



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

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**Date:** May 18, 2012  
**To:** Interested Person  
**From:** Sean Williams, Land Use Services  
503-823-7612 / [Sean.Williams@portlandoregon.gov](mailto:Sean.Williams@portlandoregon.gov)

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

The Bureau of Development Services has **approved** a proposal in your neighborhood. The 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 11-185541 TV**

#### **GENERAL INFORMATION**

**Applicant:** Mac Pham  
15516 NE Halsey Street  
Portland, OR 97230

**Representative:** Terrence P Flanagan  
Teragan & Associates, Inc  
3145 Westview Circle  
Lake Oswego, OR 97034

**Site Address:** 4340 NE 107<sup>th</sup> Avenue

**Legal Description:** LOT 3 INC UND INT TRACT A, FRANK ESTATES  
**Tax Account No.:** R296100150  
**State ID No.:** 1N2E22CA 12203  
**Quarter Section:** 2641  
**Neighborhood:** Parkrose Neighborhood Assoc., contact Mary Walker at 503-252-2146.  
**Business District:** Parkrose Business Association, contact Wayne Stoll at 503-284-1921.  
**District Coalition:** East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550.  
**Plan District:** None  
**Zoning:** Residential 7,000 (R7) w/ Aircraft Landing Zone Overlay (h)  
**Case Type:** Tree Violation (TV)  
**Procedure:** Type II, an administrative decision with appeal to the Hearings Officer.

#### **Proposal:**

The applicant has applied for a tree violation review as a 23.5-inch blue spruce and 25-inch Douglas fir, required to be preserved through LU 04-009465 LDS, were removed from the site without required review. These trees were required to be preserved through tree preservation standards (33.630) implemented in the land division review which created this lot. The applicant has proposed to mitigate for the removal of this tree via planting on the site per the attached site plan.

#### **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.C, Approval Criteria for Corrections to Violations.**

## ANALYSIS

**Site and Vicinity:** The subject property is 6,002 square feet in area and developed with a two story single family home that contains a building coverage of approximately 1,716 square feet and a detached accessory structure. The front yard is landscaped with a small lawn and one Japanese maple tree. The rear yard is void of any landscaping or groundcover. Development within the vicinity is primarily comprised of single family homes with comparable zoning. The adjacent property to the north is owned and operated by the Parkrose School District and is developed with a parking lot for school buses and commercial buildings, of which one is located on the shared property line with the site. Prescott Elementary School is located approximately 450 feet west of the site.

**Zoning:** The R7 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 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 210 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 228.3 feet. The highest ground elevation on the site is approximately 114 feet. Therefore, buildings and vegetation on the site cannot exceed 114.2 feet in height. On this site, however, the base zone (R5) height limit of 30 feet is more restrictive than the 'h' overlay allows and cannot be exceeded without a future adjustment review.

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

- **LU 04-009465 LDS:** Approval of a Preliminary Plan for an eight-lot land division with a new private street. The land division was subsequently platted as Frank Estates with Lot 3 of this subdivision being the subject of this review.

**Agency Review:** A "Notice of Proposal in Your Neighborhood" was mailed **April 12, 2012**. The Water Bureau, Fire Bureau, Life Safety Plans Examiner, Urban Forestry, Site Development section of BDS and Bureau of Transportation all have no concerns regarding the tree violation review (Exhibits E.2 & E.3). The Bureau of Environmental Services has responded with recommendation that the mitigation planting plan be revised to include more native species (Exhibit E.1).

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on April 12, 2012. One written response has been received from a notified property owner in reply to the proposal. The correspondence is from the developer of the subdivision who lives on one of the lots and includes accounts of the tree removal. The letter requested that the applicant contribute to the City tree fund as a form of mitigation. Per the findings below, the applicant will be required to plant 17 new trees on the site, which should allow the immediate vicinity to reap the benefits of trees that are described in the purpose statement for the Tree Preservation Chapter.

