



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

1900 SW 4th Avenue, Suite 5000  
Portland, Oregon 97201  
503-823-7300  
Fax 503-823-5630  
TTY 503-823-6868  
[www.portlandonline.com/bds](http://www.portlandonline.com/bds)

**Date:** March 31, 2011  
**To:** Interested Person  
**From:** Sylvia Cate, Land Use Services  
503-823-7771 / [Sylvia.Cate@portlandoregon.gov](mailto:Sylvia.Cate@portlandoregon.gov)

## **NOTICE OF A TYPE I 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 to the Oregon Land Use Board of Appeals (LUBA) at 550 Capitol St. NE, Suite 235, Salem, OR 97301. The phone number for LUBA is 1-503-373-1265. Information on how to appeal this decision is listed at the end of this notice.

### **CASE FILE NUMBER: LU 11-104120 CU**

#### **GENERAL INFORMATION**

**Applicant:** Donald E and Julia G Pollock, property owners  
1834 SW 58th Ave #206  
Portland, OR 97221

**Representative:** Dan Dutton, Main Contact  
Goodman Networks  
7360 SW Hunziker St, S.206  
Portland, OR 97223  
503 756 3888

**Site Address:** 7523 SW VIEW POINT TER

**Legal Description:** LOT 1, PARTITION PLAT 1992-146  
**Tax Account No.:** R649728720  
**State ID No.:** 1S1E22BC 03100  
**Quarter Section:** 3729

**Neighborhood:** South Portland NA., contact Jim Davis at 503-248-9820.  
**District Coalition:** Southwest Neighborhoods Inc., contact Leonard Gard at 503-823-4592.

**Zoning:** R5: Single Dwelling Residential 5,000  
**Case Type:** CU: Conditional Use  
**Procedure:** Type I, an administrative decision with appeal to the Oregon Land Use Board of Appeals (LUBA).

#### **Proposal:**

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 of Interstate 5. The associated equipment will be located on adjacent private property within a fenced enclosure approximately 11 feet by 18 feet. The proposed fence around the equipment cabinets will be wooden and 7 feet in height to conceal the installation. The wireless facility

is existing within the I-5 right of way, and the current associated equipment is mounted on a utility pole in the public right of way of SW View Point Terrace. The existing facility will be upgraded, including the proposed new equipment cabinets located at grade, and the pole mounted equipment is proposed to be removed.

The associated equipment will be connected to the antennas mounted in the right of way via an underground coaxial cable run. Because the facility is not exempted from the zoning requirements of 33.274, a Type I 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. 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.

*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.portlandonline.com/cable/index.cfm?c=33150>.

**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, Conditional Use
- 33.274.040, Development Standards

**ANALYSIS*****City Wireless Policy Background***

It is important to distinguish between this application, which seeks conditional use approval for associated equipment cabinets on private property, from a wireless facility located entirely on private property, consisting of such equipment and a tall vertical structure known as a 'monopole' or 'cell tower' that is specifically intended to elevate a radio transmission facility high above the ground. In this case, the antennas for the wireless facility 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 a conditional use review.

Wireless telecommunication facilities installed in the right of way are encouraged by the City via a number of policies, including right of way franchise agreements and revisions to the zoning code itself. A summary of these policies and how they coordinate to encourage facilities being located in the public rights of way in order to provide wireless services and to reduce the proliferation of new 'cell towers' follows:

The City Council passed a Wireless Resolution on July 24, 2002 authorizing the City's Office of Cable Management to grant right of way use agreements to wireless telecommunications service providers. In adopting this policy, the City Council found that "[e]xpansion of wireless services and users has increased at a rapid rate. Today in the United States over 50% of households and one-third of the population now have a wireless phone. Portland's penetration rates appear to be slightly higher than the national average. The City seeks to promote the availability of high-quality and diverse wireless telecommunications services to city residents, businesses, the city and other public institutions, and seeks to encourage competition and neither to promote nor to hinder one wireless telecommunication service provider or technology over others. New technology and competition may foster intensive use and occupancy of city rights of way by multiple users. Intensive use and occupancy of city rights of way requires coordination and management to ensure orderly planning, entry, construction, repair, maintenance and coordination of city rights of way, as well as

mechanisms to protect and assure the public health, safety and welfare, and reliable delivery of essential city services.”

