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6 **CITY OF LONG BEACH**
7 **ADMINISTRATIVE APPEAL HEARING**
8 **PER LONG BEACH MUNICIPAL CODE CHAPTER 15.34.030.L**

9 **THOMAS M. POYER and MARGARET A. POYER,**) **HEARING OFFICER’S FINDINGS AND**
10 **Appellants,**) **RECOMMENDATION**
11 **vs.**)
12 **CITY OF LONG BEACH,**)
13 **Respondent/Permitting**)
14 **Authority**)
15 **LOS ANGELES SMSA LIMITED**)
16 **PARTNERSHIP, d/b/a VERIZON**)
17 **WIRELESS,**)
18 **Real Party in Interest /**)
19 **Permit Applicant**)

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21 **I. INTRODUCTION**

22 This appeal came on regularly for hearing before Administrative Hearing Officer
23 Jonathan C. Navarro on January 13, 2021 at 10:00 AM via WebEx virtual hearing. The WebEx
24 hearing was administered by Daniel Ramirez with the Public Works Department (“PWD”) for
25 the City of Long Beach. The Appellants, Thomas M. Poyer and Margaret A. Poyer
26 (“Appellants”) appeared *pro se*. The City of Long Beach (“City” or “Respondent”) appeared and
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1 was represented by Erin Weesner-McKinley, Esq. with the Office of the City Attorney for the
2 City of Long Beach. Applicant Los Angeles SMSA Limited Partnership, D/B/A Verizon
3 Wireless (“Verizon” or “Applicant”) appeared and was represented mainly by Daisy Uy
4 Kimpang. The following also appeared for the Applicant: Barbara Breeden, Bill Hammett,
5 Charaka Wijeweera, Elizabeth Nygard, Gary Kraus, Korina Arvizu, and Mario De La Mora. The
6 PWD for the City of Long Beach was represented by Joshua Hickman. The City of Long Beach
7 Development Services was represented by Deputy Director Christopher Koontz. The Office of
8 Councilwoman Allen¹ was represented by Rahul Sen.

10 The following member(s) of the public also appeared: JoAnne Keenan, Andrea Caballero
11 (residence address at 2321 Carroll Park South, Long Beach, CA 90814), Cecile Lindsay (did not
12 provide address or public comment), Cherie Vela (residence address at 328 Carroll Park East,
13 Long Beach, CA 90814), Clare Workneh (residence address at 2445 East 3rd Street, Long
14 Beach, CA 90814), Darren Grosch (residence address at 333 Carroll Park West, Long Beach, CA
15 90814), Diana Geosano (residence address at 337 Carroll Park West, Long Beach, CA 90814),
16 Jackie and Paul Dejung (310 Carroll Park East, Long Beach, CA 90814), Jennifer Poyer
17 (residence address at 1204 Miramar Avenue, Long Beach, CA 90804), Michael Lester (residence
18 address at 334 Carroll Park East, Long Beach, CA 90814), and Mr. and Mrs. Wetterhahn
19 (residence address at 362 Carroll Park East, Long Beach, CA 90814). Two (s) individuals called
20 in during the hearing but did not provide addresses or public comments.

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27 ¹ The Office of Councilwoman Allen was represented by Rahul Sen at the appeal hearing.
28 Councilwoman Allen’s office made no statements on the record during the appeal hearing, but
instead provided written statements prior to and subsequent to the hearing.

1 **II. STATEMENT OF FACTS**

2 The facts in this matter are not in dispute. On or around February 7, 2020, Verizon
3 submitted an application (“Application”) for a permit to the City for the installation of a “small
4 cell” wireless telecommunications facility (“WTF”) in the public right-of-way. (Respondent’s
5 Group Exhibit, pages 4-13). The Application process is governed by Chapter 15.34 of the Long
6 Beach Municipal Code (“LBMC”) that includes requirements and applicable standards for WTFs
7 in the public right-of-way to ensure that the proposed WTF complies with said requirements and
8 standards. WTF means equipment installed for the purpose of providing wireless transmission
9 of voice, data, images, or other information including but not limited to, cellular telephone
10 service, personal communications services, and paging services, consisting of equipment,
11 antennas, and network components such as towers, utility poles, transmitters, base stations,
12 conduits, pull boxes, electrical meters, and emergency power systems. WTF does not include
13 radio or television broadcast facilities, nor radio communications systems for government or
14 emergency services agencies. LBMC 15.34.020.EE. “Public right-of-way” means any public
15 highway, street, alley, sidewalk, parkway, parking lot, and all extensions or additions thereto
16 which is either owned, operated, or controlled by the City, or is subject to an easement or
17 dedication to the City, or is a privately-owned area within City’s jurisdiction which is not yet
18 dedicated, but is designated as a proposed public right-of-way on a tentative subdivision map
19 approved by the City. LBMC 15.34.020.S.

