



Supplemental Commission Agenda Report

Planning Commission
Meeting
10-19-20

**Item
4.C.**

To: Chair Mazza and Members of the Planning Commission

Prepared by: Adrian Fernandez, Principal Planner

Approved by: Bonnie Blue, Planning Director

Date prepared: October 13, 2020 Meeting Date: October 19, 2020

Subject: Wireless Communications Facility No. 15-004, Coastal Development Permit No. 17-010, and Site Plan Review No. 15-012 – An application to install a new wireless communications facility, 28-foot tall pole and electrical support equipment (Continued from October 5, 2020)

Location: 7361.5 Birdview Avenue, within the appealable coastal zone

Nearest APN: 4468-004-028

Applicant/Carrier: Rob Searcy of Fulsang Architecture

Carrier: Verizon Wireless

Owner: City of Malibu Public Right-of-Way

RECOMMENDED ACTION: Adopt Planning Commission Resolution No. 20-72 determining the project is categorically exempt from the California Environmental Quality Act and approving Wireless Communications Facility No. 15-004 and Coastal Development Permit No. 17-010 for Verizon Wireless to install an omni/sectorized canister antenna with a tapered shroud attached on top of a new wood utility pole at a maximum height of 28 feet, and pole-mounted and in-ground electrical support equipment, including Site Plan Review (SPR) No. 15-012 to install and operate a wireless communications facility within the Public Right-of-Way (ROW) located at 7361.5 Birdview Avenue (Verizon Wireless).

DISCUSSION: The report previously published did not contain updates based on an email received on October 5, 2020 from Ms. Nichole McGinley specific to the project. The first paragraph in the *Project Overview* section and last paragraph in the *Correspondence* section have been updated in response to the email. Those two paragraphs should be replaced with the following language:

Project Overview

The subject item was scheduled for the October 5, 2020 Planning Commission meeting. At the meeting, the Commission continued the item to the next hearing to permit additional time to review public correspondence which had not been made available to all Commission members. The correspondence includes two separate emails from Ms. Nichole McGinley. The first general email about wireless communications facilities was sent to only two Commission members. The second email specific to the proposed project was sent to all Commission members just before the meeting. The emails are included in the attachment to this report and are discussed in the *Additional Correspondence* section below.

CORRESPONDENCE:

On October 5, 2020, Ms. McGinley provided two emails. The first email was sent to two of the Planning Commission members. As stated before, this email was not specific to the proposed project but instead more general about wireless communications facilities. She states that the City should not consider approving wireless communications facilities unless it is demonstrated that a gap in coverage would be filled. She also states that small cell rules do not eliminate local control over aesthetics and the City ought to impose strict requirements related to fire hazards or building code. As shown in the Signal Coverage Maps (Attachment 4) and *Significant Gap in Signal Coverage* section above, the proposed facility will fill a gap in coverage. The Planning Commission may consider other design options such as a freestanding flagpole or streetlight pole. Since the proposed wood utility pole is more consistent with other existing poles in the area, pole-mounted equipment and antenna would be painted to match the pole and the remaining in-ground electrical would be placed in handhole boxes, it is staff's recommendation that this design would be less likely to stand out visually. Furthermore, the project is required to comply with CPUC and SCE safety requirements.

Ms. McGinley's second email was specific to the proposed project. The email asks whether the Western Snowy Plover, a threatened species that nests at Westward/Zuma, and potential impacts to the Malibu Point Dume Preserve were considered in the review of the application. She also asked if the proposed facility can be a 3G technology instead of the proposed 4G. The email included a map of the Western Snowy Plover along Westward Beach. The project site is at least 520 feet from Westward Beach and is sited on the inland side of Birdview Avenue. The project site is located entirely within a disturbed, artificial turf parkway of the public ROW. The project site is not located within or near any protected habitat. The proposed construction and development is not expected to have an impact on the Western Snowy Plover or ESHA. The City is also not allowed to consider the potential health effects of RF emissions on wireless communications facilities beyond the provisions set forth by the FCC. Ms. McGinley agrees that there is a gap in coverage in this part of the Point Dume neighborhood. As a result, Verizon Wireless has the right to fill the gap with the proposed facility. The City cannot restrict the type of technology used due to a potential reduction of RF emissions given the proposed facility is well below the MPE limits on RF emissions set forth by the FCC. Other wireless carriers

are allowed to upgrade their facilities and it would place the applicant in a competitive disadvantage with other carriers which would be in conflict with Title 47 of the U.S.C. Sections 332(c)(7)(B)(i)(I) and (II). Additionally, as stated before, 3G technology could be upgraded to 4G pursuant to the Spectrum Act.

ATTACHMENT: The related correspondence referenced in this report was included as part of Attachment 8 in the previously published agenda report.

Subject: Thank you

Received

10/6/20

Planning Dept.

