

City of Malibu Wireless Facility Ordinance Local Plan Amendment: Scope, Consistency Assessment, and Impact Analysis

City of Malibu

prepared by

City of Malibu

Planning Department
23825 Stuart Ranch Road
Malibu, California 90265

afernandez@malibucity.org

(310) 456-2489, ext. 482

Contact: Adrian Fernandez, Assistant Planning Director

prepared with the assistance of

Rincon Consultants, Inc.
180 N. Ashwood Avenue
Ventura, California 93003

June 2022



RINCON CONSULTANTS, INC.

Environmental Scientists | Planners | Engineers

rinconconsultants.com

Table of Contents

1	Introduction	1
1.1	Purpose	1
2	Coastal Commission Comments	2
3	City of Malibu Response	4
3.1	Coastal Commission Comment No. 1.....	4
3.1.1	Response to Coastal Commission Comment No. 1	4
3.2	Coastal Commission Comment No. 2.....	4
3.2.1	Response to Coastal Commission Comment No. 2	4
3.2.2	Background.....	4
3.2.3	Purpose and Intent of Malibu Wireless Facilities Ordinance Amendments.....	5
3.2.4	Wireless Facilities on Public Rights-of-Way.....	6
3.2.5	Wireless Facilities on Private Land	6
3.2.6	Wireless Facilities Development Standards via Resolution.....	6
3.2.7	Wireless Facilities – Updated Standard Conditions of Approval via Resolution 6	6
3.3	Coastal Commission Comment No. 3a.....	7
3.3.1	Response to Coastal Commission Comment No. 3a.....	7
3.4	Coastal Commission Comment No. 3b	10
3.4.1	Response to Coastal Commission Comment No. 3b	10
3.5	Coastal Commission Comment No. 3c.....	11
3.5.1	Response to Coastal Commission Comment No. 3c.....	11
3.6	Coastal Commission Comment No. 4.....	12
3.6.1	Response to Coastal Commission Comment No. 4	12
4	References	16

Tables

Table 1	Wireless Facility Permit (WCF) Approval Mechanisms	11
---------	--	----

This page intentionally left blank.

1 Introduction

The City of Malibu Planning staff are responding to California Coastal Commission (CCC) staff comments received on July 21, 2021, regarding Local Coastal Program (LCP) Amendment LCP-4-MAL-21-0048-Part A (Wireless Communication Facilities). In particular, this report includes an LCP consistency analysis and environmental impact analysis, as requested by the CCC staff describing how all provisions and standards in the current Wireless Ordinance are in compliance with the State of California Coastal Act and all related provisions and will be enforced under a streamlined permitting process that also fully complies with Federal Communication Commission (FCC) standards and guidelines.

2 Coastal Commission Comments

The verbatim Coastal Commission staff comments follow.

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

1. *Public Noticing.* Please be advised that the City will be required to publish a meeting notification in at least one major newspaper that is circulated in the area that is affected by the subject LCP Amendment, in lieu of individual noticing requirements. We will send you the applicable notice for publishing prior to the scheduled hearing.
2. *LCP Amendment Scope.* Please clarify if the design and location standards and conditions of approval and basic application requirements for wireless communications provided in City of Malibu Resolution No. 21-17 are being proposed as part of the subject LCP amendment?
3. *Consistency Analysis.* Coastal Commission Administrative Regulations (Section 13552(c)) require the submittal of a consistency analysis of the proposed amendment and its relationship to and effect on the other sections of the certified LCP. The Commission's regulations (Section 13552(b)) also require information in sufficient detail to allow review for conformity with the requirements of the Coastal Act. The consistency analysis and other information provided in the subject amendment request submittal is not detailed or comprehensive enough in analyzing the LIP amendment's consistency with the policies of the LUP. Additionally, the submitted consistency analysis analyzed the proposed amendment consistency with the design and location standards and conditions of approval cited in the City's Resolution Nos. 20-65 and 21-17. However, the design and location standards and conditions of approval in Resolution Nos. 20-65 and 21-17 are not a part of the City's certified LCP, and thus these standards and conditions are not the standard of review for the subject LCP Amendment. Please provide a more detailed consistency analysis of the proposed amendment, and its relationship to, and effect on, the other sections of the certified LCP consistent with Section 13552(c) of the Commission's regulations. Address how the LIP changes are consistent with the policies of the LUP. In addition, please address the following specific issues in the analysis:
 - a. The proposed amendment language provides for CDP exemptions for eligible wireless telecommunications facilities, replacement utility poles, and temporary wireless facilities, however, these types of development are not considered exempt under LIP Section 13.4 (Exemptions), the Coastal Act, and the California Code of Regulations. Please address the relationship and consistency between the above-mentioned policies and the proposed language in your consistency analysis.
 - b. In addition, the submittal proposes a new wireless permit (WP) that must be found consistent with the policies of the Malibu Municipal Code (MMC) (which is not a part of the City's certified LCP). Please clarify if the WP is only subject to the requirements of the MMC or if it is the City's intent to process WPs in the same manner as an Administrative CDP? If it's the City's intent to process WP as Administrative CDP please indicate if the WP will have the same noticing, hearing, and appeal procedures as Administrative CDPs?
 - c. Further, the amendment proposes to approve wireless telecommunication facilities through different approval mechanisms (exemptions, wireless permit, de-minimis waiver, and/or

administrative permit). Please clarify which wireless telecommunication facilities qualify for which approval mechanisms.

