

**CITY OF ALBANY
PLANNING AND ZONING AGENDA
STAFF REPORT**

Agenda date: April 24, 2012
Prepared by: ALH

ITEM: 6A

**SUBJECT: Planning Application #08-038- Conditional Use Permit & Design Review
AT&T Wireless Facility at 1035 San Pablo Avenue**

The applicant is seeking Design Review and Conditional Use Permit approval to allow nine (9) new roof-top mounted panel antennas in an enclosure on an existing office building. The equipment will be housed in new fiberglass enclosures behind the existing parapet wall. The south facing enclosure is approximately 55 sq. ft. and will house six (6) antennas. The north facing enclosure is 20 sq. ft. and will house three (3) antennas. Both enclosures will be stealthed to match the existing roof penthouse. Related equipment is proposed to remain located on the center of the roof, though some equipment has been reduced in size.

SITE: 1035 San Pablo Ave.

APPLICANT: Gordon Bell on behalf of AT&T Wireless

PROPERTY OWNER: James & Barbara Kelly

ZONING: SPC (San Pablo Commercial)

STAFF RECOMMENDATION

Staff recommends that the Planning and Zoning Commission receive the report and take one of the following actions:

1. Review the project as it is proposed and include a condition or approval to relocate the equipment into the mechanical equipment room and make findings pursuant to Section 20.20.100 (D) (4) of the Albany Municipal Code.
2. Review the project as it is proposed and make findings to support the project consistent with Section 20.24.080 (C) of the Albany Municipal Code where equipment that is than 6 ft. in height is allowed up to 20% roof coverage.
3. If the Commission moves to deny the application, the hearing must be continued to a date certain so that staff may craft findings of denial for review and action by the Planning & Zoning Commission.

APPLICATION SUMMARY

All wireless facilities application 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. At this stage in the review process, the Commission is reviewing a fine level of detail to insure that all applicable standards have been considered and analyzed.

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 1 mile 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 fiberglass enclosures behind the existing parapet wall. The south facing enclosure is approximately 55 sq. ft. and will house six (6) antennas. The north facing enclosure is 20 sq. ft. and will house three (3) antennas. Both enclosures will be stealthed to match the existing roof penthouse. 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). AT&T will be sharing existing utility easements for cable trays with Sprint.

This application request was filed on May 22, 2008. To date, this application request has been presented to the Planning & Zoning Commission public review hearings on several different occasions. Overtime, the applicant has made modifications to the application including plan modifications, greater detail in the alternatives analysis, and staff conducting a separate site visit to verify uses at the property.

RECENT REVIEW

The Planning & Zoning Commission most recently reviewed this application request at the February 28, 2012 hearing. At that time the Commission decided that the roof-top penthouse should be included in the roof-top coverage calculations. Consequently, the Commission continued this item to a date uncertain and provided direction to the applicant to do one of the following:

- Relocate roof mounted equipment into the roof-top penthouse and support findings consistent with Section 20.20.100 (D) (4) of the Albany Municipal Code where a setback reduction could be granted if visual and noise impacts are mitigated.
- Reduce the roof mounted equipment to less than 6 ft. in height and be consistent with Section 20.24.080 (C) of the Albany Municipal Code, increasing the allowable roof coverage area to 20%.

As part of the February 28, 2012 review, a roof plan from the original construction plans was presented to the Commission. The Commission decided that the existing 432 sq. ft. roof-top penthouse should be included as part of the roof-top calculations. This plan shows that the

penthouse was originally intended to be a mechanical equipment room, though it is currently finished habitable space. This penthouse area combined with the existing Sprint equipment room of 265 sq. ft. creates a total coverage of 697 sq. ft. on a 4,786 sq. ft. roof or 14.5% roof coverage. By identifying the roof-top penthouse as counting towards roof-top coverage and acknowledging a 14.5% roof top coverage, the existing roof top exceeds the 10% coverage threshold contained in Section 20.24.080 (B) of the Albany Municipal Code.

Option 1: Roof-Top Penthouse

If the Commission directed the applicant to contain all equipment within the roof-top penthouse as a condition of approval, findings would have to be made pursuant to Section 20.20.100 (D) (4) of the Albany Municipal Code. The Commission would have to make a determination that a reduction from the 50 ft. residential setback requirement could be reduced if noise and visual impacts are mitigated. If the Commission approved this option, all equipment would be screened from view and enclosed within an existing roof-top structure. The Commission would have to include a project condition detailing that the equipment be contained within the roof-top penthouse. Additionally, this will return the roof-top penthouse to a mechanical equipment room and it would no longer be used as habitable space.

