



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

FROM CONCEPT TO CONSTRUCTION

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**Date:** August 17, 2016  
**To:** Interested Person  
**From:** Stephanie Beckman, Land Use Services  
503-823-6979 / [Stephanie.Beckman@portlandoregon.gov](mailto:Stephanie.Beckman@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 mailed copy of this document is only a summary of the decision. 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 16-194356 TV**

**GENERAL INFORMATION**

**Applicant:** Anne Marie Skinner 503-746-8812  
Emerio Design  
8285 SW Nimbus Suite 180  
Beaverton, OR 97008

**Owner:** PTM34 LLC  
5285 Meadows Rd #171  
Lake Oswego, OR 97035

**Site Address:** 8041, 8141 8181 and 8123 SE 162ND AVE

**Legal Description:** LOT 1, PARTITION PLAT 1996-84; TL 500 0.38 ACRES, SECTION 24 1S 2E; TL 400 0.21 ACRES, SECTION 24 1S 2E; TL 300 0.49 ACRES, SECTION 24 1S 2E; TL 301 6.40 ACRES, SECTION 24 1S 2E; TL 401 0.59 ACRES, SECTION 24 1S 2E

**Tax Account No.:** R649763330, R992240200, R992240930, R992241300, R992241710, R992241850

**State ID No.:** 1S2E24DD 00801, 1S2E24DD 00500, 1S2E24DD 00400, 1S2E24DD 00300, 1S2E24DD 00301, 1S2E24DD 00401

**Quarter Section:** 3846

**Neighborhood:** Pleasant Valley, contact Steve Montgomery at [foxtrotlove@hotmail.com](mailto:foxtrotlove@hotmail.com).  
**Business District:** None  
**District Coalition:** East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550.  
**Plan District:** Johnson Creek Basin - South  
**Other Designations:** None

**Zoning:** R10 – Single Dwelling Residential 10,000  
**Case Type:** TV – Tree Violation  
**Procedure:** Type II, an administrative decision with appeal to the Hearings Officer.

**Proposal:**

A 36 lot subdivision (Peach Tree Meadows) was preliminarily approved on this site under land use review case file LU 06-143592. The final plat and related permits (site development, demolition and public works) for the subdivision are currently under review. During permit review it was discovered that one of the trees required to be approved under LU 06-143592 (#2962, 6-inch Japanese Maple) is no longer on the site. It is unknown when it was removed or the reason for the removal, therefore it is considered a violation of the land use conditions. A Tree Violation review is required to correct the violation. As mitigation, the applicant proposes to plant three large canopy conifer trees within Tract B (Stormwater Management) adjacent to the new north-south street, SE 160<sup>th</sup> Avenue.

**Relevant Approval Criteria:**

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

- 33.853.040.C Tree Review Approval Criteria – Corrections to Violations

**ANALYSIS**

**Site and Vicinity:** The site is a 9.6 acre property that includes six tax lots. There are four single-family houses on the site, three of which are proposed to be demolished. The remaining home to be retained will be located on Lot 1 of the 36 lot subdivision approved under LU 06-143592 (Peach Tree Meadows). There are a number of trees on the site, primarily clustered around the existing houses. The remainder of the site consists of open field. The site fronts on SE 162<sup>nd</sup> Ave., a main thoroughfare in the area. When developed, the site will contain new public streets to serve the proposed lots. SE 162<sup>nd</sup> will also be improved with a curb, planting strip and sidewalk. The surrounding area is characterized by large properties, which are developed with single family houses, as well as more densely developed subdivisions located to the north and west.

**Zoning:** The site is in the R10 zone, which is one of the city's single-dwelling zones intended to preserve land for housing and to promote opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing.

The site is also within the Johnson Creek Basin plan district, which is intended to foster safe, orderly, and efficient development of lands which are subject to a number of physical constraints. These constraints include 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, which is subject to density limitations on steep slopes, tree removal restrictions and limits on impervious surface.

