

**RESOLUTION NO. 45-2020**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFICA DENYING THE APPEAL AND UPHOLDING PLANNING COMMISSION APPROVAL OF USE PERMIT UP-96-18 (FILE NO. 2018-008), SUBJECT TO CONDITIONS, FOR A WIRELESS COMMUNICATIONS FACILITY ON AN EXISTING UTILITY POLE IN THE PUBLIC RIGHT-OF-WAY OF TERRA NOVA BOULEVARD, APPROXIMATELY 870 FEET NORTH OF EVERGLADES DRIVE, IN THE VICINITY OF 1450 TERRA NOVA BOULEVARD (APN 022-310-300), AND FINDING THE PROJECT EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).**

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Initiated by: Modus LLC (“Applicant”) for Verizon Wireless

**WHEREAS**, an application has been submitted for the installation of a new Verizon wireless communication facility (“WCF”), including a canister antenna mounted on an extension on top of an existing utility pole, and associated pole-mounted equipment, in the Terra Nova Boulevard public right-of-way, approximately 870 feet north of Everglades Drive, in the vicinity of 1450 Terra Nova Boulevard (APN 022-310-300) (“the Project”); and

**WHEREAS**, installation of the proposed WCF requires approval of a use permit prior to the issuance of a building permit, pursuant to section 9-4.2606(c)(5) of the Pacifica Municipal Code (“PMC”); and

**WHEREAS**, the City and Verizon entered into a tolling agreement to extend the applicable time within which the City may take action on the application in compliance with 47 USC § 332(c)(7)(B)(ii), Federal Communications Commission (“FCC”) Declaratory Rulings 09-99 (November, 2009) and 18-133 (September, 2018); and

**WHEREAS**, the Planning Commission of the City of Pacifica did hold a timely and duly noticed public hearing on April 20, 2020, at which time it considered all oral and documentary evidence presented and incorporated all testimony and documents into the record by reference; and

**WHEREAS**, the Planning Commission of the City of Pacifica adopted Resolution No. 2020-006 approving Use Permit UP-96-18 for the Project by a vote of 4-1; and

**WHEREAS**, Sunil Bhat of Cal Coast for Responsible Tech (“Appellant”) submitted a City of Pacifica Appeal Form and the applicable fee to the City Clerk’s office on April 30, 2020, to appeal the action of the Planning Commission (“Appeal”); and

**WHEREAS**, although PMC Section 9-4.3603 provides that the Council shall render its decision within 60 days after the filing of the appeal, the Applicant and the Appellant both expressly agreed to an extension of the public hearing date beyond 60 days; and

**WHEREAS**, the City Council of the City of Pacifica did hold a duly noticed public hearing on July 13, 2020, at which time it considered all oral and documentary evidence presented relating to the Appeal, and incorporated all testimony and documents into the record by reference.

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Pacifica as follows:

1. The above recitals are true and correct and material to this Resolution.

2. In making its findings, the City Council relied upon and hereby incorporates by reference all correspondence, staff reports, and other related materials from both the Planning Commission public hearing on April 20, 2020 and the City Council public hearing on July 13, 2020.

**BE IT FURTHER RESOLVED** that the City Council of the City of Pacifica does hereby deny the Appeal and upholds the Planning Commission's Approval on April 20, 2020, based on the following findings:

The Appellant cited several reasons for the appeal in the submitted appeal materials, which are addressed below.

*Basis 1. "The proposed wireless facility is in violation of multiple sections of the City of Pacifica Municipal Code pertaining to both zoning and safety."*

The Appellant did not provide any evidence or specific analysis regarding the alleged violations of sections of the PMC pertaining to zoning and safety of the WCF in his appeal. However, the Appellant submitted a public comment letter prior to the May 18, 2020 Planning Commission public hearing on Use Permit UP-102-18 for a similar, but separate, WCF project in the vicinity of 1307 Redwood Way (File No. 2018-016), and in that letter, the Appellant references UP-96-18 and describes alleged violations of sections of the PMC made by both projects. The sections of the PMC that the Appellant alleges were violated are listed below and a response of why no violation occurred is provided:

- **PMC section 9-4.2614(a)(1):** Although this provision of the PMC requires, as supplemental application material, a study showing that the selected site is required, because of the Applicant's right to locate a WCF within the public R.O.W. pursuant to Public Utilities Code 7901, the Applicant has no further burden under Federal Regulations or state law to demonstrate the necessity of the WCF.
- **PMC section 9-4.2503:** This section of the PMC is intended "to regulate the placement and height of aerials" for radio and television transmissions and is not applicable to wireless communications facilities. The definition of "aerial" is provided in PMC section 9-4.203 and "shall mean a radio or television transmitting or receiving device consisting of one, or any combination, of the following elements:
  - o (a) A tower (a vertical framework which supports either an antenna or a mast);
  - o (b) A mast (a vertical element consisting of a tube or rod which supports an antenna);
  - o (c) An antenna (a horizontal or vertical element or array attached to a mast or to a tower);
  - o (d) Guy wires necessary to insure safety and stability; and
  - o (e) A dish (a broadcast device which receives microwave signals from a satellite)."

Article 26 of Title 9, Chapter 4 of the PMC has the stated purpose "to provide locational, design and screening criteria to minimize the potential health, safety and aesthetic impacts of wireless communications facilities." The definition of "wireless communication facility" is provided in PMC section 9-4.2604(n) and shall mean "commercial transmitting, relaying and receiving antennas, antenna support structures and ancillary facilities, including equipment facilities and overhead and underground service/transmission lines used for the purpose of transmitting, relaying and receiving data, voice and paging services. [...]" Given this project is a wireless communications facility applying regulations in PMC section 9-4.2503 is not appropriate. The project meets the definition of a wireless communications facility and therefore the standards in Article 26 of the Title 9, Chapter 4 of the PMC are applicable.

