



FILED
OFFICE OF THE CITY CLERK
OAKLAND
2014 JUL -2 AM 10:19

AGENDA REPORT

TO: HENRY L. GARDNER
INTERIM CITY ADMINISTRATOR

FROM: Rachel Flynn

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

DATE: June 20, 2014

City Administrator
Approval

Q

Date

6/27/14

COUNCIL DISTRICT: 4

RECOMMENDATION

Conduct a public hearing and upon conclusion 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 Fronting The Lot Line Between 5816 and 5826 Mendoza Drive

EXECUTIVE SUMMARY

On April 3, 2013, the Planning Commission 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 utility 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). Staff recommends the City Council deny the Appeal and uphold the Planning Commission's decision to approve the application.

OUTCOME

Denial of the Appeal would uphold the Planning Commission's approval of the Project.

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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, on 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 Planning & Zoning Department 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 adjacent to the property line between 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 two 2'-4" tall telecommunications antennas and an 8'-10" tall extension on top of a 38'-8" tall wooden utility pole (and equipment at 11'-3" to approximately 22'-2" in height) 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

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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 and site surroundings, including its proposed public right-of-way location, staff recommended Planning Commission approval of this application for the following reasons: the proposal met Regular Design Review findings required for approval and additional findings for telecommunications facilities. A Site design alternatives analysis and a satisfactory emissions report were submitted.

For the subject application adjacent to 5816-5826 Mendoza Drive, staff visited the site and utilized internet aerial images. Staff did not discern a view issue, given the elevation of homes uphill from the pole and the presence of a ridge to the southwest. The City publicly noticed the project for seventeen (17) days for the Planning Commission hearing of April 3, 2013. On April 1, 2013, a resident at 5816 Mendoza Drive emailed staff to oppose the project on the basis of a view concern although no evidence of a view obstruction was provided; the letter was distributed at the hearing. On the day of the hearing, a concerned neighbor telephoned staff about a view issue; in response, staff requested evidence of the view obstruction but no evidence was provided. 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 4, 2013, the City received a letter dated March 29, 2014 opposing 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 neighbors 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)

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Below are the primary issues presented by the Appellants in their Appeal and staff's response to each issue (shown in italicized text).

Appellants' Issue #1:

The public notification process was flawed, thereby depriving neighbors of due process and constituting a taking.

The Appeal states:

1. "The Commission did not afford potentially affect neighbors and property owners fair, adequate or timely notice...and its potential impact on them, nor of the Hearing it had scheduled..."
2. "It further failed to afford ample notice or follow required procedures in that allowing the installation and operation...could...amount to a "Taking" of private property..."
3. "The manner of notice provided by the Commission of the...Hearing was neither timely nor legal, in that that the notices posted...were incorrectly dated and inaccurate..."
6. "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 further denying adequate and reasonsonable [sic] notice and futher [sic] denying due process."
7. "...The rush to judgment has not left appellants enough time to specifically research this issue."

Staff Response:

*The City adhered to all the requirements of the Planning Code regarding noticing, and the Appellants have received adequate notice and due process. Staff provided seventeen (17) day notice (where the State requires ten (10) days); the notice was mailed to owners of property located within three hundred feet of the site based on Alameda County ownership records (see **Attachment C**); notice was posted at the site; and notice was posted on the City's website and at City Hall. Although the public notice sign, which was posted on site, contained a typographical error indicating an incorrect posting date, the public notice included accurate information relating to the time, date, and location of the April 3, 2013 Planning Commission meeting, described the proposal, and provided contact information for the case planner in the Bureau of Planning (Zoning).*

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The Planning Commission has not created and did not create a "fast track" for telecommunications projects. Telecommunications projects such as the one at issue are subject to Chapter 17.136, Design Review Procedure, and Chapter 17.128, Telecommunications Regulations, of the Planning Code. The City's telecommunications regulations provide a uniform and comprehensive set of standards for the development, location, siting and installation of wireless facilities.

It is unclear what the Appellants mean in stating 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." If the Appellants are claiming that the City's approval of the project constitutes a taking, they must demonstrate that the City has taken or damaged their property within the meaning of article I, section 19 of the California Constitution and the Fifth Amendment of the U.S. Constitution (i.e., that their property has been physically invaded or physically damaged). Appellants have not, and cannot, justify a claim of takings in this case.

Appellants Issue #2:

A view obstruction was not properly identified and relevant City policies were not adhered to.

The Appeal states:

1. "The Commission did not afford potentially affect neighbors and property owners...[of] its potential impact on them..."
4. "No adequate inquiry or study was made...into the issue of potential impact of the project of the view corridor rights of some of the neighbors in this area, thus potentially violating their rights under City of Oakland Ordinance 15.52.040 and/or other laws regarding view corridors."
7. "The Commission violated its own...guidelines as well as the Oakland General Plan...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...that somehow that ...translates into a mandate to allow something...that probably did not even exist at the ...writing of the General Plan...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...no mention whatsoever of ...view issues."

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Staff Response:

Staff followed its standard practice in reviewing AT&T's application. In general, if staff perceives that there will be potential view obstructions, the Bureau of Planning (Zoning) will indicate to the applicant that the application would not be supported and suggests relocating the site. For sites that do not have potential view issues, such as the current project, applications are publicly noticed. Once applications are publicly noticed, those eliciting neighbor concern are reviewed for the issues presented. For alleged view issues, staff will collect photographs taken from on site by residents as well as visiting the site to witness views from private property. When further information informs staff that a view issue may likely exist, staff again will not support the proposal and will instead suggest application withdrawal and site relocation. An example of a project that was denied by the Planning Commission and on Appeal to the City Council for view obstruction is 6045 Shirley Drive (June 1, 2011 and November 9, 2011).

Here, the applicant submitted the application based on ideal engineering locations. Staff reviewed AT&T's photo-simulations, viewed the area using internet aerial images, and visited each site in the public right-of-way. Staff also visited the site and reviewed internet aerial images, and did not discern a view issue, given the elevation of homes uphill from the pole and the presence of a ridge to the southwest. As stated above, although staff received one e-mail and one telephone call voicing concerns relating to view obstructions, no evidence was provided to support these claims.

Staff visited the site prior to public notice and visited numerous adjacent sites. After the Appeal was filed, staff returned to the site and also was allowed by neighbors to enter their homes there to observe the views from those homes. Staff did not note potential view impacts from the public right-of-way or from private property including inside neighbors' homes because the facility would be attached to the top of the utility pole that would be downhill from some of the Appellants' homes and would not project into their views above the distant ridgeline; therefore, no silhouetting effect and thus no adverse primary view impact is possible.

Appellants claim that the General Plan is silent on telecommunications activities. The City's Land Use and Transportation Element (LUTE) of the General Plan, which was adopted in 1998, sets forth development goals, objectives, policies, programs, diagrams, and maps. The Oakland Planning Code's Telecommunications Regulations (Chapter 17.128), which was adopted in 1996, and which has been amended several times since its adoption, is consistent with the LUTE. Although as a charter city, Oakland is exempt from the statutory requirement that zoning be consistent with the General Plan, the City has elected to have and maintain zoning consistency.

The Appellant's reliance on OMC Sec. 15.52.040 is misplaced, as that section of the OMC relates to obstruction of view corridors from public property.

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The Commission did not violate the General Plan or the Planning Code in approving the project. The Commission's decision was based on the entirety of the record, including the staff report, the findings for approval, and the conditions of approval. Staff's report also contained the following findings:

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.

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.

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*

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*

The proposal is meant to enhance service to residents from a highly effective location with a relatively unobtrusive design.

Appellants Issue #3:

Emissions/environmental concerns were not adequately addressed.

The Appeal states:

5. "No adequate inquiry...was made or required...into the issue of potential environmental and health and safety issues...particularly with respect to electro-magnetic activity...microwave or other radiation...No environmental impact report or anything even close was...even considered."

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7. There is no evidence and no basis in the record for this conclusion...no mention whatsoever of environmental, potential cumulative radiation, micro-wave or similar... issues.”

Staff Response:

The staff report contained the following sections, reflecting the Federal government’s preemption of certain issues related to telecommunication activities. Specifically, local agencies cannot reject telecommunications applications on the basis of emissions concerns if a satisfactory report was filed pursuant to the Planning Code, as was the case here:

Section 704 [of the Telecommunications Act of 1996] 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.

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.*

*AT&T’s representative submitted a satisfactory RF emissions report with its initial application concluding that the project “will comply with the FCC Guidelines limiting public exposure to RF energy.” The RF emissions report is attached to this report as **Attachment B**.*

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POLICY ALTERNATIVES

The City Council has the option of taking one of the following alternative actions instead of the action recommended in the Resolution which accompanies this staff report:

1. Grant the appeal and reverse the decision of the Planning Commission thereby denying the Project. This option would require the City Council to continue the item to a future hearing so that staff could prepare and the City Council has an opportunity to review the proposed findings and resolution to grant the appeal.
2. Deny the appeal and uphold the decision of the Planning Commission, but impose additional and/or revised conditions on the Project and/or modify the Project, solely related to the appellate issues. Depending on the revisions, this option may also require the City Council to continue the item to a future hearing so that staff could prepare and the City Council has an opportunity to review the proposed revisions.
3. Continue the item to a future meeting for further information or clarification, solely related to the appellate issues.
4. Refer the matter back to the Planning Commission for further consideration on specific issues/concerns of the City Council, solely related to the appellate issues. Under this option, the appeal would be forwarded back to the City Council for decision.

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.

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SUSTAINABLE OPPORTUNITIES

Economic: The Project would have no economic impact.

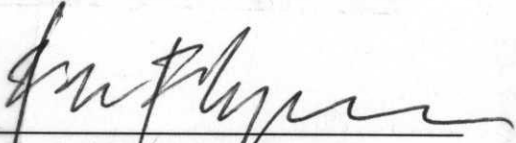
Environmental: The Project includes a satisfactory emissions report and would not have an adverse effect on the environment.

Social Equity: The Project would not affect social equity.

