



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

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**Date:** June 2, 2009  
**To:** Interested Person  
**From:** Sean Williams, Land Use Services  
503-823-7612 / [sean.williams@ci.portland.or.us](mailto:sean.williams@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 09-123241 TR**

#### **GENERAL INFORMATION**

**Applicant:** Max Ritchie  
Nordoff Pacific Capital, LLC  
1900 SW River Drive, #1001  
Portland, OR 97201  
(503) 244-5702

**Site Address:** 5243 NE 31<sup>st</sup> Avenue

**Legal Description:** LOT 1, CONCORDIA GREEN  
**Tax Account No.:** R175680050  
**State ID No.:** 1N1E24BA 09802  
**Quarter Section:** 2533  
**Neighborhood:** Concordia, contact George Bruender at 503-287-4787.  
**Business District:** North-Northeast Business Assoc, contact Joice Taylor at 503-445-1321.  
**District Coalition:** Northeast Coalition of Neighborhoods, contact Lauren McCartney at 503-823-4135.

**Plan District:** None  
**Zoning:** Residential 2,500 (R2.5) w/ Alternative Design Density (a) & Aircraft Landing Zone (h) Overlays

**Case Type:** Tree Review (TR)  
**Procedure:** Type II, an administrative decision with appeal to the Hearings Officer.

#### **Proposal:**

The applicant is proposing to change the tree preservation plan that was approved through land division case LU 06-179320 LDS. This previously approved and recorded subdivision created 4 lots through which the preservation of 1 tree, a 12" Colorado Spruce, was required on Lot 1. Preservation of this tree is conflicting with planned construction of this lot. Therefore, in lieu of preserving this tree the applicant is proposing to landscape and construct the new dwelling to "Earth Advantage" standards.

**Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are found in Section **33.853.040, Approval Criteria for Tree Review**.

**ANALYSIS**

**Site and Vicinity:** The subject property is identified as Lot 1 of Concordia Green, a subdivision that was created through land use case file LU 06-179320 LDS. This lot is currently vacant and a building permit for a new single family residence (09-122421 RS) is under review. The sole tree (12" Colorado Spruce) required for preservation through the aforementioned land use case is located on this lot approximately 31 feet from the front property line and 6 feet from the northern property line. The surrounding neighborhood is zoned R2.5 with development primarily consisting of detached single family residences.

**Zoning:** The R2.5 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 land division proposal is not using any of the provisions of the "a" overlay.

The Aircraft Landing ("h") overlay zone provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures and vegetation. The allowed height limit for buildings and vegetation on the site per the "h" overlay is 180 feet above the lowest base point at Portland International Airport. The airport low base point is at an elevation of 18.3 feet. Therefore, the topographical elevation of the site PLUS the proposed building cannot exceed 198.3 feet. The highest ground elevation on the site is approximately 200 feet. Therefore, you will need to request a waiver from the Federal Aviation Administration through the Aviation Department of the Port of Portland to construct on this site.

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

LU 05-142982 AD: Adjustment proposal to increase the length of garage wall and allow for greater eave extension into setbacks for planned construction in anticipation of land division. This case was withdrawn by the applicant.

LU 06-179320 LDS: Approval of a 4 lot subdivision that resulted in 4 narrow lots which included approval of a tree preservation plan the applicant is proposing to amend through this review.

**Agency and Neighborhood Review:** A Notice of Proposal in your Neighborhood was mailed on April 30, 2009.

**1. Agency Review:** The Bureau of Transportation Engineering and Development Review, Fire Bureau, Bureau of Parks (Forestry Division) and Life Safety Plans Examiner all have no concerns regarding the tree review proposal (Exhibit E-4). The following Bureaus have responded with comments:

Bureau of Environmental Services: "BES has no objections to the proposed modification to the tree preservation plan. However, BES supports the planting of a native conifer, such as a Douglas fir, to replace the Colorado spruce destined for removal. Please refer to BDS Site Development comments regarding landscaping and the drywell that has been approved for building permit 09-122421 RS, which is currently under review." See Exhibit E-1 for more details.

Site Development Section of BDS: “Site Development has no objection to approval of the proposed Tree Review to allow the 12" Colorado Spruce on Lot 1 to be removed, and to landscape and construct the new dwelling to "Earth Advantage" standards, provided that there is no impact to the drywell that has been approved for building permit 09-122421-RS, currently under review. If possible, landscaping should be inspected under the new Zoning Inspection program, and/or Third Party Landscaping Certification should be required to confirm that required plantings have been properly installed.” See Exhibit E-2 for more details.