4. Impact Analysis. Pursuant to Sections 13552(d) and 13511(a) of the Commission's Administrative Regulations, please provide an analysis of potential adverse individual and cumulative impacts on coastal resources and public access of the proposed LCP amendment changes and the potentially allowable development proposed. The potential impacts to coastal resources (e.g., visual resources, recreation, public access, environmentally sensitive habitat, water quality, etc.) must be identified and analyzed in the amendment submittal. In addition, the proposed amendment seeks to eliminate the existing LIP Section 3.16 wireless facility/antenna design and location development standards, permit application requirements, and required conditions of approval. Thus, it is unclear how this type of development (wireless telecommunications facilities and/or antennas) would be implemented/permitted, what adverse impacts to coastal resources may occur, or how the proposed modifications (elimination of existing design, location, application requirements, and conditions of approval standards) will be adequate to implement the policies and provisions of the LUP. Please clarify and provide an analysis of the potential impacts to coastal resources that may occur from the elimination of these existing LIP provisions.

3 City of Malibu Response

3.1 Coastal Commission Comment No. 1

1. *Public Noticing.* Please be advised that the City will be required to publish a meeting notification in at least one major newspaper that is circulated in the area that is affected by the subject LCP Amendment, in lieu of individual noticing requirements. We will send you the applicable notice for publishing prior to the scheduled hearing.

3.1.1 Response to Coastal Commission Comment No. 1

Acknowledged. The City of Malibu will be ready to publish the applicable notice as instructed by Coastal Commission staff.

3.2 Coastal Commission Comment No. 2

2. *LCP Amendment Scope.* Please clarify if the design and location standards and conditions of approval and basic application requirements for wireless communications provided in City of Malibu Resolution No. 21-17 are being proposed as part of the subject LCP amendment?

3.2.1 Response to Coastal Commission Comment No. 2

The subject Local Coastal Plan Amendment includes engineering, design and location standards, and conditions of approval for wireless communications facilities in the public right-of-way, per adoption of Resolution No. 20-65 and engineering, design and location standards, conditions of approval, and basic application requirements for wireless communications on land other than public right-of-way, per adoption of City of Malibu Resolution No. 21-17, as described below.

3.2.2 Background

As noted in the April 12, 2021, City of Malibu Council Agenda Report (item 4.D), the background information for the purpose and intent on the City of Malibu's approach to addressing the wireless facilities in the City is (pg. 4 of 10):

"Previously, the City Council adopted an advocacy plan to commit resources toward the goal of decreasing federal and State interference with local control over matters of direct impact on the health, safety, and welfare of the residents of Malibu.

The wireless industry has changed in significant ways and the laws governing how the City may regulate the placement of their facilities have been in flux, rendering the current ordinance outdated and justifying immediate action. MMC Chapter 17.46 has not been updated since 2003. It does not take into account the numerous changes in federal and state laws and regulations that have come into force since that time (and the outcome of the litigation over some of those rules), and which place restrictions on local permitting authority."

Examples include the Federal Communications Commission (FCC) requirement that local governments are obligated to approve certain wireless facilities modification requests under Section 6409(a) of the Spectrum Act of 2012, which was further amended in 2020 to facilitate 5G

antenna deployment. The FCC also adopted separate guidelines for small cell wireless facilities in 2020 that obligate local governments to approve antennas that meet the FCC guidelines. The required shot clock or time allotted for approval of wireless facilities that meet the FCC's Section 6409 guidelines is 60-days for modified or replacement antennas and equipment and 90-days for collocated wireless facilities from receipt of a complete application.

3.2.3 Purpose and Intent of Malibu Wireless Facilities Ordinance Amendments

The accelerating pace and adoption of new wireless communication facilities require the City to reevaluate existing wireless communications facilities (WCF) permit processing. Previous processing of WCF entitlements resulted in long processing times often exceeding the federally prescribed permit review time limits, as described above. Additionally, WCF applications often required staff to spend significant amount of time performing in depth analyses on the various WCF applications. For instance, the adoption of new 5G technology is prompting many carrier's facilities to seek modifications to their permits. Under the City's existing wireless regulations, this creates an administrative burden on staff, runs counter to federal guidelines, and creates delays in the upgrade of the City's critical wireless communications network.

