



Staff Report

STAFF REPORT DATE: December 2, 2020

HEARING DATE: December 9, 2020

TO: Interested Parties

FROM: Sambo Kirkman, Senior Planner

PROPOSAL: **AT&T Small Cell at Nimbus Condition of Approval Modification (WF2020-0020)**

LOCATION: The site is located in the public right-of-way in the planter area adjacent to 9350 SW Nimbus Avenue.

ZONING / NAC: Office Industrial-Washington Square (OI-WS) / Greenway

SUMMARY: The applicant New Cingular Wireless PCS, LLC, representing AT&T, requests a modification of a condition of approval (COA) associated with a previously approved application WF2020-0011 AT&T Small Cell Facility at Nimbus. The applicant requests to remove references to the undergrounding of the PGE transformer. The applicant in the approval of WF2020-0011 stated the PGE transformer was part of the small cell application in error and that the PGE equipment would be placed underground.

APPLICANT: New Cingular Wireless PCS, LLC
Kristy Weaver
16331 SW 72nd Way
Redmond, WA 98052

APPLICANT'S:
REPRESENTATIVE J5 Infrastructure Partners
Meredith Hewett
2030 Main Street, Suite 200
Irvine, CA 92614

RECOMMENDATION: **APPROVAL of AT&T Small Cell at Nimbus Condition of Approval Modification WF2020-0020**, subject to conditions of approval herein.

BACKGROUND FACTS

Key Application Dates

Application	Submittal Date	Application Deemed Complete	90-Day*
WF2020-0020	October 27, 2020	October 27, 2020	January 25, 2021

* Pursuant to the Federal Communication Facility Order No. 18-133 new small cell facilities are to be processed within 90-days of submittal. This is the latest date by which a final decision on the proposal can be made without a tolling agreement.

Existing Conditions Table

Zoning	Office Industrial – Washington Square (OI-WS)	
Current Development	Right-of-Way	
Site Size & Location	The site is located in the public right-of-way in the planter area adjacent to 9350 SW Nimbus Avenue	
NAC	Greenway	
Surrounding Uses	Zoning: North: OI-WS	Uses: North: Commercial
	South: OI-WS	South: Commercial
	East: OI-WS	East: Commercial
	West: OI-WS	West: Commercial

Project Description

The applicant, New Cingular wireless, requests to modify a previous decision for the AT&T Small Cell at Nimbus (WF2020-0020) by removing the references to the undergrounding of a PGE transformer shown on their approved site plan. The request specifically addresses the following condition found in Land Use Order No. 2768 (Exhibit 1.3):

2. *All construction shall be carried out in accordance with the site plan and elevations as approved by the Planning Commission, on file at City Hall. (Planning/SK)*

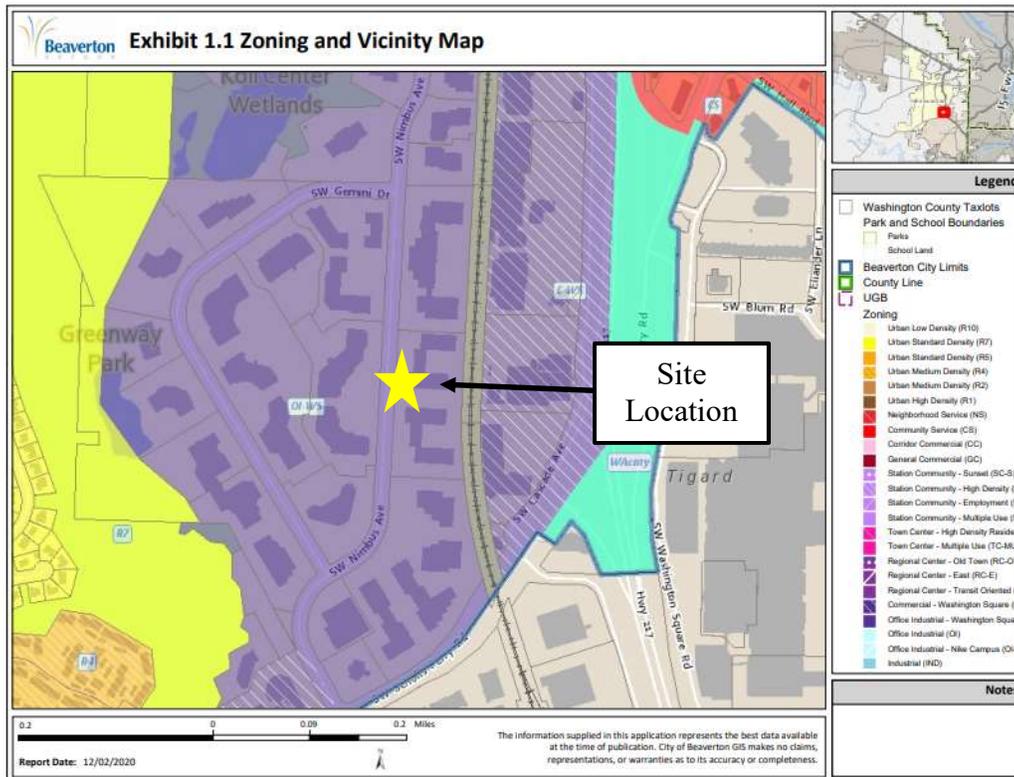
During the July 15, 2020 Planning Commission, the question was raised by the Planning Commission whether equipment on a micro pad adjacent to the small cell facility was located underground. The applicant responded in error, stating that the equipment would be located underground adjacent to the small cell facility being proposed. The micro pad is to contain an equipment cabinet with an above-ground transformer to be installed, operated and maintained by Portland General Electric (PGE). This PGE transformer was

not supposed to be part of the small cell application. The applicant requested a Planning Director's Interpretation regarding the review of PGE equipment as part of Small Cell application.

