



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

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Date: May 11, 2017
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 17-104255 TR

GENERAL INFORMATION

Applicant/Owner: David Bonn | Habitat for Humanity - Portland/Metro East
1478 NE Killingsworth Street
Portland, OR 97211

Site Address: 6352/6366/6380 NE Killingsworth Court

Legal Description: LOT 7 POTENTIAL ADDITIONAL TAX, HELENSVIEW HEIGHTS; LOT 8 POTENTIAL ADDITIONAL TAX, HELENSVIEW HEIGHTS; LOT 9 POTENTIAL ADDITIONAL TAX, HELENSVIEW HEIGHTS

Tax Account No.: R374500240, R374500270, R374500300

State ID No.: 1N2E20BB 01007, 1N2E20BB 01008, 1N2E20BB 01009

Quarter Section: 2537

Neighborhood: Cully, contact David Sweet at 503-493-9434.

Business District: Cully Blvd Business Alliance, contact contactus@cullyblvdalliance.org

District Coalition: Central Northeast Neighbors, contact Sandra Lefrancois at 503- 823-2780.

Plan District: None

Zoning: Residential 2,000 (R2) w/ Aircraft Landing Zone (h) Overlay

Case Type: Tree Review (TR)

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

Proposal:

The applicant is requesting to amend the tree preservation requirements that apply to the Douglas fir trees located in the rear yards of these three lots. These trees were originally required to be preserved as a part of the subdivision that created these lots (LU 05-160255 LDS AD). A subsequent tree review (LU 15-212510 TR) was approved to modify the approved tree protection plan of LU 05-160255 LDS AD with a modification of the minimum front building setback in the R2 zone from 10 to between 5 and 6.75 feet on Lots 1, 3-9, and 12.

Due to further complications with developing these smaller lots with 3 bedroom homes for affordable housing the applicant is again requesting to modify the tree protection requirements that apply to these lots, per the attached site plan. An arborist report has been provided to

document the alternative root protection zones for these trees, per the performance path protection methods of title 11.

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 three subject lots are located on the south side of NE Killingworth Court, which intersects with NE 64th Avenue. The lots are all vacant and relatively flat. A row of mature Douglas fir trees is located at the rear of the lots.

Zoning: The R2 designation is one of the City's multi-dwelling zones which is intended to create and maintain higher density residential neighborhoods. The zone implements the comprehensive plan policies and designations for multi-dwelling housing.

The "h" overlay limits the height of structures and vegetation in the vicinity of the Portland International Airport. In this zone, structures are regulated by the base zone height limits rather than the height limits of Chapter 33.400.

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

- **LU 05-160255 LDS AD:** Approval of a Preliminary Plan for a 42-lot subdivision, which will result in 41 single dwelling lots, and 1 multi-dwelling lot, assigned a minimum of 11 units of density; two new public streets, one common green and a recreation tract. Approval of an adjustment to Portland City Code 33.634.100 Required Recreation Area Standards subsection to allow a Recreation Tract that is approximately 75 X 227 feet in size.
- **LU 07-137334 AD:** Approval of an Adjustment to Code Section 33.266.120.C, to waive the minimum required setback for the on-site parking spaces for Lots 1 through 19 and 23 through 41.
- **LU 15-212510 TR:** Approval of a Tree Review to modify the approved tree protection plan of LU 05-160255 LDS AD and a modification of the minimum front building setback in the R2 zone from 10 to between 5 and 6.75 feet on Lots 1, 3-9, and 12.

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 **March 21, 2017**. No written responses have been received from the Neighborhood Association or notified property owners regarding 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 trees subject of this review were required to be preserved as part of a land division (LU 05-160255 LDS AD). Therefore, the proposal must continue to meet the requirements of Chapter 33.630, Tree Preservation. A Tree Review (LU 15-212510 TR) was subsequently approved to amend the approved tree protection plan of LU 05-160255 LDS AD and a modification of the minimum front building setback in the R2 zone from 10 to between 5 and 6.75 feet on Lots 1, 3-9, and 12. The conditions of approval for this review shall continue to apply unless further amended here. Some of those lots are in various stages of development. This review is to again amend the tree protection requirements that apply to Lots 7-9 due to further complications with developing these smaller lots with 3 bedroom homes for affordable housing.

