



CITY OF PORTLAND
Bureau of Development Services
1900 SW Fourth Avenue, Suite 5000
Portland, OR 97201 **P524**
Land Use Decision Enclosed
Case # LU 10-102552 TR

16

Return Service Requested



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

1900 SW 4th Avenue, Suite 5000
Portland, Oregon 97201
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Date: May 28, 2010
To: Interested Person
From: Shawn Burgett, Land Use Services
503-823-3581 / Burgetts@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 10-102552 TR

GENERAL INFORMATION

Applicant: Eric Rystadt
Main Street Development Inc
Po Box 91096
Portland, OR 97291
503-422-7707

Site Address: 12319 NW SARGENT LN

Legal Description: LOT 5, SARGENT NO 2
Tax Account No.: R747350250
State ID No.: 1N1W10B 01903
Quarter Section: 2117

Neighborhood: Forest Park, contact Jim Emerson at 503-283-4096.
Business District: None
District Coalition: Neighbors West/Northwest, contact Mark Sieber at 503-823-4212.

Plan District: None
Other Designations:

Zoning: R20 (R10)c (Single Family Residential-20,000 with "c" environmental concern overlay)

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

Proposal:

The applicant is proposing to amend the tree preservation plan approved under LU_04_012493_LDS_EN (the land division review that created this lot), for lot 5 of Sargent No. 2 (Subdivision). LU_04_012493_LDS_EN required the applicant to protect trees labeled E, F and G on the attached site plan. All three of these trees are 8" maples for a total of 24" of tree diameter. The applicant has proposed to remove trees E, F and G due to trees location adjacent

to the front of the new home, and what the applicant's arborist report describes as "poor structure." In exchange for removing these trees, the applicant has agreed to protect trees labeled C (44" Fir) and D (21" Fir) for a total tree diameter of 65". Although tree C (44" Fir) is larger than the combined size of trees E, F and G (24" total), due to the close proximity of tree D to tree C, planning staff felt it was important to protect both trees since the roots of these trees are inevitably intertwined and the removal of tree D could effect the stability of tree C. The proposed removal of trees G, F and E and the protection of trees C and D, meets the Zoning Codes tree preservation approval criteria (33.630).

It should be noted that the new home on the site is almost done being constructed, the applicants arborist has stated in his report that the trees being proposed for protection (C and D) are still viable trees following the excavation for the foundation of the new home, and a post excavation inspection took place that confirmed the viability of trees C and D.

Relevant Approval Criteria:

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

- 33.853.040, Approval Criteria for changes to an approved tree preservation plan

ANALYSIS

Site and Vicinity: The site is slightly sloped from north to south. A cluster of large fir trees are located in the southern, side setback of the New residential development that is present on lot 5, where a new single family home has been constructed. The private street tract is completely constructed at this time.

Zoning: The R20 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 "c" overlay is intended to conserve important environmental features and resources while still allowing compatible development. New development and exterior modifications to existing development must meet environmental standards or are subject to environmental review.

Land Use History: As previously noted, city records indicate that the site was subdivided under LU_04_012493_LDS_EN.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **February 2, 2010**. The Bureaus have responded with no issues or concerns (see E Exhibits).

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on February 2, 2010. No written response has been received from the Neighborhood Association in response to the proposal.

ZONING CODE APPROVAL CRITERIA

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

The approval criteria consist of three criteria (A-C). The site is not located in the Scenic Overlay Zone or Rocky Butte plan districts therefore Criterion A does not apply. The applicant has not violated the approved tree preservation plan; therefore Criterion C does not apply. Therefore only Criterion B is applicable and addressed below.

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 City’s approval of LU_04_012493_LDS_EN included the approval of a tree preservation plan under Chapter 33.630 (exhibit G-3). The plan preserved 24” inches (tree diameter) of non-exempt tree diameter on this site (lot 5), meeting Option 1 of the Zoning Code’s tree preservation requirements of Chapter 33.630 (along with preservation on other lots within the subdivision met tree preservation requirements). The applicant proposes to amend the approved tree preservation plan from LU_04_012493_LDS_EN and remove trees numbered E, F and G from the list of protected trees (exhibit C-1 and G-3); and replace these trees with trees labeled C and D which are a combined 65” in diameter (exhibit C-1).

