



CITY OF PORTLAND  
Bureau of Development Services  
1900 SW Fourth Avenue, Suite 5000  
Portland, OR 97201 **P524**  
**Land Use Review Decision**  
**Case # LU 07-148268 LDS AD**



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

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**Date:** April 24, 2008  
**To:** Interested Person  
**From:** Rachael Hoy, Land Use Services  
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## **NOTICE OF A TYPE II<sub>x</sub> DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD**

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

### **CASE FILE NUMBER: LU 07-148268 LDS AD**

#### **GENERAL INFORMATION**

**Applicant:** Jamey W Law & Phetsana Singharaj-Law  
13232 NE Failing Ct  
Portland, OR 97230-2708

**Site Address:** 305 SE 139th Ave  
**Legal Description:** N 15.5' OF LOT 75, ASCOT AC; S 1/2 OF LOT 76, ASCOT AC  
**Tax Account No.:** R041802050, R041802070  
**State ID No.:** 1N2E35DD 06800, 1N2E35DD 06900  
**Quarter Section:** 3044  
**Neighborhood:** Hazelwood, contact Arlene Kimura at 503-252-9429.  
**Business District:** Gateway Area Business Association, contact Fred Sanchez at 503-256-3910.  
**District Coalition:** East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550.  
**Plan District:** East Corridor  
**Zoning:** R5a – residential 5,000 with an 'a' overlay for Alternative design density  
**Case Type:** LDS AD– Land Division Subdivision with an Adjustment  
**Procedure:** Type IIX, an administrative decision with appeal to the Hearings Officer.

#### **Proposal:**

The applicant is proposing to divide the existing 26,436 square foot site into 4 lots. The four lots will be served by a private street and range in size from 3,605 to 5,385 square feet. Lot 1 will retain the existing house. There is an Adjustment review as part of this case to waive the turnaround requirement on the private street. There are also public improvements including a public pedestrian connection that will run the full length of the property along the southern property line, a dedication along the western property line for a future north-south public street connection and street improvements along the SE 139<sup>th</sup> Avenue frontage of the site.

This subdivision proposal is reviewed through a Type IIX procedure because: (1) the site is in a residential zone; (2) 10 or fewer lots are proposed; and (3) a concurrent review is required (see 33.660.110). For purposes of State Law, this land division is considered a subdivision. To

subdivide land is to divide an area or tract of land into four or more lots within a calendar year (See ORS 92.010).

**Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are found in Section **33.660.120, Approval Criteria for Land Divisions in Open Space and Residential Zones** and **33.805.040 Adjustment Approval Criteria**

## ANALYSIS

**Site and Vicinity:** The site is relatively flat with a single family home to be preserved. The surrounding area offers a mix of single family homes and multidwelling development. The lots in the general vicinity of this site within the R5 zone tend to be larger with the potential for more development in the future. There is an existing driveway off of SE 139<sup>th</sup> Avenue for the existing house.

**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.

The "a" overlay is intended to allow increased density that meets design compatibility requirements. It focuses development on vacant sites, preserves existing housing stock, and encourages new development that is compatible with the surrounding residential neighborhood. This land division proposal is not using any of the provisions of the "a" overlay.

The site is within the East Corridor plan district which encourages new housing and mixed use development and expansions of existing development to promote the corridor's growth and light rail transit ridership and to implement the objectives of the City's Pedestrian Districts to enhance the pedestrian experience and access to and from light rail service.

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

**Agency and Neighborhood Review:** A Notice of Proposal in your Neighborhood was mailed on **February 8, 2008**.

**1. Agency Review:** Several Bureaus and agencies have responded to this proposal. Please see Exhibits E for details. The comments are addressed under the appropriate criteria for review of the proposal.

**2. Neighborhood Review:** Two written responses have been received from notified property owners in response to the proposal. One of the property owners indicated that they are not opposed to the development, but hope that the homes that are built are high quality. They stressed concern over criminal activity in the neighborhood and would not want to see a new development in the area continue this pattern. The other property owner is opposed to the development because they feel the private street and public walkway will lead to increased trespassing and crime in the area.

**Staff response:** The applicant is proposing to divide the property into four lots. Given the rectangular shape of the property, in order for all lots to have street frontage and vehicle access a private street was proposed. The public walkway is a requirement of the zoning code at this location in order to meet street connectivity standards. The zoning code requires that there be through streets and pedestrian connections at least 200 feet apart ( 33.654.110 B). There is a more detailed discussion of the pedestrian connection in the Right of Way Approval Criteria section of this report.

## APPROVAL CRITERIA-

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

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

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

<b>Criterion</b>	<b>Code Chapter</b>	<b>Topic</b>	<b>Applicability Findings</b>
A	33.610	Lots	Applicable - See findings below
B	33.630	Trees	Applicable - See findings below.
C	33.631	Flood Hazard Area	Not Applicable – This site is not within a flood hazard area.
D	33.632	Potential Landslide Hazard Area	Not applicable - The site is not within the potential landslide hazard area.
E	33.633	Phased Land Division or Staged Final Plat	Not applicable - A phased land division or staged final plat has not been proposed.
F	33.634	Recreation Area	Not applicable - This is not required where the proposed density is less than 40 units.
G	33.635 .100	Clearing and Grading	Applicable – See findings below.
G	33.635 .200	Land Suitability	Applicable – See findings below.
H	33.636	Tracts and Easements	Applicable – See findings below.
I	33.639	Solar Access	Not Applicable - Maintaining existing development on the site limits new parcel configuration (33.610.200 supercedes 33.639).
J	33.640	Streams, Springs, and Seeps	Not applicable - No streams, springs, or seeps are evident on the site.
K	33.641	Transportation Impacts	Applicable - See findings below
L	33.651 - 33.654	Services and Utilities	Applicable - See findings below

