



City of Portland, Oregon
Bureau of Development Services
Land Use Services
 FROM CONCEPT TO CONSTRUCTION

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Date: July 7, 2015
To: Interested Person
From: Leah Dawkins, 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 mailed copy of this document is only a summary of the decision. The reasons for the decision, including the written response to the approval criteria and to public comments received on this application, 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 15-143353 TV

GENERAL INFORMATION

Applicant: Ryan C Howe, All Around Arbor
 5456 SE Lincoln St / Portland, OR 97215-3938

Owner: Geoffrey Dougall
 14675 SW Millikan Way / Beaverton, OR 97006

Site Address: 11635 SE LEXINGTON ST

Legal Description: BLOCK 5 LOT 3, ECHO HTS
Tax Account No.: R234401100
State ID No.: 1S2E22DB 07600
Quarter Section: 3842
Neighborhood: Pleasant Valley, contact Karen Hubbard at 503-760-3670.
District Coalition: East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550.

Plan District: Johnson Creek Basin
Zoning: R10- Single Dwelling Residential
Case Type: TV- Tree Preservation Violation Review
Procedure: Type II, an administrative decision with appeal to the Hearings Officer.

Proposal:
 The applicant has requested a Tree Violation Review to mitigate for the removal of seven trees, ranging in size from 11 to 22 inches in diameter and consisting of pines, maples, fir, sweet gum and cherry trees. The trees were removed from within the Johnson Creek Basin South Sub District without appropriate review. This Tree Violation Review was triggered by a code compliance case (15-101277 CC).

The seven trees that are under review are non-exempt. Exempt trees are those that are within 10 feet of an existing structure, nuisance trees and trees that are dead, dying or decayed. The applicant is proposing mitigation through the replanting of the site to meet current Title 11 Tree Density standards, planting of additional small trees on the site and payment into the City

Tree Fund for the remaining required replacement trees which cannot be planted on site due to lot size constraints.

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 site where the violation occurred is located on SE Lexington Street approximately 1/4 mile east of SE 112th Street. The site contains an existing single family residence. The site steeply sloped down from the southeast corner of the site to the northwest corner of the site and changes approximately 36 feet in grade across the site. The surrounding vicinity is primarily single-dwelling zoning and development on larger heavily wooded lots.

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 Johnson Creek Basin Plan District, South Subdistrict regulations are intended to mitigate the negative impacts that may result from the development of areas where flooding and landslides are common. The impermeable clay soils of the steep-sided Boring Lava hills to the south of the creek contribute to rapid stormwater runoff in the winter, and contribute to flooding. Unlike the flatter areas north of the creek, in the South subdistrict there are numerous small streams that can quickly carry stormwater runoff to Johnson Creek. The extensive tree canopy on these hillsides helps to slow stormwater runoff. Limitations on development density, tree removal, and impervious surface area reduce stormwater runoff, provide groundwater recharge, reduce erosion, protect water quality, and retain native vegetation. These regulations work together to protect watershed health while allowing the safe and efficient development of unconstrained lands.

Land Use History: City records indicate there are no prior land use reviews for this site.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed May 27, 2015. The following Bureaus have responded with no issues or concerns:

- Bureau of Transportation Engineering
- Site Development Section of Bureau of Development Services
- Fire Bureau
- Bureau of Parks-Forestry Division
- Life Safety Section of BDS

The Bureau of Environmental Services responded with general comments regarding sanitary sewer, stormwater and site considerations. Planting of native trees is encouraged. Please see Exhibit E-1 for additional details.

The Water Bureau responded with comments about requirements for tree planting within 10 feet of a water service or water main. Please see Exhibit E-2 for additional details.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on May 27, 2015. One written response has been received from a notified property owner in response to the proposal. The respondent requested that a dwarf variety of Shore Pine be planted to protect the view corridor to the northwest of the site. This amendment has been made to the proposed tree planting plan.

