

Council Agenda Report

To: Mayor Grisanti and the Honorable Members of the City Council

Prepared by: Tyler Eaton, Assistant Planner

Reviewed by: Richard Mollica, Planning Director

Approved by: Steve McClary, Interim City Manager

Date prepared: September 14, 2021 Meeting Date: September 27, 2021

Subject: Appeal No. 21-012 - Appeal of Planning Commission Resolution No. 21-63 (28990.5 Pacific Coast Highway; Appellants: Verizon Wireless and Lonnie Gordon; Applicant: Chris Colten of Spectrum Services on behalf of Verizon Wireless; Property Owner: 28990 W. Pacific Coast Highway, LLC.)

RECOMMENDED ACTION: Adopt Resolution No. 21-53 (Exhibit A), determining the project is categorically exempt from the California Environmental Quality Act (CEQA), denying Appeal Nos. 21-012 and 21-015 and approving Wireless Permit (WP) No. 21-002 and Coastal Development Permit (CDP) No. 20-035 for Verizon Wireless (Verizon) to install a macro wireless communications facility located on the rooftop of Building B and a ground-mounted backup generator, including Waiver (WVR) No. 21-001 and Variance (VAR) No. 20-023 to permit a rooftop wireless communications facility more than three feet above the roof parapet and Site Plan Review (SPR) No. 20-045 to install and operate a wireless communications facility in the Commercial Neighborhood (CN) zoning district located at 28990.5 Pacific Coast Highway (PCH).

FISCAL IMPACT: There is no fiscal impact associated with the recommended action.

DISCUSSION: The matter concerns two appeals (Exhibits B and C) of WP No. 21-002 and CDP No. 20-035, WVR No. 21-001, VAR No. 20-023, and SPR No. 20-045, approved by the Planning Commission on August 16, 2021 for a new rooftop macro¹ wireless communications facility and associated development. Planning Commission Resolution No. 21-63 and the related Planning Commission Agenda Report are included herein as Exhibits C and D, respectively.

¹ Macro Facility: A wireless telecommunication site that deploys many large antennas to serve a wide area of coverage for a wireless provider. In contrast to a small cell facility that utilizes typically smaller antennas and services a smaller coverage area but at usually higher radio frequency rates.

- Verizon Wireless (Appellant 1) mainly contends that the project qualifies as an “eligible facilities request”, is already deemed granted by federal law and the discretionary decision of the City is therefore preempted by such law. This is due to Appellant 1’s contention that the City failed to take action on the application within the shot-clock parameters set by the Federal Communications Commission (FCC). The City disagrees with all these contentions and is currently in litigation with Verizon Wireless over this and other matters. Appellant 1 also states that without waiving any of its arguments or positions in that litigation, it provisionally appeals the Planning Commission decision, because certain conditions of approval imposed by the Planning Commission are improper or illegal.

The full text of the appeal is included as Exhibit B.

Lonnie Gordon (Appellant 2) contends that:

- Structural and electrical safety has not been fully reviewed;
- The decision was not supported by sufficient evidence of compliance with the LCP and MMC;
- There is not sufficient evidence that the site will be in compliance with federal law.

Appellant 2 outlines 32 statements detailing the basis for her appeal. All 32 statements are summarized below accompanied by a staff response. The full text of Lonnie Gordon’s appeal is included in Exhibit C.

Staff examined all evidence in the record and determined that the record supports the Planning Commission’s action to approve the subject application with all of the conditions of approval.

Project Description

The proposed scope of work is as follows:

Roof-Mounted Equipment

- 13 New Antennas:
 - Nine panel antennas mounted onto the parapet wall,
 - One two-foot diameter parabolic antenna,
 - One three-foot diameter parabolic antenna,
 - One four-foot diameter parabolic antenna, and
 - One Global Position System (GPS) antenna;
- 12 remote radio units (RRUs);
- 3 junction boxes;
- Additional associated electrical support equipment;

Ground-Mounted Equipment

- A 40 kilowatts (kw) backup generator;
- 211-gallon fuel tank;
- Associated electrical support equipment; and
- Concrete block screen wall.

Project Background

Verizon Wireless contends that its application qualifies as an “eligible facilities request” and is deemed approved per federal law under Section 6409 of the Spectrum Act. The “Middle Class Tax Relief and Job Creation Act of 2012” also known as the “Spectrum Act” preempted State and local governments from denying any “eligible facilities request” (EFR) for a modification of an existing wireless tower or base station pursuant to Section 6409. The rules are codified as 47 CFR § 1.6100. If a project qualifies as an EFR, the applicable FCC shot clock for processing the application is 60 days and the application must be approved.

The subject site, 28990 PCH, currently has three, two-story commercial office buildings (Attachment X). There is currently a wireless communications facility on the rooftop of Building C, operated by T-Mobile. The project proposes a new wireless communications facility on the rooftop of a separate building, Building B, and partly on the ground, to be operated by Verizon Wireless.

The project was initially submitted on June 22, 2020. Verizon Wireless did not claim its project qualified as an EFR until its second submittal on July 15, 2020, addressing comments from the City, who had deemed the application incomplete. On July 20, 2020, staff had issued a subsequent incomplete notice determining that the application did not qualify as an EFR. Verizon Wireless contended that the application did qualify an EFR under Section 6409, at which time the City again declared that it was not an EFR and was in fact being processed as a collocation application that was subject to the City’s design standards and a 90-day federal shot clock.

Staff and its consultants had determined initially that the project did not qualify as an EFR because the project proposed a new backup generator that required excavation and deployment outside of the existing T-Mobile facility site, located on the rooftop of Building C. Verizon Wireless contended that the generator was within 30 feet of the “site” and therefore met the parameters for an EFR – that claim was inaccurate.

In order to try and resolve the differences, staff and its consultants met with Verizon Wireless on November 4, 2020. Staff held firm on its stance that the project was not an EFR citing the generator distance, but also addressing another reason, which was that the project was being proposed on a separate building and therefore did not qualify as the same “base station” which would be required to be an EFR. Staff also noted that even if the facility qualified as an EFR, it would still be subject to the Coastal Act. The project was not exempt from requiring a CDP, regardless of the EFR determination. Verizon

Wireless held firm on their stance that the project qualified as an EFR because the “base station” should be considered all of the buildings on the property as one structure as they are attached by exterior overhangs and staircases. If the base station were to include all buildings as one, then their argument was that their facility was collocated on the same “base station” as the existing T-Mobile facility and otherwise qualified as an EFR.

Verizon Wireless appeared to be hoping to have the project be processed without a public hearing. A public hearing process would not have been required if Verizon Wireless had revised the height of the antennas to not project three feet above the roof parapet. In doing so, the project would have qualified for a CDP exemption and would not need a variance to deviate from this height requirement. Verizon Wireless stated that it needed the proposed antenna height to maintain a signal clearance over the roof parapet in order to achieve its coverage objective. Staff and its consultants suggested that Verizon Wireless consider having the roof parapets removed and replaced with radio frequency (RF)-friendly material to maintain the size of the antennas and still meet their coverage objectives while also coming into compliance with the City’s design standards. Verizon Wireless was open to this idea but later concluded that the landlord did not approve this option and that the construction would interfere with existing tenants below the roof.

On December 14, 2020, Verizon Wireless provided the City with a copy of an email from the property owner denying the replacement of the parapets. They remained firm that the application qualified as an EFR and was subject to an administrative approval since it would not be subject to the City’s design standards. City staff disagreed and maintained the only way to proceed with the application was as a CDP with a variance and other associated entitlements.

On August 16, 2021, the Planning Commission adopted Resolution No. 21-63, approving the project entitlements with a few additional conditions beyond the standard conditions in the ordinance. As noted above, Verizon Wireless and Lonnie Gordon both submitted an appeal of the Planning Commission’s decision.

Figure 1 – Project Area Aerial Photo



Source: Malibu City GIS, 2021

APPEAL TO THE CITY COUNCIL

The appeal outlines the specific findings and the grounds for the appeal, each of which are summarized below in *italics*. Followed by each point of the appeal are staff's responses in straight type. The full text of the appeal documents can be found in Exhibits B and C.

Appellant 1: Verizon Wireless

Verizon filed a provisional appeal, in which it noted that there is ongoing litigation between the City and Verizon over this application and whether it qualifies as an EFR. Therefore, though Verizon claims the following:

Appeal Item 1: Verizon claims that: the subject Planning Commission hearing and decision were improper, preempted by federal law, and mooted by Verizon's deemed

granted letter in this matter; the project qualifies as an EFR and the City failed to approve the project within 60 days; and Verizon Wireless' application is the subject of federal litigation pending in the US District Court for the Central District of California.

Staff Response

As described in the *Project Background* above and explained more fully below, the application does not qualify as an EFR and therefore, federal law does not preempt the City from requiring compliance with local regulations. The project requires a CDP and a variance, both of which require Planning Commission approval pursuant to the Local Coastal Program's (LCP) Local Implementation Plan (LIP) Sections 13.7(B) and 13.26.5, respectively. The Planning Commission correctly made a decision on the subject application.

The proposed project does not qualify as an EFR. Pursuant to 47 CFR § 1.6100, an EFR is "Any request for modification of an **existing tower or base station** that does not substantially change the physical dimensions of such tower or base station, involving:

- (i) Collocation of new transmission equipment;
- (ii) Removal of transmission equipment; or
- (iii) Replacement of transmission equipment."

The application does not involve a collocation of new transmission equipment or the removal/replacement of existing transmission equipment on an **existing** base station. The existing base station would be Building C where the existing wireless facility is sited. The application is being processed as a collocation of new equipment (non-small cell) on an existing structure that is not a base station or tower, as defined in 47 CFR § 1.6100, and is therefore subject to a 90-day shot clock pursuant to 47 CFR § 1.6003(c)(ii).

As proposed, the proposed project does not meet the elements of an EFR pursuant to 47 CFR § 1.6100, because Verizon Wireless does not plan on using an existing base station and the modifications exceed the limits of a "substantial change" since it requires excavation and deployment outside of the existing site.

Finally, the claim that the City did not timely act on the EFR application is also disputed in the litigation. The City staff denied the EFR application multiple times. The litigation does stop the processing of the application for the proper permits. Due to shot clock limitations staff had to ensure the City was meeting federal requirements.

Appeal item 2: Verizon claimed without waiving its arguments and positions in the litigation, that certain conditions of approval in the Planning Commission resolution are improper or illegal.

Staff Response

As stated previously, the Planning Commission decision was not preempted by federal law, and the decision was made in accordance with federal, State and local law.

Therefore, the decision and the conditions of approval can be validly applied to the proposed collocation.² Verizon specifically took issue with Planning Commission's conditions of approval numbers 61, 62, and 63.

Condition No. 61 is a safety requirement to ensure that the generator activates in times of an emergency. As seen in the Woolsey Fire, power was cut off as residents evacuated their homes. They had to evacuate without communication through cellular networks. This condition will ensure that as soon as power goes out, or in times of other emergency, the automatic transfer switch keeps the wireless facility running so that residents and emergency responders can have proper communication.

Condition No. 62 ensures that the entirety of Verizon's wireless facility remains on in times of an emergency, when the generator is in use. This condition ensures that the generator powers Verizon's whole site. As directly stated in the condition, the generator is only required to power the entirety of Verizon's site on Building B. Verizon suggested in their appeal that the City was requiring them to power other facilities onsite, such as the T-Mobile site on the rooftop of Building C. That is incorrect. The condition is specific to the wireless facility on Building B, Verizon's site, as approved under this resolution.

Condition No. 63 was added by the Planning Commission as a stealthing requirement to make sure that Verizon's site would not be an eyesore. The site is proposing 13 new antennas that are 5 feet, 10 inches above the roof parapet of the building they are attached. They are highly visible from PCH and Kanan Dume Road, both LCP indicated scenic roads, and as such the Planning Commission wanted to approve a design that aligned more with the LCP by protecting scenic resources. Pursuant to LIP Section 6.5(A)(1), new development shall be sited and designed to minimize adverse impacts on scenic roads to the maximum feasible extent.

Appellant 2: Lonnie Gordon

The second appellant posed many questions about the application and related matters. Answers to all of them are provided below, though it was determined that 19 were relevant to the findings required for approval.

Appeal Item 1: The building structural issues such as weight load should had been checked by Building Safety Division prior to a Planning approval.

Appeal Item 2: Electrical issues such as the use a lot of energy as 5G is called an energy vampire should had been check by Building Safety prior to a Planning approval. Not environmentally friendly.

² Even if the project qualified as an EFR, as Verizon claims, the City still believes that the conditions imposed by the Planning Commission are justifiable. For example, Conditions Nos. 40, 58, 59, 61, and 62 require that the permittee comply with applicable safety and building codes, have sufficient backup power, and obtain the necessary permits and approvals.

Staff Response

While Ordinance No. 484 and Resolution No. 21-17 require that Building Safety Division review structural and electrical plans prior to deeming the application complete, the application was submitted prior to the effective dates of these documents.. However, conditions of approval were added for the applicant to submit plans and structural/electrical engineering documents to the Building Safety Division for Building Plan Check and building and electrical permits must be obtained prior to installation.

Appeal Item 3: Small Cell Order section on Page 6 of the Commission Agenda report states, "Staff and Consultants deemed this as not a small cell project so it does not fall within the shot clock so does not qualify under 6409 (The Spectrum Act)."

Staff Response

The application is not for a small cell facility and it is staff contention that the application does not qualify as an EFR under Section 6409. However, all wireless communications facilities are subject to federal shot clock limits. In this case, a 90-day shot clock is required pursuant to 47 CFR § 1.6003(c)(ii).

Appeal Item 4: This is closer than the stipulated 600-foot setback from other T-Mobile installation

Staff Response

The code section being referred to is LIP Section 3.16.5(O), which is not applicable because the subject site is in a commercial zone district. The 600-foot separation is required in residential zone districts only. The code section specifically states "This provision shall not apply to wireless telecommunication facilities located within any commercial zone district."

Appeal Item 5: Findings for variances are unsupported by facts in the record and the applicant was not at the meeting to answer questions.

Staff Response

It is staff's contention that the variance findings were supported by facts in the record. The additional antenna height is not expected to adversely affect views of the Pacific Ocean or Santa Monica Mountains. The site would be visible from PCH, an LCP- designated scenic highway. Staff requested Verizon Wireless to lower the height of antennas but after all options were exhausted it was deemed infeasible in order to meet the requested coverage objectives. The applicant is not required to attend a public hearing.

Appeal Item 6: No supporting engineering information on building/structural

Staff Response

As mentioned in the staff response to Appeal Items 1 and 2 above, structural safety will be during the Building Plan Check and permit inspection process.

Appeal Item 7: We would like to know if gap in coverage info supplied by Verizon Wireless was verified by the City's Wireless Consultant.

Staff Response

The project, including the coverage gap and all other submittal items, was reviewed by both the previous and current City wireless consultants. Neither consultant mentioned any issues with the coverage maps provided by Verizon Wireless.

Appeal Item 8: If there will be a 10 percent increase in building height, is it an LCP approved plan? The proposed antennas far exceed the three-foot allowable. They are 5'-10" or 5'-11". Almost six feet tall. That adds height to the building if shrouded.

Staff Response

The project requires a CDP because the antennas will increase the building's height more than 10 percent of the existing building height. The project also requires a variance because the height of the antennas protrude more than three feet above the roof parapet. The CDP and variance were approved by the Planning Commission making it a valid LCP entitlement unless denied by the City Council. The Planning Commission added a condition of approval to add a screen around the antennas for aesthetic reasons. The screening material is also subject to the same CDP and variance and would not project above the height of the proposed antennas.

Appeal Item 9: The Planning Commission approved the application on the basis of the façade, but the building owner had already said that was not acceptable. Additionally no conditions for screening materials, specific height, weight aerodynamics and wind load.

Staff Response

The property owner declined the existing parapet to be removed and reconstructed. There has not been any evidence provided showing whether the owner will accept the design as approved by the Planning Commission. The project was conditioned for the antennas to be fully screened at a maximum height consistent with the top of the antennas. Structural safety of the required screening will be reviewed in the Building Plan Check and inspection process.

Appeal Item 10: Depending on the façade material that might be used, has wind load analysis been done? This is a health and safety issue.

Staff Response

Structural analysis of the entire project will be reviewed in the Building Safety Division in the Building Plan Check and inspection process. Structural plans to demonstrate the wind resistance of the screening material will be provided and reviewed during that process.

Appeal Item 11: The Planning Commission proclaimed finding not of fact but by guessing and input of staff.

Staff Response

With the adoption of Resolution No. 21-63, the Planning Commission determined that all the relevant findings were supported by facts.

Appeal Item 12: Staff spoke on behalf of Verizon Wireless but staff works for City and statements by staff are non-binding on the applicant.

Staff Response

The Verizon Wireless representatives chose not to speak at the Planning Commission meeting. Staff presented the project to the Planning Commission in our capacity as the case planner for the project as done for all other projects heard by the Planning Commission. The City Attorney was also present to answer questions related to federal and State law.

Appeal Item 13: This installation is not just for telephone gap in coverage. It is a relay site to other Verizon Wireless antenna as stated in application. Is it a hosting site? A primary site or relay as stated?

Staff Response

The site is a macro site that will provide cellular coverage and also communicate with other Verizon Wireless sites in the surrounding areas.

Appeal Item 14: Does the interconnectedness reduce the ability of all sites to work independently?

Staff Response

As far as staff is aware, existing Verizon Wireless antennas in the surrounding areas work without the proposed macro facility, utilizing existing Verizon Wireless infrastructure. The applicant will have to further explain if there is an interconnectedness issue that the application is resolving. As mentioned previously, the proposed site will provide its own independent coverage while also connecting to other Verizon Wireless cell sites throughout the region.

Appeal Item 15: Applicant did not comply with scenic view restrictions as the antennas will be seen from N-9 a designated Scenic route, Kanan Dume Road not just PCH, and perhaps by residents nearby or up on Kanan Dume Road.

Staff Response

The site will be visible from PCH and Kanan Dume Road, both LCP-designated scenic roads. Findings were made and approved by the Planning Commission. The antennas would be visible from scenic roads whether the antennas were projecting three feet from the parapet or six feet as proposed with the variance. However, the added height over three feet is not expected to have an adverse view impact from scenic views of the Pacific Ocean or Santa Monica Mountains or any other scenic resource.

Appeal Item 16: Why do we need this in Malibu (a City of less than 9,000 people according to the current census)? Most people who live here value the rural character of our town?

Staff Response

Staff is required to review all wireless communications facility applications within the parameters of federal, State, and local law. This application meets all applicable requirements inclusive of the proposed discretionary requests.

Appeal Item 17: It is possible for these taller antenna, 5'-10" or 5'-11" according to application and requested waiver, to act as a lightning rod to the building. This is a high point in the area. This is an unknown hazard.

Staff Response

We can assume the antennas could be subject to lighting strikes. All safety requirements need to be met in accordance with the Building Code as adopted by the City of Malibu in the Building Plan Check and inspection process. Verizon Wireless cannot install its facility without completing this process and obtaining all necessary permits.

Appeal Item 18: We have questions about the alternative site analysis. PCH seems to have plenty of poles.

Staff Response

The project is proposed on a commercially zoned parcel and utilizes an existing building, both of which are preferred locations for wireless communications facilities as indicated in the LIP and MMC.

Appeal Item 19: No critical testing or information is available about how the RF emissions of these antennas will travel. We know they travel horizontally as well as vertically, so those tenants in that building, across the street, and the residential areas nearby will also be affected. Old FCC ruling from 1996 on effects of radiation may be changed. There is no intermodulation study at all, nor one in record that proves prevention to city's emergency broadcast system.

Staff Response

The RF emissions produced by the site were reviewed by both the previous and existing wireless consultants. Both consultants deemed that the RF emissions from the proposed facility were in compliance with federal law. A local jurisdiction cannot deny a wireless project based on RF emissions if it meets federal law.

Appeal Item 20: Staff determined that this class of project has no effect on the environment. We disagree. Science shows radio frequency radiation (RFR) injures trees, seedlings, roots, honey bees, butterflies, migratory birds, frogs, and other wildlife. The research can be viewed at the Environmental Health Trust (EHT) and Physicians for Safe Technology websites.

Staff Response

The City is not allowed to consider the potential health effects of RF emissions related wireless communications facilities beyond the provisions set forth by the FCC. The City is also not allowed to deny an application based on RF emissions if it is in compliance with federal law. Staff reviewed the project for all environmental impacts such as potential effects on biological resources and visual resources. The property is not identified as environmental sensitive habitat area (ESHA) pursuant to the LCP ESHA Overlay map and most of the proposed development will be on the rooftop and already disturbed areas. The potential visual impacts were also evaluated from PCH and Kanan Dume Road, which are scenic roads. The proposed facility will not obstruct any views of the ocean and the condition to screen the antennas, visual impacts are considered to be less than significant.

Appeal Item 21: There is a school for children with ADD and ADHD in the building. They will be adversely affected by this installation and are entitled to accommodations' under ADA.

Staff Response

The project is conditioned to be in compliance with all federal and State requirements including American with Disabilities Act (ADA) compliance. The Building Safety Division will verify compliance with ADA during the plan check and inspection process. The RF emissions report indicates that the proposed facility will be in compliance with applicable FCC standards.

Appeal Item 22: The application fails to comply with the City's General Plan and Municipal Code/Zoning.

Staff Response

The proposed facility is in accordance with the City's General Plan, specifically the Land Use Objective 4.2 which describes concentrating commercial uses of a similar nature in one area as to limit sprawl of such uses throughout the community. This site will concentrate wireless facilities in a commercial core area of the City and keep the wireless towers further away from residential neighborhoods, maintaining those neighborhoods rural and residential characteristics. The facility will also be in line with the LCP's Land Use Plan for Communications Facilities by being sited away from ESHA, avoiding significant view impacts and being located on the same parcel as a current facility to avoid proliferation of facilities throughout the City. Additionally, the proposed design is line with the City zoning codes as mentioned previously. The project is proposed on a commercially zoned parcel and utilizing existing infrastructure which are both preferred locations for wireless facilities in both the LIP and MMC. The proposed height requires a waiver and variance but as view impacts to scenic resources are not expected, the proposed height will not have a significant visual impact.

Appeal Item 23: Facts in record fail to comprise circumstances for which variance is eligible remedy.

Staff Response

The record demonstrates that a variance is acceptable because it was deemed to be the only feasible alternative to meet Verizon Wireless' coverage objectives. Staff had exhausted efforts for Verizon Wireless to reduce the height to avoid a variance or waiver. Verizon Wireless deemed all alternatives to be impracticable including the alternative to replace the existing parapet with a RF-friendly material, which was denied by the property owner.

Appeal Item 24: Does not provide battery backup operation independent of proposed/conditioned electric generator onsite, i.e., operation during failure/overheat/ out of fuel scenarios.

Staff Response

The proposed backup generator will service the proposed wireless communications facility in times of emergency. A backup power supply is the only requirement of the MMC. The Planning Commission added a condition to require an automatic transfer switch for all the antennas to be powered by the generator during a power shutoff.

Appeal Item 25: The Resolution mentions a monopole which is not applicable to this application.

Staff Response

The condition reads, "All non-ground-mounted equipment associated with the application shall be located no lower than eight feet above grade or ground level on the monopole or support structure". The term "support structure" is the correct reference for this condition.

Appeal Item 26: Where is the decibel level measured from? Roof, tenant offices, ground?

Staff Response

Pursuant to Condition No. 22 of Planning Commission Resolution No. 21-63, the decibels shall be measured from the base of the facility.

Appeal Item 27: Where will the signage be placed so people working or visiting in the level below installation will know of the emissions hazards?

Staff Response

The necessary RF safety signage will be located on the rooftop. The placement of the signage was reviewed by our wireless consultants and deemed to be in compliance with federal law.

Appeal Item 28: #63 states that all rooftop equipment shall be screened from view. From what and who's viewpoint?

Staff Response

The project was conditioned to be completely screened from view from members of the public. The only vantage point from where the antennas will be visible is below the building either on private property or in the public ROW.

Appeal Item 29: #65 OET can be changed at any time.

Staff Response

OET Bulletin #65 is current guidance for evaluating compliance with FCC's imposed RF emissions standards.

Appeal Item 30: Collocation on same building was not proved infeasible. Facts in the record fail to comprise justification, to collocate onto Building B and/or for exceeding height limit which prior T-Mobile installation already complies.

Although collocation is mentioned in this Resolution, there is no collocation. This is a new and separate installation and it does not share anything. It is an independent and independently functioning Macro cell site. 13 antenna to be installed with accompanying equipment.

Staff Response

Pursuant to 47 CFR § 1.6002(g), "Collocation... means -

- (1) Mounting or installing an antenna facility on a pre-existing structure; and/or
- (2) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure."

When staff refers to collocation for this project, they are referring to the definition above. A collocation is when a wireless communications facility collocates on an existing structure. A collocation can also be when a wireless communications facility collocates with another wireless communications facility. The former is the correct use of "collocation" for this project.

Staff encouraged Verizon Wireless to collocate on Building B. Verizon Wireless cited a lack of available space on the rooftop of Building C, where the current T-Mobile wireless facility resides. Pursuant to LIP Section 3.16.11(A), wireless communications facilities are preferred to be collocated with other existing wireless communications facilities.

Appeal Item 31: There is no qualifying statement in the application by building owner. She has already stated that she does not want a façade, and that was mentioned in the application.

Staff Response

The building owner has shown consent of the proposed Verizon Wireless facility by signing the Uniform Application, available for review in City records. Evidence in the

record also demonstrates that the owner did not approve the City's recommendation to remove and replace the roof parapet. There has been no evidence provided showing if the owner approves of the Planning Commission condition to screen the proposed antennas.

Appeal Item 32: The existing cellular, on Building B, was installed before Malibu became a City, so information in Variance No. 20-023 is not credible.

Staff Response

The existing T-Mobile facility is located on Building C. The existing wireless facility on Building C was approved in 1990 by a permit issued by the County of Los Angeles. The CDP, WP, WVR, VAR, and SPR are the correct entitlements for the proposed facility as of current day.

ENVIRONMENTAL REVIEW: Pursuant to the authority and criteria contained in the CEQA, the Planning Department has analyzed the proposed project. The Planning Department found that this project is listed among the classes of projects that have been determined not to have a significant adverse effect on the environment. Therefore, the project is categorically exempt from the provisions of CEQA pursuant to CEQA Guidelines Sections 15303(e) – New construction or Conversion of Small Structures, including accessory structures and 15301(e) - Improvements to existing facilities. The Planning Department has further determined that none of the six exceptions to the use of a categorical exemption applies to this project (CEQA Guidelines Section 15300.2).

CORRESPONDENCE: All correspondence received on this project has been included as Exhibit G.

PUBLIC NOTICE: On September 16, 2021, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City and a public notice was mailed to the owners and occupants of all properties within a radius of 500 feet of the subject property (Exhibit H).

SUMMARY: Based on the record as a whole, including but not limited to all written and oral testimony offered in connection with this matter, staff recommends that the City Council adopt Resolution No. 21-53 denying Appeal Nos. 21-012 and 21-015 and approving CDP No. 20-035, WP No. 21-002 and WVR No. 21-001, VAR No. 20-023, and SPR No. 20-045, subject to the conditions of approval in the resolution.

EXHIBITS:

- A. City Council Resolution No. 21-53
- B. Appeal No. 21-012
- C. Appeal No. 21-015
- D. Planning Commission Resolution No. 21-63

- E. August 16, 2021 Planning Commission Agenda Report Item 5.C. and Attachments 1-9
- F. Correspondence
- G. Public Hearing Notice

RESOLUTION NO. 21-53

A RESOLUTION OF THE CITY OF MALIBU CITY COUNCIL DETERMINING THE PROJECT IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, DENYING APPEAL NO. 21-012 AND APPEAL NO. 21-015 AND APPROVING WIRELESS PERMIT NO. 21-002 AND COASTAL DEVELOPMENT PERMIT NO. 20-035 FOR VERIZON WIRELESS TO INSTALL A ROOF MOUNTED WIRELESS COMMUNICATIONS FACILITY ON BUILDING B INCLUDING ANTENNAS REACHING A MAXIMUM HEIGHT OF FIVE FEET, TEN INCHES ABOVE THE ROOF PARAPET, ELECTRICAL SUPPORT EQUIPMENT ATTACHED TO THE ROOFTOP AND A GROUND MOUNTED BACKUP GENERATOR, INCLUDING WAIVER NO. 21-001 AND VARIANCE NO. 20-023 TO PERMIT ROOF MOUNTED WIRELESS FACILITY ANTENNAS TO EXTEND OVER 3 FEET ABOVE THE ROOF PARAPET AND SITE PLAN REVIEW NO. 20-045 TO INSTALL AND OPERATE A WIRELESS COMMUNICATIONS FACILITY IN THE COMMERCIAL NEIGHBORHOOD ZONING DISTRICT LOCATED AT 28990.5 PACIFIC COAST HIGHWAY (VERIZON WIRELESS)

The City Council of the City of Malibu does hereby find, order and resolve as follows:

SECTION 1. Recitals.

A. On June 22, 2020, a new application for Wireless Communications Facility (WCF) No. 20-013 and Site Plan Review (SPR) No. 20-045 was submitted by the applicant, Spectrum Services, on behalf of Verizon Wireless for the installation of a roof mounted wireless communications facility and a ground mounted backup generator. Coastal Development Permit (CDP) No. 20-035 and Variance (VAR) No. 20-023 were later assigned to the project.

B. On April 26, 2021, the Malibu City Council adopted Ordinance 484 and Resolution 21-17 amending the City's wireless communications facility application and design standards.

C. On July 21, 2021, Planning staff assigned Wireless Permit (WP) No. 21-002 and Waiver (WVR) No. 21-001 to the subject application.

D. On August 16, 2021, the Planning Commission adopted Planning Commission Resolution No. 21-63, approving WP No. 21-002, CDP No. 11-037, WVR No. 21-001, VAR No. 20-023, and SPR No. 20-045.

E. On August 26, 2021, Both Verizon Wireless and Lonnie Gordon filed timely Appeals Nos. 21-012 and 21-015 of Planning Commission Resolution No. 21-63.

F. On September 16, 2021, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a radius of 1,000 feet from the subject property and all interested parties.

G. On September 27, 2021, the City Council held a duly noticed public hearing on the subject appeal, reviewed and considered the agenda report, reviewed and considered written reports, public testimony, and other information in the record.

SECTION 2. Appeal of Action.

The appeals filed by Verizon Wireless and Lonnie Gordon contend that the findings or conditions are not supported by the evidence, or decision is not supported by the findings, there was a lack of a fair or impartial hearing and the decision was contrary to law. In the associated Council Agenda Report, Planning Department staff analyzed and addressed appellant's contentions.

SECTION 3. Findings for Denying the Appeals.

Based on evidence contained within the record, including the content of the Council Agenda Report and Commission Agenda Report, as well as the testimony and materials considered by the Planning Commission and the City Council, the City Council hereby makes the following findings of fact, denies the appeals, and finds that substantial evidence in the record supports the required findings for approval of the project.

Verizon Wireless Appeal

A. The application does not qualify as an Existing Facilities Request (EFR) and therefore, federal law does not preempt the City from exercising discretion, applying its applicable permitting processes, and requiring compliance with federal, State and local regulations. The project requires, among other things, a CDP and a variance, both of which require Planning Commission approval pursuant to the Local Coastal Program's (LCP) Local Implementation Plan (LIP) Sections 13.7(B) and 13.26.5, respectively.

B. The application does not involve a collocation of new transmission equipment or the removal/replacement of existing transmission equipment on an **existing** base station. The existing base station would be Building C where the existing wireless facility is sited. The application is being processed as a collocation of new equipment (non-small cell) on an existing structure that is not a base station or tower, as defined in 47 CFR § 1.6100, and is therefore subject to a 90-day shot clock pursuant to 47 CFR § 1.6003(c)(ii).

C. The claim that the City did not timely act on the EFR application is also disputed in the litigation. The City staff denied the EFR application multiple times. The litigation does not stop the processing of the application for the proper permits. Due to shot clock limitations, staff had to ensure the City was meeting federal requirements.

D. Evidence in the record demonstrates that the Planning Commission decision was not preempted by federal law and the decision was made in accordance with State and local law. Therefore, the decision and the conditions of approval can be validly applied to the proposed collocation.¹ Verizon specifically took issue with Planning Commissions conditions of approval Nos. 61, 62, and 63, which are intended to ensure that the wireless facility has sufficient backup power in the event of an emergency, that the backup generator automatically switches on, and that the facility is sufficiently stealthed and screened.

¹ Even if the project qualified as an EFR, as Verizon claims, the City still believes that the conditions imposed by the Planning Commission are justifiable. For example, Conditions 40, 59, 59, 61, and 62 require that the permittee comply with applicable safety and building codes, have sufficient backup power, and obtain the necessary permits and approvals.

Lonnie Gordon Appeal

The appellant posed many questions about the application and related matters, which staff fully addressed in the agenda report, and the City Council agrees with staff's responses to those questions. None of appellant's points are grounds for justifying denial. Below are the City Council's findings related to the appellant's points that were relevant to the findings required for approval.

- A. The application was submitted prior to the effective dates of Ordinance 484 and Resolution No. 21-17. However, conditions of approval were added for the applicant to submit plans and structural/electrical engineering documents to the Building Safety Division for Building Plan Check and building and electrical permits must be obtained prior to installation.
- B. LIP Section 3.16.5(O) is not applicable because the subject site is a commercial zoning district, not a residential one. The 600-foot separation is required in residential zoning districts only. Section 3.16.5(O) specifically states: "This provision shall not apply to wireless telecommunication facilities located within any commercial zone district."
- C. The additional antenna height is not expected to adversely affect views of the Pacific Ocean or Santa Monica Mountains. The site would be visible from PCH and Kanan Dume Road, LCP-designated scenic roads. Staff requested Verizon Wireless to lower the height of antennas, but, after all options were exhausted, it was deemed infeasible in order to meet the requested coverage objectives. The applicant is not required to attend a public hearing.
- D. Evidence in the record demonstrates that the structural safety of the proposed project will be reviewed in the Building Plan Check process.
- E. The property owner declined the existing parapet to be removed and reconstructed. There has not been any evidence provided showing whether the owner will accept the design as approved by the Planning Commission. The project was conditioned for the antennas to be fully screened at a maximum height consistent with the top of the antennas. Structural safety of the required screening will be reviewed in the Building Plan Check process.
- F. Structural analysis of the entire proposed site will be reviewed in the Building Plan Check process.
- G. With the adoption of Resolution No. 21-63, the Planning Commission determined that all the relevant findings were supported by facts.
- H. The site will be visible from PCH and Kanan Dume Road, both LCP indicated scenic roads. Findings were made and approved by the Planning Commission. The antennas would be visible from the scenic roads regardless of the proposed variance and there are no view impacts, public or private, to scenic views of the Pacific Ocean or Santa Monica Mountains or any other scenic resource.
- I. The antennas could be subject to lighting strikes. All safety requirements need to be met in accordance with the LA County Building Code as adopted by the City of Malibu in the Building Plan Check process. Verizon cannot install their facility without completing this process and obtaining all necessary permits.

J. The RF emissions produced by the site were reviewed by both the previous and existing wireless consultants. Both consultants deemed that the RF emissions proposed to be produced by the site were in compliance with federal law. Under 47 USC § 332(c)(7)(B)(iv), a local jurisdiction may not deny a wireless project on the basis of the environmental effects of RF emissions, if the facility meets the FCC's regulations concerning such emissions.

K. Evidence in the record demonstrates that the City cannot deny an application based on RF emissions if it is in compliance with federal law. Staff reviewed the project for all environmental impacts such as potential effects on biological resources and visual resources. The property is not identified as environmentally sensitive habitat area (ESHA) pursuant to the LCP ESHA Overlay map and most of the proposed development will be on the rooftop and already disturbed areas. The potential visual impacts were also evaluated from PCH and Kanan Dume Road, which are scenic roads. The proposed facility will not obstruct any views of the ocean and the condition to screen the antennas, visual impacts are considered to be less than significant.

L. The project is conditioned to be in compliance with all federal and State requirements including American with Disabilities Act (ADA) compliance. The Building Safety Division will verify compliance with ADA during the plan check and inspection process. The RF emissions report indicates that the proposed facility will be in compliance with applicable FCC standards.

M. Evidence in the record demonstrates that the proposed facility is in compliance with the City's General Plan and zoning codes. The project is proposed on a commercially zoned parcel and utilizes existing infrastructure which are both preferred locations for wireless facilities in both the LIP and MMC. The proposed height requires a waiver and variance but as view impacts to scenic resources are not expected, the proposed height will not be a major detriment to the surrounding environment.

N. Evidence in the record demonstrates that a variance is acceptable because it was deemed to be the only feasible alternative to meet Verizon's coverage objectives. Staff had exhausted efforts to get Verizon to reduce the height to measurement acceptable without a variance or waiver. All alternatives were deemed to be infeasible by Verizon including the last alternative which was denied by the property owner.

O. The proposed backup generator will service the wireless facility in times of emergency. A backup power supply is the only requirement of the MMC. The Planning Commission added a condition to require an automatic switch during a power shut off.

P. Pursuant to 47 CFR § 1.6002(g), Collocation means – (1) mounting or installing an antenna facility on a pre-existing structure; and/or (2) modifying a structure for the purpose of mounting or installing an antenna facility on that structure. When staff refers to collocation for this project, they are referring to the definition above. A collocation is when a wireless communications facility collocates on an existing structure. A collocation can also be when a wireless communications facility collocates with another wireless facility. The former is the correct use of "collocation" for this project. Staff encouraged Verizon to collocate on that building. Verizon cited a lack of available space on the rooftop of Building C, where the current T-Mobile wireless facility resides.

Q. The building owner has shown consent of the proposed Verizon facility by signing the Uniform Application, available for review in the record. Evidence in the record also demonstrates that the owner did not approve of the City's recommendation to remove and replace the roof parapet. There has been no evidence provided showing if the owner approves of the addition of screening to the roof parapet.

R. The existing T-Mobile facility is located on Building C. The CDP, WP, WVR, VAR, and SPR are the correct entitlements for the proposed facility as of current day.

SECTION 4. Environmental Review

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the City Council has analyzed the proposal. The City Council found that this project is listed among the classes of projects that have been determined not to have a significant adverse effect on the environment. Therefore, the project is categorically exempt from the provisions of CEQA pursuant to CEQA Guidelines Sections 15301(e) – additions to existing structures and 15303(e) – new construction of accessory structures. The City Council has further determined that none of the six exceptions to the use of a categorical exemption applies to this project (CEQA Guidelines Section 15300.2).

SECTION 5. Required Permit Findings

Based on substantial evidence contained within the record and pursuant to Local Coastal Program (LCP) Local Implementation Plan (LIP) Sections 13.7(B) and 13.9, the City Council adopts the analysis in the agenda report, incorporated herein, the findings of fact below, WP No. 21-002 and CDP No. 20-035 for Verizon Wireless to install a roof mounted wireless communications facility reaching a maximum height of 47 feet, 4 inches, electrical support equipment attached to the roof and a backup generator, including WVR No. 21-001 and VAR No. 20-023 to permit wireless antennas over three feet in height and SPR No. 20-045 to install and operate a wireless communications facility in the Commercial Neighborhood (CN) zoning district located at 28990.5 Pacific Coast Highway (PCH).

The project is consistent with the LCP's zoning, grading, cultural resources, water quality, and onsite wastewater treatment requirements. The project, as conditioned, has been determined to be consistent with all applicable LCP codes, standards, goals, and policies. The required findings are made herein.

A. Wireless Permit Findings (MMC Chapter 17.46)

1. The site has been reviewed for compliance with all applicable regulations including federal, State and local authority. The site will be in compliance with all Federal Communications Commission (FCC) requirements. Additionally, the project is conditioned to be submitted for a building plan check with City Building Safety Division in which the project will be verified that it meets the Los Angeles County Building Code as adopted by the City of Malibu. The project will undergo thorough safety review with the Building Safety Division and at the time of installation the project will be inspected by both Building and Planning staff for compliance with all safety requirements. As proposed and conditioned the site will not be detrimental to public health and not pose an undue fire risk.

2. The proposed wireless communications facility will comply with all requirements of Malibu Municipal Code (MMC) Chapter 17.46 and Resolution No. 21-17 inclusive of the proposed Waiver for additional height allowance. The proposed site meets or is conditioned to meet all required safety elements and the design and location are consistent with MMC Chapter 17.46 as well as Resolution No. 21-17, which describes the detailed standards in which a wireless facility shall comply. A Waiver is being proposed for an additional height allowance but as mentioned previously, the design is the only feasible alternative for Verizon Wireless to meet their coverage objectives. Besides the height of the antennas, the proposed facility will comply with or is conditioned to comply with all required design standards of the MMC and Resolution No. 21-17.

