



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

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**Date:** February 26, 2015  
**To:** Interested Person  
**From:** Diane Hale, 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 mailed copy of this document is only a summary of the decision. The reasons for the decision, including the written response to the approval criteria and to public comments received on this application, are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

**CASE FILE NUMBER: LU 14-165562 LDP**

**GENERAL INFORMATION**

**Applicant:** Mike Coyle / Faster Permits  
 14334 NW Eagleridge Lane / Portland OR 97229 / 503-680-5497

**Representative:** Charles Thomas III / Eden Enterprises LLC  
 5505 SW Delker Rd / Tualatin OR 97062-9710

**Site Address:** 8537 SW Capitol Hwy

**Legal Description:** BLOCK 2 LOT 11, HILLVALE TR  
**Tax Account No.:** R181023  
**State ID No.:** 1S1E20CC 11200  
**Quarter Section:** 3825  
**Neighborhood:** Multnomah, contact James Peterson at 503-246-0725.  
**Business District:** None  
**District Coalition:** Southwest Neighborhoods Inc., contact Leonard Gard at 503-823-4592.  
**Other Designations:** Potential Landslide Hazard Area  
**Zoning:** R7 (Single Family Residential 7,000 square feet)  
**Case Type:** LDP (Land Division Partition)  
**Procedure:** Type Iix, an administrative decision with appeal to the Hearings Officer.

**Proposal:**  
 The applicant is proposing to divide this 14,743 square foot site into 2 parcels. The existing house will remain on Parcel 1 (~10,084 sq ft). A new single family house will be developed on Parcel 2 (~4,659 sq ft). Vehicle access for both parcels will be provided via SW 41<sup>st</sup> Avenue and both parcels will provide off-street parking. The applicant will be required to dedicate property for future street improvements on SW Capitol Hwy and construct limited street improvements on SW 41<sup>st</sup> Avenue. There are 7 trees on the site subject to tree preservation regulations. The following 3 trees are proposed to be preserved: 2 Douglas Firs near SW 41<sup>st</sup> Avenue and 1 Bigleaf Maple near the northern property line.

This partition proposal is reviewed through a Type IIX procedure because: (1) the site is in a residential zone; (2) two or three parcels are proposed; and (3) the site is located within a Potential Landslide Hazard or Flood Hazard Area (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). ORS 92.010 defines “parcel” as a single unit of land created by a partition of land. The applicant’s proposal is to create 2 units of land (2 parcels). Therefore this land division is considered a partition.

**Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria found in Section 33.660.120, Approval Criteria for Land Divisions in Open Space and Residential Zones.

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. This application was submitted on June 5, 2014 and determined to be complete on November 7, 2014.

## FACTS

**Site and Vicinity:** This 14,743 square foot site is a relatively flat interior lot that has frontage on both SW 41<sup>st</sup> Ave and SW Capitol Highway. The site contains a home built in 1926 with a detached garage, and is generally surrounded by single family development. The Multnomah Village commercial center is located approximately ¼ mile north of the site. There are 12 trees on the site.

**Infrastructure:**

- **Streets** – The site has approximately 66 feet of frontage on SW 41<sup>st</sup> Avenue, and approximately 72 feet of frontage on SW Capitol Highway. There is one driveway entering the site from SW 41<sup>st</sup> Ave that serves the existing house on the site. At this location, the City’s Transportation System Plan (TSP) classifies SW 41<sup>st</sup> as a Local Service street for all modes. According to City GIS, SW 41<sup>st</sup> is a gravel roadway lacking curbs or sidewalks, transitioning into approximately 16-ft of center paving within the vicinity of the site, within a 50-ft ROW. At this location, the TSP classifies SW Capitol as a District Collector, a Transit Access street, a City Bikeway, a City Walkway, a Truck Access street, a Major Emergency Response Route, and a Community Corridor. According to City GIS, SW Capitol Hwy is improved with approximately 26-ft of paving, without curbs or sidewalks, within a 60-ft ROW. The site is also located within the Capitol Highway Plan area. The site is served by nearby transit service along SW Capitol with a stop at SW Capitol & SW Dolph Ct (TriMet Route #44).
- **Water Service** – There is an existing 6-inch CI water main in SW Capitol Highway. The existing house is served by a 5/8-inch metered service from this main. There is an existing 6-inch CI water main in SW 41<sup>st</sup> Avenue.
- **Sanitary Service** - There is an existing 8-inch VSP public gravity sanitary sewer line in SW 41<sup>st</sup> Avenue.
- **Stormwater Disposal** – There is no public storm-only sewer currently available to this property.

**Zoning:** R7 (Single Family Residential 7,000 square feet). The R7 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:** Several Bureaus have responded to this proposal and relevant comments are addressed under the applicable approval criteria. Exhibits “E” contain the complete responses.

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on **November 13, 2014**. Four written responses have been received from the Neighborhood Association or notified property owners in response to the proposal. The public comments expressed the following concerns:

- Additional development will exacerbate existing erosion and drainage problems in the immediate area.
- 41st Avenue is in poor condition with many potholes. Adding traffic will increase this problem and make it harder for neighbors to maintain the street, in general, and construction activities and traffic will have an even greater negative impact on the area. One comment requested that the developer pave 41st Avenue to mitigate these impacts.
- Concerns about on-street parking impacts.
- Removing the large Douglas Fir trees on the site will take away wildlife habitat and change the wooded character of the area.
- The proposal is not in conformance with the Comprehensive Plan designation (R7) for development intensity on the site.
- The public notice procedures were incorrect and the notice should have been re-issued to correct the problem.

