



**City of Portland, Oregon**  
**Bureau of Development Services**  
**Land Use Services**  
FROM CONCEPT TO CONSTRUCTION

Carmen Rubio, Commissioner  
Rebecca Esau, Director  
Phone: (503) 823-7300  
TTY: 711  
[www.portland.gov/bds](http://www.portland.gov/bds)

**Date:** September 6, 2023  
**To:** Interested Person  
**From:** Amanda Rhoads, Land Use Services  
503-865-6514 / [Amanda.Rhoads@portlandoregon.gov](mailto:Amanda.Rhoads@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 are included in the version located on the BDS website <https://www.portland.gov/bds/zoning-land-use/news/notices>. Enter the land use case file number in the keyword search. 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 23-015492 CU AD**

#### **GENERAL INFORMATION**

**Applicant:** Zach Phillips | Crown Castle  
1842 SW Lobelia St | Portland, OR 97219  
503-708-9200, [zach.phillips@crowncastle.com](mailto:zach.phillips@crowncastle.com)

**Owner:** Live AE Little LLC  
4579 NE Cully Blvd | Portland, OR 97218

**Site Address:** 4579 NE CULLY BLVD

**Legal Description:** BLOCK 5 LOT 1, BERRY AC  
**Tax Account No.:** R073002280  
**State ID No.:** 1N2E19AD 11700  
**Quarter Section:** 2536

**Neighborhood:** Cully, contact Zach Powers at [zachmull@gmail.com](mailto:zachmull@gmail.com)  
**Business District:** None  
**District Coalition:** Central Northeast Neighbors, contact Alison Stoll at [alisons@cnncoalition.org](mailto:alisons@cnncoalition.org)

**Plan District:** None  
**Zoning:** CM2h,m – Commercial/Mixed Use 2 with “h” Airport Landing Zone and “m” Centers Main Street Overlay zoning

**Case Type:** CU AD – Conditional Use Review with concurrent Adjustment Review  
**Procedure:** Type II, an administrative decision with appeal to the Hearings Officer.

#### **Proposal:**

An existing 70-foot-tall wireless monopole with antennas and accessory equipment was approved on this site in 2001 through LUR 01-00448 CU. The 6 antennas approved in this review were to be concealed in a fiber-reinforced plastic radome sleeve or canister at the top of the monopole. The applicant is requesting to allow the antennas on the monopole to have no

screening. T-Mobile also proposes to add 3 additional antennas and associated equipment to the tower below the existing antennas, and make changes within the equipment enclosure. These alterations to a previously approved facility require a Conditional Use Review per Zoning Code Section 33.274.035.C.3.

The applicant also proposes to increase the height of the tower by 9 feet over previous approval, up to 79 feet tall. Therefore, the applicant has requested an Adjustment to Zoning Code Section 33.130.210.B and Table 130-2 to increase the maximum height of this structure from 45 feet to 79 feet.

### Relevant Approval Criteria:

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

- 33.815.225.C.1-6, Approval criteria for personal wireless service facilities proposing to locate on a tower in a C, CI2, or EX zone more than 50 feet from an R zone
- 33.805.040.A-F, Adjustments approval criteria

## ANALYSIS

**Site and Vicinity:** The 13,671-square-foot site is an irregular parcel with street frontages on NE Going St to the north, NE 60<sup>th</sup> Ave to the west, and NE Cully Blvd to the east. The site is currently developed with a single-story structure containing Cully Central, a beer garden and food cart with outdoor seating and additional paved area. The westernmost section of the site is dedicated to the existing wireless tower and enclosure within which the wireless accessory equipment is located. The surrounding area is characterized by a diversity of commercial, residential, and institutional uses, with the residential to the north and west, and commercial and other uses along NE Prescott St and NE Cully Blvd.

### Street Classifications

Street	Transit	Traffic	Pedestrian	Bicycle	Freight	Emergency
NE 60 <sup>th</sup> Ave	Local Service	Local Service	City Walkway	Local Service	Local Service	Secondary Emergency Response
NE Going St	Local Service	Local Service	Local Service	Local Service	Local Service	Minor Emerg Response
NE Cully Blvd	Transit Access Street	Neighborhood Collector Street	Major City Walkway	Major City Bikeway	Truck Access Street	Major Emerg Response

**Zoning:** The Commercial/Mixed Use 2 (CM2) zone is a medium-scale zone intended for sites in a variety of centers, along corridors, and in other mixed-use areas that have frequent transit service. The zone allows a wide range and mix of commercial and residential uses, as well as employment uses that have limited off-site impacts. Buildings in this zone will generally be up to four stories tall unless height and floor area bonuses are used, or plan district provisions specify other height limits. Development is intended to be pedestrian-oriented, provide a strong relationship between buildings and sidewalks, and complement the scale of surrounding residentially zoned areas.

The Aircraft Landing Zone “h” overlay provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures, vegetation, and construction equipment. Since the base zone height limit is not met, Zoning Code Section 33.400.030.C requires that Section 33.400.040 must be met; therefore, the applicant will be required to submit a letter of FAA approval at time of building permit.

The Centers Main Street “m” overlay zone encourages a mix of commercial, residential and employment uses on the key main streets within town centers and neighborhood centers identified in the Comprehensive Plan. The regulations are intended to encourage a continuous

area of shops and services, create a safe and pleasant pedestrian environment, minimize conflicts between vehicles and pedestrians, support hubs of community activity, and foster a dense, urban environment with development intensities that are supportive of transit.

**Land Use History:** City records indicate that prior land use reviews include the following:

- LU 01-007846 CU – Approval of a 70-foot-tall monopole with 6 antennas concealed in a radome sleeve and associated accessory equipment, all within a 30-foot by 50-foot fenced lease area. Approval required the monopole and “associated fittings” to be finished in a dull light gray finish.

**Agency Review:** A “Notice of Proposal in Your Neighborhood” was mailed **June 29, 2023**. The following Bureaus have responded with no issues or concerns:

- Fire Bureau (Exhibit E.1); and
- Site Development Section of BDS (Exhibit E.2).

The Police Bureau shared no concerns with the proposal, noting officers could access the site without restriction (Exhibit E.3).

The Life Safety Plans Examiner did not object to the approval of the proposal, and noted a building permit would be required for the work proposed (Exhibit E.4).

