



City of Portland, Oregon
Bureau of Development Services
Land Use Services

FROM CONCEPT TO CONSTRUCTION

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Date: April 7, 2014
To: Interested Person
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NOTICE OF A TYPE Ix 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 the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 14-112281 CU

GENERAL INFORMATION

Applicant: Bill Howard / Odelia Pacific For AT&T Mobility
10570 SE Washington St, Suite 200 / Portland OR 97216

Property owner: Lazaro G Santiago / 4734 NE Cully Blvd / Portland, OR 97218

Representative: Allen Greene, Main Contact / Odelia Pacific
6233 SW Orchid Dr / Portland OR 97219

Site Address: 4734 NE CULLY BLVD

Legal Description: BLOCK 10 LOT 3, PADDOCK AC **Tax Account No.:** R637204170
State ID No.: 1N2E20BC 05800 **Quarter Section:**2537
Neighborhood: Cully, contact David Sweet at 503-493-9493.
District Coalition: Central Northeast Neighbors, contact Alison Stoll at 503-823-3156.
Zoning: CN1h: Neighborhood Commercial 1 with Aircraft Landing 'h' overlay
Case Type: CU: Conditional Use
Procedure: Type Ix, an administrative decision with appeal to the Oregon Land Use Board of Appeals (LUBA).

Proposal:

The applicant, AT&T, requests a conditional use for equipment cabinets associated with a wireless telecommunications facility that will be mounted on a replacement utility pole in the public right of way. The replacement pole will be 15 feet taller than the existing utility pole, as allowed by the franchise agreement the City has that regulates wireless service providers within the public rights of way.

The associated equipment will be located on adjacent private property, as follows: An 11' 5" by 26' by 10' high precast concrete equipment shelter near the southeast corner of the site, meeting the required 5-foot setback from the south property line as required for buildings 15 feet or less in height. Although the structure is allowed by the zoning code to have a 0-foot setback from the rear property line, the applicant proposes a 5 foot setback from the rear (east) property line as well. This 5-foot setback is required to be landscaped to the 'L3' landscaping standard per Title 33, *Portland Zoning Code*. [The L3 standard is a landscape

treatment which uses screening to provide the physical and visual separation between uses or development. The L3 standard requires enough high shrubs to form a screen 6 feet high. The shrubs must be evergreen. In addition, one large tree is required per 30 linear feet of landscaped area, one medium tree per 22 linear feet of landscaped area, or one small tree per 15 linear feet of landscaped area. Trees of different sizes may be combined to meet the standard.]

The equipment shelter will be screened from the street by the existing building on site, as well as by a wooden fence that will fully enclose the shelter. Additional radio signal processing equipment called Remote Radio Heads (RRH) will be placed on the rooftop of the existing building within an approximately 14 foot by 9 foot by screen that will fully conceal this additional equipment.

Cable and fiber optic runs will be placed underground, connecting the equipment in the shelter with the RRH units via a cable chase mounted to the north façade of the building; a second cable chase will connect the RRH units to the antennas mounted to the replacement utility pole via an underground run. The cables will run up inside the replacement utility pole, so they will not be visible to pedestrians. Both the RRH screen and the cable chases will be designed and painted to match the material of the existing north façade of the building.

Because the facility equipment is not exempted from the zoning requirements of 33.274, a Type Ix Conditional Use review is required for the associated equipment located on private property. Please refer to the attached plans for a graphical depiction of the proposal. *The antennas and the replacement pole in the public right of way are not subject to this review.*

Please note that City of Portland policies and regulations allow wireless facilities to be mounted on existing or replacement utility poles located within public rights of way via a franchise agreement with the City. Additional information about franchise agreements with the City can be found on the City's web site at: <http://www.portlandoregon.gov/revenue/58891>

Because the antennas and utility pole are located in the public right of way, zoning regulations, such as a conditional use review, *do not apply to that portion of the overall facility*. However, the associated equipment cabinets placed on private property require a conditional use review.