Portland’s public rights of way contain approximately 4,300 linear miles of paved roadways, with over 100,000 utility poles, 35,000 banks of electrical transformers, millions of miles of wires and cables, thousands of land line based telephone boxes and cable boxes. No notice is given for the installation of these and multiple other related items when installed within the City’s public rights of way. Additional information about franchise agreements with the City can be found on the City’s web site at:

<http://www.portlandonline.com/cable/index.cfm?c=33150>.

One of the many objectives of the City 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. This will minimize the visual impact and reduce the number of monopoles in the City, particularly in residential areas, that are necessary to provide wireless telecommunications service to the community. In adopting this policy, the Council made a conscious policy choice to try 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 facilities in and of itself tends to reduce visual clutter and intrusiveness. The ordinance that was adopted has specific criteria requiring that the visual impact of such facilities to be minimized via specific methods as outlined in the ordinance.

**Site and Vicinity:** The site is a 5,000 square foot lot developed with a 1,808 square foot single dwelling house built circa 1994. The site abuts the public right of way of Interstate Highway 5, and the land slopes steeply down from the northerly property line of the site to the paved grade of I-5. The vicinity to the north and west of the site is developed with the Interstate. East and south of the site are lots and parcels in the R5 zone and developed with residential uses. To the south west of the site is land zoned R10 with Environmental ‘c’ and ‘p’ overlay zones.

**Zoning:** The site is zoned R5, one of several single dwelling zones that implement the Comprehensive Plan Map designation for Single Dwelling Residential.

**Land Use History:** City records indicate there one prior land use review for this site, case file LUR 91-00575 MP, which approved a three lot partition. There is no further information in the file.

**Agency Review:** A Notice of Proposal in your Neighborhood was mailed on **February 24, 2011**. The following Bureaus have responded with no issues or concerns about the proposal:

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

The Bureau of Parks-Forestry Division responded with comments regarding the need to obtain permits to remove any trees from the public rights of way: Exhibit E-6 has additional details.

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on **February 24, 2011**. A total of two written responses have been received from two notified property owners in response to the proposal. Both neighbors responded to the Notice with comments regarding the proposed removal of one tree and the concerns regarding the consequences of removing the tree: loss of aesthetics, increased noise from adjacent I-5 and lowering of

property values. One neighbor suggested that the City should perhaps hold a hearing if there are significant concerns from the neighbors.

*Staff Comment:* Findings regarding the loss of a tree and related impacts can be found below, in this decision. There is no criterion that requires an analysis of impact on adjacent property values. The City Council adopted Zoning Code regulations and procedures that require proposals for accessory equipment in support of wireless in the rights of way be processed as a Type I land use review, and this procedure does not allow for a local hearing or a local appeal.

## **ZONING CODE APPROVAL CRITERIA**

### **33.815.010 Conditional Use 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, and therefore, this criterion is not applicable to the antennas mounted on the utility pole in the right of way. Therefore, this criterion is not applicable.

*Staff Note:* If readers of this decision are interested in the appearance of the proposed antennas and utility pole, they can view the attached elevation drawings that depict the utility pole and the methodology utilized to minimize the appearance of the antennas. Facilities locating within the public right of way must comply with all the requirements of the city's wireless in the rights of way franchise agreement, which includes a section that regulates mounting devices and appearance. These requirements generally mirror the Portland Zoning Code regulations applicable to wireless facilities and their appearance.

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 for the existing wireless facility in the I-5 right of way is currently mounted on a nearby utility pole located along the easterly edge of the public right of way of SW View Point Terrace. The applicant proposes to place upgraded accessory equipment on the subject site, near the rear property line, and remove the equipment cabinet currently attached to the SW View Point Terrace utility pole. The relocated, upgraded, and expanded equipment is proposed to be located at grade on an 8 x 16 foot concrete pad and fully enclosed within a secure fenced compound and completely screened by a 7 foot high board on board fence.

The board on board fence is typical in residential areas and is compatible with the residential character of the surrounding area. In addition, after considering the comments from two notified neighbors who expressed concerns about the removal of trees and the potential to hear more noise from the I-5 traffic below, the applicant responded to staff that a requirement to plant additional vegetation to mitigate for the removal of one tree was acceptable. As shown on the site plans, one 7-inch deciduous tree is proposed to be removed near the northerly end of the proposed equipment pad. Per the site plans, this tree is on the subject property.

[*Staff Note:* The city forester, as noted above, responded to the land use notice with a response noting that permits are required to remove trees and no trees within the public rights of way may be removed].

