



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

FROM CONCEPT TO CONSTRUCTION

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[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**Date:** September 13, 2013  
**To:** Interested Person  
**From:** Rachel Whiteside, Land Use Services  
503-823-7605 / [Rachel.White@portlandoregon.gov](mailto:Rachel.White@portlandoregon.gov)

## **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 the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

### **CASE FILE NUMBER: LU 13-172121 TR**

#### **GENERAL INFORMATION**

**Applicant/Owner:** Colleen and Charles Aaker  
7125 SE 116th Ave / Portland, OR 97266

**Site Address:** 7125 SE 116TH AVE

**Legal Description:** BLOCK 3 LOT 38 UND 1/125 INT IN TR B-E, NORTHERN LIGHTS  
**Tax Account No.:** R615302940  
**State ID No.:** 1S2E22AC 02100  
**Quarter Section:** 3742  
**Neighborhood:** Pleasant Valley, contact Linda Bauer at 503-761-2941.  
**District Coalition:** East Portland Neighborhood Office, Richard Bixby at 503-823-4550.  
**Plan District:** Johnson Creek Basin – South Subdistrict  
**Zoning:** R10p – Single-Dwelling Residential with an Environmental Protection Overlay Zone

**Case Type:** TR, Tree Review for violation of tree preservation requirements of Title 33

**Procedure:** Type II, an administrative decision with appeal to the Hearings Officer.

#### **Proposal:**

The applicant requests a Tree Review to correct a violation of the tree preservation requirements within the South Subdistrict of the Johnson Creek Basin Plan District (33.537.125.C). One less than 19-inch tree was removed due to possible hazard to the existing house. Because a letter from an arborist documenting the hazard was not obtained prior to removal of the tree, a violation occurred.

The applicant proposes to meet the tree replacement requirement in Table 853-2 by planting 5 new trees on the back of the site as shown on the attached mitigation plan. Proposed trees have been selected from the *Portland Plant List*.

#### **Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are **Section 33.853.040.C, corrections to violations.**

## ANALYSIS

**Site and Vicinity:** The site is located at the end of a cul-de-sac abutting the open space tract for the Northern Lights planned unit development. The lot slopes from the street west towards an open drainageway located within the open space tract. The site is developed with a single-family dwelling and manicured landscaping surrounding the house. The rear 25-32 feet of the lot is within the Environmental Protection overlay zone. This area contains numerous native trees.

The vicinity is all single-dwelling residential development clustered along several dead-end streets on east and south-facing slopes. Frog Creek flows south to north and into a culvert under SE Brookside Drive. Environmental zoning covers Frog Creek, associated riparian habitat areas, and forested upland areas.

**Zoning:** The R10 designation is one of the City's single-dwelling zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing. The "p" overlay provides the highest level of protection to the most important resources and functional values. Development will be approved in the environmental protection zone only in rare and unusual circumstances through environmental review. 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. The site is in the South Subdistrict of this plan district.

**Land Use History:** City records indicate prior land use reviews that changed the zoning in the area when the area was annexed from the County into the City (PC 6852) and a Conditional Use for a Planned Unit Development (CU 116-76) that created the Northern Lights development. None of these reviews have conditions of approval that relate to this review.

**Agency Review:** A "Notice of Proposal in Your Neighborhood" was mailed August 16, 2013. The following Bureaus have responded with no issues or concerns:

- Bureau of Transportation Engineering
- Water Bureau
- Fire Bureau
- Bureau of Parks-Forestry Division
- Life Safety Review Section of the Bureau of Development Services

The Bureau of Environmental Services responded with no objections, but included comments regarding the benefits of large trees, possible stormwater credits for trees over 15 feet in height, and slope stability. Exhibit E.1 contains the complete comments.

The Site Development Section of BDS responded with no objections, but included comments regarding erosion control. Exhibit E.5 contains the complete comments.

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on August 16, 2013. 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 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; and**
- b. **The mitigation plan includes replacement of trees cut, or the preservation and protection of additional trees on the site not originally proposed for preservation. If replacement of trees is proposed, the plan must at a minimum meet the requirements of Table 853-2. If additional trees on the site are proposed for preservation and protection, the total diameter of additional trees preserved must exceed the total diameter of trees cut.**

<b>Size of tree removed (inches in diameter)</b>	<b>Number of Trees to be Planted</b>
6 to 12	3 trees
13 to 18	5 trees
19 to 24	7 trees
25 to 30	10 trees
over 30	15 trees

**Findings:** The regulation violated was the tree preservation requirements within the South Subdistrict of the Johnson Creek Basin Plan District (33.537.125.C). The purposes of these regulations are:

