

**Planning
Memorandum**

To: Jenny Soo
From: Jonathan L. Kramer
With: Tripp May; Natalia Shparber
Date: March 19, 2014
RE: P12-1725 (AT&T Mobility)
3589 Nevada Street



The City of Pleasanton ("City") requested a review of the AT&T Mobility ("AT&T") permit application to install and operate a new wireless site located at 3589 Nevada Street.

Current Project

AT&T proposes to install twelve new panel antennas, center-mounted at thirty-five feet (35') above ground level ("AGL"), and evenly arranged in three sectors oriented towards 90° true north ("TN"), 170° TN, and 260° TN. Behind each sector, AT&T also proposes to install seven remote radio heads ("RRHs"), one fiber junction box, and one DC power surge suppressor.

To conceal all rooftop antennas and equipment, AT&T proposes to construct an approximately nine-foot (9') screen wall along the full southern parapet and partial eastern and western parapets. AT&T proposes to design the screen wall with faux windows and trim to match the current façade.

At ground level, AT&T proposes to install a prefabricated equipment shelter, step-down transformer, and backup diesel-powered generator with fuel tank. Above the prefabricated shelter, AT&T proposes to mount a GPS antenna. AT&T will enclose the equipment area with a slatted fence.

Section 6409(a) Evaluation

As a threshold matter, the City must determine whether the proposed application falls under the ambit of Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012. This section discusses Section 6409(a) and determines whether it should apply to this application.

Generally, Section 6409(a) requires local governments to approve certain requests to collocate with or modify an existing wireless tower or base station. Thus, Section 6409(a) may be outcome-determinative. Section 6409(a), codified at 47 U.S.C. § 1455(a) (2013), states in full:

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(a) FACILITY MODIFICATIONS.—

(1) IN GENERAL.—Notwithstanding Section 704 of the Telecommunications Act of 1996 (Public Law 104–104) or any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.

(2) **ELIGIBLE FACILITIES REQUEST.**—For purposes of this subsection, the term “eligible facilities request” means any request for modification of an existing wireless tower or base station that involves—

- (A) collocation of new transmission equipment;
- (B) removal of transmission equipment; or
- (C) replacement of transmission equipment.

(3) **APPLICABILITY OF ENVIRONMENTAL LAWS.**—Nothing in paragraph (1) shall be construed to relieve the Commission from the requirements of the National Historic Preservation Act or the National Environmental Policy Act of 1969.

To determine whether Section 6409(a) applies, the City must apply the two-prong test described below. The statute applies only when:

- (1) the applicant requests to collocate, remove, or replace transmission equipment from an existing tower or base station; and
- (2) the proposed project will not “substantially change the physical dimensions” of that tower or base station.

Section 6409(a) applies only when both of the prongs are true. The statute does not apply when the applicant desires to construct an entirely new wireless communication facility or when the applicant desires to modify an existing site that substantially changes the physical dimensions of the existing tower or base station. The applicant bears the burden to prove both prongs to the City.

In this case, Section 6409(a) does not apply because AT&T proposes to construct an entirely new wireless facility rather than remove, modify, or collocate its wireless transmission equipment on an existing wireless tower or base station. Thus, the application does not qualify as an “eligible facilities request” and the City need not determine whether it will cause a substantial change to conclude that Section 6409(a) does not apply.

RF Emissions Evaluation

The Federal Communications Commission (“FCC”) completely occupies the field of RF safety standards in the United States. The City legally cannot establish or require RF safety standards, whether more strict, more lenient, or the same as the FCC standards. The FCC does, however, permit the City to determine whether a proposed wireless project meets the federal safety standards found at 47 C.F.R. §§ 1.1307 *et seq.* (“FCC Rules”) and FCC Office of Engineering and Technology Bulletin 65 (“OET 65”) RF safety requirements.

