

# Council Agenda Report

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

Prepared by: Tyler Eaton, Assistant Planner

Reviewed by: Richard Mollica, Planning Director

Approved by: Steve McClary, Interim City Manager

Date prepared: October 26, 2021 Meeting Date: November 2, 2021

Subject: Appeal No. 21-006 - Appeal of Planning Commission Resolution No. 21-37 (22967.5 Pacific Coast Highway; Appellant: Steven Hakim; Applicant: Rob Searcy of Fulsang Architecture on behalf of Verizon Wireless; Property Owner: California Department of Transportation) (Continued from October 11, 2021)

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**RECOMMENDED ACTION:** Adopt Resolution No. 21-59 (Exhibit A), determining the project is categorically exempt from the California Environmental Quality Act (CEQA), denying Appeal No. 21-006 and approving Coastal Development Permit (CDP) No. 20-043 and Wireless Communications Facility (WCF) No. 20-022 for Verizon Wireless to install an omnidirectional canister antenna on top of a replacement streetlight pole reaching a maximum height of 34 feet, 9 inches and electrical support equipment six feet west of the originally approved location in Planning Commission Resolution No. 21-37, including Variance (VAR) No. 20-028 to permit a streetlight pole over 28 feet in height and Site Plan Review (SPR) No. 20-059 to install and operate a wireless communications facility within the public right-of-way (ROW) located at 22967.5 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 October 25, 2021, City Council meeting was then adjourned to November 2, 2021. 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.

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

### *Staff Report*

- Updated the dates and agenda item numbers throughout;
- Added a summary of changes to the *Discussion* section;
- Fixed minor typographical errors such as “hat” to “that”;
- Added language in the *Correspondence* section about the addition of Exhibit G;
- Exhibit G in the *Exhibits* section; and
- Changed “three” feet to “six” feet in the recommended action and throughout to properly display staff’s recommendation.

### *Resolution*

- Added a recital addressing the continuance;
- Fixed minor typographical errors such inserting correct section numbers throughout;
- Updated dates;
- Revised the opening paragraph of *Section 5* to meet the Councilmembers’ standards;
- Changed “three” feet to “six” feet in the action title to properly display staff’s recommended action; and
- Added a condition stating if the movement three feet west of the existing pole is infeasible as sufficiently demonstrated to the Planning Director, then the original location would be acceptable

The matter concerns an appeal (Exhibit B) of WCF No. 20-022 and CDP No. 20-043, VAR No. 20-028, and SPR No. 20-059, approved by the Planning Commission on May 3, 2021 for the installation of a wireless communications facility attached to a replacement streetlight pole in the California Department of Transportation (Caltrans) public ROW.

The appellant, Mr. Steven Hakim, contends that:

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

The appellant outlines five major points for the basis for his appeal. All five points are summarized below accompanied by a staff response. The full text of the appeal bases is included in Exhibit B. Mr. Hakim is one of the owners of the Malibu Inn and the surface parking lot, which are properties located immediately north of the project site.

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

### ***Project Description***

The proposed scope of work is as follows:

- Replacement of a streetlight pole topped with a 24-inch tall, 12-inch diameter omnidirectional canister antenna that reaches an overall height of 34 feet, 9 inches;
- Installation of electrical support equipment consisting of one remote radio unit (RRU) which will be concealed inside a 42-inch tall by 12-inch diameter shroud below the antenna atop the pole; and
- Installation of three handholes inside the concrete sidewalk within the public ROW, as follows:
  1. One handhole box for Verizon Wireless fiber optic lines;
  2. One handhole box for a power disconnect switch; and
  3. One handhole box for Southern California Edison (SCE) distribution.

### ***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.

On June 25, 2021, and July 23, 2021, staff met with the appellant and applicant team to try and find a resolution. There was a consensus that if Verizon Wireless could move the replacement pole three feet to the west of the existing pole, then the appellant would be more comfortable with the location as it would reduce view impacts to the appellant's future development on the parking lot in which the pole is currently approved to be in front of. The meetings concluded without the parties coming to an agreement, but staff was not given sufficient evidence from Verizon Wireless that the movement three feet to the west was not a practical solution. Staff is recommending that the City Council approves the new location, six feet to the west of the originally approved location, which is three feet west of the existing streetlight pole, with a condition that if Verizon Wireless can provide

sufficient evidence to the Planning Director that the movement is not feasible, then the original location would be acceptable. The new location would not change any of the findings in Resolution No. 21-59 nor would it change the analysis in this report.

Staff is also adding three conditions to Resolution No. 21-59 that differ from the Planning Commission Resolution No. 21-37, Nos. 51, 52, and 53, requiring the applicant to submit into building plan check and pull all necessary permits with Building Safety Division prior to installation. These conditions were required in later applications but not imposed at the time of the Planning Commission hearing on May 3, 2021.

**Figure 1 – Project Area Aerial Photo**



Source: Malibu City GIS 2021

## **APPEAL TO THE CITY COUNCIL**

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



**Appellant: Mr. Steven Hakim**

*Appeal Item 1: A notice was not received, and his property is within 500 feet of the proposed application.*

**Staff Response**

On April 8, 2021, a notice was sent to all property owners and occupants of properties within a 500-foot radius as per the requirements of MMC Section 17.04.180. The mailing data was provided by the applicant. The mailing list included the two properties partly owned by the appellant that are located just north of the project site. After the Planning Commission, the appellant confirmed that the owner's address in the mailing list was correct although he reiterated that he never received the notice. Staff checked to see if there were any mailers returned by the post office for the project and the one sent to appellant was never returned. Staff has no way of verifying if a member of the public receives the notice other than by them directly telling us or the City receiving returned mailers from the post office. It should also be noted that the appellant was notified by a Planning Commissioner of the project prior to the Planning Commission meeting and staff confirmed the meeting with the appellant. The appellant did not speak at the Planning Commission meeting.

*Appeal Item 2: The subject site is within the boundary limits of public parks within the City.*

**Staff Response**

As stated in the May 3, 2021 Commission Agenda Report (Exhibit C), the project site is within 500 feet of Surfrider Beach. Pursuant to LIP Section 3.16.5(N), no wireless communications facility shall be within 500 feet of a park unless a finding is made showing that a clear need for the facility exists. The vast majority of PCH in Malibu is within 500 feet of a beach which is was considered as a park for the purpose of this application. The coverage maps provided by Verizon Wireless shows that the general area has good coverage already, however, Verizon Wireless aims to add additional network capacity to the area. The area is highly congested with pedestrians, customers, beachgoers, and vehicles due to its proximity to the Malibu Pier, Surfrider Beach, and the surrounding commercial properties. As a result, staff and the Planning Commission supported the need for this facility and the Planning Commission approved the finding justification related to the facility's needs.

*Appeal Item 3: The subject site is out of character for the neighborhood and could impact scenic views.*

**Staff Response**

The proposed facility is located on the landside of PCH and replaces an existing streetlight pole in front of what is currently a parking lot partly owned by appellant. Staff assessed the potential for view impacts and determined that there would be minor impacts to the existing development. Staff also checked for any homes that have a primary view determination within 1,000 feet of the site and found two, neither of which were adversely

impacted by the replacement streetlight and atop wireless communications facility. Being on the landside of PCH, motorists along the scenic highway would also not be impacted. The single-family residences located behind appellant's property sit high enough on a steep ascending slope that there will be no significant impacts to bluewater views of the Pacific Ocean. There is already a streetlight pole at this location and the proposed height and diameter increases are not expected to result in a significant public visual impact. In fact, the code encourages the use of existing utility poles to minimize the potential for additional freestanding poles in the public ROW which could have a cumulative visual impact.

Additionally, the proposed wireless communications facility is similar to other facilities along PCH that utilize utility infrastructure. The project is proposed in a public ROW adjacent to commercially zoned parcels which is a preferred location pursuant to LIP Section 3.16.11(B). The project is sited away from residential zoning districts and is centrally located around commercial and visitor serving properties.

*Appeal Item 4: The variance would be detrimental to public interest because it would block views and can be potentially dangerous to future construction and other occupants in the area.*

#### Staff Response

As stated previously, the view impacts are less than significant, and the increased height and diameter are not expected to block views of existing development. The appellant is currently processing an application for a motel at the adjacent surface parking lot. However, the motel has not been approved and it is not existing development. Staff evaluated view impacts based on existing conditions at the time the application was deemed complete.

The project was reviewed by the City's wireless consultants and was deemed to be in compliance with the FCC regulations regarding radio frequency emissions. The project is conditioned to complete a building plan check with the Building Safety Division and obtain all necessary permits to ensure the site will be constructed in compliance with Building Code provisions. Additionally, the City's wireless consultant and a building inspector will conduct final inspections after the site is installed to ensure it is built in accordance with the approved plans.

*Appeal Item 5: There is no special circumstance to grant the variance request.*

#### Staff Response

Verizon Wireless proposes to use a Southern California Edison (SCE) streetlight for their wireless communications facility. SCE only allows a limited number of designs in order to fit wireless communications equipment onto its streetlight poles. According to Verizon Wireless, SCE did not have a design for this site that would allow them to maintain the height of the existing pole or stay within the 28-foot height limit. Staff was willing to accept the design as proposed with the variance because collocations utilizing existing

infrastructure are a preferred design option over allowing a new independent pole in the ROW pursuant to LIP Section 3.16.11(C).

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: Staff met with the appellant and the applicant team two times, once in June and once in July of 2021, to try and find a resolution. The meetings concluded without a final resolution agreed upon. Additional Correspondence is included as Exhibit E. Correspondence received for the October 11, 2021 City Council hearing are attached as Exhibit G.

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

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. 21-59 denying Appeal No. 21-006 and approving WCF No. 20-022, CDP No. 20-043, VAR No. 20-028, and SPR No. 20-059, subject to the conditions of approval in the resolution.

EXHIBITS:

- A. City Council Resolution No. 21-59
- B. Appeal No. 21-006
- C. Planning Commission Resolution No. 21-37
- D. May 3, 2021 Commission Agenda Report Item 5.B. and Attachments 1-8
  - 1. Planning Commission Resolution No. 21-37
  - 2. Project Plans
  - 3. Visual Demonstration Exhibits
  - 4. Signal Coverage Maps
  - 5. Alternative Site Analysis
  - 6. RF-EME Jurisdictional Report
  - 7. FCC Compliance
  - 8. Public Hearing Notice
- E. Correspondence
- F. Public Hearing Notice

G. Correspondence received for the October 11, 2021 City Council hearing

## RESOLUTION NO. 21-59

A RESOLUTION OF THE CITY OF MALIBU CITY COUNCIL DETERMINING THE PROJECT IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENT QUALITY ACT, DENYING APPEAL NO. 21-006 AND APPROVING COASTAL DEVELOPMENT PERMIT NO. 20-043 AND WIRELESS COMMUNICATIONS FACILITY NO. 20-022 FOR VERIZON WIRELESS TO INSTALL AN OMNIDIRECTIONAL CANISTER ANTENNA ON TOP OF A REPLACEMENT STREETLIGHT POLE REACHING A MAXIMUM HEIGHT OF 34 FEET, 9 INCHES AND ELECTRICAL SUPPORT EQUIPMENT SIX FEET WEST OF THE ORIGINALLY APPROVED LOCATION IN PLANNING COMMISSION RESOLUTION NO. 21-37, INCLUDING VARIANCE NO. 20-028 TO PERMIT A STREETLIGHT POLE OVER 28 FEET IN HEIGHT AND SITE PLAN REVIEW NO. 20-059 TO INSTALL AND OPERATE A WIRELESS COMMUNICATIONS FACILITY WITHIN THE PUBLIC RIGHT-OF-WAY LOCATED AT 22967.5 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 July 14, 2020, a new application for Wireless Communications Facility (WCF) No. 20-022 and Site Plan Review (SPR) No. 20-059 was submitted by the applicant, Fulsang Architecture, on behalf of Verizon Wireless for the installation of a replacement streetlight pole topped with a wireless antenna, associated electrical equipment and backup battery unit. Coastal Development Permit (CDP) No. 20-043 and Variance (VAR) No. 20-028 were assigned to the project.

B. On August 9, 2020, a Notice of CDP Application was posted at the subject site attached to the existing pole to be replaced.

C. On September 21, 2020, planning staff deemed the project complete for processing.

D. On May 3, 2021, the Planning Commission adopted Planning Commission Resolution No. 21-37, approving WCF No. 20-022, CDP No. 20-043, VAR No. 20-028, and SPR No. 20-059.

E. On May 12, 2021, Steven Hakim filed timely Appeal No. 21-006 of Planning Commission Resolution No. 21-37.

F. On September 16, 2021, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a radius of 500 feet from the subject property and all interested parties.

G. On October 11, 2021, the City Council adjourned the item to the October 25, 2021 Regular City Council meeting.

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



I. 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 Mr. Steven Hakim contends that the findings or conditions are not supported by the evidence, or decision is not supported by the findings and there was a lack of a fair or impartial hearing. 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. On April 8, 2021, a notice was sent to all properties within a 500-foot radius as per the requirements of MMC Section 17.04.180, notifying members of public of the May 3, 2021, Planning Commission meeting and of which the subject application will be heard. Planning staff ensured the notice was sent out to all owners and occupants of property within 500 feet of the subject site and there was no evidence confirming that a notice was never sent to the appellant.

B. The subject site is within 500 feet of Surfrider Beach. The coverage maps provided by Verizon Wireless show that the general area has good coverage already, however, Verizon Wireless aims to add additional network capacity to the area. The area is highly congested with pedestrians and vehicles due to its proximity to Malibu Pier, Surfrider Beach, and the surrounding commercial properties.

C. The proposed project will result in minor impacts. Primary view determinations within 1,000 feet of the site are not impacted by the proposed project. Motorists along PCH will not be impacted of scenic views of the Pacific Ocean. The single-family residences located behind Mr. Hakim's property sit high enough on a steep ascending slope that there will be no significant impacts to bluewater views of the Pacific Ocean. The proposed wireless communications facility is similar to other facilities along PCH that utilize utility infrastructure. The project is proposed in a right-of-way (ROW) adjacent to commercially zoned parcels which is a preferred location pursuant to LIP Section 3.16.11(B).

D. The project is conditioned to complete a building plan check with the Building Safety Division and pull all necessary permits to ensure the site will be constructed in compliance with State and local law. Additionally, the City's wireless consultant and a building inspector will conduct final inspections after the site is installed to ensure it was built in accordance with the approved plans and in compliance with federal, State, and local law.

E. Southern California Edison only accepts a limited amount of designs when wireless carriers plan to utilize their utility poles in the ROW. There were no designs available that would keep the height at or under that of the existing pole requiring the need for a variance.

#### 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 LCP Local Implementation Plan (LIP) Sections 13.7(B) and 13.9, the City Council hereby makes the findings of fact below, and approves CDP No. 20-043 and WCF No. 20-022 for Verizon Wireless to install an omnidirectional canister antenna on top of a replacement streetlight pole reaching a maximum height of 34 feet, 9 inches and electrical support equipment, including Variance (VAR) No. 20-028 to permit a streetlight pole over 28 feet in height and Site Plan Review (SPR) No. 20-059 to install and operate a wireless communications facility within the public right-of-way (ROW) located at 22967.5 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, alternative site analysis, coverage maps, 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 project is located on PCH's public ROW, the first public road and the sea. However, the proposed project will not impede public access to the beach in any way and therefore, the project will be in compliance with Chapter 3 of the Coastal Act.

3. The project is the least environmentally damaging alternative. The replacement pole is on the landside of PCH and there are no anticipated impacts to scenic views of the Pacific Ocean.

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

VAR No. 19-028 will allow the installation of a wireless communications facility above 28 feet in height.

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 same zoning classification. The

proposed co-location alternative is recommended in both the LIP and MMC as a preferred mounting technique and eliminates the need for a new pole that in comparison would be more visually intrusive. Instead, the applicant proposes to collocate on a replacement streetlight pole. Collocation is recommended in both the LIP and MMC as a preferred mounting technique. Further, the Southern California Edison (SCE) only has a couple of streetlight options that can be used for collocation with wireless facilities in order for the safe operation and maintenance of the streetlight. 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 safety standards and not detrimental to public interest in terms of a less visually intrusive alternative.

2. 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 28 feet in height 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.

3. The proposed collocation with an existing streetlight pole exceeds 28 feet in height in order to align with the most restrictive design criteria pursuant to LIP Section 3.16.6. There are other similar facilities collocated 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 collocated facilities exceed 28 feet in height in order to meet those requirements.

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

5. The proposed facility is in the public ROW adjacent to commercial 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 co-location of the facility meets the recommended design criteria in the LIP and MMC.

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

7. The variance complies with State and local law in that it meets the requirements of the FCC and is co-located on a streetlight pole, a location preferred in the Malibu LIP and MMC. There are no visual impacts to scenic resources.

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

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

SPR No. 20-059 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.

2. The proposed wireless communications facility will be painted a grey color to match the existing pole. The proposed project is generally compatible in size, bulk, and height to existing streetlight poles located along PCH.

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 Facility (FCC).

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 will not affect any scenic views of the Pacific Ocean and Santa Monica Mountains as it is located in the developed public ROW of a commercial area. Furthermore, the project is the least visually intrusive alternative that still meets Verizon Wireless's goals and objectives.

2. The subject parcel is located on the 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, SCE, and the City Public Works 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 CDP No. 20-043, WCF No. 20-022, VAR 20-028 and SPR No. 20-059, 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.



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2. Approval of this application is to allow the project as follows:
    - a. A replacement streetlight pole topped with a 24-inch tall, 12-inch diameter omnidirectional canister antenna that reaches an overall height of 34 feet, 9 inches;
    - b. Electrical support equipment consisting of one remote radio unit (RRU) which will be concealed inside a 42-inch tall by 12-inch diameter shroud below the antenna atop the pole; and
    - c. Installation of three handholes inside the concrete sidewalk of the public ROW used as follows:
      - i. One handhole box for Verizon Wireless fiber optic lines;
      - ii. One handhole box for a power disconnect switch; and
      - iii. One handhole box for Southern California Edison (SCE) distribution.
  3. Subsequent submittals for this project shall be in substantial compliance with plans on-file with the Planning Department, date-stamped **July 14, 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 Public Works Department 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. 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 (FCC), and LACFD requirements, as applicable. Notwithstanding this review, all required permits, including but not limited to an encroachment permit from the California Department of Transportation, shall be secured.
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 co-location 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 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.
28. 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.
29. 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.
30. 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.
31. 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.
32. 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.

33. 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

34. 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

35. 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.
36. 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) 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.
37. 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.

38. 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.
39. 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.
40. 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.
41. The permittee shall maintain the paint, color and finish of the facility in good condition at all times.
42. 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.
43. 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.

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- 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.
44. 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.
45. 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.
46. 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.
47. 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.
48. 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.
49. Permittee shall promptly remove any graffiti on the wireless facility at permittee's sole expense within 48 hours after notice.
50. The City's grant of a permit for a small cell facility request does not waive, and shall not be construed to waive, any standing by the city to challenge any FCC orders or rules related to small cell facilities, or any modification to those FCC orders or rules.
51. 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.
52. 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;

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- 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.
53. 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.
54. If the applicant submits sufficient evidence as determined by the Planning Director that the movement of the streetlight pole three feet to the west of the existing pole is infeasible, then the location three feet east of the existing pole will be allowed.

#### 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.

#### 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.

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PAUL GRISANTI, Mayor

ATTEST:

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KELSEY PETTIJOHN, City Clerk  
(seal)

APPROVED AS TO FORM:

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

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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)

## PLANNING DEPARTMENT COASTAL DEVELOPMENT PERMIT NOTICE OF APPEAL CHECKLIST

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

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

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

### Part I. Project Information

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

CDP No. 20-043

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

May 3, 2021

3. Who made the decision you are appealing?

☐ Planning Director

☒ Planning Commission

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

22167.5 PCH

### Part II. Appeal Summary

Page 1 of 4

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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)

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

Fulsang Architecture for Verizon Wireless

3. Indicate the nature of your appeal.

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

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

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

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

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

☐ The decision was contrary to law.

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

I did not receive a notice in the mail  
for this hearing.

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 extra 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.*

Sorrider Plaza LLC  
PRINT APPELLANT'S NAME  
STEVEN HAKIM  
APPELLANT'S SIGNATURE

TELEPHONE NUMBER

DATE

05/12/21

Appellant's mailing address:

Appellant's email address:

**OFFICE USE ONLY**

Action Appealed: WCF No 20-022 / CDP 20-043

Appeal Period: 05/4/21 - 5/13/21

Date Appeal Form and required documents submitted: 5/12/21 Received by: P. Salazar

Appeal Completion Date: \_\_\_\_\_ by: \_\_\_\_\_  
(Name, Title)

Appeal fee due by 5/20/21.  
Mailing data due by 6/4/21.

Appeal Summary – CDP No. 20-043

- A notice was not received for the May 3<sup>rd</sup> planning commission hearing and our property is located well within 500 feet
- The subject site is within the boundary limit of public parks in the City
- The subject site is out of character with the neighborhood and has potential impacts for direct scenic views
- The variance would be detrimental to public interest as it will block scenic views, it is out of character with the neighborhood, and can be potentially hazardous to future construction directly near the site, as well as potentially hazardous with an omnidirectional canister antenna to occupants/future occupants in the area
- There is no special circumstance or exceptional characteristic applicable to the subject property to grant a variance in height and location



CITY OF MALIBU PLANNING COMMISSION  
RESOLUTION NO. 21-37

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. 20-043 AND WIRELESS COMMUNICATIONS FACILITY NO. 20-022 FOR VERIZON WIRELESS TO INSTALL AN OMNIDIRECTIONAL CANISTER ANTENNA ON TOP OF A REPLACEMENT STREETLIGHT POLE REACHING A MAXIMUM HEIGHT OF 34 FEET, 9 INCHES AND ELECTRICAL SUPPORT EQUIPMENT, INCLUDING VARIANCE NO. 20-028 TO PERMIT A STREETLIGHT POLE OVER 28 FEET IN HEIGHT AND SITE PLAN REVIEW NO. 20-059 TO INSTALL AND OPERATE A WIRELESS COMMUNICATIONS FACILITY WITHIN THE PUBLIC RIGHT-OF-WAY LOCATED AT 22967.5 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. July 14, 2020, a new application for Wireless Communications Facility (WCF) No. 20-022 and Site Plan Review (SPR) No. 20-059 was submitted by the applicant, Fulsang Architecture, on behalf of Verizon Wireless for the installation of a replacement streetlight pole topped with a wireless antenna, associated electrical equipment and backup battery unit. Coastal Development Permit (CDP) No. 19-075 and Variance (VAR) No. 20-028 were assigned to the project.

B. On August 9, 2020, a Notice of CDP Application was posted at the subject site attached to the existing pole to be replaced.

C. On September 21, 2020, Planning Staff deemed the project complete.

D. On April 8, 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 500-foot radius of the project site and to all interested parties.

E. On May 3, 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. 20-043 and WCF No. 20-022 for Verizon Wireless to install an omnidirectional canister antenna on top of a replacement streetlight pole reaching a maximum height of 34 feet, 9 inches and electrical support equipment, including VAR No. 20-028 to permit a streetlight pole over 28 feet in height and SPR No. 20-059 to install and operate a wireless communications facility within the public right-of-way (ROW) located at 22967.5 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, alternative site analysis, coverage maps, 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 project is located on PCH's public ROW, the first public road and the sea. However, the proposed project will not impede public access to the beach in any way and therefore, the project will be in compliance with Chapter 3 of the Coastal Act.

3. The project is the least environmentally damaging alternative. The replacement pole is on the landside of PCH and there are no anticipated impacts to scenic views of the Pacific Ocean.

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

VAR No. 19-028 will allow the installation of a wireless communications facility above 28 feet in height.

1. Evidence in the record demonstrates there are special characteristics for the proposed wireless communications facilities that makes it subject to a variance. The proposed co-location alternative is recommended in both the LIP and MMC as a preferred mounting technique and eliminates the need for a new pole that in comparison would be more visually intrusive. Instead, the applicant proposes to collocate on a replacement streetlight pole. Collocation is recommended in both the LIP and MMC as a preferred mounting technique. Further, the Southern California Edison (SCE) only has a couple of streetlight options that can be used for collocation with wireless facilities in order for the safe operation and maintenance of the streetlight. 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 safety standards and not detrimental to public interest in terms of a less visually intrusive alternative.



2. 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 28 feet in height 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.

3. the proposed collocation with an existing streetlight pole exceeds 28 feet in height in order to align with the most restrictive design criteria pursuant to LIP Section 3.16.6. There are other similar facilities collocated 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 collocated facilities exceed 28 feet in height in order to meet those requirements.

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

5. The proposed facility is in the public ROW adjacent to commercial 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 co-location of the facility meets the recommended design criteria in the LIP and MMC.

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

7. The variance complies with State and local law in that it meets the requirements of the FCC and is co-located on a streetlight pole, a location preferred in the Malibu LIP and MMC. There are no visual impacts to scenic resources.

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

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

SPR No. 20-059 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.

2. The proposed wireless communications facility will be painted a grey color to match the existing pole. The proposed project is generally compatible in size, bulk, and height to existing streetlight poles located along PCH.

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 Facility (FCC).

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 will not affect any scenic views of the Pacific Ocean and Santa Monica Mountains as it is located in the developed public ROW of a commercial area. Furthermore, the project is the least visually intrusive alternative that still meets Verizon Wireless's goals and objectives.

2. The subject parcel is located on the 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, SCE, and the City Public Works Department.

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

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

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

#### **SECTION 4. Planning Commission Action.**

Based on the foregoing findings and evidence contained within the record, the Planning Commission hereby approves CDP No. 20-043, WCF No. 20-022, VAR 20-028 and SPR No. 20-059, 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. A replacement streetlight pole topped with a 24-inch tall, 12-inch diameter omnidirectional canister antenna that reaches an overall height of 34 feet, 9 inches;
  - b. Electrical support equipment consisting of one remote radio unit (RRU) which will be concealed inside a 42-inch tall by 12-inch diameter shroud below the antenna atop the pole; and
  - c. Installation of three handholes inside the concrete sidewalk of the public ROW used as follows:
    - i. One handhole box for Verizon Wireless fiber optic lines;
    - ii. One handhole box for a power disconnect switch; and
    - iii. One handhole box for Southern California Edison (SCE) distribution.
3. Subsequent submittals for this project shall be in substantial compliance with plans on-file with the Planning Department, date-stamped **July 14, 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 Public Works Department 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 (FCC), and LACFD requirements, as applicable. Notwithstanding this review, all required permits, including but not limited to an encroachment permit from the City Public Works Department, 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. Permittees 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 co-location 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 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.
28. 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.
29. 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.
30. 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.
31. 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.



32. 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.
33. 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

34. 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

35. 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.
36. 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) 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.
37. 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.

