

NOTICE OF DECISION

PLANNING DIVISION
555 LIBERTY ST. SE, RM 305
SALEM, OREGON 97301
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*Si necesita ayuda para comprender esta información, por favor llame
503-588-6173*

DECISION OF THE PLANNING ADMINISTRATOR

TREE REGULATION VARIANCE CASE NO.: TRV25-02

APPLICATION NO.: 25-102927-PLN

NOTICE OF DECISION DATE: May 1, 2025

REQUEST: A consolidated application for two Tree Regulation Variances to remove 23 Riparian Corridor trees and vegetation, which include four Significant Trees for the development of a sanitary sewer line serving a previously approved subdivision. The subject property is 0.84 acres in size, zoned RA (Residential Agriculture) and located at the 2085 Wilmington Avenue NW (Polk County Assessor's Map and Tax Lot Number 073W17 / 3802).

APPLICANT: Mark Farrow, Trademark Enterprises

LOCATION: 2085 Wilmington Ave NW, Salem OR 97304

CRITERIA: Salem Revised Code (SRC) Chapter 808.045(d) – Tree Regulation Variance

FINDINGS: The findings are in the attached Decision dated May 1, 2025.

DECISION: The **Planning Administrator APPROVED** Tree Variance Case No. TRV25-02 subject to the following conditions of approval:

- Condition 1:** The roots, trunks, and branches of the trees approved to be removed within the Wilark Creek riparian corridor shall be completely removed from the riparian corridor.
- Condition 2:** Prior to issuance of Public Construction permits for the sewer main, the applicant shall provide a restoration plan which includes 27 Trees outside of the sanitary sewer main easement, 27 vegetative bushes (from the list in the findings) and a seed mix (grass) beyond 15-feet from the top of bank.

The rights granted by the attached decision must be exercised, or an extension granted, by May 17, 2027, or this approval shall be null and void.

Application Deemed Complete:	<u>April 11, 2025</u>
Notice of Decision Mailing Date:	<u>May 1, 2025</u>
Decision Effective Date:	<u>May 17, 2025</u>
State Mandate Date:	<u>August 9, 2025</u>

Case Manager: Olivia Dias, odias@cityofsalem.net, 503-540-2343

This decision is final unless written appeal and associated fee (if applicable) from an aggrieved party is filed with the City of Salem Planning Division, Room 320, 555 Liberty Street SE, Salem OR 97301, or by email at planning@cityofsalem.net, no later than 5:00 p.m., Friday, May 16, 2025. The notice of appeal must contain the information required by SRC 300.1020 and must state where the decision failed to conform to the provisions of the applicable code section, SRC Chapter 808. 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 Hearings Officer will review the appeal at a public hearing. After the hearing, the Hearings Officer may amend, rescind, or affirm 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 by contacting the case manager, or at the Planning Desk in the Permit Application Center, Room 305, City Hall, 555 Liberty Street SE, during regular business hours.

<http://www.cityofsalem.net/planning>

BEFORE THE PLANNING ADMINISTRATOR OF THE CITY OF SALEM

DECISION

IN THE MATTER OF APPROVAL OF)	FINDINGS & ORDER
TREE REGULATION VARIANCE)	
CASE NO. TRV25-02)	
2085 WILMINGTON AVE NW)	MAY 1, 2025

In the matter of the applications for a Tree Variance submitted by the applicant, Multi-Tech Engineering, on behalf of the applicant, Trademark Enterprises and property owner, Salem Keizer School District, the Planning Administrator, having received and reviewed evidence and the application materials, makes the following findings and adopts the following order as set forth herein.

REQUEST

Summary: Tree Regulation Variance to remove 23 trees and vegetation within a Riparian Corridor, including four Significant trees, to install a sanitary sewer line.

