



Los Angeles County Department of Regional Planning



Planning for the Challenges Ahead

Richard J. Bruckner
Director

February 16, 2010

Sarah Ryzner-Svililo
3659 Green Road, Suite 317
Cleveland Ohio 44122

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

**REGARDING: PROJECT NUMBER R2008-01980 (3)
CONDITIONAL USE PERMIT RCUP200800165 (3)
3418 Shoreheights Dr**

Dear Applicant:

Hearing Officer, Paul McCarthy by his/her action of Tuesday, February 16, 2010, **APPROVED** the above described application (**Wireless Telecommunications Facility Conditional Use Permit**). The applicant or and other interested person may appeal the Hearing Officer's decision to the Regional Planning Commission at the office of the Commission secretary, Room 1350, Hall of Records, 320 West Temple Street, Los Angeles, California 90012. Please contact the Commission secretary for the appeal procedures and fee at (213) 974-6409. **The appeal period for this project will end at the 5:00 p.m. on Tuesday, March 2, 2010.** Any appeal must be delivered in person to the commission secretary by this time. If no appeal is filed during the specified period, the Hearing Officer's action is final.

The attached documents contain the Hearing Officer's findings and conditions relating to the approval. Please carefully review each condition. A Condition requires that the permittee records an affidavit accepting the conditions before the grants becomes effective.

Upon completion of the appeal period, please notarize the attached acceptance forms and **hand deliver** this form and any other required fees or materials to the planner assigned to your case. Please **make an appointment** with the case planner to assure that processing will be completed expeditiously.

For further information on appeal procedures or any other matter pertaining to these approvals, please contact Daniel Fierros of the Zoning Permits Section I at (213) 974-6443 or e-mail at DFierros@planning.lacounty.gov. Our office hours are Monday through Thursday, 7:30 a.m. to 5:30 p.m. We are closed on Fridays.

Sincerely,

DEPARTMENT OF REGIONAL PLANNING
Richard J. Bruckner
Director of Planning

Mark Child, Supervising Regional Planner
Zoning Permits Section I Section

Enclosures: Findings and Conditions, Affidavit (Permittee's Completion)

c: DPW (Building and Safety); Zoning Enforcement
Rob Searcy: Suresite Consulting 6303 Owensmouth Avenue, 10th Floor Woodland Hills, CA 91367

MC:df

Public right-of-way 3418 Shoreheights Dr. Malibu

HEARING DATE: 9/15/2009, 11/17/2009, 1/5/2010 and 2/16/2010

HEARING OFFICER'S FINDINGS AND ORDER:

REQUEST: The applicant, Omnipoint Communications (T-Mobile), is requesting a Conditional Use Permit (CUP) to authorize the construction, maintenance and operation of a new wireless telecommunications facility consisting of three (3) panel antennas, to be mounted on a 22'-6" concrete textured octagonal pole within the public road right-of-way (ROW). The antennas will be enclosed by 30" x 66" "Antenna Radome" placed on the top of the pole. The overall height of the pole is 28'. The associated equipment will be placed in an underground vault on the other side of the street. Two (2) 20" x 36" vent stacks will be placed adjacent to the vault as well as the Meyers electrical meter pedestal.

PROCEEDINGS BEFORE THE HEARING OFFICER:

A duly noticed public hearing was held on September 15, 2009 before the Hearing Officer Paul McCarthy. After hearing testimony from an opponent and taking into consideration various letters of opposition from the neighborhood residents, the Hearing Officer requested that the applicant meet with the neighbors to determine if they can resolve all the concerns raised by the neighbors. The main concern was geological issues related to constructing the wireless facility.

On November 17, 2009 a public hearing was conducted and the applicant indicated that the community meeting scheduled for November 14, 2009 was canceled and was to be moved to December, but that did not occur due to scheduling conflicts. The hearing was continued to January 5, 2010.

