



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

FROM CONCEPT TO CONSTRUCTION

Dan Saltzman, Commissioner
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Date: June 22, 2016
To: Interested Person
From: Leah Dawkins, Land Use Services
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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 16-162538 TR

GENERAL INFORMATION

Applicant: Darren Schroeder, Darren Schroeder Design & Consulting
716 SE 45th Avenue / Portland OR 97215
(503) 516-2678

Owner: Mark B. Murphy
PO Box 15062 / Portland, OR 97293-5062

Site Address: 5230 SW HUMPHREY BLVD

Legal Description: LOT 2, PARTITION PLAT 2012-15
Tax Account No.: R649630580
State ID No.: 1S1E06DC 04402
Quarter Section: 3224

Neighborhood: Southwest Hills Residential League, contact Nancy Seton at 503-224-3840.

District Coalition: Southwest Neighborhoods Inc., contact Leonard Gard at 503-823-4592.
Zoning: R10- Single Dwelling Residential
Case Type: TR- Tree Review
Procedure: Type II, an administrative decision with appeal to the Hearings Officer.

Proposal:

The applicant is requesting to change the tree preservation requirements of the land division partition (LU 10-147450 LDP AD) that created the subject site. The proposal is to remove two trees required for preservation. One tree, a western red cedar, is proposed for removal because the tree encroaches into the proposed construction area for a new single family dwelling. This tree is proposed to be replaced with preservation of another on-site western red cedar of comparable size. The other tree proposed for removal is a big leaf maple, which an arborist has found to be in terminal decline and no longer appropriate for preservation. There is no proposed preservation replacement for the big leaf maple. Four other on-site trees are also proposed for continued preservation.

Relevant Approval Criteria:

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

- 33.853.040.B (Tree Review, changes to tree preservation requirements following land use approval)

ANALYSIS

Site and Vicinity: The site moderately slopes upward from SW Humphrey Boulevard. Several retaining walls are located on the site including along SW Humphrey Boulevard and at the southern edge of the property. Development within the vicinity is primarily composed of single family dwellings with comparable lower density zoning.

Zoning: The R10 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.

Land Use History: City records indicate there is one prior land use review that is relevant to this current review:

- LU 10-147450 LDP AD, Approval for a two-parcel land division requiring the preservation of 121 inches of total tree diameter on the land division site.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **May 17, 2016**. The following Bureaus have responded with no issues or concerns:

- Site Development Section of BDS
- Bureau of Parks-Forestry Division

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on May 17, 2016. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA**APPROVAL CRITERIA FOR 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.

CHANGES TO TREE PRESERVATION REQUIREMENTS**33.853.040 Approval Criteria**

B. Changes to tree preservation requirements following land use approval. *The approval criteria for changes to tree preservation or mitigation requirements are:*

1. *If the tree preservation requirement was approved as part of a land division or planned development, the requested change will be approved if the review body finds that the applicant has shown that the revised method will continue to meet the requirements of Chapter 33.630, Tree Preservation.*

Findings:

As part of the land use review for the land division that created the subject property (LU 10-147450 LDP AD), trees were required to be retained and protected on the individual parcel. As a

result of the proposed design for the new house on the site, it was found that one of the preserved trees, a western red cedar numbered 127, will interfere with the proposed construction. During a recent evaluation of the trees on the site, a certified arborist identified that one additional tree, a big leaf maple numbered 128, is in a state terminal decline and no longer suitable for preservation. This review is being processed to allow the removal of these two trees #127 and #128, from the required preservation plan and to mitigate for the removal. Because the tree preservation requirements were part of a land division, the regulations of Chapter 33.630 apply.

The regulations of Chapter 33.630 require that trees be considered early in the design process with the goal of preserving high value trees and, when necessary, mitigating for the loss of trees. To satisfy these requirements, the applicant must provide a tree plan that demonstrates, to the greatest extent practicable, the trees to be preserved provide the greatest environmental and aesthetic benefits for the site and the surrounding area. The tree plan must also show that trees are suitable for preservation, considering the health and condition of the tree and development impacts anticipated. Tree preservation must be maximized, to the extent practicable, while allowing for reasonable development considering the intensity of development allowed in the zone and site constraints, including existing utility easements and requirements for services and streets.