*Staff Response:*

In addition to the concerns listed above, public comments also requested more information about the type of house being built on the site and its orientation and specific location. During the land division process applicants are required to submit conceptual building footprints to ensure that development could be accommodated on the proposed parcels. However, specific development plans are not reviewed until building permits are requested.

Most of the concerns expressed in the public comments are addressed in detail under the corresponding approval criteria later in this decision – references are included here. Bureau of Environmental Services staff reviewed the proposal with regards to stormwater management, and was satisfied that the applicant’s method of using a soakage trench for the new house is satisfactory. See *Services and Utilities* (criterion L), below for more information.

Transportation impacts and required improvements in the right-of-way are addressed below in *Transportation Impacts* (criterion K) and *Services and Utilities* (criterion L) below. In general, staff found that the addition of one extra house can be accommodated by the transportation system. Both houses will have off-street parking, therefore on-street parking impacts should be negligible.

The applicant submitted a tree report and inventory prepared by a certified arborist. The arborist determined that the Douglas Fir trees near the middle of the lot (trees #8, 9 and 10) would require a large root protection zone to be saved, and many of the proposed improvements for Parcel 2, including the house, extend into the root protection zone. He also said that the largest of these trees is not healthy and not a good choice for preservation. See the Arborist Report (Ex. A.9) for more information.

The site has a Comprehensive Plan Designation of R7, with a corresponding zone of R7. The proposed development is an allowed housing type and density for the R7 zone. For more information on the evaluation of lot dimensions and density, see *Lots* (criterion A) below.

The Multnomah Neighborhood Association Land Use Chair, James Peterson, expressed concern that he did not receive the written notice at his preferred address when it was mailed on November 13, 2014. The Zoning Code requires that notice of a proposal for a Type IIX procedure be mailed to property owners within 150 feet of the site, to recognized organizations in which the site is located, and to all recognized organizations within 400 feet of the site (33.730.025.C). Notice was sent to the Multnomah Neighborhood Association via Moses Ross, the contact listed

as the chair of the neighborhood association, and also to the SW Neighborhoods Inc. office, which is also the address listed for all correspondence to the Multnomah Neighborhood Association. Staff also emailed a link to where the notice was posted online directly to Mr. Peterson, and worked with Mr. Peterson to change the contact information so that he would receive future notices at his preferred address. The ability of the neighborhood association to review and comment on the proposal was not adversely affected in this case, therefore staff did not re-notice as requested by Mr. Peterson.

## ZONING CODE 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.***

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 criteria that are not applicable. Applicable criteria are addressed below the table.

<b>Criterion</b>	<b>Code Chapter/Section and Topic</b>	<b>Findings: Not applicable because:</b>
C	33.631 - Flood Hazard Area	The site is not within the flood hazard area.
E	33.633 - Phased Land Division or Staged Final Plat	A phased land division or staged final plat has not been proposed.
F	33.634 - Recreation Area	The proposed density is less than 40 units.
I	33.639 - Solar Access	All of the proposed parcels are interior lots (not on a corner). In this context, solar access standards express no lot configuration preference.
J	33.640 - Streams, Springs, and Seeps	No streams, springs, or seeps are evident on the site outside of environmental zones.
L	33.654.110.B.2 - Dead end streets	No dead end streets are proposed.
	33.654.110.B.3 - Pedestrian connections in the I zones	The site is not located within an I zone.
	33.654.110.B.4 - Alleys in all zones	No alleys are proposed or required.
	33.654.120.C.3.c - Turnarounds	No turnarounds are proposed or required.
	33.654.120.D - Common Greens	No common greens are proposed or required.
	33.654.120.E - Pedestrian Connections	There are no pedestrian connections proposed or required.
	33.654.120.F - Alleys	No alleys are proposed or required.
	33.654.120.G - Shared Courts	No shared courts are proposed or required.
	33.654.130.B - Existing public dead-end streets and pedestrian connections	No public dead-end streets or pedestrian connections exist that must be extended onto the site.
	33.654.130.C - Future extension of dead-end streets and pedestrian connections	No dead-end street or pedestrian connections are proposed or required.
	33.654.130.D - Partial rights-of-way	No partial public streets are proposed or required.

**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 dimension requirements applicable in the RF through R5 zones. The maximum density is one unit per 7,000 square feet. Minimum density is one unit per 7,000 square feet based on 80 percent of the site area. Because the site is within the potential landslide hazard area, the site has a minimum required density of 0 units and a maximum density of 2 units. The applicant is proposing 2 single dwelling parcels. The density standards are therefore met.

The lot dimensions required and proposed are shown in the following table:

	<b>Min. Lot Area (square feet)</b>	<b>Max. Lot Area (square feet)</b>	<b>Min. Lot Width* (feet)</b>	<b>Min. Depth (feet)</b>	<b>Min. Front Lot Line (feet)</b>
<b>R7 Zone</b>	4,200	12,000	40	55	30
Parcel 1	10,084		72.10	197.10	72.16
Parcel 2	4,659		50	90	66

\* Width is measured by placing a rectangle along the minimum front building setback line specified for the zone. The rectangle must have a minimum depth of 40 feet, or extend to the rear of the property line, whichever is less.

