



Oakland City Planning Commission

STAFF REPORT

Case File Number: PLN17-508 & PLN17-509 & PLN18-040

April 18, 2018

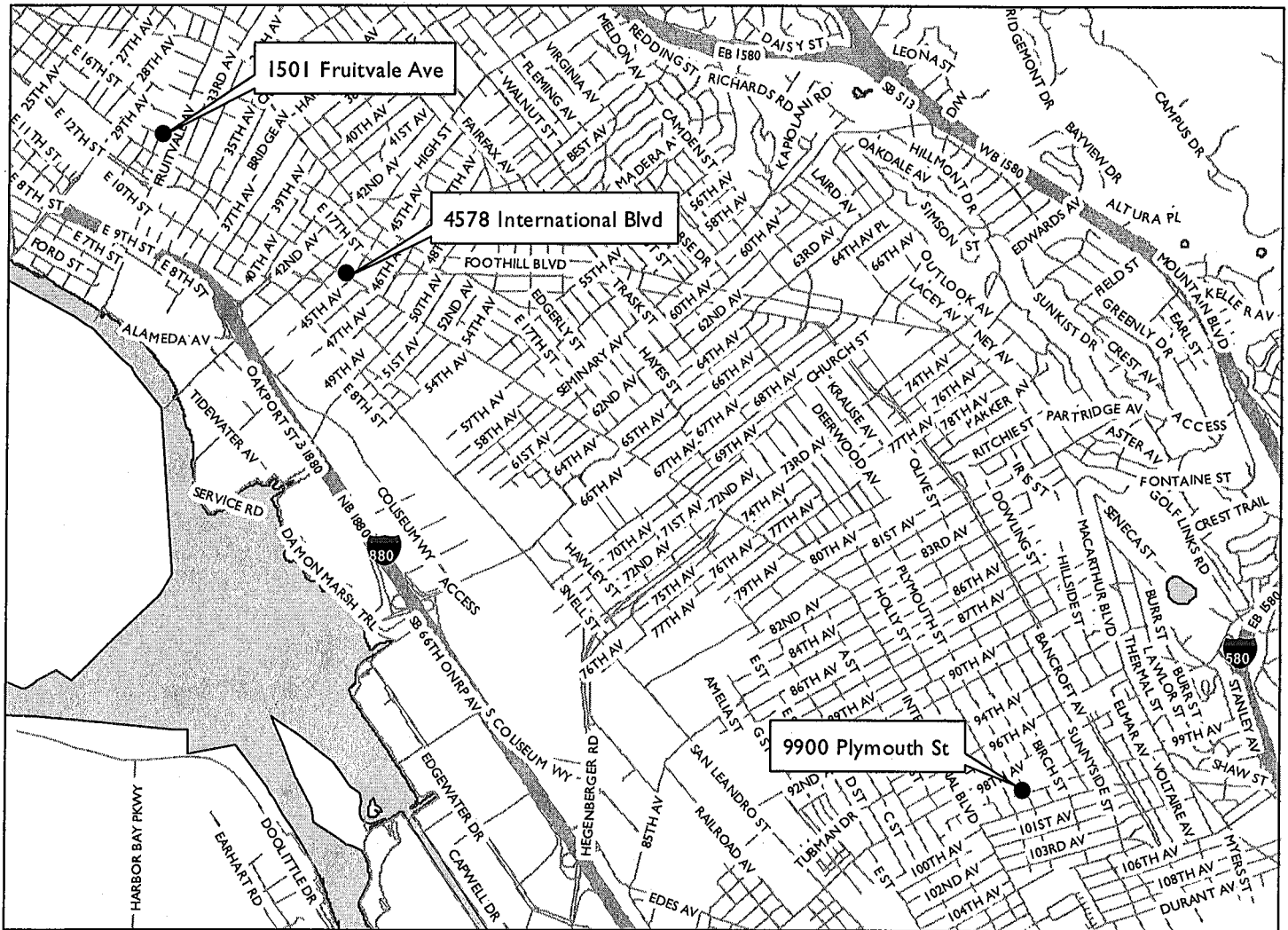
Location:	Utility pole in public right-of-way (sidewalk) adjacent to: <ul style="list-style-type: none"> • a) 1501 Fruitvale Avenue (PLN17-508; APN:025-07210-017-01) Zone: CN-2, Land Use: Neighborhood Center Mixed Use • b) 4578 International Blvd. (PLN17-509; APN: 035-2359-08-01) Zone: CC-2, Land Use: Community Commercial • c) 9900 Plymouth Street (PLN18-040; APN: 046-5439-016-00) Zone: RD-1, Land Use: Detached Unit Residential.
Proposal:	To establish (3) wireless "small cell site" Macro Telecommunication Facilities on existing utility light poles located in the Public Right-of-Way.
Permits Required:	Regular Design Reviews for Macro Telecommunication Facilities in Residential Zoning
Applicant:	Ana Gomez-Abarca/Black & Veatch & Extenet (for: T-Mobile) (913) 458-9148
Environmental Determination:	Exempt, Section 15301 of the State CEQA Guidelines: Existing Facilities; Section 15303: New Construction of Small Structures; Section 15183: Projects Consistent with a Community Plan, General Plan or Zoning
Historic Status:	Non-historic poles
City Council District:	7
For further information:	Contact case planner Jason Madani at (510) 238-4790 or by email: jmadani@oaklandnet.com

