



CITY OF
PORTLAND, OREGON

HEARINGS OFFICE

1900 S.W. 4th Avenue, Room 3100
Portland, Oregon 97201
Telephone: (503) 823-7307
FAX: (503) 823-4347
TDD (503) 823-6868

www.portlandonline.com/auditor/hearings

**DECISION OF THE HEARINGS OFFICER
ON APPEAL OF ADMINISTRATIVE DECISION**

I. GENERAL INFORMATION

File No.: 07-180154 LDP (HO 4080041)

Applicant: O'Pen Properties
3217 SE 146th Pl. #153
Vancouver, WA 98683

**Applicant's
Representatives:** Oscar Griffin
At Home Creations, Ltd.
1835 NE Fremont
Portland, OR 97212

Lawrence Derr
Law Offices of Josselson & Potter
425 NW 10th Ave., Suite 306
Portland, OR 97209

Appellant: Mount Tabor Neighborhood Association
Represented by Jeremy Shrall
6373 SE Yamhill St.
Portland, OR 97215

Hearings Officer: Ian Simpson

Bureau of Development Services (BDS) Staff Representative: Paul Cathcart

Site Address: 6371 SE Yamhill St.

Legal Description: TL 200 LOT H, BELMONT VILLA

Tax Account No.: R067900090

State ID No.: 1S2E05BC 00200

Quarter Section: 3137

Neighborhood: Mt. Tabor
Business District: Eighty-Second Avenue
District Coalition: Southeast Uplift
Zoning: Residential 5,000 (R5)
Land Use Review: Type IIX, Land Division Partition (LDP)

BDS Administrative Decision: Approval with conditions

Public Hearing: The hearing was opened at 8:59 a.m. on December 1, 2008, in the 3rd floor hearing room, 1900 SW 4th Avenue, Portland OR, and was closed at 10:32 a.m. The record was held open until 4:30 p.m. on December 8, 2008 for new written evidence; until 4:30 p.m. on December 15, 2008 for applicant's rebuttal, no new evidence. The record was closed at that time.

Exhibits 10 and 11 were submitted after 4:30 p.m. on December 8, 2008, which was the close of the open record period. Exhibit 14 was submitted after 4:30 p.m. on December 15, 2008, which was the close of the period for final responses by the applicant.

Testified at the Hearing:

Paul Cathcart, BDS Staff Representative
Jerry Shrall, 6373 SE Yamhill St., Portland, OR 97215 (representing Mt. Tabor NA)
Nancy Lapaglia, 6347 SE Yamhill, Portland, OR 97215
Larry Derr, 425 NW 10th Ave., Suite 306, Portland, OR 97209

Proposal:

The applicant proposes to divide the existing 9,898 square foot property into two parcels. Parcel 1 would be 5,009 square feet and Parcel 2 would be 4,889 square feet. Both parcels would provide building area for new single-dwelling development. The project arborist has identified ten trees on the site and has identified one of those trees as exempt from the City's tree preservation requirements. The applicant proposes to retain two of the nine non-exempt trees and proposes to mitigate for the amount of tree diameter that does not meet the City's tree preservation requirements.

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) the site is located within a Potential Landslide Hazard Area (33.660.110). This land division is considered a partition under state law. To partition land is to divide an area or tract of land into two or three parcels within a calendar year (ORS 92.010).

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Section 33.660.120, Approval Criteria for Land Divisions in an Open Space or Residential Zone.

II. ANALYSIS

Site and Vicinity: The site is vacant and located on the west side of Mt. Tabor. It contains ten trees, primarily Douglas fir. The property slopes down to the west. The site is bounded on the east and west by SE Yamhill St. that loops to the south, following the contours of the west side of Mt. Tabor. Surrounding residential development is characterized by one and two-story houses built from the 1920's through the 1980s.

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 a property line adjustment (LU 07-141633 PR) was approved between the subject property and the property to the north (State ID No.: 1S2E05BC 00100).

Neighborhood Representative: The Mount Tabor Neighborhood Association designated Jeremy Shrall as its representative in this appeal (Exhibit H-8).

Appeal Issues:

The appellant states (Exhibit H-3a) that this proposal fails to meet the approval criteria of:

- Chapter 33.630 Tree Preservation
- Chapter 33.641 Transportation Impacts

The appeal issues are addressed under the appropriate section below.

ZONING CODE APPROVAL CRITERIA-

CHAPTER 33.660 REVIEW OF LAND DIVISIONS IN OPEN SPACE AND RESIDENTIAL ZONES

33.660.120 Approval Criteria

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.

Findings: Due to the site's location and the nature of the proposal, staff determined that some of the criteria do not apply. The relevant approval criteria are below:

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

Findings: Chapter 33.610 Lots in RF through R5 Zones contains the density and lot standards applying to the R5 zone. The standards ensure that lots are consistent with each zone's desired character while allowing lots to vary in size and shape provided each zone's planned intensity is respected.

33.610.100 Density Standards

A. Single-dwelling or duplex development. When single-dwelling or duplex development is proposed for some or all of the site, the applicant must show how the proposed lots can meet minimum density and not exceed the maximum density stated in Table 120-3. Site area devoted to streets is subtracted from the total site area in order to calculate minimum and maximum density.

Findings: 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 or geophysical constraints. In this case, a street is not created, but the site is within a potential landslide hazard area. Therefore, there is no minimum required density (Section 33.610.100.D.2). The formula to determine the site's maximum density (Section 33.610.100.C.1) is:

The site's square footage (9,898 square feet) ÷ Maximum density from Table 610-1 (5,000 square feet) = 1.97 Maximum number of lots allowed, which rounds up to a maximum of two lots (Section 33.930.020.B)

The applicant is proposing two lots. The Hearings Officer finds that the density standards criteria are met.

33.610.200 Lot Dimension Standards

Lots in the RF through R5 zones must meet the lot dimension standards of this section.

A. Purpose. The lot dimension standards ensure that:

- Each lot has enough room for a reasonably-sized house and garage;
- Lots are of a size and shape that development on each lot can meet the development standards of the zoning code;
- Lots are not so large that they seem to be able to be further divided to exceed the maximum allowed density of the site in the future;
- Each lot has room for at least a small, private outdoor area;
- Lots are compatible with existing lots;
- Lots are wide enough to allow development to orient toward the street;
- Lots don't narrow to an unbuildable width close to the street;
- Each lot has adequate access from the street;
- Each lot has access for utilities and services; and
- Lots are not landlocked.

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

	R5 Zone Requirement	Proposed Parcel 1	Proposed Parcel 2
Minimum Lot Area	3,000 sq. ft.	5,009 sq. ft.	4,889 sq. ft.
Maximum Lot Area	8,500 sq. ft.		
Minimum Lot Width*	36 ft.	63 ft.	60.5 ft.
Minimum Lot Depth	50 ft.	73.5 ft	75.5 ft.

Minimum Front Lot Line	30 ft.	62.55 ft.	54.5 ft.
------------------------	--------	-----------	----------

* Width is measured at the minimum front building setback line

The Hearings Officer finds that the lot dimension standards criteria are 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. The arborist report (Exhibits A-6 and A-7) identifies ten trees on the site. Five of the trees are exempt from the tree preservation requirements because they are either a nuisance species or located within ten feet of an existing structure to remain on the site.

