



FOR SPRAB MEETING OF: September 10, 2020  
AGENDA ITEM NO.: 7.b

TO: SALEM PARKS AND RECREATION ADVISORY BOARD  
THROUGH: ROBERT D. CHANDLER, PhD, PE, ASSISTANT PUBLIC WORKS  
DIRECTOR   
FROM: GLENN J. DAVIS, PE, CFM, CHIEF DEVELOPMENT  
ENGINEER   
SUBJECT: APPEAL OF STREET TREE REMOVAL DECISION (20-109648-TR)

**ISSUE:**

Should the Salem Parks and Recreational Advisory Board (SPRAB) affirm the Public Works Director's decision to allow the removal of three street trees located along the northern boundary of Salem Heights Avenue S pursuant to the removal criteria found in *Salem Revised Code* (SRC) 86.090(a)?

**RECOMMENDATION:**

City staff recommends that SPRAB affirm the Director's decision to approve the removal of three street trees located along the 500 block of Salem Heights Avenue S.

**SUMMARY:**

The following paragraph is emphasized to explain that the number of street trees being considered for removal has been modified by the applicant:

The original street tree removal permit application and related materials specified removal of five City trees within the existing right-of-way along Salem Heights Avenue S. The applicant's representative, Project Delivery Group, submitted additional evidence on August 17, 2020, by providing City staff with a surveyor's report, showing that two of the five trees in question were not located in the right-of-way and requested that the City tree removal permit be withdrawn for those trees not located in the right-of-way. The City surveyor reviewed the surveyor's report and concurs with the conclusion that the two locust trees specified for removal are in fact located on private property. Based on the surveyor's report, the applicant has withdrawn its street tree removal permit application for the two Locust trees. Therefore, this staff report addresses only the three City trees (two 32-inch dbh White Oaks and one 12-inch dbh Douglas Fir) specified for removal within the existing right-of-way.

On August 12, 2019, City Council affirmed the Planning Administrator's decision to grant tentative approval of Wren Heights Subdivision (case number SUB-ADJ19-02) located at 575 Salem Heights Avenue S. In the application materials for the subdivision, the developer's engineer included a preliminary alternative street design of improvements to Salem Heights Avenue S that limited City tree removals to a maximum of five trees. Condition 8 of Wren Heights Subdivision granted preliminary approval of

the street design and tree removal, but required that the applicant obtain City tree removal permits prior to removing the trees.

On February 28, 2020, the applicant obtained a grading permit in order to remove trees on private property in compliance with the Tree Conservation Plan (TCP) approved in November 2019. In conjunction with the tree removal work on private property, the developer removed three City trees (originally thought to be five trees) in April 2020 without having obtained the required tree removal permits. Though these three City trees had received preliminary approval as part of the land use decision, removal of the trees without a permit is a violation of SRC Chapter 86.

Although the City trees have already been removed, City staff determined that the developer was required to obtain a City tree removal permit pursuant to SRC Chapter 86. In June 2020, the developer applied for an after-the-fact permit to remove the three (originally five) City trees to accommodate the construction of Salem Heights Avenue S. The Public Works Director approved the tree removal permit based on criteria found in SRC 86.090(a)(8). On July 27, 2020, the South West Association of Neighbors (SWAN) filed an appeal of the Director's decision.

Staff recommends that SPRAB affirm the Public Works Director's decision to approve the tree removal permit.

### **FACTS AND FINDINGS:**

1. On December 31, 2018, Project Delivery Group, on behalf of Thomas Kay Co. (Thomas Kay and Gail B. Jones), filed an application for a Tentative Subdivision Plan to divide an eight-acre parcel into 34 single family lots, located at 575 Salem Heights Avenue S. The subject property is located in Ward 7 and the South West Association of Neighbors (SWAN) neighborhood association.
2. In the application materials for Wren Heights Subdivision, the developer's engineer included a preliminary alternative street design of improvements to Salem Heights Avenue S that limited City tree removals to a maximum of five street trees.
3. On June 6, 2019, the Planning Administrator issued a decision approving the Wren Heights Subdivision under case number SUB-ADJ19-02 subject to conditions of approval. Conditions 6 through 9 directly concern alternative street standards along Salem Heights Avenue S, street alignment, and preservation of trees. Condition 8 of Wren Heights Subdivision granted preliminary approval of the street design and tree removal, but required that the applicant obtain City tree removal permits prior to removing the trees.
4. On June 21, 2019, Nathan R. Rietmann appealed the Planning Administrator's subdivision decision. On August 12, 2019, City Council denied the appeal, affirming the Planning Administrator's decision to grant tentative approval of Wren Heights Subdivision (case number SUB-ADJ19-02) located at 575 Salem Heights Avenue S. An appeal of the City Council's decision was submitted to the

- Land Use Board of Appeals. The appeal was withdrawn after negotiations between the appellant and the developer. The land use decision became effective on January 29, 2020.
5. A Tree Conservation Plan (case number TCP19-07) was approved for Wren Heights Subdivision on November 25, 2019. A Tree Conservation Plan only applies to private property; removal of trees located within the right-of-way along Salem Heights Avenue S is subject to requirements of SRC Chapter 86.
  6. On February 28, 2020, a grading permit in compliance with the TCP was issued to begin removal of private property trees on the development site.
  7. On March 10, 2020, Public Works staff provided a written reminder to the applicant that City tree removal permits are required and included an application for City tree removal in its correspondence.
  8. On April 16, 2020, Public Works staff was notified that up to five City trees had been removed without permits. Public Works Urban Forester, Milan Davis, visited the site on April 17, 2020, and confirmed that the trees had been removed.
  9. As required by City staff, the property owner, Thomas Kay, applied for an after-the-fact street tree removal permit on June 4, 2020. The application included a written statement and site plan showing the trees marked for removal. The application and attachments are attached as Exhibit A.
  10. The Public Works Director issued a Notice of Decision (Exhibit B) on June 25, 2020, granting the tree removal permit application. The approval was based on the criterion listed in SRC 86.090(a)(8). Salem Heights Avenue S is a Collector street. It has a standard width of 34 feet between curbs and a five-foot-wide sidewalk. During the Wren Subdivision approval process, the developer's engineer and City engineering staff collaborated to create an alternative street design that provides two travel lanes and one bike lane with an improvement offset to the south to minimize impacts to existing trees. There were three City trees located too close to the street centerline to be avoided by the street construction. The Director's decision found that the proposal met the requirement that there be no reasonable alternatives to the proposed construction given the conditions in place by land use case number SUB-ADJ19-02.
  11. For the two locust trees located outside the right-of-way, tree removal is addressed through a Tree Conservation Plan (TCP) process pursuant to SRC Chapter 808. Conformance with the TCP is not a subject of this appeal hearing.
  12. The SWAN neighborhood association filed an appeal of the Director's decision on July 27, 2020 (Exhibit C). The appellant cited that the trees had already been removed and that there may have been alternatives available. The Notice of Decision granting approval and notification of appeal rights was posted in the vicinity of the removed trees on June 29, 2020. The Intent of Notice to appeal

and payment of the appeal fee was received from the South West Association of Neighbors (SWAN) prior to the deadline of 5 p.m. on July 27, 2020. The Notice of Public Hearing for the SPRAB meeting scheduled on September 10, 2020, was posted in the vicinity of the removed trees on August 10, 2020.

13. The original street tree removal permit application and related materials specified removal of five City trees within the existing right-of-way along Salem Heights Avenue S. The applicant's representative, Project Delivery Group, submitted additional evidence on August 17, 2020, by providing City staff with a surveyor's report, showing that two of the five trees in question were not located in the right-of-way and requested that the City tree removal permit be withdrawn for those trees not located in the right-of-way. The City surveyor reviewed the surveyor's report and concurs with the conclusion that the two locust trees specified for removal are in fact located on private property. Based on the surveyor's report, the applicant has withdrawn its street tree removal permit application for the two Locust trees. Therefore, this staff report addresses only the three City trees (two 32-inch dbh White Oaks and one 12-inch dbh Douglas Fir) specified for removal within the existing right-of-way.
14. Staff's response to the appeal submitted by the South West Association of Neighbors (appellant) is summarized as follows:
  - a. Failure to comply with the provisions of SRC Chapter 86 is an infraction and subject to enforcement and civil penalties pursuant to SRC 86.120. The Director will determine the appropriate enforcement action and civil penalties after SPRAB renders its decision regarding the City tree removal permit appeal.
  - b. Pursuant to Administrative Rule 109-500-2.4, the two white oak trees are Class 1 trees, and the fir trees is a Class 2 tree. Administrative Rule 109-500-2.4 establishes the criteria for analysis of reasonable alternatives. For Class 1 trees, the rule states, "Alternatives that must be examined include: redesign of the project; use of alternative construction practices/materials; alternative locations for the work; and other methods to meet the goals of the project." For Class 2 trees, Administrative Rule 109-500-2.4(b)(2) states, "Applicants shall still consider alternatives including redesigning the project and use of alternative construction practices/materials, and must be able to demonstrate why potential alternatives are not reasonable." Redesign, alternatives, and other methods were considered for design of Salem Heights Avenue S street improvements during the land use process to preserve as many trees as feasible, and City Council affirmed the Planning Administrator's decision on September 19, 2019, that three (originally five) City trees were subject to removal. Because retaining the trees would not allow for construction of Salem Heights Avenue S to modified collector standards, removal of the street trees is required to comply with SUB-ADJ19-02 and meets the criteria of Administrative Rule 109-500-2.4.

- c. The appellant suggests that other reasonable alternatives exist that will eliminate the need for street tree removal. However, City Council affirmed the Planning Administrator's approval of SUB-AJD19-02 after the decision was appealed by the appellant. Such affirmation approves construction of the Salem Heights Avenue S as designed to alternative street standards. The street tree removal permit alternatives are limited to determining whether the street can be constructed without removing the trees.
15. Pursuant to SRC 86.095(e), appeals for street tree removal decisions are referred to SPRAB. In its decision, SPRAB may affirm, amend, or rescind the action, or refer the matter to staff for additional information.

In conclusion, staff finds that the tree removal criterion for construction with no reasonable alternatives has been met. Therefore, staff recommends that SPRAB uphold the Director's decision to approve the tree removal permit.

Prepared by: Jennifer Scott, Program Manager  
August 31, 2020

cc: Ted Burney, Land Use Chair, South West Association of Neighbors, Appellant  
Thomas Kay, Property Owner, Applicant

Attachments: 1. Exhibit A – Tree Removal Application and Attachments  
2. Exhibit B – Decision of Approval  
3. Exhibit C – Notice of Intent to Appeal Document  
4. Exhibit D – Land Use Case No. SUB-ADJ19-02  
5. Exhibit E – Tree Conservation Plan (TCP19-07)  
6. Exhibit F – Site Plan with correct right-of-way  
7. Exhibit G – Public Comments Received

# Street Tree Permit Application



Please send the completed application to the following address:

**City of Salem**  
**Public Works Department Development Services**  
555 Liberty Street SE, Room 325  
Salem OR 97301-3513

For Office Use Only  
**AMANDA Permit #**  
**20-109648-TR**

## SECTION 1: GENERAL INFORMATION

Site Address 525 Salem Heights Avenue South

Trees must be on property owner's frontage.

Property Owner Name Thomas Kay

Email thokay@comcast.net Phone (503) 931-4433

Mailing Address 3710 Links Court South, Salem OR 97302  
Street or PO Box City State Zip

Is the property owner the contractor? If no, provide the contractor's contact information.  Yes  No

Contractor's Name K & E Excavating Inc. - Eric Kuenzi

Day Phone (503) 399-4833 Evening Phone \_\_\_\_\_

Email eric@keex.net Fax \_\_\_\_\_

## SECTION 2: WORK TO BE PERFORMED

Please indicate the type of work to be performed.

Prune  Plant  Removal  Other \_\_\_\_\_

Species/Name See Attached D.B.H.\* \_\_\_\_\_

Note: If your request includes more than one species of tree and/or multiple work types, please attach a separate detail sheet including each species name, diameter, and type of work to be performed.

\*D.B.H.: Diameter at breast height. Will be verified by City to confirm required replant/fee-in-lieu.

Description of Tree(s) Location Salem Heights Frontage - See Attached

Proposed Start Date July 2020 Proposed Completion Date July 2020

Description of work to be completed (if removal is requested, include reason for removal):

Trees are in City R.O.W. and must be removed to accommodate street widening of Salem Heights Avenue.

Note: A work in right-of-way application may be required after review of street tree permit application.

Property Owner Signature  Date 6.4.20



## WREN HEIGHTS SUBDIVISION

### Supplemental information

### Removal of Street Trees in Salem Heights Right-of-Way

#### REASONABLE ALTERNATIVES ANALYSIS

There are currently nine (9) trees located within the proposed road right-of-way that must be removed for construction of the required street improvements.

Pursuant to the City of Salem Department of Public Works Administrative Rule, Chapter 109, Division 500, Section 002- 2.4(b) Reasonable Alternative Analysis, ***“Where no reasonable alternatives exist, the Applicant for a permit shall document the basis for that conclusion as part of the permit application.”***

**Applicant’s Response:** There are currently five (5) trees located within the required city right-of-way. Construction of the required street improvements including curb, gutter and utilities, necessitate their removal. There are 5 trees within the Salem heights right-of-way and 4 trees within the proposed Doughton Street right-of-way. There are no other alternatives to avoid their removal.

Pursuant to Chapter 86 – Trees on City Owned Property – Section 86.090 (a)(8) ***“The Director may permit the removal of a City tree if there is no reasonable alternative.”*** As stated previously, there is no reasonable alternative as the trees are within the Salem Heights and Doughton Street right-of-way and must be removed to construct the city-required improvements. Please see the attached plans showing the location of the trees to be removed attached.

#### TREES TO BE REMOVED:

<u>Number</u>	<u>Tree Species</u>	<u>DBH</u>
10001	White Oak	32”
10002	White Oak	32”
10003	Locust	15”
10004	Locust	15”

10005	Locust	30"
10006	Locust	30"
10007	White Oak	24"
10012	Douglas Fir	12"
10022	Maple	30"

**Applicant's Response:** Pursuant to the sections addressed above, the Applicant has demonstrated that there are no reasonable alternatives to removing the trees identified in this application. As such, the Applicant respectfully requests your approval of his request to remove the trees outlined in this application.



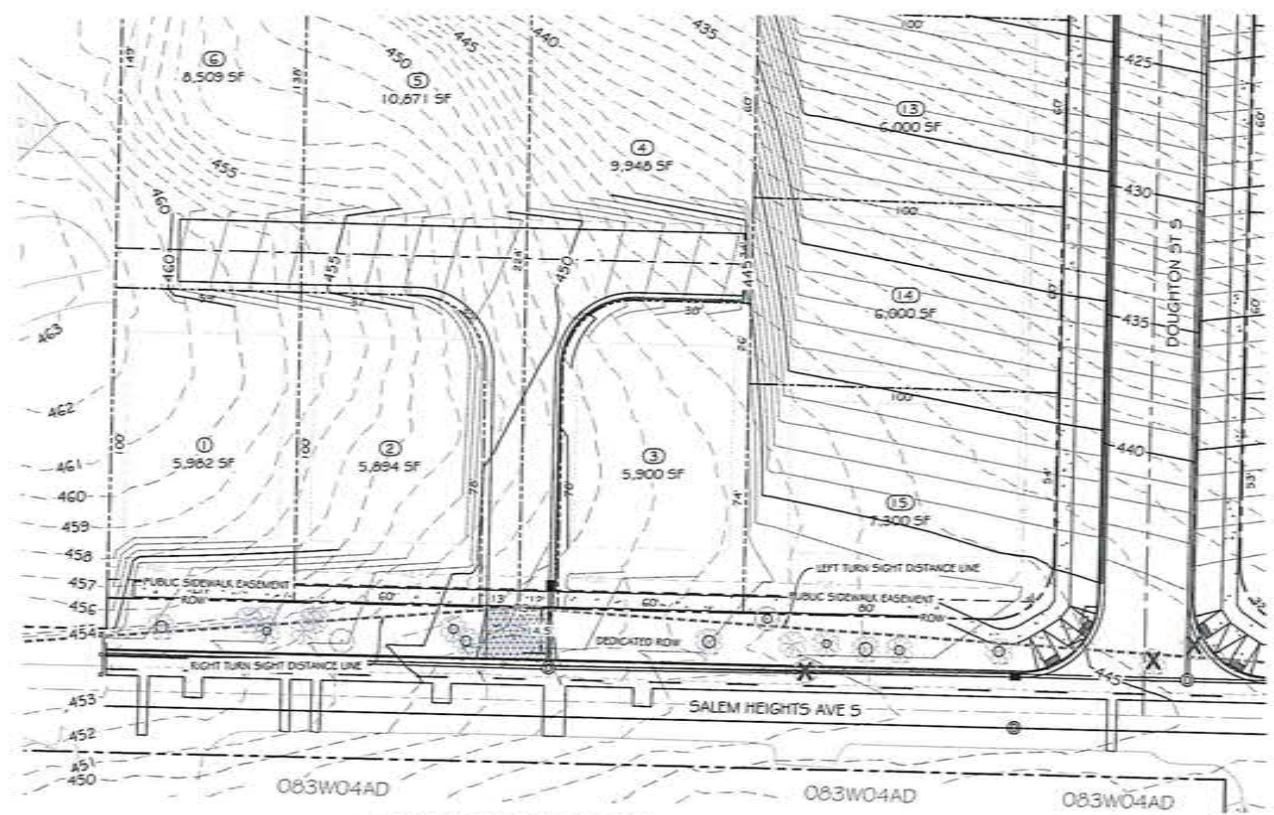


DATE: 5/20/21

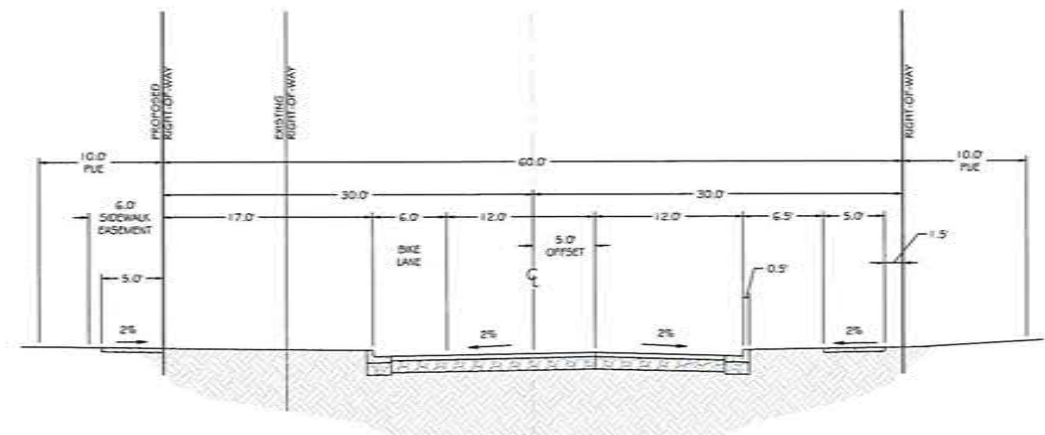
THOMAS KAY COMPANY  
**WREN HEIGHTS  
SUBDIVISION**  
SALEM, OREGON

NO.	REVISIONS	DESCRIPTION	DATE	BY
1	SUBMITTED TO COS		5/7/19	MF

TREES WITHIN  
RIGHT-OF-WAY  
CONSERVATION  
PLAN



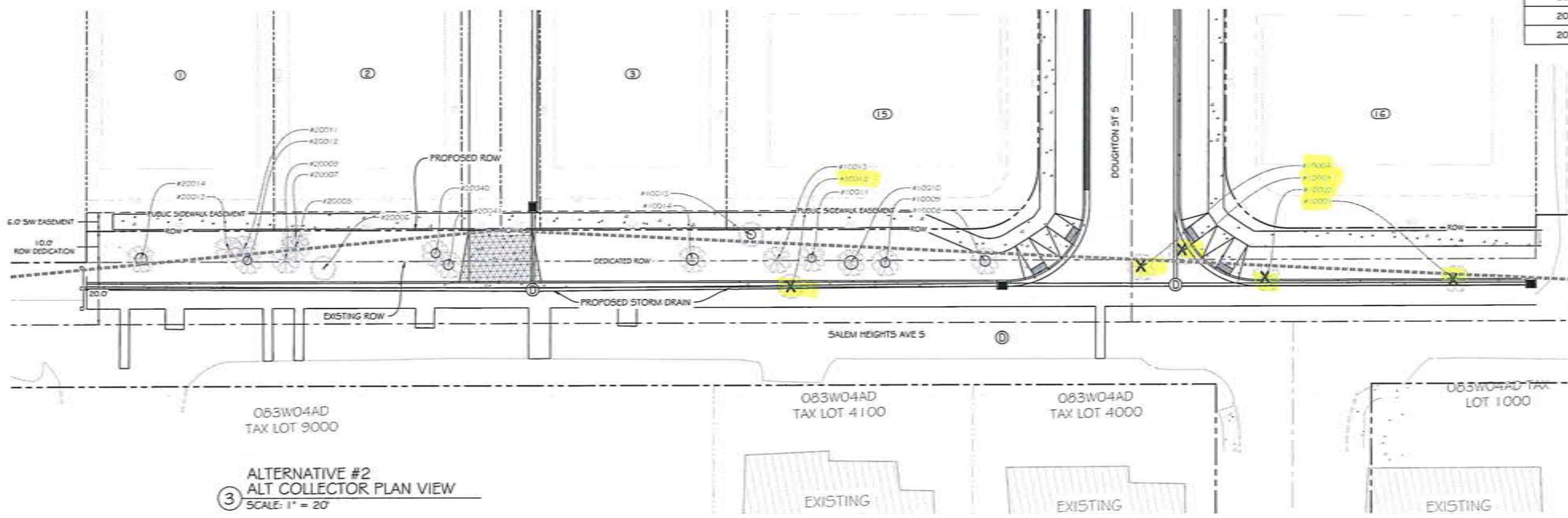
1 ALTERNATE FLAG LOT GRADING PLAN  
SCALE: 1" = 30'



2 ALTERNATE COLLECTOR TYPICAL SECTION  
SCALE: NOT TO SCALE

POINT NO.	DESCRIPTION
10001	DTR 32 WHITE OAK
10002	DTR 32 WHITE OAK
10004	DTR 15 1/2 8 LOCUS 3 TRUNKS
10008	DTR 28 MAPLE
10009	DTR 24 WHITE OAK
10010	ETR 40 DOUGLAS FIR
10012	ETR 12 DOUGLAS FIR
20006	ETR 22 FIR
20041	DTR 27 WHITE OAK

POINT NO.	DESCRIPTION
10003	DTR 15 LOCUS
10011	DTR 20 WHITE OAK
10013	DTR 22 WHITE OAK
10014	ETR 35 DOUGLAS FIR
10015	ETR 22 DOUGLAS FIR
20007	DTR 14 WHITE OAK
20008	DTR 14 WHITE OAK
20009	DTR 20 WHITE OAK
20011	DTR 10 WHITE OAK
20012	DTR 20 WHITE OAK
20013	DTR 15 WHITE OAK
20014	DTR 33 WHITE OAK
20040	DTR 23 WHITE OAK

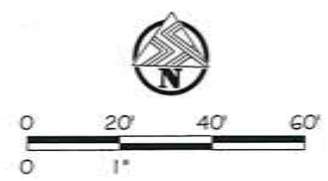


3 ALTERNATIVE #2  
ALT COLLECTOR PLAN VIEW  
SCALE: 1" = 20'

TREE TYPE, DIAMETER IN INCHES, SPECIES  
DTR = DECIDUOUS TREE  
ETR = EVERGREEN TREE

DIAMETER OF TREE TRUNK

**TREE LEGEND**  
 EXISTING TREE TO REMAIN  
 EXISTING TREE TO BE REMOVED  
 TREE IDENTIFICATION



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555 Liberty Street SE / Room 325 • Salem OR 97301-3513 • Phone 503-588-6173 • Fax 503-588-6005

# **NOTICE OF TREE REMOVAL**

**EFFECTIVE DATE: July 28, 2020** *(if no appeal is filed)*

**STREET TREE REMOVAL PERMIT APPLICATION NO.: 20-109648-TR**

**NOTICE OF DECISION DATE: June 25, 2020**

**REQUEST:** A Street Tree Removal Permit application to remove two White Oak trees, two Locust trees, and a Douglas-fir tree, located within the existing right-of-way.