Relevant Approval Criteria:

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

- 33.815.225 A. 1-3, *Conditional Use criteria*
- 33.274.040, *Mandatory Development Standards*

ANALYSIS

City Wireless in the Rights of Way Policy Background

It is important to distinguish between this land use review application, which seeks Conditional Use approval for associated equipment cabinets on private property, from the antennas for the wireless facility which will be mounted to a utility pole located within the public right of way. The utility pole is considered a non-broadcast structure and because of its location within the public right of way neither it, nor the antennas, are subject to this Conditional Use review.

The City encourages wireless telecommunication facilities to be installed in the right of way via a number of policies, including right of way franchise agreements and revisions to the zoning code itself. The City Council passed a Wireless Resolution on July 24, 2002 authorizing the City's Office for Community Technology to grant use agreements to wireless service providers. One of the many objectives in allowing wireless facilities to be placed in

the public rights of way is to foster co-location of these facilities on existing or replacement structures in the right of way. In adopting this policy, the Council made a conscious policy choice to take the pressure off of private property owners, residential neighborhoods, and the planning process by co-locating as many of these facilities in the public right of way as possible. The policy intent recognizes that the presence of wireless facilities co-located with other ROW facilities for utilities, such as telephone, cable, electric and natural gas, in and of itself tends to reduce visual clutter and intrusiveness. Commensurate revisions were adopted in the Portland Zoning Code, requiring applications for new monopoles [cell towers] that trigger a Conditional Use review to document why the facility *cannot be feasibly located* within the public right of way.

The Wireless in the Right of Way program was revised in 2009 to provide additional guidelines and requirements in the ministerial permit process to locate in the public right of way. In 2011, the City Council unanimously adopted Portland's *Broadband Strategic Plan*, which enumerates a number of policies and strategies to implement in order to bring high-speed, affordable broadband services to every home and business in the City. The Broadband Plan recognizes that wireless broadband services represent basic infrastructure for Portland to prosper and compete in the 21st century. Additional information about the City's Wireless in the Right of Way program can be found on the City's website at: <http://www.portlandoregon.gov/revenue/63234>.

Additional information about the Broadband Plan can be found here: <http://www.portlandoregon.gov/revenue/article/394185>.

Because the proposed antennas and utility pole are located in the public right of way, zoning regulations, such as a Conditional Use review, do not apply to that portion of the overall facility. However, because there are instances when a wireless facility cannot wholly fit within the public right of way due to size of the associated equipment cabinets, the wireless provider will propose placing this equipment on adjacent private property. Such requests are subject to the Portland Zoning Code [Title 33] and require a Type Ix Conditional Use review, if exemption thresholds are not met. In this instance, a Conditional Use review is required because the equipment portion of the facility is within 50 feet of a residential zone.

Site and Vicinity: The site is a lot 6,750 square feet in area and developed with a 2,350 square foot grocery store. The site has frontage along NE Cully Blvd, which is designated as a Neighborhood Collector, Transit Access Street, Major Emergency Response Street, City Bikeway, and City Walkway. This segment of NE Cully Blvd is fully developed to City standards, and includes sidewalks, bike lanes, and stormwater planters.

The site is centrally located in a small CN1 zoned area on the easterly side of Cully; additional areas of CN1 zoned lands are slightly south of the site, on both sides of Cully. Directly across NE Cully from the site is a truncated, triangular block zoned R2h and developed with residential uses. Further west are lands zoned R7h, as are the lands immediately east of the site. One block north of the site along both sides of Cully are parcels zoned R2, Multi-Dwelling residential and CS, Storefront Commercial.

Zoning: The site is zoned CN1, Neighborhood Commercial 1 with the Aircraft Landing 'h' overlay. The Neighborhood Commercial 1 (CN1) zone is intended for small sites in or near dense residential neighborhoods. The zone encourages the provision of small scale retail and service uses for nearby residential areas. Some uses which are not retail or service in nature are also allowed so a variety of uses may locate in existing buildings. Uses are restricted in size to promote a local orientation and to limit adverse impacts on nearby residential areas. Development is intended to be pedestrian-oriented and compatible with the scale of surrounding residential areas. Parking areas are restricted, since their appearance is generally out of character with the surrounding residential development and the desired orientation of the uses.

