



City of Portland
Bureau of Development Services
Land Use Services Division

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Date: September 30, 2008
To: Interested Person
From: Rachael Hoy, Land Use Services
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NOTICE OF A TYPE I DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it to the Oregon Land Use Board of Appeals (LUBA) at 550 Capitol St. NE, Suite 235, Salem, OR 97301. The phone number for LUBA is 1-503-373-1265. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 08-145166 AP

GENERAL INFORMATION

Applicant: Rod Swift IVY CHAN
Omega Construction Inc 4732 SE 108th Place
Po Box 66426 Portland, OR 97266
Portland, OR 97290

Owners: Patrick B & Judy Schwartzkopf YAN YUN DENG
634 NE 195th Ave 108 MERLOT DR
Portland, OR 97230 PROSSER, WA 99350

Site Address: **4720 SE 108th PL and 4732 SE 108th PL**
Legal Description: LOT 2 BLOCK 1, VARSITY
Tax Account No.: R857400040
State ID No.: 1S2E15BA 05000 **Quarter Section:**3541
Neighborhood: Powellhurst-Gilbert, contact James Chasse at 503-762-0863. Lents, contact Judy Welch at 503-771-4667.
Business District: Midway, contact Donna Dionne at 503-252-2017.
District Coalition: East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550.
Plan District: Johnson Creek Basin
Zoning: R5a – Residential 5,000 with Alternative Design Density Overlay Zone
Case Type: AP – Land Division Amendment (Partition)
Procedure: Type I, an administrative decision with appeal to the Oregon Land Use Board of Appeals (LUBA).

Proposal: A type I Land Division Amendment (Partition) Land Use Review is required as the applicant seeks to change a condition of approval from a 1960 Land Use Decision, per section 33.660.310 Review Procedures, Review of Changes to an Approved Plan. The applicants are proposing to change a condition of approval required for a Land Use Decision approved under case file number M17-60, pertaining to previously platted lots 1,2, and 3 of the Varsity Subdivision. This condition prohibits future land divisions to re-divide these parcels that would have a width of less than 60 feet at building line, or an area of less than 7,000 square feet. This restriction is reflective of the lot dimensional zoning requirements that were in place on the site in 1960 for the R7 zone. The subject properties are currently

zoned R5. The R5 lot dimensional standards allow for a minimum lot area of 3,000 square feet and a lot width of 36 feet, measured at the front setback.

Two of the three lots, 2 and 3, are under separate land division reviews, LU 08-128548 LDP and LU 08-141842 LDP. The applicants intend to divide each of their properties into two parcels. The condition of approval of M17-60 described above precludes the proposed land divisions. Therefore, the applicants are requesting an amendment to the M17-60 land use decision to remove the condition to allow the proposed land divisions.

Relevant Approval Criteria:

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

- Section 33.660.120 Approval Criteria of Land Divisions in Open Space and Residential Zones
- Sections 33.660.320 Approval Criteria for Changes to an Approved Preliminary Plan

ANALYSIS

Site and Vicinity: The properties are relatively flat. Parcel 3 of Varsity Subdivision is a corner lot located at the intersection of SE 108th place and SE Schilling street and Parcel 2 is in interior lot just north of parcel 3. The surrounding neighborhood is characterized by single family residences on originally platted lots or on more recently subdivided properties.

Zoning: The R5 designation is one of the City's single-dwelling zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing.

The "a" overlay is intended to allow increased density that meets design compatibility requirements. It focuses development on vacant sites, preserves existing housing stock, and encourages new development that is compatible with the surrounding residential neighborhood. This proposal is not using any of the provisions of the "a" overlay.

The Johnson Creek Basin plan district provides for the safe, orderly, and efficient development of lands which are subject to a number of physical constraints, including significant natural resources, steep and hazardous slopes, flood plains, wetlands, and the lack of streets, sewers, and water services.

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

- MCF 17-60: land use decision which platted lots 1, 2 and 3 of the Varsity Subdivision. This is the case that is being amended under the current case. A condition of approval under the 1960 land use review prohibited future land divisions to re-divide these parcels that would result in a width of less than 60 feet at building line or an area of less than 7,000 square feet. The amendment requests that this condition be removed so that the lots can be permitted to re-divide meeting the current R5 lot dimensional standards.

In order to re-divide parcels 2 and 3 of Varsity subdivision an amendment to the above referenced case is required. If approved, the following two land use reviews may proceed.