**33.537.125.A. Purpose. The regulations of this section limit tree removal to protect the scenic and recreational quality of the Springwater Corridor, reduce stormwater runoff, flooding, erosion, and landslides and protect water quality and native vegetation.**

Mature trees are beneficial because they intercept at least 30% of precipitation that falls on the canopy, filter stormwater, help prevent erosion, and provide shade which cools the air and stormwater runoff. It is difficult to mitigate for the removal of mature trees as it can take decades for the new trees to provide the equivalent benefits. To address this, Section 33.248.090 requires that plant materials must be native and selected from the *Portland Plant List*. Ensuring the continued viability and diversity of indigenous plant and animal communities, promoting the use of plants naturally adapted to local conditions, and educating citizens about the region's natural heritage and the values and uses of native plants is part of the City's environmental protection efforts. Choosing trees from the *Portland Plant List* meets the purpose of the regulation because native plants are regionally suited to reduce stormwater runoff, flooding, erosion, and landslides. This in turn protects water quality, other native vegetation, and provides habitat and food for native wildlife.

The tree removed was done so without the benefit of an arborist report prior to removal. Based upon the size of wood remaining, it is estimated that the tree was less than 19 inches DBH. Therefore, per Table 853-2, five replacement trees are required. that will serve to increase the species diversity on the project site. The applicant proposes to plant two different species from the *Portland Plant List* and a total of five trees to replace the one tree that was removed. While the five trees currently do not equal the one tree (less than 19-inches DBH) removed, their canopy will quickly exceed that of the tree removed. For these reasons, this criterion is 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:** As noted above, the applicant has provided a Mitigation Plan (Exhibit C.1) that demonstrates all mitigation trees will be planted on the site where the violation occurred. Therefore, this criterion is met.

- 3. Replacement trees must meet the requirements of Section 33.248.030, Plant Materials, unless the mitigation plan calls for different planting specifications to address concerns about plant survival or impacts on the site.**

**Findings:** Section 33.248.030 requires the selection of plants that are suitable to the site conditions, designates minimum sizes for broadleaf and conifer trees, and disallows the use of nuisance or prohibited species. Specific planting size requirements related to the mitigation, remediation, or restoration of landscaped areas in overlay zones and plan districts supercede the minimums of this paragraph. These minimum requirements do not apply to trees approved through an Environmental Review, or Pleasant Valley Resource Review to be used for mitigation, remediation, or restoration. While the project site is within the Environmental Protection overlay zone, the tree removed was only within the Transition Area. Therefore, no environmental violation occurred that requires Environmental Review. The Johnson Creek Basin Plan District does not contain mitigation standards that supercede Section 33.248.030. Chapter 33.430, Environmental Zones, does contain mitigation standards that differ from the minimum size requirement in Chapter 33.248. Because the mitigation trees will be planted within the Environmental Protection overlay area, it is appropriate to use smaller trees that cause less disturbance area. Additionally, the Pacific Madrones selected by the applicant are not available in larger sizes because they have a lower success rate when transplanted. The largest plant stock available range in size from 35-42 inches in height.

The applicant has proposed planting 5 trees from the *Portland Plant List* – two quaking aspen and three madrones. Four of the five trees will be planted within the Transition Area of the Environmental Protection overlay. The fifth will be planted in an existing landscaped area near an existing tree. The quaking aspen are appropriate for a forested slope adjacent to a riparian area. Madrone prefer dryer, rocky soil, but can be appropriate for a more managed landscaped area if good drainage is provided and young trees are not over-hydrated. A two-year monitoring period is typical for restoration plantings. If, after two years, the madrone are failing to thrive, the applicant has agreed to replace them with an alternate species from the *Portland Plant List*.

Section 33.248.090 further regulates plantings intended to mitigate for the loss of natural resource values. This section more specifically requires that plants must be non-clonal in origin, seed source must be as local as possible, and plants must be nursery propagated. The Mitigation Plan must specify that plant materials are to be used for restoration purposes. Generally, this means that standard nursery practices for growing landscape plants, such as use of pesticides, fungicides or fertilizers, and the staking of trees must not be employed.

With conditions regarding the size, monitoring, and planting requirements, this criterion can be 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

The applicant proposes to plant five trees from the *Portland Plant List* to replace the tree removed without the benefit of an arborist's report documenting the health of the tree. The new plantings will increase species diversity in the area and eventually the crown cover will far exceed what was removed. This in turn will reduce stormwater runoff, flooding, erosion, and landslides and protect water quality. The findings above have shown that the proposal can meet the applicable approval criteria with conditions. Therefore, this proposal should be approved, subject to the conditions listed below.

