



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

Ted Wheeler, Mayor
Rebecca Esau, Director
Phone: (503) 823-7300
Fax: (503) 823-5630
TTY: (503) 823-6868
www.portlandoregon.gov/bds

Date: April 25, 2019
To: Interested Person
From: Mark Moffett, City Planner
503-823-7806 / Mark.Moffett@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 19-114826 NE

GENERAL INFORMATION

Applicant: Wayne Pipes, NW Natural
220 NW Second Avenue
Portland, OR 97209

Applicant's Representative: Dana Krawczuk, Stoel Rives LLP
760 SW 9th Avenue, #3000
Portland, OR 97205

Property Owner: Northwest Natural Gas Company
220 NW 2nd Ave
Portland, OR 97209-3943

Party of Interest: Allison Reynolds, Stoel Rives LLP
760 SW 9th Ave #3000
Portland, OR 97205

Site Address: 904 SE DIVISION STREET & 2610 SE 8th AVENUE

Legal Descriptions: TL 200 0.60 ACRES DEPT OF REVENUE, SECTION 11 1S 1E; TL 7200 2.10 ACRES DEPT OF REVENUE, SECTION 11 1S 1E; TL 6900 0.15 ACRES DEPT OF REVENUE, SECTION 11 1S 1E; TL 7100 2.10 ACRES DEPT OF REVENUE, SECTION 11 1S 1E

Tax Account Nos.: R991110710, R991110810, R991110970, R991111610

State ID Nos.: 1S1E11BB 00200, 1S1E11BA 07200, 1S1E11BA 06900, 1S1E11BA 07100

Quarter Section: 3331

Neighborhood: Hosford-Abernethy, contact Michael Wade at wade.michael@comcast.net

Business District: Central Eastside Industrial Council, contact ceic@ceic.cc.

District Coalition: Southeast Uplift, contact Leah Fisher at 503-232-0010.

Zoning: **IG1** (General Industrial 1 base zone), **Central City Plan District/Central Eastside Subdistrict**

Case Type: **NE** (Determination of Legal Nonconforming Status Review)

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

PROPOSAL: The applicant is in the process of evaluating options for reconfiguration and upgrades at the existing Northwest Natural Gas Company (NW Natural) “resources center” at 904 SE Division Street and 2610 SE 8th Avenue. The NW Natural facility has been in operation at the 904 SE Division site since 1916, and in 1981 the operation expanded to include the “Exley” property at 2610 SE 8th Avenue. The facility serves as a dispatch center for maintenance, repair and emergency services for NW Natural customers, and includes accessory fleet vehicle storage/fueling/service, employee parking, and administrative support office space. Modernization projects currently anticipated include a new 3-story administrative/office building, a 1-story warehouse/storage building, and updates to accessory structures associated with the fleet vehicles and materials/equipment storage areas on the site.

As part of the site redevelopment permitting, the applicant seeks to retain legal nonconforming rights for the existing parking on the site. New Central City plan district parking regulations that went into effect on July 9, 2018 would allow no more than 20 surface parking spaces on the site for new parking (33.510.261.I.3.c), so the applicant seeks to “vest” the facility in regulations that apply to parking created before July 9, 2018 (33.510.262). In order to document legal establishment for the parking with standard evidence, a building permit is required (33.258.038). In this case, a building permit for the parking at 904 SE Division Street was not found in city records, so the only option is to use non-standard evidence. In order to establish the legal status of existing parking at the site, the Zoning Code requires the applicant to request a Type II Determination of Legal Nonconforming Status Review (33.258.075).

The applicant claims that there are 98 parking spaces at 904 SE Division Street, and an additional 31 spaces at 2610 SE 8th Avenue, for a total of 129 existing surface parking spaces. The applicant estimates that the area devoted to parking on the Division Street property is approximately two acres in size. Therefore, in order to establish legal nonconforming status for 129 surface parking spaces on the site, and allow reconfiguration of this parking under 33.510.262.E, the applicant has requested this Determination of Legal Nonconforming Status Review.

