



City of Portland  
**Bureau of Development Services**  
Land Use Services Division

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[www.portlandonline.com/bds](http://www.portlandonline.com/bds)

**Date:** June 6, 2008  
**To:** Interested Person  
**From:** Shawn Burgett, Land Use Services  
503-823-3581 / [BurgettS@ci.portland.or.us](mailto: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 08-120252 TV**

#### **GENERAL INFORMATION**

**Applicant:** Bill Sharp  
3028 SE 101st  
Portland, OR 97266

**Site Address:** 3028 SE 101ST AVE

**Legal Description:** LOT 16 BLOCK 10, PITTOCK GROVE  
**Tax Account No.:** R660603600  
**State ID No.:** 1S2E09AD 00200  
**Quarter Section:** 3340

**Neighborhood:** Powellhurst-Gilbert, contact James Chasse at 503-762-0863.  
**Business District:** Midway, contact Donna Dionne at 503-252-2017.  
**District Coalition:** East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550.

**Plan District:** Johnson Creek Basin  
**Zoning:** R5a (Single Family Residential 5,000 with "a" Alternative Design Density Overlay)

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

#### **Proposal:**

This review is required due to a tree violation on the site. The applicant previously had a 3-lot land division and a private street preliminary approved for the site on September 18, 2007 under case number LU\_07\_126116\_LDS. The case is currently going through the final plat process (FP\_07\_126116\_LDS) in order to legally create these lots. The final plat has not been approved yet. As part of the preliminary approval the applicant was required to protect 35% of all non-exempt trees on the site. This resulted in the applicant protecting trees numbered 12, 16, 17, 20, 21, 22, 23 and 24 for a total of 146 inches of protected tree diameter. It was recently discovered that Trees numbered 21(26-inch big leaf maple) and tree number 22 (20-inch big leaf maple) were both removed, in violation of the tree preservation plan approved under LU\_07\_126116\_LDS

In order to correct this tree violation, and since there are still existing viable trees located on the subject site that were not protected under the previous tree preservation plan, the applicant is required to protect the same number of inches of trees that were removed. In this case, 46 inches of tree diameter was removed. The applicant has proposed to protect trees number 6 (22- inch Port Orford Cedar), 9 (16- inch Port Orford Cedar), and 19 (14-inch big leaf maple) which are located on lots 2 and 3. The total diameter of trees 6, 9 and 19 equal approximately 52 inches of tree diameter, which is well above the total tree diameter of the two trees that were removed per the violation discussed above.

**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 and corrections to violations.

## ANALYSIS

**Site and Vicinity:** The site is located directly north of Kelly Butte Park which is heavily forested and surrounds the site on its eastern and southern boundaries, and is also located west of the site across SE 101st Ave. The properties located north of the site along SE 101<sup>st</sup> Avenue are made up of predominately single family homes of various types and sizes. The site slopes downward from east to west and has one existing detached single family home located in the western portion of the site. The properties located directly east of the site are zoned R10, a low density residential zone.

**Zoning:** The R5 designation is one of the City's single-dwelling zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing.

The "a" overlay is intended to allow increased density that meets design compatibility requirements. It focuses development on vacant sites, preserves existing housing stock, and encourages new development that is compatible with the surrounding residential neighborhood. This land division proposal is not using any of the provisions of the "a" overlay.

This site is located in the Johnson Creek Basin Plan District. The Johnson Creek Basin plan district provides for the safe, orderly, and efficient development of lands which are subject to a number of physical constraints, including significant natural resources, steep and hazardous slopes, flood plains, wetlands, and the lack of streets, sewers, and water services.

**Land Use History:** As mentioned above, City records indicate that a 3-lot land division and a private street tract was preliminary approved for this site under LU\_07\_126116. The applicant is currently in the Final Plat (FP\_07\_126116) process, which is the second step in the land division process. As of this date, the final plat is not complete. Additionally, the applicant currently has a Site Development permit (07-179621 SD) for the construction of the private street tract, the Site Development permit has not been finalized as of this date.

