

BEFORE THE MALIBU HEARING OFFICER

Appeal No.	Permit No.	Street No.	Street Name
26-003	WRP 22-014	3011.5	Corral Canyon Rd
26-004	WRP 23-002	29029.5	Cliffside Dr
26-002	WRP 25-005	6909.5	Whitesands Pl
26-005	WRP 23-003	7101.5	Fernhill Dr
26-008	WRP 23-001	28815.5	Bison Ct.
26-009	WRP 25-002	7009.5	Fernhill Dr
26-010	WRP 25-015	29515.5	Rainsford Pl
26-012	WRP 25-013	29583.5	Cuthbert Rd
26-013	WRP 25-006	7377.5	Birdview Ave
26-016	WP 25-002	3652.5	Sweetwater Mesa Rd
26-014	WRP 25-012	30145.5	Morning View Dr
26-015	WRP 25-009	5763.5	Busch Dr

**MOTION TO MODIFY ADMINISTRATIVE HEARING PROCEDURES AND
SCHEDULE**

Undersigned Counsel individually or collectively represent seven of the twelve Appellants in the above-listed appeals.¹ Those not currently represented by counsel have authorized Undersigned Counsel to represent that they join in the motion. Therefore, all Appellants other than Appeal 26-013 should be treated as Movants. This submission nonetheless applies to all twelve above-listed appeals and should be lodged in each.

The “Administrative Hearing Procedures for the City of Malibu, Wireless Permit and Wireless Right-of-Way Permit Appeals” (hereinafter “Procedures”) are neither fair nor reasonable. Further, these proceedings appear to have been seriously compromised by impermissible *ex parte* communications between at least one party (the City and in particular the Community Development Department) and the Hearing Officer. The Planning Division and

¹ The currently represented Appellants include those in Appeals 26-002, 26-003, 26-004, 26-005, 26-009, 26-015 and 26-016. Undersigned Counsel reasonably expect that they will be engaged to also represent some, if not all, of the remainder but for now they are acting *pro se*. All currently unrepresented Appellants except for the Appellant in Appeal 26-013 have been contacted, and Undersigned Counsel can represent that all but the Appellant in 26-013 join in this Motion.

possibly the Building Safety Division – which are part of the Community Development Department and therefore a party to the Appeals² – have improperly taken control of these matters. Municipal Code Section 12.02.040(A) delineates the Director’s authority with respect to processing of applications. It specifically does not extend to setting procedures for appeals of the Director’s own decisions. Yet, Planning Staff wrote the Procedures and set the schedule. The Staff has rigged the Procedures and schedule so that the result is pre-ordained. The Procedures and schedule must be set aside and replaced with reasonable procedures that are consistent with fundamental fairness and due process. The schedule must be significantly re-worked. In the meanwhile, all staff-determined deadlines must be set aside and new ones must be established, either by party consent or the Hearing Officer himself. Further, all *ex parte* communications between the City and the Hearing Officer must be disclosed and made part of the record.

I. THE PROCEEDINGS HAVE BEEN COMPROMISED BY *EX PARTE* COMMUNICATIONS AND UNDUE STAFF CONTROL

The Community Development Department is a party to each Appeal. The Procedures make that plain since they expressly contemplate Staff participation as such. Indeed, the Procedures provide that the “City” (*e.g.* Department Staff) will “present first.” The Procedures also state that “No party or interested person shall engage in *ex parte* communications with the Hearing Officer concerning the merits of the appeal outside the noticed hearing.” Yet it is obvious that Staff has engaged in communications with the Hearing Officer on both procedural and substantive issues and it has actively shaped the Procedures and schedule in ways that

² The Procedures and each of the Notices of Administrative Hearing refer to the “City” as a party. Technically, however, the “City” is also the entity with jurisdiction over the matter and the one that will be deciding the cases. It is just that the City has by Ordinance delegated the duty and function of rendering a final “City” decision to the Hearing Officer. The city “party” is Staff, and specifically the Community Development Department.

severely prejudice the Appellants – indeed in some respects the Procedures determine legal issues that preemptively rule on and functionally deny several of Appellants’ grounds for appeal.

All of the Notices of Administrative Hearing were sent to Appellants on Friday April 10, 2026 via email by Patrick Achis, a Senior Planner with the Community Development Department. The Notice was conveyed as an attachment to the email. Mr. Achis is listed as the “Author” of the attachment in the document properties of the attachment. Mr. Achis also separately communicated the Procedures to each Appellant on Friday April 10, 2026 as an attachment to an email. The document properties to the Procedures also list Mr. Achis as the “Author.” Appellants have good reason to believe that Mr. Achis was not working alone in these regards and the entire effort was likely directed from above.³ It is therefore apparent that Department Staff – a party to the cases – devised the schedule and wrote the Procedures. As explained below, the whole thing is unfair and designed to result in slanted proceedings that deny Appellants a fair hearing and the ability to raise and prosecute the issues they have raised in the appeals.

It is possible, of course, that Mr. Achis collaborated with the Hearing Officer on the Procedures drafting and schedule and conveyed them to the Appellants on the Hearing Officer’s behalf. But that just makes things worse: it means Mr. Achis, again a Staff member and therefore a party, engaged in one or more *ex parte* communications with the Hearing Officer to create the Procedures and schedule. It also means the Hearing Officer is – whether knowingly or not –

³ Shortly before the Notice and Procedures were served on Appellants the City rolled out a propaganda campaign designed to control the entire narrative over these proceedings. The Department web page, the local newspaper and some social media outlets were used as vehicles for “FAQ” and carefully-crafted position statements purporting to describe what the City can and cannot do, and what it is and is not doing. The recent “FAQ and Fact Sheet” was created on March 20, 2026 and now appears at <https://www.malibucity.org/WirelessFacilitiesFAQ>. The coordination is obvious.

complicit in the scheme. In our experience, hearing officers frequently hold prehearing conferences with the parties to confirm the procedures in open communication with all parties.

