



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

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[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**Date:** March 22, 2017  
**To:** Interested Person  
**From:** Houston Harker, Land Use Services  
503-823-6029 / [Houston.Harker@portlandoregon.gov](mailto:Houston.Harker@portlandoregon.gov)

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

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

### **CASE FILE NUMBER: LU 17-104048 TV**

#### **GENERAL INFORMATION**

**Applicant:** Dean A Grimsrud  
8107 N Wabash Ave  
Portland, OR 97217-6041

**Representative:** Nathan Arnold / Faster Permits  
14334 NW Eagleridge Lane  
Portland, OR 97229

**Site Address:** 8020 N SEWARD AVE

**Legal Description:** BLOCK 1 LOT 8, HERLEN CT  
**Tax Account No.:** R377800170  
**State ID No.:** 1N1E08DA 18400  
**Quarter Section:** 2226

**Neighborhood:** Kenton, contact Webly Bowles at [weblybowles@gmail.com](mailto:weblybowles@gmail.com).  
**Business District:** Kenton Business Association, contact Mo Bachmann at [info@kentonbusiness.com](mailto:info@kentonbusiness.com).

**District Coalition:** North Portland Neighborhood Services, contact Mary Jaron Kelley at 503-823-4099.

**Plan District:** None

**Zoning:** R5a: Residential 5,000 (R5) with Alternative design density overlay (a)

**Case Type:** Tree Violation TV  
**Procedure:** Type II, an administrative decision with appeal to the Hearings Officer.

**Proposal:**

A 4-lot subdivision was preliminarily approved on this site under land use review case file LU 15-263198 LDS. The final plat and related permits (site development, demolition and public works) for the subdivision are currently under review. During permit review it was discovered that one of the trees required to be preserved under LU15-263198 LDS (#9, 20-inch Diameter at Breast Height English Walnut) is no longer on the site. It is unknown when it was removed or the reason for the removal, therefore it is considered a violation of the land use conditions. A Tree Violation review is required to correct the violation. As mitigation, the applicant proposes to plant a total of five trees across the four proposed residential lots which make up the subdivision.

**Relevant Approval Criteria:**

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

- 33.853.040.C Tree Review Approval Criteria – Corrections to Violations

**ANALYSIS**

**Site and Vicinity:** The site is a 19,600 ft<sup>2</sup> property that currently includes one tax lot. There was one single-family house on the site. That house has been demolished. The site has been cleared for the construction of four new houses. During the demolition process it appears that the subject tree was removed. The site fronts on N Seward Ave. a street that is predominately single family housing. The surrounding area is characterized by small, dense, single family lots, which are common to this neighborhood.

**Zoning:** The site is in the R5 base zone, which is one of the city's single-dwelling zones intended to preserve land for housing and to promote opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing.

The site is also in the Alternative Design Density (a) Overlay Zone. This zone is intended to focus development on vacant sites, preserve existing housing and encourage new development that is compatible with and supportive of the positive qualities of residential neighborhoods. The concept for the zone is to allow increased density for development that meets additional design compatibility requirements.

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

- 15-263198 FP – Final Plat to create a 4-lot Subdivision (Currently Under Review)
- 15-263198 LU- Approval of a Preliminary Plan for a 4 lot subdivision that the requirements to preserve the tree subject to this violation was a condition of this review.

**Agency Review:** A “Notice of Proposal in Your Neighborhood” was mailed on February 17, 2017. The following departments have responded with no issues or concerns:

- Site Development Section of the Bureau of Development Services
- Fire Bureau
- Bureau of Transportation Engineering and Development Review
- Water Bureau
- Bureau of Parks-Forestry Division

The Life Safety Section of the Bureau of Development Services responded with comments about building code requirements that may apply at time of building permit. (See Exhibit E1)

The Bureau of Environmental Services responded with comments about the benefits of mature trees on site. (See Exhibit E2)

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on February 17, 2017. Two written responses were received from a notified property owner and the Kenton Neighborhood Association in response to the proposal. The comment letter requested that more than a minimum mitigation trees be planted on the site in addition to the levying of a fine for the removal of the subject tree.

