



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

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**Date:** July 26, 2019  
**To:** Interested Person  
**From:** Diane Hale, Land Use Services  
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## **NOTICE OF A TYPE Ix 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 18-199728 LDP**

#### **GENERAL INFORMATION**

**Applicant:** Mark Dane, Mark Dane Planning / (503) 332-7167  
14631 SW Millikan Way #6 / Beaverton, OR 97003

**Owner:** Vyacheslav Kaminskiy  
12459 SE Salmon Ct. / Portland, OR 97233

**Site Address:** 12437 SE Salmon Ct.  
**Legal Description:** BLOCK 2 LOT 7 SWLY 35' OF LOT 8, JANET ADD  
**Tax Account No.:** R426500310  
**State ID No.:** 1S2E02BB 03700  
**Quarter Section:** 3143  
**Neighborhood:** Mill Park, contact Trevor Hopper at [mill.park.pdx.chair@gmail.com](mailto:mill.park.pdx.chair@gmail.com)  
**Business District:** Gateway Area Business Association, contact at [info@gabanet.com](mailto:info@gabanet.com)  
**District Coalition:** East Portland Community Office, contact Victor Salinas at 503-823-6694.

**Plan District:** None  
**Zoning:** R7a – Single Family Residential 7,000 with an “a” Alternative Design Density Overlay

**Case Type:** LDP - Land Division Partition  
**Procedure:** Type Ix, an administrative decision with appeal to the Oregon Land Use Board of Appeals (LUBA).

#### **Proposal:**

The applicant is proposing a 2-parcel partition for this 16,926 square foot interior site, with one standard lot and one flag lot. The existing house will remain on the standard lot. Off-street parking is proposed for both homes. There are two regulated trees on the site and the applicant is proposing to preserve both of these trees.

This partition is reviewed through a Type Ix land use review because: (1) the site is in a residential zone; (2) fewer than four lots are proposed; (3) none of the lots, utilities, or

services are proposed within a Potential Landslide Hazard or Flood Hazard Area, and; (4) no other concurrent land use reviews (such as an Adjustment, Design Review, or Environmental Review) are requested or required (see 33.660.110).

For purposes of State Law, this land division is considered a partition. To partition land is to divide an area or tract of land into two or three parcels within a calendar year (See ORS 92.010). ORS 92.010 defines “parcel” as a single unit of land created by a partition of land. The applicant’s proposal is to create 2 units of land (2 parcels). Therefore, this land division is considered a partition.

**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 33.660.120, Approval Criteria for Land Divisions in Open Space and Residential Zones**.

## FACTS

**Site and Vicinity:** The site is a 16,926 square foot interior lot on SE Salmon Court, just north of the intersection of SE Salmon Court and SE Salmon Street. The surrounding area is generally developed with single-family houses. Commercial development is located 2 blocks to the west along SE 122<sup>nd</sup> Avenue, and David Douglas High School is about 3 blocks to the east.

**Infrastructure:**

- **Streets** – The site has approximately 105 feet of frontage on SE Salmon Court. There is one existing driveway onto the site for the existing house on the site. According to City GIS, at this location SE Salmon Court has a 50-ft ROW improved with a 28-ft paved roadway and 5-ft-wide paved sidewalks on both sides of the street. The site is approximately 500 feet from a bus stop for the #73 Tri-Met bus line.
- **Water Service** – There is an existing 4-inch water main in SE Salmon Court. The existing house is served by a metered service from this main.
- **Sanitary Service** - There is an existing 8-inch PVC sanitary-only sewer line in SE Salmon Court. The existing house is connected to this sewer line.
- **Stormwater Disposal** – There is no public storm-only sewer currently available to this property.

**Zoning:** The R7 zone is intended to foster single-dwelling residences. The maximum density for new lots in this zone is 1 unit per 7,000 square feet of land area. For new lots in this zone, the minimum lot size is 4,200 square feet, the minimum lot width is 40 feet, and the minimum lot depth is 55 feet.

The “a” overlay is intended to allow increased density that meets design compatibility requirements. It focuses development on vacant sites, preserves existing housing stock, and encourages new development that is compatible with the surrounding residential neighborhood.

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

**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 11, 2019. One notified neighbor responded. This neighbor was concerned the proposed land division would lead to an expanded driveway area that would be used for truck parking, creating objectionable impacts in the residential area. The neighbor said a semi-truck cab

had been parked on the applicant's property already, and that a business may be run from the residential property. The neighbor also expressed concern about stormwater runoff.

Staff response: The new flag lot (Parcel 2) will be required to take vehicle access from the existing driveway on the adjacent property to the north (12459 SE Salmon Court), and a condition of approval will prohibit a new driveway in the flag pole portion of Parcel 2. The future owner of Parcel 2 will have a permanent off-site easement over the existing driveway to 12459 SE Salmon Court, so it will need to be clear of parked vehicles to allow vehicle access to Parcel 2.

The Zoning Code does not allow heavy trucks to be parked in the R7 zone, and commercial uses are limited to "home occupations" as described in Zoning Code Chapter 33.203. These issues are not addressed in the land division approval criteria, therefore cannot be addressed through this review. Neighbors can direct concerns to BDS' Code Compliance Section (503-823-CODE), who investigates complaints about violations of these regulations.

The Bureau of Environmental Services will review the building permit for the new house on Parcel 2 to ensure stormwater runoff does not negatively impact adjacent properties. Please see Section L, Services, below for more information.

