



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: August 21, 2020
To: Interested Person
From: Andrew Gulizia, Land Use Services
 503-823-7010 / Andrew.Gulizia@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 20-128543 AD

GENERAL INFORMATION

Applicant: Andrew Tull
 3J Consulting Inc.
 9600 SW Nimbus Ave., Ste. 100
 Beaverton, OR 97008

Owner/Agent: Rick Stockton
 GSD Luther Road LLC
 1100 NASA Pkwy., Ste. 685
 Houston, TX 77058

Site Address: 7939 SE Luther Rd.

Legal Description: TL 5500 6.82 ACRES, SECTION 20 1S 2E
Tax Account No.: R992201230
State ID No.: 1S2E20DD 05500
Quarter Section: 3838

Neighborhood: Brentwood-Darlington, contact at bdlanduse@gmail.com
Business District: Eighty-Second Ave of Roses Business Association, contact at info@82ndave.org
District Coalition: Southeast Uplift, contact Leah Fisher at 503-232-0010 x313

Plan District: Johnson Creek Basin
Zoning: EG2/EG2c/EG2p – General Employment 2 base zone with portions of the site in the Environmental Conservation (“c”) and Environmental Protection (“p”) overlay zones

Case Type: AD – Adjustment Review
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee

Proposal: The applicant proposes a new self-service storage building on this site. The new construction would be in the southeastern portion of the site, outside the environmental overlay zones. Zoning Code Section 33.140.240.B.1.a requires a paved pedestrian walkway between the new building and the site's north lot line, which abuts the right-of-way for SE Harney Street. Since a pedestrian connection to SE Harney Street would require new construction within the environmental overlay zones, including a new bridge over Johnson Creek, the applicant requests an Adjustment to waive the pedestrian connection requirement to SE Harney Street. A paved pedestrian walkway will be provided between the new building and SE Luther Road to the south.

Relevant Approval Criteria: To be approved, this proposal must comply with the Adjustment Review approval criteria in Zoning Code Section 33.805.040.A-F.

ANALYSIS

Site and Vicinity: The subject property is about 8.2 acres in area and is located between SE Luther Road to the south and SE Harney Street to the north. The site is within both the City of Portland and Clackamas County. Most of the property, including the area where the new building and parking lot are proposed, are within the City of Portland and subject to Portland's Zoning Code. The southernmost portion of the property, where the driveway to SE Luther Road is proposed, is outside the City of Portland and under Clackamas County jurisdiction. Most of the site is currently vacant, except for an approximately 1,700-square-foot house in a different area of the site from the proposed construction that will remain. Johnson Creek bisects the property, and the northwestern boundary of the property abuts the Springwater Corridor. Neighboring properties are developed with a mix of industrial and commercial uses and the regional commercial corridor along SE 82nd Avenue abuts the site to the east.

Zoning: The EG2 (General Employment 2) zone is one of two zones that implement the Mixed Employment designation in the City's Comprehensive Plan. The EG2 zone allows a wide range of employment uses without potential conflicts from interspersed residential uses. The emphasis of the zone is on industrial and industrially related uses.

Parts of the site are in the Environmental Conservation ("c") and Environmental Protection ("p") overlay zones. The "c" overlay zone is intended to conserve important environmental features and resources while still allowing compatible development. The "p" overlay zone provides the highest level of protection and allows development only in unusual circumstances through environmental review. The proposed construction on this site will be entirely outside the "c" and "p" overlay zones.

The site is also within the boundaries of the Johnson Creek Basin plan district. The plan district provides for the safe, orderly, and efficient development of lands which are subject to physical constraints, including significant natural resources, steep and hazardous slopes, flood plains, wetlands, and the lack of streets, sewers, and water services.

Land Use Review History: There have been no prior land use reviews for this site.

Agency Review: A "Notice of Proposal" was sent July 21, 2020. The following agencies responded with no concerns about the proposed Adjustment:

- Bureau of Environmental Services (Exhibit E-1);
- Portland Bureau of Transportation (Exhibit E-2);
- Water Bureau (Exhibit E-3);
- Fire Bureau (Exhibit E-4);
- Life Safety Review Section of BDS (Exhibit E-5); and
- Oregon Department of Transportation (Exhibit E-6).

Neighborhood Review: No written responses to the mailed “Notice of Proposal” were received from either the Neighborhood Association or notified neighbors.

ZONING CODE APPROVAL CRITERIA

33.805.040 Approval Criteria

Adjustment requests will be approved if the applicant has demonstrated that approval criteria A through F, below, have been met.