**Agency Review:** A "Notice of Proposal in Your Neighborhood" was mailed **April 23, 2008**. The following Bureaus have responded with no issues or concerns (See E exhibits for details):

- Bureau of Transportation Engineering
- Water Bureau
- Bureau of Environmental Services
- Fire Bureau
- Bureau of Parks-Forestry Division

The **Site Development Section** of BDS responded with the following comment: The applicant must obtain an approved revision to plans for Site Development permit 07-179621-SD and request an inspection to verify that new/modified tree protection fencing has been installed according to the plans. At the time of construction, if inspections by the arborist will be required for activities that encroach into the root protection zone, then provisions should be made to ensure that the arborist's inspections are requested when required, actually conducted at the time they're needed, and that any recommendations by the arborist are implemented in a timely manner. Please see Exhibit E-5 for additional details.

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on April 23, 2008. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

It should be noted that the property owner living directly north of this site, Don Kowlaski, with a property address of 3016 SE 101st Ave contacted planning staff via telephone to express his opposition to the applicant protecting trees numbers 7 and 8, as indicated in the public notice. The neighbor felt that these two trees should be removed to allow trees numbered 6 and 9 to have more adequate room to grow. Since trees 7 and 8 are located near the property line separating the subject site from the concerned neighbor's property, the neighbors concerns were passed onto the applicant. Since there are several trees on the site that the applicant could choose to protect in order to replace the two trees that were removed, the applicant decided to not formally protect trees numbered 7 and 8 as part of his mitigation for the tree violation.

## ZONING CODE APPROVAL CRITERIA

### 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; 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 853-2. 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>Size of tree removed (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

**Findings:** The regulation violated was the tree preservation requirement for new land divisions, found in Portland Zoning Code Chapter 33.630. The purposes of these regulations are:

**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.*

The Tree Preservation standards require a certain percentage of existing viable tree diameter to be preserved on the new lots within a land division site. The three lots in the land division site were preliminarily approved in a recent land division (LU 07-126116\_LDP) that was approved with a tree preservation plan that met the standards of option 1 of Zoning Code standard 33.630.100.1 (Exhibit A-2). That plan required a number of trees to be preserved on the site. Included among the trees designated for preservation were trees numbers 21 (a 26-inch diameter Big Leaf Maple) and tree number 22 (20-inch diameter Big leaf Maple), both trees were located on proposed Lot 3.

Trees numbered 21 and 22 on Lot 3 were removed. The applicant has proposed to mitigate for the tree removal by protecting 3 existing trees on the site totaling 52 inches of tree diameter, which will replace the two trees that were removed on the site that totaled 46 inches of tree diameter.

The applicant's proposal to protect tree numbers 6 (22-inch Port Orford cedar) and 9 (16-inch Port Orford cedar) on lot 2 and tree number 19 (14-inch Big Leaf Maple) on lot 3 will adequately replace the 46 inches of tree diameter that was removed, with 52 inches of new tree diameter which will now be protected on lots 2 and 3 on the site.

Since the regulations of Zoning Code section 33.630 (option 1) require at a minimum the preservation of 35% of the total non-exempt tree diameter on a land division site, the applicant still meets this standard through the preservation of tree numbers 6, 9 and 19, which will replace trees 21 and 22, which were removed. The applicant had previously agreed to protect tree numbers 12, 16, 17, 20, 21, 22, 23 and 24 which equated to 146 inches of tree diameter and approximately 41% of the total non-exempt tree diameter on the site (which was 356 inches). Based on the subtraction of trees numbered 21 and 22 from the total number of protected trees mentioned above, and the addition of trees 6, 9 and 19, the applicant will still protect 152 inches of the total tree diameter on the site and approximately 42% of the total non-exempt tree diameter.

The applicants arborist report (Exhibit A-1) states that some fill has been pushed into the root protection zones of the protected trees remaining on the site. The applicants arborist goes on to state that the fill must be removed to the original grade before the tree protection fencing is installed. The arborist recommends that all fill material be removed by trackhoe, and

recommends that the trackhoe remain 20 ft. away from all protected trees. Additionally, the applicants arborist (exhibit A-1) recommends that the area within the root protection zones of the protected trees on the site that have been disturbed, be covered with a layer of woody mulch, 4 to 6 inches deep to restore the soil and protect the roots of the protected trees.

As a condition of approval, Site development is requiring the applicant to obtain an approved revision to the plans for the Site Development permit (07-179621 SD) and request an inspection prior to issuing the permit to verify that the new/modified tree protection fencing has been installed according to the arborist recommendation. As a condition of approval, prior to installation of the protective fencing around the protected trees, the applicant must provide Planning with written documentation from a certified arborist verifying that the fill has been removed adequately from the root protection zones of the protected trees on the site, and that a 4 to 6 inch layer of woody mulch has been installed around each of these trees where necessary. The arborist must document that they were on-site during the removal of fill around the protected trees and that the woody mulch has been properly installed around the trees as necessary.