- **PMC section 9-4.2602:** This section of the PMC provides the general purpose of Article 26 of Title 9, Chapter 4 of the PMC and the proposed project does not violate this section. As indicated in PMC section 9-4.2602, the purpose of this article is to "provide locational, design and screening criteria to minimize the potential health, safety and aesthetic impacts of wireless

communications facilities. The criteria establish standards and permit requirements to facilitate the installation of wireless communications systems while remaining consistent with the scenic character of the City. This article seeks to minimize any adverse visual impact created by wireless communications facilities while providing adequate service to the citizens of the City and to accommodate the need for a connection of such services to wireless facilities in adjacent and surrounding communities.” The Appellant contends that the height and shape of the WCF violate this section, however, this section does not set forth any criteria regarding height or shape of the WCF. Furthermore, the language of this section provides that the criteria within Article 26 are intended to regulate and thus PMC section 9-4.2602 should not be read in isolation and must be read with the other sections within Article 26 that regulate WCFs. The height and shape of the WCF do comply with the criteria for a WCF in the R.O.W. Although Section 9-4.2608(e)(1) sets a 2’-0” limit for both the vertical extension above the top of the support structure and the horizontal projection from the point of attachment to the support structure for all antennas attached to existing utility poles within rights-of-way, a greater extension or projection is allowed if necessary to comply with regulatory requirements or for health and safety reasons. The project would yield a total of a 7’-3” vertical extension above the existing utility pole, which would exceed the 2’-0” limitation set forth by the PMC. However, this extension is necessary to meet regulatory requirements of the CPUC. Pursuant to CPUC GO 95 the minimum standard for vertical separation above a high-voltage power line from 750-35,000 volts is a minimum of 6’-0”; therefore, due to the regulatory requirements of the CPUC, the proposed project may exceed the 2’-0” vertical limitation. The maximum horizontal projection from the outside edge of the utility pole would be less than 1’- 4” for mounting the RRUs, therefore the project complies with the 2’-0” maximum horizontal projection established in subsection (e).

· **PMC section 9-4.3401:** This section of the PMC identifies the purpose of a variance, which is to provide relief where ...“practical difficulties, unnecessary hardships, or results inconsistent with the general purpose...” may result from the strict application of certain provisions of the zoning code. As further detailed above and throughout this report, no code violations were identified and therefore no variance is necessary. Public Utilities Code Section 7901 grants providers the right to “construct lines” and to “erect poles, posts, piers, or abutments” for their equipment “along and upon any public road or highway” provided the facilities do not “incommode the public use of the road or highway.” Therefore, WCFs compliant with Public Utilities Code Section 7901 are an allowed use within the public R.O.W. The project meets the requirements of the PMC without the need to grant a variance.

In the Appellant’s public comment letter, he also cites sections of the PMC regarding the site development standards listed in PMC section 9-4.2608 and the findings necessary to support the approval of a Use Permit for a WCF. The project’s consistency with these PMC sections detailed in the project record.

The April 20, 2020 Planning Commission staff report detailed the project’s consistency with applicable sections of the PMC, which are summarized in the July 13, 2020 City Council staff report. The project is compliant with the general standards applicable to all WCF use permit applications addressing a facility’s physical and operating characteristics including, but not limited to, setbacks; equipment enclosures; Federal Communications Commission (FCC)-adopted radio frequency (RF) emissions standards; localized interference to television and radio broadcasts; lighting; visual concealment; and, reporting and maintenance [PMC sections 9-4.2608(a) through (b)]. The project is consistent with the standards set forth in PMC section 9-4.2608(e) that govern a WCF’s physical characteristics including support structure height; maximum vertical and horizontal projections from existing support structures; siting in relation to residential uses and structures; siting in proximity to other WCFs and support structures; setbacks from certain R.O.W. features; and, obstruction or inconvenience to the public’s use of the R.O.W.

These findings were recorded in the Planning Commission-adopted Resolution No. 2020-006. Based on the lack of evidence provided by the Appellant of PMC violations and the substantial evidence of the Project's consistency with applicable sections of the PMC in the record the City Council rejects this basis for appeal.

*Basis 2. "The safety violations could be interpreted by the carrier as 'sole negligence' on the part of the City, and would nullify any indemnity or protections from damages and losses regarding both property devaluation and personal injury lawsuits brought upon the City by residents or workers."*

The Appellant did not provided evidence or specific analysis of what the "safety violations" are or how the Project approved by the Planning Commission would create safety violations which could "nullify any indemnity or protections from damages and losses..."

PMC section 9-4.2608(f)(3) and Condition of Approval No. 10 of Resolution No. 2020-006 both require the Applicant to indemnify the City from any claim brought against the City relating to the Project. Specifically, PMC section 9-4.2608(f)(3)(ii) provides that "Applicant's installation and operation of the facility permitted hereby, including, without limitation, any and all liabilities arising from the emission by the facility of electromagnetic fields or other energy waves or emissions. The permittee/operator compliance with this section is an express condition of any City permit and this provision shall be binding on any and all of the permittee/operator's successors and assigns." The indemnity provisions of PMC section 9-4.2608(f), however, exclude those liabilities that arise due to the sole negligence of the City, *i.e.*, as between the City and the wireless carrier, the City would have to be solely negligent and the wireless carrier would have to bear no negligence in the claim in order for the exclusion to apply. In addition to the various indemnity provisions which provide certain legal protections to the City, the City is also generally immune from tort liability for discretionary approvals, such as approval of a use permit, pursuant to the Government Claims Act.

