each hearing will focus on two recommendations, and each hearing will be continued so that citizens will have multiple day/time options for participation. We will also continue to accept written comment through the end of the month of April.

There will be some kind of similar public process around the DCD recommendation but I don't have additional details at this time.

Mark O

From: Ed Bowen [rockypt@olypen.com]
Sent: Tuesday, January 26, 2021 11:10 AM
To: Ozias, Mark; Johnson, Randy; Peach, Bill
Subject: CRC Recommendation and the means the BOCC is addressing the topics

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

Where has the BOCC met the requirements of the Charter regarding we the people and the recommendations from the CRC?

The BOCC letter regarding March 15th is not the requirements of the Charter for we the people, explain your position and authority to take this action.

I insist on representation, I am filing a grievance for lack of representation for me, I insist on a response made to record to hold this BOCC accountable for the clear and present danger of not abiding by the county Charter and creating a legal flaw.

Ed Bowen
Aggrieved Citizen



Virus-free. www.avg.com

Gores, Alanna

From: THERESE STOKAN <hermanabaheda@aol.com>
Sent: Thursday, February 04, 2021 1:35 AM
To: Gores, Alanna
Subject: Letter to BOCC on Charter Review Commission's EMF/NEPA Recommendation and Dr. Martin Pall
Attachments: Letter to BOCC on CRC EMF Recommendation and Dr. Martin Pall.docx; ATT00001.htm

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

Please forward to BOCC. Thank you!

Hello Clallam County Commissioners Mark Ozias, Randy Thomas, and Bill Peach,

One of the "Recommendations" which has been submitted by the 2020 Charter Review Commission is the following:

"Consider an Ordinance Ensuring Franchises Comply with the National Environmental Protection Act (NEPA)".

As I believe you are already aware, there are many residents in our county, who have come forth to express their concerns about different sources of EMF (electromagnetic field), with Smart Meters and 5G, most often mentioned.

Over the past several years, I have met many people, throughout Clallam County, who have taken the time to attend and offer public comments on this issue, at meetings of: BOCC, Clallam County Planning Commission, Sequim City Council and PUD.

While serving on the 2020 Charter Review Commission (CRC), *concern about EMF was the top issue noted, in terms of public comment.*

Remarkably, 40 people either sent an e-mail and/or came to one of our meetings or virtual meetings, to express their concern about this topic, and wanted us to take action, in the form of an *"amendment" on the issue of EMF.*

(By comparison, note that the issue that came in second, had 14 people giving public comment/e-mails, and those residents were in support of *Ranked Choice Voting.*)

EMF can be a complex issue. There have been a number of educational seminars on issues related to EMF, in the past several years, throughout our county: in Sequim, Port Angeles, and in Neah Bay, and in Jefferson County. One of our guest speakers for these seminars, has been Anthony (Tony) Corrado, who was very instrumental in authoring the Charter Review Commission's "Recommendation", noted above.

In case you are not aware of Mr. Corrado's background, please note the following: He has a BS Mechanical Engineering Degree from Fairleigh Dickinson University, and 40 years experience with defense related weapons, sensors, and technology development. He is an inventor, who holds 19 non-classified patents. We are quite fortunate to have him in our community, and to have had him serve on the 2020 Charter Review Commission.

Residents are *disappointed that the CRC did not bring a Charter amendment* proposal to the voters, on this very important issue. However, they are *grateful and hopeful – about the “Recommendation” for the Ordinance, which the CRC has brought to the BOCC.*

As you prepare to study this issue more closely, some of our residents are suggesting that the BOCC consider having a teleconference with another expert on the issue of EMF: Martin L. Pall, PhD.

Dr. Martin Pall, is a globally acknowledged expert on the health effects of EMF on all living things. He is a professor emeritus of biochemistry and basic medical science, from Washington State University. He is a specialist in Chronic Fatigue Syndrome, Multiple Chemical Sensitivity and the effects of low-intensity microwave frequency electromagnetic fields (MWV-EMF) on the human body.

Mr. Corrado has provided you with some written summaries, relating to Dr. Pall's work.

We have a number of residents who met Dr. Pall, while he was doing a lecture series on Vancouver Island, in the summer of 2019, and other residents who have corresponded with Dr. Pall.

In September 2019, I attended a continuing medical education conference in Scotts Valley, California, regarding EMF-related health conditions. There were international speakers and international guests at that conference and most, (if not all) of them referenced Dr. Pall and his writings.

We feel fairly confident that Dr. Pall would be willing to participate in a teleconference with the BOCC, if you would be interested in doing so. There are several options:

1. He could present a slide presentation detailing his findings (45 minutes) , and/or
2. He could avail himself to you for a brief Q&A session where he would only answer any questions you may have (10-15 minutes).

Please let me know if you would like him to be invited to one of your work sessions or general meetings. He is an international speaker, so offering several different time slots might be helpful. He does reside in our time zone, fortunately, which helps.

I/we know you have a lot of issues to deal with. Therefore, we would be immensely grateful if you could take some time to talk with this authority on the issue of EMF.

Sincerely,

Therese (Tree) Stokan
Osteopathic Family Physician
Former 2020 Charter Review Commissioner, District 3
Neah Bay
(360) 640-0695

Halencak, Morgann

From: Gores, Alanna
Sent: Friday, February 19, 2021 10:44 AM
To: Halencak, Morgann
Subject: FW: Letter to BOCC on Charter Review Commission's EMF/NEPA Recommendation and Dr. Martin Pall - follow-up e-mail

Please place in the EMF folder.

*Loni Gores
Clerk of the Board
Commissioners Office
223 East 4th Street, Suite 4
Port Angeles, WA 98362
Phone: 360-417-2256*

From: THERESE STOKAN [mailto:hermanabaheda@aol.com]
Sent: Friday, February 19, 2021 9:38 AM
To: Ozias, Mark; Johnson, Randy; Peach, Bill; Gores, Alanna
Subject: Re: Letter to BOCC on Charter Review Commission's EMF/NEPA Recommendation and Dr. Martin Pall - follow-up e-mail

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

Hello Clallam County Board of Commissioners and Clerk of the Board - Alanna Gores,

I am checking in to make sure I did not miss any of your emails on this issue, since you received the one that I sent on 2/04/2021.

I may be speaking with Dr. Pall later today, and wanted to know if you would like to take advantage of a great opportunity to speak with a global authority on the issue of EMF (electromagnetic field), in preparation for reviewing the 2020 Charter Review Commission's "Recommendation" related to franchises and NEPA? (See link to the Recommendation).

<http://www.clallam.net/bocc/documents/websitelinkemf.pdf>

Perhaps PUD and others could also be invited to participate? Dr. Pall would likely be willing to either give a full presentation (50-60 min), or a shorter presentation (10 minutes) or have a brief Q&A, whatever best meets your needs.

I trust that the BOCC wants to make a really well-informed decision about this rather complex issue....and might appreciate ideas on how to best implement the "Recommendation" made by the Charter Review Commission. In addition to his scientific knowledge on the issue, Dr. Pall knows an extended network of people who have been struggling with similar issues, throughout the country and across the world.

If you want to communicate with Dr. Pall directly, please let me know and I will share his contact information.

Hope you all are healthy and well. Thanks for your hard work, on many issues!

Therese (Tree) Stokan
Former 2020 Charter Review Commissioner, District 3
(360) 640-0695

Sent from my iPhone

On Feb 4, 2021, at 7:24 AM, Gores, Alanna <agores@co.clallam.wa.us> wrote:

Therese Stokan,

Your email has been received and forwarded to the Board of Commissioners.

Loni

*Loni Gores
Clerk of the Board
Commissioners Office
223 East 4th Street, Suite 4
Port Angeles, WA 98362
Phone: 360-417-2256*

From: THERESE STOKAN [<mailto:hermanabaheda@aol.com>]

Sent: Thursday, February 04, 2021 1:35 AM

To: Gores, Alanna

Subject: Letter to BOCC on Charter Review Commission's EMF/NEPA Recommendation and Dr. Martin Pall

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

Please forward to BOCC. Thank you!

Hello Clallam County Commissioners Mark Ozias, Randy Thomas, and Bill Peach,

One of the "Recommendations" which has been submitted by the 2020 Charter Review Commission is the following:

"Consider an Ordinance Ensuring Franchises Comply with the National Environmental Protection Act (NEPA)".

As I believe you are already aware, there are many residents in our county, who have come forth to express their concerns about different sources of EMF (electromagnetic field), with Smart Meters and 5G, most often mentioned.

Over the past several years, I have met many people, throughout Clallam County, who have taken the time to attend and offer public comments on this issue, at meetings of: BOCC, Clallam County Planning Commission, Sequim City Council and PUD.

While serving on the 2020 Charter Review Commission (CRC), *concern about EMF was the top issue noted, in terms of public comment.*

Remarkably, 40 people either sent an e-mail and/or came to one of our meetings or virtual meetings, to express their concern about this topic, and wanted us to take action, in the form of an *“amendment” on the issue of EMF.*

(By comparison, note that the issue that came in second, had 14 people giving public comment/e-mails, and those residents were in support of *Ranked Choice Voting.*)

EMF can be a complex issue. There have been a number of educational seminars on issues related to EMF, in the past several years, throughout our county: in Sequim, Port Angeles, and in Neah Bay, and in Jefferson County. One of our guest speakers for these seminars, has been Anthony (Tony) Corrado, who was very instrumental in authoring the Charter Review Commission’s “Recommendation”, noted above.

In case you are not aware of Mr. Corrado’s background, please note the following: He has a BS Mechanical Engineering Degree from Fairleigh Dickinson University, and 40 years experience with defense related weapons, sensors, and technology development. He is an inventor, who holds 19 non-classified patents. We are quite fortunate to have him in our community, and to have had him serve on the 2020 Charter Review Commission.

Residents are *disappointed that the CRC did not bring a Charter amendment proposal to the voters, on this very important issue. However, they are grateful and hopeful – about the “Recommendation” for the Ordinance, which the CRC has brought to the BOCC.*

As you prepare to study this issue more closely, some of our residents are suggesting that the BOCC consider having a teleconference with another expert on the issue of EMF: Martin L. Pall, PhD.

Dr. Martin Pall, is a globally acknowledged expert on the health effects of EMF on all living things.

He is a professor emeritus of biochemistry and basic medical science, from Washington State University. He is a specialist in Chronic Fatigue Syndrome, Multiple Chemical Sensitivity and the effects of low-intensity microwave frequency electromagnetic fields (MWV-EMF) on the human body.

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We feel fairly confident that Dr. Pall would be willing to participate in a teleconference with the BOCC, if you would be interested in doing so. There are several options:

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2. He could avail himself to you for a brief Q&A session where he would only answer any questions you may have (10-15 minutes).

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I/we know you have a lot of issues to deal with. Therefore, we would be immensely grateful if you could take some time to talk with this authority on the issue of EMF.

Sincerely,

Therese (Tree) Stokan
Osteopathic Family Physician
Former 2020 Charter Review Commissioner, District 3
Neah Bay
(360) 640-0695

Gores, Alanna

From: Tony Corrado <tony.corrado@gmail.com>
Sent: Wednesday, March 03, 2021 9:50 AM
To: Gores, Alanna
Subject: 5G and NEPA
Attachments: 5g Court-Opinion.pdf

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

Hello Ms. Gores,
Would you kindly forward this email to all three BOCC Commissioners. Thank you in advance.

Commissioners,

As you are scheduled to discuss the issue of 5G implementation and possible regulation in Clallam County, we wanted to ensure that we are providing options for you to hear from professionals that may influence your deliberations.

In previous email missives we have copied the BOCC on a successful lawsuit in which a Native American entity received a verdict from the Washington DC circuit court indicating that NEPA compliance was a legitimate requirement for which the FCC and telecommunications entities were obligated to comply. That decision is attached hereto for your consideration.

The law firm and affiliated attorneys *may* be available to address the BOCC if requested to do so. As expert professionals they are seeking appropriate fees which can be discussed. Is the BOCC interested in hearing directly from a related attorney as to the merits of the case and the decision rendered?

Respectfully Submitted,
Tony Corrado

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued March 15, 2019

Decided August 9, 2019

No. 18-1129

UNITED KEETOOWAH BAND OF CHEROKEE INDIANS IN
OKLAHOMA, INDIVIDUALLY AND ON BEHALF OF ALL OTHER
NATIVE AMERICAN INDIAN TRIBES AND TRIBAL
ORGANIZATIONS, ET AL.,
PETITIONERS

v.

FEDERAL COMMUNICATIONS COMMISSION AND UNITED
STATES OF AMERICA,
RESPONDENTS

NATIONAL ASSOCIATION OF TRIBAL HISTORIC PRESERVATION
OFFICERS, ET AL.,
INTERVENORS

Consolidated with 18-1135, 18-1148, 18-1159, 18-1184

On Petitions for Review of an Order of
the Federal Communications Commission

Stephen Díaz Gavin argued the cause for petitioners United Keetoowah Band of Cherokee Indians in Oklahoma, et al., and supporting intervenors. With him on the briefs were *J. Scott Sypolt, Joel D. Bertocchi, Joseph H. Webster, F. Michael*

Willis, Andrew Jay Schwartzman, James T. Graves, and Elizabeth S. Merritt. Angela J. Campbell entered an appearance.

Sharon Buccino argued the cause for petitioner Natural Resources Defense Council and intervenor Edward B. Myers. With her on the briefs was *Edward B. Myers*.

Natalie A. Landreth argued the cause for petitioners Blackfeet Tribe, et al. With her on the briefs were *Wesley J. Furlong, Joel West Williams, Troy A. Eid, Jennifer H. Weddle, and Heather D. Thompson*.

Jacob M. Lewis, Associate General Counsel, Federal Communications Commission, argued the cause for respondents. With him on the brief were *Jeffrey Bossert Clark*, Assistant Attorney General, U.S. Department of Justice, *Eric A. Grant*, Deputy Assistant Attorney General, *Andrew C. Mergen* and *Allen M. Brabender*, Attorneys, *Thomas M. Johnson Jr.*, General Counsel, Federal Communications Commission, *David M. Gossett*, Deputy General Counsel, and *C. Grey Pash Jr.*, Counsel. *Jonathan H. Laskin* and *Robert B. Nicholson*, Attorneys, U.S. Department of Justice, and *Richard K. Welch*, Deputy Associate General Counsel, Federal Communications Commission, entered appearances.

Joshua Turner argued the cause for intervenors in support of respondents. With him on the brief were *Christopher J. Wright* and *E. Austin Bonner*.

Before: TATEL and PILLARD, *Circuit Judges*, and EDWARDS, *Senior Circuit Judge*.

Opinion for the Court filed by *Circuit Judge PILLARD*.

PILLARD, *Circuit Judge*: Cellular wireless services, including telephone and other forms of wireless data transmission, depend on facilities that transmit their radio signals on bands of electromagnetic spectrum. The Federal Communications Commission (FCC or Commission) has exclusive control over the spectrum, and wireless providers must obtain licenses from the FCC to transmit. Wireless service in the United States has mostly depended on large, “macrocell” radio towers to transmit cell signal, but companies offering the next generation of wireless service—known as 5G—are in the process of shifting to transmission via hundreds of thousands of densely spaced small wireless facilities, or “small cells.” As part of an effort to expedite the rollout of 5G service, the Commission has removed some regulatory requirements for the construction of wireless facilities. These petitions challenge one of the FCC’s orders paring back such regulations, *In re Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment (Second Report & Order) (Order)*, FCC 18-30, 2018 WL 1559856 (F.C.C.) (Mar. 30, 2018).

The *Order* exempted most small cell construction from two kinds of previously required review: historic-preservation review under the National Historic Preservation Act (NHPA) and environmental review under the National Environmental Policy Act (NEPA). Together, these reviews assess the effects of new construction on, among other things, sites of religious and cultural importance to federally recognized Indian Tribes. The *Order* also effectively reduced Tribes’ role in reviewing proposed construction of macrocell towers and other wireless facilities that remain subject to cultural and environmental review.

Three groups of petitioners challenge the *Order* as violating the NHPA, NEPA, and the Administrative Procedure

Act on several grounds: that its elimination of historic-preservation and environmental review of small cell construction was arbitrary and capricious, an unjustified policy reversal, and contrary to the NHPA and NEPA; that the changes to Tribes' role in reviewing new construction was arbitrary and capricious; that the Commission arbitrarily and capriciously failed to engage in meaningful consultations with Tribes in promulgating the *Order*; and that the *Order* itself required NEPA review.

We grant in part the petitions for review because the *Order* does not justify the Commission's determination that it was not in the public interest to require review of small cell deployments. In particular, the Commission failed to justify its confidence that small cell deployments pose little to no cognizable religious, cultural, or environmental risk, particularly given the vast number of proposed deployments and the reality that the *Order* will principally affect small cells that require new construction. The Commission accordingly did not, pursuant to its public interest authority, 47 U.S.C. § 319(d), adequately address possible harms of deregulation and benefits of environmental and historic-preservation review. The *Order's* deregulation of small cells is thus arbitrary and capricious. We do not reach the alternative objections to the elimination of review on small cell construction. We deny the petitions for review on the remaining grounds.

BACKGROUND

I. Statutory and Regulatory Background

A. National Historic Preservation Act (NHPA)

Congress enacted the NHPA to “foster conditions under which our modern society and our historic property can exist

in productive harmony” and “contribute to the preservation of nonfederally owned historic property and give maximum encouragement to organizations and individuals undertaking preservation by private means.” 54 U.S.C. § 300101(1), (4). As part of that mission, NHPA’s Section 106 requires federal agencies to “take into account the effect of” their “undertaking[s] on any historic property.” *Id.* § 306108.

Both “historic property” and “undertaking” have specific meanings under the statute. Historic properties include myriad monuments, buildings, and sites of historic importance, including “[p]roperty of traditional religious and cultural importance to an Indian tribe.” *Id.* §§ 302706, 300308. Insofar as Tribal heritage is concerned, the Section 106 process requires federal agencies to “consult with any Indian tribe . . . that attaches religious and cultural significance to” a historic property potentially affected by a federal undertaking. *Id.* §§ 302706, 306102. To count as “historic,” such properties need not be on Tribal land; in fact, they “are commonly located outside Tribal lands and may include Tribal burial grounds, land vistas, and other sites that Tribal Nations . . . regard as sacred or otherwise culturally significant.” *Order* ¶ 97. Only a federal “undertaking,” not a state or purely private one, triggers the Section 106 Tribal consultation process. A federal “undertaking,” as relevant here, is “a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including . . . those requiring a Federal permit, license, or approval.” 54 U.S.C. § 300320. We have construed the statute to mean that, for an action to be a federal undertaking, “only a ‘Federal permit, license or approval’ is required,” not necessarily federal funding. *CTIA-Wireless Ass’n v. FCC*, 466 F.3d 105, 112 (D.C. Cir. 2006).

The Section 106 process requires that an agency “consider the impacts of its undertaking” and consult various parties, not

that it necessarily “engage in any particular preservation activities.” *Id.* at 107 (quoting *Davis v. Latschar*, 202 F.3d 359, 370 (D.C. Cir. 2000)). The NHPA established an independent agency, the Advisory Council on Historic Preservation (Advisory Council), 54 U.S.C. § 304101, which is responsible for promulgating regulations “to govern the implementation of” Section 106, *id.* § 304108(a). Agencies must consult with the Advisory Council, State Historic Preservation Officers, and Tribal Historic Preservation Officers, the last of which adopt the responsibilities of State Historic Preservation Officers on Tribal lands. 54 U.S.C. §§ 302303, 302702; 36 C.F.R. §§ 800.3(c), 800.16(v)-(w) (defining State and Tribal Historic Preservation Officers).

The Advisory Council’s regulations authorize the use of alternatives to the ordinary Section 106 procedures, called “programmatic agreements.” 36 C.F.R. § 800.14(b). The Commission develops programmatic agreements in consultation with the Advisory Council, Tribes, and other interested parties, “to govern the implementation of a particular program or the resolution of adverse effects from certain complex project situations or multiple undertakings” in certain circumstances, such as when “effects on historic properties are similar and repetitive” or “effects on historic properties cannot be fully determined prior to approval of an undertaking.” *Id.* § 800.14(1)(i)-(ii). Tribes’ views must be taken into account where the agreement “has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe.” *Id.* § 800.14(b)(1)(i), (f). For instance, the Commission has consulted with Tribes to use programmatic agreements to exclude from individualized review entire categories of undertakings that are unlikely to affect historic properties. *See In re Nationwide Programmatic Agreement Regarding the Section 106 [NHPA] Review Process (Section 106 Agreement)*, 20 FCC Rcd. 1073, 1075 ¶ 2 (2004).

B. National Environmental Policy Act (NEPA)

Congress enacted NEPA to “encourage productive and enjoyable harmony between man and his environment” and “promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man,” among other purposes. 42 U.S.C. § 4321. Like the NHPA, NEPA mandates a review process that “does not dictate particular decisional outcomes, but ‘merely prohibits uninformed—rather than unwise—agency action.’” *Sierra Club v. U.S. Army Corps of Eng’rs*, 803 F.3d 31, 37 (D.C. Cir. 2015) (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 351 (1989)).

All “major Federal actions significantly affecting the quality of the human environment” trigger environmental review under NEPA, just as federal “undertakings” trigger historic preservation review under the NHPA. 42 U.S.C. § 4332(C). Major federal actions “include[] actions . . . which are potentially subject to Federal control and responsibility.” 40 C.F.R. § 1508.18. Under the Commission’s procedures implementing NEPA, if an action may significantly affect the environment, applicants must conduct a preliminary Environmental Assessment to help the Commission determine whether “the proposal will have a significant environmental impact upon the quality of the human environment,” and so perhaps necessitate a more detailed Environmental Impact Statement. 47 C.F.R. § 1.1308; *see also* 40 C.F.R. § 1508.9. If, after reviewing the Environmental Assessment, the Commission determines that the action will not have a significant environmental impact, it will make a “finding of no significant impact” and process the application “without further documentation of environmental effect.” 47 C.F.R. § 1.1308(d).

NEPA also has an analogue to the NHPA's Advisory Council. In enacting NEPA, Congress established the Council on Environmental Quality, in the Executive Office of the President, to oversee implementation of NEPA across the entire federal government. 42 U.S.C. §§ 4342, 4344. With the endorsement of the Council on Environmental Quality and by following a series of mandated procedures, agencies can establish "categorical exclusions" for federal actions that require neither an Environmental Assessment nor an Environmental Impact Statement. 40 C.F.R. § 1508.4. Categorical exclusions are appropriate for "a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency." *Id.* "Categorical exclusions are not exemptions or waivers of NEPA review; they are simply one type of NEPA review." Council on Environmental Quality, *Memorandum for Heads of Federal Dep'ts and Agencies: Establishing, Applying & Revising Categorical Exclusions under [NEPA]* (Categorical Exclusion Memo) 2 (2010).

C. Legal Framework for Wireless Infrastructure

The Communications Act of 1934 established the FCC to make available a "rapid, efficient . . . wire and radio communication service with adequate facilities at reasonable charges." 47 U.S.C. § 151. In licensing use of the spectrum, the Commission is tasked with promoting "the development and rapid deployment of new technologies, products and services for the benefit of the public . . . without administrative or judicial delays," *id.* § 309, and "maintain[ing] the control of the United States over all the channels of radio transmission," *id.* § 301.

The Commission generally does not require construction permits before private parties can build wireless facilities. Congress largely eliminated the FCC's site-specific construction permits in 1982, and the Commission has since required construction permits only where it finds that the public interest would be served by such permitting. *See* Pub. L. 97-259, 96 Stat. 1087, § 119 (1982) (codified at 47 U.S.C. § 319(d)). It has not made such a finding for the wireless facilities at issue here.

The FCC does, however, require licensing of the spectrum used by wireless small cells. It does so by issuing geographic area licenses, which allow wireless providers to operate on certain frequency bands in a wide geographic area. *See* 47 U.S.C. § 309(j). Those licenses authorize using spectrum rather than building wireless facilities, but they necessarily contemplate facility construction. They have coverage requirements—for instance, one type of geographic area license required licensees to provide service to at least 40% of the population in their geographic service area by June 2013. *See* 47 C.F.R. § 27.14(h). If they fail to meet the coverage requirements, they can be stripped of authority to operate for the license's full term or serve part of its geographic area, and they “may be subject to enforcement action, including forfeitures.” *Id.* The Commission also exercises continuing authority to inspect radio installations to ascertain their compliance with any and all applicable laws, whether or not the licensee itself constructed those installations. *See* 47 U.S.C. § 303(n); 47 C.F.R. § 1.9020(c)(5).

The Commission has not identified any period since the enactment of the NHPA (in 1966) and NEPA (in 1970) when it did not require historic-preservation and environmental review of wireless facilities. After Congress eliminated the construction permit requirement, the Commission for a time

required NEPA and NHPA review of facilities before it granted their service licenses. *See, e.g., In re Amendment of Envtl. Rules in Response to New Regulations Issued by [CEQ]*, FCC 85-626, 1986 WL 292182, at *5 ¶ 18 (F.C.C.) (Mar. 26, 1986) (requiring review “during the period prior to grant of a station license”); *id.* at *8 App’x ¶ 7 (requiring NEPA review on “[f]acilities that will affect districts, sites, buildings, structures or objects . . . that are listed in the National Register of Historic Places or are eligible for listing,” which includes property of religious or cultural significance to Indian Tribes, 54 U.S.C. § 302706(a)). In 1990, the Commission shifted review from the licensing stage to the construction stage by establishing a “limited approval authority” over construction of wireless facilities. *In re Amendment of Envtl. Rules (1990 Order)*, 5 FCC Rcd. 2942 (1990). Limited approval authority required that, “where construction of a Commission-regulated radio communications facility is permitted without prior Commission authorization (*i.e.*, without a construction permit), the licensee must nonetheless comply with historic preservation and environmental review procedures.” *Order* ¶ 51; *see also* 47 C.F.R. § 1.1312. The authority was “limited” in that it allowed “the Commission [to] exercise[] control over deployment solely to conduct federal historic and environmental review.” Resp’t Br. 12. The Commission emphasized that shifting review to the pre-construction stage served a practical function: Before it had established its limited approval authority, the FCC’s rules “provide[d] that any required submission of [Environmental Assessments] and any required Commission environmental review take place at the licensing stage rather than prior to construction,” with the result that “[a]pplicants who ha[d] already constructed their facilities” could “subsequently be denied licenses on environmental grounds.” *1990 Order* 2942 ¶ 3. The Commission explained that it continued to require review “to ensure that the Commission fully complies with Federal

environmental laws in connection with facilities that do not require pre-construction authorization.” *Id.* ¶ 4. It announced the changes as “necessary to ensure that the Commission addresses environmental issues early enough in the licensing process to ensure that it fully meets its obligations under Federal environmental laws,” including NEPA and the NHPA. *Id.* at 2943 ¶ 9 & n.16.