- A.** Granting the Adjustment will equally or better meet the purpose of the regulation to be modified; and

Findings: The Adjustment request is to waive the requirement for a new walkway connecting the proposed building to the north lot line, abutting SE Harney Street. The purpose of the pedestrian standard in the EG2 zone is stated in Zoning Code Section 33.140.240.A:

The pedestrian standards encourage a safe, attractive, and usable pedestrian circulation system in developments in the employment zones. They ensure a direct pedestrian connection between abutting streets and buildings on the site, and between buildings and other activities within the site. In addition, they provide for connections between adjacent sites, where feasible.

Self-service storage customers do not typically arrive on foot because they are moving large items or a large quantity of items into or out of the facility. The site is cut off from SE Harney Street because Johnson Creek splits the property into a north section and south section with no crossing. The proposed building is on the south side. Additionally, the Springwater Corridor is on the north side of the creek and has development restrictions that limit the ability to have full access to SE Harney Street. Any pedestrians accessing the building from the adjacent street network will have a safe and usable pedestrian connection from the nearest street, SE Luther Road to the south which is where vehicle traffic will also originate from. A 6-foot-wide, nearly straight-line pedestrian connection between the new building's entrance and SE Luther Road will be provided (Exhibit C-1). The main entrance to the building will face SE Luther Road and will be far (approximately 500 feet) from SE Harney Street, which is a narrow local service street on the other side of Johnson Creek from the proposed building. Given the nature of the self-service storage use, the lack of a crossing over Johnson Creek, the distance of the building from SE Harney Street, and that fact that a walkway from the new building to SE Harney Street would get little use, providing a pedestrian walkway from the building to SE Luther Road provides the necessary access and equally meets the purpose of the standard.

For these reasons, staff finds approval criterion A is met.

- B.** If in a residential, CI1, or IR zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, I, or CI2 zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

Findings: Since the site is zoned EG2, the Adjustment Review proposal must be consistent with the classifications of the adjacent streets and the desired character of the area.

Street classifications

The site will take access from SE Luther Road, to the south of the site, but this street is outside the City of Portland (Exhibit B) and does not have City of Portland street classifications. The only City of Portland street which abuts the site is SE Harney Street to the north, which is classified as a local service street for all modes.

The proposed Adjustment will not affect the type or intensity of the use on the site, so the Adjustment will not increase demands on adjacent streets. The Portland Bureau of Transportation reviewed the proposal and responded with no objections (Exhibit E-2). For these reasons, staff finds the proposal is consistent with the adjacent street classifications.

Desired character of area

“Desired character” is defined in Zoning Code Chapter 33.910. Pursuant to this definition, the desired character for this site is determined by:

- the character statement of the EG2 zone;
- the purpose statement for the environmental (“p” and “c”) overlay zones;
- the purpose statement for the Johnson Creek Basin plan district;
- the Brentwood-Darlington Neighborhood Plan; and
- the Outer Southeast Community Plan.

EG2 zone

The character statement for the EG2 zone is in Zoning Code Section 33.140.030.A:

The General Employment zones implement the Mixed Employment map designation of the Comprehensive Plan. The zones allow a wide range of employment opportunities without potential conflicts from interspersed residential uses. The emphasis of the zones is on industrial, industrially-related, and office uses, typically in a low-rise, flex-space development pattern. Retail uses are allowed but limited in intensity to maintain adequate employment development opportunities. The development standards for each zone are intended to allow new development which is similar in character to existing development. The intent is to promote viable and attractive industrial/commercial areas.

2. General Employment 2. EG2 areas have larger lots and an irregular or large block pattern. The area is less developed, with sites having medium and low building coverages and buildings which are usually set back from the street. EG2 zoned lands will generally be on larger areas than those zoned EG1.

Self-service storage is not classified as an industrial, office, or retail use but is still allowed outright in the EG2 zone (Zoning Code Section 33.140.100.A, Table 140-1) and provides employment opportunities. The subject site is a large (8.2-acre), irregularly shaped lot, and the proposed development will have a low building coverage and substantial setbacks from the abutting streets (Exhibit C-1). The Adjustment request is to waive the requirement for a new walkway to SE Harney Street, and as mentioned previously, this walkway is not likely to be used much if constructed. Therefore, a new walkway to SE Harney Street is not necessary to promote a viable or attractive commercial or employment area. For these reasons, staff finds the proposal is consistent with the character statement for the EG2 zone.