Both the indemnity provision in PMC section 9-4.2608(f)(3) and Condition of Approval No. 10 provide protection to the City for claims relating the Project. Moreover, there is no evidence that there are any "safety violations" which would cause the City to be solely negligent. Furthermore, any action by the City Council to approve the Project would be immune from liability. For the foregoing reasons, Council rejects this basis of appeal.

*Basis 3. "There are better options for the carrier and the City to improve cellular coverage over a larger service area, and minimize visual disturbances and aesthetic impact."*

Because of the Applicant's right to locate a WCF within the public R.O.W. pursuant to Public Utilities Code 7901, the Applicant has no further burden under Federal Regulations or state law to demonstrate the necessity of the WCF. Although the Appellant argues that there are other options for the carrier or that the Applicant has not demonstrated that the WCF is necessary to prove a gap in coverage, the Applicant has indicated there is indeed a need to improve coverage in the project area and the objective of the proposed WCF is to provide enhanced communication services, both data and voice to students, pedestrians, emergency services, etc., to service the school and the neighboring community. At the Planning Commission hearing the Applicant indicated the project area is challenging to serve and that field obstructions can make it difficult for the signal to penetrate and reach the end users. Thus a small wireless facility in the area would allow the Applicant to reach those users.

Regardless, as indicated above the Telecommunications Act provides that the City cannot regulate in a manner that has the effect of prohibiting service. <sup>1</sup> In a 2018 Order, the FCC confirmed a state or local

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<sup>1</sup> 47 U.S. Code § 332(c)(7)(B)(i)(II)

legal requirement constitutes an effective prohibition if it “materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.”<sup>2</sup> This Order also confirmed that courts that have held that a denial of a wireless siting application will have the “effect of prohibiting” wireless services only if the provider can establish a significant gap in coverage is not appropriate. Rather, the Order provides that a wireless carrier need not show an insurmountable barrier, or even a significant gap, to prove a prohibition of service only that the regulation materially limits or inhibits the ability of a wireless carrier to compete in a fair and balanced legal and regulatory environment.<sup>3</sup> Therefore, the City cannot regulate in a manner that materially limits or inhibits the ability of any wireless carrier from competing. This would include a regulation requiring a carrier to construct their small wireless facility on private property when a carrier is seeking to site their WCF in the R.O.W. Instead, the City has worked extensively with the Applicant to address aesthetic issues such as reducing the height of the proposed increase to the existing utility pole, as well as reducing the size and number of proposed equipment cabinets to be mounted to the utility pole.

As proposed, the WCF facility would not incommode the public R.O.W. Under state law, as explained in Section C of this staff report, the Applicant has a right to locate its facility within the public R.O.W. to the extent that it does not incommode the public’s use of the R.O.W. Thus, with respect to alternative site analysis performed by the Applicant pursuant to PMC section 9-4.2614(b)(2), the principal question is whether there are alternative R.O.W. sites that would have fewer visual impacts. The supplemental findings for approval of the Use Permit do not require that the Applicant consider every option for the various types of wireless facilities. Rather, the supplemental findings for approval of wireless facilities found in PMC section 9-4.2614(b)(2) only require a finding that the information submitted proves that a feasible alternate site that would result in fewer visual impacts does not provide reasonable signal coverage. PMC section 9-4.2614(b)(2) addresses aesthetics of a proposed facility by identifying the visual impacts of each alternative site but does not require an applicant to identify all possible options for the carrier to improve cellular coverage.

Pursuant to PMC section 9-4.2614(b)(2), an alternative site analysis was attached to the April 20, 2020, Planning Commission staff report and the Planning Commission discussed the alternative site options at the Planning Commission meeting. The analysis reviewed seven alternative sites that would feasibly address the capacity objective of the Project and the visual impacts of each alternative site. Six of the sites were either disqualified due to existing equipment on the existing utility poles or determined not viable because of tree obstructions to the signal or lack of power at the site. One site located further north on Terra Nova Boulevard was identified as viable, but was not preferred to the proposed site since it is located closer to residences and would have a more substantial impact on residential views.

In this case, the Applicant has expressed a need to provide additional capacity for Verizon’s existing wireless communications network within the area surrounding the Project site. To best meet this need, the Applicant has proposed a small facility which must be located within 500 to 1000 feet of the area requiring additional capacity. The Applicant has determined that locating the proposed WCF within the public R.O.W. would best meet its objectives for the facility.

The resulting facility, which was approved by the Planning Commission would not incommode the public R.O.W. The Applicant has proposed a WCF which would not require ground-mounted equipment or tree removal. Electricity and telecommunications connections would be made from existing wires on the utility pole. The proposed antenna would be mounted above an extension attached to the existing utility pole that would increase the height of the pole by 7’-3” or approximately 19 percent. The Applicant

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<sup>2</sup> Declaratory Ruling and Third Report and Order adopted September 26, 2018 (WT Docket No. 17-79; WC Docket No. 17-84) (“Order”) ¶ 35.

<sup>3</sup> *Id.* at ¶¶ 38-40.

selected a small facility design that would locate a canister antenna on an existing utility pole support structure. The Applicant would also paint the antenna and equipment to closely match the existing utility pole and has proposed a sleek equipment design. These measures have resulted in a facility design which meets the Applicant's coverage and capacity objectives while causing minimal visual impacts. The proposed WCF meets all applicable requirements of the PMC for approval of a WCF in the public R.O.W. as outlined in Resolution No. 2020-006 and the Planning Commission staff report from April 20, 2020.

For these reasons, the claim that there are better options for the carrier and the City to improve cellular coverage over a larger service area, and minimize visual disturbances and aesthetic impact is unsupported by the applicable law and facts and the City Council rejects this basis for appeal.

