



CITY OF
PORTLAND, OREGON
HEARINGS OFFICE

1900 S.W. 4th Avenue, Room 3100
Portland, Oregon 97201
Telephone: (503) 823-7307
FAX: (503) 823-4347
TDD (503) 823-6868

DECISION OF THE HEARINGS OFFICER IN UNCONTESTED CASE

File No.: LU 08-116326 TV (HO 4080019)

Applicants: Walter E. Rummors
West Hills Development Company
735 SW 158th Ave
Beaverton, OR 97006-4952

Roger A. Alfred
Perkins Coie LLP
1120 NW Couch Street, 10th Floor
Portland, OR 97209

Hearings Officer: Gregory J. Frank

Bureau of Development Services (BDS) Staff Representative: Ruth Shriber

Site Address: 1527 & 1533 SW JOSHUA ST

Legal Description: LOT 14, SPENCER MEADOWS; LOT 15, SPENCER MEADOWS

Tax Account No.: R784480700, R784480750

State ID No.: 1S1E33CA 04414, 1S1E33CA 04415

Quarter Section: 4227

Neighborhood: Arnold Creek

District Coalition: Southwest Neighborhoods Inc.

Zoning: R10 – Single Family Residential 10,000

Land Use Review: Type III, Tree Violation (TV)

BDS Staff Recommendation to Hearings Officer: Approval with conditions

Public Hearing: The hearing was opened at 1:29 p.m. on June 10, 2008, in the 3rd floor hearing room, 1900 SW 4th Avenue, Portland, OR, and was closed at 2:07 p.m. The record was closed at that time.

Testified at the Hearing:

Ruth Shriber, BDS Staff Representative

Scott Goddard, 735 SW 158th Ave., Beaverton, OR 97006, representing West Hills Development Company

Nancy Hand, Arnold Creek Neighborhood Association Chair, 3250 SW Maricara, Portland, OR 97219

Hearings Officer Decision: It is the decision of the Hearings Officer to adopt and incorporate into this decision the facts, findings, and conclusions of the Bureau of Development Services in their Staff Report and Recommendation to the Hearings Officer dated May 28, 2008, and to issue the following approval. It was agreed by the parties in the hearing to include minor corrections as follows:

- Replace Exhibit C-1 which was attached with Exhibits H.5a, H.5b, H.5c, H.5d, and H.5e;
- Replace all references to Exhibit C-1 in the findings of the Bureau of Development Services Staff Report and Recommendation with Exhibits H.5a, H.5b, H.5c, H.5d, and H.5e; and
- Replace all references to Exhibit C-1 in the approval of the Bureau of Development Services Staff Report and Recommendation with Exhibits H.5a, H.5b, H.5c, H.5d, and H.5e.

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

A. Twenty-seven (27) replacement trees shall be planted on Lots 10, 11, 12, 13, 14, 15 and 16 as shown on Exhibits H.5a, H.5b, H.5c, H.5d, and H.5e.

1. Broadleaf replacement trees must be 1.5 inches in diameter and fully branched at the time of planting. Fourteen replacement trees shall include Red Alder and Black Cottonwood as proposed, or may be substituted with broadleaf native trees specified in the Portland Plant List.
2. Conifer trees must be a minimum of five feet in height at the time of planting. Thirteen replacement trees shall be conifer trees including Douglas fir and Western Hemlock or substituted with native conifer trees specified in the Portland Plant List.
3. Each of the replacement trees may count toward meeting the applicant's T1 requirement as stated in Zoning Code section 33.248.020.h.
4. Building permits for lots 10, 11, 12, 14, 15 and 16 shall not have an approved final inspection until the mitigation trees and been installed and inspected.

5. The building permit for lot 13 must either be revised to show the required trees or a zoning permit must be obtained.
 6. Each tree shall have a tag labeled “Mitigation” for inspection purposes.
- B. The new trees listed in Condition A shall be preserved in perpetuity on the lots and shall be labeled as protected trees on the building permit plans.

Basis for the Decision: BDS Staff Report in LU 08-116326 TV, Exhibits A through H.5e, and the hearing testimony from those listed above.

Gregory J. Frank, Hearings Officer

Date

Application Deemed Complete:	April 8, 2008	
Report to Hearings Officer:	May 30, 2008	
Decision Mailed:	June 12, 2008	
Last Date to Appeal: 4:30 p.m.,	June 26, 2008	
Effective Date (if no appeal):	June 27, 2008	Decision may be recorded on this date.

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.

Appeal of the decision. ANY APPEAL OF THE HEARINGS OFFICER’S DECISION MUST BE FILED AT 1900 SW 4TH AVENUE, PORTLAND, OR 97201 (823-7526). Until 3:00 p.m., Monday through Friday, file the appeal at the Development Services Center on the first floor. Between 3:00 p.m. and 4:30 p.m., file the appeal at the Reception Desk on the 5th Floor. **An appeal fee of \$2,220.00 will be charged (one-half of the application fee for this case).**

Information and assistance in filing an appeal can be obtained from the Bureau of Development Services at the Development Services Center.

Who can appeal: You may appeal the decision only if you wrote a letter which is received before the close of the record on hearing or if you testified at the hearing, or if you are the property owner or applicant. If you or anyone else appeals the decision of the Hearings Officer, only evidence previously presented to the Hearings Officer will be considered by the City Council.

Appeal Fee Waivers: Neighborhood associations recognized by the Office of Neighborhood Involvement may qualify for a waiver of the appeal fee provided that the association has standing to appeal. The appeal must contain the signature of the Chair person or other person authorized by the association, confirming the vote to appeal was done in accordance with the organization's bylaws.

Neighborhood associations, who wish to qualify for a fee waiver, must complete the Type III Appeal Fee Waiver Request for Organizations Form and submit it prior to the appeal deadline. The Type III Appeal Fee Waiver Request for Organizations Form contains instructions on how to apply for a fee waiver, including the required vote to appeal.

BDS may also grant fee waivers to low income applicants appealing a land use decision on their primary residence that they own in whole or in part. 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. Individuals requesting fee waivers must submit documentation certifying their annual gross income and household size (copies of tax returns or documentation of public assistance is acceptable). Fee waivers for low-income individuals must be approved prior to filing your appeal; please allow three working days for fee waiver approval.

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.

