



# Council Agenda Report

Adjourned Meeting  
11-02-21  
**Item  
4.A.**

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: October 14, 2021 Meeting Date: November 2, 2021

Subject: Appeal No. 21-009 - Appeal of Planning Commission Resolution No. 21-48 (31557.5 Pacific Coast Highway; Appellant: Lonnie Gordon; Applicant: Zacharia Ghanem of Motive on behalf of Verizon Wireless; Property Owner: California Department of Transportation) (Continued from October 11, 2021)

---

**RECOMMENDED ACTION:** Adopt Resolution No. 21-57 (Exhibit A), determining the project is categorically exempt from the California Environmental Quality Act (CEQA), denying Appeal No. 21-009 and approving Coastal Development Permit (CDP) No. 20-028 and Wireless Communications Facility (WCF) No. 20-010 for Verizon Wireless to install two replacement wireless communications antennas at a height of 34 feet, 9 inches and electrical support equipment mounted on a replacement wooden utility pole, including Variance (VAR) No. 20-017 to permit an upgrade to an existing wireless communications facility mounted over 28 feet in height and Site Plan Review (SPR) No. 20-041 to install and operate a wireless communications facility within the public right-of-way (ROW) located at 31557.5 Pacific Coast Highway (PCH).

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

**DISCUSSION:** On October 11, 2021, the City Council continued this item to the October 25, 2021 Regular City Council meeting. The staff report has been updated to reflect the new meeting date, fix some typographical errors and include Exhibit H (Correspondence received for the October 11, 2021 City Council meeting). In addition, the resolution has been updated with a recital to reflect the continuance and updated dates as well as fix some typographical errors.

The following are a list of changes from the October 11, 2021 Council Agenda Report and resolution:

### *Staff Report*

- Updated dates and agenda item numbers throughout;
- Added a summary of changes to the *Discussion* section;
- Fixed minor typographical errors such as some application numbers that were initially incorrect (i.e., WCF No. 21-010 is now WCF No. 20-010);
- Added language in the *Correspondence* section about the addition of Exhibit H; and
- Added Exhibit H in the *Exhibits* section.

### *Resolution*

- Added a recital addressing the City Council continuance;
- Fixed minor typographical errors such as inserting correct resolution numbers throughout;
- Updated dates; and
- Revised the opening paragraph of *Section 5* to meet the Councilmembers' standards.

The matter concerns an appeal (Exhibit B) of WCF No. 20-010, CDP No. 20-028, VAR No. 20-017, and SPR No. 20-041, approved by the Planning Commission on June 21, 2021 for a replacement wireless communications facility attached to a replacement utility pole in the public ROW.

The appellant, Ms. Lonnie Gordon, contends that:

- The findings and conditions are not supported by the evidence, or the decision is not supported by the findings;
- There was a lack of fair or impartial hearing; and
- The Decision was contrary to law.

The appellant's attorney, Mr. Scott McCollough, outlines four major points for the bases of the appeal. All four points are summarized below accompanied by a staff response. The full text of Lonnie Gordon's appeal is included in Exhibit B.

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

## Project Description

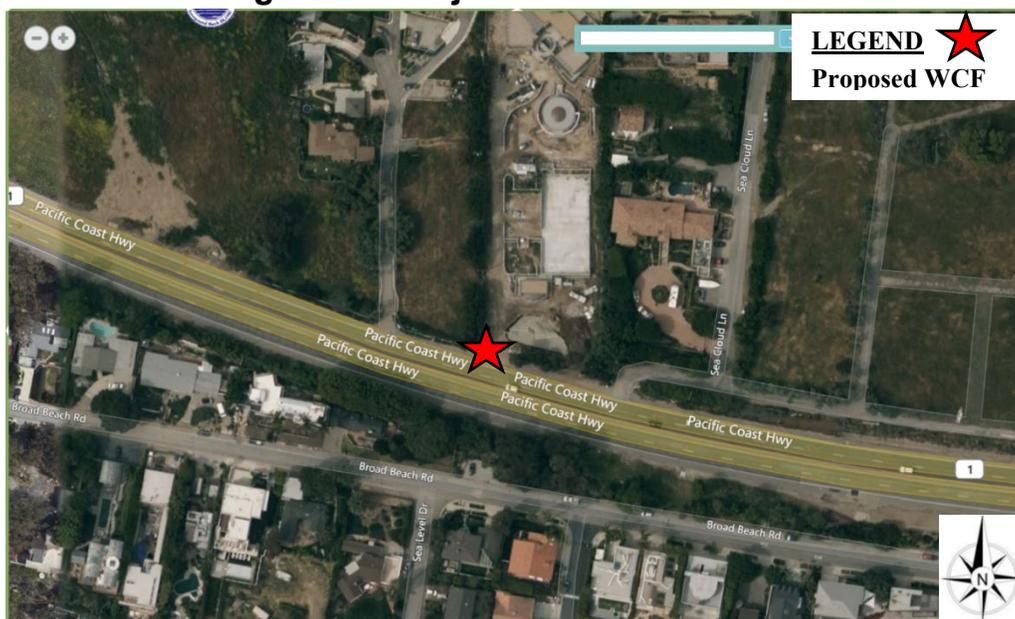
The proposed scope of work is as follows:

- Replacement of an existing 38-foot utility pole with a 52-foot tall wooden utility pole and utility infrastructure;
- Mounting of two four-foot-tall replacement panel antennas at a height of 34 feet, 9 inches supported by a pair of six-foot long wooden double extension arms; and
- Mounting of new electrical support equipment consisting of two remote radio units (RRUs), four power supply units (PSUs), disconnect box, fuse panel, and new fiber distribution box onto the replacement pole behind the new equipment channel.

## Project Background

In December of 2020, the City of Malibu adopted a new Urgency Ordinance No. 477U and Resolution No. 20-65 to address wireless communications facilities in the public ROW. In September of 2020, staff deemed the application complete for processing. The standards used for this project were those standards that were in place before the adoption of the Urgency Ordinance. It has been City practice to use the design standards that are in place at the time a project is deemed complete. The application requires a CDP and a variance, both of which required a Planning Commission approval pursuant to the Local Coastal Program (LCP) Local Implementation Plan (LIP) Sections 13.7(B) and 13.26.5, respectively. The project is outside the California Coastal Commission's (CCC) appeal jurisdiction so it is not appealable to the CCC. Ordinance 477U describes the general permitting processes for wireless communications facilities in the ROW, while Resolution No. 20-65 is specific on the design standards that apply to facilities in the ROW.

**Figure 1 – Project Area Aerial Photo**



Source: City of Malibu 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 Exhibit B.

### **Appellant: Scott McCollough on behalf of Lonnie Gordon**

*Appeal Item 1: The Planning Commission did not have the jurisdiction to approve the permits. Ordinance 477U requires the Planning Director to make the decision on this application. Additionally, the decision is appealable to the CCC.*

#### **Staff Response**

As mentioned by Mr. McCollough in his appeal letter, Section 5 of Ordinance 477U states that all wireless applications that were not subject to final action before adoption of the ordinance must comply with the ordinance. Pursuant to the Permit Streamlining Act new rules may not be applied after a development application is deemed complete, and Ordinance 477U said that it would only apply to pending applications "to the fullest extent permitted by applicable law." Additionally, pursuant to FCC rules (see FCC 18-133), design standards for wireless facilities must be published in advance of receiving an application for a city to apply those design standards to that application. Further, though Ordinance 477U was in effect at the time the Planning Commission made a decision on the application, the CCC had not approved the LCP amendments certifying the changes in the LCP. Because of that, this application is not exempt from a CDP and the standards in the LCP apply regardless of the City process precedent. The current LCP standards are that of the old ordinance. Based on the proposed application, the project requires a CDP and a variance both of which require the Planning Commission's approval.

Mr. McCollough's statements also refer to an idea that there are two separate entitlements at play, one for the Malibu Municipal Code (MMC) and one for the LCP. The project does not require two separate approvals but one approval that considers both the LCP and MMC. The project was not exempt from obtaining a CDP, so the LCP standards apply to the project.

Lastly, the decision is not appealable to the CCC. The project is outside the jurisdiction of the CCC appeal zone which includes, "developments approved by the City between the sea and the first public road paralleling the sea or within three hundred feet (300') of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance." The project is not within the first public road paralleling the sea, which is Broad Beach Road, and is not within 300 feet of any beach. If the project is not within the appeal jurisdiction of the CCC, it is not appealable to the CCC pursuant to LIP Section 13.20.2(B).

*Appeal Item 2: The Planning Commission approval erred on the merits of the applicable ordinances and Verizon did not provide sufficient evidence to support the application.*

### Staff Response

Mr. McCollough's letter explains that MMC Chapter 12 was not applied as per Ordinance 477U. As mentioned previously, the Permit Streamlining Act does not permit a jurisdiction to apply design standards that were not applicable at the time a project is deemed complete, and FCC rules do not permit a jurisdiction to apply design standards for facilities that were not published in advance of receiving the application. MMC Chapter 17.46 governed the design standards at the time the application was deemed complete. Secondly, the project is not exempt from CDP and the standards in the LIP are still in effect. The standards currently in effect in the LIP are the same as standards that were in MMC Chapter 17.46 when the application was deemed complete.

Secondly, Mr. McCollough states that Verizon Wireless failed to carry the burden of proof in its application. Specifically, he cites that Verizon Wireless failed to produce coverage maps and an alternative site analysis which were a requirement of the applicable ordinance and the City's submittal checklist. As described in the *Significant Gap in Coverage* section of the Planning Commission agenda report (Exhibit D), and confirmed by the City's wireless consultants, Verizon Wireless is not required by federal law to submit coverage maps. Additionally, staff did not require an alternative site analysis as the proposed project is to replace an existing Verizon Wireless facility. The proposed location was the best alternative because a site already exists instead of adding a new cell site to the area. If Verizon Wireless proposed the replacement facility in a new location, they would be required to provide supplemental documents including an alternative site analysis. Mr. McCollough's letter also refers to Verizon Wireless needing to show evidence that they are providing a personal wireless service. There is nothing in the applicable ordinances that requires a carrier to show proof that they are providing personal wireless services in their subject application. In fact, Verizon Wireless has the right to upgrading its facility to improve capacity and data service.

Lastly, Mr. McCollough states that the Planning Commission did not apply the correct standards for the variance when a waiver should have been applied for pursuant to MMC Chapter 12. Staff and the Planning Commission applied the variance findings required by the LIP. The standards used for the project were the standards in effect at the time the project was deemed complete. He also contends that the Planning Commission did not correctly make the finding that the project would not be detrimental to public safety and welfare because the structural and electrical safety aspects of the project had not been reviewed. The project is conditioned to submit structural and electrical plans into building plan check with the Building Safety Division to ensure structural and electrical safety. Because the project was submitted before the adoption of the Urgency Ordinance, Verizon Wireless was not required to submit for building plan check prior to approval. Per federal law, the City cannot stop the applicable FCC shot clock by requiring additional submittal items after the first notice of incompleteness letter is sent following the submittal of a wireless communications facility application.

*Appeal Item 3: Verizon must show proof of safety and code compliance before a decision is made on the application.*

Staff Response

As mentioned previously, the City cannot stop the applicable FCC shot clock by requiring additional submittal items after the first notice of incompleteness letter is sent. The application was submitted before the adoption of Ordinance 477U and, subsequently, the City issued its first incompleteness letter based on the application requirements at the time of submittal. As a condition of approval, the project is required to submit building and electrical plans into building plan check with the Building Safety Division where proof of structural and electrical safety will be ensured. If Verizon Wireless fails to complete plan check and pull all necessary permits, the CDP will be voided as required per Condition No. 52 of City Council Resolution No. 21-57.

*Appeal Item 4: Objections to Condition Nos. 3, 11, 18, 38, 52, 53 and 54 of Planning Commission Resolution No. 21-48.*

Staff Response

Mr. McCollough stated in his letter that Condition No. 3 of Planning Commission Resolution No. 21-48 was “inadequate” because the plans were insufficient based on the proof of safety argument. This condition is a standard condition that staff uses based on the most recent set of plans prior to the project being deemed complete. As it relates to the project, the plans met the applicable requirements at the time of submittal and Condition No. 3 requires that Verizon Wireless follow the plans, date-stamped June 16, 2020. Structural and electrical plans can be added to the architectural plans prior to the issuance of permits. Condition Nos. 11, 18, 38, 52, 53, and 54 were stated by Mr. McCollough as being improper based on the same proof of safety argument. Condition Nos. 11 and 38 are standard conditions approved by the City Council under Ordinance No. 477U and Resolution No. 20-65. Condition No. 18 is also a standard condition approved by the City Council slightly modified to include design standards in the LIP as the project requires a CDP and is to conform to the LCP in addition to the MMC. Condition Nos. 52-54 were added by staff to ensure that Verizon Wireless proves to the City that it will meet the required safety standards in relation to structural and electrical safety.

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(d) – New construction or Conversion of Utilities. 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: Correspondence for the project is attached as Exhibit F below. Correspondence received for the October 11, 2021 City Council hearing are attached as Exhibit H.

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 1,000 feet of the subject property (Exhibit G).

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. 21-57 denying Appeal No. 21-009 and approving WCF No. 20-010, CDP No. 20-028, VAR No. 20-017, and SPR No. 20-041, subject to the conditions of approval in the resolution.

EXHIBITS:

- A. City Council Resolution No. 21-57
- B. Appeal No. 21-009
- C. Planning Commission Resolution No. 21-48
- D. June 21, 2021 Commission Agenda Report Item 4.C. and Attachments 1-9
  - 1. Planning Commission Resolution No. 21-48
  - 2. Project Plans
  - 3. Visual Demonstration Exhibits
  - 4. Signal Coverage Maps - declined memo from Verizon
  - 5. RF-EME Jurisdictional Report
  - 6. FCC Compliance
  - 7. Public Correspondence dated May 15, 2021
  - 8. Radius Map
  - 9. Public Hearing Notice
- E. June 21, 2021 Supplemental Commission Agenda Report Item 4.C. and Attachment 1
  - 1. Correspondence
- F. Correspondence
- G. Public Hearing Notice
- H. Correspondence received for the October 11, 2021 City Council hearing

RESOLUTION NO. 21-57

A RESOLUTION OF THE CITY OF MALIBU CITY COUNCIL DETERMINING THE PROJECT IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENT QUALITY ACT, DENYING APPEAL NO. 21-009 AND APPROVING COASTAL DEVELOPMENT PERMIT NO. 20-028 AND WIRELESS COMMUNICATIONS FACILITY NO. 20-010 FOR VERIZON WIRELESS TO INSTALL TWO REPLACEMENT WIRELESS COMMUNICATIONS ANTENNAS AT A HEIGHT OF 34 FEET, 9 INCHES AND ELECTRICAL SUPPORT EQUIPMENT MOUNTED ON A REPLACEMENT WOODEN UTILITY POLE, INCLUDING VARIANCE NO. 20-017 TO PERMIT AN UPGRADE TO AN EXISTING WIRELESS COMMUNICATIONS FACILITY MOUNTED OVER 28 FEET IN HEIGHT AND SITE PLAN REVIEW NO. 20-041 TO INSTALL AND OPERATE A WIRELESS COMMUNICATIONS FACILITY WITHIN THE PUBLIC RIGHT-OF-WAY LOCATED AT 31557.5 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 15, 2020, a new application for Wireless Communications Facility (WCF) No. 20-010 and Site Plan Review (SPR) No. 20-041 was submitted by the applicant, Motive, on behalf of Verizon Wireless for a pole-mounted WCF on a replacement wooden utility pole. Coastal Development Permit (CDP) No. 20-028 and Variance (VAR) No. 20-017 were later assigned to the project.

B. On September 3, 2020, a Notice of CDP Application was posted at the subject site attached to the existing pole to be replaced.

C. On September 28, 2020, planning staff deemed the project complete for processing.

D. On May 13, 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 1000-foot radius of the project site and to all interested parties.

E. On June 7, 2021, the Planning Commission held a duly noticed public hearing and continued the item to the June 21, 2021, Planning Commission public hearing.

F. On June 21, 2021, the Planning Commission adopted Planning Commission Resolution No. 21-48, approving WCF No. 20-010, CDP No. 20-028, VAR No. 20-017, and SPR No. 20-041.

G. On June 28, 2021, Lonnie Gordon filed timely Appeal No. 21-009 of Planning Commission Resolution No. 21-48.

H. 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 500 feet from the subject property and all interested parties.

I. On October 11, 2021, the City Council continued the item to the October 25, 2021 City Council meeting.

J. On October 25, 2021, the City Council adjourned the hearing to the November 2, 2021, City Council meeting.

K. On November 2, 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 appeal filed by Ms. Lonnie Gordon contends 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 in the record, including the Council Agenda Report for the project and the hearing on October 25, 2021, the City Council hereby makes the following findings of fact, denies the appeal and based on the evidence in the record approves the project. The reasons for the City Council's decision include, but are not limited to, the following:

A. The City applied design standards that were in place at the time an application was deemed complete. New rules may not be applied after a development application is deemed complete, and Ordinance 477U said that it would only apply to pending applications "to the fullest extent permitted by applicable law."<sup>1</sup> Additionally, pursuant to FCC rules (FCC 18-133), design standards for wireless facilities must be published in advance of receiving an application for a city to apply those design standards to that application. Ordinance 477U was in effect at the time the Planning Commission made a decision on the application, but the California Coastal Commission (CCC) had not approved the Local Coastal Program (LCP) amendments certifying the changes in the LCP. This application is not exempt from a CDP and the standards in the LCP apply. Based on the proposed application, the project requires a CDP and a variance both of which required the Planning Commission's, and upon appeal the City Council's, approval. The project is outside the appeal jurisdiction of the CCC and is not appealable to the CCC.

B. Malibu Municipal Code (MMC) Chapter 17.46 governed the design standards at the time the application was deemed complete. The project is not exempt from CDP and the standards in the LCP Local Implementation Plan (LIP) are still in effect. Verizon Wireless is not required by federal law to submit coverage maps. There is nothing in the applicable ordinances that requires a carrier to show proof that they are providing personal wireless services in their subject application. The project is conditioned to enter into building plan check with the Building Safety Division to ensure structural and electrical safety.

C. The application was submitted before the adoption of Ordinance No. 477U and subsequently the City issued its first notice of incompleteness letter based on the application

---

<sup>1</sup> Government Code Section 65941(A) of the Permit Streamlining Act also limits local governments from applying design standards after a project is deemed complete.

requirements at the time of submittal. As a condition of approval, the project is required to enter into building plan check with the Building Safety Division where proof of structural and electrical safety will be ensured. If Verizon Wireless fails to complete plan check and pull all necessary permits, the CDP will void as required per Condition No. 52 of Resolution No. 21-58.

D. The plans met the requirements at the time of submittal and the plans date stamped June 16, 2020, were the plans Verizon Wireless is to follow when they are permitted for installation. Condition Nos. 11, 18, 38, 52, 53, and 54 of Planning Commission Resolution No. 21-48 were appropriately applied to ensure the site is constructed in accordance with applicable law.

#### 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 15303(d) – new construction of utility systems. 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 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, and pursuant to LIP Sections 13.7(B) and 13.9, the City Council hereby makes the findings of fact below, and approves CDP No. 20-028 and WCF No. 20-010 for Verizon Wireless to install two replacement wireless communications facility antennas at a height of 34 feet, 9 inches and electrical support equipment mounted on a replacement wooden utility pole, including VAR No. 20-017 to permit an upgraded wireless facility mounted over 28 feet in height and SPR No. 20-041 to install and operate a wireless communications facility within the public right-of-way (ROW) located at 31557.5 Pacific Coast Highway (PCH).

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. General Coastal Development Permit (LIP Chapter 13)**

1. The project has been reviewed by the City for conformance with the LCP. As discussed herein, based on the submitted project plans, visual demonstration exhibits, radio emissions report, site inspection, and recommended conditions, the proposed project conforms to the LCP and MMC in that it meets all applicable wireless communications facility code and other standards.

2. The proposed upgrade to an existing wireless communications facility is the least environmentally damaging alternative. The replacement pole is in the inland side of PCH within the disturbed dirt shoulder. The replacement antennas and associated equipment will be mounted on the replacement pole and are not expected to have a significant adverse impact on scenic views or biological resources.

**B. Variance for the development of a wireless communications facility above 28 feet (LIP 13.26.5)**

VAR No. 20-017 is requested to allow for an upgrade to an existing wireless communications facility on a 52-foot tall replacement wooden utility pole above the 28 foot height limit.

1. There are special characteristics for the proposed wireless communications facilities such that strict application of the zoning ordinance would deprive the property of privileges enjoyed by other properties in the vicinity under the identical zoning classification. The applicant proposes to upgrade the existing WCF with a new replacement wooden utility pole. The subject project is an existing wireless communications facility that is currently non-conforming due to existing antennas and equipment mounted on the pole within minimum vertical separation requirements to other electrical and cable lines attached to the same pole as imposed by the California Public Utilities Commission's (CPUC) General Order 95 and Federal Communication Commissions (FCC) safety standards. A taller pole will be necessary to comply with the required equipment separation requirements between pole-mounted equipment, the pole itself, and power and telecom lines. To achieve its wireless service objectives, Verizon Wireless is proposing the upgraded panels be mounted at 34 feet 9 inches to maximize coverage and enhance wireless service for customers in the western Malibu area. An independent pole could have been proposed at a maximum 28 feet in height, but that would be a more visually intrusive design as there would be two poles instead of just one. The proposed facility, including the variance for height is consistent with FCC and CPUC safety standards and not detrimental to public interest in terms of a less visually intrusive alternative.

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 maximum permissible exposure (MPE) limits for the general public. As previously mentioned in Finding 1, an independent pole could have been proposed at a compliant 28 feet in height but that would be more visually intrusive as there would be two poles instead of just one. The additional height is necessary to ensure compliance with contemporary regulations governing equipment mounting separations for safety purposes per the CPUC's General Order 95. The proposed facility, including the variance for height is consistent with FCC and CPUC safety standards and not detrimental to public interest in terms of a less visually intrusive alternative.

3. The granting of the variance will not constitute a special privilege to the applicant or property owner. The proposed wireless facility and electrical support equipment is prompted by both the CPUC's General Order 95 equipment mounting requirements, and Verizon Wireless's objective of maximizing coverage and enhancing wireless service for customers in the western Malibu area. The variance request for additional vertical mounting height is typical of many wireless communications permit applications to achieve the physical separation requirements for technical equipment and, enhance service delivery. Also, the variance request is not particular to Verizon Wireless, any wireless carrier company could make a similar request and staff would process the permit request and project assessment in an identical manner. Lastly, there are other similar facilities mounted on existing utility poles that exceed 28 feet in height within the City of Malibu.

4. The granting of the variance will not be contrary with the policies of the LCP. The proposed height is not expected to impact any scenic views. The pole, antenna, and associated equipment will be painted to blend in with the existing wooden utility pole.

5. The project site is neither in nor adjacent to an ESHA, ESHA buffer or stream, and therefore avoids impacts to environmentally sensitive habitat areas.

6. The proposed project does not involve a stringline modification as it is not located on a beach and therefore, avoids impacts to public access.

7. The variance request is consistent with the purpose and intent of the zone in which the site is located. The proposed facility is in the public ROW adjacent to residential properties and as a result it is not located in a zone. The proposed project is consistent with the purpose and intent for the public ROW and surrounding zones. The applicant is applying for a site plan review for a new wireless communications facility in the public ROW and the proposed facility meets the recommended design criteria in the LIP and MMC.

8. The subject site is physically suitable for the proposed variance. The proposed location, on the landside of PCH, keeps it away from potential impacts to scenic views. There are no anticipated impacts to visually impressive views of the Pacific Ocean nor any other scenic resources identified in the LIP.

9. The variance complies with State and local law in that it meets the requirements of the FCC, the CPUC's General Order 95 for pole-mounted electrical equipment on utility poles, and local WCF requirements per the Malibu LIP and MMC. There are no anticipated visual impacts to scenic resources.

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

**C. Site Plan Review for erecting a wireless communications facility in the public right-of-way (LIP Section 13.27.5)**

SPR No. 20-041 will allow the installation of a wireless communications facility in the public right-of-way and includes development over 18 feet in height.

1. Wireless communications facilities are permitted in the public ROW 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. The proposed wireless communications facility is consistent with LIP standards, which implements the policies and provisions of the City's LCP. The proposed wireless communications facility will be painted a dark brown color to match the replacement wooden utility pole. The proposed project is generally compatible in size, bulk, and height to existing streetlight poles located along PCH.

2. The project does not adversely affect neighborhood character. The pole-mounted antennas will be painted a dark brown color to match the existing pole. The proposed project is generally compatible in size, bulk, and height to existing wooden utility poles located along PCH. The wireless facility's 34-foot, 9-inch maximum height is also the least intrusive design compared to erecting a new pole meet all necessary requirements for CPUC vertical safety clearances and SCE mounting requirements.

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 pole-mounted antenna does exceed a height of 28 feet, as required by the LIP and MMC, 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 Federal Communications Commission (FCC) and the CPUC.

5. The proposed wireless communications facility is a use consistent with the goals, objectives, and policies of the General Plan, LCP, MMC, and City standards. Wireless communications facilities are permitted in the public ROW 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, which contain the same requirements as the MMC that implements the General Plan. 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.

#### **D. Scenic, Visual and Hillside Resource Protection (LIP Chapter 6)**

1. The proposed wireless communications facility is not anticipated to affect any scenic views of the Pacific Ocean and Santa Monica Mountains. 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 landward side of Pacific Coast Highway and 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. The proposed location is the least environmentally damaging alternative.

4. All project alternatives that would meet Verizon Wireless's goals and objectives have more significant impacts than the current proposal; therefore, this is the least impactful alternative.

5. The proposed design will include an antenna and equipment that will be painted a color that will best help them blend with their surroundings. As conditioned and designed, the project will have a less than significant impact on scenic views.

#### **E. 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, CPUC, SCE, and the City Building Safety Department.

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

3. The proposed project, as designed and conditioned, is the least environmentally damaging alternative.

4. 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 WCF No. 20-010, CDP No. 20-028, VAR No. 20-017 and SPR No. 20-041, 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. Approval of this application is to allow the project as follows:
  - a. Replacement 52-foot tall AGL wooden utility pole and utility infrastructure;
  - b. Mount two four-foot tall replacement panel antennas at a height of 34 feet, 9 inches supported by a pair of six-foot long wooden double extension arms; and
  - c. Mount new electrical support equipment consisting of two remote radio units (RRU), four power supply units (PSUs), disconnect box, fuse panel, and new fiber distribution box onto the replacement pole behind the new equipment channel.
3. Subsequent submittals for this project shall be in substantial compliance with plans on-file with the Planning Department, date-stamped June 15, 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.

4. 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.
5. 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.
6. 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.
7. 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 City of Malibu California Department of Transportation for an encroachment permit.
8. This CDP 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 ROW 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.
9. The installation and construction authorized by this CDP 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.
10. Any questions of intent or interpretation of any condition of approval will be resolved by the Planning Director upon written request of such interpretation.
11. All structures shall conform to the requirements of the Environmental Sustainability Department, Public Works Department, Federal Communications Commission, and Los

Angeles County Fire Department requirements, as applicable. Notwithstanding this review, all required permits, including but not limited to an encroachment permit from Caltrans, shall be secured.

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 LCP. An application with all required materials and fees shall be required.

#### *Cultural Resources*

13. 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).
14. 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

15. 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.
16. 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.
17. All antennas, equipment, and support structures shall be designed to prevent unauthorized climbing.

18. 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.
19. 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.
20. The proposed wireless communications facility shall not emit a noise greater than fifty (50) decibels (dB) as measured from the base of the facility.
21. 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.
22. The collocation of wireless communications facilities, pursuant to LIP Section 3.16.5, shall be required whenever feasible.
23. 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.
24. All pole mounted equipment associated with the application shall be located no lower than eight feet above grade or ground level on the utility pole.
25. 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.
26. 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.
27. 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 the cancellation or material modification of any applicable insurance policy.
28. 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 WCF, 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.
29. 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.
  30. 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.
  31. For all facilities located within the ROW, the permittee shall remove or relocate, at its expense and without expense to the City, any or all of its facilities when such removal or relocation is deemed necessary by the City by reason of any change of grade, alignment, or width of any right-of-way, for installation of services, water pipes, drains, storm drains, power or signal lines, traffic control devices, right-of-way improvements, or for any other construction, repair, or improvement to the right-of-way. The City will give the wireless carrier a six-month advance notice of such removal or relocation but may provide notice in less time if removal or relocation of the facility is required due to an emergency or other exigent matter. The Planning Director shall have discretion to extend this period for due cause.
  32. 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.
  33. 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.

34. A wireless facility or its modification installed after the effective date of Ordinance 477U without a Wireless Right-of-Way Permit (WRP) (except for those exempted from, or not subject to the Chapter) must be removed; provided that removal of a 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. All costs incurred by the City in connection with enforcement of this provision and removal shall be paid by entities who own or control any part of the wireless facility.

#### Construction

35. 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.

#### Site Specific Conditions

36. 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.
37. The permittee acknowledges that the City specifically includes conditions of approval related to (a) painting, coloring or finishing the equipment to match the pole; and (b) 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. Any future modifications to the permittee's wireless facility must maintain or improve all concealment elements, including undergrounding new or replacement equipment installed after the installation of the approved equipment pursuant to this permit.
38. 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.

39. 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.
40. 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.
41. 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.
42. The permittee shall maintain the paint, color and finish of the facility in good condition at all times.
43. 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.
44. 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 California Department of Transportation 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.
45. 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.
46. 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.
47. 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.
48. 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.
49. 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.
50. Permittee shall promptly remove any graffiti on the wireless facility at permittee's sole expense within 48 hours after notice.
51. The antenna and associated equipment attached to the replacement utility pole must be painted a matte dark brown color to match the wooden replacement pole.
52. 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.
53. 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;

- 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.
54. 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 plain view.

Prior to Operation

55. 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.
56. 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.

57. 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.

Public Works

58. The proposed project includes improvements within the California Department of Transportation's public right-of-way. The applicant shall obtain a Caltrans Encroachment Permit for the proposed work within the public right-of-way prior to installation.

Fixed Conditions

59. 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 2<sup>nd</sup> day of November 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

Any action challenging the final decision of the City made as a result of the public hearing on this application must be filed within the time limits set forth in Section 1.12.010 of the MMC and Code of Civil Procedure. Any person wishing to challenge the above action in Superior Court may be limited to raising only those issues they or someone else raised at the public hearing, or in written correspondence delivered to the City of Malibu at or prior to the public hearing.



# City of Malibu

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

Received

6/28/2021

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.

**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 \$... 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

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

Wireless Communications Facility No. 20-010, Coastal Development Permit No. 20-028, Variance No. 20-017, and Site Plan Review No. 20-041

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

Action Memo Issued June 22, 2021

3. Who made the decision you are appealing?

Planning Director                       Planning Commission

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

31557.5 Pacific Coast Highway

### 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:  
Motive for Verizon Wireless

3. Indicate the nature of your appeal.

a) Are you appealing the  approval or  the denial of the application and  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.)

See attached sheets

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 (improper process used)

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 sheets

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 sheets

### 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  
Lonnie Gordon  
APPELLANT'S SIGNATURE

[REDACTED]  
TELEPHONE NUMBER

June 28, 2021

Appellant's mailing address: 6 [REDACTED]

Appellant's email address: Lonnie Gordon <[REDACTED]>

Appellant is represented by counsel. All correspondence and contacts should be directed to:  
W. Scott McCollough  
MCCOLLOUGH LAW FIRM PC

[REDACTED]

O 512.888.1112  
M 512.633.3498  
F 512.692.2522  
email wsmc@dotLAW.biz

---

**OFFICE USE ONLY**

Action Appealed: Planning Commission Resolution 21-48 - Approval of WCF 20-101  
Appeal Period: June 22, 2021 through July 1, 2021  
Date Appeal Form and required documents submitted: June 28, 2021  
Received by: Patricia Salazar, Senior Administrative Analyst  
Appeal Completion Date: June 28, 2021

**ADDITIONAL SHEETS FOR LONNIE GORDON COASTAL COMMISSION AND  
PROTECTIVE NON-COASTAL COMMISSION APPEALS**

**Wireless Communications Facility No. 20-011, Coastal Development Permit No. 20-029, Variance No. 20-018, and Site Plan Review No. 20-040; Location: 6213.5 Kanan Dume Road**

---

**Wireless Communications Facility No. 20-010, Coastal Development Permit No. 20-028, Variance No. 20-017, and Site Plan Review No. 20-041; Location: 31557.5 Pacific Coast Highway**

---

Appellant Lonnie Gordon hereby appeals the approval of the Permits/Variations and Site Plan Reviews for the two projects identified above. Appellant is also, in the alternative, appealing the conditions of approval for each of the permits/variances. The grounds/reasons for each appeal contention are stated below.

Appellant is submitting four appeal forms. There is one Coastal Development Permit Notice of Appeal for each project (two total). There is also one “Protective Non-Coastal Development Permit” Appeal submittal for each project (two total).

Part of each of the two “Protective Non-Coastal Development Permit” “appeals” is a challenge (by way of “appeal”)<sup>1</sup> to the Director’s and Planning Commission’s failure and refusal to apply the procedural and substantive requirements of MMC Chapter 12.02 to the portion of these applications involving municipal permits (which are separate and independent from the City’s delegated processing of the required Coastal Development Permits under the Local Coastal Program<sup>2</sup>). The portion of the Pacific Coast Highway application labeled Wireless Communications Facility No. 20-010, including any waivers subject to MMC 12.02.050.E (wrongly treated as “Variance No. 20-017” for the municipal permit portion), should have been treated as an application for a “Wireless ROW” permit and waiver request, rather than a “WCF” and variance request under MMC Ch. 17.46. Similarly, the portion of the Kanan Dume application labeled Wireless Communications Facility No. 20-011, including any waivers subject to MMC 12.02.050.E (wrongly treated as “Variance No. 20-018”), should have been treated as an application for a “Wireless ROW” permit and waiver request, rather than a “WCF” and variance request under MMC Ch. 17.46.

MMC Section 12.02.040.B.1 provides that “Any person adversely affected by a decision of the director pursuant to this chapter may request an administrative hearing to appeal the director’s decision. In order to request a hearing, the person shall submit to the city clerk in the manner directed in the director’s decision notice a fully completed request for administrative hearing form.” The Director has not yet seen fit to promulgate any “request for administrative hearing form” so Ms. Gordon obviously cannot fill it out. Nor was there a “director’s decision” so there is not a “manner directed.” But to be clear: Ms. Gordon contends MMC Chapter 12.02

---

<sup>1</sup> This challenge/appeal is submitted within 5 business days of the action below, consistent with MMC Section 12.02.040.B.1.

<sup>2</sup> See Cal. Pub. Res. Code §30600(a) “Except as provided in subdivision (e), and in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person, as defined in Section 21066, wishing to perform or undertake any development in the coastal zone, other than a facility subject to Section 25500, shall obtain a coastal development permit.” (Emphasis added). This provision makes clear that the Coastal Development Permit is separate from and in addition to the municipal Wireless ROW permit. Nothing prohibits processing each according to the laws that apply to each.

**ADDITIONAL SHEETS FOR LONNIE GORDON COASTAL COMMISSION AND  
PROTECTIVE NON-COASTAL COMMISSION APPEALS**

**Wireless Communications Facility No. 20-011, Coastal Development Permit No. 20-029, Variance No. 20-018, and Site Plan Review No. 20-040; Location: 6213.5 Kanan Dume Road**

---

**Wireless Communications Facility No. 20-010, Coastal Development Permit No. 20-028, Variance No. 20-017, and Site Plan Review No. 20-041; Location: 31557.5 Pacific Coast Highway**

---

applies to the municipal permit portions of these applications, and hereby formally requests that Council vacate the Planning Department resolution in part and require the Planning Director to issue his determination and decision (MMC 12.02.040(A)(8), (9)), subject to an appeal and the required “administrative hearing.” MMC 12.02.040.B.4.

The Council should (1) determine that MMC Chapter 12.02 applies to the municipal permit portion of these projects; (2) determine that the Planning Commission was without jurisdiction to decide them; and conclude that (3) the Planning Commission action as to them is therefore void. The Director can then re-assume the role of “Reviewing Authority” and issue his determinations and decision.

The appeals to Council related to the Coastal Development Permits should also be sent back for proper processing. The Planning Director skipped a step, and the Coastal Development Permit was also not properly before the Planning Department. The Planning Department should not have acted as the reviewing authority; its role is limited to an appellate body.

Appellant reserves the right to appeal the coastal permit portion of each application to the Coastal Commission at any time – without exhausting the local appeal – as is allowed by 14 CCR §13573(a)(4) and LIP Section 13.20.1B.4 since the City imposes an appeal fee.

The attached written materials Ms. Gordon’s representatives submitted prior to and during the June 21, 2021 hearing are attached to and incorporated herein by reference. *See* Attachment 1, Gordon Opposition to Applications; Attachment 2, Tony Simmons’ 6-21-2021 oral presentation handout; Attachment 3, Susan Foster 6-21-2021 oral presentation handout (Chula Vista Fire Investigation Report).

1. Jurisdiction

A. No jurisdiction over municipal permits.

Ordinance 477 was adopted on second reading on January 11, 2021 and went into effect 30 days later. Section 5 provides:

**SECTION 5. Pending Applications** All applications for wireless facilities in the public rights-of way or for modifications to existing wireless facilities in the public rights-of-way which were not subject to final action by City prior to the effective date of this Ordinance shall be subject to and comply with all provisions of this Chapter, and any design and placement standards adopted by the City Council by resolution, to the fullest extent permitted by applicable law. (emphasis added)

These two projects were not subject to final action before the effective date of Ordinance 477. Ms. Gordon contends that the Staff, Planning Commission and Council are bound by this express requirement to apply Ch. 12 to the municipal permit portions of these applications. They

**ADDITIONAL SHEETS FOR LONNIE GORDON COASTAL COMMISSION AND  
PROTECTIVE NON-COASTAL COMMISSION APPEALS**

**Wireless Communications Facility No. 20-011, Coastal Development Permit No. 20-029, Variance No. 20-018, and Site Plan Review No. 20-040; Location: 6213.5 Kanan Dume Road**

---

**Wireless Communications Facility No. 20-010, Coastal Development Permit No. 20-028, Variance No. 20-017, and Site Plan Review No. 20-041; Location: 31557.5 Pacific Coast Highway**

---

must be handled under MMC Ch. 12. *See* Attachment 1, pp. 1-2, 4-10. To the extent Ms. Gordon is correct the Council lacks jurisdiction to rule on the merits of the municipal permit portion; all it can do is vacate the Planning Commission decision on the municipal permit portions. That is one of the reasons the “Non-Coastal Commission Appeal” is “protective”: Ms. Gordon “appeals” to challenge jurisdiction over the municipal permit portion and contests the procedure that was used by the Planning Director and Planning Commission. They each acted outside their authority under the MMC with regard to the municipal permit portions of these two applications.

The municipal portions should not have been handled by the Planning Commission since these portions were improperly before the Planning Commission. The Council has jurisdiction only insofar as is necessary to correct these legal errors by vacating the Planning Commission decision on the municipal permit portion. At that point the Director (and if necessary, a hearing officer) can render final determinations on the municipal permit portions pursuant to the delegations in MMC Section 12.02.040.

**B. Planning Commission lacked jurisdiction over Coastal Development Permits.**

The Planning Commission did not have jurisdiction under the LIP. Current LIP Section 3.16.2 contemplates a “site plan review” “pursuant to Section 13.27 of the LCP” for projects in the right of way. Section 13.27 in turn names the “Planning Manager” as the reviewing authority for wireless facilities. LIP Section 13.27.1(7). The Planning Commission is not the “reviewing authority” and does not make the initial decision. Instead, it has only appellate authority. An “aggrieved person” must appeal the Planning Manager’s decision to the Planning Commission under LIP Section 12.20.1. There was no Planning Manager decision and no aggrieved person appealed. Jurisdiction therefore never attached in the Planning Commission.

But there was nonetheless a Planning Commission decision, and the Council now has appellate authority over the Planning Commission decision.<sup>3</sup> The best course of action is to grant this appeal and send the matter back so the procedures required by the LIP can be followed. The Council will need to deal with these matters again only if there is an appeal from the Director’s determination, and if there is an appeal from the Planning Commission.

If and to the extent, however, the Council chooses to disregard its own ordinance and LIP and does take up the merits of the municipal permits and Coastal Development Permits, it should deny all of them for the reasons detailed below.

---

<sup>3</sup> This is therefore unlike the situation with the municipal permits, where MMC Ch. 12 completely delegates all final authority to the Director and then a hearing officer. Neither the Planning Commission nor the Council have any role, or any jurisdiction.

**ADDITIONAL SHEETS FOR LONNIE GORDON COASTAL COMMISSION AND  
PROTECTIVE NON-COASTAL COMMISSION APPEALS**

**Wireless Communications Facility No. 20-011, Coastal Development Permit No. 20-029, Variance No. 20-018, and Site Plan Review No. 20-040; Location: 6213.5 Kanan Dume Road**

---

**Wireless Communications Facility No. 20-010, Coastal Development Permit No. 20-028, Variance No. 20-017, and Site Plan Review No. 20-041; Location: 31557.5 Pacific Coast Highway**

---

C. Can appeal to Coastal Commission.

The other reason the “Non-Coastal Commission Permit Appeals” are “protective” in nature is that Staff is incorrect that the Coastal Development Permits are “non appealable.” They are appealable to the Coastal Commission. The wireless facilities here are “transmission” “facilities” for “telephone.” They are therefore “public works” as defined in Cal. Pub. Res. Code §30114. They are also “major public works” as defined in Cal. Code Regs. Tit. 14 §13012(a), since they each undoubtedly cost more than \$288,163. *See also* Malibu LIP Section 2.1 (Definition of major public works facilities). Therefore, the city’s action is appealable to the Coastal Commission pursuant to Cal. Pub. Res. Code §30603(a)(5).

2. The Planning Commission erred on the merits by approving the municipal and coastal development permits.

A. The Planning Commission Resolution fails to disclose what MMC requirements or criteria it applied (MMC Ch. 12 or Section 17.46).

The Resolution never mentions MMC Ch. 12. It refers to MMC Section 17.46 in Finding C.4 and E.1 but the Resolution still fails to provide fair notice to the public what standards, criteria, or requirements the Planning Commission applied when assessing the projects. One can assume that it applied MMC Section 17.46 to some extent (for example with regard to code requirements [C.4] and state and local laws [E.1]), but there were many other substantive requirements and tests in both Ch. 12 and Section 17.46 that were disposed in the Resolution but without any indication what benchmarks were used.

The best example where this is a problem relates to two variances/waivers Verizon required for these permits. Verizon needed a variance/waiver from the MMC to get permission to use a 52-foot pole on PCH and a 48-foot pole on Kanan Dume. *See* PCH Resolution and Kanan Dume Resolution Findings B.1-10. Similarly, Verizon must secure a variance/waiver from the LIP 3.16.9.B.9 requirement to provide a “coverage map.”<sup>4</sup> *See* Attachment 1, pp. 1-2, 3, 5-10.

The Resolution never states what evidentiary burden it applied for the variance/waiver. Section 12.02.050.E, however, is specific that “The director or hearing officer may grant a request for waiver only if it is demonstrated through clear and convincing evidence that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations.”

---

<sup>4</sup> Verizon refused to provide a coverage map. It also did not request a waiver or variance. It just demanded to be excused from the legal obligation. Staff in turn refused to enforce the LIP requirement. To the extent Staff claims MMC Section 17.46 governs then it must explain why it also refused to enforce the application content requirement in that section as well. Section 17.46.100.B.9 also requires that the application contain a coverage map.

**ADDITIONAL SHEETS FOR LONNIE GORDON COASTAL COMMISSION AND  
PROTECTIVE NON-COASTAL COMMISSION APPEALS**

**Wireless Communications Facility No. 20-011, Coastal Development Permit No. 20-029, Variance No. 20-018, and Site Plan Review No. 20-040; Location: 6213.5 Kanan Dume Road**

---

**Wireless Communications Facility No. 20-010, Coastal Development Permit No. 20-028, Variance No. 20-017, and Site Plan Review No. 20-041; Location: 31557.5 Pacific Coast Highway**

---

(emphasis added). Burden of proof is an essential component of any analysis, and the public must be allowed to know what burden was applied before any variance/waiver is granted.

Appellant Gordon cannot fairly be put in the position of arguing there was not “substantial evidence” to support a finding that Verizon carried its burden of proof if she does not know what burden of proof is required. But that is exactly where we are here. And, despite this unfairness, it is plain Verizon failed to carry its burden of proof *regardless of what burden applied*.

- B. Verizon failed to carry its burden of proof.
  - i. Failed to provide all required information under MMC Ch. 12.02.

MMC Section Chapter 12.02.060 requires the Director to promulgate application content requirements. He has done so. The Director’s PROW form available at <https://www.malibucity.org/DocumentCenter/View/16676/PLN-WCF-Submittal-Checklist-for-PROW?bidId=>, Section 6.B expressly calls for a coverage map. We believe, based on knowledge and belief that the forms used at the time these applications were filed also expressly called for coverage maps.

The purpose of a “coverage map” is to determine whether “alternatives exist for providing coverage.” This was the stated purpose in LIP Section 3.16.B.9 and MMC 17.46.100.B.9 and this remains the reason today. 47 U.S.C. §332(c)(7)(B) expressly reserves determinations on “location” to local siting authorities, and coverage maps are key to the location decision. Verizon refused to provide this information, thereby risking an adverse finding for failing to carry its required burden of proof on location. The Council must enforce this requirement and deny the permits. *See* Attachment 1, pp. 1-2, 3, 5-10.

- ii. Failed to provide all required information under MMC Ch. 17.46.

Verizon also failed to carry its burden of proof under MMC Ch. 17.46, if it applies, for the same reason. Section 17.46.100.B.9 requires coverage maps. Without one the city cannot make a full assessment of location alternatives.

- iii. Failed to provide all required information under LIP 3.16.

The story is the same for the LIP 3.16.B.9 coverage map requirement. Verizon failed to produce the information that is necessary to make an intelligent decision on location alternatives, and it therefore did not carry its burden of proof.

**ADDITIONAL SHEETS FOR LONNIE GORDON COASTAL COMMISSION AND  
PROTECTIVE NON-COASTAL COMMISSION APPEALS**

**Wireless Communications Facility No. 20-011, Coastal Development Permit No. 20-029,  
Variance No. 20-018, and Site Plan Review No. 20-040; Location: 6213.5 Kanan Dume  
Road**

---

**Wireless Communications Facility No. 20-010, Coastal Development Permit No. 20-028,  
Variance No. 20-017, and Site Plan Review No. 20-041; Location: 31557.5 Pacific Coast  
Highway**

---

- iv. Failed to provide proof of entitlement to benefits provided by 47 U.S.C. §332(c)(7) and MMC Ch. 12.02.

The federal protections and benefits *vis-à-vis* local siting authorities flowing from 47 U.S.C. §332(c)(7) and in particular the “limitations” in (c)(7)(B) only apply to providers of “personal wireless service.” *See also* FCC rules 47 C.F.R. 1.6002(i), (k).<sup>5</sup>

Verizon’s application and the materials available to the public as of the day these applications were heard did not include *any evidence* that the facilities in issue would be used to provide personal wireless service.<sup>6</sup> Verizon had the duty to prove entitlement to the protections given under federal law and failed to do so. Since Ch. 12.02 applied, and it expressly only allows permits for facilities that will be used to provide personal wireless service (12.02.020 definitions), Verizon also failed to prove it was eligible for a WRP. *See* Attachment 1, pp. 2-3, 10-14.

C. Assuming without conceding the Planning Commission was the reviewing authority for the municipal permits it applied the wrong standards to the application and the “variance” (waiver) Verizon seeks.

- i. Must apply MMC Ch. 12.02.

As explained above, MMC Ch. 12.02 applies, but the Planning Commission did not appear to apply Ch. 12.02 standards or requirements to these applications. That was error and it must be remedied on appeal. *See* Attachment 1, pp. 1-2, 3, 5-10

- ii. Applied wrong standard to “variances” (waivers).

As explained above Verizon needed at least two separate waivers – relating to pole height and coverage map provision. MMC Section 12.02.050(E) requires clear and convincing evidence to obtain a waiver. The Planning Commission did not appear to apply Ch. 12.02 standards or requirements to the necessary waivers. That was error and it must be remedied on appeal.

---

<sup>5</sup> “Minor modifications” do not need to be in whole or in part for the provision of personal wireless service. These applications do not involve a minor modification, however.

<sup>6</sup> Verizon claimed at the hearing it had filed some kind of letter with additional information on this issue just a few hours before the hearing. Verizon did not serve Ms. Gordon and it is functionally unavailable to her. If and when Verizon chooses to provide this information to Ms. Gordon, we will respond. To the extent the Planning Commission relied on evidence not available to Ms. Gordon or her representatives it committed prejudicial procedural error because she did not have a meaningful opportunity to address Verizon’s late-filed contentions.

**ADDITIONAL SHEETS FOR LONNIE GORDON COASTAL COMMISSION AND  
PROTECTIVE NON-COASTAL COMMISSION APPEALS**

**Wireless Communications Facility No. 20-011, Coastal Development Permit No. 20-029, Variance No. 20-018, and Site Plan Review No. 20-040; Location: 6213.5 Kanan Dume Road**

---

**Wireless Communications Facility No. 20-010, Coastal Development Permit No. 20-028, Variance No. 20-017, and Site Plan Review No. 20-041; Location: 31557.5 Pacific Coast Highway**

---

D. The Planning Commission erred by granting the coastal development permits because the development does not conform to the standards set forth in Malibu’s local coastal program.

The Local Implementation Plan has specific criteria and requirements for coastal development permits under LIP Ch. 3.16 and variances/waivers under LIP Ch. 13.26. Verizon failed to carry its burden of proof. The CDPs in issue here therefore cannot be granted, and the Council must deny them.

There is another issue where Verizon received a variance, although it did not ask for one and the Planning Commission did not assess the issue in terms of 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 try to demonstrate adequate design, fire/electrical safety or code compliance in its application or in any evidence presented up to and during the hearing. 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 required findings in LIP Section 13.26.5.B, C, D, E or I as to the safety/code compliance waiver even though they are directly relevant and necessary.

Granting this waiver is definitely 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. Besides, it is really bad policy.

The coastal development permits must be denied.

3. 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.

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.”<sup>7</sup> Notice that code compliance is listed as a separate requirement *in addition* to any conditions. The plain English interpretation of this

---

<sup>7</sup> MMC Section 17.46.060 contains virtually identical substantive design provisions as those in LIP Section 3.6.5. If Ch. 12.02 does not apply and Section 17.46 does apply, then it should be interpreted in similar fashion.

**ADDITIONAL SHEETS FOR LONNIE GORDON COASTAL COMMISSION AND  
PROTECTIVE NON-COASTAL COMMISSION APPEALS**

**Wireless Communications Facility No. 20-011, Coastal Development Permit No. 20-029, Variance No. 20-018, and Site Plan Review No. 20-040; Location: 6213.5 Kanan Dume Road**

---

**Wireless Communications Facility No. 20-010, Coastal Development Permit No. 20-028, Variance No. 20-017, and Site Plan Review No. 20-041; Location: 31557.5 Pacific Coast Highway**

---

provision is that code compliance cannot be determined after a decision and or merely as part of conditions.

The remainder of LIP Section 3.16.5 impose other requirements, such as pole height collocation, location on existing utility poles and separation from schools and parks. These are substantive requirements, each of which must be met and proven before a decision to grant is made. The applicant has the burden of proving compliance and if compliance is not proven (or a waiver/variance granted after satisfying the applicable standard of proof) then the permit must be denied. The LIP clearly requires that the applicant demonstrate safety/code compliance *before* a permit application can be approved.

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, 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.

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.

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 June 21. The design document fell far short of proving code compliance and safe design. Appellant provided direct evidence – including testimony provided under the seal of a licensed professional engineer – that Verizon’s proof was wholly inadequate for several reasons. *See* Attachment 1, pp. 3-4, 14-15; Attachment 3. 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 Planning Commission Resolutions, Findings B.2, B.3, B.4, B.9, C.4, E.1, E.2, and E.4 do not have substantial evidentiary support in the record.

**ADDITIONAL SHEETS FOR LONNIE GORDON COASTAL COMMISSION AND  
PROTECTIVE NON-COASTAL COMMISSION APPEALS**

**Wireless Communications Facility No. 20-011, Coastal Development Permit No. 20-029, Variance No. 20-018, and Site Plan Review No. 20-040; Location: 6213.5 Kanan Dume Road**

---

**Wireless Communications Facility No. 20-010, Coastal Development Permit No. 20-028, Variance No. 20-017, and Site Plan Review No. 20-041; Location: 31557.5 Pacific Coast Highway**

---

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 requires 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 has an engineer expert that specializes in this very topic, but she and her expert 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. *See* Conditions 10, 38, 52-54. This is a violation of due process and transgresses all notions of transparency.

Finally, and we say this with all due respect to Staff and even their outside consultants, but it is plain no one at the city level has anything close to the competence that is necessary to assess wireless provider electrical designs. No one has made any effort to review code/safety compliance for the hundreds of existing sites that are already out there, and it appears Staff has no plan and no ability to adequately follow-up on these two projects or any other.

Appellant Gordon’s engineering expert Tony Simmons spent only a few hours in Malibu on Sunday June 20 and identified a host of code violations on existing facilities. *See* Attachment 3. This was from an external visual inspection only. Mr. Simmons presented the result of his inspection at the Planning Commission hearing. We can confidently predict that if Mr. Simmons was granted access to the internal electrical gear he would find many more – and probably even worse – violations and risks. If Mr. Simmons could see the final drawings he would be able to spot more problems. But he lacks access to the internal portion of these facilities and the final drawings.

But Ms. Gordon’s team can confidently state to the Council that many, if not all, of the existing wireless facilities in Malibu are fires waiting to happen. The two projects now before Council and the many others in the pipeline will only add to the count unless the Council requires that Verizon (and every other wireless provider) prove adequate design and code compliance *before* any permit is granted.

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. Again.

**ADDITIONAL SHEETS FOR LONNIE GORDON COASTAL COMMISSION AND  
PROTECTIVE NON-COASTAL COMMISSION APPEALS**

**Wireless Communications Facility No. 20-011, Coastal Development Permit No. 20-029,  
Variance No. 20-018, and Site Plan Review No. 20-040; Location: 6213.5 Kanan Dume  
Road**

---

**Wireless Communications Facility No. 20-010, Coastal Development Permit No. 20-028,  
Variance No. 20-017, and Site Plan Review No. 20-041; Location: 31557.5 Pacific Coast  
Highway**

---

Council must deny these two applications and require that Verizon present adequate and complete proof of safety and code compliance before any final decision on whether to grant these permits.

4. Objections to specific conditions

Condition 3. This condition requires that all subsequent submittals be “in substantial compliance with the plans on file with the Planning Department, date-stamped June 16, 2020” (for PCH) and “June 15, 2020” (for Kanan Dume). Those plans are inadequate, as explained above. It conflicts with other Conditions, such as 11, 18, 38, 52-54.

Conditions 11, 18, 38, 52-54. These conditions are improper for the reasons stated above. They should be substantive requirements for approval, not mere post-approval conditions.

ATTACHMENT 1 TO ADDITIONAL SHEETS FOR LONNIE GORDON APPEALS

Gordon Opposition to Applications



Internet Communications Utilities Regulation

# McCOLLOUGH LAW FIRM<sup>PC</sup>

[www.dotLAW.biz](http://www.dotLAW.biz)



512.888.1112

512.692.2522

[wsmc@dotLAW.biz](mailto:wsmc@dotLAW.biz)

## MEMORANDUM

From: W. Scott McCollough  
To: Malibu Planning Commission  
Copy: Planning Commission Staff and City Attorney  
Date: June 6, 2021  
Re: Planning Commission June 7, 2021 Meeting, Items 5.H and 5.I

(5.H) Wireless Communications Facility No. 20-010, Coastal Development Permit No. 20-028, Variance No. 20-017, and Site Plan Review No. 20-041 – An application for an upgraded wireless communications facility on a new replacement wooden utility pole in the public right-of-way; Location: 31557.5 Pacific Coast Highway

(5.I) Wireless Communications Facility No. 20-011, Coastal Development Permit No. 20-029, Variance No. 20-018, and Site Plan Review No. 20-040 – An application for an upgraded wireless communications facility on a new replacement wooden utility pole in the public right-of-way; Location: 6213.5 Kanan Dume Road

This firm represents Lonnie Gordon, a Malibu resident (Protestant). Protestant will appear in person and through her representatives at the June 7 hearing to oppose both applications and request that the Commission not approve them. Protestant requests that the undersigned and our two experts be given equivalent and equal participatory time and status to that afforded to the applicant’s representatives and not a mere 3 minutes per person during public comment.

Protestant provides the discussion below and the information/evidence in Attachments 1 and 2. Please place these materials in the record.

### I. SUMMARY

The Planning Commission should dismiss these applications on a procedural basis. If it does address the merits it should deny all requested permits. Verizon has failed to carry its burden of proving entitlement, eligibility for the expressly and implicitly requested waivers/exceptions, and, most important, that the proposed design is both safe and code compliant.

1. **The Planning Commission lacks jurisdiction over these applications.** Malibu Municipal Code Chapter 12 (adopted through Ordinance 477) implemented a procedure using administrative processing by the Planning Director and appeal to a hearing officer. There is no Planning Commission reviewing authority or appellate role for municipal permits in public right of way. Under the Local Implementation Plan (LIP) a separate Coastal Development Permit is supposed to be secured through a similarly

administrative Planning Manager overseen Site Review Plan process, and the Planning Commission has only appellate, not original jurisdiction. There has been no decision and no appeal so the Coastal Development Permit application is also not properly before the Planning Commission. The only action that can be taken by the Planning Commission is dismissal or remittance back to the Planning Director/Manager for initial disposition, with any subsequent appeals taking their legislatively-ordained separate tracks.

This outcome may lead to problems, but it is mandated by the clear terms of the relevant governing laws in the MMC and LIP. Notably, Staff insisted on administrative processing and recourse to a hearing examiner under MMC Chapter 12 and convinced the City Council to adopt that process over the objection of many residents who opposed that process. Staff did not realize, or knew and did not disclose, that their approach requires different processes for each permit type. Ultimately, this is the procedure Staff insisted upon and the City Council adopted. The Planning Commission cannot circumvent the process by which it is bound despite Staff's improper placement of these applications before the Planning Commission in contravention of governing law.

**2. What substantive standards and requirements apply?** The Staff Agenda Report reveals that Staff used a hodge-podge, *ad hoc* approach to the substantive standards and requirements applicable to these permits. Although it is not entirely clear, it appears Staff mostly applied or referenced a standard or requirement from MMC Chapter 17.46 even though MMC Chapter 12 replaced Chapter 17.46 for ROW municipal permits in December 2020 and it has different rules. The Agenda Report never cites to MMC Chapter 12 or the associated Resolution 20-65, but Staff nonetheless imposed some of the MMC Chapter 12 permit conditions without so disclosing or explaining why. Staff applied the insurance coverage requirements in Resolution 20-65 Section 10.A.24, for example.

Protestant agrees that the LIP standards and requirements apply to the Coastal Development Permit. But MMC Chapter 12 standards and requirements apply to the separate municipal permit, except for those related to aesthetics. As a single example, the higher MMC Section 17.46.060.D "clear and convincing evidence" standard for waivers/exceptions/variances, rather than the lower "technical evidence acceptable to the planning manager" standard in MMC Section 17.46.N and O must be applied to Verizon's expressly and implicitly requested waivers/exceptions/variances in the context of the municipal permit. All of the conditions in Resolution 20-65, not just those Staff wants to use, must be imposed as part of the municipal permit.

The Planning Commission cannot use Staff's arbitrary approach. It must follow the municipal code process and assiduously apply the prescribed substance for the municipal permits Verizon seeks. More important, and even if it does not apply new MMC Chapter 12, it must be absolutely clear what "law" and "substance" and "standard" it is applying and state the justification for selecting those standards.

**3. Verizon has not proven the Wireless Facilities will be used to provide any "personal wireless service."** Assuming the Planning Commission considers the merits of the applications, under both federal law and the MMC (whether Chapter 12 or Section



17.46) a provider is eligible for municipal permits only if the proposed facility will, in fact, be used to support some personal wireless service. There is nothing in the record proving that Verizon will in fact use these two facilities to support any personal wireless service. It has therefore failed its burden of proving entitlement and the municipal permits must be denied.

4. **Deny the proposed and implicit waivers/exceptions/variances.** Verizon expressly sought a waiver/exception to the formerly-applicable MMC Section 17.46.100.B.9, the MMC Chapter 12 current application form Section 6.B and the LIP Section 3.16.9.9 “coverage map” requirements. The Planning Commission must deny this waiver. Verizon has not presented clear and convincing evidence that the waiver is appropriate. The coverage map is necessary. The Planning Commission cannot make the required findings related to pole replacement location or pole height without the information a coverage map would yield.

Verizon also implicitly sought other waivers from important requirements when it refused to supply other required information. For example, Verizon did not advise whether the proposed projects are within 600 feet of any other wireless facility. Staff failed to catch these omissions. The Planning Commission must reject these implicit waivers, and deny the applications because they do not satisfy at least two applicable substantive requirements.

5. **Verizon has not proven code compliance or safe electrical design. Staff completely failed to adequately review the proposed electrical design and ensure all fire hazards have been mitigated.** This is the most crucial issue the Planning Commission has before it now, and will need to contend with in all other future applications. See Attachment 2 (Susan Foster submission). The entire city relies on the permit reviewing authority to ensure that any proposed wireless facility has been rigorously designed to mitigate all known fire hazards, and will meet all applicable code requirements. Failure in this regard will threaten the life and property of every Malibu resident. If the Commission reaches the merits it is up to you to prevent another devastating fire in Malibu caused by utility/telecom infrastructure.

Malibu General Plan Policy 1.1.2 states that the “City shall minimize the risk of loss from fire.” All potentially applicable laws require that express findings that the project design is both safe and fully compliant with all applicable codes. There is nothing in the record, however, to support a finding of code compliance other than bald conclusions without any analysis or support. There is no reliable evidence the Planning Commission can use to enter the required code compliance findings. Even worse, Verizon’s presentation on electrical safety design is woefully deficient and contains a potential error related to power supply. No licensed engineer was willing to opine that the design is safe. Indeed, the only Verizon engineer that did supply information *expressly disclaimed any opinion on electrical and structural safety.*

Protestant, on the other hand, is providing an opinion (Attachment 1), sealed by licensed engineer Tony Simmons, that affirmatively states that “the unsigned, unsealed engineering documents submitted on behalf of Verizon do not demonstrate with engineering certainty that the five hazards associated with using electricity have been fully evaluated and mitigated for these two installations.” He affirmatively states that “the



record before the Planning Commissions of the Resolutions does not support adoption of the proposed findings in Section 3 of the draft Resolutions related to code compliance and general safety and welfare, including but not limited to A.1, B.2, B.4, B.9, C.4, C.5 and E.1-4 in Resolutions 21-48 and 21-49.”

Verizon has failed to prove safe design and code compliance. The Planning Commission cannot enter the required findings if it abides by General Plan Policy 1.1.2 and endeavors to “minimize the risk of fire.” For this reason alone all of the permits must be denied.

As stated in the above Summary and further discussed below, the Commission must dismiss these applications for lack of jurisdiction. If it reaches the merits, however, it must deny all of these permits.

## II. ARGUMENT

### A. Planning Commission lacks jurisdiction over these applications

Verizon is required to obtain two separate permits for each facility First, Verizon must obtain a municipal permit under MMC Chapter 12.02. Second, and separately, Verizon must secure a Coastal Development Permit. The City is handling the Coastal Development Permit because it has assumed delegated authority from the Coastal Commission. To perform that function the City Council enacted Section 3.16 in the Local Implementation Plan. But there must still be 2 permits for each facility.<sup>1</sup> Each permit has its own identity, and each has specific procedures and substantive requirements. The reviewing authority must abide by each, and apply those procedures and substantive requirements to each.

The process and substance was largely the same for both when MMC Chapter 17.46 applied to ROW-related applications. So the reviewing authority could hear both permits on a “concurrent” basis. See LIP Section 13.3.C. It was possible to use the same processes and make the same findings, then separately approve (or deny) each permit. But that all changed in December when the Council adopted MMC Chapter 12 on an urgency and then permanent basis. The process, substance and required findings for a Chapter 12 permit are all now different from those under the LIP. And, most important, the reviewing authority is different. When the Council was debating Ordinance 477 Staff insisted that the process should be administrative in nature. Although many Malibu residents stated a clear desire for Planning Commission review, staff opposed that and convinced Council that administrative processing was the better route. They convinced the City Council, over the citizens’ objection. MMC Chapter 12.02, enacted through Ordinance 477, now clearly and expressly states that the Planning Director is the Reviewing Authority and the one that “determine(s) whether to approve, approve subject to conditions, or deny and application.” MMC 12.02.040.A.8. The Planning Director’s determination is then subject to appeal to a Hearing Officer. MMC Section 12.02.040.B.4-.6. There is no role for Planning Commission for Chapter

---

<sup>1</sup> Staff agrees, at least conceptually, that each permit is separate when it notes on Staff Agenda Report page 9 that “a proposal for an upgraded facility would materially result in an equivalent bundle of permits (WCF, CDP, SPR, VAR) and equivalent hearing before the approval body.” (emphasis added)



12 ROW permits. Simply put, the Planning Commission now lacks jurisdiction over applications for Wireless ROW Permits. The Planning Commission must dismiss the application under Chapter 12 for lack of jurisdiction. The process envisioned by Chapter 12 must be applied.

The Planning Commission also does not have jurisdiction under the LIP. Current LIP Section 3.16.2 contemplates a “site plan review” “pursuant to Section 13.27 of the LCP” for projects in the right of way. Section 13.27 in turn names the “Planning Manager” as the reviewing authority for wireless facilities. LIP Section 13.27.1(7). The Planning Commission does not make the initial decision. Instead, it has only appellate authority. An “aggrieved person”<sup>2</sup> must appeal the Planning Manager’s decision to the Planning Commission under LIP Section 12.20.1. There has been no Planning Manager decision and no aggrieved person has appealed. Jurisdiction has therefore not attached in the Planning Commission.

The Planning Commission lacks jurisdiction. The proper processes under MMC Chapter 12 and the LIP must be followed. The Planning Director must make a decision under MMC Chapter 12, and a separate decision under LIP 13.27. Then, if anyone is dissatisfied they must take two different appellate routes: the Chapter 12 permit goes to the hearing examiner and the LIP comes to the Planning Commission.