EXECUTIVE SUMMARY

The applicant (Extenet Systems) requests Planning Commission approval to establish three (3) small cell wireless telecommunication facility sites for T-Mobile Wireless on existing utility poles located in the public right-of-way in residential neighborhoods or within 100' of a residential zone. The project involves attaching antennas within an antenna shroud and equipment to each utility pole as described in the submitted plans to enhance wireless services in those areas.

Major Design Review is required for the installation of a new Macro Telecommunications Facility in a residential zone or within 100' of a residential zone. The proposed project, antenna and associated equipment are similar to other utility poles and equipment within the same block and around the City. The antenna shrouds will extend toward the street away from the adjacent residences. The antenna shrouds and associated equipment will be painted grey or brown to match the pole and/or other utilities located on the pole. As result, the proposed telecommunication facilities are in appropriate locations and would not

CITY OF OAKLAND PLANNING COMMISSION



0 1,875 3,750 7,500 11,250 15,000 Feet



Case Files: PLN17-508, PLN17-509, PLN18-040
Applicant: Ana Gomez-Abarca/Black & Veatch & Extenet (for: T-Mobile)
Addresses: 1501 Fruitvale Ave, 4578 International Blvd, 9900 Plymouth St
Zones: CN-2, CC-2, RD-1

significantly increase negative visual impacts to adjacent neighboring residential properties. The project meets all the required findings for approval of these three (3) small cell sites.

TELECOMMUNICATIONS BACKGROUND

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

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

- Under Section 253 of the TCA, no state or local regulation or other legal requirement can prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.
- Further, Section 704 of the TCA imposes limitations on what local and state governments can do. Section 704 prohibits any state and local government action which unreasonably discriminates among personal wireless providers. Local governments must ensure that its wireless ordinance does not contain requirements in the form of regulatory terms or fees which may have the "effect" of prohibiting the placement, construction, or modification of personal wireless services.
- Section 704 also preempts any local zoning regulation purporting to regulate the placement, construction and modification of personal wireless service facilities on the basis, either directly or indirectly, on the environmental effects of radio frequency emissions (RF) of such facilities, which otherwise comply with Federal Communications Commission (FCC) standards in this regard. (See 47 U.S.C. Section 332(c)(7)(B)(iv) (1996)). This means that local authorities may not regulate the siting or construction of personal wireless facilities based on RF standards that are more stringent than those promulgated by the FCC.
- Section 704 mandates that local governments act upon personal wireless service facility siting applications to place, construct, or modify a facility within a reasonable time (See 47 U.S.C.332(c)(7)(B)(ii) and FCC Shot Clock ruling setting forth "reasonable time" standards for applications deemed complete).
- Section 704 also mandates that the FCC provide technical support to local governments in order to encourage them to make property, rights-of-way, and easements under their jurisdiction available for the placement of new spectrum-based telecommunications services. This proceeding is currently at the comment stage.