## ZONING CODE APPROVAL CRITERIA

### **APPROVAL CRITERIA FOR LAND DIVISIONS IN OPEN SPACE AND RESIDENTIAL ZONES**

**33.660.120 The Preliminary Plan for a land division will be approved if the review body finds that the applicant has shown that all of the following approval criteria have been met.**

Due to the specific location of this site, and the nature of the proposal, some of the criteria are not applicable. The following table summarizes the criteria that are not applicable. Applicable criteria are addressed below the table.

<b>Criterion</b>	<b>Code Chapter/Section and Topic</b>	<b>Findings: Not applicable because:</b>
C	33.631 - Flood Hazard Area	The site is not within the flood hazard area.
D	33.632 - Potential Landslide Hazard Area	The site is not within the potential landslide hazard area.
E	33.633 - Phased Land Division or Staged Final Plat	A phased land division or staged final plat has not been proposed.
F	33.634 - Recreation Area	The proposed density is less than 40 units.
H	33.636 - Tracts and Easements	No tracts or easements on the site have been proposed or will be required.
I	33.639 - Solar Access	All of the proposed parcels are interior lots (not on a corner). In this context, solar access standards express no lot configuration preference.
J	33.640 - Streams, Springs, Seeps and Wetlands	No streams, springs, seeps or wetlands are evident on the site.
L	33.654.110.B.2 - Dead end streets	No dead end streets are proposed.
	33.654.110.B.3 - Pedestrian connections in the I zones	The site is not located within an I zone.
	33.654.110.B.4 - Alleys in all zones	No alleys are proposed or required.
	33.654.120.C.3.c - Turnarounds	No turnarounds are proposed or required.
	33.654.120.D - Common Greens	No common greens are proposed or required.
	33.654.120.E - Pedestrian	There are no pedestrian connections proposed or

	Connections	required.
	33.654.120.F - Alleys	No alleys are proposed or required.
	33.654.120.G - Shared Courts	No shared courts are proposed or required.
	33.654.130.B - Existing public dead-end streets and pedestrian connections	No public dead-end streets or pedestrian connections exist that must be extended onto the site.
	33.654.130.C - Future extension of dead-end streets and pedestrian connections	No dead-end street or pedestrian connections are proposed or required.
	33.654.130.D - Partial rights-of-way	No partial public streets are proposed or required.
	33.655 - School District Enrollment Capacity	The proposal is for less than 11 lots.

**Applicable Approval Criteria are:**

**A. Lots. The standards and approval criteria of Chapters 33.605 through 33.612 must be met.**

**Findings:** Zoning Code Chapter 33.610 contains the density and lot dimension requirements applicable in the R7 zone. Based on the applicant's survey, the site area is 16,926 square feet. The maximum density in the R7 zone is one unit per 7,000 square feet. The minimum density is one unit per 7,000 square feet based on 80 percent of the site area.

These calculations give the site a maximum density of 2 units and a minimum density of 2 units. However, if the minimum density is equal to the maximum density, the minimum density is automatically reduced to one less than the maximum. Therefore, in this case the minimum density is 1 unit.

The applicant is proposing 2 single dwelling parcels. The density standards are therefore met.

The lot dimensions required and proposed are shown in the following table:

	Min. Lot Area (square feet)	Max. Lot Area (square feet)	Min. Lot Width* (feet)	Min. Depth (feet)	Min. Front Lot Line (feet)	Min. Flag Lot Width (feet)	Min. Flag Lot Depth (feet)
<b>R7 Zone</b>	4,200	12,000	40	55	30	40	40
Parcel 1	8,545		93	89	93	NA	NA
Parcel 2**	7,268 w/out pole 8,381 w/pole		NA	NA	NA	113	64

\* Width is measured by placing a rectangle along the minimum front building setback line specified for the zone. The rectangle must have a minimum depth of 40 feet, or extend to the rear of the property line, whichever is less.

\*\* For flag lots: (1) width and depth are measured at the midpoint of the opposite lot lines in the "flag" portion of the lot; and (2) lot area calculations do not include the pole portion of the lot.

Flag Lots

**When allowed**

In this case the applicant is proposing 2 parcels, only one of which is a flag lot. The existing dwelling unit and attached garage have been on the property for more than 5 years and are located so that they preclude a land division that meets minimum lot width standards. The minimum density standards are met. Therefore, the thresholds for when a flag lot is allowed have been met.

**Dimensions**

The proposed flag lot meets applicable Zoning Code standards found in 33.610.400 because it has a “pole” at least 12 feet wide that connects to a street, and as shown above, meets the minimum lot area, width and depth standards.

**Vehicle Access**

Where it is practical, vehicle access must be shared between the flag lot and the lots between the flag portion of the lot and the street. Factors that may be considered include the location of existing garages, driveways, and curb cuts, stormwater management needs, and tree preservation. Access easements may be used.

The “flag pole” portion of Parcel 2 will be located immediately north of the existing driveway on Parcel 1. The existing driveway on Parcel 1 provides access to an existing, street-facing garage which is set back about 27 feet from the street lot line. Due to the location of the existing garage, a shared access serving both Parcel 1 and Parcel 2 is not feasible. However, instead of constructing a new driveway in the “flag pole” portion of Parcel 2, the applicant proposes vehicle access to Parcel 2 from the existing driveway on the adjacent lot to the north, which is currently under the same ownership. This will reduce the amount of paving needed for the development of Parcel 2 and eliminate the need for an additional curb cut on SE Salmon Court. The off-site easement for shared access must be established and recorded before the final plat is recorded.

