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CITY OF  
**PORTLAND, OREGON**  
HEARINGS OFFICE

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Portland, Oregon 97201  
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**DECISION OF THE HEARINGS OFFICER  
ON APPEAL OF ADMINISTRATIVE DECISION**

**I. GENERAL INFORMATION**

**File No.:** LU 08-102933 TR (HO 4080020)

**Applicant:** Russel Bartels  
41173 SE Vista Loop Dr  
Sandy, OR 97055-6417

**Appellant:** Linda Bauer  
Pleasant Valley Neighborhood Association  
6232 SE 158<sup>th</sup>  
Portland, OR 97236

**Hearings Officer:** Gregory J. Frank

**Bureau of Development Services (BDS) Staff Representative:** John Cole

**Site Address:** 3247-3249 SE 131ST AVE

**Legal Description:** N 25' OF LOT 26 EXC PT IN ST-N 25' OF LOT 27 EXC PT IN ST-  
EXC N 63' & EXC S 5' OF W 115.23' LOT 37, LINN PK; EXC PT IN  
ST-N 63' OF LOT 37, LINN PK

**Tax Account No.:** R500305220, R500305240

**State ID No.:** 1S2E11BD 02200, 1S2E11BD 02300

**Quarter Section:** 3343

**Neighborhood:** Powellhurst-Gilbert

**Business District:** Midway

**District Neighborhood Coalition:** East Portland Neighborhood

**Plan District:** Johnson Creek Basin

**Zoning:** R5-Single Dwelling Residential 5,000 and R2-Multi dwelling  
Residential 2,000 with an "a" Alternate Design Density Overlay

**Land Use Review:** Type II, TR - Tree Review

**BDS Administrative Decision:** Approval with conditions

**Public Hearing:** The hearing was opened at 8:59 a.m. on May 21, 2008, in the 3<sup>rd</sup> floor hearing room, 1900 SW 4<sup>th</sup> Avenue, Portland, OR, and was closed at 9:58 a.m. The record was held open until 4:30 p.m. on May 23, 2008 for new written evidence and until 4:30 p.m. on May 27, 2008 for the applicant's rebuttal. The record was closed at that time. At the hearing, both Ms. Bauer and Mr. Fouch (applicant's representative) agreed to the record closing dates.

**Testified at the Hearing:**

John Cole, BDS Staff Representative  
Linda Bauer, 6232 SE 158th, Portland, OR 97236  
John Fouch, 3196 SE Hall Lane, Troutdale, OR 97060

**Proposal:**

A proposal to amend the Tree Preservation Plan adopted as a requirement of Land Division Case LU 05-172783 LDS AD. Specifically the applicant is requesting the ability to remove three Douglas Fir Trees (#14, 15 & 20) from Lots 6 and 7 of the Bartels Subdivision because final street grading has negatively impacted the health of these trees and their long term viability. The total tree diameter of these three trees proposed for removal is 51" diameter at breast height. In exchange for the removal of these trees the applicant is proposing to plant three 6" caliper Douglas Firs.

**Relevant Approval Criteria:**

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

- **33.853.040B.1. Approval Criteria for Tree Reviews related to preservation/mitigation plans approved under provisions of Code Section 33.630; Tree Preservation.**

## II. ANALYSIS

**Site and Vicinity:** The subject site has recently been subdivided into 8 lots for single family development. Two lots have houses located on them (lots 1 and 2) while 6 lots remain vacant. A partial width public street was required along the northern edge of the site as well as improvements to the SE 131<sup>st</sup> Avenue right of way as a condition of this land division. The site has been graded and cleared in anticipation of development while eight trees designated for preservation remain. One additional tree designated for preservation (tree#3) in the southwest corner of the site was blown down in the January/February wind storm.

Except on the southern border, the land division site abuts other relatively large lots developed with single-dwelling residences. South of the site, there is a large multi-dwelling residential development. A parking lot for the apartments abuts the southern property line of the subject site. This adjacent apartment development fronts the corner of SE Powell Blvd and SE 131<sup>st</sup> Avenue.

**Zoning:** Except for a small portion of the site, this site is zoned R5a (Single-Dwelling Residential 5,000 with the Alternative Design Density Overlay Zone). Properties to the west and north of the site are also zoned R5. The R5 zone is one of the City's single-dwelling zones that is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designation for single-dwelling housing. A 5,263 square foot section of the site, located along the southern edge, is zoned R2 (Multi-Dwelling Residential 2,000). Properties east of SE 131<sup>st</sup> Avenue and SE Powell Boulevard are also zoned R2. This zone is intended to preserve land for urban housing and to provide opportunities for multi-dwelling development.