CEQA

As stated in the Planning Commission staff report, the Project is exempt from environmental review under the California Environmental Quality Act (CEQA). CEQA Guidelines categorically exempts specific types of projects from environmental review. Section 15301 of the 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 also subject to CEQA Guidelines section 15183 (projects consistent with a community plan, general plan or zoning). Therefore, the City Council's action to deny the appeal and uphold the Planning Commission's approval of this application, as recommended in this report, is exempt from CEQA.

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

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Attachments:

- A. *Appeal #A13115, filed April 15, 2013*
- B. *April 3, 2013 Planning Commission Staff Report with Attachments (including satisfactory emissions report)*
- C. *Public notice and property notification list*

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-7370-028-00

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

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 Red 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



**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,
Email: sterns@trial-law.com 5817, 5816, 5809 Mendoza & others
** 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 further denying adequate and reasonable notice and further denying due 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

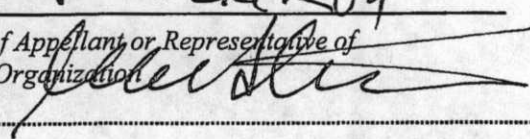
5825 Mendoza – Rob

5826 Mendoza - Dudley

5990 Colton - Wright

2 Cabrillo Place

(Continued)

STERN & WALKER by
Signature of Appellant or Representative of
Appealing Organization 

15 APRIL 2013
Date

Date/Time Received Stamp Below:

Below For Staff Use Only

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

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

Please Reply to: Oakland

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 be 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

Europe
Udo Büdding Law, Berlin
Stephen M. Mitchell,
Needleman, Treon, Solicitors; London

Of Counsel

Asia - Pacific
Ignacio Sapolo,
Sapolo, Velez, Bundang & Buhlan; Manila

Central & South America
Carlos Enrique, Lozep Polanco;
Guatemala City

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 electronic 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

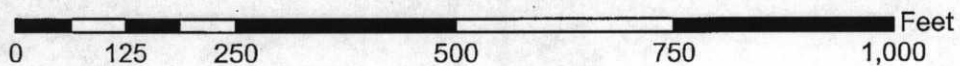
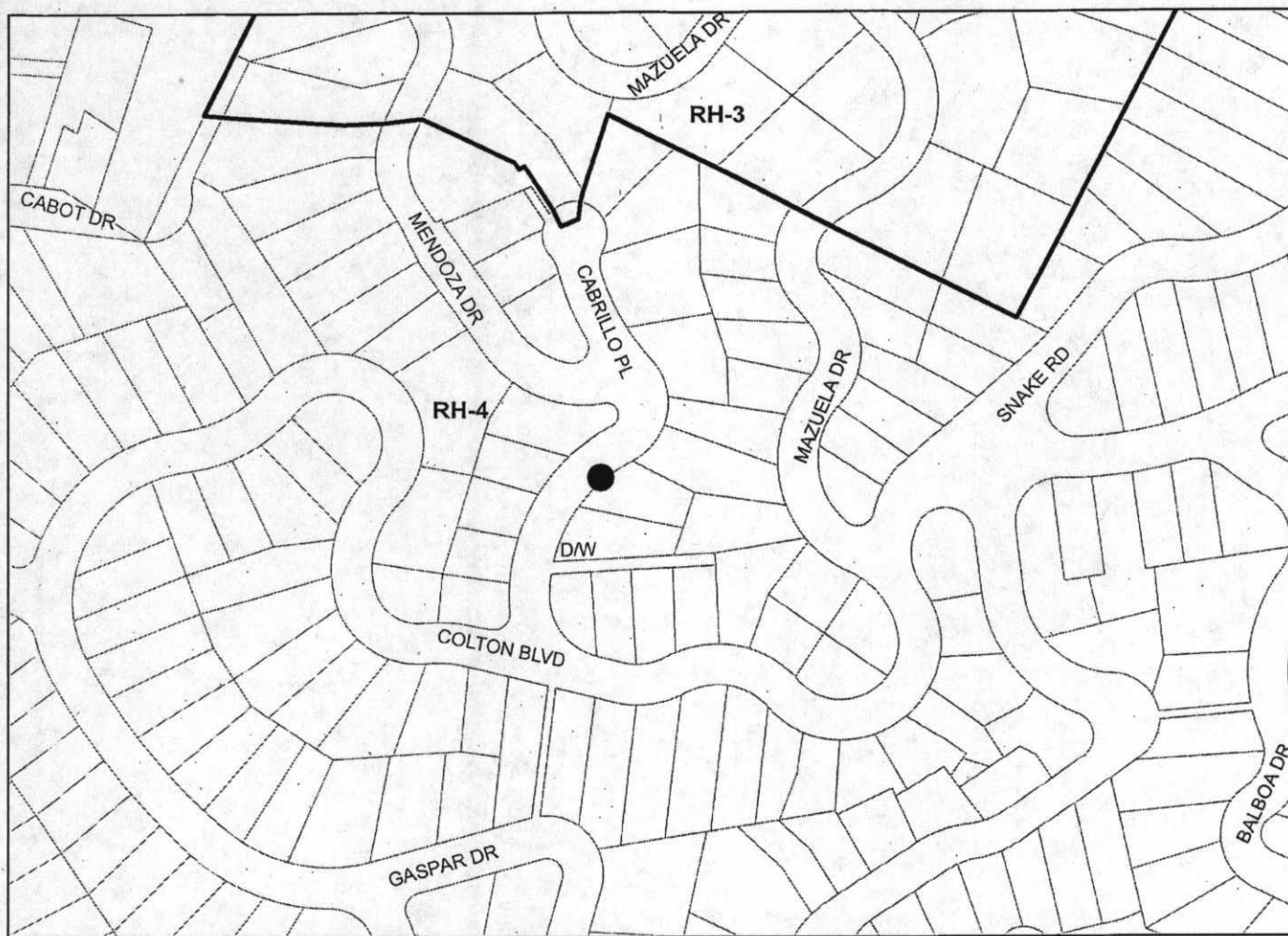
Location:	Utility pole in public right-of-way adjacent to: 5826 Mendoza Drive (see reverse for map)
Assessor's Parcel Numbers:	Adjacent to: 048F-7370-028-00
Proposal:	To install an 8'-10" tall extension with two 2'-2" tall antennas (approx.) on top of a 38'-8" utility pole (proposed top height = 48'-7") and equipment pole-mounted between 11'-3" and 22'-2" in height.
Applicant / Phone Number:	Pursuant to Federal and State law, City review for this application is essentially limited to design considerations only 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 Hillside Residential
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.

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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Staff recommends the following conditions:

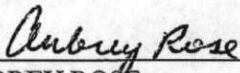
- pole mounted equipment cabinets to be encased in a single, continuous shroud painted matte brown to match the color and finish of the wooden utility pole

- 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.

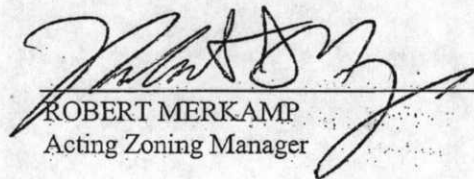
2. Approve the Regular Design Review subject to the attached Findings, Additional Findings, and Conditions.

Prepared by:



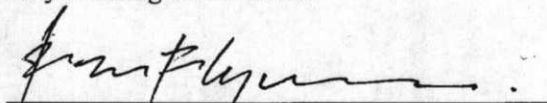
AUBREY ROSE
Planner II

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

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.

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 in 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 measures 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 distance 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 undergrounding 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



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.



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

PROJECT INFORMATION:
OAKHILLS AT&T SOUTH NETWORK
OAKS-052B
 0820 MENDOZA DR
 OAKLAND, CA 94611

CURRENT ISSUE DATE:
 12/19/12

ISSUED FOR:
ZONING

BY: DATE DESCRIPTION REV:

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

PLANS PREPARED BY:

ACI NUMBER: OAKS-052B

CONSTRUCTED BY:

3030 Warrenville Rd, Suite 340
 Lisle, IL 60532
 www.netnet.com

SEAL OF APPROVAL:

SHEET TITLE:
TITLE SHEET AND PROJECT INFORMATION

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

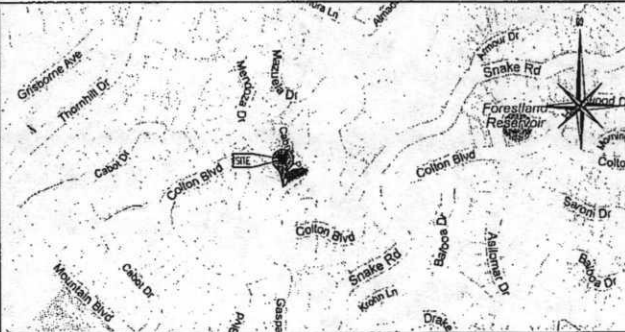
LEGEND & SYMBOLS

- CENTERLINE
- - - PROPERTY/LEASE LINE
- - - PROPOSED CONDUIT
- - - POWER CONDUIT
- - - TELEPHONE CONDUIT
- - - AERIAL ELECTRICAL LINE
- - - CROWN CABLE/CONDUIT
- - - OVERHEAD CONDUIT
- - - CHAIN LINK FENCING
- ▲ SPOT ELEVATION (DATA)
- ⊗ FLAG NOTE
- ⊗ (X) ITEM BALLOON (DETAIL SHEETS)
- ⊗ DETAIL REFERENCE
- ⊗ SECTION REFERENCE

