



TO: ALBANY PLANNING & ZONING COMMISSION
FROM: ANNE HERSCH, AICP, CITY PLANNER
SUBJECT: PA 12-050 AT&T Wireless Use Permit & Design Review 1035 San Pablo Ave.
DATE: January 17, 2013

Property Owner: Dallas Allen Jr. & Al Satake 619 San Pablo Ave. Albany, CA 94706	Applicant/Representative: Trillium Consulting on behalf of AT&T Vallerie Tallerico 7901 Stoneridge Drive, Suite 503 Pleasanton, CA 94588
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PROJECT: AT&T Wireless FILE: PA 12-050 LOCATION: 1035 San Pablo Ave. GP LU: General Commercial ZONING: SPC-San Pablo Commercial PLANNER: Anne Hersch	Original filing: October 5, 2012 Date Deemed Complete: December 17, 2012 Date of Notice Posted/Mailed: 1/7/2013 Date of Public Hearing: January 17, 2013 Total number of days to hearing: 105 days
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REQUEST

The applicant is seeking Design Review and Conditional Use Permit approval to allow nine (9) new panel antennas on an existing office building at 1035 San Pablo Ave. The antennas will be housed in new FRP (fiber reinforced plastic) on the roof and parapet wall. The south and west facing enclosure is approximately 35.6 sq. ft. and will house six (6) antennas. The north facing enclosure is 20 sq. ft. and will house three (3) antennas. Both enclosures are proposed to shield the antennas from public view. Related equipment is proposed to be located in a leased office suite in the building. The roof-top penthouse is proposed to be demolished to eliminate roof-top coverage issues.

STAFF RECOMMENDATION

The Planning and Zoning Commission review the proposed application and approve the project subject to conditions and findings.