This is not an ideal outcome, but it is the clear consequence of the Staff’s insistence before the City Council that this Commission should not be involved in Chapter 12 ROW applications. They prevailed over the community’s objection and must live with the problem they created. Staff cannot now vest jurisdiction in the Planning Commission. Only the City Council can do that and they did not.

**B. What substantive standards and requirements apply?**

Assuming (without conceding) that the Planning Commission has jurisdiction, the Staff Agenda Report must be rejected and both projects must be denied.

Staff may contend that the LIP takes precedence over the MMC so the entire process and substance collapses into a purely LIP-based review for both permits. That is incorrect. Chapter 12 applies on its face. Each permit stands on its own and the processes and standards for each must be applied to each, separately.

An “MMC Chapter 12” permit does not suffice alone since Verizon must also obtain a Coastal Development Permit. If either permit imposes higher duties and obligations then Verizon must abide by them. The Coastal process and substance does not eliminate or make irrelevant the Chapter 12 process or substance. Both apply, and both must be followed.

---

<sup>2</sup> AGGRIEVED PERSON - any person who, in person or through a representative, appeared at a public hearing of the City of Malibu or the California Coastal Commission in connection with the decision or action on a Coastal Development Permit application, or who, by other appropriate means prior to a hearing, informed the City of Malibu or the California Coastal Commission of the nature of his/her concerns or who for good cause was unable to do either. “Aggrieved person” includes the applicant for a Coastal Development Permit.



Staff, however, did not consistently follow or apply the proper legal and substantive standards under either Chapter 12 or LIP Section 3.16.1. Indeed, it is not clear what standards Staff contends do apply for applications deemed complete before the City Council adopted Malibu Municipal Code (MMC) Chapter 12.02 and Resolution 20-65 in December, 2020. They did not consistently apply the standards in MMC Chapter 12.02 and Resolution 20-65 or former MMC Chapter 17.46. Nor did Staff consistently apply LIP Chapter 3.16. They seem to have operated on an *ad hoc* basis.

If these applications are somehow properly before this Commission it has a separate obligation to exercise independent judgement since it will be the one that is formally acting on the applications and entering all required findings. See MMC Sections 2.36.080, 17.04.080. Before it takes any action the Planning Commission must expressly state just what standards, rules and procedures it is applying to these applications. And then follow them. For each of the two permits involved in Agenda Item H and each of the two permits in Agenda Item I.

While there are several aspects to the “process” and “standards” issue in the context of these applications, two predominate. The first issue, of course, is whether the old ordinance provisions in MMC Chapter 17.46 or new Chapter 12.02 (and Resolution 20-65) apply. The second is the burden of proof Verizon must carry to obtain approval.

Setting aside the jurisdictional issue, Protestant contends that the commands in Chapter 12.02 and Resolution 20-65 apply for the most part and are only preempted with regard to “aesthetics” standards.

Ordinance 484 (adopting new Chapter 12.02) Section 6 provides:

SECTION 6. Pending Applications. All applications for wireless facilities on land other than public ROW or for modifications to existing wireless facilities in the public rights-of-way which were not subject to final action by City prior to the effective date of this Ordinance shall be subject to and comply with all provisions of this Chapter, and any design and placement standards adopted by the City Council by resolution, to the fullest extent permitted by applicable law.

Although they never disclosed this issue while the City Council was considering Ordinance 477U and 477 and the “Pending Applications” provision, Staff now asserts that the new Ordinance and Resolution 20-65 cannot be applied to applications not subject to final action, but for which the Planning Director deemed the application complete before December 2020. They do so because of certain language in the FCC’s 2018 *Small Cell Order*. They are incorrect.

Staff bases its position on the “advance publication” requirement in *Small Cell Order* ¶¶86, 88 and 91.<sup>3</sup> Those passages are absolutely clear, however, that only **\*aesthetics\*** (and minimum spacing requirements imposed for aesthetics reasons, but not when imposed for other reasons) have to be published “in advance” of the time an application is deemed complete.

---

<sup>3</sup> The *Small Cell Order* is available at [https://docs.fcc.gov/public/attachments/FCC-18-133A1\\_Rcd.pdf](https://docs.fcc.gov/public/attachments/FCC-18-133A1_Rcd.pdf).



86. Given these differing perspectives and the significant impact of aesthetic requirements on the ability to deploy infrastructure and provide service, we provide guidance on whether and in what circumstances aesthetic requirements violate the Act. This will help localities develop and implement lawful rules, enable providers to comply with these requirements, and facilitate the resolution of disputes. We conclude that aesthetics requirements are not preempted if they are (1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) objective and published in advance.

...

88. Finally, in order to establish that they are reasonable and reasonably directed to avoiding aesthetic harms, aesthetic requirements must be objective--i.e., they must incorporate clearly-defined and ascertainable standards, applied in a principled manner--and must be published in advance. [n246 omitted] "Secret" rules that require applicants to guess at what types of deployments will pass aesthetic muster substantially increase providers' costs without providing any public benefit or addressing any public harm. Providers cannot design or implement rational plans for deploying Small Wireless Facilities if they cannot predict in advance what aesthetic requirements they will be obligated to satisfy to obtain permission to deploy a facility at any given site. n247

...

n247 Some local governments argue that, because different aesthetic concerns may apply to different neighborhoods, particularly those considered historic districts, it is not feasible for them to publish local aesthetic requirements in advance. See, e.g., Letter from Mark J. Schwartz, County Manager, Arlington County, VA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (Sept. 18, 2018) (Arlington County Sept. 18 Ex Parte Letter); Letter from Allison Silberberg, Mayor, City of Alexandria, VA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (Sept. 18, 2018). We believe this concern is unfounded. As noted above, the fact that our approach here (including the publication requirement) is consistent with that already enacted in many state-level small cell bills supports the feasibility of our decision. Moreover, the aesthetic requirements to be published in advance need not prescribe in detail every specification to be mandated for each type of structure in each individual neighborhood. Localities need only set forth the objective standards and criteria that will be applied in a principled manner at a sufficiently clear level of detail as to enable providers to design and propose their deployments in a manner that complies with those standards.

...

91. Minimum Spacing Requirements. Some parties complain of municipal requirements regarding the spacing of wireless installations--i.e., mandating that facilities be sited at least 100, 500, or 1,000 feet, or some other minimum distance, away from other facilities, ostensibly to avoid excessive overhead "clutter" that would be visible from public areas.[n.250 omitted] We acknowledge that while some such requirements may violate 253(a), others may be



reasonable aesthetic requirements.[n.251 omitted] For example, under the principle that any such requirements be reasonable and publicly available in advance, it is difficult to envision any circumstances in which a municipality could reasonably promulgate a new minimum spacing requirement that, in effect, prevents a provider from replacing its preexisting facilities or collocating new equipment on a structure already in use. Such a rule change with retroactive effect would almost certainly have the effect of prohibiting service under the standards we articulate here. Therefore, such requirements should be evaluated under the same standards for aesthetic requirements as those discussed above.

As is plain from each of these paragraphs, the FCC was discussing **\*only\*** aesthetics, and not any other topic or local requirement. That is certainly how the Ninth Circuit understood the issue. *City of Portland v. United States*, 969 F.3d 1020, 1041 (9th Cir. 2020). Thus, while any “aesthetics” requirements in Chapter 12.02 and Resolution 20-65 that materially differ from those in effect at the time the applications were submitted may be preempted, nothing in the *Small Cell Order* precludes recourse to the remainder of the process and substantive requirements in Chapter 12.02 and Resolution 20-65. Staff has essentially agreed this is so, even though they are not candid about it. For example, Staff has imposed the higher insurance requirements in Resolution 20-65, along with some other conditions.

The Planning Commission is bound by the “Pending Applications” provision in Ordinance 484 “to the fullest extent allowed by law.” The law allows recourse to Chapter 12.02 and Resolution 20-65, excepting *only* requirements imposed for aesthetics reasons. Staff may think it is not bound by the City Council’s direction and can do whatever it wants without any guiding principles, but Protestant hopes the Planning Commission is more inclined to honor its duties and obligations under MMU 2.36.080 and 17.04.080. In order to find that the applications are “consistent with the objectives, policies, general land uses, and goals of the Malibu general plan” (MMU 17.04.080) the Planning Commission must first articulate what standards it is applying and precisely what it is finding “consistency” with.

The second issue pertains to the burden of proof Verizon must carry to obtain approval, especially with regard to waivers. MMC Chapter 12.02.050(e) provides that a waiver request may be granted

...only if it is demonstrated through clear and convincing evidence that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations. All waivers approved pursuant to this subsection shall be (1) granted only on a case-by-case basis, and (2) narrowly-tailored so that the requirements of this Chapter are waived only to the minimum extent required to avoid the prohibition or violation.

This is not an “aesthetics” requirement; it is a legal and evidentiary rule. Therefore the new Ordinance can and does apply. Yet, even though Verizon sought exceptions or variances to install replacement poles taller than 28 feet, Staff did not apply the “clear and convincing” standard to the municipal permit request. Indeed, the Staff Agenda Report contains no discussion of the evidentiary burden Staff applied or



proposes that the Planning Commission apply. The Planning Commission must apply the proper standard when it assesses the waiver requests under the two separate regimes. Protestant contends Verizon did not meet its burden of proof.

Verizon sought, and Staff proposes to grant, a waiver from the formerly-applicable MMC Section 17.46.100.B.9, and from MMC Chapter 12 current application form Section 6.B “coverage map” requirements<sup>4</sup> for purposes of the municipal permits. Verizon sought, and Staff proposes to grant, a waiver from the similar LIP Section 3.16.9.9 “coverage map” requirement for purposes of the Coastal Development permits.

One of the expressly-stated reasons for mandating a coverage map is “whether alternatives exist for providing coverage.” See, e.g., LIP Section 3.16.9.9 and former MMC Section 17.46.100.B.9. Staff catered to “Verizon’s goals and objectives” when it addressed alternatives, but neither Verizon nor Staff chose to tell the Planning Commission or the public what those “goals and objectives” are so they are not in evidence. Neither the Planning Commission nor the public can assess them to determine if those “goals and objectives” are congruent with Malibu’s goals and objectives. Nor can the Planning Commission independently assess potential alternatives since there is no coverage map.<sup>5</sup>

Staff agreed with Verizon’s contention that the FCC preempted local coverage map demands in the *Small Cell Order*. Interestingly, Verizon cited to ¶40 but Staff focused on note 87, which is actually part of ¶37. Regardless, both Verizon and Staff are incorrect and the Planning Commission must reject this position. The FCC *did not* prohibit demands for coverage maps. What ¶40 said was that “[d]ecisions that have applied solely a ‘coverage gap’-based approach under Section 332(c)(7)(B)(i)(II) reflect both an unduly narrow reading of the statute and an outdated view of the marketplace.” This part of the *Small Cell Order* was where the FCC was addressing the “effective prohibition” test. By “coverage gap-based approach” the FCC was referring to past decisions that required proof of a complete gap in current adequate coverage, as distinguished from the situation where a provider sought to *improve existing coverage*.<sup>6</sup> See *Small Cell Order* ¶¶34-42. Protestant here, and only for purposes of this case, is not contending Verizon must prove a complete gap in coverage. The issue is appropriate location for the site and the height of the pole.

---

<sup>4</sup> New Chapter 12.02 and Resolution 20-65 do not have express application content requirements so they do not explicitly call for coverage maps. Chapter 12.02.060.D provides that the Director shall determine what is required in the application. It goes on to state that in any event the applicant shall submit “all required fee(s), documents, information, and any other materials necessary to allow the Director to make required findings and ensure that the proposed facility will comply with applicable federal and state law, the City Code, and will not endanger the public health, safety, or welfare.” The Director has promulgated a PROW form, and it does expressly require coverage maps. See <https://www.malibucity.org/DocumentCenter/View/16676/PLN-WCF-Submittal-Checklist-for-PROW?bidId=>, Section 6.B. Regardless, the Planning Commission cannot make all required findings without a coverage map, as explained below.

<sup>5</sup> All this assumes these projects will be used to provide personal wireless service in the vicinity. If these facilities will not provide personal wireless service then Verizon is not eligible for the requested municipal permits. We will return to that subject below.

<sup>6</sup> Again, we will return to the question of coverage improvement, and need, below.



But nowhere does the FCC expressly say local siting authorities cannot require a coverage map to assess potential alternatives for siting after need has been shown. Nor could it given the express reservation in 47 U.S.C. §332(c)(7)(B) that local siting authorities can determine the “placement” of personal wireless facilities. “Placement” includes “location.” Even if one accepts *arguendo* that Verizon has adequately demonstrated an actual need for improved coverage, Malibu has every right to decide where the best location is for that purpose. Even though this is an “upgrade” to an existing facility it may well be that the whole thing should be moved somewhere else. Part of the “best location” exercise is understanding current coverage and the proper location that will meet Malibu’s general plans and policies while still fulfilling any demonstrated need for coverage enhancement/supplementation in the area.

Verizon flatly refused to provide a coverage map. Staff wants to let them get away with doing so based on a strained reading of the *Small Cell Order*. The Planning Commission must not go along with this ruse. Since there is no coverage map the Planning Commission lacks the evidence it needs to assess the pole replacement/height variance and determine the proper location. Verizon chose to not supply required information and must now live with that decision. The Planning Commission must find that Verizon has not carried its burden of providing “clear and convincing evidence” that (1) the variance is justified, (2) coverage supplementation is best accomplished at the current location, (3) the current height is inadequate so a taller pole is required, and (4) the proposed height is the best (or least-worst) solution. You cannot answer those questions without a coverage map and certainly cannot find there was clear and convincing evidence without one. The permit under MMC Chapter 12 must be denied and the permit under LIP Section 3.16 must be denied because Verizon did not provide sufficient information to make a decision on the best location and the proper height at that location.

C. Verizon has not proven the Wireless Facilities will be used to provide any “personal wireless service” and therefore did not show eligibility for the municipal permit<sup>7</sup>

All the relevant current and former Malibu ordinances apply only to “wireless facilities” that will support “personal wireless service” as defined in 47 U.S.C. §332(c)(7)(C)(i). See MMC Section 17.46.040 (Definitions); MMC Section 12.02.020 (Definitions).<sup>8</sup>

Section 332(c)(7)(C) provides relevant definitions:

(C) Definitions

For purposes of this paragraph—

---

<sup>7</sup> The following discussion does not apply to the Coastal Development Permit application. Those permits are available to all providers of wireless communications services, including those that provide only private mobile service. See LIP Section 2.2 (Definitions). This is yet another situation where the municipal permit program substance differs from that in the Local Coastal Program.

<sup>8</sup> This is not a Spectrum Act “eligible facility” or “wireless facility modification” request. See MMC Section 12.02.020 (Definitions). The entitlement concepts applicable to those do not apply here.



(i) the term “personal wireless services” means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;

(ii) the term “personal wireless service facilities” means facilities for the provision of personal wireless services; and

(iii) the term “unlicensed wireless service” means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services (as defined in section 303(v) of this title).

“Commercial mobile service” is defined in 47 U.S.C. §332(d)(1):

[T]he term “commercial mobile service” means any mobile service (as defined in section 153 of this title) that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission.

The FCC rules are consistent. For example, 47 C.F.R. §1.6002(i) defines a “Facility or personal wireless service facility” as “an antenna facility or a structure that is used for the provision of personal wireless service, whether such service is provided on a stand-alone basis or commingled with other wireless communications services.” (emphasis added)

These definitions collectively demonstrate that a mobile service provider must plan to use the “wireless facilities” sought to be installed in Malibu to provide “personal wireless service.” The FCC has made clear that carriers that do and will provide personal wireless service may also use permitted wireless facilities to support other services like Internet or data services that are not personal wireless services<sup>9</sup> on a “commingled” basis. But as a matter of law applicants for Malibu municipal permits **must** demonstrate that they are eligible for a permit, and to do that the applicant **must, at minimum, plead and prove it will use the planned wireless facility to provide personal wireless service.**

Protestant asks each Planning Commission member to do a word search in the Verizon-supplied materials included in the Agenda Report. Look for “personal wireless service,” “commercial mobile service,” “telecommunications service” and “common carrier.” The Staff-generated materials use “personal wireless service” once, when quoting §332 of the Act. None of the other relevant terms appear at all.

Verizon did not plead, and Staff (properly) does not propose to find, that Verizon will use the proposed wireless facilities to provide “personal wireless service.” Protestant does not understand why Staff has nonetheless proposed that the

---

<sup>9</sup> Wireless Broadband Internet Access is NOT “personal wireless service” so it is not a “covered service” for purposes of §332(c). That is so because the FCC has ruled it is not offered on a “common carrier” basis and is therefore not a “telecommunications service.” It is instead a “private mobile service.” A provider that will offer only private mobile service through a proposed facility is not “covered” by 47 U.S.C. §332(c) and is ineligible for a permit under all current and former MMC provisions.



application be approved, but the Planning Commission cannot approve a municipal permit unless the applicant proves entitlement. Verizon has not done so. The Planning Commission must deny the municipal permit because Verizon failed to show it is eligible for, and entitled to, a WRP or any other kind of permit to use the public right of way, under the current ordinance (MMC Chapter 12) or even the prior ordinance (MMC Chapter 17.46).

Protestant contends that Verizon has not carried its burden of proof, the permit application should be denied and Verizon should not be allowed to supplement its application information at this late date. Verizon and their Staff helpers are likely to try and salvage the application despite this gaping failure of proof, and they will probably now offer additional evidence. We predict they will first attempt to baffle the Planning Commission members using impenetrable but ultimately deceptive jargon. For example, one of Verizon's favorite gambits is to observe that "Voice over LTE" (VoLTE) is "data" and then imply without actually affirming that any voice services will actually be supported along with all other "data" services provisioned by the wireless facilities in issue.

It is true that VoLTE is digital and packet-switched. But that does not mean the specific facilities proposed here will ever handle any voice traffic. To begin with, we do not know if Verizon will, in fact, be supporting VoLTE *over these facilities*. It is entirely possible voice will be handled through "Circuit Switched Fallback," which means voice goes over the 2G/3G network.<sup>10</sup> That is analog, not digital packet-switched, and it is not routed over "data" channels. But even if Verizon does intend to support VoLTE in this area that still does not mean these facilities will be used for it. Both locations employ RRUs, without an on-site BBU. The BBU is elsewhere. We do not know what BBU equipment will be used, or where it will be.

It is important to understand that, just like traditional SS7-based analog voice, LTE uses "out of band" signaling. There is a "control" channel that manages all sessions, e.g., setup and teardown and bearer channel assignment. There is a separate channel that handles the "bearer" – here the voice content.

VoLTE only works when the wireless facility supporting the control channel for the user equipment (UE) can connect to, and interoperate with, the LTE "Evolved Packet Core" (EPC) IP Multimedia Subsystem (IMS), which is always distant. IMS is what contains the Session Initiation Protocol (SIP) telephony functionality and in turn has the gateway to the rest of the public switched network. IMS is also critical for ensuring the traffic channel supporting the voice packets receive adequate Quality of Service priority.

The UE has to obtain its IP address from a Public Data Network (PDN) Gateway node and communicate with a Policy and Charging Rule Function (PCRF) node. The PCRF must then tell Verizon's network to assign a logical "bearer" or "traffic" channel<sup>11</sup>

---

<sup>10</sup> See <https://ieeexplore.ieee.org/document/9004596>. Staff Agenda Report p. 21 notes that the "replacement antennas at this location" will be "for [Verizon's] 4G LTE network." There is no indication they will also handle 2G/3G.

<sup>11</sup> The "channel" is not a singular dedicated physical path. It is "logical" and defined through timeslot



with appropriate QoS from some wireless facility for voice traffic use. This bearer channel is usually separate from the other logical bearer/traffic channels supporting different data flows, such as for email or web-browsing because they have lower QoS requirements. The conversation can then ensue, with the packetized voice content going over the assigned logical bearer channel.

Verizon has not provided any information indicating that these facilities will be supporting either the LTE-based “control channel” or the logical “bearer” channel for any voice traffic, or indeed for any personal wireless service. It is entirely possible that all voice and any other personal wireless services consumed within range of these facilities will in fact be completely supported over channels delivered by the nearest macro-tower. This is quite common in the small cell environment: voice goes through the macro and the small cell handles only bearer used entirely for other “data” – like Internet access. The reason is simple: small cells cover a fairly limited area so there must be frequent hand-offs to other cells, and this creates delay and unacceptable call quality. Further, voice traffic, unlike other data, is quite latency-sensitive, and small cells sometimes cannot provide acceptable call quality. So many carriers routinely “send” VoLTE over macro-cell delivered channels and use the small cell only for data services with lower Quality of Service (QoS) requirements – like e-mail, web browsing and even video. Other times a carrier will have the macro cell supply the control channel for all applications and use the small cell for only bearer, and only assign certain types of data.

If that is the case here, then Verizon is not eligible for a permit, since these facilities will not in any manner support any personal wireless service.

Let us be clear. It is technically possible for a small cell arrangement to handle voice bearer and some even handle the control channel. The problem here is we just do not know, since Verizon chose to not provide any of the relevant information. But if Verizon now tries to backfill, here are the precise questions to ask:

- Is this wireless facility able to communicate with Verizon’s core IMS server and receive sufficient instructions to set up and tear down voice sessions over assigned bearer channels?
- Where is the BBU that will be driving the RRUs.
- Describe the RRU equipment and its capabilities.
- Will this arrangement employ Cloud or Centralized Radio Access Networking (C-RAN)?
- Will this wireless facility actually handle any VoLTE bearer traffic over wireless logical channels delivered through the physical path between this facility and the user’s equipment?

Unless Verizon affirmatively states that voice traffic associated with UEs in the vicinity will actually be handled by these facilities, and not some other facility, then the

---

assignment within the physical channel.



municipal permit applications must be denied because Verizon will not be providing **any** “personal wireless service” over them.

D. Deny the proposed and implicit waivers/exceptions/variances

The Staff Agenda Report proposes to waive several requirements, but the Planning Commission should not agree. All waivers/exceptions/variances should be denied. In particular, as explained above, the Planning Commission must deny the request for waiver of the coverage map requirement.

Staff has also implicitly granted other waivers.

First, Resolution 20-65 provides that “Placements shall not be in front of dwelling units or schools” but based on the picture it appears that the Kanan Dume Road pole (Item 5.H) will be almost directly in front of the adjacent residential home. Neither Verizon nor Staff addressed this issue. To the extent the standards in Resolution 20-65 apply then a waiver was required. Verizon did not seek a waiver, so one cannot be granted.

Second, the Kanan Dume project is not on PCH. Resolution 20-65 and former MMU Section 17.46.060 prohibit projects within 600 feet of any other telecommunications facility.<sup>12</sup> Neither Verizon nor Staff addressed whether this condition has been met.<sup>13</sup> To the extent there is another wireless facility within 600 feet a waiver is required. Verizon did not request a waiver, so one cannot be granted. Since Verizon did not produce any evidence there were no facilities within 600 feet it has failed its burden of proof, and the application must be denied.

E. Verizon has not proven code compliance or safe electrical design

This is the last topic in our Opposition, but it is actually the most important thing for the Planning Commission to consider. Lives are at stake. Please now turn to Attachment 1, the signed and sealed presentation by Tony Simmons, PE and Attachment 2, the letter from Susan Foster. When done please pick back up at this point and read what follows.

These two experts – one of whom is putting his professional license on the line – are telling you that Verizon’s electrical design has not been proven safe and that all potential fire hazards have been mitigated. If this Commission is the proper reviewing authority then it must render affirmative findings of both safety and code compliance. The proposed Resolutions before you have such findings. But the record is entirely inadequate and this Commission cannot responsibly adopt them.

Verizon’s drawings are not “final” and are incomplete. There is at least one potential error relating to the power supply. The Staff claims both safety and code compliance but the Agenda Report contains absolutely no demonstration that Staff gave

---

<sup>12</sup> Since the 600 foot separation requirement was in MMC Chapter 17.46 when Verizon filed its applications the *Small Cell* “advance publication” requirement has been met.

<sup>13</sup> Staff found there are no schools, playgrounds or parks within 500 feet for purposes of LIP Section 3.15.5.N, but it did not consider whether the 600 foot wireless facility separation requirement in the MMC was met.



more than passing concern to this vital subject even though the entire community in Malibu has – for good reason – been extraordinarily vocal about fire/electrical safety concerns in the wireless context for the last eight months. Nowhere in the record is there a positive demonstration or anything more than unsubstantiated claims that the design complies with applicable requirements of the Uniform Building Code, National Electrical Code, and Uniform Fire Code. No engineer vouched for the design. Indeed, Verizon’s engineer *expressly disclaimed* any opinion on electrical safety or code compliance.

On the other hand, Tony Simmons, PE has provided his professional opinion that “the record before the Planning Commissions does not support adoption of the proposed findings in Section 3 of the draft Resolutions related to code compliance and general safety and welfare, including but not limited to A.1, B.2, B.4, B.9, C.4, C.5 and E.1-4 in Resolutions 21-48 and 21-49” because he cannot confirm with “engineering certainty that the five recognized hazards associated with the use of electricity have been properly mitigated by the design professional in responsible charge.”

If the Planning Commission is the reviewing authority then it must demand far better evidence and a much more rigorous demonstration and proof that these projects will not cause another fire in Malibu. Verizon failed. Staff failed. We respectfully request that this Commission, consistent with Malibu General Plan Policy 1.1.2, “minimize the risk of loss from fire” and deny these permits.

All of Malibu depends on the permitting authority to ensure that every fire/electrical safety precaution has been taken before a project is approved. That did not happen here. For this reason alone, and in addition to all the other reasons given above, both applications and all permits must be denied on the merits if the Planning Commission finds it has jurisdiction and reaches the merits (which it should not).



ATTACHMENT 1 TO GORDON OPPOSITION

Tony P. Simmons, PE



To Chairman Jennings and Members of the Planning Commission

**Recommendation to DENY Planning Resolutions 21-48 and 21-49 based on inadequate proof of mitigation of recognized electrical safety hazards.**

**Planning Resolution 20-48** is Agenda Item 5.H of the Commission Agenda Report prepared for the June 7, 2021, Commission Meeting. This resolution is for:

Wireless Communications Facility No. 20-010, Coastal Development Permit No. 20-028, Variance No. 20-017, and Site Plan Review No. 20-041 – An application for an upgraded wireless communications facility on a new replacement wooden utility pole in the public right-of-way. This WCF is located at 31557.5 Pacific Coast Highway.

**Planning Resolution 21-49** is item 5.I of the Commission Agenda Report prepared for the June 7, 2021, Commission Meeting. This resolution is for:

Wireless Communications Facility No. 20-011, Coastal Development Permit No. 20-029, -Variance No. 20-018, and Site Plan Review No. 20-040 – An application for an upgraded wireless communications facility on a new replacement wooden utility pole in the public right-of-way. This WCF is located at 6213.5 Kanan Dume Road.,

**Issue 1: The Agenda Reports prepared for both installations do not contain the consultant's report.**

The first sentence under the Discussion heading on the first page of both Commission Agenda Reports states:

“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, alternative site.”

The record submitted by the Planning Department does not include the report prepared by the City's wireless communication facility consultant and therefore is incomplete. Consequently, I cannot confirm that the five recognized hazards associated with the use of electricity have been properly mitigated by the design professional in responsible charge.

## **The Five Hazards Associated with Using Electricity**

### **INTRODUCTION.**

The National Electric Code NEC recognizes five hazards associated with using electricity that must be mitigated. Article 90.1(A) of the NEC states: The purpose of this *code* is the practical safeguarding of persons and property from hazards arising from use of electricity. This Code is not intended to be a design specification or a construction manual for untrained persons.

Article 90.1(C) of the NEC specifies five hazards associated with using electricity that must be mitigated, (1) shock, also known as electrical contact, (2) thermal effects, (3) overcurrent, (4), fault current , and (5) overvoltage. Each hazard is based on different principles of physics. No one consideration, other than not using electricity, mitigates all hazards associated with electricity.

#### (1) **Shock.**

Electrical contact may stop the heart or cause a reaction that imperils the life or health of the shocked person or other nearby individuals.

This hazard is mitigated by ensuring conductors (wires) are insulated or isolated from casual or inadvertent contact by people and that step potential hazards are mitigated. The design professional must select electrical components that are properly insulated for the site-specific environment, that are properly protected from site specific risks to the insulation, and that are appropriate for site specific for environmental conditions.

#### (2) **Thermal Effects.**

There at least three independent thermal effects to be mitigated. (1). Electrical equipment is rated for a specific ambient temperature and altitude and must be derated for higher elevations and higher ambient temperatures. (2) Electric equipment and conductors produce heat when conducting electricity and need adequate air flow to ensure proper cooling. (3) A fault current may produce an arc flash that can instantly cause third degree burns.

(3) Overcurrent.

Overcurrent is the condition when actual current exceed the design current. As an example, a circuit is designed to safely carry 20 Amps. The circuit breaker protecting the circuit is faulty and allows 40 amps to flow. The wires will create more heat than can be dissipated. The temperature of the wire and insulation will increase and eventually cause the insulation to fail, which in turns leads to a fault current, which can create an arc, which can cause a fire.

(4) Fault Current.

Fault current occurs when the insulation system has failed and allows the current to travel along an unintended path. Fault current can lead to an electric arc which can start fires, vaporize metal, and cause third degree burns. The fire report on the collapse of an WCF at Otay High School in Chula Vista, California stated that an electric arc was the heat source responsible for the collapse.

(5) Overvoltage

All electrical equipment is designed to operate within a specified voltage range. Overvoltage describes a condition when the actual voltage exceeds the voltage range specified for a component in an electrical system. In 2015, 5,800 electric meters and an unknown number of customer-owned electrical appliances in Stockton, California, catastrophically failed when the voltage exceeded the specified voltage range. 80 fires resulted from the overvoltage condition. This incident started when a vehicle struck a power pole carrying transmission and distribution conductors. The transmission and distribution conductors made contact. PG&E lost control of the voltage.

SCE power poles near Malibu Canyon Road and Harbor Vista Drive carry transmission and distribution circuits. The pole 250 feet west of Harbor Vista Drive along Malibu Canyon Drive is not protected against being struck by a vehicle. A vehicle striking this pole may cause the proposed WCF to catastrophically fail.

The City of Malibu retained an outside expert to ensure that electrical, structural and other hazards are mitigated prior to approval by the City. The report analyzing each hazard is missing. These omissions alone are grounds to DENY both resolutions until the missing report is provided.

**Issue 2: 14 of 15 engineering documents are marked “PRELIMINARY NOT FOR CONSTRUCTION”.**

Fourteen of the fifteen engineering documents in each application are marked “PRELIMINARY NOT FOR CONSTRUCTION:”

Thirteen of the documents were not certified by the responsible design professional. The design professionals responsible for these engineering documents told the world the documents were not finished.

There is no requirement that preliminary engineering documents be sealed by a design professional. Nonetheless, the Planning Commission must require that all engineering documents be certified as “ready for construction” by the design professional in responsible charge. “PRELIMINARY NOT READY FOR CONSTRUCTION” engineering documents alone are grounds to DENY both resolutions.

**Issue 3: The engineering documents do not include evidence that the overvoltage hazard has been analyzed.**

The overvoltage event in Stockton, California exposed the reality of a hazard recognized in the NEC. The applications provide no evidence that this hazard has been analyzed and mitigated. This alone is grounds to DENY both resolutions until the missing report is provided.

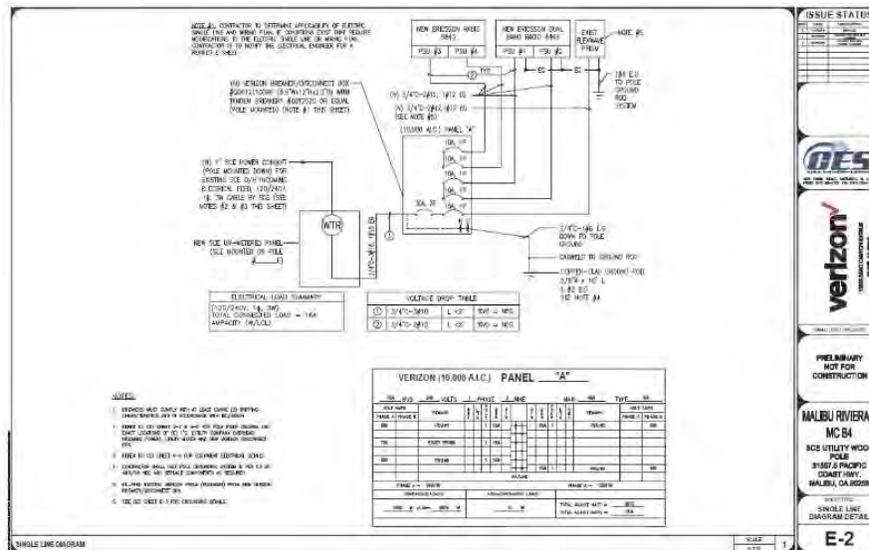
**Issue 4: Sheet E-3 SINGLE LINE DIAGRAM is blank in the application for the Kanan Dume installation.**



The one-line diagram is the industry standard method to demonstrate that the fault current and overload protective devices are in the correct position in the electric circuit. Without the information provided in the one-line diagram, it is not possible to determine that the overcurrent and fault current hazards have been mitigated.

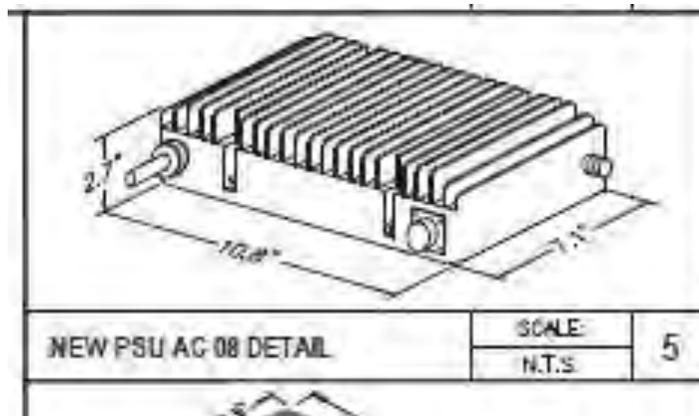
A more complete but imperfect example of a one lined diagram is shown on the next page. It was taken from the application for the WCF at 31557.5 Pacific Coast Highway (PCH). This one line shows that the WTR device protects the breaker box and the 10 Amp circuit breakers in the breaker box protect each power supply.

It is possible to analyze the one-line for PCH for errors and omissions. It is not possible analyze the one line for Kana Dume for errors and omissions. The missing one-line alone is grounds to DENY resolution 21-49 until the missing report is provided.

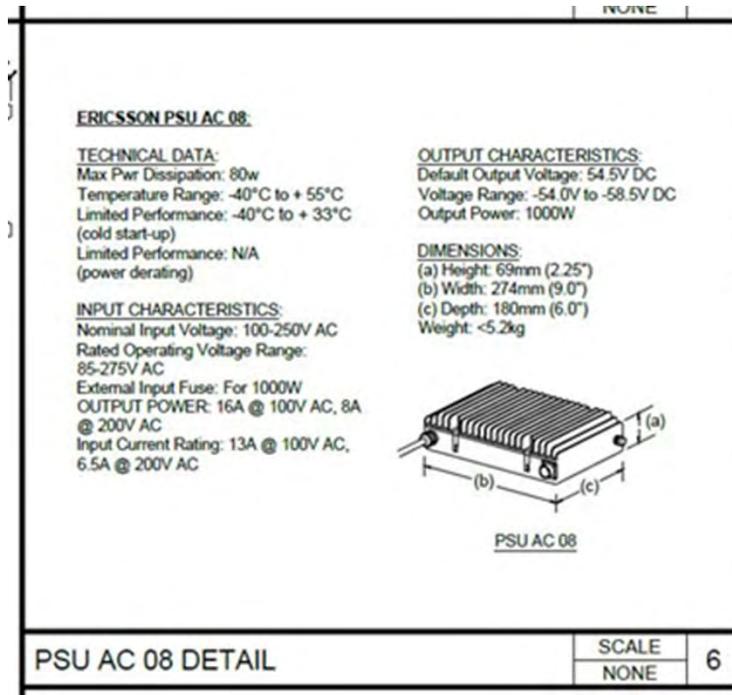


**Issue 5: The wrong power supply may have been specified at Kanan Dume.**

Block 5 on Sheet A-6 for the Kanan Dume WCF shows a PSU AC 08 power supply. The same detail is used in the application for the WCF at 31557.5 Pacific Coast Highway. The WCF at Kanan Dume has a battery backup while the WCF at PCH does not. The detail does not include the electrical specifications.



Fortunately, the application for the WCF at 3956.5 Cross Creek Road also specifies PSU AC 08 and includes the electrical specifications for the power supply.



PSU AC 08 requires input energy from a 100-250 VAC system.

Further research found the table to the right. The table lists five AC power supplies and two DC power supplies. The table was not taken from the manufacturer’s website. It is indicative and not authoritative. It is possible that an AC power supply has been selected for use on a DC battery backup system. The missing report should resolve this question. This alone is grounds to DENY Resolution 21-49 until the missing report is provided.

Table 1 lists the technical data of the PSU variants.

Table 1 PSU Technical Data

Technical Data	PSU AC 01	PSU AC 02	PSU AC 03	PSU AC 08	PSU AC 09	PSU 24 01	PSU 48 02
Maximum power dissipation (W)	200	70	175	80	50	200	55
Temperature range (°C)	Range	-40 to +70	-40 to +55	-40 to +70	-40 to +55	-40 to +70	-40 to +55
	Limited performance (cold start-up)	-40 to -10	-40 to -33	-40 to -10	-40 to -33	-	-40 to -33
	Limited performance (power derating)	+55 to +70	N/A	+55 to +70	N/A	-	+55 to +70
Input Characteristics	Nominal input voltage	100-250 V AC	100-250 V AC	100-250 V AC	100-250 V AC	27.2 V DC	-54.5 V DC
	Rated operating voltage range	85-275 V AC	90-275 V AC	85-275 V AC	85-275 V AC	18.5 to +30.0 V DC	-38.0 to -58.5 V DC
	External input fuse	10 A phase at 1,200 W <sup>(1)</sup> 16 A phase at 1,800 W <sup>(1)</sup>	For 700 W output power: <sup>(1)</sup> 12 A at 100 V AC 6 A at 200 V AC	• 10 A phase at 8 A input current <sup>(1)</sup> • 12.5 A @ 25 A/2xPS U/phase at 10 A input current <sup>(1)</sup> • 15 or 16 A phase at 12.5 A input current <sup>(1)</sup> • 20 A phase or 16 A Hydr autic magnetic circuit breaker at 15 A input current <sup>(1)</sup>	For 1000 W output power: <sup>(1)</sup> 16 A at 100 V AC 8 A at 200 V AC	For 1000 W output power: <sup>(1)</sup> 16 A at 100 V AC	80 A for 1200 W <sup>(1)</sup> 125 A for 1,800 W <sup>(1)</sup>
Input current rating	9 A at 1,200 W 14 A at 1,800 W	9 A at 100 V AC 4.5 A at 200 V AC	8, 10, 12.5, and 15 A <sup>(1)</sup>	13 A at 100 V AC 6.5 A at 200 V AC	11 A at 100 V AC	80 A at 1,200 W 100 A at 1,800 W	≤ 20 A

## Conclusion

- The absence of the consultant's reports, the unfinished engineering documents, and absence of the overvoltage studies each provide grounds to DENY both resolutions until the missing reports are received.
- The missing one-line and the uncertainty of the power supply provide two additional grounds to DENY Resolution 21-49.

Based on the information provided in the materials before the Planning Commission, I cannot confirm with engineering certainty that the five recognized hazards associated with the use of electricity have been properly mitigated by the design professional in responsible charge.

The unsigned, unsealed engineering documents submitted on behalf of Verizon do not demonstrate with engineering certainty that the five hazards associated with using electricity have been fully evaluated and mitigated for these two installations.

The record before the Planning Commission does not support adoption of the proposed findings in Section 3 of the draft Resolutions related to code compliance and general safety and welfare, including but not limited to A.1, B.2, B.4, B.9, C.4, C.5 and E.1-4 in Resolutions 21-48 and 21-49.



ATTACHMENT 2 TO GORDON OPPOSITION

*Susan Foster*

---



June 7, 2021

Malibu Planning Commission  
23825 Stuart Ranch Road  
Malibu, California 90265-4861

RE Planning Commission June 7, 2021 Meeting, Items 5.H and 5.I

(5.H) Wireless Communications Facility No. 20-010, Coastal Development Permit No. 20-028, Variance No. 20-017, and Site Plan Review No. 20-041 – An application for an upgraded wireless communications facility on a new replacement wooden utility pole in the public right-of-way; Location: 31557.5 Pacific Coast Highway

(5.I) Wireless Communications Facility No. 20-011, Coastal Development Permit No. 20-029, Variance No. 20-018, and Site Plan Review No. 20-040 – An application for an upgraded wireless communications facility on a new replacement wooden utility pole in the public right-of-way; Location: 6213.5 Kanan Dume Road

Dear Chairman Jennings & Members of the Commission:

I write this letter in an attempt to prevent another telecommunications-related fire. The city has yet to recover from the Woolsey Fire of 2018. Our review of applications strongly indicate little is being done at the most essential level – the application level where you get your first look at cell tower designs – to ensure that preventable telecom-related fires like the three I reference below do not happen again.

The two applications on their face demonstrate that Verizon and its experts did not apply proper engineering rigor with regard to fire hazard prevention. The electrical diagrams are preliminary and incomplete. No engineer vouched for them. There is no way to independently assess for whether, and then find that, the projects comply with the Uniform Building Code, National Electric Code, Uniform Plumbing Code, Uniform Mechanical Code, and Uniform Fire Code (*see* LIP Section 3.16.5.A.) There is not sufficient evidence for any finding that these facilities will not pose a threat to public health. (*see* LIP 3.15.4.A.) Indeed, the evidence to date indicates that Verizon may be using the wrong power supply.

Even worse, the record implies that Staff did not spend much, if any, time analyzing electrical safety. Staff asserts that the design is safe and code compliant but it does not include any reports or analyses explaining how it came to that conclusion. For all we know they did not really even look at the issue. If they had they would have noticed the missing one-line diagram in the Kanan Dume application and the potential power supply issue in the same application.

## ATTACHMENT 2

At this point you have no choice. You must reject these applications until Verizon proves, with competent and complete evidence, that the design is fully code-compliant and was designed so as to mitigate all fire risks.

For the record, I will remind the Planning Commission of three telecom-connected fires, two of which occurred in Malibu. This is precisely what we aim to avoid.

### **MALIBU CANYON FIRE, October 2007:**

Santa Ana winds swept through Malibu Canyon, knocking over three utility poles. Those poles sparked a fire that burned nearly 4,000 square acres. It destroyed three dozen cars and 14 structures including Castle Kashan and the Malibu Presbyterian Church. It also damaged 19 other structures and injured three firefighters. Five years later three telecommunications carriers, AT&T, Verizon and Sprint (now T-Mobile), settled with California utility regulators for a joint fine of \$12 million in equal shares, \$7 million designated for California's general fund and the remainder going to new utility pole inspection funding. As part of the 2012 settlement AT&T, Verizon and Sprint did not admit to culpability for overloading the utility poles. The power lines on the poles that fell were owned and operated by Southern California Edison (SCE) and the poles were jointly owned by Edison, AT&T, Sprint, Verizon and NextG.

NextG, now owned by infrastructure builder Crown Castle International, Inc., and Edison initially fought the CPUC but ultimately settled and admitted culpability in overloading the utility poles and misleading investigators which all five parties were accused of doing.

Under the 2013 settlement, Edison and NextG admitted that one of the failed power poles was overloaded with NextG telecommunications equipment when the fire started, in violation of CPUC rules, and that Edison did not act to prevent the overloading. NextG admitted that a consultant who testified on behalf of Edison gave "incorrect" information by stating that all items attached to the failed poles had been saved as evidence. Investigators later found that five pieces of equipment related to the investigation, including two NextG cables, had been discarded.

Edison reached a \$37 million settlement with the CPUC for its admitted role. NextG was charged with \$14.5 million in penalties.

Of the \$37 million Southern California Edison agreed to pay, \$20 million was directed as a penalty paid to California's general fund and \$17 million directed to assessing pole loads and working to improve Malibu Canyon.

Under the terms, Edison admitted it violated the law by not taking action to prevent the overloading of its pole by third-party telecommunications equipment.

SCE also acknowledged that one of its employees had concluded that a replacement pole for the overloaded pole that started the fire in the first place didn't comply with the

## ATTACHMENT 2

CPUC's safety regulations for new construction. Edison should have worked to remedy the situation back in November 2007. They did not.

Under the agreement with the CPUC, Southern California Edison admitted that it violated the law by not taking prompt action to prevent a telecommunications company from attaching fiber-optic cable to jointly owned poles in Malibu Canyon. Edison also acknowledged that a letter it sent to the CPUC after the fire did not identify pole overloading and termite damage as possible contributing factors in the pole failures.

Damages paid by all five companies involved with the fire exceeded \$60 million. A significant portion of the penalties imposed by the CPUC on the five parties was directed to pole inspections. The need to spend millions on pole inspections to look for overloading and faulty equipment frustrated one of the Malibu City Councilmembers who until recently was an active member of the Malibu City Council.

On February 27, 2013, the Malibu Times quoted Malibu City Councilmember Skylar Peak, an electrician by trade, speaking just after the NextG settlement: "[NextG] should have installed equipment that was safe in the first place," Peak said. "It's frustrating that we have to go back to check now."

He called the agreement a "step in the right direction" but not enough to fully address power pole safety in the city. "There's a lot of old equipment in Malibu that needs to be looked at," Peak said. "Not just NextG [equipment]."

### **WOOLSEY FIRE, November 2018:**

A 2018 wildfire that killed three people, destroyed 1,600 homes – over 400 of them in Malibu – burned more than 96,000 acres and cost over \$6 billion. The Woolsey fire raged for two weeks.

A redacted version of the Woolsey fire investigation report obtained by the Ventura County Star concludes Southern California Edison equipment associated with an electrical circuit was the cause of the blaze, though a communication line may have played a significant role.

"The Investigation Team (IT) determined electrical equipment associated with the Big Rock 16kV circuit, owned and operated by Southern California Edison (SCE), was the cause of the Woolsey Fire," the report stated. Under strong winds, a guy wire on a steel pole connected with an energized conductor caused "heated material" to fall on vegetation "thereby causing the Woolsey Fire," the fire report states.

A "communication line" that was hooked up to the steel pole also became energized by the incident; a lashing wire is a technique that can be used by wireless communications carriers to secure lines to utility poles. If the lashing wire is secured improperly, or the equipment is flawed or outdated, electricity can escape, and arcing can take place. Arcing can reach temperatures up to 4000° in less than 1/10 of a second.

## ATTACHMENT 2

A second fire was reported about a quarter of a mile away underneath the communication line. The two fires merged to become the Woolsey fire, the report says.

However, five full pages and notably, several sentences in the concluding remarks, remain redacted. The 70-page report includes the redacted pages under a section called "Violations."

The release of the full investigation report into the Woolsey Fire has been delayed by a criminal investigation by the California Attorney General's Office.

Absent any additional evidence, Southern California Edison claims it is likely that its equipment was "associated" with the start of the blaze. In January 2021 SCE agreed to pay \$2.2 billion to settle insurance claims for the Woolsey Fire.

SCE representative stated the cause or causes of the Woolsey Fire cannot be determined until its investigators can look at the evidence collected by officials. That evidence is in the possession of the California Department of Forestry and Fire Protection. Investigators collected metal shavings, melted plastic, guy wire and other items, according to the fire report.

Without admitting wrongdoing or liability, Edison has settled with the public agencies that sued the utility, agreeing to pay \$210 million to the public agencies.

### **SILVERADO FIRE, October 2020**

The Silverado Fire broke out in hills near Irvine and forced, together with the Blue Ridge Fire just to the north, the evacuation of over 130,000 people in Orange County. Two firefighters suffered serious burns and at least 17 buildings were damaged or destroyed. According to Southern California Edison's report to utility regulators, a "lashing wire" that ties a telecommunications line to a supporting cable may have come into contact with a separate 12,000-volt conductor line above it.

The wire may have belonged to T-Mobile, not Edison, the utility said in a recent filing with state utility regulators.

A report filed Oct. 26, 2020 by Southern California Edison to the California Public Utilities Commission opened an investigation regarding the potential role of a "lashing wire" as a cause of the Silverado Fire in Irvine.

The report, obtained by *Irvine Weekly*, indicates that a component of a telecommunications line, a lashing wire, may have contacted a SEC power line and ignited the fire.

Here is the report in full:

“SCE submits this report as it may involve an event that meets the subject of significant public attention or media coverage reporting requirement. Preliminary information reflects SCE overhead electrical facilities are located in the origin area of the Silverado Fire. We have no indication of any circuit activity prior to the report time of the fire, nor downed overhead primary conductors in the origin area. However, it appears that a lashing wire that was attached to an underbuilt telecommunication line may have contact[ed] SCE’s overhead primary conductor which may have resulted in the ignition of the fire. The investigation is ongoing.”

A lashing wire, which does not carry an electrical current, is one-third of a telecommunications line, according to Southern California Edison Spokesperson Chris Abel.

“Telecommunication wires have three components, there’s the cable itself, the support wire and the lashing wire winds around and hold them together,” Abel said.

“Telecommunication lines are third party owned, and they are below our power lines.”

## **THE “LASHING WIRE” WARNING**

What the lashing wire involvement in both Woolsey and Silverado tells us is that a lashing wire was not properly wrapped and/or secured, with disastrous consequences. In the Woolsey Fire, a telecommunications company whose identity we do not know because of the ongoing criminal investigation by the California Attorney General’s office, may be primarily or secondarily at fault. And in the case of the Silverado Fire in 2020, SCE is pointing to T-Mobile.

We don’t know what is happening with the securing of the lashing wires, but we know something is going wrong because when designed and installed properly, lashing wires are not supposed to come loose. It could be an engineering failure, or it could be a technical implementation failure, but something is not being done correctly.

As Tony Simmons, P.E. pointed out to me, it could be that Brand X lashing wire is being used and the technicians may be using Brand Y installing tools. Metal lashing is a recognized hazard if it is not done right. As Mr. Simmons stated to me, if he were the owner of a utility pole, such as SCE or poles jointly owned by multiple carriers, he would want to know what people are doing. It is the responsibility of the telecommunications company to secure their lashing wires properly at both ends, and it is the responsibility of the pole owner to make sure that whichever company is renting out space on their poles is securing the telecommunications wires according to appropriate engineering protocol. If one end is coming unwrapped and getting into a distribution line, you have two responsible parties – the telecommunications carrier that owns the lashing wire and the owner of the pole which is, in most cases in Malibu, SCE and possibly SCE along with other partners. Somebody is not mitigating a known hazard.

I do not mean to suggest there is a lashing line problem in these proposed projects. The fiber here appears to be underground. But the lashing example serves to show that electrical safety has to be a priority in all areas, and it is clear that the utility and telecommunications companies have simply dropped the ball. I have offered three examples and there are countless more throughout

## ATTACHMENT 2

the state of California confirming the role of utilities in starting wildfires – and telecommunications is a utility. When safety is not made a top priority on electrical equipment, it leads in one catastrophic direction, and that direction is fire.

The foregoing also demonstrates that the burden of ensuring rigorous safety design and code compliance falls on permitting authorities. At the front end, before any project is approved. The Municipal Code and Local Implementation Plan standards expressly require code compliance and an affirmative finding of safety. So now, since neither Verizon nor Staff performed their duties, you must do yours. Deny these applications and require a far more rigorous demonstration. Malibu's safety and security rests in your hands. If you do not do your job and insist on proper proof of safety before you approve them then you will bear some of the responsibility if there is a defect and it starts another devastating fire.

### **PLANNING COMMISSION MUST DENY THE TWO INCOMPLETE APPLICATIONS:**

The Planning Commission has before you two applications:

- 1) 31557.5 Pacific Coast Highway with applicant Motive for Verizon Wireless
- 2) 6213.5 Kanan Dume Road with applicant Motive for Verizon Wireless

You have two applications from Verizon that say exactly the same thing on page 1: "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." There is, however, no documentation provided regarding the City staff and consultant's supposed review.

Please focus on the phrase "deemed complete". Within these two applications you have diagrams and documents crucial to evaluating the safety of the proposed cell towers with the wording "PRELIMINARY NOT FOR CONSTRUCTION". This means the document has been distributed for review and discussion. This does not mean the documents are worthy of being used for approvals and affirmative safety/compliance findings. The Kanan Dume Rd. application is incomplete since the space for the crucial One Line Diagram is blank.

In the white paper Tony Simmons and I submitted to this Planning Commission in early March of this year, we explained why we required each document in our Electric Fire Safety Protocol. It's true that protocol does not apply specifically to these two small cell applications. Yet fundamental engineering requirements apply to ALL of these applications, and a One Line Diagram is an integral part of the engineering documents.

We explained in our paper submitted to you three months ago that a One Line Diagram is important for the following reasons:

- A One Line Diagram of the electrical system is important because it provides a map of the electrical installation and serves as the primary reference for all the other documents.

## ATTACHMENT 2

- This document allows less experienced electrical workers to quickly troubleshoot electrical malfunctions and failures and to identify a de-energization point.

In both the applications before you, professional engineers were willing to sign their names and stamp their seals for purposes of RF radiation modeling. They were willing to put their license on the line for the proposition that the modeling is in compliance with the FCC. That's easy modeling to do because the FCC sets the allowable regulatory level so high that virtually every cell tower comes in under that regulatory ceiling. So that is not a high-risk venture for a professional engineer. But look immediately under the stamp on pdf page 65 of 79 in the PCH application and pdf page 66 of 78 in the Kanan Dume application. The electrical engineer *expressly disclaimed responsibility for everything other than RF compliance.*

You therefore do not have any electrical engineers vouching for electrical design safety or code compliance. Apparently, no professional engineer was willing to put his/her name and seal on the electrical engineering designs of the cell towers on these applications. That should set off an alarm for those reviewing these applications. Staff should have asked questions and required better and complete diagrams. Staff could not have performed any meaningful independent assessment given the lack of reliable information. They were not willing to produce their own report that addresses this topic, and that should set off a second loud alarm.

You now have Tony Simmons, P.E. signing his name and stamping his seal on his evaluation and professional analysis of these two applications. When a professional engineer signs and seals a document, it is submitted with the highest level of accountability possible. Tony Simmons has found both these applications severely deficient. He affirmatively states that “the unsigned, unsealed engineering documents submitted on behalf of Verizon do not demonstrate with engineering certainty that the five hazards associated with using electricity have been fully evaluated and mitigated for these two installations.” He affirmatively states that “the record before the Planning Commissions of the Resolutions does not support adoption of the proposed findings in Section 3 of the draft Resolutions related to code compliance and general safety and welfare, including but not limited to A.1, B.2, B.4, B.9, C.4, C.5 and E.1-4 in Resolutions 21-48 and 21-49.” You now have a shrieking third alarm.

Why is this important? When a doctor makes a mistake, a single patient can die. When a criminal attorney is derelict in his/her duty and fails to adequately represent a client, that client – even though he/she may be innocent – may lose their freedom or even their life. When an engineer makes a mistake, hundreds if not thousands of people can die.

That's why “signed and sealed” is so profoundly important in the world of engineering. There is not a single electrical document or diagram that is signed and sealed by a professional engineer in the two applications you have before you. Yet Tony Simmons is willing to defend his recommendations to the Planning Commission in any proceeding before the PE Board in his professional analysis of these applications. Like all professional engineers Tony Simmons is prepared to defend all his work product in any proceeding before the PE Board. That is why the lack of sealed diagrams is important. The work is so shoddy no PE would attest to it. And we suspect that the Staff is not willing to show their work because they did not, in fact, perform any meaningful review.

**DEMAND COMPETENCE AND PROOF OF WORK**

Good governance requires a documented trail of the decision-making process. With electrical devices such as cell towers, you have an engineering subject matter expert who is paid for his/her expertise on ensuring compliance with the applicable electric codes. Yet without a report you don't know that the proper steps have been taken to determine whether or not the applicant – in this case Verizon – is in compliance from an electrical engineering perspective. The available evidence suggests that, like Verizon, the Staff experts have simply not done their job.

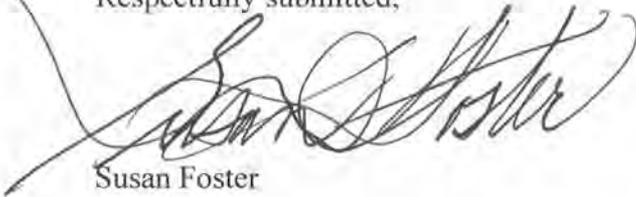
Malibu deserves better. Malibu deserves the best of your subject matter expert when it comes to permitting. Malibu deserves the best when it comes to the electric engineering documents that are supposed to be provided by Verizon, or whomever the carrier may be. These documents should be signed and sealed by professional engineers willing to professionally defend their approval of these designs, diagrams, and documents. Malibu deserves a Staff that is willing to show its work as well and be able to document the basis for its conclusions and recommendations.

We respectfully request that the Planning Commission police the wireless companies' efforts and work by denying these two applications until we can see adequate proof that due diligence has been exercised, how it has been exercised, and enough information to confirm code compliance. We need to see the City's wireless consultant and Staff analyses.

The wireless companies need to be given a clear message that Malibu insists that their facilities be proven safe and they will be required to show their work and present adequate information for you to make the required safety and code compliance findings. Only then can Malibu residents be assured that every possible step has been taken to minimize the risk of yet another wildfire caused or made worse by equipment breakdown in a WCF.

Both applications must be denied.

Respectfully submitted,



Susan Foster

Cc: Kathleen Stekko

ATTACHMENT 2 TO ADDITIONAL SHEETS FOR LONNIE GORDON APPEALS

Tony Simmons' 6-21-2021 oral presentation handout

Presentation on the WCF at  
3202 Malibu Canyon Drive  
to the June 2021 Meeting of the  
Malibu Planning Commission

Pictures Taken June 20, 2021

Tony P Simmons, P.E.

Did the  
Wireless Communication Facilities Consultant  
Miss Somethings During the Final Inspection?

NEC Article 110.3B  
Violation?

Disconnect Switch

Meter Socket



NEC Article 230.70B  
Violation?

Disconnect Switch Label



NEC Article 110.12  
Violation?

Neat and workmanlike  
Manner?



Was the  
Stockton Overvoltage Event  
Mitigated?



Commissioners have duty to  
receive an answer these  
questions before they approve  
any WCF application.

ATTACHMENT 3 TO ADDITIONAL SHEETS FOR LONNIE GORDON APPEALS

Susan Foster 6-21-2021 oral presentation handout (Chula Vista Fire Investigation Report)

**Chula Vista**

FDID: 37030 State: CA Date: 03/09/2021 Station: Incident #: CV21005483 Exposure: 0  
 Agency Address:

**BASIC MODULE (NFIRS-1)**

Location Type: **Street address** Census Tract:  
 Address: **1250 Olympic Parkway** City, State & Zip **CHULA VISTA, California 91913**  
 Incident Type: **112-Fires in structure other than in a building** Aid Given/Received: **None**

**Dates and Times**

Alarm: **03/09/2021 19:27** Arrival: **03/09/2021 19:32** Controlled: Last Unit Cleared: **03/09/2021 22:24**

**Shifts And Alarms**

Shift: **B** Alarms: District: **CHV57-NSR-01**

**Special Studies**

Special Study ID	Value
------------------	-------

Actions Taken: **Investigate (86); Extinguishment by fire service personnel (11)**

**Resources**

Apparatus			Personnel		
Suppression: <b>1</b>	EMS: <b>0</b>	Other: <b>4</b>	Suppression: <b>4</b>	EMS: <b>0</b>	Other: <b>4</b>

**Estimated Dollar Losses and Values**

Losses		Pre-Incident Value	
Property: <b>500000</b>	Contents: <b>0</b>	Property:	Contents:

**Casualties**

Fire Service Deaths: **0** Fire Service Injuries: **0** Civilian Deaths: **0** Civilian Injuries: **0**

Property Use: **215 - High school/junior high school/middle school**

**Narrative**

**Primary Jurisdiction: Chula Vista; CAD Incident Number: CV21005483; CAD Problem/Nature: Pole Fire; Call Disposition: 1-CALL COMPLETE**  
**At 1927 hours on Tuesday March 9, 2021, 5 vehicles were assigned to this incident. 8 personnel responded. The incident occurred at 1250 Olympic Pky, CHULA VISTA.**  
**Alarm number 362412 has been assigned to this incident.**

To be replaced by new field with CAD notes auto-populated.

**FIRE MODULE (NFIRS-2)**

**On-Site Materials or Products**

Material/Product ID	Material/Product Name	Storage Use
---------------------	-----------------------	-------------

**Ignition**

Area of Fire Origin: **60 - Equipment or service area, other**  
 Heat Source: **13 - Electrical arcing**  
 Item First Ignited: **UU - Undetermined**  
 Cause of Ignition: **U - Cause undetermined after investigation**  
 Factors Contributing: **Undetermined (UU)**  
 Human Factors Contributing: **Undetermined (N1)**

**Equipment Involved in Ignition**

Equipment Involved: **210 - Electrical wiring, other**  
 Power Source: **10 - Electrical, other** Portability: **2 - Stationary**

**STRUCTURE FIRE MODULE (NFIRS-3)**

**Structure Details**

Structure Type: **0 - Structure type, other** Building Status:

**APPARATUS OR RESOURCES / PERSONNEL MODULES (NFIRS-9/10)**

**Chula Vista**

FDID: 37030

State: CA

Date: 03/09/2021 Station:

Incident #: CV21005483

Exposure: 0

Agency Address:

**ID: CVE57 Type: 11 - Engine**

Use: 1 - Suppression

Number of People: 4

Dispatch Time: 03/09/2021 19:27

Arrival Time: 03/09/2021 19:32

Clear Time: 03/09/2021 22:02

Remarks:

Engine 57 responded to a telephone poll fire at Otay Ranch High School. Engine 57 made access to the school via Olympic Pkwy and was directed to the location of the fire by school employees. Engine 57 identified the fire was a stadium lighting poll that was co-used by AT&T as a cell phone tower. When we arrived the poll appeared to have an internal fire that traveled up the poll to the cell phone equipment and stadium lighting at the top of the poll. The poll was approximately 100 feet tall, therefore Engine 57 spotted in the school parking lot approximately 200 feet from the poll. Engine 57 provided an update to Metro and requested SDG&E to respond to our location. In addition, Engine 57 requested B52 to respond for logistical support. Engine 57 pulled a 200 foot reconnect as a precaution to protect exposures and maintained a safe distance until we could verify all power supply to the poll has been secured. As we were waiting for the representative from SDG&E to arrive the poll collapsed onto the bleachers near the football field. No exposures were threatened therefore Engine 57 maintained a safe distance. Once the rep from SDG&E arrived he verified, in coordination with the school's facility personnel, that the power had been secured and that there was no electrical hazard. Engine 57 repositioned the apparatus to allow for better access to the equipment in order to extinguish the fire using a water and foam combination. Once the fire was extinguished and overhauled, Engine 57's crew re-stowed their equipment and turned the scene over to school personnel. Engine 57 went available via MDC.

Personnel ID: 454 Name: Kenneth Stovall

Rank / Grade: Captain

Personnel ID: 490 Name: Scott Walker

Rank / Grade: Eng/PM

Personnel ID: 502 Name: Christian Loera

Rank / Grade: FF

Personnel ID: 531 Name: Justin Patrick

Rank / Grade: FF/PM

**ID: CVB52 Type: 92 - Chief officer car**

Use: 0 - Other

Number of People: 1

Actions taken: Investigate (86); Incident command (81)

Dispatch Time: 03/09/2021 19:35

Arrival Time: 03/09/2021 19:38

Clear Time: 03/09/2021 21:43

Remarks:

I assumed IC from E-57. We stood by until SDGE could confirm that the power was cut and it was safe to attack the fire. I requested CVPD, Fire Inv, and an ATT Rep to the scene. After the fire was out and we coordinated with all the on site cooperators I terminated IC and went Avail. The property was turned back over to Otay Ranch High School Rep. See E-57 Narrative for specific details of their actions.

Personnel ID: 393 Name: David Albright

Rank / Grade: BC

**ID: CVP526 Type: 00 - Other apparatus/resource**

Use: 0 - Other

Number of People: 1

Actions taken: Cancelled en route (93)

Dispatch Time: 03/09/2021 20:34

Arrival Time:

Clear Time: 03/09/2021 20:45

Remarks:

Personnel ID: FP-6 Name: Fernando Felix

Rank / Grade: Investigator

Personnel ID: FP-6 Name: Fernando Felix

Rank / Grade: Investigator

**ID: CVP527 Type: 00 - Other apparatus/resource**

Use: 0 - Other

Number of People: 1

Actions taken: Cancelled en route (93)

Dispatch Time: 03/09/2021 20:34

Arrival Time:

Clear Time: 03/09/2021 20:45

Remarks:

Personnel ID: FP-7 Name: Darin Golden

Rank / Grade: Investigator

**Chula Vista**

FDID: **37030** State: **CA** Date: **03/09/2021** Station: Incident #: **CV21005483** Exposure: **0**

Agency Address:

**ID: CVP526** Type: **00 - Other apparatus/resource**

Use: **0 - Other** Number of People: **1**  
Dispatch Time: **03/09/2021 20:50** Arrival Time: **03/09/2021 21:01** Clear Time: **03/09/2021 22:24**  
Remarks:

Personnel ID: **FP-6** Name: **Fernando Felix**  
Rank / Grade: **Investigator**

Personnel ID: **FP-6** Name: **Fernando Felix**  
Rank / Grade: **Investigator**

**SIGNATURES / AUTHORIZATIONS**

Date/Time: **03/10/2021 10:03** Signed By: **Kenneth Stovall**  
Rank: **Captain** Assignment:  
Reason: **Member making report, Officer in Charge**

CITY OF MALIBU PLANNING COMMISSION  
RESOLUTION NO. 21-48

A RESOLUTION OF THE CITY OF MALIBU PLANNING COMMISSION DETERMINING THE PROJECT IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENT QUALITY ACT AND APPROVING COASTAL DEVELOPMENT PERMIT NO. 20-028 AND WIRELESS COMMUNICATIONS FACILITY NO. 20-010 FOR VERIZON WIRELESS TO INSTALL TWO REPLACEMENT WIRELESS COMMUNICATIONS FACILITY ANTENNAS AT A HEIGHT OF 34 FEET, 9 INCHES AND ELECTRICAL SUPPORT EQUIPMENT MOUNTED ON A REPLACEMENT WOODEN UTILITY POLE, INCLUDING VARIANCE NO. 20-017 TO PERMIT AN UPGRADED WIRELESS FACILITY MOUNTED OVER 28 FEET IN HEIGHT AND SITE PLAN REVIEW NO. 20-041 TO INSTALL AND OPERATE A WIRELESS COMMUNICATIONS FACILITY WITHIN THE PUBLIC RIGHT-OF-WAY LOCATED AT 31557.5 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 15, 2020, a new application for Wireless Communications Facility (WCF) No. 20-010 and Site Plan Review (SPR) No. 20-041 was submitted by the applicant, Motive, on behalf of Verizon Wireless for a pole-mounted WCF on a replacement wooden utility pole. Coastal Development Permit (CDP) No. 20-028 and Variance (VAR) No. 20-017 were later assigned to the project.