Parcel 2 has met the thresholds for when a flag lot is allowed. Therefore, Parcel 2 is allowed.

The findings above show that the applicable density and lot dimension standards are met. Therefore, this criterion is met.

**B. Trees. The standards and approval criteria of Chapter 33.630, Tree Preservation, must be met.**

**Findings:** The regulations of Chapter 33.630 require that trees be considered early in the design process with the goal of preserving high value trees and, when necessary, mitigating for the loss of trees.

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.

Some trees are exempt from the requirements of this chapter, if they are unhealthy, a nuisance species, within 10 feet of a building to remain on the site, within an existing right-of-way, or within an environmental zone.

In order to identify which trees are subject to these requirements, the applicant provided a tree survey (Exhibit C.2) that shows the location and size of trees on and adjacent to the site. The applicant also provided an arborist report (Exhibit A.7) that identifies each tree, its condition and suitability for preservation or its exempt status, and a root protection zone and tree protection measures for each tree to be preserved.

Based on this information, 2 on-site trees are subject to the preservation requirements of this chapter, a 25" Red Maple (tree #3) and a 15" Flowering Dogwood (tree #2). The other 2 trees on the site are nuisance species and therefore exempt. The applicant proposes to preserve both trees, so 100% of the non-exempt trees on the site will be preserved. The proposal therefore complies with Option 1 from the tree preservation standards, which requires preservation of all trees that are 20 or more inches in diameter and at least 25% of the total, non-exempt tree diameter on the site.

The trees proposed for preservation are in good condition, include non-nuisance species, and one of the trees is 20 or more inches in diameter. The proposed root protection zones (Exhibit C.1) for the trees to be retained will allow for the type of development anticipated in the R7 zone and will not conflict with any existing utility easements, proposed services or site grading. Note that for tree #3, If the fencing can be placed 25 feet away from the tree, arborist supervision is not required. If the fencing is moved to 12.5 feet from the tree to the east, as shown on Exhibit C.1, arborist supervision is required.

In order to ensure that future owners of the lots are aware of the tree preservation requirements, the applicant must record an Acknowledgement of Tree Preservation Land Use Conditions at the time of final plat. The acknowledgement must identify that development on Parcels 1 and 2 must be carried out in conformance with the protection plan shown on the Preliminary Site Plan (Exhibit C.1) and the Arborist Report (Exhibit A.7).

Preservation requirements for work involving cesspool decommissioning:

There are two historic cesspools on the site that will need to be decommissioned prior to final plat approval (see section G. below). Plumbing records indicate that the potential locations for the cesspools are near tree #3 (25" red maple), but the exact locations are unknown. Exhibit C.1 shows the likely locations for the cesspools. The arborist outlined recommended root protection zones and other tree preservation measures for tree #3 in three scenarios that will allow the applicant to do the cesspool work and still protect the tree.

- Scenario 1: The fencing is placed 25' from the tree. No arborist supervision or other measures are required.
- Scenario 2: The fence is placed 12.5 feet from the tree and arborist supervision is required within 25 feet of the tree. Any roots over 1" must be cleanly cut.

If the cesspools cannot be located using the tree protection measures outlined in scenarios 1 and 2, the applicant is encouraged to work with Site Development to see if a decommissioning waiver is possible to avoid further impact to tree #3. If a waiver is not possible and scenarios 1 and 2 are not sufficient, the applicant may use scenario 3.

- Scenario 3: The fence is placed 8 feet from the tree to the east and expanded on other sides to compensate. The arborist must be on site to oversee the excavation. Other required measures are noted in the arborist report. Please see the arborist report (Exhibit A.7) for full details.

See the Arborist Report (Exhibit A.7) for more information.

This criterion is met, subject to the condition that development on Parcels 1 and 2 is carried out in conformance with the protection plan shown on the Preliminary Site Plan (Exhibit C.1) and the Arborist Report (Exhibit A.7) and an Acknowledgement of Tree Preservation Land Use Conditions is recorded with the final plat.

At the time of development, Parcel 2 must also meet the tree density requirement in Title 11, the Portland Tree Code. This standard will require new trees on Parcel 2 based on the size of the property and the size category of the proposed trees. Parcel 1 (the lot with the existing house) complies with the tree density requirement because of the existing trees on Parcel 1.

**G. Clearing, Grading and Land Suitability. The approval criteria of Chapter 33.635, Clearing, Grading and Land Suitability must be met.**

**Findings:****Clearing and Grading**

The regulations of Chapter 33.635 ensure that the proposed clearing and grading is reasonable given the infrastructure needs, site conditions, tree preservation requirements, and limit the impacts of erosion and sedimentation to help protect water quality and aquatic habitat.

In this case, the site is primarily flat and is not located within the Potential Landslide Hazard Area. Therefore, no significant clearing or grading will be required on the site to make the new lots developable. Tree protection fencing will be installed at the time of development on Parcel 2 to make sure no grading takes place within the root protection zones of trees 193 and 184 to be preserved. This criterion is met.

**Land Suitability**

The site is currently in residential use, and there is no record of any other use in the past. As indicated above, the site is relatively flat and contains no known geological hazards. Therefore, there are no anticipated land suitability issues and the new lots can be considered suitable for new development. The historic cesspools on the site must be located and decommissioned prior to final plat approval. A zoning permit is required for installation of the tree protection measures outlined in Section B above prior to decommissioning work. With this condition, this criterion is met.