The previous tree review required that the foundation of each home on these lots be no closer than 15-feet from the base of any tree required to be preserved and covered rear porches and or decks may be installed within root protection zones subject to there being no foundation and all excavation for pier footings are dug by hand. In addition, drywell installation was required to occur prior to any other construction activities under the supervision of a certified arborist. The root protection zone of 8 trees will be impacted by the development of these three lots. Of these 8 trees, 3 trees (#10049; #10050; #10052) are able to comply with the Title 11 Prescriptive Path (11.60.030.C.1) allowance for encroachments, which permits encroachments of up to 25% of the total area in the root protection zone with no encroachment closer than ½ the required radius distance.

Encroachment into the remaining five trees (#10016; #10047; #10048; #10051; #10053) is proposed via the Title 11 Performance Path (11.60.030.C.2). The applicant has submitted an arborist report (Exhibit A.2) that documents the amount of encroachment within the total area of the root protection zones, which is all under the Prescriptive Path allowance of 25%, as well as the shortest distance from the face of the trees to protection fencing, which is approximately 10-feet for all trees. This distance is less than the Prescriptive Path would allow for these trees and less than the 15-foot distance required in the previous Tree Review. However, the project arborist indicated that the proposed encroachments should not result in significant negative impacts to the trees. Covered rear porches and or decks will continue to be allowed within root protection zones subject to there being no foundation and all excavation for pier footings are dug by hand. In addition, the applicant was granted plumbing code appeals (Exhibit A.3) to locate the drywells associated with the new homes in the front of the lots, which results in fewer encroachments within the root protection zones of the trees where they were to be previously located.

Per the findings above, the applicant has demonstrated that the proposed method of tree preservation meets the approval criteria of 33.630, Tree Preservation as the continued retention of these large healthy, native trees on Lots 7-9 provide the greatest benefits as identified in the purpose of this chapter (33.630.010). Subject to the condition that development on Lots 7-9 be carried out in conformance with the Tree Preservation Plan (Exhibit C.1) and the applicant's arborist report (Exhibit A.2) this proposal may be approved.

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 requested to modify the tree preservation requirements that apply to the Douglas fir trees located in the rear yards of Lots 7-9, per Exhibit C.1. The applicant has demonstrated that the revised method of tree preservation will continue to meet the requirements of Chapter 33.630, Tree Preservation. Therefore, this proposal may be approved.

ADMINISTRATIVE DECISION

Approval of a Tree Review to modify the tree protection requirements that applies to Lots 7-9, Helensview Heights, per Exhibit C.1, subject to the following conditions:

- A. Development on Lots 7-9, Helensview Heights shall be in conformance with the Tree Preservation Plan (Exhibit C.1) and the applicant's arborist report (Exhibit A.2). Covered rear porches and or decks may be installed within root protection zones subject to there being no foundation and all excavation for pier footings are dug by hand. Tree protection fencing shall be installed prior to any development activities on the lots.
- B. Drywell installation on Lots 7-9 shall occur within the front yard of these lots, per approved plumbing code appeals (Exhibit A.3).

Staff Planner: Sean Williams

Decision rendered by:  **on May 9, 2017**
By authority of the Director of the Bureau of Development Services

Decision mailed: May 11, 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 March 16, 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: July 14, 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 May 25, 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 **May 26, 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:

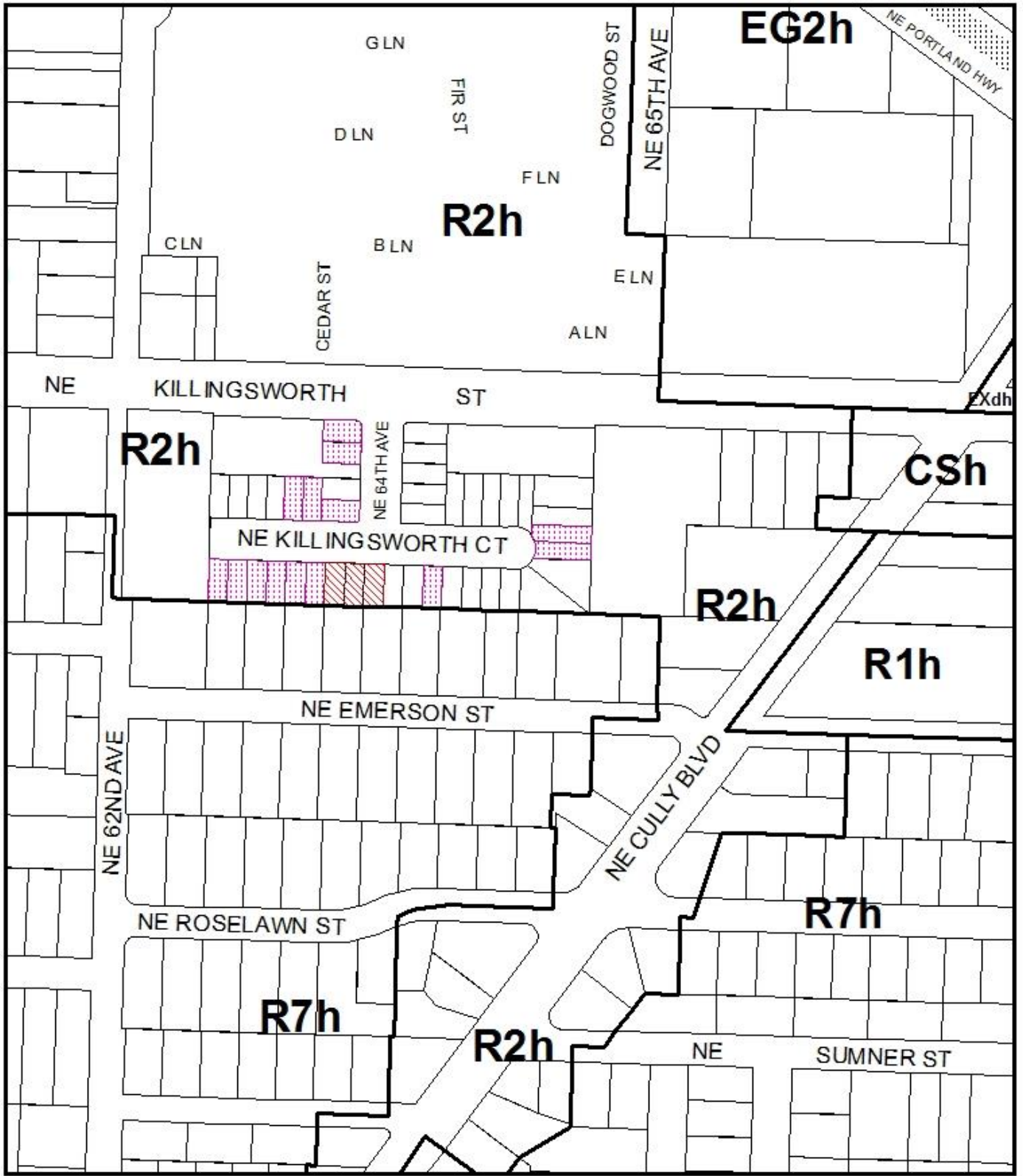
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Narrative
 - 2. Arborist report (12/16/16 & 3/10/17)
 - 3. Plumbing code appeal decisions
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Tree Preservation Plan (attached)
- 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. Life Safety Plans Examiner
 - 4. Water Bureau; Fire Bureau; Site Development Review Section of BDS; Bureau of Parks, Forestry Division
- F. Correspondence: NONE
- G. Other:
 - 1. Original LU 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