With the conditions of approval listed above, and the requirement that trees numbered 6, 9 and 12 (exhibits A-1 and C-1) are protected on lots 2 and 3, to replace trees numbered 21 and 22, which were removed in violation of the approved tree preservation plan approved under LU\_07\_126116, this criterion can be met.

**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.**

**Findings:** The applicant has not proposed to plant replacement trees as mitigation, but instead has chosen to meet Zoning Code section 33.805.040.C.1.b above and protect three existing healthy trees on the site to replace the two protected trees that were removed in violation of the approved Tree Preservation Plan (see discussion above).

This criterion does not apply.

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

**Findings:** The applicant is not proposing to plant replacement trees, therefore this criterion is not applicable.

## **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 proposal consists of a mitigation measure for violating an approved tree preservation plan on lot 3 of the subdivision preliminary approved in LU 07-126116 LDS. Two big leaf maples totaling 46 inches of tree diameter was removed on this lot. As mitigation, the applicant must protect three existing healthy trees on the site that were not previously protected that total 52 inches of tree diameter.

Overall, the mitigation requested for the Tree violation review meets the purpose and criteria contained in Code section 33.853.040, approval criteria for correcting tree violations, and is approved.


## ADMINISTRATIVE DECISION

**Approval** of a Tree Violation Review to correct a tree violation subject to the conditions listed below.

- A. The applicant will be required to protect trees numbered 6, 9 and 19 shown on exhibit C-1. Trees number 6 and 9 are located on lot 2 and tree number 19 is located on lot 3. The preservation of trees numbered 6, 9 and 19 will replace the requirements to protect trees numbered 21 and 22.

Except for trees numbered 21 and 22, all the trees previously protected under the approved Tree Preservation Plan for LU\_07\_126116 still apply to this site. All development on lots 2 and 3 shall be in conformance with the Tree Preservation Plan (Exhibit C-1) and the applicant's arborist report (Exhibit A-1). Overall, trees numbered 6, 9, 12, 16, 17, 19, 20, 23 and 24 are required to be preserved, with the root protection zones indicated in the applicants Tree Preservation Plan (exhibit C-1). 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.

- B. Prior to meeting condition C below, the applicant must provide Planning and Zoning written documentation from a certified arborist verifying that the fill has been removed adequately from the root protection zones of the protected trees on the site, and that a 4 to 6 inch layer of woody mulch has been installed around each of these trees to the satisfaction of the arborist. The arborist must document that they were on-site during the removal of fill around the protected trees, and that the woody mulch has been properly installed around the trees as necessary (see exhibit A-1).
- C. As required by Site development, prior to the finaling of the Site development permit for the Private street tract, the applicant must obtain an approved revision to plans for Site Development permit 07-179621 SD and request an inspection prior to issuing the permit to verify that the new/modified tree protection fencing has been installed according to exhibit C-1

Decision rendered by:  on May 30, 2008  
By authority of the Director of the Bureau of Development Services

**Decision mailed: June 6, 2008**

**Staff Planner: Shawn Burgett**

**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 4, 2008, and was determined to be complete on April 18, 2008.

*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 4, 2008.

*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. The 120<sup>th</sup> day is August 16, 2008.

**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 20, 2008** at 1900 SW Fourth Ave. Appeals can be filed on the first floor in the Development Services Center until 3 p.m. After 3 p.m., appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. Recognized neighborhood associations are not subject to the appeal fee. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please contact the receptionist at 503-823-7967 to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at [www.portlandonline.com](http://www.portlandonline.com).

**Attending the hearing.** If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any

further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Hearings Officer an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

**Recording the final decision.**

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- *Unless appealed*, The final decision may be recorded on or after **June 21, 2008**
- 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.