## ADMINISTRATIVE DECISION

Approval of Tree Review for the removal of one tree less than 19-inches dbh and replacement with five native trees, per the approved site plan, Exhibits C.1, signed and dated September 10, 2013, subject to the following conditions:

- A. As part of the zoning permit application submittal, the following development-related conditions (B through E) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 13-172121 TR." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- C. The applicant shall obtain a zoning permit to plant a total of 5 trees, selected from the *Portland Plant List*, in substantial conformance with Exhibits C.1 Mitigation Plan.
  1. The Mitigation Plan must specify that plant materials are to be used for restoration purposes. Use of pesticides, fungicides or fertilizers, and the staking of trees must not be employed.
  2. Plantings shall be installed between October 1 and March 31 (the planting season).
  3. Prior to installing required mitigation plantings, non-native invasive plants shall be removed from all areas within 10 feet of mitigation plantings, using handheld equipment.
  4. Trees must be a minimum of 35 inches tall for Madrones and a minimum of 1-inch in diameter for all other species.
- D. **The land owner shall maintain the required plantings** for two years to ensure survival and replacement. The land owner is responsible for ongoing survival of required plantings during and beyond the designated two-year monitoring period. The landowner shall:
  1. Obtain a Zoning Permit for a final inspection at the end of the 2-year maintenance and monitoring period. The permit must be finalized no later than 2 years from the final inspection for the installation of mitigation planting, for the purpose of ensuring that the required plantings remain.
  2. If, after two years, the madrone are failing to thrive, the applicant shall replace them with an alternate species from the *Portland Plant List*. Any required plantings that have not survived must be replaced.
- E. Failure to comply with any of these conditions may result in the City's reconsideration of this land use approval pursuant to Portland Zoning Code Section 33.700.040 and /or enforcement of these conditions in any manner authorized by law.

**Staff Planner: Rachel Whiteside**

Decision rendered by:                     R Whiteside                     on **September 10, 2013**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: September 13, 2013**

**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 June 25, 2013, and was determined to be complete on August 14, 2013.

*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 June 25, 2013.

*ORS 227.178* states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on: December 12, 2013.**

**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 September 27, 2013** 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](http://www.portlandonline.com).

**Attending the hearing.** If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, or phone 1-503-373-1265 for further information.

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

**Recording the final decision.**

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

- *Unless appealed*, The final decision may be recorded on or after **September 30, 2013**.
- A building or zoning permit will be issued only after the final decision is recorded.