Water Bureau: The Water Bureau has no objection to the requested change to the tree preservation plan and reiterated that all issues discussed with the previously approved land division case remain pertinent. See Exhibit E-3 for more details.

**2. Neighborhood Review:** Two written responses have been received from notified property owners in response to the proposal. Both letters expressed opposition to removal of the tree subject to this review. These comments are addressed under the findings associated with approval criteria for this review.

## APPROVAL CRITERIA

### APPROVAL CRITERIA FOR TREE REVIEW

#### 33.853.010 Purpose

The tree review process evaluates whether mitigation proposed for tree removal is both appropriate and adequate, considering the purpose of the regulations that limit removal. Tree review also evaluates whether changes to tree preservation plans are appropriate, and determines the appropriate mitigation for trees lost due to violations of tree regulations. The review allows flexibility for unusual situations and allows for the purpose of the tree regulations to be met using creative or innovative methods.

#### 33.853.040 Approval Criteria

**B. Changes to tree preservation or mitigation methods.** The approval criteria for changes to tree preservation or mitigation methods, including a tree preservation plan, tree preservation, tree preservation tract, or mitigation plan are:

1. If the tree preservation or mitigation method was approved under the provisions of Chapter 33.630, the requested change will be approved if the review body finds that the applicant has shown that the revised method will continue to meet Chapter 33.630, Tree Preservation.
2. If the tree preservation or mitigation method was not approved under the provisions of Chapter 33.630, the requested change will be approved if the review body finds that the applicant has shown that the revised method better meets the purpose of Chapter 33.630, Tree Preservation, stated in Section 33.630.010.

**Findings:** The tree preservation plan subject to this review was approved under the provisions of Chapter 33.630 in land division case file LU 06-179320 LDS. This land division approval resulted in four narrow lots which have since been platted. Lot 4 is already developed and Lot 1 (09-122421 RS), Lot 2 (09-122409 RS) and Lot 3 (09-121330 RS) are in various stages of the permit process. At the time of the land division review, five trees were located within the site subject to preservation standards. Of the five trees, a certified arborist determined that four Douglas fir’s were exempt from the regulations of Chapter 33.630 due to hazardous conditions (Exhibit G-4). The sole remaining non-exempt tree within the land division site was a 12 inch Colorado spruce located in the area of Lot 1. As the only non-exempt tree within the land division site the Colorado spruce was preserved in order to meet Option 1 of the tree

preservation standards, which requires at least 35 percent of the total tree diameter on the site to be preserved.

The applicant is proposing to remove the 12 inch Colorado spruce located on Lot 1. The proposal does not meet any of the tree preservation options in 66.630.100. The applicant proposes instead to use the mitigation options of 33.630.300:

**33.630.300 Mitigation Option**

**As an alternative to meeting Section 33.630.100, approval of a mitigation plan may be requested. The review body will approve the mitigation plan where the applicant has shown that the applicant has met criteria A. and B. and one of the criteria in C., below:**

- A. As many trees as possible are preserved; and**
- B. The applicant has submitted a mitigation plan that adequately mitigates for the loss of trees, and shows how the mitigation plan equally or better meets the purpose of this chapter. Mitigation can include tree planting, preservation of groups of smaller trees, eco-roof, porous paving, or pervious surface permanently preserved in a tract.**
- C. It is not possible under any reasonable scenario to meet Section 33.630.100 and meet one of the following:**
  - 1. Minimum density;**
  - 2. All service requirements of Chapters 33.651 through 33.654, including connectivity;**
  - 3. Implementation of an adopted street plan;**
  - 4. On sites 15,000 square feet or less in area, a practicable arrangement of lots, tracts, and streets within the site that would allow for the division of the site with enough room for a reasonable building site on each lot;**
  - 5. In E and I zones, provide a practicable arrangement of lots, tracts, and streets within the site that would allow for the division of the site with enough room for a reasonable building site on each lot, considering the uses and development allowed in the zone; or**
  - 6. Preserve the trees within the environmental zones on site while providing a practicable arrangement of building sites and disturbance area.**

The Colorado spruce is located on Lot 1 approximately 31 feet from the front property line and 6 feet from the northern property line. The approved tree preservation plan designated a 12 foot root protection zone for this tree. The location of the preserved tree and associated root protection zone results in significant development limitations for this narrow lot. Therefore, the applicant has proposed to remove this tree and mitigate for its loss via planting 3 new trees and constructing the new house and landscaping the lot to “Earth Advantage” standards.