On October 14, 2020, the City's Community Development Director issued a Director's Interpretation (Exhibit 1.4), which determined that while the small cell facility is connected underground to the PGE transformer, "...equipment in the right-of-way owned, operated, and maintained by PGE is not part of the WCF and therefore would not be part of the land use review component of a Small Cell Application, specifically the Wireless Facilities application in the BDC."

In the Director's Interpretation, the Director acknowledge the difficulties in processing small cell facilities, especially those within the right-of-way, as land use applications when complying with less restrictive and often challenging federal regulations. The City is working to remove the review of small cell facilities in the right-of-way from the Beaverton Development Code to a separate document. This new Small Wireless Facility policy will address design requirements that are unique to these types of Wireless Communication Facilities.

ZONING/VICINITY/AERIAL MAP



DESCRIPTION OF APPLICATION AND TABLE OF CONTENTS

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<u>Attachment B:</u>	Conditions of Approval	COA1

Exhibits

Exhibit 1. Materials submitted by Staff

- Exhibit 1.1 Vicinity Map (page SR-4 of this report)
- Exhibit 1.2 Aerial Map (page SR-4 of this report)
- Exhibit 1.3 Land Use Order No. 2768
- Exhibit 1.4 DI2020-0002 AT&T Small Director's Interpretation

Exhibit 2. Materials submitted by the Applicant

- Exhibit 2.1 Submittal Package including plans (On file at City Hall)

Public Comment

No public comments received as of the date of Staff Report issuance.

**Analysis & Findings for
Wireless Communication Facility-Three
WF2020-0020 – AT&T Small Cell at Nimbus Conditions of Approval Modification**

Section 40.96.15.3.C Approval Criteria:

in order to approve a Wireless Facility Three application; the decision-making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

- 1. The proposal satisfies the threshold requirements for a Wireless Facility Three application.**

Facts and Findings:

The applicant proposes to modify plans, associated with a previously approved application, WF2020-0011 approval of a new small cell facility, specifically removing references to the PGE transformer as part of the small cell facility approval. Section 50.95.6. of the Development Code states that, "The process type for an application to modify a decision shall be based upon the thresholds for the appropriate application listed in Chapter 40". The request meets Threshold No. 5 which reads:

"In any zoning district, installation of wireless communication facilities on streetlights or utility poles within or adjacent to the right-of-way of designated Collector Streets, Neighborhood Route Streets or Local Streets."

Therefore, staff finds that the proposal meets the criterion for approval.

- 2. All City application fees related to the application under consideration by the decision-making authority have been submitted.**

Facts and Findings:

The applicant submitted the required deposit for a small cell application.

Therefore, staff finds that the proposal meets the criterion for approval.

- 3. In relationship to the existing surroundings and future allowed uses, the location, size, shape, height, spatial and visual arrangement of the use and structure is compatible.**

Facts and Findings:

The proposed modification addresses an error made by the applicant that included a PGE transformer as part of their small cell facility approval. The design of the small cell facility which includes the antenna, replacement streetlight pole, and associated equipment are to remain as approved in WF2020-0011.

Therefore, staff finds that the proposal meets the criterion for approval.

- 4. The size dimensions, configuration and topography of the site and natural and man-made features on the site can reasonably accommodate the proposal.**

Facts and Findings:

The proposed modification does not impact the approved design to replace the existing streetlight with a replacement pole containing the new small cell facility. It was determined that the size dimensions, configuration and topography of the site can reasonably accommodate the proposal.

Therefore, staff finds that the proposal meets the criterion for approval.

- 5. That the development has been designed to, where possible, incorporate and preserve existing trees and vegetation of significant size and species.**

Facts and Findings:

The applicant does not propose to remove any trees of significant size and species.

Therefore, staff finds that the criterion is not applicable to this request.

- 6. That grading of the site shall take place with attention to minimizing the possible adverse effect of grading on the natural vegetation and physical appearance of the site.**

Facts and Findings:

No grading is required for the proposed design. Staff concurs that grading is not expected to impact the site beyond the installation of the new pole and will not adversely affect natural vegetation or the physical appearance of the site.

Therefore, staff finds that the proposal meets the criterion for approval.

- 7. That the quality, location, size and aesthetic design of walls, fences, berms, hedges, screen planting and landscape areas have minimal adverse effects on existing or approved abutting land uses.**

Facts and Findings:

No walls, fences, berms, hedges, screen planting or additional landscape are part of the proposed design. The proposed location is within the public right-of-way. The small cell facility would be installed interior to the pole, no additional structures are required.

Therefore, staff finds the criterion is not applicable to this proposal.

- 8. All critical facilities and services related to the development have, or can be improved to have, adequate capacity to serve the proposal at the time of its completion.**

Facts and Findings:

As determined by the previous approval, all critical facilities and services related to the development will have adequate capacity to serve the proposed design at the time of its completion.

Therefore, staff finds that the proposal meets the criterion for approval.

- 9. The proposal is consistent with all applicable Site Development Requirements of Sections 20.05, 20.10, 20.15, and 20.20 of the Development Code unless the applicable provisions are subject to an Adjustment, Planned Unit Development, or Variance which shall be already approved or considered concurrently with the subject proposal.**

Facts and Findings:

The applicant states the proposal is consistent with all applicable site development requirements of Development Code Chapter 20 - Land Use. Staff cites the code conformance chart herein, which shows compliance with the applicable standards of Chapter 20, in addressing the above-mentioned criteria.

Therefore, staff finds that the proposal meets the criterion for approval.