One aspect of the Procedures appears innocuous, but it signals behind the scenes communications. Page 2 says that “The Hearing Officer shall issue a written decision by May 15, 2026.” Why that specific date for all twelve cases even though under the current schedule they will be heard on different days? Does the Hearing Officer know why and how that date was selected? Appellants are admittedly drawing inference, but it comes from informed experience and indeed an issue raised in three appeals. See Appeals 26-004, 26-005, 26-009 discussion “Director Decision Risks FCC Shot Clock Violation Resulting in ‘Deemed Approval.’” Appellants have reason to suspect that Staff and Applicants have finally executed a “tolling agreement” and the May 15 deadline arises from that agreement. That agreement is indeed important, but it has not yet been disclosed so we do not know the terms. Things might be different if Staff had tended to that matter long ago as it should have and as one of Undersigned Counsel has been saying was a potential problem for a very long time. For now, suffice it to say that Staff may not impose negotiated arrangements that prejudice their Appellants’ ability to receive a fair hearing that comports with due process. *See, Am. Tower Corp. v. City of San Diego*, 763 F.3d 1035, 1050 (9th Cir. 2014), *citing Horn v. County of Ventura*, 24 Cal. 3d 605, 156 Cal. Rptr. 718, 596 P.2d 1134 (Cal. 1979). Appellants will be happy to brief how tolling agreements operate and what they mean (and do not mean) in the EFR context if the Hearing Officer desires. We caution against listening only to Staff, especially if it comes about as part of yet another *ex parte* communication.

Mr. Achis is not disinterested in the matters. He was not the named planner on any of the twelve appealed cases but he is the Planner on two current proceedings under active review and

some of the issues in those cases are implicated by issues in the appealed matters.⁴ More important, one of undersigned counsel had a written exchange with Staff about these specific cases and Mr. Achis was the Staff representative that responded to counsel. He took a position on several of the issues now raised in most of the appeals and addressed or even preemptively disposed in the Procedures he drafted.⁵

Even though he probably did not act on his own, Mr. Achis' involvement as the creator of the Procedures and schedule and as interlocutor between the Hearing Officer and the Appellants has compromised the integrity of all of the appeals, and strongly suggests that the Planning Department is acting *ultra vires*. His work product – a creation by Staff, a party – cannot be used and it must all be replaced. Appellants demand that all communications related to the crafting of the Procedures and schedule, whether within the City or between any Staff member and the Hearing Officer, be fully disclosed and made a part of the record. Further, Appellants reserve the right to call Staff members as adverse witnesses and conduct full cross-examination so that the full truth of this improper effort can be revealed since they are all being done to the public.

There are other problems. First, the Procedures say the public cannot participate. That is not how things are done in Malibu. The public must be allowed to attend, and public comment should be allowed. Second, it may appear to be a small thing, but the Notices and Procedure do not instruct Appellants how they are supposed to “submit written materials for consideration by the Hearing Officer.” *See* Procedures page 1. Appellants deduce we must go through Mr. Achis, but that is unacceptable. Filings and submissions should go direct to the Hearing Officer (with

⁴ Mr. Achis' two cases are not claimed to be eligible facilities requests but there are overlapping issues nonetheless, including especially the extent to which the FCC exposure rules can be considered in any local matter. We return to that issue below.

⁵ Mr. Achis' February 10, 2026 letter to counsel is attached hereto as Exhibit 1.

service on all parties). In the alternative, Appellants would accept filing with the City Clerk (with service on all parties), so long as it is certain the Clerk will faithfully transmit them to the Hearing Examiner on a timely basis.⁶ A related issue is that Appellants have no stated method to serve Staff and/or Staff's counsel.⁷ Nor are Appellants advised how to serve the Applicants' and/or their counsel. These parties' counsel are not identified and are presently unknown. That means Appellants had no one to reach out to in order to conduct a meet and confer in advance of this Motion, a normal prerequisite in court practice. Critically, there is also no provision assuring that appellants (and their respective counsel) are expeditiously provided copies of all submittals. As it stands, it appears that Staff will be fully informed and prepared for the hearing but appellants potentially will not be so informed. It would also be most efficient for the hearing officer if there is a provision for filing a response to other parties' submittals.

Appellants object in the strongest possible terms regarding how this has all been constructed by Staff (and perhaps in concert with Applicants, something else that must be fully disclosed)); it is unfair to the extreme. The Procedures must be completely re-worked. The schedule must be amended and differently sequenced. Appellants expect and deserve a fair hearing, but that is not what will obtain under the Procedures and this schedule.

II. THE PROCEDURES ARE PREJUDICIALLY IMBALANCED AND PREJUDGE SEVERAL ISSUES RAISED IN THE APPEALS

There are many significant problems with the Procedures. The process is unfair and tilted against the Appellants' right to have their issues heard and disposed by a neutral adjudicator. The

⁶ This Motion will be submitted to the City Clerk in the absence of other filing instructions.

⁷ For now, and until instructed otherwise Appellants will serve Mr. Achis as representative for Staff, since that is the true role he serves.

schedule sequence and tempo impose impossible burdens on Appellants. Further, the “Procedures” operate to preemptively rule out several issues Appellants have raised.

A. Procedures do not implement proper *de novo* standard of review for issues of law. These are appeals, so Appellants accept that they have the burden of showing that their grounds of appeal have merit, with a *de novo* standard of review. The problem is that implicit in the Procedures is a presumption of correctness, a kind of deference that is not due. *De novo* review means that all issues are decided anew, with no deference to either findings of fact or legal conclusions. The Procedures facially appear to reflect this as to fact findings and preponderance of the evidence, but that is not so for legal matters. The Procedures implement Staff’s skewed view of the requirements and restrictions in federal law, but the Appeals have directly challenged Staff’s legal conclusions.