As part of this Tree Review, the applicant provided updated Arborist Notes addressing the health and viability of trees #127 and #128. The arborist recommended that tree #127 be replaced for preservation by tree #129, a similarly sized western red cedar, which can be retained with a Prescriptive Path root protection zone. Tree #128 is recommended for removal without replacement because generally regulations allow trees to be exempt from tree preservation standards due to the poor health of the tree provided they are not part of a required tree preservation plan.

The applicant's proposal continues to meet the intent of the tree preservation provided in the original land use decision. The original land use decision required preservation of a total of 121 inches of tree diameter across the land division site, or 37% of the total non-exempt tree diameter inches total. If the diameter of Tree #128 (24 inches) is subtracted from the original preserved tree diameter as no longer appropriate for preservation, the total amount required for preservation would have been 107 inches. With the removal of Tree #128 from preservation, and the replacement of Tree #127 for #129 as a preserved tree, the applicant is still proposing to protect a total of 116 inches of tree diameter and 7 trees across the original Land Division site. Tree #129 is the same species and approximately the same size as Tree #127, thus providing an equivalent amount of tree preservation on the site. This proposal continues to meet the intent of the original land use review and preservation standards and is over what the minimum preserved number of inches would be required from that review. This proposal will also meet current Title 11 tree preservation standards for development sites. This criterion is met.

In order to ensure that future owners are aware of the revised tree preservation requirements, the applicant must record a revised Acknowledgement of Tree Preservation Conditions to be associated with the approved final plat, prior to the approval of the final building permit for the dwelling currently under permit review. The acknowledgement must identify that any further development on this site must be carried out with the revised Tree Preservation Plan (Exhibit C.3).

With the implementation of the condition above, the approval criteria can be met. The condition of this review amend the tree-related conditions of the land division review 10-147450 LDP AD. All other tree preservation continues to apply and all other conditions 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

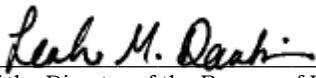
This tree review is requested to allow for the removal of two trees that were required to be protected through a prior land division review LU 10-147450 LDP AD. The proposal to remove one tree because it is no longer suitable for preservation and to remove and replace one tree with another existing tree of similar size and species continues to meet the intent of the original tree preservation plan conditioned by the original land use review. A condition to provide an updated Acknowledgement of Tree Preservation will amend tree-related conditions of LU 10-147450 LDP AD. All other conditions of LU 10-147450 LDP AD will continue to apply.

ADMINISTRATIVE DECISION

Approval of Tree Review to remove Trees #127 and #128, per the approved tree preservation plan, Exhibit C.3; and change to the tree-related conditions of LU 10-147450 LDP AD (tree preservation subject to the following condition:

- A. Prior to the Planning and Zoning approval of building permit 15-212501 RS, the applicant shall execute a revised Acknowledgement of Tree Preservation Land Use Conditions that notes tree preservation requirements that apply to the subject site and removes Trees #127 and #128 from required preservation. A copy of the revised Approved Tree Preservation Plan (Exhibit C.3) must be included as an Exhibit to the Acknowledgement.
- B. Trees numbered #100 (40" Douglas fir on Lot 1), #101 (13" Eastern red cedar on Lot 1), #105 (14" Eastern red cedar), #106 (10" Eastern red cedar), #107 (12" Eastern red cedar), #109 (12" white alder) and #129 (14" Western red cedar) are required to be preserved, with root protection zones indicated on Exhibit C.3. Tree protection fencing is required along the root protection zone of each tree to be preserved. The fence must be 6-foot high chain link and be secured to the ground with 8-foot metal posts driven into the ground. Encroachment into the specified root protection zones may only occur under the supervision of a certified arborist.

Staff Planner: Leah Dawkins

Decision rendered by:  **on June 17, 2016**
By authority of the Director of the Bureau of Development Services

Decision mailed: June 22, 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 April 27, 2016, and was determined to be complete on May 13, 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 April 27, 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: September 10, 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 July 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 5th 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.

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 29, 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.

