



City of Portland  
**Bureau of Development Services**  
Land Use Services Division

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**Date:** September 30, 2008  
**To:** Interested Person  
**From:** Paul Cathcart, Land Use Services  
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## **NOTICE OF A TYPE II<sub>x</sub> DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD**

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

### **CASE FILE NUMBER: LU 08-100679 LDP AD**

#### **GENERAL INFORMATION**

**Applicant:** Stephen McBride  
7607 SE Luther Rd  
Portland, OR 97206  
  
Bradley Joanne and William Poole  
13358 S Carus Rd  
ORegon City, OR 97045

**Site Address:** 7607 SE LUTHER RD, C231071, 12E29AB00300

**Legal Description:** 01S02E29AB TL 300  
**Tax Account No.:** C231071  
**State ID No.:** 12829AB 00300  
**Quarter Section:** 3938

**Neighborhood:** Brentwood-Darlington, contact Steve White at 503-788-2096.  
**Business District:** Eighty-Second Avenue, contact Nancy Chapin at 503-774-2832.  
**District Coalition:** Southeast Uplift, contact Gary Berger at 503-232-0010.  
**Zoning:** Residential 5,000 (R5)

**Case Type:** Land Division Partition (LDP) with concurrent Adjustment (AD)  
**Procedure:** Type II<sub>x</sub>, an administrative decision with appeal to the Oregon Land Use Board of Appeals (LUBA).

#### **PROPOSAL:**

The applicant proposes to divide the 15,208 square foot property described above into two parcels. Parcel 1 would be 8,224 square feet and would contain the existing house. Parcel 2 would be 6,984 square feet and would provide buildable area for a detached house. The applicant proposes to preserve five of the eight trees on site. The applicant is also requesting an Adjustment to the through lot standards of Section 33.610.300 of the Zoning Code to allow the creation of parcels that will front on a local street (SE Clatsop Street, not yet constructed) and SE Luther Road, a collector street. An Adjustment is also being requested to the front building

setback requirements of Section 33.110, Table 110-3 to allow the existing structure on Parcel 1 to be 5.1 feet from the right-of-way for SE Clatsop Street (after right-of-way dedication) rather than the required 10 feet.

This partition proposal is reviewed through a Type IIX procedure because: (1) the site is in a residential zone; (2) two lots are proposed; and (3) concurrent reviews (Adjustment to through lot standard and front building setback) are required (see 33.660.110).

For purposes of State Law, this land division is considered a partition. To partition land is to divide an area or tract of land into two or three parcels within a calendar year (See ORS 92.010).

**Relevant Approval Criteria:**

In order to be approved, this proposal must comply with Zoning Code sections 33.660.120, Approval Criteria for Land Divisions in an Open Space or Residential Zone and section 33.805.040, Approval Criteria for Adjustments.

## ANALYSIS

**Site and Vicinity:** The site fronts SE Luther Road, is relatively flat and contains an existing single-family house built in 1946. There are seven trees on site, consisting of pines, a fir, and deciduous trees. Surrounding development consists of one and two-story single-family homes fronting SE Luther Road. The Springwater Corridor Trail is to the south and east of this site. The property to the north has preliminary plan approval for a 10-lot subdivision (Sunny's Court). The site was annexed to the City of Portland in August of 2007 from Clackamas County.

**Zoning:** The R5 designation is one of the City's single-dwelling zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing.

**Land Use History:** City records indicate there are no prior land use reviews for this site.

**Agency Review:** A "Notice of Type I Proposal in Your Neighborhood" was mailed on **April 15, 2008** for land division partition. A "Notice of Type IIX Proposal in your Neighborhood" was mailed on **August 8, 2008** that included the two Adjustments noted in the proposal above.

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on August 8, 2008. No written responses were received from either the Neighborhood Association or notified property owners in response to the proposal by the requested notification deadline.

## APPROVAL CRITERIA-

### APPROVAL CRITERIA FOR LAND DIVISIONS IN OPEN SPACE AND RESIDENTIAL ZONES

**33.660.120 The Preliminary Plan for a land division will be approved if the review body finds that the applicant has shown that all of the following approval criteria have been met.**

The relevant criteria are found in Section **33.660.120 [A-L], Approval Criteria for Land Divisions in Open Space and Residential Zones**. Due to the specific location of this site, and the nature of the proposal, some of the criteria are not applicable. The following table summarizes the applicability of each criterion.

Criterion	Code Chapter	Topic	Applicability Findings
A	33.610	Lots	Applicable - See findings below
B	33.630	Trees	Applicable - See findings below.

Criterion	Code Chapter	Topic	Applicability Findings
C	33.631	Flood Hazard Area	Not applicable - The site is not within the flood hazard area.
D	33.632	Potential Landslide Hazard Area	Not applicable - The site is not within the potential landslide hazard area.
E	33.633	Phased Land Division or Staged Final Plat	Not applicable - A phased land division or staged final plat has not been proposed.
F	33.634	Recreation Area	Not applicable - This is not required where the proposed density is less than 40 units.
G	33.635 .100	Clearing and Grading	Applicable - See findings below.
G	33.635 .200	Land Suitability	Applicable - See findings below.
H	33.636	Tracts and Easements	Applicable - See findings below.
I	33.639	Solar Access	Not Applicable - Maintaining existing development on the site limits new parcel configuration (33.610.200 supercedes 33.639).
J	33.640	Streams, Springs, and Seeps	Not applicable - No streams, springs, or seeps are evident on the site.
K	33.641	Transportation Impacts	Applicable - See findings below
L	33.651 - 33.654	Services and Utilities	Applicable - See findings below

**Applicable Approval Criteria are:**

**A. Lots. The standards and approval criteria of Chapters 33.605 through 33.612 must be met.**

**Findings:** Chapter 33.610 contains the density and lot standards applicable in the RF through R5 zones. These density and lot dimension standards ensure that lots are consistent with the desired character of each zone while allowing lots to vary in size and shape provided the planned intensity of each zone is respected.

**Density Standards**

Density standards match housing density with the availability of services and with the carrying capacity of the land in order to promote efficient use of land, and maximize the benefits to the public from investment in infrastructure and services. These standards promote development opportunities for housing and promote urban densities in less developed areas. Maximum densities ensure that the number of lots created does not exceed the intensity planned for the area, given the base zone, overlay zone, and plan district regulations. Minimum densities ensure that enough dwelling units can be developed to accommodate the projected need for housing.

The method used to calculate density depends on whether a street is created as part of the land division, and whether the site is subject to certain environmental constraints.

In this case, a street is not proposed or required, and the site is not within the environmental zone, potential landslide hazard area, or flood hazard area. Therefore, the maximum and minimum density for this site is as follows:

Minimum = (15,208 square feet \* .80) ÷ 5,000 square feet = 2.43 (which rounds down to a minimum of 2 parcels, per 33.930.020.A)

Maximum = 15,208 square feet ÷ 5,000 square feet = 3.04 (which rounds down to a maximum of 3 parcels, per 33.930.020.B)

The applicant is proposing 2 parcels. The density standards are therefore met.

#### Lot Dimensions

The lot dimension standards ensure that: (1) each lot has enough room for a reasonably-sized house and garage; (2) lots are of a size and shape that development on each lot can meet the development standards of the Zoning Code; (3) lots are not too large relative to the planned density; (4) each lot has room for at least a small, private outdoor area; (5) lots are compatible with existing lots; (6) lots are wide enough to allow development to orient toward the street; (7) lots don't narrow to an unbuildable width close to the street; (8) each lot has adequate access from the street; (9) each lot has access for utilities and services; and (10) lots are not landlocked.

