



## CITY OF NEWPORT BEACH COMMUNITY DEVELOPMENT DEPARTMENT PLANNING DIVISION ACTION REPORT

TO: CITY COUNCIL, CITY MANAGER AND PLANNING COMMISSION  
FROM: Seimone Jurjis, Community Development Director  
SUBJECT: Report of actions taken by the Zoning Administrator, and/or Planning Division staff for the week ending August 28, 2020.

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### ZONING ADMINISTRATOR ACTIONS AUGUST 27, 2020

- Item 1: AT&T Small Cell SLC0902 Coastal Development Permit No. CD2020-119 (PA2019-113)  
Site Address: Public right-of-way, City streetlight number SLC0902, at the northwestern corner of 38th Street and Lake Avenue
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| Action: Approved by Resolution No. ZA2020-057 | Council District | 1 |
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- Item 2: AT&T Small Cell SLC4653 Coastal Development Permit No. CD2020-118 (PA2019-115)  
Site Address: Public right-of-way, City streetlight number SLC4653, on the north side of Bayside Drive, approximately 900 feet northwest of El Paseo Drive
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| Action: Approved by Resolution No. ZA2020-058 | Council District | 5 |
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**APPEAL PERIOD:** An appeal or call for review may be filed with the Director of Community Development or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was rendered unless a different period of time is specified by the Municipal Code (e.g., Title 19 allows ten (10) day appeal period for tentative parcel and tract maps, lot line adjustments, or lot mergers). For additional information on filing an appeal, contact the Planning Division at 949 644-3200.

## RESOLUTION NO. ZA2020-057

### A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2020-119 FOR A SMALL CELL WIRELESS FACILITY LOCATED WITHIN THE PUBLIC RIGHT-OF-WAY ON CITY STREETLIGHT NUMBER SLC0902, ON 38<sup>TH</sup> STREET NEAR LAKE AVENUE AND THE NEWPORT ISLAND BRIDGE (PA2019-113)

THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by New Cingular Wireless, LLC (Applicant), with respect to City of Newport Beach Streetlight Number SLC0902, located within the public right-of-way at the northwestern corner of 38<sup>th</sup> Street and Lake Avenue requesting a coastal development permit (CDP).
2. The Applicant proposes the installation of a small cell wireless facility on a City-owned streetlight pole. Project implementation will be fully contained within the public right-of-way on 38<sup>th</sup> Street and includes the following: (1) Removal and replacement of an existing City streetlight; (2) Installation of a small cell wireless facility that consists of four remote radio units, a raycap disconnect, and an omni-directional antenna within a 12-inch diameter screening shroud. This equipment would be fixed to the top of the replaced streetlight pole for a maximum height of 27 feet, 6 inches; and (3) Establishment of supporting equipment in an adjacent below-grade vault.
3. The streetlight pole is located within the public right-of-way. The proposal is regulated by City Council Policy L-23 (Siting of Wireless Telecommunications Equipment on City-Owned Property), as well as Newport Beach Municipal Code (NBMC) Chapter 20.49 (Wireless Telecommunication Facilities). Pursuant to Section 20.49.060 (Permit Review Procedures) of the NBMC, a minor use permit is required for this type of installation. A minor use permit (UP2019-032) for this project was previously reviewed and approved by the Zoning Administrator at a public hearing on May 28, 2020. There was no appeal filed and the Minor Use Permit is now effective. However, since that approval, it has been determined that a CDP is also required.
4. The project is located within the Coastal Zone. Subsection 21.49.020(B) (Permit and Agreement Required) of the NBMC requires a coastal development permit for a wireless telecommunication facility unless said facility is exempted by Subsection 21.49.020(C) (Exempt Facilities). In this case, the project does not meet any of the prescribed exemptions; therefore, a coastal development permit is required.
5. A telephonic public hearing was held online on August 27, 2020, observing restrictions due to the Declaration of a State Emergency and Proclamation of Local Emergency

related to COVID-19. A notice of time, place and purpose of the hearing was given in accordance with the NBMC. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

## SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15302 and 15303 under Class 2 (Replacement or Reconstruction) and Class 3 (New Construction or Conversion of Small Structures), respectively, of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment. Class 2 consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. 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.
2. In this case, the proposal includes the removal and replacement of an existing City streetlight pole to install a small cell wireless facility, including below-grade accessory equipment.
3. The exceptions to the Class 3 categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