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24 The Application sought a permit for the installation of a proposed WTF in the public
25 right-of-way at 358 Carroll Park East across from Appellants’ property, which is in a residential
26 zoning district. The proposed WTF will be integrated into a new light pole that will replace the
27 existing light pole at the site that is designated as “CA002_LBC_LNGBCH_123C” in the
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1 Application (“Site”). The existing light pole is located at the midpoint of E. 4th Street and E. 3rd
2 Street. (See Location Map on Respondent’s Gr. Ex., p.213). The existing light pole is twenty-five
3 (25) feet and six (5) inches high (without luminaire). (Respondent’s Gr. Ex., pp. 220-221). The
4 replacement light pole would be twenty-six (26) feet high without luminaire and twenty-seven
5 (27) feet high with luminaire. (Id.). Three integrated antennas will be placed at the top of the
6 pole, with the bottom of the antennas twenty-one (21) feet eight (8) inches from the ground. (Id.).
7 Three (3) pull boxes for fiber and power will be placed in the parkway next to the pole with all
8 associated cables routed inside the pole. (Id.).
9

10 Upon two (2) subsequent rounds of reviews and plan revisions—the latest being June 18,
11 2020—the City approved the Application on August 11, 2020. (See approval stamp on
12 Respondent’s Gr. Ex., pp. 213-241). Thereafter, pursuant to LBMC 15.34.030.K., a notice of the
13 approval was mailed out on October 16, 2020, and a posted notice was placed on the pole
14 adjacent to Appellants’ home and on the Site on October 16, 2020. (See Respondent’s Gr. Ex.,
15 pp. 245-251 [proof of mailing]; Respondent’s Gr. Ex., pp. 252 [proof of posting]). Said posted
16 notice triggered the commencement of the 10-day appeal period under LBMC 15.34.030.L. The
17 deadline for filing an appeal was October 30, 2020. Appellants filed the Appeal on October 19,
18 2020. (See Respondent’s Gr. Ex., pp. 1-3).
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21 **III. LEGAL AUTHORITY FOR APPEAL**

22 LBMC 15.34.030.L. (Appeal of Tier B Wireless Right-of-Way Facility Permit)
23 provides ...
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- 25 1. Appeal Allowed. The applicant for a Tier B Wireless Right of Way Facility
26 Permit, and/or any person owning or residing at property that is adjacent to
27 or across the street to the location of a proposed Tier B Wireless
28 Telecommunications Facility, may appeal an approval or denial of an
application for a Tier B Wireless Right-of-Way Facility Permit. An appeal

1 must be in writing and must be submitted to the City Clerk within ten (10)
2 business days of the date the notice was mailed and posted as required under
3 Subsection 15.34.030.K.2, above.

- 4 2. Public Hearing Required. If an appeal is timely submitted, an independent
5 hearing officer selected by the City shall hold a public hearing. The City
6 Clerk shall set a date for the hearing that is at least fifteen (15) business
7 days, but no more than sixty (60) business days, after the City Clerk's receipt
8 of the appeal, unless the applicant and any person submitting an appeal agree
9 to a later hearing date.
- 10 3. Notice of Public Hearing Date. At least ten (10) business days before the
11 public hearing, the City Clerk shall notify in writing any person submitting
12 an appeal, the applicant, and any City department that reviewed the
13 application of the date set for the public hearing. The City Clerk shall follow
14 its regular procedures for notifying the general public of the hearing.
- 15 4. Public Hearing Record. The public hearing record shall include:
- 16 a. The application and the Department of Public Works' approval of the
17 application;
 - 18 b. Any written determination from the Department of Public Works;
 - 19 c. Any further written evidence from any City departments submitted either
20 prior to or during the hearing;
 - 21 d. Any written submissions from the applicant, any person submitting an
22 appeal, or any other interested person submitted either prior to or during
23 the hearing; and
 - 24 e. Any oral testimony from any City departments, the applicant, any person
25 submitting a protest, or any interested person taken during the hearing.
- 26 5. Hearing Officer Determination. The Hearing Officer shall issue a written
27 resolution containing its determination within fourteen (14) business days
28 following the close of evidence at the conclusion of the public hearing on
the appeal. The resolution shall include a summary of the evidence and the
ultimate determination whether to grant, grant with modifications, or deny
the appeal.
6. Notice of Determination on Appeal.
- a. The City Clerk shall promptly mail a notice of a determination on an
appeal to both the applicant, to any neighborhood association identified by

1 the Department of Development Services for any neighborhood within three
2 hundred (300) feet of the approved wireless telecommunications facility, and
3 to any person who either filed a protest, submitted evidence, or appeared at
4 the hearing, and whose name and address are known to the Department of
5 Public Works.