In regards to the applicants proposal for planting 3 new trees for mitigation, new trees will be required to be planted on each lot as a part of approval of building permits in accordance with T1 standards (33.248.020.H). The T1 standard requires at least 3 inches of tree diameter to be planted on lots that are 3,000 square feet or smaller. This would equate to two trees per lot based on the minimum planting size of 1.5 inches. Because of the small size of the parcels it is not practical for additional trees beyond the T1 standard to be planted without jeopardizing the overall health of all of the trees on the site. However, as recommended by the Bureau of Environmental Services, these lots would benefit from the addition of a native conifer to replace the Colorado spruce. Therefore, as a part of T1 planting requirements the applicant will be required to plant 1 Douglas fir tree on Lots 1, 2 and 3 as a part of building permit approval on these lots.

While the applicant’s proposal to construct the new dwellings and landscape the lots to “Earth Advantage” standards is desirable and well received, it’s difficult to develop a nexus with tree preservation standards. Additionally, no process is currently available to confirm these standards are being met through the construction of the new single family dwellings. As noted

above there is not sufficient area on these lots to plant new trees beyond the T1 standard to compensate for the removal of the preserved tree. Therefore, in order to continue to meet the provisions of Chapter 33.630 and mitigate for the loss of the 12 inch Colorado spruce, the applicant shall be required to pay into the City Tree Fund for the amount equivalent to 4 inches of tree diameter. This figure is roughly equivalent to the amount of tree diameter that would be required to be preserved through Option 1 of the tree preservation chapter, which is 35% of existing non-exempt tree diameter on site. Payment into the Tree Fund will contribute to the general beauty and natural heritage of the City, if not directly on the site.

With conditions requiring a Douglas fir tree to be planted as a part of building permit approval on Lots 1, 2 and 3 in conjunction with payment into the City Tree Fund for the amount equivalent to 4 inches of trees this proposal will continue to meet Chapter 33.630, Tree Preservation.

## 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

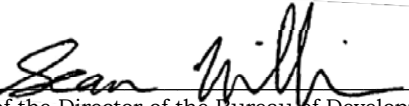
The applicant has proposed to amend the tree preservation plan approved through land division case file LU 06-179320 LDS by removing a 12 inch Colorado spruce preserved on Lot 1. The requested amendment to the tree preservation plan may be approved if the review body finds that the applicant has shown that the revised method will continue to meet Chapter 33.630, Tree Preservation. As discussed in this report, the revised method of tree preservation will continue to meet Chapter 33.630 with conditions of approval.

## ADMINISTRATIVE DECISION

**Approval** of a Tree Review to modify an approved Tree Preservation Plan to allow removal of a 12 inch Colorado spruce located on Lot 1, subject to the conditions listed below.

1. The applicant must pay into the City Tree Fund the amount equivalent to 4 inches of trees prior to Planning and Zoning approval of the building permit (09-122421 RS) on Lot 1. Payment must be made to the Bureau of Development Services, who administer the fund for the Parks Bureau.
2. The applicant shall plant 1 Douglas fir tree on Lots 1, 2 and 3 (Concordia Green) prior to final inspection approval for building permits on these lots.

**Staff Planner: Sean Williams**

Decision rendered by:  on May 29, 2009  
By authority of the Director of the Bureau of Development Services

**Decision mailed: June 2, 2009**

**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 April 22, 2009, and was determined to be complete on April 28, 2009.

*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 April 22, 2009.

*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 Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on June 16, 2009** 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 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 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 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 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 **June 17, 2009 – (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:

- 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.