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

LU 05-172783 LDS This proposal for an 8-lot land division received preliminary plan approval in September 2006. The final plat was recorded in February of 2008.

**Agency Review:** A "Notice of Proposal in Your Neighborhood" was mailed February 8, 2008. The following Bureaus have responded with no issues or concerns:

Water Bureau  
Transportation  
Fire Bureau  
Urban Forestry

The Bureau of Environmental Services responded with no conditions of approval but did recommend that the applicant provide a detailed mitigation plan.

The Bureau of Development Services Site Development Section indicated that the applicant has neglected to seek a required erosion control inspection in combination with their outstanding permits (07-111647 and 07-111606) and recommended that the arborist assess the condition of all protected trees to determine whether additional protection or damage control measures are necessary.

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on February 8, 2008. Two written responses have been received from representatives of the Neighborhood Association. These responses emphasizes that tree preservation is an important concern of the neighborhood, comment on the inadequacy of tree preservation efforts at the site and offer some recommendations regarding mitigation efforts that can occur.

## **ZONING CODE APPROVAL CRITERIA**

### **33.853.040 Approval Criteria for Tree Review**

#### **A. Trees in the Scenic Overlay Zone or Rocky Butte Plan District.**

Finding: These trees are not located in either a scenic overlay zone or within the Rocky Butte Plan District. This criterion is not applicable.

**B. Changes to a tree preservation plan or mitigation methods.** The approval criteria for changes to tree preservation or mitigation methods, including a tree preservation plan, tree preservation, tree preservation tract, or mitigation plan are:

1. If the tree preservation or mitigation method was approved under the provisions of Chapter 33.630, the requested change will be approved if the review body finds that the applicant has shown that the revised method will continue to meet Chapter 33.630, Tree Preservation.
2. If the tree preservation or mitigation method was not approved under the provisions of Chapter 33.630, the requested change will be approved if the review body finds that the applicant has shown that the revised method better meets the purpose of Chapter 33.630, Tree Preservation, stated in Section 33.630.010.

The tree preservation to be revised in this case relates to approvals granted in LU 05-172783. The tree preservation plan and mitigation, under LU 05-172783, was approved under the provisions of 33.630. Therefore, 33.630 B.1 is applicable to this case. 33.630 B.2 does not apply.

Findings: Original Tree Preservation/Mitigation Plan (LU 05-172783)

As part of the review of Land Division Case LU 05-172783 the applicant submitted a Tree Preservation Plan that identified the non-exempt trees located on the subdivision site; calculated the total non-exempt dbh and then designated trees for protection in partial conformance with numerical and operational requirements of Section 33.630 Tree Preservation. A total of **944” dbh non-exempt tree diameter** was identified on-site by the applicant’s arborist.

The applicant proposed (LU 05-172783) to preserve the following trees:

Tree #	Species	Diameter (inches)	Significant (per Table 630-1)
1	Douglas Fir	28	Yes
2	Douglas Fir	21	Yes
3**	Douglas Fir	19	Yes
14*	Douglas Fir	14	No
15*	Douglas Fir	18	Yes
20*	Douglas Fir	19	Yes
21	Maple	18	Yes
21.1	Maple	8	No
26	Cedar	14	Yes
		Total 159 inches	

Notes to Table

\*\* this tree blown down in windstorm after LU 05-172783 approved

\* trees proposed for removal under current tree review

The applicant, in LU 05-172783, proposed to preserve 159”dbh or 17 percent of the total non-exempt tree diameter on-site. The decision maker in LU 05-172783 determined that applicant’s proposal fell short of the required **number** of preserved trees under any of the options available under 33.630.100 Tree Preservation Standards the applicant proposed to include a mitigation option available under code section 33.630.300.