For more information on the FCC's jurisdiction in this area, consult the following:

Competition & Infrastructure Policy Division (CIPD) of the Wireless Telecommunications Bureau, main division number: (202) 418-1310. <https://www.fcc.gov/general/competition-infrastructure-policy-division-wireless-telecommunications-bureau>

PROPERTY DESCRIPTION

- The existing 39' tall wooden PG&E utility pole is located in the City of Oakland public right-of-way near 1501 Fruitvale Avenue.

- The existing 43' tall wooden PG&E utility pole is located in the City of Oakland public right-of-way near 4578 International Blvd.
- The existing 38' tall wooden PG&E utility pole is located in the City of Oakland public right-of-way near 9900 Plymouth Street and 99th Avenue.

PROJECT DESCRIPTION

As shown in Attachment C for PLN17-508, the project applicant proposes to:

- Install one canister antenna within an antenna shroud measuring 23.9" long and 5.4" in diameter at a height of 19' extending toward street,
- Install three radio units measuring 7.8" tall and 7.8" wide mounted at a height of 12'-3" above ground,
- Install an associated breaker box and smart meter mounted 7'-7" above ground, and
- Paint the proposed antennas and associated equipment grey or brown to match the pole and/or other utilities located on the pole.

As shown in Attachment C for PLN17-509, the project applicant proposes to:

- Install one canister antenna within an antenna shroud measuring 23.9" long and 5.4" in diameter at a height of 19' extending toward street,
- Install three radio units measuring 7.8" tall and 7.8" wide mounted at a height of 12'-3" above ground,
- Install an associated breaker box and smart meter mounted 7'-7" above ground, and
- Paint the proposed antennas and associated equipment grey or brown to match the pole and/or other utilities located on the pole.

As shown in Attachment C for PLN18-040, the project applicant proposes to:

- Install one canister antenna within an antenna shroud measuring 23.9" long and 5.4" in diameter at a height of 19'-0" extending toward street,
- Install three radio units measuring 7.8" tall and 7.8" wide mounted at a height of 12'-7" above ground,
- Install an associated breaker box and smart meter mounted 7'-7" above ground, and
- Paint the proposed antennas and associated equipment grey or brown to match the pole and/or other utilities located on the pole.

No portion of the telecommunication facilities will be located on the ground within City of Oakland public right-of-way. The proposed antenna and associated equipment will not be accessible to the public.

SURROUNDING USES

The proposed sites are located in residential neighborhoods or within 100' of a residential zone. The surrounding area for the project sites at 1501 Fruitvale Avenue and 4578 International Boulevard consists of commercial and residential uses. The surrounding area for the project site at 9900 Plymouth Street consists of detached single-family homes and is across the street from a school.

SIMILAR CASES

Records show that the Planning Commission has approved approximately 110 Macro Telecommunications Facilities requiring Design Review throughout the City since 2016.

GENERAL PLAN ANALYSIS

1501 Fruitvale Avenue PLN17-508

The project sites are classified as Neighborhood Center Mixed Use per the Oakland General Plan's Land Use and Transportation Element (LUTE). This classification is intended to create, maintain, and enhance mixed use neighborhood commercial centers. These centers are typically characterized by smaller scale pedestrian- oriented, continuous street frontage with a mix of retail, housing, office, active open space, eating and drinking places, personal and business services, and smaller scale educational, cultural, or entertainment uses.

4578 International Blvd. PLN17-509

The project sites are classified as Community Commercial per the Oakland General Plan's Land Use and Transportation Element (LUTE). This classification is intended to create, maintain, and enhance areas suitable for a wide variety of commercial and institutional operations along the City's major corridors and in shopping districts or centers.

9900 Plymouth Street PLN18-040

The project sites are classified as Detached Unit Residential per the Oakland General Plan's Land Use and Transportation Element (LUTE). This classification is intended to create, maintain, and enhance residential areas typically located near the City's major arterials and characterized by detached, single unit structures. "Future development within this classification should be primarily residential in character."

The proposed telecommunication facilities will be mounted on existing PG&E utility poles within the City of Oakland public right-of-way. The proposed unmanned wireless telecommunication facilities will not adversely affect and detract from the characteristics of the neighborhood.