At the January 5, 2010 hearing the applicant indicated that he was unsuccessful in conducting a meeting with the neighbors and requested that the hearing to be continued. The Hearing Officer continued the hearing to February 16, 2010 to give the applicant the opportunity to meet with the neighbors.

At the February 16, 2010 hearing, the applicant discussed the outcome of a January 25, 2010 neighborhood meeting. A total of six residents testified in opposition of the project stating that the project will affect aesthetics, property value, health and safety of the community.

After hearing all testimony, the hearing officer took into consideration the comments received and concluded that the proposed project meets the County's Code requirements and could be approved. The Hearing officer added a condition to prevent any construction to be conducted during the "wet weather season" which is from October 1st through April 15th. This condition would prevent the possibility of any open trenches that could fill with water, which address neighbors concern of possible soil erosion through the construction of the facility.

The Hearing Officer closed the public hearing and approved the permit changes to the conditions as discussed above.

Findings

1. The subject property is located at 3418 Shoreheights Dr. Malibu CA 90265 (across the street from APN 4443-017-001) in the unincorporated community of Malibu within the Malibu Zone District.
2. Wireless telecommunication facilities require a conditional use permit in the R-1 Zone. There are no specific policies related to the proposed use, a wireless telecommunication facilities, in the Malibu Coastal Zone.
3. The applicant, Omnipoint Communications (T-Mobile), is requesting a conditional use permit to authorize the installation of a monopole wireless facility in the public ROW in a residential neighborhood at the end of a cul-de-sac and at the end of the paved sidewalk.
4. The site plan depicts a 28' monopole wireless facility to be located on the public ROW, at the end of a cul-de-sac in a residential neighborhood.
5. The project is located in the Malibu Local Coastal Plan, which designates the land use as 8B-Residential III(B) four to six dwelling units per acre.
6. The surrounding properties are zoned as follows:
North: R-1-8,000 (Single Family Residential)
South: R-1-6,000 (Single Family Residential)
East: R-1-6,000 (Single Family Residential)
West: R-1-8,000 (Single Family Residential)
7. The subject property is currently used as a public right-of-way (ROW). Surrounding land uses include paved roadway, concrete curbs, paved sidewalks and utility infrastructures situated at end of a cul-de-sac, a vacant parcel adjacent to the proposed monopole, and a single family residence across the street adjacent to the proposed equipment vault.
Land uses within 500 feet include:
North: Vacant
South: Single Family Residential
East: Single Family Residential
West: Vacant
8. There are no specific policies related to wireless telecommunications facilities in the General Plan.
9. A wireless telecommunications facility is not a defined use in the Zoning Ordinance; however similar use defined as "radio and television stations and towers, not including studios" is a similar comparable use. Radio and television stations and towers are uses subject to conditional use permits in the R-1 (Single-Family Residence) zone (Zoning Ordinance Section 22.20.100).
10. The property on which the proposed facility is to be located is public ROW and the development standards do not apply to developments in the ROW.

11. The Department of Regional Planning has determined that the project qualifies for Class 3 Exemption (New Construction or Conversion of Small Structures), as it includes construction of a small structure like this wireless facility. Staff has determined that the project is Categorical Exempt from the provisions of the California Environmental Quality Act (CEQA).
12. Pursuant to the provisions of Section 22.60.174 and 22.60.175 of the Zoning Ordinance, the community was appropriately notified of the public hearing by mail, newspaper and property posting.
13. To satisfy the burden of proof, the architectural and general appearance of all such wireless facilities needs to be in keeping with the character of the neighborhood and so as not to be detrimental to the public health, safety and general welfare of the community in which such use or uses are located.
14. The placement of this unmanned wireless facility will in no way have a measurable impact on the surrounding community. The proposed equipment is similar to residential street light located in the public ROW.
15. To assure continued compatibility between the use of the subject property allowed by this grant and surrounding land uses, it is necessary to limit the term of the grant to 10 years.
16. The location of the documents and other materials constituting the record of proceedings upon which the Hearing Officer's decision is based in this matter is at the Los Angeles County Department of Regional Planning, 13th Floor, Hall of Records, 320 West Temple Street, Los Angeles, CA 90012. The custodian of such documents and materials shall be the Section Head of the Zoning Permits I Section, Los Angeles County Department of Regional Planning.
17. The Department of Regional Planning and the Board of Supervisors Office has received a total of 41 letters from the neighbors opposing the project, one e-mail and a petition with 136 signatures opposing the project.
18. The Hearing Officer found this project to be unobtrusive and consistent with the neighborhood pattern; which includes concrete lights standards approximately the same height.
19. Proposed telecommunication pole is composed of the same concrete material, same height and is the same design as the existing adjacent street lights.
20. A concrete pole would not pose any fire hazards.
21. The proposed telecommunication pole was relocated to the east side of the street from the original proposed design at the request of the adjacent property owner.

