

# Oakland City Planning Commission

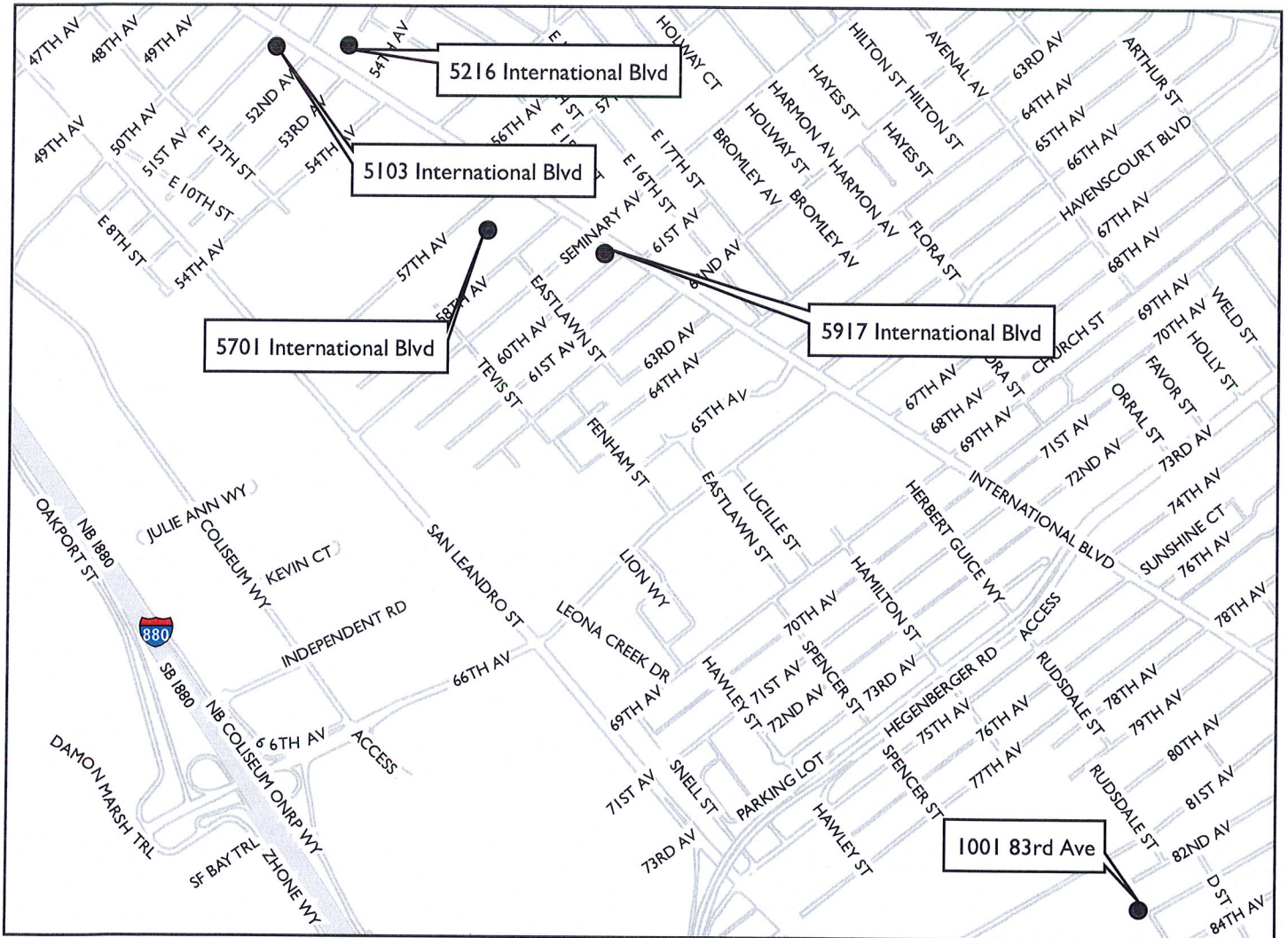
STAFF REPORT

Case nos. PLN18288 / PLN18289 / PLN18290 / PLN18291 / PLN18292

August 1, 2018

<b>Locations:</b>	<p>City street light pole in public right-of-way adjacent to:</p> <p><b>1) Case no. PLN18288; 5103 International Blvd</b> (APN: 034 2273-002-01); Submitted: 7/9/18; Zoning: RU-5 Urban Residential Zone; General Plan: Urban Residential; Council District: 5</p> <p><b>2) Case no. PLN18289; 5216 International Blvd</b> (APN: 035 2364-022-02); Submitted: 7/9/18; Zoning: RU-5; Urban Residential; Council District: 6</p> <p><b>3) Case no. PLN18290; 5701 International Blvd</b> (APN: 041 3848-004-01); Submitted: 7/9/18; Zoning: CN-3 Neighborhood Commercial Zone; General Plan: Neighborhood Center Mixed Use; Council District: 5</p> <p><b>4) Case no. PLN18291; 5917 International Blvd</b> (APN: 041 3882-033-00); Submitted: 7/9/18; Zoning: CN-3; General Plan: Neighborhood Center Mixed Use; Council District: 6</p> <p><b>5) Case no. PLN18292; 1001 83<sup>rd</sup> Ave</b> (APN: 042 4547-002-00); Submitted: 7/9/18; Zoning: RM-3 Mixed Housing Type Residential Zone; General Plan: Mixed Housing Type Residential; Council District: 7</p> <p style="text-align: right;"><i>See map on reverse</i></p>
<b>Proposal:</b>	To consider requests for five (5) applications to install a new “small cell site” Monopole Telecommunications Facilities on City street light poles by attaching antenna and equipment.
<b>Applicant / Phone Number:</b>	Ms. Ana Gomez-Abarca / Black & Veatch (913) 458-9148
<b>Owner:</b>	City of Oakland
<b>Planning Permits Required:</b>	Major Conditional Use Permit and Regular Design Review with additional findings for Monopole Telecommunications Facility in or near a Residential Zone
<b>Environmental Determination:</b>	<p>Exempt, Section 15301 of the State CEQA Guidelines: Existing Facilities;</p> <p>Exempt, Section 15302: Replacement or Reconstruction;</p> <p>Exempt, Section 15303: New Construction of Small Structures;</p> <p>Section 15183: Projects Consistent with a Community Plan, General Plan or Zoning</p>
<b>Historic Status:</b>	Non-historic property
<b>Action to be Taken:</b>	Approve with Conditions
<b>Finality of Decision:</b>	<i>Appealable to City Council</i>
<b>For Further Information:</b>	Contact case planner <b>Aubrey Rose AICP</b> at <b>(510) 238-2071</b> or by email at <a href="mailto:arose@oaklandca.gov">arose@oaklandca.gov</a>

# CITY OF OAKLAND PLANNING COMMISSION



Case Files: PLN18088, PLN18089, PLN18090, PLN18091, PLN18092  
