



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

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Date: September 29, 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 17-202529 TR

GENERAL INFORMATION

Applicant/owner: Don Ng
13834 SE Holgate Blvd LLC
PO Box 90724
Portland, OR 97290
nghangseng@yahoo.com

Site Address: 13834 SE Holgate Boulevard

Legal Description: Partition Plat 2017-36, Lot 1 and 2
Tax Account No.: R686357, R686358
State ID No.: 1S2E14AA 01701, 1S2E14AA 01702
Quarter Section: 3544
Neighborhood: Powellhurst-Gilbert, contact at pgnaboard@gmail.com
Business District: Midway, contact info@midwaybusiness.org.
District Coalition: East Portland Neighborhood Office, contact Victor Salinas at 503-823-6694.

Plan District: Johnson Creek Basin
Other Designations: Potential Landslide Hazard
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 requesting a tree review to change the tree preservation requirements approved via a 2-parcel partition (LU 16-150655 LDP AD). This review required the preservation of a 21" Western Hemlock (#214) and a 23" Douglas fir (#220). The applicant is now requesting to remove the Western Hemlock due to development pressures and the presence of overhead power lines. In lieu of preserving this tree the applicant is proposing mitigation in the form of planting new trees and/or payment into the City tree fund.

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 the south side of SE Holgate Boulevard approximately 550 feet east of SE 135th Avenue. Existing development consists of a detached 1-story single family residence on Parcel 1. Parcel 2 is currently vacant. The surrounding vicinity primarily consists of single family development with the presence of numerous flag lots on the block this site is located within. Gates Park is located directly across the street from the site and Powell Butte Nature Park is located approximately 1,000 feet east of the site.

Infrastructure:

- **Streets** – The site has approximately 100 feet of frontage on SE Holgate Boulevard. There is one driveway entering the site that serves the existing house. At this location, SE Holgate Boulevard is classified as a Local Service Street for all modes, with the exception of a City Walkway designation, in the Transportation System Plan (TSP). Tri-Met provides transit service approximately 550 feet west of the site at SE 135th Avenue and SE Holgate Boulevard via Bus #17. At this location, SE Holgate Boulevard is improved with approximately 18 feet of paving only within a 60 foot wide right-of-way. There is no curb or sidewalk.
- **Water Service** – There is an existing 8-inch DI water main in SE Holgate Boulevard.
- **Sanitary Service** - There is an existing 8-inch PVC sanitary sewer main in SE Holgate Boulevard.

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 fosters owner-occupancy, focuses development on vacant sites, preserves existing housing stock, and encourages new development that is compatible with the surrounding residential neighborhood. This land division is not using any 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. At certain locations, the density of development is limited by applying special regulations to new land division proposals. In addition, restrictions are placed on all new land uses and activities to reduce stormwater runoff, provide groundwater recharge, reduce erosion, enhance water quality, and retain and enhance native vegetation throughout the plan district. At other locations, development is encouraged and mechanisms are included that provide relief from environmental restrictions.

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

- **LU 16-150655 LDP AD:** Approval of an Adjustment to the maximum lot area (33.610.200.C) of Parcel 1 from 8,500 square feet to 11,000 square feet; Approval of an Adjustment to the maximum lot area (33.610.200.C) of Parcel 2 from 8,500 square feet to 9,499 square feet; Approval of a modification to eliminate the flag lot landscape buffer area (33.110.240.F.2) along the east property line of Parcel 2; Approval of a Preliminary Plan for

a 2-parcel partition that will result in one standard parcel (Parcel 1) and one flag lot (Parcel 2). This partition has been platted (PP 2017-36).

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 **July 15, 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 16-150655 LDP 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 21” Western Hemlock (#214) and a 23” Douglas fir (#220) as a part of the land division review. Preservation of these trees met Option 3 of the minimum tree preservation standards (33.630.100.A.3), which requires preservation of at least 50 percent of the trees that are 20 or more inches in diameter and at least 30 percent of the total tree diameter on the site. Therefore, no additional mitigation was warranted at the time of the land division in order to satisfy the approval criterion.

The 21” Western Hemlock (#214) tree proposed for removal is located in the pole portion of Parcel 2 (the flag lot) in close proximity to the right-of-way. At the time of the land division this

tree was found to be in good condition but the long term viability was not adequately evaluated. Development pressures of utilities for Parcel 2 being installed in this area as well as the presence of overhead power lines threaten the long term viability of this tree. Therefore, staff finds the removal of this tree to be acceptable subject to mitigation to replace the functions of this tree.

The applicant proposed mitigation in the form of planting additional trees throughout the land division site. However, in order to address nonconforming tree density for the existing house to be retained on Parcel 1, the applicant planted 4 large trees and 1 medium tree on this parcel via a Zoning Permit (17-134572 ZP) prior to Final Plat approval. In addition, the 23" Douglas fir (#220) will continue to be preserved on Parcel 2 and additional trees and landscaping will be required on this parcel at the time of building permit via Title 11 tree density and flag lot landscape buffer requirements. Based on this, it doesn't appear there would be any opportunities for additional planting on either parcel without jeopardizing the overall health of all the trees and landscaping. Therefore, offsite mitigation in the form of payment into the City Tree Fund is more appropriate for this proposal. The applicant must pay into the City Tree Preservation and Planting Fund the amount equivalent to 10-inches of trees to meet this approval criterion. 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.

Subject to the condition noted above, this criterion is met.

Note: conditions of the land division approval related to boring of utilities associated with Parcel 2 (D.1) will no longer apply since this tree is now being removed. In addition, the condition requiring vehicle access for Parcel 2 to be accomplished through the existing driveway on Parcel 1, via an easement, will still apply. Vehicle access from the frontage of Parcel 2 is prohibited.