The findings above show that the applicable density and lot dimension standards are met. Therefore, this criterion is 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 arborist report inventories the trees within the land division site, evaluates their condition and specifies root protection zones (Exhibit A.9). There are 12 trees on the site. Five trees have been exempted because they unhealthy or are a nuisance species. Seven trees are subject to the preservation requirements of this chapter.

The total non-exempt tree diameter on the site is 137 inches. The applicant proposes to preserve trees #1 (10" Douglas fir), #2 (11" Douglas fir) and # 12 (17" Bigleaf maple), which comprise 38 inches of diameter, or 28 percent of the total non-exempt tree diameter. The trees to be preserved and the required root protection zones are shown on the applicant's Preliminary Site/Utility Plan (Exhibit C.1).

In order to ensure that future owners of the lots are aware of the tree preservation requirements, the applicant must record an Acknowledgement of Tree Preservation Land Use Conditions at the time of final plat.

The proposal does not meet any of the tree preservation options in 66.630.100. The applicant proposes, instead, to use the mitigation options of 33.630.300.

Exhibit C.3, Existing Conditions Plan, displays the location of the 12 trees on the site. The applicant has proposed to preserve three of these trees. There are four other trees that are subject to the Tree Preservation regulations that are proposed to be removed (trees #4, 8, 9, 10). These trees are all located in areas of the site that would preclude building a house without damaging the trees to the point of failure. The arborist has also pointed out that trees #8, 9,

and 10, large Douglas firs, have been topped and damaged and are not good candidates for preservation, even though they are not damaged to the point of being exempt from the regulations. Therefore, the applicant has met Criterion A, because as many trees as possible will be preserved.

The applicant has submitted a tree mitigation plan that proposes close to the caliper inches required by Option 1 of the Tree Preservation Chapter. Option 1 would require that 35% or 48 inches of the existing non-exempt tree diameter on site be preserved. The addition of 5 trees at 2" each, along with the preservation of 3 trees totaling 38" of diameter, is roughly equivalent to the 48 inches that would be required to be preserved. The replacement trees will help to foster and maintain the City's natural heritage, reduce stormwater runoff and provide wildlife habitat that will be lost with the tree removal. The new trees will also help absorb air pollutants and contamination, provide buffering from noise and wind, and provide visual screening from the adjacent properties.

The new parcels are of such a size to allow additional trees to be planted without jeopardizing the overall health of the mitigation trees or the trees that will be required to be planted to meet the tree density standards of Title 11. The Title 11 requirements for Parcels 1 and 2 will be partially met with the preservation of trees #1, 2 and 12, but additional tree(s) and/or mitigation payment into the Tree Fund will also be required on each parcel to fully meet the Title 11 requirements. The mitigation trees must be provided in addition to the trees planted on each lot to meet the Title 11 requirements.

Criterion B is met with a condition of approval requiring four 2" trees to be planted on Parcel 1, the lot with the existing house, prior to final plat approval. Two of these trees must be native trees chosen from the Portland Plant List. A Zoning Permit must be obtained and receive final inspection approval verifying that these trees have been planted. Additionally, one 2" tree must be planted on Parcel 2 prior to final building permit approval for new houses on these lots. The applicant must also meet the Title 11 tree requirement on Parcel 1 with the existing house by either planting trees on the parcel or making the equivalent payment into the City Tree Fund, prior to final plat approval. A finalized Zoning Permit must be obtained to document tree planting prior to final plat approval.

The site is less than 15,000 square feet in area. The applicant wishes to divide the site for detached housing, which is an allowed housing type in the R7 zone. The location of the existing trees on the site 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 R7 zone. Criterion C.4 is met.

This criterion is met, subject to the conditions outlined above that development on Parcels 1 and 2 be carried out in conformance with the Preliminary Site/Utility Plan (Exhibit C.1) and the applicant's arborist report (Exhibit A.9) and an Acknowledgement of Tree Preservation Land Use Conditions is recorded with the final plat.

**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.**

**Findings:** The entire site is located within the Potential Landslide Hazard Area. The approval criteria state that the lots, buildings, services, and utilities must be located 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.

In order to evaluate the proposal against this criteria, the applicant has submitted a geotechnical evaluation of the site and proposed land division, prepared by a Certified Engineering Geologist and a Geotechnical Engineer (Exhibit A.10). That report was evaluated by the Site Development Division of the Bureau of Development Services, the City agency that makes determinations regarding soil stability.

The applicant's geotechnical evaluation indicates that the risk of potential landslide hazard at the site is relatively low, given the soil composition, topography, and other risk factors. The proposed land division will result in lots, 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. In addition, the geotechnical evaluation has concurred that the applicant's proposed method of stormwater disposal at the site will not have a significant detrimental impact on the slope stability on or around the site.

Site Development has concurred with the findings of the applicant's geotechnical report. This criterion is met.

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

**Findings:**

***Clearing and Grading***

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 located in the Potential Landslide Hazard area. Therefore, the clearing and grading associated with preparation of the parcels must occur in a way that will limit erosion concerns and assure that the preserved trees on the site will not be disturbed.