From: Nichole McGinley

Date: October 5, 2020 at 5:04:51 PM PDT

To: Karen Farrer

Subject: Re: Thank you

Hello Karen,

Thank you for offering to forward this along to appropriate City staff.

Here are the recommendations for (I believe) The Planning Commission:

Hello Planning Commissioners,

As citizens concerned about the rush of deployment of wireless facilities throughout our community, we ask that the following be considered and required when you and City staff are processing wireless facility applications under our current wireless facilities ordinance (while we await adoption of our updated ordinance). The shot clock rules do require relatively fast processing, but with proper planning and a dedication to efficient handling, the City can still exercise some control.

The City will confront several different application types and sub-types. There will be “new” installations and “modifications” to existing installations. Some will be “collocation” whereas others will be for other “equipment and network components such as towers, utility poles, transmitters, base stations, and emergency power systems that are integral to providing wireless telecommunications services.” Cal. Gov. Code §65850.6(d)(1), (2). Some will be for “small cells” and others will not. Some will be in public right-of-way and others will be on private property. The “small cell” and Spectrum Act “modifications” are the ones subject to the most restrictive rules. The other application types have different rules and the City has more flexibility and sometimes more time when dealing with them.

The City must also distinguish between applications for facilities that will fill a gap in personal wireless service coverage to provide better cellular reception in our area (especially for emergency purposes) and those that are just for data/information services like IoT, video and Internet access. Placements that are not necessary to fill a gap in coverage for things like voice, texting and push-to-talk are not preempted and are not subject to a shot clock. And placements that are for personal wireless service and for a proven gap should be scrutinized to ensure the planned location is the best and least intrusive option.

The small cell rules do not eliminate all control on a city’s part. Aesthetic requirements, especially given the recent Ninth Circuit decision, are one significant tool a city can use. But there are others. The FCC has not yet tried to prevent cities from imposing safety requirements related to fire hazards or compliance with building codes, and we are fairly certain most courts of appeals would reject any such effort. The city can still exercise some control over use of the right-of-way (both during and after construction), and it can still ensure that all state and federal environmental rules have been followed. **The City can establish preferred zones, set-backs and, of course, reasonable aesthetic protections to minimize blight.**

In short: Will these installations affect the ambiance and character of Malibu? Will the installation affect property values? Has the installation been evaluated by a registered RF engineer, deeming it safe in our extremely fire prone area?

There is still a wide range of legitimate city and resident interests that can be protected despite FCC and industry efforts to geld what they view as annoying local authorities that want to threaten their mutual efforts at total hegemony.

Thanks so much,

Nichole

On Mon, Oct 5, 2020 at 8:12 AM Karen Farrer wrote:

Thanks, Nicole.

Please feel free to send angry to me. I will loop in appropriate city staff.

Best,

Karen Farrer

Councilmember
City of Malibu

On Oct 4, 2020, at 9:45 PM, Nichole McGinley wrote:

Dear Mayor Pierson and Council Members,

I write to express my thanks for your engagement on the “small cell” antenna proliferation issue. Although we have not yet fulfilled our ultimate goals of adopting a protective wireless facility ordinance and accomplishing a meaningful slowdown of installation of small cell antennas, I know it is not from a lack of trying on your part.

I have been so impressed by your attention to the matter, your thoughtful questions and comments, all the letters you have read and processed, and your overall willingness to look at this matter urgently. I wanted to express my respect and appreciation for all you have done, although I know we are just getting started and we have much work to do.

On a personal note, I would really like to clarify something, speaking only for myself. As the conversation progresses on this issue and groups and people express their own concerns about it, MY ISSUE is not specific to 5G (that’s for another day and I know it will need to be discussed as the ordinance is updated). Frankly, I wish the "5G" label at this stage could be removed from this conversation, as I believe it confuses the matter. **MY CONCERN IS 100% WITH THE DEPLOYMENT OF CELLULAR ANTENNAS IN MY NEIGHBORS’ FRONT YARDS AND NEAR THE SCHOOLS!** The current system of “small cells” (whether it is labeled 4G or 5G or ?) is dependent on antennas being placed in much closer proximity to one another. This is what’s putting our neighborhood and environment at risk and concerning me so deeply.

I am clear about the FCC rules, BUT in this conversation about antenna placement, even within the parameters of those rules, we have offered options that the planning department can utilize right away in evaluating permit applications to help slow antenna proliferation. Please, pending the update to our ordinance, let’s do what we can now to stop wireless antennas that are not covering a gap in cellular coverage from coming in at such a furious pace. I know you have heard lots of testimony during the City Council Meetings about the things our City can do now, even under the current ordinance. I am happy to send a list of actions staff can take now to address our (and your) concerns. Should I send that list to you? Do you recommend I engage with someone on the Planning staff? Would you help facilitate that? I come from a place of wanting to work with our City and to help however I can. I would appreciate any direction you can provide on how best to proceed.