**Applicable Approval Criteria are:**

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

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

Density Standards

Density standards match housing density with the availability of services and with the carrying capacity of the land in order to promote efficient use of land, and maximize the benefits to the

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

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

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

Minimum = 26,436 square feet \* .68 ÷ 5,000 square feet = 3.59 (which rounds up to a minimum of 4 lots, per 33.930.020.A)

Maximum = 26,436 square feet \* .85 ÷ 5,000 square feet = 4.49 (which rounds down to a maximum of 4 lots, per 33.930.020.B)

If the minimum required density is equal to or larger than the maximum allowed density, then the minimum density is automatically reduced to one less than the maximum. Therefore in this case the minimum density is reduced to 3.

The applicant is proposing 4 lots. The density standards are therefore met.

#### Lot Dimensions

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

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

<b>R5 Zone Requirements</b>					
	<b>Minimum Lot Area</b>	<b>Maximum Lot Area</b>	<b>Minimum Lot Width*</b>	<b>Minimum Front Lot Line</b>	<b>Minimum Lot Depth</b>
<b>Lot</b>	<b>3,000 sq. ft.</b>	<b>8,500 sq. ft.</b>	<b>36 ft</b>	<b>30 ft.</b>	<b>50 ft.</b>
1	3,605 sq. ft.		56 ft	56 ft	64 ft
2	3,808 sq. ft.		68 ft	68 ft	56 ft
3	3,641 sq. ft.		68 ft	68 ft	53 ft
4	5,539 sq. ft.		76 ft	76 ft	74 ft.

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

The findings above describe how the applicable lot standards are met. 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 applicant has submitted an arborist report that inventories the trees within the land division site, evaluates their condition and specifies root protection zones (Exhibit A.2). Some trees have been exempted by the arborist because they are either too small, unhealthy, a nuisance species, or located partially off the property. The inventory below indicates trees on site. The arborist also inventoried a few trees on neighboring properties that are not discussed in this report.

<b>Tree #</b>	<b>Species</b>	<b>Diameter (inches)</b>	<b>Significant? (On Table 630-1)</b>	<b>Exempt? (per 33.630.030)</b>	<b>To be retained?</b>	<b>RPZ (Root Protection Zone)</b>
<b>1</b>	Crimson Maple (001)	9.5	No		No	
<b>2</b>	Oregon Maple (003)	9.0	No	Yes- partially on adjacent property	No	
<b>3</b>	Oregon Maple (004)	10.5	No	Yes- partially on adjacent property	No	
<b>4</b>	Oregon Maple (007)	19.5	No	Yes-partially on adjacent property	No	
<b>5</b>	Oregon Maple (008)	7.5	No	Yes-partially on adjacent property	No	
<b>6</b>	Lombard Poplar (010)	21	No	Yes- extreme poor health/diseased	No	

The total non-exempt tree diameter on the site is 9.5 inches. The applicant is not proposing to save the Crimson Maple given its proximity to the new private street. 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:

### **33.630.300 Mitigation Option**

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

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

- for a reasonable building site on each lot, considering the uses and development allowed in the zone; or**
- 6. Preserve the trees within the environmental zones on site while providing a practicable arrangement of building sites and disturbance area.**

The Office of Transportation has required a public pedestrian connection along the southern property line, the full length of the site. The applicant has proposed a private street adjacent to the walkway to serve the interior of the site. The location of the pedestrian connection and the private street is dictated by the need to provide lots that meet the dimensional requirements of the R5 zone within the boundaries of the site. In addition, the applicant wants to maintain the existing house on lot 1, which makes placing either the pedestrian connection or the private street on the northern boundary of the site unfeasible.

The one tree on the site that is eligible for tree preservation is located adjacent to the area that will be impacted by the required street improvements. Without this tree available for preservation, the applicant cannot meet any of the tree preservation options in 33.630.100. Therefore, the applicant cannot meet the connectivity requirements of 33.654 and still preserve the required number of tree inches. Criterion C.2 above is met.

The Crimson Maple tree is located on proposed parcel 2 adjacent to the private street. It would be difficult to save this tree because there would be a large encroachment into the root protection zone with the construction of the private street. Since this is the only viable tree on site, the applicant will remove this tree for the construction of the private street and staff recommends the planting of two, 1.5-inch trees on proposed parcel 1 prior to final plat approval. 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 3 inches of the existing tree diameter on site be preserved. The addition of 2 trees at 1.5 each is equivalent to the 3 inches that would be required to be preserved.

Therefore, the applicant has met Criteria A. Criteria B is met with a condition of approval requiring two, 1.5 inch trees to be planted on parcel 1, the parcel with the existing house, prior to final plat approval. A Zoning Permit must be obtained, and receive final inspection approval verifying that these trees have been planted. Therefore, these criteria are met.

