

## City of Portland, Oregon

### **Bureau of Development Services**

#### **Land Use Services**

FROM CONCEPT TO CONSTRUCTION

Dan Saltzman, Commissioner Paul L. Scarlett, Director Phone: (503) 823-7300 Fax: (503) 823-5630 TTY: (503) 823-6868 www.portlandoregon.gov/bds

**Date:** August 29, 2011

**To:** Interested Person

**From:** Sylvia Cate, Land Use Services

503-823-7771 / Sylvia.Cate@portlandoregon.gov

# NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

#### CASE FILE NUMBER: LU 11-121748 CU

#### GENERAL INFORMATION

**Applicant:** University Of Portland, property owner

5000 N Willamette Blvd Portland, OR 97203-5798

**Representative:** Zach Phillips, Main Contact

**PTS** 

1001 SE Water Ave

Ste 180

Portland OR 97214 503 232 5213

**Site Address:** 5000 N WILLAMETTE BLVD

**Legal Description:** TL 100 80.73 ACRES, SECTION 18 1N 1E

**Tax Account No.:** R941180010 **State ID No.:** R941180010

**Quarter Section:** 2324

**Neighborhood:** University Park, contact Fletcher Trippe at 503-232-6499.

**Business District:** North Portland Business Assoc, contact Jim Schaller at 503-517-9915. **District Coalition:** North Portland Neighborhood Services, contact Mary Jaron Kelley at

503-823-4099.

**Zoning:** R2 – Multi-Dwelling Residential 2,000

n – River Natural Greenway overlay g – River General Greenway overlay q – River Water Quality Greenway overlay

**Case Type:** CU: Conditional Use

**Procedure:** Type II, an administrative decision with appeal to the Hearings Officer.

#### Proposal:

The applicant, AT&T, has an existing wireless facility located on the rooftop of the Swindels Building, one of multiple buildings on the University of Portland campus. AT&T proposes to add two new antennas that will upgrade the wireless facility and provide additional wireless services, frequently called '4G' technology. The additional antennas, also referred to as Long Term Evolution or LTE antennas are proposed to be concealed within two faux roof stacks, matching the existing faux stacks within which the balance of the AT&T antennas are concealed. Associated equipment will also be placed on the rooftop. Attached to this notice are site plans depicting the proposal.

#### Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are:

- 33.815.225 A 1-3, Approval Criteria
- 33.274.040 C, Mandatory Development Standards

#### **ANALYSIS**

**Site and Vicinity:** The University of Portland ("University") is located on the east bank of the Willamette River in North Portland. The northern boundary of the campus, east of N. Portsmouth Avenue, extends to N. Willamette Boulevard. West of N. Portsmouth Avenue, the northern campus boundary extends a half block north of N. Warren Street. The river bluffs form the eastern and southern boundaries of the campus, with an irregular western boundary extending to N. Monteith Avenue.

The University maintains an inventory of approximately 30 buildings on the campus, with approximately 1.1 million square feet of floor area. Several larger facilities are also located on the campus, including Chiles Center, Merlo Soccer Field, and Pilot Baseball Stadium.

The subject building, Swindell's Hall, is located near the southeaster edge of the campus, near the bluff that separates the campus from the Willamette River. Adjacent properties to the east are zoned IG2i, Industrial.

The neighborhood surrounding the campus is largely characterized by low-density, single-dwelling development. The exception is the area southwest and southeast of the campus, below the bluffs. These areas are industrial in nature, and primarily developed with Warehouse and Freight Movement uses.

**Zoning:** The portion of the campus where the radio frequency transmission facility is proposed is in an R2 (Multi-Dwelling Residential 2000) zone, with three Greenway Overlay Zones ("g", "n" and "q") mapped along the southern edge of the campus near the bluff.

The R2 zone is a low density multi-dwelling zone, with allowed housing characterized by one to three story buildings. While the R2 zone is primarily intended to provide opportunities for multi-dwelling housing, universities and other institutional uses are allowed if approved through a Conditional Use review.

The purpose of the Greenway overlay zones is to implement the land use pattern identified in the Willamette Greenway Plan, and the water quality requirements of Metro Code 3.07.340.B (Title 3). The requested Conditional Use does not include any development on the portion of the site located in a Greenway overlay zone.