- 10. The proposal is consistent with all applicable provisions of Chapter 60 (Special Requirements) and that all improvements, dedications, or both required by the applicable provisions of Chapter 60 (Special Requirements) are provided or can be provided in rough proportion to the identified impact(s) of the proposal.**

Facts and Findings:

The modification applicant states the proposal remains consistent with applicable provisions of Development Code Chapter 60 – Special Requirements. Staff cites the Code Conformance Analysis chart herein, which evaluates the proposal as it relates to the applicable Code requirements of Chapter 60, in addressing the above-mentioned criteria.

Therefore, staff finds that by meeting the conditions of approval, the criterion is met.

11. **The proposal does not conflict with any existing City approval, except the City may modify prior approvals through the WCF process to comply with federal laws.**

Facts and Findings:

This proposal to modify the previously approved plan does not affect or conflict with any existing City approval. Construction of a small cell facility is a permitted use in the OI-WS zone, subject to approval through this application.

Therefore, staff finds that the proposal meets the criterion for approval.

12. **The proposal contains all applicable application submittal requirements as specified in Section 50.25.1 of the Development Code.**

Facts and Findings:

The applicant submitted the application on October 27, 2020 and deemed their application complete. In review of the materials during the application review, staff finds that all applicable application submittal requirements, identified in Section 50.25.1 are contained within this proposal.

Therefore, staff finds that the proposal meets the criterion for approval.

13. **Applications and documents related to the request, which will require further City approval, shall be submitted to the City in proper sequence.**

Facts and Findings:

The applicant has submitted the required application materials for review of a Wireless Facility Three application. Federal requirements limit time allowed for the City to approve a small cell facility. Staff finds that applications and documents related to this permit that require further City approval have been submitted in proper sequence.

Therefore, staff finds that the proposal meets the criterion for approval.

**Code Conformance Analysis Use and Site Development Requirements
Office Industrial – Washington Square (OI-WS)**

CODE STANDAR	CODE REQUIREMENT	PROJECT PROPOSAL	MEETS CODE
Development Code Section 20.05.15			
Maximum Height in R-O-W	30-feet	The proposed modification does not impact the height of the approved small cell.	Yes
Maximum Height Equipment Shelters	12 feet	The proposed modification does not impact the approved location of the equipment.	N/A
Setbacks	Front: 10 feet Side: 10 feet Rear: None	The proposal is to locate a small cell facility in the public right-of-way. Setback back requirements do not apply as there are no property lines associated with the right-of-way.	N/A
Development Code Section 20.05.20			
New WCF on streetlights in the right-of-way	Wireless Facility Type 3 approval when located on streetlights or utility poles in the right-of-way of designated Collector	The proposed modification does not impact the approved design to replace an existing streetlight with a new pole containing a small cell facility.	Yes

Chapter 60 – Special Requirements

CODE STANDARD	CODE REQUIREMENT	PROJECT PROPOSAL	MEETS CODE?
Development Code Section 60.70.35 Development Standards for WCF			
60.70.35.1 General	Top Hat antenna arrays are prohibited.	The proposed modification does not impact the approved design to place the antennas internal to the pole structure.	Yes
60.70.35.2 Height	The max height of any new WCF tower, WCF antenna collocation or both shall conform to the maximum height...	The proposed modification does not impact the approved the 30-foot height.	Yes
60.70.35.3 Lighting	The installation of light fixtures to a WCF tower is prohibited unless required by FAA or ODA.	The proposed modification does not impact the approved design and does not propose to install light fixtures on the WCF tower, outside of the required replacement streetlight.	N/A
60.70.35.4 Signage	A) Specific identification signage requirements. B) No logos or advertising signage permitted.	The proposed modification does not impact the approved design with the required emergency signage with no other signage is permitted.	Yes
60.70.35.5 At-Grade Equipment Screening	At-Grade equipment must be screened by a site obscuring fence...	The proposed modification does not impact the approved design with the small cell facilities are to be located internal to the streetlight pole.	N/A
60.70.35.6 Evergreen Trees	The decision-making authority may require evergreen trees at their discretion for properties abutting residential...	The proposed modification does not impact the approved design to locate the small cell facility internal to the streetlight pole. No plantings are proposed with this proposal	N/A
60.70.35.7 Required Plantings	Required plantings shall be irrigated and maintained.	The proposed modification does not impact the approved design to locate the small cell facility internal to the streetlight pole. No plantings are proposed.	N/A

60.70.35.8 Visual Impacts	Decision making authority decides if the tower must be painted or non-reflective metal.	The proposed modification does not impact the approved design that proposes a gray streetlight pole.	Yes
60.70.35.9 Noise	Noise generating equipment shall be sound buffered to reduce sound levels at the property line.	The proposed modification does not impact the approved design to replace an existing streetlight pole with a new pole and the requirement associated with the approval (WF2020-0011)	Yes
60.70.35.10 Stealth Design	Specific thresholds in Chapter 40 provide for stealth design ...	The proposed modification does not impact the approved design to replace an existing streetlight pole with a new pole containing the small cell facility internally thereby providing stealth design.	Yes
60.70.35.11-13 Building, Roof, Wall and Structure Mounted Antennas	Standards for antennas attached to buildings, roofs or structures, except WCF towers.	The applicant does not propose building, roof or structure mounted antennas.	N/A
60.70.35.14 Setbacks	A. Setbacks shall comply with the underlying standards of the zoning district.	As addressed in the Chapter 20 Code Conformance Analysis, the proposal is located within the public right-of-way, the setbacks to the property lines do not apply.	N/A
60.70.35.15 Parking	A minimum of one (1) readily accessible parking space shall be provided...	The proposed modification does not impact the approved design to place the small cell facility in the public right-of-way, no parking spaces are proposed for the site. Coordination with the City's Public Works Department will be required for work within the right-of-way similar to what is expected with other utilities in the right-of-way.	N/A
60.70.35.16 Clustering of Towers	Clustering of towers shall be prohibited in Residential and Multiple Use Zones.	The applicant does not propose to cluster towers. The request is to replace an existing streetlight with a new pole containing both the light and the small cell facility.	Yes