6 **IV. LEGISLATIVE BACKGROUND FOR WIRELESS TELECOMMUNICATIONS**

7 **FACILITIES**

8 **1. Federal and State Laws and Regulations**

9 In 1996, Congress conducted a major overhaul of the telecommunications law in almost
10 62 years in the Telecommunications Act of 1996 (“Act”). The goal of this new law is to let
11 anyone enter any communications business—to let any communications business compete in any
12 market against any other. The Federal Communications Commission (“FCC”) was then tasked
13 to create fair rules for this new era of competition. The advent of the newest generation of
14 wireless broadband technology known as “5G” requires the installation of thousands of “small
15 cell” wireless facilities. These facilities have become subject to a wide variety of local
16 regulations. *City of Portland v. United States* (9th Cir. 2020) No. 18-72689, p. 29. The
17 Federal Communications Commission (FCC) in 2018 therefore promulgated orders relating to
18 the installation and management of small cell facilities, including the manner in which local
19 governments can regulate them. *Id.* Sections 253(a) and 332(c)(7) of the Act provided FCC with
20 the statutory authority for limiting local regulation on the deployment of [5G] technology that
21 reflects congressional intent in 1996 to expand deployment of wireless services. *Id.* at p. 30.

22 These limitations provide that local government regulations:

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- 25 a. shall not unreasonably discriminate among providers of functionally equivalent
26 services, 47 U.S.C. § 332(c)(7)(B)(i)(I);
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- 1 b. shall not prohibit or have the effect of prohibiting the provision of personal
2 wireless services, 47 U.S.C. § 332(c)(7)(B)(i)(II);
- 3 c. a local government ... shall act on any request for authorization to place,
4 construct, or modify personal wireless service facilities within a reasonable period
5 of time after the request is duly filed with such government². 47 U.S.C. §
6 332(c)(7)(B)(ii).
- 7 d. No State or local government or instrumentality thereof may regulate the
8 placement, construction, and modification of personal wireless service facilities
9 on the basis of the environmental effects of radio frequency emissions to the
10 extent that such facilities comply with the Commission's regulations concerning
11 such emissions. 47 U.S.C. § 332(c)(7)(B)(iv).

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14 Those provisions authorize the FCC to preempt any state and local requirements that “prohibit or
15 have the effect of prohibiting” any entity from providing telecommunications services. *Id.* See
16 also 47 U.S.C. § 253(a), (d). Consequently, the FCC promulgated orders limiting local
17 governments in regulating the deployment of 5G technology in order to remove the barriers to
18 entry for businesses to compete in the telecommunications market.

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20 California case law and statutory authorities provide additional regulatory guidance for
21 installation of WTFs. Wireless providers are granted a statewide franchise to engage in the
22 telecommunications business. Pub. Util. Code § 7901; *see also T-Mobile West LLC v. City and*
23 *County of San Francisco* (2019) 6 Cal.5th 1107, 1117). In *T-Mobile*, the California Supreme
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26 ² The FCC has specifically shortened the shot clock for approving/denying applications for installation
27 of WTFs on existing infrastructure (i.e., collocation) from 90 to 60 days and from 150 to 90 days for all
28 other collocation applications. *Accelerating Wireless Broadband Deployment by Removing*
Barriers to Infrastructure Inv., 33 FCC Rcd. 9088 (2018), ¶¶ 104–05, ¶ 132, ¶ 136).

1 Court held that while the California legislature did not intend to deprive local governments of
2 the ability to impose aesthetic regulations and public safety issues, local agencies must
3 nonetheless respect that statewide franchise when making decisions on proposed facilities. *Id.*
4 Further, California Public Utilities Commission (“PUC” or “Commission”) reserves the right to
5 preempt local decisions about specific sites “when there is a clear conflict with the
6 Commission’s goals and/or statewide interests.” (PUC, General order No. 159-A (1996) p. 3
7 (General Order 159A), available at < <http://docs.cpuc.ca.gov/PUBLISHED/Graphics/611.PDF>>)
8 Generally, the PUC will step in if statewide goals such as “high quality, reliable and widespread
9 cellular services to state residents” are threatened. (*T-Mobile West, supra*, 6 Cal.5th at 1124,
10 citing General Order 159A, at p. 3.).
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12 **2. The City’s Telecom Ordinance**