**Neighborhood Review:** A total of four written responses were received from the Cully Association of Neighbors and notified neighbors in response to the proposal. One respondent raised health issues associated with wireless installations and made claims about the company, Crown Castle, who is behind the application. The neighbor seemed to indicate that because the current installation did not reflect the 2001 land use review approval, the application should be denied and the company fined (Exhibit F.1). Another neighbor first wrote in with concerns about the appearance of the tower and a desire for the applicant to make it fit in with the neighborhood better (Exhibit F.2). That neighbor wrote a follow-up after a site visit stating, “I am now retracting my ‘ugly’ comment. It just looks like a cell tower,” and suggesting they install sidewalks on NE 60<sup>th</sup> Ave and NE Going St (Exhibit F.3). The Cully Association of Neighbors (CAN) reviewed the proposal and did not object. They suggested two conditions of approval:

- “Pursuant to 33.815.225.C.4, we ask the city to require that Crown Castle minimizes the visual impact of the tower by keeping the color of the structure consistent.
- “Pursuant to 33.815.225.C.3, we ask the city to enforce the requirement for adequate screening of accessory equipment with landscaping or through other means” (Exhibit F.4).

*Staff response: Regarding the health impacts of RF equipment: 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. The applicant has demonstrated this facility meets those limits in Exhibit A.4. Because this land use review was submitted after those standards took effect, this Conditional Use cannot be denied on the issue of harmful radio frequency emission levels. Regarding the request to add a sidewalk along the site where there is none, the Bureau of Transportation (PBOT) determines when upgrades are required to the right-of-way. A land use decision of this type generally cannot require right-of-way improvements unless directed by the Bureau of Transportation. In this case, no review of the proposal was required by PBOT. Any upgrades PBOT requires will be determined at time of building permit for the alterations.*

*Staff will address issues of appearance, landscaping, and conditions of approval in the findings below. In short, however, both of CAN’s suggested conditions align with staff’s findings, and a version of both are reflected in the list of conditions.*

## ZONING CODE APPROVAL CRITERIA

### Conditional Use Review

#### **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:*

**C.** *Approval criteria for personal wireless service facilities, proposing to locate on a tower in a C, CI2, or EX zone more than 50 feet from an R zone:*

1. *The applicant must prove that a tower that is taller than the base zone height standard allows or is within 2,000 feet of another tower is the only feasible way to provide the service, including documentation as to why the proposed facility cannot feasibly be located in a right-of-way;*

**Findings:** The tower has been located on the site since after a 2001 Conditional Use approval. At that time, the applicant submitted memos from Sprint's radio frequency engineer describing the signal coverage objectives of the site, and documenting the lack of opportunities to co-locate the facility on another monopole or other tall structure. That documentation successfully demonstrated at the time that this criterion was met. The request to increase the tower height by 9 feet enables the tower to accommodate an additional set of antennas to collocate on the tower, reducing the need for another tower or installation elsewhere nearby. Since the tower is existing, this criterion does not need to be shown to be met for this review.

2. *The tower, including mounting technique, must be sleek, clean and uncluttered;*

**Findings:** The original antennas are mounted using a "stinger" design that minimizes the width of the tower plus antennas where it is most visible, at the top. The primary change from the previous approval is to remove the requirement to shroud those top antennas within a sleeve to make it look as though the sleeve is a continuation of the tower. At the time of the initial approval, this approach was proposed to simplify and streamline the design. However, the shroud only worked for the antennas mounted on the very top. To minimize additional cell towers, city regulations encourage companies to co-locate on existing towers. Also, FCC regulations allow substantial changes to existing facilities to be made without further land use review, so other sets of antennas had already been installed through building permit. This is common for cell towers in the city, and desired over installing additional towers.

As shown on the tower elevation (Exhibit C.4), additional antennas mounted lower on the tower will be smaller and mounted close to the tower, minimizing clutter.

The 2001 decision had a condition of approval that the monopole and "associated fittings" would have a dull light grey finish. Since that time, the monopole has gained rust and new antennas were not painted to match. This decision will also have a condition of approval that will require all tower elements to match, necessitating repainting the tower and painting all existing and proposed tower elements to match. With this condition, the tower will be as uncluttered as possible while still serving its purpose, and the criterion is met.

3. *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;*

**Findings:** No new structure is proposed as part of this project. The tower and accessory equipment are already within a 30-foot by 50-foot enclosure that has landscaping. Since the 2001 approval, it appears significant portions of the

landscaping have died or been removed (Exhibit A.9). A condition of approval will ensure that the landscaping is brought back to current standards, with a 5-foot L3 high-screen landscape buffer installed. In addition, the previous approval included additional trees on the east and south sides to better screen the facility from residential sites across NE Cully Blvd – 7 total as shown in Exhibit A.6. The condition of approval will require that all trees as proposed in the exhibit will be retained. With this condition to restore the landscaping to current standards, this criterion will be met.

4. *The visual impact of the tower on the surrounding area must be minimized;*

**Findings:** As described above, the “stinger” design of the top of the tower where the highest antennas are installed limit the width of the installation, which reduces the visual impact of the highest and most visible portion of the tower. The condition of approval to paint the tower and all installed elements a matte light grey will help the tower fade into the background more easily, which will reduce the visual impact. With this condition of approval, this criterion is met.

5. *Public benefits of the use outweigh any impacts which cannot be mitigated; and*

**Findings:** The proposal is to remove the requirement to install screening around the top set of antennas and increase the height of the tower by 9 feet. With the design of the tower having only a thin metal rod extending above roughly 57 feet, the antennas mounted above this point do not add to the width of the structure overall. The two proposed conditions – to paint the tower and all antennas and accessory elements on the tower a matte light grey; and to replace missing landscape screening while continuing the increased tree density in the landscape buffer around the enclosure – sufficiently mitigate any impacts the tower has on the immediate area over a wireless tower allowed outright in the commercial zone. Generally, wireless facilities like this contribute to a robust public communication system that is valued by most residents. The increased availability to access the emergency response network (911) for police, fire, and medical emergencies is one of the most direct benefits of an enhanced mobile communications network. Since all impacts are mitigated, and there are significant public benefits to continuing the wireless services provided by this facility, with the stated conditions, this criterion is met.

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

**Findings:** The proposal meets the applicable regulations in Chapter 33.274. The applicable regulations are in Zoning Code Section 33.274.040.C-D and are addressed individually below.

### **C. General requirements**

1. *Tower sharing. New facilities must co-locate on existing towers or other structures to avoid construction of new towers, unless precluded by structural limitations, inability to obtain authorization by the owner of an alternative location, or where an alternative location will not meet the service coverage objectives of the applicant. Requests for a new tower must be accompanied by evidence that application was made to locate on existing towers or other structures, with no success; or that location on an existing tower or other structure is infeasible.*
2. *Grouping of towers. The grouping of towers that support radio or television broadcast facilities on a site is encouraged where technically feasible. Tower grouping may not result in radio frequency emission levels exceeding the standards stated in C.5, below.*

The tower is existing, so requirements 1 and 2 do not apply to the proposal.