A Preliminary Clearing and Grading Plan (Exhibit C.2) and a Landslide Hazard Report (Exhibit A.10) were submitted with the land division application. These documents note that the site is relatively flat and did not indicate that special measures need to be taken to minimize erosion concerns related to clearing and grading. The Clearing and Grading Plan also designates areas on the site where grading should not occur in order to protect the roots of the trees on the site that will be preserved, and an arborist report (Exhibit A.9) further discusses grading on the site.

It is anticipated that the grading will primarily involve excavating for the foundations of the new house and trenching for the utilities, but will not include mass grading of the site to alter the existing contours. The applicant shows clearing of the lot and sediment fences around 3 sides of the site to contain any surface water and silt during construction. In addition, no clearing and grading will be permitted within the root protection zones of the trees on the site that are required to be preserved. Preserving these trees will help limit erosion by assuring that the tree roots will help to hold the soil in place.

As shown above the clearing and grading anticipated to occur on the site can meet the approval criteria. These criteria are met.

***Land Suitability***

The site is currently in residential use, and there is no record of any other use in the past. Although the site is currently connected to the public sanitary sewer, there is an old septic system on the site. The City has no record that this facility was ever decommissioned. Prior to final plat, the applicant must meet the requirements of the Site Development Section of the Bureau of Development Services for the decommissioning of this facility.

The applicant has proposed to remove the existing garage on the site. In order to ensure that the new lots are suitable for development, a permit must be obtained and finalized for demolition of structures on the site prior to final plat approval.

With the conditions described above, the new parcels 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;**

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

The following easements are required for this land division:

- A Private Access Easement is required across the relevant portions of Parcel 2 to provide access serving Parcel 1.
- A Private Sanitary Sewer Easement is required across the relevant portions of Parcel 2, for a sanitary sewer lateral connection that will serve Parcel 1.

As stated in Section 33.636.100 of the Zoning Code, maintenance agreements 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 agreement(s) with a recording block for each agreement, substantially similar to the following example:

*“A Declaration of Maintenance agreement for (Private Access Easement/Private Sanitary Sewer 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,**

**Findings:** The transportation system must be capable of safely supporting the proposed development in addition to the existing uses in the area. The Development Review Section of the Portland Bureau of Transportation has reviewed the application for its potential impacts regarding the public right-of-way, traffic impacts and conformance with adopted policies, street designations, and for potential impacts upon transportation services.

PBOT has provided the following findings (see Exhibit E.2):

The proposed land division will create two (2) new parcels from the current lot in order to accommodate one new single-family home. The existing single-family home on the site will remain. Referring to the ITE Trip Generation Manual, 9th Edition, the net new trips for the proposed land division will be one (1) new AM peak hour trip and one (1) additional PM peak hour trip (10 additional total new daily trips).

The new peak hour trips will have minimal impacts to the area’s nearby intersections and do not warrant any mitigation to said intersections. With the vehicle trips generated by the proposed project factored into the analysis, the intersections will continue to operate at current levels without further degradation.

No significant negative impacts are expected to occur in relation to any of the other evaluation factors. The site is served by nearby transit service along SW Capitol with a stop at SW Capitol & SW Dolph Ct (TriMet Route #44). There are identified bike facilities (Portland Bike/Walk Map) in the area including SW Spring Garden to the north which is identified as an On Street Route and SW 42nd to the west which is identified as a Signed Urban Trail.

With on-site parking opportunities for at least one vehicle on each of the proposed parcels, on-street parking impacts will be minimized. The 7-ft gravel shoulder that will be required along the site’s SW 41st frontage will also serve to improve on-street parking opportunities in the area (see below for more information on required improvements).

Given the area in which the site is located, the minimal increase in vehicle trips that will be generated by the proposed partition, and the classification of the streets within the transportation system, PBOT expects that the transportation system will be able to support the existing development in the area as well as the proposed development. PBOT has reviewed and

concurs with the information supplied and available evidence. No mitigation is necessary for the transportation system to be capable of safely supporting the proposed development in addition to the existing uses in the area. These 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.**

**Findings:** Chapters 33.651 through 33.654 address water service standards, sanitary sewer disposal standards, stormwater management, utilities and rights of way. The criteria and standards are met as shown in the following table:

<p><b>33.651 Water Service standard</b> – See Exhibit E.3 for detailed bureau comments.</p> <p>The Water Bureau has indicated that service is available to the site, as noted on page 2 of this report. The water service standards of 33.651 have been verified.</p>
<p><b>33.652 Sanitary Sewer Disposal Service standards</b> – See Exhibit E.1 for detailed comments.</p> <p>As a result of the proposed land division, the existing sewer connection that serves the house on Parcel 1 will cross over Parcel 2 to reach the sewer main in SW 41<sup>st</sup> Avenue. The applicant must obtain a plumbing permit to cap the existing sewer connection and establish a new service for the house located on Parcel 1. All plumbing permits must receive final inspection approval prior to Final Plat approval. Because the new lateral will cross over a small portion of Parcel 2, a private sanitary sewer easement to benefit Parcel 1 will be required.</p> <p>The existing lateral is available to serve Parcel 2.</p> <p>With the condition described above, the sanitary sewer standards have been verified.</p>
<p><b>33.653.020 &amp; .030 Stormwater Management criteria and standards</b> – See Exhibits E.1 &amp; E.5</p> <p>No stormwater tract is proposed or required. Therefore, criterion A is not applicable.</p> <p>The applicant has proposed the following stormwater management methods</p> <ul style="list-style-type: none"> <li>• <b>Public Street Improvements:</b> SW 41<sup>st</sup> Avenue: Limited improvements are required by PBOT on SW 41<sup>st</sup> Avenue, but no new impervious surface is required for the improvements. As such, no public stormwater drainage improvements apply at this time. If changes to the requirements occur in the future, BES will reevaluate stormwater management requirements. <p>SW Capitol Highway: Along SW Capitol Hwy, a Public Works Appeal (#14-224820) was approved with the condition that standard improvement requirements be waived subject to the applicant providing waivers of remonstrance and dedication of property as determined appropriate by this land use review. BES and PBOT staff have coordinated and determined that the dedication proposed under this land use review (3 feet) appears to sufficiently accommodate future improvements and no additional information is required at this time. A more detailed evaluation will occur at the time of the improvement project.</p> <li>• <b>Parcel 2:</b> Stormwater from this lot will be directed to an individual soakage trench 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. BES has indicated conceptual approval of the soakage trench.</li> <li>• <b>Parcel 1 (with the existing house):</b> The existing house has downspouts that are routed sufficiently away from the house and adjacent properties, per Chapter 2, Downspout Extensions, of the SWMM. No additional requirements apply at this time.</li> </li></ul> <p>The stormwater service standards have been verified.</p>

**33.654.110.B.1 Through streets and pedestrian connections**

Generally, through streets should be provided no more than 530 feet apart and at least 200 feet apart. Pedestrian connections should be provided ~330-ft apart. The site is located in the middle of the block, with existing streets providing vehicle and pedestrian connections approximately 325 feet to the north and 380 feet to the south. While the subject block does not meet the specified spacing goals, the existing development pattern in the area and the configuration of the adjacent rights-of-way do not make additional vehicular or pedestrian connections feasible at this time. PBOT has no concerns relative to connectivity in association with the proposed land division.

For the reasons described above, this criterion is met.

**33.654.120.B & C Width & elements of the right-of-way – See Exhibit E.2 for bureau comment**

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.

SW 41st Avenue

At this location, the City's Transportation System Plan (TSP) classifies SW 41st as a Local Service street for all modes. The site is also located within the Capitol Highway Plan area. According to City GIS, SW 41st is a gravel roadway lacking curbs or sidewalks, transitioning into approximately 16-ft of center paving within the vicinity of the site, within a 50-ft ROW.

For a Local Service classified street along an R7-zoned site, the City's public right-of-way document recommends a 54-ft wide ROW which will accommodate parking on both sides of the street and the standard 14-foot sidewalk corridors.

A Public Works Alternative Review (14-194677) was approved concerning the site's SW 41st frontage. The Public Works Alternative Review Committee (PWARC) approved limited improvements that meet the shared street standard and waived the requirement for dedication subject to the applicant signing waivers of remonstrance. The shared street standard includes a 16-ft wide paved roadway and 7-ft gravel shoulders.

As a condition of the Building Permit for the construction of the new home on Parcel 2, the applicant will be required to construct a 7-ft wide gravel shoulder at the edge of the existing pavement on SW 41st Avenue. The gravel shoulder shall extend along the frontages of Parcels 1 & 2 and street trees will be required consistent with recommendations of the Urban Forester. Asphalt driveway connections, meeting City Standards, shall provide vehicular access to each parcel. The roadway improvements will require a Minor Improvement Permit from the Bureau of Transportation.

SW Capitol Highway

At this location, the TSP classifies SW Capitol as a District Collector, a Transit Access street, a City Bikeway, a City Walkway, a Truck Access street, a Major Emergency Response Route, and a Community Corridor. The site is also located within the Capitol Highway Plan area. According to City GIS, SW Capitol Hwy is improved with approximately 26-ft of paving, without curbs or sidewalks, within a 60-ft ROW.

For a District Collector/City Walkway/City Bikeway classified street along an R7-zoned site, the City's public right-of-way document recommends a 66-ft ROW to accommodate 34-ft of roadway width (two 11-ft wide travel lanes and two 6-ft bike lanes) and two 16-ft wide sidewalk corridors. To accommodate the improvements a 3-ft dedication of property along a portion of the site's frontage is required. Prior to Final Plat approval, the applicant will be required to submit a survey documenting the exact location and amount of land required for dedication to accommodate the standard improvements identified herein.

There are existing stairs along the eastern boundary of Parcel 1 that extend into the SW

Capitol Hwy ROW. Prior to Final Plat approval the applicant will be required to remove this encroachment into the public ROW or procure a Revocable Encroachment Permit.

The applicant filed a Public Works Appeal (14-224820) for the required frontage improvements on SW Capitol Hwy. The appeal was approved and included waiving standard improvement requirements subject to the applicant providing waivers of remonstrance and dedication of property necessary to accommodate improvements in the future.

With the conditions of approval described above, one additional dwelling can be safely served by this existing street without having any significant impact on the level of service provided. This criterion is met.