- 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
 - 1. Applicant's Narrative
 - 2. 120-day extension
- B. Zoning Map
- C. Plans & Drawings
 - 1. Mitigation Plan
 - 2. Old Mitigation Plan created by LU 03 177491 LDS AD
 - 3. Old Mitigation Plan created by LU 07 104668 AD TR (see G.5, below)
- D. Notification information
 - 1. Request for Response
 - 2. Posting letter sent to applicant
 - 3. Notice to be posted
 - 4. Applicant's statement certifying posting
 - 5. Mailing list
 - 6. 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 Bureau of Development Services
 - 6. Bureau of Parks, Forestry Division
 - 7. Life Safety
- F. Letters (none)
- G. Other
 - 1. Original LUR Application
 - 2. Site History Research
 - 3. Notice of Zoning Violation dated March 25, 2008
 - 4. Pre-application Notice and Summary of October 19, 2007
 - 5. LU 07 104668 AD TR Decision of October 2, 2007
- H. Received in the Hearings Office
 - 1. Request to reschedule and extend 120-days, Shriber, Ruth
 - 2. Hearing Notice, Shriber, Ruth
 - 3. Staff Report, Shriber, Ruth (**attached**)
 - 4. PowerPoint presentation printout, Shriber, Ruth
 - 5a. Exhibit C (8 1/2 x 11"), Shriber, Ruth (**attached**)
 - 5b. Exhibit C (8 1/2 x 11"), Shriber, Ruth (**attached**)
 - 5c. Exhibit C (8 1/2 x 11"), Shriber, Ruth (**attached**)
 - 5d. Exhibit C (8 1/2 x 11"), Shriber, Ruth (**attached**)

- 5e. Exhibit C (8 1/2 x 11”), Shriber, Ruth (**attached**)
6. 6/10/08 Letter, Hand, Nancy, Submitted After Record Closed



City of Portland
Bureau of Development Services
Land Use Services Division

1900 SW Fourth Ave. Suite 5000
Portland, Oregon 97201
Telephone: 503-823-7300
TDD: 503-823-6868
FAX: 503-823-5630
www.portlandonline.com/bds

STAFF REPORT AND RECOMMENDATION TO THE HEARINGS OFFICER

CASE FILE: LU 08-116326 TV
PC # 07-160756
REVIEW BY: Hearings Officer
WHEN: June 10, 2008 at 1:30 PM
WHERE: 1900 SW Fourth Ave., Suite 3000
Portland, OR 97201

It is important to submit all evidence to the Hearings Officer. City Council will not accept additional evidence if there is an appeal of this proposal.

BUREAU OF DEVELOPMENT SERVICES STAFF: RUTH SHRIBER / RSHRIBER@CI.PORTLAND.OR.US

GENERAL INFORMATION

Applicants: Walter E. Rummers, West Hills Development Company
735 SW 158th Ave
Beaverton, OR 97006-4952

Roger A. Alfred, Perkins Coie LLP
1120 NW Couch Street, 10th Floor
Portland, OR 97209

Site Address: 1527 & 1533 SW JOSHUA ST

Legal Description: LOT 14, SPENCER MEADOWS; LOT 15, SPENCER MEADOWS
Tax Account No.: R784480700, R784480750
State ID No.: 1S1E33CA 04414, 1S1E33CA 04415
Quarter Section: 4227
Neighborhood: Arnold Creek, contact Nancy Hand at 503-452-9483.
District Coalition: Southwest Neighborhoods Inc., contact Leonard Gard at 503-823-4592.
Zoning: R10 – Single Family Residential 10,000
Case Type: TV – Tree Violation
Procedure: Type III, with a public hearing before the Hearings Officer. The decision of the Hearings Officer can be appealed to City Council.

Proposal:

The applicant is proposing to address a violation of a tree preservation plan that was approved under LU 03-177491 LDS AD and modified under LU 07-104668 AD TR. The preservation plan was required by under Section 33.630 of the zoning code. Three trees previously identified for preservation were removed. The applicant is proposing to mitigate for the removal of these trees through the Tree Violation review process. Trees #3622, a 15-inch Bigleaf Maple and #3686, a 10-inch Red Alder were removed from Lot 14. Tree #3322, a 15-inch Bigleaf Maple was removed from Lot 15. Because more than 12 inches of tree diameter was removed from the lots, a Type III Tree Violation Review is required to correct the violation of the tree preservation plan.

To mitigate for the loss of the 3 trees (which total 40-inches caliper DBH), the applicant proposes to plant 27 new replacement trees totaling 40-inches caliper in the locations shown on the Tree Mitigation Planting Plan. The applicant proposes to plant trees that are a minimum 1.5-inch caliper DBH, spaced at least 15-feet apart.

Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33, Portland Zoning Code. The applicable approval criteria are 33.853.040.C – Corrections to Violations

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. This application was submitted on March 18, 2008 and determined to be complete on April 8, 2008.

ANALYSIS

Site and Vicinity: Lot 14 and lot 15 are part of a 6.8 acre site that was subdivided to create 25 lots and 3 tracts. The site generally slopes up in the northerly direction from SW Boones Ferry Road and up in the southerly direction from Dickinson Spring Creek. Slopes range from 2 to 25 percent, with steeper slopes toward the southern portion of the site. Portions of the subdivision site and Lots 14 and 15 have frontages on SW Boones Ferry Road, which is designated as a district collector, transit access street, city bikeway, city walkway and minor truck route in the Transportation System Plan. SW Boones Ferry Road is improved with an average 30-foot paving width along the frontage of the site. The surrounding area is developed with single-family houses and open space tracts along streams and environmental zone areas.

Zoning: The zoning designation on lots 14 and 15 where the violation occurred is R10 - Low Density Single Dwelling (R10). Lots 10 through 16 where the mitigation is proposed to occur, are also designated R10. The R10 is one of the City's Single dwelling zones intended to preserve land for housing and to promote housing opportunities for individual households.

Land Use History: Prior land use reviews for this site are documented under the following case files:

- LU 03-177491 LSD AD - Approved with conditions a 25-lot subdivision, a Modification using Section 33.630.0400 of the Tree Preservation Chapter to reduce the minimum front setback of Lots 14 through 16 from 20 feet to 10 feet (A 10-foot front setback is allowed by right on Lots 10-13 per code Section 33.110.220.D.4), and an Adjustment to waive the through lot standard 33.610.300.B, to allow Lots 10 through 16 to be created as through lots;
- LU-05 122785 – Approving with conditions a Tree Review (TR) the removal of a 41” diameter Douglas Fir tree (# 3459) within proposed tract B of the pending Spencer Meadows Subdivision;
- LU-05 123653 AD – Approved with conditions Adjustments to reduce building setbacks, and;
- LU-07-104668 AD TR – Approved with conditions and Adjustment and Tree Review to modify the tree preservation plan created under LU 03 177491 LDS AD.

Agency Review: A *Request for Response* was mailed April 10, 2008. Limited agency response is included as exhibit series E to this report.

Neighborhood Review: A *Notice of Proposal in Your Neighborhood* was mailed on May 16, 2008. As of this writing, no written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

TREE VIOLATION

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.

Table 853-2 Tree Replacement for Violations	
Size of tree removed (inches in diameter)	Number of Trees to be Planted
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:

33.630.10 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 proposal to plant twenty-seven replacement trees on lots 10 through 16 meets the purpose statement in 33.630.010 above. New trees on these lots will promote absorption of air pollutants and will provide buffering from noise on Boones Ferry Road. The replacement trees will also provide a buffer from wind and storms. These trees will provide visual screening and summer cooling and may serve to reduce urban heat island impacts. The new trees will provide additional habitat for wildlife and will contribute to the beauty of the City. Additionally, the new trees will help to reduce erosion and stormwater runoff and provide slope stabilization as the root systems become established.