Over the next few years, City staff anticipate that additional modifications to the development standard resolutions may be required, while retaining the existing overarching wireless policies embedded in the LCP. Staff notes that under the City's current LCP and MMC rules for new and modified wireless facilities, the overall development process has become more elaborate and lengthier over the years, creating challenges to balance development permit processing per FCC shot clock rules. Therefore, the City has proposed new policies and procedures for the processing of all WCF applications. By establishing integrated regulations in the City's LCP and Malibu Municipal Code (MMC), the City of Malibu seeks to improve and create a streamlined WCF permitting process that incorporates full compliance with all applicable policies and provisions of the LCP. Also, the City's LCP Local Implementation Plan (LIP) has incorporated by reference the resolution approved by the Malibu City Council that regulate the engineering, design, and location standards for all wireless communications facilities as well as standard conditions of approval and submittal requirements. By articulating the particular engineering, design, location criteria, and conditions of approval via a City Council resolution, the City can adopt future changes to FCC wireless facility guidelines without processing an LCPA, while simultaneously ensuring that the revisions are wholly consistent with the City's LCP.

In summary, the City's goal is to provide new and modified existing WCF permits a more efficient and consistent policy framework within the LCP and MMC while allocating the various technical details to resolutions to be more readily updated from time to time. The following sections describe the proposed Malibu Wireless Communications Facility Ordinance and its comprehensive approach to addressing all aspects of applications for new and modified WCFs in the City, including requirements for a comprehensive application submittal package and standard conditions of approval for all wireless projects via City Council Resolution. Please note that approval of the updated wireless project development standards and conditions of approval by City Council resolution guarantees that it will apply to all new and modified wireless projects processed by the City of Malibu.

3.2.4 Wireless Facilities on Public Rights-of-Way

The first of two components of a comprehensive approach included updating requirements for WCFs within the public right-of-way in the City.

On December 9, 2020, the Council adopted an urgency ordinance (No. 477U) regulating placement of wireless facilities in the public right-of-way and a resolution (No. 20-65) establishing design and development standards and standard permit conditions for WCFs in the public right-of-way. The ordinance was codified into MMC Title 12 (Street, Sidewalks and Public Places).

3.2.5 Wireless Facilities on Private Land

The second of two components of a comprehensive approach included updating requirements for WCF on land other than public right-of-way in the City.

On April 12, 2021, the Council adopted an ordinance (No. 484) to update the regulations and permitting process related to WCFs on land other than public right-of-way (i.e., private, or public land) and a resolution (No. 21-17) establishing design and development standards and standard permit conditions for WCFs on non-public right-of-way land.

Ordinance No. 484 amended portions of the MMC and LIP, modifying standards and procedures for all WCFs per Zoning Text Amendment (ZTA) No. 16-005 and LCPA No. 16-007.

Specifically, the Ordinance amended Chapter 17.46 (Wireless Telecommunications Antennas and Facilities) of the MMC and made conforming amendments to Sections 17.62.040(a)(6), 17.08.040(d), 17.18.030(e), 17.22.040(m), 17.30.030(d), 17.32.030(a), 17.36.030(b), 17.38.030(b), 17.38.030(c), 17.18.020(e), 17.22.020(d), 17.24.020(a), 17.26.020(a), 17.28.020(a), 17.30.020(a), 17.34.020(b), and 17.36.020(c) (Zoning Text Amendment No. 16-005) and amending LIP Sections 2.2 and 3.16, Chapter 13 and Appendix 1 (Table B Permitted Uses) (LCPA No. 16-007) amending the WCF regulations in the City.

As mentioned above, ZTA 16-005 and LCPA 16-007 were part of the second phase of the process to amend MMC Chapter 17.46, LIP Section 3.16 and LIP Chapter 13, to update the regulations and permitting process related to WCFs on non-public right-of-way land.

3.2.6 Wireless Facilities Development Standards via Resolution

LCPA No. 16-007 further articulates for amended LIP Section 3.16 *Wireless Communications Facilities* that WCFs standards for engineering, design, and location standards for all WCFs are governed by separate resolutions, one for WCFs in the public right-of-way and another for WCFs on land other than public right-of-way. That is, LIP Section 3.16.4.C provides the policy framework and incorporates by reference that wireless facility development standards shall be as noted in the corresponding City of Malibu resolution. Currently in effect are Resolution No. 20-65 (public right-of-way) and No. 21-17 (non-public right-of-way).

3.2.7 Wireless Facilities – Updated Standard Conditions of Approval via Resolution

LCPA No. 16-007 further articulates for amended LIP Section 3.16 *Wireless Communications Facilities* that standard conditions of approval for all WCFs are governed by separate resolutions, with one for WCFs in public right-of-way and another for WCFs on land other than public right-of-way. That is, LIP Section 3.16.5 provides the policy framework and incorporates by reference that

conditions of approval for WCFs shall be as noted in the corresponding City of Malibu resolution. Currently in effect are Resolution No. 20-65 (public right-of-way) and No. 21-17 (non-public right-of-way). Furthermore, LIP Section 3.16.5 notes that at minimum, all conditions of approval articulated in the applicable resolution shall apply to all approved WCFs.