The dimensions of the proposed lots as compared to the required lot dimension standards is shown in the following table (this information is found in Table 610-2 of the Zoning Code):

	<b>R5 Zone Requirement</b>	<b>Proposed Parcel 1</b>	<b>Proposed Parcel 2</b>
Minimum Lot Area	3,000 sq. ft.	8,224 sq. ft.	6,984 sq. ft.
Maximum Lot Area	8,500 sq. ft.		
Minimum Lot Width*	36 ft.	73.9 ft.	62.47 ft.
Minimum Lot Depth	50 ft.	111.81 ft.	111.80 ft.
Minimum Front Lot Line	30 ft.	73.92 ft.	62.47 ft.

\* Width is measured at the minimum front building setback line

#### Through Lots

With the extension of SE Clatsop Street as required by the 10-lot subdivision to the north (LU 07-132359 LDS), Parcels 1 and 2 will be through lots. Through lots are allowed only where both front lot lines are on local service streets. SE Clatsop Street is a local service street. SE Luther Road is classified as a collector street by Clackamas County, and therefore is not a local service street. The applicant has requested approval of an Adjustment to the Through Lot standards of Section 33.610.300 to allow the creation of Parcels 1 and 2. The minimum front lot line and minimum width standards apply to one frontage of the through lot.

The findings above describe how the applicable lot standards are met. With approval of an Adjustment to the Through Lot Standards below, this criterion can be met.

#### **B. Trees. The standards and approval criteria of Chapter 33.630, Tree Preservation, must be met.**

**Findings:** The regulations of Chapter 33.630 preserve trees and mitigate for the loss of trees. Certain trees are exempt from the requirements of this chapter.

The applicant has submitted an arborist report that inventories the trees within the land division site, evaluates their condition and specifies root protection zones (Exhibit A.6). Some trees have been exempted by the arborist because they are either unhealthy, a nuisance species, located partially off the property or located within 10 feet of an existing structure to remain on the property. The inventory identifies the following trees on the site:

<b>Tree #</b>	<b>Species</b>	<b>Diameter (inches)</b>	<b>Significant? (On Table 630-1)</b>	<b>Exempt? (per 33.630.030)</b>	<b>To be retained?</b>	<b>RPZ (Root Protection Zone)</b>
<b>1</b>	Dogwood	6.2	No	No	Yes	6 ft.

<b>2</b>	European Cutleaf Birch	11.7	No	Yes	No	
<b>3</b>	Bigleaf Maple	30.5	Yes	Yes	No	
<b>4</b>	English Holly	12	No	Yes	No	
<b>5</b>	Douglas fir	22.5	Yes	No	Yes	15 ft.
<b>6</b>	Shore pine	13.5	No	Yes	No	
<b>7</b>	Shore pine	11	No	Yes	No	
<b>8</b>	Shore pine	13.5	No	Yes	No	

The total non-exempt tree diameter on the site is 28.7 inches. The arborist report mistakenly identifies 40.4 inches of tree diameter as non-exempt. The applicant proposes to preserve trees 1, 2, 3, and 5. Trees 2 and 3 are exempt from the tree preservation requirements due to health (tree 2) and location (tree 3) issues. Trees 1 and 5 comprise of 28.7 inches of diameter, or 100 percent of the total non-exempt tree diameter. Tree 5 is within the area of right-of-way dedication required for SE Clatsop Street and therefore cannot be designated for preservation. The preservation of Tree 1 would preserve 6.2 inches, or 21.6 percent of the non-exempt tree diameter on the site. The preservation of this amount of tree diameter would not meet any of the tree preservation options in 33.630.100. A tree mitigation plan is proposed (Exhibit C.2). The applicant proposes instead to use the mitigation options of 33.630.300:

### **33.630.300 Mitigation Option**

**As an alternative to meeting Section 33.630.100, approval of a mitigation plan may be requested. The review body will approve the mitigation plan where the applicant has shown that the applicant has met criteria A. and B. and one of the criteria in C., below:**

- A. As many trees as possible are preserved; and**
- B. The applicant has submitted a mitigation plan that adequately mitigates for the loss of trees, and shows how the mitigation plan equally or better meets the purpose of this chapter. Mitigation can include tree planting, preservation of groups of smaller trees, eco-roof, porous paving, or pervious surface permanently preserved in a tract.**
- C. It is not possible under any reasonable scenario to meet Section 33.630.100 and meet one of the following:**
  - 1. Minimum density;**
  - 2. All service requirements of Chapters 33.651 through 33.654, including connectivity;**
  - 3. Implementation of an adopted street plan;**
  - 4. On sites 15,000 square feet or less in area, a practicable arrangement of lots, tracts, and streets within the site that would allow for the division of the site with enough room for a reasonable building site on each lot;**
  - 5. In E and I zones, provide a practicable arrangement of lots, tracts, and streets within the site that would allow for the division of the site with enough room for a reasonable building site on each lot, considering the uses and development allowed in the zone; or**
  - 6. Preserve the trees within the environmental zones on site while providing a practicable arrangement of building sites and disturbance area.**

The Office of Transportation has required right-of-way dedication of the subject property and frontage improvements to complete the full build out of the extension of SE Clatsop Street as required by the land use conditions of LU 07-132359 LDS, a 10-lot subdivision directly north of the subject site.

Tree 5 is located in area that will be impacted by the required right-of-way dedication and street improvements. Without this tree available for preservation, the applicant cannot meet any of the tree preservation options in 33.630.100. Therefore, the applicant cannot meet the

connectivity requirements of 33.654 and still preserve the required number of tree inches. Criterion C.2 above is met.

Therefore, the applicant has meet Criteria A, because as many non-exempt trees as possible will be preserved.

The tree mitigation plan would plant 2 inches of tree diameter on each parcel. These trees will need to be native species chosen from the Portland Plant List. The proposed mitigation plan would provide similar benefits to the preservation of trees by:

- Providing for approximately the same caliper inches as Option 1 of the Tree Preservation Chapter. Option 1 would require that 35% or 10 inches of the existing tree diameter on site be preserved. The addition of two trees at 2” each, in addition to the preservation of 6.2 inches of tree diameter in Tree 1 is roughly equivalent to the 10 inches that would be required to be preserved.
- Requiring the replacement trees to be native species, chosen from the Portland Plant List, will help to foster and maintain the City’s natural heritage.
- The new trees that will be planted as part of the mitigation plan will help absorb air pollutants and contamination, provide buffering from noise and wind, and provide visual screening from the adjacent properties.

After right-of-way dedication and improvements, Parcel 1 will be approximately 6,753 square feet (assuming right-of-way is dedicated to Clackamas County for SE Luther Road). Parcel 2 would become approximately 5,740 square feet, using the same assumption. Section 33.248.020.H, known as the T1 tree planting standard, requires trees to be planted on new lots as part of the approval of future building permits. The T1 tree standard requires the planting of at least 2 inches of tree caliper per 1,000 square feet of site area, which would result in 12 inches of new trees planted for proposed Parcel 2. Because of the small size of Parcel 2 after right-of-way dedication, it is not practical for additional trees beyond the T1 standard to be planted without jeopardizing the overall health of all of the trees on the site. Therefore, the mitigation trees may be counted toward meeting the T1 requirement on the new lots.

