CITY OF OAKLAND

AGENDA REPORT

TO: HENRY L. GARDNER
INTERIM CITY ADMINISTRATOR

FROM: Rachel Flynn

SUBJECT: 5816-5826 Mendoza Drive Utility Pole Telecommunications Project Appeal

DATE: October 23, 2014

City Administrator Approval

Date 11-5-14

COUNCIL DISTRICT: 4

RECOMMENDATION

Planning staff recommends that the City Council conduct a public hearing and upon conclusion adopt:

A Resolution Upholding Appeal #A13115, Thereby Reversing the Decision of the City Planning Commission and Denying Regular Design Review to Attach a Telecommunications Facility to a Utility Pole Located in the Public Right-of-Way at 5816-5826 Mendoza Drive

Alternatively, should the Council wish to deny the Appeal and uphold the Regular Design Review application, the City Council may, upon conclusion of a public hearing, adopt:

A Resolution Denying Appeal #A13115 and Upholding the Decision of the City Planning Commission to Approve Regular Design Review To Attach A Telecommunications Facility To A Utility Pole Located in the Public Right-of-Way At 5816-5826 Mendoza Drive

EXECUTIVE SUMMARY

On April 3, 2013, the Planning Commission held a public hearing and approved an application submitted by Mr. Matthew Yergovich on behalf of AT&T ("AT&T") for a Regular Design Review with additional telecommunications findings to attach an extension and two antennas to an existing wooden ulility pole, and to mount equipment to the side of the utility pole. On April 15, 2013, the appellant Mr. Gerald C. Sterns of Sterns & Walker filed a timely Appeal of the Planning Commission's decision (#A13115) on behalf of a neighborhood group, including 5809, 5816, 5817, 5825, and 5826 Mendoza Drive, 5990 Colton Drive, and 2 Cabrillo Place (collectively, Appellants). On July 29, 2014 the City Council reviewed the appeal at a duly

noticed public hearing and directed staff to return with a Resolution to approve the Appeal and overturn the Planning Commission's decision.

OUTCOME

Approval of the Appeal would result in overturning the Planning Commission's approval of the Regular Design Review application to attach a telecommunications facility to a utility pole located in the public right-of-way at 5816-5826 Mendoza Drive. The zoning entitlements would be effectively denied.

Alternatively, denial of the Appeal would uphold the Planning Commission's decision of April 3, 2013, and approve the Regular Design Review application for the proposed telecommunications facility, and the Applicant would be free to go forward with other steps necessary to begin implementation.

BACKGROUND

Local Government Zoning Authority

In 2009, a State Supreme Court decision provided Oakland with design review discretion over telecommunications projects when located in the public right-of-way. Prior to this decision, these types of projects were not subject to Zoning permits. Telecommunications projects located in the public right-of-way are also distinct from those located on private property, which have always been subject to design review as well as a conditional use permit and possible variances in certain situations.

In addition, the Telecommunications Act of 1996 prohibits any local zoning regulations purporting to regulate the placement, construction and modification of personal wireless service facilities on the basis, either directly or indirectly, of the environmental effects of radio frequency emissions (RF) of such facilities, which otherwise comply with FCC standards in this regard. This means that local authorities may not regulate the siting or construction of personal wireless facilities based on RF standards that are more stringent than those promulgated by the FCC.

Application

On January 28, 2013, a representative for AT&T submitted a Regular Design Review application to the Bureau of Planning to construct a telecommunications facility on an existing utility pole located in the public right-of-way. The proposal was to install an 8'-10" extension with two 2'-2" antennas to a 38'-8" wooden Joint Pole Authority (JPA) utility pole owned by PG&E and

located in the City public right-of-way at 5816 and 5826 Mendoza Drive, and to mount equipment to the side of the pole between 11'-3" and 22'-2" in height.

Application Review and Decision

The site is a section of public right-of-way along Mendoza Drive containing a 38'-8" wooden utility pole. This section of road contains no sidewalk. The surrounding area consists of a hillside residential neighborhood with single-family homes. To the rear of the site are single family homes on upslope lots.

The proposal was to attach telecommunications antennas and an extension on top of the wooden utility pole and install associated equipment to enhance wireless telecommunications services (i.e., cellular telephone and wireless data). The extension on top of the utility pole, which is required for antenna clearance above overhead utility lines, would result in a top height of 48'-7". The antennas would generally maintain the shape of the pole, and the pole mounted equipment cabinet would be contained in a singular shroud. Both the equipment cabinet and antennas would be painted matte (non-reflective) brown to match the color and finish of the wooden pole.

In consideration of the proposal, but without having access to vantage points on private property during a site visit, staff recommended Planning Commission approval of this application.

The City publicly noticed the project for seventeen (17) days for the Planning Commission hearing of April 3, 2013 Staff did not receive evidence of potential view obstructions during this period. At the hearing on April 3, 2013, no evidence was presented to indicate a view obstruction, and the Planning Commission approved (by a vote of 6 to 0) the requested planning permit for the Project. On April 15, 2013, the appellants filed an appeal on behalf of numerous adjacent residents (***Attachment A***) The bases of the appeal were: (1) the public notification process was flawed, thereby depriving neigirbors of due process and constituting a taking; (2) a view obstruction was not properly identified and relevant City policies were not adhered to, and (3) emissions/environmental concerns were not adequately addressed. On September 23, 2013, the Appellants submitted additional materials (numerous exhibits) to the City that are not attached to this Appeal given they were not submitted within the 10-day legal Appeal period.

ANALYSIS

The Planning Code indicates that for an appeal of a Planning Commission decision on a Regular Design Review:

The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Commission or wherein its decision is not supported by the evidence in the record (OMC Sec. 17.132.070(A).)

In considering the appeal, the Council shall determine whether the proposal conforms to the applicable design review criteria, and may approve or disapprove the proposal or require such changes therein or impose such reasonable conditions of approval as are in its judgment necessary to ensure conformity to said criteria (OMC Sec. 17.136.090.)

On July 29, 2014, the City Council opened the public hearing, and heard testimony from the Applicant, the Appellants, and members of the public. The Council closed the public hearing, discussed the appeal, and directed staff to return with a resolution approving the Appeal, overturning the Planning Commission's approval of the project, and denying the proposed telecommunications facility. Councilmember Schaaf stated that the proposal did not meet the required findings (specifically, Finding No. 2) under Regular Design Review Criteria (OMC Sec. 17.136.040(B)) as set forth in the attached Findings for Denial. She also stated that AT&T asserted but did not adequately demonstrate that a "significant gap" in coverage exists, or if it does, that the proposed location is the "least intrusive way" to address this gap. Furthermore, the proposal would not harmonize with the surrounding area; the proposal is not compatible with the scenic and residential character and appearance in the surrounding neighborhood, as at least two residences have significant views from their decks that will be negatively impacted.

POLICY ALTERNATIVES

On July 29, 2014, the City Council directed staff to return with a Resolution overturning the Planning Commission approval of the project and denying the application. In the interim, the applicant installed story poles with staff's permission because the applicant wished to provide an opportunity to Councilmembers, staff, and the public to view a representation of the proposed height. Staff conducted a site visit to view the story poles and concluded that the proposal remains supportable. Attached to this staff report are photographs of the story poles, as well as the requested resolution overturning the Planning Commission approval and denying the application.

PUBLIC OUTREACH/INTEREST

The appeal was publicly noticed and discussed with the appellants by staff.

COORDINATION

This agenda report and legislation have been reviewed by the Office of the City Attorney and by the Budget Office.

COST SUMMARY/IMPLICATIONS

This appeal action would have no fiscal impact.

SUSTAINABLE OPPORTUNITIES

Economic: The Project Denial would have no economic impact.

Environmental. The Project Denial would not have an adverse effect on the environment.

Social Equity: The Project Denial would not affect social equity.

CEQA

Should the Council uphold the Appeal and thereby reverse the Planning Commission's approval, CEQA Guidelines Section 15270 (projects which are disapproved) would apply.

Should the Council deny the Appeal and uphold the Planning Commission's approval, the proposed telecommunications facilities are exempt from CEQA under CEQA Guidelines ssections 15301 (minor alterations), 15183 (projects consistent with a community plan, general plan, or zoning), and 15303 (small facilities or structures, installation of small new equipment and facilities in small structures). None of the exceptions to the exemptions in CEQA Guidelines Section 15300.2 are triggered by the proposed telecommunication facilities. Specifically, a) the location is not designated hazardous or critical; b) the telecommunications facilities do not have a cumulative impact because other telecommunications facilities are dispersed from each other and not in the same places such that any visual or noise impacts do not cumulate; c) utility facilities are common in the public right-of-way and are not an unusual circumstance; d) the area is not a scenic highway; e) the area is not a hazardous waste site; and f) there is no change to a historical resource

For questions regarding this report, please contact Aubrey Rose AICP, Planner II, at (510) 238-2071 or arose@oaklandnet.com.

Respectfully submitted,

Rachel Flynn, Director
Planning and Building Department

Reviewed by
Scott Miller, Zoning Manager

Prepared by:
Aubrey Rose AICP, Planner II

Attachments:

A. ***Appeal #A13115, filed April 15, 2013***

B. ***April 3, 2013 Planning Commission Staff Report with Attachments***

C. ***Correspondence by AT&T dated May 21, 2014***

D. ***Photographs of story poles***

Item: _____
City Council
November 18, 2014

PTS100-01 UPDATE/QUERY PROJECT INFORMATION 4/15/13 14:27:31
Next Option: 101

Applic#* A13115 Type: RELATED TO APPLICATION#: DR13020 Tract
Date Filed: 04/15/13 Complete By: 05/15/13 Disposition:

	NUMBER	STREET NAME	SUFFIX*	SUITE	ASSESSOR PARCEL#
Site addr: 1)	5826	MENDOZA	DR		048F-7970-028-00
2)					
3)					

Zoning* RH-4 GP Use Prcl Cond: X Cond Aprvl: Viol:
Proj Descr: APPEAL: approval of DR13020 (Telecom on JPA pole)
Planning Commission 4/3/13

Envirn Rev: Exempt? (Y/N): Y Sect: 15268 EX ER Applic#:
Track: Lic# Phone# Applicant
Owner: DUDLEY MINDA
Contractor:
Arch/Engr:
Agent: GERALD STERNS/STERNS & WALKER (510)267-0500 X
Applicant Addr: 825 WASHINGTON ST #305 No Fee:
City/State: OAKLAND, CA Zip: 94607
Other Related Applic#s: CM13016 DR13023 DR13024 DR13027 DR13029
DR13031 DR13034 DR13035 DR13036 DR13037
F3=Ext F5=Chg F6=Add F7=Fwd F8=Bck F11=Fnd F12=Prv F23=Dsc F24=Com

ATTACHMENT A

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PTS113-CPD          UPDATE/QUERY APPLICATION FEE RECORD        4/15/13 14:27:42
                      RELATED TO APPLICATION#: DR13020        Next Option: 106
    Appl#: A13115___ Pmt#: 001 Disp:              Type:   Filed: 04/15/13
  Address:  5826   MENDOZA               DR Unit:       Parcel: 048F-7370-028-00
    Descr: APPEAL: approval of DR13020 (Telecom on JPA pole)
  Other Related Applic#s: CM13016    DR13023    DR13024    DR13027    DR13029
                          DR13031    DR13034    DR13035    DR13036    DR13037
Envirn Rev Determ: EX  Date: 04/15/13 Sect#: 15268          ER Appl#:
          Site Area Sq. Ft.:                      PUD-Prelim/Final (P/F):
     PUD Floor Area Sq. Ft.:                     Condo Conversion? (Y/N):
 S-11 Nbr of Dwelling Units:                      S-11 Map Review? (Y/N):
  Des Rev-New Constr? (Y/N):              Des Rev Value > $150,000? (Y/N):
       Nbr Subdivision Lots:              Invstg:        Nbr Trees Review:
Payment Type* FIL   APPL FILING PAYMENT (PLNG PERMITS)
   Applic    917.00    Exempt 262.00   Appeal             Eng-Svcs
  Notific              Special         Notific              Other
                        Tech    61.90  Rcd Mgt   112.01     Invstg
     Total  1,352.91  Effctv 04/15/13 Init ABR Paid          Rg     Rcpt
 NSF                                     Refunded           Amount
Dlnq   Notice
Comment:

F1=Hlp F3=Ext F5=Chg F6=Add F7=Fwd F8=Bck F9=Del F11=Fnd F12=Prv F24=Com
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Community and Economic Development Agency

CITY OF OAKLAND
APPEAL FORM
FOR DECISION TO PLANNING COMMISSION, CITY COUNCIL OR HEARING OFFICER

PROJECT INFORMATION

Case No. of Appealed Project: DR13020

Project Address of Appealed Project: ADJACENT TO 5826 Mendoza Drive, Oakland

Assigned Case Planner/City Staff: AUBREY ROSE

APPELLANT INFORMATION:

Printed Name: Sterns & Walker ** Phone Number: (510) 267-0500

Mailing Address: 825 Washington St #305 Alternate Contact Number:

City/Zip Code Oakland 94607 Representing: Neighborhood Group, including 5825,5826, 5817,5816,5809 Mendoza & others

Email: sterns@trial-law.com

** on behalf of neighborhood group

An appeal is hereby submitted on:

☐ **AN ADMINISTRATIVE DECISION (APPEALABLE TO THE CITY PLANNING COMMISSION OR HEARING OFFICER)**

YOU MUST INDICATE ALL THAT APPLY:

☒ Approving an application on an Administrative Decision
☐ Denying an application for an Administrative Decision
☐ Administrative Determination or Interpretation by the Zoning Administrator
☐ Other (please specify) _____

Please identify the specific Administrative Decision/Determination Upon Which Your Appeal is Based Pursuant to the Oakland Municipal and Planning Codes listed below:

☐ Administrative Determination or Interpretation (OPC Sec. 17.132.020)
☐ Determination of General Plan Conformity (OPC Sec. 17.01.080)
☒ Design Review (OPC Sec. 17 136.080)
☐ Small Project Design Review (OPC Sec. 17 136.130)
☐ Minor Conditional Use Permit (OPC Sec. 17.134.060)
☐ Minor Variance (OPC Sec. 17.148.060)
☐ Tentative Parcel Map (OMC Section 16.304.100)
☐ Certain Environmental Determinations (OPC Sec. 17.158.220)
☐ Creek Protection Permit (OMC Sec. 13.16.450)
☐ Creek Determination (OMC Sec. 13.16.460)
☐ City Planner's determination regarding a revocation hearing (OPC Sec. 17.152.080)
☐ Hearing Officer's revocation/impose or amend conditions (OPC Secs. 17.152.150 &/or 17.156.160)
☒ Other (please specify) Existing facilities (sec 15301) OMC 17.128.070 (B) · OMC.Sec. 17.136.040 (B)

(continued on reverse)

(Continued)

☐ **A DECISION OF THE CITY PLANNING COMMISSION (APPEALABLE TO THE CITY COUNCIL)** ☒ Granting an application to: **OR** ☐ Denying an application to:

YOU MUST INDICATE ALL THAT APPLY:

Pursuant to the Oakland Municipal and Planning Codes listed below:

- ☐ Major Conditional Use Permit (OPC Sec. 17.134.070)
- ☐ Major Variance (OPC Sec. 17 148 070)
- ☐ Design Review (OPC Sec. 17.136.090)
- ☐ Tentative Map (OMC Sec. 16.32.090)
- ☐ Planned Unit Development (OPC Sec 17.140.070)
- ☐ Environmental Impact Report Certification (OPC Sec. 17.158.220F)
- ☐ Rezoning, Landmark Designation, Development Control Map, Law Change (OPC Sec. 17.144.070)
- ☐ Revocation/impose or amend conditions (OPC Sec. 17.152.160)
- ☐ Revocation of Deemed Approved Status (OPC Sec. 17 156.170)
- ☒ Other (please specify) OMC Sec.17.136.040 (B); OMC Sec. 17.128.070 (B)

FOR ANY APPEAL: An appeal in accordance with the sections of the Oakland Municipal and Planning Codes listed above shall state specifically wherein it is claimed there was an error or abuse of discretion by the Zoning Administrator, other administrative decisionmaker or Commission (Advisory Agency) or wherein their/its decision is not supported by substantial evidence in the record, or in the case of Rezoning, Landmark Designation, Development Control Map, or Law Change by the Commission, shall state specifically wherein it is claimed the Commission erred in its decision.

You must raise each and every issue you wish to appeal on this Appeal Form (or attached additional sheets). Failure to raise each and every issue you wish to challenge/appeal on this Appeal Form (or attached additional sheets), and provide supporting documentation along with this Appeal Form, may preclude you from raising such issues during your appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented to the decision-maker prior to the close of the public hearing/comment period on the matter.

The appeal is based on the following: *(Attach additional sheets as needed.)*

This is an application on behalf of AT&T to install a communications (?) tower on top of an existing utility pole in a wooded residential area in Oakland. This was approved by the Planning Commission on 4 April 2013 over objections made by individual affected neighbors and a letter of objection

(see continuation sheets)

Supporting Evidence or Documents Attached. *(The appellant must submit all supporting evidence along with this Appeal Form,* however, the appeal will be limited evidence presented to the decision-maker prior to the close of the public hearing/comment period on the matter.

(Continued on reverse)

Attachment sheet 1 to Appeal from Planning Commission decision 4 April 2013

Sent on behalf of them collectively (see letter of Sterns & Walker, dated 29 March 2013 attached). This appeal is based on all grounds set forth therein, as well as each and all of the following:

1. The Commission did not afford potentially affected neighbors and property owners fair, adequate or timely notice of the proposed installation by ATT of the tower in question and its potential impact on them, nor of the Hearing it had scheduled with respect thereto, thus violating fundamental rights of due process and opportunity to be heard;
2. It further failed to afford ample notice or follow required procedures in that allowing the installation and operation of the proposed tower could, among other things, amount to a "Taking" of private property within the meaning of the federal and state constitutions , without due process nor fair compensation therefore;
3. The manner of notice provided by the Commission of the intended installation and Hearing was neither timely nor legal, in that the notices posted on utility poles and other means in the area were incorrectly dated and inaccurate, thus further impairing the rights of appellants to fair and reasonable notice and due process;
4. No adequate inquiry or study was made or required of ATT or others by the Commission into the issue of potential impact of the project of the view corridor rights of some of the neighbors in the area, thus potentially violating their rights under City of Oakland Ordinance 15.52.040 and/or other laws regarding view corridors;
5. No adequate inquiry of study was made or required of ATT or others by the Commission as to the potential environmental and health and safety issues possible or probable in the operation of these towers, particularly with respect to electro-magnetic activity, dissemination of potential harmful microwave or other radiation and the impacts, cumulative or otherwise of same. No environmental impact report or anything even close was undertaken, nor apparently even considered.
6. For reasons of its own, and we submit not impelled by any pressing economic, civic or governmental need, the Commission allowed and sanctioned the whole process of approval and installation of these towers to be put on a literal "fast track," to effectively deprive those potentially effected of any reasonable opportunity to investigate, locate and marshal evidence relevant to all these issues and to respond thereto, thus futher denying adequate and reasonsonable notice and futher denying doe process.
7. The Commission violated its own internal rules and guidelines as well as the Oakland General Plan regarding applications and hearings of this kind, specifically (1) in reaching conclusions that "the site (of proposed tower) does not directly front a residence, a significant view from a home or a scenic vista;" (2) making the unwarranted assumption that since "The General Plan is silent on telecommunications activities (which are classified as Essential Service-Civic Activity under the Planning Code)), that somehow that silence or omission translates into a mandate to allow something (this network of towers emitting who knows what and in what amounts) that

probably did not even exist at the of the writing of the General Plan. The rush to judgment has not left appellants enough time to specifically research this issue.

Thus, the Commission findings further conclude with the observation: "The proposal is meant to enhance service to residents from a highly effective location with a relatively unobtrusive design." There is no evidence and no basis in the record for this conclusion, and notably, no mention whatsoever of environmental, potential cumulative radiation,micro-wave or similar, or view issues

8. Insofar as the Commission may be vested with discretion in respect to the evaluation of these matters, for all the above reasons, we respectfully submit, this discretion, at least in part, was abused.
9. Appellants further respectfully request their appeal to be based on any and all other facts, records and evidence that may now exist, whether in the records of the City of Oakland, ATT or otherwise, but are currently unknown to appellants.

Case No. DR 13020

Attachment sheet to Appeal from Planning Commission decision 4 April 2013

Addendum list of participating residents:

5809 Mendoza – Aiyer

5816 Mendoza – Ducker

5817 Mendoza – Sterns

5825 Mendoza – Rob

5826 Mendoza - Dudley

5990 Colton - Wright

2 Cabrillo Place

(Continued)

STERNS & WALKER by

Signature of Appellant or Representative of Appealing Organization

15 APRIL 2013

Date

Below For Staff Use Only

Date/Time Received Stamp Below:

Cashier's Receipt Stamp Below:

Law Offices of
Sterns & Walker

Toll Free (800) 543-2304
email sterns@trial-law com
websites www trial-law com
www airlawyer net

Please Reply to Oakland

Ratto Building,Old Oakland
825 Washington St , Suite 305
Oakland, California 94607
(510) 267-0500 tel
(510) 267-0506 fax

580 California St , Suite 500
San Francisco, California 94104
(415) 255-4700

March 29, 2013

Zoning Division of Planning, Building and Neighborhood Preservation
City of Oakland Planning and Zoning Division
Frank H. Ogawa Plaza, 2nd Floor
Oakland CA 94612-2031

Re: Notice of Hearing April 3, 2013 re ATT request to install towers on existing utility poles, adjacent to 5826 Mendoza Drive, Oakland. Reference Case file No. DR 13020; adjacent 048F-7370-028-00; utility pole 5 PA

Dear Sirs:

This letter is written to object to the approval of this project at this time by Planning and Zoning, or whoever else makes the final decision on the part of the City. My residence is at 5817 Mendoza, apparently just across the street, or otherwise near to the designated pole. Since several notices were posted in various places, we cannot discern exactly which pole or poles are involved, but it or they most certainly appear to be in close proximity to a number of houses, including mine, and will be essentially directly overhead.

The bases of the objections, as we are able to articulate them at this time with the limited information that we have, are:

1. The posting date is not correct and therefore their validity is in question. I believe that all such notices of this type (tacked to trees, poles, whatever) need to be properly dated. This notice indicates it was posted on April 15, 2013, which, of course is not possible, since we have not reached April yet. Further, such date would after the hearing and after objection and appeal time has run, and render its provisions and instructions moot.
2. Even assuming the notice is valid even with the incorrect date, we have determined that it has to have been posted no longer than about one week

ago, which, considering the nearness of the hearing date and the very short deadlines allowed for objection, comment and/or appeal, which in turn are said to be a condition precedent for a later court challenge of any of what is going, I would submit this far from a reasonable notice considering the content of the notice, and thus violates at a minimum due process, and perhaps other rules and regulations as well.

3. There is insufficient time to make any meaningful research concerning what appear to be some potential serious questions about what exactly ATT is planning to do with these extended towers. The information we have been able to obtain so far makes references to CEQA, notably sections 15301 and 15383, but both a very detailed, and the brief review we have been able to make reveals no reference to microwave towers or cell phone towers, if indeed, these are what are being proposed. The website reference to a supposed information cite for CEQA questions was answered with a brief E mail response: "we cannot give you any legal advice."
4. There is a suggestion that some sort of authority, state or federal has preapproved all this, and/or these towers will be exempt from any sort of Environmental Review. If this is so, it does not sound all good. For instance, what sort of emissions, radiation, microwaves, and how much will be going to or emanating from these towers? What studies have been done on this? How will such emissions be measured or monitored and who will do this? What is the risk to people in the houses directly adjacent and under these towers, and how would that be measured. Why is it necessary to place such towers directly in the middle of what is an otherwise, tranquil, wooded, residential part of the city? We don't even have sidewalks, and people seem to prefer it that way.
5. This seeming rush to judgment, to push this through on minimum notice and very little information reminds us of other similar expedited situations, where unknown devices dealing unknown amounts of radiation were rushed into service – as in with the original backscatter devices pushed into the airport security check points, and later withdrawn hastily after a public backlash.

It seems very clear that more time has to be afforded all who might be affected by these towers to find out what is going on and what indeed are the real risks. If there are none, and this can be substantiated by ATT with a credible EIR, then there may be no problem, other than the esthetics, which of course is another issue.

We ask the Commission to table this whole matter for at least ninety (90) days to allow these issues to be properly investigated and researched. This is certainly reasonable. Whatever area of Oakland is supposed to be benefited by this addition to the electrontic clutter we all share these days, seems to have done all right for some time with whatever existing facilities ATT is using.

I regret that I will not be able to attend or participate in the scheduled hearing. I have previously set legal commitment in southern California, but I ask that this letter be made part of the record. As requested, a stamped return envelope is enclosed for any decision or other material you wish to send back.

Thank you for your kind attention.

Respectfully yours,

Gerald C. Sterns

Oakland City Planning Commission STAFF REPORT

Case File Number DR13020 **April 3, 2013**

Location:	**Utility pole in public right-of-way adjacent to: 5826 Mendoza Drive (see reverse for map)**
Assessor's Parcel Numbers:	**Adjacent to: 048F-7370-028-00**
Proposal:	To install an 8'-10" tall extension with two 2'-2" tall antennas (approx.) on top of a 38'-8" utility pole (proposed top height = 48'-7") and equipment pole-mounted between 11'-3" and 22'-2" in height **Pursuant to Federal and State law, City review for this application is essentially limited to design considerations only**
Applicant / Phone Number:	Matt Yergovich on behalf of Extenet (for: AT&T) (415) 596-3747
Owners:	City of Oakland (Public right-of-way); PG&E (utility pole)
Planning Permits Required:	Regular Design Review to attach a Telecommunications Facility to a Joint Pole Authority utility pole located within a Residential Zone
General Plan:	Hillside Residential
Zoning:	RH-4 Hillside Residential Zone
Environmental Determination:	Exempt, Section 15301 of the State CEQA Guidelines: Existing Facilities; Section 15183 of the State CEQA Guidelines: Project consistent with a Community Plan, General Plan or Zoning
Historic Status:	None
Service Delivery District:	2
City Council District:	4
Date Filed:	January 28, 2013
Staff Recommendation:	Approve with conditions
Finality of Decision:	*Appealable to City Council within 10 days*
For Further Information:	Contact case planner **Aubrey Rose, AICP, Planner II** at **(510) 238-2071** or arose@oaklandnet.com

SUMMARY

The applicant requests Planning Commission approval to install an extension with two antennas on top of a utility pole, with equipment attached to the side of the pole, for wireless telecommunications purposes. The project is subject to Regular Design Review as an attachment to a utility pole located in a residential zone. The Zoning Manager has referred the application to the Planning Commission for review.

Staff recommends approval of the requested permit, as conditioned, subject to the attached Findings and Conditions of Approval

ATTACHMENT B

CITY OF OAKLAND PLANNING COMMISSION

Case File: DR13020
Applicant: Matt Yergovich on behalf of Extenet (for: AT&T)
Address: Utility pole in public right-of-way adjacent to 5826 Mendoza Drive
Zone: RH-4

BACKGROUND

State case law (Sprint v. Palos Verdes Estates) has enabled the City to require Design Review for telecommunications facilities attached to existing utility poles located within the right-of-way. The Planning & Zoning Division has determined that such Design Reviews be decided at the equivalent level as telecommunications projects located on private property located in the same zone.