**K. Transportation impacts. The approval criteria of Chapter 33.641, Transportation Impacts, must be met; and,**

**Findings:** The transportation system must be capable of supporting the proposed development in addition to the existing uses in the area. Evaluation factors include: safety, street capacity, level of service, connectivity, transit availability, availability of pedestrian and bicycle networks, on-street parking impacts, access restrictions, neighborhood impacts, impacts on pedestrian, bicycle, and transit circulation. Evaluation factors may be balanced and measures to mitigate impacts may be necessary.

The Development Review Section of the Portland Bureau of Transportation (PBOT) has reviewed the application against the evaluation factors and has provided the following findings (see Exhibit E.2):

*The applicant provided a written narrative addressing the transportation approval criteria above. The applicant proposes a flag lot partition, constructing a new single-family residence on the new flag lot behind (west) of the existing home. A 12-ft flag 'pole' is proposed abutting SE Salmon; however, the applicant is proposing to utilize the existing flag pole on the adjacent property to the north for vehicular access to the new lot, eliminating an additional driveway connection and the relocation of a power pole. The new unit will add approximately one morning trip and one evening trip, for approximately nine trips daily added to the transportation system, which the small number of trips added into the transportation system as a result will not adversely impact the operations of area intersections. The applicant's narrative indicates the surrounding area's street capacity satisfies City standards and will pose a minimal impact to immediate and adjacent neighborhoods. The existing sidewalk corridor and street provide sufficient transportation facilities to reduce impacts to the neighborhood and provide safety for all modes. Tri-Met bus service # 73-122nd is located approximately 500-ft to the west; the surrounding streets are identified as Local Service, leading to numerous bicycling routes surrounding the site and to other destinations within the City; and the sidewalk infrastructure is generally complete and well connected to other streets. Therefore, the transportation system is capable of safely supporting the proposed development in addition to existing uses in the area. The proposed development will not negatively impact transit service or safety for any mode.*

PBOT has reviewed and concurs with the information supplied and available evidence. No mitigation is necessary for the transportation system to be capable of safely supporting the proposed development in addition to the existing uses in the area. These criteria are met.

**L. Services and utilities. The regulations and criteria of Chapters 33.651 through 33.654, which address services and utilities, must be met.**

**Findings:** Chapters 33.651 through 33.654 address water service standards, sanitary sewer disposal standards, stormwater management, utilities and rights of way. The criteria and standards are met as shown in the following table:

<p><b>33.651 Water Service standard</b> – See Exhibit E.3 for detailed bureau comments.</p> <p>The Water Bureau has indicated that service is available to the site, as noted on page 2 of this report. The water service standards of 33.651 have been verified.</p>
<p><b>33.652 Sanitary Sewer Disposal Service standards</b> – See Exhibit E.1 for detailed comments.</p> <p>The Bureau of Environmental Services has indicated that service is available to the site, as noted on page 2 of this report. The sanitary sewer service standards of 33.652 have been verified.</p>
<p><b>33.653.020 &amp; .030 Stormwater Management criteria and standards</b> – See Exhibit E.1</p> <p>No stormwater tract is proposed or required. Therefore, criterion A is not applicable.</p> <p>The applicant has proposed the following stormwater management methods:</p> <ul style="list-style-type: none"> <li>• <b>Parcel 2:</b> Stormwater from this lot will be directed to a drywell that will treat the water and slowly infiltrate it into the ground. This lot has sufficient area for a stormwater facility that can be adequately sized and located to meet setback standards and accommodate water from a reasonably-sized home. BES has indicated conceptual approval of this proposal.</li> <li>• <b>Parcel 1 (the lot with the existing house):</b> Stormwater from this lot is infiltrated into the ground via downspouts from the existing house. BES indicated the existing downspouts meet BES requirements except for the downspout at the front of the attached garage, which appears to discharge water less than 5 feet from the proposed lot line. As a condition of approval, the applicant must show that this downspout meets setbacks and discharge requirements in the Stormwater Management Manual or modify the stormwater disposal system on Parcel 1 to meet the applicable requirements.</li> </ul> <p>With this condition of approval, these standards and criteria are met.</p>
<p><b>33.654.110.B.1 Through streets and pedestrian connections</b></p> <p>Generally, through streets should be provided no more than 530 feet apart and pedestrian connections should be provided no more than 330 feet apart. Through streets and pedestrian connections should generally be at least 200 feet apart.</p> <p>No street connections have been identified in the vicinity of this property in the Portland Master Street Plan, and the location of the subject property within its block makes it a poor choice for a new through street or pedestrian connection. The northeast corner of the site abutting SE Salmon Court is less than 200 feet from the public right-of-way for SE Salmon Street. Furthermore, a new through street or pedestrian connection through the subject site would conflict with existing development on abutting properties.</p> <p>Therefore, a new through street or pedestrian connection is not warranted at this location. This criterion is met.</p>
<p><b>33.654.120.B &amp; C Width &amp; elements of the right-of-way</b> – See Exhibit E.2 for bureau comment</p> <p>In reviewing this land division, PBOT relies on accepted civil and traffic engineering standards and specifications to determine if existing street improvements for motor vehicles, pedestrians and bicyclists can safely and efficiently serve the proposed new development.</p>



PBOT has indicated that the existing street is currently improved to City standards. PBOT has not identified any factors that indicate one additional dwelling cannot be safely served by this existing street or that the proposal would significantly impact the level of service.

Therefore, the current right-of-way width and improvements will be sufficient to accommodate the expected users. This criterion is met.