The Procedures state, in pertinent part:

The applicable review standards include Malibu Municipal Code (MMC) Chapters 12.02 and 17.46, the Malibu Local Implementation Plan, Resolution 20-65, Resolution 21-17, and applicable federal law including, but not limited to, the Telecommunications Act of 1996 and 47 C.F.R. § 1.6100 (Section 6409(a).

...

The Hearing Officer shall issue a written decision by May 15, 2026. The decision shall be based on the evidence in the record and shall apply the standards set forth in these procedures. The Hearing Officer shall not base any findings on the environmental or health effects of RF emissions to the extent the facility complies with FCC standards. (47 U.S.C. § 332(c)(7)(B)(iv).). The Hearing Officer shall not take action that has the effect of prohibiting the provision of personal wireless services. (47 U.S.C. § 332(c)(7)(B)(i)(II).)

Appellants agree that the Malibu Municipal Code (MMC) Chapters 12.02 and 17.46, the Malibu Local Implementation Plan, Resolution 20-65, Resolution 21-17 apply to some extent except they do not all apply to every appeal. Ten of the appeals are about facilities in right-of-way, or at least they claim to be. Assuming but not admitting that the facilities are in right-of-way, MMC Chapter 12.02, Resolution 20-65 and the LIP apply, but not MMC Chapter 17.46 or

Resolution 21-17. The other two appeals are said to not be in right-of-way. For those, MMC Chapter 17.46, Resolution 21-17 and the LIP apply, but not Chapter 12.02 or Resolution 20-65.

Where the Procedures more severely err is with the characterization of the federal law said to apply. The errors manifest through both omission and commission.

All twelve appeals involve projects claiming to be “eligible facilities requests” so the reverence to 47 C.F.R. § 1.6100 is correct. But the FCC’s other 47 C.F.R. Part 1, Subpart U rules are also relevant. The Appellants assert that for several reasons these projects do not meet the criteria for “eligible facilities requests” in 47 C.F.R. § 1.6100. That necessarily means that they are instead subject to the other Subpart U rules. Staff’s Procedures carefully omit that point.

From a citation perspective some of the statutory references are incorrect. The Telecommunications Act of 1996 and “Section 6409(a)” refer to legislation, not statutes. For clarity everyone should be citing to the U.S. Code where this legislation actually appears. The relevant U.S. Code references for the “FTA” are 47 U.S.C. §§ 253 and 332(c)(7).⁸ “Section 6409(a)” was not part of the FTA; it was passed several years later in a different Congress and now appears at 47 U.S.C. § 1455(a).

The Procedures emphasize that “The Hearing Officer shall not base any findings on the environmental or health effects of RF emissions to the extent the facility complies with FCC standards. (47 U.S.C. § 332(c)(7)(B)(iv).” This hides, and effectively prejudices, several of Appellants’ issues.

First, most of the appeals directly assert that the projects will result in emissions that do not comply with FCC standards, and the Hearing Officer will necessarily have to make findings, based on the evidence, whether the facility will indeed comply with FCC standards. The

⁸ The Procedures do use the U.S. Code citations in part.

Procedures' list of pertinent authority, however, conveniently omit the FCC's human exposure standards that are said to be binding. Those are contained in the FCC's 47 C.F.R. Part 1, Subpart I rules. The specifics of the human exposure rules can be found at 47 C.F.R. §§ 1.1307 and 1.1310. Those rules, on their face, apply *only* to human exposures. They *say nothing* about non-human exposures. Simply stated, there are no FCC exposure limits for non-human living things. Some Appellants have raised the issue of adverse impacts to *flora* and *fauna* other than humans. A single but not exclusive example is Appeal No. 26-003. Since there are no FCC rules for non-human species 47 U.S.C. § 332(c)(7)(B)(iv) presents no bar. The Procedures, however, clearly imply Malibu can do nothing about harm to non-human species if the facility merely complies with the human exposure limits. But even if the human levels also extend to non-human species the evidence here is that there will be excessive exposures to non-human species.

Second, other Appellants have claimed that the Applicants' own RF Compliance reports reveal violations of the FCC exposure rules. Appellants intend to provide evidence, including potentially expert reports, on that issue. That topic is clearly open for discussion, even under the plain wording of the Procedures, although it appears that Staff intends to try and sweep that issue under the rug as well.

Finally, and returning to burden of proof. As noted above, Appellants agree they have the burden of showing the Director's decision should be reversed. But the Procedures' also reference the federal "effective prohibition" restriction on page 2 ("The Hearing Officer shall not take action that has the effect of prohibiting the provision of personal wireless services. (47 U.S.C. § 332(c)(7)(B)(i)(II).)"). The Procedures imply that Appellants somehow have the burden of proving a negative, *e.g.*, that reversing the Director's decision will not have the effect of prohibiting the provision of personal wireless service. That is flatly incorrect. Appellants have no

such burden. The issue was not mentioned in any ground of appeal in any of the cases. If this is to be an issue in these proceedings then the applicants (T-Mobile and/or Crown Castle) will have to raise it and then prove the claim. To do that they will need to produce evidence. Should they do so, Appellants reserve the right to provide rebutting evidence, after being allowed a reasonable period of time to amass it, including through engagement of experts and presentation of expert reports. The Applicants will have the burden on that issue at all times.