Criteria B is met with a condition of approval requiring one, 2-inch trees to be planted on Parcel 1, the lot with the existing house, prior to final plat approval. A Zoning Permit must be obtained, and receive final inspection approval verifying that these trees have been planted.

This criterion is met, subject to the condition that one, 2-inch tree be planted on Parcel 1 prior to final plat approval and that any future development on Parcel 1 be carried out in conformance with the Tree Preservation Plan (Exhibit C.2) and the applicant's arborist report (Exhibit A.6).

**G. Clearing, Grading and Land Suitability. The approval criteria of Chapter 33.635, Clearing, Grading and Land Suitability must be met.**

*The approval criteria of Chapter 33.635 are found in two groups – clearing and grading, and land suitability.*

**33.635.100 – Clearing and Grading**

- A. Existing contours and drainage patterns of the site must be left intact wherever practicable. Where alteration to existing drainage patterns is proposed, it must not adversely impact adjacent properties by significantly increasing volume of runoff or erosion;**
- B. Clearing and grading should be sufficient for construction of development shown on the Preliminary Clearing and Grading Plan;**
- C. Clearing and grading should be limited to areas of the site that are reasonably necessary for construction of development shown on the Preliminary Clearing and Grading Plan;**

- D. Topsoil must be preserved on site to the extent practicable for use on the site after grading is complete; and**
- E. Soil stockpiles must be kept on the site and located in areas designated for clearing and grading as much as is practicable.**

**Findings:** The regulations of Chapter 33.635 ensure that the proposed clearing and grading is reasonable given the infrastructure needs, site conditions, tree preservation requirements, and limit the impacts of erosion and sedimentation to help protect water quality and aquatic habitat.

In this case the site is primarily flat, and is not located within the Potential Landslide Hazard Area. Therefore, no significant clearing or grading will be required on the site to make the new lots developable. In addition, there are no trees required to be preserved in the areas where new development on the site is anticipated. This criteria is met.

### **33.635.200 – Land Suitability**

**Where geologic conditions or historic uses of the site indicate a hazard may exist, the applicant must show that the proposed land division will result in lots that are suitable for development. The applicant may be required to make specific improvements in order to make the lots suitable for their intended uses and the provision of services and utilities.**

The site is currently in residential use, and there is no record of any other use in the past. The existing house is not connected to the public sanitary sewer located in public sanitary sewer easement north of the property. Prior to final plat approval, the existing house must connect to the public sanitary sewer and final a plumbing permit for this connection. In addition, prior to final plat approval, the applicant must meet the requirements of the Site Development Section of the Bureau of Development Services for the decommissioning of the existing sanitary sewer facility. With this condition, the new parcel can be considered suitable for new development, and this criterion is met.

- H. Tracts and easements. The standards of Chapter 33.636, Tracts and Easements must be met;**

### **33.636.100 Requirements for Tracts and Easements**

- A. Ownership of tracts. Tracts must be owned as follows unless otherwise specified in this Title or the land use decision:**
  - 1. The owners of property served by the tract, or by any other individual or group of people. When the tract is owned by more than one person it must be held in common with an undivided interest;**
  - 2. The Homeowners' Association for the area served by the tract;**
  - 3. A public or private non-profit organization; or**
  - 4. The City or other jurisdiction.**

**Findings:** No tracts are proposed or required for this land division, so criterion A does not apply.

- B. Maintenance agreement. The applicant must record with the County Recorder a maintenance agreement that commits the owners or owners' designee to maintain all elements of the tract or easement; however, facilities within the tract or easement that will be maintained by a specified City agency may be recorded in a separate maintenance agreement. The maintenance agreement must be approved by BDS and the City Attorney in advance of Final Plat approval and must be submitted to the County Recorder to be recorded with the Final Plat. For a Planned Development not done in conjunction with a land division, the**

**maintenance agreement must be submitted to the County Recorder to be recorded prior to issuance of the first building permit related to the development.**

**Findings:** The following easement may be required for this land division:

- If used for access to Parcel 2, an Access Easement will be required to allow shared use of the existing driveway that straddles proposed lot lines;

As stated in Section 33.636.100 of the Zoning Code, a maintenance agreement will be required describing maintenance responsibilities for the easement described above and facilities within those areas. This criterion can be met with the condition that a maintenance agreement is prepared and recorded with the final plat. In addition, the plat must reference the recorded maintenance agreement with a recording block, substantially similar to the following example:

*“A Declaration of Maintenance agreement for Access Easement has been recorded as document no. \_\_\_\_\_, Multnomah County Deed Records.”*

With the conditions of approval discussed above, this criterion is met.

**K. Transportation impacts. The approval criteria of Chapter 33.641, Transportation Impacts, must be met; and,**

*The relevant approval criteria of Chapter 33.641 are found in the two paragraphs below.*

**33.641.020. The transportation system must be capable of safely supporting the proposed development in addition to the existing uses in the area. Evaluation factors include: street capacity and level-of-service; vehicle access and loading; on-street parking impacts; the availability of transit service and facilities and connections to transit; impacts on the immediate and adjacent neighborhoods; and safety for all modes.**

**33.641.030. The applicant may meet the criterion in Section 33.641.020, above, by including mitigation measures as part of the land division proposal. Mitigation measures must be acceptable to the City Engineer and may include providing transportation demand management measures, an access management plan, constructing streets or bicycle, pedestrian, or transit facilities on or off the site or other capital improvement projects such as traffic calming devices.**

**Findings:** The regulations of Chapter 33.641 allow the traffic impacts caused by dividing and then developing land to be identified, evaluated, and mitigated for if necessary. Small land divisions involving only a few dwelling units may not require a formal transportation impact study, while it might be required for larger projects (Title 17 includes technical standards describing when a more formal study is required).

The site has approximately 136 feet of frontage on SE Luther Road and on the future extension of SE Clatsop Street on the north side of the site. SE Clatsop Street is classified as a local service street for all modes in the Transportation Element of the City’s Comprehensive Plan. SE Luther Road is a Clackamas County road with a County classification of collector street. Tri-Met provides transit service approximately 975 feet from the site on SE 72<sup>nd</sup> Avenue via bus 71. Parking is not currently allowed on SE Luther Road. There is one driveway entering the site that provides access to off-street parking for the existing house.

SE Clatsop Street does not currently provide any improvements or access along the frontage of this site (north property line). Initial street and sidewalk improvements to SE Clatsop Street are required as a condition of approval for the 10-lot, subdivision (LU 07-132359 LDS) on the property to the north of this site. In reviewing this land division, Portland Transportation relies on accepted civil and traffic engineering standards and specifications to determine if existing street improvements for motor vehicles, pedestrians and bicyclists can safely and efficiently

serve the proposed new development. In this case Portland Transportation has determined that frontage improvements must be made to the future extension of SE Clatsop Street in order to ensure that safe pedestrian travel is possible within the proposed development. The improvements required by this land use review are contingent on the completion of the improvements required by LU 07-132359 LDS. To accommodate these improvements, as well as an associated stormwater facility discussed later in this report, an additional 10 feet of right-of-way must be dedicated along the frontage of the subject site. Access control strips may be required by the City Engineer along the western and eastern terminus of the dedicated areas. With these improvements, one additional dwelling can be safely served by this existing street without having any significant impact on the level of service provided.

