

WIRELESS – CONDITONAL USE PERMIT REVIEW (CUP)

Wireless Communications Facility

(AT&T: OL0734 Olympia Mission Creek)

Submitted to City of Olympia, Washington
Community Planning & Development Department

J5 Infrastructure Partners on behalf of New Cingular Wireless PCS, LLC (“AT&T”) 19801 SW 72nd Ave. Ste 200, Tualatin, OR 97062

Representative: J5 Infrastructure Partners
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Property-Owner: Elks Lodge
1818 4th Avenue East
Olympia, WA 98507

Project Address: 1818 4th Avenue East

Description & Tax Lot: GPS Coordinates: 47.04659, -122.87704
Parcel No. 80800400300

Zoning Classification: High Density Corridor 2 (HDC-2)

J5 Infrastructure is submitting this application on behalf of New Cingular Wireless PCS, LLC (“AT&T”).

1. PROJECT OVERVIEW

AT&T is proposing to construct a new 120-foot-tall monopine (“WCF” or “facility”), OL0734 Olympia Mission Creek site, at the abovementioned address. The objective is to provide outdoor, in vehicle, and in-building coverage within a geographic area in high demand. All ground equipment will be located within a 20’x33.75’ (675’) secured lease area. The antennas and ancillary equipment will be colored to match the structure/branches. The monopine is designed to allow for collocation for future wireless providers. There will be a backup generator for emergency purposes only.

AT&T intends for its application of the proposed Wireless Communication Facility (WCF) to include the following documents (collectively, “AT&T’s Application”):

- Attachment 1 - Project Narrative (this document)
- Attachment 2 - Statement of Compliance
- Attachment 3 – Wireless CUP Checklist
- Attachment 4 – ATT RF Safety Compliance Statement
- Attachment 5 – RF Justification Report
- Attachment 6 – Title Report
- Attachment 7 – Noise Report
- Attachment 8 – SEPA Checklist
- Attachment 9 – Certified Owners List (Mailing)
- Attachment 10 – Certified Occupants List (Mailing)
- Attachment 11 – FCC License
- Attachment 12 – Zoning Plan Set
- Attachment 13 – Owner Authorization

As shown in AT&T’s Application, AT&T’s proposal meets the county’s criteria for siting new wireless communications facilities and complies with all other applicable county, state, and federal regulations. AT&T’s proposal is also the least intrusive means of meeting AT&T’s service objective. Accordingly, AT&T respectfully requests that the city approve this project as proposed and modify the approved conditional use permit to allow collocation.

Please Note: The responses and information included in **this document** are intended to support and supplement this application request. All references to “Attachments” in this Project Narrative and the Statement of Code Compliance are in reference to the attachments included as part of AT&T’s Application.

2. PROPOSED PROJECT DETAILS

2.1. Subject Property. Detailed information regarding the subject property and proposed lease area is included in **Attachment 12, Zoning Plan Set**.

2.1.1. Proposed Location; Use; Zoning.

- The property is approximately 40,698 SF (0.93 Acre) and zoned High Density Corridor 2 (HDC-2). The proposed location is within a parking lot for the Elks Club with direct access to the surrounding streets, including State Ave NE, 4th Avenue NE, Turner Street SE, and Fir Street SE—utilities are available. (Note: Alleyways access are there providing access to the streets.) There are no buildings or development on this portion of the site; however, it is part of the lodge (building) complex. The land is relatively flat (2-6% slope). There is no vegetation (other than landscape islands and perimeter vegetation). Surrounding land uses include:
 - North: Business / Residences
 - South: Residences
 - East: Businesses
 - West: Businesses/residences

Note: Three (3) parking spaces of the existing 53 will be eliminated. The Code requires 6 spaces per 1,000 SF of lodge space and the calculated area is approximately 8,200 SF. Thus, the required number of parking stalls for the Elks Lodge is 49 spaces. If 3 spaces are removed, the required number of parking spaces is still met (per Code).

Note: An erosion control plan will be necessary at the time a building permit is submitted to the city for review.

2.1.2. Lease Area.

- Again, the lease area is a 20'x33.75' (675 SF) secured fence area (wood) that will contain the structure, ground equipment and the emergency backup generator. (the "Lease Area").

2.1.3. Access and Parking.

- Access from 114th Avenue SE via an existing dirt/gravel path.
- There will be parking in front of the lease area. As the proposed Facility will be an unmanned wireless facility, after the initial construction, AT&T will only regularly access the Facility for maintenance and inspections, which will likely generate no more than one or two trips per month with a single vehicle.

