



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

FROM CONCEPT TO CONSTRUCTION

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Date: December 15, 2011
To: Interested Person
From: Marisol Caron, Land Use Services
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NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has **approved** a proposal in your neighborhood. The 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 11-190388 TV

GENERAL INFORMATION

Applicant: Darwin Green,
Grayhawk Development Llc
14523 Westlake Drive
Lake Oswego, OR 97035

Rod Isham,
Grayhawk Development Llc
14523 West Lake Drive
Lake Oswego, OR 97035

Zb Properties Llc
12000 SW Garden Place
Portland, OR 97223

Site Address: 14115 SE INSLEY ST

Legal Description: LOT 17, SCOTT'S BLUFF, SCOTT'S VIEW, LOT 4,
Tax Account No.: R750580540, R750620200
State ID No.: 1S2E14AD 03618, 1S2E13BC 1605
Quarter Section: 3544

Neighborhood: Powellhurst-Gilbert, contact Mark White at 503-761-0222.
Business District: Midway, contact Bill Dayton at 503-252-2017.
District Coalition: East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550.

Plan District: Johnson Creek Basin

Zoning: R5 – Residential 5,000

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

Proposal:

The applicant has applied for a tree violation review, as a 13-inch Japanese maple that was required to be preserved through LU 05-178424 LDS AD was removed from the site without an appropriate review. This tree was required to be preserved through tree preservation standards (33.630) implemented as part of the land division review that created this lot. The applicant has proposed to mitigate for the removal of this tree via planting on the site.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are found in Section **33.853.040.C, Approval Criteria for Corrections to Violations.**

ANALYSIS

Site and Vicinity: The property on which this tree violation review request is located is a 3,690 square foot property in the Scott's Bluff subdivision. The site has been vacant since the subdivision was approved in 2008, but a permit for a single dwelling residence has been issued and construction is underway. Vacant residential lots that surround the subject property were created as part of this same land division.

This site is located on the north side of SE Insley Street, a Local Service Street. The larger surrounding neighborhood consists of both large residential lots that were originally platted in Multnomah County and smaller single dwelling lots resulting from more recent land divisions meeting the City of Portland R5 zoning development standards. Significant open space and recreational opportunities are available to this neighborhood due to its proximity to Powell Butte Park to the east and the Springwater corridor to the south.

Zoning: The R5 designation 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 designations for single-dwelling housing.

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: City records indicate that prior land use reviews include the following:

- **LU 04-046207 LDS:** Proposal for a 23-lot subdivision. The case was withdrawn by the applicant and is void.
- **LU 05-178424 LDS AD:** Approval of a preliminary plan for a 27-lot subdivision. The 13-inch Japanese Maple, subject of this review, was required to be preserved as a part of this land division review.

Agency Review: Several City Bureaus have responded to this proposal and relevant comments are addressed under the applicable approval criteria. Please see Exhibits "E" for details.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on November 17, 2011. No written responses have been received from the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA**APPROVAL CRITERIA FOR TREE REVIEW****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;**
- b. **The mitigation plan includes replacement of trees cut, or the preservation and protection of additional trees on the site not originally proposed for preservation. If replacement of trees is proposed, the plan must at a minimum meet the requirements of Table 853-1. If additional trees on the site are proposed for preservation and protection, the total diameter of additional trees preserved must exceed the total diameter of trees cut.**

Table 853-1 Tree Replacement for Violation	
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

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.**

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

Findings: This review is for violation of a tree preservation plan in accordance with Chapter 33.630, Tree Preservation. The purpose of the regulation that required the preservation plan is as follows:

33.630.010 Purpose

The 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.*

Tree Preservation standards of 33.630 require a certain percentage of existing viable tree diameter to be preserved on new lots within a land division site. A 27-lot land division (LU 05-178424 LDS AD) was preliminarily approved with a tree preservation plan (Exhibit C.2) that met the standards of Option 1 (33.630.100.A.1). This plan required tree #17, a 13-inch Japanese maple tree, to be preserved in the northwest corner of Lot 17 (The lots shown on the tree preservation plan were renumbered at the time of final plat. Lot 17 was previously indicated as Lot 7 on the tree preservation plan.)

Tree #17 was required to be preserved and tree protection measures for the tree were indicated on the Site Development permit (07-100981 SD) that was issued for grading of the site and associated site improvements for the new subdivision. However, aerial photos from 2007 indicate that the tree was removed during the site work associated with this permit. During review of a residential building permit for development on Lot 17 (11-160415 RS), it was discovered that Tree #17 had been removed. Therefore, the applicant is in violation of the tree preservation plan approved through the aforementioned land division review.