Staff Response: The mitigation required will be for the full 20" of tree diameter removed. In addition, tree plantings including native species will be required on the site. See findings below for more details.

## ZONING CODE APPROVAL CRITERIA

### Title 33.853.040.C: Corrections to Violations.

**For corrections to violations of tree protection and tree preservation regulations of this Title, or violations of tree preservation requirements of a land use review, the applicant must show the review body that all of the following approval criteria are met:**

#### 1. Mitigation Plan;

**a. The applicant's mitigation plan meets the purpose of the regulation that was violated. Where the violation is of a tree preservation requirement of a land use review, the mitigation plan meets the purpose of the regulation that required the preservation plan; and**

**b. The mitigation plan includes replacement of trees cut, or the preservation and protection of additional trees on the site not originally proposed for preservation. If replacement of trees is proposed, the plan must at a minimum meet the requirements of Table 853-1. If additional trees on the site are proposed for preservation and protection, the applicant must submit an arborist's assessment indicating the suitability of the trees for preservation, recommendations for protection methods, and any remedial treatment that may be necessary to ensure the long term viability of the trees. The total diameter of additional trees preserved must exceed the total diameter of trees cut.**

Size of tree removed (inches in diameter)	Number of Trees to be Planted
Up to 12	3 trees
More than 12 up to 20	5 trees
More than 20 to up to 25	7 trees
More than 25 to up to 30	10 trees
More than 30	15 trees

#### 2. Replacement trees must be planted as follows:

**a. On the site where the violation occurred;**

**b. If it is not possible to plant the trees on the site where the violation occurred, then the trees may be planted on other property owned by the applicant within the City of Portland. This includes property owned by a Homeowners' Association to which the applicant belongs;**

**c. If it is not possible to plant the trees as described in 2. a or b, then a payment in lieu of planting may be made to the Tree Planting and Preservation Fund.**

#### 3. Replacement trees must meet the requirements of Section 33.248.030, Plant Materials.

**Findings:** The violation is to the condition of approval of LU 15-263198, which preliminarily approved a 4-lot subdivision on the site. The tree preservation condition was required based on

the regulations of Chapter 33.630 Tree Preservation, which contains the tree preservation requirements for new land divisions. The purpose of these regulations are:

*33.630.010 Purpose*

*The land division process provides the flexibility and opportunity to promote creative site design that considers multiple objectives, including integration of trees. The regulations of this chapter require that trees be considered early in the design process with the goal of preserving high value trees and mitigating for the loss of trees. Desired benefits of trees include:*

- *Protecting public health through the absorption of air pollutants, contamination, and capturing carbon dioxide;*
- *Buffering from noise, wind, and storms;*
- *Providing visual screening and summer cooling;*
- *Reducing energy demand and urban heat island impacts;*
- *Filtering stormwater and reducing stormwater runoff;*
- *Reducing erosion, siltation, and flooding;*
- *Stabilizing slopes;*
- *Enhancing property values;*
- *Providing fish and wildlife habitat, including support for native species biodiversity through the preservation and planting of native trees;*
- *Providing food for people and wildlife; and*
- *Contributing to the beauty of the City, its natural heritage, and the character of its neighborhoods.*

The above listed purpose statement is supported by the standards of the Tree Preservation chapter (33.630.100). These standards require preservation of a certain percentage of existing tree diameter located on a land division site. As part of the preliminary land division approval, a tree preservation plan was approved to meet these standards (Exhibit C-1). The tree designated to be preserved was a 20 inch DBH English Walnut on proposed Lot 2. The approved tree preservation plan was in compliance with Option 1 of the tree preservation standards, which requires preservation of 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. The findings of the land use decision state the following:

“The tree proposed for preservation is in good condition, is a non-nuisance species, and is the only tree that is 20 or more inches in diameter. The proposed root protection zone for the tree 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.”