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.*

The previous condition requiring all elements, including the tower, to be painted matte light grey, will be carried forward from the 2001 approval. The condition will require the tower to be repainted as significant rust has developed in the last two decades. This condition ensures the visibility of the structure is reduced. The existing facility has what the applicant calls an “obstruction light” at the top of the tower that he states is required by the FAA. The existing light will continue to be in place as shown in Exhibit C.4. With this condition, standards 3 and 4 will be met.

5. *Radio frequency emission levels and exposure limits. All Radio Frequency Transmission Facilities must operate within the radio frequency emissions levels and comply with the exposure limits established by the Federal Communications Commission (FCC). Applicants must certify that the proposed facility will be in compliance with FCC emissions standards with the permit application.*

The applicant submitted a professional report demonstrating the radio frequency emissions will comply with FCC regulations (Exhibit A.4), so C.5 is met.

6. *Antenna requirements. Antennas must be secured from public access, either by vertical or horizontal separation, fencing, locked access, or other measures as appropriate.*

The accessory equipment and the tower are all located within the fenced enclosure with barbed wire that was previously approved. Therefore, standard C.6 is met.

7. *Setbacks.*
  - a. *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.*
  - b. *Accessory equipment or structures must meet the base zone setback standards that apply to accessory structures.*
  - c. *Tower guy anchors must meet the base zone setback standards that apply to buildings.*

The existing tower which was previously approved is remaining in its current location. No guy anchors are proposed. Therefore, standards 7.a and 7.c do not apply. Likewise, the accessory equipment location was previously approved and is not changing. Therefore, standard 7.b also does not apply.

8. *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, I, or CI zones more than 50 feet from an R or IR zone. A tower and all accessory equipment or structures located in the C, E, I, or CI zones more than 50 feet from an R or IR zone must meet the following landscape standard:*

- (1) *Generally. Except as provided in (2), below, a landscaped area that is at least 5 feet deep and meets the L3 standard must be provided around the base of a tower and all accessory equipment or structures.*
- (2) *Exception. If the base of the tower and any accessory equipment or structures are screened by an existing building or fence, then some or all of the required landscaping may be relocated subject to all of the following standards.*
  - *The building or fence must be on the site;*
  - *The fence must be at least six feet in height and be totally sight-obscuring;*
  - *The relocated landscaping must meet the L2 standard. The relocated landscaping cannot substitute for any other landscaping required by this Title;*
  - *The applicant must demonstrate that the lease includes provisions for planting and ongoing maintenance of the substitute landscaped area; and*
  - *If any part of the base of the tower or accessory equipment is not screened by a building or fence, 5 feet of L3 landscaping must be provided.*

When the tower and accessory equipment was proposed in 2001, the proposal met this requirement. Since that time, it appears some landscaping and trees remain, and some shrubs and possibly trees are no longer there. A condition of approval will be included to ensure the L3 standard is met for 5 feet around the enclosure, and that the additional trees proposed in 2001 to provide additional screening to residential properties to the east will be verified to be there as well. With this condition of approval, this standard will be met.

- b. *In OS, R, or IR zones or within 50 feet of an R or IR zone. A tower and all accessory equipment or structures located in an OS, R, or IR zone or within 50 feet of an R or IR 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.*

The site is not in the OS, R, or IR zones, so C.8.b does not apply.

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

No structures related to Radio Transmission Facilities in the right-of-way are proposed, so C.8.c does not apply.

#### 9. *Tower design.*

- a. *For a tower accommodating a radio or television broadcast facility, the tower must be designed to support at least two additional radio or television broadcast transmitter/antenna systems 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.*

The proposed increase in height will enable a third set of antennas to be placed on the tower. The minimum requirements are exceeded; therefore, this standard is met.

10. *Mounting device. The mounting device or mounting structure used to mount facilities to an existing building or other non-broadcast structure may exceed the height limit of the base zone but may not project more than 10 feet above the roof or parapet of the building or other non-broadcast structure.*

This proposal is for a tower. Therefore, C.10 does not apply.

11. *Abandoned facilities. A tower or mounting device on a non-broadcast structure 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 or mounting device has been in use for more than six months.*

The monopole will be subject to this standard in the event it is abandoned. This standard does not currently apply.

#### **D. Additional requirements.**

1. *Personal wireless service facilities located in OS, R, C, EX, CI, or IR zones, and personal wireless service facilities located in EG or I zones within 50 feet of an R or IR 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.*
  - b. *Lattice. Lattice towers are not allowed.*

The proposed antennas are not mounted on triangular “top hat” mounts. The proposal is for antennas that are mounted close to the tower. The top two installations are mounted to a narrower “stinger” pole so that the support plus antennas is roughly the width of the tower below. The lowest antennas mounted to the close to the tower as well. This standard is met.

2. *The minimum site area required for a tower in an R zone is 40,000 square feet.*

The site is not in an R zone. Therefore, D.2 does not apply.



3. *Applications to locate or replace accessory equipment in or within 50 feet of an R or IR zone must be accompanied by a signed and stamped acoustical engineer's report demonstrating that noise levels from the equipment is in full compliance with Title 18 (Noise) regulations, or demonstrating that with appropriate sound proofing mitigation, that the equipment will comply with Title 18.*

All accessory equipment will be located further than 50 feet from an R zone boundary. Therefore, D.3 does not apply.

With the condition to restore the landscaping, all applicable development standards will be met. Therefore, this criterion is met.