Request: A consolidated application for two Tree Regulation Variances to remove 23 Riparian Corridor trees and vegetation, which include four Significant Trees for the development of a sanitary sewer line serving a previously approved subdivision. The subject property is 0.84 acres in size, zoned RA (Residential Agriculture) and located at the 2085 Wilmington Avenue NW (Polk County Assessors Map and Tax Lot Number 073W17 / 3802).

A vicinity map illustrating the location of the property is attached hereto and made a part of this staff report (**Attachment A**).

PROCEDURAL FINDINGS

1. Background

In 2021 a 27-lot single family subdivision was approved for property located at 2230 Doaks Ferry Rd NW (SUB-ADJ21-05). The decision requires connection to the City's sewer system which, as described later in this decision, must be located in the adjacent Riparian Corridor of Wilark Brook.

On January 29, 2025, a consolidated application for two Tree Regulation Variances was filed for the subject property. The application was deemed complete for processing on April 11, 2025. The 120-day state mandated decision deadline for this consolidated application is August 9, 2025.

The applicant's proposed development plans are included as **Attachment B** and the applicant's written statement addressing the approval criteria is included in the record.

SUBSTANTIVE FINDINGS

2. Summary of Record

The following items are submitted to the record and are available: 1) all materials and testimony submitted by the applicant, including any applicable professional studies such as

traffic impact analysis, geologic assessments, stormwater reports, and; 2) materials, testimony, and comments from public agencies, City Departments, neighborhood associations, and the public. All application materials are available on the City's online Permit Application Center at <https://permits.cityofsalem.net>. You may use the search function without registering and enter the permit number listed here: 25 102927.

3. Neighborhood Association and Public Comments

The subject property is located within the boundaries of the West Salem Neighborhood Association.

Applicant Neighborhood Association Contact: SRC 300.310 requires an applicant to contact the neighborhood association(s) whose boundaries include, and are adjacent to, property subject to specific land use application requests. Pursuant to SRC 300.310(b)(1), neighborhood association contact is not required for the requested land use applications.

Neighborhood Association Comment: Notice of the application was provided to the neighborhood association pursuant to SRC 300.520(b)(1)(B)(v), which requires notice to be sent to any City-recognized neighborhood association whose boundaries include, or are adjacent to, the subject property. The Neighborhood Association provided comments indicating their opposition. The Neighborhood Association's and one other comment are addressed below.

Homeowner's Association: The subject property is not located within a homeowner's association.

Public Comment: Notice was also provided, pursuant to SRC 300.520(b)(1)(B)(iii), (iv), (vi), & (vii), to the address of the subject property and all property owners and tenants within 250 feet of the subject property. As of the date of completion of this staff report, three comments were received from neighboring property owners. The comments and staff's responses are summarized as follows.

- *Concerns related to more housing.*

Staff Response: The proposal does not include additional housing. The adjacent property was previously approved for the creation of 27 lots within the Single-Family Residential zone (SUB-ADJ21-05). The submitted proposal pertains solely to utility connections to serve the subdivision.

- *Concerns related to the application containing two Tree Variance Applications.*

Staff Response: The applicant is requesting two variances due to the existence of two distinct sets of approval criteria: one for Significant Trees and another for Riparian Trees and Vegetation. Since the proposal encompasses both categories, they have submitted two separate applications. The findings outlined below specifically address each set of approval criteria, ensuring a thorough evaluation of the proposal in relation to both Significant and Riparian Trees and Vegetation.

- *Concerns regarding the size of the easement needed for the sewer facility.*

Staff Response: There is an existing 15-ft sanitary easement on Salem Keizer School District (SKSD) property, which was originally required as part of a 2010 Land Use Decision (SPR10-04). There is not currently a public sanitary sewer main located within the existing easement. The easement was required in the 2010 decision to serve upstream property, though an engineered alignment was not completed at that time. As the Land Use Decision was issued in 2010, the 2007 version of the Public Works Design Standards (PWDS) applied for the school project. Those 2007 PWDS required a 10-ft wide sanitary sewer easement for 8-inch mains up to 6-ft deep. A greater easement was likely required to allow for future pipe construction at depths greater than 6-feet.