The applicant has requested this Tree Violation Review to rectify the tree removal. The applicant proposes to plant replacement trees at the site as mitigation. Subparagraph 33.853.400.C *Corrections for Violations* details the requirements for corrections to tree violations, including the number and location of mitigation trees to be planted. Chapter 33.853 Tree Review, Table 853-1 (above) lists *minimum* tree replacement required for violations. Based on these standards, a minimum of five trees at 1.5 inch caliper would be required to be planted as mitigation.

The applicant has proposed to mitigate for the tree removal by planting five (5) 1.5-inch caliper trees on proposed Lots 1, 2, 3, and 4. This is the minimum number of mitigation trees specified by 33.853.400.C. The applicant has not specified a species of tree to be planted.

At the time of development, the individual lots must also meet the Title 11-Tree Code provisions, which require a specific amount of site area for tree planting based on the size of the property and the scale of the development.

Title 11 *Trees* sets standards for development-related tree planting, including a minimum required planting area, based upon canopy sizes of large, medium and small trees as classified in the *Portland Tree and Landscaping Manual* (On-site tree density standards of Chapter

11.50.050). There are four lots to consider in this review. For Lot 1, based on the lot size of 6,513 square feet, 2,605 square feet of “tree area” will be required to be planted at the site at the time of development. Lot 2, based on the lot size of 5,753 square feet, 2,301 square feet of “tree area” will be required to be planted at the site at the time of development. Lot 3, based on the lot size of 3,830 square feet, 1,532 square feet of “tree area” will be required to be planted at the site at the time of development. Finally, Lot 4, based on the lot size of 3,094 square feet, 1,238 square feet of “tree area” will be required to be planted at the site at the time of development. Tree area is defined by Title 11 as the amount of area on a development site that is used to calculate the required number of trees to be planted to meet tree density standards. To satisfy the tree area required by Title 11, any combination of large, medium and small trees may be planted.

The applicant proposes to mitigate for tree removal by planting trees on the site, but did not provide a specific planting plan showing how the tree planting standards in addition to mitigation could be met on the site. The Title 11 tree density standards will require that trees be planted on the lots at the time of building permit. Based on the size of the proposed lots, 2-9 trees will be required to be planted on each lot, depending on the type of trees chosen by the applicant. Given the required tree planting, there is not sufficient room on the lots for additional tree planting to mitigate for the tree removal without jeopardizing the overall health of the trees as they mature. The applicant has not offered a plan to plant mitigation trees on other property within the city which is owned by the applicant. Therefore, offsite mitigation in the form of payment into the City Tree Preservation and Planting Fund is more appropriate for this proposal. These funds will be used to pay for planting or preserving trees that will provide the benefits of trees to the Willamette River Watershed. A condition of approval is that a payment equivalent to 20 tree-inches be paid to the City of Portland Tree Planting and Preservation Fund prior to final plat approval.

Because it is not possible to plant the mitigation trees in addition to the plantings required by Title 11, the applicant will be required to plant the site to meet Title 11 requirements. Therefore, to mitigate the loss of the 20-inch English Walnut, a minimum of three large-canopy trees will be planted within the site. One of each of these trees will be planted on Lots 1, 2, and 3. These trees will be chosen from the Native Plant List from the Portland Plant List and will count towards meeting tree density requirements of Title 11. To ensure that the site is planted, an additional condition of approval is that the payment in lieu of planting option specified in 11.50.050.C will not be a permitted for these trees.

The mitigation described above will be consistent with the purpose of the tree preservation regulations, since it will pay into City Tree Preservation and Planting Fund and provide for the installation of trees on site that will contribute to the general beauty and natural heritage of the City, on the site, and

- help to absorb air pollutants and contamination;
- provide buffering from noise and wind;
- provide visual screening from the adjacent properties;
- reduce energy demand and urban heat island impacts;
- filter stormwater runoff and reduce the possibility for erosion;
- help with slope stabilization;
- the native trees will provide habitat to support wildlife;
- the edible species will provide food for people and wildlife.

With the conditions described above, the approval criteria for correcting a tree violation will be met.