3. The site will meet all requirements of the FCC. Additionally, the project will undergo a thorough review from the Building Safety Division for compliance with the adopted Los Angeles County Building Code. As proposed and conditioned the facility will comply with State and federal law.

B. General Coastal Development Permit (LIP Chapter 13)

1. The project has been reviewed by the Planning Department for conformance with the LCP. As discussed herein, based on the submitted project plans, visual demonstration exhibits, alternative site analysis, coverage maps, Radio Frequency – Electromagnetic Energy (RF-EME) Jurisdictional Report, site inspection, and recommended conditions, the proposed wireless communications project conforms to the LCP and MMC in that it meets all applicable wireless communications facility code and other standards.

2. Evidence in the record demonstrated that the project is the least environmentally damaging alternative. The proposed facility is on a commercially zoned parcel, or non-residential, which is a preferred location according to LIP Chapter 3.16.11(B). Additionally, the project proposes to utilize existing infrastructure and is designed and conditioned to be camouflaged to the maximum extent feasible. There were other alternatives that were researched in order to minimize visual impacts, but none were feasible.

C. Variance for the development of roof mounted wireless facility antennas to extend three feet above the roof parapet (LIP 13.26.5)

VAR No. 20-023 will allow the installation of roof mounted wireless facility antennas to extend three feet above the roof parapet.

1. Evidence in the record demonstrates there are special characteristics for the proposed wireless communications facility that makes it subject to a variance. In order to meet Verizon Wireless's coverage objectives, the antennas must be at height protruding 5 feet, 10 inches above the roof parapet. There were alternatives explored to try and lower the proposed height, but all were deemed infeasible due to various reasons including not receiving approval from the property owner, spacing and interference issues. Verizon Wireless could have proposed an independent site, not utilizing existing buildings and it would have had greater environmental impact. Being on the rooftop of a two-story structure, the proposed antennas will be far away from members of the public. And although visible from a scenic road, there are no anticipated view impacts to the Pacific Ocean or Santa Monica Mountains. Additionally, there is already a wireless facility on the adjacent building so not allowing Verizon Wireless to collocate here would deny them a right granted to another wireless carrier.

2. The proposed wireless communications facility meets all FCC required FCC's Maximum Permissible Exposure (MPE) limits for the general public. Additionally, the site will conform to the Los Angeles County Building Code as adopted by the City of Malibu. The rooftop design was accepted by the property owner and suggested alternatives would have been more harmful to the existing structure in which this proposed facility will be attached. Lastly, there are no anticipated visual impacts to scenic views. The proposed facility will not be detrimental to the public interest, safety, welfare, or property.

3. There is already a wireless facility on the adjacent building. If the carrier of that facility came in with a proposal to increase the height of their antennas to taller than three feet above the parapet, staff would also consider the project under the same circumstances as this proposal. Thus, granting the variance will not constitute a special privilege to the applicant or owner.

4. The granting of the variance will not be in conflict with the policies of the LCP. The proposed height is not expected to impact any scenic views. The antennas and associated equipment will be painted to blend in with the surrounding environment.

5. The proposed facility is the rooftop of a commercial building in the Commercial Neighborhood zoning district. The proposed project is consistent with the purpose and intent for the CN zone. As mentioned previously, the LIP's preferred location is on non-residentially zoned parcels and on existing infrastructures which this site will follow. The applicant is also applying for a site plan review for a new wireless communications facility in a commercial zoning district and the proposed collocation of the facility meets the recommended design criteria in the LIP and MMC.

6. The subject site is physically suitable for the proposed variance. The proposed location keeps it away from potential impacts to scenic views and residential homes. There are no impacts to visually impressive views of the Pacific Ocean or any other scenic resources identified in the LIP.

7. The variance complies with State and local law in that it meets the requirements of the FCC and is collocated on an existing building, a location preferred in the Malibu LIP and MMC. There are no visual impacts to scenic resources.

8. The variance proposal does not reduce or eliminate parking for access to the beach, public trails or parklands.

D. Site Plan Review for erecting a wireless communications facility in the CN zoning district (LIP Section 13.27.5)

SPR No. 20-045 will allow the installation of a wireless communications facility in the public in the CN zoning district.

1. Wireless communications facilities are permitted in commercial zoning districts with a site plan review provided such facilities comply with the general requirements set forth in LIP Section 3.16.5 and the most restrictive design standards set forth in LIP Section 3.16.6. As discussed in the *MMC/LIP Conformance Analysis* section above, the proposed wireless

communications facility is consistent with LIP standards, which implements the policies and provisions of the City's LCP.

2. As conditioned, the roof mounted antennas and associated equipment will be screened or painted to match existing infrastructure. The proposed ground-mounted backup generator will be screened. The backup generator's screening is conditioned to be painted to match the surrounding environment. The proposed project is generally compatible in size, bulk, and height to roof mounted wireless facilities in commercial zoning districts. The facility's maximum height is also the least intrusive design compared to constructing a new site. Further, the project is conditioned so that it must, at all times, be in compliance with federal and State regulations including, but not limited to, American with Disabilities Act (ADA) accessibility and any requirements related to wireless communications utilities regulated by the FCC.

3. The proposed wireless communications facility is not expected to obstruct visually impressive scenes of the Pacific Ocean, off-shore islands, Santa Monica Mountains, canyons, valleys or ravines. The proposed rooftop wireless facility does exceed a maximum three feet above the roof parapet, as required by the LIP and Resolution No. 21-17, but does not diminish any significant public views of the beach or the Santa Monica Mountains.

4. The proposed project will comply with all applicable requirements of State and local laws as required under LIP Section 3.16.5 and MCC Section 17.46.060, including but not limited to the Uniform Building Code, National Electrical Code, and Uniform Fire Code to ensure compliance with the above finding. The proposed project is also required to comply with all applicable regulations and standards promulgated or imposed by any State or Federal agency, including the FCC.

5. Wireless communications facilities are permitted in commercial zoning districts with a site plan review, provided such facilities comply with the general requirements set forth in LIP Section 3.16.5 and design criteria set forth in LIP Section 3.16.6. The proposed project complies with these standards, subject to conditions of approval.

6. Based on staff's site inspections, the provided visual simulations, and review of the plans, it was determined that the new pole and mechanical equipment is not expected to obstruct any private protected views of impressive scenes of the Pacific Ocean, off-shore islands, Santa Monica Mountains, canyons, valleys, or ravines.

E. Scenic, Visual and Hillside Resource Protection (LIP Chapter 6)

1. The proposed wireless communications facility will not affect any scenic views of the Pacific Ocean and Santa Monica Mountains as it is located in a developed commercial area in the northern part of Point Dume which is centrally located within the City and far from the aforementioned scenic areas. Furthermore, the project is the least visually intrusive alternative that still meets Verizon Wireless's goals and objectives.

2. The subject parcel is located on the ocean side of PCH but will not affect scenic views of motorists traveling on the highway. Based on the scope of the project and associated conditions of approval, no adverse scenic or visual impacts are expected.

3. Evidence in the record demonstrates that the proposed location is the least environmentally damaging alternative.

4. Evidence in the record demonstrates that all project alternatives that would meet Verizon Wireless's goals and objectives were not feasible or they would be more environmentally impactful than the current proposal; therefore, this is the least impactful alternative that is still feasible to meet Verizon's objectives.

5. Evidence in the record demonstrates the proposed design will include antennas and equipment that will be screened or painted a color that will best help them blend them with their surroundings. As conditioned and designed, the proposed project will have a less than significant impact on scenic views.

F. Hazards (LIP Chapter 9)

1. The proposed project is required to comply with all applicable requirements of State and local laws as required under LIP Section 3.16.5/MCC Section 17.46.060, including but not limited to the Uniform Building Code, National Electrical Code, and Uniform Fire Code to ensure compliance with the above finding. The proposed project is also required to comply with all applicable regulations and standards promulgated or imposed by any State or Federal agency, including the FCC. Based on the project plans and provided reports, staff determined that the project is located on PCH's public ROW where it will not adversely impact site stability or structural integrity if the project is constructed to adhere to all applicable safety requirements provided by the FCC, SCE, and the City Public Works Department.

2. Evidence in the record demonstrates that the proposed project, as designed and conditioned, will not have a significant effect on the site's stability or structural integrity.

3. Evidence in the record demonstrates that the proposed project, as designed and conditioned, is the least environmentally damaging alternative.

4. Evidence in the record demonstrates that the proposed project, as designed and conditioned, will not have adverse impacts on site stability. Compliance with standard engineering techniques and other feasible available solutions to address hazards issues will ensure that the structural integrity of the proposed development will not result in any hazardous conditions.

SECTION 6. City Council Action.

Based on the foregoing findings and evidence contained within the record, the City Council hereby approves CDP No. 18-032, WCF No. 18-008, VAR 18-039 and SPR No. 18-034, subject to the conditions set forth herein.

SECTION 7. Conditions of Approval.

1. The applicant, and their successors in interest, shall indemnify and defend the City of Malibu and its officers, employees and agents from and against all liability and costs relating to the City's actions concerning this project, including (without limitation) any award of litigation expenses in favor of any person or entity who seeks to challenge the validity of any of the City's actions or decisions in connection with this project. The City shall have the sole right to choose its counsel and property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this project.

2. The permittee shall be strictly liable for interference caused by its facilities with city communications systems. The permittee shall be responsible for costs for determining the source of the interference, all costs associated with eliminating the interference (including but not limited to filtering, installing cavities, installing directional antennas, powering down systems, and engineering analysis), and all costs arising from third party claims against the city attributable to the interference.

3. Approval of this application is to allow the installation of the following:

Roof mounted Equipment

- a. 13 New Antennas:
 - i. 9 panel antennas mounted onto the parapet wall,
 - ii. 1 two-foot parabolic antenna,
 - iii. 1 three-foot parabolic antenna,
 - iv. 1 four-foot parabolic antenna
 - v. 1 GPS antenna;
- b. 12 remote radio units;
- c. 3 junction boxes;
- d. Additional associated electrical support equipment;

Ground mounted equipment

- e. A 40kw backup generator;
 - f. 211-gallon fuel tank;
 - g. Associated electrical support equipment; and
 - h. Concrete block screen wall.
4. Subsequent submittals for this project shall be in substantial compliance with plans on-file with the Planning Department, date-stamped **December 11, 2020**. The project shall comply with all conditions of approval stipulated in the department referral sheets. In the event the project plans conflict with any condition of approval, the condition shall take precedence.
 5. The permit and rights conferred in this approval shall not be effective until the property owner signs, notarizes and returns the Acceptance of Conditions Affidavit accepting the conditions set forth herein. The applicant shall file this form with the Planning Department within 10 days of this decision or prior to issuance of building permits.
 6. Pursuant to LIP Section 13.20, development pursuant to an approved CDP shall not commence until the CDP is effective. The CDP is not effective until all appeals including those to the California Coastal Commission (CCC) if applicable, have been exhausted.
 7. The applicant shall digitally submit a complete set of plans, including the items required in Condition No. 7 to the Planning Department for consistency review and approval prior to plan check and again prior to the issuance of any building or development permits.
 8. This resolution (including the signed and notarized Acceptance of Conditions Affidavit) shall be copied in its entirety and placed directly onto a separate plan sheet(s) to be included in the development plans prior to submitting for a building permit from the City of Malibu Environmental Sustainability Department and the California Department of Transportation for an encroachment permit.

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9. This WP shall be valid for a period of ten (10) years from issuance, unless pursuant to another provision of the Code or these conditions, it expires sooner or is terminated. At the end of ten (10) years from the date of issuance, such wireless permit shall automatically expire, unless an extension or renewal has been granted. A person holding a wireless communications facility permit must either (1) remove the facility within thirty (30) days following the permit's expiration (provided that removal of support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right of way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City); or (2) prior to expiration, submit an application to renew the permit, which application must, among all other requirements, demonstrate that the impact of the wireless facility cannot be reduced. The wireless facility must remain in place until it is acted upon by the City and all appeals from the City's decision exhausted.
 10. The installation and construction authorized by this WP shall be completed within three (3) years after its approval, or it will expire without further action by the City unless prior to the three (3) years the applicant submit an extension request and the City, in its sole discretion, grants a time extension for due cause. The installation and construction authorized by a wireless ROW permit shall conclude, including any necessary post-installation repairs and/or restoration to the ROW, within thirty (30) days following the day construction commenced. This 30-day period may be extended by the Planning Director if the applicant can demonstrate that construction has been diligently pursued but due to circumstances beyond the applicant's control, construction cannot be completed within 30 days of when it is commenced. The permittee must provide written notice to City within ten (10) days after completing construction. The expiration date shall be suspended until an appeal and/or litigation regarding the subject permit is resolved.
 11. The Planning Director may grant up to four one-year extensions of the timeline, in Condition 9 above, for completing the installation and construction authorized by a development or condition use permit, if the Planning Director finds that the conditions, including but not limited to changes in the wireless ordinance under which the permit approval was issued, have not significantly changed.
 12. Minor changes to the approved plans or the conditions of approval may be approved by the Planning Director, provided such changes achieve substantially the same results and the project is still in compliance with the MMC. An application with all required materials and fees shall be required.
 13. Any questions of intent or interpretation of any condition of approval will be resolved by the Planning Director upon written request of such interpretation.
 14. All structures shall conform to the requirements of the Environmental Sustainability Department, Public Works Department, Federal Communications Commission (FCC), and LACFD requirements, as applicable. Notwithstanding this review, all required permits, including but not limited to an encroachment permit from the California Department of Transportation, shall be secured.

Cultural Resources

15. In the event that potentially important cultural resources are found in the course of geologic testing, work shall immediately cease until a qualified archaeologist can provide an

evaluation of the nature and significance of the resources and until the Planning Director can review this information. Where, as a result of this evaluation, the Planning Director determines that the project may have an adverse impact on cultural resources, a Phase II Evaluation of cultural resources shall be required pursuant to MMC Section 17.54.040(D)(4)(b).

16. If human bone is discovered, the procedures described in Section 7050.5 of the California Health and Safety Code shall be followed. These procedures require notification of the coroner. If the coroner determines that the remains are those of a Native American, the applicant shall notify the Native American Heritage Commission by phone within 24 hours. Following notification of the Native American Heritage Commission, the procedures described in Section 5097.94 and Section 5097.98 of the California Public Resources Code shall be followed.

Wireless Communications Antennas and Facilities Conditions

17. All antennas shall meet the minimum siting distances to habitable structures required for compliance with the FCC regulations and standards governing the environmental effects of radio frequency emissions. Permittee shall keep up-to-date on current information from the FCC in regards to maximum permissible radio frequency exposure levels. In the event that the FCC changes its guidelines for human exposure to radio frequency, permittee shall, within 30 days after any such change, submit to the Planning Director a report prepared by a qualified engineer that demonstrates actual compliance with such changed guidelines. The Director may, at permittee's sole cost, retain an independent consultant to evaluate the compliance report and any potential modifications to the permit necessary to conform to the FCC's guidelines. Failure to submit the compliance report required under this condition, or failure to maintain compliance with the FCC's guidelines for human exposure to radio frequency at all times shall constitute grounds for permit revocation.
18. All antennas shall be located so that any person walking adjacent to the transmitting surface of the antennas will be walking on a grade, which is a minimum of eight and one-half feet below the transmitting surface.
19. All antennas, equipment, and support structures shall be designed to prevent unauthorized climbing.
20. The wireless communications facility shall be erected, operated, and maintained in compliance with the general requirements set forth in LIP Section 3.16.5 and most restrictive design criteria set forth in LIP Section 3.16.6.
21. The antenna and electrical support equipment shall, at all times, be operated in a manner that conforms to the applicable federal health and safety standards, including those imposed by MMC Chapter 17.46 and Resolution No. 21-17.
22. The proposed wireless communications facility shall not emit a noise greater than fifty (50) decibels (dB) as measured from the base of the facility.
23. Wireless facilities and equipment must comply with the City's noise ordinance in MMC 8.24, or any successor provisions, and prevent noise and sound from being plainly audible at a distance of fifty (50) feet from the facility or within ten (10) feet of any residence.

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24. The Planning Director's approval is required if a generator is to be placed onsite for temporary or permanent use.
 25. All non-ground-mounted equipment associated with the application shall be located no lower than eight feet above grade or ground level on the monopole or support structure.
 26. The collocation of wireless communications facilities, pursuant to LIP Section 3.16.5, shall be required whenever feasible.
 27. An operation technician is required to conduct regular semi-annual maintenance visits to verify that the wireless communications facility remains in compliance with the conditions of approval and safety requirements.
 28. The City or its designee may enter onto the facility area to inspect the facility upon 48 hours prior notice to the permittee. The permittee shall cooperate with all inspections and may be present for any inspection of its facility by the City. The City reserves the right to enter or direct its designee to enter the facility and support, repair, disable, or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property. The City shall make an effort to contact the permittee prior to disabling or removing any facility elements, but in any case, shall notify permittee within 24 hours of doing so.
 29. Testing of any equipment shall take place on weekdays only, and only between the hours of 8:30 a.m. and 4:30 p.m., except that testing is prohibited on holidays that fall on a weekday. In addition, testing is prohibited on weekend days.
 30. Permittee shall obtain and maintain throughout the term of the permit commercial general liability insurance with a limit of five million dollars (\$5,000,000) per occurrence for bodily injury and property damage and six million dollars (\$6,000,000) general aggregate including premises operations, contractual liability, personal injury, and products completed operations. The relevant policy(ies) shall name the City, its elected/appointed officials, commission members, officers, representatives, agents, and employees as additional insureds. Permittee shall use its best efforts to provide thirty (30) days' prior notice to the City of to the cancellation or material modification of any applicable insurance policy.
 31. Prior to issuance of a City permit or encroachment permit, the permittee shall file with the City, and shall maintain in good standing throughout the term of the approval, a performance bond or other surety or another form of security for the removal of the facility in the event that the use is abandoned or the permit expires, or is revoked, or is otherwise terminated. The security shall be in the amount equal to the cost of physically removing the facility and all related facilities and equipment on the site, based on the higher of two contractor's quotes for removal that are provided by the permittee. The permittee shall reimburse the city for staff time associated with the processing and tracking of the bond, based on the hourly rate adopted by the City Council. Reimbursement shall be paid when the security is posted and during each administrative review.
 32. Permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement, or property without the prior consent of the owner of that structure, improvement, or property. No structure, improvement, or property owned by the City shall be moved to accommodate a permitted activity or encroachment, unless the City determines that such movement will not adversely affect the City or any surrounding

- businesses or residents, and the Permittee pays all costs and expenses related to the relocation of the City's structure, improvement, or property. Prior to commencement of any work pursuant to a WP, the permittee shall provide the City with documentation establishing to the city's satisfaction that the permittee has the legal right to use or interfere with any other structure, improvement, or property within the public right-of-way or City utility easement to be affected by permittee's facilities.
33. No possessory interest is created by a Wireless Permit. However, to the extent that a possessory interest is deemed created by a governmental entity with taxation authority, permittee acknowledges that City has given to permittee notice pursuant to California Revenue and Taxation Code Section 107.6 that the use or occupancy of any public property pursuant to a development or conditional use permit may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Permittee shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interact taxes or other taxes, fees, and assessments levied against permittee's right to possession, occupancy, or use of any public property pursuant to any right of possession, occupancy, or use created by this development or conditional use permit.
34. The permission granted by this CDP shall not in any event constitute an easement on or an encumbrance against the ROW. No right, title, or interest (including franchise interest) in the ROW, or any part thereof, shall vest or accrue in permittee by reason of a CDP or the issuance of any other permit or exercise of any privilege given thereby.
35. If not already completed, permittee shall enter into the appropriate agreement with the City, as determined by the City, prior to constructing, attaching, or operating a facility on municipal infrastructure. This permit is not a substitute for such agreement.
36. If a facility is not operated for a continuous period of three (3) months, the CDP and any other permit or approval therefore shall be deemed abandoned and terminated automatically, unless before the end of the three (3) month period (i) the Director has determined that the facility has resumed operations, or (ii) the City has received an application to transfer the permit to another service provider. No later than ninety (90) days from the date the facility is determined to have ceased operation or the permittee has notified the Director of its intent to vacate the site, the permittee shall remove all equipment and improvements associated with the use and shall restore the site to its original condition to the satisfaction of the Director. The permittee shall provide written verification of the removal of the facilities within thirty (30) days of the date the removal is completed. If the facility is not removed within thirty (30) days after the permit has been discontinued pursuant to this subsection, the site shall be deemed to be a nuisance, and the City may cause the facility to be removed at permittee's expense or by calling any bond or other financial assurance to pay for removal. If there are two (2) or more users of a single facility or support structure, then this provision shall apply to the specific elements or parts thereof that were abandoned but will not be effective for the entirety thereof until all users cease use thereof.
37. In the event the City determines that it is necessary to take legal action to enforce any of these conditions, or to revoke a permit, and such legal action is taken, the permittee shall be required to pay any and all costs of such legal action, including reasonable attorney's fees, incurred by the City, even if the matter is not prosecuted to a final judgment or is amicably resolved, unless the City should otherwise agree with permittee to waive said

fees or any part thereof. The foregoing shall not apply if the permittee prevails in the enforcement proceeding.

38. Interference with city communications systems and other governmental emergency systems is prohibited. Further, no permits issued pursuant to this chapter of the City Code establish any guarantee or warranty that Licensee's facility will be free from interference from city or third-party communication systems.

Construction

39. Installation hours shall be limited to Monday through Friday from 7:00 a.m. to 7:00 p.m. and Saturdays from 8:00 a.m. to 5:00 p.m. No installation activities shall be permitted on Sundays and City-designated holidays; provided. The restricted work hours described in this condition do not apply to emergency maintenance necessary to protect health or property. The City of Malibu may issue a Stop Work Order if permittee violates this condition.
40. All sites must be designed and build to the standards of ANSI/APCO Public Safety Grade Site Hardening Requirements, also referred to as "APCO ANSI 2.106.1-2019".

Site Specific Conditions

41. In the event that the electric service provider does not currently offer an alternative metering option, the permittee shall remove the above-grade electric meter when such option becomes available. Prior to removing the above-grade electric meter, the permittee shall apply for any encroachment and/or other ministerial permit(s) required to perform the removal. Upon removal, the permittee shall restore the affected area to its original condition that existed prior to installation of the equipment.
42. The permittee acknowledges that the City specifically includes conditions of approval related to (a) painting, coloring or finishing the equipment to match the monopole or support structure; (b) undergrounding all equipment to the extent possible; (c) installing equipment within shrouds, conduits and risers as concealment elements engineered and designed to integrate the wireless facility with the surrounding built and natural environment; and (d) specific structural, seismic, electrical, fire and operating/maintenance requirements. Any future modifications to the permittee's wireless facility must maintain or improve all concealment elements and safety precautions.
43. Before the permittee submits any applications for construction, encroachment, excavation or other required permits in connection with this permit, the permittee must incorporate a true and correct copy of this permit, all conditions associated with this permit and any approved photo simulations into the project plans (collectively, the "Approved Plans"). The permittee must construct, install and operate the wireless facility in substantial compliance with the Approved Plans as determined by the Director or the Director's designee. Any substantial or material alterations, modifications or other changes to the Approved Plans, whether requested by the permittee or required by other departments or public agencies with jurisdiction over the wireless facility, must be submitted in a written request subject to the Director's prior review and approval, who may refer the request to the original approval authority if the Director finds that the requested alteration, modification or other change substantially deviates from the Approved Plans or implicates a significant or substantial land-use concern.

-
44. The permittee shall install and at all times maintain in good condition a “Network Operations Center Information” and “RF Caution” sign on the utility pole no less than three (3) feet below the antenna (measured from the top of the sign) and no less than nine (9) feet above the ground line (measured from the bottom of the sign). Signs required under this condition shall be installed so that a person can clearly see the sign as he or she approaches within three (3) feet of the antenna structure. If any person on or within the public ROW is or may be exposed to emissions that exceed applicable FCC uncontrolled/general population limits at any time the sign shall expressly so state and provide instructions on how persons can avoid any such exposure. The sign shall also include the name(s) of the facility owner(s), equipment owner(s) and operator(s)/carrier(s) of the antenna(s), property owner name, as well as emergency phone number(s) for all such parties. The sign shall not be lighted, unless applicable law, rule or regulation requires lighting. No signs or advertising devices other than required certification, warning, required seals or signage, other signage required by law, this Chapter, any City or applicable state code or the Los Angeles County Fire Department Chief or his or her designee shall be permitted. The sign shall be no larger than two (2) square feet. If such signs are prohibited by federal law, they shall not be required.
45. The permittee shall ensure that all signage complies with FCC Office of Engineering and Technology Bulletin 65, CPUC General Order 95 or American National Standards Institute C95.2 for color, symbol, and content conventions. All such signage shall at all times provide a working local or toll-free telephone number to its network operations center, and such telephone number shall be able to reach a live person who can exert transmitter power-down control over this site as required by the FCC.
46. In the event that the FCC changes any of radio frequency signage requirements that are applicable to the project site approved herein or ANSI Z535.1, ANSI Z535.2, and ANSI C95.2 standards that are applicable to the project site approved herein are changed, the permittee, within 30 days of each such change, at its own cost and expense, shall replace the signage at the project site to comply with the current standards.
47. The permittee shall maintain the paint, color and finish of the facility in good condition at all times.
48. All improvements, including foundations, and appurtenant ground wires, shall be removed from the property and the site restored to its original pre-installation conditions within 90 days of cessation of operation or abandonment of the facility.
49. Build-Out Conditions.
- a. Permittee shall not commence any excavation, construction, installation or other work on the project site until and unless it demonstrates to the City Public Works Department that the project complies with all generally applicable laws, regulations, codes and other rules related to public health and safety, including without limitation all applicable provisions in California Public Utilities Commission General Order 95 and MMC Chapters 8.12, 8.24 and 15.08.
 - b. To the extent that the pole owner requires greater or more restrictive standards than contained in California Public Utilities Commission General Order 95, those standards shall control.

50. Permittee shall at all times maintain compliance with all applicable federal, State and local laws, regulations, ordinances and other rules, including Americans with Disabilities Act (ADA) requirements.
51. The permittee shall cooperate with all inspections. The City and its designees reserves the right to support, repair, disable or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property.
52. Permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address and email address for at least one natural person. All such contact information for responsible parties shall be provided to the Planning Department at the time of permit issuance and within one business day of permittee's receipt of City staff's written request.
53. Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification and removal of the facility.
54. The site and the facility must be maintained in a neat and clean manner and in accordance with all approved plans and conditions of approval.
55. Permittee shall promptly remove any graffiti on the wireless facility at permittee's sole expense within 48 hours after notice.
56. The antenna and associated equipment attached to the rooftop of building B must be painted a grey color to match the roof parapet. The ground mounted backup generator unit must be visually screened and painted to blend in with the surrounding buildings.
57. The ground mounted backup generator must meet all applicable setbacks indicated in LIP Chapter 3.8 if taller than six feet.
58. The applicant or property owner must submit project plans (including structural and electrical plans) to the City of Malibu Building Safety Division for building plan check and permit issuance. The project plans must meet all requirements of the California Building Code as adopted by the City of Malibu. The applicant or property owner must obtain permits from Building Safety Division and a final inspection. Failure to obtain a permit from the Building Safety Division will result in the voidance of this wireless communications facility permit.
59. The following engineering documents prepared under the responsible charge of and sealed by a California licensed Professional Engineer must be included in the application for building permits from the Building Safety Division:
 - a. A short circuit and coordination study ("SCCS") calculated pursuant to the IEEE 551-2006: Recommended Practice for Calculating AC Short-Circuit Currents in Industrial and Commercial Power Systems or the latest version of that standard. The study must demonstrate the protection devices will ensure the equipment enclosure will not be breached. The SCCS must include analysis of Voltage Transient Surges due to contact of conductors of different voltages;
 - b. A one-line diagram of the electrical system;
 - c. Voltage Drop & Load Flow Study;
 - d. Load Calculation;
 - e. Panel Directories;

- f. A plot plan showing the location of the mounting structure including address, or structure designation, or GPS location on the front sheet;
 - g. A plot plan showing the location of the service disconnecting means; and
 - h. An elevation drawing of the equipment and the service disconnecting means.
60. The following structural/civil engineering documents prepared under the responsible charge of and sealed by a California licensed professional civil engineer must be included in the application for building permits from the Building Safety Division:
 - a. The azimuth, size and center-line height location of all proposed and existing antenna(s) on the supporting structure;
 - b. The number, type and model of the antenna(s) that will be used with a copy of the specification sheet;
 - c. The make, model, type and manufacturer of any tower involved and a design plan stating the tower's capacity to accommodate multiple users;
 - d. Site and Construction Plans. Complete and accurate plans, drawn to scale, signed, and sealed by a California-licensed engineer, land surveyor, and/or architect, which include the following items.
 - i. A site plan and elevation drawings for the facility as existing and as proposed with all height and width measurements explicitly stated.
 - ii. A site plan describing the proposed tower and antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;
 - iii. A depiction, with height and width measurements explicitly stated, of all existing and proposed transmission equipment.
 - iv. A depiction of all existing and proposed utility runs and points of contact.
 - v. A depiction of the leased or licensed area of the site with all rights-of-way and easements for access and utilities labeled in plan view.
61. The backup generator is required to have an automatic transfer switch accessible to the LA County Fire Department to use in case of emergency.
62. The backup generator must supply power to the entire wireless communications facility located on the rooftop of Building B.
63. The antennas and all associated rooftop equipment shall be completely visually screened from view. The screening shall be no taller than the height of the antennas atop the roof and painted and/or textured to match the existing building.

Prior to Operation

64. The applicant shall request a final Planning Department inspection immediately after the wireless communications facility has been installed and prior to the commencement of services and final electrical inspection by the City of Malibu Environmental Sustainability Department.
65. Within thirty (30) calendar days following the installation of any wireless facilities, the applicant shall provide to the Planning Department with a field report prepared by a qualified engineer verifying that the unit has been inspected, tested, and is operating in compliance with FCC standards. Specifically, the on-site post-installation radiofrequency (RF) emissions testing must demonstrate actual compliance with the FCC OET Bulletin 65 RF emissions safety guidelines for general population/uncontrolled RF exposure in all

sectors. For this testing, the transmitter shall be operating at maximum operating power, and the testing shall occur outwards to a distance where the RF emissions no longer exceed the uncontrolled/general population limit. Such report and documentation shall include the make and model (or other identifying information) of the unit tested, the date and time of the inspection, a certification that the unit is properly installed and working within applicable FCC limits, and a specific notation of the distance from the transmitter at which the emissions are equal to or less than the uncontrolled/general population limit.

66. The operation of the approved facility shall commence no later than one (1) month after the City completes its post-installation inspection of the facility, any issues with the facility are resolved, and the City receives the RF testing report required in the condition of approval above, or the wireless ROW permit will expire without further action by the City. If the carrier needs more than one month to fix any required changes, there should be notice given to the City by the applicant before the end of said month and staff will decide if the time requested by the carrier to fix the issue is valid.
67. The applicant and/or wireless carrier must pay all outstanding fees due to the City of Malibu for review of the application. Fee amount must be based on the effective fee schedule at the time of payment.

Fixed Conditions

68. Violation of any of the conditions of this approval shall be cause for revocation and termination of all rights there under.

SECTION 8. The City Council shall certify the adoption of this resolution.

PASSED, APPROVED AND ADOPTED this 27th day of September, 2021.

PAUL GRISANTI, Mayor

ATTEST:

KELSEY PETTIJOHN, City Clerk
(seal)

| APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED
BY THE CITY ATTORNEY'S OFFICE

JOHN COTTI, Interim City Attorney

8/26/2021

Planning Dept.

From: [Jason Ernst](#)
To: [Jason Ernst](#)
Subject: FW: CDP No. 20-035, WP No. 21-002 for a wireless facility to be located at 28990.5 Pacific Coast Highway, City of Malibu
Date: Thursday, August 26, 2021 10:43:45 AM
Attachments: [Zuma Beach 2 - City Malibu PLN Appeal Checklist_CDP_.pdf](#)
[Zuma Beach 2 - Letter re Malibu Planning Commission Decision \(082621\).pdf](#)

From: Kevin P. Sullivan <KSullivan@gdandb.com>
Sent: Thursday, August 26, 2021 10:00 AM
To: Kelsey Pettijohn <kpettijohn@malibucity.org>; Richard Mollica <rmollica@malibucity.org>
Cc: Patricia Salazar <psalazar@malibucity.org>; Trevor Rusin <trevor.rusin@bbklaw.com>; Tyler Eaton <teaton@malibucity.org>
Subject: CDP No. 20-035, WP No. 21-002 for a wireless facility to be located at 28990.5 Pacific Coast Highway, City of Malibu

Ms. Pettijohn and Mr. Mollica –

Attached are materials on behalf of Verizon Wireless related to a provisional appeal of the City Planning Commission's August 16, 2021, decision on CDP No. 20-035 and WP No. 21-002, and other City permits and approvals, for a wireless facility to be located at 28990.5 Pacific Coast Highway, City of Malibu. The letter with this email is an attachment to the City Appeal Form.

The \$750 appeal fee is being separately delivered by FedEx to the City Clerk's office today.

Further, in a phone call yesterday afternoon with Ms. Patricia Salazar at the City, she stated that (1) these provisional appeal materials could be submitted by email, and (2) the mailing list and radius map materials for notice (page 3 of the Appeal Form) are already on file with the City.

Please confirm your receipt of this email, the attached materials, and the appeal fee. Also, please contact me if you have any questions about these materials. Thank you,

Kevin P. Sullivan
Partner
760.431.9501
www.gdandb.com

G | D | B Gatzke Dillon & Ballance LLP
L A W Y E R S

NOTICE: This communication and any attached document(s) are privileged and confidential. In addition, any disclosure of this transmission does not compromise or waive the attorney-client privilege or the work product doctrine. If you have received this communication in error, please delete it and contact me at ksullivan@gdandb.com.



City of Malibu

23825 Stuart Ranch Road · Malibu, California · 90265-4861
Phone (310) 456-2489 · Fax (310) 456-3356 · www.malibucity.org

PLANNING DEPARTMENT COASTAL DEVELOPMENT PERMIT NOTICE OF APPEAL CHECKLIST

Actions Subject to Local Appeal: Pursuant to Local Coastal Program (LCP) Local Implementation Plan (LIP) Section 13.20.1 (Local Appeals), a decision or any portion of the decision of the Planning Director may be appealed to the Planning Commission by an aggrieved person, and any decision of the Planning Commission may be appealed to the City Council by an aggrieved person.

Deadline and Fees: Pursuant to LIP Section 13.20.1, an appeal shall be filed with the City Clerk within 10 days following the date of action for which the appeal is made, as indicated in the decision. If the tenth day falls on a weekend or a City-recognized holiday, the deadline shall extend to the close of business at City Hall on the first business day (whether whole or partial) following the weekend or a City-recognized holiday. Appeals shall be accompanied by the filing fee of \$750 as specified by the City Council.

To perfect an appeal, the form must be completed, together with all the necessary attachments, and must be timely received by the City Clerk either in person or by mail addressed to City of Malibu, Attn: City Clerk, 23525 Stuart Ranch Road, Malibu, CA 90265. For more information, contact Patricia Salazar, Senior Administrative Analyst, at (310) 456-2489, extension 245.

Part I. Project Information *Subject to the substance of the attached letter.

1. What is the file number of the Coastal Development Permit you are appealing?
CDP No. 20-035, WP No. 21-002, Waiver No. 21-001, Variance No. 20-023, SPR No. 20-045
2. On what date was the decision made which you are appealing?
August 16, 2021
3. Who made the decision you are appealing? *Subject to the substance of the attached letter.

☐ Planning Director ☒ Planning Commission
4. What is the address of the project site at issue?
28990.5 Pacific Coast Highway, Malibu

Part II. Appeal Summary *Provisional appeal subject to the substance of the attached letter.

1. Indicate your interest in the decision by checking the appropriate box.

☐ I am the Applicant for the project

☐ I am the neighbor

☒ Other (describe)

I represent Verizon Wireless and its interests as stated in the attached letter for this provisional appeal.

2. If you are not the applicant, please indicate the applicant's name:
Verizon Wireless

3. Indicate the nature of your appeal.

a) Are you appealing the ☒ approval or ☐ the denial of the application or ☒ a condition of approval? *See attached letter

b) Each approval is accompanied by a list of specific conditions. If you are appealing one or more of the conditions of approval, list the condition number and state the grounds for your appeal. (Attach extra sheets if necessary.)

*See attached letter

4. Check the appropriate box(es) to indicate which of the following reasons forms the basis of your appeal:

☒ The findings or conditions are not supported by the evidence, or the decision is not supported by the findings: or *See attached letter

☒ There was a lack of fair or impartial hearing: or *See attached letter

☒ The decision was contrary to law.

You must next provide a specific statement in support of each of the bases for appeal that you have checked above. Appeals that are stated in generalities, legal or otherwise, are not adequate. (Attach extra sheets if necessary.)

*See attached letter. The conditions are improper and preempted by federal law and mooted by Verizon's deemed granted letter in this matter.

Each coastal development permitting decision made by the Planning Director or the Planning Commission is accompanied by written findings. The written findings set forth the basis for the decision. If you have checked the first box in this section as a ground for your appeal, you must indicate the specific finding(s) you disagree with and give specific reasons why you believe the finding(s) is/are not supported by the evidence or why the decision is not supported by the findings. Appeals stated in generalities, legal or otherwise, are not adequate. (Attach extra sheets if necessary.)

*See attached letter. The subject Planning Commission hearing and decision were improper, preempted by federal law, and mooted by Verizon's deemed granted letter in this matter.

Part III. Appeal Checklist

ALL of the following must be timely filed to perfect an appeal.

1. ☒ Completed Appeal Checklist (This form with appellant's signature)
2. ☒ Appeal Fee \$750

The appeal fee must be submitted in the form of a check or money order made payable to the City of Malibu. Cash will not be accepted.

3. ☒ Mailing Labels and Radius Maps for Public Notice to Property Owners and Occupants
*On file with the City.

Public Notice of an appeal must conform to the manner in which the original notice was given. The notice radius for appealable CDPs and non-appealable CDPs that do not require a public hearing is 100 feet for property owners and residents. The notice radius for non-appealable CDPs that require a public hearing is 300 feet for property owners and 100 feet for residents.

The mailing labels and radius map **must be certified** by the preparer (a form is available at the public counter): certification may not be more than six months prior to the date of submittal; the radius map must be provided on an 8½" x 11" paper; the mailing labels must be printed on 8½" x 11" paper, 3 columns, 10 rows (e.g. Avery 5160).

Part IV. Signature and Appellant Information

I hereby certify that the appeal submittal contains all of the above items. I understand that if any of the items are missing or otherwise deficient, the appeal is ineffective and the filing fee may be returned. IN ORDER TO PERFECT AN APPEAL, ALL APPEAL SUBMITTALS MUST BE COMPLETE BY THE DEADLINE. NO EXTENSIONS WILL BE ALLOWED FOR APPELLANTS WHO ONLY PARTIALLY COMPLY WITH THESE REQUIREMENTS AS OF THE DEADLINE. IF AN APPEAL IS NOT PERFECTED BY THE DEADLINE, THE DECISION BECOMES FINAL.

Kevin P. Sullivan *Subject to the attached letter

760-431-9501 Ext. 114

PRINT APPELLANT'S NAME

TELEPHONE NUMBER

August 25, 2021

APPELLANT'S SIGNATURE

DATE

Appellant's mailing address: Gatzke Dillon & Ballance LLP, 2762 Gateway Road, Carlsbad, CA 92009

Appellant's email address: ksullivan@gdandb.com

OFFICE USE ONLY

Action Appealed: _____

Appeal Period: _____

Date Appeal Form and required documents submitted: _____ Received by: _____

Appeal Completion Date: _____ by: _____
(Name, Title)



August 26, 2021

VIA EMAIL

Ms. Kelsey Pettijohn
City Clerk
KPettijohn@malibucity.org
Mr. Richard Mollica
Planning Director
RMollica@malibucity.org
City of Malibu
23825 Stuart Ranch Road
Malibu, CA 90265

**Re: Wireless Permit No. 21-002 and Coastal Development Permit No. 20-035, and other permits/approvals
28990.5 Pacific Coast Highway
Planning Commission Agenda Item 5C, August 16, 2021, Meeting**

Ms. Pettijohn and Mr. Mollica,

I write on behalf of Verizon Wireless regarding Item 5C of the agenda for the Malibu Planning Commission Regular Meeting held on Monday, August 16, 2021, which unilaterally considered “Wireless Permit No. 21-002 and Coastal Development Permit No. 20-035 [and other permits and approvals]/ 28990.5 Pacific Coast Highway.”

