



City of Portland, Oregon
Bureau of Development Services
Land Use Services

FROM CONCEPT TO CONSTRUCTION

Dan Saltzman, Commissioner
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www.portlandoregon.gov/bds

Date: December 27, 2016
To: Interested Person
From: Sean Williams, Land Use Services
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NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved a proposal in your neighborhood. The mailed copy of this document is only a summary of the decision. The reasons for the decision are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 16-259565 TR

GENERAL INFORMATION

Applicant: Ante Skoro / Clearwater Homes LLC
PO Box 2885
Clackamas, OR 97015

Owner(s): Bounsong & Sengthavy Somsanith
8320 SE 89th Avenue
Portland, OR 97266

Site Address: 8320 SE 89th Avenue

Legal Description: LOT 1, PARTITION PLAT 1992-73
Tax Account No.: R649724340
State ID No.: 1S2E21CD 01307
Quarter Section: 3839
Neighborhood: Lents, contact Judy Low at pmsi_92@hotmail.com
Business District: None
District Coalition: East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550.

Plan District: Johnson Creek Basin - South
Zoning: Residential 5,000 (R5) w/ Alternative Design Density Overlay (a)
Case Type: Tree Review (TR)
Procedure: Type II, an administrative decision with appeal to the Hearings Officer.

Proposal:

The applicant is proposing to change a tree preservation requirement that was approved as a part of a 10 lot subdivision (14-219577 LDS AD). That review required a 13" Blue Spruce to be preserved on Lot 8. The applicant has indicated this tree may no longer be preserved based on construction of a public street and associated utility easement. Mitigation is proposed via either planting new trees or payment into the City tree fund. A final plat application (FP 14-219577) is currently under review.

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 33.853.040.B, Approval Criteria for Changes to tree preservation requirements following land use approval.**

FACTS

Site and Vicinity: The site is located on east side of SE 89th Avenue at the intersection with SE Harney Street. I-205 borders the site to the east. Existing development consists of a single family residence that will be retained within Lot 7 and some accessory structures that will be removed. The surrounding vicinity is primarily developed with single family homes.

Infrastructure:

- **Streets** – The site has approximately 156 feet of frontage on SE 89th Avenue. There is one driveway entering the site that serves the existing house as well as property to the south (8340 SE 89th Avenue). At this location, SE 89th Avenue is classified as a Local Service Street for all modes in the Transportation System Plan (TSP). Tri-Met provides transit service approximately 1,800 feet west of the site on SE 82nd Avenue via Bus #72. At this location, SE 89th Avenue is improved with a 20 foot paved roadway surface lacking curbs and sidewalks within a 60 foot wide right-of-way.
- **Water Service** – There is an existing 8-inch DI water main in SE 89th Avenue. The existing house is served by a 5/8-inch metered service from this main.
- **Sanitary Service** - There is an existing 8-inch PVC sanitary sewer main in SE 89th Avenue. The existing residential structure on proposed Lot 7 is currently served by an on-site septic system.

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.

Land Use History: City records indicate the following prior land use reviews for this site:

- **LUR 92-00059 MP:** Approval of a 2 parcel partition that was subsequently platted as PP 1992-73. The property subject of this review is Parcel 1 and Parcel 2 is the property addressed 8340 SE 89th Avenue.
- **LUR 96-00717 MP:** Proposed 2 lot partition that was void/withdrawn.
- **LU 14-219577 LDS AD:** Approval of an Adjustment to the maximum area of Lot 7 from 8,500 to 9,459 square feet; Approval of an Adjustment to the maximum building coverage for the existing house (8320 SE 89th Avenue) to be retained within Lot 7 from 2,918 to approximately 3,783 square feet; Approval of a Preliminary Plan for a 10 lot subdivision that will result in 10 standard lots, an open space tract, and a new public street. The applicant is proposing to change the tree preservation requirements of this review.

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 8, 2016**. 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 TREE REVIEW

33.853.040 Approval Criteria

B. Changes to tree preservation requirements following land use approval. The approval criteria for changes to tree preservation or mitigation requirements are:

1. If the tree preservation requirement was approved as part of a land division or planned development, the requested change will be approved if the review body finds that the applicant has shown that the revised method will continue to meet the requirements of Chapter 33.630, Tree Preservation.
2. If the tree preservation requirement was approved through a land use review other than a land division or planned development, the requested change will be approved if the review body finds that the applicant has shown that the revised method continues to meet the approval criteria of the original review. Any impacts resulting from the requested change must be mitigated to the extent practicable.

Findings: The tree preservation requirement that applies to this site was approved as a part of a land division review (LU 14-219577 LDS AD). Therefore, the applicant must demonstrate that the requested change will continue to meet the Tree Preservation requirements of Chapter 33.630.

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.

