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CITY OF PORTLAND
Bureau of Development Services
1900 SW Fourth Avenue, Suite 5000
Portland, OR 97201 **P524**
Land Use Review Decision Enclosed
Case # LU 08-102933 TR



City of Portland
Bureau of Development Services
Land Use Services Division

1900 SW Fourth Ave. Suite 5000
Portland, Oregon 97201
Telephone: 503-823-7300
TDD: 503-823-6868
FAX: 503-823-5630
www.portlandonline.com/bds

Date: April 15, 2008
To: Interested Person
From: John Cole, Land Use Services
503-823-3475 / ColeJA@ci.portland.or.us

NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 08-102933 TR

GENERAL INFORMATION

Applicant: Russel Bartels,
41173 SE Vista Loop Dr
Sandy, OR 97055-6417

Site Address: 3247-3249 SE 131ST AVE

Legal Description: N 25' OF LOT 26 EXC PT IN ST-N 25' OF LOT 27 EXC PT IN ST-EXC N 63' & EXC S 5' OF W 115.23' LOT 37, LINN PK; EXC PT IN ST-N 63' OF LOT 37, LINN PK

Tax Account No.: R500305220, R500305240

State ID No.: 1S2E11BD 02200, 1S2E11BD 02300 **Quarter Section:** 3343

Neighborhood: Powellhurst-Gilbert, contact James Chasse at 503-762-0863.

Business District: Midway, contact Donna Dionne at 503-252-2017.

District Coalition: E Portland Neighborhood, contact Richard Bixby at 503-823-4550.

Plan District: Johnson Creek Basin

Zoning: R5-Single Dwelling Residential 5,000 and R2-Multi dwelling Residential 2,000 with an "a" Alternate Design Density Overlay

Case Type: TR - Tree Review

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

Proposal:

A proposal to amend the Tree Preservation Plan adopted as a requirement of Land Division Case LU 05-172783 LDS AD. Specifically the applicant is requesting the ability to remove three Douglas Fir Trees (#14, 15 & 20) from Lots 6 and 7 of the Bartels Subdivision because final street grading has negatively impacted the health of these trees and their long term viability. The total tree diameter of these three trees proposed for removal is 51" diameter at breast height. In exchange for the removal of these trees the applicant is proposing to plant three 6" caliper Douglas Firs.

Relevant Approval Criteria:

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

- **33.853.040B.1. Approval Criteria for Tree Reviews related to preservation/mitigation plans approved under provisions of Code Section 33.630; Tree Preservation.**

ANALYSIS

Site and Vicinity: The subject site has recently been subdivided into 8 lots for single family development. Two lots have houses located on them (lots 1 and 2) while 6 lots remain vacant. A partial width public street was required along the northern edge of the site as well as improvements to the SE 131st Avenue right of way as a condition of this land division. The site has been graded and cleared in anticipation of development while eight trees designated for preservation remain. One additional tree designated for preservation (tree#3) in the southwest corner of the site was blown down in the January/February wind storm.

Except on the southern border, the land division site abuts other relatively large lots developed with single-dwelling residences. South of the site, there is a large multi-dwelling residential development. A parking lot for the apartments abuts the southern property line of the subject site. This adjacent apartment development fronts the corner of SE Powell Blvd and SE 131st Avenue.

Zoning: Except for a small portion of the site, this site is zoned R5a (Single-Dwelling Residential 5,000 with the Alternative Design Density Overlay Zone). Properties to the west and north of the site are also zoned R5. The R5 zone is one of the City's single-dwelling zones that is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designation for single-dwelling housing. A 5,263 square foot section of the site, located along the southern edge, is zoned R2 (Multi-Dwelling Residential 2,000). Properties east of SE 131st Avenue and SE Powell Boulevard are also zoned R2. This zone is intended to preserve land for urban housing and to provide opportunities for multi-dwelling development.

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

LU 05-172783 LDS This proposal for an 8-lot land division received preliminary plan approval in September 2006. The final plat was recorded in February of 2008.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed February 8, 2008. The following Bureaus have responded with no issues or concerns:

Water Bureau
Transportation
Fire Bureau
Urban Forestry

The Bureau of Environmental Services responded with no conditions of approval but did recommend that the applicant provide a detailed mitigation plan.

