



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

Ted Wheeler, Mayor
Rebecca Esau, Director
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Date: February 18, 2020
To: Interested Person
From: Sean Williams, Land Use Services
503-823-7612 / Sean.Williams@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 19-251767 TV

GENERAL INFORMATION

Applicant: Jamie Lerma | Red Crow LLC
PO Box 825
Cannon Beach, OR 97110
(503) 849-0258 / jamie@redcrowgc.com

Owner: Don Pollock | DEP LLC
1820 SW 58th Avenue
Portland, OR 97221

Site Address: 5025 SE 118th Avenue

Legal Description: TL 1200 0.41 ACRES, SECTION 15 1S 2E
Tax Account No.: R992151810
State ID No.: 1S2E15AD 01200
Quarter Section: 3542

Neighborhood: Powellhurst-Gilbert, contact at pgnaboard@gmail.com
Business District: Midway, contact info@midwaybusiness.org.
District Coalition: East Portland Community Office, contact Victor at 503-823-4550.

Plan District: Johnson Creek Basin
Other Designations: 100-year floodplain
Zoning: Residential 7,000 (R7)

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

PROPOSAL:

The applicant has requested a Tree Violation Review in order to address the removal of a large tree, estimated to be approximately 25 to 30 diameter inches in size, from the subject property as identified in Code Compliance case 19-209475 CC. Removal of this tree is in violation of

Tree Removal standards of the Johnson Creek Plan District that apply to this site as it is entirely within the 100-year floodplain (33.537.125/150). The applicant has proposed to mitigate for removal of this tree by planting 10 trees on the site consisting of 4 Douglas firs, 4 Incense cedars, and 2 Western red cedars.

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.C, Approval Criteria for Corrections to Violations**.

FACTS

Site and Vicinity: The site is located on the west side of SE 118th Avenue just south of SE Raymond Street. Existing development consists of a single family residence that is currently being remodeled (19-185898 RS). The site is relatively flat and located entirely within the 100-year floodplain. Raymond Park directly abuts the site to the north.

Zoning: The R7 zone 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 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 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 **November 26, 2019**. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

33.853 Tree Review

33.853.010 Purpose

The tree review process evaluates whether mitigation proposed for tree removal is both appropriate and adequate, considering the purpose of the regulations that encourage tree preservation or limit removal. Tree review also evaluates whether changes to tree preservation plans or tree-related conditions of approval are appropriate, and determines the appropriate mitigation for trees lost due to violations of tree regulations. The review allows flexibility for unusual situations and allows for the purpose of the tree regulations to be met using creative or innovative methods.

33.853.040 Approval Criteria

- C. Corrections to violations.** For corrections to violations of tree protection and tree preservation regulations of this Title, or violations of tree preservation requirements of a

land use review, the applicant must show the review body that all of the following approval criteria are met:

1. Mitigation Plan;
 - a. The applicant's mitigation plan meets the purpose of the regulation that was violated. Where the violation is of a tree preservation requirement of a land use review, the mitigation plan meets the purpose of the regulation that required the preservation plan; and
 - b. The mitigation plan includes replacement of trees cut, or the preservation and protection of additional trees on the site not originally proposed for preservation. If replacement of trees is proposed, the plan must at a minimum meet the requirements of Table 853-1. If additional trees on the site are proposed for preservation and protection, the applicant must submit an arborist's assessment indicating the suitability of the trees for preservation, recommendations for protection methods, and any remedial treatment that may be necessary to ensure the long term viability of the trees. The total diameter of additional trees preserved must exceed the total diameter of trees cut.

Table 853-1	
Tree Replacement for Violation	
Size of tree removed (inches in diameter)	Number of Trees to be Planted
Up to 12	3 trees
More than 12 to up to 20	5 trees
More than 20 to up to 25	7 trees
More than 25 to up to 30	10 trees
More than 30	15 trees

2. Replacement trees must be planted as follows:
 - a. On the site where the violation occurred;
 - b. If it is not possible to plant the trees on the site where the violation occurred, then the trees may be planted on other property owned by the applicant within the City of Portland. This includes property owned by a Homeowners' Association to which the applicant belongs;
 - c. If it is not possible to plant the trees as described in 2.a or b, then a payment in lieu of planting may be made to the Tree Planting and Preservation Fund
3. Replacement trees must meet the requirements of Section 33.248.030, Plant Materials, unless the mitigation plan calls for different planting specifications to address concerns about plant survival or impacts on the site.

