



City of Portland  
**Bureau of Development Services**  
Land Use Services Division

1900 SW Fourth Ave. Suite 5000  
Portland, Oregon 97201  
Telephone: 503-823-7300  
TDD: 503-823-6868  
FAX: 503-823-5630  
[www.portlandonline.com/bds](http://www.portlandonline.com/bds)

**Date:** July 21, 2008  
**To:** Interested Person  
**From:** Sheila Frugoli, Land Use Services  
503-823-7817 / [frugolis@ci.portland.or.us](mailto:frugolis@ci.portland.or.us)

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

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

### **CASE FILE NUMBER: LU 08-129831 AD**

#### **GENERAL INFORMATION**

**Representative:** Benjamin Freeman  
Technology Associates International Corporation  
6 SW Centerpoint Dr., Suite #420  
Lake Oswego, OR 97035

**Applicant:** Verizon Wireless (VAW) LLC, DBA Verizon Wireless  
5430 NE 122<sup>nd</sup> Ave.  
Portland, OR 97230

**Owner:** Reach Community Development, Inc.  
1135 SE Salmon St.  
Portland, OR 97214

**Site Address:** 2545 E BURNSIDE ST

**Legal Description:** S 17.5' OF LOT 1&2 BLOCK 5 EXC PT IN ST-E 10' OF LOT 15 BLOCK 5 EXC PT IN ST LOT 16 BLOCK 5, ETNA

**Tax Account No.:** R257800650  
**State ID No.:** 1N1E36CB 05100  
**Quarter Section:** 3033  
**Neighborhood:** Kerns, contact Michael Whitmore at 503-233-0305  
**Business District:** East Burnside Business Association, contact Judy Crain at 503-234-2514  
**District Coalition:** Southeast Uplift, contact Gary Berger at 503-232-0010  
**Zoning:** R1, Multi-Dwelling Residential 1,000

**Case Type:** AD, Adjustment Review  
**Procedure:** Type II, an administrative decision with appeal to the Adjustment Committee.

**Proposal:** The applicant proposes to install an emergency back-up generator to support an existing Verizon cell tower located on the rooftop of an apartment building (Dresden Apartments) at 2545 E. Burnside Street. The diesel-powered generator will be located at ground level on the northwest corner of the lot. It will be placed on a 4' by 11' concrete pad, be

5' 7" in height, and be used only during regular service testing for maintenance and long-term power outages.

Within an R zone, the Zoning Code requires accessory equipment to radio frequency transmission facilities to be screened from streets and abutting sites by a 10-foot deep area landscaped to the L3 (high-screen) standard (Section 33.274.040). The applicant requests an Adjustment to this standard, arguing that the limited size of the landscape area prevents full compliance with the standard and that existing vegetation will provide substantial screening of the generator. The applicant proposes to replace a 20-foot section of existing 4-foot tall chain link fence along the north property line with a 6-foot tall chain link fence with green vinyl slats to screen views of the back-up generator from the adjacent parking lot and from NE Couch Street.

**Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the Adjustment Review approval criteria of Chapter 33.805.040.A.-F. of the Portland Zoning Code.

## ANALYSIS

**Site and Vicinity:** The site is a 6,070 square foot lot located at the corner of NE 26<sup>th</sup> Avenue and E. Burnside Street. The property is occupied by a 4-story apartment building (Dresden Apartments) owned by Reach Community Development, Inc. The landscaped portion of the site, which will be the location for the back-up generator, extends behind the adjacent lot to the west.

The vicinity is characterized by multi-dwelling structures and commercial and office uses along E. Burnside Street and NE 28<sup>th</sup> Avenue. An architecture firm is located on the adjacent lot west of the site. An auto repair business is located south of the site, across E. Burnside Street, and a karaoke bar is on the adjacent lot to the east. A large paved parking lot abuts the site to the north. The da Vinci Arts Middle School and Everett Community Garden are north of the site, across NE Couch Street.

**Zoning:** The site is zoned R1, a medium density multi-dwelling zone. The R1 zone allows approximately 43 units per acre. The major types of new housing development for properties with this zoning designation include multi-dwelling structures (condominiums and apartments), duplexes, townhouses and rowhouses. Radio frequency transmission facilities are allowed within the R1 zone, but are subject to special limitations and Conditional Use Reviews.

