



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

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Date: May 17, 2021
To: Interested Person
From: Lois Jennings, Land Use Services
503-865-6433 or lois.jennings@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 21-024481 TV

GENERAL INFORMATION

Applicant/Owner: Dmitry Shmelev,
6048 SE Knapp St
Portland, OR 97206-7546
Phone#: 971-331-6457 or email ds190333@gmail.com

Site Address: 5081 SE MALDEN DR

Legal Description: Parcel 2 of Partition Plat 2020-25
Tax Account No.: R649920980
State ID No.: 1S2E19CA 07702
Quarter Section: 3835

Neighborhood: Brentwood-Darlington, contact bdlanduse@gmail.com.
Business District: Woodstock Community Business Association, contact at <http://www.woodstockbiz.com>

District Coalition: Southeast Uplift, contact Leah Fisher at 503-232-0010 x313

Plan District: None
Zoning: R5-Residential 5,000 with the "a"-Alternative Design Density Overlay

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

Proposal: The proposal consists of mitigation for removal of a 17-inch diameter English Walnut tree (identified as Tree #10266) on the site that was required to be preserved through the approved tree preservation plan. The tree preservation plan was approved through the preliminary land division approval and final plat for a two-lot partition under Land Use Case File# LU 19-157197 LDP. The tree removal was discovered during the review process of the future house being developed for this flag lot under building permit application #: 20-217570 RS. To mitigate for the removal of the tree #10266-English Walnut tree, the applicant is proposing payment into the Tree Planting and Preservation Fund in lieu of planting mitigation

trees. Other on-site tree plantings required by Title 33 development standards (tree density and flag lot landscaping) and easements on this flag lot, limit the available area to plant additional mitigation trees as shown on future development and landscape site. The applicant proposes a payment for 7.5-inches, which is equivalent to five (5) trees (1.5-inches each) as required by Table 853-1 Tree Replacement for Violations.

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 – Correction to Violations.

ANALYSIS

Site and Vicinity: The project site is currently a vacant flag lot on the north side of SE Malden Drive. Existing vegetation (grass and a deciduous cherry tree) remain on the site. Access to the site is via a 12-ft. access pole situated between the two neighboring properties. A recorded private access easement exists along the northeast corner of the flag. Neighboring properties are developed with single-family residential development.

Zoning: The R5 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 “a”-Alternative Design Density overlay is intended to allow increased density that meets design compatibility requirements. It fosters owner-occupancy, focuses development on vacant sites, preserves existing housing stock, and encourages new development that is compatible with the surrounding residential neighborhood.

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

- MP 94-453 MP: Approval of a minor partition for two lots on July 24, 1994. No Final Plat for this preliminary decision was submitted to complete the land division process. The preliminary land division decision expired on July 24, 1997.
- LU19-157197 LDP: Preliminary approval of a two-lot minor partition that resulted in one standard single-dwelling lot (Parcel 1) and one Flag Lot (Parcel 2) with conditions of approval. The final plat for this preliminary land division was approved under Case File#, FP 19-15719. City Approval of the Final Plat was on April 7, 2020 and recorded with Multnomah County Deeds and Records on April 23, 2020.

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **April 14, 2021**. The following Bureaus have responded with no issues or concerns:

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

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on April 14, 2021. No written responses were received from either 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**

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 (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: The applicant has requested a Tree Preservation Violation Review in order to resolve the unauthorized removal of a 17-inch diameter English Walnut tree (identified as #10266) on Parcel 2 of Partition Plat #2020-25, which was required to be preserved and protected per LU 19-157197 LDP.

In order to meet this criterion, the applicant must provide sufficient mitigation to replace the values lost by the removal of the 17-inch diameter tree and satisfy the purpose of the regulation that was violated.

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 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 regulations of Chapter 33.630 require that trees be considered early in the design process during a land division proposal with the goal of preserving high value trees and, when necessary, mitigating for the loss of trees. Some trees are exempt from the requirements of this chapter, if they are unhealthy, a nuisance species, within 10 feet of a building to remain on the site, within an existing right-of-way, or within an environmental zone.

Two trees, a English Walnut and Apple, with a total of tree diameter of 30-inches existed on the site per the original arborist report (Exhibit G.4) and were subject to the tree preservation regulations during the preliminary review of this subdivision, LU 19-157197 LDP (Exhibit G.5). Under the preliminary land division, LU 19-157197 LDP, the City considered the type of development which is allowed in the R5- Residential Zone and the allowed density for the site when reviewing land division layout and tree preservation on the site. During the preliminary land division, the applicant chose the healthier of the two trees, the 17-inch English Walnut and a total of 56% of total tree diameter on the site meeting Option #4 for Tree Preservation standards. Option # 4 is where all trees are less than 20 inches in diameter, preserve at least 35 percent of total tree diameter on the site. This proposal allowed the removal of one tree with the preservation of the other tree and now both are being removed. The unauthorized removal of 17-inch diameter English Walnut (Tree #10266) is what will be considered in this tree violation review.