The standards that implement these purposes require a certain percentage of existing viable tree diameter be preserved on new lots in a subdivision site. The Tree Preservation Plan created by LU 03-177491 LDS AD and modified by LU 07 104668 AD TR required a number of trees to be preserved on the site and met the standards of 33.630.

Two trees required for preservation were removed from Lot 14. These included #3622 (15-inch Bigleaf Maple) and #3686 (10-inch Red Alder). To mitigate for the loss of these two trees, the applicant proposes to plant seventeen 1.5-inch DBH trees on lots 10 through 16. In addition, one tree required for preservation was removed from Lot 15. This was tree #3322 – a 15-inch Bigleaf Maple. To mitigate for the loss of the tree on Lot 15, the applicant proposes to plant ten 1.5-inch replacement trees on lots 10 through 16. The applicant is proposing a total of 27 replacement trees for the 3 trees that were cut down. Proposed species include Red Alder, Douglas Fir, Black Cottonwood and Western Hemlock. The locations of the proposed replacement trees are shown on the attached Mitigation Plan (Exhibit C.1).

The mitigation must, at a minimum, meet the requirements of Table 853-2. Two trees totaling twenty-five inches were removed from lot 14, which is 7,596 square feet in size. According to Table 853-2, five (5) trees must be planted for the loss of the fifteen-inch tree and three (3) trees must be planted for the loss of the 10-inch tree for a total of eight (8) replacement trees required to mitigate for the loss of the two trees on Lot 14. In addition, one tree totaling fifteen inches was removed from Lot 15, which is 7,772 square feet in size. According to Table 853-2, five (5) trees must be planted for the loss of the fifteen-inch tree to mitigate for the loss of the tree on Lot 15. This table requires replacement based on the size of each tree removed, not the not the number of total inches lost. A total of thirteen (13) replacement trees are required. The applicant's proposal to plant 27 replacement trees to mitigate for the loss of the three trees exceeds the required minimum. This criterion is satisfied.

When building permits are submitted for lots 10, 11, 12, 14, 15, and 16, the applicant must show the tree location, size, and species on the building permit site plan. The trees must be installed and inspected prior to final inspection of the houses. For lot 13, because a building permit has already been issued, the applicant must either submit a revision to the permit showing the replacement trees, or apply for a zoning permit.

The twenty-seven replacement trees on lots 10 through 16 may be counted toward meeting the T1 standards of Zoning Code section 33.248.020.h. Section 33.248.020.H, known as the T1 tree planting standard, requires trees to be planted on new lots as part of the approval of future building permits. The T1 tree standard requires the planting of at least 2 inches of tree caliper per 1,000 square feet of site area. Due to the size of the parcels and the existing trees to be preserved, it is not practical for additional trees beyond the T1 standard to be planted without jeopardizing the overall health of all of the trees on the site. Therefore, the mitigation trees may be counted toward meeting the T1 requirement on the new lots.

With conditions of approval listed above, these criteria 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 proposed to plant some of the replacement trees on lots 14 and 15, where the violations occurred. Lots 14 and 15 are not big enough to accommodate the planting of all 27 replacement trees. Therefore, the applicant has proposed to plant the remaining replacement trees on lots 10, 11, 12, 13, and 16 of the subdivision which is other property owned by the applicant within the City of Portland, as required in condition 2.b above.

This criterion is met.

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

Findings: Section 33.248.030 requires that broadleaf trees be 1.5 inches in diameter and fully branched at the time of planting as stated in 33.248030C1. The section also requires conifer trees to be a minimum of five feet in height at the time of planting. Therefore, the fourteen (14) broadleaf replacement trees to be planted as mitigation as shown on the applicant's mitigation plan (Exhibit C.1) must be 1.5 inches in diameter and fully branched at the time of planting. These broadleaf trees may include Red Alder and Black Cottonwood as proposed on the applicant's Mitigation Plan or may be substituted with any broadleaf native tree specified in the Portland Plant List since the availability of specific tree species cannot be guaranteed at the time of planting. The thirteen (13) conifer replacement trees to be planted as mitigation must be a minimum of five feet in height at the time of planting. Conifer replacement trees may include Douglas Fir and Western Hemlock as specified on the applicant's Mitigation Plan (Exhibit C.1) or may be substituted with any conifer native tree specified in the Portland Plant List, since the availability of specific tree species cannot be guaranteed at the time of planting.

With these conditions, this criterion is met.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

This proposal consists of mitigation measures for violating an approved tree preservation plan on Lots 14 and 15 of the subdivision approved in LU 03-177491 LDS AD and modified by LU-07

104668 AD TR. Two trees totaling 25 inches DBH were removed from Lot 14. One tree totaling 15 inches DBH was removed from Lot 15. Overall, the mitigation requested for the Tree Violation Review meets the purpose and other individual criteria contained in Code section 33.853.040, *Approval Criteria for Tree Review*, including the approval criteria for correcting tree violations, and is approved.

TENTATIVE STAFF RECOMMENDATION

(May be revised upon receipt of new information at any time prior to the Hearings Officer decision)

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

- A. Twenty-seven (27) replacement trees shall be planted on Lots 10, 11, 12, 13, 14, 15 and 16 as shown on C.1 Mitigation Tree Planting plan.
 - 1 Broadleaf replacement trees must be 1.5 inches in diameter and fully branched at the time of planting. Fourteen replacement trees shall include Red Alder and Black Cottonwood as proposed, or may be substituted with broadleaf native trees specified in the Portland Plant List.
 - 2 Conifer trees must be a minimum of five feet in height at the time of planting. Thirteen replacement trees shall be conifer trees including Douglas fir and Western Hemlock or substituted with native conifer trees specified in the Portland Plant List.
 - 3 Each of the replacement trees may count toward meeting the applicant's T1 requirement as stated in Zoning Code section 33.248.020.h.
 - 4 Building permits for lots 10, 11, 12, 14, 15 and 16 shall not have an approved final inspection until the mitigation trees and been installed and inspected.
 - 5 The building permit for lot 13 must either be revised to show the required trees or a zoning permit must be obtained.
 - 6 Each tree shall have a tag labeled "Mitigation" for inspection purposes.
- B. The new trees listed in Condition A shall be preserved in perpetuity on the lots and shall be labeled as protected trees on the building permit plans.

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 recommendation 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.