B. Appellants are assigned the burden but are not given the right to open and close the evidence and argument.

The Procedures assign the burden to Appellants, but then contemplate that Staff will open, Appellants will go next and then the Applicants will close. Each party (Staff, Appellant, Applicant) gets 15 minutes. That is not how adjudications generally work. The party with the burden, whether Plaintiff or Appellant, usually gets to open and close. Further, all aligned parties typically share a collective equal amount of time to the burdened party. The procedure must reflect this fundamental aspect of adjudicatory proceedings. Staff and the Applicants are clearly aligned, so they should together be allotted an equal amount to the Appellant. Appellant should go first, then Staff/Applicant, then Appellant should be allowed to close. Movants strongly object to the currently allowed 15 minutes per party, and one hour total per case. But for example purposes only, if the 15 minute rule applies, that means Appellant gets 15 total minutes then Staff and Applicant together get 15 minutes.

In contrast with Brown Act meetings held by boards, an advantage of hearing officer appeals is that they have a limited agenda and flexible procedures that enable the parties sufficient time to present their positions and for the hearing officer to understand technical issues. Appellants have invested in the appeal and have a due process right to a meaningful hearing. Counsel's experience is that hearing officers in other cities allow considerably more

time for argument and evidence. The procedure should allow adequate time to consider the evidence, which typically demands more than 15 minutes total. Furthermore, hearing officer questions should not be included in the time allotment.

III. THE APPEALS SHOULD BE CONSOLIDATED FOR HEARING PURPOSES AND COLLECTIVELY HEARD IN ONE SESSION

Each appeal does have some unique aspects both as to fact and legal issues. But there are also a number of common issues and claims. Every Appellant asserts the project under review does not qualify EFR. There are some variations, but many of the arguments overlap. Every Appellant asserts each project involves a violation of the FCC exposure rules. Every Appellant asserts that Staff has seriously mishandled (through misfeasance, malfeasance and past and reasonably anticipated future nonfeasance) the electrical safety proof requirements in the governing standards. Every Appellant challenges Staff's intention to use a two-step process to assess and ensure safety code compliance.

There is no reason to require that the same issues be tried twelve different times. Doing it that way risks wildly inconsistent results. These are the first appeals in Malibu of the Staff's administration of the EFR provisions in the relevant authorities. Precedent will be set. On the electrical safety issues, it is not understatement to say that lives are at stake, as are many millions of dollars in potential property damages from yet another devastating telecom-caused fire. The decisions here will determine how Department Staff handles the fire/electrical safety issue going forward. It will much inform how EFRs are assessed as well.

To the extent that the 15-minute limit is intended to reduce the total cost of the process, this can be more fairly and effectively achieved by full or partial consolidation. All the cases should be consolidated for purposes of hearing. It may be that the entire matter can be submitted in one day, although up to two may be required. But even two days is less than what the current

schedule contemplates. Consolidation and issue sequencing will allow for much more efficient evidence receipt and processing. It will provide a much better record for the Hearing Officer.

IV. NECESSARY CHANGES TO THE PROCEDURES AND SCHEDULE

A. Transparency to remove the taint

These cases have been tainted by what got us to here. The first thing that must occur is – as the Procedures themselves provide – all past *ex parte* communications between the City and the Hearing Officer must be disclosed and made a part of the record. The suspected tolling agreement should also be disclosed since it appears to be the driver for the May 15, 2026 decision deadline. Then we need to clean up the mess by having an all-case status conference to devise new procedures and a new schedule.

B. Staff must produce a complete administrative record

Appellants addressed their difficulty obtaining relevant and up to date materials in their Comments in these matters and by reference in several of the appeals. Mr. Achis' May 15, 2026 letter to one of the Undersigned Counsel also addressed and defended the Staff's position on public access to timely information. The April 10 Notices say that the Appellants can "Request to View Records" but conveniently ignore that the Procedures impose a filing requirement this coming Friday, April 17. It is not practically possible to only now arrange for this "view" and then assess what else should be submitted as part of the too-short allowed 20-page April 17 submission (that Appellants have no idea how to submit, or to whom, or how to serve the opposing parties).

The next step should be for Staff to assemble and distribute (via email, which can include a link if the materials are voluminous) whatever it claims to be the relevant administrative record. Appellants should then be given a reasonable time to review Staff's product and then

supplement with any additional materials they believe should be part of the administrative record. April 17 comes to mind for the Staff distribution. Appellants could then provide any desired supplement 7 days later, on April 24.

Appellants can already predict that some relevant material will not be included in Staff's product. For one, it is almost certain that the Staff product will not include all communications within and between the two departments on the issue of electrical safety. Appellants have reason to believe the Building Safety was instructed by the current Department Director Yolanda Bundy to approve the Applicants' safety compliance submission without meaningful review and without compliance with the requirements in controlling authority.⁹ Building and Safety at one point purported to finish "Plan Check" of the plans for the facility involved in Appeal 26-004 on March 16, 2023 by stamping the plans "No Engineering Section Plan Review Required." *See* Exhibit 2 (excerpt). Building and Safety uses an outside contractor (True North Compliance Services, Inc.). The NOD for Appeal 26-004 on pdf p. 28 reveals that a representative of that firm Plan Check "red stamped" the plans in issue once again in 2025, once again without requiring all the necessary studies. All communications between Planning Staff, Building and Safety Staff, the Applicants and that firm must be provided as well.¹⁰

Appellants have reason to believe there was a significant meeting between the Applicants (and perhaps other wireless carriers) and various Staff representatives in the Spring or early Summer of 2025, at which certain agreements were reached allowing the wireless providers to provide studies or materials addressing, but not fully compliant with, the requirements of

⁹ For this reason, Appellants will seek to call Ms. Bundy as a hostile witness for the purpose of conducting cross-examination designed to show that this issue has been mismanaged, almost to the point of gross negligence.

¹⁰ Appellants will seek to call him as a witness to adduce facts on any directives he was given.