### **Adjustment Review**

#### **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 proposes to increase the tower height from the previously approved 70 feet to 79 feet. The applicant secured a building permit in 2018 to increase the height of the tower by right along with changes to the antennas (18-258426 CO). This permit was reviewed using the FCC's rules for what is considered a "substantial change." The FCC allows towers to increase in height up to 20 feet above previous approval under these regulations. Had the applicant continued the screening, the tower height was allowed by right. Since the applicant applied for a new Conditional Use review to remove that previously-required screening, the applicant could not use the FCC rules and increase the height of the antenna by right and must seek an Adjustment to the height limit. The purpose of the height limit is stated in Zoning Code Section 33.130.210.A:

- A. Purpose.** *The height limits are intended to control the overall scale of buildings. The height limits in the CR and CM1 zones allow buildings that are in scale with low rise residential areas. **The height limits in the CM2 and CE zones allow for a greater building height at a scale that can accommodate the growth intended for centers and corridors, while relating to the low- to mid-rise scale of neighborhood residential areas.** The CM3 zone allows the tallest buildings outside the Central City and Gateway plan districts, consistent with its intended role in accommodating higher-density development in areas well served by transit and other services. The CX zone allows the tallest buildings in the commercial/mixed use zones, consistent with its intended role in accommodating high-density development in the Central City and the Gateway plan districts.*

*In some situations, step downs in maximum height provide a transition in scale to adjacent lower-scale residential areas, and preserve opportunities for light, air*

*and privacy. Exceptions to height limit standards accommodate minor projections that do not significantly increase the visual scale of buildings; provide flexibility in the height of parapets and railings to facilitate rooftop outdoor spaces and equipment screening; and accommodate ground-floor spaces with high ceilings to encourage ground-floor commercial uses, mechanical parking, and other uses that benefit from high ceilings.*

The sentence most relevant to the situation is the one in bold that addresses the CM2 zone, in which the subject site is located. The monopole is located near the southwest corner of the property, almost 100 feet from the closest residentially-zoned properties to the north but part of a robust commercial stretch of NE Cully Blvd, just north of a commercial node along NE Prescott St. The requested monopole height has little impact on surrounding properties due to the narrowness of the tower. The pole's location within a commercial area is appropriate given its distance to residential sites as well as its location in a commercial node with significant traffic and people passing through who are likely to benefit from the wireless service the tower provides for two carriers.

The second paragraph of the purpose alludes to various exceptions "that do not significantly increase the visual scale of buildings." One of the exceptions addresses wireless facilities and other types of towers, exempting "[a]ntennas and mounting devices, utility power poles, and public safety facilities" from the height limits (33.130.210.C.5). While the monopole is not included in this item, there is recognition that other similarly-scaled vertical structures like utility poles do not impact the building height or overall massing on a site. The exemption also recognizes that antennas and their mounting structures themselves should not be constrained by the height limits, likely for a similar reason.

The condition to have the tower and all elements mounted to it painted matte light grey will help the tower recede into the visual background and further ensure it does not appear out of scale with other development on the site. With this condition, and for the reasons stated above, the purposes for the height limit are equally met by this proposal. This criterion is met.

- B.** *If in a residential, CII, or IR zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, I, or CI2 zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and*

**Findings:** Since the site is in a commercial/mixed-use zone, the Adjustment must be consistent with the classifications of adjacent streets and the desired character of the area. The table detailing the street classifications for the adjacent streets in the Transportation Element of the Comprehensive Plan is under Site and Vicinity above.

The zoning map tends to focus higher intensity development on sites with frontage on arterial streets such as NE Cully Blvd. In this case, the intensity of the existing development on the site is well under what would be allowed for the CM2 zone, with a one-story building on the northeast corner of the site and much of the property dedicated to vehicle area. The Adjustment to increase height from the previously-approved 70 feet to 79 feet will not increase the intensity of the development or impact traffic to or usage of the site. For these reasons, staff finds the proposal is consistent with the adjacent street classifications.

Desired character of area

"Desired character" is defined in Zoning Code Chapter 33.910. Pursuant to this definition, the desired character for this site is determined by:

- The character statement for the CM2 zone;

- The purpose statement for the Aircraft Landing Zone (“h”) overlay zone;
- The purpose statement for the Centers Main Street (“m”) overlay zone; and
- The Cully Neighborhood Plan.

#### CM2 zone

The character statement for the CM3 zone is in Zoning Code Section 33.130.030.C, and is reproduced under the Zoning section, above. The characteristics do not address ancillary uses like wireless facilities. The proposal to increase the height of an existing monopole does not impact the site’s ability to reflect the zone’s desired characteristics either now or for future redevelopment. The location of the tower and enclosure on the west side of the site ensures the east side is available for redevelopment along the street with the highest transit classification, so that a pedestrian-oriented, dense development could be achieved if the site were to redevelop. Since the height increase does not impact the bulk or massing of the development on the site as described above, it does not affect the zone characteristics.

#### Aircraft Landing Zone (“h”) overlay zone

The purpose of this zone is to provide safer operating conditions for aircraft in the vicinity of the airport by limiting the height of structures, vegetation, and construction equipment. However, the height limits of the overlay zone do not apply to properties or projects in Commercial zones. Since the Adjustment is to the base zone height limit, Section 33.400.040 does apply: the project will be required to get an approval letter from the Federal Aviation Administration. With this “determination of no hazard to air navigation” letter, the project will meet the purpose of the overlay to ensure safe operating conditions for aircraft.

#### Centers Main Street (“m”) overlay zone

The purpose for the overlay is stated in Zoning Code Section 33.415.010 and is reproduced under the Zoning section, above. The monopole and associated equipment pre-date the creation of this overlay zone. The increase in height by 9 feet will not prevent the property from redeveloping to the standards of the Centers Main Street overlay and meeting the purpose of providing shops or services in a pedestrian-focused, dense, urban environment. There is no conflict between this Adjustment request to alter existing development and the purpose of this overlay zone.

#### Cully Neighborhood Plan

The Cully Neighborhood Plan was adopted by City Council in 1992, predating widespread availability of cellular phones by years. Therefore, the “Issues and Vision” section is silent on wireless infrastructure and connection via cell phone, instead focusing on residents’ interest in the neighborhood’s “country” character and concerns over sewer line expansions and street improvements, and the costs associated with each. The increase in height is not in conflict with the values of neighborhood stability; improvements to the transit system; and desire to rehabilitate the housing stock and limit “undesirable” businesses.

For the reasons stated above, the proposal to increase the height of the tower from 70 feet to 79 feet is consistent with the street classifications and the desired character of the area. With the condition to paint the tower and all equipment mounted to it a matte light grey, the tower will visually recede into the background. The condition to restore landscaping to the required density will help to screen views of the equipment and monopole at ground level. With these conditions, 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. With the proposed conditions to paint the tower and all equipment mounted to it a matte light grey, and to restore the landscaping to meet the required L3 standard with the extra trees required in 2001, 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 existing monopole has been in operation for the past two decades. This approval allows the antennas to be mounted without the screening initially required, and increases the allowed height of the monopole from 70 feet to 79 feet. With the conditions of approval, the ground-level equipment and fenced compound will be adequately screened with landscaping, and the monopole and all equipment attached to it will be painted a matte light grey to fade into the background as much as possible. The applicant has shown the proposal can meet all approval criteria; with the conditions of approval, this proposal must be approved.