ABBREVIATIONS

AL ALUMINUM	FLR FLOOR	PRELIM PRELIMINARY
ALY ALLOY	FT FOOT	PWR POWER
AMT AMERICA	FS FARSEDE	QTY QUANTITY
ANL ANNEAL	FSH FASTENER	R RADIUS
ASL ASBESTE CROUD	GLV GALVANIZED	RAD RAD CENTER
AVSL AVOID MEAN	CA GAUGE	RC RAO CENTER
APVD APPROVED	CEH CEILING	RECH RECOVER
AR, A/R AS REQUIRED	CEH GROUND/ROUNDING	RELOC RELOCATED
BAI BATTERY	CHD CHISEL CHAMFER	RECO RECOVERED
BC BOLT CIRCLE	CHD MILLER	SH SHEET
BDD BUILDING	CHD MANUFACTURER	SPLY SUPPLY
BRKT BRACKET	CHD MOUNTING	SS STAINLESS STL
CB CABINET	CHD METER	STD STANDARD
CL CENTERLINE	CHD MOUNTING	STL STEEL
CCC CONCRETE	CHD MIN	STR STRUCTURAL
CKD CKD	CHD NEW	SW SWITCH
DN DOWN	CHD NOT TO SCALE	TRD TRIFLEAD
EX EXISTING	CHD ON CENTER	TRK TRUCK
EA EACH	CHD OUTSIDE DIAMETER	TRD TRIMMED
EL ELEVATION	CHD (P) PROPOSED	TYP TYPICAL
EMER EMERGENCY	CHD PLYWOOD	UNIFORM BUILDING CODE
ENCL ENCLOSURE	CHD PLACES	W/W WITHOUT
EQUI EQUIPMENT	CHD PNL PANEL	W/O WITHOUT
EQ SP EQUAL SPACE	CHD PVD PANEL OF	TRFR TRANSFORMER
HGT HEIGHT	CHD POSH POSH	TRNT TRANSFORMER
(P) FUTURE		

VICINITY MAP



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 CIRCULAR 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) BBV 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

DRIVING DIRECTIONS

FROM: 2678 BRUSH RANCH DR, SAN RAMON, CA
 DESTINATION: 24.5 MILES (20 MIN)

- HEAD SOUTHWEST ON BRUSH ON SIGNAL 9.2000 ON 450 FT
- LEFT ON 1ST LEFT BRUSH SIGNAL ON 0.3 MI
- RIGHT ON 1ST BRUSH SIGNAL ON 0.3 MI
- RIGHT ON 1ST BRUSH ON 1.00 MI TO THE RIGHT TO SIGNAL ON 100 MI
- LEFT ON 1ST BRUSH ON 1.00 MI TO THE RIGHT TO SIGNAL ON 100 MI
- LEFT ON 1ST BRUSH ON 1.00 MI TO THE RIGHT TO SIGNAL ON 100 MI
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- LEFT ON 1ST BRUSH ON 1.00 MI TO THE RIGHT TO SIGNAL ON 100 MI

BUILDING / SITE DATA

ADDRESS:	37.832730	TYPE OF CONSTRUCTION:	ATTACHMENTS TO EXISTING WOOD POLE
LONGITUDE:	-122.209180	AREA OF COVER:	-
ELEVATION:	N/A	HANDICAP REQUIREMENTS:	FACILITY IS UNARMED AND NOT FOR HUMAN INMATION. HANDICAPPED ACCESS NOT REQUIRED.
AUTOCORRECTION:	CITY OF OAKLAND	TITLE 24 REQUIREMENTS:	FACILITY IS UNARMED AND NOT FOR HUMAN INMATION. THIS PROJECT IS EXEMPT.
A.P.N.:	487737002600		
ZONING:	PUBLIC RIGHT OF WAY		
OCCUPANCY:	U, UNARMED		

PROJECT TEAM

PROPERTY OWNER: NEW CIRCULAR WIRELESS PCS, LLC 4430 ROSEWOOD DR. BLDG. 3 PLEASANTON, CA 94588-3050 CONTACT: VAN MULLER PHONE: (510) 258-1705	CONSTRUCTION MANAGER: EXTENET SYSTEMS CA, LLC CONTACT: KEN BOOKER PHONE: (510) 466-0829	MUNICIPAL AFFAIRS: EXTENET SYSTEMS CA, LLC CONTACT: BRI STEPHENS PHONE: (510) 612-2511
APPLICANT: NEW CIRCULAR WIRELESS PCS, LLC 4430 ROSEWOOD DR. BLDG. 3 PLEASANTON, CA 94588-3050 CONTACT: VAN MULLER PHONE: (510) 258-1705	APPLICANT AGENT: MATTHEW YERGENSON EXTENET SYSTEMS REAL ESTATE CONTRACTOR FOR MANY MUNICIPALITIES 1826 WILBSTER ST SAN FRANCISCO, CA 94115 PHONE: (415) 396-3174 EMAIL: m.yergson@gmail.com	ARCHITECT: AERO COMMUNICATIONS, INC. 5711 RESEARCH DRIVE CANTON, MI 48106 CONTACT: GARY CLOHUELL PHONE: (510) 292-8918

CODE COMPLIANCE

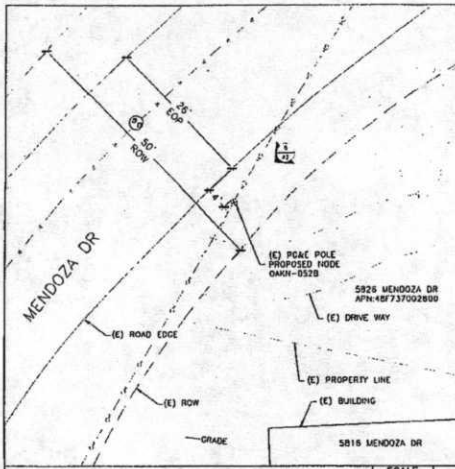
ALL MATERIALS SHALL BE PERFORMED AND INSTALLED IN ACCORDANCE WITH EDITIONS OF THE FOLLOWING CODES AS ADOPTED BY THE LOCAL JURISDICTIONS. WORKING IN THESE PLANS IS TO BE CONSTRUCTED TO PERMIT REFERRING TO THESE CODES.

- 1. BUILDING CODE CBC-2010
- 2. ADMINISTRATIVE CODE
- 3. S 24 & 251 2010
- 4. 222-F LIFE SAFETY CODE NFPA 9, CITY AND/OR COUNTY ORDINANCES.
- 5. TRUCKS AND CODE
- 6. 1985 (BOOK)
- 7. ELECTRICAL CODE CCC-2010
- 8. CALIFORNIA MECHANICAL CODE CMC-2010.
- 9. CALIFORNIA PLUMBING CODE CPC 2010.
- 10. LOCAL BUILDING CODE(S)
- 11. CITY AND/OR COUNTY ORDINANCES.
- 12. MOST CURRENTLY TO LATEST CALIFORNIA FIRE CODE.
- 13. (AND LATEST MUNICIPAL FIRE CODES)
- 14. CALIFORNIA GENERAL ORDER 95 AND 128

SIGNATURE BLOCK

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

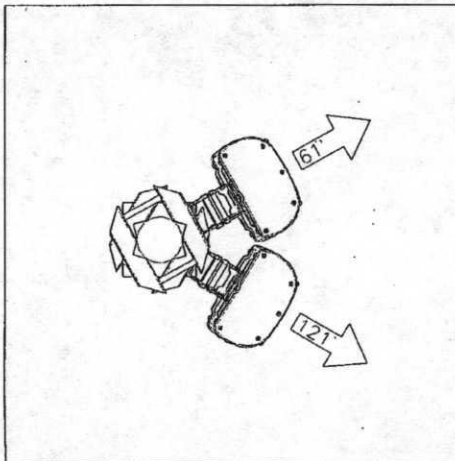
ATTACHMENT C



SITE PLAN CLOSEUP

SCALE
1"=25'-0"

2

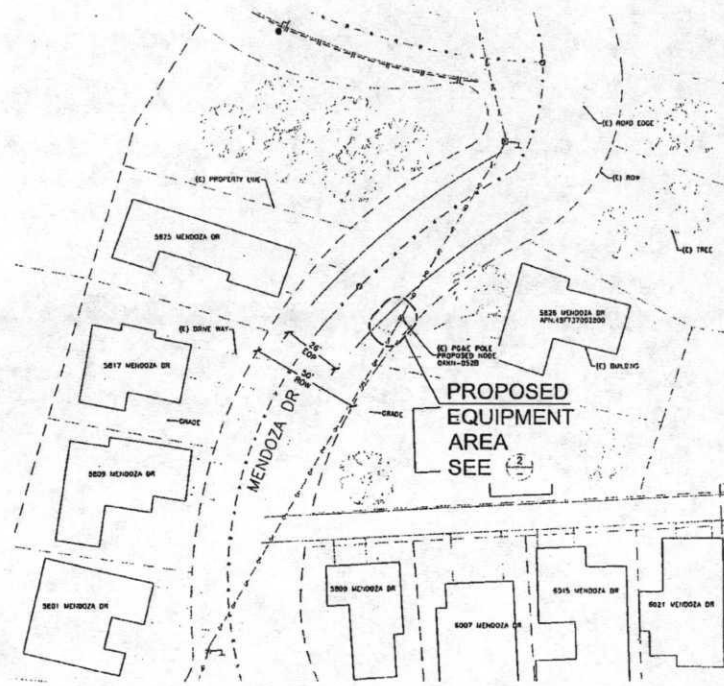


ANTENNA AZIMUTHS

SCALE
NBS

3

SITE PLAN



SCALE
1"=50'-0"

1



NEW CIRCULAR WIRELESS PCS, LLC
4430 ROSEWOOD DR. BLDG 3
PLEASANTON, CA 94589-3050

PROJECT INFORMATION:

OAKHILLS AT&T
SOUTH NETWORK
NODE 052B
5825 MENDOZA DR
OAKLAND, CA 94611

CURRENT ISSUE DATE:

12/19/12

ISSUED FOR:

ZONING

BY: DATE: DESCRIPTION: REV:

BY:	DATE:	DESCRIPTION:	REV:

ACI 12/19/12 POLE INFO CORRECTED 1

ACI 12/07/12 ZONING 0

BY: DATE: DESCRIPTION: REV:

PLANS PREPARED BY:



Para Communications Inc.
1-800-825-4401
5711 Research Drive
Canton, MI 48188

ACI NUMBER: OAKS-052B

CONSTRUCTED BY:



3030 Warrenville Rd, Suite 340
Lisle, IL 60532
www.net.com

SCALE OF APPROVAL:

SHEET TITLE:

SITE PLAN

SHEET NUMBER: REVISION:

A1

1

12/19/12



NEW CINCULAR 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 94611

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

PLANS PREPARED BY:



ACI Communications Inc.
1-800-825-ACI
5711 Research Drive
Canton, MI 48188

JO NUMBER: OHS-052B

CONSTRUCTED BY:



3030 Warrenville Rd. Suite 340
Lisle, IL 60532
www.netel.com

SEAL OF APPROVAL:



SHEET TITLE:

**ELEVATIONS
&
RISER DETAILS**

SHEET NUMBER: REVISION:

A2

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, OPTING, METER SOCKET, & SAFETY SWITCH 4" OFF OF POLE (USING UNSTRUTS) AT 12:00 POSITION.
4. RELOCATE CLIMBING PECS AT 9:00 POSITION, 8'-6" AGL TO COMM ZONE, TO 6:00 POSITION.