The City considers the existing development, lot size, and location and number of replacement trees, species type, mature height, mature canopy spread and the overall health of trees as they mature on a site to determine if what is being proposed is feasible. A tree within 10-ft. of an existing building would not be considered for tree preservation under the preliminary land division review. Therefore, planting a tree within 10-feet of an existing building is not allowed when mitigating for a tree to be removed, since it will be a tree required to be preserved moving forward.

Table 853-1 states for a 17-inch tree removed a minimum of five (5) trees are required to be planted. Therefore, as part of this review the applicant must demonstrate there is sufficient available area on Parcel 2 for planting of the replacement trees for the removal of the English Walnut tree (Tree #10266) and also the planting of additional trees to meet tree density and Flag Lot Landscaping standards. The applicant submitted a future development plan (Exhibit C.2) demonstrating the combination of the required landscape buffer (L3) for flag lots, tree density standard, and reduced area due to the existing access easement, limits the availability of on-site tree mitigation plantings for this site. The applicant is proposing a payment into the Tree Planting and Preservation Fund in lieu of planting five mitigation trees. The future development site and landscape plan (Exhibit C.2) shows planting required for the L3

landscape buffer and tree density to demonstrate the limitations to planting additional trees on the site. This future development site and landscape plan shows native trees from the Portland Plant list being included within the landscape buffer.

The subject site, Parcel 2 of Partition Plat 2020-25 is considered a flag lot, with a total site area of 6,212 square feet. The apple tree still exists on the site, but as shown in the preliminary decision will be removed for development on the site. The flag portion of the site is 4,952 s.f. in area and is where the future house will be developed. As shown on the final plat survey the flag area of the site has an existing access easement which limits the location of development and landscaping on the site. The applicant submitted a future development landscape plan showing trees required for flag lot landscape buffer and Title 11-tree density requirements for the new residential development. Flag Lot landscape area is required around the perimeter of the flag lot to buffer the flag portion from the surrounding lots. The landscape area is required to be at least 5-ft. deep and landscaped to the L3 landscape standard. The L3 landscape standard includes a combination of high shrubs, trees, and groundcover plants. Enough high evergreen shrubs must be planted form a continuous sight-obscuring evergreen screen that grows at least 6-feet high. In addition, one large tree is required per 30 linear feet of landscape area, one medium tree per 22 linear feet of landscape area, or one small tree per 15 linear feet of landscape area. Trees of different sizes may be combined to meet the standard. Ground cover plants must fully cover the remainder of the landscape area. For 6212 s.f. site area, a minimum of 2,485 square feet of tree canopy area is required to meet Title 11 -tree density requirement. These trees being planted within the 5-ft- flag lot landscape buffer area may be counted also toward Title 11-tree density.

In order to meet the required Flag Lot Landscape buffer and tree density, between 8 to 17 trees will have to be planted on the lot, depending on the size and species of the trees planted. According to the technical planting standards of Title 11, there is not enough room on this lot to accommodate both the trees and shrubs required to meet flag lot landscape buffer with tree density, and the additional trees that would have to be planted to mitigate the Tree Violation. The 5-mitigation trees are the minimum number of trees required for replacement. A payment into the fund is being chosen. However to further contribute to the purpose of the regulations, the applicant has shown on the future development landscape plan planting of native trees (Pacific Dogwood & Bitter Cherry) from the Portland Plant list. To provide more flexibility for the future owners of the lot only twenty-five percent (1/4) of the trees within the landscape buffer will be required to be chosen as native trees from the Portland Plant List. These native trees will provide greater benefits, such as wildlife habitat, shade, and increased stormwater absorption.

Therefore, considering location of the site within the City, the lot size where the violation occurred, existing easement on the site, and the proposed new development with landscaping requirements that will be occurring on Parcel 2, preserving the overall health of trees as they mature on the site with suitable area for planting, the City determined that it is appropriate to make Payment into the City Tree Preservation Fund in lieu of planting. With planting of some native trees from the Portland Plant List within the landscape buffer and payment of 7.5-inches of trees into City Tree Preservation Fund in lieu of planting will mitigate for the unauthorized removal of the 17-inch-English Walnut tree (Tree #10266).