SITE LOCATION

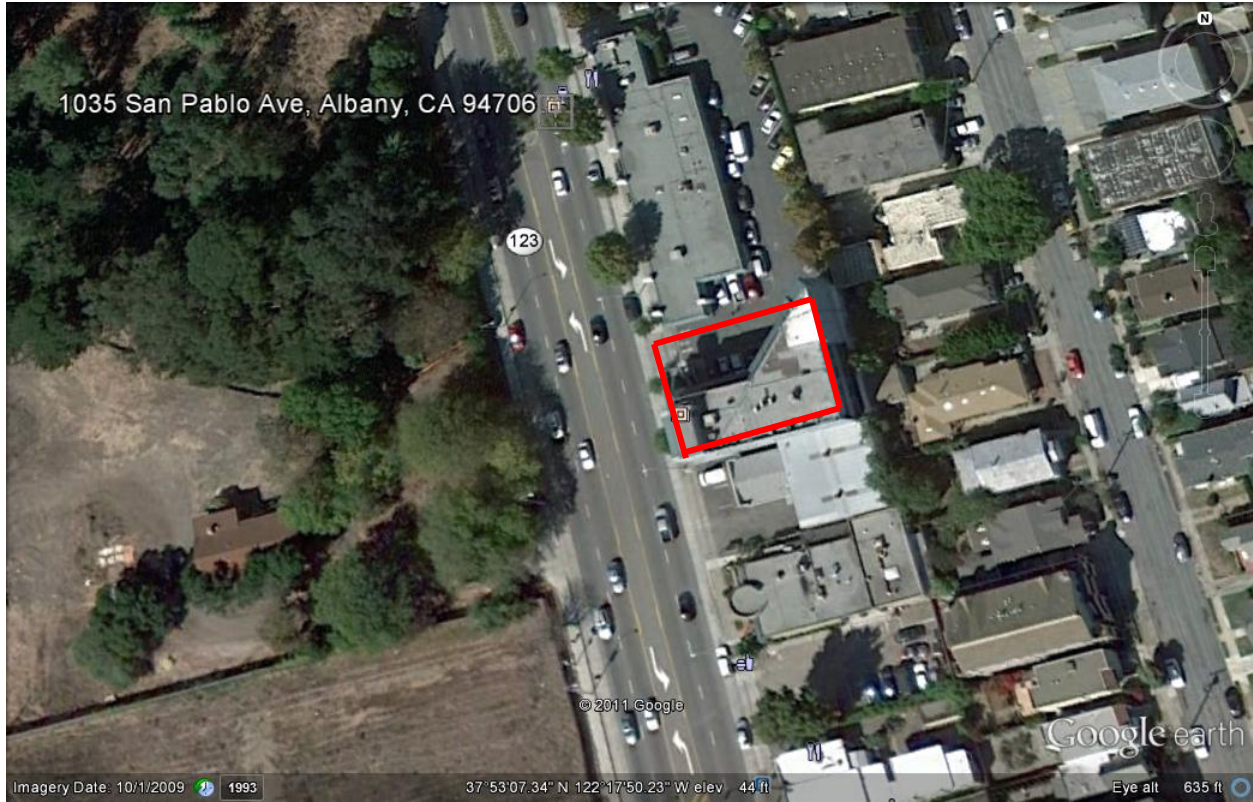


Figure 1. Site Location

OVERVIEW OF REGULATORY FRAMEWORK

Pursuant to the Telecommunications Act of 1996, the Federal Communications Commission (FCC) is the primary regulator of wireless communications, including the design and operation of equipment. In addition, the FCC has adopted radio frequency exposure emissions regulations. Section 704 “Facilities Siting, Radio Frequency Emission Standards” (a) National Wireless Telecommunications Siting Policy- Section 332 (c) (47 U.S.C. 332(c)) (7) (B) Title VII, Section 704 of the Federal Telecommunications Act of 1996 precludes municipalities from making findings of denial based on radio frequency emissions or health concerns. Provision iv specifically prevents a jurisdiction from denying the application request as a result of radio frequency or health concerns. Wireless telecommunications providers and the City are required to adhere to accepted radiofrequency standards as established the Federal Communications Commission (FCC).

In 2005, the City adopted a Wireless Communications Facilities Ordinance. The city’s regulations are focused on the location and design of antennas. The key features of the regulations include:

- Allowing wireless facilities in the SPC (San Pablo Avenue), SC (Solano Commercial), and CMX (Commercial Mixed-Use) zoning districts.
- Prohibiting wireless facilities in any residential zone.
- Establishing development standards, operation and maintenance standards, and specifying application submittal requirements.

- Requiring a maintenance and facility removal agreement.
- Allowing the City to conduct studies to ensure compliance of with City and FCC standards.

BACKGROUND

All wireless facilities applications submitted to City are reviewed in extensive detail for compliance with all applicable provisions contained in Chapter 20 “Land Development” of the Albany Municipal Code. The Planning & Zoning Commission completes a thorough review of each application and the circumstances unique to each request. With each review of wireless applications, the Commission must balance the demands to improve wireless infrastructure, satisfy the requirements of the Code, and comply with Federal law.

Currently, AT&T has no facilities in the City of Albany. The nearest locations include El Cerrito Plaza (1.2 miles from the proposed location) and 1255 Eastshore Freeway in Berkeley (approximately .66 miles from the proposed location). The applicant is seeking a Conditional Use Permit and Design Review approval to allow installation of nine (9) new antenna units in three groups on the north, south, and east facing portions of the rooftop of an existing commercial building. The equipment will be housed in new fiber-reinforced plastic (FRP) enclosures behind the existing parapet wall. The south and west facing enclosure is approximately 35.6 sq. ft. and will house six (6) antennas. This enclosure will be partially mounted on the parapet to minimize the roof-top footprint. The north facing enclosure is 20 sq. ft. and will house three (3) antennas. Both enclosures are proposed to shield the antennas from public view. The project’s purpose is to provide broader services for ATT wireless customers. The building currently has an existing roof-mounted Sprint wireless facility which makes the site co-locatable pursuant to Section 20.20.100 (E) (2) (a).

Existing Sprint Facility

The existing Sprint facility was installed at 1035 San Pablo Ave. in 1997, well before adoption of the City’s Wireless Ordinance. Sprint applied for an Administrative Conditional Use Permit in 2001. Administrative Use Permit 01-056 was approved by the Planning & Zoning Commission on October 21, 2001 and allowed for an additional antenna sector and two new antennas within existing sectors.

Sprint applied for a Conditional Use Permit 05-029 to relocate four (4) existing telecommunications antennas from the northeast façade to the north wall of the equipment shelter on the rooftop of the building. However, no action was ever taken on this application request as it was never deemed complete. The Sprint facility is legal non-conforming as it pre-dates the City’s Wireless Communication Facilities Ordinance.