The Aircraft Landing overlay zone provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures and vegetation. The 'h' overlay and associated regulations has no impact on the proposal.

Land Use History: City records indicate there are no prior land use reviews for this site.

A Notice of Proposal in your Neighborhood was mailed on **February 21, 2014**.

Agency Review: No objections were received from any notified agencies. The *Life Safety Section of BDS* responded that a building permit is required for the proposed development. [Exhibit E-1].

The City's *Noise Officer* responded at the request of City staff with recommendations regarding acoustical limits of the cooling units for the accessory equipment. The full response is found at Exhibit E-2 in the record for this review.

Neighborhood Review: A total of 2 written responses have been received; each from a neighbor in response to the proposal. A third letter was received after expiration of the public comment period and was not considered.

The first letter [Exhibit F-1] requests that the application be denied based on noise concerns created by the proposed equipment and the proximity of the equipment to adjacent residences. The letter notes that the noise emitted will have specific characteristics that are annoying and disturbing.

Staff comment: These concerns are addressed in the findings below.

The second letter [Exhibit F-2] also raises several concerns about the proposed development, which include: noise; incompatibility with existing community-led efforts to improve the neighborhood and lack of infrastructure; the negative aesthetic impacts of the equipment on the recently improved Cully Boulevard; the need to mitigate the impacts of the proposed equipment because these impacts outweigh the benefits to users and the neighborhood; and that the City should require or encourage such mitigation through a community benefits agreement.

Staff Comment: None of the applicable approval criteria require an analysis of whether the public benefits of the facility outweigh impacts. Concerns regarding noise and aesthetic impacts on the street are addressed in the findings below.

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 requests a conditional use for equipment cabinets associated with a wireless telecommunications facility mounted on a utility pole in the public right of way. While this is considered a non-broadcast structure, the utility pole is located in the public right of way and therefore is not subject to this conditional use review because the regulations of Title 33, Portland Zoning Code, are not applicable to the public rights of way, except under a few specific instances [ref 33.10.030 B 1-5]. This proposal is not one of the five specific situations in which zoning regulations and review criteria apply; therefore, this criterion is not applicable to the antennas mounted on the utility pole in the public right of way.

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 accessory equipment is proposed to be placed behind the grocery building at the site, which will screen it from the majority of possible view angles from the street. The equipment will be within a fenced lease area, with a condition of approval that the proposed wooden fence must be 8 feet in height to completely screen the equipment from views. In addition, a row 6 foot high landscaping is proposed between the equipment and the rear property line to further buffer and screen the equipment.

As mentioned in the proposal description, the development standards of Title 33 requires the 5-foot setback to be landscaped to the L3 standard. The proposed landscaping does not fully comply with this standard. Therefore, a condition is warranted that requires the landscaping to fully meet the L3 landscaping in this setback. The L3 screening will be consistent with the desired commercial appearance of this CN1 zoned parcel, as it will be in compliance with this development standard that requires this level of landscaping between a building in the CN1 zone and an abutting property line of a residentially zoned lot when there is no 0-foot setback.

Two neighbors have noted concerns about the equipment and potential noise levels from the cooling units of the equipment. As shown on the site plan, the equipment is configured so that the cooling units face the back of the grocery store, i.e. towards the interior of the site rather than toward a side or rear property line. However, the cooling units run during warmer weather and at times can have extended duty cycles which results in a prolonged period of run times. Given the neighbors' concerns, staff requested a response from the City's Noise Control Officer, based on the proposal, the configuration, and the regulations of Title 18, Portland's Noise Code. The response includes a discussion of the requirements of Title 18, and a request that the applicant work with a licensed Acoustical Engineer to prepare a signed and stamped report certifying that the final design of the equipment shelter will include any necessary mitigation to ensure that the noise level of the cooling units are no greater than 50 dBA at the property line abutting residentially zoned lands.