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

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

**33.635.100 – Clearing and Grading**

- A. Existing contours and drainage patterns of the site must be left intact wherever practicable. Where alteration to existing drainage patterns is proposed, it must not adversely impact adjacent properties by significantly increasing volume of runoff or erosion;**
- B. Clearing and grading should be sufficient for construction of development shown on the Preliminary Clearing and Grading Plan;**
- C. Clearing and grading should be limited to areas of the site that are reasonably necessary for construction of development shown on the Preliminary Clearing and Grading Plan;**
- D. Topsoil must be preserved on site to the extent practicable for use on the site after grading is complete; and**
- E. Soil stockpiles must be kept on the site and located in areas designated for clearing and grading as much as is practicable.**

**Findings:** The regulations of Chapter 33.635 ensure that the proposed clearing and grading is reasonable given the infrastructure needs, site conditions, tree preservation requirements, and

limit the impacts of erosion and sedimentation to help protect water quality and aquatic habitat.

In this case, the site is relatively flat, and is not located within the Potential Landslide Hazard Area. However a new street and associated stormwater system is proposed as part of the land division, which will require grading on the site. The applicant has submitted a Preliminary Clearing and Grading Plan (Exhibit C.2) that depicts the proposed work, including existing and proposed elevation contours, soil stockpile areas, and the overall limits of disturbed area.

The proposed clearing and grading shown on Exhibit C.2 represents a minimal amount of change to the existing contours and drainage patterns of the site to provide for a level street surface. The contour changes proposed should not increase runoff or erosion because all of the erosion control measures shown on the grading plan must be installed prior to starting the grading work. Stormwater runoff from the new street and lots will be appropriately managed by a vegetated swale to ensure that the runoff will not adversely impact adjacent properties (see detailed discussion of stormwater management later in this report).

The limits of disturbance shown on the applicant's plan includes grading of the street areas, as well as the lots, to allow the applicant to conduct the majority of the clearing and grading on the site at one time. This will help manage erosion and sedimentation concerns and limit the disturbance on the adjacent properties.

The clearing and grading plan indicates areas of topsoil storage and general stockpiling that are located directly adjacent to the new street tract.

As shown above, the Preliminary Clearing and Grading Plan meets the approval criteria. As discussed later in this report, the Site Development Section of the Bureau of Development Services requires that the applicant apply for a Site Development Permit for the construction of the proposed private street. The permit application must include a final clearing and grading plan, that must be consistent with the preliminary clearing and grading plan approved with the land division. With a condition of approval that the applicant's final clearing and grading plan is consistent with the preliminary clearing and grading plan, this criterion is met.

### **33.635.200 – Land Suitability**

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

The site is currently in residential use, and there is no record of any other use in the past. 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. With this condition, the new lots can be considered suitable for new development, and this criterion is met.

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

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

**A. Ownership of tracts. Tracts must be owned as follows unless otherwise specified in this Title or the land use decision:**



1. **The owners of property served by the tract, or by any other individual or group of people. When the tract is owned by more than one person it must be held in common with an undivided interest;**
2. **The Homeowners' Association for the area served by the tract;**
3. **A public or private non-profit organization; or**
4. **The City or other jurisdiction.**

**Findings:** The following tracts are proposed: Tract A: Private Street. With a condition that the proposed tract be owned in common by the owners of lots 1 through 4, this criterion can be met.

- 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:** There are no easements proposed and/or required for this land division.

As stated in Section 33.636.100 of the Zoning Code, a maintenance agreement will be required describing maintenance responsibilities for the tract described above and facilities within those areas. This criterion can be met with the condition that a maintenance agreement(s) is prepared and recorded with the final plat. In addition, the plat must reference the recorded maintenance agreement 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, this criterion is met.

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

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

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

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

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

divisions involving only a few dwelling units may not require a formal transportation impact study, while it might be required for larger projects (Title 17 includes technical standards describing when a more formal study is required).

The site has approximately 86 feet of frontage on SE 139<sup>th</sup> Avenue. SE 139<sup>th</sup> Avenue is classified as a Neighborhood Collector, City Walkway, and a Local Service Street for all modes in the Transportation Element of the Comprehensive Plan. Tri-Met provides transit service approximately 400 feet from the site on SE Stark via bus 20. Parking is currently allowed on SE 139<sup>th</sup> Avenue. There is one driveway entering the site that provides access to off-street parking for the existing house.

SE 139<sup>th</sup> Avenue is a 40 foot wide right of way. There is a paved roadway but no curbs, planter strips, or sidewalks along the frontage of the site. In reviewing this land division, Portland Transportation relies on accepted civil and traffic engineering standards and specifications to determine if existing street improvements for motor vehicles, pedestrians and bicyclists can safely and efficiently serve the proposed new development. In this case Portland Transportation has determined that curb and sidewalk improvements must be made in order to ensure that safe pedestrian travel is possible within the proposed development. To accommodate these improvements, as well as any associated stormwater facility discussed later in this report, additional right-of-way must be dedicated along the frontage of the site. With those improvements, three additional dwellings can be safely served by this existing street without having any significant impact on the level of service provided.

In addition, the applicant will be required to construct a public pedestrian walkway along the southern property line of the site. PDOT has indicated that fences within 5 feet of the north side of the public pedestrian right-of-way are prohibited. A condition of approval will be added at the time of development to ensure that lot 4 and Tract A do not have a fence within 5 feet of the walkway. The applicant will be required to dedicate 9 feet for the public pedestrian walkway and 25 feet along the western boundary of the site for a future mid-block north-south public street. Waivers of Remonstrance toward future improvements of this north-south street will be required to be recorded for proposed lot 4 prior to final plat approval.