The required mitigation is consistent with the purpose of Chapter 33.630, Tree Preservation as payment into the Tree Fund will contribute to the tree canopy and related benefits within the City, if not directly on the site, and requiring twenty-five percent of the trees within the Flag Lot landscape buffer to be Native trees from the Portland Plant will provide benefits directly on the site.

With conditions of approval requiring twenty-five percent of trees within the Flag Lot landscape buffer to be native trees from the Portland Plant list at the time of development and payment into the City Tree Fund the amount equivalent to 7.5 inches of trees prior to approval of building permits for development on the site, 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 requirements of Title 11 can be met, and 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

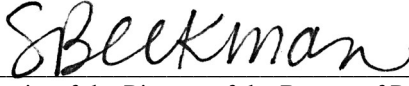
As part of the two-lot land division (LU19-157197 LDP) that created the subject property, a 17-inch English Walnut was required to be preserved on this lot. The tree was discovered to be removed during the review of the future house on this lot under permit # 20-217570 RS. To address the violation, the applicant will be required to mitigate with a payment into the City's Tree Preservation and Planting Fund, as well as by planting native trees within the flag lot landscaping area on the site. As addressed in the findings above, the required mitigation will meet the purpose of Chapter 33.630, Tree Preservation, and the intent of the original land division decision to require retention of 35 percent of the total non-exempt tree diameter on the site. The mitigation requirements must be met prior to approval of the building permit for the new development on Parcel 2 of Partition Plat 2020-25.

ADMINISTRATIVE DECISION

Approval of a Tree Violation Review to correct a violation resulting from the unauthorized removal of a 17-inch diameter English Walnut (Tree #10266) required to be preserved as part LU 19-157197 LDP, subject to the following conditions:

- A. Prior to Planning & Zoning Approval of a building permit for this site, the building plans/landscape plan must show twenty-five percent of the trees to be planted within the flag lot landscape buffer (33.110.240.F) to be native trees chosen from the Portland Plant List. The sheets on which this information appears must be labeled, "Mitigation Plantings as approved in Case File # LU 21-024481 TV. No field changes allowed."
- B. The applicant must pay into the City Tree Preservation and Planting Fund [Private Property Trees – Planting and Establishment, fee in Lieu (per inch)] the amount equivalent to 7.5 inches of trees. Payment must be made to the Bureau of Development Services, who administers the fund for the Parks Bureau. Payment must be completed prior to any building permit approval.

Staff Planner: Lois Jennings

Decision rendered by:  on May 15, 2021

By authority of the Director of the Bureau of Development Services

Decision mailed: May 17, 2021

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 March 11, 2021, and was determined to be complete on April 9, 2021.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on March 11, 2021.

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: August 7, 2021.**

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, and if appealed a hearing will be held. The appeal application form can be accessed at <https://www.portlandoregon.gov/bds/45477>. Appeals must be received **by 4:30 PM on May 31, 2021. The completed appeal application form must be emailed to LandUseIntake@portlandoregon.gov and to the planner listed on the first page of this decision.** If you do not have access to e-mail, please telephone the planner listed on the front page of this notice about submitting the appeal application. **An appeal fee of \$250 will be charged.** Once the completed appeal application form is received, Bureau of Development Services staff will contact you regarding paying the appeal fee. The appeal fee will be refunded if the appellant prevails. There is no fee for Office of Community and Civic Life recognized organizations for the appeal of Type II and IIx decisions on property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. Please contact the planner listed on the front page of this decision for assistance in filing the appeal and information on fee waivers. Please see the appeal form for additional information.

If you are interested in viewing information in this file, please contact the planner listed on the front of this notice. The planner can email you documents from the file. A fee would be required for all requests for paper copies of file documents. Additional information about the City of Portland, and city bureaus is available online at <https://www.portland.gov>. A digital copy of the Portland Zoning Code is available online at <https://www.portlandoregon.gov/zoningcode>.

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 will be recorded with the Multnomah County Recorder.

- *Unless appealed*, the final decision will be recorded after May 31, 2021 by the Bureau of Development Services.

The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder.

