

City of Portland, Oregon Bureau of Development Services

Land Use Services

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

FROM CONCEPT TO CONSTRUCTION

**Date:** April 8, 2015

To: Interested Person

 From:
 Mark Walhood, City Planner

 503-823-7806 / mark.walhood@portlandoregon.gov

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

The Bureau of Development Services has **approved** a proposal in your neighborhood. The mailed copy of this document is only a summary of the decision. The reasons for the decision, including the written response to the approval criteria and to public comments received on this application, are included in the version located on the BDS website

<u>http://www.portlandonline.com/bds/index.cfm?c=46429</u>. 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 15-107881 AD

NORTH LOMBARD CELL TOWER LANDSCAPING

## **GENERAL INFORMATION**

Applicant:	Noah Grodzin / Cascadia PM 5501 NE 109th Ct Suite A2 / Vancouver WA 98662
Property Owner:	Union Pacific Railroad Company 1400 Douglas St - Ms 1640 / Omaha NE 68179-1640
Operator:	Navid Abhaisingh / Sba Communications 5900 Broken Sound Pkwy / Boca Raton FL 33487
Site Address:	( <i>No Address</i> ) Railroad parcel on the west side of N. Lombard, across the street from Pier Park
Legal Description: Tax Account No.: State ID No.: Quarter Section: Neighborhood: Neighborhood within Business District:	TL 400 5.28 ACRES DEPT OF REVENUE, SECTION 02 1N 1W R961021160 1N1W02 00400 2020 St. Johns, contact Josh Leslie at 503-505-8495. <b>150 feet:</b> Cathedral Park, contact Cole Grisham at 503-410-8463. Columbia Corridor Association, contact Peter Livingston at 503-796-
District Coalition:	2892. North Portland Neighborhood Services, contact Mary Jaron Kelley at 503-823-4099.
Zoning: Case Type: Procedure:	<ul> <li>IG2, IG2b (General Industrial 2 base zone, southernmost tip of the site away from project area also includes 'b' or Buffer overlay zone)</li> <li>AD (Adjustment Review)</li> <li>Type II, an administrative decision with appeal to the Adjustment Committee.</li> </ul>

**PROPOSAL:** The applicant has proposed construction of a new 120'-0" tall wireless telecommunications (cell phone) tower on a railroad parcel in North Portland. The site is located on the west frontage of N. Lombard Street across the street from Pier Park, and east of Terminal 4 on the Willamette River. The proposed facility would be located on the western portion of an approximately 5-acre parcel, approximately 1,200 feet from the closest street (N. Lombard). The facility includes the 120-0"-tall cell tower itself, and enclosed equipment area of 50'-0" by 75'-0" surrounded by an 8'-0" tall solid cedar fence. A covered shelter building and other related equipment are proposed within the fenced enclosure at grade, behind the fence. No landscaping is proposed around the base of the facility.

Regulations for new wireless telecommunication facilities require that the base of the tower and all accessory equipment at grade be provided with 5'-0" deep landscaping to the L3 standard (6'-tall shrub screen, trees, groundcover). As no landscaping is proposed, the applicant has requested an Adjustment to waive the required 5'-0"-deep L3 landscaping around the base of the facility {33.274.040.C.8.a.(1)}.

**RELEVANT APPROVAL CRITERIA:** In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are found at 33.805.040.A-F, Adjustment Approval Criteria. The "purpose of the regulation" is found at 33.274.040.A. Zoning Code chapters are available online at <u>www.portlandoregon.gov/zoningcode</u>.

## ANALYSIS

**Site and Vicinity:** The site is a large, irregular parcel of land owned by the Union Pacific Railroad, developed with both paved and graveled areas, rail spurs, vehicle areas and driveways. The southern portion of the site, and the curving tail that tapers in a long arc reaching southwest, are developed with rail spurs that allow unloading to trucks or storage. Aerial photos show that the site is variably used to store trucks and shipping containers, and a common truck driveway serving multiple sites in connection to the adjacent Port of Portland Terminals along the river immediately to the west criss-crosses the site from northeast to southwest, just north of the rail spurs. Chain link fencing surrounds the site along the North Lombard frontage, and the site has no landscaping.

