



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

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**Date:** August 26, 2019  
**To:** Interested Person  
**From:** Shawn Burgett, Land Use Services  
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## **NOTICE OF A TYPE Ix 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 18-172910 LDP**

#### **GENERAL INFORMATION**

**Applicant:** Kwok Wai Yu  
2117 SE 77th Ave, Portland, OR 97215  
e-mail: [wai9898@hotmail.com](mailto:wai9898@hotmail.com)

**Owner:** Kwok Wai Yu  
3721 SE 79<sup>th</sup> Ave, Portland, OR 97206

**Representative:** Tracy Brown | Tracy Brown Planning Consultants, Llc  
17075 Fir Dr, Sandy, OR 97055  
e-mail: [tbrownplan@gmail.com](mailto:tbrownplan@gmail.com)

**Site Address:** 8625 SE HARNEY ST

**Legal Description:** LOT 8, FIR BOUGH AC  
**Tax Account No.:** R280900150  
**State ID No.:** 1S2E21CC 00700  
**Quarter Section:** 3839

**Neighborhood:** Lents, contact Nick Christensen at [mojavenc@gmail.com](mailto:mojavenc@gmail.com)  
**Business District:** Eighty-Second Ave of Roses Business Association, contact Frank Harris at [info@82ndave.org](mailto:info@82ndave.org) & Lents Business Association, contact [lentsgrown@gmail.com](mailto:lentsgrown@gmail.com).

**District Coalition:** East Portland Community Office, contact Victor Salinas at 503-823-6694.

**Plan District:** Johnson Creek Basin - South

**Zoning:** R5a (Single Family Residential 5,000 sq. ft. with "a" alternative design density overlay).

**Case Type:** LDP (Land Division Partition)  
**Procedure:** Type Ix, an administrative decision with appeal to the Oregon Land Use Board of Appeals (LUBA).

**Proposal:**

The applicant is proposing to subdivide a 10,650-square foot site into two parcels. Parcel 1 will be 3,728 square feet and Parcel 2 will be 6,736 square feet and both parcels will be configured for detached houses. Onsite parking is proposed for each unit and both parcels will gain access from SE 86<sup>th</sup> Avenue. The existing detached house on Parcel 2 will remain after the partition is completed. The applicant has elected to construct the required half-street frontage improvements on SE Harney Street. Those improvements may include additional paving as needed, a curb located 13-feet from the SE Harney Street right-of-way (ROW) centerline, an 8-foot public stormwater facility, 5-foot sidewalk, and a 0.5-foot frontage zone.

There are 6 trees onsite which are subject to tree preservation requirements. A total of 4 trees will be retained to address the tree preservation requirements of Chapter 33.630. On Parcel 1 the applicant has proposed to preserve two 32-inch Douglas fir trees and on Parcel 2 the applicant has proposed to retain two Douglas fir trees (23-inches and 28-inches respectively). An additional Douglas fir tree is shown to be preserved on Parcel 2 on an optional basis; however, this tree is technically exempt from tree preservation requirements due to the proximity of the house to remain.

This partition is reviewed through a Type Ix land use review because: (1) the site is in a residential zone; (2) fewer than four lots are proposed; (3) none of the lots, utilities, or services are proposed within a Potential Landslide Hazard or Flood Hazard Area, and; (4) no other concurrent land use reviews (such as an Adjustment, Design Review, or Environmental Review) are requested or required (see 33.660.110).

For purposes of State Law, this land division is considered a partition. To partition land is to divide an area or tract of land into two or three parcels within a calendar year (See ORS 92.010). ORS 92.010 defines “parcel” as a single unit of land created by a partition of land. The applicant’s proposal is to create 2 units of land (2 parcel). Therefore, this land division is considered a partition.

**Relevant Approval Criteria:** In order to be approved, this proposal must comply with the approval criteria of *Title 33*. The relevant criteria are found in **Section 33.660.120, Approval Criteria for Land Divisions in Open Space and Residential Zones**.

## FACTS

**Site and Vicinity:** The existing one-story home on the site was constructed in 1951 based on City records. The area surrounding the site is made up of predominantly single-family homes of various types and sizes. The subject site is flat and has mature trees located on it as referenced in the applicant’s arborist report (exhibit A.6).

**Infrastructure:**

- **Streets** –The site has approximately 150 feet of frontage on SE 86<sup>th</sup> Avenue and approximately 71 feet of frontage along SE Harney Street. There is one driveway entering the site that serves the existing house. At this location, SE 86<sup>th</sup> Avenue and SE Harney Street are classified as a Local Service Street for all modes in the Transportation System Plan (TSP). Tri-Met provides transit service approximately 1,150 feet from the site at SE 82<sup>nd</sup> Avenue via Bus 72.

Based on City GIS mapping, it appears SE 86<sup>th</sup> Avenue has a 32-foot curb to curb paved surface within a 50-foot right-of-way with parking on both sides. No sidewalks are located on either side of SE 86<sup>th</sup> Avenue adjacent to this site.

Based on City GIS mapping, SE Harney St. has a 32-foot paved surface within a 55-foot right-of-way with parking on both sides. No sidewalks or curbs are located on either side of SE Harney St. adjacent to this site.

- **Water Service** – There is an existing 6-inch CI water main in SE 86<sup>th</sup> Avenue and another public water main in SE Harney St. Based on GIS mapping, the existing house is served by metered service from the water main in SE Harney St.
- **Sanitary Service** - There is an existing 8-inch PVC public sewer main in SE 86<sup>th</sup> Avenue and SE Harney St. The existing house is not connected to either of these mains but rather is on septic.
- **Stormwater Disposal** – There is an 18-inch concrete storm only sewer located in SE Harney St. that is a BES facility. In addition, there is a 54-inch concrete storm only sewer in SE Harney St. owned by ODOT.

