



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

Dan Ryan, Commissioner  
Rebecca Esau, Director  
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[www.portland.gov/bds](http://www.portland.gov/bds)

**Date:** September 20, 2022  
**To:** Interested Person  
**From:** Sean Williams, Land Use Services  
503-865-6441 / [Sean.Williams@portlandoregon.gov](mailto:Sean.Williams@portlandoregon.gov)

**NOTICE OF A DECISION ON A MIDDLE HOUSING LAND DIVISION 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 <https://www.portlandoregon.gov/bds/46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you may be able to appeal. Information on how to do so is included at the end of this decision.

**CASE FILE NUMBER: LU 22-159319 MLDP**

**GENERAL INFORMATION**

**Consultant:** Brian Varricchione  
Mackenzie  
1515 SE Water Avenue, #100  
Portland, OR 97214  
(971) 346-3742 / [bvarricchione@mcknze.com](mailto:bvarricchione@mcknze.com)

**Applicant:** Kenneth Eiler  
Kenneth S Eiler, Attorney at Law  
515 NW Saltzman Road, Pmb 810  
Portland, OR 97229

**Owner:** Empire Construction Corp (WY)  
PO Box 1425  
Vancouver, WA 98668

**Site Address:** 3220-3222 SE 12<sup>th</sup> Avenue

**Legal Description:** BLOCK 5 LOT 6, COLES ADD  
**Tax Account No.:** R168200500  
**State ID No.:** 1S1E11BD 01700  
**Quarter Section:** 3331  
**Neighborhood:** Brooklyn Action Corps, contact Josh Hetrick at [chair@brooklyn-neighborhood.org](mailto:chair@brooklyn-neighborhood.org)

**Business District:** Greater Brooklyn, contact at [greaterbrooklynba@gmail.com](mailto:greaterbrooklynba@gmail.com)  
**District Coalition:** Southeast Uplift, contact Matchu Williams at [matchu@seuplift.org](mailto:matchu@seuplift.org)  
**Plan District:** None  
**Zoning:** Residential 2,500 (R2.5)  
**Case Type:** Middle Housing Land Division Partition (MLDP) Review  
**Procedure:** Expedited Land Division, an administrative decision with appeal to the Hearings Officer.

**Proposal:**

The applicant has requested a Middle Housing Land Division to partition the subject site into two parcels. The middle housing development type that is proposed to be divided is a duplex and will result in each unit being located on its own lot. Existing water, sanitary sewer, and stormwater management facilities serve each dwelling unit separately.

Review of Preliminary Plans for middle housing land divisions are processed through an Expedited Land Division (ELD) procedure (33.671.110).

**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 **33.671.130, Middle Housing Land Divisions Approval Standards**.

**FACTS**

**Site and Vicinity:** The subject site is located on the east side of SE 12<sup>th</sup> Avenue approximately 50-feet north of the intersection with SE Franklin Street. Existing development consists of a recently constructed duplex (18-264731/33 RS). On-site parking is accommodated via an attached garage for each unit. Development in the vicinity consists of a mix of residential structure types and commercial development. Brooklyn Park is approximately 450-feet southwest of the site.

**Zoning:** The site is located in the Residential 2,500 (R2.5) zone, which is a single-dwelling zone that is intended to preserve land for housing and to provide housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing and provides options for infill housing that is compatible with the scale of the single-dwelling neighborhood.

**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 **August 22, 2022**. No written responses have been received from the Neighborhood Association or notified property owners regarding the proposal.

**ZONING CODE APPROVAL CRITERIA****Review of Middle Housing Land Divisions****33.671.130 Approval Standards**

The Preliminary Plan for a middle housing land division will be approved if the review body finds that the applicant has shown that all of the following approval standards have been met. Adjustments are prohibited. The approval standards are:

**A. Lots.**

1. The number of lots proposed is the same as the number of dwelling units proposed, approved, or legally existing on the middle housing land division site; and
2. There is only one dwelling unit per lot.

**Findings:** Two lots are proposed to be created, which is the same number of dwelling units that legally exist on the middle housing land division site. In addition, there will only be one dwelling unit per lot. Therefore, these standards are met.