3.3 Coastal Commission Comment No. 3a

3. *Consistency Analysis.* Coastal Commission Administrative Regulations (Section 13552(c)) require the submittal of a consistency analysis of the proposed amendment and its relationship to and effect on the other sections of the certified LCP. The Commission's regulations (Section 13552 (b)) also require information in sufficient detail to allow review for conformity with the requirements of the Coastal Act. The consistency analysis and other information provided in the subject amendment request submittal is not detailed or comprehensive enough in analyzing the LIP amendment's consistency with the policies of the LUP. Additionally, the submitted consistency analysis analyzed the proposed amendment consistency with the design and location standards and conditions of approval cited in the City's Resolution Nos. 20-65 and 21-17. However, the design and location standards and conditions of approval in Resolution Nos. 20-65 and 21-17 are not a part of the City's certified LCP, and thus these standards and conditions are not the standard of review for the subject LCP Amendment. Please provide a more detailed consistency analysis of the proposed amendment, and its relationship to, and effect on, the other sections of the certified LCP consistent with Section 13552(c) of the Commission's regulations. Address how the LIP changes are consistent with the policies of the LUP. In addition, please address the following specific issues in the analysis:
 - a. The proposed amendment language provides for CDP exemptions for eligible wireless telecommunications facilities, replacement utility poles, and temporary wireless facilities, however, these types of development are not considered exempt under LIP Section 13.4 (Exemptions), the Coastal Act, and the California Code of Regulations. Please address the relationship and consistency between the above-mentioned policies and the proposed language in your consistency analysis.
 - b. In addition, the submittal proposes a new WP that must be found consistent with the policies of the MMC (which is not a part of the City's certified LCP). Please clarify if the WP is only subject to the requirements of the MMC or if it's the City's intent to process WPs in the same manner as an Administrative CDP? If it's the City's intent to process WP as Administrative CDP please indicate if the WP will have the same noticing, hearing, and appeal procedures as Administrative CDPs?
 - c. Further, the amendment proposes to approve wireless telecommunication facilities through different approval mechanisms (exemptions, wireless permit, de-minimis waiver, and/or administrative permit). Please clarify which wireless telecommunication facilities qualify for which approval mechanisms.

3.3.1 Response to Coastal Commission Comment No. 3a

The proposed LIP amendment does include provisions for Coastal Development Permit (CDP) exemptions for eligible WCFs, replacement utility poles, and temporary WCFs. As explained below, these CDP exemptions for WCFs are compliant with the City of Malibu LIP Section 13.4 (Exemptions) and as such, concurrently compliant with the Coastal Act, and the California Code of Regulations.

Eligible Wireless Telecommunications Facilities

The City of Malibu LIP amendment Section 13.4.11.1 details the exemptions for federally defined eligible facilities. This LIP amendment for CDP exemptions for qualified eligible WCFs is a matter of federal preemption over state and local land use controls per the Spectrum Act Section 6409(A) modification. Federal law requires local government approval of any eligible facilities request for modification of an existing wireless tower or base station as follow:

Notwithstanding Section 704 of the Telecommunications Act of 1996 (Public Law 104-104) or any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.

An eligible facilities request is any request for modification of an existing tower or base station that does not substantially change the physical dimensions or support equipment of a transmission tower or base station, involving:

1. Collocation of new transmission equipment;
2. Removal of transmission equipment; or
3. Replacement of transmission equipment (more than four equipment cabinets).

Upon receipt, any WCF permit application asserting an eligible wireless telecommunications facilities request would be vetted by staff to determine the validity of the eligibility per Spectrum Act Section 6409(A) modification. If staff determined that as proposed the evidence provided substantiates the WCF eligibility, then per federal law, the WCF would be permitted by-right, subject only to current building code construction and development criteria for the actual installation, per 2014 Infrastructure Order, 29 FCC Rcd at 12951, para. 202.

Those applications that are deemed by staff to be ineligible for Spectrum Act Section 6409(A) provisions would also be ineligible for the automatic CDP exemption. Ineligibility is any modification that substantially changes the physical dimensions of an eligible support structure as articulated in 47 CFR Section 1.6100(b)(3), and further reiterated for WCF within the public right-of-way per City of Malibu Urgency Ordinance No. 477U, and on non-public right-of-way land per City of Malibu Ordinance No. 484.