ZONING ANALYSIS

1501 Fruitvale Avenue PLN17-508

The proposed telecommunication facilities are located within the CN-1 Neighborhood Center Mixed Use Zone, and is located within 100' of the adjacent residential zone. The intent of the CN-1 Zone is to create, maintain, and enhance vibrant commercial districts with a wide range of retail establishments serving both short and long term needs in attractive settings oriented to pedestrian comparison shopping.

4578 International Blvd. PLN17-509

The proposed telecommunication facilities are located within the CC-2 Community Commercial Zone, and is located within 100' of the adjacent residential zone. The intended to create, maintain, and enhance shopping centers and malls with a wide range of consumer businesses.

9900 Plymouth Street, PLN18-40

The proposed telecommunication facilities are located within RD-1 Detached Unit Residential Zone. The intent of the RD-1 Zone. The intent of the RD-1 Zone is to create maintain, and enhance areas with detached, single unit structures. A limited number of commercial uses will be permitted or conditionally permitted in existing non-residential Facilities.

Section 17.136.040 and 17.128.070 of the City of Oakland Planning Code requires a Major Design Review permit for Macro Telecommunication facilities that are attached to utility poles in the RD-1 Zone or that are located within one hundred (100) feet of the boundary of any residential zone. Special findings are also required for Design Review approval to ensure that the facilities are concealed to the greatest extent possible. The project designs are discussed later in this report, and the required findings for Major Design Review are listed and included in staff's evaluation later in this report.

ENVIRONMENTAL DETERMINATION

The California Environmental Quality Act (CEQA) Guidelines list the projects that qualify as categorical exemptions from environmental review. The proposed project is categorically exempt from the environmental review requirements pursuant to Section 15301, minor additions and alterations to an existing PG&E utility pole; Section 15303, new construction or conversion of small structures, and Section 15183, projects consistent with the General Plan or Zoning.

KEY ISSUES AND IMPACTS

Project Sites

Section 17.128.110 of the City of Oakland Telecommunication Regulations requires that new wireless facilities shall generally be located on designated properties or facilities in the following ranked order of preference:

- A. Co-located on an existing structure or facility with existing wireless antennas.
- B. City owned properties or other public or quasi-public facilities.
- C. Existing commercial or industrial structures in non-residential zones (excluding all HBX Zones and the D-CE3 and D-C-4 Zones).
- D. Existing commercial or industrial structures in residential zones, HBX Zones, or the D-CE-3 or D-CE-4 Zones.
- E. Other non-residential uses in residential zones, HBX Zones, or the D-CE-3 or D-CE-4 Zones.
- F. Residential uses in non-residential zones (excluding all HBX Zones and the D-CE-3 and D-CE-4 Zones).
- G. Residential uses in residential zones, HBX Zones, or the D-CE-3 or D-CE-4 Zones.

Facilities sited on an A, B or C ranked preference do not require a site alternatives analysis. Since the proposed projects involves the installation of new antenna and radio units within commercial and within 100' of residential zones, the proposed projects meet preference B, and a site alternatives analysis is not required. However, applicant has provided a site alternative analysis for each project site (Attachment E).

Alternative Site Analyses:

The projects are located in an area with existing commercial, residential and civic structures. The project applicant considered alternative sites on other utility poles in this area but none of these sites are as desirable from a service coverage perspective or from an aesthetics perspective to minimize visual impacts. The proposed projects are located in underserved areas. The proposed locations are approximately equidistant from other Distributed Antenna Systems (DAS) nodes proposed in the surrounding area so that service coverage can be evenly distributed.

Staff has reviewed the applicant's alternative site analyses for each location and determined that the sites selected conform to the telecommunication regulation requirements. In addition, staff agrees that no other sites are more suitable.

Project Design

Section 17.128.120 of the City of Oakland Telecommunications Regulations requires that new wireless facilities shall generally be designed in the following order of preference:

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

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

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

Since the proposed projects do not meet preference A and B, an alternative design analysis is required for each location.

Alternative Design Analysis:

The project applicant submitted an alternative design analysis (Attachment E) for each location. The analyses evaluated whether the equipment could be under grounded and concealed from view. Unfortunately, this is not possible because there is insufficient right-of-way space in each location for the necessary equipment access and the equipment would be compromised by rainwater saturation. The proposed designs are a good option because the facilities are located where a signal can be adequately propagated without obstruction, which could not have been the case if the antennas were located on a building and concealed.