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

- PC 5151 and PC 7295C – City zoning applied and a revocable permit to use a trailer on the site.
- 93-00862 MP and 94-00367 MP – Partitions which divided portions of the site.
- LU 06-143592 LDS AD – Approval of Preliminary Plan for a 36-lot subdivision and Adjustment to reduce the front setback for a home to be retained (this house is now proposed to be removed). This approval included a required tree preservation plan that included Tree #2962 that has since been removed from the site and is the subject of this Tree Violation review.

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on July 11, 2016. One written response was received from a notified property owner in response to the proposal. The comment letter requested that the mitigation trees be planted in the location proposed in order to buffer the new development and stormwater facility, but that the species be *Cedrus Deodora* (instead of Douglas Fir) to better integrate with the landscaping on the

neighboring property to the north. The applicant agreed to make the requested change, which is reflected on the approved plan.

**Agency Review:** A The Site Development Section of BDS responded that the proposed mitigation tree planting should be shown on the Site Development permit for grading and private street construction (see Exhibit E.1). No other agencies responded.

## ZONING CODE APPROVAL CRITERIA

### CORRECTIONS TO VIOLATIONS

#### 33.853.040 Approval Criteria

**33.853.040.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.

| Size of tree removed<br>(inches in diameter) | Number of Trees to be Planted |
|--|-------------------------------|
| Up to 12                                     | 3 trees                       |
| More than 12 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                      |

**Findings:** The violation is to the condition of approval of LU 06-143592, which preliminarily approved a 36-lot subdivision on the site. The tree preservation condition was required based on the regulations of Chapter 33.630 *Tree Preservation*, which contains the tree preservation requirements for new land divisions. The purpose of these regulations are:

#### 33.630.010 Purpose

*The land division process provides the flexibility and opportunity to promote creative site design that considers multiple objectives, including integration of trees. The regulations of this chapter require that trees be considered early in the design process with the goal of preserving high value trees and mitigating for the loss of trees. Desired benefits of trees include:*

- *Protecting public health through the absorption of air pollutants, contamination, and capturing carbon dioxide;*
- *Buffering from noise, wind, and storms;*
- *Providing visual screening and summer cooling;*
- *Reducing energy demand and urban heat island impacts;*

- *Filtering stormwater and reducing stormwater runoff;*
- *Reducing erosion, siltation, and flooding;*
- *Stabilizing slopes;*
- *Enhancing property values;*
- *Providing fish and wildlife habitat, including support for native species biodiversity through the preservation and planting of native trees;*
- *Providing food for people and wildlife; and*
- *Contributing to the beauty of the City, its natural heritage, and the character of its neighborhoods.*

The tree removed in violation of the required tree preservation plan was a 6-inch Japanese Maple (tree #2962), that had been proposed for preservation by the applicant at the time of the 2006 land division review. The subject tree is no longer on the site and it is unknown when or why it was removed. To mitigate for the loss of the 6-inch Maple, the applicant proposes to plant three large canopy conifer trees within Tract B, the majority of which will be occupied by a public stormwater facility. The area where the trees are proposed to be planted is approximately 2,000 square feet (40 x 50), which is essentially leftover area created by a jog in the property line along the site's northern border. No planting had previously been proposed or required in this area. Other landscaping will be required within Tract B, associated with the public stormwater facility. Tract B will be owned in common by all lots in the subdivision and has an easement over its entirety to the City of Portland for the stormwater and sanitary sewer facilities within the tract. BES public works staff reviewed the proposed tree planting and verbally indicated they had no concerns. In addition, they indicated it would help discourage use of the area for parking, storage or other unintended purposes.

The applicant originally proposed to plant three Douglas Fir trees, but has agreed to plant Deodar Cedar (*Cedrus deodara*) trees at the request of the neighbor to the north. Given that this site is not within an Environmental Overlay Zone where native species would be required and these are both large canopy conifer trees, which will provide significant tree-related benefits to the site, staff has no objections to this change. The proposed planting complies with the requirement to plant three trees in Table 853-1 and the choice of large canopy conifer species will more than compensate for the loss of 6-inch Maple tree. While there may be potential to preserve other existing trees on the site, instead of the Maple tree, many of the trees are already required to be preserved by LU 06-143592 and subject to the Johnson Creek Basin Plan District Tree Removal Standards, or will conflict with future development of the site. The proposed tree planting will take place in an unused common space and will provide a buffer between the new public street and stormwater facility, as well as between the new development and the neighboring house to the north.