#### **33.654.130.A - Utilities (defined as telephone, cable, natural gas, electric, etc.)**

Any easements that may be needed for private utilities that cannot be accommodated within the adjacent right-of-ways 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.

## **DEVELOPMENT STANDARDS**

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.

**Existing development that will remain after the land division.** The existing house on the site will remain and be located on Parcel 1. The existing detached garage will be removed. 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 R7 zone. Per 33.700.015, if a proposed land division will cause conforming development to move out of conformance with any regulation of the zoning code, and if the regulation may be adjusted, the land division request must include a request for an adjustment (Please see section on Other Technical Standards for Building Code standards.)

In this case, there are several Zoning Code 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 16.05 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.
- Accessory Structure – The existing detached garage is located in the setback of Parcel 1, from the proposed new lot lines, which is not allowed without an approved Adjustment. The applicant has proposed to remove the garage. Demolition permits are required. The applicant must provide documentation prior to final plat approval that all required demolition permits have received final inspection. To ensure that this standard is met, a condition of approval is necessary.
- Required Off-Street Parking – In this zone, one parking space per dwelling unit is required. A garage provides this required parking for the existing house on Parcel 1. The applicant has proposed removing the existing garage. In order to ensure that parking requirements continue to be met, a new parking space for the existing house must be constructed on Parcel 1 prior to final plat approval. Permits must be obtained to construct a new parking space. Documentation of final inspection of this new

parking space will be required prior to final plat approval.

- **Title 11 Tree Requirements** – Residential development has a tree requirement that is currently met on the site. Due to the land division, and associated tree removal, Parcel 1 with existing house will no longer meet this standard. Prior to final plat approval, the applicant must meet this requirement by either planting trees on Parcel 1 or making a payment into the City Tree Fund.

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 and Topic
Development Services/503-823-7300 <a href="http://www.portlandonline.com/bds">www.portlandonline.com/bds</a>	Title 24 – Building Code, Flood plain Title 10 – Erosion Control, Site Development Administrative Rules for Private Rights-of-Way
Environmental Services/503-823-7740 <a href="http://www.portlandonline.com/bes">www.portlandonline.com/bes</a>	Title 17 – Sewer Improvements 2008 Stormwater Management Manual
Fire Bureau/503-823-3700 <a href="http://www.portlandonline.com/fire">www.portlandonline.com/fire</a>	Title 31 Policy B-1 – Emergency Access
Transportation/503-823-5185 <a href="http://www.portlandonline.com/transportation">www.portlandonline.com/transportation</a>	Title 17 – Public Right-of-Way Improvements Transportation System Plan
Urban Forestry (Parks)/503-823-4489 <a href="http://www.portlandonline.com/parks">www.portlandonline.com/parks</a>	Title 20 – Street Trees and other Public Trees
Water Bureau/503-823-7404 <a href="http://www.portlandonline.com/water">www.portlandonline.com/water</a>	Title 21 – Water availability

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 addressing requirements; ensuring adequate hydrant flow from the nearest fire hydrant or obtaining an approved Fire Bureau appeal to this requirement and aerial access. These requirements are based on the technical standards of Title 31 and Fire Bureau Policy B-1. Exhibit E.4 contains the response from the Fire Bureau to the proposal. The response noted required conditions related to fire access roads. The applicant successfully appealed these conditions (Appeal ID# 11519, see Exhibit G.6) and therefore these conditions of approval are not included in this decision.

## CONCLUSIONS

The applicant has proposed a 2 parcel partition, as shown on the attached preliminary site/utility plan (Exhibit C.1). As discussed in this report, the relevant standards and approval criteria have been met, or can be met with conditions.

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

## ADMINISTRATIVE DECISION

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

**A. Supplemental Plan.** Three copies of an additional supplemental plan shall be submitted with the final plat survey for Land Use Review review and approval. 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.

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

1. The applicant shall meet the street dedication requirements of the City Engineer for SW Capitol Highway. The required right-of-way dedication must be shown on the final plat.
2. A private access easement, for the benefit of Parcel 1, shall be shown and labeled over the relevant portions of Parcel 2.
3. A private sanitary sewer easement, for the benefit of Parcel 1, shall be shown and labeled over the relevant portions of Parcel 2.
4. A recording block for each of the legal documents such as maintenance agreements and an acknowledgement of special land use conditions, as required by Conditions C.11, C.12 and C.13 below. The recording blocks shall, at a minimum, include language substantially similar to the following examples:

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

“A Declaration of Maintenance Agreement for Private Sanitary Sewer Easement has been recorded as document no. \_\_\_\_\_, Multnomah County Deed Records.”

“An Acknowledgement of Tree Preservation Land Use Conditions has been recorded as document no. \_\_\_\_\_, Multnomah County Deed Records.”

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

**Streets**

1. The applicant must submit a survey documenting the exact location and amount of land required for dedication to accommodate the standard improvements required for SW Capitol Highway.
2. The applicant must remove the stairs along the eastern boundary of Parcel 1 that extend into the SW Capitol Hwy right of way or procure a Revocable Encroachment Permit.
3. The applicant shall complete street and storm sewer waivers of remonstrance (for future street and storm sewer improvements) for SW 41<sup>st</sup> Ave and SW Capitol Hwy as required by the City Engineer. Waiver forms and instructions will be provided to the applicant during the final plat review process.