## ZONING CODE APPROVAL CRITERIA

### APPROVAL CRITERIA FOR TREE REVIEW

#### 33.853.040 Approval Criteria

**C. Corrections to violations. For corrections to violations of tree protection and tree preservation regulations of this Title, or violations of tree preservation plans or the approved method of tree preservation or mitigation, the applicant must show the review body that all of the following approval criteria are met:**

**1. Mitigation Plan;**

- a. The applicant's mitigation plan meets the purpose of the regulation that was violated. Where the violation is of a tree preservation plan or the approved method of tree preservation or mitigation, the mitigation plan meets the purpose of the regulation that required the preservation plan;
- b. The mitigation plan includes replacement of trees cut, or the preservation and protection of additional trees on the site not originally proposed for preservation. If replacement of trees is proposed, the plan must at a minimum meet the requirements of Table 853-2. If additional trees on the site are proposed for preservation and protection, the total diameter of additional trees preserved must exceed the total diameter of trees cut.

| <b>Table 853-2<br/>Tree Replacement for Violation</b> |                                      |
|---|--------------------------------------|
| <b>Size of tree removed<br/>(inches in diameter)</b>  | <b>Number of Trees to be Planted</b> |
| 6 to 12   | 3 trees                              |
| 13 to 18  | 5 trees                              |
| 19 to 24  | 7 trees                              |
| 25 to 30  | 10 trees                             |
| Over 30   | 15 trees                             |

**2. Replacement trees must be planted as follows:**

- a. On the site where the violation occurred;
- b. If it is not possible to plant the trees on the site where the violation occurred, then the trees must be planted on other property owned by the applicant within the City of Portland, this includes property owned by a Homeowners' Association to which the applicant belongs;
- c. If it is not possible to plant the trees on the site where the violation occurred, or on other property owned by the applicant within the City of Portland, then the trees must be planted in a City of Portland park, as approved by the Bureau of Parks and Recreation, or on a site approved by the Bureau of Environmental Services.

**3. Replacement trees must meet the requirements of Section 33.248.030, Plant Materials.**

**Findings:** This review is for violation of a tree preservation plan in accordance with Chapter 33.630, Tree Preservation. The purpose of the regulation that required the preservation plan is as follows:

**33.630.010 Purpose**

The regulations of this chapter preserve trees and mitigate for the loss of trees to:

- Protect public health through the absorption of air pollutants and contamination;
- Provide buffering from noise, wind, and storms;
- Provide visual screening and summer cooling;
- Reduce urban heat island impacts;
- Maintain property values;
- Maintain wildlife habitat; and
- Maintain the beauty of the City and its natural heritage.

**The preservation of trees on a land division site also will:**

- **Preserve trees when it is feasible to preserve trees and still meet the other regulations of this Title;**
- **Reduce erosion, siltation, and flooding;**
- **Filter stormwater and reduce stormwater runoff;**
- **Stabilize slopes; and**
- **Retain options for property owners to preserve trees and vegetation at the time of development.**

Tree Preservation standards require a certain percentage of existing viable tree diameter to be preserved on new lots within a land division site. An eight lot land division (LU 04-009465 LDS) was approved with a tree preservation plan that met the standards of Option 1 (33.630.100.A.1). This plan required a 23.5-inch blue spruce and 25-inch Douglas fir tree to be preserved on the subject property (Lot 3). These trees were removed from the site without required review. Therefore, the applicant is in violation of the tree preservation plan approved through the aforementioned land division. A code compliance case (11-166952 CC) is currently under review for this site due to violation of this land use condition of approval. The applicant has proposed to mitigate for the removal of these trees via planting on the property per the attached site plan (Exhibit C.1).

Since the applicant has chosen replacement trees as a preferred method of mitigation, the plan must at a minimum meet the requirements of Table 853-2. A total of 48.5 diameter inches of trees were removed from the site. Therefore, Table 853-2 would require at least 15 trees to be planted. The proposed planting plan consists of 11 Italian cypress trees, 4 English oak trees, 1 Douglas fir tree and 1 Golden rain tree.