Under the FCC Rules, certain types of wireless projects are deemed “categorically excluded” and not subject to further RF evaluation. A wireless project is categorically excluded when the antenna supporting structure is not a building or shared to perform some other function, and the lowest portion of the transmitting antenna is at least ten (10) meters AGL.

In this case, the proposed antennas are *not* categorically excluded because AT&T proposed to mount the antennas on an occupied building. Therefore I cannot conclude that the proposed antennas will comply with FCC Rules without further analysis.

AT&T submitted an RF compliance report conducted by Hammett & Edison, Inc. and dated February 26, 2014 (“H&E Report”). Based on the frequency and transmitter power from AT&T’s proposed antennas, a controlled access zone will extend approximately forty-one feet (41’) from the face of the antennas at roughly the height of the antennas.

The fact that a site creates a controlled access zone does not necessarily mean that it violates the FCC Rules. Rather, a controlled access zone means that the carrier must affirmatively restrict public access to that area so that members of the general population (including trespassers) cannot unknowingly enter and be exposed to radio emissions in excess of those allowed by the FCC.

To comply with the FCC Rules, I recommend that the City require, as a condition of approval, the following:

1. AT&T shall install and at all times maintain in good condition an RF Notice sign at all rooftop access points. AT&T shall install the RF Notice sign(s) in a location where anyone can clearly see the sign before entering the rooftop area;
2. AT&T shall install and at all times maintain in good condition an RF Notice sign at each sector of antennas. AT&T shall install the RF Notice signs in a location where anyone can clearly see the sign before passing in front of the antennas; and
3. AT&T shall ensure that all signage complies with FCC OET Bulletin 65 or ANSI C95.2 for color, symbol, and content conventions. All signage shall, at all times, provide a working local or toll-free telephone number to its network operations center, and such telephone number shall be able to reach a live person who can exert transmitter power-down control over this site as required by the FCC

If AT&T complies with the above conditions described in this memorandum for this design, then the City will have no basis to deny or further condition the project on the basis of RF emissions.

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Design Recommendations

I also recommend that the City require, as a condition of approval, the following:

1. The AT&T GPS antenna proposed to be mounted to the eave of the equipment shelter should be moved down below the level of the chain link fence or, in the alternative, should be relocated to the roof below the top of the new parapet; and
2. The portion of the existing and proposed chain link fence with vision screening slats fronting AT&T's proposed equipment shelter should be raised higher so that the height of the fence equals the height of AT&T's proposed pre-fabricated equipment shelter.

As for both conditions just described, the current project would expose portions of the proposed equipment building to public view as is shown in Figure 1, below.

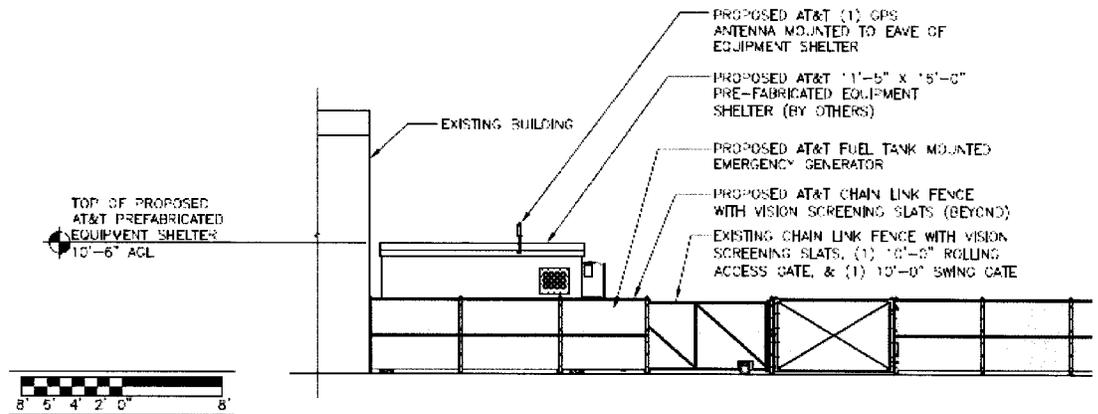


Figure 1: Current project plan detail (Source: AT&T; scale incorporated by J. Kramer)

The preferred design would be as shown in Figure 2, below.