Based on final engineering and design of the subdivision, the alignment of the existing sanitary sewer easement did not work for the Wilark Creek Subdivision. The City has reviewed the new sanitary sewer alignment to ensure that it meets the current PWDS and that City Staff can adequately access the manhole structures and main. The alignment of the 2016 easement would have necessitated the addition of another sanitary sewer manhole, which would be difficult to be accessed by City, which is not desirable. As the new sanitary sewer main was designed in a different alignment, a new easement for the sanitary sewer main has been required to meet the current standards. The current PWDS, adopted in 2014, requires a 20-ft wide easement for sanitary sewer mains 8-inch diameter pipes up to 10-ft deep. Wider easements allow for the pipes to be buried deeper and also for larger diameter pipes. Excavations for deeper pipes and larger pipes require larger equipment and wider trenches than for smaller pipes and shallower trenches.

- *Concerns regarding construction within a designated/mapped wetland.*

Staff Response: The Statewide Wetlands Inventory shows a waterway on the subject property, but does not identify mapped wetlands outside of the waterway boundaries. SRC Chapter 809 requires the City to notify DSL of development activity which may impact wetlands and waterways. As there is a waterway mapped on the subject property, Wetlands Notice was provided to the Department of State Lands (DSL) with the Land Use Application for the Wilark Creek Subdivision (SUB-ADJ21-05). Providing notice to DSL, assures compliance with applicable wetland regulations regardless of whether any portion of the property is listed on the Local Wetland Inventory. SRC Chapter 809 provides that grading and construction activities within wetlands and waterways are regulated by DSL and US Army Corps of Engineers. If permits are required by DSL or the US Army Corps of Engineers, those permits would be required to be submitted to the Development Services Division prior to issuance of any construction permits which impact the wetlands or waterways.

- *Concerns related to Indigenous Salmonids*

Staff Response: The subject property is located within the Urban Growth Boundary, is incorporated within the city limits of Salem, and is designated in the City of Salem Comprehensive Plan as developing residential. Designation as developing residential anticipates existing or future residential development similar to the adjacent subdivision and utility extension to support those uses. Loss of wildlife habitat that has not been identified as significant is not a criterion under Salem Revised Code for granting or denying a Tree Variance.

Further, SRC Chapter 809 was evaluated as part of the adjacent subdivision and ties evaluation of wetlands for significance to, in part, indigenous salmonids “which are listed as sensitive threatened or endangered by a federal or state authority.” The cutthroat trout and sculpin are not listed as threatened or endangered. There is no evidence that the property is a habitat for any threatened or endangered species. Accordingly, there is no indication of any significant habitat present on site or of any impact to any identified habitat, and the criteria is satisfied.

In regard 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 “Developing Residential,” which anticipates existing or future residential development. 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 Tree Variance for extension of a sewer facility.

- *Concerns related to compliance with Salem Area Comprehensive Plan Goal N1.*

Staff Response: Comprehensive Plans provide goals, policies, and recommendations to guide future decisions. The Salem Revised Code implements the Comprehensive Plan, including Goal N1. Compliance with the applicable decision criteria would be consistent with the Salem Area Comprehensive Plan.

4. City Department Comments

Development Services: Reviewed the facts and findings listed in this decision and concur.

Building and Safety: Reviewed the proposal and indicated no concerns.

Fire Department: Reviewed the proposal and indicated no concerns.

5. Public Agency Comments

No Agency Comments were received.

DECISION CRITERIA FINDINGS

6. Analysis of Tree Regulation Variance Approval Criteria

Salem Revised Code (SRC) 808.045(d) sets forth the following criteria that must be met before approval can be granted to a request for a Tree Regulation Variance. In this case, the applicant has requested to address the hardship criterion in SRC 808.045(d)(1).