2008-2012 Review

AT&T filed an application for a new wireless facility at 1035 San Pablo Ave on May 22, 2008. After several plan modifications, the project was denied by the Planning & Zoning Commission on May 22, 2012 by a 3-1 vote. As part of the denial, the Commission cited existing non-compliant roof-top coverage conditions and that the project failed to comply with Section 20.24.080(C) of the Albany Municipal Code as the installation on the south side of the site exceeds the height limit by more than 6’ and is within 10 ft. of the perimeter of the plate line of the top story.

On June 5, 2012, AT&T filed an appeal of the Planning & Zoning Commission decision. The Albany City Council reviewed the appeal on July 2, 2012. At that time the Council continued the review pending the following additional information:

- AT&T and staff to further evaluate the 979 San Pablo Avenue site with regard to technical feasibility and availability
- Determine if there is any way to change roof coverage at the 1035 San Pablo site to prevent a net increase

The appeal was brought back to the Council at the July 16, 2012 hearing. At that time, the Council voted 3-2 to uphold the denial decision and reiterated the Commission's concerns about non-conforming roof-top coverage as unresolved.

Litigation

On August 15, 2012 AT&T filed a lawsuit against the City of Albany seeking declaratory and injunctive relief against the City. To date, the City's external legal counsel and staff have prepared the administrative record and proceeded with the required court filings for litigation.

Upon filing the new application, the City's legal counsel contacted AT&T's legal counsel regarding a staying agreement. The staying agreement would allow the lawsuit to be on hold until action is taken on the new application. AT&T declined the City's request to stay the litigation and both parties are proceeding with litigation.

It is possible that if the new application submittal is approved, the pending lawsuit may be able to reach settlement. If the new application is denied, it is likely that AT&T will amend their existing complaint to include the PA 12-050 as part of the administrative record.

CURRENT APPLICATION REQUEST/ANALYSIS

FCC Shot Clock Requirements

In 2009, the Federal Communications Commission (FCC) established "Shot Clock" provisions for municipal land use planning authorities to insure timely processing of wireless applications. This decision was the result of CTIA-The Wireless Association, a trade organization representing the wireless industry, petitioning the FCC to limit local review length for application processing. The FCC's ruling has resulted in a 90 day review limit for collocation applications and 150 day review for siting applications other than collocations. The ruling was challenged and upheld in the 5th Circuit Court of Appeals in the case of City of Arlington, Texas vs. The FCC. The case was appealed to the Supreme Court and is expected to be heard this month.

Current Submittal

The new application request was filed on October 5, 2012. A letter of incompleteness was provided to AT&T on October 31, 2012. At that time, staff requested additional information to be included in the Alternatives Analysis. AT&T initially provided a response on November 16, 2012. On November 30, 2012 staff asked for additional information to be included in the analysis. This additional request for information is detailed below.

- Description of Tools Used to Calculate Propagation Predictions (previously a description was provided of the radiofrequency software used to prepare the propagation maps)
- Radiofrequency Considerations description for each site considered
- Conclusion of the Analysis

AT&T provided this additionally requested information on December 6, 2012. On December 17, 2012 staff deemed the application complete.

Penthouse Demolition

In the previous review, the Planning & Zoning Commission identified the existing roof-top penthouse as legal non-conforming. The penthouse was originally approved as a mechanical equipment room and was converted to a break room/storage room without a building permit. The Commission determined that that the roof-top penthouse counted towards the rooftop coverage, and identified that the roof-top exceeded the 10% coverage threshold requirement contained in Section 20.24.080 (B).

As the project is proposed, the roof-top penthouse will be largely demolished. This will eliminate roof-top coverage issues as well as legal non-conforming status of the penthouse. As part of this application submittal, AT&T provided a detailed table with roof-top coverage calculations. With this reduction, the inclusion of the existing Sprint cabinets, and the footprint of the new AT&T enclosures, the roof-top coverage is 9.95%, less than the 10% maximum threshold contained in Section 20.24.080 (B) in the Albany Municipal Code. Table 1 provides a breakdown on the roof-top area calculations.

