

CITY OF OAKLAND

## Oakland City Planning Commission

Case File Numbers: PLN18065, PLN18071, PLN18072

STAFF REPORT

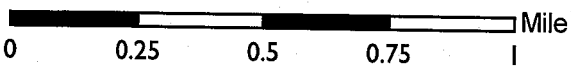
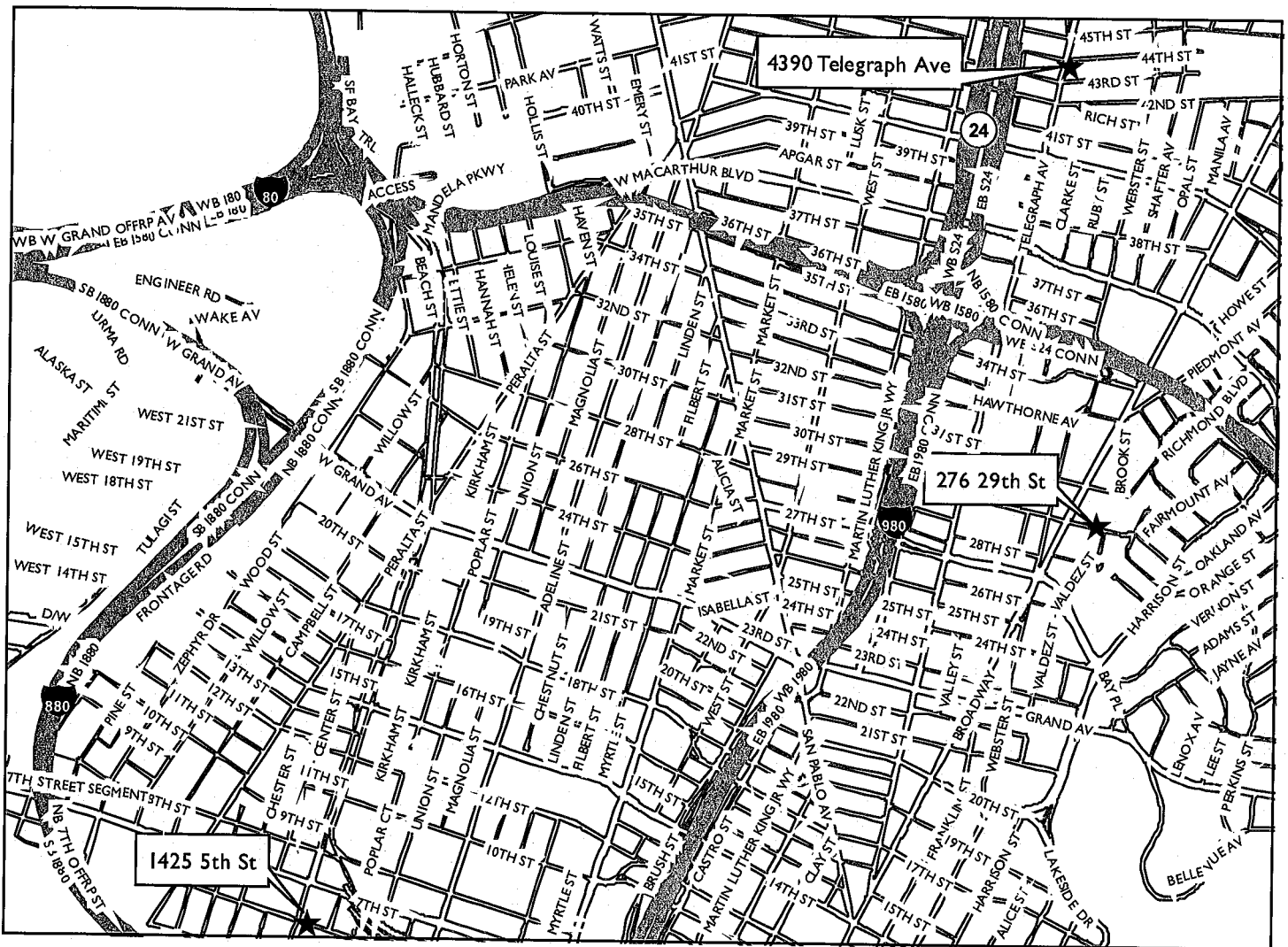
March 7, 2018