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).*

Option 2: Reduced Height of Equipment

The Commission previously indicated that if equipment could be reduced to less than 6 ft. in height, the application could be considered pursuant to Section 20.24.080 (C) of the Albany Municipal Code where mechanical appurtenances less than 6 ft. in height equipment are permitted up to 20% roof-top coverage. The revised plans include two additional drawing details not previously submitted to the City. Sheet A-3 and sheet A-3.1 provide equipment cabinet, antenna, and related device details, including dimensions and height. One equipment cabinet is shown at exactly 6' in height. The additional equipment detailed including cabinets and related devices are shown as less than 6 ft. in height.

C. ***Mechanical Appurtenances.*** *Mechanical appurtenances covering not more than twenty (20%) of the roof area of the top floor of any nonresidential, mixed use or multi-family structure to which they are attached may exceed the height limit prescribed by the regulations for the district in which the site is located by six (6) feet subject to design review and provided that such structures are screened in accordance with subsection 20.24.110, and further provided that no screening is located within ten (10) feet of the perimeter of the plate line of the top story.*

PROJECT ANALYSIS/DISCUSSION OF KEY ISSUES

Roof-Top Area Calculations

AT&T has reduced much of their roof mounted equipment to less than 6 ft. in height in an effort to be consistent with Section 20.24.080 (C) of the Albany Municipal Code where mechanical appurtenances less than 6 ft. in height equipment are permitted up to 20% roof-top coverage. This option not only increases the allowable coverage area to 20%, the project still maintains a 50 ft. setback from residentially zoned property. By taking this step, roof coverage area for appurtenances greater than 6 ft. in height has been reduced to 65.21 sq. ft., a reduction from 151.55 sq. ft. shown in the previous project plans. This is a reduction in 86.34 sq. ft. the previous submittal.

Sprint maintains antennas with an equipment enclosure at the subject site. The total area occupied by Sprint is 265.35 sq. ft. with the equipment cabinet on the west side of the roof facing San Pablo Ave. Tables 1 provides roof top area calculations including and excluding the roof-top break room/penthouse.

Alternatives	Alt. A	Alt. B	Alt. C	Alt. D
Rooftop Area	4,354	4,354	4,786	4,786
(E) Penthouse	(excluded)	432	(excluded)	432
(E) Sprint	265	265	265	265
(N) AT&T	65.21	65.21	65.21	65.21
Total (E) + (N)	330.21	762.21	330.21	762.21
Percentage Coverage	7.6%	17.5%	6.9%	16%

Table 1. Roof-Top Area Calculations: 1035 San Pablo Ave.

Project Setback

The applicant is proposing to maintain a 50 ft. setback from the adjacent residential zone to comply with Section 20.20.100 (D) (4) of the Albany Municipal Code. The actual distance is 50'5" to rear property line from the nearest residentially zoned property. Figure 2 shows the proposed roof-top antenna locations.