Comment: The original mitigation plan approved with the land division did assign mitigation planting requirements to individual lots but only established general guidelines for tree choices. BDS staff is retaining the flexibility contained in the original mitigation plan but is requiring specific tree type and sizes for the three trees required as a component of this current tree review. (Exhibit E-1)

The Bureau of Development Services Site Development Section indicated that the applicant has neglected to seek a required erosion control inspection in combination with their outstanding permits (07-111647 and 07-111606) and recommended that the arborist assess the condition of all protected trees to determine whether additional protection or damage control measures are necessary.

Comment: Because the required tree protection fencing has been knocked down on at least two occasions, Staff is including a requirement of this decision that an additional field report be provided by the applicant's arborist asserting that the remaining tree protection fencing is in place protecting trees 1 and 2 on lot 7; tree 21 on lot 4; and tree 21.1 on lot 3 and that these trees remain viable.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on February 8, 2008. Two written responses have been received from representatives of the Neighborhood Association. These responses emphasize that tree preservation is an important concern of the neighborhood, comment on the inadequacy of tree preservation efforts at the site and offer some recommendations regarding mitigation efforts that can occur.

Comment: Staff has attempted to incorporate some of these recommendations into this decision. (See attached exhibits F-1 and F-2.)

ZONING CODE APPROVAL CRITERIA

33.853.040 Approval Criteria for Tree Review

A. Trees in the Scenic Overlay Zone or Rocky Butte Plan District

Finding: These trees are not located in either a scenic overlay zone or within the Rocky Butte Plan District. This criterion is not applicable.

B. Changes to a tree preservation plan or to the approved method of tree preservation or mitigation must continue to meet Chapter 33.630 Tree Preservation.

Findings: Original Tree Preservation/Mitigation Plan

As part of the review of Land Division Case LU 05-172783 the applicant submitted a Tree Preservation Plan that identified the non-exempt trees located on the subdivision site; calculated the total non-exempt dbh and then designated trees for protection in partial conformance with numerical and operational requirements of Section 33.630 Tree Preservation. A total of 944" dbh non-exempt tree diameter was identified on-site by the applicant's arborist.

The applicant proposed to preserve the following trees:

Tree #	Species	Diameter (inches)	Significant (per Table 630-1)
1	Douglas Fir	28	Yes
2	Douglas Fir	21	Yes
3**	Douglas Fir	19	Yes
14*	Douglas Fir	14	No
15*	Douglas Fir	18	Yes
20*	Douglas Fir	19	Yes
21	Maple	18	Yes
21.1	Maple	8	No
26	Cedar	14	Yes
		Total 159 inches	

** blown down in windstorm

* proposed for removal under current tree review

The applicant proposed to preserve 159" dbh or 17 percent of the total non-exempt tree diameter on-site. Because this fell short of the required number of preserved trees under any of the options available under 33.630.100 Tree Preservation Standards the applicant proposed to include a mitigation option available under code section 33.630. 300.

The Decision approving the land division included a mitigation plan that required the planting of 23 native trees. These trees are required to be a minimum 2" in caliper at planting. If conifers are used the tree must be fully branched and at least 6 feet tall. The trees must be

native, selected from the following list: Douglas Fir, Western Red Cedar, Big Leaf Maple, Red Alder and Oregon Ash. No more than 50 percent may be of the same species. The trees are required to be placed on the lots within the land division as follows:

TREE MITIGATION REQUIREMENT (LU 05-172783 LDS AD)

Lot	# of Trees
Lot 1	6
Lot 2	4
Lot 3	2
Lot 4	1
Lot 5	2
Lot 6	2
Lot 7	1
Lot 8	5

After planting the mitigation trees this development would have retained or replanted 21% of the original predevelopment non-exempt tree diameter.

Current Tree Review Request: Additional Trees Proposed for Removal

Since gaining approval of the land division the applicant has obtained a public works permit for the installation of the new east/west partial public street. During the course of this right of way improvement the City's Department of Transportation decided to route public stormwater from this entire street segment back to existing facilities located in the SE 131st Avenue right of way. This required that the finished grade of the partial public street be higher than was originally anticipated. (See exhibit C-2) The grading necessary to achieve this road grade, in turn, conflicted with the viability of three additional trees 14, 15 and 20 because it has placed fill over their root protection zones and is causing water to pool in the root protection zones. The current application seeks permission to remove these trees and replace them with 6" diameter Douglas Fir trees planted once individual lot grading is completed. An arborist report has been submitted detailing these concerns and is attached as exhibit A-2.