The Commission has never required individualized review of each separate facility, however. A long series of regulations, programmatic agreements, and categorical exclusions has aggregated facilities for joint consideration and focused NHPA and NEPA review on those deployments most likely to have cultural or environmental effects. For instance, most collocations—deployments on existing structures—are excluded from individualized review under NHPA programmatic agreements and NEPA categorical exclusions. *See In re Implementation of the National Environmental Policy Act of 1969 (Implementation of NEPA)*, 49 F.C.C.2d 1313, 1319-20 (1974); *Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (Collocation Agreement)*, 47 C.F.R. pt.1, app. B (2001); *Section 106 Agreement*, 20 FCC Rcd. at 1075 ¶ 2; *Nationwide Programmatic Agreement for Review Under the National Historic Preservation Act*, 70 Fed. Reg. 556 (2005); *In re Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies (Improving Wireless Facilities Siting Policies)*, 29 FCC Rcd. 12865, 12870 ¶ 11 (2014); 47 C.F.R. § 1.1320(b)(4). Categorical exclusions go through notice and comment, 40 C.F.R. § 1507.3; include impact findings, *Categorical Exclusion Memo 9*; require the Council on Environmental Quality to approve them as consistent with its regulations and NEPA, 40 C.F.R. § 1507.3(a); and reserve rights to interested parties to request further review in the event that atypical adverse effects do occur, 47 C.F.R. § 1.1307(c), (d). At the same time, they

achieve enormous efficiencies in the review processes for classes of actions or undertakings anticipated to have minimal or no adverse cultural or environmental effects.

Since 2004, the FCC has been conducting NHPA review in accordance with a broad programmatic agreement, the *Section 106 Agreement*, 20 FCC Rcd. 1073. Interested parties developed that agreement to “tailor the Section 106 review in the communications context in order to improve compliance and streamline the review process for construction of towers and other Commission undertakings, while at the same time advancing and preserving the goal of the NHPA to protect historic properties, including historic properties to which federally recognized Indian tribes . . . attach religious and cultural significance.” *Id.* at 1074-75 ¶ 1. In the *Section 106 Agreement*, the Commission adopted “procedures for participation of federally recognized Indian tribes,” among other changes. *Id.* at 1075 ¶ 2. It also formalized the use of the electronic Tower Construction Notification System, which notifies Tribes of proposed wireless construction in areas they have identified as containing properties of religious and cultural significance, and allows them to give applicants information on the potential effects of proposed construction. *Id.* at 1106-10 ¶¶ 89-100.

II. Order Under Review

The challenged *Order* eliminated NHPA and NEPA review on small cells that meet certain size and other specifications, based on the Commission’s conclusion that such review was not statutorily required and would impede the advance of 5G networks, and that its costs outweighed any benefits. *See Order* ¶¶ 36-45. The *Order* also altered Tribal involvement in those Section 106 reviews that are still conducted on wireless facilities that were not encompassed in

the small cell exemption. *See id.* ¶¶ 96-130. Two of the five Commissioners dissented. *See Order*, Dissenting Statement of Comm’r Mignon L. Clyburn; Dissenting Statement of Comm’r Jessica Rosenworcel.

We consolidated five timely petitions for review of the *Order* into this action. They challenge the Commission’s exclusion of small cell construction from NHPA and NEPA review, its changes to Tribal involvement in Section 106 review, and its promulgation of the *Order* itself. Three groups of petitioners and intervenors, each designated here by the name of its lead petitioner, challenge the *Order*. United Keetoowah Band of Cherokee Indians (Keetoowah) represents a group of Tribes and historic preservation organizations. Blackfeet Tribe (Blackfeet) represents another group of Tribes and the Native American Rights Fund. The Natural Resources Defense Council (NRDC) represents itself and Maryland citizen Edward B. Myers. Two wireless industry groups (jointly, CTIA) intervened to defend the order alongside the FCC.

ANALYSIS

We set aside an agency order only if it is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). Agencies’ obligation to engage in “reasoned decisionmaking” means that “[n]ot only must an agency’s decreed result be within the scope of its lawful authority, but the process by which it reaches that result must be logical and rational.” *Michigan v. EPA*, 135 S. Ct. 2699, 2706 (2015) (quoting *Allentown Mack Sales & Serv., Inc. v. NLRB*, 522 U.S. 359, 374 (1998)). Although “a court is not to substitute its judgment for that of the agency,” the arbitrary and capricious standard demands that the agency “examine the relevant data and articulate a satisfactory

explanation for its action including a rational connection between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal quotation marks omitted). An agency action is arbitrary and capricious where the agency has “entirely failed to consider an important aspect of the problem” or “offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Id.*

The FCC is entitled to deference to its reasonable interpretations of ambiguous provisions of the Communications Act. *See Chevron, USA, Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 844-45 (1984). We owe no deference to the FCC’s interpretations of the NHPA or NEPA, which are primarily administered by the Advisory Council, *see McMillan Park Comm. v. Nat’l Capital Planning Comm’n*, 968 F.2d 1283, 1287-88 (D.C. Cir. 1992), and the Council on Environmental Quality, *see Grand Canyon Tr. v. FAA*, 290 F.3d 339, 341 (D.C. Cir. 2002) (as amended Aug. 27, 2002), respectively.

I. Eliminating NHPA and NEPA Review on Small Cells

The *Order* did not follow the processes for a programmatic agreement under the NHPA, a categorical exclusion from NEPA, or any other wholesale or aggregated form of review, but simply eliminated NHPA and NEPA review on most small cells by removing them from the FCC’s limited approval authority. Small cells had not previously been defined or regulated separately from macrocell towers. The Commission defines the small cells that its *Order* deregulates as wireless facilities that are not on Tribal lands, do not require antenna structure registration because they could not constitute a

menace to air navigation, do not result in human exposure to radiofrequency radiation in excess of applicable safety standards, and that are “small” per the following conditions:

- (i) The facilities are mounted on structures 50 feet or less in height including their antennas . . . or the facilities are mounted on structures no more than 10 percent taller than other adjacent structures, or the facilities 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;
- (ii) Each antenna associated with the deployment, excluding the associated equipment . . . is no more than three cubic feet in volume;
- (iii) 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.

47 C.F.R. § 1.1312(e)(2). Small cells that meet those requirements are now outside the purview of the Commission’s limited approval authority, the mechanism by which it has required NHPA and NEPA review since 1990.

The Commission deregulated small cells as part of a broader effort to reduce regulations that the FCC says “are unnecessarily impeding deployment of wireless broadband networks” on which 5G service depends. *Order* ¶ 3. “Within the next few years,” the Commission explained, “5G networks . . . will make possible once-unimaginable advances, such as

self-driving cars and growth of the Internet of Things,” *i.e.* physical objects controllable over the internet. *Id.* ¶ 1. 5G networks “will increasingly need to rely on network densification,” which entails “the deployment of far more numerous, smaller, lower-powered base stations or nodes that are much more densely spaced.” *Id.* According to the Commission, rapid proliferation of hundreds of thousands of small cells would be hindered by the significant time and cost of NHPA and NEPA reviews, even as the benefits of such review—which it characterized as already minimal—would be negligible because small cells are “inherently unlikely to trigger environmental and historic preservation concerns.” *Id.* ¶ 92; *see also id.* ¶¶ 9, 11-16. It noted that the FCC’s baseline approach to environmental and historic-preservation review, which requires facility-specific review unless a programmatic agreement or categorical exclusion applies, “was developed when all or nearly all deployments involved large macrocell facilities and accordingly failed to consider both the relatively diminutive size of small wireless facilities and the proliferation of these facilities necessary for deployment of advanced wireless technologies.” *Id.* ¶ 9.

In the *Order*, the Commission asserts that federal law does not independently require such review. The only basis for treating small cell construction as either a federal undertaking triggering NHPA review or a major federal action triggering NEPA review was, the Commission says, the limited approval authority the Commission exercised over that construction—which the *Order* eliminated. *See Order* ¶¶ 58-59. The Commission reasons that removing small cell construction from its limited approval authority removes the “sufficient degree of federal involvement” necessary to render an undertaking or action “federal.” *Id.* ¶ 58. It now says its power to exercise limited approval authority over construction derives exclusively from its “public interest authority” under the

Communications Act, *see Order* ¶¶ 39, 53, 61, rather than from “its obligations under Federal environmental laws,” *1990 Order* at 2943 ¶ 9. In this context, the “public interest authority” refers to the FCC’s power to require pre-construction permits for wireless facilities if it “determines that the public interest, convenience, and necessity would be served by requiring such permits.” 47 U.S.C. § 319(d). While the Commission has never made such a determination for the category of facilities at issue here, it has previously interpreted the public interest authority “as allowing the Commission to require covered entities [not requiring preconstruction permits] to nonetheless comply with environmental and historic preservation processing requirements.” *Order* ¶ 53. In the *Order*, the Commission made a new determination that it was not in the public interest to require NHPA and NEPA review on small cells, so simply removed them from its limited approval authority.

Petitioners all argue that the FCC unlawfully excluded small cells from NHPA and NEPA review. They contend first that removing small cells from the FCC’s limited approval authority was arbitrary and capricious. *See* 5 U.S.C. § 706(2)(A). Keetoowah and the NRDC argue that the Commission failed to adequately consider the harms of massive deployment and to justify its decision to completely exempt small cells from review. Additionally, all petitioners argue that the NHPA and NEPA mandate review of small cell construction. They assert that the geographic licenses the Commission grants, which allow wireless companies to operate on spectrum, constitute sufficient federal control over wireless facility construction to make the construction a federal undertaking and a major federal action triggering review under those statutes. Keetoowah also contends that the exclusion violates the Administrative Procedure Act on various other grounds, including that it is an unjustified policy reversal. If

petitioners prevail on any one or more of those grounds, we must vacate the *Order*'s deregulation of small cells and remand to the FCC.

The Commission failed to justify its determination that it is not in the public interest to require review of small cell deployments. We therefore grant the petitions in part because the *Order*'s deregulation of small cells is arbitrary and capricious. The Commission did not adequately address the harms of deregulation or justify its portrayal of those harms as negligible. In light of its mischaracterization of small cells' footprint, the scale of the deployment it anticipates, the many expedients already in place for low-impact wireless construction, and the Commission's decades-long history of carefully tailored review, the FCC's characterization of the *Order* as consistent with its longstanding policy was not "logical and rational." *Michigan v. EPA*, 135 S. Ct. at 2706. Finally, the Commission did not satisfactorily consider the benefits of review.

First, the Commission inadequately justified its portrayal of deregulation's harms as negligible. The FCC partly based its public-interest conclusion on a picture of small cells that the record does not support. It described small cells as "materially different from the deployment of macrocells in terms of . . . the lower likelihood of impact on surrounding areas." *Order* ¶ 41. In its brief, the Commission sums up its explanation of the difference: "small cells are primarily pizza-box sized, lower-powered antennas that can be placed on existing structures." Resp't Br. 3; *see also Order* ¶¶ 66, 92. It likened small cells to small household items that operate on radiofrequency such as "consumer signal boosters [and] Wi-Fi routers," which do not undergo review. *Order* ¶ 66. Small cells are, to be sure, quite different from macrocells in many ways, but the Commission fails to address that small cells are typically *mounted* on much

bigger structures, and the *Order* is not limited to deployments on structures that already exist or are independently subject to review. Small cells deregulated under the *Order* can be “mounted on structures 50 feet or less in height including their antennas” or “mounted on structures no more than 10 percent taller than other adjacent structures.” 47 C.F.R. § 1.1312(e)(i). That makes them crucially different from the consumer signal boosters and Wi-Fi routers to which the FCC compares them.

The scale of the deployment the FCC seeks to facilitate, particularly given its exemption of small cells that require new construction, makes it impossible on this record to credit the claim that small cell deregulation will “leave little to no environmental footprint.” *Order* ¶ 41. The Commission anticipates that the needed “densification of small deployments over large geographic areas,” *id.*, could require 800,000 deployments by 2026, FCC, *Declaratory Ruling & Third Report & Order*, FCC 18-133 ¶ 126 (Sept. 26, 2018). Even if only twenty percent of small cells required new construction—as one wireless company estimates and the FCC highlights in its brief, *see* Resp’t Br. 54—that could entail as many as 160,000 densely spaced 50-foot towers (or 198-foot towers, as long as they are located near 180-foot adjacent structures). The Commission does not grapple with that possibility. Instead, it highlights the small cells that can be collocated without addressing the many thousands that cannot be.

As Keetoowah points out, the FCC “offers no analysis of the footprint of” the new towers on which small cells can be mounted, “what equipment will be used, what ongoing maintenance or security will be provided and how often towers will be updated or rebuilt.” Keetoowah Br. 15-16. Deployment of new small cells requires not only new construction but also wired infrastructure, such as electricity hookups, communications cables, and wired “backhaul,”

which connects the new antenna to the core network. *See, e.g., Comment of Sprint*, Joint Appendix (J.A.) 380 (describing process of deploying small cells); *Comment of the Cities of Bos., Mass., et al.*, J.A. 705-06 (describing the equipment associated with small cells), NRDC Br. Ex. A, Decl. of Warren Betts ¶¶ 11-12 (describing concerns about disruption “by the laying of cables and wires, by the maintenance they require, [and] by the sound of the maintenance vehicles” in otherwise tranquil areas, and concerns “that trees may be cut down or damaged by the construction of small cells”). Construction, connection, and maintenance may entail excavation and clearing of land. The Tribal Historic Preservation Officer for the Seminole Tribe of Florida expressed concern about effects of anticipated “additional related infrastructure, such as fencing, security, and access for periodic maintenance and troubleshooting.” Keetoowah Br. Add. 114, Decl. of Paul Backhouse, ¶ 28. While the Commission asserted that “deployment of small wireless facilities commonly (although not always) involves previously disturbed ground,” it eliminated review of small cells that will involve new ground disturbance without responding to concerns about such disturbance. *Order* ¶ 92; *see also, e.g., Comment of the Nat’l Cong. of Am. Indians, et al.* (NCAI), J.A. 430-31 (expressing concern about small cells that require ground disturbance); *Comment of the Cities of Bos., Mass., et al.*, J.A. 707 (“No explanation is offered by the Commission for its exclusion of any ground disturbance related conditions” in the draft *Order*).

The Commission also failed to assess the harms that can attend deployments that do not require new construction, particularly the cumulative harms from densification. While “Tribal Nations are most concerned with federal undertakings that disturb the ground and turn up dirt,” even “[c]ollocations can affect cultural and historical properties th[r]ough disturbing view sheds” because “[t]he cultural and spiritual

traditions of Tribal Nations across the United States frequently involve the uninterrupted view of a particular landscape, mountain range, or other view shed.” *Comment of NCAI*, J.A. 50. The FCC did not respond to historic-preservation commenters warning “that permanent, direct adverse effects will be more likely with small wireless facilities as in many cases they are proposed for installation on or in historic buildings,” and “these multi-site deployments have a greater potential to cause cumulative effects to historic properties, cluttering historic districts with multiple towers, antennae, and utility enclosures.” *Comment of Tex. Historical Comm’n*, J.A. 794; see also, e.g., *Ex Parte Comm’n of Thlopthlocco Tribal Town Tribal Historic Pres. Officer*, J.A. 690 (noting that the Commission did not discuss “the issue of multiple collocations on the same pole which cumulatively would exceed the volume restriction and would create an adverse impact”); *Comment of Ark. State Historic Pres. Officer*, J.A. 751 (“[A]lthough individual small cells are unlikely to adversely impact individual historic properties or districts, the FCC doesn’t address how the large scale, nationwide deployment of 5G and small cells facilities will cumulatively impact cultural and natural resources.”). The Commission noted that all facilities remain subject to its limits on radiofrequency exposure, *Order* ¶ 45, but failed to address concerns that it was speeding densification “without completing its investigation of . . . health effects of low-intensity radiofrequency radiation,” which it is currently reassessing. *Comment of BioInitiative Working Grp.*, J.A. 235.

The FCC does not reconcile its assertion that planned small cell densification does not warrant review because it will “leave little to no environmental footprint” with the *Order*’s principal deregulatory effect of eliminating review of precisely the new construction and other deployments that the Commission previously considered likely to pose cultural and

environmental risks. The Commission already had in place NEPA categorical exclusions and NHPA programmatic agreements covering most collocations—as well as other kinds of deployments unlikely to have cultural and environmental impacts. What the new *Order* accomplishes, then, is to sweep away the review the Commission had concluded should not be relinquished.

Since the 1970s, the Commission has explained that most collocations on existing towers or buildings are not “major” federal actions and therefore are not subject to NEPA review. *Implementation of NEPA*, 49 F.C.C.2d at 1319-20; 47 C.F.R. §§ 1.1301-1.1319. The FCC’s NEPA regulations limit environmental review to a small subset of actions likely to have significant environmental effects, *see* 47 C.F.R. § 1.1307, as well as those actions found through Section 106 review to have adverse effects on historic properties, *see id.* § 1.1307(a)(4). Before it promulgated the challenged rule, the Commission had further shrunk the category of actions that receive individualized NHPA or NEPA review by adopting programmatic agreements and categorical exclusions. In chronological order, it excluded most collocations from individualized review, *see Collocation Agreement*, 47 C.F.R. Pt.1, App. B; adopted “categories of undertakings that are excluded from the Section 106 process because they are unlikely by their nature to have an impact upon historic properties,” *Section 106 Agreement*, 20 FCC Rcd. at 1075 ¶ 2; excluded from individualized review new categories of wireless construction and modification unlikely to have historic preservation effects, *see Nationwide Programmatic Agreement for Review Under the National Historic Preservation Act*, 70 Fed. Reg. at 558; and, most recently, expanded NHPA and NEPA exclusions for collocations, *see Improving Wireless Facilities Siting Policies*, 29 FCC Rcd. at 12870 ¶ 11. In sum, the FCC had already streamlined and

minimized review of vast numbers of minor actions, focusing attention only on subcategories of deployments likely to have cultural or environmental effects.

Second, in sweeping away wholesale the review it had preserved for the small cell deployments most likely to be disruptive, the *Order* is not, as the FCC asserts, “consistent with the Commission’s treatment of small wireless facility deployments in other contexts,” but directly contrary to it. *Order* ¶ 42. We observe by way of example the Commission’s assertion that “under the Collocation [Agreement], the Commission already excludes” from NHPA review “many facilities that meet size limits similar to those” of small cells. *Id.* As the Commission sees it, the *Order* thus “builds upon the insight underlying these existing rules that small wireless facilities pose little or no risk of adverse environmental or historic preservation effects.” *Id.* But the *Collocation Agreement* exclusion was defined not just by size, but by other characteristics that minimized the likelihood of cultural harm. The section of the *Collocation Agreement* the FCC cites in fact only excludes from individualized NHPA review “small wireless antennas and associated equipment on building and non-tower structures that are outside of historic districts and are not historic properties,” which include property of religious and cultural importance to Tribes. *Collocation Agreement*, 47 C.F.R. Pt.1, App. B § VI (formatting altered); *see also* 54 U.S.C. §§ 300308, 302706. A different section of the *Collocation Agreement*, which did exempt certain collocations of small antennas in historic districts or on historic properties, likewise included numerous conditions to minimize effects on historic properties. An antenna could only be collocated on a historic property if, for example, “a member of the public, an Indian Tribe, a [State Historic Preservation Office] or the [Advisory] Council” had not complained “that the collocation ha[d] an adverse effect on one or more historic properties,”

Collocation Agreement, 47 C.F.R. Pt.1, App. B § VII(A)(6), and if the antenna was installed “using stealth techniques that match or complement the structure on which or within which it is deployed,” *id.* § VII(A)(2)(c), and “in a way that does not damage historic materials and permits removal of such facilities without damaging historic materials,” *id.* § VII(A)(4), among other conditions. After the *Order*, none of those limiting conditions applies. The insight of the *Collocation Agreement* was not that small cells by their nature “pose little or no risk of adverse environmental or historic preservation effects,” *Order* ¶ 42, but that small cells under certain carefully defined conditions pose little such risk.

Similarly, the FCC explains its “conclusion that, as a class, the nature of small wireless facility deployments appears to render them inherently unlikely to trigger environmental and historic preservation concerns” by reference to limiting criteria that it chose *not* to place on its small cell exemption. *Id.* ¶ 92. It notes, for example, that “deployment of small wireless facilities commonly (although not always) involves previously disturbed ground, where fewer concerns generally arise than on undisturbed ground,” and reiterates that “use of existing structures, where feasible, can both promote efficiency and avoid adverse impacts on the human environment.” *Id.* But the Commission decided not to limit the *Order*’s exemption only to facilities sited on previously disturbed ground, or those that are collocated on existing structures. It therefore fails to justify its conclusion that small cells “as a class” and by their “nature” are “inherently unlikely” to trigger concerns.

By ignoring the extent to which it had already streamlined review, the Commission also overstated the burdens of review. It said it could not “simply turn a blind eye to the reality that the mechanical application of [limited approval authority] requirements to each of [the] small deployments” necessary for

5G “would increase the burden of review both to regulated entities and the Commission by multiples of tens or hundreds.” *Id.* ¶ 65. As the preceding discussion of the *Collocation Agreement* illustrates, however, the FCC was not indiscriminately or “mechanic[ally]” requiring full NHPA and NEPA review for each individual small cell. The Commission fails to explain why the categorical exclusions and programmatic agreements in place did not already minimize unnecessary costs while preserving review for deployments with greater potential cultural and environmental impacts.

Third, given that only the most vulnerable cases were still subject to individualized NHPA or NEPA review, the Commission did not adequately address either the possible benefits of retaining review, or the potential for further streamlining review without eliminating it altogether. It dismissed the benefits of historic-preservation and environmental review in a two-sentence paragraph, describing most of the comments that highlight those benefits as “generalized” and the comments that point to specific benefits as “few.” *Id.* ¶ 78. Characterizing a concern as “generalized” without addressing that concern does not meet the standard of “reasoned decisionmaking.” *Michigan v. EPA*, 135 S. Ct. at 2706.

The Commission found that adverse effects are rare, but it considered neither the importance of the sites review does save, nor how that rarity depends on the very review it eliminates, which forestalled adverse effects that otherwise would have occurred. The FCC cited comments suggesting that only 0.3 or 0.4% of requests for Tribal review result in findings of adverse effects or possible adverse effects. *Order* ¶ 79. Based on the estimate of 800,000 small cell deployments, that could mean 3,200 adverse effects. The *Order* displayed no consideration of the importance of the 3,200 Tribal sites that might be saved

through review except to describe that benefit as “*de minimis* both individually and in the aggregate.” *Id.* As counsel for petitioner Blackfeet Tribe said at oral argument: “They may think that’s infinitesimal. To us, it means the world.” Oral Argument at 1:16:16-20. The Commission also did not address comments that “no adverse effects in 99% of tower deployments shows that the current system is working” because “[o]ften, after an applicant enters a location into” the Tower Construction Notification System, a Tribal representative “will notify the applicant of an issue and the applicant will choose a new location or resolve that effect,” which “gets counted as having no adverse effect.” *Comment of Nat’l Ass’n of Tribal Historic Pres. Officers*, J.A. 661. Other commenters agreed that “[t]he lack of significant impact should be a testament to the value of the review process in these instances, not negate its necessity.” *Comment of Tex. Historical Comm’n*, J.A. 794 (“In our experience, the vast majority of adverse effects for cell projects are resolved through sensitive design modifications, including stealth measures, modifying how equipment is attached if directly mounted to a historic building or structure, or relocation to an alternate site further removed from historic properties.”).

Similarly, the Commission dismissed the point that its own oversight deters adverse effects by describing comments to that effect as “generalized, and undercut by our conclusion that, as a class, the nature of small wireless facility deployments appears to render them inherently unlikely to trigger environmental and historic preservation concerns.” *Order* ¶ 92. For the reasons already explained, the FCC’s conclusion that small cells are inherently unlikely to trigger concerns is arbitrary and capricious, and describing comments as “generalized” does not excuse the agency of its obligation to consider those comments as part of reasoned decisionmaking.

We hold that the *Order*'s deregulation of small cells is arbitrary and capricious because its public-interest analysis did not meet the standard of reasoned decisionmaking. We therefore decide neither the alternative grounds for holding that the *Order* is arbitrary and capricious or otherwise violated the Administrative Procedure Act, nor the claim that small cell construction is a federal undertaking and a major federal action requiring NHPA and NEPA review.

II. Tribal Involvement in Section 106 Review

The *Order* also made three changes to Tribal involvement in the Section 106 review not eliminated by the *Order*, such as review of macrocells and small wireless facilities on Tribal land. The first two changes relate to two types of Tribal involvement that the Commission and the Advisory Council distinguish from one another: (a) government-to-government consultation between the agency and the Tribes, in which Tribes function in their governmental capacity, and (b) the "identification and evaluation phase of the Section 106 process when the agency or applicant is carrying out its duty to identify historic properties that may be significant to an Indian tribe." Advisory Council, *Consultation with Indian Tribes in the Section 106 Review Process: A Handbook* (Section 106 Handbook), J.A. 1015; see also FCC, *Voluntary Best Practices for Expediting the Process of Communications Tower and Antenna Siting Review Pursuant to Section 106 of the NHPA*, J.A. 933; *Order* ¶¶ 118-19.