SRC 808.045(d)(1)(a): There are special conditions that apply to the property which create unreasonable hardships or practical difficulties which can be most effectively relieved by a variance.

Finding: The applicant is requesting two variances due to the existence of two distinct sets of approval criteria: one for Significant Trees and another for Riparian Trees and Vegetation. Findings for each are provided as follows:

▪ ***Significant Trees:***

The applicant has requested the removal of four significant trees to install a sanitary sewer line that will serve the subdivision located to the southwest. According to Salem Revised Code (SRC) 808.015, significant trees cannot be removed unless it is done under a tree and vegetation permit (SRC 808.030), a tree conservation plan (SRC 808.035), or a tree variance (SRC 808.045). The trees in question have been classified as both Significant and Riparian trees.

To grant a variance, it must be demonstrated that preserving the trees would create an unreasonable hardship or practical difficulty that can only be resolved through the variance. In assessing the request to remove the four significant trees, staff considered several factors, including existing or planned utilities and the site's topography, which would require severe grading of the critical root zone to comply with the installation standards for the sanitary sewer line.

The site must be equipped with essential utilities, including water, sewer, stormwater, and private utilities like power and cable. The subdivision tentatively approved to the west is bordered by Doaks Ferry Road NW, which currently lacks sanitary sewer access for the proposed homes (SUB-ADJ21-05). Utility placement is determined by existing infrastructure and grade. The sewer is located in the Wilark Park West Subdivision to the north and is stubbed to the northern property line of the School District property (the subject property). It was specifically stubbed here in order to serve future development on the SKSD property and the adjacent property where SUB-ADJ21-05 was approved. The only viable option for providing sanitary sewer service to the subdivision is to connect to the existing sanitary line located to the northeast and abutting the subject property.

The applicant aims to remove only the minimum number of trees necessary for utility installation. Staff has determined that the location of the four significant trees proposed for removal aligns with the criteria for removal. Their removal is essential because they are situated directly in the path of the sanitary sewer line that must be constructed to provide the necessary infrastructure. Given the constraints of existing sanitary sewer lines and the site's topography, there are no alternative options for installing the required sewer line.

▪ ***Riparian Corridor Trees:***

The applicant has requested to remove 23 riparian corridor trees, including four significant trees (addressed above) in order to install a sanitary sewer line to serve the subdivision to the southwest of the subject property.

No person shall remove a tree in a riparian corridor or native vegetation in a riparian corridor, unless the removal is undertaken pursuant to a tree and vegetation removal permit issued under SRC [808.030](#), undertaken pursuant to a tree conservation plan approved under SRC [808.035](#), or undertaken pursuant to a tree variance granted under SRC [808.045](#). Roots, trunks, and branches of trees removed in riparian corridors shall remain within the riparian

corridor, unless determined to be a potential hazard or impediment to stream flow by the Director.

The applicant has requested the removal of 23 Riparian trees to install a sanitary sewer line that will serve the subdivision located to the southwest. According to Salem Revised Code (SRC) 808.020, Riparian trees cannot be removed unless it is done under a tree and vegetation permit (SRC 808.030), a tree conservation plan (SRC 808.035), or a tree variance (SRC 808.045). The trees in question have been classified as both Significant and Riparian trees.

To grant a variance, it must be demonstrated that preserving the trees would create an unreasonable hardship or practical difficulty that can only be resolved through the variance. In assessing the request to remove the 23 Riparian trees, staff considered several factors, including existing or planned utilities and the site's topography, which would require severe grading of the critical root zone to comply with the installation standards for the sanitary sewer line.

The site must be equipped with essential utilities, including water, sewer, stormwater, and private utilities like power and cable. The subdivision tentatively approved to the west is bordered by Doaks Ferry Road NW, which currently lacks sanitary sewer access for the proposed homes. Utility placement is determined by existing infrastructure, which is currently extended to the northern property line of the School District property (the subject property). The only viable option for providing sanitary sewer service to the subdivision is to connect to the sanitary line located to the northeast and abutting the subject property.