One additional tree toppled in windstorm

Tree #3, a 19-inch Douglas Fir tree was blown over in a windstorm this past January or February. Consistent with past City policy, one additional replacement tree will be required to be planted to replace this tree that was destroyed by the storm event.

33.630.300 Mitigation Option

As an alternative to meeting Section 33.630.100, approval of a mitigation plan may be requested. The review body will approve the mitigation plan where the applicant has shown that the applicant has met criteria A. and B. and one of the criteria in C., below:

- A. As many trees as possible are preserved; and**
- B. The applicant has submitted a mitigation plan that adequately mitigates for the loss of trees, and shows how the mitigation plan equally or better meets the purpose of this chapter. Mitigation can include tree planting, preservation of groups of smaller trees, eco-roof, porous paving, or pervious surface permanently preserved in a tract.**
- C. It is not possible under any reasonable scenario to meet Section 33.630.100 and meet one of the following:**
 - 1. Minimum density;**
 - 2. All service requirements of Chapters 33.651 through 33.654, including connectivity;**
 - 3. Implementation of an adopted street plan; or**
 - 4. On sites 15,000 square feet or less in area, a practicable arrangement of lots, tracts, and streets within the site that would allow for the division of the site with enough room for a reasonable building site on each lot.**

Findings: The original application was deemed eligible for the mitigation option because a significant number of non-exempt trees on the land division site conflicted with the public street alignment. Without these trees eligible for preservation none of the standards for tree preservation listed in 33.630 could reasonably be met. Under the current request three additional trees are proposed for removal. The applicants have submitted an updated arborist report that presents the results of an on-site inspection. This report indicates that the three trees will not survive given the recent grading and recommends their removal. No other trees are proposed for removal. Therefore as many remaining trees as possible are being protected. This criterion is met.

Criteria B requires a mitigation plan that adequately mitigates for the loss of trees, and shows how the mitigation plan equally or better meets the purpose of the Tree preservation chapter. The purpose of Chapter 33.630 Tree Preservation is to preserve trees and mitigate for the loss of trees to:

- Protect public health through the absorption of air pollutants and contamination;
- Provide buffering from noise, wind, and storms;
- Provide visual screening and summer cooling;
- Reduce urban heat island impacts;
- Maintain property values;
- Maintain wildlife habitat;
- Maintain the beauty of the City and its natural heritage;
- Preserve trees when it is feasible to preserve trees and still meet the other regulations of this Title;
- Reduce erosion, siltation, and flooding;
- Filter stormwater and reduce stormwater runoff;
- Stabilize slopes; and
- Retain options for property owners to preserve trees and vegetation at the time of development.

The applicant is proposing to remove 51 inches of tree diameter. Two of the trees in question were listed as in poor condition on the original arborist report. One tree was listed as being in fair condition. All three of the trees exhibit very little intact crown. To replace these trees the applicant is proposing to plant three 6" caliper Douglas Fir Trees. This 18" total replacement diameter equals 35% of the 51 inches proposed for removal. These trees, being earlier in their growth cycle will grow to provide comparable tree diameter and will quickly provide a healthier tree crown than the trees proposed for removal. These new trees will provide comparable values in terms of visual screening and beauty to the trees being removed and over time will grow to provide comparable or superior value regarding stormwater and wildlife habitat benefits.

In order to further enhance the health of trees #1 and #2 located on Lot 7, this decision will require that the invasive Ivy be removed from these trees. Staff is also requiring that all root protection fencing be repaired and replaced as needed.

Subject to conditions, this criterion is met.

CONCLUSIONS

The criteria for approving a tree review can be met in this instance by requiring that trees used to meet this additional 18" dbh mitigation requirement be 6" caliper Douglas Fir Trees. These trees will be added to the required plantings on lots 6 and 7 required by the original land division and an additional standard replacement tree required on lot 7 to replace the tree lost to the windstorm in January/February of this past year. Additional requirements including removal of the invasive Ivy from Trees on lot 7 and installation of more durable fencing to protect the few remaining trees during construction are required as a component of this decision.