38. 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.
39. 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.
40. 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.
41. The permittee shall maintain the paint, color and finish of the facility in good condition at all times.
42. 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.



43. Build-Out Conditions.

- a. Permittee shall not commence any excavation, construction, installation or other work on the project site until and unless it demonstrates to the City Public Works Department that the project complies with all generally applicable laws, regulations, codes and other rules related to public health and safety, including without limitation all applicable provisions in California Public Utilities Commission General Order 95 and MMC Chapters 8.12, 8.24 and 15.08.
  - b. To the extent that the pole owner requires greater or more restrictive standards than contained in California Public Utilities Commission General Order 95, those standards shall control.
44. 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.
45. 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.
46. 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.
47. 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.
48. 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.
49. Permittee shall promptly remove any graffiti on the wireless facility at permittee's sole expense within 48 hours after notice.
50. The City's grant of a permit for a small cell facility request does not waive, and shall not be construed to waive, any standing by the city to challenge any FCC orders or rules related to small cell facilities, or any modification to those FCC orders or rules.

Prior to Operation

51. 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.



52. 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.
53. 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.

Public Works

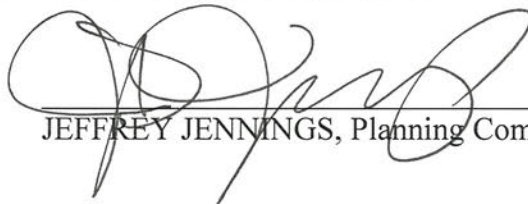
54. The proposed project includes improvements within the California Department of Transportation's public right-of-way. The applicant shall obtain a Caltrans Encroachment Permit for the proposed work within the public right-of-way prior to installation.

Fixed Conditions

55. 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 3<sup>rd</sup> day of May 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](mailto: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.

COASTAL COMMISSION APPEAL – An aggrieved person may appeal the Planning Commission's approval to the Coastal Commission within 10 working days of the issuance of the City's Notice of Final Action. Appeal forms may be found online at [www.coastal.ca.gov](http://www.coastal.ca.gov) or by calling (805) 585-1800. Such an appeal must be filed with the Coastal Commission, not the City.

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 21-37 was passed and adopted by the Planning Commission of the City of Malibu at the regular meeting thereof held on the 3<sup>rd</sup> day of May 2021, by the following vote:

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

  
KATHLEEN STECKO, Recording Secretary



# Commission Agenda Report

Planning Commission  
Meeting  
05-03-21

## Item 5.B.

To: Chair Jennings and Members of the Planning Commission

Prepared by: Tyler Eaton, Assistant Planner

Approved by: Richard Mollica, Planning Director

Date prepared: April 22, 2021 Meeting date: May 3, 2021

Subject: Wireless Communications Facility No. 20-022, Coastal Development Permit No. 20-043, Variance No. 20-028, and Site Plan Review No. 20-059 – An application for a new wireless communications facility on top of a replacement streetlight pole in the public right-of-way

Location: 22967.5 Pacific Coast Highway, within the appealable coastal zone

Nearest APN: 4452-019-005

Applicant: Fulsang Architecture for Verizon Wireless

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

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**RECOMMENDED ACTION:** Adopt Planning Commission Resolution No. 21-37 (Attachment 1) determining the project is categorically exempt from the California Environmental Quality Act (CEQA), and approving Wireless Communications Facility (WCF) No. 20-022 and Coastal Development Permit (CDP) No. 20-043 for Verizon Wireless to install an omnidirectional canister antenna on top of a replacement streetlight pole reaching a maximum height of 34 feet, 9 inches and electrical support equipment, including Variance (VAR) No. 20-028 to permit a streetlight pole over 28 feet in height and Site Plan Review (SPR) No. 20-059 to install and operate a wireless communications facility within the public right-of-way (ROW) located at 22967.5 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, signal coverage maps, alternative site analysis, Radio Frequency – Electromagnetic Energy (RF-EME)

Jurisdictional Report, and a Federal Communications Commission (FCC) compliance statement.

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

## **Project Overview**

The applicant proposes to install and operate a new WCF attached to a replacement streetlight pole mounted in the north parkway of the public ROW of PCH. This project was submitted on behalf of Verizon Wireless for placement of a new antenna in the Malibu Pier area in order to address signal coverage and capacity service to existing customers within the general area.

The City of Malibu adopted a new Urgency Ordinance to address wireless communications facilities in the ROW in December of 2020. This project was deemed complete by staff in September of 2020. The standards used for this project were those standards that were in place before adoption of the Urgency Ordinance. The City's code standards at the time of completion encourage co-location 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 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(E). The proposed project involves installation of a replacement streetlight pole with the antenna attached to the top and extending to a maximum height of 34 feet, 9 inches. VAR No. 20-028 is requested for the replacement streetlight pole with proposed antenna to project above 28 feet and the height of the existing streetlight pole. The additional height is necessary to co-locate on a replacement pole which is a preferred mounting technique pursuant to LIP Sections 3.16.7(F) and 3.16.10(D).

## ***CDP Requirement***

A wireless communications facility is typically exempt from the requirement to obtain a CDP. However, in this case, the proposed antenna requires installation of a replacement streetlight pole in a different location and does not qualify for the CDP exemption pursuant to LIP Sections 13.4.5 or 13.4. The siting of the proposed antenna requires installation of a replacement streetlight pole in order to meet the objectives of Verizon Wireless to provide a capacity solution and to increase antenna signal coverage in the general area as discussed in the Significant Gap in Signal Coverage and the Site Alternative Analysis

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



sections below. Furthermore, the application proposes development of a wireless facility in excess of 28 feet in height and therefore requires a variance.

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

The project site is located in the parkway of the PCH public ROW, approximately 120 feet northeast of the Malibu Pier. As outlined in Table 1, the project site is surrounded in all sides by existing commercial development, including the Malibu Pier and public parking across the street. As shown on the LCP ESHA and Marine Resources Map, the project site is not located on or adjacent to ESHA. However, the project site is located within the Appeal Jurisdiction of the California Coastal Commission as depicted on the Post-LCP Certification Permit and Appeal Jurisdiction Map.

<b>Table 1 – Surround Zoning and Land Uses</b>		
<b>Surrounding Properties</b>	<b>Zoning</b>	<b>Adjacent Land Uses</b>
22969 PCH (East)	CV-1	Commercial Building
22941 PCH (West)	CV-1	Chabad of Malibu
23000 PCH (South)	OS	Malibu Pier
APN: 4452-019-005 (North)	CV-1	Parking Lot

\*CV-1 = Commercial Visitor Serving – One  
OS = Public Open Space

**Figure 1 – 22967.5 Pacific Coast Highway**



Source: Malibu City GIS, 2020

The nearest existing commercial building is situated approximately 85 feet to the northwest. The proposed pole-mounted antenna is located on the concrete sidewalk within

PCH's public ROW. Existing streetlight 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, and the Malibu Pier as well as surrounding properties. However, there will be no impact to scenic resources from PCH nor Malibu Pier as an existing streetlight pole will be replaced on the landside of PCH.

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

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

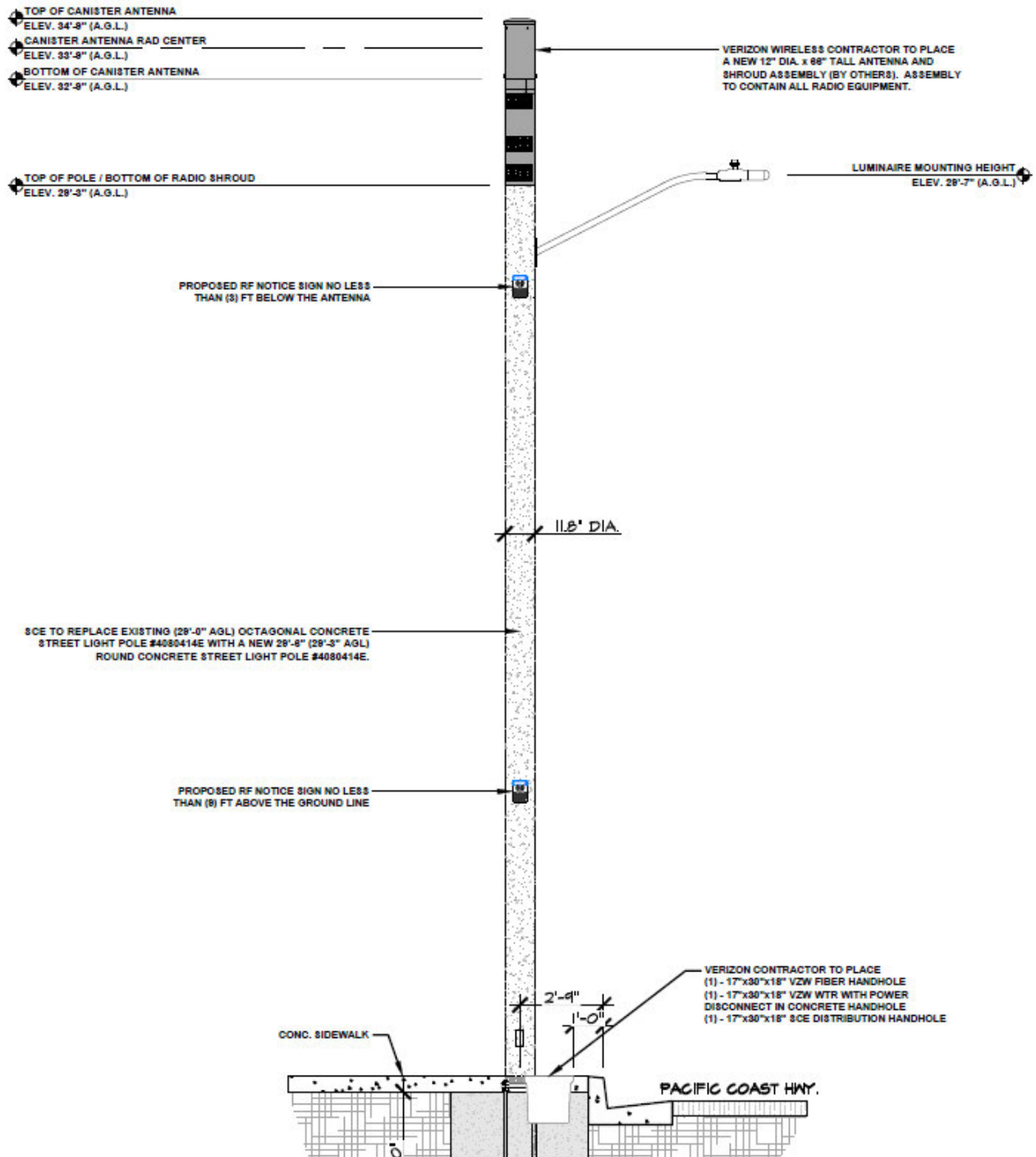
- A replacement streetlight pole topped with a 24-inch tall, 12-inch diameter omnidirectional canister antenna that reaches an overall height of 34 feet, 9 inches;
- Electrical support equipment consisting of one remote radio unit (RRU) which will be concealed inside a 42-inch tall by 12-inch diameter shroud below the antenna atop the pole; and
- Installation of three handholes inside the concrete sidewalk within the public ROW, as follows:
  1. One handhole box for Verizon Wireless fiber optic lines;
  2. One handhole box for a power disconnect switch; and
  3. One handhole box for Southern California Edison (SCE) distribution.

Associated with the proposed project is the discretionary request for:

- VAR No. 20-028 for a replacement streetlight pole over 28 feet; and
- SPR No. 20-059 for the installation and operation of a wireless communications facility located within the public ROW.

Figure 2 on the following page depict the proposed replacement streetlight pole, pole-mounted antenna and shrouded equipment. The pole-mounted antenna design is also depicted in the applicant's provided visual demonstration exhibits (Attachment 2). The antenna is conditioned to be painted grey to match the replacement streetlight pole.

Figure 2 – Project Plan Elevation (looking east)



**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 streetlight pole. It does not qualify as an eligible facility request because it does not include co-location on an existing facility or modification to an existing wireless communications facility.

### ***Small Cell Order 18-133***

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

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

The applicant submitted propagation coverage maps showing Verizon Wireless’s existing and proposed wireless coverage within the project site’s general area (Attachment 4). The existing coverage map shows that the general area has good coverage already, however, Verizon Wireless aims to add additional network capacity to the area. The area is highly trafficked with pedestrians and vehicles due to its proximity to Malibu Pier, Surfrider Beach, and the surrounding commercial properties. Adding an antenna in this area will help Verizon Wireless provide additional service to its customers.

### ***Site Alternative Analysis***

Pursuant to LIP Section 3.16.9(B)(9), an alternative site analysis is required to explain the site selection process for the proposed wireless communications facility, including information about other sites considered and reason for each site’s rejection. The applicant’s Alternative Site Analysis evaluated several site locations for the proposed facility and determined the proposed site is the most suitable, considering compatibility



with adjacent development, co-location opportunities, and reduced view impacts (Attachment 5). The applicant's Alternative Site Analysis Map showing the three alternative sites is provided in Figure 4 below. The proposed site location is shown with the yellow tack.

**Figure 4 – Project Alternative Site Analysis Map**



The following summarizes the applicant's reasons for not selecting the three alternative sites:

- Alternate 1 is located 150 feet east of the project site. The streetlight pole is further away from the Malibu Pier and thus would not achieve the desired effect for Verizon Wireless's coverage area.
- Alternate 2 is located across the street from the project site, on the oceanside of PCH. Similar to Alternative 1, the streetlight pole at this location was determined to be less feasible for Verizon Wireless because it would have less coverage. Additionally, this pole would cause greater view impacts to scenic resources as it would have the potential to block views of the Pacific Ocean from motorists and pedestrians traveling along PCH.
- Alternative 3 is also located on the oceanside side of PCH, approximately 335 feet east of the project site. Similar to Alternatives 1 and 2, the streetlight pole at this

location was determined to be less feasible from a coverage perspective. This site would also have greater potential for visual impacts than the proposed project.

The proposed facility will minimize visual impacts by replacing an existing streetlight pole on the landside of PCH. It will be closer to the Malibu Pier and Surfrider Beach and thus help Verizon Wireless achieve their coverage objectives.

### ***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 10, 2020, which outlines compliance of the facility with FCC thresholds for RF emissions (Attachment 6). The applicant has also provided correspondence that the proposed wireless communications facility will operate in compliance with the FCC regulations (Attachment 7). The report concluded that the maximum power density generated by the Verizon Wireless antennas at its nearest walking/working surfaces is approximately 0.05 percent of the FCC's limit for maximum permissible exposure for the general public (0.01 percent of 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/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 right-of-way 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 replacement streetlight pole for a wireless facility on top to reach a height of 34 feet, 9 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(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 RRU will be concealed inside a shroud and other electrical equipment serving the antenna will be placed within in-ground handhole boxes.

The project site is located within 500 feet of the Surfrider Beach and Malibu Pier. Pursuant to LIP Section 3.15.5(N), no wireless telecommunication 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. As stated in the *Alternative Site Analysis*, the applicant has demonstrated that no technically feasible alternative site exists that would place the proposed project more than 500 feet away from the Surfrider Beach and Malibu Pier. The proposed location is the most feasible location to maintain adequate signal coverage and is also located on the inland side of PCH further away from these facilities.

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

Pursuant to LIP Sections 3.16.6(C), (D), and (J), wireless communication facilities are required to be placed, screened, camouflaged, painted and textured, to the greatest extent feasible, for compatibility with existing site characteristics. The proposed streetlight pole with the antenna attached to the pole's top along with the screened ground-mounted equipment are compatible with the existing site characteristics in the general area that contain other streetlight poles, wood utility poles with overhead utility lines and street signals located along Cross Creek Road and Pacific Coast Highway. Consistent with these requirements, the proposed antenna is conditioned to be painted grey to match the color of the replacement streetlight pole.

### Grading (LIP Chapter 8)

Minor soil/concrete excavation is proposed for the installation of the replacement streetlight pole, in-ground handhole boxes and underground lines. 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 an existing sidewalk on PCH's public ROW. The project site has been evaluated by Planning Department for potential impacts to archaeological resources per the adopted City of Malibu Cultural Resources Map and it has been determined that, due to the limited landform alteration within the 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 streetlight pole with an antenna attached to its top, associated electrical support equipment in a shroud atop the pole, in-ground handhole box and underground fiber optic and power lines serving the antenna located within the public street 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, alternative site analysis, coverage maps, RF-EME Jurisdictional Report, site inspection, and recommended conditions, the proposed wireless communications project conforms to the LCP and MMC in that it meets all applicable wireless communications facility code and other standards.

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

The project is located on PCH's public ROW, the first public road and the sea. However, the proposed project will not impede public access to the beach in any way and therefore, the project will be in compliance with Chapter 3 of the Coastal Act.

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

As mentioned above in the *Site Alternative Analysis* section, the project is the least environmentally damaging alternative. The replacement pole is in the inland side of PCH and there are no anticipated impacts to scenic views of the Pacific Ocean.

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

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

**B. Variance to permit a streetlight pole over 28 feet in height (LIP Section 13.26.5)**

VAR No. 20-028 is requested for height of a replacement streetlight and antenna attached at the top of the pole above 28 feet. The Planning Commission may approve, deny and/or modify a variance application in whole or in part, with or without conditions, provided that it makes all of the following 10 findings pursuant to LIP Section 13.26.5. The evidence in the record supports approval of VAR No. 20-028 and all of the required findings of fact can be made as follows:

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

There are special characteristics for the proposed wireless communications facility that makes it subject to a variance. 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 collocate on a replacement streetlight pole. Collocation is recommended in both the LIP and MMC as a preferred mounting technique. Further, the Southern California Edison (SCE) only has a couple of streetlight options that can be used for collocation with wireless facilities in order for the safe operation and maintenance of the streetlight.

In order for the antenna to be collocated on the streetlight pole, the only acceptable location per SCE requirements is top mounted antenna, over the light fixture that would cast light onto the public ROW. The light fixture of the replacement pole is at the same height as other nearby streetlights and will keep the lighting of PCH consistent with existing infrastructure. Strict application of the height standard would preclude collocating as required by the code and would result in a new independent pole that has the potential for greater visual intrusion compared to a slight increase in height of the replacement pole. Not allowing Verizon to co-locate would prevent a project design that has been allowed in identical zoning classifications and also deviates from a recommended mounting option for wires facilities per the LIP.

*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 28 feet in height 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 collocation with an existing streetlight pole exceeds 28 feet in height in order to align with the most restrictive design criteria pursuant to LIP Section 3.16.6. There are other similar facilities collocated 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 collocated facilities exceed 28 feet in height in order 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 in conflict 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 surrounding environment.

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



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

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

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

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

The proposed facility is in the public ROW adjacent to commercial 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 co-location of the facility meets the recommended design criteria in the LIP and MMC.

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

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

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

The variance complies with State and local law in that it meets the requirements of the FCC and is co-located on a streetlight pole, a location preferred in the Malibu LIP and MMC. There are no visual impacts to scenic resources.

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

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

**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. 20-059 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 antenna will be painted a grey color to match the existing pole. The proposed project is generally compatible in size, bulk, and height to existing streetlight poles located along PCH. The facility's 34-foot, 9-inch maximum height is also the least intrusive design compared to erecting a new pole in order to meet all necessary requirements for vertical 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 proposed pole-mounted antenna does exceed a maximum 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.

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

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

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

Wireless communications facilities are permitted in 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 new pole and mechanical equipment is not expected to obstruct protected private views of impressive scenes of the Pacific Ocean, off-shore islands, Santa Monica Mountains, canyons, valleys, or ravines.

#### **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, and will be visible from Surfrider Beach, a scenic area. Therefore, findings in LIP Section 6.4 apply to the proposed project and are made as follows:

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

The proposed wireless communications facility will not affect any scenic views of the Pacific Ocean and Santa Monica Mountains as it is located in the developed public ROW of a commercial 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.

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: To date, staff has not received any public correspondence on the subject application.

PUBLIC NOTICE: On April 8, 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 500-foot radius of the project site (Attachment 8).

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. 21-37. The project has been reviewed and conditionally approved for conformance with the LCP by Planning Department staff.

ATTACHMENTS:

1. Planning Commission Resolution No. 21-37
2. Project Plans
3. Visual Demonstration Exhibits
4. Signal Coverage Maps
5. Alternative Site Analysis
6. RF-EME Jurisdictional Report
7. FCC Compliance
8. Public Hearing Notice

CITY OF MALIBU PLANNING COMMISSION  
RESOLUTION NO. 21-37

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. 20-043 AND WIRELESS COMMUNICATIONS FACILITY NO. 20-022 FOR VERIZON WIRELESS TO INSTALL AN OMNIDIRECTIONAL CANISTER ANTENNA ON TOP OF A REPLACEMENT STREETLIGHT POLE REACHING A MAXIMUM HEIGHT OF 34 FEET, 9 INCHES AND ELECTRICAL SUPPORT EQUIPMENT, INCLUDING VARIANCE NO. 20-028 TO PERMIT A STREETLIGHT POLE OVER 28 FEET IN HEIGHT AND SITE PLAN REVIEW NO. 20-059 TO INSTALL AND OPERATE A WIRELESS COMMUNICATIONS FACILITY WITHIN THE PUBLIC RIGHT-OF-WAY LOCATED AT 22967.5 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. July 14, 2020, a new application for Wireless Communications Facility (WCF) No. 20-022 and Site Plan Review (SPR) No. 20-059 was submitted by the applicant, Fulsang Architecture, on behalf of Verizon Wireless for the installation of a replacement streetlight pole topped with a wireless antenna, associated electrical equipment and backup battery unit. Coastal Development Permit (CDP) No. 19-075 and Variance (VAR) No. 20-028 were assigned to the project.

B. On August 9, 2020, a Notice of CDP Application was posted at the subject site attached to the existing pole to be replaced.

C. On September 21, 2020, Planning Staff deemed the project complete.

D. On April 8, 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 500-foot radius of the project site and to all interested parties.

E. On May 3, 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. 20-043 and WCF No. 20-022 for Verizon Wireless to install an omnidirectional canister antenna on top of a replacement streetlight pole reaching a maximum height of 34 feet, 9 inches and electrical support equipment, including VAR No. 20-028 to permit a streetlight pole over 28 feet in height and SPR No. 20-059 to install and operate a wireless communications facility within the public right-of-way (ROW) located at 22967.5 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, alternative site analysis, coverage maps, 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 project is located on PCH's public ROW, the first public road and the sea. However, the proposed project will not impede public access to the beach in any way and therefore, the project will be in compliance with Chapter 3 of the Coastal Act.

3. The project is the least environmentally damaging alternative. The replacement pole is on the landside of PCH and there are no anticipated impacts to scenic views of the Pacific Ocean.

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

VAR No. 19-028 will allow the installation of a wireless communications facility above 28 feet in height.

1. Evidence in the record demonstrates there are special characteristics for the proposed wireless communications facilities that makes it subject to a variance. The proposed collocation alternative is recommended in both the LIP and MMC as a preferred mounting technique and eliminates the need for a new pole that in comparison would be more visually intrusive. Instead, the applicant proposes to collocate on a replacement streetlight pole. Collocation is recommended in both the LIP and MMC as a preferred mounting technique. Further, the Southern California Edison (SCE) only has a couple of streetlight options that can be used for collocation with wireless facilities in order for the safe operation and maintenance of the streetlight. 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 safety standards and not detrimental to public interest in terms of a less visually intrusive alternative.



2. 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 28 feet in height 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.

3. the proposed collocation with an existing streetlight pole exceeds 28 feet in height in order to align with the most restrictive design criteria pursuant to LIP Section 3.16.6. There are other similar facilities collocated 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 collocated facilities exceed 28 feet in height in order to meet those requirements.

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

5. The proposed facility is in the public ROW adjacent to commercial 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 co-location of the facility meets the recommended design criteria in the LIP and MM.

6. 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 impacts to visually impressive views of the Pacific Ocean or any other scenic resources identified in the LIP.

7. The variance complies with State and local law in that it meets the requirements of the FCC and is co-located on a streetlight pole, a location preferred in the Malibu LIP and MMC. There are no visual impacts to scenic resources.

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

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

SPR No. 20-059 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.

2. The proposed wireless communications facility will be painted a grey color to match the existing pole. The proposed project is generally compatible in size, bulk, and height to existing streetlight poles located along PCH.

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 Facility (FCC).

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 view 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 will not affect any scenic views of the Pacific Ocean and Santa Monica Mountains as it is located in the developed public ROW of a commercial area. Furthermore, the project is the least visually intrusive alternative that still meets Verizon Wireless's goals and objectives.

2. The subject parcel is located on the 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, SCE, and the City Public Works Department.

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

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

4. Evidence in the record demonstrates that the proposed project, as designed and conditioned, will not have adverse impact 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 CD No. 20-043, WCF No. 20-022, VAR 20-028 and SPR No. 20-059, 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. A replacement streetlight pole topped with a 24-inch tall, 12-inch diameter omnidirectional canister antenna that reaches an overall height of 34 feet, 9 inches;
  - b. Electrical support equipment consisting of one remote radio unit (RRU) which will be concealed inside a 42-inch tall by 12-inch diameter shroud below the antenna atop the pole; and
  - c. Installation of three handholes inside the concrete sidewalk of the public ROW used as follows:
    - i. One handhole box for Verizon Wireless fiber optic lines;
    - ii. One handhole box for a power disconnect switch; and
    - iii. One handhole box for Southern California Edison (SCE) distribution.
3. Subsequent submittals for this project shall be in substantial compliance with plans on-file with the Planning Department, date-stamped **July 14, 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 Public Works Department 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. 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 (FCC), and LACFD requirements, as applicable. Notwithstanding this review, all required permits, including but not limited to an encroachment permit from the City Public Works Department, 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 co-location 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.

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27. 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.
  28. 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.
  29. 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.
  30. 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 device, right-of-way improvements, or for any other construction, repair, or improvement to the right-of-way.
  31. 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.

32. 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.
33. 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

34. 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 holiday; 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

35. 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.
36. 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) 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.
37. 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.

38. 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.
39. 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 toll 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.
40. 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.
41. The permittee shall maintain the paint, color and finish of the facility in good condition at all times.
42. 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.

43. Build-Out Conditions.

- a. Permittee shall not commence any excavation, construction, installation or other work on the project site until and unless it demonstrates to the City Public Works Department that the project complies with all generally applicable laws, regulations, codes and other rules related to public health and safety, including without limitation all applicable provisions in California Public Utilities Commission General Order 95 and MMC Chapters 8.12, 8.24 and 15.08.
  - b. To the extent that the pole owner requires greater or more restrictive standards than contained in California Public Utilities Commission General Order 95, those standards shall control.
44. 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.
45. 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.
46. 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.
47. 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.
48. 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.
49. Permittee shall promptly remove any graffiti on the wireless facility at permittee's sole expense within 48 hours after notice.
50. The City's grant of a permit for a small cell facility request does not waive, and shall not be construed to waive, any standing by the city to challenge any FCC orders or rules related to small cell facilities, or any modification to those FCC orders or rules.