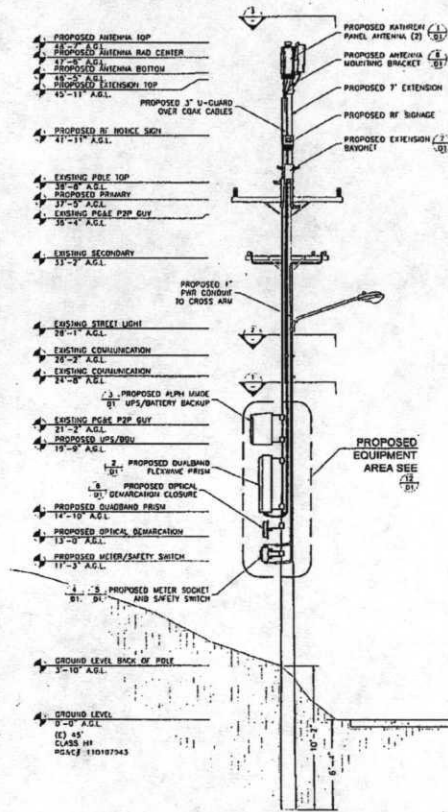
POWER MAKE-READY

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

- EXISTING POLE TOP 18'-3" AGL.
- EXISTING PRIMARY 33'-3" AGL.
- EXISTING PG&E P&P GUY 38'-4" AGL.
- EXISTING SECONDARY 33'-2" AGL.
- EXISTING STREET LIGHT 18'-1" AGL.
- EXISTING COMMUNICATION 18'-2" AGL.
- EXISTING COMMUNICATION 14'-8" AGL.
- EXISTING PG&E P&P GUY 31'-2" AGL.

- GROUND LEVEL BACK OF POLE 3'-10" AGL.
- GROUND LEVEL 0'-0" AGL.
- CLAS HI PG&E# 110107943



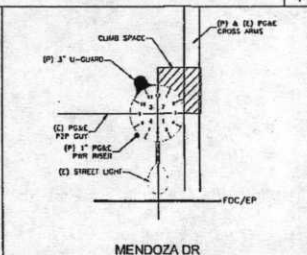
PROPOSED ELEVATION NORTHEAST

SCALE 1/8"=1'-0"

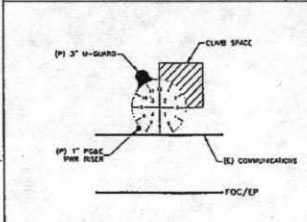
EXISTING ELEVATION NORTHEAST

SCALE 1/8"=1'-0"

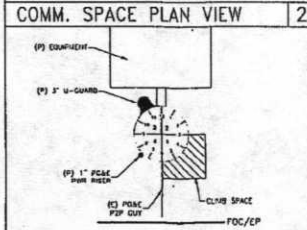
EQUIP. SPACE PLAN VIEW



MENDOZA DR POWER SPACE PLAN VIEW



MENDOZA DR COMM. SPACE PLAN VIEW



MENDOZA DR EQUIP. SPACE PLAN VIEW

SCALE 1/8"=1'-0"

SCALE 1/8"=1'-0"



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

PROJECT INFORMATION:

OAKHILLS AT&T
SOUTH NETWORK
NODE 052B
5825 MEMORIAL DR
OAKLAND, CA 94611

CURRENT ISSUE DATE:

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ZONING

BY: DATE: DESCRIPTION: REV:

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 Communications Inc.
1-800-825-4ACI
5711 Research Drive
Canton, WI 48188

CONSTRUCTED BY:



3030 Warrenville Rd, Suite 340
Lisle, IL 60532
www.netel.com

SEAL OF APPROVAL:

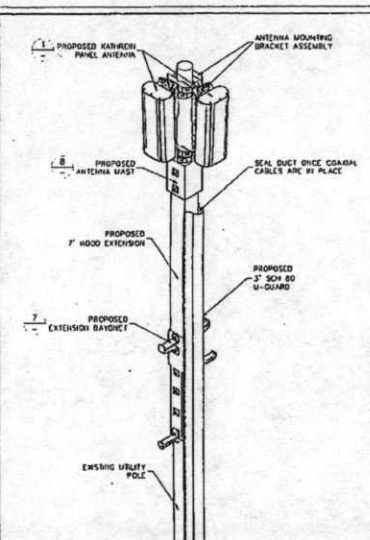
SHEET TITLE:

EQUIPMENT DETAILS

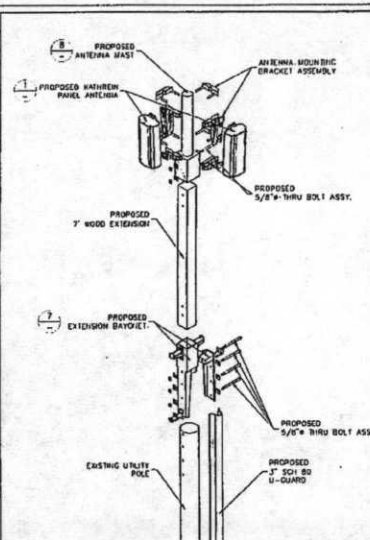
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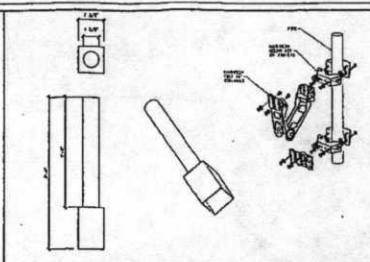
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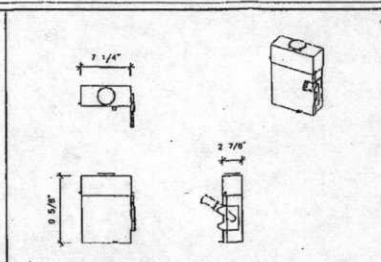
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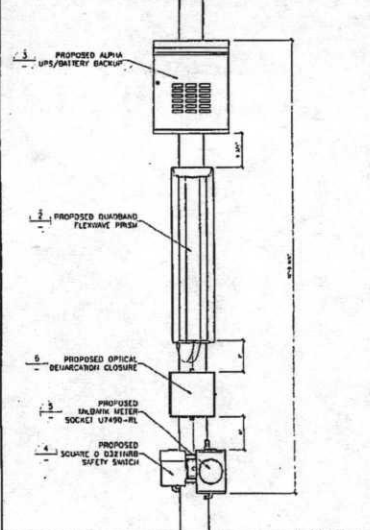
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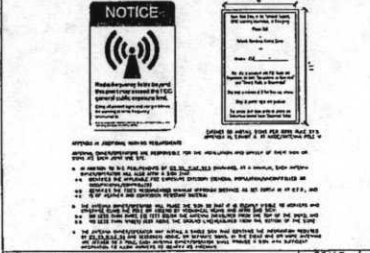
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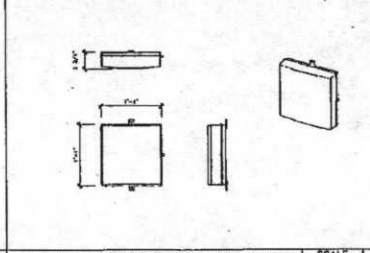
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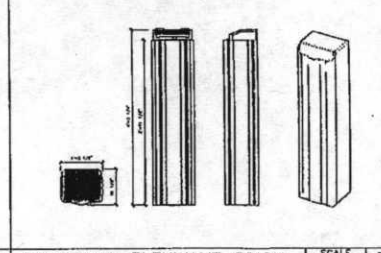
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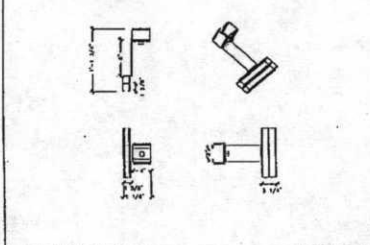
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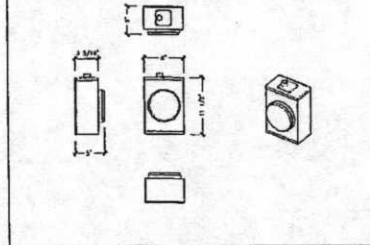
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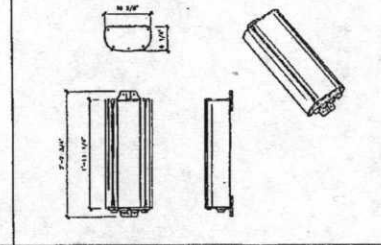
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LADDER BRACKET SCALE 1/2"=1'-0" 9