Replacement Utility Poles

The City of Malibu LIP amendment Section 13.4.11.2 includes allowances for the exemptions for replacement of existing utility poles. This LIP amendment for CDP exemptions for qualified utility pole replacements is consistent with California Public Utility Code requirements, typically as specified in General Order 95 "Overhead Electric Line Construction" (GO 95). As stated in GO 95 Section 1 General Provisions, Rule 12.1-B, item 11 "The purpose of these rules is to formulate, for the State of California, requirements for overhead line design, construction, and maintenance, the application of which will ensure adequate service and secure safety to persons engaged in the construction, maintenance, operation or use of overhead lines and to the public in general."

Within the City of Malibu, many WCFs are mounted to utility poles. Often these are wooden utility poles originally installed years ago to carry telephone and electrical lines, and perhaps a streetlamp. Currently, these poles might also host cable television, telecommunication lines, and other wireless communication facilities. Each pole has a defined structural load limit, which also may be

compromised by the age of the pole or current conditions around the base of the pole (too close to the public right-of-way, near edge of eroding slope, shallow footing, etc.). Many of the recent wildfires (e.g., 2007 Malibu Fire, 2018 Woolsey Fire) have been contributed to overburdened and/or deteriorated utility poles.

LIP Section 13.4.8 defers to the “Repair, Maintenance and Utility Hook-Up Exclusions from Permit Requirements” to further clarify Section 30610 of the Coastal Act for repair and maintenance activities related to the ongoing work of various types of public and private agencies. The document further explains exemptions from a CDP for repair, maintenance, and alterations to existing facilities.

Pursuant to Section II(B)(2)(b) of the “Repair, Maintenance and Utility Hook-Up Exclusions from Permit Requirements”, a CDP is not required to:

1. Maintain, replace, or modify existing overhead facilities and minor pole relocations, including the addition of equipment and wires to existing poles or other structures;
2. Install, test and place in service power line extension facilities and supply points specifically required to provide service to development permitted or exempted under the Coastal Act; and
3. Supply increased demand of existing customers’ facilities in order to maintain the existing standard of service.

Utility poles, as a component of overhead facilities, should be allowed to be maintained, replaced, modified, and relocated without a CDP.

LIP Section 13.4.8 further states that the repair and maintenance activities, specifically described in the “Repair, Maintenance and Utility Hook-Up Exclusions from Permit Requirement”, apply unless the proposed activity will have a risk of substantial adverse impact on public access, environmentally sensitive habitat area, wetlands, or public views to the ocean. The following activity has been determined by LUP Policy 5.55 to have a risk of substantial adverse impacts and is therefore not exempt:

1. The removal of vegetation from, or other minor road improvements, to a lawfully established public or private road on private property which has not been maintained for a period of five years.

Since the Coastal Act and its interpretation “Repair, Maintenance and Utility Hook-Up Exclusions from Permit Requirement” provide an exemption to a CDP, we thought it would be best to clarify the exemption and avoid potential loopholes such as the replacement of a utility pole for the installation of a WCF.

In conclusion, an eligible utility pole replacement, minor relocation and/or modification per CPUC GO 95 regulations would be considered a state level health and safety provision governing repair or maintenance activities consistent with LIP Section 13.4.8. In other words, any utility pole replacement, minor relocation and/or modifications prompted by compliance with CPUC GO 95 is concurrently consistent with LIP Section 13.4.8 would be exempt from the requirement to obtain a Coastal Development Permit provided the exemption does not result in potential coastal resource impacts and a height increase is not a result of a new WCF. Any unduly delay to a replacement of an overburdened or deteriorated utility pole could cause much more damage to coastal resources.

Temporary Wireless Facilities

The City of Malibu LIP amendment Section 3.16.2 (Wireless Permit) details the CDP exemptions for a temporary mobile telecommunications rig (“cell on wheels”) “...for a temporary period in connection with an emergency or event, but no longer than required for the emergency or event...” Staff note that the LIP amendment Section 3.16.2 is specific to emergency events, as detailed in LIP Chapter 2 (Definitions).

This LIP amendment addresses a gap in the current definition of WCF available during an emergency event. The use of vehicle mounted WCFs allows the communications network to be maintained for wireless subscribers immediately after disasters. Since electrical and communications transmission lines are often compromised or downed during emergency events (i.e., mudflows or wildfires), being able to deploy a mobile WCF rig can help to maintain crucial communication networks and public safety information receipt and dispersal. Additionally, unlike all other WCF types, a WCF mobile rig is just that, ‘mobile,’ and may be routed to different locations as demand and risks evolve. Notably, such a mobile WCF rig would be used as a replacement for one or more existing WCFs made non-functional (say, due to burning down), rather than augmenting the total network capacity.

Additionally, facilitating mobile temporary WCF rigs aligns with the City of Malibu Emergency Operations Plan public alert protocol: “The Disaster Notification System sends text and voice messages to landlines, and text, voice, and e-mail messages to people who have registered their cell phone in the system. In the event of major earthquakes, fires, unplanned utility outages, public health emergencies and other potentially life-threatening incidents, the City will send out instructions on how to protect your life and safety. This system also has the capability to send Wireless Emergency Alerts, which people do not need to subscribe to.”