In order for the equipment shelter to be compatible with the desired character of the immediately surrounding area, a condition of approval is warranted that requires the applicant to submit the above referenced Acoustical Engineer's

report at time of building permit review to ensure that noise levels from the cooling units are in full compliance with Title 18 (Noise) regulations. With such a condition of approval, 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, 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 or Modification via a land use review prior to the approval of a building or zoning permit.

33.274.040 Development Standards Radio Frequency Transmission Facilities Amended by Ord. No. 165376, effective 5/29/92.)

A. Purpose. The development standards:

- Ensure that Radio Frequency Transmission Facilities will be compatible with adjacent uses;
- Reduce the visual impact of towers and accessory equipment in residential and open space zones whenever possible;
- Protect adjacent populated areas from excessive radio frequency emission levels; and
- Protect adjacent property from tower failure, falling ice, and other safety hazards.

B. When standards apply. Unless exempted by 33.274.030, above, 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.

Staff note: Because these standards apply only to facilities regulated by the zoning code, only the accessory equipment on private property will be considered in the findings below. The City's franchise agreements that allows wireless facilities to locate within the public rights of way include requirements that the facility [antennas] comply with emission levels and separation distances at time of building permit review.

C. General requirements

1. Tower sharing. Where technically feasible, new facilities must co-locate on existing towers or other structures to avoid construction of new towers. Requests for a new tower must be accompanied by evidence that application was made to locate on existing towers or other structures, with no success; or that location on an existing tower or other structure is infeasible.
2. Grouping of towers. The grouping of towers that support facilities operating at 1,000 watts ERP or more on a site is encouraged where technically feasible. However, tower grouping may not result in radio frequency emission levels exceeding the standards of this chapter.

3. Tower finish. For towers not regulated by the Oregon Aeronautics Division or Federal Aviation Administration, a finish (paint/surface) must be provided that reduces the visibility of the structure.
4. Tower illumination. Towers must not be illuminated except as required for the Oregon State Aeronautics Division or the Federal Aviation Administration.

Findings: No new tower is proposed. Therefore, these criteria are not applicable.

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^2) Field Strength (A^2/m^2) [3] | Equivalent Plane-Wave Power Density (mW/cm^2) [4] |
| 100 KHz – 3 MHz | 80,000 | 0.5 | 20 |
| 3 MHz – 30 MHz | 4,000 ($180/f^2$) [5] | 0.025 ($180/f^2$) | $180/f^2$ |
| 30 MHz – 300 MHz | 800 | 0.005 | 0.2 |
| 300 MHz – 1500 MHz | 4,000 ($f/1500$) | 0.025 ($f/1500$) | $f/1500$ |
| 1500 MHz – 300 GHz | 4,000 | 0.025 | 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 antennas will be mounted on an existing utility pole located in the public right of way. The wireless service provider has a franchise agreement with the City of Portland that allows wireless facilities to be mounted on structures in the public rights of way. Clauses in the franchise agreement require that antennas so mounted comply with the above Emission Level Standard limits. At time of construction permit for the facility, the applicant must submit calculations prepared by a qualified engineer documenting that the facility will meet and not exceed the applicable emission standards in Table 274-1, above. The above emission limits is not applicable to the accessory equipment, and therefore this criterion is not applicable.

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 Power | Frequency (MHz) | Point A: Minimum Distance From Highest Point of Antenna To Habitable Area of Structure (feet) | Point B: Minimum Distance From Closest Portion Of Antenna 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: This standard is not applicable to the accessory equipment cabinets. However, at time of building permit, the applicant must submit plans demonstrating that the antennas placed within the public right of way meet the above standards, in addition to height and spacing dimensions as required by the right of way franchise agreement with the City of Portland.