**Land Use History:** The University of Portland has been the subject of more than 30 land use reviews, dating back at least to the early 1960s. Previous land use reviews that directly relate to the current proposal are limited to amendments to the University's Conditional Use Master Plan to allow radio frequency transmission facilities to be located on campus buildings,

including a roof top installation on Mehling Hall, approved under LUR 97-00138 CU MS; and a previous roof top installation on the Buckley Center, which was approved under LUR 97-00143 CU MS. A conditional use approved in 2004 (LU 04-027390 CU) modified the antennae on Buckley Center, allowing the replacement of three whip antennae with 12 panel antennae. A conditional use was approved in 2005 for the installation of a radio frequency transmission facility on the rooftop of the Swindells Hall building. (The University's current Conditional Use Master Plan allows the installation of rooftop radio frequency transmission facilities without an amendment to the Master Plan.) In 2006, a conditional use was approved [06-134210 CU] for a wireless facility to be installed on the rooftop of the Buckley Center. In 2009, a conditional use was approved [09-127081 CU] for a wireless facility on the roof of the Buckley Center Building'

**Agency Review:** A "Notice of Proposal in Your Neighborhood" was mailed **July 18, 2011**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services
- Bureau of Transportation Engineering
- Water Bureau
- Fire Bureau
- Site Development Section of BDS
- Bureau of Parks-Forestry Division

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on July 18, 2011. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

#### ZONING CODE APPROVAL CRITERIA

#### Conditional Use (33.815.010) Purpose

Certain uses are conditional uses instead of being allowed outright, although they may have beneficial effects and serve important public interests. They are subject to the conditional use regulations because they may, but do not necessarily, have significant adverse effects on the environment, overburden public services, change the desired character of an area, or create major nuisances. A review of these uses is necessary due to the potential individual or cumulative impacts they may have on the surrounding area or neighborhood. The conditional use review provides an opportunity to allow the use when there are minimal impacts, to allow the use but impose mitigation measures to address identified concerns, or to deny the use if the concerns cannot be resolved.

#### 33.815.225 Radio Frequency Transmission Facilities

These approval criteria allow Radio Frequency Transmission Facilities in locations where there are few impacts on nearby properties. The approval criteria are:

- **A.** Approval criteria for facilities operating at 1,000 watts ERP or less, proposing to locate on an existing building or other non-broadcast structure in an OS or R zone or in a C, E, or I zone within 50 feet of an R zone:
  - 1. The visual impact of an antenna must be minimized. For instance, it can be hidden behind a compatible building feature such as a dormer, mounted flush to the facade of the building and painted to match, mounted on a structure designed with minimal bulk and painted to fade into the background, or mounted by other technique that equally minimizes the visual impact of the antenna;

**Findings:** The applicant proposes to add two additional 'LTE' antennas to their existing facility in order to provide enhanced broadband services. The additional antennas are proposed to be concealed within two faux roof stacks, matching the existing faux stacks within which the balance of the AT&T antennas are

concealed. This proposed configuration minimizes the visual impacts and conceals the antennas from view. This criterion is met.

2. Accessory equipment associated with the facility must be adequately screened. If a new structure will be built to store the accessory equipment, the new structure must be designed to be compatible with the desired character of the surrounding area and be adequately screened; and

**Findings:** The wireless equipment cabinet is proposed to be placed in a previously approved equipment room. This criterion is met.

3. The regulations of Chapter 33.274, Radio Frequency Transmission Facilities are met.

**Findings:** The relevant regulations and standards for this proposal as discussed below, are the development standards of Chapter 33.274 - Radio Frequency Transmission Facilities. As discussed in detail under 33.274.040 below, all applicable regulations are met; therefore, this criterion is met.

#### **DEVELOPMENT STANDARDS**

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment review prior to the approval of a building or zoning permit.

#### 33.274.040 Development Standards Radio Frequency Transmission Facilities

- **A. Purpose**. The development standards:
  - Ensure that Radio Frequency Transmission Facilities will be compatible with adjacent uses;
  - Reduce the visual impact of towers in residential and open space zones whenever possible;
  - Protect adjacent populated areas from excessive radio frequency emission levels;
  - Protect adjacent property from tower failure, falling ice, and other safety hazards; and
- **B. When standards apply.** Unless exempted by 33.274.030, the development standards of this section apply to all Radio Frequency Transmission Facilities. Applications to modify existing facilities regulated by this chapter are only required to meet the standards of Paragraphs C.3, C.4, C.5, C.6, and C.9 in addition to any previous conditions of approval. Increasing the height of a tower is not considered modification of an existing facility.

<u>Staff Note</u>: Only the applicable development standards are addressed, below. The standards found at 33.274.040 C 1, 2, 3, 4, 8, 9 b [1], 10, 12 and 33.274.040 D 2 a and c and 33.274.040 E are specific to new towers, and therefore are not applicable to this proposal.

#### C. General requirements

5. Radio frequency emission levels. All existing and proposed Radio Frequency Transmission Facilities are prohibited from exceeding or causing other facilities to exceed the radio frequency emission standards specified in Table 274-1, except as superseded by Part 1, Practice and Procedure, Title 47 of the Code of Federal Regulations, Section 1.1310, Radio Frequency Radiation Exposure Limits.