Prior to Operation

51. 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.



52. 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.
53. 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.

#### Public Works

54. 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

55. Violation of any of the conditions of this approval shall be cause for revocation and termination of all rights thereunder.

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

PASSED, APPROVED AND ADOPTED this 3<sup>rd</sup> day of May 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](mailto: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. 21-37 was passed and adopted by the Planning Commission of the City of Malibu at the regular meeting thereof held on the 3<sup>rd</sup> day of May 2021, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

---

KATHLEEN STECKO, Recording Secretary

# ATTACHMENT 2

# ATTACHMENT 2

# ATTACHMENT 2

# ATTACHMENT 2



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# ATTACHMENT 2

**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: JUNE 10, 2020

SITE NUMBER: N/A  
SITE NAME: SCL MALIBU PIER 01  
TYPE: STREET LIGHT (Pole ID #4080414E)  
LOCATION: SIDE OF 22969 PACIFIC COAST HWY.  
MALIBU, CA 90265

I, BERT HAZE, HEREBY CERTIFY THE GEODETIC COORDINATES AT THE CENTER OF THE EXISTING STREET LIGHT ARE:

\*GEODETIC COORDINATES: (NORTH AMERICAN DATUM 1983)

LATITUDE 34°02'15.95" N (34.037763° N)  
LONGITUDE 118°40'35.45" W (118.676514° 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 STREET LIGHT LOCATION = 22 FEET/6.7 METERS (A.M.S.L.)(NAVD88)

TOP ELEVATION OF EXISTING STREET LIGHT POLE = 51 FEET/15.5 METERS (A.M.S.L.)(NAVD88)

TOP ELEVATION OF EXISTING SENSOR (HIGHEST POINT/FIXED STRUCTURE) = 53 FEET/16.2 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 STREET LIGHT POLE = 29 FEET/8.8 METERS (A.G.L.)

HEIGHT OF EXISTING SENSOR (HIGHEST POINT/FIXED STRUCTURE) = 31 FEET/9.5 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.)

NAD 83 GEODETIC COORDINATES AND ELEVATIONS WERE ESTABLISHED USING SURVEY GRADE "LEICA GS14" "GNSS" RECEIVERS CONNECTED TO THE "LEICA SMART NET" REFERENCE NETWORK.

\*\*BENCH MARK REFERENCE:  
UNITED STATES GEOLOGICAL SURVEY BENCH MARK "BM 14" AS SHOWN ON THE "MALIBU BEACH" 7.5 MINUTE QUADRANGLE MAP.  
ELEVATION: 16.5 FEET A.M.S.L. (NAVD88) (DATUM VERIFIED IN FIELD TO BE WITHIN SAID ACCURACY STANDARDS)



SIGNED  
BERT HAZE, PLS 7211

DATE

PLS 801.674

**ISSUE STATUS**

REV	DATE	DESCRIPTION	BY
0	06/22/20	90% ZONING	JD

**FULSANG**  
**ARCHITECTURE**

371 VIA LIDO, SUITE 202  
NEWPORT BEACH, CA 92660  
PHONE: 949.556-1158

**PROPRIETARY INFORMATION**

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**verizon**

15505 SAND CANYON AVENUE  
IRVINE, CA 92618

SMALL CELL PROJECT

**SCL MALIBU**

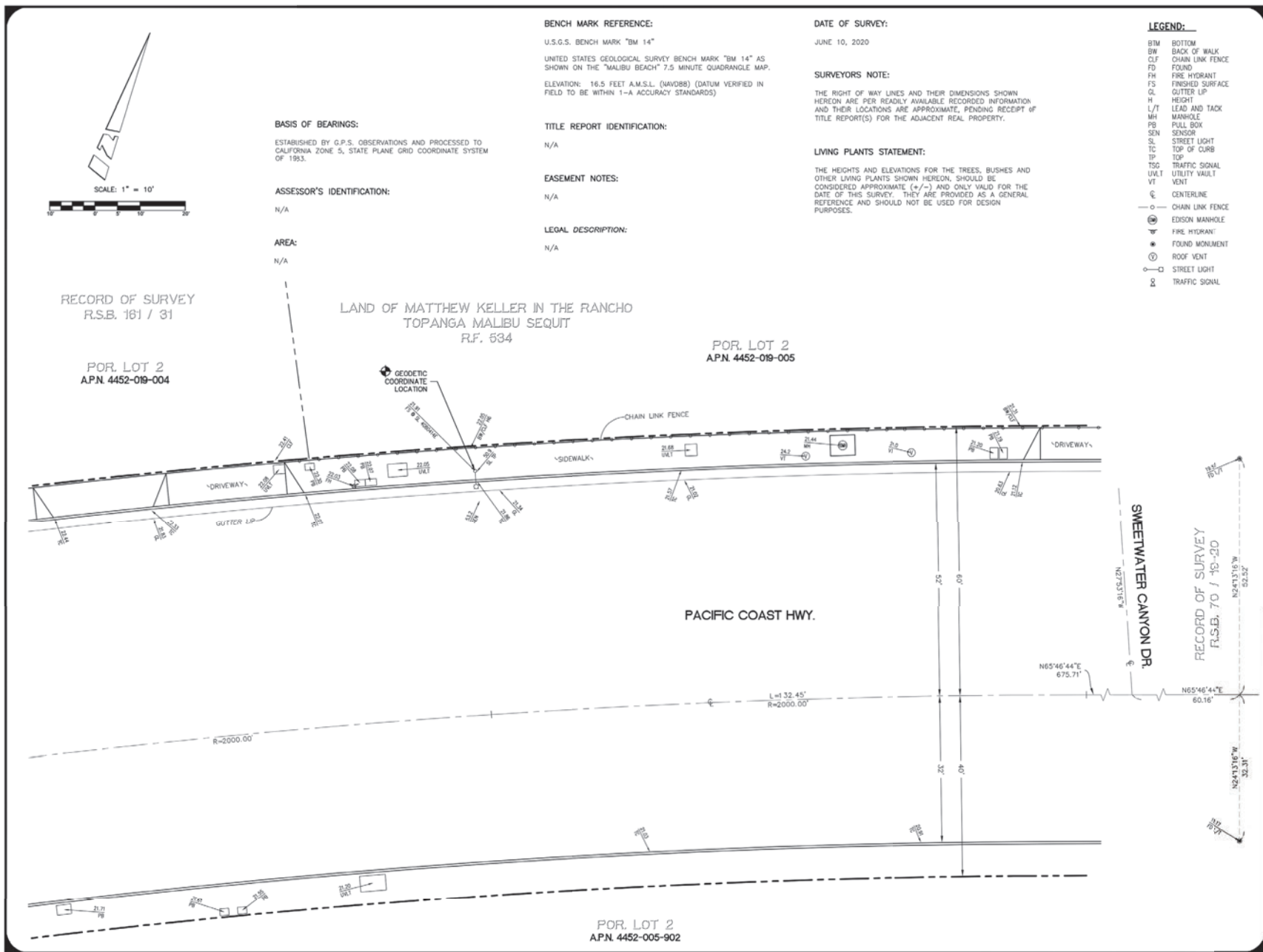
**PIER 01**

SCE - STREET LIGHT  
POLE #408041E  
SIDE OF 22969 PACIFIC  
COAST HWY.  
MALIBU, CA 90265

**SHEET TITLE**

**1A CERTIFICATION  
LETTER**

**T-2**



ISSUE STATUS			
REV	DATE	DESCRIPTION	BY
0	06/17/20	ISSUED FOR REVIEW	MDL

**BERT HAZZ**  
 AND ASSOCIATES, INC.  
 LAND SURVEYING & MAPPING  
 3185 AIRWAY AVENUE, SUITE K1  
 COSTA MESA, CALIFORNIA 92626  
 714 557-1567 OFFICE  
 JN. 801.674

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**verizon**  
 15505 SAND CANYON AVENUE, D1  
 IRVINE, CA 92618

PROFESSIONAL LAND SURVEYOR  
 No. 7211  
 Exp. 3-31-22

**SCL MALIBU PIER 01**  
 SIDE OF 22969 PACIFIC COAST HWY.  
 MALIBU, CA 90265

SHEET TITLE:  
 TOPOGRAPHIC SURVEY

**LS-1**



SYMBOL	DESCRIPTION	GENERAL NOTES AND CONDITIONS		ISSUE STATUS
EOO	EDGE OF DIRT	INTENT	PRODUCTS & SUBSTITUTIONS	REV. DATE DESCRIPTION BY
W/L	WIRE LINE			0 06/22/20 80% ZONING JD
ROW	RIGHT OF WAY	EOP	GENERAL NOTES:	
EOP	EDGE OF PAVEMENT			
C/L	CENTER LINE	C/L	CODE COMPLIANCE	
C/F	CURBSIDE			
P/L	PROPERLY LANE	CONFLICTS	INSURANCE AND BONDS	
		WARRANTIES & BONDS	ADMINISTRATION	
		RELATED DOCUMENTS AND COORDINATION	CHANGE ORDER PROCEDURE	
		SHOP DRAWINGS	CLEAN UP	
		ABBREVIATIONS AND SYMBOLOGY	GENERAL NOTES	

IT SHALL BE THE CONTRACTOR'S RESPONSIBILITY TO COORDINATE WITH THE PROPERTY OWNER A NECESSARY UTILITY COMPANIES FOR THE EXISTING UTILITIES AND TO OBTAIN ALL NECESSARY PERMITS FOR CONSTRUCTION. CONTRACTOR SHALL BE RESPONSIBLE FOR ANY DAMAGE TO EXISTING UTILITIES AND TO REPAIR SAME TO ORIGINAL CONDITION.

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 & SPACING. CONTRACTOR TO CONDUCT ALL NECESSARY FIELD SURVEYS. CONSTRUCTION MANAGER IMMEDIATELY OF ANY DISCREPANCIES.

CONTRACTOR TO CALL DGL ALERT (800-227-2606) A MINIMUM OF 4 HRS BEFORE START OF CONSTRUCTION. CONTRACTOR SHALL BE RESPONSIBLE TO HAVE ALL NONPUBIC UTILITIES LOCATED AT THEIR OWN EXPENSE.

PROPOSED UTILITY SERVICES SHOWN NEED TO BE VERIFIED & APPROVED BY THE CITY BEFORE START OF CONSTRUCTION. CONTRACTOR TO VERIFY WITH CLIENT PROJECT MANAGER TO OBTAIN FINAL APPROVAL.

LINE(S) SHOWN DO NOT REPRESENT THE EXACT LOCATION OF THE CONDUIT RUN. CONTRACTOR TO VERIFY SERVICE LOCATIONS & ACTUAL FIELD CONDITIONS.

CONTRACTOR SHALL IMMEDIATELY INFORM CLIENT OF ANY ACCIDENTAL DAMAGE TO EXISTING UTILITIES BY TELEPHONE AND E-MAIL REGARDLESS OF THE TIME OF DAY OR NIGHT. CONTRACTOR SHALL BE RESPONSIBLE FOR THE DAMAGE. PHOTO'S WILL BE REQUIRED DAILY UNTIL RESOLUTION HAS BEEN OBTAINED. CONTRACTOR SHALL BE RESPONSIBLE FOR ANY REPAIRS AT THEIR OWN EXPENSE. CONTRACTOR WILL EXERCISE ALL EFFORTS TO HAVE REPAIRS MADE BY QUALIFIED TECHNICIANS AS APPROVED BY SERVICE PROVIDER.

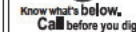
THE LOCATIONS AND EXISTENCE OF ANY UNDERGROUND PIPES, STRUCTURES OR CONDUITS SHOWN ON THIS PLAN WERE OBTAINED BY A SEARCH OF AVAILABLE RECORDS. THERE MAY BE EX. UTILITIES OTHER THAN THOSE SHOWN ON THIS PLAN. THE CONTRACTOR IS REQUIRED TO TAKE PRECAUTIONARY MEASURES TO PROTECT THE UTILITY LINES SHOWN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

**NOTE TO CONTRACTOR:**  
CONCRETE SIDEWALKS SHALL BE SAWCUT TO THE NEAREST SCALE MARK AND BE REPLACED EQUAL N DIMENSION TO THAT REMOVED.

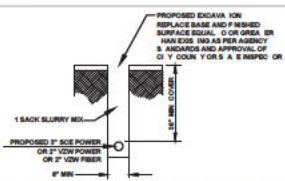
**NOTE:**  
CONTRACTOR TO ALLOW EGRESS AND  
EGRESS TO DRIVEWAYS AT ALL TIMES  
DURING CONSTRUCTION.

CONTRACTOR TO ALLOW ingress and egress to driveways at all times during construction.

GAS	_____	G	_____
GASOLINE	_____	GS	_____
OIL	_____	OIL	_____
POWER	_____	E	_____
PHONE	_____	T	_____
SEWER	_____	S	_____
STORM DRAIN	_____	SD	_____
WATER	_____	W	_____



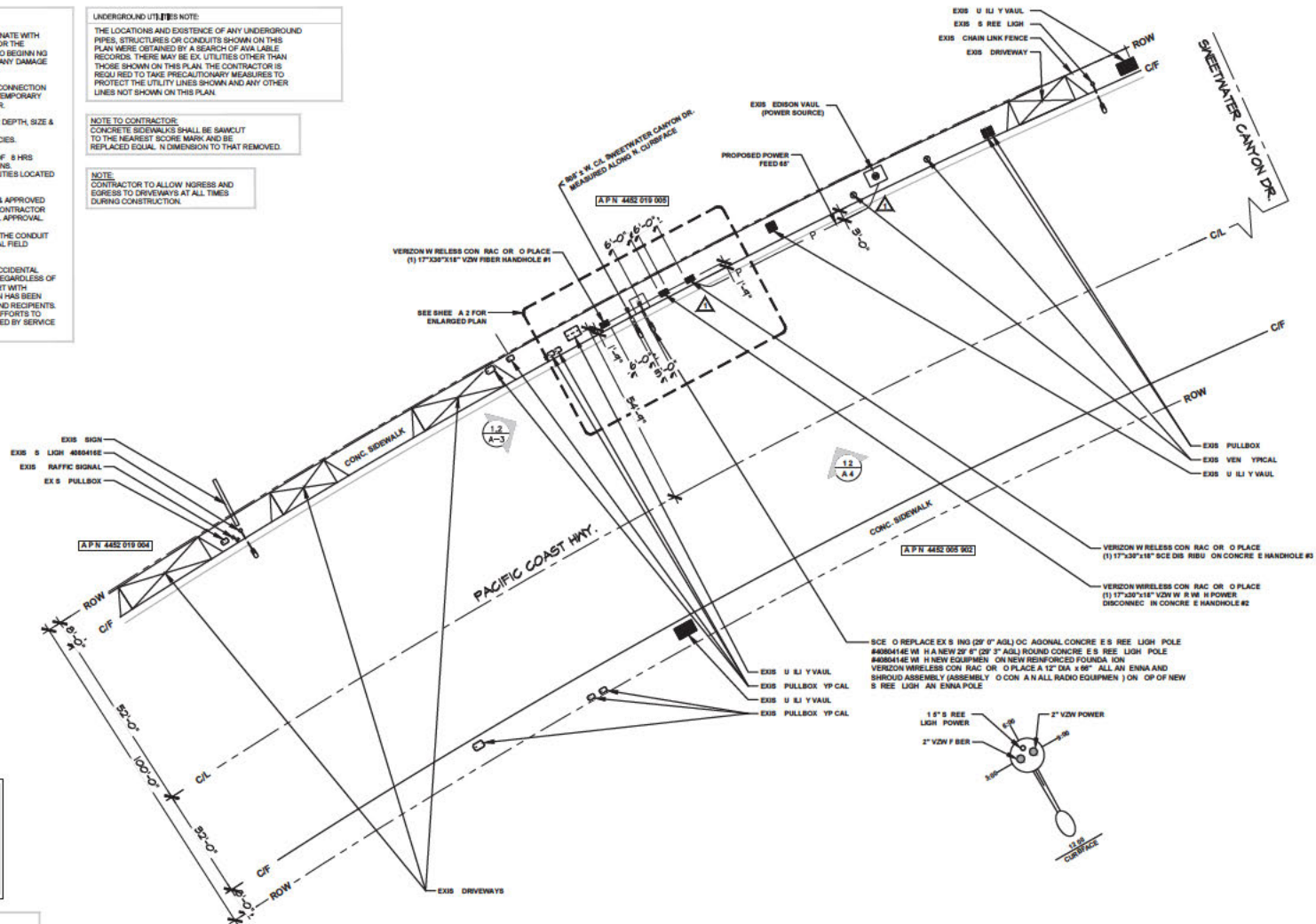
TO OBTAIN LOCATION OF PARTICIPANTS  
UNDERGROUND FACILITIES BEFORE  
YOU DIG IN CALIFORNIA (SOUTH), CALL  
DIG ALERT  
TOLL FREE: 1-800-227-2600 OR  
[www.digalert.org](http://www.digalert.org)  
CALIFORNIA STATUTE  
REQUIRE MINIMUM OF 2  
WORKING DAYS NOTICE  
BEFORE YOU EXCAVATE



**TYPICAL CONDUIT PLACEMENT DETAIL (TRENCH) N.T.S.**

HDD / OPEN TRENCH A/C STREET FOOTAGE: _____	59' 0"
HDD / OPEN TRENCH CONC. SIDEWALK FOOTAGE: _____	29' 0"
HDD / OPEN TRENCH GRASS/DIRT PARKWAY FOOTAGE: _____	0
HDD / OPEN TRENCH TOTAL PROJECT FOOTAGE: _____	88' 0"
ALL PROPOSED TRENCH WILL BE 1' WIDTH UNLESS OTHERWISE SPECIFIED	

	ANGLE	RADIUS	LENGTH
1	90°	3' 0"	5' 0"



SCALE @ 1 x17: 1/32" = 1'-0"
SCALE @ 24x38: 1/ 8" = 1'-0"

SCALE @ 24x36: 1/8" = 1'-0"

[illegible]

PROPRIETARY INFORMATION

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VERIZON WIRELESS

ANY USE OR DISCLOSURE OTHER THAN AS IT RELATES  
TO VERIZON WIRELESS IS STRICTLY PROHIBITED

15505 SAND CANYON AVENUE  
IRVINE, CA 92618

SMALL CELL PROJECT

SCL MALIBU  
PIER 01  
SCE - STREET LIGHT  
POLE #408041E  
SIDE OF 22969 PACIFIC  
COAST HWY.  
MALIBU, CA 90265

**SHEET TITLE**

## SITE PLAN

A-1



# NOTES:

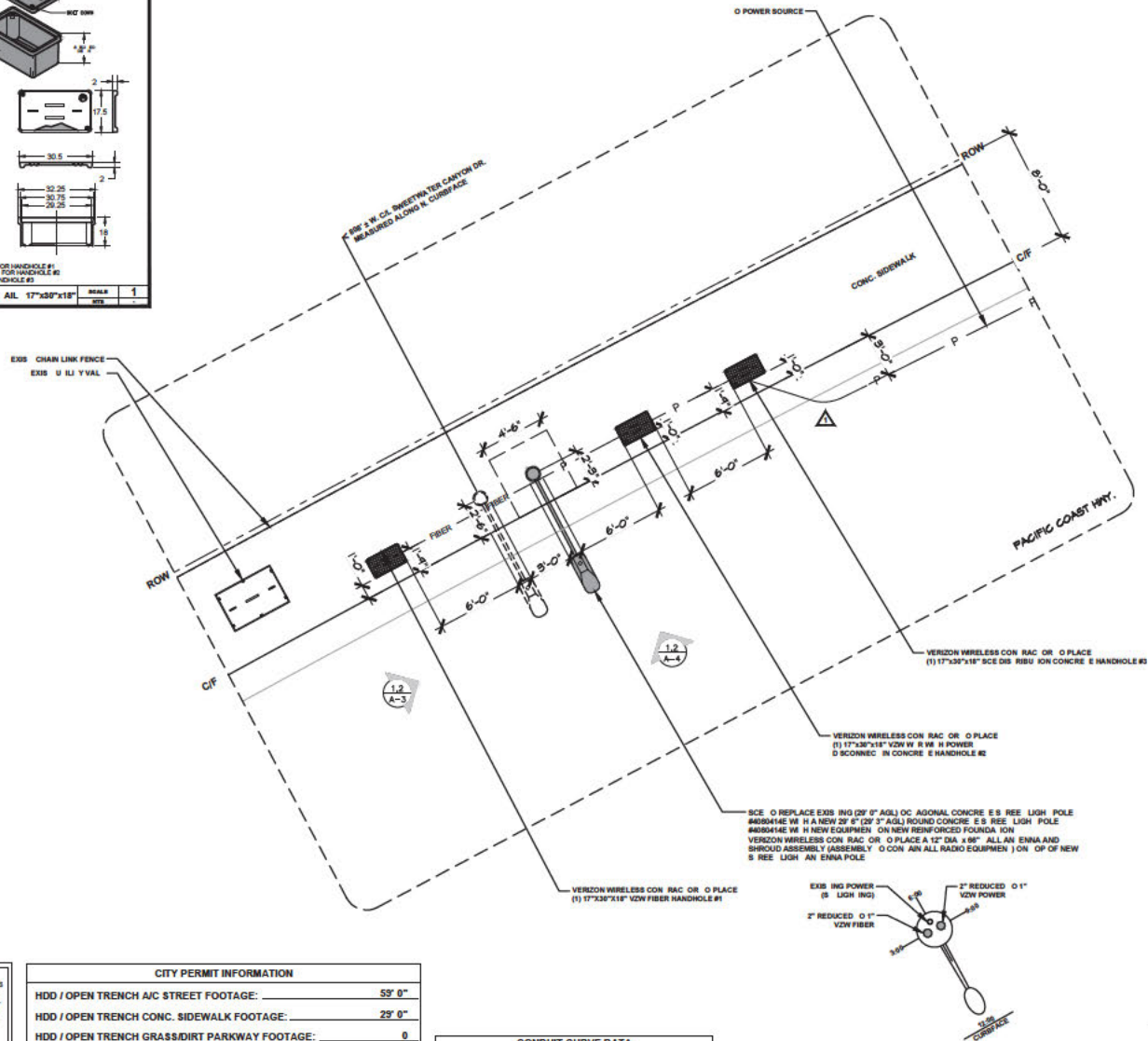
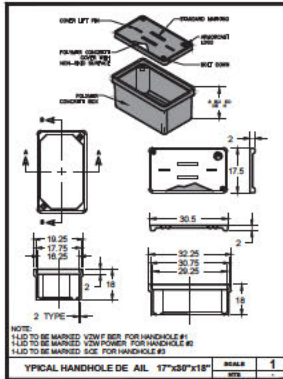
- IT SHALL BE THE CONTRACTOR'S RESPONSIBILITY TO COORDINATE WITH THE PROPERTY OWNER & NECESSARY UTILITY COMPANIES FOR THE LOCATION OF ALL EXISTING BELOW GRADE UTILITIES PRIOR TO BEGINNING CONSTRUCTION. CONTRACTOR SHALL BE RESPONSIBLE FOR ANY DAMAGE COSTS ASSOCIATED WITH EXISTING BELOW GRADE UTILITIES.
- 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) 227-2600 A MINIMUM OF 8 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.
- LINE SHOWN DO NOT REPRESENT THE EXACT LOCATION OF THE CONDUIT RUNS. CONTRACTOR TO VERIFY SERVICE LOCATIONS IN 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.

## 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.

NOTE TO CONTRACTOR: CONCRETE SIDEWALKS SHALL BE DEMOLISHED TO THE NEAREST SCORE MARK AND BE REPLACED EQUAL IN DIMENSION TO THAT REMOVED.

