

**FINDINGS AND CONDITIONS OF APPROVAL FOR COUNTY FILE #LP13-2020:
NEW CINGULAR WIRELESS – AT&T MOBILITY (Applicant), CONTRA COSTA
COUNTY/NORTHERN CALIFORNIA JOINT POLE ASSOCIATION (Owners)**

FINDINGS

A. Growth Management Performance Standards

1. Traffic: The project will not significantly increase existing traffic levels in the area. However, there will be a temporary increase in traffic as a result of the construction phase of the project which is anticipated to take 5-7 days. The applicant will be required to obtain an encroachment permit from the Public Works Department, as this project is located within the public right-of-way. One additional truck and employee may be temporarily located at the work site to assist in traffic management. The facility will require routine maintenance which will be 1 to 2 visits a month. Street parking is available in the immediate area to accommodate maintenance vehicles. According to County records, no other wireless providers are currently proposed at this site.
2. Water: The proposed equipment will be located on an existing utility pole; therefore, staff is not recommending vegetative screening for this project. Consequently, the project will not increase the demand for water supplies in the area or for the subject site. Additionally, the East Bay Municipal Utilities District has reviewed the project and has indicated that they did not have any concerns with the proposal as submitted.
3. Sanitary Sewer: The project will not increase the demand for sanitary sewer service in the area as the project is to be un-manned. Therefore, the project does not involve any toilets or sanitary sewer facilities. The Stege Sanitary District has reviewed the project submittal and has returned an Agency Comment Request indicating that they did not have any comments on this application.
4. Fire Protection: The project will not significantly increase the demand for fire protection at the site. There are no fuel cells or back-up generators proposed for this site.
5. Public Protection: The project will not increase the demand for police service facilities; on the contrary, the project will improve wireless telecommunication services in the area which is considered to be a benefit during emergency situations.
6. Parks & Recreation: The project will not increase the demand for parks or recreation facilities, as the project will not increase the housing stock in the County.
7. Flood Control & Drainage: The subject site is not located within a Federal Emergency Management Agency-designated special flood hazard zone. Therefore, the project will not create a hazard associated with any existing physical conditions at the site.

B. Land Use Permit Findings

1. *That the proposed project shall not be detrimental to the health, safety and general welfare of the County.*

Finding: As previously mentioned, the Federal Communications Commission (FCC) has adopted standards for public exposure, as well as, occupational exposure to electromagnetic fields (EMF). Compliance with these standards is considered to be evidence that the project does not present health and safety risks. Therefore, the applicant has submitted an EMF report, dated August 20, 2013, indicating that the EMF strength for this project falls within the FCC limit for public exposure.

2. *That the proposed project shall not adversely affect the orderly development within the County or the community.*

Finding: The proposed equipment is so compact and innocuous that granting AT&T a 10 year conditional use permit for the installation and operation of the proposed project cannot reasonably be expected to influence the orderly development of property within the County. Additionally, as discussed in the staff report, the project as conditioned is consistent with applicable policies of the County's 2005-2020 General Plan for the Kensington area, as well as, the 1998 Telecommunications Policy.

3. *That the proposed project shall not adversely affect the preservation of property values and the protection of the tax base within the County.*

Finding: The project site is located within the Ardmore Road right-of-way. As proposed, the project would not require the existing pole to be extended to accommodate the 2 antennas and associated electrical equipment. According to the photographs of the subject pole as seen from adjacent properties, the project will not block any views and only represent a minor change to the physical conditions of the site and area. Furthermore, no tree removal is required to attach the proposed electrical equipment to the pole or to establish the required electrical power for the facility.

Due to the relatively small scope of the project, staff does not anticipate that the operation of one cell site at the subject location will limit the potential range of uses at the site or on adjacent properties. No evidence has been provided to staff that confirms cell sites lower property value. Therefore, the project will not adversely affect the preservation of property values and the protection of the tax base within the County.

4. *That the proposed project as conditioned shall not adversely affect the policy and goals as set by the General Plan.*

Finding: The General Plan designation for the site is Single-Family Residential-High Density (SH). Accordingly, the site in general is primarily developed with single-family homes, streets, sidewalks and the public utilities which serve the area. As new services are made available to residential customers (e.g., satellite cable and associated antennas), the supporting infrastructure must be upgraded to address the new services. The wireless technology proposed with this application, will allow AT&T to attach two

relatively small antennas and associated electrical equipment to an existing utility pole in the public right-of-way. The subject pole currently supports electrical power, cable and telephone landline services. Therefore, AT&T's proposal is consistent with the existing uses at the site, immediate area and intent of the SH General Plan designation in which it is situated.