Limitations on Local Government Zoning Authority under the Telecommunications Act of 1996

Section 704 of the Telecommunications Act of 1996 (TCA) provides federal standards for the siting of "Personal Wireless Services Facilities " "Personal Wireless Services" include all commercial mobile services (including personal communications services (PCS), cellular radio mobile services, and paging); unlicensed wireless services, and common carrier wireless exchange access services Under Section 704, local zoning authority over personal wireless services is preserved such that the FCC is prevented from preempting local land use decisions, however, local government zoning decisions are still restricted by several provisions of federal law

Under Section 253 of the TCA, no state or local regulation or other legal requirement can prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

Further, Section 704 of the TCA imposes limitations on what local and state governments can do. Section 704 prohibits any state and local government action which unreasonably discriminates among personal wireless providers Local governments must ensure that its wireless ordinance does not contain requirements in the form of regulatory terms or fees which may have the "effect" of prohibiting the placement, construction, or modification of personal wireless services

Section 704 also preempts any local zoning regulation purporting to regulate the placement, construction and modification of personal wireless service facilities on the basis, either directly or indirectly, on the environmental effects of radio frequency emissions (RF) of such facilities, which otherwise comply with FCC standards in this regard See, 47 U S C 332(c)(7)(B)(iv) (1996). This means that local authorities may not regulate the siting or construction of personal wireless facilities based on RF standards that are more stringent than those promulgated by the FCC.

Section 704 mandates that local governments act upon personal wireless service facility siting applications to place, construct, or modify a facility within a reasonable time. 47 U.S.C.332(c)(7)(B)(ii). See FCC Shot Clock ruling setting forth "reasonable time" standards for applications deemed complete.

Section 704 also mandates that the FCC provide technical support to local governments in order to encourage them to make property, rights-of-way, and easements under their jurisdiction available for the placement of new spectrum-based telecommunications services. This proceeding is currently at the comment stage.

For more information on the FCC's jurisdiction in this area, contact Steve Markendorff, Chief of the Broadband Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, at (202) 418-0640 or e-mail "smarkend@fcc.gov"

The effect of the preceding section on this application are discussed in the Key Issues And Impacts section of this report

SITE DESCRIPTION

The site is a section of public right-of-way containing a wooden utility pole (38'-8" tall). The public right-of-way measures fifty feet and the pavement measures twenty six feet in width. The street does not contain sidewalks The surrounding area consists of a hillside residential neighborhood with single-family homes To the rear of the site is a steep upslope (greater than twenty percent, approximately thirty-five foot rise) and the rear of two adjacent two-story homes (5816 and 5826 Mendoza Drive). The homes are situated towards the center of the lots and accessed from an adjacent alley. Several mature trees are located between the homes and the utility pole. Based on the orientation of the homes, it does not appear from public right-of-way that the pole is located directly in any home's view corridor Across the street are homes on down slope lots Several homes in the area contain views

PROJECT DESCRIPTION

The proposal is to install an 8'-10" tall extension with two 2'-2" tall antennas (approx.) on top of a 38'-8" utility pole (proposed top height = 48'-7") and equipment mounted to the pole between 11'-3" and 22'-2" in height The antennas would be wider than the extension. The extension on top of the pole is required for antenna clearance above overhead utility lines. The purpose of the project would be to enhance wireless telecommunications (cellular telephones service).

GENERAL PLAN ANALYSIS

The site is located in a Hillside Residential area under the General Plan The intent of the Hillside Residential area is: *"to create, maintain, and enhance residential areas characterized by detached, single unit structures."* The General Plan is silent on telecommunications activities (which are classified as Essential Service Civic Activity under the Planning Code). The purpose of the proposal would be to enhance service to residents from a highly effective location with a relatively unobtrusive design. Staff finds the proposal to be in conformance with the General Plan.

ZONING ANALYSIS

The site is located within the RH-4 Hillside Residential Zone - 4. The intent of the RH-4 zone is: *"to create, maintain, and enhance areas for single-family dwellings on lots of 6,500 to 8,000 square feet and is typically appropriate in already developed areas of the Oakland Hills "*

As described in the Background section of this report, telecommunications facilities located on Joint Pole Authority (JPA) utility poles are subject to Design Review. Additional findings for Macro facilities apply to all JPA cases. Findings required to approve the project ensure the location and design are not obstructive and are concealed to the extent practicable. Authority for review and approval is to be equivalent to Zoning for private property. Therefore, the subject proposal requires Planning Commission review. The Planning Commission has approved cases that were located in front of trees and not residences, and has denied cases fronting residences with significant views where the proposal would create an obstruction Given advancing technologies, enhanced service at this location would assist users in the residential zone The antennas would generally maintain the shape of the JPA pole. The proposal meets the Telecommunications Regulations for Site Location Preferences for locating on City property on a quasi-public facility and a site alternatives analysis is not required A site design preference analysis and a satisfactory emissions (RF) report have been submitted. Staff finds the proposal to be consistent with the Planning Code

ENVIRONMENTAL DETERMINATION

The California Environmental Quality Act (CEQA) Guidelines categorically exempts specific types of projects from environmental review Section 15301 of the State CEQA Guidelines exempts projects involving " *the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use .*" The proposal to attach wireless telecommunications antennas and related equipment to an existing wooden utility pole meets this description. The project is therefore exempt from further Environmental Review.

KEY ISSUES AND IMPACTS

In addition to ensuring this type of request meets required legal findings, proposed wireless telecommunications facilities must meet specific development standards, and site location and design preferences, and possess a satisfactory radio frequency emissions report.

Project Site
Section 17 128 110 of the City of Oakland Telecommunication Regulations requires that wireless facilities shall generally be located on designated properties or facilities in the following order of preference:

A Co-located on an existing structure or facility with existing wireless antennas.
B. City owned properties or other public or quasi-public facilities
C Existing commercial or industrial structures in non-residential zones.
D. Existing commercial or industrial structures in residential zones.
E Other non-residential uses in residential zones.
F Residential uses in non-residential zones
G. Residential uses in residential zones

*Facilities locating on an A, B or C ranked preference do not require a site alternatives analysis.

Since the proposed project involves the attachment antennas on an existing structure, the proposed development meets the (B) located on an existing structure or facility, therefore a site alternatives analysis is not required.

Project Design
Section 17.128 120 of the City of Oakland Telecommunications Regulations indicates that new wireless facilities shall generally be designed in the following order of preference:

A Building or structure mounted antennas completely concealed from view
B. Building or structure mounted antennas set back from roof edge, not visible from public right-of way.
C. Building or structure mounted antennas below roof line (facade mount, pole mount) visible from public right-of-way, painted to match existing structure
D. Building or structure mounted antennas above roof line visible from public right of-way.
E Monopoles.
F Towers.

* Facilities designed to meet an A or B ranked preference do not require site design alternatives analysis. Facilities designed to meet a C through F ranked preference, inclusive, must submit a site design alternatives analysis as part of the required application materials. A site design alternatives analysis shall, at a minimum, consist of:

a Written evidence indicating why each such higher preference design alternative cannot be used Such evidence shall be in sufficient detail that independent verification could be obtained if required by the City of Oakland Zoning Manager Evidence should indicate if the reason an alternative was rejected was technical (e.g. incorrect height, interference from existing RF sources, inability to cover required area) or for other concerns (e g. inability to provide utilities, construction or structural impediments)

The project meets preference (D) since the antennas would be visible from the public right-of-way and a site design alternatives is therefore required A satisfactory report has been submitted and is attached to this report

Project Radio Frequency Emissions Standards

Section 17.128.130 of the City of Oakland Telecommunication Regulations require that the applicant submit the following verifications including requests for modifications to existing facilities:

a With the initial application, a RF emissions report, prepared by a licensed professional engineer or other expert, indicating that the proposed site will operate within the current acceptable thresholds as established by the Federal government or any such agency who may be subsequently authorized to establish such standards.
b Prior to commencement of construction, a RF emissions report indicating the baseline RF emissions condition at the proposed site.
c. Prior to final building permit sign off, an RF emissions report indicating that the site is actually operating within the acceptable thresholds as established by the Federal government or any such agency who may be subsequently authorized to establish such standards.

A satisfactory RF emissions report has been submitted.

In consideration of the proposal, site surroundings, and discussions regarding cases under this type of review, staff recommends Planning Commission approval of this application for the following reasons

The site does not directly front:

- a residence
- a significant view from a home (for example, view of the Bay)
- a scenic vista

The proposal features:

- an existing structure (JPA pole) in an area lacking other non-residential structures
- a facility not appreciably taller than adjacent structures (that is, trees)
- no ground mounted equipment cabinets
- satisfactory reports

Staff recommends the following conditions:

- pole mounted equipment cabinets to be encased in a single, continuous shroud painted matte brown to match the color and finish of the wooden utility pole

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- satisfactory reports

Staff recommends the following conditions:

- pole mounted equipment cabinets to be encased in a single, continuous shroud painted matte brown to mateh the color and finish of the wooden utility pole

- the antennas and connecting apparatus and all equipment be painted matte brown to match the color and finish of the wooden pole

RECOMMENDATIONS: 1. Affirm staff's environmental determination

2. Approve the Regular Design Review subject to the attached Findings, Additional Findings, and Conditions

Prepared by:

Aubrey Rose

AUBREY ROSE
Planner II

Approved by:

ROBERT MERKAMP
Acting Zoning Manager

Approved for forwarding to the
City Planning Commission

RACHEL FLYNN, Director
Department of Planning and Building

ATTACHMENTS:

A. Findings for Approval
B. Conditions of Approval
C. Plans
D. Applicant's Photo-Simulations
E. Site Design Preference Analysis
F. RF Emissions Report by Hammett & Edison, Inc. dated December 13, 2012

Attachment A: Findings for Approval

This proposal meets the required findings under Regular Design Review Criteria (OMC Sec. 17.136 040(B)) and Design Review Criteria for Macro Facilities (OMC Sec 17 128.070(B)) as set forth below. Required findings are shown in **bold** type, explanations as to why these findings can be made are in normal type

REGULAR DESIGN REVIEW CRITERIA FOR NONRESIDENTIAL FACILITIES(OMC SEC. 17.136.040(B))

1. That the proposal will help achieve or maintain a group of facilities which are well related to one another and which, when taken together, will result in a well-composed design, with consideration given to site, landscape, bulk, height, arrangement, texture, materials, colors, and appurtenances; the relation of these factors to other facilities in the vicinity; and the relation of the proposal to the total setting as seen from key points in the surrounding area. Only elements of design which have some significant relationship to outside appearance shall be considered, except as otherwise provided in Section 17.136.060;

The proposal is to attach an 8'-10" tall extension with two 2'-2" tall antennas (approx.) on top of a 38'-8" utility pole (proposed top height = 48'-7") and equipment pole mounted between 11'-3" and 22'-2" in height for wireless telecommunications purposes. The antennas will be wider than the extension. The extension on top of the pole is required for antenna clearance above overhead utility lines.

The surrounding area consists of a hillside residential neighborhood with single-family homes. To the rear of the site is a steep upslope (greater than twenty percent, approximately thirty-five foot rise) and the rear of two adjacent two-story homes (5816 and 5826 Mendoza Drive). The homes are situated towards the center of the lots and accessed from an adjacent alley. Several mature trees are located between the homes and the utility pole. Based on the orientation of the homes, it does not appear that the pole is located directly in a view corridor. Across the street are homes on down slope lots Several homes in the area contain views.

Given advancing technologies, enhanced service at this location will assist users in the residential zone. The antennas will generally maintain the shape of the JPA pole and pole mounted equipment cabinets, as conditioned, will be contained in a singular sheath painted matte brown to match the color and finish of the wooden pole.

2. That the proposed design will be of a quality and character which harmonizes with, and serves to protect the value of, private and public investments in the area;

This finding is met for the following reasons.

The site does not directly front

- a residence
- a significant view from a home (for example, view of the Bay)
- a scenic vista

The proposal features·

- an existing structure (JPA pole) in an area lacking other non-residential structures
- a facility not appreciably taller than adjacent structures (that is, trees)
- no ground mounted equipment cabinets

ATTACHMENT A

Conditions of approval contain the following requirements:

- pole mounted equipment cabinets to be encased in a single, continuous shroud painted matte brown to match the color and finish of the wooden utility pole
- the antennas and connecting apparatus and all equipment be painted matte brown to match the color and finish of the wooden pole

3. That the proposed design conforms in all significant respects with the Oakland General Plan and with any applicable design review guidelines or criteria, district plan, or development control map which have been adopted by the Planning Commission or City Council.

The site is located in a Hillside Residential area under the General Plan The intent of the Hillside Residential area is: *"to create, maintain, and enhance residential areas characterized by detached, single unit structures "* The General Plan is silent on telecommunications activities (which are classified as Essential Service Civic Activity under the Planning Code). The proposal is meant to enhance service to residents from a highly effective location with a relatively unobtrusive design

DESIGN REVIEW CRITERIA FOR MACRO FACILITIES (OMC SEC. 17.128.070(B)):
1. Antennas should be painted and/or textured to match the existing structure.

The antennas will be painted matte brown to match the color and finish of the wooden pole, as conditioned.

2. Antennas mounted on architecturally significant structures or significant architectural detail of the building should be covered by appropriate casings which are manufactured to match existing architectural features found on the building.

The antennas will be attached to an existing wooden utility pole

3. Where feasible, antennas can be placed directly above, below or incorporated with vertical design elements of a building to help in camouflaging.

The antennas will be mounted directly on top of the existing wooden utility pole.

4. Equipment shelters or cabinets shall be screened from the public view by using landscaping, or materials and colors consistent with surrounding backdrop or placed underground or inside existing facilities or behind screening fences.

As conditioned, equipment cabinets will be mounted to the pole in a singular shroud that is significantly smaller than typical ground mounted cabinets and shelters and the exterior will be painted matte brown to match the color and finish of the wooden pole

5. Equipment shelters or cabinets shall be consistent with the general character of the area.

As conditioned, equipment cabinets will be housed in a singular shroud attached to an existing structure (wooden utility pole) and painted to match its color

6. For antennas attached to the roof, maintain a 1:1 ratio (example: ten feet high antenna requires ten feet setback from facade) for equipment setback; screen the antennas to match existing air conditioning units, stairs, or elevator towers; avoid placing roof mounted antennas in direct line

with significant view corridors.

This finding is inapplicable, the proposal does not involve a roofed structure

7. That all reasonable means of reducing public access to the antennas and equipment has been made, including, but not limited to, placement in or on buildings or structures, fencing, anti climbing measures and anti-tampering devices.

Equipment will be pole mounted a minimum of 11'-3" above grade and, as conditioned, will be encased in a shroud, the antenna will be located at 47'-6".

Attachment B: Conditions of Approval

1. **Approved Use**
   Ongoing
   a) The project shall be constructed and operated in accordance with the authorized use as described in the application materials and the **plans dated December 19, 2012 and submitted to the City on January 29, 2013**, and as amended by the following conditions. Any additional uses or facilities other than those approved with this permit, as described in the project description and the approved plans, will require a separate application and approval. Any deviation from the approved drawings, Conditions of Approval or use shall require prior written approval from the Director of City Planning or designee.
   b) This action by the **Planning Commission** ("this Approval") includes the approvals set forth below. This Approval includes **establishment of a wireless telecommunications facility on a utility pole including two antennas attached to the top of the pole and a singular shroud containing pole mounted equipment, all painted matte brown**

2. **Effective Date, Expiration, Extensions and Extinguishment**
   Ongoing
   Unless a different termination date is prescribed, this Approval shall expire **two (2) years** from the approval date, unless within such period all necessary permits for construction or alteration have been issued, or the authorized activities have commenced in the case of a permit not involving construction or alteration Upon written request and payment of appropriate fees submitted no later than the expiration date of this permit, the Director of City Planning or designee may grant a one-year extension of this date, with additional extensions subject to approval by the approving body Expiration of any necessary building permit for this project may invalidate this Approval if the said extension period has also expired.

3. **Scope of This Approval; Major and Minor Changes**
   Ongoing
   The project is approved pursuant to the **Planning Code** only. Minor changes to approved plans may be approved administratively by the Director of City Planning or designee. Major changes to the approved plans shall be reviewed by the Director of City Planning or designee to determine whether such changes require submittal and approval of a revision to the approved project by the approving body or a new, completely independent permit.

4. **Conformance with other Requirements**
   Prior to issuance of a demolition, grading, P-job, or other construction related permit
   a) The project applicant shall comply with all other applicable federal, state, regional and/or local laws/codes, requirements, regulations, and guidelines, including but not limited to those imposed by the City's Building Services Division, the City's Fire Marshal, and the City's Public Works Agency. Compliance with other applicable requirements may require changes to the approved use and/or plans. These changes shall be processed in accordance with the procedures contained in Condition of Approval #3.

   b) The applicant shall submit approved building plans for project-specific needs related to fire protection to the Fire Services Division for review and approval, including, but not limited to automatic extinguishing systems, water supply improvements and hydrants, fire department access, elevated walking pathways, safety railings, emergency access and lighting

ATTACHMENT B

5. **Conformance to Approved Plans; Modification of Conditions or Revocation**
   Ongoing
   a) Site shall be kept in a blight/nuisance-free condition. Any existing blight or nuisance shall be abated within 60-90 days of approval, unless an earlier date is specified elsewhere

   b) Violation of any term, **Conditions of Approval** or **project description** relating to the **Conditions of Approval** is unlawful, prohibited, and a violation of the Oakland Municipal Code. The City of Oakland reserves the right to initiate civil and/or criminal enforcement and/or abatement proceedings, or after notice and public hearing, to revoke the Approvals or alter these **Conditions of Approval** if it is found that there is violation of any of the **Conditions of Approval** or the provisions of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance. This provision is not intended to, nor does it, limit in any manner whatsoever the ability of the City to take appropriate enforcement actions. The project applicant shall be responsible for paying fees in accordance with the City's Master Fee Schedule for inspections conducted by the City or a City-designated third-party to investigate alleged violations of the Conditions of Approval

6 **Signed Copy of the Conditions of Approval**
A copy of the approval letter and **Conditions of Approval** shall be signed by the property owner, notarized, and submitted with each set of permit plans to the appropriate City agency for this project

7. **Indemnification**
   Ongoing
   a. To the maximum extent permitted by law, the applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the City of Oakland Redevelopment Agency, the Oakland City Planning Commission and its respective agents, officers, and employees (hereafter collectively called City) from any liability, damages, claim, judgment, loss (direct or indirect)action, causes of action, or proceeding (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul, (1) an approval by the City relating to a development-related application or subdivision or (2) implementation of an approved development-related project The City may elect, in its sole discretion, to participate in the defense of said Action and the applicant shall reimburse the City for its reasonable legal costs and attorneys' fees

   b. Within ten (10) calendar days of the filing of any Action as specified in subsection A above, the applicant shall execute a Letter of Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations These obligations and the Letter of Agreement shall survive termination, extinguishment or invalidation of the approval. Failure to timely execute the Letter of Agreement does not relieve the applicant of any of the obligations contained in this condition or other requirements or Conditions of Approval that may be imposed by the City.

8. **Compliance with Conditions of Approval**
   Ongoing
   The project applicant shall be responsible for compliance with the recommendations in any submitted and approved technical report and all the Conditions of Approval set forth below at its sole cost and expense, and subject to review and approval of the City of Oakland.

9 **Severability**
Ongoing

Approval of the project would not have been granted but for the applicability and validity of each and every one of the specified **Conditions of Approval**, and if one or more of such **Conditions of Approval** is found to be invalid by a court of competent jurisdiction, this Approval would not have been granted without requiring other valid **Conditions of Approval** consistent with achieving the same purpose and intent of such Approval

10. Construction-Related Air Pollution Controls (Dust and Equipment Emissions)

Ongoing throughout demolition, grading, and/or construction

During construction, the project applicant shall require the construction contractor to implement all of the following applicable measures recommended by the Bay Area Air Quality Management District (BAAQMD)

a) Water all exposed surfaces of active construction areas at least twice daily (using reclaimed water if possible) Watering should be sufficient to prevent airborne dust from leaving the site. Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour. Reclaimed water should be used whenever possible.

b) Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer).

c) All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day The use of dry power sweeping is prohibited

d) Pave all roadways, driveways, sidewalks, etc as soon as feasible. In addition, building pads should be laid as soon as possible after grading unless seeding or soil binders are used

e) Enclose, cover, water twice daily or apply (non-toxic) soil stabilizers to exposed stockpiles (dirt, sand, etc)

f) Limit vehicle speeds on unpaved roads to 15 miles per hour.

g) Idling times shall be minimized either by shutting equipment off when not is use or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measure Title 13, Section 2485, of the California Code of Regulations Clear signage to this effect shall be provided for construction workers at all access points.

h) All construction equipment shall be maintained and properly tuned in accordance with the manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation

i) Post a publicly visible sign that includes the contractor's name and telephone number to contact regarding dust complaints. When contacted, the contractor shall respond and take corrective action within 48 hours. The telephone numbers of contacts at the City and the BAAQMD shall also be visible. This information may be posted on other required on-site signage.

11. Noise Control

Ongoing throughout demolition, grading, and/or construction

To reduce noise impacts due to construction, the project applicant shall require construction contractors to implement a site-specific noise reduction program, subject to the Planning and Zoning Division and the Building Services Division review and approval, which includes the following measures:

a) Equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds, wherever feasible).

b) Except as provided herein, Impact tools (e g , jack hammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electrically powered to avoid

noise associated with compressed air exhaust from pneumatically powered tools However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used, this muffler can lower noise levels from the exhaust by up to about 10 dBA External jackets on the tools themselves shall be used, if such jackets are commercially available and this could achieve a reduction of 5 dBA Quieter procedures shall be used, such as drills rather than impact equipment, whenever such procedures are available and consistent with construction procedures.

c) Stationary noise sources shall be located as far from adjacent receptors as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or use other measures as determined by the City to provide equivalent noise reduction

d) The noisiest phases of construction shall be limited to less than 10 days at a time. Exceptions may be allowed if the City determines an extension is necessary and all available noise reduction controls are implemented.

12. **Noise Complaint Procedures**

Ongoing throughout demolition, grading, and/or construction

Prior to the issuance of each building permit, along with the submission of construction documents, the project applicant shall submit to the Building Services Division a list of measures to respond to and track complaints pertaining to construction noise These measures shall include:

a) A procedure and phone numbers for notifying the Building Services Division staff and Oakland Police Department, (during regular construction hours and off-hours);

b) A sign posted on-site pertaining with permitted construction days and hours and complaint procedures and who to notify in the event of a problem. The sign shall also include a listing of both the City and construction contractor's telephone numbers (during regular construction hours and off-hours);

c) The designation of an on-site construction complaint and enforcement manager for the project;

d) Notification of neighbors and occupants within 300 feet of the project construction area at least 30 days in advance of extreme noise generating activities about the estimated duration of the activity, and

e) A preconstruction meeting shall be held with the job inspectors and the general contractor/on-site project manager to confirm that noise measures and practices (including construction hours, neighborhood notification, posted signs, etc.) are completed.

13. **Operational Noise-General**

Ongoing.

Noise levels from the activity, property, or any mechanical equipment on site shall comply with the performance standards of Section 17.120 of the Oakland Planning Code and Section 8.18 of the Oakland Municipal Code If noise levels exceed these standards, the activity causing the noise shall be abated until appropriate noise reduction measures have been installed and compliance verified by the Planning and Zoning Division and Building Services.

14. **Hazards Best Management Practices**

Prior to commencement of demolition, grading, or construction

The project applicant and construction contractor shall ensure that construction of Best Management Practices (BMPs) are implemented as part of construction to minimize the potential negative effects to groundwater and soils. These shall include the following

a) Follow manufacture's recommendations on use, storage, and disposal of chemical products used in construction,
b) Avoid overtopping construction equipment fuel gas tanks;
c) During routine maintenance of construction equipment, properly contain and remove grease and oils;
d) Properly dispose of discarded containers of fuels and other chemicals
e) Ensure that construction would not have a significant impact on the environment or pose a substantial health risk to construction workers and the occupants of the proposed development Soil sampling and chemical analyses of samples shall be performed to determine the extent of potential contamination beneath all UST's, elevator shafts, clarifiers, and subsurface hydraulic lifts when on-site demolition, or construction activities would potentially affect a particular development or building.
f) If soil, groundwater or other environmental medium with suspected contamination is encountered unexpectedly during construction activities (e.g., identified by odor or visual staining, or if any underground storage tanks, abandoned drums or other hazardous materials or wastes are encountered), the applicant shall cease work in the vicinity of the suspect material, the area shall be secured as necessary, and the applicant shall take all appropriate measures to protect human health and the environment Appropriate measores shall include notification of regulatory agency(ies) and implementation of the actions described in the City's Standard Conditions of Approval, as necessary, to identify the nature and extent of contamination. Work shall not resume in the area(s) affected until the measures have been implemented under the oversight of the City or regulatory agency, as appropriate

15. Tree Protection During Construction

Prior to issuance of a demolition, grading, or building permit

Adequate protection shall be provided during the construction period for any trees which are to remain standing, including the following, plus any recommendations of an arborist:

a) Before the start of any clearing, excavation, construction or other work on the site, every protected tree deemed to be potentially endangered by said site work shall be securely fenced off at a distance from the base of the tree to be determined by the City Tree Reviewer. Such fences shall remain in place for duration of all such work All trees to be removed shall be clearly marked A scheme shall be established for the removal and disposal of logs, brush, earth and other debris which will avoid injury to any protected tree.
b) Where proposed development or other site work is to encroach upon the protected perimeter of any protected tree, special measures shall be incorporated to allow the roots to breathe and obtain water and nutrients. Any excavation, cutting, filing, or compaction of the existing ground surface within the protected perimeter shall be minimized. No change in existing ground level shall occur within a distence to be determined by the City Tree Reviewer from the base of any protected tree at any time No burning or use of equipment with an open flame shall occur near or within the protected perimeter of any protected tree.
c) No storage or dumping of oil, gas, chemicals, or other substances that may be harmful to trees shall occur within the distance to be determined by the Tree Reviewer from the base of any protected trees, or any other location on the site from which such substances might enter the protected perimeter. No heavy construction equipment or construction materials shall be operated or stored within a distance from the base of any protected trees to be determined by the tree reviewer. Wires, ropes, or other devices shall not be attached to any protected tree, except as needed for support of the tree. No sign, other than a tag showing the botanical classification, shall be attached to any protected tree

d) Periodically during construction, the leaves of protected trees shall be thoroughly sprayed with water to prevent buildup of dust and other pollution that would inhibit leaf transpiration

e) If any damage to a protected tree should occur during or as a result of work on the site, the project applicant shall immediately notify the Public Works Agency of such damage If, in the professional opinion of the Tree Reviewer, such tree cannot be preserved in a healthy state, the Tree Reviewer shall require replacement of any tree removed with another tree or trees on the same site deemed adequate by the Tree Reviewer to compensate for the loss of the tree that is removed.

f) All debris created as a result of any tree removal work shall be removed by the project applicant from the property within two weeks of debris creation, and such debris shall be properly disposed of by the project applicant in accordance with all applicable laws, ordinances, and regulations.

SPECIFIC CONDITIONS FOR TELECOMMUNICATIONS FACILITIES

16. **Emissions Report**
Prior to a final inspection
The applicant shall provide an RF emissions report to the City of Oakland Zoning Division indicating that the site is actually operating within the acceptable thresholds as established by the Federal government or any such agency that may be subsequently authorized to establish such standards.

17. **Equipment Concealment**
Prior to submitting for a Building Permit
Plans shall be revised to depict all pole mounted equipment contained within a singular casing that is as small in size as possible

18. **Camouflaging**
Prior to a final inspection
All apparatus (including but not limited to antenna and equipment) shall be painted matte or non-reflective brown to match the color and finish of the existing wooden utility pole.