**APPLICANT:** Thomas Kay

**LOCATION:** 500 Block of Salem Heights Avenue S, Salem OR 97302 - Marion County Assessor's Map and Tax Lot numbers: 083W04AA 10400, 10600, 10601, and 10800.

**CRITERIA:** Criteria for street tree removal is found in SRC 86.090(a).

**FINDINGS:** The trees proposed for removal meet the criteria described in SRC 86.090(a)(8) because no reasonable alternatives exist to mitigate impacts due to street construction required by land use decision SUB-ADJ19-02.

**DECISION:** The Public Works Director **GRANTED** Street Tree Removal Permit Application No. 20-109648-TR subject to the applicable standards of the Salem Revised Code (SRC); conditioned upon and in conformance with permits issued for construction in Salem Heights Road S right-of-way pursuant to SRC 77.090.

Case Manager: Jennifer Scott, jrscott@cityofsalem.net

This decision is final unless written appeal is filed with the City of Salem Public Works Department, Room 325, 555 Liberty Street SE, Salem OR 97301, no later than 5:00 p.m., Monday, July 27, 2020. The notice of intent to appeal must state the basis of the appeal and why the decision was in error. The appeal fee must be paid at the time of filing. If the appeal is untimely and/or lacks the proper fee, the appeal will be rejected. The Salem Parks and Recreation Advisory Board will review the appeal at a public hearing. After the hearing, the Salem Parks and Recreation Advisory Board may affirm, amend, or rescind the action, or refer the matter to staff for additional information.

The complete case file, including findings, conclusions and conditions of approval, if any, is available for review at the City of Salem Public Works Department, Room 325, 555 Liberty Street SE, during regular business hours.

***Si necesita ayuda para comprender esta informacion, por favor llame  
503-588-6211***

Jennifer Scott  
Program Manager  
City of Salem Public Works Department  
555 Liberty Street SE., Room 325  
Salem, Oregon 97301-3513

Letter of Intent to Appeal Tree Removal Permit Application  
No. 20-109648-TR Salem Heights Rd.

Dear Jennifer Scott,

The Southwest Association of Neighbors (SWAN) is providing **notice of intent to appeal** the tree removal permit application No. 20-109648-TR decision issued on June 25, 2020. Per requirements of appeal we are providing the reason for the appeal, why SWAN believes the decision was in error and additionally noting requests for remedy.

It is our assumption that we will be afforded the opportunity to supplement this notice of intent to appeal with additional written testimony and comments according to the schedule for hearing the appeal established by the Salem Parks and Recreation Advisory Board.

### **Reason for the Appeal:**

Among the reasons for this appeal is the trees listed for potential removal - two significant white oak trees, two locust trees and a Douglas Fir tree - have already been cut down and removed prior to issuance of a permit for removal in violation of City Code contained within SRC Chapter 86. We believe the Director's conclusion that there was no "reasonable alternative" was in error. We believe there were, or may have been reasonable alternatives.

City staff has confirmed with us that the trees were removed on April 15 in violation of the Code because the order granting the removal was not issued until June 25 with an effective date of July 28, 105 calendar days after they were cut down.

We believe the City Tree Code should be enforced in a way that protects the city's trees. Granting a permit after trees have been cut, as in this case, sends a message the Code enforcement is lax. We intend to show that the cutting of trees along the 500 block of Salem Heights Avenue violated City Code.

We believe city residents deserve the opportunity to offer reasonable alternatives during the permit application process. This was denied in particular to the removal of the white oaks. The Director has concluded, without explanation in the order, that there was no reasonable

alternative to cutting the trees. Our appeal will show the possibility that a reasonable alternative existed before the trees were removed.

This cutting and removal of trees on city-owned right of way prior to issuance of a tree removal permit is an egregious breach of current law and an affront to the citizens of Salem - a "tree" city. Cutting and removal of the trees in question prior to issuance of a tree removal permit is also an extreme breach of due process afforded by the tree removal permit application process.

It is ironic that the effort of city staff to comply with posting of the tree removal order and appeal process as required by the Code to be posted "where the tree or trees are located" had to be posted to a utility pole *after* the trees were reduced to stumpage. Again, this cutting was done prior to the issuance of a removal permit or posting of the required notice of removal.

We are also appealing because we believe the Board should establish conditions giving the Director instructions on the level of enforcement and penalties. We believe enforcement issues are parts of the merits of this case because the Board has the authority to impose conditions. Those conditions should include the level of penalties commensurate with the willful or negligent violation of the Code that undermined the appeals process.

This denial of due process has precluded the opportunity to present a reasonable alternative to prevent unnecessary removal of the trees, especially the white oaks.

This appeal is a means to restore the due process denied by the cutting of the trees in question and seek effective enforcement of City Tree Code.

### **Why the Decision was in Error:**

We believe the finding that "no reasonable alternative" is in error and that reasonable alternatives either do exist or may reasonably exist and ought to have an opportunity to be pursued. Cutting the trees prior to issuance of a permit was also a clear violation of City Code SRC 86.090.

In support of our assertion regarding reasonable alternatives we offer the following observations:

Currently discussion is underway for a Salem Heights Avenue Refinement Plan with a city planner and members of the Salem Heights neighborhood. Examination of alternatives to removing the trees could have been discussed with this group to fit the demands of possible street widening and connections to better fit the entire plan.

Salem Heights Avenue is an undeveloped collector street and widening is planned only at the Wren Heights Development site. Residents of the area have requested the "feel" of the street be maintained, efforts be made to slow traffic and increase pedestrian safety.

Right of way varies on Salem Heights Avenue creating a meandering pattern of ownership. Could this pattern have been incorporated into the proposed street widening plan? Perhaps a shift of a few feet in the widening of Salem Heights or center line location of the Doughton connections at Salem Heights Avenue could have created opportunity to meet neighborhood needs as well as preserve trees.

An alternative could have been considered which could have included leaving the trees where they were, maintaining the pavement at its current width and configuration. Adding a paved pathway for pedestrians and cyclists and dropping the speed limit to 20 mph. This is a reasonable alternative because it preserves tree cover, enhances safety and expands opportunities for walkers and cyclists (all neighborhood priorities) while potentially saving money.

Another possibility is that a bulb out or curb extension could have been placed to eliminate the need for removal of the significant white oaks. This looks like a possible option especially for tree number 1001. Curb extensions increase the sharpness of a turning radius which is an efficient tool for reducing speed thereby meeting neighborhood needs as well as tree preservation.

Maintaining the trees which were cut prior to a permit being issued would have contributed to an attractive streetscape which may have helped maintain a buffer zone for pedestrians depending on alternative design again benefiting the community.

The white oak trees which were cut down without a permit have stumps six feet from the current North edge of the pavement. Trees slated for preservation along the right of way are only nine feet from the North edge of pavement. Recommendations from the Vista/Commercial corridor study have noted reduction in lane width to the standard of 11 feet is desirable. Perhaps an adjustment of street/sidewalk layout could have been another reasonable alternative to white oak removal.

SWAN is not selecting, suggesting or in a position to mandate layout or represent an expert design opinion. SWAN is merely demonstrating reasonable alternatives may have existed prior to unlawful tree removal. The illegal removal of the trees precludes these options for discussion. However, although the trees are gone, alternatives to the standardized street design put forward should still be examined. These alternatives developed with neighborhood input can assist in siting and replacement of the trees that were cut down.

The burden of proof that no reasonable alternative exists is on the City. The Board need not select any particular alternative. It only needs to find a reasonable alternative that may exist to conclude the order is in error. If the Board finds the order in error it has several alternatives, including adding conditions.

It is this authority to either affirm or remand with conditions that makes enforcement and the level of penalties matters of merit in this case. We believe there is a clear violation of the City Tree Code. We also believe that this violation is especially egregious because of the impact it has on the appeals process itself.

We believe the Board has the authority and should include instructions to the Director regarding the magnitude of enforcement of penalties including costs of restoration, civil penalties and other remedies required before any tree removal permit or construction permit is issued. It is clear in this instance that violations have occurred and that the violators are subject to the required penalties in the Code. Because the trees were removed before permitted and before any appeals process, these violations meet the “objectively impossible to correct” criteria in the Imposition of Civil Penalty Section 20J.140(c) of the City Code.

### **Remedy:**

SWAN is asking for full enforcement of the City Tree Code. Even though the trees that were illegally cut down were given *tentative* approval for removal in an initial site plan, confusion on tree removal is not an excuse. This is especially important for those who report on development criteria being met. Condition 8 of SUB-ADJ19-02 specifically states - “prior to issuance of public construction permits, obtain final approval for tree removal permits for trees labeled as 10001-10004 and 10012”. These were the trees along Salem Heights Avenue that were removed without a permit.

SWAN believes there are several remedies that take into account the blatant disregard for Code requirements, the serious undermining of the public process and the opportunities to develop a reasonable alternative that is consistent with planned improvement on the entirety of Salem Heights Avenue.

We believe the developer should not be able to remove the trees illegally, undermine the appeals process and then be given an after the fact permit, thus allowing the developer to then be granted a construction permit. To do this essentially makes the appeals process useless. We believe the Board should impose conditions which should be met before any tree removal permit and subsequent construction permit can be issued.

Because Salem Heights Ave. is an unimproved collector street with a low priority for funding improvement, the City began the process called the Salem Heights Refinement Plan to work with residents of the area to adopt a plan for future improvement, including sidewalks. A citizen Policy Advisory Committee has been formed to work with the City and communicate with the larger community in the area. This presents a fortuitous opportunity to pursue what would be an alternative to the plans submitted by the developer that would have the approval of the City, the neighborhood and the developer. It would also mean the development design in question would be compatible with the improvements on the rest of the street.

When the Refinement plan process began last fall, the City Staff estimated it would take from nine months to a year so this should not present an unreasonably long delay for the developer.

SWAN is not opposing the eventual construction of the development. SWAN is, in a sense, through the City of Salem enforcement action, inviting the developer to work with Salem Heights Area residents as we build the Salem Heights Refinement Plan. Working with city planners, neighbors involved in the SHRP and perhaps Salem's urban forester, plans for restoration can be collaboratively put together to enhance the character of the development as well as Salem Heights Avenue. This could create a win for all out of a breach of Salem City Code.

SWAN also believes that the conditions should include directions regarding enforcement of the Code to the Director. The Board should make it clear that because the tree removal was not only illegal but was also injurious to the appeals process and the rights of citizens to appeal removal of the trees, the levels of penalties imposed should be the maximum.

Key elements are:

- 1) That each tree removed is a separate violation (Section 86.105(c))
- 2) that each day it was removed before the effective date of the permit is a separate infraction (Section 86.130)
- 3) monetary reimbursement for the trees removed not be linked only to commercial board footage value but also to the intrinsic value of the trees contribution to the character of the neighborhood
- 4) tree replacement and costs be based on comparable sized trees

In addition it is our belief that because we are forced to appeal the removal of trees that have already been illegally cut, SWAN requests reimbursement of \$283.00, the cost of intent to appeal the notice of tree removal. This is to be returned to the Southwest Association of Neighbors city account or reimbursed by the developer.

In summary we believe the Board should remand the Director's order with the conditions that no permit for tree removal and subsequent construction permit be issued until a plan for that portion of the development site has been adopted in the Salem Heights Refinement Plan and any level of penalties specified in the order have been enforced.

We believe the Board could also justify reversing the Director's decision for tree removal based on the disregard for the Code and public process.

If the board affirms the Director's order, we ask that it does so with conditions associated with enforcement and penalties and not leave such discretion up to the Director.



Respectfully submitted on behalf of SWAN by unanimous consent of the SWAN Board.

Jeanine Stice,  
Chair, Southwest Association of Neighbors

Ted Burney  
Land Use Chair, Southwest Association of Neighbors  
[Burney.ted.tb@gmail.com](mailto:Burney.ted.tb@gmail.com)  
503-428-0625

**Photos included below:**

**#1** Notice of removal on utility pole - trees gone - unable to post on trees

**#2** View of Salem Heights Ave. after tree removal without permit

**#3** View of Salem Heights Ave. (same location) prior to tree removal

Appendix A - attached



City of Salem • 503-588-2213 • Phone 503-588-4173 • Fax 503-588-4009

## NOTICE OF TREE REMOVAL

**PERMIT DATE: July 28, 2020** (if no appeal is filed)

**PERMIT APPLICATION NO.: 20-109648-TR**

**PERMIT ISSUED: June 25, 2020**

The City of Salem has granted a Street Tree Removal Permit application to remove two White Oak trees, two of which are located within the existing right-of-way.

The trees are located on Salem Heights Avenue S, Salem OR 97302 - Marion County  
Parcel Numbers: 003W04AA 10400, 10600, 10601, and 10800

The applicable code for tree removal is found in SRC 86.090(a).

The trees are to be removed to meet the criteria described in SRC 66.090(3)(B) and to mitigate impacts due to street construction.

The applicant is required to submit a mitigation plan to the City of Salem.

The City of Salem **GRANTED** Street Tree Removal Permit Application for the removal of the trees located at the above address in accordance with the applicable standards of the Salem Revised Code (SRC). The applicant must comply with the standards of the SRC and the standards with permits issued for construction in Salem Heights.

For more information, please contact the City of Salem at 503-588-4211.

The permit application was filed with the City of Salem Public Works Department, 503-588-4211, no later than 5:00 p.m. on July 28, 2020. The City of Salem will review the application and the appeal fee must be paid at the time of filing. If the appeal fee is not paid, the appeal will be rejected. The Salem Parks and Recreation Department will review the appeal at a public hearing. After the hearing, the City of Salem may affirm, amend, or rescind the action, or refer the matter to the City of Salem Public Works Department for further information.

The City of Salem Public Works Department, Room 325, 555 Liberty Street, Salem, Oregon 97301, is available for public comment during business hours.

Si desea más información, por favor llame al 503-588-4211.



**SWAN APPEAL OF ORDER 20-109648-T**

**APPENDIX A**

**Code and Procedural Basis for Penalties and Remedies of Illegal Tree Removal**

**Background Facts:**

On August 26, the City adopted a Facts and Findings statement on the appeal to the Wren Heights development in CASE NO. SUB-ADJ19-02 which upholding the decision to approve the development with conditions.

According to the City staff, the developer removed five trees in the City Right-of-Way on April 15., 2020. An inspection was conducted on April 17, confirming that the trees had been removed without the proper permit. Staff also confirmed that the Public Works Director was aware of the violation.

On June 25, the Director of Public Works issued an order, 20-109648-TR, granting a permit application by the developer to remove the Right-of-Way trees “because no reasonable alternative exist to mitigate impacts due to street construction required by land use decision SUB-ADJ19-02. The order does not mention that the trees have already

The June 25<sup>th</sup> order specified that it did not take effect until July 28, 2020, unless appealed by July 27. July 28 effective date is 105 calendar days after the trees were actually removed.

**The removal of the trees was illegal and in violation of the City Tree Code, the land use order and the tree removal permit.**

1. The land use order, on page 8, stated that the trees in the right-of-way were subject to the provisions of SRC Chapter 86. It stated that four of the nine existing trees in the right-of-way will likely need to be removed “to accommodate the required widening, sidewalk installation, and grading associated with the improvement of Salem Heights.” The order specified other right-of-way trees are to be conditioned for preservation but that the trees that were likely needed to be removed “will be required to obtain a permit for removal pursuant to SRC 86.090.”

2. Condition 8 noted that that the right-of-way trees in question were tentatively approved for removal but specifically stated “Prior to issuance of public construction permits, obtain final approval for tree removal permits for trees labeled as 10001 – 10004, and 10012 ...”

**The removal of the trees in April violated the City Tree Code because no final written permit, exemption, or variance was granted before removal.**

1. Sec. 86.030. – Prohibited Activities of the City Tree Code states

(a) It shall be unlawful for any person, except as expressly allowed by a written permit, exemption, or variance granted pursuant to the terms of this chapter, to willfully or negligently injure, destroy, top, or prevent the growth of a City tree, including, but not limited to, the following: ....”

2. Sec. 86.050(a) (1) also makes it clear that you have to have a permit to “prune or remove City trees or tree protection devices..”

3. Sec. 86.080 requires an application for tree removal and establishes application requirements and processes. It also provides that

(c) Effective date. A decision to approve a permit application for City tree removal shall be effective no earlier than 30 calendar days after the decision has been issued, unless an appeal has been filed, and any appeal fee paid.

4. The Director’s order also states that it is not final until after the deadline for appeal by July 27<sup>th</sup> has passed. “

**The trees were unlawfully removed either “willingly or negligently.”**

Any excuse that there was confusion over requirements for tree removal or that removal was unintentional is bogus. The developer isn’t new to the business. Developers have attorneys, planners and other consultants whose job it is to know the City Code. This is not new to them. They should reasonably be expected to know the Code and the instructions in the orders are clear: no trees are to be removed from the right-of-way until final approval is granted.

**The removal of the trees subjects the violator to specific penalties required by the City Tree Code.**

1. Section 86.105 (c) establishes the parameters for penalties that “shall” be imposed. This includes restoration and repair and civil penalties for each tree removed.

“Persons violating this chapter, or a permit issued hereunder, shall be responsible for restoring damaged areas in conformance with a plan approved by the Director that provides for repair of any environmental or property damage and restoration of the site. Costs of restoration shall be not less than those determined equal to the monetary value of the regulated trees removed in violation of this chapter, or permit issued hereunder, as set forth in an appraisal acceptable to the Director and based upon applicable administrative rules. Each removal of a regulated tree in violation of this chapter shall result in a separate civil fine in addition to costs of restoration.

Hence the developer is responsible for restoration and repair of the site, the costs of which shall not be less than those determined by an appraisal.

2. Section 86.120 (c) (1) sets out the civil penalties and reiterates that the civil penalties are in addition to the value of the trees.

Unauthorized City tree removal shall be subject to a civil penalty not to exceed \$2,000.00 per violation in addition to the value of the tree as calculated in accordance with applicable administrative rules (or in the absence of administrative rules, in accordance with the most current edition of Council of Tree and Landscape Appraisers "Guide for Plant Appraisal").

3. The civil penalties apply to each day after trees were removed as a continuation of the violation as provided for in Section 86.130 – Violations

“Violation of any of the provisions of this chapter is an infraction. Each day that a violation continues shall constitute a separate infraction.”

When a tree is illegally removed it is still unlawfully destroyed, gone and absent the next day and the next and the next, etc., until the effective date of any order that subsequently blesses the its removal.

4. An after-the-fact permit and any new plantings required in the land use order do not override or serve as substitutes for the above penalties. Any posthumous granting of a permit does not eliminate the penalties for violation of the Code. The Code’s requirement for restoration and repair is based on the assumption that trees were illegally removed before a permit was issued. Requirements in any land use order to replant trees in the right-of-way after removal of trees allowed by a permit cannot be substituted as restoration and repair penalties. To do so would mean that there would be no such penalties for illegal removal and would provide no incentive to wait for final approval.

**The Board has the authority to provide direction on enforcement to the Director as well as other conditions, whether it affirms the order or not.**

1. Item A.6(j) of the Boards adopted procedures states that the Board can attach conditions and findings to its decisions:

(j) Findings and Order. The decision of the Board shall be by simple majority vote of members present. Board decisions concerning appeals of a decision by the Public Works Director under SRC Chapter 86, may affirm the Director’s decision, affirm the Director’s decision with conditions, or remand the Director’s decision to the Director with specific findings identifying where the Director’s decision is in error, or reverse the Director’s

decision, with specific findings identifying where the Director's decision is in error, and why the decision must be reversed. The Board shall, in all decisions, adopt findings to support its decision.

2. In order to assure that sufficient penalties are assessed for the illegal removal of trees before the effective date of any required final order approving any removal, and before citizens have had an opportunity to appeal, the Board should include instructions to the Director on the level of penalties. Leaving it up to the Director risks assessment of penalties that are insufficient to deter any future violations of this kind.

**The Board should include other conditions and findings delaying any issuance of a tree removal permit or subsequent construction permit because the illegal tree removal had undermined the right of citizens to appeal the Director's order. should, include as a condition of continuation of work on the develop**

**The Board can, and should, establish conditions for penalties and remedies before any continuation of work on the development is allowed.**

1. The most egregious violation here is the impact of the tree removal on the process and the ability of the public to appeal an order allowing removal. By removing the trees before the effective date of the permit and the deadline for appeal, the public cannot appeal to prevent the removal and it is objectively impossible to correct the violation. This impact justifies either reversing the Director's order or the application of Section 86.120 (a) which allows stop work order or permit revocation:

(a) Stop work orders and permit revocation. The Director may suspend work or revoke a permit specifying the basis for the suspension or revocation that must be remedied prior to resuming other work on the project, upon a finding that:

(1) The work is not authorized by a valid permit or...

(3) The applicant is not complying with the terms of the permit or this chapter.

2. The criteria for taking such action have been met. If the Director can take such action, the Board can instruct him to do so, whether it is his preference or not. It can instruct the Director to make final approval of the tree permit or to not allow any construction permit until certain conditions or findings are met. These could include instructions on the level of penalties, the nature of the required restoration and repair, and further examination of potential alternatives.

**The conditions can, and should, include a public process for examination of reasonable alternatives consistent with public works designs on the entire Salem Heights Ave S right-of-way.**

One way to redress the impact the illegal tree removal has on the public process and citizens' right to appeal is to provide another process for determining if there may be a reasonable alternative. Such a process already exist through the City's Salem Heights Refinement Plan.