This criterion is met, with the following conditions:

- Curb and sidewalk improvements on SE 139<sup>th</sup> Avenue and public pedestrian walkway are made and 12-foot dedication is shown on the final plat.
- The 25-foot dedication along the western property line must be shown on the Final Plat.
- Waivers of Remonstrance toward future improvements of this north-south street will be required to be recorded for proposed lot 4 prior to final plat approval.
- A fence is not allowed along the southern boundary abutting the public pedestrian connection. Lot 4 may not place a fence within 5 feet of the public pedestrian walkway.

With the conditions of approval described above, this criterion is 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 water standards of 33.651 have been verified. This site is within the Rockwood Water People's Utility District. An existing 6 inch water main is available in SE 139<sup>th</sup> Avenue to serve the proposed development. See Exhibit E-3 for more details.
- The sanitary sewer standards of 33.652 have been verified. There is an existing 8 inch PVC public sanitary sewer located in SE 139<sup>th</sup> Avenue. Parcel 1 has an existing sewer service from that main. See Exhibit E-1 for more details.

- The technical standards of Chapter 33.653 related to stormwater management have been verified. The findings below for the Stormwater Management Approval Criteria of 33.653.020 incorporate a discussion of how the technical standards have been satisfied by the applicant's stormwater proposal.

### **33.653.020 Stormwater Management Approval Criteria**

- A. If a stormwater tract is proposed or required, an adequate amount of land and an appropriate location must be designated on the Preliminary Plan; and**
- B. The application must show that a stormwater management system can be designed that will provide adequate capacity for the expected amount of stormwater.**

**Findings:** A private street and stormwater tract (Tract A) is proposed. The method used to determine the size and location of the stormwater tract is discussed below.

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

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

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

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

- **Private Street:** Stormwater will be directed to a 50 x 11 -foot wide infiltration swale located within the street tract at the west end. The applicant has submitted stormwater calculations and soil test results that indicate the size of the proposed swale can accommodate the volume of stormwater runoff from the impervious areas of the street (Exhibit A 4-7). The Site Development Section has indicated conceptual approval of the proposed swale location and size.
- **Public Street Improvements:** As a condition of this land use approval, the Office of Transportation requires the applicant to improve the frontage of the site to City standards, with curbs and sidewalks (discussed earlier in this report). Stormwater from these new impervious areas will be directed into 8 foot infiltration swale located at the between the curb and the new sidewalk. BES has indicated that surface infiltration is the preferred method of public stormwater disposal at this site. The applicant submitted stormwater calculations and infiltration testing that reflect the need for an 8-foot swale to drain the proposed improvements (Exhibit A 4-7). BES will review the proposed swale and calculations more closely at the time of the pre-design meeting. At this time, BES has indicated conceptual approval of the 8-foot swale that is being proposed. To accommodate this stormwater facility within the public right-of-way, a dedication along the frontage of the site must be provided on the final plat.

BES requires a Public Works Permit for the construction of such a swale. The applicant must provide engineered designs and financial guarantees of performance prior to final plat approval.

In addition, as a condition of this land use approval, the Office of Transportation requires the applicant to construct a public pedestrian walkway along the southern property line of the site. BES has indicated that the sidewalk must be constructed in a way that allows the stormwater runoff from the sidewalk to be deposited in a vegetated area, which meets the requirements of the Stormwater Management Manual.

- **Lots 2-4:** Stormwater from these lots will be directed to individual drywells that will treat the water and slowly infiltrate it into the ground. To ensure that the size and setback requirements of the Stormwater Management Manual can be met, specific information regarding the future building setbacks and the location for stormwater facilities was requested by BDS Site Development. The applicant provided this information on the site plan and Site Development finds the proposal acceptable.
- **Lot 1 (the lot with the existing house):** The existing house has downspouts that are connected to underground pipes. Site Development has noted that there are no City records indicating where the pipes are directed. Site Development finds that the proposed drywell to serve the existing house is acceptable. Prior to final plat approval, final approval of a plumbing permit to install or modify rain drains and a new drywell will be required.

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

#### **Right of Way Approval Criteria**

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

<b>Code Section</b>	<b>Topic</b>	<b>Applicability Findings</b>
33.654.110.B.1	Through streets and pedestrian connections	Applicable - See findings below
33.654.110.B.2	Dead end streets	Applicable - See findings below.
33.654.110.B.3	Pedestrian connections in the I zones	Not applicable - The site is not located within an I zone.
33.654.110.B.4	Alleys in all zones	Not applicable – No alleys are proposed or required.
33.654.120.C.1	Width of the street right-of-way	Applicable - See findings below.
33.654.120.C.3.c	Turnarounds	Applicable - See findings below.
33.654.120.D	Common Greens	Not applicable – No common greens are proposed or required.
33.654.120.E	Pedestrian Connections	Applicable - See findings below.
33.654.120.F	Alleys	Not applicable – No alleys are proposed or required.
33.654.120.G	Shared Courts	Not applicable – No shared courts are proposed or required.
33.654.130.A	Utilities	Applicable - See findings below.

<b>Code Section</b>	<b>Topic</b>	<b>Applicability Findings</b>
33.654.130.B	Extension of existing public dead-end streets and pedestrian connections	Not applicable – there are not existing public dead-end streets or pedestrian connections abutting the site.
33.654.130.C	Future extension of proposed dead-end streets and pedestrian connections	Applicable - See findings below
33.654.130.D	Partial rights-of-way	Not applicable – No partial public streets are proposed or required.