60.70.35.17 Collocation Capacity	Collocation Capacity. New WCF towers and associated site area shall be designed to accommodate a minimum of one (1) additional future service...	The proposal is to replace an existing streetlight with a new small cell facility.	N/A
60.70.35.18 Standards for Multiple Use Zones	Specific standards for WCF in Multiple Use Zoning Districts.	The subject site is zoned OI-WS a multiple use zone. The facility is to be located within the public right-of-way and the equipment and cables are to be located internal to the streetlight pole. The proposed design will meet the standards of this section.	Yes
60.70.35.19 Standards for WCF in Public ROW	Specific standards for WCF in the Public ROW:	The proposed modification does not impact the approved design that met the standards in this section.	Yes
60.70.40	Development Standards for Satellite Antennas	Satellite antennas are not proposed.	N/A
60.70.45	Requirements for Non-Exempt Amateur Radio Facilities	Non-Exempt Amateur Radio Facilities are not proposed.	N/A
60.70.50.1 Required Studies and Information	Required studies and information...visual impact report, written summary of the findings of the visual analysis...	The proposed modification does not impact the approved design, all applicable studies and information have been provided.	Yes
60.70.60 Collocation Protocol	The applicant shall show proof satisfactory to the City that it has made reasonable inquiries at potential sites for collocation that would otherwise meet the applicant's need for signal coverage.	The proposed modification does not impact the approved design to replace an existing streetlight with a new pole. Future collocation would warrant additional review by the carrier on the ability for the replacement pole to handle additional collocation. The proposed design collocates a small cell facility with a streetlight pole, thereby meeting this standard.	Yes

Section 50.95 Modification of a Decision - Procedures.

The applicant has requested modifications to the site plan of the previously approved Wireless Facility Three (WF2020-0011) for the AT&T Small Cell at Nimbus, therefore, Section 50.95 of the Development Code is applicable to the request.

- 1. An applicant or successor in interest may file with the Director an application to modify a prior decision that was the subject of a Type 1, Type 2 or Type 3 procedure. In addition to other requirements, such an application to modify a prior decision shall describe the nature of the proposed change to the original decision and the basis for that change, including the applicable facts and law, together with the fee prescribed for that application type necessary to modify the prior decision. Such an application to modify a prior decision shall be subject to the approval criteria and development regulations in effect when the Director receives a complete application for the modification.**

The applicant has requested modification to the approve site plan referenced in the conditions of approval for WF2020-0011, this modification is associated with a decision, originally approved through a Type 3 procedure. The applicant must return to the Planning Commission to request this modification. The applicant's materials have been submitted along with a completeness waiver requesting the City being the review process for this application. The request is limited to modifying the approved site plan identified in Condition No. 2, specifically removing references to the PGE transformer as part of the small cell facility approval. All conditions of approval of WF2020-0011 remain effective.

Therefore, staff find, the proposal meets the criterion for approval.

- 2. An application for modification is subject to pre-application conference and completeness review; provided, the Director shall only require an application for modification to contain information that is relevant or necessary to address the requested change or the facts and regulations on which it is based. An application for modification is not subject to the neighborhood review meeting requirement.**

Pursuant to the Federal Communication Facility Order No. 18-133 local governments that all approvals needed for the installation of new small cell facilities are to be processed with a final decision on the proposal within 90-days of submittal. Based on the FCC's regulations, the requirements for a pre-application conference would trigger the 90-day review clock, prior to the submittal of a Small Cell application thereby potentially shortening the review time allotted for local jurisdictions. Staff in a phone call with the applicant on October 26 discussed the requirements for this application in lieu of the pre-application conference.

Therefore, staff find the criterion is not applicable to this proposal.

- 3. An application for modification does not extend the deadline for filing an appeal and does not stay appeal proceedings. An application for modification is subject to the 120-day requirement pursuant to ORS 227.178.**

Pursuant to the Federal Communication Facility Order No. 18-133 new small cell facilities are to be processed within 90-days of submittal. This is the latest date by which a final decision on the proposal can be made without a tolling agreement.

Therefore, staff find the criterion is not applicable to the proposal.

- 4. Only a decision that approves or conditionally approves an application can be modified. A decision denying an application cannot be modified. Refer to Section 50.99.**

The applicant has applied to modify the approved Wireless Facility Three application, WF2020-0011 AT&T Small Cell Facility at Nimbus.

Therefore, staff find the proposal meets the criterion for approval.

- 5. An application for modification shall be subject to a Type 1, Type 2, or Type 3 procedure as determined by the Director.**

The approved small cell facility project was originally processed under the Type 3 review procedures. The requested modification to the approved site plan associated with the project will follow the Type 3 review procedures.

Therefore, staff find the proposal meets the criterion for approval.

- 6. The process type for an application to modify a decision shall be based upon the thresholds for the appropriate application listed in Chapter 40. In all cases, regardless of the thresholds listed in Chapter 40, when a proposed modification involves a condition of approval, that condition of approval can be modified or removed only by the same decision making authority that issued the original decision and through the same procedure that was followed to establish the condition to be modified. Modification or removal of a condition of approval shall only be granted if the decision-making authority determines any one of the following:**

- A. The applicant or owner has demonstrated that a mistake of law or fact occurred, and that the mistake was substantial enough to warrant modification or removal of the condition to correct the mistake.**

The applicant states they seek to correct a mistake of fact, proposing to revise the approved site plan and clarifying an erroneous statement it made at the Planning Commission hearing, recorded Land Use Order No. 2768 (Exhibit 1.3).