## SECTION 3. REQUIRED FINDINGS.

In accordance with Subsection 21.52.015(F) (Coastal Development Permits, Findings and Decision) of the NBMC, the following findings and facts in support of such findings are set forth:

### Finding:

- A. *Conforms to all applicable sections of the certified Local Coastal Program.*

### Facts in Support of Finding:

1. The project is considered a Class 3 (Public Right-of-Way) installation. Section 21.49.040 (Telecom Facility Preferences and Prohibited Locations) of the NBMC lists Class 3 installations as third on the installation preference list. It is not proposed at a location that is prohibited by NBMC Subsection 21.49.040(B) (Prohibited Locations).

2. The Applicant analyzed alternative sites for the project and ultimately concluded that a more preferred location as defined by NBMC Subsection 21.49.040(A) (Preferred Locations), such as a collocation or a Class 1 or 2 facility, would not be technically feasible from an RF or construction perspective. The analysis explained that small cell facilities are low powered and must be located at the precise location selected to serve the network traffic demands of the specific limited area. Further, this type of service cannot be accomplished with a traditional macro collocation or building mounted site in the area.
3. The project site abuts a vacant City-owned parcel to the west with residentially zoned properties surrounding it. The streetlight pole is located within an existing landscaped area, which provides visual interest and distraction from the streetlight. The taller palm trees and their trunks will help to mask the equipment shroud on top of the streetlight pole, which is anticipated to lessen the general visibility of the proposed small cell facility and helps to ensure visual compatibility with the surrounding neighborhood and its residential character.
4. The existing and replacement streetlight poles are not and will not impact the view or character of the entrance and exit point to Newport Island, as seen when crossing the bridge. The decorative acorn-style streetlamps are situated at a lower height, will not be impacted, and will still frame the entrance to Newport Island. The visual character and charm of the area will be maintained and is not expected to be negatively impacted by the project based on a visual impact analysis of project renderings.
5. The project has been reviewed pursuant to Subsection 21.49.050(B) of the NBMC. It complies with Section 21.30.100 (Scenic and Visual Quality Protection) of the NBMC. The subject location is located between the first public roadway paralleling the sea and the sea; however, it is not on a coastal bluff or canyon or public accessway, as identified on the Coastal Land Use Plan Map 4-3 (Coastal Views), and does not contain significant natural landforms or vegetation. Although the project site may be visible from Newport Island Park approximately 175 feet northwest, the replacement streetlight pole will be placed in the same location as the existing streetlight pole and the shroud on top is not anticipated to be detectable from any vantage point at the park. Furthermore, there are existing taller palm trees immediately surrounding the proposed site, which will serve to mask the height of the facility.
6. The project scope involves the removal and replacement of an existing City streetlight in the same location with the same luminaire height. The project has been designed to blend with its surroundings while it will be visible. The replacement streetlight is consistent with the size, shape, style, and design of the existing pole. No above-ground mounted equipment is proposed, and the support equipment is proposed to be placed in underground handholes. All transmission equipment, including remote radio units and the raycap disconnect switch, are fully concealed within a screening shroud. There will be no negative impacts on coastal views or coastal resources with the project's implementation.

7. The proposed replacement streetlight and antenna structure will comply with the maximum allowable height limit of 35 feet from existing finished grade.

Finding:

- B. *Conforms with the public access and public recreation policies of Chapter 3 of the Coastal Act if the project is located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone.*

Facts in Support of Finding:

1. Pursuant to Section 21.49.040(B) (Prohibited Locations) of the NBMC, new facilities are not allowed to be located between the first public roadway paralleling the sea and the sea, unless they are generally located on an existing structure. In this case, staff has determined the proposal is allowed since the facility would be installed at an existing streetlight pole location, which meets the intent of limiting new vertical projections closer to the coastline.
2. The project site is within an existing landscaped area on 38<sup>th</sup> Street near Lake Avenue and the Newport Island Bridge. All equipment will be either concealed within the replacement pole or vaulted below grade. There will be no changes or obstructions to the pedestrian right-of-way and access will be unaffected. As such, the project will not affect the public's ability to gain access to, use, and/or view the coast and nearby recreational facilities.
3. The project will allow the installation of a small cell facility that complies with all applicable Local Coastal Program (LCP) development standards and maintains development attributes consistent with the existing and anticipated future surrounding neighborhood pattern of development. Therefore, the project does not have the potential to degrade public views within the Coastal Zone.

SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15302 and 15303 under Class 2 (Replacement or Reconstruction) and Class 3 (New Construction or Conversion of Small Structures), respectively, of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment. The exceptions to the Class 3 exemption do not apply.
2. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2020-119, subject to the conditions set forth in "Exhibit A," which is attached hereto and incorporated by reference.

3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 Local Coastal Program Implementation Plan of the NBMC. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 of the NBMC and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

**PASSED, APPROVED, AND ADOPTED THIS 27<sup>TH</sup> DAY OF AUGUST, 2020.**



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Jaime Murillo  
Zoning Administrator

**EXHIBIT "A"**

## CONDITIONS OF APPROVAL

**Planning Division**

1. The development shall be in substantial conformance with the plans, including elevation exhibits and visual simulations, stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The Applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this approval.
4. The telecom facility approved by this permit shall comply with all applicable Federal and State rules, regulations, and standards.
5. The replacement pole shall be reconstructed in the exact location of the existing streetlight pole.
6. The reconstructed streetlight pole design shall be consistent with the size (including diameter), shape, style, and design of the existing streetlight pole to the greatest extent feasible, including the attached light arm and luminaire. All mounted equipment shall be painted to match the color and style of the replacement streetlight pole.
7. All accessory support equipment of this facility shall be installed underground.
8. All electrical and antenna wiring shall be fully encased within the reconstructed streetlight pole.
9. The telecom facility approved by the use permit shall comply with any easements, covenants, conditions, or restrictions on the underlying City-trust property upon which the facility is located.
10. Anything not specifically approved by this permit is not permitted and must be addressed in a separate and subsequent review.
11. Prior to building permit final, a Height Certification Inspection shall be required prior to final of building permits. The small cell facility and base streetlight pole approved by this permit shall not exceed a total of 27 feet, 6 inches in height from existing grade. The top of the new luminaire shall not exceed a total of 21 feet in height from existing grade and shall match the height and shape of the existing luminaire.

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12. Prior to building permit issuance, all contractors and subcontractors shall have a valid City of Newport Beach business license.
  13. The Applicant shall continually maintain the wireless telecom facility so that it retains its original appearance at the time the building permit is finalized by the City of Newport Beach.
  14. On an annual basis, the Applicant shall conduct maintenance inspections of the wireless telecom facility, including the small cell facility and below-grade equipment areas, and make all necessary repairs. The Community Development Director may require additional inspections and/or maintenance activities at his/her discretion.
  15. The Applicant shall not prevent the City of Newport Beach from having adequate spectrum capacity on the City's 800 MHz radio frequencies at any time.
  16. The facility shall transmit at the approved frequency ranges established by the FCC. The Applicant shall inform the City in writing of any proposed changes to the frequency range in order to prevent interference with the City's Public Safety radio equipment.
  17. The telecommunications facility shall at no time interfere with the frequencies used by the City of Newport Beach for public safety. "Comprehensive advanced planning and frequency coordination" engineering measures shall prevent interference, especially in the choice of frequencies and radio ancillary hardware. This is encouraged in the "Best Practices Guide" published by the Association of Public-Safety Communications Officials-International, Inc. ("APCO"), and as endorsed by the FCC.
  18. Should interference with the City's Public Safety radio equipment occur, use of the telecom facility authorized by this permit may be suspended until the radio frequency interference is corrected and verification of the compliance is reported.
  19. The Applicant shall provide a "single point of contact" for the carrier in its Engineering and Maintenance Departments that is monitored 24 hours per day to ensure continuity on all interference issues, and to which interference problems may be reported. The name, telephone number, fax number, and email address of that person shall be provided to the Community Development Department and Newport Beach Police Department's Support Services Commander prior to activation of the facility. If the point of contact changes, the City shall be immediately alerted and updated.
  20. No advertising signage or identifying logos shall be displayed on the telecom facility except for small identification, address, warning, and similar information plates. A detail of the information plates depicting the language on the plate shall be included in the plans submitted for issuance of building permits.
  21. Appropriate information warning signs or plates shall be posted on the base streetlight pole of the transmitting antenna. In addition, contact information (e.g., a telephone number) shall be provided on the warning signs or plates. The location of the information warning signs or plates shall be depicted on the plans submitted for construction permits.