- 08-141842 LDP: Preliminary approval has been granted subject to conditions of approval to divide the 10,406 square foot lot into two standard lots. Parcel 2 will be 5,092 with an existing house, and Parcel 1 will contain about 5,314 square feet of site area.
- 08-128548 LDP: Preliminary approval has been granted subject to conditions of approval to divide the 10,436 square foot lot into two parcels. Parcel one will be 4,228 square feet with an existing house to remain. Parcel two will be a 6,208 square foot flag lot.

Agency Review: A Notice of Proposal in your Neighborhood was mailed on **August 28, 2008**. The following Bureaus have responded with no issues or concerns about the proposal:

- Bureau of Environmental Services
- Bureau of Transportation Engineering
- Water Bureau
- Fire Bureau
- Site Development Section of BDS
- Life Safety Review Section of BDS
- Bureau of Parks-Forestry Division

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on **August 28, 2008**. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

APPROVAL CRITERIA FOR CHANGES TO AN APPROVED PRELIMINARY PLAN

33.660.120 Approval Criteria

Changes to an approved preliminary plan will be approved if the review body finds that the applicant has shown that all of the approval criteria of Code Section 33.660.120 have been met. The relevant approval criteria and analysis are discussed below.

- A. Approval criteria for changes listed in Subsection 33.660.310.B.** Changes to the Preliminary Plan that are listed in Subsection 33.660.310.B must meet the approval criteria of Section 33.660.120, Approval Criteria.

Findings: The applicant proposes to remove a condition of approval from land use decision MCF 17-60 related to Lot dimensional standards. Deleting a condition of the Preliminary Plan approval is a change listed in Subsection 33.660.310.B. Therefore the proposed changes must meet the applicable approval criteria of Section 33.660.120, Approval Criteria.

The relevant criteria are found in Section **33.660.120 [A-L], Approval Criteria for Land Divisions in Open Space and Residential Zones**. Due to the specific location of this site, and the nature of the proposal, some of the criteria are not applicable. The following table summarizes the applicability of each criterion.

Criterion	Code Chapter	Topic	Applicability Findings
A	33.612	Lots	Applicable- see findings below
B	33.630	Trees	Not Applicable. This is not an application for a new partition.
C	33.631	Flood Hazard Area	Not Applicable. The site is not located in a Flood Hazard Area.
D	33.632	Potential Landslide Hazard Area	Not applicable. The site is not located in a Potential Landslide Hazard Area.
E	33.633	Phased Land Division or Staged Final Plat	Not applicable.
F	33.634	Recreation Area	Not Applicable.
G	33.635 .100	Clearing and Grading	Not Applicable. This is not an application for a new partition.
G	33.635 .200	Land Suitability	Not Applicable. This is not an application for a new partition

Criterion	Code Chapter	Topic	Applicability Findings
H	33.636	Tracts and Easements	Not Applicable. No tracts or easements are proposed.
I	33.639	Solar Access	Not Applicable. This site is not a qualifying situation under 33.639.
J	33.640	Streams, Springs, and Seeps	Not applicable. No streams, springs or seeps are identified on this site and this is not an application for a new partition.
K	33.641	Transportation Impacts	Not Applicable. This is not an application for a new partition.
L	33.651 - 33.654	Services and Utilities	Not Applicable. This is not an application for a new partition. Any issues related to services or utilities have been addressed under LU 08-141842 and LU 08-128548

Applicable Approval Criteria are:

A. Lots. The standards and approval criteria of Chapters 33.605 through 33.612 must be met.

Findings: Chapter 33.610 contains the density and lot standards applicable in the RF through R5 zones. These density and lot dimension standards ensure that lots are consistent with the desired character of each zone while allowing lots to vary in size and shape provided the planned intensity of each zone is respected.

The discussion related to the Lots Approval Criteria will be focused on the lot dimensional standards. The applicant has not requested any modifications to density standards.

Lot Dimensions

The lot dimension standards ensure that: (1) each lot has enough room for a reasonably-sized house and garage; (2) lots are of a size and shape that development on each lot can meet the development standards of the Zoning Code; (3) lots are not too large relative to the planned density; (4) each lot has room for at least a small, private outdoor area; (5) lots are compatible with existing lots; (6) lots are wide enough to allow development to orient toward the street; (7) lots don't narrow to an unbuildable width close to the street; (8) each lot has adequate access from the street; (9) each lot has access for utilities and services; and (10) lots are not landlocked.

