



### City of Portland, Oregon

### **Bureau of Development Services**

#### **Land Use Services**

FROM CONCEPT TO CONSTRUCTION

Charlie Hales, Mayor Paul L. Scarlett, Director Phone: (503) 823-7300 Fax: (503) 823-5630 TTY: (503) 823-6868 www.portlandoregon.gov/bds

**Date:** June 13, 2013 **To:** Interested Person

**From:** Rachel Whiteside, Land Use Services

503-823-7605 / Rachel.Whiteside@portlandoregon.gov

# NOTICE OF A TYPE I DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has **approved** a proposal in your neighborhood. The reasons for the decision are included in the version located on the BDS website <a href="http://www.portlandonline.com/bds/index.cfm?c=46429">http://www.portlandonline.com/bds/index.cfm?c=46429</a>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal it to the Oregon Land Use Board of Appeals (LUBA) at 550 Capitol St. NE, Suite 235, Salem, OR 97301. The phone number for LUBA is 1-503-373-1265. Information on how to appeal this decision is listed at the end of this notice.

### CASE FILE NUMBER: LU 13-145901 LDP

#### **GENERAL INFORMATION**

Applicant/Owner: Richard Samuels / Oregon Pacific Railroad Company

PO Box 22548 / Portland OR, 97269-2548

**Representative:** Jerry Offer / Otak Architects

17355 SW Boones Ferry Road / Lake Oswego, OR 97035

**Site Address:** SE 10<sup>th</sup> Avenue and Linn Street

Legal Description: BLOCK M LOT 1&15&16 TL 8301 DEPT OF REVENUE, SELLWOOD

**Tax Account No.:** R752722624 **State ID No.:** 1S1E26BB 08301

Quarter Section: 3931

Neighborhood:Sellwood-Moreland, contact Ellen Burr at 503-234-2233.Business District:Sellwood-Westmoreland, contact Tom Brown at 503-381-6543.

**District Coalition:** Southeast Uplift, contact Bob Kellett at 503-232-0010.

**Zoning:** EXd

**Case Type:** LDP, Land Division (Partition)

**Procedure:** Type I, an administrative decision with appeal to the Oregon Land Use

Board of Appeals (LUBA).

#### Proposal:

The applicant proposes to divide the vacant site into one parcel of 3,544 square feet and one undevelopable tract for railroad purposes for the Oregon Pacific Railroad. The tract is proposed to be 2,152 square feet and would be for the purpose of locating a future railroad track siding.

Public water and sanitary sewer lines are located within SE Linn Street adjacent to the site. Stormwater disposal from future development of Parcel 1 would occur onsite through a drywell or soakage trench. No improvements to the public right-of-way are proposed along either SE Linn Street or SE 10<sup>th</sup> Avenue.

This partition is reviewed through a Type Ix land use review because: (1) the site is in a commercial, employment, or industrial zone; (2) fewer than four lots are proposed; (3) none

of the lots, utilities, or services are proposed within a Potential Landslide Hazard or Flood Hazard Area, and; (4) no other concurrent land use reviews (such as an Adjustment, Design Review, or Environmental Review) are requested or required (see 33.662.110).

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 (1 parcel and 1 tract). 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 criteria are: **Section 33.662.120**, **Approval Criteria for Land Divisions in Commercial**, **Employment**, and **Industrial zones**.

#### **FACTS**

**Site and Vicinity:** The site is a triangular-shaped lot at the western point of a triangular-shaped sliver of Central Employment (EX) zoning, surrounded by primarily single-family zoning and development. The site is bordered to the north by SE Linn Street, SE 10<sup>th</sup> Avenue to the east, and Oregon Pacific Railroad to the south. The Springwater Trail leaves the Willamette riverfront at SE Linn Street, roughly 875 feet west of the site and the City border is less than 350 feet south of the site. The site is flat and covered mainly with gravel. The site has been used for storage of railroad ties and similar railroad functions.

#### Infrastructure:

• **Streets** –At this At this location, both SE Linn Street and SE 9<sup>th</sup> Avenue are classified as Local Service Streets for all modes in the Transportation System Plan (TSP). Tri-Met provides transit service approximately 760 feet east of the site at SE 13<sup>th</sup> Avenue via Bus #70.

Adjacent to the site, SE Linn Street is fully improved with a curb, planter strip with street trees, and sidewalk. The right-of-way for SE 10<sup>th</sup> Avenue is unimproved and does not cross the railroad tracks.

- Water Service There is an existing 8-inch CI water main in SE Linn Street.
- **Sanitary Service** There is an existing 16-inch vitrified clay public combination sewer line in SE Linn Street.

**Zoning:** The EX zone allows mixed-uses and is intended for areas in the center of the City that have predominantly industrial type development. The intent of the zone is to allow industrial and commercial uses which need a central location. Residential uses are allowed, but are not intended to predominate or set development standards for other uses in the area

The "d" overlay promotes the conservation and enhancement of areas of the City with special historic, architectural or cultural value. New development must meet the Community Design Standards (Chapter 33.218) or is subject to design review.