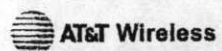


MILBANK METER SOCKET U7490-RL SCALE 1/2"=1'-0" 5



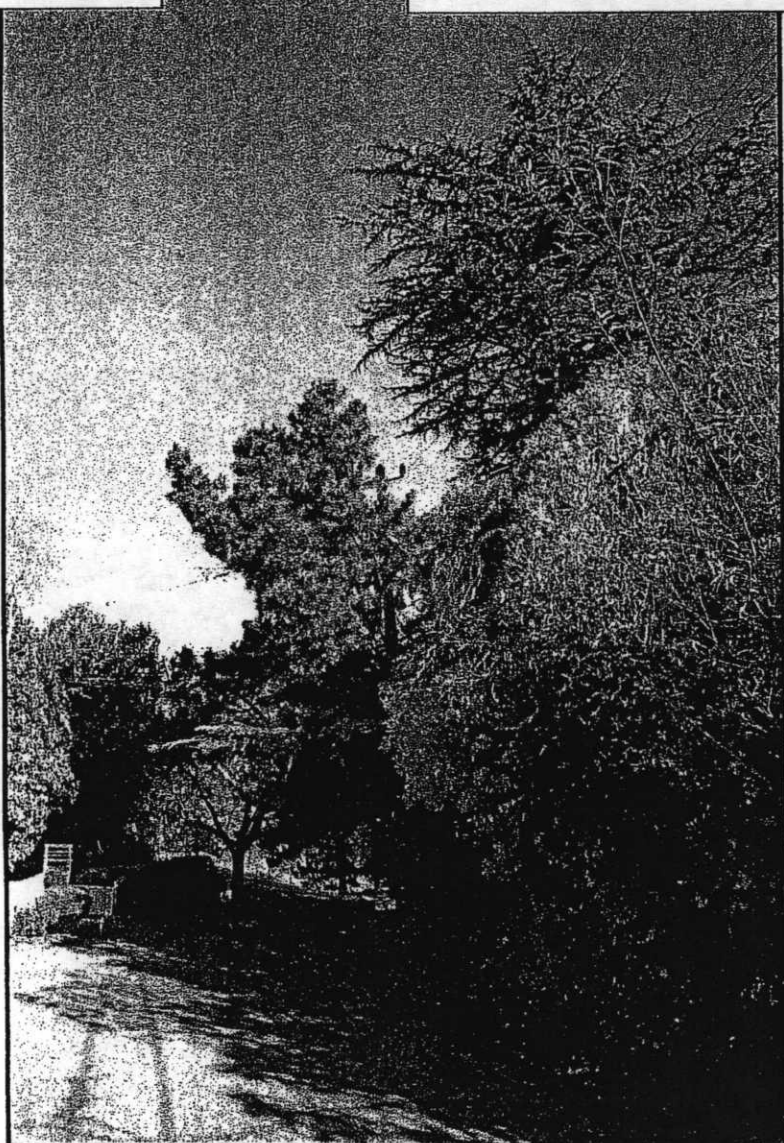
KATHREIN PANEL ANTENNA SCALE 1/2"=1'-0" 1

view from Mendoza Drive looking northeast at site

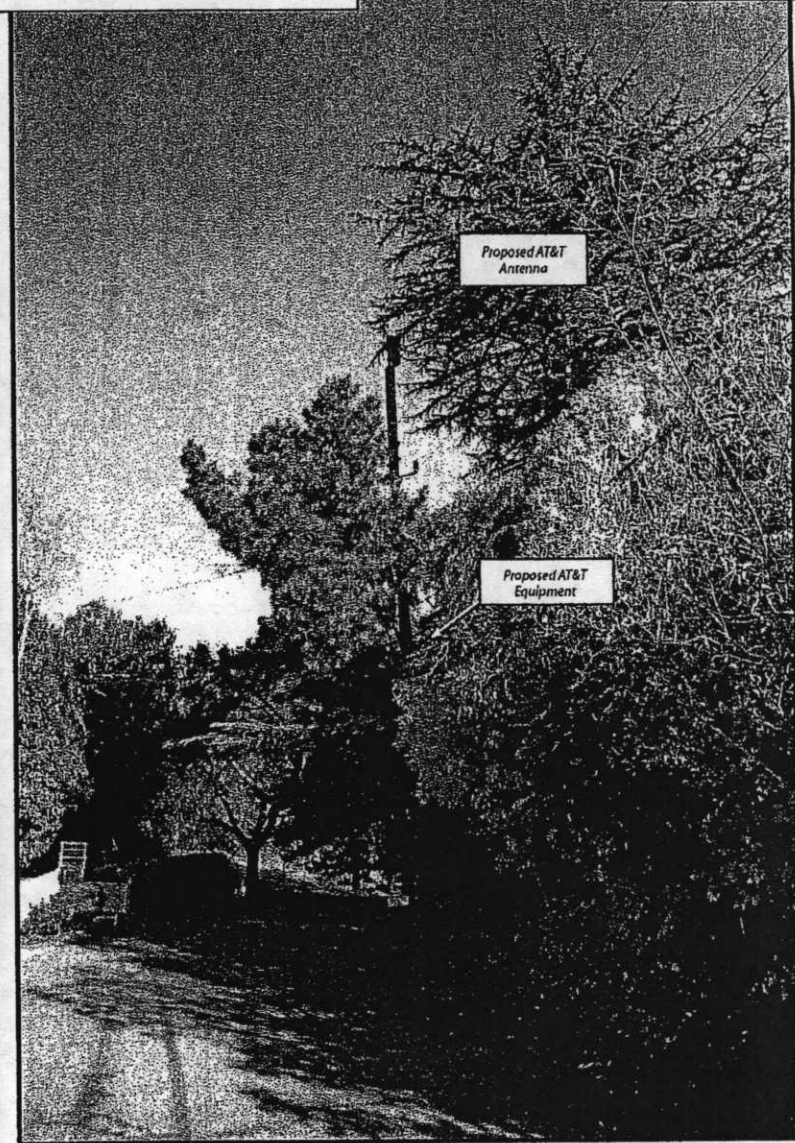


5826 Mendoza Drive, Oakland, CA
Oakhills AT&T South Network Node 052B

Existing



Proposed



ATTACHMENT D



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-foot 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

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

**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.



HAMMETT & EDISON, INC.
CONSULTING ENGINEERS
SAN FRANCISCO

S5XH
Configuration 2B
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ATTACHMENT F

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

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.



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

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/cm², 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.



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

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.

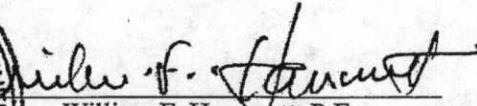
† Warning signs should comply with OET-65 color, symbol, and content recommendations. Signage may also need to comply with the requirements of California Public Utilities Commission General Order No. 95.



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

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



HAMMETT & EDISON, INC.
CONSULTING ENGINEERS
SAN FRANCISCO

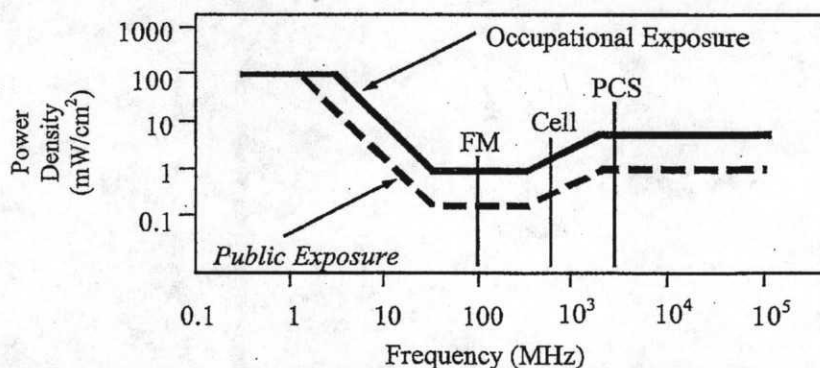
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FCC Radio Frequency Protection Guide

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 Applicable Range (MHz)	Electromagnetic Fields (<i>f</i> is frequency of emission in MHz)					
	Electric Field Strength (V/m)		Magnetic Field Strength (A/m)		Equivalent Far-Field Power Density (mW/cm ²)	
0.3 - 1.34	614	<i>614</i>	1.63	<i>1.63</i>	100	<i>100</i>
1.34 - 3.0	614	<i>823.8/f</i>	1.63	<i>2.19/f</i>	100	<i>180/f²</i>
3.0 - 30	1842/f	<i>823.8/f</i>	4.89/f	<i>2.19/f</i>	900/f ²	<i>180/f²</i>
30 - 300	61.4	<i>27.5</i>	0.163	<i>0.0729</i>	1.0	<i>0.2</i>
300 - 1,500	3.54√ <i>f</i>	<i>1.59√f</i>	√ <i>f</i> /106	<i>√f/238</i>	f/300	<i>f/1500</i>
1,500 - 100,000	137	<i>61.4</i>	0.364	<i>0.163</i>	5.0	<i>1.0</i>



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.



HAMMETT & EDISON, INC.
CONSULTING ENGINEERS
SAN FRANCISCO

FCC Guidelines
Figure 1

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/cm²,

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/cm²,

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/cm²,

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.