The applicants seek to amend the 1960 Land Use Decision to remove the following restrictive clause that was placed on the face of the plat:

"No re-subdivided lot shall have a width of less than 60 feet at building line, nor an area of less than 7,000 square feet. " (Exhibit G.3)

These lot size requirements represent the minimum area and width required in the R7 zone in 1960 (Exhibit G.4). Since 1960 the properties in this area have been annexed into the City of Portland and the current zoning is R5. The applicants have requested to divide their properties, (Land Use Reviews 08-141842 and 08-128548) meeting the lot dimensional standards for the current zoning.

The required lot dimension standards for the R5 zone is shown in the following table (this information is found in Table 610-2 of the Zoning Code):

	R5 Zone Requirement
Minimum Lot Area	3,000 sq. ft.

Maximum Lot Area	8,500 sq. ft.
Minimum Lot Width*	36 ft.
Minimum Lot Depth	50 ft.
Minimum Front Lot Line	30 ft.

* Width is measured at the minimum front building setback line

All of the new proposed lots under the aforementioned land use reviews will be of a size and shape that development on each lot can meet the development standards of the Zoning Code. In addition, the new lots are compatible with existing lots in the surrounding R5 zoned neighborhood.

Staff concludes that the intent of the restrictive clause in the 1960 decision was to ensure that existing and future development meet the lot dimensional standards of the zone. The request to remove this restrictive clause, which is more restrictive than the current R5 zoning requirements, will allow the applicants to develop their properties in accordance with current zoning requirements in this area. The applicants are proposing to meet the R5 lot dimensional standards, which is consistent with the zoning requirements for these properties and the surrounding area.

The findings above describe how the applicable lot standards are met. This criterion is therefore met.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.


CONCLUSIONS

The applicants propose to remove a condition of approval required for a Land Use Decision approved under case file number M17-60, pertaining to previously platted lots 1,2, and 3 of the Varsity Subdivision. This condition of approval prohibits future land divisions to re-divide these parcels that would have a width of less than 60 feet at building line, or an area of less than 7,000 square feet. This restriction is reflective of the lot dimensional zoning requirements that were in place on the site in 1960 for the R7 zone. The subject properties are currently zoned R5. The R5 lot dimensional standards allow for a minimum lot area of 3,000 square feet and a lot width of 36 feet, measured at the front setback. The Amendment should be approved to allow further division of these properties at the R5 zoning.

Two of the three lots, 2 and 3, are under separate land division reviews, LU 08-128548 LDP and LU 08-141842 LDP. The applicants intend to divide each of their properties into two parcels meeting lot dimensional standards in the R5 zone.

ADMINISTRATIVE DECISION

Approval of Amendment to Land Use Review M17-60 to remove the restrictive clause: “No re-subdivided lot shall have a width of less than 60 feet at building line, nor an area of less than 7,000 square feet. “

Decision rendered by:  **on September 29, 2008**

By authority of the Director of the Bureau of Development Services

Decision mailed September 30, 2008

Staff Planner: Rachael Hoy

About this Decision. This land use decision is **not a permit** for development. A Final Plat must be completed and recorded before the proposed lots can be sold or developed. 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 July 11, 2008, and was determined to be complete on July 21, 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 July 11, 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.

This decision, and any conditions associated with it, is final. It may be appealed to the Oregon Land Use Board of Appeals (LUBA), within 21 days of the date the decision is mailed, as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that a petitioner at LUBA must have submitted written testimony during the comment period for this land use review. You may call LUBA at 1-503-373-1265 for further information on filing an appeal.

The file and all evidence on this case is available for your review by appointment. Please contact the receptionist at 503-823-7967 to schedule an appointment. Copies of all information in the file can be obtained for a fee equal to the cost for such services. You may also find additional information about the City of Portland and City Bureaus, as well as a digital copy of the Portland Zoning Code, by visiting the City's homepage on the Internet at www.portlandonline.com.

Recording the final decision.

If this Land Use Review is approved, the final decision must be recorded with the Multnomah County Recorder. A building or zoning permit will be issued only after the final decision is recorded. The final decision may be recorded on or after **October 21, 2008**.

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 503-823-7967.

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.

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 503-823-7967.