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:

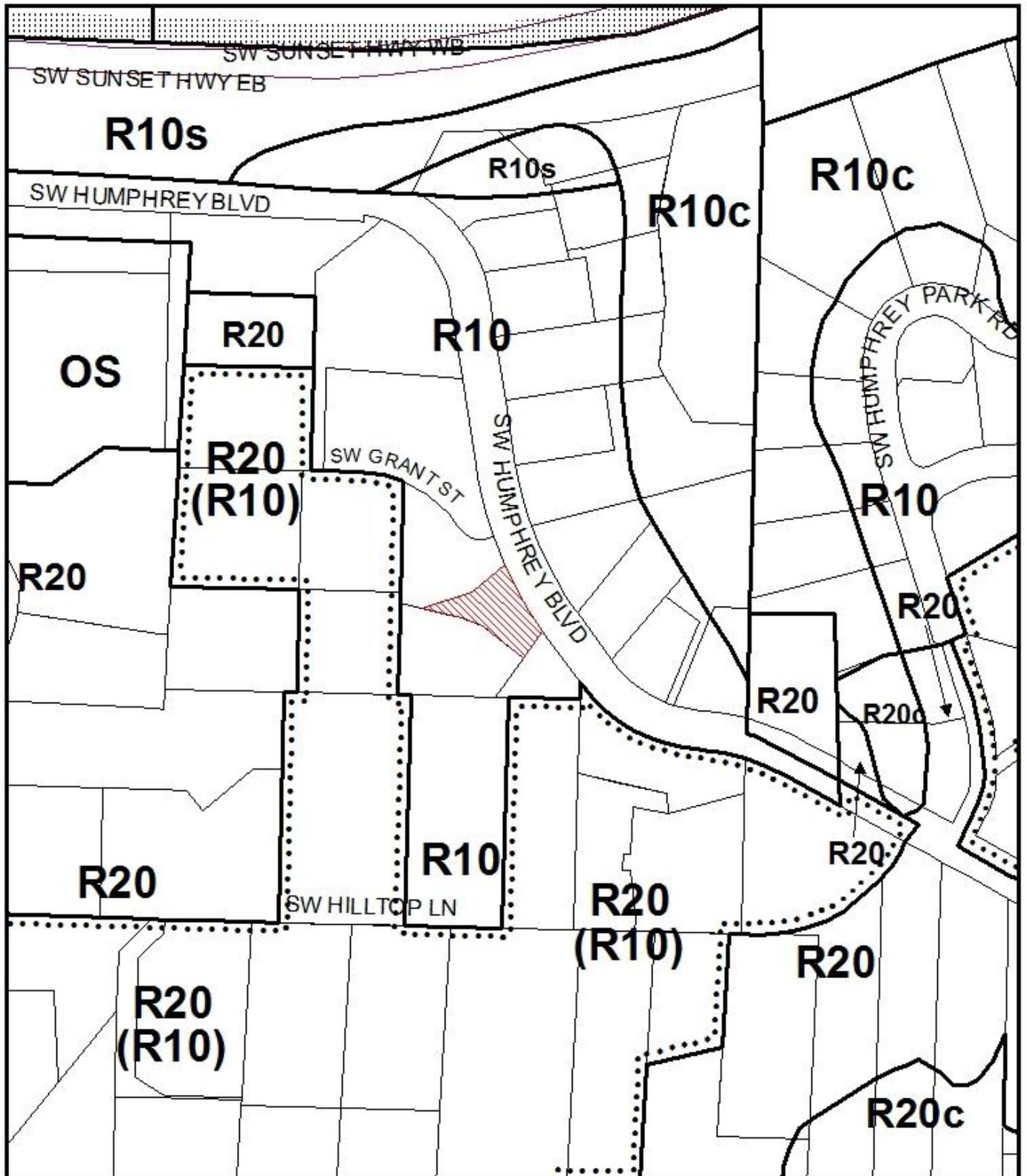
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Arborist Notes
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Cover Sheet
 - 2. Site Plan
 - 3. Tree Preservation Plan (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Site Development Review Section of BDS
 - 2. Bureau of Parks, Forestry Division
- F. Correspondence: None Submitted
- 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