B. On September 3, 2020, a Notice of CDP Application was posted at the subject site attached to the existing pole to be replaced.

C. On September 28, 2020, planning staff deemed the project complete for processing.

D. On May 13, 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 1000-foot radius of the project site and to all interested parties.

E. On June 7, 2021, the Planning Commission held a duly noticed public hearing and continued the item to the June 21, 2021, Planning Commission public hearing.

F. On June 21, 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 15303(d) – new construction of

utility systems. 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, CDP No. 20-028 and WCF No. 20-010 for Verizon Wireless to install two replacement wireless communications facility antennas at a height of 34 feet, 9 inches and electrical support equipment mounted on a replacement wooden utility pole, including VAR No. 20-017 to permit an upgraded wireless facility mounted over 28 feet in height and SPR No. 20-041 to install and operate a wireless communications facility within the public right-of-way (ROW) located at 31557.5 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. 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, radio emissions report, site inspection, and recommended conditions, the proposed project conforms to the LCP and Malibu Municipal Code (MMC) in that it meets all applicable wireless communications facility code and other standards.

2. The proposed upgrade to an existing wireless communications facility is the least environmentally damaging alternative. The replacement pole is in the inland side of PCH within the disturbed dirt shoulder. The replacement antennas and associated equipment will be mounted on the replacement pole and are not expected to have a significant adverse impact on scenic views or biological resources.

#### **B. Variance for the development of a wireless communications facility above 28 feet (LIP 13.26.5)**

VAR No. 20-017 is requested to allow for an upgrade to an existing wireless communications facility on a 52-foot tall replacement wooden utility pole above the 28 foot height limit.

1. Evidence in the record demonstrates there are special characteristics for the proposed wireless communications facilities that makes it subject to a variance. The applicant proposes to upgrade the existing WCF with a new replacement wooden utility pole. The subject project is an existing wireless communications facility that is currently non-conforming with contemporary physical separation requirements for equipment mounted onto SCE utility poles, as per the California Public Utilities Commission's (CPUC) General Order 95 and Federal Communication Commissions (FCC) safety standards. A taller pole will be necessary to comply with the required equipment separation requirements between pole-mounted equipment, the pole itself, and power and telecom lines. To achieve its wireless service objectives, Verizon Wireless is proposing the upgraded panels be mounted at 34 feet 9 inches to maximize coverage and enhance wireless service for customers in the western Malibu area. An independent pole could have been

proposed at a maximum 28 feet in height but that would be a more visually intrusive design as there would be two poles instead of just one. The proposed facility, including the variance for height is consistent with FCC and CPUC safety standards and not detrimental to public interest in terms of a less visually intrusive alternative.

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 maximum permissible exposure (MPE) limits for the general public. As previously mentioned in Finding 1, an independent pole could have been proposed at a compliant 28 feet in height but that would be more visually intrusive as there would be two poles instead of just one. The additional height is necessary to ensure compliance with contemporary regulations governing equipment mounting separations for safety purposes per the CPUC's General Order 95. The proposed facility, including the variance for height is consistent with FCC and CPUC safety standards and not detrimental to public interest in terms of a less visually intrusive alternative.

3. The granting of the variance will not constitute a special privilege to the applicant or property owner. The proposed wireless facility and electrical support equipment is prompted by both the CPUC's General Order 95 equipment mounting requirements, and, Verizon Wireless's objective of maximizing coverage and enhancing wireless service for customers in the western Malibu area. The variance request for additional vertical mounting height is typical of many wireless communications permit applications to achieve the physical separation requirements for technical equipment and, enhance service delivery. Also, the variance request is not particular to Verizon Wireless, any wireless carrier company could make a similar request and staff would process the permit request and project assessment in an identical manner. Lastly, there are other similar facilities mounted on existing utility poles that exceed 28 feet in height within the City of Malibu.

4. The granting of the variance will not be contrary with the policies of the LCP. The proposed height is not expected to impact any scenic views. The pole, antenna, and associated equipment will be painted to blend in with the existing wooden utility pole.

5. The project site is neither in nor adjacent to an ESHA, ESHA buffer or stream, and therefore avoids impacts to environmentally sensitive habitat areas.

6. The proposed project does not involve a stringline modification as it is not located on a beach; and therefore avoids impacts to public access.

7. The variance request is consistent with the purpose and intent of the zone in which the site is located. The proposed facility is in the public ROW adjacent to residential properties and as a result it is not located in a zone. The proposed project is consistent with the purpose and intent for the public ROW and surrounding zones. The applicant is applying for a site plan review for a new wireless communications facility in the public ROW and the proposed facility meets the recommended design criteria in the LIP and MMC.

8. The subject site is physically suitable for the proposed variance. The proposed location, on the landside of PCH, keeps it away from potential impacts to scenic views. There are no anticipated impacts to visually impressive views of the Pacific Ocean nor any other scenic resources identified in the LIP.

9. The variance complies with State and local law in that it meets the requirements of the FCC, the CPUC's General Order 95 for pole-mounted electrical equipment on utility poles, and local WCF requirements per the Malibu LIP and MMC. There are no anticipated visual impacts to scenic resources.

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

**C. Site Plan Review for erecting a wireless communications facility in the public right-of-way (LIP Section 13.27.5)**

SPR No. 20-041 will allow the installation of a wireless communications facility in the public right-of-way and includes development over 18 feet in height.

1. Wireless communications facilities are permitted in the public ROW 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. The proposed wireless communications facility is consistent with LIP standards, which implements the policies and provisions of the City's LCP. The proposed wireless communications facility will be painted a dark brown color to match the replacement wooden utility pole. The proposed project is generally compatible in size, bulk, and height to existing streetlight poles located along PCH.

2. The project does not adversely affect neighborhood character. The pole-mounted antennas will be painted a dark brown color to match the existing pole. The proposed project is generally compatible in size, bulk, and height to existing wooden utility poles located along PCH. The wireless facility's 34-foot, 9-inch maximum height is also the least intrusive design compared to erecting a new pole meet all necessary requirements for CPUC vertical safety clearances and SCE mounting requirements.

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 pole-mounted antenna does exceed a height of 28 feet, as required by the LIP and MMC, 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 Federal Communications Commission (FCC) and the CPUC.

5. The proposed wireless communications facility is a use consistent with the goals, objectives, and policies of the General Plan, LCP, MMC, and City standards. Wireless communications facilities are permitted in the public ROW 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, which contain the same requirements as the MMC that implements the General Plan. 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.

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

1. The proposed wireless communications facility is not anticipated to affect any scenic views of the Pacific Ocean and Santa Monica Mountains. 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 landward side of Pacific Coast Highway and 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 have more significant impacts than the current proposal; therefore, this is the least impactful alternative.

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

**E. 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, CPUC, SCE, and the City Building Safety 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. 20-028, WCF No. 20-010, VAR No. 20-017 and SPR No. 20-041, 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. Approval of this application is to allow the project as follows:
  - a. Replacement 52-foot tall AGL wooden utility pole and utility infrastructure;
  - b. Mount two four-foot tall replacement panel antennas at a height of 34 feet, 9 inches supported by a pair of six-foot long wooden double extension arms; and
  - c. Mount new electrical support equipment consisting of two remote radio units (RRU), four power supply units (PSUs), disconnect box, fuse panel, and new fiber distribution box onto the replacement pole behind the new equipment channel.
3. Subsequent submittals for this project shall be in substantial compliance with plans on-file with the Planning Department, date-stamped June 15, 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.
4. 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.
5. 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.
6. 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.
7. 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 City of Malibu California Department of Transportation for an encroachment permit.

8. This CDP 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 ROW 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.
9. The installation and construction authorized by this CDP 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.
10. Any questions of intent or interpretation of any condition of approval will be resolved by the Planning Director upon written request of such interpretation.
11. All structures shall conform to the requirements of the Environmental Sustainability Department, Public Works Department, Federal Communications Commission, and Los Angeles County Fire Department requirements, as applicable. Notwithstanding this review, all required permits, including but not limited to an encroachment permit from Caltrans, shall be secured.
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 LCP. An application with all required materials and fees shall be required.

*Cultural Resources*

13. 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).

14. 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

15. 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.
16. 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.
17. All antennas, equipment, and support structures shall be designed to prevent unauthorized climbing.
18. 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.
19. 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.
20. The proposed wireless communications facility shall not emit a noise greater than fifty (50) decibels (dB) as measured from the base of the facility.
21. 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.
22. The collocation of wireless communications facilities, pursuant to LIP Section 3.16.5, shall be required whenever feasible.
23. 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. 90

24. All pole mounted equipment associated with the application shall be located no lower than eight feet above grade or ground level on the utility pole.
25. 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.
26. 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.
27. 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.
28. 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 WCF, 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.
29. 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.
30. 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.
31. For all facilities located within the ROW, the permittee shall remove or relocate, at its expense and without expense to the City, any or all of its facilities when such removal or relocation is deemed necessary by the City by reason of any change of grade, alignment, or width of any right-of-way, for installation of services, water pipes, drains, storm drains,

power or signal lines, traffic control devices, right-of-way improvements, or for any other construction, repair, or improvement to the right-of-way. The City will give the wireless carrier a six-month advance notice of such removal or relocation but may provide notice in less time if removal or relocation of the facility is required due to an emergency or other exigent matter. The Planning Director shall have discretion to extend this period for due cause.

32. 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.
33. 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.
34. A wireless facility or its modification installed after the effective date of Ordinance 477U without a Wireless Right-of-Way Permit (WRP) (except for those exempted from, or not subject to the Chapter) must be removed; provided that removal of a 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. All costs incurred by the City in connection with enforcement of this provision and removal shall be paid by entities who own or control any part of the wireless facility.

#### Construction

35. 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.

Site Specific Conditions

36. 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.
37. The permittee acknowledges that the City specifically includes conditions of approval related to (a) painting, coloring or finishing the equipment to match the pole; and (b) 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. Any future modifications to the permittee's wireless facility must maintain or improve all concealment elements, including undergrounding new or replacement equipment installed after the installation of the approved equipment pursuant to this permit.
38. 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.
39. 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.

40. 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.
41. 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.
42. The permittee shall maintain the paint, color and finish of the facility in good condition at all times.
43. 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.
44. 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 California Department of Transportation 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.
45. 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.
46. 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.
47. 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.
48. 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.

- 
49. 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.
50. Permittee shall promptly remove any graffiti on the wireless facility at permittee's sole expense within 48 hours after notice.
51. The antenna and associated equipment attached to the replacement utility pole must be painted a matte dark brown color to match the wooden replacement pole.
52. 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.
53. 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.
54. 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.

#### Prior to Operation

- 55. 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.
- 56. 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.
- 57. 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.

#### Public Works

- 58. The proposed project includes improvements within the California Department of Transportation's public right-of-way. The applicant shall obtain a Caltrans Encroachment Permit for the proposed work within the public right-of-way prior to installation.

#### Fixed Conditions

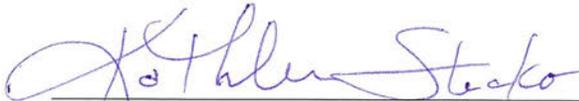
- 59. Violation of any of the conditions of this approval shall be cause for revocation and termination of all rights there under.

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

PASSED, APPROVED AND ADOPTED this 21<sup>st</sup> day of June 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. Appeals shall be emailed to psalazar@malibucity.org and the filing fee shall be mailed to Malibu Planning Department, attention: Patricia Salazar, 23825 Stuart Ranch Road, Malibu, CA 90265. Appeal forms may be found online at www.malibucity.org/planningforms. If you are unable to submit your appeal online, please contact Patricia Salazar by calling (310) 456-2489, extension 245, at least two business days before your appeal deadline to arrange alternative delivery of the appeal.

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 21-48 was passed and adopted by the Planning Commission of the City of Malibu at the regular meeting thereof held on the 21<sup>st</sup> day of June 2021, by the following vote:

AYES:	4	Commissioners:	Mazza, Smith, Weil, Jennings
NOES:	1	Commissioners:	Hill.
ABSTAIN:	0		
ABSENT:	0		

  
\_\_\_\_\_  
KATHLEEN STECKO, Recording Secretary



# Commission Agenda Report

Planning Commission  
Meeting  
06-21-21

**Item  
4.C.**

To: Chair Jennings and Members of the Planning Commission

Prepared by: Tyler Eaton, Assistant Planner

Approved by: Richard Mollica, Planning Director

Date prepared: June 10, 2021 Meeting date: June 21, 2021

Subject: Wireless Communications Facility No. 20-010, Coastal Development Permit No. 20-028, Variance No. 20-017, and Site Plan Review No. 20-041 – An application for an upgraded wireless communications facility on a new replacement wooden utility pole in the public right-of-way (Continued from June 7, 2021)

Location: 31557.5 Pacific Coast Highway, not within the appealable coastal zone

Nearest APN: 4470-008-002

Geo-coordinates: 34°02'12.63"N, 118°51'43.45"W

Applicant: Motive for Verizon Wireless

Owner: California Department of Transportation (Caltrans)  
Public Right-of-Way

---

**RECOMMENDED ACTION:** Adopt Planning Commission Resolution No. 21-48 (Attachment 1) determining the project is categorically exempt from the California Environmental Quality Act (CEQA), and approving Wireless Communications Facility (WCF) No. 20-010 and Coastal Development Permit (CDP) No. 20-028 for Verizon Wireless to install two replacement wireless communications facility antennas at a height of 34 feet, 9 inches and electrical support equipment mounted on a replacement wooden utility pole, including Variance (VAR) No. 20-017 to permit an upgraded wireless facility mounted over 28 feet in height and Site Plan Review (SPR) No. 20-041 to install and operate a wireless communications facility within the public right-of-way (ROW) located at 31557.5 Pacific Coast Highway (PCH).

**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, 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.<sup>1</sup>

## **Project Overview**

The applicant proposes to upgrade an existing WCF attached to a new replacement wooden utility pole in the inland parkway of the public ROW of PCH. This project was submitted on behalf of Verizon Wireless for upgrades to an existing WCF on an existing wooden utility pole to augment wireless service delivery and capacity to Verizon Wireless customers within the general western Malibu area.

### *Design Standards Applied*

In December of 2020, the City of Malibu adopted a new Urgency Ordinance No. 477U to address wireless communications facilities in the public ROW. In September of 2020, staff deemed the application complete for processing. The standards used for this project were those standards that were in place before adoption of the Urgency Ordinance.

The City's standards at the time of completion encourage collocation of wireless communication facilities when possible, on existing poles or other facilities provided the antennas do not exceed the utility pole's height or a less intrusive alternative is not available as set forth in LCP Local Implementation Plan (LIP) Sections 3.16.5(H) and (J). Also, freestanding tower, lattice, or monopole antennas shall not exceed a height of 28 feet pursuant to LIP Section 3.16.5(F). The proposed project involves the installation of a 52-foot tall above ground level (AGL) replacement wooden utility pole, a pair of new four-foot tall panel antennas at a height of 34 feet, 9 inches, and supporting electrical equipment attached to the pole.

VAR No. 20-017 is requested for the replacement wooden utility pole with proposed upgraded antennas to project above the 28 feet height maximum. The additional height is necessary to ensure compliance with regulations governing equipment mounting separations for safety purposes (i.e., the weight and stress on utility poles from attachments and weather conditions [e.g., heat, wind], and inspection requirements) per

---

<sup>1</sup> LCP Local Implementation Plan (LIP) Section 3.16 and MMC Chapter 17.46 contain the same standards for wireless communications facilities.

the California Public Utilities Commission's (CPUC) General Order 95, and in conjunction with LIP Sections 3.16.7(C) and 3.16.10(D).

Contested Conditions of Approval

At the Planning Commission meeting on May 17, 2021, staff was directed to review Verizon Wireless's requests to modify some conditions of approval within the resolution. Staff did not change the language at Verizon's request because the language was adopted by the City Council in December of 2020 per Ordinance 477U. However, at the Planning Commission's request, staff reviewed the requested changes again to make sure language within the conditions were applicable to the project. The following conditions were requested by Verizon Wireless for modification.

Condition 1: Verizon wants to add the word "reasonable" to the City's indemnification condition. Although adding the word "reasonable" within this condition does not seem to change the condition too much, this language is standard for all projects within the City, not just wireless projects. The term "reasonable" is also subjective and would cause confusion at time of implementation. Therefore, staff does not want to grant a special privilege to wireless projects, different than what is required for all other projects within the City.

Condition 31: Condition related to the modification and/or removal of wireless infrastructure when in conflict with City authorized improvements in the public ROW. Verizon Wireless requests that the condition be modified to add language that the City will notify Verizon Wireless at least 12 months in advance of a request to remove equipment for City authorized ROW improvements. For larger projects, the City should know well in advance when improvements would require other agencies within the public ROW to modify/remove infrastructure. However other improvements could occur on behalf of an emergency and other situations that require the City to take more expeditious action. Six months' notice is reasonable and should provide ample time for Verizon Wireless to make accommodations. Secondly, if the City wants to add a time period to the language, it is requested that we maintain the right to provide notice less than six months if necessary due to time constraints.

Condition 37: Condition related to the permittee acknowledging conditions related to painting, camouflaging, and undergrounding and that maintaining those concealment elements even with future improvements to the WCF. Verizon requests to remove the language "undergrounding all equipment to the maximum extent possible". This project does not require undergrounding; however, future improvements to the proposed facility might, as they would need to meet current design standards which require undergrounding of accessory electrical equipment. By removing this language, the City could be waiving the City's ability to require the applicant to underground future equipment. The last line in the condition states, "Any future modifications to the permittee's wireless facility must maintain or improve all concealment elements." By keeping this language, the permittee is acknowledging the need to underground future improvements. Local jurisdictions have less latitude on modifications to existing facilities and without this condition, large above-

ground or pole-mounted equipment could be installed without any screening. Staff does not recommend changing this condition but if the undergrounding language is removed, staff proposes to add language to the last line stating “, including undergrounding new or replacement equipment.”

Condition 44a: Condition relating to build-out conditions necessitating that the site meet all requirements related to laws, codes and standards of the applicable ROW agency, in addition to requirements from State and federal agencies. Verizon Wireless proposes that the City change the requirement of demonstrating to City Public Works Department that the project complies with applicable law. Instead, Verizon is requesting the language be changed to demonstrating compliance with Caltrans. The proposed WCF is within the Caltrans ROW and as such staff was willing to change the language to Caltrans. This language will be interchangeable depending on the correct public ROW authority.

Condition 57: Condition related to the expiration of the project within one month if Verizon Wireless does not submit their post-installation report and fix any problems that were not in the original approval. Staff does not recommend changing this condition because precedence has not shown the carriers readiness to submit post-installation reports in a timely manner. There have been cases where staff has received post-installation reports months and years after installation. This condition requires the carrier to submit the post-installation report and fix unpermitted problems in a timely manner. Staff is willing to add language stating “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.”

### ***CDP Requirement***

A wireless communications facility is typically exempt from the requirement to obtain a CDP. However, in this case, the replacement antennas require the installation of a replacement wooden utility pole in a different location and does not qualify for the CDP exemption pursuant to LIP Section 13.4. The siting of the proposed antennas requires the installation of a replacement wooden utility pole in order to meet the objectives of Verizon Wireless to augment wireless service delivery and capacity to Verizon customers in the general area. Furthermore, the project is for development of an upgraded wireless communications facility in excess of 28 feet in height and therefore, requires a variance.

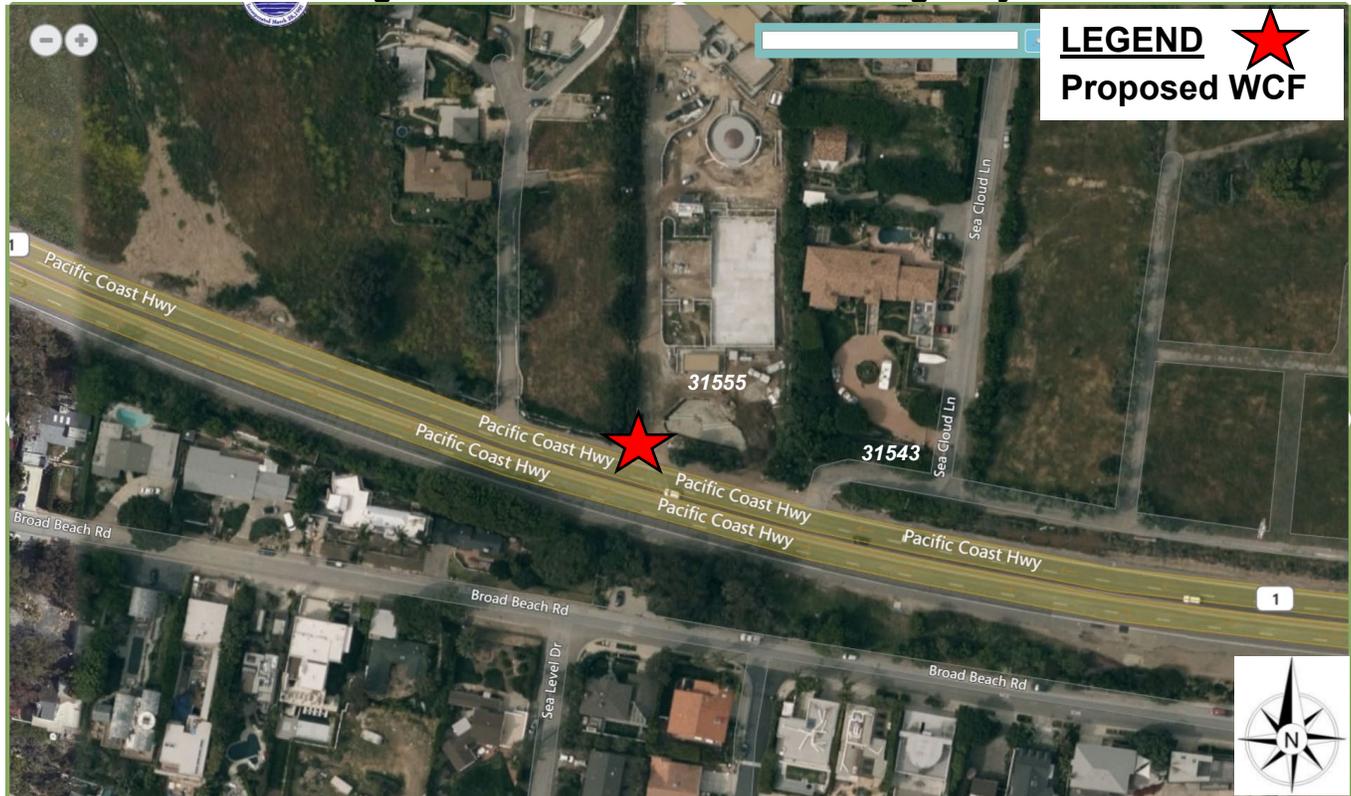
### ***Surrounding Land Uses and Project Setting***

The project site is in the inland parkway of the PCH public ROW, adjacent to a series of residential parcels zoned Rural Residential (RR)-10 and RR-5. As outlined in Table 1, the project site is surrounded on all sides by existing residentially zoned properties. As shown on the LCP ESHA and Marine Resources Map, the project site is neither located in nor adjacent to ESHA. Furthermore, the project site is not 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
31543 PCH (East)	RR-5	Residential
31577 PCH (West)	RR-10	Residential
APN 4470-017-901 (South)	SFM	Vacant
31555 PCH (North)	RR-10	Residential

RR-10 = Rural Residential, 10-acre minimum lot size  
 RR-5 = Rural Residential, 5-acre minimum lot size  
 SFM = Single-Family Residential, Medium, 0.25-acre minimum lot size

**Figure 1 – 31557.5 Pacific Coast Highway**



Source: City of Malibu GIS, 2021

The nearest existing residential dwelling at 31543 PCH is situated approximately 190 feet to the northeast. The replacement wooden utility pole would be installed in a new hole in the dirt shoulder immediately east of the driveway access to 31555 PCH and within the PCH’s public ROW. Existing wooden utility poles are located along the same side of the street and across the street. The pole will be visible from PCH, an LCP-designated scenic highway, as well as surrounding properties. However, there will be no impact to scenic resources from PCH as the existing wooden utility pole will be replaced on the landside of PCH. Staff also checked for primary view determinations for the properties north of the subject site and none were discovered. The replacement pole will be taller than the original pole; however, visually impressive views are not anticipated to be obstructed by the replacement pole.

## ***Project's Scope of Work Description***

The proposed improvements as shown on the project plans (Attachment 2) consist of the installation of the following:

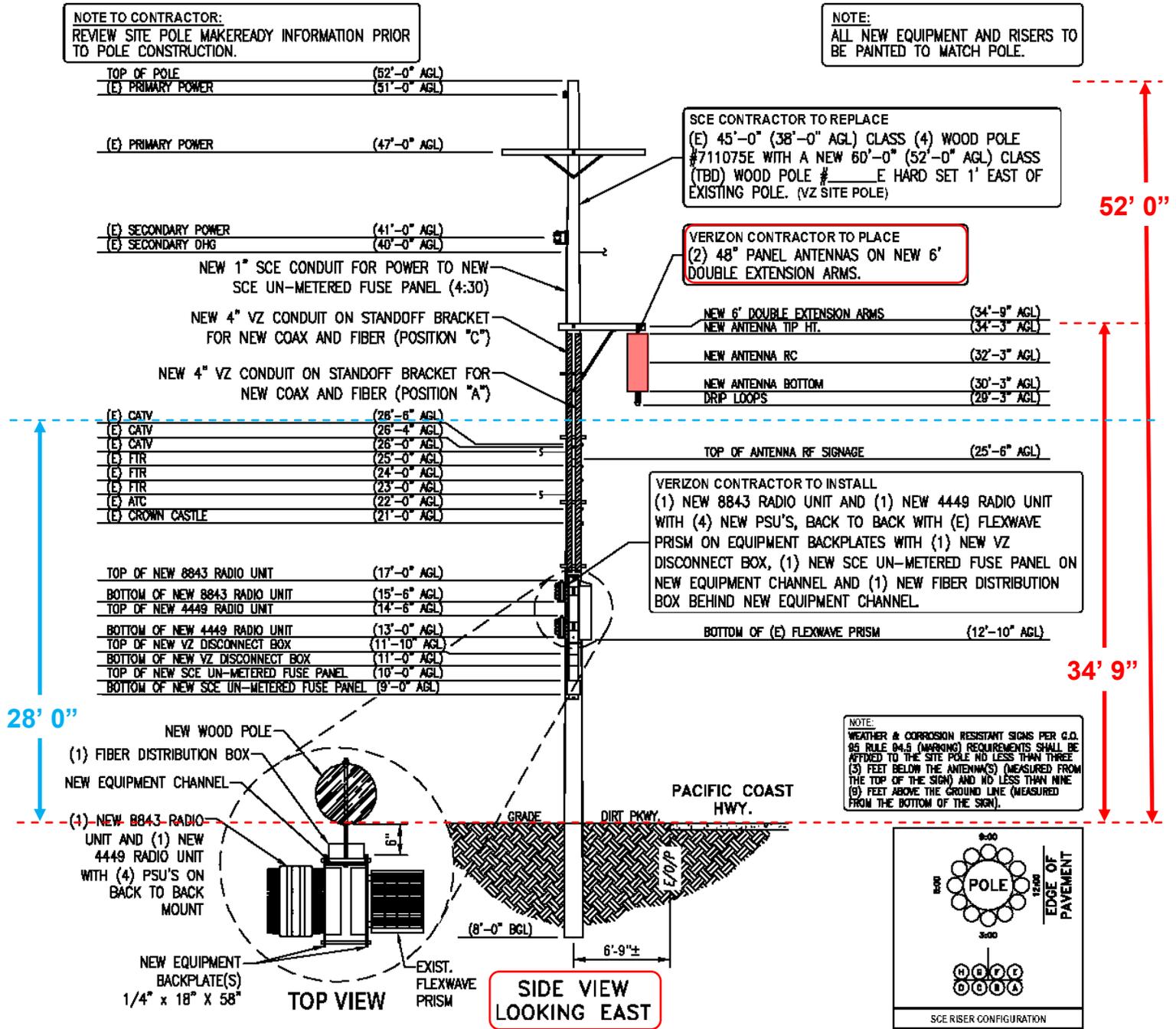
- a) Replacement 52-foot tall AGL wooden utility pole and utility infrastructure;
- b) Mount two four-foot tall replacement panel antennas at a height of 34 feet, 9 inches supported by a pair of six-foot long wooden double extension arms; and
- c) Mount new electrical support equipment consisting of two remote radio units (RRU), four power supply units (PSUs), disconnect box, fuse panel, and new fiber distribution box onto the replacement pole behind the new equipment channel.

Associated with the proposed project is the discretionary request for:

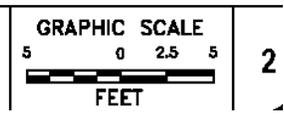
- VAR No. 20-017 for the installation of an upgraded wireless communications facility at 34 feet, 9 inches mounted to a 52-foot tall replacement wooden utility pole, above the 28 foot height limit; and,
- SPR No. 20-041 for the installation and operation of a wireless communications facility located within the public ROW.

Figure 2 below depicts the proposed replacement wooden utility pole, pole-mounted antennas and shrouded equipment. The pole-mounted antenna design is also depicted in the applicant's provided visual demonstration exhibits (Attachment 3). The antennas and appurtenant equipment are conditioned to be painted brown to match the replacement wooden utility pole.

Figure 2 – Project Plan Elevation (looking east)



PROPOSED ELEVATION



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 within the street public ROW.

### ***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 an installation of a new antenna on a replacement wooden utility pole. It does not qualify as an eligible facility request because the wireless upgrade involves a replacement base station structure and the proposed replacement antennas exceeds three cubic feet.

### ***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 in the public ROW. Under a 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 not deemed by the City staff and their wireless consultants as a small cell project. The project was processed in compliance with the 150-day timeframe.

### ***Significant Gap in Signal Coverage***

Per LIP Section 3.16.9(9) and MMC Section 17.46.100(9) *Minimum Application Requirements* all wireless communication facility permit applications require a map and narrative description explaining the site selection process and to assess wireless service coverage gaps. Historically, most wireless communication facility permit applicants provided a written needs justification and a color-coded coverage map showing the evidence to support the proposed enhancements to a wireless carrier’s service delivery within a given geographic boundary.

However, pursuant to FCC Order 18-133 “*Streamline Small Cell Deployment Order*”, effective January 14, 2019, the FCC deems augmenting wireless network service provision to be an amalgamation of expanding coverage, amplifying capacity, and facility densification, all of which are protected actions per FCC Order 18-133.

For WCF No. 20-010, the applicant (Verizon Wireless) has declined to provide a wireless coverage map, referencing FCC Order 18-133, and citing the passage below from an *ex parte* letter to the FCC from Crown Castle: “*coverage gap-based approaches are ‘simply*

*incompatible with a world where the vast majority of new wireless builds are going to be designed to add network capacity and take advantage of new technologies, rather than plug gaps in network coverage.”* Furthermore, within FCC Order 18-133, sub-section 40 (page 19 of 116) there is support for discounting (i.e., disregarding) coverage maps requirements as part of local jurisdictions needs assessment for wireless communication facility permit applications. The FCC Order 18-133 authors parallel Crown Castles argument, per FCC footnote #87 (page 18 of 116):

*Our conclusion finds further support in our broad understanding of the statutory term “service,” which, as we explained in our recent Moratoria Declaratory Ruling, means “any covered service a provider wishes to provide, incorporating the abilities and performance characteristics it wishes to employ, including to provide existing services more robustly, or at a higher level of quality—such as through filling a coverage gap, densification, or otherwise improving service capabilities.”*

As such, staff interprets the FCC Order 18-133 as a federal preemption of LIP Section 3.16.9(9) and MMC Section 17.46.100(9), obviating needs justifications narratives and coverage maps from wireless communications facility permit applicants. In addition, the project includes the replace an existing WCF and therefore will be upgrading coverage and capacity to the area provided by the current WCF.

### **Site Alternative Analysis**

Pursuant to LIP Section 3.16.9(B)(9), *Minimum Application Requirements*, 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 subject site hosts an existing WCF mounted on an existing wooden utility pole. The proposed project would upgrade the existing WCF attached on a new replacement wooden utility pole. The application did not provide an alternate site assessment nor were they required to submit one since the facility already exists and this is an upgrade. Staff notes that the permitting process for a new facility or a proposal for an upgraded facility would materially result in an equivalent bundle of permits (WCF, CDP, SPR, VAR) and equivalent hearing before the approval body. The proposed upgrades to an existing WCF is the least environmentally damaging alternative as upgrading the existing facility minimizes site disturbances and maintains critical wireless service provision within the public ROW.

### **Health Effects of Radio Frequency Emissions and Radio Frequency Report**

MMC Section 17.46.050 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 MMC Section 17.46.060(K) 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 Radio Frequency (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 EBI Consulting, dated July 24, 2020, which outlines compliance of the facility with FCC thresholds for RF emissions (Attachment 5). The applicant has also provided correspondence that the proposed wireless communications facility will operate in compliance with the FCC regulations (Attachment 6). The report concluded that the maximum power density generated by the Verizon Wireless antennas at its nearest walking/working surfaces is approximately 0.80 percent of the FCC's limit for maximum permissible exposure for the general public (0.16 percent the FCC's occupational limit) 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/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 and MMC Findings* section below.

Based on the project site and scope of work described for the proposed wireless communication 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/LIP Conformance Analysis***

The proposed project has been reviewed for conformance with the MMC and 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 (LIP Section 3.16)**

LIP Section 3.16.2 permits wireless communications facilities within the public ROW 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 development that will be taller than 28 feet, a height that is inconsistent with LIP Section 3.16.5. Therefore, the applicant is applying for a variance request to allow the 52-foot AGL replacement wooden utility pole for an upgraded wireless communications facility with two replacement panel antennas at a height of 34 feet, 3 inches.

#### **General Requirements (LIP Section 3.16.5)**

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.

Pursuant to LIP Section 3.15.5(H), wireless communications facilities shall be collocated on existing poles when possible. The upgraded WCF is proposed to be collocated on a replacement utility pole near the same hole set as the existing one.

Pursuant to LIP Section 3.15.5(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 pair of RRU's would be pole-mounted and visually screened inside a concealment box. Electrical

support equipment would be pole-mounted inside a new equipment box and replacement cables and wires would be routed inside a new conduit. All new pole-mounted equipment would be painted dark brown to match the replacement wooden utility pole.

Pursuant to LIP Section 3.15.5(N), no wireless communications facility shall be located within 500 feet of any school ground, playground or park unless a finding is made, based on technical evidence acceptable to the Planning Director, as appropriate, showing a clear need for the facility and that no technically feasible alternative site exists. The project site is located more than 500 feet of any school ground, playground or park and therefore, this finding does not apply.

#### Most Restrictive Design Criteria (LIP Section 3.16.6)

Pursuant to LIP Sections 3.16.6(C), (D), and (J), wireless communications facilities are required to be placed, screened, camouflaged, painted and textured, to the greatest extent feasible, for compatibility with existing site characteristics. The proposed replacement wooden utility pole and upgraded wireless facility at a mounting height of 34 feet, 9 inches are compatible with the existing site characteristics in the general area that contain other wooden utility poles, various pole-mounted electrical equipment, overhead utility lines and street signals and signs along the PCH. Consistent with these requirements, the proposed antennas and support equipment are conditioned to be painted dark brown to match the color of the replacement wooden utility pole.

#### Grading (LIP Chapter 8)

Minor soil/concrete excavation is proposed for the installation of the replacement wooden utility pole. 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 disturbed dirt road shoulder of PCH. The project site has been evaluated by Planning Department staff 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 previously improved road, 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 replacement wooden utility pole with an upgraded pole-mounted wireless communications facility located within the public ROW. 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. 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, RF-EME Jurisdictional Report, site inspection, and recommended conditions, the proposed upgrade to the existing wireless communications facility 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 within the first public road and the sea and therefore, this finding does not apply. The proposed project conforms to the public access and recreation policies of Chapter 3 of the Coastal Act.

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

The proposed upgrade to an existing wireless communications facility is the least environmentally damaging alternative. The replacement pole is in the inland side of PCH within the disturbed dirt shoulder. The replacement antennas and associated equipment will be mounted on the replacement pole and are not expected to have a significant adverse impact on scenic views or biological resources.

*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 do not apply.

**B. Variance for an Upgrade to an Existing Wireless Communications Facility on a Taller Replacement Utility Pole Over 28 Feet in Height (LIP Section 13.26.5)**

VAR No. 20-017 is requested to allow for an upgrade to an existing wireless communications facility on a 52-foot tall replacement wooden utility pole above the 28 foot height limit. The Planning Commission may approve, deny and/or modify a variance application in whole or in part, with or without conditions, provided it makes all of the following 10 findings pursuant to LIP Section 13.26.5. The evidence in the record supports approval of VAR No. 20-017 and all 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. If the applicant chose to propose an independent pole to support the antenna, it may not need to be taller than 28 feet. However, this option would result in an additional pole and would not be the least visually intrusive option. Instead, the applicant proposes to upgrade the existing WCF with a replacement wooden utility pole.

As mentioned previously in *Project Overview*, the subject project is an existing wireless communications facility that is currently non-conforming with respect to separation requirements for equipment mounted onto Southern California Edison (SCE) utility poles, as per the CPUC's General Order 95. A taller pole would be necessary to comply with the required equipment separation requirements between pole-mounted equipment, the pole itself, and power and telecom lines. To achieve its wireless service objectives, Verizon Wireless is proposing the upgraded panel antennas to be mounted at a height of 34 feet, 9 inches to comply with safety separations requirements, maximize coverage and enhance wireless service for Verizon Wireless customers in the western Malibu area.

*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. As previously mentioned in Finding 1, an independent pole could have been proposed at a compliant height of 28 feet but that would be more visually intrusive as there would be two poles instead of just one. The proposed facility, including the variance for height is consistent with FCC safety standards and not detrimental to public interest in terms of a less visually intrusive alternative.

*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, the proposed installation of a 52-foot tall replacement wooden utility pole and two pole-mounted panel antennas is prompted by both the CPUC's General Order 95 equipment mounting requirements, and, Verizon Wireless's objective of maximizing coverage and enhancing wireless service for customers in the western Malibu area. The variance request for additional vertical mounting height is typical of many wireless communications permit applications to achieve the physical separation requirements for technical equipment and, enhance service delivery. Also, the variance request is not particular to Verizon Wireless, any wireless carrier company could make a similar request and staff would process the permit request and project assessment in an identical manner. Lastly, there are other similar facilities mounted on existing utility poles that exceed 28 feet in height within the City of Malibu. Granting this variance will not constitute a special privilege to the applicant and would bring the project closer into compliance with other design criteria. It is common that upgrades to existing facilities exceed 28 feet in height to meet those requirements.

*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 contrary with the policies of the LCP. The proposed height is not expected to impact any scenic views. All pole-mounted antennas and associated equipment will be painted to blend in with the existing wooden utility pole.

*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 neither in nor 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 while adjacent to residentially zoned properties is in the public ROW and as a result it is not located in a zone. The proposed project is consistent with the purpose and intent for the public ROW and surrounding zones. The applicant is applying for a site plan review for a new wireless communications facility in the public ROW and the proposed 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 upgrade eliminates the need for a new freestanding pole, thus minimizing the potential for impacts to scenic views. There are no anticipated impacts to visually impressive views of the Pacific Ocean, nor 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, the CPUC's General Order 95 for pole-mounted electrical equipment on utility poles, and local WCF requirements per the Malibu LIP and MMC. There are no anticipated 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, therefore this finding does not apply.

**C. Site Plan Review to install and operate a wireless communications facility located within the public ROW (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. 20-041 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 the public ROW 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 pole-mounted antennas and equipment will be painted a dark brown color to match the replacement wooden utility pole. The proposed project is generally compatible in size, bulk, and height to existing wooden utility poles located along PCH. The wireless antennas will be mounted at a height of 34 feet, 9 inch and is the least intrusive design compared to erecting a separated freestanding pole. The proposed facility would meet all necessary requirements for CPUC vertical safety clearances and SCE mounting requirements.

*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 replacement utility pole and antennas exceed a maximum height of 28 feet, as required by the LIP and MMC, but are not expected to have any significant public views impact 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 and the CPUC.

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

Wireless communications facilities are permitted in the public ROW 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, which contain the same requirements as the MMC that implements the General Plan. 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 inspections, the provided visual simulations, and review of the plans, it was determined that the replacement pole, and upgraded wireless antennas and

equipment are not expected to obstruct protected private views of impressive scenes of the Pacific Ocean, off-shore islands, Santa Monica Mountains, canyons, valleys, or ravines.

#### **D. 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.

#### **E. 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.

#### **F. 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 site is located on 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 replacement utility pole and updated wireless communications facility are not anticipated to affect any scenic views of the Pacific Ocean and Santa Monica Mountains as it is located in the disturbed dirt road shoulder of a residential area. 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 landward side of PCH and 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 have more significant impacts than the current proposal; therefore, this is the least impactful alternative.

*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 an antenna and equipment that will be painted a color that will best help them blend with their surroundings. As conditioned and designed, the project will have a less than significant impact on scenic views.

#### **G. 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.

#### **H. 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 and the CPUC.

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. The Planning Department has conditioned 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.

#### **I. 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.

#### **J. 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.

#### **K. 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(d) – New construction or Conversion of Small Structures, including water main, sewage, electrical, gas, and other utility extensions (i.e., communications, cable TV, etc.). 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: On May 15, 2021, staff received correspondence from a member of the public concerned if the replacement antennas will be for a 5G network upgrade (Attachment 7). There is no indication in the project materials whether the upgrades will be for Verizon’s 5G network. Staff verified with Verizon Wireless that the replacement antennas at this location will not be for a 5G upgrade but instead for their 4G LTE network.

PUBLIC NOTICE: On May 13, 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 1000-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. 21-48. The project has been reviewed and conditionally approved for conformance with the LCP by Planning Department staff.

ATTACHMENTS:

1. Planning Commission Resolution No. 21-48
2. Project Plans
3. Visual Demonstration Exhibits
4. Signal Coverage Maps – declined memo from Verizon
5. RF-EME Jurisdictional Report
6. FCC Compliance
7. Public Correspondence dated May 15, 2021
8. Radius Map
9. Public Hearing Notice

CITY OF MALIBU PLANNING COMMISSION  
RESOLUTION NO. 21-48

A RESOLUTION OF THE CITY OF MALIBU PLANNING COMMISSION DETERMINING THE PROJECT IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENT QUALITY ACT AND APPROVING COASTAL DEVELOPMENT PERMIT NO. 20-028 AND WIRELESS COMMUNICATIONS FACILITY NO. 20-010 FOR VERIZON WIRELESS TO INSTALL TWO REPLACEMENT WIRELESS COMMUNICATIONS FACILITY ANTENNAS AT A HEIGHT OF 34 FEET, 9 INCHES AND ELECTRICAL SUPPORT EQUIPMENT MOUNTED ON A REPLACEMENT WOODEN UTILITY POLE, INCLUDING VARIANCE NO. 20-017 TO PERMIT AN UPGRADED WIRELESS FACILITY MOUNTED OVER 28 FEET IN HEIGHT AND SITE PLAN REVIEW NO. 20-041 TO INSTALL AND OPERATE A WIRELESS COMMUNICATIONS FACILITY WITHIN THE PUBLIC RIGHT-OF-WAY LOCATED AT 31557.5 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 15, 2020, a new application for Wireless Communications Facility (WCF) No. 20-010 and Site Plan Review (SPR) No. 20-041 was submitted by the applicant, Motive, on behalf of Verizon Wireless for a pole-mounted WCF on a replacement wooden utility pole. Coastal Development Permit (CDP) No. 20-028 and Variance (VAR) No. 20-017 were later assigned to the project.

B. On September 3, 2020, a Notice of CDP Application was posted at the subject site attached to the existing pole to be replaced.

C. On September 28, 2020, planning staff deemed the project complete for processing.

D. On May 13, 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 1000-foot radius of the project site and to all interested parties.

E. On June 7, 2021, the Planning Commission held a duly noticed public hearing and continued the item to the June 21, 2021, Planning Commission public hearing.

F. On June 21, 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 15303(d) – new construction of utility systems. 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, CDP No. 20-028 and WCF No. 20-010 for Verizon Wireless to install two replacement wireless communications facility antennas at a height of 34 feet, 9 inches and electrical support equipment mounted on a replacement wooden utility pole, including VAR No. 20-017 to permit an upgraded wireless facility mounted over 28 feet in height and SPR No. 20-041 to install and operate a wireless communications facility within the public right-of-way (ROW) located at 31557.5 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. 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, radio emissions report, site inspection, and recommended conditions, the proposed project conforms to the LCP and Malibu Municipal Code (MMC) in that it meets all applicable wireless communications facility code and other standards.

2. The proposed upgrade to an existing wireless communications facility is the least environmentally damaging alternative. The replacement pole is in the inland side of PCH within the disturbed dirt shoulder. The replacement antennas and associated equipment will be mounted on the replacement pole and are not expected to have a significant adverse impact on scenic views or biological resources.

#### **B. Variance for the development of a wireless communications facility above 28 feet (LIP 13.26.5)**

VAR No. 20-017 is requested to allow for an upgrade to an existing wireless communications facility on a 52-foot tall replacement wooden utility pole above the 28 foot height limit.

1. Evidence in the record demonstrates there are special characteristics for the proposed wireless communications facilities that makes it subject to a variance. The applicant proposes to upgrade the existing WCF with a new replacement wooden utility pole. The subject project is an existing wireless communications facility that is currently non-conforming with contemporary physical separation requirements for equipment mounted onto SCE utility poles, as per the California Public Utilities Commission's (CPUC) General Order 95 and Federal Communication Commissions (FCC) safety standards. A taller pole will be necessary to comply with the required equipment separation requirements between pole-mounted equipment, the pole

itself, and power and telecom lines. To achieve its wireless service objectives, Verizon Wireless is proposing the upgraded panels be mounted at 34 feet 9 inches to maximize coverage and enhance wireless service for customers in the western Malibu area. An independent pole could have been proposed at a maximum 28 feet in height but that would be a more visually intrusive design as there would be two poles instead of just one. The proposed facility, including the variance for height is consistent with FCC and CPUC safety standards and not detrimental to public interest in terms of a less visually intrusive alternative.

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 maximum permissible exposure (MPE) limits for the general public. As previously mentioned in Finding 1, an independent pole could have been proposed at a compliant 28 feet in height but that would be more visually intrusive as there would be two poles instead of just one. The additional height is necessary to ensure compliance with contemporary regulations governing equipment mounting separations for safety purposes per the CPUC's General Order 95. The proposed facility, including the variance for height is consistent with FCC and CPUC safety standards and not detrimental to public interest in terms of a less visually intrusive alternative.

3. The granting of the variance will not constitute a special privilege to the applicant or property owner. The proposed wireless facility and electrical support equipment is prompted by both the CPUC's General Order 95 equipment mounting requirements, and, Verizon Wireless's objective of maximizing coverage and enhancing wireless service for customers in the western Malibu area. The variance request for additional vertical mounting height is typical of many wireless communications permit applications to achieve the physical separation requirements for technical equipment and, enhance service delivery. Also, the variance request is not particular to Verizon Wireless, any wireless carrier company could make a similar request and staff would process the permit request and project assessment in an identical manner. Lastly, there are other similar facilities mounted on existing utility poles that exceed 28 feet in height within the City of Malibu.

4. The granting of the variance will not be contrary with the policies of the LCP. The proposed height is not expected to impact any scenic views. The pole, antenna, and associated equipment will be painted to blend in with the existing wooden utility pole.

5. The project site is neither in nor adjacent to an ESHA, ESHA buffer or stream, and therefore avoids impacts to environmentally sensitive habitat areas.

6. The proposed project does not involve a stringline modification as it is not located on a beach; and therefore avoids impacts to public access.

7. The variance request is consistent with the purpose and intent of the zone in which the site is located. The proposed facility is in the public ROW adjacent to residential properties and as a result it is not located in a zone. The proposed project is consistent with the purpose and intent for the public ROW and surrounding zones. The applicant is applying for a site plan review for a new wireless communications facility in the public ROW and the proposed facility meets the recommended design criteria in the LIP and MMC.

8. The subject site is physically suitable for the proposed variance. The proposed location, on the landside of PCH, keeps it away from potential impacts to scenic views. There are no anticipated impacts to visually impressive views of the Pacific Ocean nor any other scenic resources identified in the LIP.

9. The variance complies with State and local law in that it meets the requirements of the FCC, the CPUC's General Order 95 for pole-mounted electrical equipment on utility poles, and local WCF requirements per the Malibu LIP and MMC. There are no anticipated visual impacts to scenic resources.

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

**C. Site Plan Review for erecting a wireless communications facility in the public right-of-way (LIP Section 13.27.5)**

SPR No. 20-041 will allow the installation of a wireless communications facility in the public right-of-way and includes development over 18 feet in height.

1. Wireless communications facilities are permitted in the public ROW 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. The proposed wireless communications facility is consistent with LIP standards, which implements the policies and provisions of the City's LCP. The proposed wireless communications facility will be painted a dark brown color to match the replacement wooden utility pole. The proposed project is generally compatible in size, bulk, and height to existing streetlight poles located along PCH.

2. The project does not adversely affect neighborhood character. The pole-mounted antennas will be painted a dark brown color to match the existing pole. The proposed project is generally compatible in size, bulk, and height to existing wooden utility poles located along PCH. The wireless facility's 34-foot, 9-inch maximum height is also the least intrusive design compared to erecting a new pole meet all necessary requirements for CPUC vertical safety clearances and SCE mounting requirements.

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 pole-mounted antenna does exceed a height of 28 feet, as required by the LIP and MMC, 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 Federal Communications Commission (FCC) and the CPUC.

5. The proposed wireless communications facility is a use consistent with the goals, objectives, and policies of the General Plan, LCP, MMC, and City standards. Wireless communications facilities are permitted in the public ROW 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, which contain the same requirements as the MMC that implements the General Plan. 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.

#### **D. Scenic, Visual and Hillside Resource Protection (LIP Chapter 6)**

1. The proposed wireless communications facility is not anticipated to affect any scenic views of the Pacific Ocean and Santa Monica Mountains. 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 landward side of Pacific Coast Highway and 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 have more significant impacts than the current proposal; therefore, this is the least impactful alternative.

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

#### **E. 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, CPUC, SCE, and the City Building Safety 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. 20-028, WCF No. 20-010, VAR No. 20-017 and SPR No. 20-041, 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. Approval of this application is to allow the project as follows:
  - a. Replacement 52-foot tall AGL wooden utility pole and utility infrastructure;
  - b. Mount two four-foot tall replacement panel antennas at a height of 34 feet, 9 inches supported by a pair of six-foot long wooden double extension arms; and
  - c. Mount new electrical support equipment consisting of two remote radio units (RRU), four power supply units (PSUs), disconnect box, fuse panel, and new fiber distribution box onto the replacement pole behind the new equipment channel.
3. Subsequent submittals for this project shall be in substantial compliance with plans on-file with the Planning Department, date-stamped June 15, 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.
4. 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.
5. 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.
6. 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.
7. 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 City of Malibu California Department of Transportation for an encroachment permit.

8. This CDP 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 ROW 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.
9. The installation and construction authorized by this CDP 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.
10. Any questions of intent or interpretation of any condition of approval will be resolved by the Planning Director upon written request of such interpretation.
11. All structures shall conform to the requirements of the Environmental Sustainability Department, Public Works Department, Federal Communications Commission, and Los Angeles County Fire Department requirements, as applicable. Notwithstanding this review, all required permits, including but not limited to an encroachment permit from Caltrans, shall be secured.
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 LCP. An application with all required materials and fees shall be required.

#### *Cultural Resources*

13. 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).

14. 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

15. 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.
16. 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.
17. All antennas, equipment, and support structures shall be designed to prevent unauthorized climbing.
18. 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.
19. 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.
20. The proposed wireless communications facility shall not emit a noise greater than fifty (50) decibels (dB) as measured from the base of the facility.
21. 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.
22. The collocation of wireless communications facilities, pursuant to LIP Section 3.16.5, shall be required whenever feasible.

23. An operation technician is required to conduct regular annual maintenance visits to verify that the wireless communications facility remains in compliance with the conditions of approval and safety requirements.
24. All pole mounted equipment associated with the application shall be located no lower than eight feet above grade or ground level on the utility pole.
25. 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.
26. 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.
27. 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 the cancellation or material modification of any applicable insurance policy.
28. 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 WCF, 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.
29. 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.
30. 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.

31. For all facilities located within the ROW, the permittee shall remove or relocate, at its expense and without expense to the City, any or all of its facilities when such removal or relocation is deemed necessary by the City by reason of any change of grade, alignment, or width of any right-of-way, for installation of services, water pipes, drains, storm drains, power or signal lines, traffic control devices, right-of-way improvements, or for any other construction, repair, or improvement to the right-of-way. The City will give the wireless carrier a six-month advance notice of such removal or relocation but may provide notice in less time if removal or relocation of the facility is required due to an emergency or other exigent matter.
32. 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.
33. 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.
34. A wireless facility or its modification installed after the effective date of Ordinance 477U without a Wireless Right-of-Way Permit (WRP) (except for those exempted from, or not subject to the Chapter) must be removed; provided that removal of a 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. All costs incurred by the City in connection with enforcement of this provision and removal shall be paid by entities who own or control any part of the wireless facility.

#### Construction

35. 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.

#### Site Specific Conditions

36. 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.
37. The permittee acknowledges that the City specifically includes conditions of approval related to (a) painting, coloring or finishing the equipment to match the pole; and (b) 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. Any future modifications to the permittee's wireless facility must maintain or improve all concealment elements, including undergrounding new or replacement equipment installed after the installation of the approved equipment pursuant to this permit.
38. 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.
39. 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.

40. 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.
41. 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.
42. The permittee shall maintain the paint, color and finish of the facility in good condition at all times.
43. 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.
44. 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 California Department of Transportation 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.
45. 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.
46. 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.
47. 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.

48. 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.
49. 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.
50. Permittee shall promptly remove any graffiti on the wireless facility at permittee's sole expense within 48 hours after notice.
51. The antenna and associated equipment attached to the replacement utility pole must be painted a matte dark brown color to match the wooden replacement pole.
52. 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.
53. 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.
54. 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.

#### Prior to Operation

55. 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.
56. 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.
57. 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.

#### Public Works

58. The proposed project includes improvements within the California Department of Transportation's public right-of-way. The applicant shall obtain a Caltrans Encroachment Permit for the proposed work within the public right-of-way prior to installation.

Fixed Conditions

59. 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 21<sup>st</sup> day of June 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. Appeals shall be emailed to psalazar@malibucity.org and the filing fee shall be mailed to Malibu Planning Department, attention: Patricia Salazar, 23825 Stuart Ranch Road, Malibu, CA 90265. Appeal forms may be found online at [www.malibucity.org/planningforms](http://www.malibucity.org/planningforms). If you are unable to submit your appeal online, please contact Patricia Salazar by calling (310) 456-2489, extension 245, at least two business days before your appeal deadline to arrange alternative delivery of the appeal.

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 21-48 was passed and adopted by the Planning Commission of the City of Malibu at the regular meeting thereof held on the 21<sup>st</sup> day of June 2021, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
KATHLEEN STECKO, Recording Secretary



**BERT HAZE**  
 AND ASSOCIATES, INC.  
 LAND SURVEYING & MAPPING

3188 AIRWAY AVENUE, SUITE K1  
 COSTA MESA, CALIFORNIA 92626  
 714 557-1567 OFFICE  
 714 557-1568 FAX

**1-A ACCURACY CERTIFICATION**

DATE OF SURVEY: SEPTEMBER 4, 2019

SITE NUMBER: N/A  
 SITE NAME: MALIBU RIVIERA II MC B4  
 TYPE: UTILITY POLE  
 LOCATION: 31557.5 PACIFIC COAST HWY.  
 MALIBU, CA 90265

I, BERT HAZE, HEREBY CERTIFY THAT THE GEODETIC COORDINATES AT THE CENTER OF THE EXISTING UTILITY POLE ARE:

\*GEODETIC COORDINATES: (NORTH AMERICAN DATUM 1983)

LATITUDE 34°02'12.63" N (34.036841' N)  
 LONGITUDE 118°51'43.45" W (118.862069' W)

AND FURTHER CERTIFY THAT THE ELEVATION CALLS PRODUCED HEREON ARE ABOVE MEAN SEA LEVEL (A.M.S.L.), NORTH AMERICAN VERTICAL DATUM 1988 (NAVD88) \*(SEE BENCHMARK DATUM REFERENCED HEREON)

GROUND ELEVATION @ EXISTING UTILITY POLE LOCATION = 113 FEET/34.4 METERS (A.M.S.L.)(NAVD88)

TOP ELEVATION OF EXISTING ANTENNA = 138 FEET/42.1 METERS (A.M.S.L.)(NAVD88)

TOP ELEVATION OF EXISTING UTILITY POLE (HIGHEST POINT/FIXED STRUCTURE) = 151 FEET/46.0 METERS (A.M.S.L.)(NAVD88)

AND FURTHER CERTIFY THAT THE MEASURED HEIGHTS ARE AS STATED ABOVE THE GROUND LINE (A.G.L.)

HEIGHT OF EXISTING ANTENNA = 25 FEET/7.7 METERS (A.G.L.)

HEIGHT OF EXISTING UTILITY POLE (HIGHEST POINT/FIXED STRUCTURE) = 38 FEET/11.6 METERS (A.G.L.)

THE ACCURACY STANDARDS FOR THIS "1-A ACCURACY CERTIFICATION" ARE AS FOLLOWS:

GEODETIC COORDINATE LOCATIONS: FIFTEEN (15) FEET HORIZONTALLY  
 THE ELEVATIONS OF THE GROUND AND THE FEATURES LOCATED: THREE (3) FEET VERTICALLY (A.M.S.L.)  
 THE MEASURED HEIGHTS OF THE FEATURES LOCATED: ONE (1) FOOT ± VERTICALLY (A.G.L.)

GEODETIC COORDINATES AND ELEVATIONS WERE ESTABLISHED USING SURVEY GRADE "ASHTech" G.P.S. RECEIVERS AND ASHTECH SURVEY GRADE PRECISION SOFTWARE FOR POST-PROCESSING.

\*\*BENCH MARK REFERENCE:  
 UNITED STATES GEOLOGICAL SURVEY BENCH MARK "BM 103" AS SHOWN ON THE "POINT DUME" 7.5 MINUTE QUADRANGLE MAP.  
 ELEVATION: 105.5 FEET A.M.S.L. (NAVD88)(DATUM VERIFIED IN FIELD TO BE WITHIN SAID ACCURACY STANDARDS)



SIGNED: *[Signature]* 03/09/2020  
 BERT HAZE, PLS 7211 DATE \*REV. PER ARCH 03/09/20

**ISSUE STATUS**

REV	DATE	DESCRIPTION	BY
0	11/13/19	90% CD	RL
1	03/10/20	REVISED PER NEW SITE ADDRESS	JM
2	03/12/20	REVISED PER NEW POLE ADDRESS	AH



SMALL CELL PROJECT

**PRELIMINARY  
 NOT FOR  
 CONSTRUCTION**

**MALIBU RIVIERA II  
 MC B4  
 SCE UTILITY WOOD  
 POLE  
 31557.5 PACIFIC  
 COAST HWY.  
 MALIBU, CA 90265**

SHEET TITLE:  
**1A CERTIFICATION  
 LETTER**

**T-2**

SYMBOL	DESCRIPTION
	EDGE OF DIRT
	FOG LINE
	RIGHT OF WAY
	EDGE OF PAVEMENT
	CENTER LINE
	CURBSIDE
	PROPERTY LINE
	CONC. GUTTER
	CONCRETE
	DECORATIVE
	PARKWAY
	SIDEWALK
	ABANDONED
	EXISTING
	PROPOSED
	(E) CUT
	FENCE
	WALL
	DRIVEWAY
	BUSHES
	TREE
	SITE POLE
	UTILITY POLE
	ST. LIGHT
	TRAFFIC SIGNAL
	PARKING METER / ST. SIGN
	DOWN GUY
	FIRE HYDRANT
	UTILITY VALVE
	UTILITY MANHOLE / VAULT
	UTILITY LD
	SEWER MANHOLE
	SQUARE VENT
	ROUND VENT
	DIG-ALERTS
	(POC) POINT OF CF
	ADA CURB RAMP

SYMBOL	DESCRIPTION
	SCALE: N.T.S.
<b>1</b>	<b>GENERAL NOTES</b>

**GENERAL NOTES AND CONDITIONS**

**INTENT**

- THESE CONSTRUCTION DRAWINGS DESCRIBE THE WORK TO BE DONE & THE MATERIALS TO BE FURNISHED FOR CONSTRUCTION.
- THE INTENTION OF THE DOCUMENTS IS TO INCLUDE ALL LABOR AND MATERIALS REASONABLY NECESSARY FOR THE PROPER EXECUTION AND COMPLETION OF THE WORK AS STIPULATED IN THE CONTRACT.
- THE PURPOSE OF THE SPECIFICATIONS IS TO INTERPRET THE INTENT OF THE DRAWINGS AND TO DESIGNATE THE METHOD OF THE PROCEDURE, TYPE AND QUALITY OF MATERIALS REQUIRED TO COMPLETE THE WORK.
- MINOR DEVIATIONS FROM THE DESIGN LAYOUT ARE ANTICIPATED AND SHALL BE CONSIDERED AS PART OF THE WORK. NO CHANGES THAT ALTER THE CHARACTER OF THE WORK WILL BE MADE OR PERMITTED BY THE OWNER WITHOUT ISSUING A CHANGE ORDER.

**CONFLICTS**

- THE CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFICATION OF ALL MEASUREMENTS AT THE SITE BEFORE ORDERING ANY MATERIALS OR DOING ANY WORK. NO EXTRA CHARGE OR COMPENSATION SHALL BE ALLOWED DUE TO DIFFERENCE BETWEEN ACTUAL DIMENSIONS AND DIMENSIONS INDICATED IN THE CONSTRUCTION DRAWINGS. ANY SUCH DISCREPANCY IN DIMENSIONS WHICH MAY BE FOUND SHALL BE SUBMITTED TO THE OWNER FOR CONSIDERATION BEFORE THE CONTRACTOR PROCEEDS WITH THE WORK IN THE AFFECTED AREAS.
- THE BIDDER, IF AWARDED THE CONTRACT, WILL NOT BE ALLOWED ANY EXTRA COMPENSATION BY REASON OF ANY MATTER OR THING CONCERNING WHICH SUCH BIDDER MIGHT HAVE FULLY INFORMED THEMSELVES PRIOR TO THE BIDDING.
- NO PLEA OF IGNORANCE OF CONDITIONS THAT EXIST, OR OF DIFFICULTIES OR CONDITIONS THAT MAY BE ENCOUNTERED OR OF ANY OTHER RELEVANT MATTER CONCERNING THE WORK TO BE PERFORMED IN THE EXECUTION OF THE WORK WILL BE ACCEPTED AS AN EXCUSE FOR ANY FAILURE OR OMISSION ON THE PART OF THE CONTRACTOR TO FULFILL EVERY DETAIL OF ALL THE REQUIREMENTS OF THE CONTRACT DOCUMENTS GOVERNING THE WORK.

**WARRANTIES & BONDS**

- CONTRACTOR IS RESPONSIBLE FOR APPLICATION AND PAYMENT OF CONTRACTOR LICENSES AND BONDS.
- SEE MASTER CONTRACT SERVICES AGREEMENT FOR ADDITIONAL DETAILS.

**STORAGE**

- ALL MATERIALS MUST BE STORED IN A LEVEL AND DRY FASHION AND IN A MANNER THAT DOES NOT NECESSARILY OBSTRUCT THE FLOW OF OTHER WORK.
- BITS CABINETS MUST BE STORED INSIDE UNTIL THERE IS POWER ON SITE.
- STORAGE METHOD MUST MEET ALL RECOMMENDATIONS OF THE ASSOCIATED MANUFACTURER.

**RELATED DOCUMENTS AND COORDINATION**

- GENERAL CONSTRUCTION, ELECTRICAL AND ANTENNA DRAWINGS ARE INTERRELATED. IN PERFORMANCE OF THE WORK, THE CONTRACTOR MUST REFER TO ALL DRAWINGS. ALL COORDINATION SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR.

**CHANGE ORDER PROCEDURE**

- CHANGE ORDERS MAY BE INITIATED BY THE OWNER AND/OR THE CONTRACTOR INVOLVED. THE CONTRACTOR, UPON VERBAL REQUEST FROM THE OWNER SHALL PREPARE A WRITTEN PROPOSAL DESCRIBING THE CHANGE IN WORK OR MATERIALS AND ANY CHANGES IN THE CONTRACT AMOUNT AND PRESENT TO THE OWNER WITHIN 72 HRS FOR APPROVAL. SUBMIT REQUESTS FOR SUBSTITUTIONS IN THE FORM AND IN ACCORDANCE WITH PROCEDURES REQUIRED FOR CHANGE ORDER PROPOSALS. ANY CHANGES IN THE SCOPE OF WORK OR MATERIALS WHICH ARE PERFORMED BY THE CONTRACTOR WITHOUT A WRITTEN CHANGE ORDER AS DESCRIBED & APPROVED BY THE OWNER SHALL PLACE FULL RESPONSIBILITY OF THESE ACTIONS ON THE CONTRACTOR.

**SHOP DRAWINGS**

- CONTRACTOR SHALL SUBMIT SHOP DRAWINGS AS REQUIRED AND LISTED IN THESE DRAWINGS TO THE OWNER FOR APPROVAL.
- ALL SHOP DRAWINGS SHALL BE REVIEWED, CHECKED AND CORRECTED BY CONTRACTOR PRIOR TO SUBMITTAL TO THE OWNER.