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

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

EXHIBITS

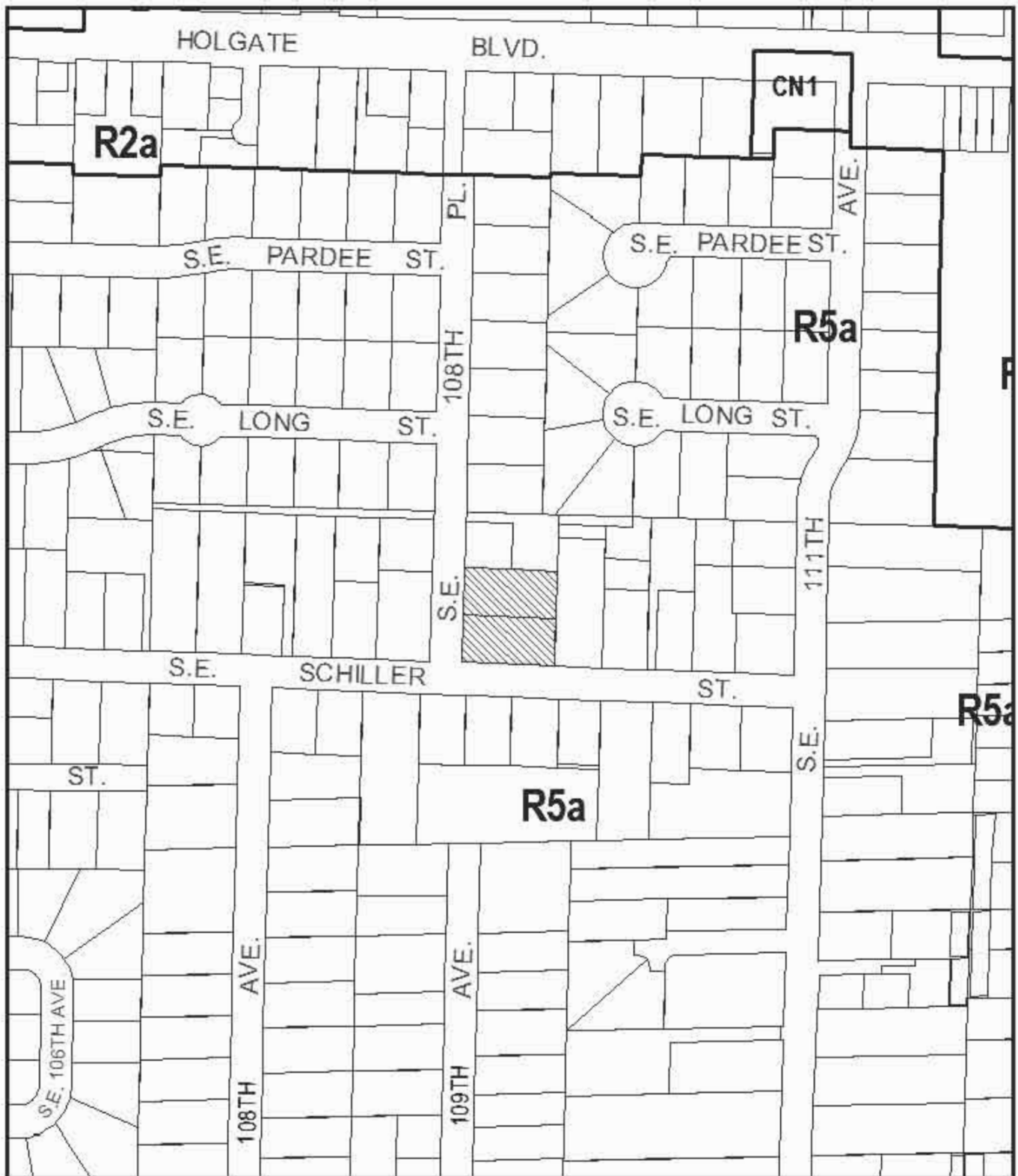
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement: none submitted
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. none
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Bureau of Parks, Forestry Division
- F. Correspondence: none

G. Other:

1. Original LU Application
2. Site History Research
3. Page from MCF 17-60 land use decision that references restrictive clause
4. 1960 zoning- R7 section

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



This site lies within the:
JOHNSON CREEK BASIN PLAN DISTRICT

File No.	<u>LU 08-145166 AP</u>
1/4 Section	<u>3541</u>
Scale	<u>1 inch = 200 feet</u>
State Id	<u>1S2E15BA 5100</u>
Exhibit	<u>B (Jul 17, 2008)</u>