The Italian cypress trees are evergreens and have been chosen for the expressed purposes of shading and screening benefits as well as stormwater interception. These trees have a narrow columnar habit of growth that will be ideal for the limited amount of space available in the rear yard to support the number of trees required for mitigation. The Bureau of Environmental Services (BES) has recommended that the mitigation plan include as many native species as possible to help provide stormwater benefits, provide habitat for native wildlife, stabilize soils, and minimize erosion. These recommendations are consistent with the purpose of the Tree Preservation regulations identified above. Therefore, the applicant shall plant native species, selected from the *Portland Plant List*, in lieu of the four English oak trees and one Golden Rain tree. BES has recommended native species of Oregon white oak and Cascara or Pacific dogwood as similar species to the English oak and Golden rain tree, respectively.

The applicant must receive final inspection approval of a zoning permit to plant 11 Italian cypress trees, 1 Douglas fir tree and 5 native tree species selected from the *Portland Plant List*, in conformance with Exhibit C.1. The replacement trees will be required to meet the minimum planting sizes identified in Section 33.248.030, Plant Materials. The required mitigation is consistent with the purpose of Chapter 33.630, Tree Preservation for the noted reasons above. Therefore, this criterion is 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**

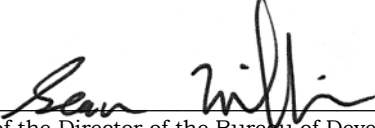
As part of an 8-lot land division (LU 04-009465 LDS) that established the subject property, a 23.5-inch blue spruce and 25-inch Douglas fir tree were required to be preserved. The applicant removed these trees without an appropriate review. In order to address the Violation resulting from removal of these trees, the applicant will be required to plant 17 trees on the site, per the attached site plan (Exhibit C.1). As addressed in the findings above, the required method of mitigation is able to meet the purpose of Chapter 33.630, Tree Preservation and should be approved.

## ADMINISTRATIVE DECISION

**Approval** of a Tree Violation Review to correct a violation resulting from the removal of a 23.5-inch blue spruce and 25-inch Douglas fir tree that were required to be preserved as a part of LU 04-009465 LDS. The following condition shall be satisfied within 30 days of this land use approval for completion of code compliance case 11-166952 CC:

- A. The applicant shall receive final inspection approval of a Zoning Permit to plant 11 Italian cypress trees, 1 Douglas fir tree and 5 native tree species selected from the *Portland Plant List*, in conformance with Exhibit C.1.

**Staff Planner: Sean Williams**

**Decision rendered by:**  **on May 16, 2012**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: May 18, 2012**

**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 October 14, 2011, and was determined to be complete on **April 10, 2012**.

*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 October 14, 2011.

*ORS 227.178* states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on: August 8, 2012.**

**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 1, 2012** 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. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. 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](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 4, 2012**.
- 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.