**SHOP DRAWINGS**

- CONTRACTOR SHALL AT ALL TIMES KEEP THE SITE FREE FROM ACCUMULATION OF WASTE MATERIALS OR RUBBISH CAUSED BY THEIR EMPLOYEES AT WORK. AT THE COMPLETION OF THE WORK, THEY SHALL REMOVE ALL RUBBISH FROM AND ABOUT THE BUILDING AREA, INCLUDING ALL THEIR TOOLS, SCAFFOLDING AND SURPLUS MATERIALS AND SHALL LEAVE THEIR WORK CLEAN AND READY FOR USE.
- VISUALLY INSPECT EXTERIOR SURFACES AND REMOVE ALL TRACES OF SOIL, WASTE MATERIALS, SWAGES & OTHER FOREIGN MATTER.
- REMOVE ALL TRACES OF SPLASHED MATERIALS FROM ADJACENT SURFACES.
- IF NECESSARY TO ACHIEVE A UNIFORM DEGREE OF CLEANLINESS, HOSE DOWN THE EXTERIOR OF THE STRUCTURE.

FIELD SYMBOLOGY	SCALE: N.T.S.	<b>1</b>	GENERAL NOTES
-----------------	------------------	----------	---------------

**PRODUCTS & SUBSTITUTIONS**

- SUBMIT 3 COPIES OF EACH REQUEST FOR SUBSTITUTION. IN EACH REQUEST IDENTIFY THE PRODUCT OR FABRICATION OR INSTALLATION METHOD TO BE REPLACED BY THE SUBSTITUTION INCLUDE RELATED SPECIFICATION SECTION AND DRAWING NUMBERS AND COMPLETE DOCUMENTATION SHOWING COMPLIANCE WITH THE REQUIREMENTS FOR SUBSTITUTIONS.
- SUBMIT ALL NECESSARY PRODUCT DATA AND CUT SHEETS WHICH PROPERLY INDICATE AND DESCRIBE THE ITEMS, PRODUCTS & MATERIALS BEING INSTALLED. THE CONTRACTOR SHALL, IF DEEMED NECESSARY BY THE OWNER SUBMIT ACTUAL SAMPLES TO THE OWNER FOR APPROVAL IN LIEU OF CUT SHEETS.

**CODE COMPLIANCE**

- ALL WORK SHALL BE IN ACCORDANCE WITH APPLICABLE LOCAL, STATE AND FEDERAL REGULATIONS. THESE SHALL INCLUDE BUT NOT BE LIMITED TO THE LATEST VERSION OF THE FOLLOWING:  
2016 CALIFORNIA BUILDING CODE  
2016 CALIFORNIA ELECTRICAL CODE  
2016 CALIFORNIA PLUMBING CODE  
2016 CALIFORNIA MECHANICAL CODE  
2016 CALIFORNIA CODE OF REGULATIONS FOR ENERGY CONSERVATION  
C095/G0128

**INSURANCE AND BONDS**

- CONTRACTOR SHALL AT THEIR OWN EXPENSE CARRY AND MAINTAIN FOR THE DURATION OF THE PROJECT ALL INSURANCE AS REQUIRED AND LISTED.
- CONTRACTOR SHALL NOT COMMENCE WITH THEIR WORK UNTIL THEY HAVE PRESENTED AN ORIGINAL CERTIFICATE OF INSURANCE STATING ALL COVERAGES TO THE OWNER.
- THE OWNER SHALL BE NAMED AS AN ADDITIONAL INSURED ON ALL POLICIES.
- REFER TO THE MASTER AGREEMENT FOR REQUIRED INSURANCE LIMITS.

**ADMINISTRATION**

- BEFORE THE COMMENCEMENT OF ANY WORK, THE CONTRACTOR WILL ASSIGN A PROJECT MANAGER WHO WILL ACT AS A SINGLE POINT OF CONTACT FOR ALL PERSONNEL INVOLVED IN THIS PROJECT. THIS PROJECT MANAGER WILL BE DEVELOPING A MASTER SCHEDULE FOR THE PROJECT WHICH WILL BE SUBMITTED TO THE OWNER PRIOR TO THE COMMENCEMENT OF ANY WORK.
- SUBMIT A BAR TYPE PROGRESS CHART NOT MORE THAN THREE (3) DAYS AFTER THE DATE ESTABLISHED FOR COMMENCEMENT OF THE WORK ON THE SCHEDULE. INDICATING A TIME BAR FOR EACH MAJOR CATEGORY OF WORK TO BE PERFORMED AT THE SITE, PROPERLY SEQUENCED AND COORDINATED WITH OTHER ELEMENTS OF WORK & SHOWING COMPLETION OF THE WORK SUFFICIENTLY IN ADVANCE OF THE DATE ESTABLISHED FOR SUBSTANTIAL COMPLETION OF THE SITE.
- PRIOR TO COMMENCING CONSTRUCTION, THE OWNER SHALL SCHEDULE AN ON-SITE MEETING WITH ALL MAJOR PARTIES. THIS WOULD INCLUDE (THOUGH NOT LIMITED TO) THE OWNER, PROJECT MANAGER, CONTRACTOR, LAND OWNER REPRESENTATIVE, LOCAL TELEPHONE COMPANY, TOWER ERECTION FOREMAN (IF SUBCONTRACTED).
- CONTRACTOR SHALL BE EQUIPPED WITH SOME MEANS OF CONSTANT COMMUNICATIONS, SUCH AS A MOBILE PHONE OR A BEEPER. THIS EQUIPMENT WILL NOT BE SUPPLIED BY THE OWNER, NOR WILL WIRELESS SERVICE BE ARRANGED.
- DURING CONSTRUCTION, CONTRACTOR MUST ENSURE THAT EMPLOYEES AND SUBCONTRACTORS WEAR HARD HATS AT ALL TIMES. CONTRACTOR WILL COMPLY WITH ALL CLIENT SAFETY REQUIREMENTS IN THEIR AGREEMENT.
- PROVIDE WRITTEN DAILY UPDATES AND PHOTOGRAPHS OF ON SITE PROGRESS TO THE PROJECT MANAGER VIA E-MAIL.
- A COMPLETE INVENTORY OF CONSTRUCTION MATERIALS AND EQUIPMENT IS REQUIRED PRIOR TO START OF CONSTRUCTION.
- NOTIFY THE OWNER / PROJECT MANAGER IN WRITING NO LESS THAN 48 HOURS IN ADVANCE OF CONCRETE POURS, TOWER ERECTIONS, AND EQUIPMENT CABINET PLACEMENTS.
- CLOSEOUT PACKAGE IS DUE COMPLETE WITH DETAILED TOP PHOTOS UPON SITE PUNCHWALK WITH PROJECT MANAGER (SEE PROJECT MANAGER FOR SAMPLE CLOSEOUT PACKAGE).

**CLEAN UP**

- CONTRACTOR SHALL AT ALL TIMES KEEP THE SITE FREE FROM ACCUMULATION OF WASTE MATERIALS OR RUBBISH CAUSED BY THEIR EMPLOYEES AT WORK. AT THE COMPLETION OF THE WORK, THEY SHALL REMOVE ALL RUBBISH FROM AND ABOUT THE BUILDING AREA, INCLUDING ALL THEIR TOOLS, SCAFFOLDING AND SURPLUS MATERIALS AND SHALL LEAVE THEIR WORK CLEAN AND READY FOR USE.
- VISUALLY INSPECT EXTERIOR SURFACES AND REMOVE ALL TRACES OF SOIL, WASTE MATERIALS, SWAGES & OTHER FOREIGN MATTER.
- REMOVE ALL TRACES OF SPLASHED MATERIALS FROM ADJACENT SURFACES.
- IF NECESSARY TO ACHIEVE A UNIFORM DEGREE OF CLEANLINESS, HOSE DOWN THE EXTERIOR OF THE STRUCTURE.

**GENERAL NOTES:**

- INDEMNIFICATION CLAUSE: THE CONTRACTOR AGREES AND SHALL ASSUME SOLE AND COMPLETE RESPONSIBILITY OF THE JOB SITE CONDITIONS DURING THE COURSE OF CONSTRUCTION OF THIS PROJECT, INCLUDING THE SAFETY OF ALL PERSONS AND PROPERTIES. THAT THESE REQUIREMENTS SHALL APPLY CONTINUOUSLY AND NOT BE LIMITED TO NORMAL WORKING HOURS AND CONDITIONS. THE CONTRACTOR FURTHER AGREES TO DEFEND INDEMNIFY AND HOLD THE CLIENT, REPRESENTATIVES, AND ENGINEERS HARMLESS FROM ANY AND ALL LIABILITY, REAL OR ALLEGED IN CONNECTION WITH THE PERFORMANCE OF THE WORK ON THIS PROJECT.
- PRIOR TO THE BEGINNING OF ANY CONSTRUCTION AND THROUGHOUT THE COURSE OF CONSTRUCTION WORK, THE CONTRACTOR SHALL FULLY COMPLY WITH CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH ACT OF 1973 INCLUDING ALL REVISIONS AND AMENDMENTS THERETO.
- ALL WORK SHALL CONFORM TO THE LATEST EDITION OF GO 95, 128, AND THE STANDARD "SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION", AS ADOPTED BY THE CITY, COUNTY OR STATE AS MODIFIED BY STANDARD PLANS AND ADDENDUMS.
- THE EXISTENCE AND LOCATION OF UTILITIES AND OTHER AGENCIES, FACILITIES AS SHOWN HEREON ARE OBTAINED BY A SEARCH OF AVAILABLE RECORDS. OTHER FACILITIES MAY EXIST, THE CONTRACTOR SHALL VERIFY PRIOR TO THE START OF CONSTRUCTION AND SHALL USE EXTREME CARE AND PROTECTIVE MEASURES TO PREVENT DAMAGE TO THESE FACILITIES. THE CONTRACTOR IS RESPONSIBLE FOR THE PROTECTION OF ALL UTILITY OR AGENCY FACILITIES WITHIN THE LIMITS OR WORK, WHETHER THEY ARE SHOWN ON THIS PLAN OR NOT.
- THE CONTRACTOR SHALL NOTIFY UNDERGROUND SERVICE ALERT (800) 422-4133, AT LEAST TWO WORKING DAYS PRIOR TO THE START OF ANY EXCAVATION.
- THE CONTRACTOR SHALL NOTIFY THE CITY, COUNTY OR STATE ENGINEER INSPECTION DEPARTMENT, (310) 456-8489 EXT. 235, AT LEAST TWO DAYS BEFORE START OF ANY WORK REQUIRING THEIR INVOLVEMENT.
- ALL WORK AREA AND STREET TRAFFIC CONTROL SHALL BE IN ACCORDANCE WITH THE SPECIFICATIONS OF THE MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (M.U.T.C.D.) OR THE WORK AREA TRAFFIC CONTROL HANDBOOK (W.A.T.C.H.) AND SPECIFICATIONS FROM THE CITY, COUNTY OR STATE.
- THE CITY, COUNTY OR STATE SHALL SPECIFY THE EXPIRATION PERIOD OF THE PERMIT FOR THIS CONSTRUCTION PROJECT.
- THE MINIMUM COVER FOR ALL CONDUITS PLACED UNDERGROUND SHALL BE 42 INCHES TO THE FINISHED GRADE AT ALL TIMES.
- THE CONTRACTOR SHALL HOD OR OPEN TRENCH ALL CURB AND GUTTERS, CONCRETE DRIVEWAYS, WALKWAYS AND ASSIST RAMPS AT THE DIRECTION OF THE CITY, COUNTY OR STATE INSPECTOR.
- ALL A/C AND/OR CONCRETE PAVEMENT SHALL BE REPLACED AT THE DIRECTION OF THE CITY, COUNTY OR STATE ENGINEERS.
- ALL SHRUBS, PLANTS OR TREES THAT HAVE BEEN DAMAGED OR DISTURBED DURING THE COURSE OF THE WORK, SHALL BE REPLANTED AND/OR REPLACED SO AS TO RESTORE THE WORK SITE TO ITS ORIGINAL CONDITION.
- IF DAMAGE OCCURS TO THE CITY OR COUNTY FACILITIES, THE CONTRACTOR SHALL IMMEDIATELY NOTIFY TRAFFIC CONTROL LIGHTING, (310) 456-2489 EXT. 247, STREET LIGHTING (310) 315-3201.
- AT LEAST TWO DAYS PRIOR TO THE COMMENCEMENT OF ANY WORK, NOTIFY THE POLICE TRAFFIC BUREAU (818) 878-1808 AND THE FIRE DEPARTMENT; (310) 317-1802.
- THE CONTRACTOR WILL BE RESPONSIBLE FOR THE PROCESSING OF ALL APPLICATION PERMIT FORMS ALONG WITH THE REQUIRED LIABILITY INSURANCE FORMS; CLEARLY DEMONSTRATING THAT THE CLIENT, THE CITY, COUNTY OR STATE AS ALSO INSURED WITH THE REQUIRED LIABILITY INSURANCE IN THE AMOUNT OF \$1,000,000.00 FOR THIS CONSTRUCTION PROJECT.
- VAULTS, PEDESTALS, CONDUITS AND OTHER TYPES OF SUBSTRUCTURE ARE EITHER SPECIFIED ON THIS PLAN OR WILL BE SPECIFIED BY THE CONSTRUCTION ENGINEER. ANY AND ALL DEVIATIONS FROM THE SPECIFIED TYPES OF MATERIAL MUST BE APPROVED BY THE SYSTEM ENGINEER, IN WRITING BEFORE INSTALLATION THEREOF.
- ALL U.G. CONDUIT MUST BE SCHEDULE 40 OR BETTER, UNLESS SPECIFIED.
- CONDUIT REQUIREMENTS:  
UG-SCHEDULE 40 EXCEPT ALL RADIUS CONDUITS TO BE SCH. 80 RISERS-SCHEDULE 80.
- GROUND REQUIREMENTS:  
5/8" ROD-10' LENGTH  
#2 GROUND WIRE  
WOOD MOLDING, STAPLED EVERY 3' AND AT EACH END GROUNDS 2' FROM POLE.
- POWER REQUIREMENT FOR 3 WIRE SERVICE 120/240V.
- CONTRACTOR SHALL NOTIFY POWER & TELCO COMPANIES THREE DAYS PRIOR TO START OF CONSTRUCTION FOR CONDUIT INSPECTION.
- ANY AND ALL PROPOSED SITE MODIFICATIONS, EXPANSION, OR REARRANGEMENT OF THIS CELLULAR SITE MUST BE COMPLIANT WITH ALL GO 95, AND GO 128 REGULATIONS AS PRESCRIBED BY STATE LAW. FUTURE EXPANSION OF THIS CELLULAR SITE MUST BE APPROVED BY THE DESIGNING ENGINEERING FIRM OR AN EQUALLY QUALIFIED ENGINEERING COMPANY.

SCALE: N.T.S.	<b>2</b>
------------------	----------

**ISSUE STATUS**

REV	DATE	DESCRIPTION	BY
0	11/13/19	90% CD	RL
1	03/10/20	REVISED PER NEW SITE	JM
2	03/12/20	REVISED PER NEW POWER ARRIVAL	AH

**DES**  
CABLE ENGINEERING SERVICES  
8275 CORBIN AVENUE, NORTHRODE, CA 91324  
PHONE: (818) 888-2352 FAX: (714) 225-1313

**verizon**  
16505 SAND CANYON AVENUE  
IRVINE, CA 92618

SMALL CELL PROJECT  
  
**PRELIMINARY  
NOT FOR  
CONSTRUCTION**

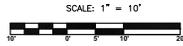
**MALIBU RIVIERA II  
MC B4  
SCE UTILITY WOOD  
POLE  
31557.5 PACIFIC  
COAST HWY.  
MALIBU, CA 90285**

SHEET TITLE:  
**ABBREVIATIONS,  
SYMBOLS AND  
GENERAL NOTES**

**T-3**

**LEGEND:**

- ACTC ASPHALT CONCRETE / TOP OF CURB
- ANT ANTENNA
- BD BOLLARD
- CLF CHAIN LINK FENCE
- CLM COLUMN
- CPD CONCRETE PAD
- EP EDGE OF PAVEMENT
- FD FOUND
- FH FIRE HYDRANT
- GTP GATE POST
- H HEIGHT
- IN INCHES
- INS INSULATOR
- MBX MAIL BOX
- N/T NAIL AND TAG
- NS NATURAL GROUND
- OHP OVERHEAD POWER
- OHW OVERHEAD WIRE
- S/W SPRING AND WASHER
- TP TOP
- TR TREE
- TW TOP OF WALL
- UP UTILITY POLE
- WDF WOOD FENCE
- WM WATER METER
- WTL WHITE TRAVEL LINE
- WV WATER VALVE
- ANTENNA
- BLOCK WALL
- BOLLARD
- ⊙ CENTERLINE
- CHAIN LINK FENCE
- FIRE HYDRANT
- FOUND MONUMENT
- UTILITY POLE
- WATER METER
- WATER VALVE
- WOOD FENCE



**COORDINATES:**

LATITUDE 34°02'12.63" N  
LONGITUDE 118°51'43.45" W

NAD 1983 GEODETIC COORDINATES AND ELEVATIONS WERE ESTABLISHED USING SURVEY GRADE "ASHTECH" G.P.S. RECEIVERS AND ASHTECH SURVEY GRADE PRECISION SOFTWARE FOR POST-PROCESSING.

**BASIS OF BEARINGS:**

THE CENTERLINE OF BROAD BEACH RD. BEING NORTH 79°54'30" WEST PER TRACT NO. 25166, M.B. 695/29-31, RECORDS OF LOS ANGELES COUNTY.

**ASSESSOR'S IDENTIFICATION:**

N/A

**AREA:**

N/A

**BENCH MARK REFERENCE:**

U.S.G.S. BENCH MARK "BM 103"

UNITED STATES GEOLOGICAL SURVEY BENCH MARK "BM 103" AS SHOWN ON THE "POINT DUME" 7.5 MINUTE QUADRANGLE MAP.

ELEVATION: 105.5 FEET A.M.S.L. (NAVD88) (DATUM VERIFIED IN FIELD TO BE WITHIN 1-A ACCURACY STANDARDS)

**TITLE REPORT IDENTIFICATION:**

N/A

**EASEMENT NOTES:**

N/A

**LEGAL DESCRIPTION:**

N/A

**DATE OF SURVEY:**

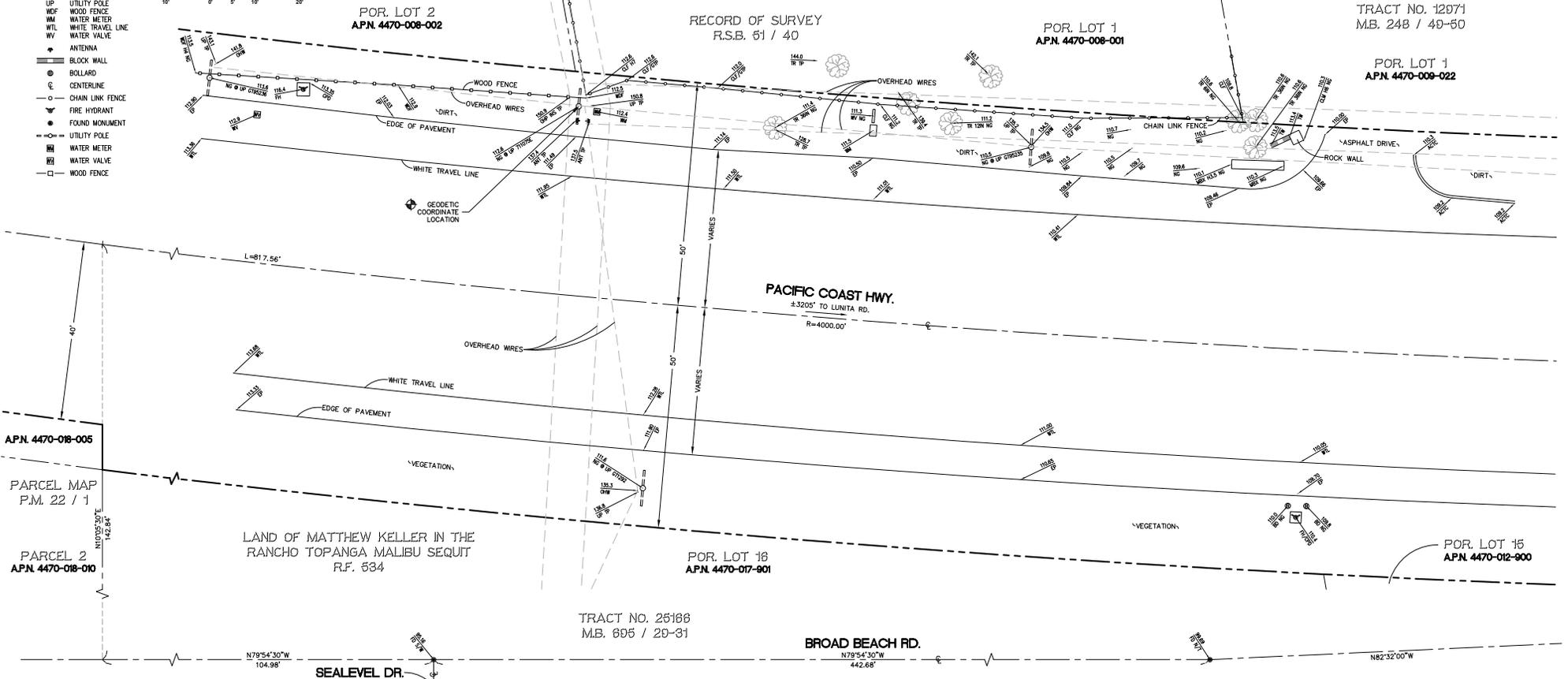
SEPTEMBER 4, 2019

**SURVEYORS NOTE:**

THE RIGHT OF WAY LINES AND THEIR DIMENSIONS SHOWN HEREON ARE PER READILY AVAILABLE RECORDED INFORMATION AND THEIR LOCATIONS ARE APPROXIMATE. FURNISH RECEIPT OF TITLE REPORT(S) FOR THE ADJACENT REAL PROPERTY.

**LIVING PLANTS STATEMENT:**

THE HEIGHTS AND ELEVATIONS FOR THE TREES, BUSHES AND OTHER LIVING PLANTS SHOWN HEREON, SHOULD BE CONSIDERED APPROXIMATE (+/-) AND ONLY VALID FOR THE DATE OF THIS SURVEY. THEY ARE PROVIDED AS A GENERAL REFERENCE AND SHOULD NOT BE USED FOR DESIGN PURPOSES.



APN. 4470-018-005  
PARCEL MAP P.M. 22 / 1  
PARCEL 2 APN. 4470-018-010

LAND OF MATTHEW KELLER IN THE RANCHO TOPANGA MALIBU SEQUIT R.F. 534

POR. LOT 16 APN. 4470-017-001

POR. LOT 15 APN. 4470-012-900

TRACT NO. 25166 M.B. 695 / 29-31

1-800-227-2600  
AT LEAST TWO DAYS BEFORE YOU DIG  
UNDERGROUND SERVICE ALERT OF SOUTHERN CALIFORNIA  
TICKET #

No. 7211  
Exp. 3-31-22

**BERT HASE**  
AND ASSOCIATES, INC.  
LAND SURVEYING & MAPPING  
3188 AIRWAY AVENUE, SUITE K1  
COSTA MESA, CALIFORNIA 92626  
714 557-1567 OFFICE  
714 557-1568 FAX  
JN. 740.1454

CABLE ENGINEERING SERVICES  
9275 CORBIN AVENUE, NORTHridge, CA 91324  
PHONE: (818) 698-2352 FAX: (747) 225-1313

Southern California  
15505 Sand Canyon Ave., Irvine, CA 92618

REVISIONS	
DATE	DESCRIPTION
09/12/19	ISSUED FOR REVIEW (MCL)
03/09/20	REVISED ADDRESS (MCL)

PROJECT NO.:	N/A	PERMIT NO.:	
PROJECT NAME:	MALIBU RIVERA II AC B4	DATE:	
T.G. PAGE NO.:		CITY:	MALIBU
TOTAL FOOTAGE:		COUNTY:	LOS ANGELES COUNTY
DRAFTED BY:	MDL	DATE:	09/12/19
CHECKED BY:	CWV	DATE:	09/12/19
ISSUE DATE:	09/12/19	LOCATION:	31557.5 PACIFIC COAST HWY. MALIBU, CA 90265
SHEET TITLE		ZONE No.:	SHEET C-1
<b>TOPOGRAPHIC SURVEY</b>		PLAN No.:	

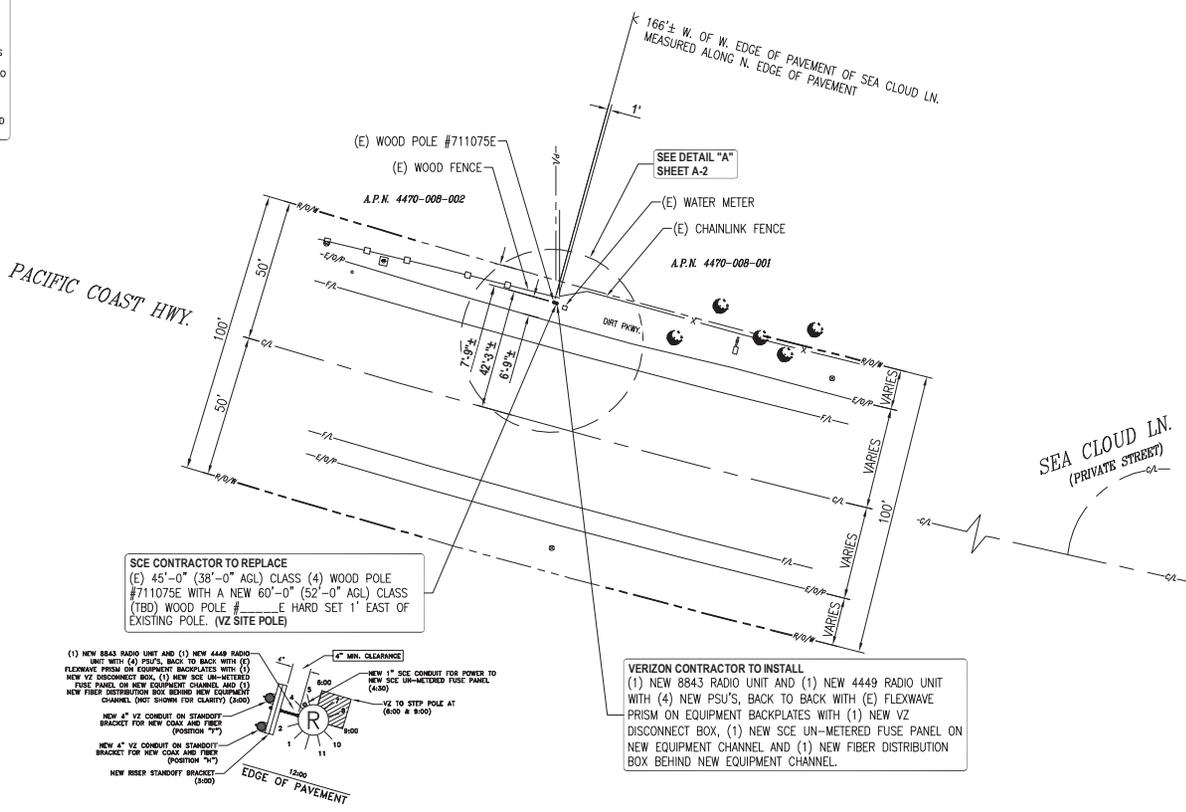
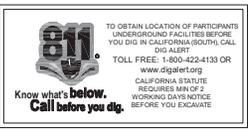
- NOTES:**
- IT SHALL BE THE CONTRACTOR'S RESPONSIBILITY TO COORDINATE WITH THE PROPERTY OWNER & NECESSARY UTILITY COMPANIES FOR THE LOCATION OF ALL EXISTING BELOW GRADE UTILITIES PRIOR TO BEGINNING CONSTRUCTION. CONTRACTOR SHALL BE RESPONSIBLE FOR ANY DAMAGE COSTS ASSOCIATED WITH EXISTING BELOW GRADE UTILITIES.
  - CONTRACTOR TO COORDINATE WITH UTILITY COMPANY FOR CONNECTION OF TEMPORARY AND PERMANENT POWER TO THE SITE. THE TEMPORARY POWER AND ALL HOOKUP COSTS TO BE PAID BY CONTRACTOR.
  - CONTRACTOR TO VERIFY LOCAL UTILITY REQUIREMENTS FOR DEPTH, SIZE & SEPARATION OF CONDUITS PRIOR TO INSTALLATION. NOTIFY CONSTRUCTION MANAGER IMMEDIATELY OF ANY DISCREPANCIES.
  - CONTRACTOR TO CALL DIG ALERT (800) 422-4311 A MINIMUM OF 48 HRS PRIOR TO EXCAVATING FOR UNDERGROUND UTILITY LOCATIONS. CONTRACTOR IS RESPONSIBLE TO HAVE ALL NONPUBLIC UTILITIES LOCATED AT THEIR OWN EXPENSE.
  - PROPOSED UTILITY SERVICES SHOWN NEED TO BE VERIFIED & APPROVED BY UTILITY COMPANIES BEFORE START OF CONSTRUCTION. CONTRACTOR TO VERIFY WITH CLIENT PROJECT MANAGER TO OBTAIN FINAL APPROVAL.
  - LINES SHOWN DO NOT REPRESENT THE EXACT LOCATION OF THE CONDUIT RUNS. CONTRACTOR TO VERIFY SERVICE LOCATIONS w/ACTUAL FIELD CONDITIONS.
  - CONTRACTOR SHALL IMMEDIATELY INFORM CLIENT OF ANY ACCIDENTAL DAMAGE TO EXISTING UTILITIES BY TELEPHONE AND E-MAIL REGARDLESS OF ABILITY TO REPAIR OR MITIGATE. A FOLLOW-UP E-MAIL REPORT WITH DIGITAL PHOTOS WILL BE REQUIRED DAILY UNTIL RESOLUTION HAS BEEN ACCEPTED BY CLIENT AND AFFECTED SERVICE PROVIDERS AND RECIPIENTS. AT THEIR OWN EXPENSE, CONTRACTOR WILL EXERCISE ALL EFFORTS TO HAVE REPAIRS MADE BY QUALIFIED TECHNICIANS AS APPROVED BY SERVICE PROVIDER.

**NOTE:**  
CONTRACTOR TO ALLOW INGRESS AND EGRESS TO DRIVEWAYS AT ALL TIMES DURING CONSTRUCTION.

**UNDERGROUND UTILITIES NOTE:**  
THE LOCATIONS AND EXISTENCE OF ANY UNDERGROUND PIPES, STRUCTURES OR CONDUITS SHOWN ON THIS PLAN WERE OBTAINED BY A SEARCH OF AVAILABLE RECORDS. THERE MAY BE EXISTING UTILITIES OTHER THAN THOSE SHOWN ON THIS PLAN. THE CONTRACTOR IS REQUIRED TO TAKE PRECAUTIONARY MEASURES TO PROTECT THE UTILITY LINES SHOWN AND ANY OTHER LINES NOT SHOWN ON THIS PLAN.

**UTILITY LINE TYPE LEGEND:**

	PROPOSED CONDUIT
	POWER
	GAS
	WATER
	TELCO
	STREET LIGHT
	TRAFFIC SIGNAL
	OIL
	SEWER
	CABLE TV
	STORM DRAIN



**ISSUE STATUS**

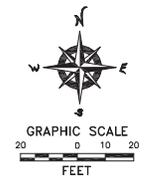
REV	DATE	DESCRIPTION	BY
0	11/13/19	90% CD	RL
1	03/10/20	REVISED PER NEW SITE ADDRESS	JM
2	03/12/20	REVISED PER NEW POWER ADDRESS	AH



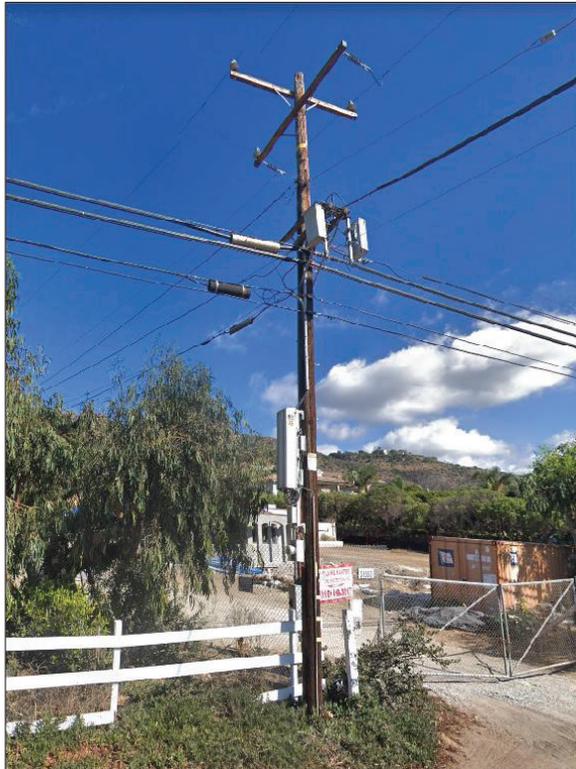
SMALL CELL PROJECT  
**PRELIMINARY NOT FOR CONSTRUCTION**

**MALIBU RIVIERA II MC B4**  
SCE UTILITY WOOD POLE  
31557.5 PACIFIC COAST HWY.  
MALIBU, CA 90285

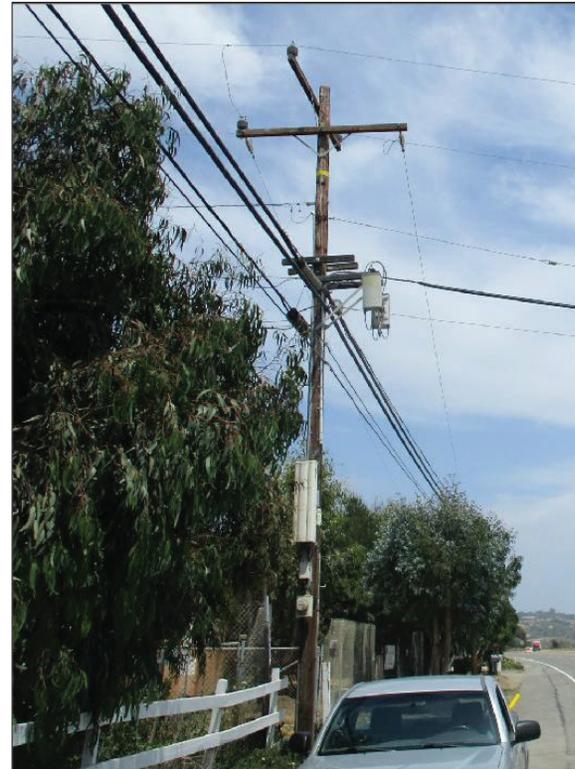
SHEET TITLE:  
**SITE PLAN**  
**A-1**







SITE POLE LOCATION  
LOOKING NORTH



SITE POLE LOCATION  
LOOKING EAST

**ISSUE STATUS**

REV	DATE	DESCRIPTION	BY
0	11/13/19	90% CD	RL
1	03/10/20	REVISED FOR NEW SITE ADDRESS	JM
2	03/12/20	REVISED FOR NEW POWER ADDRESS	AH



SMALL CELL PROJECT

**PRELIMINARY  
NOT FOR  
CONSTRUCTION**

**MALIBU RIVIERA II  
MC B4**  
SCE UTILITY WOOD  
POLE  
31557.5 PACIFIC  
COAST HWY.  
MALIBU, CA 90265

SHEET TITLE:  
**SITE LOCATION  
PHOTOS**

**A-3**

SITE LOCATION PHOTOS

SCALE:  
N.T.S. 1

**ISSUE STATUS**

REV	DATE	DESCRIPTION	BY
0	11/13/19	90% CD	RL
1	03/10/20	REVISED PER NEW BIR APPROVAL	JM
2	03/12/20	REVISED PER NEW POWER AGREEMENT	AH



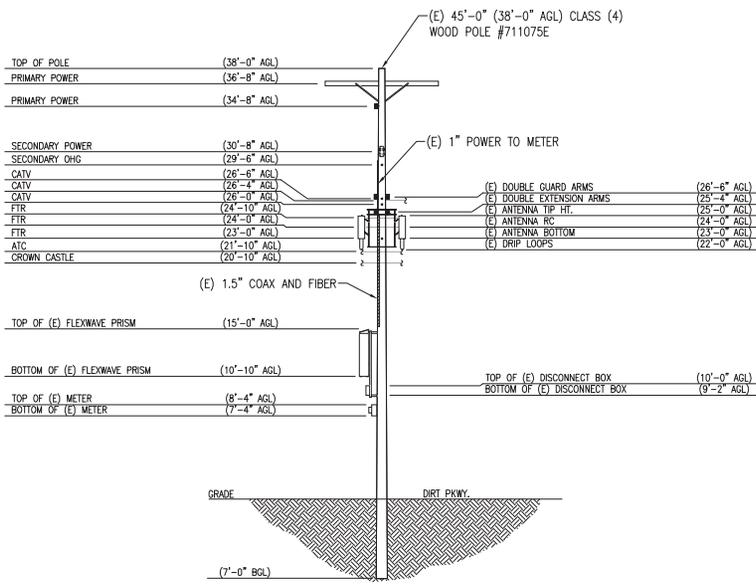
SMALL CELL PROJECT

**PRELIMINARY  
NOT FOR  
CONSTRUCTION**

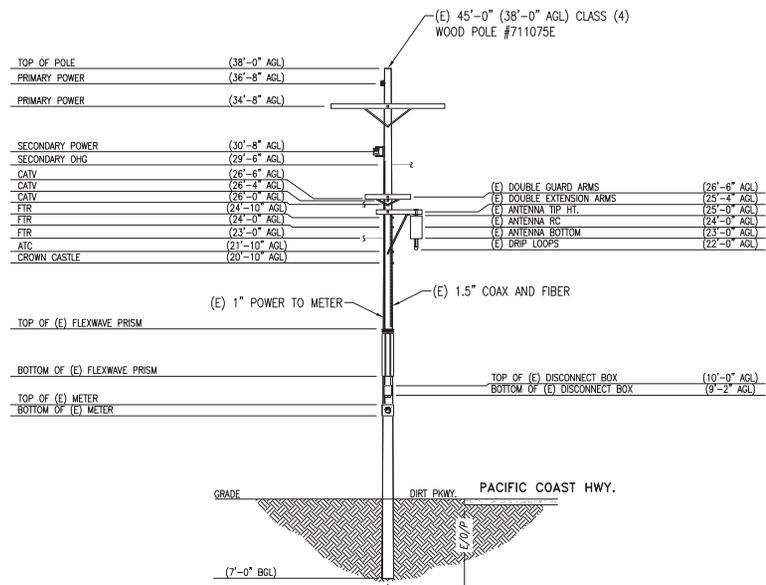
**MALIBU RIVIERA II  
MC B4  
SCE UTILITY WOOD  
POLE  
31557.5 PACIFIC  
COAST HWY.  
MALIBU, CA 90265**

SHEET TITLE:  
**EXISTING  
ELEVATIONS**

**A-4**

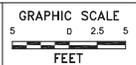


FRONT VIEW  
LOOKING NORTH



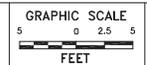
SIDE VIEW  
LOOKING EAST

EXISTING ELEVATION



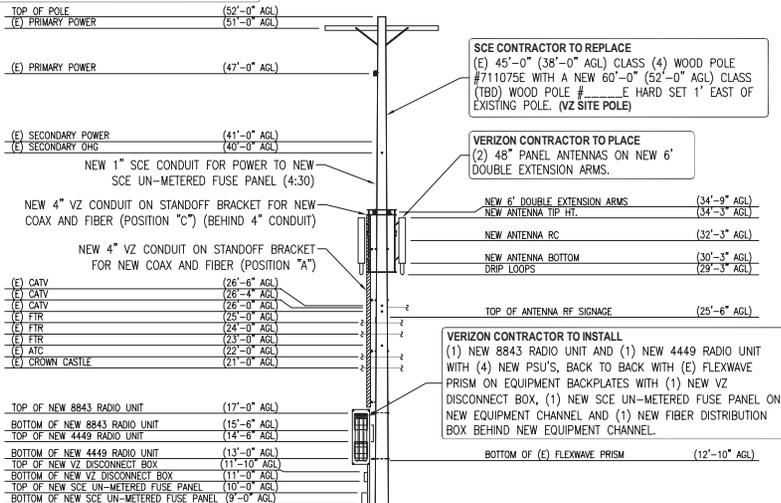
1

EXISTING ELEVATION



2

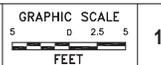
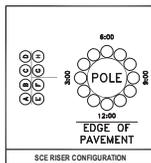
**NOTE TO CONTRACTOR:**  
REVIEW SITE POLE MAKEREADY INFORMATION PRIOR TO POLE CONSTRUCTION.



**NOTE:**  
WEATHER & CORROSION RESISTANT SIGNS PER G.O. 95, RULE 94.5 (MARKING) REQUIREMENTS SHALL BE AFFIXED TO THE SITE POLE NO LESS THAN THREE (3) FEET BELOW THE ANTENNAS (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).

**NOTE:**  
ALL NEW EQUIPMENT AND RISERS TO BE PAINTED TO MATCH POLE.

FRONT VIEW  
LOOKING NORTH

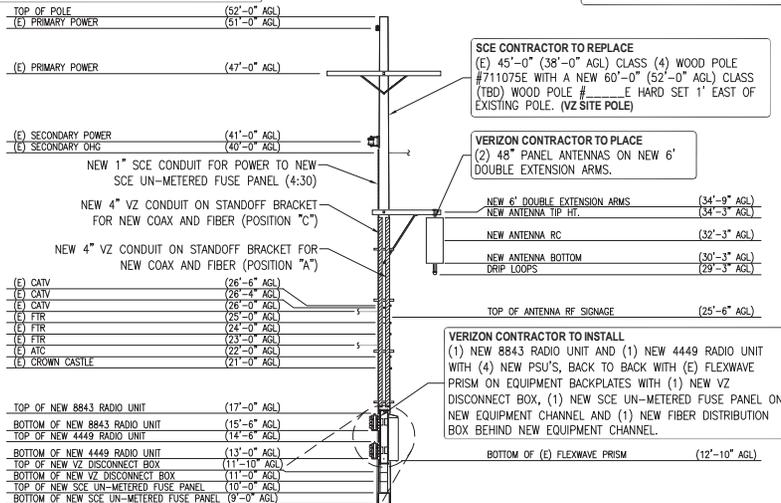


PROPOSED ELEVATION

VERIZON SITE POLE # \_\_\_\_\_ E. MAKE READY INFORMATION  
(NORTH SIDE PACIFIC COAST HWY. 166.5 WEST OF WEST E.O.P. SEA CLOUD LN.)

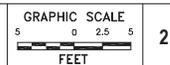
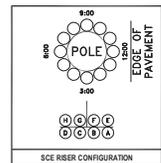
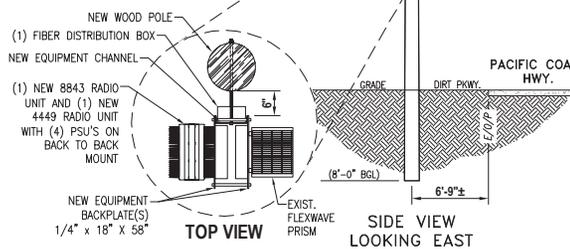
- A. SCE CONTRACTOR TO HARD SET NEW 60 FT CLASS (TBD) WOOD POLE 1' EAST OF EXISTING POLE.
- B. SCE CONTRACTOR TO TRANSFER EXISTING PRIMARY ARM WITH CONDUCTORS TO NEW POLE AT 51'-0" ABOVE GRADE.
- C. SCE CONTRACTOR TO TRANSFER EXISTING PRIMARY ARM WITH CONDUCTORS TO NEW POLE AT 47'-0" ABOVE GRADE.
- D. SCE CONTRACTOR TO TRANSFER EXISTING SECONDARY TRIPLEX TO NEW POLE AT 41'-0" ABOVE GRADE.
- E. SCE CONTRACTOR TO TRANSFER EXISTING SECONDARY OVERHEAD GUY TO NEW POLE AT 40'-0" ABOVE GRADE.
- F. SCE CONTRACTOR TO TOP POLE AT 29'-0" LOWER, TRANSPORT AND DISPOSE OF TOP PORTION OF POLE.
- G. VERIZON CONTRACTOR TO REMOVE EXISTING ANTENNA ARMS WITH (2) ANTENNAS ON EXISTING POLE.
- H. VERIZON CONTRACTOR TO PLACE NEW 8FT DOUBLE EXTENSION ARMS ON NEW POLE AT 34'-3" ABOVE GRADE.
- I. VERIZON CONTRACTOR TO PLACE (2) NEW 48" ANTENNAS ON NEW 8FT EXTENSION ARMS PER DETAIL.
- J. VERIZON CONTRACTOR TO TRANSFER EXISTING CATV SOUTHEAST TO NEW POLE AT EXISTING GRADE OF 26'-6".
- K. VERIZON CONTRACTOR TO TRANSFER EXISTING CATV EAST TO NEW POLE AT EXISTING GRADE OF 26'-4".
- L. VERIZON CONTRACTOR TO TRANSFER EXISTING CATV NORTH TO NEW POLE AT EXISTING GRADE OF 26'-0".
- M. VERIZON CONTRACTOR TO TRANSFER EXISTING FIR TO NEW POLE AT EXISTING GRADE OF 22'-0".
- N. VERIZON CONTRACTOR TO TRANSFER EXISTING FIR TO NEW POLE AT EXISTING GRADE OF 22'-0".
- O. VERIZON CONTRACTOR TO TRANSFER EXISTING FIR TO NEW POLE AT EXISTING GRADE OF 22'-0".
- P. VERIZON CONTRACTOR TO TRANSFER EXISTING ATC TO NEW POLE AT EXISTING GRADE OF 22'-0".
- Q. CROWN CASTLE TO TRANSFER EXISTING CROWN CASTLE TO NEW POLE AT EXISTING GRADE OF 21'-0".
- R. VERIZON CONTRACTOR TO REMOVE ALL RISERS AND REMAINING EQUIPMENT ON OLD POLE.
- S. VERIZON CONTRACTOR TO LOWER, TRANSPORT AND DISPOSE OF OLD POLE.
- T. VERIZON CONTRACTOR TO PLACE NEW 1" SCE CONDUIT AT 4:30 POSITION ON POLE FOR NEW SITE POWER.
- U. VERIZON CONTRACTOR TO PLACE NEW RISER STANDOFF ASSEMBLY AT 3:50 POSITION. PLACE (1) NEW 4" CONDUIT AT POSITION "A" FOR VERIZON COAX AND FIBER. PLACE (1) NEW 4" CONDUIT AT POSITION "C" FOR VERIZON COAX AND FIBER.
- V. VERIZON CONTRACTOR TO PLACE NEW EQUIPMENT CHANNEL AND BACK PLATES FOR BACK TO BACK RADIO MOUNT AT 3:50 POSITION.
- W. VERIZON CONTRACTOR TO ATTACH (1) NEW 8843 RADIO UNIT, (1) NEW 4449 RADIO UNIT AND EXISTING PRISM ON NEW EQUIPMENT BACK PLATES BACK TO BACK WITH (4) NEW PSU'S.
- X. VERIZON CONTRACTOR TO PLACE NEW DISCONNECT BOX TO NEW EQUIPMENT CHANNEL PER DETAIL.
- Y. VERIZON CONTRACTOR TO PLACE NEW SCE UN-METERED FUSE PANEL CABINET ON CHANNEL PER DETAIL.
- Z. VERIZON CONTRACTOR TO PLACE NEW FIBER DISTRIBUTION BOX BEHIND EQUIPMENT CHANNEL PER DETAIL.
- AA. SCE CONTRACTOR TO PULL NEW SERVICE WIRES THROUGH NEW 1" SCE CONDUIT TO VERIZON FLEX CONDUIT TO FUSE PANEL. SCE TO ENERGIZE NEW SERVICE.
- BB. VERIZON CONTRACTOR TO STEP POLE AT 6:00 AND 8:00.
- CC. VERIZON CONTRACTOR TO PLACE ALL REQUIRED GROUNDING PER GO-95.
- DD. VERIZON CONTRACTOR TO PLACE SIGNAGE PER GO-95.

**NOTE TO CONTRACTOR:**  
REVIEW SITE POLE MAKEREADY INFORMATION PRIOR TO POLE CONSTRUCTION.



**NOTE:**  
ALL NEW EQUIPMENT AND RISERS TO BE PAINTED TO MATCH POLE.

**NOTE:**  
WEATHER & CORROSION RESISTANT SIGNS PER G.O. 95, RULE 94.5 (MARKING) REQUIREMENTS SHALL BE AFFIXED TO THE SITE POLE NO LESS THAN THREE (3) FEET BELOW THE ANTENNAS (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).



PROPOSED ELEVATION

**ISSUE STATUS**

REV	DATE	DESCRIPTION	BY
0	11/13/19	90% CD	RL
1	03/10/20	REVISED PER NEW BIR	JM
2	03/12/20	REVISED PER NEW BIR	AH
		POWER ADDITION	



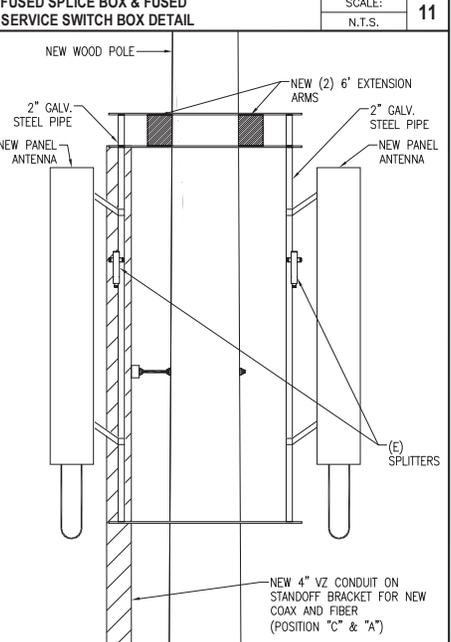
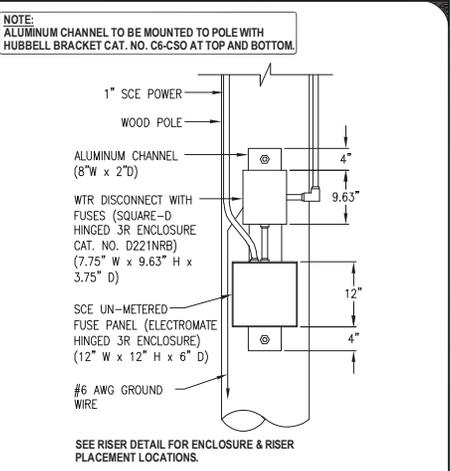
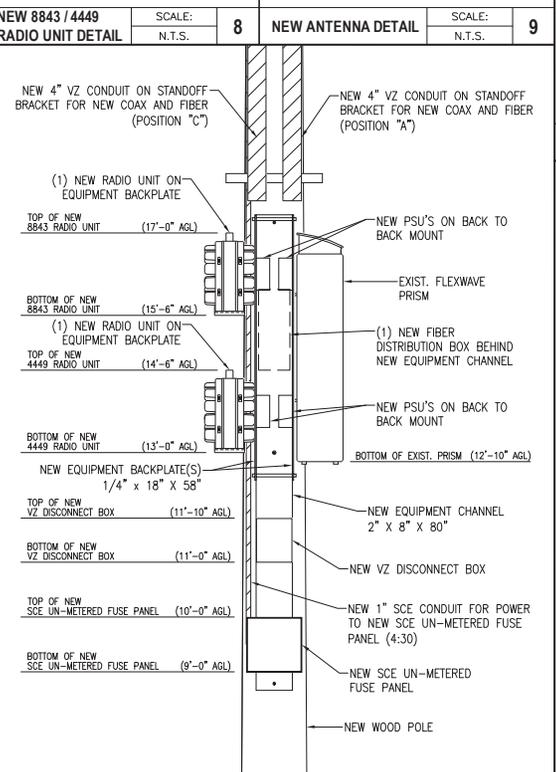
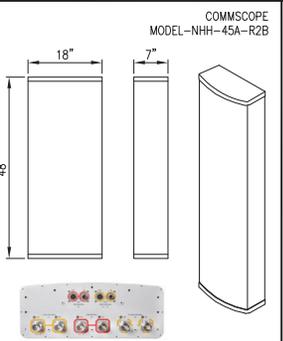
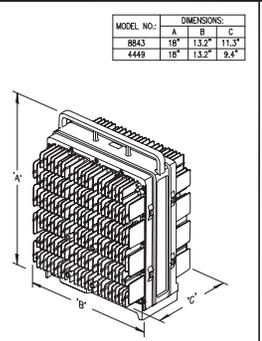
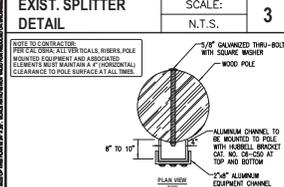
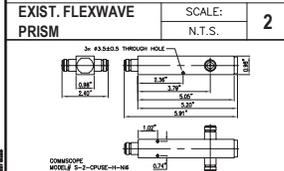
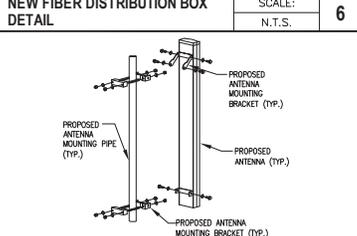
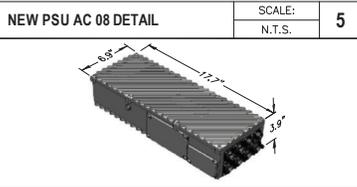
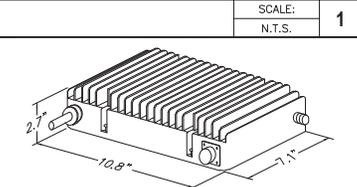
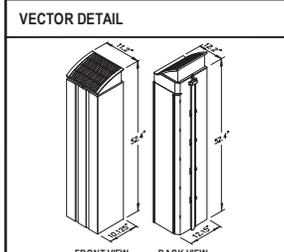
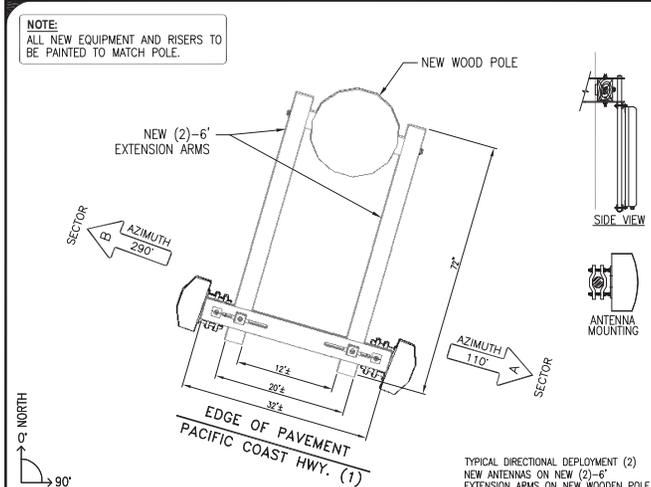
SMALL CELL PROJECT

PRELIMINARY  
NOT FOR  
CONSTRUCTION

**MALIBU RIVIERA II**  
**MC B4**  
SCE UTILITY WOOD  
POLE  
31557.5 PACIFIC  
COAST HWY.  
MALIBU, CA 90285

SHEET TITLE:  
PROPOSED  
ELEVATIONS

**A-5**



MODEL NO.	DIMENSIONS:		
	A	B	C
8843	18"	13.2"	11.3"
4449	18"	13.2"	9.4"

COMMSCOPE  
MODEL-NHH-45A-R2B

**NOTE:**  
ALUMINUM CHANNEL TO BE MOUNTED TO POLE WITH HUBBELL BRACKET CAT. NO. C6-CSO AT TOP AND BOTTOM.

**ISSUE STATUS**

REV	DATE	DESCRIPTION	BY
0	11/13/19	90% CD	RL
1	03/10/20	REVISED PER NEW BIR APPROVAL	JM
2	03/12/20	REVISED PER NEW POWER AGREEMENT	AH

**OES**  
CABLE ENGINEERING SERVICES  
9275 CORBIN AVENUE, NORTHridge, CA 91324  
PHONE: (818) 888-2332 FAX: (747) 225-1313

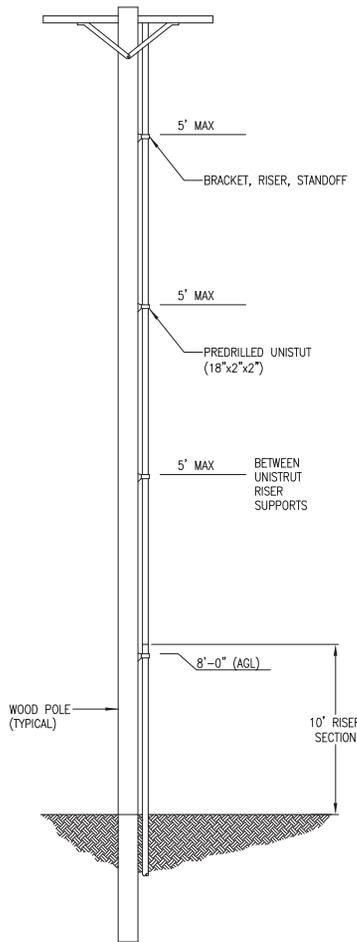
**verizon**  
16505 SAND CANYON AVENUE  
IRVINE, CA 92618

SMALL CELL PROJECT  
**PRELIMINARY NOT FOR CONSTRUCTION**

**MALIBU RIVIERA II MC B4**  
SCE UTILITY WOOD POLE  
31557.5 PACIFIC COAST HWY.  
MALIBU, CA 90285

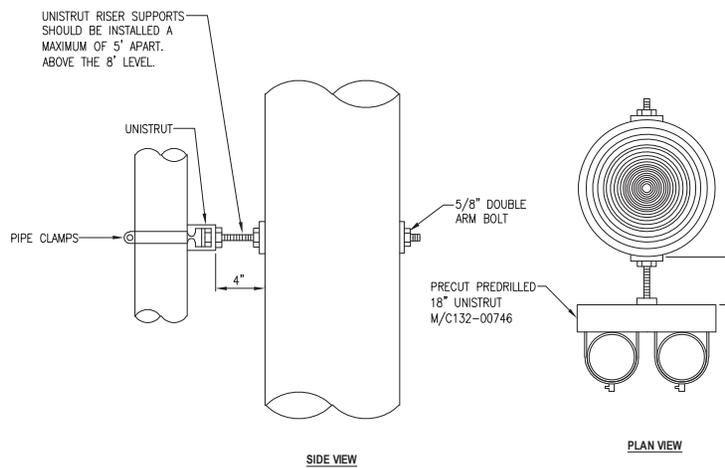
SHEET TITLE:  
**DETAILS**

**A-6**



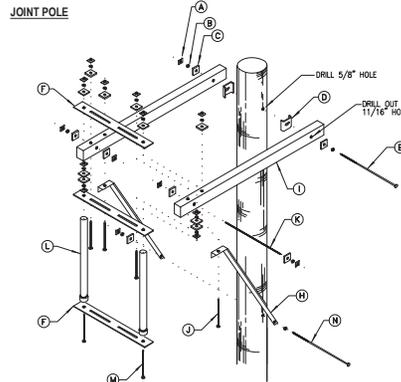
TYPICAL RISER STANDOFF BRACKET DETAIL  
POLE SCHEMATIC

SCALE:  
N.T.S. 1



RISER INSTALLATION USING UNISTRUT DETAIL

SCALE:  
N.T.S. 2

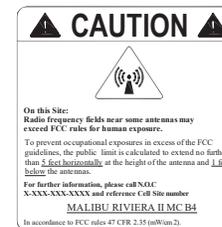


ITEM	DESCRIPTION	DIMENSIONS	CAT. NO.	QTY.
A	SQUARE NUT	5/8"	J8563/JOSLYN	16
B	DOUBLE COIL LOCK WASHER	5/8"	J177/JOSLYN	16
C	FLAT SQUARE WASHERS	2 1/4" x 5/8" x 3/16"	J1014/JOSLYN	17
D	POLE GAINS	4" x 4" SLOT SIZE 2 11/16"	DATES992001/MCORNW	2
E	MACHINE BOLT *	24" x 5/8"	J8824 (E)/JOSLYN	1
F	ANTENNA MOUNTING PLATE *	32" x 4" x 1/4"	PRE-FAB	3
H	ANGLE BRACES & ALLEY ARM BRACES	60" x 1 3/4" x 3/16"	J1522/JOSLYN	2
I	TYPE 72 GA-WOOD ARM	3 1/2" x 4 1/2" x 72"	BROOKS	2
J	MACHINE BOLT	6" x 5/8"	J8826/JOSLYN	4
K	DOUBLE ARMING BOLT *	5/8" x 26"	J8819/JOSLYN	1
L	GALV. STEEL PIPE W/END CAP *	2" x 8" MIN. - 48" MAX.	PRE-FAB	2
M	MACHINE BOLT *	5/8" x 16" MIN. - 56" MAX.	CUSTOM/JOSLYN	2
N	MACHINE BOLT *	16" x 5/8"	J8816/JOSLYN	1

\* DIMENSIONS VARY BASED UPON POLE/ANTENNA SIZE

ARM ASSEMBLY

SCALE:  
N.T.S. 3



VERIZON TO INSTALL SIGNS PER CODE RULE #4.5  
APPENDIX 16, EXHIBIT A AT RISER/ANTENNA POLE

ANTENNA OWNER/OPERATORS ARE RESPONSIBLE FOR THE INSTALLATION AND UPKEEP OF THEIR SIGN OR SIGNS AT EACH JOINT USE SITE.

- IN ADDITION TO THE REQUIREMENTS OF GO. REG. RULE 84.5 (MARKING), AT A MINIMUM, EACH ANTENNA OWNER/OPERATOR WILL ALSO AFFIX A SIGN THAT:
  - IDENTIFIES THE APPLICABLE FCC EXPOSURE CATEGORY (GENERAL POPULATION/UNCONTROLLED OR OCCUPATIONAL/CONTROLLED).
  - IDENTIFIES THE FCC'S RECOMMENDED MINIMUM APPROACH DISTANCE AS SET FORTH IN 47 C.F.R. AND IS OF WEATHER AND CORROSION RESISTANT MATERIAL.
- THE ANTENNA OWNER/OPERATOR WILL PLACE THE SIGN SO THAT IT IS CLEARLY VISIBLE TO WORKERS WHO OTHERWISE CLIMB THE POLE OR ASCEND BY MECHANICAL MEANS AND AFFIX SAID SIGN:
  - 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).
- THE ANTENNA OWNER/OPERATOR MAY INSTALL A SINGLE SIGN THAT CONTAINS THE INFORMATION REQUIRED BY GO. REG. RULE 84.5 AND SECTION(S) ABOVE, OR SEPARATE SIGNS. IN THE EVENT ONE OR MORE ANTENNAS ARE ATTACHED TO A POLE, EACH ANTENNA OWNER/OPERATOR SHALL PROVIDE A SIGN WITH SUFFICIENT INFORMATION TO ALLOW WORKERS TO IDENTIFY ITS ANTENNAS.

ANTENNA RF SIGNAGE

SCALE:  
N.T.S. 4

ISSUE STATUS			
REV	DATE	DESCRIPTION	BY
0	11/13/19	90% CD	RL
1	03/10/20	REVISED PER NEW SITE ADDRESS	JM
2	03/12/20	REVISED PER NEW POWER ADDRESS	AH



SMALL CELL PROJECT

PRELIMINARY  
NOT FOR  
CONSTRUCTION

MALIBU RIVIERA II  
MC B4  
SCE UTILITY WOOD  
POLE  
31557.5 PACIFIC  
COAST HWY.  
MALIBU, CA 90265

SHEET TITLE:

DETAILS

A-7

**ISSUE STATUS**

REV	DATE	DESCRIPTION	BY
0	11/13/19	90% CD	RL
1	03/10/20	REVISED PER NEW SITE ADDRESS	JM
2	03/12/20	REVISED PER NEW POWER ADDRESS	AH



SMALL CELL PROJECT

PRELIMINARY  
NOT FOR  
CONSTRUCTION

**MALIBU RIVIERA II  
MC B4**  
SCE UTILITY WOOD  
POLE  
31557.5 PACIFIC  
COAST HWY.  
MALIBU, CA 90285

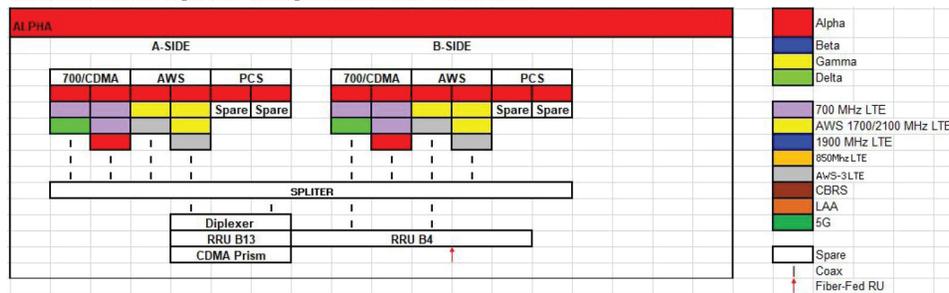
SHEET TITLE:  
**RF PLUMBING  
DIAGRAMS**

**RF-1**

**ANTENNA WIRE DIAGRAM (PENDING)**

SCALE: 1  
N.T.S.

MALIBU RIVIERA II MC B4 - Delgado, Simon - simon.delgado@verizonwireless.com - 10/21/2019 13:06:33



**RFDS DIAGRAM**

SCALE: 2  
N.T.S.

**RF SYSTEM SCHEDULE**

ANTENNA SECTOR	AZIMUTH	NUMBER OF ANTENNAS	ANTENNA MODEL NO.	EQUIPMENT JUMPER (IN VAULT)	JUMPER SIZE	EST. COAX LENGTH	COAX SIZE	JUMPER ANTENNA	RAD. CENTER OF ANTENNA
A	110°	1	NHH-45A-R2B	-	-	-	-	-	32'-3"±
B	290°	1	NHH-45A-R2B	-	-	-	-	-	32'-3"±
-	-	-	-	-	-	-	-	-	-

**RF SYSTEM SCHEDULE**

SCALE: 3  
N.T.S.