**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” overlay is intended to allow increased density that meets design compatibility requirements. It focuses development on vacant sites, preserves existing housing stock, and encourages new development that is compatible with the surrounding residential neighborhood. This land division proposal is not using any of the provisions of the “a” overlay.

The Johnson Creek Basin plan district provides for the safe, orderly, and efficient development of lands which are subject to a number of physical constraints, including 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.

**Please note:** This site was re-zoned to R7 (Single Family Residential 7,000) following submittal of the land division application on 5/17/19. Therefore, this application is vested under the R5 zoning designation since it was in place at application submittal.

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

**Agency Review:** Several Bureaus have responded to this proposal and relevant comments are addressed under the applicable approval criteria. Exhibits “E” contain the complete responses.

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on **November 7, 2019**. No written responses have been received from the Neighborhood Association or notified property owners in response to the proposal.

## ZONING CODE APPROVAL CRITERIA

### ***APPROVAL CRITERIA FOR LAND DIVISIONS IN OPEN SPACE AND RESIDENTIAL ZONES***

***33.660.120 The Preliminary Plan for a land division will be approved if the review body finds that the applicant has shown that all of the following approval criteria have been met.***

Due to the specific location of this site, and the nature of the proposal, some of the criteria are not applicable. The following table summarizes the criteria that are not applicable. Applicable criteria are addressed below the table.

<b>Criterion</b>	<b>Code Chapter/Section and Topic</b>	<b>Findings: Not applicable because:</b>
C	33.631 - Flood Hazard Area	The site is not within the flood hazard area.

D	33.632 - Potential Landslide Hazard Area	The site is not within the potential landslide hazard area.
E	33.633 - Phased Land Division or Staged Final Plat	A phased land division or staged final plat has not been proposed.
F	33.634 - Recreation Area	The proposed density is less than 40 units.
H	33.636 - Tracts and Easements	No tracts or easements have been proposed or will be required.
I	33.639 - Solar Access	Maintaining existing development on the site limits new parcel configuration (33.610.200 supercedes 33.639).
J	33.640 - Streams, Springs, Seeps and Wetlands	No streams, springs, seeps or wetlands are evident on the site
L	33.654.110.B.2 - Dead end streets	No dead end streets are proposed.
	33.654.110.B.3 - Pedestrian connections in the I zones	The site is not located within an I zone.
	33.654.110.B.4 - Alleys in all zones	No alleys are proposed or required.
	33.654.120.C.3.c - Turnarounds	No turnarounds are proposed or required.
	33.654.120.D - Common Greens	No common greens are proposed or required.
	33.654.120.E - Pedestrian Connections	There are no pedestrian connections proposed or required.
	33.654.120.F - Alleys	No alleys are proposed or required.
	33.654.120.G - Shared Courts	No shared courts are proposed or required.
	33.654.130.B - Existing public dead-end streets and pedestrian connections	No public dead-end streets or pedestrian connections exist that must be extended onto the site.
	33.654.130.C - Future extension of dead-end streets and pedestrian connections	No dead-end street or pedestrian connections are proposed or required.
	33.654.130.D - Partial rights-of-way	No partial public streets are proposed or required.
	33.655 - School District Enrollment Capacity	The proposal is for less than 11 lots or is not in the David Douglas School District.

**Applicable Approval Criteria are:**

**A. Lots. The standards and approval criteria of Chapters 33.605 through 33.612 must be met.**

**Findings:** Chapter 33.610 contains the density and lot dimension requirements applicable in the RF through R5 zones. Based on the applicant's survey, the site area is 10,650 square feet. The maximum density in the R5 zone is one unit per 5,000 square feet. Minimum density is one unit per 5,000 square feet based on 80 percent of the site area. Based on this density allowance, the applicant is allowed two lots as proposed.

The site is also located in the south subdistrict of the Johnson Creek Basin Plan District that restricts density allowances on sites with slopes over 20%. This site is relatively flat; therefore, no density restrictions apply.

The lot dimensions required and proposed are shown in the following table:

	<b>Min. Lot Area (square feet)</b>	<b>Max. Lot Area (square feet)</b>	<b>Min. Lot Width* (feet)</b>	<b>Min. Depth (feet)</b>	<b>Min. Front Lot Line (feet)</b>
<b>R5 Zone</b>	3,000	8,500	36	50	30
Parcel 1	3,728 sq. ft.		54 ft.	71 ft.	54 ft.
Parcel 2	6,736 sq. ft.		71 ft.	97.70 ft.	71 ft.

\* Width is measured by placing a rectangle along the minimum front building setback line specified for the zone. The rectangle must have a minimum depth of 40 feet, or extend to the rear of the property line, whichever is less.

The findings above show that the applicable density and lot dimension standards are met. Therefore, this criterion is met.

**B. Trees. The standards and approval criteria of Chapter 33.630, Tree Preservation, must be met.**

**Findings:** The regulations of Chapter 33.630 require that trees be considered early in the design process with the goal of preserving high value trees and, when necessary, mitigating for the loss of trees.

To satisfy these requirements, the applicant must provide a tree plan that demonstrates, to the greatest extent practicable, the trees to be preserved provide the greatest environmental and aesthetic benefits for the site and the surrounding area. The tree plan must also show that trees are suitable for preservation, considering the health and condition of the tree and development impacts anticipated. Tree preservation must be maximized, to the extent practicable, while allowing for reasonable development considering the intensity of development allowed in the zone and site constraints, including existing utility easements and requirements for services and streets.

Trees that are healthy, native and non-nuisance species, 20 or more inches in diameter and in tree groves are the highest priority for preservation. Additional considerations include trees that are slower growing native species, buffering natural resources, preventing erosion and slope destabilization and limiting impacts on adjacent sites.