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

- LUR 00-00492 CU: Approval with conditions of a conditional use review for a wireless communications facility on top of a residential apartment building.
- LU 05-137655 CU: Approval with conditions of a conditional use review to reconfigure and expand a previously approved wireless telecommunications facility.
- LU 05-155648 CU: Approval with conditions of a conditional use review for the installation of a second radio frequency transmission facility on the roof of a residential apartment building.
- LU 06-158356 CU: Approval with conditions of a conditional use review for the installation of an additional radio frequency transmission facility on top of a residential apartment building.

**Agency Review:** A “Notice of Proposal in Your Neighborhood” was mailed **June 19, 2008**. The following Bureaus have responded with no issues or concerns:

- Site Development Section of BDS
- Life Safety Section of BDS
- Fire Bureau
- Bureau of Environmental Services
- Portland Office of Transportation
- Water Bureau
- Parks Bureau – Urban Forestry

**Neighborhood Review:** A “Notice of Proposal in Your Neighborhood” was mailed on June 19, 2008. No written responses have been received from either the Neighborhood Association or from notified property owners in response to the proposal.

## ZONING CODE APPROVAL CRITERIA

### 33.805.010 Purpose (Adjustments)

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

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

The applicant has requested an Adjustment to waive the requirement to provide a landscaped area that is at least 10-feet deep and that meets the L3 (high screen) landscape standard around the base of the 11' by 15' generator lease area. The applicant argues that the limited size of the landscape area prevents full compliance with the L3 standard and that existing vegetation will provide substantial screening of the generator from adjacent properties. As shown on the attached site plan, the applicant proposes to replace a 20-foot section of an existing 4-foot high chain link fence along the north property line with a 6-foot high chain link fence with green vinyl slats to screen views of the generator from the adjacent parking lot and NE Couch Street to the north.

Because the back-up generator will be supporting an existing cell tower facility on the site and will not result in any adverse noise, visual, or safety impacts, it will be compatible with adjacent uses. The back-up generator will be contained within a sound-attenuation enclosure to reduce noise levels during operation. Noise levels from the generator, measured at a distance of 23 feet in all directions, will be no greater than 66 decibels,

which is comparable to the noise level of a loud conversation. As described below, the generator will be screened to prevent visual impacts from adjacent areas. There will be no adverse impacts to public health or safety, since the generator will be in a secure area, will be anchored to a concrete pad, will be located in a well-ventilated area to disperse fumes during operation, and will be designed and operated according to federal standards. The generator will also be tested at least once a month for proper maintenance.

Staff agrees with the applicant's assertion that the limited size of the landscape area, concrete surfaces, and existing vegetation make it impractical to create a 10-foot deep area landscaped to the L3 (high screen) standard. Existing vegetation and trees near the lease area will provide a significant degree of screening from adjacent properties. As shown on the attached site plan, there is an existing arborvitae hedge within the landscape area that extends along the west property line. The arborvitae hedge continues for approximately 23 feet along the north property line. A maple tree, apple tree, and two other trees are also located within this landscape area. A 5-foot tall wooden fence that extends from the rear wall of the apartment building to the north property line will provide additional screening of the generator area.

For a 20-foot section along the north property line that is currently unscreened, the applicant proposes to replace the existing 4-foot tall chain link fence with a 6-foot tall chain link fence with green vinyl slats. While this would provide for adequate screening, it would not have a beneficial impact on the appearance of the area, since only a 20-foot section of the approximately 100-foot long fence would stand taller in height and have vinyl slats. Planting arborvitae along the 20-foot section of fence would provide for visual continuity and consistency, since there are already arborvitae along the north property line. It would also provide vegetated screening of the generator from the adjacent parking lot and NE Couch Street. Therefore, as a condition of approval of this application, the applicant shall be required to plant 8 arborvitae, spaced at a distance of 2 ½ feet, along the 20-foot section of fence identified on the submitted site plan. At planting, each arborvitae shrub must be at least 5 feet tall and identical in variety ("emerald green") to those already planted in the landscape area.

The back-up generator will not emit any radio frequency waves, and issues related to tower failure and falling ice do not apply to accessory equipment placed at-grade.

With the imposition of the condition requiring the applicant to plant arborvitae shrubs along a 20-foot section of the north property line, 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; and

**Findings:** As discussed under criterion A, the back-up generator will not significantly detract from the livability of the residential area, since there will be no significant noise, safety, or health impacts associated with its operation. Measured at a distance of 23 feet in all directions, noise levels will not exceed 66 decibels during operation. This sound level is comparable to a loud conversation. The generator will be used only during regular service testing for maintenance and during long-term power outages. Maintenance testing will take place during normal business hours and will occur no more than twice each month. During testing, the generator will be run for one-half hour to ensure proper functioning.