*Basis 4. "The clear aesthetic impact to Terra Nova high school, and the surrounding neighborhood, as well as the increasingly negative public perception of cellular facilities in residential neighborhoods, is a significant risk to property values in all the surrounding neighborhoods and entire school district based on published data and local professional opinion."*

The Appellant has provided no analysis or any documentary support of how the small facility proposed by the Applicant, which would be located more than 200 feet from the nearest building on the Terra Nova High School campus and more than 400 feet from the nearest residential building, would cause a "clear aesthetic impact". The Appellant provided letters from three realtors estimating up to a 20 percent reduction in home values for surrounding residences of the project site. Impacts on property values is not a criterion that can be used to deny the application of a WCF under applicable laws, including the supplemental findings in PMC 9-4.2614(b).

The City's ability to regulate WCFs in the ROW under State law is limited to consideration of time, place and manner. The Applicant proposed to install the WCF on an existing utility pole, which would not require ground-mounted equipment or tree removal. Electricity and telecommunications connections would be made from existing wires on the utility pole. The proposed antenna would be mounted above an extension attached to the existing utility pole that would increase the height of the pole by 7'-3" or approximately 19 percent.

The Applicant selected a small facility design that would locate a canister antenna on an existing utility pole support structure. The slender design is the least visually obtrusive design alternative because it does not require the construction of a new, large support structure within the public R.O.W. The Applicant would also paint the antenna and equipment to closely match the existing utility pole and has proposed a sleek equipment design. These measures have resulted in a facility design which meets the Applicant's coverage and capacity objectives while causing minimal visual impact for observers.

Additionally, as further described in the April 20, 2020, Planning Commission staff report, the project addresses all of the applicable design-related zoning requirements detailed in PMC section 9-4.2608(b), including facility concealment and colors and material compatibility. The staff report details the consistency of the project with applicable Pacifica Design Guidelines. Overall, the visual impacts from the WCF on the existing visual quality would be minimal.

The Appellant does not provide evidence to support the claim that a negative impact on property values would result from the project. More importantly however, there would be no legal basis to regulate a wireless facility based on impacts on property values under applicable laws. For these reasons, claims made in this basis are unsupported and the City Council rejects this basis for appeal.

*Basis 5. The proposed wireless facility would harm the health of humans and violate the rights of persons with electromagnetic sensitivity under the Americans with Disabilities Act (ADA) and Fair Housing Act; and harm birds, and trees in the vicinity of the project site.*

The Appellant acknowledges in the supplemental documents submitted after filing of the Appeal that Federal Regulations limit a local jurisdiction's ability to deny a WCF based on environmental concerns of RF emissions, including but not limited to health effects. Nevertheless, Appellant provided materials that the Appellant believes support his position that WCFs cause adverse health effects to children and persons with electromagnetic sensitivity as well as birds and trees in the vicinity of the project site. Appellant also cites to an article which discusses a First Circuit Court of Appeals case, as support for his argument that a "US appeals court upholding a lawsuit against the Fay School in Southboro MA due to Americans with Disabilities Act concerns affecting a student with electromagnetic hypersensitivity (EHS)..."<sup>4</sup>

Although the Appellant alleges that electromagnetic sensitivity is a recognized disability under the Americans with Disabilities Act, federal regulation preempts local agencies from regulating based on the environmental effects of RF emissions-which would include claims of electromagnetic sensitivity.<sup>5</sup> As discussed above, Federal regulations prohibit the City from regulating the environmental impacts of RF emissions beyond requesting reasonable information to substantiate a project's compliance with FCC standards for RF emissions. Section 332(c)(7)(B)(iv) of the Telecommunications Act provides that "[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 radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions." The term "environmental effects" has been interpreted by courts to include human health effects and the biological effects of RF.<sup>6</sup> The FCC's acceptable RF emission levels are the only consideration the City can consider in evaluating the environmental effects of RF emissions. The Applicant had Bill Hammett of Hammett and Edison Consulting Inc., address the RF emissions at the Planning Commission meeting. Mr. Hammett, a licensed engineer, indicated that the report prepared by his consulting company showed exposure levels at 2.4% of the allowable limit at ground level and 0.33% in the nearest building, or 300 times below the exposure limit for emissions.

Therefore, the City has no evidence to indicate that the Project is not compliant with applicable FCC RF emissions standards, and cannot further regulate the WCF based on any perceived or potential environmental concerns. For these reasons, the City Council rejects this basis for appeal.

**BE IT FURTHER RESOLVED**, that the City Council of the City of Pacifica does hereby make the finding that the Project qualifies for Class 3 exemption provided in Section 15303 'New Construction or Conversion of Small Structures' of the California Environmental Quality Act (CEQA) Guidelines, respectively, as described below:

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<sup>4</sup> Although Appellant indicates that the article and First Circuit Court of Appeals found in favor of the plaintiffs, both the article and the case itself provide that the First Circuit Court of Appeals actually upheld the school's motion for summary judgment ruling in favor of the school and rejecting the plaintiffs' claims for recovery under ADA (*G. v. Fay School*, 931 F.3d 1, 3 (1st Cir. 2019)).

<sup>5</sup> See *Santa Fe All. for Pub. Health & Safety v. City of Santa Fe, New Mexico*, 2020 WL 2198120 (D.N.M. May 6, 2020); see also *Firstenberg v. City of Santa Fe*, 782 F.Supp.2d 1262, 1271 (D.N.M. 2011), rev'd on other grounds by 696 F.3d 1018 (10th Cir. 2012) [Plaintiff, an individual diagnosed with electromagnetic sensitivity (EMS) could not force city to prohibit 3G transmissions and that Telecommunications Act superseded ADA.]

<sup>6</sup> *T-Mobile Northeast LLC v. Town of Ramapo*, 701 F.Supp.2d 446, 460 (S.D.N.Y. 2009).

The Project qualifies as a Class 3 exemption provided in Section 15303 of the CEQA Guidelines (New Construction or Conversion of Small Structures). Section 15303 states in part:

Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure.