### **33.654.130.A - Utilities (defined as telephone, cable, natural gas, electric, etc.)**

Any easements that may be needed for private utilities that cannot be accommodated within the adjacent right-of-way can be provided on the final plat. At this time no specific utility easements adjacent to the right-of-way have been identified as being necessary. Therefore, this criterion is met.

## **DEVELOPMENT STANDARDS**

Development standards that are not relevant to the land division review have not been addressed in the review. 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 11 can be met, and those 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.

### **Future Development**

Among the various development standards that will be applicable to this lot, the applicant should take note of:

- Flag Lots – Special setback standards apply to flag lots in the R7 zone, and additional landscape standards apply to flag lots that are 10,000 square feet or less in area (33.110.240.F). These standards apply to Parcel 2.

**Existing development that will remain after the land division.** The existing development on the site will remain and be located on Parcel 1. The division of the property may not cause the existing structure to move out of conformance or further out of conformance with any development standard applicable in the R7 zone. Per 33.700.015, if a proposed land division will cause conforming development to move out of conformance with any zoning regulation, and if the regulation may be adjusted, the land division request must include a request for an adjustment. (Please see section on Other Technical Standards for Building Code standards.)

In this case, the following Zoning Code standard relates to existing development on the site:

- Minimum Setbacks – The existing house identified to remain on the site must meet the required Zoning Code setbacks from the proposed new lot lines. Alternatively, existing buildings must be set back from the new lot lines in conformance with an approved Adjustment or other Land Use Review decision that specifically approves alternative setbacks. The existing house will be 3.5 feet from the new “flag pole” side property line of Parcel 2. The minimum setback from a “flag pole” side property line is 3 feet, per 33.110.220.D.2. Therefore, the required setbacks are met. To ensure this standard continues to be met at the final plat stage, the final plat must be accompanied by a supplemental plan showing the surveyed location of the existing building relative to the adjacent new lot lines. If modifications to the house (eave) are required to meet setbacks to the proposed lot lines, all building permits must receive final inspection approval prior to final plat approval.

With the conditions noted above, this land division proposal can meet the requirements of 33.700.015.

## OTHER TECHNICAL REQUIREMENTS

Technical decisions have been made as part of this review process. These decisions have been made based on other City Titles, adopted technical manuals, and the technical expertise of appropriate service agencies. These related technical decisions are not considered land use actions. If future technical decisions result in changes that bring the project out of conformance with this land use decision, a new land use review may be required. The following is a summary of technical service standards applicable to this preliminary partition proposal.

Bureau	Code Authority and Topic
Development Services/503-823-7300 <a href="http://www.portlandonline.com/bds">www.portlandonline.com/bds</a>	Title 24 – Building Code, Flood plain Title 10 – Erosion Control, Site Development Administrative Rules for Private Rights-of-Way
Environmental Services/503-823-7740 <a href="http://www.portlandonline.com/bes">www.portlandonline.com/bes</a>	Title 17 – Sewer Improvements 2008 Stormwater Management Manual
Fire Bureau/503-823-3700 <a href="http://www.portlandonline.com/fire">www.portlandonline.com/fire</a>	Title 31 Policy B-1 – Emergency Access
Transportation/503-823-5185 <a href="http://www.portlandonline.com/transportation">www.portlandonline.com/transportation</a>	Title 17 – Public Right-of-Way Improvements Transportation System Plan
Urban Forestry (Parks)/503-823-4489 <a href="http://www.portlandonline.com/parks">www.portlandonline.com/parks</a>	Title 11 –Trees
Water Bureau/503-823-7404 <a href="http://www.portlandonline.com/water">www.portlandonline.com/water</a>	Title 21 – Water Availability

As authorized in Section 33.800.070 of the Zoning Code, conditions of approval related to these technical standards have been included in the Administrative Decision on this proposal.

- The applicant must meet the requirements of the Fire Bureau in regards to addressing requirements and fire apparatus access, including aerial access. These requirements are based on the technical standards of Title 31 and Fire Bureau Policy B-1. The applicant is applying an exception in the Fire Code that required new development on Parcel 2 to include residential sprinklers. See Exhibit E.4 for more information.
- The applicant must meet the requirements of Urban Forestry for street tree planting in the existing planter strip prior to final plat approval. This requirement is based on the standards of Title 11.

## CONCLUSIONS

The applicant has proposed a 2-parcel partition for 1 standard lot and 1 flag lot, as shown on the attached preliminary plan (Exhibit C.1). As discussed in this report, the relevant standards and approval criteria have been met, or can be met with conditions. With conditions of approval that address these requirements this proposal can be approved.

## ADMINISTRATIVE DECISION

**Approval** of a Preliminary Plan for a 2-parcel partition that will result in 1 standard lot and 1 flag lot, as illustrated in Exhibit C.1. This approval is subject to the following conditions:

- A. Supplemental Plan.** Three copies of an additional supplemental plan shall be submitted with the final plat survey for Land Use and BES review and approval. That plan must portray how the conditions of approval listed below are met. In addition, the supplemental plan must show the surveyed location of the following:

- Any buildings or accessory structures on the site at the time of the final plat application, including eaves;
- Any driveways and off-street vehicle parking areas on the site at the time of the final plat application;
- The stormwater system for the existing garage to remain on Parcel 1 (see condition C.4)
- Any other information specifically noted in the conditions listed below.