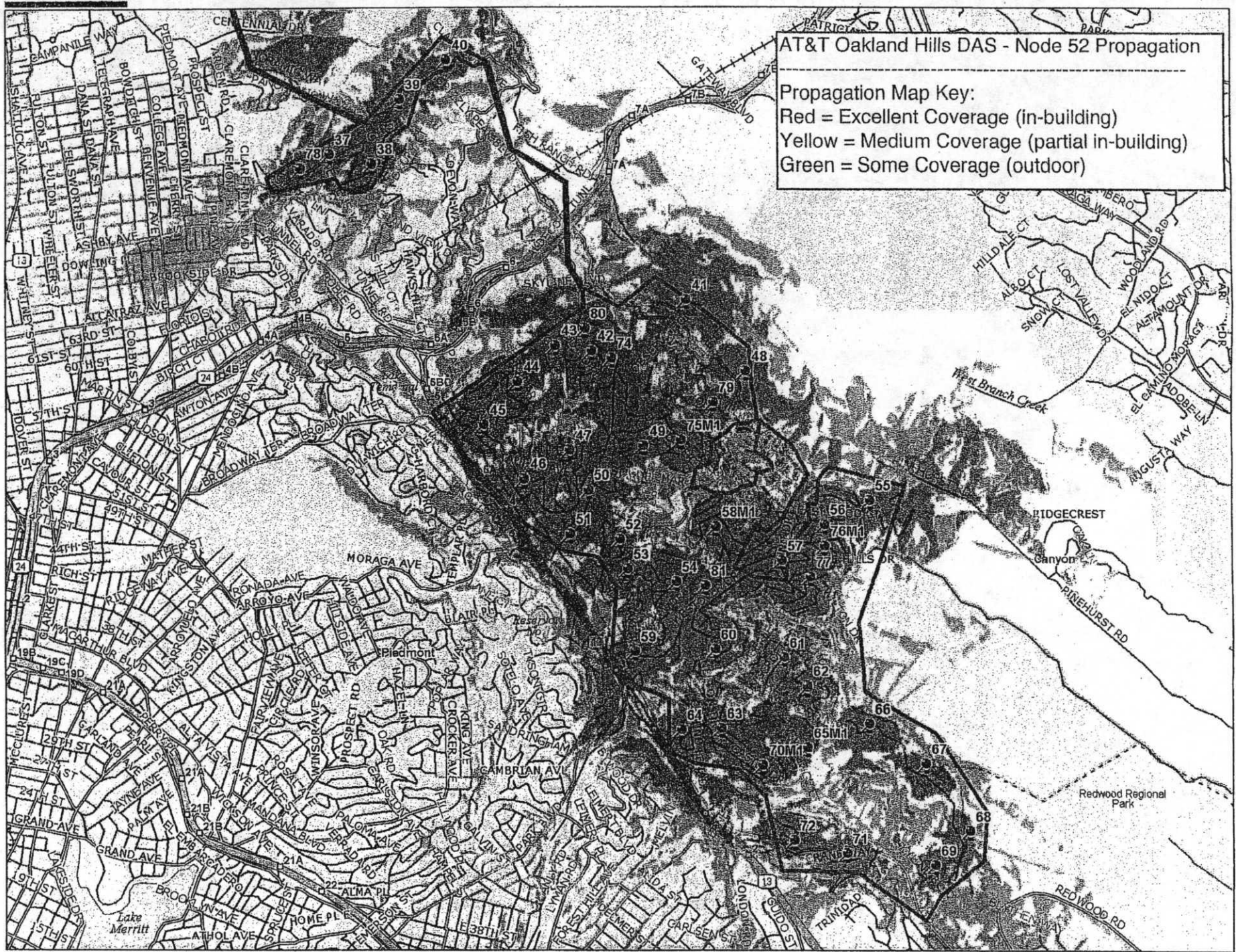


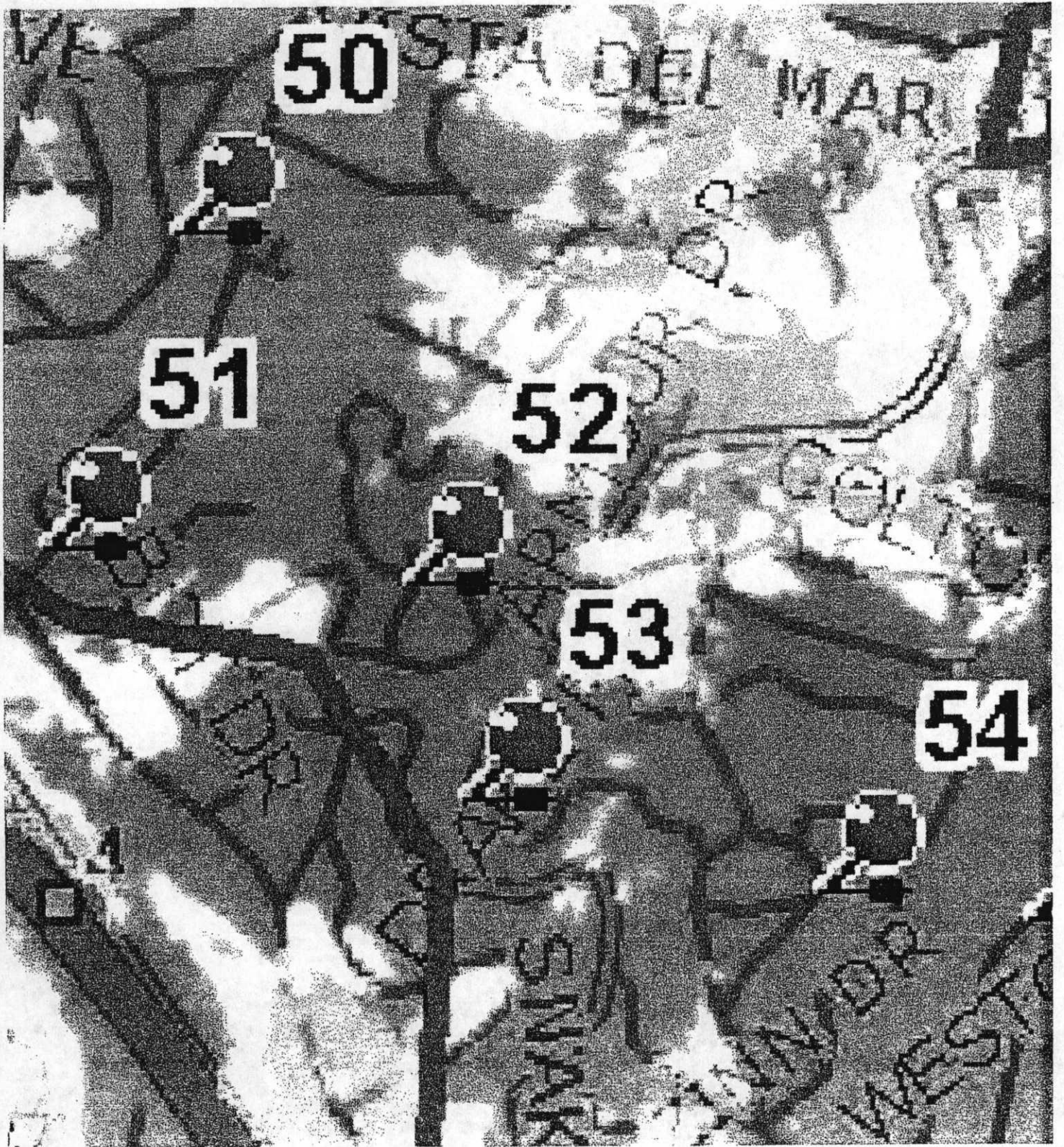
HAMMETT & EDISON, INC.
CONSULTING ENGINEERS
SAN FRANCISCO

Methodology
Figure 2

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)