The subject proposal to construct a WCF on an existing utility pole fits within the scope of a Class 3 categorical exemption. Specifically, the Project includes installation of a 2' tall by 12" diameter cylindrical canister antenna above a 5' tall pole extension attached to the top of the 38'-2" existing utility pole and associated pole mounted equipment projecting less than 1'-4" from the face of the pole. For purposes of the Class 3 exemption, the antenna, vertical extension, and equipment are all small new equipment attached to a small structure (the existing pole), and constitute only minor modifications to the exterior of the structure.

Exceptions to the exemption, as set forth in Section 15300.2 of the CEQA Guidelines, would not apply:

- Sec. 15300.2(a): There is no evidence in the record that the Project would impact an environmental resource of hazardous or critical concern in an area designated, precisely mapped, and officially adopted pursuant to law by federal, State, or local agencies. The proposed WCF installation is on an existing utility pole in the public right-of-way immediately adjacent to a city street.
- Sec. 15300.2(b): There is no evidence in the record that successive projects of the same type in the area would have a significant cumulative impact. The Project is an independent project under CEQA and its impacts are not cumulative. According to information provided by the Applicant, the WCF can operate independently of the other WCFs proposed in the City and provides coverage to a small area surrounding the facility. Furthermore, it is connected to existing electrical and telecommunications lines on an existing utility pole and does not propose direct site-to-site communication between this facility and other WCFs in the area.
- Sec. 15300.2(c): There is no evidence in the record of any unusual circumstances nor is there evidence possibility that the Project would have a significant effect on the environment due to unusual circumstances. The Project is of a small scale such that no identifiable significant impacts to the environment would occur.
- Sec. 15300.2(d) through (f): The Project is not proposed near a scenic highway, does not involve a current or former hazardous waste site, and, does not affect any historical resources. Therefore, the provisions of subsections (d) through (f) are not applicable to this Project.

Because the Project is consistent with the requirements for a Class 3 exemption and none of the exceptions in Section 15300.2 apply; there is substantial evidence in the record to support a finding that the Project is categorically exempt from CEQA.

**BE IT FURTHER RESOLVED** that the City Council of the City of Pacifica does hereby make the following findings pertaining to Use Permit UP-96-18:

USE PERMIT FINDINGS PURSUANT TO PMC 9-4.3303



*A. That the establishment, maintenance, or operation of the use or building applied for will not, under the circumstances of the particular case, be detrimental to the health, safety, and welfare of the persons residing or working in the neighborhood or to the general welfare of the City.*

Potential impacts to public health, safety, and welfare from this project could arise from an unsafe electrical or mechanical installation; from radio frequency (RF) emissions from the antennas; from noise from facility equipment; or, from adverse aesthetic design of the site.

The proposed Project would require a building permit prior to construction. The building permit process includes a detailed plan review for building and electrical code compliance, as well as field inspections of the work prescribed in the approved Project plans to verify proper performance of the work. This would ensure safe installation of the proposed WCF. A condition of approval is included which requires the applicant to obtain a building permit prior to installation of the WCF.

The City cannot regulate the topic of RF emissions beyond requesting reasonable information to substantiate a project's compliance with FCC standards for RF emissions. The FCC has established two categories of RF emissions standards: public exposure limits and occupational exposure limits. The applicant has demonstrated its facility would comply with FCC RF emissions standards for public exposure limits. Since the applicant has provided relevant information prepared by a qualified professional engineer to demonstrate compliance with FCC RF emissions standards, the Project must be considered safe from the standpoint of RF emissions.

The RF emissions report did, however, include three recommended measures to protect workers who access the utility pole from exceeding occupational exposure limits:

- 1) Provide RF safety training to all workers who have access within 14 feet outward from the antenna;
- 2) Prohibit access to areas within three feet directly in front of the antenna; and
- 3) Install explanatory signs at the antenna and/or on the pole below the antenna, visible from any angle of approach, that identifies the RF emissions hazard.

The first two recommended measures are out of the control of the applicant because the subject pole is a joint pole utilized by various different utility providers. However, the third measure is within the control of the applicant and can be accomplished during construction of the site. A condition of approval requires the installation of signage to protect workers who access the utility pole from exceeding occupational exposure limits to address the recommendations in the RF emissions report relating to occupational safety.

The components of the WCF do not include noise producing elements, in particular because the proposed equipment does not contain a fan, and the WCF would not produce noise.

Based on the information provided by the applicant and the conditions of approval proposed for this Project, the Project would not be detrimental to the health, safety, and welfare of the persons residing or working in the neighborhood or to the general welfare of the City.

*B. That the use or building applied for is consistent with the applicable provisions of the General Plan and other applicable laws of the City and, where applicable, the local Coastal Plan.*

The proposed Project is consistent with the following provisions of the General Plan and other laws of the City. Since the Project is not within the Coastal Zone, the provisions of the Local Coastal Plan do not apply.

i. Noise Element, Policy No. 2: *Establish and enforce noise emission standards for Pacifica which are consistent with the residential character of the City and environmental, health, and safety needs of the residents.*

The Project has been designed to eliminate noise. It does not include large equipment cabinets with air conditioners or backup generators, which can often generate noise in the immediate vicinity. The equipment associated with the facility does not contain fans and would not produce noise.

ii. Community Design Element, Policy No. 1: *Preserve the unique qualities of the City's neighborhoods.*

The proposed WCF would be located on an existing utility pole, which does not require ground-mounted equipment, installation of a new vertical support structure, or removal of trees. Installation of the WCF on an existing utility pole would be compatible with the existing quality of the Park Pacifica neighborhood along Terra Nova Boulevard because the area has other utility poles in the area carrying essential utilities for the neighborhood.