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



## UTILITY TYPE LEGEND:

GAS	— G —
GASOLINE	— GS —
CE	— CE —
POWER	— P —
PHONE	— T —
SEWER	— S —
STORM DRAIN	— SD —
WATER	— W —



TO OBTAIN LOCATION OF PARTICIPANTS UNDERGROUND FACILITIES BEFORE YOU DIG IN CALIFORNIA (SOUTH), CALL DIG ALERT. TOLL FREE: 1-800-227-2600 OR WWW.DIGALERT.CA

## CITY PERMIT INFORMATION

HDD / OPEN TRENCH A/C STREET FOOTAGE:	59' 0"
HDD / OPEN TRENCH CONC. SIDEWALK FOOTAGE:	29' 0"
HDD / OPEN TRENCH GRASS/DIRT PARKWAY FOOTAGE:	0
HDD / OPEN TRENCH TOTAL PROJECT FOOTAGE:	88' 0"
ALL PROPOSED TRENCH WILL BE 1' WIDTH UNLESS OTHERWISE SPECIFIED	

CONDUIT CURVE DATA		
ANGLE	RADIUS	LENGTH
30°	3' 0"	5' 0"

SCALE @ 1" = 10' (1" = 10')  
SCALE @ 24" = 1" (1" = 24')



## ISSUE STATUS

REV	DATE	DESCRIPTION	BY
0	06/22/20	80% ZONING	JD

**FULSANG ARCHITECTURE**  
371 VIA LIDO, SUITE 202  
NEWPORT BEACH, CA 92663  
PHONE: 949.556-1358

**PROPRIETARY INFORMATION**  
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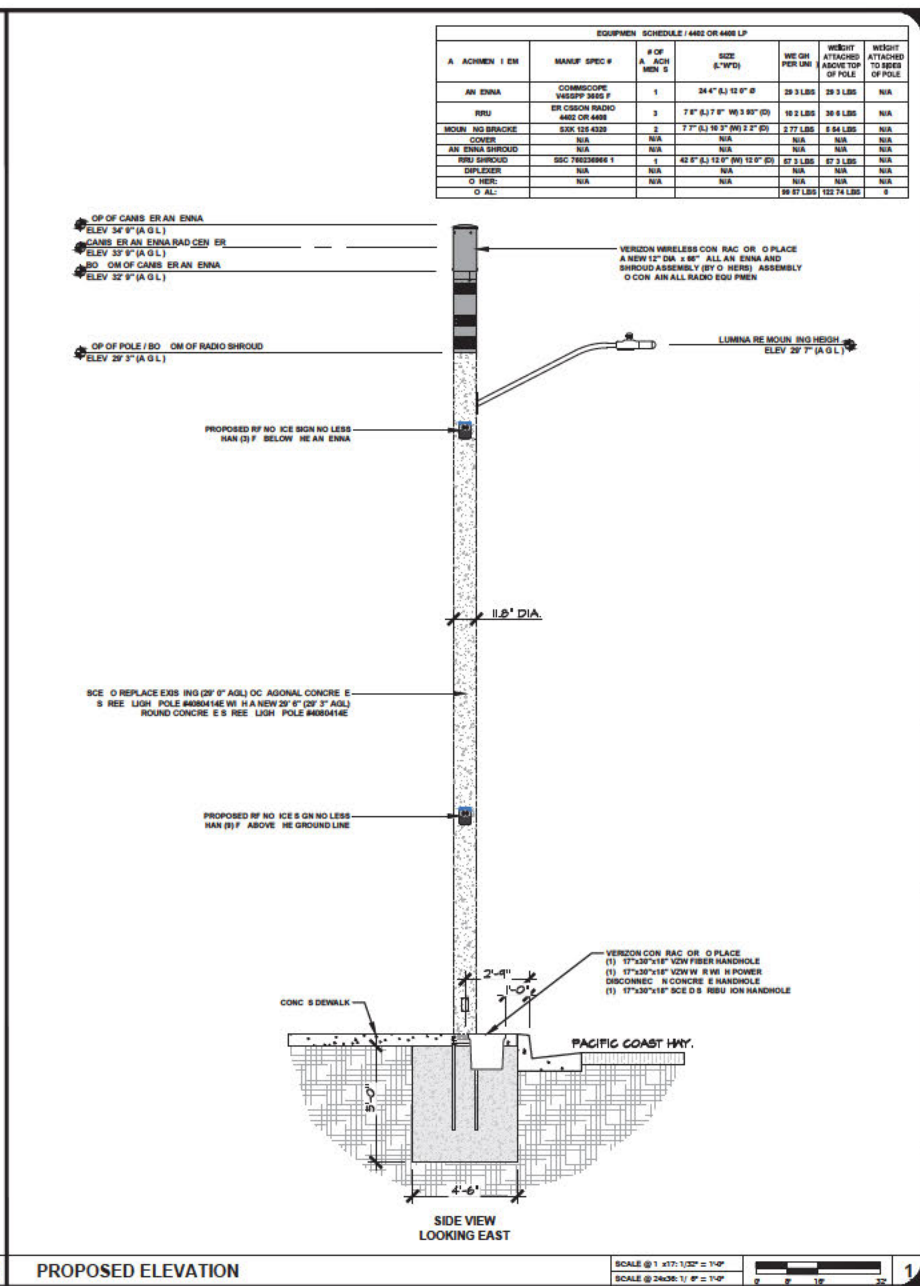
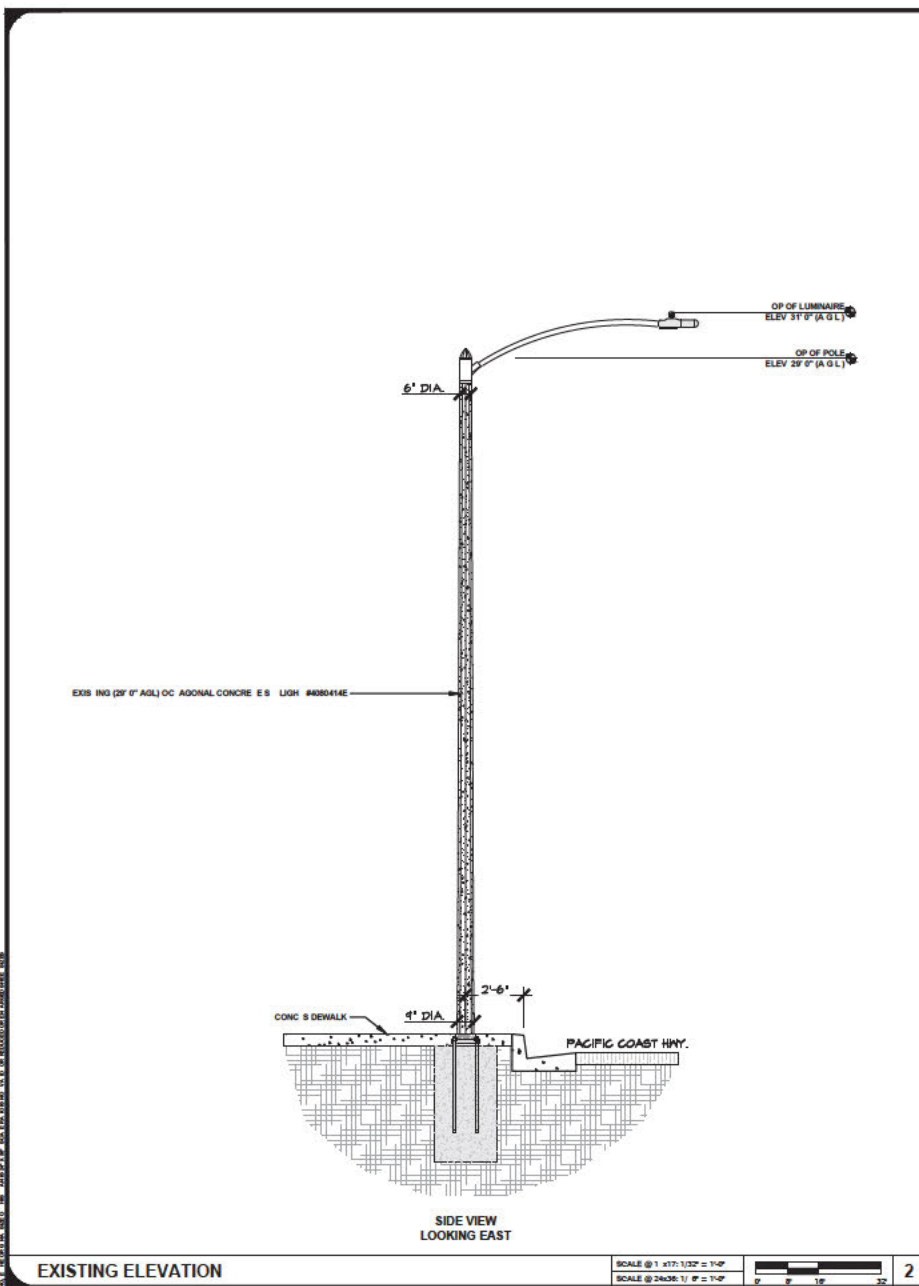
**verizon**  
15505 SAND CANYON AVENUE  
IRVINE, CA 92618

SMALL CELL PROJECT

**SCL MALIBU PIER 01**  
SCE - STREET LIGHT  
POLE #408041E  
SIDE OF 22969 PACIFIC  
COAST HWY.  
MALIBU, CA 90265

SHEET TITLE  
**ENLARGED SITE PLAN**

**A-2**



EQUIPMENT SCHEDULE 1442 OR 442 LP							
A	ACHMEN I EN	MANUF SPEC #	# OF A CH MEN S	SIZE (L"XW")	WEIGHT PER UNIT	WEIGHT ATTACHED ABOVE TOP OF POLE	WEIGHT ATTACHED TO SIDES OF POLE
AN	ENNA	COMBICORE VESPP 3665 F	1	24" 4" 6" 12" 0"	29.3 LBS	29.3 LBS	N/A
RRU	ER	CISION RADIO AND OR 442	3	7" 6" 6" 12" 0" 10" 3" 0" 0"	10.2 LBS	30.6 LBS	N/A
MOUN	NO BRACKET COVER	SXK 122 4329	2	7" 6" 6" 12" 0" 10" 3" 0" 0"	2.77 LBS	5.54 LBS	N/A
AN	ENNA SHROUD	N/A	N/A	N/A	N/A	N/A	N/A
RRU	SHROUD	SXK 122 4329 1	1	42" 6" 6" 12" 0" 10" 3" 0" 0"	87.3 LBS	87.3 LBS	N/A
DIPLEXER	N/A	N/A	N/A	N/A	N/A	N/A	N/A
O	RECE	N/A	N/A	N/A	N/A	N/A	N/A
O	AL	N/A	N/A	N/A	99.87 LBS	122.74 LBS	8

### ISSUE STATUS

REV	DATE	DESCRIPTION	BY
0	06/22/20	90% ZONING	JD

### FULSANG ARCHITECTURE

371 VIA LIDO, SUITE 202  
NEWPORT BEACH, CA 92663  
PHONE: 949.556-1358

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### verizon

15505 SAND CANYON AVENUE  
IRVINE, CA 92618

### SMALL CELL PROJECT

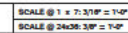
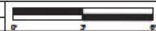
### SCL MALIBU PIER 01

SCE - STREET LIGHT POLE #408041E  
SIDE OF 22969 PACIFIC COAST HWY.  
MALIBU, CA 90265

### SHEET TITLE

EXISTING AND PROPOSED ELEVATION

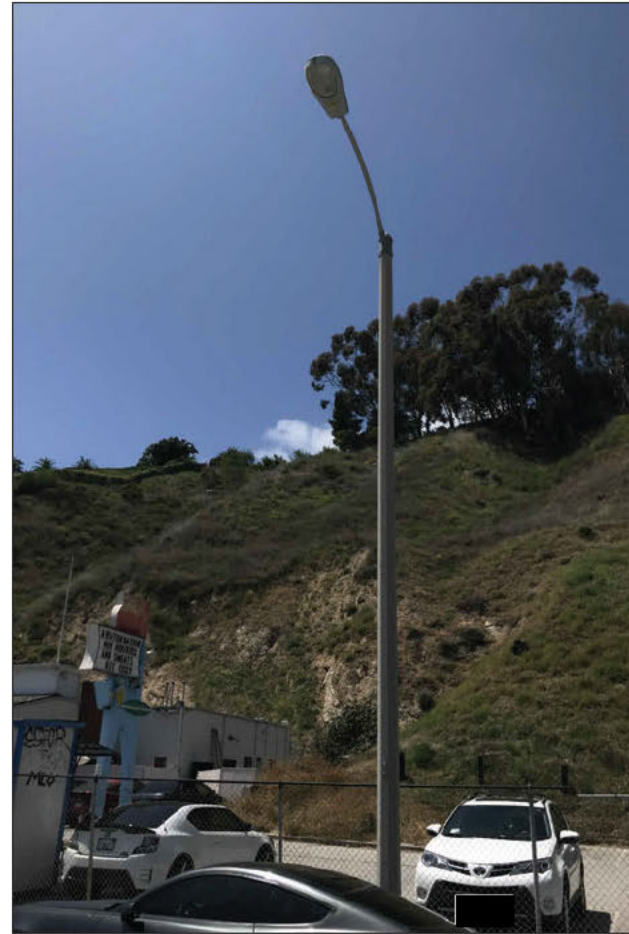
### A-3







PROPOSED SITE POLE  
LOOKING EAST



PROPOSED SITE POLE  
LOOKING NORTH

SITE LOCATION PHOTOS

ISSUE STATUS			
REV.	DATE	DESCRIPTION	BY
0	06/22/20	80% ZONING	JD

**FULSANG**  
ARCHITECTURE  
371 VIA LIDO, SUITE 202  
NEWPORT BEACH, CA 92663  
PHONE: 949.556-1158

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**verizon**  
15505 SAND CANYON AVENUE  
IRVINE, CA 92618

SMALL CELL PROJECT

**SCL MALIBU  
PIER 01**  
SCE - STREET LIGHT  
POLE #408041E  
SIDE OF 22969 PACIFIC  
COAST HWY.  
MALIBU, CA 90265

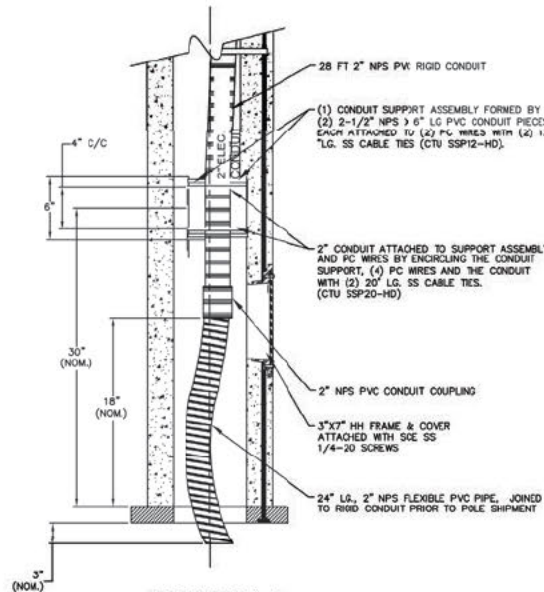
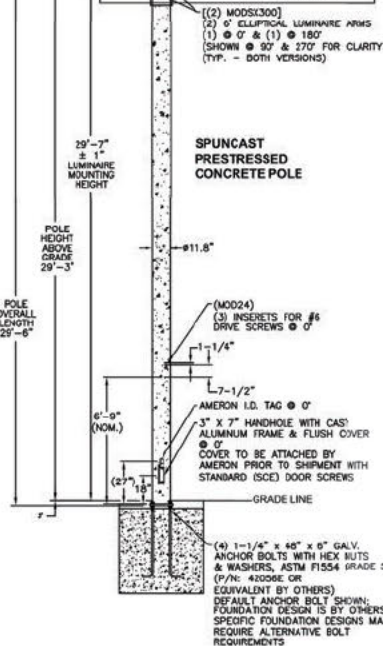
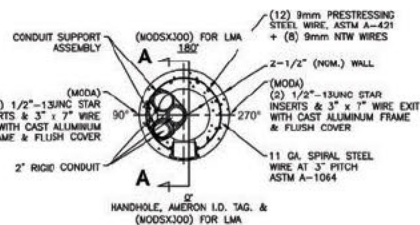
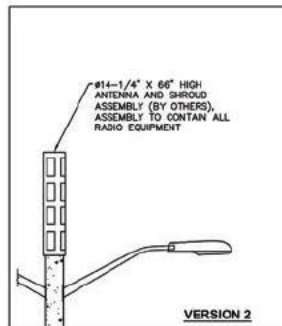
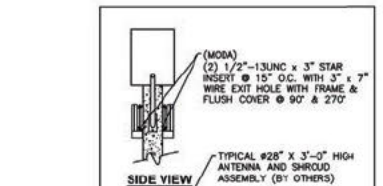
SHEET TITLE

SITE PHOTOS

**A-5**

SCALE	1
NTS	-

A-6



REV.	DATE	DESCRIPTION	DRN.	APPR.

"F" LEVEL CONFIG CODES		
OPTION CLASS	ENTRY	INFO.
COATING	S	
HHCOVER	66546E	(3 REQ.)
DOOR SCR	SCE	(2 REQ.)
DOOR SCR	1/4-20x.75	(4 REQ.)
DRILL IN MOD	MOD24	

"P" LEVEL CONFIG CODES		
OPTION CLASS	ENTRY	INFO.
MIX	81	
FINISH	5	
BASEPLATE	63250E-1	SPL
COLLAR	NONE	
POLE TOP CON.	MOD08	30" x 10" COUPLERS
CAST-IN MOD	(2)MOD5X300	SIDE MT.
CAST-IN MOD	MODA	184" x 1/2" STAR INS.
CAST-IN MOD	MODC	2" CONDUIT TOP 20"
CAST-IN MOD	(1) SUPPORT	UP 30"
STRUCTURE	MODMS	


300mm NON-TAPERED BASE PLATE ROUND POLE

POLE DESIGNATION	POLE HEIGHT ABOVE GRADE	OVERALL POLE LENGTH	BOLT CIRCLE	BASE O.D.	ULTIMATE G.L. MOMENT (R. lbs.)	POLE WEIGHT (lbs.)
BP300X09	29'-3"	29'-6"	16"	11-13/16"	79,000	2,900

( ) POLES REQUIRED (BP300X09-16139) INCLUDING CONDUIT WITH A (2) 6" WALL BRACKET ALUMINUM ELLIPTICAL ARM (P/N: LAEB6A); (1) ALUMINUM COVER PLATE (66546E-1 & (2) 1/2-13UNC x 1 SCREWS (P/N: 66108E) FOR USE WHEN ONLY (1) LAEB6A ARM IS IN USE

NOTES:

- MIX (815S): SCE BLACK & WHITE, LIGHTLY EXPOSED AGGREGATE FINISH WITH FLAT, WATER SEALER COATING.
- ASTM C-150 TYPE III GRAY CEMENT.
- Fc @ 28 DAYS = 7,000 PSI, USING SPUN CYLINDER TEST.
- Fc @ 28 DAYS = 5,000 PSI, USING ASTM C-31 CYLINDER TEST.
- POLES MANUFACTURED PER ASTM C-1089-13 SPECIFICATIONS.
- PROTECTIVE COAT EXPOSED P.C. WIRES AT POLE ENDS.
- ALLOWABLE LOADING TO BE BASED ON LOCAL SEISMIC CRITERIA.
- DUE TO THE NATURE & CHARACTERISTICS OF CONCRETE, SIDE MOUNT SPACING DIMENSIONS CAN ONLY BE TAKEN TO THE NEAREST 1/8 INCH.
- INTERNAL SEPARATE ELECTRICAL CONDUIT FULL POLE LENGTH TO BE FURNISHED AND INSTALLED BY MANUFACTURER. INTERNAL ELECTRICAL WIRES FOR ANTENNA AND RADIOS TO BE SEPARATED FROM SCE LUMINAIRE WIRES.

APPROVED BY		DATE	
<b>SOUTHERN CALIFORNIA EDISON</b>			
<b>BP300X09 POLE WITH SINGLE OR DOUBLE 6' ARMS</b>			
<b>WITH WIRE WAYS FOR POLE MOUNTED RADIOS</b>			
<b>PAGE 1 OF 2</b>			
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		<b>DRAWN:</b> K.B.	<b>DATE:</b> 03/14/2019
		<b>SCALE:</b> N.T.S.	<b>DWG. NO.</b> 1409-040(1)
		<b>REV</b>	

REV.	DATE	DESCRIPTION	BY
0	06/22/20	80% ZONING	JD

**FULSANG ARCHITECTURE**

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NEWPORT BEACH, CA 92663  
PHONE: 949.556-1358

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SMALL CELL PROJECT

**SCL MALIBU PIER 01**

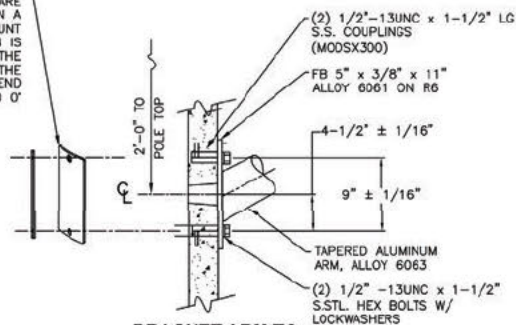
SCE - STREET LIGHT  
POLE #408041E  
SIDE OF 22969 PACIFIC COAST HWY.  
MALIBU, CA 90265

SHEET TITLE  
**POLE DETAILS**

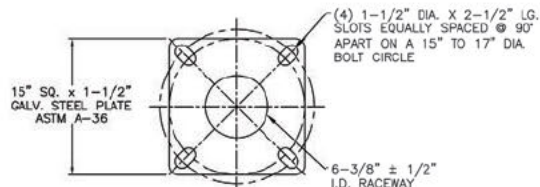
**LS-1**



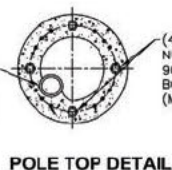
ALUM. COVER PLATE  
(66546E-1) & (2)  
1/2" SCREWS ARE  
REQUIRED WHEN A  
SINGLE SIDE MOUNT  
ARM APPLICATION IS  
USE TO COVER THE  
OPENING @ THE  
OPPOSITE END  
TYPICALLY @ 0'



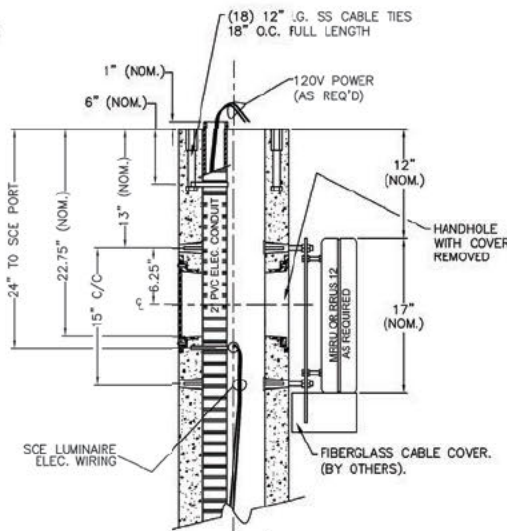
**BRACKET ARM TO  
POLE CONNECTION**



**BASE PLATE**



**POLE TOP DETAIL**



RADIO TRANSMITTER, ADAPTER,  
RRU, ELEC. WIRES, COAX, ON  
JOBSITE. (BY OTHERS).

**POLE TOP CUT-AWAY DETAIL**

REV.	DATE	DESCRIPTION	DRN.	APPR.

"F" LEVEL CONFIG CODES			"P" LEVEL CONFIG CODES		
OPTION CLASS	ENTRY	INFO.	OPTION CLASS	ENTRY	INFO.
COATING	S		MIX	81	
HHCOVER	66546E	(3 REQ.)	FINISH	5	
DDRR SCR	SCE	(2 REQ.)	BASEPLATE	63250E-1	SPL
DDRR SCR	1/4-20x.75	(4 REQ.)	COLLAR	NONE	
DRILL IN MOD	MOD24		POLE TOP CON.	MOD8	3/4\"-12\" COUPLINGS
			CAST-IN MOD	(2)MOD5X300	SIDE MT.
			CAST-IN MOD	MODA	1/4\"-1/2\" STAIR INS.
			CAST-IN MOD	MODC	2\" CONDUIT TOP 20'
			CAST-IN MOD	(1) SUPPORT	UP 30'
			STRUCTURE	MODMS	

**300mm NON-TAPERED BASE PLATE ROUND POLE**

POLE DESIG- NATION	POLE HEIGHT ABOVE GRADE	OVERALL POLE LENGTH	BOLT CIRCLE	BASE O.D.	ULTIMATE G.L. MOMENT (R. lbs.)	POLE WEIGHT (lbs.)
BP300X09	29'-3"	29'-6"	16"	11-13/16"	73,000	2,900

( ) POLES REQUIRED (BP300X09-16139) INCLUDING CONDUIT WITH A (2) 6\" WALL  
BRACKET ALUMINUM ELLIPTICAL ARM (P.N. LAE66A); (1) ALUMINUM COVER PLATE  
(66546E-1) & (2) 1/2-13UNC x 1 SCREWS (P.N. 66108E) FOR USE WHEN ONLY  
(1) LAE66A ARM IS IN USE

- NOTES:**
- MIX (8155): SCE BLACK & WHITE, LIGHTLY EXPOSED AGGREGATE FINISH WITH FLAT, WATER SEALER COATING.
  - ASTM C-150 TYPE III GRAY CEMENT.
  - Fc @ 28 DAYS = 7,000 PSI, USING SPUN CYLINDER TEST.
  - Fc @ 28 DAYS = 5,000 PSI, USING ASTM C-31 CYLINDER TEST.
  - POLES MANUFACTURED PER ASTM C-1089-13 SPECIFICATIONS.
  - PROTECTIVE COAT EXPOSED P.C. WIRES AT POLE ENDS.
  - ALLOWABLE LOADING TO BE BASED ON LOCAL SEISMIC CRITERIA.
  - DUE TO THE NATURE & CHARACTERISTICS OF CONCRETE, SIDE MOUNT SPACING DIMENSIONS CAN ONLY BE TAKEN TO THE NEAREST 1/8 INCH.
  - INTERNAL SEPARATE ELECTRICAL CONDUIT FULL POLE LENGTH TO BE FURNISHED AND INSTALLED BY MANUFACTURER. INTERNAL ELECTRICAL WIRES FOR ANTENNA AND RADIOS TO BE SEPARATED FROM SCE LUMINAIRE WIRES.