50

SPANISH MAR

51

52

53

54

SINK

WIND

THORNHILL DR

ALHAMBRA LN

ALHAMBRA AV

ALMADEN LN

DR13020
Utility pole in public ROW adjacent to
5826 Mendoza Dr

ACCESS

MAZUELA DR

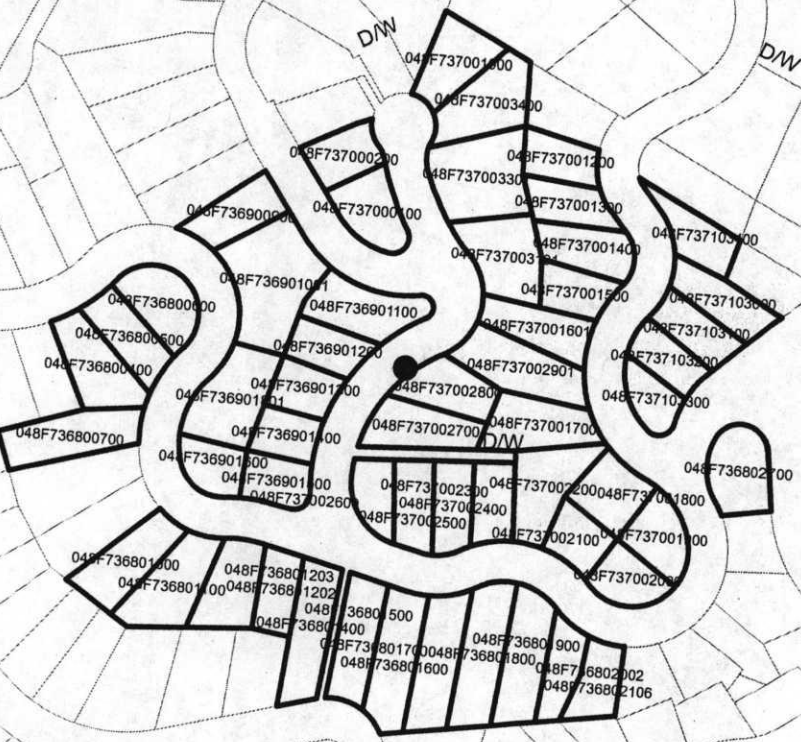
D/W

D/W

D/W

CABOT DR

DIAZ PL



CABOT DR

MOUNTAIN BLVD

COLTON BLVD

MAGELLAN DR

GASPAR DR

SNAKE RD

KROHN LN

BALBOA DR

DRAKE DR

DRAKE PL

GASPAR DR

ATTACHMENT C

ADVANCE DEVELOPMENT CORP
2308 SITKA ST
SAN LEANDRO CA 94577
DR13020

AIYER ARJUN & MERETE TRS
5809 MENDOZA DR
OAKLAND CA 94611
DR13020

ATO JACQUELINE M
6030 COLTON BLVD
OAKLAND CA 94611
DR13020

BASKIN RICHARD J TR
6079 COLTON BLVD
OAKLAND CA 94611
DR13020

BENNETT JASON & BENNETT LORNA
J & JASON TRS
5928 COLTON BLVD
OAKLAND CA 94611
DR13020

CHANG ANN & LAM RAYMOND Y
5970 COLTON BLVD
OAKLAND CA 94611
DR13020

CIZANCKAS VICTOR I
10 CABRILLO PL
OAKLAND CA 94611
DR13020

CONANT ROBERT
1810 BARROILHET
BURLINGAME CA 94010
DR13020

CONNERSCOPELAND RYAN & HARO
JENNIFER A TRS
5931 MAZUELA DR
OAKLAND CA 94611
DR13020

CONNOLLY JAMES & AMY G
AMY & JAMES CONNOLLY
5924 COLTON BLVD
OAKLAND CA 94611
DR13020

CORDER SOPHIE E TR
ERIN M SCHAEFER
2156 CORTE DORADO ESPUELA
ALPINE CA 91901
DR13020

DORRINGTON GARY D & JESSICA M
6085 COLTON BLVD
OAKLAND CA 94611
DR13020

DUCKER KENNETH L & DALIA G TRS
5816 MENDOZA DR
OAKLAND CA 94611
DR13020

DUDLEY MINDA
5826 MENDOZA DR
OAKLAND CA 94611
DR13020

FIENBERG BRUCE L & YAMASAKI
JUNKO TRS
5934 COLTON BLVD
OAKLAND CA 94611
DR13020

GECKELER PETER
2 CABRILLO PL
OAKLAND CA 94611
DR13020

GOTT KIMBERLY A & KIMBERLY A
5939 MAZUELA DR
OAKLAND CA 94611
DR13020

GOULD HELEN M & ALEXANDER
ERIC
6012 COLTON BLVD
OAKLAND CA 94611
DR13020

HERSH JUSTIN P & WRIGHT KAREN B
5901 MAZUELA DR
OAKLAND CA 94611
DR13020

HONG WARREN & LILLIAN TRS
5910 COLTON BLVD
OAKLAND CA 94611
DR13020

JOHNSON MARISA L & ERNEST E JR
5909 COLTON BLVD
OAKLAND CA 94611
DR13020

KREHLIK CARRIE A
6015 COLTON BLVD
OAKLAND CA 94611
DR13020

LAUER MICHAEL R & LISA J
6036 COLTON BLVD
OAKLAND CA 94611
DR13020

LAWS ANTHONY L TR
5964 COLTON BLVD
OAKLAND CA 94611
DR13020

LEE AMY K & WANG WAYLEN K
6007 COLTON BLVD
OAKLAND CA 94611
DR13020

LEE DONALD & MARIETA M TRS
1 CABRILLO PL
OAKLAND CA 94611
DR13020

LEE KYONGRI
6027 COLTON BLVD
OAKLAND CA 94611
DR13020

LIN KENNETH J & SINGHASIRI
SIRIWAN
6043 COLTON BLVD
OAKLAND CA 94611
DR13020

MCHENRY DORIS TRUST
7124 47TH AVE SW 203
SEATTLE WA 98136
DR13020

MIHALY ONITA
5907 MAZUELA DR
OAKLAND CA 94611
DR13020

MOORE BRENT C & MORRISON
WENDY M
6082 COLTON BLVD
OAKLAND CA 94611
DR13020

NYLUND ERIK & JANE TRS
5942 MAZUELA DR
OAKLAND CA 94611
DR13020

OLVERA LINDA E TR
6071 COLTON BLVD
OAKLAND CA 94611
DR13020

ORIENTAL INVESTMENT & REAL
ESTATE INC
KENT LAU
7918 HILLMONT DR
OAKLAND CA 94605
DR13020

OSMAN HUSSAM H & JENNIFER H
25 CABRILLO PL
OAKLAND CA 94611
DR13020

PLAUD TIMOTHY & PUCCIONI
ALLISON
24 CABRILLO PL
OAKLAND CA 94611
DR13020

ROJAS FRANCISCO J &
MORETTIROJAS INEZ
6097 COTTON BLVD
OAKLAND CA 94611
DR13020

ROY CARMELLA J TR
5825 MENDOZA DR
OAKLAND CA 94611
DR13020

SELFRIIDGE TOM & JENNIFER
5915 MAZUELA DR
OAKLAND CA 94611
DR13020

SIEDLECKI CECILE T
6022 COLTON BLVD
OAKLAND CA 94611
DR13020

SINGH JAMES
21 PEMBROKE CT
OAKLAND CA 94619
DR13020

SISKIN MICHAEL S
30 CABRILLO PL
OAKLAND CA 94611
DR13020

SKAGGS JASON M & ELIZABETH
1085 LOS ALTOS AVE
LOS ALTOS CA 94022
DR13020

SMITH ALAN E & MARY A TRS
5947 MAZUELA DR
OAKLAND CA 94611
DR13020

SODIKOFF CHARLES H & KAREN R
TRS
5925 COLTON BLVD
OAKLAND CA 94611
DR13020

STERNS GERALD C TR
5817 MENDOZA DR
OAKLAND CA 94611
DR13020

SZU RENEE T
5958 COLTON BLVD
OAKLAND CA 94611
DR13020

VITAL ALAN & KIRSTEN
5941 COLTON BLVD
OAKLAND CA 94611
DR13020

WANG FAIR
5925 MAZUELA DR
OAKLAND CA 94611
DR13020

WONDER ROBERT TR
79 SAND HARBOR RD
ALAMEDA CA 94502
DR13020

WRIGHT DURWIN & DEBORAH C
5990 COLTON BLVD
OAKLAND CA 94611
DR13020

WRIGHT JOHN TR & GILBERT
DONALD T TR
1611 SAN ANTONIO AVE
ALAMEDA CA 94501
DR13020

WU VICTORIA
6114 LA SALLE AVE 576
OAKLAND CA 94611
DR13020

YANEZ JESS P & STOCKER LYNNE G
JESS P YANEZ
6046 COLTON BLVD
OAKLAND CA 94611
DR13020



C. Blake Huntsman, Chair
Chris Pattillo, Vice Chair
Michael Colbruno
Michael Coleman
Jim Moore
Vien Truong
Jonelyn Whales

April 3, 2013
Regular Meeting

MEAL GATHERING **5:15 P.M.**

Saigon Restaurant, 326 Frank Ogawa Plaza, Oakland

Open to the public (Members of the public may purchase their own meals if desired. Consumption of food is not required to attend.)

BUSINESS MEETING **6:00 P.M.**

Sgt. Mark Dunakin Hearing Room 1, City Hall, One Frank H. Ogawa Plaza

Persons wishing to address the Commission on any item on the agenda, including Open Forum and Director's Report, should fill out a speaker card and give it to the Secretary "*Agenda items will be called at the discretion of the Chair not necessarily in the order they are listed on the Agenda*". Speakers are generally limited to two minutes at the discretion of the Chair. Applicants and appellants are generally limited to five minutes.

The order of items will be determined under "Agenda Discussion" at the beginning of the meeting. With the exception of Open Forum, a new item will not be called after 10:15 p.m., and the meeting will adjourn no later than 10:30 p.m. unless the meeting is extended by the Chair with the consent of a majority of Commissioners present.

Please check with the Department prior to the meeting regarding items that may be continued. Any agenda item may be continued, without the hearing on the matter being opened or public testimony taken, at the discretion of the Chair. Persons wishing to address the continued item may do so under Open Forum.

Staff reports for items listed on this agenda will be available by 3:00 p.m. the Friday before the meeting, to any interested party, at the Planning and Zoning Division, 250 Frank H. Ogawa Plaza, Oakland, California 94612.

For further information on any case listed on this agenda, please contact the case planner indicated for that item. For further information on Historic Status, please contact the Oakland Cultural Heritage Survey at 510-238-6879. For other questions or general information on the Oakland City Planning Commission, please contact the Community and Economic Development Agency, Planning and Zoning Division, at 510-238-3941.

♿ This meeting is wheelchair accessible. To request materials in alternative formats, or to request an ASL interpreter, or assistive listening device, please call the *Planning Department at 510-238-3941* or TDD 510-238-3254 at least three working days before the meeting. Please refrain from wearing scented products to this meeting so attendees who may experience chemical sensitivities may attend. Thank you.



New web-site staff report
download instructions

Reports are also available at the Strategic Planning Division on the 3rd floor (Suite 3315), which closes at 5:00 p.m.

Staff reports are also available on-line, by 3:00 p.m. the Friday before the meeting, at www.oaklandnet.com. Select the "Government" tab, scroll down and click on "Planning & Zoning" click on "visit the Boards and Commissions page" under "Planning Commission". You will need to ensure that your computer will accept pop-ups from the host site (oaklandnet.com) and that your computer has a later version of Adobe Acrobat Reader installed. For further information, please call [510-238-3941](tel:510-238-3941).

If you challenge a Commission decision in court, you will be limited to issues raised at the hearing or in correspondence delivered to the Zoning Division, at, or prior to, the hearing. Any party seeking to challenge in court those decisions that are final and not administratively appealable to the City Council must do so within ninety (90) days of the date of the announcement of the final decision, pursuant to Code of Civil Procedure Section 1094.6, unless a shorter period applies.

Please note that the descriptions of the applications found below are preliminary in nature and that the projects and/or descriptions may change prior to a decision being made.

While attending Planning Commission Meetings, parking in the Clay Street Garage is free. Attendees should see staff at the meeting for validation of parking tokens.

Applicants or members of the public that plan power point presentations: Please contact Cheryl Dunaway at cdunaway@oaklandnet.com or 510-238-2912 or Gwen Brown at gbrown@oaklandnet.com or 510-238-6194, at least 48 hours prior to the meeting.

Interested parties are encouraged to submit written material on agenda items in advance of the meeting and prior to the close of the public hearing on the item. To allow for distribution to the Commission, staff, and the public, 25 copies of all material should be submitted. Material submitted at least ten days prior to the meeting may be included as part of the agenda packet; material submitted later will be distributed at or prior to the meeting. To ensure that material is distributed to Commissioners, a minimum of twenty-five (25) copies should be submitted to Planning staff no later than the time is scheduled to be considered by the Commission.

ROLL CALL

WELCOME BY THE CHAIR

COMMISSION BUSINESS

Agenda Discussion

Director's Report

Committee Reports



Commission Matters

City Attorney's Report

OPEN FORUM

At this time members of the public may speak on any item of interest within the Commission's jurisdiction. Speakers are generally limited to two minutes or less if there are six or less speakers on an item, and one minute or less if there are more than six speakers.

CONSENT CALENDAR

The Commission will take a single roll call vote on all of the items listed below in this section. The vote will be on approval of the staff report in each case. Members of the Commission may request that any item on the Consent Calendar be singled out for separate discussion and vote.