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:

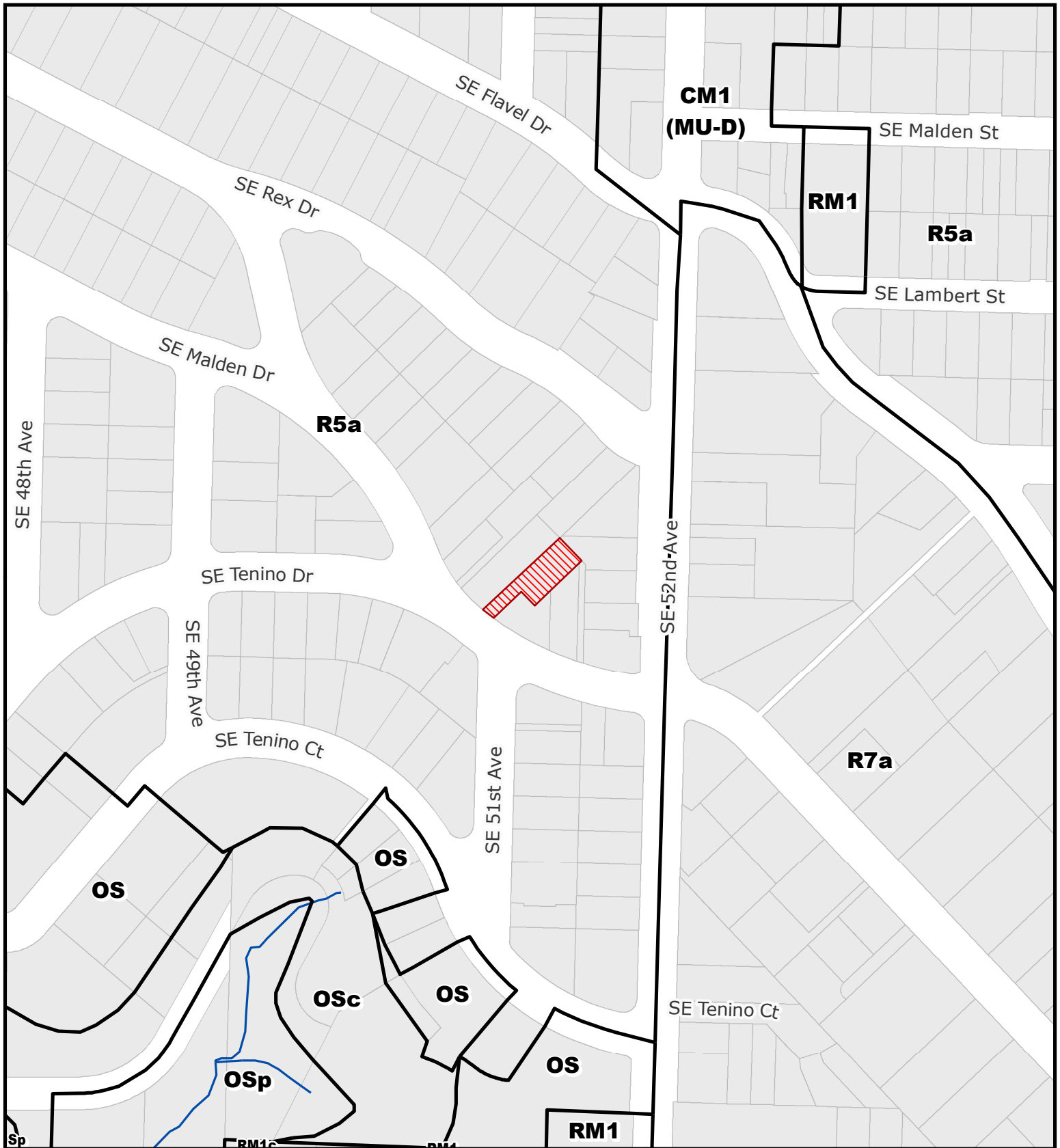
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Original Narrative
 - 2. Approved Tree Protection Plan submitted by applicant
 - 3. A Beautiful Tree and Gardens LLC -Arborist Report
 - 4. New Tree Protection Plan
 - 5. April 9, 2021 Revised Narrative
 - 6. April 9, 2021 New House Site & Landscape Plan
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Tree Violation Site Plan
 - 2. Future new house site and landscape plan
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Fire Bureau
 - 2. Site Development Review Section of BDS
 - 3. Bureau of Parks, Forestry Division
 - 4. Life Safety Section of BDS
- F. Correspondence: None
- G. Other:
 - 1. Original LU Application
 - 2. Copy of Approved Exhibit C.2-Approved Tree Preservation Plan per LU19-157197 LDP
 - 3. Incomplete Letter
 - 4. Copy of original tree preservation plan
 - 5. Copy of LU19-157197 LDP Preliminary Decision

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



Stream

File No.	LU 21 - 024481 TV
1/4 Section	3835
Scale	1 inch = 200 feet
State ID	
Exhibit	B Mar 11, 2021