



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

Carmen Rubio, Commissioner
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Date: February 17, 2023
To: Interested Person
From: Kate Green, Land Use Services
503-865-6428 / Kate.Green@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 22-205088 TR

GENERAL INFORMATION

Applicant: Mark Dane, Mark Dane Planning, Inc.
825 SE 32nd Avenue, Portland, OR 97214
503-332-7167, markdaneplanning@gmail.com

Owner/Agent: Eric Rystadt, Main Street Development
5331 SW Macadam Ave, Ste 258 Pmb 208, Portland, OR 97239

Project Arborist: Brenden Monahan, Madrone Modern Arboriculture

Site Address: 6014 SW 18TH DRIVE

Legal Description: BLOCK 1 LOT 1&2 TL 7400, HILLSDALE HTS
Tax Account No.: R389000020
State ID No.: 1S1E16CA 07400
Quarter Section: 3627

Neighborhood: Hillsdale, contact at board@hna-pdx.com
Business District: None
District Coalition: Office of Community & Civic Life, contact at CivicLife@portlandoregon.gov

Plan District: Hillsdale
Other Designations: Landslide Hazard

Zoning: Residential 2500 (R2.5)

Case Type: Tree Review (TR)
Procedure: Type II, an administrative decision with appeal to the Hearings Officer.

Proposal: The applicant requests a **Tree Review** to address unauthorized tree removal and grading within the root zones of trees that were required to be preserved and protected in a tree tract, which was established as part of a 2018 Land Division (LU 18-226914 LDS) on the

subject property. The applicant proposes changes to the protection measures for the remaining trees. Any changes must continue to meet the requirements of Chapter 33.630, Tree Preservation.

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, Tree Review.**

ANALYSIS

Site and Vicinity: The subject property is an approximately 46,511 square foot site that fronts onto SW 18th Drive to the west and a public pedestrian path to the north. The west side of the property had been developed with a single dwelling residence, which has been removed, and the property is now vacant. Large conifers and deciduous trees are located near the front and center of the site. The property is moderately sloped from the northwest down to the southeast.

The nearby properties to the west, north and east are also in residential zones (R2.5 and R5) and most are developed with one or two-story residences. The abutting properties to the south include single dwelling residences, also in the R2.5 zone; multi-dwelling residences in the RM2 zone, and commercial complex in the CM2 zone. Other nearby development within several blocks of the subject site includes a commercial mixed use corridor along SW Capitol Highway and public schools and parks.

Zoning: The subject property is within the **Residential 2500 (R2.5)** base zone and within the **Hillsdale Plan District**.

The residential zones are intended to preserve land for housing and to promote housing opportunities for individual households.

The plan district aims to promote compatibility between existing and new residential and commercial development and support the Hillsdale Town Center. No specific plan district regulations apply to the R2.5 zone.

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

LU 18-226914 LDS: Land Division-Subdivision for 8 lots, a private alley tract, a tree tract, and a stormwater management tract, and public street dedications. The tree protection plan required for this prior land use case is the subject of this pending Tree Review.

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **December 23, 2022**. The following Bureaus responded with no issues or concerns:

- Fire Bureau
- Site Development/BDS
- Life Safety/BDS

The Bureau of Parks-Forestry Division responded with the following comment: *Urban Forestry does not object to approval of the land use proposal as it pertains to street trees. The proposed development will be subject to Title 11 regulations during the permit review process. All the requirements, recommendations, and conditions of approval defined in 18-226914-LU still apply.* Please see Exhibit E4 for additional details.

Neighborhood Review: A *Notice of Proposal in Your Neighborhood* was mailed on December 23, 2022. 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

33.853.040.B. Changes to tree preservation requirements following land use approval.

The approval criteria for changes to tree preservation or mitigation requirements are:

1. If the tree preservation requirement was approved as part of a land division or planned development, the requested change will be approved if the review body finds that the applicant has shown that the revised method will continue to meet the requirements of Chapter 33.630, Tree Preservation.