Procedural Information. The application for this land use review was submitted on March 18, 2008, and was determined to be complete on April 8, 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 March 18, 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 requested that the 120-day review period be extended by two weeks as stated with Exhibit (Exhibit A.2). Unless further extended by the applicant, **the 120 days will expire on August 22, 2008.**

This report is not a decision. The review body for this proposal is the Hearings Officer who will make the decision on this case. This report is a recommendation to the Hearings Officer by the Bureau of Development Services. The review body may adopt, modify, or reject this recommendation. The Hearings Officer will make a decision about this proposal within 17 days of the close of the hearing. Your comments to the Hearings Officer can be mailed c/o the Hearings Officer, 1900 SW Fourth Ave., Suite 3100, Portland, OR 97201 or faxed to 503-823-4347.

You will receive mailed notice of the decision if you write a letter received before the hearing or testify at the hearing, or if you are the property owner or applicant. This Staff Report will be posted on the Bureau of Development Services website. Look at www.portlandonline.com. On the left side of the page use the search box to find Development Services, then click on the Zoning/Land Use section, select Notices and Hearings. Land use review notices are listed by the District Coalition shown at the beginning of this document. You may review the file on this case at the Development Services Building at 1900 SW Fourth Ave., Suite 5000, Portland, OR 97201.

Appeal of the decision. The decision of the Hearings Officer may be appealed to City Council, who will hold a public hearing. If you or anyone else appeals the decision of the Hearings Officer, only evidence previously presented to the Hearings Officer will be considered by the City Council.

Who can appeal: You may appeal the decision only if you write a letter which is received before the close of the record for the hearing, if you testify at the hearing, or if you are the property owner/applicant. Appeals must be filed within 14 days of the decision. **Appeals must be filed within 14 days of the decision. An appeal fee of \$2,220.00 will be charged (one-half of the application fee for this case).**

Appeal Fee Waivers: Neighborhood associations recognized by the Office of Neighborhood Involvement may qualify for a waiver of the appeal fee provided that the association has standing to appeal. The appeal must contain the signature of the Chair person or other person authorized by the association, confirming the vote to appeal was done in accordance with the organization's bylaws.

Neighborhood associations, who wish to qualify for a fee waiver, must complete the Type III Appeal Fee Waiver Request for Organizations Form and submit it prior to the appeal deadline. The Type III Appeal Fee Waiver Request for Organizations Form contains instructions on how to apply for a fee waiver, including the required vote to appeal.

BDS may also grant fee waivers to low income applicants appealing a land use decision on their primary residence that they own in whole or in part. 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. Individuals requesting fee waivers must submit documentation certifying their annual gross income and household size (copies of tax returns or documentation of public assistance is acceptable). Fee waivers for low-income individuals must be approved prior to filing your appeal; please allow three working days for fee waiver approval.

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.

- 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.

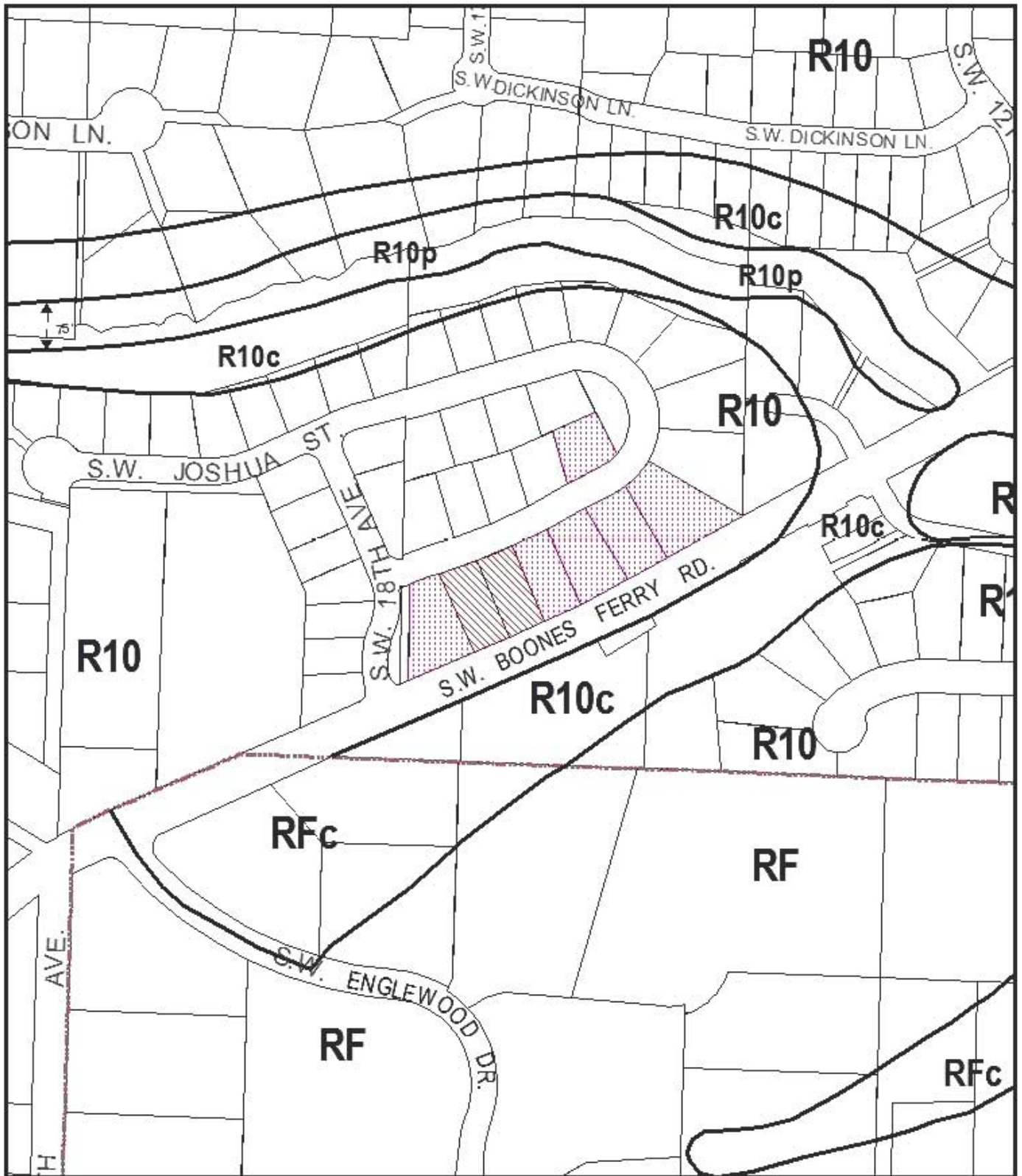
Planner's Name: Ruth M. Shriber, ASLA

Date: May 28, 2008

EXHIBITS
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement:
 - 1. Applicant's Narrative
 - 2. 120-day extension
- B. Zoning Map (attached):
 - 1. Zoning Map
- C. Plans & Drawings:
 - 1. Mitigation Plan (attached)
 - 2. Old Mitigation Plan created by LU 03 177491 LDS AD
 - 3. Old Mitigation Plan created by LU 07 104668 AD TR (see G.5, below)
- D. Notification information:
 - 1. Request for Response
 - 2. Posting letter sent to applicant
 - 3. Notice to be posted
 - 4. Applicant's statement certifying posting
 - 5. Mailing list
 - 6. 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 Bureau of Development Services
 - 6. Bureau of Parks, Forestry Division
 - 7. Life Safety
- F. Letters (none)
- G. Other:
 - 1. Original LUR Application
 - 2. Site History Research
 - 3. Notice of Zoning Violation dated March 25, 2008
 - 4. Pre-application Notice and Summary of October 19, 2007
 - 5. LU 07 104668 AD TR Decision of October 2, 2007

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).