ADMINISTRATIVE DECISION

Approval of the Tree Review allowing the removal of Tree #14 a 14- inch Douglas Fir and Tree #15 an 18" Douglas Fir both located on lot 6 and Tree #20 a 19" Douglas Fir located on lot 5 of the Bartels Subdivision. These trees are further identified on attached Exhibit C-1. This approval is subject to the following Conditions:

1. The tree mitigation plan table adopted as condition D-2 of Land Use Decision LU 05-172783 LDS AD shall be revised as indicated below to reflect the addition of mitigation plantings to offset the removal of these three trees and the loss of tree # 3 from Lot 7 due to a windstorm. Planting of these mitigation trees shall be reflected on the building permits for residential construction on each of these individual lots and installed prior to final inspection. These trees may be counted towards the T-1 landscape requirements.

REVISED TREE MITIGATION REQUIREMENT

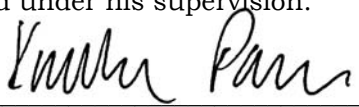
Lot	# of Trees
Lot 1	6
Lot 2	4
Lot 3	2
Lot 4	1
Lot 5	2 3*
Lot 6	2 4*
Lot 7	1 2
Lot 8	5

At least two trees on Parcel 6 and one tree on Parcel 5 shall be 6" caliper Douglas Firs. The remaining mitigation trees must be a minimum of 2" caliper at planting. If conifers are used, the tree must be fully branched and at least 6 feet tall. The trees must be native, selected from the following list: Douglas fir, Western Red Cedar, Big Leaf Maple, Red Alder and Oregon Ash. No more than 50 percent of the trees may be of the same species. These trees can be used towards meeting the T1 requirement for each lot.

2. A certified arborist shall submit a field report affirming that durable tree protection fencing has been (re)placed around trees # 1 and # 2 on lot 7, tree #21 and #26 on Lot 4; and tree # 21.1 on lot 3; and that these trees remain viable prior to issuance of building permits on lots 3,4 and/or 7.
3. The invasive ivy shall be removed from Trees number 1 and 2 in the southwestern corner of the site prior to issuance of any building permits on lot 7.

Other tree preservation/mitigation requirements from LU 05-172783 are replaced by the following conditions:

4. Development on Lots 1-8 shall be in conformance with the Tree Preservation Plan (Exhibit C-1) and the original applicant's arborist report (Exhibit LU 05-172783 A.10 and Arborist letter dated 1/14/08 exhibit A.1 to LU 09-102933 TR). Specifically, trees numbered 1,2, 21, 21.1, and 26, are required to be preserved, with the root protection zones indicated on the tree inventory map, Exhibit C-1. Encroachment into the specified root protection zones may only occur under the supervision of a certified arborist. Planning and Zoning approval of development in the root protection zones is subject to receipt of a report from an arborist, explaining that the arborist has approved of the specified methods of construction, and that the activities will be performed under his supervision.

Decision rendered by:  on April 10, 2008

By authority of the Director of the Bureau of Development Services

Decision mailed: April 15, 2008

Staff Planner: John Cole

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 January 16, 2008, and was determined to be complete on February 5, 2008.

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 January 16, 2008.

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.

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 April 29, 2008** at 1900 SW Fourth Ave. Appeals can be filed on the first floor in the Development Services Center until 3 p.m. After 3 p.m., appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. Recognized neighborhood associations are not subject to the appeal fee. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. 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 contact the receptionist at 503-823-7967 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 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, or phone 1-503-373-1265 for further information.

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

Recording the final decision.

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision. Unless appealed, the final decision may be recorded on or after **April 30, 2008** – (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.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