SE Luther Road is under the jurisdiction of Clackamas County and is improved with a paved roadway and a gravel shoulder on both sides. There are no curbs, planter strips, or sidewalks. In reviewing this land division, Portland Transportation relies on accepted civil and traffic engineering standards and specifications to determine if existing street improvements for motor vehicles, pedestrians and bicyclists can safely and efficiently serve the proposed new development. Because none of the other frontages have been improved on this street, Portland Transportation has determined that an isolated improvement at this location would not be meaningful. However, as this is a Clackamas County road, the timing and level of improvements to SE Luther Road will be determined by Clackamas County. If the street is to be improved, it would be more appropriate to complete the improvements as one LID project. Portland Transportation is requiring a 10-foot right-of-way dedication, unless waived by the County Engineer, in anticipation of future development potential of nearby properties. Therefore, the applicant will only be required to sign street and storm sewer waivers of remonstrance (for participation in future street and storm sewer improvements) prior to final plat approval.

This criterion is met, with the condition that frontage improvements are made to extension of SE Clatsop Street, the required right-of-way dedication for SE Clatsop Street and SE Luther Road is shown on the Final Plat, and that the required waivers for SE Luther Road are signed prior to final plat approval.

**L. Services and utilities. The regulations and criteria of Chapters 33.651 through 33.654, which address services and utilities, must be met.**

**Findings:** Chapters 33.651 through 33.654 address water service standards, sanitary sewer disposal standards, stormwater management, utilities and rights of way.

- The water standards of 33.651 have been verified. Clackamas River Water has indicated that water is available to serve the proposed development from the water main in SE Luther Street. See Exhibit E-3 for more details.
- The sanitary sewer standards of 33.652 have been verified. There is an existing 8-inch PVC sanitary sewer main located in a 20-foot public easement north of the site that can serve the sanitary needs of the proposed parcels. The existing house on Parcel 1 is not connected to this sewer line. Prior to final plat approval, the existing house will need to connect to this sewer main and obtain a finalized plumbing permit will need to be obtained for the disconnection of the existing septic system will need to be disconnected See Exhibit E-1 and E-5 for more details.
- The technical standards of Chapter 33.653 related to stormwater management have been verified. The findings below for the Stormwater Management Approval Criteria of 33.653.020 incorporate a discussion of how the technical standards have been satisfied by the applicant's stormwater proposal.

**33.653.020 Stormwater Management Approval Criteria**

**A. If a stormwater tract is proposed or required, an adequate amount of land and an appropriate location must be designated on the Preliminary Plan; and**

**B. The application must show that a stormwater management system can be designed that will provide adequate capacity for the expected amount of stormwater.**

**Findings:** No stormwater tract is proposed or required. Therefore, criterion A is not applicable.

The City of Portland requires that stormwater from development be cleaned and disposed of in a manner that meets the requirements of the City's Stormwater Management Manual. In order to meet this approval criterion, land division proposals must demonstrate an approved method of cleaning (water quality treatment), detention (delayed release), and an approved disposal point.

The Stormwater Management Manual contains a hierarchy of acceptable methods of stormwater treatment and disposal. The hierarchy requires that applicants first explore the use of methods that have a lower potential impact on groundwater, such as on-site surface infiltration swales and infiltration planters. If these methods are not feasible on a site, applicants may move lower on the hierarchy, to methods that inject water deeper into the ground through mechanical devices such as drywells or sumps, or carry it off of the site into storm sewers, drainageways, or other approved disposal points.

In addition to determining appropriate treatment and disposal methods by working through the hierarchy in the Stormwater Management Manual, stormwater facilities must be sized, through engineering calculations, to accommodate the expected amounts of stormwater. In some cases, sizing a stormwater facility necessitates testing the infiltration rate of the soil at the site.

The applicant has proposed the following stormwater management methods (Exhibit C.2), and the Bureaus have responded as follows (Exhibits E-1 and E-5):

- **Public Street Improvements:** As a condition of this land use approval, the Office of Transportation requires the applicant to improve the frontage of the site adjacent to the future extension of SE Clatsop Street to City standards, with curbs and sidewalks (discussed earlier in this report). Stormwater from these new impervious areas will be directed north to the stormwater facilities to be constructed by other parties as part of the extension of SE Clatsop Street required in LU 07-132359 LDS. BES has indicated that the stormwater generated from the required sidewalk can be directed toward the planter strip located between the curb and the new sidewalk.
- **Parcel 2:** Stormwater from this lot will be directed to an individual soakage trench/drywell that will treat the water and slowly infiltrate it into the ground. This lot has sufficient area for a stormwater facility that can be adequately sized and located to meet setback standards, and accommodate water from a reasonably-sized home. Site Development has indicated conceptual approval of the soakage trench/drywell. To ensure that the size and setback requirements of the Stormwater Management Manual can be met, specific information regarding the existing building locations, future building footprints and the location for stormwater facilities shall be provided on the supplemental site plan prior to final plat approval by BES.
- **Parcel 1 (the lot with the existing house):** The existing house has downspouts that drain onto the ground and into underground pipes. Site Development has inspected the stormwater system for the existing house and has noted (Exhibit E.5.c) that the existing system is acceptable.

With the conditions of approval described above, the stormwater management criteria are met. As shown by the findings above, the Services and Utilities criteria are met.

### Right of Way Approval Criteria

Chapter 33.654 contains standards and approval criteria for rights of way. Due to the location of this site, and the type of street that is proposed, some of the criteria are not applicable. The following table summarizes the applicability of each criterion.

<b>Code Section</b>	<b>Topic</b>	<b>Applicability Findings</b>
33.654.110.B.1	Through streets and pedestrian connections	Applicable - See findings below
33.654.110.B.2	Dead end streets	Not applicable - No dead end streets are proposed.
33.654.110.B.3	Pedestrian connections in the I zones	Not applicable - The site is not located within an I zone.
33.654.110.B.4	Alleys in all zones	Not applicable - No alleys are proposed or required.
33.654.120.C.1	Width of the street right-of-way	Not applicable - The proposal does not include a street.
33.654.120.C.3.c	Turnarounds	Not applicable - No turnarounds are proposed or required.
33.654.120.D	Common Greens	Not applicable - No common greens are proposed or required.
33.654.120.E	Pedestrian Connections	Not applicable - There are no pedestrian connections proposed or required.
33.654.120.F	Alleys	Not applicable - No alleys are proposed or required.
33.654.120.G	Shared Courts	Not applicable - No shared courts are proposed or required.
33.654.130.A	Utilities	Applicable - See findings below.
33.654.130.B	Extension of existing public dead-end streets and pedestrian connections	Not applicable - There are no existing public dead-end street or pedestrian connections adjacent to the site.
33.654.130.C	Future extension of proposed dead-end streets and pedestrian connections	Not applicable - No street extensions are required to serve abutting sites that are further dividable.
33.654.130.D	Partial rights-of-way	Not applicable - No partial public streets are proposed or required.