Findings: A 2018 land division (LU 18-226914 LDS) on the subject property established a tree tract, and designated 8 specific trees that were required to be preserved and protected within the tree tract. The labeling for the trees has shifted from various plans and documents with the addition of a “10” in front of the tree numbers, for instance, Tree 242 has also been labeled as Tree 10242; Tree 241 has also been labeled as Tree 10241, etc. In any event, the trees to be retained in the tree tract included 5 live trees (bold) and 3 “exempt” trees, as follows:

- **Tree 10239 *Pinus contorta* lodgepole pine 17.5 healthy**
- Tree 10240 *Pinus contorta* lodgepole pine 6.3-inch suppressed; dead top; excessive lean
- **Tree 10241 *Pinus contorta* lodgepole pine 18-inch healthy**
- **Tree 10242 *Pinus contorta* lodgepole pine 20-inch healthy**
- **Tree 10411 *Pinus contorta* lodgepole pine 17-inch healthy**
- **Tree 10412 *Pinus contorta* lodgepole pine 16-inch healthy**
- Tree 10413 *Pinus contorta* lodgepole pine 7.7-inch snag
- Tree 10414 *Pinus contorta* lodgepole pine 8.3-inch suppressed; dead top; excessive lean

Typically, trees in poor condition are exempt from preservation; however, in this case, 3 “exempt” trees were flagged to be retained, due to the applicant’s arborist recommendation that those “exempt” trees help to anchor the adjacent trees and contribute to the habitat values of the collective grove of trees in the tree tract. As such, each of the noted 8 trees was to be retained and protected.

Additionally, to fulfill the land use conditions from the Land Division case, the applicant was to provide a final tree preservation plan that showed adequate protection measures would be in place for the 8 trees in the tree tract, and for a significant tree (**Tree 10400 *Thuja plicata* western red cedar 33-inch healthy**) that is located just north of the tree tract in an area designated to become public right-of-way. Since Tree 10400 will become a right-of-way tree, and right-of-way trees are regulated by Urban Forestry, the protection measures for this future right-of-way tree are guided by Urban Forestry.

However, while the final plat review was underway, a review process where the applicant must demonstrate all the conditions of the land division decision are met, the applicant conducted unauthorized grading and tree removal, which impacted the trees in the tree tract.

The applicant’s arborist provided several updated arborist reports (Exhibits A1a and A1b), which provide an overview of the condition of each tree that was to be retained and updated protection measures. The reports state one tree (Tree 10413) was removed and all the trees were impacted to varying degrees by earthwork within and proximate to their root protection zones. The applicant’s arborist initially indicated one of the most impacted trees (Tree 10242) could not be retained. Subsequently, the applicant’s arborist determined each of the remaining trees could be retained with some soil restoration measures, including the application of organic mulch such as wood chips, bark dust or compost, and the arborist recommended a 3-year monitoring period to provide continued oversight of the health of the impacted trees. The applicant’s arborist also indicates future earthwork could occur within the root protection zone of the most

impacted tree (Tree 10242) with onsite supervision during the construction and development on one of the lots (future Lot 4) and within the alley tract that abut the south end of the tree tract.

However, based on a site visit and discussion with the city's Urban Forestry staff on November 3, 2022, the applicant's arborist report provides limited information about the size of the roots that were cut or damaged during the unauthorized grading, and few details or technical analysis to address how footings or driveway compaction could be conducted on future Lot 4 to minimize impacts to the trees in the tract. Similarly, the applicant's arborist report includes limited information to address pruning for the tree canopy areas that extend beyond the tree tract boundary, or how such pruning could be conducted in a manner that is protective of the trees in the tree tract, other than to note dead branches should be removed.

While this tree review was underway, the applicant submitted a conceptual site plan for future Lot 4 (Exhibit A3), and indicated reduced side building setbacks were approved in the initial Land Division decision (Exhibit A4). While it does appear the applicant had some preliminary discussions about potentially reducing some setbacks, during the review of the 2018 land division application, BDS staff find the Hearings Officer's decision for LU 18-226914 LDS did not include approval for any reduced setbacks. Further, while BDS staff explained to the applicant that the city could consider a reduction to the setback on the (west) side of future Lot 4, furthest from the tree tract, as part of this pending tree review, reducing the east side setback so that development could be placed closer to the trees to be protected is impractical and inconsistent with the applicant's arborist report. The applicant did not elect to seek any setback reductions.