The Decision approving LU 05-172783 included a mitigation plan that required the planting of 23 native trees. These trees are required to be a minimum 2” in caliper at planting. The decision stated that if conifers were to be used the trees were required to be fully branched and at least 6 feet tall. The trees were required to be native, selected from the following list: Douglas Fir, Western Red Cedar, Big Leaf Maple, Red Alder and Oregon Ash. No more than 50 percent were permitted to be of the same species. The trees were required to be placed on the lots within the land division as follows:

**TREE MITIGATION REQUIREMENT (LU 05-172783 LDS AD)**

<b>Lot</b>	<b># of Trees</b>
Lot 1	6
Lot 2	4
Lot 3	2
Lot 4	1
Lot 5	2
Lot 6	2
Lot 7	1
Lot 8	5

Current Tree Review Request: Additional Trees Proposed for Removal

Since gaining approval of the land division the applicant has obtained a public works permit for the installation of the new east/west partial public street. During the course of this right of way improvement the City’s Department of Transportation decided to route public stormwater from this entire street segment back to existing facilities located in the SE 131<sup>st</sup> Avenue right of way. This required that the finished grade of the partial public street be higher than was originally anticipated. (See exhibit C-2) The grading necessary to achieve this road grade, in turn, conflicted with the viability of three additional trees 14, 15 and 20 because it has placed fill over their root protection zones and is causing water to pool in the root protection zones. The current application seeks permission to remove these trees and replace them with 6” diameter Douglas Fir trees planted once individual lot grading is completed. An arborist report was submitted detailing these concerns (Exhibit A-2).

One additional tree toppled in windstorm

Tree #3, a 19-inch Douglas Fir tree was blown over in a windstorm in January or February or 2008. BDS policy generally requires that one additional replacement tree is required to be planted to replace each tree destroyed by a storm event.

**33.630.300 Mitigation Option**

**As an alternative to meeting Section 33.630.100, approval of a mitigation plan may be requested. The review body will approve the mitigation plan where the applicant has shown that the applicant has met criteria A. and B. and one of the criteria in C., below:**

- A. As many trees as possible are preserved; and**
- B. The applicant has submitted a mitigation plan that adequately mitigates for the loss of trees, and shows how the mitigation plan equally or better meets the purpose of this chapter. Mitigation can include tree planting, preservation of groups of smaller trees, eco-roof, porous paving, or pervious surface permanently preserved in a tract.**
- C. It is not possible under any reasonable scenario to meet Section 33.630.100 and meet one of the following:**
  - 1. Minimum density;**
  - 2. All service requirements of Chapters 33.651 through 33.654, including connectivity;**
  - 3. Implementation of an adopted street plan; or**
  - 4. On sites 15,000 square feet or less in area, a practicable arrangement of lots, tracts, and streets within the site that would allow for the division of the site with enough room for a reasonable building site on each lot.**

Findings: The original application was deemed eligible for the mitigation option because a significant number of non-exempt trees on the land division site conflicted with the public street alignment. Without these trees eligible for preservation none of the standards for tree preservation listed in 33.630 could reasonably be met (see 33.630.300 C).

The current request is for three additional trees to be removed. The applicants submitted an updated arborist report that presents the results of an on-site inspection. This report indicates that the three trees (#14, #15, and #20) will not survive given the recent grading and recommends their removal. No other trees are proposed for removal.

Appellant's Appeal form contained the following summary of the primary issue raised in this appeal:

“This proposal does not meet 33.853.040 Approval for Tree Review (B.) Changes to a tree preservation plan or to the approval method of tree preservation or mitigation must continue to meet Chapter 33.530 Tree Preservation. This proposal does not continue to meet the 21% of the original predevelopment non-exempt tree diameter retention and replanting.” In an open record submission (Exhibit H.6) appellant stated that “tree inches were used to calculate the Tree Preservation/Mitigation Plan so tree inches should be used to calculate whether ‘changes to a tree preservation plan or to the approval method of tree preservation or mitigation must continue to meet chapter 33.630 Tree Preservation.’”

The Hearings Officer starts with the requirements of 33.853.040 B.1 which states that “if the tree preservation or mitigation method was approved under the provisions of Chapter 33.630, the requested change will be approved if the review body finds that the applicant has shown that the revised method will continue to meet Chapter 33.630, Tree Preservation.” The Hearings Officer finds that the approval of the land division with which this application is concerned (LU 05-172783) did approve a tree mitigation plan approved under 33.630. The Hearings Officer further

finds that the decision in LU 05-172783 utilized the Mitigation Option as set forth in 33.630.300. The Hearings Officer finds that neither the applicant nor appellant disagreed with the facts related to the applicant's proposal and BDS staff decision in LU 05-172783 as set forth in the current BDS staff report as follows:

Total non-exempt trees	944" dbh tree diameter
Applicant's original proposal to preserve	159" (17% of total)
LU 05-172783 decision	159" proposed + 23 native trees (@ min. 2") (21% of total)

BDS staff, in the staff decision subject to this appeal (Exhibit H.1), stated that "after planting the mitigation trees this development would have retained or replanted 21% of the original predevelopment non-exempt **tree diameter**." (emphasis added by Hearings Officer) BDS staff was referring to the decision in LU 05-172783. It is clear to the Hearings Officer that the tree preservation decision in LU 05-172783 established a goal of retaining 21% of the total non-exempt tree **diameter** to satisfy the mitigation option.