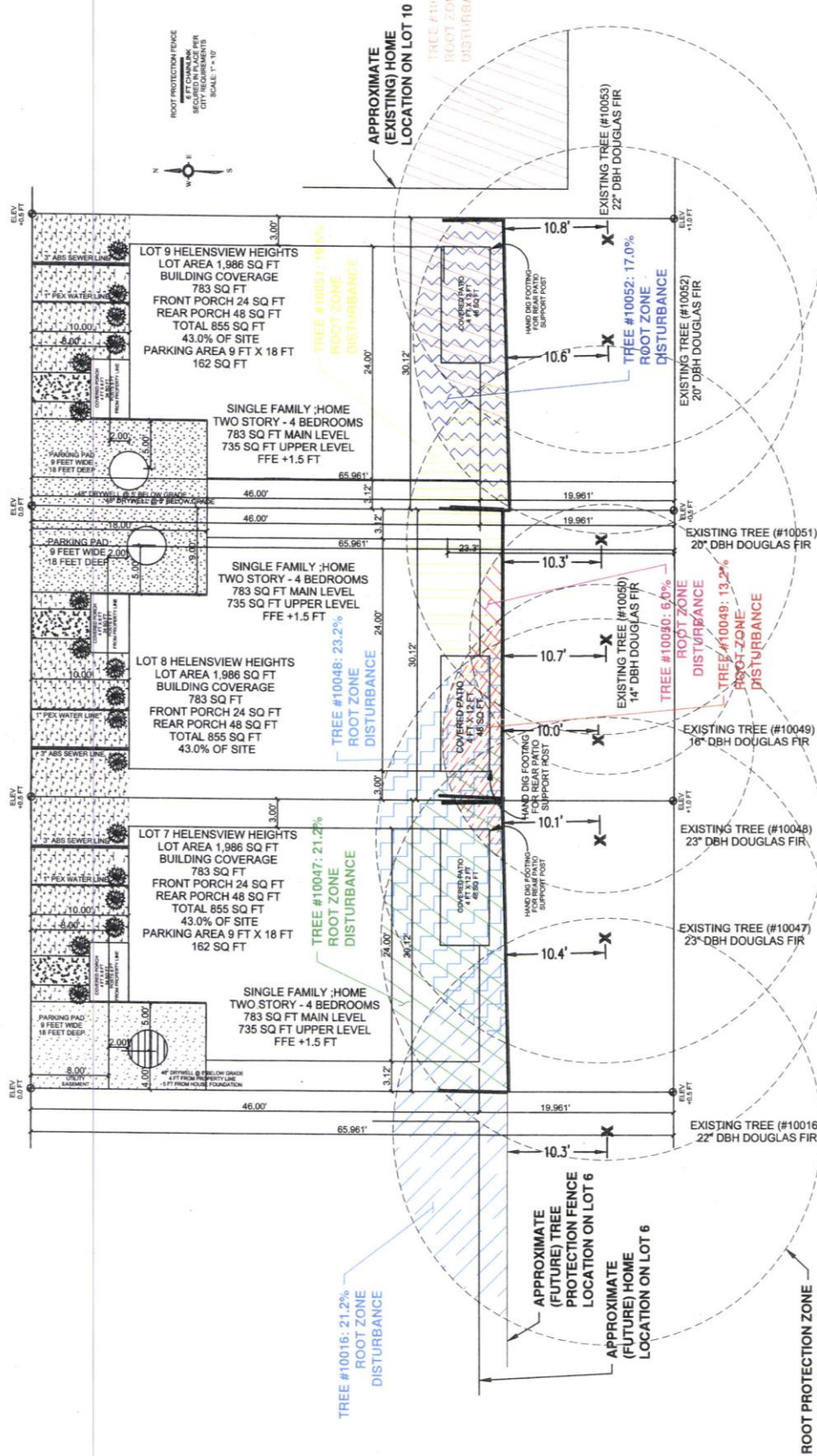
-  Site
-  Also Owned Parcels



File No.	<u>LU 17-104255 TR</u>
1/4 Section	<u>2537</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1N2E20BB 1009</u>
Exhibit	<u>B (Jan 16, 2017)</u>

CASE NO 17-10453
EXHIBIT C-1

DRYWELL LOCATION - PLUMBING APPEAL SUBMISSION



DATE: 3/10/2017

HELENSVIEW HEIGHTS
TREE EXHIBIT - COLOR COPY

AKS
AKS ENGINEERING & FORESTRY, LLC
12965 SW HERMAN RD, STE 100
TUALATIN, OR 97062
P: 503.563.6151 F: 503.563.6152 aks-eng.com

DRWN: DJS
CHKD: BRB
AKS JOB: 1245

- NOTES:
- BASEMAP PROVIDED BY HABITAT FOR HUMANITY.
 - TREE PROTECTION MEASURES PREPARED BY HABITAT FOR HUMANITY AND REVIEWED BY AKS ENGINEERING AND FORESTRY.