In order to ensure that the trees will be planted and maintained, the applicant is required to obtain a permit for tree planting. The tree planting shall be shown on the Site Development permit for the project (15-134584 SD) and installed prior to final inspection approval of that permit. The trees must meet Title 11 minimum size requirements for new tree planting. In addition, the maintenance agreement for Tract B must include a description of the required tree planting and a requirement to maintain the trees by the owners.

With the conditions described above, the tree violation criteria are 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 mitigate for the removal of tree #2962, a 6-inch Japanese Maple required to be preserved under LU 06-143592 by planting three large canopy conifer trees within Tract B. The proposed planting will more than replace the lost tree functions provided by the Maple, will be located in an unused common area and will serve as a buffer adjacent to the stormwater facility within Tract B. With conditions to ensure the trees will be planted and maintained, the mitigation plan meets the criteria to correct the violation and can be approved.

### ADMINISTRATIVE DECISION

Approval of a Tree Violation review to correct a violation resulting from the removal of tree #2962, a 6-inch Japanese Maple required to be preserved un LU 06-143592 LDS AD, per the approved site plan, Exhibits C.1, signed and dated 8/15/16, subject to the following conditions:

- A. The Site Development permit for the land division site (15-134584 SD) must show the planting of three Deodar Cedar (*Cedrus deodara*) trees within Tract B in substantial conformation with C.1. The trees must meet Title 11 requirements for new trees at the time of planting and must be installed prior to final inspection approval of the Site Development permit.
- B. The maintenance agreement for Tract B must include a description of the required tree planting within Tract B and a requirement to maintain the trees by the owners. The maintenance agreement must be updated prior to approval of the final plat for the subdivision (FP 06-143592).

**Staff Planner: Stephanie Beckman**

Decision rendered by:  on August 15, 2016  
By authority of the Director of the Bureau of Development Services

**Decision mailed: August 17, 2016**

**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 24, 2016, and was determined to be complete on July 6, 2016.

*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 24, 2016.

*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: November 3, 2016.**

**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 August 31, 2016** at 1900 SW Fourth Ave. Appeals can be filed at the 5<sup>th</sup> floor reception desk of 1900 SW 4<sup>th</sup> Avenue Monday through Friday between 8:00 am and 4:30 pm. **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 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 **September 1, 2016 – (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:

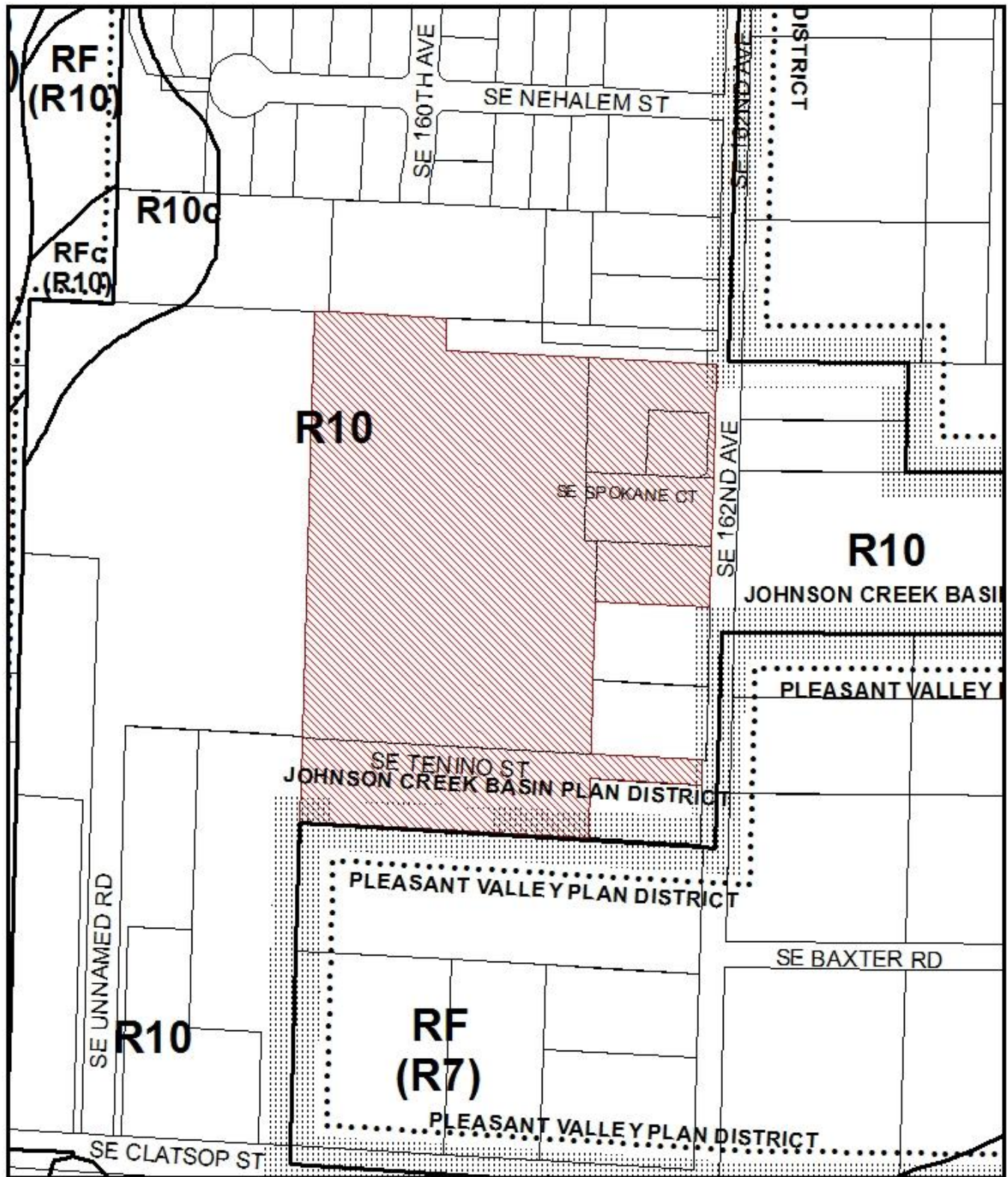
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  - 1. Original submittal
  - 2. Email correspondence
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Site Development Review Section of BDS
- F. Correspondence:
  - 1. Rod Boettcher, 8037 SE 162<sup>nd</sup>, Portland, OR 97236
- G. Other:
  - 1. Original LU Application
  - 2. Tree Preservation Plan approved under LU 06-143592