Signage required by State or federal regulations shall be allowed in its smallest permissible size.

22. Prior to the final of building permits, the Applicant shall schedule an evening inspection by the Code Enforcement Division to confirm compliance with lighting. The telecom facility shall be lighted to the extent deemed necessary by the Newport Beach Police and Utilities Departments for security lighting and consistency with other streetlights in the area.
23. The Applicant shall maintain the telecom facility in a manner consistent with this approval.
24. The Applicant shall ensure that its telecom facility complies with the most current regulatory, operations standards, and radio frequency emissions standards adopted by the FCC. The Applicant shall be responsible for obtaining and maintaining the most current information from the FCC regarding allowable radio frequency emissions and all other applicable regulations and standards. This information shall be made available by the Applicant upon request of the Community Development Director.
25. The facility shall comply with all applicable provisions of U.S. Code Title 47 (Telecommunications) rules and regulations, including those related to FCC Radio Frequency safety.
26. Prior to final of building permits, the Applicant shall schedule an inspection by the Planning Division to ensure materials and colors match existing architecture as illustrated in the approved photographic simulations and in conformance with NBMC Section 21.49.050.
27. Any operator who intends to abandon or discontinue use of a telecom facility must notify the Planning Division by certified mail no less than thirty (30) days prior to such action. The operator shall have ninety (90) days from the date of abandonment or discontinuance to reactivate use of the facility, or remove the telecom facility and restore the site.
28. The City reserves the right and jurisdiction to review and modify any permit approved pursuant to NBMC Chapter 21.49, including the conditions of approval, based on changed circumstances. The operator shall notify the Planning Division of any proposal to change the height or size of the facility; increase the size, shape, or number of antennas; change the facility's color or materials or location on the site; or increase the signal output above the maximum permissible exposure ("MPE") limits imposed by the radio frequency emissions guidelines of the FCC. Any changed circumstance shall require the operator to apply for a review of the modification, and possible amendment to the use permit, prior to implementing any change.
29. Costal Development Permit No. CD2020-119 shall expire unless exercised within 24 months from the date of approval as specified in Section 21.54.060 (Time Limits and Extensions) of the NBMC unless an extension is otherwise granted.

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30. Construction activities shall comply with NBMC Section 10.28.040, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7 a.m. and 6:30 p.m., Monday through Friday. Noise-generating construction activities are not allowed on Saturdays, Sundays or holidays.
  31. This approval may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
  32. A copy of the Resolution, including conditions of approval Exhibit "A," and approved drawings from Southern California Edison (SCE) for the power supply and design, shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
  33. The Applicant is responsible for compliance with the Migratory Bird Treaty Act (MBTA). In compliance with the MBTA, grading, brush removal, building demolition, tree trimming, and similar construction activities shall occur between August 16 and January 31, outside of the peak nesting period. If such activities must occur inside the peak nesting season from February 1 to August 15, compliance with the following is required to prevent the taking of Native Birds pursuant to MBTA:
    - A. The construction area shall be inspected for active nests. If birds are observed flying from a nest or sitting on a nest, it can be assumed that the nest is active. Construction activity within 300 feet of an active nest shall be delayed until the nest is no longer active. Continue to observe the nest until the chicks have left the nest and activity is no longer observed. When the nest is no longer active, construction activity can continue in the nest area.
    - B. It is a violation of state and federal law to kill or harm a native bird. To ensure compliance, consider hiring a biologist to assist with the survey for nesting birds, and to determine when it is safe to commence construction activities. If an active nest is found, one or two short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.
  34. The Applicant shall promptly notify the City if the landscaped parkway of the subject streetlight pole is negatively affected or otherwise damaged by project implementation.
  35. To the fullest extent permitted by law, Applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of AT&T Small Cell SLC0902, including,

but not limited to, Coastal Development Permit No. CD2020-119 (PA2019-113). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Applicant, City, and/or the parties initiating or bringing such proceeding. The Applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The Applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

### **Public Works Department**

36. Prior to the issuance of a building permit, an encroachment permit shall be required.
37. Prior to the issuance of a building permit, traffic control plans illustrating compliance with the 2016 WATCHBook requirements shall be reviewed and approved by the Public Works Department before their implementation. Large construction vehicles shall not be permitted to travel narrow streets as determined by the Public Works Department. Disruption caused by construction work along roadways and by movement of construction vehicles shall be minimized by proper use of traffic control equipment and flagman.