**R.F. INFORMATION**

RF ENGINEER: SIMON DELGADO  
STREET ADDRESS: 31557.5 PACIFIC COAST HWY. CITY: MALIBU, CA 90285  
COORDINATES: LATITUDE: 34° 02' 12.63" N. LONGITUDE: 118° 51' 43.45" W.

**R.F. REQUIREMENTS**

GROUND ELV.	RC AMSL	BTS LOCATION	# OF TRU'S	DIVERSITY SEP	BTS TYPE
113'-0"	145'-3"±	ON POLE	-	-	8842 & 4469 RND0
SECTOR A					
AZIMUTH IN	RC	TIP HT.	SECTOR A ANTENNA	CABLE LENGTH(S)	SECTOR A QTY
110°	32'-3"±	34'-3"±	NHH-45A-R2B	-	1
SECTOR B					
AZIMUTH IN	RC	TIP HT.	SECTOR B ANTENNA	CABLE LENGTH(S)	SECTOR B QTY
290°	32'-3"±	34'-3"±	NHH-45A-R2B	-	1
SECTOR G					
AZIMUTH IN	RC	TIP HT.	SECTOR G ANTENNA	CABLE LENGTH(S)	SECTOR G QTY
-	-	-	-	-	-

**RF INFORMATION**

**GENERAL PROJECT INFORMATION**

OSP ENG:	ADAM HARMON
POLE NUMBER	_____E
POLE HEIGHT	60'-0" (52'-0" AGL)
ANTENNA TIP HEIGHT	34'-8"±
X-ARM ORIENTATION	N/A
CROSS STREET	SEA CLOUD LN.
T.B.G. MAP NO.:	LA 626-H7
PWR E. M. OTHER	SCE
PWR PLANNER/PHONE #	DAVID LAW // (909) 873-7931
CLOSEST AVAILABLE PWR.	TBD
COMMA: GTE, H	TBD (DARK FIBER FED)
TELCO CONTACT/PHONE #	N/A
CLOSEST AVAILABLE TELCO	N/A

SCALE: 4  
N.T.S.



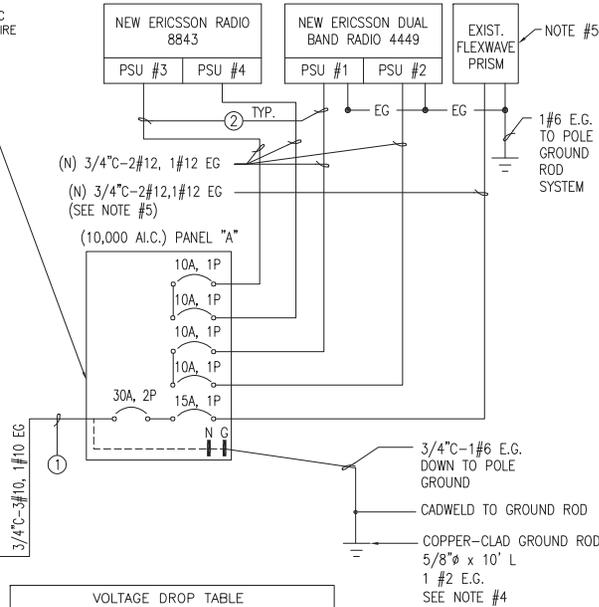
NOTE #1: CONTRACTOR TO DETERMINE APPLICABILITY OF ELECTRIC SINGLE LINE AND WIRING PLAN. IF CONDITIONS EXIST THAT REQUIRE MODIFICATIONS TO THE ELECTRIC SINGLE LINE OR WIRING PLAN, CONTRACTOR IS TO NOTIFY THE ELECTRICAL ENGINEER FOR A REVISED E SHEET.

(N) VERIZON BREAKER/DISCONNECT BOX #Q0612L100RP (8.9"Wx12"Hx3.5"D) WITH TANDEM BREAKERS #Q0T2020 OR EQUAL (POLE MOUNTED) (NOTE #1 THIS SHEET)

(N) 1" SCE POWER CONDUIT (POLE MOUNTED DOWN) FOR EXISTING SCE O/H INCOMING ELECTRICAL FEED, 120/240V, 1 $\phi$ , 3W CABLE BY SCE (SEE NOTES #2 & #3 THIS SHEET)

NEW SCE UN-METERED PANEL (SCE MOUNTED ON POLE #\_\_\_\_E)

ELECTRICAL LOAD SUMMARY	
(120/240V, 1 $\phi$ , 3W)	
TOTAL CONNECTED LOAD = 16A	
AMPACITY (W/LCL)	



VOLTAGE DROP TABLE			
①	3/4"C-3#10	L < 2'	%VD = NEG.
②	3/4"C-2#12	L < 5'	%VD = NEG.

NOTES:

- BREAKERS MUST COMPLY WITH AT LEAST CURVE (3) TRIPPING CHARACTERISTICS AND IN ACCORDANCE WITH IEC/60934.
- REFER TO CES SHEET A-2 & A-5 FOR POLE RISER DIAGRAM AND EXACT LOCATIONS OF (E) 1"C, (UTILITY COMPANY OVERHEAD INCOMING POWER), UTILITY METER AND NEW VERIZON DISCONNECT BOX.
- REFER TO CES SHEET A-6 FOR EQUIPMENT ELECTRICAL DETAILS.
- CONTRACTOR SHALL TEST POLE GROUNDING SYSTEM & PER GO 95 AND/OR NEC AND REPLACE COMPONENTS AS REQUIRED.
- RE-FEED EXISTING VERIZON PRISM (FLEXWAVE) FROM NEW VERIZON BREAKER/DISCONNECT BOX.
- SEE CES SHEET E-3 FOR GROUNDING DETAILS.

VERIZON (10,000 A.I.C.) PANEL "A"														
70A BUS		240 VOLTS		1 PHASE		2 WIRE		MAIN		40A		TYPE 3R		
VOLT AMPS	PHASE A	PHASE B	REMARK	R	L	D	B	C	B	D	R	REMARK	VOLT AMPS	
				OP	OP	OP	OP	OP	OP	OP	OP		PHASE A	PHASE B
600			PSU #1			1	10A					PSU #2		600
700			EXIST. PRISM			1	15A							
600			PSU #3			1	10A					PSU #4		600
VA/LINE														
PHASE A = 1900 W						PHASE B = 1200 W								
CONTINUOUS LOADS				NON-CONTINUOUS LOADS										
3100 W		x1.25= 3875 W		0 W				TOTAL ADJUST WATT = 3875				TOTAL ADJUST AMPS = 16 A		

SINGLE LINE DIAGRAM

SCALE: 1  
N.T.S.

ISSUE STATUS

REV	DATE	DESCRIPTION	BY
0	11/13/19	90% CD	RL
1	03/10/20	REVISED PER NEW SITE ADDRESS	JM
2	03/12/20	REVISED PER NEW POWER ADDRESS	AH



SMALL CELL PROJECT

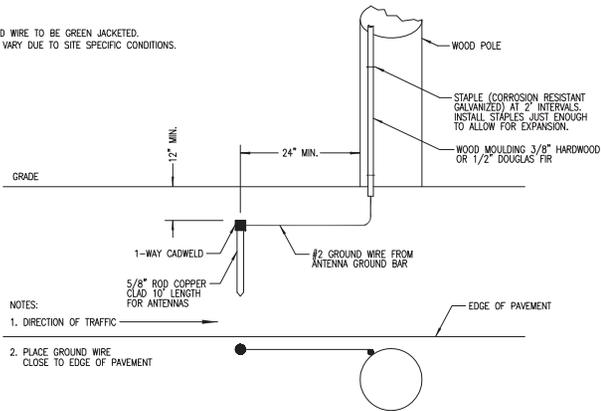
PRELIMINARY  
NOT FOR  
CONSTRUCTION

MALIBU RIVIERA II  
MC B4  
SCE UTILITY WOOD  
POLE  
31557.5 PACIFIC  
COAST HWY.  
MALIBU, CA 90285

SHEET TITLE:  
SINGLE LINE  
DIAGRAM DETAIL

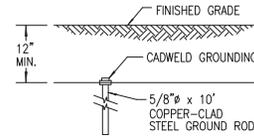
E-2

NOTES:  
 1. ALL STRANDED GROUND WIRE TO BE GREEN JACKETED.  
 GROUND SCHEME MAY VARY DUE TO SITE SPECIFIC CONDITIONS.



NOTES:  
 1. DIRECTION OF TRAFFIC  
 2. PLACE GROUND WIRE CLOSE TO EDGE OF PAVEMENT

1. ELECTRICAL CONTRACTOR SHALL PERFORM TEST TO DETERMINE GROUND RESISTANCE.
2. IF RESISTANCE EXCEEDS 5 OHMS ELECTRICAL CONTRACTOR SHALL DETERMINE, FROM TEST RESULTS, NUMBER OF RODS REQUIRED.



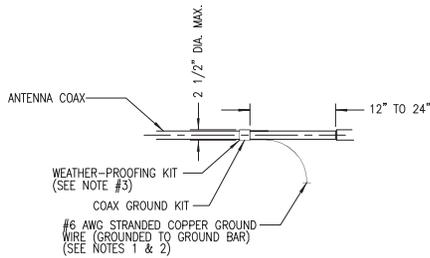
TYPICAL WOOD ANTENNA GROUNDING DETAIL

SCALE:  
N.T.S. 1

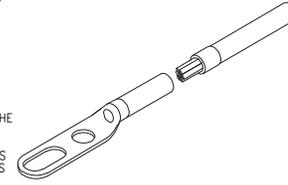
GROUND ROD DETAIL

SCALE:  
N.T.S. 2

- NOTES:
1. DO NOT INSTALL COAX GROUND KIT AT A BEND AND ALWAYS DIRECT GROUND WIRE DOWN TO GROUND BEND.
  2. GROUNDING KIT SHALL BE TYPE AND PART NUMBER AS SUPPLIED OR RECOMMENDED BY COAX MANUFACTURER.
  3. WEATHER PROOFING SHALL BE TWO-PART TAPE KIT, COLD SHRINK SHALL NOT BE USED.



- NOTES:
1. CRIMP (COMPRESSION) TYPE TWO-HOLE BOLTED TONGUE CONNECTORS SHALL BE USED TO TERMINATE STRANDED GROUNDING CONDUCTORS. THE CONNECTORS SHALL BE TIN PLATED COPPER, LONG BARREL LUG, AND SHALL BE LISTED FOR THEIR INTENDED USE BY AN NRTL.  
NOTE: TIN PLATED ALUMINUM CONNECTORS INSTALLED PRIOR TO THE DATE OF THIS STANDARD OR CONNECTORS THAT ARE PART OF AN APPROVED PRODUCT ARE ACCEPTABLE.
  2. CRIMP TYPE CONNECTORS USED ON SOLID CONDUCTORS MUST BE LISTED BY AN NRTL FOR USE ON SOLID CONDUCTORS, AND MUST BE CRIMPED WITH THE DIES SPECIFIED BY THE MANUFACTURER OF THE CONNECTOR. USE A HYDRAULIC CRIMPING TOOL.
  3. TWO-HOLE BOLTED TONGUE CONNECTORS WITH INSPECTION WINDOW SHALL BE USED. WIRES SHALL BE INSERTED THE ENTIRE LENGTH OF THE LUG. ENSURE COAX OUTER INSULATION IS SNUG TO LUG BARREL. PROVIDE AN ANTI-OXIDE COMPOUND ON THE CONDUCTOR BEFORE CRIMPING (NO DX). INSTALL A TRANSPARENT HEAT SHRINK INSULATING TUBE ALONG THE ENTIRE LENGTH OF THE CRIMP.
  4. USE #6 AWG STRANDED-THOMAS & BETTS 455578 OR EQUIVALENT.
  5. USE #2 AWG STRANDED-THOMAS & BETTS 435306 OR EQUIVALENT.

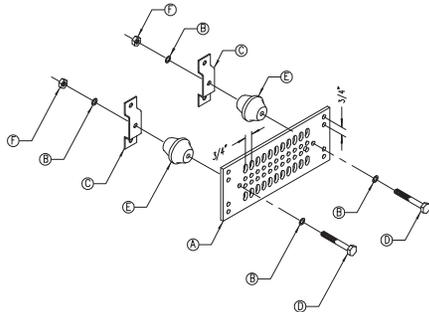


CONNECTION OF COAX GROUND KIT TO ANTENNA COAX

SCALE:  
N.T.S. 3

2-HOLE LB GROUNDING LUG

SCALE:  
N.T.S. 4



PARTS LIST

QTY	DESCRIPTION
A	COPPER GROUND BAR, USE STYLE "T" GTI TELECOM, INC. (ACTUAL GROUND BAR SIZE WILL VARY BASED ON NUMBER OF GROUND CONNECTIONS)
B	5/8" LOCK WASHERS, NEWTON INSTRUMENT CO. CAT. NO. 3015-B OR EQUAL
C	WALL MOUNTING BRACKET, NEWTON INSTRUMENT CO. CAT. NO. A-6056 OR EQUAL
D	5/8-11 X 1" HHCS BOLTS, NEWTON INSTRUMENT CO. CAT. NO. 3012-1 OR EQUAL
E	INSULATORS SHALL BE INSTALLED
F	5/8-11 NUT

TYPICAL GROUND BAR

SCALE:  
N.T.S. 5

ISSUE STATUS

REV	DATE	DESCRIPTION	BY
0	11/13/19	90% CD	RL
1	03/10/20	REVISED PER NEW BIR	JM
2	03/12/20	REVISED PER NEW POWER ADDRESS	AH



SMALL CELL PROJECT

PRELIMINARY  
NOT FOR  
CONSTRUCTION

MALIBU RIVIERA II  
MC B4  
SCE UTILITY WOOD  
POLE  
31557.5 PACIFIC  
COAST HWY.  
MALIBU, CA 90285

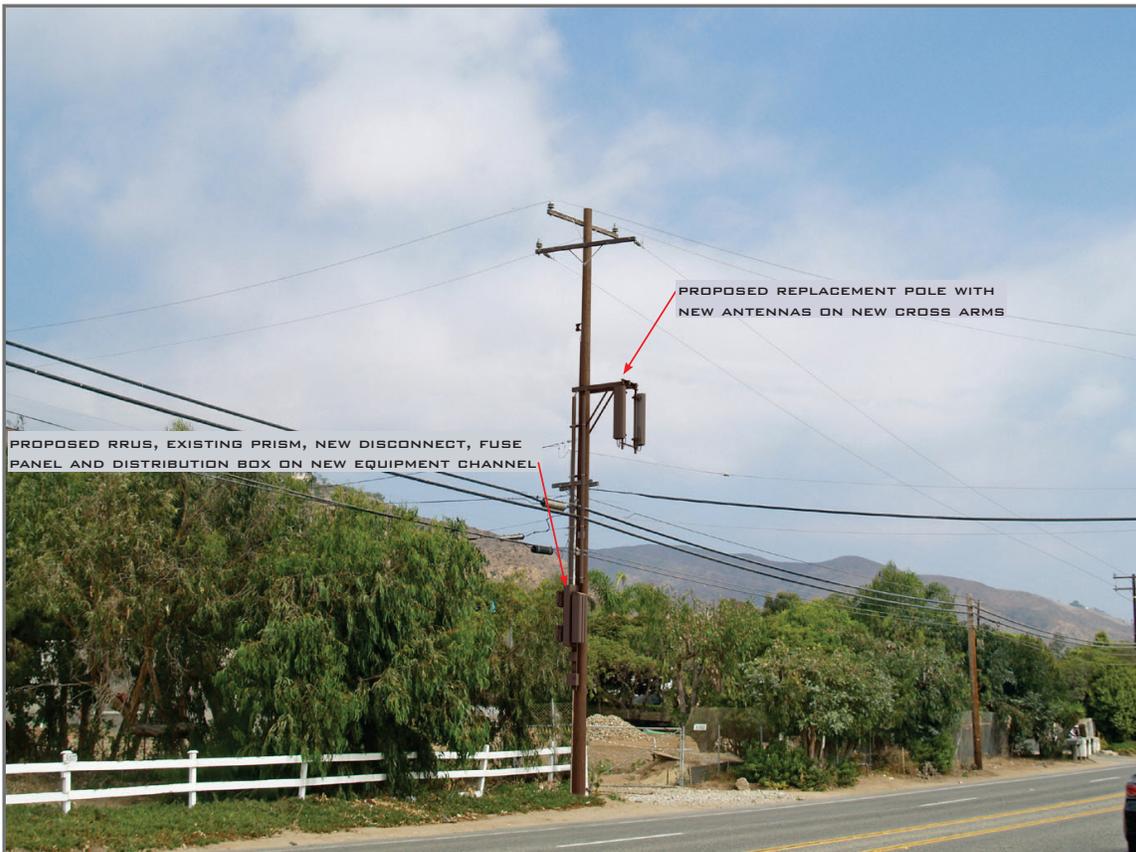
SHEET TITLE:  
GROUNDING DETAILS

E-3

VIEW 1



EXISTING



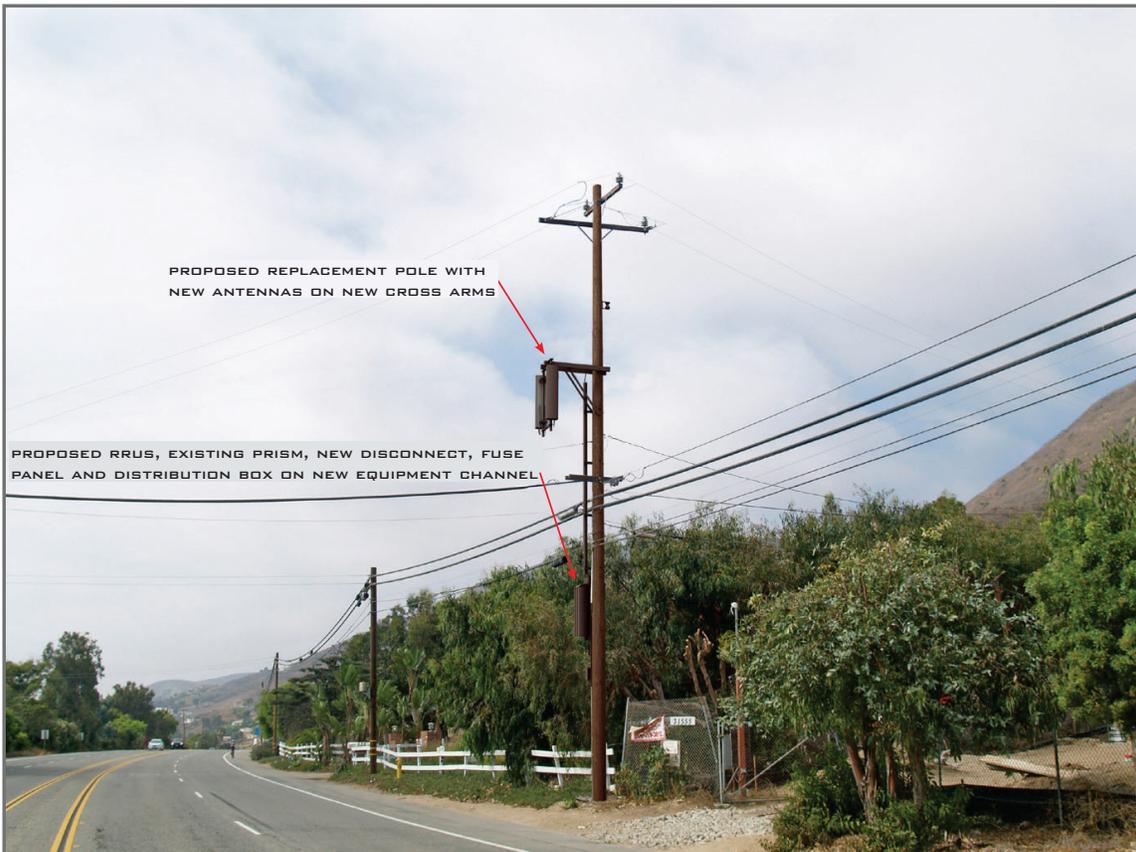
PROPOSED

LOOKING EAST FROM PACIFIC COAST HIGHWAY

VIEW 2



EXISTING



PROPOSED

LOOKING WEST FROM PACIFIC COAST HIGHWAY

VIEW 3



EXISTING



PROPOSED

LOOKING NORTH FROM PACIFIC COAST HIGHWAY



15505 Sand Canyon Avenue  
Irvine, CALIFORNIA 92618

---

TELEPHONE (949) 286-7178  
EMAIL [ethan.rogers@verizon.com](mailto:ethan.rogers@verizon.com)

Received  
7.13.2020  
Planning Dept.

Re: Verizon Wireless Application for Small Cell Wireless Facility  
in the Public Right-of-Way

To Whom It May Concern:

The City currently requires a coverage map as part of Verizon Wireless's application to install a small wireless facility in the public right-of-way. However, the Federal Communications Commission (the "FCC") recently confirmed that a permitting agency cannot require coverage maps. *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, FCC 18-133 (September 27, 2018) (the "FCC 18-133 Order"); *see also* 47 U.S.C. §§ 253(a), 332(c)(7)(B)(i)(II). It found that "coverage gap-based approaches are 'simply incompatible with a world where the vast majority of new wireless builds are going to be designed to add network capacity and take advantage of new technologies, rather than plug gaps in network coverage.'" FCC 18-133 Order, ¶ 40. Consequently, the Small Cell Order preempts the City's ability to require coverage maps.

Please review and approve the accompanying application, without the submission of coverage maps in accordance with applicable law.

Very truly yours,

Ethan J. Rogers

# Radio Frequency - Electromagnetic Energy (RF-EME) Jurisdictional Report

Site No. 212030  
Malibu Riviera II MC B4  
31579 1/2 Pacific Coast Hwy  
Malibu, California 90265  
Los Angeles County  
34° 2' 12.63" N, -118° 51' 43.45" W NAD83

Received  
7/27/2020  
Planning Dept.

EBI Project No. 6219005452  
July 24, 2020



Prepared for:  
Verizon Wireless  
c/o CES  
20 Corporate Park, suite 400  
Irvine, CA 92606

Prepared by:  
 **EBI Consulting**  
environmental | engineering | due diligence

**TABLE OF CONTENTS**

**EXECUTIVE SUMMARY ..... 1**

**1.0 SITE DESCRIPTION AND ANTENNA INVENTORY .....2**

**2.0 BACKGROUND INFORMATION AND MODELING PROCEDURE.....3**

**3.0 MITIGATION/SITE CONTROL OPTIONS .....4**

**4.0 SUMMARY AND CONCLUSIONS .....5**

**5.0 LIMITATIONS .....5**

**APPENDICES**

- APPENDIX A CERTIFICATIONS**
- APPENDIX B RADIO FREQUENCY ELECTROMAGNETIC ENERGY SAFETY / SIGNAGE PLANS**
- APPENDIX C FEDERAL COMMUNICATIONS COMMISSION (FCC) REQUIREMENTS**

**EXECUTIVE SUMMARY**

**Purpose of Report**

EnviroBusiness Inc. (dba EBI Consulting) has been contracted by Verizon via CES to conduct radio frequency electromagnetic (RF-EME) modeling for Verizon Site 212030 to be located on a utility pole at 31579 1/2 Pacific Coast Hwy in Malibu, California to determine RF-EME exposure levels from proposed Verizon wireless communications equipment at this site. As described in greater detail in Appendix C, the Federal Communications Commission (FCC) has developed Maximum Permissible Exposure (MPE) Limits for general public exposures and occupational exposures. This report summarizes the results of RF-EME modeling in relation to relevant FCC RF-EME compliance standards for limiting human exposure to RF-EME fields.

Modeling results included in this report are based on drawings dated October 2, 2019 as provided to EBI Consulting. Subsequent changes to the drawings or site design may yield changes in the MPE levels or FCC Compliance recommendations.

<b>Maximum Permissible Exposure (MPE) Summary</b>					
<b>Location</b>	<b>% of FCC General Public/Uncontrolled Exposure Limit</b>	<b>% of FCC Occupational/Controlled Exposure Limit</b>	<b>Power Density (mW/cm<sup>2</sup>)</b>	<b>Horizontal Approach Distance of Occupational Limit</b>	<b>Horizontal Approach Distance of General Public Limit</b>
<b>Proposed Verizon Equipment</b>					
Antenna Face (Max Emission Level)	3,601.70	720.34	16.8079	13	30
Ground Level	0.80	0.16	0.0037	N/A	N/A

These results are calculated based on max power assumptions for this site. The mounted antenna will contribute the majority to these emissions. Workers accessing any equipment on the utility pole should follow all safety procedures outlined by the carrier and property owner.

**Statement of Compliance**

Based on worst-case predictive modeling, there are no calculated levels above the FCC’s general public or occupational limits at ground level. At the antenna face (max emission) level, the general public is recommended to maintain a horizontal distance of 30 feet, while occupational workers are recommended to maintain a horizontal distance of 13 feet from the front of the antennas.

Signage recommendations are presented in Section 3.0 to bring the site into compliance with the FCC Rules and Regulations.

### I.0 SITE DESCRIPTION AND ANTENNA INVENTORY

This project involves the installation of 2 (two) active wireless telecommunication antennas on a utility pole at 31579 1/2 Pacific Coast Hwy in Malibu, California. This site is located in a suburban area.

The antennas are to be mounted on an existing utility pole and operating in the directions, frequencies, and heights mentioned below.

Ant #	Operator	Antenna Make	Antenna Model	Frequency (MHz)	Azimuth (deg.)	Aperture (feet)	Total Power Input (Watts)	Antenna Gain (dBd)	Total ERP (Watts)	Total EIRP (Watts)
1	Verizon	COMMSCOPE	NHH-45A-R2B 02DT 700	700	110	4.0	60.0	12.48	946.6	1552.4
1	Verizon	COMMSCOPE	NHH-45A-R2B 02DT 850	850	110	4.0	72.0	13.79	1087.3	1783.1
1	Verizon	COMMSCOPE	NHH-45A-R2B 01DT 2100	2100	110	4.0	40.0	17.09	1824.1	2991.6
1	Verizon	COMMSCOPE	NHH-45A-R2B 01DT 2100	2100	110	4.0	40.0	17.09	1824.1	2991.6
2	Verizon	COMMSCOPE	NHH-45A-R2B 02DT 700	700	290	4.0	60.0	12.48	946.6	1552.4
2	Verizon	COMMSCOPE	NHH-45A-R2B 02DT 850	850	290	4.0	72.0	13.79	1087.3	1783.1
2	Verizon	COMMSCOPE	NHH-45A-R2B 01DT 2100	2100	290	4.0	40.0	17.09	1824.1	2991.6
2	Verizon	COMMSCOPE	NHH-45A-R2B 01DT 2100	2100	290	4.0	40.0	17.09	1824.1	2991.6

ID	Carrier	X	Y	Antenna Radiation Centerline	Z-Height Ground
1	Verizon	42.0	45.1	32.3	30.3
2	Verizon	37.4	43.5	32.3	30.3

\*Z-Height represents the distance measured from the bottom of the antenna.

## 2.0 BACKGROUND INFORMATION AND MODELING PROCEDURE

EBI has performed theoretical modeling using RoofMaster™ software to estimate the worst-case power density at the site antenna face and ground-level resulting from the operation of the antennas. Using the computational methods set forth in Federal Communications (FCC) Office of Engineering & Technology (OET) Bulletin 65, “Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields” (OET-65), RoofMaster™ calculates predicted power density in a scalable grid based on the contributions of all RF sources characterized in the study scenario. At each grid location, the cumulative power density is expressed as a percentage of the FCC limits. Manufacturer antenna pattern data is utilized in these calculations. RoofMaster™ models consist of the Far Field model as specified in OET-65 and an implementation of the OET-65 Cylindrical Model (Sula9). The models utilize several operational specifications for different types of antennas to produce a plot of spatially-averaged power densities that can be expressed as a percentage of the applicable exposure limit..

For this report, EBI utilized antenna and power data provided by Verizon and compared the resultant worst-case MPE levels to the FCC’s occupational/controlled exposure limits outlined in OET Bulletin 65. The assumptions used in the modeling are based upon information provided by Verizon and information gathered from other sources. The parameters used for modeling are summarized in Section 1.0.

The Site Safety Plan also presents areas where Verizon Wireless antennas contribute greater than 5% of the applicable MPE limit for a site. A site is considered out of compliance with FCC regulations if there are areas that exceed the FCC exposure limits and there are no RF hazard mitigation measures in place. Any carrier which has an installation that contributes more than 5% of the applicable MPE must participate in mitigating these RF hazards.

A graphical representation of the RoofMaster™ modeling results is presented in Appendix B. It should be noted that RoofMaster™ is not suitable for modeling microwave dish antennas; however, these units are designed for point-to-point operations at the elevations of the installed equipment rather than ground level coverage.

### **3.0 MITIGATION/SITE CONTROL OPTIONS**

EBI's modeling indicates that there are no areas in front of the Verizon antennas that exceed the FCC standards for occupational or general public exposure at ground level. All exposures above the FCC's safe limits require that individuals be elevated above the ground. In order to alert people accessing the utility pole, a yellow caution sign is recommended for installation on the utility pole, 5 feet below the antennas, facing the right of way (25.3 feet above ground level).

To reduce the risk of exposure and/or injury, EBI recommends that access to areas associated with the active antenna installation be restricted and secured where possible.

These protocols and recommended control measures have been summarized and included with a graphic representation of the antennas and associated signage and control areas in a RF-EME Site Safety Plan, which is included as Appendix B. Individuals and workers accessing the utility pole should be provided with a copy of the attached Site Safety Plan, made aware of the posted signage, and signify their understanding of the Site Safety Plan.

Implementation of the signage recommended in the Site Safety Plan and in this report will bring this site into compliance with the FCC's rules and regulations.

#### 4.0 SUMMARY AND CONCLUSIONS

EBI has prepared this Radiofrequency – Electromagnetic Energy (RF-EME) Compliance Report for proposed Verizon telecommunications equipment to be located on a utility pole at 31579 1/2 Pacific Coast Hwy in Malibu, California.

EBI has conducted theoretical modeling to estimate the worst-case power density from the proposed Verizon antennas to document potential MPE levels at this location and to ensure that site control measures are adequate to meet FCC and OSHA requirements.

<b>Maximum Permissible Exposure (MPE) Summary</b>					
<b>Location</b>	<b>% of FCC General Public/Uncontrolled Exposure Limit</b>	<b>% of FCC Occupational/Controlled Exposure Limit</b>	<b>Power Density (mW/cm<sup>2</sup>)</b>	<b>Horizontal Approach Distance of Occupational Limit</b>	<b>Horizontal Approach Distance of General Public Limit</b>
<b>Proposed Verizon Equipment</b>					
Antenna Face (Max Emission Level)	3,601.70	720.34	16.8079	13	30
Ground Level	0.80	0.16	0.0037	N/A	N/A

Based on worst-case predictive modeling, there are no calculated levels above the FCC’s general public or occupational limits at ground level. At the antenna face (max emission) level, the general public is recommended to maintain a horizontal distance of 30 feet, while occupational workers are recommended to maintain a horizontal distance of 13 feet from the front of the antennas.

Workers should be informed about the presence and locations of antennas and their associated fields. Recommended control measures are outlined in Section 3.0 and within the Site Safety Plan in Appendix B; Verizon should also provide procedures to shut down and lockout/tagout this wireless equipment in accordance with Verizon’s standard operating protocol. Non-telecom workers who will be working in areas of exceedance are required to contact Verizon since only Verizon has the ability to lockout/tagout the facility, or to authorize others to do so.

To reduce the risk of exposure and/or injury, EBI recommends that access to areas associated with the active antenna installation be restricted and secured where possible.

Implementation of the signage recommended in the Site Safety Plan and in this report will bring this site into compliance with the FCC’s rules and regulations.

#### 5.0 LIMITATIONS

This report was prepared for the use of Verizon Wireless. It was performed in accordance with generally accepted practices of other consultants undertaking similar studies at the same time and in the same locale under like circumstances. The conclusions provided by EBI are based solely on the information provided by the client. The observations in this report are valid on the date of the investigation. Any additional information that becomes available concerning the site should be provided to EBI so that our conclusions may be revised and modified, if necessary. This report has been prepared in accordance with Standard Conditions for Engagement and authorized proposal, both of which are integral parts of this report. No other warranty, expressed or implied, is made.

# **Appendix A**

## **Certifications**

## Preparer Certification

I, Jonathan Ilgenfritz, state that:

- I am an employee of EnviroBusiness Inc. (d/b/a EBI Consulting), which provides RF-EME safety and compliance services to the wireless communications industry.
- I have successfully completed RF-EME safety training, and I am aware of the potential hazards from RF-EME and would be classified “occupational” under the FCC regulations.
- I am fully aware of and familiar with the Rules and Regulations of both the Federal Communications Commissions (FCC) and the Occupational Safety and Health Administration (OSHA) with regard to Human Exposure to Radio Frequency Radiation.
- I am fully aware of and familiar with the Verizon Wireless Signage & Demarcation Policy.
- I have reviewed the data provided by the client and incorporated it into this Site Compliance Report such that the information contained in this report is true and accurate to the best of my knowledge.



Reviewed and Approved by:



sealed 24jul2020

---

Michael McGuire  
Electrical Engineer  
[Mike@h2dc.com](mailto:Mike@h2dc.com)

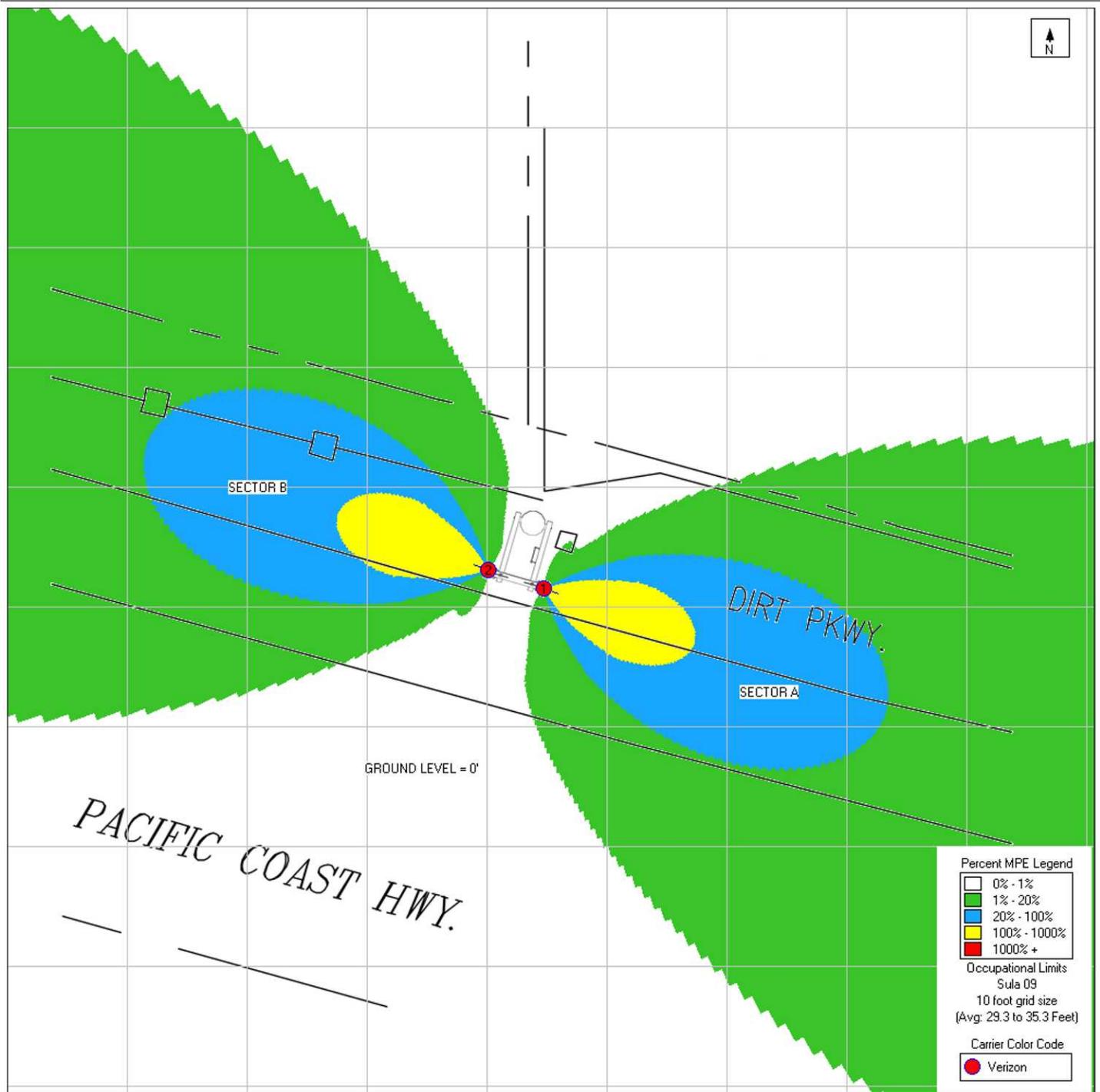
Note that EBI's scope of work is limited to an evaluation of the Radio Frequency – Electromagnetic Energy (RF-EME) field generated by the antennas and broadcast equipment noted in this report. The engineering and design of the structure, as well as the impact of the antennas and broadcast equipment on the structural integrity of the structure, are specifically excluded from EBI's scope of work.

**Appendix B**

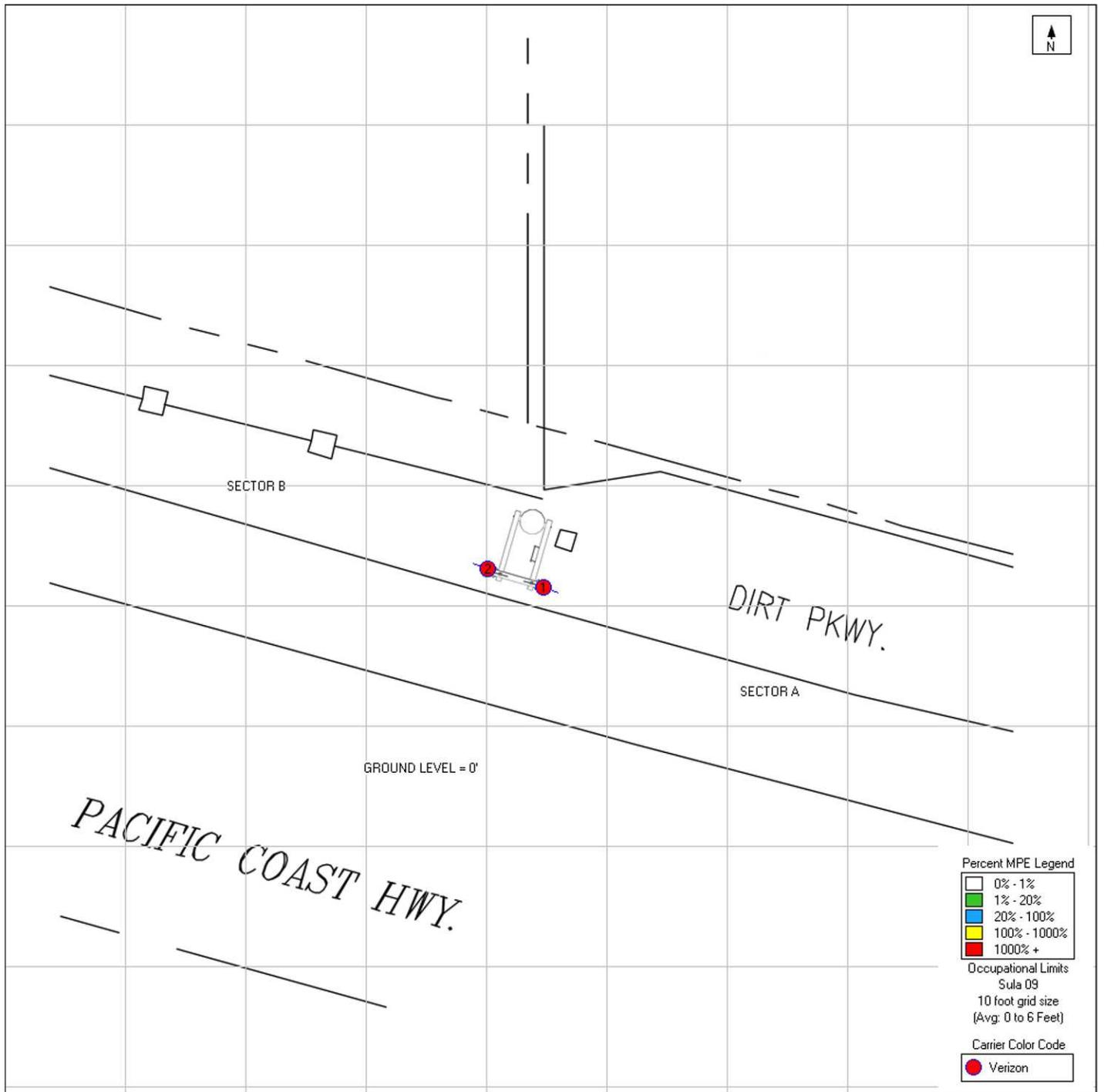
**Radio Frequency Electromagnetic Energy**

**Safety Information and Signage Plans**

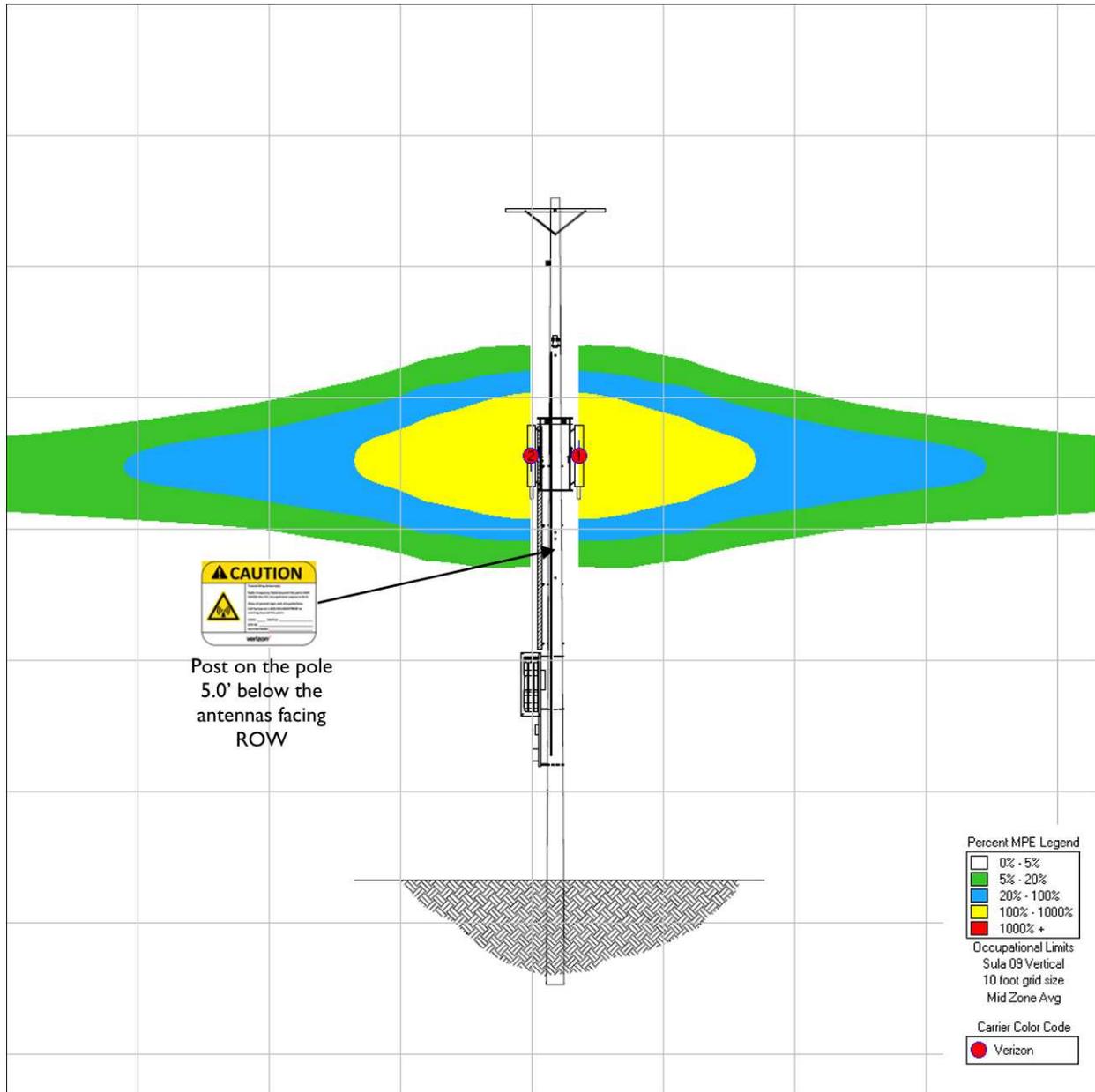
### Antenna Face Simulation



### Ground Level Simulation



### Elevation Simulation and Signage Plan



Sign	Description	Posting Instructions	Required Signage / Mitigation
	<p><b>Yellow Caution Sign</b>                  Used to alert individuals that they are entering an area where the power density emitted from transmitting antenna(s) may exceed the FCC's maximum permissible exposure limits for the occupational and general population.</p>	<p>Securely post on the utility pole facing the ROW 5.0 feet below the antennas (25.3 feet above ground level).</p>	<p>1 sign posted below the antennas</p>

## RF Signage and Safety Information

### RF Signage

Areas or portions of any transmitter site may be susceptible to high power densities that could cause personnel exposures in excess of the FCC guidelines. These areas must be demarcated by conspicuously posted signage that identifies the potential exposure. Signage **MUST** be viewable regardless of the viewer's position.

GUIDELINES	NOTICE	CAUTION	WARNING
This sign will inform anyone of the basic precautions to follow when entering an area with transmitting radiofrequency equipment.	This sign indicates that RF emissions may exceed the FCC General Population MPE limit.	This sign indicates that RF emissions may exceed the FCC Occupational MPE limit.	This sign indicates that RF emissions may exceed at least 10x the FCC Occupational MPE limit.
			

NOC INFORMATION	INFORMATION
Information signs are used as a means to provide contact information for any questions or concerns. They will include specific cell site identification information and the Verizon Wireless Network Operations Center phone number.	

### Physical Barriers

Physical barriers are control measures that require awareness and participation of personnel. Physical barriers are employed as an additional administration control to complement RF signage and physically demarcate an area in which RF exposure levels may exceed the FCC General Population limit. **Example:** chain-connected stanchions

### Indicative Markers

Indicative markers are visible control measures that require awareness and participation of personnel, as they cannot physically prevent someone from entering an area of potential concern. Indicative markers are employed as an additional administration control to complement RF signage and visually demarcate an area in which RF exposure levels may exceed the FCC General Population limit. **Example:** paint stripes

### Occupational Safety and Health Administration (OSHA) Requirements

A formal adopter of FCC Standards, OSHA stipulates that those in the Occupational classification must complete training in the following: RF Safety, RF Awareness, and Utilization of Personal Protective Equipment. OSHA also provides options for Hazard Prevention and Control:

Hazard Prevention	Control
<ul style="list-style-type: none"> <li>• Utilization of good equipment</li> <li>• Enact control of hazard areas</li> <li>• Limit exposures</li> <li>• Employ medical surveillance and accident response</li> </ul>	<ul style="list-style-type: none"> <li>• Employ Lockout/Tag out</li> <li>• Utilize personal alarms &amp; protective clothing</li> <li>• Prevent access to hazardous locations</li> <li>• Develop or operate an administrative control program</li> </ul>

## **Appendix C**

### **Federal Communications Commission (FCC) Requirements**

The FCC has established Maximum Permissible Exposure (MPE) limits for human exposure to Radiofrequency Electromagnetic (RF-EME) energy fields, based on exposure limits recommended by the National Council on Radiation Protection and Measurements (NCRP) and, over a wide range of frequencies, the exposure limits developed by the Institute of Electrical and Electronics Engineers, Inc. (IEEE) and adopted by the American National Standards Institute (ANSI) to replace the 1982 ANSI guidelines. Limits for localized absorption are based on recommendations of both ANSI/IEEE and NCRP.

The FCC guidelines incorporate two separate tiers of exposure limits that are based upon occupational/controlled exposure limits (for workers) and general public/uncontrolled exposure limits for members of the general public.

**Occupational/controlled exposure limits** apply to situations in which persons are exposed as a consequence of their employment and in which those persons who are exposed have been made fully aware of the potential for exposure and can exercise control over their exposure. Occupational/controlled exposure limits also apply where exposure is of a transient nature as a result of incidental passage through a location where exposure levels may be above general public/uncontrolled limits (see below), as long as the exposed person has been made fully aware of the potential for exposure and can exercise control over his or her exposure by leaving the area or by some other appropriate means.

**General public/uncontrolled exposure limits** apply to situations in which the general public may be exposed or in which persons who are exposed as a consequence of their employment may not be made fully aware of the potential for exposure or cannot exercise control over their exposure. Therefore, members of the general public would always be considered under this category when exposure is not employment-related, for example, in the case of a telecommunications tower that exposes persons in a nearby residential area.

Table I and Figure I (below), which are included within the FCC's OET Bulletin 65, summarize the MPE limits for RF emissions. These limits are designed to provide a substantial margin of safety. They vary by frequency to take into account the different types of equipment that may be in operation at a particular facility and are "time-averaged" limits to reflect different durations resulting from controlled and uncontrolled exposures.

The FCC's MPEs are measured in terms of power (mW) over a unit surface area (cm<sup>2</sup>). Known as the power density, the FCC has established an occupational MPE of 5 milliwatts per square centimeter (mW/cm<sup>2</sup>) and an uncontrolled MPE of 1 mW/cm<sup>2</sup> for equipment operating in the 1900 MHz frequency range.

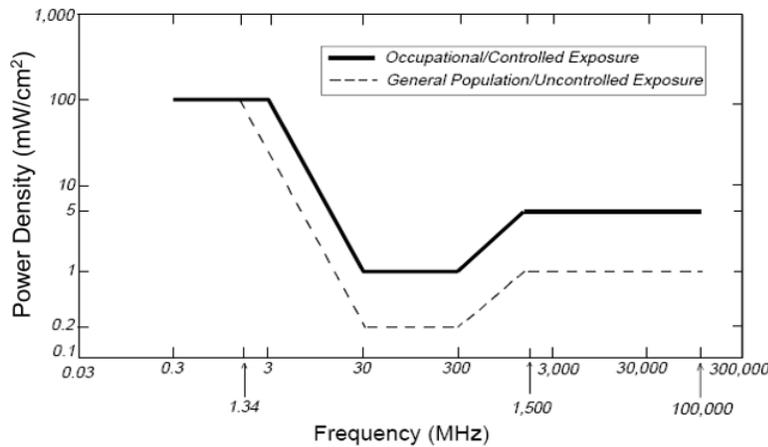
Equipment operating in the 700 MHz frequency range has an established occupational MPE of 2.33 (mW/cm<sup>2</sup>) and a general public MPE of 0.47 mW/cm<sup>2</sup>, equipment operating in the 850 MHz frequency range the occupational MPE is 2.83 mW/cm<sup>2</sup> and the general public MPE is 0.57 mW/cm<sup>2</sup>, and equipment operating in the 1900 and 2100 MHz frequency range the occupational MPE is 5 mW/cm<sup>2</sup> and general public MPE is 1 mW/cm<sup>2</sup>. These limits are considered protective of these populations.

Table I: Limits for Maximum Permissible Exposure (MPE)				
(A) Limits for Occupational/Controlled Exposure				
Frequency Range (MHz)	Electric Field Strength (E) (V/m)	Magnetic Field Strength (H) (A/m)	Power Density (S) (mW/cm <sup>2</sup> )	Averaging Time [E] <sup>2</sup> , [H] <sup>2</sup> , or S (minutes)
0.3-3.0	614	1.63	(100)*	6
3.0-30	1842/f	4.89/f	(900/f <sup>2</sup> )*	6
30-300	61.4	0.163	1.0	6
300-1,500	--	--	f/300	6
1,500-100,000	--	--	5	6
(B) Limits for General Public/Uncontrolled Exposure				
Frequency Range (MHz)	Electric Field Strength (E) (V/m)	Magnetic Field Strength (H) (A/m)	Power Density (S) (mW/cm <sup>2</sup> )	Averaging Time [E] <sup>2</sup> , [H] <sup>2</sup> , or S (minutes)
0.3-1.34	614	1.63	(100)*	30
1.34-30	824/f	2.19/f	(180/f <sup>2</sup> )*	30
30-300	27.5	0.073	0.2	30
300-1,500	--	--	f/1,500	30
1,500-100,000	--	--	1.0	30

f = Frequency in (MHz)

\* Plane-wave equivalent power density

Figure 1. FCC Limits for Maximum Permissible Exposure (MPE)  
 Plane-wave Equivalent Power Density



Based on the above, the most restrictive thresholds for exposures of unlimited duration to RF energy for several personal wireless services are summarized below:

Personal Wireless Service	Approximate Frequency	Occupational MPE	Public MPE
Microwave (Point-to-Point)	5,000 - 80,000 MHz	5.00 mW/cm <sup>2</sup>	1.00 mW/cm <sup>2</sup>
Broadband Radio (BRS)	2,600 MHz	5.00 mW/cm <sup>2</sup>	1.00 mW/cm <sup>2</sup>
Wireless Communication (WCS)	2,300 MHz	5.00 mW/cm <sup>2</sup>	1.00 mW/cm <sup>2</sup>
Advanced Wireless (AWS)	2,100 MHz	5.00 mW/cm <sup>2</sup>	1.00 mW/cm <sup>2</sup>
Personal Communication (PCS)	1,950 MHz	5.00 mW/cm <sup>2</sup>	1.00 mW/cm <sup>2</sup>
Cellular Telephone	870 MHz	2.90 mW/cm <sup>2</sup>	0.58 mW/cm <sup>2</sup>
Specialized Mobile Radio (SMR)	855 MHz	2.85 mW/cm <sup>2</sup>	0.57 mW/cm <sup>2</sup>
Long Term Evolution (LTE)	700 MHz	2.33 mW/cm <sup>2</sup>	0.47 mW/cm <sup>2</sup>
Most Restrictive Frequency Range	30-300 MHz	1.00 mW/cm <sup>2</sup>	0.20 mW/cm <sup>2</sup>

MPE limits are designed to provide a substantial margin of safety. 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.

Personal Communication Services (PCS) facilities operate within a frequency range of 1850-1990 MHz. Facilities typically consist of: 1) electronic transceivers (the radios or cabinets) connected to wired telephone lines; and 2) antennas that send the wireless signals created by the transceivers to be received by individual subscriber units (PCS telephones). Transceivers are typically connected to antennas by coaxial cables.

Advanced Wireless Services (AWS) facilities operate within a frequency range of 2155-2180 MHz. Facilities typically consist of: 1) electronic transceivers (the radios or cabinets); and 2) antennas that send the wireless signals created by the transceivers to be received by individual subscriber units. Transceivers are typically connected to antennas by coaxial cables.

Because of the short wavelength of PCS/AWS services, the antennas require line-of-site paths for good propagation, and are typically installed above ground level. Antennas are constructed to concentrate energy towards the horizon, with as little energy as possible scattered towards the ground or the sky. This design, combined with the low power of PCS facilities, generally results in no possibility for exposure to approach Maximum Permissible Exposure (MPE) levels, with the exception of areas directly in front of the antennas.

### FCC Compliance Requirement

A site is considered out of compliance with FCC regulations if there are areas that exceed the FCC exposure limits and there are no RF hazard mitigation measures in place. Any carrier which has an installation that contributes more than 5% of the applicable MPE must participate in mitigating these RF hazards.

Received  
6/15/2020  
Planning Dept.



March 25, 2020

RE: Verizon Wireless Small Cell Sites (listed below) Located in Malibu

- MALIBU RIVIERA II MC A1 – 20002.5 Pacific Coast HWY. Malibu, CA 90265
- MALIBU RIVIERA II MC A7 – 18921 ½ Pacific Coast HWY. Malibu, CA 90265
- MALIBU RIVIERA II MC A4 – 25803.5 Corral Canyon Rd. Malibu, CA 90265
- MALIBU RIVIERA II MC B1 – 26920 ½ Pacific Coast HWY. Malibu, CA 90265
- MALIBU RIVIERA II MC B4 – 31557.5 Pacific Coast HWY. Malibu, CA 90265
- MALIBU RIVIERA II MC B7 – 6213.5 Kanan Dume Rd. Malibu, CA 90265
- MALIBU RIVIERA II MC B8 – 27729 ½ Pacific Coast HWY. Malibu, CA 90265

**To Whom It May Concern,**

We write to inform you that Verizon Wireless has performed a radio frequency (RF) compliance pre-construction evaluation for the above-noted proposed sites and based on the result of the evaluation, the sites will be compliant with FCC Guidelines.

The FCC has established safety guidelines relating to potential RF exposure from cell sites. The FCC developed the standards, known as Maximum Permissible Exposure (MPE) limits, in consultation with numerous other federal agencies, including the Environmental Protection Agency, the Food and Drug Administration, and the Occupational Safety and Health Administration. The FCC provides information about the safety of radio frequency (RF) emissions from cell towers on its website at:

Please refer to the FCC Office of Engineering and Technology Bulletin 65 for information on RF exposure guidelines. Policy questions should be directed to [redacted]. Contact your local Verizon Wireless resource below if you have additional site-specific questions.

Contact Name	Contact Email	Contact Phone
Steve Lamb	WestSoCalNetworkCompliance@verizonwireless.com	760-636-3918

Sincerely,

Jeremy Lee  
Manager-RF System Design  
Verizon Wireless



## Tyler Eaton

---

**From:** Nick Rodionoff [REDACTED]  
**Sent:** Saturday, May 15, 2021 5:53 PM  
**To:** Tyler Eaton; arome@motive-energy.com  
**Subject:** Re: notice of public hearing wireless communications facility application

If this is to install a 5G tower, we are VERY opposed and ask that it NOT be granted.

Thank you,  
Nick and Carolyn Rodionoff

## Tyler Eaton

---

**From:** Gonzales Uy Kimpang, Daisy Mae <daisy.uykimpang@verizonwireless.com>  
**Sent:** Wednesday, May 26, 2021 2:13 PM  
**To:** Tyler Eaton  
**Cc:** Zacharia Ghanem; Jared Rodriguez  
**Subject:** 31557.5 PCH\_WCF20-010\_MALIBU RIVIERA II MC B4 - Question from public

Hi Tyler,

Regarding the question from the public about this proposed project ---

At the present time, the proposed facility located at 31557.5 PACIFIC COAST HWY, Malibu, will support Verizon's 4G LTE network. Verizon is committed to building a nationwide 5G network, and you can find more about where we've announced 5G deployment [here](#).

Thank you!

**Daisy M. Uy Kimpang | Verizon**

Municipal Engagement Partner





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

**PLANNING DEPARTMENT**  
**NOTICE OF PUBLIC HEARING**  
**WIRELESS COMMUNICATIONS**  
**FACILITY APPLICATION**



**NOTICE OF PUBLIC HEARING**  
**WIRELESS COMMUNICATION FACILITY APPLICATION**

You have received this notice because you are within 1,000-feet of a wireless telecommunication facility application pending a Planning Commission public hearing on **MONDAY JUNE 7, 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 COMMUNICATION FACILITY NO. 20-010, COASTAL DEVELOPMENT PERMIT NO. 20-028, VARIANCE NO. 20-017, AND SITE PLAN REVIEW NO. 20-041** - An application, filed on June 15, 2020, for the installation of replacement wireless antennas and electrical support equipment attached to a replacement utility pole with a new height of 52 feet (currently 38 feet), including a variance for construction of a wireless facility over 28 feet in height, and a site plan review to place a wireless communications facility in the public right-of-way. In addition to City-issued permits, the applicant is required to obtain permits for use of the pole by Southern California Edison and will need to obtain an encroachment permit from Caltrans

Nearest Location / APN: **31557.5 Pacific Coast Highway / 4470-008-002**  
 GPS Coordinates / Pole ID: 34.036841, -118.862069 / #711075E  
 Nearest Zoning: Rural Residential-Ten Acre (RR-10)  
 Property Owner: Caltrans, public right-of-way  
 Appealable to: City Council and California Coastal Commission  
 Environmental Review: Categorical Exemption CEQA Guidelines Section 15303(d)

**CONTACTS:**  
 City Case Planner: Tyler Eaton, Assistant Planner, teaton@malibucity.org (310) 456-2489, ext. 273  
 Applicant: Alexa Rome, Motive, on behalf of Verizon Wireless  
 arome@motive-energy.com  
 (714) 752-4263

To view or sign up to speak during the meeting, visit [www.malibucity.org/virtualmeeting](http://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 emailed to [psalazar@malibucity.org](mailto:psalazar@malibucity.org) within ten days following the date of action and the filing fee shall be mailed to Malibu Planning Department, attention: Patricia Salazar, 23825 Stuart Ranch Road, Malibu, CA 90265. Payment must be received within 10 days of the appeal deadline. Appeal forms may be found online at [www.malibucity.org/planningforms](http://www.malibucity.org/planningforms). If you are unable to submit your appeal online, please contact Patricia Salazar by calling (310) 456-2489, extension 245, at least two business days before your appeal deadline to arrange alternative delivery of the appeal.

**COASTAL COMMISSION APPEAL** - An aggrieved person may appeal the Planning Commission's approval directly to the Coastal Commission within 10 working days of the issuance of the City's Notice of Final Action. More information may be found online at [www.coastal.ca.gov](http://www.coastal.ca.gov) or by calling 805-585-1800.

RICHARD MOLLICA, Planning Director

Date: May 13, 2021



# Supplemental Commission Agenda Report

Planning Commission  
Meeting  
06-21-21  
**Item  
4.C.**

To: Chair Jennings and Members of the Planning Commission

Prepared by: Tyler Eaton, Assistant Planner

Approved by: Richard Mollica, Planning Director

Date prepared: June 17, 2021 Meeting date: June 21, 2021

Subject: Wireless Communications Facility No. 20-010, Coastal Development Permit No. 20-028, Variance No. 20-017, and Site Plan Review No. 20-041 – An application for an upgraded wireless communications facility on a new replacement wooden utility pole in the public right-of-way (Continued from June 7, 2021)

Location: 31557.5 Pacific Coast Highway, not within the appealable coastal zone

Nearest APN: 4470-008-002

Geo-coordinates: 34°02'12.63"N, 118°51'43.45"W

Applicant: Motive for Verizon Wireless

Owner: California Department of Transportation (Caltrans)  
Public Right-of-Way

---

**RECOMMENDED ACTION:** Adopt Planning Commission Resolution No. 21-48 determining the project is categorically exempt from the California Environmental Quality Act, and approving Wireless Communications Facility (WCF) No. 20-010 and Coastal Development Permit (CDP) No. 20-028 for Verizon Wireless to install two replacement wireless communications facility antennas at a height of 34 feet, 9 inches and electrical support equipment mounted on a replacement wooden utility pole, including Variance No. 20-017 to permit an upgraded wireless facility mounted over 28 feet in height and Site Plan Review No. 20-041 to install and operate a wireless communications facility within the public right-of-way (ROW) located at 31557.5 Pacific Coast Highway (PCH) (Verizon Wireless).

DISCUSSION: The purpose of this report is to respond to Scott McCollough's previously submitted letter, dated June 6, 2021. In addition, this report includes correspondence received for the June 7, 2021 Regular Planning Commission meeting.

The following is a response to Mr. McCollough's letter related to the project's conformance with the Malibu Municipal Code (MMC) and Local Coastal Program Local Implementation Plan (LIP). The City Attorney will discuss information regarding State and federal regulations at the June 21, 2021, Planning Commission meeting. Mr. McCollough summarized five points that were of major concern and then added further arguments later on in the letter. Below is a response to the five major points of concern listed in Mr. McCollough's letter:

1) *"The Planning Commission lacks jurisdiction over these applications."*

Mr. McCollough states that pursuant to MMC Chapter 12, the Planning Commission does not have authority to act on this application and that instead, the Planning Director is the decision-making body. This application was deemed complete before the adoption of Ordinance 477U. As such, it is City practice to apply standards to projects that were applicable at the time the application was deemed complete, even if standards had changed in between the completeness determination and hearing. Additionally, pursuant to LIP Chapter 1.3.1, "If there is a conflict between a provision of the Malibu LCP and a provision of the General Plan, or any other City-adopted plan, resolution, or ordinance not included in the LCP, and it is not possible for the development to comply with both the LCP and such other plan, resolution or ordinance, the LCP shall take precedence and the development shall not be approved unless it complies with the LCP provision." The project requires a CDP and therefore, the LCP applies. As per LIP Chapter 1.3.1, the LCP standards take precedence over the MMC. Per the LCP, regular CDPs are required to be considered by the Planning Commission.

2) *"What substantive standards and requirements apply?"*

Mr. McCollough states that staff did not refer to MMC Chapter 12, which describes the new standards for wireless permits in the ROW, but added the conditions adopted in ordinance 477U. He states that staff took a "hodge-podge approach" to these applications. As mentioned in the staff report and in staff's response above, staff applied standards contained in the ordinance in effect at the time the application was deemed complete. However, staff applied conditions of approval that were part of the new ordinance because conditions are not in the applicable ordinance, and staff determined these conditions would reduce potential adverse impacts related to the project. Staff added those conditions that were specifically related to the proposed project.

- 3) *“Verizon has not proven the Wireless Facilities will be used to provide any personal wireless service.”*

Mr. McCollough states that Verizon did not submit evidence that this facility is for personal wireless service. MMC Chapter 17.46 does not contain a provision that the carrier must prove that facilities will support personal wireless service, nor does the LIP. Therefore, this is not an MMC or LCP requirement.

- 4) *“Deny the proposed and implicit waivers/exceptions/variances”*

Mr. McCollough states that Verizon is seeking a waiver on the subject application and the applicant failed to submit required documents such as the coverage maps. As stated previously, staff applied the ordinance in effect at the time the application was deemed complete. As such, staff did not apply the waiver process contained in Ordinance No. 477U. In addition, coverage maps were a requirement of the previous WCF ordinance, however, Verizon rejected staff’s multiple attempts to obtain coverage maps. As discussed in the staff report, Verizon cited FCC Order 18-133, which deems coverage maps as an outdated form of displaying a need for a wireless facility as present-day needs are data driven. Staff conferred with the City’s WCF consultants on the matter, and they agreed with Verizon’s interpretation and accepted the applicant’s justification.