Further, the generator will be diesel-powered. Diesel fuel will be contained within a 112-hour double-walled chamber with an indicator that identifies any fuel leakage. The location of the back-up generator will allow for the dispersal of fumes into open air during operation. The generator will be located within an area that is locked and will be securely anchored to a concrete pad.

As discussed under criterion A, the generator will not significantly detract from the appearance of the residential area. It will measure 5' 7" in height, 9' 3" in length, and 3' 5"

in width. The generator will be located 3 feet from the back wall of the office building on the adjacent lot west of the site; this office building is currently occupied by an architecture firm. There are no windows on the rear façade of the building from which the generator will be visible. Views of the generator from the apartment building on the subject site will be screened by the east wall of the office building. Views of the generator from other adjacent lots and streets will be screened by existing vegetation, an existing wooden fence, and the required arborvitae that will be planted along a 20-foot section of the north property line that is currently unscreened.

For the reasons stated above, 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 being requested. This criterion is therefore not applicable.

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

**Findings:** There are no city-designated scenic or historic resources on the site. This criterion is therefore not applicable.

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

**Findings:** Visual impacts that result from the approval of this Adjustment will be mitigated through the condition of approval, which requires the applicant to plant 8 arborvitae along a 20-foot section of fence that is currently unscreened. Existing trees and vegetation within the landscape area will provide screening of the generator from other areas adjacent to the site. This criterion is satisfied.

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

**Findings:** The site is not within an environmental zone. This criterion therefore does not apply.

## 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 has proposed an emergency back-up generator to support an existing cell tower on the rooftop of an apartment building located at 2545 E. Burnside Street. Within an R zone, the Zoning Code requires accessory equipment to radio frequency transmission facilities to be screened from streets and abutting sites by a 10-foot deep area landscaped to the L3 (high-screen) standard.

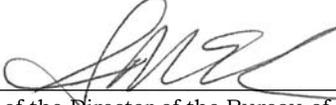
Because of the limited size of the landscape area, the presence of concrete surfaces, and existing vegetation and trees, full compliance with the L3 standard is impractical. Existing trees and vegetation and a wooden fence will provide substantial screening of the generator from adjacent areas. A condition of approval requiring that 8 arborvitae, each at least 5 feet

tall, be planted along a 20-foot section of the north property line will screen views of the generator from the adjacent parking lot and NE Couch Street. With the condition of approval, this application should be approved.

## ADMINISTRATIVE DECISION

Approval of an Adjustment to Section 33.274.040 of the Zoning Code to waive the required 10-foot deep L3 landscaping requirement around the base of an emergency back-up generator for an existing cell tower, per the approved site plan, Exhibit C.1, signed and dated July 17, 2008, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (Condition B) 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 08-129831AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. A total of 8 arborvitae of the variety "emerald green," spaced at a distance of 2 ½ feet, with each shrub at least 5 feet in height at planting, will be installed along the interior side of a 20-foot section of fence identified on the submitted site plan. The identified 20-foot section of existing fence will remain at 4 feet in height and no vinyl slats will be placed in the fence.

**Decision rendered by:**  **on July 17, 2008.**

By authority of the Director of the Bureau of Development Services

**Decision mailed: July 21, 2008**

**Staff Planner: Sheila Frugoli**

**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 May 16, 2008, and was determined to be complete on June 16, 2008.

*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 May 16, 2008.

*ORS 227.178* states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period.

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

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

**Conditions of Approval.** If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be

documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

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

**Appealing this decision.** This decision may be appealed to the Adjustment Committee, which will hold a public hearing. Appeals must be filed **by 4:30 PM on August 4, 2008** at 1900 SW Fourth Ave. Appeals can be filed on the first floor in the Development Services Center until 3 p.m. After 3 p.m., appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI-recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please contact the receptionist at 503-823-7967 to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at [www.portlandonline.com](http://www.portlandonline.com).