2.1.4. Utilities.

- **Power.** Power will be provided by the local purveyor. AT&T's GC will install a new meter base and will run conduit from the new meter base to the new equipment. A bridge will be provided from the equipment to the antennas.
- **Fiber.** Fiber to the Facility will be provided via the local fiber purveyor (likely Comcast).
- **Other.** Given this is an unmanned wireless communications facility, no water, sewer, or other utilities are required.

2.2. Wireless Facilities and Equipment. Specifications of the facilities outlined below, including a site plan, can be found in **Attachment 12, Zoning Plan Set**

2.2.1. Antennas and accessory equipment.

- The Three (3) Sectors on the monopine will contain the following AT&T equipment:
 - Twelve (12) panel antennas
 - Twelve (12) remote radio head units (RRHs)
 - Six (6) remote RRH mounts
 - Two (2) surge protectors
 - Three (3) Mounting Brackets
 - One (1) Lightning Rod
 - All other associated and accessory equipment

2.2.2. Ground equipment.

- Ground equipment includes:
 - Two (2) Equipment cabinets (one walk-in)
 - One (1) Generator w/ concrete pad

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- One (1) Cable Bridge
- One (1) GPS
- Fiber/cable vaults
- All associated and accessory equipment

3. NETWORK COVERAGE AND SERVICES.

3.1. Overview—AT&T 4G LTE. AT&T is upgrading and expanding its wireless communications network throughout the Pacific Northwest, including the installation of the latest 4G technology at this proposed facility. LTE stands for “Long Term Evolution.” This acronym refers to the ongoing process of improving wireless technology standards with speeds up to ten times faster than 3G. LTE technology is the next step in increasing broadband speeds to meet the demands of uses and the variety of content accessed over mobile networks.

Upon completion of this update, AT&T will operate a state-of-the-art digital network of wireless communications facilities throughout the proposed coverage area as part of its nationwide wireless communications network.

The new Facility will allow for uninterrupted wireless service in the targeted service area with fewer dropped calls, improved call quality, and improved access to additional wireless services that the public now demands. This includes emergency 911 calls within the area.

3.2. Network Service Objectives for Proposed Facility. The proposed new Facility is a service coverage site. Currently, portions in and around Eastside have minimal 4G voice service and AT&T’s existing coverage in the area is at or near its capacity and is insufficient for the volume of traffic (*i.e.* though this area already has AT&T coverage, additional capacity is needed to service the volume of users).

The proposed Facility meets AT&T’s service objectives to provide sufficient continuous and uninterrupted outdoor, in-vehicle, and in-building wireless service within the Targeted Service Area, resulting in fewer dropped calls, improved call quality, and improved access to additional wireless services the public now demands (this includes emergency 911 calls).

In addition to AT&T LTE commercial facilities, this proposed WTF will include facilities to support FirstNet. As a FirstNet site, this proposed WTF is part of a more significant initiative by AT&T to upgrade existing wireless sites and to build new sites to support FirstNet and deploy the new frequency band for first responders (“Band 14”). Placing antennas at the minimum height necessary to reliably make and receive telephone calls and provide data service in the presence of varying signals is crucial for the efficient and effective operation of this site as a FirstNet Network site.

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4. **SEARCH RING.** AT&T's radio frequency ("RF") engineers performed an RF engineering study, considering multiple objectives, to determine the approximate site location and antenna height required to fulfill the noted network objectives for the Targeted Service Area. From this study,

AT&T's RF engineers identified a specific geographic area or "search ring" area, where a WTF may be located to provide effective service. The search ring established for this proposal is provided in Pages 3 to 4 of **Attachment 5—RF Justification**.

5. **ALTERNATIVE SITES ANALYSIS.** The applicant made diligent attempts to analyze all collocation opportunities on existing Antenna Support Structures or other support structures within a mile radius of the proposed location, as well as alternative technologies:

- **Roosevelt Elementary School**
- **Capital Vision Christian Church**
- **Various commercially zoned properties**
- **Other larger lots and possible suitable sites**

Another component of alternative site analysis is an acceptable property and willing landowner. Given this ring is primarily residential, there are few properties that qualify as being "acceptable" based on size, setbacks, sensitive areas, etc. Once properties are identified that may be acceptable, there needs to a willing property owner that wants the facility. Again, there are very few options in the ring. In fact, this was the only owner that contacted us regarding locating a facility.

6. APPLICABLE LAW

- 6.1. **Local Codes.** Per our minor conditional use permit is required for new WTFs located on government property and must comply with all applicable standards and the criteria for approval in the Kent City Code. See **Attachment 4 – Statement of Code Compliance** for AT&T's demonstration of compliance with the applicable code sections.