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 accessory equipment shelter will be set back 5 feet from the side and rear lot lines, per Table 130-4 of the base zone CN1.

8. Guy anchor setback. Tower guy anchors must meet the main building setback requirements of the base zone.

Findings: No new tower is proposed. Therefore, this criterion is not applicable.

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: This standard is applied to wireless facilities that include a tower and accessory equipment on private property located more than 50 feet from a Residential zone. No new tower is proposed, therefore this standard 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:

Findings: This standard is applied to wireless facilities that include a tower and accessory equipment on private property within 50 feet of a Residential zone. No new tower is proposed, therefore this standard is not applicable.

- c. In all zones, equipment cabinets or shelters located on private property that are associated with Radio Transmission Facilities mounted in a right-of-way must be screened from the street and any adjacent properties by walls, fences or vegetation. Screening must comply with at least the L3 or F2 standards of Chapter 33.248, Landscaping and Screening, and be tall enough to screen the equipment.

Findings: The applicant proposes to enclose the equipment cabinets within a 6-foot high wooden fence with a 5-foot buffer of landscaping between the easterly property line and the adjacent residentially zoned lot. As discussed earlier in this decision, a condition of approval is warranted to ensure that the landscaping complies with the L3 landscaping standard. The equipment will be located behind the existing grocery store on the site, and therefore will not be visible from the street. However, in order to fully meet the standard above, the wooden fence must be 8 feet height. Therefore a condition is warranted to ensure that the equipment is adequately screened. With such a condition, this standard can be met.

10. Tower design.

Findings: No new tower is proposed. 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 antennas will be mounted on a utility pole per the requirements of the City of Portland's Wireless in the Rights of Way franchise agreement with the service provider. This criterion is not applicable.

12. Abandoned facilities. A tower erected to support one or more Federal Communication Commission licensed Radio Frequency Transmission Facilities must be removed from a site if no facility on the tower has been in use for more than six months.

Findings: No new tower is proposed and no abandoned tower exists on the site. Therefore, this criterion is not applicable.

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:
 - a. Antennas mounted on towers. Triangular "top hat" style antenna mounts are prohibited. Antennas must be mounted to a tower either on davit arms

that are no longer than 5 feet, flush with the tower, within a unicell style top cylinder, or other similar mounting technique that minimizes visual impact.

Findings: No new tower is proposed. Therefore, this criterion is not applicable.

- 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: The antennas are not reviewed under this Conditional Use. This criterion is not applicable.

- c. Lattice. Lattice towers are not allowed.

Findings: No new tower is proposed. Therefore, this criterion is not applicable.

E. Additional requirements in R zones. The minimum site area required for a tower in an R zone is 40,000 square feet. This regulation must be met in addition to the regulations in Subsections C. and D., above.

Findings: No new tower is proposed. Therefore, this criterion is not applicable.

CONCLUSIONS

The applicant, AT&T, requests a conditional use for equipment cabinets associated with a wireless telecommunications facility that will be mounted on a replacement utility pole in the public right of way. The replacement pole will be 15 feet taller than the existing utility pole, as allowed by the franchise agreement the City has that regulates wireless service providers within the public rights of way. The associated equipment will be located on adjacent private property, placed behind the existing building on the site and fully enclosed within a wooden fence that will completely screen the equipment.

With conditions of approval, as discussed in the above findings, the proposal meets all of the applicable approval criteria, and should be approved.

ADMINISTRATIVE DECISION

Approval of:

- A Conditional Use for equipment cabinets and accessory equipment associated with a wireless telecommunications facility in the public right of way, per the approved site plans, Exhibits C-1 through C-2, signed and dated April 3, 2014, subject to the following conditions:
- A. As part of the building permit application submittal, the following development-related conditions (B through D) must be noted on each of the four required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE- Case File LU 14-112281 CU." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."