The Hearings Officer finds that 33.630 can be satisfied in more than one way. For example, 33.630 can be satisfied if the requirements of 33.630.100 are met. Or, in the alternative 33.630 can be satisfied by meeting the requirements of 33.630.300 (mitigation option). The Hearings Officer finds that just because the decision in LU 05-172783 satisfied 33.630 by utilizing tree diameter and 33.630.300 does not necessarily mandate that the exact same approach must be used to satisfy 33.630 during a subsequent tree review/modification.

The Hearings Officer finds, however, that the tree preservation rationale and analysis in LU 05-172783 is not irrelevant. The Hearings Officer finds that if the tree preservation rationale and analysis in LU 05-172783 is persuasive the same rationale and analysis may be used in the tree review/modification. The bottom line is that either 33.630.100 or 33.630.300 is satisfied.

In the current application the applicant is proposing to remove 3 trees which are not in pristine health and face the reasonable expectation that their location (in relation to the new roadway) will result in jeopardizing their long term viability. The 3 trees to be removed are 14", 18" and 19" in diameter (total 51" dbh diameter). Applicant proposes to replace the 3 removed trees with three 6" dbh Douglas Firs (total replacement of 18" dbh diameter). The applicant's proposal would reduce the overall percentage of the original predevelopment non-exempt tree diameter from approximately 21% (205"/944") to approximately 18% (172"/944"). The Hearings Officer notes that BDS staff, in LU 05-172783, found the applicant's proposal of retaining 17% (159"/944") unacceptable and required additional trees to be planted to reach the 21% goal. The Hearings Officer finds that current BDS staff finding that 18% retention is acceptable is inconsistent with the earlier staff finding that 21% was required.

The Hearings Officer finds persuasive that the BDS staff argument that adding to the number of trees to be planted on the subject site may not be compatible with construction of residences (see Exhibit H.5). The Hearings Officer, however, does not find persuasive BDS staff's argument that this decision should be influenced by the City of Portland decision to raise the road grade created the circumstance of water pooling around the three trees to be removed and causing the risk to the three trees' health. The Hearings Officer finds that the relevant approval criteria in this case do not consider the underlying reasons precipitating applicant's request for a tree

review; the Hearings Officer can only consider whether or not the tree preservation plan in this application continues to satisfy 33.630.

BDS staff indicated (Exhibit H.5) that no consideration was given to alternative tree preservation methods (see 33.630.200). The Hearings Officer finds that alternative tree preservation methods should have been considered; in particular the off-site tree alternative. Appellant suggested that “if the applicant does not have room on this site for mitigation Powell-hurst or Pleasant Valley would be happy to help find suitable off-site locations.” (Exhibit H.4)

At this point the Hearings Officer considers the specific approval criteria of 33.630.300.

Based upon the BDS decision in this case and comments submitted at the hearing and during the open record period, the Hearings Officer finds that as many remaining trees as possible are being protected. The Hearings Officer finds that the three trees being proposed to be removed (#14, #15, and #20) are in poor health and/or are in a location where water will pool and create a serious long term health risk to the trees. The Hearings Officer finds that these trees cannot be retained in a healthy condition. The Hearings Officer also finds that BDS comments (See Exhibit H.5, second bullet) are credible and that planting additional trees (beyond those proposed in this application) may interfere with public utilities, the roadway, and building envelopes. The Hearings Officer finds that 33.630.300 A is met.

Criteria B requires a mitigation plan that adequately mitigates for the loss of trees, and shows how the mitigation plan equally or better meets the purpose of the Tree preservation chapter. The purpose of Chapter 33.630 Tree Preservation is to 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;
- Maintain the beauty of the City and its natural heritage;
- 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 applicant is proposing to remove 51 inches of tree diameter. To replace these trees the applicant is proposing to plant three 6” caliper Douglas Fir Trees. This 18” total replacement



diameter equals 35% of the 51 inches proposed for removal. A deficit of 33 inches is proposed by BDS staff to be retained under this proposal.