Table 274-1 Radio Frequency Emission Standards [1]					
Frequency Range	Mean Squared Electric ( $E^2$ ) Field Strength ( $V^2/m^2$ ) [2]	Mean Squared Magnetic (H <sup>2</sup> ) Field Strength (A <sup>2</sup> /m <sup>2</sup> ) [3]·	Equivalent Plane-Wave Power Density (mW/cm <sup>2</sup> ) [4]		
100 KHz - 3 MHz 3 MHz - 30 MHz 30 MHz - 300 MHz 300 MHz - 1500 MHz 1500 MHz - 300 GHz	80,000 4,000 (180/f <sup>2</sup> ) [5] 800 4,000 (f/1500) 4,000	0.5 0.025 (180/f <sup>2</sup> ) 0.005 0.025 (f/1500) 0.025	20 180/f <sup>2</sup> 0.2 f/1500 1.0		

#### Notes:

- [1] All standards refer to root mean square (rms) measurements gathered by an approved method.
- [2]  $V^2/m^2$  = Volts squared per meter squared.
- [3]  $A^2/m^2$  = Amperes squared per meter squared.
- [4]  $mW/cm^2$  = Milliwatts per centimeter squared.
- [5] f = Frequency in megahertz (MHz).

**Findings:** The proposed antennas will operate within the frequency ranges of 704-892 MHz and 1900 to 2100 MHz. Documentation provided by the applicant includes information that the power density for additional antennas is calculated to be 0.4693 mW/cm<sup>2</sup>.

The Effective Radiated Power for the facility is 518 watts, and the maximum allowed power density level is 0.567 mW/cm<sup>2</sup> and 1.0 mW/cm<sup>2</sup>, respectively. [Milliwatts per centimeter squared]. Information submitted by the applicant indicates that the greatest levels of power density will be 0.026 mW/cm<sup>2</sup>. This is significantly below the maximum allowed. This criterion is met.

Staff note: The Federal Telecommunications Act of 1996 prohibits a local government from denying a request to construct such facilities based on "harmful radio frequency emissions" as long as the wireless telecommunications facility meets the standards set by the FCC. Furthermore, the Act required the FCC to adopt standards for radio frequency emissions from wireless telecommunications by August 1996. In a rule making procedure, the FCC adopted standards effective August 1, 1996, which are virtually the same as those reflected in Table 274-1. Because this land use review was submitted after those standards took effect, this conditional use review cannot be denied solely on the issue of harmful radio frequency emission levels.

6. Antenna requirements. The antenna on any tower or support structure must meet the minimum siting distances to habitable areas of structures shown in Table 274-2. Measurements are made from points A and B on the antenna to the nearest habitable area of a structure normally occupied on a regular basis by someone other than the immediate family or employees of the owner/operator of the antenna. Point A is measured from the highest point of the antenna (not the tower) to the structure, and Point B is measured from the closest point of the antenna to the structure.

Table 274-2  Distance Between Antenna and Habitable Area of Structure  (Where f is frequency in megahertz.)				
Effective Radiated	Point A: Point B:  Minimum Distance From Minimum Distance From Highest Point of Antenna Closest Portion Of Antenna	ı		

Power	Frequency (MHz)	To Habitable Area of Structure (feet)	To Habitable Area of Structure (feet)
< 100 watts		10	3
100 watts to 999 watts		15	6
1,000 watts to 9.999 Kw	< 7 7 - 30 30 - 300 300 - 1500 > 1500	11 f/0.67 45 780/vf 20	5 f/1.5 20 364/vf 10
10 Kw plus	< 7 7 - 30 30 - 300 300 - 1500 1500	17.5 f/0.4 75 1300/vf 34	8 f/0.91 33 572/vf 15

**Findings:** The antennas will operate below 1,000 watts ERP, and thus are required to be 15 feet for Point A and 6 feet for Point B, per Table 274-2.

The applicant notes that the proposed antennas will comply with the 15 and 6 foot separation distances. Based on the scalable elevation plans submitted with the application, the additional antennas will exceed both the required Point A and Point B separation distances. The facility, as proposed complies with the separation requirements. This criterion is met.

7. Setbacks. All towers must be set back at least a distance equal to 20 percent of the height of the tower or 15 feet, whichever is greater, from all abutting R and OS zoned property and public streets. Accessory equipment or structures must meet the base zone setback standards.

**Findings:** The proposal is to mount the facility on an existing building. No new tower is proposed. The accessory equipment will be located inside a prior approved equipment room. This criterion is met.

- 9. Landscaping and screening. The base of a tower and all accessory equipment or structures located at grade must be fully screened from the street and any abutting sites as follows:
  - a. In C, E or I zones more than 50 feet from an R zone. A tower and all accessory equipment or structures located in the C, E, or I zones more than 50 feet from an R zone must meet the following landscape standard:

**Findings:** The proposal is to mount the facility on an existing building. No new tower is proposed. The accessory equipment will be located in a prior approved equipment room in the building, and not at grade. Therefore, this criterion is not applicable.