Again, thank you!

Nichole McGinley

Kathleen Stecko

Subject: Agenda item 5D 10/5/20

Received

10/6/20

Planning Dept.

From: Nichole McGinley
Sent: Monday, October 5, 2020 5:46 PM
To: Planning Commission <planningcommission@malibucity.org>
Cc: Mikke Pierson <mpierson@malibucity.org>
Subject: Agenda item 5D 10/5/20

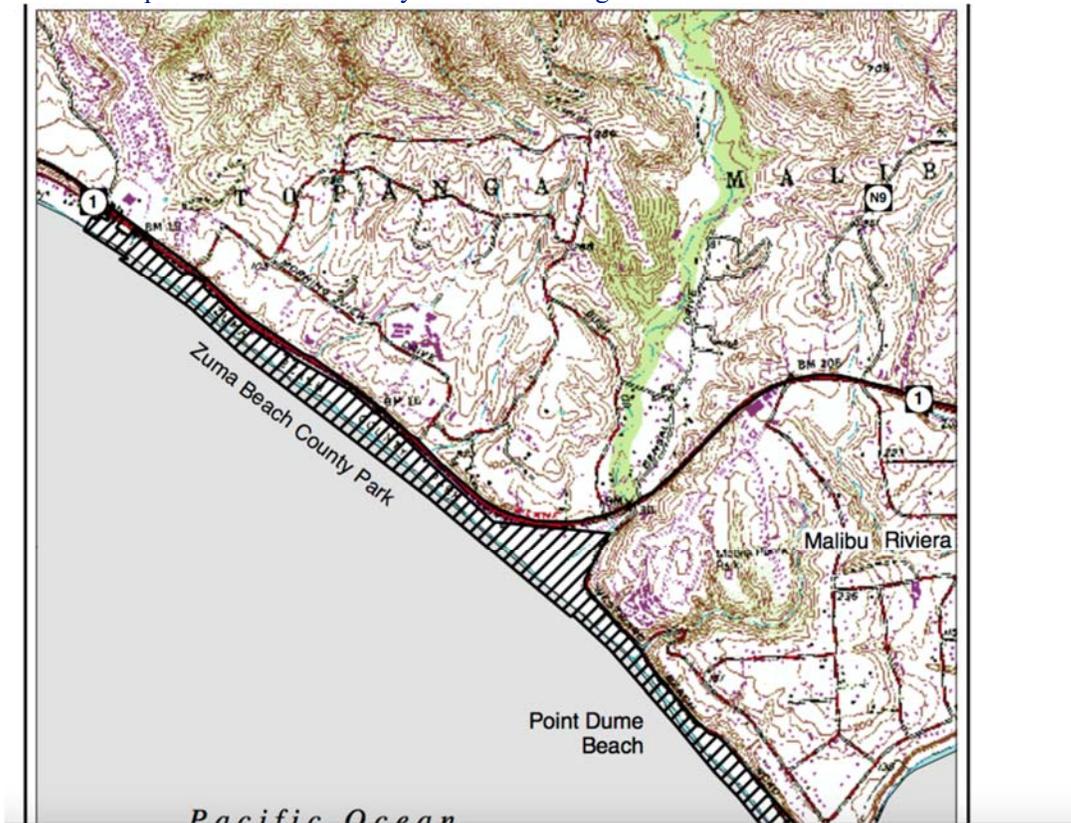
Hello Commissioners,

In regards to the wireless facility application proposed at Birdview & Sealion (Agenda item 5D) I was wondering if they applicant or reviewer had taken a look at the implications this installation may have on the Western Snowy Plover, threatened species:

(https://www.fws.gov/arcata/es/birds/WSP/documents/WSPCH_June2012/6-19-2012_FR_rule.pdf)

For this installation (5D), there is in fact a gap in coverage at the proposed location which places a shot clock on this application. There is also a threatened species that nests at Westwards/Zuma (Western Snowy Plover) that may be affected by this small cell installation. So the question would be, in order to close the gap does it have to be a small cell installation or can it be installed with 3G technology?

Here is a map of the Western Snowy Plovers breeding location in Malibu.



Malibu Point Dume Preserve:

Though small, the Preserve provides habitat for a surprising amount of wildlife. A visitor may encounter coyotes, skunks, raccoons, ground squirrels and rabbits in broad daylight. One may also find five species of butterflies, six types of snakes, various lizards including the silvery legless lizard, and over one hundred types of birds including brown pelicans, plovers, wrens, roadrunners, burrowing owls, falcons, and hawks.

western snowy plover- threatened (see Map link/scroll to Zuma L-121 for full image above)

<http://www.westernsnowyplover.org/pdfs/WSP%20Final%20Appendices%20Part%203.pdf>

Thank you very much for your time,

Nichole