Environmental overlay zones

The purpose of the Environmental Protection (“p”) and Environmental Conservation (“c”) overlay zones is stated in Zoning Code Sections 33.430.010 – 33.430.017:

33.430.010 Purpose

Environmental zones protect resources and functional values that have been identified by the City as providing benefits to the public. The environmental regulations encourage flexibility and innovation in site planning and provide for development that is carefully designed to be sensitive to the site’s protected resources. These regulations also help meet other City goals, along with other regional, state, and federal goals and regulations. The environmental regulations also carry out Comprehensive Plan policies and objectives.

33.430.015 Purpose of the Environmental Protection Zone

The Environmental Protection zone provides the highest level of protection to the most important resources and functional values. These resources and functional values are identified and assigned value in the inventory and economic, social, environmental, and energy (ESEE) analysis for each specific study area. Development will be approved in the environmental protection zone only in rare and unusual circumstances.

33.430.017 Purpose of the Environmental Conservation Zone

The Environmental Conservation zone conserves important resources and functional values in areas where the resources and functional values can be protected while allowing environmentally sensitive urban development.

The proposed construction is entirely outside both environmental overlay zones. Without this Adjustment, the applicant would be required to disturb the environmental overlay zones and the 100-year flood plain to construct a new walkway and bridge over Johnson Creek to connect the new building and SE Harney Street, which is on the opposite side of Johnson Creek (Exhibits B and C-1). Therefore, the proposed Adjustment supports the purpose of the environmental overlays by avoiding the need for construction within them.

Johnson Creek Basin plan district

The purpose statement for the Johnson Creek Basin plan district is in Zoning Code Section 33.537.010:

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.

This plan district is intended to be used in conjunction with environmental zoning placed on significant resources and functional values in the Johnson Creek basin, to protect resources and functional values in conformance with Goal 8 of the Comprehensive Plan and Statewide Planning Goal 5.

Again, the proposed construction is outside the environmental overlay zones, and without this Adjustment, the applicant would have to construct a new walkway through the environmental zones and floodplain and a new bridge over Johnson Creek. Therefore, the proposed Adjustment supports the purpose of the Johnson Creek Basin plan district by avoiding the need for these impacts near the creek.

Brentwood-Darlington Neighborhood Plan and Outer Southeast Community Plan

The following statements from the Brentwood-Darlington Neighborhood Plan are found to be relevant:

Policy 1 (Neighborhood Identity), Objective 2: Support programs and policies which will promote, retain, and manage Brentwood-Darlington's historic and natural resources.

Policy 6 (Business and Industry), Objective 2: Attract businesses that enhance the neighborhood and provide needed goods and services to local residents.

Policy 7 (Traffic and Transportation), Objective 5: Encourage bicycling and walking for everyday and recreational trips.

The following statements from the Outer Southeast Community Plan are found to be relevant:

Economic Development Policy, Objective 1: Foster the revitalization of older business districts including Foster Road, 82nd Avenue, and the former downtowns of Lents and Montavilla.

Economic Development Policy, Objective 3: Create up to 6,000 new jobs in the outer southeast area by encouraging development of commercial and industrial areas.

Transportation Policy, Objective 8: Seek ways of providing connections for limited auto access and for full pedestrian and bike access when practical difficulties prevent full street improvements.

Open Space and Environment Policy, Objective 2: Reinforce Johnson Creek, the Boring Lava Hills, and Kelly Butte as significant natural and scenic resources.

Open Space and Environment Policy, Objective 7: Protect and improve water quality within the Johnson Creek Basin.

Open Space and Environment Policy, Objective 8: Maintain Johnson Creek and all related waterways in as natural condition as possible.

Urban Design Policy, Objective 5: Protect the natural and scenic resources of Johnson Creek, Powell and Kelly Buttes, and Mt. Scott. Reinforce the Springwater Corridor. These features serve as important edges in the Outer Southeast Community Plan area.

Subarea Policy VIII (Mt. Scott/Johnson Creek), Objective 1: Protect and improve the Johnson Creek corridor and its tributaries as a natural drainage way, a wildlife corridor, and a naturally forested area.