The surrounding area is developed with similar industrial warehousing and distribution uses. The Toyota automobile import yard is located immediately to the west, and the Port of Portland Terminals are just beyond to the west. Pier Park is located across the street to the east of the site. Residential areas are located nearby to the south, at the north tip of the residential portions of St. Johns.

**Zoning:** The site is in the General Industrial 2 (IG2) base zone. The IG2 zone is one of three zones that implement the Industrial Sanctuary map designation of the Comprehensive Plan. The zone provides areas where most industrial uses may locate, while other uses are restricted to preserve land for industry and prevent potential conflicts. A small portion of the southernmost tip of the site, several hundred feet from the facility and abutting the adjacent residential zones, is covered by the 'b' or Buffer overlay zone. As no exterior alterations are proposed in the Buffer overlay zone, these regulations are not relevant to the requested Adjustment.

Land Use History: City records indicate three prior land use reviews at the site:

- *CU* 26-69, Conditional Use for excavation and fill, file marked VOID on 7/25/69. No further information is available on this case in City records;
- *CU* 79-75, Approved Conditional Use for excavation and fill, no further information available in the file, including approved drawings or final decision language; and
- *CU* 57-76, Approved Conditional Use for excavation and fill, subject to conditions of approval. This review, like the two above, was for a larger area extending beyond the current site, including the adjacent three parcels to the north, and the adjacent two parcels to the south.

**Agency Review:** A "Notice of Proposal in Your Neighborhood" was mailed **February 27, 2015**. The following Bureaus have responded:

The *Bureau of Environmental Services* has reviewed the proposal and responded with standard comments regarding stormwater management and sanitary sewer disposal, but no objections to the requested Adjustment. Exhibit E.1 contains staff contact and additional information.

The *Water Bureau* has reviewed the proposal and responded with information regarding available water services, but no objections or concerns regarding the requested Adjustment. Exhibit E.2 contains staff contact and additional information.

The *Fire Bureau* has reviewed the proposal and responded with standard comments regarding Fire Code, but no objections or recommendations regarding the requested Adjustment. Exhibit E.3 contains staff contact and additional information.

The *Life Safety Section of the Bureau of Development Services* has reviewed the proposal and offered standard comments regarding Building Codes, but no objections or recommendations regarding the requested Adjustment. Exhibit E.4 contains staff contact and additional information.

The following two bureaus have responded without comment or concern (Exhibit E.5):

- The Development Review Section of Portland Transportation; and
- The Site Development Section of the Bureau of Development Services.

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on February 27, 2015. 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 of Adjustment Reviews

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 Adjustment 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 purpose of the landscaping standard for the base of cell tower facilities is to 'ensure that Radio Frequency Transmission Facilities will be compatible with adjacent uses' (relevant excerpts from 33.274.040.A, Purpose).

The proposed facility is located at the western edge of an industrial shipping and distribution center site, in the middle of other similar industrial uses. The nearest public street, N. Lombard, is approximately 1,200 feet away to the east. The nearest residential zone is located approximately 750 feet away to the south, and visually separated by a grove of existing mature trees on the property to the south. When viewed from the public vantage point along N. Lombard, in the vicinity of the entry to

Pier Park, the facility will only be visible against a backdrop of other industrial development, shipping containers, and trucks.

The existing site has no buildings or landscaping, and is not set up with water service to support the establishment of vegetation. The site is used mainly for truck maneuvering, train movement, and the temporary storage of trucks and shipping containers. Eliminating the required landscaping around the base of the tower and providing a solid wood fence instead will visually screen the base of the facility from view, and protect it from damage by truck movement.