Original to Be Retained	205''
Less Trees #14, #15, #20	51''
Plus three 6'' Firs to be Planted	<u>18''</u>
Total, Under BDS Decision, to be Retained	172''
Deficit under BDS decision	33''
Original % of Non-exempt Retained Per BDS approval	21%

The Hearings Officer finds that, in LU 05-172783, section 33.630.100, could not be met and therefore the applicant proposed using the mitigation option. The decision in LU 05-172783 found the mitigation option could be met by retaining certain trees and planting others for a total of 205 inches diameter resulting in 21% of the dbh diameter of non-exempt trees being retained. The Hearings Officer finds, in this case, that 33.630.300 B. is not met unless retention of 21% of the total non-exempt tree diameter is achieved. The Hearings Officer finds the 21% goal can be met by approving the applicant's proposal to plant three 6'' fir trees and contributing into the City Tree fund sufficient funds to compensate for the 33'' deficit. The Hearings Officer recommends that the 33'' diameter deficit plantings be made in the Powellhurst-Gilbert neighborhood, and if that is not possible then in the Pleasant Valley Neighborhood. In addition, to satisfy 33.630.300, applicant will be required to further enhance the health of trees #1 and #2 on Lot 7 by removing the invasive Ivy from those trees. Root protection fencing will also be required. With conditions consistent with this paragraph 33.630.300 B is met.

The Hearings Officer finds 33.630.300 C is met because it is not reasonable to retain trees #14, #15 and #20 because their relative proximity to the street (below grade) will result in them dying. Further, the Hearings Officer finds that the required/adopted street plan was the cause of the ultimate demise of trees #14, #15, and #20.

The Hearings Officer finds that with conditions consistent with the findings above 33.630.300 is met.

### III. CONCLUSIONS

The criteria for approving a tree review can be met in this instance by requiring that trees used to meet this additional 18'' dbh mitigation requirement be 6'' caliper Douglas Fir Trees. These trees will be added to the required plantings on lots 6 and 7 required by the original land division and an additional standard replacement tree required on lot 7 to replace the tree lost to the windstorm in January/February of this past year. Additional requirements including a contribution into the City of Portland Tree fund to compensate for the 33 inch deficit, the removal of the invasive Ivy from Trees on lot 7 and the installation of more durable fencing to protect the few remaining trees during construction are required as a component of this decision. Finally, applicant will be required to plant one 2'' diameter tree on lot 7 to compensate for the tree blown down in the windstorm.

#### IV. DECISION

The appellant prevailed in this appeal.

Approval of the Tree Review allowing the removal of Tree #14 a 14- inch Douglas Fir and Tree #15 an 18“ Douglas Fir both located on lot 6 and Tree #20 a 19“ Douglas Fir located on lot 5 of the Bartels Subdivision. These trees are further identified on attached Exhibit C-1. This approval is subject to the following Conditions:

1. The tree mitigation plan table adopted as condition D-2 of Land Use Decision LU 05-172783 LDS AD shall be revised as indicated below to reflect the addition of mitigation plantings to offset the removal of these three trees and the loss of tree # 3 from Lot 7 due to a windstorm. Planting of these mitigation trees shall be reflected on the building permits for residential construction on each of these individual lots and installed prior to final inspection. These trees may be counted towards the T-1 landscape requirements.

##### **REVISED TREE MITIGATION REQUIREMENT**

<b>Lot</b>	<b># of Trees</b>
Lot 1	6
Lot 2	4
Lot 3	2
Lot 4	1
Lot 5	<del>2</del> 3*
Lot 6	<del>2</del> 4*
Lot 7	<del>1</del> 2
Lot 8	5

At least two trees on Parcel 6 and one tree on Parcel 5 shall be 6” caliper Douglas Firs. The remaining mitigation trees must be a minimum of 2” caliper at planting. If conifers are used, the tree must be fully branched and at least 6 feet tall. The trees must be native, selected from the following list: Douglas fir, Western Red Cedar, Big Leaf Maple, Red Alder and Oregon Ash. No more than 50 percent of the trees may be of the same species. These trees can be used towards meeting the T1 requirement for each lot.