Section 106 review comprises "four steps": "initiation, identification, assessment [or evaluation], and resolution." *Section 106 Handbook*, J.A. 1018. Government-to-government consultation is a background requirement of Section 106 review at every stage. See *id.* at J.A. 1014, 1018; Advisory Council, *Fees in the Section 106 Review Process*,

J.A. 913; 36 C.F.R. § 800.2(c)(2)(ii)(A) (consultation requires giving the interested Tribe “a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, . . . articulate its views on the undertaking’s effects on such properties, and participate in the resolution of adverse effects”). In the identification and evaluation period, however, applicants have often paid for expertise and assistance from Tribes acting “in a role similar to that of a consultant or contractor” such as by providing “specific information and documentation regarding the location, nature, and condition of individual sites” or even conducting surveys. *Section 106 Handbook*, J.A. 1015. The *Order* explains that identification and evaluation involves “activities undertaken after the initial determination that historic properties are likely to be located in the site vicinity,” and that it includes “monitoring and other activities directed toward completing the identification of historic properties as well as assessing and mitigating the project’s impacts on those properties.” *Order* ¶ 124.

The “initial determination” falls into the government-to-government consultation category. *See Section 106 Handbook*, J.A. 1021 (explaining that initiating contact with Tribes is part of the Commission’s “responsibilities to conduct government-to-government Consultation”). In practice, however, Tribes have been allowing applicants to contact them directly, in lieu of government-to-government consultation, to help make the initial determination. *See Section 106 Agreement*, 20 FCC Rcd. at 1108 ¶¶ 95-96; *Keetoowah Br.* 37. The *Section 106 Agreement* “expresses the ambition that this initial contact will lead to voluntary direct discussions through which applicants and tribes . . . will resolve questions involving the presence of relevant historic properties and effects on such properties to the tribe[’s] . . . satisfaction without Commission involvement.” 20 FCC Rcd. at 1108 ¶ 97. But “if an applicant and an Indian

tribe . . . disagree regarding whether an undertaking will have an adverse effect on a historic property of religious and cultural significance, or if the tribe . . . does not respond to the applicant's inquiries," the Commission steps in to consult and ultimately "make a decision regarding the proposed undertaking." *Id.*

The Advisory Council explains that "[t]hese two tribal roles"—government-to-government consultation, and assistance with identification and evaluation—"are not treated the same when it comes to compensation, although the line between them may not be sharp." Advisory Council, *Fees in the Section 106 Review Process*, J.A. 913. Advisory Council guidance states that "agencies are strongly encouraged to use available resources to help overcome financial impediments to effective tribal participation in the Section 106 process" and applicants are likewise "encouraged to use available resources to facilitate and support tribal participation." Advisory Council, *Section 106 Handbook*, J.A. 1015. At the same time, it says that agencies and applicants should not expect to pay fees for government-to-government consultation, which "give[s] the Indian tribe an opportunity to get its interests and concerns before the agency," Advisory Council, *Fees in the Section 106 Review Process*, J.A. 913, but "should reasonably expect to pay" fees for the identification and evaluation, which puts Tribes in a "consultant or contractor" role, Advisory Council, *Section 106 Handbook*, J.A. 1015. It notes, however, that "this encouragement is not a legal mandate; nor does any portion of the NHPA or the [Advisory Council's] regulations require an agency or an applicant to pay for any form of tribal involvement." *Id.*

First, apparently because applicants had been consistently paying upfront fees, *see Keetoowah Br. 37*, the *Order* made clear that applicants' payment of upfront fees to Tribes is

voluntary. *See Order* ¶ 116. Upfront fees are payments made to Tribes for the initial determination whether the Tribe actually has religiously or culturally significant properties that might be affected by a proposed construction. *See id.* ¶ 116. Applicants contact Tribes for that initial determination when Tribes have noted that properties in the general area of proposed construction may have religious or cultural significance for them. *Id.* When an applicant follows up “to ascertain whether there are in fact such properties that may be affected,” some Tribes have requested upfront fees before they will respond. *Id.* As the *Order* describes the practice, the upfront fees “do not compensate Tribal Nations for fulfilling specific requests for information and documentation, or for fulfilling specific requests to conduct surveys,” but are “more in the nature of a processing fee” to “obtain a response” to an applicant’s initial Tower Construction Notification contact with a Tribal Nation. *Id.* ¶ 119.

Second, while the *Order* approved of fees for identifying and evaluating properties that may be significant to Tribes, as opposed to upfront fees, *see id.* ¶ 123, it also authorized applicants to consult with non-Tribal parties in the identification and evaluation phase, *see id.* ¶¶ 124-45. The Commission found that, if an applicant asks a Tribe to perform work to aid it in documenting, surveying, or analyzing potentially historic properties, “the applicant should expect to negotiate a fee for that work” and, if the parties are “unable to agree on a fee, the applicant may seek other means to fulfill its obligations.” *Id.* ¶ 125. “The agency or applicant is free to refuse just as it may refuse to pay for an archeological consultant, but the agency still retains the duties of obtaining the necessary information for the identification [and evaluation] of historic properties . . . through reasonable means.” *Id.* (quoting Advisory Council, *Section 106 Handbook*, J.A. 1015).

Third, the *Order* shortened from 60 to 45 days the timeline for Tribes to respond to notifications on the Tower Construction Notification System, eliminated the requirement that applicants make a second attempt to contact Tribes, and shortened from 20 to 15 days the timeline for Tribal response to Commission contact. *Id.* ¶¶ 110-11.

Keetoowah and Blackfeet challenge those three changes as arbitrary and capricious and inconsistent with the NHPA. Keetoowah complains that the *Order* “encourages applicants, which have until this point voluntarily paid fees, to refuse paying Tribes” upfront fees, Keetoowah Br. 37; that “FCC implementation goes far beyond the terms of the Order by refusing to even allow Tribes to request voluntary fees through” the Tower Construction Notification System, *id.* at 37-38; that letting applications proceed where Tribes refuse to participate without compensation or are not hired as consultants violates the Commission’s legal obligation to consult with Tribes, *id.* at 38; and that the shortened timelines are unreasonable, *id.* at 40. Blackfeet asserts that the Commission lacks “the authority to prohibit tribes from collecting fees” because only the Advisory Council may promulgate regulations implementing Section 106. Blackfeet Br. 16.

None of those challenges is availing. The clarification that applicants are not required to pay upfront fees is consistent with the Advisory Council’s preexisting guidance and does not violate the Commission’s duty to consult with Tribes. The *Order* permissibly authorizes applicants to contract with non-Tribal parties in the identification-and-evaluation phase because it stipulates that contractors must be “properly qualified,” which we understand does not authorize hiring other contractors in any circumstance in which only Tribes are

qualified. *Order* ¶ 128. The shortened timeline for Tribal response is reasonable and sufficiently explained.

A. Upfront Fees

The *Order* permissibly confirms that upfront fees for Tribes to comment on proposed deployments are voluntary. Unchallenged Advisory Council regulations already make clear that fees are voluntary, so the *Order*'s reiteration of the same point is not arbitrary and capricious. While applicants have apparently been uniformly paying upfront fees for Section 106 review, no party asserts that they have been required to do so. *See Keetoowah Reply Br. 20*. The Advisory Council has been explicit that no "portion of the NHPA or the [Advisory Council's] regulations require an agency or an applicant to pay for any form of tribal involvement." Advisory Council, *Section 106 Handbook*, J.A. 1015; *see also* Advisory Council, *Fees in the Section 106 Review Process*, J.A. 913 (neither the NHPA nor Advisory Council regulations "requires Federal agencies to pay for any aspect of tribal [or] other consulting party participation in the Section 106 process"). Blackfeet's complaint that "[t]he FCC does not have the authority to prohibit tribes from collecting fees" and that the *Order* is impermissibly "implementing and administering Section 106 through regulation" is misplaced. The challenged *Order* contains no such prohibition, but does no more than recognize and reiterate the Advisory Council's existing rule.

The Commission has a non-delegable duty to consult with Tribes about the effect of federal undertakings on property significant to the Tribes, which Tribes can invoke or waive as they choose. The NHPA mandates that, "[i]n carrying out its responsibilities under [Section 106], a Federal agency shall consult with any Indian tribe . . . that attaches religious and cultural significance to property." 54 U.S.C. § 302706(b). The

Advisory Council has explained that “federal agencies cannot unilaterally delegate their tribal consultation responsibilities to an applicant,” but can only delegate if “expressly authorized by the Indian tribe to do so.” Advisory Council, *Limitations on the Delegation of Authority by Federal Agencies to Initiate Tribal Consultation under Section 106 of the National Historic Preservation Act (Limitations on Section 106 Delegation)* 1 (2011), <https://go.usa.gov/xyWGq>. The Commission has also recognized that its “fiduciary responsibility and duty of consultation [to Tribes] rest with the Commission as an agency of the federal government, not with licensees, applicants, or other third parties.” *Section 106 Agreement*, 20 FCC Rcd. at 1106 ¶ 91.

Keetoowah says its challenge is not to the “FCC’s clarification that fees are voluntary,” but to “the Order’s determination that FCC will process applications without tribal input if tribes insist on charging applicants for their reviews.” Keetoowah Reply Br. 19-20. That determination, Keetoowah asserts, violates the Commission’s “statutory obligation to consult with tribes.” *Id.* at 19. Under the *Section 106 Agreement*, Tribes can and do permit applicants to contact them to request review of proposed construction—essentially agreeing to accept that contact in satisfaction of the Commission’s responsibility to consult with Tribes directly. 20 FCC Rcd. at 1108 ¶ 96; *see also* Keetoowah Br. 37; *Comment of the Seminole Tribe of Florida*, J.A. 743 (“[T]ribes participate in review . . . on a voluntary basis” as a substitute for “direct Section 106 consultation with the FCC.”) But Tribes can request “the federal agency to reenter the consultation process at any time . . . since the federal agency remains responsible for government-to-government consultation.” *Limitations on Section 106 Delegation* 2. Keetoowah implies that Tribes have only agreed to accept direct contact from applicants under the condition that

applicants pay for Tribes' responses—meaning that if Tribes refuse to respond without being paid upfront fees, they will not have waived the Commission's responsibility to consult with them directly. Without having fulfilled its legal obligation to consult, Keetoowah contends, the Commission cannot permit applicants to go ahead with construction.

Keetoowah overlooks the fact that when a Tribe refuses to review an application without being paid, the *Order* requires the Commission to step in to ask the Tribe for a response before allowing applicants to construct. Tribes' refusal to respond triggers a process in which applicants can refer the matter to the Commission, the Commission must contact Tribes directly, and Tribes have 15 days from Commission contact to respond. *See Order* ¶ 111. Only if the Tribe does not timely respond to the Commission are “the applicant's pre-construction obligations . . . discharged with respect to that Tribal Nation.” *Id.* The Tribe is guaranteed the opportunity to consult as a sovereign—a capacity in which it need not be paid—and the Commission cannot force an unwilling Tribe to respond. Therefore, if a Tribe refuses to respond when the Commission requests its views on an application, the Commission has discharged its obligation of direct Commission-to-Tribe consultation. *See id.* ¶ 111. Apart from the shortened timeframe, discussed below, Keetoowah has not offered any reason the Commission's contacting Tribes directly with a request to consult that the Tribe rejects does not satisfy the Commission's consultation obligation.

Finally, the objection that the Commission is prohibiting Tribes from requesting voluntary fees on the Tower Construction Notification System, Keetoowah Br. 38-40, is not properly before us. That prohibition does not appear in the *Order* itself but seems to originate with a later decision of Commission staff. *See Resp't Br.* 64 n.19.

B. Non-Tribal Consultation

The *Order* states that applicants need not contract with Tribes to identify which properties have historic or cultural significance to Tribes and determine how to assess or mitigate adverse effects of construction. *Order* ¶¶ 124-25, 128-29. Keetoowah argues that allowing applicants to contract with non-Tribal parties is arbitrary and capricious because “only Tribes are qualified to perform” such services “based on their unique, often sacred, knowledge.” Keetoowah Br. 23. Because the *Order* stipulates that contractors must be “properly qualified,” we reject the arbitrary-and-capricious claim. *Order* ¶ 128.

Advisory Council regulations require the agency to “make a reasonable and good faith effort to carry out appropriate identification efforts” under Section 106. 36 C.F.R. § 800.4(b)(1). The *Order* explains that “the applicant is not bound to any particular method of gathering information,” *Order* ¶ 125, but it stipulates that contractors must be “properly qualified,” *id.* ¶ 128. The “reasonable and good faith efforts” standard together with the *Order*’s mandate that parties be “properly qualified” may sometimes require applicants to hire Tribes—for instance, where Tribes have “unique” and “sacred” knowledge of historic properties. Advisory Council guidance supports that notion, explaining that “unless an archeologist has been specifically authorized by a tribe to speak on its behalf on the subject, it should not be assumed that the archaeologist possesses the appropriate expertise to determine what properties are or are not of significance to an Indian tribe.” *Section 106 Handbook*, J.A. 1022. The *Order* itself suggests that applicants should try to hire Tribes first: “[I]f an applicant asks a Tribal Nation” to perform identification and evaluation of historic properties, “the applicant should expect to negotiate a fee for that work,” but if the Tribe and applicant “are unable

to agree on a fee, the applicant may seek other means to fulfill its obligations.” *Order* ¶ 125. We cannot say, *ex ante*, how often as a practical matter applicants might find qualified non-Tribal contractors or whether, as applied, the law will ordinarily require hiring Tribes. If a Tribe believes an applicant has hired an unqualified contractor, that issue can be litigated when it arises.

C. Timeline Changes

Keetoowah’s one-paragraph challenge to the *Order*’s shortening the timeline for Tribal response to Tower Construction Notification System notifications provides no basis on which to hold the shortened timeline arbitrary and capricious. Keetoowah Br. 40. Its sole objection is that Tribes “operate with limited staff and budget, making the shortening of Tribal review time unreasonable.” *Id.* The Commission acted within its discretion and “considered the relevant factors and articulate[d] a rational connection between the facts found and the choice made.” *Vonage Holdings Corp. v. FCC*, 489 F.3d 1232, 1241 (D.C. Cir. 2007) (quoting *BellSouth Telecomms., Inc. v. FCC*, 469 F.3d 1052, 1056 (D.C. Cir. 2006) (alteration in original)). It reasonably justified the decision as a compromise between industry requests for even shorter timelines to address delays, and Tribes’ need for adequate time to review submissions. *See Order* ¶¶ 112 n.262, 113.

III. Promulgation of the *Order* Itself

All petitioners argue that the promulgation of the *Order* itself violated the law. Keetoowah and Blackfeet argue that the Commission violated its duty to consult with Tribes, as established by the Tribes’ sovereign status and the government-to-government relationship recognized in Article I, Section 8 of the Constitution, the NHPA, and the Commission’s regulations. *See Keetoowah Br. 40-42; Blackfeet Br. 20-21.*

The NRDC argues that the *Order* itself was a major federal action that required NEPA review. *See* NRDC Br. 10-11. Because the *Order* documents extensive consultation with Tribes, we reject the first contention. We lack jurisdiction to consider the second because the NRDC forfeited it by failing to raise it to the Commission.

As for the Tribes' contention that the *Order* is invalid because the Commission did not meet its obligations to consult with Tribes, the Commission responds that it extensively consulted with Tribes, and that in any event its consultation obligation is not judicially enforceable. Resp't Br. 69-74. We conclude that the Commission fulfilled its obligation to consult. The Commission presented abundant evidence that it "consulted" Tribes in the ordinary sense of the word, and the Tribes have offered no other concrete standard by which to judge the Commission's efforts.

On this record, we cannot say that the Commission failed to consult with Tribes in its meetings and other communications, which began in 2016 and continued through early 2018. *See Order* ¶¶ 19, 34. The Commission documented extensive meetings it held with Tribes before it issued the *Order*. *See Order* ¶¶ 19-35. Under Advisory Council regulations, "[c]onsultation means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process." 36 C.F.R. § 800.16(f); *see also* 54 U.S.C. § 302706(b). The dictionary definition of consulting is "seek[ing] advice or information of." *Consult*, *American Heritage Dict.* (5th ed. 2019). Keetoowah complains that the FCC's efforts were "listening sessions, briefings, conference calls, and delivery of remarks by a Commissioner" rather than "consultations," and presents evidence that Tribes did not view these meetings as

consultations. Keetoowah Br. 44. But it offers no standard by which to judge which consultations were “listening sessions” or whether a “listening session” or a conference call qualifies as a consultation. The only case Keetoowah cites interpreting an agency’s failure to consult is inapposite: there, an agency official “acknowledged at trial” that the contested decision “had already been made prior to” the first meeting between Tribal members and agency officials discussing the decision. *Oglala Sioux Tribe of Indians v. Andrus*, 603 F.2d 707, 710 (8th Cir. 1979). No evidence in this record suggests the Commission had already determined the *Order*’s substance before meeting with Tribes—and the series of communications and meeting commenced even before the Commission issued the Notice of Proposed Rulemaking. *See Order* ¶ 19. The Commission appeared to “seek[], discuss[], and consider[] the views of” the Tribes, even if it did not ultimately adopt those views.

The NRDC argues that promulgating the *Order* was itself a major federal action that required NEPA review. *See* NRDC Br. 10-11. But, as intervenor CTIA points out, the NRDC forfeited that argument by failing to make it to the Commission, *see* CTIA Br. 38, and we lack jurisdiction to review a claim that was not raised there. *Free Access & Broad. Telemedia, LLC v. FCC*, 865 F.3d 615, 619 (D.C. Cir. 2017). While the NRDC points to its own and others’ comments “urg[ing] the Commission to conduct a NEPA analysis,” NRDC Reply Br. 3, none of those comments said the Commission was required to perform a NEPA analysis *of the Order*. The NRDC cites its own comment “that if the FCC sought to exclude an entire category of wireless facilities from NEPA, it was required to establish a categorical exclusion.” *Id.* (citing J.A. 787-90). But the NRDC did not there contend, as it now does, that the *Order* is a major federal action. Rather, the NRDC’s argument was that the federal character of the

geographic area license meant that the Commission could not entirely exempt wireless facility construction from NEPA review, J.A. 790—the same statutory argument it made here—and that the proper approach to exempting federal “activities that by their nature do not have significant impacts on the environment is with a categorical exclusion,” J.A. 789. Whether the licenses or construction are federal, the basis of the NRDC’s argument, is irrelevant to the question whether the *Order* overall is a major federal action that requires NEPA review. One of the other two comments it cites asserted that the proposed rule failed to comply with NEPA, but again, not because the *Order* required NEPA analysis—rather because the issuance of licenses constitutes a major federal action. *See Comment of the Nat’l Trust for Historic Pres.*, J.A. 770. The third comment urged the Commission to consider the cumulative effects of radiofrequency exposure, but did not even mention NEPA. *See Comment of BioInitiative Working Grp.*, J.A. 235-38. The argument that the *Order* required independent NEPA review was never fairly before the Commission.

CONCLUSION

We grant the petitions to vacate the *Order*’s removal of small cells from its limited approval authority and remand to the FCC. We deny the petitions to vacate the *Order*’s changes to Tribal involvement in Section 106 review and to vacate the *Order* in its entirety.

So ordered.

Gores, Alanna

From: Tree Stokan <treejstokan@gmail.com>
Sent: Friday, March 05, 2021 11:30 AM
To: Gores, Alanna
Subject: Green Party of California Statement on 5G Wireless Technology Environmental Oversight | Green Party of California (GPCA)

Hello Alanna,

Please share this important link with the BOCC, as they ponder the Franchises Recommendation by the CRC.

Thank you,
Therese (Tree) Stokan
Neah Bay
Recently served on 2020 Charter Review Commission, District 3

<https://www.cagreens.org/green-party-california-statement-5g-wireless-technology-environmental-oversight>

Sent from my iPhone

Gores, Alanna

From: Tony Corrado <tony.corrado@gmail.com>
Sent: Wednesday, March 10, 2021 1:50 PM
To: Gores, Alanna
Subject: Re: 5g
Attachments: COVID-19-and-RFR-SUBMITTED.pdf

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

Ms. Gores,
Opps! Getting old shows up more and more. Thanks for alerting me.
Ciao,
Tony Corrado

On Wed, Mar 10, 2021 at 6:42 AM Gores, Alanna <agores@co.clallam.wa.us> wrote:

Mr. Corrado,

There was nothing attached to the previous email you sent. Please resend with the attachment.

Hope you have a nice day!

Loni

Loni Gores

Clerk of the Board

Commissioners Office

223 East 4th Street, Suite 4

Port Angeles, WA 98362

Phone: 360-417-2256

From: Tony Corrado [mailto:tony.corrado@gmail.com]

Sent: Tuesday, March 09, 2021 9:48 PM

To: Gores, Alanna

Subject: 5g

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

Hello Ms. Gores,

The attached scientific paper purports to show a correlation between 5G EMF and Covid 19 health effects. Would you kindly forward to the BOCC members for their consideration.

Thank you,

Regards,

Tony Corrado

Evidence for a Connection between COVID-19 and Exposure to Radiofrequency Radiation from Wireless Telecommunications Including Microwaves and Millimeter Waves

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Abstract: COVID-19 public health policy has focused on the SARS-CoV-2 virus and its effects on human health while environmental factors have been largely ignored. In considering the epidemiological triad (agent-host-environment) applicable to all disease, we investigated a possible environmental factor in the COVID-19 pandemic: ambient radiofrequency radiation from wireless communication systems including microwaves and millimeter waves. COVID-19 surfaced in Wuhan, China shortly after the implementation of city-wide 5G (fifth generation of wireless radiation), and spread globally, demonstrating a statistical correlation to international communities with 5G antennas installed. In this study, we examined the peer-reviewed scientific literature on the detrimental bioeffects of radiofrequency radiation (RFR) and identified several ways in which RFR may be contributing to COVID-19 as a toxic environmental cofactor. We conclude that RFR and, in particular, 5G, which involves 4G infrastructure densification, has exacerbated COVID-19 prevalence and severity by weakening host immunity and increasing SARS-CoV-2 virulence by (1) causing morphologic changes in erythrocytes including echinocyte and rouleaux formation that may be contributing to hypercoagulation; (2) impairing microcirculation and reducing erythrocyte and hemoglobin levels exacerbating hypoxia; (3) amplifying immune system dysfunction, including immunosuppression, autoimmunity, and hyperinflammation; (4) increasing cellular oxidative stress and the production of free radicals exacerbating vascular injury and organ damage; (5) augmenting intracellular Ca^{2+} essential for viral entry, replication, and release, in addition to promoting pro-inflammatory pathways; and (6) worsening heart arrhythmias and cardiac disorders. In short, RFR is a ubiquitous environmental stressor that contributes to adverse health outcomes of COVID-19. We invoke the Precautionary Principle and strongly recommend a moratorium on 5G wireless infrastructure at this crucial time to help mitigate the pandemic, and to preserve public health until governmental safety standards for RFR exposure based on current and future research are defined and employed.

Keywords: coronavirus; COVID-19; electromagnetic stress; EMF; environmental factor; microwave; millimeter wave; pandemic; public health; radiofrequency

Introduction

Background

COVID-19 has been the focus of international public health policy throughout 2020. Despite unprecedented public health protocols to quell the pandemic, the number of COVID-19 cases continues to rise. We propose a reassessment of our public health strategies.

According to the Center for Disease Control and Prevention (CDC, 2020), the simplest model of disease causation is the epidemiological triad consisting of three interactive factors: the agent (pathogen), the environment, and the health status of the host. Extensive research is being done on the agent (SARS-CoV-2). Risk factors that make a host more likely to succumb to the disease have been elucidated. However, environmental factors have not been sufficiently explored. Are there environmental factors involved and actions that we can take to mitigate COVID-19? In this paper, we investigate the role of wireless communication radiation as a widespread environmental stressor.

This is the first comprehensive paper examining scientific evidence that radio-frequency radiation including 5G (fifth generation of wireless communication technology and its necessary earlier generations), henceforth referred to as RFR, may be a contributing factor in COVID-19. RFR from wireless technology has already been recognized as a form of environmental pollution and physiological stressor (Balmori, 2009). Assessing the detrimental health effects of RFR is crucial to develop an effective, rational public health policy that will expedite eradication of the COVID-19 pandemic. In addition, because we are on the verge of worldwide 5G deployment, it is critical to consider the damaging health effects of RFR before it is too late.

5G is a protocol that will use high frequency bands of the electromagnetic spectrum in the vast radiofrequency range from 600 MHz to 90 GHz, which includes millimeter waves, in addition to the currently used 3G and 4G LTE microwave bands. Focused pulsed beams of radiation will emit from new base stations and antennas placed close to homes and schools whenever persons access the 5G network. The system requires significant densification of 4G as well as new 5G antennas that will dramatically increase the population's wireless radiation exposure both inside structures and outdoors. In addition, up to 100,000 satellites are planned to be launched into low earth orbit to achieve a global wireless network. This infrastructure will significantly alter the world's electromagnetic environment to unprecedented levels and may cause

unknown consequences to the entire biosphere, including humans.

COVID-19 began in Wuhan, China in December 2019, shortly after city-wide 5G had "gone live" on October 31, 2019. COVID-19 outbreaks soon followed in other areas where 5G had also been at least partially implemented, including South Korea, Northern Italy, New York City, Seattle, and Southern California. In April 2020, Payeras and Cifre (2020) reported a statistically significant correlation between the density of 5G antennas and the location of COVID-19 cases in specific regions throughout the world. During the first wave in the United States, COVID-19 attributed cases and deaths were higher in states with 5G infrastructure compared with states that did not yet have this technology (Tsiang and Havas, manuscript submitted).

There is a large body of peer reviewed literature, since before World War II, on the biological effects of wireless radiation that impact many aspects of our health. In examining this literature, we found intersections between the pathophysiology of COVID-19 and detrimental bioeffects of wireless radiation exposure. Here we present the evidence that RFR is a contributing factor exacerbating COVID-19.

Overview on COVID-19

The clinical presentation of COVID-19 has proven to be highly variable, with a wide range of symptoms and variability from case to case. According to the CDC, early disease symptoms may include sore throat, headache, fever, cough, chills, among others. More severe symptoms including shortness of breath, high fever, and severe fatigue may occur in a later stage. The neurological sequela of taste and smell loss has also been described.

Ing *et al.*, (2020) determined 80% of those affected have mild symptoms or none, but older populations and those with comorbidities, such as hypertension, diabetes, and obesity, have a greater risk for severe disease (Garg *et al.*, 2020). Acute respiratory distress syndrome (ARDS) can rapidly occur (Wu *et al.*, 2020) and cause severe shortness of breath as endothelial cells lining blood vessels and epithelial cells lining airways lose their integrity, and protein rich fluid leaks into adjacent air sacs. COVID-19 can cause insufficient oxygen levels (hypoxia) that has been seen in up to 80% of intensive care unit (ICU) patients (Gattinoni, 2020) exhibiting respiratory distress. Decreased oxygenation and elevated carbon dioxide levels in patients' blood have been observed, although the etiology for these findings remains unclear.