19. **Underground Districts**
Ongoing
Should the utility pole be voluntarily removed for purposes of district under grounding or otherwise, the telecommunications facility can only be re-established by applying for and receiving approval of a new application to the Oakland Planning and Zoning Division as required by the regulations

APPROVED BY:
City Planning Commission _____(date)_____(vote)

RECEIVED
JAN 28 2013
City of Oakland
Planning & Zoning Division

at&t

OAKHILLS AT&T SOUTH NETWORK
OAKS-052B
(PROW) 5826 MENDOZA DR, OAKLAND, CA 94611

PROPRIETARY INFORMATION

THE INFORMATION CONTAINED IN THIS SET OF CONSTRUCTION DOCUMENTS IS PROPRIETARY BY NATURE. ANY USE OR DISCLOSURE OTHER THAN THAT WHICH RELATES TO CARRIER SERVICES IS STRICTLY PROHIBITED.

LEGEND & SYMBOLS

CENTERLINE
PROPERTY/LEASE LINE
PROPOSED CONDUIT
POWER CONDUIT
TELEPHONE CONDUIT
AERIAL ELECTRICAL LINE
COAXIAL CABLE/CONDUIT
OVERHEAD CONDUCTORS
CHAIN LINK FENCING
SPOT ELEVATION (DATUM)
FLAG NOTE
NEW BALLOON (DETAIL SHEETS)
DETAIL REFERENCE
SECTION REFERENCE

ABBREVIATIONS

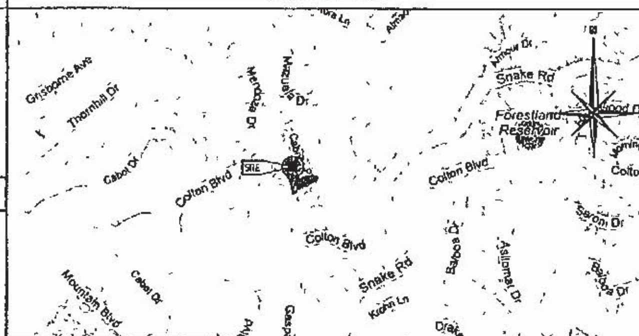
AL	ALUMINUM	FLR	FLOOR	PRELIM	PRELIMINARY
ALY	ALLOY	FT	FOOT	PWR	POWER
ANT	ANTENNA	FS	FARSIDE	QTY	QUANTITY
AGL	ABOVE GROUND LEVEL	FSTNR	FASTENER	R	RADIUS
		GALV	GALVANIZED	RAD	RADIATION
AMSL	ABOVE MEAN SEA LEVEL	GA	GAUGE	RC	RAD CENTER
		GEN	GENERATOR	RCVR	RECEIVER
APVD	APPROVED	GND	GROUND/GROUNDING	ALY	ALLOY
APPROX	APPROXIMATE	ID	INSIDE DIAMETER	RELOC	RELOCATED
AR A/R	AS REQUIRED	MATL	MATERIAL	REQD	REQUIRED
BAT	BATTERY	MAX	MAXIMUM	SH	SHEET
BC	BOLT CIRCLE	MFR	MANUFACTURER	SPLY	SUPPLY
BLDG	BUILDING	MTD	MOUNTED	SS	STAINLESS STL
BRKT	BRACKET	MTG	MOUNTING	STD	STANDARD
CAB	CABINET	MTR	METER	STL	STEEL
CL	CENTERLINE	MAX	MAXIMUM	STRL	STRUCTURAL
CONC	CONCRETE	MIN	MINIMUM	SQ	SQUARE
CND	CONDUIT	(N)	NEW	SW	SWITCH
DN	DOWN	NS	NEARSIDE	THD	THREAD
(E)	EXISTING	NTS	NOT TO SCALE	THK	THICK
EA	EACH	OC	ON CENTER	THRD	THREAD
EL	ELEVATION	OD	OUTSIDE DIAMETER	TYP	TYPICAL
EMBED	EMBEDMENT	(P)	PROPOSED	UBC	UNIFORM BUILDING CODE
EMER	EMERGENCY	PLYWD	PLYWOOD		
ENCL	ENCLOSURE	PL	PLACES	W/	WITH
EQPT	EQUIPMENT	PNL	PANEL	W/O	WITHOUT
EQ SP	EQUAL SPACE	P/O	PART OF	XMFR	TRANSFORMER
HGT	HEIGHT	POSN	POSITION	XMTR	TRANSMITTER
(F)	FUTURE				

CODE COMPLIANCE

ALL MATERIALS SHALL BE PERFORMED AND INSTALLED IN ACCORDANCE WITH EDITIONS OF THE FOLLOWING CODES AS ADOPTED BY THE LOCAL AUTHORITIES. NOTHING IN THESE PLANS IS TO BE CONSTRUCTED TO PERMIT WORKING TO THESE CODES.

1. BUILDING CODE CBC-2010
2. ADMINISTRATIVE CODE
3. S 24 & 25) 2010
4. 222-F LIFE SAFETY CODE NFPA
5. FICIALS AND CODE IORS (BOCA)
   ELECTRICAL CODE CEC-2010
6. CALIFORNIA MECHANICAL CODE CMC-2010
7. CALIFORNIA PLUMBING CODE CPC 2010
8. LOCAL BUILDING CODE(S)
9. CITY AND/OR COUNTY ORDINANCES.
10. MUST COMPLY TO LATEST CALIFORNIA FIRE CODE (AND LATEST MUNICIPAL FIRE CODE)
11. CALIFORNIA GENERAL ORDER 95 AND 128.

VICINITY MAP



DRIVING DIRECTIONS

FROM: 2678 BISHOP RANCH DR SAN RAMON CA
DISTANCE: 74.8 MILES (76 MIN)
TO: 5826 MENDOZA DR, OAKLAND CA 94611

SIGNATURE BLOCK

APPROVED BY	INITIALS	DATE
MUNICIPAL AFFAIRS		
RF MANAGER		
CONSTRUCTION MANAGER		
PROJECT MANAGER		
APPLICANT AGENT		
APPLICANT		

PROJECT DESCRIPTION

THESE DRAWINGS DEPICT A PORTION OF A DISTRIBUTED ANTENNA SYSTEM (DAS) TELECOMMUNICATIONS NETWORK, TO BE CONSTRUCTED BY EXTENET SYSTEMS AND OWNED AND OPERATED BY NEW CINGULAR WIRELESS PCS LLC IN THE PUBLIC RIGHT OF WAY PURSUANT TO AUTHORITY GRANTED BY THE CALIFORNIA PUBLIC UTILITIES COMMISSION.

THE MAIN COMPONENTS OF THIS INSTALLATION ARE:
THE ADDITION OF TWO (2) 27.75"X10.625"X6.25" PANEL ANTENNAS. ONE (1) BBU CABINET. ONE (1) RADIO UNIT. ASSOCIATED ELECTRICAL COMPONENTS AND MOUNTING BRACKETS AS REQUIRED, LOCATED ON AN EXISTING PG&E UTILITY POLE.

DRAWING INDEX

T1	TITLE SHEET & PROJECT INFORMATION
T2	GENERAL NOTES AND SCHEDULES
A1	SITE PLAN
A2	UTILITY POLE ELEVATIONS / RISER DETAILS
D1	EQUIPMENT DETAILS

BUILDING / SITE DATA

LATITUDE:	37.832730	TYPE OF CONSTRUCTION:	ATTACHMENTS TO EXISTING WOOD POLE
LONGITUDE:	-122.209100	AREA OF CONST.:	-
ELEVATION:	N / A	HANDICAP REQUIREMENTS:	FACILITY IS UNMANNED AND NOT FOR HUMAN HABITATION. HANDICAPPED ACCESS NOT REQUIRED
JURISDICTION:	CITY OF OAKLAND		
A.P.N.:	48F737002800	TITLE 24 REQUIREMENTS:	FACILITY IS UNMANNED AND NOT FOR HUMAN HABITATION. THIS PROJECT IS EXEMPT
ZONING:	PUBLIC RIGHT OF WAY		
OCCUPANCY:	U UNMANNED		

PROJECT TEAM

PROPERTY OWNER:
NAME: PUBLIC RIGHT OF WAY
ADDRESS: 5826 MENDOZA DR,
OAKLAND CA 94611

CONSTRUCTION MANAGER:
EXTENET SYSTEMS CA LLC
CONTACT: KEN BOOKER
PHONE: (510) 406-0829

MUNICIPAL AFFAIRS:
EXTENET SYSTEMS CA LLC
CONTACT: BILL STEPHENS
PHONE: (510) 617-2511

APPLICANT:
NEW CINGULAR WIRELESS PCS, LLC
4430 ROSEWOOD DR, BLDG 3
PLEASANTON CA 94588-3050
CONTACT: VAIB MALLER
PHONE: (510) 258-1703

APPLICANT AGENT:
MATTHEW YERGOVICH
EXTENET SYSTEMS REAL ESTATE CONTRACTOR FOR AT&T MOBILITY
1826 WEBSTER ST
SAN FRANCISCO CA 94115
PHONE: (415) 596-3474
EMAIL: myergo@gmail.com

ARCHITECT:
AERO COMMUNICATIONS, INC
5711 RESEARCH DRIVE
CANTON MI 48188
CONTACT: GARY GETCHELL
PHONE: (510) 232-6938

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at&t
NEW CINGULAR WIRELESS PCS LLC
4430 ROSEWOOD DR BLDG 3
PLEASANTON CA 94588-3050

PROJECT INFORMATION
OAKHILLS AT&T SOUTH NETWORK NODE 052B
5826 MENDOZA DR
OAKLAND CA 94611

CURRENT ISSUE DATE: 12/19/12

ISSUED FOR: ZONING

BY	DATE	DESCRIPTION	REV
ACI	12/19/12	POLE INFO CORRECTED	1
ACI	12/07/12	ZDs	0

PLANS PREPARED BY:
ACI
1-800-825-4ACI
5711 Research Drive
Canton MI 48188
ACI NUMBER: OAKS-052B

CONSTRUCTED BY:
net YOUR NETWORK EVERYWHERE SYSTEMS
3030 Warrenville Rd Suite 340
Lisle IL 60532
www.extenet.com

SEAL OF APPROVAL

SHEET TITLE: TITLE SHEET AND PROJECT INFORMATION

SHEET NUMBER: T1 REVISION: 1
12/19/12

ATTACHMENT C

[illegible]

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8. [illegible]

9. [illegible]

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Call before you dig
811 / 1-800-227-2600
www usanorth org

[illegible]

1. [illegible]
2. – 15. [illegible]

[illegible]

1. – 15. [illegible]

GENERAL NOTES

ROW GROUND CONSTRUCTION NOTES.

1. 120/240 POWER REQUIRED FOR 3-WIRE SERVICE
2. GC TO REMOVE/CLEAN ALL DEBRIS, NAILS, STAPLES, OR NON-USED VERTICALS OFF THE POLE
3. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH MUNICIPAL, COUNTY STATE, FEDERAL, GO95 AND GO128 STANDARDS AND REGULATIONS
4. CALL USA 48 HOURS PRIOR TO EXCAVATING AT (800) 227-2600.
5. ALL LANDSCAPING TO BE RESTORED TO ORIGINAL CONDITION OR BETTER
6. ALL EQUIPMENT TO BE BONDED
7. METERING CABINET REQUIRES 3' CLEARANCE AT DOOR OPENING
8. CAULK CABINET BASE AT PAD.

STANDARD GROUNDING NOTES.

1. GROUND TESTED AT 5 OHMS OR LESS
2. 5/8 x8' ROD CAD WELD BELOW GRADE
3. #6 GROUND AND BOND WIRE
4. MOOD MOLDING STAPLED EVERY 3' AND AT EACH END
5. GROUNDS 3' FROM POLE
6. PLACE 3 #10GA WIRES FROM BREAKER TO METER BOX

STANDARD CONDUIT NOTES.

1. FOR UNDERGROUND USE SCHEDULE 40.
2. FOR RISERS USE SCHEDULE 80
3. PLACE 2' GALVANIZED STEEL CONDUIT FOR ANY CONDUIT UNDER 2' STUB UP 10' THEN CONVERT TO SCHEDULE 80
4. CONVERT 4" CARRIER CONDUIT TO 2' AT BASE OF POLE
5. GC TO STUB UP POLE 10' w/3' POWER CONDUIT POWER CO. TO CONVERT FROM 3" SCH. 80 TO 2' SCH. 80 FROM TOP OF STUB UP
6. ALL CONDUIT WILL BE MAN DRILLED AND EQUIPPED WITH 3/8' PULL ROPE

STANDARD TRENCHING NOTES

1. MAINTAIN 40' MINIMUM COVER FOR ELECTRICAL CONDUIT
2. MAINTAIN 30" MINIMUM COVER FOR COMMUNICATIONS CONDUIT
3. SAND SHADING MINIMUM 3' UNDER CONDUITS AND 6' COVERING ON TOP REQUIRED
4. ALL ELECTRICAL SERVICE CONDUITS FROM POWER COMPANY WHETHER FROM POLES, TRANSFORMERS, OR OTHER LOCATIONS WILL BE SLURRY BACKFILLED
5. IN STREET SLURRY TO GRADE AND MILL DOWN 1-1/2' FOR AC CAP
6. IN DIRT SLURRY 18' FROM GRADE AND FILL WITH 95% COMPACTION NATIVE SOIL FOR BALANCE
7. PLACE WARNING TAPE IN TRENCH 12' ABOVE ALL CONDUITS AND #14 WARNING TAPE ABOVE GROUND RING

ROW UTILITY POLE CONSTRUCTION NOTES.

1. NO BOLT THREADS TO PROTRUDE MORE THAN 1-1/2"
2. FILL ALL HOLES LEFT IN POLE FROM REARRANGEMENT OF CLIMBERS.
3. ALL CLIMB STEPS NEXT TO CONDUIT SHALL HAVE EXTENDED STEPS.
4. CABLE NOT TO IMPEDE 15" CLEAR SPACE OFF POLE FACE (12 90).
5. 90' SHORT SWEEPS UNDER ANTENNA ARM. ALL CABLES MUST ONLY TRANSITION ON THE INSIDE OR BOTTOM OF ARMS (NO CABLE ON TOP OF ARMS)
6. USE CABLE CLAMPS TO SECURE CABLE TO ARMS. PLACE 2" CARRIER CABLE IN SAGS ON BOTH SIDES OF ARMS.
7. USE 90' CONNECTOR AT CABLE CONNECTION TO ANTENNAS
8. PLACE GPS ON ARM WITH SOUTHERN SKY EXPOSURE AT MINIMUM 6' FROM TRANSMIT ANTENNA, WHICH IS 24" AWAY FROM CENTER OF POLE
9. USE 1/2" CABLE ON ANTENNAS UNLESS OTHERWISE SPECIFIED
10. FILL VOID AROUND CABLES AT CONDUIT OPENING WITH FOAM SEALANT TO PREVENT WATER INTRUSION

ROW CONSTRUCTION GENERAL NOTES — SCALE NTS — 3

WIND LOADING INFORMATION

ANTENNA/MOUNT AREA TOTAL	83.57 SQ. FT
TOP GRADE	48 – 7
BOTTOM GRADE	38' – 8
METER/BREAKER AREA TOTAL	14.62 SQ. FT
TOP GRADE	8 – 11"
BOTTOM GRADE	6 – 0
BATTERY BACK UP AREA TOTAL	40.5 SQ. FT
TOP GRADE	18 – 9
BOTTOM GRADE	16 – 6"
PRIMARY DECK AREA TOTAL	50.77 SQ. FT
TOP GRADE	15 – 9
BOTTOM GRADE	11 – 7"
PRIMARY DECK (PUT) AREA TOTAL	–
TOP GRADE	–
BOTTOM GRADE	–
COAX RISER SIZE	3 0
COAX RISER TOP GRADE	45 – 0
COAX RISER BTM GRADE	11 – 7"
PWR RISER SIZE	1"ø
PWR RISER TOP GRADE	33 – 2"
PWR RISER BTM GRADE	8 – 0

ANTENNA & CABLE SCHEDULE

ANTENNA SECTOR	AZIMUTH	ANTENNA MAKE / MODEL	COAXIAL CABLE LENGTH	CABLES PER SECTOR	CABLE SIZE
SECTOR ALPHA	61	KATHREIN 840-10525	36 / 3'	2/4	1/2
SECTOR BETA	121	KATHREIN 840-10525	35 / 5'	2/4	1/2
SECTOR GAMMA					

NOTE: [illegible]

LOADING AND ANTENNA CABLE SCHEDULES — SCALE NTS — 1

at&t

NEW CINGULAR WIRELESS PCS LLC
4430 ROSEWOOD DR BLDG 3
PLEASANTON CA 94588-3050

PROJECT INFORMATION

OAKHILLS AT&T SOUTH NETWORK NODE 052B
5820 MENDOZA DR
OAKLAND CA 01011

CURRENT ISSUE DATE

12/19/12

ISSUED FOR

ZONING

BY	DATE	DESCRIPTION	REV
ACI	12/19/12	POLE INFO CORRECTED	1
ACI	12/07/12	20%	0

PLANS PREPARED BY

ACI
1-800-825-4ACI
5711 Research Drive
Canton MI 48188

ACI NUMBER: OAKS-052B

CONSTRUCTED BY

net
YOUR NETWORK EVERYWHERE
SYSTEMS

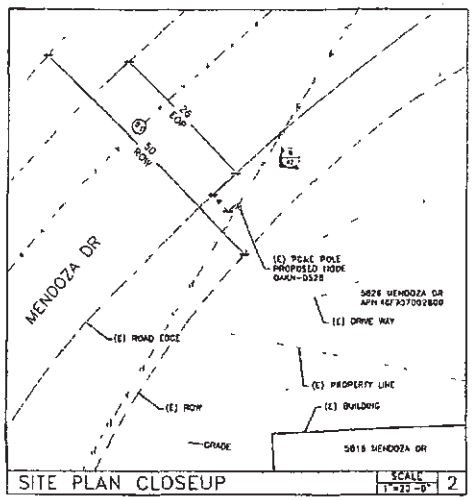
3030 Warrenville Rd Suite 340
Lisle IL 60532
www.extenet.com

SEAL OF APPROVAL

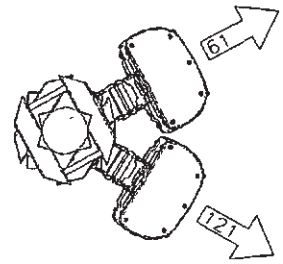
SHEET TITLE

GENERAL NOTES AND SCHEDULES

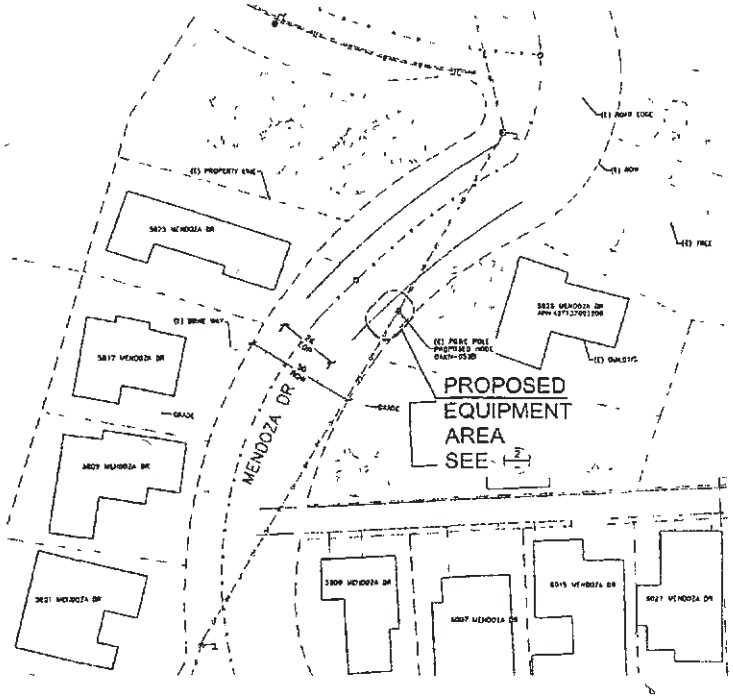
SHEET NUMBER: T2
REVISION: 1
12/13/12



SITE PLAN CLOSEUP — SCALE 1"=25'-0" — 2



ANTENNA AZIMUTHS — SCALE NTS — 3



SITE PLAN — 0 5 15 25 35' — SCALE 1"=50'-0" — 1

at&t

NEW CINGULAR WIRELESS PCS LLC
4430 ROSEWOOD DR BLDG 3
PLEASANTON CA 94588-3050

PROJECT INFORMATION

OAKHILLS AT&T
SOUTH NETWORK
NODE 052B
5828 MENDOZA DR
OAKLAND CA 94611

CURRENT ISSUE DATE

12/19/12

ISSUED FOR

ZONING

BY	DATE	DESCRIPTION	REV
ACI	12/19/12	POLE INFO CORRECTED	C
ACI	12/07/12	ZDs	B
BY	DATE	DESCRIPTION	REV

PLANS PREPARED BY

ACI
1-800-828-ACI
5711 Research Drive
Canton MI 48188
ACI NUMBER OAKS-052B

CONSTRUCTED BY

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YOUR NETWORK EVERYWHERE
3030 Warrenville Rd Suite 340
Lisle IL 60532
www.extenet.com

SEAL OF APPROVAL

SHEET TITLE

SITE PLAN

SHEET NUMBER — REVISION

A1 — 1 — 12/19/12

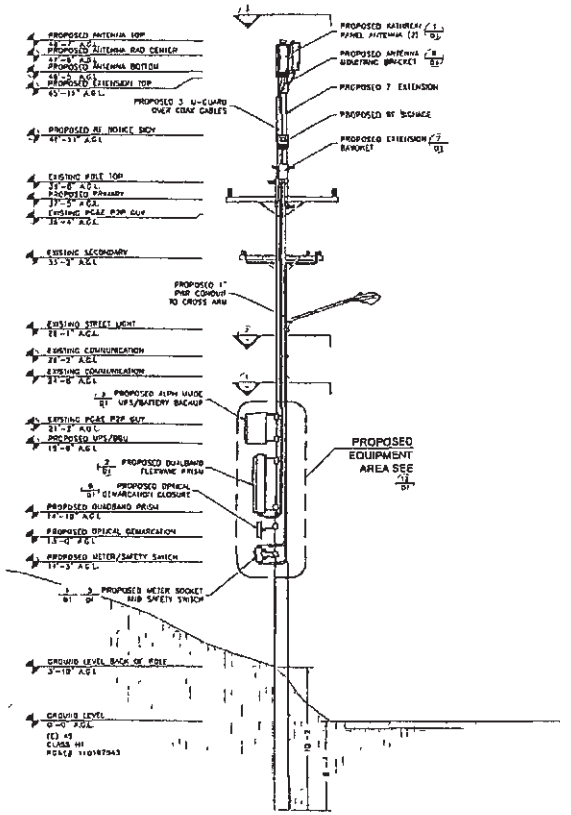
COMMUNICATIONS MAKE-READY

1. INSTALL PG&E 1" SCH 80 CONDUIT AT 7.30 POSITION FOR POWER SERVICE.
2. INSTALL 3" SCH 80 U-GUARD AT 11.00 POSITION OVER COAX
3. INSTALL RADIO BBU OPTIMA METER SOCKET & SAFETY SWITCH 4" OFF OF POLE (USING UNISTRUTS) AT 12:00 POSITION
4. RELOCATE CLIMBING PEGS AT 9.00 POSITION, 8'-6" AGL TO COMM ZONE TO 6.00 POSITION

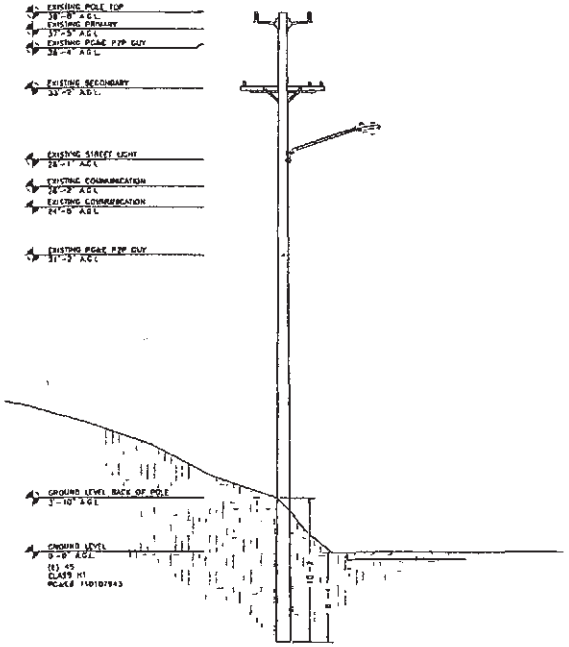
POWER MAKE-READY

1. REFRAME PRIMARY TO 8" CROSS ARM
2. INSTALL 7' POLE TOP EXTENSION
3. INSTALL (2) PANEL ANTENNAS W/ MOUNTING BRACKET ON POLE TOP EXTENSION AT 45'-11" AGL
4. INSTALL COMBINERS AND (4/8) 1/2" COAX
5. INSTALL PG&E 1" SCH 80 CONDUIT TO SECONDARY CROSS ARM AT 7.30 POSITION FOR POWER SERVICE.
6. INSTALL 3" SCH 80 U-GUARD AT 11.00 POSITION OVER COAX
7. PROVIDE 120/240 3-WIRE SINGLE PHASE 100 AMP SERVICE TO 1" PG&E CONDUIT AT 7.30 POSITION TO METER SOCKET FROM SERVICE DROP 33'-2" AGL

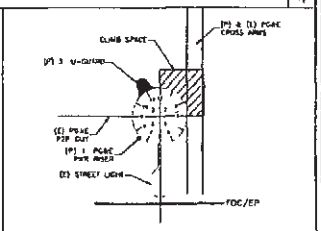
MAKE-READY NOTES 4



PROPOSED ELEVATION NORTHEAST — SCALE 1/8"=1'-0" — 6

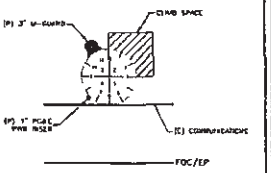


EXISTING ELEVATION NORTHEAST — SCALE 1/8"=1'-0" — 5



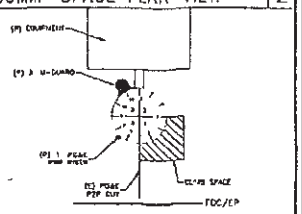
MENDOZA DR

POWER SPACE PLAN VIEW 3



MENDOZA DR

COMM SPACE PLAN VIEW 2



MENDOZA DR

EQUIP SPACE PLAN VIEW 1

at&t

NEW CINGULAR WIRELESS PCS LLC
4430 ROSEWOOD DR, BLDG 3
PLEASANTON CA 94588-3050

PROJECT INFORMATION

OAKHILLS AT&T SOUTH NETWORK NODE 052B

5820 MENDOZA DR
OAKLAND CA 01031

CURRENT ISSUE DATE

12/19/12

ISSUED FOR

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BY	DATE	DESCRIPTION	REV
ACI	12/19/12	POLE INFO CORRECTED	1
ACI	12/07/12	ZD=	0
BY	DATE	DESCRIPTION	REV

PLANS PREPARED BY

ACI
1-800-825-4ACI
5711 Research Drive
Canton MI 48188

ACI NUMBER DAKS-0078

CONSTRUCTED BY

net YOUR NETWORK EVERYWHERE SYSTEMS
3030 Warrenville Rd Suite 340
Lisle IL 60532
www.enetsl.com