13 On May 1, 2018, the City adopted LBMC §15.34, Wireless Telecommunications
14 Facilities in the Public Rights-Of-Way (“Telecom Ordinance”). The Telecom Ordinance governs
15 the installation of WTFs within the jurisdiction of the City of Long Beach, and the City’s scope
16 of regulatory authority for the installation of WTFs is limited to this ordinance. The Telecom
17 Ordinance provides for the requirements and standards for WTFs in the public right-of-way.
18 These include comprehensive permit requirements and standards (LBMC 15.34.030.B),
19 application process requirements (application, review, and approval) (LBMC 15.34.030.D),
20 conditions of approval (LBMC 15.34.030.F), notice following approval (LBMC 15.34.030.K),
21 and the appeal process of a Tier B³ WTF permit (LBMC 15.34.030.L). The Telecom Ordinance
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27 ³ “Tier B Wireless Telecommunications Facility” means a wireless telecommunications facility
28 where the proposed location for the facility is in a Planning Protected Location, Coastal Zone
Protected Location, or Zoning Protected Location.

1 also provides for, among others, compliance and modifications, of WTFs after installation
2 (LBMC 15.34.030.N; LBMC 15.34.030.S).

3 **V. STATEMENT OF ISSUES OF APPEAL BEFORE THE HEARING OFFICER**

4 By letter dated October 19, 2020, Appellants requested that the Application for the
5 proposed WTF be denied and stated the legal basis therefor. Subsequent to their October 19,
6 2020 letter, Appellants submitted an appeal brief prior to the appeal hearing on January 11, 2021,
7 and a final brief on January 19, 2021. Both briefs contain novel arguments that were not
8 otherwise apparent or discussed in Appellants' October 19, 2020 letter, but are ripe and proper
9 for consideration before this hearing officer. Upon review of Appellants' briefs, it is determined
10 that their final brief contains the most salient legal arguments for their appeal. The following,
11 therefore, are the statement of issues before the hearing officer:
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14 1. Did the City violate LBMC § 15.34.030.B.1.b.(i) by failing to obtain other
15 applicable permits and approvals necessary to comply with its own Cultural Heritage
16 Commission ("CHC") Ordinance, as set forth in LBMC § 2.63.040(E)?

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18 2. Did the City violate LBMC § 15.34.030.B.1.b.(iii) by failing to comply with
19 CEQA requirements for historic resources?

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21 3. Did the City violate LBMC § 15.34.030.B.1.b.(vi).6).(vi) by failing to site the
22 proposed WTF to minimize the negative aesthetic impacts of the public right-of-way?

23 **VI. SUMMARY OF RELEVANT EVIDENCE INTRODUCED BY PARTIES**

24 **1. Appellants' Evidence**

25 During the WebEx virtual hearing on January 13, 2021, this hearing officer explained to
26 all the participants the guidelines for the hearing. These include examination of witnesses and
27 presentation of evidence. It was stated on the record that the hearing officer received the City's
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1 submission package⁴ in advance of the hearing both in hardcopy and electronic format. The
2 hardcopy was received at this hearing officer's business address and included a Proof of Service
3 indicating that the hardcopy was sent to said business address and to Appellants' address on
4 record. The package also included a Proof of Service that the electronic copy was transmitted to
5 the email addresses of the hearing officer, the Appellants, and the Applicant's representatives.
6
7 During the hearing, all parties acknowledged receipt of the City's submission package.

8 In addition to the October 19, 2020 letter from Appellants, Appellants submitted a brief
9 in advance of the appeal hearing on January 11, 2021 and a final brief ("Appellants' Final
10 Brief") on January 19, 2021. Both briefs were submitted via email to all interested parties.

11 **2. The City's (and Applicant's) Evidence**

12 In advance of the formal hearing, the City submitted the following evidence
13 (Respondent's Group Exhibit) in support of its opposition to the appeal:
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- 15 • October 19, 2020 Appeal Letter to the City of Long Beach from Thomas M. and
16 Margaret A. Poyer for the proposed Wireless Telecommunications Facility
17 Installation at 358 Carroll Park East, Long Beach, CA 90814 (Respondent's
18 Group Exhibit Pages 1-3)
- 19 • Verizon's February 7, 2020 City of Long Beach Application (Respondent's
20 Group Exhibit Pages 4-13)
- 21 • Verizon Master License Agreement (MLA) (which includes Verizon's
22 maintenance obligations) (Respondent's Group Exhibit Pages 14-109)
- 23 • Small Cell Noise Study (Respondent's Group Exhibit Pages 110-128)
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27 ⁴ The City's submission package included a copy of Appellants' letter dated October 19, 2020.
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- 1 • Coverage Map - Verizon (Respondent's Group Exhibit Page 129)
- 2 • Structural Analysis (Respondent's Group Exhibit Pages 130-209)
- 3 • Radio Frequency Electromagnetic Fields Exposure Analysis Letter dated June 5,
- 4 2020 and cover letter dated June 19, 2020 (Respondent's Group Exhibit Pages
- 5 210-211)
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- 7 • August 11, 2020 - Approved Application (Respondent's Group Exhibit Pages
- 8 212-241)
- 9 • Tier B Justification (Respondent's Group Exhibit Pages 242-244)
- 10 • Mailing and Posting Notification (Respondent's Group Exhibit Pages 245-252)
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12 In addition to the evidence submitted by the City in opposition to the appeal, the City
13 submitted a Supplemental Brief subsequent to the appeal hearing wherein the City provided its
14 position and arguments with regard to the issues presented by Appellants in their appeal brief.