2. A certified arborist shall submit a field report affirming that durable tree protection fencing has been (re)placed around trees # 1 and # 2 on lot 7, tree #21 and #26 on Lot 4; and tree # 21.1 on lot 3; and that these trees remain viable prior to issuance of building permits on lots 3,4 and/or 7.
3. The invasive ivy shall be removed from Trees number 1 and 2 in the southwestern corner of the site prior to issuance of any building permits on lot 7.

Other tree preservation/mitigation requirements from LU 05-172783 are replaced by the following conditions:

4. Development on Lots 1-8 shall be in conformance with the Tree Preservation Plan (Exhibit C-1) and the original applicant's arborist report (Exhibit LU 05-172783 A.10 and Arborist

letter dated 1/14/08 exhibit A.1 to LU 09-102933 TR). Specifically, trees numbered 1, 2, 21, 21.1, and 26, are required to be preserved, with the root protection zones indicated on the tree inventory map, 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.

5. Applicant, prior to issuance of a building permit on lot 3, 4, 5, 6 or 7, shall contribute to the City of Portland Tree Fund funds equivalent to 33” dbh diameter. The City shall attempt to utilize the 33” dbh diameter funds for tree planting in the Powelhurst-Gilbert neighborhood, and if that is not possible, within the Pleasant Valley neighborhood.
6. Applicant, prior to the issuance of a building permit on 7 shall plant one 2” diameter native tree to replace tree #3 which was blown down in a windstorm.

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Gregory J. Frank, Hearings Officer

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Date

<b>Application Determined Complete:</b>	February 5, 2008
<b>Report to Hearings Officer:</b>	May 9, 2008
<b>Decision Mailed:</b>	June 2, 2008
<b>Last Date to Appeal:</b>	June 23, 2008

**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.

**Conditions of Approval.** 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.** The Hearings Officer's decision is final and takes effect on the day the notice of decision is mailed. The decision may not be appealed to City Council, but may be appealed to the Oregon Land Use Board of Appeals (LUBA), as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that:

- an appellant before LUBA must have presented testimony (orally or in writing) as part of the local hearing before the Hearings Officer; and
- a notice of intent to appeal be filed with LUBA within 21 days after the Hearings Officer's decision becomes final.

Please contact LUBA at 1-503-373-1265 for further information on filing an appeal.

**Recording the final decision.**

If this land use review is approved, the final decision must be recorded with the Multnomah County Recorder. A building or zoning permit will be issued only after the final decision is recorded.

- 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.

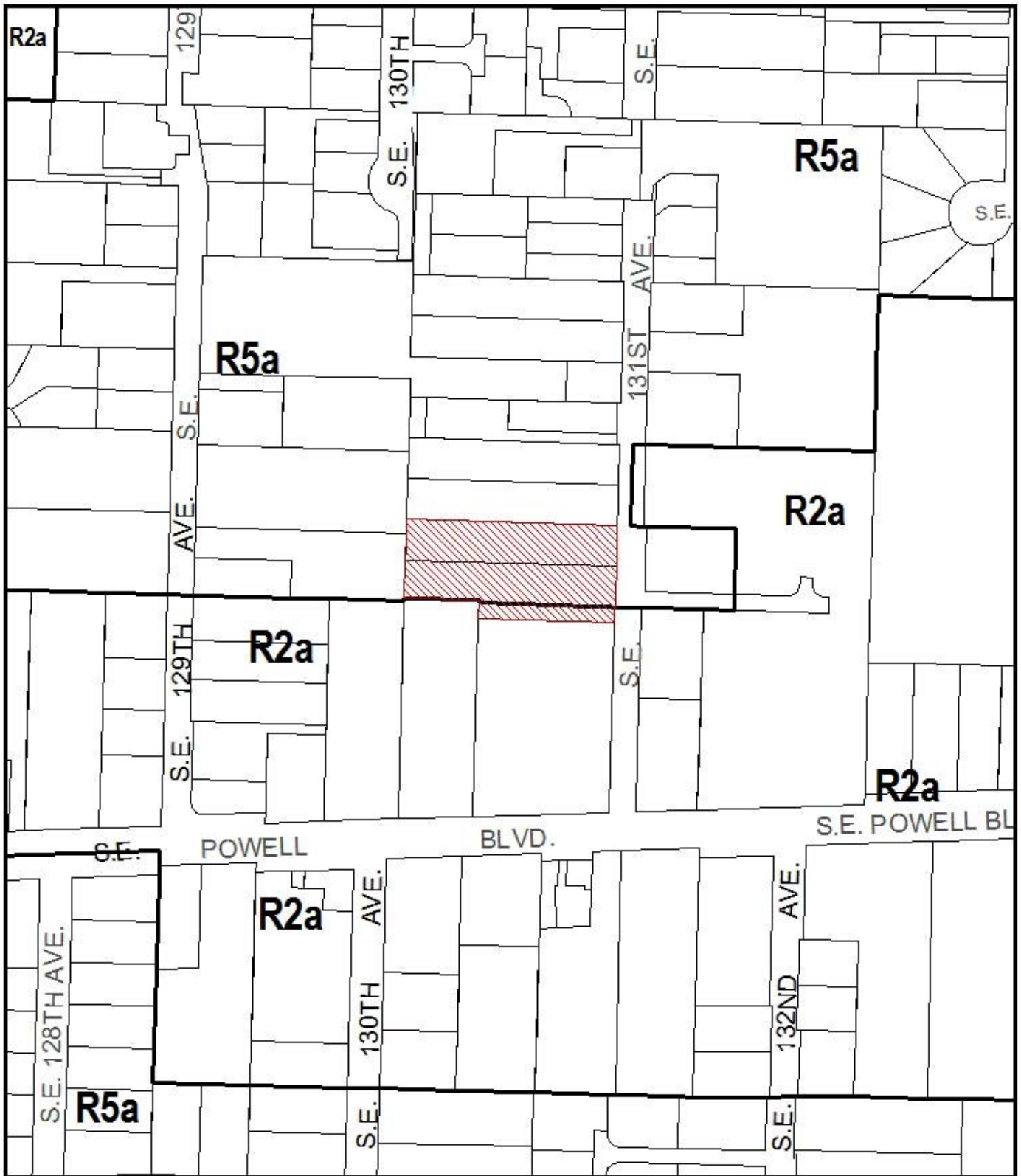
Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