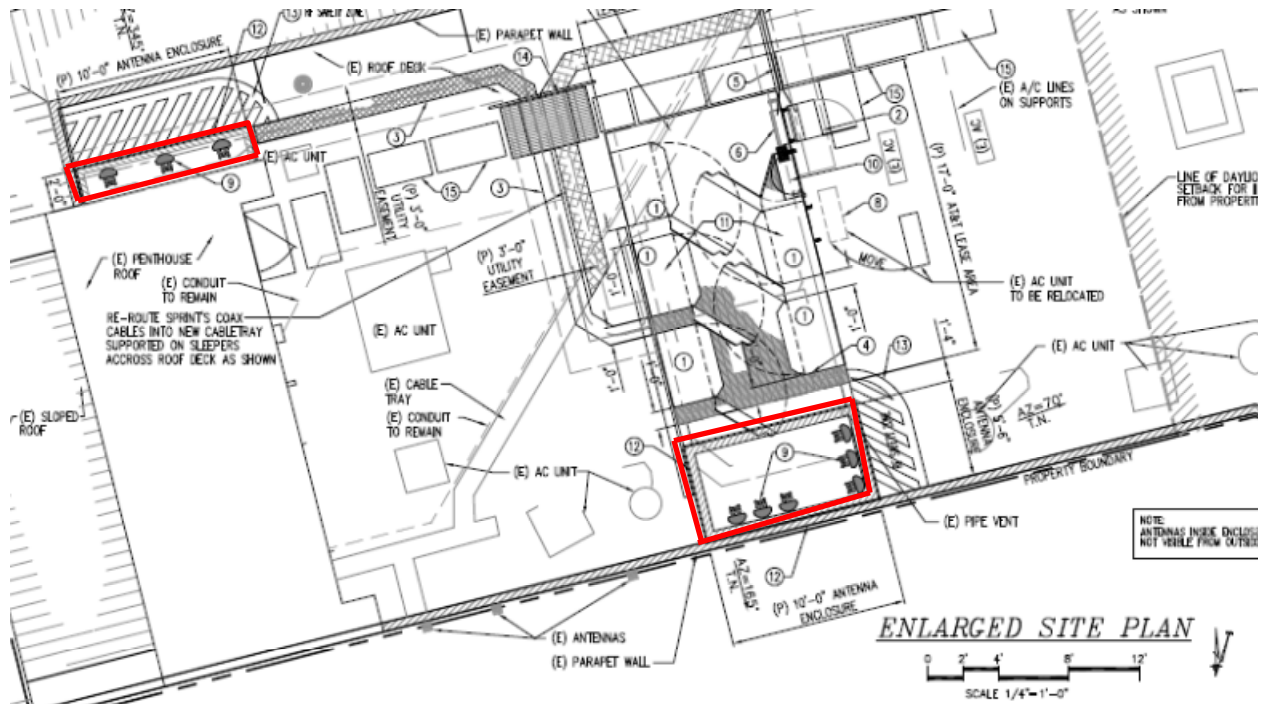


Figure 2. Proposed roof configuration

Alternatives Analysis

Pursuant to the requirement of Section 20.20.100 (4) (b) (2), the applicant has prepared alternatives analysis (See Attachments 4, 5, 6). The applicant identified ten (10) sites (including the proposed site) all located within the City of Albany. The list of sites includes:

- 1035 San Pablo Ave.
- 1000 San Pablo Ave. (City Hall-existing pole with safety dispatch equipment)
- 850 Stannage St. (condo building)
- 979 San Pablo Ave. (formerly Theep Naree Thai Restaurant, now Agagio Thai Restaurant)
- 1231 Solano Ave. (office building)
- 1115 Solano Ave. (Albany Twin Movie Theater)
- 1051 Monroe St. (UC property)
- 940 San Pablo Ave. (Albany Town Center)
- 800 Buchanan St. (USDA Building)
- CMX Zone

For various reasons, the alternatives sites did not work according to information in the analysis. In most instances, the location was not consistent with co-location requirements in Section 20.20.100 (E) (2) (a). Additionally, the majority of landlords contacted were not interested in leasing to AT&T.

In preparing the alternatives analysis, the applicant indicated that a facility in the CMX zone would require height beyond the Code requirements. The applicant estimated a height of 150 ft.

for signal projection towards the southern part of the City. If this height were to be achieved, the propagation map indicates that coverage would not significantly improve in the southern part of the City. A height of 150 ft. is not feasible under the current code regulations. Additionally, this would be a new facility and not a collocation as preferred by the municipal code.

During the previous review, the Commission directed the applicant to explore the feasibility of co-location at Albany Towne Center, 940 San Pablo Ave. Though there is an existing T-Mobile facility at the site, the landlord is not interested in leasing to other wireless carriers.

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 fiberglass enclosure that is architecturally compatible with the existing penthouse on the roof.
- 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, penthouse, 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 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 does not expand or create a non-conforming structure/use at the site. 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 City maintains a legitimate role in the Design Review evaluation process for this application request. 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 at 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 fiberglass and have been designed and have been designed to have minimal visual impact.

The revised application mounts the north facing set of antennas on the wall of the existing penthouse. The south facing and east facing antennas are screened by a new antenna enclosure on the side of the building next to a single story commercial building to the south (see simulations Attachment 8).

The equipment cabinets are less than six feet in height and placed in the middle of the roof. The equipment cabinets are not expected to be visible from public right-of-way or other nearby buildings. Staff recommends that a condition of approval be required that the service light be switched off any time a technician is not physically present on the roof of the building.

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.

As the project is proposed, the building structure will not physically expand. The building footprint and overall building height will remain the same. The wireless equipment will occupy existing roof-top area and not enlarge the structure.

ENVIRONMENTAL ANALYSIS

Staff recommends that the proposed project be considered categorically exempt from the requirements of CEQA per Section 15303, "New Construction or Conversion of Small Structures" of the CEQA Guidelines, which allows the construction small facilities or structures.

SITE LOCATION



Figure 1. Site Location

FCC SHOTCLOCK 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 recently challenged and upheld in the 5th Circuit Court of Appeals in the case of City of Arlington, Texas vs. The FCC.

This application request was reinitiated on October 21, 2011 when a revised application request was submitted to the City of Albany. This application was then deemed complete and letter of completeness was sent to the applicant on December 15, 2011. This application request was presented as a study session item less than one month later on January 10, 2012. A hearing recommending action was held on February 28, 2012 and the item was continued to a date uncertain by the Planning & Zoning Commission. Modifications to the application have resulted in resetting the time frame provided for City review.

FEDERAL REQUIREMENTS

The Federal Telecommunications Act of 1996

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).

Due to Federal preemption, the city’s regulations are focused on the location and design of antennas. The key features of the regulations include:

- Prohibiting wireless facilities in residential areas thus leaving the SPC (San Pablo Avenue), SC (Solano Commercial), and CMX (Commercial Mixed-Use) zoning districts as potential areas to allow such a facility.
- 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 with City and FCC standards.