The 2005-2020 Contra Costa County General Plan also prescribes that many localized scenic vistas, major ridgelines and views of the San Francisco Bay/Delta area, are components of the County's environmental setting which are perceived by many as desirable. The General Plan policies for the Kensington area provide that items such as; parking, views and design compatibility should be considered as part of the application process. As conditioned, the proposed equipment will not block any views currently had by adjacent residents. The photosimulations submitted for this project; show that the slim design of the equipment will reduce the visual intrusiveness of the proposed equipment. Therefore, the proposed wireless telecommunications facility complies with the policies and goals set by the General Plan for the Kensington area.

5. *That the proposed project shall not create a nuisance and/or enforcement problem within the neighborhood or community.*

Finding: The project, as conditioned, will not create a nuisance and/or enforcement problem within the neighborhood or community. There has been no record of code enforcement issues with these types of facilities. Nevertheless, the applicant has submitted a noise study dated July 30, 2013, indicating that the equipment proposed will meet the 2005-2020 Contra Costa County General Plan residential noise limits. Furthermore, if approved, the applicant will be required to submit 3-year condition of approval compliance reviews in order for the County to evaluate the on-going compliance efforts by AT&T.

6. *That the proposed project as conditioned shall not encourage marginal development within the neighborhood.*

Finding: The proposed cell site is consistent with the allowable uses in R-6,-TOV,-K Zoning District. The R-6,-TOV,-K Zoning District also clearly defines the other types of uses determined to be appropriate for the subject site and area. The project will increase the wireless services to an area of the County currently experiencing poor coverage/capacity. Therefore, staff does not anticipate that the project will encourage marginal development within the neighborhood.

7. *That special conditions or unique characteristics of the subject property and its location or surroundings are established.*

Finding: Kensington is unique with its steep slopes and undulating topography. Cell sites require a reasonably clear line-of-sight to function properly. As a result, AT&T has proposed to install the subject project, as well as five other strategically placed cell sites to accommodate for the line-of-sight challenges in the area. The subject site is located within the public right-of-way along Ardmore Road and does not require the removal

of any trees or grading. There are no other concurrent applications that propose to develop this site. Therefore, establishment of the subject wireless facility will not significantly alter the physical or visual characteristics that currently exist at the site or within the immediate vicinity.

CONDITIONS OF APPROVAL

Project Approval

1. _____ Development is approved as generally described in the application materials received by the Department of Conservation and Development/Community Development Division (CDD) on, January 24, 2013 (revised plans dated, June 19, 2013) and subject to the conditions below.

Administrative Review

2. _____ This land use permit is granted for a period of ten (10) years and shall be administratively reviewed at three-year intervals. The applicant shall initiate the first review by submitting a statement as to the current status of the project to CDD no later than three (3) years following the effective date of the project approval. This review by CDD will be for the purpose of ensuring continued compliance with the conditions of permit approval.

Non-compliance with the approved conditions and/or the ordinance code provisions after written notice thereof shall be cause for revocation proceedings.

For the review of existing commercial wireless telecommunication facilities, submittal shall include photo documentation of existing conditions and equipment for comparison with the applicable approved conditions.

The applicant is encouraged, at the time of each administrative review, to review the design of the telecommunications facility and make voluntary upgrades to the facility for the purpose of improving safety and lessening visual obtrusiveness.

A review fee in the amount of \$500.00 (subject to time and materials) will be filed through a Compliance Review Application to allow for review of the approved conditions.

Initial Compliance Report Required Prior to the Issuance of a Building Permit

3. _____ **30 days prior to the issuance of a building permit**, the applicant shall submit a report addressing compliance with the conditions of approval for review and approval by CDD staff. The report shall list each condition followed by a description of what the applicant has provided as evidence of compliance with that condition. CDD staff may reject the report if it is not comprehensive with respect to applicable requirements for the requested permit. The deposit for review of the Compliance Report is \$500.00; the actual fee shall be time and materials.

Replacement of Equipment

4. _____ The replacement of existing equipment may be done administratively (without the submittal of a Land Use Permit) after review and approval by CDD staff. The replacement of equipment will need to conform to the following:

- A. The proposed replacement equipment will not create a greater visual impact on the surrounding area and will not increase the risk to public health or safety; and
- B. Will not otherwise conflict with the permit conditions.

An additional review fee in the amount of \$500.00 (subject to time and materials) will be filed through a Compliance Verification Application to allow for review of the equipment to be replaced. This condition shall not require prior approval to replace malfunctioning equipment where necessary to restore or maintain service. Nothing in this condition shall excuse the applicant from obtaining a building or electrical permit where otherwise required under the applicable code.

A new land use permit approval will be necessary prior to the installation of any equipment that does not satisfy Criteria A and B above, or prior to co-location by another carrier.