Mr. McCollough stated that Verizon failed to mention if the facility is within 600 feet of other wireless facilities and, therefore, are implicitly applying for a waiver of such standard. As mentioned previously, waivers do not apply to this project because the applicable ordinance does not require a waiver. MMC Chapter 17.46.060(O) states,

Except for facilities co-located on the same pole or tower, wireless telecommunication facilities located within any residential zone district, **except for those facilities placed on utility poles located along Pacific Coast Highway**, shall not be located within six hundred (600) feet of any other wireless telecommunications facility, unless a finding is made, based on technical evidence acceptable to the planning manager, as appropriate, showing a clear need for the facility and that no technically feasible alternative site exists. This provision shall not apply to wireless telecommunication facilities located within any commercial zone district.

WCF No. and 20-010 is along PCH and is on a utility pole, and therefore, this finding is not applicable to this project.

- 5) *“Verizon has not proven code compliance or safe electrical design. Staff completely failed to adequately review the proposed electrical design and ensure all fire hazards have been mitigated.”*

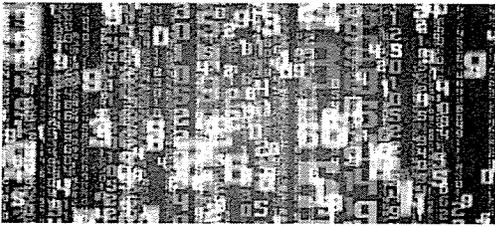
Mr. McCollough states that staff did not adequately review this application for electrical and fire safety and is not in compliance with Malibu General Plan Policy I.I.2. Staff agrees that this application needs to be built to the safety requirements of local and State law. Therefore, staff added a condition that a building plan check and permits be issued by the City Building Safety Division for all wireless projects. Those plans will be stamped and signed by the applicable engineers prior to submittal and issuance of permits. Secondly, both Planning staff and Building Safety staff will conduct a final inspection, ensuring that the project is built as permitted. Lastly, the project, for a replacement wireless facility, will comply with current California Public Utilities Commission (CPUC) separation requirements related to the safe placement of wireless facilities on utility poles. The existing facility does not meet the current CPUC safety standards.

#### Additional Correspondence

On June 2, 2021, staff received correspondence from Rachel Oden regarding the proximity of the WCF to nearby properties. Staff's response is included in the attachments. Staff responded to the concerns as shown in Attachment 1.

On June 7, 2021, staff received correspondence from Verizon Wireless regarding local government review of small cell WCF applications. Staff will address this correspondence at the June 21, 2021 meeting.

ATTACHMENTS: Correspondence



Internet Communications Utilities Regulation

# McCOLLOUGH LAW FIRM<sup>PC</sup>

[www.dotLAW.biz](http://www.dotLAW.biz)



512.888.1112

512.692.2522

[wsmc@dotLAW.biz](mailto:wsmc@dotLAW.biz)

## MEMORANDUM

Received

From: W. Scott McCollough  
To: Malibu Planning Commission  
Copy: Planning Commission Staff and City Attorney  
Date: June 6, 2021  
Re: Planning Commission June 7, 2021 Meeting, Items 5.H and 5.I

6/6/21

Planning Dept.

(5.H) Wireless Communications Facility No. 20-010, Coastal Development Permit No. 20-028, Variance No. 20-017, and Site Plan Review No. 20-041 – An application for an upgraded wireless communications facility on a new replacement wooden utility pole in the public right-of-way; Location: 31557.5 Pacific Coast Highway

(5.I) Wireless Communications Facility No. 20-011, Coastal Development Permit No. 20-029, Variance No. 20-018, and Site Plan Review No. 20-040 – An application for an upgraded wireless communications facility on a new replacement wooden utility pole in the public right-of-way; Location: 6213.5 Kanan Dume Road

This firm represents Lonnie Gordon, a Malibu resident (Protestant). Protestant will appear in person and through her representatives at the June 7 hearing to oppose both applications and request that the Commission not approve them. Protestant requests that the undersigned and our two experts be given equivalent and equal participatory time and status to that afforded to the applicant's representatives and not a mere 3 minutes per person during public comment.

Protestant provides the discussion below and the information/evidence in Attachments 1 and 2. Please place these materials in the record.

### I. SUMMARY

The Planning Commission should dismiss these applications on a procedural basis. If it does address the merits it should deny all requested permits. Verizon has failed to carry its burden of proving entitlement, eligibility for the expressly and implicitly requested waivers/exceptions, and, most important, that the proposed design is both safe and code compliant.

1. **The Planning Commission lacks jurisdiction over these applications.** Malibu Municipal Code Chapter 12 (adopted through Ordinance 477) implemented a procedure using administrative processing by the Planning Director and appeal to a hearing officer. There is no Planning Commission reviewing authority or appellate role for municipal permits in public right of way. Under the Local Implementation Plan (LIP) a separate Coastal Development Permit is supposed to be secured through a similarly

Date Received 6/6/21 Time 9:48AM  
Planning Commission meeting of 6/7/21  
Agenda Item No. 5H5I  
Total No. of Pages 32

CC: Planning Commission, PD,

Recording Secretary, File

administrative Planning Manager overseen Site Review Plan process, and the Planning Commission has only appellate, not original jurisdiction. There has been no decision and no appeal so the Coastal Development Permit application is also not properly before the Planning Commission. The only action that can be taken by the Planning Commission is dismissal or remittance back to the Planning Director/Manager for initial disposition, with any subsequent appeals taking their legislatively-ordained separate tracks.

This outcome may lead to problems, but it is mandated by the clear terms of the relevant governing laws in the MMC and LIP. Notably, Staff insisted on administrative processing and recourse to a hearing examiner under MMC Chapter 12 and convinced the City Council to adopt that process over the objection of many residents who opposed that process. Staff did not realize, or knew and did not disclose, that their approach requires different processes for each permit type. Ultimately, this is the procedure Staff insisted upon and the City Council adopted. The Planning Commission cannot circumvent the process by which it is bound despite Staff's improper placement of these applications before the Planning Commission in contravention of governing law.

2. **What substantive standards and requirements apply?** The Staff Agenda Report reveals that Staff used a hodge-podge, *ad hoc* approach to the substantive standards and requirements applicable to these permits. Although it is not entirely clear, it appears Staff mostly applied or referenced a standard or requirement from MMC Chapter 17.46 even though MMC Chapter 12 replaced Chapter 17.46 for ROW municipal permits in December 2020 and it has different rules. The Agenda Report never cites to MMC Chapter 12 or the associated Resolution 20-65, but Staff nonetheless imposed some of the MMC Chapter 12 permit conditions without so disclosing or explaining why. Staff applied the insurance coverage requirements in Resolution 20-65 Section 10.A.24, for example.

Protestant agrees that the LIP standards and requirements apply to the Coastal Development Permit. But MMC Chapter 12 standards and requirements apply to the separate municipal permit, except for those related to aesthetics. As a single example, the higher MMC Section 17.46.060.D "clear and convincing evidence" standard for waivers/exceptions/variances, rather than the lower "technical evidence acceptable to the planning manager" standard in MMC Section 17.46.N and O must be applied to Verizon's expressly and implicitly requested waivers/exceptions/variances in the context of the municipal permit. All of the conditions in Resolution 20-65, not just those Staff wants to use, must be imposed as part of the municipal permit.

The Planning Commission cannot use Staff's arbitrary approach. It must follow the municipal code process and assiduously apply the prescribed substance for the municipal permits Verizon seeks. More important, and even if it does not apply new MMC Chapter 12, it must be absolutely clear what "law" and "substance" and "standard" it is applying and state the justification for selecting those standards.

3. **Verizon has not proven the Wireless Facilities will be used to provide any "personal wireless service."** Assuming the Planning Commission considers the merits of the applications, under both federal law and the MMC (whether Chapter 12 or Section



17.46) a provider is eligible for municipal permits only if the proposed facility will, in fact, be used to support some personal wireless service. There is nothing in the record proving that Verizon will in fact use these two facilities to support any personal wireless service. It has therefore failed its burden of proving entitlement and the municipal permits must be denied.

4. **Deny the proposed and implicit waivers/exceptions/variances.** Verizon expressly sought a waiver/exception to the formerly-applicable MMC Section 17.46.100.B.9, the MMC Chapter 12 current application form Section 6.B and the LIP Section 3.16.9.9 "coverage map" requirements. The Planning Commission must deny this waiver. Verizon has not presented clear and convincing evidence that the waiver is appropriate. The coverage map is necessary. The Planning Commission cannot make the required findings related to pole replacement location or pole height without the information a coverage map would yield.

Verizon also implicitly sought other waivers from important requirements when it refused to supply other required information. For example, Verizon did not advise whether the proposed projects are within 600 feet of any other wireless facility. Staff failed to catch these omissions. The Planning Commission must reject these implicit waivers, and deny the applications because they do not satisfy at least two applicable substantive requirements.

5. **Verizon has not proven code compliance or safe electrical design. Staff completely failed to adequately review the proposed electrical design and ensure all fire hazards have been mitigated.** This is the most crucial issue the Planning Commission has before it now, and will need to contend with in all other future applications. See Attachment 2 (Susan Foster submission). The entire city relies on the permit reviewing authority to ensure that any proposed wireless facility has been rigorously designed to mitigate all known fire hazards, and will meet all applicable code requirements. Failure in this regard will threaten the life and property of every Malibu resident. If the Commission reaches the merits it is up to you to prevent another devastating fire in Malibu caused by utility/telecom infrastructure.

Malibu General Plan Policy 1.1.2 states that the "City shall minimize the risk of loss from fire." All potentially applicable laws require that express findings that the project design is both safe and fully compliant with all applicable codes. There is nothing in the record, however, to support a finding of code compliance other than bald conclusions without any analysis or support. There is no reliable evidence the Planning Commission can use to enter the required code compliance findings. Even worse, Verizon's presentation on electrical safety design is woefully deficient and contains a potential error related to power supply. No licensed engineer was willing to opine that the design is safe. Indeed, the only Verizon engineer that did supply information *expressly disclaimed any opinion on electrical and structural safety.*

Protestant, on the other hand, is providing an opinion (Attachment 1), sealed by licensed engineer Tony Simmons, that affirmatively states that "the unsigned, unsealed engineering documents submitted on behalf of Verizon do not demonstrate with engineering certainty that the five hazards associated with using electricity have been fully evaluated and mitigated for these two installations." He affirmatively states that "the



record before the Planning Commissions of the Resolutions does not support adoption of the proposed findings in Section 3 of the draft Resolutions related to code compliance and general safety and welfare, including but not limited to A.1, B.2, B.4, B.9, C.4, C.5 and E.1-4 in Resolutions 21-48 and 21-49.”

Verizon has failed to prove safe design and code compliance. The Planning Commission cannot enter the required findings if it abides by General Plan Policy 1.1.2 and endeavors to “minimize the risk of fire.” For this reason alone all of the permits must be denied.

As stated in the above Summary and further discussed below, the Commission must dismiss these applications for lack of jurisdiction. If it reaches the merits, however, it must deny all of these permits.

## II. ARGUMENT

### A. Planning Commission lacks jurisdiction over these applications

Verizon is required to obtain two separate permits for each facility. First, Verizon must obtain a municipal permit under MMC Chapter 12.02. Second, and separately, Verizon must secure a Coastal Development Permit. The City is handling the Coastal Development Permit because it has assumed delegated authority from the Coastal Commission. To perform that function the City Council enacted Section 3.16 in the Local Implementation Plan. But there must still be 2 permits for each facility.<sup>1</sup> Each permit has its own identity, and each has specific procedures and substantive requirements. The reviewing authority must abide by each, and apply those procedures and substantive requirements to each.

The process and substance was largely the same for both when MMC Chapter 17.46 applied to ROW-related applications. So the reviewing authority could hear both permits on a “concurrent” basis. See LIP Section 13.3.C. It was possible to use the same processes and make the same findings, then separately approve (or deny) each permit. But that all changed in December when the Council adopted MMC Chapter 12 on an urgency and then permanent basis. The process, substance and required findings for a Chapter 12 permit are all now different from those under the LIP. And, most important, the reviewing authority is different. When the Council was debating Ordinance 477 Staff insisted that the process should be administrative in nature. Although many Malibu residents stated a clear desire for Planning Commission review, staff opposed that and convinced Council that administrative processing was the better route. They convinced the City Council, over the citizens’ objection. MMC Chapter 12.02, enacted through Ordinance 477, now clearly and expressly states that the Planning Director is the Reviewing Authority and the one that “determine(s) whether to approve, approve subject to conditions, or deny and application.” MMC 12.02.040.A.8. The Planning Director’s determination is then subject to appeal to a Hearing Officer. MMC Section 12.02.040.B.4-.6. There is no role for Planning Commission for Chapter

---

<sup>1</sup> Staff agrees, at least conceptually, that each permit is separate when it notes on Staff Agenda Report page 9 that “a proposal for an upgraded facility would materially result in an equivalent bundle of permits (WCF, CDP, SPR, VAR) and equivalent hearing before the approval body.” (emphasis added)



12 ROW permits. Simply put, the Planning Commission now lacks jurisdiction over applications for Wireless ROW Permits. The Planning Commission must dismiss the application under Chapter 12 for lack of jurisdiction. The process envisioned by Chapter 12 must be applied.

The Planning Commission also does not have jurisdiction under the LIP. Current LIP Section 3.16.2 contemplates a "site plan review" "pursuant to Section 13.27 of the LCP" for projects in the right of way. Section 13.27 in turn names the "Planning Manager" as the reviewing authority for wireless facilities. LIP Section 13.27.1(7). The Planning Commission does not make the initial decision. Instead, it has only appellate authority. An "aggrieved person"<sup>2</sup> must appeal the Planning Manager's decision to the Planning Commission under LIP Section 12.20.1. There has been no Planning Manager decision and no aggrieved person has appealed. Jurisdiction has therefore not attached in the Planning Commission.

The Planning Commission lacks jurisdiction. The proper processes under MMC Chapter 12 and the LIP must be followed. The Planning Director must make a decision under MMC Chapter 12, and a separate decision under LIP 13.27. Then, if anyone is dissatisfied they must take two different appellate routes: the Chapter 12 permit goes to the hearing examiner and the LIP comes to the Planning Commission.

This is not an ideal outcome, but it is the clear consequence of the Staff's insistence before the City Council that this Commission should not be involved in Chapter 12 ROW applications. They prevailed over the community's objection and must live with the problem they created. Staff cannot now vest jurisdiction in the Planning Commission. Only the City Council can do that and they did not.

B. What substantive standards and requirements apply?

Assuming (without conceding) that the Planning Commission has jurisdiction, the Staff Agenda Report must be rejected and both projects must be denied.

Staff may contend that the LIP takes precedence over the MMC so the entire process and substance collapses into a purely LIP-based review for both permits. That is incorrect. Chapter 12 applies on its face. Each permit stands on its own and the processes and standards for each must be applied to each, separately.

An "MMC Chapter 12" permit does not suffice alone since Verizon must also obtain a Coastal Development Permit. If either permit imposes higher duties and obligations then Verizon must abide by them. The Coastal process and substance does not eliminate or make irrelevant the Chapter 12 process or substance. Both apply, and both must be followed.

---

<sup>2</sup> AGGRIEVED PERSON - any person who, in person or through a representative, appeared at a public hearing of the City of Malibu or the California Coastal Commission in connection with the decision or action on a Coastal Development Permit application, or who, by other appropriate means prior to a hearing, informed the City of Malibu or the California Coastal Commission of the nature of his/her concerns or who for good cause was unable to do either. "Aggrieved person" includes the applicant for a Coastal Development Permit.



Staff, however, did not consistently follow or apply the proper legal and substantive standards under either Chapter 12 or LIP Section 3.16.1. Indeed, it is not clear what standards Staff contends do apply for applications deemed complete before the City Council adopted Malibu Municipal Code (MMC) Chapter 12.02 and Resolution 20-65 in December, 2020. They did not consistently apply the standards in MMC Chapter 12.02 and Resolution 20-65 or former MMC Chapter 17.46. Nor did Staff consistently apply LIP Chapter 3.16. They seem to have operated on an *ad hoc* basis.

If these applications are somehow properly before this Commission it has a separate obligation to exercise independent judgement since it will be the one that is formally acting on the applications and entering all required findings. See MMC Sections 2.36.080, 17.04.080. Before it takes any action the Planning Commission must expressly state just what standards, rules and procedures it is applying to these applications. And then follow them. For each of the two permits involved in Agenda Item H and each of the two permits in Agenda Item I.

While there are several aspects to the “process” and “standards” issue in the context of these applications, two predominate. The first issue, of course, is whether the old ordinance provisions in MMC Chapter 17.46 or new Chapter 12.02 (and Resolution 20-65) apply. The second is the burden of proof Verizon must carry to obtain approval.

Setting aside the jurisdictional issue, Protestant contends that the commands in Chapter 12.02 and Resolution 20-65 apply for the most part and are only preempted with regard to “aesthetics” standards.

Ordinance 484 (adopting new Chapter 12.02) Section 6 provides:

SECTION 6. Pending Applications. All applications for wireless facilities on land other than public ROW or for modifications to existing wireless facilities in the public rights-of-way which were not subject to final action by City prior to the effective date of this Ordinance shall be subject to and comply with all provisions of this Chapter, and any design and placement standards adopted by the City Council by resolution, to the fullest extent permitted by applicable law.

Although they never disclosed this issue while the City Council was considering Ordinance 477U and 477 and the “Pending Applications” provision, Staff now asserts that the new Ordinance and Resolution 20-65 cannot be applied to applications not subject to final action, but for which the Planning Director deemed the application complete before December 2020. They do so because of certain language in the FCC’s 2018 *Small Cell Order*. They are incorrect.

Staff bases its position on the “advance publication” requirement in *Small Cell Order* ¶¶86, 88 and 91.<sup>3</sup> Those passages are absolutely clear, however, that only **\*aesthetics\*** (and minimum spacing requirements imposed for aesthetics reasons, but not when imposed for other reasons) have to be published “in advance” of the time an application is deemed complete.

---

<sup>3</sup> The *Small Cell Order* is available at [https://docs.fcc.gov/public/attachments/FCC-18-133A1\\_Rcd.pdf](https://docs.fcc.gov/public/attachments/FCC-18-133A1_Rcd.pdf).



86. Given these differing perspectives and the significant impact of aesthetic requirements on the ability to deploy infrastructure and provide service, we provide guidance on whether and in what circumstances aesthetic requirements violate the Act. This will help localities develop and implement lawful rules, enable providers to comply with these requirements, and facilitate the resolution of disputes. We conclude that aesthetics requirements are not preempted if they are (1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) objective and published in advance.

...

88. Finally, in order to establish that they are reasonable and reasonably directed to avoiding aesthetic harms, aesthetic requirements must be objective--i.e., they must incorporate clearly-defined and ascertainable standards, applied in a principled manner--and must be published in advance. [n246 omitted] "Secret" rules that require applicants to guess at what types of deployments will pass aesthetic muster substantially increase providers' costs without providing any public benefit or addressing any public harm. Providers cannot design or implement rational plans for deploying Small Wireless Facilities if they cannot predict in advance what aesthetic requirements they will be obligated to satisfy to obtain permission to deploy a facility at any given site. n247

...

n247 Some local governments argue that, because different aesthetic concerns may apply to different neighborhoods, particularly those considered historic districts, it is not feasible for them to publish local aesthetic requirements in advance. See, e.g., Letter from Mark J. Schwartz, County Manager, Arlington County, VA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (Sept. 18, 2018) (Arlington County Sept. 18 Ex Parte Letter); Letter from Allison Silberberg, Mayor, City of Alexandria, VA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (Sept. 18, 2018). We believe this concern is unfounded. As noted above, the fact that our approach here (including the publication requirement) is consistent with that already enacted in many state-level small cell bills supports the feasibility of our decision. Moreover, the aesthetic requirements to be published in advance need not prescribe in detail every specification to be mandated for each type of structure in each individual neighborhood. Localities need only set forth the objective standards and criteria that will be applied in a principled manner at a sufficiently clear level of detail as to enable providers to design and propose their deployments in a manner that complies with those standards.

...

91. Minimum Spacing Requirements. Some parties complain of municipal requirements regarding the spacing of wireless installations--i.e., mandating that facilities be sited at least 100, 500, or 1,000 feet, or some other minimum distance, away from other facilities, ostensibly to avoid excessive overhead "clutter" that would be visible from public areas.[n.250 omitted] We acknowledge that while some such requirements may violate 253(a), others may be



reasonable aesthetic requirements.[n.251 omitted] For example, under the principle that any such requirements be reasonable and publicly available in advance, it is difficult to envision any circumstances in which a municipality could reasonably promulgate a new minimum spacing requirement that, in effect, prevents a provider from replacing its preexisting facilities or collocating new equipment on a structure already in use. Such a rule change with retroactive effect would almost certainly have the effect of prohibiting service under the standards we articulate here. Therefore, such requirements should be evaluated under the same standards for aesthetic requirements as those discussed above.

As is plain from each of these paragraphs, the FCC was discussing **\*only\*** aesthetics, and not any other topic or local requirement. That is certainly how the Ninth Circuit understood the issue. *City of Portland v. United States*, 969 F.3d 1020, 1041 (9th Cir. 2020). Thus, while any “aesthetics” requirements in Chapter 12.02 and Resolution 20-65 that materially differ from those in effect at the time the applications were submitted may be preempted, nothing in the *Small Cell Order* precludes recourse to the remainder of the process and substantive requirements in Chapter 12.02 and Resolution 20-65. Staff has essentially agreed this is so, even though they are not candid about it. For example, Staff has imposed the higher insurance requirements in Resolution 20-65, along with some other conditions.

The Planning Commission is bound by the “Pending Applications” provision in Ordinance 484 “to the fullest extent allowed by law.” The law allows recourse to Chapter 12.02 and Resolution 20-65, excepting *only* requirements imposed for aesthetics reasons. Staff may think it is not bound by the City Council’s direction and can do whatever it wants without any guiding principles, but Protestant hopes the Planning Commission is more inclined to honor its duties and obligations under MMU 2.36.080 and 17.04.080. In order to find that the applications are “consistent with the objectives, policies, general land uses, and goals of the Malibu general plan” (MMU 17.04.080) the Planning Commission must first articulate what standards it is applying and precisely what it is finding “consistency” with.

The second issue pertains to the burden of proof Verizon must carry to obtain approval, especially with regard to waivers. MMC Chapter 12.02.050(e) provides that a waiver request may be granted

...only if it is demonstrated through clear and convincing evidence that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations. All waivers approved pursuant to this subsection shall be (1) granted only on a case-by-case basis, and (2) narrowly-tailored so that the requirements of this Chapter are waived only to the minimum extent required to avoid the prohibition or violation.

This is not an “aesthetics” requirement; it is a legal and evidentiary rule. Therefore the new Ordinance can and does apply. Yet, even though Verizon sought exceptions or variances to install replacement poles taller than 28 feet, Staff did not apply the “clear and convincing” standard to the municipal permit request. Indeed, the Staff Agenda Report contains no discussion of the evidentiary burden Staff applied or



proposes that the Planning Commission apply. The Planning Commission must apply the proper standard when it assesses the waiver requests under the two separate regimes. Protestant contends Verizon did not meet its burden of proof.

Verizon sought, and Staff proposes to grant, a waiver from the formerly-applicable MMC Section 17.46.100.B.9, and from MMC Chapter 12 current application form Section 6.B “coverage map” requirements<sup>4</sup> for purposes of the municipal permits. Verizon sought, and Staff proposes to grant, a waiver from the similar LIP Section 3.16.9.9 “coverage map” requirement for purposes of the Coastal Development permits.

One of the expressly-stated reasons for mandating a coverage map is “whether alternatives exist for providing coverage.” See, e.g., LIP Section 3.16.9.9 and former MMC Section 17.46.100.B.9. Staff catered to “Verizon’s goals and objectives” when it addressed alternatives, but neither Verizon nor Staff chose to tell the Planning Commission or the public what those “goals and objectives” are so they are not in evidence. Neither the Planning Commission nor the public can assess them to determine if those “goals and objectives” are congruent with Malibu’s goals and objectives. Nor can the Planning Commission independently assess potential alternatives since there is no coverage map.<sup>5</sup>

Staff agreed with Verizon’s contention that the FCC preempted local coverage map demands in the *Small Cell Order*. Interestingly, Verizon cited to ¶40 but Staff focused on note 87, which is actually part of ¶37. Regardless, both Verizon and Staff are incorrect and the Planning Commission must reject this position. The FCC *did not* prohibit demands for coverage maps. What ¶40 said was that “[d]ecisions that have applied solely a ‘coverage gap’-based approach under Section 332(c)(7)(B)(i)(II) reflect both an unduly narrow reading of the statute and an outdated view of the marketplace.” This part of the *Small Cell Order* was where the FCC was addressing the “effective prohibition” test. By “coverage gap-based approach” the FCC was referring to past decisions that required proof of a complete gap in current adequate coverage, as distinguished from the situation where a provider sought to *improve existing coverage*.<sup>6</sup> See *Small Cell Order* ¶¶34-42. Protestant here, and only for purposes of this case, is not contending Verizon must prove a complete gap in coverage. The issue is appropriate location for the site and the height of the pole.

---

<sup>4</sup> New Chapter 12.02 and Resolution 20-65 do not have express application content requirements so they do not explicitly call for coverage maps. Chapter 12.02.060.D provides that the Director shall determine what is required in the application. It goes on to state that in any event the applicant shall submit “all required fee(s), documents, information, and any other materials necessary to allow the Director to make required findings and ensure that the proposed facility will comply with applicable federal and state law, the City Code, and will not endanger the public health, safety, or welfare.” The Director has promulgated a PROW form, and it does expressly require coverage maps. See <https://www.malibucity.org/DocumentCenter/View/16676/PLN-WCF-Submittal-Checklist-for-PROW?bidId=>, Section 6.B. Regardless, the Planning Commission cannot make all required findings without a coverage map, as explained below.

<sup>5</sup> All this assumes these projects will be used to provide personal wireless service in the vicinity. If these facilities will not provide personal wireless service then Verizon is not eligible for the requested municipal permits. We will return to that subject below.

<sup>6</sup> Again, we will return to the question of coverage improvement, and need, below.



But nowhere does the FCC expressly say local siting authorities cannot require a coverage map to assess potential alternatives for siting after need has been shown. Nor could it given the express reservation in 47 U.S.C. §332(c)(7)(B) that local siting authorities can determine the “placement” of personal wireless facilities. “Placement” includes “location.” Even if one accepts *arguendo* that Verizon has adequately demonstrated an actual need for improved coverage, Malibu has every right to decide where the best location is for that purpose. Even though this is an “upgrade” to an existing facility it may well be that the whole thing should be moved somewhere else. Part of the “best location” exercise is understanding current coverage and the proper location that will meet Malibu’s general plans and policies while still fulfilling any demonstrated need for coverage enhancement/supplementation in the area.

Verizon flatly refused to provide a coverage map. Staff wants to let them get away with doing so based on a strained reading of the *Small Cell Order*. The Planning Commission must not go along with this ruse. Since there is no coverage map the Planning Commission lacks the evidence it needs to assess the pole replacement/height variance and determine the proper location. Verizon chose to not supply required information and must now live with that decision. The Planning Commission must find that Verizon has not carried its burden of providing “clear and convincing evidence” that (1) the variance is justified, (2) coverage supplementation is best accomplished at the current location, (3) the current height is inadequate so a taller pole is required, and (4) the proposed height is the best (or least-worst) solution. You cannot answer those questions without a coverage map and certainly cannot find there was clear and convincing evidence without one. The permit under MMC Chapter 12 must be denied and the permit under LIP Section 3.16 must be denied because Verizon did not provide sufficient information to make a decision on the best location and the proper height at that location.

C. Verizon has not proven the Wireless Facilities will be used to provide any “personal wireless service” and therefore did not show eligibility for the municipal permit<sup>7</sup>

All the relevant current and former Malibu ordinances apply only to “wireless facilities” that will support “personal wireless service” as defined in 47 U.S.C. §332(c)(7)(C)(i). See MMC Section 17.46.040 (Definitions); MMC Section 12.02.020 (Definitions).<sup>8</sup>

Section 332(c)(7)(C) provides relevant definitions:

(C) Definitions

For purposes of this paragraph—

---

<sup>7</sup> The following discussion does not apply to the Coastal Development Permit application. Those permits are available to all providers of wireless communications services, including those that provide only private mobile service. See LIP Section 2.2 (Definitions). This is yet another situation where the municipal permit program substance differs from that in the Local Coastal Program.

<sup>8</sup> This is not a Spectrum Act “eligible facility” or “wireless facility modification” request. See MMC Section 12.02.020 (Definitions). The entitlement concepts applicable to those do not apply here.



(i) the term “personal wireless services” means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;

(ii) the term “personal wireless service facilities” means facilities for the provision of personal wireless services; and

(iii) the term “unlicensed wireless service” means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services (as defined in section 303(v) of this title).

“Commercial mobile service” is defined in 47 U.S.C. §332(d)(1):

[T]he term “commercial mobile service” means any mobile service (as defined in section 153 of this title) that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission.

The FCC rules are consistent. For example, 47 C.F.R. §1.6002(i) defines a “Facility or personal wireless service facility” as “an antenna facility or a structure that is used for the provision of personal wireless service, whether such service is provided on a stand-alone basis or commingled with other wireless communications services.” (emphasis added)

These definitions collectively demonstrate that a mobile service provider must plan to use the “wireless facilities” sought to be installed in Malibu to provide “personal wireless service.” The FCC has made clear that carriers that do and will provide personal wireless service may also use permitted wireless facilities to support other services like Internet or data services that are not personal wireless services<sup>9</sup> on a “commingled” basis. But as a matter of law applicants for Malibu municipal permits **must** demonstrate that they are eligible for a permit, and to do that the applicant **must, at minimum, plead and prove it will use the planned wireless facility to provide personal wireless service.**

Protestant asks each Planning Commission member to do a word search in the Verizon-supplied materials included in the Agenda Report. Look for “personal wireless service,” “commercial mobile service,” “telecommunications service” and “common carrier.” The Staff-generated materials use “personal wireless service” once, when quoting §332 of the Act. None of the other relevant terms appear at all.

Verizon did not plead, and Staff (properly) does not propose to find, that Verizon will use the proposed wireless facilities to provide “personal wireless service.” Protestant does not understand why Staff has nonetheless proposed that the

---

<sup>9</sup> Wireless Broadband Internet Access is NOT “personal wireless service” so it is not a “covered service” for purposes of §332(c). That is so because the FCC has ruled it is not offered on a “common carrier” basis and is therefore not a “telecommunications service.” It is instead a “private mobile service.” A provider that will offer only private mobile service through a proposed facility is not “covered” by 47 U.S.C. §332(c) and is ineligible for a permit under all current and former MMC provisions.



application be approved, but the Planning Commission cannot approve a municipal permit unless the applicant proves entitlement. Verizon has not done so. The Planning Commission must deny the municipal permit because Verizon failed to show it is eligible for, and entitled to, a WRP or any other kind of permit to use the public right of way, under the current ordinance (MMC Chapter 12) or even the prior ordinance (MMC Chapter 17.46).

Protestant contends that Verizon has not carried its burden of proof, the permit application should be denied and Verizon should not be allowed to supplement its application information at this late date. Verizon and their Staff helpers are likely to try and salvage the application despite this gaping failure of proof, and they will probably now offer additional evidence. We predict they will first attempt to baffle the Planning Commission members using impenetrable but ultimately deceptive jargon. For example, one of Verizon's favorite gambits is to observe that "Voice over LTE" (VoLTE) is "data" and then imply without actually affirming that any voice services will actually be supported along with all other "data" services provisioned by the wireless facilities in issue.

It is true that VoLTE is digital and packet-switched. But that does not mean the specific facilities proposed here will ever handle any voice traffic. To begin with, we do not know if Verizon will, in fact, be supporting VoLTE *over these facilities*. It is entirely possible voice will be handled through "Circuit Switched Fallback," which means voice goes over the 2G/3G network.<sup>10</sup> That is analog, not digital packet-switched, and it is not routed over "data" channels. But even if Verizon does intend to support VoLTE in this area that still does not mean these facilities will be used for it. Both locations employ RRUs, without an on-site BBU. The BBU is elsewhere. We do not know what BBU equipment will be used, or where it will be.

It is important to understand that, just like traditional SS7-based analog voice, LTE uses "out of band" signaling. There is a "control" channel that manages all sessions, e.g., setup and teardown and bearer channel assignment. There is a separate channel that handles the "bearer" – here the voice content.

VoLTE only works when the wireless facility supporting the control channel for the user equipment (UE) can connect to, and interoperate with, the LTE "Evolved Packet Core" (EPC) IP Multimedia Subsystem (IMS), which is always distant. IMS is what contains the Session Initiation Protocol (SIP) telephony functionality and in turn has the gateway to the rest of the public switched network. IMS is also critical for ensuring the traffic channel supporting the voice packets receive adequate Quality of Service priority.

The UE has to obtain its IP address from a Public Data Network (PDN) Gateway node and communicate with a Policy and Charging Rule Function (PCRF) node. The PCRF must then tell Verizon's network to assign a logical "bearer" or "traffic" channel<sup>11</sup>

---

<sup>10</sup> See <https://ieeexplore.ieee.org/document/9004596>. Staff Agenda Report p. 21 notes that the "replacement antennas at this location" will be "for [Verizon's] 4G LTE network." There is no indication they will also handle 2G/3G.

<sup>11</sup> The "channel" is not a singular dedicated physical path. It is "logical" and defined through timeslot



with appropriate QoS from some wireless facility for voice traffic use. This bearer channel is usually separate from the other logical bearer/traffic channels supporting different data flows, such as for email or web-browsing because they have lower QoS requirements. The conversation can then ensue, with the packetized voice content going over the assigned logical bearer channel.

Verizon has not provided any information indicating that these facilities will be supporting either the LTE-based “control channel” or the logical “bearer” channel for any voice traffic, or indeed for any personal wireless service. It is entirely possible that all voice and any other personal wireless services consumed within range of these facilities will in fact be completely supported over channels delivered by the nearest macro-tower. This is quite common in the small cell environment: voice goes through the macro and the small cell handles only bearer used entirely for other “data” – like Internet access. The reason is simple: small cells cover a fairly limited area so there must be frequent hand-offs to other cells, and this creates delay and unacceptable call quality. Further, voice traffic, unlike other data, is quite latency-sensitive, and small cells sometimes cannot provide acceptable call quality. So many carriers routinely “send” VoLTE over macro-cell delivered channels and use the small cell only for data services with lower Quality of Service (QOS) requirements – like e-mail, web browsing and even video. Other times a carrier will have the macro cell supply the control channel for all applications and use the small cell for only bearer, and only assign certain types of data.

If that is the case here, then Verizon is not eligible for a permit, since these facilities will not in any manner support any personal wireless service.

Let us be clear. It is technically possible for a small cell arrangement to handle voice bearer and some even handle the control channel. The problem here is we just do not know, since Verizon chose to not provide any of the relevant information. But if Verizon now tries to backfill, here are the precise questions to ask:

- Is this wireless facility able to communicate with Verizon’s core IMS server and receive sufficient instructions to set up and tear down voice sessions over assigned bearer channels?
- Where is the BBU that will be driving the RRUs.
- Describe the RRU equipment and its capabilities.
- Will this arrangement employ Cloud or Centralized Radio Access Networking (C-RAN)?
- Will this wireless facility actually handle any VoLTE bearer traffic over wireless logical channels delivered through the physical path between this facility and the user’s equipment?

Unless Verizon affirmatively states that voice traffic associated with UEs in the vicinity will actually be handled by these facilities, and not some other facility, then the

---

assignment within the physical channel.



Internet Communications Utilities Regulation

**MCCOLLOUGH LAW FIRM PC**

[www.dotLAW.biz](http://www.dotLAW.biz)

Page 13

municipal permit applications must be denied because Verizon will not be providing **any** “personal wireless service” over them.

D. Deny the proposed and implicit waivers/exceptions/variances

The Staff Agenda Report proposes to waive several requirements, but the Planning Commission should not agree. All waivers/exceptions/variances should be denied. In particular, as explained above, the Planning Commission must deny the request for waiver of the coverage map requirement.

Staff has also implicitly granted other waivers.

First, Resolution 20-65 provides that “Placements shall not be in front of dwelling units or schools” but based on the picture it appears that the Kanan Dume Road pole (Item 5.H) will be almost directly in front of the adjacent residential home. Neither Verizon nor Staff addressed this issue. To the extent the standards in Resolution 20-65 apply then a waiver was required. Verizon did not seek a waiver, so one cannot be granted.

Second, the Kanan Dume project is not on PCH. Resolution 20-65 and former MMU Section 17.46.060 prohibit projects within 600 feet of any other telecommunications facility.<sup>12</sup> Neither Verizon nor Staff addressed whether this condition has been met.<sup>13</sup> To the extent there is another wireless facility within 600 feet a waiver is required. Verizon did not request a waiver, so one cannot be granted. Since Verizon did not produce any evidence there were no facilities within 600 feet it has failed its burden of proof, and the application must be denied.

E. Verizon has not proven code compliance or safe electrical design

This is the last topic in our Opposition, but it is actually the most important thing for the Planning Commission to consider. Lives are at stake. Please now turn to Attachment 1, the signed and sealed presentation by Tony Simmons, PE and Attachment 2, the letter from Susan Foster. When done please pick back up at this point and read what follows.

These two experts – one of whom is putting his professional license on the line – are telling you that Verizon’s electrical design has not been proven safe and that all potential fire hazards have been mitigated. If this Commission is the proper reviewing authority then it must render affirmative findings of both safety and code compliance. The proposed Resolutions before you have such findings. But the record is entirely inadequate and this Commission cannot responsibly adopt them.

Verizon’s drawings are not “final” and are incomplete. There is at least one potential error relating to the power supply. The Staff claims both safety and code compliance but the Agenda Report contains absolutely no demonstration that Staff gave

---

<sup>12</sup> Since the 600 foot separation requirement was in MMC Chapter 17.46 when Verizon filed its applications the *Small Cell* “advance publication” requirement has been met.

<sup>13</sup> Staff found there are no schools, playgrounds or parks within 500 feet for purposes of LIP Section 3.15.5.N, but it did not consider whether the 600 foot wireless facility separation requirement in the MMC was met.



more than passing concern to this vital subject even though the entire community in Malibu has – for good reason – been extraordinarily vocal about fire/electrical safety concerns in the wireless context for the last eight months. Nowhere in the record is there a positive demonstration or anything more than unsubstantiated claims that the design complies with applicable requirements of the Uniform Building Code, National Electrical Code, and Uniform Fire Code. No engineer vouched for the design. Indeed, Verizon’s engineer *expressly disclaimed* any opinion on electrical safety or code compliance.

On the other hand, Tony Simmons, PE has provided his professional opinion that “the record before the Planning Commissions does not support adoption of the proposed findings in Section 3 of the draft Resolutions related to code compliance and general safety and welfare, including but not limited to A.1, B.2, B.4, B.9, C.4, C.5 and E.1-4 in Resolutions 21-48 and 21-49” because he cannot confirm with “engineering certainty that the five recognized hazards associated with the use of electricity have been properly mitigated by the design professional in responsible charge.”

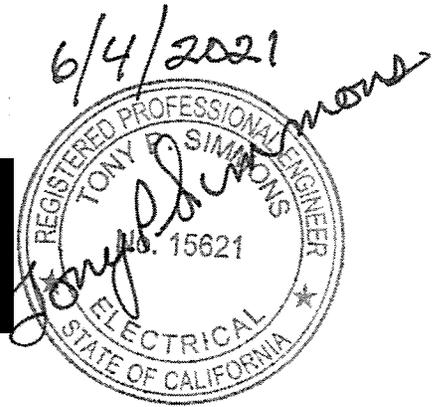
If the Planning Commission is the reviewing authority then it must demand far better evidence and a much more rigorous demonstration and proof that these projects will not cause another fire in Malibu. Verizon failed. Staff failed. We respectfully request that this Commission, consistent with Malibu General Plan Policy 1.1.2, “minimize the risk of loss from fire” and deny these permits.

All of Malibu depends on the permitting authority to ensure that every fire/electrical safety precaution has been taken before a project is approved. That did not happen here. For this reason alone, and in addition to all the other reasons given above, both applications and all permits must be denied on the merits if the Planning Commission finds it has jurisdiction and reaches the merits (which it should not).



ATTACHMENT 1 TO GORDON OPPOSITION

Tony P Simmons, PE



To Chairman Jennings and Members of the Planning Commission

**Recommendation to DENY Planning Resolutions 21-48 and 21-49 based on inadequate proof of mitigation of recognized electrical safety hazards.**

**Planning Resolution 20-48** is Agenda Item 5.H of the Commission Agenda Report prepared for the June 7, 2021, Commission Meeting. This resolution is for:

Wireless Communications Facility No. 20-010, Coastal Development Permit No. 20-028, Variance No. 20-017, and Site Plan Review No. 20-041 – An application for an upgraded wireless communications facility on a new replacement wooden utility pole in the public right-of-way. This WCF is located at 31557.5 Pacific Coast Highway.

**Planning Resolution 21-49** is item 5.I of the Commission Agenda Report prepared for the June 7, 2021, Commission Meeting. This resolution is for:

Wireless Communications Facility No. 20-011, Coastal Development Permit No. 20-029, -Variance No. 20-018, and Site Plan Review No. 20-040 – An application for an upgraded wireless communications facility on a new replacement wooden utility pole in the public right-of-way. This WCF is located at 6213.5 Kanan Dume Road.,

**Issue 1: The Agenda Reports prepared for both installations do not contain the consultant's report.**

The first sentence under the Discussion heading on the first page of both Commission Agenda Reports states:

“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, alternative site.”

## ATTACHMENT 1

The record submitted by the Planning Department does not include the report prepared by the City's wireless communication facility consultant and therefore is incomplete. Consequently, I cannot confirm that the five recognized hazards associated with the use of electricity have been properly mitigated by the design professional in responsible charge.

### **The Five Hazards Associated with Using Electricity**

#### INTRODUCTION.

The National Electric Code NEC recognizes five hazards associated with using electricity that must be mitigated. Article 90.1(A) of the NEC states: The purpose of this *code* is the practical safeguarding of persons and property from hazards arising from use of electricity. This Code is not intended to be a design specification or a construction manual for untrained persons.

Article 90.1(C) of the NEC specifies five hazards associated with using electricity that must be mitigated, (1) shock, also known as electrical contact, (2) thermal effects, (3) overcurrent, (4), fault current , and (5) overvoltage. Each hazard is based on different principles of physics. No one consideration, other than not using electricity, mitigates all hazards associated with electricity.

#### (1) Shock.

Electrical contact may stop the heart or cause a reaction that imperils the life or health of the shocked person or other nearby individuals.

This hazard is mitigated by ensuring conductors (wires) are insulated or isolated from casual or inadvertent contact by people and that step potential hazards are mitigated. The design professional must select electrical components that are properly insulated for the site-specific environment, that are properly protected from site specific risks to the insulation, and that are appropriate for site specific for environmental conditions.

#### (2) Thermal Effects.

There at least three independent thermal effects to be mitigated. (1). Electrical equipment is rated for a specific ambient temperature and altitude and must be derated for higher elevations and higher ambient temperatures. (2) Electric equipment and conductors produce heat when conducting electricity and need adequate air flow to ensure proper cooling. (3) A fault current may produce an arc flash that can instantly cause third degree burns.

## ATTACHMENT 1

### (3) Overcurrent.

Overcurrent is the condition when actual current exceed the design current. As an example, a circuit is designed to safely carry 20 Amps. The circuit breaker protecting the circuit is faulty and allows 40 amps to flow. The wires will create more heat than can be dissipated. The temperature of the wire and insulation will increase and eventually cause the insulation to fail, which in turns leads to a fault current, which can create an arc, which can cause a fire.

### (4) Fault Current.

Fault current occurs when the insulation system has failed and allows the current to travel along an unintended path. Fault current can lead to an electric arc which can start fires, vaporize metal, and cause third degree burns. The fire report on the collapse of an WCF at Otay High School in Chula Vista, California stated that an electric arc was the heat source responsible for the collapse.

### (5) Overvoltage

All electrical equipment is designed to operate within a specified voltage range. Overvoltage describes a condition when the actual voltage exceeds the voltage range specified for a component in an electrical system. In 2015, 5,800 electric meters and an unknown number of customer-owned electrical appliances in Stockton, California, catastrophically failed when the voltage exceeded the specified voltage range. 80 fires resulted from the overvoltage condition. This incident started when a vehicle struck a power pole carrying transmission and distribution conductors. The transmission and distribution conductors made contact. PG&E lost control of the voltage.

SCE power poles near Malibu Canyon Road and Harbor Vista Drive carry transmission and distribution circuits. The pole 250 feet west of Harbor Vista Drive along Malibu Canyon Drive is not protected against being struck by a vehicle. A vehicle striking this pole may cause the proposed WCF to catastrophically fail.

The City of Malibu retained an outside expert to ensure that electrical, structural and other hazards are mitigated prior to approval by the City. The report analyzing each hazard is missing. These omissions alone are grounds to DENY both resolutions until the missing report is provided.

### **Issue 2: 14 of 15 engineering documents are marked “PRELIMINARY NOT FOR CONSTRUCTION”.**

Fourteen of the fifteen engineering documents in each application are marked “PRELIMINARY NOT FOR CONSTRUCTION:”

## ATTACHMENT 1

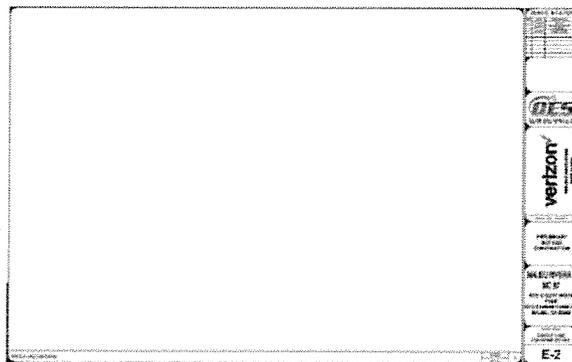
Thirteen of the documents were not certified by the responsible design professional. The design professionals responsible for these engineering documents told the world the documents were not finished.

There is no requirement that preliminary engineering documents be sealed by a design professional. Nonetheless, the Planning Commission must require that all engineering documents be certified as “ready for construction” by the design professional in responsible charge. “PRELIMINARY NOT READY FOR CONSTRUCTION” engineering documents alone are grounds to DENY both resolutions.

### **Issue 3: The engineering documents do not include evidence that the overvoltage hazard has been analyzed.**

The overvoltage event in Stockton, California exposed the reality of a hazard recognized in the NEC. The applications provide no evidence that this hazard has been analyzed and mitigated. This alone is grounds to DENY both resolutions until the missing report is provided.

### **Issue 4: Sheet E-3 SINGLE LINE DIAGRAM is blank in the application for the Kanan Dume installation.**

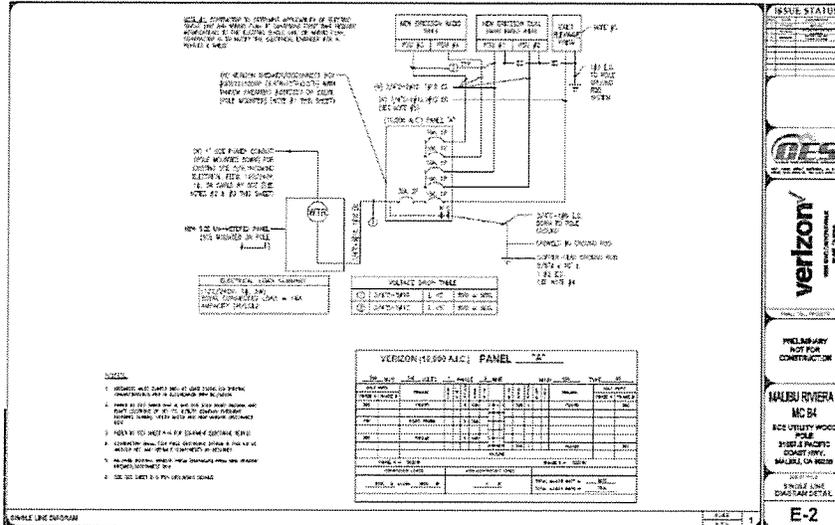


The one-line diagram is the industry standard method to demonstrate that the fault current and overload protective devices are in the correct position in the electric circuit. Without the information provided in the one-line diagram, it is not possible to determine that the overcurrent and fault current hazards have been mitigated.

A more complete but imperfect example of a one lined diagram is shown on the next page. It was taken from the application for the WCF at 31557.5 Pacific Coast Highway (PCH). This one line shows that the WTR device protects the breaker box and the 10 Amp circuit breakers in the breaker box protect each power supply.

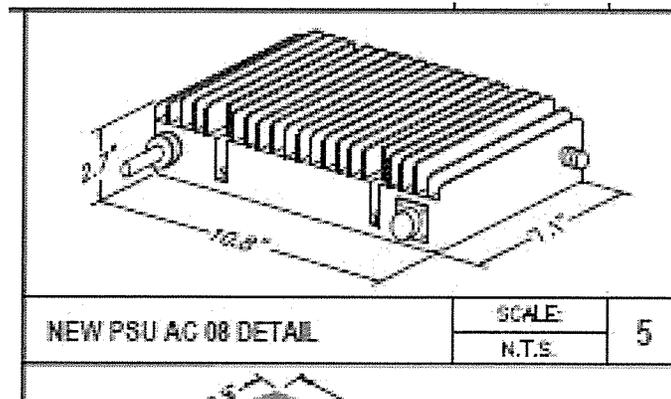
ATTACHMENT 1

It is possible to analyze the one-line for PCH for errors and omissions. It is not possible analyze the one line for Kana Dume for errors and omissions. The missing one-line alone is grounds to DENY resolution 21-49 until the missing report is provided.

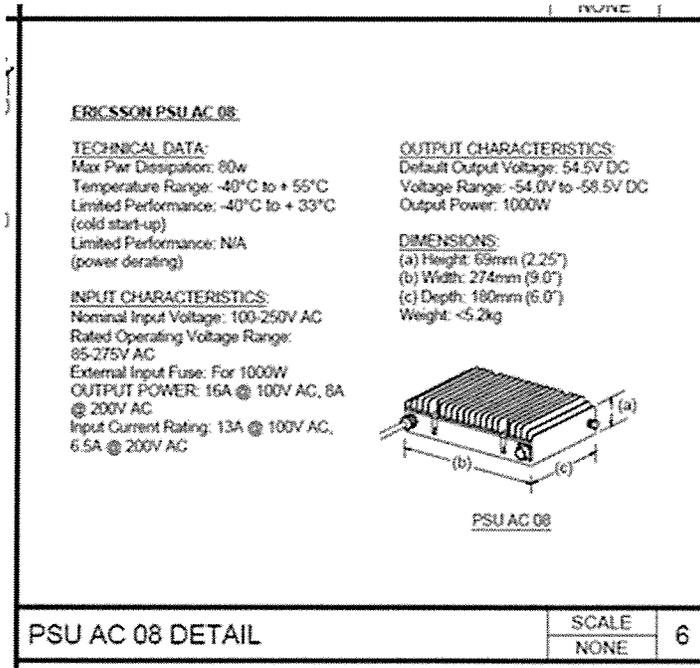


**Issue 5: The wrong power supply may have been specified at Kanan Dume.**

Block 5 on Sheet A-6 for the Kanan Dume WCF shows a PSU AC 08 power supply. The same detail is used in the application for the WCF at 31557.5 Pacific Coast Highway. The WCF at Kanan Dume has a battery backup while the WCF at PCH does not. The detail does not include the electrical specifications.



Fortunately, the application for the WCF at 3956.5 Cross Creek Road also specifies PSU AC 08 and includes the electrical specifications for the power supply.



PSU AC 08 requires input energy from a 100-250 VAC system.

Further research found the table to the right. The table lists five AC power supplies and two DC power supplies. The table was not taken from the manufacturer's website. It is indicative and not authoritative. It is possible that an AC power supply has been selected for use on a DC battery backup system. The missing report should resolve this question. This alone is grounds to DENY Resolution 21-49 until the missing report is provided.

Table 1 lists the technical data of the PSU variants.

Table 1 PSU Technical Data

Technical Data	PSU AC 01	PSU AC 02	PSU AC 03	PSU AC 08	PSU AC 09	PSU 24 01	PSU 48 02	
Maximum power dissipation (W)	200	70	175	80	50	200	55	
Temperature range (°C)	Range	-40 to +70	-40 to +55	-40 to +70	-40 to +55	-40 to +70	-40 to +55	
	Limited performance (cold start-up)	-40 to -10	-40 to -30	-40 to -10	-40 to -20	-40 to -10	-40 to -30	
	Limited performance (power derating)	+55 to +70	N/A	+55 to +70	N/A	+55 to +70	N/A	
Input Characteristics	Nominal input voltage	100-250 V AC	100-250 V AC	100-250 V AC	100-250 V AC	27.2 V DC	-54.5 V DC	
	Rated operating voltage range	85-275 V AC	85-275 V AC	85-275 V AC	85-275 V AC	19.5 to +26.0 V DC	-38.0 to -58.5 V DC	
	External input fuses	10 Amps at 1,200 W 15 Amps at 1,800 W <sup>(1)</sup>	For 700 W output power: <sup>(1)</sup> 12 A at 100 V AC 6 A at 200 V AC	• 10 Amps at 8 A input current <sup>(1)</sup> • 12.5 A (25 Amps Unphase at 10 A input current) <sup>(1)</sup> • 15 or 16 Amps at 12.5 A input current <sup>(1)</sup> • 20 Amps at 16 A input current <sup>(1)</sup>	For 1000 W output power: <sup>(1)</sup> 16 A at 100 V AC 8 A at 200 V AC	For 1000 W output power: <sup>(1)</sup> 16 A at 100 V AC	80 A for 1,200 W <sup>(1)</sup> 125 A for 1,800 W <sup>(1)</sup>	For 700 W output power: <sup>(1)</sup> Min 25 A Max 80 A
	Input current rating	8 A at 1,200 W 14 A at 1,800 W	8 A at 100 V AC 4.5 A at 200 V AC	8, 10, 12.5, and 15 A <sup>(1)</sup>	13 A at 100 V AC 6.5 A at 200 V AC	11 A at 100 V AC	80 A at 1,200 W 100 A at 1,800 W	≤ 20 A

## Conclusion

- The absence of the consultant's reports, the unfinished engineering documents, and absence of the overvoltage studies each provide grounds to DENY both resolutions until the missing reports are received.
- The missing one-line and the uncertainty of the power supply provide two additional grounds to DENY Resolution 21-49.

Based on the information provided in the materials before the Planning Commission, I cannot confirm with engineering certainty that the five recognized hazards associated with the use of electricity have been properly mitigated by the design professional in responsible charge.

The unsigned, unsealed engineering documents submitted on behalf of Verizon do not demonstrate with engineering certainty that the five hazards associated with using electricity have been fully evaluated and mitigated for these two installations.

The record before the Planning Commission does not support adoption of the proposed findings in Section 3 of the draft Resolutions related to code compliance and general safety and welfare, including but not limited to A.1, B.2, B.4, B.9, C.4, C.5 and E.1-4 in Resolutions 21-48 and 21-49.

A handwritten signature in black ink that reads "Tony P. Simmons". The signature is written in a cursive, flowing style.

ATTACHMENT 2 TO GORDON OPPOSITION

ATTACHMENT 2

*Susan Foster*

June 7, 2021

Malibu Planning Commission  
23825 Stuart Ranch Road  
Malibu, California 90265-4861

RE Planning Commission June 7, 2021 Meeting, Items 5.H and 5.I

(5.H) Wireless Communications Facility No. 20-010, Coastal Development Permit No. 20-028, Variance No. 20-017, and Site Plan Review No. 20-041 – An application for an upgraded wireless communications facility on a new replacement wooden utility pole in the public right-of-way; Location: 31557.5 Pacific Coast Highway

(5.I) Wireless Communications Facility No. 20-011, Coastal Development Permit No. 20-029, Variance No. 20-018, and Site Plan Review No. 20-040 – An application for an upgraded wireless communications facility on a new replacement wooden utility pole in the public right-of-way; Location: 6213.5 Kanan Dume Road

Dear Chairman Jennings & Members of the Commission:

I write this letter in an attempt to prevent another telecommunications-related fire. The city has yet to recover from the Woolsey Fire of 2018. Our review of applications strongly indicate little is being done at the most essential level – the application level where you get your first look at cell tower designs – to ensure that preventable telecom-related fires like the three I reference below do not happen again.

The two applications on their face demonstrate that Verizon and its experts did not apply proper engineering rigor with regard to fire hazard prevention. The electrical diagrams are preliminary and incomplete. No engineer vouched for them. There is no way to independently assess for whether, and then find that, the projects comply with the Uniform Building Code, National Electric Code, Uniform Plumbing Code, Uniform Mechanical Code, and Uniform Fire Code (*see* LIP Section 3.16.5.A.) There is not sufficient evidence for any finding that these facilities will not pose a threat to public health. (*see* LIP 3.15.4.A.) Indeed, the evidence to date indicates that Verizon may be using the wrong power supply.

Even worse, the record implies that Staff did not spend much, if any, time analyzing electrical safety. Staff asserts that the design is safe and code compliant but it does not include any reports or analyses explaining how it came to that conclusion. For all we know they did not really even look at the issue. If they had they would have noticed the missing one-line diagram in the Kanan Dume application and the potential power supply issue in the same application.

## ATTACHMENT 2

At this point you have no choice. You must reject these applications until Verizon proves, with competent and complete evidence, that the design is fully code-compliant and was designed so as to mitigate all fire risks.

For the record, I will remind the Planning Commission of three telecom-connected fires, two of which occurred in Malibu. This is precisely what we aim to avoid.

### **MALIBU CANYON FIRE, October 2007:**

Santa Ana winds swept through Malibu Canyon, knocking over three utility poles. Those poles sparked a fire that burned nearly 4,000 square acres. It destroyed three dozen cars and 14 structures including Castle Kashan and the Malibu Presbyterian Church. It also damaged 19 other structures and injured three firefighters. Five years later three telecommunications carriers, AT&T, Verizon and Sprint (now T-Mobile), settled with California utility regulators for a joint fine of \$12 million in equal shares, \$7 million designated for California's general fund and the remainder going to new utility pole inspection funding. As part of the 2012 settlement AT&T, Verizon and Sprint did not admit to culpability for overloading the utility poles. The power lines on the poles that fell were owned and operated by Southern California Edison (SCE) and the poles were jointly owned by Edison, AT&T, Sprint, Verizon and NextG.

NextG, now owned by infrastructure builder Crown Castle International, Inc., and Edison initially fought the CPUC but ultimately settled and admitted culpability in overloading the utility poles and misleading investigators which all five parties were accused of doing.

Under the 2013 settlement, Edison and NextG admitted that one of the failed power poles was overloaded with NextG telecommunications equipment when the fire started, in violation of CPUC rules, and that Edison did not act to prevent the overloading. NextG admitted that a consultant who testified on behalf of Edison gave "incorrect" information by stating that all items attached to the failed poles had been saved as evidence. Investigators later found that five pieces of equipment related to the investigation, including two NextG cables, had been discarded.

Edison reached a \$37 million settlement with the CPUC for its admitted role. NextG was charged with \$14.5 million in penalties.

Of the \$37 million Southern California Edison agreed to pay, \$20 million was directed as a penalty paid to California's general fund and \$17 million directed to assessing pole loads and working to improve Malibu Canyon.

Under the terms, Edison admitted it violated the law by not taking action to prevent the overloading of its pole by third-party telecommunications equipment.

SCE also acknowledged that one of its employees had concluded that a replacement pole for the overloaded pole that started the fire in the first place didn't comply with the

## ATTACHMENT 2

CPUC's safety regulations for new construction. Edison should have worked to remedy the situation back in November 2007. They did not.

Under the agreement with the CPUC, Southern California Edison admitted that it violated the law by not taking prompt action to prevent a telecommunications company from attaching fiber-optic cable to jointly owned poles in Malibu Canyon. Edison also acknowledged that a letter it sent to the CPUC after the fire did not identify pole overloading and termite damage as possible contributing factors in the pole failures.

Damages paid by all five companies involved with the fire exceeded \$60 million. A significant portion of the penalties imposed by the CPUC on the five parties was directed to pole inspections. The need to spend millions on pole inspections to look for overloading and faulty equipment frustrated one of the Malibu City Councilmembers who until recently was an active member of the Malibu City Council.

On February 27, 2013, the Malibu Times quoted Malibu City Councilmember Skylar Peak, an electrician by trade, speaking just after the NextG settlement: "[NextG] should have installed equipment that was safe in the first place," Peak said. "It's frustrating that we have to go back to check now."

He called the agreement a "step in the right direction" but not enough to fully address power pole safety in the city. "There's a lot of old equipment in Malibu that needs to be looked at," Peak said. "Not just NextG [equipment]."

### **WOOLSEY FIRE, November 2018:**

A 2018 wildfire that killed three people, destroyed 1,600 homes – over 400 of them in Malibu – burned more than 96,000 acres and cost over \$6 billion. The Woolsey fire raged for two weeks.

A redacted version of the Woolsey fire investigation report obtained by the Ventura County Star concludes Southern California Edison equipment associated with an electrical circuit was the cause of the blaze, though a communication line may have played a significant role.

"The Investigation Team (IT) determined electrical equipment associated with the Big Rock 16kV circuit, owned and operated by Southern California Edison (SCE), was the cause of the Woolsey Fire," the report stated. Under strong winds, a guy wire on a steel pole connected with an energized conductor caused "heated material" to fall on vegetation "thereby causing the Woolsey Fire," the fire report states.

A "communication line" that was hooked up to the steel pole also became energized by the incident; a lashing wire is a technique that can be used by wireless communications carriers to secure lines to utility poles. If the lashing wire is secured improperly, or the equipment is flawed or outdated, electricity can escape, and arcing can take place. Arcing can reach temperatures up to 4000° in less than 1/10 of a second.

## ATTACHMENT 2

A second fire was reported about a quarter of a mile away underneath the communication line. The two fires merged to become the Woolsey fire, the report says.

However, five full pages and notably, several sentences in the concluding remarks, remain redacted. The 70-page report includes the redacted pages under a section called "Violations."

The release of the full investigation report into the Woolsey Fire has been delayed by a criminal investigation by the California Attorney General's Office.

Absent any additional evidence, Southern California Edison claims it is likely that its equipment was "associated" with the start of the blaze. In January 2021 SCE agreed to pay \$2.2 billion to settle insurance claims for the Woolsey Fire.

SCE representative stated the cause or causes of the Woolsey Fire cannot be determined until its investigators can look at the evidence collected by officials. That evidence is in the possession of the California Department of Forestry and Fire Protection. Investigators collected metal shavings, melted plastic, guy wire and other items, according to the fire report.

Without admitting wrongdoing or liability, Edison has settled with the public agencies that sued the utility, agreeing to pay \$210 million to the public agencies.

### **SILVERADO FIRE, October 2020**

The Silverado Fire broke out in hills near Irvine and forced, together with the Blue Ridge Fire just to the north, the evacuation of over 130,000 people in Orange County. Two firefighters suffered serious burns and at least 17 buildings were damaged or destroyed. According to Southern California Edison's report to utility regulators, a "lashing wire" that ties a telecommunications line to a supporting cable may have come into contact with a separate 12,000-volt conductor line above it.

The wire may have belonged to T-Mobile, not Edison, the utility said in a recent filing with state utility regulators.

A report filed Oct. 26, 2020 by Southern California Edison to the California Public Utilities Commission opened an investigation regarding the potential role of a "lashing wire" as a cause of the Silverado Fire in Irvine.

The report, obtained by *Irvine Weekly*, indicates that a component of a telecommunications line, a lashing wire, may have contacted a SEC power line and ignited the fire.

Here is the report in full:

## ATTACHMENT 2

“SCE submits this report as it may involve an event that meets the subject of significant public attention or media coverage reporting requirement. Preliminary information reflects SCE overhead electrical facilities are located in the origin area of the Silverado Fire. We have no indication of any circuit activity prior to the report time of the fire, nor downed overhead primary conductors in the origin area. However, it appears that a lashing wire that was attached to an underbuilt telecommunication line may have contact[ed] SCE’s overhead primary conductor which may have resulted in the ignition of the fire. The investigation is ongoing.”

A lashing wire, which does not carry an electrical current, is one-third of a telecommunication line, according to Southern California Edison Spokesperson Chris Abel.

“Telecommunication wires have three components, there’s the cable itself, the support wire and the lashing wire winds around and hold them together,” Abel said.

“Telecommunication lines are third party owned, and they are below our power lines.”

### THE “LASHING WIRE” WARNING

What the lashing wire involvement in both Woolsey and Silverado tells us is that a lashing wire was not properly wrapped and/or secured, with disastrous consequences. In the Woolsey Fire, a telecommunication company whose identity we do not know because of the ongoing criminal investigation by the California Attorney General’s office, may be primarily or secondarily at fault. And in the case of the Silverado Fire in 2020, SCE is pointing to T-Mobile.

We don’t know what is happening with the securing of the lashing wires, but we know something is going wrong because when designed and installed properly, lashing wires are not supposed to come loose. It could be an engineering failure, or it could be a technical implementation failure, but something is not being done correctly.

As Tony Simmons, P.E. pointed out to me, it could be that Brand X lashing wire is being used and the technicians may be using Brand Y installing tools. Metal lashing is a recognized hazard if it is not done right. As Mr. Simmons stated to me, if he were the owner of a utility pole, such as SCE or poles jointly owned by multiple carriers, he would want to know what people are doing. It is the responsibility of the telecommunication company to secure their lashing wires properly at both ends, and it is the responsibility of the pole owner to make sure that whichever company is renting out space on their poles is securing the telecommunication wires according to appropriate engineering protocol. If one end is coming unwrapped and getting into a distribution line, you have two responsible parties – the telecommunication carrier that owns the lashing wire and the owner of the pole which is, in most cases in Malibu, SCE and possibly SCE along with other partners. Somebody is not mitigating a known hazard.

I do not mean to suggest there is a lashing line problem in these proposed projects. The fiber here appears to be underground. But the lashing example serves to show that electrical safety has to be a priority in all areas, and it is clear that the utility and telecommunication companies have simply dropped the ball. I have offered three examples and there are countless more throughout

## ATTACHMENT 2

the state of California confirming the role of utilities in starting wildfires – and telecommunications is a utility. When safety is not made a top priority on electrical equipment, it leads in one catastrophic direction, and that direction is fire.

The foregoing also demonstrates that the burden of ensuring rigorous safety design and code compliance falls on permitting authorities. At the front end, before any project is approved. The Municipal Code and Local Implementation Plan standards expressly require code compliance and an affirmative finding of safety. So now, since neither Verizon nor Staff performed their duties, you must do yours. Deny these applications and require a far more rigorous demonstration. Malibu's safety and security rests in your hands. If you do not do your job and insist on proper proof of safety before you approve them then you will bear some of the responsibility if there is a defect and it starts another devastating fire.