This application does not evaluate the future site redevelopment project for conformance with current Zoning Code regulations. During an Early Assistance process last year (EA 18-245605 APPT), the applicant was advised that an Adjustment would be necessary for vehicle access onto SE 9th Avenue, and that a Conditional Use Review would be necessary for a wireless telecommunications tower. If necessary, those reviews will occur later.

RELEVANT APPROVAL CRITERIA: In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are found at **33.258.075.D.1-2, Determination of Legal Nonconforming Status Review Approval Criteria.**

ANALYSIS

Site and Vicinity: The site includes several parcels that together comprise just under 5 acres of land, straddling both sides of SE 9th Avenue south of SE Division Street and a rail line corridor. The larger “resources center” portion of the site is located east of SE 9th Avenue, and is surrounded by chain link security fencing. This portion of the site is used for equipment and vehicle storage, parking, and the southernmost portion of the site is excavated below grade in a holdover from the time when the site was home to large natural gas storage tanks, which sat atop the excavated areas. The “Exley” portion of the site is the small two-story industrial building on the west side of SE 9th Avenue, with paved surface parking areas between the building and the street.

The surrounding area is industrial in character. Nearby firms include manufacturing businesses, contractors, self-service storage facilities, and industrial office uses. Newer sidewalks exist in SE Tillikum Way on the north edge of the main “resources center” property, and there are segments of curb-tight sidewalk on the remainder, but the majority of the property has no improved public sidewalks along the site frontage. The right-of-way in SE Taggart Street at the south edge of the “resources center” site is unimproved and blocked from public access by chain link fencing.

Zoning: The General Industrial 1 (IG1) base zone is an industrial zone where most industrial uses are allowed to locate, but where other uses are limited to prevent conflicts with and preserve land for industry. IG1 areas tend to be the city’s older industrial areas, often with smaller lots and a grid block pattern. The Central City plan district implements various plans and policies specific to the central area of Portland, including the Central City 2035 Plan, which was adopted in July, 2018 and includes parking limits which are in part the reason for the current land use review.

Land Use History: City records indicate no prior land use reviews for this site.

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **March 15, 2019**. The following Bureaus have responded with no issues or concerns:

- The *Development Review Section of Portland Transportation* (Exhibit E.1); and
- The *Fire Bureau* (Exhibit E.2).

Neighborhood Review: No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

33.258.075 Determination of Legal Nonconforming Status Review

- A. Purpose.** This review will determine if a use or site has legal nonconforming situation rights. In addition, it will determine what the current legal use is, based on the use categories in Chapter 33.920.
- D. Approval criteria.**
1. The legal status of the nonconforming situation will be certified if the review body finds that:
 - a. The nonconforming situation would have been allowed when established; and
 - b. The nonconforming situation has been maintained over time.
 2. The review body will determine, based on the evidence, what the current legal use is, using the definitions in Chapter 33.910 and the use categories in Chapter 33.920.

Findings: Legal nonconforming status for existing surface parking spaces and overall area dedicated to surface parking is necessary for the proposed redevelopment of this NW Natural Gas facility at 904 SE Division and 2610 SE 8th Avenue. Regulations that came into effect on July 9, 2018 would prohibit more than 20 surface parking spaces at the site for new parking (33.510.261.I.3.c), so the applicant must document that more than 20 surface parking spaces are already legally in place. The new regulations from last year also prohibit any increase in the site area dedicated to surface parking (33.510.262.E.6), so the specific site area devoted to existing legal parking must be documented prior to any site redevelopment that seeks to retain on-site surface parking, as well.

The applicant and staff both reviewed building permit records and could not find a building permit record showing staff approval of a site plan with existing surface parking. With no building permit record to show that the parking was legally established, there is no “standard evidence” that the parking has grandfather rights, and the parking would not be allowed to be

retained during redevelopment of the site as proposed. Therefore, the applicant has provided non-standard evidence showing when the parking was created.