BASED ON THE FOREGOING, THE HEARING OFFICER CONCLUDES:

- A. That the proposed use is consistent with the adopted general plan for the area; and
- B. That the requested use at the proposed location will not adversely affect the health, peace, comfort, or welfare of persons residing or working in the surrounding area, will not be materially detrimental to the use, enjoyment, or valuation of property of other persons located in the vicinity of the site, and will not jeopardize, endanger, or otherwise constitute a menace to the public health, safety or general welfare; and
- C. That the proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking, loading facilities, landscaping and other development features prescribed in this Title 22.
- D. That the proposed site is adequately served by highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate, and by other public or private service facilities as are required; and

THEREFORE, the information submitted by the applicant and presented at the public hearing substantiates the required findings for a conditional use permit as set forth in Sections 22.56.090, Title 22, of the Los Angeles County Code (Zoning Ordinance).

HEARING OFFICER ACTION:

- 1. I the Hearing Officer have considered the Categorical Exemption for this project and certify that it is consistent with the finding by the State Secretary for Resources or by local guidelines that this class of projects does not have a significant effect on the environment.
 - 2. In view of the findings of fact and conclusions presented above, project No. **R2008-01980(3)/ RCUP200800165(3)** is **APPROVED**, Subject to the attached conditions and restrictions.
- c: Hearing Officer, Each Commissioner, Zoning Enforcement, Building and Safety

This grant approves, a Conditional Use Permit (CUP) to install a new wireless telecommunications facility subject to the following conditions:

1. The wireless telecommunications facility consisting of three (3) panel antennas, to be mounted on a 22'-6" concrete textured octagonal pole within the public road right-of-way (ROW). The antennas will be enclosed by a 30" x 66" random placed on the top of the pole. The overall height of the pole is 28'. The associated equipment will be placed in a vault across the street. Two (2) 20" x 36" vent stacks will be placed adjacent to the vault as well as the Meyers electrical meter pedestal.
2. Unless otherwise apparent from the context, the term "permittee" shall include the applicant and any other person, corporation or other entity making use of this grant.
3. Prior to the use of this grant, the property owner or permittee shall record the terms and conditions of the grant in the office of the County Recorder. In addition, upon any transfer or lease of the property during the term of this grant, the property owner or permittee shall promptly provide a copy of the grant and its conditions to the transferee or lessee of the subject property.

This grant shall not be effective for any purpose until the permittee, and the owner of the subject property if other than the permittee, have filed at the office of the Department of Regional Planning their affidavit stating that they are aware of, and agree to accept, all of the conditions of this grant and that the conditions of the grant have been recorded as required by this condition and until all required monies have been paid (if applicable). Further, this grant shall not be effective until the permittee has obtained the insurance coverage required by these conditions (if Applicable).