Overall, based on the conceptual site plan for future Lot 4, the applicant appears to be proposing development closer to the tree tract than recommended by their project arborist; and the arborist report does not provide sufficient detail to affirm the proposed encroachments can reasonably be minimized without further harm to the trees in the tract, particularly Tree 10242, which appears to have been most impacted by the unauthorized grading.

Therefore, based on the onsite conversations with Urban Forestry and to ensure a minimum level of protection for the trees in the tree tract, the tree protection fencing for the trees in the tree tract and for the future right-of-way tree (Tree 10400) must be installed as outlined as proposed by the applicant's arborist, except the tree protection fencing must be installed at least 10 feet from the (east) side lot line of future Lot 4, as shown on the staff modified tree protection plan (Exhibit C1), and no encroachments are allowed within this area. This placement for the tree protection fencing will require future development to be located west of and outside of the critical root zone of the trees to be retained within the tree tract.

Further, to ensure the soil repair work, noted in the arborist report (Exhibit A1b), is implemented, and to implement the revised tree protection fencing locations outlined in this decision (Exhibit C1), the applicant must revise the plans for the site development permit (20-185377 SD) to include these measures, prior to final plat approval.

Additionally, prior to final plat approval, the applicant must provide a contract for the 3-year monitoring of Trees 10241 and 10242, within the tree tract, as recommended by the applicant's arborist. Monitoring reports must be submitted annually, which assess the condition of these trees and identify any further recommendations to contribute to their on-going health. Those recommendations must be implemented, as directed by BDS staff reviewing the monitoring reports. In the event, those trees don't respond favorably to the soil repair and other repair measures and must be removed, a contribution must be made to the City's Tree Fund at a 1.5:1 replacement ratio for diameter inches of trees removed.

Further, to mitigate for the unauthorized removal of Tree 10413 and the unauthorized grading in and adjacent to other trees within the tree tract, the applicant must make a contribution to the City's Tree Fund equivalent to 12-inches of tree diameter (1.5:1 replacement ratio for removal of the 8-inches of tree diameter).

Similarly, prior to final plat approval, the final tree protection plans and tree protection acknowledgement required as part of the initial land use decision (LU18-226914 LDS, Condition B.14) and the pending final plat review (18-226914 FP) must be revised and updated to reflect the conditions outlined in this decision.

With the implementation of these measures, the revised tree protection measures and mitigation measures will align with these criteria. As such, these 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 seeks changes to the tree protection measures required in land use case LU 18-226914 LDS, to address unauthorized grading proximate to the trees to be protected and the unauthorized removal of a tree that was designated to be retained. As outlined in the findings above, the applicant's proposal can meet the relevant approval criteria, with the application of a staff-modified (wider) root protection zone along the east side of future Lot 4, mitigation for the removal of and impacts to the trees, which were to be protected, and with other soil repair and monitoring measures outlined in the applicant's arborist report. With the application of such conditions, this request should be approved.

ADMINISTRATIVE DECISION

Approval of a Tree Review to modify the tree protection plan approved in LU 18-226914 LDS, subject to the following conditions:

1. Prior to final plat approval, the applicant shall revise and update the final tree protection plans and tree protection acknowledgement required as part of land use case LU 18-226914 LDS (Condition B.14) and the related pending final plat 18-226914 FP, to protect the trees, listed below, and to implement the soil repair work and monitoring work, as outlined in the applicant's arborist report (Exhibit A1b), except the tree protection fencing must be installed at least 10 feet from the (east) side lot line of future Lot 4, as shown on the staff-modified site plan (Exhibit C1), and no encroachments are allowed within this area.

The following 7 trees shall be protected in the tree tract:

- **Tree 10239 *Pinus contorta* lodgepole pine 17.5 healthy**
- Tree 10240 *Pinus contorta* lodgepole pine 6.3-inch suppressed; dead top; excessive lean
- **Tree 10241 *Pinus contorta* lodgepole pine 18-inch healthy**
- **Tree 10242 *Pinus contorta* lodgepole pine 20-inch healthy**
- **Tree 10411 *Pinus contorta* lodgepole pine 17-inch healthy**
- **Tree 10412 *Pinus contorta* lodgepole pine 16-inch healthy**
- Tree 10414 *Pinus contorta* lodgepole pine 8.3-inch suppressed; dead top; excessive lean

The following tree shall be protected within the right-of-way dedication adjacent to the tree tract, in accordance with Urban Forestry.