Rooftop Area	4,852 (this includes the roof top penthouse area)
(N) Penthouse	94 (444-350)
(E) Sprint	346 (this includes cable trays, antennas, and the Sprint equipment room)
(N) AT&T	42.8 (this includes antenna enclosure, pipe H frame to support enclosure, antennas, and remote radio units)
Total (E) + (N)	482.8
Percentage Coverage	9.95%

Table 1. Roof-Top Coverage

Supporting Equipment in an Office Suite

The other significant difference is that all supporting equipment is proposed to be located in a leased first floor office suite within the building. The equipment will be completely enclosed and will not be publicly visible. Previously, supporting equipment was proposed to be located on the roof, increasing the roof-top footprint and potentially creating visual impacts.

Development Standards for Building & Roof-Mounted Antennas

Pursuant to Section 20.20.100 (E) (3) of the Albany Municipal Code, there are additional development standards for roof-mounted equipment.

Development Standards for Building and Roof-Mounted Antennas. In addition to all other applicable development standards, wireless communication facilities proposed to be mounted on or attached to existing or proposed buildings shall comply with the following:

- a. *Building-mounted antennas and any ancillary equipment shall be in scale and architecturally integrated with the building design in such a manner as to be visually unobtrusive. Screening may include designs such as locating the facility within attics, steeples, towers, behind and below parapets, or concealed within a new architectural addition to a building or structure which is architecturally compatible with the building;*
 - The antennas are proposed to be screened in a new fiber-reinforced plastic (FRP) enclosure that is architecturally compatible with the existing building.
- b. *When antennas or other equipment are viewed directly against a building wall, colors and materials of the equipment shall be painted or otherwise treated to match the exterior of the building;*
 - The antennas will be completely enclosed within an enclosure designed and painted to match the existing building.
- c. *Roof-mounted equipment and antennas shall be located as far away as feasible from the edge of the building; and*
 - The south facing antennas are approximately 2 ft. from the edge of the roof and contained in an enclosure. The north facing antennas are setback approximately 4 ft. from the edge and will also be contained in an enclosure. Due to existing HVAC equipment and the ability to achieve signal projection, the north and south facing elevation locations and respective setbacks from the edge are the most feasible for this project.
- d. *Antennas mounted on such structures as utility poles, light standards or flagpoles shall be placed on the structure in a way to reduce visibility, and shall be painted to blend into the structure.*
 - N/A

Project Setback

The plans indicate a 50'5" antenna setback from the rear property line. Section 20.20.100 (D) (4) requires a 50 ft. minimum setback from any residential district.

4. *In the San Pablo Commercial District and the Solano Commercial District any wireless communication facility that abuts a residential district shall be set back from a property line that is contiguous to the residential district a minimum distance of fifty (50) feet, provided that such distance may be reduced by the Planning and Zoning Commission based on a determination that the lesser distance will not have perceptibly greater noise impact or greater visual impact with respect to properties in the abutting residential district, and further provided that there be no less than ten (10) feet of separation between a property line that is contiguous to the residential district and the subject wireless communication facility (with the exception of such elements as transmission cables and meter boxes).*

Project Height

Pursuant to Code Section 20.20.100(E) (2) (h), the height of a wireless facility shall not exceed 10 ft. above the basic maximum building height for the district in which the site is located. The maximum building height for the San Pablo Commercial district is 38 ft. (Section 20.24.020 Table 2.B). This creates a maximum permitted height of 48 ft. for any wireless facility at the subject site. The proposed facility will be 47'4" maximum height, which is within the 48 ft. maximum height requirement for wireless facilities.

If the building were to be rebuilt, it would have to conform to the development standards in the current Code. Any incidental uses, including wireless facilities, would also be subject to conformance to the current development standards. If that were to happen, the maximum height which could be achieved for wireless facilities at this location remains 48 ft. (38 ft. maximum building height + 10 ft. additional height as permitted Section 20.20.100(E) (2) (h)).

As it is proposed, the project conforms to the development standards and eliminates existing non-conforming roof-top conditions. The project as it is proposed could still be achieved if the building were to be rebuilt and the overall building height lowered.

Design Review

The building is a three-story office building with rooftop penthouse space and a legal non-conforming maximum height of 47'4", with the majority of the building reaching a height of 40'. It is one of the tallest buildings in Albany, and one of the few buildings with existing wireless facilities. The building does not have any architectural style or particular elements of interest. However, the antenna enclosures are fiber reinforced plastic (FRP) and have been designed and have been designed to have minimal visual impact. In the future, subject to an application and Planning & Zoning Commission approval, an upgrade and installation could utilize similar architectural treatment.