<b>Location:</b>	Utility pole in public right-of-way (sidewalk) adjacent to: •276 29 <sup>th</sup> St. (Legal Address 2910 Broadway) (PLN18065, APN: 009-0702-001-01) Zone: D-BV-3/N, Land Use: Community Commercial; CD 3 •4390 Telegraph Ave (PLN18071, APN: 013-1098-033-04) Zone: CN-2, Land Use: Neighborhood Center Mixed Use; CD 1 •1425 5 <sup>th</sup> St (PLN18072, APN: 004-0073-004-00) Zone: S-15W, Land Use: Community Commercial; CD 3 (Please see map on reverse)
<b>Proposal:</b>	To establish (3) wireless "small cell site" Macro Telecommunication Facilities on existing utility light poles located in the Public Right-of-Way.
<b>Permits Required:</b>	Regular Design Reviews for Macro Telecommunication Facilities near Residential Zoning
<b>Applicant:</b>	Matt Yergovich/New Cingular Wireless PCS, LLC (for AT&T) (415)596-3474
<b>Owner:</b>	New Cingular Wireless PCS, LLC, et al.
<b>Environmental Determination:</b>	Exempt, Section 15301 of the State CEQA Guidelines: Existing Facilities; Exempt, Section 15302: Replacement or Reconstruction; Exempt, Section 15303: New Construction of Small Structures; Section 15183: Projects Consistent with a Community Plan, General Plan or Zoning
<b>Historic Status:</b>	Non-historic poles
<b>Date File:</b>	January 31, 2018
<b>Action to be Taken:</b>	Approve with Conditions
<b>Finality of Decision:</b>	<i>Appealable to City Council within 10 days</i>
<b>For further information:</b>	Contact case planner Marilu Garcia at (510) 238-5217 or by email: <a href="mailto:mgarcia2@oaklandnet.com">mgarcia2@oaklandnet.com</a>

### EXECUTIVE SUMMARY

The applicant requests Planning Commission approval to establish three (3) small cell wireless telecommunication facility sites for AT&T on existing utility poles located on the public right-of-way in the commercial neighborhoods. 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.

# CITY OF OAKLAND PLANNING COMMISSION



Case Files: PLN18065, PLN18071, PLN18072  
Applicant: Matt Yergovich/New Cingular Wireless PCS, LLC (for AT&T)  
Addresses: 276 29th St, 4390 Telegraph Ave, 1425 5th St  
Zones: D-BV-3/N, CN-2, S-15W

Regular Design Review is required for the installation of a new Macro Telecommunications Facility. The proposed projects, antenna and associated equipment are similar to other utility poles and equipment within the same block and around the City. The antenna shroud will extend toward the top and away from the adjacent residences. The antenna shroud 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 facility is an appropriate location and would not 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 43' tall wooden utility pole is located in the City of Oakland public right-of-way (side walk, towards the curb) near 276 29<sup>th</sup> Street (Legal Address 2910 Broadway);
- The existing 25' tall wooden utility pole is located in the City of Oakland public right-of-way (side walk, towards the curb) near 4390 Telegraph Avenue;
- The existing 25' tall wooden utility pole is located in the City of Oakland public right-of-way (side walk, towards the curb) near 1425 5<sup>th</sup> Street.

**PROJECT DESCRIPTION**

As shown in Attachment C for PLN18065 (276 29<sup>th</sup> Street), the project applicant proposes to:

- Install one panel antenna within an antenna shroud measuring 24.7" tall and 10" in diameter at a height of 50.4' high on top of existing pole;
- Install two radio units measuring 27.2" long, 12.1" wide and 7" deep and related equipment within a shroud at a height of 10' mounted on the side of the pole 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 PLN18071 (4390 Telegraph Avenue), the project applicant proposes to:

- Install one panel antenna within an antenna shroud measuring 24.7" tall and 10" in diameter at a height of 32'-4" on top of existing pole;
- Install two radio units measuring 27.2" long, 12.1" wide and 7" deep and related equipment within a shroud at a height of 10' mounted on the side of the pole 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 PLN18072 (1425 5<sup>th</sup> Street), the project applicant proposes to:

- Install one panel antenna within an antenna shroud measuring 24.7" tall and 10" in diameter at a height of 32'-4" on top of existing pole;
- Install two radio units measuring 27.2" long, 12.1" wide and 7" deep and related equipment within a shroud at a height of 8' mounted on the side of the pole 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. The proposed antenna and associated equipment will not be accessible to the public.

**SURROUNDING USES**

The proposed sites are located in commercial neighborhoods in proximity to residential zones. The pole adjacent to 276 29<sup>th</sup> Street is close to the intersection of Broadway and 29<sup>th</sup> Street. The pole is adjacent to a structure used a grocery store. Residential uses are found to the southeast. The pole adjacent to 4390 Telegraph is located at the intersection of Telegraph and 44<sup>th</sup> Street. The pole is adjacent a parking area serving a commercial business. Residential uses are found to the west. The pole adjacent to 1425 5<sup>th</sup> Street is located across a warehouse and adjacent to parking area serving the West Oakland BART station. Residential uses are found to the west.

## **SIMILAR CASES**

Records show that the Planning Commission has approved approximately 75 Macro Telecommunications Facilities requiring Design Review throughout the City since 2016.

## **GENERAL PLAN ANALYSIS**

The sites are classified as Community Commercial or Neighborhood Center Mixed Use per the Oakland General Plan's Land Use and Transportation Element (LUTE). The proposed telecommunication facilities will be mounted on existing 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 neighborhoods.

