



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

Dan Saltzman, Commissioner  
Paul L. Scarlett, Director  
Phone: (503) 823-7300  
Fax: (503) 823-5630  
TTY: (503) 823-6868  
[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**Date:** March 3, 2016  
**To:** Interested Person  
**From:** Stephanie Beckman, Land Use Services  
503-823-6979 / [Stephanie.Beckman@portlandoregon.gov](mailto:Stephanie.Beckman@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 16-105729 TV**

#### **GENERAL INFORMATION**

**Applicant:** Oleg Pilipenko  
Crescent Custom Homes LLC  
230 NW Seblar Dr  
Portland, OR 97210

**Site Address:** 6003 SE CESAR E CHAVEZ BLVD

**Legal Description:** LOT 1, PARTITION PLAT 2015-18  
**Tax Account No.:** R649660690, R649660690  
**State ID No.:** 1S1E13DD 01201, 1S1E13DD 01201  
**Quarter Section:** 3634

**Neighborhood:** Eastmoreland, contact Clark Nelson at [clark@pbsenv.com](mailto:clark@pbsenv.com)  
**Business District:** None  
**District Coalition:** Southeast Uplift, contact Anne Dufay at 503-232-0010.

**Zoning:** R5 – Single Dwelling Residential 5,000  
**Case Type:** TV – Tree Violation  
**Procedure:** Type II, an administrative decision with appeal to the Hearings Officer.

#### **Proposal:**

The site was part of a land division that created two lots, approved in 2014 under case LU 14-167113 LDP. That decision required one tree to be preserved at the rear of Parcel 1 (this site), a 10-inch Pissard Plum (labeled as Tree #20). That tree was removed in violation of the land use decision, therefore a tree violation review is required.

The applicant proposes to mitigate for the tree removal by planting 6 small canopy trees.

#### **Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are: **33.853.040.C, Tree Review, Corrections to Violations**

## ANALYSIS

**Site and Vicinity:** The site is a 4,875 square foot lot located on the southwest corner of the intersection of SE Cesar Chavez Blvd and SE Woodstock Blvd. It was previously part of a roughly 10,000 square foot site that was recently divided to create two lots under LU 14-167113 and recorded Partition Plat 2015-18. Since the land division was initiated, the prior home on the site has been demolished, a new home has been constructed on Parcel 2 of the land division site (14-184686 RS), and a new home is currently under construction on Parcel 1, the site of this land use review, under permit 15-141138 RS.

During construction on the site, all trees, with the exception of a 7-inch apple tree, were removed from the site. The land division decision approved removal of the apple tree because of its poor health/structure and impacts related to sewer construction. A 10-inch plum tree that was required to be preserved by the land division decision was removed.

**Zoning:** The site is within the R5 zone, 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.

**Land Use History:** City records indicate that prior land use reviews include the following:

- LU 14-167113 LDP: Approved a 2-lot land division that created the site and included the condition of approval for preserving the tree that is the subject of this violation review.
- LUR 93-00682 AD: Approved a reduced side yard setback for a garage addition for the development prior to division of the site. That house and garage have since been demolished.

**Agency Review:** A “Notice of Proposal in Your Neighborhood” was mailed **January 28, 2016**. The following Bureaus have responded with no issues or concerns:

- Site Development Section of BDS
- Bureau of Parks-Forestry Division

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on January 28, 2016. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

## ZONING CODE APPROVAL CRITERIA

### APPROVAL CRITERIA FOR TREE REVIEW

#### 33.853.040 Approval Criteria

**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.**

<b>Size of tree removed (inches in diameter)</b>	<b>Number of Trees to be Planted</b>
<b>Up to 12</b>	<b>3 trees</b>
<b>More than 12 to up to 20</b>	<b>5 trees</b>
<b>More than 20 to up to 25</b>	<b>7 trees</b>
<b>More than 25 to up to 30</b>	<b>10 trees</b>
<b>More than 30</b>	<b>15 trees</b>

- 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.**

**Findings:** This review is for violation of a tree preservation plan in accordance with Chapter 33.630, Tree Preservation. The purpose of the regulation that required the preservation plan is as follows:

*33.630.010 Purpose*

*The land division process provides the flexibility and opportunity to promote creative site design that considers multiple objectives, including integration of trees. The regulations of this chapter require that trees be considered early in the design process with the goal of preserving high value trees and mitigating for the loss of trees. Desired benefits of trees include:*

- Protecting public health through the absorption of air pollutants, contamination, and capturing carbon dioxide;*
- Buffering from noise, wind, and storms;*
- Providing visual screening and summer cooling;*
- Reducing energy demand and urban heat island impacts;*
- Filtering stormwater and reducing stormwater runoff;*
- Reducing erosion, siltation, and flooding;*
- Stabilizing slopes;*
- Enhancing property values;*
- Providing fish and wildlife habitat, including support for native species biodiversity through the preservation and planting of native trees;*
- Providing food for people and wildlife; and*
- Contributing to the beauty of the City, its natural heritage, and the character of its neighborhoods.*

The applicant proposes to mitigate for the removal of the 10-inch diameter plum tree by planting six small canopy trees. No information was provided about where the proposed trees would be planted or how this tree planting would relate to Title 11 tree density requirements that apply to new construction (11.50.050). Based on the lot size of 4,875 square feet, the Tree Density standards would require a tree area of 1,950 square feet. This could be met by planting 2 large canopy trees, 4 medium canopy trees or 7 small canopy trees. Therefore, the proposed tree planting would not even comply with the minimum tree planting requirement for the new home, not considering any additional mitigation related to the violation.

The original land division site, which included this lot and the lot to the south, had a total of 57 inches of non-exempt tree diameter. Due to the small site size and conflicts with the development proposed, a combination of preservation and mitigation was approved. This included preservation of the 10-inch plum tree on this lot, planting of two trees on this lot, and a payment equivalent of 7 inches into the City's Tree Preservation and Planting Fund to provide for planting of trees elsewhere within the watershed. The findings for the land division decision conclude that the mitigation will be roughly equivalent to the tree preservation standard of preserving 35% of the total non-exempt tree diameter, in this case 20 of the 57 inches.

Given that the 10-inch plum has been removed and the tree planting (2 trees, totaling 3 inches) would no longer be considered "extra" trees planted on the property, the applicant should be required to mitigate for 13 diameter inches in order to meet the intent of the original decision to mitigate for 35% of the non-exempt tree diameter. A payment for 7 inches was made prior to final plat approval, therefore the additional 13 inches will result in a full 20 inches of mitigation. The required 13 inches of mitigation will exceed the minimum requirement for tree replacement for this violation under Table 853-1.

There are no trees on the site, with the exception of a 7-inch apple tree. This tree was approved for removal during the original land division review due to its poor health/structure and impacts to the tree from sewer construction. Based on this, this tree is not considered a good candidate for preservation. As described above, Title 11 tree density standards will require between 2 and 7 trees (depending on eventual size) be planted on the lot. This does not leave space for additional mitigation trees to be planted on the lot and the applicant has not proposed to plant trees on another property that they own. Therefore, the entire thirteen inches will need to be mitigated for through a payment into the Tree Preservation and Planting Fund. These funds will be used to pay for planting or preserving trees that will provide the benefits described in purpose of the tree preservation regulations in 33.630.010. To further contribute to the purpose of the regulations, of trees planted to meet Title 11 requirements, the applicant should be required to plant at least one medium canopy or larger tree on the site (instead of solely small canopy trees as proposed). Larger canopy trees provide greater benefits, such as increased stormwater absorption and shade.

The conditions described above for a payment of 13 inches into the Tree Preservation and Planting Fund and planting of at least one medium canopy tree on the site, replace conditions C.1 and C.2 of LU 14-167113 LDP (the original land division review). These conditions must be met prior to final inspection approval the home currently under construction on the site under permit 15-141105 RS. In addition, a revision to the building permit is required to demonstrate how the tree density standards of Title 11 will be met.