Consideration of alternatives, without precluding a finding that no reasonable alternative exists, through this planning process would provide the opportunity to make the right-of-way design of Wren Heights consistent with other adopted improvements on the entirety of the street.

**The Board should either direct the refund of the SWAN appeal fee or require the developer to reimburse SWAN for the fee.**

The Director could have informed the public of the illegal violations in his order and delayed the permit until penalties have been determined, assessed and enforced. And under the Code and procedures he could have referred the issue of whether to issue an after-the-fact approval to someone who had violated the Code to the Board. Instead, he left it up to the neighborhood association to decide to pay the fee in order to appeal his order that blesses the illegal activity and leaves no recourse to prevent the removal of the trees.





555 Liberty Street SE / Room 305 • Salem OR 97301-3503 • Phone 503-588-6213 • Fax 503-588-6005  
www.cityofsalem.net/planning • www.cityofsalem.net

September 11, 2019

***Si necesita ayuda para comprender esta información, por favor llame 503-588-6173.***

**NOTICE OF FINAL LAND USE DECISION *Subdivision and Class 1 Adjustment* Case No. SUB-ADJ19-02 for Property located 500-600 Blks of Salem Heights Ave S**

YOU ARE HEREBY NOTIFIED that the *City Council* at their August 12, 2019 session, adopting findings ***affirming*** the *Planning Administrator's* decision. A copy of the *Order* is attached.

Any person with standing may appeal the City Council's decision by filing a "Notice of Intent to Appeal" with the Land Use Board of Appeals, 775 Summer St NE, Suite 330, Salem OR 97301-1283, **not later than 21 days** after September 11, 2019. Anyone with questions regarding filing an appeal with the Oregon Land Use Board of Appeals should contact an attorney.

The complete case file, including findings, conclusions, modifications, and conditions of approval, if any is available for review at the Community Development Department, 555 Liberty St SE, Room 305, Salem OR 97301. If you have any further questions, you may contact the City of Salem Planning Division at 503-588-6173.

A handwritten signature in blue ink that reads "Lisa Anderson-Ogilvie". The signature is fluid and cursive, written in a professional style.

Lisa Anderson-Ogilvie, AICP  
Planning Administrator

Attachment: ***Order***

BEFORE THE CITY COUNCIL OF THE CITY OF SALEM

IN THE MATTER OF APPROVAL OF )	ORDER NO. 2019-9 SUBADJ 19-02
CONSOLIDATED TENTATIVE SUBDIVISION )	SUBDIVISION/ CLASS 1
AND CLASS 1 ADJUSTMENT )	ADJUSTMENT
CASE NO. 19-02 )	CASE NO. 19-02
575 SALEM HEIGHTS AVENUE S )	

This matter coming regularly for hearing before the City Council, at its July 22, 2019 meeting, and subsequently deliberated upon, at its August 12, 2019, meeting, and the City Council, having received evidence and heard testimony, makes the following findings, and adopts the following order affirming the decision of the Planning Administrator in Subdivision and Class 1 Adjustment Case No. SUB-ADJ19-02, and approving the application.

**PROCEDURAL FINDINGS:**

- (a) On December 31, 2018, Project Delivery Group, on behalf of Thomas Kay Co (Thomas Kay & Gail B. Jones), filed an application for a Tentative Subdivision Plan to divide an 8 acre into 34 single family lots, located at the 575 Salem Heights Avenue S - 97302.
- (b) On June 6, 2019, the Planning Administrator issued a decision approving the consolidated Tentative Subdivision and Class 1 adjustment subject to conditions of approval.
- (c) On June 21, 2019, two appeals (Ron Eachus and Nathan Rietmann) were received by the Planning Division.
- (d) On June 24, 2019, at a regularly scheduled meeting, the City Council voted to initiate the review of the Planning Administrator's decision. A public hearing before the City Council was scheduled for July 22, 2019.
- (e) On July 22, 2019, City Council held a public hearing and received public testimony. A motion was passed to close the public hearing and leave the record open.
- (f) The record was held open for any party to submit additional testimony and evidence for seven days (July 29, 2019); for persons to submit testimony to rebut the new testimony that was submitted in the prior seven days, by August 5, 2019; and for the applicant to provide final written argument by August 12, 2019.
- (g) On August 12, 2019, the City Council conducted deliberations and voted to affirm the Planning Administrator's decision to approve the applications subject to conditions of approval. The City Council hereby adopts the findings of fact and conclusions of law in the Decision in their entirety and the supplemental findings of fact found in Exhibit 1.

(h) The new 120-day State mandated deadline for final decision is October 11, 2019.

**SUBSTANTIVE FINDINGS:**

The City Council adopts the following as findings for this decision:

- (a) The Tentative Subdivision and Class 1 Adjustment applications to develop an 8 acres into 34 single family lots, as proposed and conditioned, meets the approval criteria set forth in SRC 205.005 and 250.005(d)(2).
- (b) The findings, attached hereto as exhibit 1, are incorporated to this decision as set forth herein.
- (c) The City Council therefore APPROVES the consolidated application subject to conditions of approval from the June 6, 2019 decision of the Planning Administrator.

NOW, THEREFORE, IT IS HEREBY ORDERED BY THE CITY COUNCIL OF THE CITY OF SALEM, OREGON:

Section 1. The Planning Administrator's decision for Subdivision and Class 1 Adjustment Case No. SUB-ADJ19-02 is hereby modified to include the findings and facts in exhibit 1, and the following conditions of approval:

- Condition 1:** The front lot lines for the double frontage lots and flag lots within the subdivision shall be designated as follows:
- Lot 4-6: The front lot line of Lots 4-6 shall be the south property line.
  - Lot 15: The front lot line of Lot 15 shall be the east property line.
  - Lot 16: The front lot line of Lot 16 shall be the west property line.
  - Lot 23: The front lot line of Lot 23 shall be the east property line.
  - Lot 33: The front lot line of Lot 33 shall be the west property line.
- Condition 2:** The flag lot accessway shall be paved in accordance with the requirements of SRC 800.025(c), Table 800-1. "NO PARKING—FIRE LANE" signs shall be posted on both sides of that segment of the flag lot accessway that is a fire apparatus roadway and "NO PARKING" signs shall be posted on both sides of any remaining portion of the accessway.
- Condition 3:** Proposed Lots 1-3 shall not have access to the flag lot accessway serving Lots 4-6.
- Condition 4:** Design and construct stormwater facilities pursuant to SRC Chapter 71 and Public Works Design Standards.
- Condition 5:** Construct water and sewer systems to serve each lot.

- Condition 6:** Convey land for dedication of right-of-way adjacent to Salem Heights Avenue S to equal 30 feet from the centerline of Salem Heights Avenue S.
- Condition 7:** Construct a 17-foot-wide half-street improvement along the northern frontage of Salem Heights Avenue S to collector street standards. The street improvements are authorized to match the existing street grade up to a maximum of 12 percent grade, the sidewalk location west of Doughton Street S shall be located consistent with Attachment C and may be within an easement north of the property line to preserve existing trees.
- Condition 8:** Prior to issuance of public construction permits, obtain final approval for tree removal permits for trees labeled as 10001 – 10004, and 10012 identified in the plan submitted on May 7, 2019 and titled Trees within Right-of-Way Conservation Plan (Attachment C). Trees labeled as 10001 – 10004, and 10012 are tentatively approved for removal.
- Condition 9:** Prior to issuance of public construction permits, a tree preservation and protection plan pursuant to SRC Chapter 86 and Salem Administrative Rule 109-500, and signed by a certified arborist, shall be submitted for the identified preserved "Future Street Trees" (trees labeled as 20006- 20009, 20011- 2014, 20040, 20041, 10008 - 10011, 10013 – 10015, show on Attachment C), to the City for review. Future Street Trees, identified above, shall be preserved. Any proposed removal of identified Future Street Trees (listed above) would require a separate removal permit pursuant to SRC 86.090.
- Condition 10:** Construct internal streets to Local Street standards as shown on the applicant's tentative plan, except as listed below:
- Along the north/south portion of Felton Street S, the sidewalk shall be constructed so that the back of walk is located 28.5 feet from centerline pursuant to the Local street standard.
  - The alternative cul-de-sac turnaround design at the terminus of Earhart Street S is authorized as proposed on the applicant's tentative subdivision plan.
- Condition 11:** Provide a 10-foot-wide public utility easement (PUE) along the street frontage of each lot.
- Condition 12:** Prior to plat approval, closure of the existing driveway abutting tax lot 083W04AA / 10400 is subject to the notice and appeal provisions of SRC 804.060 to provide adequate notice to the owner of tax lot 083W04AA / 10500 prior to discontinuing the neighbor's access through the subject property.

Section 2. This order constitutes the final land use decision and any appeal must be filed with the Oregon Land Use Board of Appeals within 21 days of the date that notice of this decision is mailed to persons with standing to appeal.

Exhibit 1: Findings for SUB-ADJ19-02

ADOPTED by the City Council this 9<sup>th</sup> day of September, 2019.

ATTEST:

  
City Recorder

Checked by: Olivia Glantz

## **FACTS & FINDINGS**

### **SUBDIVISION AND CLASS 2 ADJUSTMENT CASE NO. SUB-ADJ19-02**

**August 26, 2019**

#### **PROCEDURAL FINDINGS**

On December 31, 2018, an application for a Tentative Subdivision Review was submitted to the Planning Division. On March 27, 2019, the application was deemed complete after submission of additional requested materials and a Class 1 Adjustment application. On June 6, 2019, the Planning Administrator issued a decision approving the tentative subdivision and a Class 1 Adjustment.

On June 21, 2019, two appeals (Ron Eachus and Nathan Rietmann) were received by the Planning Division. On June 24, 2019, at a regularly scheduled meeting, the City Council voted to initiate the review of the Planning Administrator's decision. A public hearing before the City Council was scheduled for July 22, 2019.

On July 2, 2019, notice of the hearing was sent to the South West Association of Neighbors (SWAN), and surrounding property owners pursuant to Salem Revised Code requirements. Notice of the hearing was posted on the subject property on July 8, 2019.

On July 22, 2019, City Council held a public hearing, received written and oral testimony and evidence. A motion was passed to close the public hearing and leave the record open.

The record was held open for any party to submit additional testimony and evidence for seven days (July 29, 2019); for persons to submit testimony to rebut the new testimony that was submitted in the prior seven days, by August 5, 2019; and for the applicant to provide final written argument by August 12, 2019.

On August 12, 2019, the City Council conducted deliberations and voted to affirm the decision of the Planning Administrator, approving the consolidated application subject to conditions of approval in the June 6, 2019 decision.

The 120-day State mandated deadline for final decision is October 11, 2019.

#### **1. Salem Area Comprehensive Plan (SACP)**

Land Use Plan Map: The subject property is designated "Single Family Residential" on the Salem Area Comprehensive Plan Map.

Urban Growth Policies: The subject property is located inside the Salem Urban Growth Boundary and inside the corporate city limits.

Growth Management: The subject property is located inside the City's Urban Service Area. Pursuant to the Urban Growth Management requirements

contained under SRC Chapter 200, an Urban Growth Preliminary Declaration is therefore not required in conjunction with the proposed subdivision.

## 2. Zoning

The subject property is zoned RS (Single Family Residential). The zoning of surrounding properties is as follows:

Zoning of Surrounding Properties	
North	RS (Single Family Residential)
South	Across Salem Heights Avenue S – RS (Single Family Residential)
East	RS (Single Family Residential)
West	RS (Single Family Residential)

## 3. City Department Comments

- A. **Salem Fire Department.** The Salem Fire Department reviewed the proposal and indicated they have no issues with the proposed subdivision, but will have requirements for Fire Department access with NO PARKING FIRE LANE signs.

**Finding:** The proposed subdivision includes a flag lot accessway. The flag lot accessway serves proposed Lots 4, 5 and 6 and conforms to the flag lot accessway standards under SRC 800.025(c). In order to ensure adequate Fire Department access, the tentative subdivision plan approval is conditioned to require “NO PARKING – FIRE LANE” signs to be posted on both sides of those segments of the flag lot accessways that serve as fire apparatus roadways.

- B. **Public Works Department.** The City of Salem Public Works Department, Development Services Section, reviewed the proposal and provided comments and recommendations for plat approval.

## 4. Public Agency and Private Service Provider Comments

- A. **Portland General Electric (PGE).** PGE reviewed the proposal and indicated that development costs will be determined by current tariff and service requirements and that a 10-foot-wide public utility easement (PUE) is required on all front street lots.
- B. **Salem-Keizer School District.** The school district did not provide comments concerning the proposed application.

## 5. Neighborhood Association Comments and Public Comments

The subject property is located within the Southwest Association of Neighbors (SWAN) neighborhood association. Notice of the application was provided to the neighborhood association, pursuant to SRC 300.520(b)(1)(B)(iii), which requires

public notice to be sent to any City-recognized neighborhood association whose boundaries include, or are adjacent to, the subject property.

All property owners within 250 feet of the subject property were mailed notification of the proposed subdivision. Comments from 26 property owners within the vicinity of the subject property, members of the public at large and SWAN were submitted prior to the close of the public comment period deadline. Concerns and opposition received can be summarized into the following main categories:

A. **Safety of Salem Heights Avenue.** The majority of the comments submitted express concern about the safety of Salem Heights Avenue and the impact of adding traffic from 34 additional lots onto a narrow and under-improved collector street that is already heavily trafficked by vehicles and pedestrians. Specific concerns raised relating to vehicular, bike, and pedestrian safety on Salem Heights Avenue include the following:

- Narrowness of roadway;
- Lack of sidewalks and bike lanes;
- Prevalent speeding with few speed limit signs to indicate the maximum 25 mph speed limit;
- Poor visibility at the crest of the steep hill and increase in grade; and
- Limitation of driveways to Salem Heights Ave

Comments received expressed the need for sidewalks on both sides of Salem Heights along its full length as well as traffic calming measures, such as speed bumps, to slow vehicle traffic.

**Finding:** Residential development of properties on Salem Heights Avenue in previous decades did not include the level of street improvements currently required for development. As such, as properties were partitioned, subdivided, or developed in the past, the roadway was not widened and sidewalks were not provided as currently required.

As indicated in the comments from the Public Works Department, Salem Heights is an under-improved collector street that does not meet current standards for right-of-way and improvement widths, curbs, and sidewalks. In order to conform to the City's Transportation System Plan (TSP) and the street improvements required in conjunction with subdivisions under SRC Chapter 803 (Streets and Right-of-Way Improvements), all streets within and abutting the proposed subdivision will be required to conform to TSP standards for right-of-way and improvement width, including provision of sidewalks. On Salem Heights Avenue, additional right-of-way will be required to be dedicated along the property's frontage and the street will be widened to accommodate a half-street improvement which will include a sidewalk and bike lane.

Improvement of Salem Heights Avenue along the frontage of the property and construction of the internal streets within the subdivision will increase the number of streets with sidewalks in the vicinity, and fill in gaps in the existing pedestrian network. These new streets will partially address the existing lack of bicycle and pedestrian connections. Because the proposed subdivision will not generate



sufficient traffic volumes to require a Traffic Impact Analysis (TIA) under SRC 803.015, off-site mitigation to the existing transportation system is not warranted as a condition of the proposed development. Regarding the installation of speed bumps to slow the speed of traffic, because Salem Heights Avenue is a collector street speed bumps are not allowed. The proposal contains four new driveways onto Salem Heights Avenue, which have been reviewed by the City Traffic Engineer for safe turning movements.

- B. Traffic Impact Analysis.** Comments indicate that a traffic impact analysis (TIA) should have been required because although Salem Heights Avenue S is designated as a collector street, it does not meet the requirements for a collector street. The comments assert that the City cannot treat Salem Heights Avenue as a collector street for purpose of determining whether a traffic impact statement is required when, in fact, it does not meet the requirements for a collector street. Comments indicate that the 1,000 trip per day threshold for requiring a traffic impact statement on collector streets assumes that collector streets are in fact collector streets and can handle a 1,000 trip per day increase in traffic without endangering lives. Comments assert that this is not the circumstance with Salem Heights Avenue because, in fact, it does not meet the safety requirements of a collector street, is a highly dangerous street, and any increase in traffic upon it directly threatens lives.

Comments also assert that a TIA was required pursuant to SRC 803.015(b)(2) that requires a TIA when the increased traffic resulting from the development will contribute to documented traffic problems.

**Finding:** The Public Works Department evaluated the proposed subdivision and submitted comments indicating that existing streets in the vicinity have adequate width for two-way vehicle traffic.

One of the many purposes of the City's TSP is to provide for a comprehensive system of streets that serve the mobility and multimodal travel needs of the Salem Urban Area. One of the ways this is implemented is through the establishment of a classification system for the City's streets based on the levels of traffic they are intended to accommodate as a result of existing and projected land use activities, the long-range mobility needs of the community, and how those streets function in terms of geographic location in relation to other streets in the City's transportation system network.

The particular classification assigned to a street under the TSP affects the applicable standards which apply to it within the City's Unified Development Code and, in this case, the minimum average daily vehicle trip threshold applicable under SRC 803.015 to require a TIA.

City Council acknowledges that Salem Heights Avenue does not currently meet collector street standards, however City Council cannot consider it as one classification of street for purposes of determining whether a TIA is required while considering it as another classification for purposes of applying standards or requiring specific improvements.

As part of the application submittal, the applicant provided a trip generation estimate on a form provided by the Public Works Department. Based on the number of lots included within the subdivision, the City Traffic Engineer determined that the proposed subdivision will result in a net increase of 345 average daily trips. Because Salem Heights Avenue is designated as a collector street under the TSP, the net increase of 345 average daily trips does not exceed the 1,000 trip threshold to require a TIA.

Though Salem Heights does not currently meet collector street standards, City Council cannot ignore its classification under the TSP and apply a standard that applies to a lower classification of street. In order to apply a different standard to Salem Heights, the TSP would have to be amended to lower the classification of the street from a collector street to a local street. Additionally, City Council concludes that SRC 803.015(b)(2) does not apply in this instance, because the evidence shows a lack of documented traffic problems, and that the development will not significantly contribute to existing traffic, based on the current accident rates, traffic volumes, or speed.

The proposed subdivision will, however, result in a boundary street improvement of Salem Heights Avenue along the frontage of the subject property to collector street standards and the extension of new local streets through the subdivision in conformance with current standards for vehicle, pedestrian, and bicycle facilities. These streets will connect to existing streets and fill in gaps within the current street network. Because the proposed development will not generate traffic volumes sufficient to require a traffic impact analysis under SRC 803.015, off-site mitigation to the existing transportation system is not warranted as a condition of the proposed development.

**C. Impact of Increased Traffic on Adjacent Streets.** Several comments received express concern with increased traffic in the vicinity as a result of the subdivision. Specific concerns raised regarding traffic and impacts on adjacent streets include the following:

- Traffic from subdivision will filter onto streets in the surrounding neighborhood;
- Salem Heights Avenue and Liberty Road and Madrona Avenue and Liberty Road;
- During standard commute times traffic at the intersection of Salem Heights Avenue and Liberty Road is already heavy and backs up;
- Traffic from an additional 37 lots will make traffic much heavier in an area that is already over-used on a daily basis.
- A Traffic Impact Analysis (TIA) is needed for the proposed subdivision to evaluate its impact on streets and intersections in the area.

**Finding:** The Public Works Department has evaluated the proposal and submitted comments indicating that existing streets in the vicinity have adequate width for two-way vehicle traffic. The proposal will result in a boundary street improvement of Salem Heights Avenue and the extension of new local streets through the

subdivision in conformance with current standards for vehicle, pedestrian, and bicycle facilities. These streets will connect to existing streets and fill in gaps within the current street network. The City Traffic Engineer has determined that the proposed development does not generate traffic volumes sufficient to require a traffic impact analysis pursuant to SRC 803.015; therefore, off-site mitigation to the existing transportation system is not warranted as a condition of the proposed development. Additional traffic concerns are addressed below under the Subdivision criteria.

- D. Street System In and Adjacent to Subdivision Is Not Compatible and Does Not Provide Convenient Bicycle/Pedestrian Access.** Comments submitted indicate, in summary, that Salem Heights is narrow, does not have sidewalks, and is already very dangerous to bicyclists and pedestrians. The increased traffic from and through the proposed subdivision will substantially exacerbate what is already a very dangerous situation because the tentative plan does not propose a sidewalk down to Liberty Street or road widening to facilitate safe pedestrian and bicycle access to schools, shopping areas, parks, and employment centers that may otherwise be accessed from walking at the sidewalks beginning on Liberty Street.

Comments submitted claim that the light at Salem Heights and Liberty are already very congested and dangerous during peak hours; there is no separate turn lane on Liberty Street and the flow of traffic is already greatly impeded by people trying to turn onto Salem Heights from Liberty Street; and with the additional traffic coming from and through the proposed subdivision, the congestion and danger will be substantially increased by the Tentative Plan.

**Finding:** As addressed below, the proposed subdivision includes a network of internal streets, improvements to boundary streets at the perimeter of the subject property, and connections to existing streets in the vicinity to improve traffic circulation in the area by providing additional street connectivity. The internal street system is supplemented by a private flag lot accessways providing vehicular access to three flag lots (Lots 4, 5 and 6) off Salem Heights.

The subdivision, as proposed and conditioned, is served with adequate transportation infrastructure in conformance with the Salem Transportation System Plan (TSP).

In addition, though existing bicycle and pedestrian access in the vicinity is limited, the proposed subdivision will incrementally improve access between the subject property and adjacent residential areas, transit, and neighborhood activity centers by improving Salem Heights Avenue along the frontage of the property as well as extending local streets through the property to connect to other existing streets on the perimeter of the property. The required boundary street improvement of Salem Heights Avenue will include a sidewalk and bike lane and the internal streets proposed to be extended through the development will include sidewalks.

The sidewalk and bike lane improvements required with the development will help to improve safe and convenient bicycle and pedestrian access in an area where it

is currently limited by the existing development pattern on surrounding properties and under-improved streets. The proposal, as conditioned, satisfies the applicable subdivision approval criteria.

- E. **Alternative Street Standard.** Comments were submitted that the request for an alternative street standard for Earhart Street and Felton Street should be denied. The comments indicate that the applicant has not adequately addressed the need for an alternative to the standard.

**Finding:** Findings evaluating the alternative street standard requested by the applicant in conjunction with the proposed subdivision are included under Section 7 of this decision. As indicated in the findings under those sections, the requested alternatives are due to physical constraints associated with the property and the need to address the extension of three streets, in a relatively confined area, that were previously extended to the northern boundary of the subject property for future extension.