The total non-exempt tree diameter on the site prior to the land division was 538 inches. Option 1 of the tree preservation standards requires at least 35 percent of the total tree diameter on the site to be preserved. Preservation of 8 trees, including the 13-inch Japanese maple tree, met the minimum requirements and equated to 36 percent of the total tree diameter on site. In order for the proposed method of mitigation to meet the purpose of the regulation that required the preservation plan, the applicant will be required to mitigate for the equivalent of 13 diameter inches of trees. According to Table 853-1, five replacement trees are required to mitigate for this size tree.

The applicant has proposed to mitigate for the removal of this tree via planting on the site. Due to the small size of the subject property and the layout of the proposed house which was recently permitted, there is limited space to plant additional trees on the violation site in addition to the T1 tree planting requirement (33.248.020.H) applicable to new residential development. The T1 standard for this site requires the planting of 4 trees on this 3,690 square foot site. The rear yard contains about 1,600 square feet of yard area. The amount of space required for tree planting varies with soil conditions, site stress levels and species of tree. Spacing should account for the mature size of proposed trees. The applicant has proposed red leaf maples in the rear yard for the T1 plantings, which have a mature canopy size of 60-feet in diameter. Planting an additional 5 trees within this area to address the tree violation would result in overcrowding of the trees and an unusable yard area. There is yard area at the front of the lot and the applicant could select smaller-sized trees. Therefore, it is feasible to plant one additional tree on this site without negative impacts.

There are multiple lots within the Scott's Bluff subdivision and the adjacent Scott's View subdivision that are in the same ownership as the subject site, leaving several opportunities for planting on property owned by the applicant within the City of Portland. Many of the lots are vacant and will be developed in the future. Lot 4 of the Scott's View subdivision is a 5,721 square foot lot owned by the applicant. The lot is developed with an existing house and the site currently contains no trees. As the lot contains existing residential development, the site will not be subject to the T1 tree planting standards. Therefore, this site would benefit from the planting of the remaining 4 replacement trees and would not be at risk of over-planting. As

such, four replacement trees will be required on Lot 4 of Scott's View subdivision. All replacement trees must meet the requirements of Section 33.248.030.

Tree #17 was a mature tree that was beneficial because it intercepted at least 30% of precipitation that fell on the canopy, filtered stormwater, helped prevent erosion, and provided shade which cools the air and stormwater runoff. It is difficult to mitigate for the removal of a mature tree because it can take decades for new trees to provide equivalent benefits. Planting native trees from the *Portland Plant List* will help to offset the loss of functions the mature tree provided and will add to the native tree canopy in the vicinity.

The required mitigation is consistent with the purpose of Chapter 33.630, Tree Preservation, as planting on the site and adjacent to the subdivision on a property also owned by the applicant will allow this lot and the greater subdivision to reap the benefits of trees that are described in the purpose statement of the Tree Preservation Chapter.

With conditions of approval requiring planting of five trees, selected from the *Portland Plant List* and meeting the requirements of Section 33.248.030, in the locations described above and shown on Exhibit C.3, 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

As part of a 27-lot land division (LU 05-178424 LDS AD) that created the subject property, a 13-inch Japanese maple tree (tree #17) was required to be preserved. This tree was removed without an appropriate review. To address the Violation resulting from the inappropriate removal of this tree, the applicant will be required to plant five new trees, according to Table 853-1, Tree Replacement for Violations. To compensate for removal of a mature tree, the replacement trees shall be native trees selected from the *Portland Plant List*. Due to the small size of the subject site, one replacement tree shall be planted on the site. The remaining four new trees will be planted nearby on a lot that is also owned by the applicant and that can better accommodate the tree plantings. As addressed in the findings above, the required method of mitigation will meet the purpose of Chapter 33.630, Tree Preservation, and should be approved.

ADMINISTRATIVE DECISION

Approval of a Tree Violation Review to correct a violation resulting from the removal of a 13-inch Japanese maple tree that was required to be preserved as a part of LU 05-178424 LDS AD.

- A. The applicant shall receive final inspection approval of a Zoning Permit to plant **four** trees on the property identified as 5459 SE 142nd Place (Lot 4, Scott's View). The trees must meet the requirements of Section 33.248.030 and shall be native trees selected from the *Portland Plant List*. **This condition shall be satisfied within 45 days of the date that this land use decision is rendered.**
- B. The applicant shall obtain a revision to the residential building permit 11-160415 RS to include **one** replacement tree on the property identified as 14115 SE Insley Street (Lot 17, Scott's Bluff). The tree must meet the requirements of Section 33.248.030 and shall be a native tree selected from the *Portland Plant List*. **The revision to the permit shall occur within 45 days of the date that this land use decision is rendered.**

Inspection of the replacement tree shall occur prior to final permit approval for the new single family dwelling.