Massive oxidative damage to the lungs has been observed in areas of consolidation documented on lung radiographs and CT scans in patients with COVID-19

pneumonia (Cecchini and Cecchini, 2020). This cellular stress may indicate a biochemical rather than a viral etiology (Cavezzi *et al.*, 2020).

Because disseminated virus can attach itself to cells containing an ACE-2 (angiotensin-converting enzyme 2) receptor, the disease can spread and damage organs and soft tissues throughout the body, including the lungs, heart, intestines, kidneys, blood vessels, fat, testes, and ovaries, among others. The disease can increase systemic inflammation and induce a hypercoagulable state. Without anticoagulation, intravascular blood clots can be devastating (Bikdeli *et al.*, 2020).

In COVID-19 patients referred to as “long-haulers,” symptoms can wax and wane for months (Carfi *et al.*, 2020). Shortness of breath, fatigue, joint pain and chest pain can become persistent symptoms. Post-infectious brain fog, cardiac arrhythmia, and new onset hypertension have also been described. Long term chronic complications of COVID-19 are being defined as epidemiological data are collected over time.

As our understanding of COVID-19 continues to evolve, environmental factors, particularly those of wireless electromagnetic fields, remain unexplored variables that may be contributing to the disease including its severity in some patients. Next, we summarize the bioeffects of RFR exposure from the peer reviewed scientific literature published over decades.

Overview on Bioeffects of Radiofrequency Radiation (RFR) Exposure

Organisms are electrochemical beings, and low-level RFR from wireless communication devices, including cell phone antennas, base stations, Wi-Fi, and cell phones, among others, may disrupt regulation of numerous physiological functions. Non-thermal bioeffects (below the power density that causes tissue heating) from very low-level RFR exposure have been reported in thousands of peer-reviewed scientific publications at power densities below the ICNIRP (International Commission on Non-Ionizing Radiation Protection) exposure guidelines (ICNIRP, 2009). Low-level RFR has been found to impact the organism at all levels of organization, from the molecular to the cellular, physiological, behavioral, and psychological levels. Moreover, it has been shown to cause systemic detrimental health effects including increased cancer risk (Bortkiewicz *et al.*, 2017), endocrine changes (Sangun *et al.*, 2016), increased free radical production (Yakymenko *et al.*, 2016), DNA damage (Ruediger, 2009), changes to the reproductive system (Asghari *et al.*, 2016), learning and memory defects (Zhang *et al.*, 2017), and neurological disorders (Pall, 2016). Having evolved within Earth’s extremely low-level natural radiofrequency background, organisms lack the ability to

adapt to heightened levels of unnatural radiation of wireless technology with digital pulse modulation.

The peer-reviewed world scientific literature has documented evidence for detrimental bioeffects from RFR exposure including 5G frequencies over several decades. The Soviet and Eastern European literature from 1960-70s demonstrates significant biological effects, even at exposure levels 100 times below 1 mW/cm², the current guideline for maximum public exposure in the US. Eastern studies on animal and human subjects were performed at low exposure levels (<1 mW/cm²) for long durations (typically months). By contrast, most US research has been performed over short durations of weeks or less. There have been few long-term studies on animals or humans.

Illness from RFR exposure has been documented since the early use of radar. Prolonged exposure to microwaves and millimeter waves from radar was associated with various disorders termed “radio-wave sickness” decades ago by Russian scientists. A bibliography of over 3,700 references on the reported biological effects in the world scientific literature was published in 1972 (revised 1976) by the US Naval Medical Research Institute report (Glaser, 1972; 1976). The BioInitiative Report (Sage and Carpenter, 2012), authored by 29 experts from 10 countries, and updated in 2020, provides a scholarly contemporary summary of the literature on the bioeffects and health consequences from RFR exposure, including a compendium of supporting research. Recent reviews have been published (Belpomme *et al.*, 2018; Di Ciaula, 2018; Russell, 2018; Miller *et al.*, 2019). A comprehensive review on the bioeffects of millimeter waves reports that even short-term exposures produce marked bioeffects (Pakhomov *et al.*, 1998).

Methods

An ongoing literature study of the unfolding pathophysiology of COVID-19 was performed throughout 2020. To investigate a possible connection to bioeffects from RFR exposure, we examined over 250 peer-reviewed research reports from 1969 – 2020, including reviews and studies on cells, animals, and humans. This included the world literature in English and Russian reports translated to English, on RFR from 600 MHz – 90 GHz, the spectrum of wireless communication radiation (2G – 5G inclusive), at non-thermal power densities (< 5 mW/cm²) and with particular emphasis on low power densities (<1mW/cm²) and long term exposures. The following search terms were used in queries in MEDLINE® and the Defense Technical Information Center (<https://discover.dtic.mil>) to find relevant study reports: radiofrequency radiation, microwave, millimeter wave, radar, MHz, GHz, blood,

red blood cell, erythrocyte, hemoglobin, hemodynamic, oxygen, hypoxia, vascular, inflammation, pro-inflammatory, immune, lymphocyte, T cell, cytokine, intracellular calcium, sympathetic function, arrhythmia, heart, cardiovascular, oxidative stress, glutathione, ROS (reactive oxygen species), COVID-19, virus, and SARS-CoV-2. Occupational studies on RFR exposed workers were included. From analysis of these studies in comparison with new information unfolding on the pathophysiology of COVID-19, we identified several ways in which adverse bioeffects of RFR exposure intersect with COVID-19 manifestations and organized our findings into five categories.

Results

Table 1 lists the manifestations common to Covid-19 including disease progression and the corresponding adverse bioeffects from RFR exposure. Although these effects are delineated into categories—blood and vascular changes, oxidative stress, immune system disruption, increased Ca^{2+} levels, and cardiac arrhythmias—it must be emphasized that these effects are not independent of each other. For example, blood clotting and inflammation have overlapping mechanisms, and oxidative stress is implicated in erythrocyte morphological changes as well as in hypercoagulation, inflammation, and organ damage.

Table 1. Bioeffects of RFR exposure in relation to COVID-19 manifestations and their progression

RFR Exposure Bioeffects	COVID-19 Manifestations
<u>Blood Changes</u>	<u>Blood and Vascular Changes</u>
Short-term: rouleaux, echinocytes Long-term: reduced blood clotting time, reduced hemoglobin, hemodynamic disorders	Rouleaux, echinocytes Hemoglobin effects; vascular effects → Reduced hemoglobin in severe disease; autoimmune hemolytic anemia; hypoxemia and hypoxia → Endothelial injury; impaired microcirculation; hypercoagulation; disseminated intravascular coagulopathy (DIC); pulmonary embolism; stroke
<u>Oxidative Stress</u>	<u>Oxidative Stress</u>
Glutathione level decrease; free radicals and lipid peroxide increase; superoxide dismutase activity decrease Oxidative injury in tissues and organs	Glutathione level decrease; free radical increase and damage; apoptosis → Oxidative injury; organ damage in severe disease
<u>Immune System Disruption and Activation</u>	<u>Immune System Disruption and Activation</u>
Immune suppression in some studies; immune hyperactivation in other studies Long-term: suppression of T-lymphocytes; inflammatory biomarkers increased; autoimmunity; organ injury	Decreased production of T-lymphocytes; elevated inflammatory biomarkers. → Immune hyperactivation and inflammation; cytokine storm in severe disease; cytokine-induced hypo-perfusion with resulting hypoxia; organ injury; organ failure
<u>Increased Intracellular Calcium</u>	<u>Effects of Increased Intracellular Calcium</u>
From activation of voltage-gated calcium channels on cell membranes, with numerous secondary effects	→ Increased virus entry, replication, and release → Increased NF-kB, pro-inflammatory processes, coagulation, and thrombosis
<u>Cardiac Effects</u>	<u>Cardiac Effects</u>
Up-regulation of sympathetic nervous system; palpitations and arrhythmias	Arrhythmias → Myocarditis; myocardial ischemia; cardiac injury; cardiac failure

Effects on the Blood

RFR exposure can cause morphologic changes in blood readily seen via microscopic examination of peripheral blood samples. Two recent studies documented the formation of erythrocyte aggregates (Havas, 2013) and erythrocyte aggregates and echinocyte formation upon human exposure to 4G-LTE smart phone radiation (microwaves) (Rubik, 2014). One study investigated the effect of cell phone radiation on the peripheral blood of ten human subjects (Rubik, 2014). Exposure to radiation from a cell phone for two consecutive 45-minute periods caused two types of effects: initially increased stickiness of peripheral red blood cells and rouleaux formation (rolls of stacked red blood cells) and subsequently formation of echinocytes (spiky red blood cells).

Similar red blood cell changes have been described in peripheral blood of COVID-19 patients (Lakhdari *et al.*, 2020). Rouleaux formation is observed in 1/3 of

COVID-19 patients, whereas spherocytes and echinocytes have been observed at variable levels. Rouleaux formation impedes the microcirculation. These blood changes may also impede oxygen transport, contributing to hypoxia, and increase the risk of thrombosis (Wagner *et al.*, 2013) and therefore stroke, which can manifest in COVID-19.

Additional blood effects have been observed in both humans and animals exposed to RFR. In 1977, a Russian study reported that rodents irradiated with 5 - 8 millimeter waves (60 - 37 GHz) at 1mW/cm² for 15 minutes/day over 60 days developed hemodynamic disorders, suppressed red blood cell formation, reduced hemoglobin, and an inhibition of oxygen utilization (oxidative phosphorylation by the mitochondria) (Zalyubovskaya, 1977). In 1978, a 3-year Russian study on 72 engineers exposed to millimeter wave (5G RFR) generators emitting at 1 mW/cm² or less showed a decrease in their hemoglobin levels and numbers of red blood cells, and a tendency toward hypercoagulation,

whereas a control group showed no changes (Zalyubovskaya and Kiselev, 1978). Such deleterious hematologic effects from RFR exposure may also contribute to the development of hypoxia and blood clotting observed in COVID-19 patients.

It has been proposed that the SARS-CoV-2 virus attacks erythrocytes and causes degradation of hemoglobin (Cavezzi et al., 2020). Viral proteins may attack the 1-beta chain of hemoglobin and capture the porphyrin, along with other proteins from the virus catalyzing the dissociation of iron from heme (Wenzhong and Li, 2020). In principal this would reduce the number of functional erythrocytes and cause the release of free iron ions that could cause oxidative stress, tissue damage, and hypoxia. With hemoglobin partially destroyed and lung tissue damaged by inflammation, patients would be less able to exchange CO₂ and O₂, and would become oxygen depleted. In fact some COVID-19 patients show reduced hemoglobin levels, measuring 7.1 g/L and even as low as 5.9 g/L in severe cases (Lippi and Mattiuzzi, 2020). Clinical studies of almost 100 patients from Wuhan revealed that the hemoglobin levels in the blood of most patients infected with SARS-CoV-2 are significantly lowered resulting in compromised delivery of oxygen to tissues and organs (Chen et al., 2020). In a meta-analysis of 4 studies with a total of 1210 patients and 224 with severe disease, hemoglobin values were reduced in COVID-19 patients with severe disease compared to those with milder forms (Lippi and Mattiuzzi, 2020). In another study on 601 COVID-19 patients, 14.7% of anemic COVID-19 ICU patients and 9% of non-ICU COVID-19 patients had autoimmune hemolytic anemia (Algassin et al., 2020). In patients with severe COVID-19 disease, decreased hemoglobin along with elevated erythrocyte sedimentation rate, C-reactive protein, lactate dehydrogenase, albumin (Ghahramani et al., 2020), serum ferritin (Cheng et al., 2020), and low oxygen saturation (Tobin et al., 2020) provide additional support for this hypothesis. In addition, packed red blood cell transfusion may promote recovery of COVID-19 patients with acute respiratory failure (Ejigu et al., 2020).

In short, both RFR exposure and COVID-19 can cause deleterious effects on red blood cells and reduced hemoglobin levels contributing to hypoxia in COVID-19. Endothelial injury may also contribute to hypoxia and many of the vascular complications seen in COVID-19 (Varga et al., 2020), discussed in the next section.

Oxidative Stress

Oxidative stress is a nonspecific pathological condition reflecting an imbalance between an increased production of ROS and an inability of the organism to detoxify the ROS or to repair the damage they cause to

biomolecules and tissues (Betteridge, 2000). Oxidative stress can disrupt cell signaling, cause the formation of stress proteins, and generate free radicals, which are highly reactive and can cause DNA damage.

SARS-CoV-2 inhibits intrinsic pathways designed to reduce ROS levels, thereby increasing morbidity. Immune dysregulation, i.e. the upregulation of interleukin (IL)-6 and tumor necrosis factor α (TNF- α) (Giamarellos-Bourboulis et al., 2020) and suppression of interferon α and interferon β (IFN- α , IFN- β) (Hadjadj et al., 2020) has been identified in the cytokine storm accompanying severe COVID-19 infections and generates oxidative stress (Cecchini and Cecchini, 2020). Oxidative stress and mitochondrial dysfunction may further perpetuate the cytokine storm, worsening tissue damage, and increasing the risk of severe illness and death.

Similarly low-level RFR generates ROS in cells that cause oxidative damage. In fact, oxidative stress is considered as one of the primary mechanisms in which RFR exposure causes cellular damage. Among 100 currently available peer-reviewed studies investigating oxidative effects of low-intensity RFR, 93 studies confirmed that RFR induces oxidative effects in biological systems (Yakymenko et al., 2015). RFR is an oxidative agent with a high pathogenic potential especially when exposure is continuous (Dasdag and Akdag, 2016).

Oxidative stress is also an accepted mechanism causing endothelial damage (Higashi et al., 2009). This may manifest in patients with severe COVID-19 in addition to increasing the risk for blood clot formation and worsening hypoxemia (Cecchini and Cecchini, 2020). Low levels of glutathione, the master antioxidant, have been observed in a small group of COVID-19 patients, with the lowest level found in the most severe case (Polonikov, 2020). The finding of low glutathione levels in these patients further supports oxidative stress as a component of this disease (Polonikov, 2020). In fact, glutathione, the major source of sulfhydryl-based antioxidant activity in the human body may be pivotal in COVID-19 (Guloyan et al., 2020). Glutathione deficiency has been proposed as the most likely cause of serious manifestations in COVID-19 (Polonikov, 2020). The most common co-morbidities, hypertension (Marushchak et al., 2019); obesity (Choromanska et al., 2020); diabetes (Gordon-Strachan et al., 2018); and COPD (Marushchak et al., 2019)) support the concept that pre-existing conditions causing low levels of glutathione may work synergistically to create the "perfect storm" for both the respiratory and vascular complications of severe infection. Another paper citing two cases of COVID-19 pneumonia treated successfully with intravenous glutathione also supports this hypothesis (Horowitz et al. 2020).

Many studies report oxidative stress in humans exposed to RFR. Peraica *et al.* (2008) found diminished blood levels of glutathione in workers exposed to RFR from radar equipment (10 microW/cm² to 10 mW/cm²; 1.5 –10.9 GHz). Garaj-Vrhovac *et al.* (2011) studied bioeffects following exposure to non-thermal pulsed microwaves from marine radar (3 GHz, 5.5 GHz and 9.4 GHz) and reported reduced glutathione levels and increased malondialdehyde (marker for oxidative stress) in an occupationally exposed group (Garaj-Vrhovac *et al.*, 2011). Blood plasma of individuals residing near mobile phone base stations showed significantly reduced glutathione, catalase, and superoxide dismutase levels over unexposed controls (Zothansiam *et al.*, 2017). In a study on human exposure to RFR from cell phones, increased blood levels of lipid peroxide were reported while enzymatic activities of superoxide dismutase and glutathione peroxidase in the red blood cells decreased, indicating oxidative stress from cell phone exposure (Moustafa *et al.*, 2001).

In a study on rats exposed to 2450 MHz (wireless router frequency), oxidative stress was implicated in causing red blood cell lysis (hemolysis) (Hassan *et al.*, 2010). In another study, rats exposed to 945 MHz (base station frequency) at 3.67 W/m² for 7 hours/day, over 8 days, demonstrated low glutathione levels and increased malondialdehyde and superoxide dismutase enzyme activity, hallmarks for oxidative stress (Yurekli *et al.*, 2006).

There is a correlation between oxidative stress and thrombogenesis (Loscalzo, 2003). ROS can cause endothelial dysfunction and cellular damage. The endothelial lining of the vascular system contains ACE-2 receptors that are targeted by SARS-CoV-2. The resulting endotheliitis can cause luminal narrowing and result in diminished blood flow to downstream structures. Thrombi in arterial structures can further obstruct blood flow causing ischemia and/or infarcts in involved organs, including pulmonary emboli and strokes. Abnormal blood coagulation leading to micro-emboli was a recognized complication early in the history of COVID-19 (Tang *et al.*, 2020). Out of 184 ICU COVID-19 patients, 31% showed thrombotic complications (Klok *et al.*, 2020). Cardiovascular clotting events are a common cause of COVID-19 deaths (Bikdeli *et al.*, 2020). Pulmonary embolism, disseminated intravascular coagulation (DIC), liver, cardiac and renal failure have all been observed in COVID-19 patients (Zaim *et al.*, 2020).

Patients with the highest cardiovascular risk factors in COVID-19 include males, the elderly, diabetics, and obese and hypertensive patients. However, increased incidence of strokes in younger patients with COVID-19 has also been described (Yaghi *et al.*, 2020).

Oxidative stress is caused by RFR exposure and is known to be implicated in cardiovascular disease. Ubiquitous environmental exposure to RFR may contribute to cardiovascular disease by creating a chronic state of oxidative stress (Bandara and Weller, 2017). This would lead to oxidative damage to cellular constituents and alter signal transduction pathways. In addition, pulse-modulated RFR can cause oxidative injury in liver, lung, testis, and heart tissues mediated by lipid peroxidation, increased levels of NOx, and suppression of the antioxidant defense mechanism (Esmekaya *et al.*, 2011).

In summary, oxidative stress is a major component in the pathophysiology of COVID-19 as well as in cellular damage caused by RFR exposure. Similar effects are observed in both that are caused by increased free radical formation and glutathione deficiency.

The Immune Response

When SARS-CoV-2 first infects the human body, it attacks cells lining the nose, throat, and upper airway harboring an ACE-2 receptor. Once the virus gains access to a cell via its spike protein, it converts the cell into a self-replicating machine. In response to COVID-19 infection, both an immediate systemic innate immune response as well as a delayed adaptive response has been shown to occur (Cao, 2020). The virus can also cause a dysregulation of the immune response, particularly in the decreased production of T- lymphocytes (Qin *et al.*, 2020). Severe cases tend to have lower lymphocyte counts, higher leukocyte counts and neutrophil-lymphocyte ratios, as well as lower percentages of monocytes, eosinophils, and basophils (Qin *et al.*, 2020). Severe cases of COVID-19 show the greatest impairment in T- lymphocytes.

In comparison, low-level RFR studies on laboratory animals also show impaired immune function (McCree, 1980). Findings include physical alterations in immune cells, a degradation of immunological responses, inflammation, and tissue damage. Baranski (1971) exposed guinea pigs and rabbits to continuous or pulse-modulated 3,000 MHz microwaves at an average power density of 3.5 mW/cm² for 3 hours/day over 3 months and found nonthermal changes in lymphocyte counts, abnormalities in nuclear structure, and mitosis in the erythroblastic cell series in the bone marrow and in lymphoid cells in lymph nodes and spleen. Other investigators have shown diminished T-lymphocytes or suppressed immune function in animals exposed to RFR. Rabbits exposed to 2.1GHz at 5mW/cm² for 3 hours/day, 6 days/week, for 3 months, showed suppression of T-lymphocytes (Nageswari *et al.*, 1991). Rats exposed to 2.45 GHz and 9.7 GHz for 2 hours/day, 7 days/week, for 21 months showed a significant decrease in the levels of

lymphocytes and an increase in mortality at 25 months in the irradiated group (Adang *et al.*, 2009). Lymphocytes harvested from rabbits irradiated with 2.45 GHz for 23 hours/day for 6 months show a significant suppression in immune response to a mitogen (McRee *et al.*, 1980).

In the acute phase of COVID-19 infection, blood tests demonstrate elevated erythrocyte sedimentation rate (ESR), C-reactive protein, and other elevated inflammatory markers (Zhou *et al.*, 2020), typical for an innate immune response. Rapid viral replication can cause death of epithelial and endothelial cells and result in leaky blood vessels and pro-inflammatory cytokine release (Yang, 2020). Cytokines, proteins, peptides and proteoglycans that modulate the body's immune response, are modestly elevated in patients with mild-to-moderate disease severity (Upadhyay *et al.*, 2020). In those with severe disease, an uncontrolled release of pro-inflammatory cytokines--a cytokine storm--can occur. Cytokine storms originate from an imbalance in T-cell activation with dysregulated release of interleukin (IL)-6, IL-17, and other cytokines. Programmed cell death (apoptosis), ARDS, disseminated intravascular coagulopathy (DIC), and multi-organ system failure can all result from a cytokine storm and increase the risk of mortality.

By comparison, Soviet researchers found in the 1970s that RFR irradiation can damage the immune system of animals. Shandala (1977) exposed rats to 500 microW/cm² microwaves for 1 month, 7 hours per day, and found impaired immune competence and induction of autoimmune disease. Rats irradiated with 2.45 GHz at 500 microwatts/cm² for 7 hours daily for 30 days produced autoimmune reactions, and 100-500 microwatts/cm² produced persistent pathological immune reactions (Grigoriev *et al.*, 2010). Exposure to microwave radiation, even at low levels (100-500 microwatts/cm²), can impair immune function, causing physical alterations in the essential cells of the immune system and a degradation of immunologic responses (Grigoriev, 2012). Szabo *et al.* (2001) examined the effects of 61.2 GHz exposure on epidermal keratinocytes and found an increase in IL-1b, a pro-inflammatory cytokine. Makar *et al.* (2003) found that immunosuppressed mice irradiated 30 minutes/day for 3 days by 42.2 GHz showed increased levels of tumor necrosis factor-alpha, a cytokine produced by macrophages.

In short, COVID-19 can lead to immune dysregulation as well as cytokine storm. By comparison, exposure to low-level RFR as observed in animal studies can also compromise the immune system, with chronic daily exposure producing immunosuppression or immune dysregulation including hyperactivation.

Intracellular Calcium Levels

Low-level nonthermal RFR exposure leads to increased intracellular Ca²⁺ via the activation of voltage-gated calcium channels (Pall, 2013), which is considered to be one of the primary mechanisms of action of RFR on organisms. Intracellular Ca²⁺ is also essential for virus entry, replication, and release, and it has been reported that viruses hijack calcium channels and increase intracellular Ca²⁺ (Chen *et al.*, 2019). Even though direct evidence has not been reported, there is indirect evidence that increased intracellular Ca²⁺ may be involved in COVID-19. In a recent study, elderly hospitalized COVID-19 patients treated with calcium channel blockers (CCBs amlodipine or nifedipine) were more likely to survive and less likely to require intubation or mechanical ventilation than controls (Solaimanzadeh, 2020). Furthermore, CCB drugs strongly limit SARS-CoV-2 entry and infection in cultured epithelial lung cells (Straus *et al.*, 2020). CCBs also block the increase of intracellular Ca²⁺ caused by RFR exposure (Pall, 2013).

Intracellular Ca²⁺ is a ubiquitous second messenger involved in numerous biochemical processes. Increased intracellular Ca²⁺ is a significant factor in up-regulation of transcription nuclear factor κ B (NF- κ B) (Sen *et al.*, 1996), an important regulator of pro-inflammatory cytokine production as well as coagulation and thrombotic cascades. NF- κ B is hypothesized to be a key factor underlying severe clinical manifestations of COVID-19 (Do *et al.*, 2020).

In short, RFR exposure may enhance the infectivity of the virus by increasing intracellular Ca²⁺ that may also indirectly contribute to inflammatory processes and thrombosis.

Heart Disease and Arrhythmias

Cardiac arrhythmias are more commonly encountered in critically ill patients with COVID-19 (Atri *et al.*, 2020). The cause for arrhythmia in COVID-19 patients is multifactorial and includes cardiac and extra-cardiac processes (Dherange *et al.*, 2020). Direct infection of the heart muscle by SARS-CoV-19 causing myocarditis, myocardial ischemia caused by a variety of etiologies, and heart strain secondary to pulmonary or systemic hypertension can result in cardiac arrhythmia. Hypoxemia caused by diffuse pneumonia, ARDS, or extensive pulmonary emboli represent extra-cardiac causes of arrhythmia. Electrolyte imbalances, intravascular fluid imbalance, and side effects from pharmacologic regimens can also result in arrhythmias in COVID-19 patients. Patients admitted to the ICU have been shown to have a higher increase in cardiac arrhythmias, 16.5% in one study (Colon *et al.*, 2020).

Although no correlation between electromagnetic fields (EMFs) and arrhythmia in COVID-19 patients has been described in the literature, many ICUs are equipped with wireless patient monitoring equipment and communication devices producing a wide range of EMF pollution (Gokmen *et al.*, 2016).

COVID-19 patients commonly show increased levels of cardiac troponin, indicating damage to the heart muscle (Sandoval *et al.*, 2020). Cardiac damage has been associated with arrhythmias and increased mortality. Cardiac injury is thought to be more often secondary to pulmonary emboli and viral sepsis, but direct infection of the heart, i.e. myocarditis, can occur through direct viral binding to ACE-2 receptors on cardiac pericytes, affecting local and regional cardiac blood flow (Chen *et al.*, 2020).

Immune system activation along with alterations in the immune system may result in plaque instability, contributing to development of acute coronary events and cardiovascular disease in COVID-19.

Regarding RFR exposure bioeffects, in 1969 Christopher Dodge of the Biosciences Division, U.S. Naval Observatory in Washington DC, reviewed 54 papers and reported that RFR can adversely affects all major systems of the body, including impeding blood circulation; altering blood pressure and heart rate; affecting electrocardiograph readings; and causing chest pain and heart palpitations (Dodge, 1969). In the 1970s Glaser reviewed more than 2000 publications on RFR exposure bioeffects and concluded that microwave radiation can alter the ECG (electrocardiogram), cause chest pain, hypercoagulation, thrombosis, and hypertension in addition to myocardial infarction (Glaser, 1971; 1976). Seizures, convulsions, and alteration of the autonomic nervous system response (increased sympathetic stress response) have also been observed.