Resolution 21-17 Paragraph 9.A.8 and Wireless Facility Application Form Item 16. That would explain the subsequent submissions in some of the cases of a less-than-compliant Short Circuit and Coordination Study by the Applicant's Engineer David Cotton. An example is in Appeal 26-005, August 12 letter from David Cotton PE. The letter is in the record, but the predicate for it (the prior meeting and what was said and agreed) was not. Appellants note that the Cotton letter purported to address the required SCCS but there is still no Voltage Drop and Load Flow Study (Res. 21-17, 9.A.8.c). Appellants believe this reflects the mid-2025 deal that contemplated less than full compliance with applicable standards.

Finally, several, if not most, of these matters have been around for several years. Some originally had different application numbers. That would be fine except that the Notices of Decision do not disclose this fact or that some of the materials actually were drawn from the prior cases. This is especially so for the RF Compliance Reports. To take a single example, the RF Compliance Report for Appeal 26-016 has a 2025 application number (WP 25-002), but the RF Compliance Report beginning on pdf p. 32 of the Notice of Decision was generated on February 17, 2023. Back then it was being handled under WRP 22-006. What this means is that the Staff should include all historical information for each site, beginning with the original permit application that authorized placement to begin with, in the administrative record for each matter.

Appellants have tried to keep up with things but it has been impossible because of the way public access to information has been handled. Some Public Records Act requests have been submitted, which disclose relevant materials not included in the limited documents linked to the decision notices. It is not fair or practical for Appellants to have the burden to seek to compile the record given that it is the City's obligation to ensure a due process-compliant appeal

procedure. Staff is the only party with complete access to all relevant materials, including those listed above. It is only reasonable that Staff start the sequence by assembling a complete administrative record for each matter. Appellants can then supplement a week later if necessary. There are some things Appellants know exist but have not been able to obtain. Therefore some provision must be made for a discovery-like process for Appellants to identify needed materials for Staff (or the Applicant) to produce.

C. After the administrative records are fully assembled Appellants should then be given a reasonable period to provide expert reports or other evidence, along with a Pre-Hearing Memorandum that has reasonable page limits

Appellants have engaged experts to address at least two issues, but at present those experts lack all the information they need. This is especially so for the electric safety/code compliance issue. A rational approach would be to allow Appellants two weeks after the assembly of an agreed record to supply any expert reports, along with a Pre-Hearing Memorandum of Law. We can reasonably anticipate that it will require more than 20 pages, exclusive of exhibits.¹¹ That amount might well be consumed on only the RF exposure issues and an equal amount may be necessary on code compliance and/or some of the other issues like whether these projects qualify as an EFR. The applicants have already had the opportunity to provide whatever materials are pertinent to document their application. It is highly prejudicial to Appellants to impose this arbitrary page limit after the other parties to the proceeding have already had a fully opportunity to develop whatever record they wish.

¹¹ Appellants note that the Procedures would allow each individual appellant 20 pages, for a total of 240 pages. Appellants' alternative approach would reduce total hearing time and likely the total page count for all appellant submissions.

D. Consolidation and Hearing

Appellants have already discussed this above, but to recap. All twelve appeals should be consolidated for hearing. The hearing can logically be organized by issue for efficiency purposes, where the specifics of each case can be fleshed out and the commonalities addressed only once. Regardless of whether the hearing is organized by issue, Appellants must be allowed to open and close and Staff and Applicants must be aligned and allowed no more total time than Appellants. 15 minutes per side simply won't work.

The hearing will obviously consume more than an hour, but if a logical and efficient process is followed, and given that much of the evidence will be pre-filed and written, Appellants have every reason to believe all twelve cases can be heard (together) over no more than a two-day period. The public must also be allowed to attend and public comment must be permitted. Appellants do not accept, at least at this point, the May 15, 2026 deadline for decision. Most of these cases have been percolating at the City for at least four years. There is no reason for a sudden emergency rush to decision under a process and set of rules that has been designed to deny Appellants their right to a fair hearing before a neutral (and non-compromised) Hearing Officer.

E. Status Conference

Appellants suggest that the Hearing Officer convene a Status Conference to hear argument on this Motion and work out the new rules and new schedule.

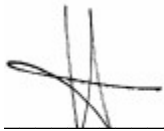
V. NOTICE OF CONFLICT

One of the Undersigned Counsel, W. Scott McCollough, has a conflict for each day that has been noticed for hearing. Specifically, Mr. McCollough has a pre-trial conference in a federal district court case in North Carolina that is set for the morning of Wednesday, April 22. Mr.

McCollough then has a long-scheduled meeting with state legislators in Texas for that afternoon. He then drives to Dallas to attend a conference, where he is scheduled to appear on a panel on the afternoon of Friday April 24. Those are the three days that have identified for hearings in these matters. Mr. McCollough therefore has a conflict with all three hearing dates and respectfully requests that these matters be reset.

CONCLUSION

Appellants collectively request that this Motion To Modify Administrative Hearing Procedures And Schedule be granted.



W. Scott McCollough
MCCOLLOUGH LAW FIRM PC
2290 Gatlin Creek Rd.
Dripping Springs, TX 78620
wsmc@dotLAW.biz

Respectfully Submitted,



Ariel Strauss
Law Offices of Ariel Strauss
92 Pine Hill Dr.
El Sobrante, CA 94803
ariel@alegal.info



Grace White
Law Offices of Grace White
21700 Oxnard Street
Suite 1140
Woodland Hills, CA 91367
gracewhiteesq@sbcglobal.net

Dated: April 13, 2026

Motion Exhibit 1



City of Malibu

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

Sent via Email

February 10, 2026

W. Scott McCollough
McCollough Law Firm PC
wsmc@dotLAW.biz

Subject: City's Procedural Response to November 24, 2025 and October 20, 2023 Resident Comment Letters (Wireless Facility Applications / Eligible Facilities Requests)

Dear W. Scott McCollough:

This response summarizes how City procedures address the primary topics raised in the November 24, 2025 and October 20, 2023 letters submitted on behalf of Malibu residents (represented by McCollough Law Firm) regarding the subject pending small wireless facility applications (the "Applications"). This correspondence is informational only and does not change or create new policy, and it does not approve or deny any application. Each Application will be decided on its own record under the Malibu Municipal Code (MMC) (including MMC Chapter 12.02 for facilities in the public right-of-way (ROW) and MMC Chapter 17.46 for non-ROW facilities, as applicable), the City's [Wireless Permit and Wireless ROW Permit Submittal Checklist](#), the certified Local Coastal Program (LCP), City Council Resolution Nos. 20-65 and 21-17, and applicable state and federal law.