Applicant: Ms. Ana GomezAbarca / Black & Veatch  
Addresses: 5103 International Blvd, 5216 International Blvd  
5701 International Blvd, 5917 International Blvd, 1001 83rd Ave  
Zones: RU-5, CN-3, RM-3



## **EXECUTIVE SUMMARY**

The applicant requests Planning Commission approval to establish five (5) small cell wireless telecommunication facility site on existing City street light poles located on the public right-of-way in residential and commercial districts. The project involves attaching two antennas within one shroud to the top of the pole and equipment mounted to the side of the pole, as described in the submitted plans, to enhance wireless services in those areas.

Regular Design Review and a Major Conditional Use Permit decided by the Planning Commission, each with additional findings, are required for the installation of a new Monopole Telecommunications Facility. Additionally, Site # 1 requires a Minor Variance, for proximity to a residential property line. The proposed projects, antenna and associated equipment, would be similar to other facilities around the City. The proposed telecommunication facility is therefore sited at appropriate locations and would not significantly increase negative visual impacts to adjacent properties including residences. The project meets all the required findings for approval of these five (5) 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 sites are as follows:

City street light pole in public right-of-way adjacent to:

### Site # 1) Case no. PLN18288; 5103 International Blvd

A 25'-1" "cobrahead" City street light pole (non-decorative; measured to top of pole, not luminaire) located in the public right-of-way (sidewalk) along International Boulevard at the corner of 51<sup>st</sup> Avenue fronting a one-story commercial building with an appliances store;

### 2) Case no. PLN18289; 5216 International Blvd

A 43'-10" tall light pole fronting an open truck rental business (U-Haul);

### 3) Case no. PLN18290; 5701 International Blvd

A 27-foot tall light pole towards the corner, fronting an historic brick building containing a furniture store;

### 4) Case no. PLN18291; 5917 International Blvd

A 26'-11" light pole fronting a one-story church at zero lot line to the sidewalk; and,

### 5) Case no. PLN18292; 1001 83<sup>rd</sup> Ave

A 28'-5" light pole at the corner near a two-story live-work building, across from single-family homes to the north and Tassaforanga Park to the east.