APPROVED BY	DATE
<b>SOUTHERN CALIFORNIA EDISON</b>	
<b>BP300X09 DETAILS FOR 1409-040</b>	
<b>PAGE 2 OF 2</b>	
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<b>SCALE: N.T.S.</b>	<b>DWG. NO. 1409-040(2)</b>
	<b>REV -</b>

REV.	DATE	DESCRIPTION	BY
0	06/22/20	80% ZONING	JD

**FULSANG  
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SMALL CELL PROJECT

**SCL MALIBU  
PIER 01**  
SCE - STREET LIGHT  
POLE #408041E  
SIDE OF 22969 PACIFIC  
COAST HWY.  
MALIBU, CA 90265

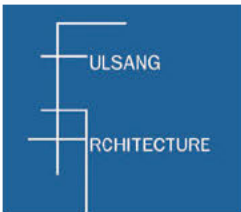
SHEET TITLE  
**POLE DETAILS**

**LS-2**



15505 SAND CANYON AVENUE  
IRVINE, CA 92618

PHOTOGRAPHIC VISUALIZATIONS CREATED BY

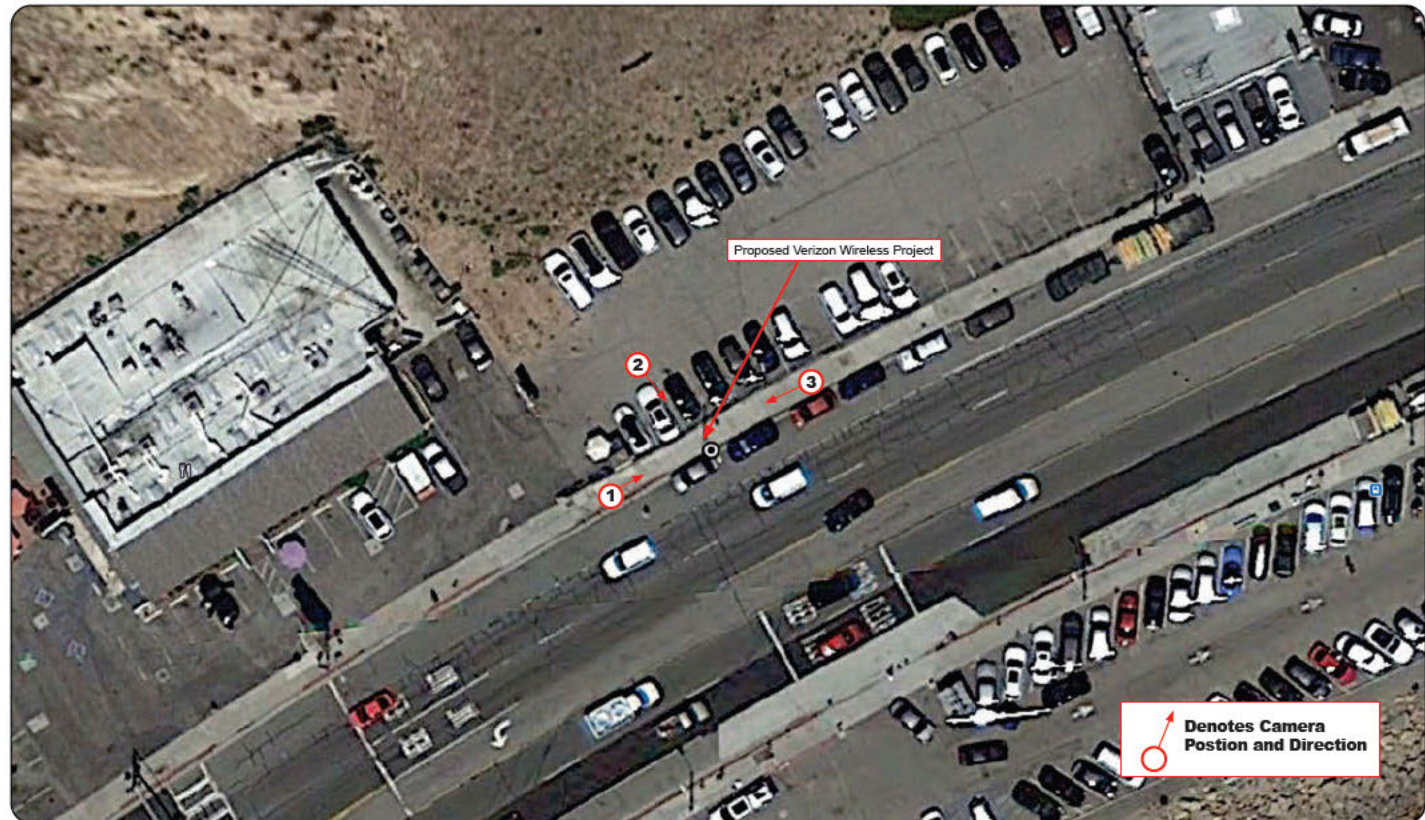


Rob Searcy  
Fulsang Architecture, Inc.  
3471 Via Lido, Suite 202  
Newport Beach, CA 92663  
(949) 327-3398  
Rob.searcy@fularch.com

# verizon✓

## SCL MALIBU PIER 01

22967.5 PACIFIC COAST HIGHWAY  
MALIBU, CA 90265



GEODETIC COORDINATES

34°02'15.95"N / 118°40'35.45"W

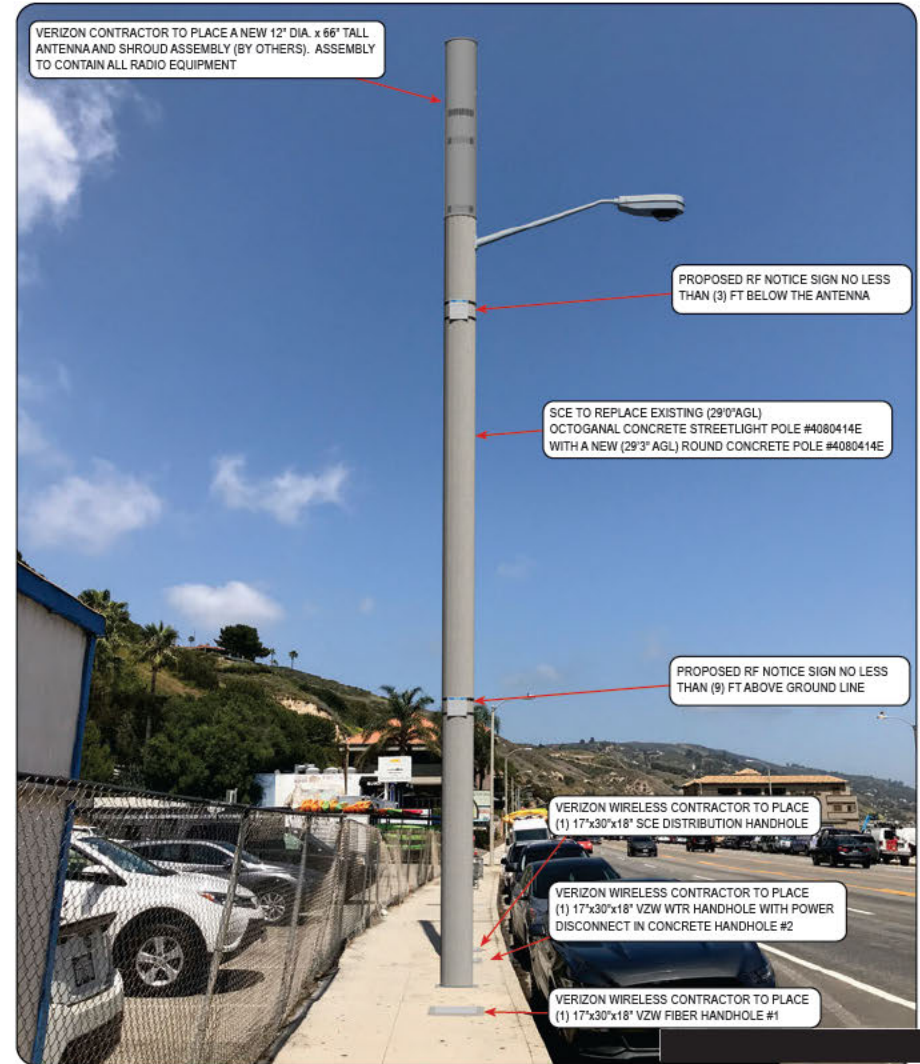
This photo simulation is being provided as a conceptual representation of the proposed wireless facility.  
For exact dimensions and design, please refer to the submitted plans.  
Ascend South West is not responsible for Post Simulation Production Design Changes, Scaling Error, Omissions, Color Discrepancies, Material Variances or  
any Construction Related Concern.

Rev Date: 07/10/20





Existing Conditions



Proposed Site Build

View: 1  
Revision Date: 07/10/20





Existing Conditions



Proposed Site Build

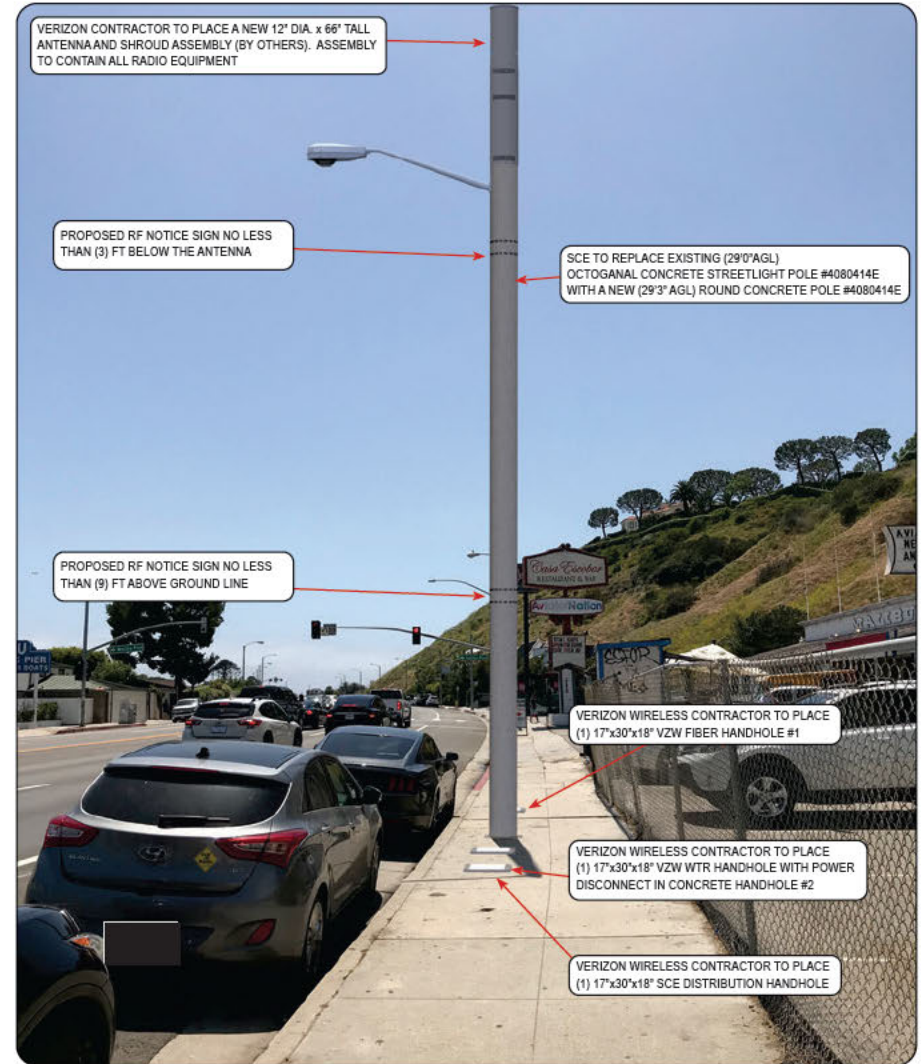
View: 2  
Revision Date: 07/10/20







Existing Conditions



Proposed Site Build

View: 3  
Revision Date: 07/10/20



# The coverage of “SCL MALIBU PIER 01” 22967.5 PACIFIC COAST HWY, Malibu, 90265, CA

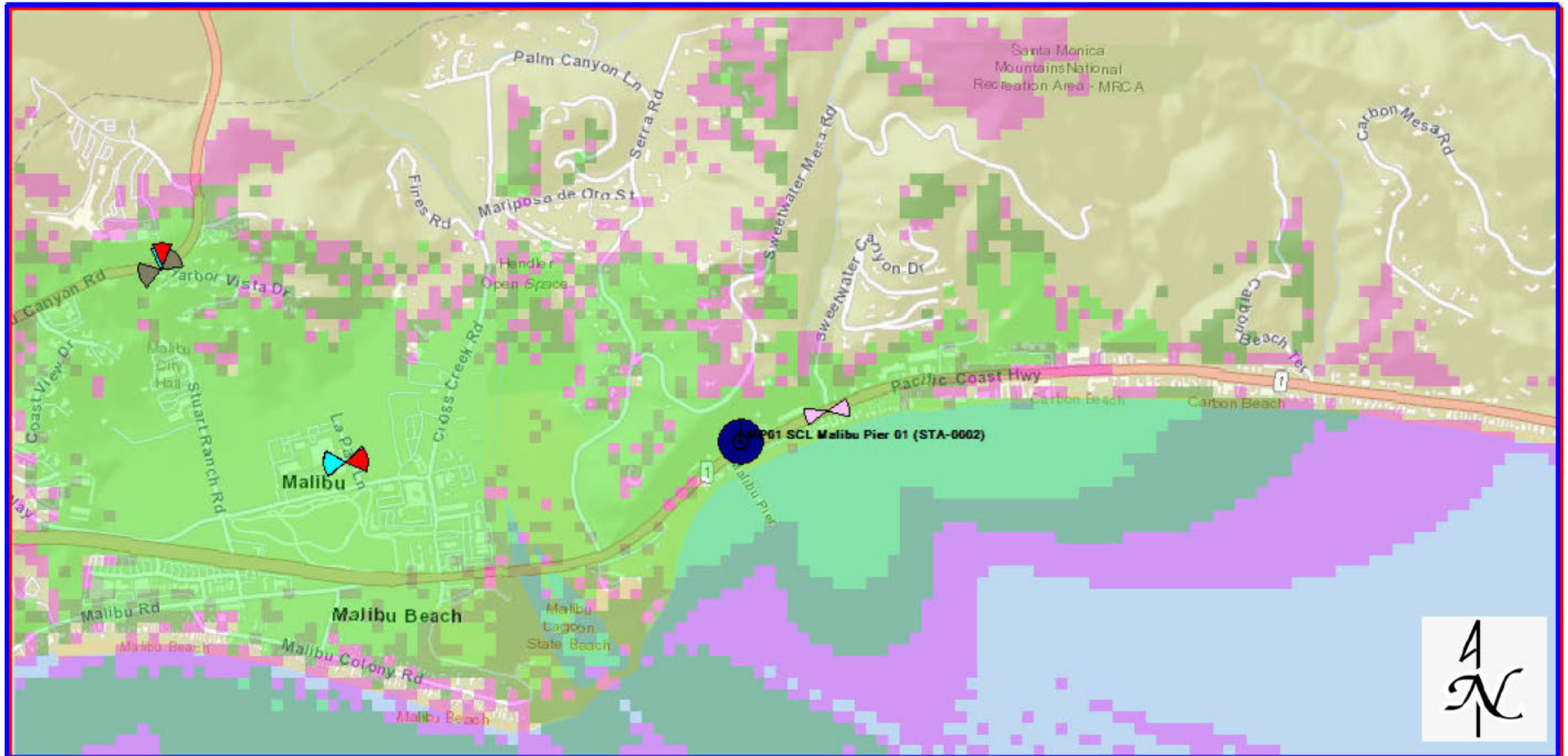
Jul 07 2020



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1

## Coverage with "SCL MALIBU PIER 01"



LTE - Coverage

- BEST
- GOOD
- FAIR
- POOR

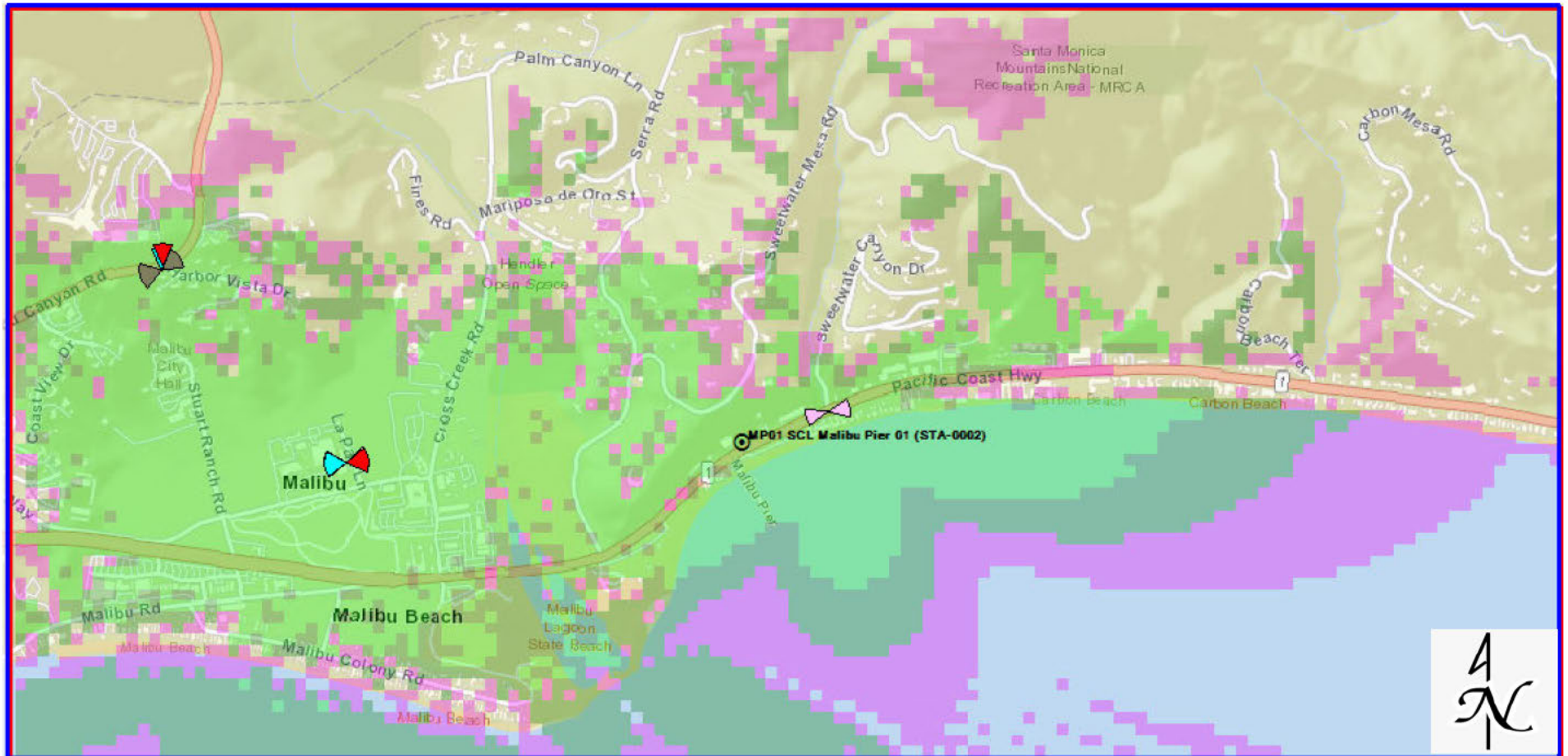
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## Coverage without "SCL MALIBU PIER 01"

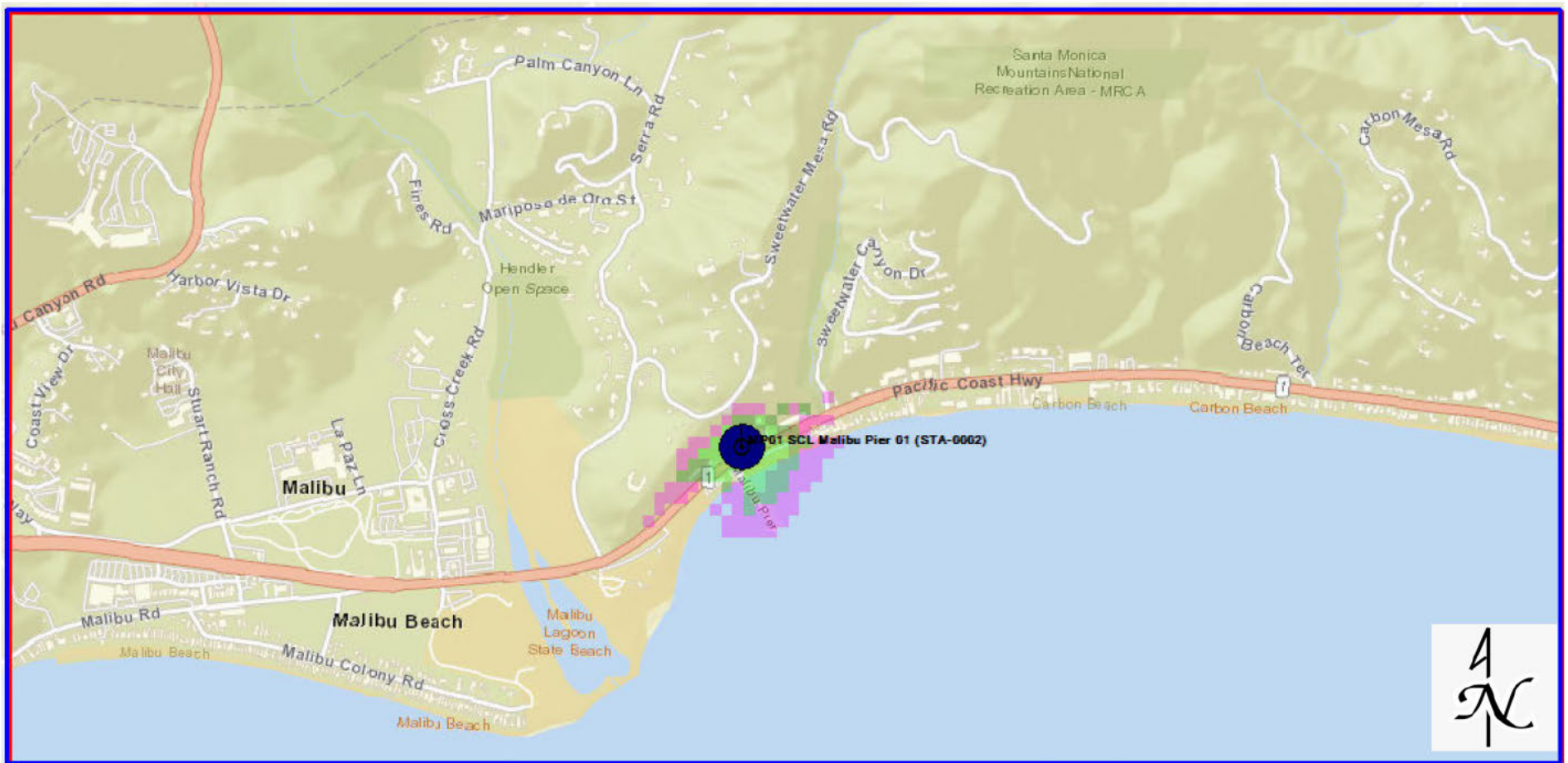


**LTE - Coverage**  
BEST  
GOOD  
FAIR  
POOR



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## Coverage just “SCL MALIBU PIER 01”



**LTE - Coverage**  
BEST  
GOOD  
FAIR  
POOR



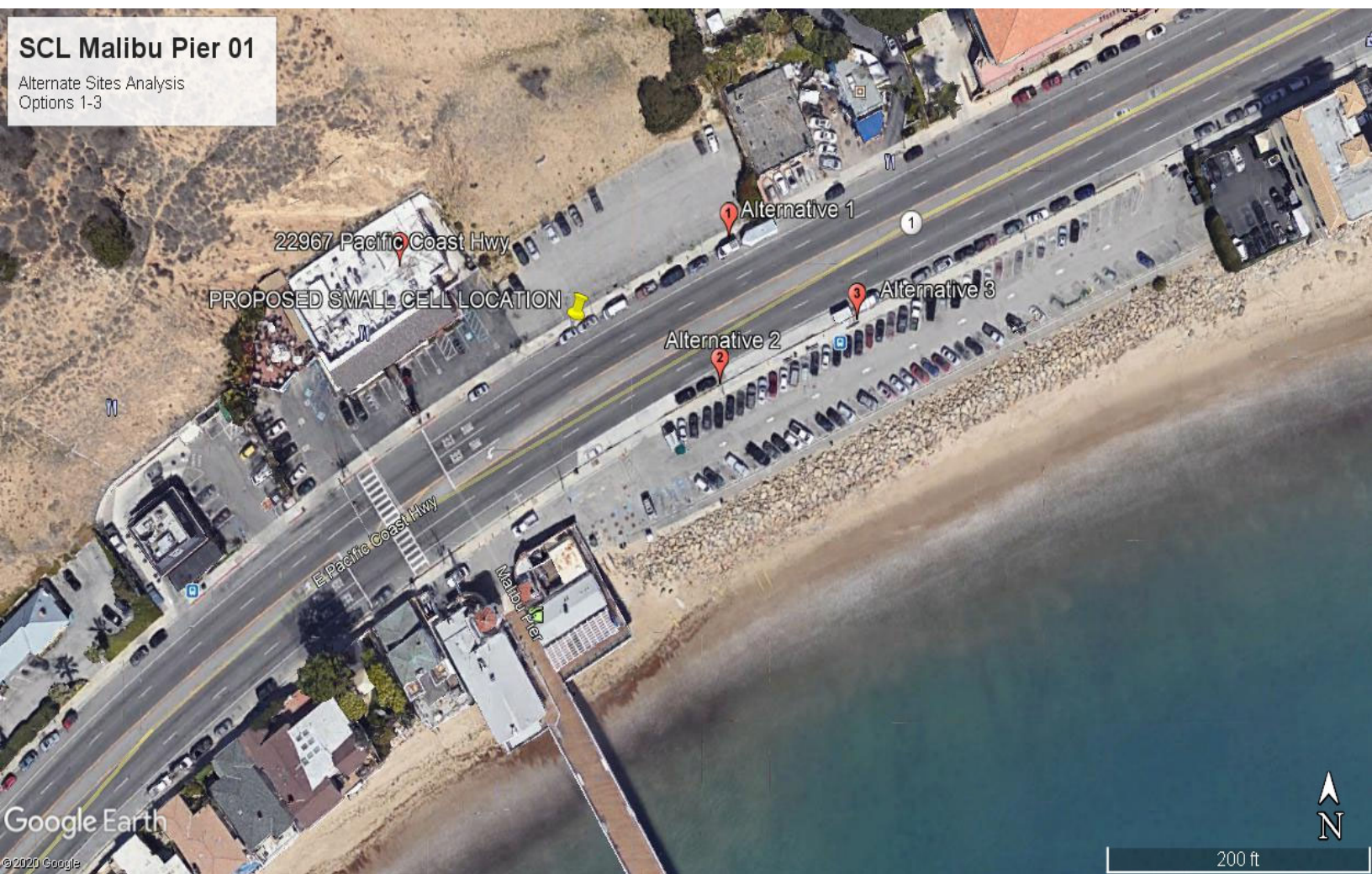
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## SCL Malibu Pier 01

22967.5 Pacific Coast Highway,  
Malibu, CA 90265

### Alternative Sites Analysis



On this aerial map, Verizon Wireless' proposed site SCL Malibu Pier 01 is identified by a yellow pin and the alternative sites are identified by red pins.



## Proposed Site - SCL Malibu RD 02

Verizon Wireless proposes to attach the small cell facility to a new street light replacing an existing 29'0" AGL octagonal street light pole with a 29'3" AGL concrete pole in the public right-of-way located at 22967.5 Pacific Coast Highway, Malibu, CA 90265 (Lat/Long: 34.037763° N, -118.676514° W). The pole is located on the north side of PCH and directly across the street from the parking lot adjacent to the beach access, Malibu Pier and between restaurant and commercial office building land uses to the east and west. The coverage objective for this site is to serve the immediately adjacent commercial areas, beach visitors and the traffic traversing PCH. Verizon Wireless determined that the site will successfully meet the coverage objective, will be the least intrusive option from an aesthetic perspective since existing infrastructure is available to attach to and the site does not adversely impact the viewshed of adjacent properties or the public at large.





## Alternative 1

The first alternative is a 29 ft. octagonal street light located approximately 150 ft. to the east of the primary option on the same side of PCH in front of the parking lot adjacent to commercial office space. The street light provides a clear line of sight to PCH however, the street light is located too far to the east to provide the desired coverage needed to satisfy the coverage objective. Any proposed attachment on the street light would also reflect the same design as the primary project as well as a pole replacement for structural integrity. As such, the street light for Alternative 1 cannot be considered as a superior option to the proposed project since the street light is not a viable option from a coverage perspective and it provides no aesthetic or location advantage. As such, the primary project is considered the least intrusive option.





## Alternative 2

The second alternative is an existing SCE street light in the public right-of-way on the south side of Pacific Coast Highway in front of the Malibu Pier and beach parking lot. The street light provides a clear line of sight to PCH however, the street light is located on the beach side of PCH and the proposed small cell attachment would have the potential to have a greater visual impact. Any proposed attachment on the street light would also reflect the same design as the primary project as well as a pole replacement for structural integrity. As such, the street light for Alternative 2 cannot be considered as a superior option to the proposed project since the street light provides no aesthetic or location advantage, therefore the primary project is considered the least intrusive option.



## Alternative 3

The third alternative is an existing SCE street light in the public right-of-way on the south side of Pacific Coast Highway approximately 335 ft. east of the entrance to the Malibu Pier and directly in front of the beach parking lot. The street light is located on the beach side of PCH and the proposed small cell attachment would have the potential to have a greater visual impact. The street light provides a clear line of sight to PCH however, the street light is located too far to the east to provide the desired coverage needed to satisfy the coverage objective. Any proposed attachment on the street light would also reflect the same design as the primary project as well as a pole replacement for structural integrity. As such, the street light for Alternative 3 cannot be considered as a superior option to the proposed project since the street light provides no aesthetic or location advantage. As a result, the primary project is considered the least intrusive option.