**B. The final plat must show the following:**

1. A recording block for each of the legal documents such as the maintenance agreement and acknowledgement of special land use conditions required by Conditions C.7, C.8 and C.9, below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: "An acknowledgement of tree preservation land use conditions has been recorded as document no. \_\_\_\_\_, Multnomah County Deed Records."

**C. The following must occur prior to Final Plat approval:**

**Utilities**

1. The applicant shall meet the requirements of the Fire Bureau for ensuring adequate hydrant flow from the nearest hydrant. The applicant must provide verification to the Fire Bureau that Appendix B of the Fire Code is met, the exception is used, or provide an approved Fire Code Appeal prior final plat approval.

**Existing Development**

2. The applicant shall meet the requirements of the Site Development Section of the Bureau of Development Services for the decommissioning of the cesspools on the site. The tree protection measures required by Condition C.3 must be installed prior to ground disturbance.
3. The applicant must obtain a zoning permit to install tree protection fencing for tree #3 prior to cesspool decommissioning work:  
Exhibit C.1 shows the likely locations for the cesspools. The arborist outlined recommended root protection zones and other tree preservation measures for tree #3 in three scenarios that will allow the applicant to do the cesspool work and still protect the tree.
  - Scenario 1: The fencing is placed 25' from the tree. No arborist supervision or other measures are required.
  - Scenario 2: The fence is placed 12.5 feet from the tree and arborist supervision is required within 25 feet of the tree. Any roots over 1" must be cleanly cut.

If the cesspools cannot be located using the tree protection measures outlined in scenarios 1 and 2, the applicant is encouraged to work with Site Development to see if a decommissioning waiver is possible to avoid further impact to tree #3. If a waiver is not possible and scenarios 1 and 2 are not sufficient, the applicant may use scenario 3.

- Scenario 3: The fence is placed 8 feet from the tree to the east and expanded on other sides to compensate. The arborist must be on site to oversee the excavation. Other required measures are noted in the arborist report. Please see the arborist report (Exhibit A.7) for full details.
4. The applicant must meet the requirements of BES for stormwater disposal for the existing garage to remain on Parcel 1. Specifically, the gutters and downspouts must direct water to an approved disposal point that meets setback requirements from the new lot lines. If modifications are required by BES, the applicant must obtain finalized plumbing permits for this work prior to final plat approval.

5. The applicant must meet the requirements of Urban Forestry to plant street tree(s) in the planter strip on SE Salmon Court adjacent to the site. The applicant must contact Urban Forestry at 503-823-TREE (8733) prior to selecting trees to discuss the species of trees that are permitted and to obtain the planting permit.
6. If required, the applicant must obtain a finalized building permit for modifications to the existing house that will remain on proposed Parcel 1 that demonstrate compliance with the standards listed below in relation to the proposed new lot lines. The permit plans must include the note: *This permit fulfills requirements of Condition C.5 of LU 18-199728.*
  - 33.110.220 Setbacks--specifically, the permit must show removal of sufficient portions of the eave to meet the side setback along the flag pole for Parcel 2.

#### **Required Legal Documents**

7. The off-site access easement illustrated in Exhibit C.1 (abutting the north side of Parcel 2 and providing vehicle access to Parcel 2) shall be established prior to final plat approval. The off-site easement document(s) must be provided for BDS review and approval prior to recording. The approved off-site easement document(s) must be recorded prior to final plat approval and referenced on the plat.
8. The applicant shall execute an Acknowledgement of Special Land Use conditions requiring residential development on Parcel 2 to contain internal fire suppression sprinklers. The acknowledgement shall be referenced on and recorded with the final plat to the satisfaction of the Fire Bureau.
9. The applicant shall execute an Acknowledgement of Tree Preservation Land Use Conditions that notes tree preservation requirements that apply to Parcels 1 and 2. A copy of the approved Tree Preservation Plan must be included as an Exhibit to the Acknowledgement. The acknowledgment shall be referenced on and recorded with the final plat.

#### **D. The following conditions are applicable to site preparation and the development of individual lots:**

1. Development on Parcels 1 and 2 shall be in conformance with the Preliminary Site Plan (Exhibit C.1) and the applicant's arborist report (Exhibit A.7). Specifically, trees #2 and #3 are required to be preserved, with the root protection zones indicated on Exhibit C.1. Tree protection fencing is required along the root protection zone of the trees to be preserved, as shown on Exhibit C.1. The fence must be 6-foot high chain link and be secured to the ground with 8-foot metal posts driven into the ground. Encroachment into the specified root protection zone may only occur if it meets the Tree Protection Specifications of 11.60.030.
2. The applicant must meet the Fire Bureau requirements for addressing and aerial fire department access. Aerial access applies to buildings that exceed 30 feet in height from the fire access as measured to the bottom of the eave of the structure or the top of the parapet for a flat roof.
3. New development on Parcel 2 will be required to have residential sprinklers.
4. Vehicle access to Parcel 2 must be from the off-site access easement illustrated in Exhibit C.1. A driveway is not allowed in the flag pole portion of Parcel 2.

**Staff Planner: Diane Hale**

**Decision rendered by:** Diane Hale **on June 24, 2019**

By authority of the Director of the Bureau of Development Services

**Decision mailed June 26, 2019**

**About this Decision.** This land use decision is **not a permit** for development. A Final Plat must be completed and recorded before the proposed lots can be sold or developed.

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 10, 2018 and was determined to be complete on December 14, 2018.

*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 10, 2018.

*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 requested that the 120-day review period be extended by 105 days (Exhibit G.4). Unless further extended by the applicant, **the 120 days will expire on July 27, 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.