## **B. Buildings, structures and other development.**

1. The proposed, approved, or legally existing development meets the standards and regulations of Title 33 applicable to development on the original site prior to the land division. See 33.644, Middle Housing Land Divisions, for development that is eligible for a middle housing land division; and
2. All of the buildings and structures on a resulting lot comply with applicable building code provisions relating to the proposed property lines and, all of the structures and buildings located on the lots comply with the Oregon residential specialty code.

**Findings:** The proposal includes a legally existing duplex, which is a development type that is eligible for a middle housing land division, per 33.644.020.A. The duplex was constructed under building permit(s) 18-264731 RS and 18-264733 RS and met the standards and regulations of Title 33 applicable at the time of application submittal on the original site prior to the land division.

Life Safety has indicated that each unit of the duplex complies with the Oregon residential specialty code as they were constructed as townhouses that meet applicable building code provisions for fire separation in relation to a common property line. Therefore, these standards are met.

## **C. Services.**

1. Water service. The Water Bureau or District and the Fire Bureau have verified that water facilities that meet established service levels are, or will be, available to serve each dwelling unit separately.

**Findings:** The Water Bureau has verified that existing water facilities that meet established service levels serve each unit of the duplex separately, per the following response (Exhibit E.3):

*No issue with the land use proposal. Existing water services are within the subject's site and meet water's requirements. Additional water is available from the 8" main in SE 12<sup>th</sup> Ave.*

This standard is met.

2. Public sanitary sewer service. The Bureau of Environmental Services has verified that sewer facilities that meet established service levels are, or will be, available to serve each dwelling unit separately.

**Findings:** The Bureau of Environmental Services has verified that existing sewer facilities that meet established service levels serve each unit of the duplex separately, per the following response (Exhibit E.1):

*According to City records and the submitted survey, development on each proposed parcel is currently connected to the sanitary sewer in SE 12<sup>th</sup> Avenue via individual laterals located within the frontage of each proposed parcel.*

This standard is met.

3. Private on-site sanitary sewage disposal. Private on-site sanitary sewage disposal is prohibited as part of a middle housing land division except when the development proposed, approved, or legally existing is a duplex. When private on-site sanitary sewage disposal is proposed, BDS has verified that an onsite wastewater treatment system that meets established service levels is, or will be, available to serve each dwelling unit separately.

**Findings:** Private on-site sanitary sewage disposal is not proposed. Therefore, this standard is not applicable.

4. Stormwater management. The Bureau of Environmental Services has verified that a stormwater management system and stormwater disposal facilities that meet established service levels are, or will be, available to each dwelling unit.

**Findings:** The Bureau of Environmental Services has verified that existing stormwater disposal facilities that meet established service levels serve each unit of the duplex, per the following response (Exhibit E.1):

*According to the submitted survey, stormwater runoff from the existing structures currently discharges to individual drywells located on each proposed parcel. The existing drywells do not cross proposed new property lines, meet required setbacks and are acceptable per BES standards; therefore, the applicant has adequately demonstrated compliance with the relevant stormwater approval criteria.*

This standard is met.

5. Right-of-way. For public streets, the Bureau of Transportation has preliminarily approved any proposed streets. For private streets, the Bureau of Development Services has preliminarily approved any proposed private streets.

**Findings:** A public or private street is not proposed. Therefore, this standard is not applicable.

#### **D. Tracts and easements.**

1. The preliminary plan includes easements or tracts necessary for each dwelling unit for:
  - a. Locating, accessing, replacing and servicing all services;
  - b. Pedestrian access from each dwelling unit to a street and, in a cottage cluster, to any required common outdoor area;
  - c. Any common use areas or shared building elements;
  - d. Any shared driveways or parking; and
  - e. Any shared common area;
2. The standards of Chapter 33.636, Tracts and Easements, must be met.

**Findings:** Because a property line will be established along the common wall separating each unit, the applicant must meet the requirements of Life Safety for executing an Easement and Maintenance Agreement for shared or common building elements. The agreement must be reviewed by the Bureau of Development Services, and approved as to form, prior to final plat approval (Exhibit E.7).