**Applicable Approval Criteria are:**

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

- a. **Through streets should generally be provided no more than 530 feet apart, and pedestrian connections should generally be provided no more than 330 feet apart. Through street and pedestrian connections should generally be at least 200 feet apart;**
- b. **Where the street pattern in the area immediately surrounding the site meets the spacing of subparagraph a., above, the existing street pattern should be extended onto the site;**
- c. **Characteristics of the site, adjacent sites, and vicinity, such as: (1) Terrain; (2) Whether adjacent sites may be further divided; (3) The location of existing streets and pedestrian connections; (4) Whether narrow frontages will constrain creation of a through street or pedestrian connection; (5) Whether environmental overlay zones interrupt the expected path of a through street or pedestrian connection; and (6) Whether existing dwelling units on- or off-site obstruct the expected path of a through street or pedestrian connection. Alternative locations or designs of rights-of-way should be considered that avoid existing dwelling units. However, provision of through streets or pedestrian connections should take precedence over protection of existing dwelling units where the surrounding transportation system will be significantly affected if a new through street or pedestrian connection is not created;**
- d. **Master street plans for the area identified in Goal 11B of the Comprehensive Plan;**
- e. **Pedestrian connections should take the most direct route practicable. Users should be able to see the ending of the connection from the entrance point, if possible.**

**Findings:** The site is located between E Burnside approximately 600 feet to the north and SE Stark approximately 400 feet to the south of the site, which have a distance between them of approximately 1000 feet. There are no other east/west through streets or pedestrian connections between these two streets. If the distance between these existing streets is evaluated against the optimum spacing requirement of 530 feet, one can conclude that there should be an east-west through street provided in the vicinity of the site. Given that the site is narrow, a partial east west public street is not feasible. PDOT has no objection to the site being served by a private street. However, in order to meet minimum connectivity requirements, a public pedestrian connection along the southern property line running east-west will be required. Typical spacing of pedestrian connections should be no more than 330 feet apart. Since there are no other pedestrian connections in the near vicinity and the closest through street is SE Stark at 400 feet south of the site, this is an appropriate location for a pedestrian connection. This is a straight-line connection on which users will be able to see the ending of

the pedestrian route from the entrance. In addition, a 25 foot dedication along the western property line will be required for a future mid-block north-south public street.

The site is within the Portland Master Street Plan for the Far Southeast District. However, no connections are shown for this location.

There will also be new sidewalk improvements along the frontage of the site along SE 139<sup>th</sup> Avenue.

For the reasons described above, this criterion is met.

**33.654.110.B.2 Approval criterion for dead-end streets in OS, R, C, and E zones. In OS, R, C, and E zones, dead-end streets may be provided where through streets are not required. Dead-end streets should generally not exceed 200 feet in length, and should generally not serve more than 18 dwelling units. Public dead-end streets should generally be at least 200 feet apart.**

**Findings:** The proposal includes a private dead-end street tract and a pedestrian connection, which will be located in public right-of-way after the dedication. As discussed under the findings for through streets above, a new public east-west through street is not required for this proposal. The private dead-end street will serve only 4 dwelling units and it is approximately 200 feet in length from the frontage along SE 139<sup>th</sup> Avenue to the frontage of parcel 4. At about 25 feet from the side lot line of parcel 3, the private street is reduced to 12 feet in width for an additional 43 feet to serve lot 4. The private street is being reduced in width for the remaining 43 feet because in the future lot 4 may be served by the new north south public street along the western boundary of the site. This criterion is met.

**33.654.120.C.1 Approval criterion for width of the right-of-way. The width of the local street right-of-way must be sufficient to accommodate expected users, taking into consideration the characteristics of the site and vicinity, such as the existing street and pedestrian system improvements, existing structures, and natural features.**

**Findings:** The private street will serve 4 lots. The applicant has proposed that a 21-foot wide tract, for the first 157 feet, terminating in a 12-foot roadway for the remaining 43 feet is sufficient to accommodate the expected users. The *Administrative Rules for Private Rights of Way* are the standards that govern the construction of private streets. These rules recommend a width of 22 feet for dead-end streets less than 300 feet long, serving 4 or more lots. The applicant has requested to remove the 1 foot setback between the private street and the new lots in order to reduce the area required to be torn down and remodeled on the existing house on parcel 1. This width will provide room for the construction of a 18-foot wide paved roadway that allows two travel lanes, two, 1-foot mountable curbs, and a 1-foot setback between the public pedestrian walkway and the private property. Normally, a private serving 4 or more lots requires a 5-foot wide sidewalk on one side of the street, however, the location of the public pedestrian walkway along the southern boundary of the site can serve this purpose. Site Development has indicated that the requirement for a separate private sidewalk may be waived. In this proposal, the applicant will be disposing of stormwater from the private street within an infiltration swale located at the west end of the private street. As previously discussed in this report, the proposed swale is 50 feet x 11 feet wide. These elements, including the swale can be accommodated in a 21-foot to 24 foot wide tract.

The proposed tract width is sufficient to accommodate the elements of a street that is presumed to be adequate for 4 lots by the *Administrative Rules* governing private streets. This criterion is met.