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 requirements of a land use review, 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 requirement of a land use review, 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 853-1. If additional trees on the site are proposed for preservation and protection, the applicant must submit an arborist's assessment indicating the suitability of the trees for preservation, recommendations for protection methods, and any remedial treatment that may be necessary to ensure the long term viability of the trees. 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
Up to 12	3 trees
More than 12 to up to 20	5 trees
More than 20 to up to 25	7 trees
More than 25 to up to 30	10 trees
More than 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 may 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 as described in 2.a or b, then a payment in lieu of planting may be made to the Tree Planting and Preservation Fund**

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:**

This review is for violation of the Tree Removal Standards of Chapter 33.537, Johnson Creek Basin Plan District. The purpose of the regulation that limits tree removal in the Johnson Creek Basin Plan District is as follows:

33.537.125 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.

Tree Removal Standards of 33.537 do not allow the removal of trees 6 inches or more in diameter unless one or more of the following is met:

1. *Trees must be determined by an arborist to be dead, dying or dangerous;*
2. *The tree is on the Nuisance Plants List;*
3. *The tree is within 10 feet of existing or proposed buildings and structures attached to buildings or within 10 feet of a proposed driveway or right-of-way improvements;*
4. *The tree must be removed due to installation, repair, or maintenance of water, sewer, or stormwater services;*
5. *The tree is within a proposed roadway or City-required construction easement;*
6. *The tree is at least 6 and up to 12 inches in diameter and does not meet any of the other standards of the Subsection, but is replaced with two trees.*
7. *Trees that do not qualify for removal under C.1 through 6 may be removed if approved through tree review as provided in Chapter 33.853, Tree Review.*

There were a total of 15 trees removed from the subject site. According to Tree Removal Standards of 33.537, 7 of the trees removed were considered non-exempt, and thus not eligible for removal. According to Table 853-1, 27 trees are required to replace the 5 trees removed which were over 12 inches in diameter, with a total of 79 inches of tree diameter removed. 2 of the non-exempt trees were between 6 and 12 inches in diameter, which requires replacement with 2 new trees for each tree removed. The total mitigation required for the site requires the planting of 31 new trees on site or payment into the Tree Fund for any planting not done on site.

The applicant's proposed method of mitigation is a combination of tree planting to meet the current tree density standards, some mitigation planting on-site, and payment into the City Tree Fund in the amount equivalent to the number of trees required for mitigation but which cannot be supported on the site.

Staff has reviewed the applicant's proposed planting plan (Exhibit C.3) and has determined that the plan is acceptable with some modifications to placement and species of trees. In order to compensate for the loss of large mature native trees that provided significant canopy, habitat and stormwater management, the applicant will be required to bring the site back up to current Tree Density standards, as described in Title 11, Trees. Title 11 allows a prescriptive path for tree planting in development situations based on the size of the site. Based on an assessment of the size and species of trees removed from the site, it has been determined that to meet Title 11, 11 trees of a species similar to those removed will be planted to bring the site back up to current standards.

Given the size of the site, it is not feasible to plant 31 additional trees on the site while ensuring the long-term viability of the new plantings. Staff has determined that there is enough remaining site area to support the planting of an additional 5 trees from the 31 trees required for mitigation of the tree violation. Payment into the City Tree Fund will be made for the remaining 26 trees required for mitigation.

In order to satisfy the mitigation requirements, the applicant shall receive final inspection approval of a Zoning Permit to plant a total of 16 trees of the variety and in the location indicated on the Tree Planting Plan (Exhibit C.3) during the time period of October 1, 2015 and March 31, 2016. Irrigation for the newly planted trees must be provided through Irrigation Options 1, 2, or 3 of Chapter 33.248.040, Landscaping and Screening- Landscaping Installation and Maintenance. A Zoning Permit must be obtained to provide written proof that all specifications of this decision have been met must be provided one year after the planting is completed and the Zoning Permit for the mitigation planting is final. Payment into the City Tree Fund for the equivalent of 26 mitigation trees shall be made prior to issuance of the Zoning Permit required for planting.