The WCF would be unobtrusive in the sightlines of persons on the ground in close vicinity of the facility but would be noticeable from afar as a result of an increase in existing pole height. Compliance with the design related standards for WCF installations above existing support structures as outlined in PMC Section 9-4.2608 (e)(1) would minimize the visual impact of the proposed installation on the neighborhood. Thus, with the maximum separation between the uppermost high voltage power line and the bottom of the antenna no more than 6'-0" and the maximum height of the antenna canister being 2'-0", the Project is consistent with the Community Design Element, Policy No. 1.

iii. Community Design Element, Policy No. 2: *Encourage the upgrading and maintenance of existing neighborhoods.*

The applicant proposes to install the WCF to improve signal quality in the area, which would increase data rates for customers to consistently be able to access wireless data services including but not limited to streaming videos. Improving service quality would allow residents to improve their quality of life in access to information that is an important part of modern home life and commerce for home-based and mobile businesses. For these reasons, the Project would be an upgrade to the existing neighborhood.

iv. Community Facilities Element, Policy No. 4: *Meet basic social needs of City residents, such as transportation, housing, health, information and referral services, and safety, consistent with financial constraints.*

The applicant proposes to install the WCF to improve signal quality in the area, which would increase data rates for customers to consistently be able to access wireless data services. Improving service quality would allow residents to obtain information on City services and emergency services more expeditiously, which modernizes the process and is increasingly essential to meeting residents' basic social needs, including safety.

v. Land Use Element, Policy No. 4: *Continue to cooperate with other public agencies and utilities in applying compatible uses for their lands, rights-of-way and easements.*

The proposed Project would occur within the public right-of-way. The City has cooperated with Verizon Wireless, a communications service provider, through its agent Modus, LLC, in processing this application for the subject WCF, including by working together to extend the time for the City to take action on the application to allow more time for Verizon to explore alternative locations for the WCF. The coordination between the City and Verizon Wireless has resulted in a proposed Project which, as

conditioned, would be a compatible use for the public right-of-way in the Park Pacifica neighborhood. This is evidenced by its installation on an existing utility pole, thus reducing the need for additional structures within the public right-of-way. Cooperation between the City and Verizon Wireless has also yielded a sleeker equipment design and shorter antenna height from that earlier proposed, including the bayonet extension and the antenna to meet with all applicable requirements of the PMC and CPUC.

*C. Where applicable, that the use or building applied for is consistent with the City's adopted Design Guidelines.*

The Project is consistent with the following provisions of the City's adopted Design Guidelines:

i. Design. *The style and design of new buildings should be in character with that of the surrounding neighborhood. This does not mean that new buildings should be identical to existing buildings on neighboring lots, but that new buildings should complement, enhance, and reinforce the positive characteristics of surrounding development.*

[ ... ]

*Additions to an existing structure should also retain and/or be consistent with the positive architectural features of the original structure.*

Electrical and telecommunications utilities in the area of the Project site are provided via above-ground utility poles and associated wires. The applicant proposes to install the WCF on an existing utility pole, which would not require ground-mounted equipment or tree removal. Electricity and telecommunications connections would be made from existing wires on the utility pole. The proposed antenna would be mounted above an extension attached to the existing utility pole that would increase the height of the pole by 7'-3" or approximately 19 percent. The applicant's chosen small cell facility design - locating a canister antenna on an existing utility pole support structure - is a slender and least visually obtrusive design alternative. The applicant would also paint the antenna and equipment to closely match the existing utility pole and has proposed a sleek equipment design. These measures have resulted in a facility design which meets the applicant's coverage objectives while causing minimal visual impact for observers, except for the height of the installation above the top of the existing utility pole.

ii. Scale. *An important aspect of design compatibility is scale. Scale is the measure of the relationship of the relative overall size of one structure with one or more other structures. Scale is also used to refer to a group of buildings, a neighborhood, or an entire city. A development can be "out of scale" with its surroundings due to its relative height, bulk, mass, or density.[...]*

The proposed Project, as shown on the plans on file, would increase the height of a 38'-2" tall existing utility pole to 45'-5". This addition would further emphasize the verticality of the subject utility pole; however, there are multiple large scale buildings on the Terra Nova High School campus in the background, as well as, many large scale mature redwoods and other tall vegetation that have an overall scale and height similar to that of the proposed Project.

iii. Color. *Building color should be compatible with the neighborhood and should reinforce and complement the visual character of the building's environment. Multiple colors applied to a single building should relate to changes of material or form.*

The existing utility pole on which the applicant proposes to locate the subject WCF is made of wood. The applicant has proposed to paint the antennas and equipment brown to achieve a similar color to the utility pole which would result in an installation that blends into the utility pole. Painting the WCF brown would be compatible with other utility poles in the neighborhood.

## SUPPLEMENTAL FINDINGS PURSUANT TO PMC 9-4.2614(b)

*D. That the project will not cause localized interference with reception of area television or radio broadcasts or other signal transmission or reception.*

The WCF would not cause localized interference with the reception of television and radio broadcasts or other signal transmission or reception as Verizon Wireless has a license from the FCC to operate the WCF on specific frequencies that are not utilized by television or radio broadcasts, based upon a statement provided by the applicant, prepared by a qualified engineer.

*E. That the information submitted proves that a feasible alternate site that would result in fewer visual impacts does not provide reasonable signal coverage.*

The applicant assessed seven alternative sites to the subject site within the search ring and did not identify a feasible alternative site that would result in fewer visual impacts does not provide reasonable signal coverage. The applicant's analysis reviewed seven alternative sites that would feasibly address the capacity objective of the Project and the visual impacts of each alternative site. Six of the sites were either disqualified due to existing equipment on the existing utility poles or determined not viable because of tree obstructions to the signal or lack of power at the site. One site located further north on Terra Nova Boulevard was identified as viable, but was not preferred to the proposed site since it is located closer to residences and would have a more substantial impact on residential views. The other utility poles examined appear to be equally visually prominent, but were also unavailable for installation as a result of non-compliance with CPUC GO 95, PG&E regulations, and/or, did not meet the applicant's coverage objectives.