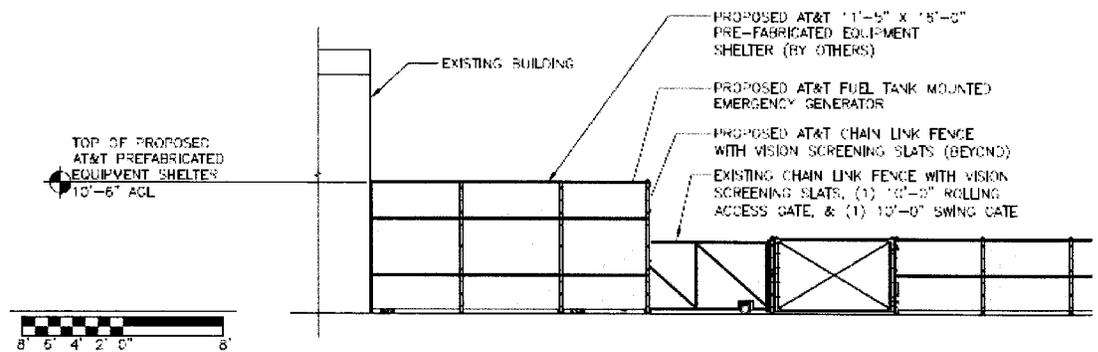


Figure 2: Modified project plan detail (Source: AT&T; scale incorporated by J. Kramer)

Conclusion

Subject to the proposed conditions in this memo, I recommend the project advance through the planning process.

TM/NS/jlk

**AGENDA
STAFF REVIEW BOARD**

**Large Conference Room, 200 Old Bernal Avenue
Thursday, April 3, 2014
1:30 p.m.**

STAFF REVIEW

1. P14-0566, Kitty Li / Message Journey (Arthur Henriques, ext. 5609)
Application for a Conditional Use Permit to allow up to 10 massage technicians at any one time at Message Journey located at 1530 Stoneridge Mall Road, Suite F133. Zoning for the property is C-R(m) (Regional Commercial – Enclosed Mall) District.
2. P14-0568, Melanie Bailey-Bird / Transition Learning Center (Arthur Henriques, ext. 5609)
Application for a Preliminary Review for a use determination regarding a proposed business that assists special needs students 12-18 years of age with transitional planning between adolescence and adulthood proposed within Suite 102 of the Crossroads Shopping Center located at 5980 Stoneridge Drive. Zoning for the property is PUD-I/C-O (Planned Unit Development – Industrial/Commercial-Office); Hacienda Business Park CPD Designation.
3. P14-0589/P14-0590/PUD-81-22-14M, Workday, Inc. (Steve Otto, ext. 5608)
Applications for: 1) Planned Unit Development (PUD) rezoning and development plan to construct a six-story, approximately 430,000 square foot office building, parking garage, and related site improvements at 6110 Stoneridge Mall Road (adjacent to the West Dublin/Pleasanton BART station); 2) PUD Major Modification to the PUD governing Stoneridge Corporate Plaza (6120-6160 Stoneridge Mall Road) to construct a parking garage, surface parking modifications, and related site improvements and to eliminate the public's use of the private landscaped area between the existing office buildings; and 3) Development Agreement to vest the entitlements for the project. Zoning for 6110 Stoneridge Mall Road is Planned Unit Development-High Density
Residential/Commercial (PUD-HDR/C) District and zoning for 6120-6160 Stoneridge Mall Road is Planned Unit Development – Commercial - Office (PUD-C-O) District.

Distribution List:

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