## **DEVELOPMENT STANDARDS**

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of

Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

## CONCLUSIONS

As part of a four lot land division (LU 15-263198 LDS), a 20-inch English Walnut tree was required to be preserved on this lot. This tree was removed in violation of this requirement. The applicant proposes to mitigate for the removal of Tree #9, a 20-inch English Walnut required to be preserved under LU 15-263198 LDS by planting five trees on the site where the violation occurred.

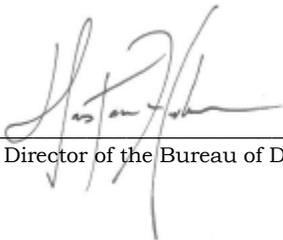
To address the violation, the applicant will be required to mitigate with a payment into the City's Tree Preservation and Planting Fund, as well as plant three large canopy native species trees from the Portland Plant List on the site. These three trees will count towards meeting the tree density standard of Title 11. As an addition, to ensure the site is planted, the payment in lieu of planting option specified in 11.50.050.C will not be a permitted for these trees. As addressed in the findings above, the required mitigation will meet the purpose of Chapter 33.630, Tree Preservation, and the intent of the original land division by the requiring of mitigation for the full 20" removed in violation of the tree preservation plan.

## ADMINISTRATIVE DECISION

Approval of a Tree Violation review to correct a violation resulting from the removal of Tree #9, a 20-inch English Walnut required to be preserved in LU 15-263198 LDS, per the approved site plans, Exhibit C-1, signed and dated March 20, 2017, subject to the following conditions:

- A. The applicant must pay into the City Tree Preservation and Planting Fund the amount equivalent to 20 inches of tree. Payment must be made to the Bureau of Development Services, who administers the fund for the Parks Bureau. The payment must be made prior to final plat approval (FP 15-26318).
- B. At the time of development on proposed Lots 1, 2, and 3 the site plan must show a minimum of one native large canopy trees from the Portland Plant List being planted on each lot. These trees must meet the planting size required of 11.60 and will count towards Title 11 tree density requirements. The site plan must identify these trees with common and scientific name and label them as "Required" per this condition. This condition of approval shall be included as a note on the site plan.

**Staff Planner: Houston Harker**

**Decision rendered by:**  **on (March 20, 2017)**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: March 22, 2017**

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

**Procedural Information.** The application for this land use review was submitted on January 10, 2017, and was determined to be complete on February 10, 2017.

*Zoning Code Section 33.700.080* states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the

application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on January 10, 2017.

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: 6/10/2017.**

**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 April 5, 2017** at 1900 SW Fourth Ave. Appeals can be filed at the 5<sup>th</sup> floor reception desk of 1900 SW 4<sup>th</sup> 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](http://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 **April 6, 2017 – (The first workday following the last day of 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. Original Tree Preservation Plan (Attached)
  2. Applicants Mitigation Plan
- D. Notification information:
  1. Mailing list
  2. Mailed notice