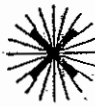

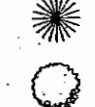

ZONING

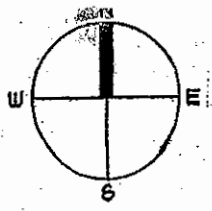
	Site
	Also Owned



File No.	<u>LU 08-116326 TV</u>
1/4 Section	<u>4227</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1S1E33CA 4415</u>
Exhibit	<u>B (Mar 19, 2008)</u>

MISSING TREE **KEY**

-  EXISTING EVERGREEN TREE
-  EXISTING EVERGREEN TREE TO BE REMOVED PER CITY CASE FILE NUMBER LU 07-104668 AD TR
-  EXISTING DECIDUOUS TREE
-  1 1/2" EVERGREEN REPLACEMENT TREE
-  1 1/2" DECIDUOUS REPLACEMENT TREE



THE NUMBER OF TREES THAT MUST BE REPLACED PER CHAPTER 33.853, TABLE 053-2

TOTAL DIAMETER OF TREES REMOVED IN VIOLATION (MISSING TREES) 40'

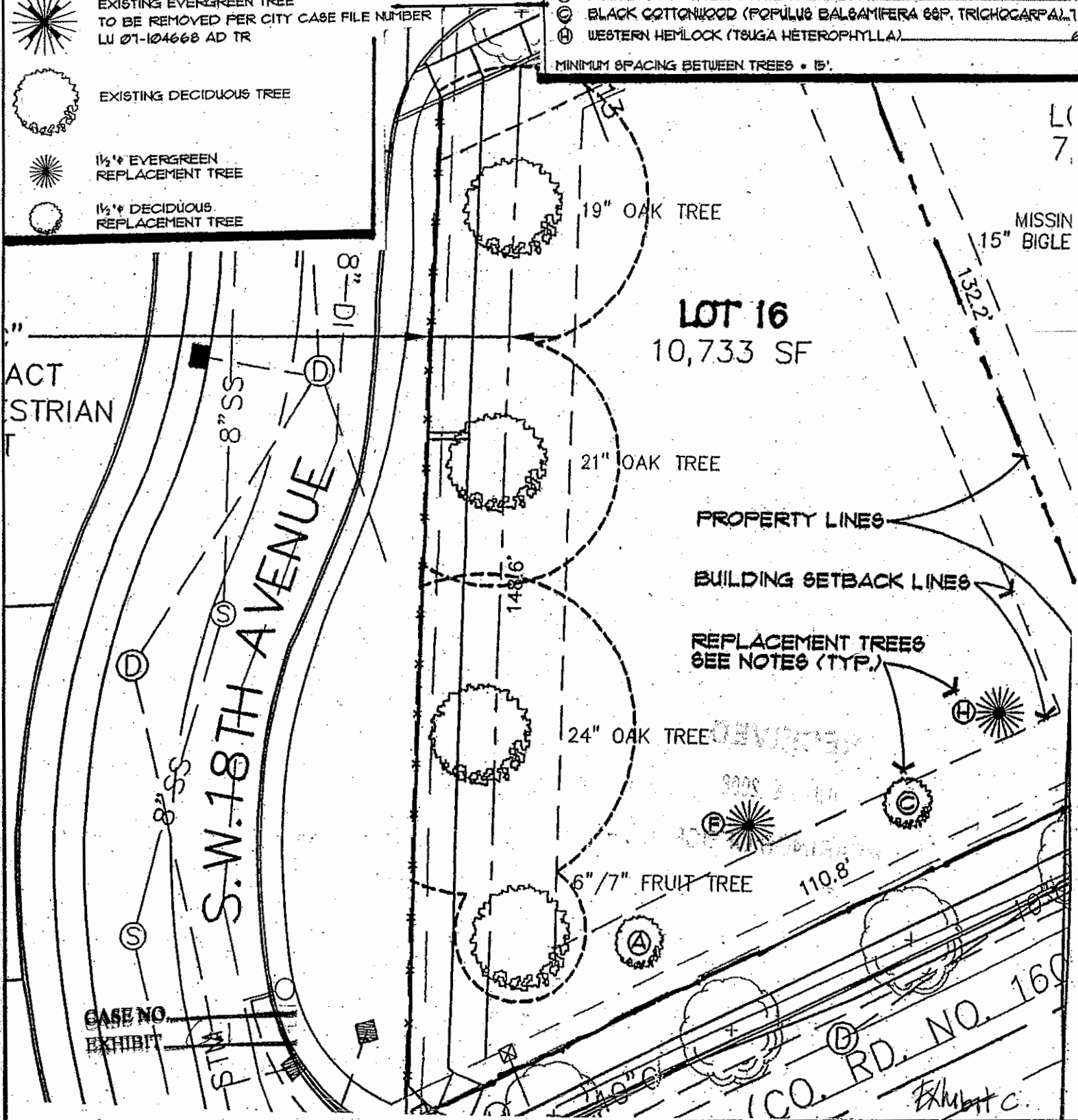
40' OF TREES / 1 1/2" CALIF. TREES = (21) 1 1/2" REPLACEMENT TREES

TOTAL TREE PRESERVATION INCHES AT SPENCER MEADOWS TO BE 35%

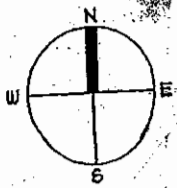
TREES TO BE PLANTED:

- (A) RED ALDER (ALNUS RUBRA) 1
- (F) DOUGLAS FIR (PSEUDOTSUGA MENZIESII) 1
- (C) BLACK COTTONWOOD (POPULUS BALSAMIFERA 66P. TRICHOCARPA) 1
- (H) WESTERN HEMLOCK (TSUGA HETEROPHYLLA) 6

MINIMUM SPACING BETWEEN TREES = 15'



MISSING TREE



EXISTING EVERGREEN TREE

EXISTING EVERGREEN TREE TO BE REMOVED PER CITY CASE FILE NUMBER LU 07-104668 AD TR

EXISTING DECIDUOUS TREE

1 1/2" EVERGREEN REPLACEMENT TREE

1 1/2" DECIDUOUS REPLACEMENT TREE

KEY

TREE PRESERVATION CHAPTER 33.630 THE NUMBER OF TREES THAT MUST BE REPLACED PER CHAPTER 33.653, TABLE 853-2

TOTAL DIAMETER OF TREES REMOVED IN VIOLATION (MISSING TREES) 40'