## **ADMINISTRATIVE DECISION**

Approval of an unscreened wireless telecommunications facility, consisting of a 79-foot-tall monopole with three sets of antennas mounted to it as proposed, and associated equipment cabinets within a 30-foot by 50-foot fenced compound. Approval of an Adjustment to 33.130.210.B and Table 130-2 to increase the height of the tower from the previous 70-foot approval to 79 feet. All approvals are per the approved plans, Exhibits C.1 through C.5, signed and dated September 1, 2023, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B through C) must be noted on each of the 4 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 23-015492 CU AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."

- B. The monopole and all antennas, additional equipment, conduit, or other associated items mounted to it, must be painted in a matte light grey finish. This paint must be maintained over time so that all elements remain consistently colored.
- C. The 5-foot-deep landscape buffer around the lease area must be restored to the L3 standard, with any missing plants replanted. The trees along the east and south sides of the enclosure must match the number and size category of trees originally approved through LU 01-007846 CU, and shown in Exhibit A.6. Per Zoning Code Section 33.248.040.B, this required landscaping must be continuously maintained in a healthy manner.

**Staff Planner: Amanda Rhoads**

**Decision rendered by:**  **on September 1, 2023**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: September 6, 2023**

**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 February 21, 2023, and was determined to be complete on June 19, 2023.

*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 February 21, 2023.

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: October 17, 2023.**

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

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

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

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

**Appealing this decision.** This decision may be appealed to the Hearings Officer, and if appealed a hearing will be held. The appeal application form can be accessed at <https://www.portland.gov/bds/zoning-land-use/land-use-review-fees-and-types/appeals-fees-and-fee-waivers>. Appeals must be received **by 4:30 PM on September 20, 2023. The completed appeal application form must be emailed to [LandUseIntake@portlandoregon.gov](mailto:LandUseIntake@portlandoregon.gov) and to the planner listed on the first page of this decision.** If you do not have access to e-mail, please telephone the planner listed on the front page of this notice about submitting the appeal application. **An appeal fee of \$250 will be charged.** Once the completed appeal application form is received, Bureau of Development Services staff will contact you regarding paying the appeal fee. The appeal fee will be refunded if the appellant prevails. There is no fee for Office of Community and Civic Life recognized organizations for the appeal of Type II and IIx decisions on property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Please contact the planner listed on the front page of this decision for assistance in filing the appeal and information on fee waivers. Please see the appeal form for additional information.

If you are interested in viewing information in this file, please contact the planner listed on the front of this notice. The planner can email you documents from the file. A fee would be required for all requests for paper copies of file documents. Additional information about the City of Portland, and city bureaus is available online at <https://www.portland.gov>. A digital copy of the Portland Zoning Code is available online at <https://www.portlandoregon.gov/zoningcode>.

**Attending the hearing.** If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 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 Hearings Officer an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

**Recording the final decision.**

If this land use review is approved the final decision will be recorded with the County Recorder. *Unless appealed*, the final decision will be recorded on or after **September 21, 2023** by the Bureau of Development Services.

The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder.

For further information on 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;

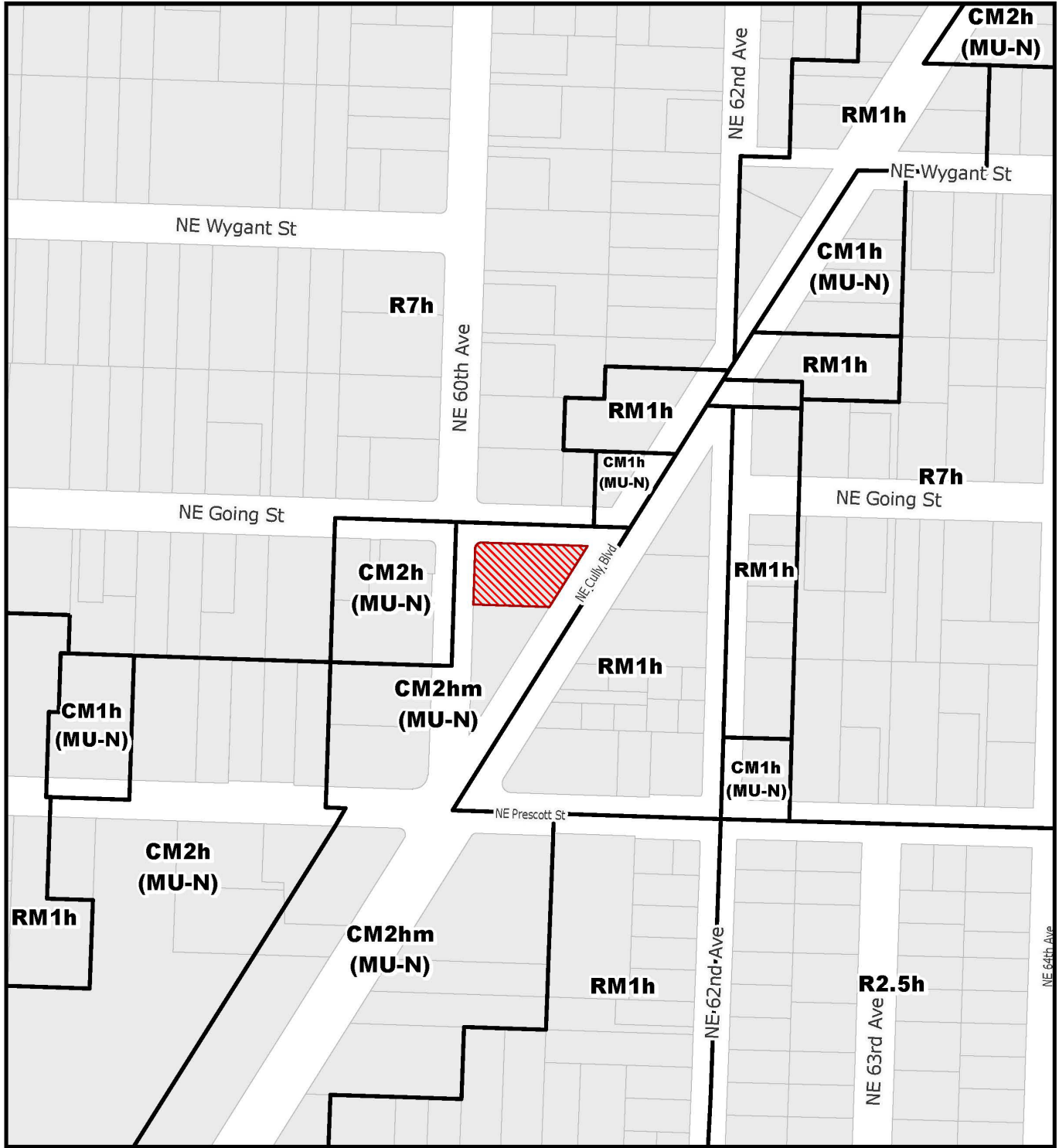
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

**EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  1. Conditional Use Narrative
  2. Original Plans
  3. Photosimulations
  4. NIER Report
  5. Radio Frequency Registration Form
  6. Landscaping
  7. 2019 Building Permit Sheets
  8. Adjustment Narrative
  9. Current Landscape Photos
- B. Zoning Map (attached)
- C. Plans/Drawings:
  1. Site Plan (attached)
  2. Lease Area Plan (attached)
  3. Equipment Enclosure Plan
  4. Monopole Elevations (attached)
  5. Antenna Plan
- D. Notification information:
  1. Mailing list
  2. Mailed notice
- E. Agency Responses:
  1. Fire Bureau
  2. Site Development Review Section of BDS
  3. Police Bureau
  4. Life Safety Plans Examiner
- F. Correspondence:
  1. Lynette Yetter, July 3, 2023, in opposition
  2. Chris Browne, July 4, 2023, with concerns
  3. Chris Browne, July 12, 2023, with suggestions
  4. Maria Grzanka, Co-Chair, Cully Association of Neighbors, July 20, 2023, with conditions
- G. Other:
  1. Original Land Use Application
  2. Incomplete Letter, March 8, 2023

**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).**



For Zoning Code in Effect Post October 1, 2022

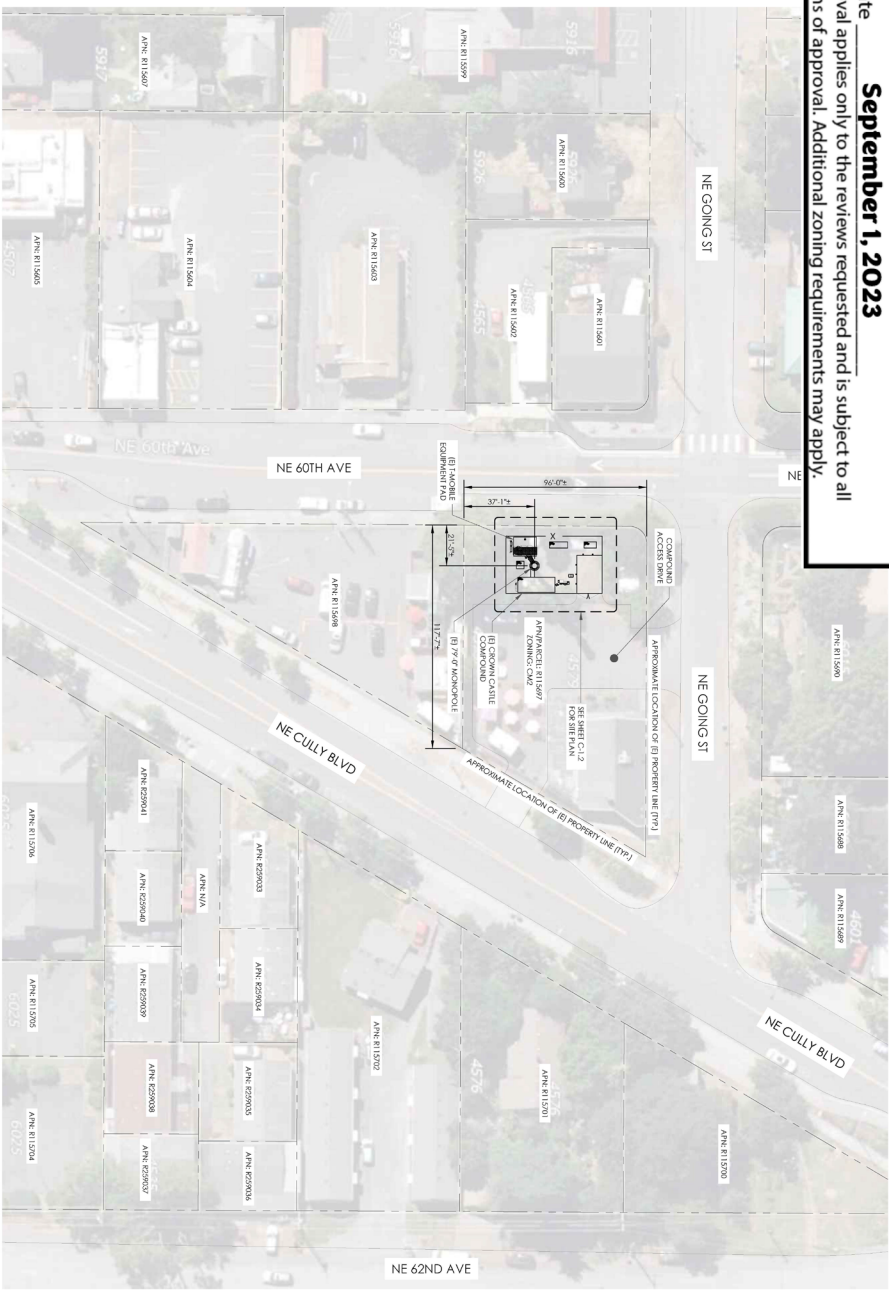
**ZONING** 

 Site

File No. LU 23 - 015492 CU AD  
 1/4 Section 2536  
 Scale 1 inch = 200 feet  
 State ID 1N2E19AD 11700  
 Exhibit B May 15, 2023



\*Approved\*  
 City of Portland  
 Bureau of Development Services  
**Amanda Rhoads**  
 Planner  
**September 1, 2023**  
 Date  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.



1 OVERALL SITE PLAN  
 SCALE: 1" = 60'-0" HORIZONTAL  
 1" = 20'-0" VERTICAL



LU 23-015492 CU AD  
 Exhibit C-1

EXISTING UTILITY LINES AND STRUCTURES HAVE BEEN LOCATED FROM PUBLIC RECORDS FOR STATIC CONDITIONS ONLY AND INTERFERENCES ARE NOT CLAIMED AS OF THE DATE OF THIS DOCUMENT (8/29/23).