15 The Applicant also conducted a presentation during the hearing that discussed the (1)
16 increasing need for better wireless infrastructure in the City of Long Beach, (2) photo depictions
17 of the existing light pole and proposed WTF, (3) alternative locations for the proposed WTF that
18 were evaluated by Applicant, and (4) health and safety key facts regarding wireless RF
19 technology. A copy of said presentation was submitted by Applicant in electronic format via
20 email to all interested parties subsequent to the appeal hearing.
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23 At the conclusion of Applicant's presentation and public comments, this hearing officer
24 closed the evidentiary portion of the appeal hearing.

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1 **VII. DISCUSSION**

2 **1. Violation of LBMC §§ 15.34.030.B.1.b.(i) and 2.63.040(E)**

3 “The [PWD] shall require an applicant for a Wireless Right-of-Way Facility Permit to
4 demonstrate to the satisfaction of the [PWD] that . . . [t]he applicant has obtained all
5 appropriate permits . . . from the [PWD], together with all other applicable permits and
6 approvals from the City and other governmental agencies (e.g. . . . approvals and permits
7 required under the City’s cultural heritage procedures (Chapter 2.63)).” LBMC §
8 15.34.030.B.1.b.(i). “The CHC shall have the following powers and duties . . . to review and
9 comment for advisory purposes only upon the conduct of land use, housing, redevelopment,
10 public works and other types of planning and programs undertaken by any agency or
11 department of the City, County, State or nation, as they relate to the cultural heritage of the
12 City.” LBMC § 2.63.040.(E). In relevant parts, LBMC also provides that a group of cultural
13 resources qualify for designation as a Landmark District if it retains integrity as a whole.
14 LBMC § 2.63.050. In addition, “[n]o person owning, renting or occupying property that has
15 been designated a Landmark or situated in a Landmark District, shall make any modification to
16 such property unless a certificate of appropriateness has been issued authorizing such
17 modification . . . [a]ll modifications made to Landmarks or properties within Landmark
18 Districts require a certificate of appropriateness whether or not the alteration, demolition,
19 removal or construction of such property requires a City permit.” LBMC § 2.63.080.A.

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24 The Parties do not dispute that the location of the proposed WTF installation is in a
25 historic district. On July 6, 1982, the City of Long Beach designated the Carroll Park
26 neighborhood as a historic district (*See* Ordinance No. C-5847, as amended by Ordinance No. C-
27 6761, attached to Appellants’ Final Brief as Exhibits A and B, respectively). Appellants argue
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1 that Ordinance No. C-5847, as amended by Ordinance No. C-6761 (hereinafter referred to
2 collectively as “Carroll Park Historic Ordinance”) include all areas within the stated boundaries,
3 and that there were no exclusions indicated on the boundary maps, except for two properties that
4 were later included when they were brought back into compliance. Therefore, Appellants
5 contend, all public areas in Carroll Park were included in the designated boundaries,⁵ and that
6 Applicant should have obtained the CHC’s review and approval, and applied for a Certificate of
7 Appropriateness pursuant to LBMC §§ 2.63.040.(E) and 2.63.050. Accordingly, because
8 Applicant has not obtained all appropriate approvals and permits required under the City’s
9 cultural heritage procedures, Appellants argue that the City should not have approved the
10 Application pursuant to LBMC 15.34.030.B.1.b.(i).
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13 The City, on the other hand, argues that the Carroll Park Historic Ordinance and its
14 subject relates only to the privately held real property—the homes—within the Carroll Park area.
15 This is because the Carroll Park Historic Ordinance refers to homes/properties and makes
16 specific reference to the architectural style of the homes, provides specific guidance for
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20 ⁵ In support of Appellants’ contention that public areas were not excluded in the
21 designated boundaries of Carroll Park Historic District, Appellants argue it was never the intent
22 of the signers of Ordinance No. C-6761 that public areas were to be excluded from the historic
23 landmark designation. In support, Appellants attached as Exhibit C to Appellants’ Final Brief
24 the declaration of Evan Anderson Braude, Esq., a resident at nearby 358 Carroll Park East and
25 former Long Beach City Councilmember who voted in favor of certifying Ordinance No. C-
26 6761. Mr. Braude stated in his declaration that during the adoption of Ordinance No. C-6761 on
27 July 27, 1990, it was his understanding that there was no intention that public rights-of-way be
28 excluded from the historic designation of Carroll Park neighborhood. Insofar as Mr. Braude’s
declaration was submitted after the closing of evidentiary portion of the appeal hearing, this
hearing officer may not admit said declaration into evidence and may only consider Mr.
Braude’s declaration as public comment.