The applicant was required to preserve a 13-inch Blue Spruce on Lot 8 as a part of the land division review. Mitigation was also required to address the removal of other trees on site that were deemed inappropriate for preservation based on their proximity to the new public street required to serve the lots. The 13-inch Blue Spruce is similarly in close proximity to the public street. The applicant has indicated that it will not be feasible to preserve this tree as it is located within the public utility easement associated with the street. Therefore mitigation is proposed to address removal of this tree in the form of either planting new trees or payment into the City tree fund.

Mitigation must be provided as needed to replace the functions of trees removed from the site. Options for mitigation may include preservation of smaller diameter or native trees, permanent preservation of trees within a tree preservation or environmental resource tract, tree planting,

payment into the City's Tree Planting and Preservation Fund, or other options that are consistent with the purpose of this chapter.

In this instance, as with the previous land division review, it is not practical for additional trees beyond the on-site tree density standards of Title 11 to be planted without jeopardizing the overall health of all of the trees on the site, based on the size of the lots. Therefore, offsite mitigation in the form of payment into the City Tree Fund is more appropriate for this proposal. Payment into the Tree Fund will help to replace the functions of the tree removed from the site and contribute to the general beauty and natural heritage of the City, if not directly on the site.

This criterion is met subject to a condition requiring payment into the City Tree Fund for the amount equivalent to 13 inches of trees prior to approval of the final plat (FP 14-219577).

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS


The applicant has proposed to remove a 13-inch Blue Spruce required to be preserved as a part of a land division review (LU 14-219577 LDS AD). With a condition requiring payment into the City Tree Fund to replace the functions of the tree being removed, this proposal may be approved.

ADMINISTRATIVE DECISION

Approval of a Tree Review to remove a 13-inch Blue Spruce required to be preserved as a part of a land division review (LU 14-219577 LDS AD), subject to the following condition:

- A. The applicant must pay into the City Tree Preservation and Planting Fund the amount equivalent to 13 inches of trees, prior to approval of final plat 14-219577. Payment must be made to the Bureau of Development Services, who administers the fund for the Parks Bureau.

Staff Planner: Sean Williams

Decision rendered by:  **on December 23, 2016**
By authority of the Director of the Bureau of Development Services

Decision mailed: December 27, 2016

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 October 17, 2016, and was determined to be complete on November 4, 2016.

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 October 17, 2016.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on: March 4, 2017.**

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 January 10, 2017** at 1900 SW Fourth Ave. Appeals can be filed at the 5th floor reception desk of 1900 SW 4th Avenue Monday through Friday between 8:00 am and 4:30 pm. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. 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 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.

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, or phone 1-503-373-1265 for further information.

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

Recording the final decision.

If this Land Use Review is approved the final decision 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 **January 11, 2017 – (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.

Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

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

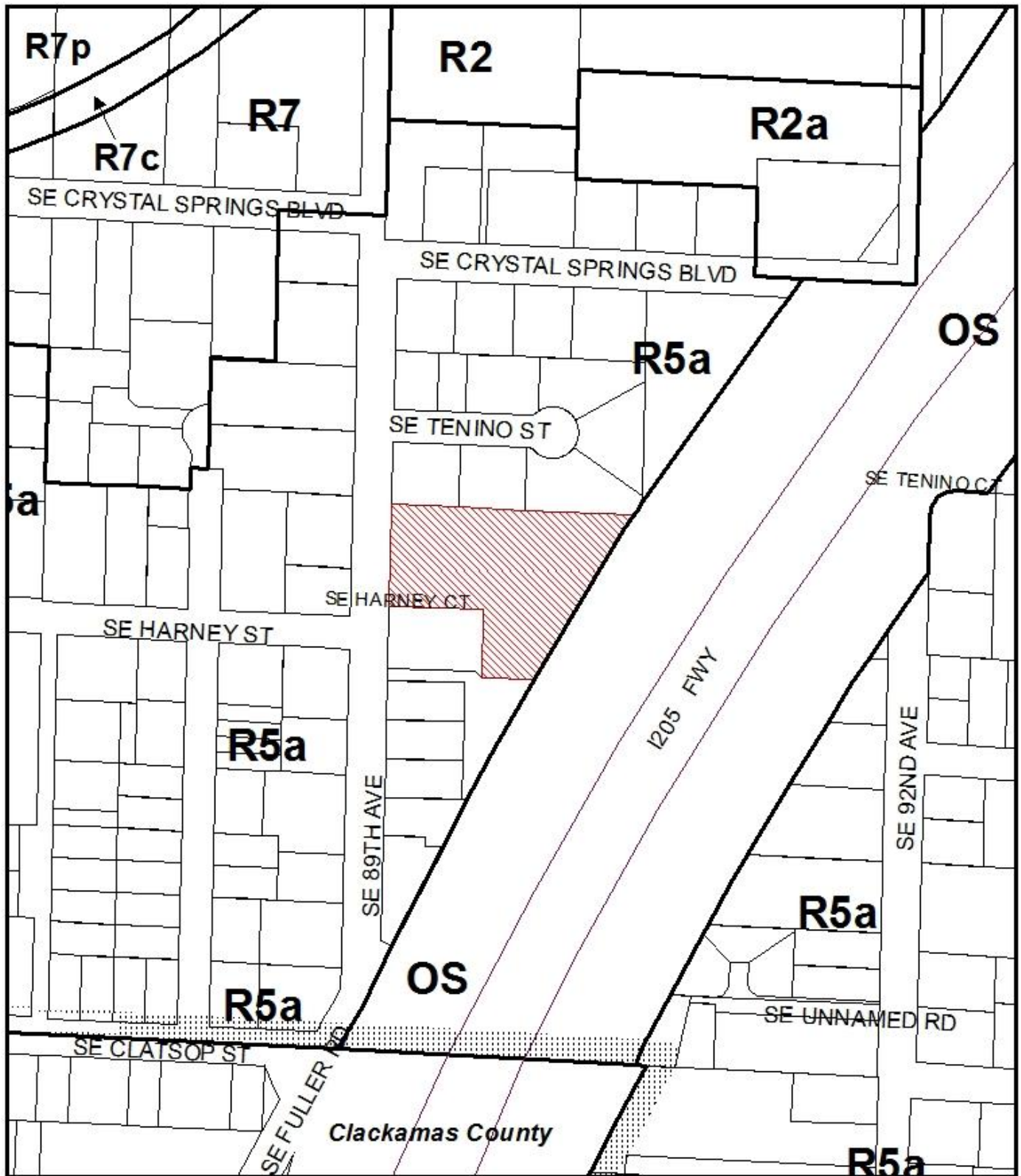
EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:

1. Bureau of Environmental Services; Bureau of Transportation Engineering and Development Review; Water Bureau; Fire Bureau; Site Development Review Section of BDS; Bureau of Parks, Forestry Division
 2. Life Safety Plans Examiner
- F. Correspondence: NONE
- G. Other:
1. Original LU Application

The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).



ZONING

 Site



This site lies within the:
JOHN SON CREEK BASIN PLAN DISTRICT
SOUTH SUBDISTRICT

File No.	<u>LU 16-259565 TR</u>
1/4 Section	<u>3839</u>
Scale	<u>1 inch = 200 feet</u>
State Id	<u>1S2E21CD 1307</u>
Exhibit	<u>B (Oct 20, 2016)</u>

8320 SE 89TH TEN LOT SUBDIVISION TREE PRESERVATION PLAN

NOTES

OWNER:
BOUNSON + SENGTHAVY SOMSNAITH
8320 SE 89TH AVENUE
PORTLAND, OR 97266

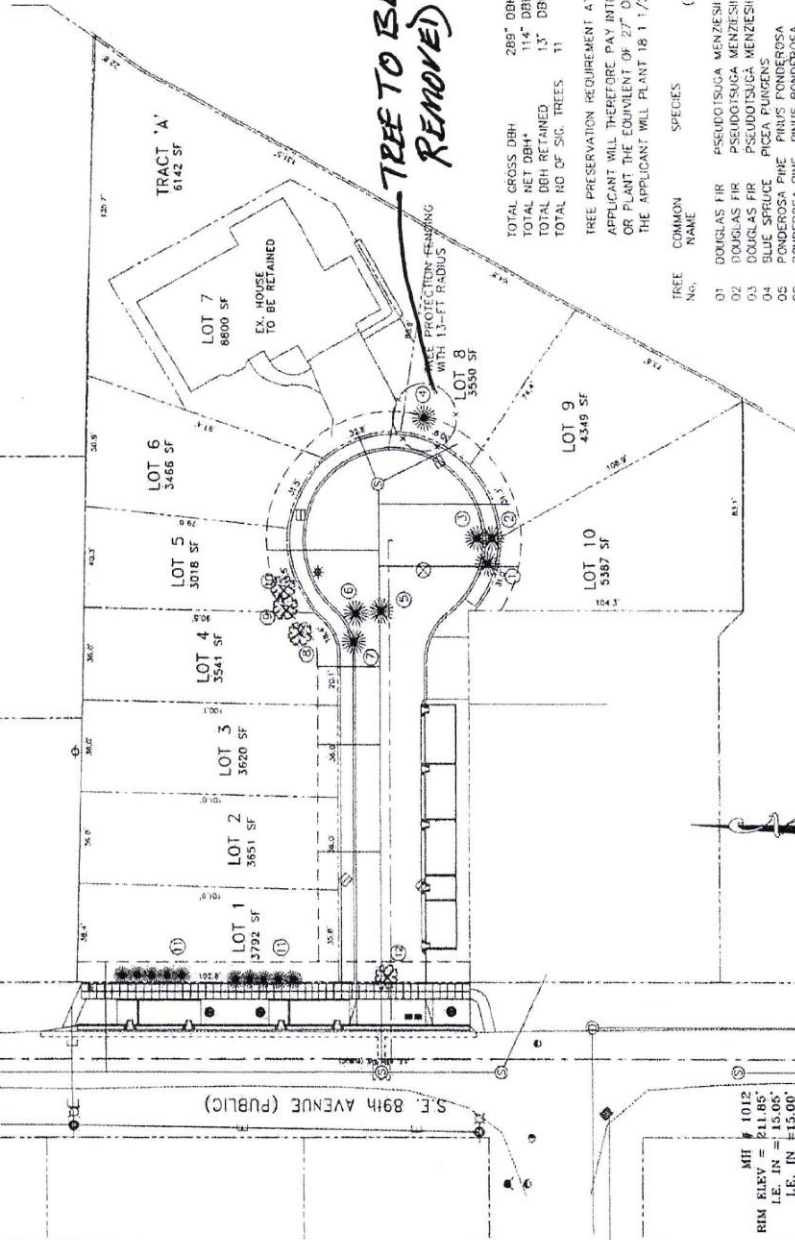
ARBORIST:
HAL STEAD'S ARBORICULTURE CONSULTANTS
11111 MILL VALLEY ROAD
PO BOX 1182, TUALUMIN, OR 97062
503-245-2383