**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

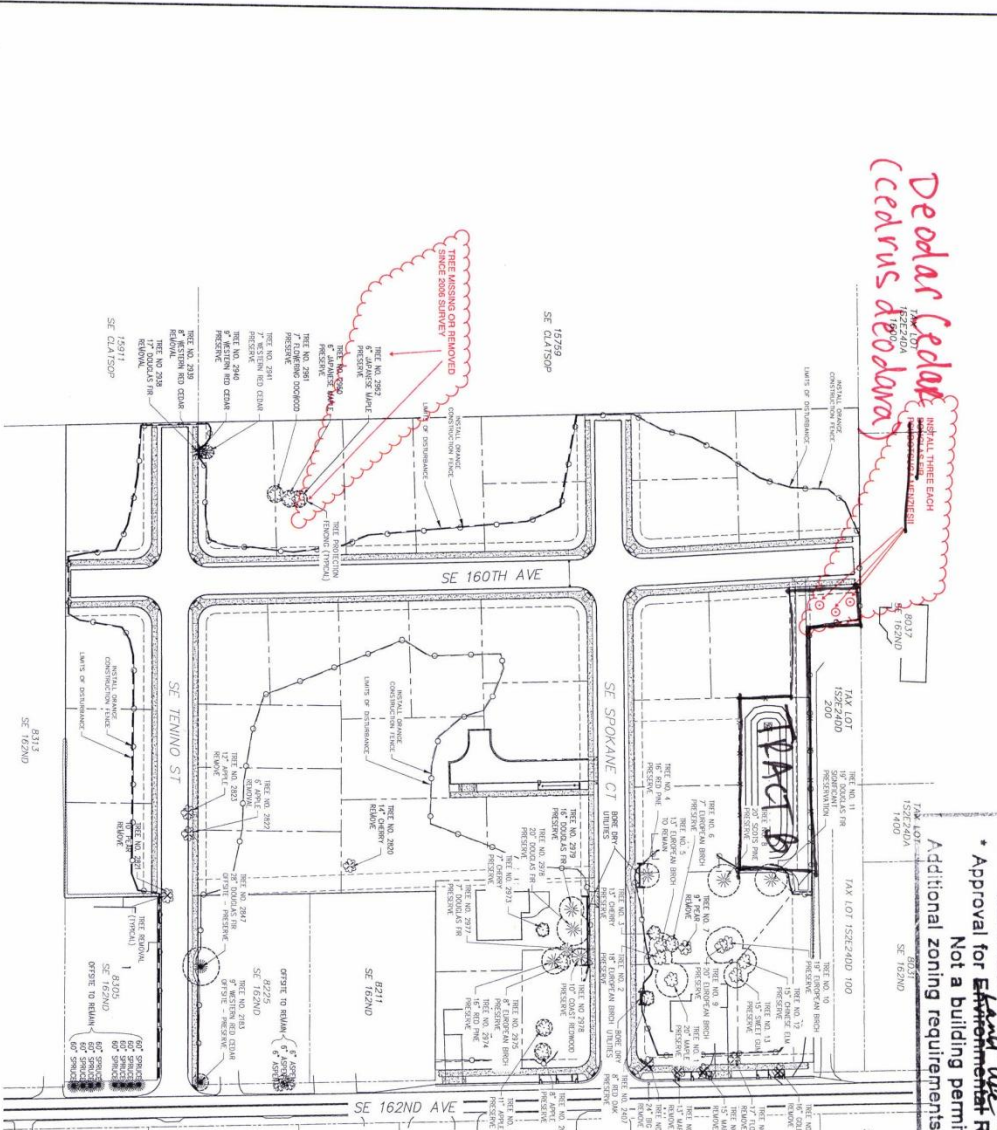


This site lies within the:  
 JOHNSON CREEK BASIN PLAN DISTRICT  
 SOUTH SUBDISTRICT

Site

|             |                   |
|-------------|-------------------|
| File No.    | LU 16-194356 TV   |
| 1/4 Section | 3846              |
| Scale       | 1 inch = 200 feet |
| State_Id    | 1S2E24DD 301      |
| Exhibit     | B (Jul 06, 2016)  |





Deodar Cedar  
(Cedrus deodara)

**\* Approved \***  
 Bureau of Development Services  
 City of Portland  
 Permit # LU 16-194356 TV  
 Planner SR/MLW  
 Date 8/15/16  
 \* Approval for Form 1628 Review only.  
 Not a building permit.  
 Additional zoning requirements may apply.

CASE NO. 16-194356 TV  
 EXHIBIT C.1

**Exhibit B**

**LU 16-194356 TV**

|  |                               |  |
|--|-------------------------------|--|
| REVISIONS<br>NO. DATE DESCRIPTION  | <b>ON-SITE IMPROVEMENTS</b>   | PEACH TREE MEADOWS<br>SE 162ND AVENUE<br>TAX MAP 1S 2E 24DD<br>TAX LOTS 300, 301, 401, 401 & 500<br>CITY OF PORTLAND, OREGON |
|  | <b>TREE PRESERVATION PLAN</b> |  |
| <b>EMERIO Design</b><br>6107 SW BURNLEY BLVD, SUITE 147<br>BEAVERTON, OREGON 97008<br>TEL (503) 639-9552<br>FAX (503) 639-9552<br>www.emeriodesign.com |                               | SHEET 3 OF 11  |

EMERIO PROJECT NO. 304-001  
 11ed: Apr 14, 2016 - 2:27pm, P:\304-001 Peach Tree Meadows\proj\plan\304-001.dwg (3) Tree.dwg, Layer: (03) REC