The applicant proposes a private electrical easement across the relevant portions of Parcel 1 so that the owner of Parcel 2 may access their electric meter. If access to the electric meter is not covered by the common building element agreement described above, a separate easement may be shown on the plat.

With the condition that a common building element agreement is reviewed by the City and recorded, these standards will be met.

## DEVELOPMENT STANDARDS

The existing development on the site has been reviewed for compliance with the development standards of Title 33 based on the original site prior to the land division. Development on the Middle Housing Land Division Site is subject to the regulations of 33.253, which are summarized below:

- For the purposes of development, the regulations of Title 33 will apply to the lots resulting from a middle housing land division collectively and not to each lot individually.
- The residential structure type on a site that has been divided through a middle housing land division remains the residential structure type that was proposed with the middle housing land division. The existing duplex on this site will remain a duplex for the purposes of applying zoning code regulations.
- More than one dwelling unit is prohibited on a lot that has been created through a middle housing land division. Accessory dwelling units are prohibited on the lots created through this land division.
- All the primary uses on a middle housing land division site must be residential uses. Accessory home occupations are allowed (see 33.203).
- The further division of the lots created through this middle housing land division is prohibited.

## CONCLUSIONS

The applicant proposes a middle housing land division to divide the subject site into 2 lots. As discussed within this report, the relevant standards have been met, or can be met with conditions. The primary issues with this proposal relate to easements and associated legal documents. With conditions of approval that address these requirements this proposal can be approved.

## ADMINISTRATIVE DECISION

**Approval** of a Preliminary Plan for a Middle Housing Land Division to divide the existing duplex development into 2 lots, as illustrated with Exhibit C.1, subject to the following conditions:

**A. As-built survey.** An additional as-built survey shall be submitted with the final plat survey for review and approval. That plan must show that structures and services are constructed in conformance with the preliminary plan and meet requirements in relation to property lines and any easements or tracts.

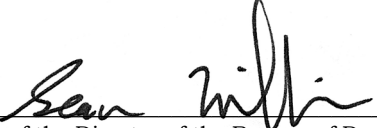
**B. The final plat must show the following:**

1. The final plat survey shall include a note with the following statement: "This plat was approved as a Middle Housing Land Division under ORS 92.031."

**C. The following must occur prior to final plat approval:**

1. An Easement and Maintenance Agreement for shared or common building elements shall be executed. The agreement must be reviewed by the Bureau of Development Services, approved as to form, and recorded prior to final plat approval. The recorded document must be referenced on the plat.

**Staff Planner: Sean Williams**

Decision rendered by:  on September 16, 2022  
By authority of the Director of the Bureau of Development Services

**Decision mailed: September 20, 2022**

**About this Decision.** This decision is **not a permit** for development. A Final Plat must be completed and recorded before the proposed lots can be sold. For information on permitting go to <https://www.portland.gov/bds> or call 503-823-7357.

**Procedural Information.** The application for this land use review was submitted on July 1, 2022 and was determined to be complete on August 16, 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 July 1, 2022.

*ORS 197.370* states the City must issue a decision to approve or deny this application within 63-days of the application being deemed complete.

**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 or final plat applications. Plans and drawings submitted during the permit or final plat review 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 by the applicant, owner or any person who submitted written comments. If appealed, a hearing will be held before the Hearings Officer. The appeal application form can be accessed at <https://www.portland.gov/bds/zoning-land-use/documents>. Appeals must be received by **4:30 PM on October 4, 2022. The completed appeal application form must be emailed to [LandUseIntake@portlandoregon.gov](mailto:LandUseIntake@portlandoregon.gov).** If you do not have access to e-mail, please call 503-823-7300 for assistance. **An appeal fee of \$300 will be charged.** Once the completed appeal application form is received, Bureau of Development Services staff will contact you regarding paying the appeal fee.

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 the final City decision.