Financial Assurance

5. _____ **30 days prior to the issuance of a building permit**, the applicant or permittee shall provide financial guarantee, which shall be indexed annually for inflation, satisfactory to CDD staff, for the removal of the facility in the event that the use is abandoned or the use permit expires, or is revoked, or otherwise terminated.

If the owner or lessee does not remove any obsolete or unused equipment, as described above, the financial guarantee shall be used by the County to remove any obsolete or unused facilities and to return the site to its pre-development condition. Any unused financial guarantee shall be returned to the applicant upon termination of the use and removal of the facility or transfer of the lease accompanied by a financial guarantee by the new lessee or owner.

Removal of Facility/Site Restoration

6. _____ All structures and equipment associated with the applicant's commercial wireless telecommunications facility shall be removed within 30 days of the discontinuance of the use and the site shall be restored by the permittee to its original pre-development condition.

In the event that County staff receives confirmation that the overhead utilities attached to this pole are to be undergrounded, the applicant shall remove the subject wireless facility within 30 days of written notice by this Department. Additionally, in the event a macro site is developed, or another alternative is

discovered that allows for the removal of the subject site while still providing the permittee an opportunity to provide the intended coverage, the permittee shall remove the approved equipment in favor of the visually less intrusive alternative.

General Provisions

7. ____ Any deviation from or expansion beyond the limits of this permit approved under this application may require the filing and approval of a request for modification of the Land Use Permit.
8. ____ The conditions contained herein shall be accepted by the applicant, his agents, lessees, survivors or successors for continuing obligation.
9. ____ All commercial wireless telecommunication facilities shall comply at all times with all Federal Communications Commission (FCC) rules, regulations and standards, and any other applicable federal, state or County law or regulation.
10. ____ Facilities shall be operated in such a manner so as not to contribute to ambient RF/EMF emissions in excess of then current FCC adopted RF/EMF emission standards.
11. ____ The equipment and accessory structures shall be maintained in good condition over the term of the permit. This shall include keeping the lease area clean and free of trash accumulation and the structures graffiti-free. In the event a piece of equipment needs to be repainted, the applicant shall paint the entire unit to ensure a uniform appearance.
12. ____ Antennas, cabinets and mountings shall not be used for advertising.
13. ____ No lights and no signage beyond what is required by this permit and the Federal Communications Commission shall be allowed.

Frequency Interference

14. ____ **30 days prior to the issuance of a building permit**, the applicant shall submit a letter, on AT&T letterhead, agreeing to participate in a County-wide program to resolve frequency interference problems.

Exterior Noise

15. ____ **Within 30 days of issuance of the final building permit**, the applicant shall submit evidence for review and approval by the CDD staff that the wireless telecommunications facility meets acceptable exterior noise level standards as established in the Noise and Land Use Compatibility Guidelines contained in the Noise Element of the County General Plan. The noise levels considered for this site shall be the aggregate of the approved equipment, as well as, any existing equipment on the subject pole. The evidence shall include actual noise monitoring

data recorded at the site. The report shall be prepared by a consultant chosen by CDD staff and paid for by the applicant.

The facility shall be kept in good working order at all times so that noise levels do not increase above 60 decibels over the life of the project. If the noise emanating from the facility increases above 60 decibels for any reason, then the applicant shall take immediate corrective action (for example, replace the fan).

Camouflaging

16. _____ A. All proposed antennas, antenna supports, and conduits shall have a non-reflective finish. Paints with a reflectivity less than 55 percent are required. All equipment shall be painted to match its surroundings (e.g., light brown for the antennas, supports and equipment boxes).
- B. Color photographs showing the as-built condition shall be submitted for review of the CDD staff to verify compliance with this Condition of Approval within 30 days of completing construction.
17. _____ Prior to construction, the applicant, CDD and Public Works Department must engage adjacent neighbors to identify and provide the least impactful aesthetic options for the proposed project (e.g., colors) to ensure the project is consistent with this particular residential street.

Work Restrictions

18. _____ The applicant shall make a good faith effort to minimize project-related disruptions to adjacent properties, and to nearby uses. This shall be communicated to all project-related contractors and maintenance personnel.
19. _____ The project sponsor shall require their contractors and subcontractors to fit all internal combustion engines with mufflers which are in good condition and shall locate stationary noise-generating equipment such as air compressors as far away from existing residences as possible.
20. _____ The site shall be maintained in an orderly fashion. Following the cessation of construction activity, all construction debris shall be removed from the site.
21. _____ Non-emergency maintenance, construction, and other activities on the site related to this use are restricted to the hours of 8:30 A.M. to 5:00 P.M., Monday through Friday, and shall be prohibited on State and Federal holidays on the calendar dates that these holidays are observed by the State or Federal government as listed below:

New Year's Day (State and Federal)
Birthday of Martin Luther King, Jr. (State and Federal)
Washington's Birthday (Federal)
Lincoln's Birthday (State)
President's Day (State and Federal)

Cesar Chavez Day (State)
Memorial Day (State and Federal)
Independence Day (State and Federal)
Labor Day (State and Federal)
Columbus Day (State and Federal)
Veterans Day (State and Federal)
Thanksgiving Day (State and Federal)
Day after Thanksgiving (State)
Christmas Day (State and Federal)

For specific details on the actual day the state and federal holidays occur, please visit the following websites:

Federal Holidays:

http://www.opm.gov/Operating_Status_Schedules/fedhol/2013.asp

California Holidays:

<http://www.ftb.ca.gov/aboutFTB/holidays.shtml>

Party Responsible for Permit Compliance

22. _____ The permittee (wireless facility operator) is responsible for keeping CDD informed of who is responsible for maintenance of compliance with this permit and how they may be contacted (e.g. mailing and email addresses, telephone number) at all times.
- A. **30-days prior to the issuance of a building permit**, the permittee shall provide the name of the party (carrier) responsible for permit compliance and their contact information.
- B. Should the responsible party subsequently change (e.g., facility is acquired by a new carrier), within 30 days of the date of the change, the permittee shall issue a letter to CDD on the name of the new party who has been assigned permit compliance responsibility and their contact information. Failure to satisfy this condition may result in the commencement of procedures to revoke the permit.

Application Costs

23. _____ This application is subject to an initial application deposit of \$2,700.00 which was paid with the application submittal, plus time and material costs if the application review expenses exceed 100% of the initial deposit. **Any additional costs due must be paid within 60 days of the permit effective date or prior to use of the permit, whichever occurs first.** The applicant may obtain current costs by contacting the project planner. If you owe additional fees, a bill will be sent to you shortly after permit issuance.

PUBLIC WORKS CONDITIONS OF APPROVAL

Applicant shall comply with the requirements of Title 8, Title 9 and Title 10 of the Ordinance Code. Any exception(s) must be stipulated in these Conditions of Approval. Conditions of Approval are based on the site plans submitted to the Department of Conservation and Development, Community Development Division, on June 19, 2013.

COMPLY WITH THE FOLLOWING CONDITIONS OF APPROVAL PRIOR TO ISSUANCE OF A BUILDING PERMIT AND PRIOR TO INITIATION OF THE USE PROPOSED UNDER THIS PERMIT.

Access to Adjoining Property - Proof of Access

24. ____ Applicant shall furnish proof to the Public Works Department of the acquisition of all necessary rights-of-way, rights of entry, permits, and/or easements for the construction of off-site, temporary or permanent, public and private road and drainage improvements and cell site improvements.

Encroachment Permit

25. ____ Applicant shall obtain an encroachment permit from the Application and Permit Center for construction of improvements within the right-of-way.

Proof of Franchise Agreement/Owner of Light Pole Authorization

26. ____ For cell sites within the public right-of-way, the applicant shall provide evidence to the Public Works Department, Real Property Division that they are included in the statewide franchise agreement issued by the CPUC (California Public Utilities Commission); or, if unable to do so, the applicant shall enter into a license agreement with the County.

ADVISORY NOTES

ADVISORY NOTES ARE NOT CONDITIONS OF APPROVAL; THEY ARE PROVIDED TO ALERT THE APPLICANT TO ADDITIONAL ORDINANCES, STATUTES, AND LEGAL REQUIREMENTS OF THE COUNTY AND OTHER PUBLIC AGENCIES THAT MAY BE APPLICABLE TO THIS PROJECT.

- A. Additional requirements may be imposed by the Fire District, Water District, Sanitary District or the Building Inspection Division. It is advisable to check with these agencies prior to requesting a building permit or proceeding with the project.
- B. The Building Inspection Division will require three full sized sets of building plans which must be stamped by the Community Development Division and by the Sanitary District prior to issuance of building permits.

- C. The project sponsor is required by the FCC to work with neighbors to correct any interference to telephones, televisions or other electronic equipment caused by wireless telecommunication facilities.
- D. NOTICE OF OPPORTUNITY TO PROTEST FEES, ASSESSMENTS, DEDICATIONS, RESERVATIONS OR OTHER EXACTIONS PERTAINING TO THE APPROVAL OF THIS PERMIT.

Pursuant to California Government Code Section 66000, et seq., the applicant has the opportunity to protest fees, dedications, reservations or exactions required as part of this project approval. To be valid, a protest must be in writing pursuant to Government Code Section 66020 and must be delivered to the Community Development Division within a 90-day period that begins on the date that this project is approved. If the 90th day falls on a day that the Community Development Division is closed, then the protest must be submitted by the end of the next business day.