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.

In order to identify which trees are subject to these requirements, the applicant provided a tree survey (Exhibit C.2) that shows the location and size of trees on and adjacent to the site. The applicant also provided an arborist report (Exhibit A.6) that identifies each tree, its condition and suitability for preservation or its exempt status and specifies a root protection zone and tree protection measures for each tree to be preserved.

Based on this information, 6 trees, which provide a total of 138 inches of tree diameter are subject to the preservation requirements of this chapter.

The trees proposed for preservation are in good condition, include native/non-nuisance species. Four of the non-exempt trees are 20 or more inches in diameter. The proposed root protection zones for the trees to be retained will allow for the type of development anticipated in the R5 zone and will not conflict with any existing utility easements, proposed services or site grading.

Specifically, the applicant proposes to retain all of the non-exempt trees that are 20 or more inches (numbered 3, 4, 5 and 7) and 115 inches (83%) of the total tree diameter (138”), so the proposal complies with:

*Option 1: Preserve all of the trees that are 20 or more inches in diameter and at least 20 percent of the total tree diameter on the site.*

In addition, the applicant’s arborist report has also identified one tree offsite in the public right of way adjacent to SE 86<sup>th</sup> Ave (tree number 8) that will be regulated by Urban Forestry.

Based on these factors, no additional mitigation is warranted to satisfy the approval criteria.

In order to ensure that future owners of the parcels are aware of the tree preservation requirements, the applicant must record an Acknowledgement of Tree Preservation Land Use Conditions, at the time of final plat. The acknowledgement must identify that development on Parcels 1 and 2 must be carried out in conformance with the Tree Preservation Plan (Exhibit C.1) and the Arborist Report (Exhibit A.6).

With the implementation of the noted conditions, the approval criteria will be met.

**G. Clearing, Grading and Land Suitability. The approval criteria of Chapter 33.635, Clearing, Grading and Land Suitability must be met.**

**Findings:** The regulations of Chapter 33.635 ensure that the proposed clearing and grading is reasonable given the infrastructure needs, site conditions, tree preservation requirements, and limit the impacts of erosion and sedimentation to help protect water quality and aquatic habitat.

Additionally, where geologic conditions or historic uses of the site indicate that a hazard may exist, the applicant must show that the proposed land division will result in lots that are suitable for development. The applicant may be required to make specific improvements to make the lots suitable for their intended uses and the provision of services and utilities.

Clearing and Grading: In this case, the site is primarily flat and is not located within the Potential Landslide Hazard Area. Therefore, no significant clearing or grading will be required on the site to make the new lots developable. However, as indicated above under Tree Preservation criteria, several trees are required to be preserved near the east property boundary of Parcels 1 and 2 which will be addressed via a condition of approval that will apply to future development on these Parcels. The root protection zone of several trees on Parcel 1 are located near where new development on Parcel 1 is anticipated. In addition, tree removal is only allowed within the South subdistrict of the Johnson Creek Plan District in limited situations which will not allow the removal of two non-exempt trees (please see exhibit A.6) not proposed for protection including tree 1 (on Parcel 1) or tree 10 (on Parcel 2) until building permits or public works permit are issued for development near these trees as indicated under Zoning Code section 33.537.125.C. This criterion is met.

Land Suitability: The site is currently in residential use, and there is no record of any other use in the past. Based on the BES comments (exhibit E.1) the existing house on the site is connected to a septic system and must be connected to the public sewer main prior to final plat approval (see comments later in this report). The septic system on the site must also be decommissioned. Prior to final plat, the applicant must meet the requirements of the Site Development Section of the Bureau of Development Services for the decommissioning of this facility. With a condition requiring final inspection for a decommissioning permit and connection to the public sewer as required by BES, the new lots can be considered suitable for new development, and this criterion is met.

**K. Transportation impacts. The approval criteria of Chapter 33.641, Transportation Impacts, must be met; and,**

**Findings:** The transportation system must be capable of supporting the proposed development in addition to the existing uses in the area.

Evaluation factors include: street capacity and level-of-service; vehicle access and loading; on-street parking impacts: the availability of transit service and facilities and connections to transit; impacts on the immediate and adjacent neighborhoods; and safety for all modes. Mitigation may be necessary to reduce impacts.

The proposal will result in an increase of 1 single-family residence. This residence can be expected to generate 10 daily vehicle trips with 1 trip occurring in each of the AM and PM Peak Hours. This small increase in peak hour vehicles will not have significant impact on intersection levels of service or street capacity. No mitigation is needed.

The new lot will have at least one on-site parking space with potentially an additional space in front of the garage. Impacts to the on-street parking supply should be minimal.

Standard sidewalk corridor improvements will be required to serve the proposed development (see criterion L. 33.654). These criteria are met.

**L. Services and utilities. The regulations and criteria of Chapters 33.651 through 33.654, which address services and utilities, must be met.**

**Findings:** Chapters 33.651 through 33.654 address water service standards, sanitary sewer disposal standards, stormwater management, utilities and rights of way. The criteria and standards are met as shown in the following table:

<p><b>33.651 Water Service standard</b> – See Exhibit E.3 for detailed bureau comments.</p> <p>The Water Bureau has indicated that service is available to the site, as noted on page 2 of this report. The water service standards of 33.651 have been verified. This criterion is met.</p>
<p><b>33.652 Sanitary Sewer Disposal Service standards</b> – See Exhibit E.1 for detailed comments.</p> <p>The Bureau of Environmental Services has indicated that service is available to the site, as noted on page 2 of this report.</p> <p>According to City records, the existing dwelling on proposed Parcel 2 is currently on septic. The existing house is required to connect to sewer prior to final plat approval.</p> <p>Parcel 1 and Parcel 2 will be served by new connections (separately conveyed) to the sanitary-only sewer in 86<sup>th</sup> Ave within their frontages.</p> <p>Prior to final plat approval the applicant must establish a new service connection from the existing structure on Parcel 2 to a public sanitary-only sewer within its frontage. The applicant must obtain finalized permits for this work prior to final plat approval.</p> <p>In addition, prior to final plat approval the applicant must submit a supplemental plan that depicts how sanitary service requirements discussed above are met.</p> <p>The sanitary sewer service standards of 33.652 have been verified. This criterion is met.</p>
<p><b>33.653.020 &amp; .030 Stormwater Management criteria and standards</b> – See Exhibits E.1</p> <p>No stormwater tract is proposed or required. Therefore, criterion A is not applicable.</p> <p>The applicant has proposed the following stormwater management methods:</p>

- **Public Street Improvements:** Stormwater from these new impervious areas will be directed into a new public facility between the curb and the new sidewalk. The agency has confirmed via the Public Works concept approval process that the proposed facility is of a size and proposed design that is adequate to accommodate the quantity of water generated from the new impervious areas. To accommodate this stormwater facility within the public right-of-way, a dedication along the frontage of the site must be provided on the final plat.

BES requires a Public Works Permit for the construction of such a swale. The applicant must provide engineered designs and financial guarantees of performance prior to final plat approval.

- **Parcel 1:** Stormwater from this lot will be directed to an individual drywell that will treat the water and slowly infiltrate it into the ground. This lot has sufficient area for a stormwater facility that can be adequately sized and located to meet setback standards and accommodate water from a reasonably-sized home. BES has indicated conceptual approval of the drywell.
- **Parcel 2 (the lot with the existing house):** It is unclear where stormwater from the existing house on Parcel 2 currently discharges. The applicant has indicated that currently stormwater discharges to a piped system but the discharge location is unknown. The applicant intends to retrofit the stormwater system by disconnecting the downspouts and discharging stormwater to splashblocks. Prior to final plat approval, the applicant must demonstrate that the stormwater management for existing development will meet applicable SWMM requirements and will not be impacted by the proposed lot lines.

Therefore, prior to final plat approval the applicant must modify the stormwater disposal system serving the existing structure on Parcel 2 according to BES and SWMM requirements and obtain finalized permits as necessary. In addition, the applicant must submit a revised supplemental plan that depicts how stormwater management requirements discussed above have been addressed. Based on these conditions, this criterion is met.

### **33.654.110.B.1 Through streets and pedestrian connections**

Generally, through streets should be provided no more than 530 feet apart and pedestrian connections should be provided no more than 330 feet apart. Through streets and pedestrian connections should generally be at least 200 feet apart.

The block on which the subject property is located meets the noted spacing requirements.

The site is within the Portland Master Street Plan for the Southeast District. Therefore, the proposal is consistent with the master street plan.

For the reasons described above, this criterion is met.

### **33.654.120.B & C Width & elements of the right-of-way – See Exhibit E.2 for bureau comment**

SE 86<sup>th</sup> Avenue is improved with a paved roadway and curbs both sides. There are no planter strips or sidewalks. SE Harney St. is improvement with a paved roadway with a gravel shoulder on both sides. There is no sidewalks or planter strips.

In reviewing this land division, PBOT relies on accepted civil and traffic engineering standards and specifications to determine if existing street improvements for motor vehicles, pedestrians and bicyclists can safely and efficiently serve the proposed new development. In this case, PBOT has determined that curb and sidewalk improvements must be made in order to meet City standards to ensure that safe pedestrian travel is possible to and from the proposed development. To accommodate these improvements, as well as an associated stormwater facility discussed later in this report, additional right-of-way must be dedicated along the frontage of the site. With those improvements, one additional dwelling additional dwellings can be safely served by this existing street without having any significant impact



on the level of service provided.

This criterion is met, with the condition that curb and sidewalk improvements are made, and the required right-of-way dedication is shown on the Final Plat.

### **33.654.130.A - Utilities (defined as telephone, cable, natural gas, electric, etc.)**

Any easements that may be needed for private utilities that cannot be accommodated within the adjacent right-of-ways can be provided on the final plat. At this time no specific utility easements adjacent to the right-of-way have been identified as being necessary. Therefore, this criterion is met.

## **DEVELOPMENT STANDARDS**

Development standards that are not relevant to the land division review, have not been addressed in the review. 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 11 can be met, and those 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.

### **Future Development**

- Garages can be no wider than 50% of the width of the front façade of the house, per 33.110.253.D.3.a
- Parcel 1 will be subject to R7 zone development standards: Parcels 1 and 2 will be subject to current zoning (R7) zoning designation since these lots are not vested under the R5 zoning designation following land division approval. The primary difference is the R7 Zone requires a 15' front setback (the R5 zone had required a 10' front setback).
- The site is located in South subdistrict of Johnson Creek Basin Plan district, the following regulations will also apply due to the sites location in this subdistrict:

**Impervious surface.** No more than 50 percent of any site may be developed in impervious surface. Building eaves are included in the calculation of impervious surface.

**Tree removal.** Tree removal is subject to the standards of 33.537.125 which states: Trees 6 or more inches in diameter may not be removed unless one or more of the following are met:

1. The tree is determined by an arborist to be dead, dying or dangerous and needs to be removed;
2. The tree is listed on the Nuisance Plants List;
3. The tree is within 10 feet of existing or proposed buildings and structures attached to buildings, such as decks, stairs, and carports, or within 10 feet of a proposed driveway or right-of-way improvements;
4. The tree must be removed due to installation, repair, or maintenance of water, sewer, or stormwater services. For new installation of services, tree removal allowed under this provision is limited to a single 10-foot wide utility corridor per site;
5. The tree is within a proposed roadway or City-required construction easement;
6. The tree is at least 6 and up to 12 inches in diameter and does not meet any of the other standards of this Subsection, but is replaced with two trees. Replacement plantings must meet Section 33.248.030, Plant Materials. Trees removed within 20 feet of the Springwater Corridor must be replaced within the 20 feet of the Springwater Corridor; or
7. Trees that do not qualify for removal under C.1 through 6 may be removed if approved through tree review as provided in Chapter 33.853, Tree Review. However, where the tree removal requires environmental review, only environmental review

is required.