Most litigation involving municipal governments and wireless providers involve Federal law rather than state and local laws as wireless facilities are regulated through the Federal Telecommunications Act of 1996. The City’s recent denial of the application for a Verizon installation at 423 San Pablo Avenue has resulted in Verizon filing a lawsuit against the City in federal court.

TECHNICAL EQUIPMENT REVIEW

Third Party Independent Review of Application

When the revised application request was submitted to the City in October 2011, the City retained the services of an outside consultant for project review. The consulting firm *Kramer. Firm Inc.*, who specializes in telecommunications review for municipalities, was retained to conduct a third-party review of the application (see attachment 10).

Signal Projection

The proposed installation involves nine (9) antennas total. Assuming a ½ mile radius, AT&T is able to meet 100% of their coverage objective providing service in central Albany. The south facing antennas serve both the Albany and Berkeley areas. Due to the proximity to Berkeley City limit line, it appears that there will be a slight spillover in coverage in Berkeley. The north, south and east facing antennas will serve the City of Albany where there are existing gaps in

service. (See Attachment 6) The portion of Berkeley that would be served by the Albany installation also appears to have poor coverage.

RF Safety

Kramer. Firm Inc. found that the project does not qualify for Categorical Exclusion under FCC regulations. The “worst case” controlled zone, where RF exceed permitted levels, is located in the airspace, 42’ in front of the panel antennas. It appears that maintenance and facilities operators are the only people that may be exposed to the controlled area. To comply with FCC rules, the following conditions of approval are recommended by the consultant and have been included in the draft 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. 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.

If AT&T agrees to the Conditions, there are no RF emissions issues to deny or further condition the project.

Kramer also recommended that the following conditions be included:

1. 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.
2. Future equipment shown on the plans which is not associated with this request but anticipated for future installation, shall be omitted from the construction drawings submitted as part of the building permit process.

Special Condition

The proposed application complies with the City's policy that new wireless communication facilities shall be co-located with existing facilities whenever feasible and aesthetically desirable to minimize overall visual impact. In this case, there are unenclosed antennas on the south side.

A controlled zone is the area off the face of the transmitting antennas in which the density of the RF emissions exceeds the maximum limit for continuous exposure as set by the FCC in FCC Office of Engineering and Technology Bulletin 65 for the general population. The controlled zone for this project extends 42 feet in front of the antennas, which was determined based on the RF emissions data provided by the applicant.

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.

Maintenance Agreement

Staff recommends that the Commission authorize staff to enter into a maintenance and facility removal agreement with the operator and the property owner. This agreement would be

executed prior to issuance of a building permit, and establish maintenance standards and monitoring procedures. The agreement would also detail procedures for future modifications to the facility, including repair of existing facilities, modification of existing fixtures and equipment. It would be appropriate for the City to be informed of these changes and to be able to evaluate the changes against the City's development standards. In addition, transfer and assignment of agreements between wireless service providers occur from time to time. The agreement can specify notification procedures so that the City is aware of the appropriate entity to contact in the event of questions or concerns.

Public Comment

All previously received public comments from 2010 to the present are included as an attachment to the report. Additionally, other correspondence was received for the modified application and is included as an attachment to this report. (See Attachments 11 a-d)

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.

Attachments:

1. Zoning Compliance
2. Findings of Approval
3. Conditions of Approval
4. Alternatives Analysis Matrix
5. Alternatives Analysis Report
6. Propagation Maps (including maps for the alternatives analysis)
7. EMF Report
8. Photo Simulations
9. Revised Project Plans
10. Report From Jonathan Kramer
11. Recent & Older Correspondence
 - a. Correspondence October 2010
 - b. Correspondence ARROW dated 10/26/10
 - c. All Correspondence received for the 1/10/12 P&Z study session
 - d. All Correspondence received 2/24/12
 - e. All Correspondence received for the 2/28/12 P&Z hearing and afterwards
12. Meeting Minutes Excerpt from 10/26/10 P&Z hearing
13. Letter from AT&T Legal Counsel received 4/18/12
14. Meeting Minute Excerpt from 1/10/12 P&Z Hearing

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 April 13, 2012 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>1. <i>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>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 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>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 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; 	<p>Not applicable. Project is co-located with other facilities.</p>

<i>Required Finding</i>	<i>Explanation</i>
<p>c) Co-location is not permitted by the 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.”
12. Future equipment shown on the plans which is not associated with this request but anticipated for future installation, shall be omitted from the construction drawings submitted as part of the building permit process.

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 April 9, 2012 (project plans include site plan, elevations, RF report, alternatives analysis, details), all as presented to the Planning and Zoning Commission on April 24, 2012. 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 May 8, 2013 (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.

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.