**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. Arborist letter dated 1/14/08
- B. Zoning Map (**8 ½ x 11" attached**)
- C. Plans/Drawings
  - 1. Site Plan with revised root protection zones (**8 ½ x 11" attached**)
  - 2. Public street Improvements Plan and Profile
- D. Notification information
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses
  - 1. Bureau of Environmental Services
  - 2. Site Development Review Section of BDS
- F. Correspondence
  - 1. E-mail from John McDonald dated 2/18/08
  - 2. Letter from James Chasse dated 3/3/08
- G. Other
  - 1. LU Application
  - 2. Original Decision LU 05-172783
- H. Received in the Hearings Office
  - 1. Hearing notice, Cole, John Andrew
  - 2. Staff Decision and Appeal, Cole, John Andrew
  - 3. PowerPoint presentation printout, Cole, John Andrew
  - 4. Testimony with attachments, Bauer, Linda
  - 5. Memo to HO dated 5/22/08, Cole, John Andrew
  - 6. Letter dated 5/23/08, Bauer, Linda



# ZONING

 Site



This site lies within the:  
JOHNSON CREEK BASIN PLAN DISTRICT

File No.	<u>LU 08-102933 TR</u>
1/4 Section	<u>3343</u>
Scale	<u>1 inch = 200 feet</u>
State Id	<u>1S2E11BD 2200</u>
Exhibit	<u>B (Jan 22, 2008)</u>



Revised Tree Protection plan

Remove  
Tree # 14: 14" Douglas Fir  
Tree # 15: 18" Douglas Fir

Remove  
Tree 20: 19" Douglas Fir

Protect  
Tree # 26: 14" Cedar

CASE NO. CV 08-102933TR  
EXHIBIT C-1

RM = 244.85'  
10' E B (C) = 232.00'  
10' E OUT (S) = 231.05'

SOIL DISTURBANCE LIMITS

SEDIMENT FENCE PER DETAIL 2

HOUSE TO BE REMOVED TO LOT 7

HOUSE TO REMAIN

FFF=245.2

FFF=245.4

FFF=245.6

FFF=245.8

FFF=245.9

FFF=245.7

Protect  
Tree # 1: 25" Douglas Fir  
Tree # 2: 21" Douglas Fir

Damaged in Winds storm  
Tree # 3: 19" Douglas Fir

Protect  
Tree 21: 18" Maple  
Protect  
Tree 21: 8" Maple

NOT Protected