The site's total non-exempt tree diameter is 218.25 inches. The applicant proposes preserving Trees 1 (36-inch Douglas fir) and 2 (33 inch Douglas fir), which comprise 69 inches of diameter, or 31.5 percent of the total non-exempt tree diameter. This does not comply with the tree preservation standards of Section 33.630.100. The applicant has proposed a Tree Mitigation Plan (Exhibit C-5) and proposes using the mitigation option of Section 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 site is less than 15,000 square feet. The applicant wishes to divide the site for detached housing, which is an allowed housing type in the R5 zone. The location of the site's trees would prevent a land division that would result in a practicable arrangement of lots that could each contain a reasonable building area and still be able to meet the development standards of the R5 zone. Criterion C.4 above is met.

The proposed tree preservation plan protects those trees on the site that are outside of a reasonable building footprint for each lot and within the root protection zone. Therefore, the applicant has met Criterion A, because as many trees as possible will be preserved.

Coniferous and deciduous trees are proposed for removal. The arborist report (Exhibit A-7) proposes planting four, 2-inch caliper, deciduous trees near the southern property line. The arborist report suggests three possible tree species as mitigation: *Malus 'Prairifire'* (a variety of crabapple), *Cornus 'Eddie's White Wonder'* (a variety of dogwood), and *Quercus robur 'Fastigiata'* (columnar oak). The trees' proposed locations would provide screening for the houses on Parcels 1 and 2 from off-site views as well as solar shading for these houses. The proposed mitigation plan would provide similar benefits to the preservation of trees by:

- The mitigation plan provides for approximately the same caliper inches as Option 1 of the Tree Preservation Chapter. Option 1 would require that 35% or 77 inches of the site's non-exempt tree diameter be preserved. The addition of four trees at 2" each, combined with the 69" of trees being preserved, is approximately equal to the 77 inches that would be required to be preserved.
- 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.
- The variety and number of trees required by the mitigation plan will work together to ensure slope stability, reduce the possibility for erosion, as well as reduce stormwater runoff.

Section 33.248.020.H, known as the T1 tree planting standard, requires planting trees on new lots as part of approving future building permits. The T1 tree standard requires planting at least two inches of tree caliper per 1,000 square feet of site area, which would result in ten inches of new trees planted on Parcel 1. The existing trees to be preserved on Parcel 2 can meet the T1 standard. Because of the small size of Parcel 2, it is not practical for additional trees beyond the T1 standard to be planted without jeopardizing the overall health of all of the site's trees. Therefore, the mitigation trees may be counted toward meeting the T1 requirement on the new lots.

A condition of approval will require that two, 2-inch trees be planted on Parcels 1 and 2 before final approval of building permits for each parcel's primary structure and that development on Parcels 1 and 2. The trees shall be chosen from the varieties proposed by the project arborist. Tree preservation and mitigation shall conform to the Tree Preservation Plan (Exhibit C.2), the Tree Mitigation Plan (C.5), and the applicant's arborist report (Exhibit A.6).

Tree Preservation Appeal Issues:

The MTNA argues (Exhibit H-9) that the applicant has failed to satisfy the tree preservation criteria. The neighborhood's argument as presented by Mr. Shrall is below:

A) Tree Preservation Plan

According to Section 33.630.200 Tree Preservation Methods, trees that will be preserved on individual lots must be permanently preserved via a tree preservation plan. The applicant has not submitted a formal tree preservation plan. Instead the applicant has submitted a mesh of multiple arborist reports and at least three different maps for root protection. Mr. Shrall stated that none of the maps include both root protection zones and utilities. Exhibit C-3 does not have root protection zones and none for the other maps include utilities. Some of these mistakes were corrected after the BDS decision. But some remain.

B) Tree Protection Requirements are Not Met

Mr. Shrall continues that a tree preservation plan must meet tree protection requirements of Section 33.248.068. Trees 1 and 2 and the other tree in the right-of-way are critical for maintaining the slope on the southwestern edge of the site where there are 40 degree slopes. All measures should be taken to preserve these trees, as their loss could result in significant damage to neighboring properties and increased landslide hazard concerns.

The final tree preservation map in the BDS decision (Exhibit C-5) shows the final arborist markings for tree preservation, but does not match what was drawn on the grading and erosion control plan. It seems that what is on the final grading and erosion control plan takes the minimum preservation from both arborist proposals and merges them as if they are what the arborist has approved. To date, neighbors have not received an updated arborist report explaining how this is sufficient for preserving the trees.

Mr. Shrall continues that the original arborist report recommended a 20 foot and 15 foot root protection zones for trees 1 and 2, respectively. It is noteworthy that using root protection zone calculations described in Chapter 33.930, these trees should have a root protection radius of 36 and 33 feet, respectively. Dropping root protection radius down to a meager 20 feet and 15 feet within the steepest part of a landslide hazard zone requires some specific qualifications. In order to compensate for the lack of protection in all directions, the arborist was careful to state in his first report:

The fence for Tree 2 cannot begin to taper back into the west until 30 feet past it to the north.

This important detail describes how enough root protection area will be maintained to keep the trees healthy. Our interpretation of this comment is that at 15 feet east of Tree 2, the root protection fence extends 30 feet to the north before it tapers back to the west. Presumably, this tapering matched the originally proposed driveway, although that detail is not spelled out in the arborist's report. In the second arborist report, it is noted that given updates in the driveway and house placement, the first report was made in error. Mr. Shrall cites at length a section of the arborist report "fencing alteration for Tree 2".

The arborist decided to move the tree preservation fence because the latest development plan involves building a retaining wall in the previously defined root protection zone. This decision conforms to Section 33.248.068, “Within the root protection zone of each tree, the following development is not allowed: ... Grade change or cut and fill during or after construction.”. The arborist is careful later to explain that the typical fencing shape must be modified in order to “gain more ground” to preserve tree roots. Land use decision Exhibit 5 shows the exact fencing proposal. The root protection zone drawn on the Clearing and Grading maps indicates a simple 15 and 20 foot fence in a circular fashion, which is in direct conflict with both arborist reports. The currently approved definition violated the final arborist report in three ways:

- It reduces the root protection in the north direction where there is proposed grading and a retaining wall for the driveway.
- It proposes a water line installation (Exhibit C-3) through the root protection zone as defined in Exhibit C-5).
- It uses a radial method of fencing instead of the very precise and specific fencing defined by the arborist in Figure 1.

The MTNA has been very clear and vocal in supporting the tree preservation ever since May 2007 incident in which a tree removal crew attempted to cut down these trees without any permits and actually lied to the neighbors stating that the permits were in the owner’s office and the owner was “out of town”. The neighborhood association was dumbfounded by this incident and has watched the applicant ever since. Any proposal for development that puts Trees 1 and 2 at risk should not be approved, and given the applicant’s demonstrated lack of respect for this important natural resource, any approach to preserving these trees should be scrutinized. The MTNA asks the following:

- Maps are updated to reflect a formal arborist report that guarantees, with some form of accountability, that these trees will be preserved in the development. If the applicant wishes to use the reduced tree preservation radius, then an arborist must be consulted and, as part of a formal tree preservation plan, state how these trees will be preserved.
- The water line is moved out of the root protection zone of trees 1 and 2.
- Retaining walls and grading are conducted only outside the limits of a tree protection fence.

If protecting these trees is compromised, it could result in serious landslide hazard to existing and new development. This risk is shouldered entirely by the neighbors and it should be the city’s responsibility to ensure that its citizens are protected from these risks by carefully enforcing the tree preservation in landslide hazard zones. Every precaution should be taken to preserve the trees, ensure the existing slope’s stability, and maintain the neighborhood’s integrity. If the actual location of buildings and grading needs to be modified during construction, the developer may request a tree review as allowed by Chapter 33.853.