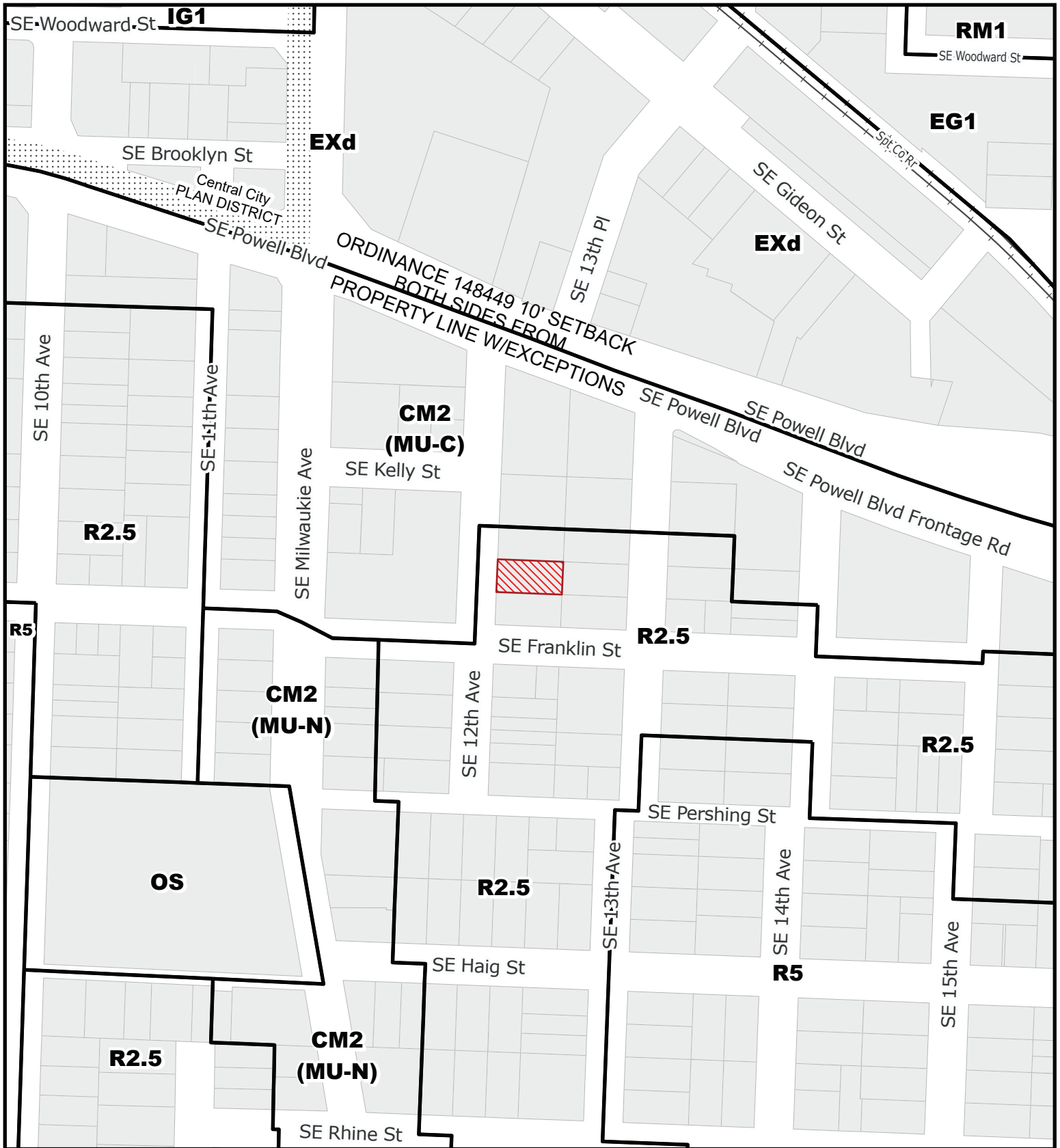
**Expiration of this approval and recording the land division.** This preliminary plan approval will expire unless a final plat is approved by the City within 3 years of the date of the final decision. The final plat must be approved by the County Surveyor and recorded with the County Recording Office within 90 days of City approval.