SURVIVOR:
FEURIGSON LAND SURVEYING ASS.
640 SE 108TH AVENUE
PORTLAND, OR 97216
PR: 503-408-0501

NOTES

ADDRESS 8320 SE 89TH AVENUE,
PORTLAND OR 97268
TAX MAP: 152E21CD 0013C7
ZONING: R5
SITE AREA: 62,290 SF (1.42 ACRES)

- * NOT COUNTING EXEMPT TREES
- CONIFEROUS TREE
- ⊙ DECIDUOUS TREE
- 6'-FT. STEEL FENCE ON POSTS 8'-FEET APART
- 4'-FT. STEEL FENCE ON POSTS 8'-FEET APART
- 2'-FT. STEEL FENCE ON POSTS 8'-FEET APART
- 1'-FT. STEEL FENCE ON POSTS 8'-FEET APART
- 6" x 6" FENCING BASED ON ARBORIST RECOMMENDATION



TOTAL GROSS DBH 2897 DBH
TOTAL NET DBH* 1147 DBH
TOTAL DBH RETAINED 137 DBH
TOTAL NO. OF SIG. TREES 11

TREE PRESERVATION REQUIREMENT AT 35% = 40"
APPLICANT WILL THEREFORE PAY INTO TREE FUND
OR PLANT THE EQUIVALENT OF 27" DBH TREES ON-SITE
THE APPLICANT WILL PLANT 18 1 1/2" TREES

TREE No.	COMMON NAME	SPECIES	DBH (INCHES)	SIGNIFICANT TREE	PRESERVATION VALUE	RECOMMENDATION	ROOT PROTECTION ZONE
01	DOUGLAS FIR	PSEUDOTSUGA MENZESII	37	YES	MEDIUM	MITIGATE	37
02	DOUGLAS FIR	PSEUDOTSUGA MENZESII	31	YES	LOW	REMOVE	
03	DOUGLAS FIR	PSEUDOTSUGA MENZESII	24	YES	MEDIUM	MITIGATE	24
04	BLUE SPRUCE	PICEA PLUMGENS	13	NO	MEDIUM	PRESERVABLE	13
05	PONDEROSA PINE	PINUS PONDEROSA	26	YES	MEDIUM	MITIGATE	26
06	PONDEROSA PINE	PINUS PONDEROSA	13	YES	LOW	REMOVE	
07	PONDEROSA PINE	PINUS PONDEROSA	24	YES	MEDIUM	MITIGATE	24
08	BIG LEAF MAPLE	ACER MACROPHYLLUM	19	YES	LOW	REMOVE	
09	CHERRY	PRUNUS AVIUM	28	YES	NUISANCE	REMOVE	
10	CHERRY	PRUNUS AVIUM	22	YES	NUISANCE	REMOVE	
11	ENGLISH HOLLY	ILEX AQUIFOLIUM	24	YES	NUISANCE	REMOVE	
12	BIG LEAF MAPLE	ACER MACROPHYLLUM	28	YES	LOW	REMOVE	

P4

MH # 1012
RIM ELEV = 211.85'
I.E. IN = 15.05'
I.E. IN = 15.00'
I.E. OUT = 15.20'
PIPE SIZE = 8" PVC

CASE NO. 16-259565
DATE 11/2/22

CASE NO. 16-259565
EXHIBIT C.1