E. Agency Responses:

1. Life Safety Section of Bureau of Development Services
2. The Bureau of Environmental Service

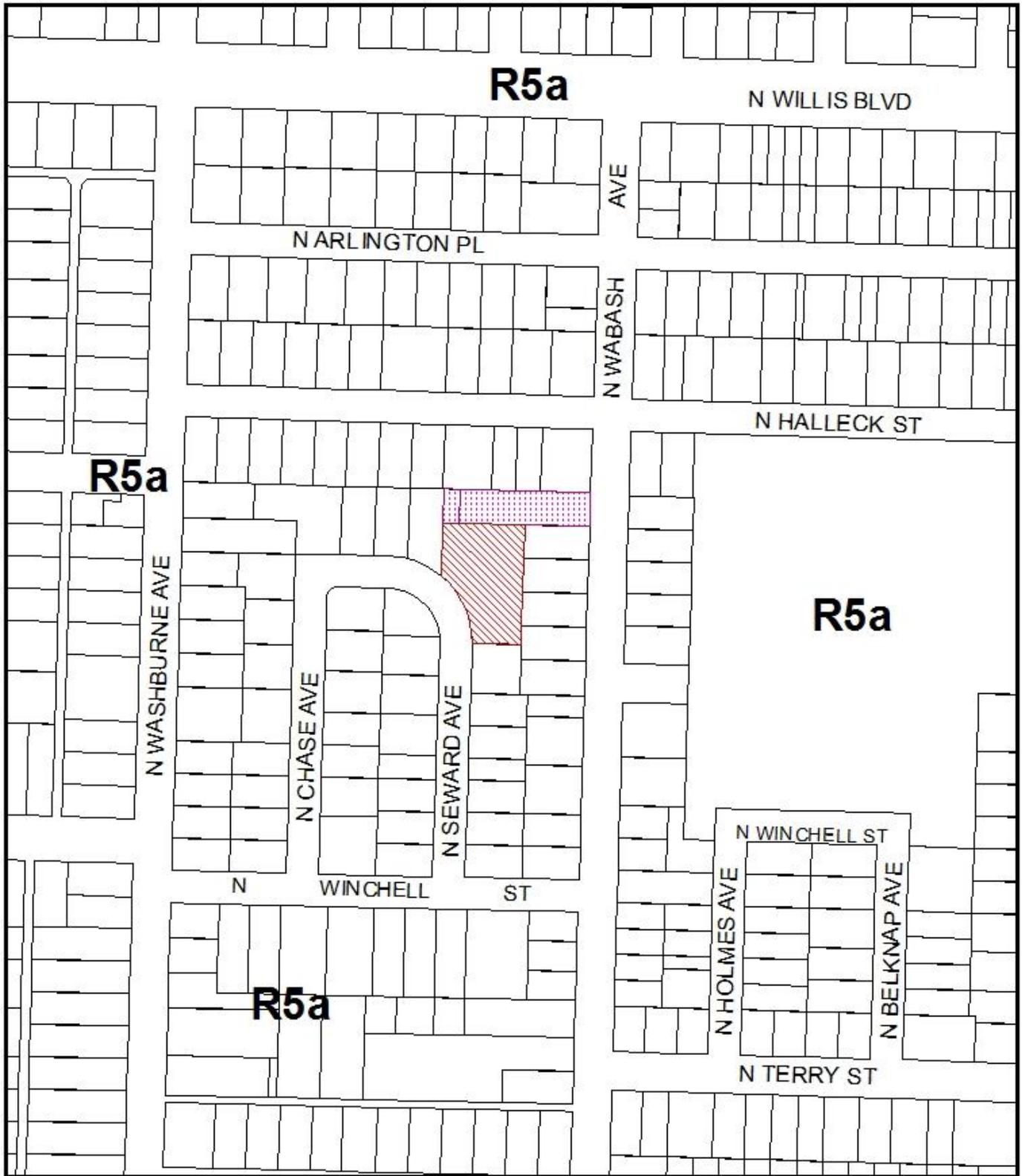
F. Correspondence:

1. Kenton Neighborhood Association, February 25, 2017
2. Belia Marquez, March 2, 2017,

G. Other:

1. Original LU Application
2. LU 15-263198 Decision
3. Incomplete Letter dated January 25, 2017

**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

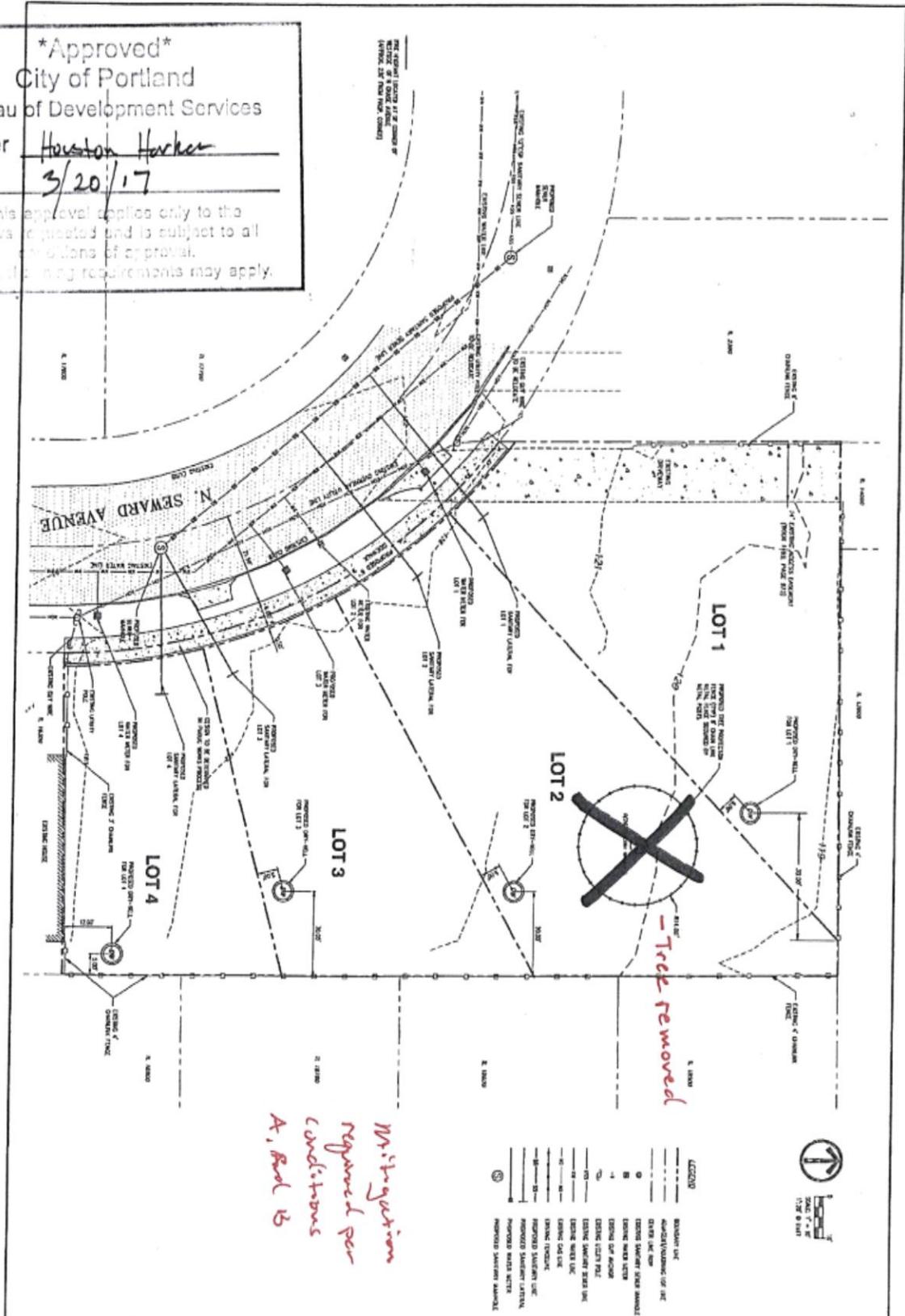
-  Site
-  Also Owned Parcels



File No. LU 17-104048 TV  
 1/4 Section 2226  
 Scale 1 inch = 200 feet  
 State\_Id 1N1E08DA 18400  
 Exhibit B (Jan 16, 2017)

**\*Approved\***  
**City of Portland**  
 Bureau of Development Services  
 Planner Houston Harker  
 Date 3/20/17

\* This approval applies only to the reviews requested and is subject to all conditions of approval.  
 Additional zoning requirements may apply.



*Mitigation required per conditions A, B and C*

CASE NO LU17104048  
 EXHIBIT C1

 EMERIO Design 4000 NE ANCHOR AVE. SUITE 100 PORTLAND, OREGON 97218 TEL: 503.281.8877 FAX: 503.281.8888 WWW.EMERIODSIGN.COM	REVISIONS NO. DATE DESCRIPTION	PRELIMINARY SITE/UTILITY PLAN	8020 N SEWARD AVENUE TAX MAP 1N.1E.08DA TAX LOT 18400 MULTNOMAH COUNTY
	SHEET 4 5		

*[Handwritten signature]*