It is appropriate for the Commission to review the design aspects of the application particularly with respect to the massing of the building, parapet details, etc.

Existing Building Conditions

The building was originally constructed in 1984 as the "Regents Park Plaza." At the time, C-2 Highway Commercial standards applied and the maximum building height for the District was 45 ft. According to the original plans and verified in the field by City staff, the height from the ground to roof is 37.5 ft. with a 2.5 ft. parapet wall, creating a total building height of 40 ft.

In 2005, the C-2 zoning classification was eliminated as part of the Zoning Code update and replaced with the "San Pablo Commercial" zoning classification. This change also reduced overall building height in the San Pablo corridor from 45 ft. to 38 ft.

The uses of the building at 1035 San Pablo Ave. conform to the Code while the building height does not as a result of the policy changes in 2005. Though the subject building exceeds the prescribed height development regulations, the use of an office building is permitted by right in the San Pablo Commercial zone. Thus, the primary uses of the building are legally conforming. General maintenance of the building is permitted pursuant to Section 20.44.030 (A) which allows for the maintenance of non-conforming structures.

THIRD PARTY REVIEW

Staff forwarded the latest application submittal to Kramer Firm Inc. for a third party review of the technical aspects of the application. Similar to the review prepared for previous application, Mr. Kramer recommends the same conditions that were previously discussed by the Planning & Zoning Commission in 2012.

1. All roof access doors shall remain locked at all times except during active maintenance by AT&T or authorized building personnel; and
2. AT&T shall place and maintain permanent **RF Notice signs** in English and Spanish on the **roof access doors**. The signage must be a minimum of 8" wide by 12" high, compliant with FCC OET Bulletin 65 or ANSI C95.2 for color, symbol, and content conventions. All such signage shall at all times provide a working local or toll-free telephone number to its network operations center, and such telephone number shall be able to reach a live person who can exert transmitter power-down control over this site as required by the FCC. The location of the sign must be visible to persons immediately prior to entering the roof area; and
3. AT&T shall place and maintain a permanent **RF Notice sign** in English and Spanish on the **BTS platform**. The signage must be a minimum of 8" wide by 12" high, compliant with FCC OET Bulletin 65 or ANSI C95.2 for color, symbol, and content conventions. All such signage shall at all times provide a working local or toll-free telephone number to its network operations center, and such telephone number shall be able to reach a live person who can exert transmitter power-down control over this site as required by the FCC. The location of the sign must be visible to persons no less than 3 feet from the BTS platform; and
4. All access to the proposed pop-up and FRP screen walls shall be secured by AT&T at all times, except during active maintenance by AT&T; and
5. AT&T shall place and maintain a permanent **RF Caution sign** in English and Spanish at the **access point to the interior of each pop-up enclosure**. The signage must be a minimum of 8" wide by 12" high, compliant with FCC OET Bulletin 65 or ANSI C95.2 for color, symbol, and content conventions. All such signage shall at all times provide a working local or toll-free telephone number to its network operations center, and such telephone number shall be able to reach a live person who can exert transmitter power-down control over this site

as required by the FCC. The location of the sign must be visible immediately prior to entering the pop-up; and

6. AT&T shall install and at all times maintain in good condition alternating bright color UV stabilized floor stripes in front of Sector A extending from the pop-up in front of Sector A to the end of the controlled zone, at least 42' towards the eastern wall of the building; and
7. Consistent with AT&T's proposed RF safety zone for Sector B, AT&T shall install and at all times maintain in good condition alternating bright color UV stabilized floor stripes in front of Sector B extending from the FRP screen walls to the parapet wall; and
8. If members of the General Population are required to be in the controlled zone in front of Sectors A or B, denoted by the roof stripping other than to transit the controlled zone area (i.e., to perform maintenance or repairs on the air conditioning units or roof area, etc. within the controlled zone), AT&T shall coordinate signal transmissions from the that Sector during the entire work period to ensure compliance with the FCC rules.

As a condition of approval, staff recommends that if at any time in the future a mixed-use or residential building is constructed within the RF controlled area in front of the panel antennas, the antennas must be relocated away from the residential development. The intent of this requirement is to ensure that placement of the antennas do not inadvertently result in a barrier to future development of adjacent properties.