**Attending the hearing.** If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Adjustment Committee is final. Any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Adjustment Committee an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

**Recording the final decision.**

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- *Unless appealed*, the final decision may be recorded on or after **August 5, 2008 – (the day following the last day to appeal)**.
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- By Mail: Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- In Person: Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034. For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

**Expiration of this approval.** An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

**Applying for your permits.** A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with the following:

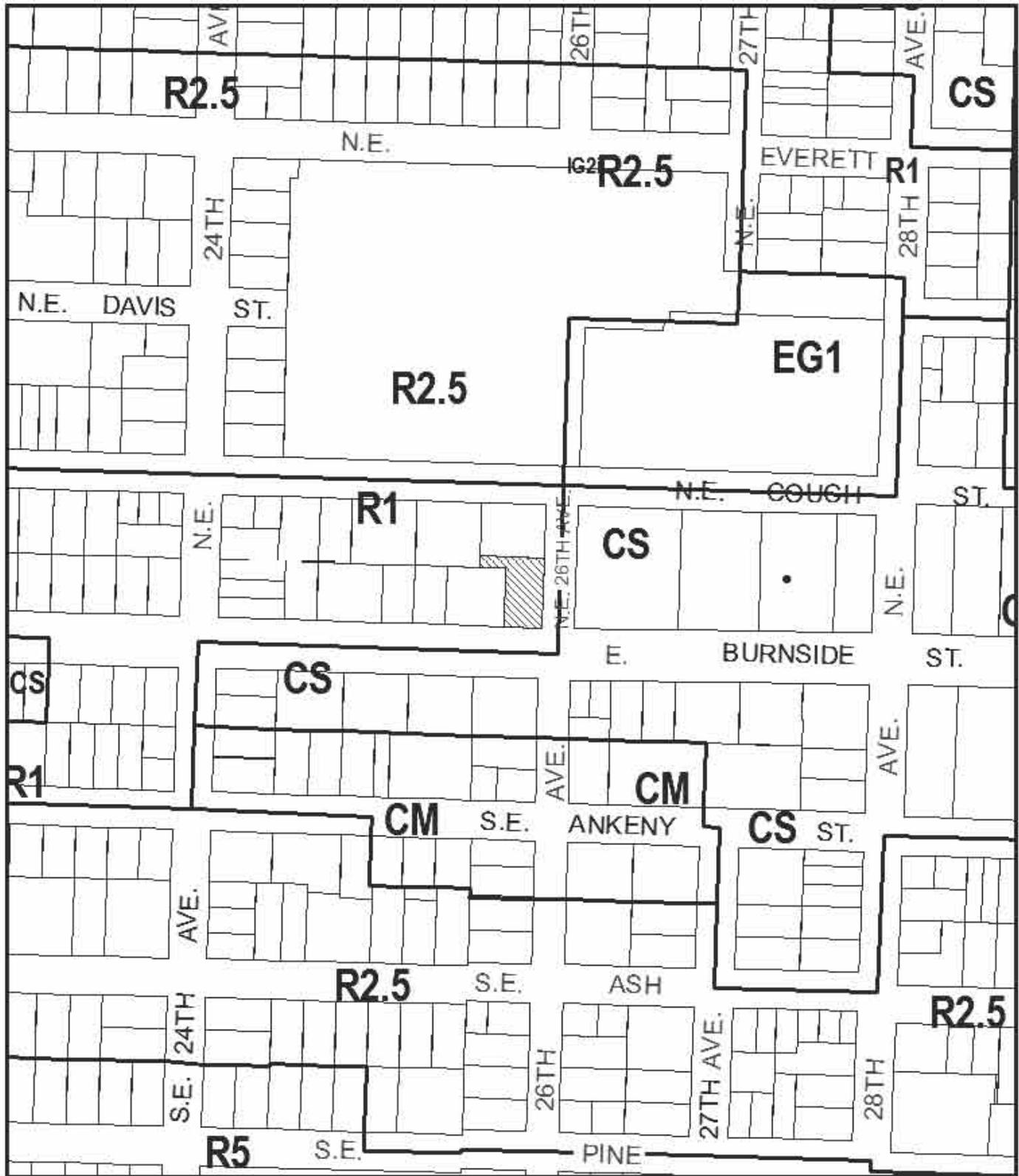
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
  1. Site Plan (attached)
- D. Notification information:
  1. Mailing list
  2. Mailed notice
- E. Agency Responses:
  1. Site Development Section of BDS
  2. Life Safety Section of BDS
  3. Bureau of Environmental Services
  4. Portland Office of Transportation
  5. Water Bureau
  6. Bureau of Parks – Urban Forestry
  7. Fire Bureau
- F. Correspondence: None
- G. Other:
  1. Original LU Application
  2. Site History Research

**The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-0625 (TTY 503-823-6868).**



# ZONING

 Site

 Historic Landmark



File No.	LU 08-129831 AD
1/4 Section	3033
Scale	1 inch = 200 feet
State_Id	1N1E36CB 5100
Exhibit	B (May 23, 2008)