### **Additional Conditions**

38. No demolition or construction materials, equipment debris, or waste, shall be placed or stored in a location that would enter sensitive habitat, receiving waters, or a storm drain or result in impacts to environmentally sensitive habitat areas, streams, canals, the beach, wetlands or their buffers.

## RESOLUTION NO. ZA2020-058

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2020-118 FOR A SMALL CELL WIRELESS FACILITY LOCATED WITHIN THE PUBLIC RIGHT-OF-WAY ON CITY STREETLIGHT NUMBER SLC4653, ON THE NORTH SIDE OF BAYSIDE DRIVE APPROXIMATELY 900 FEET NORTHWEST OF EL PASEO DRIVE (PA2019-115)**

THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by New Cingular Wireless, LLC (Applicant), with respect to City of Newport Beach Streetlight Number SLC4653, located within the public right-of-way at the north side of Bayside Drive, approximately 900 feet northwest of El Paseo Drive requesting a coastal development permit (CDP).
2. The Applicant proposes the installation of a small cell wireless facility on a City-owned streetlight pole. Project implementation will be fully contained within the public right-of-way on Bayside Drive and includes the following: (1) Removal and replacement of an existing City streetlight; (2) Installation of a small cell wireless facility that consists of four (4) remote radio units, a raycap disconnect, and an omni-directional antenna within a 12-inch diameter antenna screening shroud. This equipment would be fixed to the top of the replaced streetlight pole for a maximum height of 27 feet, 5 inches; and (3) Establishment of support equipment in an adjacent below-grade vault.
3. The streetlight pole is located within the public right-of-way. The proposal is regulated by City Council Policy L-23 (Siting of Wireless Telecommunications Equipment on City-Owned Property), as well as Newport Beach Municipal Code (NBMC) Chapter 20.49 (Wireless Telecommunication Facilities). Pursuant to Section 20.49.060 (Permit Review Procedures) of the NBMC, a minor use permit is required for this type of installation. A minor use permit (UP2019-034) for this project was previously reviewed and approved by the Zoning Administrator at a public hearing on April 16, 2020. There was no appeal filed and the Minor Use Permit is now effective. However, since that approval, it has been determined that a CDP is also required.
4. The project is located within the Coastal Zone. Subsection 21.49.020(B) (Permit and Agreement Required) of the NBMC requires a coastal development permit for a wireless telecommunication facility unless said facility is exempted by Subsection 21.49.020(C) (Exempt Facilities). In this case, the project does not meet any of the prescribed exemptions; therefore, a coastal development permit is required.

5. A telephonic public hearing was held online on August 27, 2020, observing restrictions due to the Declaration of a State Emergency and Proclamation of Local Emergency related to COVID-19. A notice of time, place and purpose of the hearing was given in accordance with the NBMC. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

## SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15302 and 15303 under Class 2 (Replacement or Reconstruction) and Class 3 (New Construction or Conversion of Small Structures), respectively, of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment. Class 2 consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. 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.
2. In this case, the proposal includes the removal and replacement of an existing City streetlight pole to install a small cell wireless facility, including below-grade accessory equipment.
3. The exceptions to the Class 3 categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

## SECTION 3. REQUIRED FINDINGS.

In accordance with Subsection 21.52.015(F) (Coastal Development Permits, Findings and Decision) of the NBMC, the following findings and facts in support of such findings are set forth:

### Finding:

- A. *Conforms to all applicable sections of the certified Local Coastal Program.*

### Facts in Support of Finding:

1. The project is considered a Class 3 (Public Right-of-Way) installation. Section 21.49.040 (Telecom Facility Preferences and Prohibited Locations) of the NBMC lists Class 3

installations as third on the installation preference list. It is not proposed at a location that is prohibited by NBMC Subsection 21.49.040(B) (Prohibited Locations).