*F. That the application meets all applicable requirements of Section 9-4.2608 of the Pacifica Municipal Code.*

Article 26 of the Zoning Regulations sets the standards for WCFs. Subsections (a), (b), and (e) of section 9-4.2808 include the development standards applicable to the subject facility.

Section 9-4.2608(e)(1) of the PMC limits the vertical height increase of a WCF attached to an existing utility, streetlight, or traffic signal pole to 2'-0" above the top of the respective support structure. Two exceptions are provided: when necessary to comply with regulatory requirements; or, when necessary for health and safety reasons. The applicant has cited a regulatory requirement of CPUC GO 95 as justifying the proposed height increase and has not separately cited any specific health and safety reasons. Therefore, the analysis has considered only the reasonableness of the regulatory exception requested by the applicant.

The minimum vertical separations for "antennas and associated elements on the same support structure" are indicated in Case No. 21 of Table 2 of GO 95 (Attachment G of the April 20, 2020 Planning Commission staff report). The 72-inch (e.g., 6'-0") minimum height increase requested by the applicant corresponds to an antenna installation above power supply conductors ranging in voltage from 750 volts to 35,000 volts (Columns E through G of Table 2 of GO 95). The applicant has proposed to locate its facility above power lines carrying voltages from 750 volts to 35,000 volts.

As demonstrated on Sheet A-4 of Attachment D of the April 20, 2020 Planning Commission staff report, the applicant is proposing the minimum separation of 6' required by GO 95 from the top of the "supply conductor" to the bottom of the "antenna and associated elements on the same support structure" therefore, the height increase is "necessary to comply with regulatory requirements" as limited by PMC Section 9-4.2608(e)(1).

The proposed 2'-0" tall canister antennas meets the requirements of Section 9-4.2608(e)(1) of the PMC which requires the proposed antenna height to be a maximum of 2'-0". This section states, in pertinent

part, that “[a]ll antennas attached to existing utility, streetlight, or traffic signal poles ... within private or public rights-of-way, shall not extend more than two (2’) feet above the top of the support structure ... unless necessary to comply with regulatory requirements or for health and safety reasons” (PMC sec. 9-4.2608(e)(1)). The applicant has successfully demonstrated an allowable height increase of 6’-0” to comply with GO 95 regulatory requirements. However, any further facility height above that mandated by GO 95 shall be limited to the base height increase allowable under PMC section 9-4.2608(e)(1), which is an allowable height increase of 2’-0”.

The proposed project would comply with all applicable PMC requirements pertaining to a WCF installation in the public right-of-way.

**NOW, THEREFORE, BE IT FURTHER RESOLVED** that the City Council of the City of Pacifica does hereby approve Use Permit UP-96-18 for installation of a new wireless communications facility above an existing utility pole and associated pole-mounted equipment within the public right-of-way of Terra Nova Boulevard, approximately 870 feet north of Everglades Drive, adjacent to 1450 Terra Nova Blvd, subject to conditions of approval included as Exhibit A to this resolution.

\* \* \* \* \*

Passed and adopted at a regular meeting of the City Council of the City of Pacifica, California, held on the 13th day of July 2020.

AYES, Councilmembers: Beckmeyer, Vaterlaus, O’Neill.

NOES, Councilmembers: Bier.

ABSENT, Councilmembers: n/a

ABSTAIN, Councilmembers: Martin.

*Deirdre H Martin*

Deirdre H Martin (Jul 24, 2020 10:47 PDT)

Deirdre Martin, Mayor

ATTEST:

*Sarah Coffey*

Sarah Coffey, City Clerk

APPROVED AS TO FORM:

*Michelle Marchetta Kenyon*

Michelle Marchetta Kenyon, City Attorney

## **Exhibit A**

**Conditions of Approval: File No. 2018-008 for Use Permit UP-96-18,  
for installation of a new wireless communications facility consisting of a canister antenna mounted on  
an extension on top of an existing utility pole, and associated pole-mounted equipment, in the Terra  
Nova Boulevard public right-of-way, approximately 870 feet north of Everglades Drive, in the vicinity  
of 1450 Terra Nova Boulevard (APN 022-310-300)**

**City Council Meeting of July 13, 2020**

### **Planning Division of the Planning Department**

1. Development shall be substantially in accord with the plans entitled "SF Pacifica 004" dated February 3, 2020, except as modified by the following conditions.
2. The approval letter issued by the City and all conditions of approval attached thereto shall be included as plan sheets within all plan sets submitted to the City as part of any building permit application.
3. That the approval or approvals is/are valid for a period of two years from the date of final determination. If the use or uses approved is/are not established within such period of time, the approval(s) shall expire unless Applicant submits a written request for an extension and applicable fee prior to the expiration date, and the Planning Director or Planning Commission approves the extension request as provided below. The Planning Director may administratively grant a single, one year extension provided, in the Planning Director's sole discretion, the circumstances considered during the initial project approval have not materially changed. Otherwise, the Planning Commission shall consider a request for a single, one year extension.

In the event of litigation filed to overturn the City's determination on the approval or approvals, the Planning Director may toll the expiration of the approval or approvals during the pendency of such litigation.