#### **Applicable Approval Criteria are:**

**33.654.110.B.1 Approval criterion for through streets and pedestrian connections in OS, R, C, and E Zones. In OS, R, C, and E zones, through streets and pedestrian connections are required where appropriate and practicable, taking the following into consideration:**

- a. Through streets should generally be provided no more than 530 feet apart, and pedestrian connections should generally be provided no more than 330 feet apart. Through street and pedestrian connections should generally be at least 200 feet apart;**

- b. Where the street pattern in the area immediately surrounding the site meets the spacing of subparagraph a., above, the existing street pattern should be extended onto the site;**
- c. Characteristics of the site, adjacent sites, and vicinity, such as: (1) Terrain; (2) Whether adjacent sites may be further divided; (3) The location of existing streets and pedestrian connections; (4) Whether narrow frontages will constrain creation of a through street or pedestrian connection; (5) Whether environmental overlay zones interrupt the expected path of a through street or pedestrian connection; and (6) Whether existing dwelling units on- or off-site obstruct the expected path of a through street or pedestrian connection. Alternative locations or designs of rights-of-way should be considered that avoid existing dwelling units. However, provision of through streets or pedestrian connections should take precedence over protection of existing dwelling units where the surrounding transportation system will be significantly affected if a new through street or pedestrian connection is not created;**
- d. Master street plans for the area identified in Goal 11B of the Comprehensive Plan;**
- e. Pedestrian connections should take the most direct route practicable. Users should be able to see the ending of the connection from the entrance point, if possible.**

**Findings:** The site is located between SE 75<sup>th</sup> Avenue and SE 77<sup>th</sup> Avenue, which have a distance between them of approximately 395 feet. The Springwater Corridor is located approximately 65 feet to the east. The Office of Transportation is requiring that a portion of the extension of SE Clatsop Street (as required by LU 07-132359 LDS) be built on the subject property to its western property line. Right-of-way for the connection of SE Clatsop Street, from the western portion of the property to SE 75<sup>th</sup> Avenue has previously been dedicated. There are no other east/west through streets between these two streets. If the distance between these existing streets is evaluated against the optimum spacing requirement of 530 feet, one can conclude that an additional east-west through street in the vicinity of the site would be required. The Office of Transportation has required right-of-way dedication and frontage improvements that will extend SE Clatsop Street to the western extent of the property. These improvements are required in conjunction with the extension of SE Clatsop Street required by Land Use Review 07-132359 LDS to the north of the subject property. When completed, the extension of SE Clatsop Street will further the through street connection between SE 75<sup>th</sup> Avenue and SE 77<sup>th</sup> Avenue.

In addition, the site is not within an area that has an adopted Master Street Plan, so criterion d. does not apply.

The only new through pedestrian connections included in the proposal are new sidewalks along the frontage of the site along the extension of SE Clatsop Street. This is a straight-line connection on which users will be able to see the ending of the pedestrian route from the entrance.

For the reasons described above, this criterion is met.

### **Utility Location, Extension of Streets, Partial Rights of Way**

#### **33.654.130 Additional Approval Criteria for Rights-of-Way**

- A. Utilities. Utilities must be located within rights-of-way or utility easements that are adjacent to rights-of-way to the maximum extent practicable. Utility easements up to 15 feet in width may be required adjacent to rights-of-way.**

**Findings:** Utilities are defined in the Zoning Code as telephone, cable, natural gas, electric, and telecommunication facilities. Any easements that may be needed for private utilities that cannot be accommodated within the right-of-way width of SE Luther Road or the extension of

SE Clatsop Street can be provided on the final plat. At this time no specific utility easements adjacent to the right-of-way have been identified as being necessary. Therefore, this criterion is met.

With the findings noted above, the Right of Way criteria are met. As shown by the findings above, the Services and Utilities criteria are met.

#### **APPROVAL CRITERIA FOR ADJUSTMENTS**

The applicant has requested Adjustments to the following requirements: front-building setback requirements for Parcel 1, and the through lot standard for Parcels 1 and 2. The requested Adjustments are reviewed below.

**The approval criteria for adjustments are found in Chapter 33.805.040 of the Zoning Code. Adjustment requests will be approved if the review body finds that the applicant has shown that either approval criteria A. through F. or approval criteria G. through I., below, have been met.**

- A. Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and**
- B. If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and**
- C. If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and**
- D. City-designated scenic resources and historic resources are preserved; and**
- E. Any impacts resulting from the adjustment are mitigated to the extent practical; and**
- F. If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;**

#### ***Front Building Setback Adjustment***

**Findings:** An adjustment to the front building setback requirements (Table 110-3) for the north side of Parcel 1 is being proposed concurrently with the land division application. The required front building setback for the R5 zone for detached houses is 10 feet. Proposed Parcel 1 is a through lot, therefore it has two front property lines. The required street dedication of 10-feet along the north property line for the extension of SE Clatsop Street will move the property line to within 5.1 feet of the existing garage, therefore an Adjustment is required to allow the smaller front-building setback to the north property line. For an adjustment to be granted to this requirement, the proposal must “equally or better” meet the purpose of the regulation to be modified, which is 33.110.220 (setbacks):

#### **33.110.220 – Setbacks**

**A. Purpose. The setback regulations for buildings and garage entrances serve several purposes:**

- **They maintain light, air, separation for fire protection, and access for fire fighting;**
- **They reflect the general building scale and placement of houses in the city's neighborhoods;**
- **They promote a reasonable physical relationship between residences;**

- **They promote options for privacy for neighboring properties;**
- **They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;**
- **They provide adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity; and**
- **They provide room for a car to park in front of a garage door without overhanging the street or sidewalk, and they enhance driver visibility when backing onto the street.**

The proposed decrease in the front-building setback from the existing 15.1-feet to 5.1-feet for the existing garage on Parcel 1 can meet the purpose statements of the setback regulations. The north property line is a front property line by virtue of being a through lot. The existing house and garage have an orientation to SE Luther Road. Therefore, many of the features associated with the front of a residential primary structure, such as pedestrian entry and car parking, are oriented to SE Luther Road. The northern front yard area has been used for traditional rear yard purposes including outdoor area. The outdoor area will continue to be met with the proposed Adjustment in the side yard on the west side of the existing house. The resulting front building setback is a reasonable physical area for a front yard given that the functions of the front yard will continue to be met by the front yard area that fronts SE Luther Road. The light and air between the existing house and other existing structures will not change with the proposed Adjustment.

Therefore the intent of the setback regulations are met and Criterion A is satisfied.

This proposal is in a residential zone (not an OS, C, E, or I zone). The existing house on Parcel 1 fronts and takes access from SE Luther Road. The 44.6-foot front building, 17.4-foot west side building, and 5-foot side building setback would maintain light and air between surrounding houses and continue to provide useable outdoor area. Criterion B is satisfied.

The applicant has requested two adjustments: a reduction in the front-building setback for Parcel 1 and the designation of Parcels 1 and 2 as through lots. Adjacent development to the east, west, and south of the subject property front SE Luther Road. Requiring that the house to be built on Parcel 2 face SE Luther Street (see Through Lot Adjustment below) will maintain the compatibility standards of the R5 Zone as well the surrounding development pattern. Criterion C is satisfied.

No City-designated scenic or historic resources are affected, so criterion D does not apply.

The decrease in the front building setbacks to the SE Clatsop Street right-of-way would be offset by a larger than required side-building setback (17.4 feet) on the west side of the existing house and a larger than required front building setback to the SE Luther Road right-of-way, allowing the functional separation between buildings to be maintained. Criterion E of the Adjustment criteria is therefore satisfied.

The proposal is not in an environmental zone, so criterion F does not apply.