As stated in my August 11, 2021, letter to the City Planning Commission, Verizon’s application, which was the subject of Item 5C, is an eligible facilities request (“EFR”) under Section 6409 of the federal Spectrum Act. As such, the City was required to approve the application within 60 days (subject to any tolling). As set forth in our separate letter dated December 28, 2020, the City failed to act within the required statutory period and, by operation of law, the application is now deemed granted. Thus, the application did not require Planning Commission or any other state or local approvals, and was and is not subject to public hearing, objection, or appeal. Federal law preempts any discretionary City action on any permits or approvals for the wireless telecommunications facility that was the subject of Item 5C on the August 16, 2021, Planning Commission meeting agenda.

Verizon’s application is also currently the subject of federal litigation, captioned *Los Angeles SMSA Limited Partnership d/b/a Verizon Wireless v. City of Malibu*, No. 2:21-cv-01827-PSG-PVC, pending in the United States District Court for the Central District of California. In that litigation, Verizon seeks a court order consistent with the foregoing declaring that the application is granted under Section 6409 and ordering the City to issue all permits and approvals needed to allow the project to be constructed. Due to the deemed granted status of the

application and the pending federal court proceeding, this application was not properly before the Planning Commission. The Commission's action on the facility application on August 16, 2021, was therefore preempted.

Subject to the above facts and information, Verizon files a provisional appeal of the Planning Commission's action on the facility application on August 16, 2021, and related conditions, solely to protect its appeal rights if necessary depending on the results of the referenced litigation. This provisional appeal does not constitute a waiver of Verizon's arguments and positions stated in this letter above or in the referenced litigation.

We also note that the Planning Commission approved the facility application subject to 68 conditions contained in a revised draft Resolution No. 21-63, including three new conditions imposed during the August 16 hearing on the matter for (1) added screening, (2) adding a transfer switch on Verizon's emergency generator, and (3) requiring Verizon's emergency generator to also power another wireless carrier's facilities on the site. While all of these conditions are improper, particularly objectionable conditions in the revised draft Resolution No. 21-63 include Nos. 2, 37, 38, 40, 57-59, 61-63, and 67. These conditions are improper and violate federal law to the extent they are inconsistent with Section 6409, its implementing regulations, and applicable declaratory rulings and orders of the Federal Communications Commission.

Moreover, even if Section 6409 did not apply here – which it does – many of the 68 conditions in the draft Resolution, and each of the three new conditions added at the Commission hearing, are objectionable on other grounds, including under the holding of *Koontz v. St. Johns River Management District*, 133 S.Ct. 2586 (2013), which required that all conditions in a land use permit conform to the nexus and rough proportionality requirements of the U.S. Supreme Court's *Nollan* and *Dolan* decisions.

Verizon does not consent to any of the conditions contained in the revised draft Resolution No. 21-63 from the August 16 Commission hearing, and reserves the right to pursue objections to the conditions, if necessary after the conclusion of the pending litigation.

Sincerely,



Ethan J. Rogers
Network Counsel

Cc:

Patricia Salazar, Senior Administrative Analyst (PSalazar@malibucity.org)

Trevor Rusin, Asst. City Attorney (Trevor.Rusin@BBKLAW.com)

Tyler Eaton, Assistant Planner (TEaton@malibucity.org)

Jill Flynn, Verizon

Andrew Budniewski, Verizon

Daisy M. Uy Kimpang, Verizon



City of Malibu

23825 Stuart Ranch Road · Malibu, California · 90265-4861
Phone (310) 456-2489 · Fax (310) 456-3356 · www.malibucity.org

RECEIVED

AUG 26 2021

PLANNING DEPT.

PLANNING DEPARTMENT COASTAL DEVELOPMENT PERMIT NOTICE OF APPEAL CHECKLIST

Actions Subject to Local Appeal: Pursuant to Local Coastal Program (LCP) Local Implementation Plan (LIP) Section 13.20.1 (Local Appeals), a decision or any portion of the decision of the Planning Director may be appealed to the Planning Commission by an aggrieved person, and any decision of the Planning Commission may be appealed to the City Council by an aggrieved person.

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Part I. Project Information

1. What is the file number of the Coastal Development Permit you are appealing?

Wireless Permit No. 21-002, Coastal Development Permit No. 20-035,
Waiver No. 21-001, Variance No. 20-023, and Site Plan Review No.
20-045 -

2. On what date was the decision made which you are appealing?

August 16, 2021

3. Who made the decision you are appealing?

☐ Planning Director



Planning Commission

4. What is the address of the project site at issue?

28990.5 Pacific Coast Hwy

Part II. Appeal Summary

1. Indicate your interest in the decision by checking the appropriate box.

☐ I am the Applicant for the project

☐ I am the neighbor

☒ Other (describe)

Aggrieved person

2. If you are not the applicant, please indicate the applicant's name:

Spectrum Services for Verizon Wireless

3. Indicate the nature of your appeal.

a) Are you appealing the ☒ approval or ☐ the denial of the application or ☐ a condition of approval?

b) Each approval is accompanied by a list of specific conditions. If you are appealing one or more of the conditions of approval, list the condition number and state the grounds for your appeal. (Attach extra sheets if necessary.)

4. Check the appropriate box(es) to indicate which of the following reasons forms the basis of your appeal:

☒ The findings or conditions are not supported by the evidence, or the decision is not supported by the findings: or

☒ There was a lack of fair or impartial hearing: or

☒ The decision was contrary to law.

You must next provide a specific statement in support of each of the bases for appeal that you have checked above. Appeals that are stated in generalities, legal or otherwise, are not adequate. (Attach extra sheets if necessary.)

See attached

Each coastal development permitting decision made by the Planning Director or the Planning Commission is accompanied by written findings. The written findings set forth the basis for the decision. If you have checked the first box in this section as a ground for your appeal, you must indicate the specific finding(s) you disagree with and give specific reasons why you believe the finding(s) is/are not supported by the evidence or why the decision is not supported by the findings. Appeals stated in generalities, legal or otherwise, are not adequate. (Attach extra sheets if necessary.)

- INCOMPLETE** §
1. Improper and inadequate noticing of tenants and surrounding residential and businesses
 2. Environmental review (see attached)
 3. . Structural issues of building – weight load on building
 4. Electrical issues – can building handle additional electrical load without additional electrical work to be done.
 5. Small Cell order Pg 6: Staff and Consultants deemed this as not a small cell project so it does not fall within the shot clock so does not qualify under 6409 (The Spectrum Act)
 6. Findings for variances are unsupported by facts in record and applicant was not at meeting to answer questions
 7. See additional attached sheet

Part III. Appeal Checklist

ALL of the following must be timely filed to perfect an appeal.

1. ☒ Completed Appeal Checklist (This form with appellant's signature)
2. ☒ Appeal Fee \$750

The appeal fee must be submitted in the form of a check or money order made payable to the City of Malibu. Cash will not be accepted.

3. ☒ Mailing Labels and Radius Maps for Public Notice to Property Owners and Occupants

Public Notice of an appeal must conform to the manner in which the original notice was given. The notice radius for appealable CDPs and non-appealable CDPs that do not require a public hearing is 100 feet for property owners and residents. The notice radius for non-appealable CDPs that require a public hearing is 300 feet for property owners and 100 feet for residents.

The mailing labels and radius map **must be certified** by the preparer (a form is available at the public counter): certification may not be more than six months prior to the date of submittal; the radius map must be provided on an 8½" x 11" paper; the mailing labels must be printed on 8½" x 11" paper, 3 columns, 10 rows (e.g. Avery 5160).

Part IV. Signature and Appellant Information

I hereby certify that the appeal submittal contains all of the above items. I understand that if any of the items are missing or otherwise deficient, the appeal is ineffective and the filing fee may be returned. IN ORDER TO PERFECT AN APPEAL, ALL APPEAL SUBMITTALS MUST BE COMPLETE BY THE DEADLINE. NO EXTENSIONS WILL BE ALLOWED FOR APPELLANTS WHO ONLY PARTIALLY COMPLY WITH THESE REQUIREMENTS AS OF THE DEADLINE. IF AN APPEAL IS NOT PERFECTED BY THE DEADLINE, THE DECISION BECOMES FINAL.

Lonnie Gordon
PRINT APPELLANT'S NAME

310 457-2725
TELEPHONE NUMBER

Lonnie Gordon
APPELLANT'S SIGNATURE

8-25-21
DATE

Appellant's mailing address: 6804 Las Olas Way Malibu, Ca 90265

Appellant's email address: magiclg@verizon.net

OFFICE USE ONLY

Action Appealed: _____

Appeal Period: _____

Date Appeal Form and required documents submitted: _____ Received by: _____

Appeal Completion Date: _____ by: _____
(Name, Title)

Additional Sheets for Wireless Permit No. 21-002 and Coastal Permit No. 20-035

Waiver No.21-001 Variance No. 20-023 and Site plan review

Appealing Conditions of approval based on:

1. Structural issues of building – weight load on building – permit granted before any check by Building and Safety
2. Electrical issues – can building handle additional electrical load without additional electrical work to be done? These installations use a lot of energy, and 5G is called an energy vampire. Not environmentally friendly.
3. Small Cell order Pg 6: Staff and Consultants deemed this as not a small cell project so it does not fall within the shot clock so does not qualify under 6409 (The Spectrum Act)
4. This is closer than the stipulated 600 foot set back from other T-Mobile installation
5. Findings for variances are unsupported by facts in record and applicant was not at meeting to answer questions
6. No supporting engineering information on building/structural
7. We would like to know if gap in coverage info supplied by Verizon was verified by consultant, if not possible falsification of documentation in application.
8. If there will be a 10% increase in building height, is it an LCP approved plan?

Proposed antennas far exceed 3 foot allowable. They are 5'10 or 11". Almost six feet tall. That adds height to the building if shrouded. In many areas of the Resolution a "pole" is mentioned which seems like there was a copy and paste of this document, and inadequate attention paid to the details.

Additional Sheets for Wireless Permit No. 21-002 and Coastal Permit No. 20-035

Waiver No.21-001 Variance No. 20-023 and Site plan review

9. Commission approved application on basis of façade, but building owner had already said that was not acceptable. Additionally no conditions for screening materials, specific height, weight, aerodynamics and wind load.
10. Depending on façade material that might be used has wind load analysis been done? Health and Safety issue.
11. Commission proclaimed finding not of fact but by guessing and input of staff.
12. Staff spoke on behalf of Verizon but staff works for city and statements by staff are non-binding on applicant.
13. This installation is not just for telephone gap in coverage. It is relay site to other Verizon antenna, as stated in application. Is it a hosting site? A primary site or relay as stated?
14. Does the interconnectedness reduce the ability of all sites to work independently?
15. Applicant did not comply with scenic view restrictions as the antennas will be seen from N-9 a designated Scenic route, Kanan Dume Rd. not just PCH, and perhaps by residents nearby or up on Kanan.
16. Why do we need this in Malibu, (a city of less than 9000, according to the current census)? Most people who live here value the rural character of our town?
17. It is possible these taller antenna, 5'10" or 5'11" according to application and request for waiver, may act as a lightning rod to the building. This is a high point in the area. This is an unknown hazard.

Additional Sheets for Wireless Permit No. 21-002 and Coastal Permit No. 20-035

Waiver No.21-001 Variance No. 20-023 and Site plan review

18. We have questions about the alternative site analysis. PCH seems to have plenty of poles.

19. No critical testing or information is available about how the emissions/radio frequencies of these antennas will travel. We know they travel horizontally as well as vertically, so those tenants in that building, across the street, and the residential areas nearby will also be affected. Old FCC ruling from 1996 on effects of radiation may be changed. There is no intermodulation study at all, nor one in record that proves prevention to city's emergency broadcast system.

20. Staff determined that this class of project has no effect on the environment. We disagree. Science shows radiofrequency radiation (RFR) injures trees, seedlings, roots, honey bees, butterflies, migratory birds, frogs, and other wildlife. The research can be viewed at the Environmental Health Trust (EHT) and Physicians for Safe Technology websites.

21. There is a school for children with ADD and ADHD in the building. They will be adversely affected by this installation and are entitled to accommodations' under ADA.

22. The application fails to comply with the city's General Plan and Municipal Code/Zoning

23. Facts in record fail to comprise circumstances for which variance is eligible remedy.

24. Does not provide battery backup operation independent of proposed/conditioned electric generator on site, i.e. operation during failure/overheat/out of fuel scenarios.

25. #25 in the Resolution mentions a monopole which is not applicable to this application.

26. Where is the decibel level measured from? Roof, tenant offices, ground?

Additional Sheets for Wireless Permit No. 21-002 and Coastal Permit No. 20-035

Waiver No.21-001 Variance No. 20-023 and Site plan review

27. Where will the signage be placed so people working or visiting in the level below installation will know of the emissions hazards?

28. #63 states that all rooftop equipment shall be screened from view. From what and who's viewpoint?

29. #65 OET can be changed at any time.

30. Collocation on same building was not proved infeasible. Facts in the record fail to comprise justification, to collocate onto Bldg. B and/or for exceeding height limit which prior T-Mobile installation already complies.

Staff says that if T-Mobile would file for the increased height limit on its existing units, that it would be approved. On what grounds? Code only approved 3 foot limit.

Although collocation is mentioned in this Resolution, there is no collocation. This is a new and separate installation and it does not share anything. It is an independent and independently functioning Macro cell site. 13 antenna to be installed with accompanying equipment.

31. There is no qualifying statement in the application by building owner. She has already stated that she does not want a façade, and that was mentioned in the application.

32. The existing cellular, on Bldg. B, was installed before Malibu became a city, so information in variance No. 20-023 is not credible

33. We may have other criteria that we would like to have the opportunity to present with more facts later on.

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City of Malibu

23825 Stuart Ranch Road · Malibu, California · 90265-4861
Phone (310) 456-2489 · Fax (310) 456-3356 · www.malibucity.org

NON-COASTAL DEVELOPMENT PERMIT APPEAL SUBMITTAL

Actions Subject to Appeal: Pursuant to Malibu Municipal Code (MMC) Section 17.04.220, any person aggrieved by a decision or any portion of a decision made by the Planning Director under the provisions of this title in connection with a site plan review, variance, stringline modification, conditional use permit, cultural resources review, highway dedication or improvement, or temporary use permit may appeal such action to the Planning Commission. Any person aggrieved in a similar manner by such decision made by the Planning Commission may appeal such action to the City Council.

Planning Director or Planning Commission Date of Action: August 16, 2021

Case No.: Wireless Permit No. 21-002 Coastal Development Permit No. 20-035
WAIVER NO 21-001
VARIANCE NO 20-023
AND SITE PLAN REVIEW

Site Address/Location: 28990.5 Pacific Coast Highway

Note: Appeals shall be addressed to the appellant body on a form prescribed by the City. The appeal shall state the basis of the appeal and identify the decision or portion of the decision being appealed and stated the grounds for the appeal. Only matters raised in the appeal shall be subject to review. Any matters not raised in the appeal shall not be subject to consideration by the appellate body. The purpose of this limitation is to provide adequate notice to all parties with respect to the issues on appeal and eliminate the necessity of rehearing matters not subject to challenge. Although the issues on appeal will be limited by the appeal, the appellate body will accept new evidence (de novo appeal) and will not be bound by the previous record. [MMC Section 17.04.220(B)]

An appeal shall be filed with the City Clerk within 10 days following the date of action for which appeal is made. Appeals shall be accompanied by the filing fee as specified by the City Council. An appellant shall have an additional 10 days following the date of filing the appeal to submit to the City Clerk in writing, the specific grounds for the appeal. If the appellant does not submit grounds for the appeal within the time allowed by this section, the City Clerk shall return the filing fee and the appeal shall be deemed to have been withdrawn. [MMC Section 17.04.220(C)]

To Submit an Appeal:

The appeal must be timely received by the City Clerk either in person or by mail addressed to City of Malibu, Attn: City Clerk, 23825 Stuart Ranch Road, Malibu, CA 90265. For more information, contact Patricia Salazar, Senior Administrative Analyst, at (310) 456-2489, ext. 245.



ALL of the following must be timely filed to perfect an appeal.

- | | |
|--|---|
| 1. Appeal Letter | X |
| An appeal letter setting for the grounds for the appeal | |
| 2. Appeal Fees(s) | X |
| In the form of a check or money order made payable to the City of Malibu. Cash will not be accepted. | |
| 3. Appeal Checklist (This form with appellant's signature) | X |

An appellant shall have 10 days following the date of filing to submit the following:

- | | |
|--|---|
| 4. Grounds of Appeal Letter | X |
| An appellant shall have an additional 10 days following the date of filing the appeal to submit to the City Clerk in writing, the specific grounds for the appeal. If the appellant does not submit grounds for the appeal within the time allowed by this section, the City Clerk shall return the filing fee and the appeal shall be deemed to have been withdrawn. See MMC Section 17.04.220(C) for details. | |
| 5. Certified Public Notice Property Owner and Occupant Mailing Addresses and Radius Map | X |
| <ul style="list-style-type: none">The addresses of the property owners and occupants within the mailing radius shall be provided on a compact disc in a Microsoft Excel spreadsheet. The spreadsheet shall have the following column headers in row one: 1) name, 2) address, 3) city, state & zip code, and 4) parcel (for APN). The owners should be listed first followed by the occupants. The project applicant's mailing address should be added at the end of the list.An additional column for "arbitrary number" may be included if the supplied radius map utilizes such numbers for the purpose of correlating the addressee to their map location.Printouts of the excel spreadsheet and radius map, certified by the preparer as being accurate, must be provided.The radius map (8½" x 11") shall show a 500-foot radius* from the subject property and must show a minimum of 10 developed properties. A digital copy of the map shall be submitted on the same cd as the mailing addresses. | |

*Properties zoned RR-10, RR-20, or RR-40 require a 1,000-foot radius notification.

**Note that updated mailing labels may be requested by the project planner prior to deeming the application complete.

I hereby certify that the appeal submittal contains all of the above items. I understand that if any of the items are missing or subsequently deficient, the appeal shall be deemed to have been withdrawn and the filing fee shall be returned.

Lonnie Gordon

PRINT APPELLANT'S NAME

Lonnie Gordon

APPELLANT'S SIGNATURE

310 -457-2725

TELEPHONE NUMBER

8-25-2021

DATE

Appellant's mailing address: 6804 Las Olas Way Malibu, Ca 90265

Appellant's telephone: 310 457-2725

OFFICE USE ONLY

Action Appealed: _____

Appeal Period: _____

Date Appeal Form submitted: _____ Received by: _____

Date Grounds of Appeal Letter submitted: _____ Received by: _____

Date of Mailing Labels/Radius Map submitted: _____ Received by: _____

Appeal Completion Date: _____ By: _____
Name, Title

Grounds of Appeal Letter:

Appellant Lonnie Gordon hereby appeals the approval of the Permits/Variances and Site Plan Reviews for the project identified below. Appellant is also, in the alternative, appealing the conditions of approval for the permit/variiances. The grounds/reasons for each appeal contention are stated below and in attachment to Notice of Appeal Checklist.

Appellant is submitting one appeal form. There is one Coastal Development Permit Notice of Appeal for Wireless Permit No. 21-002, Coastal Development Permit No. 20-035 and Waiver No. 21-001, Variance No. 20-023 and Site plan Review No. 20-045

Appeal issues:

The Director and Planning Commission failed to apply the procedural and substantive requirements of MMC 17.46, as modified by Ordinance 484, and fleshed out by Resolution 21-17 to this application. MMC 17.46, Local Ordinance 484 applies, as does Resolution 21-17, and they were not followed either procedurally or substantively.

The Planning Commission lacked jurisdiction over the Coastal Development permit application. LIP 3.16.2 provides for a site plan review pursuant to LIP 1.32.1.A.7. Site plan review is an administrative process, and the planning commission has no role or jurisdiction over the application.

The Council should (1) determine that MMC Chapter 17.46 as modified by Ordinance 484 and fleshed out by Resolution 21-17 applies to the municipal permit portion of these projects; (2) determine that the Planning Commission was without jurisdiction to decide the Coastal Development permit application.

Assuming without admitting that the Planning Commission had jurisdiction over the Coastal Development permit application, Verizon received variances, and the Planning Commission did not adequately assess the issue in terms of this variance. Specifically, as explained below, an applicant must prove adequate design and code compliance as part of the application review process. It cannot be allowed to cure that deficiency as part of a post-approval "condition."

Verizon did not present adequate evidence relating to proper adequate design, fire/electrical safety, wind load, or code compliance in its application or in any evidence presented up to and during the hearing. No one from Verizon was present to answer questions from the Commission. Yet the Planning Commission approved the applications. This was, in effect, a variance grant. But there are no findings related to the variance from required safety/code compliance demonstrations in the Resolution. Specifically, the findings required by LIP Section 13.26.5.B, C, D, E and I are not present even though they are directly relevant and necessary. Granting a waiver from the safety findings requirement contrary to public safety, health and welfare, so the LIP Section 13.26.5.B finding could not legitimately be made in any event. Excusing code compliance and safety proof is a special privilege. 13.26.5.C. It conflicts with the goals, objectives and policies of the LCP and especially LIP 9.3. And it does not comply with state or local law. 13.26.5.I. It is bad policy. The Coastal Development permits must be denied.

The Planning Commission resolution of approval on page 5 (Part D.4) does assert that the “The proposed project *will* comply with all applicable requirements of State and local laws as required under LIP Section 3.16.5 and MMC Section 17.46.060, including but not limited to the Uniform Building Code, National Electrical Code, and Uniform Fire Code.” There is no, or at least insufficient, evidence to support this finding. Part F.1 of the resolution indicates the Planning Commission intends to let the staff and Verizon work on and ensure safety code compliance after approval, but that is not allowed by the LIP or MMC, both of which require that the applicant prove compliance at the front end, not in the back end.

LIP Section 3.16.5.A requires proof of compliance “with any and all applicable provisions of the Malibu LCP and Municipal Code, including but not limited to provisions of the Uniform Building Code, National Electric Code, Uniform Plumbing Code, Uniform Mechanical Code, and Uniform Fire Code. It then goes on to require compliance with any conditions of approval imposed as part of the approval process. Code compliance is listed as a separate requirement *in addition* to any conditions. The plain English interpretation of this provision is that code compliance cannot be determined after a decision and/or merely included as part of conditions of approval.

LIP Section 9.3 requires specific findings addressing, among other things, “fire hazards” and “structural integrity.” Those findings can only be made if there is “substantial evidence” in the record” – at the time the findings are made – to support them.

LIP Section 9.3.1 expressly requires a finding that “The project, as proposed, will neither be subject to nor increase instability of the site or structural integrity from geologic, flood, wind or fire hazards due to project design, location on the site or other reasons.” The Coastal Development permits were treated as a “site plan review” subject to LIP Section 13.27 requirements. LIP Section 13.27.4 (“Investigations”) requires the Planning Manager to consult with “all appropriate City Staff and specialists including the Building Official, City Engineer, City Biologist, City Archeologist and a Coastal Morphologist” as part of the “investigation” and before any findings and approvals are made under LIP Section 13.27.4.A. *See also* LIP Sections 13.26.4, 13.26.5.

The LIP unambiguously requires affirmative findings that the design materials presented in the application demonstrate safety and code compliance. The LIP does not allow deferral of these findings, nor does it allow imposition of a “condition” that the applicant prove safety and code compliance after the application is approved.

The same result obtains under MMC 17.46.110. The “approving authority” must find that the facility “*is*” not detrimental to the public health, safety and welfare, “complies with Chapter 17.46 and all applicable design and development standards” and “complies with state and federal law.” All these requirements use the present tense. The Planning Commission resolution of approval uses the *future* tense (“will”) and is therefore noncompliant. Again, the Planning Commission wholly lacked any, or at least sufficient, evidence to find the project “is” compliant.

An administrative body can only find a “project design” demonstrates safety if the project design materials before it *at the time of decision* and *at the time the findings are made* provide substantial evidence in support of a safety finding. There is no such evidence, so no such findings could or can properly be made.

The Staff and Planning Commission chose to impose a “safety” and “code compliance” condition. They apparently expect Verizon to present new design documents and another opportunity to prove code compliance, *after* the permit is approved. That is not permissible given what the LIP and MMC require by way of substance and evidence and the command for positive findings based on the record before the Planning Commission at the time of decision.

This approach is also unwise from an oversight and due process perspective. Neither the Planning Commission nor Council will have any further opportunity to make a “safety” review. Nor will the public have any opportunity to review the revised design documents. Appellant Gordon will never have any opportunity to review the materials and provide any input. These subsequent materials will receive final approval by the Planning Director, without any requirement for public review or input. It will be done in secret. This is a violation of due process and transgresses all notions of transparency.

The wireless providers have been negligent. Staff has not paid adequate attention to this issue. This must change. Now. That is, unless Council is willing to answer to the public when one of these facilities catches fire and burns Malibu.

The record before the Planning Commission was entirely inadequate; the Planning Commission could not lawfully find the project is safe based on the record it had before it on August 16th. The design document fell far short of proving code compliance and safe design.

The Council will have the same problem. There is no evidence of safety/code compliance and there is also compelling evidence of defective design. The Council must instruct the Director and Planning Commission to require that the applicant present proof of safety and code compliance before a decision is made.

Council must deny this application and variances request and require that Verizon present adequate and complete proof of safety and code compliance before any final decision on whether to grant these permits. Council must ensure that Ordinance 484 and Resolution 21-17 are followed by way of both procedure and substance. Finally, the Council must rule that the Planning Commission lacked jurisdiction over the Coastal Development application and require that proper processes be used.

Respectfully submitted by,

Ms. Lonnie Gordon
Exec. Director
MalibuForSafeTech.org
www.malibuforsafetech.org

CITY OF MALIBU PLANNING COMMISSION
RESOLUTION NO. 21-63

A RESOLUTION OF THE CITY OF MALIBU PLANNING COMMISSION DETERMINING THE PROJECT IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENT QUALITY ACT AND APPROVING WIRELESS PERMIT NO. 21-002 AND COASTAL DEVELOPMENT PERMIT NO. 20-035 FOR VERIZON WIRELESS TO INSTALL A ROOF MOUNTED WIRELESS COMMUNICATIONS FACILITY ON BUILDING B REACHING A MAXIMUM HEIGHT OF 47 FEET, 4 INCHES, ELECTRICAL SUPPORT EQUIPMENT ATTACHED TO THE ROOFTOP AND A GROUND MOUNTED BACKUP GENERATOR, INCLUDING WAIVER NO. 21-001 AND VARIANCE NO. 20-023 TO PERMIT ROOF MOUNTED WIRELESS FACILITY ANTENNAS TO EXTEND OVER 3 FEET ABOVE THE ROOF PARAPET AND SITE PLAN REVIEW NO. 20-045 TO INSTALL AND OPERATE A WIRELESS COMMUNICATIONS FACILITY IN THE COMMERCIAL NEIGHBORHOOD ZONING DISTRICT LOCATED AT 28990.5 PACIFIC COAST HIGHWAY (VERIZON WIRELESS)

The Planning Commission of the City of Malibu does hereby find, order and resolve as follows:

SECTION 1. Recitals.

A. On June 22, 2020, a new application for Wireless Communications Facility (WCF) No. 20-013 and Site Plan Review (SPR) No. 20-045 was submitted by the applicant, Spectrum Services, on behalf of Verizon Wireless for the installation of a roof mounted wireless communications facility and a ground mounted backup generator. Coastal Development Permit (CDP) No. 20-035 and Variance (VAR) No. 20-023 were later assigned to the project.

B. On April 26, 2021, the Malibu City Council adopted Ordinance 484 and Resolution 21-17 amending the City's wireless communications facility application and design standards.

C. On July 21, 2021, Planning staff assigned Wireless Permit (WP) No. 21-002 and Waiver (WVR) No. 21-001 to the subject application.

D. On July 22, 2021, Planning staff deemed the project complete.

E. On August 5, 2021, a Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 1,000-foot radius of the project site and to all interested parties.

F. On August 16, 2021, the Planning Commission held a duly noticed public hearing on the subject application for the modified wireless communications facility project, reviewed and considered the staff report, reviewed and considered written reports, public testimony, and other information in the record.

SECTION 2. Environmental Review.

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the Planning Commission has analyzed the proposal. The Planning Commission found that this project is listed among the classes of projects that have been determined not to have a significant adverse effect on the environment. Therefore, the project is categorically exempt from the provisions of CEQA pursuant to CEQA Guidelines Sections 15301(e) – additions to existing structures and 15303(e) – new construction of accessory structures. The Planning Commission has further determined that none of the six exceptions to the use of a categorical exemption applies to this project (CEQA Guidelines Section 15300.2).

SECTION 3. Coastal Development Permit Findings.

Based on substantial evidence contained within the record and pursuant to Local Coastal Program (LCP) Local Implementation Plan (LIP) Sections 13.7(B) and 13.9, the Planning Commission adopts the analysis in the agenda report, incorporated herein, the findings of fact below, WP No. 21-002 and CDP No. 20-035 for Verizon Wireless to install a roof mounted wireless communications facility reaching a maximum height of 47 feet, 4 inches, electrical support equipment attached to the roof and a backup generator, including WVR no. 21-001 and VAR No. 20-023 to permit wireless antennas over three feet in height and SPR No. 20-045 to install and operate a wireless communications facility in the Commercial Neighborhood (CN) zoning district located at 28990.5 Pacific Coast Highway (PCH).

The project is consistent with the LCP's zoning, grading, cultural resources, water quality, and onsite wastewater treatment requirements. The project, as conditioned, has been determined to be consistent with all applicable LCP codes, standards, goals, and policies. The required findings are made herein.

A. Wireless Permit Findings (MMC Chapter 17.46)

1. The site has been reviewed for compliance with all applicable regulations including federal, State and local authority. The site will be in compliance with all Federal Communications Commission (FCC) requirements. Additionally, the project is conditioned to be submitted for a building plan check with City Building Safety Division in which the project will be verified that it meets the Los Angeles County Building Code as adopted by the City of Malibu. The project will undergo thorough safety review with the Building Safety Division and at the time of installation the project will be inspected by both Building and Planning staff for compliance with all safety requirements. As proposed and conditioned the site will not be detrimental to public health and not pose an undue fire risk.

2. The proposed wireless communications facility will comply with all requirements of Malibu Municipal Code (MMC) Chapter 17.46 and Resolution No. 21-17 inclusive of the proposed Waiver for additional height allowance. The proposed site meets or is conditioned to meet all required safety elements and the design and location are consistent with MMC Chapter 17.46 as well as Resolution No. 21-17, which describes the detailed standards in which a wireless facility shall comply. A Waiver is being proposed for an additional height allowance but as mentioned previously, the design is the only feasible alternative for Verizon Wireless to meet their coverage objectives. Besides the height of the antennas, the proposed facility will comply with or is conditioned to comply with all required design standards of the MMC and Resolution No. 21-17.

3. The site will meet all requirements of the FCC. Additionally, the project will undergo a thorough review from the Building Safety Division for compliance with the adopted Los Angeles County Building Code. As proposed and conditioned the facility will comply with State and federal law.

B. General Coastal Development Permit (LIP Chapter 13)

1. The project has been reviewed by the Planning Department for conformance with the LCP. As discussed herein, based on the submitted project plans, visual demonstration exhibits, alternative site analysis, coverage maps, Radio Frequency – Electromagnetic Energy (RF-EME) Jurisdictional Report, site inspection, and recommended conditions, the proposed wireless communications project conforms to the LCP and MMC in that it meets all applicable wireless communications facility code and other standards.

2. Evidence in the record demonstrated that the project is the least environmentally damaging alternative. The proposed facility is on a commercially zoned parcel, or non-residential, which is a preferred location according to LIP Chapter 3.16.11(B). Additionally, the project proposes to utilize existing infrastructure and is designed and conditioned to be camouflaged to the maximum extent feasible. There were other alternatives that were researched in order to minimize visual impacts, but none were feasible.

C. Variance for the development of roof mounted wireless facility antennas to extend three feet above the roof parapet (LIP 13.26.5)

VAR No. 20-023 will allow the installation of roof mounted wireless facility antennas to extend three feet above the roof parapet.

1. Evidence in the record demonstrates there are special characteristics for the proposed wireless communications facility that makes it subject to a variance. In order to meet Verizon Wireless's coverage objectives, the antennas must be at height protruding 5 feet, 10 inches above the roof parapet. There were alternatives explored to try and lower the proposed height, but all were deemed infeasible due to various reasons including not receiving approval from the property owner, spacing and interference issues. Verizon Wireless could have proposed an independent site, not utilizing existing buildings and it would have had greater environmental impact. Being on the rooftop of a two-story structure, the proposed antennas will be far away from members of the public. And although visible from a scenic road, there are no anticipated view impacts to the Pacific Ocean or Santa Monica Mountains. Additionally, there is already a wireless facility on the adjacent building so not allowing Verizon Wireless to collocate here would deny them a right granted to another wireless carrier.

2. The proposed wireless communications facility meets all FCC required FCC's Maximum Permissible Exposure (MPE) limits for the general public. Additionally, the site will conform to the Los Angeles County Building Code as adopted by the City of Malibu. The rooftop design was accepted by the property owner and suggested alternatives would have been more harmful to the existing structure in which this proposed facility will be attached. Lastly, there are no anticipated visual impacts to scenic views. The proposed facility will not be detrimental to the public interest, safety, welfare, or property.

3. There is already a wireless facility on the adjacent building. If the carrier of that facility came in with a proposal to increase the height of their antennas to taller than three feet above the parapet, staff would also consider the project under the same circumstances as this proposal. Thus, granting the variance will not constitute a special privilege to the applicant or owner.

4. The granting of the variance will not be in conflict with the policies of the LCP. The proposed height is not expected to impact any scenic views. The antennas and associated equipment will be painted to blend in with the surrounding environment.

5. The proposed facility is the rooftop of a commercial building in the Commercial Neighborhood zoning district. The proposed project is consistent with the purpose and intent for the CN zone. As mentioned previously, the LIP's preferred location is on non-residentially zoned parcels and on existing infrastructures which this site will follow. The applicant is also applying for a site plan review for a new wireless communications facility in a commercial zoning district and the proposed collocation of the facility meets the recommended design criteria in the LIP and MMC.

6. The subject site is physically suitable for the proposed variance. The proposed location keeps it away from potential impacts to scenic views and residential homes. There are no impacts to visually impressive views of the Pacific Ocean or any other scenic resources identified in the LIP.

7. The variance complies with State and local law in that it meets the requirements of the FCC and is collocated on an existing building, a location preferred in the Malibu LIP and MMC. There are no visual impacts to scenic resources.

8. The variance proposal does not reduce or eliminate parking for access to the beach, public trails or parklands.

D. Site Plan Review for erecting a wireless communications facility in the CN zoning district (LIP Section 13.27.5)

SPR No. 20-045 will allow the installation of a wireless communications facility in the public in the CN zoning district.

1. Wireless communications facilities are permitted in commercial zoning districts with a site plan review provided such facilities comply with the general requirements set forth in LIP Section 3.16.5 and the most restrictive design standards set forth in LIP Section 3.16.6. As discussed in the *MMC/LIP Conformance Analysis* section above, the proposed wireless communications facility is consistent with LIP standards, which implements the policies and provisions of the City's LCP.

2. As conditioned, the roof mounted antennas and associated equipment will be screened or painted to match existing infrastructure. The proposed ground-mounted backup generator will be screened. The backup generator's screening is conditioned to be painted to match the surrounding environment. The proposed project is generally compatible in size, bulk, and height to roof mounted wireless facilities in commercial zoning districts. The facility's maximum height is also the least intrusive design compared to constructing a new site. Further, the project is conditioned so that it must, at all times, be in compliance with federal and State regulations

including, but not limited to, American with Disabilities Act (ADA) accessibility and any requirements related to wireless communications utilities regulated by the FCC.

3. The proposed wireless communications facility is not expected to obstruct visually impressive scenes of the Pacific Ocean, off-shore islands, Santa Monica Mountains, canyons, valleys or ravines. The proposed rooftop wireless facility does exceed a maximum three feet above the roof parapet, as required by the LIP and Resolution No. 21-17, but does not diminish any significant public views of the beach or the Santa Monica Mountains.

4. The proposed project will comply with all applicable requirements of State and local laws as required under LIP Section 3.16.5 and MCC Section 17.46.060, including but not limited to the Uniform Building Code, National Electrical Code, and Uniform Fire Code to ensure compliance with the above finding. The proposed project is also required to comply with all applicable regulations and standards promulgated or imposed by any State or Federal agency, including the FCC.

5. Wireless communications facilities are permitted in commercial zoning districts with a site plan review, provided such facilities comply with the general requirements set forth in LIP Section 3.16.5 and design criteria set forth in LIP Section 3.16.6. The proposed project complies with these standards, subject to conditions of approval.

6. Based on staff's site inspections, the provided visual simulations, and review of the plans, it was determined that the new pole and mechanical equipment is not expected to obstruct any private protected views of impressive scenes of the Pacific Ocean, off-shore islands, Santa Monica Mountains, canyons, valleys, or ravines.

E. Scenic, Visual and Hillside Resource Protection (LIP Chapter 6)

1. The proposed wireless communications facility will not affect any scenic views of the Pacific Ocean and Santa Monica Mountains as it is located in a developed commercial area in the northern part of Point Dume which is centrally located within the City and far from the aforementioned scenic areas. Furthermore, the project is the least visually intrusive alternative that still meets Verizon Wireless's goals and objectives.

2. The subject parcel is located on the ocean side of PCH but will not affect scenic views of motorists traveling on the highway. Based on the scope of the project and associated conditions of approval, no adverse scenic or visual impacts are expected.

3. Evidence in the record demonstrates that the proposed location is the least environmentally damaging alternative.

4. Evidence in the record demonstrates that all project alternatives that would meet Verizon Wireless's goals and objectives were not feasible or they would be more environmentally impactful than the current proposal; therefore, this is the least impactful alternative that is still feasible to meet Verizon's objectives.

5. Evidence in the record demonstrates the proposed design will include antennas and equipment that will be screened or painted a color that will best help them blend them with their surroundings. As conditioned and designed, the proposed project will have a less than significant impact on scenic views.

F. Hazards (LIP Chapter 9)

1. The proposed project is required to comply with all applicable requirements of State and local laws as required under LIP Section 3.16.5/MCC Section 17.46.060, including but not limited to the Uniform Building Code, National Electrical Code, and Uniform Fire Code to ensure compliance with the above finding. The proposed project is also required to comply with all applicable regulations and standards promulgated or imposed by any State or Federal agency, including the FCC. Based on the project plans and provided reports, staff determined that the project is located on PCH's public ROW where it will not adversely impact site stability or structural integrity if the project is constructed to adhere to all applicable safety requirements provided by the FCC, SCE, and the City Public Works Department.

2. Evidence in the record demonstrates that the proposed project, as designed and conditioned, will not have a significant effect on the site's stability or structural integrity.

3. Evidence in the record demonstrates that the proposed project, as designed and conditioned, is the least environmentally damaging alternative.

4. Evidence in the record demonstrates that the proposed project, as designed and conditioned, will not have adverse impacts on site stability. Compliance with standard engineering techniques and other feasible available solutions to address hazards issues will ensure that the structural integrity of the proposed development will not result in any hazardous conditions.

SECTION 4. Planning Commission Action.

Based on the foregoing findings and evidence contained within the record, the Planning Commission hereby approves CDP No. 18-032, WCF No. 18-008, VAR 18-039 and SPR No. 18-034, subject to the conditions set forth herein.

SECTION 5. Conditions of Approval.

1. The applicant, and their successors in interest, shall indemnify and defend the City of Malibu and its officers, employees and agents from and against all liability and costs relating to the City's actions concerning this project, including (without limitation) any award of litigation expenses in favor of any person or entity who seeks to challenge the validity of any of the City's actions or decisions in connection with this project. The City shall have the sole right to choose its counsel and property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this project.
2. The permittee shall be strictly liable for interference caused by its facilities with city communications systems. The permittee shall be responsible for costs for determining the source of the interference, all costs associated with eliminating the interference (including but not limited to filtering, installing cavities, installing directional antennas, powering down systems, and engineering analysis), and all costs arising from third party claims against the city attributable to the interference.

