



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

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Portland, Oregon 97201
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www.portlandonline.com/bds

Date: July 23, 2009
To: Interested Person
From: Sylvia Cate, Land Use Services
503-823-7771 / scate@ci.portland.or.us

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 09-135503 AD

GENERAL INFORMATION

Applicant: Multnomah County, Property Owner
401 N Dixon St
Portland, OR 97227-1865

Carrie Plarski, Lessee
FLO TV Incorporated
5775 Morehouse Drive
San Diego, CA 92121

Michael Matthews, Tower management
Toweracquisition
190 Housatonic Street
Lee, MA 01238

Representative: Michael Sloop, Land Use Consultant and Main Contact
WFI
6170 Cornerstone Ct. East, Suite 200
San Diego, CA 92121
858 228 2236

Site Address: 2600 NE ROCKY BUTTE RD

Legal Description: TL 200 0.19 ACRES, SECTION 28 1 N 2 E
Tax Account No.: R942282040, R942282040, R942282040
State ID No.: 1N2E28DB 00200, 1N2E28DB 00200, 1N2E28DB 00200
Quarter Section: 2840

Neighborhood: Madison South, contact Carter Cummings at 971-222-8590.
Business District: Parkrose Business Association, contact Mike Taylor at 503-546-9928.
District Coalition: Central Northeast Neighbors, contact Alison Stoll at 503-823-3156.

Plan District: Rocky Butte
Other Designations: NA

Zoning: OSp Open Space with Environmental Protection Overlay zone

Case Type: AD, Adjustment

Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

The applicant proposes to collocate antennas for FLO-TV on an existing broadcast tower located on Rocky Butte. The collocation is allowed by right. However, an associated equipment building, 10 feet wide, 12 feet long and 10 feet high is proposed to be placed adjacent to the tower on the easterly side. Development standards for buildings in the Open Space zone require a 1 foot setback for every 1 foot of height of the building. In this case, the required setback would be 10 feet, but due to the size of the parcel and existing landscaping, the applicant requests an adjustment to reduce the setback from 10 feet to 3 feet 6 inches. Attached to this decision 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. Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. of Section 33.805.040, Adjustment Approval Criteria, have been met.

ANALYSIS

Site and Vicinity: The site is a sloping, 8,276 square foot tax lot within a much larger parcel zoned as Open Space. Existing development on the site includes a lattice-style tower hosting a variety of antennas, microwave dishes and similar. Thick vegetation and mature tree canopy surrounds the site to the west, south and east. The site has frontage on NE Rocky Butte Road, to the north. Across the road, uphill and further north are single dwelling houses and residential uses in the R7 zone.

Zoning: The site is zoned OSp, Open Space with Environmental Preservation overlay zone. The proposed project does not encroach into the Environmental zone, so no Environmental review is required.

Land Use History: City records indicate that prior land use reviews include the following: Approval of a relay station via MCF 85-03-11. No other information is available in the file.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **June 29, 2009**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services
- Bureau of Transportation Engineering
- Water Bureau
- Fire Bureau
- The Bureau of Parks-Forestry Division
- Site Development Section of BDS noted in their comments: Site Development has no objection to approval of this Adjustment. Ericka Koss of Site Development signed off on 09-121662-CO; according to TRACS description for that permit, the 120 square foot structure is exempt from permits.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on June 29, 2009. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

33.805.010 Purpose (Adjustments)

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue providing certainty and rapid processing for land use applications.

33.805.040 Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. below have been met.

- A.** Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

Findings: The applicant requests an Adjustment to reduce the required setback of an associated equipment building from 10 feet to 3 feet 6 inches from the adjacent property line. The purpose of the development standards for radio frequency transmission facilities is found at 33.274.040 A, which states:

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.*

The reduction in the setback for the associated equipment building will not result in a significant change with adjacent uses because the property line the shelter is locating closer to is for a tax lot within a much larger parcel zoned OSp. The tax lot property lines encompass the total footprint of an existing radio tower. The immediately surrounding use to this site is Open Space with no structures and dense vegetation. Due to the grade difference, the shelter will not be visible from the adjacent public right of way, Rocky Butte Road, nor from the residential uses to the north. Because of the lack of visibility and due to the lack of any adjacent structures, the reduced setback will still be compatible with adjacent uses and will not cause the accessory building to be any more visible. The accessory building will not emit any radio frequency; therefore the reduction in setback will not cause excessive RF emission levels. The reduced setback will not affect the structural integrity of the lattice-style tower; therefore there is no associated increase in safety hazards. For these reasons, this criterion is met.