The City of Malibu LIP amendment Sections 3.16.2 and 13.4.9 provides a CDP exemption for mobile WCF rigs during declared emergency events in the furtherance of enhancing public health and safety by augmenting critical communications networks.

3.4 Coastal Commission Comment No. 3b

3b. In addition, the submittal proposes a new WP that must be found consistent with the policies of the MMC (which is not a part of the City’s certified LCP). Please clarify if the WP is only subject to the requirements of the MMC or if it’s the City’s intent to process WPs in the same manner as an Administrative CDP? If it’s the City’s intent to process WP as Administrative CDP please indicate if the WP will have the same noticing, hearing, and appeal procedures as Administrative CDPs?

3.4.1 Response to Coastal Commission Comment No. 3b

The City is proposing a new Wireless Right-of-Way Permit (WRP) and Wireless Permit (WP) that must be found consistent with the policies of the MMC, and are concurrently proposing amendments to the LIP related to the new WCF permit type, definitions, and procedures related to WCFs in general. The verbiage for the MMC and LIP are nearly identical, differing only in references to the applicable sections within the MMC or LIP. In effect, the City of Malibu WCF policies and provisions are included in the MMC and the LIP.

CCC comment: Please clarify if the WP is only subject to the requirements of the MMC or if it’s the City’s intent to process WPs in the same manner as an Administrative CDP? The WCF permit will be

processed per the proposed amendments to the LIP (though as mentioned, identical to the proposed amendments to the MMC). As noted in proposed amended LIP Section 13.13.1(A) subsection (7), “wireless communication facilities other than eligible facility requests or small cell facilities” will be processed as an Administrative CDP, with the exception noted in LIP Section 1313.1.A (within CCC appeal zone) where a CDP approved by the Planning Commission is required.

CCC Comment and Response: If it’s the City’s intent to process WP as Administrative CDP please indicate if the WP will have the same noticing, hearing, and appeal procedures as Administrative CDPs? WRPs and WPs will be processed no different than our current WCF applications in that if found to be exempt from a CDP, they will be processed based on the noticing, hearing and appeal procedures stipulated in the LCPA. They will either be subject to a Planning Director reviewing authority responsible for taking action or Planning Commission for a WP Type 2. WP Type 2s will be processed similarly to full CDPs in that these applications are subject to a Planning Commission hearing and decision and 10-day noticing requirements. However, WPs will be expedited to comply with the federal shot-clock requirements, the mailing radius is 1,000 feet instead of 500 feet for CDPs and a posting sign must be done immediately after an application is submitted.

3.5 Coastal Commission Comment No. 3c

3c. Further, the amendment proposes to approve wireless telecommunication facilities through different approval mechanisms (exemptions, wireless permit, de-minimis waiver, and/or administrative permit). Please clarify which wireless telecommunication facilities qualify for which approval mechanisms.

3.5.1 Response to Coastal Commission Comment No. 3c

The City of Malibu is proposing to update and streamline the WCF permitting process to be consistent with evolving federal law and the amended LCP and MMC as shown in the table below.

Table 1 Wireless Facility Permit (WCF) Approval Mechanisms

Approval Mechanism or Permit	Applicability	Reference
WCF Exemption	Qualified eligible facilities, per federal Spectrum Act Section 6409(A)	amended LIP Section 13.4.11.1
	Qualified utility pole replacement, minor relocation, and modifications, per CPUC	amended LIP Section 13.4.11.2
	Mobile WCF rigs during declared emergency events	Amended LIP: Sections 3.16.2.A.1.b; 3.16.2.B.3.e; 13.4.9.F
di-minimis waiver	Qualified small cell facilities	Amended LIP Section 13.4.11.B.3
Administrative Coastal Permit	Other wireless communication facilities, other than eligible facility requests or small cell facilities as noted above	Amended LIP Section 1313.1.A subsection (7), with exceptions for areas within CCC appeal zone

3.6 Coastal Commission Comment No. 4

4. *Impact Analysis.* Pursuant to Sections 13552(d) and 13511(a) of the Commission’s Administrative Regulations, please provide an analysis of potential adverse individual and cumulative impacts on coastal resources and public access of the proposed LCP amendment changes and the potentially allowable development proposed. The potential impacts to coastal resources (e.g., visual resources, recreation, public access, environmentally sensitive habitat, water quality, etc.) must be identified and analyzed in the amendment submittal. In addition, the proposed amendment seeks to eliminate the existing LIP Section 3.16 wireless facility/antenna design and location development standards, permit application requirements, and required conditions of approval. Thus, it is unclear how this type of development (wireless telecommunications facilities and/or antennas) would be implemented/permitted, what adverse impacts to coastal resources may occur, or how the proposed modifications (elimination of existing design, location, application requirements, and conditions of approval standards) will be adequate to implement the policies and provisions of the LUP. Please clarify and provide an analysis of the potential impacts to coastal resources that may occur from the elimination of these existing LIP provisions.