The subject site is an underdeveloped property in a commercial area near SE 82nd Avenue. The new development will support new jobs and services in this area. The Adjustment to waive the requirement for a new walkway to SE Harney Street will avoid the need for construction impacts in the environmental overlay zones around Johnson Creek, protecting the natural and scenic character of the creek and the adjacent Springwater Corridor. As mentioned in the findings for approval criterion A, a walkway between the new building and SE Harney Street is not likely to get much use, given the nature of the self-service storage use and the distance between the new building and SE Harney Street. Therefore, a new walkway to SE Harney Street is not needed to support the pedestrian network. A 6-foot-wide, nearly straight-line walkway will be provided between the new building entrance and the nearest street, SE Luther Road (Exhibit C-1).

For these reasons, staff finds the proposal is consistent with the Brentwood-Darlington Neighborhood Plan and the Outer Southeast Community Plan.

Summary

For the reasons discussed above, staff finds the Adjustment is consistent with the classifications of the adjacent streets and the desired character of the area. Approval criterion B is met.

- C.** If more than one Adjustment is being requested, the cumulative effect of the Adjustments results in a project which is still consistent with the overall purpose of the zone; and

Findings: As only one Adjustment is requested, this criterion is not applicable.

D. City-designated scenic resources and historic resources are preserved; and

Findings: City-designated scenic resources are identified on the official zoning maps with a lower case “s,” and historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. As there are no City-designated scenic resources or historic resources mapped on the subject site, this criterion is not applicable.

E. Any impacts resulting from the Adjustment are mitigated to the extent practical; and

Findings: As discussed in the findings above, constructing a new walkway between the proposed building and SE Harney Street would impact environmental zones around Johnson Creek and would not be necessary for the purpose of the pedestrian standard to be achieved. Waiving the requirement for a new walkway to SE Harney Street will not cause adverse impacts which require mitigation. Therefore, this criterion is not applicable.

F. If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

Findings: While environmental zones are located on the 8.5-acre size, the proposed construction is entirely outside the Environmental Conservation (“c”) and Environmental Protection (“p”) environmental overlay zones. Without this Adjustment, the applicant would be required to disturb the environmental overlay zones to construct a new walkway to SE Harney Street. Since the Adjustment request avoids detrimental impacts, 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 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

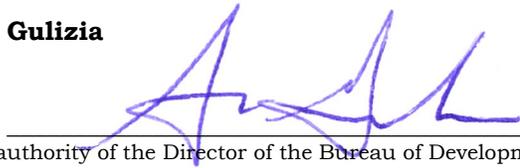
The applicant requests an Adjustment to waive the requirement for a new walkway connecting the proposed storage building to SE Harney Street to the north. Construction of this walkway, if required, would include a new, private pedestrian bridge over Johnson Creek for visitors to the storage building. The Adjustment to waive the requirement allows the environmental overlay zones around Johnson Creek to be left undisturbed while still providing pedestrian access to SE Luther Street and the public right-of-way. Staff finds the development proposal still meets the purpose of the pedestrian standard and the desired character for the site. Staff finds the Adjustment Review approval criteria are met.

ADMINISTRATIVE DECISION

Approval of an Adjustment to Zoning Code Section 33.140.240.B.1.a to waive the requirement for a paved pedestrian connection between the new building and the north lot line abutting SE Harney Street, per the approved site plan, Exhibit C-1, subject to the following condition:

- A. As part of the building permit application submittal, each of the required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibit C-1. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 20-128543 AD."

Staff Planner: Andrew Gulizia

Decision rendered by:  **on August 19, 2020**
By authority of the Director of the Bureau of Development Services

Decision mailed: August 21, 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 January 21, 2020 and was determined to be complete on July 16, 2020.

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 March 10, 2020.

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 November 13, 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, and if appealed a hearing will be held. The appeal application form can be accessed at <https://www.portlandoregon.gov/bds/45477>. Appeals must be received by 4:30 PM on September 4, 2020. **Towards promoting social distancing during the COVID-19 pandemic, the completed appeal application form must be e-mailed to BDSLUSTeamTech@portlandoregon.gov and to the planner listed on the first page of this decision.** If you do not have access to e-mail, please telephone the planner listed on the front page of this notice about submitting the appeal application. **An appeal fee of \$250 will be charged.** Once the completed appeal application form is received, Bureau of Development Services staff will contact you regarding paying the appeal fee. The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations for the appeal of Type

II and IIX decisions on property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Please contact the planner listed on the front page of this decision for assistance in filing the appeal and information on fee waivers. Please see the appeal form for additional information.

If you are interested in viewing information in the file, please contact the planner listed on the front of this decision. The planner can provide some information over the phone. Please note that due to COVID-19 and limited accessibility to files, only digital copies of material in the file are available for viewing. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at <https://www.portlandoregon.gov/citycode/28197>.