Planning staff has reviewed the applicant's alternative design analyses and determined that the sites selected conform to the telecommunication regulation requirements. Specifically, given the flat topography and streamlined equipment design and location, the facilities will blend in with the existing utility apparatus. In addition, the proposed new antennas are located within a shroud screening. Both the antennas and the radio units will be attached above head height, 7'-7" and 19'- 0' above the ground. The shrouds and radio units will be painted grey to match the other utilities or brown to match the pole.

Project Radio Frequency Emissions Standards

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

- a. The telecommunications regulations require that the applicant submit written documentation demonstrating that the emission from the proposed project are within the limits set by the Federal Communications Commission.

- b. Prior to final building permit sign off, an RF emissions report indicating that the site is actually operating within the acceptable thresholds as established by the Federal government or any such agency who may be subsequently authorized to establish such standards.

In the analyses prepared by Hammett & Edison, Inc. (Attachment F), the proposed projects were evaluated for compliance with appropriate guidelines limiting human exposure to radio frequency electromagnetic fields. According to the reports, the projects will comply with the prevailing standards for limiting public exposure to radio frequency energy, and therefore, the proposed sites will operate within the current acceptable thresholds as established by the Federal government or any such agency that may be subsequently authorized to establish such standards. The RF emissions reports state that the proposed project will not cause a significant impact on the environment. Additionally, staff recommends that, prior to the final building permit sign off, the applicant submit a certified RF emissions report for each location stating that the facilities are operating within acceptable thresholds established by the regulatory federal agency.

CONCLUSION

The proposed projects meet all the required findings for approval. The proposals will provide an essential telecommunication service to the community and the City of Oakland at large. The facilities will also be available to emergency services such as police, fire department and emergency response teams. Staff believes that the proposals are designed to meet the established zoning and telecommunication regulations and recommends supporting the Major Design Review application.

RECOMMENDATIONS:

1. Affirm staff's environmental determination.

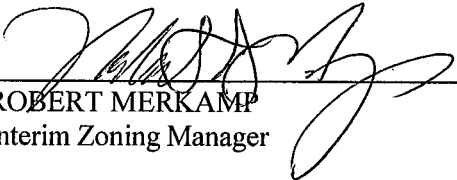
2. Approve the Regular Design Reviews subject to the attached Findings and Conditions of Approval.

Prepared by:



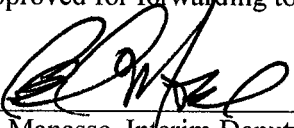
Jason Madani
Planner II

Reviewed by:



ROBERT MERKAMP
Interim Zoning Manager

Approved for forwarding to the Planning Commission:



Ed Manasse, Interim Deputy Director
Bureau of Planning

ATTACHMENTS:

- A. Findings
- B. Conditions of Approval
- C. Plans
- D. Applicant's Photo-Simulations
- E. Site Alternatives Analysis/Site Design Alternatives Analysis
- F. RF Emissions Report by Hammett & Edison, Inc.
- G. CPUC Compliance Letter
- H. Applicant's Proof of Public Notification Posting

ATTACHMENT A: FINDINGS

This proposal meets the required findings under Regular Design Review Criteria for Nonresidential Facilities (OMC Sec. 17.136.050(B)) and Telecommunications Regulations/Design Review Criteria for Macro Telecommunications Facilities (OMC Sec. 17.128.070(B)), as set forth below. Required findings are shown in **bold** type; explanations as to why these findings can be made are in normal type.

REGULAR DESIGN REVIEW CRITERIA FOR NON-RESIDENTIAL FACILITIES (OMC SEC. 17.136.050(B))

1. That the proposed design will create a building or set of buildings that are well related to the surrounding area in their setting, scale, bulk, height, materials, and textures:

The attachment of small antennas and equipment to non-historic utility poles, painted and texturized to match the poles and power line posts in appearance for camouflaging, will be the least intrusive design. The antennas will project over the street, away from the closest residences.

2. That the proposed design will protect, preserve, or enhance desirable neighborhood characteristics;

The proposals would not create a view obstruction, be directly adjacent to a primary living space such as a living room or bedroom window, or be located on an historic structure.