The applicant aims to remove only the minimum number of trees necessary for utility installation. Staff has determined that the location of the 23 Riparian trees proposed for removal aligns with the criteria for removal. Their removal is essential because they are situated directly in the path of the sanitary sewer line that must be constructed to provide the necessary infrastructure. Given the constraints of existing sanitary sewer lines and the site's topography, there are no alternative options for installing the required sewer line.

Pursuant to SRC 808.020, Roots, trunks, and branches of trees removed in riparian corridors shall remain within the riparian corridor, unless determined to be a potential hazard or impediment to stream.

The application materials and construction plans have been reviewed by the Public Works Department to ensure compliance with Public Works Design Standards. In addition, the Natural Resources Section of the Public Works Department has noted that roots, trunks and branches shall be removed to ensure a flow impediment or hazard does not occur in the area, therefore the following condition applies:

Condition 1: The roots, trunks, and branches of the trees approved to be removed within the Wilark Creek riparian corridor, shall be completely removed from the riparian corridor.

Pursuant to SRC 808.045(e)(2), variances approved for removal within a Riparian Corridor are to be reasonably restored and in no case shall the alteration of the corridor occupy more than 50 percent of the width or result in less than 15-feet of vegetated corridor on each side.

Natural Resources Section commented that restoration to all areas affected at the site shall include planting with a seed (grass) mix beyond the 15 -feet from top of bank. Additionally, a mix of the following native shrubs along the disturbed ground shall be provided: Tall Oregon Grape, Pacific Nine Bark, Snowberry, Red Flowering Current, Mock Orange, Red Stemmed Dogwood, and Vine Maple. According to the Public Works Design Standards, trees are not permitted to be planted within the sanitary sewer main easement. As such, trees required as part of the restoration plan, shall be provided outside of the sanitary sewer main easement.

Condition 2: Prior to issuance of Public Construction permits for the sewer main, the applicant shall provide a restoration plan which includes 27 Trees outside of the sanitary sewer main easement, 27 vegetative bushes (from the list in the findings) and a seed mix (grass) beyond 15-feet from the top of bank.

As addressed above, because of the location of the sanitary sewer line and where the connection is needed to provide services to the approved subdivision is the minimum necessary for the otherwise reasonable development of the property.

SRC 808.045(d)(1)(b): The proposed variance is the minimum necessary to allow the otherwise lawful proposed development of activity.

Finding: The applicant is requesting two variances due to the existence of two distinct sets of approval criteria: one for Significant Trees and another for Riparian Trees. Findings for each are provided as follows:

▪ ***Significant Trees:***

The 27-lot subdivision (SUB-ADJ21-05) was approved through the land use process. The site is required, and entitled, to connect to City utilities, including sanitary sewer. The subdivision is bordered by Doaks Ferry Road NW, which lacks sanitary sewer. Utility placement is determined by existing infrastructure and grade. The sewer is located in the Wilark Park West Subdivision to the north and is stubbed to the northern property line of the School District property. It was specifically stubbed here in order to serve future development on the SKSD property, and the adjacent property where SUB-ADJ21-05 was approved. The only viable option for providing sanitary sewer service to the subdivision is to connect to the existing sanitary line located to the northeast and abutting the subject property.

The City has reviewed the new sanitary sewer alignment to ensure that it meets the current PWDS and that City Staff can adequately access the manhole structures and main. The PWDS require a 20-ft wide easement for sanitary which allows for the required pipe size, the required pipe depth and for grading and excavation as needed for construction.

As described in the findings above and as conditioned, the applicant's requested variances to remove four significant trees, is the minimum necessary to allow for the otherwise lawful development of the adjacent property.