C) Meeting Tree Preservation Requirements without Mitigation.

Section 33.630.300 requires that “as many trees as possible” are preserved and “shows how the mitigation plan adequately mitigates for the loss of trees”. Mr. Shrall suggested that site layout could be adjusted in ways to fully comply with tree preservation goals. By saving Tee 8 (a lovely

20" DBH silk tree) the proposed development could exceed the tree preservation goal of 35% retention and gain the likely benefit of increased property value as a result.

The MTNA does not believe that the developer has adequately demonstrated that "as many trees as possible are preserved" or that it is impossible to "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" as 33.630.300 may allow for.

D) Mitigation Tree Selection

Mr. Shrall stated that according to Section 33.630.200 Tree Preservation Methods, "Trees that will be preserved on individual lots must be permanently preserved through a tree preservation plan, as specified in Section 33.248.065. The mitigation trees should come from the Portland Plant List, defined in Section 33.630.010.

Currently, the proposed land division involves removing two large Douglas fir trees on the site as well as one Douglas fir and one western hemlock on the adjacent site. In total this land division will lose 158 inches of these majestic trees. The arborist proposes using three tree varieties to meet mitigation requirements.

- Malus "Prarifire" is a non-native crabapple tree, not on the Portland Plant List.
- Quercus robur "Fastigiata" is a European oak tree not on the Portland Plant List.
- Cornus "Eddie's White Wonder" is a dogwood tree that is not native, but is similar to the same-genus Cornus Nuttalli, which is native.

None of these trees are on the Portland Plant List. The existing site acts as one of the main gateways to Mt. Tabor Park, and cutting down these trees will forever change the face of that park for the many frequent users. The loss of trees will directly impact the diverse wildlife habitat, it will reduce the value of the homes in the area, and it will increase the heat island effect. Replacing these trees with smaller and lesser variants fails to match the heritage of the Mt. Tabor neighborhood. The neighbors would like to see Douglas fir, Western Hemlock or Western Red Cedar trees planted so that someday the properties should return to their original state and once again reflect the park that binds our neighborhood together.

E) Slope Stabilization

Chapter 33.630 states that preserving trees on the site will reduce erosion, siltation and flooding and stabilize slopes. Tree 3 on Parcel 2 is to be removed even though it is healthy and not obstructing development. Furthermore, it is without the root protection zone of trees 1 and 2 which will be preserved. Tree 3 is considered a nuisance tree. Trees 1, 2 and 3 and another in the right-of-way are located in an extremely sloped portion of the lot. In order to minimize the risk of landslide hazard, the MTNA requests that the approval decision includes specific language to preserve this tree, at least until development is complete and the slope is confirmed to be stable. Removing any of these trees may put all of them at risk and poses a significant safety hazard to the existing homes in the area, as well as any new development.

Staff responds (Exhibit H-12) to the MTNA's arguments as follows:

Preserving Tree 8

This would require relocating the house and garage to be built on this parcel to be shifted to the north. A root protection zone radius of 20 feet would be required. However, the project arborist may provide an alternative tree preservation plan with a smaller root protection zone. In so doing, the practicality of placing a house and garage between a root protection zone of Tree 8 and the required side building setback on the north property line comes into question. The distance between the center of Tree 8 and the northern property line is approximately 50 feet. Given the site's slope, the location of the garage or parking space for Parcel 1 should be located as close as possible to the existing driveway. If the root protection zone for Tree 8 is reduced to say, ten feet, this would leave approximately 35 feet to place a parking space/garage and house when the side building setback of 5 feet to the north is factored in. A larger root protection zone would leave less room for this purpose. A single car garage typically requires 12 feet in width to allow for a 9 foot wide garage door and sufficient adjacent wall area to support the garage door opening (a double car garage is currently shown on Exhibit C-2). This would leave approximately 23 feet of lot frontage for a house on this parcel, or less with a larger root protection zone.

The provision for tree mitigation allowed for in Section 33.630.300.C.4 anticipates that there will be conflicts between tree preservation requirements and allowing "enough room for a reasonable building site on each lot" on sites less than 15,000 square feet. Meeting the tree preservation standards (Section 33.630.100) does not provide the same surety for enough room for a reasonable building site. Meeting the mitigation option would. Staff suggests that providing mitigation trees would allow a more reasonable building area on Parcel 1 that could meet the development standards of Chapter 33.110 during building permit review.

Meaning of arborist report regarding root protection zone of Tree 2

The project arborist's statement (page 3, the third paragraph of the arborist report) that "the fence for Tree #2 cannot begin to taper back into the west until 30 feet past it to the north" is not entirely clear. Appendix B (page 6 of Exhibit A.6 – see below) of this same report shows a site plan with a symmetrical root protection zone for Tree 2. As Appendix B shows, if the root protection zone for Tree 2 is extended further to the north, it will cross the location of the existing sanitary sewer easement that contains the sanitary sewer lateral for the existing house on Parcel 1 of LU 07-180149. The BDS administrative decision for LU 07-180149 LDP required (condition of approval C.4) this sanitary sewer lateral be removed before final plat approval.

Location of mitigation trees

The tree mitigation plan (Exhibit C.5) denotes the general location of mitigation trees for Parcels 1 and 2. As noted in the hearing, a note has been added to the mitigation plan that the mitigation trees be planted on the subject site and not on Tax Lot 201, which belongs to the property owner to the south. The specific location of the mitigation trees was not identified on the Tree Mitigation Plan. The trees' location should be specified during building permit to ensure that they are placed in an area on the site with a sufficient distance from the house to be built on each lot.

Tree Preservation Plan

The Grading and Erosion Control and Tree Preservation Plan (Exhibit C-2) is the tree preservation plan. As noted below, this plan meets the requirements of Section 33.248.065.B.2 (in bold below):

- a. **All trees to be preserved on the site, their species and diameter.** This is a hand written note in the lower left hand corner of the plan.
- b. **The location of water, sewer and other utility easements.** The location of these utilities is shown on this plan, however the easements are not. The easements are shown on Exhibit C-1, the site plan.
- c. **The location of drywells and soakage trenches.** This project is using flow through planters for stormwater management. The plants will out-fall to the extension of the combination sewer in SE Yamhill St. The flow through planters are shown on the plan.
- d. **How the requirements of Section 33.248.068 Tree Preservation Requirements are met.** The tree protection detail on this plan noted the details of the construction fencing. Condition of approval D.1 notes that encroachment into the specified root protection zones on the tree preservation plan may only occur under the supervision of a certified arborist.

Engineering drawings need to show root protection zones

Section 33.248.065.B.2.b, Elements of a Tree Preservation Plan, requires indicating the location of water, sewer, and other utility easements on a tree preservation plan. The submittal requirements of Section 33.730.060.D.1.d do not require that the preserved trees be shown on the utility plan (proposed improvement map per Section 33.730.060.D.1.d (3)) or the preliminary clearing and grading plan (per Section 33.730.060.D.1.d(4)). The tree preservation plan approved in the administrative decision (Exhibit C-2) shows the location of the utilities, but not the easements required for them. These easements are shown on the site plan, Exhibit C-1.

Mitigation to be chosen from the Portland Plant List of native species

The requirements of tree mitigation plans per Section 33.630.300 do not refer to Section 33.248.090, Mitigation and Restoration Planting, and therefore do not require mitigation trees to be specifically from the Portland Plant List. The requirements of Section 33.249.090 relate to plantings intended to mitigate for the loss of natural resource values. City designated natural resources per Chapter 33.910 are natural resource and functional values protected by environmental zones. The subject property does not have an environmental overlay zone. Therefore, the required mitigation trees on the mitigation plan are not required to be from the Portland Plant List.