3. The project will provide a necessary function without negatively impacting surrounding opens pace and hillside residential properties.

The proposals will enhance essential services in urbanized neighborhoods.

4. That the proposed design will be sensitive to the topography and landscape.

The proposals will not be ground mounted.

5. That, if situated on a hill, the design and massing of the proposed building relates to the grade of the hill.

This finding is inapplicable because the sites are level.

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

1501 Fruitvale Avenue PLN17-508

The project sites are classified as Neighborhood Center Mixed Use per the Oakland General Plan's Land Use and Transportation Element (LUTE). This classification is intended to create, maintain, and enhance mixed use neighborhood commercial centers. These centers are typically characterized by smaller scale pedestrian-oriented, continuous street frontage with a mix of retail, housing, office, active open space, eating and drinking places, personal and business services, and smaller scale educational, cultural, or entertainment uses.

4578 International Blvd. PLN17-509

The project sites are classified as Community Commercial per the Oakland General Plan's Land Use and Transportation Element (LUTE). This classification is intended to create, maintain, and enhance areas suitable for a wide variety of commercial and institutional operations along the City's major corridors and in shopping districts or centers.

9900 Plymouth Street PLN18-040

The project sites are classified as Detached Unit Residential per the Oakland General Plan's Land Use and Transportation Element (LUTE). This classification is intended to create, maintain, and enhance residential areas typically located near the City's major arterials and characterized by detached, single unit structures. "Future development within this classification should be primarily residential in character."

The proposed telecommunication facilities will be mounted on existing PG&E utility poles within the City of Oakland public right-of-way. The proposed unmanned wireless telecommunication facilities will not adversely affect and detract from the characteristics of the neighborhood.

Section 17.128.120 of the City of Oakland Telecommunications Regulations describes the design criteria for wireless facilities. In general, these facilities should either be concealed from view or not visible from the public right of way. Since the project did not meet either ranked criteria, but did meet criteria C as described above, alternative site design studies needed to be undertaken for each location. The proposed antennas and associated related equipment are compatible with and typical of utility equipment on these poles. The proposed antennas will be extended toward street and away from the homes and be painted to match either the pole or utilities. As result, the proposals are consistent with the telecommunication regulation requirements, are in appropriate locations, and of appropriate designs that would not significantly increase negative visual impacts to adjacent neighboring residential properties

TELECOMMUNICATIONS REGULATIONS/DESIGN REVIEW CRITERIA FOR MACRO TELECOMMUNICATIONS FACILITIES (OMC SEC. 17.128.070(B))

1. Antennas should be painted and/or textured to match the existing structure.

The antennas will be painted and texturized to match the poles in appearance for camouflaging and will be the least intrusive design, as required by conditions of approval.

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

This finding is inapplicable because the antennas will not be mounted onto an architecturally significant structure but to wooden utility poles.

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

The antennas will be located parallel to the host utility pole below posts hosting power lines.

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

Conditions of approval require painting and texturing to match the poles in appearance for camouflaging.

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

Equipment will be attached to the utility poles with an unobtrusive design.

6. For antennas attached to the roof, maintain a 1:1 ratio (example: ten (10) feet high antenna requires ten (10) feet setback from facade) for equipment setback; screen the antennas to match existing air conditioning units, stairs, or elevator towers; avoid placing roof mounted antennas in direct line with significant view corridors.

This finding is inapplicable because the antennas would be attached to a pole and not to a roofed structure.

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

The minimal clearance to the facilities will be approximately 7'-7".

Attachment B: Conditions of Approval

1. Approved Use

The project shall be constructed and operated in accordance with the authorized use as described in the approved application materials, **staff report** and the approved plans **submitted December 27, 2017, and January 22, 2018** as amended by the following conditions of approval and mitigation measures, if applicable (“Conditions of Approval” or “Conditions”). Case Numbers: **1501 Fruitvale Avenue. (PLN17-508, APN:0025-7210-017-01), 4578 International Blvd (PLN17-509, APN: 035-2359-08-01); 9900 Plymouth Street. (PLN18-040, APN:046-5439-016-00).**