3. Approval of this application is to allow the installation of the following:

Roof mounted Equipment

- a. 13 New Antennas:
 - i. 9 panel antennas mounted onto the parapet wall,
 - ii. 1 two-foot parabolic antenna,
 - iii. 1 three-foot parabolic antenna,
 - iv. 1 four-foot parabolic antenna
 - v. 1 GPS antenna;
- b. 12 remote radio units;
- c. 3 junction boxes;
- d. Additional associated electrical support equipment;

Ground mounted equipment

- e. A 40kw backup generator;
- f. 211-gallon fuel tank;
- g. Associated electrical support equipment; and
- h. Concrete block screen wall.

4. Subsequent submittals for this project shall be in substantial compliance with plans on-file with the Planning Department, date-stamped **December 11, 2020**. The project shall comply with all conditions of approval stipulated in the department referral sheets. In the event the project plans conflict with any condition of approval, the condition shall take precedence.
5. The permit and rights conferred in this approval shall not be effective until the property owner signs, notarizes and returns the Acceptance of Conditions Affidavit accepting the conditions set forth herein. The applicant shall file this form with the Planning Department within 10 days of this decision or prior to issuance of building permits.
6. Pursuant to LIP Section 13.20, development pursuant to an approved CDP shall not commence until the CDP is effective. The CDP is not effective until all appeals including those to the California Coastal Commission (CCC) if applicable, have been exhausted.
7. The applicant shall digitally submit a complete set of plans, including the items required in Condition No. 7 to the Planning Department for consistency review and approval prior to plan check and again prior to the issuance of any building or development permits.
8. This resolution (including the signed and notarized Acceptance of Conditions Affidavit) shall be copied in its entirety and placed directly onto a separate plan sheet(s) to be included in the development plans prior to submitting for a building permit from the City of Malibu Environmental Sustainability Department and the California Department of Transportation for an encroachment permit.
9. This WP shall be valid for a period of ten (10) years from issuance, unless pursuant to another provision of the Code or these conditions, it expires sooner or is terminated. At the end of ten (10) years from the date of issuance, such wireless permit shall automatically expire, unless an extension or renewal has been granted. A person holding a wireless communications facility permit must either (1) remove the facility within thirty (30) days following the permit's expiration (provided that removal of support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right of

way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City); or (2) prior to expiration, submit an application to renew the permit, which application must, among all other requirements, demonstrate that the impact of the wireless facility cannot be reduced. The wireless facility must remain in place until it is acted upon by the City and all appeals from the City's decision exhausted.

10. The installation and construction authorized by this WP shall be completed within three (3) years after its approval, or it will expire without further action by the City unless prior to the three (3) years the applicant submit an extension request and the City, in its sole discretion, grants a time extension for due cause. The installation and construction authorized by a wireless ROW permit shall conclude, including any necessary post-installation repairs and/or restoration to the ROW, within thirty (30) days following the day construction commenced. This 30-day period may be extended by the Planning Director if the applicant can demonstrate that construction has been diligently pursued but due to circumstances beyond the applicant's control, construction cannot be completed within 30 days of when it is commenced. The permittee must provide written notice to City within ten (10) days after completing construction. The expiration date shall be suspended until an appeal and/or litigation regarding the subject permit is resolved.
11. The Planning Director may grant up to four one-year extensions of the timeline, in Condition 9 above, for completing the installation and construction authorized by a development or condition use permit, if the Planning Director finds that the conditions, including but not limited to changes in the wireless ordinance under which the permit approval was issued, have not significantly changed.
12. Minor changes to the approved plans or the conditions of approval may be approved by the Planning Director, provided such changes achieve substantially the same results and the project is still in compliance with the MMC. An application with all required materials and fees shall be required.
13. Any questions of intent or interpretation of any condition of approval will be resolved by the Planning Director upon written request of such interpretation.
14. All structures shall conform to the requirements of the Environmental Sustainability Department, Public Works Department, Federal Communications Commission (FCC), and LACFD requirements, as applicable. Notwithstanding this review, all required permits, including but not limited to an encroachment permit from the California Department of Transportation, shall be secured.

Cultural Resources

15. In the event that potentially important cultural resources are found in the course of geologic testing, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Director can review this information. Where, as a result of this evaluation, the Planning Director determines that the project may have an adverse impact on cultural resources, a Phase II Evaluation of cultural resources shall be required pursuant to MMC Section 17.54.040(D)(4)(b).

16. If human bone is discovered, the procedures described in Section 7050.5 of the California Health and Safety Code shall be followed. These procedures require notification of the coroner. If the coroner determines that the remains are those of a Native American, the applicant shall notify the Native American Heritage Commission by phone within 24 hours. Following notification of the Native American Heritage Commission, the procedures described in Section 5097.94 and Section 5097.98 of the California Public Resources Code shall be followed.

Wireless Communications Antennas and Facilities Conditions

17. All antennas shall meet the minimum siting distances to habitable structures required for compliance with the FCC regulations and standards governing the environmental effects of radio frequency emissions. Permittee shall keep up-to-date on current information from the FCC in regards to maximum permissible radio frequency exposure levels. In the event that the FCC changes its guidelines for human exposure to radio frequency, permittee shall, within 30 days after any such change, submit to the Planning Director a report prepared by a qualified engineer that demonstrates actual compliance with such changed guidelines. The Director may, at permittee's sole cost, retain an independent consultant to evaluate the compliance report and any potential modifications to the permit necessary to conform to the FCC's guidelines. Failure to submit the compliance report required under this condition, or failure to maintain compliance with the FCC's guidelines for human exposure to radio frequency at all times shall constitute grounds for permit revocation.
18. All antennas shall be located so that any person walking adjacent to the transmitting surface of the antennas will be walking on a grade, which is a minimum of eight and one-half feet below the transmitting surface.
19. All antennas, equipment, and support structures shall be designed to prevent unauthorized climbing.
20. The wireless communications facility shall be erected, operated, and maintained in compliance with the general requirements set forth in LIP Section 3.16.5 and most restrictive design criteria set forth in LIP Section 3.16.6.
21. The antenna and electrical support equipment shall, at all times, be operated in a manner that conforms to the applicable federal health and safety standards, including those imposed by MMC Chapter 17.46 and Resolution No. 21-17.
22. The proposed wireless communications facility shall not emit a noise greater than fifty (50) decibels (dB) as measured from the base of the facility.
23. Wireless facilities and equipment must comply with the City's noise ordinance in MMC 8.24, or any successor provisions, and prevent noise and sound from being plainly audible at a distance of fifty (50) feet from the facility or within ten (10) feet of any residence.
24. The Planning Director's approval is required if a generator is to be placed onsite for temporary or permanent use.
25. All non-ground-mounted equipment associated with the application shall be located no lower than eight feet above grade or ground level on the monopole or support structure.

26. The collocation of wireless communications facilities, pursuant to LIP Section 3.16.5, shall be required whenever feasible.
27. An operation technician is required to conduct regular semi-annual maintenance visits to verify that the wireless communications facility remains in compliance with the conditions of approval and safety requirements.
28. The City or its designee may enter onto the facility area to inspect the facility upon 48 hours prior notice to the permittee. The permittee shall cooperate with all inspections and may be present for any inspection of its facility by the City. The City reserves the right to enter or direct its designee to enter the facility and support, repair, disable, or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property. The City shall make an effort to contact the permittee prior to disabling or removing any facility elements, but in any case, shall notify permittee within 24 hours of doing so.
29. Testing of any equipment shall take place on weekdays only, and only between the hours of 8:30 a.m. and 4:30 p.m., except that testing is prohibited on holidays that fall on a weekday. In addition, testing is prohibited on weekend days.
30. Permittee shall obtain and maintain throughout the term of the permit commercial general liability insurance with a limit of five million dollars (\$5,000,000) per occurrence for bodily injury and property damage and six million dollars (\$6,000,000) general aggregate including premises operations, contractual liability, personal injury, and products completed operations. The relevant policy(ies) shall name the City, its elected/appointed officials, commission members, officers, representatives, agents, and employees as additional insureds. Permittee shall use its best efforts to provide thirty (30) days' prior notice to the City of to the cancellation or material modification of any applicable insurance policy.
31. Prior to issuance of a City permit or encroachment permit, the permittee shall file with the City, and shall maintain in good standing throughout the term of the approval, a performance bond or other surety or another form of security for the removal of the facility in the event that the use is abandoned or the permit expires, or is revoked, or is otherwise terminated. The security shall be in the amount equal to the cost of physically removing the facility and all related facilities and equipment on the site, based on the higher of two contractor's quotes for removal that are provided by the permittee. The permittee shall reimburse the city for staff time associated with the processing and tracking of the bond, based on the hourly rate adopted by the City Council. Reimbursement shall be paid when the security is posted and during each administrative review.
32. Permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement, or property without the prior consent of the owner of that structure, improvement, or property. No structure, improvement, or property owned by the City shall be moved to accommodate a permitted activity or encroachment, unless the City determines that such movement will not adversely affect the City or any surrounding businesses or residents, and the Permittee pays all costs and expenses related to the relocation of the City's structure, improvement, or property. Prior to commencement of any work pursuant to a WP, the permittee shall provide the City with documentation establishing to the city's satisfaction that the permittee has the legal right to use or interfere with any other structure, improvement, or property within the public right-of-way or City utility easement to be affected by permittee's facilities.

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33. No possessory interest is created by a Wireless Permit. However, to the extent that a possessory interest is deemed created by a governmental entity with taxation authority, permittee acknowledges that City has given to permittee notice pursuant to California Revenue and Taxation Code Section 107.6 that the use or occupancy of any public property pursuant to a development or conditional use permit may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Permittee shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interest taxes or other taxes, fees, and assessments levied against permittee's right to possession, occupancy, or use of any public property pursuant to any right of possession, occupancy, or use created by this development or conditional use permit.
34. The permission granted by this CDP shall not in any event constitute an easement on or an encumbrance against the ROW. No right, title, or interest (including franchise interest) in the ROW, or any part thereof, shall vest or accrue in permittee by reason of a CDP or the issuance of any other permit or exercise of any privilege given thereby.
35. If not already completed, permittee shall enter into the appropriate agreement with the City, as determined by the City, prior to constructing, attaching, or operating a facility on municipal infrastructure. This permit is not a substitute for such agreement.
36. If a facility is not operated for a continuous period of three (3) months, the CDP and any other permit or approval therefore shall be deemed abandoned and terminated automatically, unless before the end of the three (3) month period (i) the Director has determined that the facility has resumed operations, or (ii) the City has received an application to transfer the permit to another service provider. No later than ninety (90) days from the date the facility is determined to have ceased operation or the permittee has notified the Director of its intent to vacate the site, the permittee shall remove all equipment and improvements associated with the use and shall restore the site to its original condition to the satisfaction of the Director. The permittee shall provide written verification of the removal of the facilities within thirty (30) days of the date the removal is completed. If the facility is not removed within thirty (30) days after the permit has been discontinued pursuant to this subsection, the site shall be deemed to be a nuisance, and the City may cause the facility to be removed at permittee's expense or by calling any bond or other financial assurance to pay for removal. If there are two (2) or more users of a single facility or support structure, then this provision shall apply to the specific elements or parts thereof that were abandoned but will not be effective for the entirety thereof until all users cease use thereof.
37. In the event the City determines that it is necessary to take legal action to enforce any of these conditions, or to revoke a permit, and such legal action is taken, the permittee shall be required to pay any and all costs of such legal action, including reasonable attorney's fees, incurred by the City, even if the matter is not prosecuted to a final judgment or is amicably resolved, unless the City should otherwise agree with permittee to waive said fees or any part thereof. The foregoing shall not apply if the permittee prevails in the enforcement proceeding.
38. Interference with city communications systems and other governmental emergency systems is prohibited. Further, no permits issued pursuant to this chapter of the City Code establish any guarantee or warranty that Licensee's facility will be free from interference from city or third-party communication systems.

Construction

39. Installation hours shall be limited to Monday through Friday from 7:00 a.m. to 7:00 p.m. and Saturdays from 8:00 a.m. to 5:00 p.m. No installation activities shall be permitted on Sundays and City-designated holidays; provided. The restricted work hours described in this condition do not apply to emergency maintenance necessary to protect health or property. The City of Malibu may issue a Stop Work Order if permittee violates this condition.
40. All sites must be designed and build to the standards of ANSI/APCO Public Safety Grade Site Hardening Requirements, also referred to as “APCO ANSI 2.106.1-2019”.

Site Specific Conditions

41. In the event that the electric service provider does not currently offer an alternative metering option, the permittee shall remove the above-grade electric meter when such option becomes available. Prior to removing the above-grade electric meter, the permittee shall apply for any encroachment and/or other ministerial permit(s) required to perform the removal. Upon removal, the permittee shall restore the affected area to its original condition that existed prior to installation of the equipment.
42. The permittee acknowledges that the City specifically includes conditions of approval related to (a) painting, coloring or finishing the equipment to match the monopole or support structure; (b) undergrounding all equipment to the extent possible; (c) installing equipment within shrouds, conduits and risers as concealment elements engineered and designed to integrate the wireless facility with the surrounding built and natural environment; and (d) specific structural, seismic, electrical, fire and operating/maintenance requirements. Any future modifications to the permittee’s wireless facility must maintain or improve all concealment elements and safety precautions.
43. Before the permittee submits any applications for construction, encroachment, excavation or other required permits in connection with this permit, the permittee must incorporate a true and correct copy of this permit, all conditions associated with this permit and any approved photo simulations into the project plans (collectively, the “Approved Plans”). The permittee must construct, install and operate the wireless facility in substantial compliance with the Approved Plans as determined by the Director or the Director’s designee. Any substantial or material alterations, modifications or other changes to the Approved Plans, whether requested by the permittee or required by other departments or public agencies with jurisdiction over the wireless facility, must be submitted in a written request subject to the Director’s prior review and approval, who may refer the request to the original approval authority if the Director finds that the requested alteration, modification or other change substantially deviates from the Approved Plans or implicates a significant or substantial land-use concern.
44. The permittee shall install and at all times maintain in good condition a “Network Operations Center Information” and “RF Caution” sign on the utility pole no less than three (3) feet below the antenna (measured from the top of the sign) and no less than nine (9) feet above the ground line (measured from the bottom of the sign). Signs required under this condition shall be installed so that a person can clearly see the sign as he or she approaches within three (3) feet of the antenna structure. If any person on or within the

public ROW is or may be exposed to emissions that exceed applicable FCC uncontrolled/general population limits at any time the sign shall expressly so state and provide instructions on how persons can avoid any such exposure. The sign shall also include the name(s) of the facility owner(s), equipment owner(s) and operator(s)/carrier(s) of the antenna(s), property owner name, as well as emergency phone number(s) for all such parties. The sign shall not be lighted, unless applicable law, rule or regulation requires lighting. No signs or advertising devices other than required certification, warning, required seals or signage, other signage required by law, this Chapter, any City or applicable state code or the Los Angeles County Fire Department Chief or his or her designee shall be permitted. The sign shall be no larger than two (2) square feet. If such signs are prohibited by federal law, they shall not be required.

45. The permittee shall ensure that all signage complies with FCC Office of Engineering and Technology Bulletin 65, CPUC General Order 95 or American National Standards Institute C95.2 for color, symbol, and content conventions. All such signage shall at all times provide a working local or toll-free telephone number to its network operations center, and such telephone number shall be able to reach a live person who can exert transmitter power-down control over this site as required by the FCC.
46. In the event that the FCC changes any of radio frequency signage requirements that are applicable to the project site approved herein or ANSI Z535.1, ANSI Z535.2, and ANSI C95.2 standards that are applicable to the project site approved herein are changed, the permittee, within 30 days of each such change, at its own cost and expense, shall replace the signage at the project site to comply with the current standards.
47. The permittee shall maintain the paint, color and finish of the facility in good condition at all times.
48. All improvements, including foundations, and appurtenant ground wires, shall be removed from the property and the site restored to its original pre-installation conditions within 90 days of cessation of operation or abandonment of the facility.
49. Build-Out Conditions.
 - a. Permittee shall not commence any excavation, construction, installation or other work on the project site until and unless it demonstrates to the City Public Works Department that the project complies with all generally applicable laws, regulations, codes and other rules related to public health and safety, including without limitation all applicable provisions in California Public Utilities Commission General Order 95 and MMC Chapters 8.12, 8.24 and 15.08.
 - b. To the extent that the pole owner requires greater or more restrictive standards than contained in California Public Utilities Commission General Order 95, those standards shall control.
50. Permittee shall at all times maintain compliance with all applicable federal, State and local laws, regulations, ordinances and other rules, including Americans with Disabilities Act (ADA) requirements.
51. The permittee shall cooperate with all inspections. The City and its designees reserves the right to support, repair, disable or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property.

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52. Permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address and email address for at least one natural person. All such contact information for responsible parties shall be provided to the Planning Department at the time of permit issuance and within one business day of permittee's receipt of City staff's written request.
 53. Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification and removal of the facility.
 54. The site and the facility must be maintained in a neat and clean manner and in accordance with all approved plans and conditions of approval.
 55. Permittee shall promptly remove any graffiti on the wireless facility at permittee's sole expense within 48 hours after notice.
 56. The antenna and associated equipment attached to the rooftop of building B must be painted a grey color to match the roof parapet. The ground mounted backup generator unit must be visually screened and painted to blend in with the surrounding buildings.
 57. The ground mounted backup generator must meet all applicable setbacks indicated in LIP Chapter 3.8 if taller than six feet.
 58. The applicant or property owner must submit project plans (including structural and electrical plans) to the City of Malibu Building Safety Division for building plan check and permit issuance. The project plans must meet all requirements of the California Building Code as adopted by the City of Malibu. The applicant or property owner must obtain permits from Building Safety Division and a final inspection. Failure to obtain a permit from the Building Safety Division will result in the voidance of this wireless communications facility permit.
 59. The following engineering documents prepared under the responsible charge of and sealed by a California licensed Professional Engineer must be included in the application for building permits from the Building Safety Division:
 - a. A short circuit and coordination study ("SCCS") calculated pursuant to the IEEE 551-2006: Recommended Practice for Calculating AC Short-Circuit Currents in Industrial and Commercial Power Systems or the latest version of that standard. The study must demonstrate the protection devices will ensure the equipment enclosure will not be breached. The SCCS must include analysis of Voltage Transient Surges due to contact of conductors of different voltages;
 - b. A one-line diagram of the electrical system;
 - c. Voltage Drop & Load Flow Study;
 - d. Load Calculation;
 - e. Panel Directories;
 - f. A plot plan showing the location of the mounting structure including address, or structure designation, or GPS location on the front sheet;
 - g. A plot plan showing the location of the service disconnecting means; and
 - h. An elevation drawing of the equipment and the service disconnecting means.

60. The following structural/civil engineering documents prepared under the responsible charge of and sealed by a California licensed professional civil engineer must be included in the application for building permits from the Building Safety Division:
- a. The azimuth, size and center-line height location of all proposed and existing antenna(s) on the supporting structure;
 - b. The number, type and model of the antenna(s) that will be used with a copy of the specification sheet;
 - c. The make, model, type and manufacturer of any tower involved and a design plan stating the tower's capacity to accommodate multiple users;
 - d. Site and Construction Plans. Complete and accurate plans, drawn to scale, signed, and sealed by a California-licensed engineer, land surveyor, and/or architect, which include the following items.
 - i. A site plan and elevation drawings for the facility as existing and as proposed with all height and width measurements explicitly stated.
 - ii. A site plan describing the proposed tower and antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;
 - iii. A depiction, with height and width measurements explicitly stated, of all existing and proposed transmission equipment.
 - iv. A depiction of all existing and proposed utility runs and points of contact.
 - v. A depiction of the leased or licensed area of the site with all rights-of-way and easements for access and utilities labeled in plan view.
61. The backup generator is required to have an automatic transfer switch accessible to the LA County Fire Department to use in case of emergency.
62. The backup generator must supply power to the entire wireless communications facility located on the rooftop of Building B.
63. The antennas and all associated rooftop equipment shall be completely visually screened from view. The screening shall be no taller than the height of the antennas atop the roof and painted and/or textured to match the existing building.

Prior to Operation

64. The applicant shall request a final Planning Department inspection immediately after the wireless communications facility has been installed and prior to the commencement of services and final electrical inspection by the City of Malibu Environmental Sustainability Department.
65. Within thirty (30) calendar days following the installation of any wireless facilities, the applicant shall provide to the Planning Department with a field report prepared by a qualified engineer verifying that the unit has been inspected, tested, and is operating in compliance with FCC standards. Specifically, the on-site post-installation radiofrequency (RF) emissions testing must demonstrate actual compliance with the FCC OET Bulletin 65 RF emissions safety guidelines for general population/uncontrolled RF exposure in all sectors. For this testing, the transmitter shall be operating at maximum operating power, and the testing shall occur outwards to a distance where the RF emissions no longer exceed the uncontrolled/general population limit. Such report and documentation shall include the make and model (or other identifying information) of the unit tested, the date and time of the inspection, a certification that the unit is properly installed and working within

applicable FCC limits, and a specific notation of the distance from the transmitter at which the emissions are equal to or less than the uncontrolled/general population limit.

66. The operation of the approved facility shall commence no later than one (1) month after the City completes its post-installation inspection of the facility, any issues with the facility are resolved, and the City receives the RF testing report required in the condition of approval above, or the wireless ROW permit will expire without further action by the City. If the carrier needs more than one month to fix any required changes, there should be notice given to the City by the applicant before the end of said month and staff will decide if the time requested by the carrier to fix the issue is valid.
67. The applicant and/or wireless carrier must pay all outstanding fees due to the City of Malibu for review of the application. Fee amount must be based on the effective fee schedule at the time of payment.

Fixed Conditions

68. Violation of any of the conditions of this approval shall be cause for revocation and termination of all rights there under.

SECTION 6. The Planning Commission shall certify the adoption of this resolution.

PASSED, APPROVED AND ADOPTED this 16th day of August 2021.



DAVID WEIL, Planning Commission Vice Chair

ATTEST:



KATHLEEN STECKO, Recording Secretary

LOCAL APPEAL – Pursuant to Local Coastal Program Local Implementation Plan (LIP) Section 13.20.1 (Local Appeals) a decision made by the Planning Commission may be appealed to the City Council by an aggrieved person by written statement setting forth the grounds for appeal. An appeal shall be filed with the City Clerk within 10 days and shall be accompanied by an appeal form and filing fee, as specified by the City Council. Appeal forms may be found online at www.malibucity.org, in person, or by calling (310) 456-2489, ext. 245.

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 21-63 was passed and adopted by the Planning Commission of the City of Malibu at the regular meeting thereof held on the 16th day of August 2021, by the following vote:

AYES:	3	Commissioners:	Mazza, Smith, Weil
NOES:	1	Commissioner:	Hill
ABSTAIN:	0		
ABSENT:	1	Commissioner:	Jennings


KATHLEEN STECKO, Recording Secretary



Planning Commission
Meeting
08-16-21

**Item
5.C.**

Commission Agenda Report

To: Chair Jennings and Members of the Planning Commission

Prepared by: Tyler Eaton, Assistant Planner

Approved by: Richard Mollica, Planning Director

Date prepared: August 5, 2021 Meeting date: August 16, 2021

Subject: Wireless Permit No. 21-002, Coastal Development Permit No. 20-035, Waiver No. 21-001, Variance No. 20-023, and Site Plan Review No. 20-045 – An application for a new wireless communications facility on the rooftop of an office building, including a ground-mounted backup generator on a commercially zoned parcel

Location: 28990.5 Pacific Coast Highway, not within the appealable coastal zone

APN: 4466-019-004

Applicant: Spectrum Services for Verizon Wireless

Owner: 28990 W. Pacific Coast Hwy, LLC

RECOMMENDED ACTION: Adopt Planning Commission Resolution No. 21-63 (Attachment 1) determining the project is categorically exempt from the California Environmental Quality Act (CEQA), and approving Wireless Permit (WP) No. 21-002 and Coastal Development Permit (CDP) No. 20-035 for Verizon Wireless to install a macro wireless communications facility located on the rooftop of Building B and a ground-mounted backup generator, including Waiver (WVR) No. 21-001 and Variance (VAR) No. 20-023 to permit a rooftop wireless communications facility more than three feet above the roof parapet and Site Plan Review (SPR) No. 20-045 to install and operate a wireless communications facility in the Commercial Neighborhood (CN) zoning district located at 28990.5 Pacific Coast Highway (PCH) (Verizon Wireless).

DISCUSSION: This application was reviewed by City staff and the City's wireless communications facility consultant for compliance with all applicable codes and regulations in effect at the time the application was deemed complete. This agenda report provides site and project analyses of the proposed wireless communications facility project, including attached project plans, visual demonstration exhibits, signal coverage maps, alternative site analysis, Radio Frequency – Electromagnetic Energy (RF-EME) Jurisdictional Report, and a Federal Communications Commission (FCC) compliance statement.

This agenda report contains a summary of surrounding land uses and project setting, the project's proposed scope of work, regulatory setting for subject project, consistency analysis with applicable Malibu Local Coastal Program (LCP) and Malibu Municipal Code (MMC) provisions, and environmental review pursuant to CEQA. The analyses and findings contained herein demonstrate that the application is consistent with the LCP and MMC.¹

Project Overview

The applicant proposes to install and operate a new wireless communications facility located on the rooftop of an existing building on a commercially zoned parcel. This project was submitted on behalf of Verizon Wireless for placement of a macro facility in the northern Point Dume area in order to address signal coverage and capacity service to existing customers within the general area. There is currently an existing wireless communications facility located on the rooftop of Building C for T-Mobile. The proposed Verizon Wireless site is a separate wireless communications facility on a separate building, Building B.

In April of 2021, the City of Malibu adopted Ordinance 484 and Resolution No. 21-17 amending the LCP and MMC in order to address wireless communications facilities on private properties. The amendments to the LCP Local Implementation Plan (LIP) have not been certified by the California Coastal Commission and thus the changes are not yet in effect. However, the amendments to the MMC went into effect on May 26, 2021. Because the LIP amendments have yet to be certified, the proposed project is subject to two different design standards. The first being the recently adopted amendments to the MMC and secondly to the current standards of the LIP, before the adoption of Ordinance 484. Specifically, the MMC requires that the project obtain a Wireless Permit and a Waiver for the proposed facility. The LIP requires the project obtain a CDP, Variance, and SPR for the proposed facility. As such, findings for a Wireless Permit, CDP, Variance, and SPR are made below.

Resolution No. 21-17 describes in detail the design requirements, location preferences, application requirements, federal and State regulations, etc., whereas Ordinance 484 is more of an overview of the application process and describes general policies in which wireless facilities must adhere to. Because the specific standards tend to be in Resolution No. 21-17, references to the resolution will replace the usual reference to the MMC. As mentioned above, the LIP changes have not been certified by the California Coastal Commission and will therefore be referenced as they usually are, by their LIP section.

Waiver No. 21-001 and Variance No. 20-023 are requested for the placement of a rooftop wireless communications facility over three feet above the roof parapet. The additional height is necessary to collocate on an existing rooftop, which is a preferred mounting technique pursuant to LIP Sections 3.16.7(F) and 3.16.10(B).

¹ LCP Local Implementation Plan (LIP) Section 3.16 and MMC Chapter 17.46 contain different standards for wireless communications facilities.

Previous Approvals on the site

- Conditional Use Permit No. 90-166 was approved in December of 1990 for the installation of a new roof-mounted wireless communications facility located on Building C for T-Mobile.
- Wireless Communications Facility (WCF) No. 12-026 was approved on May 25, 2012, for the installation of new equipment inside Building C to support the T-Mobile site.
- On January 9, 2013, WCF No. 12-031 was approved for a modification to the existing T-Mobile rooftop equipment.

CDP Requirement

A wireless communications facility is typically exempt from the requirement to obtain a CDP. However, in this case, the proposed antennas require the installation of a new wireless communications facility visible from a scenic road and does not qualify for the CDP exemption pursuant to LIP Section 13.4.3(B)(4). The siting of the new facility is requested in order to meet the objectives of Verizon Wireless to provide a capacity solution and to increase antenna signal coverage in the general area as discussed in the *Significant Gap in Signal Coverage* and the *Site Alternative Analysis* sections below.

Surrounding Land Uses and Project Setting

The project site is located on the rooftop of a commercially zoned parcel, on the oceanside of PCH in the northern Point Dume area. As outlined in Table 1, the project site is surrounded by existing commercial development to the north and west and residential development to the north, south and east. As shown on the LCP Environmentally Sensitive Habitat Area (ESHA) and Marine Resources Map, the project site is not located on or adjacent to ESHA and the project site is not located within the Appeal Jurisdiction of the California Coastal Commission as depicted on the Post-LCP Certification Permit and Appeal Jurisdiction Map.

Table 1 – Surround Zoning and Land Uses		
Surrounding Properties	Zoning	Adjacent Land Uses
28830 Hampton Place (East)	RR-1	Single-Family Home
6551 Portsheed Road (West)	CN	Vacant Parcel
28930 and 28910 Hampton Place (South)	RR-1	Single-Family Homes
6442 Cavalleri Road (North)	MF	Apartment Complex
28955 PCH (North)	CN	Commercial Businesses

RR-1 = Rural Residential – One Acre

MF = Multi-Family

Figure 1 – 28990.5 Pacific Coast Highway



Source: Malibu City GIS, 2021

The wireless communications facility is proposed to be placed on the rooftop of Building B of the three building, two-story commercial complex. Existing uses on the lot consist of professional office spaces. The facility will be visible from PCH, an LCP-designated scenic highway as well as surrounding properties. However, there will be less than significant impact to scenic resources from PCH and there are no anticipated impacts to public or private views of the Pacific Ocean or Santa Monica Mountains.

Project's Scope of Work Description

The proposed improvements as shown on the project plans consist of the installation of a new 1,249 square foot wireless communications facility consisting of the following (Attachment 2):

Roof-Mounted Equipment

- 13 New Antennas:
 - 9 panel antennas mounted onto the parapet wall,
 - 1, two-foot parabolic antenna,
 - 1, three-foot parabolic antenna,
 - 1, four-foot parabolic antenna,
 - 1 Global Position System (GPS) antenna;
- 12 remote radio units;
- 3 junction boxes;
- Additional associated electrical support equipment;

Ground-Mounted Equipment

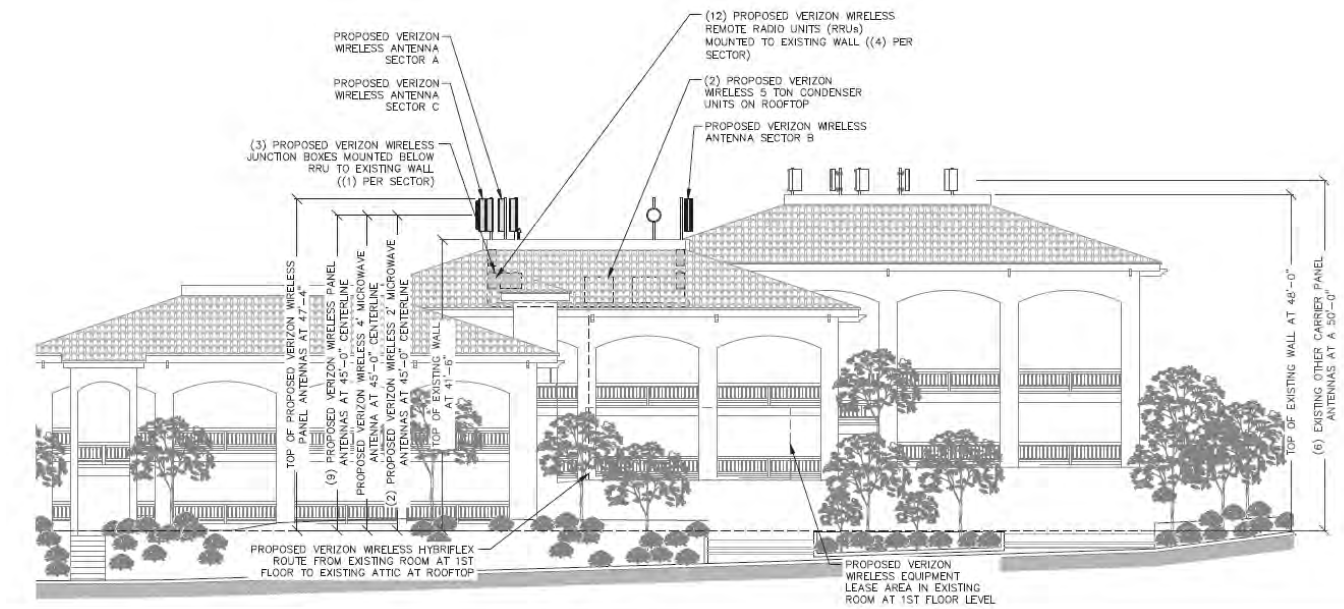
- A 40 kilowatts (kw) backup generator;
- 211-gallon fuel tank;
- Associated electrical support equipment; and
- Concrete block screen wall.

Associated with the proposed project is the discretionary requests for:

- WVR No. 21-001 for roof-mounted wireless communications antennas taller than three feet above the parapet;
- VAR No. 20-023 for roof-mounted wireless communications antennas taller than three feet above the parapet; and
- SPR No. 20-045 for the installation and operation of a wireless communications facility on a commercially zoned parcel.

Figure 2 on the following page depicts the proposed roof-mounted facility. The proposed roof-mounted design is also depicted in the applicant's provided visual demonstration exhibits (Attachment 3). The antennas are conditioned to be painted to match the roof parapet and the ground-mounted equipment is conditioned to be visually screened on all sides.

Figure 2 – Project Plan Elevation (looking north)



REGULATORY SETTING FOR PROPOSED WIRELESS COMMUNICATIONS FACILITY PROJECT: The following provides analyses of pertinent federal and local governmental regulations that apply to wireless communications facilities located within the City, including the proposed wireless communications facility.

The Spectrum Act

The “Middle Class Tax Relief and Job Creation Act of 2012” also known as the “Spectrum Act” preempted State and local governments from denying any “eligible facility request” for a modification of an existing wireless tower or base station pursuant to Section 6409. The subject wireless communications facility project involves the installation of new antennas on a separate building. It does not qualify as an eligible facility request because it does not include collocation with an existing facility or modification to an existing wireless communications facility.

Small Cell Order 18-133

Recent changes in federal law placed shortened timeframes (or “shot clocks”) and other requirements on the local government review of wireless communications facility installations. Under a Federal Communications Commission (FCC) Small Cell Order and regulations that went into effect on January 14, 2019, if a city does not render a decision on a small cell wireless facility application within a specified times period (60 days for installations on existing structures and 90 days on new structures), the failure to meet the deadline for actions will be presumed to not follow federal law and the application would be “deemed approved”. The proposed project was deemed by City staff and City wireless consultants as not a small cell project.

Significant Gap in Signal Coverage

The applicant submitted propagation coverage maps showing Verizon Wireless's existing and proposed wireless coverage within the project site's general area (Attachment 4). The existing coverage map shows that the general area has "Good" coverage already, but the proposed site will increase coverage to the north, west and east from "Poor" and "Fair" to "Good" according to Verizon Wireless's coverage interpretation. Besides providing additional coverage to the area, the proposed site will be used to connect Malibu to other Verizon Wireless macro sites across the region.

Site Alternative Analysis

Pursuant to LIP Section 3.16.9(B)(9), an alternative site analysis is required to explain the site selection process for the proposed wireless communications facility, including information about other sites considered and reason for each site's rejection. The applicant did not provide an alternative site analysis because the proposed location met Verizon Wireless's coverage objectives and it met a preferred location pursuant to LIP Section 3.16.11. However, pursuant to LIP Section 3.16.10(B), the preferred mounting technique for rooftop wireless facilities is to not be visible to the public. The proposed site will be visible to members of the public traveling on PCH and Portshead Road. In addition, Verizon Wireless is requesting a Waiver and a Variance to allow the antennas to protrude higher than three feet above the parapet to a height of five feet, ten inches above the parapet. Staff requested that the applicant evaluate other design alternatives to minimize visual impacts, including reducing the height of the antennas to be in compliance with the LIP and MMC. Below are a couple of the alternatives staff had Verizon Wireless explore and the reasons they were rejected.

- Alternate 1 was to reduce the height of the antennas to three feet maximum above the parapet in accordance with Resolution No. 21-17 Section 6(J) and LIP Section 3.16.5(F). Verizon Wireless had sited that they needed the requested height to meet their coverage objectives. They also sited interference challenges that would occur if their antennas did not reach a certain clearance over the parapet. Staff had requested that Verizon explore looking into reducing the height to meet the three-foot requirement by replacing the roof parapet with a Radio Frequency (RF) friendly material to solve the interference issue and still maintain the Resolution No. 21-17 and LIP height requirements. Verizon Wireless was open to this option but were denied by owner to reconstruct the roof parapet as it would be cause of significant structural alteration to the roof (Attachment 5) and would disrupt existing tenants.
- Alternate 2 was to collocate on the same roof as the T-Mobile wireless facility, Building C. Verizon Wireless sited that they did not have the required space to install their desired facility. Additionally, they stated that an additional site on the rooftop of Building C could cause interference problems with the two different carrier's antennas so close together. The proposed location would have the same visual impact as installing another facility on Building C, so staff was willing to allow the proposed location, on the rooftop of Building B, to move forward.

- Alternate 3 was requested by staff to explore a building façade-mount design. This would resolve the issue with the height and would still be a preferred design option pursuant to the LIP and Resolution 21-17. Verizon Wireless sited technical challenges with making the façade mount structurally feasible and also stated that the owner would not accept that design.

The proposed facility will be in a preferred location pursuant to the LIP and MMC. It is on a commercial property and attached to an existing structure. The rooftop design will be visible to the public but there were no feasible alternatives that would eliminate the visual impacts. However, there are no anticipated public or private view obstructions to any LCP indicated scenic resources like the Santa Monica Mountains or the Pacific Ocean.

Health Effects of Radio Frequency Emissions and Radio Frequency Report

Resolution No. 21-17 Section 4(E) and LIP Section 3.16.4 require that wireless communications facilities be limited to power densities in any inhabited area that does not exceed the FCC's Maximum Permissible Exposure (MPE) limits for electric and magnetic field strength and power density for transmitters. Additionally, pursuant to Resolution No. 21-17 Section 4(F) and LIP Section 3.16.5(K), all antennas must meet the minimum siting distances to habitable structures required for compliance with the FCC regulations and standards governing the environmental effects of RF emissions.

Verizon Wireless is regulated by the FCC and is required to operate its facilities in compliance with the FCC regulations and standards. The proposed wireless communications facility would operate at power levels below the established standards used by the FCC for safe human exposure to RF electromagnetic fields, which have been tested and proven safe by the American National Standards Institute (ANSI) and the Institute of Electrical Electronic Engineers (IEEE).

The applicant has provided an RF-EME Jurisdictional Report prepared by Hammet & Edison, Inc. submitted on June 22, 2020, which outlines compliance of the facility with FCC thresholds for RF emissions (Attachment 6). The applicant has also provided correspondence that the proposed wireless communications facility will operate in compliance with the FCC regulations (Attachment 7). The report concluded that the maximum power density generated by the Verizon Wireless antennas at its nearest walking surfaces at the ground level is approximately 5.8 percent of the FCC's limit for maximum permissible exposure for the general public. Additionally, the cumulative total when accounting for RF emissions produced by both the proposed Verizon site and the existing T-Mobile site will be 7.1 percent the FCC limit at the nearest walking/working surface at the ground level. The maximum cumulative total at the top floor of any nearby building is 9.7 percent the FCC limit for the general public. These results were based on the "worst-case" assumptions of the sites involved. The proposed site, including the additional impacts when accounting for the existing T-Mobile site will be in accordance with Title 47 Code of Federal Regulations (C.F.R.) Section 1.1310. The FCC requirements are detailed in Parts 1 and 2 of the FCC's Rules and Regulations (47 C.F.R. Sections 1.1307(b), 1.1310, 2.1091 and 2.1093).

Pursuant to Title 47 of U.S.C. Section 332(c)(7)(B)(iv), “[n]o State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of RF emissions to the extent that such facilities comply with the FCC’s regulations concerning such emissions. Even though the City is unable to impose more restrictive MPE limits, the City may still require information to verify compliance with FCC requirements as it was done for this project. The proposed site has been demonstrated to meet FCC requirements.