- 6.2. **Federal Law.** Federal law, primarily found in the Telecommunications Act of 1996 ("Telecom Act") acknowledges a local jurisdiction's zoning authority over proposed wireless facilities but limits the exercise of that authority in several important ways.

- 6.2.1. **Local jurisdictions may not materially limit or inhibit.** The Telecom Act prohibit a local jurisdiction from taking any action on a wireless siting permit that "prohibit[s] or [has] the effect of prohibiting the provision of personal wireless services." 47 U.S.C. §332(c)(7)(B)(i)(II). According to the Federal Communications Commission ("FCC") Order adopted in September 2018, a local jurisdiction's action has the effect of prohibiting the proviso of wireless service when it "materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment."² Under the FCC Order, an applicant need not prove it has a significant gap in coverage; it may demonstrate the need for a new wireless facility terms of adding capacity, updating to new technologies, and/or maintaining

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high quality service.³ While an applicant is no longer required to show a significant gap in service coverage, in the Ninth Circuit, local jurisdiction clearly violates section 332(c)(7)(B)(i)(II) when it prevents a wireless carrier from using the least intrusive means to fill a significant gap in service coverage. *T-Mobile U.S.A., Inc. v. City of Anacortes*, 572 F.3d 987, 988 (9th Cir. 2009).

¹ *Accelerating Wireless and Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, WT Docket No. 17-79, WC Docket No. 17-84 (rel. Sept. 27, 2018); 83 Fed. Reg. 51867 (Oct. 15, 2018) (“FCC Order”). ² *Id.* at ¶ 35. ³ *Id.* at ¶¶ 34-42.

- **Significant Gap.** Reliable in-building coverage is now a necessity and every community’s expectation. Consistent with the abandonment of land line telephones and reliance on only wireless communications, federal courts now recognize that a “significant gap” can exist based on inadequate in-building coverage. See, e.g., *T-Mobile Central, LLC v. Unified Government of Wyandotte County/Kansas City*, 528 F. Supp. 2d 1128, 1168-69 (D.Kan. 2007), *affirmed in part*, 546 F.3d 1299 (10th Cir. 2008); *MetroPCS, Inc. v. City and County of San Francisco*, 2006 WL 1699580, *10-11 (N.D. Cal. 2006).
- **Least Intrusive Means.** The least intrusive means standard “requires that the provider ‘show that the manner in which it proposes to fill the significant gap in service is the least intrusive on the values that the denial sought to serve.’” 572 F.3d at 995, *quoting MetroPCS, Inc. v. City of San Francisco*, 400 F.3d 715, 734 (9th Cir. 2005). These values are reflected by the local code’s preferences and siting requirements.
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6.2.2. Environmental and health effects prohibited from consideration. Also under the Telecom Act, a jurisdiction is prohibited from considering the environmental effects of RF emissions (including health effects) of the proposed site if the site will operate in compliance with federal regulations. 47 U.S.C. § 332(c)(7)(B)(iv).

AT&T has included with this application a statement from its radio frequency engineers demonstrating that the proposed facility will operate in accordance with the Federal Communications Commission's RF emissions regulations. See Attachment 4 – RF Justification Report. Accordingly, this issue is preempted under federal law and any testimony or documents introduced relating to the environmental or health effects of the proposed site should be disregarded in this proceeding.

6.2.3. No discrimination amongst providers. Local jurisdiction also may not discriminate amongst providers of functionally equivalent services. 47 U.S.C. § 332(c)(7)(B)(i)(I). A jurisdiction must be able to provide plausible reasons for disparate treatment of different providers' applications for similarly situated facilities.

6.2.4. Shot Clock. Finally, the Telecom Act requires local jurisdictions to act upon applications for wireless communications sites within a "reasonable" period of time. 47 U.S.C. § 332(c)(7)(B)(ii).

The FCC has issued a "Shot Clock" rule to establish a deadline for the issuance of land use permits for wireless facilities. 47 C.F.R. § 1.6001, *et seq.* According to the Shot Clock rule, a reasonable period for local government to act on wireless applications is 90 days for a collocation application, with "collocation" defined to include an attachment to any existing structure regardless of whether it already supports wireless, and 150 days for all other applications.

The Shot Clock applies to all authorizations required for siting a wireless facility, including the building permit, and all application notice and administrative appeal periods. Pursuant to federal law, the reasonable time period for review of this application is 150 days.

Thank you for your time and consideration in the review of this request. Please feel free to contact me by phone (206.227.7445) or email (pkitzes@j5ip.com) if there are any questions or comments.

J5 INFRASTRUCTURE PARTNERS

PHILLIP KITZES
Project Manager I