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  - 1. Narrative
  - 2. Incomplete Letter Response
  - 3. Common Wall As-Built Detail
  - 4. Water Bureau Correspondence
  - 5. Draft Electrical Easement
  - 6. Approved Permit Plans
  - 7. Certificates of Occupancy
  - 8. Vicinity Map
  - 9. Coles Addition Subdivision Plat
  - 10. Draft Townhouse Maintenance Agreement
  - 11. Zoning Plan Review Worksheet
  - 12. Multnomah County Tax Map
  - 13. Applicants Zone and Comprehensive Plan Map
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Existing Conditions & Preliminary Plan Map (attached)
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Portland Bureau of Transportation
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Site Development Review Section of Bureau of Development Services
  - 6. Bureau of Parks, Forestry Division
  - 7. Life Safety Section of Bureau of Development Services
- F. Correspondence: NONE
- G. Other:
  - 1. Application & Expedited Land Division Form
  - 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).**



For Zoning Code in effect Post August 1, 2021

# ZONING



 Site

File No.	<u>LU 22 - 159319 MLDP</u>
1/4 Section	<u>3331</u>
Scale	<u>1 inch = 200 feet</u>
State ID	<u>1S1E11BD 1700</u>
Exhibit	<u>B Jul 05, 2022</u>

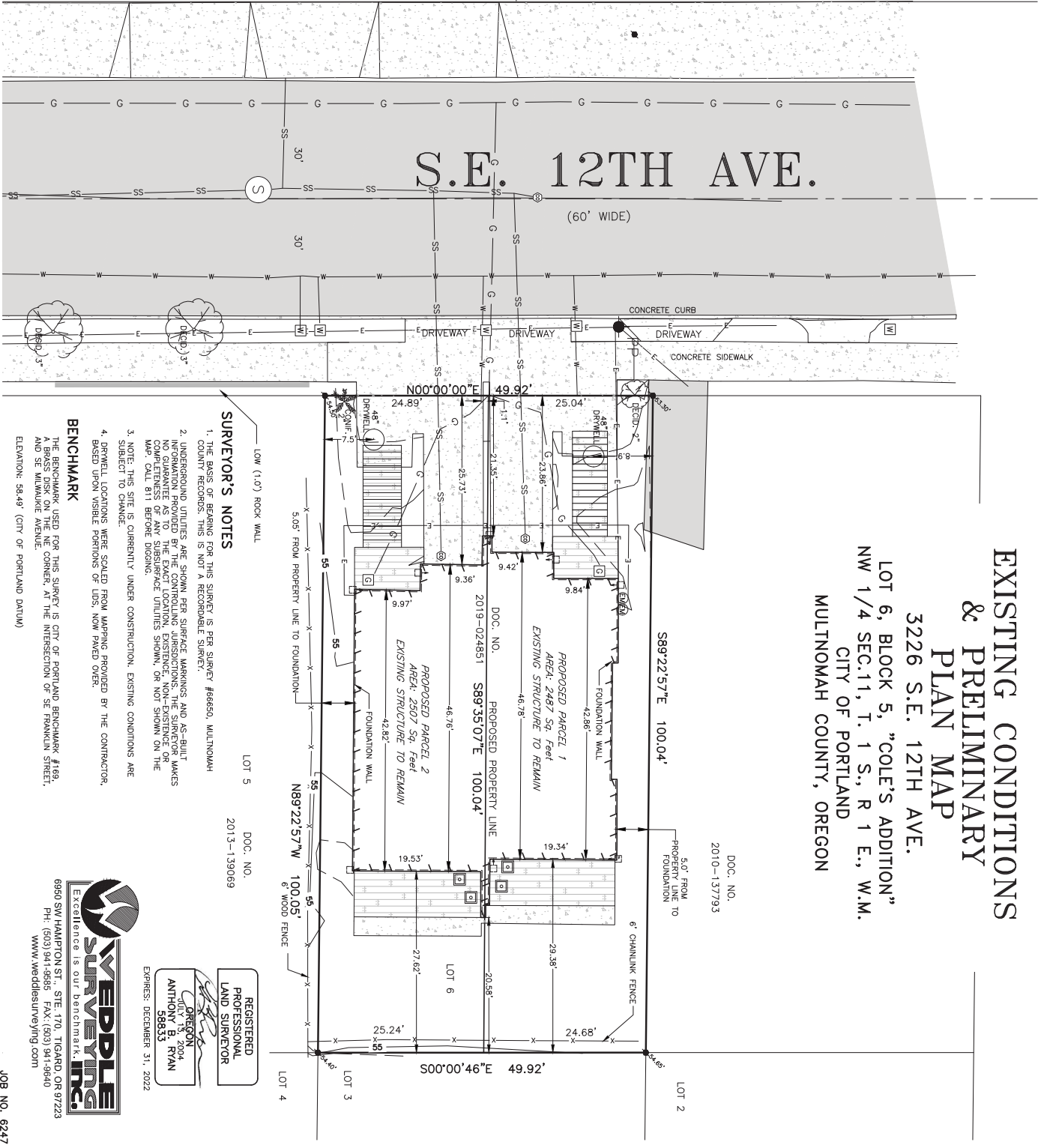




SCALE: 1" = 10'  
 APRIL 18, 2022  
 REVISED: AUG 3, 2022 (DRWELL LOCATIONS)

**LEGEND**

- AC UNIT
- DOWNSPOUTS (50 UNDERGROUND TO DRY WELL)
- DRY WELL (FOR DOWNSPOUTS)
- ELECTRIC METER
- GAS METER
- POWER POLE
- PROPERTY MONUMENT