LCP Analysis

The LCP consists of the Land Use Plan (LUP) and the LIP. The LUP contains programs and policies implementing the Coastal Act in Malibu. The LIP contains provisions to carry out the policies of the LUP to which every project requiring a coastal development permit must adhere.

There are 14 LIP chapters that potentially apply depending on the nature and location of the proposed project. Of these, five are for conformance review only and contain no findings: 1) Zoning, 2) Grading, 3) Archaeological/Cultural Resources, 4) Water Quality and 5) Onsite Wastewater Treatment System. These chapters are discussed in the *MMC (Resolution No. 21-17/LIP Conformance Analysis* section below.

The nine remaining LIP chapters contain required findings: 1) Coastal Development Permit; 2) ESHA; 3) Native Tree Protection; 4) Scenic, Visual and Hillside Resource Protection; 5) Transfer of Development Credits; 6) Hazards; 7) Shoreline and Bluff Development; 8) Public Access; and 9) Land Division. For the reasons described later in this report, only the findings in the following chapters are applicable to the proposed project: Coastal Development Permit (including the requested variance and site plan review), Scenic, Visual and Hillside Resource Protection and Hazards. Consistency review with these sections is discussed in the *LIP/MMC (Resolution No. 21-17) Findings* section below.

Based on the project site and scope of work described for the proposed wireless project above, the ESHA, Native Tree Protection, Transfer of Development Credits, Shoreline and Bluff Development, Public Access and Land Division findings are not applicable to the project.

MMC (Resolution No. 21-17)/LIP Conformance Analysis

The proposed project has been reviewed for conformance with the MMC, Resolution No. 21-17, and the LIP by Planning Department. Staff has determined that the project, as proposed and conditioned, is consistent with all applicable MMC/LIP goals, policies, codes, and standards.

Zoning (Section LIP Section 3.16)

LIP Section 3.16.2 permits wireless communications facilities on private property with a site plan review, provided such facilities comply with the general requirements set forth in LIP Section 3.16.4 and the most restrictive design criteria set forth in LIP Section 3.16.6. The project proposes antennas that will be taller than three feet above the parapet, a height that is inconsistent with LIP Section 3.16.5. Therefore, the applicant is applying for a variance request to allow the antennas to protrude 5 feet, 11 inches above the parapet.

General Requirements (Resolution No. 21-17 Section 4 and LIP Section 3.16.5)

Consistent with Resolution No. 21-17 Sections 4(B), (C), (D), (E), and (F) the proposed wireless facility was designed and reviewed for compliance with all applicable law including federal, State and local authority. The site was designed and will be conditioned to meet all requirements related to FCC compliance, fire safety, and the Los Angeles County Building Code as adopted by the City of Malibu.

Pursuant to Resolution 21-17 Section 4(A), the site should be designed in a manner to minimize visual impact as much as possible to accomplish the carrier's objectives. As mentioned in the *Site Alternative Analysis* section above, alternatives were explored but none were feasible to reduce the height. As stated previously, the site requires a Waiver and Variance to allow additional height. Verizon Wireless requires the proposed height to meet their coverage objectives. Additionally, the site will either comply with or be conditioned to comply with all other applicable requirements of Resolution No. 21-17 Section (4) as well as the MMC.

Consistent with LIP Sections 3.16.4(B), (C) and (K), the proposed wireless communications facility complies with the maximum permitted exposure limits promulgated by the FCC as previously stated in the *Health Effects from Radio Frequency Emissions* section.

The rooftop wireless communications facility will have to comply with all State and federal regulations pursuant to LIP Section 3.16.5(B). The project has been conditioned so that it must be in compliance with State and federal law at all times, including but not limited to, accessibility requirements along the sidewalk pursuant to the Americans with Disabilities Act (ADA) and all requirements regulated by the FCC.

Pursuant to LIP Section 3.16.5(I), all electrical support equipment located within cabinets, shelters, or similar structures shall be screened from public view and encouraged to be ground-mounted, or undergrounding is required, when feasible. The proposed support will be concealed behind the roof parapet. The backup generator will be conditioned to be visually screened with a screen wall. The proposed antennas and the backup generator's required screening will be painted to match the existing buildings.

The project site is located within 600 feet of another wireless facility, the adjacent T-Mobile rooftop site. Pursuant to LIP Section 3.16.5(O), wireless facilities should be placed at least 600 feet from another facility unless clear need is demonstrated. Verizon Wireless provided evidence that the site will upgrade coverage in the general area through coverage maps. Additionally, this site will be used as a necessary macro site connecting Malibu with other Verizon Wireless macro sites in the surrounding jurisdictions.

Most Restrictive Design Criteria (LIP Section 3.16.6)

Pursuant to LIP Sections 3.16.6(C), (D), and (J), wireless communication facilities are required to be placed, screened, camouflaged, painted and textured, to the greatest extent feasible, for compatibility with existing site characteristics. The proposed rooftop site is proposing antennas at a height inconsistent with the design standards of the LIP and Resolution No. 21-17 but the electrical support equipment and ground-mounted backup generator will be screened from view. However, consistent with this section, all visible antennas and screening will be painted to match the buildings onsite.

Location (Resolution No. 21-17 Section 5 and LIP Section 3.16.11)

Pursuant to Resolution No. 21-17 Sections 5(C)(1) and (2), the proposed site will meet a preferred location by being on a non-residentially zoned parcel and being attached to an existing building. However, contrary to Section 5(C)(4) the site will be visible from adjacent roadways.

Pursuant to LIP Chapter 3.16.11(B), the preferred location for wireless facilities is in non-residential zones excluding public open space and recreational vehicle park zoning districts. The proposed site is located on a commercially zoned property.

Engineering and Design (Resolution No. 21-17 Section 6)

Pursuant to Resolution No. 21-17 Section 6(J), roof-mounted wireless communications facilities shall have antennas that extend no taller than three feet above the parapet of the roof in which they are attached. All other equipment should be screened from view which is proposed for this site. As mentioned previously, the height proposed is necessary for Verizon Wireless to meet their coverage objectives. Verizon is requesting a Waiver and Variance to go over the allowed height.

Grading (LIP Chapter 8)

Minor soil/concrete excavation is proposed for the installation of the backup generator. The proposed excavation is inconsequential and fall under exempt, understructure grading consistent with LIP Chapter 8.

Archaeological / Cultural Resources (LIP Chapter 11)

LIP Chapter 11 requires certain procedures be followed to determine potential impacts on archaeological resources. The proposed work for the project is completely within a developed parcel. The project site has been evaluated by Planning Department for potential impacts to archaeological resources per the adopted City of Malibu Cultural Resources Map and it has been determined that, due to the limited landform alteration within the completely disturbed parcel, the project has very low probability of any adverse effects on archaeological/cultural resources. Nevertheless, the project is conditioned to require that in the event potentially important cultural resources are found during geologic testing or construction, the work shall immediately cease until a qualified archaeologist can submit an evaluation of the nature and significance of the resources to the City, and until the Planning Director can review this information.

Water Quality (LIP Chapter 17)

The proposed project includes the installation of a rooftop wireless communications facility on an existing building and a ground-mounted backup generator. Due to the limited amount of impermeable coverage, the project complies with LIP Chapter 17 requirements for water quality protection.

Wastewater Treatment System Standards (LIP Chapter 18)

The proposed project does not include any plumbing fixtures and will not conflict with any existing wastewater facilities. Therefore, the project complies with LIP Chapter 18.

LIP and MMC Findings

A. Findings for a Wireless Permit (MMC Chapter 17.46)

MMC Section 17.46.110 requires that three findings be made for all new wireless communications facility applications. The following three findings are made below.

Finding 1. The facility is not detrimental to the public health, safety, and welfare and will not pose an undue fire risk.

As stated previously, the site has been reviewed for compliance with all applicable regulations including federal, State and local authority. The site will be in compliance with all FCC requirements. Additionally, the project is conditioned to be submitted for a building plan check with City Building Safety Division in which the project will be verified that it meets the Los Angeles County Building Code as adopted by the City of Malibu. The project will undergo thorough safety review with the Building Safety Division and, at the time of installation, the project will be inspected by both Building and Planning staff for compliance with all safety requirements. As proposed and conditioned the site will not be detrimental to public health and not pose an undue fire risk.

Finding 2. The facility complies with Chapter 17.46 and all applicable design and development standards.

The proposed wireless communications facility will comply with all requirements of MMC Chapter 17.46 and Resolution No. 21-17 inclusive of the proposed Waiver for additional height allowance. The proposed site meets or is conditioned to meet all required safety elements and the design and location are consistent with MMC Chapter 17.46 as well as Resolution No. 21-17, which describes the detailed standards in which a wireless facility shall comply. A Waiver is being proposed for an additional height allowance but as mentioned previously, the design is the only feasible alternative for Verizon Wireless to meet their coverage objectives. Besides the height of the antennas, the proposed facility will comply with or is conditioned to comply with all required design standards of the MMC and Resolution No. 21-17.

Finding 3. The facility complies with state and federal law.

As mentioned in Finding 1 and in the “MMC (Resolution No. 21-17)/LIP Conformance Analysis” section, the site will meet all requirements of the FCC. Additionally, the project will undergo a thorough review from the Building Safety Division for compliance with the adopted LA County Building Code. As proposed and conditioned the facility will comply with State and federal law.

B. General Coastal Development Permit Findings (LIP Chapter 13)

LIP Section 13.9 requires that the following four findings be made for all coastal development permits.

Finding 1. That the project as described in the application and accompanying materials, as modified by any conditions of approval, conforms with certified City of Malibu Local Coastal Program.

The project has been reviewed by the Planning Department for conformance with the LCP. As discussed herein, based on the submitted project plans, visual demonstration exhibits, alternative site analysis, coverage maps, RF-EME Jurisdictional Report, site inspection, and recommended conditions, the proposed wireless communications project conforms to the LCP and MMC in that it meets all applicable wireless communications facility code and other standards.

Finding 2. If the project is located between the first public road and the sea. The project conforms to the public access and recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing with Sections 30200 of the Public Resources Code).

The project is not located between the first public road and the sea; therefore, this finding does not apply.

Finding 3. The project is the least environmentally damaging alternative.

As mentioned above in the *Site Alternative Analysis* section, the project is the least environmentally damaging alternative. The proposed facility is on a commercially zoned parcel, or non-residential, which is a preferred location according to LIP Chapter 3.16.11(B). Additionally, the project proposes to utilize existing infrastructure and is designed and conditioned to be camouflaged to the maximum extent feasible. There were other alternatives that were researched in order to minimize visual impacts, but none were feasible as mentioned previously.

Finding 4. If the project is located in or adjacent to an environmentally sensitive habitat area pursuant to Chapter 4 of the Malibu LIP (ESHA Overlay), that the project conforms with the recommendations of the Environmental Review Board, or if it does not conform with the recommendations, findings explaining why it is not feasible to take the recommended action.

The project site is not located on or adjacent to ESHA. Therefore, the findings in LIP Chapter 4 are not applicable.

C. Variance to permit rooftop antennas more than three feet above the roof parapet (LIP Section 13.26.5)

VAR No. 20-023 is requested for height of the proposed rooftop wireless facility to be taller than three feet above the roof parapet from which it is attached. The Planning Commission may approve, deny and/or modify a variance application in whole or in part, with or without conditions, provided that it makes all of the following ten findings pursuant to LIP Section 13.26.5. The evidence in the record supports approval of VAR No. 20-023 and all of the required findings of fact can be made as follows:

Finding 1. There are special circumstances or exceptional characteristics applicable to the subject property, including size, shape, topography, location, or surroundings such that strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under the identical zoning classification.

There are special characteristics for the proposed wireless communications facility that makes it subject to a variance. In order to meet Verizon Wireless' coverage objectives, the antennas must be at height protruding 5 feet, 10 inches above the roof parapet. As mentioned previously, there were alternatives explored to try and lower the proposed height, but all were deemed infeasible due to various reasons including not receiving approval from the property owner, spacing and interference issues. Verizon Wireless could have proposed an independent site, not utilizing existing buildings and it would have had greater environmental impact. Being on the rooftop of a two-story structure, the proposed antennas will be far away from members of the public. Although visible from a scenic road, there are no anticipated view impacts to the Pacific Ocean or Santa Monica Mountains. Additionally, there is already a wireless facility on the adjacent building so not allowing Verizon Wireless to collocate here would deny them a right granted to another wireless carrier.

Finding 2. The granting of such variance will not be detrimental to the public interest, safety, health or welfare, and will not be detrimental or injurious to the property or improvements in the same vicinity and zone(s) in which the property is located.

The proposed wireless communications facility meets all FCC required MPE limits for the general public. Additionally, the site will conform to the LA County Building Code as adopted by the City of Malibu. The rooftop design was accepted by the property owner and suggested alternatives would have been more harmful to the existing structure in which this proposed facility will be attached. Lastly, there are no anticipated visual impacts to scenic views. The proposed facility will not be detrimental to the public interest, safety, welfare, or property.

Finding 3. The granting of the variance will not constitute a special privilege to the applicant or property owner.

As previously mentioned in Finding 1, there is already a wireless facility on the adjacent building. If the carrier of that facility came in with a proposal to increase the height of their antennas to taller than three feet above the parapet, staff would also consider the project under the same circumstances as this proposal. Thus, granting the variance will not constitute a special privilege to the applicant or owner.

Finding 4. The granting of such variance will not be contrary to or in conflict with the general purposes and intent of this Chapter, nor to the goals, objectives and policies of the LCP.

The granting of the variance will not be in conflict with the policies of the LCP. The proposed height is not expected to impact any scenic views. The antennas and associated equipment will be painted to blend in with the surrounding environment.

Finding 5. For variances to environmentally sensitive habitat area buffer standards or other environmentally sensitive habitat area protection standards, that there is no other feasible alternative for siting the structure and that the development does not exceed the limits on allowable development area set forth in LIP Section 4.7.

The project site is not in or adjacent to an ESHA, ESHA buffer or stream; therefore, this finding does not apply.

Finding 6. For variances to stringline standards, that the project provides maximum feasible protection to public access as required by LIP Chapter 12.

The proposed project does not involve a stringline modification as it is not located on a beach; therefore, this finding does not apply.

Finding 7. The variance request is consistent with the purpose and intent of the zone(s) in which the site is located. A variance shall not be granted for a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property.

The proposed facility is the rooftop of a commercial building in the Commercial Neighborhood zoning district. The proposed project is consistent with the purpose and intent for the CN zone. As mentioned previously, the LIP's preferred location is on non-residentially zoned parcels and on existing infrastructures which this site will follow. The applicant is also applying for a site plan review for a new wireless communications facility in a commercial zoning district and the proposed collocation of the facility meets the recommended design criteria in the LIP and MMC.

Finding 8. The subject site is physically suitable for the proposed variance.

The subject site is physically suitable for the proposed variance. The proposed location keeps it away from potential impacts to scenic views and residential homes. There are no impacts to visually impressive views of the Pacific Ocean or any other scenic resources identified in the LIP.

Finding 9. The variance complies with all requirements of State and local law.

The variance complies with State and local law in that it meets the requirements of the FCC and is collocated on an existing building, a location preferred in the Malibu LIP and MMC. There are no visual impacts to scenic resources.

Finding 10. A variance shall not be granted that would allow reduction or elimination of public parking for access to the beach, public trails or parklands. (Ord. 303 § 3, 2007)

The variance proposal does not reduce or eliminate parking for access to the beach, public trails or parklands.

D. Site Plan Review to install and operate a wireless communications facility located within a commercial zoning district (LIP Section 13.27)

LIP Section 13.27.5(A) requires that the City make four findings in consideration and approval of a site plan review. Two additional findings are required pursuant to MMC Section 17.62.060 when a project exceeds 18 feet. Based on the foregoing evidence contained in the record, the required findings for SPR No. 20-045 are made as follows:

Finding 1. That the project is consistent with policies and provisions of the Malibu LCP.

Wireless communications facilities are permitted in commercial zoning districts with a site plan review provided such facilities comply with the general requirements set forth in LIP Section 3.16.5 and the most restrictive design standards set forth in LIP Section 3.16.6. As discussed in the *MMC/LIP Conformance Analysis* section above, the proposed wireless communications facility is consistent with LIP standards, which implements the policies and provisions of the City's LCP.

Finding 2. The project does not adversely affect neighborhood character.

As conditioned, the roof-mounted antennas and associated equipment will be screened or painted a to match existing infrastructure. The proposed ground-mounted backup generator will be screened. The backup generator's screening is conditioned to be painted to match the surrounding environment. The proposed project is generally compatible in size, bulk, and height to roof-mounted wireless facilities in commercial zoning districts. The facility's maximum height is also the least intrusive design compared to constructing a new site. Further, the project is conditioned so that it must, at all times, be in compliance with federal and State regulations including, but not limited to, ADA accessibility and any requirements related to wireless communications utilities in regulated by the FCC.

Finding 3. The project provides maximum feasible protection to significant public views as required by LIP Chapter 6.

The proposed wireless communications facility is not expected to obstruct visually impressive scenes of the Pacific Ocean, off-shore islands, Santa Monica Mountains, canyons, valleys or ravines. The proposed rooftop wireless facility does exceed a maximum three feet above the roof parapet, as required by the LIP and Resolution No. 21-17, but does not diminish any significant public views of the beach or the Santa Monica Mountains.

Finding 4. The proposed project complies with all applicable requirements of State and local laws.

The proposed project will comply with all applicable requirements of State and local laws as required under LIP Section 3.16.5 and MCC Section 17.46.060, including but not limited to the Uniform Building Code, National Electrical Code, and Uniform Fire Code to ensure compliance with the above finding. The proposed project is also required to comply with all applicable regulations and standards promulgated or imposed by any State or Federal agency, including the FCC.

Finding 5. The project is consistent with the City's General Plan and Local Coastal Program.

Wireless communications facilities are permitted in commercial zoning districts with a site plan review, provided such facilities comply with the general requirements set forth in LIP Section 3.16.5 and design criteria set forth in LIP Section 3.16.6. The proposed project complies with these standards, subject to conditions of approval.

Finding 6. The portion of the project that is in excess of 18 feet in height does not obstruct visually impressive scenes of the Pacific Ocean, off-shore islands, Santa Monica Mountains, canyons, valleys or ravines from the main viewing area of any affected principal residence as defined in MMC Section 17.40.040(A)(17).

Based on staff's site inspection, the provided visual simulations, and review of the project plans, it was determined that the rooftop wireless facility and associated equipment is not expected to obstruct protected private views of impressive scenes of the Pacific Ocean, off-shore islands, Santa Monica Mountains, canyons, valleys, or ravines.

E. Environmentally Sensitive Habitat Area (LIP Chapter 4)

As discussed in Section A, Finding 4, the project site is not located in or adjacent to ESHA, ESHA buffer or stream as shown in the LCP ESHA and Marine Resources Map. Therefore, the supplemental ESHA findings in LIP Section 4.7.6 do not apply.

F. Native Tree Protection (LIP Chapter 5)

The proposed project does not involve removal of or encroachment into the protected zone of any protected native trees. Therefore, LIP Chapter 5 does not apply.

G. Scenic, Visual and Hillside Resource Protection (LIP Chapter 6)

The Scenic, Visual and Hillside Resource Protection Chapter governs those coastal development permit applications concerning any parcel of land that is located along, within, provides views to or is visible from any scenic area, scenic road or public viewing area. The proposed wireless communications facility is visible from PCH, an LCP-designated scenic highway. Therefore, findings in LIP Section 6.4 apply to the proposed project and are made as follows:

Finding 1. The project, as proposed, will have no significant adverse scenic or visual impacts due to project design, location on the site or other reasons.

The proposed wireless communications facility will not affect any scenic views of the Pacific Ocean and Santa Monica Mountains as it is located in a developed commercial area in the northern part of Point Dume which is centrally located within the City and far from the aforementioned scenic areas. Furthermore, the project is the least visually intrusive alternative that still meets Verizon Wireless's goals and objectives.

Finding 2. The project, as conditioned, will not have significant adverse scenic or visual impacts due to required project modifications, landscaping or other conditions.

The subject parcel is located on the ocean side of PCH but will not affect scenic views of motorists traveling on the highway. Based on the scope of the project and associated conditions of approval, no adverse scenic or visual impacts are expected.

Finding 3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.

As previously mentioned in Finding 1, the proposed location is the least environmentally damaging alternative.

Finding 4. There are no feasible alternatives to development that would avoid or substantially lessen any significant adverse impacts on scenic and visual resources.

As mentioned previously, all project alternatives that would meet Verizon Wireless's goals and objectives were not feasible or they would be more environmentally impactful than the current proposal; therefore, this is the least impactful alternative that is still feasible to meet Verizon's objectives.

Finding 5. Development in a specific location on the site may have adverse scenic and visual impacts but will eliminate, minimize or otherwise contribute to conformance to sensitive resource protection policies contained in the certified LCP.

As previously stated, the proposed design will include antennas and equipment that will be screened or painted a color that will best help them blend them with their surroundings. As conditioned and designed, the proposed project will have a less than significant impact on scenic views.

H. Transfer of Development Credits (LIP Chapter 7)

Pursuant to LIP Section 7.2, transfer of development credits only applies to land divisions and/or new multi-family residential development in specified zoning districts. The proposed project does not involve any land division or residential development. Therefore, LIP Chapter 7 does not apply.

I. Hazards (LIP Chapter 9)

Pursuant to LIP Section 9.3, written findings of fact, analysis and conclusions addressing geologic, flood and fire hazards, structural integrity or other potential hazard must be included in support of all approvals, denials or conditional approvals of development located on a site or in an area where it is determined that the proposed project has the potential to adversely impact site stability or structural integrity. The proposed wireless communications project has been reviewed for the hazards listed in LIP Section 9.2(A)(1-7). The evidence in the record supports the required five findings in LIP Chapter 9 as follows.

Finding 1. The project, as proposed will neither be subject to nor increase instability of the site or structural integrity from geologic, flood, or fire hazards due to project design, location on the site or other reasons.

The proposed project is required to comply with all applicable requirements of State and local laws as required under LIP Section 3.16.5, including but not limited to the Uniform Building Code, National Electrical Code, and Uniform Fire Code to ensure compliance with the above finding. The proposed project is also required to comply with all applicable regulations and standards promulgated or imposed by any State or Federal agency, including the FCC.

The entire city limits of Malibu are located within a high fire hazard area. As conditioned, the facility's owner is required to indemnify and hold harmless the City from all impacts related to wildfire hazards. Further, as designed and conditioned, the proposed project will not increase stability of the site or structure integrity from geologic hazards.

Finding 2. The project, as conditioned, will not have significant adverse impacts on site stability or structural integrity from geologic, flood or fire hazards due to required project modifications, landscaping or other conditions.

As discussed in Finding 1, the proposed project, as designed and conditioned, will not have a significant effect on the site's stability or structural integrity. Conditions have been added to the project to ensure that it will not have significant adverse impacts on the site stability or structural integrity.

Finding 3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.

As discussed in Section A, Finding 3, the proposed project, as designed and conditioned, is the least environmentally damaging alternative.

Finding 4. There are no alternatives to development that would avoid or substantially lessen impacts on site stability or structural integrity.

As discussed in Finding 1, the proposed project, as designed and conditioned, will not have adverse impacts on site stability. Compliance with standard engineering techniques and other feasible available solutions to address hazards issues will ensure that the structural integrity of the proposed development will not result in any hazardous conditions.

Finding 5: Development in a specific location on the site may have adverse impacts but will eliminate, minimize or otherwise contribute to conformance to sensitive resource protection policies contained in the certified Malibu LCP.

As previously stated in Finding 1 and Section A, Findings 3, the proposed project, as designed and conditioned, will not have significant adverse impacts on sensitive resources, including but not limited to hazards; therefore, this finding does not apply.

J. Shoreline and Bluff Development (LIP Chapter 10)

The proposed project is not located on or along a shoreline, coastal bluff or bluff-top fronting the shoreline. Therefore, LIP Chapter 10 does not apply.

K. Public Access (LIP Chapter 12)

LIP Section 12.4 requires public access for lateral, bluff-top, and vertical access near the ocean, trails, and recreational access for the following cases:

- A. New development on any parcel or location specifically identified in the LUP or in the LCP zoning districts as appropriate for or containing a historically used or suitable public access trail or pathway.
- B. New development between the nearest public roadway and the sea.
- C. New development on any site where there is substantial evidence of a public right of access to or along the sea or public tidelands, a bluff-top trail or an inland trail acquired through use or a public right of access through legislative authorization.
- D. New development on any site where a trail, bluff-top access or other recreational access is necessary to mitigate impacts of the development on public access where there is no feasible, less environmentally damaging, project alternative that would avoid impacts to public access.

As described herein, the project site and the proposed project do not meet any of these criteria in that no trails are identified on the LCP Park Lands Map on or adjacent to the property, and the property is not located between the first public road and the sea, or on a bluff or near a recreational area. The requirement for public access of LIP Section 12.4 does not apply and further findings are not required.

L. Land Division (LIP Chapter 15)

The proposed project does not involve a land division as defined in LIP Section 15.1. Therefore, LIP Chapter 15 does not apply.

ENVIRONMENTAL REVIEW: Pursuant to the authority and criteria contained in the CEQA, the Planning Department has analyzed the proposed project. The Planning Department found that this project is listed among the classes of projects that have been determined not to have a significant adverse effect on the environment. Therefore, the project is categorically exempt from the provisions of CEQA pursuant to CEQA Guidelines Sections 15303(e) – New construction or Conversion of Small Structures, including accessory structures and 15301(e) - Improvements to existing facilities. The Planning Department has further determined that none of the six exceptions to the use of a categorical exemption applies to this project (CEQA Guidelines Section 15300.2).

CORRESPONDENCE: Staff has not received any public correspondence on the subject application.

PUBLIC NOTICE: On August 5, 2021, staff published a Notice of Public Hearing for the project in a newspaper of general circulation within the City of Malibu and mailed the notice to all property owners and occupants within a 1,000-foot radius of the project site (Attachments 8 and 9).

SUMMARY: The required findings can be made that the proposed wireless communications facility project is consistent with the LCP and MMC. Further, the Planning Department's findings of fact are supported by substantial evidence in the record. Based on the analysis contained in this agenda report and the accompanying resolution, staff recommends approval of the project, subject to the conditions of approval contained in

Section 5 (Conditions of Approval) of Planning Commission Resolution No. 21-63. The project has been reviewed and conditionally approved for conformance with the LCP by Planning Department staff.

ATTACHMENTS:

1. Planning Commission Resolution No. 21-63
2. Project Plans
3. Visual Demonstration Exhibits
4. Signal Coverage Maps
5. Letter from Owner Denying Alternative 1
6. RF-EME Jurisdictional Report
7. FCC Compliance
8. Radius Map
9. Public Hearing Notice

CITY OF MALIBU PLANNING COMMISSION
RESOLUTION NO. 21-63

A RESOLUTION OF THE CITY OF MALIBU PLANNING COMMISSION DETERMINING THE PROJECT IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENT QUALITY ACT AND APPROVING WIRELESS PERMIT NO. 21-002 AND COASTAL DEVELOPMENT PERMIT NO. 20-035 FOR VERIZON WIRELESS TO INSTALL A ROOF MOUNTED WIRELESS COMMUNICATIONS FACILITY ON BUILDING B REACHING A MAXIMUM HEIGHT OF 47 FEET, 4 INCHES, ELECTRICAL SUPPORT EQUIPMENT ATTACHED TO THE ROOFTOP AND A GROUND MOUNTED BACKUP GENERATOR, INCLUDING WAIVER NO. 21-001 AND VARIANCE NO. 20-023 TO PERMIT ROOF MOUNTED WIRELESS FACILITY ANTENNAS TO EXTEND OVER 3 FEET ABOVE THE ROOF PARAPET AND SITE PLAN REVIEW NO. 20-045 TO INSTALL AND OPERATE A WIRELESS COMMUNICATIONS FACILITY IN THE COMMERCIAL NEIGHBORHOOD ZONING DISTRICT LOCATED AT 28990.5 PACIFIC COAST HIGHWAY (VERIZON WIRELESS)

The Planning Commission of the City of Malibu does hereby find, order and resolve as follows:

SECTION 1. Recitals.

A. On June 22, 2020, a new application for Wireless Communications Facility (WCF) No. 20-013 and Site Plan Review (SPR) No. 20-045 was submitted by the applicant, Spectrum Services, on behalf of Verizon Wireless for the installation of a roof mounted wireless communications facility and a ground mounted backup generator. Coastal Development Permit (CDP) No. 20-035 and Variance (VAR) No. 20-023 were later assigned to the project.

B. On April 26, 2021, the Malibu City Council adopted Ordinance 484 and Resolution 21-17 amending the City's wireless communications facility application and design standards.

C. On July 21, 2021, Planning staff assigned Wireless Permit (WP) No. 21-002 and Waiver (WVR) No. 21-001 to the subject application.

D. On July 22, 2021, Planning staff deemed the project complete.

E. On August 5, 2021, a Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 1,000-foot radius of the project site and to all interested parties.

F. On August 16, 2021, the Planning Commission held a duly noticed public hearing on the subject application for the modified wireless communications facility project, reviewed and considered the staff report, reviewed and considered written reports, public testimony, and other information in the record.

SECTION 2. Environmental Review.

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the Planning Commission has analyzed the proposal. The Planning Commission found that this project is listed among the classes of projects that have been determined not to have a significant adverse effect on the environment. Therefore, the project is categorically exempt from the provisions of CEQA pursuant to CEQA Guidelines Sections 15301(e) – additions to existing structures and 15303(e) – new construction of accessory structures. The Planning Commission has further determined that none of the six exceptions to the use of a categorical exemption applies to this project (CEQA Guidelines Section 15300.2).

SECTION 3. Coastal Development Permit Findings.

Based on substantial evidence contained within the record and pursuant to Local Coastal Program (LCP) Local Implementation Plan (LIP) Sections 13.7(B) and 13.9, the Planning Commission adopts the analysis in the agenda report, incorporated herein. The findings of fact below, WP No. 21-002 and CDP No. 20-035 for Verizon Wireless to install a roof mounted wireless communications facility reaching a maximum height of 47 feet, 4 inches, electrical support equipment attached to the roof and a backup generator, including WVR No. 21-001 and VAR No. 20-023 to permit wireless antennas over three feet in height and SPR No. 20-045 to install and operate a wireless communications facility in the Commercial Neighborhood (CN) zoning district located at 28990.5 Pacific Coast Highway (PCH).

The project is consistent with the LCP's zoning, grading, cultural resources, water quality, and onsite wastewater treatment requirements. The project, as conditioned, has been determined to be consistent with all applicable LCP codes, standards, goals, and policies. The required findings are made herein.

A. Wireless Permit Findings (MMC Chapter 17.46)

1. The site has been reviewed for compliance with all applicable regulations including federal, State and local authority. The site will be in compliance with all Federal Communications Commission (FCC) requirements. Additionally, the project is conditioned to be submitted for a building plan check with City Building Safety Division in which the project will be verified that it meets the Los Angeles County Building Code as adopted by the City of Malibu. The project will undergo thorough safety review with the Building Safety Division and at the time of installation the project will be inspected by both Building and Planning staff for compliance with all safety requirements. As proposed and conditioned the site will not be detrimental to public health and not pose an undue fire risk.

2. The proposed wireless communications facility will comply with all requirements of Malibu Municipal Code (MMC) Chapter 17.46 and Resolution No. 21-17 inclusive of the proposed Waiver for additional height allowance. The proposed site meets or is conditioned to meet all required safety elements and the design and location are consistent with MMC Chapter 17.46 as well as Resolution No. 21-17, which describes the detailed standards in which a wireless facility shall comply. A Waiver is being proposed for an additional height allowance but as mentioned previously, the design is the only feasible alternative for Verizon Wireless to meet their coverage objectives. Besides the height of the antennas, the proposed facility will comply with or is conditioned to comply with all required design standards of the MMC and Resolution No. 21-17.

3. The site will meet all requirements of the FCC. Additionally, the project will undergo a thorough review from the Building Safety Division for compliance with the adopted Los Angeles County Building Code. As proposed and conditioned the facility will comply with State and federal law.

B. General Coastal Development Permit (LIP Chapter 13)

1. The project has been reviewed by the Planning Department for conformance with the LCP. As discussed herein, based on the submitted project plans, visual demonstration exhibits, alternative site analysis, coverage maps, Radio Frequency – Electromagnetic Energy (RF-EME) Jurisdictional Report, site inspection, and recommended conditions, the proposed wireless communications project conforms to the LCP and MMC in that it meets all applicable wireless communications facility code and other standards.

2. Evidence in the record demonstrated that the project is the least environmentally damaging alternative. The proposed facility is on a commercially zoned parcel, or non-residential, which is a preferred location according to LIP Chapter 16.11(B). Additionally, the project proposes to utilize existing infrastructure and is designed and conditioned to be camouflaged to the maximum extent feasible. There were other alternatives that were researched in order to minimize visual impacts, but none were feasible.

C. Variance for the development of roof mounted wireless facility antennas to extend three feet above the roof parapet (LIP 15.11(5))

VAR No. 20-023 will allow the installation of roof mounted wireless facility antennas to extend three feet above the roof parapet.

1. Evidence in the record demonstrates there are special characteristics for the proposed wireless communications facility that makes it subject to a variance. In order to meet Verizon Wireless's coverage objectives, the antennas must be at height protruding 5 feet, 10 inches above the roof parapet. There were alternatives explored to try and lower the proposed height, but all were deemed infeasible due to various reasons including not receiving approval from the property owner, spacing and interference issues. Verizon Wireless could have proposed an independent site, not utilizing existing buildings and it would have had greater environmental impact. Being on the rooftop of a two-story structure, the proposed antennas will be far away from members of the public. And although visible from a scenic road, there are no anticipated view impacts to the Pacific Ocean or Santa Monica Mountains. Additionally, there is already a wireless facility on the adjacent building so not allowing Verizon Wireless to collocate here would deny them a right granted to another wireless carrier.

2. The proposed wireless communications facility meets all FCC required FCC's Maximum Permissible Exposure (MPE) limits for the general public. Additionally, the site will conform to the Los Angeles County Building Code as adopted by the City of Malibu. The rooftop design was accepted by the property owner and suggested alternatives would have been more harmful to the existing structure in which this proposed facility will be attached. Lastly, there are no anticipated visual impacts to scenic views. The proposed facility will not be detrimental to the public interest, safety, welfare, or property.

3. There is already a wireless facility on the adjacent building. If the carrier of that facility came in with a proposal to increase the height of their antennas to taller than three feet above the parapet, staff would also consider the project under the same circumstances as this proposal. Thus, granting the variance will not constitute a special privilege to the applicant or owner.

4. The granting of the variance will not be in conflict with the policies of the LCP. The proposed height is not expected to impact any scenic views. The antennas and associated equipment will be painted to blend in with the surrounding environment.

5. The proposed facility is the rooftop of a commercial building in the Commercial Neighborhood zoning district. The proposed project is consistent with the purpose and intent for the CN zone. As mentioned previously, the LIP's preferred location is on non-residentially zoned parcels and on existing infrastructures which this site will follow. The applicant is also applying for a site plan review for a new wireless communications facility in a commercial zoning district and the proposed collocation of the facility meets the recommended design criteria in the LIP and MMC.

6. The subject site is physically suitable for the proposed variance. The proposed location keeps it away from potential impacts to scenic views and residential homes. There are no impacts to visually impressive views of the Pacific Ocean or any other scenic resources identified in the LIP.

7. The variance complies with State and local law in that it meets the requirements of the FCC and is collocated on an existing building, a location preferred in the Malibu LIP and MMC. There are no visual impacts to scenic resources.

8. The variance proposal does not reduce or eliminate parking for access to the beach, public trails or parklands.

D. Site Plan Review for erecting a wireless communications facility in the CN zoning district (LIP Section 13.2.5)

SPR No. 20-045 will allow the installation of a wireless communications facility in the public in the CN zoning district.

1. Wireless communications facilities are permitted in commercial zoning districts with a site plan review provided such facilities comply with the general requirements set forth in LIP Section 3.16.5 and the most restrictive design standards set forth in LIP Section 3.16.6. As discussed in the *MMC/LIP Conformance Analysis* section above, the proposed wireless communications facility is consistent with LIP standards, which implements the policies and provisions of the City's LCP.

2. As conditioned, the roof mounted antennas and associated equipment will be screened or painted to match existing infrastructure. The proposed ground-mounted backup generator will be screened. The backup generator's screening is conditioned to be painted to match the surrounding environment. The proposed project is generally compatible in size, bulk, and height to roof mounted wireless facilities in commercial zoning districts. The facility's maximum height is also the least intrusive design compared to constructing a new site. Further, the project is conditioned so that it must, at all times, be in compliance with federal and State regulations

including, but not limited to, American with Disabilities Act (ADA) accessibility and any requirements related to wireless communications utilities regulated by the FCC.

3. The proposed wireless communications facility is not expected to obstruct visually impressive scenes of the Pacific Ocean, off-shore islands, Santa Monica Mountains, canyons, valleys or ravines. The proposed rooftop wireless facility does exceed a maximum three feet above the roof parapet, as required by the LIP and Resolution No. 21-17, but does not diminish any significant public views of the beach or the Santa Monica Mountains.

4. The proposed project will comply with all applicable requirements of State and local laws as required under LIP Section 3.16.5 and MCC Section 17.46.060, including but not limited to the Uniform Building Code, National Electrical Code, and Uniform Fire Code to ensure compliance with the above finding. The proposed project is also required to comply with all applicable regulations and standards promulgated or imposed by any State or Federal agency, including the FCC.

5. Wireless communications facilities are permitted in commercial zoning districts with a site plan review, provided such facilities comply with the general requirements set forth in LIP Section 3.16.5 and design criteria set forth in LIP Section 3.16.5. The proposed project complies with these standards, subject to conditions of approval.

6. Based on staff's site inspection, the provided visual simulations, and review of the plans, it was determined that the new pole and mechanical equipment is not expected to obstruct any private protected views of impressive scenes of the Pacific Ocean, off-shore islands, Santa Monica Mountains, canyons, valleys, or ravines.

E. Scenic, Visual and Hillslope Resource Protection (LIP Chapter 6)

1. The proposed wireless communications facility will not affect any scenic views of the Pacific Ocean and Santa Monica Mountains as it is located in a developed commercial area in the northern part of Point Dume which is centrally located within the City and far from the aforementioned scenic area. Furthermore, the project is the least visually intrusive alternative that still meets Verizon Wireless's goals and objectives.

2. The subject parcel is located on the ocean side of PCH but will not affect scenic views of motorists traveling on the highway. Based on the scope of the project and associated conditions of approval, no adverse scenic or visual impacts are expected.

3. Evidence in the record demonstrates that the proposed location is the least environmentally damaging alternative.

4. Evidence in the record demonstrates that all project alternatives that would meet Verizon Wireless's goals and objectives were not feasible or they would be more environmentally impactful than the current proposal; therefore, this is the least impactful alternative that is still feasible to meet Verizon's objectives.

5. Evidence in the record demonstrates the proposed design will include antennas and equipment that will be screened or painted a color that will best help them blend them with their surroundings. As conditioned and designed, the proposed project will have a less than significant impact on scenic views.

F. Hazards (LIP Chapter 9)

1. The proposed project is required to comply with all applicable requirements of State and local laws as required under LIP Section 3.16.5/MCC Section 17.46.060, including but not limited to the Uniform Building Code, National Electrical Code, and Uniform Fire Code to ensure compliance with the above finding. The proposed project is also required to comply with all applicable regulations and standards promulgated or imposed by any State or Federal agency, including the FCC. Based on the project plans and provided reports, staff determined that the project is located on PCH's public ROW where it will not adversely impact site stability or structural integrity if the project is constructed to adhere to all applicable safety requirements provided by the FCC, SCE, and the City Public Works Department.

2. Evidence in the record demonstrates that the proposed project, as designed and conditioned, will not have a significant effect on the site's stability or structural integrity.

3. Evidence in the record demonstrates that the proposed project, as designed and conditioned, is the least environmentally damaging alternative.

4. Evidence in the record demonstrates that the proposed project, as designed and conditioned, will not have adverse impacts on site stability. Compliance with standard engineering techniques and other feasible available solutions to address hazards issues will ensure that the structural integrity of the proposed development will not result in any hazardous conditions.

SECTION 4. Planning Commission Action.

Based on the foregoing findings and evidence contained within the record, the Planning Commission hereby approves CIP No. 18-032, WCF No. 18-008, VAR 18-039 and SPR No. 18-034, subject to the conditions set forth herein.