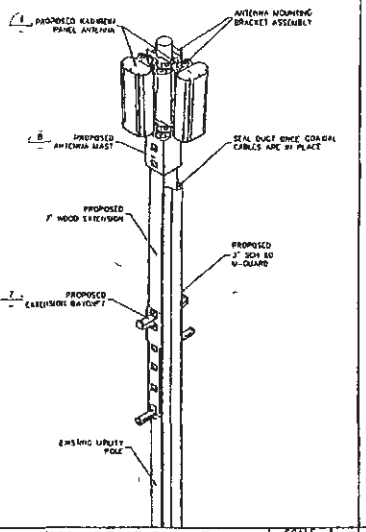
SEAL OF APPROVAL

SHEET TITLE

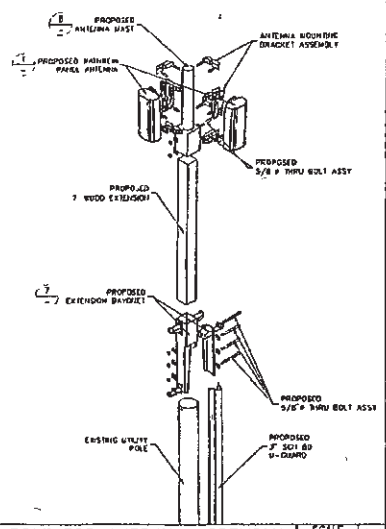
ELEVATIONS & RISER DETAILS

SHEET NUMBER — REVISION

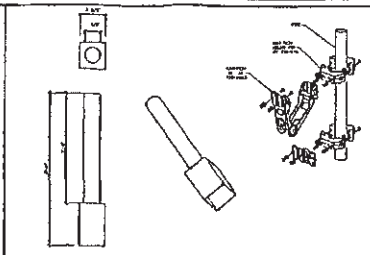
A2 — 1 — 12/19/12



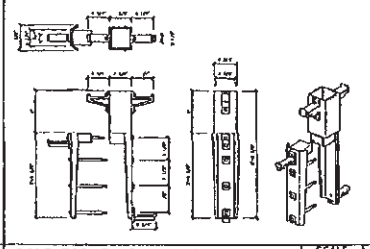
ANTENNA CONFIGURATION | SCALE 3/8"=1'-0" | 13



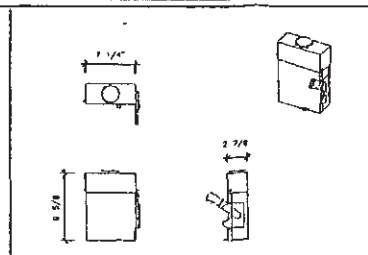
POLE TOP ANTENNA ASSEMBLY | SCALE 1/4"=1'-0" | 11



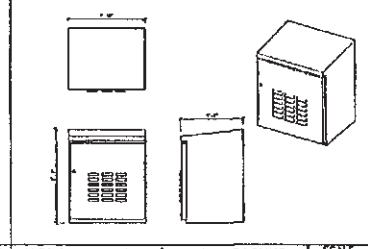
POLE TOP EXTENSION ANTENNA MAST W/ BRKTS | SCALE 3/8"=1'-0" | 8



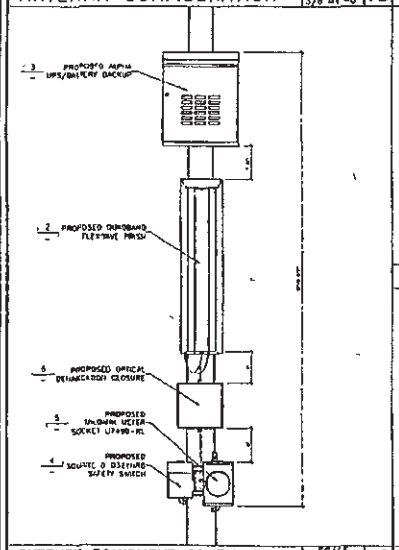
POLE TOP EXTENSION BAYONET | SCALE 3/8"=1'-0" | 7



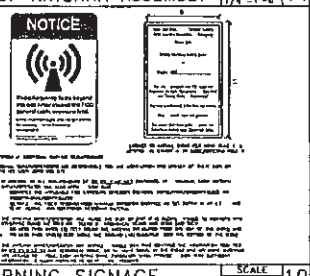
SQUARE D D321NRB SAFETY SWITCH | SCALE 3/4"=1'-0" | 4



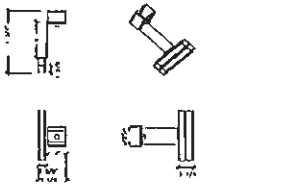
ALPHA MMOE UPS/BATTERY BACKUP | SCALE 3/8"=1'-0" | 3



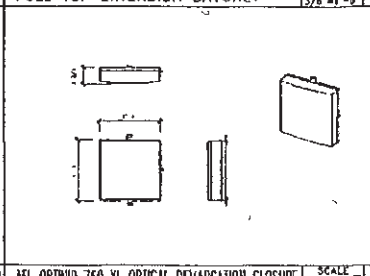
EXTENET EQUIPMENT CONFIG | SCALE 3/8"=1'-0" | 12



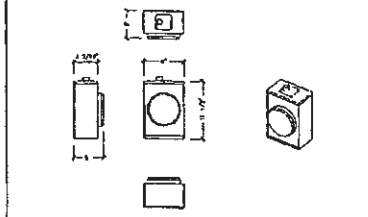
RF WARNING SIGNAGE | SCALE NTS | 10



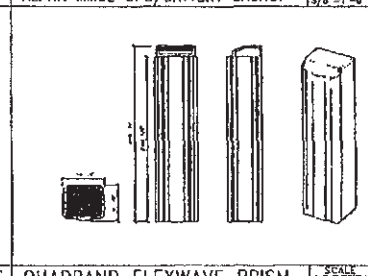
LADDER BRACKET | SCALE 1/2"=1'-0" | 9



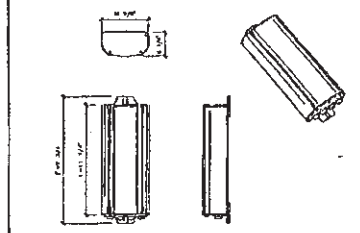
AFL OPTNID 760 XL OPTICAL DEMARCATION CLOSURE | SCALE 1/2"=1'-0" | 6



MILBANK METER SOCKET U7490-RL | SCALE 1/2"=1'-0" | 5



QUADBAND FLEXWAVE PRISM | SCALE 3/8"=1'-0" | 2



KATHREIN PANEL ANTENNA | SCALE 1/2"=1'-0" | 1

at&t

NEW CINGULAR WIRELESS PCS LLC
4430 ROSEWOOD DR, BLDG 5
PLEASANTON CA 94588-3050

PROJECT INFORMATION

OAKHILLS AT&T SOUTH NETWORK NODE 052B

5826 MENDOZA DR
OAKLAND, CA 94611

CURRENT ISSUE DATE

12/19/12

ISSUED FOR

ZONING

BY	DATE	DESCRIPTION	REV
ACI	12/19/12	POLE INFO CORRECTED	1
ACI	12/07/12	ZDs	0
BY	DATE	DESCRIPTION	REV

PLANS PREPARED BY

ACI
1-800-825-4ACI
5711 Research Drive
Canton MI 48188

ACI NUMBER: OAKS-052B

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SEAL OF APPROVAL

SHEET TITLE

EQUIPMENT DETAILS

SHEET NUMBER: D1

REVISION: 1 12/19/12

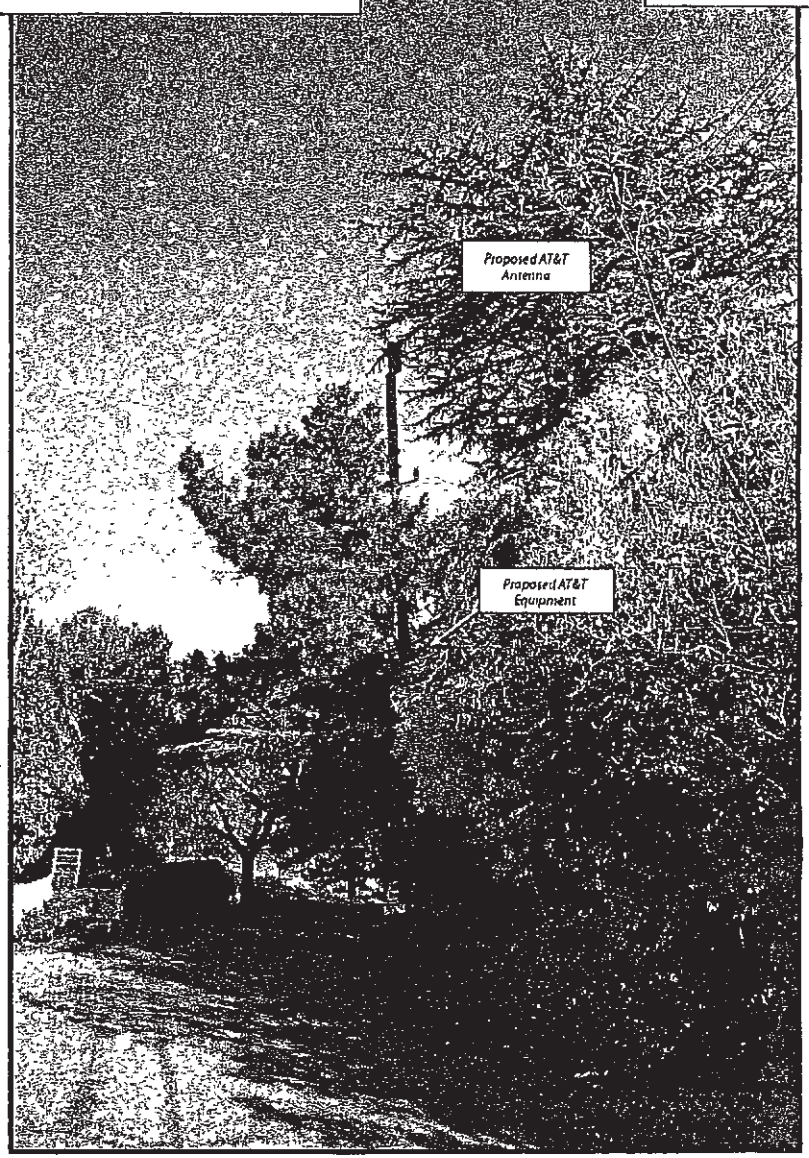
view from Mendoza Drive looking northeast at site

AT&T Wireless

5826 Mendoza Drive, Oakland, CA
Oakhills AT&T South Network Node 052B

Existing

Proposed



AdvanceSim
Photo Simulation Solutions
Contact (925) 202 8507

ATTACHMENT D

at&t

January 28, 2013

Planning Department
City of Oakland
250 Frank Ogawa Plaza, 2nd Floor
Oakland, CA 94612

Re:	Proposed AT&T Mobility DAS Node Installation	
	Applicant:	New Cingular Wireless PCS, LLC (d/b/a AT&T Mobility)
	Site Address:	Public Right of Way near 5826 Mendoza Dr.
	Site ID:	OAKS-052B
	Latitude/Longitude:	37.832730, -122.209180
	Joint Utility Pole #:	110107943

Dear Planning Department,

This letter and attached materials are to apply for the appropriate planning permits to accomplish the above-referenced and below-described AT&T distributed antenna system ("DAS") node installation The following is an explanation of the existing site, a project description of the installation, the project purpose and justifications in support of this proposal

A. Project Description.

The existing site consists of an approximate 38-feet eight-inch tall wooden utility pole in the public right of way on the east side of Mendoza Drive just south of Cabrillo Place near 5826 Mendoza Drive. There are several tall trees in the immediate vicinity almost entirely concealing the pole and the terrain slopes upward to the north/east

AT&T proposes to modify the utility pole by adding two panel antennas that are approximately two-feet long, ten-inches wide and six-inches deep These antennas will be mounted onto a seven-foot tall extension affixed on top of the pole The extension piece is a utility-required and pre-approved fixture At a mounting location about 17-feet high on the pole we propose to mount a battery-backup equipment box approximately two-feet long by two-feet wide and a foot and a half feet deep. At about 12-feet high on the pole we propose to mount an equipment cabinet approximately four-feet long, a foot wide and a foot deep Below that, at about 10-feet high on the pole, we propose to mount an approximate one-foot long by one-foot wide by four-inch deep optical demarcation unit Below that at about eight feet we propose a small safety shut-off switch and electricity meter approximately one-foot long, three-inches deep and eight-inches wide The equipment will be connected to power and telecommunications lines already on the pole, extended through one-inch and three-inch conduit Climbing pegs will also be relocated on the pole All equipment will be painted brown to match the utility pole Our proposal is depicted in the attached design drawings and photographic simulations

This is an unmanned facility that will operate at all times (24-hours per day, 7 days per week) and will be serviced about once per month by an AT&T technician Our proposal will greatly benefit the area by improving wireless telecommunications service as detailed below.

AT&T Mobility
C/O Yergovich and Associates, LLC
ExteNet Systems Real Estate Contractor
1826 Webster Street • San Francisco, CA 94115
(415) 596-3474 • myergo@gmail.com

ATTACHMENT E

B. Project Purpose.

The purpose of this project is to provide AT&T third and fourth generation (3G and 4G) wireless voice and data coverage to the surrounding area where there is currently a significant gap in coverage These wireless services include mobile telephone, wireless broadband, emergency 911, data transfers, electronic mail, internet, web browsing, wireless applications, wireless mapping and video streaming The proposed node is part of a larger DAS providing coverage to areas of the Oakland and Berkeley Hills that are otherwise impossible to reach. The attached radio frequency propagation maps depict AT&T's larger DAS project along with the existing and proposed coverage

C. Project Justification, Design and Placement.

The site is located in a difficult coverage area because of its winding roads, hilly terrain and plentiful trees The coverage area consists of an Oakland Hills neighborhood off of Thornhill Drive, Snake Road and surrounding areas. The proposed site will cover these areas as depicted in the attached-propagation maps

This DAS node is the least intrusive means to provide coverage because it uses existing utility infrastructure, the smallest equipment and the lowest emissions possible. Deploying a DAS node onto this pole utilizes an inconspicuous location out of the way from any residences or views By co-locating antennas and equipment onto this existing pole, AT&T does not need to propose any new infrastructure in the area Furthermore, this two-antenna installation onto existing infrastructure is miniature in size compared to the typical 12-antenna macro site and therefore more appropriate for the surrounding rural residential area. The site should be barely noticeable as a co-located utility amidst the backdrop of trees, bushes and hillside

The DAS node emissions are also much lower than the typical macro-site and thus appropriate for the area Attached is a radio-frequency analysis supporting this conclusion The facility will comply with all FCC rules and California Public Utility Commission (CPUC) General Orders 95 and 170.

Alternative sites were considered at other utility poles along Mendoza Drive, Manuela Drive and Colton Boulevard but none of these sites are as desirable from a coverage perspective or from an aesthetics perspective The proposed location is equally distanced from nodes to be placed in surrounding hard-to-reach areas so that coverage can be evenly distributed There are a number of trees very close to the proposed site that will allow the installation to be almost entirely concealed by foliage, thus minimizing any visual impact The other utility poles in the area are much more conspicuous than the proposed location because the proposed location has so many trees immediately surrounding it Any other locations where utility poles are not located would require new infrastructure to be installed which would impose unnecessary visual impact For these reasons, our proposal is the best out of all the alternatives

Included with this zoning submittal are the following materials

(1) Completed Planning Applications,
(2) The appropriate filing fee,
(3) Full-sized (24" x 36") and reduced drawing sets,
(4) One copy of two-perspective photographic simulations depicting the proposed modification,
(5) Propagation maps, and
(6) A radio-frequency report explaining the impact of the proposed site

We respectfully request approval of this project Feel free to contact me if you have any questions Thank you

Best Regards,

Matthew S Yergovich
ExteNet Real Estate Contractor
For AT&T Mobility

New Cingular Wireless, LLC • 32 Proposed Distributed Antenna System Nodes
Oakland Hills • Oakland, California

Statement of Hammett & Edison, Inc., Consulting Engineers

The firm of Hammett & Edison, Inc., Consulting Engineers, has been retained on behalf of New Cingular Wireless, LLC, a wireless telecommunications service provider, to evaluate 32 distributed antenna system (DAS) nodes proposed to be located in the Oakland Hills area of Oakland, California, for compliance with appropriate guidelines limiting human exposure to radio frequency ("RF") electromagnetic fields.

Executive Summary

New Cingular Wireless proposes to install two directional panel antennas on 32 existing or proposed utility poles sited in the Oakland Hills area of Oakland. The proposed operation will comply with the FCC guidelines limiting public exposure to RF energy.

Prevailing Exposure Standards

The U.S. Congress requires that the Federal Communications Commission ("FCC") evaluate its actions for possible significant impact on the environment. A summary of the FCC's exposure limits is shown in Figure 1. These limits apply for continuous exposures and are intended to provide a prudent margin of safety for all persons, regardless of age, gender, size, or health. The most restrictive FCC limit for exposures of unlimited duration to radio frequency energy for several personal wireless services are as follows:

Wireless Service	Frequency Band	Occupational Limit	Public Limit
Microwave (Point-to-Point)	5,000–80,000 MHz	5.00 mW/cm^2	1.00 mW/cm^2
BRS (Broadband Radio)	2,600	5.00	1.00
AWS (Advanced Wireless)	2,100	5.00	1.00
PCS (Personal Communication)	1,950	5.00	1.00
Cellular	870	2.90	0.58
SMR (Specialized Mobile Radio)	855	2.85	0.57
700 MHz	700	2.35	0.47
[most restrictive frequency range]	30–300	1.00	0.20

Power line frequencies (60 Hz) are well below the applicable range of these standards, and there is considered to be no compounding effect from simultaneous exposure to power line and radio frequency fields

General Facility Requirements

Base stations typically consist of two distinct parts: the electronic transceivers (also called "radios" or "channels") that are connected to the traditional wired telephone lines, and the passive antennas that send the wireless signals created by the radios out to be received by individual subscriber units.

ATTACHMENT F

The transceivers are often located at ground level and are connected to the antennas by coaxial cables. A small antenna for reception of GPS signals is also required, mounted with a clear view of the sky. Because of the short wavelength of the frequencies assigned by the FCC for wireless services, the antennas require line-of-sight paths for their signals to propagate well and so are installed at some height above ground. The antennas are designed to concentrate their energy toward the horizon, with very little energy wasted toward the sky or the ground. Along with the low power of such facilities, this means that it is generally not possible for exposure conditions to approach the maximum permissible exposure limits without being physically very near the antennas.

Computer Modeling Method

The FCC provides direction for determining compliance in its Office of Engineering and Technology Bulletin No. 65, "Evaluating Compliance with FCC-Specified Guidelines for Human Exposure to Radio Frequency Radiation," dated August 1997. Figure 2 attached describes the calculation methodologies, reflecting the facts that a directional antenna's radiation pattern is not fully formed at locations very close by (the "near-field" effect) and that at greater distances the power level from an energy source decreases with the square of the distance from it (the "inverse square law"). The conservative nature of this method for evaluating exposure conditions has been verified by numerous field tests.

Site and Facility Description

Based upon information provided by New Cingular Wireless, that carrier proposes to install 32 new nodes, listed in Table 1 below, in the Oakland Hills area of Oakland. Each node would consist of two Kathrein Model 840-10525 directional panel antennas installed on a new or existing utility pole to be sited in a public right-of-way. The antennas would be mounted with no downtilt at an effective height of about 35 feet above ground and would be oriented in different directions, as shown in Table 1. The maximum effective radiated power in any direction would be 219 watts, representing simultaneous operation by New Cingular Wireless at 104 watts for PCS, 61 watts for cellular, and 54 watts for 700 MHz service. There are reported no other wireless telecommunications base stations at the site or nearby

Node #	Approximate Address	Antenna Orientations	
Node 35	Grizzly Peak Boulevard and Golf Course Drive	116°T	321°T
Node 36	2501 Grizzly Peak Boulevard	65°T	248°T
Node 37	7541 Claremont Avenue	54°T	240°T
Node 39	8071 Claremont Avenue	36°T	215°T
Node 41	Grizzly Peak Boulevard and Skyline Boulevard	149°T	283°T
Node 42	6616 Pine Needle Drive	73°T	344°T
Node 46	1265 Mountain Boulevard	30°T	105°T
Node 47	5925 Sherwood Drive	13°T	285°T
Node 48	Skyline Boulevard and Elverton Drive	153°T	325°T
Node 49	1732 Indian Way	24°T	306°T
Node 50	5612 Merriewood Drive	46°T	110°T
Node 51	5658 Grisborne Avenue	87°T	355°T
Node 52	5826 Mendoza Drive	61°T	121°T
Node 53	6133 Snake Road	43°T	119°T
Node 54	2052 Tampa Avenue	0°T	100°T
Node 55	8211 Skyline Boulevard	98°T	158°T
Node 56	6837 Aitken Drive	65°T	316°T
Node 57	6415 Westover Drive	137°T	302°T
Node 58	6828 Saroni Drive	20°T	100°T
Node 59	2189 Andrews Street	37°T	88°T
Node 60	5879 Scarborough Drive	33°T	81°T
Node 62	2997 Holyrood Drive	21°T	88°T
Node 63	2679 Mountain Gate Way	0°T	80°T
Node 64	Mountain Boulevard and Ascot Drive	29°T	110°T
Node 70	75 Castle Park Way	0°T	70°T
Node 71	3343 Crane Way	72°T	355°T
Node 74	6925 Pinehaven Road	0°T	70°T
Node 75	6776 Thornhill Drive	66°T	127°T
Node 77	6659 Girvin Drive	100°T	180°T
Node 78	7380 Claremont Avenue	55°T	200°T
Node 79	6757 Sobrante Road	70°T	159°T
Node 81	Shepherd Canyon Road and Escher Drive	56°T	209°T

Table 1. New Cingular Wireless Nodes Evaluated

Study Results

For a person anywhere at ground, the maximum RF exposure level due to the proposed operation through is calculated to be 0.0026 mW/cm^2, which is 0.50% of the applicable public exposure limit. The maximum calculated level at the second-floor elevation of any nearby building* is 1.2% of the

* Including nearby residences located at least 9 feet from any pole, based on photographs from Google Maps

public limit It should be noted that these results include several "worst-case" assumptions and therefore are expected to overstate actual power density levels from the proposed operation.

Recommended Mitigation Measures

Due to their mounting locations on utility poles, the New Cingular Wireless antennas would not be accessible to the general public, and so no mitigation measures are necessary to comply with the FCC public exposure guidelines. To prevent occupational exposures in excess of the FCC guidelines, no access within 3 feet directly in front of the antennas themselves, such as might occur during maintenance work on the poles, should be allowed while the pertinent node is in operation, unless other measures can be demonstrated to ensure that occupational protection requirements are met. Posting explanatory warning signs† at the antennas and/or on the poles below the antennas, such that the signs would be readily visible from any angle of approach to persons who might need to work within that distance, would be sufficient to meet FCC-adopted guidelines.

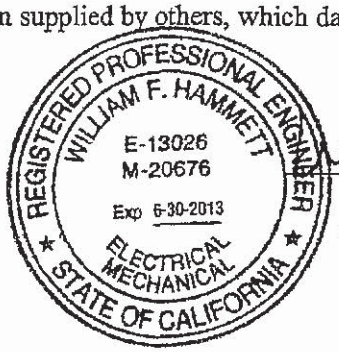
Conclusion

Based on the information and analysis above, it is the undersigned's professional opinion that the proposed operation of these New Cingular Wireless nodes located in Oakland, California, will comply with the prevailing standards for limiting public exposure to radio frequency energy and, therefore, will not for this reason cause a significant impact on the environment. The highest calculated level in publicly accessible areas is much less than the prevailing standards allow for exposures of unlimited duration. This finding is consistent with measurements of actual exposure conditions taken at other operating base stations. Posting explanatory signs is recommended to establish compliance with occupational exposure limitations.

† Warning signs should comply with OET-65 color, symbol, and content recommendations Signage may also need to comply with the requirements of California Public Utilities Commission General Order No 95

Authorship

The undersigned author of this statement is a qualified Professional Engineer, holding California Registration Nos. E-13026 and M-20676, which expire on June 30, 2013. This work has been carried out under his direction, and all statements are true and correct of his own knowledge except, where noted, when data has been supplied by others, which data he believes to be correct.



William F. Hammett, P.E.
707/996-5200

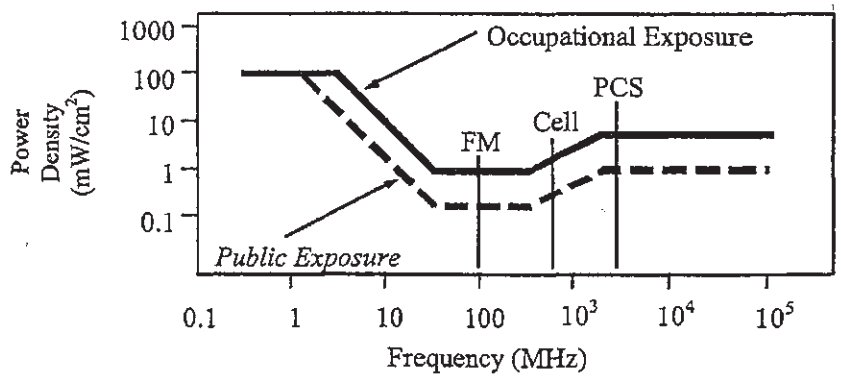
December 13, 2012

FCC Radio Frequency Protection Guide

The U.S. Congress required (1996 Telecom Act) the Federal Communications Commission ("FCC") to adopt a nationwide human exposure standard to ensure that its licensees do not, cumulatively, have a significant impact on the environment. The FCC adopted the limits from Report No. 86, "Biological Effects and Exposure Criteria for Radiofrequency Electromagnetic Fields," published in 1986 by the Congressionally chartered National Council on Radiation Protection and Measurements ("NCRP"). Separate limits apply for occupational and public exposure conditions, with the latter limits generally five times more restrictive. The more recent standard, developed by the Institute of Electrical and Electronics Engineers and approved as American National Standard ANSI/IEEE C95.1-2006, "Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz," includes similar limits. These limits apply for continuous exposures from all sources and are intended to provide a prudent margin of safety for all persons, regardless of age, gender, size, or health.

As shown in the table and chart below, separate limits apply for occupational and public exposure conditions, with the latter limits (in *italics* and/or dashed) up to five times more restrictive:

Frequency	Electromagnetic Fields (f is frequency of emission in MHz)					
Applicable Range (MHz)	Electric Field Strength (V/m)		Magnetic Field Strength (A/m)		Equivalent Far-Field Power Density (mW/cm^2)	
0.3 – 1.34	614	*614*	1.63	*1.63*	100	*100*
1.34 – 3.0	614	*823.8/f*	1.63	*2.19/f*	100	*180/f^2*
3.0 – 30	1842/f	*823.8/f*	4.89/f	*2.19/f*	900/f^2	*180/f^2*
30 – 300	61.4	*27.5*	0.163	*0.0729*	1.0	*0.2*
300 – 1,500	$3.54\sqrt{f}$	*$1.59\sqrt{f}$*	$\sqrt{f}/106$	*$\sqrt{f}/238$*	f/300	*f/1500*
1,500 – 100,000	137	*61.4*	0.364	*0.163*	5.0	*1.0*



Higher levels are allowed for short periods of time, such that total exposure levels averaged over six or thirty minutes, for occupational or public settings, respectively, do not exceed the limits, and higher levels also are allowed for exposures to small areas, such that the spatially averaged levels do not exceed the limits. However, neither of these allowances is incorporated in the conservative calculation formulas in the FCC Office of Engineering and Technology Bulletin No. 65 (August 1997) for projecting field levels. Hammett & Edison has built those formulas into a proprietary program that calculates, at each location on an arbitrary rectangular grid, the total expected power density from any number of individual radio sources. The program allows for the description of buildings and uneven terrain, if required to obtain more accurate projections.