- SANITARY SEWER CLEAN OUT
- SANITARY SEWER MANHOLE
- SPOT ELEVATION
- WATER METER
- BUILDING (SIDING)
- FOUNDATION
- FENCE
- GAS
- OVERHEAD ELECTRIC
- SANITARY SEWER
- WATER
- ASPHALT
- CONCRETE
- WOOD DECK
- CONIF = CONIFEROUS
- DEC = DECIDUOUS



**EXISTING CONDITIONS  
 & PRELIMINARY  
 PLAN MAP**  
 3226 S.E. 12TH AVE.  
 LOT 6, BLOCK 5, "COLE'S ADDITION"  
 NW 1/4 SEC. 11, T. 1 S., R 1 E., W.M.  
 CITY OF PORTLAND  
 MULTNOMAH COUNTY, OREGON

**SURVEYOR'S NOTES**

1. THE BASIS OF BEARING FOR THIS SURVEY IS PER SURVEY #86650, MULTNOMAH COUNTY RECORDS. THIS IS NOT A RECORDED SURVEY.
2. UNDERGROUND UTILITIES ARE SHOWN PER SURFACE MARKINGS AND AS-BUILT RECORDS. THE SURVEYOR HAS VISUALLY INSPECTED THE UTILITIES AND MAKES NO GUARANTEE AS TO THE EXACT LOCATION, EXISTENCE, NON-EXISTENCE OR COMPLETENESS OF ANY SUBSURFACE UTILITIES SHOWN, OR NOT SHOWN ON THE MAP. CALL 811 BEFORE DIGGING.
3. NOTE: THIS SITE IS CURRENTLY UNDER CONSTRUCTION. EXISTING CONDITIONS ARE SUBJECT TO CHANGE.
4. DRWELL LOCATIONS WERE SCALED FROM MAPPING PROVIDED BY THE CONTRACTOR, BASED UPON VISIBLE PORTIONS OF UDS, NOW PAVED OVER.

**BENCHMARK**

THE BENCHMARK USED FOR THIS SURVEY IS CITY OF PORTLAND BENCHMARK #169, A BRASS DISK ON THE NE CORNER AT THE INTERSECTION OF SE FRANKLIN STREET AND SE MILWAUKEE AVENUE.  
 ELEVATION: 58.49' (CITY OF PORTLAND DATUM)

REGISTERED PROFESSIONAL LAND SURVEYOR  
 ANTHONY B. RYAN  
 OREGON  
 JULY 15, 2004  
 58853

EXPIRES: DECEMBER 31, 2022



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 WWW.WEDDLESURVEYING.COM