The applicant has provided an arborist report (exhibits A-1 and A-2) which documents the health of the two Fir trees located near the southern property boundary of lot 5 that the applicant would like to formally protect, these two trees (shown visually on exhibit C-1) are both Fir trees that equal 65 inches of tree diameter, and would increase the total tree diameter protected on lot 5 from 24 inches to 65 inches. This would raise the total tree diameter protected on Lot 5 under LU_04_012493_LDS_EN by 41 inches which would continue to meet option 1 of the Zoning Code’s tree preservation requirements of Chapter 33.630.

Protect the following trees:

Tree Labeled	Size (dbh)	Species	Location
C	44”	Douglas Fir	Lot 5
D	21”	Douglas Fir	Lot 5

Remove the following trees:

Tree Labeled	Size (dbh)	Species	Location
E	8”	Maple	Lot 5
F	8”	Maple	Lot 5
G	8”	Maple	Lot 5

Due to the close proximity of several protected trees on lot 5 from the backup drainfield approved (exhibit C-2) and the recommendation that the arborist be involved in the excavation of this area if the backup drainfield is ever used (exhibit A-2) the following information will be required prior to the issuance and final of plumbing permits on lot 5 to use the backup drainfield:

As a condition of approval, prior to the issuance of any permits to install a drainfield in the backup area on lot 5, the applicant shall provide a letter from a certified arborist that

summarizes the arborist's involvement in the excavation and installation of the drainfield in association with the structure on Lot 5, as recommended in the arborist report (exhibit A-2)

Based on the discussion above and the conditions of approval discussed above, this criterion is met with the requirement that Trees C and G on lot 5 of Sargent Lane No. 2 are formally protected to replace trees G and F and E. All other conditions related to the approved tree preservation plan for LU_04_012943_LDS_EN continue to 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's amended tree preservation plan removes three trees (labeled G, F and E on lot 5) that were previously preserved as part of the original tree preservation plan under LU_04_012493_LDS_EN and adds two trees to the list of trees with protected status, trees C and D on lot 5.

The removal of trees G, F and E from "protected status" and the addition of trees C and D will result in an additional of 41 inches of non-exempt tree diameter protected within the subdivision, well over the 35% minimum for the subdivision as a whole.

ADMINISTRATIVE DECISION

Approval of a Tree Review to amend the Tree Preservation Plan approved under LU 04_012493 LDS_EN to remove Trees labeled G, F and E located on lot 5 from the list of protected trees within the subdivision and add trees labeled C and D located on lot 5 to the tree preservation plan as protected trees. All other conditions related to the approved tree preservation for LU 04_012493 LDS_EN continue to apply.

As illustrated with Exhibit C-1 subject to the following conditions:

1. Development on Lot 5 shall be in conformance with the revised Tree Preservation Plan (Exhibit C-1) and the applicant's Arborist Reports (Exhibits A-1 & A-2). Trees labeled C and D on lot 5 as shown on exhibit C-1 must be preserved.

Prior to the issuance of any permits to install a drainfield in the backup area on lot 5 (shown on exhibit C-2), the applicant shall provide a letter from a certified arborist that summarizes the arborist's involvement in the excavation and installation of the drainfield in association with the structure on Lot 5, as recommended in the arborist report (exhibit A-2)

Encroachment into the specified root protection zones may only occur under the supervision of a certified arborist. Planning and Zoning approval of development in the root protection zones is subject to receipt of a report from an arborist, explaining that the arborist has approved of the specified methods of construction, and that the activities will be performed under his supervision. The report from an arborist and any revisions to permit plans reflecting new root protection zones must be submitted and approved by Planning and Zoning prior to any working occurring in the root protection zone. If work is conducted in the RPZ and Planning & Zoning approval is not obtained before the work begins and the tree subsequently falls, it may result in a violation.



Decision rendered by: _____ **on May 25, 2010**
By authority of the Director of the Bureau of Development Services

Decision mailed: May 28, 2010

About this Decision. This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

Procedural Information. The application for this land use review was submitted on January 13, 2010, and was determined to be complete on January 27, 2010.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on January 13, 2010.