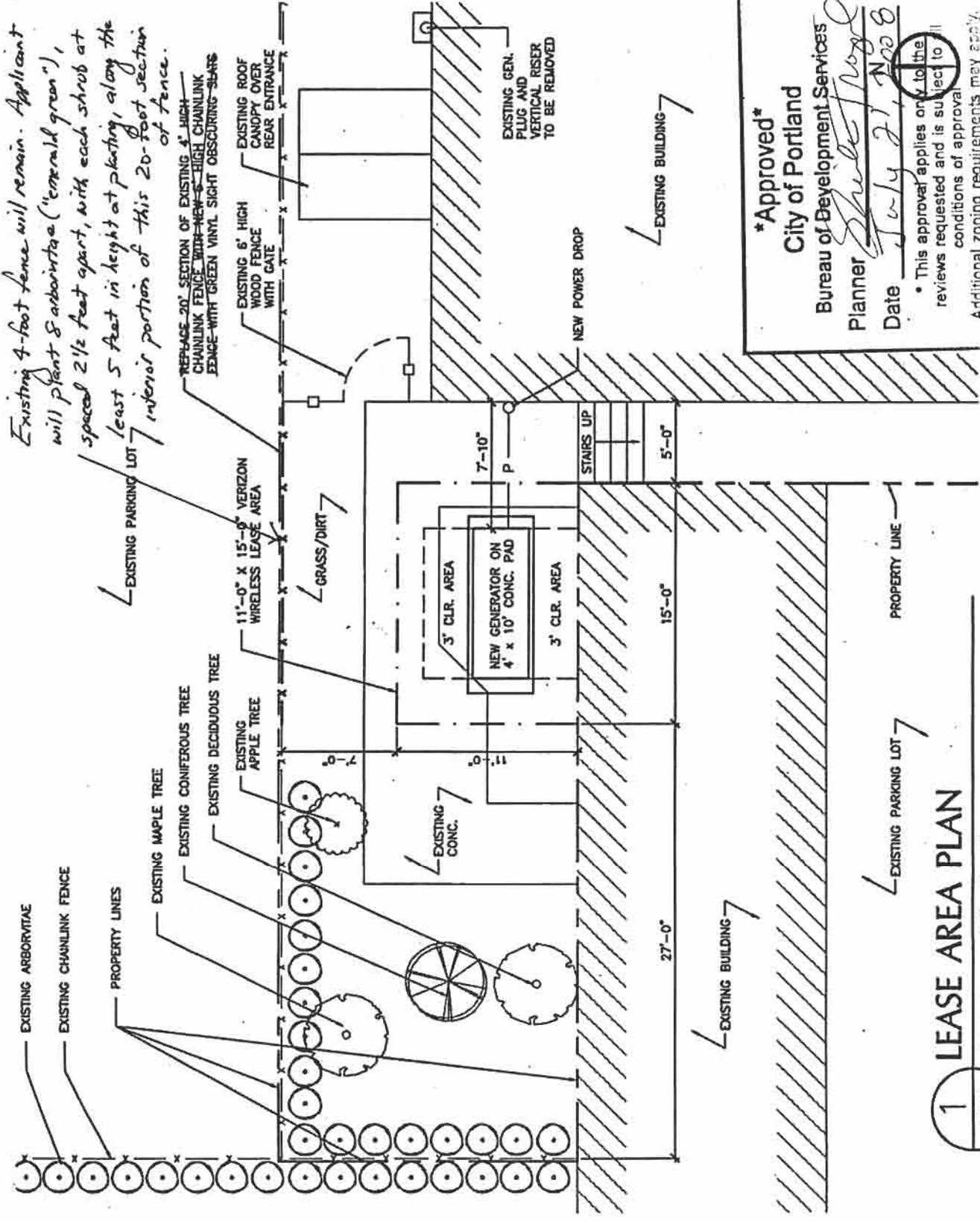
SK1

VERIZON WIRELESS  
FOR LONE FIR  
PORTLAND, OR

GAZLEY  
PLOWMAN  
ARCHITECTS

2701 NW Vaughn  
Suite 704  
Portland, Or. 97210  
503 274 7800  
503 274 7803 Fax

Date: 06/06/08  
Proj. No.: 07-231



Existing 4-foot fence will remain. Applicant will plant *Sarbinivtae* ("emerald green"), spaced 2 1/2 feet apart, with each shrub at least 5 feet in height at planting, along the interior portion of this 20-foot section of fence.

**\*Approved\***  
City of Portland  
Bureau of Development Services  
Planner *Shirley Boyd*  
Date *July 21, 2008*

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

1 LEASE AREA PLAN

SK1 SCALE: 1/8"=1'-0"

EXHIBIT 1