Preserve Tree 3 until construction completed

According to the first arborist report (Exhibit A-6), Tree 3 is a 7.5 inch native or sweet cherry tree which is identified as an nuisance plant on the Portland Plant List. Therefore, the tree cannot be part of the tree preservation plan. This does not mean the tree must be removed. The findings

in the clearing and grading portion of the administrative decision for LU 07-180149 LDP required retaining trees that were not part of the tree preservation plan to enhance slope stability. However, retaining Tree 3 in this case would not have the same benefit as the adjacent Douglas fir trees that likely have a more significant root system that is providing slope stability in this location.

Location of mitigation trees on adjoining property

After the administrative decision for this case was rendered, staff determined that the location of the mitigation trees proposed on the mitigation plan were shown on the adjoining site to the south, Tax Lot 201. Upon learning of this, staff made a note in the file indicating that the mitigation trees must be planted on the subject site and not on Tax Lot 201. This is shown on Exhibit C-5, the tree mitigation plan. The location of the mitigation trees shown on this plan is generalized to indicate that each parcel is required to have two, 2 inch trees chosen from the list of trees on the mitigation plan. The exact placement of these trees should be specified in the context of a site plan that is part of a building permit application.

Authority in code to allow smaller root protection zones

Section 33.630.200.B allows using a tree preservation plan as a tree preservation method. The elements of such a plan are prescribed in Section 33.248.065. Subsection C allows using an alternative plan by an arborist if it will adequately preserve the tree. Such is the case with the arborist reports submitted with this application.

The Hearings Officer finds that the tree preservation issues raised by the MTNA have been adequately addressed, and finds that the tree preservation approval criteria are met.

D. Potential Landslide Hazard Area. If any portion of the site is in a Potential Landslide Hazard Area, the approval criteria of Chapter 33.632, Sites in Potential Landslide Hazard Areas, must be met.

33.632.100 Landslide Hazard Area Approval Criterion

The following approval criterion must be met: Locate the lots, buildings, services and utilities on the safest part of the site so that the risk of a landslide affecting the site, adjacent sites, and sites directly across a street or alley from the site, is reasonably limited.

Determination of whether the proposed layout and design reasonably limits the risk of a landslide will include evaluation of the Landslide Hazard Study and will take into consideration accepted industry standards for factor of safety. Alternative development options including alternative housing types and reduced density may be required in order to limit the risk to a reasonable level.

Findings: The entire site is located within a Potential Landslide Hazard Area. The Site Development Division of the Bureau of Development Services (Site Development) evaluated the applicants' geotechnical report (Exhibits A-4 and A-5) and determined that the risk of potential landslide hazard at the site, given the soil composition, topography, and other risk factors, can be

managed through construction management techniques. The proposed land division will result in parcels, buildings, services, and utilities that will not significantly increase the risk of landslide potential on the site or other properties in the vicinity of the site if certain precautions are taken in excavating the site for new construction. In addition, the applicant's proposed method of stormwater disposal at the site concurs with the geotechnical report and will not have a significant detrimental impact on slope stability on or around the site. This conclusion was reached because stormwater will not be disposed on the site itself. It will be treated in flow through planters and discharged into an extension of the public combined sewer.

The Hearings Officer finds that the landslide hazard approval criterion is met.

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

33.635.100 Clearing and Grading Approval Criteria

The Preliminary Clearing and Grading Plan must meet the following approval criteria:

- 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, and tree preservation requirements. The regulations also limit erosion and sedimentation impacts to help protect water quality and aquatic habitat.

In this case, the site has steep grades (over 20%) in some areas, and is located in a Potential Landslide Hazard area. Therefore, the clearing and grading associated with preparing the lots must occur in a manner that limits erosion concerns and assures that the site's preserved trees will not be disturbed.

Both the applicant's geotechnical engineer and arborist recommend that the amount of grading work occurring on the site be minimized as much as possible. It is anticipated that the grading will primarily involve excavating for the foundations and driveways of the new houses and trenching for the utilities. The Landslide Hazard Report recommends stripping those areas of the site that will receive structural fill, pavement, and structures to remove organic topsoil. Following the report's recommendations will help to limit erosion and sedimentation concerns

by installing erosion control devices before earth moving equipment enters the site. Stormwater runoff from the parcels will be appropriately managed by flow-through planters that overflow to an extension of the City's combined sewer in SE Yamhill St. to the west. This will assure that the runoff will not adversely impact adjacent properties. No clearing and grading will be permitted within the root protection zones of the site's preserved trees. Preserving these trees will help limit erosion by assuring that the tree roots will help to hold the soil in place. Topsoil storage and general stockpiling on the site should only occur if it will not create any additional erosion concerns as recommended by the geotechnical engineer.

When a building permit is submitted on the individual lots a clearing, grading and erosion control plan will be submitted to Site Development. Site Development will review the grading plan against the applicant's Landslide Hazard Study as well as any additional geotechnical information required during permit submittal to assure that the grading will not create any erosion risks. In addition the plans will be reviewed for compliance with the applicant's tree preservation plan and arborist report.

Staff determined that with the conditions noted above requiring that the building permits for the parcels comply with the recommendations of the Landslide Hazard Study and arborist report these criteria are met. The Hearings Officer concurs with staff and finds that the clearing and grading approval criteria are met.

33.635.200 Land Suitability Approval Criterion

Where geologic conditions or historic uses of the site indicate that 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. As indicated above, the site slopes, in some areas steeply, downward to the west but contains no known geological hazards. Staff determined that there are no anticipated land suitability issues and the new lots can be considered suitable for new development. The Hearings Officer concurs with staff and finds that the land suitability approval 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 easements are proposed and/or required for this land division:

- A Private Utility Easement is required across the relevant portions of Parcel 2, for a sanitary and storm sewer lateral connections that will serve Parcel 1. The applicant also proposes to serve Parcels 1 and 2 of LU 07-180149 LDP via this easement.
- A Private Access Easement over Parcel 1 for the benefit of Parcel 1 of LU 07-180149 LDP

As stated in Section 33.636.100, a maintenance agreement(s) will be required describing maintenance responsibilities for the easements described above and facilities within those areas. This criterion can be met with the condition that maintenance agreements are prepared and recorded with the final plat. In addition, the plat must reference the recorded maintenance agreements with a recording block for each agreement, substantially similar to the following example:

"A Declaration of Maintenance Agreement for (name of feature) has been recorded as document no. _____, Multnomah County Deed Records."

With the conditions of approval discussed above, the Hearings Officer finds that the tracts and easements approval criteria are met.

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

33.641.010 Purpose

The regulations of this chapter 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. The purpose of a transportation impact study is to assess the effects of routing or volume of traffic in the

vicinity of the site on traffic conditions, transit, pedestrian and bicycle movement, and neighborhood livability.

33.641.020 Approval Criterion

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: Parcel 1 has approximately 62 feet and Parcel 2 approximately 55 feet of frontage on SE Yamhill St. SE Yamhill St. is classified as a local service street for all modes in the Transportation Element of the Comprehensive Plan. TriMet does not provide frequent transit service within 500 feet of the site. Parking is not currently allowed on SE Yamhill St. The site is vacant, and has no existing off-street parking spaces.