1.	<p>Location: Utility pole in public right-of-way adjacent to: 5826 Mendoza Drive (APN: Adjacent to: 048F-7370-028-00)</p> <p>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.</p> <p>Pursuant to Federal and State law, City review for this application is essentially limited to design considerations only</p> <p>Applicant / Matt Yergovich on behalf of Extenet (for: AT&T) Phone Number: (415) 596-3747</p> <p>Owners: Public right-of-way: City of Oakland/ Utility pole: JPA</p> <p>Case File Number: DR13020</p> <p>Planning Permits Required: Regular Design Review and additional findings for a telecommunications facility</p> <p>General Plan: Hillside Residential Zoning: RH-4 Hillside Residential Zone</p> <p>Environmental Determination: Exempt, Section 15301 of the State CEQA Guidelines: Existing Facilities; Section 15183 of the State CEQA Guidelines: Projects Consistent with a Community Plan, General Plan or Zoning</p> <p>Historic Status: Non-historic property</p> <p>Service Delivery District: II City Council District: 4 Date Filed: January 28, 2013 Action to be Taken: Decision based on staff report 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</p>
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2. **Location:** Utility pole in public right-of-way adjacent to:
6133 & 6141 Snake Road

Assessor's Parcel **Adjacent to:** 048F-7368-034-00 & 033-00
 Numbers:

Proposal: To install a 9" tall extension with two 2'-2" tall antennas (approx.) on
top of a 38'-3" utility pole (proposed top height = 41'-2") and
equipment pole mounted between 8" and 18'-10" in height.

**Pursuant to Federal and State law, City review for this application
is essentially limited to design considerations only**

Applicant / Matt Yergovich on behalf of Extenet (for: AT&T)
Phone Number: (415) 596-3747

Owners: Public right-of-way: City of Oakland/
Utility pole: JPA

Case File Number: DR13034

Planning Permits Required: Regular Design Review and additional findings for a
telecommunications facility

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:
Projects Consistent with a Community Plan, General Plan or Zoning

Historic Status: Non-historic property

Service Delivery District: II

City Council District: 4

Date Filed: January 30, 2013

Action to be Taken: Decision based on staff report

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

3. **Location:** 1001 Warfield Avenue (APN: 011-0856-015-03)

Proposal: Request for a Major Conditional Use Permit and Design Review for the
modification to an existing unmanned macro telecommunications
facility. Project will remove two antennas and replace with two new
antennas inside an existing FRP screen and add four new RRU's inside
a new roof top screen(total of 13 antennas on site).

Applicant: Michelle Weller for Cortel

Contact Person/ Phone Michelle Weller
Number: (925) 997-1312

Owner: Estopinal Family Partnership

Case File Number: CMD11183

Planning Permits Required: Major Conditional Use Permit to modify an existing unmanned
wireless telecommunication macro facility and Regular Design
Review to remove two (2) antennas and replace with two (2) new
antennas (total of 13 antennas on site). New antennas and equipment
will be located within new and existing FRP enclosures along the roof
of the building.

(continued on page 5)



(continued from page 4)

General Plan: Mixed Housing Type Residential
Zoning: RM-2 Mixed Housing Type Residential 2 Zone
Environmental Determination: Exempt, Section 15303 of the State CEQA Guidelines; new construction of small structures, 15301 existing facilities; 15183 Projects consistent with the General Plan or Zoning.
Historic Status: Not A Potential Designated Historic Property (PDHP); Survey rating:
Service Delivery District: 3
City Council District: II
Date Filed: 09/22/11
Finality of Decision: Appealable to City Council within 10 days
For Further Information: Contact case planner **Jose M. Herrera-Preza** at (510) 238-3808 or jherrera@oaklandnet.com

4. **Location:** The public Right of Way across from 2679 Mountain Gate Way
APN: (048D-7228-004-00) the lot adjacent to the right of way
Proposal: To install a wireless telecommunication facility (AT&T wireless) on an existing 38'-8" high PG&E utility pole located in the public right-of-way: Install two panel antennas (two-feet long and 10-inches wide mounted onto a seven-foot tall extension affixed on top of the pole; an associated equipment box, one battery backup and meter boxes within a 6' tall by 18" wide single equipment box attached to the pole (8' above ground).
Applicant: New Cingular Wireless PCS, LLC./AT&T Mobility
Contact Person/Phone Number: Matthew Yergovich (415)596-3474
Owner: Pacific Gas & Electric. (PG&E)
Case File Number: DR13-047
Planning Permits Required: Major Design Review to install a wireless Telecommunication Macro Facility to on existing PG&E pole located in the public right of way in a residential zone.
General Plan: Hillside Residential
Zoning: RH-4 Hillside Residential Zone
Environmental Determination: Exempt, Section 15301 of the State CEQA Guidelines; minor additions and alterations to an existing facility.
Section 15183 of the State CEQA Guidelines; projects consistent with a community plan, general plan or zoning.
Historic Status: Not a Potential Designated Historic Property; Survey Rating: N/A
Service Delivery District: 4
City Council District: 4
Status: Pending
Action to be Taken: Decision of Application
Finality of Decision: Appealable to City Council within 10 days
For Further Information: Contact case planner **Jason Madani** at (510) 238-4790 or by email: jmadani@oaklandnet.com



5.	<p>Location: The public Right of Way across from 2997 Holy rood Drive APN: (048D-7274-013-02) the lot adjacent to the right of way</p> <p>Proposal: To install a wireless telecommunication facility (AT&T wireless) on an existing 38'-1" high PG&E utility pole located in the public right-of-way: Install two panel antennas (two-feet long and 10-inches wide mounted onto a seven-foot tall extension affixed on top of the pole; an associated equipment box, one battery backup and meter boxes within a 6' tall by 18" wide single equipment box attached to the pole (8' above ground).</p> <p>Applicant: New Cingular Wireless PCS, LLC./AT&T Mobility</p> <p>Contact Person/Phone Number: Matthew Yergovich (415)596-3474</p> <p>Owner: Pacific Gas & Electric. (PG&E)</p> <p>Case File Number: DR13-048</p> <p>Planning Permits Required: Major Design Review to install a wireless Telecommunication Macro Facility to on existing PG&E pole located in the public right of way in a residential zone.</p> <p>General Plan: Hillside Residential</p> <p>Zoning: RH-4 Hillside Residential Zone</p> <p>Environmental Determination: Exempt, Section 15301 of the State CEQA Guidelines; minor additions and alterations to an existing facility. Section 15183 of the State CEQA Guidelines; projects consistent with a community plan, general plan or zoning.</p> <p>Historic Status: Not a Potential Designated Historic Property; Survey Rating: N/A</p> <p>Service Delivery District: 2</p> <p>City Council District: 4</p> <p>Status: Pending</p> <p>Action to be Taken: Decision of Application</p> <p>Finality of Decision: Appealable to City Council within 10 days</p> <p>For Further Information: Contact case planner Jason Madani at (510) 238-4790 or by email: jsmadani@oaklandnet.com</p>
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PUBLIC HEARINGS

The hearing provides opportunity for all concerned persons to speak; the hearing will normally be closed after all testimony has been heard. If you challenge a Commission decision in court, you will be limited to issues raised at the public hearing or in correspondence delivered to the Zoning Division at, or prior to, the public hearing.

The Commission will then vote on the matter based on the staff report and recommendation. If the Commission does not follow the staff recommendation and no alternate findings have been prepared, then the vote on the matter will be considered a "straw" vote, which essentially is a non-binding vote directing staff to return to the Commission at a later date with appropriate findings and, as applicable, conditions of approval that the Commission will consider in making a final decision.

If you wish to be notified on the decision of an agenda item, please indicate the case number and submit a self-addressed stamped envelope, for each case.



Planning Commission decisions that involve "major" cases (i.e., major variances, major conditional use permits) are usually appealable to the City Council. If any interested party seeks to challenge such decision in court, an appeal must be filed within ten (10) calendar days of the date of the announcement of the Planning Commission decision and by 4:00 p.m. An appeal shall be on a form provided by the Planning and Zoning Division, and submitted to the same at 250 Frank H. Ogawa Plaza, Suite 2114, to the attention of the Case Planner. The appeal shall state specifically wherein it is claimed there was error or abuse of discretion by the Planning Commission or wherein their decision is not supported by substantial evidence and must include payment in accordance with the City of Oakland Master Fee Schedule. Failure to timely appeal will preclude you from challenging the City's decision in court. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record which supports the basis of the appeal; failure to do so will 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 City Planning Commission prior to the close of the City Planning Commission's public hearing on the matter.

Any party seeking to challenge a final decision in court must do so within ninety (90) days of the date of the announcement of a final decision, pursuant to Code of Civil Procedure section 1094.6, unless a shorter period applies.

(There are no public hearings on this agenda)

APPEALS

The Commission will take testimony on each appeal. If you challenge a Commission decision in court, you will be limited to issues raised at the public hearing or in correspondence delivered to the Zoning Division, Community and Economic Development Agency, at, or prior to, to the public hearing; provided, however, such issues were previously raised in the appeal itself.

Following testimony, the Commission will vote on the report prepared by staff. If the Commission reverses/overturns the staff decision and no alternate findings have been prepared, then the vote on the matter will be considered a "straw" vote, which essentially is a non-binding vote directing staff to return to the Commission at a later date with appropriate findings and, as applicable, conditions of approval that the Commission will consider in making a final decision.

Unless otherwise noted, the decisions in the following matters are final and not administratively appealable. Any party seeking to challenge these decisions in court must do so within ninety (90) days of the date of the announcement of the final decision, pursuant to Code of Civil Procedure section 1094.6, unless a shorter period applies.

(There are no appeals on this agenda)

COMMISSION BUSINESS

Approval of Minutes January 9, January 16, 2013

Correspondence

City Council Actions

ADJOURNMENT By 10:30 P.M. unless a later time is agreed upon by a majority of Commissioners present.

SCOTT MILLER
Zoning Manager
Planning and Zoning Division

NEXT REGULAR MEETING: April 17, 2013

FILED
OFFICE OF THE CITY CLERK
OAKLAND

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 15, 2014; and

WHEREAS, the Appellants and all other interested 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 15, 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) 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 15, 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 15, 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 Project Application, including all accompanying maps and papers;
2. all plans submitted by the Applicant and its representatives;
3. all final staff reports, decision letters, and other documentation and information produced by or on behalf of the City, all related and/or supporting materials, and all notices relating to the Application and attendant hearings;
4. all oral and written evidence properly received by City staff, the Planning Commission, and the City Council before and during the public hearings on the Application and Appeal, as stated above; and
5. 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 (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.