**This decision, and any conditions associated with it, is final.** It may be appealed to the Oregon Land Use Board of Appeals (LUBA), within 21 days of the date the decision is mailed, as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that a petitioner at LUBA must have submitted written testimony during the comment period for this land use review. Contact LUBA at 775 Summer St NE Suite 330, Salem, OR 97301-1283 or phone 1-503-373-1265 for further 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).

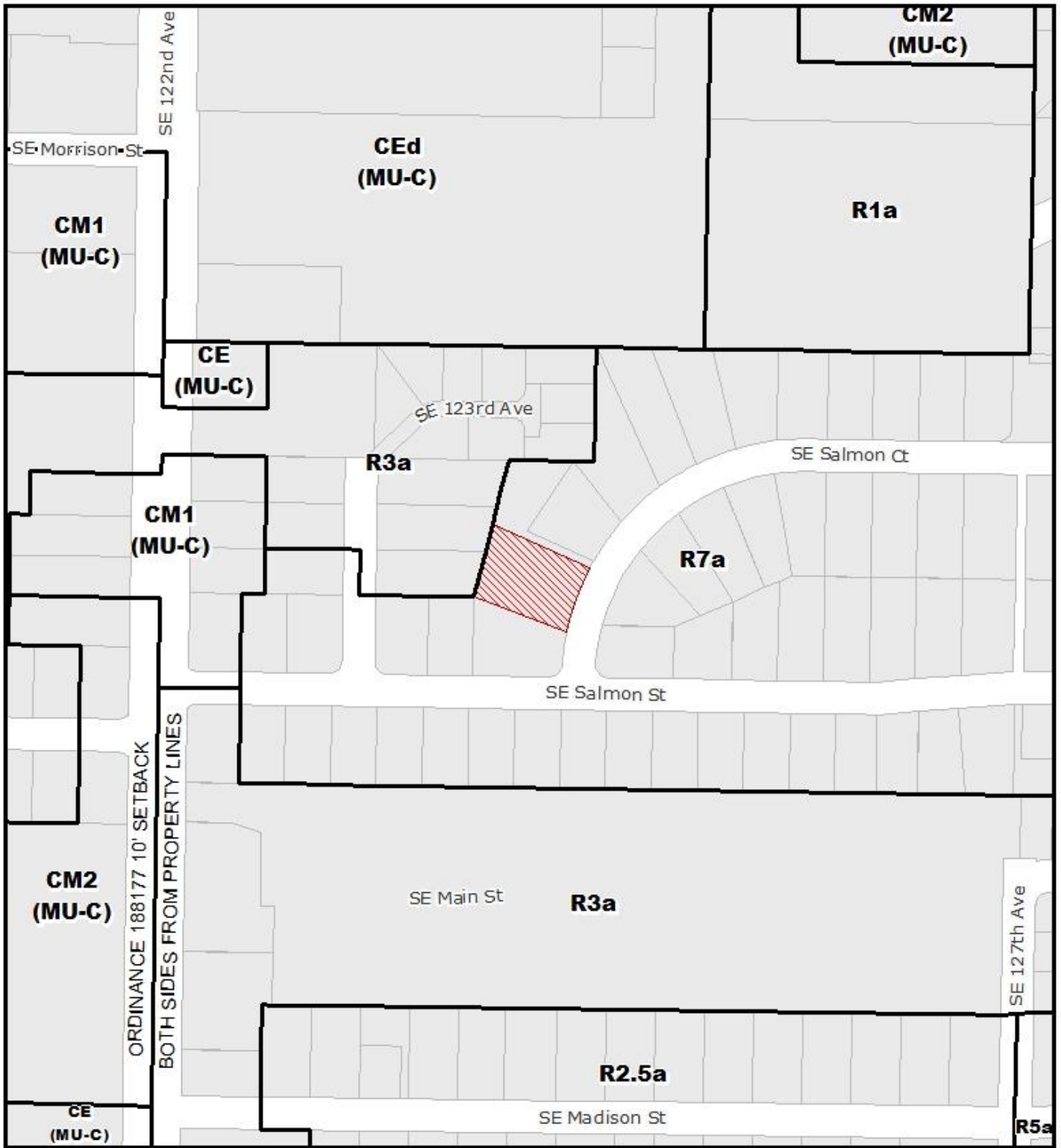
**Recording the land division.** The final land division plat **must** be submitted to the City **within three years** of the date of the City's final approval of the preliminary plan. This final plat must be recorded with the County Recorder and Assessors Office after it is signed by the Planning Director or delegate, the City Engineer, and the City Land Use Hearings Officer, and approved by the County Surveyor. **The approved preliminary plan will expire unless a final plat is submitted within three years of the date of the City's approval of the preliminary plan.**

#### EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  - 1. Applicant's original submittal and plans
  - 2. Applicant's response, November 29, 2018
  - 3. Applicant's response, January 17, 2019
  - 4. Applicant's response, February 25, 2019
  - 5. Applicant's response, May 7, 2019
  - 6. Stormwater Materials, original submittal and 5/7/19
  - 7. Arborist Report, June 24, 2019
  - 8. Applicant's response, July 23, 2019
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Preliminary Site Plan (attached)
  - 2. Existing Conditions Survey
- 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. Water Bureau
  - 4. Fire Bureau
  - 5. Site Development Review Section of BDS
  - 6. Life Safety Section of BDS
  - 7. Parks Urban Forestry
- F. Correspondence: None
- G. Other:
  - 1. Original LU Application
  - 2. Expedited Land Division Form
  - 3. Incomplete Letter
  - 4. Extension Forms