- F. **Tree Removal.** Several comments received express concern regarding the removal of trees, including significant Oregon White Oaks, which will be required to accommodate the proposed subdivision. Specific concerns raised regarding tree removal include:

- Removal of 122 trees is a big change for neighborhood.
- The removal of the oak trees along Salem Heights Avenue; and
- Removal of significant Oregon White Oaks

**Finding:** Tree preservation and removal in conjunction with proposed subdivisions is regulated under the City's tree preservation ordinance (SRC Chapter 808). As required under SRC Chapter 808, the applicant submitted a tree conservation plan in conjunction with the proposed subdivision that identifies a total of 129 trees on the property, nine of which are significant oaks.

Of the 129 total trees existing on the property, the proposed tree conservation plan identifies 54 trees (41.9%) for preservation and 75 trees (58.1%) for removal. Of the 75 trees proposed for removal, five are significant oaks which the applicant has identified for removal based on their location within either the future building envelopes of lots (*applicable to two of the five significant oaks*) or adjacent to required street and/or sidewalk improvements (*applicable to three of the five significant oaks*).

The proposed tree conservation plan preserves 41.9 percent of the existing trees on the property, therefore exceeding the minimum 25 percent preservation requirement under SRC Chapter 808. In addition, though five of the nine existing significant oaks on the property are proposed to be removed, their removal is necessary because of no reasonable design alternatives that would enable their preservation. The tree conservation plan is being reviewed and, if approved, will be binding on the lots until final occupancy is granted for the construction of dwelling units on the lots.

In addition to the trees located on the subject property, there are also nine trees located within the existing right-of-way on the north side of Salem Heights Avenue S, including four significant oaks. Pursuant to the tree preservation ordinance (SRC Chapter 808), tree conservation plans are required to identify and preserve the minimum required number of trees on the property. Because the nine trees located within the existing right-of-way of Salem Heights Avenue are not located on the property, they are not subject to the provisions of SRC Chapter 808 and are not counted toward the total number of trees on the site. These trees are instead considered trees on City owned property and subject to the provisions of SRC Chapter 86. Based on the current under-improved width of Salem Heights Avenue, four (two significant oaks) of the nine existing trees within the right-of-way will likely need to be removed to accommodate the required widening, sidewalk installation, and grading associated with the improvement of Salem Heights.

As noted, trees labeled as 20006- 20009, 20011- 2014, 20040, 20041, 10008 - 10011, 10013 – 10015 in Attachment C will be future street trees and are conditioned for preservation. Any proposal for removal of additional street trees will be required to obtain a permit for removal pursuant to SRC 86.090.

- G. Impact on Neighborhood Character and Adjacent Properties.** Several comments received expressed concern about the impact the proposed subdivision will have on adjacent properties and the character of the existing neighborhood due to a higher density development with smaller lots sizes and homes which are inconsistent with the sizes of lots and homes in the surrounding area.

**Finding:** The single family dwelling parcels proposed within the subdivision range from approximately 5,251 square feet to approximately 22,034 square feet in size, which exceeds the minimum lot size requirement of 4,000 square feet. Their size and layout is consistent with the expected development pattern of properties in the “Single Family Residential” Comprehensive Plan Map designation and RS (Single Family Residential) zone. There is no approval criterion or development standard which requires single family residential lots to resemble adjacent existing developments. Goal E.b (Residential Development) of the Salem Area Comprehensive Plan (SACP) states that “residential development shall provide housing opportunities for Salem’s diverse population.” Variation of lot sizes is one means of providing diversity of housing opportunities within the detached single family residential submarket.

- H. Loss of Wildlife Habitat and Open Space.** Several comments received express concern regarding the loss of wildlife habitat and open space that will result from the clearing and development of the property and suggest that rather than it being developed as a subdivision it should be donated to the City for creation of a new park.

**Finding:** In regards to impacts to wildlife habitat, the subject property has not been identified as a significant wildlife habitat by state wildlife management agencies or by the City. The subject property is located within the Urban Growth Boundary and incorporated limits of the City of Salem, and has been designated on the City of Salem Comprehensive Plan Map as “Single Family Residential,” which anticipates existing or future residential development similar to the

subdivision proposed by the applicant. Loss of wildlife habitat that has not been identified as significant is not a criterion under the Salem Revised Code for granting or denying a phased tentative subdivision approval.

In regards to impacts on open space, the Salem Area Comprehensive Plan has adopted goals, policies, and plan map designations to protect identified open space areas. The subject property has not been identified as a natural open space area. Instead, the Comprehensive Plan Map designates the subject property as "Single Family Residential," and the site has been zoned RS (Single Family Residential). While currently undeveloped, the subject property is located within an already developed residential area within the corporate limits of the City of Salem, and changes to the landscape from future residences in the proposed subdivision are not expected to exceed what would occur from the presumed development of land within the City zoned for single family residential development.

In regards to the property being developed as a park, comments from the Public Works Department indicate the Candelaria Reservoir is an undeveloped park approximately one-half mile northwest of the proposed development and Salem Heights Elementary is a partially developed park area approximately one-quarter of a mile southeast of the proposed development. The Public Works Department also indicates that the Parks Master Plan shows that a potential park site NP-6 was identified near the subject property. However, park site locations are approximate as described on page 73-80 of the plan which provides:

"Locations are mapped to show generally where a park or trail may be located; however, feasible park sites may not be available within the area shown. The actual location will be determined based on a combination of factors, including land availability and cost. Park site selection and development will proceed as neighborhoods develop."

The Public Works Department indicates that no park is proposed within the subject property at this time.

- I. **Impact on Property Values.** Comments received expressed concern that property values will be negatively impacted by the proposed development due to the very small lot sizes and small houses that will likely be constructed on the lots.

**Finding:** Effect on property values is not a criterion under the Salem Revised Code for granting or denying a tentative subdivision approval. The proposal for single family residential development is consistent with the "Single Family Residential" Comprehensive Plan Map designation and RS (Single Family Residential) zone of the subject property. As described above, SACP goal E.b (Residential Development) aims to provide housing opportunities for a diverse population. As such, while SACP goals encourage a diversity of housing property values, the Salem Revised Code neither directly nor indirectly regulates such property values.

- J. **Impact of Stormwater Runoff.** Comments received express concern about potential stormwater and drainage impacts on properties and the need to use permeable street and sidewalk materials.

**Finding:** As described in further detail in findings included under Section 9 of this decision regarding compliance with the standards set forth in SRC Chapter 71 (Stormwater), the proposed subdivision is required to meet flow control requirements which limit runoff to levels not exceeding pre-existing conditions. As required under Condition 4 of the tentative subdivision plan approval, the applicant is also required to provide an engineered tentative stormwater design to accommodate new impervious surface in the right-of-way and on all proposed lots.

In order to address stormwater management requirements within the subdivision, a 9,699 square-foot lot within the subdivision, Lot 34, is proposed to be dedicated to the City for stormwater management purposes.

- K. **Urban Growth Preliminary Declaration.** Comments submitted assert that an Urban Growth Preliminary Declaration (UGA) should have been required in connection with the subdivision because the proposed subdivision is located within the City's Urban Service Area but precedes City construction of "required facilities." The new sidewalk/infill provided for along Salem Heights in the Pedestrian System Element of the Salem Transportation System Plan is a "required facility" and therefore an Urban Growth Preliminary Declaration is required notwithstanding the fact that the proposed subdivision may be within the Urban Service Area.

**Finding:** The Urban Service Area (USA) is comprised of two distinct areas: (1) the boundary formerly called the "Current Developed Area" (CDA) prior to the establishment of the USA; and (2) boundaries added to the CDA through USA amendments pursuant to SRC 200.015. In SRC 200.010 and SRC 200.015, consideration is given to amend the USA boundary based on availability of and city construction of required facilities to serve properties in the USA. In other words, USA amendments can be made only when infrastructure is available to serve the area or when funds are committed to serve the area.

That USA amendment process is the context of the phrase "precedes city construction of required facilities" in SRC 200.010(c) and SRC 200.020(a). In particular, SRC 200.020(a) states, "or is within the urban service area (USA), but precedes city construction of required facilities that are shown in the adopted capital improvement plan, public facilities plan or comparable plan for the area of the development." This language is a direct reference to the capital improvement planning process as described in SRC 200.015 for USA amendments.

Therefore, UGA permits are not required for areas within the original CDA boundary because that area was not subject to the USA amendment criteria in SRC 200.015. Because there is no "city construction of required facilities" pursuant to SRC 200.015, then no UGA permit is required.

- L. **Subdivision Impedes Use, Development, Livability, and Value of Adjacent Property.** Comments submitted indicate, in summary, that surrounding properties consists of a large lots and the proposed smaller lot sizes will impact the livability of the adjacent property owners. The value of their property is derived predominately from the relative solitude and privacy it currently possesses, and the exiting trees and wildlife in the area.

Comments assert that the tentative plan will have a very substantial impact on the livability of their property which they cannot self-mitigate, and it will devalue their property. It is asserted that the devaluing of their property in this manner will have a very significant impact on the use and development of their property.

**Finding:** Single family dwelling parcels proposed within the subdivision range from approximately 5,251 square feet to approximately 29,771 square feet in size, which exceeds the minimum lot size requirement of 4,000 square feet. Their size and layout is consistent with the expected development pattern of properties in the “Single Family Residential” Comprehensive Plan Map designation and RS (Single Family Residential) zone. There is no approval criterion or development standard which requires single family residential lots to resemble adjacent existing developments. Goal E.b (Residential Development) of the Salem Area Comprehensive Plan (SACP) states that “residential development shall provide housing opportunities for Salem’s diverse population.” Variation of lot sizes is one means of providing diversity of housing opportunities within the detached single family residential submarket.

In addition, effect on property values is not a criterion under the Salem Revised Code for granting or denying a tentative subdivision approval. As previously indicated, the proposal for single family residential development is consistent with the “Single Family Residential” Comprehensive Plan Map designation and RS (Single Family Residential) zoning of the subject property. As described above, SACP goal E.b (Residential Development) aims to provide housing opportunities for a diverse population. As such, while SACP goals encourage a diversity of housing property values, the Salem Revised Code neither directly nor indirectly regulates such property values.

Comments raised during the proceeding related to private property rights were not directed to specific criteria, and Council finds that the comments are not applicable to the approval criteria, and may not be addressed in this decision.

- M. **Adjustment does not Meet Approval Criteria.** Comments submitted express concern that the requested adjustment does not meet the approval criteria and that instead of approving adjustments for the lots, other lot sizes should be increased to allow the homes on the lots to meet standards.

**Finding:** Findings evaluating the Class 1 and Class 2 Adjustments requested by the applicant in conjunction with the proposed subdivision are included under Sections 10 and 11 of this decision. As indicated in the findings under those sections, the requested Class 1 and Class 2 Adjustments are minimal in scope and allow only minor deviations from standards whose underlying purposes are



otherwise met by the proposed development. The cumulative effect of the adjustments do not result in a project which is inconsistent with the overall purpose of the RS zone or the "Single Family Residential" designation of the Salem Area Comprehensive Plan.

- N. **Construction Noise and disturbance.** Comments were received about the noise and disturbance of all construction activities.

**Finding:** Noise disturbances are prohibited by SRC Chapter 93, and construction activities are specifically limited to the hours of 7 a.m. to 10 p.m. by SRC 93.020(d). The level of allowable noise during construction activities is also limited by state law. SRC 93 also prohibits idling engines on motor vehicles in a manner that is plainly audible within any dwelling unit for more than 10 minutes between the hours of 10 p.m. and 7 a.m.

The subject property is located within an already developed area within the corporate limits of the City of Salem, and noise impacts from future residences in the proposed subdivision are not expected to exceed what would occur from the presumed development of land within the City zoned for single family residential development. Approval criteria for a tentative subdivision plan do not specifically address noise levels, and no evidence has been provided that would indicate that the proposed development in the vicinity would interfere with the safe and healthful use of neighboring properties.

SRC Chapter 51 also regulates noise levels, and the proposed development is subject to these regulations. Specifically, SRC 51.015 provides maximum sound levels based on the source and receiver of the sound. It is unlawful to exceed the maximum sound levels without an event sound permit. The Neighborhood Enhancement division of the Community Development Department enforces these noise regulations.

- O. **Existing easement to Single Family Dwelling.** Comments were submitted concerning the developer's request to relocate or eliminate an easement serving an off-site dwelling.

**Finding:** The existing easement is a civil matter between two property owners.

- P. **Historic Terrain and Cemetery.** Comments submitted express concern about historic terrain and cemetery near and on the subject property.

**Finding:** St. Barbara's Catholic Cemetery is located at 083W03BB00300 and is approximately half of a mile away, to the northeast of the proposed Wren Heights Subdivision on Liberty Rd. S. The cemetery is not designated as a Salem Historic Resource, therefore, SRC 230 does not apply to any proposed alterations. However, no alterations are proposed to the cemetery as part of the subdivision proposal, therefore there will be no direct adverse impact to the cemetery as a result of its development. Indirect effects, such as the impacts of traffic congestion upon designated historic resources, are typically evaluated as part of federally funded transportation projects, or projects that trigger review under Section 106 of

the National Historic Preservation Act. There is no federal nexus for this proposal, therefore review and analysis under Section 106 of the National Historic Preservation Act is not applicable to the evaluation of this proposal.

- Q. **Barricade at Doughton Street and Salem Heights.** Testimony was received requesting that the applicant provides a barricade on Doughton Street at its intersection with Salem Heights Ave S, or that City Council condition the application to require the barricade. City Council finds that no evidence has been submitted that shows that a barricade would alleviate the traffic concerns and that additionally, it would violate numerous sections of the SRC as listed below.

#### Conditions of Approval

Conditions of approval are used to protect the public and adjacent property owners from adverse impacts resulting from development. Pursuant to SRC 300.820, conditions are to be used to ensure conformance with the applicable development standards and criteria of the Code.

City Council found that a condition of approval could not be placed on a land use action that would substantially modify a proposal. The appellant's request to barricade Doughton Street would be a substantial modification to the application and therefore could not be considered as part of the current application. Additionally, conditions are used to bring an application into conformance with a standard or policy. City Council found that requiring a barricade would take a proposal that currently complies with adopted City policy and codes and change it to a development that does not comply.

#### Subdivision Standards

Salem Revised Code (SRC) 803.035(a), requires that all subdivisions provide connectivity to all existing streets abutting the subject property. The proposed subdivision is making connections to all four existing streets, including Salem Heights Ave S. City Council finds that the current proposal meets the connectivity standard of SRC 803.035(a) and placing a barricade at Salem Heights would not meet SRC 803.035.

#### Adequate Public Notice

City Council finds that altering the proposed subdivision to eliminate the connection to Salem Heights Ave S substantially changes the subdivision application. Adequate public notice to those surrounding property owners, especially to the north and the Neighborhood Association has not been provided.

As testimony has been provided by the applicant's traffic engineer and the Assistant City Traffic Engineer, the proposed traffic would be dispersed between trips to the north and trips to the south (Salem Heights Ave S). If Doughton Street is barricaded, all trips will be forced north via Felton Street, and Doughton Street.

Traffic Impact Analysis (TIA) Requirement:

City Council finds that if Doughton Street S did not connect to Salem Heights Ave S, there would be 27 lots that will only be able to access the transportation system via Missouri Ave S. Missouri Ave is classified as a local street. The 27 lots would be expected to generate 255 daily trips to the transportation system. Salem Revised Code 803.015(b) states: "The applicant shall provide a traffic impact analysis if one of the following conditions exist: (1) The development will generate 200 or more daily vehicle trips onto a local street or alley . . ." If Doughton Street was blocked from access to Salem Heights Ave S a Traffic Impact Analysis (TIA) would be required by Code.

## **6. Criteria for Granting a Tentative Subdivision**

The Salem Revised Code (SRC), which includes the Unified Development Code (UDC), implements the Salem Area Comprehensive Plan land use goals, and governs development of property within the city limits. The subdivision process reviews development for compliance with City standards and requirements contained in the UDC, the Salem Transportation System Plan (TSP), and the Water, Sewer, and Storm Drain System Master Plans. A second review occurs for the created lots at the time of site plan review/building permit review to assure compliance with the UDC. Compliance with conditions of approval to satisfy the UDC is checked prior to Planning Administrator signing the final subdivision plat.

SRC Chapter 205.010(d) sets forth the criteria that must be met before approval can be granted to a subdivision request. The following subsections are organized with approval criteria shown in bold, followed by findings of fact upon which the City Council's decision is based. The requirements of SRC 205.010(d) are addressed within the specific findings which evaluate the proposal's conformance with the applicable criteria. Lack of compliance with the following criteria is grounds for denial of tentative plan or for the issuance of conditions of approval to more fully satisfy the criteria.

**SRC 205.010(d)(1): The tentative subdivision complies with all standards of this Chapter and with all applicable provisions of the UDC, including, but not limited to, the following:**

**(A) Lot standards, including, but not limited to, standards for lot area, lot width and depth, lot frontage, and designation of front and rear lot lines.**

**Lot Standards:** The property subject to the proposed subdivision is approximately 8 acres in size and zoned RS (Single Family Residential). The proposed subdivision creates a total of 34 lots ranging in size from approximately 5,251 square feet to approximately 22,034 square feet. Of the 34 lots proposed, one lot, Lot 34, will be dedicated to the City as a stormwater management facility. The remainder of the lots within the subdivision are intended for residential development.

The minimum lot standards of the RS zone are established under SRC 511.010(a), Table 511-2. A summary of those standards are identified in the following table:

<b>RS Zone Lot Standards <sup>1</sup></b>	
Lot Area ( <i>Single Family</i> )	Min. 4,000 sq. ft.
Lot Width	Min. 40 ft.
Lot Depth ( <i>Single Family</i> )	Min. 70 ft.
	Min. 120 ft. ( <i>Applicable to double frontage lots</i> )
	Max. 300% of average lot width
Street Frontage	Min. 40 ft. ( <i>Except for flag lots</i> )
<b>Notes</b>	
(1) All lot dimensions ( <i>e.g. lot area, width, depth, and street frontage</i> ) are required to be measured exclusive of any flag lot accessway per SRC 112.045(a)-(d).	

As shown on the applicant's tentative subdivision plan all of the proposed lots, with the exception of Lots 23, meet the minimum lot size, dimension, and street frontage standards of the RS zone.

**Lot 23 (Minimum Double Frontage Lot Depth):** Based on the proposed configuration of the subdivision, Lot 23 does not meet the minimum required 120-foot lot depth for a double frontage lot (*a lot which has frontage on a street adjacent to both its front and rear property lines*). Lot 23, located in the northeast portion of the subject property, is a double frontage lot with frontage on both the proposed extension of Doughton Street and the proposed turnaround of Earhart Street. In order to address the minimum double frontage lot depth requirement for this lot, the applicant has requested a Class 1 Adjustment in conjunction with the proposed subdivision to allow for the depth of this lot to be less than the minimum required 120 feet. Findings addressing the Class 1 Adjustment request for conformance with the applicable approval criteria are included under Section 8 of this decision.

All of the lots within the subdivision, including those requiring the Class 1 Adjustment, are suitable for the general purpose for which they are intended to be used, and each of the lots is of a size and design that will not be detrimental to the public health, safety, and welfare.

**Designation of Front Property Lines:** SRC 800.020(a) establishes the following provisions for designating the front property line for various types of lots:

- **Interior Lots.** For interior lots with frontage on only one street, the front property line shall be the property line abutting the street.
- **Corner Lots.** For corner lots, the front property line shall be the property line abutting a street designated by the building permit applicant, provided that lot dimension standards are met.

- **Double Frontage Lots.** For double frontage lots, the front property line shall be the property line abutting a street designed by the building permit applicant, provided that lot dimension standards are met.
- **Flag Lots.** For flag lots, the front property line shall be either the outside property line that is an extension of the flag lot accessway or the property line separating the flag portion of the lot from the lot between it and the street from which access is provided, unless the Planning Administrator otherwise directs.

The proposed subdivision includes a combination of interior lots, corner lots, double frontage lots, and flag lots. Based on the above identified requirements, the front property lines for the interior lots and corner lots within the subdivision will be determined as specified above.

In order to further clarify the front lot line designations for the proposed double frontage lots and flag lots within the subdivision, and to ensure that, based on the proposed lot configurations and location of existing structures, the proposed lots and structures on them meet applicable SRC requirements, except as otherwise may be allowed through a variance or adjustment, the following front lot line designations for will apply:

- ❖ Lot 4-6: The front lot line of Lots 4-6 shall be the south property line.
- ❖ Lot 15: The front lot line of Lot 15 shall be the west property line.
- ❖ Lot 16: The front lot line of Lot 16 shall be the west property line.
- ❖ Lot 23: The front lot line of Lot 23 shall be the east property line.
- ❖ Lot 33: The front lot line of Lot 33 shall be the west property line.

Designation of Front Lot Lines: SRC 800.020(a) establishes requirements for designating the front lot line for various types of lots. The proposed subdivision includes a combination of interior lots, corner lots, double frontage lots, and flag lots. In order to clearly designate the front lot lines for the proposed double frontage lots and flag lots within the subdivision and ensure that existing structures meet the applicable requirements of the SRC based on the proposed lot configurations, except as otherwise is proposed to be allowed through an adjustment, and the proposed orientation of the lots and corresponding setbacks establish a development pattern consistent with that of surrounding properties, the following condition of approval shall apply:

- Condition 1:** The front lot lines for the double frontage lots and flag lots within the subdivision shall be designated as follows:
- Lot 4-6: The front lot line of Lots 4-6 shall be the south property line.
  - Lot 15: The front lot line of Lot 15 shall be the east property line.
  - Lot 16: The front lot line of Lot 16 shall be the west property line.

- Lot 23: The front lot line of Lot 23 shall be the east property line.
- Lot 33: The front lot line of Lot 33 shall be the west property line.

The appellants argued that Lot 16 does not comply with SRC 800.020. The Planning Administrator’s decision had a scrivener’s error on page 16, which is corrected above. Lot 16 has adequate frontage and will take access from the western property line.

Flag Lots:

SRC 800.025 establishes the following development standards for flag lot accessways serving residentially zoned lots:

<b>Flag Lot Accessway Standards (Residential Zones)</b>		
	<b>1 to 2 Lots Served by Accessway</b>	<b>3 to 4 Lots Served by Accessway</b>
<b>Length</b>	150 ft. Max.	400 ft. Max.
<b>Width</b>	Min. 20 ft.	25 ft. Min.
<b>Paved Width</b>	Min. 15 ft.	20 ft. Min.
<b>Parking</b>	Not Allowed	Not Allowed
<b>Turnaround</b>	Required for flag lot accessways greater than 150 feet in length. <i>(Unless the buildings served by the flag lot accessway are equipped with approved automatic fire sprinkler systems or where geographic features make it impractical and an alternative means of fire protection is provided and approved by the Fire Marshal)</i>	

As shown on the applicant’s tentative subdivision plan, the flag lot accessway serving Lots 4, 5 and 6 is approximately 180 feet in length, and located within a 25-foot wide easement, in conformance with the standards for flag lot accessways serving up to four lots. Because the flag lot accessway is greater than 150 in width, a turnaround is required. As shown on the applicant’s tentative subdivision plan a turnaround is provided that meet Fire Department standards.