4. The permittee shall defend, indemnify and hold harmless the County, its agents, officers, and employees from any claim, action, or proceeding against the County or its agents, officers, or employees to attack, set aside, void or annul this permit approval, which action is brought within the applicable time period of Government Code Section 65009. The County shall promptly notify the permittee of any claim, action, or proceeding and the County shall cooperate fully in the defense. If the County fails to promptly notify the permittee of any claim action or proceeding, or if the County fails to cooperate fully in the defense, the permittee shall not thereafter be responsible to defend, indemnify, or hold harmless the County.
5. In the event that any claim, action, or proceeding as described above is filed against the County, the permittee shall within ten days of the filing pay the Department of Regional Planning an initial deposit of \$5,000, from which actual costs shall be billed and deducted for the purpose of defraying the expenses involved in the department's cooperation in the defense, including but not limited to, depositions, testimony, and other assistance to permittee or permittee's counsel. The permittee shall also pay the following supplemental deposits, from which actual costs shall be billed and deducted:

- a. If during the litigation process, actual costs incurred reach 80 percent of the amount on deposit, the permittee shall deposit additional funds sufficient to bring the balance up to the amount of the initial deposit. There is no limit to the number of supplemental deposits that may be required prior to completion of the litigation.
 - b. At the sole discretion of the permittee, the amount of an initial or supplemental deposit may exceed the minimum amounts defined herein. The cost for collection and duplication of records and other related documents will be paid by the permittee in accordance with Los Angeles County Code Section 2.170.010.
6. If any material provision of this grant is held or declared to be invalid, the permit shall be void and the privileges granted hereunder shall lapse.
 7. Notice is hereby given that any person violating a provision of this grant is guilty of a misdemeanor. Notice is further given that the Regional Planning Commission or a hearing officer may, after conducting a public hearing, revoke or modify this grant, if the Commission or hearing officer finds that these conditions have been violated or that this grant has been exercised so as to be detrimental to the public's health or safety or so as to be a nuisance.
 8. Within ninety (90) days of the approval date of this grant, the permittee shall submit to the Director for review and approval, three (3) copies of site plans, similar to Exhibit "A" as presented at the public hearing. The property shall be developed and maintained in substantial compliance with the plans marked Exhibit "A". In the event that subsequent revised plans are submitted, the permittee shall submit three (3) copies of the proposed plans to the Director for review and approval. All revised plans must be accompanied by the written authorization of the property owner. If changes to the site plan are required as a result of instruction given at the public hearing, a Revised Exhibit "A" shall be submitted to the Department of Regional Planning within sixty (60) days of the date of approval for the Conditional Use Permit.
 9. All structures shall comply with the requirements of the Division of Building and Safety of the Los Angeles County Department of Public Works.

In the event that the county deems it necessary to initiate such proceedings pursuant to Part 13 of Chapter 22.56 of the County Code, the applicant shall compensate the county for all costs incurred in such proceedings.
 10. All requirements of the Zoning Ordinance and of the specific zoning of the subject property must be complied with unless specifically modified by this grant, as set forth in these conditions or shown on the approved plans.
 11. The permittee shall maintain the subject property (telecommunications facility and