**Tree removal without development.** When no development is proposed, tree removal allowed under the standards of Subsection C.1 through 5, above, is subject to the tree permit requirements of Title 11, Trees.

**Existing development that will remain after the land division.** The existing development on the site will remain and be located on Parcel 2. The division of the property may not cause the structures to move out of conformance or further out of conformance to any development standard applicable in the R5 zone. Per 33.700.015, if a proposed land division will cause conforming development to move out of conformance with any regulation of the zoning code, and if the regulation may be adjusted, the land division request must include a request for an adjustment (Please see section on Other Technical Standards for Building Code standards.)

In this case, there are several Zoning Code standards that relate to existing development on the site:

- Minimum Setbacks – The existing house identified to remain on the site must meet the required Zoning Code setbacks from the proposed new lot lines. Alternatively, existing buildings must be set back from the new lot lines in conformance with an approved Adjustment or other Land Use Review decision that specifically approves alternative setbacks. The existing house will be approximately 11.5 feet from the new property line. Therefore, the required setbacks are being met. To ensure this standard continues to be met at the final plat stage, the final plat must be accompanied by a supplemental plan showing the surveyed location of the existing building relative to the adjacent new lot lines.
- Accessory Structures – In this zone, accessory structures are not allowed on a lot without a primary structure. Therefore, in order for the proposed new lots to meet this standard, all accessory structures on Parcel 1 must be removed prior to final plat. Because the structure is less than 200 square feet in size, a demolition permit is not required. The applicant must submit before and after photos to document removal of the structure.
- Parking pad- The existing parking pad serving the existing house is located 18' from the side lot line within the side setback (the zoning code now requires parking pads (a minimum of 18' in depth) to be located outside of the side setback. However, the based on a review of the permit history (permit number 92-104357), it appears this existing driveway configuration had been in place prior to this zoning requirement going into effect. Therefore, even though the existing parking pad is located within the existing side setback it's considered an existing non-conforming situation.

With the conditions noted above, this land division proposal can meet the requirements of 33.700.015.

## **OTHER TECHNICAL REQUIREMENTS**

Technical decisions have been made as part of this review process. These decisions have been made based on other City Titles, adopted technical manuals, and the technical expertise of appropriate service agencies. These related technical decisions are not considered land use actions. If future technical decisions result in changes that bring the project out of conformance with this land use decision, a new land use review may be required. The following is a summary of technical service standards applicable to this preliminary partition proposal.

<b>Bureau</b>	<b>Code Authority and Topic</b>
Development Services/503-823-7300 <a href="http://www.portlandonline.com/bds">www.portlandonline.com/bds</a>	Title 24 – Building Code, Flood plain Title 10 – Erosion Control, Site Development Administrative Rules for Private Rights-of-Way
Environmental Services/503-823-7740 <a href="http://www.portlandonline.com/bes">www.portlandonline.com/bes</a>	Title 17 – Sewer Improvements 2008 Stormwater Management Manual
Fire Bureau/503-823-3700 <a href="http://www.portlandonline.com/fire">www.portlandonline.com/fire</a>	Title 31 Policy B-1 – Emergency Access
Transportation/503-823-5185 <a href="http://www.portlandonline.com/transportation">www.portlandonline.com/transportation</a>	Title 17 – Public Right-of-Way Improvements Transportation System Plan
Urban Forestry (Parks)/503-823-4489 <a href="http://www.portlandonline.com/parks">www.portlandonline.com/parks</a>	Title 11 –Trees
Water Bureau/503-823-7404 <a href="http://www.portlandonline.com/water">www.portlandonline.com/water</a>	Title 21 – Water availability

As authorized in Section 33.800.070 of the Zoning Code conditions of approval related to these technical standards have been included in the Administrative Decision on this proposal.

- The applicant must meet the requirements of the Fire Bureau in regards to ensuring adequate hydrant flow from the nearest fire hydrant or obtaining an approved Fire Bureau appeal to this requirement or recording an Acknowledgement of Special Land Use Conditions that requires the provision of internal fire suppression sprinklers on Parcel 1 if applying the Fire Code exception; fire apparatus access, including aerial access. These requirements are based on the technical standards of Title 31 and Fire Bureau Policy B-1.
- The applicant must meet the requirements of Urban Forestry for street tree planting in the new planter strip in correlation with the Public works and/or building permit review. In addition, Urban Forestry noted the following (exhibit E.6):

The applicant has not provided a conceptual street tree planting plan. One street tree must be planted or retained for each full increment of 25 linear feet (11.50.060.C.1). Street trees must be planted at a minimum 1.5 caliper inches. Trees will be required to be planted through the building permit, public works permit or final plat.

- Parcel 1: There are approximately 54 feet of street frontage at this location, requiring 2 trees to be planted or preserved.
- Parcel 2: There are approximately 167 feet of street frontage at this location (combined). 5 trees are required to be planted or preserved.

Street tree planting may be exempt under 11.50.060.B when existing above or below grade utilities prevent planting street trees or when the existing planting strip is less than 3-feet wide.