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 Adjustment Committee 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 Adjustment Committee 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 **September 4, 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 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 permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site plan (attached)

D. Notification information:

1. Mailing list
2. Mailed notice

E. Agency Responses:

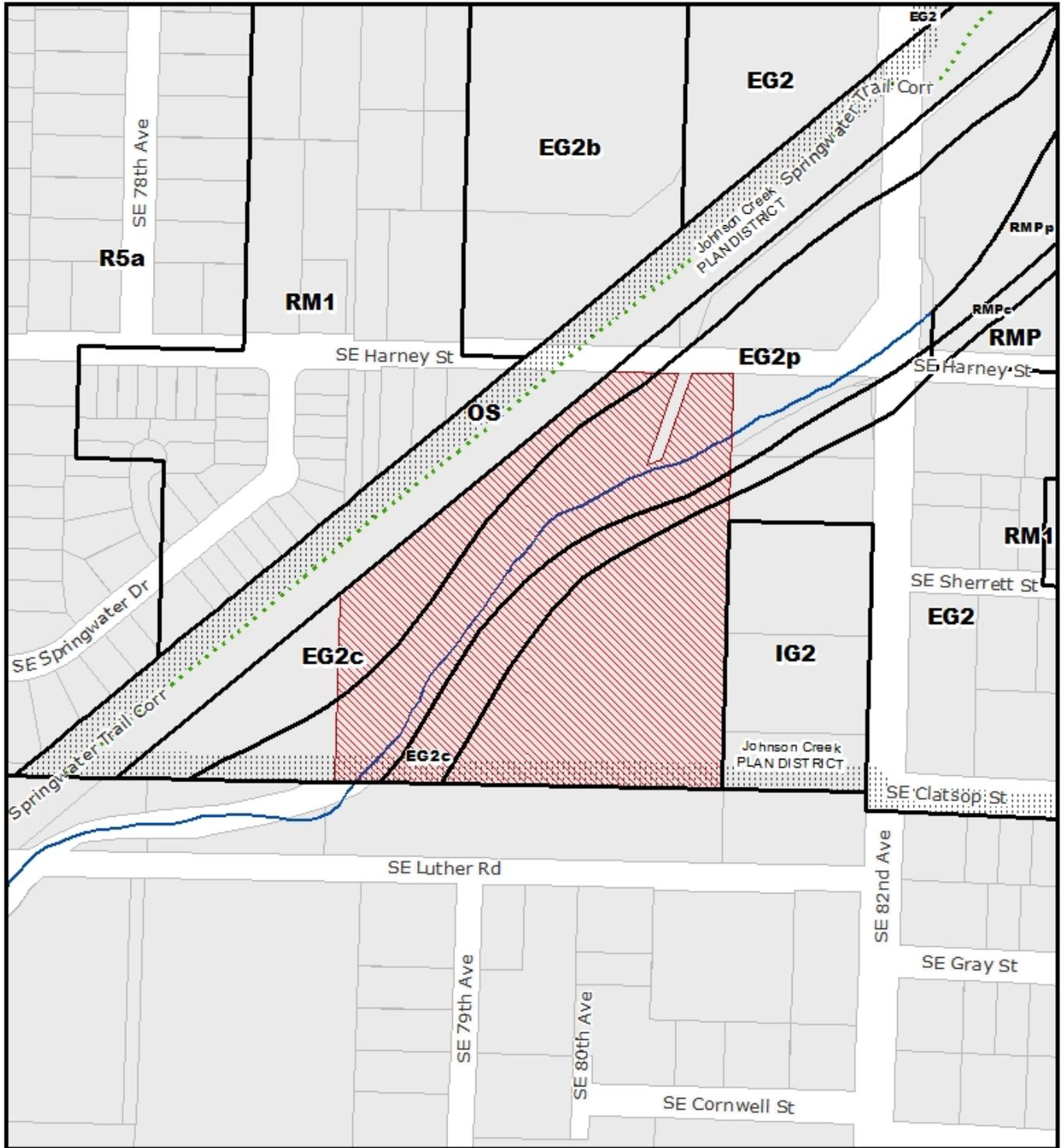
1. Bureau of Environmental Services
2. Portland Bureau of Transportation
3. Water Bureau
4. Fire Bureau
5. Life Safety Review Section of BDS
6. Oregon Department of Transportation

F. Correspondence – none received

G. Other:

1. Land use application form
2. Incompleteness determination letter, dated April 6, 2020

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).