**33.654.120.C.3.c. Approval criterion for turnarounds. The turnaround must:**

- **Be of a size to accommodate expected users, taking into consideration the characteristics of the site such as existing structures, natural features, the length of the street, and the number of housing units served by the street;**
- **Minimize paved area;**
- **Provide adequate area for safe vehicular movement; and**
- **Provide adequate area for safe and convenient movement by bicyclists and pedestrians traveling on the street or traveling from the street to a pedestrian connection.**

**Findings:** No-turnaround is proposed within this subdivision, even though turn-arounds are a standard for new streets serving 4 or more lots (33.654.120.C.3.a.1). The applicant's proposal does not include a turnaround for the private street. An adjustment review, addressed later in this report, discusses waiving the turnaround requirement with the following rationale:

- The subject site is only 86 feet in width and PDOT is requiring various public right of way improvements and dedications that will mean the construction of extensive impervious area on the site. Waiving the turnaround will reduce additional impervious surface on the site. There will be less paved area immediately adjacent to properties that abut the site. In addition, the street will appear narrower than if a turn-around was provided at the terminus.
- There will be sufficient space on lots 1-3 for residential vehicles to turnaround in the required 18 foot garage setback on each of the lots. A condition of approval for a small turnaround on lot 4 will be required to make sure that vehicles exiting lot 4 may do so in a forward motion.
- The private street is standard width for serving lots 1-3 for 200 feet in length. The last 43 feet allows lot 4 to be served by a 12 foot wide roadway, which is part of the street tract. Site Development and the Fire Bureau have reviewed this configuration and find it acceptable. In addition, it is important to note that the public dedication along the western edge of the site for a future north-south street will eventually serve as a means for vehicle access for lot 4.
- The Fire Bureau requires a turnaround for dead end streets that exceed 300 feet in length. As mentioned above the private street is less than 300 feet in length. The current configuration of the private street meets Fire Bureau requirements for 20 feet unobstructed width for the first 157 feet. The 12 foot width of the street tract as it approaches parcel 4 has been approved by the Fire Bureau as well. Emergency vehicles will have full access to all lots and an emergency vehicle access easement will be placed over the entire tract.

With the approved Adjustment to this requirement, this criterion does not apply.

**33.654.120.E. Approval criterion for the width of pedestrian connections. The width of the pedestrian connection right-of-way must be sufficient to accommodate expected users and provide a safe environment, taking into consideration the characteristics of the site and vicinity, such as the existing street and pedestrian system improvements, existing structures, natural features, and total length of the pedestrian connection. As much as is possible, the users should be able to stand at one end of the connection and see the other end.**

**Findings:** PDOT is requesting a 9 foot dedication for the public pedestrian walkway. Usually the width of right-of-way needed for a pedestrian connection is 15 feet, however since the private street will provide a buffer to the new parcels, PDOT has determined that 9 feet is sufficient. Within this 9 foot right-of-way there will be a 6 foot sidewalk along the full length of the walkway dedication. There will be 1 foot between the walkway and the private street tract to the north and a 2 foot buffer on the south side of the sidewalk. Users will be able to stand at one end of the walkway and see the other end. Therefore, this criterion is met.

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

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

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

**Findings:** Any easements that may be needed for private utilities that cannot be accommodated within the proposed 21-foot width of the private street tract can be provided on the final plat. At this time no specific utility easements adjacent to the street tract have been identified as being necessary. Therefore, this criterion is met.

**C. Future extension of proposed dead-end streets and pedestrian connections. Where the land division site is adjacent to sites that may be divided under current zoning, dead-end streets and pedestrian connections must be extended to the boundary of the site as needed to provide future access to the adjacent sites. The following factors are considered when determining if there is a need to make provisions for future access to adjacent sites. A need may exist if:**

- 1. The site is within a block that does not comply with the spacing standards or adopted street plan of the Transportation Element of the Comprehensive Plan; or**
- 2. The full development potential of adjacent sites within the block will not be realized unless a more complete street system is provided to improve access to those sites.**

**Findings:** As discussed under the findings for 33.654.110.C, adjacent sites to the west of the site appear to have potential to further divide under current zoning, and they are not currently developed in a manner that would preclude the extension of the pedestrian walkway from the site. The proposed pedestrian connection will terminate at a location on the site boundary that will allow it to be further extended to serve those properties if they further develop in the future. This criterion is met.

**33.805.040 Approval Criteria for Adjustments**

**The approval criteria for signs are stated in Title 32. All other adjustment requests will be approved if the review body finds that the applicant has shown that either approval criteria A. through F. or approval criteria G. through I., below, have been met.**

**Adjustments to the ground floor window requirements of this Title must also meet the additional requirements stated in the ground floor window sections in the base zones.**

The proposal does not include a turnaround to the private street with the proposed land division (Zoning Code section 33.654.120.C.3.a1). Turnarounds are required for streets serving 4 or more lots. An adjustment review to waive the standard that requires a vehicle turnaround is discussed below. The purpose of this regulation, and the other standards governing the design of new rights-of-way is to ensure that the vehicle, bicycle, and pedestrian circulation system is designed to be safe, efficient, and convenient.

**A. Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and**

**Findings:** The adjustment request will equally or better meet the purpose of the regulation to be modified because parcels 1-3 will have sufficient area on the individual lots for residential vehicles to turn around in the required 18 foot garage setback. However, the configuration of lot 4, with vehicle access coming off of the 12 foot wide roadway, could make turning around more difficult. Therefore, staff requires that the applicant provide a turning area, no less than 9 feet wide and 18 feet long, to serve as a turn-around for lot 4. A condition of approval for a small turnaround on lot 4 will be required to make sure that vehicles exiting lot 4 may do so in a forward motion.