The subject site has some significant topography, and the back yard is partially terraced, with useable, flat outdoor area adjacent to a back deck and bordered by a railroad tie retaining wall. Beyond this portion of the back yard, the equipment pad and enclosure is proposed, meeting the required 5-foot setbacks from the property lines.

After comments were received from notified neighbors, the applicant indicated a willingness to install some landscaping to further buffer and screen the facility from neighbors. Therefore, to ensure that the accessory equipment is fully compatible with the desired residential character of the immediately adjacent area, a condition of approval is warranted. The applicant must plant a row of arborvitae [or any other evergreen shrubbery that is not on the Portland nuisance or prohibited plant list] along the east edge of the equipment compound, which will further buffer the facility from views from the neighbors and the home on the subject site. These plants must be at least a one gallon container size at time of planting, and should be spaced so that a continuous hedge of greenery is formed within 3 years after installed. The applicant must also install two trees, along the northerly fence line as indicated on Exhibit C-1. These trees can be evergreen or deciduous or a mixture, but they must meet the sizing standards for residential plantings at 33.248.030.C.1. With these conditions, this criterion can be 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, *Development Standards*, below, all applicable regulations are met, and 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 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

*Staff Note:* The above purpose statements are not mandatory approval criteria, but rather explain the intent and purpose of the development standards found below, in this section of Chapter 33.274.

**B. When standards apply.** Unless exempted by 33.274.030, above, the development standards of this section apply to all Radio Frequency Transmission Facilities [regulated by the Portland Zoning Code]. 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 allow 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.

**Findings:** The proposal is to mount the antennas on a utility pole in the public right of way, thus avoiding the construction of a new tower on private property. 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, and therefore, this criterion is not applicable.

*Staff note:* The utility pole which will host the antennas associated with the wireless facility will be located in the public right of way, and is a use allowed by right via the City of Portland's right of way agreement with the wireless telecommunications service provider, in this specific instance, AT&T Wireless.

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.

**Findings:** The proposal does not include a new tower, nor is the utility pole subject to Title 33 for the reasons stated above. Therefore, this criterion is not applicable.

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:** The proposal does not include a new tower, nor is the existing utility pole subject to Title 33 for the reasons stated above. Therefore, this criterion is 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.

<b>Table 274-1</b> <b>Radio Frequency Emission Standards [1]</b>			
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 are presently already mounted on a utility pole located in the public right of way. If the applicant determines that any of the existing antennas need to be switched out or replaced, clauses in the right of way franchise agreement require that antennas so mounted comply with the above Emission Level Standard limits. At time of building permit for any replacement antennas, 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.

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.

**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 proposal does not include a new tower, nor is the utility pole subject to Title 33 for the reasons stated above. As discussed earlier in this report, the ground-based equipment will comply with the base zone setback standards. Therefore, this criterion is met.

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

**Findings:** The proposal does not include a new tower, nor is the utility pole subject to Title 33 for the reasons stated above. 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:** The proposal does not include a new tower, nor is the utility pole subject to Title 33 for the reasons stated above. Additionally, the site for the proposed accessory equipment is within 50 feet of an R zone. 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:

- (1) Tower landscaping. A landscaped area that is at least 15 feet deep and meets the L3 standard must be provided around the base of the tower.



- [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 does not include a new tower, nor is the utility pole subject to Title 33 for the reasons stated above. Therefore, this criterion 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 public 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 locate the associated equipment within a secured, fully fenced compound that includes a board on board wooden fence that will be tall enough to completely screen the equipment. This meets the F2 standards. However, as noted earlier in this decision, a condition of approval is warranted to ensure that this installation of accessory equipment at the rear of a residential back yard is fully compatible with the desired character of the residential area and to mitigate for the removal of a 7-inch deciduous tree. The applicant will be required to install additional landscaping to fully meet the approval criterion found at 33.815.225 A. 2. Therefore, this standard will be met and exceeded.

10. Tower design.

- a. For a tower accommodating a Radio Frequency Transmission Facility of 100,000 watts or more, the tower must be designed to support at least two additional transmitter/antenna systems of equal or greater power to that proposed by the applicant and one microwave facility, and at least three two-way antennas for every 40 feet of tower over 200 feet of height above ground.
- b. For any other tower, the design must accommodate at least three two-way antennas for every 40 feet of tower, or at least one two-way antenna for every 20 feet of tower and one microwave facility.
- c. The requirements of Subparagraphs a. and b. above may be modified by the City to provide the maximum number of compatible users within the radio frequency emission levels.