SECTION 5. Conditions of Approval.

1. The applicant, and their successors in interest, shall indemnify and defend the City of Malibu and its officers, employees and agents from and against all liability and costs relating to the City's actions concerning this project, including (without limitation) any award of litigation expenses in favor of any person or entity who seeks to challenge the validity of any of the City's actions or decisions in connection with this project. The City shall have the sole right to choose its counsel and property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this project.
2. The permittee shall be strictly liable for interference caused by its facilities with city communications systems. The permittee shall be responsible for costs for determining the source of the interference, all costs associated with eliminating the interference (including but not limited to filtering, installing cavities, installing directional antennas, powering down systems, and engineering analysis), and all costs arising from third party claims against the city attributable to the interference.

3. Approval of this application is to allow the installation of the following:

Roof mounted Equipment

- a. 13 New Antennas:
 - i. 9 panel antennas mounted onto the parapet wall,
 - ii. 1 two-foot parabolic antenna,
 - iii. 1 three-foot parabolic antenna,
 - iv. 1 four-foot parabolic antenna
 - v. 1 GPS antenna;
- b. 12 remote radio units;
- c. 3 junction boxes;
- d. Additional associated electrical support equipment;

Ground mounted equipment

- e. A 40kw backup generator;
- f. 211-gallon fuel tank;
- g. Associated electrical support equipment; and
- h. Concrete block screen wall.

4. Subsequent submittals for this project shall be in substantial compliance with plans on-file with the Planning Department, date-stamped **December 11, 2020**. The project shall comply with all conditions of approval stipulated in the department referral sheets. In the event the project plans conflict with any condition of approval, the condition shall take precedence.
5. The permit and rights conferred by this approval shall not be effective until the property owner signs, notarizes and returns the Acceptance of Conditions Affidavit accepting the conditions set forth herein. The applicant shall file this form with the Planning Department within 10 days of this decision or prior to issuance of building permits.
6. Pursuant to LUP Section 3.20, development pursuant to an approved CDP shall not commence until the CDP is effective. The CDP is not effective until all appeals including those to the California Coastal Commission (CCC) if applicable, have been exhausted.
7. The applicant shall digitally submit a complete set of plans, including the items required in Condition No. 7 to the Planning Department for consistency review and approval prior to plan check and again prior to the issuance of any building or development permits.
8. This resolution (including the signed and notarized Acceptance of Conditions Affidavit) shall be copied in its entirety and placed directly onto a separate plan sheet(s) to be included in the development plans prior to submitting for a building permit from the City of Malibu Environmental Sustainability Department and the California Department of Transportation for an encroachment permit.
9. This WP shall be valid for a period of ten (10) years from issuance, unless pursuant to another provision of the Code or these conditions, it expires sooner or is terminated. At the end of ten (10) years from the date of issuance, such wireless permit shall automatically expire, unless an extension or renewal has been granted. A person holding a wireless communications facility permit must either (1) remove the facility within thirty (30) days following the permit's expiration (provided that removal of support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right of

way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City); or (2) prior to expiration, submit an application to renew the permit, which application must, among all other requirements, demonstrate that the impact of the wireless facility cannot be reduced. The wireless facility must remain in place until it is acted upon by the City and all appeals from the City's decision exhausted.

10. The installation and construction authorized by this WP shall be completed within three (3) years after its approval, or it will expire without further action by the City unless prior to the three (3) years the applicant submit an extension request and the City, in its sole discretion, grants a time extension for due cause. The installation and construction authorized by a wireless ROW permit shall conclude, including any necessary post-installation repairs and/or restoration to the ROW, within thirty (30) days following the day construction commenced. This 30-day period may be extended by the Planning Director if the applicant can demonstrate that construction has been diligently pursued but due to circumstances beyond the applicant's control, construction cannot be completed within 30 days of when it is commenced. The permittee must provide written notice to City within ten (10) days after completing construction. The expiration date shall be suspended until an appeal and/or litigation regarding the subject permit is resolved.
11. The Planning Director may grant up to four (4) one-year extensions of the timeline, in Condition 9 above, for completing the installation and construction authorized by a development or condition use permit if the Planning Director finds that the conditions, including but not limited to changes in the wireless ordinance under which the permit approval was issued, have not significantly changed.
12. Minor changes to the approved plans or the conditions of approval may be approved by the Planning Director, provided such changes achieve substantially the same results and the project is still in compliance with the MMC. An application with all required materials and fees shall be required.
13. Any questions of intent or interpretation of any condition of approval will be resolved by the Planning Director upon written request of such interpretation.
14. All structures shall conform to the requirements of the Environmental Sustainability Department, Public Works Department, Federal Communications Commission (FCC), and LACFD requirements, as applicable. Notwithstanding this review, all required permits, including but not limited to an encroachment permit from the California Department of Transportation, shall be secured.

Cultural Resources

15. In the event that potentially important cultural resources are found in the course of geologic testing, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Director can review this information. Where, as a result of this evaluation, the Planning Director determines that the project may have an adverse impact on cultural resources, a Phase II Evaluation of cultural resources shall be required pursuant to MMC Section 17.54.040(D)(4)(b).

16. If human bone is discovered, the procedures described in Section 7050.5 of the California Health and Safety Code shall be followed. These procedures require notification of the coroner. If the coroner determines that the remains are those of a Native American, the applicant shall notify the Native American Heritage Commission by phone within 24 hours. Following notification of the Native American Heritage Commission, the procedures described in Section 5097.94 and Section 5097.98 of the California Public Resources Code shall be followed.

Wireless Communications Antennas and Facilities Conditions

17. All antennas shall meet the minimum siting distances to habitable structures required for compliance with the FCC regulations and standards governing the environmental effects of radio frequency emissions. Permittee shall keep up-to-date on current information from the FCC in regards to maximum permissible radio frequency exposure levels. In the event that the FCC changes its guidelines for human exposure to radio frequency, permittee shall, within 30 days after any such change, submit to the Planning Director a report prepared by a qualified engineer that demonstrates actual compliance with such changed guidelines. The Director may, at permittee's sole cost, retain an independent consultant to evaluate the compliance report and any potential modifications to the permit necessary to conform to the FCC's guidelines. Failure to submit the compliance report required under this condition, or failure to maintain compliance with the FCC's guidelines for human exposure to radio frequency at all times shall constitute grounds for permit revocation.
18. All antennas shall be located so that any person walking adjacent to the transmitting surface of the antennas will be walking on a grade, which is a minimum of eight and one-half feet below the transmitting surface.
19. All antennas, equipment, and support structures shall be designed to prevent unauthorized climbing.
20. The wireless communications facility shall be erected, operated, and maintained in compliance with the general requirements set forth in LIP Section 3.16.5 and most restrictive design criteria set forth in LIP Section 3.16.6.
21. The antenna and electrical support equipment shall, at all times, be operated in a manner that conforms to the applicable federal health and safety standards, including those imposed by MMC Chapter 17.46 and Resolution No. 21-17.
22. The proposed wireless communications facility shall not emit a noise greater than fifty (50) decibels (dB) as measured from the base of the facility.
23. Wireless facilities and equipment must comply with the City's noise ordinance in MMC 8.24, or any successor provisions, and prevent noise and sound from being plainly audible at a distance of fifty (50) feet from the facility or within ten (10) feet of any residence.
24. The Planning Director's approval is required if a generator is to be placed onsite for temporary or permanent use.
25. All non-ground-mounted equipment associated with the application shall be located no lower than eight feet above grade or ground level on the monopole or support structure.

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26. The collocation of wireless communications facilities, pursuant to LIP Section 3.16.5, shall be required whenever feasible.
 27. An operation technician is required to conduct regular semi-annual maintenance visits to verify that the wireless communications facility remains in compliance with the conditions of approval and safety requirements.
 28. The City or its designee may enter onto the facility area to inspect the facility upon 48 hours prior notice to the permittee. The permittee shall cooperate with all inspections and may be present for any inspection of its facility by the City. The City reserves the right to enter or direct its designee to enter the facility and support, repair, disable, or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property. The City shall make an effort to contact the permittee prior to disabling or removing any facility elements, but in any case, shall notify permittee within 24 hours of doing so.
 29. Testing of any equipment shall take place on weekdays only, and only between the hours of 8:30 a.m. and 4:30 p.m., except that testing is prohibited on holidays that fall on a weekday. In addition, testing is prohibited on weekend days.
 30. Permittee shall obtain and maintain throughout the term of the permit commercial general liability insurance with a limit of five million dollars (\$5,000,000) per occurrence for bodily injury and property damage and six million dollars (\$6,000,000) general aggregate including premises operations, contractual liability, personal injury, and products completed operations. The relevant policy(ies) shall name the City, its elected/appointed officials, commission members, officers, representatives, agents, and employees as additional insureds. Permittee shall use its best efforts to provide thirty (30) days' prior notice to the City of to the cancellation or material modification of any applicable insurance policy.
 31. Prior to issuance of a City permit or encroachment permit, the permittee shall file with the City, and shall maintain in good standing throughout the term of the approval, a performance bond or other surety or another form of security for the removal of the facility in the event that the facility is abandoned or the permit expires, or is revoked, or is otherwise terminated. The security shall be in the amount equal to the cost of physically removing the facility and all related facilities and equipment on the site, based on the higher of two contractor's quotes for removal that are provided by the permittee. The permittee shall reimburse the city for staff time associated with the processing and tracking of the bond, based on the hourly rate adopted by the City Council. Reimbursement shall be paid when the security is posted and during each administrative review.
 32. Permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement, or property without the prior consent of the owner of that structure, improvement, or property. No structure, improvement, or property owned by the City shall be moved to accommodate a permitted activity or encroachment, unless the City determines that such movement will not adversely affect the City or any surrounding businesses or residents, and the Permittee pays all costs and expenses related to the relocation of the City's structure, improvement, or property. Prior to commencement of any work pursuant to a WP, the permittee shall provide the City with documentation establishing to the city's satisfaction that the permittee has the legal right to use or interfere with any other structure, improvement, or property within the public right-of-way or City utility easement to be affected by permittee's facilities.

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33. No possessory interest is created by a Wireless Permit. However, to the extent that a possessory interest is deemed created by a governmental entity with taxation authority, permittee acknowledges that City has given to permittee notice pursuant to California Revenue and Taxation Code Section 107.6 that the use or occupancy of any public property pursuant to a development or conditional use permit may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Permittee shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interest taxes or other taxes, fees, and assessments levied against permittee's right to possession, occupancy, or use of any public property pursuant to any right of possession, occupancy, or use created by this development or conditional use permit.
34. The permission granted by this CDP shall not in any event constitute an easement on or an encumbrance against the ROW. No right, title, or interest (including franchise interest) in the ROW, or any part thereof, shall vest or accrue in permittee by reason of a CDP or the issuance of any other permit or exercise of any privilege given thereby.
35. If not already completed, permittee shall enter into the appropriate agreement with the City, as determined by the City, prior to constructing, attaching, or operating a facility on municipal infrastructure. This permit is not a substitute for such agreement.
36. If a facility is not operated for a continuous period of three (3) months, the CDP and any other permit or approval therefor shall be deemed abandoned and terminated automatically, unless before the end of the three (3) month period (i) the Director has determined that the facility has resumed operations, or (ii) the City has received an application to transfer the permit to another service provider. No later than ninety (90) days from the date the facility is determined to have ceased operation or the permittee has notified the Director of its intent to leave the site, the permittee shall remove all equipment and improvements associated with the use and shall restore the site to its original condition to the satisfaction of the Director. The permittee shall provide written verification of the removal of the facilities within thirty (30) days of the date the removal is completed. If the facility is not removed within thirty (30) days after the permit has been discontinued pursuant to this subsection, the site shall be deemed to be a nuisance, and the City may cause the facility to be removed at permittee's expense or by calling any bond or other financial assurance to pay for removal. If there are two (2) or more users of a single facility or support structure, then this provision shall apply to the specific elements or parts thereof that were abandoned but will not be effective for the entirety thereof until all users cease use thereof.
37. In the event the City determines that it is necessary to take legal action to enforce any of these conditions, or to revoke a permit, and such legal action is taken, the permittee shall be required to pay any and all costs of such legal action, including reasonable attorney's fees, incurred by the City, even if the matter is not prosecuted to a final judgment or is amicably resolved, unless the City should otherwise agree with permittee to waive said fees or any part thereof. The foregoing shall not apply if the permittee prevails in the enforcement proceeding.
38. Interference with city communications systems and other governmental emergency systems is prohibited. Further, no permits issued pursuant to this chapter of the City Code establish any guarantee or warranty that Licensee's facility will be free from interference from city or third-party communication systems.

Construction

39. Installation hours shall be limited to Monday through Friday from 7:00 a.m. to 7:00 p.m. and Saturdays from 8:00 a.m. to 5:00 p.m. No installation activities shall be permitted on Sundays and City-designated holidays; provided. The restricted work hours described in this condition do not apply to emergency maintenance necessary to protect health or property. The City of Malibu may issue a Stop Work Order if permittee violates this condition.
40. All sites must be designed and build to the standards of ANSI/APCO Public Safety Grade Site Hardening Requirements, also referred to as “APCO ANSI 2.106.1-2019”.

Site Specific Conditions

41. In the event that the electric service provider does not currently offer an alternative metering option, the permittee shall remove the above-grade electric meter when such option becomes available. Prior to removing the above-grade electric meter, the permittee shall apply for any encroachment and/or other ministerial permit(s) required to perform the removal. Upon removal, the permittee shall restore the affected area to its original condition that existed prior to installation of the equipment.
42. The permittee acknowledges that the City specifically includes conditions of approval related to (a) painting, coloring or finishing the equipment to match the monopole or support structure; (b) undergrounding all equipment to the extent possible; (c) installing equipment within shrouds, enclosures and risers as concealment elements engineered and designed to integrate the wireless facility with the surrounding built and natural environment; and (d) specific structural seismic, electrical, fire and operating/maintenance requirements. Any future modifications to the permittee’s wireless facility must maintain or improve all concealment elements and safety precautions.
43. Before the permittee submits any applications for construction, encroachment, excavation or other required permits in connection with this permit, the permittee must incorporate a true and correct copy of this permit, all conditions associated with this permit and any approved photo simulations into the project plans (collectively, the “Approved Plans”). The permittee must construct, install and operate the wireless facility in substantial compliance with the Approved Plans as determined by the Director or the Director’s designee. Any substantial or material alterations, modifications or other changes to the Approved Plans, whether requested by the permittee or required by other departments or public agencies with jurisdiction over the wireless facility, must be submitted in a written request subject to the Director’s prior review and approval, who may refer the request to the original approval authority if the Director finds that the requested alteration, modification or other change substantially deviates from the Approved Plans or implicates a significant or substantial land-use concern.
44. The permittee shall install and at all times maintain in good condition a “Network Operations Center Information” and “RF Caution” sign on the utility pole no less than three (3) feet below the antenna (measured from the top of the sign) and no less than nine (9) feet above the ground line (measured from the bottom of the sign). Signs required under this condition shall be installed so that a person can clearly see the sign as he or she approaches within three (3) feet of the antenna structure. If any person on or within the

public ROW is or may be exposed to emissions that exceed applicable FCC uncontrolled/general population limits at any time the sign shall expressly so state and provide instructions on how persons can avoid any such exposure. The sign shall also include the name(s) of the facility owner(s), equipment owner(s) and operator(s)/carrier(s) of the antenna(s), property owner name, as well as emergency phone number(s) for all such parties. The sign shall not be lighted, unless applicable law, rule or regulation requires lighting. No signs or advertising devices other than required certification, warning, required seals or signage, other signage required by law, this Chapter, any City or applicable state code or the Los Angeles County Fire Department Chief or his or her designee shall be permitted. The sign shall be no larger than two (2) square feet. If such signs are prohibited by federal law, they shall not be required.

45. The permittee shall ensure that all signage complies with FCC Office of Engineering and Technology Bulletin 65, CPUC General Order 95 or American National Standards Institute C95.2 for color, symbol, and content conventions. All such signage shall at all times provide a working local or toll-free telephone number to the network operations center, and such telephone number shall be able to reach a live person who can exert transmitter power-down control over this site as required by the FCC.
46. In the event that the FCC changes any of radio frequency signage requirements that are applicable to the project site approved herein or ANSI Z535.1, ANSI Z535.2, and ANSI C95.2 standards that are applicable to the project site approved herein are changed, the permittee, within 30 days of each such change, at its own cost and expense, shall replace the signage at the project site to comply with the current standards.
47. The permittee shall maintain the paint, color and finish of the facility in good condition at all times.
48. All improvements, including foundations, and appurtenant ground wires, shall be removed from the property and the site restored to its original pre-installation conditions within 90 days of cessation of operation or abandonment of the facility.
49. Build-Out Conditions
 - a. Permittee shall not commence any excavation, construction, installation or other work on the project site until and unless it demonstrates to the City Public Works Department that the project complies with all generally applicable laws, regulations, codes and other rules related to public health and safety, including without limitation all applicable provisions in California Public Utilities Commission General Order 95 and MMC Chapters 8.12, 8.24 and 15.08.
 - b. To the extent that the pole owner requires greater or more restrictive standards than contained in California Public Utilities Commission General Order 95, those standards shall control.
50. Permittee shall at all times maintain compliance with all applicable federal, State and local laws, regulations, ordinances and other rules, including Americans with Disabilities Act (ADA) requirements.
51. The permittee shall cooperate with all inspections. The City and its designees reserves the right to support, repair, disable or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property.

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52. Permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address and email address for at least one natural person. All such contact information for responsible parties shall be provided to the Planning Department at the time of permit issuance and within one business day of permittee's receipt of City staff's written request.
53. Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification and removal of the facility.
54. The site and the facility must be maintained in a neat and clean manner and in accordance with all approved plans and conditions of approval.
55. Permittee shall promptly remove any graffiti on the wireless facility at permittee's sole expense within 48 hours after notice.
56. The antenna and associated equipment attached to the rooftop of building B must be painted a grey color to match the roof parapet. The ground mounted backup generator unit must be visually screened and painted to blend in with the surrounding buildings.
57. The ground mounted backup generator must meet all applicable setbacks indicated in LIP Chapter 3.8 if taller than six feet.
58. The applicant or property owner must submit project plans (including structural and electrical plans) to the City of Malibu Building Safety Division for building plan check and permit issuance. The project plans must meet all requirements of the California Building Code as adopted by the City of Malibu. The applicant or property owner must obtain permits from Building Safety Division and a final inspection. Failure to obtain a permit from the Building Safety Division will result in the voidance of this wireless communication facility permit.
59. The following engineering documents prepared under the responsible charge of and sealed by a California licensed Professional Engineer must be included in the application for building permits from the Building Safety Division:
- A short circuit and coordination study ("SCCS") calculated pursuant to the IEEE 551-2006: Recommended Practice for Calculating AC Short-Circuit Currents in Industrial and Commercial Power Systems or the latest version of that standard. The study must demonstrate the protection devices will ensure the equipment enclosure will not be breached. The SCCS must include analysis of Voltage Transient Surges due to contact of conductors of different voltages;
 - A one-line diagram of the electrical system;
 - Voltage Drop & Load Flow Study;
 - Load Calculation;
 - Panel Directories;
 - A plot plan showing the location of the mounting structure including address, or structure designation, or GPS location on the front sheet;
 - A plot plan showing the location of the service disconnecting means; and
 - An elevation drawing of the equipment and the service disconnecting means.

60. The following structural/civil engineering documents prepared under the responsible charge of and sealed by a California licensed professional civil engineer must be included in the application for building permits from the Building Safety Division:
- The azimuth, size and center-line height location of all proposed and existing antenna(s) on the supporting structure;
 - The number, type and model of the antenna(s) that will be used with a copy of the specification sheet;
 - The make, model, type and manufacturer of any tower involved and a design plan stating the tower's capacity to accommodate multiple users;
 - Site and Construction Plans. Complete and accurate plans, drawn to scale, signed, and sealed by a California-licensed engineer, land surveyor, and/or architect, which include the following items.
 - A site plan and elevation drawings for the facility as existing and as proposed with all height and width measurements explicitly stated.
 - A site plan describing the proposed tower and antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;
 - A depiction, with height and width measurements explicitly stated, of all existing and proposed transmission equipment.
 - A depiction of all existing and proposed utility runs and points of contact.
 - A depiction of the leased or licensed area of the site with all rights-of-way and easements for access and utilities labeled in plan view.

Prior to Operation

61. The applicant shall request a final Planning Department inspection immediately after the wireless communication facility has been installed and prior to the commencement of services and final electrical inspection by the City of Malibu Environmental Sustainability Department.
62. Within thirty (30) calendar days following the installation of any wireless facilities, the applicant shall provide to the Planning Department with a field report prepared by a qualified engineer verifying that the unit has been inspected, tested, and is operating in compliance with FCC standards. Specifically, the on-site post-installation radiofrequency (RF) emissions testing must demonstrate actual compliance with the FCC OET Bulletin 65 RF emissions safety guidelines for general population/uncontrolled RF exposure in all sectors. For this testing, the transmitter shall be operating at maximum operating power, and the testing shall occur outwards to a distance where the RF emissions no longer exceed the uncontrolled/general population limit. Such report and documentation shall include the make and model (or other identifying information) of the unit tested, the date and time of the inspection, a certification that the unit is properly installed and working within applicable FCC limits, and a specific notation of the distance from the transmitter at which the emissions are equal to or less than the uncontrolled/general population limit.
63. The operation of the approved facility shall commence no later than one (1) month after the City completes its post-installation inspection of the facility, any issues with the facility are resolved, and the City receives the RF testing report required in the condition of approval above, or the wireless ROW permit will expire without further action by the City. If the carrier needs more than one month to fix any required changes, there should be notice given to the City by the applicant before the end of said month and staff will decide if the time requested by the carrier to fix the issue is valid.

64. The applicant and/or wireless carrier must pay all outstanding fees due to the City of Malibu for review of the application. Fee amount must be based on the effective fee schedule at the time of payment.

Fixed Conditions

65. Violation of any of the conditions of this approval shall be cause for revocation and termination of all rights there under.

SECTION 6. The Planning Commission shall certify the adoption of this resolution.

PASSED, APPROVED AND ADOPTED this 16th day of August 2021.

JEFFREY JENNINGS, Planning Commission Chair

ATTEST:

KATHLEEN STECKO, Recording Secretary

LOCAL APPEAL – Pursuant to Local Coastal Program Local Implementation Plan (LIP) Section 13.20.1 (Local Appeals) a decision made by the Planning Commission may be appealed to the City Council by an aggrieved person by written statement setting forth the grounds for appeal. An appeal shall be filed with the City Clerk within 10 days and shall be accompanied by an appeal form and filing fee, as specified by the City Council. Appeal forms may be found online at www.malibucity.org, in person, or by calling (310) 456-2489, ext. 245.

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 21-63 was passed and adopted by the Planning Commission of the City of Malibu at the regular meeting thereof held on the 16th day of August 2021, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

KATHLEEN STECKO, Recording Secretary

EXCEPTIONS & EXCLUSIONS PER TICOR TITLE ORDER NO. 00661713-993-IET-CAB
DATED AS OF JANUARY 10, 2020 AT 7:30 AM.

- | LEASE AREA CALCULATION | |
|--------------------------------------|---------------|
| EQUIPMENT LEASE AREA | 531 SQ. FT. |
| GENERATOR LEASE AREA | 258 SQ. FT. |
| CONDENSER LEASE AREA | 84 SQ. FT. |
| ANTENNA LEASE AREA (SECTORS A AND C) | 240 SQ. FT. |
| ANTENNA LEASE AREA (SECTOR B) | 136 SQ. FT. |
| TOTAL LEASE AREA | 1,249 SQ. FT. |

	LEASE AREA
	CENTERLINE
	EASEMENT
	RIGHT-OF-WAY
	SECTION LINE
	PROPERTY LINE
	OVERHEAD POWER
	EXISTING CHAIN LINK FENCE
	PROPOSED CHAIN LINK FENCE
	PROPOSED WROUGHT IRON FENCE
	EXISTING 1' CONTOUR
	EXISTING 5' CONTOUR
	EXISTING BLOCK WALL
	PROPOSED BLOCK WALL
	FIRE HYDRANT
	PARKING LOT AREA LIGHT
	OFFICIAL RECORD
	POWER POLE



REV.	DATE	DESCRIPTION	BY
0	05/06/20	90% ZONING	R.G.
1	06/05/20	100% ZONING	R.G.
2	07/15/20	PLANNING REVISION	R.G.
3	07/29/20	PLANNING REVISION	R.G.
4	08/05/20	CLIENT REVISION	R.G.
5	12/09/20	CLIENT REVISION	R.G.



PROPRIETARY INFORMATION
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IRVINE, CALIFORNIA 92618

ZUMA BEACH 2

28990 1/2 PACIFIC COAST
HIGHWAY
MALIBU, CALIFORNIA 90265

SHEET TITLE:

A1

REVISION:

5

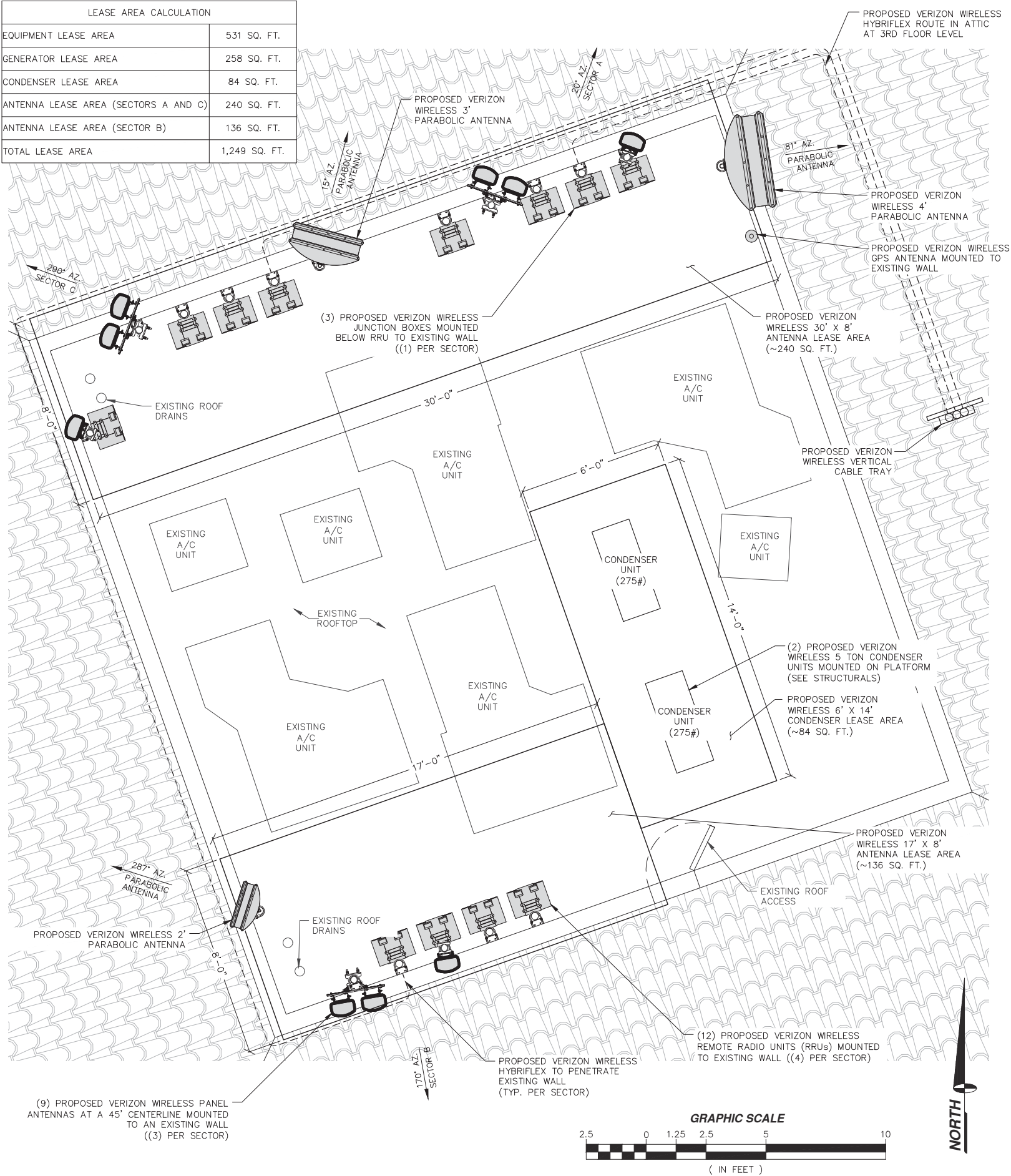
11" X 17" SCALE	24" X 36" SCALE
1" = 80'	1" = 40'

NOTE:
ALL PROPOSED PARABOLIC
ANTENNA AZIMUTHS ARE SUBJECT
TO CHANGE

ANTENNA SECTOR	AZIMUTH	# OF ANTENNAS	# OF RRUS	CENTERLINE	CABLE LENGTH	CABLE TYPE	COLOR CODE	HYBRID JUMPER	JUMPER	COMMENTS
SECTOR A	20°	3	4	45'	85'	(3) 1.7" HYBRIFLEX	.	5'	15'	..
SECTOR B	170°	3	4		150'		.	5'	15'	..
SECTOR C	290°	3	4		90'		.	5'	15'	..
PARABOLIC ANTENNA	15°	1	.		.		.	.	.	..
PARABOLIC ANTENNA	81°	1	.		.		.	.	.	..
PARABOLIC ANTENNA	287°	1	.	.	.	.	.	.	.	..
GPS	N/A	1	.	.	.	1/2" COAX	GRAY	.	.	..

NOTE: CONTRACTOR TO FIELD VERIFY CABLE LENGTHS PRIOR TO ORDERING, FABRICATION, OR INSTALLATION OF CABLES.

LEASE AREA CALCULATION	
EQUIPMENT LEASE AREA	531 SQ. FT.
GENERATOR LEASE AREA	258 SQ. FT.
CONDENSER LEASE AREA	84 SQ. FT.
ANTENNA LEASE AREA (SECTORS A AND C)	240 SQ. FT.
ANTENNA LEASE AREA (SECTOR B)	136 SQ. FT.
TOTAL LEASE AREA	1,249 SQ. FT.



ISSUE STATUS

REV.	DATE	DESCRIPTION	BY
0	05/06/20	90% ZONING	R.G.
1	06/05/20	100% ZONING	R.G.
2	07/15/20	PLANNING REVISION	R.G.
3	07/29/20	PLANNING REVISION	R.G.
4	08/05/20	CLIENT REVISION	R.G.
5	12/09/20	CLIENT REVISION	R.G.



SPECTRUM SERVICES, INC.
4405 E. AIRPORT DRIVE, SUITE 100
ONTARIO, CALIFORNIA 91761
PHONE: (909) 456-8401
FAX: (909) 456-8408

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ZUMA BEACH 2

28990 1/2 PACIFIC COAST
HIGHWAY
MALIBU, CALIFORNIA 90265

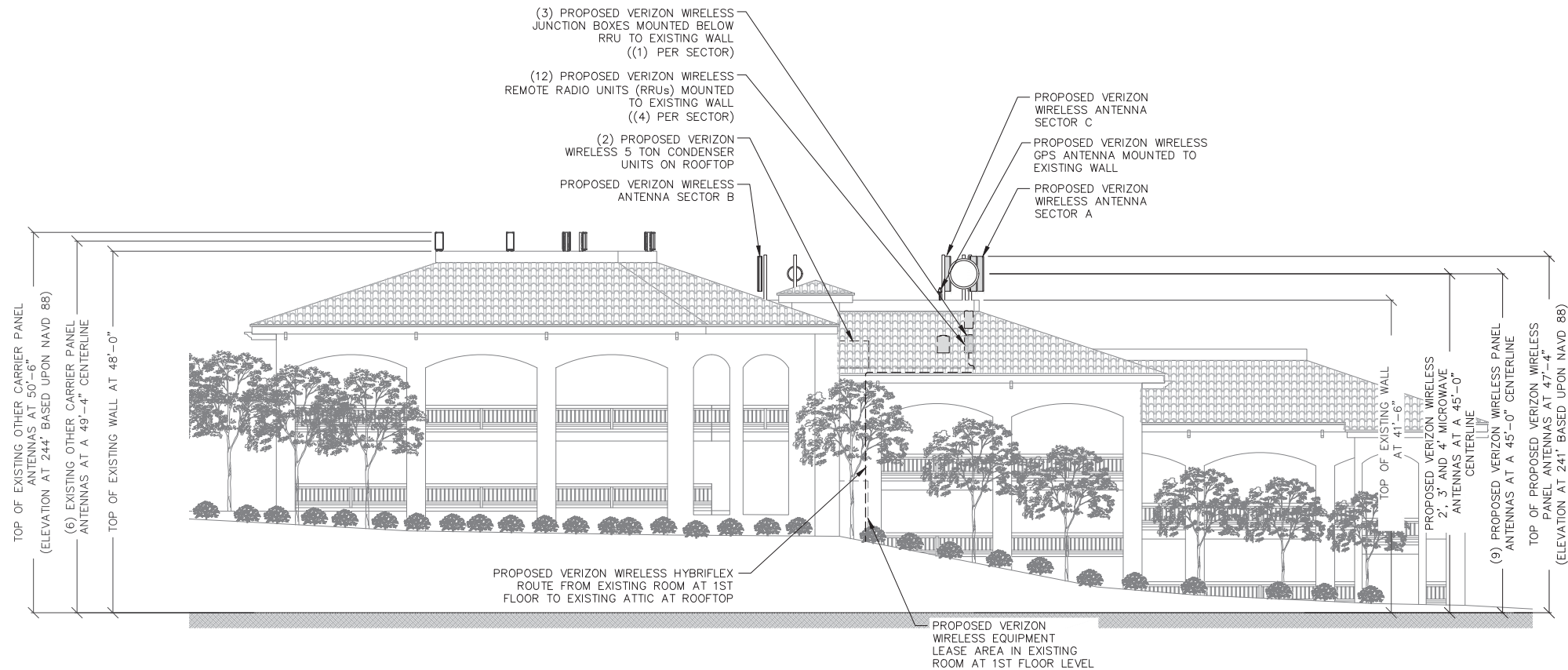
SHEET TITLE:
**ANTENNA LAYOUT AND
ANTENNA & CABLE
SCHEDULE**

A2

REVISION:

5

NOTE:
ALL PROPOSED ANTENNAS AND
MOUNTING EQUIPMENT TO BE
PAINTED OR WRAPPED TO MATCH
EXISTING BUILDING

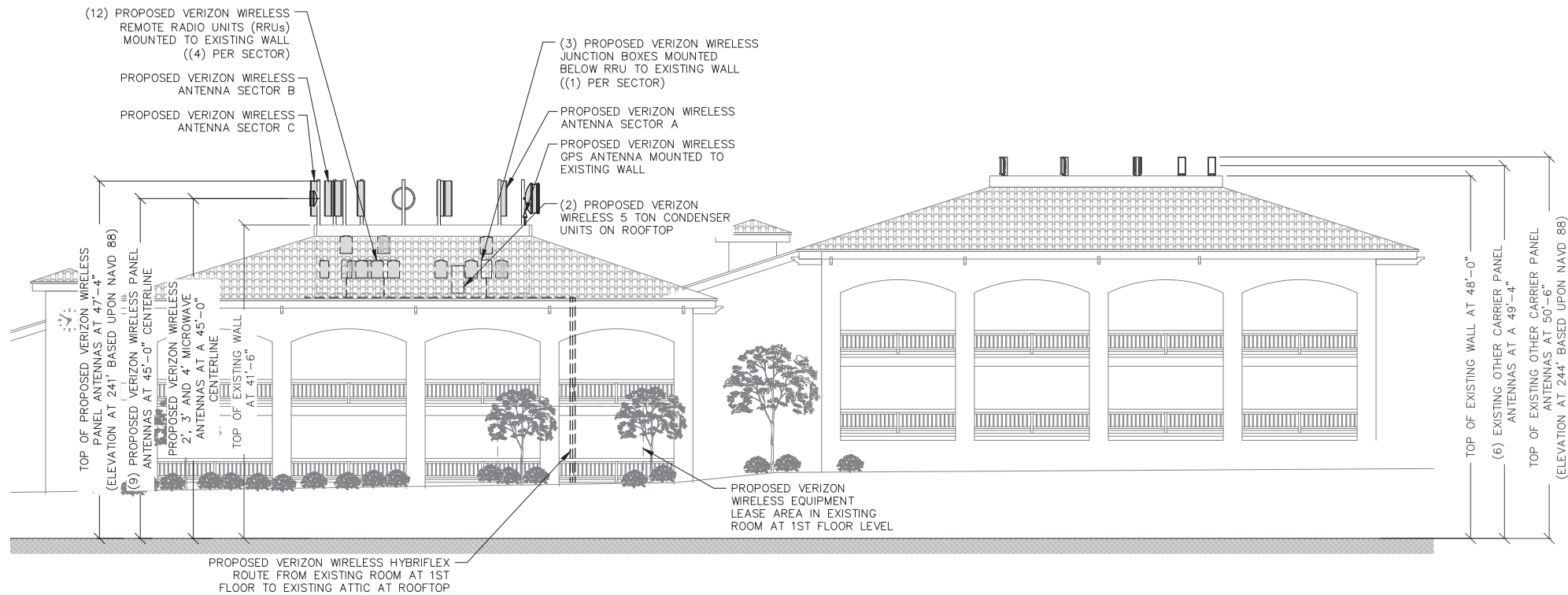


NORTHEAST ELEVATION

11" X 17" SCALE | 24" X 36" SCALE
1" = 20' | 1" = 10'

2

NOTE:
ALL PROPOSED ANTENNAS AND
MOUNTING EQUIPMENT TO BE
PAINTED OR WRAPPED TO MATCH
EXISTING BUILDING



SOUTHEAST ELEVATION

11" X 17" SCALE | 24" X 36" SCALE
1" = 20' | 1" = 10'

1

ISSUE STATUS

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0	05/06/20	90% ZONING	R.G.
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ZUMA BEACH 2

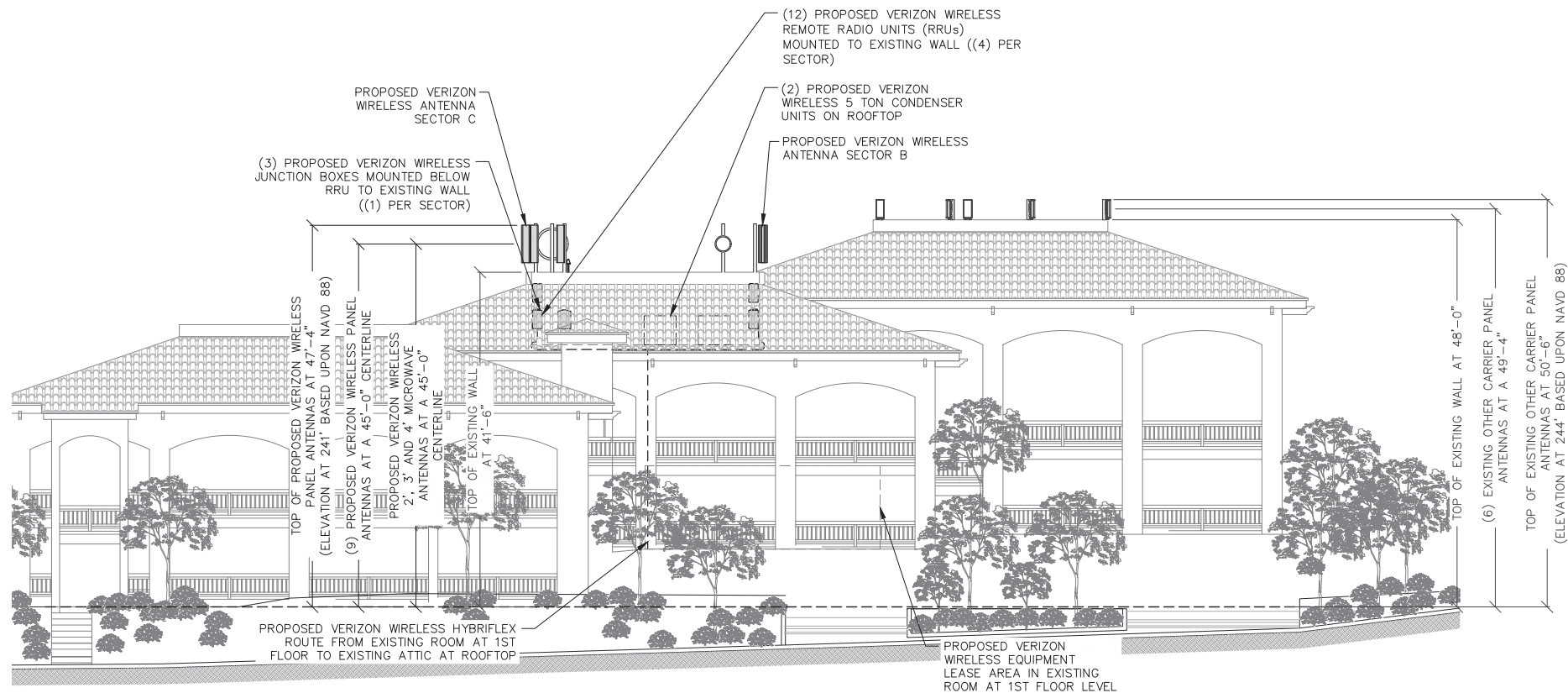
28990 1/2 PACIFIC COAST
HIGHWAY
MALIBU, CALIFORNIA 90265