Fee required for loss of street tree planting locations. Prior to lot division there is room for 8 street trees. After the proposed lot division, there will only be room for 7 trees. This is because 1 street tree is required to be planted for every 25 linear feet of frontage. A fee of \$487.50 (\$325 per inch x 1.5” required size) is required for the permanent loss of available planting space.

These requirements are based on the standards of Title 11.

## **CONCLUSIONS**

The applicant has proposed a 2-parcel partition, as shown on the attached preliminary plan (Exhibit C.1). As discussed in this report, the relevant standards and approval criteria have been met, or can be met with conditions. The primary issues identified with this proposal are: Tree Preservation, public frontage improvements, new sewer service for existing house

and decommissioning of septic system, verifying stormwater system for existing house for on-site stormwater management.

With conditions of approval that address these requirements this proposal can be approved.

## **ADMINISTRATIVE DECISION**

**Approval** of a Preliminary Plan for a 2-parcel partition, that will result in two standard lots for detached dwelling units as illustrated with Exhibit C.1, subject to the following conditions:

**A. Supplemental Plan.** Three copies of an additional supplemental plan shall be submitted with the final plat survey for Land Use Review and BES review and approval. That plan must portray how the conditions of approval listed below are met. In addition, the supplemental plan must show the surveyed location of the following:

- Any buildings or accessory structures on the site at the time of the final plat application;
- Any driveways and off-street vehicle parking areas on the site at the time of the final plat application;
- New sewer lateral serving existing house and modified stormwater management facilities for existing house to meet conditions C.2 and C.7 below.
- Any other information specifically noted in the conditions listed below.

**B. The final plat must show the following:**

1. The applicant shall meet the street dedication requirements of the City Engineer for SE 86<sup>th</sup> Avenue and SE Harney St. The required right-of-way dedication must be shown on the final plat.
2. A recording block for each of the legal documents such as maintenance agreement(s), acknowledgement of special land use conditions, or Declarations of Covenants, Conditions, and Restrictions (CC&Rs) as required by Condition C.7-C.8 below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: "An Acknowledgement of Special Land Use Conditions (name of feature) has been recorded as document no. \_\_\_\_\_, Multnomah County Deed Records."

**C. The following must occur prior to Final Plat approval:**

### **Streets**

1. The applicant shall meet the requirements of the City Engineer for right of way improvements along the site's street frontage. The applicant shall submit an application for a Public Works Permit and provide plans and financial assurances to the satisfaction of the Portland Bureau of Transportation, the Bureau of Environmental Services and Urban Forestry (for new street trees) for required street frontage improvements.

### **Utilities**

2. The applicant shall meet the requirements of the Bureau of Environmental Services to establish a new service connection from the existing structure on Parcel 2 to a public sanitary-only sewer within its frontage. The applicant must obtain finalized permits for this work prior to final plat approval and show this new lateral on the supplemental survey.
3. The applicant shall meet the requirements of the Fire Bureau for ensuring adequate hydrant flow from the nearest hydrant. The applicant must provide verification to the Fire Bureau that Appendix B of the Fire Code is met, the exception is used, or provide an approved Fire Code Appeal prior final plat approval.

**Existing Development**

4. The applicant must remove the shed on Parcel 1. The applicant must submit before and after photos of the removal (with the same perspective).
5. The applicant shall meet the requirements of the Site Development Section of the Bureau of Development Services for the decommissioning the septic system on the site.
6. The applicant must meet the requirements of BES for the stormwater systems on the existing house to remain on Parcel 2. Specifically, the gutters and downspouts must direct water to an approved disposal point that meets setback requirements from the new lot lines. If modifications to the system are required by BES, the applicant must obtain finalized plumbing permits for this work prior to final plat approval. The location of these new facilities are required to be shown on the supplemental survey

**Required Legal Documents**

7. If required per condition C.3 above, the applicant shall execute an Acknowledgement of Special Land Use conditions, requiring residential development on Parcel to contain internal fire suppression sprinklers, per the Fire Code exception of a Fire Bureau Appeal. The acknowledgement shall be referenced on and recorded with the final plat.
8. The applicant shall execute an Acknowledgement of Tree Preservation Land Use Conditions that notes tree preservation requirements that apply to Parcels 1 and 2. A copy of the approved Tree Preservation Plan must be included as an Exhibit to the Acknowledgement. The acknowledgment shall be referenced on and recorded with the final plat.

**Other requirements**

9. The applicant must pay into the City Tree Preservation and Planting Fund [Street Trees – Fee in Lieu of Planting and Establishment (per inch)] the amount equivalent to 1.5 inches of trees. Payment must be made to the Bureau of Development Services, who administers the fund for the Parks Bureau.

**D. The following conditions are applicable to site preparation and the development of individual lots:**

1. Development on Parcels 1 and 2 shall be in conformance with the Tree Preservation Plan (Exhibit C.1) and the applicant's arborist report (Exhibit A.6). Specifically, trees numbered 3, 4, 5 and 7 are required to be preserved, with the root protection zones indicated on Exhibit C.1. Tree protection fencing is required along the root protection zone of the trees to be preserved. The fence must be 6-foot high chain link and be secured to the ground with 8-foot metal posts driven into the ground. Further Encroachment into the specified root protection zones may only occur if it meets the Tree Protection Specifications of 11.60.030.
2. The applicant must meet the Fire Bureau requirements for addressing and aerial fire department access. Aerial access applies to buildings that exceed 30 feet in height from the fire access as measured to the bottom of the eave of the structure or the top of the parapet for a flat roof.
3. If required, the applicant shall meet any requirements identified through a Fire Code Appeal/install residential sprinklers in the new dwelling unit on Parcel 1. Please refer to the final plat approval report for details on whether or not this requirement applies.