2. Effective Date, Expiration, Extensions and Extinguishment

This Approval shall become effective immediately, unless the Approval is appealable, in which case the Approval shall become effective in ten calendar days unless an appeal is filed. Unless a different termination date is prescribed, this Approval shall expire **two years** from the Approval date, or from the date of the final decision in the event of an appeal, unless within such period all necessary permits for construction or alteration have been issued, or the authorized activities have commenced in the case of a permit not involving construction or alteration. Upon written request and payment of appropriate fees submitted no later than the expiration date of this Approval, the Director of City Planning or designee may grant a one-year extension of this date, with additional extensions subject to approval by the approving body. Expiration of any necessary building permit or other construction-related permit for this project may invalidate this Approval if said Approval has also expired. If litigation is filed challenging this Approval, or its implementation, then the time period stated above for obtaining necessary permits for construction or alteration and/or commencement of authorized activities is automatically extended for the duration of the litigation.

3. Compliance with Other Requirements

The project applicant shall comply with all other applicable federal, state, regional, and local laws/codes, requirements, regulations, and guidelines, including but not limited to those imposed by the City’s Bureau of Building, Fire Marshal, and Public Works Department. Compliance with other applicable requirements may require changes to the approved use and/or plans. These changes shall be processed in accordance with the procedures contained in Condition #4.

4. Minor and Major Changes

- a. Minor changes to the approved project, plans, Conditions, facilities, or use may be approved administratively by the Director of City Planning
- b. Major changes to the approved project, plans, Conditions, facilities, or use shall be reviewed by the Director of City Planning to determine whether such changes require submittal and approval of a revision to the Approval by the original approving body or a new independent permit/approval. Major revisions shall be reviewed in accordance with the procedures required for the original permit/approval. A new independent permit/approval shall be reviewed in accordance with the procedures required for the new permit/approval.

5. Compliance with Conditions of Approval

- a. The project applicant and property owner, including successors, (collectively referred to hereafter as the “project applicant” or “applicant”) shall be responsible for compliance with all the Conditions of Approval and any recommendations contained in any submitted and approved technical report at his/her sole cost and expense, subject to review and approval by the City of Oakland.
- b. The City of Oakland reserves the right at any time during construction to require certification by a licensed professional at the project applicant’s expense that the as-built project conforms to all applicable requirements, including but not limited to, approved maximum heights and minimum setbacks. Failure

to construct the project in accordance with the Approval may result in remedial reconstruction, permit revocation, permit modification, stop work, permit suspension, or other corrective action.

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

6. Signed Copy of the Approval/Conditions

A copy of the Approval letter and Conditions shall be signed by the project applicant, attached to each set of permit plans submitted to the appropriate City agency for the project, and made available for review at the project job site at all times.

7. Blight/Nuisances

The project site shall be kept in a blight/nuisance-free condition. Any existing blight or nuisance shall be abated within 60 days of approval, unless an earlier date is specified elsewhere.

8. Indemnification

- a. To the maximum extent permitted by law, the project applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the Oakland Redevelopment Successor Agency, the Oakland City Planning Commission, and their respective agents, officers, employees, and volunteers (hereafter collectively called "City") from any liability, damages, claim, judgment, loss (direct or indirect), action, causes of action, or proceeding (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul this Approval or implementation of this Approval. The City may elect, in its sole discretion, to participate in the defense of said Action and the project applicant shall reimburse the City for its reasonable legal costs and attorneys' fees.
- b. Within ten (10) calendar days of the filing of any Action as specified in subsection (a) above, the project applicant shall execute a Joint Defense Letter of Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Joint Defense Letter of Agreement shall survive termination, extinguishment, or invalidation of the Approval. Failure to timely execute the Letter of Agreement does not relieve the project applicant of any of the obligations contained in this Condition or other requirements or Conditions of Approval that may be imposed by the City.

9. Severability

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

10. Job Site Plans

Ongoing throughout demolition, grading, and/or construction

At least one (1) copy of the stamped approved plans, along with the Approval Letter and Conditions of Approval, shall be available for review at the job site at all times.

11. Special Inspector/Inspections, Independent Technical Review, Project Coordination and Management***Prior to issuance of a demolition, grading, and/or construction permit***

The project applicant may be required to pay for on-call special inspector(s)/inspections as needed during the times of extensive or specialized plan check review, or construction. The project applicant may also be required to cover the full costs of independent technical and other types of peer review, monitoring and inspection, including without limitation, third party plan check fees, including inspections of violations of Conditions of Approval. The project applicant shall establish a deposit with the Building Services Division, as directed by the Building Official, Director of City Planning or designee.