### **PLANNING COMMISSION MUST DENY THE TWO INCOMPLETE APPLICATIONS:**

The Planning Commission has before you two applications:

- 1) 31557.5 Pacific Coast Highway with applicant Motive for Verizon Wireless
- 2) 6213.5 Kanan Dume Road with applicant Motive for Verizon Wireless

You have two applications from Verizon that say exactly the same thing on page 1: "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." There is, however, no documentation provided regarding the City staff and consultant's supposed review.

Please focus on the phrase "deemed complete". Within these two applications you have diagrams and documents crucial to evaluating the safety of the proposed cell towers with the wording "PRELIMINARY NOT FOR CONSTRUCTION". This means the document has been distributed for review and discussion. This does not mean the documents are worthy of being used for approvals and affirmative safety/compliance findings. The Kanan Dume Rd. application is incomplete since the space for the crucial One Line Diagram is blank.

In the white paper Tony Simmons and I submitted to this Planning Commission in early March of this year, we explained why we required each document in our Electric Fire Safety Protocol. It's true that protocol does not apply specifically to these two small cell applications. Yet fundamental engineering requirements apply to ALL of these applications, and a One Line Diagram is an integral part of the engineering documents.

We explained in our paper submitted to you three months ago that a One Line Diagram is important for the following reasons:

- A One Line Diagram of the electrical system is important because it provides a map of the electrical installation and serves as the primary reference for all the other documents.

## ATTACHMENT 2

- This document allows less experienced electrical workers to quickly troubleshoot electrical malfunctions and failures and to identify a de-energization point.

In both the applications before you, professional engineers were willing to sign their names and stamp their seals for purposes of RF radiation modeling. They were willing to put their license on the line for the proposition that the modeling is in compliance with the FCC. That's easy modeling to do because the FCC sets the allowable regulatory level so high that virtually every cell tower comes in under that regulatory ceiling. So that is not a high-risk venture for a professional engineer. But look immediately under the stamp on pdf page 65 of 79 in the PCH application and pdf page 66 of 78 in the Kanan Dume application. The electrical engineer *expressly disclaimed responsibility for everything other than RF compliance.*

You therefore do not have any electrical engineers vouching for electrical design safety or code compliance. Apparently, no professional engineer was willing to put his/her name and seal on the electrical engineering designs of the cell towers on these applications. That should set off an alarm for those reviewing these applications. Staff should have asked questions and required better and complete diagrams. Staff could not have performed any meaningful independent assessment given the lack of reliable information. They were not willing to produce their own report that addresses this topic, and that should set off a second loud alarm.

You now have Tony Simmons, P.E. signing his name and stamping his seal on his evaluation and professional analysis of these two applications. When a professional engineer signs and seals a document, it is submitted with the highest level of accountability possible. Tony Simmons has found both these applications severely deficient. He affirmatively states that "the unsigned, unsealed engineering documents submitted on behalf of Verizon do not demonstrate with engineering certainty that the five hazards associated with using electricity have been fully evaluated and mitigated for these two installations." He affirmatively states that "the record before the Planning Commissions of the Resolutions does not support adoption of the proposed findings in Section 3 of the draft Resolutions related to code compliance and general safety and welfare, including but not limited to A.1, B.2, B.4, B.9, C.4, C.5 and E.1-4 in Resolutions 21-48 and 21-49." You now have a shrieking third alarm.

Why is this important? When a doctor makes a mistake, a single patient can die. When a criminal attorney is derelict in his/her duty and fails to adequately represent a client, that client – even though he/she may be innocent – may lose their freedom or even their life. When an engineer makes a mistake, hundreds if not thousands of people can die.

That's why "signed and sealed" is so profoundly important in the world of engineering. There is not a single electrical document or diagram that is signed and sealed by a professional engineer in the two applications you have before you. Yet Tony Simmons is willing to defend his recommendations to the Planning Commission in any proceeding before the PE Board in his professional analysis of these applications. Like all professional engineers Tony Simmons is prepared to defend all his work product in any proceeding before the PE Board. That is why the lack of sealed diagrams is important. The work is so shoddy no PE would attest to it. And we suspect that the Staff is not willing to show their work because they did not, in fact, perform any meaningful review.

**DEMAND COMPETENCE AND PROOF OF WORK**

Good governance requires a documented trail of the decision-making process. With electrical devices such as cell towers, you have an engineering subject matter expert who is paid for his/her expertise on ensuring compliance with the applicable electric codes. Yet without a report you don't know that the proper steps have been taken to determine whether or not the applicant – in this case Verizon – is in compliance from an electrical engineering perspective. The available evidence suggests that, like Verizon, the Staff experts have simply not done their job.

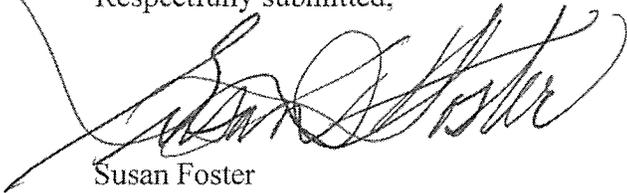
Malibu deserves better. Malibu deserves the best of your subject matter expert when it comes to permitting. Malibu deserves the best when it comes to the electric engineering documents that are supposed to be provided by Verizon, or whomever the carrier may be. These documents should be signed and sealed by professional engineers willing to professionally defend their approval of these designs, diagrams, and documents. Malibu deserves a Staff that is willing to show its work as well and be able to document the basis for its conclusions and recommendations.

We respectfully request that the Planning Commission police the wireless companies' efforts and work by denying these two applications until we can see adequate proof that due diligence has been exercised, how it has been exercised, and enough information to confirm code compliance. We need to see the City's wireless consultant and Staff analyses.

The wireless companies need to be given a clear message that Malibu insists that their facilities be proven safe and they will be required to show their work and present adequate information for you to make the required safety and code compliance findings. Only then can Malibu residents be assured that every possible step has been taken to minimize the risk of yet another wildfire caused or made worse by equipment breakdown in a WCF.

Both applications must be denied.

Respectfully submitted,



Susan Foster

Cc: Kathleen Stekko

Received

6/2/2021

Planning Dept.

**Aaron Gribben**

---

**Subject:** FW: Wireless application

**From:** Tyler Eaton

**Sent:** Wednesday, June 2, 2021 8:24 AM

**To:** RACHEL ODEN [REDACTED]

**Subject:** RE: Wireless application

Hello Rachel,

Thank you for your inquiry. Below are some answers to your questions:

- The proposed replacement Verizon wireless communications facility (WCF 20-010) is located along PCH near the southern property boundaries of [REDACTED]
- It will be approximately [REDACTED].
- It is to the west [REDACTED].
- This is not a 5G Network upgrade, but it will improve Verizon's 4G Network.
- See photosimulation below for a demonstration of the site before and after.
- Verizon provided a radio frequency, electromagnetic energy report showing the proposed emissions from the site conducted by a third-party electrical engineer. It was reviewed by City staff and the City's wireless consultant and was deemed to meet the Federal Communications Commission's safety requirements. Additionally, there will be construction safety reviews from the City's Building Safety staff, Southern California Edison, and the California Department of Transportation along with a final inspection from City staff to ensure the site was constructed as approved, if approved.
- The utility wires for the replacement pole will be above ground, how they are now. All of the equipment for the replacement wireless facility will also be above ground attached to the side of the replacement utility pole.
- The site is not anticipated to obstruct scenic views.

**Existing Site**

Date Received 6/2/2021 Time 8:24AM  
Planning Commission meeting of 6/7/21  
Agenda Item No. 5H  
Total No. of Pages 4

CC: Planning Commission, PD,  
Recording Secretary, File



**Proposed Site**



Let me know if you have further questions.

Thank you.  
Tyler

**Tyler Eaton | Assistant Planner | City of Malibu**  
23825 Stuart Ranch Road, Malibu CA, 90265  
Office: 310-456-2489 Ext. 273  
Cell: 424-422-8365  
Email: [teaton@malibucity.org](mailto:teaton@malibucity.org)

---

**From:** RACHEL ODEN [REDACTED]  
**Sent:** Tuesday, June 1, 2021 5:11 PM  
**To:** Tyler Eaton <[teaton@malibucity.org](mailto:teaton@malibucity.org)>; [arome@motive-energy.com](mailto:arome@motive-energy.com)  
**Subject:** Wireless application

**Hello,**

**We received notification of a wireless communication facility application. What's the exact location of this? [REDACTED]. How close exactly is this to our property? Is this east or west of our property? What is this exactly? Is this 5g? Is there a photo of what it will look like? Are there any dangers to the device? Are the wires above ground or below? Will it obscure any views if this is to pass? Please advise.**

**Aaron Gribben**

---

**Subject:** Memo re State and Federal Law: Small Cells in the Right-of-Way  
**Attachments:** Memo to Malibu re Federal and State Law Governing Small Cells in the ROW 20210516.pdf

**From:** Rogers, Ethan JOSEPH [REDACTED]  
**Sent:** Monday, June 7, 2021 3:37 PM  
**To:** Planning Commission <[planningcommission@malibucity.org](mailto:planningcommission@malibucity.org)>; Kathleen Stecko <[kstecko@malibucity.org](mailto:kstecko@malibucity.org)>  
**Cc:** Daisy Mae Gonzales Uy Kimpang [REDACTED]  
**Subject:** Re: Memo re State and Federal Law: Small Cells in the Right-of-Way

Dear Chair Jennings, Vice Chair Weil and Commissioners:

I am resending the attached memo, the substance of which applies to your review tonight of Verizon's small cell applications.

Thank you for your time and consideration.

Best,

Ethan

[REDACTED]  
**Ethan J. Rogers**  
[REDACTED]

Received  
6/7/21  
Planning Dept.

On Sun, May 16, 2021 at 2:10 PM Rogers, Ethan JOSEPH [REDACTED] wrote:

Dear Chair Jennings, Vice Chair Weil and Commissioners:

For your review prior to deciding on Verizon's small cell applications tomorrow, please find the attached memo explaining the limitations imposed by law on local governments relative to such decision(s).

Thank you for your time and consideration.

Best,

Ethan

[REDACTED]  
**Ethan J. Rogers**  
[REDACTED]

Date Received 6/7/21 Time 3:37PM  
Planning Commission meeting of 6/7/21  
Agenda Item No. 5H5I  
Total No. of Pages 5

CC: Planning Commission, PD,  
Recording Secretary, File



## MEMORANDUM

**TO:** The City of Malibu, California

**FROM:** Ethan J. Rogers, Verizon Wireless Network Counsel

**DATE:** May 16, 2021

**RE:** Federal and State Law Requirements for Local Government Review of Small Cell Wireless Facility Applications

---

### **I. Executive Summary**

Verizon Wireless provides this memo in anticipation of decisions that your jurisdiction will make on applications for small cell facilities in the right-of-way. This memo summarizes certain federal and California state laws that govern wireless facility applications. Below, we review requirements of the federal Telecommunications Act and applicable regulations of the Federal Communications Commission (the “FCC”). We also address California Public Utilities Code Section 7901 regulating the right-of-way, and California Government Code Section 65964 addressing wireless facilities.

### **II. Federal Law Constrains Local Government Review of Small Cells.**

The Telecommunications Act imposes five principal limitations on local authority over the placement and construction of wireless facilities. Local governments shall not discriminate among wireless providers, nor prohibit or effectively prohibit the provision of personal wireless services. Local governments must act on applications within a reasonable period of time, and provide substantial evidence for a denial. Additionally, local governments may not regulate based on the environmental effects of radio frequency emissions if a facility complies with the FCC’s exposure guidelines. 47 U.S.C. § 332(c)(7)(B). The FCC has adopted regulations interpreting these statutory requirements with respect to small cells.

#### **A. A Denial Cannot Constitute a Prohibition of Service.**

Local government regulations “shall not prohibit or have the effect of prohibiting the provision of personal wireless services.” 47 U.S.C. § 332(c)(7)(B)(i)(II). For small cells, the FCC determined that a wireless carrier need not show an insurmountable barrier, or even a “significant gap,” to prove a prohibition of service. *See In Re: Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, 33 FCC Rcd. 9088, ¶¶ 35, 38 (September 27, 2018) (the “Infrastructure Order”).<sup>1</sup> Instead, “a state or local legal requirement constitutes an effective prohibition if it ‘materially limits or inhibits the

---

<sup>1</sup> The Ninth Circuit Court of Appeals upheld these FCC requirements. *See City of Portland v. United States*, 969 F.3d 1020 (9<sup>th</sup> Cir. 2020), petition for cert. pending, No. 20-1354 (filed March 22, 2021).

ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.” *Id.*, ¶ 35. Thus, state or local regulations are preempted if they materially inhibit “densifying a wireless network, introducing new services, or otherwise improving service capabilities.” *Id.*, ¶ 37.

**B. Small Cells Must Be Evaluated under Reasonable Aesthetic Criteria.**

In adopting the “materially inhibit standard,” the FCC also confirmed that a local government’s aesthetic criteria for small cells must be “reasonable,” that is, “technically feasible” and meant to avoid “out-of-character” deployments, and also “published in advance.” Infrastructure Order, ¶¶ 86-87. A denial based on infeasible or otherwise unreasonable standards would “materially inhibit” deployment of small cells and service improvements, constituting an effective prohibition of service.

**C. A Denial Must Be Supported by Substantial Evidence.**

Under the federal Telecommunications Act, a local government’s denial of a wireless facility application must be based on “substantial evidence.” *See* 47 U.S.C. § 332(c)(7)(B)(iii). This means that a denial must be based on requirements set forth in local regulations and supported by evidence in the record. *See Metro PCS, Inc. v. City and County of San Francisco*, 400 F.3d 715, 725 (9th Cir. 2005). Further, generalized aesthetic objections do not amount to substantial evidence upon which a local government can deny a wireless facility permit. *See City of Rancho Palos Verdes v. Abrams*, 101 Cal. App. 4th 367, 381 (2002).

**D. Radio Frequency Emissions and Proxy Concerns Such as Property Values Cannot Be a Decision Factor.**

A local government cannot consider the environmental effects of radio frequency emissions if a proposed wireless facility complies with the FCC’s exposure limits. 47 U.S.C. § 332(c)(7)(B)(iv). Moreover, federal law bars efforts to circumvent preemption of health concerns through proxy concerns such as property values. *See, e.g., AT&T Wireless Servs. of Cal. LLC v. City of Carlsbad*, 308 F. Supp. 2d 1148, 1159 (S.D. Cal. 2003) (“Thus, direct or indirect concerns over the health effects of RF emissions may not serve as substantial evidence to support the denial of an application”); *Calif. RSA No. 4, d/b/a Verizon Wireless v. Madera County*, 332 F. Supp. 2d 1291, 1311 (E.D. Cal. 2003).

**E. A Local Government Must Take Final Action on a Small Cell Application within the 60- or 90-day “Shot Clock” Time Period.**

The Telecommunications Act requires local governments to act on wireless facility applications within a “reasonable period of time.” 47 U.S.C. § 332(c)(7)(B)(ii). According to FCC rules, the presumptively reasonable period of time is 60 days for small cells on existing structures, and 90 days for small cells on new structures. 47 C.F.R. § 1.6003(c). The time period may be tolled if a local government issues a timely request for information, or by mutual agreement. 47 C.F.R. § 1.6003(d). If a local government does not take final action within the Shot Clock period, an applicant may file claims of

unreasonable delay and a prohibition of service in federal court. 47 U.S.C. § 332(c)(7)(B)(v); Infrastructure Order ¶¶ 117-18.

### **III. State Law Constrains Local Government Review of Right-of-Way Facilities.**

State law provides a separate remedy if a local government does not act within the FCC’s Shot Clock periods. State Assembly Bill 537 has been introduced this legislative session in order to clarify the applicable FCC time periods for review of small cell applications.

#### **A. Verizon Wireless Has a Statewide Right to Use the Right-of-Way.**

California Public Utilities Code Section 7901 grants telephone corporations such as Verizon Wireless a statewide right to place their equipment along any public right-of-way, including new poles. The California Supreme Court has confirmed this right. *See T-Mobile West LLC v. City and County of San Francisco* (2019) 6 Cal.5th 1107, 1122 (“Any wireless provider may construct telephone lines on the City’s public roads. . .”).

#### **B. Local Governments Cannot Limit Right-of-Way Facilities to Poles of a Particular Owner.**

California Government Code Section 65964(c) bars local governments from limiting wireless facilities to sites owned by particular parties. Because of this, a local government cannot deny right-of-way facilities based on a preference for different poles owned by the local government itself or a local utility.

### **IV. Both Federal and State Law Preempt Requirements To Show the Need for Small Cells in the Right-of-Way, and Limit Review of Alternatives.**

#### **A. Local Governments Cannot Require Coverage Maps or Similar Information for Small Cells in the Right-of-Way.**

Because Public Utilities Code Section 7901 grants telephone corporations a statewide right to place their equipment along any public right-of-way, wireless facility applicants need not prove the need for their right-of-way facilities. Further, as explained above, the FCC disfavored dated standards for a prohibition of service based on “coverage gaps” and the like, instead adopting the “materially inhibit” standard for small cells. Infrastructure Order, ¶¶ 38, 40. Because of these state and federal laws, a local government cannot require wireless carriers to prove the need for their small cells in the right-of-way, and so cannot request irrelevant information such as coverage maps, drive test results, or network capacity data.

**B. Review of Alternatives Should Be Based on Reasonable Aesthetic Criteria, Not a “Least Intrusive” Standard, and Is Limited to the Right-of-Way.**

When the FCC rejected the “coverage gap” approach to establishing a prohibition of service, it also rejected the requirement that a proposed small cell must be the “least intrusive means” to fill a gap. Infrastructure Order, ¶ 40, n. 94. As discussed above, the Telecommunications Act requires that denial of a wireless facility be supported by “substantial evidence” based on the local government’s published codes or standards. Therefore, when reviewing alternatives, a local government cannot apply the vague “least intrusive means” criterion if it is not specified in local wireless regulations that are consistent with federal requirements. Instead, any comparison of alternatives must be based on “reasonable” aesthetic criteria, as required by the FCC.

Because Section 7901 grants telephone corporations the right to use the right-of-way, a local government cannot request review of alternatives outside the right-of-way, nor can it deny a right-of-way facility based on preference for private property.

**Conclusion**

Federal and state law impose several limitations on review of wireless facility applications that local governments must observe to avoid legal challenges. This area of law is complicated and continues to evolve. For example, new FCC rules regarding radio frequency exposure are effective this month, and currently, two bills have been introduced in the California State Legislature this session that may affect small cell siting. Counsel to Verizon Wireless is available at any time to provide details about the above summary and current updates.

## Tyler Eaton

---

**From:** W. Scott McCollough <wsmc@dotlaw.biz>  
**Sent:** Friday, September 17, 2021 3:14 PM  
**To:** Tyler Eaton  
**Cc:** Patricia Salazar  
**Subject:** RE: Malibu City Council Notice of Public Hearing - October 11, 2021

Tyler (and Patricia). Thank you for providing the notice. As you know I represent Lonnie Gordon in the below-described appeals.

Pursuant to the invitation to contact below, and as noted on the agenda to contact the case planner, please accept this as my request for the full file as it exists today for "APPEAL NO. 21-014" (WCF No. 20-011) and "APPEAL NO. 21-009" (WCF No. 20-010).

The applicant has previously provided items that I did not receive since they chose to not directly serve me. Hopefully those past items will be included in what you send me. I would appreciate it if you forward anything they subsequently submit.

I understand that Staff may be supplementing the file for either or both as we get closer to the 10/11 hearing date. Please ensure I receive those when submitted.

Thank you in advance.

---

W. Scott McCollough  
MCCOLLOUGH LAW FIRM PC  
[www.dotLAW.biz](http://www.dotLAW.biz)

[REDACTED]  
O 512.888.1112  
M 512.633.3498  
F 512.692.2522  
email wsmc@dotLAW.biz

---

---

**From:** Patricia Salazar <psalazar@malibucity.org>  
**Sent:** Wednesday, September 15, 2021 6:49 PM  
**Subject:** Malibu City Council Notice of Public Hearing - October 11, 2021

*You have received this email because you are on file with the City of Malibu Planning Department as an interested party for a project to be considered at the October 11, 2021 City Council meeting.*

On October 11, 2021, the Malibu City Council will hold virtual public hearings on several wireless communications facilities applications. Please refer to the attached public hearing notice for project details.

Should you have any questions, please contact the Case Planner as listed on the notice.

Regards,

Patricia Salazar | Senior Administrative Analyst | Planning Department  
23825 Stuart Ranch Road, Malibu CA, 90265  
(310) 456-2489 extension 245

**Connect with the City of Malibu!**



This email has been checked for viruses by Avast antivirus software.  
[www.avast.com](http://www.avast.com)

## Tyler Eaton

---

**From:** Tyler Eaton  
**Sent:** Monday, June 7, 2021 7:32 PM  
**To:** Gail Karish  
**Cc:** Trevor Rusin; Richard Mollica  
**Subject:** RE: Items for tonight  
**Attachments:** Re: [E] RE: Verizon - Malibu - 22 Pending WCF applications - Verizon Response

Attached is the agreement

---

**From:** Gail Karish [mailto:Gail.Karish@bbklaw.com]  
**Sent:** Monday, June 7, 2021 7:04 PM  
**To:** Tyler Eaton <teaton@malibucity.org>  
**Cc:** Trevor Rusin <trevor.rusin@bbklaw.com>; Richard Mollica <rmollica@malibucity.org>  
**Subject:** Re: Items for tonight

I think if the applicant agreed in writing to delay until this planning commission meeting then they won't raise any shot clock concerns. I'd have to see what the agreement said basically to know if it stopped the clock or the parties just agreed on a date by which city would act.

Gail A Karish  
Best Best & Krieger

On Jun 7, 2021, at 6:58 PM, Tyler Eaton <[teaton@malibucity.org](mailto:teaton@malibucity.org)> wrote:

CAUTION - EXTERNAL SENDER.

---

Ok thank you!

These the projects were about 40 days into their shot clocks when they were deemed complete in September of 2020.

40/150 from September. Because of all the stuff with the new ordinance these got pushed.

We did make an agreement to get these projects on tonight's meeting so is that sufficient in terms of the shot clock stopping?

---

**From:** Gail Karish [mailto:Gail.Karish@bbklaw.com]  
**Sent:** Monday, June 7, 2021 6:53 PM  
**To:** Tyler Eaton <[teaton@malibucity.org](mailto:teaton@malibucity.org)>  
**Cc:** Trevor Rusin <[trevor.rusin@bbklaw.com](mailto:trevor.rusin@bbklaw.com)>; Richard Mollica <[rmollica@malibucity.org](mailto:rmollica@malibucity.org)>  
**Subject:** Re: Items for tonight

No the shot clock does not stop when applications are deemed complete. It only stops 2 ways-1) by agreement with the applicant or 2) by sending a timely notice of incompleteness.

Gail A Karish  
Best Best & Krieger

On Jun 7, 2021, at 6:42 PM, Tyler Eaton <[teaton@malibucity.org](mailto:teaton@malibucity.org)> wrote:

CAUTION - EXTERNAL SENDER.

---

Hey Gail,

From the time an applications deemed complete, how long do we have to issue an approval?

The items tonight are under a 150 day shot clock. We should be way under but I was wondering if there was a separate from when an application is deemed complete.

Does the shot clock stop when items are deemed complete?

**Tyler Eaton | Assistant Planner | City of Malibu**  
23825 Stuart Ranch Road, Malibu CA, 90265  
Office: 310-456-2489 Ext. 273  
Cell: 424-422-8365  
Email:[teaton@malibucity.org](mailto:teaton@malibucity.org)

This email and any files or attachments transmitted with it may contain privileged or otherwise confidential information. If you are not the intended recipient, or believe that you may have received this communication in error, please advise the sender via reply email and immediately delete the email you received.

## Tyler Eaton

---

**From:** Tyler Eaton  
**Sent:** Monday, June 7, 2021 4:51 PM  
**To:** Bob Ross  
**Cc:** Trevor Rusin  
**Subject:** RE: WCF 20-010 & WCF 20-011

Thanks Bob,

We mention in the staff report that this is not a small cell facility. I think the biggest thing we may need you on is the coverage maps we discussed unless the Commissioners want to ask you additional questions.

Thanks for being available.

Tyler

---

**From:** Bob Ross [mailto:[rcross5@cox.net](mailto:rcross5@cox.net)]  
**Sent:** Monday, June 7, 2021 4:37 PM  
**To:** Tyler Eaton <[teaton@malibucity.org](mailto:teaton@malibucity.org)>  
**Cc:** Trevor Rusin <[trevor.rusin@bbklaw.com](mailto:trevor.rusin@bbklaw.com)>  
**Subject:** WCF 20-010 & WCF 20-011  
**Importance:** High

Tyler,

Just to let you know in my opinion that both of these sites were submitted as "Small Cells" and neither of them meet what I would consider "Small Cell" criteria! Both have Rx units over 10 Watts, which is the generally accepted power rating on Small Cells. The other factor, is the area covered. For Small Cells 10 Meters to Several Kilometers. The Tx units proposed on both sites are ERICSSON 4449 and 8843, 40Watts. If asked, I will let the Planning Commission know my opinion on the power output of small cell sites, the FCC has not given their reference point for power output of small cells.



*Robert C. Ross*     [rcross5@cox.net](mailto:rcross5@cox.net)

Mobile 619-318-7589 Office 619-318-7589 FAX 760-631-8088



*Please enjoy our WEB Site <http://www.telecomsol.com>*

**Confidentiality Notice :** This e-mail message is covered by the Electronic Communications Privacy Act 18 U.S.C. 2510-2521 and is legally privileged. Unauthorized review, use, disclosure, or distribution is strictly prohibited. If you are not the intended recipient, please contact the sender at 619-318-7589, or by reply e-mail, and destroy all copies of the original message. Thank You

## Tyler Eaton

---

**From:** Tyler Eaton  
**Sent:** Wednesday, June 2, 2021 8:24 AM  
**To:** RACHEL ODEN  
**Subject:** RE: Wireless application

Hello Rachel,

Thank you for your inquiry. Below are some answers to your questions:

- The proposed replacement Verizon wireless communications facility (WCF 20-010) is located along PCH near the southern property boundaries of [REDACTED].
- It will be approximately 300 feet from [REDACTED], 450 feet from [REDACTED], and 550 feet from [REDACTED].
- It is to the west of [REDACTED] [REDACTED].
- This is not a 5G Network upgrade, but it will improve Verizon's 4G Network.
- See photosimulation below for a demonstration of the site before and after.
- Verizon provided a radio frequency, electromagnetic energy report showing the proposed emissions from the site conducted by a third-party electrical engineer. It was reviewed by City staff and the City's wireless consultant and was deemed to meet the Federal Communications Commission's safety requirements. Additionally, there will be construction safety reviews from the City's Building Safety staff, Southern California Edison, and the California Department of Transportation along with a final inspection from City staff to ensure the site was constructed as approved, if approved.
- The utility wires for the replacement pole will be above ground, how they are now. All of the equipment for the replacement wireless facility will also be above ground attached to the side of the replacement utility pole.
- The site is not anticipated to obstruct scenic views.

### Existing Site



**Proposed Site**



Let me know if you have further questions.

Thank you.  
Tyler

**Tyler Eaton | Assistant Planner | City of Malibu**  
23825 Stuart Ranch Road, Malibu CA, 90265  
Office: 310-456-2489 Ext. 273  
Cell: 424-422-8365  
Email:teaton@malibucity.org

---

**From:** RACHEL ODEN <[REDACTED]>  
**Sent:** Tuesday, June 1, 2021 5:11 PM  
**To:** Tyler Eaton <teaton@malibucity.org>; arome@motive-energy.com  
**Subject:** Wireless application

**Hello,**

**We received notification of a wireless communication facility application. What's the exact location of this? [REDACTED] [REDACTED]. How close exactly is this to our property? Is this east or west of our property? What is this exactly? Is this 5g? Is there a photo of what it will look like? Are there any dangers to the device? Are the wires above ground or below? Will it obscure any views if this is to pass? Please advise.**

## Tyler Eaton

---

**From:** Tyler Eaton  
**Sent:** Tuesday, September 21, 2021 4:56 PM  
**To:** mweinstein@motiveis.com  
**Cc:** Marianne Riggins  
**Subject:** RE: Building Plan Check Pole Replacement  
**Attachments:** PLN WP Concurrent Submittal 210628.pdf

Hey Marybel,

Attached is the concurrent submittal document that should be filled out. Please complete one for each project.

Thanks,

### Tyler Eaton

#### Assistant Planner | City of Malibu

23825 Stuart Ranch Road, Malibu CA, 90265

Office: 310-456-2489 Ext. 273

Cell: 424-422-8365

Email: [teaton@malibucity.org](mailto:teaton@malibucity.org)

---

**From:** Marianne Riggins <[mriggins@malibucity.org](mailto:mriggins@malibucity.org)>  
**Sent:** Tuesday, September 21, 2021 4:33 PM  
**To:** mweinstein@motiveis.com  
**Cc:** Tyler Eaton <[teaton@malibucity.org](mailto:teaton@malibucity.org)>  
**Subject:** Building Plan Check Pole Replacement

Hi Marybel,

Building Safety received your request for the pole and Wireless equipment replacement at 2 locations, 6213.5 Kanan Dume Rd and 31557.5 Pacific Coast Highway. Prior to acceptance of your request I will need a copy of the approved concurrent submittal form. I have cc'd your project planner, Tyler Eaton, he can assist you with this document.

After I receive the signed form for each property, I will create the payment request and contact you for documents for the Plan check submittal.

Please let me know any questions,

Marianne Riggins  
Sr. Permit Services Tech  
City of Malibu  
23825 Stuart Ranch Rd  
Malibu, CA 90265  
(310) 456-2489 ext. 340  
[mriggins@malibucity.org](mailto:mriggins@malibucity.org)

## Tyler Eaton

**From:** Tyler Eaton  
**Sent:** Thursday, September 23, 2021 8:38 AM  
**To:** RACHEL ODEN  
**Subject:** RE: Wireless application  
**Attachments:** 6A. Visual Impact Demonstration\_Malibu Riviera II MC B4.pdf

Hey Rachel

Here is a map showing where the replacement pole will be. There is already a utility pole in the area so if you pass by you can get an idea of where it will be. I have also attached photosimulations so you can see how it will look in real life.



**From:** RACHEL ODEN [REDACTED]  
**Sent:** Wednesday, September 22, 2021 7:07 PM  
**To:** Tyler Eaton <teaton@malibucity.org>  
**Subject:** Re: Wireless application

Hi Tyler,

Is there a way to pinpoint exactly where this is from [REDACTED] to see if it affects the west view?

On Sep 22, 2021, at 5:10 PM, Tyler Eaton <[teaton@malibucity.org](mailto:teaton@malibucity.org)> wrote:

Hey Rachel,

The Planning Commission approved the project (WCF 20-010) on June 21, and then the decision was appealed by a member of the public. The project will now go before the City Council on October 11.

The replacement utility pole and Verizon antennas will be completely within the right-of-way on PCH. It will not be on any private property. It will be closest to [REDACTED] and is approximately 300 feet to the south west of the lot.

Hope that helps. Let me know if I can be of more assistance.

Tyler

---

**From:** RACHEL ODEN [REDACTED]  
**Sent:** Tuesday, September 21, 2021 6:11 PM  
**To:** Tyler Eaton <[teaton@malibucity.org](mailto:teaton@malibucity.org)>  
**Subject:** Re: Wireless application

Hi Tyler,

We received a few notices about an appeal on this issue. Do you know what's going on with this? Also can you please reconfirm that this tower is not on 31501, 31509 or 31527 and how far it is from these?

Thank you

On Jun 2, 2021, at 8:24 AM, Tyler Eaton <[teaton@malibucity.org](mailto:teaton@malibucity.org)> wrote:

Hello Rachel,

Thank you for your inquiry. Below are some answers to your questions:

- The proposed replacement Verizon wireless communications facility (WCF 20-010) is located along PCH near the southern property boundaries of [REDACTED]
- It will be approximately 300 feet from [REDACTED].







NEXTG NETWORKS INC  
PCH 48 7377 1/2 BIRVIEW  
E-PERMIT # 206-6UC-2044  
E.C. # 1-408-754-1540 EX

37  
7377 1/2

WTR

Chula Vista – Otay Ranch High School Cell Tower Fire and Collapse  
on March 9, 2021



## **Kathleen Stecko**

---

**Subject:** Verizon Wireless WCF 20-010 and WCF 20-011; Letter responding to 6-6-21 correspondence  
**Attachments:** Verizon Malibu Riviera II MC B4 and B7 - Response Ltr (062121).pdf

---

**From:** Kevin P. Sullivan

**Sent:** Monday, June 21, 2021 1:27 PM

**To:** Planning Commission; Kathleen Stecko; Richard Mollica

**Cc:** Trevor Rusin; Tyler Eaton

**Subject:** Verizon Wireless WCF 20-010 and WCF 20-011; Letter responding to 6-6-21 correspondence

Good afternoon –

Attached is a letter on behalf of Verizon Wireless regarding proposed WCF 20-010 and WCF 20-011, which are Agenda Item Nos. 4.C and 4.D, respectively, for the City Planning Commission's June 21, 2021, meeting.

Please let me know if you have any questions about the letter. Thank you,

Kevin P. Sullivan

June 21, 2021

*By Email Only* ([PlanningCommission@malibucity.org](mailto:PlanningCommission@malibucity.org),  
[KStecko@malibucity.org](mailto:KStecko@malibucity.org), [RMollica@malibucity.org](mailto:RMollica@malibucity.org))

Mr. Jeffrey Jennings  
Chair City of Malibu Planning Commission  
City of Malibu  
23825 Stuart Ranch Road  
Malibu, CA 90265

Mr. Richard Mollica  
Planning Director  
City of Malibu Planning Department  
23825 Stuart Ranch Road  
Malibu, CA 90265

**Re: Verizon Wireless WCF 20-010 (Malibu Riviera II MC B4) at 31557.5 Pacific Coast Highway, Agenda Item 4.C; Verizon Wireless WCF 20-011 (Malibu Riviera II MC B7) at 6213.5 Kanan Dume Road, Agenda Item 4.D; Verizon Wireless's Response to the June 6, 2021, Letter from Scott McCullough.**

Chair Jennings, Members of the Planning Commission, and Mr. Mollica:

Our office represents Verizon Wireless (Verizon) regarding WCF 20-010 proposed to be located in the public right-of-way (ROW) at 31557.5 Pacific Coast Highway, and WCF 20-011 proposed to be located in the ROW at 6213.5 Kanan Dume Road in the City. The proposed wireless facilities are Agenda Item Nos. 4.C and 4.D, respectively, for the City Planning Commission's June 21, 2021, meeting.

This letter responds to the correspondence about the facilities from Mr. Scott McCullough dated June 6, 2021. As explained below, arguments and positions raised in Mr. McCullough's letter are inaccurate and/or do not apply to the permit requests for WCF 20-010 or WCF 20-011.

Further, Mr. McCullough should not be given "equivalent and equal participatory time" at the project hearings as Verizon, who is the applicant for the projects. Mr. McCullough should be afforded the same time as any other member of the public who is speaking at the Planning Commission.

Mr. Jeffrey Jennings and Planning Commissioners  
Mr. Richard Mollica  
June 21, 2021  
Page 2

**The City’s Former Code Provisions Apply to WCFs 20-010 and 20-011, Applications for Which Were Submitted to the City and Found to be Complete Before the City’s Urgency Ordinance was Adopted.**

As confirmed in the respective Staff Reports for both projects, applications for WCFs 20-010 and 20-011 were submitted for City review and found to be complete before the City adopted its Urgency Ordinance for ROW wireless facilities in December 2020. Accordingly, California law requires that the City’s previous Code provisions on WCFs apply as to process and substantive standards regarding the applications, and this Planning Commission has jurisdiction to hear those applications.

Under California law, the new City ROW wireless facility regulations and related application requirements from December 2020 “**shall apply prospectively only** and shall not be a basis for determining that an application is not complete pursuant to [Government Code] Section 65943 **if the application was received before the revision is effective ....**” (Government Code § 65492; see Government Code § 65493 [the City’s list, after review, of incomplete application materials “shall be limited to those items required on the [City’s] submittal requirement checklist. In any subsequent review of the application determined to be incomplete, the [City] shall not request the applicant to provide any new information that was not stated in the initial list of items that were not complete ....”])

State law expressly prevents the retroactive use of the December 2020 City ROW wireless facility regulations and process to Verizon’s pending permit applications as argued by Mr. McCullough.

Federal law also prohibits the retroactive application of new City Codes and rules to Verizon’s WCF applications as explained in more detail in my letter to the City on this issue dated February 16, 2021.

As explained in detail in the respective Staff Reports for both projects, WCFs 20-010 and 20-011 fully comply with the applicable former ROW wireless facility regulations, and the projects should therefore be approved.

**Verizon is Not Required to Provide Coverage Maps or a “Least Intrusive Means” Analysis for Its Proposed Replacement Wireless Facilities.**

As noted in the Staff Reports for each project, Verizon’s applications for WCFs 20-010 and 20-011 involve replacement and upgrade of existing wireless facilities. Verizon previously demonstrated the need for the facilities as part of its wireless network. In addition, the Staff Reports for each project note that FCC Order 18-133 obviates “needs justifications narratives and coverage maps from wireless communications facility permit applicants.” Coverage maps are therefore not required for the facility applications.

Mr. Jeffrey Jennings and Planning Commissioners  
Mr. Richard Mollica  
June 21, 2021  
Page 3

Under the FCC’s decision in *California Payphone Ass’n*, 12 FCC Rcd 14191, 14206, ¶ 31 (1997), a local agency’s denial of a wireless facility application will have the effect of prohibiting wireless telecommunications services under Section 253 of the 1996 Telecommunications Act if it “materially inhibits” the provision of such services. An effective prohibition occurs where a state or local legal requirement materially inhibits a provider’s ability to engage in any of a variety of activities related to its provision of a covered service. “This test is met not only when filling a coverage gap but also when densifying a wireless network, introducing new services or otherwise improving service capabilities.” (FCC 18-133 ¶ 35.) Accordingly, Verizon does not need to provide coverage maps on a significant gap in its network services to justify its need for a wireless facility. (See FCC Order 18-133 ¶¶ 35-37.)

Also as noted in the Staff Reports for each project, Verizon was not required to submit alternate site assessments because the facilities already exist and the projects are upgrades to current sites. Further, Staff explained that “the permitting process for a new facility or a proposal for an upgraded facility would materially result in an equivalent bundle of permits (WCF, CDP, SPR, VAR) and equivalent hearing before the approval body. The proposed upgrades to [the] existing WCF [are] the least environmentally damaging alternative as upgrading the existing facilit[ies] minimizes site disturbances and maintains critical wireless service provision within the public ROW.”

**Verizon’s Proposed Wireless Facilities Will Provide Personal Wireless Services Under the Telecommunications Act.**

WCFs 20-010 and 20-011 are wireless infrastructure facilities that will provide personal wireless services to customers and potential customers in the City, which services are governed and protected by Section 332(c)(7)(b) of the TCA. The Verizon facilities will provide voice, texting, emailing, and high speed/high-definition broadband streaming and access to internet-based programs and applications, among other functions. These are personal wireless services.

In its March 2007 Declaratory Ruling (FCC 07-30), pages 23-24, the Federal Communications Commission (FCC) stated that:

“Section 332 (c)(7)(B) [of the TCA] would continue to apply to wireless broadband Internet access service that is classified as an “information service” **where a wireless service provider uses the same infrastructure to provide its “personal wireless services” and wireless broadband Internet access service.** We find that classifying wireless broadband Internet access services as “information services” will not exclude these services from the section 332(c)(7) framework when a wireless provider’s infrastructure is used to provide such services commingled with “personal wireless service.” **Commingling services does not change the fact that the facilities are being used for the provisioning of personal wireless services.** Therefore, application of section 332(c)(7) should remain unaffected. This interpretation is consistent with the public interest goals of this provision and ensures that wireless broadband Internet access service providers continue to use existing wireless infrastructure to rapidly deploy their services. This result is also consistent with the Commission’s commitment to its national broadband policy

Mr. Jeffrey Jennings and Planning Commissioners  
Mr. Richard Mollica  
June 21, 2021  
Page 4

goals to “promote the deployment of advanced telecommunications capability to all Americans in a reasonable and timely manner.”

**The Heights of the Proposed Facilities are Proper Under Governing Standards, Including CPUC General Order 95.**

The heights of the replacement utility poles for WCFs 20-010 and 20-011 are proper. As noted in the Staff Reports for each project, the proposed heights are needed to comply with and conform to CPUC General Order 95 safety standards and equipment separation regulations. “A taller pole would be necessary to comply with the required equipment separation requirements between pole-mounted equipment, the pole itself, and power and telecom lines. To achieve its wireless service objectives, Verizon Wireless is proposing the upgraded panel antennas to be mounted at a height of 34 feet, 9 inches to comply with safety separations requirements, maximize coverage and enhance wireless service for Verizon Wireless customers in the western Malibu area.”

**Verizon is Not Required to Show Its Rights to Permits for WCFs 20-010 and 20-011 by Clear and Convincing Evidence.**

Verizon has fully complied with governing standards under the TCA to justify its applications and permit requests for WCFs 20-010 and 20-011. No showing that a permit or approval request must be supported by “clear and convincing evidence” is required under the TCA or can be properly enforced in this matter.

Requirements for “clear and convincing” evidence of the need or siting considerations for a wireless facility are inconsistent with, and preempted by, federal law. FCC Order 18-133 did not impose or endorse any such heightened evidentiary standard for a carrier to overcome zoning regulations that could result in a prohibition, or effective prohibition, of wireless services. Further, even as to macro wireless facilities, in *T-Mobile USA, Inc. v. City of Anacortes*, 572 F.3d 987, 998-999 (9th Cir. 2009), a carrier is required only to make a “prima facie” or sufficient showing related to the need for its facility and its efforts to address the need in a reasonable way.

Consequently, any provision in the City Code about a heightened showing of justification for the facility permits, such as “clear and convincing” evidence, would be preempted under federal law. (*See Omnipoint Communications, Inc. v. City of Huntington Beach* (9th Cir. 2013) 738 F.3d 192, 196 (observing that “Congress intended ... to preempt local land use authority that does not comply with the requirements in § 332(c)(7)(B)(i) ....”)

Moreover, language about “clear and convincing” evidence to justify a wireless facility is contained in the December 2020 Code, which does not apply to the applications for WCFs 20-010 and 20-011.

Mr. Jeffrey Jennings and Planning Commissioners  
Mr. Richard Mollica  
June 21, 2021  
Page 5

**Verizon’s WCFs 20-010 and 20-011 are Designed, and Will be Constructed and Maintained, in Compliance with all Applicable Building and Fire Safety Laws and Regulations Intended to Protect Public Safety.**

Verizon’s proposed facilities comply with all applicable California Building Code and Electrical Code provisions on fire safety, as well as with the applicable provisions of California Public Utilities Commission General Order 95. Those facilities will also be operated and maintained in compliance with all applicable building and fire safety laws and regulations intended to protect public health and safety. No additional electrical requirements apply for the facility designs.

\* \* \* \* \*

Arguments and issues raised in Mr. McCullough’s June 6, 2021, letter are inaccurate and not applicable to Verizon’s applications for WCF 20-010 and WCF 20-011. The arguments should be rejected.

This letter should be included as part of the administrative record for WCF 20-010 and WCF 20-011. Please let me know if you have any questions about this matter. Thank you.

Sincerely,



Kevin P. Sullivan, Esq.  
Partner  
Gatzke Dillon and Ballance LLP

Copies (all via email):

Trevor Rusin, Asst. City Attorney ([Trevor.Rusin@BBKLAW.com](mailto:Trevor.Rusin@BBKLAW.com))  
Tyler Eaton ([TEaton@malibucity.org](mailto:TEaton@malibucity.org))  
Ethan Rogers, Esq.  
Joel Crane  
Daisy M. Uy Kimpang

**Chula Vista**

FDID: 37030

State: CA

Date: 03/09/2021 Station:

Incident #: CV21005483

Exposure: 0

Agency Address:

**BASIC MODULE (NFIRS-1)**

Location Type: **Street address** Census Tract:  
 Address: **1250 Olympic Parkway** City, State & Zip **CHULA VISTA, California 91913**  
 Incident Type: **112-Fires in structure other than in a building** Aid Given/Received: **None**

**Dates and Times**

Alarm: **03/09/2021 19:27** Arrival: **03/09/2021 19:32** Controlled: Last Unit Cleared: **03/09/2021 22:24**

**Shifts And Alarms**

Shift: **B** Alarms: District: **CHV57-NSR-01**

**Special Studies**

Special Study ID	Value
------------------	-------

Actions Taken: **Investigate (86); Extinguishment by fire service personnel (11)**

**Resources**

Apparatus			Personnel		
Suppression: <b>1</b>	EMS: <b>0</b>	Other: <b>4</b>	Suppression: <b>4</b>	EMS: <b>0</b>	Other: <b>4</b>

**Estimated Dollar Losses and Values**

Losses		Pre-Incident Value	
Property: <b>500000</b>	Contents: <b>0</b>	Property:	Contents:

**Casualties**

Fire Service Deaths: **0** Fire Service Injuries: **0** Civilian Deaths: **0** Civilian Injuries: **0**

Property Use: **215 - High school/junior high school/middle school**

**Narrative**

**Primary Jurisdiction: Chula Vista; CAD Incident Number: CV21005483; CAD Problem/Nature: Pole Fire; Call Disposition: 1-CALL COMPLETE**  
**At 1927 hours on Tuesday March 9, 2021, 5 vehicles were assigned to this incident. 8 personnel responded. The incident occurred at 1250 Olympic Pky, CHULA VISTA.**  
**Alarm number 362412 has been assigned to this incident.**

To be replaced by new field with CAD notes auto-populated.

**FIRE MODULE (NFIRS-2)****On-Site Materials or Products**

Material/Product ID	Material/Product Name	Storage Use
---------------------	-----------------------	-------------

**Ignition**

Area of Fire Origin: **60 - Equipment or service area, other**  
 Heat Source: **13 - Electrical arcing**  
 Item First Ignited: **UU - Undetermined**  
 Cause of Ignition: **U - Cause undetermined after investigation**  
 Factors Contributing: **Undetermined (UU)**  
 Human Factors Contributing: **Undetermined (N1)**

**Equipment Involved in Ignition**

Equipment Involved: **210 - Electrical wiring, other**  
 Power Source: **10 - Electrical, other** Portability: **2 - Stationary**

**STRUCTURE FIRE MODULE (NFIRS-3)****Structure Details**

Structure Type: **0 - Structure type, other** Building Status:

**APPARATUS OR RESOURCES / PERSONNEL MODULES (NFIRS-9/10)**

**Chula Vista**

FDID: 37030 State: CA Date: 03/09/2021 Station: Incident #: CV21005483 Exposure: 0

Agency Address:

**ID: CVE57 Type: 11 - Engine**Use: 1 - Suppression Number of People: 4  
Dispatch Time: 03/09/2021 19:27 Arrival Time: 03/09/2021 19:32 Clear Time: 03/09/2021 22:02

## Remarks:

Engine 57 responded to a telephone poll fire at Otay Ranch High School. Engine 57 made access to the school via Olympic Pkwy and was directed to the location of the fire by school employees. Engine 57 identified the fire was a stadium lighting poll that was co-used by AT&T as a cell phone tower. When we arrived the poll appeared to have an internal fire that traveled up the poll to the cell phone equipment and stadium lighting at the top of the poll. The poll was approximately 100 feet tall, therefore Engine 57 spotted in the school parking lot approximately 200 feet from the poll. Engine 57 provided an update to Metro and requested SDG&E to respond to our location. In addition, Engine 57 requested B52 to respond for logistical support. Engine 57 pulled a 200 foot reconnect as a precaution to protect exposures and maintained a safe distance until we could verify all power supply to the poll has been secured. As we were waiting for the representative from SDG&E to arrive the poll collapsed onto the bleachers near the football field. No exposures were threatened therefore Engine 57 maintained a safe distance. Once the rep from SDG&E arrived he verified, in coordination with the school's facility personnel, that the power had been secured and that there was no electrical hazard. Engine 57 repositioned the apparatus to allow for better access to the equipment in order to extinguish the fire using a water and foam combination. Once the fire was extinguished and overhauled, Engine 57's crew re-stowed their equipment and turned the scene over to school personnel. Engine 57 went available via MDC.

Personnel ID: 454 Name: Kenneth Stovall

Rank / Grade: Captain

Personnel ID: 490 Name: Scott Walker

Rank / Grade: Eng/PM

Personnel ID: 502 Name: Christian Loera

Rank / Grade: FF

Personnel ID: 531 Name: Justin Patrick

Rank / Grade: FF/PM

**ID: CVB52 Type: 92 - Chief officer car**Use: 0 - Other Number of People: 1  
Actions taken: Investigate (86); Incident command (81)  
Dispatch Time: 03/09/2021 19:35 Arrival Time: 03/09/2021 19:38 Clear Time: 03/09/2021 21:43

## Remarks:

I assumed IC from E-57. We stood by until SDGE could confirm that the power was cut and it was safe to attack the fire. I requested CVPD, Fire Inv, and an ATT Rep to the scene. After the fire was out and we coordinated with all the on site cooperators I terminated IC and went Avail. The property was turned back over to Otay Ranch High School Rep. See E-57 Narrative for specific details of their actions.

Personnel ID: 393 Name: David Albright

Rank / Grade: BC

**ID: CVP526 Type: 00 - Other apparatus/resource**Use: 0 - Other Number of People: 1  
Actions taken: Cancelled en route (93)  
Dispatch Time: 03/09/2021 20:34 Arrival Time: Clear Time: 03/09/2021 20:45

## Remarks:

Personnel ID: FP-6 Name: Fernando Felix

Rank / Grade: Investigator

Personnel ID: FP-6 Name: Fernando Felix

Rank / Grade: Investigator

**ID: CVP527 Type: 00 - Other apparatus/resource**Use: 0 - Other Number of People: 1  
Actions taken: Cancelled en route (93)  
Dispatch Time: 03/09/2021 20:34 Arrival Time: Clear Time: 03/09/2021 20:45

## Remarks:

Personnel ID: FP-7 Name: Darin Golden

Rank / Grade: Investigator

**Chula Vista**

FDID: **37030** State: **CA** Date: **03/09/2021** Station: Incident #: **CV21005483** Exposure: **0**

Agency Address:

**ID: CVP526** Type: **00 - Other apparatus/resource**

Use: **0 - Other** Number of People: **1**  
Dispatch Time: **03/09/2021 20:50** Arrival Time: **03/09/2021 21:01** Clear Time: **03/09/2021 22:24**  
Remarks:

Personnel ID: **FP-6** Name: **Fernando Felix**  
Rank / Grade: **Investigator**

Personnel ID: **FP-6** Name: **Fernando Felix**  
Rank / Grade: **Investigator**

**SIGNATURES / AUTHORIZATIONS**

Date/Time: **03/10/2021 10:03** Signed By: **Kenneth Stovall**  
Rank: **Captain** Assignment:  
Reason: **Member making report, Officer in Charge**

City of Malibu  
Planning Commission Meeting  
June 7, 2021

Tony P. Simmons, P.E.

The National Fire Protection Association (NFPA) recognizes five distinct hazards “associated with using electricity” - electric contact, thermal effects, overcurrent, fault current, and overvoltage.

Each hazard requires analysis and a different mitigation strategy.

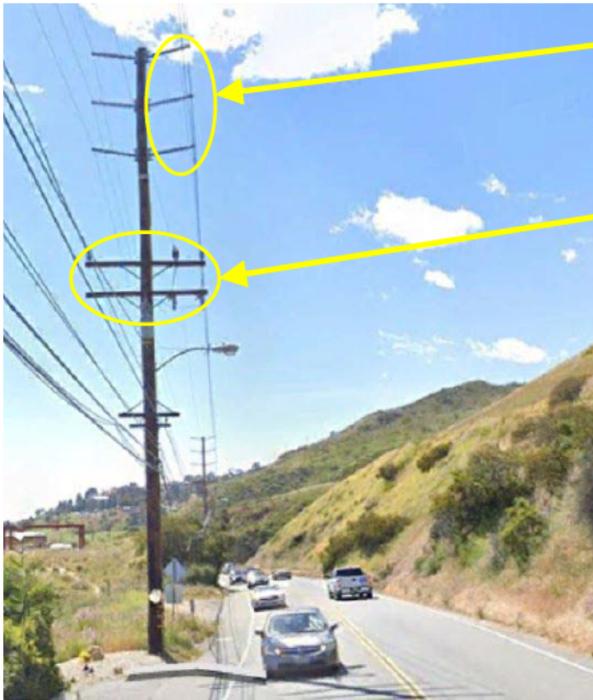
The fundamental hazards are the same for all installations.

However, site specific factors must be considered when evaluating each hazard.



- This appears to be corrosion and warrants investigation.
- External corrosion demands investigation of internal corrosion.
- This appears to be the result of a site-specific factor.

# Stockton Catastrophe Setup



- 72 KV Class Transmission Line
- 15 KV Class Distribution Line
- 250 feet west of Harbor Vista Drive along Malibu Canyon Road

# Pole at the Intersection of Harbor Vista Drive and Malibu Canyon Road



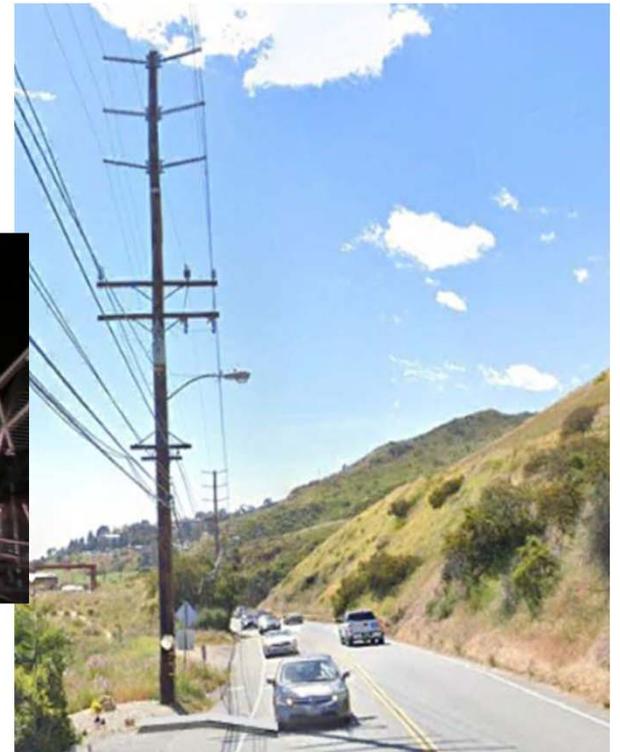
- WCF that is 250 feet from the pole shown previously.
- The next pole down the road presents a site-specific factor.

# Chula Vista Pole Failure Due to Electric Arcing



- Why did the electric arc last so long?
- Was the correct fuse used?
- Show me the one line.
- Show me the coordination study.

I welcome your questions.



The duty to mitigate the hazard of electrical contact is the same for macro towers, small cells, or any other electrical installation.

The analysis required to mitigate the hazard of electrical contact is the same for macro towers, small cells, or any other electrical installation.

The duty to mitigate the hazard of thermal effects is the same for all installations.

The analysis required to mitigate the hazard of thermal effects is the same for all installations.

The duty to mitigate the hazard of overcurrent is the same for macro towers, small cells, or any other electrical installation.

The analysis required to mitigate the hazard of overcurrent is the same for macro towers, small cells, or any other electrical installation.

The duty to mitigate the hazard of fault current is the same for all installations.

The analysis required to mitigate the hazard of fault current is the same for all installations.

The duty to mitigate the hazard of overvoltage is the same all installations.

The analysis required to mitigate the hazard of overvoltage is the same for all installations.

# City of Malibu



**Verizon Wireless**

**June 21, 2021**

**Malibu Riviera II MC B4**

**verizon**✓

263

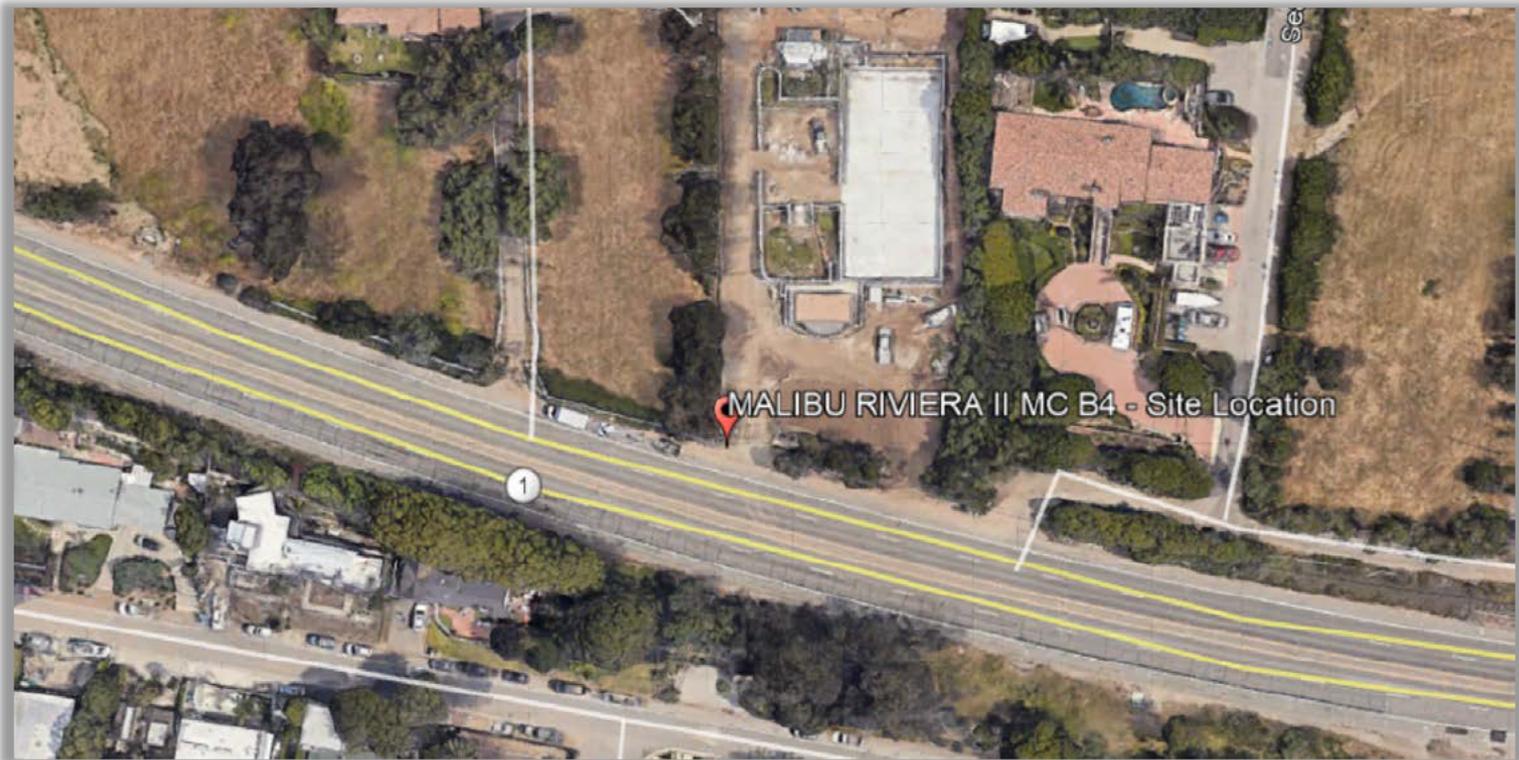
# Safe harbor statement

NOTE: In this presentation we have made forward-looking statements. These statements are based on our estimates and assumptions and are subject to risks and uncertainties. Forward-looking statements include the information concerning our possible or assumed future results of operations. Forward-looking statements also include those preceded or followed by the words “anticipates,” “believes,” “estimates,” “expects,” “hopes” or similar expressions. For those statements, we claim the protection of the safe harbor for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995. We undertake no obligation to revise or publicly release the results of any revision to these forward-looking statements, except as required by law. Given these risks and uncertainties, readers are cautioned not to place undue reliance on such forward-looking statements. The following important factors, along with those discussed in our filings with the Securities and Exchange Commission (the “SEC”), could affect future results and could cause those results to differ materially from those expressed in the forward-looking statements: adverse conditions in the U.S. and international economies; the effects of competition in the markets in which we operate; material changes

in technology or technology substitution; disruption of our key suppliers’ provisioning of products or services; changes in the regulatory environment in which we operate, including any increase in restrictions on our ability to operate our networks; breaches of network or information technology security, natural disasters, terrorist attacks or acts of war or significant litigation and any resulting financial impact not covered by insurance; our high level of indebtedness; an adverse change in the ratings afforded our debt securities by nationally accredited ratings organizations or adverse conditions in the credit markets affecting the cost, including interest rates, and/or availability of further financing; material adverse changes in labor matters, including labor negotiations, and any resulting financial and/or operational impact; significant increases in benefit plan costs or lower investment returns on plan assets; changes in tax laws or treaties, or in their interpretation; changes in accounting assumptions that regulatory agencies, including the SEC, may require or that result from changes in the accounting rules or their application, which could result in an impact on earnings; the inability to implement our business strategies; and the inability to realize the expected benefits of strategic transactions.

**As required by SEC rules, we have provided a reconciliation of the non-GAAP financial measures included in this presentation to the most directly comparable GAAP measures in materials on our website at [www.verizon.com/about/investors](http://www.verizon.com/about/investors)**

## Subject Site Location – Aerial View 31557.5 PACIFIC COAST HWY

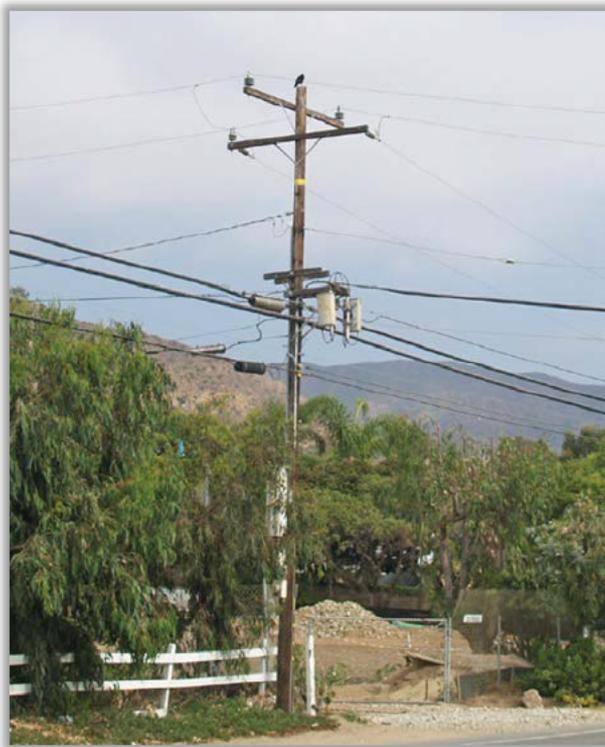


**Photo  
Simulation**

**View 1**

**East from  
PCH**

**Existing**



**Proposed**



# Photo Simulation

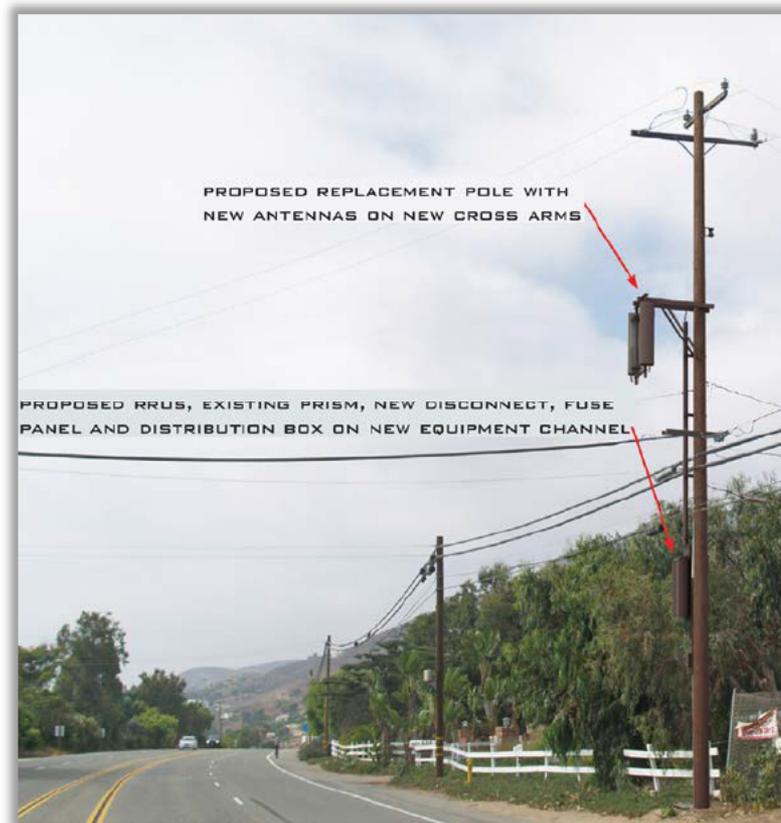
## View 2

### West from PCH

Existing



Proposed



# Photo Simulation

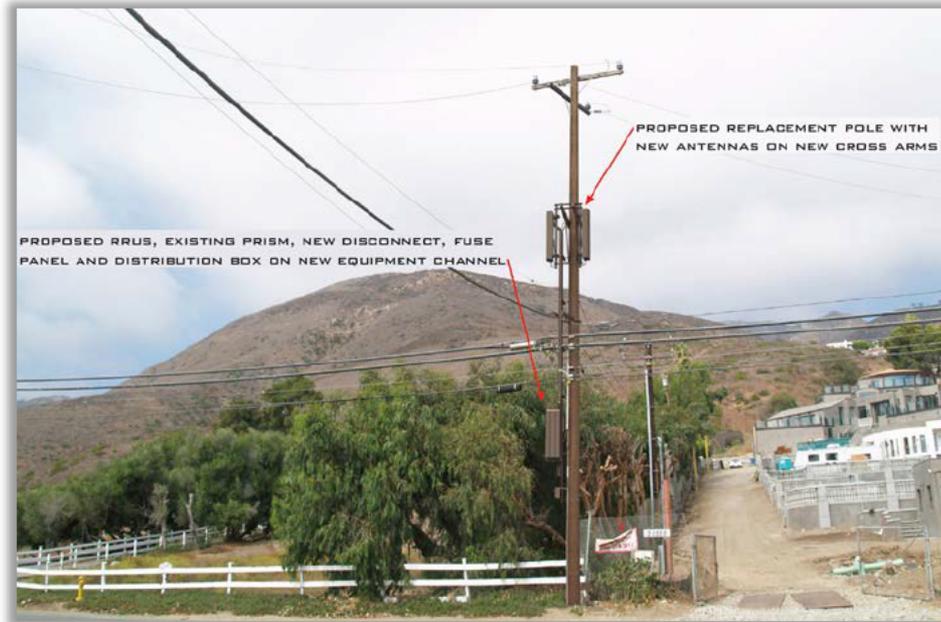
## View 3

### North from PCH

#### Existing



#### Proposed

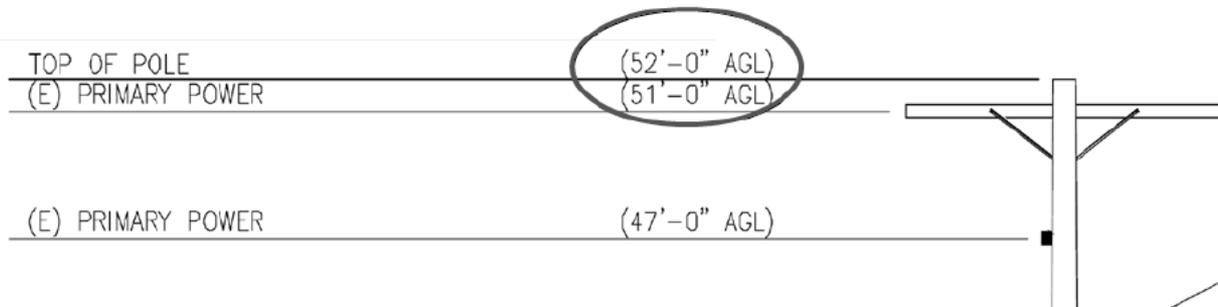
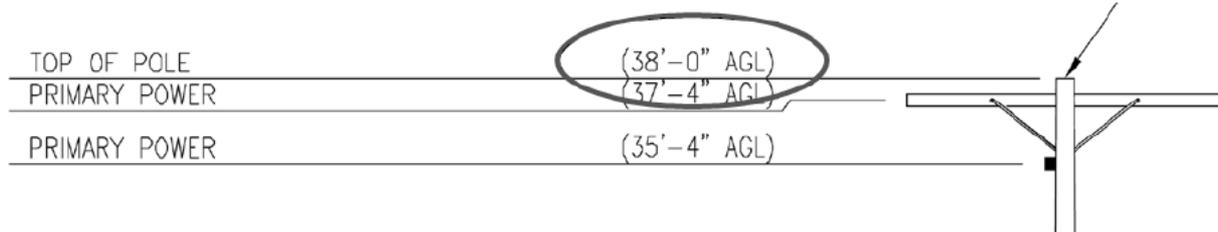


## Item 4C – Malibu Riviera II MC B4 - 31557.5 Pacific Coast Highway

- **Verizon proposes to upgrade an **existing** WCF attached to a new replacement wooden utility pole in the inland parkway of the public ROW of PCH.**
  - **Existing Pole was set in 1947, with WCF installation around 2010**
- **Verizon is proposing this upgrade to provide a capacity solution to improve service capabilities in this general area on Pacific Coast Highway.**
- **The proposed small cell facility will be located on PCH. 2018 CalTrans Annual Average Daily Traffic<sup>1</sup> indicates that there are approximately 16,700 average daily trips on PCH at this location.**

1. <https://data.ca.gov/dataset/annual-average-daily-traffic-volumes>

## Existing Pole Height already exceeds 28 feet



- **Other existing collocated structures in the PROW in the City, including the existing pole, already exceed 28'.**
- **Additional height is necessary to ensure compliance with regulations governing equipment mounting separations for safety purposes (i.e., the weight and stress on utility poles from attachments and weather conditions [e.g., heat, wind], and inspection requirements) per the California Public Utilities Commission's (CPUC) General Order 95.**

## Item 4C – Malibu Riviera II MC B4 - 31557.5 Pacific Coast Highway- continued

- **No Retroactive Application of the City’s New Wireless Facility Regulations is Permitted Under State Law**
  - Under State law, the new City wireless facility regulations and related application requirements “shall apply prospectively only and shall not be a basis for determining that an application is not complete pursuant to [Government Code] Section 65943 if the application was received before the revision is effective....”
- **No Retroactive Application of the City’s New Wireless Facility Regulations is Permitted Under Federal Law.**
  - The federal Shot Clock review processes and timeframes do not allow the new issues and delay resulting from the retroactive application of the new City regulations.
  - Retroactive application would not be consistent with the Shot Clock timeframes governing wireless facilities, which require City review and approval decisions within 60 days (for applications to collocate small cells on an existing structure).