### ***Through Lot Adjustment***

**Findings:** An Adjustment to the through lot standards, 33.610.300, for both proposed parcels is being proposed concurrently with the land division application. The through lot standard only allows through lots where both front lot lines are on local service streets. SE Luther Street is classified by Clackamas County as a collector street. An Adjustment to the through lot standard is therefore required. For an adjustment to be granted to this standard, the proposal must “equally or better” meet the purpose of the regulation to be modified, which is 33.610.300:

### **33.610.300 Through Lots.**

**A. Purpose. This standard ensures that lots are configured in a way that development can be oriented toward streets to increase the safety and enjoyment of pedestrians and bicyclists. The standard also ensures that development does not “turn its back” on a collector or major city traffic street.**

**Findings:** The existing house on Parcel 1 is oriented to and takes access from SE Luther Road. Adjoining residential development to the east, west, and south in Clackamas County is oriented to SE Luther Road. As SE Luther Road has the higher street classification (collector street), the house to be built on Parcel 2 will need to front SE Luther Road to meet the purpose statement of the Through Lot Standard. Additionally, the Office of Transportation is requiring SE Luther Road be the vehicle access frontage for Parcel 2, and the Fire Bureau is requiring the house on Parcel 2 be oriented to SE Luther Road to ensure fire hydrant access. With the condition that the house to be built on Parcel 2 front SE Luther Road, Criterion A can be met.

This proposal is in a residential zone (not an OS, C, E, or I zone). The existing house on Parcel 1 fronts and takes access from SE Luther Road. The adjoining residential development to the east, west, and south is oriented to SE Luther Road. Requiring the house to be built on Parcel 2 to front SE Luther Road would maintain the residential character of the surrounding development. Criterion B is satisfied.

The applicant has requested two adjustments: a reduction in the front-building setback for Parcel 1 and the designation of Parcels 1 and 2 as through lots. Requiring the house to be built on Parcel 2 to have an orientation to SE Luther Road will keep this house in character with the overall purpose of the R5 Zone and the surrounding development pattern of adjoining lots. Criterion C is satisfied.

No City-designated scenic or historic resources are affected, so criterion D does not apply.

Requiring the house to be built on Parcel 2 to have an orientation to SE Luther Road will mitigate for any potential out character development that would occur with an orientation to SE Clatsop Street. Criterion E of the Adjustment criteria is therefore satisfied.

The proposal is not in an environmental zone, so criterion F does not apply.

### **Conclusion**

The approval criteria for granting Adjustments to the required front-building setback and through lot standards can be met with a condition of approval that the house to be built on Parcel 2 have an orientation to SE Luther Road.

## **DEVELOPMENT STANDARDS**

**General Information about Development Standards and Approval Criteria.** The Zoning Code contains two types of regulations: Development standards and Approval criteria.

**Approval criteria**, such as those listed earlier in this report, are administered through a land use review process. Approval criteria are regulations where the decision-maker must exercise discretion to determine if the regulation is met. Public notice is provided and public comments received that address the approval criteria are addressed in the decision.

**Development Standards:** Development standards are clear and objective regulations (for example: building setbacks; number of required parking spaces; and maximum floor area). Compliance with development standards is reviewed as part of the administrative permitting process and are not considered to be discretionary reviews. Development standards that are not relevant to the land division review, have not been addressed in the review, but will have to be met at the time that each of the proposed lots is developed.

Among the various development standards that will be applicable to this lot, the applicant should take note of:

**Existing development that will remain after the land division.** The existing development on the site will remain and be located on Parcel 1. The division of the property may not cause the structures to move out of conformance or further out of conformance to any development standard applicable in the R5 zone (Please see section on Other Technical Standards for Building Code standards.)

In this case, there is one Zoning Code standard/standards that relate to existing development on the site:

- Minimum Setbacks – The existing house identified to remain on the site must meet the required Zoning Code setbacks from the proposed new lot lines. Alternatively, existing buildings must be set back from the new lot lines in conformance with an approved Adjustment or other Land Use Review decision that specifically approves alternative setbacks. The existing house will be 5 feet from the new property line. Therefore, the required setbacks are being met. To ensure this standard continues to be met at the final plat stage, the final plat must be accompanied by a supplemental survey showing the location of the existing building relative to the adjacent new lot lines.
- Street-Facing Facades in R10 through R2.5 Zones -- In this zone, street-facing facades of residential structures are required to have windows that comprise at least 15 percent of the façade area. The existing house that will remain on Parcel 1 currently meets this standard on the front of the house, which is oriented toward the street. After the land division, the existing house will have two street frontages. Prior to final plat approval, the applicant must finalize a building permit to make modifications to the house that will remain on Parcel 1 to demonstrate continued compliance with 33.110.232.C for each street frontage after the land division is recorded. Alternately, an Adjustment to this standard must be approved.

With the conditions noted above, this land division proposal can meet the requirements of 33.700.015.

## OTHER TECHNICAL REQUIREMENTS

Technical decisions have been made as part of this review process. These decisions have been made based on other City Titles, adopted technical manuals, and the technical expertise of appropriate service agencies. These related technical decisions are not considered land use actions. If future technical decisions result in changes that bring the project out of conformance with this land use decision, a new land use review may be required. The following is a summary of technical service standards applicable to this preliminary partition proposal.

Bureau	Code Authority	Topic	Contact Information
Water Works	Title 21	Water availability	503-823-7404 <a href="http://www.water.ci.portland.or.us/">http://www.water.ci.portland.or.us/</a>
Environmental Services	Title 17; 2002 Stormwater Manual	Sewer availability Stormwater Management	503-823-7740 <a href="http://www.bes.ci.portland.or.us/">http://www.bes.ci.portland.or.us/</a>
Fire Bureau	Title 31 Policy B-1	Emergency Access	503-823-3700 <a href="http://www.fire.ci.portland.or.us/">http://www.fire.ci.portland.or.us/</a>
Transportation	Title 17, Transportation System Plan	Design of public street	503-823-5185 <a href="http://www.trans.ci.portland.or.us/">http://www.trans.ci.portland.or.us/</a>

<b>Bureau</b>	<b>Code Authority</b>	<b>Topic</b>	<b>Contact Information</b>
Development Services	Titles 24 –27, Admin Rules for Private Rights of Way	Building Code, Erosion Control, Flood plain, Site Development & Private Streets	503-823-7300 <a href="http://www.bds.ci.portland.or.us">http://www.bds.ci.portland.or.us</a> .

As authorized in Section 33.800.070 of the Zoning Code conditions of approval related to these technical standards have been included in the Administrative Decision on this proposal.

- The applicant must meet the requirements of the Fire Bureau in regards to orienting the house on Parcel 2 to SE Luther Road. This requirement is based on the technical standards of the Fire Code.

## CONCLUSIONS

The applicant has proposed a 2 lot partition, as shown on the attached preliminary plan (Exhibit C.1). As discussed in this report, the relevant standards and approval criteria have been met, or can be met with conditions. The primary issues identified with this proposal are:

- Street improvements along the SE Clatsop Street frontage for both Parcels
- Tree mitigation plan
- Connection of the existing house to the sanitary sewer and decommissioning the existing sanitary sewer system
- Condition of approval requiring the house to be built on Parcel 2 front SE Luther Road

With conditions of approval that address these requirements this proposal can be approved.

## ADMINISTRATIVE DECISION

**Approval** of an Adjustment to the Through Lot standards to allow the creation of two parcels that will front a local street and collector street subject to the conditions below:

**Approval** of an Adjustment to the front building setback for the existing house on Parcel 1 to allow the existing garage to be 5.1 feet from the right-of-way for SE Clatsop Street subject to the conditions below:

**Approval** of a Preliminary Plan for a 2-lot partition, that will result in two standard lots as illustrated with Exhibit C.1, subject to the conditions below:

**A. Supplemental Plan.** Three copies of an additional supplemental plan shall be submitted with the final plat survey. That plan must portray how the conditions of approval listed below are met. In addition, the supplemental plan must show the surveyed location of the following:

- Any buildings or accessory structures on the site at the time of the final plat application;
- Any driveways and off-street vehicle parking areas on the site at the time of the final plat application;
- The proposed general location of future building footprints and stormwater facilities for Parcel 2.
- Any other information specifically noted in the conditions listed below.