- B. At time of building permit, the applicant must submit a signed and stamped Acoustical Engineer's report demonstrating that noise levels from the cooling units are in full compliance with Title 18 (Noise) regulations, or demonstrating that with appropriate sound proofing mitigation, that the cooling units will comply with Title 18.
- C. The accessory equipment and shelter must be screened by an 8-foot high wooden fence that complies with the F-2 fencing standard per 33.248.020.G.
- D. Landscaping installed in the 5-foot setback between the equipment shelter fence and the rear property line must be landscaped to comply with the L-3 landscaping standard per 33.248.020.C.

Staff Planner: Sylvia Cate

Decision rendered by: _____ **on April 3, 2014**

By authority of the Director of the Bureau of Development Services

Decision mailed April 7, 2014

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 January 31, 2014, and was determined to be complete on February 19, 2014.

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 January 31, 2014.

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: June 19, 2014. This application is also subject to the FCC 'shot clock'. The shot clock will expire on: April 20, 2014.**

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.

This decision, and any conditions associated with it, is final. It may be appealed to the Oregon Land Use Board of Appeals (LUBA), within 21 days of the date the decision is mailed, as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that a petitioner at LUBA must have submitted written testimony during the comment period for this land use review. Contact LUBA at 775 Summer St NE Suite 330, Salem, OR 97301-1283 or phone 1-503-373-1265 for further 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 www.portlandonline.com.

Recording the final decision.

If this Land Use Review is approved, the final decision must be recorded with the Multnomah County Recorder. A building or zoning permit will be issued only after the final decision is recorded. The final decision may be recorded on or after **April 8, 2014**

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.

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 for the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

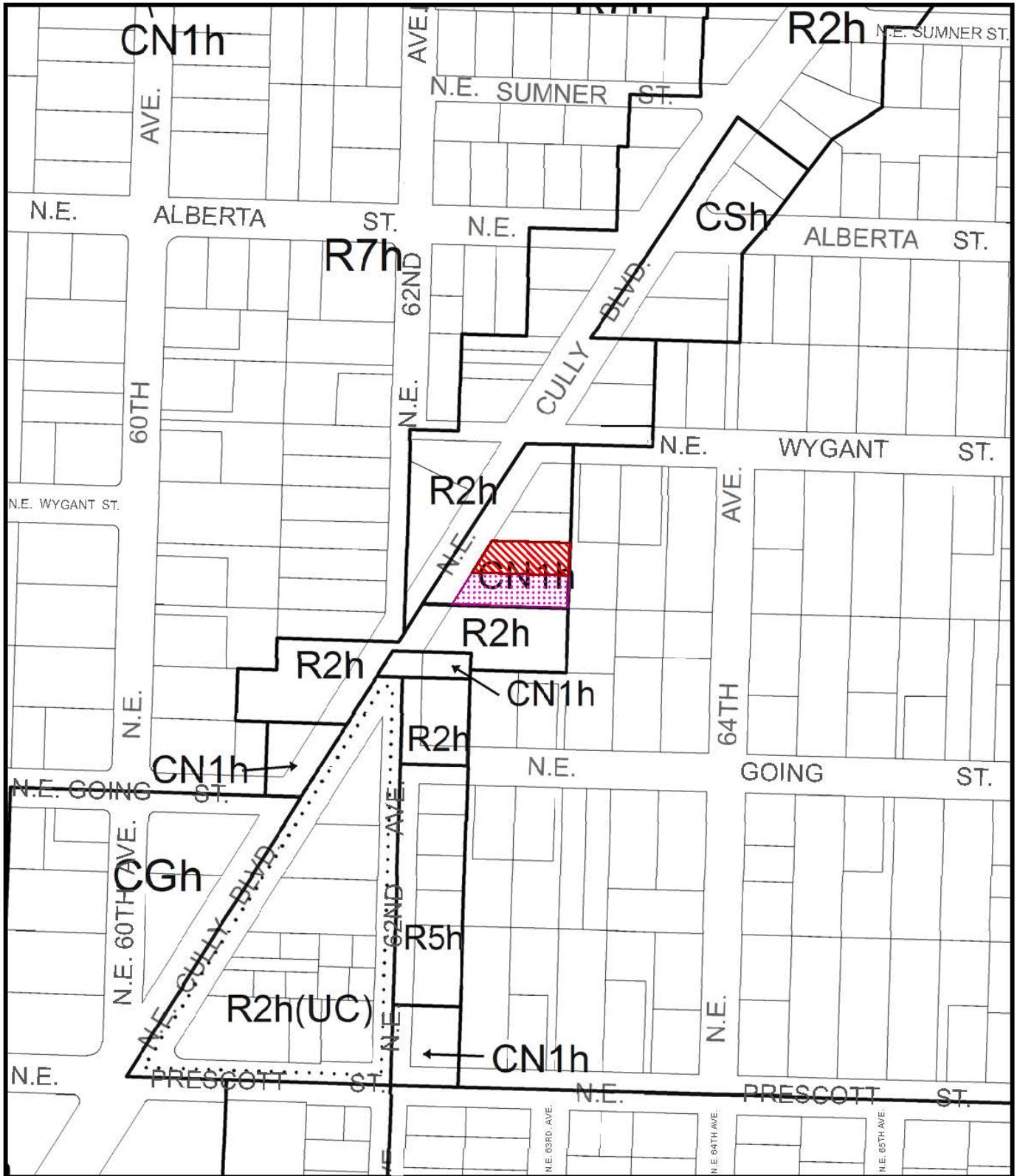
EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 1. Project Narrative
 2. Email with attached maps regarding signal coverage
- B. Zoning Map (attached)

- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Elevations (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Life Safety Section of BDS
 - 2. Portland Noise Officer, re: Title 18, *Noise*, requirements
- F. Correspondence:
 - 1. Kathy Fuerstenau, March 24, 2014 letter with concerns and objections
 - 2. Tony DeFalco, March 24, 2014 email in opposition and with concerns
- G. Other:
 - 1. Original LU 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).

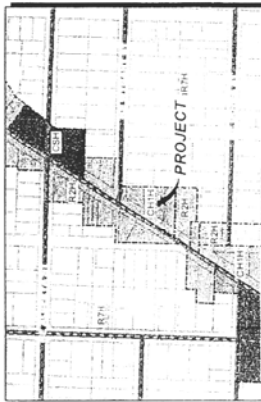


ZONING

-  Site
-  Also Owned

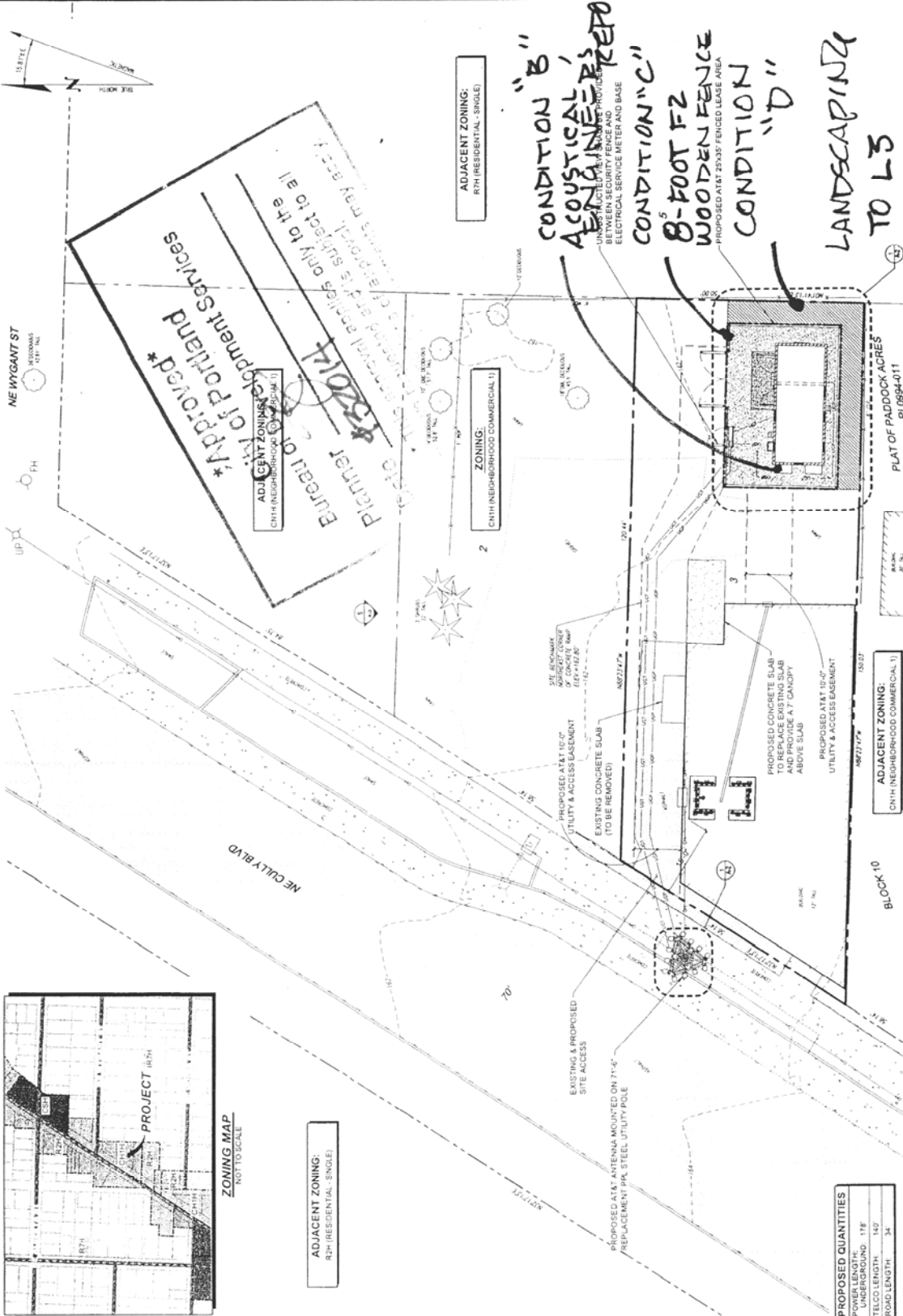


File No. LU 14-112281 CU
 1/4 Section 2537
 Scale 1 inch = 200 feet
 State_Id 1N2E20BC 5800
 Exhibit B (Feb 05, 2014)



ZONING MAP
NOT TO SCALE

ADJACENT ZONING:
R2H (RESIDENTIAL - SINGLE)