1 evaluating changes to the homes, and has specific guidelines on issues such as architecture,
2 roofing, windows, room additions, landscape changes, fencing.

3 In addition, the City contends that Appellants' assertion runs contrary to the plain
4 language of the LBMC § 2.63.080 and the Carroll Park Historic Ordinance for two reasons. First,
5 the legislative intent of the Long Beach City Council at the time the ordinance was adopted did
6 not include a prohibition of any modifications to the light poles because there is no evidence that
7 the Long Beach City Council intended light poles in the public right of way to be part of the
8 Historic District. The City argues that light poles are not identified as contributing structures to
9 the historic district in the ordinance, and that light poles in the public rights-of-way are not
10 included in the relevant CHC ordinances regarding certificates of appropriateness that relates
11 solely to landmarks or properties within a landmark district. Second, the City Staff has
12 determined that the light pole is not a Landmark because it is not from the period of
13 significance—1898 to 1923—for the Carroll Park neighborhood. The light pole has been
14 modified throughout the years and it is not from the 1898-1923 period of significance, when the
15 homes were constructed in this neighborhood.

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19 Taking into consideration both Parties' assertions, the question remains whether the
20 proposed WTF is subject to the requirements of LBMC § 15.34.030.B.1.b.(i) vis-à-vis LBMC §
21 2.63.040(E). Although the City correctly states that the Carroll Park Historic Ordinance makes
22 specific references to homes/properties and architectural styles of those homes, the Carroll Park
23 Historic Ordinance nonetheless identifies those private homes/properties within the district only
24 as significant examples of recognized architectural styles (*See* Ordinance No. C-5847, page 1,
25 line 28 through page 2, line 1) and does not limit the historic designation of the area to those
26 private homes/properties. It is also stated in the Carroll Park Historic Ordinance that the
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1 boundaries of the Carroll Park Historic Landmark District are shown as the entire plat of said
2 district attached to and incorporated therein (*See* Ordinance No. C-5847, as amended by
3 Ordinance No. C-6761, attached to Appellants’ Final Brief as Exhibits A and B, respectively).
4 Nowhere in the Carroll Park Historic Ordinance states that public areas be excluded from the
5 designated boundaries. In fact, the Carroll Park Historic Ordinance specifically states that the
6 guidelines contained therein are an aid to *public* and property owners—which only assumes that
7 *public* properties are subject to the regulations of the Carroll Park Historic Ordinance (*See*
8 Ordinance No. 5847, page 3, line 12). Having established that public properties within the
9 Carroll Park neighborhood are not excluded from the boundaries of the Carroll Park Historic
10 Landmark District, the question then turns to whether the proposed WTF is a *structure* that is
11 subject to the guidelines for new construction, and for rehabilitation or alteration of existing
12 structures within the Carroll Park Historic Landmark District (*See* Ordinance No. 5847, page 3,
13 lines 14-15). Taking into account the plain language of the Carroll Park Historic Ordinance and
14 the relevant sections of LBMC §§15.34 and 2.63, the answer is no. The guidelines enumerated in
15 the Carroll Park Historic Ordinance pertain to *buildings* of all occupancy and construction types
16 . . . and to site development, landscaping, and other details. (*See* Ordinance No. 5847, page 3,
17 lines 15-21). The Carroll Park Historic Ordinance provides very specific items needing a
18 Certificate of Appropriateness from the CHC in order to comply with the Carroll Park Historic
19 Ordinance, the list of which does not include light poles. (*See* Ordinance No. 5847, page 4, lines
20 2-28 through page 5, lines 1-10). Furthermore, nothing in the enumerated list of items even
21 resembles light poles or structures similar to the proposed WTF. Without specific language in the
22 Carroll Park Historic Ordinance stating that light poles or structures similar to the proposed WTF
23 are subject to the guidelines of the ordinance and require a Certificate of Appropriateness from
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1 the CHC, this hearing officer cannot find that the Applicant has not complied with the
2 requirements of LBMC §§ 2.63.040(E) and 2.63.080 by not obtaining a Certificate of
3 Appropriateness from the CHC.⁶ The City, therefore, is not in violation of the LBMC §
4 15.34.030.B.1.b.(i) by not requiring the Applicant to obtain the approvals and permits required
5 under the City’s cultural heritage procedures under LBMC § 2.63.