SHEET TITLE:
SOUTHEAST & NORTHEAST
ELEVATIONS

A4

REVISION:
5

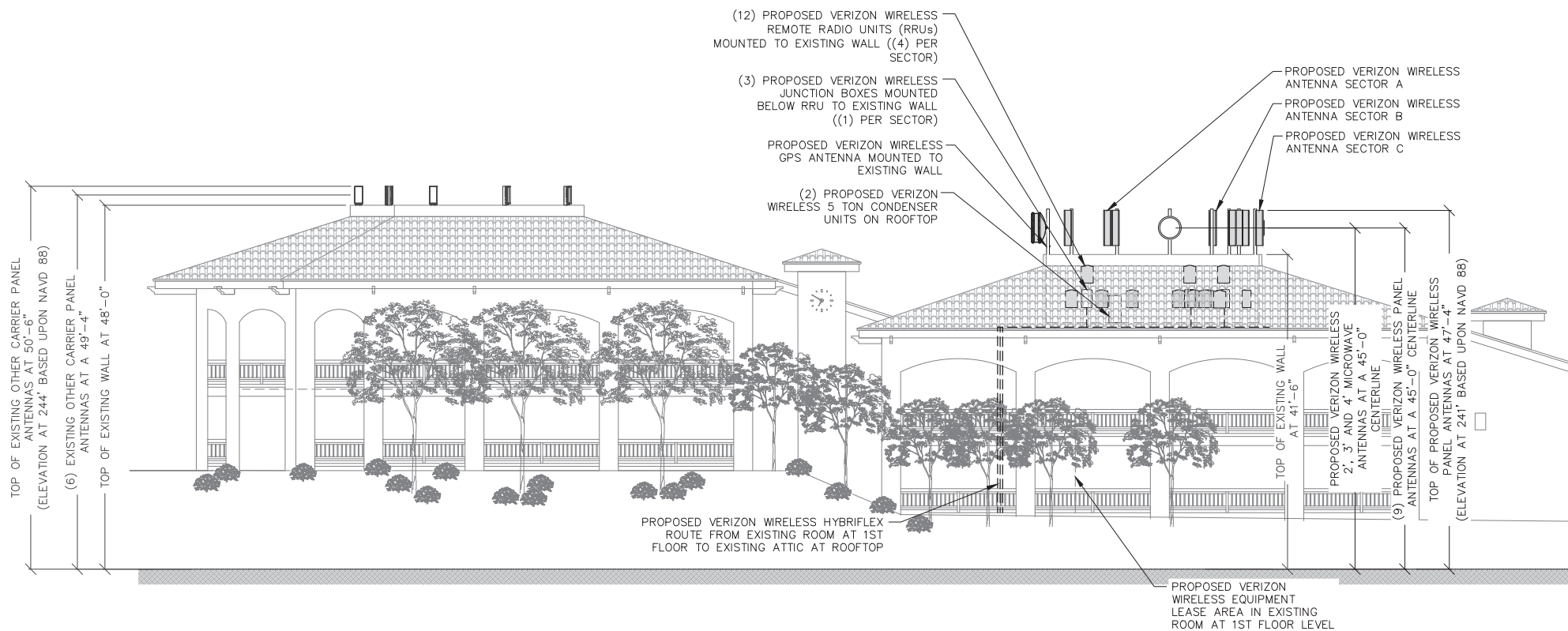
NOTE:
ALL PROPOSED ANTENNAS AND
MOUNTING EQUIPMENT TO BE
PAINTED OR WRAPPED TO MATCH
EXISTING BUILDING



SOUTHWEST ELEVATION

11" X 17" SCALE 24" X 36" SCALE
1" = 20' 1" = 10' 2

NOTE:
ALL PROPOSED ANTENNAS AND
MOUNTING EQUIPMENT TO BE
PAINTED OR WRAPPED TO MATCH
EXISTING BUILDING



NORTHWEST ELEVATION

11" X 17" SCALE 24" X 36" SCALE
1" = 20' 1" = 10' 1

ISSUE STATUS

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IRVINE, CALIFORNIA 92618

ZUMA BEACH 2

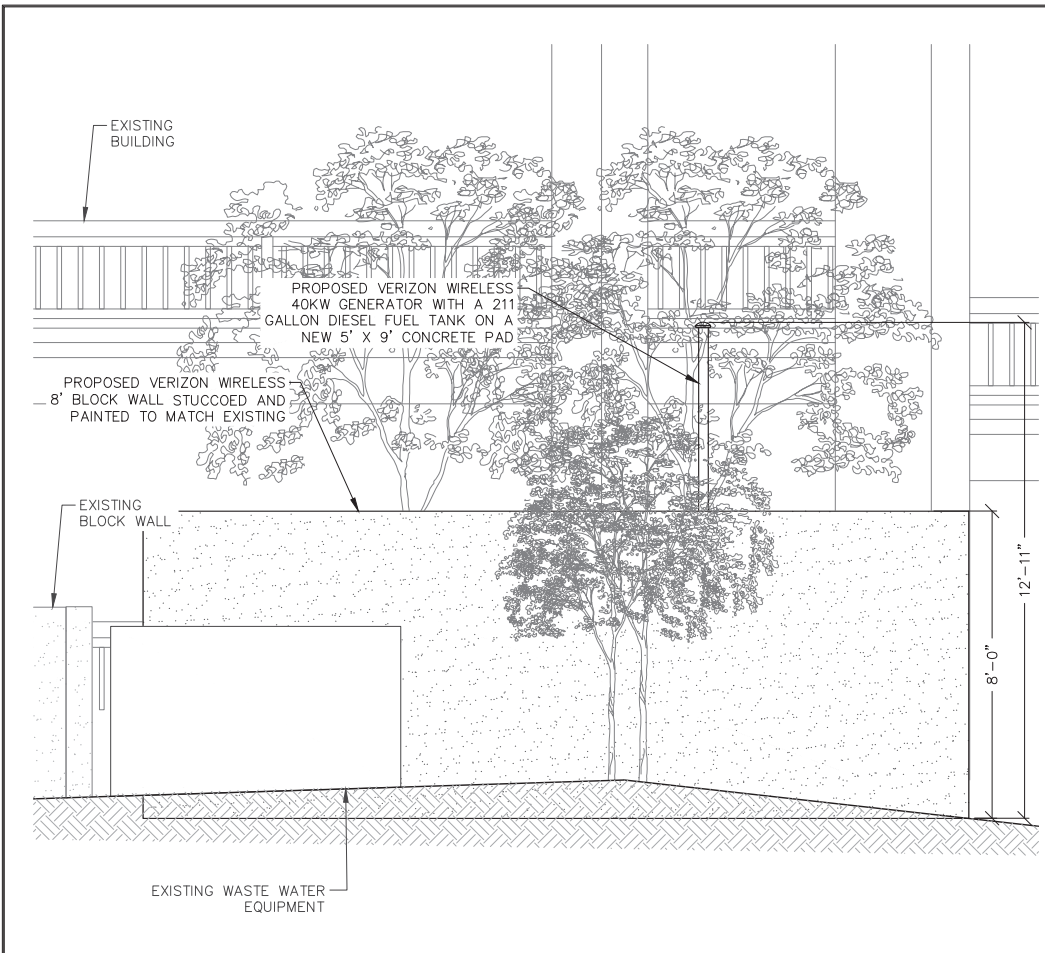
28990 1/2 PACIFIC COAST
HIGHWAY
MALIBU, CALIFORNIA 90265

SHEET TITLE:
**NORTHWEST & SOUTHWEST
ELEVATIONS**

A5

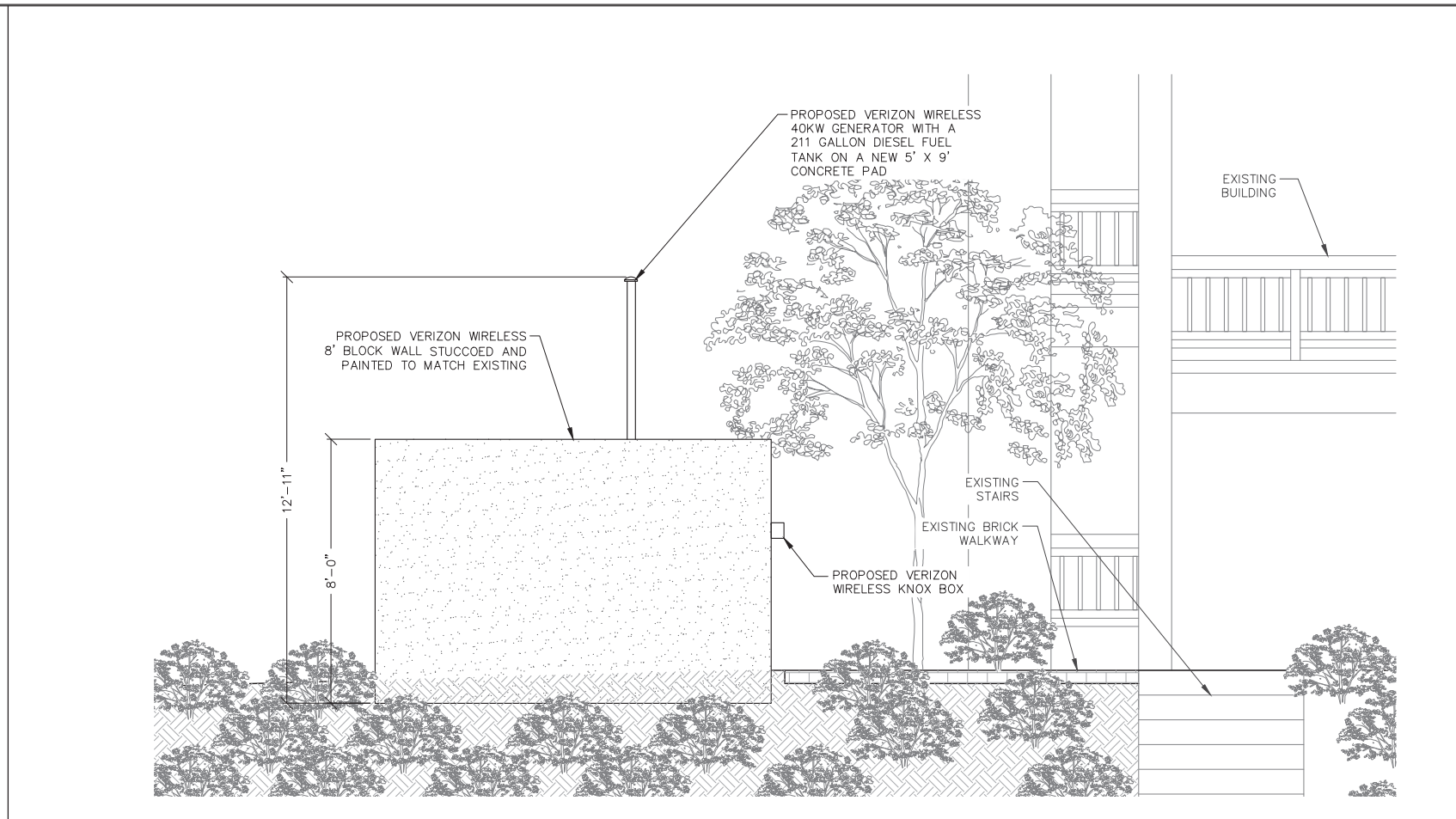
REVISION:

5



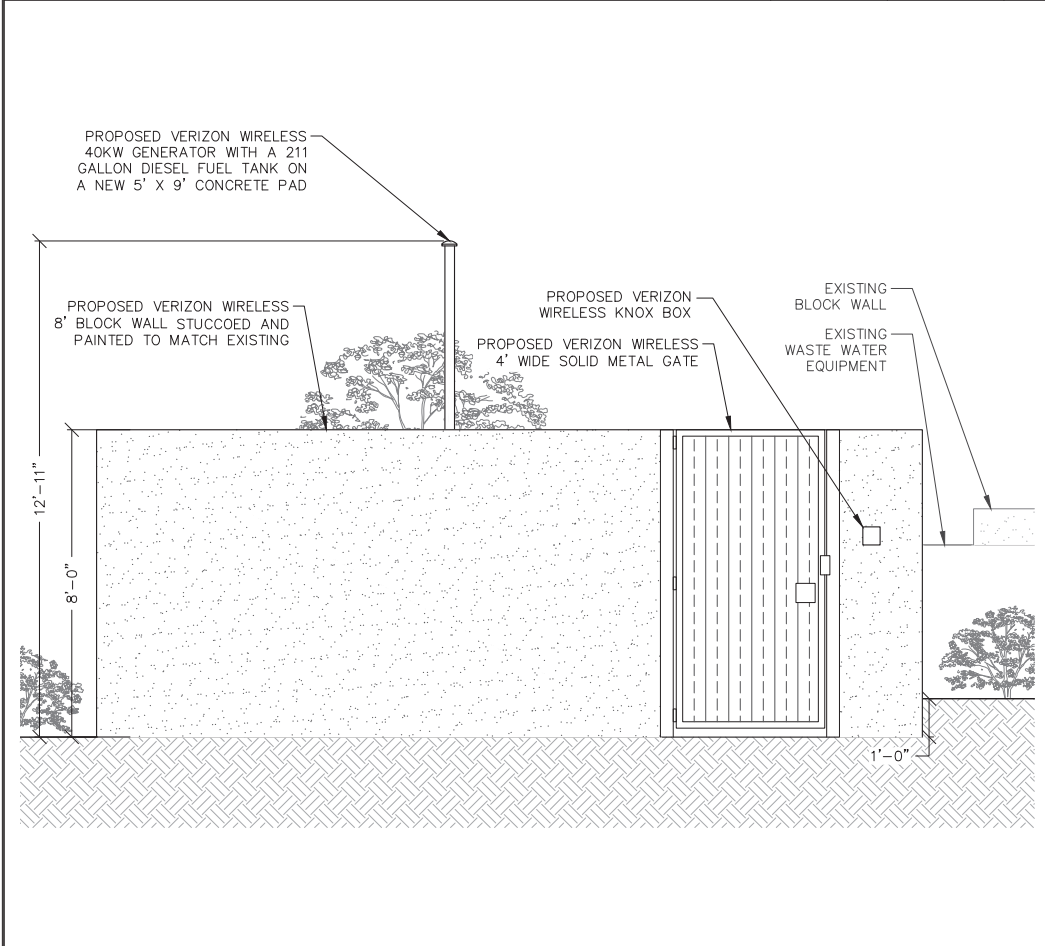
GENERATOR AREA NORTHWEST ELEVATION

11" X 17" SCALE 24" X 36" SCALE
1" = 5' 1" = 2'-6" 4



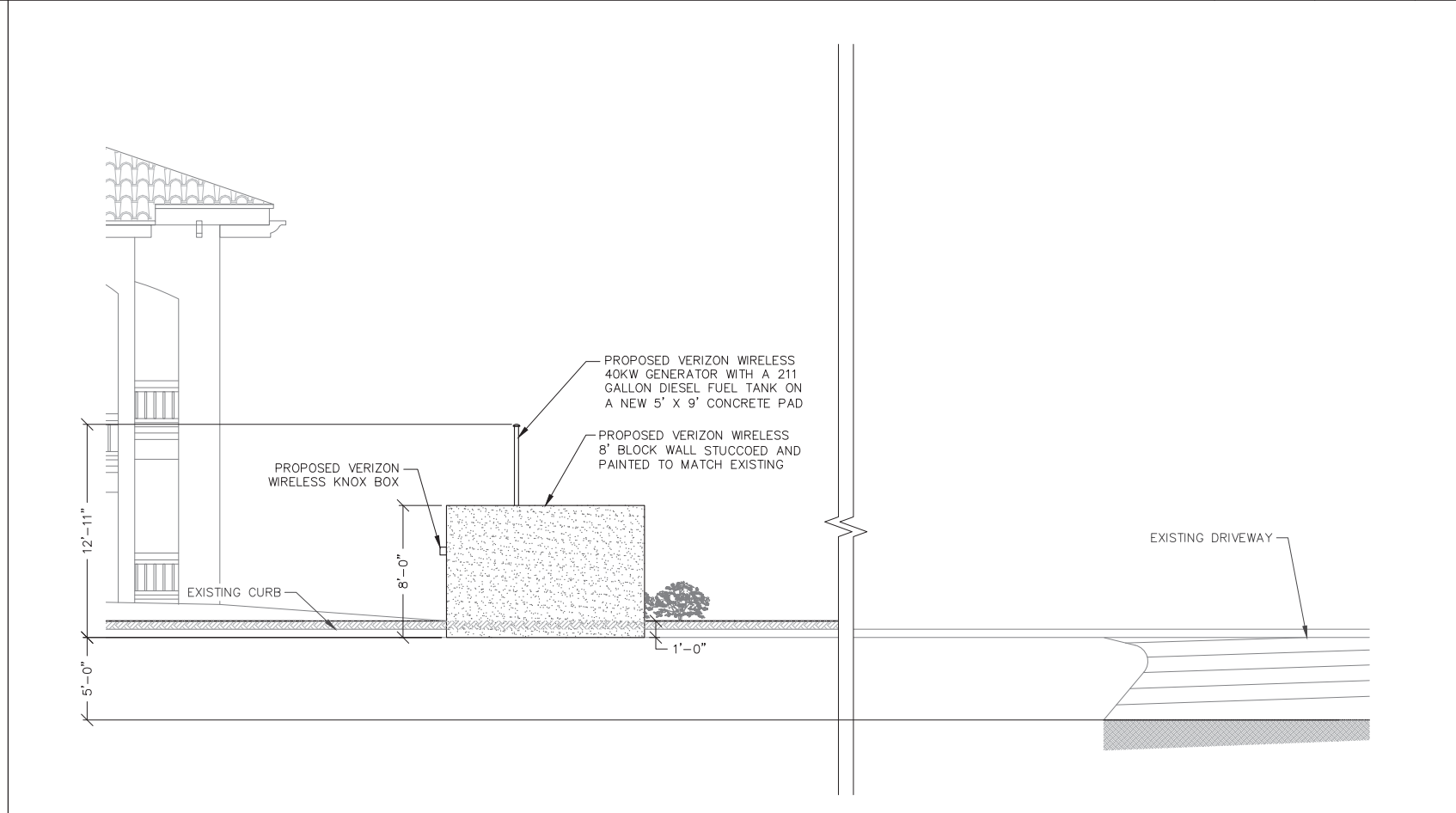
GENERATOR AREA SOUTHWEST ELEVATION

11" X 17" SCALE 24" X 36" SCALE
1" = 5' 1" = 2'-6" 2



GENERATOR AREA SOUTHEAST ELEVATION

11" X 17" SCALE 24" X 36" SCALE
1" = 5' 1" = 2'-6" 3



GENERATOR AREA NORTHEAST ELEVATION


11" X 17" SCALE 24" X 36" SCALE
1" = 10' 1" = 5' 1

ISSUE STATUS			
REV.	DATE	DESCRIPTION	BY
0	05/06/20	90% ZONING	R.G.
1	06/05/20	100% ZONING	R.G.
2	07/15/20	PLANNING REVISION	R.G.
3	07/29/20	PLANNING REVISION	R.G.
4	08/05/20	CLIENT REVISION	R.G.
5	12/09/20	CLIENT REVISION	R.G.



SPECTRUM SERVICES, INC.
4405 E. AIRPORT DRIVE, SUITE 100
ONTARIO, CALIFORNIA 91761
PHONE: (909) 456-8401
FAX: (909) 456-8408

PROPRIETARY INFORMATION
THE INFORMATION CONTAINED IN THIS SET OF
DRAWINGS IS PROPRIETARY & CONFIDENTIAL
TO VERIZON WIRELESS. ANY USE OR
DISCLOSURE OTHER THAN AS IT RELATES TO
VERIZON WIRELESS IS STRICTLY PROHIBITED.



15505 SAND CANYON AVENUE, D1
IRVINE, CALIFORNIA 92618

ZUMA BEACH 2

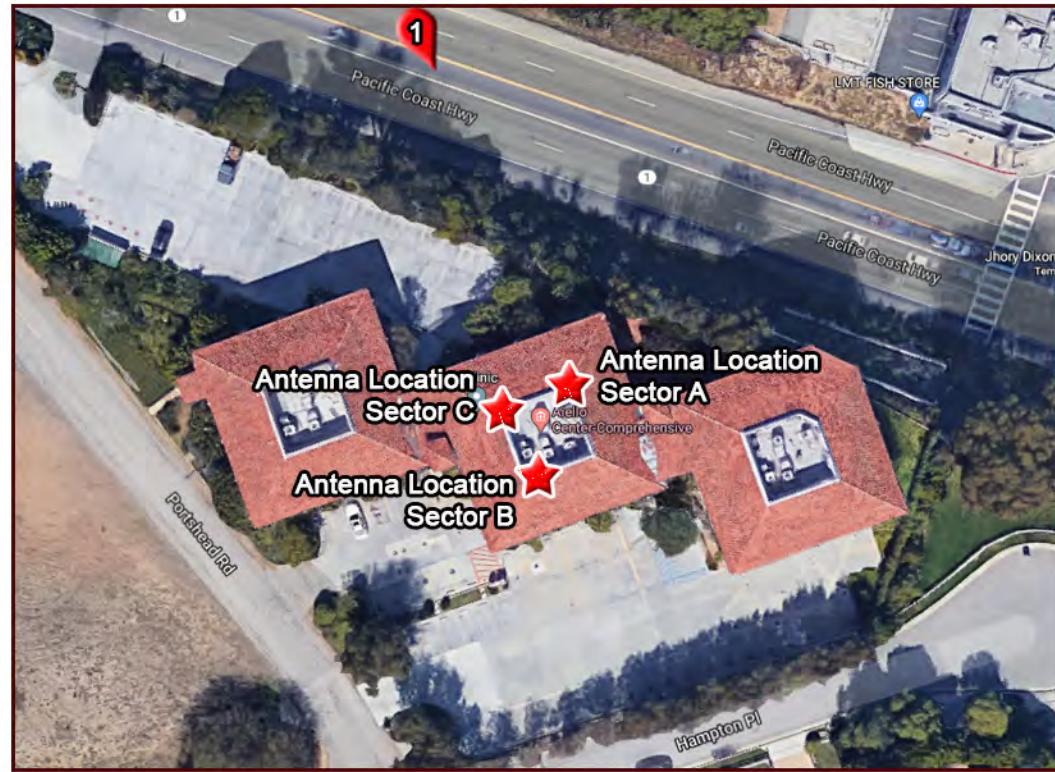
28990 1/2 PACIFIC COAST
HIGHWAY
MALIBU, CALIFORNIA 90265

SHEET TITLE:
GENERATOR AREA
ELEVATIONS

A6

REVISION:
5

ZUMA BEACH 2 28990 1/2 PACIFIC COAST HIGHWAY, MALIBU, CALIFORNIA 90265



LOCATION



EXISTING



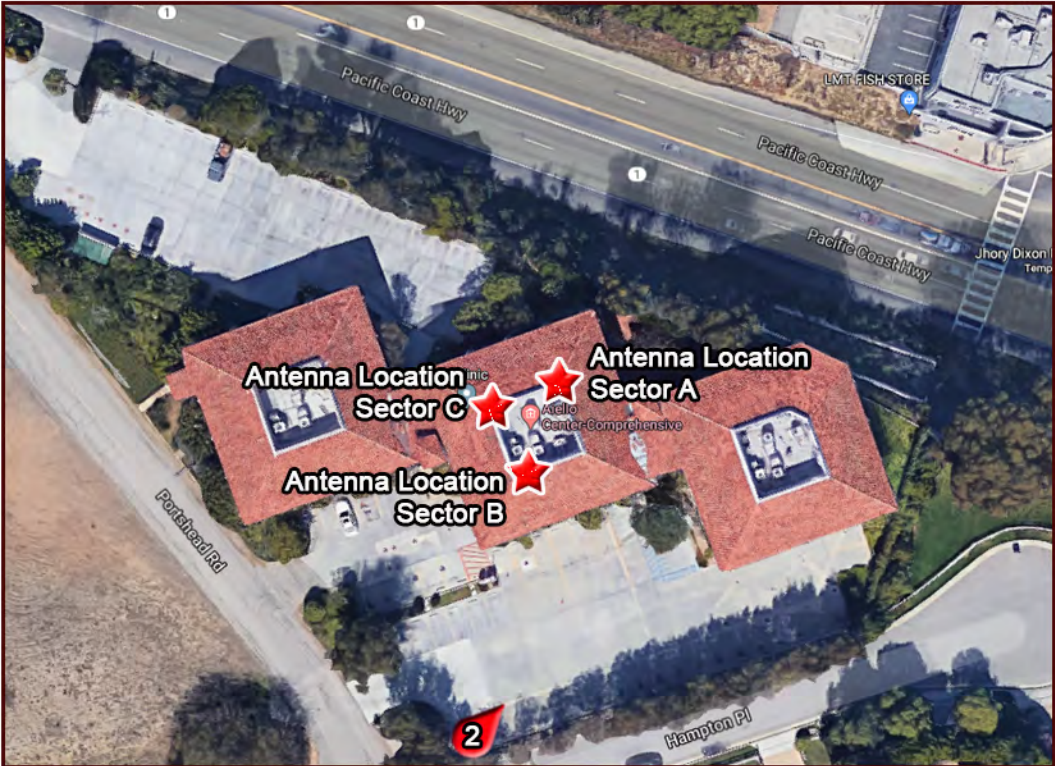
PROPOSED



4405 E. AIRPORT DRIVE, SUITE 100
ONTARIO, CALIFORNIA 91761
OFFICE: (909) 456-8401
FAX: (909) 456-8408



15505 SAND CANYON AVENUE
BUILDING D, 1ST FLOOR IRVINE,
CALIFORNIA 92618



LOCATION



EXISTING



PROPOSED



4405 E. AIRPORT DRIVE, SUITE 100
ONTARIO, CALIFORNIA 91761
OFFICE: (909) 456-8401
FAX: (909) 456-8408



15505 SAND CANYON AVENUE
BUILDING D, 1ST FLOOR IRVINE,
CALIFORNIA 92618

Received
6/22/2020
Planning Dept.

ATTACHMENT 4

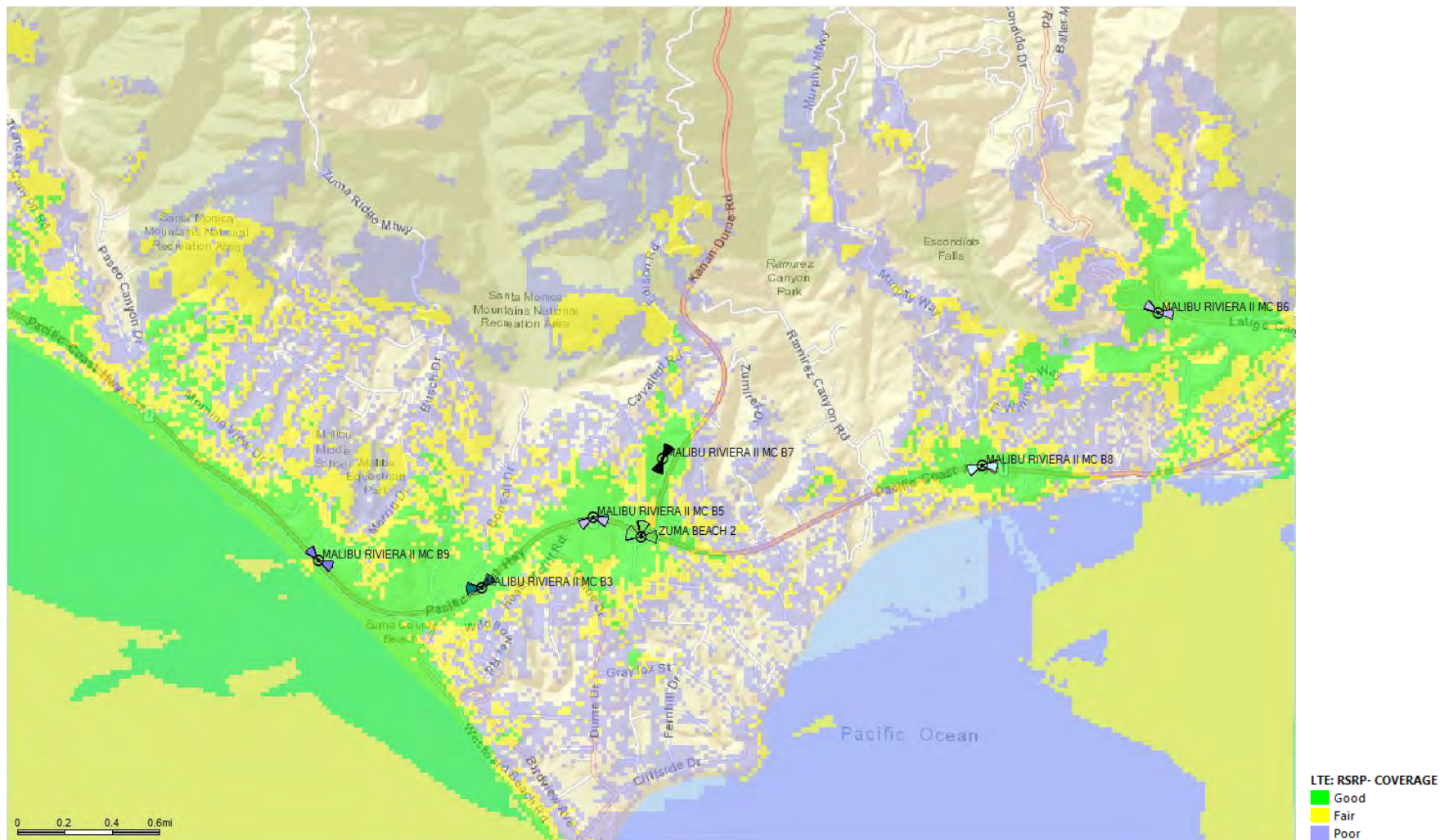
Zuma Beach 2 Propagation Maps

March 9, 2020

Zuma Beach 2 – General Map



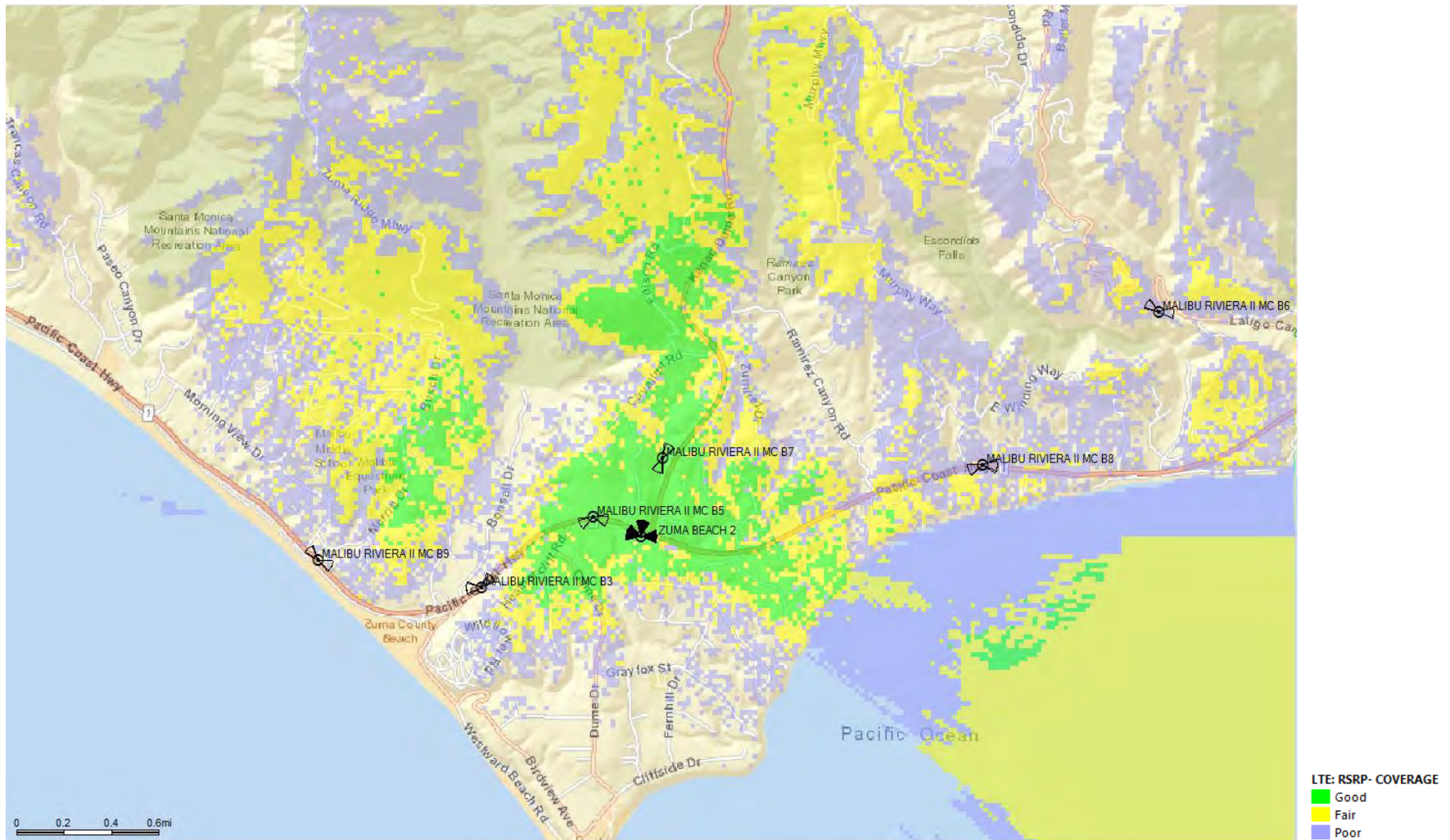
Verizon Coverage without Zuma Beach 2



Verizon Coverage with Zuma Beach 2



Verizon Coverage with Zuma Beach 2 Only



From: [J&P Ltd.](#)
To: [Chris Colten](#)
Subject: Re: Zuma Beach 2 recent plans
Date: Tuesday, December 1, 2020 12:24:35 PM

Hi Chris,

Thank you for the updated plans for our records.

We understand that you guys had a meeting with the city regarding (2) alternate design options they have requested. However we the Landlord after reviewing both of these options we understand that this would involve invasive exploration to the roof and the building structure in order to analyze wind load impact as well as structural impact. We also understand that this would require significant amount of structural work that would severely impact existing tenants in the complex.

As per the above stated reasons at this time we are denying Verizon's request to explore these alternative design options. However we look forward to proceeding with Verizon a lease based on the original design/drawings dated 11-17-2020.

Regards,
Jennifer Goldwasser

On Wednesday, November 18, 2020, 03:03:24 PM PST, Chris Colten <ccolten@spectrumse.com> wrote:

Recent plans.

Thanks,

Chris



Chris Colten
PROJECT MANAGER
4405 E. AIRPORT DRIVE, SUITE 100 | ONTARIO, CA 91761
PHONE 909.831.5990
CCOLTEN@SPECTRUMSE.COM
CONTRACTOR FOR SPECTRUM SERVICES
DRE LICENSE #01414093
www.spectrumse.com

*** Spectrum Services Notification: Email sent from an External Sender. ***

ATTACHMENT 5

**Verizon Wireless • Proposed Base Station (Site No. 548474 “Zuma Beach 2”)
28990½ Pacific Coast Highway • Malibu, California**

Received

6/22/2020

Planning Dept.

Statement of Hammett & Edison, Inc., Consulting Engineers

The firm of Hammett & Edison, Inc., Consulting Engineers, has been retained on behalf of Verizon Wireless, a personal wireless telecommunications carrier, to evaluate the base station (Site No. 548474 “Zuma Beach 2”) proposed to be located at 28990½ Pacific Coast Highway in Malibu, California, for compliance with appropriate guidelines limiting human exposure to radio frequency (“RF”) electromagnetic fields.

Executive Summary

Verizon proposes to install directional panel antennas on short poles above the roof of the office building complex located at 28990 Pacific Coast Highway in Malibu. The proposed operation will, together with the existing base station at the site, comply with the FCC guidelines limiting public exposure to RF energy; certain mitigation measures are recommended to comply with FCC occupational guidelines.

Prevailing Exposure Standards

The U.S. Congress requires that the Federal Communications Commission (“FCC”) evaluate its actions for possible significant impact on the environment. A summary of the FCC’s exposure limits is shown in Figure 1. These limits apply for continuous exposures and are intended to provide a prudent margin of safety for all persons, regardless of age, gender, size, or health. The most restrictive limit for exposures of unlimited duration at several wireless service bands are as follows:

Wireless Service Band	Transmit Frequency	“Uncontrolled” Public Limit	Occupational Limit (5 times Public)
Microwave (point-to-point)	1–80 GHz	1.0 mW/cm ²	5.0 mW/cm ²
Millimeter-wave	24–47	1.0	5.0
Part 15 (WiFi & other unlicensed)	2–6	1.0	5.0
CBRS (Citizens Broadband Radio)	3,550 MHz	1.0	5.0
BRS (Broadband Radio)	2,490	1.0	5.0
WCS (Wireless Communication)	2,305	1.0	5.0
AWS (Advanced Wireless)	2,110	1.0	5.0
PCS (Personal Communication)	1,930	1.0	5.0
Cellular	869	0.58	2.9
SMR (Specialized Mobile Radio)	854	0.57	2.85
700 MHz	716	0.48	2.4
600 MHz	617	0.41	2.05
[most restrictive frequency range]	30–300	0.20	1.0



**Verizon Wireless • Proposed Base Station (Site No. 548474 “Zuma Beach 2”)
28990½ Pacific Coast Highway • Malibu, California**

General Facility Requirements

Base stations typically consist of two distinct parts: the electronic transceivers (also called “radios” or “channels”) that are connected to the traditional wired telephone lines, and the passive antennas that send the wireless signals created by the radios out to be received by individual subscriber units. The transceivers are often located at ground level and are connected to the antennas by coaxial cables. Because of the short wavelength of the frequencies assigned by the FCC for wireless services, the antennas require line-of-sight paths for their signals to propagate well and so are installed at some height above ground. The antennas are designed to concentrate their energy toward the horizon, with very little energy wasted toward the sky or the ground. This means that it is generally not possible for exposure conditions to approach the maximum permissible exposure limits without being physically very near the antennas.

Computer Modeling Method

The FCC provides direction for determining compliance in its Office of Engineering and Technology Bulletin No. 65, “Evaluating Compliance with FCC-Specified Guidelines for Human Exposure to Radio Frequency Radiation,” dated August 1997. Figure 2 describes the calculation methodologies, reflecting the facts that a directional antenna’s radiation pattern is not fully formed at locations very close by (the “near-field” effect) and that at greater distances the power level from an energy source decreases with the square of the distance from it (the “inverse square law”). This methodology is an industry standard for evaluating RF exposure conditions and has been demonstrated through numerous field tests to be a conservative prediction of exposure levels.

Site and Facility Description

Based upon information provided by Verizon, including zoning drawings by Spectrum Services, Inc., dated May 6, 2020, it is proposed to install nine CommScope Model NHH-65A-R2B directional panel antennas on short poles above the roof of the center Building B at the two-story professional office center located at 28990 Pacific Coast Highway in Malibu. The antennas would employ 2° downtilt, would be mounted at an effective height of about 45 feet above ground, 13 feet above the roof well, and would be oriented in groups of three toward 20°T, 170°T, and 290°T. The maximum effective radiated power in any direction would be 12,150 watts, representing simultaneous operation at 4,390 watts for AWS, 3,840 watts for PCS, 1,980 watts for cellular, and 1,940 watts for 700 MHz service. Also proposed to be located above the roof of the building are three microwave “dish” antennas, for interconnection of this site with others in the Verizon network.