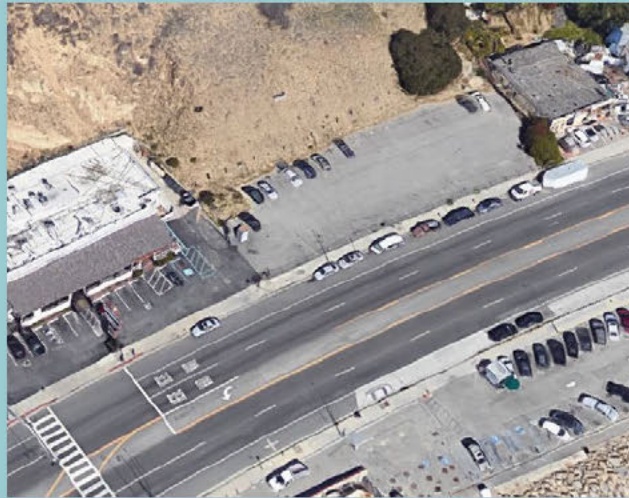




# Radio Frequency - Electromagnetic Energy (RF-EME) Jurisdictional Report

Site No. 655341  
SCL Malibu Pier 01  
22967.5 Pacific Coast Highway  
Malibu, California 90265  
Los Angeles County  
34° 2' 15.95" N, -118° 40' 35.45" W NAD83

EBI Project No. 6220003022  
July 10, 2020



Prepared for:  
Verizon Wireless  
c/o Fulsang Architecture  
347 Via Lido, Suite 202  
Newport Beach, California 92663

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



## **TABLE OF CONTENTS**

<b>EXECUTIVE SUMMARY .....</b>	<b>1</b>
<b>1.0 SITE DESCRIPTION AND ANTENNA INVENTORY .....</b>	<b>2</b>
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<b>3.0 MITIGATION/SITE CONTROL OPTIONS .....</b>	<b>4</b>
<b>4.0 SUMMARY AND CONCLUSIONS .....</b>	<b>5</b>
<b>5.0 LIMITATIONS .....</b>	<b>5</b>

## **APPENDICES**

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

## EXECUTIVE SUMMARY

### Purpose of Report

EnviroBusiness Inc. (dba EBI Consulting) has been contracted by Verizon via Fulsang Architecture to conduct radio frequency electromagnetic (RF-EME) modeling for Verizon Site SCL Malibu Pier 01 to be located on a light pole at 22967.5 Pacific Coast Highway 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 June 22, 2020 as provided to EBI Consulting. Subsequent changes to the drawings or site design may yield changes in the MPE levels or FCC Compliance recommendations.

Maximum Permissible Exposure (MPE) Summary					
Location	% of FCC General Public/Uncontrolled Exposure Limit	% of FCC Occupational/Controlled Exposure Limit	Power Density (mW/cm <sup>2</sup> )	Horizontal Approach Distance of Occupational Limit	Horizontal Approach Distance of General Public Limit
Proposed Verizon Equipment					
Antenna Face (Max Emission Level)	136.25	27.25	1.3625	N/A	3
Ground Level	0.05	0.01	0.0005	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 light 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 3 feet from the front of the antenna.

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 1 (one) active wireless telecommunication antenna on a light pole at 22967.5 Pacific Coast Highway in Malibu, California. This site is located in the right of way in a suburban area.

The antenna are to be mounted on top of a proposed light 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)
I	Verizon	COMMSCOPE	SON_V4SSPP-360S-F 07DT 1900	1900	0	2.0	20.0	4.87	54.7	89.7
I	Verizon	COMMSCOPE	SON_V4SSPP-360S-F 07DT 2100	2100	0	2.0	10.0	4.78	26.8	43.9
I	Verizon	COMMSCOPE	SON_V4SSPP-360S-F 07DT 2100	2100	0	2.0	10.0	4.78	26.8	43.9
I	Verizon	COMMSCOPE	V4SSPP-360S-F 02DT 3500	3500	0	2.0	20.0	2.91	34.8	57.1

ID	Carrier	X	Y	Antenna Radiation Centerline	Z-Height Ground
I	Verizon	99.0	59.3	31.3	30.2
I	Verizon	99.0	59.3	31.3	30.2

\*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 antenna. 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 I.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 antenna 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 light pole blue notice signs are recommended for installation on opposite sides of the light pole, 2 feet below the antenna (28.23 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 light 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 light pole at 22967.5 Pacific Coast Highway in Malibu, California.

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

Maximum Permissible Exposure (MPE) Summary					
Location	% of FCC General Public/Uncontrolled Exposure Limit	% of FCC Occupational/Controlled Exposure Limit	Power Density (mW/cm <sup>2</sup> )	Horizontal Approach Distance of Occupational Limit	Horizontal Approach Distance of General Public Limit
<b>Proposed Verizon Equipment</b>					
Antenna Face (Max Emission Level)	136.25	27.25	1.3625	N/A	3
Ground Level	0.05	0.01	0.0005	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 3 feet from the front of the antenna.

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, Jos Schorr, 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.

A rectangular box containing a handwritten signature in black ink. The signature appears to be "Jos Schorr" with a stylized flourish at the end.



Reviewed and Approved by:



sealed 10jul2020

---

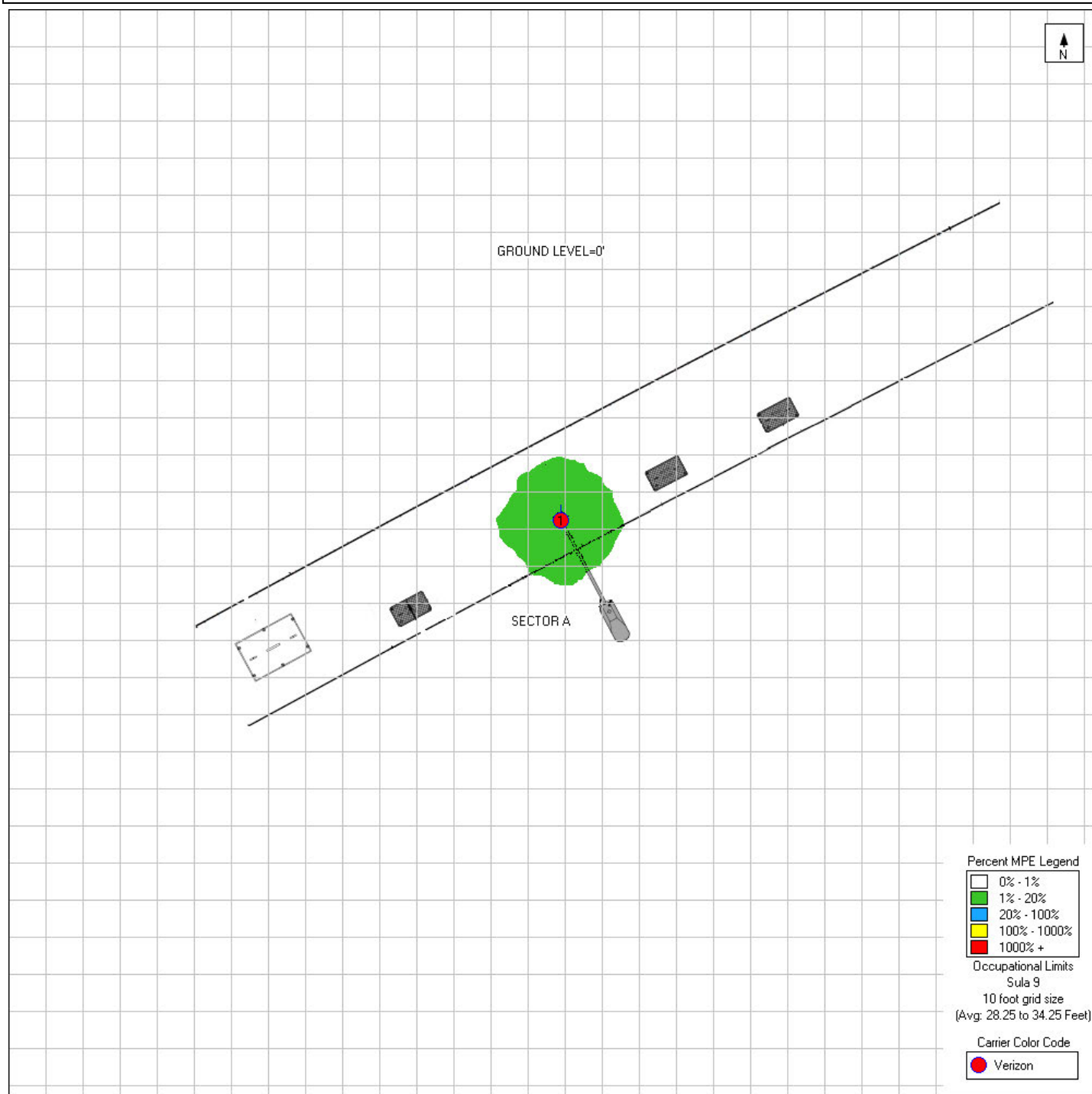
Michael McGuire  
Electrical Engineer  
[mike@h2dc.com](mailto:mike@h2dc.com)

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 building and related structures, as well as the impact of the antennas and broadcast equipment on the structural integrity of the building, are specifically excluded from EBI's scope of work.

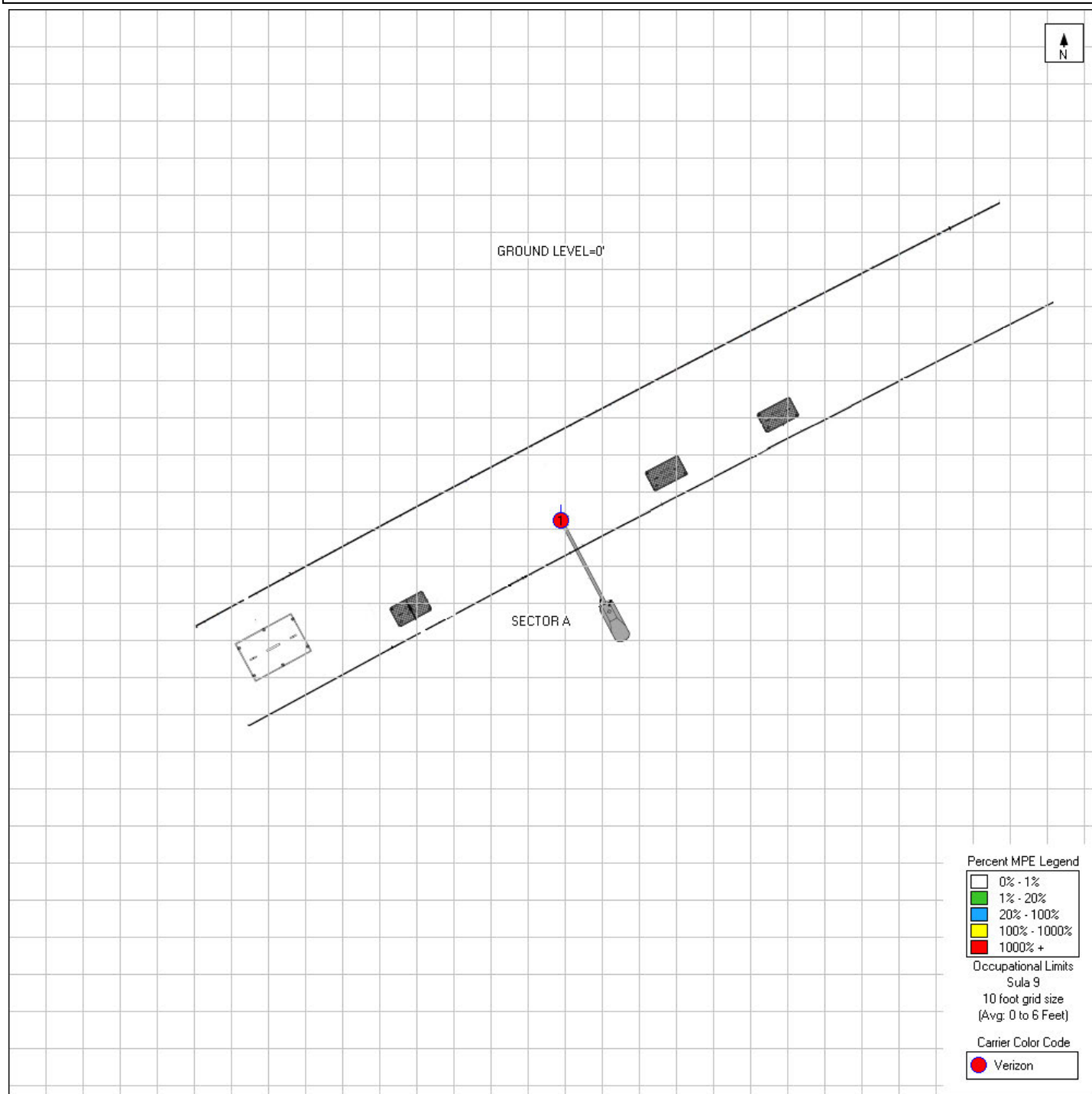
## **Appendix B**

### **Radio Frequency Electromagnetic Energy Safety Information and Signage Plans**

## Antenna Face Simulation

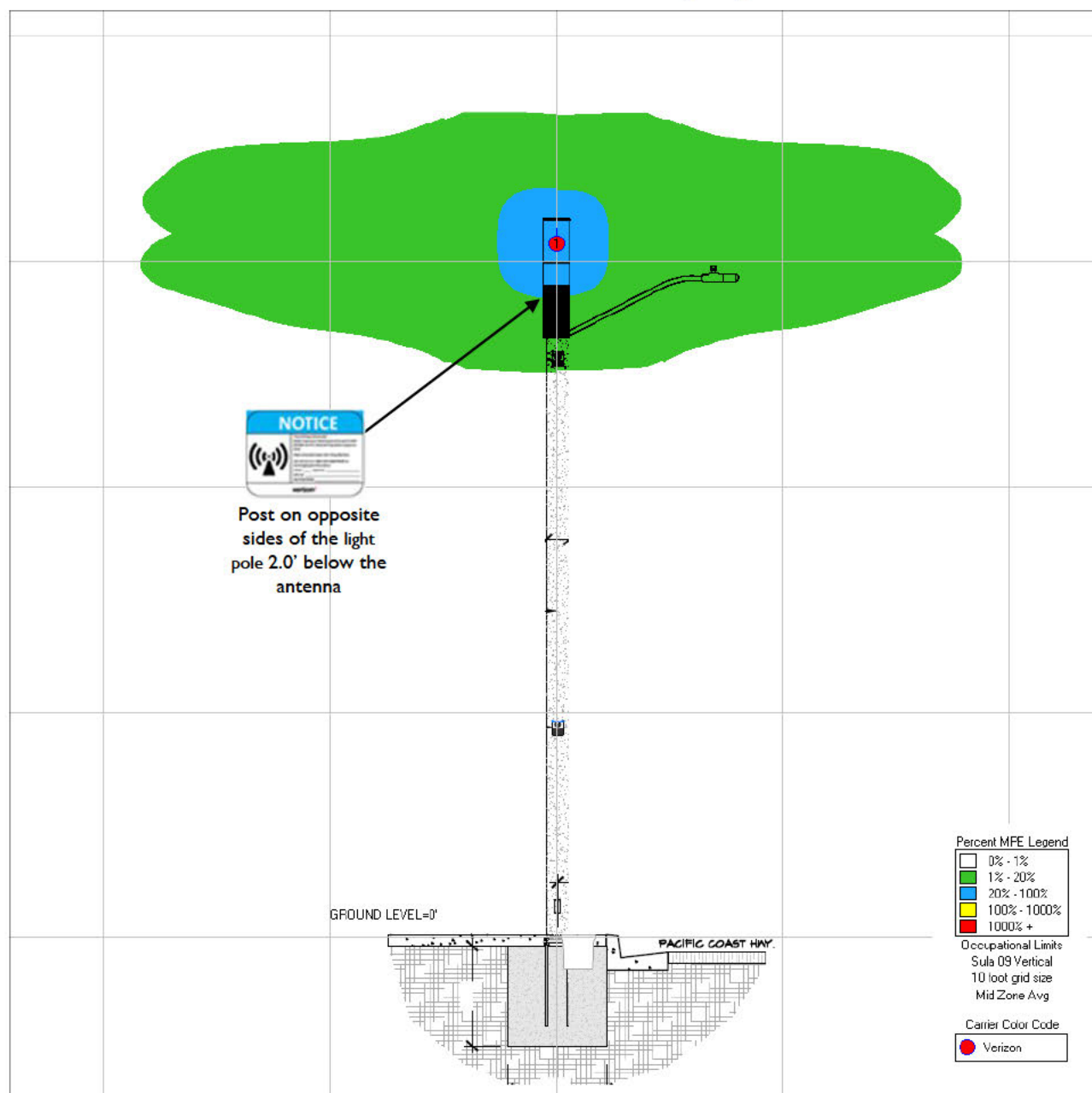



## Ground Level Simulation





## Elevation Simulation and Signage Plan

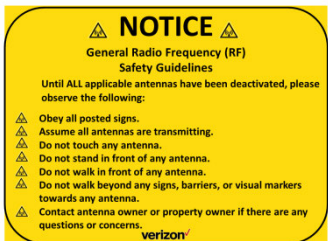

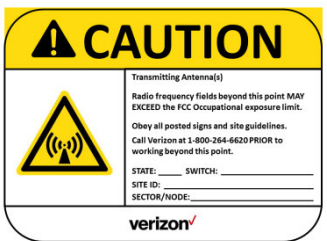




Sign	Description	Posting Instructions	Required Signage / Mitigation
	<b>Blue Notice Sign</b> Used to alert individuals that they are entering an area where the power density emitted from transmitting antenna(s) may exceed the FCC's maximum permissible exposure limit for the general population.	Securely post on opposite sides of the light pole 2.0 feet below the antenna (28.2 feet above ground level).	2 signs posted below the antenna

## 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 access point to 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.

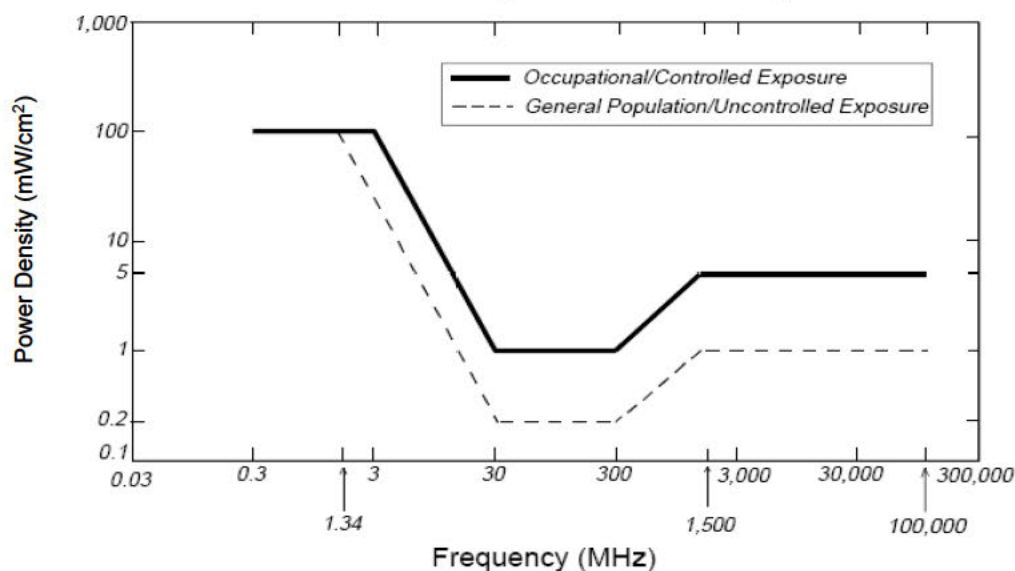


Table 1: Limits for Maximum Permissible Exposure (MPE)				
(A) Limits for Occupational/Controlled Exposure				
Frequency Range (MHz)	Electric Field Strength (E) (V/m)	Magnetic Field Strength (H) (A/m)	Power Density (S) (mW/cm <sup>2</sup> )	Averaging Time [E] <sup>2</sup> , [H] <sup>2</sup> , or S (minutes)
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:

<b>Personal Wireless Service</b>	<b>Approximate Frequency</b>	<b>Occupational MPE</b>	<b>Public MPE</b>
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.

July 10, 2020

RE: Verizon Wireless SCL sites noted below:

Site Name	Address	
SCL Malibu Rd 02	24256.5 Malibu Road	Malibu, CA 90265
SCL Malibu Rd 03	3014.5 Malibu Canyon Road	Malibu, CA 90265
SCL Pepperdine 01	3504.5 Malibu country Road	Malibu, CA 90265
SCL Point Dume Z4	29019.5 Cliffside Drive	Malibu, CA 90265
SCL West Malibu 01	33648.5 Pacific Coast Highway	Malibu, CA 90265
SCL Malibu Pier 01	22967.5 Pacific Coast Highway	Malibu, CA 90265
SCL East Malibu	22082.5 Carbon Mesa Road	Malibu, CA 90265
SCL Pepperdine 02	3015.5 Malibu Canyon Road	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 site and based on the result of the evaluation, the site will be compliant with FCC Guidelines.

The FCC has established safety rules relating to potential RF exposure from cell sites. The rules are codified at 47 C.F.R § 1.1310. The FCC provides guidance on how to ensure compliance with its rules in the FCC Office of Engineering and Technology Bulletin 65 (available at [https://transition.fcc.gov/Bureaus/Engineering\\_Technology/Documents/bulletins/oet65/oet65.pdf](https://transition.fcc.gov/Bureaus/Engineering_Technology/Documents/bulletins/oet65/oet65.pdf)). The FCC developed the RF 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: <https://www.fcc.gov/engineering-technology/electromagnetic-compatibility-division/radio-frequency-safety/faq/rf-safety>.

Please refer to the FCC Office of Engineering and Technology Bulletin 65 and the attached Verizon Wireless RF Brochure for information on RF exposure guidelines, RF safety, and landlord responsibilities. Questions related to compliance with federal regulations should be directed to [VZWRFCCompliance@VerizonWireless.com](mailto:VZWRFCCompliance@VerizonWireless.com).

Please 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,

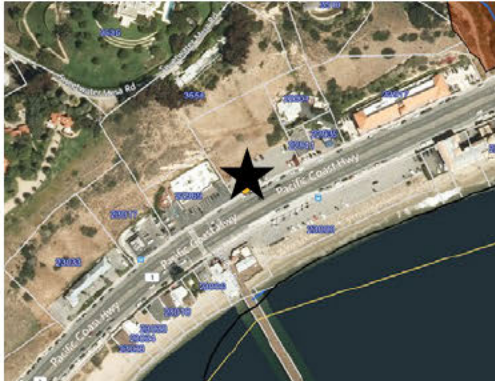
Jeremy Lee  
Manager-RF System Design  
Verizon Wireless





City Of Malibu  
23825 Stuart Ranch Road  
Malibu, CA 90265  
Phone (310) 456-2489  
[www.malibucity.org](http://www.malibucity.org)

## 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 500-feet of a wireless telecommunication facility application pending a Planning Commission public hearing on **MONDAY MAY 3, 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 & N-29-20 & 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. 20-022, COASTAL DEVELOPMENT PERMIT NO. 20-043, AND VARIANCE NO. 20-028** - An application, filed on July 14, 2020, for the installation of one wireless antenna at a height of 34 feet, 9 inches, and electrical support equipment attached to the top of a replacement concrete streetlight pole on the land side of Pacific Coast Highway, including a coastal development permit and variance to allow for the construction of a new streetlight pole taller than 28 feet in height located in the public right-of-way. In addition to City-issued permits, the applicant is required to obtain permits for use of the pole and will need to obtain an encroachment permit from Caltrans.

Nearest Location / APN:	22967.5 Pacific Coast Highway / 4452-019-005
GPS Coordinates / Pole ID:	34.0037763, -118.676514 / #4080414E
Zoning:	Commercial Visitor-Serving-One (CV-1)
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:  
Applicant:

Tyler Eaton, Assistant Planner, [teaton@malibucity.org](mailto:teaton@malibucity.org), (310) 456-2489, ext. 273  
Rob Searcy, Fulsang Architecture, [rob.searcy@fularch.com](mailto:rob.searcy@fularch.com), (949) 327-3398  
on behalf of Verizon Wireless

**REQUEST TO REVIEW 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: April 8, 2021



## **Tyler Eaton**

---

**From:** Tyler Eaton  
**Sent:** Monday, September 13, 2021 12:11 PM  
**To:** Steven Hakim  
**Subject:** RE: WCF 20 022 Appeal

I tried to do that with my last correspondence with Daisy and she said they have exhausted their efforts to figure out a solution. If you would like to reach out feel free, but we are moving forward because Verizon told us they would rather move forward with the location as proposed.

---

**From:** Steven Hakim [REDACTED]  
**Sent:** Monday, September 13, 2021 11:33 AM  
**To:** Tyler Eaton <teaton@malibucity.org>  
**Subject:** Re: WCF 20-022 Appeal

Can we set up another call with them. We were really trying to work with them, but if they plan to pursue the appeal, we will suggest to the council that this general location does not work at all.

Best,  
Steven

**Steven Hakim**  
[REDACTED]

P 310-393-5800 C 310-908-7300  
F 310-393-1292  
[REDACTED]

DRE#: 01917895  
[REDACTED]

On Sep 13, 2021, at 9:26 AM, Tyler Eaton <[teaton@malibucity.org](mailto:teaton@malibucity.org)> wrote:

Hey Steven,

Verizon is moving forward with the appeal. They are not planning on proposing any changes to the location that the Planning Commission approved. The hearing is scheduled to be heard at the October 11, 2021, City Council meeting.

Let me know if you have any questions.

**Tyler Eaton**  
**Assistant Planner | City of Malibu**  
23825 Stuart Ranch Road, Malibu CA, 90265  
Office: 310-456-2489 Ext. 273  
Cell: 424-422-8365

## Aaron Gribben

---

**Subject:** FW: Memo re State and Federal Law: Small Cells in the Right-of-Way

**Importance:** High

---

**From:** Rogers, Ethan JOSEPH [REDACTED]  
**Sent:** Monday, May 3, 2021 2:49 PM  
**To:** Planning Commission <[planningcommission@malibucity.org](mailto:planningcommission@malibucity.org)>; Kathleen Stecko <[kstecko@malibucity.org](mailto:kstecko@malibucity.org)>  
**Subject:** Memo re State and Federal Law: Small Cells in the Right-of-Way

Dear Chair Jennings, Vice Chair Weil and Commissioners:

For your review prior to deciding on Verizon's upcoming small cell applications, please find the attached memo explaining the current state of limitations imposed by law on local governments concerning your review of such applications.