## PROJECT DESCRIPTION

The sites are generally proposed for:

- Installation by top-mounting to the pole one (1) cannister antenna within a shroud (various sizes less than five-feet in height); the shroud is attached below pole-top, to add less than the shroud's total height to the pole's total height;
- Installation of side-mounted equipment below the street light (various heights);
- Accessory equipment; and,
- Paint the proposed antennas and associated equipment to match the pole.

Following are site-specific proposals:

**1) Case no. PLN18288; 5103 International Blvd**

Attach a 4'-11" tall shroud (containing 1 cannister antenna) below pole-top to add 3'-6" in height, totaling 28'-7" in height; attach equipment measuring 2'-4" in height to the pole above 15'-3" in height;

**2) Case no. PLN18289; 5216 International Blvd**

Attach 4'-10" tall shroud to result in 47'-4" in height; attach equipment measuring 2'-4" in height to the pole above 15'-3" in height;

**3) Case no. PLN18290; 5701 International Blvd**

Attach 4'-11" tall shroud to add 2'-11" in height, totaling 30'-2" in height; attach equipment above 12-feet in height;

**4) Case no. PLN18291; 5917 International Blvd**

Attach 4'-7" tall shroud to add three-feet in height, totaling 29'-11" in height; attach equipment above 12'-11" in height; and,

**5) Case no. PLN18292; 1001 83<sup>rd</sup> Ave**

Attached a 4'-11" tall shroud to add six-inches in height, totaling 28'-11" in height.

No portion of the telecommunication facilities would be located at grade. The proposed antenna and associated equipment would not be accessible to the public.

## **SIMILAR CASES**

Records show that the Planning Commission has approved numerous Monopole Telecommunications Facilities requiring Design Review and Conditional Use Permits as well as some Minor Variances throughout the City since at least 2016.

## **GENERAL PLAN ANALYSIS**

Site #s 1 and 2 are located in the Urban Residential area of the General Plan's Land Use and Transportation Element (LUTE). The intent of the area is: *"to create, maintain, and enhance areas of the City that are appropriate for multi-unit, mid-rise or high-rise residential structures in locations with good access to transportation and other services."* Site #s 3 and 4 are in the Neighborhood Center Mixed Use area of the LUTE; the intent of the area is: *"to identify, 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."* Site # 5 is in the Mixed Housing Type Residential area; the intent is: *"To create, maintain, and enhance residential areas typically located near the City's major arterials and characterized by a mix of single family homes, townhouses, small multi-unit buildings, and neighborhood businesses where appropriate."* The proposed telecommunication facilities would be mounted on existing City street light poles within the City of Oakland public right-of-way. The proposed unmanned wireless telecommunication facility would not adversely affect the characteristics of the neighborhood.

## ZONING ANALYSIS

Site #s 1 and 2 are located in the RU-5 Urban Residential Zone. Site #s 3 and 4 are in the CN-3 Neighborhood Commercial Zone. Site #5 is in the RM-3 Mixed Housing Type Residential Zone. Monopole Telecommunications Facilities on City light poles require a Conditional Use Permit and a Regular Design Review with additional findings; these permits are decided by the Planning Commission for sites located in or near to a residential zone. New wireless telecommunications facilities may also be subject to a Site Alternatives Analysis, Site Design Alternatives Analysis, and a satisfactory radio-frequency (RF) emissions report. Staff analyzes the proposal in consideration of these requirements in the 'Key Issues and Impacts' section of this report. Additionally, attachment to City infrastructure requires review by the City's Real Estate Department, Electrical Division, and Information Technology Department. Given customers increasing reliance upon cellular service for phone and Wi-Fi, the proposal for a Monopole Telecommunications Facility that is not adjacent to a primary living space or historic structure conforms to this intent.

## 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 City street light pole; Section 15302, replacement or reconstruction of existing utility systems and/or facilities; Section 15303, new construction or conversion of small structures, and Section 15183, projects consistent with the General Plan or Zoning.