**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 **May 10, 2013**. No written responses have been received from the Neighborhood Association or notified property owners in response to the proposal.

#### ZONING CODE APPROVAL CRITERIA

APPROVAL CRITERIA FOR LAND DIVISIONS IN A COMMERCIAL, EMPLOYMENT, OR INDUSTRIAL ZONE

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

The relevant criteria are found in Section **33.662.120 [A-K], Approval Criteria for Land Divisions in Commercial, Employment and Industrial Zones**. Due to the specific location of this site, and the nature of the proposal, some of the criteria are not applicable. The following table summarizes the applicability of each criterion.

Criterion	Code Chapter/Section and Topic	Findings: Not applicable because:
В	33.630 – Tree Preservation	No significant trees or trees in excess of 6 inches
		in diameter are located fully on the site.
С	33.631 - Flood Hazard Area	The site is not within the flood hazard area.
D	33.632 - Potential	The site is not within the potential landslide
	Landslide Hazard Area	hazard area.
E	33.633 - Phased Land	A phased land division or staged final plat has not
	Division or Staged Final	been proposed.
	Plat	
Н	33.639 - Solar Access	The proposed development is for something other
		than single-dwelling detached homes.
I	33.640 - Streams, Springs,	No streams, springs, or seeps are evident on the
	and Seeps	site outside of environmental zones.
J	33.654.110.B.2 - Dead end	No dead end streets are proposed.
	streets	
	33.654.110.B.3 -	The site is not located within an I zone.
	Pedestrian connections in	
	the I zones	NY 11 1 1 1
	33.654.110.B.4 - Alleys in	No alleys are proposed or required
	all zones	NT 1 1 1
	33.654.120.C.3.c -	No turnarounds are proposed or required
	Turnarounds	NT 1 ' 1
	33.654.120.D - Common	No common greens are proposed or required
	Greens 33.654.120.E - Pedestrian	There are no destrice connections are need on
	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	No shared courts are proposed or required
	Courts	No shared courts are proposed of required
	33.654.130.B - Existing	No public dead-end streets or pedestrian
	public dead-end streets	connections exist that must be extended onto the
	and pedestrian connections	site.
	33.654.130.C - Future	No dead-end street or pedestrian connections are
	extension of dead-end	proposed or required.
	streets and pedestrian	
	connections	
	33.654.130.D - Partial	No partial public streets are proposed or required
	rights-of-way	

#### Applicable Approval Criteria are:

A. Lots. The standards and approval criteria of Chapters 33.613 through 33.615 must be met.

**Findings:** Chapter 33.614 contains the lot standards applicable in the employment zones.

Each lot must have a front lot line that is at least 10 feet long. Parcel 1 meets this standard. There are no minimum lot area, width, or depth standards in the EX zone. Therefore this criterion is met.

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

#### Land Suitability

The site is currently in a rail corridor use, and there is no record of any other use in the past. On June 7, 2013, BDS accepted a permit application to construct a duplex on the site. As indicated above, the site is relatively flat and contains no known geological hazards. Therefore, there are no anticipated land suitability issues and the new lots can be considered suitable for new development. This criterion is met.

# J. 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.

Dividing a commercially zoned site does not permit additional development beyond what is allowed by the base zone. PBOT has determined that no additional impacts to transportation facilities will occur as a result of dividing the site into two lots (see Exhibit E.2). These criteria are met.

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

**Findings:** The regulations of Chapter 33.641 allow the traffic impacts caused by dividing and then developing land to be identified, evaluated, and mitigated for if necessary. 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:

#### **33.651 Water Service standard** – See Exhibit E.3 for detailed bureau comments.

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.

#### **33.652 Sanitary Sewer Disposal Service standards** – See Exhibit E.1 for detailed comments.

The Bureau of Environmental Services has indicated that service is available to the site, as noted on page 2 of this report. The sanitary sewer service standards of 33.652 have been verified.

#### 33.653.020 & .030 Stormwater Management criteria and standards - See Exhibit E.1

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

Stormwater from Parcel 1 will be directed to an individual drywell that will treat the water and slowly infiltrate it into the ground. This lot has sufficient area for a stormwater facility that can be adequately sized and located to meet setback standards, and accommodate water from a reasonably-sized home. BES has indicated conceptual approval of the drywell. However, to assure that an adequate setback for the drywell for the duplex under permit review (13-165258 RS) is maintained, prior to final approval the applicant must provide a supplemental site plan showing the stormwater management facility for Parcel 1.