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 requested that the 120-day review period be extended 60 days (exhibit A-3) **the 120 day extension will expire on: 7/26/10**

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 date** at 1900 SW Fourth Ave. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, 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 call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at 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 11, 2010 – (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:

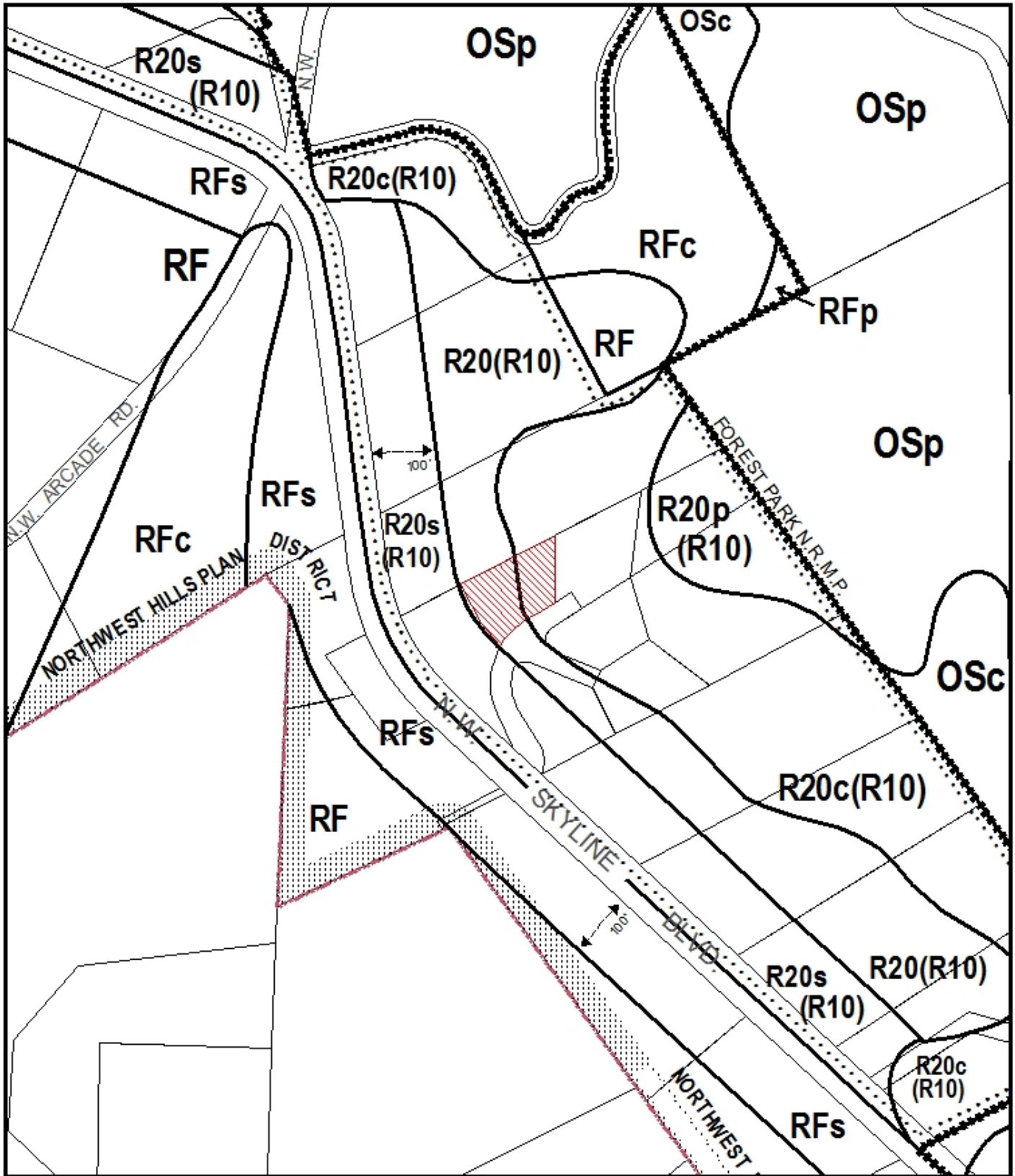
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Information submitted
 - 1. Arborist report dated 11/9/09
 - 2. Arborist report dated 4/20/10
 - 3. Applicants 60 day extensions to 120 day clock
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Site Plan with backup drainfield shown
- 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
 - 7. Life Safety
- F. Correspondence: None received
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research
 - 3. Site Plan (exhibit C.5 from LU_04_012493_LDS_EN) showing protected trees on site.

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).