1. Application Processing, Ordinance Compliance, and Public Participation

Comment: Residents lacked timely access to application materials; certain documents were described as "confidential"; and some Applications were deemed complete without required Item 16 safety materials.

City Response 1

The City processes wireless facility applications and conducts public noticing consistent with MMC 12.02 (Right-of-Way), 17.46 (Non-ROW), City policies, and the Brown Act. Staff additionally maintains a [Pending Wireless Communication Facilities webpage](#)¹ that includes an active [Pending Wireless Applications Report](#)² with access to public notices, record requests, notice of decisions, and information on the

¹ <https://malibucity.org/1041/Pending-WCF-Applications>

² <https://www.malibucity.org/DocumentCenter/View/27314/WCF-Pending-Projects>

decision and appeal bodies. Interested parties are notified via email when the Report is updated. Under the California Public Records Act, the City provides public access to non-exempt application materials.

A “deemed complete” determination is a matter of procedure and not an approval. For purposes of procedural completeness, staff evaluates whether the application includes submitted materials that respond to each required checklist item, including Item 16 (Electrical and Structural Safety Information). A completeness determination does not represent a finding that an Application satisfies substantive requirements or that submitted materials demonstrate compliance. During substantive review, staff evaluates the adequacy of submitted materials to determine compliance and may request additional information. Where checklist items are missing, staff issues an incompleteness letter; where checklist items are submitted but later determined to be inadequate during substantive review, staff may request additional information and, if deficiencies persist, may recommend denial for failure to submit required materials or failure to demonstrate compliance.

2. Electrical and structural safety – Checklist Item 16

Comment: Checklist Item 16 engineering deliverables (for example, a Short-Circuit and Coordination Study (“SCCS”) per IEEE 551-2006 or successor standard, one-line diagram, Voltage Drop & Load Flow Study, Load Calculations, etc.) are mandatory for each project but were not provided. Without Item 16 materials, there is no basis to conclude designs meet applicable building, electrical, and fire codes or adequately address fire risk.

City Response 2

Item 16 is required as part of a complete application to demonstrate compliance with the provisions of California Building Standards Code (Title 24), including California Building, Electric, and Fire Codes.

Consequently, the City will not authorize construction through issuance of required building/electrical permits, and no facility may be energized through final electrical inspection, unless the City confirms that the submitted plans and Item 16 materials adequately demonstrate compliant design and installation. If an applicant fails to supply this material after notice and an opportunity to correct, the City may deny the application for failure to submit required materials and/or for failure to demonstrate compliance. Nothing in the City’s review process operates as a waiver of Checklist Item 16. Instead, the City determines whether the required Item 16 materials have

been submitted and, during substantive review, evaluates whether those materials are adequate to demonstrate compliance with the applicable Item 16 requirements.

3. Conductor sizing, overcurrent protection, and manufacturer limits

Comment: Plans show #14 AWG on 20-A breakers and #10 AWG on 60-A breakers; manufacturer specifications set lower maximum fuse/breaker ratings than those shown on plans.

City Response 3

Final plans must show compliant ampacity/overcurrent protection and device coordination (CEC 240.4 and 240.4(D) small-conductor limits) and installation per manufacturer instructions/listings (CEC 110.3(B)). If code compliance cannot be demonstrated, staff may recommend denial. ROW facilities must satisfy CPUC/utility safety standards in addition to CEC/NEC.

As part of verification during construction and inspection, the City requires all conductors to be sized in accordance with the California Electrical Code and coordinated with the installed overcurrent protection.

Where plan review or field inspection identifies conductor sizing that is not code-compliant or not properly coordinated with breaker ratings, corrections are required prior to final inspection and energization. Any such corrections shall be documented through approved field redlines or as-built drawings reviewed by the City.

4. Side-Mounted Antennas – 30-Inch Projection

Comment: Plans show side-mounted antennas projecting beyond the 30-inch limit in Resolution 20-65 § B.a.(2).

City Response 4

Where an applicant asserts eligibility for streamlined processing under federal law (including 47 U.S.C. § 1455(a) and applicable FCC rules), the City evaluates whether the application qualifies based on the required federal criteria, including whether the facility is lawfully existing and whether the proposed modification would constitute a “substantial change.” Where the City determines that an application qualifies as an EFR under 47 C.F.R. § 1.6100, federal law does not allow the City to apply local development standards, including the 30-inch antenna projection limit.

Based on the City's preliminary review, applications referenced in the comment letters assert eligibility for processing as ERFs. EFR eligibility is reviewed for each application pursuant to 47 C.F.R. § 1.6100. Where an application qualifies as an EFR, federal law mandates City approval.

For new wireless facilities (non-EFRs) or applications that do not meet EFR criteria, side-mounted antennas cannot project more than 30 inches from the pole, must only extend on one side of the pole, and must use the smallest feasible shroud.

5. Right-of-Way Status and Location Control

Comment: The letter questions whether the sites are in the public ROW.

City Response 5

For each site, staff confirms ROW or easement boundaries, pole ownership, and necessary encroachment or Caltrans permits. Projects on private property must demonstrate legal site control and are processed under the appropriate zoning and coastal procedures. The City's [Wireless Permit and Wireless ROW Permit Submittal Checklist](#) requirements apply to both private and right-of-way facilities and includes requirements for proof of ownership (Item 12) and authorization and licenses (Item 13).