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

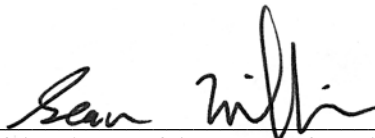
The applicant has proposed to remove a 21" Western Hemlock required to be preserved as a part of a land division review (LU 16-150655 LDP AD). With a condition requiring payment into the City Tree Fund to replace the functions of the tree being removed, this proposal may be approved.

ADMINISTRATIVE DECISION

Approval of a Tree Review to remove a 21" Western Hemlock required to be preserved as a part of a land division review (LU 16-150655 LDP AD), subject to the following condition:

- A. The applicant must pay into the City Tree Preservation and Planting Fund the amount equivalent to 10 inches of trees, prior to approval of a building permit on Parcel 2 of Partition Plat 2017-36 (R686358). 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 September 27, 2017**
By authority of the Director of the Bureau of Development Services

Decision mailed: September 29, 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 July 12, 2017, and was determined to be complete on August 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 July 12, 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: December 8, 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 October 13, 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 will be recorded with the Multnomah County Recorder.

- *Unless appealed*, the final decision will be recorded after **October 16, 2017** by the Bureau of Development Services.

The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder.

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:

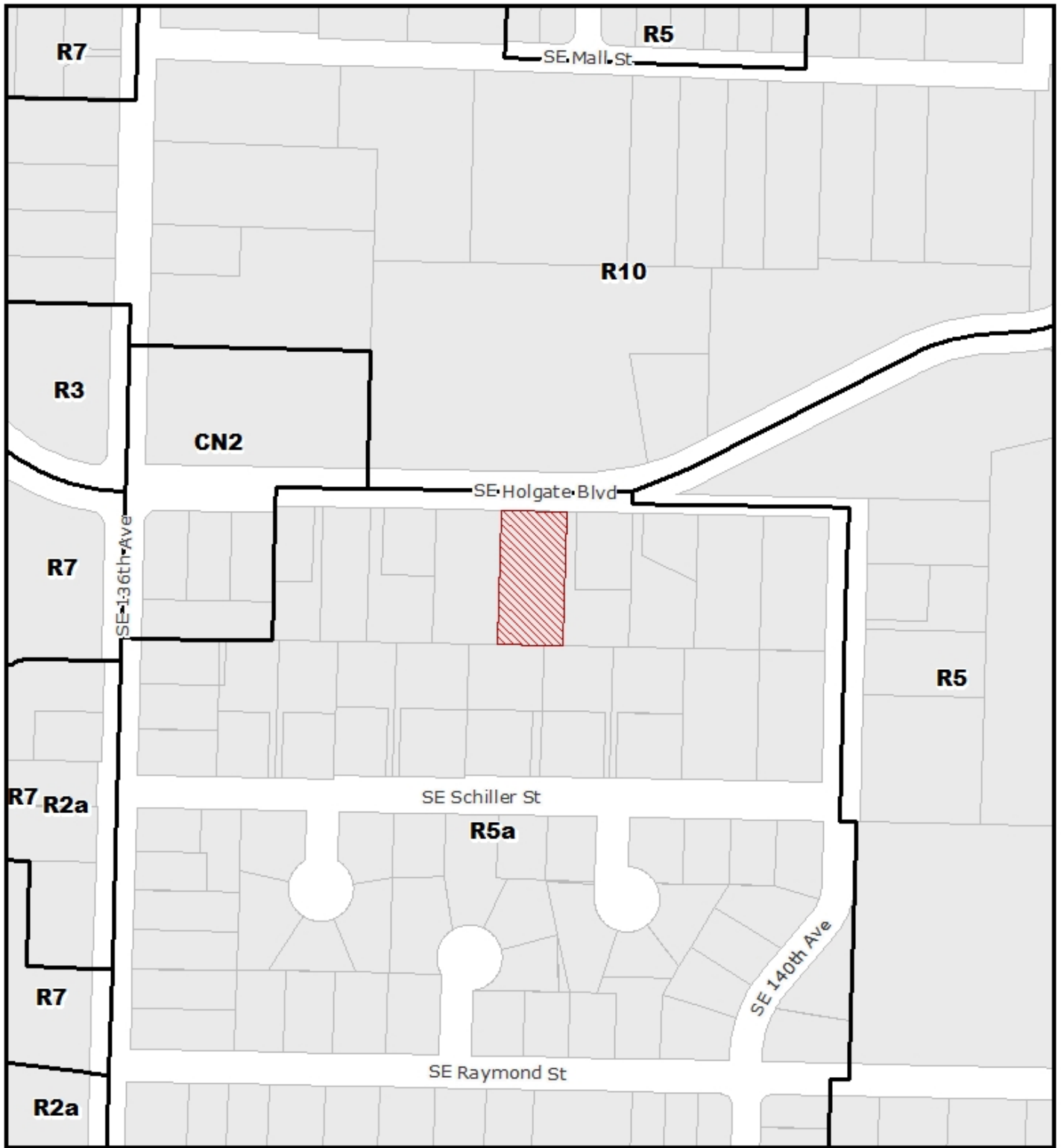
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations 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. Fire Bureau; Site Development Review Section of BDS; Bureau of Parks, Forestry Division
- 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

NORTH

THIS SITE LIES WITHIN THE:
JOHNSON CREEK BASIN PLAN DISTRICT



File No.	LU 17-202529 TR
1/4 Section	3544
Scale	1 inch = 200 feet
State ID	1S2E14AA 1700
Exhibit	B Aug 10, 2017

Removal of tree # 214