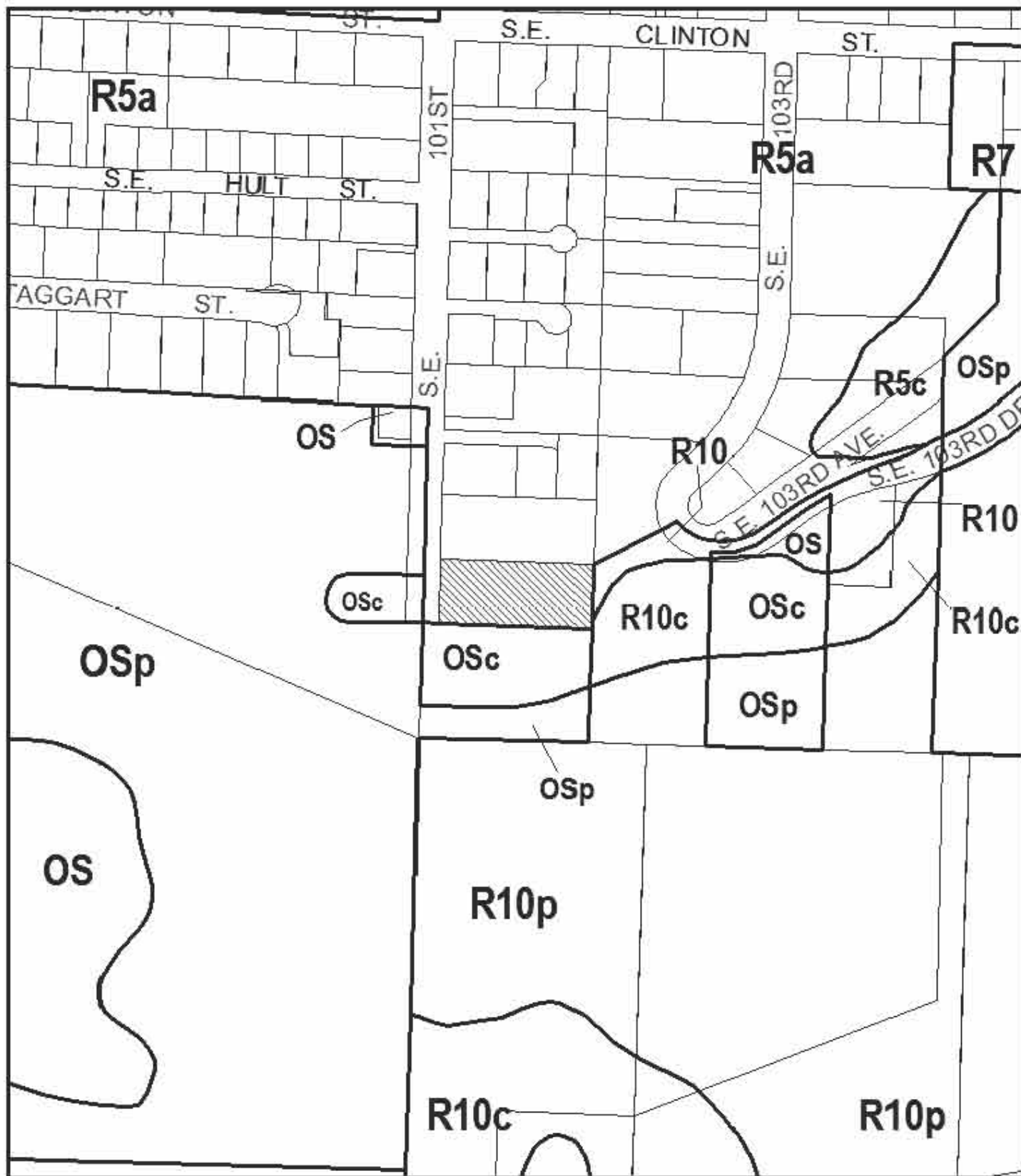
**EXHIBITS**



## NOT ATTACHED UNLESS INDICATED

- A. Applicant's submittal
  - 1. Revised Arborist Report dated 4/8/2008
  - 2. Old Arborist report from LU\_07\_126116 dated 4/18/07
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Tree Preservation Plan (attached)
  - 2. Old Tree Preservation Plan
- 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 Plans Examiner
- F. Correspondence:
  - 1. No correspondence received.
- G. Other:
  - 1. Original LU Application
  - 2. Site History Research

**The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-0625 (TTY 503-823-6868).**



# ZONING



This site lies within the:  
JOHNSON CREEK BASIN PLAN DISTRICT

File No.	1U 08-120252 TV
1/4 Section	3340
Scale	1 inch = 200 feet
State_Id	1S2E09AD 200
Exhibit	B (Apr 10, 2008)