- equipment) in a neat and orderly fashion.
12. This grant shall expire unless used within 2 years from the date of final approval by the County. A single one-year time extension may be requested in writing and with the payment of the applicable fee prior to such expiration date.
 13. **This grant will terminate on February 16, 2020.** Entitlement to use of the property thereafter shall be subject to the regulations then in effect. At least six (6) months prior to the expiration of this permit and in the event that the permittee intends to continue operations after such date, a new Conditional Use Permit application shall be filed with the Department of Regional Planning. The application shall be a request for continuance of the use permitted under this grant, whether including or not including modification to the use at that time.
 14. The subject property shall be maintained and operated in full compliance with the conditions of this grant and any law, statute, ordinance, or other regulation applicable to any development or activity on the subject property. Failure of the permittee to cease any development or activity not in full compliance shall be a violation of these conditions. Prior to the use of this grant, the permittee shall deposit with the County of Los Angeles the sum of **\$750.00**. These monies shall be placed in a performance fund which shall be used exclusively to compensate the Department of Regional Planning for all expenses incurred while inspecting the premises to determine the permittee's compliance with the conditions of approval, including adherence to development in accordance with the approved site plan on file. **The fund provides for five (5) bi-annual (every two years) inspections.** Inspections shall be unannounced. The inspection fee shall be **paid within 30 days** of approval. If additional inspections are required to ensure compliance with the conditions of this grant, or if any inspection discloses that the subject property is being used in violation of any condition of this grant, the permittee shall be financially responsible for and shall reimburse the Department of Regional Planning for all additional inspections and for any enforcement efforts necessary to bring the subject property into compliance. The amount charged for additional inspections shall be the amount equal to the recovery cost at the time of payment (currently \$200.00 per inspection).
 15. All structures, pole, vault, vents open to public view shall remain free of extraneous markings, drawings, or signage.
 16. In the event of graffiti or other extraneous markings occurring, the permittee shall remove or cover said markings, drawings, or signage within 24 hours of such occurrence, weather permitting. Paint utilized in covering such markings shall be of a color that matches, as closely as possible, the color of the adjacent surfaces. The only exceptions shall be seasonal decorations or signage provided under the auspices of a civic or non-profit organization.
 17. The permittee shall maintain a current contact name, address, and phone number

with the Department of Regional Planning at all times

18. Upon receipt of this letter, the permittee shall contact the Fire Prevention Bureau of the Los Angeles County Fire Department to determine what facilities may be necessary to protect the property from fire hazard. Any necessary facilities shall be provided as may be required by said Department.
19. The facility shall be operated in accordance with regulations of the state Public Commission;
20. Said facility shall be removed if in disuse for more than six months;
21. Insofar as is feasible, the operator shall cooperate with any subsequent applicants for wireless communications facilities in the vicinity with regard to possible co-location. Such subsequent applicants will be subject to the regulations in effect at that time;
22. All structures shall conform with the requirements of the Division of Building and Safety of the Department of public Works or other appropriate agency and obtain an encroachment permit if deemed necessary;
23. No construction shall be permitted during the Wet Weather Season which is from October 1st through April 15th.
24. All buildings or structures shall be a neutral color, excluding black, to blend with its surroundings and shall be maintained in good condition at all times;
25. Construction and maintenance of the facility shall take place between the hours of 9:00 AM to 5:00 PM, Monday through Friday only;
26. The permittee shall provide written verification that the proposed facility's radio-frequency radiation and electromagnetic field emissions will fall within the adopted FCC standards for safe human exposure to such forms of non-ionizing electromagnetic radiation when operating at full strength and capacity for the lifetime of this Conditional Use Permit. The permittee/operator shall submit a copy of the initial report on the said facility's radio frequency emissions level, as required by the Federal Communications Commission requirements, to the Department of Regional Planning;
27. Any proposed wireless telecommunications facility that will be co-locating on the proposed facility will be required to submit the same written verification and include the cumulative radiation and emissions of all such facilities;
28. The operator shall submit an annual maintenance report to the Department of Regional Planning by January 1, verifying the continued operation and maintenance of the said facility;

29. The project shall be developed and maintained in substantial compliance with the plans and photo simulations marked as Exhibit "A". Placement and height of all pole mounted equipment to be in substantial conformance with that shown on said Exhibit "A". All revised plot plans must be accompanied by the written authorization of the property owner;
30. The operator shall ensure that maintenance vehicles shall not block access to driveways or garages and shall obey all applicable on-street parking regulations;
31. The maximum height of the proposed monopole is 28'-3" in height from above ground level or existing sidewalk with a maximum 12" diameter octagonal pole that is textured to match existing light poles.
32. The maximum height of the proposed equipment cabinet is 36" tall vents and 20" in diameter. Electrical Meter Pedestal shall have a maximum height of 48" and 17" x 20" widths.

MC:df
February 16, 2010