Staff Planner: Marisol Caron

Decision rendered by: Michael Nayak **on December 13, 2011.**
By authority of the Director of the Bureau of Development Services

Decision mailed: December 15, 2011

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 November 1, 2011, and was determined to be complete on **November 15, 2011.**

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 November 1, 2011.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period. Unless extended by the applicant, **the 120 days will expire on: March 14, 2012.**

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 December 29, 2011** at 1900 SW Fourth Ave. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, 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. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries.

The vote to appeal must be in accordance with the organization's bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.portlandonline.com.

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 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 **December 30, 2011 – (the day following the last day to appeal)**. A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- **By Mail:** Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- **In Person:** Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034
For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

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

Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

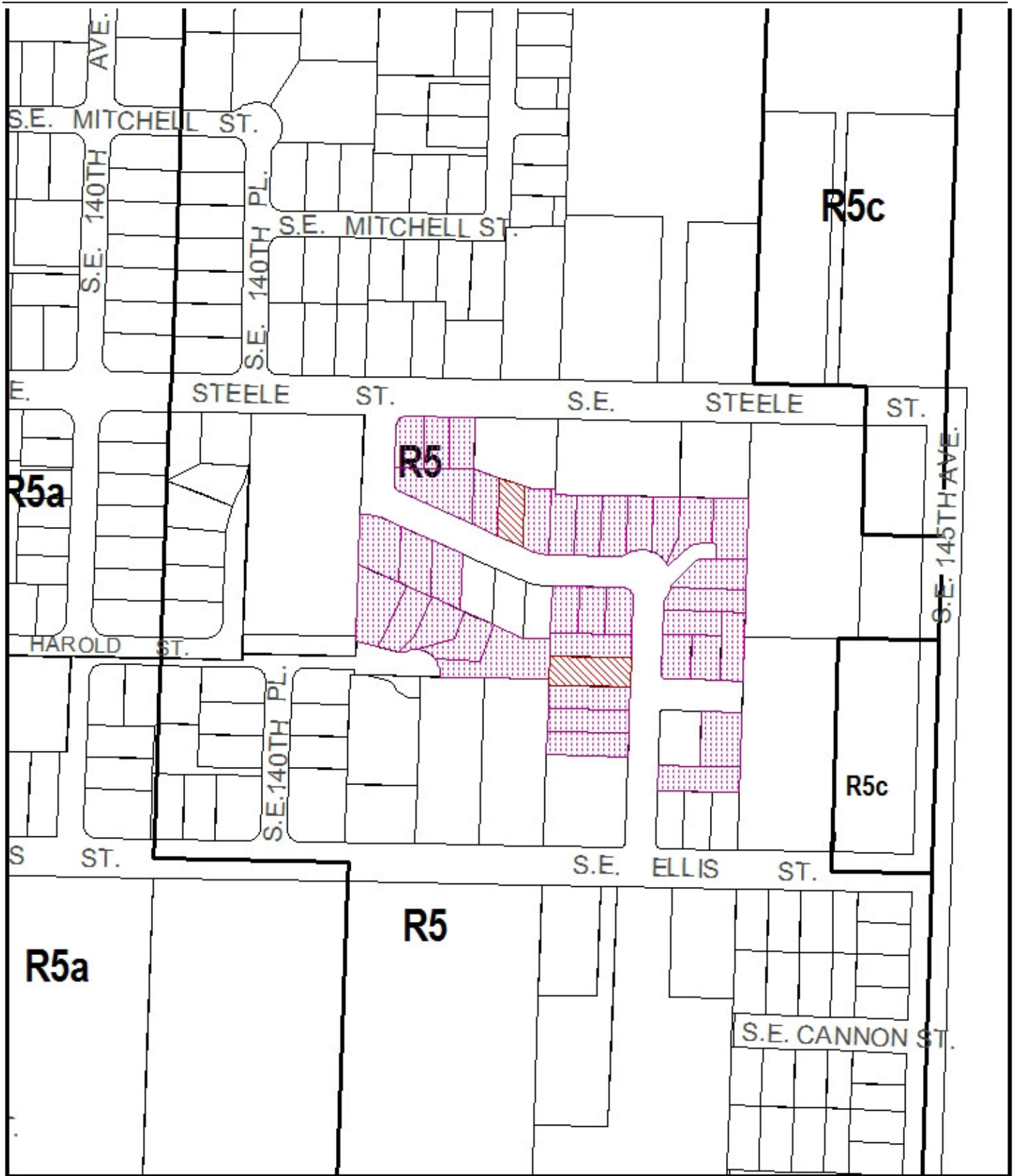
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan/Original Proposed Mitigation Plan
 - 2. Tree Preservation Plan from LU 05-178424 LDS AD
 - 3. Revised Mitigation Plan (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Water Bureau
 - 3. Fire Bureau; Bureau of Transportation Engineering and Development Review; Site Development Review and Life Safety Sections of BDS; Bureau of Parks, Forestry Division
- F. Correspondence: NONE
- 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. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).