Thank you for your time and consideration.

Best,

Ethan

[REDACTED]  
**Ethan J. Rogers**  
Network Counsel  
Legal Department  
[REDACTED]



## MEMORANDUM

**TO:** The City of Malibu, California

**FROM:** Ethan J. Rogers, Verizon Wireless Network Counsel

**DATE:** May 3, 2021

**RE:** Federal and State Law Requirements for Local Government Review of Small Cell Wireless Facility Applications

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### **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

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<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. The Minimum Term for Wireless Facility Permits Is 10 Years.**

Government Code Section 65964(b) bars local governments from unreasonably limiting wireless facility permit terms, and presumes that a period less than 10 years is unreasonable.

#### **C. 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.

## Kathleen Stecko

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**Subject:** Verizon Wireless letter on Wireless Communications Facility No. 20-022; 22967.5 Pacific Coast Highway in the City of Malibu; Agenda Item No. 5.B  
**Attachments:** Verizon Wireless letter to Malibu Planning Commission re SCL Malibu Pier 01 (050321).pdf

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**From:** Kevin P. Sullivan <KSullivan@gdandb.com>

**Sent:** Monday, May 3, 2021 4:11 PM

**To:** Planning Commission <planningcommission@malibucity.org>; Kathleen Stecko <kstecko@malibucity.org>

**Cc:** Tyler Eaton <teaton@malibucity.org>; Trevor Rusin <trevor.rusin@bbklaw.com>

**Subject:** Verizon Wireless letter on Wireless Communications Facility No. 20-022; 22967.5 Pacific Coast Highway in the City of Malibu; Agenda Item No. 5.B

Good afternoon Chair Jennings and members of the City of Malibu Planning Commission.

Attached is a letter on behalf of Verizon Wireless requesting modifications to certain conditions of approval for Wireless Communications Facility No. 20-022, Coastal Development Permit No. 20-043, Variance No. 20-028, and Site Plan Review No. 20-059 for a proposed telecommunications facility (Facility) to be located at 22967.5 Pacific Coast Highway in the City of Malibu.

Approval of the Facility permits will be considered for Agenda Item No. 5.B at tonight's Planning Commission meeting.

Please contact me if you have any questions about the attached letter. Thank you,

Kevin P. Sullivan  
Partner  
760.431.9501  
[www.gdandb.com](http://www.gdandb.com)

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

May 3, 2021

**By Email Only** ([PlanningCommission@malibucity.org](mailto:PlanningCommission@malibucity.org) and [KStecko@malibucity.org](mailto:KStecko@malibucity.org))

Mr. Jeffrey Jennings, Chair  
City of Malibu Planning Commission  
City of Malibu  
23825 Stuart Ranch Road  
Malibu, CA 90265

**Re: Verizon Wireless's Objections to Certain Draft Conditions of Approval for Wireless Communications Facility No. 20-022, Coastal Development Permit No. 20-043, Variance No. 20-028, and Site Plan Review No. 20-059; 22967.5 Pacific Coast Highway, City of Malibu; Agenda Item No. 5.B.**

Chair Jennings and Members of the Planning Commission:

Our office represents Verizon Wireless (Verizon) regarding Wireless Communications Facility No. 20-022, Coastal Development Permit No. 20-043, Variance No. 20-028, and Site Plan Review No. 20-059 for a proposed telecommunications facility (Facility) to be located at 22967.5 Pacific Coast Highway in the City of Malibu. Approval of the Facility permits will be considered as Agenda Item No. 5.B at the Planning Commission's May 3, 2021 meeting.

Consistent with the City Planning Department's detailed recommendations, Verizon asks the City Planning Commission to adopt Resolution No. 21-37 (with modifications addressed below) and approve the CEQA Categorical Exemption for the Facility.

Verizon also respectfully requests that the City revise or remove certain conditions of approval (COAs) for the Facility as follows:

- **COA No. 1** – Verizon asks that the last sentence of this COA be modified to include an obligation only to pay the City's "reasonable" expenses, if any, in defense of any challenge to approval of the Facility. Such a clarification is consistent with Government Code section 50030, which limits fees or charges relating to a wireless communications facility to the "reasonable costs" incurred by the City.
- **COA No. 9** – Reasonable time is needed for Verizon to construct its Facility. Typically, construction of a small wireless facility in the public ROW takes about 5-6 months, sometimes longer. Accordingly, COA No. 9 should be revised to allow 180 days, not just 30 days, for construction activities to finish after they start.

Alternatively, COA No. 9 could be revised to state that (1) Verizon will diligently and timely pursue its construction activities relating to the Facility, or (2) Verizon



Chair Jennings and Members of the Planning Commission  
May 3, 2021  
Page 2

could obtain extensions on the time to complete construction once started based on reasonable cause.

Verizon also requests the City to identify whether similar 30-day construction periods are imposed on other utility providers for their projects within the public ROW.

- **COA No. 11** – This COA should be revised to state that the Facility as constructed will conform with the design and plans approved through Resolution No. 21-37. Presumably, all City and other departmental review has already occurred for the Facility design, and no new departmental design requirements should be allowed to be imposed. (Verizon understands that it will need to obtain an encroachment permit from the City. But that permit should not impose any new Facility design requirements.)
- **COA No. 18** – This COA should be revised to state that the Facility as constructed and operated will conform with the design and plans approved through Resolution No. 21-37. Presumably, the Facility complies with all applicable “design criteria set forth in LIP Section 3.16.6.” Alternatively, this COA could be removed.
- **COA No. 21** – The term “plainly audible” relating to noise in this COA is vague and ambiguous. The City needs to identify what objective standards are used regarding this term. Also, Verizon will comply with COA No. 20, which should address all noise issues.
- **COA No. 30** – Verizon does not contest that the City can require removal or relocation of the Facility in the ROW for the reasons stated in this COA. 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.

The City typically knows well in advance when work will occur in the ROW that will result in the need to remove or relocate items. And, advance notice of removal or relocation requirements will allow Verizon time to plan, design and permit a replacement facility to avoid having a gap in its wireless network services.

- **COA No. 32** – This COA should be modified to provide reciprocal attorneys’ fees recovery rights to the prevailing party in a referenced action. The City’s unilateral and exclusive right to recover attorneys’ fees as part of this COA is unfair.

Chair Jennings and Members of the Planning Commission  
May 3, 2021  
Page 3

- **COA No. 36** – Subpart (b) of this COA relating to “undergrounding all equipment to the extent possible” should be removed. The Facility as constructed will conform with the design and plans approved through Resolution No. 21-37, which do not involve any undergrounding of equipment.
- **COA No. 38** – This COA should be modified. The requirement in this COA to provide network operations center information and RF caution information is addressed by FCC signage requirements. Verizon installs one sign on its small wireless facilities, and that sign is consistent with FCC regulations.

FCC-required signage protocols were recently addressed in the FCC's December 4, 2019 Report and Order (FCC 19-126) at paragraphs 89-103. All signage must be readily viewable and readable at a minimum distance of five feet (1.52 m) from the boundary (and as necessary on approach to this boundary) at which the applicable limits are exceeded. To comply with FCC regulations Verizon is required to install the primary signage at the lowest point on the pole where the RF emissions exceed, if at all, the FCC General Population MPE limits.

Any additional signage would need to be extremely large and placed above the primary signage. The typical signage Verizon installs on streetlight poles to comply with the FCC requirements includes a PSLC (Location Code) and Site Identification number, along with owner identification ("Verizon") and a 24-hour telephone number. Modifying this signage to comply with separate City requirements stated in this COA would be problematic from a FCC compliance standpoint and is likely duplicative of the typical signage Verizon installs under FCC regulations.

- **COA No. 43.a** – The Facility will be installed in ROW which Verizon understands is governed by Caltrans. Accordingly, Verizon will demonstrate to Caltrans – not the City Public Works Department – that the project complies with all applicable laws, codes, and regulations. The COA should be revised to reflect this fact.
- **COA No. 44** – This COA Section should be removed. No ADA requirements are imposed as part of the Facility design that would be approved under Resolution No. 21-37.
- **COA No. 53** – The statement at the end of this COA that “the wireless ROW permit will expire without further action by the City” should be removed. The provision about automatic expiration of the Facility permit is unfair and arbitrary, and violates Verizon’s due process rights.

Chair Jennings and Members of the Planning Commission  
May 3, 2021  
Page 4

Verizon's use and reliance on the Facility permit, which includes completion of construction, maintains the viability and life of the permit. (*See Community Development Commission v. City of Fort Bragg* (1988) 204 Cal.App.3d 1124, 1131-1132 [involving court rescinding city revocation of a CUP, which revocation was based on supposed permit expiration for failure to show substantial use and reliance on the permit]; *see also Morgan v. County of San Diego* (1971) 19 Cal. App. 3d 636, 639-642.) The provision for automatic termination of the permit is also inconsistent with City Code provisions for the revocation or termination of an issued permit.

This letter should be included as part of the administrative record for the Facility. Please let me know if you have any questions or comments about the objections to the draft COAs. Thank you.

Sincerely,



Kevin P. Sullivan, Esq.  
Partner  
Gatzke Dillon and Ballance LLP

KPS/jec  
Copies, all via email only:

Tyler Eaton, Assistant Planner ([TEaton@malibucity.org](mailto:TEaton@malibucity.org))  
Joel Crane  
Daisy M. Uy Kimpang  
Myrna Allende  
Ethan Rogers, Esq.

## Kathleen Stecko

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**From:** David Weil <davidweil@gmx.com>  
**Sent:** Monday, May 3, 2021 5:20 PM  
**To:** Kathleen Stecko; Richard Mollica; Patrick Donegan; Trevor Rusin; Adrian Fernandez  
**Subject:** Fwd: 5/3/21 Planning Commission: Agenda 5B

FYI

Sent from my iPhone

Begin forwarded message:

**From:** Nichole McGinley [REDACTED]  
**Date:** May 3, 2021 at 4:42:40 PM PDT  
**To:** planningcommission@malibucity.org, K Hill <kraig.malibu@gmail.com>, Jeffrey D Jennings <jdjenningslaw@gmail.com>, davidweil@gmx.com, Dennis Smith <was27miles@gmail.com>, res02igz@gte.net  
**Cc:** [REDACTED]  
**Subject:** 5/3/21 Planning Commission: Agenda 5B

May 3, 2021

Hello Commissioners,

I am sorry for the late note before tonight's meeting. I feel it is important to please consider the following for agenda item 5B :

In the Staff memo

p. 1: 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.**

p. 2: **The City of Malibu adopted a new Urgency Ordinance to address wireless communications facilities in the ROW in December of 2020. This project was deemed complete by staff in September of 2020. The standards used for this project were those standards that were in place before adoption of the Urgency Ordinance.**

But See Urgency Ordinance (Ordinance 477U), Secs. 4 and 5

SECTION 4. Urgency Declaration; Effective Date

The City Council finds and declares that the adoption and implementation of this ordinance is necessary for the immediate preservation and protection of the public peace, health and safety as detailed above and as the City and public would suffer potentially irreversible impacts if this ordinance is not immediately implemented. The Council therefore finds and determines that the immediate preservation of the public peace, health and safety requires that this Ordinance be enacted as an urgency ordinance pursuant to Government Code section 36937 and take effect immediately upon adoption by four-fifths of the City Council.



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.

The Staff applied the wrong “codes and regulations.” The Urgency Ordinance and related resolution “codes and regulations” must be applied.

There are at least three problems with the application under the Urgency Ordinance/Resolution requirements.

First, since they are replacing the pole and seeking additional height and thus need a waiver they must make the showing required by 12.02.050(E), e.g., “substantial 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.” Verizon did not make that showing (and staff applied a much different and lower test under the prior rules), and could not carry the burden in any event since this project is for coverage enhancement. Verizon admits there is no gap in coverage at present. So denial would not constitute an effective prohibition.

Related: since there is already “good coverage” and the project is merely for “additional capacity” (memo p. 6) the project can be denied outright.

Second, Verizon proposes to put the RRU in a shroud below the antenna. It is not “with the antenna in the shroud.” So the RRU must be undergrounded. Urgency Ordinance 6.A.

Third, Verizon does not meet the insurance requirements in the urgency ordinance. It looks like there is only \$1 million liability. The urgency resolution requires \$5 million occurrence/\$6 million aggregate.

Because the wrong codes and regulations were applied, I ask that you kick this back to staff and apply the Urgency Ordinance and Resolution codes and regulations to this application.

Thank you very much,

Nichole McGinley

cc: Lonnie Gordon

Urgency Ordinance (Ordinance 477U), Secs. 4 and 5:

SECTION 4. Urgency Declaration; Effective Date

The City Council finds and declares that the adoption and implementation of this ordinance is necessary for the immediate preservation and protection of the public peace, health and safety as detailed above and as the City and public would suffer potentially irreversible impacts if this ordinance is not immediately implemented. The Council therefore finds and determines that the immediate preservation of the public peace, health and safety requires that this Ordinance be enacted as an urgency ordinance pursuant to Government Code section 36937 and take effect immediately upon adoption by four-fifths of the City Council.

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.

Submitted by: Nichole McGinley

**CDP No. 20-043**

**WCF No. 20-022**

**VAR No. 20-028**

**SPR No. 20-059**

**22967.5 Pacific Coast Highway**

**Closest APN: 4452-019-005**

**Planning Commission**

**May 3, 2021**



# Vicinity Map & Aerial





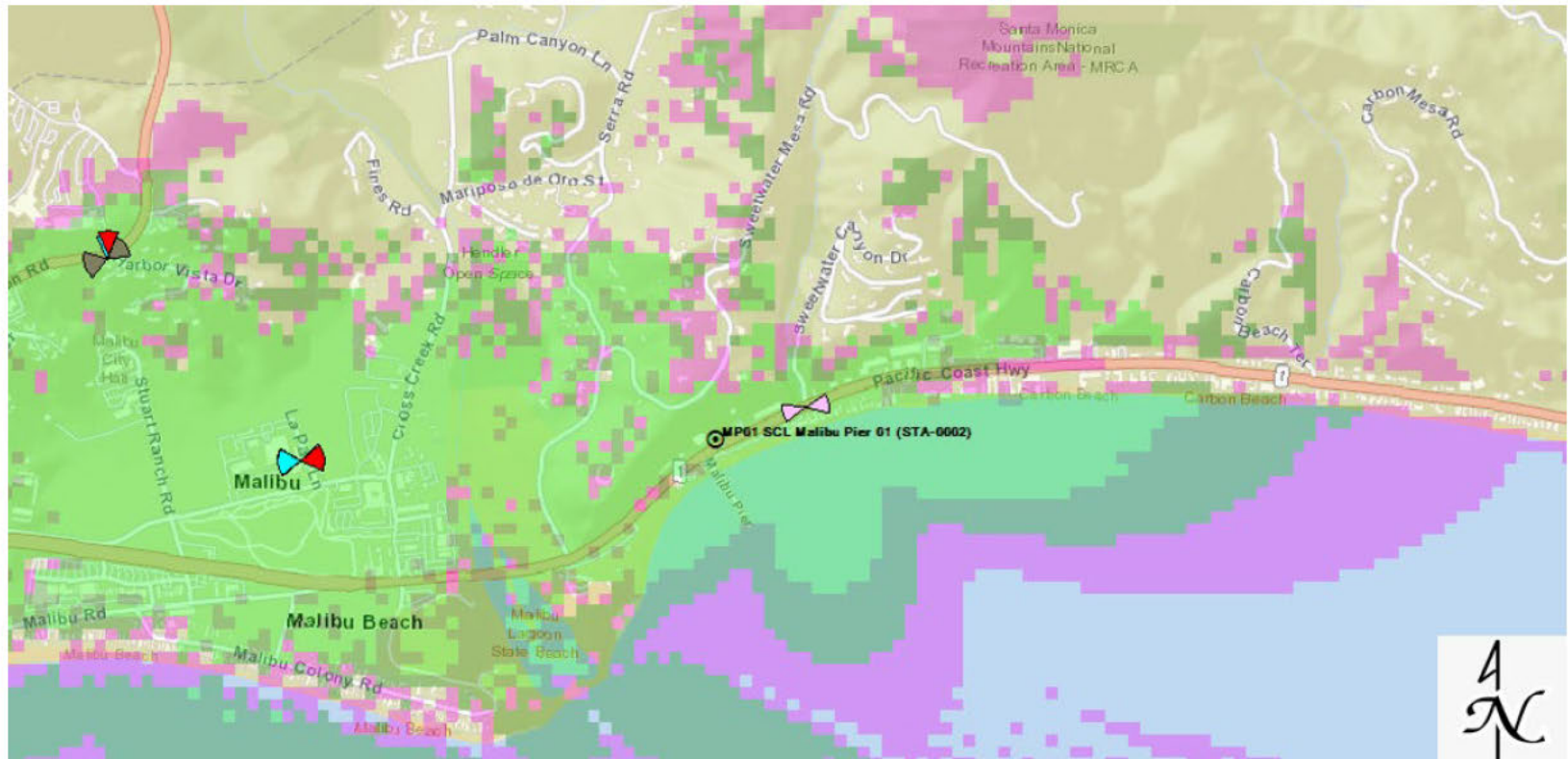
# Project Description

- A replacement streetlight pole topped with that reaches an overall height of 34 feet, 9 inches:
  - a) An omnidirectional canister antenna;
  - b) One remote radio unit (RRU) which will be concealed inside a concealment shroud below the antenna atop the pole;
- Installation of three handholes inside the concrete sidewalk within the public ROW, as follows:
  1. One handhole box for Verizon Wireless fiber optic lines;
  2. One handhole box for a power disconnect switch; and
  3. One handhole box for Southern California Edison (SCE) distribution.

## Two Discretionary Requests

- ❖ VAR No. 20-028 for a replacement streetlight pole over 28 feet; and
- ❖ SPR No. 20-059 for the installation and operation of a wireless communications facility located within the public ROW.

# Coverage Maps (Existing)

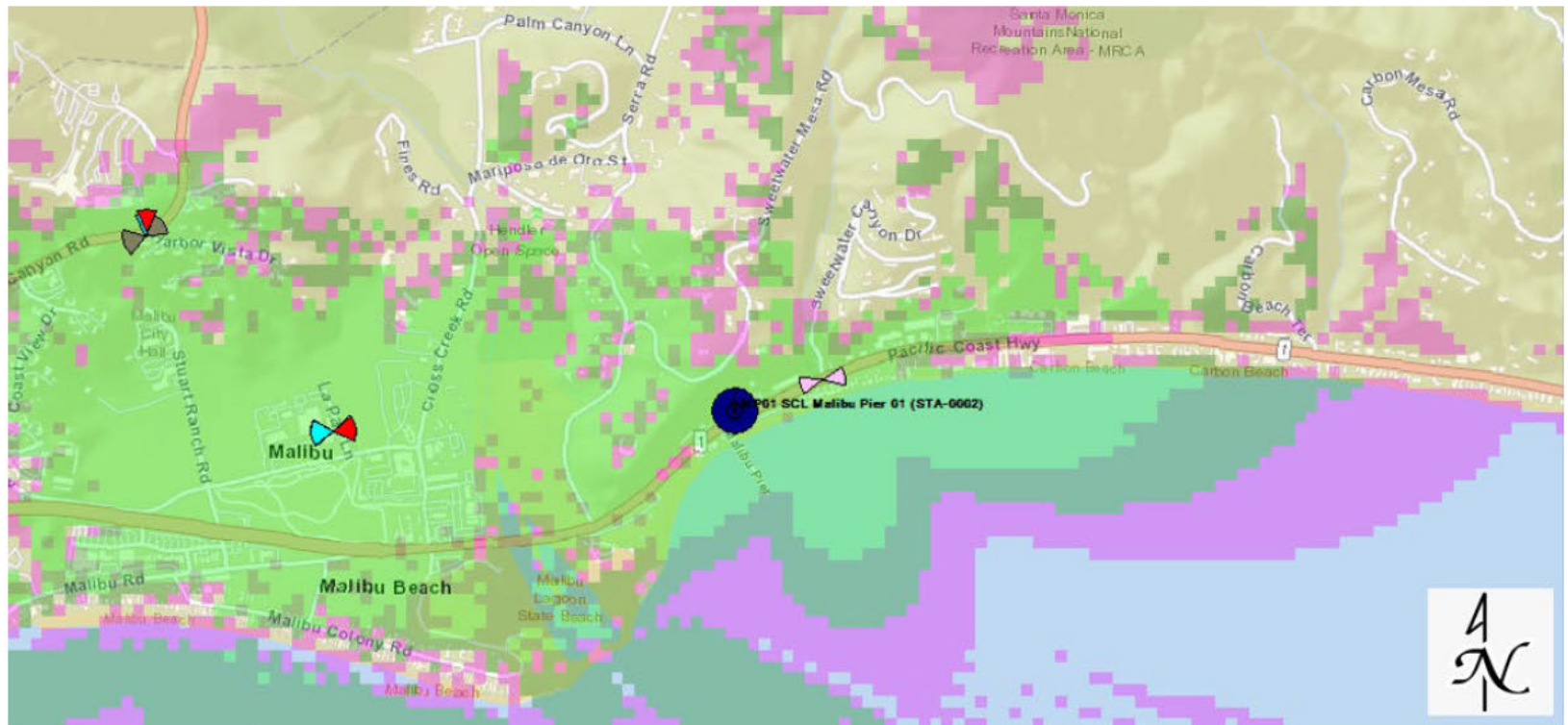


verizon✓

LTE - Coverage  
BEST  
GOOD  
FAIR  
POOR



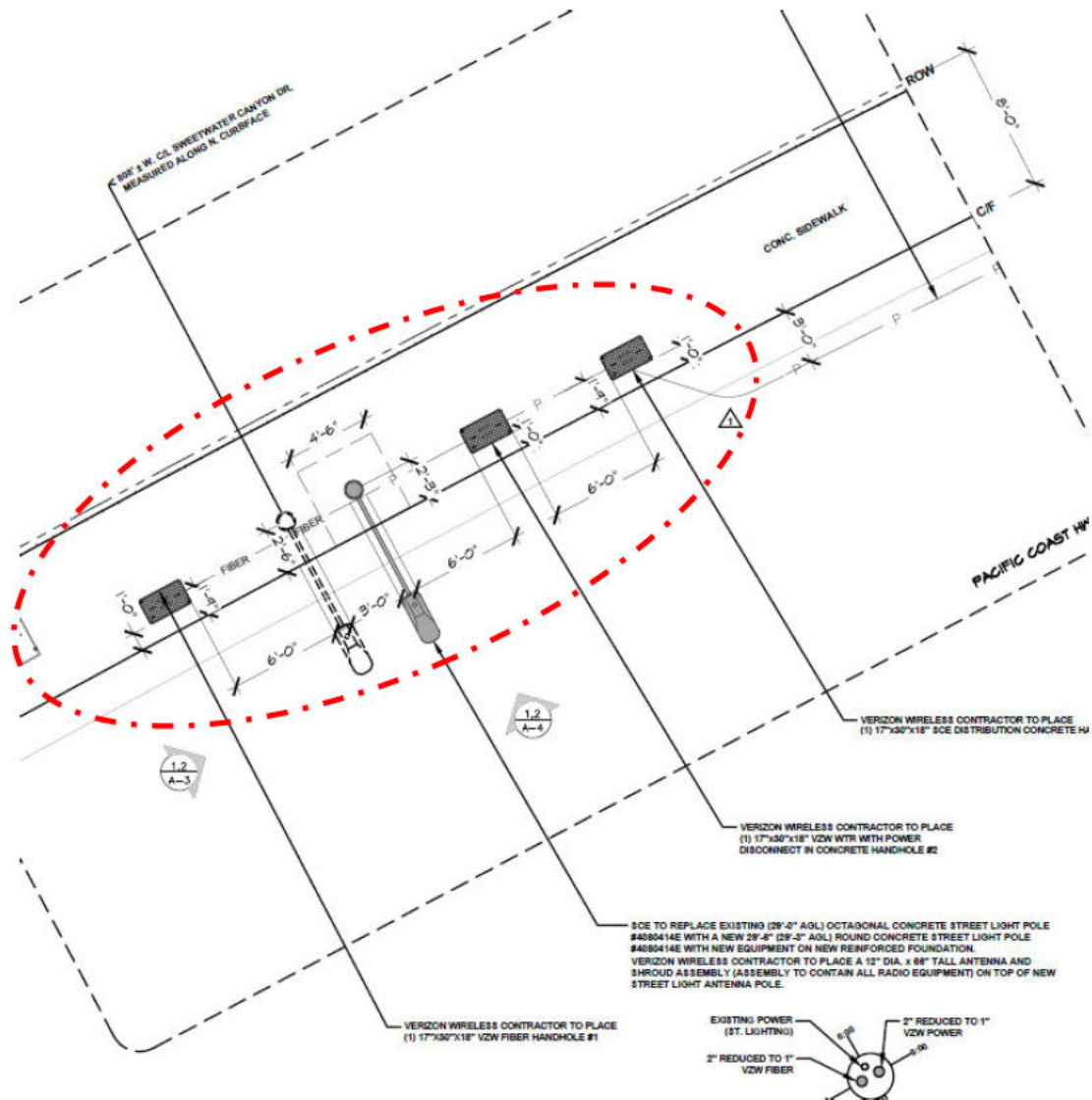
# Coverage Maps (Proposed)