## Item 4C – Malibu Riviera II MC B4 - 31557.5 Pacific Coast Highway- continued

- **Both Federal and State Law Preempt Requirements To Show the Need for Wireless Facilities in the Right-of-Way.**
  - Public Utilities Code Section 7901 grants telephone corporations a statewide right to place their equipment along any public right-of-way, wireless facility applicants need not prove the need for their right-of-way facilities.
  - Under the FCC’s decision in California Payphone Ass’n, 12 FCC Rcd 14191, 14206, ¶ 31 (1997), a local agency’s denial of a wireless facility application will have the effect of prohibiting wireless telecommunications services under Section 253 of the 1996 Telecommunications Act if it “materially inhibits” the provision of such services.
    - An effective prohibition occurs where a state or local legal requirement materially inhibits a provider’s ability to engage in any of a variety of activities related to its provision of a covered service. “This test is met not only when filling a coverage gap but also when densifying a wireless network, introducing new services or otherwise improving service capabilities.”

---

## Objections to Draft Conditions of Approval

- **COA No. 1 – add “reasonable” standard.**
- **COA No. 30 – requesting removal of this COA; requirement applies to attachment to a municipal infrastructure, which is inapplicable here.**
- **COA No. 31 – Verizon, requests, however, that the COA be modified to state, absent exigent circumstances, that the City will provide reasonable notice of not less than 12 months’ notice of the need to remove or relocate the Facility.**
- **COA No. 37 – requesting removal of 2<sup>nd</sup> sentence referring to **any future modifications** & reference to “undergrounding new or replacement equipment installed after the installation of the approved equipment pursuant to this permit .” Verizon can only acknowledge what’s being submitted today.**
- **COA No. 43 – Verizon, requests that the COA be modified to specify that only the removal of applicant’s improvements shall be required and that restoration shall be to original pre-installation conditions prior to the installation of the applicant’s equipment pursuant to this permit.**

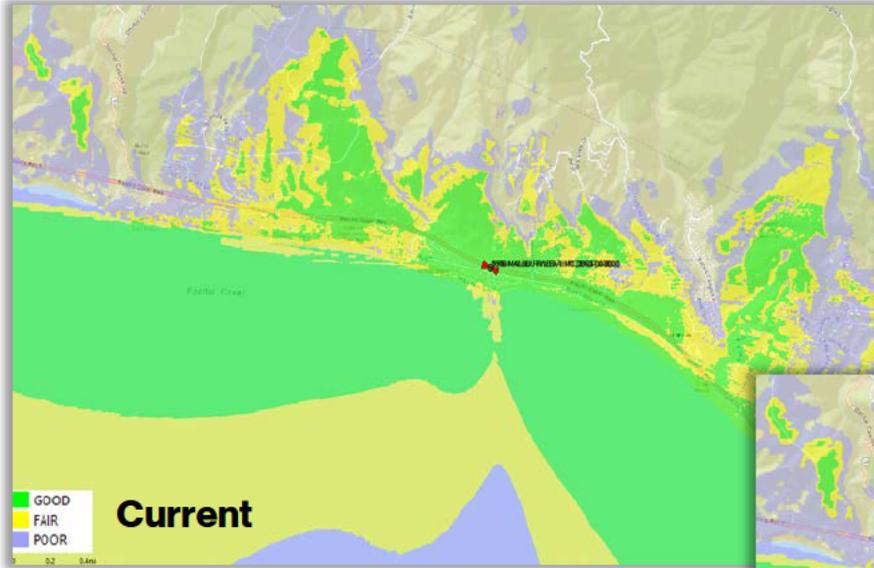
---

## Objections to Draft Conditions of Approval *continued*

- **COA No. 52 – Verizon, requests, however, that the COA be modified to language that provides a requirement of consistency with California Public Utilities Commission General Order 95 and only applicable requirements of the California Building Code as adopted by the City of Malibu.**
- **COA No. 54 C – Verizon, requests, however, that the COA be modified to delete the requirement to have a design plan stating the tower’s capacity to accommodate multiple users. Verizon cannot design for something that we don’t know what equipment to accommodate for.**
- **COA No. 56 – Verizon requests that the word “installation” in the first sentence be replaced with “operation.”**



## Verizon Footprint



**Current**



**With Upgrade**



**CDP No. 20-028**

**WCF No. 20-010**

**VAR No. 20-017**

**SPR No. 20-041**

**31557.5 Pacific Coast Highway**

**Closest APN: 4470-008-002**

**Planning Commission**

**June 21, 2021**



# Project Description

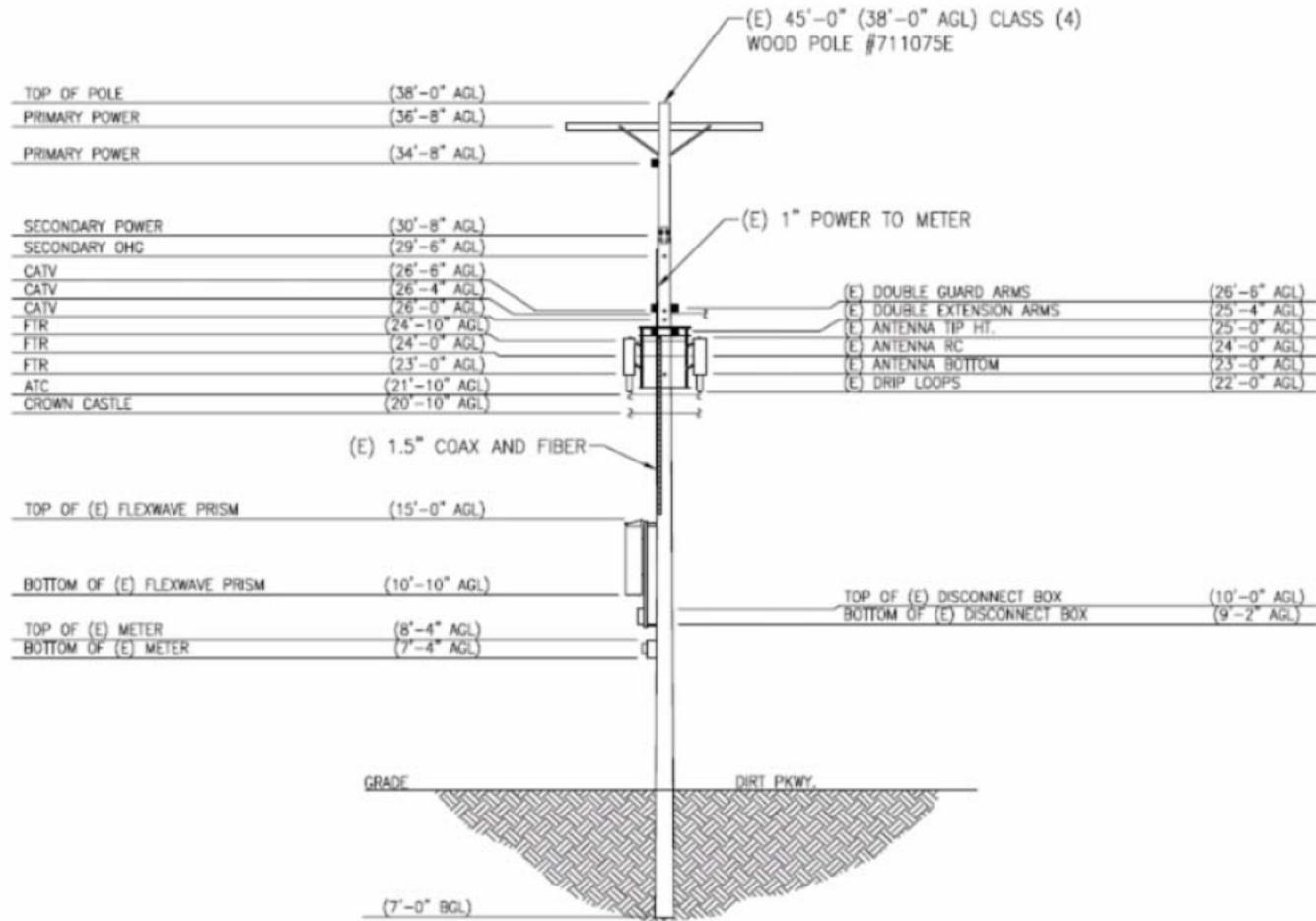
- A replacement utility pole and a replacement wireless communications facility including:
  - a) Replacement 52-foot tall wooden utility pole and utility infrastructure;
  - b) Mount two four-foot tall replacement panel antennas onto replacement pole; and
  - c) Mount new electrical support equipment onto the replacement pole.

## Two Discretionary Requests

- ❖ VAR No. 20-017 for a replacement streetlight pole over 28 feet; and
- ❖ SPR No. 20-041 for the installation and operation of a wireless communications facility located within the public ROW.

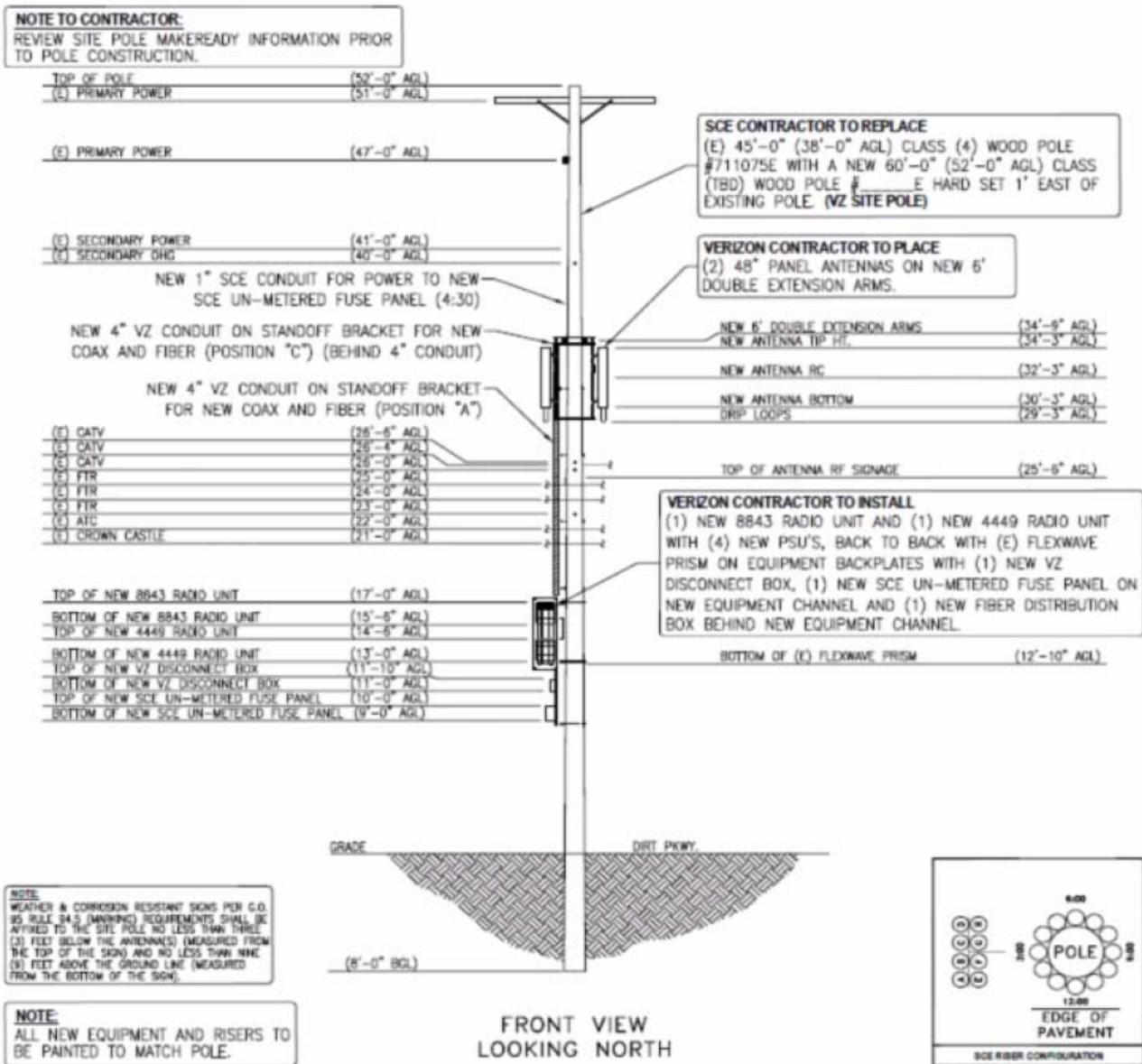


# Elevation (Existing)



FRONT VIEW  
LOOKING NORTH

# Elevation (Proposed)



# Photosimulation

Existing



Proposed



# Conditions of Approval

- Condition 1: **Verizon Wireless wants to add the word “reasonable” to the City’s indemnification condition.** Staff recommends no change to this condition because the condition is standard for all applications. The term “reasonable” is subjective which could lead to confusion at the time of implementation. Staff believes doing so would grant special privilege to wireless applications.
- Condition 31: “For all facilities located within the ROW, the permittee shall remove or relocate, at its expense and without expense to the City, any or all of its facilities when such removal or relocation is deemed necessary by the City by reason of any change of grade, alignment, or width of any right-of-way, for installation of services, water pipes, drains, storm drains, power or signal lines, traffic control devices, right-of-way improvements, or for any other construction, repair, or improvement to the right-of-way. **The City will give the wireless carrier a six-month advance notice of such removal or relocation but may provide notice in less time if removal or relocation of the facility is required due to an emergency or other exigent matter.”**

# Conditions of Approval

- Condition 37: “The permittee acknowledges that the City specifically includes conditions of approval related to (a) painting, coloring or finishing the equipment to match the pole; ~~(b) undergrounding all equipment to the extent possible~~; and ~~(c)~~ (b) 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. Any future modifications to the permittee’s wireless facility must maintain or improve all concealment elements, **including undergrounding new or replacement equipment installed after the installation of the approved equipment pursuant to this permit.**”
- Condition 44a: “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~~ **California Department of Transportation** 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.”

# Conditions of Approval

- Condition 54: “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.”**

# Conditions of Approval

Staff recommends the addition of three new conditions:

- Added Condition: “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.

# Conditions of Approval

- Added Condition: “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.”

# Conditions of Approval

- Added Condition: “The 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.
    - 1) A site plan and elevation drawings for the facility as existing and as proposed with all height and width measurements explicitly stated.
    - 2) 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;
    - 3) A depiction, with height and width measurements explicitly stated, of all existing and proposed transmission equipment.
    - 4) A depiction of all existing and proposed utility runs and points of contact.
    - 5) 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.”

# Summary

Adopt Resolution No. 21-48,  
approving CDP No. 20-028

## Aaron Gribben

---

**Subject:** notice of public hearing wireless communications facility application

---

**From:** Tyler Eaton

**Sent:** Monday, May 17, 2021 8:16 AM

**To:** Kathleen Stecko <[KStecko@malibucity.org](mailto:KStecko@malibucity.org)>; Aaron Gribben <[agribben@malibucity.org](mailto:agribben@malibucity.org)>

**Subject:** FW: notice of public hearing wireless communications facility application

Good Morning,

This is correspondence for item 5A for tonight's meeting, sent over the weekend.

Thanks,  
Tyler

---

**From:** Nick Rodionoff [REDACTED]

**Sent:** Saturday, May 15, 2021 5:53 PM

**To:** Tyler Eaton <[teaton@malibucity.org](mailto:teaton@malibucity.org)>; [arome@motive-energy.com](mailto:arome@motive-energy.com)

**Subject:** Re: notice of public hearing wireless communications facility application

If this is to install a 5G tower, we are VERY opposed and ask that it NOT be granted.

Thank you,  
Nick and Carolyn Rodionoff

# NOTICE OF PUBLIC HEARING WIRELESS COMMUNICATION FACILITY APPLICATION

You have received this notice because you are within 1,000-feet of a wireless telecommunication facility application pending a Planning Commission public hearing on **MONDAY JUNE 7, 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 COMMUNICATION FACILITY NO. 20-010, COASTAL DEVELOPMENT PERMIT NO. 20-028, VARIANCE NO. 20-017, AND SITE PLAN REVIEW NO. 20-041** - An application, filed on June 15, 2020, for the installation of replacement wireless antennas and electrical support equipment attached to a replacement utility pole with a new height of 52 feet (currently 38 feet), including a variance for construction of a wireless facility over 28 feet in height, and a site plan review to place a wireless communications facility in the public right-of-way. In addition to City-issued permits, the applicant is required to obtain permits for use of the pole by Southern California Edison and will need to obtain an encroachment permit from Caltrans

Nearest Location / APN: **31557.5 Pacific Coast Highway / 4470-008-002**  
GPS Coordinates / Pole ID: 34.036841, -118.862069 / #711075E  
Nearest Zoning: Rural Residential-Ten Acre (RR-10)  
Property Owner: Caltrans, public right-of-way  
Appealable to: City Council and California Coastal Commission  
Environmental Review: Categorical Exemption CEQA Guidelines Section 15303(d)

#### CONTACTS:

City Case Planner: Tyler Eaton, Assistant Planner, [teaton@malibucity.org](mailto:teaton@malibucity.org) (310) 456-2489, ext. 273  
Applicant: Alexa Rome, Motive, on behalf of Verizon Wireless  
[arome@motive-energy.com](mailto:arome@motive-energy.com)  
(714) 752-4263

To view or sign up to speak during the meeting, visit [www.malibucity.org/virtualmeeting](http://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 emailed to [psalazar@malibucity.org](mailto:psalazar@malibucity.org) within ten days following the date of action and the filing fee shall be mailed to Malibu Planning Department, attention: Patricia Salazar, 23825 Stuart Ranch Road, Malibu, CA 90265. Payment must be received within 10 days of the appeal deadline. Appeal forms may be found online at [www.malibucity.org/planningforms](http://www.malibucity.org/planningforms). If you are unable to submit your appeal online, please contact Patricia Salazar by calling (310) 456-2489, extension 245, at least two business days before your appeal deadline to arrange alternative delivery of the appeal.

**COASTAL COMMISSION APPEAL** - An aggrieved person may appeal the Planning Commission's approval directly to the Coastal Commission within 10 working days of the issuance of the City's Notice of Final Action. More information may be found online at [www.coastal.ca.gov](http://www.coastal.ca.gov) or by calling 805-585-1800.

RICHARD MOLLICA, Planning Director

Date: May 13, 2021



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

**PLANNING DEPARTMENT**

**NOTICE OF PUBLIC HEARING  
 WIRELESS COMMUNICATIONS  
 FACILITY APPLICATION**



**NOTICE OF PUBLIC HEARING  
 WIRELESS COMMUNICATION FACILITY APPLICATION**

You have received this notice because you are within 1,000-feet of a wireless telecommunication facility application pending a City Council public hearing on **MONDAY, October 11, 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 Order N-08-21 and the County of Los Angeles Public Health Officer's Safer at Home Order. Before the City Council 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.

**APPEAL NO. 21-009** - An appeal of the Planning Commission's approval of Wireless Communications Facility No. 20-010, Coastal Development Permit No. 20-028, Variance No. 20-017, and Site Plan Review No. 20-041 for the installation of replacement wireless antennas and electrical support equipment attached to a replacement utility pole with a new height of 52 feet (currently 38 feet), including a variance for construction of a wireless communications facility over 28 feet in height, and a site plan review to place a wireless communications facility in the public right-of-way. In addition to City-issued permits, the applicant is required to obtain permits for use of the utility pole by Southern California Edison and will need to obtain an encroachment permit from Caltrans

Nearest Location / APN:	31557.5 Pacific Coast Highway / 4470-008-002
GPS Coordinates / Pole ID:	34.036841 -118.862069 / #711075E
Nearest Zoning:	Rural Residential-Ten Acre (RR-10)
Property Owner:	Caltrans, public right-of-way
Applicant:	Zacharia Ghanem, Motive, on behalf of Verizon Wireless zghanem@motive-energy.com, (714) 752-4263
Appellant:	Lonnie Gordon
Application Filed:	June 15, 2020
Appeal Filed:	June 28, 2021
Environmental Review:	Categorical Exemption CEQA Guidelines Section 15303(d)
Case Planner:	Tyler Eaton, Assistant Planner, teaton@malibucity.org (310) 456-2489, ext. 273

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](http://www.malibucity.org/virtualmeeting).

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

RICHARD MOLLICA, Planning Director

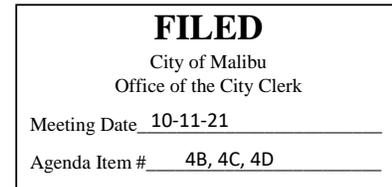
Date: September 16, 2021



October 11, 2021

*By Email Only* ([citycouncil@malibucity.org](mailto:citycouncil@malibucity.org))

Mayor Paul Grisanti and Honorable Members of the City Council  
City of Malibu  
23825 Stuart Ranch Road  
Malibu, CA 90265



**Re: Verizon Wireless WCF 20-010 (Malibu Riviera II MC B4) at 31557.5 Pacific Coast Highway, Agenda Item 4.B; Verizon Wireless WCF 20-011 (Malibu Riviera II MC B7) at 6213.5 Kanan Dume Road, Agenda Item 4.C; Verizon Wireless's Response to the June 28, 2021, Appeal Materials For The Projects.**

Mayor Grisanti and Honorable Members of the City Council:

Our office represents Verizon Wireless (Verizon) regarding WCF 20-010 proposed to be located in the public right-of-way (ROW) at 31557.5 Pacific Coast Highway, and WCF 20-011 proposed to be located in the ROW at 6213.5 Kanan Dume Road in the City. The proposed wireless facilities are Agenda Item Nos. 4.B and 4.C, respectively, for the City Council Regular Meeting for October 11, 2021.

This letter responds to the Appeal materials about the facilities filed on June 28, 2021. As explained below, arguments and positions raised in the Appeals are inaccurate and/or do not apply to the permit requests for WCF 20-010 or WCF 20-011.

Verizon therefore respectfully requests that the City Council confirm the Planning Commission's 4-1 approval decisions for both replacement projects in the public ROW, accept City Staff's recommendation for approval of the projects and for denial of the appeals, and deny the appeals.

**The City's Former Code Provisions Apply to WCFs 20-010 and 20-011, Applications for Which Were Submitted to the City and Found to be Complete Before the City's Urgency Ordinance was Adopted. The Planning Commission Therefore Had Jurisdiction And Properly Applied The Former Code.**

As confirmed in the respective Staff Reports for both projects, applications for WCFs 20-010 and 20-011 were submitted for City review and found to be complete before the City adopted its Urgency Ordinance for ROW wireless facilities in December 2020. Accordingly, California law requires that the City's previous Code provisions on WCFs apply as to process and substantive standards regarding the applications, and the City Planning Commission has jurisdiction to hear those applications under standards from the former Code.

Under California law, the new City ROW wireless facility regulations and related application requirements from December 2020 "**shall apply prospectively only** and shall not be

Mayor Grisanti and Honorable Members of the City Council  
October 11, 2021  
Page 2

a basis for determining that an application is not complete pursuant to [Government Code] Section 65943 **if the application was received before the revision is effective ....**” (Government Code § 65492; see Government Code § 65493 [the City’s list, after review, of incomplete application materials “shall be limited to those items required on the [City’s] submittal requirement checklist. In any subsequent review of the application determined to be incomplete, the [City] shall not request the applicant to provide any new information that was not stated in the initial list of items that were not complete ....”])

State law expressly prevents the retroactive use of the December 2020 City ROW wireless facility regulations and process to Verizon’s pending permit applications as argued by the Appeals.

Federal law also prohibits the retroactive application of new City Codes and rules to Verizon’s WCF applications as explained in more detail in my letter to the City on this issue dated February 16, 2021.

As explained in detail in the respective Staff Reports for both projects, WCFs 20-010 and 20-011 fully comply with the applicable former ROW wireless facility regulations, and the projects should therefore be approved.

**Decisions On WCFs 20-010 And 20-011 Are Not Appealable To The Coastal Commission.**

Both proposed replacement facility projects are outside the jurisdiction of the appeal zone for the Coastal Commission, as confirmed in the Staff Reports.

Further, Verizon’s replacement pole projects, with minimal antennas and equipment, each cost much less than the amount required to be “major public works” projects, and therefore are not major public works projects under 14 Cal Code Regs section 13012(a). Even if the projects were somehow found to be within the appeal zone, only “major public works” projects can be appealed to the Coastal Commission where the City has a certified LCP. (See Pub. Res. Code § 30603(a)(5).)

**Verizon is Not Required to Provide Coverage Maps or a “Least Intrusive Means” Analysis for Its Proposed Replacement Wireless Facilities.**

As noted in the Staff Reports for each project, Verizon’s applications for WCFs 20-010 and 20-011 involve replacement and upgrade of existing wireless facilities. Verizon previously demonstrated the need for the facilities as part of its wireless network. In addition, the Staff Reports for each project note that FCC Order 18-133 obviates “needs justifications narratives and coverage maps from wireless communications facility permit applicants.” Coverage maps are therefore not required for the facility applications.

Under the FCC’s decision in *California Payphone Ass’n*, 12 FCC Rcd 14191, 14206, ¶ 31 (1997), a local agency’s denial of a wireless facility application will have the effect of prohibiting wireless telecommunications services under Section 253 of the 1996 Telecommunications Act if it “materially inhibits” the provision of such services. An effective prohibition occurs where a state or local legal requirement materially inhibits a provider’s ability

Mayor Grisanti and Honorable Members of the City Council  
October 11, 2021  
Page 3

to engage in any of a variety of activities related to its provision of a covered service. “This test is met not only when filling a coverage gap but also when densifying a wireless network, introducing new services or otherwise improving service capabilities.” (FCC 18-133 ¶ 35.) Accordingly, Verizon does not need to provide coverage maps on a significant gap in its network services to justify its need for a wireless facility. (See FCC Order 18-133 ¶¶ 35-37.)

Also as noted in the Staff Reports for each project, Verizon was not required to submit alternate site assessments because the facilities already exist and the projects are upgrades to current sites. Further, Staff explained that “the permitting process for a new facility or a proposal for an upgraded facility would materially result in an equivalent bundle of permits (WCF, CDP, SPR, VAR) and equivalent hearing before the approval body. The proposed upgrades to [the] existing WCF [are] the least environmentally damaging alternative as upgrading the existing facilit[ies] minimizes site disturbances and maintains critical wireless service provision within the public ROW.”

### **Verizon’s Proposed Wireless Facilities Will Provide Personal Wireless Services Under the Telecommunications Act.**

WCFs 20-010 and 20-011 are wireless infrastructure facilities that will provide personal wireless services to customers and potential customers in the City, which services are governed and protected by Section 332(c)(7)(b) of the TCA. The Verizon facilities will provide voice, texting, emailing, and high speed/high-definition broadband streaming and access to internet-based programs and applications, among other functions. These are personal wireless services.

In its March 2007 Declaratory Ruling (FCC 07-30), pages 23-24, the Federal Communications Commission (FCC) stated that:

“Section 332 (c)(7)(B) [of the TCA] would continue to apply to wireless broadband Internet access service that is classified as an “information service” **where a wireless service provider uses the same infrastructure to provide its “personal wireless services” and wireless broadband Internet access service.** We find that classifying wireless broadband Internet access services as “information services” will not exclude these services from the section 332(c)(7) framework when a wireless provider’s infrastructure is used to provide such services commingled with “personal wireless service.” **Commingling services does not change the fact that the facilities are being used for the provisioning of personal wireless services.** Therefore, application of section 332(c)(7) should remain unaffected. This interpretation is consistent with the public interest goals of this provision and ensures that wireless broadband Internet access service providers continue to use existing wireless infrastructure to rapidly deploy their services. This result is also consistent with the Commission’s commitment to its national broadband policy goals to “promote the deployment of advanced telecommunications capability to all Americans in a reasonable and timely manner.”

Mayor Grisanti and Honorable Members of the City Council  
October 11, 2021  
Page 4

**The Heights of the Proposed Replacement Facilities are Necessary Under Governing Safety Standards, Including CPUC General Order 95.**

The heights of the replacement utility poles for WCFs 20-010 and 20-011 are proper. As noted in the Staff Reports for each project, the proposed heights are needed to comply with and conform to CPUC General Order 95 safety standards and equipment separation regulations. “A taller pole would be necessary to comply with the required equipment separation requirements between pole-mounted equipment, the pole itself, and power and telecom lines. To achieve its wireless service objectives, Verizon Wireless is proposing the upgraded panel antennas to be mounted at a height of 34 feet, 9 inches to comply with safety separations requirements, maximize coverage and enhance wireless service for Verizon Wireless customers in the western Malibu area.”

Further, the projects fully comply with all applicable Codes, including as to public safety, as explained in the multiple thorough Staff Reports on the projects.

**Verizon is Not Required to Show Its Rights to Permits for WCFs 20-010 and 20-011 by Clear and Convincing Evidence.**

Verizon has fully complied with governing standards under the TCA to justify its applications and permit requests for WCFs 20-010 and 20-011. No showing that a permit or approval request must be supported by “clear and convincing evidence” is required under the TCA or can be properly enforced in this matter.

Requirements for “clear and convincing” evidence of the need or siting considerations for a wireless facility are inconsistent with, and preempted by, federal law. FCC Order 18-133 did not impose or endorse any such heightened evidentiary standard for a carrier to overcome zoning regulations that could result in a prohibition, or effective prohibition, of wireless services. Further, even as to macro wireless facilities, in *T-Mobile USA, Inc. v. City of Anacortes*, 572 F.3d 987, 998-999 (9th Cir. 2009), a carrier is required only to make a “prima facie” or sufficient showing related to the need for its facility and its efforts to address the need in a reasonable way.

Consequently, any provision in the City Code about a heightened showing of justification for the facility permits, such as “clear and convincing” evidence, would be preempted under federal law. (*See Omnipoint Communications, Inc. v. City of Huntington Beach* (9th Cir. 2013) 738 F.3d 192, 196 (observing that “Congress intended ... to preempt local land use authority that does not comply with the requirements in § 332(c)(7)(B)(i) ....”)

Moreover, language about “clear and convincing” evidence to justify a wireless facility is contained in the December 2020 Code, which does not apply to the applications for WCFs 20-010 and 20-011.

Mayor Grisanti and Honorable Members of the City Council  
October 11, 2021  
Page 5

**Verizon’s WCFs 20-010 and 20-011 are Designed, and Will be Constructed and Maintained, in Compliance with all Applicable Building and Fire Safety Laws and Regulations Intended to Protect Public Safety.**

Verizon’s proposed facilities comply with all applicable California Building Code and Electrical Code provisions on fire safety, as well as with the applicable safety provisions of CPUC General Order 95. Those facilities will also be operated and maintained in compliance with all applicable building and fire safety laws and regulations intended to protect public health and safety. No additional electrical requirements apply for the facility designs.

\* \* \* \* \*

Arguments and issues raised in the June 28, 2021, Appeal materials are inaccurate and not applicable to Verizon’s applications for WCF 20-010 and WCF 20-011. The arguments should be rejected.

Verizon therefore respectfully requests that the City Council confirm the Planning Commission’s 4-1 approval decisions for the replacement projects in the public ROW, accept City Staff’s recommendation for approval of the projects and for denial of the appeals, and deny the appeals.

This letter should be included as part of the administrative record for WCF 20-010 and WCF 20-011. Please let me know if you have any questions about this matter. Thank you.

Sincerely,



Kevin P. Sullivan, Esq.  
Partner  
Gatzke Dillon and Ballance LLP

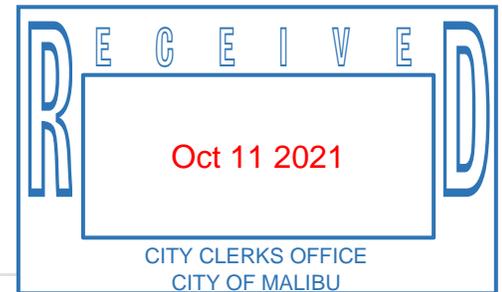
Copies (all via email):

- Kelsey Pettijohn, City Clerk ([KPettijohn@malibucity.org](mailto:KPettijohn@malibucity.org))
- John C. Cotti, City Attorney ([John.Cotti@BBKLaw.com](mailto:John.Cotti@BBKLaw.com))
- Trevor Rusin, Asst. City Attorney ([Trevor.Rusin@bbklaw.com](mailto:Trevor.Rusin@bbklaw.com))
- Richard Mollica ([RMollica@malibucity.org](mailto:RMollica@malibucity.org))
- Tyler Eaton ([TEaton@malibucity.org](mailto:TEaton@malibucity.org))
- Ethan Rogers, Esq.
- Daisy M. Uy Kimpang

**Julie Stuva**

**Subject:** Items 4.B., 4.C, and 4.D. (Verizon Wireless Applications)

<b>FILED</b> City of Malibu Office of the City Clerk Meeting Date <u>10-11-21</u> Agenda Item # <u>4B, 4C, &amp; 4D</u>
---



**From:** K Hill [REDACTED]  
**Sent:** Sunday, October 10, 2021 2:53 PM  
**To:** Paul Grisanti <[pgrisanti@malibucity.org](mailto:pgrisanti@malibucity.org)>; Bruce Silverstein <[bsilverstein@malibucity.org](mailto:bsilverstein@malibucity.org)>; Mikke Pierson <[mpierson@malibucity.org](mailto:mpierson@malibucity.org)>; Karen Farrer <[kfarrer@malibucity.org](mailto:kfarrer@malibucity.org)>; Steve Uhring <[suhring@malibucity.org](mailto:suhring@malibucity.org)>  
**Cc:** Steve McClary <[SMcClary@malibucity.org](mailto:SMcClary@malibucity.org)>; Richard Mollica <[rmollica@malibucity.org](mailto:rmollica@malibucity.org)>; John Cotti <[john.cotti@bbklaw.com](mailto:john.cotti@bbklaw.com)>; Trevor Rusin <[trevor.rusin@bbklaw.com](mailto:trevor.rusin@bbklaw.com)>; Tyler Eaton <[teaton@malibucity.org](mailto:teaton@malibucity.org)>; Lonnie Gordon [REDACTED]; R Y A N [REDACTED]; [REDACTED]; Susan Foster [REDACTED]; [gail.karish@bbklaw.com](mailto:gail.karish@bbklaw.com); Kelsey Pettijohn <[kpettijohn@malibucity.org](mailto:kpettijohn@malibucity.org)>  
**Subject:** Re: Items 4.B., 4.C, and 4.D. (Verizon Wireless Applications)

Council members,

In regard to height variances requested by Verizon for their wireless installations, you would do well to question their representatives about the availability of utility poles and street light poles that can accommodate their equipment without needing to be 5-6 feet taller than the surrounding poles, while still providing the required separation distance between electrical and communications wiring. In at least two Planning Commission hearings, I asked whether such height-compliant poles were available. The Verizon reps conceded that lower poles do exist on the market, but that Verizon has some sort of issues in dealing with SCE about using a different pole design – basically administrative issues – that would require more inter-company coordination than Verizon wants to entertain, to get SCE to change their poles to ones with a more appropriate design. Verizon’s position has been, in effect, that they “need” the height variance because they’re not obliged to work with SCE to implement the type of pole that doesn’t need to be taller. If I recall correctly, the alternative pole option was effectively ignored by staff because Verizon has not included it as a design option in the application.

Where, like here, there is a reasonable option that doesn’t require a variance, the fact that it might cost a little more, or take a little longer, is not a consideration. You can say to Verizon, in effect, “Sorry, you don’t actually need the variance. Just liase with SCE and pay a little extra for the existing type of poles that are already code compliant.”

With regard to aesthetics, note that wherever there is a pole that’s taller than the poles on either side of it, the wires on either side will be raised up from their usual horizontal alignment, creating a “tent” effect. That will look irregular and even haphazard, which will catch the eye and call attention to the fact of poles and wires being within a given view. By approving Verizon’s plan, you’d be saying in effect, “We don’t care if it looks haphazard, as long as we can save Verizon a little dough.”

Finally, with regard to safety, you will get assurances from Verizon all day long that the poles will be as safe as can be, but at the margin – when there are unusual events such as a severe windstorm or a vehicle crashing into a pole – a pole carrying its mass of wires six feet higher off the ground has a higher center of gravity, so inherently cannot be as safe as a six-foot shorter pole of similar construction.

Bottom line, please don't let Verizon tell you there's only one way to do things. Remind them that they've already conceded that there's way to get their project done within the bounds of the code, without needing a variance.

Best,  
Kraig

**Julie Stuva**



**Subject:** City Council Meeting 10/11, items 4B & 4C & updating Ordinance 477

<p><b>FILED</b> City of Malibu Office of the City Clerk</p> <p>Meeting Date <u>10-11-21</u></p> <p>Agenda Item # <u>4B, 4C, 4D</u></p>
--

**From:** Nichole McGinley [REDACTED]

**Sent:** Monday, October 11, 2021 10:03 AM

**To:** Paul Grisanti <[pgrisanti@malibucity.org](mailto:pgrisanti@malibucity.org)>; Bruce Silverstein <[bsilverstein@malibucity.org](mailto:bsilverstein@malibucity.org)>; Mikke Pierson <[mpierson@malibucity.org](mailto:mpierson@malibucity.org)>; Karen Farrer <[kfarrer@malibucity.org](mailto:kfarrer@malibucity.org)>; Steve Uhring <[suhring@malibucity.org](mailto:suhring@malibucity.org)>; City Council <[citycouncil@malibucity.org](mailto:citycouncil@malibucity.org)>

**Cc:** W. Scott McCollough [REDACTED] >

**Subject:** City Council Meeting 10/11, items 4B & 4C & updating Ordinance 477

October 11, 2021

Hello Mayor Grisanti and Councilmembers,

While I was disappointed by the denial of Lonnie's appeal last week over the NPROW application, I was pleased to see your inclusion of the insurance requirement and your unanimous desire to provide transparency during the building process and monitor safety and code compliance. I share your desire to have CMS become more involved in assessing RF emissions and I hope they become involved in the initial stages of all incoming applications so that we are not wasting precious shot clock time while the Planning Department understandably focuses on rebuilds and building permits.

At the 10/5 meeting, there was discussion about what ordinance is being applied depending on when an application is deemed complete. It is now more important than ever to get the P-ROW Ordinance 477 to match the standards in the NP-ROW Ordinance 483. The appeal you considered on 10/5 was in a gap between old conditions and new ones in the NP-ROW and we didn't get the benefit of all of the important safety standards that are woven into the application process, not the building phase. In the P-ROW, there are currently 23 applications that fall in a gap between when applications were submitted and the Urgency Ordinance was adopted. Since its adoption, there are an additional 10 applications that will be under the 477 P-ROW ordinance. As we have anticipated and warned, telecoms will not stop bombarding our city with applications. We need to update the P-ROW Ordinance to match the NP-ROW Ordinance where appropriate. Residents should have the assurance that the highest level of safety standards possible will apply to every possible application. If we don't update the P-ROW Ordinance soon, this gap will continue to widen between ensuring our City has adequate infrastructure and mitigating fire hazards.

This evening you will hear appeals that deal with the P-ROW in another “gap” application between the old regulations and Ordinance 477.

Although we have been following this process, we still cannot tell what rules the Staff is applying to these projects. And we cannot understand why they unilaterally grant Verizon waivers and variances from the rules they claim apply. They say the LIP applies. But they do not enforce the LIP 3.16.9.B.9 coverage map requirement or the MMC 17.46.100 minimum application requirements that functionally demand a coverage map.

A major reason for requiring “coverage map” is to determine whether “alternatives exist for providing coverage.” This was the stated purpose in LIP Section 3.16.B.9 and MMC 17.46.100.B.9. 47 U.S.C. §332(c)(7)(B) expressly reserves determinations on “location” to local siting authorities. Coverage maps are key to the location decision, and Verizon has refused to provide this information. The coverage map tells Staff and interested residents where Verizon has adequate coverage and where they don't. It tells staff and Malibu residents where a safer, less visible location may be if Verizon's preferred location is undesirable for some reason.

We have come before the City Council for a year and expressed our concerns about the potential for fires within cell towers, yet one of the cell towers we are appealing is proposed at the entrance to somebody's driveway where they have no other exit from the property. There is no evidence provided on potential alternative locations for this installation. This location site is inappropriate and possibly dangerous. I doubt any of you would want this in your front yard. I know I don't. Verizon's refusal to investigate alternatives or provide any information that could be used to determine potential alternatives leaves City Council no choice but to **deny this permit**.

Why doesn't Verizon supply the coverage map to allow a safer, more aesthetically pleasing location?

Please grant Lonnie's appeal and deny these applications from Verizon.

As far as the ordinance update, I will be happy to resubmit redlines of 477 to match 484 where appropriate.

Thank you,

Nichole McGinley

**Julie Stuva**

---

**Subject:** Follow-up concerns re telecom application process in response to your questions

**FILED**  
City of Malibu  
Office of the City Clerk  
Meeting Date 10-11-21  
Agenda Item # 4B,4C,4D



**From:** Susan Foster [redacted] >

**Sent:** Sunday, October 10, 2021 11:15 PM

**To:** Bruce Silverstein <[bsilverstein@malibucity.org](mailto:bsilverstein@malibucity.org)>

**Cc:** W. Scott McCollough [redacted]

**Subject:** Follow-up concerns re telecom application process in response to your questions

Dear Bruce,

I want to be very clear I am not writing in response to any specific cell tower project that Scott McCollough and I have appealed or may be appealing. I'm grateful for your communication to everyone regarding questions you have because I think as questions are asked, there is an opportunity for improvements to be made within a city that obviously cares very much for its residents, their safety and their well-being.

I will be sharing my observations & concerns with Councilmember Mikke Pierson, as well. Mikke reached out to me after I spoke before the City Council in August 2020 and focused on the SPECT brain scan study I had organized of firefighters (2004) at a California station who were experiencing severe and often disabling neurological symptoms. The symptoms had begun after installation of the cell tower in front of their station in the late 1990s. As a result of that pilot study in which we found brain damage in all six of the firefighters tested, word started to spread, more symptoms by firefighters at other stations were shared, and a movement began in California among the local unions which culminated in an exemption in AB 537, signed into law by Gov. Newsom on October 4, 2021, granting an exemption to all fire stations in California from 5G cell towers.

Of course it would be illegal to have an exemption on health grounds so the wording centers around the "unique configuration" of fire stations and the need for preparedness on the part of firefighters. This is the first such exemption of its kind in the world.

So Mikke and I have connected on the issue of fire from the beginning. You and I have not formally met, but I appreciate being copied in your emails in which you raised some excellent questions, and you've touched on the process itself – something I was extremely pleased to see.

I don't know what Staff's process is from the time the application hits the Planning Department at what is most likely 4:55 PM on a Friday afternoon with the shot clock tolling over the weekend until they have a report and recommendation ready for Planning Commission, but I do have the sense that your emails have hit upon some significant problems regarding bias, or at least the appearance of bias. Maybe that appearance of bias is just overwhelm because the process is not running efficiently, and staff is buried in an avalanche of building permits at the same time they're getting hit with a ton of telecom applications.

What troubles me and this is why I'm reaching out to you and shortly will be reaching out to Mikke, as well, is that the system does appear broken to me. Staff is running out of time to fully and perhaps fairly evaluate the applications as they come in. It was my understanding that CMS was retained to replace Jonathan Kramer's other company, Permit Team LLC (same principals as Telecom Law Firm), to do most of the permitting. That change was made a long time ago and we are not hearing from Bob Ross. You quoted Bob Ross and I was glad to know that you have access to his evaluation of why one of the projects claimed to be a small cell by Verizon did not appear to be a small cell by Bob Ross. I believe the man knows what he's talking about and I think everybody would like to hear from him more. The more you scrutinize the applications as they come in, the greater you increase your chances that you will help prevent another Woolsey. In my experience knowing Bob, he knows when electrical drawings are incomplete and he knows when the ANSI/APCO structural engineering requirements are not being applied.

I lived in San Diego for 32 years and during the latter part of that time my path crossed with Bob at various meetings. I recommended CMS because I had talked with Bob at length about his process and I would like to ask you if you have any idea whether or not Bob is being properly utilized in Malibu?

Bob typically has a checklist and he knows telecom likes to send someone to drop the applications off right before the end of the business day on Friday, so right away 2 days are lost because the shot clock is running on Saturday and Sunday. Bob prides himself on going through applications within 24 – 48 hours. He compares what the carriers have submitted with his checklist and when something is missing, he very specifically lets the carrier know what is missing and that tolls the shot clock. We are seeing some very incomplete applications in Malibu. That begs the question: Is Staff actually using Bob Ross or not? He was at the meeting on October 5 on the appeal, but his presence at some of the meetings does not demonstrate that he is actually seeing each application as it comes in to Planning Department.

I know Staff is dealing with multiple telecommunications applications and also building permits as Malibu struggles to recover as best as the city can after losing over 400 homes in the Woolsey Fire. So I want to cut Staff some slack because I can imagine it is a burdensome job. However, perhaps there is a lack of efficiency if Staff is continuing to process telecom permits the "old" way, as smaller municipalities tended to do. But small cells and shot clocks changed everything and there is no longer time to get everything done if there is not immediate attention given to every single application as it comes in.

The reason this is so important to me comes down to one thing and that's fire. I signed on with Scott McCollough to try to prevent more telecom fires in Malibu, and hopefully, throughout the West, in the long run. I am updating the white paper that Tony Simmons and I submitted to Planning Commission and City Council because I have found one more California fire that was telecom-initiated and that brings the total to four, including Malibu Canyon Fire and Woolsey Fire. We are learning more about the possible internal causes of electrical fires within cell towers. Verizon attorneys like to tell us that it is the fault of somebody else who hasn't done proper maintenance, but Verizon knows they have a problem with their macro towers, at a minimum. I'll tell you how I know they know.

I testified before the California Senate Committee on Energy, Utilities and Communications on April 19 in opposition to SB 556, a bill that Gov. Newsom just vetoed. I talked about the risk of cell tower and telecommunications equipment fires and after I was done testifying and was on mute, several senators spoke up and expressed concern. I remained on mute (I was testifying remotely) and the bill's author, Sen. Dodd, called on Verizon VP lobbyist/attorney Rudy Reyes for rebuttal. Mr. Reyes failed to present an accurate picture of the risks posed by telecommunications equipment and one thing in particular needs to be shared with you. He said there will be "less fire risk" with the 5G buildout because there will be "fewer macro towers".

First of all, that's not true. Every 4 to 5 small cells needs a macro tower to power it so the need for macro towers will remain. Perhaps the rate of increase in macro towers will decline a bit, but they will still be very much part of telecom infrastructure. What is hard to miss in Mr. Reyes's rebuttal is the fact that he said there would be "less fire risk because there will be fewer macro towers." Sen. Dodd did not know I was going to be testifying because I didn't know I was going to be able to testify until right before I went on. So I suspect there was a quick huddle to determine how to best allay the fire concerns expressed by some of the senators. When I relayed this testimony to Tony Simmons, his immediate response was that through an "excited utterance" Mr. Reyes had just admitted that Verizon knows they've got fire problems with their macro towers. I think Tony was right.

Scott McCollough and I are trying to the best of our ability to help Malibu. Through attention to electric fire safety we are trying as best we know how to reduce the fire risk in cell towers coming into Malibu. The risk will still be there of electrical and structural engineering flaws, but we are trying to catch the obvious, and the not so obvious, hazards. In order to do that we need Staff to be paying very close attention to each application. Staff should *want* to ensure electrical and structural engineering rigor just as much as we do. In order for them to do this, their system has to be working like most other cities operating under the shot clock scenario.

Knowing how CMS works, and why they have one of the better reputations for efficiency, I think it would be good if some well-placed leaders in this community like you and our former mayor were to ask some important questions of Staff:

- 1) Is Bob Ross the first person to see the telecom application? If not, why not? He should be because this is what he does in every other city that I'm aware of where CMS is used as the permitting entity. Bob prides himself in going over applications with a very critical eye. I remember he told me one time that 99% of the applications that he sees the first time around are incomplete. To me that's a very first step in stopping fires before they begin. If the application is incomplete, stop the shot clock, send it back to the carrier with a written letter expressing exactly what is missing and what is expected by the city of Malibu.

2) Does Bob Ross write a report on each proposed cell tower, and does staff follow Bob Ross's recommendations?

3) Does Planning Commission see Bob Ross's report, if he does indeed write one? He has a great deal of telecommunications expertise and he knows how to recognize when something does not look electrically or structurally sound. I know this from talking to Bob back in San Diego. So is Bob's knowledge of this technology being fully utilized?

4) If Bob Ross is opposed to a project at the Planning Commission stage, but Planning Commission passes that project, is City Council apprised of Mr. Ross's original position on the project?

5) Who is doing post-construction inspections? Is it CMS? Is it somebody else? Where's the checklist? How can the residents know that the critical criteria for electrical and structural safety are being checked off? It's not enough to check the boxes and say that a particular carrier's project adheres to all of the electrical, fire and building codes. I believe there should be greater transparency for the residents. You have some of the brightest and most informed residents have met in any city. Shouldn't they have the opportunity to review the post construction inspection report?

As you pointed out in one of your emails, Bruce, there is a great deal of trust that is being placed in the carriers when a permit is issued before the city has even seen the full construction plans. How do we know that Verizon or AT&T or T-Mobile is not going to add another cabinet that weighs 600 pounds with another block of batteries that weighs another 1200 pounds to a rooftop zoning drawing? We don't know. But we do know that three months from now the Redundancy Program mandated by the CPUC, in large part because your residents could not communicate during the Woolsey Fire when the power was cut, nor could the residents of Paradise, will go into effect for Tier 2 and Tier 3 extremely high risk fire zones. That includes all of Malibu. That Redundancy Program mandating 72 hours of communication by way of battery or portable generator goes into effect retroactively for every cell tower in Malibu beginning January 2022, but it does come with some risks. Those batteries for some macro towers can weigh exactly what I just quoted you. What does that do to the structural integrity of a building when that project is on the roof? These things need to be evaluated upfront with multiple bright minds focused on the possibilities – not at the backend with a checklist on a clipboard.

Remember when we pushed to get the electric fire safety protocol passed, we emphasized that telecom was exempt from the National Electric Code (NEC) and just months after passage of the Telecommunications Act of 1996, the state of California in GO159 exempted telecom from California's electric code. We did not find that Los Angeles County was imposing requirements on telecom to make up for the omissions at the federal and state level, perhaps because they didn't know – because neither did we, initially – but also, very few counties are going to want to be proactive and hold telecom's feet to the fire. That's why we wanted Malibu to protect Malibu by enforcing our electric fire safety protocol. We need to upgrade that Urgency Ordinance without doubt, but in the meantime there's so much Staff can be doing that perhaps they are not.

Malibu needs inspectors who are not just going to check off boxes but who are going to understand that we have fought for a higher level of adherence to the proper codes in this city that has burned twice at the hands of telecom. Thank you so much for taking the time to ask the important questions that will ultimately make Malibu a safer city.

Respectfully,

*Susan*

SUSAN FOSTER

Medical Writer

Honorary Firefighter, San Diego Fire Department



**Julie Stuva**



**Subject:** My thoughts on the application process & how it might be improved

**FILED**  
City of Malibu  
Office of the City Clerk  
Meeting Date 10-11-21  
Agenda Item # 4B, 4C, & 4D

**From:** Susan Foster [redacted] >  
**Sent:** Sunday, October 10, 2021 11:57 PM  
**To:** Mikke Pierson <[mpierson@malibucity.org](mailto:mpierson@malibucity.org)>  
**Cc:** W. Scott McCollough [redacted] >  
**Subject:** My thoughts on the application process & how it might be improved

Dear Mikke,

I want to be very clear I am not writing in response to any specific cell tower project that Scott McCollough and I have appealed or may be appealing. You and I have connected on the issue of fire since I first testified before Malibu City Council in August 2020. I sent you an email either later that evening or the next day about concerns with respect to Jonathan Kramer, and you wrote back almost immediately to thank me for writing and said that you might be needing some assistance with fire in the future. I think with me you know this commitment comes very much from the heart, and I'm proud to have worked with Tony Simmons and very proud to continue to work with Scott McCollough to make Malibu safer.

I wanted to share some of my observations & concerns that I just shared in a separate email to Councilmember Bruce Silverstein in response to some of the questions he brought up that struck me as important and made me feel this was an opportune time to share with the two of you some concerns I have about Staff's process in reviewing telecommunications applications.

Yet first a word on the issue of fire and firefighters. You may recall that I testified before the City Council in August 2020 about the SPECT brain scan study I had organized of California firefighters (2004) at a station where the men were experiencing severe and often disabling neurological symptoms. The symptoms had begun after installation of the cell tower in front of their station in the late 1990s. As a result of that pilot study in which we found brain damage in all six of the firefighters tested, word started to spread, more symptoms by firefighters at other stations were shared, and a movement began in California among the local unions which culminated in an exemption in AB 537, signed into law by Gov. Newsom on October 4, 2021, granting an exemption to all fire stations in California from 5G cell towers.

Of course, it would be illegal to have an exemption on health grounds so the wording centers around the "unique configuration" of fire stations and the need for preparedness on the part of firefighters. This is the first such exemption of its kind in the world. The wheels of change may be cumbersome and awkward and frustratingly time-consuming, but with some creative language it is good to see that those wheels still turn.

Yet back to Bruce's emails which touched on some important questions and for me, highlighted problems that I see within the process itself. I'd like to put these concerns in your very capable hands and see what resonates with you. I don't know what Staff's process is from the time the application hits the Planning Department at what is most likely 4:55 PM on a Friday afternoon with the shot clock tolling over the weekend until they have a report and recommendation ready for Planning Commission, but I do have the sense that Bruce's emails have hit upon some problems regarding bias, or at least the appearance of bias. Maybe that appearance of bias is just "overwhelm", because clearly the process is not running efficiently, and staff is buried in an avalanche of building permits at the same time they're getting hit with a ton of telecom applications.

What troubles me and this is why I'm reaching out to you and Bruce, is that the system does appear broken to me. Staff is running out of time to fully and perhaps fairly evaluate the applications as they come in. It was my understanding that CMS was retained to replace Jonathan Kramer's other company, Permit Team LLC (same principals as Telecom Law Firm), to do most of the permitting. That change was made a long time ago and we are not hearing from Bob Ross. Bruce quoted Bob Ross and I was glad to know that you all have access to his evaluation of why one of the projects claimed to be a small cell by Verizon did not appear to be a small cell by Bob Ross. I believe the man knows what he's talking about

and I think everybody would like to hear from him more. The more you scrutinize the applications as they come in, the greater you increase your chances that you will help prevent another Woolsey. In my experience knowing Bob, he knows when electrical drawings are incomplete and he knows when the ANSI/APCO structural engineering requirements are not being applied.

I lived in San Diego for 32 years and during the latter part of that time my path crossed with Bob at various meetings. I recommended CMS because I had talked with Bob at length about his process and I would like to ask you if you have any idea whether or not Bob is being properly utilized in Malibu?

Bob typically has a checklist and he knows telecom likes to send someone to drop the applications off right before the end of the business day on Friday, so right away 2 days are lost because the shot clock is running on Saturday and Sunday. Bob prides himself on going through applications within 24 – 48 hours. He compares what the carriers have submitted with his checklist and when something is missing, he very specifically lets the carrier know what is missing and that tolls the shot clock. We are seeing some very incomplete applications in Malibu. That begs the question: Is Staff actually using Bob Ross or not? He was at the meeting on October 5 on the appeal, but his presence at some of the meetings does not demonstrate that he is actually seeing each application as it comes in to Planning Department. I know Staff is dealing with multiple telecommunications applications and also building permits as Malibu struggles to recover as best as the city can after losing over 400 homes in the Woolsey Fire. So I want to cut Staff some slack because I can imagine it is a burdensome job. However, perhaps there is a lack of efficiency if Staff is continuing to process telecom permits the "old" way, as smaller municipalities tended to do. But small cells and shot clocks changed everything and there is no longer time to get everything done if there is not immediate attention given to every single application as it comes in.

The reason this is so important to me comes down to one thing and that's fire. I signed on with Scott McCollough to try to prevent more telecom fires in Malibu, and hopefully, throughout the West, in the long run. I am updating the white paper that Tony Simmons and I submitted to Planning Commission and City Council because I have found one more California fire that was telecom-initiated and that brings the total to four, including Malibu Canyon Fire and Woolsey Fire. We are learning more about the possible internal causes of electrical fires within cell towers. Verizon attorneys like to tell us that it is the fault of somebody else who hasn't done proper maintenance, but Verizon knows they have a problem with their macro towers, at a minimum. I'll tell you how I know they know.

I testified before the California Senate Committee on Energy, Utilities and Communications on April 19 in opposition to SB 556, a bill that Gov. Newsom just vetoed. I talked about the risk of cell tower and telecommunications equipment fires and after I was done testifying and was on mute, several senators spoke up and expressed concern. I remained on mute (I was testifying remotely) and the bill's author, Sen. Dodd, called on Verizon VP lobbyist/attorney Rudy Reyes for rebuttal. Mr. Reyes failed to present an accurate picture of the risks posed by telecommunications equipment and one thing in particular needs to be shared with you. He said there will be "less fire risk" with the 5G buildout because there will be "fewer macro towers".

First of all, that's not true. Every 4 to 5 small cells needs a macro tower to power it so the need for macro towers will remain. Perhaps the rate of increase in macro towers will decline a bit, but they will still be very much part of telecom infrastructure. What is hard to miss in Mr. Reyes's rebuttal is the fact that he said there would be "less fire risk because there will be fewer macro towers." Sen. Dodd did not know I was going to be testifying because I didn't know I was going to be able to testify until right before I went on. So I suspect there was a quick huddle to determine how to best allay the fire concerns expressed by some of the senators. When I relayed this testimony to Tony Simmons, his immediate response was that through an "excited utterance" Mr. Reyes had just admitted that Verizon knows they've got fire problems with their macro towers. I think Tony was right.

Scott McCollough and I are trying to the best of our ability to help Malibu. Through attention to electric fire safety we are trying as best we know how to reduce the fire risk in cell towers coming into Malibu. The risk will still be there of electrical and structural engineering flaws, but we are trying to catch the obvious, and the not so obvious, hazards. In order to do that we need Staff to be paying very close attention to each application. Staff should *want* to ensure electrical and structural engineering rigor just as much as we do. In order for them to do this, their system has to be working like most other cities operating under the shot clock scenario.

Knowing how CMS works, and why they have one of the better reputations for efficiency, I think it would be good if some well-placed leaders in this community like you as the former mayor and Paul Grisanti as the present mayor were to ask some important questions of Staff:

1) Is Bob Ross the first person to see the telecom application? If not, why not? He should be because this is what he does in every other city that I'm aware of where CMS is used as the permitting entity. Bob prides himself in going over applications with a very critical eye. I remember he told me one time that 99% of the applications that he sees the first time around are incomplete. To me that's a very first step in stopping fires before they begin. If the application is incomplete, stop the shot clock, send it back to the carrier with a written letter expressing exactly what is missing and what is expected by the city of Malibu.

2) Does Bob Ross write a report on each proposed cell tower, and does staff follow Bob Ross's recommendations?

3) Does Planning Commission see Bob Ross's report, if he does indeed write one? He has a great deal of telecommunications expertise and he knows how to recognize when something does not look electrically or structurally sound. I know this from talking to Bob back in San Diego. So is Bob's knowledge of this technology being fully utilized?

4) If Bob Ross is opposed to a project at the Planning Commission stage, but Planning Commission passes that project, is City Council apprised of Mr. Ross's original position on the project?

5) Who is doing post-construction inspections? Is it CMS? Is it somebody else? Where's the checklist? How can the residents know that the critical criteria for electrical and structural safety are being checked off? It's not enough to check the boxes and say that a particular carrier's project adheres to all of the electrical, fire and building codes. I believe there should be greater transparency for the residents. You have some of the brightest and most informed residents I have met in any city. Shouldn't they have the opportunity to review the post construction inspection report?

There is a great deal of trust that is being placed in the carriers when a permit is issued before the city has even seen the full construction plans. How do we know that Verizon or AT&T or T-Mobile is not going to add another cabinet that weighs 600 pounds with another block of batteries that weighs another 1200 pounds to a rooftop zoning drawing? We don't know. But we do know that three months from now the Redundancy Program mandated by the CPUC, in large part because your residents could not communicate during the Woolsey Fire when the power was cut, nor could the residents of Paradise, will go into effect for Tier 2 and Tier 3 extremely high risk fire zones. That includes all of Malibu. That Redundancy Program mandating 72 hours of communication by way of battery or portable generator goes into effect retroactively for every cell tower in Malibu beginning January 2022, but it does come with some risks. Those batteries for some macro towers can weigh exactly what I just quoted you. What does that do to the structural integrity of a building when that project is on the roof? These things need to be evaluated upfront with multiple bright minds focused on the possibilities – not at the back end with a checklist on a clipboard.

Remember when we pushed to get the electric fire safety protocol passed, we emphasized that telecom was exempt from the National Electric Code (NEC) and just months after passage of the Telecommunications Act of 1996, the state of California in GO159 exempted telecom from California's electric code. We did not find that Los Angeles County was imposing requirements on telecom to make up for the omissions at the federal and state level, perhaps because they didn't know – because neither did we, initially – but also, very few counties are going to want to be proactive and hold telecom's feet to the fire. That's why we wanted Malibu to protect Malibu by enforcing our electric fire safety protocol. We need to upgrade that Urgency Ordinance without doubt, but in the meantime there's so much Staff can be doing that perhaps they are not.

Malibu needs inspectors who are not just going to check off boxes but who are going to understand that we have fought for a higher level of adherence to the proper codes in this city that has burned twice at the hands of telecom. Thank you so much for all you have done literally since before you took office to heal the wounds of fire in Malibu, including preventing future fires.

With all best wishes,

*Susan*

SUSAN FOSTER

Medical Writer

Honorary Firefighter, San Diego Fire Department

