



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

FROM CONCEPT TO CONSTRUCTION

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**Date:** May 23, 2016  
**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 mailed copy of this document is only a summary of the decision. The reasons for the decision are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

### **CASE FILE NUMBER: LU 16-128930 TV**

#### **GENERAL INFORMATION**

**Applicant:** David Bonn  
Habitat For Humanity Portland/Metro East  
1478 NE Killingsworth Street  
Portland, OR 97211

**Site Address:** 6482 NE Killingsworth Court

**Legal Description:** LOT 19 POTENTIAL ADDITIONAL TAX, HELENSVIEW HEIGHTS  
**Tax Account No.:** R374500600  
**State ID No.:** 1N2E20BB 01019  
**Quarter Section:** 2537  
**Neighborhood:** Cully, contact David Sweet at 503-493-9434.  
**Business District:** None  
**District Coalition:** Central Northeast Neighbors, contact Alison Stoll at 503-823-3156.  
**Plan District:** None  
**Zoning:** Residential 2,000 (R2) w/ Aircraft Landing Zone (h) Overlay  
**Case Type:** Tree Violation (TV)  
**Procedure:** Type II, an administrative decision with appeal to the Hearings Officer.

#### **Proposal:**

This review is to evaluate the removal of two trees on Lot 19, Helensview Heights that were required to be preserved as a part of the land division review (LU 05-160255 LDS AD) that created this subdivision. The applicant indicated that a 7-inch Douglas fir and a 7-inch big leaf maple were removed from this lot at the time of construction of NE Killingsworth Court. The applicant has proposed to mitigate for the removal of these two trees via planting new trees or making a payment into the City tree fund.

#### **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**.

## FACTS

**Site and Vicinity:** The site is located at the east end of NE Killingsworth Court. Topography is relatively flat with a big leaf maple in the southeast corner of the lot. A new single family home (16-113338 RS) is currently under construction.

**Zoning:** The R2 designation is one of the City's multi-dwelling zones which is intended to create and maintain higher density residential neighborhoods. The zone implements the comprehensive plan policies and designations for multi-dwelling housing.

The "h" overlay limits the height of structures and vegetation in the vicinity of the Portland International Airport. In this zone, structures are regulated by the base zone height limits rather than the height limits of Chapter 33.400.

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

- **LU 05-160255 LDS AD:** Approval of a Preliminary Plan for a 42-lot subdivision, which will result in 41 single dwelling lots, and 1 multi-dwelling lot, assigned a minimum of 11 units of density; two new public streets, one common green and a recreation tract. Approval of an adjustment to Portland City Code 33.634.100 Required Recreation Area Standards subsection to allow a Recreation Tract that is approximately 75 X 227 feet in size.
- **LU 07-137334 AD:** Approval of an Adjustment to Code Section 33.266.120.C, to waive the minimum required setback for the on-site parking spaces for Lots 1 through 19 and 23 through 41.

**Agency Review:** Several Bureaus have responded to this proposal and relevant comments are addressed under the applicable approval criteria. Exhibits "E" contain the complete responses.

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on **April 1, 2016**. No written responses have been received from the Neighborhood Association or notified property owners in response to the proposal.

## ZONING CODE APPROVAL CRITERIA

### 33.853 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 encourage tree preservation or limit removal. Tree review also evaluates whether changes to tree preservation plans or tree-related conditions of approval 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

- C. Corrections to violations.** For corrections to violations of tree protection and tree preservation regulations of this Title, or violations of tree preservation requirements of a land use review, 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 requirement of a land use

review, the mitigation plan meets the purpose of the regulation that required the preservation plan; and

- 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 853-1. If additional trees on the site are proposed for preservation and protection, the applicant must submit an arborist's assessment indicating the suitability of the trees for preservation, recommendations for protection methods, and any remedial treatment that may be necessary to ensure the long term viability of the trees. The total diameter of additional trees preserved must exceed the total diameter of trees cut.

<b>Table 853-1</b>	
<b>Tree Replacement for Violation</b>	
<b>Size of tree removed (inches in diameter)</b>	<b>Number of Trees to be Planted</b>
Up to 12	3 trees
More than 12 to up to 20	5 trees
More than 20 to up to 25	7 trees
More than 25 to up to 30	10 trees
More than 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 may 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 as described in 2.a or b, then a payment in lieu of planting may be made to the Tree Planting and Preservation Fund
- 3. Replacement trees must meet the requirements of Section 33.248.030, Plant Materials, unless the mitigation plan calls for different planting specifications to address concerns about plant survival or impacts on the site.