2. The Applicant analyzed alternative sites for the project and ultimately concluded that a more preferred location as defined by NBMC Subsection 21.49.040(A) (Preferred Locations), such as a collocation or a Class 1 or 2 facility, would not be technically feasible from an RF or construction perspective. The analysis explained that small cell facilities are low powered and must be located at the precise location selected to serve the network traffic demands of the specific limited area. Further, this type of service cannot be accomplished with a traditional macro collocation or building mounted site in the area.
3. The project site abuts a residentially zoned property however the physical residence at that property is setback from the property line approximately 115 feet and is separated from the right of way by an extremely steep slope. The slope is highly landscaped and provides visual interest and distraction from the streetlight. Given the significant grade differential and the lower setting of the streetlight, the general visibility of the proposed small cell facility is lessened for the existing development, which helps to ensure visual compatibility with the surrounding neighborhood and its residential character. Across Bayside Drive, approximately 50 feet west, there are additional residences zoned RM with grades that are approximately five feet below the grade of the proposed facility.
4. The existing streetlight is located on the inland side of a well-traveled street. The location of the existing streetlight is not within in a curve or at a bend in the road and is in line with the surrounding streetscape and existing light poles. The replacement streetlight will be installed in the same location as the existing streetlight and it will not visually protrude.
5. While Bayside Drive is considered the first public road paralleling the sea, the project site is located on the landward side of the road and not between the first public road and the sea. The project has been reviewed pursuant to Subsection 21.49.050(B) of the NBMC. It complies with Section 21.30.100 (Scenic and Visual Quality Protection) of the NBMC. The subject location is not located within the first public roadway paralleling the sea and the sea but is not between the first public roadway paralleling the sea and the sea. It is further is not on a coastal bluff or canyon, not adjacent to or within the viewshed of a public viewpoint, coastal view road, public park or beach, or public accessway, as identified on the Coastal Land Use Plan Map 4-3 (Coastal Views), and does not contain significant natural landforms or vegetation.
6. The project scope involves the removal and replacement of an existing City streetlight in the same location with the same luminaire height. The project has been designed to blend with its surroundings while it will be visible. The replacement streetlight is consistent with the size, shape, style, and design of the existing pole. No above-ground mounted equipment is proposed, and the support equipment is proposed to be placed in underground handholes. All transmission equipment, including remote radio units and the raycap disconnect switch, are fully concealed within a screening shroud. There will

be no negative impacts on coastal views or coastal resources with the project's implementation.

7. The proposed replacement streetlight and antenna structure will comply with the maximum allowable height limit of 35 feet from existing finished grade.

Finding:

- B. Conforms with the public access and public recreation policies of Chapter 3 of the Coastal Act if the project is located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone.*

Facts in Support of Finding:

1. As discussed in Fact in Support of Finding A.5, SLC4653 is not located between the nearest public road paralleling the sea or shoreline. There is no pedestrian right-of-way or access on the north side of Bayside Drive and, as such, the project will not affect the public's ability to gain access to, use, and/or view the coast and nearby recreational facilities.
2. The project will allow the installation of a small cell facility that complies with all applicable Local Coastal Program (LCP) development standards and maintains development attributes consistent with the existing and anticipated future surrounding neighborhood pattern of development. Therefore, the project does not have the potential to degrade public views within the Coastal Zone.


SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15302 and 15303 under Class 2 (Replacement or Reconstruction) and Class 3 (New Construction or Conversion of Small Structures), respectively, of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment. The exceptions to the Class 3 exemption do not apply.
2. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2020-118, subject to the conditions set forth in "Exhibit A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 Local Coastal Program Implementation Plan of the NBMC. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 of the

NBMC and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

**PASSED, APPROVED, AND ADOPTED THIS 27<sup>TH</sup> DAY OF AUGUST, 2020.**



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Jaime Murillo  
Zoning Administrator