The applicant relocated the flag lot accessway after notice was sent to accommodate saving several trees which will be within the right-of-way of Salem Heights Street after dedication. The relocation did not substantially change the layout of the subdivision or lot sizes.

In order to ensure the proposed flag lot accessway serving Lots 4, 5 and 6 conforms to the requirements of SRC 800.205, the following condition of approval shall apply:

**Condition 2:** The flag lot accessway shall be paved in accordance with the requirements of SRC 800.025(c), Table 800-1. "NO PARKING—FIRE LANE" signs shall be posted on both sides of that segment of the flag lot accessway that is a fire apparatus roadway and

"NO PARKING" signs shall be posted on both sides of any remaining portion of the accessway.

Subsection (c) establishes standards for flag lots and flag lot accessways. Pursuant to SRC Chapter 800, Table 800-1, flag lot accessways serving 3 to 4 lots must be a minimum of 25 feet in overall width and must be paved to a minimum width of 20 feet. The accessway is proposed to serve Lots 4-6. Lots 1-3 abut the accessway and if used would exceed the allowed amount of lots to be served. The tentative plan show an easement width of at least 25-foot wide, with a 20-foot paved width. To ensure the standard is met the following condition shall apply:

**Condition 3:** Proposed Lots 1-3 shall not have access to the flag lot accessway serving Lots 4-6.

**(B) City Infrastructure Standards:**

The Public Works Department reviewed the proposal for compliance with the City's public facility plans pertaining to provision of streets, water, sewer, and storm drainage facilities and determined that the proposed subdivision, with recommended necessary conditions of approval, conforms to the requirements of SRC Chapter 71 (Stormwater), SRC Chapter 802 (Public Improvements), SRC Chapter 803 (Streets and Right-of-Way Improvements), and the Public Works Design Standards (PWDS). While SRC Chapter 205 does not require submission of public construction plans for City infrastructure prior to tentative subdivision plan approval, it is the responsibility of the applicant to design and construct required City infrastructure to serve the proposed development prior to final plat approval without impeding service to the surrounding area.

A summary of the existing and required City infrastructure improvements are as follows:

SRC Chapter 71 (Stormwater): The proposed subdivision is subject to the stormwater requirements of SRC Chapter 71 and the revised Public Works Design Standards (PWDS) adopted in Administrative Rule 109, Division 004. These requirements limit runoff from the development to levels not exceeding pre-existing conditions.

The Public Works Department indicates that existing stormwater facilities in the area include a 10-inch main located on adjacent property along the east boundary of the subject property.

The proposed development is subject to SRC Chapter 71 and the revised PWDS as adopted in Administrative Rule 109, Division 004. To demonstrate the proposed lots can meet the PWDS, the applicant shall provide an engineered tentative stormwater design to accommodate future impervious surface on all proposed lots.

In order to demonstrate that the proposed lots within the subdivision can meet the PWDS, the following condition of approval shall apply:

**Condition 4:** Design and construct stormwater facilities pursuant to SRC Chapter 71 and Public Works Design Standards.

The appellants argue that the application lacks substantial evidence to comply with the City's Stormwater regulations.

Applicant has submitted a grading and drainage plan showing the location of all existing and proposed water, sewer and stormwater lines. See Plan D in the record. Applicant submitted a preliminary drainage report as Appendix A to the Applications' narrative. Applicant plans to construct a 10-inch storm line with the improvements along Salem Heights Avenue and continue down Doughton Street where it will connect to an existing 12-inch storm line located in an easement at the northeast corner of the Subject Property.

Applicant has designated a storm water treatment and detention facility to be located on Lot No. 34. See Plan C in the record. Applicant plans to extend existing water service through the Subject Property from an 8-inch water line located within Salem Heights Avenue through the proposed public streets and individual laterals and tie into an existing 6-inch line located within an easement located adjacent to the Subject Property's east property line. A 10-inch sanitary sewer line is located within Doughton Street and will be extended through the proposed public street and individual laterals to construct each parcel. Applicant has prepared and submitted a letter from engineer Keith Whisenhunt, PE, PLS (the "Feasibility Letter") indicating that Applicant can feasibly build all public infrastructure elements in compliance with the City's standards.

As conditioned, the proposal meets the requirements of SRC Chapter 71.

SRC Chapter 802 (Public Improvements): SRC 802.015 requires development to be served by city utilities designed and constructed according to all applicable provisions of the Salem Revised Code and Public Works Design Standards (PWDS). Specifications for required public improvements are summarized in the comments provided by the Public Works Department.

In summary, the Public Works Department indicates that water and sewer infrastructure is available along the perimeter of the site and appears to be adequate to serve the proposed subdivision as shown on the applicant's preliminary utility plan; however, the existing sewer main in Salem Heights Avenue is in poor condition and may not be able to accommodate new connections.

The applicant's preliminary plan appears to propose realignment of the existing public sewer main along the west line of the subject property. The applicant shall abandon the existing sewer system abutting Felton Street S, where all service laterals can be reconnected to the new public sewer main.



All public and private City infrastructure proposed to be located in the public right-of-way shall be constructed or secured per SRC 205.035(c)(6)(B) prior to final plat approval. Any easements needed to serve the proposed parcels with City infrastructure shall be shown on the final plat.

In order to ensure that appropriate City infrastructure is provided to serve the proposed subdivision, the following conditions of approval shall apply:

**Condition 5:** Construct water and sewer systems to serve each lot.

As conditioned, the proposed subdivision conforms to the public improvement standards of SRC Chapter 802.

SRC Chapter 803 (Street and Right-of-Way Improvements): The subject property is located on Salem Heights Avenue S and three existing dead-end streets, Felton Street S, Earhart Street S, and Doughton Street S, terminate at the northern boundary of the property. Salem Heights is designated as a collector street under the City's TSP. Felton Street, Earhart Street, and Doughton Street are designated as local streets.

The Public Works Department indicates that Salem Heights has an existing 20-foot-wide improvement within a varied 40-foot to 50-foot-wide right-of-way adjacent to the subject property. The standard for a collector street is a 34-foot wide improvement within a 60-foot-wide right-of-way.

Felton Street, Earhart Street, and Doughton Streets all have an existing 30-foot-wide improvement within a 50-foot-wide right-of-way. The standard for a local street is a 30-foot-wide improvement within a 60-foot-wide right-of-way.

Pursuant to SRC 803.065(a)(3), the Director may authorize the use of one or more alternate street standards where topography or other conditions make the construction that conforms to the standards impossible or undesirable. All internal streets will be constructed to Local Street standards as specified in the Salem TSP, with the exception of the following alternative street standards:

- The proposed turnaround at the terminus of Earhart Street S does not conform to the cul-de-sac standards in SRC Chapter 803. The alternative turnaround provides radii that accommodate for street cleaning equipment and Fire Department access. Based off the existing topography and circulation through the subdivision an alternative turnaround is approved.
- The applicant is requesting an alternate sidewalk location for the west side of Felton Street S along the north/south portion, to allow for curblin sidewalks pursuant to SRC 803.035(l)(2)(B). The applicant has not provided adequate evidence that an alternative street standard is needed. The applicant shall be required to construct the sidewalk so that the back of walk is located 28.5 feet from centerline pursuant to the

Local street standard. Additional right-of-way is located behind the proposed sidewalk location to provide for transition to existing grade.

Street improvements along Salem Heights Avenue S may require removal of one or more street trees. The applicant has applied for removal of labeled 10001 – 10004, and 10012 on the plan attached (Attachment C). A Reasonable Alternatives Analysis pursuant to Administrative Rule 109-500-2.4 has been tentatively approved to remove trees labeled 10001 – 10004, and 10012. The approval is in conjunction with the proposed street improvements, and the sidewalk location north of trees proposed for preservation (trees labeled in Attachment C as 2006- 20009, 20011- 2014, 20040, 20041, 10008 - 10011, 10013 – 10015). As conditioned below, a tree preservation and protection plan pursuant to SRC Chapter 86 and Salem Administrative Rule 109-500, and signed by a certified arborist, shall be submitted for the preserved trees, to the City for review and approval prior to the issuance of Public Construction permits.

Any additional removal of future street trees (2006- 20009, 20011- 2014, 20040, 20041, 10008 - 10011, 10013 – 10015) shall require a new removal permit be granted pursuant to SRC 86.090.

SRC Chapter 803 (Streets and Right-of-Way Improvements) establishes standards for the development of streets located within and adjacent to the proposed subdivision. In order to ensure that the proposed streets within and on the boundary of the proposed subdivision conform to the applicable provisions of SRC Chapter 803 and the City's Transportation System Plan (TSP), the following conditions of approval shall apply:

- Condition 6:** Convey land for dedication of right-of-way adjacent to Salem Heights Avenue S to equal 30 feet from the centerline of Salem Heights Avenue S.
- Condition 7:** Construct a 17-foot-wide half-street improvement along the northern frontage of Salem Heights Avenue S to collector street standards. The street improvements are authorized to match the existing street grade up to a maximum of 12 percent grade, the sidewalk location west of Doughton Street S shall be located consistent with Attachment C and may be within an easement north of the property line to preserve existing trees.
- Condition 8:** Prior to issuance of public construction permits, obtain final approval for tree removal permits for trees labeled as 10001 – 10004, and 10012 identified in the plan submitted on May 7, 2019 and titled Trees within Right-of-Way Conservation Plan (Attachment C). Trees labeled as 10001 – 10004, and 10012 are tentatively approved for removal.

**Condition 9:** Prior to issuance of public construction permits, a tree preservation and protection plan pursuant to SRC Chapter 86 and Salem Administrative Rule 109-500, and signed by a certified arborist, shall be submitted for the identified preserved "Future Street Trees" (trees labeled as 20006-20009, 20011- 2014, 20040, 20041, 10008 - 10011, 10013 – 10015, show on Attachment C), to the City for review. Future Street Trees, identified above, shall be preserved. Any proposed removal of identified Future Street Trees (listed above) would require a separate removal permit pursuant to SRC 86.090.

**Condition 10:** Construct internal streets to Local Street standards as shown on the applicant's tentative plan, except as modified below:

- Along the north/south portion of Felton Street S, the sidewalk shall be constructed so that the back of walk is located 28.5 feet from centerline pursuant to the Local street standard.
- The alternative cul-de-sac turnaround design at the terminus of Earhart Street S is authorized as proposed on the applicant's tentative subdivision plan.

As conditioned, the proposal meets the requirements of SRC 803.040.

**(C) Any special development standards, including, but not limited to, floodplain development, special setbacks, geological or geotechnical analysis, and vision clearance.**

SRC Chapter 601 (Floodplain Overlay Zone): There are no waterways or mapped floodplain areas on the subject property; therefore, the requirements of SRC Chapter 601 (Floodplain Overlay Zone) are not applicable to the proposed subdivision.

SRC Chapter 808 (Preservation of Trees and Vegetation): The City's tree preservation ordinance (SRC Chapter 808) protects Heritage Trees, Significant Trees (*including Oregon White Oaks with diameter-at-breast-height of 24 inches or greater*), trees and native vegetation in riparian corridors, and trees on lots and parcels greater than 20,000 square feet. The tree preservation ordinance defines "tree" as, "any living woody plant that grows to 15 feet or more in height, typically with one main stem called a trunk, which is 10 inches or more dbh, and possesses an upright arrangement of branches and leaves."

Under the City's tree preservation ordinance, pursuant to SRC 808.035(a), tree conservation plans are required in conjunction with development proposals involving the creation of lots or parcels to be used for the construction of single family or duplex dwelling units, if the development proposal will result in the removal of trees.

The applicant submitted a tree conservation plan in conjunction with the proposed subdivision identifying a total of 129 trees on the property, nine of which are significant oaks. There are no heritage trees or riparian corridor trees and vegetation located on the property.

Of the 129 total trees existing on the property, the proposed tree conservation plan identifies 54 trees (41.9%) for preservation and 75 trees (58.1%) for removal. Of the 75 trees proposed for removal, five are significant oaks which the applicant has identified for removal based on their location within either the future building envelopes of lots (*applicable to two of the five significant oaks*) or adjacent to required street and/or sidewalk improvements (*applicable to three of the five significant oaks*).

The proposed tree conservation plan preserves 41.9 percent of the existing trees on the property, therefore exceeding the minimum 25 percent preservation requirement under SRC Chapter 808. In addition, though four of the nine existing significant oaks on the property are proposed to be removed, their removal is necessary because of no reasonable design alternatives that would enable their preservation. The tree conservation plan is being reviewed and, if approved, will be binding on the lots until final occupancy is granted for the construction of dwelling units on the lots.

In addition to the trees located on the subject property, there are also nine trees located within the existing right-of-way on the north side of Salem Heights Avenue S, including four significant oaks. Pursuant to the tree preservation ordinance (SRC Chapter 808), tree conservation plans are required to identify and preserve the minimum required number of trees on the property. Because the nine trees located within the existing right-of-way of Salem Heights Avenue are not located on the property, they are not subject to the provisions of SRC Chapter 808 and are not counted toward the total number of trees on the site. These trees are instead considered trees on City owned property and subject to the provisions of SRC Chapter 86. Based on the current under-improved width of Salem Heights Avenue, the four (two significant oaks) of the nine existing trees within the right-of-way will likely need to be removed to accommodate the required widening, sidewalk installation, and grading associated with the improvement of Salem Heights.

As noted, trees labeled as 20006- 20009, 20011- 2014, 20040, 20041, 10008 - 10011, 10013 – 10015 in Attachment C will be future street trees and are conditioned for preservation. Any proposal for removal of additional street trees will be required to obtain a permit for removal pursuant to SRC 86.090.

The appellant argues that the applicant cannot satisfy the City development standard because it has not feasibly when that it can satisfy SRC Chapter 86 which regulates trees on City-owned property and requires a removal permit to remove any such trees.

The appellant's comments pertain to future street trees – not trees within the Subject Property. SRC 86.090(8) sets out the criteria for removing City Trees. SRC 86.090(8) provides that "the Director may permit the removal of a City tree

due to construction if there is no reasonable alternative. The applicant shall be required to bear all cost of the tree's removal and replacement." The Planning Administrator found that street improvements along Salem Heights Avenue may require removal of one or more street trees and tentatively approved removal of trees labeled 10001-10004 and 10012, and tentatively approved the Reasonable Alternatives Analysis submitted by Applicant. Applicant submitted a tree preservation plan, which is incorporated into the Decision and is binding on the Subject Property.

For the removal of any additional future street trees, a new removal permit is required to be granted pursuant to SRC 86.090. The future street trees will likely need to be removed to accommodate widening, sidewalk installation, and grading associated with improvement of Salem Heights Avenue in accordance with the plans submitted into the record. The Applicant has submitted a tree plan with comments and signed by a certified arborist. See Plan F in the record. Applicant's proposed tree conservation plan preserves 41.9% of the existing trees on the Subject Property, well exceeding the minimum 25% preservation requirement set out in SRC Chapter 808.

In addition to SRC 86.090(8), a City tree can also be removed based on SRC 86.090(9) provides that the "Director may permit the removal of a City tree if the tree is having an adverse effect on adjacent infrastructure and that effect cannot be mitigated by pruning, reasonable alternative construction techniques, or accepted arboricultural practices."

SRC Chapter 809 (Wetlands): Grading and construction activities within wetlands are regulated by the Oregon Department of State Lands (DSL) and US Army Corps of Engineers. State and Federal wetlands laws are also administered by the DSL and Army Corps, and potential impacts to jurisdictional wetlands are addressed through application and enforcement of appropriate mitigation measures.

According to the Salem-Keizer Local Wetland Inventory (LWI) there are no mapped wetlands or waterways located on the subject property. Because there are no wetlands on the property, there will impacts to wetlands as a result of the proposed subdivision.

SRC Chapter 810 (Landslide Hazards): The City's landslide hazard ordinance (SRC Chapter 810) establishes standards and requirements for the development of land within areas of identified landslide hazard susceptibility. According to the City's adopted landslide hazard susceptibility maps, there are no areas of mapped landslide hazard susceptibility identified on the subject property and therefore the proposed subdivision is classified as a low landslide risk. However, a geotechnical investigation, prepared by Redmond Geotechnical Services and dated October 24, 2016, was submitted to the City of Salem. This investigation indicates that development of the subject site into residential home sites does not appear to present a potential geologic and/or landslide hazard provided that the site grading and development activities conform with the recommendations presented within the investigation report.

As identified in the above findings and illustrated by the applicant's tentative subdivision plan, the proposed subdivision, as conditioned, complies with the applicable provisions of the UDC. This criterion is met.

**SRC 205.010(d)(2): The tentative subdivision plan does not impede the future use or development of the property or adjacent land.**

**Finding:** The proposed subdivision divides the entire 8 acre property into 34 lots. As in infill proposal within a developed area, properties to the north, south, east, and west of the subject property are developed and in use. Because of this, opportunities to provide additional access and connectivity to surrounding properties for the benefit of facilitating future development is limited.

The proposed subdivision responds to prior development approvals on adjacent lands by making connections and extending streets stubbed to the northern boundary of the subject property; thereby filling in gaps within the existing street network and improving access for not only future residences within the subdivision but also for residences on surrounding properties.

The only adjacent land on the perimeter of the subject property that has the potential for further development are two properties located adjacent to the northwest corner of the subject property. With the extension of Felton Street, street access to these properties will be possible; thereby enhancing the development potential of the adjacent land consistent with this approval criterion, rather than impeding it.

The subdivision is an infill development with properties to the north, south, east, and west of the Subject Property are currently developed and in use, and because of this, opportunities to provide additional access and connectivity to surrounding properties is limited. However, the proposed subdivision still provides additional connectivity by making connections and extending streets that are stubbed to the northern boundary of the Subject Property, filling gaps within the existing street network and improving access for future residences within the subdivision and residences on surrounding properties. The proposed subdivision improves connectivity to the north and south, rather than impeding existing connectivity,

The appellants argue that the layout of the proposed subdivision would limit access from a potential future development on the Rietmann Property to Doughton Street and Felton Street. Opponents' assertion is without merit. While the plan for the potential subdivision does not extend Doughton Street such that it directly borders the Rietmann Property, the subdivision does increase connectivity to the theoretical future development on the Rietmann Property. The Rietmann Property includes an approximately 28-foot-wide access onto Salem Heights Avenue. Applicant proposes to extend Doughton Street south through the subdivision to connect with Salem Heights Avenue. The theoretical future development on the Rietmann Property would have quick, easy access to both Doughton and Felton Streets via a right turn from the Rietmann Property onto Salem Heights Avenue and a right turn onto Doughton Street. City Council finds that the existing stubbed streets to the subject property and those in the surrounding area, include a stub

street (Dave Street) along the eastern property line of 475 Salem Heights Avenue which would allow for orderly development and adequate access without a street connection from the proposed subdivision.

Because the proposed subdivision improves, rather than impedes, possibilities for future development of both adjacent properties on the perimeter of the subject property and the two large lots located within the subject property, the subdivision satisfies this approval criterion.

**SRC 205.010(d)(3): Development within the tentative subdivision plan can be adequately served by City infrastructure.**

**Finding:** As indicated in the comments from the City's Public Works Department, the proposed subdivision can be adequately served by City infrastructure. Water and sewer infrastructure is available along the perimeter of the site.

Conditions of approval require construction of water and sewer systems to serve each lot and an engineered stormwater design to accommodate future impervious surfaces. In order to provide for the installation and maintenance of private utility infrastructure to serve the subdivision, the following condition of approval shall apply:

**Condition 11:** Provide a 10-foot-wide public utility easement (PUE) along the street frontage of each lot.

The Public Works Department also reviewed the proposal for consistency with the Comprehensive Parks Master Plan Update and found that the subject property is served by parks, including Candelaria Reservoir, an undeveloped park approximately one-half mile northwest of the proposed development, and Salem Heights Elementary, a partially developed park area approximately one-quarter mile southeast of the proposed development. No park-related improvements are required as a condition of development.

The appellant argues that the applicant did not provide adequate evidence that the property could be served by City infrastructure.

Council finds that the applicant submitted detailed plans proposing the location of the proposed infrastructure development. See Plan C and Plan D in the record. A 10-inch storm line will be constructed with the improvements along Salem Heights Avenue and continued through Doughton Street where it will connect to an existing 12-inch storm line located in an easement located at the northeast corner of the Subject Property. Lot 34 is designed for storm water treatment and detention facility. The water service will be extended through the proposed subdivision from an 8-inch water line located within Salem Heights Avenue through the proposed public streets and individual laterals and tie into an existing 6-inch line located within an easement located adjacent to the Subject Property's east property line. A 10-inch sanitary sewer line is currently located in Doughton Street and will be extended through the proposed public streets, and individual laterals will be constructed to serve each parcel. There is also a sewer main located in Salem

Heights Avenue, but the Public Works Department commented that the existing sewer main is in poor condition and may not be able to accommodate new connections. A Feasibility Letter from project engineer, Keith Whisenhunt, attesting to the feasibility of the project and to the development of the Subject Property consistent with the City's development standards.

As conditioned, the proposal meets this criterion.

**SRC 205.010(d)(4): The street system in and adjacent to the tentative subdivision plan conforms to the Salem Transportation System Plan.**

**Finding:** The street system adjacent to the proposed subdivision includes Salem Heights Avenue, which is adjacent to the subject property along its southern boundary, and three dead-end streets (Felton Street, Earhart Street, and Doughton Street) which terminate at the northern boundary of the property for the purpose of future further extension. The proposed subdivision extends these three streets into and through the subject property in order to provide vehicular access to the proposed lots and required connectivity.

Salem Heights Avenue is designated as a collector street under the City's Transportation System Plan (TSP) and Felton, Earhart, and Doughton Streets are designated as local streets.

As indicated in the comments from the Public Works Department (**Attachment C**), Salem Heights Avenue does not currently meet the standard for a collector street in regards to required right-of-way and improvement widths. In addition, a small section of the street, exceeds the maximum street grade for a collector street. The existing grade along this section of the street is approximately 9.48 percent, which exceeds the maximum 8 percent grade allowed for a collector street under SRC 803.035(c).

In regards to the right-of-way and improvement widths of Salem Heights, as conditioned above the applicant is required to dedicate right-of-way and construct a half-street improvement on Salem Heights Avenue along the frontage of the subject property to collector street standards. In regards to street grade, SRC 803.065(a) allows for the utilization of alternative street standards in situations where a street may not be able to meet applicable standards. Pursuant to SRC 803.065(a)(1) and (3), alternative street standards may be utilized where existing development or physical constraints make compliance with the standard impracticable and where topography or other conditions make construction that conforms to the standards impossible or undesirable. In the case of the small section of Salem Heights Avenue which currently exceeds the maximum 8 percent collector street grade, the Public Works Department indicates that an alternative street standard is authorized and, as provided under Condition No. 8, street improvements for this section of the street are authorized to match the existing street grade up to a maximum grade of 12 percent. The alternative street standard is warranted due to topography, the existing grade of Salem Heights, and potential impacts on adjacent properties on Salem Heights Avenue to the west if



the grade of the street were required to be lowered to conform to the maximum 8 percent standard.