The required mitigation is consistent with the Purpose of Chapter 33.537.125, Tree Removal Standards in the Johnson Creek Basin Plan District. The tree planting and payment into the

tree fund will provide the benefits of trees described in the purpose statement, by reducing stormwater runoff, protecting water quality and providing native vegetation. All tree planting must meet the requirements of 33.248.040.

With the conditions of approval described above, 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

Trees on the subject site are required to meet the standards of Chapter 33.537.125, Standards for Tree Removal in the Johnson Creek Basin Plan District. The subject site was cleared of all trees without any review, in violation of the requirements of 33.537.125. To address the violation, the applicant will be required mitigation with a combination of planting trees to meet current tree planting standards, planting mitigation trees, and making a payment into the City Tree Fund. As addressed in the findings above, the required mitigation will meet the purpose of Chapter 33.537, Johnson Creek Basin Plan District, and should be approved.

ADMINISTRATIVE DECISION

Approval of a Tree Violation Review to correct a violation resulting from the removal of seven trees of various sizes and varieties subject to the Tree Removal Standards of Chapter 33.537, the Johnson Creek Basin Plan District, as illustrated on Exhibits C-1 through C-3, subject to the following conditions:

- A. The applicant shall receive final inspection approval of a Zoning Permit to plant trees as follows:
 1. 16 trees shall be planted on the site according to the Tree Planting Plan (Exhibit C.3). The trees planted must be the species and variety indicated on the Tree Planting Plan and must be placed in the location indicated on the Tree Planting Plan.
 2. Trees must be planted during the time period of October 1, 2015 and March 31, 2015.
 3. Irrigation for the newly planted trees must be provided through Irrigation Options 1, 2, or 3 of Chapter 33.248.040.
 3. All tree planting must meet the requirements of Section 33.248.030.
- B. Prior to the issuance of the Zoning Permit required under condition A. above, the applicant must pay into the City Tree Fund the amount equivalent to 26 trees. Payment must be made to the Bureau of Development Services, who administers the fund for the Parks Bureau.
- C. One year from the date of the final zoning permit inspection approval for planting, the applicant shall obtain and final a Zoning Permit to provide proof that all specifications of this decision have been met and to document that trees have survived. If any trees have not survived, they must be replanted according to the approved planting plan.

Staff Planner: Leah Dawkins

Decision rendered by: Leah M. Dawkins **on July 1, 2015**
By authority of the Director of the Bureau of Development Services

Decision mailed: July 7, 2015

About this Decision. This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

Procedural Information. The application for this land use review was submitted on April 1, 2015, and was determined to be complete on **May 21, 2015**.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on April 1, 2015.

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: September 18, 2015**.

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 July 21, 2015** at 1900 SW Fourth Ave. Appeals can be filed at the Development Services Center Monday through Wednesday and Fridays between 8:00 am to 3:00 pm and on Thursdays between 8:00 am to 12:00 pm. After 3:00 pm Monday through Wednesday and Fridays, and after 12:00 pm on Thursdays, appeals must be submitted at the reception desk on the 5th 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 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, 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 **July 22, 2015 – (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.

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:

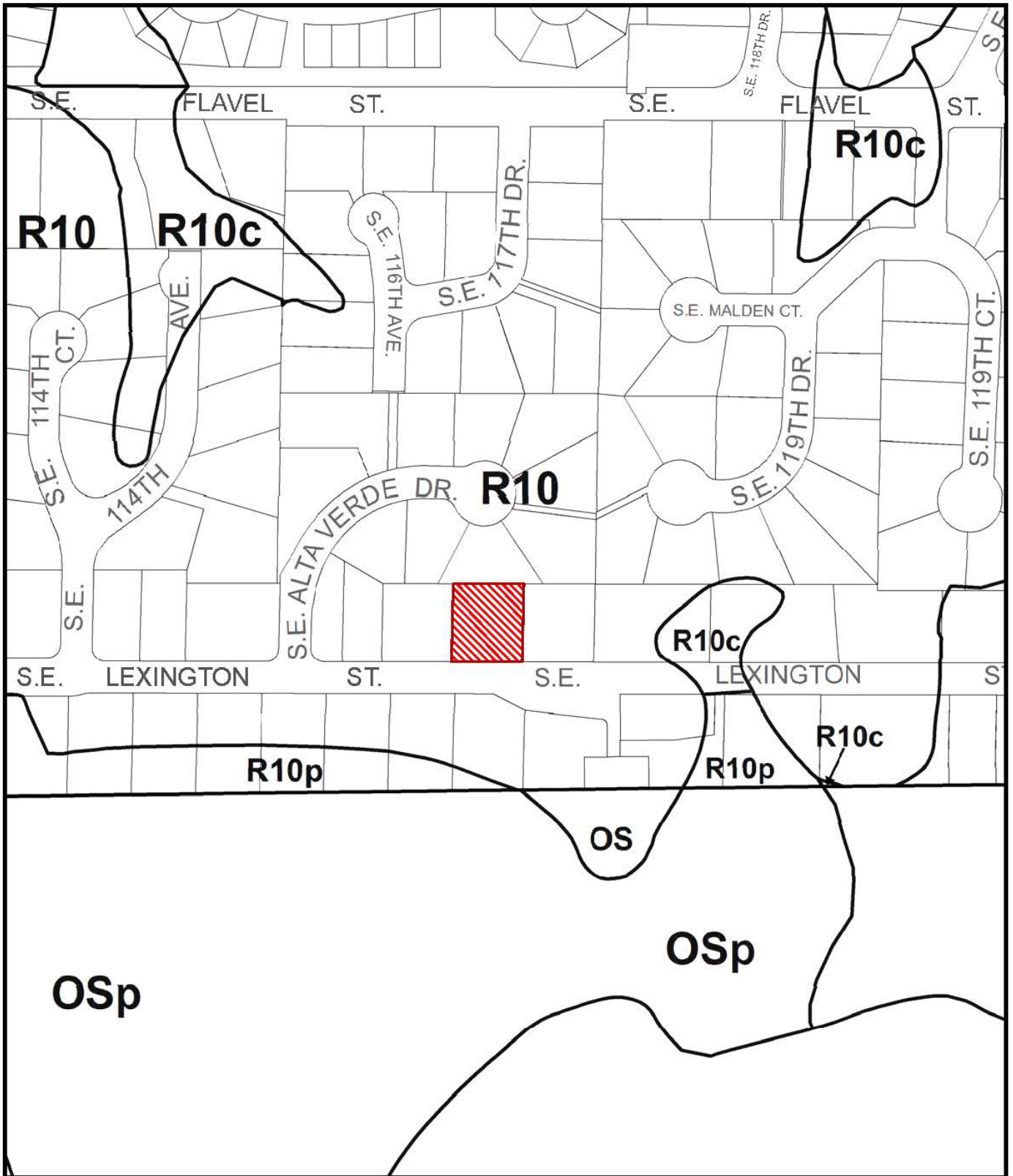
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Arborist Report and Narrative
 - 2. Site Photos
 - 3. Base map of Tree Removal
 - 4. Proposed Mitigation Plantings Options
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Base Map of Non-Exempt Tree Removal
 - 2. Total Tree Removal Plan
 - 3. Tree Planting Plan (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Water Bureau
- F. Correspondence:
 - 1. Janet Hancock, 7/3/15, request for minor revision to Proposed Tree Planting Plan
- G. Other:
 - 1. Original LU Application
 - 2. Incompleteness Letter
 - 3. Notice of Zoning Violation (15-101277 CC)
 - 4. Refund Request for Environmental Violation Review (EV)

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



NORTH

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

File No. LU 15-143353 TV

1/4 Section 3842

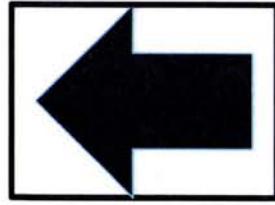
Scale 1 inch = 200 feet

State_Id 1S2E22DB 7600

Exhibit B (Apr 07, 2015)