**Staff Planner: Shawn Burgett**

Decision rendered by: \_\_\_\_\_ *S. Burgett* on August 22, 2019  
By authority of the Director of the Bureau of Development Services

**Decision mailed August 26, 2019**

**About this Decision.** This land use decision is **not a permit** for development. A Final Plat must be completed and recorded before the proposed lots can be sold or developed. 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 May 17, 2018, and was determined to be complete on November 1, 2018.

*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 May 17, 2018.

*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 requested that the 120-day review period be extended 180 days as stated with Exhibit A.7. Unless further extended by the applicant, **the 120 days will expire on: 8/28/19.**

**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.

**This decision, and any conditions associated with it, is final.** It may be appealed to the Oregon Land Use Board of Appeals (LUBA), within 21 days of the date the decision is mailed, as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that a petitioner at LUBA must have submitted written testimony during the comment period for this land use review. Contact LUBA at 775 Summer St NE Suite 330, Salem, OR 97301-1283 or phone 1-503-373-1265 for further 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).

**Recording the land division.** The final land division plat **must** be submitted to the City **within three years** of the date of the City's final approval of the preliminary plan. This final plat must be recorded with the County Recorder and Assessors Office after it is signed by the Planning Director or delegate, the City Engineer, and the City Land Use Hearings Officer, and approved by the County Surveyor. **The approved preliminary plan will expire unless a final plat is submitted within three years of the date of the City's approval of the preliminary plan.**

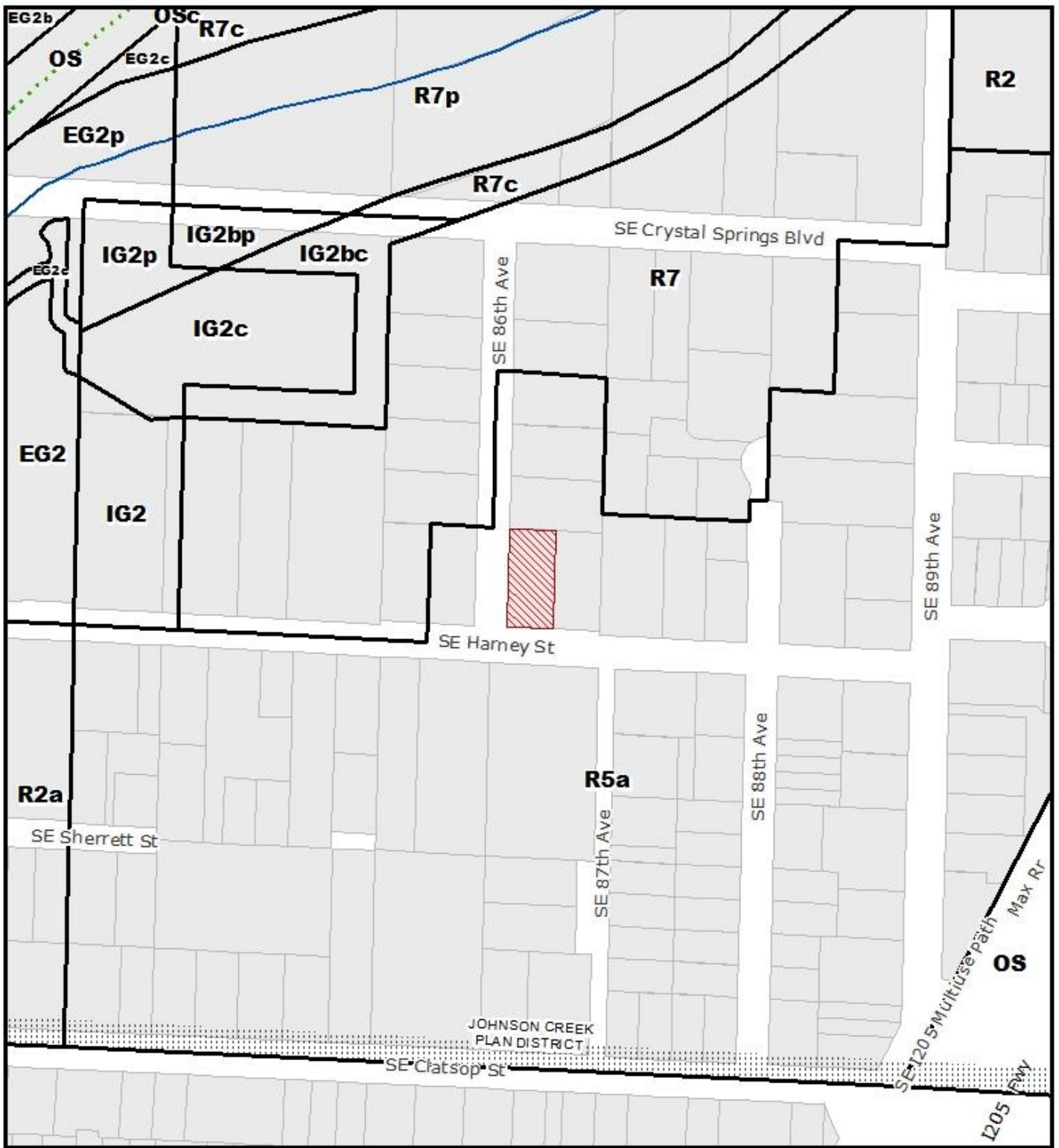
#### EXHIBITS


NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  - 1. Applicants Narrative
  - 2. SIM Test
  - 3. Depth to groundwater
  - 4. Tree credit worksheet
  - 5. Expedited Land Division Acknowledgment
  - 6. Arborist report
  - 7. 180 day extension to 120 day clock
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Existing conditions survey
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Bureau of Transportation Engineering and Development Review
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Site Development Review Section of BDS
  - 6. Bureau of Parks, Forestry Division
  - 7. Life Safety
- F. Correspondence: (None received)
- G. Other:
  - 1. Original Land use application
  - 2. Incomplete Letter