**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 land division process provides the flexibility and opportunity to promote creative site design that considers multiple objectives, including integration of trees. The regulations of this chapter require that trees be considered early in the design process with the goal of preserving high value trees and mitigating for the loss of trees. Desired benefits of trees include:

- Protecting public health through the absorption of air pollutants, contamination, and capturing carbon dioxide;
- Buffering from noise, wind, and storms;
- Providing visual screening and summer cooling;
- Reducing energy demand and urban heat island impacts;
- Filtering stormwater and reducing stormwater runoff;
- Reducing erosion, siltation, and flooding;
- Stabilizing slopes;

- Enhancing property values;
- Providing fish and wildlife habitat, including support for native species biodiversity through the preservation and planting of native trees;
- Providing food for people and wildlife; and
- Contributing to the beauty of the City, its natural heritage, and the character of its neighborhoods.

Tree Preservation standards of 33.630 require a certain percentage of existing viable tree diameter to be preserved on new lots within a land division site. The trees subject of this review were required to be preserved as part of a 42-lot subdivision (LU 05-160255 LDS AD). The 7-inch Douglas fir and 7-inch big leaf maple required to be preserved on Lot 19 were among a total of 447-inches of trees that were preserved throughout the land division site. A 15-inch big leaf maple was also required to be preserved on this lot.

Approximately half of the subdivision was developed after being platted in 2007 while the remaining lots have been vacant until recently purchased by the current property owner. Upon application of a new single family residence on this lot (16-113338 RS) it was discovered that of the three trees required to be preserved only the 15-inch big leaf maple remained. The applicants understanding is that the 7-inch Douglas fir and 7-inch big leaf maple were likely removed during construction of the adjacent public right-of-way (NE Killingsworth Court) and related site development improvements as this lot was used to stockpile soil.

According to Table 853-1, 6 trees would be required to replace removal of the 7-inch Douglas fir and 7-inch big leaf maple. The applicant has proposed to mitigate for the removal of these two trees via planting new trees or making a payment to the City Tree Fund. Based on a lot size of 2,310 square feet, location of the new single family home, and presence of a 15 inch big leaf maple it doesn't appear viable to plant additional trees without jeopardizing their overall health. Therefore, the applicant shall pay into the City Tree Fund to mitigate for the trees that were removed. A minimum planting size of 1.5-inches (33.248.030.C) would yield a mitigation requirement equivalent to 9-inches based on the amount of replacement trees identified above.

The required mitigation is consistent with the purpose of Chapter 33.630, Tree Preservation as payment into the Tree Fund will contribute to the general beauty of the City, if not directly on the site. This criterion is met with a condition of approval requiring a payment into the City Tree Fund the amount equivalent to 9-inches of trees prior to final inspection approval of the single family home that is under construction on Lot 19.

## **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**

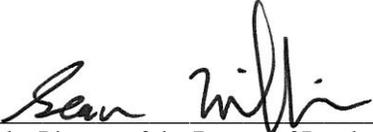
As part of a 42-lot subdivision (LU 05-160255 LDS AD) that established Helensview Heights, three trees were required to be preserved on Lot 19. Two of these trees, a 7-inch Douglas fir and 7-inch big leaf maple, were removed in violation of this requirement. To address this violation, the applicant will be required to mitigate via making a payment into the City Tree Fund. 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 two trees required to be preserved as a part of LU 05-160255 LDS AD, as illustrated on Exhibit C.1 and subject to the following conditions:

- A. The applicant must pay into the City Tree Fund the amount equivalent to 9 inches of trees within 3 months from the mailing date of this decision and prior to final inspection approval of the new single family home (16-113338 RS) under construction on Lot 19, Helensview Heights. Payment must be made to the Bureau of Development Services, who administers the fund for the Parks Bureau.

**Staff Planner: Sean Williams**

**Decision rendered by:**  **on May 19, 2016**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: May 23, 2016**

**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 March 1, 2016, and was determined to be complete on March 30, 2016.

*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 March 1, 2016.