**B. The final plat must show the following:**

1. The applicant shall meet the street dedication requirements of the City Engineer for SE Clatsop Street and SE Luther Road. The required right-of-way dedication must be shown on

the final plat. The applicant shall also meet the requirements of the City Engineer for any access control strips at the terminus of SE Clatsop Street that abut private property.

2. If access to Parcel 2 is taken from the driveway for Parcel 1, an Access Easement shall be shown and labeled on the final plat over an appropriate area of Parcel 1. The easement shall allow shared use of this area for all of the purposes that a driveway would be typically used for.
3. A recording block for the maintenance agreement as may be required by Condition C.4 below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: "A Declaration of Maintenance Agreement for access easement has been recorded as document no. \_\_\_\_\_, Multnomah County Deed Records."

**C. The following must occur prior to Final Plat approval:**

**Streets**

1. The applicant shall sign street and storm sewer waivers of remonstrance (for future street and storm sewer improvements to SE Luther Road) as required by the City Engineer. Waiver forms will be provided to the applicant during the final plat review process.
2. The applicant shall meet the requirements of the City Engineer for right of way improvements along the frontage of SE Clatsop Street. The applicant shall provide plans and financial assurances to the satisfaction of the Bureau of Transportation Engineering and Development Review and the Bureau of Environmental Services for required street frontage improvements. A pre-design meeting with the Bureau of Transportation Engineering & Development regarding the street improvements is required prior to final plat approval.

**Utilities**

3. The applicant shall meet the requirements of the Site Development Section of the Bureau of Development Services for the decommissioning of the existing sanitary sewer system on the site and connecting the existing house to the public sanitary sewer.

**Existing Development**

4. The applicant must obtain a finalized building permit for modifications to the existing house that will remain on proposed Parcel 1 that demonstrate compliance with the following standards in relation to the proposed new lot lines:
  - 33.110.232.C (standards for Street-Facing Facades in the R10-R2.5 Zones);

Alternately, the applicant must obtain an approved Adjustment to these standards prior to final plat approval.

**Required Legal Documents**

5. If the applicant intends to use the existing driveway for access to Parcel 2, a Maintenance Agreement shall be executed for the Access area described in Condition B.3 above. The agreement shall include provisions assigning maintenance responsibilities for the easement area and any shared facilities within that area, consistent with the purpose of the easement, and all applicable City Code standards. The agreement must be reviewed by the City Attorney and the Bureau of Development Services, and approved as to form, prior to final plat approval.

**Other requirements**

6. The applicant must plant one, 2-inch caliper tree on Parcel 1. The tree must be a native species chosen from the Portland Plant List. Approval of a Zoning permit for the installation of this tree is required to satisfy this condition.

**D. The following conditions are applicable to site preparation and the development of individual lots:**

1. Development on Parcel 1 and 2 shall be in conformance with the Tree Preservation Plan (Exhibit C.2) and the applicant's arborist report (Exhibit A.6). Specifically, tree number 1 is required to be preserved, with the root protection zones indicated on Exhibit C.2. Encroachment into the specified root protection zones may only occur under the supervision of a certified arborist. Planning and Zoning approval of development in the root protection zones is subject to receipt of a report from an arborist, explaining that the arborist has approved of the specified methods of construction, and that the activities will be performed under his supervision.
2. The primary structure to be built on Parcel 2 shall be oriented to and take access from SE Luther Road. No curb cuts are permitted along SE Clatsop Street.

Decision rendered by: Paul Cathcart on September 26, 2008  
By authority of the Director of the Bureau of Development Services

**Decision mailed September 30, 2008**

**Staff Planner: Paul Cathcart**

**About this Decision.** This land use decision is **not a permit** for development. A Final Plat must be completed and recorded before the proposed lots can be sold or developed. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

**Procedural Information.** The application for this land use review was submitted on January 4, 2008, and was determined to be complete on August 4, 2008.

*Zoning Code Section 33.700.080* states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on January 4, 2008.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant waived the 120-day review period, as stated with Exhibit (A.3).

**Note: some of the information contained in this report was provided by the applicant.** As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

**Conditions of Approval.** If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project

elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term “applicant” includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

**Appealing this decision.** This decision may be appealed to the Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on October 14, 2008** at 1900 SW Fourth Ave. Appeals may be filed on the first floor in the Development Services Center until 3 p.m. After 3 p.m., appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please contact the receptionist at 503-823-0625 to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at [www.ci.portland.or.us](http://www.ci.portland.or.us) .

**Attending the hearing.** If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 550 Capitol St. NE, Suite 235, Salem, Oregon 97301 or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Hearings Officer an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

**Recording the land division.** The final land division plat **must** be submitted to the City **within three years** of the date of the City’s final approval of the preliminary plan. This final plat must be recorded with the County Recorder and Assessors Office after it is signed by the Planning Director or delegate, the City Engineer, and the City Land Use Hearings Officer, and approved by the County Surveyor. **The approved preliminary plan will expire unless a final plat is submitted within three years of the date of the City’s approval of the preliminary plan.**

**Recording concurrent approvals.** The preliminary land division approval also includes concurrent approval of adjustments. These other concurrent approvals must be recorded by the Multnomah County Recorder before any building or zoning permits can be issued.

A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with these concurrent land use reviews. The applicant,

builder, or their representative may record the final decisions on these concurrent land use decisions as follows:

- **By Mail:** Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- **In Person:** Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034.

**Expiration of concurrent approvals.** The preliminary land division approval also includes concurrent approval of Adjustments. For purposes of determining the expiration date, there are two kinds of concurrent approvals: 1) concurrent approvals that were necessary in order for the land division to be approved; and 2) other approvals that were voluntarily included with the land division application.

The following approvals were necessary for the land division to be approved: Adjustments. These approvals expires if:

- The final plat is not approved and recorded within the time specified above, or
- Three years after the final plat is recorded, none of the approved development or other improvements (buildings, streets, utilities, grading, and mitigation enhancements) have been made to the site.