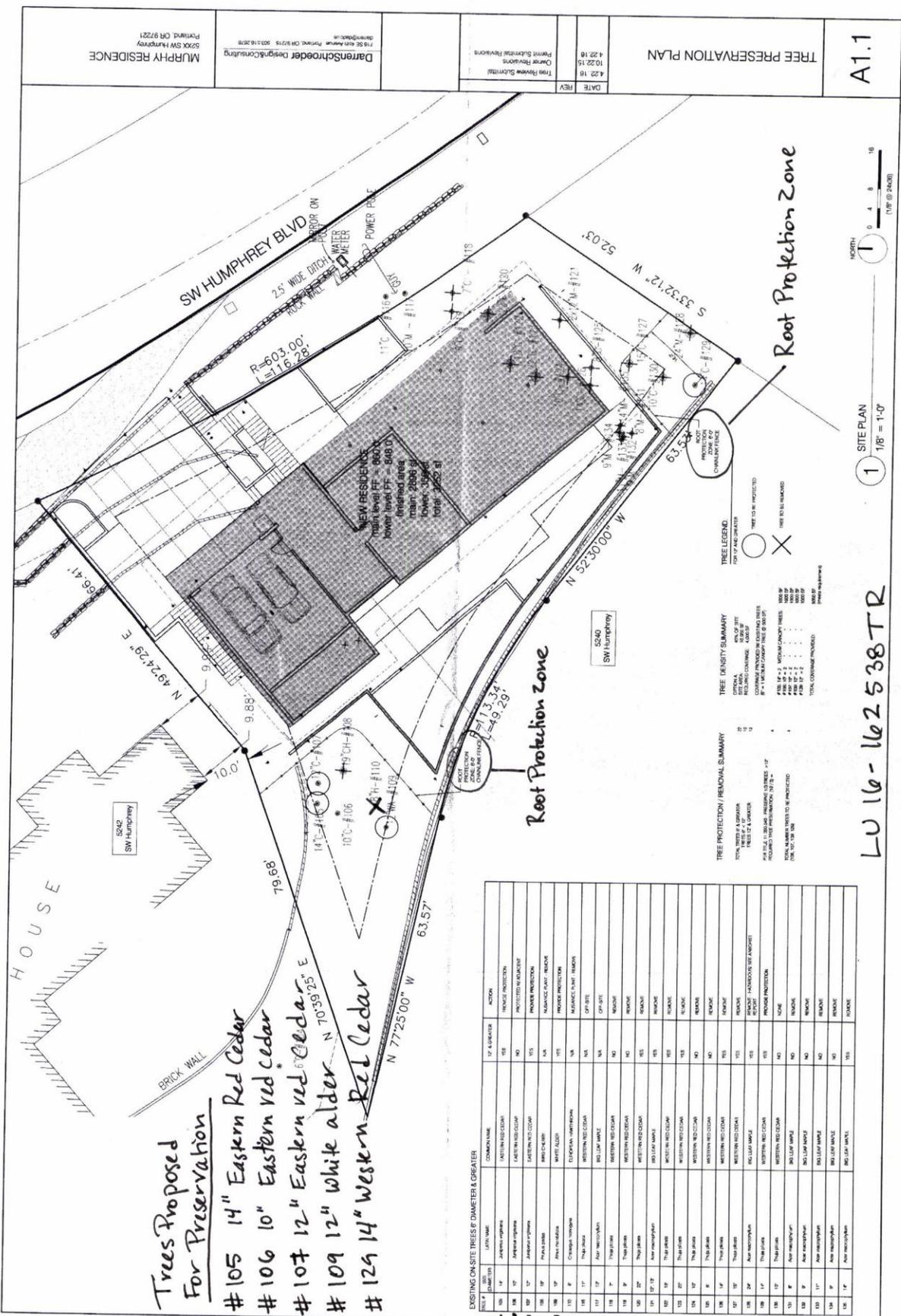
 Site



File No.	<u>LU 16-162538 TR</u>
1/4 Section	<u>3224</u>
Scale	<u>1 inch = 200 feet</u>
State Id	<u>1S1E06DC 4402</u>
Exhibit	<u>B</u> (Apr 29, 2016)

Trees Proposed For Preservation

- #105 14" Eastern Red Cedar
- #106 10" Eastern red cedar
- #107 12" Eastern red cedar
- #109 12" white alder
- #124 14" western Red Cedar



EXISTING ON SITE TREES (6" DIAMETER @ OBSERVE)