With the conditions described above, the approval criteria for correcting a tree violation are 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**

As part of a 2-lot land division (LU 14-167113 LDP) that created the subject property, a 10-inch plum tree was required to be preserved on this lot. That tree was removed in violation of this requirement. To address the violation, the applicant will be required to mitigate with a payment into the City's Tree Preservation and Planting Fund, as well as plant at least one medium canopy or larger tree on the site as part of meeting Title 11 tree density standards. As



**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 17, 2016** at 1900 SW Fourth Ave. Appeals can be filed at the Development Services Center Monday through Wednesday and Fridays between 8:00 am to 3:00 pm and on Thursdays between 8:00 am to 12:00 pm. After 3:00 pm Monday through Wednesday and Fridays, and after 12:00 pm on Thursdays, appeals must be submitted at the reception desk on the 5<sup>th</sup> floor. **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](http://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 must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- *Unless appealed*, The final decision may be recorded on or after **March 18, 2016 – (the day following the last day to appeal)**.
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- By Mail: Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to:

Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.

- In Person: Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034  
For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

**Expiration of this approval.** An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

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

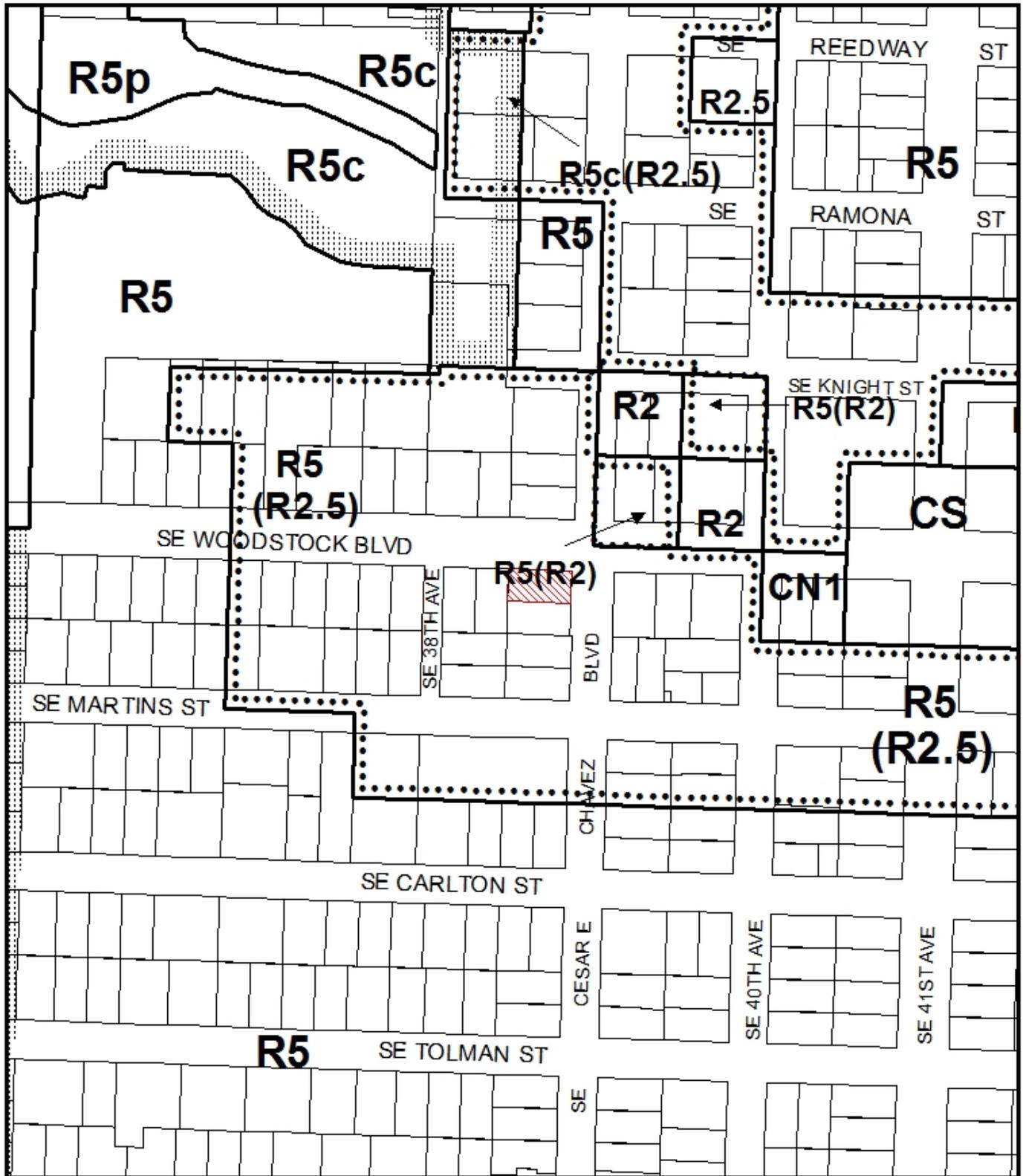
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Original Tree Preservation Plan under LU 14-167113 LDP
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Site Development Review Section of BDS
  - 2. Bureau of Parks, Forestry Division
- F. Correspondence from interested parties (none)
- G. Other:
  - 1. Original LU Application
  - 2. LU 14-167113 LDP Decision