**T-Mobile**  
 8960 ALDERWOOD ROAD  
 PORTLAND, OR 97220

**CROWN CASTLE**  
 1565 VESTAL AVE, AVENUE NORTH, SUITE 800  
 SEATTLE, WA 98102

**PM&A**  
 P MARSHALL & ASSOCIATES  
 6801 PORTWEST DR., SUITE 100  
 PORTLAND, OR 97228

T-MOBILE SITE NUMBER:  
**PO03689A**

BT #:  
**879605**  
 BACKSWING  
 4579 NE CULLY  
 PORTLAND, OR 97218

EXISTING 79'-0" MONOPOLE

ISSUED FOR:

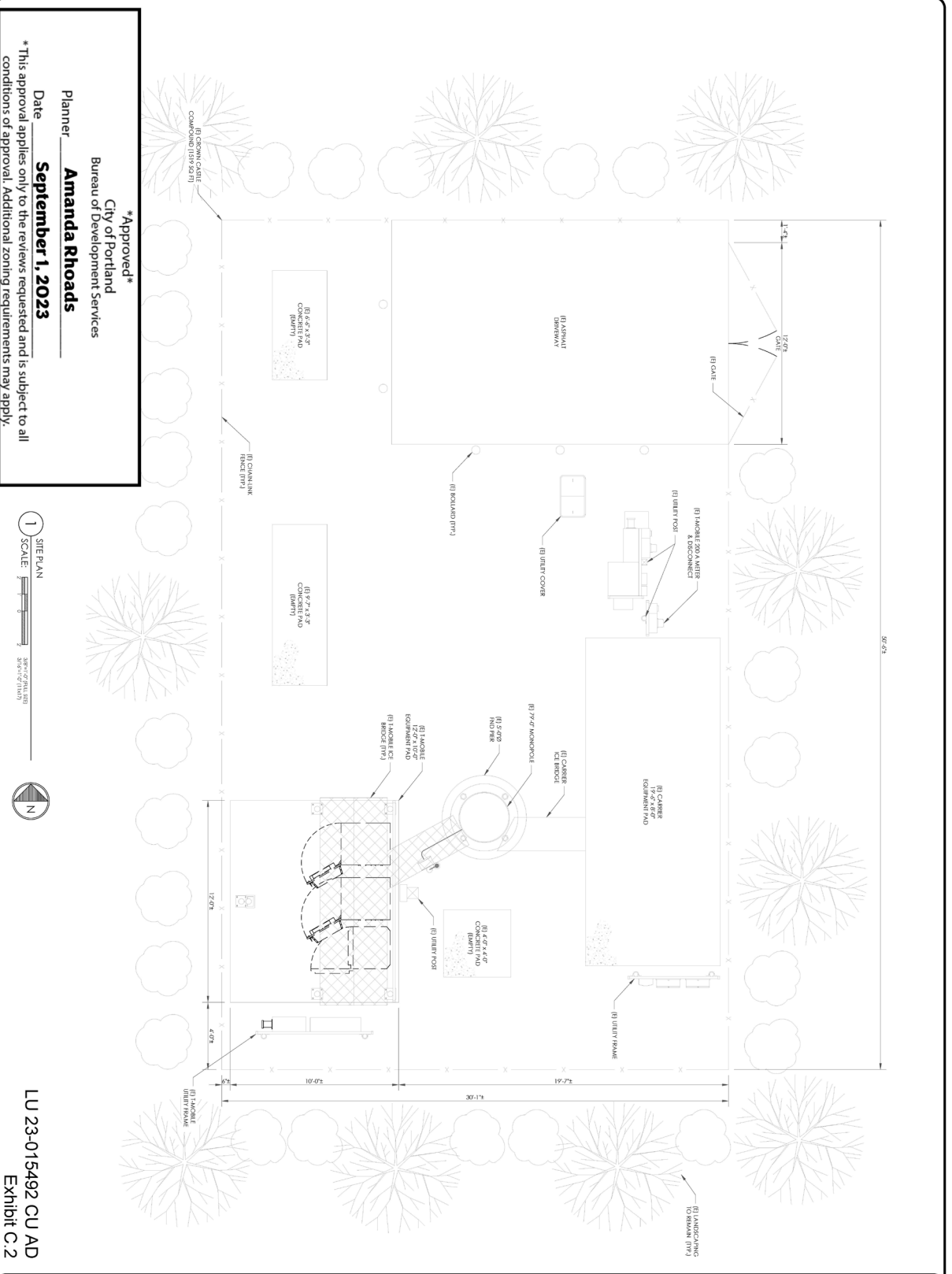
REV	DATE	ISSUED FOR	DESCRIPTION	CHK/APP
1	12/09/2021	MM	PRELIMINARY	VT
2	02/06/2023	MM	FINAL REVISION	VT
3	02/06/2023	MM	FINAL REVISION	VT



LET'S VIOLEATION OF LAW FOR ANY PERSON, UNLESS THEY ARE AGENTS UNDER THE DIRECTION OF THE ENGINEER, TO SIGN OR SEAL THIS DOCUMENT TO ALTER THIS DOCUMENT.

PM&A JOB #:  
**22CCTM-214**

SHEET NUMBER: **C-1.1** REVISION: **2**



\*Approved\*  
 City of Portland  
 Bureau of Development Services  
 Planner **Amanda Rhoads**  
 Date **September 1, 2023**  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

