

ATTACHMENT 6 - FINDINGS

Findings for Design Review approval (Per section 20.100.050.E of the AMC)

Required Finding	Explanation
<p>1. <i>The project conforms to the General Plan, any applicable specific plan, applicable design guidelines adopted by the City of Albany, and all applicable provisions of this Chapter.</i></p>	<p>The General Plan designates this area for commercial recreation. Additionally, as a minor utility use, the project meets City zoning standards for location, intensity and type of development.</p>
<p>2. <i>Approval of project design is consistent with the purpose and intent of this section, which states “designs of projects...will result in improvements that are visually and functionally appropriate to their site conditions and harmonious with their surroundings, including natural landforms and vegetation. Additional purposes of design review include (but are not limited to): that retention and maintenance of existing buildings and landscape features are considered; and that site access and vehicular parking are sufficient.”</i></p>	<p>The proposal is in scale and harmony with existing development in the existing observation tower, which will make the antennas and equipment minimally visible to passers-by.</p>
<p>3. <i>Approval of the project is in the interest of public health, safety and general welfare.</i></p>	<p>The proposed project will not be detrimental to the health, safety, convenience and welfare of those in the area and would not adversely impact property, improvements or potential future development in the area. A third party review has been conducted and a number of conditions of approval requiring signage about radio frequency levels, as well as relocation of the antennas if in future residential development in the controlled radio frequency level areas is constructed.</p>
<p>4. <i>The project is in substantial compliance with applicable general and specific Standards for Review stated in Subsection 20.100.050.D.</i></p>	<p>The project as designed is in substantial compliance with the standards as stated, including access, architecture, natural features, coordination of design details, and privacy. The proposed project will not affect the use, drastically affect the aesthetics, or at all the privacy at or around the site.</p>

Findings for Conditional Use Permit Approval as required by Section 20.100.030.D:

<i>Required Finding</i>	<i>Explanation</i>
<p>1. <i>The size, location and intensity of the project are desirable and compatible with the neighborhood and community.</i></p>	<p>The General Plan designates this area for commercial recreation. Additionally, as a minor utility use, the project meets City zoning standards for location, intensity and type of development.</p>
<p>2. <i>The project will not be detrimental to the health, safety, convenience or general welfare of people residing or working in the vicinity, or injurious to property, improvements or potential development in the vicinity, with respect to aspects including but not limited to the following:</i></p> <ul style="list-style-type: none"> a. <i>The nature of the proposed site, including its size and shape, and the proposed size, shape and arrangement of structures</i> b. <i>The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading.</i> c. <i>The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor.</i> d. <i>Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs.</i> 	<ul style="list-style-type: none"> a. The site is of sufficient size and shape to successfully install/construct the wireless facilities. They will be located on an existing racetrack observation and will not change the use or dramatically change the aesthetics of the site. b. The project will not have any increased traffic impacts beyond those typical during the initial installation period. A technician will visit the site once every few weeks, and aside from the visits will be self-sufficient unless emergencies arise. c. The project will not develop significant new noxious noise, glare, dust or odor emissions beyond those associated with racetrack corporation yard. d. The antennas and equipment shall be painted and finished to match the existing structure.
<p>3. <i>That such use or feature as proposed will comply with the applicable provisions of this Chapter and will be consistent with the policies and standards of the General Plan.</i></p>	<p>The proposed project is otherwise consistent with the City's General Plan zoning standards and requirements relating to wireless facilities.</p>

Findings for Approval as required by Section 20.20.100F.5:

<i>Required Finding</i>	<i>Explanation</i>
<p>The establishment or expansion of the facility demonstrates a reasonable attempt to minimize stand-alone facilities, is designed to protect the visual quality of the City, and will not have an undue adverse impact on historic resources, scenic views, or other natural or man-made resources.</p>	<p>The proposal is in scale and harmony with existing development near the site. The antennas and equipment will be painted to match the finish of the existing observation tower, which will make the antennas and equipment minimally visible to passers-by.</p>