**Utilities**

4. The applicant shall meet the requirements of the Site Development Section of the Bureau of Development Services for decommissioning the septic system on the site.
5. Prior to final plat approval, the applicant must cap the existing sanitary lateral connection on Parcel 2 and establish a new lateral connection for the existing house on Parcel 1.
6. The applicant shall meet the requirements of the Fire Bureau for ensuring adequate hydrant flow from the nearest hydrant. The applicant must provide verification to the Fire Bureau that Appendix B of the Fire Code is met, the exception is used, or provide an approved Fire Code Appeal prior final plat approval.

**Existing Development**

7. The applicant must obtain a finalized demolition permit for removing the garage on Parcel 1.
8. A parking space shall be installed on Parcel 1, in conformance with the applicable requirements of the Portland Zoning Code. A copy of the final inspection approval of a Zoning Permit shall be submitted, documenting that the parking space has been installed within the area to become Parcel 1. The new parking space must also be shown on the supplemental plan.
9. The applicant must plant four 2" inch mitigation trees on Parcel 1. Two of these trees must be native trees chosen from the Portland Plant List. A finalized Zoning Permit must be obtained to document tree planting prior to final plat approval. This mitigation planting is required in addition to any Title 11 tree requirements.
10. The applicant must meet the Title 11 tree planting requirements on Parcel 1 with the existing house by either planting trees on the lot or making the equivalent payment into the City Tree Fund. A finalized Zoning Permit must be obtained to document tree planting prior to final plat approval.

**Required Legal Documents**

11. A Maintenance Agreement shall be executed for the Private Access Easement described in Condition B.2 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.
12. A Maintenance Agreement shall be executed for the Private Sanitary Sewer Easement 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.
13. The applicant shall execute an Acknowledgement of Tree Preservation Land Use Conditions that notes tree preservation requirements that apply to Parcels 1 and 2. A copy of the approved Tree Preservation Plan must be included as an Exhibit to the Acknowledgement. The acknowledgment shall be referenced on and recorded with the final plat.

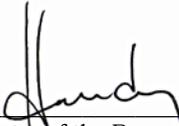
**D. The following conditions are applicable to site preparation and the development of individual lots:**

14. As a condition of the building permit for construction of a new house on Parcel 2, the applicant must obtain a Minor Improvement Permit and construct a 7-ft wide gravel shoulder at the edge of the existing pavement on SW 41st Avenue, extending along the frontages of Parcels 1 & 2, with street trees consistent with recommendations of the Urban Forester, and asphalt driveway connections to each parcel.
15. The applicant must plant one 2" inch mitigation tree on Parcel 2 as part of the building permit for development of Parcel 2. This mitigation planting is required in addition to any Title 11 tree requirements. Trees must be planted prior to final approval of the permit.
16. Development on Parcels 1 and 2 shall be in conformance with the Preliminary Site/Utility Plan (Exhibit C.1) and the applicant's arborist report (Exhibit A.9). Specifically, trees numbered 1, 2, and 12 are required to be preserved, with the root protection zones indicated on the Preliminary Site/Utility Plan (Ex. C.1). Tree protection fencing is required

along the root protection zone of each tree to be preserved. If disturbance activity is limited to the boundaries of Parcel 2, the protection fencing is not required around Tree #12, which is located on Parcel 1. The fence must be 6-foot high chain link and be secured to the ground with 8-foot metal posts driven into the ground. 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.

17. The applicant must meet the Fire Bureau requirements for addressing and aerial fire department access. Aerial access applies to buildings that exceed 30 feet in height from the fire access as measured to the bottom of the eave of the structure or the top of the parapet for a flat roof.

**Staff Planner: Diane Hale**

**Decision rendered by:**  **on February 23, 2015.**  
By authority of the Director of the Bureau of Development Services

**Decision mailed on February 26, 2015.**

**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 June 5, 2014, and was determined to be complete on **November 7, 2014.**

*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 June 5, 2014.

*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 requested that the 120-day review period be extended by 58 days. Unless further extended by the applicant, **the 120 days will expire on: May 4, 2015.**

**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 March 12, 2015**, at 1900 SW Fourth Ave. Appeals can be filed at the Development Services Center Monday through Wednesday and Fridays between 8:00 am to 3:00 pm and on Thursdays between 8:00 am to 2:00 pm. After 3:00 pm Monday through Wednesday and Fridays, and after 2:00 pm on Thursdays, appeals must be submitted at the reception desk on the 5<sup>th</sup> floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please contact the receptionist at 503-823-7617 to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at [www.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 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283 or phone 1-503-373-1265 for further information.