- B.** If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

Findings: The site is in an Open Space zone. The adjacent street, Rocky Butte Road is a Local Service Street for all modes and a City bikeway. The reduction of the required ten foot setback to 3 feet 6 inches from the easterly property line will have no impact on the street function, nor on the desired character of the Open Space area that is immediately adjacent to the project. For these reasons, this criterion is met.

- C.** If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and

Findings: Only one adjustment is requested. This criterion is not applicable.

- D.** City-designated scenic resources and historic resources are preserved; and

Findings: City designated resources are shown on the zoning map by the 's' overlay; historic resources are designated by a large dot, and by historic and conservation districts. There are no such resources present on the site. Therefore, this criterion is not applicable.

- E.** Any impacts resulting from the adjustment are mitigated to the extent practical; and

Findings: There are no discernible impacts that would result from granting the requested adjustment. This criterion is met.

- F.** If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

Findings: The project area is not within an environmental zone. This criterion is not applicable.

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.

CONCLUSIONS

The applicant proposes to collocate antennas for FLO-TV on an existing broadcast tower located on Rocky Butte. The collocation is allowed by right. However, an associated equipment building, 10 feet wide, 12 feet long and 10 feet high is proposed to be placed adjacent to the tower on the easterly side. Development standards for buildings in the Open Space zone require a 1 foot setback for every 1 foot of height of the building. In this case, the required setback would be 10 feet, but due to the size of the parcel and existing landscaping, the applicant requests an adjustment to reduce the setback from 10 feet to 3 feet 6 inches. The request meets all of the applicable approval criteria, and therefore should be approved.

ADMINISTRATIVE DECISION

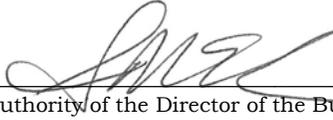
Approval of:

- Adjustment to reduce the required setback from 10 feet to 3 feet 6 inches for an accessory equipment building 10 feet in height adjacent to the easterly property line,

per the approved site plan, Exhibit C-1, signed and dated July 21, 2009, 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. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 09-135503 AD."

Staff Planner: Sylvia Cate

Decision rendered by:  **on July 21, 2009**

By authority of the Director of the Bureau of Development Services

Decision mailed: July 23, 2009

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 June 12, 2009, and was determined to be complete on June 25, 2009.

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 June 12, 2009.

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.

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 Adjustment Committee, which will hold a public hearing. Appeals must be filed **by 4:30 PM on August 6, 2009** at 1900 SW Fourth Ave. Appeals can be filed on the first floor in the Development Services Center until 3

p.m. After 3 p.m., 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. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. 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 contact the receptionist at 503-823-7967 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.

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 Adjustment Committee 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 Adjustment Committee 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 **August 7, 2009 – (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:

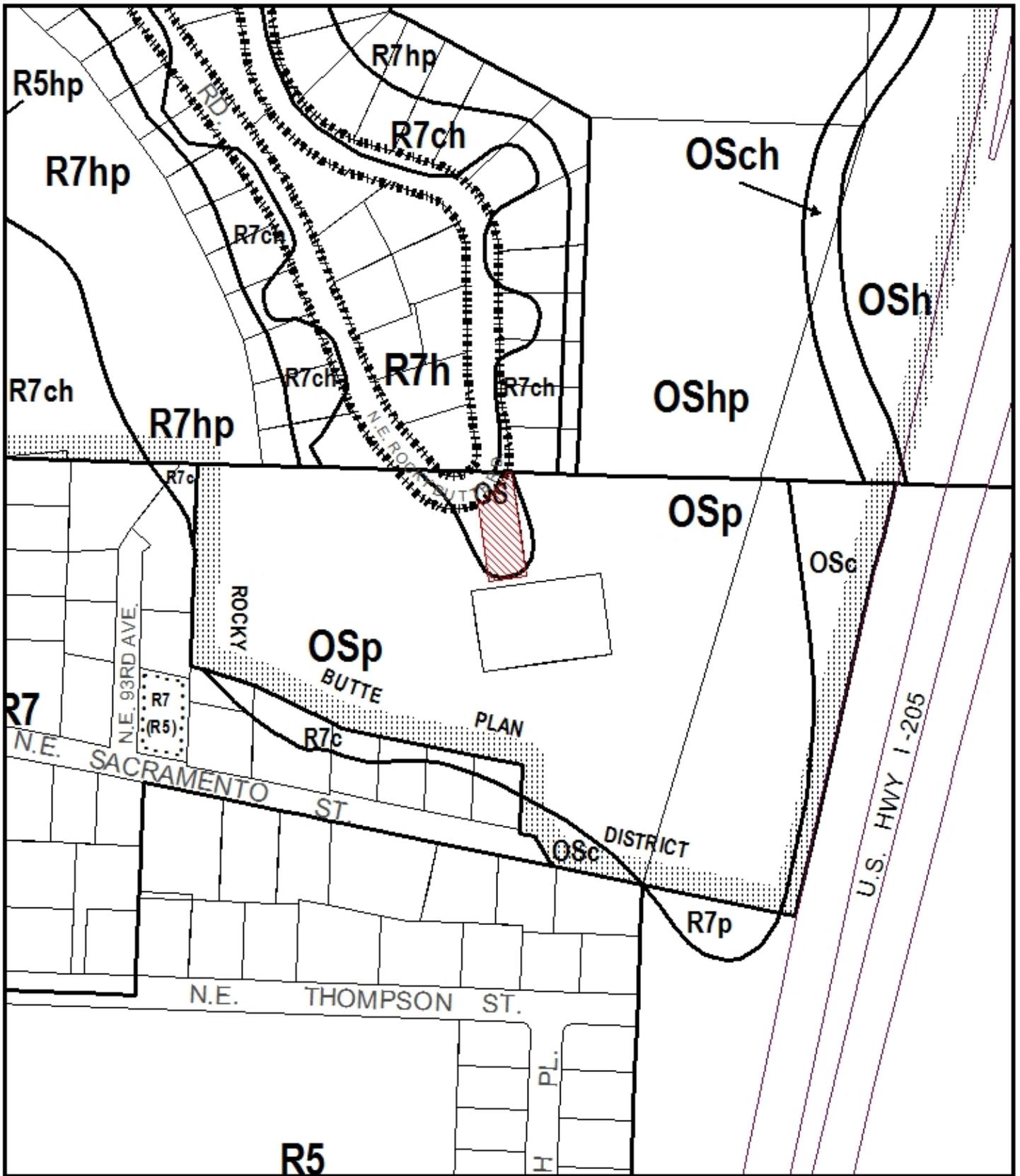
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - B. Zoning Map (attached)
 - C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Elevation
 - 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
- Correspondence: None received
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research

The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-7300 (TTY 503-823-6868).



ZONING



This site lies within the:
ROCKY BUTTE PLAN DISTRICT

File No.	<u>LU 09-135503 AD</u>
1/4 Section	<u>2840</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1N2E28DB 200</u>
Exhibit	<u>B</u> (Jun 15,2009)