7 **2. Violation of LBMC § 15.34.030.B.1.b.(iii) re: CEQA requirements**

8 LBMC § 15.34.030.B.1.b.(iii) provides that the PWD shall require an applicant for a
9 Wireless Right-of-Way Facility Permit to demonstrate to the satisfaction of the PWD that the
10 applicant has obtained any approvals that *may* be required under the CEQA (California Public
11 Resources Code § 21000 et. seq.) to construct, install, and maintain the proposed wireless
12 telecommunications facility. The City claims that the proposed WTF falls under a categorical
13 exemption per CEQA §§ 15301-15303 (*See* email from Daniel Ramirez to Appellants on
14 November 23, 2020 attached to Appellants’ January 11, 2021 Brief at Exhibit E and incorporated
15 therein). In response to the City’s claim that the proposed WTF is categorically exempt under
16 CEQA, Appellants’ assert that the City erroneously found that the exception to CEQA referred to
17 a specific impact on a *historic structure* which the City identified as the light pole on which the
18 5G equipment would be attached. However, as Appellants assert, the exception to CEQA refers
19 to a specific impact on a *historical resource*. The Carroll Park Historic Landmark District meets
20 the very definition of “historical resource” in its totality and the criteria required to be considered
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25 ⁶ Although both Appellants and the City asserted their respective arguments regarding the
26 legislative intent of the Long Beach City Council when it passed the Carroll Park Historic
27 Ordinance, neither party submitted relevant evidence pertaining to the legislative history of the
28 ordinance. Accordingly, this hearing officer may not assume any asserted legislative intent and
may only look to the plain language of the ordinance.

1 historically significant. Therefore, Appellants contend, the *exception* to the CEQA for a
2 *historical resource* (not a historic structure) should have been applied.

3 Section 21084 of the Public Resources Code (PRC) requires the guidelines for
4 implementation of the CEQA to include a list of classes of projects which have been determined
5 to not to have a significant effect on the environment and which shall, therefore, be exempt from
6 the provisions of CEQA. 14 California Code of Regulations (CCR) § 15300 et. seq. In addition,
7 Section 21080 of the PRC exempts from the application of CEQA those projects over which
8 public agencies exercise only ministerial authority. 14 CCR § 15300.1. Since ministerial projects
9 are already exempt, Categorical Exemptions should be applied only where a project is not
10 ministerial under a public agency's statutes and ordinances. Id. “Ministerial” describes a
11 governmental decision involving little or no personal judgment by the public official as to the
12 wisdom or manner of carrying out the project. 14 CCR § 15369. The public official merely
13 applies the law to the facts as presented but uses no special discretion or judgment in reaching a
14 decision. Id. A ministerial decision involves only the use of fixed standards or objective
15 measurements, and the public official cannot use personal, subjective judgment in deciding
16 whether or how the project should be carried out. Id.

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20 On February 15, 2018, the Long Beach City Planning Commission adopted Negative
21 Declaration ND-11-17 and approved a Zoning Code Amendment (ACA17-008) and Local
22 Coastal Program Amendment (LCPA 17-001) to remove from Title 21 of the Long Beach
23 Municipal Code (LBMC) those provisions that relate to the regulations of WTFs in the public
24 right-of-way (ROW). (*See* Letter dated March 13, 2018 considered at the April 17, 2018 meeting
25 to Long Beach City Council with Recommendation re: Adoption of Municipal Code Governing
26 Wireless Telecommunications Facilities in the Public Right-of-Way, at pages 240-384 of City’s
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1 Authorities in Support of Brief in Opposition to Appeal). The regulation of WTFs in the public
2 ROW was to be transferred to Title 15 of the LBMC and placed under the jurisdiction of the
3 PWD, which will review all applications related to the installation of such facilities in the public
4 ROW. Id. The proposed Ordinance amending Chapter 21.56 (WTFs) and Title 15 (Public
5 Utilities) of the LBMC will establish comprehensive regulations for small cells in the ROW, and
6 will create a streamlined, uniform review process based on the best practices of several other
7 jurisdictions at the forefront of WTF regulation. Id. The proposed Ordinance included new
8 standards for location, size, intensity, and aesthetics of wireless small cells. Id. Sites meeting the
9 stricter development and location standards would become eligible for *ministerial* (by-right)
10 approvals. Id. The revised regulations would change the permitting process for wireless sites in
11 the right-of-way from a quasi-discretionary administrative permitting process to a *ministerial*
12 permitting process in most cases. (See Negative Declaration attached to the March 18, 2018
13 letter). Accordingly, On May 1, 2018, the City approved the amendments and adopted LBMC
14 §15.34, Wireless Telecommunications Facilities in the Public Rights-Of-Way. Consequently,
15 under the new Telecom Ordinance, the permitting process for WTFs in the public ROW became
16 a *by-right/ministerial* process carried out by the staff of the PWD in most cases. In certain other
17 cases, where a WTF is proposed in a “protected location,” the determination of approval or
18 denial by the PWD would be appealable to the City Council.