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

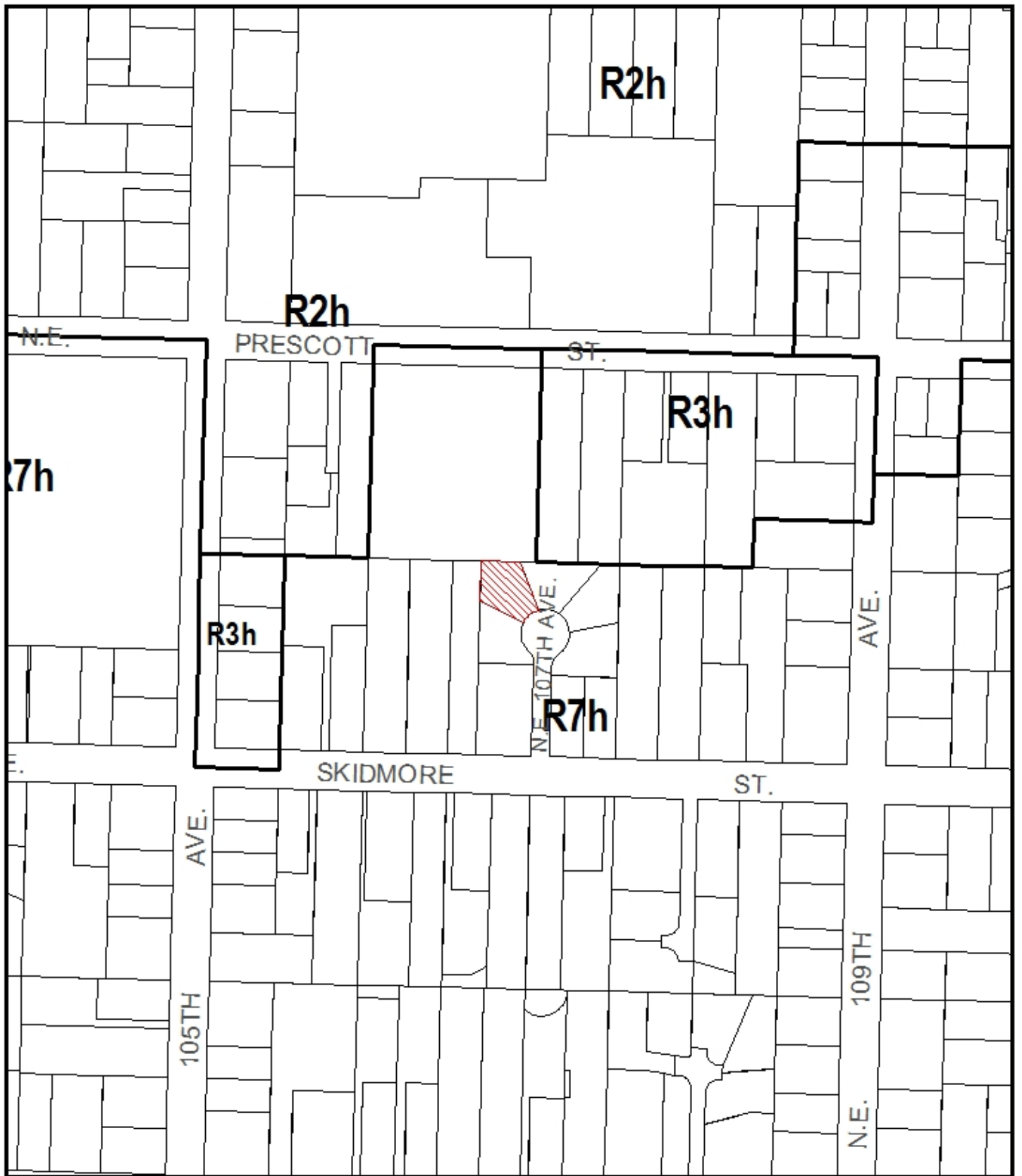
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  - 1. Arborist Report
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Water Bureau
  - 3. Bureau of Transportation Engineering and Development Review; Fire Bureau; Site Development Review Section of BDS; Bureau of Parks, Forestry Division; Life Safety Plans Examiner
- F. Correspondence:
  - 1. Williams Frank, Frank Investment Group, LLC (5/3/12)
- G. Other:
  - 1. Original LU Application
  - 2. Site History Research
  - 3. Incomplete Letter

**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



|             |                          |
|-------------|--------------------------|
| File No.    | <u>LU 11-185541 TV</u>   |
| 1/4 Section | <u>2641</u>              |
| Scale       | <u>1 inch = 417 feet</u> |
| State_Id    | <u>1N2E22CA 12203</u>    |
| Exhibit     | <u>B (Oct 24, 2011)</u>  |