Findings: The applicant has requested a Tree Violation Review in order to address the removal of a large tree, estimated to be approximately 25 to 30 diameter inches in size, from the subject property as identified in Code Compliance case 19-209475 CC. Removal of this tree is in violation of Tree Removal standards of the Johnson Creek Plan District that apply to this site as it is entirely within the 100-year floodplain (33.537.125/150). The purpose of the Tree Removal Standards (33.537.125.A) of the Johnson Creek Basin Plan District are as follows:

The regulations of this section limit tree removal to protect the scenic and recreational quality of the Springwater Corridor, reduce stormwater runoff, flooding, erosion, and landslides and protect water quality and native vegetation.

The applicant has proposed to mitigate for removal of this tree by planting 10 trees on the site consisting of 4 Douglas firs, 4 Incense cedars, and 2 Western red cedars. The number of trees proposed to be planted is consistent with the Tree Replacement for Violation Table (853-1) based on estimated size of the tree that was removed. However, of the three species of trees proposed to be planted, only the Western Red Cedar is identified as being found within this native plant community. The *Portland Plant List (June 2016)* identifies Deciduous Forested Wetlands and Floodplains (2.4) as being the native plant community that most closely represents this area. The dominant trees are black cottonwood, Oregon ash, various willows, and red alder, all of which can quickly recover from periodic flooding. On higher ground which floods less frequently Bigleaf maple and Oregon White Oak are common. Western red cedars appear in the transition zones between the lowlands and the forested bluffs overlooking the rivers. Therefore, the mitigation trees shall be selected from the list identified in this native plant community and must include a variation of at least three different species.

In regards to the number of trees proposed to be planted, 10 may not be appropriate considering Title 11 tree density standards and the development potential of the site. Based on the size of the site (17,860 square feet), a minimum of 7 trees would be required to be planted for compliance with tree density standards. In addition, the applicant recently applied for a land division (LU 19-170682 LDP) to partition the site into two parcels, which was later withdrawn. Considering these factors, it doesn't seem appropriate to over plant the site when these trees may later be compromised by future development as they will not be large enough to protect under Tree Preservation (33.630) requirements associated with land divisions. Therefore, the applicant shall plant 7 trees on the site and make a payment into the City Tree Preservation and Planting Fund for the amount equivalent to the remaining 3 trees (4.5-inches) that are required for mitigation.

The required mitigation, consisting of planting trees on site and paying into the City Tree Preservation and Planting Fund, will be consistent with the purpose of Tree Removal Standards (33.537.125.A) of the Johnson Creek Basin Plan District as it will provide for the installation of new native trees, which will reduce stormwater runoff, flooding, erosion, and landslides and protect water quality and native vegetation.

In order to ensure the mitigation is provided the applicant must plant 7 trees on site, chosen from the Deciduous Forested Wetlands and Floodplains (2.4) native plant community identified in the *Portland Plant List (2016)*, with a variation of at least three different species and obtain a Zoning Permit to document installation of those trees. In addition, payment must be made into the City Tree Preservation and Planting Fund for the amount equivalent to 3 trees (4.5-inches).

With the implementation of the noted conditions, the approval criteria will be met.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all 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 requested a Tree Violation Review in order to address the removal of a large tree, estimated to be approximately 25 to 30 diameter inches in size, from the subject property as identified in Code Compliance case 19-209475 CC. Removal of this tree is in violation of Tree Removal standards of the Johnson Creek Plan District that apply to this site as it is entirely within the 100-year floodplain (33.537.125/150). In order to mitigate for the removal of this tree, mitigation is required in the form of planting trees on site and paying into the City Tree Preservation and Planting Fund. As addressed in the findings above, the required method

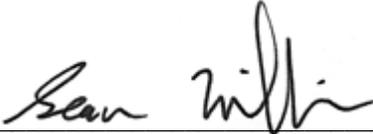
of mitigation is able to meet the purpose of Tree Removal Standards (33.537.125.A) of the Johnson Creek Basin Plan District and should be approved.