Since then many other researchers have concluded that RFR exposure can affect the cardiovascular system. Potekhina *et al.* (1992) found that certain frequencies (55 GHz; 73 GHz) caused pronounced arrhythmia. In 1997, a review reported that some investigators discovered cardiovascular changes including arrhythmias in humans from long-term low-level exposure to RFR including microwaves (Jauchem, 1997). However, the literature also shows some unconfirmed findings as well as some contradictory findings (Black and Heynick, 2003). Havas *et al.* (2010) reported that human subjects in a controlled, double-blinded study were hyper-reactive when exposed to 2.45 GHz, developing either an arrhythmia or tachycardia and up-regulation of the sympathetic nervous system, which is associated with the stress response. Saili *et al.*, (2015) found that exposure to Wi-Fi affects heart rhythm, blood pressure, and the efficacy of catecholamines on the cardiovascular

system, indicating that RFR can act directly and/or indirectly on the cardiovascular system. Most recently, Bandara and Weller (2017) present evidence that people who live near radar installations (millimeter waves: 5G frequencies) have a greater risk of developing cancer and experiencing heart attacks. Similarly, those occupationally exposed have a greater risk of coronary heart disease. Microwave radiation affects the heart, and some people are more vulnerable if they have an underlying heart abnormality (Cleary, 1969).

In short, both COVID-19 and RFR exposure can affect the heart and cardiovascular system, directly and/or indirectly.

Discussion

According to the CDC and epidemiology, there are multiple causal factors that underlie disease, including environmental factors and the health status of the host. Evidence from the literature summarized here suggests a connection between several adverse health effects of RFR exposure and the clinical course of COVID-19. The evidence indicates that RFR may weaken the host, exacerbate COVID-19 disease, and thereby worsen the pandemic.

This evidence presented here does not claim causation. Clearly COVID-19 occurs in regions with little wireless communication. In addition, the relative morbidity caused by RFR exposure in COVID-19 is unknown. The question of causation could be investigated in controlled laboratory experiments.

Human exposure to ambient RFR has significantly increased in 2020 as a side effect to the pandemic. Stay-at-home measures designed to reduce the spread of COVID-19 have inadvertently resulted in greater public exposure to RFR, as people carry out work and school related activities via wireless communication. Telemedicine creates another source of RFR exposure. Even hospital inpatients, particular ICU patients, experience increased RFR exposure as new monitoring devices utilize wireless communication systems that may exacerbate COVID-19 and other health disorders.

The bioeffects of RFR exposure are typically nonlinear rather than exhibiting the familiar linear dose-response effects from biochemicals. RFR bioeffects depend upon specific values of wave parameters including frequency, power density, exposure time, and modulation, as well as the history of exposure. Importantly, RFR bioeffects can involve “response windows” of specific parameters whereby extremely low level fields can have disproportionately detrimental effects (Blackman *et al.*, 1989). This nonlinearity of RFR bioeffects can result in biphasic responses such as immune suppression from one set of parameters, and

immune hyperactivation from another set of parameters, as described herein.

RFR is a widespread, yet often neglected, environmental stressor that can produce a wide range of adverse bioeffects. For decades, independent international research scientists have emphasized the health risks and cumulative damage caused by wireless radiation (Sage and Carpenter, 2012; Russell, 2018). Our findings here are consistent with a large body of established research.

Some of the reported results on bioeffects from RFR exposure seem inconsistent but they are not always true replications. There may be small differences in methods, including unreported details such as the history of exposure of the organisms, or non-uniform body exposure. Additionally, industry-sponsored studies tend to show less adverse bioeffects than studies conducted by independent researchers, suggesting industry bias (Huss *et al.*, 2007). Yet studies employing real-life exposures from commercially available devices display high consistency in showing adverse effects (Panagopoulos, 2019). In gathering papers and examining existing data in this study, we looked for outcomes providing evidence to support a connection between the bioeffects of RFR exposure and COVID-19. We did not make an exhaustive search or attempt to weigh the evidence. The RFR exposure literature is extensive and currently contains over 30,000 research reports dating back several decades.

The telecommunication industry claims that 5G is safe because it complies with current RFR exposure guidelines. However, these guidelines were established in 1996, are antiquated, and are not safety standards. No scientific analyses of the health effects of 5G have been done, and none are currently planned by the industry. 5G networks would expose the public to RFR at an unprecedented scale. With the planned “internet of things,” the entire environment of our planet will be drastically changed by unnatural, digitally pulse-modulated microwaves and millimeter waves with power densities trillions of times above the natural background. The long-term effects of this global experiment on humans and the biosphere are unknown.

When a course of action raises threats of harm to human health, precautionary measures should be taken, even if clear causal relationships are not yet fully established. Therefore, we must apply the Precautionary Principle (Kriebel *et al.*, 2001) regarding wireless 5G. The authors urge policymakers to execute an immediate worldwide moratorium on wireless 5G infrastructure until its safety can be assured.

Several unresolved safety issues must be addressed before wireless 5G is further implemented. Questions have been raised about 60 GHz, a key 5G frequency planned for extensive use that is a resonant frequency of

the oxygen molecule (Tretyakov *et al.*, 2005). It is possible that adverse bioeffects might ensue from oxygen absorption of 60 GHz. Bioeffects from prolonged RFR exposure of the whole body need to be investigated in animal and human studies, and long-term exposure guidelines need to be considered. Independent scientists need to conduct concerted research to determine, once and for all, the biological effects of real-world exposure to RFR frequencies carrying digitally pulsed signals. Testing could also include real-life exposures to multiple toxins (chemical and biological) (Kostoff *et al.*, 2020). Environmental impact assessments are also needed. Once we understand the long-term biological effects of wireless 5G, we can set clear safety standards of public exposure limits and design an appropriate strategy for safe deployment.

Conclusion

We conclude that RFR and, in particular, 5G, which involves densification of 4G, has exacerbated the COVID-19 pandemic by weakening host immunity and increasing SARS-CoV-2 virulence by (1) causing morphologic changes in erythrocytes including echinocyte and rouleaux formation that may be contributing to hypercoagulation; (2) impairing microcirculation and reducing erythrocyte and hemoglobin levels exacerbating hypoxia; (3) amplifying immune dysfunction, including immunosuppression, autoimmunity, and hyperinflammation; (4) increasing cellular oxidative stress and the production of free radicals exacerbating vascular injury and organ damage; (5) augmenting intracellular Ca^{2+} essential for viral entry, replication, and release, in addition to promoting pro-inflammatory pathways; and (6) worsening heart arrhythmias and cardiac disorders. In short, wireless communication radiation is a ubiquitous environmental stressor, and evidence presented here suggests that it is a contributing factor in the COVID-19 pandemic.

This is the first scientific paper documenting a link between RFR emitted by wireless communication devices and COVID-19. Healthcare workers and policymakers should consider RFR as an environmental cofactor exacerbating the COVID-19 pandemic. Methods for reducing exposure to RFR should be provided to all patients and the general population.

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Author Contribution

Both authors made a substantial intellectual contribution to the work. Beverly Rubik searched and examined the RFR exposure literature and wrote most of the initial draft. Robert Brown contributed much of the material on COVID-19 and contributed to writing and editing the manuscript.

Author Disclosure

The authors declare that they have no conflicts of interest in preparing and publishing this manuscript. No competing financial interests exist.

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Gores, Alanna

From: larjdyng@olypen.com
Sent: Monday, March 15, 2021 8:41 AM
To: Gores, Alanna
Cc: Dean&Judy
Subject: 3/15/21 RE:Charter Review Commission (CRC) recommendation for EMF related Franchise Agreements

ATTN: Clallam County Board of Commissioners

I agree with/support the CRC's recommendation that our County needs to ensure ANY franchise associated with new radio frequency rf/EMF) devices or using micro/millimeter range wavelength/frequencies must provide scientific studies consistent with NEPA.

Many jurisdictions - domestic and international - have developed such requirements to ensure protections for human and environmental health and safety.

Thank you for your consideration.

Judy Larson
1070 W Palo Verde Loop
Sequim,WA 98382

P.S. The 3/14/21 PDN does not clearly state that your work session will cover this.

Gores, Alanna

From: Jane Hielman <sunsetswestcoop@gmail.com>
Sent: Sunday, March 14, 2021 7:29 PM
To: Gores, Alanna
Subject: Randy Johnson, Bill Peach, Mark Ozias

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

Clallam County Commissioners

Please consider having at least two Public Hearings, to discuss the Charter Review Commission Recommendations, in the evening, so “working people” can participate more readily?

Also, please consider the purchase of the tiny piece of land allowing walking access to the West Park from Clallam Bay residential area. It is of great value to our population and the Lion's Club who built the access path to the beach.

Jane Hielman

Chair for the Planning Commission and
President to the Chamber of Commerce Clallam Bay/Sekiu

16795 Hwy 112
Clallam Bay WA 98326
1 (360) 963 2189
www.sunsetswestcoop.weebly.com

Gores, Alanna

From: Mary Margaret Doherty <mmdoherty441@gmail.com>
Sent: Sunday, March 14, 2021 11:43 PM
To: Gores, Alanna
Subject: Request to BOCC

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

Dear County Commissioners,

The idea of hearings for gathering public opinion around the CRC Recommendations is seemingly defeated by offering hearings when citizens are more likely to be employed and unable to attend. I urge you to hold at least one session in the evening to increase citizen participation by access to broaden the voice and input you receive on these important ideas.

Thank you for listening.

Peace, Mary Doherty

Gores, Alanna

From: Tree Stokan <treejstokan@gmail.com>
Sent: Sunday, March 14, 2021 5:40 PM
To: Ozias, Mark; Johnson, Randy; Peach, Bill
Cc: Gores, Alanna
Subject: We need to have at least two Charter Review Commission Public Hearings in the evening, please!

Hello BOCC Commissioners Mark Ozias, Randy Johnson and Bill Peach,

In reviewing tomorrow's (March 15) BOCC work session agenda and the proposed times for Public Hearings for the Charter Review Recommendations, I am noting that there are no options for working people to easily participate.

April 6, 12, 13, and 19 are two Mondays and two Tuesdays at either 10:30 AM or 1 PM. I realize that these times and dates are consistent with your work schedules.

However, the goal for these Public Hearings should really be to provide ample opportunity for all residents of Clallam County, including working individuals, to participate on the issues that are important to them.

I am urging the BOCC to consider having two evening Public Hearings, with an opportunity for working people to reading participate. Two Recommendations could be discussed at one evening Hearing and the two (or three) Recommendations could be discussed at the other. I believe that one of the Recommendations (DCD) is going to be discussed at a later time?

I would suggest 6 PM, which was the typical meeting time that the 2020 Charter Review Commission met.

I trust that your goal in serving the needs of the public and our county would include making participation in Public Hearings accessible to all members of our community, including working people.

Thank you,
Therese Stokan
Former 2020 Charter Review Commissioner, District 3

Gores, Alanna

From: Rose Marschall <rosemarschall@gmail.com>
Sent: Monday, March 15, 2021 12:52 PM
To: Gores, Alanna
Subject: Charter Review Commission

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

3/15/21

Dear Commission,

I highly recommend that you offer as PRIORITY evening meetings so working people can attend them. Your second time for meeting should be during the day. This is the right and respectable way to have your meetings, so a higher percentage of people can attend.

Thank you.

Marvelous Monday to you,

Rose Marschall

Gores, Alanna

From: Tree Stokan <treejstokan@gmail.com>
Sent: Monday, March 15, 2021 12:19 PM
To: Ozias, Mark; Johnson, Randy; Peach, Bill; Stanley, Elizabeth
Cc: Gores, Alanna
Subject: Re: 5g Court-Opinion.pdf - Attorney Stephen Díaz Gavin - is willing to consider a meeting with BOCC, on issue of NEPA, as was addressed in this case....

***In the next two weeks, there is only an 8-hour difference (instead of 9) between Central Europe Time and Pacific Daylight Time, so it would be a particularly good time for Attorney Gavin to participate in a meeting with you.

Next Monday, March 22, Attorney Gavin (note spelling correction) is available in the AM, if you want to arrange a meeting, or maybe the following Monday, March 29.

After that, we can still check his availability.

Thanks,
Therese

Sent from my iPhone

> On Mar 15, 2021, at 11:49 AM, Tree Stokan <treejstokan@gmail.com> wrote:
>
> Hello Clallam County Commissioners Mark Ozias, Randy Johnson and Bill Peach, and Attorney Elizabeth Stanley,
>
> First, I want to thank you and Alanna Gores for adding the additional early evening Public Hearings, for discussion of the 2020 Charter Review Commission Recommendations. I am sure that people who work the day shift and students will appreciate that effort in making the Public Hearings more accessible.
>
> Next, I was wondering if you had made a decision about inviting Attorney Stephen Díaz Gaven to attend/participate in a BOCC meeting, either with a presentation and/or Q&A session, regarding the case that he led, which successfully invoked NEPA (the National Environmental Protection Act). I am including the PDF, in this email.
>
> Attorney Gaven currently has a client in Europe, and he is staying overseas in the next few months. He is willing to participate in a meeting with the BOCC, and 9 AM might be the best time, on a Monday, (or other morning) or a little later. He is 9 hours ahead of us.
>
> Some of the people who have been working on the CRC Recommendation regarding Franchises/NEPA ...and others in the community, would be willing to pay the speakers fee to Attorney Gaven, if the county could not. We don't have a price yet, but I am fairly certain that we could find people willing to contribute to this. Perhaps a 15-30 minute session could be considered?
>
> Because the Public Hearings are approaching, it might be good to try to schedule Attorney Gaven soon, if BOCC agrees. This is a complex issue and an attorney, who specializing in this area, might help us to better understand NEPA and it's legal implications.
>
> Please let me know your thoughts and I will connect you by e-mail/provide a phone number, etc.
>
> Thank you,

> Therese Stokan
> ...served on 2020 Charter Review Commission, representing District 3
>
> <5g Court-Opinion.pdf>
>
>
> Sent from my iPhone

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued March 15, 2019

Decided August 9, 2019

No. 18-1129

UNITED KEETOOWAH BAND OF CHEROKEE INDIANS IN
OKLAHOMA, INDIVIDUALLY AND ON BEHALF OF ALL OTHER
NATIVE AMERICAN INDIAN TRIBES AND TRIBAL
ORGANIZATIONS, ET AL.,
PETITIONERS

v.

FEDERAL COMMUNICATIONS COMMISSION AND UNITED
STATES OF AMERICA,
RESPONDENTS

NATIONAL ASSOCIATION OF TRIBAL HISTORIC PRESERVATION
OFFICERS, ET AL.,
INTERVENORS

Consolidated with 18-1135, 18-1148, 18-1159, 18-1184

On Petitions for Review of an Order of
the Federal Communications Commission

Stephen Diaz Gavin argued the cause for petitioners United Keetoowah Band of Cherokee Indians in Oklahoma, et al., and supporting intervenors. With him on the briefs were *J. Scott Sypolt*, *Joel D. Bertocchi*, *Joseph H. Webster*, *F. Michael*

Willis, Andrew Jay Schwartzman, James T. Graves, and Elizabeth S. Merritt. Angela J. Campbell entered an appearance.

Sharon Buccino argued the cause for petitioner Natural Resources Defense Council and intervenor Edward B. Myers. With her on the briefs was *Edward B. Myers*.

Natalie A. Landreth argued the cause for petitioners Blackfeet Tribe, et al. With her on the briefs were *Wesley J. Furlong, Joel West Williams, Troy A. Eid, Jennifer H. Weddle, and Heather D. Thompson*.

Jacob M. Lewis, Associate General Counsel, Federal Communications Commission, argued the cause for respondents. With him on the brief were *Jeffrey Bossert Clark*, Assistant Attorney General, U.S. Department of Justice, *Eric A. Grant*, Deputy Assistant Attorney General, *Andrew C. Mergen* and *Allen M. Brabender*, Attorneys, *Thomas M. Johnson Jr.*, General Counsel, Federal Communications Commission, *David M. Gossett*, Deputy General Counsel, and *C. Grey Pash Jr.*, Counsel. *Jonathan H. Laskin* and *Robert B. Nicholson*, Attorneys, U.S. Department of Justice, and *Richard K. Welch*, Deputy Associate General Counsel, Federal Communications Commission, entered appearances.

Joshua Turner argued the cause for intervenors in support of respondents. With him on the brief were *Christopher J. Wright* and *E. Austin Bonner*.

Before: TATEL and PILLARD, *Circuit Judges*, and EDWARDS, *Senior Circuit Judge*.

Opinion for the Court filed by *Circuit Judge PILLARD*.

PILLARD, *Circuit Judge*: Cellular wireless services, including telephone and other forms of wireless data transmission, depend on facilities that transmit their radio signals on bands of electromagnetic spectrum. The Federal Communications Commission (FCC or Commission) has exclusive control over the spectrum, and wireless providers must obtain licenses from the FCC to transmit. Wireless service in the United States has mostly depended on large, “macrocell” radio towers to transmit cell signal, but companies offering the next generation of wireless service—known as 5G—are in the process of shifting to transmission via hundreds of thousands of densely spaced small wireless facilities, or “small cells.” As part of an effort to expedite the rollout of 5G service, the Commission has removed some regulatory requirements for the construction of wireless facilities. These petitions challenge one of the FCC’s orders paring back such regulations, *In re Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment (Second Report & Order) (Order)*, FCC 18-30, 2018 WL 1559856 (F.C.C.) (Mar. 30, 2018).

The *Order* exempted most small cell construction from two kinds of previously required review: historic-preservation review under the National Historic Preservation Act (NHPA) and environmental review under the National Environmental Policy Act (NEPA). Together, these reviews assess the effects of new construction on, among other things, sites of religious and cultural importance to federally recognized Indian Tribes. The *Order* also effectively reduced Tribes’ role in reviewing proposed construction of macrocell towers and other wireless facilities that remain subject to cultural and environmental review.

Three groups of petitioners challenge the *Order* as violating the NHPA, NEPA, and the Administrative Procedure

Act on several grounds: that its elimination of historic-preservation and environmental review of small cell construction was arbitrary and capricious, an unjustified policy reversal, and contrary to the NHPA and NEPA; that the changes to Tribes' role in reviewing new construction was arbitrary and capricious; that the Commission arbitrarily and capriciously failed to engage in meaningful consultations with Tribes in promulgating the *Order*; and that the *Order* itself required NEPA review.

We grant in part the petitions for review because the *Order* does not justify the Commission's determination that it was not in the public interest to require review of small cell deployments. In particular, the Commission failed to justify its confidence that small cell deployments pose little to no cognizable religious, cultural, or environmental risk, particularly given the vast number of proposed deployments and the reality that the *Order* will principally affect small cells that require new construction. The Commission accordingly did not, pursuant to its public interest authority, 47 U.S.C. § 319(d), adequately address possible harms of deregulation and benefits of environmental and historic-preservation review. The *Order's* deregulation of small cells is thus arbitrary and capricious. We do not reach the alternative objections to the elimination of review on small cell construction. We deny the petitions for review on the remaining grounds.

BACKGROUND

I. Statutory and Regulatory Background

A. National Historic Preservation Act (NHPA)

Congress enacted the NHPA to “foster conditions under which our modern society and our historic property can exist

in productive harmony” and “contribute to the preservation of nonfederally owned historic property and give maximum encouragement to organizations and individuals undertaking preservation by private means.” 54 U.S.C. § 300101(1), (4). As part of that mission, NHPA’s Section 106 requires federal agencies to “take into account the effect of” their “undertaking[s] on any historic property.” *Id.* § 306108.

Both “historic property” and “undertaking” have specific meanings under the statute. Historic properties include myriad monuments, buildings, and sites of historic importance, including “[p]roperty of traditional religious and cultural importance to an Indian tribe.” *Id.* §§ 302706, 300308. Insofar as Tribal heritage is concerned, the Section 106 process requires federal agencies to “consult with any Indian tribe . . . that attaches religious and cultural significance to” a historic property potentially affected by a federal undertaking. *Id.* §§ 302706, 306102. To count as “historic,” such properties need not be on Tribal land; in fact, they “are commonly located outside Tribal lands and may include Tribal burial grounds, land vistas, and other sites that Tribal Nations . . . regard as sacred or otherwise culturally significant.” *Order* ¶ 97. Only a federal “undertaking,” not a state or purely private one, triggers the Section 106 Tribal consultation process. A federal “undertaking,” as relevant here, is “a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including . . . those requiring a Federal permit, license, or approval.” 54 U.S.C. § 300320. We have construed the statute to mean that, for an action to be a federal undertaking, “only a ‘Federal permit, license or approval’ is required,” not necessarily federal funding. *CTIA-Wireless Ass’n v. FCC*, 466 F.3d 105, 112 (D.C. Cir. 2006).

The Section 106 process requires that an agency “consider the impacts of its undertaking” and consult various parties, not

that it necessarily “engage in any particular preservation activities.” *Id.* at 107 (quoting *Davis v. Latschar*, 202 F.3d 359, 370 (D.C. Cir. 2000)). The NHPA established an independent agency, the Advisory Council on Historic Preservation (Advisory Council), 54 U.S.C. § 304101, which is responsible for promulgating regulations “to govern the implementation of” Section 106, *id.* § 304108(a). Agencies must consult with the Advisory Council, State Historic Preservation Officers, and Tribal Historic Preservation Officers, the last of which adopt the responsibilities of State Historic Preservation Officers on Tribal lands. 54 U.S.C. §§ 302303, 302702; 36 C.F.R. §§ 800.3(c), 800.16(v)-(w) (defining State and Tribal Historic Preservation Officers).

The Advisory Council’s regulations authorize the use of alternatives to the ordinary Section 106 procedures, called “programmatic agreements.” 36 C.F.R. § 800.14(b). The Commission develops programmatic agreements in consultation with the Advisory Council, Tribes, and other interested parties, “to govern the implementation of a particular program or the resolution of adverse effects from certain complex project situations or multiple undertakings” in certain circumstances, such as when “effects on historic properties are similar and repetitive” or “effects on historic properties cannot be fully determined prior to approval of an undertaking.” *Id.* § 800.14(1)(i)-(ii). Tribes’ views must be taken into account where the agreement “has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe.” *Id.* § 800.14(b)(1)(i), (f). For instance, the Commission has consulted with Tribes to use programmatic agreements to exclude from individualized review entire categories of undertakings that are unlikely to affect historic properties. *See In re Nationwide Programmatic Agreement Regarding the Section 106 [NHPA] Review Process (Section 106 Agreement)*, 20 FCC Rcd. 1073, 1075 ¶ 2 (2004).

B. National Environmental Policy Act (NEPA)

Congress enacted NEPA to “encourage productive and enjoyable harmony between man and his environment” and “promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man,” among other purposes. 42 U.S.C. § 4321. Like the NHPA, NEPA mandates a review process that “does not dictate particular decisional outcomes, but ‘merely prohibits uninformed—rather than unwise—agency action.’” *Sierra Club v. U.S. Army Corps of Eng’rs*, 803 F.3d 31, 37 (D.C. Cir. 2015) (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 351 (1989)).

All “major Federal actions significantly affecting the quality of the human environment” trigger environmental review under NEPA, just as federal “undertakings” trigger historic preservation review under the NHPA. 42 U.S.C. § 4332(C). Major federal actions “include[] actions . . . which are potentially subject to Federal control and responsibility.” 40 C.F.R. § 1508.18. Under the Commission’s procedures implementing NEPA, if an action may significantly affect the environment, applicants must conduct a preliminary Environmental Assessment to help the Commission determine whether “the proposal will have a significant environmental impact upon the quality of the human environment,” and so perhaps necessitate a more detailed Environmental Impact Statement. 47 C.F.R. § 1.1308; *see also* 40 C.F.R. § 1508.9. If, after reviewing the Environmental Assessment, the Commission determines that the action will not have a significant environmental impact, it will make a “finding of no significant impact” and process the application “without further documentation of environmental effect.” 47 C.F.R. § 1.1308(d).

NEPA also has an analogue to the NHPA's Advisory Council. In enacting NEPA, Congress established the Council on Environmental Quality, in the Executive Office of the President, to oversee implementation of NEPA across the entire federal government. 42 U.S.C. §§ 4342, 4344. With the endorsement of the Council on Environmental Quality and by following a series of mandated procedures, agencies can establish "categorical exclusions" for federal actions that require neither an Environmental Assessment nor an Environmental Impact Statement. 40 C.F.R. § 1508.4. Categorical exclusions are appropriate for "a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency." *Id.* "Categorical exclusions are not exemptions or waivers of NEPA review; they are simply one type of NEPA review." Council on Environmental Quality, *Memorandum for Heads of Federal Dep'ts and Agencies: Establishing, Applying & Revising Categorical Exclusions under [NEPA]* (Categorical Exclusion Memo) 2 (2010).

C. Legal Framework for Wireless Infrastructure

The Communications Act of 1934 established the FCC to make available a "rapid, efficient . . . wire and radio communication service with adequate facilities at reasonable charges." 47 U.S.C. § 151. In licensing use of the spectrum, the Commission is tasked with promoting "the development and rapid deployment of new technologies, products and services for the benefit of the public . . . without administrative or judicial delays," *id.* § 309, and "maintain[ing] the control of the United States over all the channels of radio transmission," *id.* § 301.

The Commission generally does not require construction permits before private parties can build wireless facilities. Congress largely eliminated the FCC's site-specific construction permits in 1982, and the Commission has since required construction permits only where it finds that the public interest would be served by such permitting. *See* Pub. L. 97-259, 96 Stat. 1087, § 119 (1982) (codified at 47 U.S.C. § 319(d)). It has not made such a finding for the wireless facilities at issue here.