This is an appropriate site for a new cell tower, as distance from residential and open spaces zones provides the fundamental screening of the facility. Waiving the required landscaping for this facility will not create a situation that is incompatible with the industrial uses in the area, nor will it reduce the character or livability of residential and park lands. Therefore, 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 Development Review Division of Portland Transportation has reviewed the proposal for street classification issues and responded without comment or concern. As noted above under findings for criterion A, the proposal is in keeping with the desired character of this IG2-zoned industrial area. Therefore, 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:** Based on the findings and discussion above under criterion A, 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:** Environmental overlay zones are designated on the Official Zoning Maps with either a lowercase "p" (Environmental Protection overlay zone) or a "c" (Environmental Conservation overlay zone). As the site 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 is proposing a new wireless telecommunications facility on an industrial site in industrial St. John's, but without the required landscaping around the base of the facility. As proposed, the site is approximately 1,200 feet from the nearest public street, and not visible from the nearest residential area to the south. A sight-obscuring wood fence will be provided around the base of the facility, screening the varied equipment at the base from view and protecting the facility from truck traffic. The request meets the relevant criteria and should be approved.

## **ADMINISTRATIVE DECISION**

**Approval** of an **Adjustment** to waive the required 5'-0" deep L3 landscaping around the base of a new wireless telecommunications tower and at-grade equipment {33.274.040.C.8.a.(1)}, with substitution of the landscaping with an 8'-0"-tall solid cedar fence, as shown on the approved Exhibits C.1 through C.9, all signed and dated April 6, 2015, and subject to the following condition:

A. As part of the building permit application submittal, each of the 4 required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C.1-C.9. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 15-107881 AD."

## Staff Planner: Mark Walhood

Decision rendered by: <u>MARK WALHOOO</u> on April 6, 2015. By authority of the Director of the Bureau of Development Services

## Decision mailed: April 8, 2015

**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 21, 2015, and was determined to be complete on **February 23, 2015**.

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 21, 2015.

*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 22, 2015.** 

## 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 April 22, 2015** at 1900 SW Fourth Ave. Appeals can be filed at the Development Services Center Monday through Wednesday and Fridays between 8:00 am to 3:00 pm and on Thursdays between 8:00 am to 12:00 pm. After 3:00 pm Monday through Wednesday and Fridays, and after 12:00 pm on Thursdays, appeals must be submitted at the reception desk on the 5<sup>th</sup> floor. **An appeal fee of \$250 will be charged**. The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

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

**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 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, 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 April 23, 2015 (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; **OR**
- **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 of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