**Findings:** The proposal does not include a new tower, nor is the utility pole subject to Title 33 for the reasons stated above. Therefore, this criterion is not applicable.

11. Mounting device. The device or structure used to mount facilities operating at 1000 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 proposal does not include a new tower, nor is the utility pole subject to Title 33 for the reasons stated above. Therefore, 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:** The proposal does not include a new tower, nor is the utility pole subject to Title 33 for the reasons stated above. 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 1000 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 1000 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:** The proposal does not include a new tower, nor is the utility pole subject to Title 33 for the reasons stated above. Therefore, this criterion is not applicable.

Staff note: Mounting techniques for antennas on utility poles are addressed in the right of way franchise agreement the wireless provider has with the City. At time of building permit, the mounting technique will be reviewed for compliance.

- 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 will be mounted to a non-broadcast structure, a utility pole in the right of way. However, the facility located within the right of way is not subject to this review and therefore, this criterion is not applicable.

- c. Lattice. Lattice towers are not allowed.

**Findings:** The proposal does not include a new tower, nor is the proposed utility pole subject to Title 33 for the reasons stated above. 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:** The proposal does not include a new tower, nor is the utility pole subject to Title 33 for the reasons stated above. Therefore, this criterion is not applicable.

### **33.274.060 Registration of Existing Facilities**

All Radio Frequency Transmission Facilities subject to this chapter and existing as of September 19, 1987 must complete and submit the Radio Frequency Transmission Facility registration form available from the City.

*Staff Note:* A registration form is required for this facility, and the registration form must be submitted to the City at time of permit issuance for the wireless facility.

## **CONCLUSIONS**

The applicant requests a conditional use review for equipment cabinets associated with a wireless telecommunications facility mounted on a utility pole in the public right of way. The associated equipment will be located on adjacent private property within a fully fenced equipment compound utilizing a board on board wooden fence. With conditions of approval, the proposal meets all of the applicable approval criteria, and therefore should be approved.

## **ADMINISTRATIVE DECISION**

Approval of:

- A Conditional Use for the accessory equipment cabinets for a wireless facility with antennas located in the public right of way of Interstate 5, per the approved site plans, Exhibit C-1 through C-3 signed and dated March 28, 2011, subject to the following conditions:
  - A. As part of the building permit application submittal, the following development-related conditions (B) 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 11-104120 CU." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
  - B. The applicant must plant a row of arborvitae [or any other evergreen shrubbery that is not on the Portland nuisance or prohibited plant list] along the east edge of the equipment compound, which will further buffer the facility from views from the neighbors and the home on the subject site. This area is indicated on Exhibit C-2. These plants must be at least a one gallon container size at time of planting, and should be spaced so that a continuous hedge of greenery is formed within 3 years after installed.

The applicant must also install two trees, along the northerly fence line as indicated on Exhibit C-2. These trees can be evergreen or deciduous or a mixture, but they must meet the sizing standards for residential plantings at 33.248.030.C.1.

**Staff Planner: Sylvia Cate**

**Decision rendered by:**  **on March 28, 2011**

By authority of the Director of the Bureau of Development Services

**Decision mailed March 31, 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 January 18, 2011, and was determined to be complete on **February 17, 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 January 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: May 18, 2011.**

**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. You may call LUBA at 1-503-373-1265 for further information on filing an appeal.

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](http://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 1, 2011**. 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.