The SE Yamhill St. frontages are currently improved with curbs and a 6-foot sidewalk in a 12-foot pedestrian corridor on the upper frontage with Parcel 1 and 5-foot sidewalks in an 11-foot pedestrian corridor along the frontage of Parcel 2. Portland Transportation determined that two additional dwellings can be safely served by this existing street without having any significant impact on the level of service provided.

Portland Transportation notes that the proposed land division would generate approximately 20 new daily trips, which is not expected to have a significant effect on the transportation system. Each proposed parcel will be required to provide off-street parking. The proposed driveway of Parcel 2 will need to be modified to show a slope of 2:1 in the right-of-way. The location of the retaining wall on the south side of the driveway for Parcel 2 will need to be evaluated during building permit to ensure adequate sight distance to SE Yamhill St.

Transportation Appeal Issues:

The MTNA argues, as presented by Mr. Shrall, that the Chapter 33.641 factors have not been adequately reviewed and that public safety has not been adequately addressed. Mr. Shrall states that the city's responses regarding transportation impacts have been focused solely on the impact of additional traffic on SE Yamhill St. While these concerns are important, it has not been clear that the safety of the development has been properly reviewed. The MTNA has been told that many transportation details will be covered during the development and permitting phase of the land division, but believe that it is important at this early phase to ensure that the proposed development is feasible given the constraints of a Type IIx land division procedure.

The MTNA does not have any experts on line of site or curb cut requirements, but has concerns about this. The MTNA would like to see Portland Transportation formally review the proposed grading and hillside cuts into the western edge of the development and confirm that there is no risk to the safety of any of the neighbors or the frequent pedestrian and bicycle usage on Yamhill St. Concerns such as line of site at the sidewalk intersection, left and right turns, on-street parking and car and bicycle traffic from each direction should be considered.

Mr. Shrall continues that at the western edge of the site, a sidewalk exists on the interior side of Yamhill St. as it curves up the hill to the east. This sidewalk cuts through the proposed egress to Parcel 2 as part of an access easement through Parcel 3 of LU 07-180149. The steep slopes of the hillside may require a steep driveway directly into the pedestrian walk, and the cuts into the hillside may result in reduced sight distance to the pedestrian walk. The MTNA would like to see that Portland Transportation has reviewed this concern and is confident that the proposed development will not incur additional risk to the safety of pedestrians on this part of Yamhill St.

The driveway on Parcel 1 of LU 07-180149 requires an access easement through Parcel 1 of this land division. As currently defined, the driveway on Parcel 1 of LU 07-180149 to the north has no means for maneuvering due to a narrow drive width (approximately 9 feet) which is immediately flanked by a steep grade to the east and a house to the west. The access easement through Parcel 1 of LU 07-180154 to benefit Parcel 1 of LU 07-180149 is a safety risk because there is no identified or planned maneuvering space on Parcel 1 of LU 07-180149 to allow a vehicle to egress in a forward motion. The MTNA wants to see the LU 07-180149 proposal fixed to include maneuvering space and confirm that such modifications are possible, while still meeting tree preservation requirements and keeping the existing house in conformance with all applicable codes. If this is not possible, alternate driveway access for LU 07-180154 must be considered and no access easement should be granted through Parcel 1 of the subject site.

Mr. Shrall also notes that Chapter 33.730 requires a landslide hazard study. The landslide hazard study submitted by Chinook Geotechnical Services was submitted with an out of date lot layout, indicating that the review they conducted did not make an assessment of the risk of landslide affecting the site or adjacent sites. The site layout map included with the geotechnical report on February 29, 2008 does not include Parcel 1 at all and includes an incorrect statement of placement for Parcel 2 of LU 07-180149. The original geotechnical report makes general statements regarding their assessment that they believe the slopes are stable based on visual inspection. But they point out in that report that visual inspection is insufficient to properly assess seismically induced slope instability and liquefaction risk. The February 29, 2008 report makes a general statement, “the subject property appears stable from a geologic and geotechnical standpoint, and may be partitioned and developed as intended”, although clearly they do not have the plans for what was actually intended. This study does not include “adequate detail to show the design of all proposed structures and improvements, and ... a statement of on-site slope stability after the proposed development is complete” as Chapter 33.730 requires. The MTNA would like to see a detailed review of landslide risk associated with the final submitted plans before the land division is approved.

Staff responded (Exhibit H-12) to the issues raised by the MTNA as follows:

Did the applicant address transportation criteria?

The application materials submitted (Exhibit A-1) did address the transportation criteria of Chapter 33.641. The applicant's responses did not provide a detailed response to the approval criterion of 33.641.020. The land use response provided by Portland Transportation in Exhibit E-2.a did evaluate the proposal against this criterion (page 1 and 2 of Exhibit E.2.a) and concluded that proposal can meet the requirements of Chapter 33.641 with conditions.

Turnaround and maneuvering room for Parcel 1 of LU 07-180149 LDP

As staff noted in the appeal hearing for LU07-180149 LDP, condition of approval C.7 of the administrative decision requires that a zoning permit be finalized before the final plat approval for that case that shows the location of a parking space for Parcel 1 with the existing house.

Landslide Hazard Study

The BDS review of the landslide hazard studies (Exhibit A-4 and A-5) found that the studies provided sufficient detail to evaluate the slope stability of the project and infiltration potential of the site for future development. During building permit on each parcel, Site Development will evaluate the grading plan against the landslide hazard studies of this land use review to ensure the recommendations of these studies are incorporated into the grading plans. Site development may require additional geotechnical evaluation of each parcel specific to the proposed buildings for each parcel.

The Hearings Officer finds that the transportation issues raised by the MTNA have been adequately addressed, and finds that the transportation approval criteria are met.

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

33.651.020 Water Service Standard

Water service must meet the standard of this section. Adjustments are prohibited. The Water Bureau or District and the Fire Bureau have verified that water facilities with adequate capacity and pressure are available to serve the proposed development.

Findings: An existing six-inch water main is available in SE Yamhill St. Water is available to serve the proposed development from the water main in SE Yamhill St.

The Hearings Officer finds that this criterion is met.

33.652.020 Sanitary Sewer Disposal Service Standards

Sanitary sewer disposal service must meet the standards of this section. Adjustments are prohibited.

A. Availability of sanitary sewer.

1. The Bureau of Environmental Services has verified that sewer facilities are available to serve the proposed development; or

2. BDS has approved the use of a private on-site sanitary sewage disposal system.

B. Public sanitary sewage disposal. Where public sewer facilities are available to serve the proposed development, the Bureau of Environmental Services has preliminarily approved the location, design, and capacity of the proposed sanitary sewage disposal system. The approval is based on the Sewer Design Manual; and

C. Private sanitary sewage disposal. Where private on-site sanitary sewage disposal is proposed, BDS and Environmental Services have preliminarily approved the location, design, and capacity of the proposed sanitary sewage disposal system.

Findings: There is an existing eight-inch VSP combination gravity main in SE Yamhill St., west of the site. There is no public sanitary sewer available in SE Yamhill St. to serve Parcels 1 and 2. The nearest available sewer is located in SE Yamhill St., 118 feet west of the site. The applicant must obtain a public works permit to extend the public sewer to this site before final plat approval.

The Hearings Officer finds that these criteria are met.