## KEY ISSUES AND IMPACTS

The proposal to establish a Monopole Telecommunications Facility is subject to the following Planning Code development standards, which are followed by staff's analysis in relation to this application:

### **17.128.080 Monopole Telecommunications Facilities.**

#### **A. General Development Standards for Monopole Telecommunications Facilities.**

**1. Applicant and owner shall allow other future wireless communications companies including public and quasi-public agencies using similar technology to collocate antenna equipment and facilities on the monopole unless specific technical or other constraints, subject to independent verification, at the applicant's expense, at the discretion of the City of Oakland Zoning Manager, prohibit said collocation. Applicant and other wireless carriers shall provide a mechanism for the construction and maintenance of shared facilities and infrastructure and shall provide for equitable sharing of cost in accordance with industry standards. Construction of future facilities shall not interrupt or interfere with the continuous operation of applicant's facilities.**

The proposal involves use of an existing City of Oakland metal street light pole that would remain available for future collocation purposes as practicable.

**2. The equipment shelter or cabinet must be concealed from public view or made compatible with the architecture of the surrounding structures or placed underground. The shelter or cabinet must be regularly maintained.**

Recommended conditions of approval require painting and texturing the antenna and equipment to match the appearance of the metal pole. There is no equipment shelter or cabinet proposed; however, minimal equipment would be closely mounted onto the side of the metal pole.

**3. When a monopole is in a Residential Zone or adjacent to a residential use, it must be set back from the nearest residential lot line a distance at least equal to its total height.**

Site # 5 is in a residential zone; none of the five sites are adjacent to a residential use.

**4. In all zones other than the D-CE-5, D-CE-6, IG, CIX-2, and IO Zones, the maximum height of Monopole Telecommunications Facilities and connecting appurtenances may be increased from the otherwise required maximum height to forty-five (45) feet upon the granting of a Conditional Use Permit (see Chapter 17.134 for the Conditional Use Permit Procedure).**

This requirement does not apply. The subject property is not located in any of the described zoning districts. Nonetheless, four of the five facilities would not exceed the height of 45-feet.

**5. In the D-CE-5, D-CE-6, CIX-2, and IO Zones, the maximum height of Monopole Telecommunications Facilities and connecting appurtenances may be increased from the otherwise required maximum height to eighty (80) feet upon the granting of a Conditional Use Permit (see Chapter 17.134 for the Conditional Use Permit Procedure).**

This requirement does not apply. The subject property is not located in any of the described zoning districts. Nonetheless, no facility would exceed the height of 47'-4"

**6. In the IG Zone, the maximum height of Monopole Telecommunications Facilities and connecting appurtenances may reach a height of forty-five (45) feet. These facilities may reach a height of eighty (80) feet upon the granting of Regular Design Review approval (see Chapter 17.136 for the Design Review Procedure).**

This requirement does not apply. The subject property is not located in the described zoning district. Nonetheless, four of the five facilities would not exceed the height of 45-feet.

**7. The applicant shall submit written documentation demonstrating that the emissions from the proposed project are within the limits set by the Federal Communications Commission.**

This standard is met by the proposal; a satisfactory emissions report has been submitted and is attached to this report (Attachments C-D-E-F-G).

**8. Antennas may not extend more than fifteen (15) feet above their supporting structure.**

The proposed antenna would project less than fifteen feet above the City light pole.

**17.128.110 Site location preferences.**

**New wireless facilities shall generally be located on the following properties or facilities in 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 Nonresidential Zones (excluding all HBX Zones and the D-CE-3 and D-CE-4 Zones).**
- D. Existing commercial or industrial structures in Residential Zones, HBX Zones, or the DCE-3 or D-CE-4 Zones.**
- E. Other Nonresidential uses in Residential Zones, HBX Zones, or the D-CE-3 or D-CE-4 Zones.**

**F. Residential uses in Nonresidential 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 locating on an A, B or C ranked preference do not require a site alternatives analysis.**

**Facilities proposing to locate on a D through G ranked preference, inclusive, must submit a site alternatives analysis as part of the required application materials. A site alternatives analysis shall, at a minimum, consist of:**

- a. The identification of all A, B and C ranked preference sites within one thousand (1,000) feet of the proposed location. If more than three (3) sites in each preference order exist, the three such closest to the proposed location shall be required.**
- b. Written evidence indicating why each such identified alternative cannot be used. Such evidence shall be in sufficient detail that independent verification, at the applicant's expense, 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. refusal to lease, inability to provide utilities).**

A site alternatives analysis is not required because the proposal conforms to 'B' as it would be located on a public facility (City light pole). Nonetheless, the applicant has submitted an analysis which is attached to this report (Attachments C-D-E-F-G).