The private street is short in length (200ft), but meets the standard width requirements for the first 157 feet. After this point, lot 4 is served by a 12 foot wide roadway or stub that is part of the street tract. This was done in part to help reduce impervious area on the site and also because the public dedication along the western edge of the site for a future north-south street



will eventually serve as a means for vehicle access for lot 4. Site Development and the Fire Bureau have reviewed this configuration and find it acceptable.

As mentioned above this configuration limits impervious area on a site that is constrained by extensive requirements for street dedications and improvements. Waiving the turnaround requiring will reduce additional impervious surface on the site. In addition, it is important to point out that the applicant is meeting connectivity standards on the site by providing a public pedestrian walkway on the south side of the private street. This will provide pedestrian and bicycle users with a safe and convenient area separated from the vehicle traffic on the private street. Therefore, this criterion is met.

**B. If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and**

**Findings:** This site is in the R5 residential zone. This zone is characterized primarily by detached single family homes. The site is also within the East Corridor plan district which has a goal of enhancing the pedestrian experience and access to the light rail system. The request to waive the turnaround requirement will not significantly detract from the livability or appearance of the residential area. In fact, it will help preserve the desired character of the area by reducing the paved area on the site. In addition, the street will appear narrower than if a turn-around was provided at the terminus. The applicant's inclusion of the pedestrian walkway into the proposal meets connectivity standards and aligns with the goals of the East Corridor plan district. Since there is sufficient area on the lots to allow for vehicle turnaround, eliminating the turnaround requirement for the private street is a good alternative to limiting overall impervious area and working toward the goals of the plan district. Therefore, this criterion is met.

**C. If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and**

**Findings:** Only one adjustment has been requested. This criterion does not apply.

**D. City-designated scenic resources and historic resources are preserved; and**

**Findings:** There are no city designated scenic resources or historic resources on the site. This criterion does not apply.

**E. Any impacts resulting from the adjustment are mitigated to the extent practical; and**

**Findings:** No mitigation is required for lots 1-3 given that there is sufficient area on the individual lots to turnaround in the garage setback area. Parcel 4 will be required to show a turnaround area on the lot to exit in a forward motion on to the private street. With this condition, impacts are mitigated and this criterion can be met.

**F. If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;**

**Findings:** There is no environmental zoning on this site. This criterion does not apply.

In summary, with a condition of approval requiring an area on lot 4, no less than 9 feet wide and 18 feet long, to serve as a turn-around to assure that vehicles exiting lot 4 may do so in a forward motion, the proposed Adjustment can meet the applicable approval criteria above and should be approved.

## DEVELOPMENT STANDARDS

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

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

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

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

In this case, there 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 approximately 14 feet from the new property line between lots 1 and 2, and 23 feet from SE 139<sup>th</sup> Avenue after the required street dedication.

Structures are not allowed to remain on a proposed lot line. In this case, the attached garage for the existing house extends into the proposed private street. Therefore, in order for the proposed new lots to be approved, the garage must be modified on Parcel 1. The setback between the newly modified house and the private street may be three feet, eaves may extend one foot into the setback (33.110.220.D.7). A building permit will be required to make this alteration to the existing house. The applicant must provide documentation prior to final plat approval that the required permit has received final inspection. To ensure that this standard is met, a condition of approval is necessary.

Therefore, the required setbacks are being met, or can be met with conditions of approval. 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, and obtain and have finalized a building permit for alterations on the existing house.

- **Accessory Structures** – In this zone, accessory structures are not allowed on a lot without a primary structure. Therefore, in order for the proposed new lots to meet this standard, the large shed/garage straddling the proposed property lines of Lots 2-3 must be removed prior to final plat. 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 - A garage provides parking for the existing house on Lot 1. As a result of this land division, the garage will be removed for the private street. There is sufficient space behind the existing house for a new parking pad; however, the Portland Zoning Code does not require off-street parking on sites that are less than 500 feet from a transit street with 20-minute peak-hour bus, streetcar, or light rail service. Tri-Met provides transit service approximately 400 feet from the site on SE Stark via bus number 20. Bus number 20 provides peak-hour service meeting this requirement. As a result, no replacement parking is required for Lot 1.

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

## OTHER TECHNICAL REQUIREMENTS

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

Bureau	Code Authority	Topic	Contact Information
Water Works	Title 21	Water availability	503-823-7404 <a href="http://www.water.ci.portland.or.us/">http://www.water.ci.portland.or.us/</a>
Environmental Services	Title 17; 2002 Stormwater Manual	Sewer availability Stormwater Management	503-823-7740 <a href="http://www.bes.ci.portland.or.us/">http://www.bes.ci.portland.or.us/</a>
Fire Bureau	Title 31 Policy B-1	Emergency Access	503-823-3700 <a href="http://www.fire.ci.portland.or.us/">http://www.fire.ci.portland.or.us/</a>
Transportation	Title 17, Transportation System Plan	Design of public street	503-823-5185 <a href="http://www.trans.ci.portland.or.us/">http://www.trans.ci.portland.or.us/</a>
Development Services	Titles 24 -27, Admin Rules for Private Rights of Way	Building Code, Erosion Control, Flood plain, Site Development & Private Streets	503-823-7300 <a href="http://www.bds.ci.portland.or.us.">http://www.bds.ci.portland.or.us.</a>

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

- The applicant is required to make improvements to the proposed private street. Several conditions are required, including provision of plans and financial assurances, initiating a building permit, and providing a maintenance agreement. In addition to the approval criteria of Title 33, these requirements are also based on the technical standards of Title 17 and Title 24.
- The applicant must meet the requirements of the Fire Bureau in regards to private street width serving lot 4, posting of "No Parking" signs for the private street, installing a new hydrant/ensuring adequate hydrant flow from the nearest fire hydrant or obtaining an approved Fire Bureau appeal to this requirement/providing an Emergency Vehicle Access Easement over the private street tract; and fire access lane turning radius. These requirements are based on the technical standards of Title 31 and Fire Bureau Policy B-1.