33.653.020 Stormwater Management Approval Criteria
Stormwater management must meet the following 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*. The applicant has proposed the following stormwater management methods (Exhibits C-2, C-3), and agencies responded as follows (Exhibits E-1 and E-5):

- **Parcels 1 and 2:** Stormwater from the parcels will be directed into flow-through planters that remove pollutants and suspended solids. The water will then drain from the planters to an extension of the existing combination sewer in SE Yamhill St. Each parcel has sufficient room for individual planter boxes. The Bureau of Environmental Services (BES) has indicated that, although the treated water can be directed to the combination sewer in SE Yamhill St., the combination sewer in SE Taylor Ct. is preferred. To ensure that the size and setback requirements of the *Stormwater Management Manual* are met, specific information regarding future building footprints, location of utility and access

easements, and the location for stormwater facilities shall be provided on the supplemental site plan before final plat approval by BES.

The Hearings Officer finds that with the conditions of approval described above, the stormwater management criteria are met.

33.654.110 Connectivity and Location of Rights-of-Way

B. Approval criteria.

- 1. 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: SE Yamhill St. runs north-south on the west and east sides of the site. The street loops south of the site to follow the topography adjacent to Mt. Tabor, approximately 150 feet south of the site. There is approximately 600 feet between SE Yamhill St. south of the site, and SE Belmont St. north of the site. There is sufficient width to allow continuing SE Yamhill St. through the site. Given that the criterion above recommends that through-streets be no more than 530 feet apart, there should be an east-west through-street provided in the site's vicinity. However, the site's steep grades prevent such an extension.

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

The Hearings Officer finds that the connectivity and location of rights-of-way approval criteria are met.

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: Any easements that may be needed for private utilities that cannot be accommodated within the right-of-way can be provided on the final plat. Staff determined that no specific utility easements adjacent to the right-of-way have been identified as being necessary.

The Hearings Officer finds that the right-of-way utilities approval criteria are met.

The Hearings Officer finds that with conditions, the Services and Utilities criteria are met.

ADDITIONAL CONDITIONS

33.800.070 Conditions of Approval

The City may attach conditions to the approval of all discretionary reviews. However, conditions may be applied only to ensure that the proposal will conform to the applicable approval criteria for the review or to ensure the enforcement of other City regulations.

Findings: The following development and technical standards apply to this proposal. Conditions of approval based on these standards are included in this decision.

Fire Bureau Standards

The applicant must meet Fire Bureau requirements concerning water flow from the nearest fire hydrant. It has been determined that the flow does not meet the minimum requirements. Therefore, the applicant must record an Acknowledgement of Special Land Use Conditions that requires providing internal fire suppression sprinklers on Parcels 1 and 2. Additionally, the applicant must meet Fire Bureau requirements to provide information about the grade of SE Yamhill St., and must have a successful Fire Code appeal for grades that exceed 18%. These requirements are based on the standards of Title 31 Fire Regulations.

Urban Forestry Standards

The applicant must meet Urban Forestry requirements to protect the Douglas fir tree in the public right-of-way. This requirement is based on the standards of Title 20 Parks and Recreation.

III. CONCLUSIONS

The appellant, the Mount Hood Neighborhood Association, stated that the land division approved by the Bureau of Development Services fails to meet approval criteria contained in:

- Chapter 33.630 Tree Preservation
- Chapter 33.641 Transportation Impacts

The Hearings Officer finds that the applicant has met their burden of proof in satisfying the tree preservation and transportation impacts approval criteria.

IV. DECISION

The appellant did not prevail in this appeal.

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

A. Supplemental Plan. Three copies of an additional supplemental plan for review by BDS LUS, BDS Site Development, and BES 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 during the final plat application.
- Any driveways and off-street vehicle parking areas on the site during the final plat application.
- Existing and proposed utilities and easements.
- Any other information specifically noted in the conditions listed below.

B. The final plat must show the following:

1. A private utility easement for sanitary and storm sewers for the benefit of Parcel 1 shall be shown and labeled over the relevant portions of Parcel 2. This easement may also serve Parcels 1 and 2 of LU 07-180149 LDP.
2. A private access easement for the benefit of Parcel 1 of LU 07-180149 LDP shall be shown and labeled over the relevant portions 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 each of the maintenance agreements and an acknowledgement of special land use conditions as required by Condition C.3 and C.4 below. The recording blocks shall, at a minimum, include language substantially similar to the following example:

“A Declaration of Maintenance Agreement for (name of feature) has been recorded as document no. _____, Multnomah County Deed Records.”

C. The following must occur before final plat approval:

Streets

1. The applicant shall meet Fire Bureau requirements to provide information regarding the existing grade of SE Yamhill St. and provide any required Acknowledgement of Special Land Use Condition or obtaining any required Fire Code Appeal.

Utilities

2. The applicant shall meet BES requirements to extend a public sewer main in SE Yamhill St. The public sewer extension requires a Public Works Permit, which must be initiated before final plat approval. In addition, the applicant must provide engineered designs and performance guarantees for the sewer extension to BES before final plat approval.

Required Legal Documents

3. A Maintenance Agreement shall be executed for the Access and Private Utility Easement areas described in Conditions B.1 and 2 above. The agreements shall include provisions assigning maintenance responsibilities for the easement areas and any shared facilities within those areas, consistent with the purpose of the easements, and all applicable City Code standards. The agreement must be approved by the City Attorney and the Bureau of Development Services before final plat approval.
4. The applicant shall execute an Acknowledgement of Special Land Use conditions, requiring residential development on Parcels 1 and 2 to contain internal fire suppression sprinklers. The acknowledgement shall be referenced on the final plat.

Other requirements

5. An access easement for Parcel 2 must be confirmed on the adjacent Tax Lot 100 as required by LU 07-180149 LDP.
6. If required to provide utility services to Parcels 1 or 2, a private utility easement must be confirmed on adjacent Tax Lot 100.

D. The following conditions apply to site preparation and developing individual lots:

1. Development on Parcels 1 and 2 shall conform to the Tree Preservation Plan (Exhibit C-2), the applicant's arborist report (Exhibits A-6 and A-7) and the Tree Mitigation Plan (Exhibit C-5). Specifically, Trees 1 (36-inch Douglas fir) and 2 (33-inch Douglas fir) must 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 receiving an arborist report, explaining that the arborist has approved of the specified methods of construction, and that the activities will be performed under his or her supervision.
2. Two, 2-inch trees chosen from the varieties proposed by the project arborist shall be planted on Parcels 1 and 2 before final approval of building permits for the primary structure on each parcel and that development on Parcels 1 and 2. The trees to be planted shall be chosen from the following species: Malus 'Prairifire' (a variety of plum), Cornus 'Eddie's White Wonder (a variety of dogwood), and Quercus robur 'Fastigiata' (columnar oak) as shown on Exhibit C-5. The mitigation trees may be used to meet T1 requirements.
3. The applicant is required to install residential sprinklers in the new houses on Parcels 1 and 2 to the Fire Bureau's satisfaction. If an appeal is granted to satisfy condition C.1, any requirements of that appeal must be met.
4. The applicant must meet Urban Forestry requirements to protect the Douglas fir tree in the SE Yamhill St. public right-of-way (Exhibit E-6).

Ian Simpson, Hearings Officer

Date

Application Deemed Complete: January 7, 2008
Report to Hearings Officer: November 21, 2008
Decision Mailed: December 29, 2008

Last Date to Appeal: January 19, 2009

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 before any work.

Conditions of Approval. This proposal is subject to 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 and future owners of the property subject to this land use review.

Appealing this decision. The Hearings Officer’s decision is final and takes effect on the day the notice of decision is mailed. The decision may not be appealed to City Council, but may be appealed to the Oregon Land Use Board of Appeals (LUBA), as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that:

- an appellant before LUBA must have presented testimony (orally or in writing) as part of the local hearing before the Hearings Officer; and
- a notice of intent to appeal be filed with LUBA within 21 days after the Hearings Officer’s decision becomes final.