**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



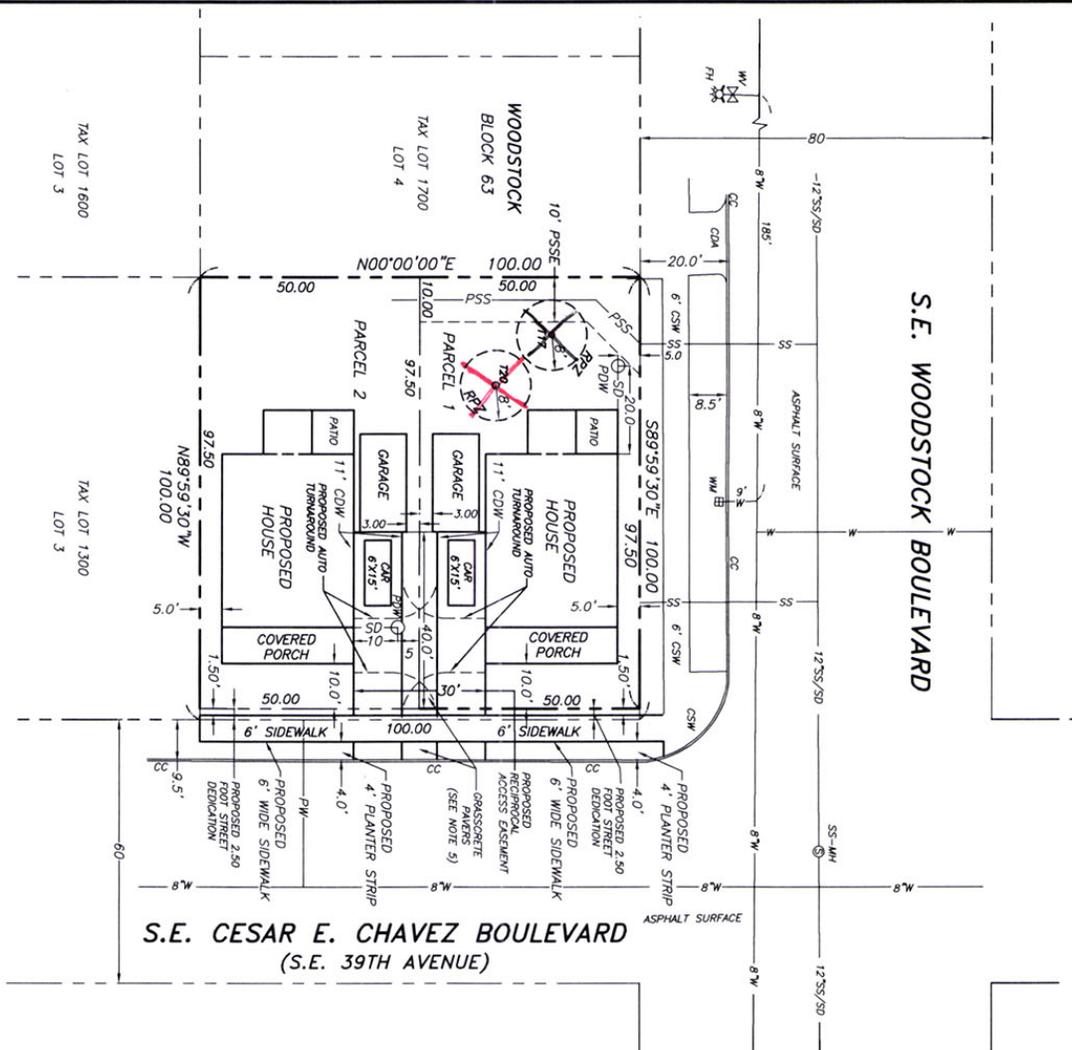
File No.	LU 16-105729 TV
1/4 Section	3634
Scale	1 inch = 200 feet
State_Id	1S1E13DD 1201
Exhibit	B (Jan 19, 2016)