ADMINISTRATIVE DECISION

Approval of a Tree Violation Review to correct a violation resulting from the removal of a large tree, estimated to be approximately 25 to 30 diameter inches in size, from the subject property as identified in Code Compliance case 19-209475 CC. Approval of this review is subject to the following conditions:

- A.** Prior to April 18, 2020, the applicant must meet the following:
1. Receive final inspection approval of a Zoning Permit to plant 7 trees on the site. The trees must be chosen from the Deciduous Forested Wetlands and Floodplains (2.4) native plant community identified in the *Portland Plant List (2016)*, with a variation of at least three different species.
 2. Pay into the City Tree Preservation and Planting Fund [Private Property Trees – Planting and Establishment, fee in Lieu (per inch)] the amount equivalent to 4.5-inches of trees. 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 February 13, 2020**
By authority of the Director of the Bureau of Development Services

Decision mailed: February 18, 2020

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 November 12, 2019, and was determined to be complete on November 22, 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 November 12, 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: March 21, 2020.**

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 March 3, 2020** 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 **March 3, 2020** 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:

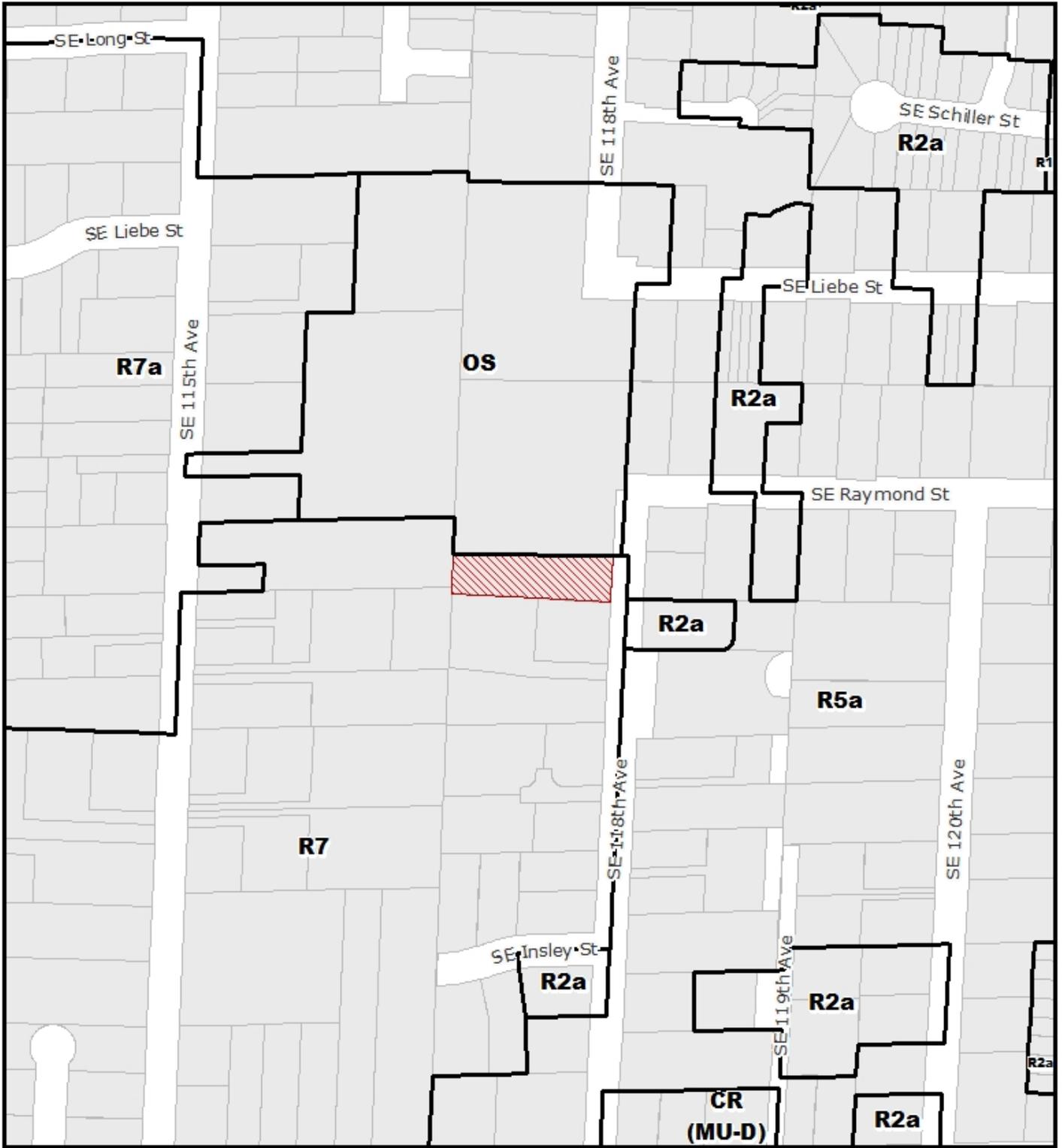
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Narrative
 - 2. Notice of Zoning Violation (19-209475 CC)
 - 3. Aerial Photographs
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Parks, Forestry Division
 - 2. Site Development Review Section of BDS
 - 3. Life Safety Plans Examiner
 - 4. Fire Bureau
- F. Correspondence: NONE
- G. Other:
 - 1. Original LU Application