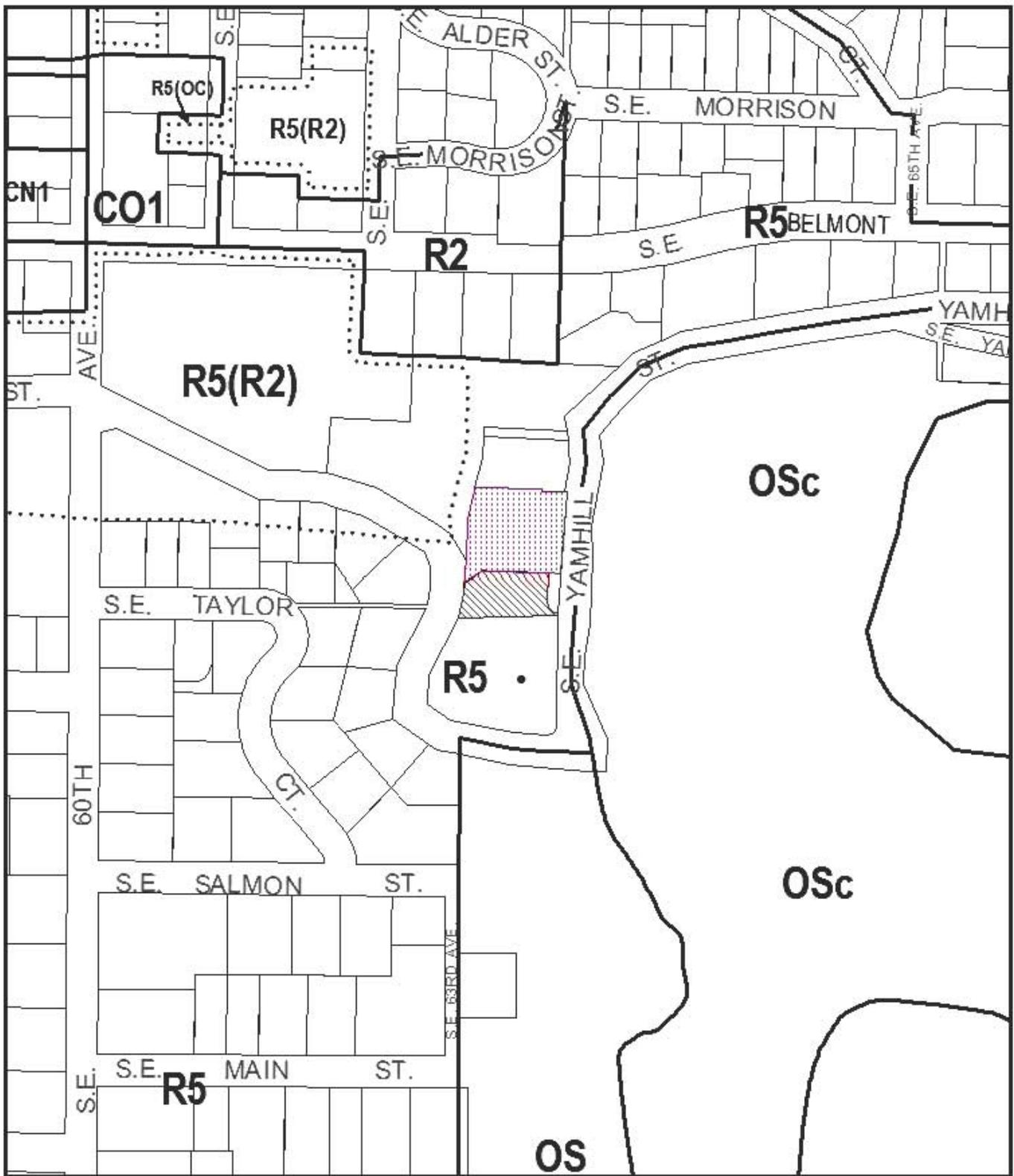
Recording the land division. The final land division plat must be submitted to the City within three years of the date of the City’s final approval of the preliminary plan. This final plat must be recorded with the County Recorder and Assessors Office after it is signed by the Planning Director or delegate, 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.

EXHIBITS
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Submittals
 - 1. Response findings to Land Division Approval Criteria
 - 2. Memo from Oscar Griffin to Paul Cathcart dated December 24, 2007 regarding response to LU 07-180149 LDP 6371 SE Yamhill House
 - 3. E-mail from Oscar Griffin to Paul Cathcart dated February 5, 2008 waiving the 120-day deadline
 - 4. Subsurface Exploration, Infiltration Testing, and Geotechnical Evaluation prepared by Chinook GeoServices Inc. dated February 29, 2008
 - 5. Landslide Hazard Reconnaissance Report dated May 1, 2007
 - 6. Arborist Report prepared by Lloyd's Arboricultural Consulting, LLC dated August 9, 2007
 - 7. Addendum to Arborist Report date March 31, 2008
 - 8. Letter from Lawrence Derr to Paul Cathcart, dated August 12, 2008
 - 9. Plumbing Code Appeal 5564 dated September 10, 2008
- B. Zoning Map (**attached**)
- C. Plans/Drawings
 - 1. Site Plan (**8 ½ x 11 attached**)
 - 2. Grading and Erosion Control Plan and Tree Preservation Plan (**8 ½ x 11 attached**)
 - 3. Utilities Feasibility Plan
 - 4. Utility Sections
 - 5. Tree Mitigation Plan (**8 ½ x 11 attached**)
- D. Notification information
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses
 - 1. Bureau of Environmental Services
 - a. Land Use Response dated February 12, 2008
 - b. Land Use Response dated June 4, 2008
 - c. Land Use Response dated September 10, 2008
 - d. Land Use Response dated September 24, 2008
 - 2. Bureau of Transportation Engineering and Development Review
 - a. Land Use Response dated June 4, 2008
 - b. Land Use Response dated September 23, 2008
 - 3. Water Bureau
 - a. Land Use Response dated February 1, 2008
 - b. Land Use Response dated May 16, 2008
 - 4. Fire Bureau
 - a. Land Use Response dated February 13, 2008
 - b. Land Use Response dated June 5, 2008
 - c. E-mail dated September 22, 2008
 - 5. Site Development Review Section of Bureau of Development Services
 - a. Land Use Response dated January 29, 2008
 - b. Land Use Response dated June 4, 2008