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. Portland Transportation has not identified or been made aware of any factors related to this proposal that lead to a conclusion other than that one lot can be safely served by this existing street without having any significant impact on the level of service provided. No dedications or street improvements will be required. 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 development on the site will remain and be located on Parcel 1. The division of the property may not cause the structures to move out of conformance or further out of conformance to any development standard applicable in the EX 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 is one Zoning Code standard that relates to existing development on the site. The building under construction, identified to remain on the site, must meet the required Zoning Code setbacks from the proposed <u>new</u> 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 building will be 5 feet from the new property line. Therefore, the required setbacks are being met. To ensure this standard continues to be met at the final plat stage, the final plat must be accompanied by a supplemental survey showing the location of the existing building relative to the adjacent new lot lines.

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

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 hydrant spacing and ensuring adequate hydrant flow from the nearest fire hydrant or obtaining an approved Fire Bureau appeal to this requirement. These requirements are based on the technical standards of Title 31 and Fire Bureau Policy B-1.

#### CONCLUSIONS

The applicant has proposed a one-parcel partition, as shown on the attached preliminary plan (Exhibit C.1). As discussed in this report, the relevant standards and approval criteria have been met, or can be met with conditions. The primary issues identified with this proposal are those surrounding future development and technical standards. With conditions of approval that address these requirements this proposal can be approved.

#### ADMINISTRATIVE DECISION

**Approval** of a Preliminary Plan for a one-parcel partition, that will result in one lot and one tract 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 Services and BES 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:
- The location of stormwater facilities for the units under construction.
- Any other information specifically noted in the conditions listed below.

#### B. The following must occur prior to Final Plat approval:

#### Utilities

1. 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.

#### **Required Legal Documents**

2. If the exception is used to meet Condition B.1, above, the applicant shall execute an Acknowledgement of Special Land Use conditions, requiring residential development on Parcel 1 to contain internal fire suppression sprinklers. The acknowledgement shall be recorded with Multnomah County, and referenced on the final plat.

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

1. If required by Condition B.1, the applicant will be required to install residential sprinklers in the new dwelling unit on Parcel 1 (or meet any requirements identified through a Fire Code Appeal). Please refer to the final plat approval report for details on whether or not this requirement applies.

Decision mailed June 13, 2013.

**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 May 3, 2013, and was determined to be complete on May 8, 2013.

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 May 3, 2013.

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 did not waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on: September 5, 2013.** 

#### 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.

**This decision, and any conditions associated with it, is final.** It may be appealed to the Oregon Land Use Board of Appeals (LUBA), within 21 days of the date the decision is mailed, as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that a petitioner at LUBA must have submitted written testimony during the comment period for this land use review. You may call LUBA at 1-503-373-1265 for further information on filing an appeal.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 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 <a href="https://www.portlandonline.com">www.portlandonline.com</a>.

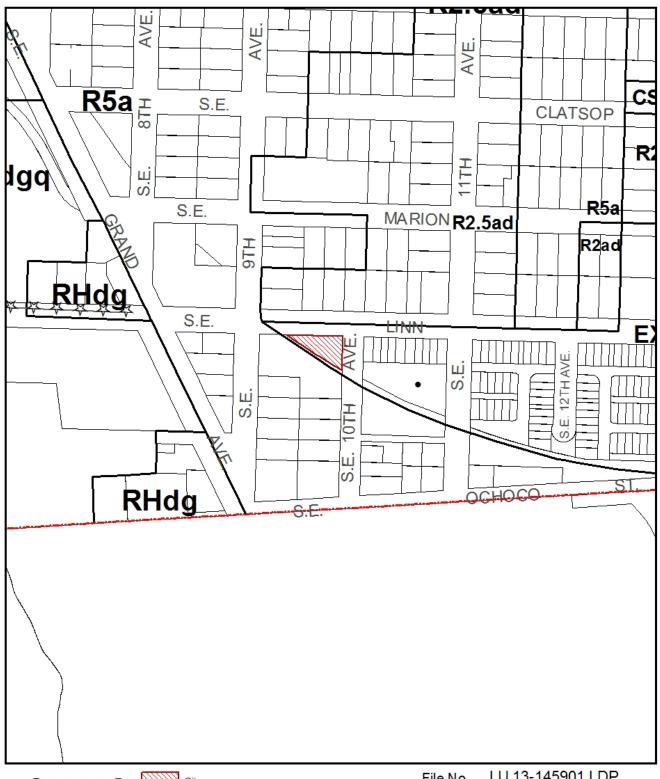
Recording the land division. The final land division plat must be submitted to the City within three years of the date of the City's final approval of the preliminary plan. This final plat must be recorded with the County Recorder and Assessors Office after it is signed by the Planning Director or delegate, 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. Original Narrative
  - 2. Infiltration Testing Report
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Preliminary Land Division Plan (attached)
  - 2. Site photo
- 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. Bureau of Parks, Forestry Division
  - 7. Life Safety Review Section of BDS
- F. Correspondence: None Received
- G. Other:
  - 1. Original LU Application
  - 2. Land Division Appointment Summary

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** 



Historic Landmark



File No.	LU 13-145901 LDP
1/4 Section	3931
	1 inch = 200 feet
	1S1E26BB 8301
Exhibit_	B (May 06,2013)