Appeals:

The Albany Municipal Code provides that any action of the Planning and Zoning Commission may be appealed to the City Council if such appeal is filed within 14 days of the date of action. Appeals may be filed in the Community Development Department by completing the required form and paying the required fee.

ENVIRONMENTAL REVIEW

Staff has determined that the proposed project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) per Section 15303 "New Construction or Conversion of Small Structures" of the CEQA Guidelines, which exempts small additions.

ATTACHMENTS:

1. Analysis of Requirements with the Zoning Code
2. Findings of Fact
3. Conditions of Approval
4. Project Plans
5. Project Application
6. Alternatives Analysis
7. Photo Simulations
8. EMF Report

ATTACHMENT 1 – ANALYSIS OF COMPLIANCE WITH ZONING REQUIREMENTS

20.12 Zoning Districts and Permitted Uses

General Plan: Commercial

Zoning: SPC (San Pablo Commercial)

20.16 Land Use Classifications

Office

Surrounding	North - Commercial	East – Residential
Property Use	South - Commercial	West – Commercial

20.20.080 Secondary Residential Units.

Not applicable.

20.24.020 Table of Site Regulations by District.

Not applicable.

20.24.030 Overlay District Regulations.

Not applicable.

20.24.040 Hillside Residential Regulations.

Not applicable.

20.24.050 Floor-Area-Ratio.

Not applicable.

20.24.060 Setback Areas, Encroachments.

Not applicable.

20.24.070 Setbacks with Daylight Planes.

See Discussion of Key Issues.

20.24.080 Height Limits and Exceptions.

See Discussion of Key Issues.

20.24.100 Distances between Structures.

Not applicable.

20.24.110 Fences, Landscaping, Screening.

See Discussion of Key Issues.

20.24.130 Accessory Buildings.

Not applicable.

20.28 Off-Street Parking Requirement.

Not applicable.

20.40 Housing Provisions

Not applicable.

20.44 Non-conforming Uses, Structures and Lot

Not applicable.

20.48 Removal of Trees

Not applicable.

20.52 Flood Damage Prevention Regulations

Not applicable.

20.58 Art in Public Places Program

Not applicable.

20.100.030 Use Permits.

Not applicable.

20.100.040 Variances.

Not applicable.

20.100.010 Common Permit Procedures.

Public notice of this application was provided on January 7, 2013 in the form of mailed notice to property owners and occupants within a 300-foot radius, and posted in three locations.

20.100.050 Design Review.

See Discussion of Key Issues.

ATTACHMENT 2 – 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 and commercially related development. Additionally, 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 vicinity of the site. The antennas and equipment will be painted to match the finish of the existing building. The building is also one of the tallest in the city, which will make the antennas and equipment minimally visible to passers-by. The facility is also co-locating with existing telecommunication carriers thus will not change the use or drastically change the aesthetics of the building.</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:

Required Finding	Explanation
<p><i>1. The size, location and intensity of the project are desirable and compatible with the neighborhood and community.</i></p>	<p>The proposed wireless communication facility is co-located with existing facilities. It is located in one of three conditionally permitted zones and will provide additional wireless communication services to city residents and those travelling through the city.</p>
<p><i>2. 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"> <i>a. The nature of the proposed site, including its size and shape, and the proposed size, shape and arrangement of structures</i> <i>b. 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> <i>c. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor.</i> <i>d. 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 the rooftop of an existing building 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 initial construction activities. The project will remain a residential activity with all such characteristics. Conditions of approval requiring signage and d. The antennas and equipment shall be painted and finished to match the existing building.
<p><i>3. 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:

Required Finding	Explanation
<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 building. The building is also one of the tallest in the city, which will make the antennas and equipment minimally visible. The facility is also co-locating with existing telecommunication carriers thus will not change the use or drastically change the aesthetics of the building.</p>
<p>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.</p>	<p>The project is consistent with Section 20.20.100 (E) "Development Requirements and Standards" of the Albany Municipal Code.</p>
<p>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.</p>	<p>The City retained an independent third-party consultant specializing in telecommunications facilities. The consultant concluded that the project site is best suited location within the area for AT&T coverage and that the applicant's justification for the site is sound.</p>
<p>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.</p>	<p>Not applicable. Project does not require a satellite dish.</p>
<p>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):</p> <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 	<p>Not applicable. Project is co-located with other facilities.</p>