3.6.1 Response to Coastal Commission Comment No. 4

Background

Pursuant to Public Resources Code Section 21080.9, the California Environmental Quality Act (CEQA) does not apply to activities and approvals by the City as necessary for the preparation and adoption of an LCP amendment. This application is for an amendment to the LCP, which must be certified by CCC before it takes effect.

In particular, CEQA Section 21080.5(d)(2)(A) prohibits a proposed LCP or LCP amendment from being approved if there are feasible alternatives and/or feasible mitigation measures available that would substantially lessen any significant adverse effect that the LCP or LCP amendment may have on the environment. Although local governments are not required to satisfy CEQA in terms of local preparation and adoption of LCPs and LCP amendments, many local governments use the CEQA related process to develop information about proposed LCPs and LCP amendments, including to help facilitate Coastal Act review.

The CCC is not completely exempt from satisfying CEQA requirements with respect to LCPs and LCP amendments, but the Commission’s LCP/LCP amendment review, approval, and certification process has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of the environmental review required by CEQA (California Code of Regulations Section 15251(f)). Accordingly, in fulfilling that review, this response to the CCC comment above has discussed the relevant coastal resource issues with the proposal. Accordingly, it is not necessary for the City to suggest modifications to the proposed LCP amendment to ensure that it does not result in significant adverse environmental effects. Thus, the proposed LCP amendment as modified will not result in any significant adverse environmental effects for which feasible mitigation measures have not been employed, consistent with CEQA Section 21080.5(d)(2)(A), as discussed below.

Additionally, approval of the Wireless Ordinance would not result in the actual installation of any facilities in the City. In order to install a facility in accordance with this Ordinance, the wireless provider would have to submit an application for installation of the wireless communications facility. As described above, LCPA 16-007 further articulates for amended LIP Section 3.16 *Wireless*

Communications Facilities that wireless facilities standards for engineering, design, and location standards for all WCFs are governed by separate resolutions, one for WCFs in public right-of-way and another for WCFs on land other than public right-of-way. That is, LIP Section 3.16.4.C provides the policy framework and incorporates by reference that WCF development standards shall be as noted in the corresponding City of Malibu resolution. Currently in effect are Resolution No. 20-65 (public right-of-way) and No. 21-17 (non-public right-of-way).

At that time, the City will have specific and definite information regarding the facility to review in accordance with CEQA. And, in fact, the City will conduct a preliminary review under CEQA at that time. Moreover, in the event that the Ordinance is interpreted so as to permit installation of WCFs on a particular site, the installation would be exempt from CEQA review in accordance with CEQA Guidelines Section 15302 (replacement or reconstruction), CEQA Guidelines Section 15303 (new construction or conversion of small structures), and/or CEQA Guidelines Section 15304 (minor alterations to land).

Impact Analysis

The below discussion will help clarify and provide an analysis of the potential impacts to coastal resources and public access that may occur from the elimination of these existing LIP provisions. The CCC has published numerous procedural and coastal policy guidance documents to assist in preparing technical studies, evaluating potential project impacts on coastal resources, and understanding and interpreting coastal resource protection policies. One of those documents is the Caltrans Standard Environmental Reference (SER), Volume 5, Coastal Requirements (Chapter 7) reference document, which is often used to make coastal policy consistency findings. Per SER and the above comment from the CCC, policy findings are generally associated with environmentally sensitive habitat areas (ESHA), agricultural resources, visual resources, recreation, and water quality.

Visual Resources

The construction of future WCFs and implementation of the LCP amendments would affect the visual environment during excavation, grading, and on-site storage of equipment and materials. Although views could potentially be altered, construction would be short-term and temporary in nature. Temporary visual impacts would include views of construction staging equipment, storage areas, and potential signage. All construction equipment would vacate the project site upon completion of the project, thus, making any visual obstructions to visual resources temporary.

The proposed Ordinance includes requirements for all facilities to be properly screened and designed to blend in with the surrounding environment. Overall, development will be sited and designed to and along the ocean and scenic areas to minimize the alteration of natural landforms, and to be visually compatible with the character of surrounding areas. As such, it would result in no impacts to aesthetics with regard to scenic vistas, scenic resources, degrading the existing visual character, creating new sources of light or glare, or affecting areas of public assembly and congregation. Unless required by the Federal Aviation Administration and/or the FCC due to safety reasons, no lights or beacons would be allowed. Furthermore, because facilities, especially towers, vary in height, a code compliance WCF will not warrant a safety light. In case a light is required to be installed, it is typically of a soft blue, low intensity color, and it would not create any major source of light or glare. Lighting can also be required during the construction. However, because construction is short in nature and takes place mostly during daytime, it is not typical for light to be a concern during the construction/installation of WCFs.