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22 As a result of the amendments to LBMC 21.565 and Title 15 of the LBMC, and the
23 adoption of LBMC 15.34, the permitting process for WTFs in public rights-of-way became
24 *ministerial*. Accordingly, pursuant to 14 CCR § 15300.1, Section 21080 of the PRC exempts
25 from the application of CEQA the ministerial permitting process for the proposed WTF.
26 Therefore, the City is not in violation of LBMC § 15.34.030.B.1.b.(iii) by not requiring the
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1 Applicant to obtain any approvals that *may* be required under the CEQA to construct, install,
2 and maintain the proposed WTF.

3 **3. Violation of LBMC § 15.34.030.B.1.b.(vi).6.(vi)**

4 LBMC § 15.34.030.B.1.b.(vi)6(vi) provides that “[f]acilities shall be designed to be as
5 visually unobtrusive as possible . . . and shall be sited to avoid or minimize obstruction of views
6 from public vantage points and otherwise minimize the negative aesthetic impacts of the
7 public right-of-way.” Appellants contend that for the proposed WTF in this case, the City
8 evaluated its aesthetic impacts and cultural resource impacts as it relates to a *structure* (i.e., the
9 light pole) instead of the *historical resource* (the Carroll Park Historic Landmark District),
10 resulting in the erroneous conclusion that there would be “no impact” or a “less than significant”
11 impact. Consequently no effort was made to site the Proposed Facility to minimize the negative
12 aesthetic impacts. Therefore, because the City failed to properly evaluate the negative aesthetic
13 impacts of the Proposed WTF on the historical resource (The Carroll Park Historic Landmark
14 District), Appellants argue that it failed to site the Proposed WTF to minimize the negative
15 aesthetic impacts on the historic District and is therefore in violation of the LBMC. However,
16 Appellants submitted no evidentiary support regarding the basis for the City’s evaluation of the
17 proposed WTF’s negative aesthetic impacts and only assumes that the City’s basis for its
18 evaluation resulted in the erroneous conclusion that there would be “no impact” or a “less than
19 significant” impact. The only evidentiary support for Appellants’ argument regarding negative
20 aesthetic impacts are sections taken from the Negative Declaration prepared by the City of Long
21 Beach Department of Development Services in 2018 as supporting declaration to the proposed
22 amendments to the LBMC that has no direct correlation to the City’s evaluation of the proposed
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1 WTF. Without more, this hearing officer has no basis to determine that the City violated LBMC
2 § 15.34.030.B.1.b.(vi)6(vi).

3 **VIII. RECOMMENDATION**

4 Appellants are credible witnesses. This hearing officer has no reason to doubt the
5 veracity and sincerity of Appellants' statements in their appeal letter, appeal briefs, or during
6 the formal hearing. However, inasmuch as Appellants' concerns and grievances warrant
7 serious consideration and notwithstanding their relevant legal arguments, Appellants have
8 otherwise not shown by a preponderance of the evidence that the appeal be granted and the
9 permit be denied. Both the City and Applicant (as an interested party) submitted a
10 comprehensive package in opposition to the appeal that included the City's brief and
11 supporting legal authorities and relevant evidence. The City's evidence included all the
12 materials and documentation that the Applicant submitted to the City as part of the application
13 process. After two (2) subsequent rounds of plan review and revisions, the City determined that
14 the Applicant's proposed WTF met all the applicable requirements and standards set forth in
15 the LBMC 15.34, and approved the permit application accordingly. As stated above, this
16 hearing officer is bound by the provisions of the LBMC 15.34 and other relevant statutes and
17 regulations, and cannot look elsewhere in making its determination. Accordingly, this hearing
18 officer has found nothing on the record by a preponderance of the evidence to conclude that the
19 Applicant's permit for the proposed WTF was granted in violation of LBMC 15.34.
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24 Based on the foregoing, this hearing officer hereby recommends that Appellants'
25 appeal be denied and that Applicant's permit for the proposed WTF be upheld.

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Dated this 4th day of February 2021

/s/ JONATHAN C. NAVARRO, ESQ.

Administrative Hearing Officer

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HEARING OFFICER'S FINDINGS AND RECOMMENDATION