The Planning Commission approved WF2020-0011 during the public hearing of July 15, 2020 and adopted Condition of Approval No. 2, which requires the small cell to be constructed according to the plan submitted for the hearing. The approved plans identified a PGE micro pad with a transformer to be placed underground. The applicant erred in incorporating PGE's equipment with their submittal and erred in identifying the equipment was to be placed underground. PGE in a separate approval process will be permitting and constructing and maintaining this equipment.

The Planning Director's Interpretation (DI2020-0002) determined that while the small cell facility is connected underground to the PGE transformer, "...equipment in the right-of-way owned, operated, and maintained by PGE is not part of the WCF and therefore would not be part of the land use review component of a Small Cell Application, specifically the Wireless Facilities application in the BDC".

The applicant's error is such it the proposal warrants the modification of the original approval.

Therefore, staff find the proposal meets the criterion for approval.

B. The condition could not be implemented for reasons beyond the control of the applicant and the modification will not require a significant modification of the original decision.

The applicant has not requested the modification of a condition based on reasons beyond their control nor require a significant modification of the original decision.

Therefore, staff find the criterion for approval is not applicable.

C. The circumstances have changed to the extent that the condition is no longer needed or warranted.

The condition is still warranted; however, the applicant has requested to modify the approved site plan referenced in Condition No. 2 with an updated site plan showing the PGE transformer is not part of the wireless facility approval.

Therefore, staff find the criterion for approval is not applicable.

D. A new or modified condition would better accomplish the purpose of the original condition.

The applicant's request is to modify the approved site plan referenced in condition no. 2 of WF2020-0011, which requires the small cell to be constructed according to the plans approved by the Planning Commission at the July 15, 2020 hearing. The approved plans identified a PGE micro pad with a transformer to be placed underground. The applicant erred in incorporating PGE's equipment with their submittal and erred in identifying the equipment was to be placed underground.

PGE in a separate approval process will be permitting and constructing the transformer above ground like other above ground equipment located in the planter area along SW Nimbus Avenue.

Through a Director's Interpretation (DI2020-0002), the applicant requested clarity on the elements of the small cell approval through the Beaverton Development Code. The Director determined that the PGE equipment to be permitted, constructed, and maintained by PGE was not part of the small cell approval, but instead is part of the PGE infrastructure.

Based on this interpretation the applicant's request to remove the PGE transformer from the wireless facility application better accomplishes the purpose of the original condition as it would align the approved plans with the Director's Interpretation.

Therefore, staff find the proposal meets the criterion for approval.

RECOMMENDATION

Based on the facts and findings presented, staff recommends **APPROVAL** of **WF2020-0020 AT&T Small Cell at Nimbus Conditions of Approval Modification**, subject to the applicable conditions identified in Attachment B.

**RECOMMENDED CONDITIONS OF APPROVAL
AT&T Small Cell at Nimbus Condition of Approval Modification
(WF2020-0020)**

1. All conditions of approval for WF2020-0011 shall remain effective. (Planning / SK)

**BEFORE THE PLANNING COMMISSION FOR
THE CITY OF BEAVERTON, OREGON**

IN THE MATTER OF A REQUEST FOR APPROVAL) ORDER NO. 2768
 OF A WIRELESS FACILITY, SPECIFICALLY A) WF2020-0011 ORDER APPROVING
 SMALL CELL FACILITY IN THE PUBLIC RIGHT-) AT&T SMALL CELL AT SW NIMBUS AVENUE
 OF-WAY ON SW NIMBUS AVENUE, J5)
 INFRASTRUCTURE PARTNERS FOR NEW)
 CINGULAR WIRELESS PCS, LLC, APPLICANT.

The matter came before the Planning Commission on July 15, 2020, on a request for a Wireless Facility application to install a small cell facility in the public right-of-way on SW Nimbus Avenue. The site location is in the planter area of SW Nimbus adjacent to 9350 SW Nimbus Avenue.

Pursuant to Ordinance 2050 (Development Code) Section 50.45, the Planning Commission conducted a public hearing and considered testimony and exhibits on the subject proposal.

The Commission raised a question regarding the visual design of a PGE micro pad north of the small cell facility. The applicant clarified the micro pad would not be visible as it would be installed underground.

The Commission, after holding the public hearing and considering all oral and written testimony, adopts the Staff Report dated July 8, 2020, and the findings contained therein, as applicable to the approval criteria contained in Section 40.96.15.3.C of the Development Code.

Therefore, **IT IS HEREBY ORDERED** that **WF2020-0011** is APPROVED, based on the testimony, reports and exhibits, and evidence presented during the public hearing on the matter and based on the facts, findings, and conclusions found in the Staff Report, dated July 8, 2020, and this land use order, subject to the conditions of approval as follows:

1. In accordance with Section 50.90.1 of the Development Code, Wireless Facility Three land use approval shall expire after two (2) years from the date of approval unless prior to that time a construction permit has been issued and substantial construction has taken place, or an application for extension is filed pursuant to Section 50.93, or that authorized development has otherwise commenced in accordance with Section 50.90.3.B. All other expirations associated with the small cell application applies. (Planning/SK)
2. All construction shall be carried out in accordance with the site plan and elevations as approved by the Planning Commission, on file at City Hall. (Planning/SK)
3. Prior to issuance of the Small Cell Permit the applicant shall confirm noise-generating equipment shall be sound-buffered by means of baffling or structural barriers to reduce the sound level measured at the property line abutting Multiple Use zoning districts and shall meet the standards established by the State of Oregon Department of Environmental Quality.(Planning/SK)
4. Prior to issuance of the Small Cell Permit the applicant shall confirm the small cell facility does not create any odor or vibration impacts to the surrounding area.(Planning/SK)

Motion **CARRIED**, by the following vote:

AYES: Lawler, Winter, Nye, Overhage, Saldanha, Uba
NAYS: None.
ABSTAIN: None.
ABSENT: Brucker.