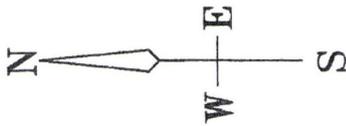
The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).



ZONING 
 NORTH
 JOHNSON CREEK PLAN DISTRICT

 Site

File No.	LU 19 - 251767 TV
1/4 Section	3542
Scale	1 inch = 200 feet
State ID	1S2E15AD 1200
Exhibit	B Nov 15, 2019

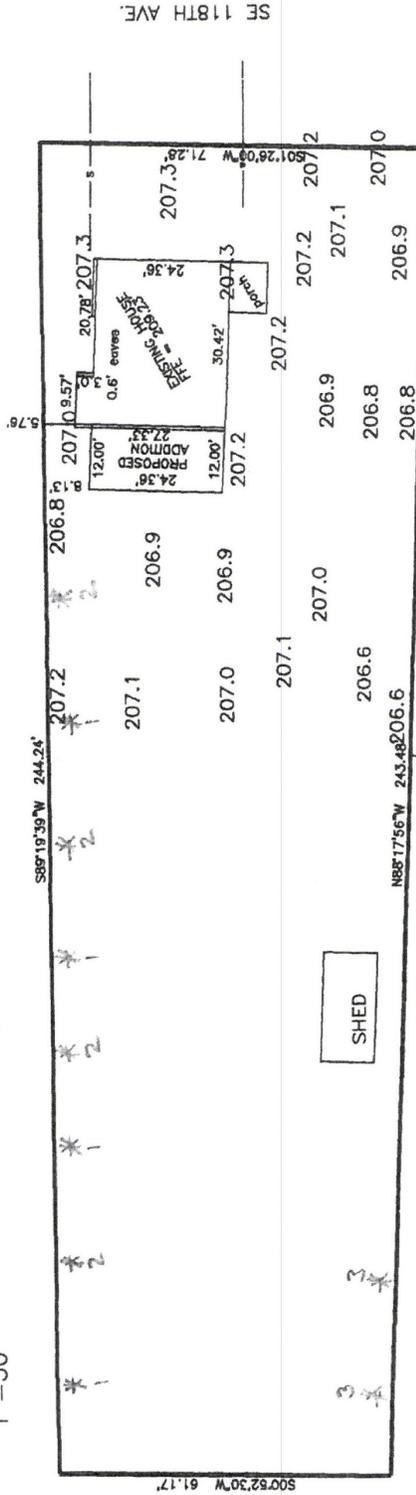


SITE MAP
TL 01200

LOCATED IN THE NE 1/4 OF SECTION 15, T.1.S., R2.E., W.M.
CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON

*Applicant to plant 7 trees on the site. The trees must be chosen from the Deciduous Forested Wetlands and Floodplains (2.4) native plant community identified in the *Portland Plant List (2016)*, with a variation of at least three different species.

SCALE
1"=30'



BASE FLOOD ELEV. 207.4 COP DATUM
FINISH FLOOR EXISTING HOUSE 209.23

SHED

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 25, 1990
JOE H. FERGUSON
2445

RENEWAL DATE 12/31/19

CLIENT:
DEP LLC
SITE 5025 SE 118TH AVE
PORTLAND, OR

Ferguson Land Surveying, Inc.
646 SE 106TH AVE. PORTLAND, OR 97216
Phone (503) 408-0601 Fax (503) 408-0602

SHEET NO. 1 OF 1
JOB NO. 19-106
DRAFTED: 10/2/19

CASE NO. 19-251767
EXHIBIT C-1

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