RFR.CALC™ Calculation Methodology

Assessment by Calculation of Compliance with FCC Exposure Guidelines

The U.S. Congress required (1996 Telecom Act) the Federal Communications Commission ("FCC") to adopt a nationwide human exposure standard to ensure that its licensees do not, cumulatively, have a significant impact on the environment. The maximum permissible exposure limits adopted by the FCC (see Figure 1) apply for continuous exposures from all sources and are intended to provide a prudent margin of safety for all persons, regardless of age, gender, size, or health. Higher levels are allowed for short periods of time, such that total exposure levels averaged over six or thirty minutes, for occupational or public settings, respectively, do not exceed the limits

Near Field.

Prediction methods have been developed for the near field zone of panel (directional) and whip (omnidirectional) antennas, typical at wireless telecommunications base stations, as well as dish (aperture) antennas, typically used for microwave links. The antenna patterns are not fully formed in the near field at these antennas, and the FCC Office of Engineering and Technology Bulletin No. 65 (August 1997) gives suitable formulas for calculating power density within such zones.

For a panel or whip antenna, power density $S = \frac{180}{\theta_{BW}} \times \frac{0.1 \times P_{net}}{\pi \times D \times h}$, in mW/cm^2,

and for an aperture antenna, maximum power density $S_{max} = \frac{0.1 \times 16 \times \eta \times P_{net}}{\pi \times h^2}$, in mW/cm^2,

where θ_{BW} = half-power beamwidth of the antenna, in degrees, and
P_{net} = net power input to the antenna, in watts,
D = distance from antenna, in meters,
h = aperture height of the antenna, in meters, and
η = aperture efficiency (unitless, typically 0.5-0.8).

The factor of 0.1 in the numerators converts to the desired units of power density.

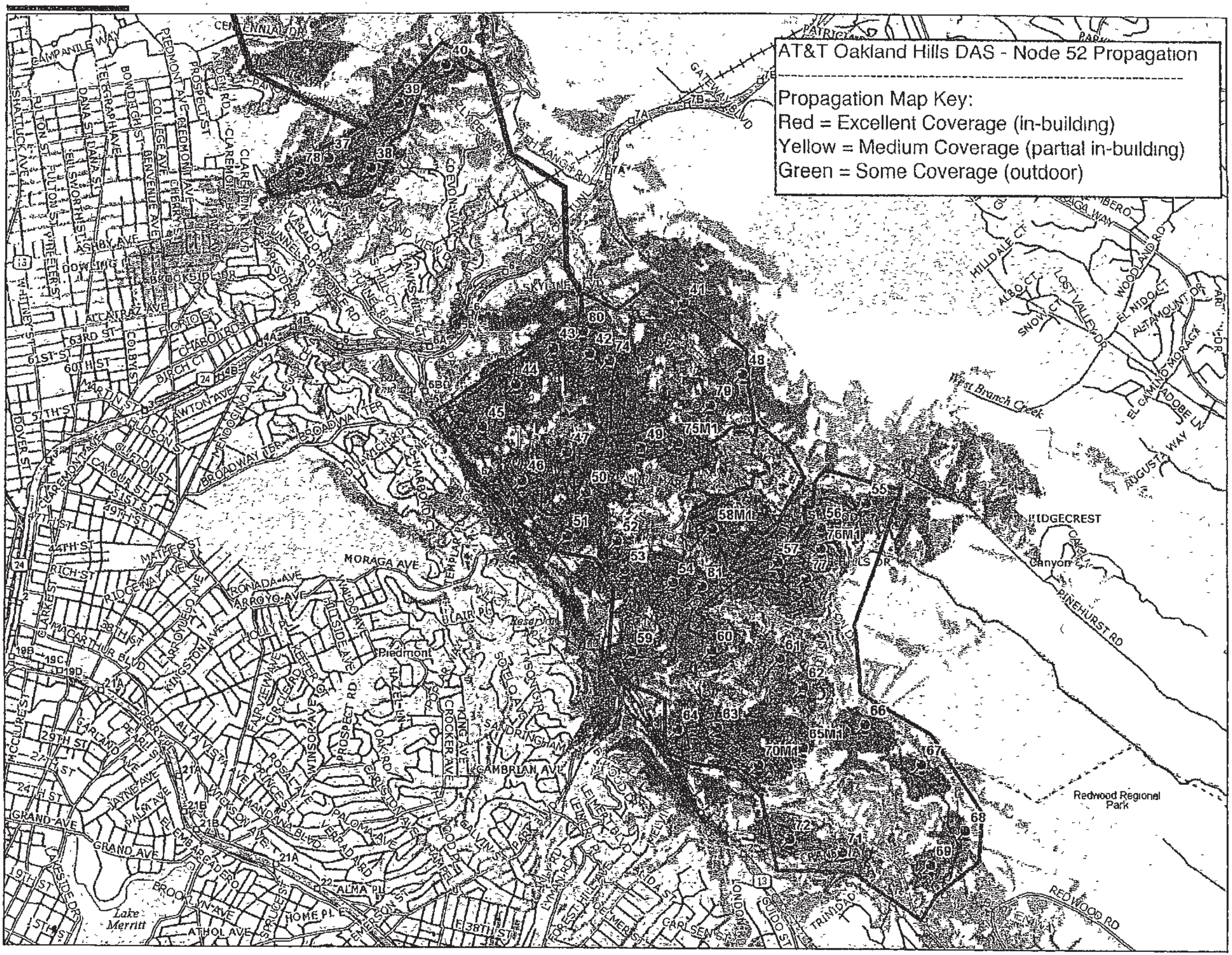
Far Field.

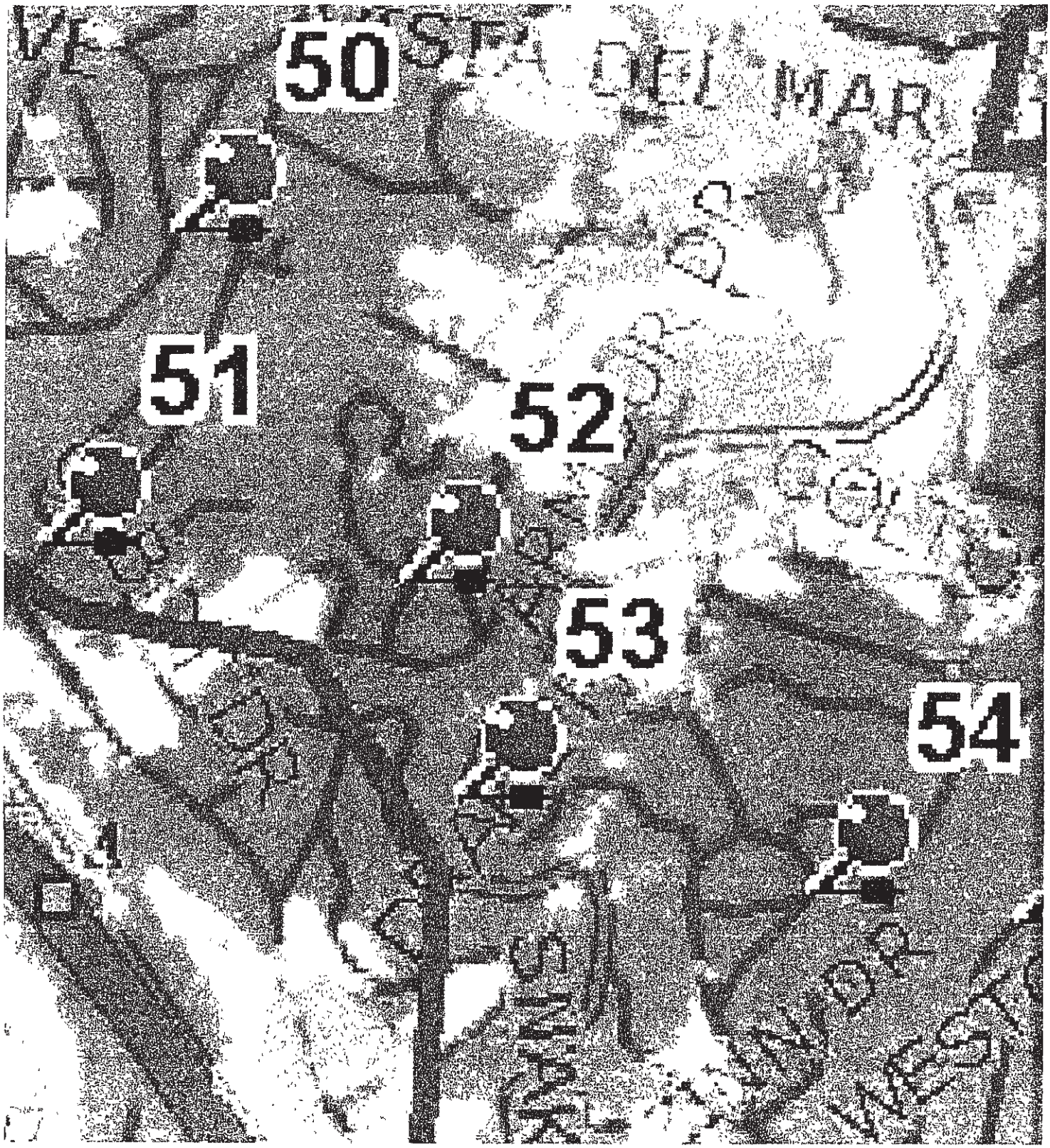
OET-65 gives this formula for calculating power density in the far field of an individual RF source:

power density $S = \frac{2.56 \times 1.64 \times 100 \times RFF^2 \times ERP}{4 \times \pi \times D^2}$, in mW/cm^2,

where ERP = total ERP (all polarizations), in kilowatts,
RFF = relative field factor at the direction to the actual point of calculation, and
D = distance from the center of radiation to the point of calculation, in meters.

The factor of 2.56 accounts for the increase in power density due to ground reflection, assuming a reflection coefficient of 1.6 (1.6 x 1.6 = 2.56). The factor of 1.64 is the gain of a half-wave dipole relative to an isotropic radiator. The factor of 100 in the numerator converts to the desired units of power density. This formula has been built into a proprietary program that calculates, at each location on an arbitrary rectangular grid, the total expected power density from any number of individual radiation sources. The program also allows for the description of uneven terrain in the vicinity, to obtain more accurate projections.


AT&T Oakland Hills DAS - Node 52 Propagation
Propagation Map Key:
Red = Excellent Coverage (in-building)
Yellow = Medium Coverage (partial in-building)
Green = Some Coverage (outdoor)
Redwood Regional Park
Lake Merritt
Piedmont
West Branch Creek
MORAGA AVE
PINEHURST RD
REDWOOD RD
SKYLINE BLVD
GATEWAY BLVD
MACARTHUR BLVD
BROADWAY TER
TELEGRAPH AVE
COLLEGE AVE
PIEDMONT AVE
GRAND AVE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at&t

Nelsonya Causby
General Attorney
525 Market Street
Suite 2025
San Francisco, CA 94105

T 415.778 1488
F: 415.974.1999
nelsonya causby@att com

May 21, 2014

Via Email (atose@oaklandnet.com)

Oakland City Council
Oakland City Hall
1 Frank H. Ogawa Plaza
Oakland, CA 94612

Re. New Cingular Wireless PCS, LLC d/b/a AT&T Mobility
Conditional Use Permit Application No. DR13020
Distributed Antenna System Node 52, near 5826 Mendoza Drive

Dear Council President Kernighan, President Pro Tem Kaplan, Vice Mayor Reid, and Councilmembers Kalb, McElhaney, Schaaf, Gallo, and Brooks:

I write on behalf of New Cingular Wireless PCS, LLC d/b/a AT&T Mobility (AT&T) to respond to the appeal of the Planning Commission's unanimous (6-0) approval of AT&T's Conditional Use Permit Application No. DR13020 ("Application"), seeking to install a distributed antenna system node on an existing utility pole in the public right-of-way near 5826 Mendoza Drive ("Proposed DAS Node 52"). This site is necessary to close a significant service coverage gap in this portion of Oakland. The purpose of this letter is to provide the Oakland City Council ("Council") with an overview of the Proposed Facility, to apply key requirements of state and federal law, and to address specific issues raised in the appeal.

AT&T's Proposed Facility

AT&T's Application complies with the Oakland Municipal Code ("Code"), and it is consistent with federal law. AT&T has identified a significant service coverage gap in the city in the vicinity of Proposed DAS Node 52. AT&T's gap is depicted in Exhibit 2 (3G UMTS coverage) and Exhibit 4 (4G LTE coverage) to the attached Radio Frequency Statement.[1] This residential Oakland Hills neighborhood consists of dozens of single-family homes in an area between Thornhill Drive and Snake Road To close this gap, AT&T proposes to install a relatively small distributed antenna system (DAS) node consisting of two short panel antennas and associated equipment on a seven-foot tall extension to existing utility pole (JPA Pole No. 110107943) in the public right-of-way near 5826 Mendoza Drive. There are several tall trees in the immediate vicinity almost entirely concealing the pole and the terrain slopes upward to the north and east.[2] The proposed coverage

[1] *See* Radio Frequency Statement (Attachment A)

[2] *See* Simulated photograph (Attachment B)

ATTACHMENT C

from Proposed DAS Node 52 is depicted in Exhibit 3 (3G UMTS coverage) and Exhibit 5 (4G LTE coverage) to the attached Radio Frequency Statement.[3]

AT&T investigated alternative sites on which to install Proposed DAS Node 52 in the area of its service coverage gap. As described in the attached Alternative Sites Analysis, AT&T identified the Proposed Facility as the best available and least intrusive means to close its significant service coverage gap.[4] Each of the alternatives is either not feasible from a radio frequency perspective to close AT&T's service coverage gap or either more or no less intrusive in terms of greater visual impact. Proposed DAS Node 52 will benefit from existing natural screening and offers the most visually appealing solution to AT&T's significant service coverage gap. As the Planning Commission explained, the pole is not located in a view corridor due to the location of homes on this sloping terrain and the presence of several mature trees.

In addition, in working with the city and community AT&T investigated an alternative design for Proposed DAS Node 52. This alternative design involved moving the equipment from the same utility pole to a new short "stub" pole across the street. However, when AT&T presented this alternative to the community, the residents did not like the design. Thus, AT&T identified the current design at the current location as the least intrusive means to close AT&T's service coverage gap in this area.

Applicable State Law – California Public Utilities Code

The construction of telecommunications infrastructure is a matter of statewide concern that municipalities generally may not regulate.[5] AT&T has a state law franchise right to modify its facilities in the public rights-of-way. Section 7901 of the California Public Utilities Code provides.

> Telegraph or telephone corporations may construct lines of telegraph or telephone lines along and upon any public road or highway, along or across any of the waters or lands within this State, and may erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters.

Plainly, Section 7901 grants telephone companies the right to construct telephone lines and equipment in the public rights-of-way—subject only to the restriction that it be done "in such manner and at such points as not to incommode the public use of the road or highway." First applied to telephone companies in 1905 in what was then Civil Code § 536, and reenacted as § 7901

---

[3] *Id*

[4] *See* Alternative Site Analysis (Attachment C)

[5] *See, e g , Pac. Tel & Tel. Co. v. City of Los Angeles*, 44 Cal 2d 272, 280 (1955) (stating the "business of supplying the people with telephone service is not a municipal affair, it is a matter of statewide concern"); *Pac. Tel & Tel. Co v City & County of San Francisco*, 51 Cal 2d 766, 768 (1959) (holding "the construction and maintenance of telephone lines in the streets and other public places within the city is today a matter of state concern and not a municipal affair"); *see also*, Cal Const , Art XII, § 8 ("[a] city, county, or other public body may not regulate matters over which the Legislature grants regulatory power to the [Public Utilities] Commission")

without amendment in 1951, this language has remained unchanged for over 100 years. Section 7901 applies to wireless telephone companies and the provision of wireless telecommunications services.[6]

In 1995, the Legislature enacted Section 7901.1(a) of the Public Utilities Code, which declares:

> It is the intent of the Legislature, consistent with Section 7901, that municipalities shall have the right to exercise reasonable control as to the time, place, and manner in which roads, highways and waterways are accessed.

(emphasis added) This declaration of intent by the Legislature confirms that municipalities may control the "time, place and manner" of a telephone company's access to public rights-of-way for construction of telephone lines and equipment. In essence, Section 7901.1 clarifies that municipalities may regulate construction to minimize public inconvenience in using the right-of-way.

On many occasions over the course of the last century, California courts have construed Section 7901 and confirmed that telephone companies are granted broad rights to construct and maintain facilities in the public rights-of-way. In 1906, the California Supreme Court addressed the statutory rights granted by then Section 536 in *Western Union Telegraph Co. v. City of Visalia*, 149 Cal 744, 750-51 (1906), including the line between proper and improper local regulation:

> While the [company] had the right, of which the city could not deprive it, to construct and operate its lines along the streets of the city, nevertheless it could not maintain its poles and wires in such a manner as to unreasonably obstruct and interfere with ordinary travel; and the city had authority, under its police power, to so regulate the manner of [the company's] placing and maintaining its poles and wires as to prevent unreasonable obstruction of travel.

Accord Postal Telegraph-Cable Co. v. City and County of San Francisco, 53 Cal. App. 188, 192 (1921) (holding that company had the right to lay its conduit along and beneath the street so long as doing so would not "interfere with the normal and ordinary use of the street for purposes of travel and traffic"), *Pacific Tel. & Tel. Co. v. City and County of San Francisco*, 197 Cal. App. 2d 133, 146 (1961) (stating permissible restriction by a city "necessarily is limited to an unreasonable obstruction of the

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[6] In Decision 11-01-027, the California Public Utilities Commission ("CPUC") rejected the argument that "only wireline telephone corporations may rely upon section 7901 to access the public rights-of-way[,]" stating that the "plain language of section 7901 contains no language limiting this statute to only wireline telephone corporations. In interpreting statutes, the principles of statutory construction prohibit reading language into a statute that was not intended by the Legislature." *Application of NextG Networks of California, Inc. for Authority to Engage in Ground-Disturbing Outside Plant Construction and Related Matter*, Case 08-04-037, Decision 11-01-027, 2011 Cal. PUC LEXIS 25 (Jan 13, 2011), at *13, *see also id.* at *10, n 8; *City of Huntington Beach v. Public Utilities Com* , 214 Cal. App 4th 566, 584-587 (2013) (NextG was properly classified as u "telephone corporation" by the CPUC and telephone corporations are "public utilities"); *GTE Mobilnet of Cal. L L.P. v. City & County of San Francisco*, 440 F. Supp. 2d 1097, 1103 (N.D. Cal 2006) (wireless carriers are included in the definition of "telephone corporation" in Section 7901 of the California Public Utilities Code)

public use"). Thus, the City may not burden AT&T's use of the public rights-of-way unless the use poses an unreasonable obstruction of public use.

Proposed DAS Node 52 will not obstruct the public rights-of-way. It will be a small installation on existing utility infrastructure. Accordingly, the city may not burden AT&T's use of the public right-of-way, and the city must permit AT&T to construct Proposed DAS Node 52

Applicable Federal Law – Telecommunications Act of 1996

The federal Telecommunications Act of 1996, 47 U.S C § 332 ("Act") provides rights to wireless service providers and establishes limitations upon state and local zoning authorities with respect to applications for permits to construct personal wireless service facilities. This important law was enacted in part to prioritize and streamline proliferation of wireless technologies on a national basis The United States Supreme Court has explained.

> Congress enacted the Telecommunications Act of 1996 (TCA), 110 Stat. 56, to promote competition and higher quality in American telecommunications services and to "encourage the rapid deployment of new telecommunications technologies." *Ibid.* One of the means by which it sought to accomplish these goals was reduction of the impediments imposed by local governments upon the installation of facilities for wireless communications, such as antenna towers. To this end, the TCA amended the Communications Act of 1934, 48 Stat 1064, to include § 332(c)(7), which imposes specific limitations on the traditional authority of state and local governments to regulate the location, construction, and modification of such facilities, 110 Stat. 151, codified at 47 U S. C. § 332(c)(7).[7]

Thus, the Act limits local regulation of wireless telecommunications facilities in pursuit of increasing deployment of the necessary wireless infrastructure.

Rapid deployment of wireless telecommunications facilities, like the Proposed Facility, is an important national issue, especially given the trend of Americans eliminating traditional landline telephone service in favor of wireless communications. The Center for Disease Control and Prevention ("CDC") tracks "wireless substitution" rates as part of its National Health Interview Survey, and the CDC publishes the statistics every six months in its Wireless Substitution reports. The most recent report, issued on December 20, 2013, which covers the period from January to June 2013, finds that 39.4% of American homes have only wireless telephones, and another 15.7% receive all or almost all calls on wireless telephones despite also having a landline.[8] Likewise, the city Planning Code characterizes telecommunications activities as essential service civic activities.

The Act defines the scope and parameters of the city's overall review of AT&T's Application. Importantly, the Act prohibits a local government from denying an application for a wireless telecommunications facility where doing so would "prohibit or have the effect of

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[7] *City of Rancho Palos Verdes v. Abrams*, 544 U S 113, 115-16 (2005).

[8] The CDC's December 2013 *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, January-June, 2013* is available at http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201312.pdf

prohibiting the provision of personal wireless services."[9] Courts have found an "effective prohibition" exists where a wireless carrier demonstrates (1) a "significant gap" in wireless service coverage; and (2) that the proposed facility would provide the "least intrusive means," in relation to the land use values embodied in local regulations, to provide the service coverage necessary to fill that gap.[10] If a wireless carrier satisfies both of these requirements, state and local standards that would otherwise be sufficient to permit denial of the facility are preempted and the municipality must approve the wireless facility.[11] When a wireless provider presents evidence of a significant gap and the absence of a less intrusive alternative, the burden shifts to the local government to prove that a less intrusive alternative exists. In order to meet this burden (and overcome the presumption in favor of federal preemption), the local government must show that another alternative is available that fills the significant gap in coverage, that it is technologically feasible, and that it is "less intrusive" than the proposed facility.[12]

Here, AT&T has met both prongs of the test. AT&T demonstrated that it has a significant service coverage gap[13] and that Proposed DAS Node 52 is the least intrusive means to close that gap.[14] Indeed, in approving the Application, the Planning Commission concluded that AT&T's Proposed DAS Node 52 "will help achieve or maintain a group of facilities which are well related to one another and which, when taken together, will result in a well-composed design," and is consistent with the General Plan. Thus, federal law requires the city to approve AT&T's Application.

Issues Raised By Appeal

The appellant raises a few specific issues in support of his appeal. But, as described above, whether or not the Council finds a code-based reason to disfavor AT&T's Proposed DAS Node 52, the Council is preempted by the Act from taking action that would prohibit or have the effect of prohibiting AT&T from providing personal wireless services, and the city cannot burden AT&T's right to use the public right-of-way. Nevertheless, AT&T offers the following responses to the issues raised in the appeal.

View Corridor

The appellant contends that AT&T did not study potential view corridor impacts. This is not accurate. AT&T carefully analyzed potential alternative sites and designs in order to identify the most appropriate and least intrusive means to meet its coverage objective in this portion of the city. After examining the various opportunities in the vicinity to mount its antennas on existing utility infrastructure, including utility poles along Mendoza Drive, Manuela Drive and Colton Boulevard, AT&T identified three candidate poles. Proposed DAS Node 52 is located on a utility pole with

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[9] 47 U.S.C. §332(c)(7)(B)(i)(II).

[10] *See e.g., Metro PCS, Inc. v. City and County of San Francisco*, 400 F3d 715, 734-35 (9th Cir. 2005); *Sprint PCS Assets, LLC v. City of Palos Verdes Estates*, 583 F.3d 716, 726 (9th Cir. 2009).

[11] *See T-Mobile USA, Inc. v. City of Anacortes*, 572 F.3d 987, 999 (9th Cir. 2009).

[12] *Id.*, 572 F.3d at 998-999.

[13] *See* Radio Frequency Statement (Attachment A)

[14] *See* Alternative Sites Analysis (Attachment C)

mature trees very nearby, including one tree that partly envelops the pole itself. This proposed location does not impact a view corridor and offers the least visual impact of the alternative candidates.

One alternative candidate is located across from 5826 Mendoza Drive, on the corner of a switchback along the road. A facility on this pole would create a view impact for nearby residences with elevated decks. Further, this site is not feasible from a radio frequency perspective because signals would be obstructed due to the terrain in the area. Another alternative candidate is located near 5801 Mendoza Drive. This alternative is much more exposed than Proposed DAS Node 52 because it is situated on a corner with no natural screening. The proposed site is the least intrusive means to close AT&T's significant service coverage gap in part because it minimizes view impacts.

Moreover, as the Planning Commission found, AT&T's Proposed DAS Node 52 is not in a view corridor and does not impact significant views from homes or scenic vistas. The Planning Commission also found that Proposed DAS Node 52 "harmonizes with, and serves to protect the value of, private and public investments in the area." Proposed DAS Node 52 is a stealthy installation that will not be noticeable as a wireless telecommunications facility. Unlike traditional cell towers that may rise many feet above nearby buildings and treetops, Proposed DAS Node 52 is designed so that the antennas are on top of a typical utility pole. Any visual impact will be minimal and Proposed DAS Node 52 fully complies with the city's General Plan and Code.

Health Effects

The appellant also voices concerns about environmental and health consequences of radio frequency emissions. Moreover, it is important to note that evidence about RF emissions is not substantial evidence that can support a denial. Local governments are specifically precluded from considering any alleged health or environmental effects of RF emissions in making decisions as to the siting of wireless telecommunications facilities "to the extent such facilities comply with the FCC's regulations concerning such emissions."[15] Here, it is beyond dispute that the proposed equipment will operate well below applicable FCC limits. An RF engineering analysis for Proposed DAS Node 52 was provided by Hammett & Edison, Inc., Consulting Engineers.[16] This report confirms that the Proposed Facility will operate well within (and actually far below) all applicable FCC public and occupational exposure limits. Given the compliance with the FCC standards, the Application cannot be rejected based on health concerns of RF emissions.

The Application cannot be rejected whether health concerns are raised explicitly or indirectly through some proxy such as "property values" or even, in some instances, aesthetics. A federal district court in California has held that in light of the federal preemption of RF emissions, "concern over the decrease in property values may not be considered as substantial evidence if the fear of property value depreciation is based on concern over the health effects caused by RF emissions."[17] Thus, these

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[15] *See* 47 U.S.C. §332(c)(7)(B)(iv).

[16] *See* Statement of Hammett & Edison, Inc., Consulting Engineers (December 13, 2012) (Attachment D).

[17] *AT&T Wireless Services of California LLC v. City of Carlsbad*, 308 F.Supp.2d 1148, 1159 (S.D. Cal. 2003) (quoting H.R. Conference Report No. 104-458, 201 (1996)).

complaints cannot be a proxy for preempted concerns about RF emissions. To the extent that the appeal is animated by concerns over RF frequency radiation, the Council cannot consider them.

In addition to the RF engineering analysis on file, the Planning Commission imposed as a condition of approval that AT&T obtain an emissions report to test actual operating levels after the site is constructed and on air. AT&T will comply with this and all other conditions of approval.

Notice and Timing

The appellant complains that the city did not provide notice and that the city is seeking to "fast track" this matter and describes the Planning Commission's decision as a "rush to judgment." However, the appellant's concerns are addressed in his appeal, the filing of which demonstrates notice of the pending process. Appellant also concedes that several notices were posted in his neighborhood. Moreover, and contrary to appellant's suggestion that the city is rushing, the Application was filed more than fifteen months ago and this appeal has been pending for over a year. At this point, the city is at risk of violating the Act's mandate that the city act within a reasonable period of time.

Conclusion

AT&T is diligently trying to upgrade its network to meet the growing wireless telecommunications demand within Oakland. It is doing so in a manner that takes prudent and careful consideration of the aesthetic impacts of its facilities and the values the city seeks to promote. AT&T's proposed design is fully consistent with city's land use regulations and its General Plan, and Proposed DAS Node 52 is the least intrusive means by which AT&T can fill the significant service coverage gap in the area. I urge the Council to deny the appeal and uphold the Planning Commission's approval of AT&T's Application.