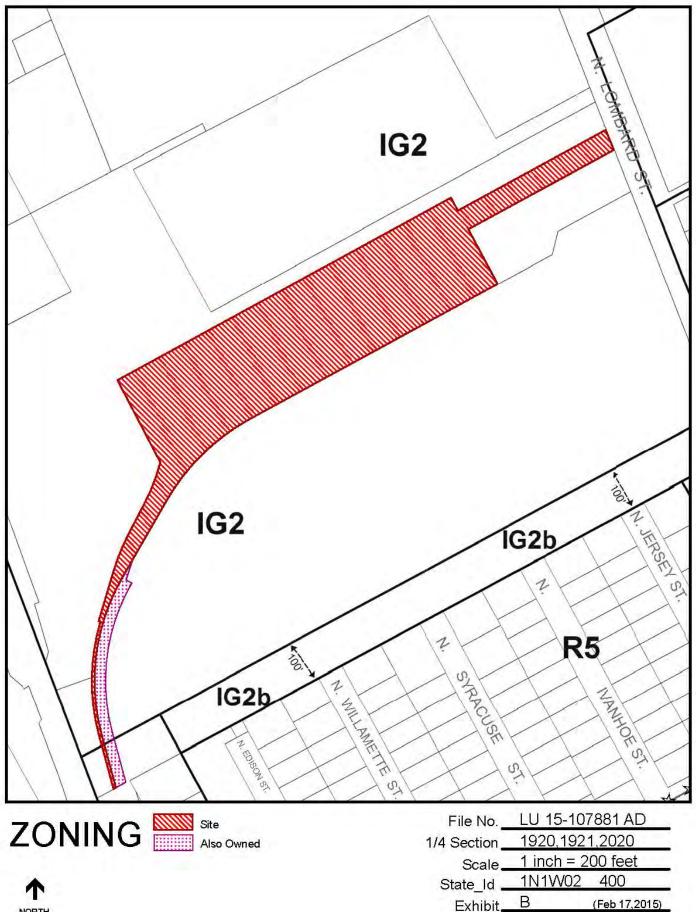
## **EXHIBITS**

## NOT ATTACHED UNLESS INDICATED

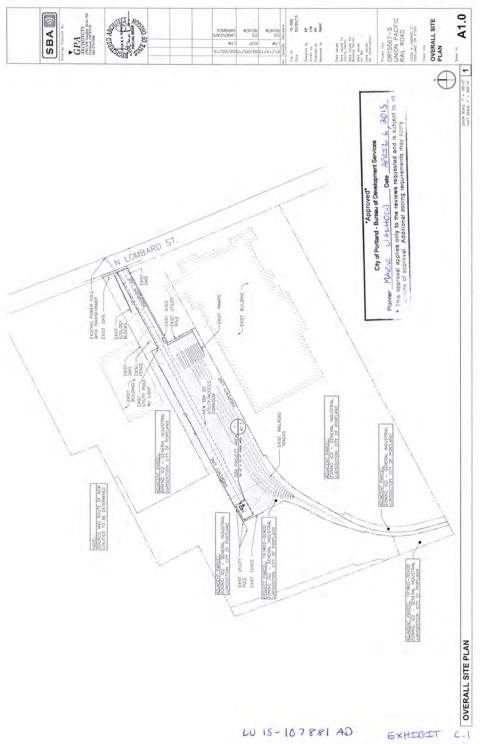
- A. Applicant's Statements
  - 1. Original narrative
  - 2. Original drawing set REFERENCE ONLY/NOT APPROVED
  - 3. Revised narrative, rec'd. 2/23/15
  - 4. Reference-only sheets from revised plan set (title pages, general notes, survey)
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Overall Site Plan (attached)
  - 2. Enlarged Site Plan (attached)
  - 3. North Elevation (attached)
  - 4. Fencing Details (attached)
  - 5. Construction Details
  - 6. Utility Details
  - 7. Utility Rack Details
  - 8. Electrical Site Plan
  - 9. Enlarged Electrical Site Plan
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Water Bureau
  - 3. Fire Bureau

- 4. Life Safety Section of the Bureau of Development Services
- 5. No comment/concern responses from the Development Review Section of Portland Transportation and the Site Development Review Section of the Bureau of Development Services
- F. Correspondence (none received at time of decision mailing)
- G. Other:
  - 1. Original LU Application Form and receipt
  - 2. Incomplete letter from staff to applicant, sent 2/17/15
  - 3. Documentation of site location vis-à-vis adjacent cell towers in city wireless infrastructure database (3 attached maps/plans)
  - 4. Staff and applicant e-mail dialogue, 2/17/15
  - 5. Land use history records
  - 6. Pre-Application Conference notes: EA 14-180835 PC