**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**   
 NORTH

THIS SITE LIES WITHIN THE:  
 JOHNSON CREEK PLAN DISTRICT  
 SOUTH SUBDISTRICT

-  Site
-  Stream
-  Recreational Trails

File No.	LU 18-172910 LDP
1/4 Section	3839
Scale	1 inch = 200 feet
State ID	1S2E21CC 700
Exhibit	B May 21, 2018



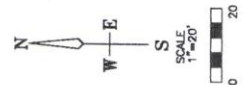
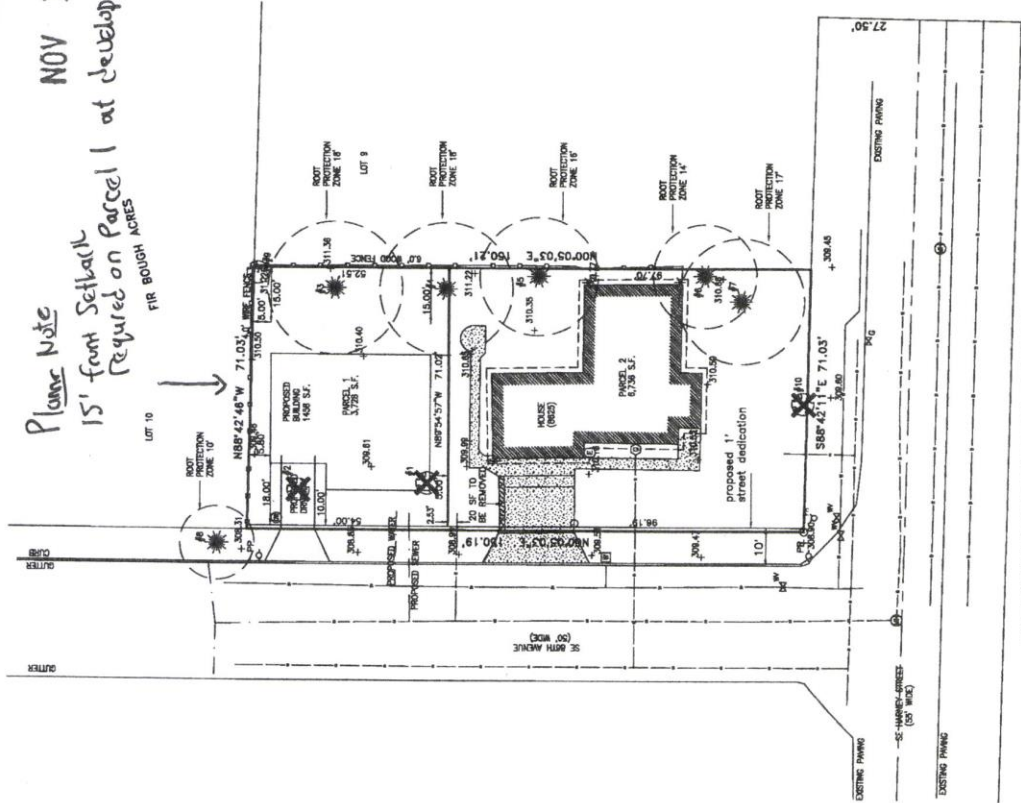
RECEIVED

Planner Note  
NOV 1 2018  
15' front setback  
Required on Parcel 1 at development  
FIR BOUGH ACRES

Planner Note:  
- TREE numbers 3, 4, 5, 7  
protected per  
Condition P.1  
- Future Development Subject to  
R7 Zoning Standards

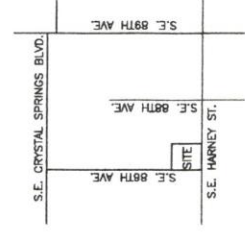
CASE NO. LU 16-172910-012  
EXHIBIT C-1

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR  
JOE H. FERGUSON  
JULY 25, 1960  
RENEWAL DATE 12/31/19



- SYMBOLS**
- PP = POWER POLE
  - GA = GUY ANCHOR
  - EM = ELECTRIC METER
  - GM = GAS METER
  - GV = GAS VALVE
  - SM = SANITARY MANHOLE
  - WC = WATER METER
  - WV = WATER VALVE
  - FB = FIRE HYDRANT
  - CB = CATCH BASIN
  - SMH = SANITARY MANHOLE
  - DW = DRY WELL
  - W = WATER LINE
  - G = GAS LINE
  - E = ELECTRIC LINE
  - S = SANI. SEWER
  - D = STORM LINE
  - DT = DECIDUOUS TREE
  - CT = CONIFER TREE

VICINITY MAP  
NO SCALE



NOTE: DOWNSDRIFTS TO BE CONVERTED TO SP. ASH/BOURNS  
NOTE: ELEVATION DATUM IS PER CITY OF PORTLAND BENCHMARK #1216  
LOCATE TICKET NO. 18100952

**Ferguson Land Surveying, Inc.**  
646 SE 106TH AVE. PORTLAND, OR 97216  
Phone (503) 408-0801 Fax (503) 408-0602  
www.FergusonLandSurveying.com

**PROPOSED IMPROVEMENTS  
AND UTILITIES**  
LOT 9, THE BOUGH ACRES  
SITUATED IN THE SW 1/4 OF SECTION 21, T.11S., R.2E., W.1M.  
CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON

CLIENT:  
KWOK YU  
2117 SE 77TH AVE  
PORTLAND OR 97215

DATE: MAY 9, 2018  
JOB NO. 18-072  
DRAFTED 5.9.18  
REVISED 6/9/2018  
REVISIONS 8/19/2018  
PERIOD:  
SHEET 2 OF 2