The site has been developed with a NW Natural Gas facility since 1915. The use is classified in the Zoning Code as Industrial Service, as it provides services and goods to industrial and commercial and residential customers, but functions like a dispatch center where few if any customers actually come to the site. Over time, surface areas at the site have been used for vehicle parking, maintenance and repair services, materials and equipment storage, fleet vehicle storage, and fleet fueling and other industrial services. Fleet and vehicle parking has not historically been limited to any single area on the site, but has been used flexibly and changes physical locations over time, as documented by NW Natural (Exhibit A.5) and the applicant (Exhibit A.1).

The applicant has submitted aerial photographs for the site with superimposed graphics indicating the number and location of existing parking spaces. These plans show 98 parking stalls at 904 SE Division Street, and 31 parking stalls at 2610 SE 8th Avenue, for a total of 129 surface parking spaces on the site. These site plans are consistent with information shown on historic aerial photos for the site, which indicate that vehicles and materials have been stored in the same general areas on the site at least since 1998. The parking also appears to have been in place since at least the early 1920's based on statements from NW Natural, at which time there were no Zoning Code regulations (Portland's first Zoning Code came into effect on January 1, 1927).

Based on the narrative information from the applicant, parking was established at the site not only prior to the recent 2018 code changes, but also prior to enactment of Portland's first Zoning Code regulations in 1927. The evidence provided also shows that the parking has been maintained over time, as indicated on the submitted site plans. Therefore, the applicant should be granted legal nonconforming status for 129 parking spaces on approximately two acres of site area, allowing the parking to be regulated as existing parking instead of new parking. This criterion is 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 requirements of Title 11 can be met, and 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 provided non-standard evidence to show that more than 20 surface parking spaces are legally in place at the site, in order to redevelop the site without being subject to recent limitations on surface parking in the central city. Northwest Natural Gas has operated the site and parked vehicles at the facility since 1915, and was parking passenger vehicles at the site in the 1920's during the first automobile boom and prior to Portland's first Zoning Code in 1927. Because convincing non-standard evidence of the parking's existence at the site has been presented, the relevant criteria are met and the request should be approved.

ADMINISTRATIVE DECISION

Approval of a Determination of Legal Nonconforming Status Review to document that the Northwest Natural Gas facility at 904 SE Division Street and 2610 SE 8th Avenue has legal nonconforming status for 129 surface passenger parking spaces covering approximately two acres of land area.

This approval is granted for the site shown on the attached Zoning Map (Exhibit B), with existing parking locations shown on the approved aerial photographs, Exhibits C.1 and C.2, both signed and dated April 22, 2019.

Staff Planner: Mark Moffett

Decision rendered by: M. MOFFETT **on April 22, 2019.**
By authority of the Director of the Bureau of Development Services

Decision mailed: April 25, 2019.

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 February 1, 2019 and was determined to be complete on March 8, 2019.

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 February 1, 2019.

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 8, 2019.**

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 9, 2019** 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 on or after **May 10, 2019** 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:

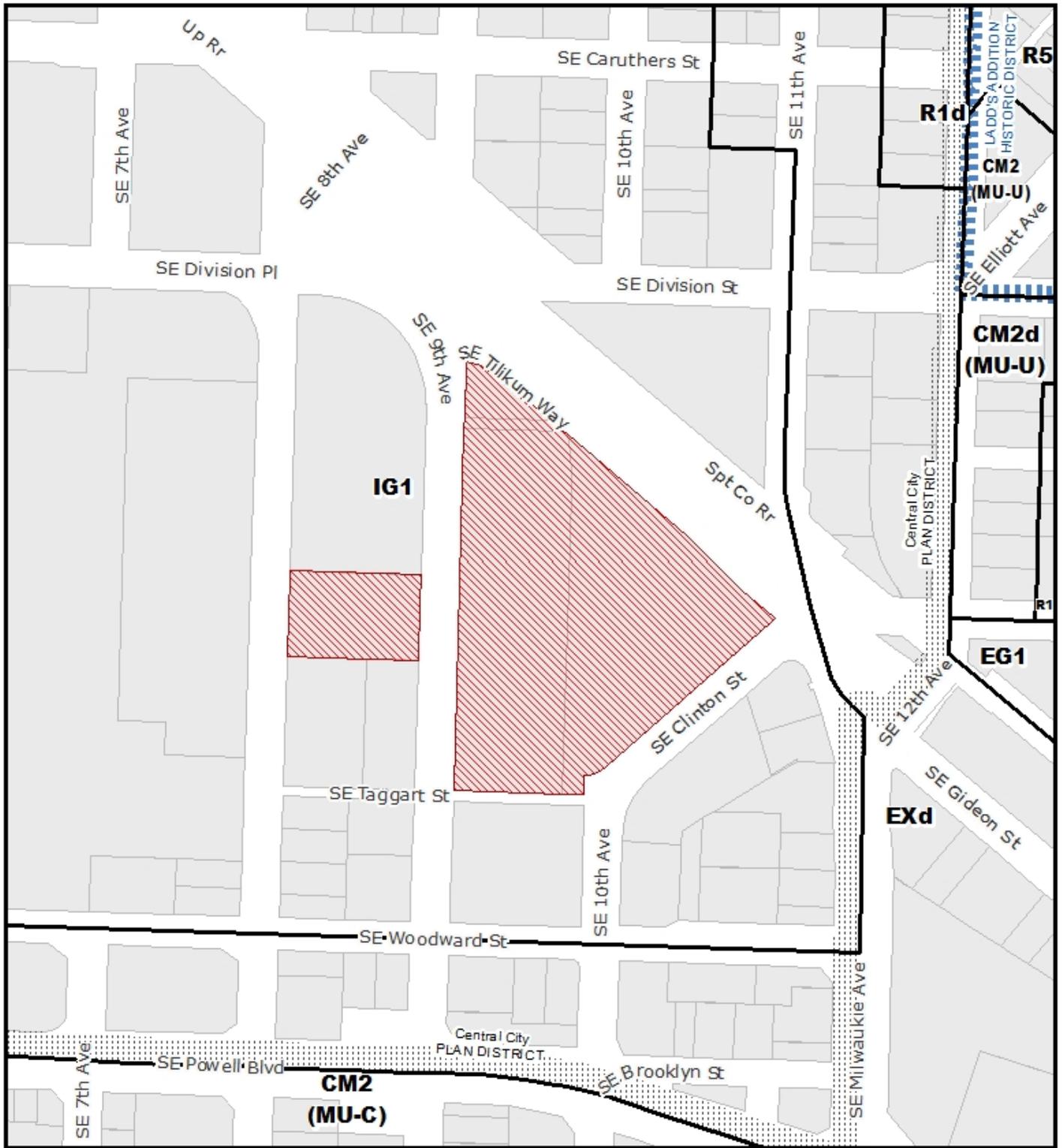
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statements
 - 1. Original narrative
 - 2. Original NW Natural statement
 - 3. Additional site plans and building elevations of concept redevelopment
 - 4. Supplemental stormwater site plan and transmittal e-mail, rec'd. 2/13/19
 - 5. Revised narrative and NW Natural statement, rec'd. 3/8/19
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Aerial Photo Parking Plan: Main Site (attached)
 - 2. Aerial Photo Parking Plan: Exley Building Site (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Development Review Section of Portland Transportation
 - 2. Fire Bureau
- F. Correspondence (*none received at time of decision mailing*)
- G. Other:
 - 1. Original LU application form and receipt
 - 2. Incomplete letter from staff to applicant, sent 2/20/19

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



THIS SITE LIES WITHIN THE:
 CENTRAL CITY PLAN DISTRICT
 CENTRAL EASTSIDE SUBDISTRICT

File No.	LU 19-114826 NE
1/4 Section	3331
Scale	1 inch = 200 feet
State ID	1S1E11BA 6900
Exhibit	B Feb 20, 2019

EXHIBIT 3

NWN CENTRAL PARKING:

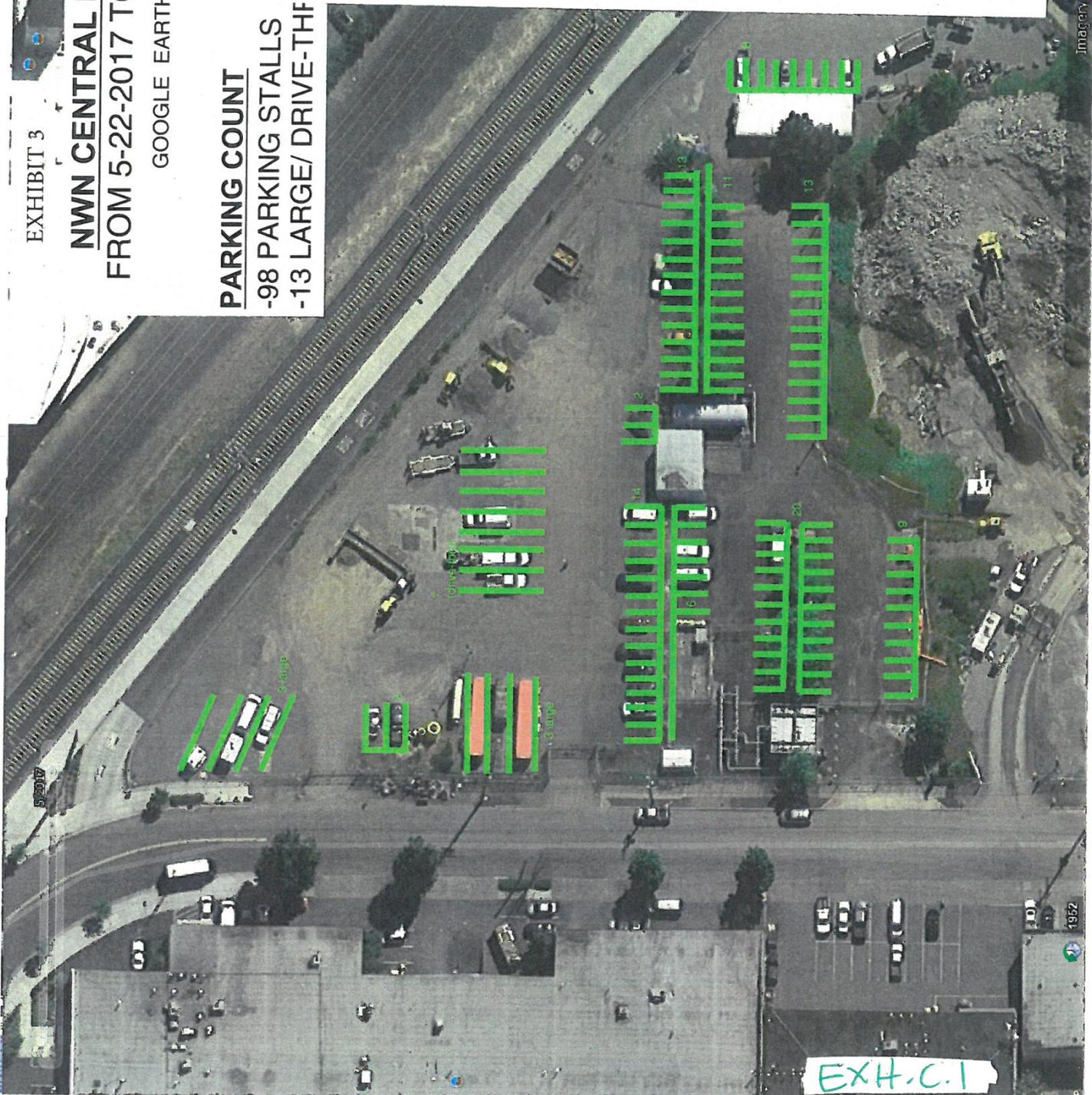
FROM 5-22-2017 TO 07-09-2018

GOOGLE EARTH IMAGE

PARKING COUNT

- 98 PARKING STALLS
- 13 LARGE/ DRIVE-THF

Approved
 City of Portland - Bureau of Development Services
 Planner MARK MOFFETT Date APRIL 22 2019
 This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