12. Public Improvements

The project applicant shall obtain all necessary permits/approvals, such as encroachment permits, obstruction permits, curb/gutter/sidewalk permits, and public improvement ("p-job") permits from the City for work in the public right-of-way, including but not limited to, streets, curbs, gutters, sidewalks, utilities, and fire hydrants. Prior to any work in the public right-of-way, the applicant shall submit plans for review and approval by the Bureau of Planning, the Bureau of Building, and other City departments as required. Public improvements shall be designed and installed to the satisfaction of the City.

13. Days/Hours of Construction Operation***Ongoing throughout demolition, grading, and/or construction***

The project applicant shall require construction contractors to limit standard construction activities as follows:

- a) Construction activities are limited to between 7:00 AM and 7:00 PM Monday through Friday, except that pile driving and/or other extreme noise generating activities greater than 90 dBA shall be limited to between 8:00 a.m. and 4:00 p.m. Monday through Friday.
- b) Any construction activity proposed to occur outside of the standard hours of 7:00 am to 7:00 pm Monday through Friday for special activities (such as concrete pouring which may require more continuous amounts of time) shall be evaluated on a case by case basis, with criteria including the proximity of residential uses and a consideration of resident's preferences for whether the activity is acceptable if the overall duration of construction is shortened and such construction activities shall only be allowed with the prior written authorization of the Building Services Division.
- c) Construction activity shall not occur on Saturdays, with the following possible exceptions:
 - i. Prior to the building being enclosed, requests for Saturday construction for special activities (such as concrete pouring which may require more continuous amounts of time), shall be evaluated on a case by case basis, with criteria including the proximity of residential uses and a consideration of resident's preferences for whether the activity is acceptable if the overall duration of construction is shortened. Such construction activities shall only be allowed on Saturdays with the prior written authorization of the Building Services Division.
 - ii. After the building is enclosed, requests for Saturday construction activities shall only be allowed on Saturdays with the prior written authorization of the Building Services Division, and only then within the interior of the building with the doors and windows closed.
- d) No extreme noise generating activities (greater than 90 dBA) shall be allowed on Saturdays, with no exceptions.
- e) No construction activity shall take place on Sundays or Federal holidays.
- f) Construction activities include but are not limited to: truck idling, moving equipment (including trucks, elevators, etc) or materials, deliveries, and construction meetings held on-site in a non-enclosed area.

14. Radio Frequency Emissions

Prior to the final building permit sign off.

The applicant shall submit a certified RF emissions report stating the facility is operating within the acceptable standards established by the regulatory Federal Communications Commission.

15. Camouflage

Requirement: The antenna shall be painted, texturized, and maintained matte silver, and the equipment and any other accessory items including cables matte brown, to better camouflage the facility to the utility pole and attached power line posts.

When Required: Prior to a final inspection

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

16. Operational

Ongoing.

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

17. Possible District Undergrounding PG&E Pole

Ongoing

Should the PG &E utility pole be voluntarily removed for purposes of district undergrounding or otherwise, the telecommunications facility can only be re-established by applying for and receiving approval of a new application to the Oakland Planning Department as required by the regulations.

18. Graffiti Control

Requirement:

a During construction and operation of the project, the project applicant shall incorporate best management practices reasonably related to the control of graffiti and/or the mitigation of the impacts of graffiti. Such best management practices may include, without limitation:

The project applicant shall remove graffiti by appropriate means within seventy-two (72) hours. Appropriate means include the following:

- i. Removal through scrubbing, washing, sanding, and/or scraping (or similar method) without damaging the surface and without discharging wash water or cleaning detergents into the City storm drain system.
- ii. For galvanized poles, covering with new paint to match the color of the surrounding surface.
- iii. Replace pole numbers.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

Applicant Statement

I have read and accept responsibility for the Conditions of Approval. I agree to abide by and conform to the Conditions of Approval, as well as to all provisions of the Oakland Planning Code and Oakland Municipal Code pertaining to the project.

Name of Project Applicant

Signature of Project Applicant

Date