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

**Recording the 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.**

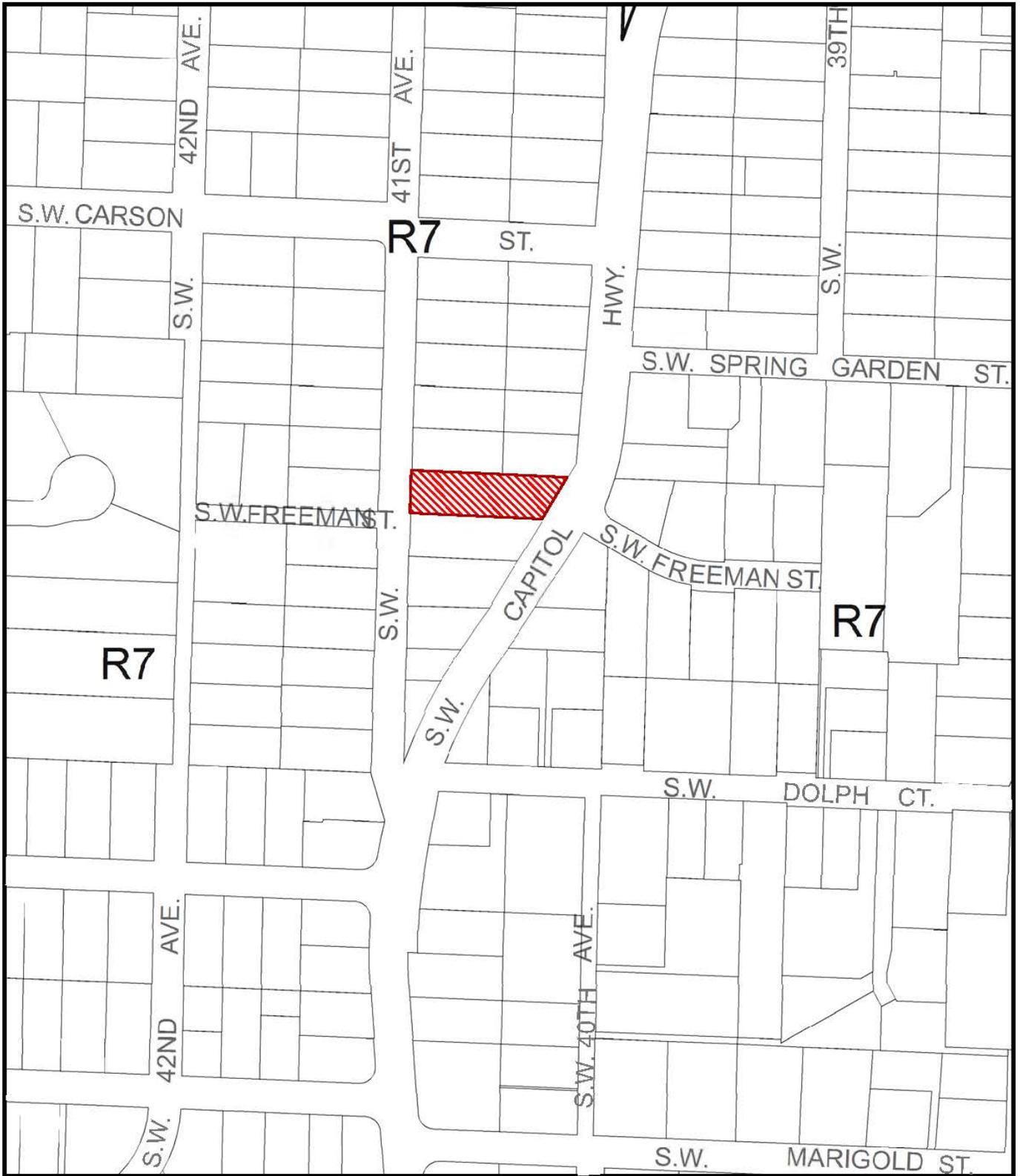
#### EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  - 1. Applicant's original submittal and plans
  - 2. Applicant's response, October 29, 2014
  - 3. Applicant's response, October 31, 2014
  - 4. Applicant's response, November 7, 2014
  - 5. Applicant's response, January 13, 2015
  - 6. Applicant's response, January 14, 2015
  - 7. Neighborhood Contact Requirement Documentation
  - 8. Stormwater Simplified Approach Form
  - 9. Arborist Report, Original Submittal and October 29, 2014 Addendum
  - 10. Landslide Hazard Report (April 23, 2014)
  - 11. Applicant and Property Owner Response to Public Comments (January 9, 2015)
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Preliminary Site/Utility Plan (attached)

2. Preliminary Clearing and Grading Plan
  3. Existing Conditions Map
  4. Preliminary Plat
- D. Notification information:
1. Mailing list
  2. Mailed notice
- E. Agency Responses:
1. Bureau of Environmental Services
  2. Bureau of Transportation Engineering and Development Review
  3. Water Bureau
  4. Fire Bureau
  5. Site Development Review Section of BDS
  6. Life Safety Section of BDS
  7. Parks Urban Forestry
- F. Correspondence:
1. Kenneth and Judy Worley, November 20, 2014
  2. Janice Coco, 8510 SW 41<sup>st</sup> Avenue 97219, November 21, 2014
  3. Leigh Coffey, December 2, 2014
  4. James Peterson, December 15, 2014
- G. Other:
1. Original LU Application
  2. Incomplete Letter
  3. Extension Form – December 10, 2014
  4. Extension Form – January 26, 2015
  5. Extension Form – February 9, 2015
  6. Fire Code Appeal Documents – 2/10/15

**The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).**



# ZONING



Site



NORTH

File No. LU 14-165562 LDP  
 1/4 Section 3825  
 Scale 1 inch = 200 feet  
 State\_Id 1S1E20CC 11200  
 Exhibit B (Jun 09,2014)