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

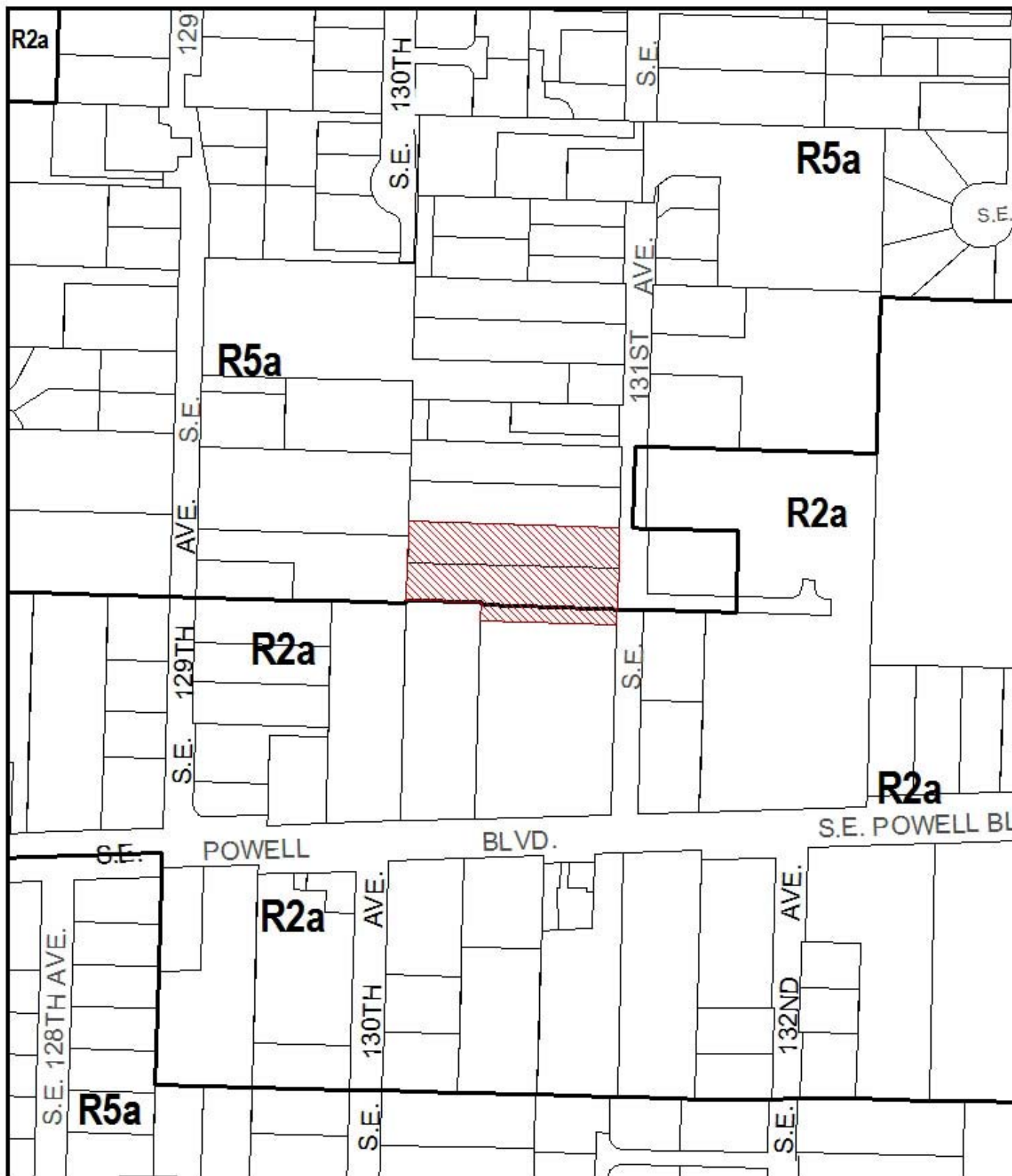
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Submittal
 - 1. Arborist letter dated 1/14/08
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan with revised root protection zones (attached)
 - 2. Public street Improvements Plan and Profile
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Site Development Review Section of BDS
- F. Correspondence:
 - 1. E-mail from John McDonald dated 2/18/08
 - 2. Letter from James Chasse dated 3/3/08
- G. Other:
 - 1. LU Application
 - 2. Original Decision LU 05-172783

The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-0625 (TTY 503-823-6868).



ZONING



Site



NORTH

This site lies within the:
JOHNSON CREEK BASIN PLAN DISTRICT

File No.	LU 08-102933 TR
1/4 Section	3343
Scale	1 inch = 200 feet
State_Id	1S2E11BD 2200
Exhibit	B (Jan 22, 2008)