▪ ***Riparian Corridor Trees:***

The 27-lot subdivision (SUB-ADJ21-05) was approved through the land use process. The site is required, and entitled, to connect to City utilities, including sanitary sewer. The subdivision is

bordered by Doaks Ferry Road NW, which lacks sanitary sewer. Utility placement is determined by existing infrastructure and grade. The sewer is located in the Wilark Park West Subdivision to the north and is stubbed to the northern property line of the School District property. It was specifically stubbed here in order to serve future development on the SKSD property, and the adjacent property where SUB-ADJ21-05 was approved. The only viable option for providing sanitary sewer service to the subdivision is to connect to the existing sanitary line located to the northeast and abutting the subject property.

The City has reviewed the new sanitary sewer alignment to ensure that it meets the current PWDS and that City Staff can adequately access the manhole structures and main. The PWDS require a 20-ft wide easement for sanitary which allows for the required pipe size, the required pipe depth and for grading and excavation as needed for construction.

As described in the findings above and as conditioned, the applicant's requested variances to remove 23 riparian corridor trees and vegetation, is the minimum necessary to allow for the otherwise lawful development of the adjacent property.

7. Conclusion

Based upon review of SRC Chapter 808, the applicable standards of the Salem Revised Code, the findings contained herein, and due consideration of comments received, the application complies with the requirements for an affirmative decision.

IT IS HEREBY ORDERED

Tree Regulation Variance Case No. TRV25-02 is hereby **APPROVED** subject to SRC Chapter 808 and 804, the applicable standards of the Salem Revised Code, and conditions of approval.

- Condition 1:** The roots, trunks, and branches of the trees approved to be removed within the Wilark Creek riparian corridor shall be completely removed from the riparian corridor.
- Condition 2:** Prior to issuance of Public Construction permits for the sewer main, the applicant shall provide a restoration plan which includes 27 Trees outside of the sanitary sewer main easement, 27 vegetative bushes (from the list in the findings) and a seed mix (grass) beyond 15-feet from the top of bank.