NO.	DBH (INCHES)	SP. SPECIES	COMMON NAME	IF A LOCATOR	ACTION
105	14"	JUNIPER SPARGANAE	EASTERN RED CEDAR	YES	REMOVE PROTECTION
106	10"	JUNIPER SPARGANAE	EASTERN RED CEDAR	NO	PROTECTED IN ADVANCE
107	12"	JUNIPER SPARGANAE	EASTERN RED CEDAR	YES	REMOVE PROTECTION
109	12"	ALNUS INCANA	WHITE ALDER	N/A	ADVANCE CULM - REMOVE
124	14"	CHAMAECIPARUS LASOPHYLLUS	WESTERN RED CEDAR	YES	REMOVE PROTECTION
125	14"	CHAMAECIPARUS LASOPHYLLUS	WESTERN RED CEDAR	YES	ADVANCE CULM - REMOVE
126	14"	CHAMAECIPARUS LASOPHYLLUS	WESTERN RED CEDAR	YES	REMOVE PROTECTION
127	14"	CHAMAECIPARUS LASOPHYLLUS	WESTERN RED CEDAR	YES	REMOVE PROTECTION
128	14"	CHAMAECIPARUS LASOPHYLLUS	WESTERN RED CEDAR	YES	REMOVE PROTECTION
129	14"	CHAMAECIPARUS LASOPHYLLUS	WESTERN RED CEDAR	YES	REMOVE PROTECTION
130	14"	CHAMAECIPARUS LASOPHYLLUS	WESTERN RED CEDAR	YES	REMOVE PROTECTION
131	14"	CHAMAECIPARUS LASOPHYLLUS	WESTERN RED CEDAR	YES	REMOVE PROTECTION
132	14"	CHAMAECIPARUS LASOPHYLLUS	WESTERN RED CEDAR	YES	REMOVE PROTECTION
133	14"	CHAMAECIPARUS LASOPHYLLUS	WESTERN RED CEDAR	YES	REMOVE PROTECTION
134	14"	CHAMAECIPARUS LASOPHYLLUS	WESTERN RED CEDAR	YES	REMOVE PROTECTION
135	14"	CHAMAECIPARUS LASOPHYLLUS	WESTERN RED CEDAR	YES	REMOVE PROTECTION
136	14"	CHAMAECIPARUS LASOPHYLLUS	WESTERN RED CEDAR	YES	REMOVE PROTECTION
137	14"	CHAMAECIPARUS LASOPHYLLUS	WESTERN RED CEDAR	YES	REMOVE PROTECTION
138	14"	CHAMAECIPARUS LASOPHYLLUS	WESTERN RED CEDAR	YES	REMOVE PROTECTION
139	14"	CHAMAECIPARUS LASOPHYLLUS	WESTERN RED CEDAR	YES	REMOVE PROTECTION
140	14"	CHAMAECIPARUS LASOPHYLLUS	WESTERN RED CEDAR	YES	REMOVE PROTECTION
141	14"	CHAMAECIPARUS LASOPHYLLUS	WESTERN RED CEDAR	YES	REMOVE PROTECTION
142	14"	CHAMAECIPARUS LASOPHYLLUS	WESTERN RED CEDAR	YES	REMOVE PROTECTION
143	14"	CHAMAECIPARUS LASOPHYLLUS	WESTERN RED CEDAR	YES	REMOVE PROTECTION
144	14"	CHAMAECIPARUS LASOPHYLLUS	WESTERN RED CEDAR	YES	REMOVE PROTECTION
145	14"	CHAMAECIPARUS LASOPHYLLUS	WESTERN RED CEDAR	YES	REMOVE PROTECTION
146	14"	CHAMAECIPARUS LASOPHYLLUS	WESTERN RED CEDAR	YES	REMOVE PROTECTION
147	14"	CHAMAECIPARUS LASOPHYLLUS	WESTERN RED CEDAR	YES	REMOVE PROTECTION
148	14"	CHAMAECIPARUS LASOPHYLLUS	WESTERN RED CEDAR	YES	REMOVE PROTECTION
149	14"	CHAMAECIPARUS LASOPHYLLUS	WESTERN RED CEDAR	YES	REMOVE PROTECTION
150	14"	CHAMAECIPARUS LASOPHYLLUS	WESTERN RED CEDAR	YES	REMOVE PROTECTION

CASE NO. **16-162538**
EXHIBIT **C.3**

A1.1



1 SITE PLAN
1/8" = 1'-0"

LU 16-162538 TR

1616-162538TR

MURPHY RESIDENCE
Darenschroeder Design/Consulting
TREE PRESERVATION PLAN
DATE REV
4.22.18
10.22.18
Owner Revisions
Tina & Tom Schreiber Revisions