1 SITE PLAN  
 SCALE: 3/8" = 1'-0" (AS SHOWN)



LU 23-015492 CU AD  
 Exhibit C.2

**Mobile**  
 8660 ALDERWOOD ROAD  
 PORTLAND, OR 97239

**CROWN CASTLE**  
 1569 VESTER AVE, AVENUE NORTH, SUITE 800  
 SEATTLE, WA 98109  
 T: 206.461.1234

**PM&A**  
 P. MARSHALL & ASSOCIATES  
 6801 NORTHWEST DR., SUITE 100  
 PORTLAND, OR 97228

T-MOBILE SITE NUMBER:  
**P003689A**  
 BU# #: 879605  
 BACKSWING  
 4579 NE CULLY  
 PORTLAND, OR 97218

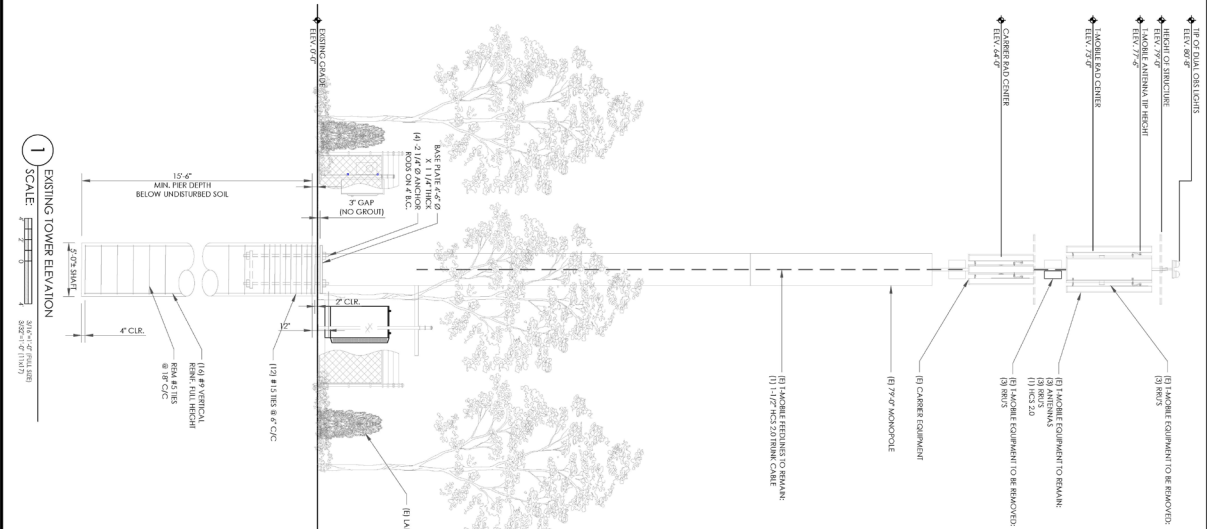
EXISTING 79'-0" MONOPOLE

ISSUED FOR:

REV	DATE	BY	CHKD	DESCRIPTION	PREP/CHKD
1	12/09/22	NW	PM	PRELIMINARY	VT
1	02/02/23	BB	NSM	FINAL REVISION	VT
2	02/02/23	BB	NSM	FINAL REVISION	VT



IT IS A VIOLATION OF LAW FOR ANY PERSON, INDIVIDUAL OR FIRM, TO REPRODUCE, COPIY, OR TRANSMIT THIS DOCUMENT OR ANY PART THEREOF, IN ANY MANNER, WITHOUT THE WRITTEN PERMISSION OF THE DESIGNER.  
 PK&A JOB #: **22CCTM-214**  
 SHEET NUMBER: **C-1.2** REVISION: **2**

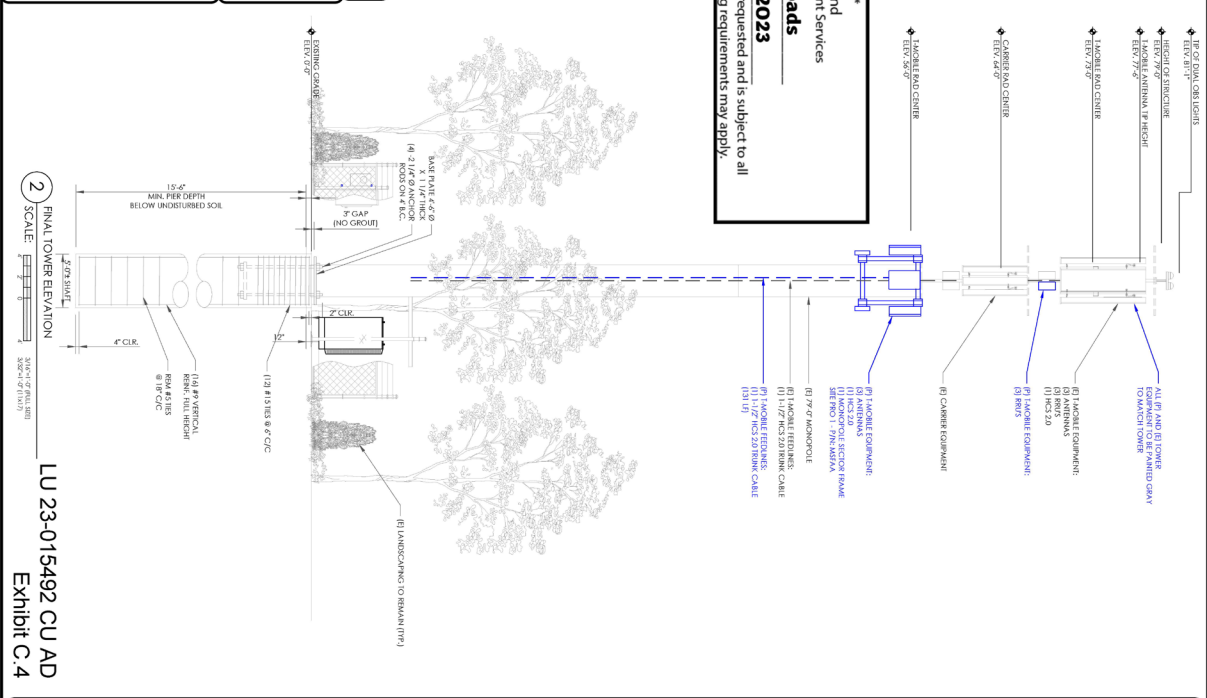


**1** SCALE: 1/8" = 1'-0"

EXISTING TOWER ELEVATION

**\*Approved\***  
 City of Portland  
 Bureau of Development Services  
 Planner **Amanda Rhoads**  
 Date **September 1, 2023**

**\* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.**



**2** SCALE: 1/8" = 1'-0"

FINAL TOWER ELEVATION

LU 23-015492 CU AD  
 Exhibit C.4

ISSUED FOR:  
 DATE: 12/09/22  
 DRAWN: [Signature]  
 CHECKED: [Signature]  
 IN CHARGE: [Signature]

EXISTING 79'-0" MONOPOLE  
 4579 NE CULLY  
 PORTLAND, OR 97218

**T-MOBILE SITE NUMBER:**  
 P03689A

**BU #:** 879605  
**BACKSWING**

**PM&A**  
 P. MARSHALL & ASSOCIATES  
 6801 PORTWINE DR., SUITE 100  
 PORTLAND, OR 97206

**CROWN CASTLE**  
 1568 VASHTI AVE., AVENUE NORTH, SUITE 800  
 SEATTLE, WA 98109

**Mobile**  
 8960 ALDERWOOD ROAD  
 PORTLAND, OR 97229

**PK&A DB#:**  
 22CCTM-214

**SHEET NUMBER:** C-2  
**REVISION:** 2