Dedication of required right-of-way and improvement of Salem Heights Avenue to collector street standards, and the authorized alternative street standard for maximum grade, ensures the street system adjacent to the subdivision conforms to the TSP as required by this approval criterion.

The street system within the proposed subdivision includes the extension of three local streets, Felton Street, Earhart Street, and Doughton Street.

Felton Street and Doughton Street conform to minimum required right-of-way and improvement widths except for a section of Felton Street which proposes to provide curblin sidewalks. SRC 803.035(l)(1) requires sidewalks to be constructed as part of street improvement projects. In order to ensure that Felton Street conforms to the sidewalk requirements of SRC 803.035(l), Condition 9 of this decision requires sidewalks to be provided on both side of Felton Street.

Earhart Street is proposed as a cul-de-sac street which extends into the subject property and terminates with a turnaround. Pursuant to SRC 803.025(a) and (b), the turnaround of a cul-de-sac street is required to be improved to a diameter of 76 feet within 90-foot-wide diameter right-of-way. Due to physical constraints associated with the property and the need to address the extension of three streets, in a relatively confined area, that were previously extended to the northern boundary of the property for future extension, the applicant has proposed an alternative design for the turnaround at the end of Earhart Street. Rather than a circular turnaround as required under SRC 803.025, a modified hammerhead turnaround design is provided that meets and exceeds the turnaround dimensions required by the Fire Department and, as indicated in the comments from the Public Works Department, is authorized pursuant to SRC 803.065.

The applicant's proposal includes the closure of an adjacent property's driveway. Closure of the existing driveway abutting tax lot 083W04AA10400 is subject to the notice and appeal provisions of SRC 804.060 to provide adequate notice to the owner of tax lot 083W04AA10500 prior to discontinuing the neighbor's access through the subject property.

**Condition 12:** Prior to plat approval, closure of the existing driveway abutting tax lot 083W04AA / 10400 is subject to the notice and appeal provisions of SRC 804.060 to provide adequate notice to the owner of tax lot 083W04AA / 10500 prior to discontinuing the neighbor's access through the subject property.

The appellant asserts that the Planning Administrator Decision misconstrues SRC 205.010(d)(4) in failing to require the applicant to improve all existing conditions of Salem Heights Avenue.

The street system adjacent to the proposed subdivision as Salem Heights Avenue and three dead-end streets (Felton Street, Earhart Street, and Doughton Street). The proposed subdivision extends the three streets into and through the

subdivision and provides vehicular access to the proposed lots and required connectivity. The City does acknowledge that Salem Heights Avenue does not currently meet the standard for a collector street regarding right-of-way and improvement widths. In addition, a small section of the street, exceeds the maximum street grade for a collector street. As required conditions of approval of the subdivision, Applicant will be required to dedicate right-of-way and construct a half-street improvement on Salem Heights Avenue along the frontage of the Subject Property, improving it to collector street standards. Regarding the street grades, SRC 803.065(a) allows for utilization of alternative street standards in situations where a street may not be able to meet applicable standards, including where existing development or physical constraint make compliance with the standard impracticable and where topography or other conditions make construction that conforms to the standards impossible or undesirable. In this case, the portion of Salem Heights Avenue which currently exceeds the maximum street grade is authorized and warranted due to topography, the existing grade of Salem Heights Avenue, and potential impacts on adjacent properties to the west if the grade of the street were required to be lowered to conform to the maximum 8% standard.

The portion of Salem Heights Avenue that is adjacent to the Subject Property will be improved to comply with the TSP. See Plan C and Plan E in the record. While the entirety of Salem Heights Avenue does not comply with the Salem TSP, Applicant is improving the system adjacent to the tentative subdivision.

The appellants interpretation would cause one single property owner, adjacent to a non-conforming arterial or collector street to be responsible for public infrastructure improvements, regardless of the size of the development or amount of traffic contributed to the street. A requirement to improve the entire section of Salem Heights Avenue would be cost prohibitive for anyone to subdivide property. These requirements would be an overbroad interpretation of the code. See *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 US 595, 595, 133 S Ct 2586, 2589 (2013) (“Extortionate demands for property in the land-use permitting context run afoul of the Takings Clause not because they take property but because they impermissibly burden the right to not have property taken without just compensation.”)

As proposed, conditioned, and authorized though alternative street standards, the street network formed by the improved boundary street and new internal streets serving the subdivision conform to the TSP. The proposal meets this criterion.

**SRC 205.010(d)(5): The street system in and adjacent to the tentative subdivision plan is designed so as to provide for the safe, orderly, and efficient circulation of traffic into, through, and out of the subdivision.**

**Finding:** The subdivision proposal includes a network of internal streets, improvements to boundary streets at the perimeter of the subject property, and connections to existing streets in the vicinity to improve traffic circulation in the area by providing additional street connectivity. The internal street system is

supplemented by a private flag lot accessways providing vehicular access to three flag lots (Lots 4, 5 and 6) off Salem Heights Avenue.

The applicant provided evidence from traffic engineer, Mike Ard, who analyzed the traffic issues at the proposed subdivision, and he provided a transportation analysis memo, found in the record, to the City (the "Transportation Analysis"). As part of the Transportation Analysis, Ard evaluated whether Salem Heights Avenue is currently unsafe by obtaining the Oregon Department of Transportation crash data for the most recent five-year period for which data is available (January 2013 through December 2017). The crash data showed there were 15 crashes in the five-year analysis period, none of which were fatalities or incapacitating injuries. Ten of the fifteen crashes occurred at the intersection of Salem Heights Avenue at Liberty Road. Id. The crash rate at this intersection was calculated to be 0.272 crashes per million entering vehicles, which is significantly lower than the average crash rate of 0.477 for signalized urban four-way intersections in Oregon. Id. Ard evaluated the crashes that occurred on Salem Heights Avenue west of Liberty Road in greater detail and found one crash at 6th Avenue was a turning-movement collision that occurred when a northbound driver turned left onto Salem Heights Avenue without yielding and resulted in no injuries. Another crash at Sunridge Drive was a fixed-object collision that occurred when a driver attempted to make a left turn in snowy conditions and slid off the road. Based on Mr. Ard's analysis of the crash data and the traffic volume data, there are no indications of a traffic problem for Salem Heights Avenue.

The subdivision, as proposed and conditioned, is served with adequate transportation infrastructure in conformance with the Salem Transportation System Plan (TSP). The proposal meets this criterion.

The proposal meets this criterion.

**SRC 205.010(d)(6): The tentative subdivision plan provides safe and convenient bicycle and pedestrian access from within the subdivision to adjacent residential areas and transit stops, and to neighborhood activity centers within one-half mile of the development. For purposes of this criterion, neighborhood activity centers include, but are not limited to, existing or planned schools, parks, shopping areas, transit stops, or employment centers.**

**Finding:** Bicycle and pedestrian access in the vicinity of the subject property is limited by existing development patterns, street network gaps, and under improved streets. The nearest transit service is provided by Salem-Keizer Transit (Cherriots) Route 21 (*South Commercial*), near the intersection of Commercial Street SE and Ratcliff Drive SE, and Routes 8 and 18 (*12th / Liberty*), near the intersection of Liberty Road S and Madrona Avenue S.

The proposed subdivision is also situated within one-half mile of the following neighborhood activity centers:

- Candalaria Elementary School;

- Salem Heights Elementary School;
- Fircrest Park; and
- Shopping areas along Commercial Street.

Though existing bicycle and pedestrian access in the vicinity is limited, the proposed subdivision will incrementally improve bicycle and pedestrian access between the subject property and adjacent residential areas, transit, and neighborhood activity centers by improving Salem Heights Avenue along the frontage of the property as well as extending local streets through the property to connect to other existing streets on the perimeter of the property. The required boundary street improvement of Salem Heights Avenue will include a sidewalk and bike lane and the internal streets proposed to be extended through the development will include sidewalks.

The sidewalk and bike lane improvements required with the development will help to improve safe and convenient bicycle and pedestrian access in an area where it is currently limited by the existing development pattern on surrounding properties and under improved streets.

The appellant argues that the application does not meet the decision criteria based on the assertion that Salem Heights Avenue is unsafe, and that there is no substantial evidence that the subdivision plan can provide safe and convenient bicycle and pedestrian access from within the subdivision to adjacent residential areas and transit stops and to neighborhood activity centers within one-half mile of the proposed development.

As identified above, the bicycle and pedestrian access near the Subject Property is constrained by the existing development patterns, street network gaps, and underimproved streets. The proposed subdivision will improve the bicycle and pedestrian access in the vicinity by improving Salem Heights Avenue along the frontage of the Subject Property and extend local streets through the Subject Property to connect to other existing streets on the perimeter of the Subject Property. This finding of fact and conclusion of law is supported by the tentative subdivision plan, the surrounding area map, and the Transportation Analysis. As part of the proposed subdivision, Applicant will improve the frontage along Salem Heights Avenue to include a sidewalk and bike lane. The sidewalk and bike lane improvements will improve safe and convenient bicycle and pedestrian access in an area where it is currently limited by the existing development pattern.

The proposal meets this criterion.

**SRC 205.010(d)(7): The tentative subdivision plan mitigates impacts to the transportation system consistent with the approved Traffic Impact Analysis, where applicable.**

**Finding:** The Public Works Department has reviewed the proposal and City Council finds that the 38-lot subdivision will generate less than 1,000 average daily vehicle trips onto Salem Heights Avenue S, which is designated as a collector street in the City's Transportation System Plan (TSP). Because the number of

trips estimated to be generated by the proposed subdivision fall below the minimum threshold to require a transportation impact analysis (TIA), a TIA is not required in conjunction with the proposed subdivision and this approval criterion is therefore not applicable.

**SRC 205.010(d)(8): The tentative subdivision plan takes into account the topography and vegetation of the site so the need for variances is minimized to the greatest extent practicable.**

**Finding:** The proposed subdivision has been reviewed to ensure that adequate measures have been planned to alleviate natural or fabricated hazards and limitations to development, including topography and vegetation of the site. A number of existing natural and built conditions on the subject property are considered in the street and lot configuration proposed by the applicant.

As described in findings above, the lot and street configuration proposed by the applicant meets applicable development standards, with an adjustment to required lot depth for Lot 23. No existing conditions of topography or vegetation have been identified on the site which would necessitate further adjustments during future development of the property. The proposed layout allows for reasonable development of all lots within the subdivision without any anticipated variances from the UDC.

The proposal meets this criterion.

**SRC 200.010(d)(9): The tentative subdivision plan takes into account the topography and vegetation of the site, such that the least disruption of the site, topography, and vegetation will result from the reasonable development of the lots.**

**Finding:** The tentative subdivision plan configures lots and streets to allow single family residential development of the site while minimizing disruptions to topography and vegetation. In particular, a number of trees are present along the western border of the subject property. In this area, the configuration and orientation of the proposed lots are such that a significant number of the trees in that area have been designated for preservation under the applicant's tree conservation plan.

There are also several trees located along the southern boundary of the property next to Salem Heights Avenue. Some of these trees are within the existing right-of-way of Salem Heights and others are located on the subject property. Because Salem Heights does not meet the minimum required width for a collector street, the widening of Salem Heights Avenue and the installation of a sidewalk is required in conjunction with the proposed subdivision.

Street improvements along Salem Heights Avenue S may require removal of one or more street trees. A Reasonable Alternatives Analysis pursuant to Administrative Rule 109-500-2.4 has been tentatively approved to remove trees labeled 10001 – 10004, and 10012 on the plan attached (Attachment C). The

approval is in conjunction with the proposed street improvements, and the sidewalk location north of trees proposed for preservation (trees labeled in Attachment C as 2006- 20009, 20011- 2014, 20040, 20041, 10008 - 10011, 10013 – 10015). As conditioned below, a tree preservation and protection plan pursuant to SRC Chapter 86 and Salem Administrative Rule 109-500, and signed by a certified arborist, shall be submitted for the preserved trees, to the City for review and approval prior to the issuance of Public Construction permits.

Removal of identified as future street trees shall apply and be granted a removal permit pursuant to SRC 86.090.

The proposed subdivision, to the extent possible, takes into account the topography and vegetation of the site to minimize the about of disruption to the site, it's topography, and vegetation. The proposal meets this criterion.

**SRC 200.010(d)(10): When the tentative subdivision plan requires an Urban Growth Preliminary Declaration under SRC Chapter 200, the tentative subdivision plan is designed in a manner that ensures that the conditions requiring the construction of on-site infrastructure in the Urban Growth Preliminary Declaration will occur, and, if off-site improvements are required in the Urban Growth Preliminary Declaration, construction of any off-site improvements is assured.**

**Finding:** The subject property is located within the City's Urban Service Area and therefore does not require an Urban Growth Preliminary Declaration under SRC Chapter 200.

The appellants testified that an Urban Growth Preliminary Declaration permit is required. City Council finds that the Urban Service Area (USA) is comprised of two distinct areas: (1) the boundary formerly called the "Current Developed Area" (CDA) prior to the establishment of the USA; and (2) boundaries added to the CDA through USA amendments pursuant to SRC 200.015. In SRC 200.010 and SRC 200.015, consideration is given to amend the USA boundary based on availability of and city construction of required facilities to serve properties in the USA. In other words, USA amendments can be made only when infrastructure is available to serve the area or when funds are committed to serve the area.

That USA amendment process is the context of the phrase "precedes city construction of required facilities" in SRC 200.010(c) and SRC 200.020(a). In particular, SRC 200.020(a) states, "or is within the urban service area (USA), but precedes city construction of required facilities that are shown in the adopted capital improvement plan, public facilities plan or comparable plan for the area of the development." This language is a direct reference to the capital improvement planning process as described in SRC 200.015 for USA amendments.

Therefore, UGA permits are not required for areas within the original CDA boundary because that area was not subject to the USA amendment criteria in SRC 200.015. Because there is no "city construction of required facilities" pursuant to SRC 200.015, then no UGA permit is required.

This criterion is not applicable to the proposed subdivision.

### **Class 1 Zoning Adjustment**

The applicant has requested a Class 1 Adjustment in conjunction with the proposed subdivision to:

- a) Reduce the minimum lot depth for Lot 7 from 120 feet, as required for double frontage lots under SRC 511.010(a), Table 511-2, to approximately 111 feet.

Salem Revised Code (SRC) 250.005(d)(1) sets forth the following criteria that must be met before approval can be granted to an application for a Class 1 Adjustment. The following subsections are organized with approval criteria shown in ***bold italic***, followed by findings of fact upon which the Planning Administrator's decision is based. Lack of compliance with the following criteria is grounds for denial of the Class 1 Adjustment, or for the issuance of certain conditions to ensure the criteria are met.

**A. SRC 250.005(d)(1)(A): *The purpose underlying the specific development standard proposed for adjustment is:***

- (i) Clearly inapplicable to the proposed development; or***
- (ii) Clearly satisfied by the proposed development.***

**Finding:** The requested adjustments satisfy this approval criterion as follows:

Adjustment to Minimum Lot Depth for Lot 7:

Within the RS (Single Family Residential) zone, double frontage lots with street frontage adjacent to both their front and rear property lines are required to have a minimum lot depth of 120 feet pursuant to SRC 511.010(a), Table 511-2. The underlying purpose of this standard is to ensure that lots that have street frontage adjacent to both their front and rear property lines have an increased lot depth to provide potential for additional privacy and separation from the street, which is of greater importance for lots abutting collector and arterial streets which convey greater levels of traffic.

City Council finds that the adjustment to the minimum lot depth for Lot 23 is necessary based on the existing geometry and the need to provide access from the cul-de-sac above and also to tie Doughton Street to Salem Heights Avenue. The appellant provided testimony that the Planning Administrator did not adequately provide findings for the reduction in lot depth.

The requested adjustment is needed based on the proposed street configuration, which is influenced by the topography of the site and the location of existing streets on the perimeter of the property. Lot 23 is a double frontage lot with frontage on two streets (Doughton Street adjacent to the front and the proposed cul-de-sac turnaround of Earhart Street adjacent to the rear). The record contains

“Plan C, Preliminary Site Plan”, which show two lots with access on to Earhart Street and does not included Lot 23. Lot 23 does not have adequate frontage along Earhart Street to access and will function similar to any other lot in the subdivision with a 70-foot lot depth. The reduced approximate 111-foot depth of Lot 23 satisfies the underlying purpose of the minimum 120-foot lot depth standard by providing a lot depth that, while not meeting the minimum 120-foot depth standard, still provides sufficient depth to allow for separation and privacy from Doughton Street and Earhart Street.

The requested adjustment satisfies this approval criterion.

***B. The proposed adjustment will not unreasonably impact surrounding existing or potential uses or development.***

Adjustment to Minimum Lot Depth for Lot 23:

The proposed adjustment to the minimum required lot depth for Lot 7 will not result in unreasonable impacts to surrounding existing uses or potential future uses or development because, despite the depth of Lot 7 falling below the minimum required 120-foot lot depth, the proposed approximate 111-foot lot depth still allows for sufficient depth to accommodate the reasonable development of the lot in compliance with the setback and lot coverage requirements of the RS zone without impacting future development on surrounding lots.

The requested adjustment satisfies this approval criterion.

**CONCLUSION**

Based upon review of SRC 205.005 and 250.005(d), the findings presented herein the tentative subdivision plan complies with the requirements for an affirmative decision. Approval will not adversely affect the safe and healthful development and access to any adjoining lands.

**Condition 1:** The front lot lines for the double frontage lots and flag lots within the subdivision shall be designated as follows:

- Lot 4-6: The front lot line of Lots 4-6 shall be the south property line.
- Lot 15: The front lot line of Lot 15 shall be the east property line.
- Lot 16: The front lot line of Lot 16 shall be the west property line.
- Lot 23: The front lot line of Lot 23 shall be the east property line.
- Lot 33: The front lot line of Lot 33 shall be the west property line.

**Condition 2:** The flag lot accessway shall be paved in accordance with the requirements of SRC 800.025(c), Table 800-1. "NO PARKING—FIRE LANE" signs shall be posted on both sides of that segment of the flag lot accessway that is a fire apparatus roadway and "NO PARKING"



signs shall be posted on both sides of any remaining portion of the accessway.

- Condition 3:** Proposed Lots 1-3 shall not have access to the flag lot accessway serving Lots 4-6.
- Condition 4:** Design and construct stormwater facilities pursuant to SRC Chapter 71 and Public Works Design Standards.
- Condition 5:** Construct water and sewer systems to serve each lot.
- Condition 6:** Convey land for dedication of right-of-way adjacent to Salem Heights Avenue S to equal 30 feet from the centerline of Salem Heights Avenue S.
- Condition 7:** Construct a 17-foot-wide half-street improvement along the northern frontage of Salem Heights Avenue S to collector street standards. The street improvements are authorized to match the existing street grade up to a maximum of 12 percent grade, the sidewalk location west of Doughton Street S shall be located consistent with Attachment C and may be within an easement north of the property line to preserve existing trees.
- Condition 8:** Prior to issuance of public construction permits, obtain final approval for tree removal permits for trees labeled as 10001 – 10004, and 10012 identified in the plan submitted on May 7, 2019 and titled Trees within Right-of-Way Conservation Plan (Attachment C). Trees labeled as 10001 – 10004, and 10012 are tentatively approved for removal.
- Condition 9:** Prior to issuance of public construction permits, a tree preservation and protection plan pursuant to SRC Chapter 86 and Salem Administrative Rule 109-500, and signed by a certified arborist, shall be submitted for the identified preserved “Future Street Trees” (trees labeled as 20006- 20009, 20011- 2014, 20040, 20041, 10008 - 10011, 10013 – 10015, show on Attachment C), to the City for review. Future Street Trees, identified above, shall be preserved. Any proposed removal of identified Future Street Trees (listed above) would require a separate removal permit pursuant to SRC 86.090.
- Condition 10:** Construct internal streets to Local Street standards as shown on the applicant’s tentative plan, except as listed below:
- Along the north/south portion of Felton Street S, the sidewalk shall be constructed so that the back of walk is located 28.5 feet from centerline pursuant to the Local street standard.
  - The alternative cul-de-sac turnaround design at the terminus of Earhart Street S is authorized as proposed on the applicant’s tentative subdivision plan.

**Condition 11:** Provide a 10-foot-wide public utility easement (PUE) along the street frontage of each lot.

**Condition 12:** Prior to plat approval, closure of the existing driveway abutting tax lot 083W04AA / 10400 is subject to the notice and appeal provisions of SRC 804.060 to provide adequate notice to the owner of tax lot 083W04AA / 10500 prior to discontinuing the neighbor's access through the subject property.

*Si necesita ayuda para comprender esta informacion, por forvor llame  
503-588-6173*

## ADMINISTRATIVE DECISION FOR TREE CONSERVATION PLAN

**CASE NO.:** TCP19-07  
**AMANDA NO.:** 18-125036-NR  
**DATE OF DECISION :** November 26, 2019  
**PROPERTY LOCATION:** 575 Salem Heights Avenue S  
**APPLICANT:** Tom Kay Co.

### REQUEST

A Tree Conservation Plan in conjunction with Subdivision and Adjustment Case No. 19-02, proposing the preservation of 41.9 percent, out of a total of 129 trees. The subject property is approximately eight acres in size, zoned RS (Single Family Residential), and located at 575 Salem Heights Road SE - 97302 (Marion County Assessor Map and Tax Lot Numbers 083W04AA10400, 10600, 10601, 10700, 10800).

### FINDINGS

The subject property is located at 575 Salem Heights Avenue S (Attachment A). The tree conservation plan (Attachment B) was submitted in conjunction with a subdivision application for the subject property (SUB-ADJ19-02).

The tree conservation plan identifies a total of three trees above 10 inches diameter-at-breast-height (dbh) on the property, with one tree identified for preservation. There are no significant trees proposed for removal and no heritage trees, or riparian corridor trees or vegetation located on the property.

#### **1. Tree Conservation Plan Approval Criteria (SRC 808.035(d)):**

SRC 808.035(d) establishes the following approval criteria for tree conservation plans:

- (1) No heritage trees are designated for removal;
- (2) No significant trees are designated for removal, unless there are no reasonable design alternatives that would enable preservation of such trees;
- (3) No trees or native vegetation in a riparian corridor are designated for removal, unless there are no reasonable design alternatives that would enable preservation of such trees or native vegetation;
- (4) Not less than 25 percent of all trees located on the property are designated for preservation; provided, however, if less than 25 percent of all trees located on the property are designated for preservation, only those trees reasonably necessary to accommodate the proposed development shall be designated for removal.

**NOTICE OF DECISION**

PLANNING DIVISION  
 555 LIBERTY ST. SE, RM 305  
 SALEM, OREGON 97301  
 PHONE: 503-588-6173  
 FAX: 503-588-6005

**CITY OF Salem**  
**AT YOUR SERVICE**

## 2. Analysis of Tree Conservation Plan Approval Criteria:

(1) No heritage trees are designated for removal.