Very truly yours,

Nelsonya Causby

cc: Celena Chen, Deputy City Attorney

Attachment A: Radio Frequency Statement
Attachment B: Simulated photograph
Attachment C: Alternative Site Analysis
Attachment D: Statement of Hammett & Edison, Inc., Consulting Engineers (Dec. 13, 2012)

ATTACHMENT A

AT&T Mobility Radio Frequency Statement
DAS Node 52: Public Right-of-Way JPA Pole # 110107943
at 5826 Mendoza Dr., Oakland, CA

I am the AT&T radio frequency engineer assigned to the proposed wireless communications facility located on an existing utility pole in public right-of-way next to JPA Pole 110107943 at 5826 Mendoza Dr., Oakland (the "Property"). Based on my personal knowledge of the Property and with AT&T's wireless network, as well as my review of AT&T's records with respect to the Property and its wireless telecommunications facilities in the surrounding area, I have concluded that the work associated with this permit request is needed to close a service coverage gap in the area immediately surrounding the Property.

The service coverage gap is caused by inadequate (or, in the case of 4G LTE, non-existent) infrastructure in the area. As explained further in Exhibit 1, AT&T's existing facilities cannot adequately serve its customers in the desired area of coverage, let alone address rapidly increasing data usage. Moreover, 4G LTE service coverage has not yet been fully deployed in this area. To remedy this service coverage gap, AT&T needs to construct a new wireless communications facility.

AT&T uses industry standard propagation tools to identify the areas in its network where signal strength is too weak to provide reliable in-building service quality. This information is developed from many sources including terrain and clutter databases, which simulate the environment, and propagation models that simulate signal propagation in the presence of terrain and clutter variation. AT&T designs and builds its network to ensure customers receive reliable in-building service quality.

Exhibit 2 to this Statement is a map of existing service coverage (without the proposed installation at the Property) in the area where AT&T is planning to install several distributed antenna system (DAS) nodes to close a larger service coverage gap in the County. It includes service coverage provided by existing on-air AT&T sites. The green shaded areas depict areas within a signal strength range that provide acceptable in-building service coverage. In-building coverage means customers are able to place or receive a call on the ground floor of a building. The yellow shaded areas depict areas within a signal strength range that provide acceptable in-transit coverage. In this area, an AT&T customer should be able to successfully place or receive a call within a vehicle. The red shading depicts areas within a signal strength range in which a customer might have difficulty receiving a consistently acceptable level of service. The quality of service experienced by any individual can differ greatly depending on whether that customer is indoors, outdoors, stationary, or in transit. Any area in the red or yellow category is considered inadequate service coverage and constitutes a service coverage gap.

Exhibit 3 predicts service coverage based on signal strength in the vicinity of the Property if the node 3 antennas are placed as proposed in the application. As shown by these maps, and, in particular, the "After" map in Exhibit 3 shows that node 3 closes the significant 3G service coverage gap in the area immediately surrounding the Property.

In addition to these 3G wireless service gap issues, AT&T is in the process of deploying its 4G LTE service in Oakland with the goal of providing the most advanced personal wireless experience available to AT&T customers. 4G LTE is capable of delivering speeds up to 10 times faster than industry-average 3G speeds. LTE technology also offers lower latency, or the processing time it takes to move data through a network, such as how long it takes to start downloading a webpage or file once a customer has sent the request. Lower latency helps to improve the quality of personal wireless services. What's more, LTE uses spectrum more efficiently than other technologies, creating more space to carry data traffic and services and to deliver a better overall network experience. Exhibit 4 is a map that depicts 4G LTE service in the area surrounding the Property, and it shows a significant 4G LTE service coverage gap in the area. After the upgrades, Exhibit 5 shows that 4G LTE service is available both indoors and outdoors in the targeted service area. This is important not only to bring 4G LTE to residents of Oakland but also because as existing customers migrate to 4G LTE, the LTE technology will provide the added benefit of reducing 3G data traffic, which can cause capacity issues on the UMTS (3G) network during peak usage periods, especially in light of the forecasted increase in usage noted in Exhibit 1.

I have a Bachelor's Degree in Electrical Engineering from Concordia University, and I have worked as a radio frequency design engineer in the wireless communications industry for over 7 years.

Dimitri Gogas

September 11, 2013

EXHIBIT 1
Prepared by AT&T Mobility

AT&T's digital wireless technology converts voice or data signals into a stream of digits to allow a single radio channel to carry multiple simultaneous signal transmissions. This technology allows AT&T to offer services such as secured transmissions and enhanced voice, high-speed data, texting, video conferencing, paging and imaging capabilities, as well as voicemail, visual voicemail, call forwarding and call waiting that are unavailable in analog-based systems. With consumers' strong adoption of smartphones, customers now have access to wireless broadband applications, which consumer utilize at a growing number.

AT&T customers are using these applications in a manner that has caused a ***30,000% increase in mobile data usage on AT&T's network since 2007.*** AT&T expects total mobile data volume to ***grow 8x-10x over the next five years***. To put this estimate in perspective, all of AT&T Mobility's mobile traffic during 2010 would be equal to only six or seven weeks of mobile traffic volume in 2015. The FCC noted that U.S. mobile data traffic grew almost 300% in 2011, and driven by 4G LTE smartphones and tablets, traffic is projected to grow an additional 16-fold by 2016.

Mobile devices using AT&T's technology transmit a radio signal to antennas mounted on a tower, pole, building, or other structure. The antenna feeds the signal to electronic devices housed in a small equipment cabinet, or base station. The base station is connected by microwave, fiber optic cable, or ordinary copper telephone wire to the Radio Network Controller, subsequently routing the calls and data throughout the world.

The operation of AT&T's wireless network depends upon a network of wireless communications facilities. The range between wireless facilities varies based on a number of factors. The range between AT&T mobile telephones and the antennas in and nearby Oakland, for example, is particularly limited as a result of topographical challenges, blockage from buildings, trees, and other obstructions as well as the limited capacity of existing facilities.

To provide effective, reliable, and uninterrupted service to AT&T customers in their cars, public transportation, home, and office, without interruption or lack of access, coverage must overlap in a grid pattern resembling a honeycomb.

In the event that AT&T is unable to construct or upgrade a wireless communications facility within a specific geographic area, so that each site's coverage reliably overlaps with at least one adjacent facility, AT&T will not be able to provide adequate personal wireless service to its customers within that area. Some consumers will experience an abrupt loss of service. Others will be unable to obtain reliable service, particularly if they are placing a call inside a building.

Service problems occur for customers even in locations where the coverage maps on AT&T's "Coverage Viewer" website appear to indicate that coverage is available. As the legend to the Coverage Viewer maps indicates, these maps depict a high-level *approximation* of coverage, which may not show gaps in coverage; *actual* coverage in an area may differ substantially from map graphics, and may be affected by such things as terrain, foliage, buildings and other construction, motion, customer equipment, and network traffic. The legend states that AT&T does not guarantee coverage and its coverage maps are not intended to show actual customer performance on the network, nor are they intended to show future network needs or build requirements inside or outside of AT&T's existing coverage areas.

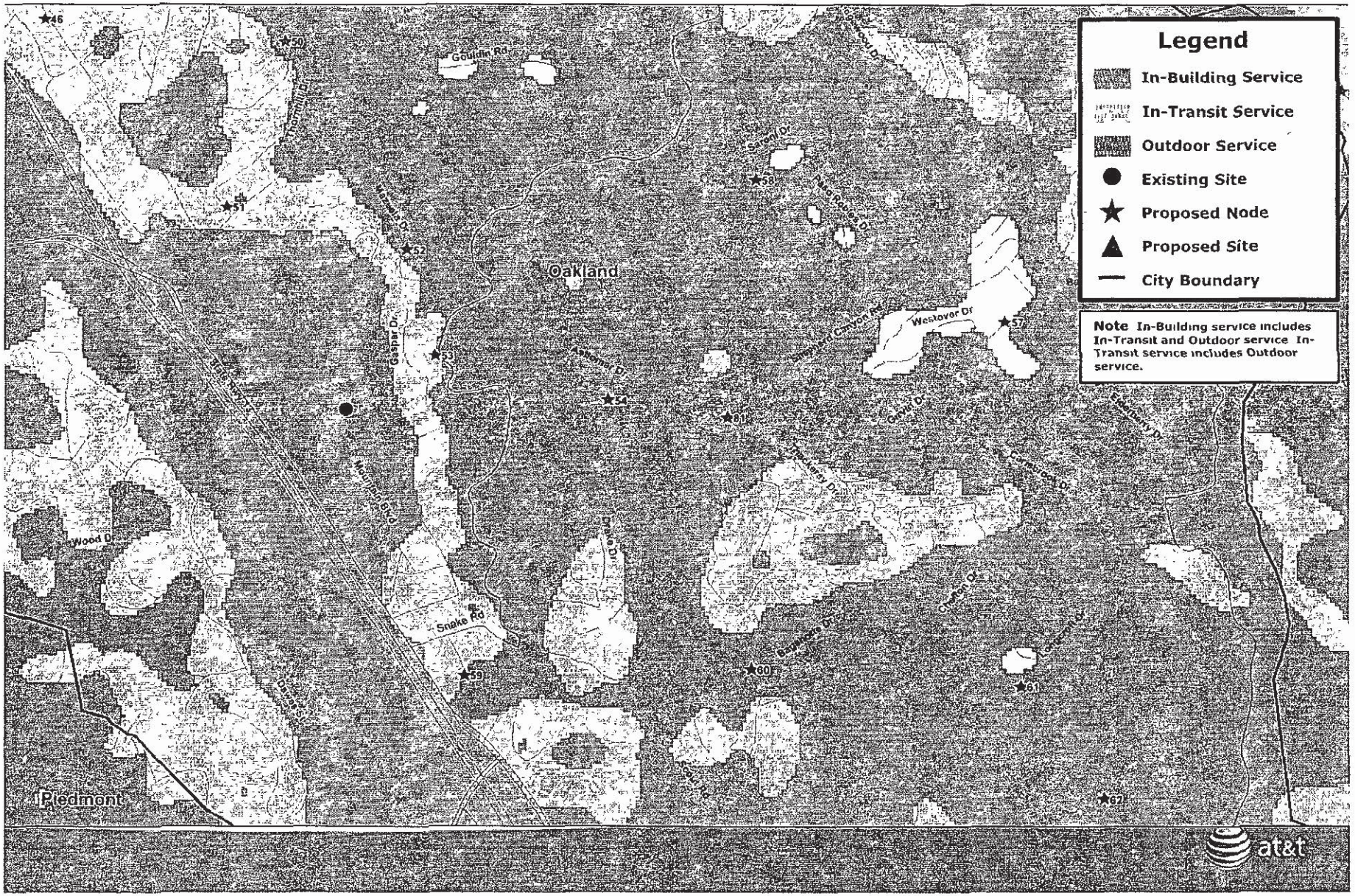
It is also important to note that the signal losses and service problems described above can and do occur for customers even at times when certain other customers in the same vicinity may be able to initiate and complete calls on AT&T's network (or other networks) on their wireless phones. These problems also can and do occur even when certain customers' wireless phones indicate "all bars" of signal strength on the handset.

The bars of signal strength that individual customers can see on their wireless phones are an imprecise and slow-to-update estimate of service quality. In other words, a customer's wireless phone can show "four bars" of signal strength, but that customer can still, at times, be unable to initiate voice calls, complete calls, or download data reliably and without service interruptions.

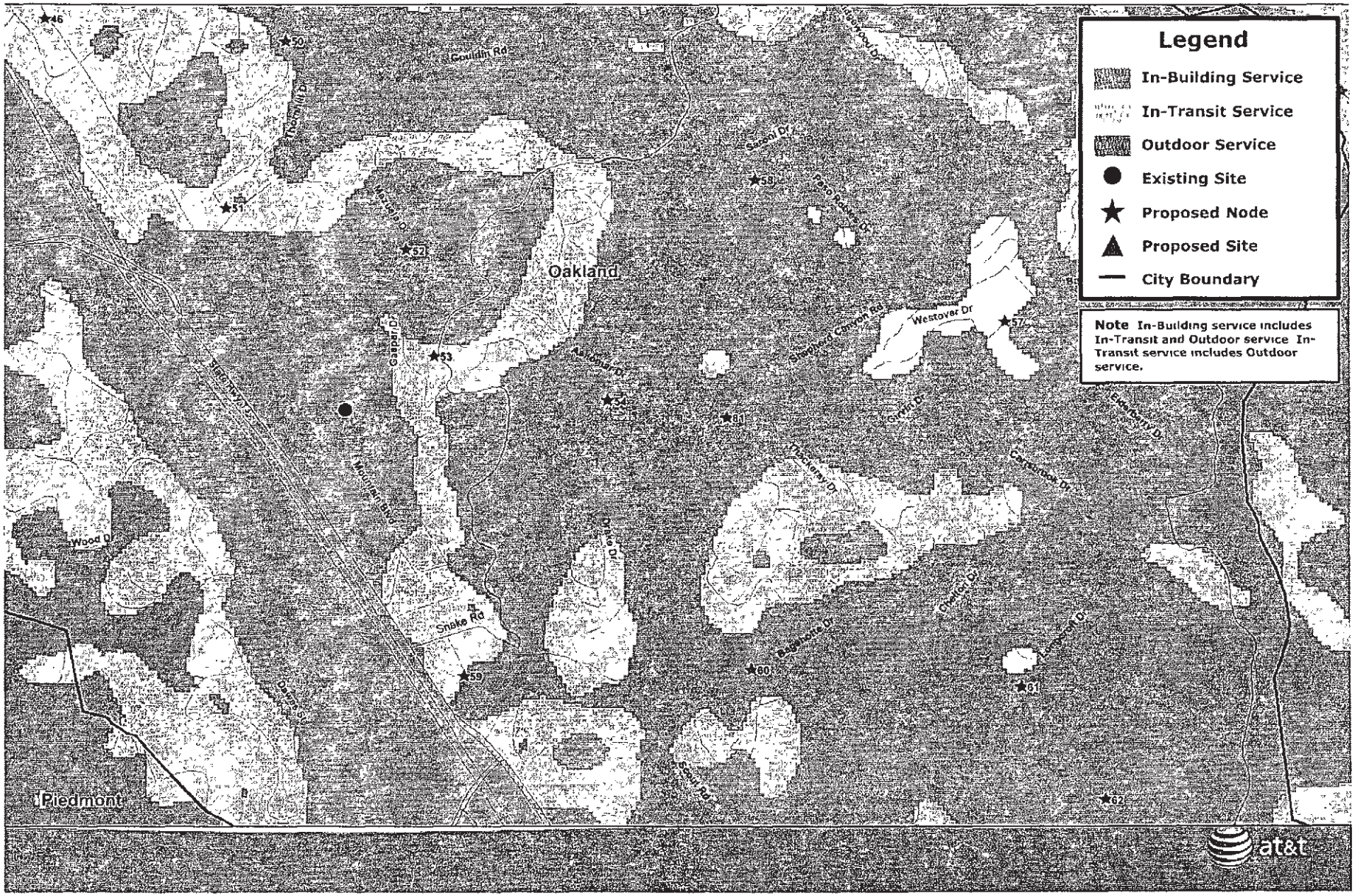
To determine where new or upgraded telecommunications facilities need to be located for the provision of reliable service in any area, AT&T's radio frequency engineers rely on far more complete tools and data sources than just signal strength from individual phones. AT&T creates maps incorporating signal strength that depict existing service coverage and service coverage gaps in a given area

To rectify this significant gap in its service coverage, AT&T needs to locate a wireless facility in the immediate vicinity of the Property.

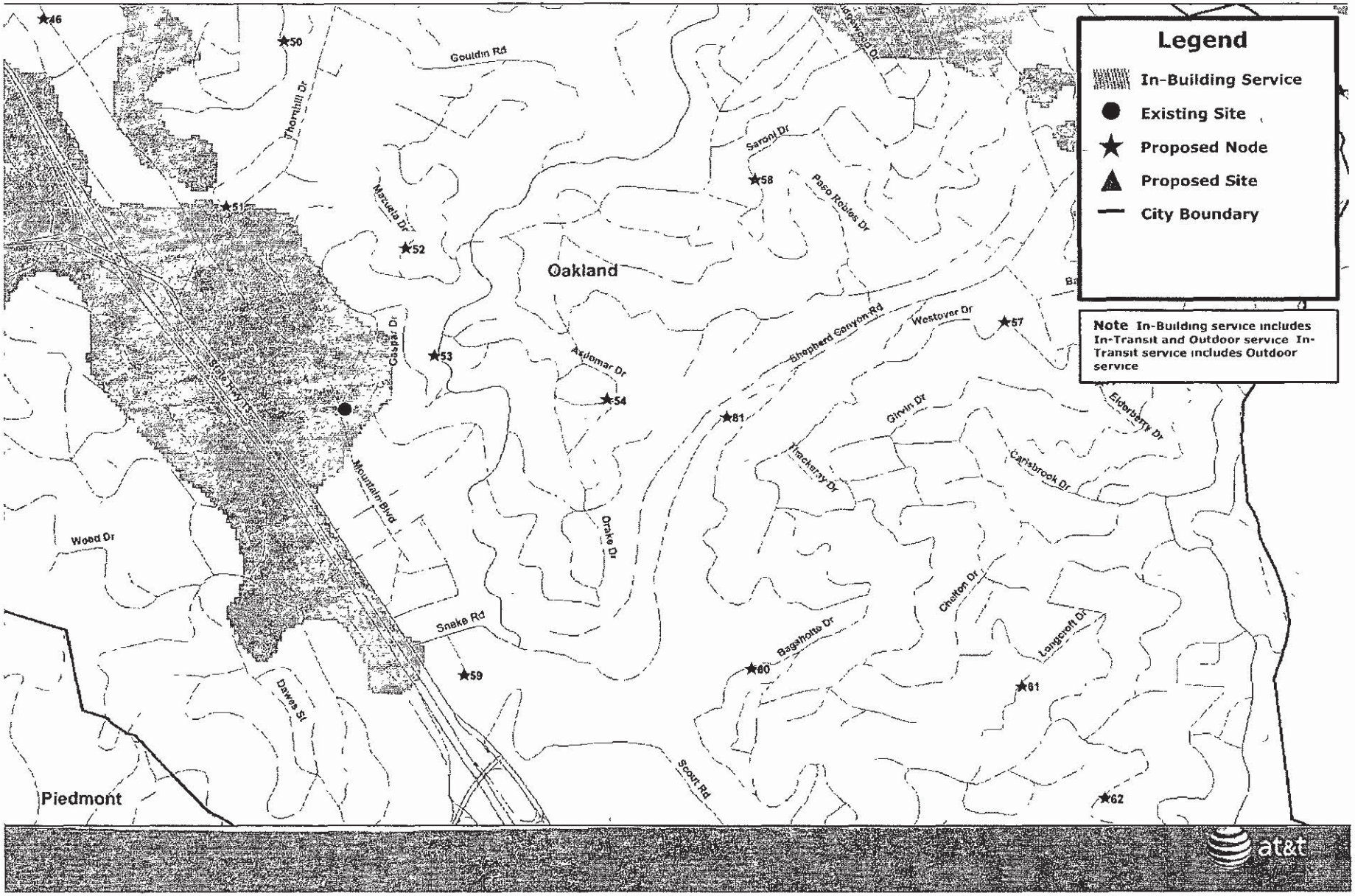
Oakland oDAS – Existing UMTS Coverage



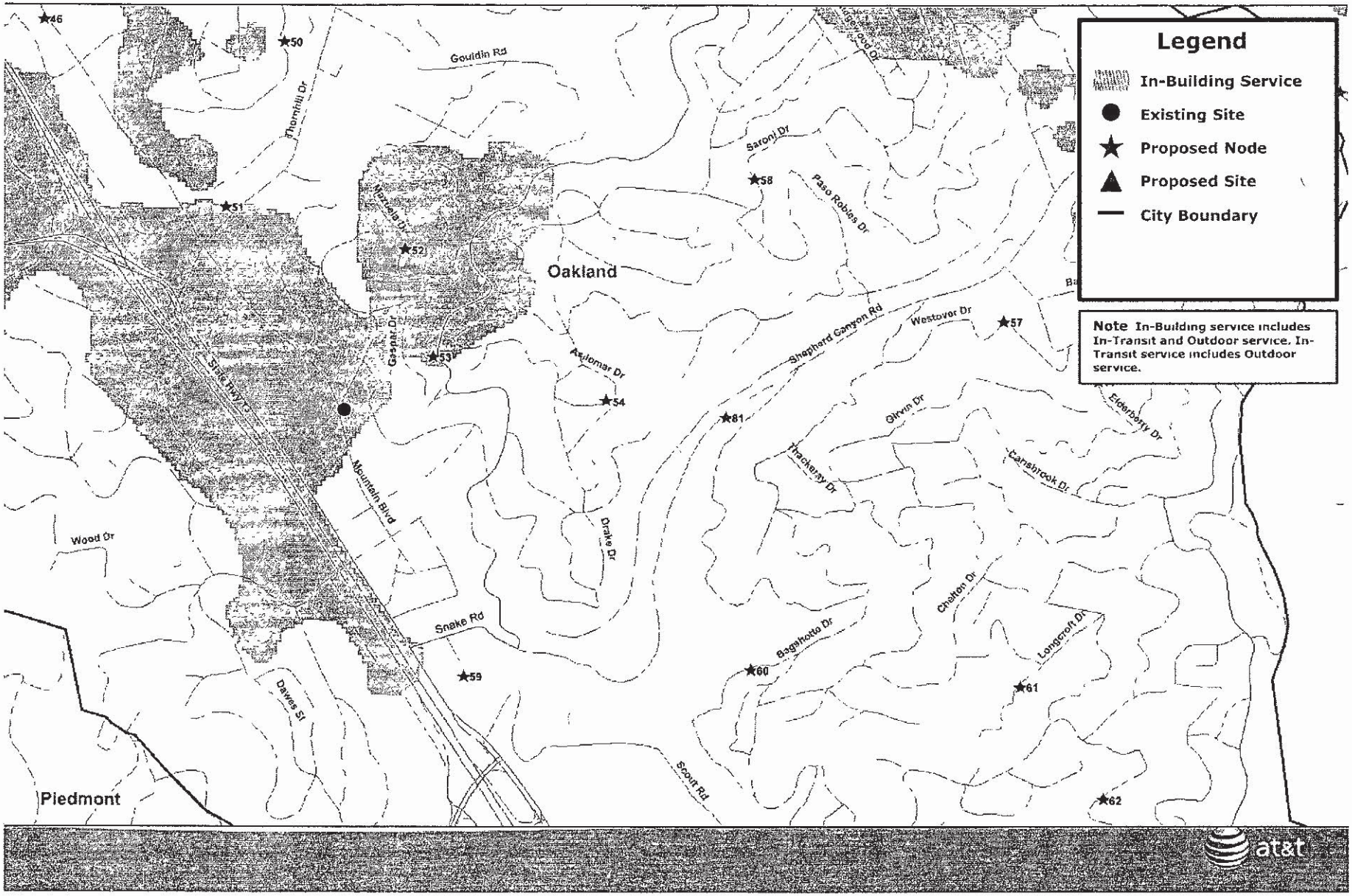
Oakland oDAS – Existing with Node 52 UMTS Coverage



Oakland oDAS – Existing LTE Coverage



Oakland oDAS – Existing with Node 52 LTE Coverage



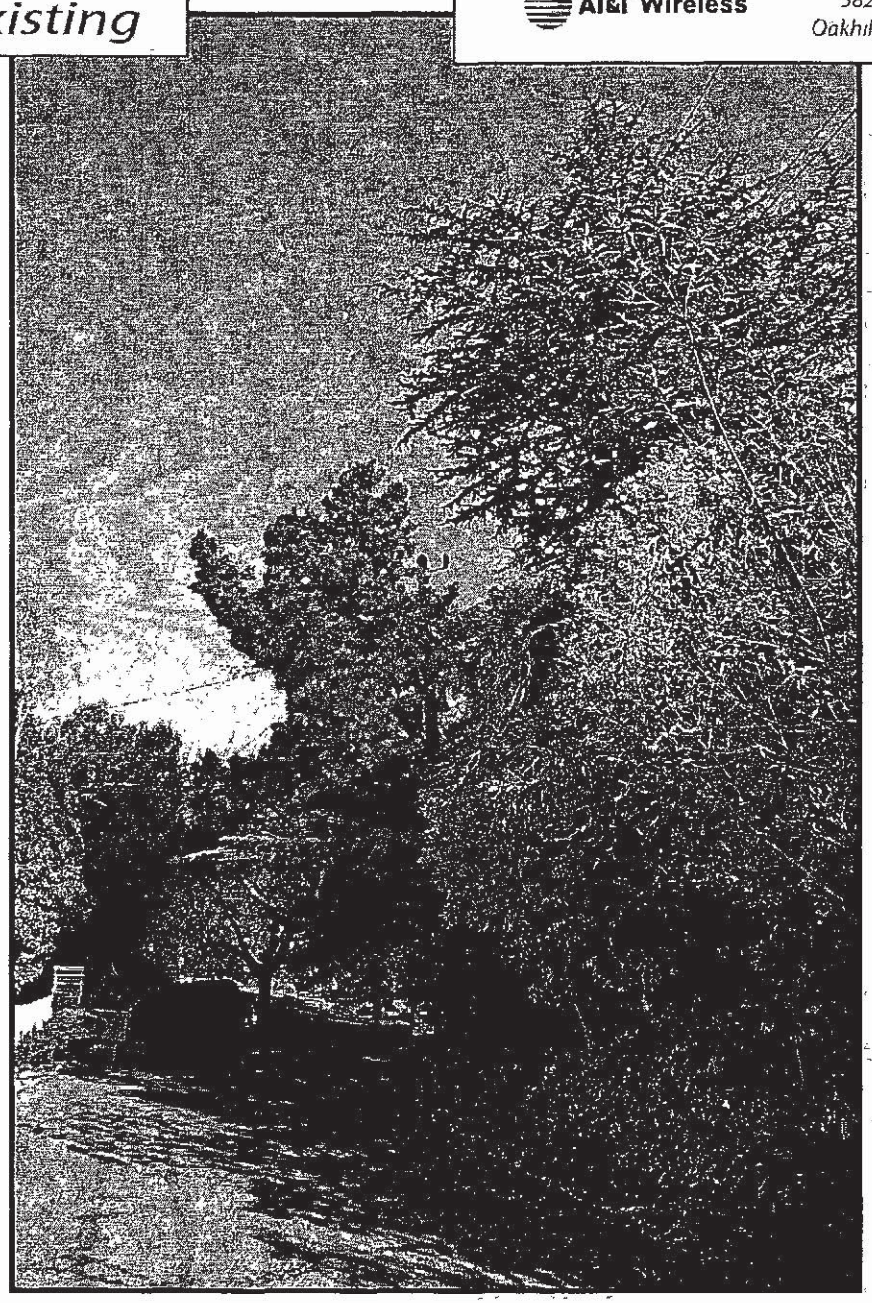
ATTACHMENT B

view from Mendoza Drive looking northeast at site

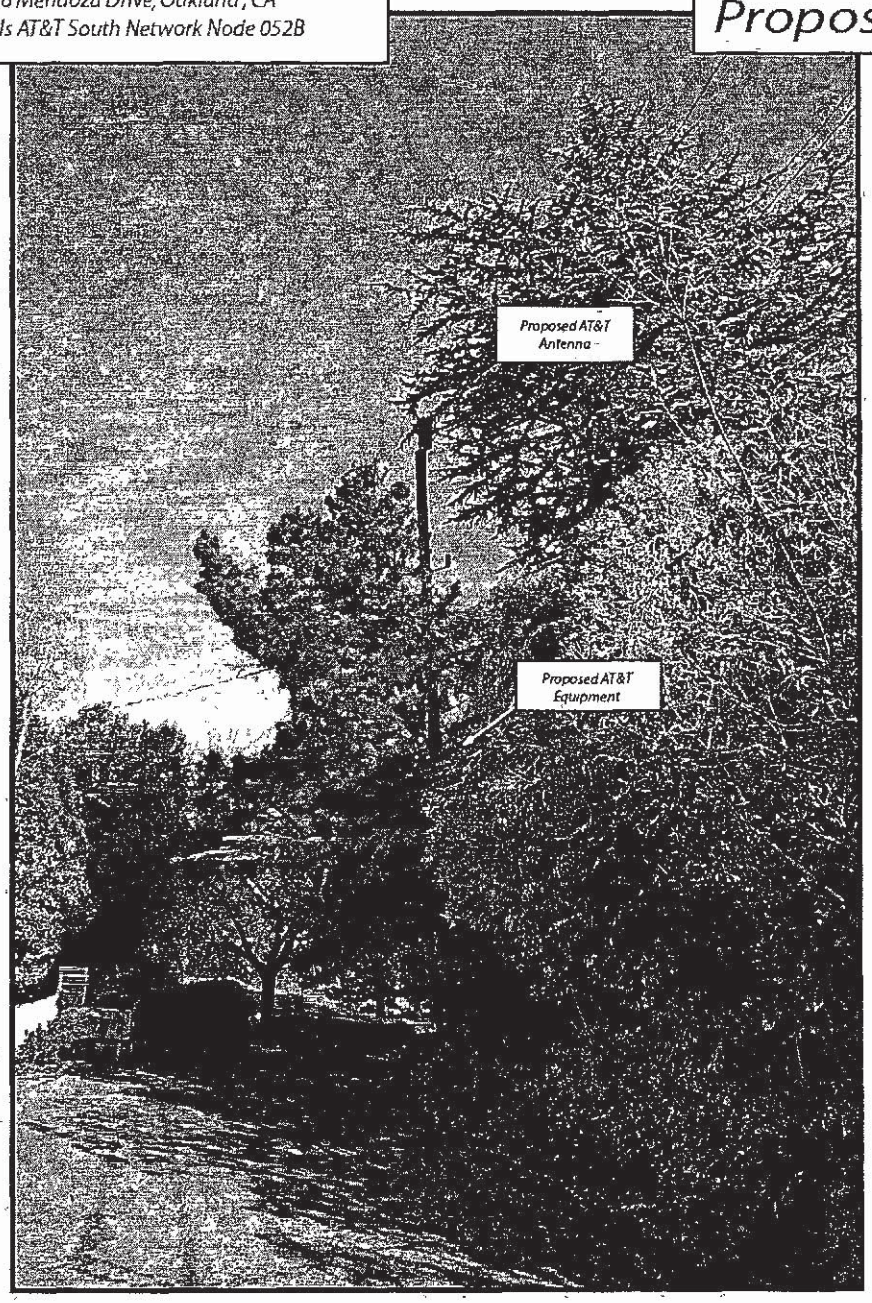
AT&T Wireless

5826 Mendoza Drive, Oakland, CA
Oakhills AT&T South Network Node 052B

Existing



Proposed



AdvanceSim
Photo Simulation Solutions
Contact (925) 202 8507

ATTACHMENT C

Alternative Site Analysis

JPA Pole 110107943 at 5826 Mendoza Drive

Submitted by Extenet Systems on behalf of AT&T
Node 52

PRIMARY SITE

- The Primary site is identified as JPA 110107943 at 5826 Mendoza Drive at Colton Drive.
- The photo above is a panoramic view taken of the Primary pole to capture its setting and surroundings.
- PURPOSE: This site is being re-evaluated in good faith by AT&T to thoughtfully analyze, select, and support the best site location that will meet the objectives of a cellular site with respect to the thoughts of the city and the site's surrounding neighbors.