Revised Tree Protection plan

Remove
Tree # 14: 14" Douglas Fir
Tree # 15: 18" Douglas Fir

Remove
Tree 20: 19" Douglas Fir

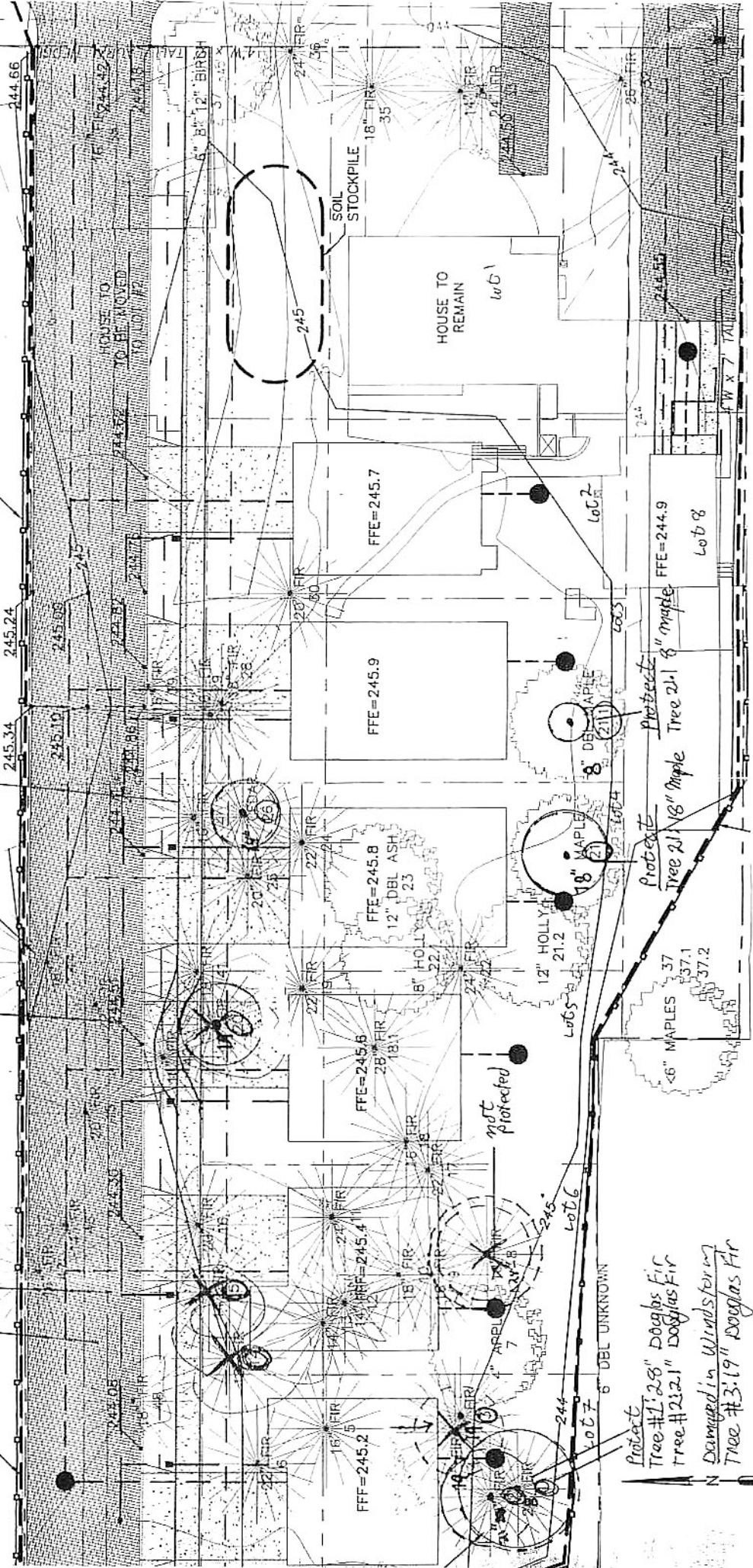
Protect
Tree # 26: 14" Cedar

RM = 244.65'
10' E 0.01' (S) = 232.00'
10' E 0.01' (S) = 231.95'

CASE NO. CV 08-102933TR
EXHIBIT C-1

SOIL DISTURBANCE
LIMITS

SEDIMENT FENCE
PER DETAIL 2



Protect
Tree # 1: 28" Douglas Fir
Tree # 2: 21" Douglas Fir
Damaged in Windstorm
Tree # 3: 19" Douglas Fir

Protect
Tree 21: 18" Maple
Tree 21: 18" Maple

Protect
Tree 21: 18" Maple

not
protected

FFE=245.7

FFE=245.9

FFE=245.8

FFE=245.6

FFE=245.4

FFE=245.2

HOUSE TO
REMAIN

SOIL
STOCKPILE

HOUSE TO
BE MOVED
TO LOT #2

FFE=244.9

Lot 8

Lot 2

Lot 3

Lot 4

Lot 5

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Lot 252

Lot 253

Lot 254

Lot 255

Lot 256

Lot 25