<i>Required Finding</i>	<i>Explanation</i>
All applicable Development Standards in subsection 20.20.100.E. above have been met; or: Finding for an exception to the Development Standards: Strict compliance would not provide for adequate radio-frequency signal reception and that no other alternative solutions which would meet the Development Standards are feasible.	Not applicable. Existing racetrack facility complies with development standards.
The placement, construction, or modification of a wireless telecommunications facility in the proposed location is necessary for the provision of wireless communication services to Albany residents and businesses, or their owners, customers, guests, or invitees, or other persons traveling in or about the City.	Not applicable. Project is an existing facility.
Finding for establishment of a satellite dish or parabolic antenna exceeding thirty-nine (39) inches in diameter: A smaller or different antenna cannot feasibly accomplish the provider's technical objectives and that the facility will not be readily visible.	Project requires a satellite dish or parabolic antenna due to the lack of carrying capacity in hard-wired telephone lines in the area.
Findings for the establishment of a wireless communications facility that is not co-located with other existing or proposed facilities or a new freestanding pole or tower (at least one (1) finding required): <ul style="list-style-type: none"> a) Co-location is not feasible; b) Co-location would have more significant adverse effects on views or other environmental consideration; c) Co-location is not permitted by the property owner; d) Co-location would impair the quality of service to the existing facility; e) Co-location would require existing facilities at the same location to go off-line for a significant period of time; 	Not applicable. Project is an existing facility.

ATTACHMENT - 7

COMMUNITY DEVELOPMENT DEPARTMENT CONDITIONS OF APPROVAL

GENERAL PROJECT CONDITIONS

Gen-1 **Project Approval.** This Design Review and Conditional Use Permit approval is for Verizon Wireless, as substantially shown and described on the project plans, except as may be modified by conditions herein. Plans include plans prepared by AT&T, date received October 15, 2010, all as presented to the City Council on December 13, 2010. For any condition herein that requires preparation of a Final Plan where the project developer has submitted a conceptual plan, the project developer shall submit final plan(s) in substantial conformance with the conceptual plan, but incorporate the modifications required by the conditions herein for approval by the City.

GEN-2 **Project Approval Expiration.** This Design Review and Conditional Use Permit approval will expire on December 27, 2011 (one year from the date on which this approval becomes effective), or at an alternate time specified as a condition of approval, unless a building permit has been issued and construction diligently pursued; a certificate of occupancy has been issued; the use is established; the use permit, variance or design review approval is renewed. The approval may be renewed by the Community Development Director for a period up to an additional two (2) years, provided that, at least ten (10) days before expiration of one (1) year from the date when the approval becomes effective, an application for renewal of the approval is filed with the Community Development Department. The Community Development Director may grant a renewal of an approval where there is no change in the original application, or there is no request to change any condition of approval.

Project also is subject to "Duration, Revocation and Discontinuance" regulations contained in Planning and Zoning Code Section 20.20.100.I :

An approved use permit for a wireless communication facility must be activated within one (1) year from the date of final approval. If not activated within one (1) year from the date of final approval, the permit shall be deemed expired, as provided in subsection 20.100.010.K.1.

b. Once activated, all permit approvals for wireless communication facilities shall be valid for an initial maximum period of up to ten (10) years, or as specified by the approving body.

c. Permit approvals may be administratively extended without a public hearing for subsequent five (5)-year terms(s) by the Community Development Director upon verification of continued compliance with the findings and conditions of approval under which the application was originally approved, as well as any other provisions provided for in the Municipal Code, and Federal and State regulations which are in effect at the time of permit renewal.

d. In the event that the Community Development Director finds that the applicant has not maintained the facility in compliance with all applicable code requirements, conditions of approval and provisions of the maintenance agreement, the Director may initiate a revocation procedure as provided by subsection 20.100.010.M.

e. Costs associated with the process of verification of compliance and extension or revocation of approval shall be borne by the permit holder.

2. Discontinuance of Use. All equipment and improvements associated with a wireless communication facility shall be removed within thirty (30) days of the discontinuation of the use and the site shall be restored to its original, pre-construction condition, or as approved by the Community Development Director. For facilities located on City property, this removal requirement shall be included within the terms of the lease. For facilities located on private sites, the terms of private leases shall also require equipment removal as a provision of the lease. Written verification of the removal of wireless communication facilities on private property shall be provided to the Community Development Director within thirty (30) days of the discontinuation of the use.

a. If the operator fails to remove the wireless communication facilities from the site, the property owner shall be responsible for removal, and may use any bond or other assurances provided by the operator pursuant to the requirements of this Chapter to do so. If such facilities are not removed, the site shall be deemed to be a nuisance and the City may call the bond for removal or take such other action as it deems appropriate.

b. Failure to inform the Community Development Director of cessation of operations of any existing facility shall constitute a violation of the Zoning Ordinance and be grounds for:

- 1) Prosecution;*
- 2) Revocation or modification of the permit;*
- 3) Calling of any bond or other assurance secured by the operator pursuant to the requirements of this Chapter; and/or*
- 4) Removal of the facilities.*

Gen-3

FEES. The applicant shall pay all City and other related fees applicable to the property, as may be modified by conditions herein. Fees shall be based on the current fee structure in effect at the time the relevant permits are secured, and shall be paid before issuance of said permit or before any City Council final action approval. Notice shall be taken specifically of Plan Check, Engineering, Fire and Inspection Fees. The project developer shall also reimburse the City for direct costs of planning; building and engineering plan check and inspection, as mutually agreed between the City and developer.