**EXHIBIT "A"**

## CONDITIONS OF APPROVAL

**Planning Division**

1. The development shall be in substantial conformance with the plans, including elevation exhibits and visual simulations, stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The Applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this approval.
4. The telecom facility approved by this permit shall comply with all applicable Federal and State rules, regulations, and standards.
5. The replacement pole shall be reconstructed in the exact location of the existing streetlight pole.
6. The reconstructed streetlight pole design shall be consistent with the size (including diameter), shape, style, and design of the existing streetlight pole to the greatest extent feasible, including the attached light arm and luminaire. All mounted equipment shall be painted to match the color and style of the replacement streetlight pole.
7. All accessory support equipment of this facility shall be installed underground.
8. All electrical and antenna wiring shall be fully encased within the reconstructed streetlight pole.
9. The telecom facility approved by the use permit shall comply with any easements, covenants, conditions, or restrictions on the underlying City-trust property upon which the facility is located.
10. Anything not specifically approved by this permit is not permitted and must be addressed in a separate and subsequent review.
11. Prior to building permit final, a Height Certification Inspection shall be required prior to final of building permits. The small cell facility and base streetlight pole approved by this permit shall not exceed a total of 27 feet, 5 inches in height from existing grade. The top of the new luminaire shall not exceed a total of 21 feet, 1 inch in height from existing grade and shall match the height and shape of the existing luminaire.

12. Prior to building permit issuance, all contractors and subcontractors shall have a valid City of Newport Beach business license.
13. The Applicant shall continually maintain the wireless telecom facility so that it retains its original appearance at the time the building permit is finalized by the City of Newport Beach.
14. On an annual basis, the Applicant shall conduct maintenance inspections of the wireless telecom facility, including the small cell facility and below-grade equipment areas, and make all necessary repairs. The Community Development Director may require additional inspections and/or maintenance activities at his/her discretion.
15. The Applicant shall not prevent the City of Newport Beach from having adequate spectrum capacity on the City's 800 MHz radio frequencies at any time.
16. The facility shall transmit at the approved frequency ranges established by the FCC. The Applicant shall inform the City in writing of any proposed changes to the frequency range in order to prevent interference with the City's Public Safety radio equipment.
17. The telecommunications facility shall at no time interfere with the frequencies used by the City of Newport Beach for public safety. "Comprehensive advanced planning and frequency coordination" engineering measures shall prevent interference, especially in the choice of frequencies and radio ancillary hardware. This is encouraged in the "Best Practices Guide" published by the Association of Public-Safety Communications Officials-International, Inc. ("APCO"), and as endorsed by the FCC.
18. Should interference with the City's Public Safety radio equipment occur, use of the telecom facility authorized by this permit may be suspended until the radio frequency interference is corrected and verification of the compliance is reported.
19. The Applicant shall provide a "single point of contact" for the carrier in its Engineering and Maintenance Departments that is monitored 24 hours per day to ensure continuity on all interference issues, and to which interference problems may be reported. The name, telephone number, fax number, and email address of that person shall be provided to the Community Development Department and Newport Beach Police Department's Support Services Commander prior to activation of the facility. If the point of contact changes, the City shall be immediately alerted and updated.
20. No advertising signage or identifying logos shall be displayed on the telecom facility except for small identification, address, warning, and similar information plates. A detail of the information plates depicting the language on the plate shall be included in the plans submitted for issuance of building permits.
21. Appropriate information warning signs or plates shall be posted on the base streetlight pole of the transmitting antenna. In addition, contact information (e.g., a telephone number) shall be provided on the warning signs or plates. The location of the information warning signs or plates shall be depicted on the plans submitted for construction permits.

Signage required by State or federal regulations shall be allowed in its smallest permissible size.