40' OF TREES / 1 1/2" CALIPER TREES = (27) 1 1/2" REPLACEMENT TREES

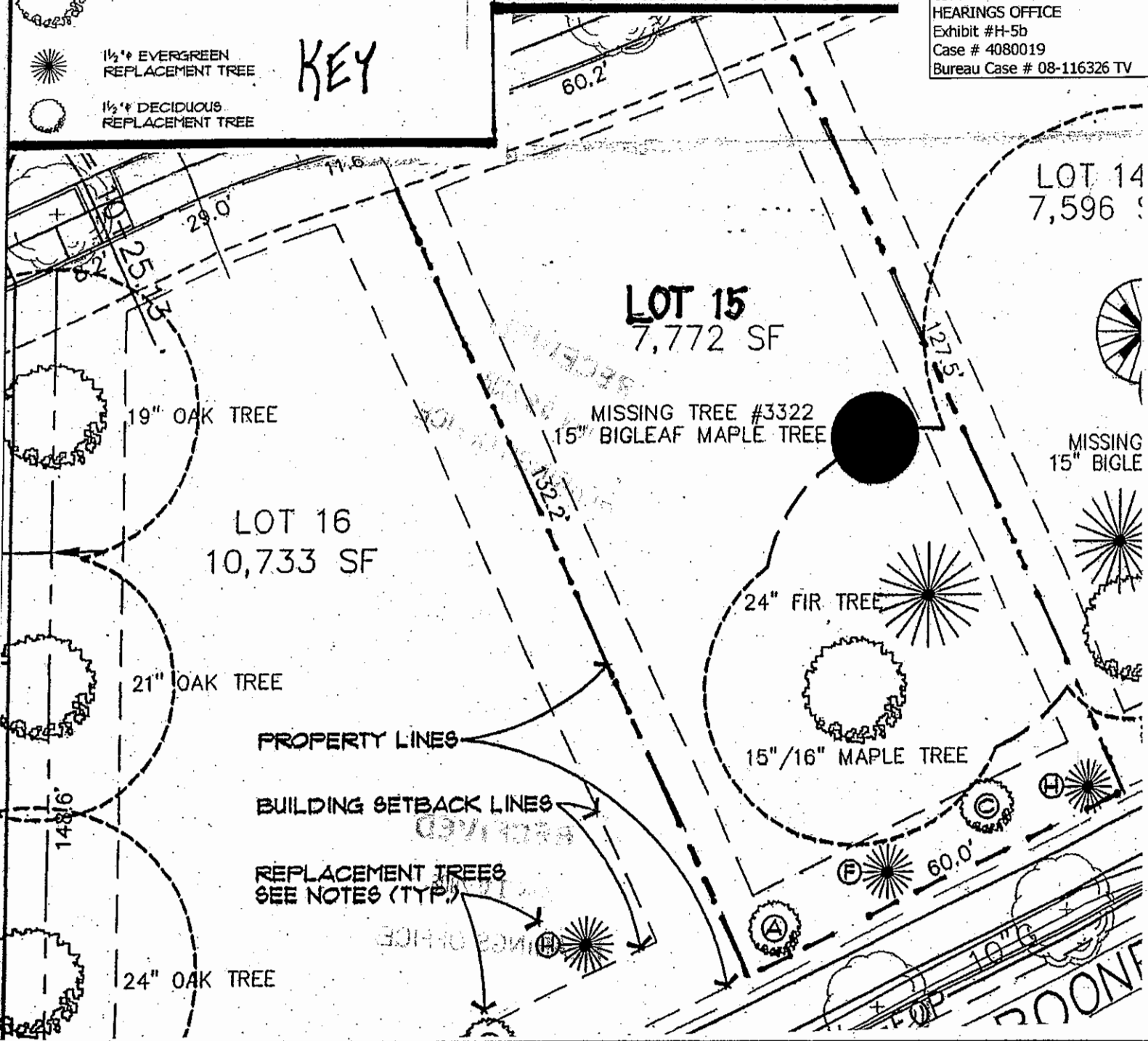
TOTAL TREE PRESERVATION INCHES AT SPENCER MEADOWS TO BE 35%

TREES TO BE PLANTED:

- (A) RED ALDER (ALNUS RUBRA) 7
- (B) DOUGLAS FIR (PSEUDOTSUGA MENZIESII) 7
- (C) BLACK COTTONWOOD (POPULUS BALSAMIFERA S&P. TRICHOCARPA) 7
- (H) WESTERN HEMLOCK (TSUGA HETEROPHYLLA) 6

MINIMUM SPACING BETWEEN TREES = 15'

CITY OF PORTLAND HEARINGS OFFICE Exhibit #H-5b Case # 4080019 Bureau Case # 08-116326 TV



MISSING TREE

KEY



EXISTING EVERGREEN TREE



EXISTING EVERGREEN TREE TO BE REMOVED PER CITY CASE FILE NUMBER LU 07-104668 AD TR



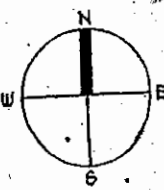
EXISTING DECIDUOUS TREE



1 1/2" EVERGREEN REPLACEMENT TREE



1 1/2" DECIDUOUS REPLACEMENT TREE



'TREE PRESERVATION CHAPTER' 33.630
THE NUMBER OF TREES THAT MUST BE REPLACED PER CHAPTER 33.653,
TABLE 853-2

TOTAL DIAMETER OF TREES REMOVED IN VIOLATION (MISSING TREES) 40'