- GEN-4 **Appeals.** The Albany Municipal Code provides that any action of the Planning staff may be appealed to the Planning and Zoning Commission, and any action of the Planning and Zoning Commission may be appealed to the City Council as per the procedures described in Section 20.100.080. The City Clerk will then schedule the matter for the next available City Council meeting.
- GEN-5 **Requirement for Building Permit.** Approval granted by the Planning and Zoning Commission does not constitute a building permit or authorization to begin any construction or demolish an existing structure. An appropriate permit issued by the Community Development Department must be obtained before constructing, enlarging, moving, converting, or demolishing any building or structure within the City.
- GEN-6 **Fire Department Approval.** As part of a building permit application, the applicant shall submit written documentation that all requirements of the Albany Fire Department have, or will be, met to the satisfaction of the AFD.
- GEN-7 **Engineering Approval.** As part of a building permit application, the applicant shall submit written documentation that all requirements of the Public Works Department have, or will be, met to the satisfaction of the City Engineer.
- GEN-8 **Construction Hours.** Construction activity shall be restricted to the hours of 8:00 a.m. to 6:00 p.m. Mondays through Saturdays, and 10:00 a.m. to 6:00 p.m., Sundays and legal holidays, unless otherwise approved in writing by the City Engineer for general construction activity. Failure to comply with construction hours may result in stop work orders or other administrative actions.
- GEN-9 **Modifications to Approved Plans.** The project shall be constructed as approved. Planning staff may approve minor modifications in the project design, but not the permitted land use (per MC 20.12). A change in an item requiring discretionary approval and any other changes deemed appropriate by the Planning staff shall require further Planning and Zoning Commission approval through the Design Review process.
- GEN-10 **Hold Harmless Agreement.** Pursuant to Government Code Section 66474.9, the applicant (including any agent thereof) shall defend, indemnify, and hold harmless, the City of Albany and its agents, officers and employees, from any claim, action, or proceeding against the City or its agents, officers or employees to attack, set aside, void, or annul the City's approval concerning this application, which action is brought within the time period provide for in Section 66499.37. The City will promptly notify the applicant of any such claim action or proceeding and cooperate fully in the defense.
- GEN-11 **Public Improvements Standards.** Public improvements, as required by the City Engineer during building permit review, shall be designed and constructed in accordance with the City's Standard Specifications and Standard Details, unless specifically waived in writing by the City Engineer.

- GEN-12 **Title 24 Standards.** All construction shall be designed and built in accordance with California Title 24 handicap accessibility standards. Appropriate details and specifications shall be incorporated into the plans and submitted at time of building permit application.
- GEN-13 **Energy Conservation Standards.** All buildings shall be designed in accordance with the State of California energy conservation standards for non-residential buildings. The necessary plans and documentation shall be submitted at time of building permit application.

ARCHITECTURE CONDITION

- ARCH-1 **Material Samples.** Samples of final exterior materials and the proposed color palette shall be submitted for review and approval by the Community Development Department as part of building permit application.
- ARCH-2 **Final Architectural Drawings.** The applicant shall submit final architectural elevations, details and revisions for the review and approval of the Community Development Department as part of building permit application.

Project-Specific Conditions

- SPECIAL-1 Verizon shall permanently place and at all times maintain in good condition radio frequency emission notice signs in English and Spanish that are compliant with ANSI C95.2 color, symbol, and content conventions.
- SPECIAL-2 Each sign shall at all times bear the name of the carrier, the site identification number, and a 24-7 local or toll-free telephone number to reach a live person at the carrier’s Network Operations Center.
- SPECIAL-3 Such signage shall be affixed to the building, immediately adjacent to or on the access portal; and outside of the entry point to the proposed RF transparent enclosure housing; and adjacent to the rear of each panel antenna located in the proposed RF-transparent enclosures; and other locations as determined by Verizon.
- SPECIAL-4 The applicant shall install a disconnect switch so that building maintenance staff and public safety personnel can turn off transmitters in the event of an emergency.
- SPECIAL-5 Any exterior service lights are to be switched off any time an AT&T technician is not physically present on the roof of the building.
- SPECIAL-7 Installation of an emergency generator will be subject to City of Albany review and permits, including if applicable, Planning and Zoning Code review and California, Building, Electrical, Mechanical and Fire Codes.”

Appeals: The Albany Municipal Code provides that any action on an appeal by the city Council shall be final.