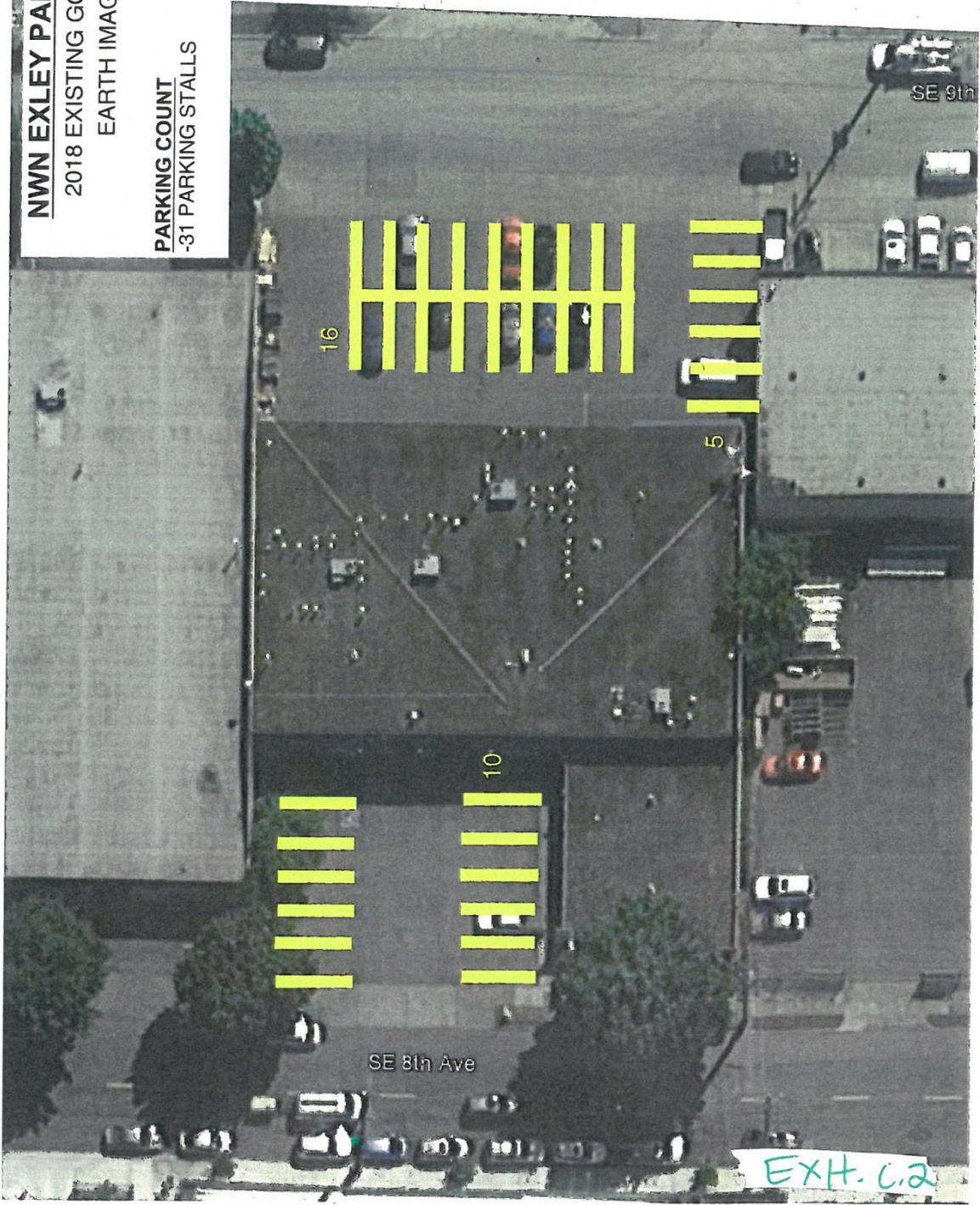


EXH.C.1
 LU 19-114826 NE

NWN EXLEY PARKING:
2018 EXISTING GOOGLE
EARTH IMAGE

PARKING COUNT
-31 PARKING STALLS

Approved
City of Portland - Bureau of Development Services
Applicant: MARK MOFFETT Date: APRIL 22 2019
This approval applies only to the revisions requested and is subject to all conditions of approval. Additional zoning requirements may apply.



EXH. C.2
LU 19-114826 NE