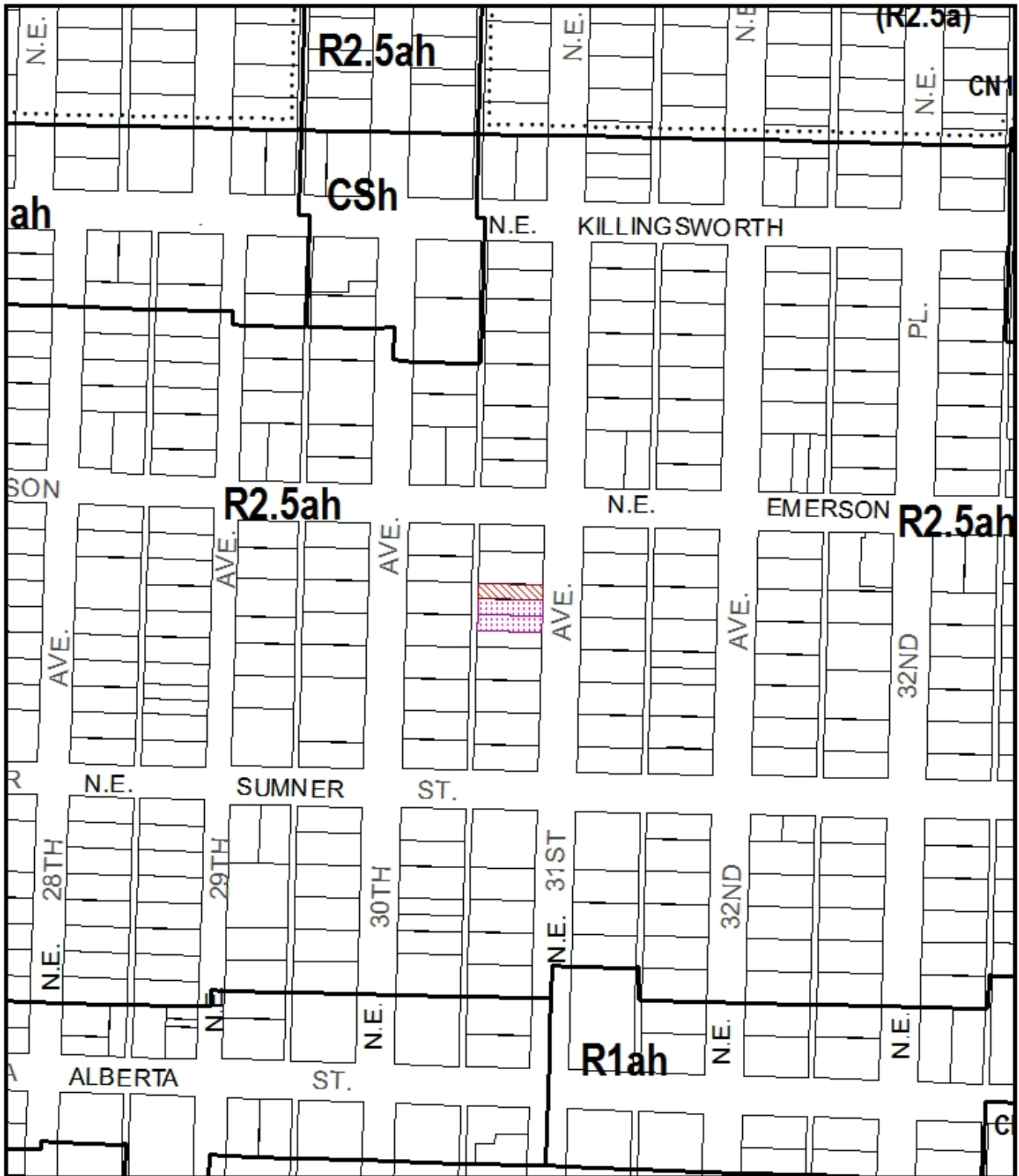
**EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Original tree preservation plan for LU 06-179320 LDS
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Site Development Review Section of BDS
  - 3. Water Bureau
  - 4. Bureau of Transportation Engineering and Development Review; Fire Bureau; Bureau of Parks, Forestry Division; Life Safety Plans Examiner
- F. Correspondence:
  - 1. Jonathan Dehaan; 5303 NE 31<sup>st</sup> Avenue (5/12/09)
  - 2. Kerri Smith; 5244 NE 31<sup>st</sup> Avenue (5/4/09)
- G. Other:
  - 1. Original LU Application
  - 2. Site History Research
  - 3. Original Land Division decision: LU 06-179320 LDS
  - 4. Original arborist report for LU 06-179320 LDS

**The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-7300 (TTY 503-823-6868).**





# ZONING

-  Site
-  Also Owned



File No. LU 09-123241 TR  
 1/4 Section 2533  
 Scale 1 inch = 200 feet  
 State\_Id 1N1E24BA 9802  
 Exhibit B (Apr 27, 2009)