- **Tree 10400 *Thuja plicata* western red cedar 33-inch healthy**

2. Prior to final plat approval, the applicant shall revise the site development permit (20-185377 SD) to show tree protection fencing and the soil repair work shall be installed in accordance with this decision. The revision cannot be approved by Planning and Zoning until this Tree Review decision is final. The sheet on which this information appears shall

be labeled "Proposal and design as approved in Case File # LU 22-205088 TR. No field changes allowed."

3. Prior to final plat approval, the applicant shall submit a contract for the 3-year monitoring of Trees 10241 and 10242, within the tree tract, which shall include the submittal of an annual health assessment monitoring report for Trees 10241 and 10242 in the fall of 2023 through 2026. In addition, the applicant shall submit a Landscape Monitoring Report application and pay the fee, prior to final plat approval. Each annual report shall include an assessment of the condition of these trees and specifically note if any new signs of flagging/decay are visible within these tree, heaving of the ground within the vicinity of the trees, and the angle of each tree's lean, subject to review and approval by Planning and Zoning and Urban Forestry. If it is determined that either of these tree needs to be removed, the applicant shall make a payment to the City's Tree Fund equivalent to 1.5 inches of tree diameter for each inch of tree diameter that is removed (i.e. a payment for 27-inches of tree diameter will be required for the removal of 18-inches of tree diameter).
4. Prior to final plat approval, the applicant shall make a payment to the City's Tree Fund equivalent to 12-inches of tree diameter to mitigate for the unauthorized removal of Tree 10413.

Staff Planner: Kate Green

Decision rendered by:  **on February 15, 2023**
By authority of the Director of the Bureau of Development Services

Decision mailed: February 17, 2023

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

Procedural Information. The application for this land use review was submitted on November 18, 2022, and was determined to be complete on December 20, 2022.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on November 18, 2022.

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 extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on: April 19, 2023.**

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 March 3, 2023. 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 **March 3, 2023** 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:

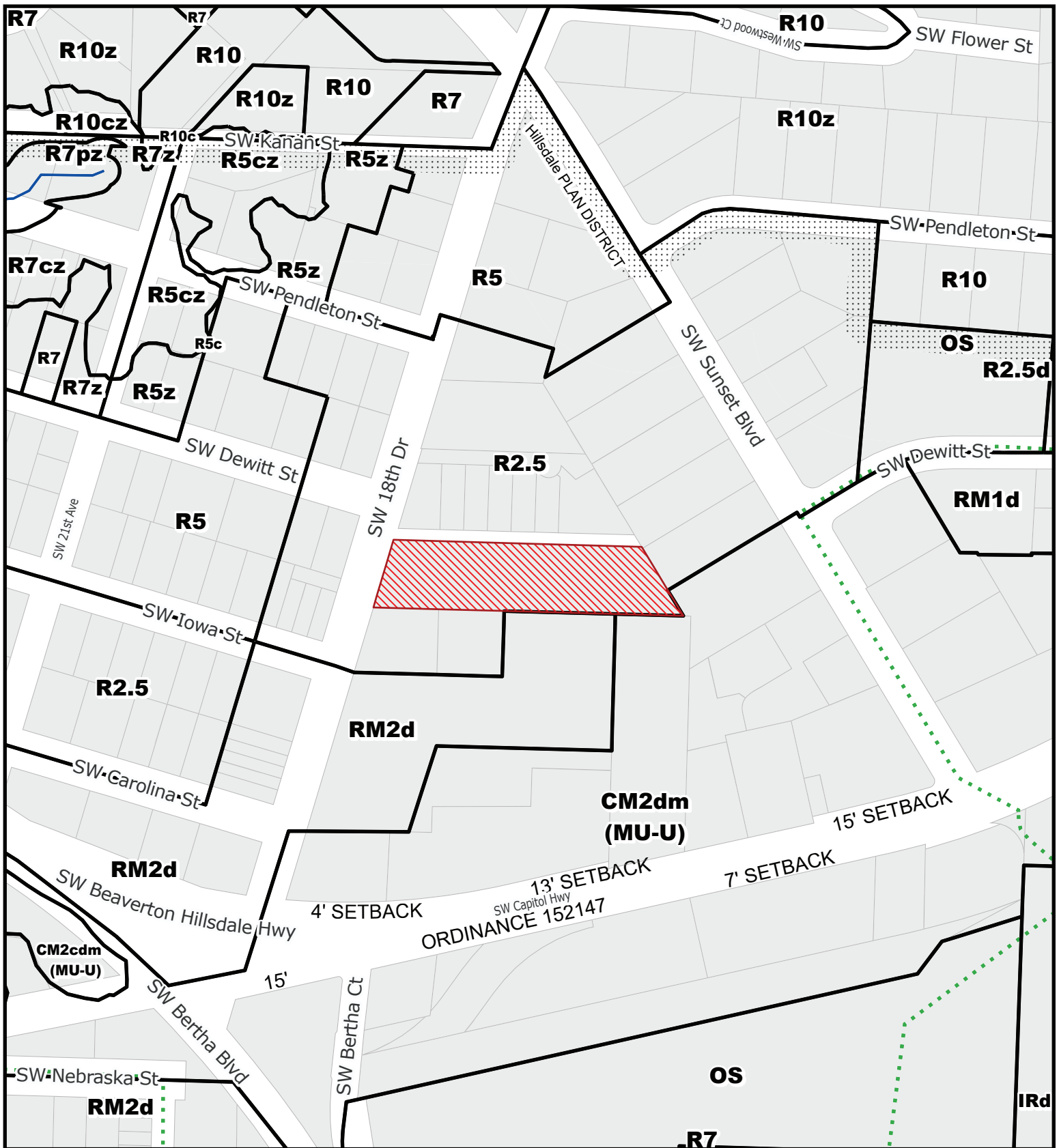
1. All conditions imposed herein;
1. All applicable development standards, unless specifically exempted as part of this land use review;
1. All requirements of the building code; and
1. All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 1. Initial Submittal
 - a) Arborist Report, Madrone Modern Arboriculture, August 18, 2022
 - b) Disturbance Assessment and Analysis, Madrone Modern Arboriculture, October 20, 2022
 - c) Narrative
 2. Tree Plan, December 20, 2022
 3. Conceptual Plan for future Lot 4 (February 3, 2023)
 4. Email from Applicant
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. BDS Staff Modified Tree Protection Plan (attached)
- D. Notification information:
 1. Mailing list
 2. Mailed notice
- E. Agency Responses:
 1. Site Development/BDS
 2. Life Safety/BDS
 3. Fire Bureau
 4. Urban Forestry
- F. Correspondence: [none]
- G. Other:
 1. Original LU Application

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).