6. Coastal/LIP Applicability and Appeals

Comment: LIP provisions remain applicable; decisions should be appealable to the Planning Commission and City Council, particularly in the coastal appeal area.

City Response 6

Based on the City's review to date, applications referenced in the comment letters appear to qualify for exemption from a coastal development permit pursuant to LIP Section 13.4.8 for repair, maintenance, and minor utility work. CDP exemption determinations are made on each application and are reflected in the City's individual permit determinations.

When a project requires a coastal development permit, LIP procedures govern coastal permitting and appeals. Decisions in the coastal zone remain appealable to the Planning Commission and City Council under LIP Sections 13.20.1 and 13.20.2, and to the Coastal Commission where within its appeal area.

All decision notices state applicable appeal rights. The [City's Pending Applications Report](#)³ includes information on the approving and appeal bodies for each application.

7. Prior Approvals, Term limits, and 47 U.S.C. § 1455(a) / 47 C.F.R. § 1.6100 Eligibility

Comment: Some original approvals lapsed (e.g., under former LIP § 3.14.2.F two-year renewal/inspection); such sites cannot qualify as "existing" for Section 6409 processing.

³ <https://www.malibucity.org/DocumentCenter/View/27314/WCF-Pending-Projects>

City Response 7

The City verifies the permit history for each facility. If a prior approval has expired or required conditions were not met, the current proposal will be processed as a new facility under current standards and FCC shot-clock timelines (47 C.F.R. § 1.6003). Section 6409 processing applies only to certain modifications to “existing” towers and base stations. To be “existing” under FCC regulations, the tower or base station must be “constructed” and “reviewed and approved under the applicable zoning or siting process.”

8. Expert letter (Erik S. Anderson, P.E.)

Comment. The Anderson letter concludes that, without Item 16 and given sample plan issues, the system cannot be assessed for safety.

City Response 8

The Anderson letter has been entered into the administrative record. Building and Safety reviews required Item 16 documentation and engages independent peer review as needed. The City's Building Safety staff requires adequate Item 16 documentation for each project and may require additional technical detail, revised plans, and/or independent peer review by qualified engineers where warranted by the record. The City will not authorize energization without certification from a California-licensed Professional Engineer confirming compliance with the approved design and California Electrical Code. No activation is permitted until the Planning Division inspection and RF compliance report confirm that the installation conforms to approved plans and safety standards.

Summary of City Actions

The City continues to verify compliance with applicable electrical, structural, and fire-safety documentation before permit issuance, and maintains public access to non-exempt application materials. Standard conditions of approval require indemnity and insurance, security for removal, inspection access, graffiti abatement within 48 hours, and compliance with construction hour limits, among others.

Planning Division
City of Malibu

Cc: Tyler Eaton, Assistant Community Development Director
teaton@malibucity.org

Gail A. Karish, Partner, Best Best & Krieger LLP
Gail.Karish@bbklaw.com

Motion Exhibit 2



T-MOBILE SITE NUMBER: LA8064BA_31LAB
 SPRINTSITE NAME: LA36XC630
 SITE TYPE: SMALL CELL
 POLE HEIGHT: 38'-6"

SITE ADDRESS: 29029 1/2 CLIFFSIDE DR.
 MALIBU, CA 90265
 COUNTY: LOS ANGELES
 JURISDICTION: CITY OF MALIBU
 LAT: 34.007236 LONG: -118.801218



T-MOBILE NODE ID: LA8064BA_31LAB

EXISTING WOOD UTILITY POLE
 POLE ID#: 770793E

POLE OWNER: SCE
 29029 1/2 CLIFFSIDE DR.
 MALIBU, CA 90265
 LOS ANGELES COUNTY

LAT/LONG:
 34.007236°, -118.801218°

REV.	DATE	DRAWN	DESCRIPTION	DATE
0	09/14/22	CS	100% CD FOR REVIEW	FO
1	12/13/22	CS	100% CD FOR REVIEW	FO

DRAWINGS ISSUED FOR				
REV.	DATE	DRAWN	DESCRIPTION	DATE

SHEET TITLE
TITLE SHEET

SHEET NUMBER
T-1

SITE INFORMATION

PROPERTY INFORMATION:
 SITE ADDRESS: 29029 1/2 CLIFFSIDE DR.
 MALIBU, CA 90265
 POLE ID: 770793E
 POLE OWNER: SCE
 COUNTY: LOS ANGELES
 JURISDICTION: CITY OF MALIBU
 APN: 4486413610
 ZONING: PUBLIC RIGHT OF WAY

APPLICANT:
 COMPANY: T-MOBILE
 ADDRESS: 2008 MCGAW AVE.
 CITY, STATE, ZIP: IRVINE, CA 92614
 CONTACT: FABIAN ROSADA
 PHONE: (909) 259-3820
 E-MAIL: fabian.rosada@t-mobile.com

**CITY OF LOS ANGELES
 FIRE DEPARTMENT
 FIRE PREVENTION ENGINEERING**

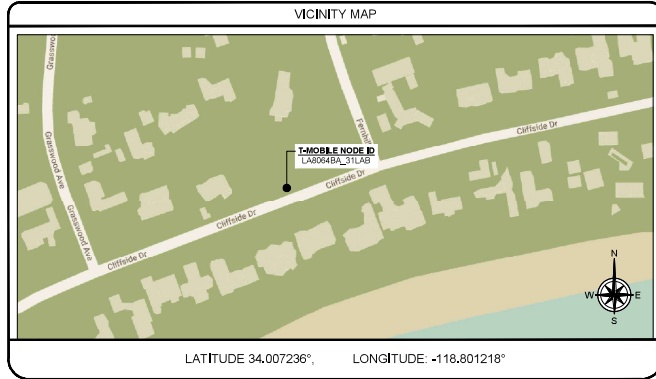
**NO ENGINEERING SECTION
 PLAN REVIEW REQUIRED**

By: **C.J. Lawson**
 Fire Prevention Engineer
 Date: **03/15/2023**

Subject to field inspection approval.
 Subject to Regional Inspection Office
 review and approval.