The FCC does, however, require licensing of the spectrum used by wireless small cells. It does so by issuing geographic area licenses, which allow wireless providers to operate on certain frequency bands in a wide geographic area. *See* 47 U.S.C. § 309(j). Those licenses authorize using spectrum rather than building wireless facilities, but they necessarily contemplate facility construction. They have coverage requirements—for instance, one type of geographic area license required licensees to provide service to at least 40% of the population in their geographic service area by June 2013. *See* 47 C.F.R. § 27.14(h). If they fail to meet the coverage requirements, they can be stripped of authority to operate for the license's full term or serve part of its geographic area, and they “may be subject to enforcement action, including forfeitures.” *Id.* The Commission also exercises continuing authority to inspect radio installations to ascertain their compliance with any and all applicable laws, whether or not the licensee itself constructed those installations. *See* 47 U.S.C. § 303(n); 47 C.F.R. § 1.9020(c)(5).

The Commission has not identified any period since the enactment of the NHPA (in 1966) and NEPA (in 1970) when it did not require historic-preservation and environmental review of wireless facilities. After Congress eliminated the construction permit requirement, the Commission for a time

required NEPA and NHPA review of facilities before it granted their service licenses. *See, e.g., In re Amendment of Envtl. Rules in Response to New Regulations Issued by [CEQ]*, FCC 85-626, 1986 WL 292182, at *5 ¶ 18 (F.C.C.) (Mar. 26, 1986) (requiring review “during the period prior to grant of a station license”); *id.* at *8 App’x ¶ 7 (requiring NEPA review on “[f]acilities that will affect districts, sites, buildings, structures or objects . . . that are listed in the National Register of Historic Places or are eligible for listing,” which includes property of religious or cultural significance to Indian Tribes, 54 U.S.C. § 302706(a)). In 1990, the Commission shifted review from the licensing stage to the construction stage by establishing a “limited approval authority” over construction of wireless facilities. *In re Amendment of Envtl. Rules (1990 Order)*, 5 FCC Rcd. 2942 (1990). Limited approval authority required that, “where construction of a Commission-regulated radio communications facility is permitted without prior Commission authorization (*i.e.*, without a construction permit), the licensee must nonetheless comply with historic preservation and environmental review procedures.” *Order* ¶ 51; *see also* 47 C.F.R. § 1.1312. The authority was “limited” in that it allowed “the Commission [to] exercise[] control over deployment solely to conduct federal historic and environmental review.” *Resp’t Br.* 12. The Commission emphasized that shifting review to the pre-construction stage served a practical function: Before it had established its limited approval authority, the FCC’s rules “provide[d] that any required submission of [Environmental Assessments] and any required Commission environmental review take place at the licensing stage rather than prior to construction,” with the result that “[a]pplicants who ha[d] already constructed their facilities” could “subsequently be denied licenses on environmental grounds.” *1990 Order* 2942 ¶ 3. The Commission explained that it continued to require review “to ensure that the Commission fully complies with Federal

environmental laws in connection with facilities that do not require pre-construction authorization.” *Id.* ¶ 4. It announced the changes as “necessary to ensure that the Commission addresses environmental issues early enough in the licensing process to ensure that it fully meets its obligations under Federal environmental laws,” including NEPA and the NHPA. *Id.* at 2943 ¶ 9 & n.16.

The Commission has never required individualized review of each separate facility, however. A long series of regulations, programmatic agreements, and categorical exclusions has aggregated facilities for joint consideration and focused NHPA and NEPA review on those deployments most likely to have cultural or environmental effects. For instance, most collocations—deployments on existing structures—are excluded from individualized review under NHPA programmatic agreements and NEPA categorical exclusions. *See In re Implementation of the National Environmental Policy Act of 1969 (Implementation of NEPA)*, 49 F.C.C.2d 1313, 1319-20 (1974); *Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (Collocation Agreement)*, 47 C.F.R. pt.1, app. B (2001); *Section 106 Agreement*, 20 FCC Rcd. at 1075 ¶ 2; *Nationwide Programmatic Agreement for Review Under the National Historic Preservation Act*, 70 Fed. Reg. 556 (2005); *In re Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies (Improving Wireless Facilities Siting Policies)*, 29 FCC Rcd. 12865, 12870 ¶ 11 (2014); 47 C.F.R. § 1.1320(b)(4). Categorical exclusions go through notice and comment, 40 C.F.R. § 1507.3; include impact findings, *Categorical Exclusion Memo 9*; require the Council on Environmental Quality to approve them as consistent with its regulations and NEPA, 40 C.F.R. § 1507.3(a); and reserve rights to interested parties to request further review in the event that atypical adverse effects do occur, 47 C.F.R. § 1.1307(c), (d). At the same time, they

achieve enormous efficiencies in the review processes for classes of actions or undertakings anticipated to have minimal or no adverse cultural or environmental effects.

Since 2004, the FCC has been conducting NHPA review in accordance with a broad programmatic agreement, the *Section 106 Agreement*, 20 FCC Rcd. 1073. Interested parties developed that agreement to “tailor the Section 106 review in the communications context in order to improve compliance and streamline the review process for construction of towers and other Commission undertakings, while at the same time advancing and preserving the goal of the NHPA to protect historic properties, including historic properties to which federally recognized Indian tribes . . . attach religious and cultural significance.” *Id.* at 1074-75 ¶ 1. In the *Section 106 Agreement*, the Commission adopted “procedures for participation of federally recognized Indian tribes,” among other changes. *Id.* at 1075 ¶ 2. It also formalized the use of the electronic Tower Construction Notification System, which notifies Tribes of proposed wireless construction in areas they have identified as containing properties of religious and cultural significance, and allows them to give applicants information on the potential effects of proposed construction. *Id.* at 1106-10 ¶¶ 89-100.

II. Order Under Review

The challenged *Order* eliminated NHPA and NEPA review on small cells that meet certain size and other specifications, based on the Commission’s conclusion that such review was not statutorily required and would impede the advance of 5G networks, and that its costs outweighed any benefits. *See Order* ¶¶ 36-45. The *Order* also altered Tribal involvement in those Section 106 reviews that are still conducted on wireless facilities that were not encompassed in

the small cell exemption. *See id.* ¶¶ 96-130. Two of the five Commissioners dissented. *See Order*, Dissenting Statement of Comm’r Mignon L. Clyburn; Dissenting Statement of Comm’r Jessica Rosenworcel.

We consolidated five timely petitions for review of the *Order* into this action. They challenge the Commission’s exclusion of small cell construction from NHPA and NEPA review, its changes to Tribal involvement in Section 106 review, and its promulgation of the *Order* itself. Three groups of petitioners and intervenors, each designated here by the name of its lead petitioner, challenge the *Order*. United Keetoowah Band of Cherokee Indians (Keetoowah) represents a group of Tribes and historic preservation organizations. Blackfeet Tribe (Blackfeet) represents another group of Tribes and the Native American Rights Fund. The Natural Resources Defense Council (NRDC) represents itself and Maryland citizen Edward B. Myers. Two wireless industry groups (jointly, CTIA) intervened to defend the order alongside the FCC.

ANALYSIS

We set aside an agency order only if it is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). Agencies’ obligation to engage in “reasoned decisionmaking” means that “[n]ot only must an agency’s decreed result be within the scope of its lawful authority, but the process by which it reaches that result must be logical and rational.” *Michigan v. EPA*, 135 S. Ct. 2699, 2706 (2015) (quoting *Allentown Mack Sales & Serv., Inc. v. NLRB*, 522 U.S. 359, 374 (1998)). Although “a court is not to substitute its judgment for that of the agency,” the arbitrary and capricious standard demands that the agency “examine the relevant data and articulate a satisfactory

explanation for its action including a rational connection between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal quotation marks omitted). An agency action is arbitrary and capricious where the agency has “entirely failed to consider an important aspect of the problem” or “offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Id.*

The FCC is entitled to deference to its reasonable interpretations of ambiguous provisions of the Communications Act. *See Chevron, USA, Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 844-45 (1984). We owe no deference to the FCC’s interpretations of the NHPA or NEPA, which are primarily administered by the Advisory Council, *see McMillan Park Comm. v. Nat’l Capital Planning Comm’n*, 968 F.2d 1283, 1287-88 (D.C. Cir. 1992), and the Council on Environmental Quality, *see Grand Canyon Tr. v. FAA*, 290 F.3d 339, 341 (D.C. Cir. 2002) (as amended Aug. 27, 2002), respectively.

I. Eliminating NHPA and NEPA Review on Small Cells

The *Order* did not follow the processes for a programmatic agreement under the NHPA, a categorical exclusion from NEPA, or any other wholesale or aggregated form of review, but simply eliminated NHPA and NEPA review on most small cells by removing them from the FCC’s limited approval authority. Small cells had not previously been defined or regulated separately from macrocell towers. The Commission defines the small cells that its *Order* deregulates as wireless facilities that are not on Tribal lands, do not require antenna structure registration because they could not constitute a

menace to air navigation, do not result in human exposure to radiofrequency radiation in excess of applicable safety standards, and that are “small” per the following conditions:

(i) The facilities are mounted on structures 50 feet or less in height including their antennas . . . or the facilities are mounted on structures no more than 10 percent taller than other adjacent structures, or the facilities 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;

(ii) Each antenna associated with the deployment, excluding the associated equipment . . . is no more than three cubic feet in volume;

(iii) 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.

47 C.F.R. § 1.1312(e)(2). Small cells that meet those requirements are now outside the purview of the Commission’s limited approval authority, the mechanism by which it has required NHPA and NEPA review since 1990.

The Commission deregulated small cells as part of a broader effort to reduce regulations that the FCC says “are unnecessarily impeding deployment of wireless broadband networks” on which 5G service depends. *Order* ¶ 3. “Within the next few years,” the Commission explained, “5G networks . . . will make possible once-unimaginable advances, such as

self-driving cars and growth of the Internet of Things,” *i.e.* physical objects controllable over the internet. *Id.* ¶ 1. 5G networks “will increasingly need to rely on network densification,” which entails “the deployment of far more numerous, smaller, lower-powered base stations or nodes that are much more densely spaced.” *Id.* According to the Commission, rapid proliferation of hundreds of thousands of small cells would be hindered by the significant time and cost of NHPA and NEPA reviews, even as the benefits of such review—which it characterized as already minimal—would be negligible because small cells are “inherently unlikely to trigger environmental and historic preservation concerns.” *Id.* ¶ 92; *see also id.* ¶¶ 9, 11-16. It noted that the FCC’s baseline approach to environmental and historic-preservation review, which requires facility-specific review unless a programmatic agreement or categorical exclusion applies, “was developed when all or nearly all deployments involved large macrocell facilities and accordingly failed to consider both the relatively diminutive size of small wireless facilities and the proliferation of these facilities necessary for deployment of advanced wireless technologies.” *Id.* ¶ 9.

In the *Order*, the Commission asserts that federal law does not independently require such review. The only basis for treating small cell construction as either a federal undertaking triggering NHPA review or a major federal action triggering NEPA review was, the Commission says, the limited approval authority the Commission exercised over that construction—which the *Order* eliminated. *See Order* ¶¶ 58-59. The Commission reasons that removing small cell construction from its limited approval authority removes the “sufficient degree of federal involvement” necessary to render an undertaking or action “federal.” *Id.* ¶ 58. It now says its power to exercise limited approval authority over construction derives exclusively from its “public interest authority” under the

Communications Act, *see Order* ¶¶ 39, 53, 61, rather than from “its obligations under Federal environmental laws,” *1990 Order* at 2943 ¶ 9. In this context, the “public interest authority” refers to the FCC’s power to require pre-construction permits for wireless facilities if it “determines that the public interest, convenience, and necessity would be served by requiring such permits.” 47 U.S.C. § 319(d). While the Commission has never made such a determination for the category of facilities at issue here, it has previously interpreted the public interest authority “as allowing the Commission to require covered entities [not requiring preconstruction permits] to nonetheless comply with environmental and historic preservation processing requirements.” *Order* ¶ 53. In the *Order*, the Commission made a new determination that it was not in the public interest to require NHPA and NEPA review on small cells, so simply removed them from its limited approval authority.

Petitioners all argue that the FCC unlawfully excluded small cells from NHPA and NEPA review. They contend first that removing small cells from the FCC’s limited approval authority was arbitrary and capricious. *See* 5 U.S.C. § 706(2)(A). Keetoowah and the NRDC argue that the Commission failed to adequately consider the harms of massive deployment and to justify its decision to completely exempt small cells from review. Additionally, all petitioners argue that the NHPA and NEPA mandate review of small cell construction. They assert that the geographic licenses the Commission grants, which allow wireless companies to operate on spectrum, constitute sufficient federal control over wireless facility construction to make the construction a federal undertaking and a major federal action triggering review under those statutes. Keetoowah also contends that the exclusion violates the Administrative Procedure Act on various other grounds, including that it is an unjustified policy reversal. If

petitioners prevail on any one or more of those grounds, we must vacate the *Order*'s deregulation of small cells and remand to the FCC.

The Commission failed to justify its determination that it is not in the public interest to require review of small cell deployments. We therefore grant the petitions in part because the *Order*'s deregulation of small cells is arbitrary and capricious. The Commission did not adequately address the harms of deregulation or justify its portrayal of those harms as negligible. In light of its mischaracterization of small cells' footprint, the scale of the deployment it anticipates, the many expedients already in place for low-impact wireless construction, and the Commission's decades-long history of carefully tailored review, the FCC's characterization of the *Order* as consistent with its longstanding policy was not "logical and rational." *Michigan v. EPA*, 135 S. Ct. at 2706. Finally, the Commission did not satisfactorily consider the benefits of review.

First, the Commission inadequately justified its portrayal of deregulation's harms as negligible. The FCC partly based its public-interest conclusion on a picture of small cells that the record does not support. It described small cells as "materially different from the deployment of macrocells in terms of . . . the lower likelihood of impact on surrounding areas." *Order* ¶ 41. In its brief, the Commission sums up its explanation of the difference: "small cells are primarily pizza-box sized, lower-powered antennas that can be placed on existing structures." Resp't Br. 3; *see also Order* ¶¶ 66, 92. It likened small cells to small household items that operate on radiofrequency such as "consumer signal boosters [and] Wi-Fi routers," which do not undergo review. *Order* ¶ 66. Small cells are, to be sure, quite different from macrocells in many ways, but the Commission fails to address that small cells are typically *mounted* on much

bigger structures, and the *Order* is not limited to deployments on structures that already exist or are independently subject to review. Small cells deregulated under the *Order* can be “mounted on structures 50 feet or less in height including their antennas” or “mounted on structures no more than 10 percent taller than other adjacent structures.” 47 C.F.R. § 1.1312(e)(i). That makes them crucially different from the consumer signal boosters and Wi-Fi routers to which the FCC compares them.

The scale of the deployment the FCC seeks to facilitate, particularly given its exemption of small cells that require new construction, makes it impossible on this record to credit the claim that small cell deregulation will “leave little to no environmental footprint.” *Order* ¶ 41. The Commission anticipates that the needed “densification of small deployments over large geographic areas,” *id.*, could require 800,000 deployments by 2026, FCC, *Declaratory Ruling & Third Report & Order*, FCC 18-133 ¶ 126 (Sept. 26, 2018). Even if only twenty percent of small cells required new construction—as one wireless company estimates and the FCC highlights in its brief, *see* Resp’t Br. 54—that could entail as many as 160,000 densely spaced 50-foot towers (or 198-foot towers, as long as they are located near 180-foot adjacent structures). The Commission does not grapple with that possibility. Instead, it highlights the small cells that can be collocated without addressing the many thousands that cannot be.

As Keetoowah points out, the FCC “offers no analysis of the footprint of” the new towers on which small cells can be mounted, “what equipment will be used, what ongoing maintenance or security will be provided and how often towers will be updated or rebuilt.” Keetoowah Br. 15-16. Deployment of new small cells requires not only new construction but also wired infrastructure, such as electricity hookups, communications cables, and wired “backhaul,”

which connects the new antenna to the core network. *See, e.g., Comment of Sprint*, Joint Appendix (J.A.) 380 (describing process of deploying small cells); *Comment of the Cities of Bos., Mass., et al.*, J.A. 705-06 (describing the equipment associated with small cells), NRDC Br. Ex. A, Decl. of Warren Betts ¶¶ 11-12 (describing concerns about disruption “by the laying of cables and wires, by the maintenance they require, [and] by the sound of the maintenance vehicles” in otherwise tranquil areas, and concerns “that trees may be cut down or damaged by the construction of small cells”). Construction, connection, and maintenance may entail excavation and clearing of land. The Tribal Historic Preservation Officer for the Seminole Tribe of Florida expressed concern about effects of anticipated “additional related infrastructure, such as fencing, security, and access for periodic maintenance and troubleshooting.” Keetoowah Br. Add. 114, Decl. of Paul Backhouse, ¶ 28. While the Commission asserted that “deployment of small wireless facilities commonly (although not always) involves previously disturbed ground,” it eliminated review of small cells that will involve new ground disturbance without responding to concerns about such disturbance. *Order* ¶ 92; *see also, e.g., Comment of the Nat’l Cong. of Am. Indians, et al.* (NCAI), J.A. 430-31 (expressing concern about small cells that require ground disturbance); *Comment of the Cities of Bos., Mass., et al.*, J.A. 707 (“No explanation is offered by the Commission for its exclusion of any ground disturbance related conditions” in the draft *Order*).

The Commission also failed to assess the harms that can attend deployments that do not require new construction, particularly the cumulative harms from densification. While “Tribal Nations are most concerned with federal undertakings that disturb the ground and turn up dirt,” even “[c]ollocations can affect cultural and historical properties th[r]ough disturbing view sheds” because “[t]he cultural and spiritual

traditions of Tribal Nations across the United States frequently involve the uninterrupted view of a particular landscape, mountain range, or other view shed.” *Comment of NCAI*, J.A. 50. The FCC did not respond to historic-preservation commenters warning “that permanent, direct adverse effects will be more likely with small wireless facilities as in many cases they are proposed for installation on or in historic buildings,” and “these multi-site deployments have a greater potential to cause cumulative effects to historic properties, cluttering historic districts with multiple towers, antennae, and utility enclosures.” *Comment of Tex. Historical Comm’n*, J.A. 794; *see also, e.g., Ex Parte Commc’n of Thlopthlocco Tribal Town Tribal Historic Pres. Officer*, J.A. 690 (noting that the Commission did not discuss “the issue of multiple collocations on the same pole which cumulatively would exceed the volume restriction and would create an adverse impact”); *Comment of Ark. State Historic Pres. Officer*, J.A. 751 (“[A]lthough individual small cells are unlikely to adversely impact individual historic properties or districts, the FCC doesn’t address how the large scale, nationwide deployment of 5G and small cells facilities will cumulatively impact cultural and natural resources.”). The Commission noted that all facilities remain subject to its limits on radiofrequency exposure, *Order* ¶ 45, but failed to address concerns that it was speeding densification “without completing its investigation of . . . health effects of low-intensity radiofrequency radiation,” which it is currently reassessing. *Comment of BioInitiative Working Grp.*, J.A. 235.

The FCC does not reconcile its assertion that planned small cell densification does not warrant review because it will “leave little to no environmental footprint” with the *Order*’s principal deregulatory effect of eliminating review of precisely the new construction and other deployments that the Commission previously considered likely to pose cultural and

environmental risks. The Commission already had in place NEPA categorical exclusions and NHPA programmatic agreements covering most collocations—as well as other kinds of deployments unlikely to have cultural and environmental impacts. What the new *Order* accomplishes, then, is to sweep away the review the Commission had concluded should not be relinquished.

Since the 1970s, the Commission has explained that most collocations on existing towers or buildings are not “major” federal actions and therefore are not subject to NEPA review. *Implementation of NEPA*, 49 F.C.C.2d at 1319-20; 47 C.F.R. §§ 1.1301-1.1319. The FCC’s NEPA regulations limit environmental review to a small subset of actions likely to have significant environmental effects, *see* 47 C.F.R. § 1.1307, as well as those actions found through Section 106 review to have adverse effects on historic properties, *see id.* § 1.1307(a)(4). Before it promulgated the challenged rule, the Commission had further shrunk the category of actions that receive individualized NHPA or NEPA review by adopting programmatic agreements and categorical exclusions. In chronological order, it excluded most collocations from individualized review, *see Collocation Agreement*, 47 C.F.R. Pt.1, App. B; adopted “categories of undertakings that are excluded from the Section 106 process because they are unlikely by their nature to have an impact upon historic properties,” *Section 106 Agreement*, 20 FCC Rcd. at 1075 ¶ 2; excluded from individualized review new categories of wireless construction and modification unlikely to have historic preservation effects, *see Nationwide Programmatic Agreement for Review Under the National Historic Preservation Act*, 70 Fed. Reg. at 558; and, most recently, expanded NHPA and NEPA exclusions for collocations, *see Improving Wireless Facilities Siting Policies*, 29 FCC Rcd. at 12870 ¶ 11. In sum, the FCC had already streamlined and

minimized review of vast numbers of minor actions, focusing attention only on subcategories of deployments likely to have cultural or environmental effects.

Second, in sweeping away wholesale the review it had preserved for the small cell deployments most likely to be disruptive, the *Order* is not, as the FCC asserts, “consistent with the Commission’s treatment of small wireless facility deployments in other contexts,” but directly contrary to it. *Order* ¶ 42. We observe by way of example the Commission’s assertion that “under the Collocation [Agreement], the Commission already excludes” from NHPA review “many facilities that meet size limits similar to those” of small cells. *Id.* As the Commission sees it, the *Order* thus “builds upon the insight underlying these existing rules that small wireless facilities pose little or no risk of adverse environmental or historic preservation effects.” *Id.* But the *Collocation Agreement* exclusion was defined not just by size, but by other characteristics that minimized the likelihood of cultural harm. The section of the *Collocation Agreement* the FCC cites in fact only excludes from individualized NHPA review “small wireless antennas and associated equipment on building and non-tower structures that are outside of historic districts and are not historic properties,” which include property of religious and cultural importance to Tribes. *Collocation Agreement*, 47 C.F.R. Pt.1, App. B § VI (formatting altered); *see also* 54 U.S.C. §§ 300308, 302706. A different section of the *Collocation Agreement*, which did exempt certain collocations of small antennas in historic districts or on historic properties, likewise included numerous conditions to minimize effects on historic properties. An antenna could only be collocated on a historic property if, for example, “a member of the public, an Indian Tribe, a [State Historic Preservation Office] or the [Advisory] Council” had not complained “that the collocation ha[d] an adverse effect on one or more historic properties,”

Collocation Agreement, 47 C.F.R. Pt.1, App. B § VII(A)(6), and if the antenna was installed “using stealth techniques that match or complement the structure on which or within which it is deployed,” *id.* § VII(A)(2)(c), and “in a way that does not damage historic materials and permits removal of such facilities without damaging historic materials,” *id.* § VII(A)(4), among other conditions. After the *Order*, none of those limiting conditions applies. The insight of the *Collocation Agreement* was not that small cells by their nature “pose little or no risk of adverse environmental or historic preservation effects,” *Order* ¶ 42, but that small cells under certain carefully defined conditions pose little such risk.

Similarly, the FCC explains its “conclusion that, as a class, the nature of small wireless facility deployments appears to render them inherently unlikely to trigger environmental and historic preservation concerns” by reference to limiting criteria that it chose *not* to place on its small cell exemption. *Id.* ¶ 92. It notes, for example, that “deployment of small wireless facilities commonly (although not always) involves previously disturbed ground, where fewer concerns generally arise than on undisturbed ground,” and reiterates that “use of existing structures, where feasible, can both promote efficiency and avoid adverse impacts on the human environment.” *Id.* But the Commission decided not to limit the *Order*’s exemption only to facilities sited on previously disturbed ground, or those that are collocated on existing structures. It therefore fails to justify its conclusion that small cells “as a class” and by their “nature” are “inherently unlikely” to trigger concerns.

By ignoring the extent to which it had already streamlined review, the Commission also overstated the burdens of review. It said it could not “simply turn a blind eye to the reality that the mechanical application of [limited approval authority] requirements to each of [the] small deployments” necessary for

5G “would increase the burden of review both to regulated entities and the Commission by multiples of tens or hundreds.” *Id.* ¶ 65. As the preceding discussion of the *Collocation Agreement* illustrates, however, the FCC was not indiscriminately or “mechanic[ally]” requiring full NHPA and NEPA review for each individual small cell. The Commission fails to explain why the categorical exclusions and programmatic agreements in place did not already minimize unnecessary costs while preserving review for deployments with greater potential cultural and environmental impacts.

Third, given that only the most vulnerable cases were still subject to individualized NHPA or NEPA review, the Commission did not adequately address either the possible benefits of retaining review, or the potential for further streamlining review without eliminating it altogether. It dismissed the benefits of historic-preservation and environmental review in a two-sentence paragraph, describing most of the comments that highlight those benefits as “generalized” and the comments that point to specific benefits as “few.” *Id.* ¶ 78. Characterizing a concern as “generalized” without addressing that concern does not meet the standard of “reasoned decisionmaking.” *Michigan v. EPA*, 135 S. Ct. at 2706.

The Commission found that adverse effects are rare, but it considered neither the importance of the sites review does save, nor how that rarity depends on the very review it eliminates, which forestalled adverse effects that otherwise would have occurred. The FCC cited comments suggesting that only 0.3 or 0.4% of requests for Tribal review result in findings of adverse effects or possible adverse effects. *Order* ¶ 79. Based on the estimate of 800,000 small cell deployments, that could mean 3,200 adverse effects. The *Order* displayed no consideration of the importance of the 3,200 Tribal sites that might be saved

through review except to describe that benefit as “*de minimis* both individually and in the aggregate.” *Id.* As counsel for petitioner Blackfeet Tribe said at oral argument: “They may think that’s infinitesimal. To us, it means the world.” Oral Argument at 1:16:16-20. The Commission also did not address comments that “no adverse effects in 99% of tower deployments shows that the current system is working” because “[o]ften, after an applicant enters a location into” the Tower Construction Notification System, a Tribal representative “will notify the applicant of an issue and the applicant will choose a new location or resolve that effect,” which “gets counted as having no adverse effect.” *Comment of Nat’l Ass’n of Tribal Historic Pres. Officers*, J.A. 661. Other commenters agreed that “[t]he lack of significant impact should be a testament to the value of the review process in these instances, not negate its necessity.” *Comment of Tex. Historical Comm’n*, J.A. 794 (“In our experience, the vast majority of adverse effects for cell projects are resolved through sensitive design modifications, including stealth measures, modifying how equipment is attached if directly mounted to a historic building or structure, or relocation to an alternate site further removed from historic properties.”).