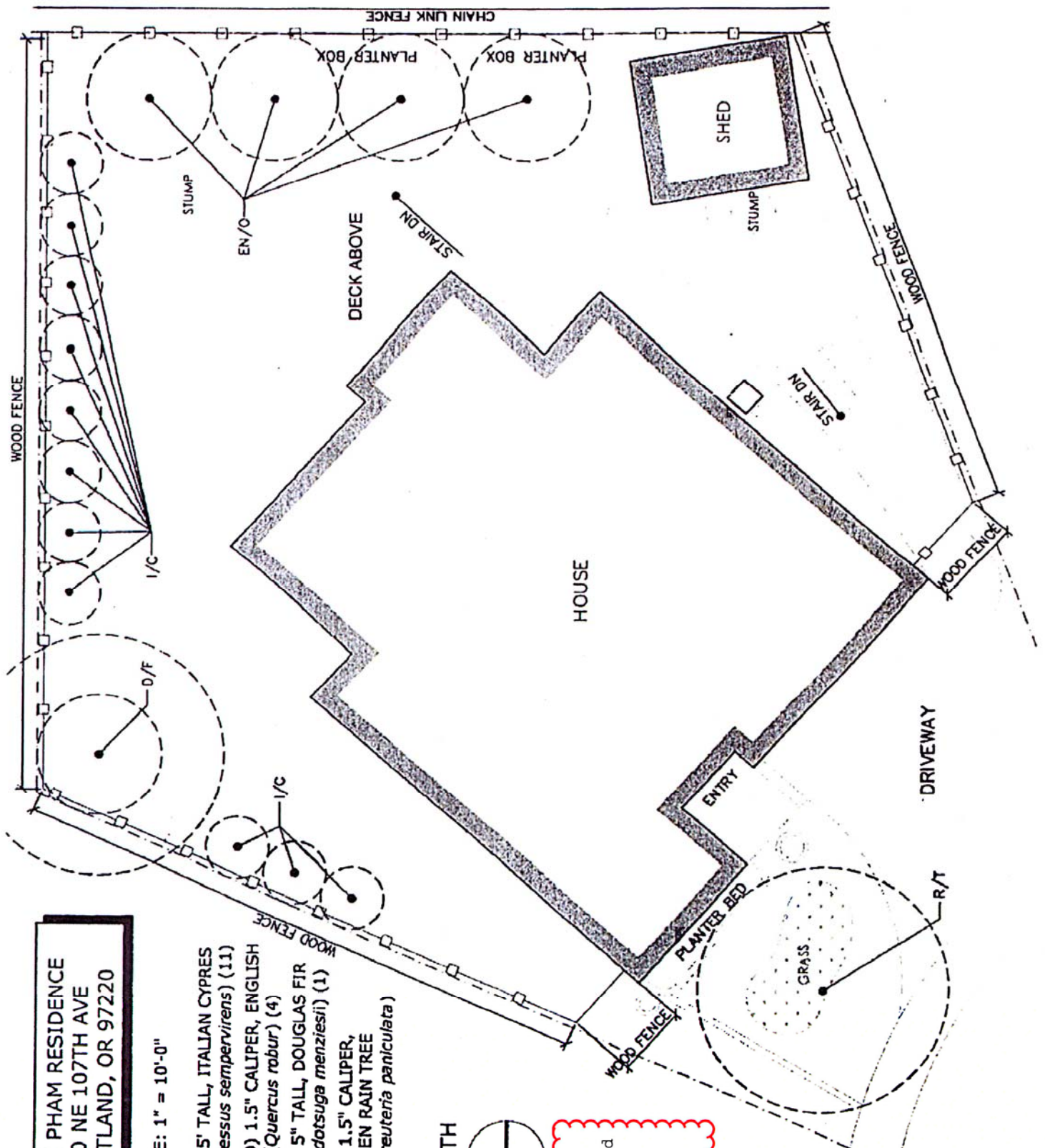
MAC PHAM RESIDENCE  
 4340 NE 107TH AVE  
 PORTLAND, OR 97220

SCALE: 1" = 10'-0"

- (I/C) 5' TALL, ITALIAN CYPRES  
 (*Cupressus sempervirens*) (11)
- (EN/O) 1.5" CALIPER, ENGLISH  
 OAK (*Quercus robur*) (4)
- (D/F) 5' TALL, DOUGLAS FIR  
 (*Pseudotsuga menziesii*) (1)
- (R/T) 1.5" CALIPER,  
 GOLDEN RAIN TREE  
 (*Koelreuteria paniculata*)  
 (1)



English Oak & Golden Rain Tree to be replaced with native species selected from the Portland Plant List.



CASE NO. 11-185541  
 EXHIBIT C-1