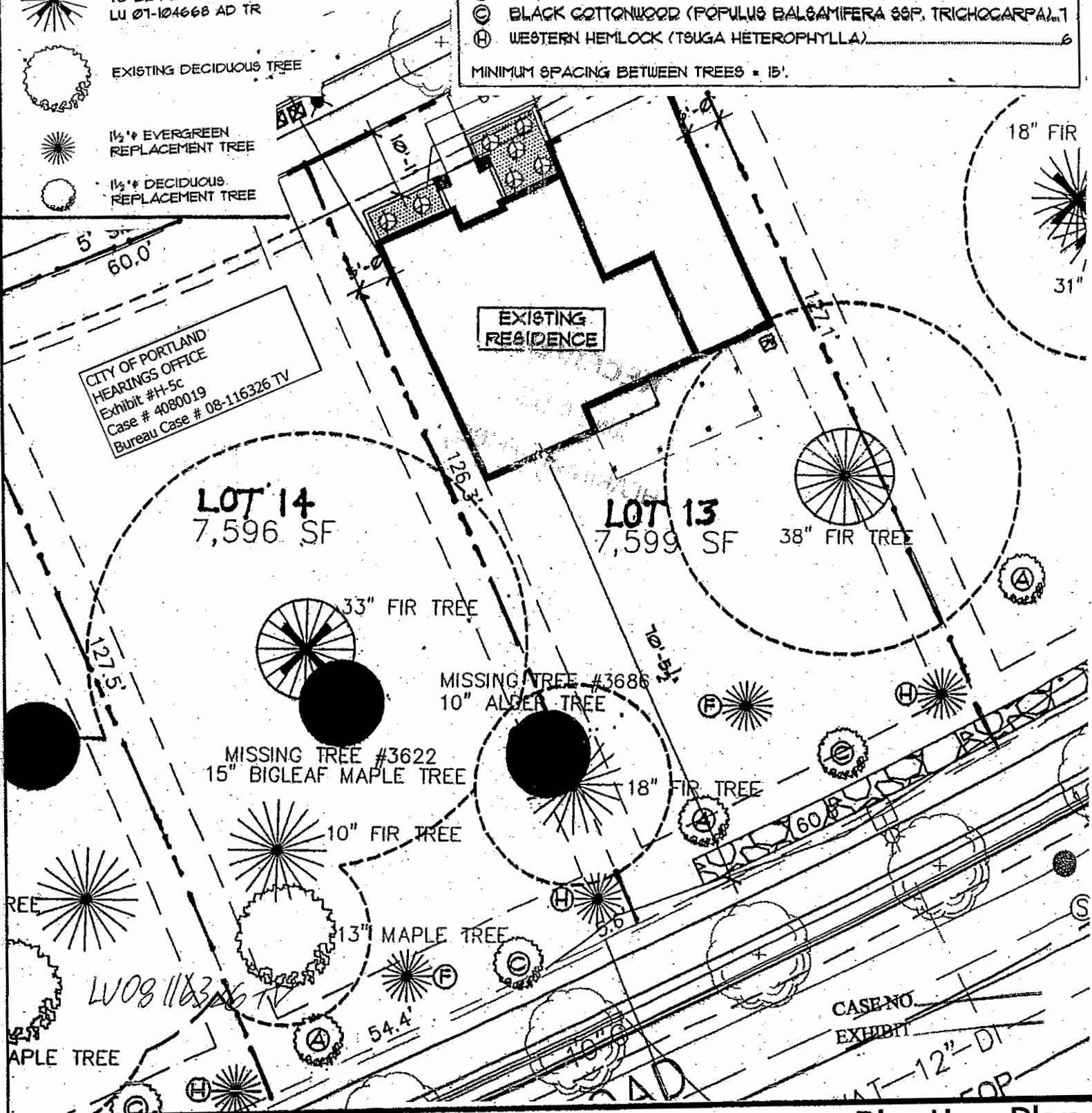
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TOTAL TREE PRESERVATION INCHES AT SPENCER MEADOWS TO BE 35%

TREES TO BE PLANTED:

- (A) RED ALDER (ALNUS RUBRA) _____ 7
- (B) DOUGLAS FIR (PSEUDOTSUGA MENZIESII) _____ 7
- (C) BLACK COTTONWOOD (POPULUS BALSAMIFERA SPP. TRICHOCARPA) 1
- (H) WESTERN HEMLOCK (TSUGA HETEROPHYLLA) _____ 6

MINIMUM SPACING BETWEEN TREES = 15'



CITY OF PORTLAND
HEARINGS OFFICE
Exhibit #H-5c
Case # 4080019
Bureau Case # 08-116326 TV

LOT 14
7,596 SF

LOT 13
7,599 SF

EXISTING
RESIDENCE

MISSING TREE #3686
10" ALDER TREE

MISSING TREE #3622
15" BIGLEAF MAPLE TREE

CASE NO. _____
EXHIBIT _____

SPENCER MEADOWS

Mitigation Tree Planting Plan

SW JOSHUA STREET, PORTLAND OR

SCALE = 1:20

LU 08 116326 TV

SPENCER MEADOWS

SW JOSHUA STREET, PORTLAND OR

LOT







Mitigation Tree Planting Plan

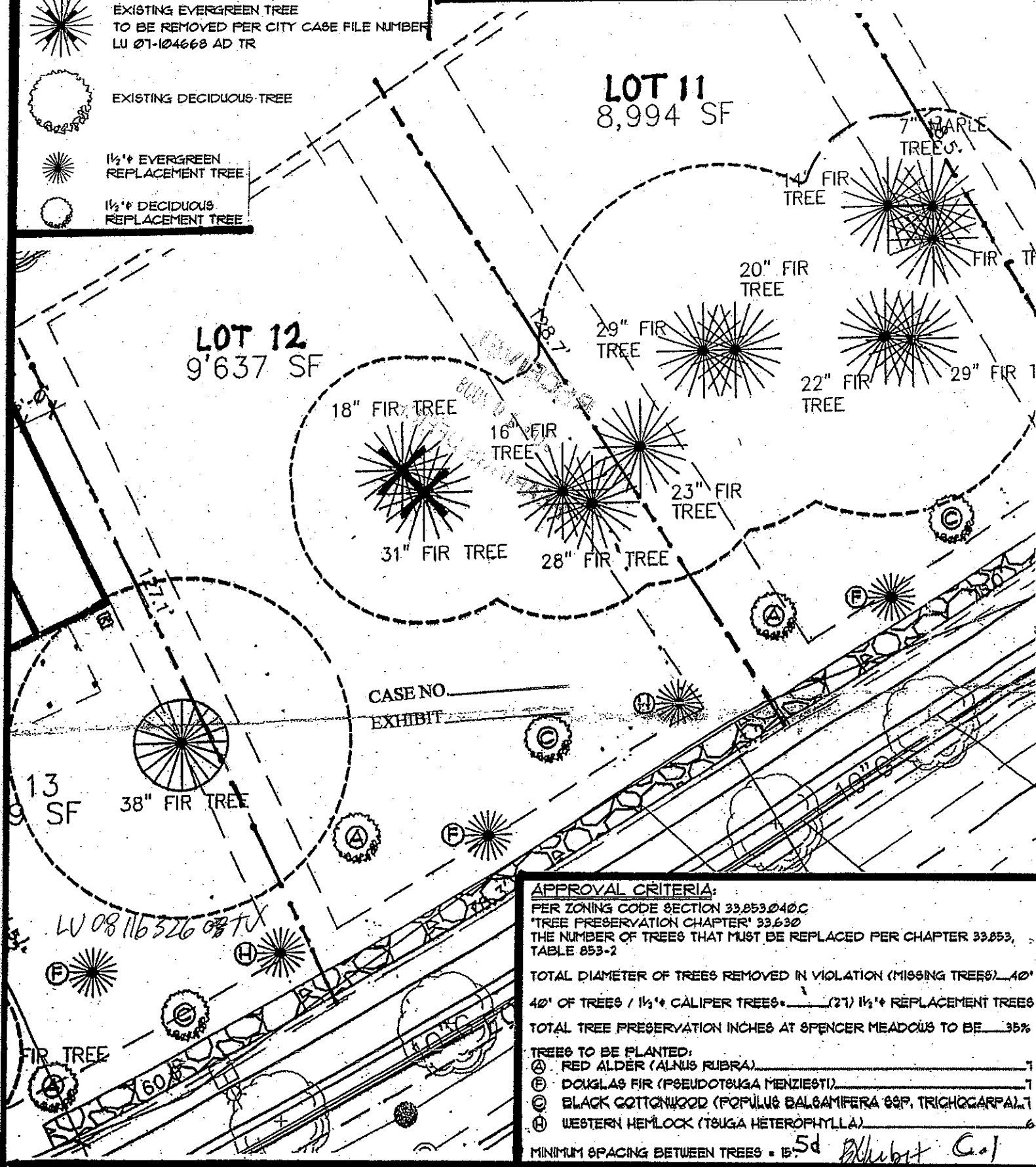
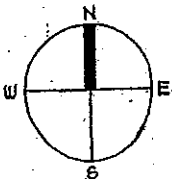
SCALE = 1:20