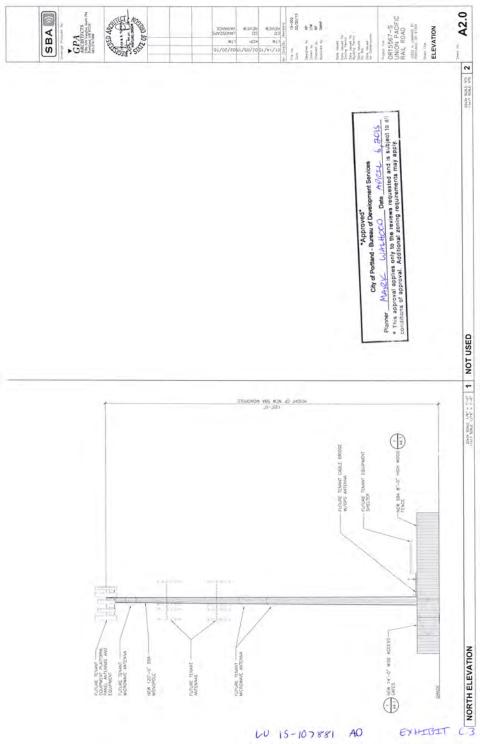
The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).

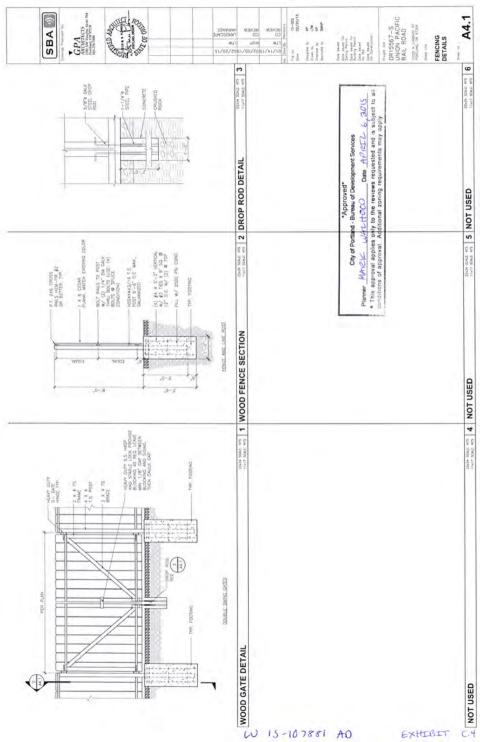


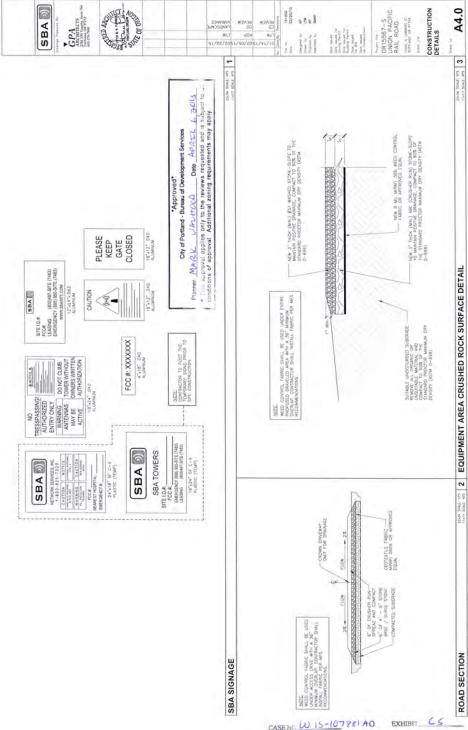
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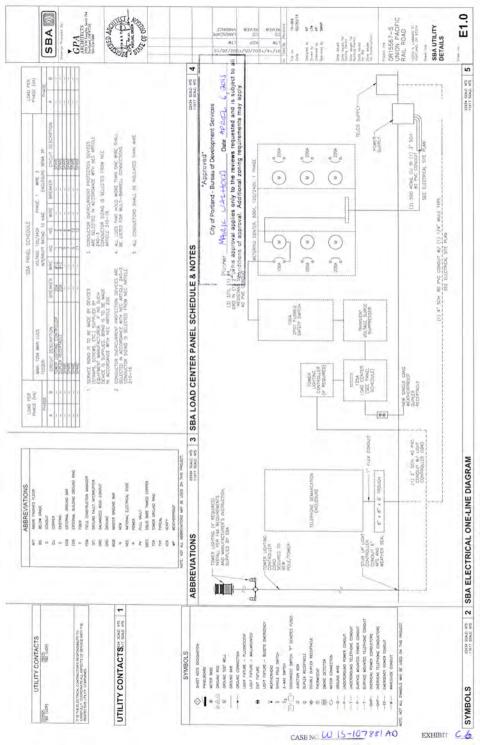