PROPOSED QUANTITIES

| | |
|----------------|------|
| POWER LENGTH: | 178' |
| UNDERGROUND: | 178' |
| TELECO LENGTH: | 140' |
| ROAD LENGTH: | 34' |

SITE PLAN

at&t Your world. Delivered.

LDC Commercial Residential
1401 NE CULLY BLVD. PORTLAND, OR 97232
TEL: 503.553.1200 FAX: 503.553.1202
WWW.LDCORP.COM

DATE: 12-04-13
DRAWN BY: JFO
CHECKED BY: RBH

| NO. | DESCRIPTION | DATE |
|-----|-------------------|----------|
| 1 | ISSUED FOR PERMIT | 12/04/13 |
| 2 | REVISIONS | |
| 3 | | |
| 4 | | |
| 5 | | |
| 6 | | |
| 7 | | |
| 8 | | |
| 9 | | |
| 10 | | |

DESIGNED BY: JFO
DRAWN BY: JFO
CHECKED BY: RBH
DATE: 12-04-13

SITE
PINS AND PRESCOTT
CULLY AND PRESCOTT
4734 NE CULLY BOULEVARD
PORTLAND, OR 97218

SHEET TITLE
SITE PLAN

SHEET NUMBER
A-1

SITEPLAN LU 14 - 112 2810 EXHIBIT C-1