## **ZONING ANALYSIS**

The proposed Telecommunication Facilities are located in commercial zones and adjacent to residential zoning. Section 17.136.040 and 17.128.070 of the City of Oakland Planning Code requires a Regular Design Review permit for Macro Telecommunication facilities that are attached to utility poles in these zones or that are located within one hundred (300) feet of the boundary of any residential zone and are not fully concealed. Special findings are also required for Design Review approval to ensure that the facility is concealed to the greatest extent possible. The project design is discussed later in this report, and the required findings for Regular 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 utility 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 four Macro Telecommunications Facilities is subject to the following Planning Code development standards, which are followed by staff's analysis in relation to this application:

### **17.128.070 Macro Telecommunications Facilities.**

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

**1. The Macro Facilities shall be located on existing buildings, poles or other existing support structures, or shall be post mounted.**

The projects involve attachment to existing utility poles hosting power lines.

**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 antennas and all components to match the appearance of the utility poles and power line posts.

**3. Macro Facilities may exceed the height limitation specified for all zones but may not exceed fifteen (15) feet above the roof line or parapet. Placement of an antenna on a nonconforming structure shall not be considered to be an expansion of the nonconforming structure.**

This standard is inapplicable because the proposal does not involve attachment to a roofed structure.

**4. Ground post mounted Macro Facilities must not exceed seventeen (17) feet to the top of the antenna.**

This standard is inapplicable because the proposal does not involve ground post mounting.

**5. 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 (Attachment F).

**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.**

A site alternatives analysis is not required because the proposal conforms to 'B' as it would be located on a quasi-public facility (utility pole with power lines). Nonetheless, the applicant has submitted an analysis which is attached to this report (Attachment E).

The projects are located in a commercial area nearby existing residential 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 project is in an underserved area. Staff has reviewed the applicant's alternative sites analysis and determined that the site selected conforms to the telecommunication regulation requirements. In addition, staff agrees that no other sites are more suitable.

**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 'C' (Building or structure mounted antennas below roof line (facade mount, pole mount) visible from public right-of-way, painted to match existing structure), and the applicant has submitted a satisfactory site design alternatives analysis (Attachment E).

**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.**

In the analysis prepared (Attachment F), the proposed projects were evaluated for compliance with appropriate guidelines limiting human exposure to radio frequency electromagnetic fields. According to the report, the projects will comply with the prevailing standards for limiting public exposure to radio frequency energy, and therefore, the proposed site 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 report, states 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 stating that the facility is operating within acceptable thresholds established by the regulatory federal agency.

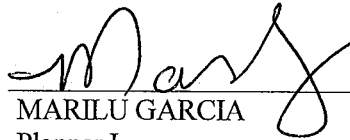
**CONCLUSION**

The proposed site design would not be situated on a historic pole or structure, create a view obstruction, or be directly adjacent to a primary living space such as a living room or bedroom window. The projects meet all the required findings for approval and will provide an essential telecommunication service to the community and the City of Oakland at large. It will also be available to emergency services such as police, fire department and emergency response teams. Staff believes that the proposal is designed to meet the established zoning and telecommunication regulations and recommends supporting the Regular Design Review application.

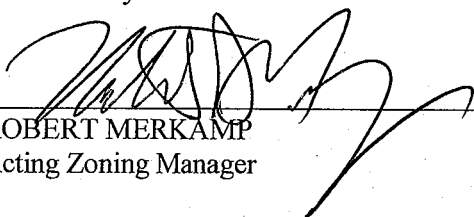
Outreach was conducted January 8, 2018 at the Preservation Park and January 30, 2018 at the Temescal Oakland Public Library to introduce the projects to the community.

- RECOMMENDATIONS:**
1. Affirm staff's environmental determination.
  2. Approve the Regular Design Reviews subject to the attached Findings and Conditions of Approval.


Prepared by:

  
MARILU GARCIA  
Planner I

Reviewed by:

  
ROBERT MERKAMP  
Acting Zoning Manager

Approved for forwarding to the Planning Commission:

  
DARIN RANELLETTI, 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 one antenna 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 proposed antennas will project over the street or be placed on top of the pole 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.**

The sites are located in a Community Commercial and Neighborhood Center Mixed Use area under the General Plan's Land Use and Transportation Element (LUTE). Given resident's and visitors' increasing reliance upon cellular service for phone and internet, the proposal for a Macro Telecommunications Facility that is not adjacent to a primary living space or historic structure conforms to this intent.

**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 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 a wooden utility pole.

**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 on top of the pole.

**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 pole 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 facility will be approximately 8-feet.

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**Attachment B: Conditions of Approval**

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**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 September 27, 2017 and October 23, 2017** as amended by the following conditions of approval and mitigation measures, if applicable (“Conditions of Approval” or “Conditions”). Case Numbers: **276 29th St. (Legal Address 2910 Broadway) (PLN18065, APN: 009-0702-001-01); 4390 Telegraph Ave (PLN18071, APN: 013-1098-033-04); 1425 5th St (PLN18072, APN: 004-0073-004-00)**

**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 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 shall be painted, texturized, and maintained matte brown (to match existing poles), and the equipment and any other accessory items including cables matte brown, to better camouflage the facility to the 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. Possible Pole Removal**

Requirement: Should the City light pole be permanently removed for any reason, telecommunications facility can only be re-established by applying for and receiving approval of a new application to the Oakland Planning Bureau as required by the regulations.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: N/A

**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:
- 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