Dated this 16th day of July, 2020.

To appeal the decision of the Planning Commission, as articulated in Land Use Order No. 2768 an appeal must be filed on an Appeal form provided by the Director at the City of Beaverton Community Development Department's office by no later than 4:30 p.m. on Monday, July 27, 2020.

PLANNING COMMISSION
FOR BEAVERTON, OREGON

ATTEST:

APPROVED:

 Digitally signed by Sambo Kirkman
DN: C=US,
E=skirkman@beavertonoregon.gov, O=City of
Beaverton, OU=GDD, CN=Sambo Kirkman
Date: 2020.07.16 13:58:49-07'00'

SAMBO KIRKMAN
Senior Planner

 Digitally signed by Jennifer
Nye
Date: 2020.07.16
10:39:29-07'00'

JENNIFER NYE
Chair

 Digitally signed by Jana Fox
DN: C=US, E=jfox@beavertonoregon.gov,
O=City of Beaverton, OU=Planning Division,
CN=Jana Fox
Reason: Approve Additional Items
Date: 2020.07.16 14:20:35-07'00'

JANA FOX
Current Planning Manager



MEMORANDUM

City of Beaverton

Community Development Department

To: Interested Parties
From: City of Beaverton Planning Division
Date: October 14, 2020
Subject: **Notice of Decision for DI2020-0002 AT&T Small Cell Director's Interpretation**

Please find attached the Notice of Decision for **DI2020-0002 AT&T Small Cell Director's Interpretation**. Pursuant to Section 50.40.11.E of the Beaverton Development Code, the decision for **DI2020-0002 AT&T Small Cell Director's Interpretation** is final, unless appealed within twelve (12) calendar days following the date of the decision. The procedures for appeal of a Type 2 Decision are specified in Section 50.65 of the Beaverton Development Code. The appeal shall include the following in order for it to be accepted by the Director:

- The case file number designated by the City.
- The name and signature of each appellant.
- Reference to the written evidence provided to the decision-making authority by the appellant that is contrary to the decision.
- If multiple people sign and file a single appeal, the appeal shall include verifiable evidence that each appellant provided written testimony to the decision-making authority and that the decision being appealed was contrary to such testimony. The appeal shall designate one person as the contact representative for all pre-appeal hearing contact with the City. All contact with the City regarding the appeal, including notice, shall be through this contact representative.
- The specific approval criteria, condition, or both being appealed, the reasons why a finding, condition, or both is in error as a matter of fact, law or both, and the evidence relied on to allege the error.
- The appeal fee of \$250.00, as established by resolution of the City Council.

The appeal closing date for DI2020-0002 AT&T Small Cell Director's Interpretation is 4:30 p.m., October 26, 2020.

The complete case files including findings, conclusions, and conditions of approval, if any, are available for review. The City of Beaverton has declared a State of Emergency due to COVID-19 and the Community Development Division is closed to the public until further notice. The Community Development Department is evaluating temporary changes to processes and procedures to respond appropriately to the COVID-19 State of Emergency and is committed to ensuring that the land use review process continues to fulfill the requirements of state and local law while protecting the health and wellbeing of the community. For more information about the case file, please contact Sambo Kirkman, Senior Planner at (503) 526-2557 or skirkman@beavertonoregon.gov



NOTICE OF DECISION

DATE: October 14, 2020

TO: All Interested Parties

FROM: Sambo Kirkman, Senior Planner

PROPOSAL: **DI2020-0002 AT&T Small Cell Director's Interpretation**

LOCATION: The site is in the public right-of-way in the planter area adjacent to 9350 SW Nimbus Avenue.

SUMMARY: The applicant, New Cingular Wireless PCS, LLC, for AT&T, requests the Director interpret the Beaverton Development Code regarding the review of PGE equipment as part of a small cell wireless facility application. Specifically exempting Wireless Facility land use review of PGE owned and operated equipment connecting to small cell facilities within the right-of-way.

APPLICANT: New Cingular Wireless PCS, LLC
Kristy Weaver
16331 SW 72nd Way
Redmond, WA 98052