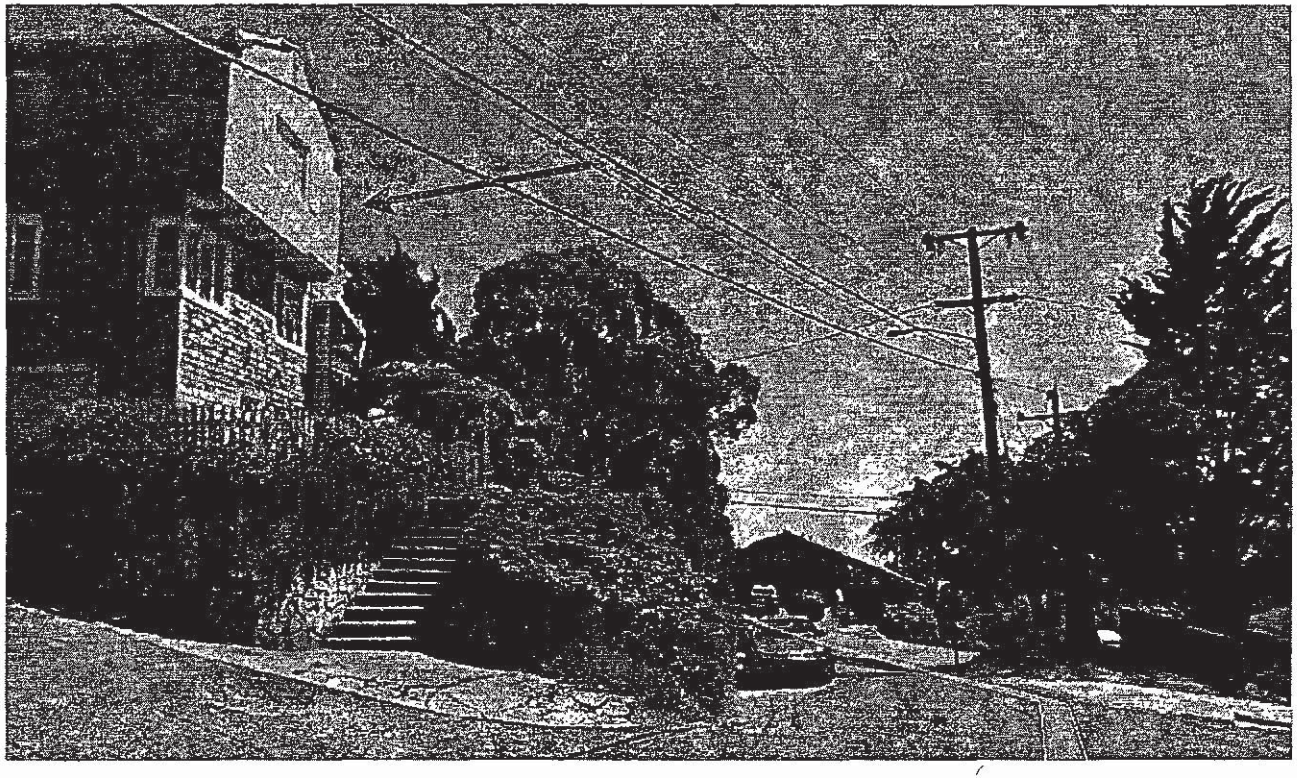
PRIMARY & ALTERNATIVE LOCATIONS

- On the map above, the Primary site (JPA110107943) is marked with a blue pin with the 2 alternative sites (JPA 110107942, JPA 110306400) marked by yellow pins.

ALTERNATIVE 1: Node 52C

- Alternative 1 is identified as JPA 110306400 across from the side of 5826 Mendoza Drive.
- This site is located on the corner of a switchback along Mendoza Drive, which continues with a hard left (containing a view corridor) and splits off to Cabrillo Place. Behind the camera view, there are 2 residential decks overlooking this alternative pole on the above hill, giving rise to concerns about view impact.
- RF engineering rejects this pole due to terrain obstruction.
- AT&T does not support this site as a viable alternative site.

ALTERNATIVE 2: Node 52D



- Alternative 2 is identified as JPA 110107942 at 5801 Mendoza Drive.
- This site is located at the intersection of Mendoza Drive and Colton Boulevard, visually exposing the site more than the Primary. Alternative 2 is situated at a corner without the natural screening provided by the inset of the Primary site along Mendoza Drive and its surrounding foliage.
- Extremely concerning is the view impact that the residence at 5802 Mendoza Drive (red arrow) will experience. See the following slide for an additional view from Colton Blvd.

ALTERNATIVE 2: Node 52D

- As pictured above, the existing view corridor at 5802 Mendoza Drive (red arrow) at Colton Boulevard will be severely impacted and is not acceptable.
- RF engineering approves this site, however, view obstructions eliminate its candidacy.
- AT&T does not support this site as a viable alternative.

CONCLUSION

- All alternative sites were examined for visual impact, radio frequency engineering, and implementation.

- The original, Primary pole remains the best location for a wireless facility as demonstrated with the provided photographs and information. The Primary pole is the most logical solution to mitigate visual impact and fulfill RF and implementation standards.

ATTACHMENT D

New Cingular Wireless, LLC • 32 Proposed Distributed Antenna System Nodes
Oakland Hills • Oakland, California

Statement of Hammett & Edison, Inc., Consulting Engineers

The firm of Hammett & Edison, Inc., Consulting Engineers, has been retained on behalf of New Cingular Wireless, LLC, a wireless telecommunications service provider, to evaluate 32 distributed antenna system (DAS) nodes proposed to be located in the Oakland Hills area of Oakland, California, for compliance with appropriate guidelines limiting human exposure to radio frequency ("RF") electromagnetic fields.

Executive Summary

New Cingular Wireless proposes to install two directional panel antennas on 32 existing or proposed utility poles sited in the Oakland Hills area of Oakland. The proposed operation will comply with the FCC guidelines limiting public exposure to RF energy.

Prevailing Exposure Standards

The U.S. Congress requires that the Federal Communications Commission ("FCC") evaluate its actions for possible significant impact on the environment. A summary of the FCC's exposure limits is shown in Figure 1. These limits apply for continuous exposures and are intended to provide a prudent margin of safety for all persons, regardless of age, gender, size, or health. The most restrictive FCC limit for exposures of unlimited duration to radio frequency energy for several personal wireless services are as follows.

Wireless Service	Frequency Band	Occupational Limit	Public Limit
Microwave (Point-to-Point)	5,000–80,000 MHz	5.00 mW/cm^2	1.00 mW/cm^2
BRS (Broadband Radio)	2,600	5 00	1.00
AWS (Advanced Wireless)	2,100	5 00	1.00
PCS (Personal Communication)	1,950	5.00	1.00
Cellular	870	2.90	0.58
SMR (Specialized Mobile Radio)	855	2 85	0.57
700 MHz	700	2.35	0.47
[most restrictive frequency range]	30–300	1.00	0 20

Power line frequencies (60 Hz) are well below the applicable range of these standards, and there is considered to be no compounding effect from simultaneous exposure to power line and radio frequency fields.

General Facility Requirements

Base stations typically consist of two distinct parts the electronic transceivers (also called "radios" or "channels") that are connected to the traditional wired telephone lines, and the passive antennas that send the wireless signals created by the radios out to be received by individual subscriber units.

The transceivers are often located at ground level and are connected to the antennas by coaxial cables. A small antenna for reception of GPS signals is also required, mounted with a clear view of the sky. Because of the short wavelength of the frequencies assigned by the FCC for wireless services, the antennas require line-of-sight paths for their signals to propagate well and so are installed at some height above ground. The antennas are designed to concentrate their energy toward the horizon, with very little energy wasted toward the sky or the ground. Along with the low power of such facilities, this means that it is generally not possible for exposure conditions to approach the maximum permissible exposure limits without being physically very near the antennas.

Computer Modeling Method

The FCC provides direction for determining compliance in its Office of Engineering and Technology Bulletin No. 65, "Evaluating Compliance with FCC-Specified Guidelines for Human Exposure to Radio Frequency Radiation," dated August 1997. Figure 2 attached describes the calculation methodologies, reflecting the facts that a directional antenna's radiation pattern is not fully formed at locations very close by (the "near-field" effect) and that at greater distances the power level from an energy source decreases with the square of the distance from it (the "inverse square law") The conservative nature of this method for evaluating exposure conditions has been verified by numerous field tests.

Site and Facility Description

Based upon information provided by New Cingular Wireless, that carrier proposes to install 32 new nodes, listed in Table 1 below, in the Oakland Hills area of Oakland. Each node would consist of two Kathrein Model 840-10525 directional panel antennas installed on a new or existing utility pole to be sited in a public right-of-way. The antennas would be mounted with no downtilt at an effective height of about 35 feet above ground and would be oriented in different directions, as shown in Table 1. The maximum effective radiated power in any direction would be 219 watts, representing simultaneous operation by New Cingular Wireless at 104 watts for PCS, 61 watts for cellular, and 54 watts for 700 MHz service. There are reported no other wireless telecommunications base stations at the site or nearby

Node #	Approximate Address	Antenna Orientations	
Node 35	Grizzly Peak Boulevard and Golf Course Drive	116°T	321°T
Node 36	2501 Grizzly Peak Boulevard	65°T	248°T
Node 37	7541 Claremont Avenue	54°T	240°T
Node 39	8071 Claremont Avenue	36°T	215°T
Node 41	Grizzly Peak Boulevard and Skyline Boulevard	149°T	283°T
Node 42	6616 Pine Needle Drive	73°T	344°T
Node 46	1265 Mountain Boulevard	30°T	105°T
Node 47	5925 Sherwood Drive	13°T	285°T
Node 48	Skyline Boulevard and Elverton Drive	153°T	325°T
Node 49	1732 Indian Way	24°T	306°T
Node 50	5612 Merriewood Drive	46°T	110°T
Node 51	5658 Grisborne Avenue	87°T	355°T
Node 52	5826 Mendoza Drive	61°T	121°T
Node 53	6133 Snake Road	43°T	119°T
Node 54	2052 Tampa Avenue	0°T	100°T
Node 55	8211 Skyline Boulevard	98°T	158°T
Node 56	6837 Aitken Drive	65°T	316°T
Node 57	6415 Westover Drive	137°T	302°T
Node 58	6828 Saroni Drive	20°T	100°T
Node 59	2189 Andrews Street	37°T	88°T
Node 60	5879 Scarborough Drive	33°T	81°T
Node 62	2997 Holyrood Drive	21°T	88°T
Node 63	2679 Mountain Gate Way	0°T	80°T
Node 64	Mountain Boulevard and Ascot Drive	29°T	110°T
Node 70	75 Castle Park Way	0°T	70°T
Node 71	3343 Crane Way	72°T	355°T
Node 74	6925 Pinehaven Road	0°T	70°T
Node 75	6776 Thornhill Drive	66°T	127°T
Node 77	6659 Girvin Drive	100°T	180°T
Node 78	7380 Claremont Avenue	55°T	200°T
Node 79	6757 Sobrante Road	70°T	159°T
Node 81	Shepherd Canyon Road and Escher Drive	56°T	209°T

Table 1 New Cingular Wireless Nodes Evaluated

Study Results

For a person anywhere at ground, the maximum RF exposure level due to the proposed operation through is calculated to be 0.0026 mW/cm^2, which is 0.50% of the applicable public exposure limit The maximum calculated level at the second-floor elevation of any nearby building* is 1.2% of the

* Including nearby residences located at least 9 feet from any pole, based on photographs from Google Maps

public limit. It should be noted that these results include several "worst-case" assumptions and therefore are expected to overstate actual power density levels from the proposed operation.

Recommended Mitigation Measures

Due to their mounting locations on utility poles, the New Cingular Wireless antennas would not be accessible to the general public, and so no mitigation measures are necessary to comply with the FCC public exposure guidelines. To prevent occupational exposures in excess of the FCC guidelines, no access within 3 feet directly in front of the antennas themselves, such as might occur during maintenance work on the poles, should be allowed while the pertinent node is in operation, unless other measures can be demonstrated to ensure that occupational protection requirements are met. Posting explanatory warning signs† at the antennas and/or on the poles below the antennas, such that the signs would be readily visible from any angle of approach to persons who might need to work within that distance, would be sufficient to meet FCC-adopted guidelines.

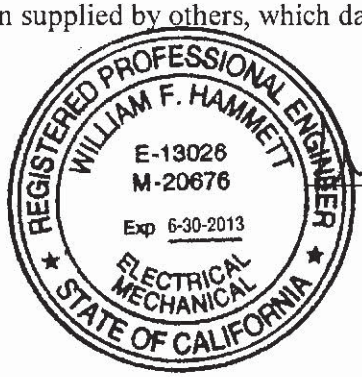
Conclusion

Based on the information and analysis above, it is the undersigned's professional opinion that the proposed operation of these New Cingular Wireless nodes located in Oakland, California, will comply with the prevailing standards for limiting public exposure to radio frequency energy and, therefore, will not for this reason cause a significant impact on the environment. The highest calculated level in publicly accessible areas is much less than the prevailing standards allow for exposures of unlimited duration. This finding is consistent with measurements of actual exposure conditions taken at other operating base stations. Posting explanatory signs is recommended to establish compliance with occupational exposure limitations.

† Warning signs should comply with OET-65 color, symbol, and content recommendations Signage may also need to comply with the requirements of California Public Utilities Commission General Order No 95

Authorship

The undersigned author of this statement is a qualified Professional Engineer, holding California Registration Nos. E-13026 and M-20676, which expire on June 30, 2013. This work has been carried out under his direction, and all statements are true and correct of his own knowledge except, where noted, when data has been supplied by others, which data he believes to be correct.



William F. Hammett, P.E.
707/996-5200

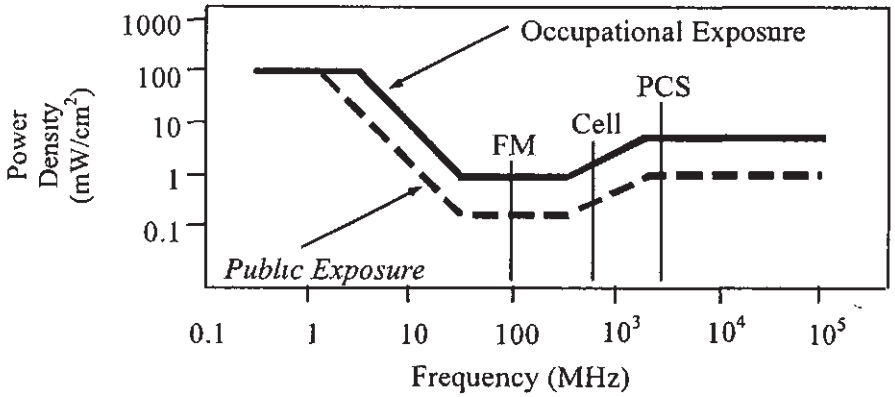
December 13, 2012

FCC Radio Frequency Protection Guide

The U S Congress required (1996 Telecom Act) the Federal Communications Commission ("FCC") to adopt a nationwide human exposure standard to ensure that its licensees do not, cumulatively, have a significant impact on the environment. The FCC adopted the limits from Report No 86, "Biological Effects and Exposure Criteria for Radiofrequency Electromagnetic Fields," published in 1986 by the Congressionally chartered National Council on Radiation Protection and Measurements ("NCRP"). Separate limits apply for occupational and public exposure conditions, with the latter limits generally five times more restrictive The more recent standard, developed by the Institute of Electrical and Electronics Engineers and approved as American National Standard ANSI/IEEE C95.1-2006, "Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz," includes similar limits These limits apply for continuous exposures from all sources and are intended to provide a prudent margin of safety for all persons, regardless of age, gender, size, or health

As shown in the table and chart below, separate limits apply for occupational and public exposure conditions, with the latter limits (in *italics* and/or dashed) up to five times more restrictive·

Frequency	Electromagnetic Fields (f is frequency of emission in MHz)					
Applicable Range (MHz)	Electric Field Strength (V/m)		Magnetic Field Strength (A/m)		Equivalent Far-Field Power Density (mW/cm^2)	
0 3 – 1 34	614	*614*	1 63	*1 63*	100	*100*
1 34 – 3 0	614	*823 8/f*	1 63	*2 19/f*	100	*180/f^2*
3 0 – 30	1842/ f	*823 8/f*	4 89/ f	*2 19/f*	900/ f^2	*180/f^2*
30 – 300	61 4	*27 5*	0 163	*0 0729*	1 0	*0 2*
300 – 1,500	3 54$\sqrt{f}$	*1 59$\sqrt{f}$*	$\sqrt{f}$/106	*$\sqrt{f}$/238*	f/300	*f/1500*
1,500 – 100,000	137	*61 4*	0 364	*0 163*	5 0	*1 0*



Higher levels are allowed for short periods of time, such that total exposure levels averaged over six or thirty minutes, for occupational or public settings, respectively, do not exceed the limits, and higher levels also are allowed for exposures to small areas, such that the spatially averaged levels do not exceed the limits. However, neither of these allowances is incorporated in the conservative calculation formulas in the FCC Office of Engineering and Technology Bulletin No. 65 (August 1997) for projecting field levels Hammett & Edison has built those formulas into a proprietary program that calculates, at each location on an arbitrary rectangular grid, the total expected power density from any number of individual radio sources The program allows for the description of buildings and uneven terrain, if required to obtain more accurate projections

RFR.CALC™ Calculation Methodology

Assessment by Calculation of Compliance with FCC Exposure Guidelines

The U S. Congress required (1996 Telecom Act) the Federal Communications Commission ("FCC") to adopt a nationwide human exposure standard to ensure that its licensees do not, cumulatively, have a significant impact on the environment. The maximum permissible exposure limits adopted by the FCC (see Figure 1) apply for continuous exposures from all sources and are intended to provide a prudent margin of safety for all persons, regardless of age, gender, size, or health. Higher levels are allowed for short periods of time, such that total exposure levels averaged over six or thirty minutes, for occupational or public settings, respectively, do not exceed the limits

Near Field.

Prediction methods have been developed for the near field zone of panel (directional) and whip (omnidirectional) antennas, typical at wireless telecommunications base stations, as well as dish (aperture) antennas, typically used for microwave links The antenna patterns are not fully formed in the near field at these antennas, and the FCC Office of Engineering and Technology Bulletin No 65 (August 1997) gives suitable formulas for calculating power density within such zones

For a panel or whip antenna, power density $S = \frac{180}{\theta_{BW}} \times \frac{0.1 \times P_{net}}{\pi \times D \times h}$, in mW/cm^2,

and for an aperture antenna, maximum power density $S_{max} = \frac{0.1 \times 16 \times \eta \times P_{net}}{\pi \times h^2}$, in mW/cm^2,

where θ_{BW} = half-power beamwidth of the antenna, in degrees, and
P_{net} = net power input to the antenna, in watts,
D = distance from antenna, in meters,
h = aperture height of the antenna, in meters, and
η = aperture efficiency (unitless, typically 0.5-0 8).

The factor of 0 1 in the numerators converts to the desired units of power density.

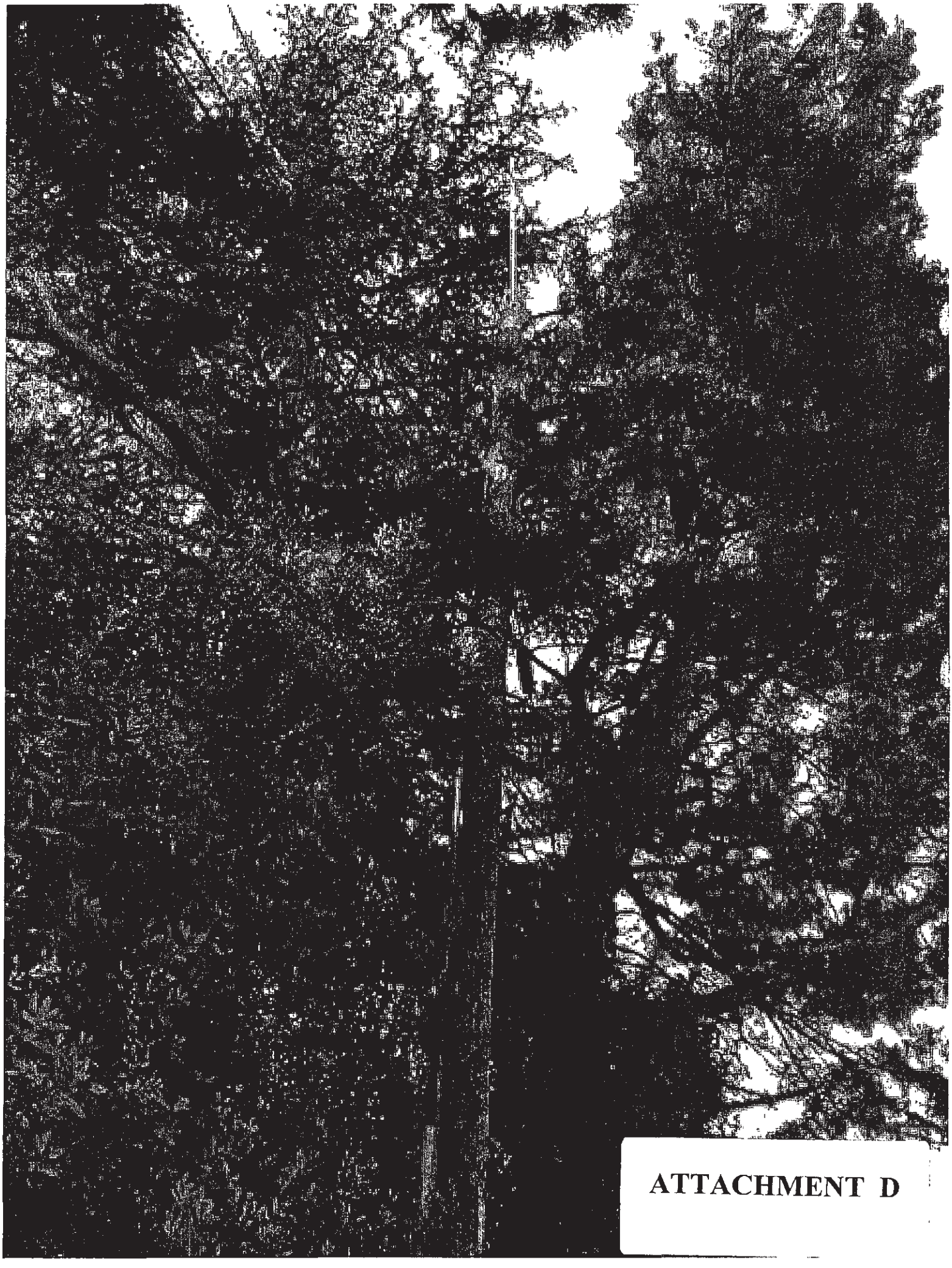
Far Field.