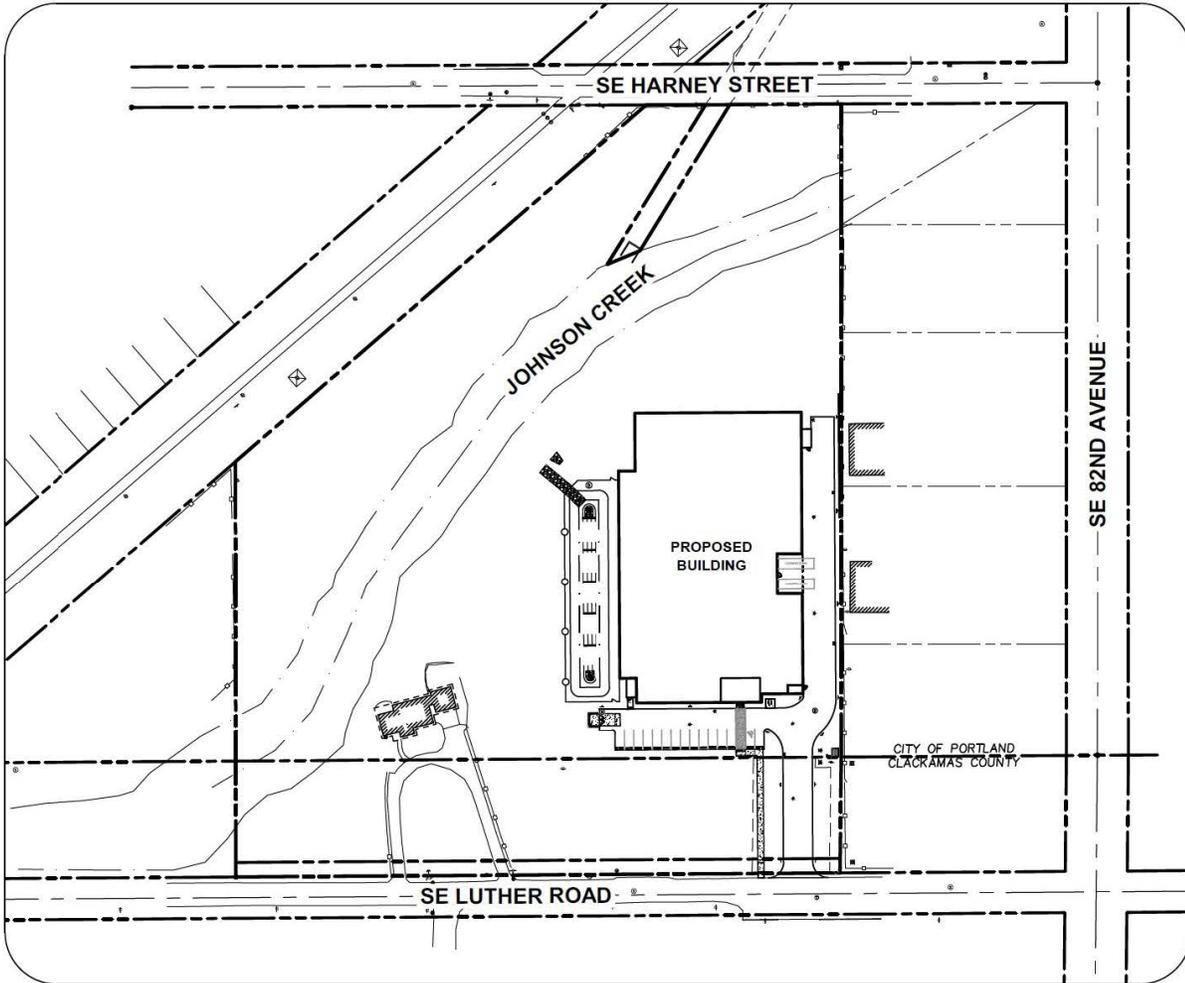


ZONING

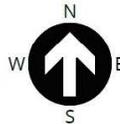
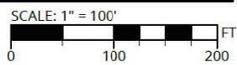
NORTH ↑
JOHNSON CREEK PLAN DISTRICT

-  Site
-  Stream
-  Recreational Trails

File No.	LU 20 - 128543 AD
1/4 Section	3838
Scale	1 inch = 200 feet
State ID	1S2E20DD 5500
Exhibit	B Mar 31, 2020



SITE MAP



LU 20-128543 AD
Exhibit C-1