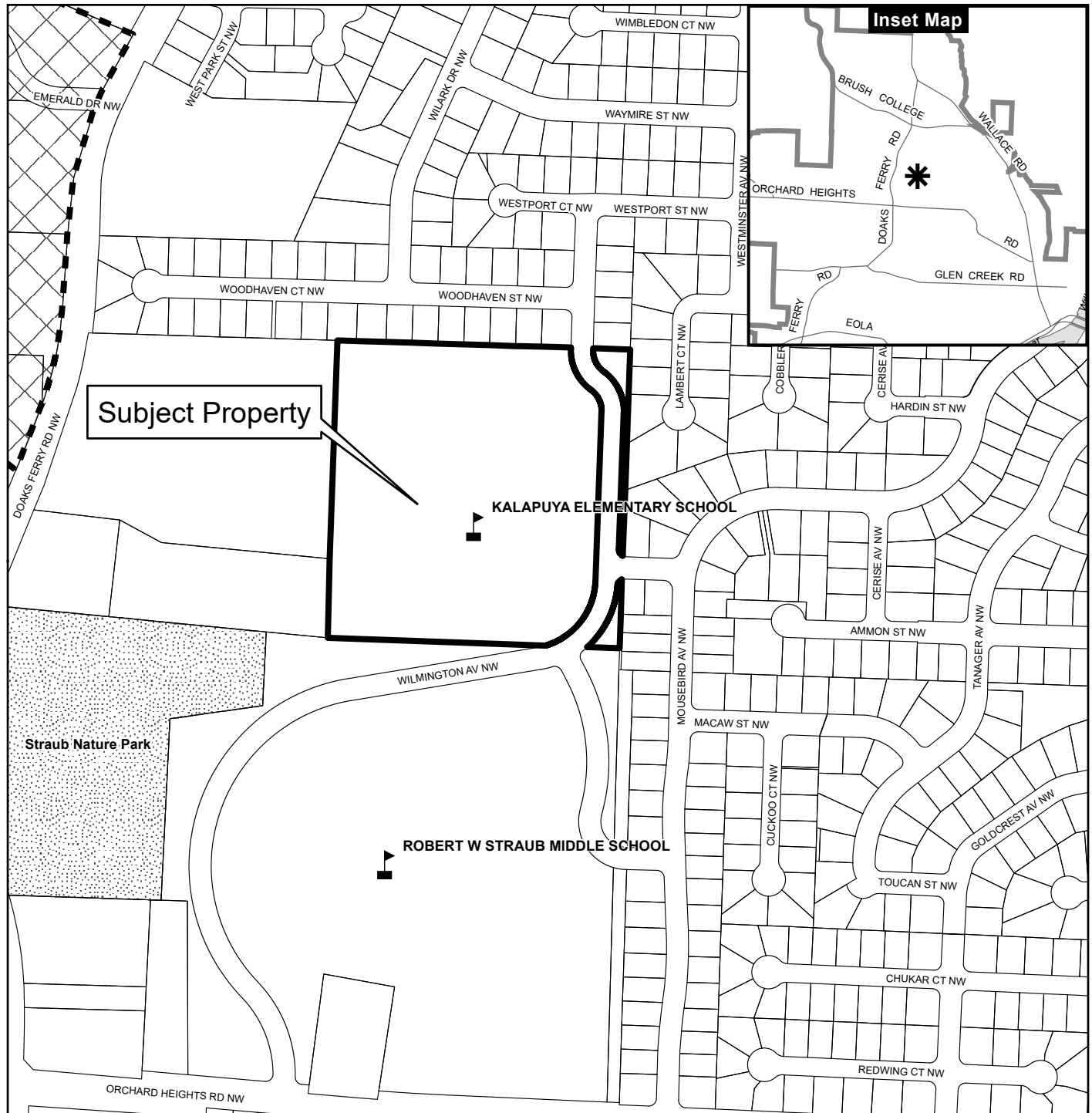


Olivia Dias, Current Planning Manager, on behalf of
Lisa Anderson-Ogilvie, AICP
Planning Administrator