ZONING

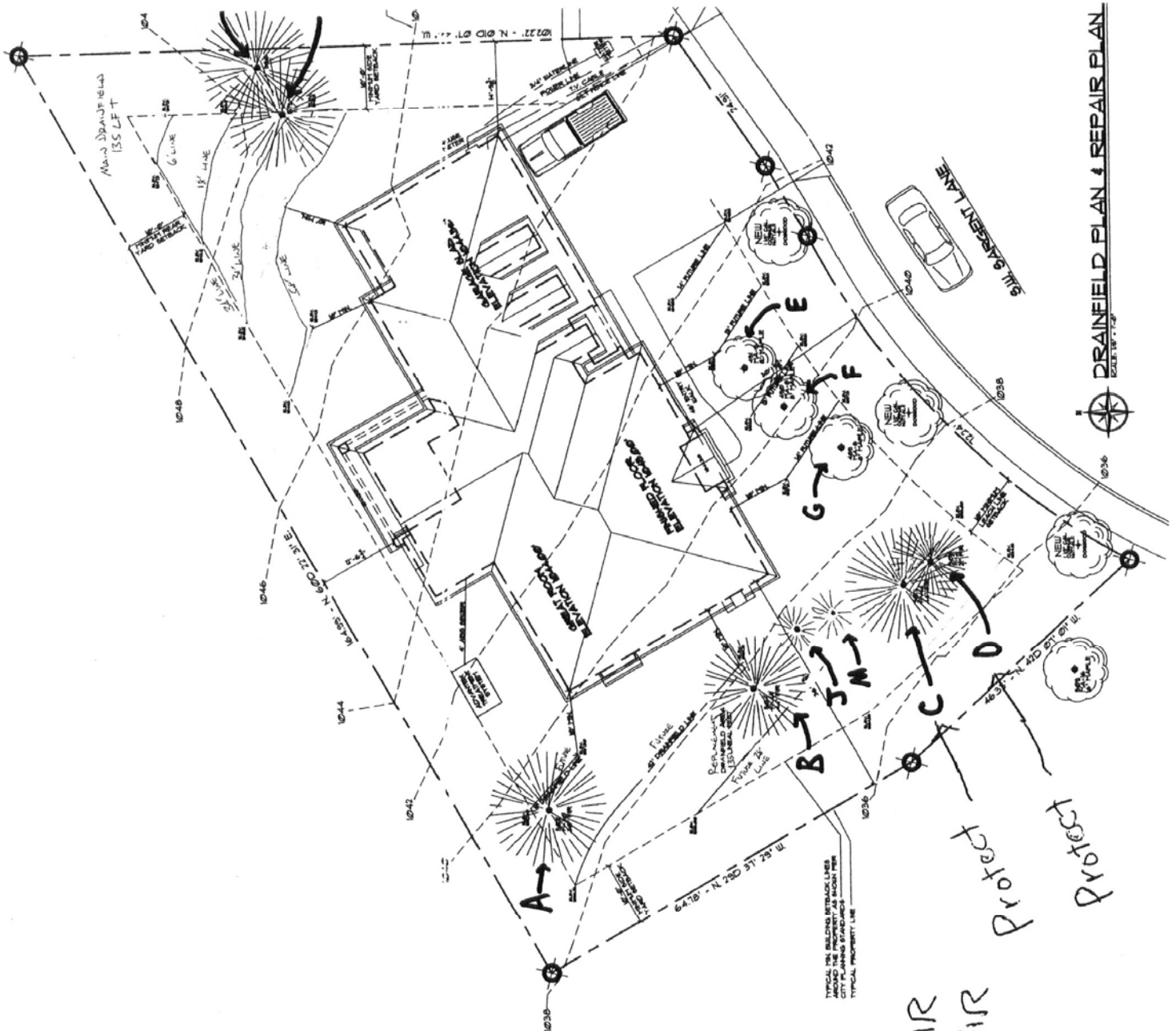
 Site



This site lies within the:
NORTHWEST HILLS PLAN DISTRICT

File No.	LU 10-102552 TR
1/4 Section	2117
Scale	1 inch = 200 feet
State Id	1N1W10B 1903
Exhibit	B (Jan 14, 2010)

Remove trees G, F, E



Tree C = 44" FIR
 Tree D = 21" FIR

CASE NO. 10-10255Z
 EXHIBIT C-1

DRAINFIELD PLAN & REPAIR PLAN
 DATE: 10/17/10