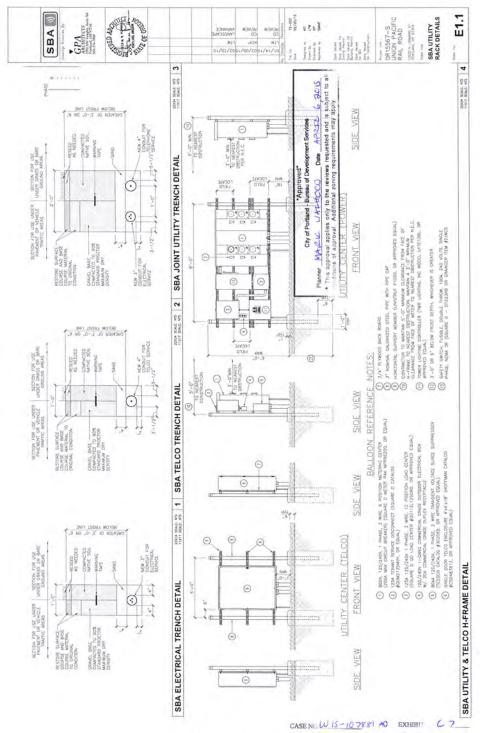


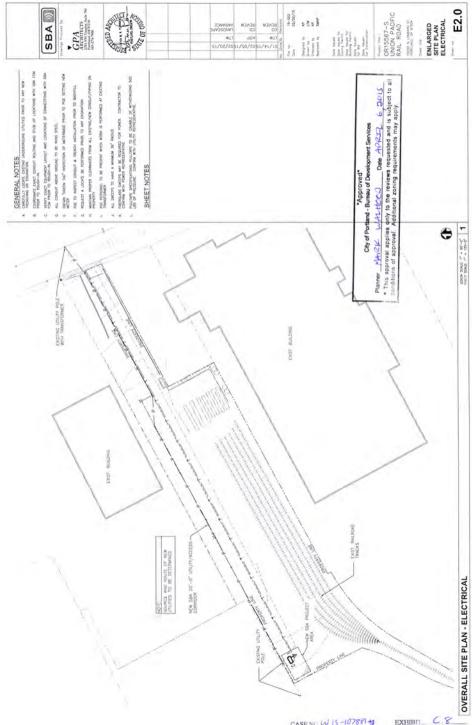




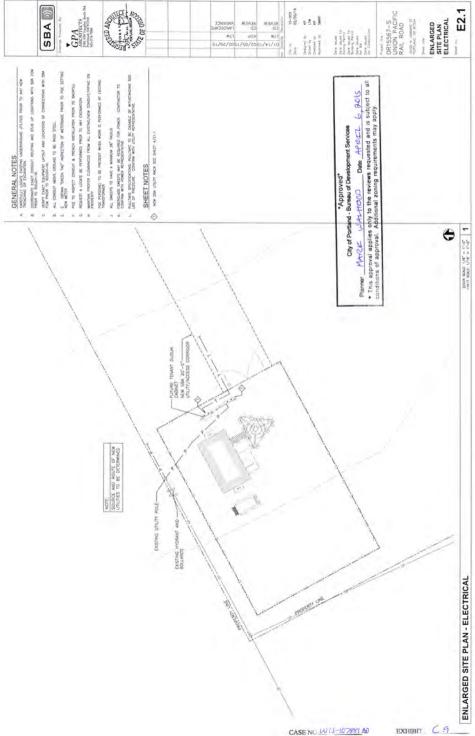
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EXHIBIT



EXHIBIT