All other concurrent approvals expire three years from the date rendered, unless a building permit has been issued, or the approved activity has begun. Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

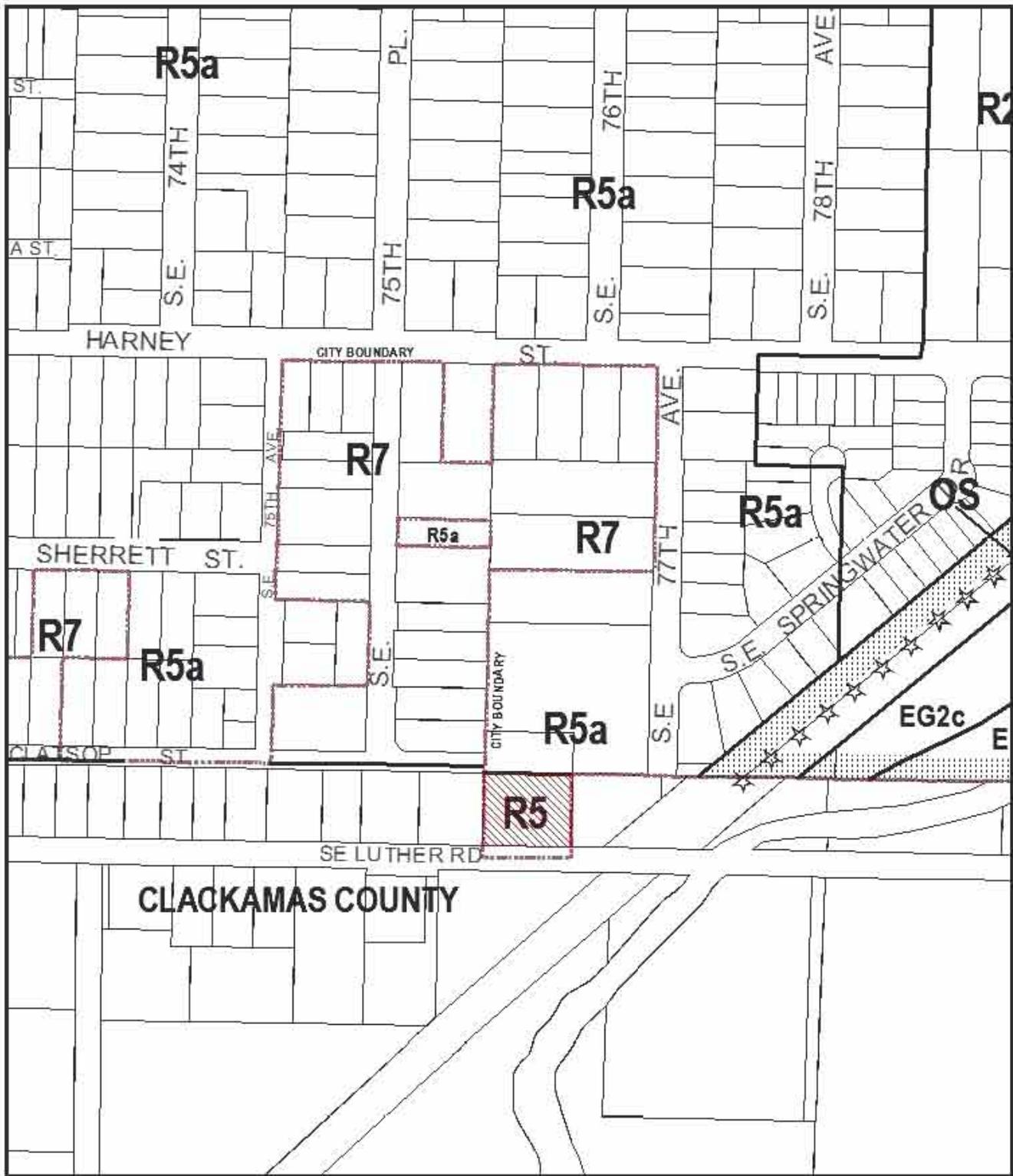
### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Submittals
  1. Letter to Paul Cathcart from Bradley Poole date stamped April 8, 2008
  2. Letter to Paul Cathcart from William and Bradley Poole dated June 5, 2008
  3. Extension of 120-day Review Period
  4. Narrative in support of Adjustment requests date stamped July 18, 2008
  5. Letter to Paul Cathcart from William Poole date stamped July 18, 2008
  6. Arborist Report dated November 2, 2007
- B. Zoning Map (attached)
- C. Plans/Drawings:
  1. Existing Conditions Map (attached)
  2. Utility and Tree Preservation Plan
  3. Tree Mitigation Plan
- D. Notification information:
  1. Mailing list
  2. Mailed notice
- E. Agency Responses:
  1. Bureau of Environmental Services
    - a. Response dated May 14, 2008
    - b. Response dated September 8, 2008
  2. Bureau of Transportation Engineering and Development Review

3. Clackamas County Preliminary Statement of Feasibility for water service to Brady Joanne Poole from John Hall dated April 18, 2007
  4. Fire Bureau
  5. Site Development Review Section of Bureau of Development Services
    - a. Response dated May 9, 2008
    - b. Response dated August 8, 2008
    - c. E-mail dated June 12, 2008
  6. Bureau of Parks, Forestry Division
  7. Life Safety Section of Bureau of Development Services
  8. Clackamas County Preliminary Statement of Feasibility for surface water treatment dated April 17, 2007
- F. Correspondence: None submitted
- G. Other:
1. Original LU Application
  2. Site History Research
  3. Incomplete Letter
  4. Letter to William Poole from Paul Cathcart dated June 27, 2008
  5. LU Application for Adjustments

**The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-0625 (TTY 503-823-6868).**



# ZONING

 Site



File No. LU 08-100679 LDP AD  
 1/4 Section 3938  
 Scale 1 inch = 200 feet  
 State\_Id 12E29AB00300  
 Exhibit B (Aug 06, 2008)

# EXISTING CONDITIONS MAP

TAX LOT 300, 1S 2E 29AB  
 N.E. 1/4 SECTION 29, T.1S., R.2E., W.M.,  
 CLACKAMAS COUNTY, OREGON  
 DECEMBER 12, 2007 SCALE 1"=20'

STORM MANHOLE  
 RIM EL. 200.42  
 E 10' (10' SE) 194.46  
 E 00' (10' N) 154.28  
 SANITARY MANHOLE  
 RIM EL. 200.23  
 E 10' (10' W) 192.35  
 E 00' (8' N) 181.93

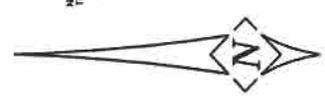
S.E. CLATSOP STREET  
 (COUNTY LINE ROAD)

MULTNOMAH COUNTY  
 CLACKAMAS COUNTY

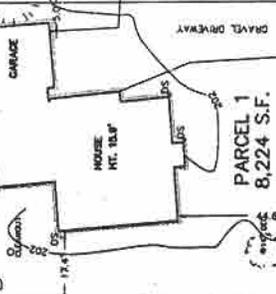
MULTNOMAH COUNTY  
 CLACKAMAS COUNTY

SAN

111.82' N 00°00'09" W  
 73.17' N 89°34'38" E  
 135.64' S 00°22'56" W  
 62.47' S 00°22'56" W  
 73.92' S 89°33'58" W  
 136.59' S 00°22'56" W  
 62.47' S 00°22'56" W



NOTE: FENCES APPEAR TO BE NEIGHBOR'S



SIGNED ON: 1-05-08  
 REGISTERED PROFESSIONAL LAND SURVEYOR  
 WADE G. WOODMAN III  
 OREGON  
 ADV. NO. 10120  
 WADE G. 2278

VALID THROUGH DECEMBER 31, 2009

VERTICAL CONTROL FROM CITY OF PORTLAND  
 BENCHMARK NO. 1215, AT THE INTERSECTION OF LUTHER  
 ROAD AND JARVIS CREEK BRIDGE. ELEVATION 191.177'

- CG - CENTERLINE
- W - WATER METER
- PP - POWER POLE
- OS - OUTPOST
- OD - CLEANOUT

Centerline Concepts Inc.  
 700 MALALA AVENUE, OREGON CITY, OREGON 97045  
 503 650-0188 FAX 503 650-0189  
 DRAWN BY: MJC CHECKED BY: MJC ACCOUNT #150-5686  
 PROJECT: 15006-5686/10M

CASE NO. LU08-100679 LDPAD  
 EXHIBIT C.1