*Note: See conditions for required mitigation*

**PRELIMINARY UTILITY AND SITE PLAN**

TAX LOT 1200, LOT 1, BLOCK 63, WOODSTOCK, SITUATED IN THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 1 SOUTH, RANGE 1 EAST, WILLAMETTE MERIDIAN, CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON  
 DATE: SEPTEMBER 30, 2014 SCALE: 1"=20'  
 FOR: CRESCENT CUSTOM HOMES LLC

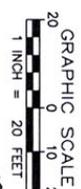
CASE NO. 16-105729 IV  
 EXHIBIT C.1



- LEGEND**
- ⊗ = FIRE HYDRANT
  - ⊙ = COMBINATION SANITARY SEWER / MANHOLE
  - ⊠ = WATER METER
  - ⊞ = WATER VALVE
  - CC = CONCRETE CURB
  - CDW = CONCRETE DRIVEWAY APRON
  - CSW = CONCRETE SIDEWALK
  - FH = FIRE HYDRANT
  - MH = MANHOLE
  - PW = PROPOSED SANITARY SEWER LINE
  - PSS = PROPOSED 10" WIDE SANITARY SEWER LINE EASEMENT
  - SS = PROPOSED 2.50' FOOT STREET DEDICATION
  - SS = SQUARE FEET
  - SS = SANITARY SEWER LINE
  - WM = WATER METER
  - WV = WATER VALVE

*T117 = 7" apple  
 T20 = 10" Pissard  
 Plann*

*⊗ Tree 17 approved for removal under LU14-167.113  
 ⊗ Tree 20 required to be preserved under LU14-167.113 - removed during construction*



- NOTES**
1. A 48" INCH DIAMETER DRYWELLS WILL BE INSTALLED 5 FEET DEEP PER BESS SPECIFICATIONS TO MANAGE THE STORM WATER RUNOFF FOR THE NEW HOUSES AND GARAGES ON PARCEL 1 AND PARCEL 2. THE DRYWELL ESCAPE ROUTE FOR PARCEL 1 WILL BE THROUGH THE STREET AND EAST PARCELS OF PARCEL 2.
  2. THE PROPOSED PRIVATE SANITARY SEWER FOR THE BENEFIT STREET HOUSE ON PARCEL 2 SINCE THERE IS NO SEWER MAIN IN SE CESAR E. CHAVEZ BOULEVARD, IT IS NECESSARY TO PROVIDE A SEWER SERVICE LATERAL ACROSS PARCEL 1.
  3. THE EXISTING WATER METER FOR THE EXISTING HOUSE WILL BE USED FOR THE NEW HOUSE ON PARCEL 1.
  4. TREE 17 AND TREE 20 WILL BE PROTECTED. SEE THE UPDATED ARBORIST REPORT FOR PROTECTING TREE 17 DURING CONSTRUCTION OF THE SEWER LINE.
  5. THE AREA IN BETWEEN THE PROPOSED DRIVEWAYS OF PARCEL 1 AND PARCEL 2 WILL BE GRASSCOTE PAVERS.
  6. THE PROPOSED AUTO TURNOVER IS TO PROVIDE AN INTERNAL MOVEMENT SO AS TO EXIT THE SITE IN A FORWARD MOTION AND NOT BACK OUT INTO SE CESAR E. CHAVEZ BLVD.

REGISTERED PROFESSIONAL LAND SURVEYOR

**REPETTO & ASSOCIATES, INC.**  
 LAND SURVEYORS

Piazza 125, Building G  
 12730 SE Stark Street  
 Portland, Oregon 97233  
 Phone: (503) 408-1507  
 Fax: (503) 408-2370

DATE: SEPT. 30, 2014 FILE: C14040-UP-DWG  
 DRAWN BY: CJH JOB NO. C14040