22. Prior to the final of building permits, the Applicant shall schedule an evening inspection by the Code Enforcement Division to confirm compliance with lighting. The telecom facility shall be lighted to the extent deemed necessary by the Newport Beach Police and Utilities Departments for security lighting and consistency with other streetlights in the area.
23. The Applicant shall maintain the telecom facility in a manner consistent with this approval.
24. The Applicant shall ensure that its telecom facility complies with the most current regulatory, operations standards, and radio frequency emissions standards adopted by the FCC. The Applicant shall be responsible for obtaining and maintaining the most current information from the FCC regarding allowable radio frequency emissions and all other applicable regulations and standards. This information shall be made available by the Applicant upon request of the Community Development Director.
25. The facility shall comply with all applicable provisions of U.S. Code Title 47 (Telecommunications) rules and regulations, including those related to FCC Radio Frequency safety.
26. Prior to final of building permits, the Applicant shall schedule an inspection by the Planning Division to ensure materials and colors match existing architecture as illustrated in the approved photographic simulations and in conformance with NBMC Section 21.49.050.
27. Any operator who intends to abandon or discontinue use of a telecom facility must notify the Planning Division by certified mail no less than thirty (30) days prior to such action. The operator shall have ninety (90) days from the date of abandonment or discontinuance to reactivate use of the facility, or remove the telecom facility and restore the site.
28. The City reserves the right and jurisdiction to review and modify any permit approved pursuant to NBMC Chapter 21.49, including the conditions of approval, based on changed circumstances. The operator shall notify the Planning Division of any proposal to change the height or size of the facility; increase the size, shape, or number of antennas; change the facility's color or materials or location on the site; or increase the signal output above the maximum permissible exposure ("MPE") limits imposed by the radio frequency emissions guidelines of the FCC. Any changed circumstance shall require the operator to apply for a review of the modification, and possible amendment to the use permit, prior to implementing any change.
29. Costal Development Permit No. CD2020-118 shall expire unless exercised within 24 months from the date of approval as specified in Section 21.54.060 (Time Limits and Extensions) of the NBMC unless an extension is otherwise granted.

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30. Construction activities shall comply with NBMC Section 10.28.040, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7 a.m. and 6:30 p.m., Monday through Friday. Noise-generating construction activities are not allowed on Saturdays, Sundays or holidays.
  31. This approval may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
  32. A copy of the Resolution, including conditions of approval Exhibit "A," and approved drawings from Southern California Edison (SCE) for the power supply and design, shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
  33. The Applicant is responsible for compliance with the Migratory Bird Treaty Act (MBTA). In compliance with the MBTA, grading, brush removal, building demolition, tree trimming, and similar construction activities shall occur between August 16 and January 31, outside of the peak nesting period. If such activities must occur inside the peak nesting season from February 1 to August 15, compliance with the following is required to prevent the taking of Native Birds pursuant to MBTA:
    - A. The construction area shall be inspected for active nests. If birds are observed flying from a nest or sitting on a nest, it can be assumed that the nest is active. Construction activity within 300 feet of an active nest shall be delayed until the nest is no longer active. Continue to observe the nest until the chicks have left the nest and activity is no longer observed. When the nest is no longer active, construction activity can continue in the nest area.
    - B. It is a violation of state and federal law to kill or harm a native bird. To ensure compliance, consider hiring a biologist to assist with the survey for nesting birds, and to determine when it is safe to commence construction activities. If an active nest is found, one or two short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.
  34. The Applicant shall promptly notify the City if the landscaped parkway of the subject streetlight pole is negatively affected or otherwise damaged by project implementation.
  35. The applicant shall replace any privately installed landscaping disturbed as a result of the telecom installation. Any removed landscaping shall be replaced with the same species and size, wherever feasible, and provided the replacement is in compliance with any applicable encroachment agreements.

36. To the fullest extent permitted by law, Applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of AT&T Small Cell SLC4653, including, but not limited to, Coastal Development Permit No. CD2020-118 (PA2019-115). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Applicant, City, and/or the parties initiating or bringing such proceeding. The Applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The Applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

### **Public Works Department**

37. Prior to the issuance of a building permit, an encroachment permit shall be required.
38. Prior to the issuance of a building permit, traffic control plans illustrating compliance with the 2016 WATCHBook requirements shall be reviewed and approved by the Public Works Department before their implementation. Large construction vehicles shall not be permitted to travel narrow streets as determined by the Public Works Department. Disruption caused by construction work along roadways and by movement of construction vehicles shall be minimized by proper use of traffic control equipment and flagman.

### **Additional Conditions**

39. No demolition or construction materials, equipment debris, or waste, shall be placed or stored in a location that would enter sensitive habitat, receiving waters, or a storm drain or result in impacts to environmentally sensitive habitat areas, streams, canals, the beach, wetlands or their buffers.