As mentioned above, the timing, extent and location of future facilities are speculative. Individual applications for WCFs would be reviewed and assessed for compliance with the proposed Wireless Ordinance and CEQA consistency as they are submitted for review, separate from this analysis. At that time, the specific details of the facility being proposed, and the physical changes would be assessed for aesthetic impacts per CEQA and also assessed for compliance with the provisions of the Ordinance. The adoption of this Ordinance would not create potential adverse individual or cumulative visual resources impacts to coastal resources or public access areas.

Agricultural Resources

A WCF generally occupies a small footprint. Typically, the foundation/base of the tower is not much larger than the required foundation area to support tower/pole and electrical equipment. Thus, a facility should not conflict with existing zoning for agricultural use. Due to the fact that such facilities impose a small footprint of disturbance, it is not expected to be any conflict with an existing Williamson Act or any other agricultural use in the area of potential facilities. Properties that are involved with a Williamson Act are not typically concentrated at a particular area, but rather, they are scattered throughout the County. In fact, it is known that most of properties that are within the Williamson Act are not necessarily located within prime agricultural areas, but mostly on properties used for grazing. Thus, the adoption of this Ordinance would not create potential adverse individual or cumulative agricultural resources impacts to coastal resources or public access areas.

Recreation

The intent of this ordinance is to establish criteria for the location and design of facilities. The ordinance will also not permit the erection of ground-mounted facilities within 1,000 feet of residentially zoned districts. However, any impacts related to recreational facilities will be individually analyzed for as each project is proposed for review. Thus, the adoption of this Ordinance would not create potential adverse individual or cumulative recreation impacts to coastal resources or public access areas.

Environmentally Sensitive Habitat

The footprint of disturbance that a potential WCF occupies is not substantial. Specifically, the footprint of a new facility is no larger than it needs to be in order to provide for the installation of the facility and its electrical ground equipment. Disturbance of sensitive habitat areas would not be likely to occur. As previously stated, since the specific location, existing surroundings, size, height, and design of tower/facility is unknown at this point, it is only speculative to discuss in the details the potential impacts that it may or not cause in the environment. The review of an application would include sufficient details about the facility and its surrounding to determine if the facility would have a substantial adverse effect, either directly or through habitat modifications, on any sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service.

Once a project is proposed and a sensitive habitat survey is warranted and/or needed, it would provide for sufficient information on existing presence of animal species, birds, and other special sensitive vegetation that may have the potential to be within the property or its surrounding areas. Without a formal report or survey, it is only speculative to determine the significance of a project at this point or if it will or not impose an impact on special species, wetland, or sensitive habitat area. With regard to drainage areas, a WCF may be located on high elevations and where body of waters

may not be present. There are also other lower locations where it may be appropriate to witness the erection of these facilities.

Nevertheless, as proposed, the adoption of this Ordinance would not create potential adverse individual or cumulative environmentally sensitive habitat impacts to coastal resources or public access areas.

Water Quality

WCFs are not generally associated with impacts to water quality or natural resources near the ocean. What's more, the Ordinance does not contain provisions that are in conflict with ensuring adequate hydrology resources and water quality. Nevertheless, as noted above, it is unknown where or when facilities might be proposed, and any proposal to construct a facility would undergo separate project and environmental review per CEQA, with any water quality concerns assessed at that time. Once a project is proposed, consideration will be given to any potential impact that it may cause on water quality. The impervious surface generated by a tower or facility is insignificant; However, projects will have to comply with the National Pollution Prevention Discharge as established by the Regional Water Quality Board. As expanded, any project that would cause water quality impacts would have to comply with the local, state, and federal requirements to lessen or avoid water quality impacts. Therefore, the adoption of this Ordinance would not create potential adverse individual or cumulative water quality impacts to coastal resources or public access areas.

Summary

Approval of the LCP Amendment will not result in the actual installation of any facilities in the City of Malibu. In order to install a facility in accordance with the Ordinance and Resolutions, the wireless provider would have to submit an application for installation of the WCF. At that time, the City will have specific and definite information on the facility to review in accordance with CEQA. In particular, the City of Malibu will conduct preliminary review under CEQA at that time. Overall, elimination of these existing LIP provisions that are now incorporated per City Council resolution would not create a significant environmental impact. The proposed LCPA is not expected to increase any potential environmental impacts versus existing wireless regulations. The proposed LCPA will bring the existing wireless regulations up to date with state and federal requirements while trying to reduce coastal resource impacts such as impacts to visual and biological resources.

4 **References**

CodeAlert Amendment List, Ordinance No. 484 < <http://qcode.us/codes/malibu-coastal/revisions.html> >

April 12, 2021, City of Malibu Council Agenda Report (item 4.D) < https://www.malibucity.org/AgendaCenter/ViewFile/Agenda/_04122021-1672?html=true >