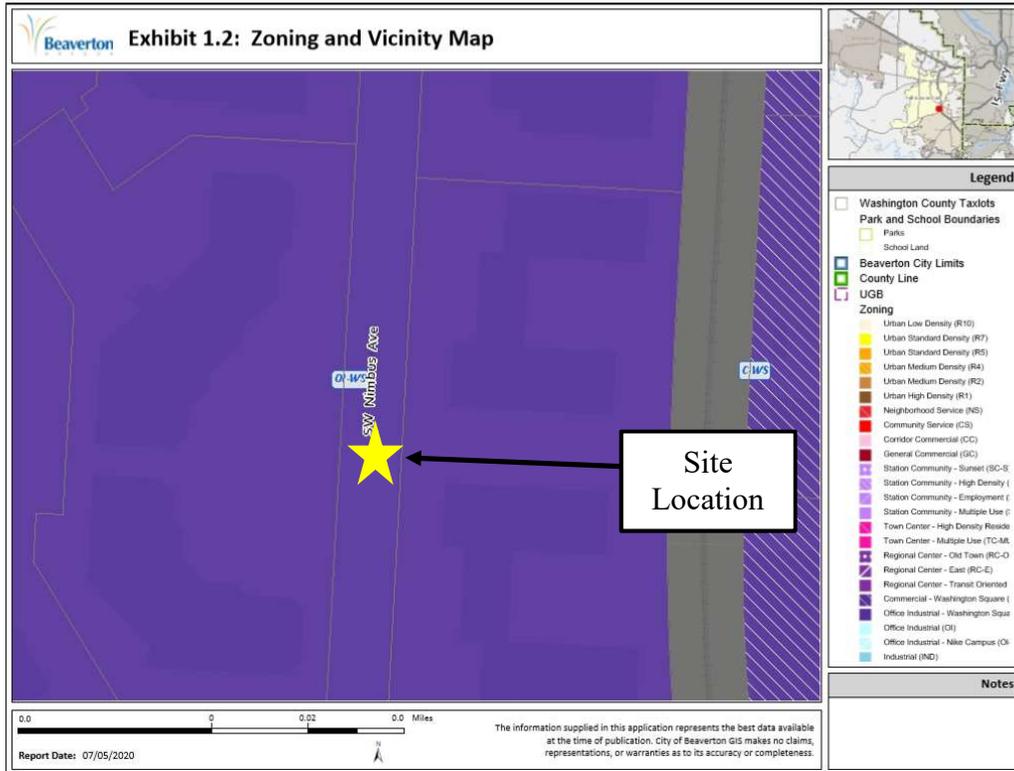
APPLICANT'S:
REPRESENTATIVE J5 Infrastructure Partners
Meredith Hewett
6732 SW Terri Ct.
Portland, OR 97225

APPLICABLE
CRITERIA: Director's Interpretation, Section 40.25.15.1.C

DECISION: **APPROVAL of DI2020-0002 AT&T Small Cell Director's Interpretation**, subject to conditions identified at the end of this report.

AUTHORIZATION: *Cheryl Twete*
Cheryl Twete, Community Development Director

ZONING/VICINITY/AERIAL MAP



BACKGROUND FACTS

Key Application Dates

Application	Submittal Date	Application Deemed Complete	120-Day*
DI2020-0002	Aug 4, 2020	Aug 19, 2020	Dec. 17, 2020

*Pursuant to Section 50.25.9 of the Beaverton Development Code this is the latest date, by which a final written decision on the proposal can be made.

Existing Conditions Table

Zoning	Office Industrial – Washington Square (OI-WS)	
Current Development	Right-of-Way	
Site Size & Location	The site is in the public right-of-way in the planter area adjacent to 9350 SW Nimbus Avenue	
NAC	Greenway	
Surrounding Uses	Zoning: North: OI-WS South: OI-WS East: OI-WS West: OI-WS	Uses: North: OI-WS South: OI-WS East: OI-WS West: OI-WS
	South: OI-WS	South: Commercial
	East: OI-WS	East: Commercial
	West: OI-WS	West: Commercial

Development of New Small Cell Regulations Underway

In 2017, the city adopted updates to its Wireless Facility regulations to amend the process for collocation and develop standards and processes for review of facilities in the right of-way (ROW). Based on feedback from the service providers and the upcoming changes to the federal regulations by the Federal Communications Commission (FCC), staff began looking at further updates to the permitting process and design standards to the city's Wireless Facilities regulations in the Summer of 2018.

In September 2018, the Federal Communication Commission (FCC) adopted new regulations limiting city control of wireless communication facilities, specifically small cell installation. City staff's work expanded to developing new regulations and processes that will address regulatory changes made by the FCC. Currently, review of a small cell facility in the right-of-way requires completing an interim Small Cell Application that the City created to comply with FCC rules until a permanent approach is adopted, and one component of this application is obtaining land use approval through the Wireless Facility application.

The draft approach being developed by staff includes removing review of small cell wireless facilities in the right-of-way from the Beaverton Development Code (BDC) Wireless Communications Facilities Regulations and creating a separate regulatory document to govern these installations. The BDC will continue to govern some aspects of wireless installations not located in the right-of-way.

This Director’s Interpretation has been requested to address the Small Cell Facility approved near 9350 SW Nimbus Avenue, specifically to clarify whether associated PGE equipment is within the scope the existing Wireless Facility land use application.

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Exhibits

Exhibit 1.	Materials submitted by Staff
Exhibit 1.1	Vicinity Map (page SR-2 of this report)
Exhibit 1.2	Zoning Map (page SR-2 of this report)
Exhibit 2.	Public Comment
No Comments Received	
Exhibit 3.	Materials submitted by the Applicant
Exhibit 3.1	Submittal Package including plans (on file at City Hall)

**ANALYSIS AND FINDINGS
DIRECTOR'S INTERPRETATION
AT&T Small Cell
DI2020-0002**

Section 40.25.15.1.C. of the Development Code identifies the approval criteria for evaluating and rendering a decision on all Director's Interpretation applications.

The approval criteria are as follows:

1. The proposal satisfies the threshold requirements for a Director's Interpretation application.

The applicant requests that the Director interpret Beaverton Development Code Section 60.70 *Wireless Communications Facilities* and Chapter 90 regarding the review of PGE equipment as part of a small cell wireless facility application. Specifically, it is requested that of PGE owned and operated equipment connecting to small cell facilities within the right-of-way be exempted from Wireless Facility application land use review. This request relates to the approval of the small cell facility on SW Nimbus for AT&T (WF2020-0011). This request meets Threshold 1 for a Director's Interpretation:

1. *A request that the Director interpret the Development Code in writing.*

Therefore, the Director finds that the proposal meets the criterion for approval.

2. All City application fees related to the application under consideration by the decision-making authority have been submitted.

The fee for a Director's Interpretation application has been paid.

Therefore, the Director finds that the proposal meets the criterion for approval.