*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: July 28, 2016.**

**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 6, 2016** at 1900 SW Fourth Ave. Appeals can be filed at the Development Services Center Monday through Wednesday and Fridays between 8:00 am to 3:00 pm and on Thursdays between 8:00 am to 12:00 pm. After 3:00 pm Monday through Wednesday and Fridays, and after 12:00 pm on Thursdays, appeals must be submitted at the reception desk on the 5<sup>th</sup> 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 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, 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 7, 2016 – (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:

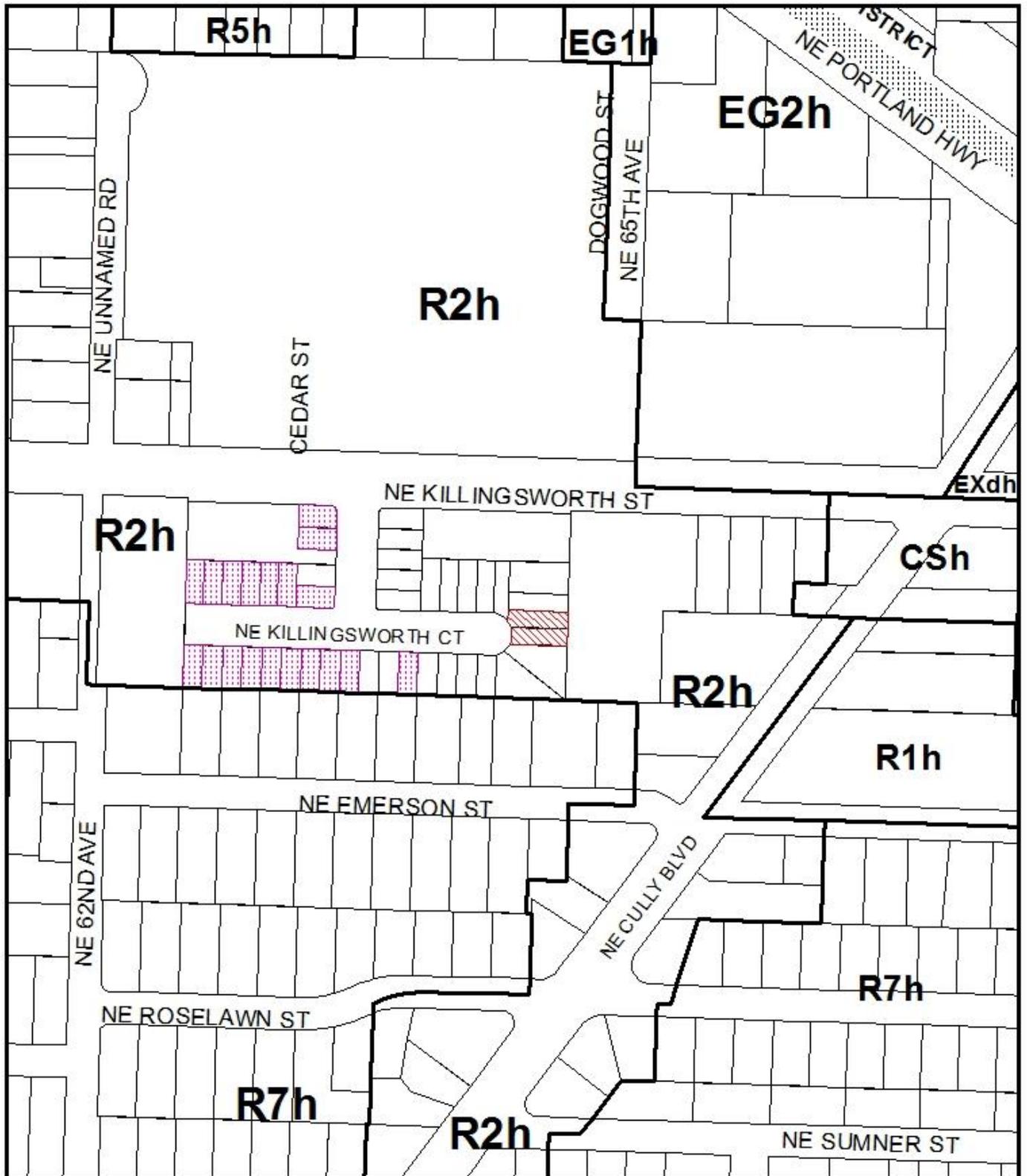
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Water Bureau
  - 3. Site Development Review Section of BDS
  - 4. Life Safety Plans Examiner
  - 5. Bureau of Parks, Forestry Division; Bureau of Transportation Engineering and Development Review; Fire Bureau
- F. Correspondence: NONE
- G. Other:
  - 1. Original LU Application

**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
-  Also Owned Parcels

File No.	<u>LU 16-128930 TV</u>
1/4 Section	<u>2537</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1N2E20BB 1019</u>
Exhibit	<u>B</u> (Mar 03, 2016)