LU 08 116326 TV

4 of 5

KEY

-  MISSING TREE
-  EXISTING EVERGREEN TREE
-  EXISTING EVERGREEN TREE TO BE REMOVED PER CITY CASE FILE NUMBER LU 07-104668 AD TR
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-  1 1/2" DECIDUOUS REPLACEMENT TREE



APPROVAL CRITERIA:

PER ZONING CODE SECTION 33.853.040.C
 'TREE PRESERVATION CHAPTER' 33.630
 THE NUMBER OF TREES THAT MUST BE REPLACED PER CHAPTER 33.853,
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TREES TO BE PLANTED:

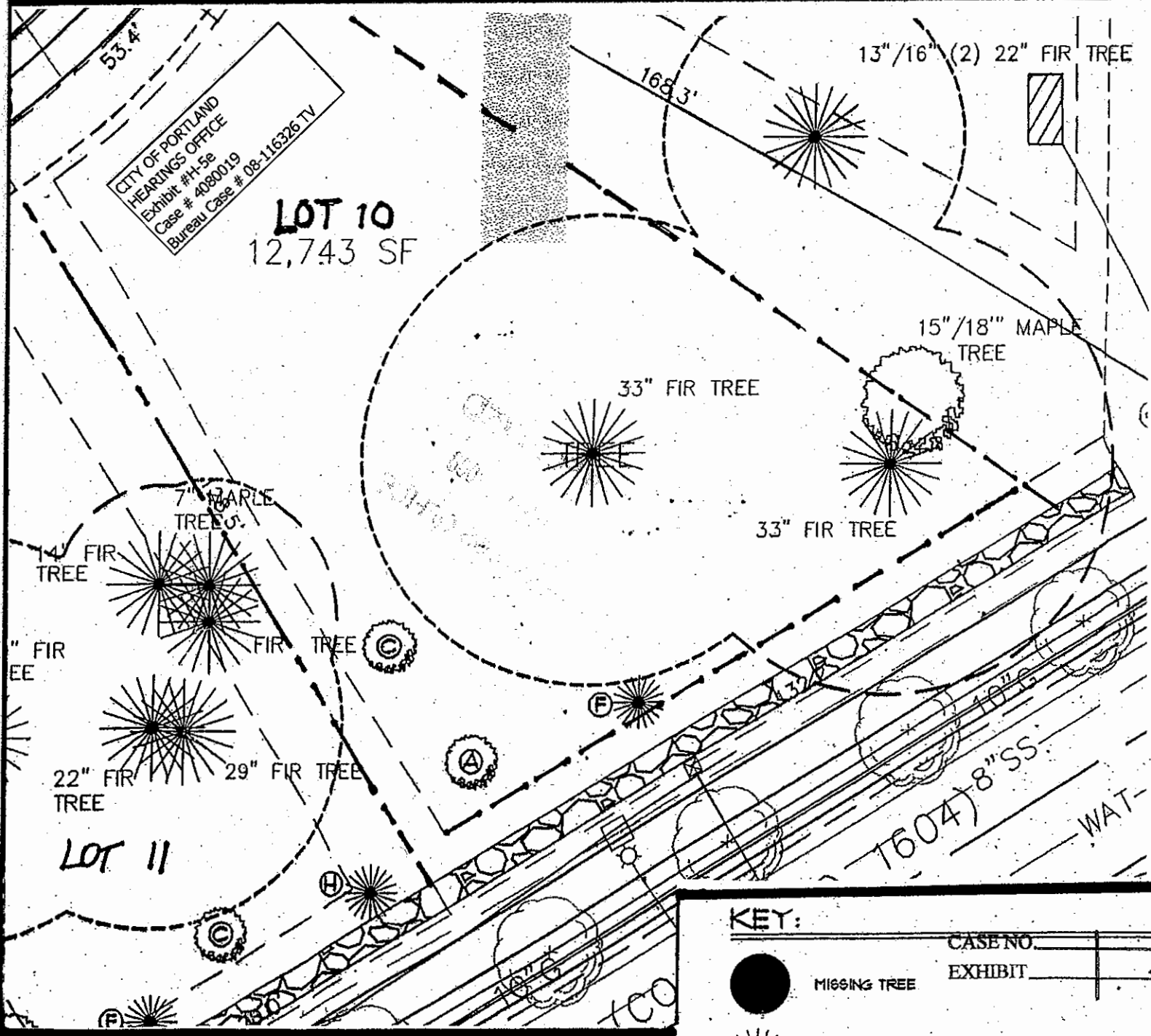
- (A) RED ALDER (ALNUS RUBRA) _____ 7
- (B) DOUGLAS FIR (PSEUDOTSUGA MENZIESII) _____ 7
- (C) BLACK COTTONWOOD (POPULUS BALSAMIFERA SSP. TRICHOCARPAL) _____ 7
- (H) WESTERN HEMLOCK (TSUGA HETEROPHYLLA) _____ 6

MINIMUM SPACING BETWEEN TREES = 15' *5d Exhibit C-1*

CITY OF PORTLAND
HEARINGS OFFICE
Exhibit #14-5e
Case # 4080019
Bureau Case # 08-116326 TV

LOT 10
12,743 SF

LOT 11



APPROVAL CRITERIA:
PER ZONING CODE SECTION 33.853.040.C
'TREE PRESERVATION CHAPTER' 33.630.
THE NUMBER OF TREES THAT MUST BE REPLACED PER CHAPTER 33.853,
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(C) BLACK COTTONWOOD (POPULUS BALSAMIFERA SPP. TRICHOCARPA)	7
(H) WESTERN HEMLOCK (TSUGA HETEROPHYLLA)	6

MINIMUM SPACING BETWEEN TREES = 15'

LU 08 116326 TV

KEY:

	MISSING TREE
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CASE NO. _____
EXHIBIT _____

5e Exhibit C.1