3. That the interpretation is consistent with the City's Comprehensive Plan and other provisions within this Code.

The applicant has requested that the City interpret the Beaverton Development Code (BDC) regarding the review of PGE equipment as part of a small cell wireless facility application.

Relevant Comprehensive Plan Sections

The applicant states there are no provisions in the City's Comprehensive Plan relevant to their request. The Director concurs with the applicant's assertion. While Chapter Five *Public Facilities and Services Element* of the Comprehensive Plan addresses some utilities, both Wireless Communication Facilities and electrical services are not identified in this Chapter as a public facility relevant to the policies in this Comprehensive Plan chapter.

Relevant Beaverton Development Code Sections:

The sections of the Beaverton Development Code that are relevant to this request are below:

60.50.25.8 Uses Requiring Special Regulations

8. Utilities: The erection, construction, alteration, or maintenance by public utility or municipal or other governmental agencies of any electrical, gas, steam, potable and non-potable water transmission or distribution systems, collection, communication, supply or disposal system, including poles, towers, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar equipment and accessories in connection therewith, but not including buildings, shall be Permitted in any district

60.70.35.19. Specific Development Standards for WCF in Public Road Right-of-Way

M. Equipment cabinets shall be placed completely within underground vaults. No at-grade or pole-mounted equipment cabinets, equipment in the public right-of-way, or on any equipment on private property (above or below grade) abutting the structure is permitted. The mounting of equipment to the structures shall conform to the following:

1. The smallest antennas, equipment, and equipment cabinets to satisfy engineering requirements and service objectives shall be utilized.
2. All cabling and wiring shall be placed completely underground or on the interior of the structure, tower or pole. Collocates to poles that existed on or before the date of adoption of this text amendment, that cannot accommodate cabling run on the interior, may have cables attached to the exterior, provided that they are painted to match the color of the structure.
3. Mounting hardware and accessory equipment shall be painted to match the color of the structure, tower or pole.

Chapter 90: Definitions

Utility. For the purposes of this code, a utility includes but is not limited to a local exchange carrier or an electric, gas, water, or other public utility, and who owns or controls poles, ducts, conduits, or rights of way used, in whole or in part, for any wire or cable communications [ORD 4312; July 2004]

Wireless Communication Facility (WCF). [ORD 4248; May 2003] A non-staffed facility for the transmission of radio frequency (RF) signals, usually consisting of an equipment shelter, cabinet or other enclosed structure housing electronic equipment; a support structure; and antenna systems or other transmission and reception devices. This includes cellular towers, cellular antennas, satellite dishes, and microwave dishes.

The Director concurs with the applicant's assertion that the equipment installed, operated, and maintained by Portland General Electric is not part of a Wireless Communication Facility. As the applicant states:

- The PGE equipment addressed by the applicant in the approval of a small cell facility (WF2020-0011) is a power transformer that in error was discussed as part of a WCF approval.
- While the PGE transformer will provide correct levels of power to the small cell facility, it is part of the PGE infrastructure and not the WCF.
- Pursuant to BDC Section 60.50.25.8, utilities are permitted in all zoning districts, this would include PGE infrastructure.

The Director notes that BDC definitions include electrical services as a utility and PGE is the electrical service provider for the City. Standards that apply to WCF in the right-of-way address equipment associated with supporting the antennas but does not specifically address power sources to the facility. Components of the WCF described in Chapter 90 of the BDC do not include equipment provided by a separate utility provider and therefore would not be part of WCF application approval.

The PGE transformer is described as equipment that powers the WCF like transformers that provide power to other uses throughout the city. Land use review associated with PGE infrastructure typically include Design Review applications for equipment located on private property and not within the public right-of-way. The City's Utility Undergrounding regulations (BDC 60.65) are implemented through Land Division and Design Review applications. The Utility Undergrounding regulations in the BDC do not apply to PGE equipment within the public right-of-way. However, these facilities may be evaluated by Site Development through a Right-of-Way Permit application.

Summary

Based on the analysis above and the information submitted by the applicant, the Director concludes that equipment in the right-of-way owned, operated, and maintained by PGE is not part of the WCF and therefore would not be part of the land use review component of a Small Cell Application, specifically the Wireless Facilities application in the BDC.

However, equipment in the right-of-way owned, operated, and maintained by PGE may be subject to review under other components of the Small Cell Application.

Therefore, the Director finds that the proposal meets the criterion for approval.

- 4. When interpreting that a use not identified in the Development Code is a permitted, a conditional, or prohibited use, that use must be substantially similar to a use currently identified in the subject zoning district or elsewhere in the Development Code.**

The applicant has not requested an interpretation of a use not identified in the Development Code, because Wireless Communication Facilities are currently identified in the code.

Therefore, the Director finds that the approval criterion is not applicable.

- 5. The proposal contains all applicable submittal requirements as specified in Section 50.25.1 of the Development Code.**

All applicable submittal requirements for the Director's Interpretation application have been submitted. The application was deemed complete by the city on August 19, 2020.

Therefore, the Director finds that the proposal meets the criterion for approval.

- 6. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.**

The necessary documents related to the Director's Interpretation have been submitted.

Therefore, the Director finds that the proposal meets the criterion for approval.

CONCLUSION

Based on the facts and findings stated above, the Community Development Director interprets that equipment within the public right-of-way, owned, operated and maintained by PGE that connects to a small cell facility is not considered part of the Wireless Communication Facility and is exempt from the Wireless Facility land use review component of the Small Cell Application. However, it may be subject to review under other components of the Small Cell Application.

CONDITIONS OF APPROVAL

No conditions of approval are being proposed with DI2020-0002 AT&T Small Cell Director's Interpretation.