Required Finding	Explanation
<p>property owner;</p> <p>d) Co-location would impair the quality of service to the existing facility;</p> <p>e) Co-location would require existing facilities at the same location to go off-line for a significant period of time; or</p>	

ATTACHMENT 3
COMMUNITY DEVELOPMENT DEPARTMENT CONDITIONS OF APPROVAL

Special Conditions

1. All roof access doors shall remain locked at all times except during active maintenance by AT&T or authorized building personnel; and
2. AT&T shall place and maintain permanent **RF Notice signs** in English and Spanish on the **roof access doors**. The signage must be a minimum of 8" wide by 12" high, compliant with FCC OET Bulletin 65 or ANSI C95.2 for color, symbol, and content conventions. All such signage shall at all times provide a working local or toll-free telephone number to its network operations center, and such telephone number shall be able to reach a live person who can exert transmitter power-down control over this site as required by the FCC. The location of the sign must be visible to persons immediately prior to entering the roof area; and
3. AT&T shall place and maintain a permanent **RF Notice sign** in English and Spanish on the **BTS platform**. The signage must be a minimum of 8" wide by 12" high, compliant with FCC OET Bulletin 65 or ANSI C95.2 for color, symbol, and content conventions. All such signage shall at all times provide a working local or toll-free telephone number to its network operations center, and such telephone number shall be able to reach a live person who can exert transmitter power-down control over this site as required by the FCC. The location of the sign must be visible to persons no less than 3 feet from the BTS platform; and
4. AT&T shall place and maintain a permanent **RF Caution sign** in English and Spanish at the **access point to the interior of each pop-up enclosure**. The signage must be a minimum of 8" wide by 12" high, compliant with FCC OET Bulletin 65 or ANSI C95.2 for color, symbol, and content conventions. All such signage shall at all times provide a working local or toll-free telephone number to its network operations center, and such telephone number shall be able to reach a live person who can exert transmitter power-down control over this site as required by the FCC. The location of the sign must be visible immediately prior to entering the pop-up; and
5. All access to the proposed pop-up and FRP screen walls shall be secured by AT&T at all times, except during active maintenance by AT&T; and
6. AT&T shall install and at all times maintain in good condition alternating bright color UV stabilized floor stripes in front of Sector A extending from the pop-up in front of Sector A to the end of the controlled zone, at least 42' towards the eastern wall of the building; and
7. Consistent with AT&T's proposed RF safety zone for Sector B, AT&T shall install and at all times maintain in good condition alternating bright color UV stabilized floor stripes in front of Sector B extending from the FRP screen walls to the parapet wall; and

8. If members of the General Population are required to be in the controlled zone in front of Sectors A or B, denoted by the roof stripping other than to transit the controlled zone area (i.e., to perform maintenance or repairs on the air conditioning units or roof area, etc. within the controlled zone), AT&T shall coordinate signal transmissions from the that Sector during the entire work period to ensure compliance with the FCC rules.
9. If at any time in the future a mixed-use or residential building is constructed within the RF controlled area, in front of the panel antennas, the antennas must be relocated away from the residential development, subject to Planning and Zoning Commission review and approval (The controlled zone for this project extends 42 feet in front of the antennas).
10. No portion of the project, including without limitation the equipment cabinets; the mounting platforms, rails and racks; the GPS antenna; cables; work lights; and all other elements of the project shall protrude above the height of the parapet wall.
11. 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.”

GENERAL PROJECT CONDITIONS

- Gen-1 **Project Approval.** This Design Review and Conditional Use Permit approval is for AT&T 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 5, 2012 (project plans include site plan, elevations, RF report, alternatives analysis, details), all as presented to the Planning and Zoning Commission on January 17, 2013. 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 January 31, 2014 (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 20.20.100.1 :

a. 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.

Appeals: The Albany Municipal Code provides that any action of the Planning and Zoning Commission may be appealed to the City Council, if such appeal is filed within 14 days of the date of the action. Appeals may be filed in the Community Development Department by completing the required form and paying the required fee. The City Clerk will then schedule the matter for the next available City Council meeting.