Similarly, the Commission dismissed the point that its own oversight deters adverse effects by describing comments to that effect as “generalized, and undercut by our conclusion that, as a class, the nature of small wireless facility deployments appears to render them inherently unlikely to trigger environmental and historic preservation concerns.” *Order* ¶ 92. For the reasons already explained, the FCC’s conclusion that small cells are inherently unlikely to trigger concerns is arbitrary and capricious, and describing comments as “generalized” does not excuse the agency of its obligation to consider those comments as part of reasoned decisionmaking.

We hold that the *Order*'s deregulation of small cells is arbitrary and capricious because its public-interest analysis did not meet the standard of reasoned decisionmaking. We therefore decide neither the alternative grounds for holding that the *Order* is arbitrary and capricious or otherwise violated the Administrative Procedure Act, nor the claim that small cell construction is a federal undertaking and a major federal action requiring NHPA and NEPA review.

II. Tribal Involvement in Section 106 Review

The *Order* also made three changes to Tribal involvement in the Section 106 review not eliminated by the *Order*, such as review of macrocells and small wireless facilities on Tribal land. The first two changes relate to two types of Tribal involvement that the Commission and the Advisory Council distinguish from one another: (a) government-to-government consultation between the agency and the Tribes, in which Tribes function in their governmental capacity, and (b) the "identification and evaluation phase of the Section 106 process when the agency or applicant is carrying out its duty to identify historic properties that may be significant to an Indian tribe." Advisory Council, *Consultation with Indian Tribes in the Section 106 Review Process: A Handbook* (Section 106 Handbook), J.A. 1015; see also FCC, *Voluntary Best Practices for Expediting the Process of Communications Tower and Antenna Siting Review Pursuant to Section 106 of the NHPA*, J.A. 933; *Order* ¶¶ 118-19.

Section 106 review comprises "four steps": "initiation, identification, assessment [or evaluation], and resolution." *Section 106 Handbook*, J.A. 1018. Government-to-government consultation is a background requirement of Section 106 review at every stage. See *id.* at J.A. 1014, 1018; Advisory Council, *Fees in the Section 106 Review Process*,

J.A. 913; 36 C.F.R. § 800.2(c)(2)(ii)(A) (consultation requires giving the interested Tribe “a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, . . . articulate its views on the undertaking’s effects on such properties, and participate in the resolution of adverse effects”). In the identification and evaluation period, however, applicants have often paid for expertise and assistance from Tribes acting “in a role similar to that of a consultant or contractor” such as by providing “specific information and documentation regarding the location, nature, and condition of individual sites” or even conducting surveys. *Section 106 Handbook*, J.A. 1015. The *Order* explains that identification and evaluation involves “activities undertaken after the initial determination that historic properties are likely to be located in the site vicinity,” and that it includes “monitoring and other activities directed toward completing the identification of historic properties as well as assessing and mitigating the project’s impacts on those properties.” *Order* ¶ 124.

The “initial determination” falls into the government-to-government consultation category. *See Section 106 Handbook*, J.A. 1021 (explaining that initiating contact with Tribes is part of the Commission’s “responsibilities to conduct government-to-government Consultation”). In practice, however, Tribes have been allowing applicants to contact them directly, in lieu of government-to-government consultation, to help make the initial determination. *See Section 106 Agreement*, 20 FCC Rcd. at 1108 ¶¶ 95-96; *Keetoowah Br.* 37. The *Section 106 Agreement* “expresses the ambition that this initial contact will lead to voluntary direct discussions through which applicants and tribes . . . will resolve questions involving the presence of relevant historic properties and effects on such properties to the tribe[s] . . . satisfaction without Commission involvement.” 20 FCC Rcd. at 1108 ¶ 97. But “if an applicant and an Indian

tribe . . . disagree regarding whether an undertaking will have an adverse effect on a historic property of religious and cultural significance, or if the tribe . . . does not respond to the applicant's inquiries," the Commission steps in to consult and ultimately "make a decision regarding the proposed undertaking." *Id.*

The Advisory Council explains that "[t]hese two tribal roles"—government-to-government consultation, and assistance with identification and evaluation—"are not treated the same when it comes to compensation, although the line between them may not be sharp." Advisory Council, *Fees in the Section 106 Review Process*, J.A. 913. Advisory Council guidance states that "agencies are strongly encouraged to use available resources to help overcome financial impediments to effective tribal participation in the Section 106 process" and applicants are likewise "encouraged to use available resources to facilitate and support tribal participation." Advisory Council, *Section 106 Handbook*, J.A. 1015. At the same time, it says that agencies and applicants should not expect to pay fees for government-to-government consultation, which "give[s] the Indian tribe an opportunity to get its interests and concerns before the agency," Advisory Council, *Fees in the Section 106 Review Process*, J.A. 913, but "should reasonably expect to pay" fees for the identification and evaluation, which puts Tribes in a "consultant or contractor" role, Advisory Council, *Section 106 Handbook*, J.A. 1015. It notes, however, that "this encouragement is not a legal mandate; nor does any portion of the NHPA or the [Advisory Council's] regulations require an agency or an applicant to pay for any form of tribal involvement." *Id.*

First, apparently because applicants had been consistently paying upfront fees, *see Keetoowah Br. 37*, the *Order* made clear that applicants' payment of upfront fees to Tribes is

voluntary. *See Order* ¶ 116. Upfront fees are payments made to Tribes for the initial determination whether the Tribe actually has religiously or culturally significant properties that might be affected by a proposed construction. *See id.* ¶ 116. Applicants contact Tribes for that initial determination when Tribes have noted that properties in the general area of proposed construction may have religious or cultural significance for them. *Id.* When an applicant follows up “to ascertain whether there are in fact such properties that may be affected,” some Tribes have requested upfront fees before they will respond. *Id.* As the *Order* describes the practice, the upfront fees “do not compensate Tribal Nations for fulfilling specific requests for information and documentation, or for fulfilling specific requests to conduct surveys,” but are “more in the nature of a processing fee” to “obtain a response” to an applicant’s initial Tower Construction Notification contact with a Tribal Nation. *Id.* ¶ 119.

Second, while the *Order* approved of fees for identifying and evaluating properties that may be significant to Tribes, as opposed to upfront fees, *see id.* ¶ 123, it also authorized applicants to consult with non-Tribal parties in the identification and evaluation phase, *see id.* ¶¶ 124-45. The Commission found that, if an applicant asks a Tribe to perform work to aid it in documenting, surveying, or analyzing potentially historic properties, “the applicant should expect to negotiate a fee for that work” and, if the parties are “unable to agree on a fee, the applicant may seek other means to fulfill its obligations.” *Id.* ¶ 125. “The agency or applicant is free to refuse just as it may refuse to pay for an archeological consultant, but the agency still retains the duties of obtaining the necessary information for the identification [and evaluation] of historic properties . . . through reasonable means.” *Id.* (quoting Advisory Council, *Section 106 Handbook*, J.A. 1015).

Third, the *Order* shortened from 60 to 45 days the timeline for Tribes to respond to notifications on the Tower Construction Notification System, eliminated the requirement that applicants make a second attempt to contact Tribes, and shortened from 20 to 15 days the timeline for Tribal response to Commission contact. *Id.* ¶¶ 110-11.

Keetoowah and Blackfeet challenge those three changes as arbitrary and capricious and inconsistent with the NHPA. Keetoowah complains that the *Order* “encourages applicants, which have until this point voluntarily paid fees, to refuse paying Tribes” upfront fees, Keetoowah Br. 37; that “FCC implementation goes far beyond the terms of the Order by refusing to even allow Tribes to request voluntary fees through” the Tower Construction Notification System, *id.* at 37-38; that letting applications proceed where Tribes refuse to participate without compensation or are not hired as consultants violates the Commission’s legal obligation to consult with Tribes, *id.* at 38; and that the shortened timelines are unreasonable, *id.* at 40. Blackfeet asserts that the Commission lacks “the authority to prohibit tribes from collecting fees” because only the Advisory Council may promulgate regulations implementing Section 106. Blackfeet Br. 16.

None of those challenges is availing. The clarification that applicants are not required to pay upfront fees is consistent with the Advisory Council’s preexisting guidance and does not violate the Commission’s duty to consult with Tribes. The *Order* permissibly authorizes applicants to contract with non-Tribal parties in the identification-and-evaluation phase because it stipulates that contractors must be “properly qualified,” which we understand does not authorize hiring other contractors in any circumstance in which only Tribes are

qualified. *Order* ¶ 128. The shortened timeline for Tribal response is reasonable and sufficiently explained.

A. Upfront Fees

The *Order* permissibly confirms that upfront fees for Tribes to comment on proposed deployments are voluntary. Unchallenged Advisory Council regulations already make clear that fees are voluntary, so the *Order*'s reiteration of the same point is not arbitrary and capricious. While applicants have apparently been uniformly paying upfront fees for Section 106 review, no party asserts that they have been required to do so. *See Keetoowah Reply Br. 20*. The Advisory Council has been explicit that no "portion of the NHPA or the [Advisory Council's] regulations require an agency or an applicant to pay for any form of tribal involvement." Advisory Council, *Section 106 Handbook*, J.A. 1015; *see also* Advisory Council, *Fees in the Section 106 Review Process*, J.A. 913 (neither the NHPA nor Advisory Council regulations "requires Federal agencies to pay for any aspect of tribal [or] other consulting party participation in the Section 106 process"). Blackfeet's complaint that "[t]he FCC does not have the authority to prohibit tribes from collecting fees" and that the *Order* is impermissibly "implementing and administering Section 106 through regulation" is misplaced. The challenged *Order* contains no such prohibition, but does no more than recognize and reiterate the Advisory Council's existing rule.

The Commission has a non-delegable duty to consult with Tribes about the effect of federal undertakings on property significant to the Tribes, which Tribes can invoke or waive as they choose. The NHPA mandates that, "[i]n carrying out its responsibilities under [Section 106], a Federal agency shall consult with any Indian tribe . . . that attaches religious and cultural significance to property." 54 U.S.C. § 302706(b). The

Advisory Council has explained that “federal agencies cannot unilaterally delegate their tribal consultation responsibilities to an applicant,” but can only delegate if “expressly authorized by the Indian tribe to do so.” Advisory Council, *Limitations on the Delegation of Authority by Federal Agencies to Initiate Tribal Consultation under Section 106 of the National Historic Preservation Act (Limitations on Section 106 Delegation)* 1 (2011), <https://go.usa.gov/xyWGq>. The Commission has also recognized that its “fiduciary responsibility and duty of consultation [to Tribes] rest with the Commission as an agency of the federal government, not with licensees, applicants, or other third parties.” *Section 106 Agreement*, 20 FCC Rcd. at 1106 ¶ 91.

Keetoowah says its challenge is not to the “FCC’s clarification that fees are voluntary,” but to “the Order’s determination that FCC will process applications without tribal input if tribes insist on charging applicants for their reviews.” Keetoowah Reply Br. 19-20. That determination, Keetoowah asserts, violates the Commission’s “statutory obligation to consult with tribes.” *Id.* at 19. Under the *Section 106 Agreement*, Tribes can and do permit applicants to contact them to request review of proposed construction—essentially agreeing to accept that contact in satisfaction of the Commission’s responsibility to consult with Tribes directly. 20 FCC Rcd. at 1108 ¶ 96; *see also* Keetoowah Br. 37; *Comment of the Seminole Tribe of Florida*, J.A. 743 (“[T]ribes participate in review . . . on a voluntary basis” as a substitute for “direct Section 106 consultation with the FCC.”) But Tribes can request “the federal agency to reenter the consultation process at any time . . . since the federal agency remains responsible for government-to-government consultation.” *Limitations on Section 106 Delegation* 2. Keetoowah implies that Tribes have only agreed to accept direct contact from applicants under the condition that

applicants pay for Tribes' responses—meaning that if Tribes refuse to respond without being paid upfront fees, they will not have waived the Commission's responsibility to consult with them directly. Without having fulfilled its legal obligation to consult, Keetoowah contends, the Commission cannot permit applicants to go ahead with construction.

Keetoowah overlooks the fact that when a Tribe refuses to review an application without being paid, the *Order* requires the Commission to step in to ask the Tribe for a response before allowing applicants to construct. Tribes' refusal to respond triggers a process in which applicants can refer the matter to the Commission, the Commission must contact Tribes directly, and Tribes have 15 days from Commission contact to respond. *See Order* ¶ 111. Only if the Tribe does not timely respond to the Commission are “the applicant’s pre-construction obligations . . . discharged with respect to that Tribal Nation.” *Id.* The Tribe is guaranteed the opportunity to consult as a sovereign—a capacity in which it need not be paid—and the Commission cannot force an unwilling Tribe to respond. Therefore, if a Tribe refuses to respond when the Commission requests its views on an application, the Commission has discharged its obligation of direct Commission-to-Tribe consultation. *See id.* ¶ 111. Apart from the shortened timeframe, discussed below, Keetoowah has not offered any reason the Commission’s contacting Tribes directly with a request to consult that the Tribe rejects does not satisfy the Commission’s consultation obligation.

Finally, the objection that the Commission is prohibiting Tribes from requesting voluntary fees on the Tower Construction Notification System, Keetoowah Br. 38-40, is not properly before us. That prohibition does not appear in the *Order* itself but seems to originate with a later decision of Commission staff. *See Resp’t Br.* 64 n.19.

B. Non-Tribal Consultation

The *Order* states that applicants need not contract with Tribes to identify which properties have historic or cultural significance to Tribes and determine how to assess or mitigate adverse effects of construction. *Order* ¶¶ 124-25, 128-29. Keetoowah argues that allowing applicants to contract with non-Tribal parties is arbitrary and capricious because “only Tribes are qualified to perform” such services “based on their unique, often sacred, knowledge.” Keetoowah Br. 23. Because the *Order* stipulates that contractors must be “properly qualified,” we reject the arbitrary-and-capricious claim. *Order* ¶ 128.

Advisory Council regulations require the agency to “make a reasonable and good faith effort to carry out appropriate identification efforts” under Section 106. 36 C.F.R. § 800.4(b)(1). The *Order* explains that “the applicant is not bound to any particular method of gathering information,” *Order* ¶ 125, but it stipulates that contractors must be “properly qualified,” *id.* ¶ 128. The “reasonable and good faith efforts” standard together with the *Order*’s mandate that parties be “properly qualified” may sometimes require applicants to hire Tribes—for instance, where Tribes have “unique” and “sacred” knowledge of historic properties. Advisory Council guidance supports that notion, explaining that “unless an archeologist has been specifically authorized by a tribe to speak on its behalf on the subject, it should not be assumed that the archaeologist possesses the appropriate expertise to determine what properties are or are not of significance to an Indian tribe.” *Section 106 Handbook*, J.A. 1022. The *Order* itself suggests that applicants should try to hire Tribes first: “[I]f an applicant asks a Tribal Nation” to perform identification and evaluation of historic properties, “the applicant should expect to negotiate a fee for that work,” but if the Tribe and applicant “are unable

to agree on a fee, the applicant may seek other means to fulfill its obligations.” *Order* ¶ 125. We cannot say, *ex ante*, how often as a practical matter applicants might find qualified non-Tribal contractors or whether, as applied, the law will ordinarily require hiring Tribes. If a Tribe believes an applicant has hired an unqualified contractor, that issue can be litigated when it arises.

C. Timeline Changes

Keetoowah’s one-paragraph challenge to the *Order*’s shortening the timeline for Tribal response to Tower Construction Notification System notifications provides no basis on which to hold the shortened timeline arbitrary and capricious. Keetoowah Br. 40. Its sole objection is that Tribes “operate with limited staff and budget, making the shortening of Tribal review time unreasonable.” *Id.* The Commission acted within its discretion and “considered the relevant factors and articulate[d] a rational connection between the facts found and the choice made.” *Vonage Holdings Corp. v. FCC*, 489 F.3d 1232, 1241 (D.C. Cir. 2007) (quoting *BellSouth Telecomms., Inc. v. FCC*, 469 F.3d 1052, 1056 (D.C. Cir. 2006) (alteration in original)). It reasonably justified the decision as a compromise between industry requests for even shorter timelines to address delays, and Tribes’ need for adequate time to review submissions. *See Order* ¶¶ 112 n.262, 113.

III. Promulgation of the *Order* Itself

All petitioners argue that the promulgation of the *Order* itself violated the law. Keetoowah and Blackfeet argue that the Commission violated its duty to consult with Tribes, as established by the Tribes’ sovereign status and the government-to-government relationship recognized in Article I, Section 8 of the Constitution, the NHPA, and the Commission’s regulations. *See Keetoowah Br. 40-42; Blackfeet Br. 20-21.*

The NRDC argues that the *Order* itself was a major federal action that required NEPA review. *See* NRDC Br. 10-11. Because the *Order* documents extensive consultation with Tribes, we reject the first contention. We lack jurisdiction to consider the second because the NRDC forfeited it by failing to raise it to the Commission.

As for the Tribes' contention that the *Order* is invalid because the Commission did not meet its obligations to consult with Tribes, the Commission responds that it extensively consulted with Tribes, and that in any event its consultation obligation is not judicially enforceable. Resp't Br. 69-74. We conclude that the Commission fulfilled its obligation to consult. The Commission presented abundant evidence that it "consulted" Tribes in the ordinary sense of the word, and the Tribes have offered no other concrete standard by which to judge the Commission's efforts.

On this record, we cannot say that the Commission failed to consult with Tribes in its meetings and other communications, which began in 2016 and continued through early 2018. *See Order* ¶¶ 19, 34. The Commission documented extensive meetings it held with Tribes before it issued the *Order*. *See Order* ¶¶ 19-35. Under Advisory Council regulations, "[c]onsultation means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process." 36 C.F.R. § 800.16(f); *see also* 54 U.S.C. § 302706(b). The dictionary definition of consulting is "seek[ing] advice or information of." *Consult*, *American Heritage Dict.* (5th ed. 2019). Keetoowah complains that the FCC's efforts were "listening sessions, briefings, conference calls, and delivery of remarks by a Commissioner" rather than "consultations," and presents evidence that Tribes did not view these meetings as

consultations. Keetoowah Br. 44. But it offers no standard by which to judge which consultations were “listening sessions” or whether a “listening session” or a conference call qualifies as a consultation. The only case Keetoowah cites interpreting an agency’s failure to consult is inapposite: there, an agency official “acknowledged at trial” that the contested decision “had already been made prior to” the first meeting between Tribal members and agency officials discussing the decision. *Oglala Sioux Tribe of Indians v. Andrus*, 603 F.2d 707, 710 (8th Cir. 1979). No evidence in this record suggests the Commission had already determined the *Order*’s substance before meeting with Tribes—and the series of communications and meeting commenced even before the Commission issued the Notice of Proposed Rulemaking. *See Order* ¶ 19. The Commission appeared to “seek[], discuss[], and consider[] the views of” the Tribes, even if it did not ultimately adopt those views.

The NRDC argues that promulgating the *Order* was itself a major federal action that required NEPA review. *See* NRDC Br. 10-11. But, as intervenor CTIA points out, the NRDC forfeited that argument by failing to make it to the Commission, *see* CTIA Br. 38, and we lack jurisdiction to review a claim that was not raised there. *Free Access & Broad. Telemedia, LLC v. FCC*, 865 F.3d 615, 619 (D.C. Cir. 2017). While the NRDC points to its own and others’ comments “urg[ing] the Commission to conduct a NEPA analysis,” NRDC Reply Br. 3, none of those comments said the Commission was required to perform a NEPA analysis *of the Order*. The NRDC cites its own comment “that if the FCC sought to exclude an entire category of wireless facilities from NEPA, it was required to establish a categorical exclusion.” *Id.* (citing J.A. 787-90). But the NRDC did not there contend, as it now does, that the *Order* is a major federal action. Rather, the NRDC’s argument was that the federal character of the

geographic area license meant that the Commission could not entirely exempt wireless facility construction from NEPA review, J.A. 790—the same statutory argument it made here—and that the proper approach to exempting federal “activities that by their nature do not have significant impacts on the environment is with a categorical exclusion,” J.A. 789. Whether the licenses or construction are federal, the basis of the NRDC’s argument, is irrelevant to the question whether the *Order* overall is a major federal action that requires NEPA review. One of the other two comments it cites asserted that the proposed rule failed to comply with NEPA, but again, not because the *Order* required NEPA analysis—rather because the issuance of licenses constitutes a major federal action. *See Comment of the Nat’l Trust for Historic Pres.*, J.A. 770. The third comment urged the Commission to consider the cumulative effects of radiofrequency exposure, but did not even mention NEPA. *See Comment of BioInitiative Working Grp.*, J.A. 235-38. The argument that the *Order* required independent NEPA review was never fairly before the Commission.

CONCLUSION

We grant the petitions to vacate the *Order*’s removal of small cells from its limited approval authority and remand to the FCC. We deny the petitions to vacate the *Order*’s changes to Tribal involvement in Section 106 review and to vacate the *Order* in its entirety.

So ordered.

Gores, Alanna

From: Tree Stokan <treejstokan@gmail.com>
Sent: Monday, March 15, 2021 11:39 PM
To: Ozias, Mark; Johnson, Randy; Peach, Bill
Cc: Stanley, Elizabeth; Gores, Alanna
Subject: Re: 5g Court-Opinion.pdf - Attorney Stephen Díaz Gavin - is willing to consider a meeting with BOCC, on issue of NEPA, ...response to Chair Ozias' e-mail. (Further considerations.)

Follow Up Flag: Follow up
Flag Status: Flagged

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

Hello Mark Ozias, Chair of BOCC,

Thank you for your response to my email, regarding the suggestion to invite Attorney Stephen Diaz Gavin to meet with the BOCC.

I thought it might be helpful to share **some additional information about the process** that led to the following Recommendation by the 2020 Charter Review Commission:

“Consider an Ordinance Ensuring Franchises Comply with the National Environmental Protection Act (NEPA).”

Clallam County residents began to assemble in early 2019, concerned about the harmful effects of EMF (electromagnetic field), ranging from smart meters to 5G. I don't know if you ever saw the video of the *large group of people who attended the Clallam County Planning Commission Meeting, on February 20, 2019*. I know that Commissioner Peach watched it, per a conversation that I had with him, more than a year ago. Residents with similar concerns have come to *BOCC meetings, Sequim City Council meetings, and PUD meetings. Residents have sponsored a series of “educational seminars” on the topic, held in Sequim, Port Angeles, Neah Bay, and beyond....including Jefferson County.*

If you go to the Charter Review Commission web page, at Clallam.net, you may want to click on the third “Document” listed: “Charter Review Commission public comments”. **There was no topic that had more public input, during our one-year CRC term, than support for an amendment on EMF/Franchises and NEPA. “40 people”.** Only three opposed, one was PUD.

It might be a bit labor-intensive, but you could review multiple e-mails on this issue, sent to the CRC, in the minutes of our CRC meetings.

From the very beginning of our term, residents who were concerned about this issue sent e-mails, showed up in-person (one in a wheelchair), and later by BlueJeans participation. I cannot recall the number of revisions that the EMF/Franchisees/NEPA proposal went through, in an effort to win support for an amendment on this issue.

When the amendment proposal did not pass in July 2020, the next step was to come up with a “Recommendation”. While some members of the EMF group considered the eventual document to be “watered-down”, and a lot weaker than initial drafts, those revisions were necessary to win the support of the Charter Review Commissioners. **The “Recommendation” in its current form was approved in September 2020, nine months from the time that the belabored process began.**

Compliance with NEPA “made sense” to the majority of the Charter Review Commissioners.

A number of our residents believe that Attorney Stephen Diaz Gavin may be one of the most knowledgeable attorneys in this “country” on the issue of NEPA. He did successfully litigate a case, invoking NEPA, at the United States Court of Appeals, for the District of Columbia Circuit, on August 9, 2019.

All of this said, I want you to realize that **much work has already been done, in this county**, researching this issue and determining the best path forward. **By no means are you starting from ground zero.**

If our residents have recommended that you invite and learn from Attorney Gavin, on the issue of NEPA and its legal implications, **I (and they) see no reason to delay.**

I think you can gather public comments from our county, as planned, and simultaneously seek knowledge from those who are authorities/experts in their field.

I think **this is a concept that should apply to all of the Recommendations** proposed by the Charter Review Commission. Invite the most knowledgeable people, from “both sides” of an issue, for and against each Recommendation, and **let members of the public hear “both sides” before** they start giving their public comments or **simultaneously.**

After gaining more information, people may end up changing their mind about an issue. **I don't think it makes sense to wait until the "end" of the public hearings to offer valuable information for people to consider when forming their opinions on an issue.**

More information is better than less. **It is difficult for me to imagine why the BOCC would not welcome the expertise of a high-caliber attorney, who is very knowledgeable about NEPA.** You have residents willing to pay the speaker fee, if necessary, so you need not be concerned about the financial aspect.

I am adding Commissioner Randy Johnson and Commissioner Bill Peach to this e-mail, for their review, also.

Here is the e-mail address for: Attorney Stephen Diaz Gavin - Stephen.diaz.gavin@rimonlaw.com. Remember that he is in Central Europe time zone, currently.

Thank you.

Therese Stokan

Former 2020 Charter Review Commissioner, District 3

Sent from my iPhone

On Mar 15, 2021, at 3:31 PM, Ozias, Mark <mozias@co.clallam.wa.us> wrote:

Thank you for making us aware of this resource. At this point I would prefer to use the public hearings as an opportunity to hear broad feedback from county residents which I hope will help us shape follow-up steps for each recommendation. I can more easily imagine doing this kind of a deep-dive as one of several potential "next steps" related to the wireless franchise recommendation, but that will depend on what we hear and on how we end up shaping the next steps in the process.

Sincerely,

Mark Ozias
Chair, Board of County Commissioners

From: Tree Stokan [treejstokan@gmail.com]

Sent: Monday, March 15, 2021 12:19 PM

To: Ozias, Mark; Johnson, Randy; Peach, Bill; Stanley, Elizabeth

Cc: Gores, Alanna

Subject: Re: 5g Court-Opinion.pdf - Attorney Stephen Díaz Gavin - is willing to consider a meeting with BOCC, on issue of NEPA, as was addressed in this case....

***In the next two weeks, there is only an 8-hour difference (instead of 9) between Central

Europe Time and Pacific Daylight Time, so it would be a particularly good time for Attorney Gavin to participate in a meeting with you.