mediaFLO
 USA
 5775 WARDHOUSE DRIVE
 SAN DIEGO, CA 92121
 RICHARD AZER
 DIRECTOR OF OPERATIONS
 (619) 551-3244

WFI
 140 MICHAEL FARADAY DRIVE, SUITE 242
 RESTON, VIRGINIA 20190
 PH: (703) 943-7100

B. J. THOMAS, P.E.
 7607 80TH AVE NE
 MARYSVILLE, WA 98270
 206-851-1106

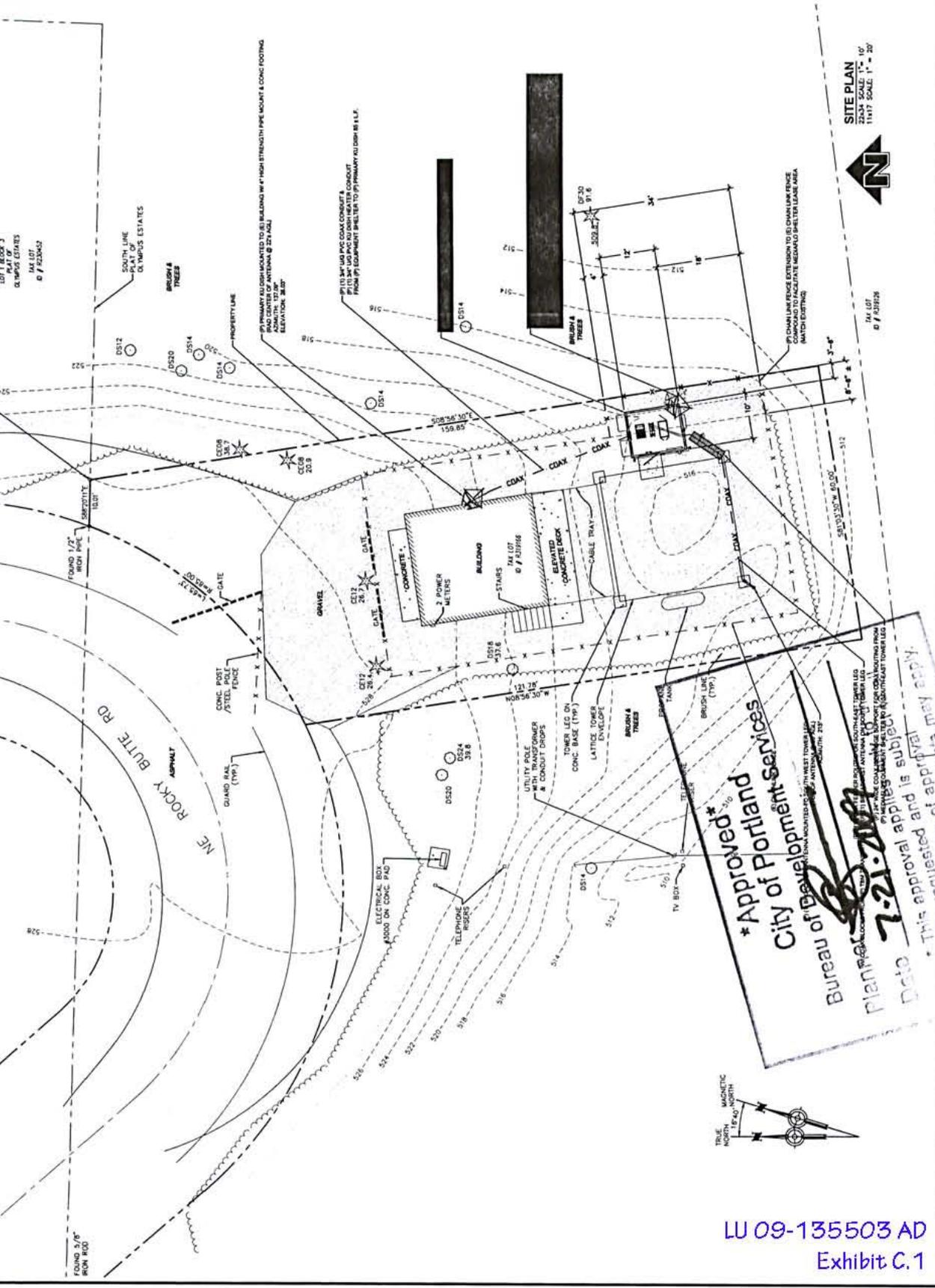
REV	DATE	DESCRIPTION
1	2/25/2008	CHANGE LOCATION OF PRIMARY
2	2/21/2008	ISSUED FOR REVIEW

REGISTERED PROFESSIONAL ENGINEER
 B. J. THOMAS, P.E.
 91824PE
 DESIGN
 IF IS A VIOLATION OF LAW FOR ANY PERSON, UNLESS THEY ARE ACTING UNDER THE DIRECTION OF A LICENSED PROFESSIONAL ENGINEER, TO ALTER THIS DOCUMENT.

PDX-004
 PORTLAND OR-004P
 2600 NE ROCKY BUTTE RD
 PORTLAND, OR 97220

SHEET TITLE
 SITE PLAN
SHEET NUMBER
 A-1

APPLICANT: CONSULTANT: A/E DESIGN FIRM: DESIGN RECORD: PROFESSIONAL STAMP: SITE INFORMATION: SHEET TITLE: SHEET NO.:



LU 09-135503 AD
 Exhibit C.1