Attachments: A. Vicinity Map
B. Site Plan

Vicinity Map

2085 Wilmington Avenue NW



Legend

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

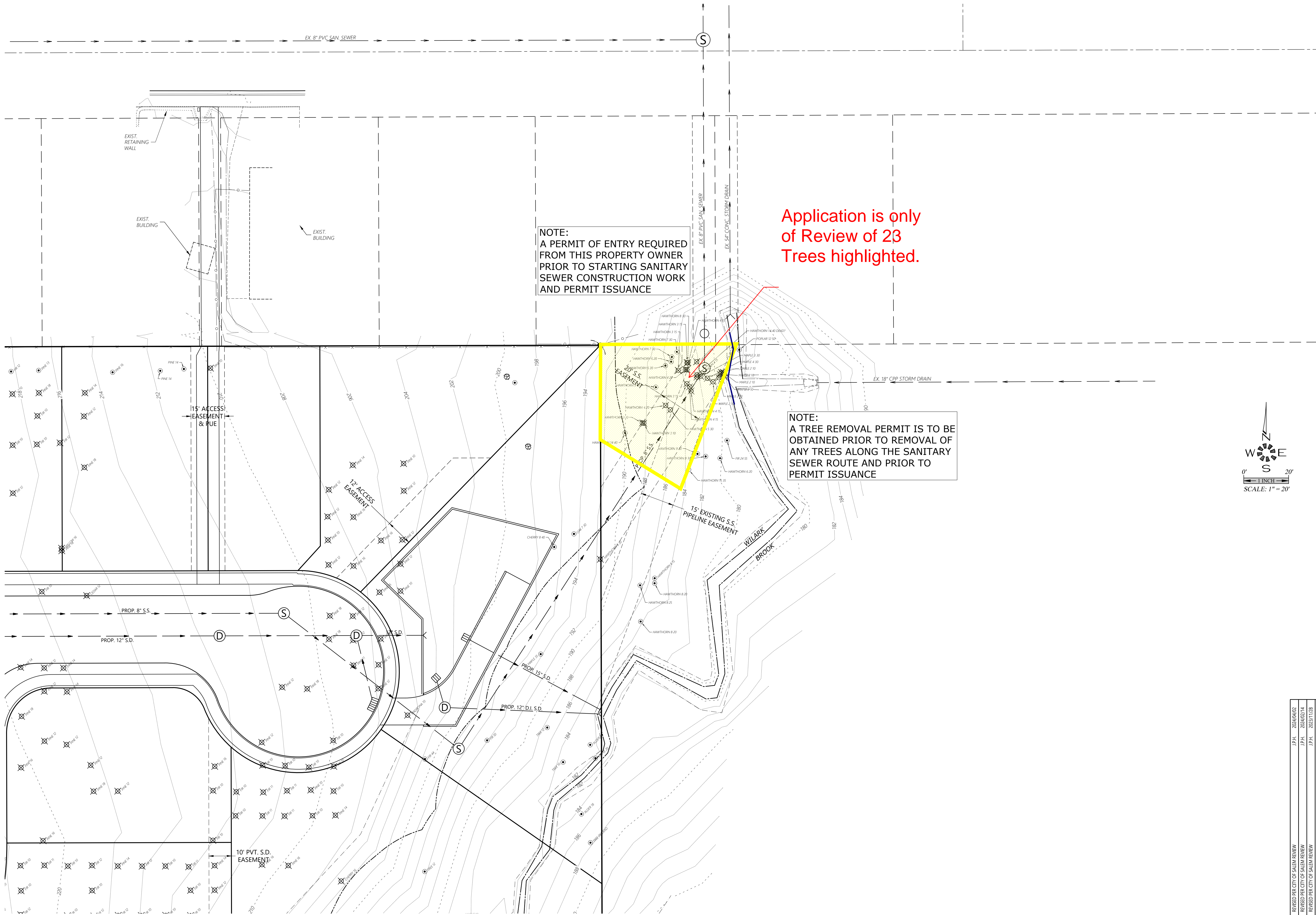
Parks

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Community Planning and Development

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MULTI/TECH

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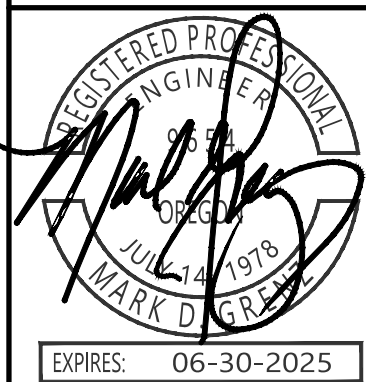
TREE REMOVAL
PLAN

WILARK CREEK

NO CHANGES, MODIFICATIONS
OR REVISIONS SHALL BE
MADE WITHOUT WRITTEN
AUTHORIZATION FROM THE
DESIGN ENGINEER.
DIMENSIONS & NOTES TAKE
PRECEDENCE OVER
GRAPHICAL REPRESENTATION.

69510 103 TREE

Design:	M.D.G.
Drawn:	D.G.G.
Checked:	J.J.G.
Date:	JAN. 2020
Scale:	AS SHOWN
As-Built:	----



JOB # 6951

5. REVISED PER CITY OF SALEM REVIEW	JPH - 2024/04/02
4. REVISED PER CITY OF SALEM REVIEW	JPH - 2024/02/14
3. REVISED PER CITY OF SALEM REVIEW	JPH - 2023/11/28
2. REVISED PER CITY OF SALEM REVIEW	JPH - 2023/09/20
1. REVISED PER CITY OF SALEM REVIEW	CFG - 2023/06/20