#### **17.128.120 Site design preferences.**

**New wireless facilities shall generally be designed in the following order of preference:**

**A. Building or structure mounted antennas completely concealed from view.**

**B. Building or structure mounted antennas set back from roof edge, not visible from public right-of way.**

**C. Building or structure mounted antennas below roof line (facade mount, pole mount) visible from public right-of-way, painted to match existing structure.**

**D. Building or structure mounted antennas above roof line visible from public right-of-way.**

**E. Monopoles.**

**F. Towers.**

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

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

The proposal most closely conforms to 'E' (monopole) and the applicant has submitted a satisfactory site design alternatives analysis (Attachments C-D-E-F-G).

#### **17.128.130 Radio frequency emissions standards.**

**The applicant for all wireless facilities, including requests for modifications to existing facilities, shall submit the following verifications:**

**a. With the initial application, a RF emissions report, prepared by a licensed professional engineer or other expert, indicating that the proposed site will operate within the current acceptable thresholds as established by the Federal government or any such agency who may be subsequently authorized to establish such standards.**

**b. Prior to commencement of construction, a RF emissions report indicating the baseline RF emissions condition at the proposed site.**



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

A satisfactory report is attached to this report (Attachments C-D-E-F-G).

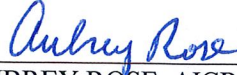
Analysis

The proposed site design would not be situated on an historic or decorative pole or structure, would not create a view obstruction, and would not negatively impact a view from a primary living space such as a living room or bedroom window. Staff, therefore, finds the proposal to provide an essential service with a least-intrusive possible design. Draft conditions of approval stipulate that the components be painted and textured to match the metal pole in appearance for camouflaging.

In conclusion, staff recommends approval subject to recommended Conditions of Approval.

- RECOMMENDATIONS:**
1. Affirm staff's environmental determination.
  2. Approve the Major Conditional Use Permit and Regular Design Review, subject to the attached Findings and Conditions of Approval.

Prepared by:



\_\_\_\_\_  
AUBREY ROSE, AICP  
Planner III

Reviewed by:

  
\_\_\_\_\_  
CATHERINE PAYNE  
Acting Zoning Manager

Approved for forwarding to the Planning Commission:

  
\_\_\_\_\_  
ED MANASSE, Interim Deputy Director  
Planning Bureau

**ATTACHMENTS:**

- A. Findings
- B. Conditions of Approval

Plans / Photo-Simulations / Site Analyses / RF Report / Proof of Posting:

- C. Site # 1) Case no. PLN18288; 5103 International Blvd
- D. Site # 2) Case no. PLN18289; 5216 International Blvd
- E. Site # 3) Case no. PLN18290; 5701 International Blvd
- F. Site # 4) Case no. PLN18291; 5917 International Blvd
- G. Site # 5) Case no. PLN18292; 1001 83rd Ave

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**ATTACHMENT A: FINDINGS**

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This proposal meets the required findings under General Use Permit Criteria (OMC Sec. 17.134.050), Conditional Use Permit Criteria for Monopole Facilities (OMC Sec. 17.136.040 (A)), Regular Design Review Criteria for Nonresidential Facilities (OMC Sec. 17.136.050(B)) and Design Review Criteria for Monopole 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.

**GENERAL USE PERMIT CRITERIA (OMC SEC. 17.134.050):**

**A. That the location, size, design, and operating characteristics of the proposed development will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development.**

The proposal is to establish a Monopole Telecommunications Facility adjacent a commercial facility by attaching to an existing City light pole. Attachment to an existing structure with smallest possible components painted and texturized to match the pole will be the least intrusive design. The project will enhance existing service for merchants, shoppers, residents, and visitors in the area.

**B. That the location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrant.**

Attachment to an existing structure with smallest possible components painted and texturized to match the pole will be the least intrusive design.

**C. That the proposed development will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region.**

The project will enhance existing service for merchants, shoppers, residents, and visitors in the area.

**D. That the proposal conforms to all applicable design review criteria set forth in the design review procedure at Section 17.136.070.**

The proposal conforms to Design Review findings which are included in that section of this attachment of Findings for Approval.