- c. Land Use Response dated September 23, 2008
 - d. Land Use Response dated September 24, 2008
 6. Bureau of Parks, Forestry Division
 7. Life Safety Section of Bureau of Development Services
 - a. Land Use Response dated February 1, 2008
 - b. Land Use Response dated June 2, 2008
- F. Correspondence
 1. Mt. Tabor Neighborhood Association, (represented by Dave Hilts and Jerry Shrall), Letter dated February 8, 2008, regarding opposition to the land division proposed at 6371 SE Yamhill Street (LU 07-180154)
 2. Bruce Treat, 5834 SE Lincoln St., Portland, OR 97215 and Jerry Shrall, 6373 SE Yamhill St. Portland, OR 97215, Letter dated May 26, 2008, regarding opposition to land division proposed at 6371 SE Yamhill Street
 3. Nancy Lapaglia, 6347 SE Yamhill St., Portland, OR 97215, E-mail dated February 13, 2008, regarding 6371 SE Yamhill case file # LU 07-180154 LDP
 4. Nancy Lapaglia, 6347 SE Yamhill St., Portland, OR 97215, E-mail dated May 25, 2008, regarding 6371 SE Yamhill case file # LU 07-180154 LDP
 5. Patricia Morgan, patanddaisy@comcast.net, E-mail dated June 3, 2008, regarding review of proposed development at 6371 SE Yamhill St.
 6. Lynette and Dennis Doht, 6320 SE Yamhill St., Portland, OR 97215, Letter dated January 31, 2008, regarding case file number: LU 07-180149 LDP
 7. Lynette and Dennis Doht, 6320 SE Yamhill St., Portland, OR 97215, Letter dated May 31, 2008, regarding case file number: LU 07-180149 LDP
 8. Alice Powell, alicepowell@comcast.net E-mail dated June 2, 2008, regarding concerns about the property at 6371 SE Yamhill
 9. Mark Bartlett, mbart@pacifier.com, E-mail dated January 22, 2008, regarding 6371 SE Yamhill Street
- G. Other
 1. Original LU Application
 2. Site History Research
 3. Incomplete Letter
- H. Received in the Hearings Office
 1. Hearing notice - Cathcart, Paul
 2. Corrected hearing notice Cathcart, Paul Received
 3. Appeal form - Cathcart, Paul
 - a. Appellant's letter - Cathcart, Paul
 4. Staff report/administrative decision - Cathcart, Paul
 5. Memo Jamie Jeffrey to Cathcart - Cathcart, Paul
 6. 12/1/08 Memo Cathcart to Simpson - Cathcart, Paul
 7. PowerPoint presentation printout - Cathcart, Paul
 8. 11/25/08 Letter Bruce Treat to BDS - Shrall, Jerry
 9. 12/1/08 Letter - Shrall, Jerry
 10. 12/8/08 Letter with attachments - Derr, Larry - Submitted After Record Closed
 - a. 12/8/08 Letter Rob Lloyd to Derr - Derr, Larry - Submitted After Record Closed
 - b. Grading and Erosion Plan - Derr, Larry - Submitted After Record Closed
 - c. Certification of Performance - Derr, Larry - Submitted After Record Closed
 - d. Diagram - Derr, Larry - Submitted After Record Closed

11. Original of Exh. H-10 received in mail - Derr, Larry - Submitted After Record Closed
 - a. Original of Exh. H-10a received in mail - Derr, Larry - Submitted After Record Closed
 - b. Original of Exh. H-10b received in mail - Derr, Larry - Submitted After Record Closed
 - c. Original of Exh. H-10c received in mail - Derr, Larry - Submitted After Record Closed
 - d. Original of Exh. H-10d received in mail - Derr, Larry - Submitted After Record Closed
12. Memo to HO dated 12/8/08 - Cathcart, Paul
13. 12/15/08 letter - Derr, Larry - Received
14. 12/15/08 Letter - Derr, Larry - Submitted After Record Closed



ZONING

 Site



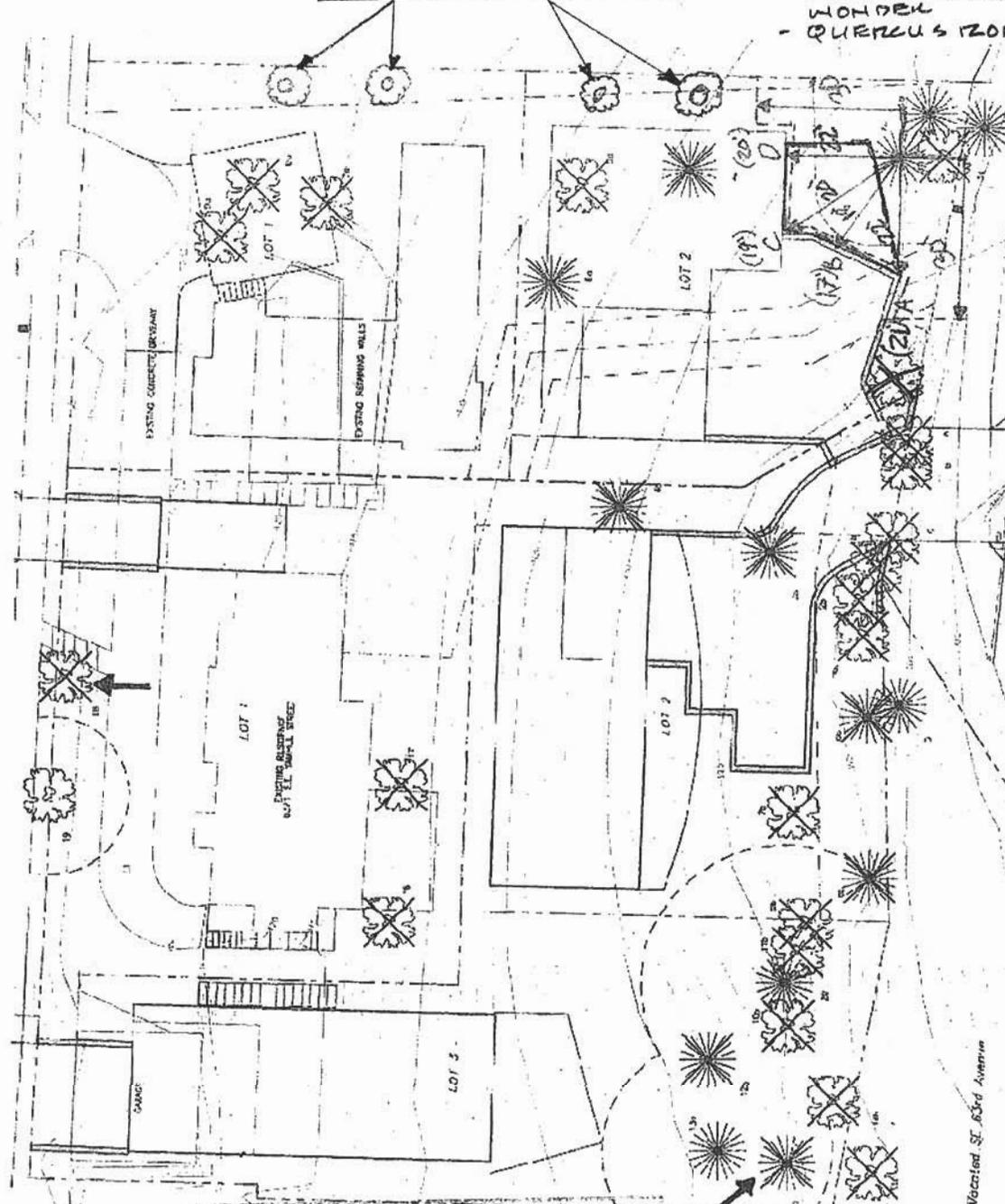
File No.	<u>LU 07-180154 LDP</u>
1/4 Section	<u>3137</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1S2E05BC 200</u>
Exhibit	<u>B (Oct 07, 2008)</u>

CHOOSE FROM:

- MALUS PRAIRIFERA
- CORNUS EDDIE'S WHITE
- QUERCUS ROBUR

FASTIGIATA

MITIGATION TREES:



Approved
 City of Portland
 Bureau of Development Services
 Planner *[Signature]*

ROB LLOYD, CERTIFIED ARBORIST 10/7/08

April 17, 2008

* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

CASE NO. LU 07-180154 LDP
 EXHIBIT C.5

TREE MITIGATION PLAN