**Verizon Wireless • Proposed Base Station (Site No. 548474 “Zuma Beach 2”)
28990½ Pacific Coast Highway • Malibu, California**

Located above the roof of the companion Building C to the east are similar antennas for use by T-Mobile. For the limited purpose of this study, it is assumed that T-Mobile has installed JMA Wireless Model X7CQAP-FRO-260 antennas at an effective height of about 50 feet above ground, employing 2° downtilt, and that the maximum effective radiated power in any direction is 3,140 watts, representing simultaneous operation at 1,350 watts for AWS, 1,240 watts for PCS, 550 watts for 700 MHz service.

Study Results

For a person anywhere at ground, the maximum RF exposure level due to the proposed Verizon operation by itself, including the contribution of the microwave antennas, is calculated to be 0.038 mW/cm², which is 5.8% of the applicable public exposure limit. The maximum calculated cumulative level at ground, for the simultaneous operation of both carriers, is 7.1% of the public exposure limit. The maximum calculated cumulative level at the top-floor elevation of any nearby building* is 9.7% of the public limit. It should be noted that these results include several “worst-case” assumptions and therefore are expected to overstate actual power density levels.

Recommended Compliance Measures

It is recommended that the roof access door be kept locked, so that the Verizon antennas are not accessible to unauthorized persons. To prevent occupational exposures in excess of the FCC guidelines, it is recommended that appropriate RF safety training, to include review of personal monitor use and lockout/tagout procedures, be provided to all authorized personnel who have access to the roof, including employees and contractors of Verizon and of the property owner. No access within 30 feet directly in front of the antennas themselves, such as might occur during certain maintenance activities above the roof, should be allowed while the pertinent antennas are in operation, unless other measures can be demonstrated to ensure that occupational protection requirements are met. As shown in Figure 3, it is recommended that boundary lines be marked on the roof with blue paint, to identify areas within which exposure levels are calculated to exceed the FCC public limits, and that yellow lines be painted at the top of the roof parapet, to indicate that exposure levels are calculated to exceed the FCC occupational guidelines on the sloped roof beyond the lines. It is recommended that explanatory signs† be posted at the roof access door, at the boundary lines, and on the face of the antennas, readily visible from any angle of approach to persons who might need to work within that

* Including the three-story commercial building to the northeast and two-story residential buildings to the north and south, based on photographs from Google Maps.

† Signs should comply with OET-65 color, symbol, and content recommendations. Contact information should be provided (e.g., a telephone number) to arrange for access to restricted areas. The selection of language(s) is not an engineering matter, and guidance from the landlord, local zoning or health authority, or appropriate professionals may be required.

**Verizon Wireless • Proposed Base Station (Site No. 548474 “Zuma Beach 2”)
28990½ Pacific Coast Highway • Malibu, California**

distance. Similar measures should already be in place for T-Mobile; applicable mitigations for that carrier have not been determined as part of this study.

Conclusion

Based on the information and analysis above, it is the undersigned’s professional opinion that operation of the base station proposed by Verizon Wireless at 28990½ Pacific Coast Highway in Malibu, California, can comply with the prevailing standards for limiting human exposure to radio frequency energy and, therefore, need not for this reason cause a significant impact on the environment. The highest calculated level in publicly accessible areas is much less than the prevailing standards allow for exposures of unlimited duration. This finding is consistent with measurements of actual exposure conditions taken at other operating base stations. Locking the roof access door is recommended to establish compliance with public exposure limits; training authorized personnel, marking roof areas, and posting explanatory signs are recommended to establish compliance with occupational exposure limits.

Authorship

The undersigned author of this statement is a qualified Professional Engineer, holding California Registration Nos. E-13026 and M-20676, which expire on June 30, 2021. This work has been carried out under his direction, and all statements are true and correct of his own knowledge except, where noted, when data has been supplied by others, which data he believes to be correct.



William F. Hammett
William F. Hammett, P.E.
707/996-5200

June 11, 2020

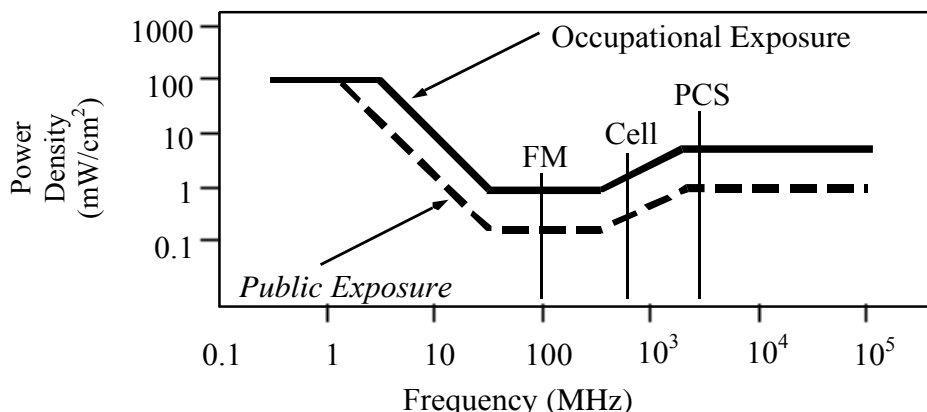


FCC Radio Frequency Protection Guide

The U.S. Congress required (1996 Telecom Act) the Federal Communications Commission (“FCC”) to adopt a nationwide human exposure standard to ensure that its licensees do not, cumulatively, have a significant impact on the environment. The FCC adopted the limits from Report No. 86, “Biological Effects and Exposure Criteria for Radiofrequency Electromagnetic Fields,” published in 1986 by the Congressionally chartered National Council on Radiation Protection and Measurements (“NCRP”). Separate limits apply for occupational and public exposure conditions, with the latter limits generally five times more restrictive. The more recent standard, developed by the Institute of Electrical and Electronics Engineers and approved as American National Standard ANSI/IEEE C95.1-2006, “Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz,” includes similar limits. These limits apply for continuous exposures from all sources and are intended to provide a prudent margin of safety for all persons, regardless of age, gender, size, or health.

As shown in the table and chart below, separate limits apply for occupational and public exposure conditions, with the latter limits (in *italics* and/or dashed) up to five times more restrictive:

Frequency Applicable Range (MHz)	Electromagnetic Fields (f is frequency of emission in MHz)					
	Electric Field Strength (V/m)		Magnetic Field Strength (A/m)		Equivalent Far-Field Power Density (mW/cm ²)	
0.3 – 1.34	614	<i>614</i>	1.63	<i>1.63</i>	100	<i>100</i>
1.34 – 3.0	614	<i>823.8/f</i>	1.63	<i>2.19/f</i>	100	<i>180/f²</i>
3.0 – 30	1842/f	<i>823.8/f</i>	4.89/f	<i>2.19/f</i>	900/f ²	<i>180/f²</i>
30 – 300	61.4	<i>27.5</i>	0.163	<i>0.0729</i>	1.0	<i>0.2</i>
300 – 1,500	$3.54\sqrt{f}$	<i>$1.59\sqrt{f}$</i>	$\sqrt{f}/106$	<i>$\sqrt{f}/238$</i>	$f/300$	<i>$f/1500$</i>
1,500 – 100,000	137	<i>61.4</i>	0.364	<i>0.163</i>	5.0	<i>1.0</i>



Higher levels are allowed for short periods of time, such that total exposure levels averaged over six or thirty minutes, for occupational or public settings, respectively, do not exceed the limits, and higher levels also are allowed for exposures to small areas, such that the spatially averaged levels do not exceed the limits. However, neither of these allowances is incorporated in the conservative calculation formulas in the FCC Office of Engineering and Technology Bulletin No. 65 (August 1997) for projecting field levels. Hammett & Edison has incorporated those formulas in a computer program capable of calculating, at thousands of locations on an arbitrary grid, the total expected power density from any number of individual radio frequency sources. The program allows for the inclusion of uneven terrain in the vicinity, as well as any number of nearby buildings of varying heights, to obtain more accurate projections.

Assessment by Calculation of Compliance with FCC Exposure Guidelines

The U.S. Congress required (1996 Telecom Act) the Federal Communications Commission (“FCC”) to adopt a nationwide human exposure standard to ensure that its licensees do not, cumulatively, have a significant impact on the environment. The maximum permissible exposure limits adopted by the FCC (see Figure 1) apply for continuous exposures from all sources and are intended to provide a prudent margin of safety for all persons, regardless of age, gender, size, or health. Higher levels are allowed for short periods of time, such that total exposure levels averaged over six or thirty minutes, for occupational or public settings, respectively, do not exceed the limits.

Near Field.

Prediction methods have been developed for the near field zone of panel (directional) and whip (omnidirectional) antennas, typical at wireless telecommunications base stations, as well as dish (aperture) antennas, typically used for microwave links. The antenna patterns are not fully formed in the near field at these antennas, and the FCC Office of Engineering and Technology Bulletin No. 65 (August 1997) gives suitable formulas for calculating power density within such zones.

For a panel or whip antenna, power density $S = \frac{180}{\theta_{BW}} \times \frac{0.1 \times P_{net}}{\pi \times D \times h}$, in mW/cm²,

and for an aperture antenna, maximum power density $S_{max} = \frac{0.1 \times 16 \times \eta \times P_{net}}{\pi \times h^2}$, in mW/cm²,

where θ_{BW} = half-power beamwidth of antenna, in degrees,

P_{net} = net power input to antenna, in watts,

D = distance from antenna, in meters,

h = aperture height of antenna, in meters, and

η = aperture efficiency (unitless, typically 0.5-0.8).

The factor of 0.1 in the numerators converts to the desired units of power density.

Far Field.

OET-65 gives this formula for calculating power density in the far field of an individual RF source:

power density $S = \frac{2.56 \times 1.64 \times 100 \times RFF^2 \times ERP}{4 \times \pi \times D^2}$, in mW/cm²,

where ERP = total ERP (all polarizations), in kilowatts,

RFF = three-dimensional relative field factor toward point of calculation, and

D = distance from antenna effective height to point of calculation, in meters.

The factor of 2.56 accounts for the increase in power density due to ground reflection, assuming a reflection coefficient of 1.6 (1.6 x 1.6 = 2.56). The factor of 1.64 is the gain of a half-wave dipole relative to an isotropic radiator. The factor of 100 in the numerator converts to the desired units of power density. This formula is used in a computer program capable of calculating, at thousands of locations on an arbitrary grid, the total expected power density from any number of individual radio frequency sources. The program also allows for the inclusion of uneven terrain in the vicinity, as well as any number of nearby buildings of varying heights, to obtain more accurate projections.

**Verizon Wireless • Base Station (Site No. 548474 "Zuma Beach 2")
28990½ Pacific Coast Highway • Malibu, California**

Calculated Cumulative RF Exposure Levels on Roofs

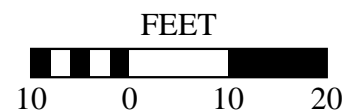
Recommended Compliance Measures

- Mark blue boundaries as shown (roof access locked)
- Post explanatory signs
- Provide training



Notes: See text.
Aerial photograph from Google Maps.
Calculations performed according to OET Bulletin 65, August 1997.

Legend:	Less Than Public	Exceeds Public	Exceeds Occupational	Exceeds 10x Occupational
Shaded color	blank			
Boundary marking	N/A			
Sign type	- Green INFORMATION	- Blue NOTICE	- Yellow CAUTION	- Orange WARNING





HAMMETT & EDISON, INC.
CONSULTING ENGINEERS
BROADCAST & WIRELESS

Received
6/22/2020
Planning Dept.

WILLIAM F. HAMMETT, P.E.
RAJAT MATHUR, P.E.
ROBERT P. SMITH, JR.
ANDREA L. BRIGHT, P.E.
NEIL J. OLIJ, P.E.
MANAS REDDY, P.E.
BRIAN F. PALMER
M. DANIEL RO

BY E-MAIL CCOLTEN@SPECTRUMSE.COM

June 1, 2020

Mr. Chris Colten
Spectrum Services, Inc.
4850 West Oquendo Road
Las Vegas, NV 89118

ROBERT L. HAMMETT, P.E.
1920-2002
EDWARD EDISON, P.E.
1920-2009
DANE E. ERICKSEN, P.E.
CONSULTANT

Re: Verizon Wireless Proposed Base Station No. 548474 "Zuma Beach 2"

Dear Chris:

As you requested, this letter serves to certify that Verizon Wireless is duly licensed to operate the above base station, to be located at 28990½ Pacific Coast Highway in Malibu, California. The table below lists the wireless services that Verizon proposes to provide from this facility, as well as the associated licenses it possesses that permit it to do so within Los Angeles County.

Service Band	Licensed Callsign	Channel Block	Frequency Range		License Expiration
			Receive	Transmit	
AWS	WQSH611	A	1710-1720 MHz	2110-2120 MHz	29-Nov-2021
	WQGB222	B	1720-1730	2120-2130	29-Nov-2021
	WQTX808	C	1730-1735	2130-2135	29-Nov-2021
	WQVP229	J	1770-1780	2170-2180	8-Apr-2027
PCS	WPWH653	E	1885-1890	1965-1970	28-Apr-2027
	KNLF889	F	1890-1895	1970-1975	28-Apr-2027
Cellular	KNKA209	B	835-845	880-890	1-Oct-2024
			846.5-849	891.5-894	
700 MHz	WQJQ694	Upper Band C	746-757	776-787	13-Jun-2029

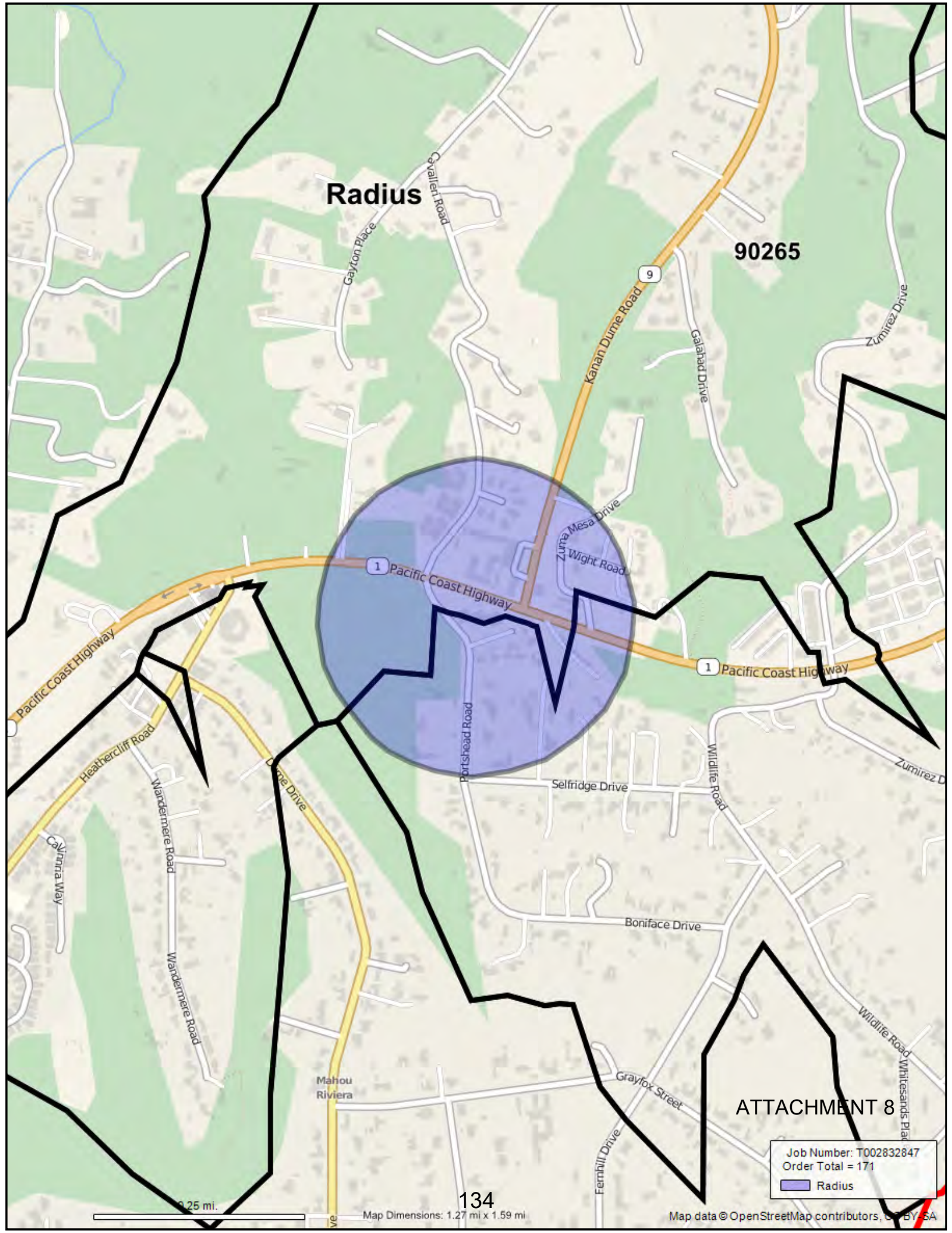
We note that in addition to those listed in the table above, Verizon has obtained licenses for millimeter-wave frequencies in the 28 GHz band, though no operation in the 28 GHz band is currently proposed from this specific site.

Should further questions arise on this matter, please do not hesitate to pass them along.

Sincerely yours,


Neil Olij, P.E.
lw

cc: Mr. Ryan Grobmeier – BY EMAIL RGROBMEIER@SPECTRUMSE.COM



Radius

90265

ATTACHMENT 8

Job Number: T002832847
Order Total = 171
Radius

0.25 mi.

134

Map Dimensions: 1.27 mi x 1.59 mi

Map data © OpenStreetMap contributors, CC-BY-SA



City Of Malibu
23825 Stuart Ranch Road
Malibu, CA 90265
Phone (310) 456-2489 ext. 273
www.malibucity.org

PLANNING DEPARTMENT
NOTICE OF PUBLIC HEARING
WIRELESS PERMIT APPLICATION



NOTICE OF PUBLIC HEARING
WIRELESS PERMIT APPLICATION

You have received this notice because you are within 1,000-feet of a wireless permit application pending a Planning Commission public hearing on **MONDAY AUGUST 16, 2021, at 6:30 p.m.** which will be held via teleconference only in order to reduce the risk of spreading COVID-19 pursuant to the Governor's Executive Orders N-25-20 and N-29-20 and the County of Los Angeles Public Health Officer's Safer at Home Order. Before the Planning Commission issues a decision on the application, the City of Malibu is providing an opportunity for members of the public to provide comments on the application. Interested parties are invited to submit written comments, concerns, or questions at any time prior to the beginning of the public hearing.

WIRELESS PERMIT NO. 21-002, WAIVER NO. 21-001, COASTAL DEVELOPMENT PERMIT NO. 20-035, VARIANCE NO. 20-023, AND SITE PLAN REVIEW NO. 20-045 - An application for a Type 2 Wireless Permit, filed on June 22, 2020, for the installation of a new wireless communications facility on the rooftop of Building B and a ground mounted backup battery unit, including a waiver and a variance of the wireless design standards to allow the antennas to be taller than three feet above the top of the roof parapet and a site plan review to place a wireless communications facility on a commercial property. All required building permits from the City Building Safety Division.

Nearest Location / Nearest APN: **28990.5 Pacific Coast Highway, Building B / 4466-019-004**
Nearest Zoning: Commercial Neighborhood (CN)
Property Owner: 28990 W. Pacific Coast Highway, LLC
Appealable to: City Council
Environmental Review: Categorical Exemption CEQA Guidelines Sections 15303(e) and 15301(e)

CONTACTS:

City Case Planner: Tyler Eaton, Assistant Planner, teaton@malibucity.org (310) 456-2489, ext. 273
Applicant: Chris Colten, Spectrum Services, on behalf of Verizon Wireless
ccolten@spectrumse.com
(909) 831-5990

A written staff report will be available at or before the hearing for the project, typically 10 days before the hearing in the Agenda Center: <http://www.malibucity.org/agendacenter>. You will have an opportunity to testify at the public hearing. If the City's action is challenged in court, testimony may be limited to issues raised before or at the public hearing. To view or sign up to speak during the meeting, visit www.malibucity.org/virtualmeeting.

REQUEST TO VIEW RECORDS: To review materials, please contact the Case Planner as indicated above.

LOCAL APPEAL - A decision of the Planning Commission may be appealed to the City Council by an aggrieved person by written statement setting forth the grounds for appeal. An appeal shall be filed with the City Clerk within ten days following the date of action which the appeal is made and shall be accompanied by an appeal form and filing fee, as specified by the City Council. Appeal forms may be found online at www.malibucity.org/planningforms, or in person, or by calling (310) 456-2489, extension 245.

RICHARD MOLLICA, Planning Director

Date: August 5, 2021



Received

8/12/21

Planning Dept.

August 11, 2021

VIA EMAIL

Planning Commission
City of Malibu
23825 Stuart Ranch Road
Malibu, CA 90265
PlanningCommission@malibucity.org
KStecko@malibucity.org

**Re: Wireless Permit No. 21-002 and Coastal Development Permit No. 20-035
28990.5 Pacific Coast Highway
Planning Commission Agenda Item 5C, August 16, 2021**

Dear Chair Jennings and Planning Commissioners:

Verizon's application, which is the subject of Item 5C of the above-referenced agenda, is an eligible facilities request ("EFR") under Section 6409 of the federal Spectrum Act. As such, the City of Malibu ("City") was required to approve the application within 60 days (subject to any tolling). As set forth in our letter dated December 28, 2020, the City failed to act within the required statutory period and, by operation of law, the application is now deemed granted. Thus, the application does not require Planning Commission or any other state or local approvals, and is not subject to public hearing, objection, or appeal.

In addition, Verizon's application is currently the subject of federal litigation, captioned *Los Angeles SMSA Limited Partnership d/b/a Verizon Wireless v. City of Malibu*, No. 2:21-cv-01827-PSG-PVC, pending in the United States District Court for the Central District of California. In that litigation, Verizon seeks a court order consistent with the foregoing declaring that the application is granted under Section 6409 and ordering the City to issue all permits and approvals needed to allow the project to be constructed. Due to the deemed granted status of the application and the pending federal court proceeding, this application is not properly before the Planning Commission.

Verizon also notes that the Planning Commission proposes to approve the application subject to 65 conditions. These conditions are improper and violate federal law to the extent they are inconsistent with Section 6409, its implementing regulations, and applicable declaratory rulings and orders of the Federal Communications Commission. Moreover, even if Section 6409 did not apply here – which it does – many of the 65 conditions are objectionable on other grounds. Verizon does not consent to those conditions and reserves the right to pursue those objections, if necessary after the conclusion of the pending litigation.

Sincerely,

Ethan J. Rogers
Network Counsel

CC: Planning Commission, PD,
Recording Secretary, File

Date Received 8/12/21 Time 9:00 AM
Planning Commission meeting of 8/16/21
Agenda Item No. 5C
Total No. of Pages 2

Cc: Trevor Rusin, Asst. City Attorney (Trevor.Rusin@BBKLAW.com)
Richard Mollica, Planning Director (RMollica@malibucity.org)
Tyler Eaton, Assistant Planner (TEaton@malibucity.org)
Jill Flynn, Verizon
Daisy M. Uy Kimpang, Verizon

Aaron Gribben

Subject: FW: Important new info for Commissioners, Planning Dept and City Council - We won our suit against the FCC

Received

8/14/21

Planning Dept.

From: Lonnie Gordon

Sent: Saturday, August 14, 2021 3:10 PM

To: Kathleen Stecko <kstecko@malibucity.org>; Patricia Salazar <psalazar@malibucity.org>; Tyler Eaton <teaton@malibucity.org>; Adrian Fernandez <afernandez@malibucity.org>; Richard Mollica <rmollica@malibucity.org>; Trevor Rusin <trevor.rusin@bbklaw.com>

Cc: Mikke Pierson <mpierson@malibucity.org>; Karen Farrer <kfarrer@malibucity.org>; Bruce Silverstein <bsilverstein@malibucity.org>; Steve Uhring <suhring@malibucity.org>; Paul Grisanti <pgrisanti@malibucity.org>

Subject: Important new info for Commissioners, Planning Dept and City Council - We won our suit against the FCC

Hi Kathleen,

Would you please send this to the Planning Commissioners? I do not have their email addresses. I think this is important information for them to have as this will change some of the FCC guidelines, and the telecoms can't hide behind this anymore. If possible, can this be added to the WCF site and added to the public record?? We won the suit against the FCC and they must revise their 1996 ruling on radiation from cell devices and towers, and the health effects of same!!

Thank you,

Lonnie

"The world is not dangerous because of those who do harm,
but because of those who look at it without doing anything".
Albert Einstein

Thank You, Environmental Health Trust and Children's Health Defense!

The U.S. Government Accountability Office in 2013 asked the Federal Communications Commission to reassess their public radiation exposure limits given science was showing potential harm.

The FCC opened Docket 13-84 into which thousands of pages of testimony were submitted by expert scientists, doctors, the American Academy of Pediatrics, the American Academy of Environmental Medicine, citizens and other organizations documenting great biological harm to both people and planet.

CC: Planning Commission, PD,

Recording Secretary, File

Date Received 8/14/21 Time 3:10PM
Planning Commission meeting of 8/16/21
Agenda Item No. 5C5D
Total No. of Pages 3

In late 2019 the FCC closed the docket and said their public radiation exposure limits didn't need to be changed.

In 2020 EHT and CHD sued the FCC for "failing to respond to significant comments" and neglecting the science.

Oral arguments were held in January 2021 before three federal judges in the United State Court of Appeals for the District of Columbia Circuit and it did not look good for the FCC.

The judges' ruling came out today, telling the FCC they must:

1. Provide a reasoned explanation for its decision to retain its testing procedures for determining whether cell phones and other portable electronic devices comply with its guidelines.
2. Address the impacts of RF radiation on children, the health implications of long-term exposure to RF radiation, the ubiquity of wireless devices, and other technological developments that have occurred since the Commission last updated its guidelines.
3. Address the impacts of RF radiation on the environment.

[See the Judges' Ruling Here!](#)



See the Environmental Health Trust write-up [here](#)!



See the Children's Health Defense write-up [here](#)!

Received

8/15/21

Planning Dept.

Aaron Gribben

Subject: Coastal Commission Letter and request

From: Lonnie Gordon

Sent: Sunday, August 15, 2021 3:41 PM

To: Richard Mollica <rmollica@malibucity.org>; Patricia Salazar <psalazar@malibucity.org>; Adrian Fernandez <afernandez@malibucity.org>; Tyler Eaton <teaton@malibucity.org>

Cc: Mikke Pierson <mpierson@malibucity.org>; Karen Farrer <kfarrer@malibucity.org>; Bruce Silverstein <bsilverstein@malibucity.org>; Steve Uhring <suhring@malibucity.org>; Paul Grisanti <pgrisanti@malibucity.org>; Kathleen Stecko <kstecko@malibucity.org>; Kelsey Pettijohn <kpettijohn@malibucity.org>

Subject: Coastal Commission Letter and request

Dear Richard et al,

Have you followed through with the request made in the attached letter from the Coastal Commission dated July 21st? It appears that the Planning Dept. bases its approval of many telecom applications, in part, because the California Coastal Commission has not yet approved of some items for our new ordinance. What is the status of this?* Have you replied to the Coastal Commission?

The application by Verizon coming before the planning commission tomorrow evening, (see attached), is based partially on this I believe, as well as on some other rather now invalid assumptions. The application asks for 13 antennae on the roof of the building as well as other electrical equipment. There is a school for children with disabilities and a veterinarians office in this complex. They will all be adversely affected if this is approved.

Under ADA the children will need to be provided accommodation, as well as the people with immune suppressed systems at the Alo House across the street, at 28955 PCH. Additionally, with our (and that is a national "our", thanks to Scott McCollough and the team) win against the FCC, the requirements for radiation exposure will no longer be valid. More information will be forthcoming on how this will affect applications.

By the way, did CMS verify the lack of coverage for this application, or was it just Verizon's word?

Additionally, I visited every tenant who was open on Friday, as well as Diamonds Malibu Gym and the Alo House. Only a few tenants in the proposed building site were properly noticed. Most had no idea of what is planned.

I would appreciate your response asap, as I will be attending the planning commission meeting tomorrow evening and Verizon has already sent a letter saying that a hearing is not needed due to the shot clock expiring. Thank you.

*According to the City's WCF page:

Updated 07/07/21 - On April 12, 2021, the City Council adopted Resolution No. 21-17, adopting engineering, design and location standards, conditions of approval, and basic application requirements for wireless communication facilities on land other than public right-of-way. On April 26, 2021, the City Council adopted Ordinance No. 484, adopting a comprehensive overhaul of the City's Wireless Communication Facility Ordinance. The Ordinance went into effect on May 26, 2021, with the exception of proposed amendments to the Local Coastal Program. The proposed amendments to the Local Coastal Program have been submitted to the California Coastal Commission (CCC) for certification. The CCC submitted comments in response to the City's submittal. Staff is currently addressing the CCC's comment.

CC: Planning Commission, PD,

Recording Secretary, File

Date Received 8/15/21 Time 3:41pm

¹Planning Commission meeting of 8/16/21

141 Agenda Item No. 5C5D

Total No. of Pages 5

Best regards,

Lonnie Gordon
Exec. Director
MalibuForSafeTech.org
www.malibuforsafetech.org

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"The world is not dangerous because of those who do harm,
but because of those who look at it without doing anything".
Albert Einstein

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST DISTRICT
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800



July 21, 2021

Richard Mollica, Planning Director
City of Malibu
23825 Stuart Ranch Road
Malibu, CA 90265-4861

Re: Local Coastal Program Amendment No. LCP-4-MAL-21-0048-1-Part A (Wireless Communications Facilities) and LCP-4-MAL-21-0049-1-Part B (Sign Regulations)

Dear Mr. Mollica:

On July 7, 2021, our office received the City's submittal to amend portions of the certified Local Coastal Program (LCP), including (1) a Local Implementation Plan (LIP) Amendment to amend various sections of the LIP regarding definitions, development standards, and permit procedures related to wireless communication facilities, and (2) a Land Use Plan (LUP) and LIP amendment to amend LCP sign regulations. Due to the extensive nature of the amendment request, we have decided to divide the submittal into two parts, with the wireless communications facilities portion of the amendment request as Part A, and the LCP sign regulations portion of the amendment submittal request as Part B. Staff has reviewed the materials submitted for the subject LCP amendment request and we have found that there is additional information that is required for our analysis of this request. Pursuant to Article 15, § 13551 and 13552 of the Commission's regulations, this additional information is required to deem the City's proposed amendment complete. Please provide the following information.

Local Coastal Program Amendment No. LCP-4-MAL-21-0048-1-Part A (Wireless Communications Facilities)

1. *Public Noticing.* Please be advised that the City will be required to publish a meeting notification in at least one major newspaper that is circulated in the area that is affected by the subject LCP Amendment, in lieu of individual noticing requirements. We will send you the applicable notice for publishing prior to the scheduled hearing.
2. *LCP Amendment Scope.* Please clarify if the design and location standards and conditions of approval and basic application requirements for wireless communications provided in City of Malibu Resolution No. 21-17 are being proposed as part of the subject LCP amendment?
3. *Consistency Analysis.* Coastal Commission Administrative Regulations (Section 13552(c)) require the submittal of a consistency analysis of the proposed amendment and its relationship to and effect on the other sections of the certified LCP. The Commission's regulations (Section 13552 (b)) also require information in sufficient detail to allow review for conformity with the requirements of the Coastal Act. The consistency analysis and other information provided in the subject amendment request submittal is not detailed or comprehensive enough in analyzing the LIP amendment's consistency with the policies of the LUP. Additionally, the submitted consistency analysis analyzed the proposed amendment consistency with the design and location standards and conditions of approval cited in the City's Resolution Nos. 20-65 and 21-17. However, the design and location standards and conditions of approval in Resolution Nos. 20-65 and 21-17 are not a part of the City's

certified LCP, and thus these standards and conditions are not the standard of review for the subject LCP Amendment. Please provide a more detailed consistency analysis of the proposed amendment, and its relationship to, and effect on, the other sections of the certified LCP consistent with Sections 13552(c) of the Commission's regulations. Address how the LIP changes are consistent with the policies of the LUP. In addition, please address the following specific issues in the analysis:

- a. The proposed amendment language provides for CDP exemptions for eligible wireless telecommunications facilities, replacement utility poles, and temporary wireless facilities, however, these types of development are not considered exempt under LIP Section 13.4 (Exemptions), the Coastal Act, and the California Code of Regulations. Please address the relationship and consistency between the above-mentioned policies and the proposed language in your consistency analysis.
 - b. In addition, the submittal proposes a new wireless permit (WP) that must be found consistent with the policies of the Malibu Municipal Code (MMC) (which is not a part of the City's certified LCP). Please clarify if the wireless permit (WP) is only subject to the requirements of the MMC or if it's the City's intent to process WPs in the same manner as an Administrative CDP? If it's the City's intent to process WP as Administrative CDP please indicate if the WP will have the same noticing, hearing, and appeal procedures as Administrative CDPs?
 - c. Further, the amendment proposes to approve wireless telecommunication facilities through different approval mechanisms (exemptions, wireless permit, de-minimis waiver, and/or administrative permit). Please clarify which wireless telecommunication facilities qualify for which approval mechanisms.
4. *Impact Analysis.* Pursuant to Sections 13552(d) and 13511(a) of the Commission's Administrative Regulations, please provide an analysis of potential adverse individual and cumulative impacts on coastal resources and public access of the proposed LCP amendment changes and the potentially allowable development proposed. The potential impacts to coastal resources (e.g., visual resources, recreation, public access, environmentally sensitive habitat, water quality, etc.) must be identified and analyzed in the amendment submittal. In addition, the proposed amendment seeks to eliminate the existing LIP Section 3.16 wireless facility/antenna design and location development standards, permit application requirements, and required conditions of approval. Thus, it is unclear how this type of development (wireless telecommunications facilities and/or antennas) would be implemented/permitted, what adverse impacts to coastal resources may occur, or how the proposed modifications (elimination of existing design, location, application requirements, and conditions of approval standards) will be adequate to implement the policies and provisions of the LUP. Please clarify and provide an analysis of the potential impacts to coastal resources that may occur from the elimination of these existing LIP provisions.

Local Coastal Program Amendment No. LCP-4-MAL-21-0049-1-Part B (Sign Regulations)

1. *Public Noticing.* Please be advised that the City will be required to publish a meeting notification in at least one major newspaper that is circulated in the area that is affected by the subject LCP Amendment, in lieu of individual noticing requirements. We will send you the applicable notice for publishing prior to the scheduled hearing.
2. *Consistency Analysis.* Coastal Commission Administrative Regulations (Section 13552 (c)) require the submittal of a consistency analysis of the proposed amendment and its relationship to and effect on the other sections of the certified LCP. The Commission's regulations (Section 13552 (b))

also require information in sufficient detail to allow review for conformity with the requirements of the Coastal Act. The consistency analysis and other information provided in the subject amendment request submittal is not detailed or comprehensive enough in analyzing the amendment's consistency with the applicable standard of review. Please provide a more detailed consistency analysis of the proposed amendment, and its relationship to, and effect on, the other sections of the certified LCP consistent with Sections 13552(c) of the Commission's regulations. Address how the LUP changes are consistent with the applicable policies of the Coastal Act (Sections 30210 and 30211) and how the LIP changes are consistent with the policies of the LUP (LUP Policies 2.2 and 2.5).

3. *Impact Analysis.* Pursuant to Sections 13552(d) and 13511(a) of the Commission's Administrative Regulations, please provide an analysis of potential adverse individual and cumulative impacts on coastal resources and public access of the proposed LCP amendment changes and the potentially allowable development proposed. The potential impacts to coastal resources and public access must be identified and analyzed in the amendment submittal. In this case, the subject LCP amendment would allow for signs that restrict public access to State tidelands, public vertical or lateral access easement areas, or purport to identify the boundary between State tidelands and private property. Please provide an analysis of the potential impacts to public access that would result from beachfront signs that restrict public access to State tidelands, public vertical or lateral access easement areas, or purport to identify the boundary between State tidelands and private property.

Thank you for your time and attention to this matter. Once we receive the noted information, we can analyze Parts A and B of the proposed LCP amendment and schedule the matters for hearing. Should you have any questions regarding the filing status and review of the proposed amendment, please do not hesitate to contact me at denise.venegas@coastal.ca.gov. We look forward to receiving the requested materials and moving forward with our review of this amendment application at your earliest convenience.

Sincerely,

DocuSigned by:

EC0C1D43CA0C426...
Denise Venegas
Coastal Program Analyst

cc: Adrian Fernandez, Principal Planner, City of Malibu
Justine Kendall, Associate Planner, City of Malibu

**NOTICE OF PUBLIC HEARING
CITY OF MALIBU
CITY COUNCIL**

The Malibu City Council will hold a public hearing on **MONDAY, September 27, 2021 at 6:30 p.m.** on the project identified below. This meeting will be held via teleconference only in order to reduce the risk of spreading COVID-19 and pursuant to the Governor's Executive Order N-08-21 and the County of Los Angeles Public Health Officer's Safer at Home Order. All votes taken during this teleconference meeting will be by roll call vote, and the vote will be publicly reported.

How to View the Meeting: No physical location from which members of the public may observe the meeting and offer public comment will be provided. Please view the meeting, which will be live streamed at <https://malibucity.org/video> and <https://malibucity.org/VirtualMeeting>.

How to Participate Before the Meeting: Members of the public are encouraged to submit email correspondence to citycouncil@malibucity.org before the meeting begins.

How To Participate During the Meeting: Members of the public may also speak during the meeting through the Zoom application. You must first sign up to speak before the item you would like to speak on has been called by the Mayor and then you must be present in the Zoom conference to be recognized.

Please visit <https://malibucity.org/VirtualMeeting> and follow the directions for signing up to speak and downloading the Zoom application.

APPEAL NO. 21-012 AND APPEAL NO. 21-015 – Appeals of the Planning Commission's approval of Wireless Permit No. 21-002, Waiver No. 21-001, Coastal Development Permit No. 20-035, Variance No. 20-023, and Site Plan Review No. 20-045, an application for a Type 2 Wireless Permit for the installation of a new wireless communications facility on the rooftop of Building B and a ground-mounted backup generator, including a waiver and a variance of the wireless design standards to allow the antennas to be taller than three feet above the top of the roof parapet and a site plan review to place a wireless communications facility on a commercial property

Location / APN:	28990.5 Pacific Coast Highway, Building B / 4466-019-004
Zoning:	Commercial Neighborhood (CN)
Property Owner:	28990 W. Pacific Coast Highway, LLC
Applicant:	Chris Colten, Spectrum Services, on behalf of Verizon Wireless, colten@spectrumse.com , (909) 831-5990
	Appellants: Gatz Dillon & Balance, LLP on behalf of Verizon Wireless (Appeal No. 21-012) and Lonnie Gordon (Appeal No. 21-015)
Application Filed:	June 22, 2020
Appeals Filed:	June 26, 2021
Environmental Review:	Categorical Exemption CEQA Guidelines Sections 15303(e) and 15301(e)
City Case Planner:	Tyler Eaton, Assistant Planner, teaton@malibucity.org (310) 456-2489, ext. 273

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the Planning Commission analyzed the proposed project and found that it is listed among the classes of projects that have been determined not to have a significant adverse effect on the environment. Therefore, the project is categorically exempt from the provisions of CEQA. The Planning Commission has further determined that none of the six exceptions to the use of a categorical exemption apply to these projects (CEQA Guidelines Section 15300.2).

A written staff report will be available at or before the hearing for the project. All persons wishing to address the Council regarding these matters will be afforded an opportunity in accordance with the Council's procedures.

Copies of all related documents can be reviewed by any interested person by contacting the Case Planner during regular business hours. Oral and written comments may be presented to the City Council at any time prior to the beginning of the public hearing.

IF YOU CHALLENGE THE CITY'S ACTION IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE PUBLIC HEARING DESCRIBED IN THIS NOTICE, OR IN WRITTEN CORRESPONDENCE DELIVERED TO THE CITY, AT OR PRIOR TO THE PUBLIC HEARING.

Richard Mollica, Planning Director

Publish Date: September 16, 2021