**E. That the proposal conforms in all significant respects with the Oakland Comprehensive Plan and with any other applicable plan or development control map which has been adopted by the City Council.**

Site #s 1 and 2 are located in the Urban Residential area of the General Plan's Land Use and Transportation Element (LUTE). The intent of the area is: "to create, maintain, and enhance areas of the City that are appropriate for multi-unit, mid-rise or high-rise residential structures in locations with good access to transportation and other services." Site #s 3 and 4 are in the Neighborhood Center Mixed Use area of the LUTE; the intent of the area is: "to identify, 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." Site # 5 is in the Mixed Housing Type Residential area; the intent is: "To create, maintain, and enhance residential areas typically located near the City's major arterials and characterized by a mix of single family homes, townhouses, small multi-unit buildings, and neighborhood businesses where appropriate." The proposed telecommunication facilities would be mounted on existing City street light poles within the City of Oakland public right-of-way. The proposed unmanned wireless telecommunication facility would not adversely affect the characteristics of the neighborhood.

**CONDITIONAL USE PERMIT CRITERIA FOR MONOPOLE FACILITIES (OMC  
SEC. 17.128.070(C))**

**1. The project must meet the special design review criteria listed in subsection B of this section.**

The proposal conforms to Design Review findings which are included in that section of this attachment of Findings for Approval.

**2. Monopoles should not be located any closer than one thousand five hundred (1,500) feet from existing monopoles unless technologically required or visually preferable.**

Use of this pole precludes placement of a new pole with facility fronting an upper story residences at various viable sites in the surrounding area and is therefore "visually preferable."

**3. The proposed project must not disrupt the overall community character.**

Attachment to an existing structure with smallest possible components painted and texturized to match the pole will be the least intrusive design. The project will enhance existing service for merchants, shoppers, residents, and visitors in the area.

**4. If a major conditional use permit is required, the Planning Director or the Planning Commission may request independent expert review regarding site location, collocation and facility configuration. Any party may request that the Planning Commission consider making such request for independent expert review.**

**a. If there is any objection to the appointment of an independent expert engineer, the applicant must notify the Planning Director within ten (10) days of the Commission request. The Commission will hear arguments regarding the need for the independent expert and the applicant's objection to having one appointed. The Commission will rule as to whether an independent expert should be appointed.**

**b. Should the Commission appoint an independent expert, the Commission will direct the Planning Director to pick an expert from a panel of licensed engineers, a list of which will be compiled, updated and maintained by the Planning Department.**

**c. No expert on the panel will be allowed to review any materials or investigate any application without first signing an agreement under penalty of perjury that the expert will keep confidential any and all information learned during the investigation of the application. No personnel currently employed by a telecommunication company are eligible for inclusion on the list.**



- d. An applicant may elect to keep confidential any proprietary information during the expert's investigation. However, if an applicant does so elect to keep confidential various items of proprietary information, that applicant may not introduce the confidential proprietary information for the first time before the Commission in support of the application.**
- e. The Commission shall require that the independent expert prepare the report in a timely fashion so that it will be available to the public prior to any public hearing on the application.**
- f. Should the Commission appoint an independent expert, the expert's fees will be paid by the applicant through the application fee, imposed by the City.**

A Major Conditional Use Permit is required and the Planning Director or Planning Commission may therefore independent expert review in addition to that which is attached to this report.

**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:**

Attachment to an existing structure with smallest possible components painted and texturized to match the pole will be the least intrusive design.

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

The proposal will not create a view obstruction, will not be directly adjacent to a residential facility's primary living space windows, and will not be located on an historic or decorative structure.

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

The proposal will enhance essential services in a residential or commercial district.

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

The proposal 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 site is 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.**

This finding is met by this proposal as described in a previous section of this attachment.

**DESIGN REVIEW CRITERIA FOR MONOPOLE TELECOMMUNICATIONS FACILITIES (OMC SEC. 17.128.070(B))**

- 1. Collocation is to be encouraged when it will decrease visual impact and collocation is to be discouraged when it will increase negative visual impact.**

The project does not involve collocation as it involves the establishment of a new telecommunications facility; however, the project should not preclude any future proposals for location at the site.

**2. Monopoles should not be sited to create visual clutter or negatively affect specific views.**

The Monopole Facility is sited on existing infrastructure where it will not create clutter or negatively affect specific views. The view of the City street light from the adjacent story residence should remain of the pole below the antenna and above the equipment.

**3. Monopoles shall be screened from the public view wherever possible.**

The Monopole Facility will be camouflaged and texturized to match the appearance of the existing light pole that will host it. The City street light is not located directly adjacent to a residential facility window.