- b. In OS or R zones or within 50 feet of an R zone. A tower and all accessory equipment or structures located in an OS or R zone or within 50 feet of an R zoned site must meet the following landscape standards:
  - (2) Accessory equipment and structures. A landscaped area that is at least 10 feet deep and meets the L3 standard must be provided around the base of all accessory equipment or structures located at grade.

**Findings:** The proposal is to mount the facility on an existing building. No new tower is proposed. The accessory equipment will be located inside the existing equipment room in the building, and not at grade. Therefore, this criterion is not applicable.

11. Mounting device. The device or structure used to mount facilities operating at 1,000 watts ERP or less to an existing building or other non-broadcast structure may not project more than 10 feet above the roof of the building or other non-broadcast structure.

**Findings:** The proposed antennas are shown on the submitted site plans to be 10 feet above the top of the penthouse, the maximum allowed, as shown on the submitted elevation drawings. With approval granted based on the elevation drawings, this criterion can be met.

## D. Additional requirements in OS, R, C, and EX zones and EG and I zones within 50 feet of an R zone.

- 1. Purpose. These additional regulations are intended to ensure that facilities operating at 1,000 watts ERP or less have few visual impacts. The requirements encourage facilities that look clean and uncluttered.
- 2. Standards. In addition to the regulations in Subsection C., above, facilities operating at 1,000 watts ERP or less located in OS, R, C, or EX zones or EG or I zones within 50 feet of an R zone must meet all of the following standards:
  - b. Antennas mounted on existing buildings or other non-broadcast structures. This standard only applies to facilities located in OS or R zones or within 50 feet of an R zone. The visual impact of antennas that are mounted to existing buildings or other non-broadcast structures must be minimized. For instance, on a pitched roof, an antenna may be hidden behind a false dormer, mounted flush to the facade of the building and painted to match; mounted on a structure designed with minimal bulk and painted to fade into the background; or mounted by other technique that equally minimizes the visual impact of the antenna. The specific technique will be determined by the conditional use review.

**Findings:** No tower-mounted antennas or lattice towers are proposed, so these portions of this standard do not apply. As noted under criterion 33.815.225.A.1, the visual impacts of the antennas have been minimized by fully concealing the additional antennas inside stealth roof stacks consistent with the rest of the prior approved facility. This criterion is met.

#### CONCLUSIONS

The applicant requests a conditional use approval to add additional LTE antennas to an existing a wireless telecommunications facility mounted on the roof top of an existing building. The accessory equipment will be located in a prior approved equipment room within the building. All applicable criteria are met, and therefore the proposal should be approved.

#### ADMINISTRATIVE DECISION

Approval of:

• Conditional Use to add two new LTE antennas concealed within two faux roof stacks to an existing roof mounted wireless telecommunications facility, per the approved site plans, Exhibits C-1 through C-2, signed and dated August 24, 2011, subject to the following conditions:

A. As part of the building permit application submittal, each of the 4 required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C.1-C.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 11-121748 CU."

Staff Planner: Sylvia Cate

Decision rendered by: \_\_\_\_\_ on August 24, 2011

By authority of the Director of the Bureau of Development Services

Decision mailed: August 29, 2011

**About this Decision.** This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

**Procedural Information.** The application for this land use review was submitted on March 18, 2011, and was determined to be complete on **July 13, 2011**.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on March 18, 2011.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period. Unless further extended by the applicant, the 120 days will expire on: November 10, 2011. This application is also subject to the FCC 'shot clock'. The shot clock will expire on: September 11, 2011, unless extended by the applicant.

#### Some of the information contained in this report was provided by the applicant.

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

**Conditions of Approval.** If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

**Appealing this decision.** This decision may be appealed to the Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on September 12, 2011** at 1900 SW Fourth Ave. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, appeals must be submitted to the

receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged**. The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at <a href="https://www.portlandonline.com">www.portlandonline.com</a>.

**Attending the hearing.** If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Hearings Officer an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

#### Recording the final decision.

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- Unless appealed, The final decision may be recorded on or after **September 13, 2011** (the day following the last day to appeal).
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- By Mail: Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- In Person: Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034 For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

**Expiration of this approval.** An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

**Applying for your permits.** A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

#### **EXHIBITS**

#### NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Elevations
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Bureau of Transportation Engineering and Development Review
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Site Development Review Section of BDS
  - 6. Bureau of Parks, Forestry Division
- F. Correspondence: None received
- G. Other:
  - 1. Original LU Application
  - 2. Site History Research
  - 3. Letter to applicant re incomplete application

The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).