ZONING

-  Site
-  Also Owned

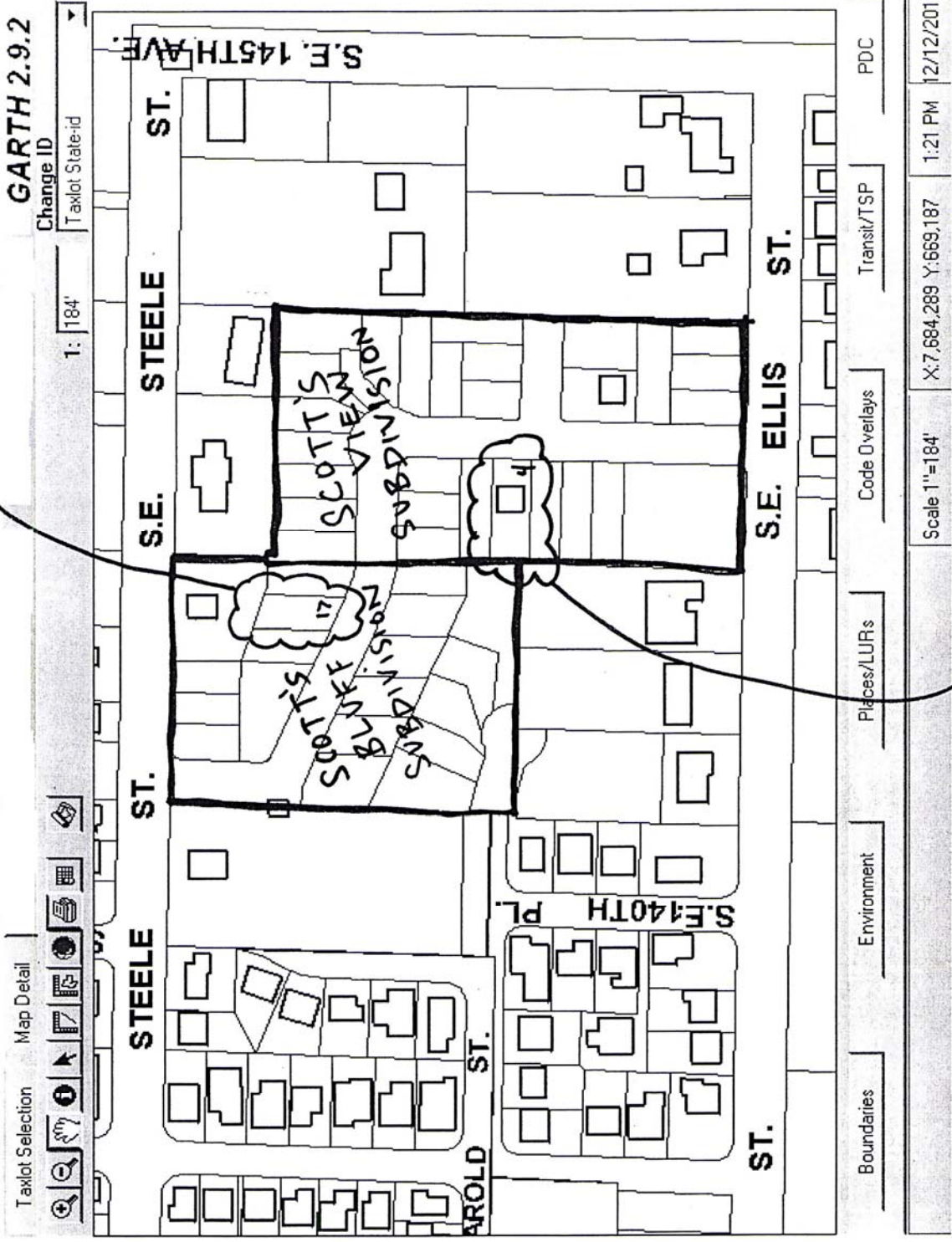


NORTH

This site lies within the:
JOHNSON CREEK BASIN PLAN DISTRICT

File No.	<u>LU 11-190388 TV</u>
1/4 Section	<u>3545,3645</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1S2E13BC 1605</u>
Exhibit	<u>B</u> (Dec 13,2011)

Lot 17, Scott's Bluff - site of tree removal
 (1) Replacement tree required



Lot 4, Scott's View - Mitigation site.
 (4) Replacement trees required

Tree Mitigation Plan

LU 11-190388 TV
 Exhibit C.3