**Finding:** There are no heritage trees located on the subject property; therefore, the preservation requirements of SRC 808.035(d)(1) are not applicable to the tree conservation plan.

(2) No significant trees are designated for removal, unless there are no reasonable design alternatives that would enable preservation of such trees.

**Finding:** There are eight significant trees located on the subject property. The applicant is proposing to remove five are significant oaks which the applicant has identified for removal based on their location within either the future building envelopes of lots (applicable to two of the five significant oaks) or adjacent to required street and/or sidewalk improvements (applicable to three of the five significant oaks).

(3) No trees or native vegetation in a riparian corridor are designated for removal, unless there are no reasonable design alternatives that would enable preservation of such trees or native vegetation.

**Finding:** There are no riparian corridors present on the subject property; therefore, the preservation requirements of SRC 808.035(d)(3) are not applicable to the tree conservation plan.

(4) Not less than 25 percent of all trees located on the property are designated for preservation; provided, however, if less than 25 percent of all trees located on the property are designated for preservation, only those trees reasonably necessary to accommodate the proposed development shall be designated for removal.

**Finding:** The applicant submitted a tree conservation plan indicating 129 total trees existing on the property, the proposed tree conservation plan identifies 54 trees (41.9%) for preservation and 75 trees (58.1%) for removal. Of the 75 trees proposed for removal, five are significant oaks which the applicant has identified for removal based on their location within either the future building envelopes of lots (applicable to two of the five significant oaks) or adjacent to required street and/or sidewalk improvements (applicable to three of the five significant oaks).

The proposed tree conservation plan preserves 41.9 percent of the existing trees on the property, therefore exceeding the minimum 25 percent preservation requirement under SRC Chapter 808. In addition, though five of the nine existing significant oaks on the property are proposed to be removed, their removal is necessary because of no reasonable design alternatives that would enable their preservation. The tree conservation plan is being reviewed and, if approved, will be binding on the lots until final occupancy is granted for the construction of dwelling units on the lots.

In addition to the trees located on the subject property, there are also nine trees located within the existing right-of-way on the north side of Salem Heights Avenue S, including four significant oaks. Pursuant to the tree preservation ordinance (SRC Chapter 808), tree conservation plans are required to identify and preserve the minimum required number of trees on the property. Because the nine trees located within the existing right-of-way of Salem Heights Avenue are not located on the property, they are not subject to the provisions of SRC Chapter 808 and are not counted toward the total number of trees on the site. These trees are instead considered trees on City owned property and subject to the provisions of SRC Chapter 86. Based on the current under-improved width of Salem Heights Avenue, the four (two significant oaks) of the nine existing trees within the right-of-way will likely need to be removed to accommodate the required widening, sidewalk installation, and grading associated with the improvement of Salem Heights.

As noted, trees labeled as 20006- 20009, 20011- 2014, 20040, 20041, 10008 - 10011, 10013 – 10015 in Attachment C of SUB-ADJ19-02 will be future street trees and are conditioned for preservation as part of the subdivision decision. Any proposal for removal of additional street trees will be required to obtain a permit for removal pursuant to SRC 86.090.

### 3. SRC Chapter 808 Planting Requirements

SRC Chapter 808.050 establishes tree planting requirements for lots or parcels to be used for Single Family or Two Family uses. The specific number of trees that must be provided on each lot is based upon the requirements of Table 808-1, as shown below:

**Table 808-1**

<b>Lot Size</b>	<b>Required Trees</b>
Up to and including 6,000 square feet	2
6,001 to 7,000 square feet	3
7,001 to 8,000 square feet	4
8,001 to 9,000 square feet	5
Above 9,000 square feet	6

In the event there are insufficient existing trees on a lot or parcel to meet the requirements of Table 808-1, the deficiency shall be made up by planting trees that are at least 1.5 inches in caliper.

### **DECISION**

The proposed Tree Conservation Plan is consistent with the provisions of SRC Chapter 808. The Tree Conservation Plan is hereby **APPROVED**, subject to SRC Chapter 808 and the following conditions, adopted pursuant to SRC 808.050(e)(2):

**Condition 1:** All trees designated for retention under the tree conservation plan shall be marked and protected during construction. Any heritage tree or significant tree shall require that at least 70 percent of a circular area beneath the tree measuring one foot in radius for every one inch of dbh be protected by an above ground silt fence or its equivalent. Tree protection measures shall remain in place until the issuance of Notice of Final Completion for the Single Family dwelling or Two Family dwelling.

**Condition 2:** Each lot or parcel within the development proposal shall comply with the tree planting requirements set forth in SRC 808.050.

**Condition 3:** The applicant shall obtain all required grading and erosion control permits if tree removal results in ground disturbance.

The applicant, and all representatives thereof, shall comply with all applicable development standards of SRC Chapter 808. The approved Tree Conservation Plan is on file with the City of Salem and is binding on the lots created by the partition of the subject property. No tree designated for removal on the approved Tree Conservation Plan shall be removed or critically damaged prior to the Tree Conservation Plan approval date.



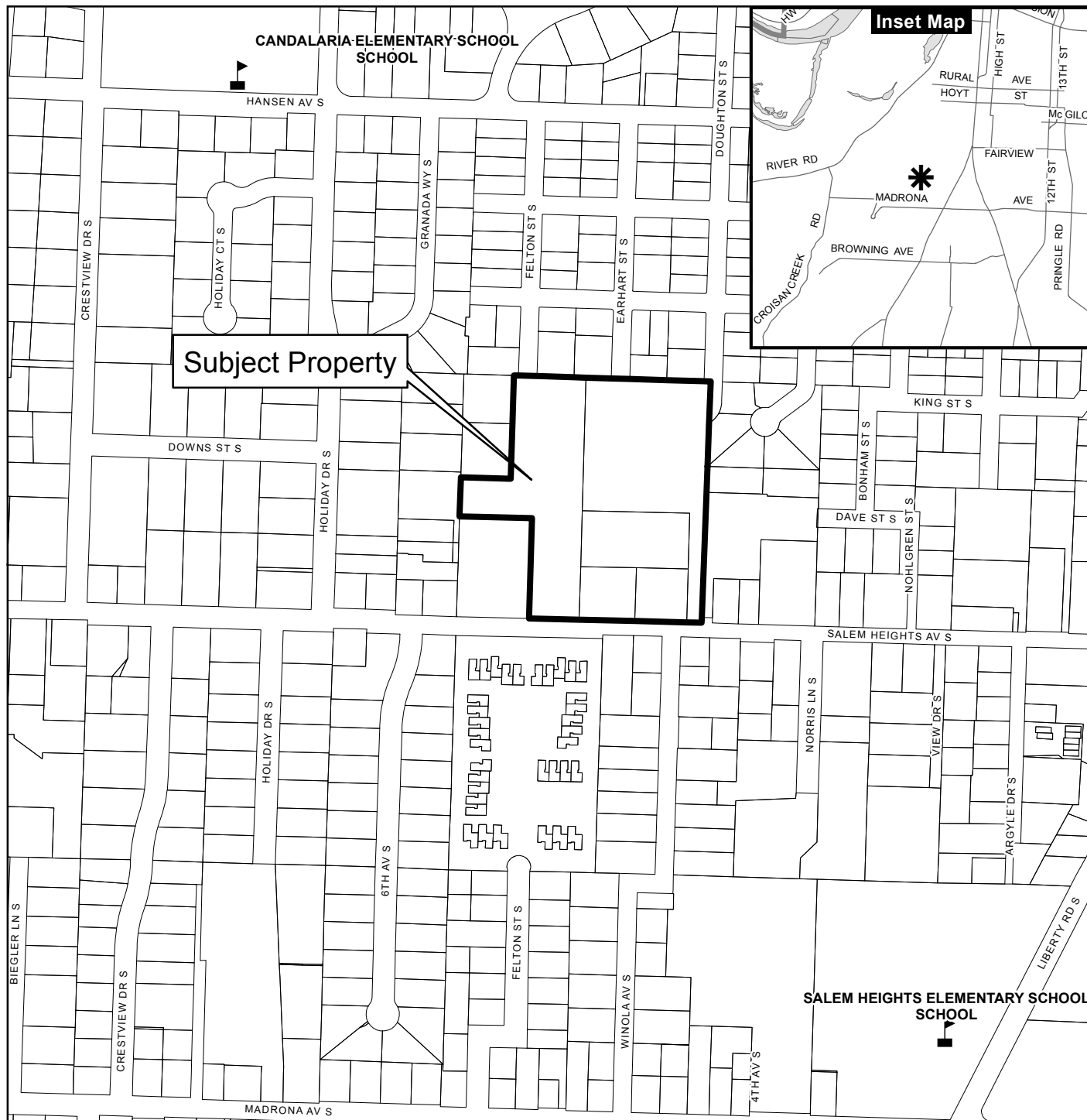
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Olivia Glantz, Planner III  
Planning Administrator Designee








Attachments:   A. Vicinity Map  
                  B. Approved Tree Conservation Plan

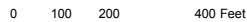
cc:     Alan Kessler, GIS

# Vicinity Map 575 Salem Heights Avenue S

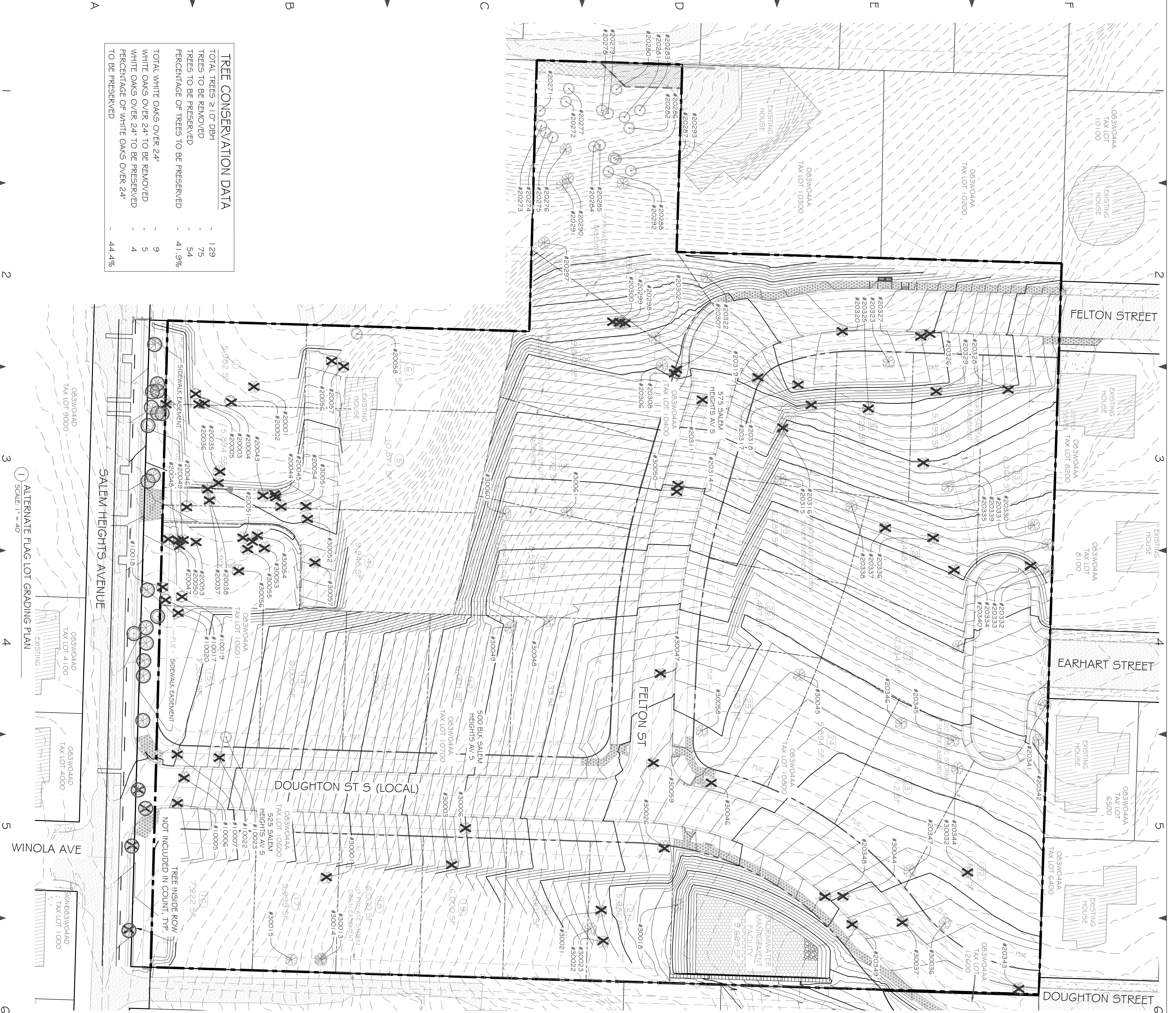


**Legend**

-  Taxlots
-  Urban Growth Boundary
-  City Limits
-  Outside Salem City Limits
-  Historic District
-  Schools
-  Parks



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**TREE CONSERVATION DATA**

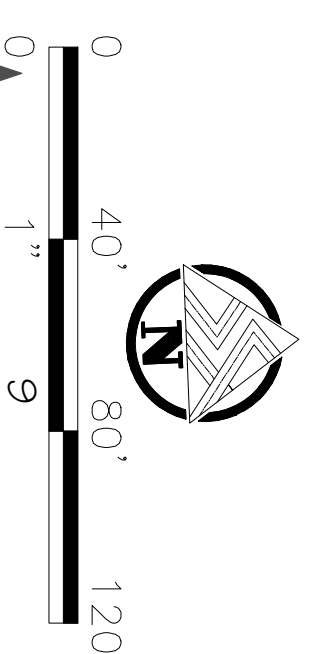
TOTAL TREES ≥ 10" DBH	129
TREES TO BE REMOVED	75
TREES TO BE PRESERVED	54
PERCENTAGE OF TREES TO BE PRESERVED	41.9%
TOTAL WHITE OAKS OVER 24"	9
WHITE OAKS OVER 24" TO BE REMOVED	5
WHITE OAKS OVER 24" TO BE PRESERVED	4
PERCENTAGE OF WHITE OAKS OVER 24" TO BE PRESERVED	44.4%

ID	DBH	TYPE	SAVE	ID	DBH	TYPE	SAVE
10005	30	L	N	20315	11	D	Y
10006	34	L	N	20316	10	CH	N
10007	20	W	N	20317	10	W	N
10015	22	D	Y	20318	16	CH	N
10017	14	D	N	20319	10	H	N
10018	24	D	N	20320	17	WN	N
10019	24	D	N	20322	16	E	Y
10020	30	D	N	20323	11	PL	Y
10022	36	M	N	20325	10	CH	N
10023	26	D	Y	20326	30	W	N
20001	17	W	N	20327	10	PL	N
20002	30	F	N	20328	19	WN	N
20003	22	F	N	20329	12	HN	N
20004	23	F	N	20330	40	W	Y
20005	23	WD	N	20331	25	W	Y
20010	16	W	N	20332	21	W	Y
20035	10	W	N	20333	17	M	N
20036	11	W	N	20334	10	W	N
20037	15	W	N	20335	10	CH	Y
20038	10	W	N	20336	10	W	N
20043	17	W	N	20337	13	M	N
20044	27	W	N	20338	12	D	Y
20045	21	W	N	20339	15	M	N
20046	10	F	N	20340	15	W	Y
20047	26	W	N	20341	26	W	Y
20048	12	W	N	20342	15	CH	Y
20049	21	W	N	20343	11	D	N
20050	14	W	N	20344	10	W	Y
20051	27	W	N	20345	10	W	Y
20054	16	W	N	20346	16	W	Y
20056	26	F	N	20347	18	CH	N
20057	33	F	N	20348	13	CH	N
20058	22	F	Y	20349	16	CH	N
20059	22	F	Y	30001	14	CH	N
20271	12	F	Y	30003	12	HN	N
20272	27	F	Y	30006	14	HN	N
20273	13	F	Y	30013	10	CH	Y
20274	29	F	Y	30014	10	CH	Y
20275	30	F	Y	30015	30	CH	Y
20276	10	W	Y	30016	11	HN	Y
20277	36	F	Y	30021	10	HN	N
20278	21	F	Y	30022	14	M	Y
20279	20	F	Y	30023	10	HN	N
20280	26	F	Y	30026	12	HN	N
20281	20	F	Y	30032	14	M	N
20282	15	F	Y	30036	12	W	Y
20283	35	F	Y	30037	12	HN	N
20284	14	F	Y	30044	10	W	N
20285	21	F	Y	30045	12	W	Y
20286	17	F	Y	30046	12	W	N
20287	12	F	Y	30047	11	W	N
20288	33	F	Y	30048	13	A	Y
20290	16	W	Y	30049	10	M	Y
20291	17	F	Y	30050	10	CH	N
20292	18	W	Y	30051	14	W	N
20293	12	F	Y	30052	14	W	N
20297	27	W	Y	30053	18	W	N
20298	15	WN	N	30054	14	W	N
20299	10	CH	N	30055	12	W	N
20300	11	CH	N	30056	12	W	N
20302	11	CH	Y	30057	18	W	N
20306	14	CH	Y	30058	12	W	Y
20307	12	CH	N	30059	14	W	N
20308	16	WN	N	30060	12	CH	Y
20314	14	CH	N	30061	12	M	Y

- TREE TYPES**
- A=APPLE
  - CE=CEDAR
  - CH=CHERRY
  - CW=COTTONWOOD
  - D=DOUGLAS FIR
  - E=ELM
  - F=FR
  - H=HAZEL
  - HO=HOLLY
  - HN=HAWTHORNE
  - L=LOCUST
  - M=MAPLE
  - MD=MAHOGONY
  - F=FLUM
  - W=WHITE OAK
  - WN=WALNUT

**LEGEND**

- PROPOSED PCC
- PROPOSED AC
- EXISTING PCC
- EXISTING AC
- REMOVE EXISTING PAVEMENT
- PROPOSED WATER
- EXISTING WATER
- PROPOSED SANITARY SEWER
- PROPOSED STORM SEWER
- SANITARY SEWER CLEANOUT
- EXISTING SANITARY SEWER
- EXISTING STORM SEWER
- PROPOSED WATER METER
- PROPOSED FIRE HYDRANT
- PROPOSED WATER VALVE
- PROPOSED BLOW-OFF VALVE
- PROPOSED WATER METER
- EXISTING WATER METER
- EXISTING WATER VALVE
- EXISTING FIRE HYDRANT
- HOSE BIB
- PROPOSED CATCH BASIN
- EXISTING CATCH BASIN
- FINISH GRADE EXISTING GROUND
- EVERGREEN TREE
- DECIDUOUS TREE
- STORMWATER INFRASTRUCTURE
- TREE WITHIN RIGHT-OF-WAY
- TREE TO BE REMOVED



**THOMAS KAY COMPANY**  
SALEM, OREGON

REVISIONS: NO. DESCRIPTION DATE BY

PROJECT NO.: 15126  
 PROJECT DATUM: NAD83 (2011)  
 HORIZ. CONTROL: AS SHOWN  
 VERT. CONTROL: AS SHOWN  
 VERT. SCALE: AS SHOWN  
 DRAWN: KW  
 CHECKED: JM

**PROJECT DELIVERY GROUP**  
Engineers | Land Surveyors | Project Managers

**REGISTERED PROFESSIONAL ENGINEER IN OREGON**  
 NOV 9 1999  
 62679PPE  
 KEITH WHESEMONT  
 EXPIRES 6-30-2018  
 DATE SIGNED:

# WREN HEIGHTS SUBDIVISION

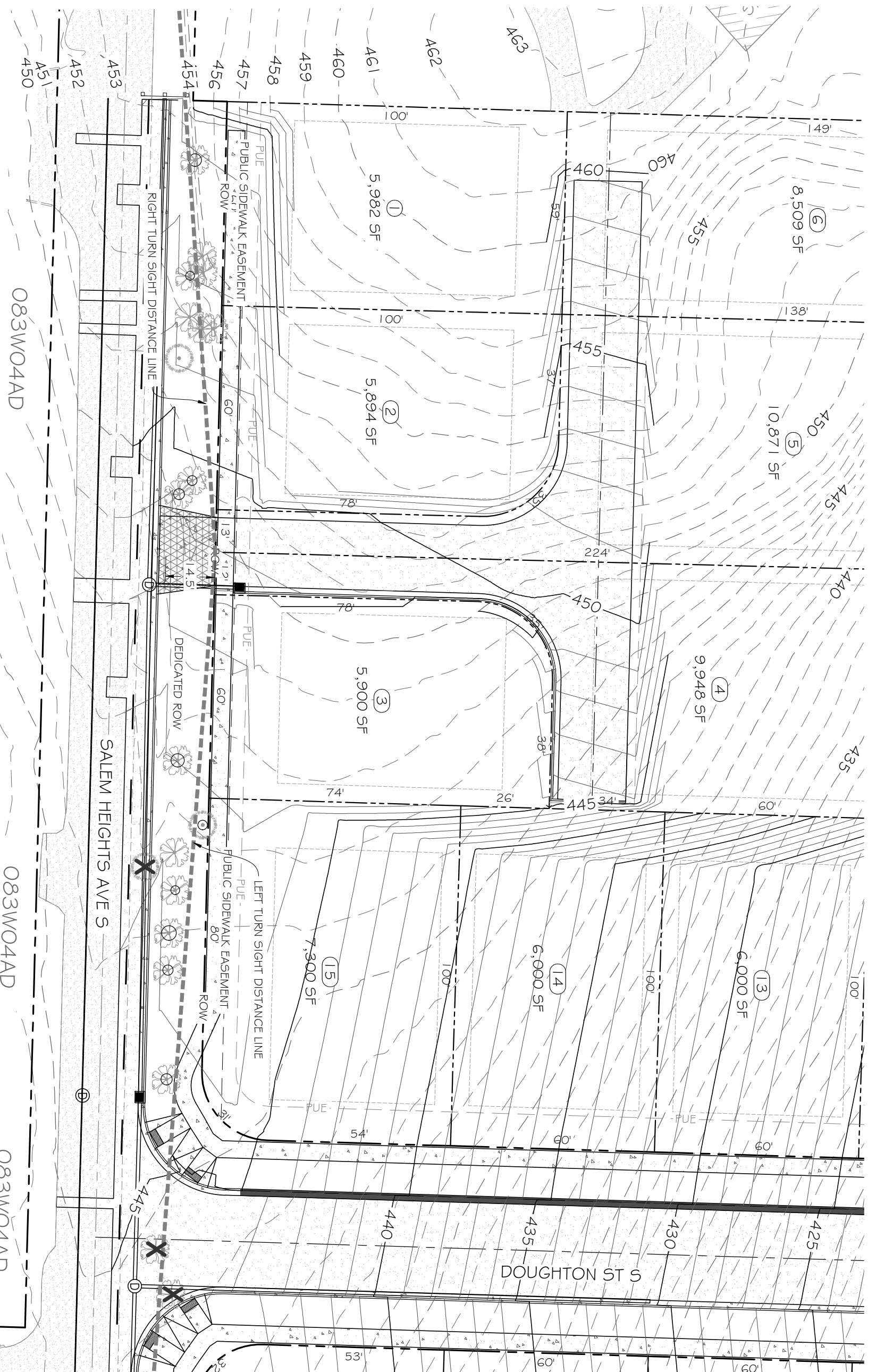
SALEM, OREGON

SHEET TITLE

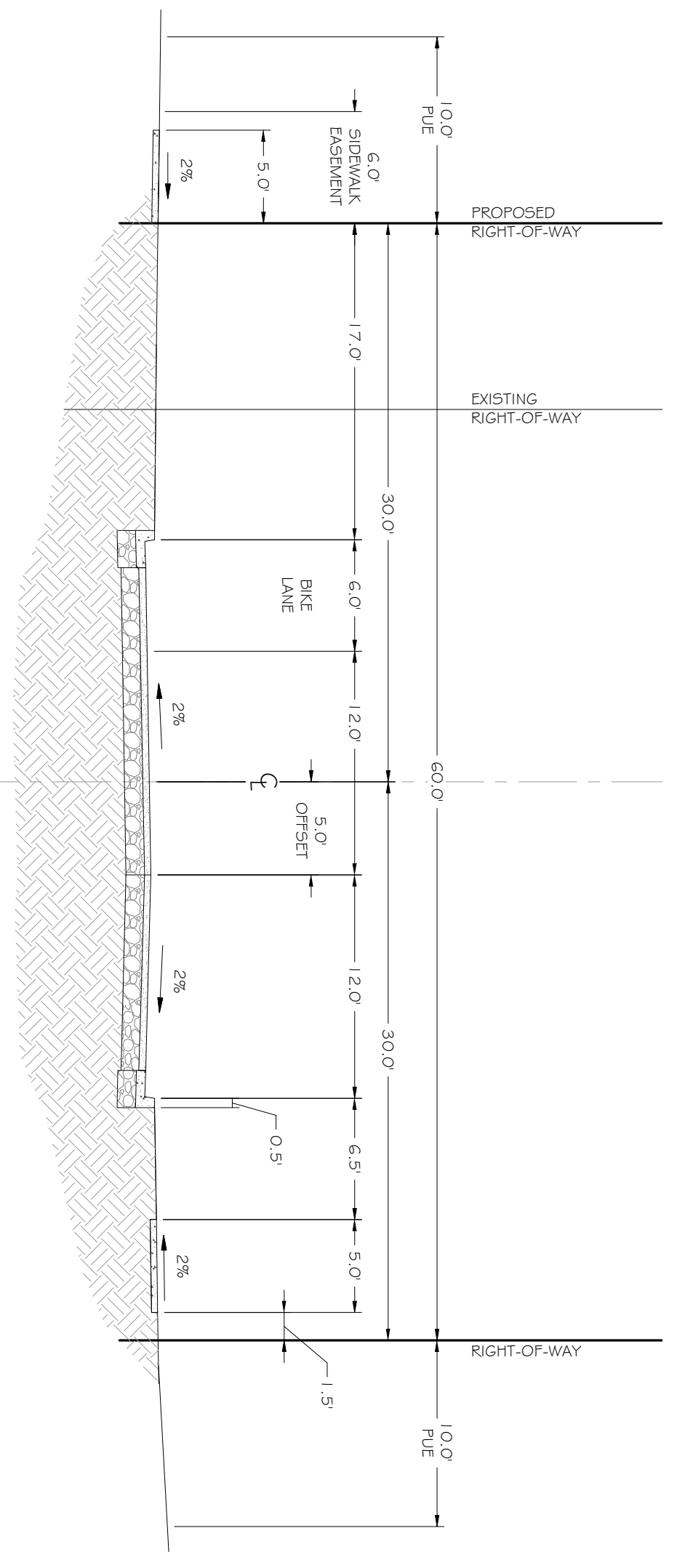
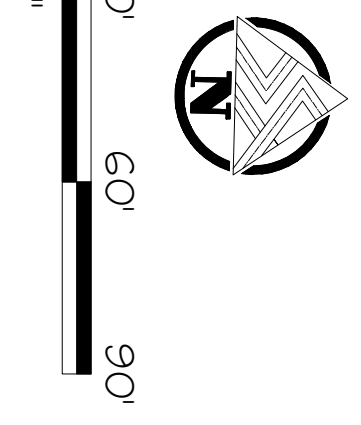
**TREE CONSERVATION PLAN**

C-1.15





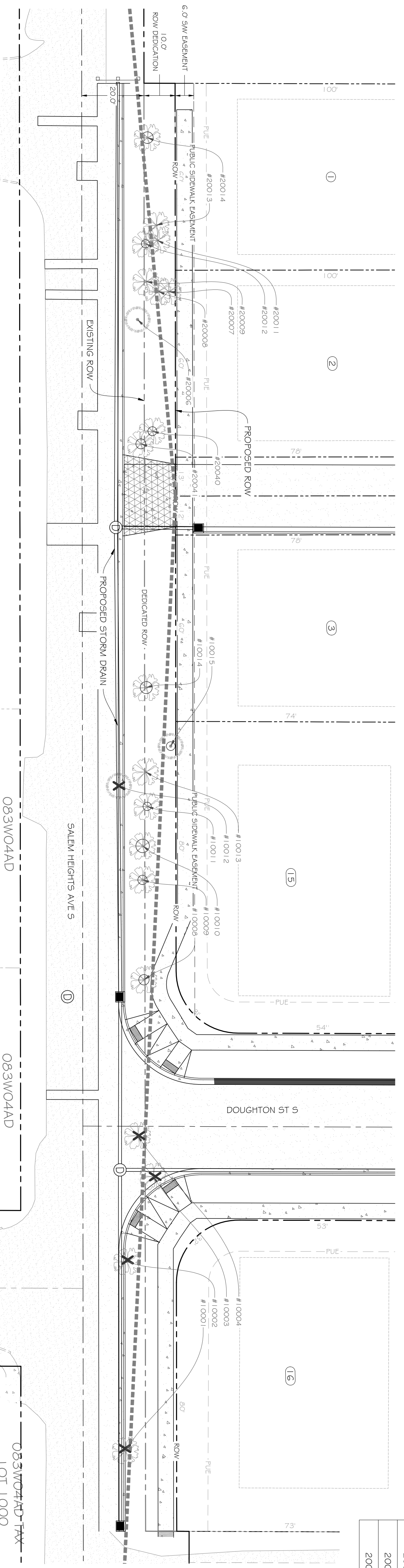
1 ALTERNATE FLAG LOT GRADING PLAN  
SCALE: 1" = 30'



2 ALTERNATE COLLECTOR TYPICAL SECTION  
SCALE: NOT TO SCALE

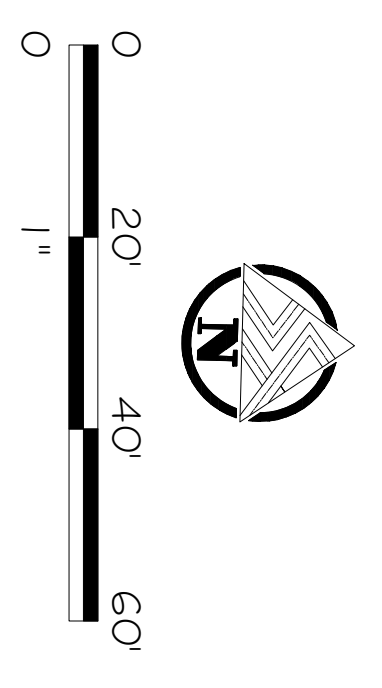
POINT NO.	DESCRIPTION
10001	DTR 32 WHITE OAK
10002	DTR 32 WHITE OAK
10004	DTR 15 12 & LOCUS 3 TRUNKS
10006	DTR 28 MAPLE
10009	DTR 24 WHITE OAK
10010	ETR 40 DOUGLAS FIR
10012	ETR 12 DOUGLAS FIR
20006	ETR 22 FIR
20041	DTR 27 WHITEOAK

POINT NO.	DESCRIPTION
10003	DTR 15 LOCUS
10011	DTR 20 WHITE OAK
10013	DTR 22 WHITE OAK
10014	ETR 35 DOUGLAS FIR
10015	ETR 22 DOUGLAS FIR
20007	DTR 14 WHITEOAK
20008	DTR 14 WHITEOAK
20009	DTR 20 WHITEOAK
20011	DTR 10 WHITEOAK
20012	DTR 20 WHITEOAK
20013	DTR 15 WHITEOAK
20014	DTR 33 WHITEOAK
20040	DTR 23 WHITEOAK



3 ALTERNATE #2  
ALT COLLECTOR PLAN VIEW  
SCALE: 1" = 20'

DIAMETER OF TREE TRUNK  
TREE LEGEND  
EXISTING TREE TO REMAIN  
EXISTING TREE TO BE REMOVED  
TREE IDENTIFICATION  
TREE TYPE, DIAMETER IN INCHES, SPECIES  
DTR = DECIDUOUS TREE  
ETR = EVERGREEN TREE



083W04AD TAX LOT 9000  
083W04AD TAX LOT 4100  
083W04AD TAX LOT 4000  
083W04AD TAX LOT 1000

EXISTING  
EXISTING  
EXISTING  
EXISTING

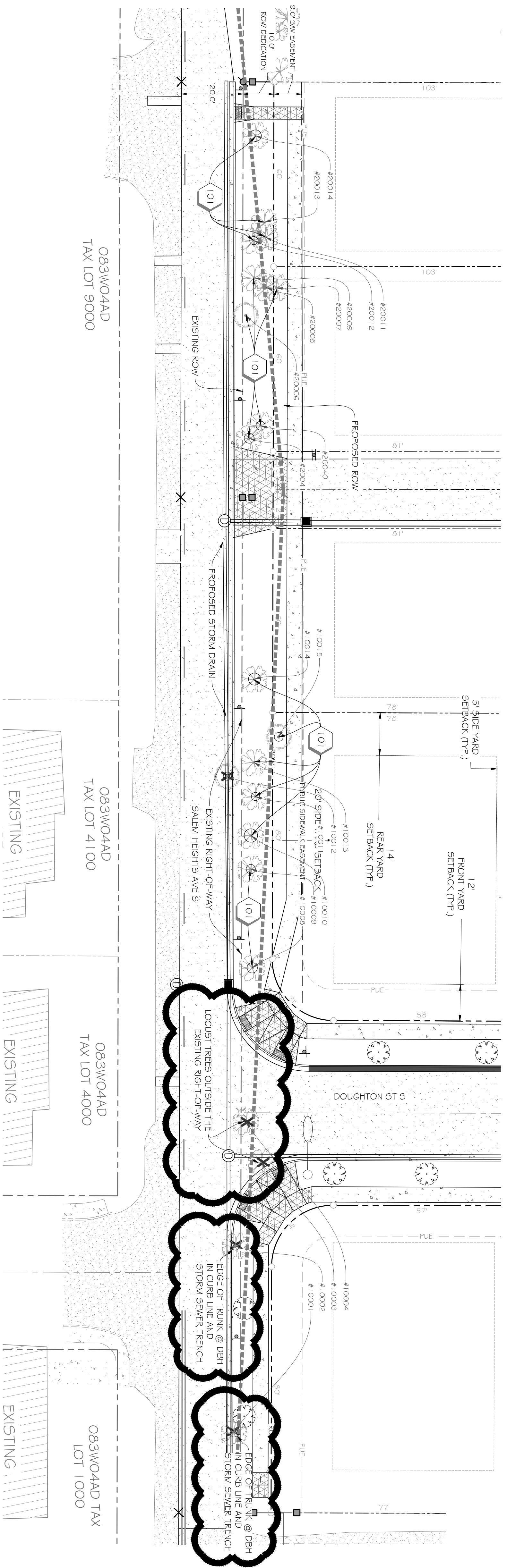
NO.	DESCRIPTION	DATE	BY
1	SUBMITTED TO COS	5/7/19	MF

THOMAS KAY COMPANY  
WREN HEIGHTS SUBDIVISION  
SALEM, OREGON

DATE SIGNED:  
REGISTERED PROFESSIONAL ENGINEER  
NOV 9 2018  
KEITH WHITNEY  
EXPIRES JUNE 30 2020

CIVIL ENGINEERS  
LAND SURVEYORS  
PROJECT MANAGERS  
PLANNERS  
www.pddgm.com

TREES WITHIN  
RIGHT-OF-WAY  
CONSERVATION  
PLAN



KEYNOTES - WORK BY CONTRACTOR  
 100. TREE TO BE PROTECTED BY SAFETY FENCING AT DRIFTLINE TO BE INSTALLED PRIOR TO GRADING.

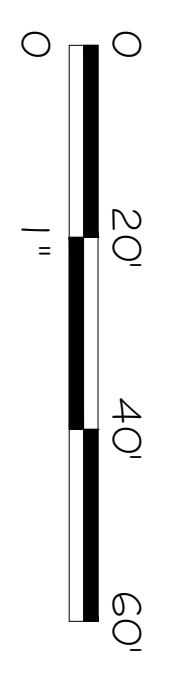
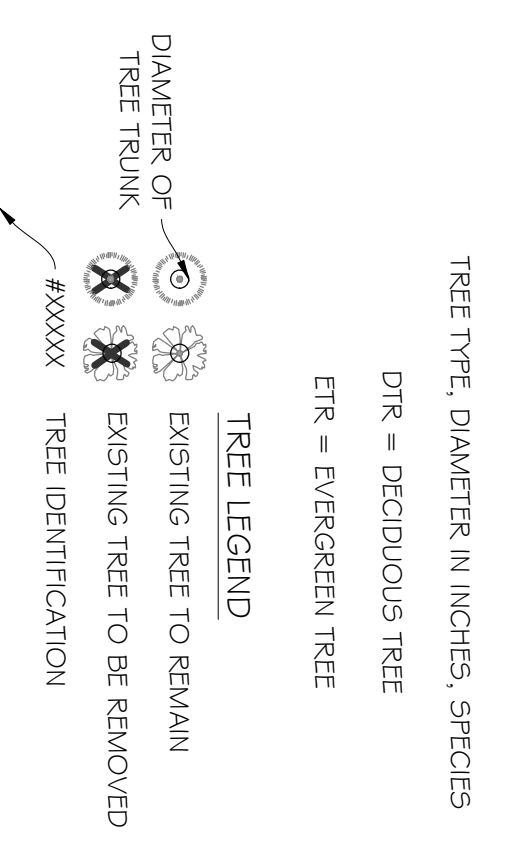
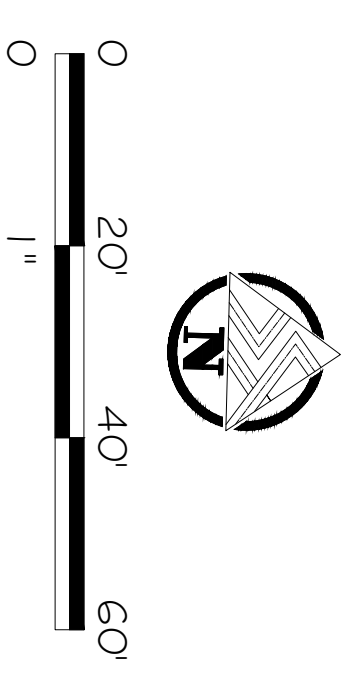
3 ALTERNATIVE #2  
 ALT COLLECTOR PLAN VIEW  
 SCALE: 1" = 20'

CITY TREES WITHIN THE CURRENT RIGHT-OF-WAY

POINT NO.	DESCRIPTION
10001	DTR 32 WHITE OAK
10002	DTR 32 WHITE OAK
10004	DTR 15 1 2 8 LOCUS 3 TRUNKS
10008	DTR 28 MAPLE
10009	DTR 24 WHITE OAK
10010	ETR 40 DOUGLAS FIR
10012	ETR 12 DOUGLAS FIR
20006	ETR 22 FIR
20041	DTR 27 WHITEOAK

CITY TREES WITHIN THE RIGHT-OF-WAY DEDICATION

POINT NO.	DESCRIPTION
10003	DTR 15 LOCUS
10011	DTR 20 WHITE OAK
10013	DTR 22 WHITE OAK
10014	ETR 35 DOUGLAS FIR
10015	ETR 22 DOUGLAS FIR
20007	DTR 14 WHITEOAK
20008	DTR 14 WHITEOAK
20009	DTR 20 WHITEOAK
20011	DTR 10 WHITEOAK
20012	DTR 20 WHITEOAK
20013	DTR 15 WHITEOAK
20014	DTR 33 WHITEOAK
20040	DTR 23 WHITEOAK



NO.	DESCRIPTION	DATE	BY
1	SUBMITTED TO COS	5/7/19	MF
2	SUBMITTED TO ADDRESS PERMIT APPEAL	8/15/20	

## Jennifer Scott

---

**From:** T <ganeesher@gmail.com>  
**Sent:** Sunday, July 05, 2020 6:27 PM  
**To:** Jennifer Scott  
**Subject:** Application # 20-109648-TR

To whom it may concern and the City of Salem,

I vehemently oppose this application.

1. How was the community notified of this application? A yellow 8.5 x 11 piece of paper on a pole across the street that supports a power / cable / telephone pole. I can't believe this is all that is needed? If so then there is a significant problem of letting the community members know of this. Most of the local community in the area will not be aware of this request and you will be getting complaints shortly thereafter.

2. There was already an approved plan that was submitted and accepted. Now the developer is asking for a modification???? No, the plan was already accepted, they can work with those constraints. I can't wait for another request and a piece of paper on a pole to see what will be done.

3. How does this benefit the local community? The developer could care less about the surrounding community and it appears as does the city of Salem.

This process and development has been a problem from the start (i.e., lawyers getting involved) as the developer and the city of Salem have failed the existing community members in the area. I'm sure the city of Salem has already rubber-stamped this.

Timothy Grim  
3335 Winola Ave. S  
Salem OR

## Jennifer Scott

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**From:** Julie Curtis <julielcurtis@comcast.net>  
**Sent:** Thursday, August 27, 2020 3:49 PM  
**To:** Jennifer Scott  
**Subject:** Permit application 20-109648-TR

This email is in support of SWAN's appeal concerning the unlawful removal of city trees in the 500 block of Salem Heights Ave. (at the "Wren Heights" development site).

My family lives at 3285 Holiday Drive South, just west of this site. Our home is on the corner of Salem Heights and Holiday.

As Salem developers begin to scout and purchase sites for dense, close-in housing, residents are rightfully concerned about the potential for increased traffic, loss of open space, and changes in established neighborhood characteristics. The Wren Heights development along a narrow, tree-lined street certainly prompted me and others to fully examine the merits and legality of such a massive development on a property containing many white oaks and other significant trees.

After much research and extensive public testimony, we had to accept there is little citizens can do to stop developments that are out of character with a given neighborhood. However, we certainly expect the City of Salem to be thorough in every aspect of the permitting process for these developments. In fact we demand it.

That city trees were removed at this contentious site without a permit is unacceptable. The Wren Heights developer is well aware how important the permit process is, and frankly should have known better or more carefully supervised the site clearing process. But to have the city tentatively approve a permit AFTER THE FACT is egregious.

Salem residents should have faith that city officials will uphold our ordinances, and oversee significant developments such as Wren Heights with the utmost attention to detail. This clearly has not happened here, and we are concerned. Where else have white oaks been removed without a permit? Where else are developers ignoring city code? Where else will neighborhoods be forever changed by lax oversight? This is a very serious concern.

My family stands in support of SWAN's appeal to the Parks and Recreation advisory board. At the very minimum, the developer should be levied the highest penalty possible for the unlawful tree removal. The city should stop all work on the property until there is sufficient restitution. I would also hope that the city's permit process is fully examined to determine why an "after-the-fact" approval is acceptable. It is not.

Thank you for the opportunity to comment.

Julie Curtis

## Jennifer Scott

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**From:** Bill Dixon <bill.r.dixon@gmail.com>  
**Sent:** Friday, August 28, 2020 11:10 AM  
**To:** Jennifer Scott  
**Subject:** TESTIMONY OPPOSING TREE REMOVAL PERMIT APPLICATION NO. 20-109648-TR

### **TESTIMONY OPPOSING TREE REMOVAL PERMIT APPLICATION NO. 20-109648-TR**

I urge the Parks and Recreation Advisory Board to take decisive action against all un-permitted tree removals from city owned property and specifically against the un-permitted tree removal from the 500 block of Salem Heights Avenue South.

I urge the board to:

- Deny approval of tree removal permit application No. 20-109648-TR. This permit was granted after the trees were cut – endorsing an obvious code violation and denying residents the opportunity to show that reasonable construction alternatives existed which might not have required tree removal.
- Recommend that the city impose and enforce penalties against the developer for improper tree removal
- Recommend that neighbors be involved through the existing Salem Heights Refinement Plan neighborhood committee in developing a collaborative remediation plan.

I stand in support of the SWAN neighborhood association in its appeal against the permit. The Parks Board should take a stand, too.

It's time to Stand For Trees by enforcing city code with fines for improper cutting and fees to cover the commercial value of the downed trees.

And it's time to Stand With The Neighborhood by giving residents a voice in where to replace the trees that were cut.

Salem is at its best when it protects its natural heritage and neighborhood livability while at the same time welcoming new residents into its midst. Take a stand now and show the community that we are up to the challenge.

--

*Bill Dixon*

*608 Salem Heights Ave. S, Salem 97302*

[bill.r.dixon@gmail.com](mailto:bill.r.dixon@gmail.com)

503-602-1708

## Jennifer Scott

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**From:** Wblitz <wblitz@aol.com>  
**Sent:** Sunday, August 30, 2020 3:40 PM  
**To:** Jennifer Scott  
**Subject:** 20-109648-TR

I urge the Parks and Recreation Advisory Board to take decisive action against all un-permitted tree removals from city owned property and specifically, against the un-permitted tree removal from the 500 block of Salem Heights Avenue South. The property in question is by my understanding commonly referred to as the Wren Subdivision.

I live directly across the street from the property. My residence is at 664 Salem Heights Ave S. I have watch with sadness the total removal of a vast number of full grown trees including White Oak trees at the Wren Subdivision. The removal of so many trees seemed to me to be an "over-clearing."

I have learned that my concern was/is well founded and am appalled to now learn that despite an obvious code violation an "oops you are excused" notice was issued after the violation.

I request that the Parks and Recreation Board acknowledge: (1) the error in the after-the-fact permission; (2) immediately impose and enforce a substantial monetary penalty against the developer; (3) require that the developer replace the improperly removed trees with like-kind-and-like-quality trees; and, (4) allow the neighbors in the immediate vicinity of the offense, including input from SWAN.

Thank you for accepting my request.

Sincerely,

William Blitz