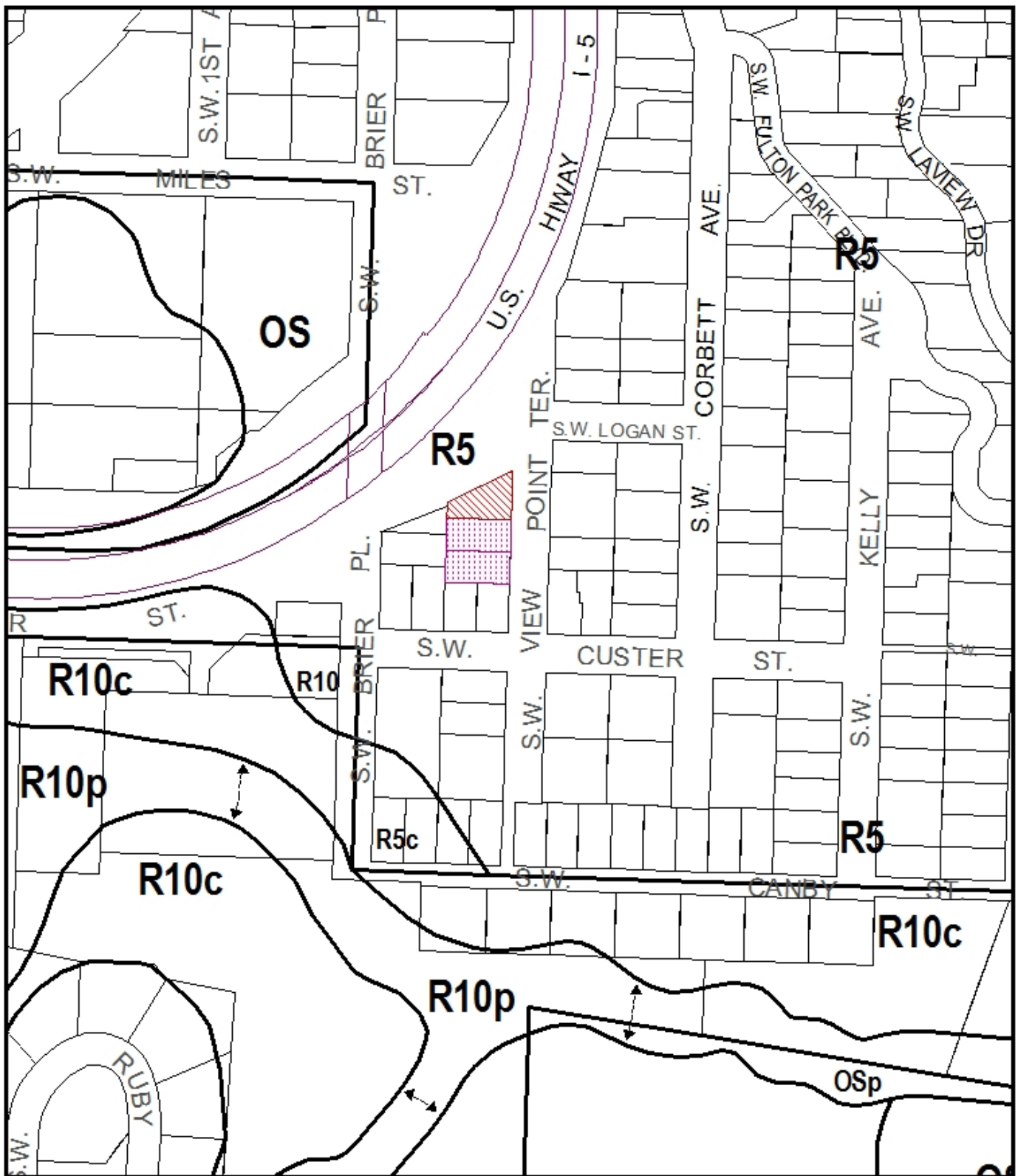
#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Site Plan Detail: areas to install additional landscaping
  - 3. 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:
  - 1. S. Gurdian MD, March 3, 2011, Objections

2. The Rev. H. Knight, March 4, 2011, Objections
- 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. 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



NORTH

File No.	LU 11-104120 CU
1/4 Section	3729
Scale	1 inch = 200 feet
State_Id	1S1E22BC 3100
Exhibit	B (Jan 20, 2011)



[illegible]

W11-104120cm  
EXHIBIT C-1



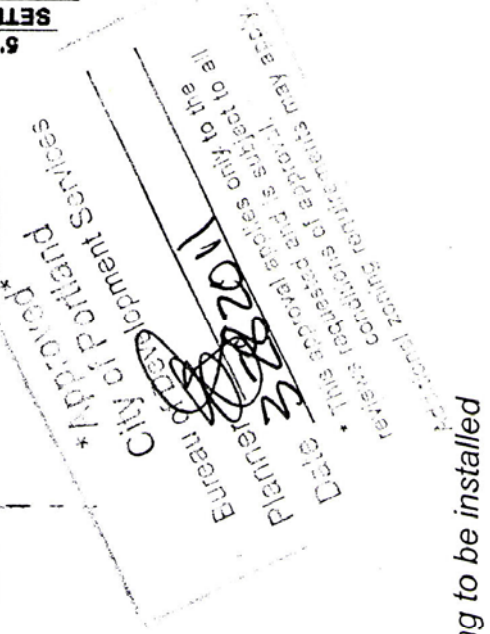


EXHIBIT C-2

EXHIBIT C-3  
441-104120 CC