4. Prior to issuance of a building permit, Applicant shall submit samples of exterior finishes, including color, subject to approval by the Planning Director.
5. Prior to final inspection, all equipment, conduit, antenna, and other appurtenances of the facility shall be painted to match and blend in with the utility pole and minimize visual obtrusiveness using a color and/or texture reviewed and approved by the Planning Director. Painted surfaces shall be maintained in a uniform condition substantially free of peeling, chipping or other paint defects, to the satisfaction of the Planning Director.
6. The Project shall not include any ground mounted equipment or trenching.
7. Applicant shall maintain its site in a fashion that does not constitute a public nuisance and that does not violate any provision of the Pacifica Municipal Code.
8. All outstanding and applicable fees associated with the processing of this Project shall be paid prior to the issuance of a building permit.

9. Prior to issuance of a building permit, Applicant shall clearly indicate compliance with all conditions of approval on the plans and/or provide written explanations to the Planning Director's satisfaction.
10. The Applicant shall indemnify, defend and hold harmless the City, its Council, Planning Commission, advisory boards, officers, employees, consultants and agents (hereinafter "City") from any claim, action or proceeding (hereinafter "Proceeding") brought against the City to attack, set aside, void or annul the City's actions regarding any development or land use permit, application, license, denial, approval or authorization, including, but not limited to, variances, use permits, developments plans, specific plans, general plan amendments, zoning amendments, approvals and certifications pursuant to the California Environmental Quality Act, and/or any mitigation monitoring program, or brought against the City due to actions or omissions in any way connected to the Applicant's project ("Challenge"). City may, but is not obligated to, defend such Challenge as City, in its sole discretion, determines appropriate, all at Applicant's sole cost and expense. This indemnification shall include, but not be limited to, damages, fees and/or costs awarded against the City, if any, and costs of suit, attorney's fees and other costs, liabilities and expenses incurred in connection with such proceeding whether incurred by the Applicant, City, and/or parties initiating or bringing such Proceeding. If the Applicant is required to defend the City as set forth above, the City shall retain the right to select the counsel who shall defend the City. Per Government Code Section 66474.9, the City shall promptly notify Applicant of any Proceeding and shall cooperate fully in the defense.
11. The Applicant shall be required to remove all unused or abandoned equipment, antennas, poles, towers, and equipment enclosures if the facility has not been operational for the purposes for which it was approved by the City for a consecutive period of six (6) months. A facility is considered abandoned if it no longer provides communication or data services. It is the responsibility of the wireless communications facility owner to remove the antennas, equipment, enclosures, and related ancillary items such as but not limited to conduit and wiring, in order to restore the site to its original condition.
12. To prevent occupational exposures in excess of Federal Communications Commission (FCC) guidelines, the Applicant shall post signage on the subject utility pole below the antenna, readily visible to workers from any angle of approach, that notifies the workers of the risk of exposure to radio frequency (RF) emissions. The signage shall comply with OET-65 color, symbol, and content recommendations, and any applicable requirements of California Public Utilities Commission General Order 95. The size and placement of the signage shall be subject to review and approval of the Planning Director prior to issuance of a building permit.

#### **Building Division of the Planning Department**

13. The Project requires review and approval of a building permit by the Building Official. Applicant shall apply for and receive approval of a building permit prior to commencing any construction activity.
14. Prior to issuance of building permit, Applicant shall provide evidence that PG&E has approved the work for the antenna installation at the subject pole.
15. All mounting hardware shall be made of corrosion resistance materials, to the satisfaction of the Building Official and City Engineer.

## **Engineering Division of Public Works Department**

16. Construction shall be in conformance with the City of Pacifica Storm Water Management and Discharge Control Ordinance and San Mateo Countywide Storm Water Pollution Prevention Program. Best Management Practices shall be implemented and the construction BMPs plan sheet from the Countywide program shall be included in the Project plans.
17. Roadways shall be maintained clear of construction materials, equipment, storage, and debris. Dust control and daily road cleanup will be strictly enforced. A properly signed no-parking zone may be established during normal working hours only.
18. Add a note on the Site Plan that says, "Existing curb, sidewalk or other street improvements adjacent to the property frontage that are damaged or displaced shall be repaired or replaced as determined by the City Engineer even if damage or displacement occurred prior to any work performed for this Project."
19. Applicant shall locate all equipment to the greatest extent possible so that the meter cabinets are not directly over sidewalks in order to reduce the future possibility of deteriorated equipment falling on a person, to the satisfaction of the City Engineer.
20. Applicant shall locate the ground rod in the landscape area.
21. Applicant agrees that, if the subject utility pole is ever no longer needed for carrying electrical power or communications wires, the owner shall apply to the City for alternate options for providing wireless communications service to its customers.
22. All recorded survey points, monuments, railroad spikes, pins, cross cuts on top of sidewalks and tags on top of culvert headwalls or end walls whether within private property or public right-of-way shall be protected and preserved. If survey point/s are altered, removed or destroyed, the Applicant shall be responsible for obtaining the services of a licensed surveyor or qualified Civil Engineer to restore or replace the survey points and record the required map prior to occupancy of the first unit.
23. A City of Pacifica Encroachment Permit shall be obtained for all work undertaken in the public right-of-way. All work shall be done in accordance with City Standards, Standard Specifications for Public Works Construction (Green Book) or Caltrans Standard Specifications, Pacifica Municipal Code, Administrative Policies and to the satisfaction of the City Engineer or his designee. A traffic control plan may be required as a condition for the encroachment permit. Permit fees shall be determined per the current adopted fee schedule.

### **Added by Planning Commission on April 20, 2020**

24. Prior to issuance of a building permit, the Applicant shall submit information demonstrating adequate structural integrity of the pole with the subject facility installed, to the satisfaction of the Building Official.

\*\*\* END OF CONDITIONS \*\*\*











# ResolutionNo45-2020\_DenyingAppeal\_UP-96-18\_VerizonWCF\_1450TerraNova-Approved

Final Audit Report

2020-07-24

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