**4. The equipment shelter or cabinet must be concealed from public view or made compatible with the architecture of the surrounding structures or placed underground. The shelter or cabinet must be regularly maintained.**

Recommended conditions of approval require painting and texturing the antenna and equipment to match the appearance of the metal pole. There is no equipment shelter or cabinet proposed, however minimal equipment would be closely mounted on the side of the metal pole.

**5. Site location and development shall preserve the preexisting character of the surrounding buildings and land uses and the zone district as much as possible. Wireless communication towers shall be integrated through location and design to blend in with the existing characteristics of the site to the extent practical. Existing on-site vegetation shall be preserved or improved, and disturbance of the existing topography shall be minimized, unless such disturbance would result in less visual impact of the site to the surrounding area.**

The proposed Monopole Facility will be placed in an existing non-decorative City light pole. This enables the preservation of character in the area and will not pose a negative visual impact as the proposal will be camouflaged to match the pole. There is no adjacent vegetation or topography.

**6. 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 facility will reduce or eliminate public access.

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**Attachment B: Conditions of Approval**

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**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 **dated August 16, 2017; August 21, 2017; and August 30, 2017, submitted July 9, 2018**, as amended by the following conditions of approval and mitigation measures, if applicable (“Conditions of Approval” or “Conditions”).

**Five (5) approvals to install new “small cell site” Monopole Telecommunications Facilities on an existing City street light pole in public right-of-way (sidewalk) by attaching antennas within a shroud to the top of the pole and equipment mounted to the side of the pole adjacent to:**

Site # 1) Case no. PLN18288; 5103 International Blvd

Site # 2) Case no. PLN18289; 5216 International Blvd

Site # 3) Case no. PLN18290; 5701 International Blvd

Site # 4) Case no. PLN18291; 5917 International Blvd

Site # 5) Case no. PLN18292; 1001 83rd Ave

**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 calendar 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 Monitoring**

The project applicant may be required to cover the full costs of independent third-party technical review and City monitoring and inspection, including without limitation, special inspector(s)/inspection(s) during times of extensive or specialized plan-check review or construction, and inspections of potential violations of the Conditions of Approval. The project applicant shall establish a deposit with the Bureau of Building, if directed by the Building Official, Director of City Planning, or designee, prior to the issuance of a construction-related permit and on an ongoing as-needed basis.

### **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. Construction Days/Hours**

Requirement: The project applicant shall comply with the following restrictions concerning construction days and hours:

- a. Construction activities are limited to between 7:00 a.m. and 7:00 p.m. Monday through Friday, except that pier drilling 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.
- b. Construction activities are limited to between 9:00 a.m. and 5:00 p.m. on Saturday. In residential zones and within 300 feet of a residential zone, construction activities are allowed from 9:00 a.m. to 5:00 p.m. only within the interior of the building with the doors and windows closed. No pier drilling or other extreme noise generating activities greater than 90 dBA are allowed on Saturday.
- c. No construction is allowed on Sunday or federal holidays.

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.

Any construction activity proposed outside of the above days and hours for special activities (such as concrete pouring which may require more continuous amounts of time) shall be evaluated on a case-by-case basis by the City, with criteria including the urgency/emergency nature of the work, the proximity of residential or other sensitive uses, and a consideration of nearby residents'/occupants' preferences. The project applicant shall notify property owners and occupants located within 300 feet at least 14 calendar days prior to construction activity proposed outside of the above days/hours. When submitting a request to the City to allow construction activity outside of the above days/hours, the project applicant shall submit information concerning the type and duration of proposed construction activity and the draft public notice for City review and approval prior to distribution of the public notice.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

## **PROJECT-SPECIFIC CONDITIONS**

### **14. Emissions Report**

Requirement: A RF emissions report shall be submitted to the Planning Bureau 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.

Requirement: Prior to a final inspection

When Required: Prior to final building permit inspection sign-off

Initial Approval: N/A

Monitoring/Inspection: N/A

### **15. Camouflage**

Requirement: The antenna and equipment shall be painted, texturized, and maintained the same color and finish of the City light pole.

When Required: Prior to a final inspection

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

### **16. Operational**

Requirement: 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.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

## **17. 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:
- b. 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

**ATTACHMENT C**

**Site # 1) Case no. PLN18288; 5103 International Blvd**

**Plans / Photo-Simulations / Site Analyses / RF Report / Proof of Posting**