OET-65 gives this formula for calculating power density in the far field of an individual RF source

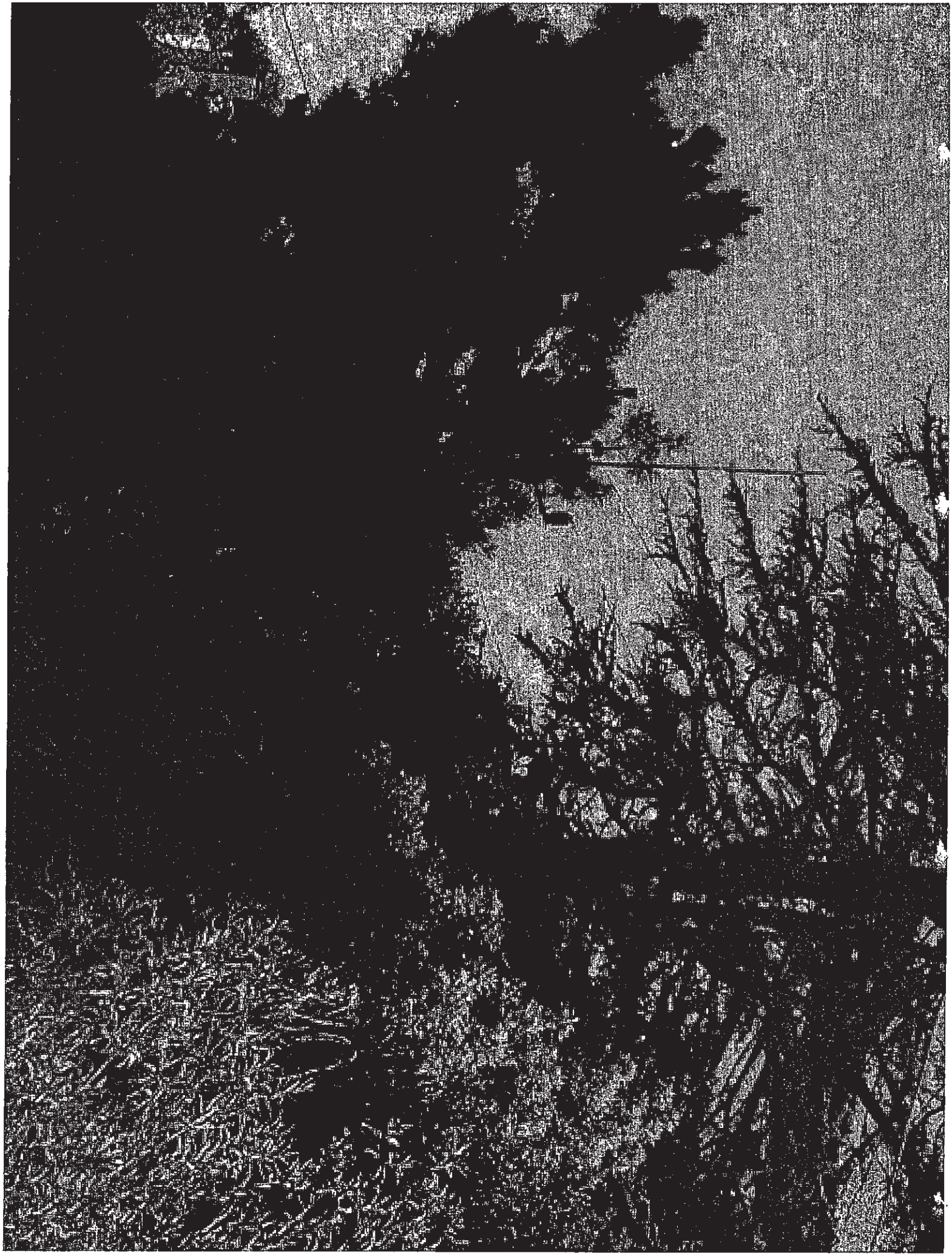
power density $S = \frac{2.56 \times 1.64 \times 100 \times RFF^2 \times ERP}{4 \times \pi \times D^2}$, in mW/cm^2,

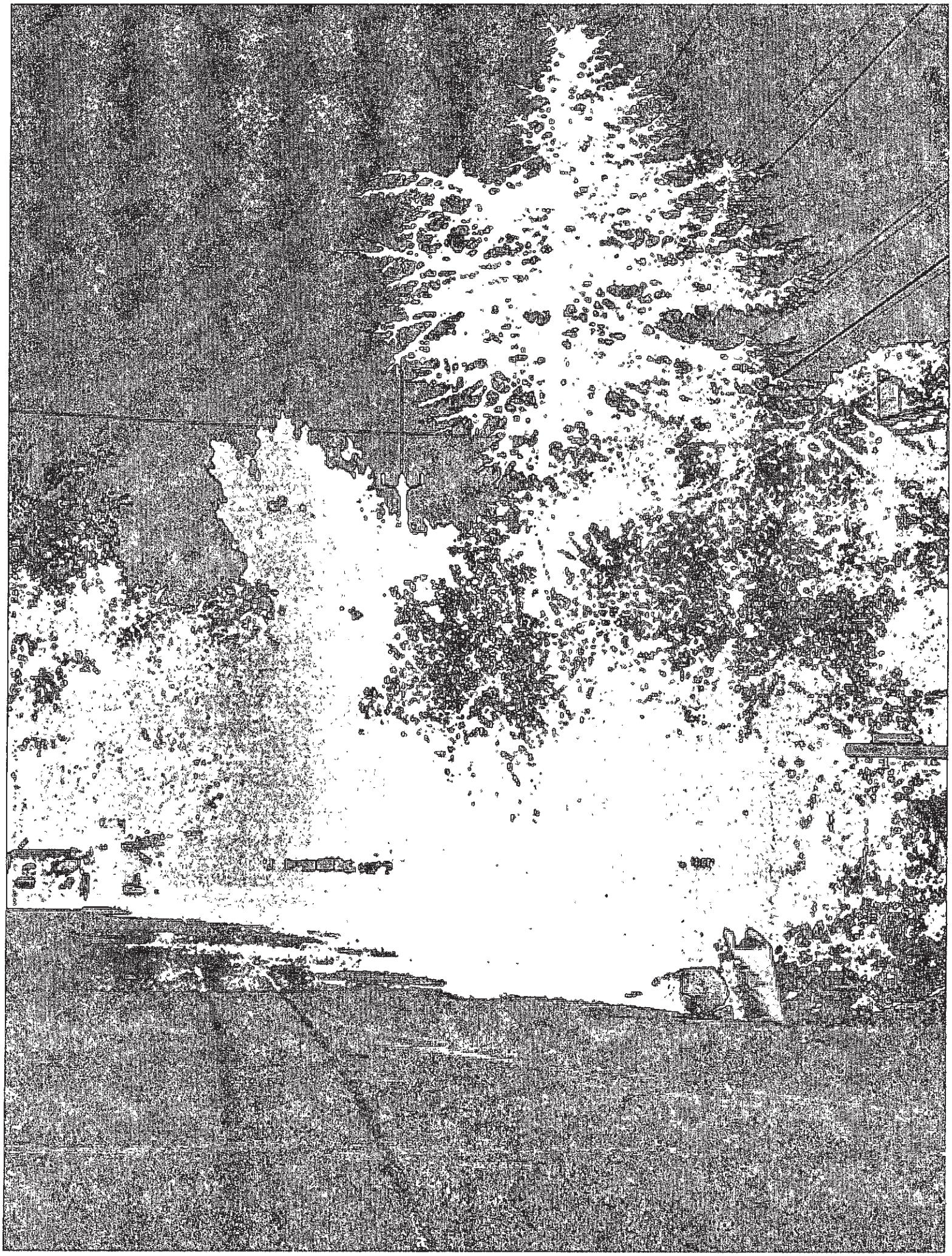
where ERP = total ERP (all polarizations), in kilowatts,
RFF = relative field factor at the direction to the actual point of calculation, and
D = distance from the center of radiation to the point of calculation, in meters.

The factor of 2 56 accounts for the increase in power density due to ground reflection, assuming a reflection coefficient of 1.6 (1 6 x 1.6 = 2 56) The factor of 1.64 is the gain of a half-wave dipole relative to an isotropic radiator. The factor of 100 in the numerator converts to the desired units of power density This formula has been built into a proprietary program that calculates, at each location on an arbitrary rectangular grid, the total expected power density from any number of individual radiation sources. The program also allows for the description of uneven terrain in the vicinity, to obtain more accurate projections



ATTACHMENT D





Introduced by Councilmember _____

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2014 NOV -6 AM 10: 41

Approved as to Form and Legality

Office of the City Attorney

OAKLAND CITY COUNCIL

RESOLUTION NO._____C.M.S.

A RESOLUTION UPHOLDING APPEAL #A13115, THEREBY REVERSING THE DECISION OF THE CITY PLANNING COMMISSION AND DENYING REGULAR DESIGN REVIEW TO ATTACH A TELECOMMUNICATIONS FACILITY TO A UTILITY POLE LOCATED IN THE PUBLIC RIGHT-OF-WAY AT 5816-5826 MENDOZA DRIVE

WHEREAS, on January 28, 2013, Mr Matthew Yergovich for AT&T (Applicant) submitted an application for Regular Design Review with additional findings to attach an 8'-10" extension with two 2'-2" antennae to a 38'-8" wooden Joint Pole Authority (JPA) utility pole owned by PG&E and located in the City public right-of-way adjacent to 5816 and 5826 Mendoza Drive, and to mount equipment to the side of the pole between 11'-3" and 22'-2" in height, as case # DR13020 ("Project"), and

WHEREAS, on April 3, 2013, the Planning Commission conducted a duly noticed public hearing on the matter, closed the hearing and then voted to approve the Regular Design Review application for case #DR13020, subject to findings, additional findings, and conditions of approval, and

WHEREAS, on April 15, 2013, Mr. Gerald C. Sterns of Sterns & Walker filed an Appeal (#A13115) of the Planning Commission's decision on behalf of a neighborhood group, including 5809, 5816, 5817, 5825, and 5826 Mendoza Drive, 5990 Colton Drive, and 2 Cabrillo Place (collectively, "Appellants"); and

WHEREAS, as stated in (i) various notices/agendas for the Project, for which the Appellant had actual and construction notice; (ii) the City's Appeal Form, (iii) the City's April 5, 2013 decision letter on the Project; and (iv) various provisions of the Oakland Planning Code, including without limitation sections 17.130.050 (Presentation of written and documentary evidence) and 17.136 090 (Appeal to City Council – Regular design review), the Appellants must present any and all arguments, issues, or evidence ("Issues") (a) prior to the close of the seventeen (17) day public comment period on the Project, or (b) prior to the close of the April 3, 2013 City Planning Commission public hearing on the Project (and therefore limiting any appeal to such previously presented Issues); and

WHEREAS, five months after filing the Appeal, on September 23, 2013, the Appellants submitted additional materials (numerous exhibits) to the City; and

WHEREAS, after giving due notice to the Appellants, the Applicant, all interested parties, and the public, the Appeal came before the City Council for a public hearing on July 29, 2014; and

WHEREAS, the Appellants, the Applicant, supporters of the application, those opposed to the application and interested neutral parties were given ample opportunity to participate in the public hearing by submittal of oral and/or written comments, and

WHEREAS, the public hearing on the Appeal was closed by the City Council on July 29, 2014; and

WHEREAS, the City Council took a vote directing City Planning staff to return with a resolution and findings for upholding the appeal/denying the application; and

WHEREAS, after the July 29, 2014 City Council hearing, and with the City's permission, the Applicant installed story poles on the subject utility pole to demonstrate the proposed height of the Project,

WHEREAS, after giving due notice to the Appellants, the Applicant, all interested parties, and the public, the Appeal came again before the City Council for a public hearing on November 18, 2014; and

WHEREAS, the Appellants, the Applicant, supporters of the application, those opposed to the application and interested neutral parties were given ample opportunity to participate in the public hearing by submittal of oral and/or written comments; and

WHEREAS, the public hearing on the Appeal was closed by the City Council on November 18, 2014, now, therefore, be it

RESOLVED: That the City Council, having independently heard, considered and weighed all the evidence in the record presented on behalf of all parties and being fully informed of the Application, the Planning Commission's decision, and the Appeal, finds that the Appellants **have** shown, by reliance on appropriate/proper evidence already contained in the record before the City Planning Commission; that the Planning Commission's decision was made in error, that there was an abuse of discretion by the Commission, and/or that the Commission's decision was not supported by substantial evidence in the record. This decision is based, in part, on the November 18, 2014 City Council Agenda Report, which is hereby incorporated by reference as if fully set forth herein; and be it

FURTHER RESOLVED: That the additional materials submitted by the Appellants on September 23, 2013 are not properly before the City Council since they were not specifically raised or submitted (a) prior to the close of the seventeen (17) day public comment period on the project, or (b) prior to the close of the April 3, 2013 City Planning Commission public hearing on the project, and be it

FURTHER RESOLVED: That the Appeal is upheld, the Planning Commission's decision approving Regular Design Review is reversed, and the Application is denied, and be it

FURTHER RESOLVED: That in further support of the City Council's decision to reverse the Planning Commission's approval of the Application, the City Council rejects the July 29, 2014 City Council Report and the April 3, 2013 Planning Commission staff report, and instead, hereby adopts and incorporates by reference, as if fully set forth herein, the Findings for Denial contained in Exhibit A Each of the reasons for denial listed therein provides a separate and independent basis to uphold the Appeal and deny the Application, and when viewed collectively, provides an overall basis to deny the Application; and be it

FURTHER RESOLVED: That the City Council finds and determines that this Resolution complies with CEQA pursuant to State CEQA Guidelines section 15270, which states that CEQA does not apply to projects which are disapproved; and be it

FURTHER RESOLVED: That the record before this Council relating to this Application and Appeal includes, without limitation, the following.

1 the Application, including all accompanying maps and papers;
2. all plans submitted by the Applicant and his representatives,
3. the notice of appeal and all accompanying statements and materials;
4 all final staff reports, final decision letters, and other final documentation and information produced by or on behalf of the City, including without limitation all related/supporting final materials, and all final notices relating to the Application and attendant hearings;
5. all oral and written evidence received by the Planning Commission and City Council during the public hearings on the Application and Appeal; and all written evidence received by relevant City Staff before and during the public hearings on the Application and Appeal;
6 all matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan; (b) the Oakland Municipal Code; (c) the Oakland Planning Code; (d) other applicable City policies and regulations; and all applicable State and federal laws, rules and regulations; and be it

FURTHER RESOLVED: That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are located at (a) the Planning and Building Department, Bureau of Planning, 250 Frank H Ogawa Plaza, Suite 3315, Oakland, California, and (b) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, First Floor, Oakland, California; and be it

FURTHER RESOLVED: That the recitals contained in the Resolution are true and correct and are an integral part of the City Council's decision; and be it

FURTHER RESOLVED: That the Applicant may submit a new application that identifies alternative less intrusive sites and facilities with payment of all the appropriate fees, and City staff shall process the application and it shall be considered without prejudice.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF and PRESIDENT KERNIGHAN

NOES -

ABSENT -

ABSTENTION –

ATTEST:_____
LaTonda Simmons
City Clerk and Clerk of the Council of the
City of Oakland, California

LEGAL NOTICE:

PURSUANT TO OAKLAND MUNICIPAL CODE SECTION 17.136 090, THIS DECISION OF THE CITY COUNCIL IS FINAL IMMEDIATELY AND IS NOT ADMINISTRATIVELY APPEALABLE. ANY PARTY SEEKING TO CHALLENGE SUCH DECISION IN COURT MUST DO SO WITHIN NINETY (90) DAYS OF THE DATE OF THIS DECISION, UNLESS A DIFFERENT DATE APPLIES

EXHIBIT A

FINDINGS FOR DENIAL

The City Council finds that this proposal does not meet all the required findings under Regular Design Review Criteria (OMC Sec. 17.136.040(B)) as set forth below. A legislative body shall deny a recommendation of Planning Approval of Design Review for a proposed telecommunications facility and related equipment on an existing utility pole if it cannot make all of the required findings. The required findings that cannot be made are shown in **bold** type; the explanation as to why the City Council finds that these finding cannot be made is shown in normal type.

GENERAL FINDINGS

The City Council finds that the Planning Commission's decision to approve the Regular Design Review application was in error, constituted an abuse of discretion, and/or not supported by substantial evidence in the record because the following two findings were **not** met:

Finding No. 1: There is a significant gap in coverage. While there may be a coverage gap in the area, AT&T has not demonstrated that there is a "significant gap" in service; federal law requires a wireless carrier to demonstrate a "significant gap" in coverage. The RF Statement concludes that "the work associated with this permit request is needed to close a service coverage gap in the area immediately surrounding the Property." May 21, 2014 Letter, Attachment A. AT&T acknowledges that it has numerous customers in the Oakland Hills, and that there is currently service coverage by AT&T covered by this potential node. However, AT&T's service is not ***optimal*** in that location, and AT&T seeks to optimize its in-building service coverage for that area. That AT&T may not provide its customers with the ***best*** in-building coverage does not mean that there is a "significant gap" in coverage. Moreover, AT&T did not provide a survey or other documentation to support its assertion that there is a "significant gap" in coverage. Presentation of a radio frequency statement and propagation maps does not establish a "significant gap."

Finding No. 2: If there is a significant gap in coverage, the proposed location is the "least intrusive way" to address this gap. Even if AT&T can demonstrate that a 'significant gap" in service coverage existed, which it has not, AT&T has not demonstrated that the proposal at 5816-5826 Mendoza Drive is the least intrusive way to provide wireless services in this area. AT&T submitted a site design alternatives analysis (January 28, 2013) and stated that "alternative sites were considered", but only reviewed two alternative sites (May 21, 2014 Letter, Attachment C – "Alternative Site Analysis"). AT&T has not undertaken meaningful comparison of alternative locations. If AT&T demonstrates that it has a significant gap in coverage, City Planning staff is willing to work with AT&T to identify other potentially available and technologically feasible alternative sites that may be less intrusive than the proposed location.

REGULAR DESIGN REVIEW CRITERIA FOR NONRESIDENTIAL FACILITIES (OMC SEC. 17.136.040(B))

2. That the proposed design will be of a quality and character which harmonizes with, and serves to protect the value of, private and public investments in the area;

The City Council finds that this finding is **not** met, and that the Planning Commission's decision to approve the Regular Design Review application despite the proposal's view obstruction was made in error, constituted an abuse of discretion, and/or was not supported by substantial evidence in the record, for the following reasons:

The proposal will have significant negative impacts to significant views, and will not harmonize with the surrounding area. The utility pole, which would have a top extension with telecommunications antennas attached, is located on steep topography directly fronting two upslope residences, and is not compatible with the scenic and residential character and appearanee in the surrounding neighborhood. At least two residences have significant views from their decks that will be negatively impacted. The home located at 5816 Mendoza Drive is situated approximately twenty-five feet from the utility pole. Although an existing tree partially screens the utility pole and proposed top extension with antennas, the tree may not survive indefinitely. Given the slope, the equipment would sit at eye level from the homes, and will negatively impact the views of residents. Given the adjacency of the proposal to the front of residential properties with views and a hillside sylvan setting, the proposal does not harmonize with, and would have significant adverse aesthetic impacts on, private property in the area. The proposed project will increase the mechanical clutter visible and very near to residential properties and cannot be altered to eliminate this adverse impact.

In addition, the significant views that will already be negatively impacted by the existing proposal could be much more significantly impacted under new rules issued by the FCC. The FCC recently issued a Report and Order, FCC 14-153 ("Order"), which adopts new rules that govern how the City may regulate requests to modify existing wireless towers and base stations. Order, ¶161. The FCC defines "base station" broadly to include not only the equipment that communicates with user equipment (encompassing DAS and small cells), but also the "structure" that supports or houses that equipment. Although the Order is not effective until 90 days after it is published in the Federal Register, once it becomes effective, any wireless facilities are considered "base stations," and will be subject to the approval process in Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. § 1455(a), which requires approval unless the modification is a "substantial change." Under the FCC's definition of "substantially change the physical dimensions" of a tower or base station (Order, ¶182), a modification substantially changes the physical dimensions of a wireless tower or base station if it increases the height of the structure by more than 10% or more than 10 feet, whichever is greater, or if it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than 6 feet. Thus, if the application is approved, once the Order becomes effective, AT&T will be able to use Section 6409(a) to increase the height of the antenna (up to 9'-11" higher) and width of the facility (adding protrusions of up to 5'-11") later through the streamlined Section 6409(a) process.

Introduced by Councilmember _____

Approved as to Form and Legality
Office of the City Attorney

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2014 NOV -6 AM 10: 41

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

A RESOLUTION DENYING APPEAL #A13115 AND UPHOLDING THE DECISION OF THE CITY PLANNING COMMISSION TO APPROVE REGULAR DESIGN REVIEW TO ATTACH A TELECOMMUNICATIONS FACILITY TO A UTILITY POLE LOCATED IN THE PUBLIC RIGHT-OF-WAY FRONTING THE LOT LINE BETWEEN 5816 AND 5826 MENDOZA DRIVE

WHEREAS, on January 28, 2013, the Applicant Mr. Matthew Yergovich/AT&T submitted an application for a Regular Design Review with additional findings to attach an 8'-10" extension with two 2'-2" antennae to a 38'-8" wooden Joint Pole Authority (JPA) utility pole owned by PG&E and located in the City public right-of-way adjacent to 5826 Mendoza Drive, and to mount equipment to the side of the pole between 11'-3" and 22'-2" in height, as case # DR13020 ("Project"); and

WHEREAS, based on a site visit and review of internet aerial images of the site, staff did not discern a view issue, given the elevation of homes uphill from the utility pole and the presence of a ridge to the southwest of the site; and

WHEREAS, the application was agendized for the Planning Commission hearing of April 3, 2013, and public notices were duly distributed; and

WHEREAS, on April 3, 2013, the Planning Commission independently reviewed, considered, and determined that the Project is exempt from the environmental review requirements of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines sections 15301 (existing facilities) and 15183 (projects consistent with a community plan, general plan or zoning); and

WHEREAS, on April 3, 2013, the Planning Commission approved the Regular Design Review application for case #DR13020, subject to findings, additional findings, and conditions of approval; and

WHEREAS, on April 15, 2013, the appellant Mr. Gerald C. Sterns of Sterns & Walker filed a timely Appeal (#A13115) of the Planning Commission's decision to approve the Project on behalf of a neighborhood group, including 5809, 5816, 5817, 5825, and 5826 Mendoza Drive, 5990 Colton Drive, and 2 Cabrillo Place (collectively, "Appellants"), and

WHEREAS, as stated in (i) various notices/agendas for the Project, for which the Appellant had actual and construction notice, (ii) the City's Appeal Form; (iii) the City's April 5, 2013 decision letter on the Project; and (iv) various provisions of the Oakland Planning Code, including without limitation sections 17.130.050 (Presentation of written

and documentary evidence) and 17.136 090 (Appeal to City Council – Regular design review), the Appellants must present any and all arguments, issues, or evidence ("Issues") (a) prior to the close of the seventeen (17) day public comment period on the Project, or (b) prior to the close of the April 3, 2013 City Planning Commission public hearing on the Project (and therefore limiting any appeal to such previously presented Issues); and

WHEREAS, five months after filing the Appeal, on September 23, 2013, the Appellants submitted additional materials (numerous exhibits) to the City; and

WHEREAS, after giving due notice to the Appellants, the Applicant, all interested parties, and the public, the Appeal came before the City Council in a duly noticed public hearing on July 29, 2014; and

WHEREAS, the Appellants, the Applicant, supporters of the application, those opposed to the application and interested neutral parties were given the opportunity to participate in the public hearing by submittal of oral and written comments; and

WHEREAS, the public hearing on the Appeal was closed by the City Council on July 29, 2014; and

WHEREAS, the City Council took a vote directing City Planning staff to return with a resolution and findings for upholding the appeal/denying the application; and

WHEREAS, after the July 29, 2014 City Council hearing, and with the City's permission, the Applicant installed story poles on the subject utility pole to demonstrate the proposed height of the Project,

WHEREAS, after giving due notice to the Appellants, the Applicant, all interested parties, and the public, the Appeal again came before the City Council for a public hearing on November 18, 2014; and

WHEREAS, the Appellants, the Applicant, supporters of the application, those opposed to the application and interested neutral parties were given ample opportunity to participate in the public hearing by submittal of oral and/or written comments; and

WHEREAS, the public hearing on the Appeal was closed by the City Council on November 18, 2014, now, therefore, be it

RESOLVED. The City Council independently finds and determines that this Resolution complies with CEQA, as the Project is exempt from CEQA pursuant to CEQA Guidelines sections 15301 (existing facilities), 15303 (small facilities or structures, installation of small new equipment and facilities in small structures), and 15183 (projects consistent with a community plan, general plan or zoning), and the Environmental Review Officer is directed to cause to be filed a Notice of Determination/Exemption with the appropriate agencies, and be it

FURTHER RESOLVED: That the City Council, having independently heard, considered and weighed all the evidence in the record presented on behalf of all parties and being fully informed of the Application, the Planning Commission's decision, and the Appeal, hereby finds and determines that the Appellants have **not** shown, by reliance on appropriate/proper evidence in the record, that the Planning Commission's decision was made in error, that there was an abuse of discretion by the Planning Commission, or that the Planning Commission's decision was not supported by substantial evidence in the record. This decision is based, in part, on the July 29, 2014 City Council Agenda Report and the April 3, 2013 Planning Commission staff report, both of which are hereby incorporated by reference as if fully set forth herein, on the reports and testimony provided at the hearing, and on the City's General Plan, Planning Code, and other planning regulations as set forth below; and be it

FURTHER RESOLVED: That the additional materials submitted by the Appellants on September 23, 2013 are not properly before the City Council since they were not specifically raised or submitted (a) prior to the close of the seventeen (17) day public comment period on the Project, or (b) prior to the close of the April 3, 2013 City Planning Commission public hearing on the Project; and be it

FURTHER RESOLVED: That the Appeal is hereby denied, and the Planning Commission's decision to approve an 8'-10" extension with two 2'-2" antennae to a 38'-8" wooden utility pole located in the City public right-of-way adjacent to 5826 Mendoza Drive, and to mount equipment to the side of the pole between 11'-3" and 22'-2" in height, is upheld, subject to the findings for approval, additional findings, and conditions of approval adopted by the Planning Commission, each of which is hereby separately and independently adopted by this Council in full, and be it

FURTHER RESOLVED: That, in support of the City Council's decision to deny the Appeal and approve the Project, the City Council affirms and adopts as its own independent findings and determinations: (i) the July 29, 2014 City Council Agenda Report (including without limitation the discussion, findings and conclusions (each of which is hereby separately and independently adopted by this Council in full), and (ii) the April 3, 2013 Planning Commission staff report approving the Project, including without limitation the discussion, findings, additional findings, conclusions, and conditions of approval (each of which is hereby separately and independently adopted by this Council in full), and be it

FURTHER RESOLVED: The record before this Council relating to this Project Application and Appeal includes, without limitation, the following:

1. the Application, including all accompanying maps and papers,
2. all plans submitted by the Applicant and its representatives;
3. the notice of appeal and all accompanying statements and materials;
4. all final staff reports, final decision letters, and other final documentation and information produced by or on behalf of the City, including without limitation all related/supporting final materials, and all final notices relating to the Application and attendant hearings;
5. all oral and written evidence received by the Planning Commission and City

Council during the public hearings on the Application and Appeal; and all written evidence received by relevant City Staff before and during the public hearings on the Application and Appeal, and

6 all matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan; (b) the Oakland Municipal Code; (c) the Oakland Planning Code; (d) other applicabla City policies and regulations; and (e) all applicable State and federal laws, rules and regulations, and be it

FURTHER RESOLVED: That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are located at (a) the Planning and Building Department, Planning and Zoning Division, 250 Frank H Ogawa Plaza, Suite 3315, Oakland, California, and (b) the Office of the City Clerk, 1 Frank H Ogawa Plaza, First Floor, Oakland, California, and be it

FURTHER RESOLVED: Per standard City practice, if litigation is filed challenging this decision, or any subsequent implementing actions, then the time period for obtaining necessary permits for construction or alteration and/or commencement of authorized construction-related activities stated in Condition of Approval #2 is automatically extended for the duration of the litigation; and be it

FURTHER RESOLVED: The recitals contained in this Resolution are true and correct and are an integral part of the City Council's decision.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF and PRESIDENT KERNIGHAN

NOES -

ABSENT -

ABSTENTION –

ATTEST:_____
LaTonda Simmons
City Clerk and Clerk of the Council of the
City of Oakland, California

LEGAL NOTICE.

PURSUANT TO OAKLAND MUNICIPAL CODE SECTION 17.136 090, THIS DECISION OF THE CITY COUNCIL IS FINAL IMMEDIATELY AND IS NOT ADMINISTRATIVELY APPEALABLE ANY PARTY SEEKING TO CHALLENGE SUCH DECISION IN COURT MUST DO SO WITHIN NINETY (90) DAYS OF THE DATE OF THIS DECISION, UNLESS A DIFFERENT DATE APPLIES