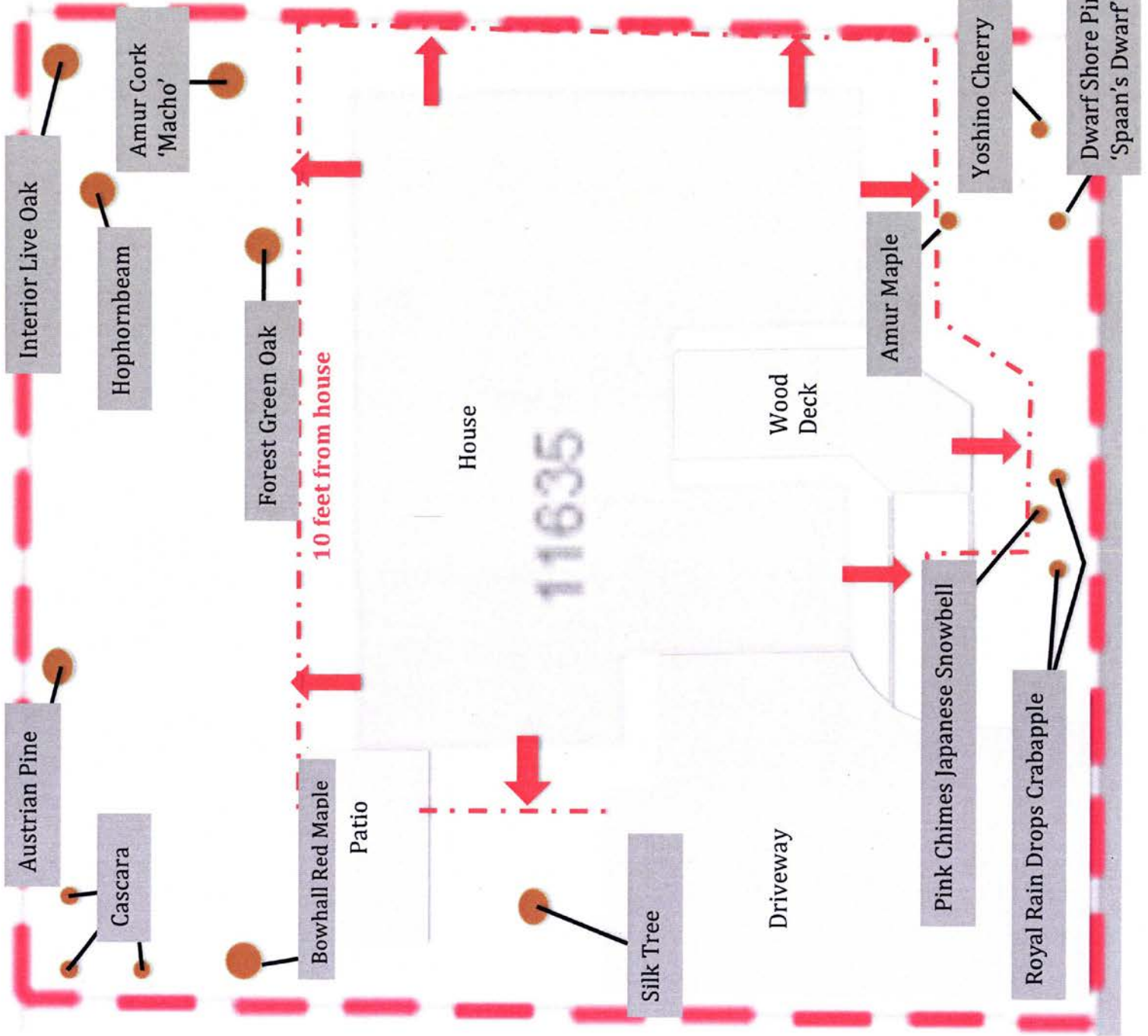
Final Tree Planting Plan

11635 SE Lexington St
Portland, OR
Tree Map
Created by:
Ryan Howe
ISA # 4121 A
3-18-15



NORTH

OPTION: ONE
LU 15-
143353TV



RECEIVED
JUN 23 REC'D

CASE NO. 15-143353
EXHIBIT 0.3