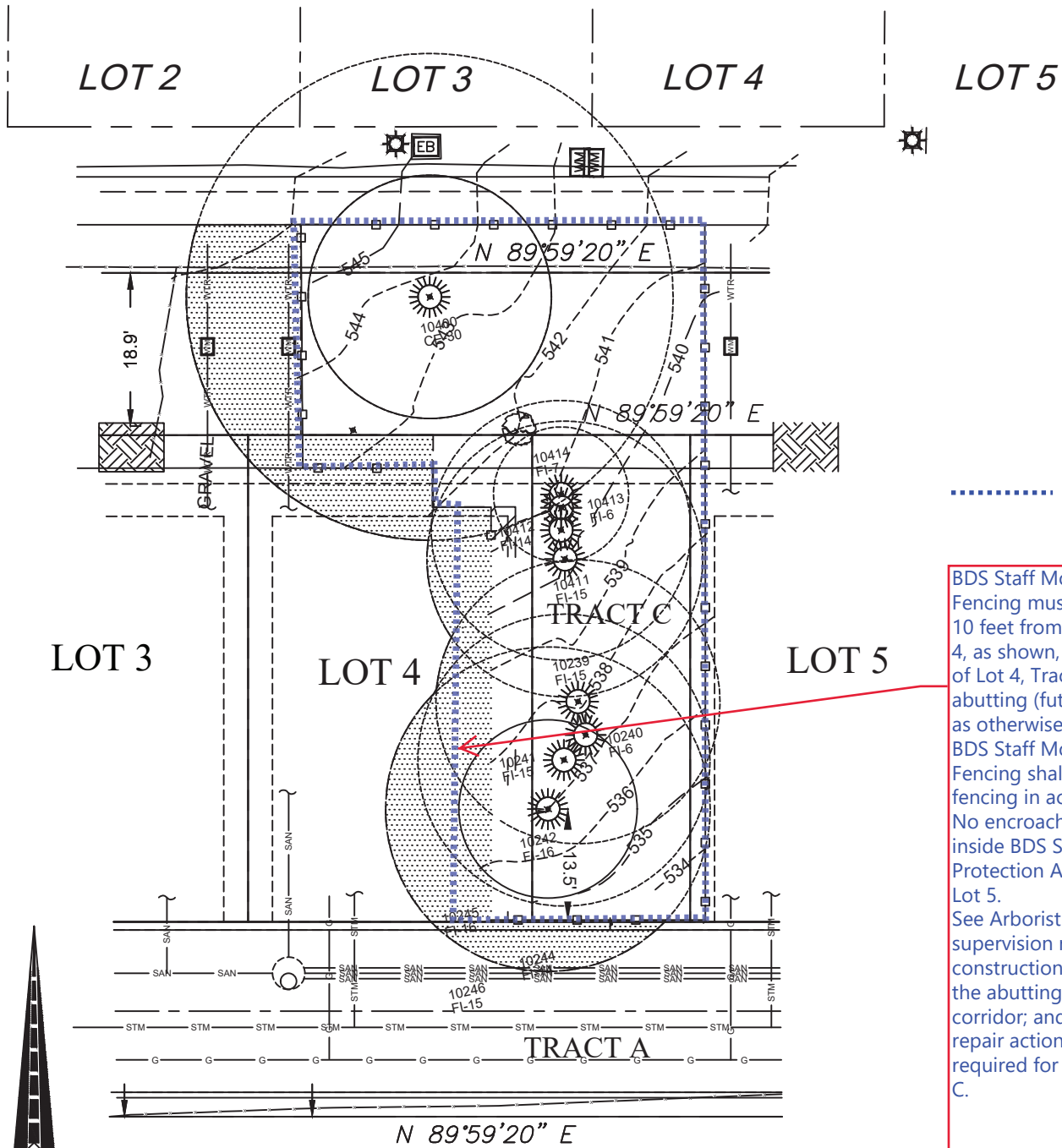
For Zoning Code in Effect Post October 1, 2022

ZONING

THIS SITE LIES WITHIN THE:
HILLSDALE PLAN DISTRICT

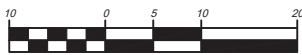
-  Site
-  Plan District
-  Stream
-  Recreational Trails

File No.	<u>LU 22 - 205088 TR</u>
1/4 Section	<u>3627</u>
Scale	<u>1 inch = 200 feet</u>
State ID	<u>1S1E16CA 7400</u>
Exhibit	<u>B</u> <u>Nov 21, 2022</u>



BDS Staff Modified Tree
 Protection Fencing

BDS Staff Modified Tree Protection Fencing must be installed at least 10 feet from the east lot line of Lot 4, as shown, and on other portions of Lot 4, Tract C, and Lot 5 and the abutting (future) sidewalk corridor, as otherwise noted. BDS Staff Modified Tree Protection Fencing shall consist of chainlink fencing in accordance with Title 11. No encroachments are allowed inside BDS Staff Modified Tree Protection Area on Lot 4, Tract C or Lot 5. See Arborist Report for onsite supervision requirements during construction on Lot 4, Lot 5 and in the abutting (future) sidewalk corridor; and for additional soil repair actions and monitoring required for the trees within Tract C.



GRAPHIC SCALE