This stamping of these plans and representations
 shall not be held for or in lieu of
 the professional seal, signature or stamp of a
 registered professional engineer.

The stamping of this plan and specifications SHALL NOT be
 approval of the violation of any provisions of any
 County/City Ordinance or State Law.
PLAN CHECK #FPC2023-0707.*



SHEET INDEX

SHEET	DESCRIPTION
T-1	TITLE SHEET
T-2	GENERAL NOTES
T-3	GENERAL NOTES
A-1	OVERALL AND ENLARGED SITE PLAN
A-2	ELEVATIONS
A-3	ELEVATIONS
D-1	EQUIPMENT DETAILS
D-2	EQUIPMENT DETAILS
E-1	ELECTRICAL DETAILS
G-1	GROUNDING DETAILS

SCOPE OF WORK

EQUIPMENT TO BE INSTALLED

- PROPOSED (1) VVSSP-45SR-1BV2 ANTENNAS
- PROPOSED (1) ANTENNA ARM MOUNT
- PROPOSED (1) HP FALCON SHROUD
- PROPOSED (1) ERRICSON 4455 + (1) 4435 RRU
- PROPOSED RF CAUTION SIGNAGE
- PROPOSED RF NOTICE SIGNAGE
- PROPOSED (2) DIPLXERS
- PROPOSED (8) 1/2" COAX 4-3-10 female to 4-3-10 female
- PROPOSED (4) BRITTERS

"No, batteries or backup generators will be replaced or installed on this T-Mobile project."

EQUIPMENT TO BE REMOVED

- EXISTING (2) ANTENNAS ARM
- EXISTING (1) EQUIPMENT SHROUD

NOTE: "NO GROUND WORK PROPOSED"

DESIGN IS BASED ON T-MOBILE APPLICATION ID #####, REV. #0
 RFDS VERSION 1, DATED ##/##/202#

THESE PLANS HAVE BEEN DEVELOPED FOR THE CONSTRUCTION OF AN
 UNMANNED TELECOMMUNICATIONS FACILITY OWNED OR LEASED BY
 T-MOBILE IN ACCORDANCE WITH THE PROVIDED SCOPE OF WORK
 INCORPORATED IN THE PLANS BY INFINIGY. THESE PLANS ARE NOT FOR
 CONSTRUCTION UNLESS STAMPED & SIGNED, & ACCOMPANIED BY A
 PASSING STRUCTURAL STABILITY ANALYSIS FOR THE STRUCTURE AND
 MOUNT PREPARED BY A LICENSED PROFESSIONAL ENGINEER.

CODE COMPLIANCE

ALL WORK SHALL BE PERFORMED AND MATERIALS INSTALLED IN
 ACCORDANCE WITH THE CURRENT EDITIONS OF THE FOLLOWING
 CODES AS ADOPTED BY THE LOCAL GOVERNING AUTHORITIES.
 NOTHING IN THESE PLANS IS TO BE CONSTRUED TO PERMIT WORK NOT
 CONFORMING TO THE LATEST EDITIONS OF THESE CODES.

- 2019 CALIFORNIA ADMINISTRATIVE CODE
- 2019 CALIFORNIA BUILDING CODE
- 2019 CALIFORNIA ELECTRICAL CODE
- 2019 CALIFORNIA MECHANICAL CODE
- 2019 CALIFORNIA PLUMBING CODE
- 2019 CALIFORNIA ENERGY CODE
- 2019 CALIFORNIA FIRE CODE
- 2015 INTERNATIONAL FUEL GAS CODE
- TABLE A-222-H OR LATEST EDITION
- ASCE 7-16
- NFPA 790 - LIGHTNING PROTECTION CODE
- ANY OTHER NATIONAL OR LOCAL APPLICABLE CODES,
 MOST RECENT EDITION
- LOCAL AMENDMENTS TO THE ABOVE, WHERE
 APPLICABLE
- CITY/COUNTY ORDINANCES
- LIFE SAFETY CODE NFPA-101
- ICCANSI A117.1 2009 SEEMS TO BE FOR HANDICAP
 ACCESSIBILITY

811
 Know what's below.
 Call before you dig.
 www.call811.com

PROJECT TEAM

ARCHITECTURAL & ENGINEERING:
 INFINIGY SOLUTIONS, LLC
 ADDRESS: 25455 RANCHO PKWY S
 LAKE FOREST, CA 92630
 CITY, STATE, ZIP:
 CONTACT: EMANUEL POULIN
 PHONE: (849) 215-4343
 E-MAIL: epoulin@infinigy.com

SITE ACQUISITION:
 COMPANY: INFINIGY SOLUTIONS, LLC
 ADDRESS: 25455 RANCHO PKWY S
 LAKE FOREST, CA 92630
 CITY, STATE, ZIP: RUBY SANDHU
 CONTACT: (849) 215-4343
 PHONE: (849) 215-4343
 E-MAIL: rsandhu@infinigy.com

CONTRACTOR SHALL VERIFY ALL PLANS AND EXISTING DIMENSIONS
 AND CONDITIONS ON THE JOB SITE AND SHALL IMMEDIATELY NOTIFY
 THE ENGINEER IN WRITING OF ANY DISCREPANCIES BEFORE
 PROCEEDING WITH THE WORK OR BE RESPONSIBLE FOR SAME.

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