Next Monday, March 22, Attorney Gavin (note spelling correction) is available in the AM, if you want to arrange a meeting, or maybe the following Monday, March 29.

After that, we can still check his availability.

Thanks,
Therese

Sent from my iPhone

On Mar 15, 2021, at 11:49 AM, Tree Stokan <treejstokan@gmail.com> wrote:

Hello Clallam County Commissioners Mark Ozias, Randy Johnson and Bill Peach, and Attorney Elizabeth Stanley,

First, I want to thank you and Alanna Gores for adding the additional early evening Public Hearings, for discussion of the 2020 Charter Review Commission Recommendations. I am sure that people who work the day shift and students will appreciate that effort in making the Public Hearings more accessible.

Next, I was wondering if you had made a decision about inviting Attorney Stephen Díaz Gaven to attend/participate in a BOCC meeting, either with a presentation and/or Q&A session, regarding the case that he led, which successfully invoked NEPA (the National Environmental Protection Act). I am including the PDF, in this email.

Attorney Gaven currently has a client in Europe, and he is staying overseas in the next few months. He is willing to participate in a meeting with the BOCC, and 9 AM might be the best time, on a Monday, (or other morning) or a little later. He is 9 hours ahead of us.

Some of the people who have been working on the CRC Recommendation regarding Franchises/NEPA ...and others in the community, would be willing to pay the speakers fee to Attorney Gaven, if the county could not. We don't have a price yet, but I am fairly certain that we could find people willing to contribute to this. Perhaps a 15-30 minute session could be considered?

Because the Public Hearings are approaching, it might be good to try to schedule Attorney Gaven soon, if BOCC agrees. This is a complex issue and an attorney, who specializing in this area, might help us to better understand NEPA and it's legal implications.

Please let me know your thoughts and I will connect you by e-mail/provide a phone number, etc.

Thank you,

Therese Stokan

...served on 2020 Charter Review Commission, representing District 3

<5g Court-Opinion.pdf>

Sent from my iPhone

Gores, Alanna

From: THERESE STOKAN <hermanabaheda@aol.com>
Sent: Wednesday, March 31, 2021 3:46 PM
To: Gores, Alanna
Subject: List of Countries, Cities, Towns, and Councils that have Banned 5G – Stop 5G Blacktown

Hello Alanna Gores, Clerk of the Board,

Please share this email and link with the BOCC, in preparation for consideration of the CRC Recommendation on Franchises/EMF/NEPA.

Thanks,
Therese Stokan
2020 Charter Review Commissioner, District 3

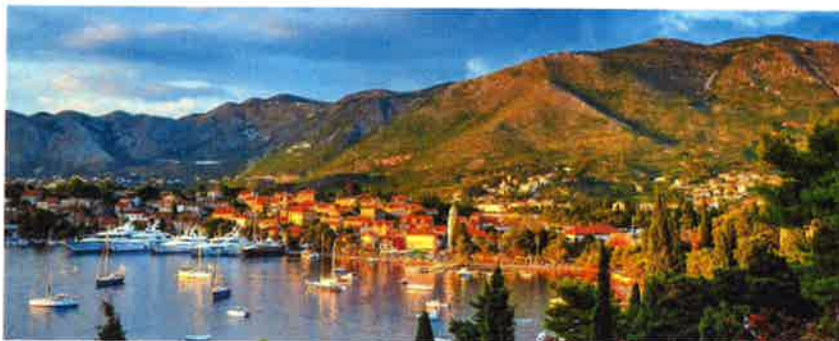
<https://stop5gblacktown.org/list-of-countries-cities-towns-and-councils-that-have-banned-5g/>

Sent from my iPhone



(<https://stop5gblacktown.org/>)

List of Countries, Cities, Towns, and Councils that have Banned 5G



(<https://stop5gblacktown.org/list-of-countries-cities-towns-and-councils-that-have-banned-5g/>)

1. Brussels is the first City to halt 5G due to adverse health effects. <https://smombiegate.org/brussels-first-major-city-to-halt-5g-due-to-health-effects/>

2. UK Glastonbury Town Council have halted 5G due to adverse health effects. <https://www.somersetlive.co.uk/news/local-news/glastonbury-council-opposes-5g-roll-2998413>

3. UK Frome Town Council has a moral responsibility to protect public health and the local environment. Until there is more independent scientific consensus that 5G wireless radiation is harmless to humans and the environment FTC adopts the precautionary principle and will not endorse the roll out of 5G. https://www.frometowncouncil.gov.uk/frome-town-council...

4. Ireland County Clare has halted 5G due to adverse health effects. <http://www.clare.fm/news/clare-county-council/motion-oppose-5g-rollout-clare-receives-council-backing/>

5. Ireland Roscommon County halt 5g due to adverse health effects. <https://www.facebook.com/groups/796999407353013/permalink/877482035971416/>

6. Ireland Leitrim Council https://www.leitrimobserver.ie/news/home/476112/councillors-opposed-to-the-dangers-of-5g.html?fbclid=IwAR1eo8BW_ByCdZxUkxwHGFN3DsuMTaYw2yeYk0xKjtTOH1cWqLWTBRDFcU8

7. Ireland Sligo <https://www.facebook.com/stop5gsligo/posts/210209590412424>

8. UK Totnes Devon 5G Moratorium <https://www.dailymail.co.uk/news/article-7544239/5G-campaigners-force-Devon-council-pause-installation-new-high-speed-network.html>, <https://www.newsweek.com/small-town-bans-5g-high-speed-network-due-health-concerns-5g-dangerous-1463974>

9. Australia h alts 5G due to adverse health effects (I think its only TPG a leading Tech Co. that has halted 5G) <https://www.activistpost.com/2019/09/health-concerns-have-stopped-5g-rollout-in-australia.html>

Link 2 https://l.facebook.com/l.php?u=https%3A%2F%2Fau.finance.yahoo.com%2Fnews%2Ftpg-says-community-health-fears-035230703.html%3Fsoc_src%3Dcommunity%26soc_trk%3Dfb&h=AT2qfjMfMAXfrz1FWp-CmV7mOOfs9nGaG8O_oNSbnyxgSBwBK6k7a3mRke211BBQsQBHmTxdtLkhhMjO5nhX8pZI7EGVdAVq4kRXIFixH0u8H9566xSr5tnD891xQg

10. USA Portland Oregon 24th March 2019 City officials state clear opposition to the installation of 5G networks on health grounds, supported by the mayor and two commissioners. https://digitalsurvivor.uk/.../portland-officials...

11. Italy Florence 28 March 2019 Florence applies the precautionary principle, refusing permissions for 5G and referring to "the ambiguity and the uncertainty of supranational bodies and private bodies (like ICNIRP)", which "have very different positions from each other, despite the huge evidence of published studies".

12. Russia 28 March 2019 – The Russian Ministry of Defence refuses to transfer frequencies for 5G, which

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Recent Posts

List of Countries, Cities, Towns, and Councils that have Banned 5G

(<https://stop5gblacktown.org/list-of-countries-cities-towns-and-councils-that-have-banned-5g/>)

UK Prime Minister Warns Of Danger From Digital Authoritarianism
(<https://stop5gblacktown.org/255-2/>)

The 5G Propaganda War: The Telcos And Mainstream Media Are Losing
(<https://stop5gblacktown.org/the-5g-propaganda-war-the-telcos-and-mainstream-media-are-losing/>)

High Radiation Levels Found At Local Cafe
(<https://stop5gblacktown.org/high-radiation-levels-found-at-local-cafe/>)

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(<https://stop5gblacktown.org/2020/03/>)

November 2019
(<https://stop5gblacktown.org/2019/11/>)

October 2019
(<https://stop5gblacktown.org/2019/10/>)

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Media
(<https://stop5gblacktown.org/category/media/>,

Radiation
(<https://stop5gblacktown.org/category/radiation/>

Uncategorized
(<https://stop5gblacktown.org/category/uncategorized/>)

effectively delays any 5G roll out there for several years.

13. Netherlands 4 April 2019 Members of Parliament in the Netherlands insist that radiation research must be carried out before any approval of the 5G network.

14. USA California 5th April 2019 California Supreme Court Justices unanimously uphold a 2011 San Francisco ordinance requiring telecommunications companies to get permits before placing antennas on city infrastructure.

15. Switzerland Geneva 10th April 2019 Geneva adopts a motion for a moratorium on 5G, calling on the Council of State to request WHO to monitor independent scientific studies to determine the harmful effects of 5G. <https://www.letemps.ch/.../geneve-adopte-une-motion-un...16/> Switzerland 9 April :-The Canton of Vaud adopts a resolution calling for a moratorium on 5G antennas until the publication this summer of a report on 5G by the Swiss Federal Office for the Environment.

16. USA District of Columbia August 9th 2019. The US Court of Appeals for the District of Columbia Circuit issued a decision substantially setting back the efforts of the Federal Communications Commission to expedite the deployment of 5G technology. <https://ehtrust.org/federal-court-overturns-fcc-order.../>

17. Cyprus MPs want Health Hazard study prior to 5G <https://cyprus-mail.com/2019/09/19/mps-want-health-hazard-study-prior-to-allowing-5g/>

18. Switzerland 5G Opponents Block 320 of 326 Antennas <https://mieuxprevenir.blogspot.com/2019/09/switzerland-5g-opponents-block-320-or.html>

19. Italy 14 municipalities, including Rome, stopped 5G. <https://www.5gexposed.com/2019/07/05/italy-stop-5g-mayors-here-is-italys-first-suspension-order/>

20. Malta Godfrey Farrugia MP will be tabling a 5G warning in Parliament. https://www.maltatoday.com.mt/news/national/97919/Godfrey_Farrugia_will_be_tabling_a_5G_warning_in_Parliament

21. Ireland Wicklow 7th October Kat Redmond Just to let everyone know Motion to Oppose 5G In Co. Wicklow was passed 5 mins ago at Council Meeting. Further update later.

22. UK Kingsbridge Devon 8th October Moratorium https://youtu.be/Nggr_ZIGsd0

23. UK Shepton Mallet 8th October Moratorium <https://www.somersetlive.co.uk/news/local-news/somerset-council-blocks-5g-roll-3420355>

24. Brighton October 2019 5G Masts rejected. <http://www.theargus.co.uk/news/17966374.win-anti-5g-group-mast-plans-rejected>

25. France October 2019, French NGOs Demand Moratorium on 5G Due to Its "Out of Control" Consequences On Society.

26. Bangladesh October 2019, The High Court issued 12-point directives including imposition of a ban on installation of mobile or telecommunication towers on the rooftops of residential area, educational institutions, hospitals, jail premises, heritage sites, playgrounds and places of worship. <http://www.newagebd.net/article/87920/hc-orders-removal-of-mobile-towers-from-sensitive-areas>

27. USA Louisiana June 2019 Louisiana Becomes First State to Call for Study on Health Impacts of 5G <https://www.wakingtimes.com/2019/06/07/louisiana-becomes-first-state-to-call-for-study-on-health-impacts-of-5g>

28. Italy October 2019, Isabella Conti blocks the 5G in San Lazzaro

"Without guarantees on health effects, therefore, in San Lazzaro no new generation antennas. The 5G radio frequencies, underlines Conti, "are completely unexplored: as administrators we cannot close our eyes to the absence of scientific studies on the possible effects on health" <http://www.bolognatoday.it/cronaca/antenne-5g-blocco-bologna-san-lazzaro.html>

29. USA October 2019 New York becomes the next State to introduce a Bill to establish a Commission to study the Health and Environmental effects of 5G.

30. USA Encinitas to ban 5G wireless antennas near schools, daycares, residences <https://www.sandiegouniontribune.com/communities/north-county/story/2019-10-31/encinitas-to-ban-5g-wireless-antennas-near-schools-daycares-residences>

31. France 2015 France: New National Law Bans WIFI in Nursery School <https://ehtrust.org/france-new-national-law-bans-wifi-nursery-school/>

32. UK 2019 November, Wellington Somerset. Charlie Kay As of tonight Wellington Town Council have just invoked the Precautionary Principle. There were only 6 of us with 2 of us speaking. If you are not already doing so then now is the time to speak to your county, town ,district, parish council. Action conquers fear. Rise up!

33. UK 2019 November ANNOUNCEMENT – Winchester CC responded and OBJECTED to the Government proposal to support 5G deployment – WIN.

34. WALES Lampeter. Dinah Mulholland, Labour 1 November. Glad to let you know that last night Lampeter Town Council passed a motion urging that the precautionary principle be applied to the installation and roll out of 5G. The motion was proposed by Gary Thorogood and I seconded, it was passed with overwhelming support, no votes against and only two abstentions. The meeting was packed with concerned members of the public. Town Council will write to our AMs, MP, and Ceredigion Council asking for them to also apply the precautionary principle, and be active in encouraging research into the effects of 5G on people and the environment. Lampeter Town Council is leading the way in responding to concerns over 5G and the climate crisis. I feel very proud to be a member of Lampeter Town Council, and to live in this amazing community.

35. LAOIS COUNTY, IRELAND – <https://smombiegate.org/laois-county-ireland-to-suspend-5g-due-to-health-concerns-non-coverage-by-insurance/> (<https://smombiegate.org/laois-county-ireland-to-suspend-5g-due-to-health-concerns-non-coverage-by-insurance/>)

36. 20th November 2019 – Mayor of Bad Wiessee in Bavaria, Germany announces unanimous decision of Town Council to invoke precautionary principle and reject 5G rollout (November 2019)

Dear Residents and Visitors of Bad Wiessee,

Bad Wiessee has a long-established reputation as a popular destination for health and well-being and this informs the present and future decision-making of the Council. Many of our visitors come here seeking medical treatments, physical rehabilitation or simply to improve their well-being and most, if not all, of our town's prosperity depends on providing such services. As such, the Council takes its responsibilities in protecting and promoting health tourism very seriously.

At a public meeting, the Council unanimously decided to oppose the rollout of the untested 5G network. The Council felt a great sense of responsibility towards both residents and visitors in taking this decision, given the significance of Bad Wiessee as a health destination.

5G offers many things that are attractive to people who love technology, such as time-saving automation, autonomous vehicles, ubiquitous smart homes, real time data-transfer, and the Internet of Things, to name but a few. But 5G also means increasing the number of cell towers in Germany from 90,000 to 750,000; launching approximately 12,000 5G satellites into space; increasing public exposure to microwave radiation from around 2.5 GHz currently to 200 GHz; seeing potential liability claims against owners of cell-tower locations; chopping down trees on a large scale (to ensure good transmission); as well as irradiating plants and animals. Above all, there is uncertainty about whether 5G can be considered safe in terms of public health. This is a very serious matter and, until such uncertainty is adequately clarified, the precautionary principle must be applied.

Not only the residents and visitors of Bad Wiessee, but also future generations are entitled to expect their Council representatives to exercise their duty of care. The Council's responsibility is all the greater given that the character and spirit of Bad Wiessee is defined in terms of health and well-being. The Council's decision with regard to 5G was taken after serious deliberation, which showed that all the Council representatives recognized its importance. This decision is not intended to restrict progress, but solely to examine critically the price we pay for such progress. If you are interested in the topic of 5G, I would ask you to inform yourself about it in order to form your own opinion.

Very sincerely from your Town Mayor,

Peter Höß

37. Switzerland – Some Swiss regions have suspended the use of new mobile sites constructed for 5G due to health concerns. The country is one of the most advanced 5G nations in Europe, with Swisscom and Sunrise among the first to launch next-generation networks. Speeds and coverage outpace other nations in the region and the government itself is interested in using 5G for applications like smart farming. However, Switzerland is also home to a vocal community of anti-5G campaigners. Protests have taken place in major cities while rural mayors have declared their desire to remain '5G-free zones'. <https://smombiegate.org/switzerland-halts-rollout-of-5g-over-health-concerns> (<https://smombiegate.org/switzerland-halts-rollout-of-5g-over-health-concerns>)

38. Santa Barbara City Council – <https://smombiegate.org/council-hits-big...bara-independent/> (<https://smombiegate.org/council-hits-big%E2%80%A6bara-independent/>) Facing a gathering storm of opposition from anti-radiation activists worried about the health effects of the new 5G cellular technology,

the Santa Barbara City Council voted to delay authorizing a licensing agreement with Verizon that would have allowed the cell phone service giant to install up to 60 new 5G cell phone antennas on light fixtures downtown.

39. 5G has been halted in Slovenia while officials take more time to investigate health effects of the new technology. A letter (<https://ehtrust.org/wp-content/uploads/Odgovor-Medveda-MJU.Horvatu-iz-ZSKS-9.12.-2019-2.pdf>) from Minister Rudi Medved (unofficial translation below) states they will reopen the debate on potential health risks. <https://smombiegate.org/slovenia-halts-5g-to-investigate-health-and-safety/> (<https://smombiegate.org/slovenia-halts-5g-to-investigate-health-and-safety/>)

40. 100 Municipalities in Italy are officially Stop 5G – DECEMBER 10 2019 "A small Italian miracle in defense of public health. Just 9 months after the approval of the Vicovaro Resolution (<https://oasisana.com/2019/03/02/alleanza-italiana-stop-5g-ecco-la-risoluzione-di-vicovaro-per-governo-parlamento-sindaci-e-cittadini/>) in the consensus of the 1st Stop 5G national meeting promoted on 2 March 2019 by the Italian Alliance Stop 5G, today 100 Italian Municipalities are officially Stop 5G . Before Vicovaro the void in the local administration of the *tsunami* of *wireless* fifth generation did not speak at all, completely ignored the risk, but now – less than 300 days from the first historical event (<https://oasisana.com/2019/03/02/alleanza-italiana-stop-5g-ecco-la-risoluzione-di-vicovaro-per-governo-parlamento-sindaci-e-cittadini/>) – a rising tide of awareness in the claim of a right enshrined in art. 32 of the Constitution, recalling the European precautionary principle, spreads relentlessly from the Valle d'Aosta to Sicily , from the province of Bolzano to that of Caltanissetta and Nuoro , passing through the cities of Rome (Municipio XII), Turin, Catania, Florence and Bologna . And we're just beginning.

<https://oasisana.com/2019/12/10/il-5g-ora-e-pure-un-problema-democratico-100-comuni-ditalia-sono-ufficialmente-stop-5g-ecco-la-lista-unica-in-europa/> (<https://translate.google.ca/translate?sl=auto&tl=en&u=https%3A%2F%2Foasisana.com%2F2019%2F12%2F10%2FIl-5g-ora-e-pure-un-problema-democratico-100-comuni-ditalia-sono-ufficialmente-stop-5g-ecco-la-lista-unica-in-europa%2F>)

41. Papua New Guinea's ICT Minister wants the country's internet providers to hold off on any development of 5G until all risks from the new technology are evaluated. DEC 31, 2019 – <https://www.rnz.co.nz/international/pacific-news/406411/png-govt-puts-hold-on-5g-development> (<https://www.rnz.co.nz/international/pacific-news/406411/png-govt-puts-hold-on-5g-development>)

42. Los Altos, CA Unanimously Denies All 4G/5G Cell Node Appeals – After substantial pushback from Los Altos residents, all 13 cell node application appeals submitted by Verizon and AT&T were denied by the city council on the basis of "insubstantial evidence." <https://www.5gcrisis.com/post/los-altos-ca-unanimously-denies-all-4g-5g-cell-node-appeals> (<https://www.5gcrisis.com/post/los-altos-ca-unanimously-denies-all-4g-5g-cell-node-appeals>)

in Uncategorized (<https://stop5gblacktown.org/category/uncategorized/>)

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(<https://stop5gblacktown.org/list-of-countries-cities-towns-and-councils-that-have-banned-5g/#respond>)



About Editor Blacktown

 (<https://stop5gblacktown.org/author/editorial-team/>)

◀ UK Prime Minister Warns Of... (<https://stop5gblacktown.org/255-2/>)



(<https://stop5gblacktown.org/>)

Gores, Alanna

From: larjdyng@olypen.com
Sent: Monday, April 05, 2021 12:44 PM
To: Gores, Alanna
Subject: RE: 4/6/21 BOC consideration of Charter Review Commission (CRC) recommendation for EMF related Franchise Agreements
Attachments: 2cea04_9c8a5103ca93461bae13dd604f64364b.pdf; SCIENCE EXPLAINED 5G Crisis.htm

*In addition to your forwarding my 3/15/21 comments to attention of the Board of Commissioners, I am adding an attachment for their consideration.

*I will also be forwarding the email source which also cites a website that provides considerable reference material which might be of interest to them.

*Thank you for verifying my previous input.

Regards,
Judy Larson
1070 W. Palo Verde Loop
Sequim, WA 98382

On 2021-03-15 09:29, Gores, Alanna wrote:

> Judy Larson,
>
> Thank you for your email below. I will forward to the Board of
> Commissioners.
>
> Loni
>
> Loni Gores
> Clerk of the Board
> Commissioners Office
> 223 East 4th Street, Suite 4
> Port Angeles, WA 98362
> Phone: 360-417-2256
>
> -----Original Message-----
> From: larjdyng@olypen.com [<mailto:larjdyng@olypen.com>]
> Sent: Monday, March 15, 2021 8:41 AM
> To: Gores, Alanna
> Cc: Dean&Judy
> Subject: 3/15/21 RE:Charter Review Commission (CRC) recommendation for
> EMF related Franchise Agreements
>
> ATTN: Clallam County Board of Commissioners
>
> I agree with/support the CRC's recommendation that our County needs to
> ensure ANY franchise associated with new radio frequency rf/EMF)
> devices or using micro/millimeter range wavelength/frequencies must
> provide scientific studies consistent with NEPA.
>

> Many jurisdictions - domestic and international - have developed such
> requirements to ensure protections for human and environmental health
> and safety.
>
> Thank you for your consideration.
>
> Judy Larson
> 1070 W Palo Verde Loop
> Sequim, WA 98382
>
> P.S. The 3/14/21 PDN does not clearly state that your work session will
> cover this.

PRESS RELEASE



For release: Friday, March 26, 2021

Contact: Doug Wood, Director, Americans for Responsible Technology, (516) 883-0887

NYS Lawmakers Want Answers on 5G Health Effects

(Albany, NY) Members of the New York State (NYS) legislature have introduced a bill to establish a special commission charged with investigating the growing evidence linking exposure to radiofrequency (RF) microwave radiation (“wireless radiation”) emitted by 5G and other wireless antennas, with serious human health and environmental impacts. The commission, proposed by NYS Senator Anna Kaplan and NYS Assemblyman Tom Abinanti, will include public health experts, environmental scientists, and independent electromagnetic radiation researchers. The commission is slated to report its findings to the legislature by June of 2022.

“It’s critical for the people of New York State to understand the full range of risks inherent in the deployment of 5G antennas in neighborhoods across the state,” says Doug Wood, Director of non-profit Americans for Responsible Technology. “This kind of involuntary exposure to a scientifically-proven health hazard deserves the scrutiny this commission will provide. I applaud Senator Kaplan and Assemblyman Abinanti for taking this action to protect public health and the environment.”

New York is not the first state to establish such a commission. In 2019, New Hampshire introduced and passed HB522 to study the health and environmental effects of evolving 5G technology. In November of 2020, the commission released its watershed report containing 15 recommendations largely intended to reduce public exposure to wireless radiation, raise public awareness of potential health risks, and improve monitoring of wireless radiation emissions from existing and future wireless systems.

To date, no studies have confirmed claims by the telecom industry that exposure to wireless radiation emitted by 5G wireless devices, as well as earlier generations of wireless technologies, is safe. As a result, Lloyd’s of London, and other leading insurance companies, have declined to insure the telecoms against personal injury claims and class-action lawsuits related to exposure to electromagnetic fields, including wireless radiation.

[Senate bill S5926](#)

[Assembly bill A6448](#)

About Americans For Responsible Technology (ART)

Americans For Responsible Technology is a non-profit national coalition of more than 160 grassroots organizations in 43 states advocating for the safe and responsible use of technology. More information at www.AmericansForResponsibleTech.org.

Gores, Alanna

From: larjdyng@olypen.com
Sent: Monday, April 05, 2021 1:04 PM
To: Gores, Alanna
Subject: Fwd: BREAKING: NY Lawmakers Want Answers on 5G Health Risks
Attachments: SCIENCE EXPLAINED 5G Crisis(1).htm

*This is the forwarding of the email source for my recently submitted comments and attachments for BOC attention on 4/6/21 about CCCRC recommendation on any EMG/ franchise considerations.

*I don't know why the 2nd attachment showed such LONGGGG breaks, but with "patience" in scrolling, contents can be read.

*I am trying one more time to add that attachment, but Commissioners can read it fully assembled if they go to website noted at bottom and then look under SCIENCE tab.

*Thanks for your efforts!

Judy Larson

----- Original Message -----

Subject: BREAKING: NY Lawmakers Want Answers on 5G Health Risks

Date: 2021-03-27 10:25

From: larjdyng@olypen.com

To: larjdyng@olypen.com

From: 5G Crisis <report@5Gcrisis.com>

Subject: BREAKING: NY Lawmakers Want Answers on 5G Health Risks

Date: March 26, 2021 at 11:54:04 AM PDT

BREAKING NEWS:

NY Lawmakers Want Answers on 5G Health Risks

[Read the Full Press Release Here](#)

<<https://americansforresponsibletech.us8.list-manage.com/track/click?u=c3128cbc75b5968aacd624e4b&id=89410e3838&e=3ee75c47e1>>

We urge you to please share our press release with your local news outlets, local legislators, state legislators, and federal legislators.

The more folks who are aware of this bill, the greater the likelihood that other decision makers will also take action to address 5G risks.

Thanks for all you do, and please reach out if you have any questions or concerns about 5G issues near you. Upward and onward!

The 5G Crisis Team

<<https://americansforresponsibletech.us8.list-manage.com/track/click?u=c3128cbc75b5968aacd624e4b&id=effe487640&e=3ee75c47e1>>

<<tel:516-883-0887>>

Gores, Alanna

From: Darlene Schanfald <darlenes@olympus.net>
Sent: Tuesday, April 06, 2021 11:23 AM
To: Gores, Alanna
Subject: 2020 Charter Review Commission Recommendation – - on Franchises/EMF/NEPA

I am submitting my support for the **2020 Charter Review Commission Recommendation – - on Franchises/EMF/NEPA** for the public record.

Thank you,

Darlene Schanfald
160 Kane Lane
Sequim WA 98382