**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

 Site

File No.	LU 18-199728 LDP
1/4 Section	3143
Scale	1 inch = 200 feet
State ID	1S2E02BB 3700
Exhibit	B Jul 13, 2018

**MARK DANE PLANNING**  
 INCORPORATED  
 14631 SW Millikan Way  
 #6, Beaverton OR 97005  
 503-332-7167  
 markdaneplanning@gmail.com

**PRELIMINARY SITE PLAN**  
 12437 SW Salmon Court  
 FOR Vyacheslav Kaminsky  
 City of Portland

PROJECT NO. **VYA-001**  
 FILE: **6-16-18**  
 DATE: **6-16-18**  
 DESIGNED: **MSD**  
 DRAWN: **MSD**

TOWNSHIP/RANGE/SECTION  
**25 2E 13D**  
 COUNTY  
**MULTNOMAH**  
 TAX LOTS

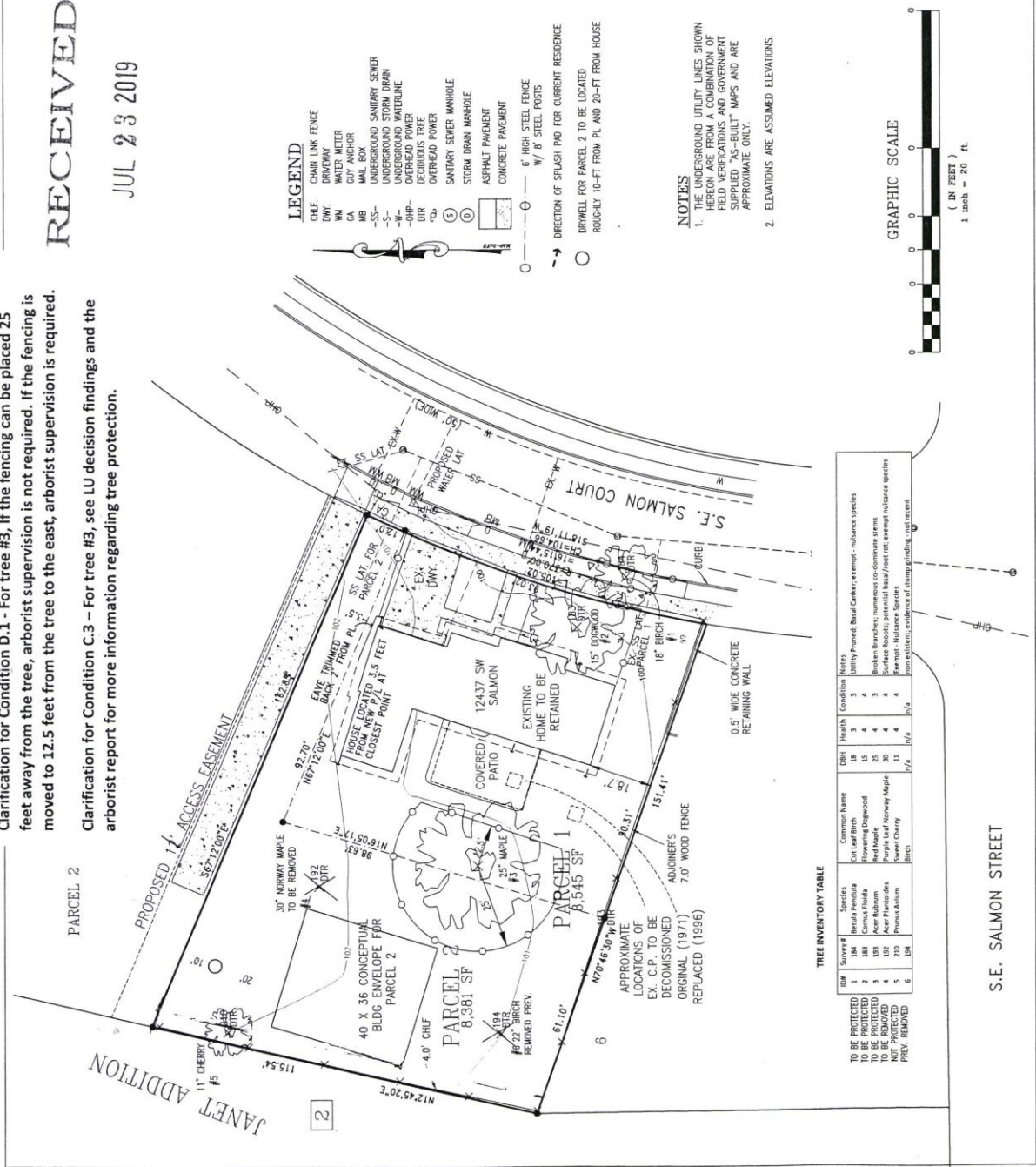
SHEET TITLE  
**COMPOSITE SITE PLAN**  
 SHEET NUMBER  
**P2**

RECEIVED

JUL 23 2019

**Staff notes:**

- Clarification for Condition D.1 - For tree #3, if the fencing can be placed 25 feet away from the tree, arborist supervision is not required. If the fencing is moved to 12.5 feet from the tree to the east, arborist supervision is required.
- Clarification for Condition C.3 - For tree #3, see LU decision findings and the arborist report for more information regarding tree protection.



CASE NO. 18-199728  
 EXHIBIT C.1