verizon✓

LTE - Coverage  
BEST  
GOOD  
FAIR  
POOR

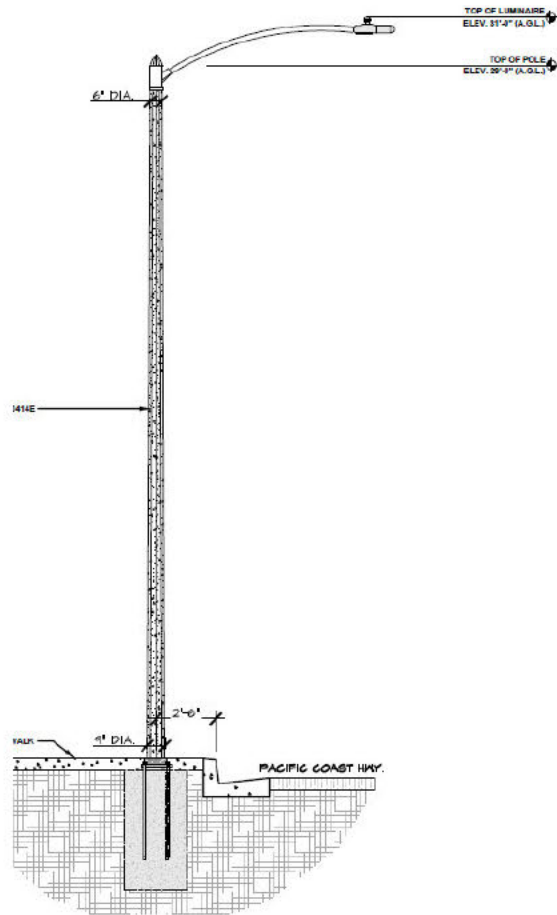
# Site Plan



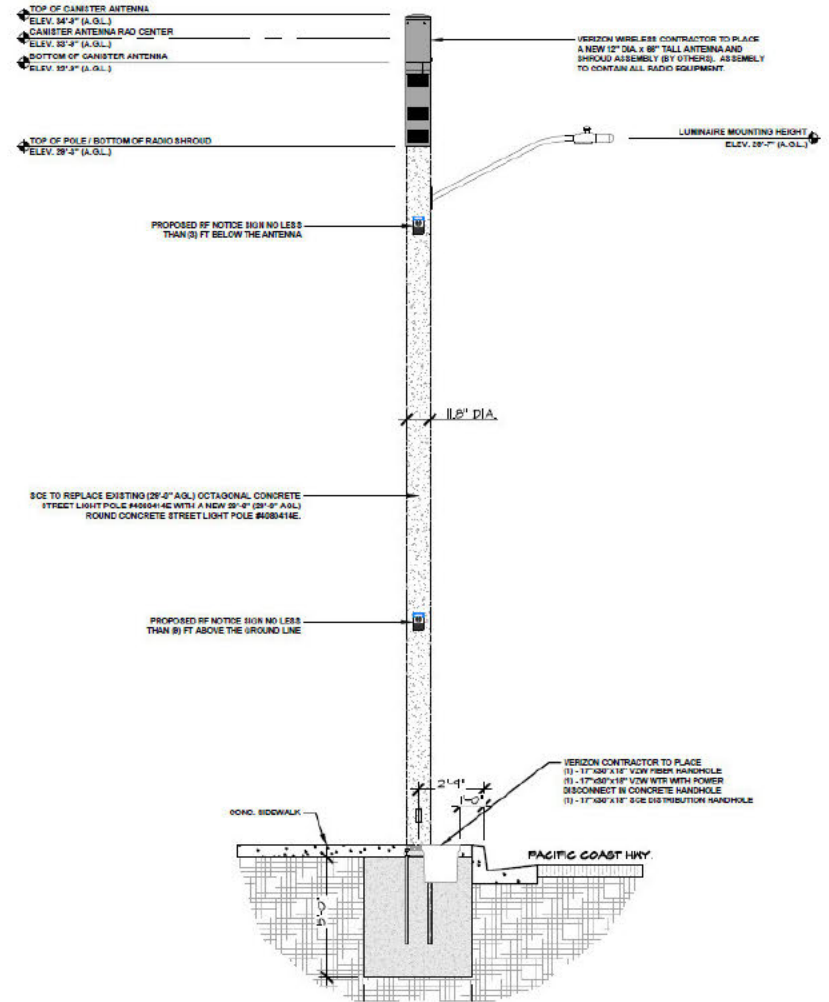


# Elevation

## Existing



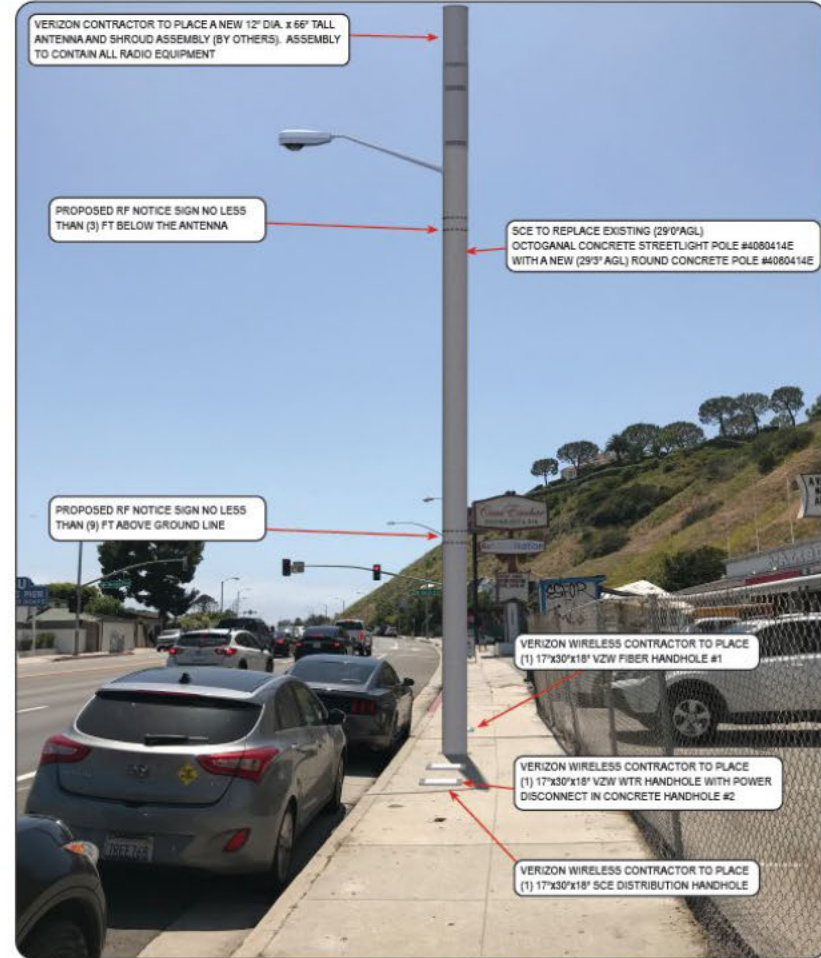
## Proposed



# Photosimulation



Existing Conditions

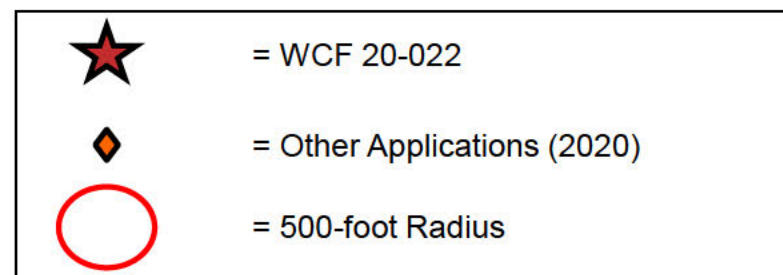


Proposed Site Build

# Summary

Adopt Resolution No. 21-37,  
approving CDP No. 20-043







**City Of Malibu**  
**23825 Stuart Ranch Road**  
**Malibu, CA 90265**  
 Phone (310) 456-2489  
[www.malibucity.org](http://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 500-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. 21-006** - An appeal of the Planning Commission's approval of Wireless Communications Facility No. 20-022, Coastal Development Permit No. 20-043, Variance No. 20-028, and Site Plan Review No. 20-059 for the installation of one wireless antenna at a height of 34 feet, 9 inches, and electrical support equipment attached atop a replacement concrete streetlight pole on the land side of Pacific Coast Highway, including a coastal development permit and variance to allow for the construction of a new streetlight pole taller than 28 feet in height located in the public right-of-way. In addition to City-issued permits, the applicant is required to obtain permits for use of the streetlight pole and will need to obtain an encroachment permit from Caltrans.

Nearest Location / APN: 22967.5 Pacific Coast Highway / 4452-019-005  
GPS Coordinates / Pole ID: 34.0037763 -118.676514 / #4080414E  
Nearest Zoning: Commercial Visitor-Serving-One (CV-1)  
Owner: Caltrans public right-of-way  
Applicant: Rob Searcy, Fulsang Architecture, on behalf of Verizon Wireless  
rob.searcy@fulsarc.com, (949) 327-3398  
Appellant: Steven Hakim, Surfider Plaza LLC  
Appealable to: California Coastal Commission  
Application Filed: July 14, 2020  
Appeal Filed: May 12, 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.

**COASTAL COMMISSION APPEAL.** An aggrieved person may appeal the City Council'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: September 16, 2021

**Julie Stuva**

---

**Subject:** Items 4.B., 4.C, and 4.D. (Verizon Wireless Applications)

---

**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 <[mperson@malibucity.org](mailto:mperson@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**

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**Subject:** City Council Meeting 10/11, items 4B & 4C & updating Ordinance 477

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**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

**Subject:** Follow-up concerns re telecom application process in response to your questions

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**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





**Subject:** My thoughts on the application process & how it might be improved

**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

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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.

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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.

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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



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's Response to Appeal Filed on the City Planning Commissions' Approval (4-1) of WCF 20-022 for a Replacement Light Pole Facility at 22967.5 Pacific Coast Highway; October 11, 2021 City Council Meeting; Agenda Item No. 4D.**

Mayor Grisanti and Honorable Members of the City Council:

Our office represents Verizon Wireless (Verizon) regarding an appeal filed as to the City Planning Commission's 4-1 approval of a small cell facility omnidirectional canister antenna (WCF 20-022) on top of a **replacement** streetlight pole to be located at 22967.5 Pacific Coast Highway (PCH).

As discussed in detail below, the appeal filed for the approved small project does not have merit.

Verizon's proposed small cell project is needed to enhance and supplement existing wireless network coverage in the area, including on well-traveled PCH<sup>1</sup>, to provide additional wireless services and system capacity for customers. In addition, the project complies with all applicable City Codes and regulations as determined after thorough review by City staff.

Verizon therefore respectfully requests that the City Council confirm the Planning Commission's 4-1 approval decision, accept City Staff's recommendation for approval of the project at the location approved by the Planning Commission and for denial of the appeal, and deny the appeal.

#### **Brief Background About The Project Application.**

Verizon submitted an application for the subject small cell facility in the public right-of-way (ROW) in early August 2020, and the application was deemed complete by the City in September 2020.

The proposed small cell facility on the land side of PCH will replace an existing streetlight in the ROW and next to a vacant commercial lot with a new pole that is **only one foot wide**.

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<sup>1</sup> Caltrans' website has data that about 47,500 average daily trips travel on this segment of Highway 1 near the intersection with Civic Center Way. See: [2017 Traffic Volumes : Route 1 | Caltrans](#). Traffic volumes on weekends for this segment of Highway 1 are typically higher.



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The height of the pole, which is needed to achieve a reasonable coverage area, will be 34'-9". This height is well under the up to 50-foot height allowed under federal regulations for a small cell facility. (See 47 Code Federal Regulations [CFR] § 1.6002(d)(1)(1).) In fact, this small cell project utilizes only about 70% of the height rights available under governing federal law.

Additionally, the existing streetlight (luminaire) is already at a height of 31', which as it exists is in excess of the 28' height limit in the area. Many streetlight poles similar in size to the replacement streetlight exist in the area around the project within the ROW on PCH, including 3-4 light poles on the ocean side of the road.

Based on a detailed 80-page Agenda Report, which included a Staff recommendation for project approval, the City Planning Commission on May 3, 2021, voted 4-1 to approve the small cell facility project. Planning Commission Resolution No. 21-37 approving the project contained detailed findings explaining that the proposed facility complied with all governing regulations and City Codes.

On May 12, 2021, an appeal was nonetheless filed on the project approval by a person/entity that did not appear at or send a written communication for the Planning Commission hearing. Further, the appeal did not contain any supporting materials or explanation for the general arguments raised.

### **Verizon Attempted To Address Appellant's Concerns And To Resolve The Appeal.**

In the last few months, Verizon's representatives and consultants met virtually with the appellant and its team twice, in long calls, to explore whether solutions existed to avoid the appeal of the project approval.

Verizon investigated options to move the location of the replacement street light pole away from appellant's property boundaries, either to the west, east, or south (across PCH to the ocean side). But, as explained in detail to appellant by Verizon and its engineering consultant, no feasible alternatives were identified.

Moving the replacement facility as requested by appellant is not feasible due to (1) inability of Verizon to meet its coverage objective at other locations, (2) the existence of physical underground utility and other constraints at alternate locations, (3) Southern California Edison (SCE), who owns the pole, retains construction standards that require moving a replacement pole a minimum of 3 feet from the existing pole location to accommodate a larger foundation for the replacement streetlight, and (4) moving the pole to the ocean side of PCH could impact scenic views.

Verizon offered to explore moving the replacement pole a few feet further to the west if appellant agreed to pay the costs of the investigation of underground constraints in the area. Investigation of utility and other constraints in the ROW would be needed, which would cost about \$25,000 to prepare work plans, tear up and restore the ROW, prepare and implement a traffic

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control plan, and obtain Caltrans' and possible City permits for the work. Appellant repeatedly stated that it would not pay anything for this investigative work.

**The Appeal Issues Lack Merit And The Appeal Should Be Denied.**

**1. Appeal Issue No. 1 – Claimed lack of notice.**

The appeal wrongly claims that notice was not sent for the May 3, 2021, Planning Commission meeting on the project. This is not correct. Proper notice was provided.

Attached as **Exhibit A** to this letter is an affidavit, signed under penalty of perjury, identifying all property owners within 500 feet of the project site to whom mailed notice was sent about the May 2021 hearing on the project. The first address and Parcel Number on the mailing list (**Ex. A**, page 3) is Surfrider Plaza LLC, the appellant in this matter.

Further, the City timely and properly noticed the May 3, 2021, public hearing on Verizon's project under the Brown Act. Appellant does not claim otherwise.

**2. Appeal Issue No. 2 – The project site is claimed to be within a “park.”**

The appeal incorrectly asserts that the project site is “within the boundary limit of public parks within the City.” No support for this argument was provided by appellant.

Again, the location of the proposed small cell replacement streetlight pole is on the land side of PCH, in the ROW, and next to a vacant commercial lot.

In any event, the replacement facility is needed by Verizon to enhance and improve its coverage and network capacity in the area, which has nearly 50,000 daily traffic trips on average on the segment of Highway 1. The wireless facilities are needed to densify Verizon's wireless network, introduce new services, and to improve network service capabilities in the area. No further showing for the wireless services<sup>2</sup>, such as a “clear need”, is required to justify the small cell facility here. (See Federal Communications Commission (FCC) September 2018 Order [FCC 18-133].) Nor is a “clear need” required for a public utility such as Verizon to install its communications facilities in the public right-of-way under California Public Utilities Code section 7901.

The area around the proposed project is also a highly visited location on Malibu with increased visitor activity and traffic especially during the summer months. It is conservatively estimated that Malibu receives approximately 13 million visitors each year with its beaches like Zuma Beach receiving approximately more than 7 million visitors.

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<sup>2</sup> In its 2018 Order the FCC eliminated requirements that applicants show a “coverage gap”-based analytical approach for small wireless facility applications and instead established a new national standard for what constitutes effective prohibition of wireless service under the Telecommunications Act. (See FCC Small Cell Order, ¶¶ 9-10, 21, 37 and 40 and notes 87-88 and 94.)

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**3. Appeal Issue No. 3 – Claim that the project is out of character and potentially impacts scenic views.**

Appellant next claims that the proposed less than one foot wide **replacement** streetlight pole is out of character and could impact scenic views. This is incorrect. Again, appellant does not provide any support for this argument in the appeal.

Many similarly sized streetlight poles exist in the area around the project within the ROW on PCH, including 3-4 light poles on the ocean side of the road. Also, two large and tall signs for the Casa Escobar and Jack in the Box restaurants are located about 100-150 feet to the west of the project location on the land side of PCH. In addition, a large sign for the Malibu Pier is on the ocean side of PCH across from the project location.

No scenic public views will be impacted by the replacement light pole on the land side of PCH. After review and investigation, City Staff determined that the replacement streetlight facility on the land side of PCH will not impact any “visually impressive view of the Pacific Ocean or any other scenic resources identified in the LIP.”

**4. Appeal Issue No. 4 – Alleged detriment to the public interest.**

The appeal next asserts, incorrectly and without any foundation, that the replacement streetlight pole will be a detriment to the public interest due to impacts to scenic views, inconsistent character with the neighborhood, potential hazards to future construction near the site, and potential hazards of the antenna to occupants in the area.

As discussed regarding Appeal Issue No. 3 above, no scenic views will be adversely impacted by the replacement pole on the land side of PCH next to a vacant commercial lot. The argument on this matter is not factually accurate or supported.

Also as discussed regarding Appeal Issue No. 3 above, the replacement streetlight is similar in type and size to many other nearby streetlights in the ROW and is much less visible than the few nearby large signs for commercial operations. The argument on this matter is not factually accurate or supported.

The claim about possible hazards to future construction also lacks any support. Appellant does not identify what possible future construction could be impacted by the replacement light pole. Further, as the proposed facility is a replacement pole, there is no material change in circumstances with Verizon’s project as to the condition of the ROW in the immediate area of the project. Even if Verizon did not propose to install a replacement streetlight pole, the existing light pole would have to be accommodated by any future construction activity. And, accommodation of existing streetlights in the ROW in construction projects is common and does not present any supposed hazard.

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Finally, appellant's general claims about potential hazards from Verizon's antenna fail under the facts and the law. City Staff confirmed information in a report provided by Verizon that its wireless facility will operate within Federal Communications Commission (FCC) regulations governing health safety issues. Further, federal law prevents the City from regulating wireless facility applications on the basis of environmental effects of radio frequency energy where the facility complies with FCC regulations for such energy. (47 U.S.C. section 332(c)(7)(B)(iv).)

#### **5. Appeal Issue No. 5 – No ability to grant a variance.**

Appellant lastly claims, without explanation or support, that circumstances do not support the granting of a variance for the height and location of the project. These claims also fail.

The Agenda Report for this item explains that all needed findings can be made for Verizon's small cell replacement light pole project as to height and location. The location and facility are needed to supplement and enhance wireless coverage in the area, is the least visually intrusive alternative for the proposed facility, implements the City's policy of collocation, avoids installation of an additional utility facility in the ROW, and will comply with all applicable City Codes.

In addition, as explained above, the height of the pole, which is needed to achieve a reasonable coverage area, will be 34'-9", is well under the up to 50-foot height allowed under federal regulations for a small cell facility. (See 47 CFR § 1.6002(d)(1)(1).) This small cell project utilizes only about 70% of the height rights available under governing federal law.

Also, Verizon's project to enhance, upgrade, densify, improve and augment its wireless services in the area does not require a variance under the FCC's September 2018 Order [FCC 18-133].) Nor is a variance required for a public utility such as Verizon to install its communications facilities in the public right-of-way under California Public Utilities Code section 7901.

Moreover, SCE's replacement pole designs are limited for wireless facilities on streetlights and the only option below 28' is a 23' pole which (1) will not allow a wireless coverage footprint necessary to meet Verizon's coverage objectives and would likely require installation of an additional wireless network facility in the area, (2) will have a luminaire or light height more than 6 feet lower than the proposed replacement streetlight, which will significantly reduce the light footprint for traffic and pedestrian safety in the public right-of-way, and (3) will be inconsistent in height with the other nearby existing streetlights and will disrupt the existing lighting scheme in the area.

Further, the City has approved collocation of many other similar wireless facilities on existing utility poles and streetlights in the public right-of-way that exceed 28 feet in height, so no special privilege will be granted to Verizon. Moreover, deploying a needed wireless facility consistent with federal law and national policy is not a special privilege.

Furthermore, the Planning Commission's Resolution No. 21-37 approving the project made many detailed findings supporting the granting of a variance for the project.



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For the many reasons discussed above, Verizon respectfully requests that the City Council confirm the Planning Commission's 4-1 approval decision, accept City Staff's recommendation for approval of the project at the location approved by the Planning Commission and for denial of the appeal, and deny the appeal of the approved Verizon project (WCF 20-022) to install a replacement streetlight pole on the land side of PCH in the ROW.

This letter should be included as part of the administrative record for the proposed project. Please let me know if you have any questions about these comments. 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))  
Adrian Fernandez, Principal Planner ([AFernandez@malibucity.org](mailto:AFernandez@malibucity.org))  
Tyler Eaton, Assistant Planner ([TEaton@malibucity.org](mailto:TEaton@malibucity.org))  
Daisy M. Uy Kimpang  
Ethan Rogers, Esq.

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## **EXHIBIT A**



# City of Malibu

23825 Stuart Ranch Road · Malibu, California · 90265-4861  
Phone (310) 456-2489 · Fax (310) 456-7650 · [www.malibucity.org](http://www.malibucity.org)

## CERTIFIED PROPERTY OWNERS/OCCUPANTS LIST

**PROJECT ADDRESS:** SIDE OF 22969 PACIFIC COAST HWY **APN:** ROW 4452-019-005

I HEREBY CERTIFY that the attached list contains the names and addresses of all persons to whom all property is assessed (including any required occupants of said properties) as they appear on the latest available assessment roll of the County of Los Angeles and for a distance ☒ of 500 feet from the exterior boundaries of the property described above or ☐ 1,000 feet for properties zoned Rural Residential – 10 acre, 20 acre and 40 acre.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 07/09/2020

Signature  
ANTONIO PUERTAS

Print Name

LEON MAPPING & GIS SERVICES  
15031 CHATSWORTH ST # 17  
MISSION HILLS, CA 91345  
PHONE 818-235-7649

e-mail: [leonmapping@hotmail.com](mailto:leonmapping@hotmail.com)  
[www.laradiusmaps.com](http://www.laradiusmaps.com)





0 50 100 200 300 400 500 Feet



Map Prepared by:

Leon Mapping & GIS Services  
15031 Chatsworth St, Ste 17  
Mission Hills, CA 91345  
818-235-7649  
leonmapping@hotmail.com  
www.laradiusmaps.com

SCL MALIBU PIER 01  
SIDE OF 22969 PACIFIC COAST HWY

1 TO 28 OWNERS

500' RADIUS

DATE:07/09/2020

UPDATE: \_\_\_\_\_

166

CONTACT: VERIZON C/O OF FULSANG ARCHITECTURE  
PHONE :(949) 633-6079





## SCL MALIBU PIER 01. SIDE OF 22969 PACIFIC COAST HWY

## OWNERS / OCCUPANTS

OWNER	OWNERNAME	ST ADDRESS 1	ST ADDRESS 2	CITY	STATE	ZIP	APN_D
1							4452-019-005
2							4452-019-009
2	4452-019-009						4452-019-010
3							4452-019-008
4							4452-017-006
5							4452-017-007
6							4452-016-015
7							4452-019-011
8							4452-020-101
9							4452-005-029
9	SAME AS 4452-005-029						4452-005-030
9	SAME AS 4452-005-029						4452-005-031
10							4452-005-902
							4452-005-901
11	SAME AS 4452-005-901						4452-006-902
12		AGE		S			4452-005-903
13							4452-005-025
14							4452-005-024
15							4452-005-004
15							4452-005-023
16				P			4452-005-022
17							4452-005-018
18							4452-005-002
19							4452-005-001
20							4452-019-002
21							4452-019-003
22							4452-017-009
23							4452-017-002
24							4452-017-001
25							4452-017-004
26							4452-017-005
27							4452-017-008
28							4452-019-004
1	VACANT/PKG						4452-019-005
2	OCCUPANT						4452-019-009
2	OCCUPANT						4452-019-010
2	OCCUPANT						4452-019-010
3	OCCUPANT						4452-019-008
4	VACANT						4452-017-006
5	OCCUPANT						4452-017-007
6	OCCUPANT						4452-016-015
7	OCCUPANT						4452-019-011
7	OCCUPANT						4452-019-011
7	OCCUPANT						4452-019-011
7	OCCUPANT						4452-019-011
7	OCCUPANT						4452-019-011
7	OCCUPANT						4452-019-011
8	VACANT						4452-020-101
9	VACANT/PKG						4452-005-029
9	VACANT/PKG						4452-005-030
9	OCCUPANT						4452-005-031
10	VACANT/PKG						4452-005-902
11	VACANT						4452-005-901
11	VACANT						4452-006-902
12	OCCUPANT						4452-005-903

## SCL MALIBU PIER 01. SIDE OF 22969 PACIFIC COAST HWY

## OWNERS / OCCUPANTS

OWNER	OWNERNAME	ST ADDRESS 1	ST ADDRESS 2	CITY	STATE	ZIP	APN_D
13	OCCUPANT						4452-005-025
14	OCCUPANT						4452-005-024
15	OCCUPANT						4452-005-004
15	SAME AS 4452-005-004						4452-005-023
16	OCCUPANT						4452-005-022
17	OCCUPANT						4452-005-018
18	OCCUPANT						4452-005-002
19	OCCUPANT						4452-005-001
20	OCCUPANT						4452-019-002
21	OCCUPANT						4452-019-003
22	OCCUPANT						4452-017-009
23	VACANT						4452-017-002
24	OCCUPANT						4452-017-001
25	OCCUPANT						4452-017-004
26	OCCUPANT						4452-017-005
27	OCCUPANT						4452-017-008
28	OCCUPANT						4452-019-004
28	OCCUPANT						4452-019-004

## Tyler Eaton

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**From:** R Y A N [REDACTED]  
**Sent:** Monday, October 11, 2021 11:28 PM  
**To:** Tyler Eaton; Richard Mollica; Steve McClary; John Cotti; gail.karish@bbklaw.com  
**Subject:** 22837 PCH existing co-located WCF on granite street light in SIGN INVENTORY  
**Attachments:** 22853 PCH- Budget Car Rental 2.JPG

The staff report does not reflect the existing, neighborhood standards of utility build-out. This Undergrounding District was constructed at over \$100,000 expense to each property parcel owner in the area. I ponder if the Assessment District created standards for which the members of the Assessment District expect utility encroachments in the right-of-way comply.

Ryan





## Tyler Eaton

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**From:** R Y A N [REDACTED]  
**Sent:** Monday, October 11, 2021 10:59 PM  
**To:** [REDACTED]; Steve McClary; gail.karish@bbklaw.com; Tyler Eaton; [REDACTED];  
**Subject:** Re: City Council Meeting of October 11, 2021 -- Items 4.B., 4.C, and 4.D. (Verizon Wireless Applications)  
**Attachments:** 22837 PCH.JPG; P1010556.JPG; Screenshot (1833).png

The first attached photo shows a WCF co-located onto a standard-height granite street light at 22837 Pacific Coast Highway office building (perhaps 22821.5 PCH WCF). This is the ideal application, and one that Verizon can comport in this SAME area of PCH utility under-grounded infrastructure. This installation shows in the City's record of Sign Inventory (2011) for the then-Budget Rent-A-Car sign recordation. That database is of record for the City.

I talked with Bill at Crown on Sunday (yesterday) who confirmed that the existing WCF in front Jack in the Box (23017 PCH) is a small cell connected via fiber-optic back-haul to T-Mobile. As the attached photo clearly shows -- which I took myself -- the SCE street light's identical-construction is replicated by the adjacent WCF pole that is NOT higher.

The third attached photo is also of twin poles on the opposite side of PCH at 22860 screenshot and is of similar installation date as #2, above, perhaps designed in conjunction with the Utility Undergrounding District project engineers 20 years ago.

NONE of these WCF antennae are higher than the street lights in THIS AREA -- of PCH. These WCFs ARE the NEIGHBORHOOD STANDARD which should be respected and continued for Verizon's endeavors.

Ryan

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[REDACTED]

[REDACTED]

[REDACTED]