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

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

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

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

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

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

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

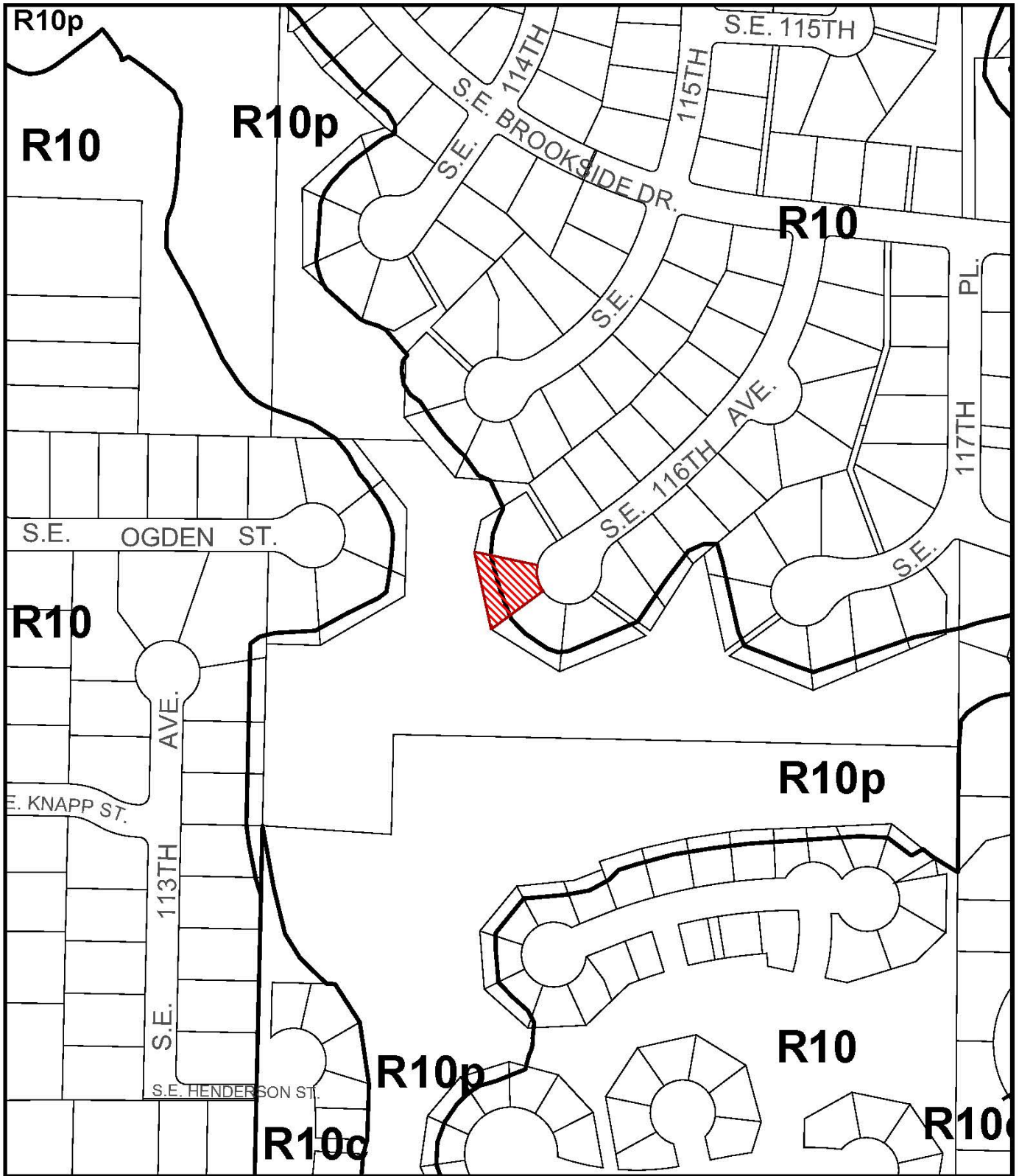
**EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement:
  - 1. Original Narrative
  - 2. Tree size communication
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Mitigation Plan (attached)
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Bureau of Transportation Engineering and Development Review
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Site Development Review Section of BDS
  - 6. Bureau of Parks, Forestry Division
  - 7. Life Safety Section of BDS
- F. Correspondence: *none received*
- G. Other:
  - 1. Original LU Application
  - 2. Incomplete Letter, sent July 10, 2013

**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



This site lies within the:  
JOHNSON CREEK BASIN PLAN DISTRICT - SOUTH

File No. LU 13-172121 TV  
 1/4 Section 3742  
 Scale 1 inch = 200 feet  
 State\_Id 1S2E22AC 2100  
 Exhibit B (Jun 27, 2013)

122.26 FT

25 FT Transition Area

100 FT

100 FT

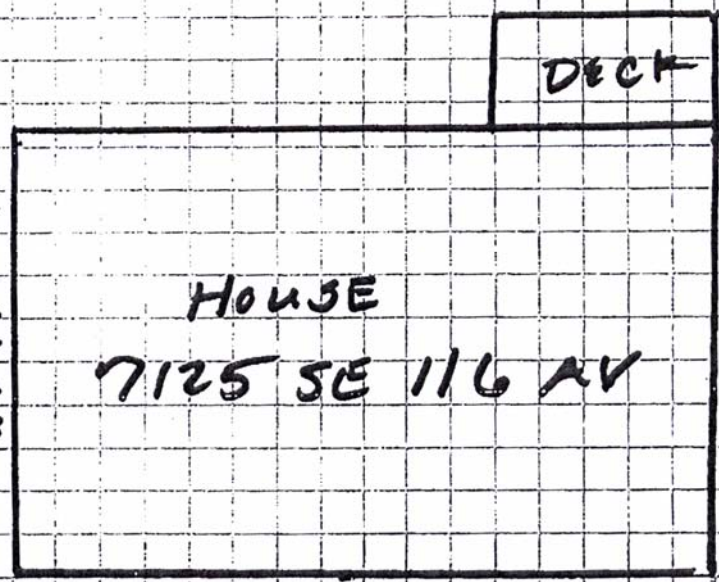
27 FT

40 FT

10 FT

41.98

**\*Approved\***  
 City of Portland  
 Bureau of Development Services  
 Planner R Whiteside  
 Date 9/10/13  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.



MADRONE

MADRONE

MADRONE

MADRONE

TREE

Quaking ASPEN

Quaking ASPEN

P-zone Boundary

EXISTING TREE

EXISTING TREE

MITIGATION TREE

Exhibit C.1

LU 13-172121 TR