## CONCLUSIONS

The applicant has proposed a 4-lot subdivision with a private street as shown on the attached preliminary plan (Exhibit C-1). An Adjustment to the turnaround standard for the private street was also a part of this review. The applicant is also required construct a public pedestrian walkway along the southern property line, dedicate property for a future north-south public street, as well as street improvements along SE 139<sup>th</sup> Avenue.

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 relate to Public street dedications and improvements, Fire Bureau requirements, Private street improvements, Site Development requirements for the existing house and new lots and tree preservation.

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

## ADMINISTRATIVE DECISION

**Approval of an Adjustment** to waive the turnaround requirement for the private street (33.654.120.C3).

**Approval** of a Preliminary Plan for a 4-lot subdivision, that will result in 4 standard lots, and a private street tract, as illustrated with Exhibit C 1-4, subject to the following conditions:

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

- Any buildings or accessory structures on the site at the time of the final plat application;
- Any driveways and off-street vehicle parking areas on the site at the time of the final plat application;
- Any other information specifically noted in the conditions listed below.

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

1. The applicant shall meet the street dedication requirements of the City Engineer for SE 139<sup>th</sup> Avenue, the public pedestrian walkway along the southern boundary of the site, and the dedication along the western boundary of the site for the future, new north-south street. The required right-of-way dedications must be shown on the final plat.
2. An Emergency Vehicle Access Easement, granted to the City of Portland, shall be shown over the entirety of the private street to the satisfaction of the Fire Bureau.
3. The private street tract shall be named, with approval from the City Engineer, and noted on the plat as "Tract A: Private Street *name of street*". The tract shall be owned in common by the owners of Lots 1-4.
4. A recording block for each of the legal documents such as maintenance agreement(s), acknowledgement of special land use conditions, or Declarations of Covenants, Conditions, and Restrictions (CC&Rs) as required by Condition C.3 below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: "A Declaration of Maintenance Agreement for Tract A: Private Street has been recorded as document no. \_\_\_\_\_, Multnomah County Deed Records."

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

**Streets**

1. The applicant shall meet the requirements of the City Engineer for right of way improvements along the frontage of SE 139<sup>th</sup> Avenue and the public pedestrian walkway. The applicant shall provide plans and financial assurances to the satisfaction of the Bureau of Transportation Engineering and Development Review and the Bureau of Environmental Services for required street frontage improvements.
2. The applicant shall sign street and storm sewer waivers of remonstrance (for future street and storm sewer improvements) for lot 4 as required by the City Engineer. Waiver forms will be provided to the applicant during the final plat review process.
3. The applicant shall submit an application for a Site Development Permit for construction of the private street and related site development improvements. Street design plans must be prepared by, or under the direction of, an Oregon licensed civil engineer.
4. The applicant shall furnish a financial guarantee of performance, as approved by the Bureau of Development Services, for 125 percent of the estimated construction cost for the private street and all required site development improvements. The applicant shall provide an engineer's estimate of the costs of performance including the costs for temporary erosion control measures required during construction. The financial guarantee of performance shall be accompanied by a performance agreement with the Bureau of Development Services to complete the required improvements.
5. The applicant shall provide a clearing and grading plan with the Site Development permit required for the private street described in Condition C.3. The clearing and grading plan must substantially conform to the Preliminary Clearing and Grading Plan approved with this decision (Exhibit C.2).

### **Utilities**

6. The applicant shall meet the requirements of the Site Development Section of the Bureau of Development Services for the decommissioning of the existing sanitary sewer system on the site.
7. The applicant shall meet the requirements of the Fire Bureau for installing a new fire hydrant. The applicant must contact the Water Bureau to purchase the hydrant. Verification of the purchase must be provided to the Fire Bureau before Final Plat approval.
8. The applicant shall meet the requirements of the Fire Bureau for ensuring adequate hydrant flow from the nearest hydrant or obtain an approved Fire Bureau appeal to this requirement.

### **Existing Development**

9. The applicant must obtain a finalized demolition permit for removing the garage/shed on Lot 2 and 3. Alternately, the applicant can execute a covenant with the City stating that the structures will be removed if a primary structure has not received final inspection on the lot(s) with the accessory structure(s) within two years of final plat approval. The covenant must be recorded with Multnomah County prior to final plat approval.
10. The applicant must obtain a finalized building permit for modifications to the existing house that will remain on proposed Lot 1 that demonstrate compliance with the following standards in relation to the proposed new lot lines:
  - 33.110.220 (Setbacks--specifically, the permit must show removal of sufficient portions of the attached garage to meet the side setback requirement of 3 feet adjacent to the private street in the R5 zone);

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

11. The applicant must meet the requirements of Site Development for the stormwater systems on the existing house to remain on Lot 1. Specifically, final approval of a plumbing permit to install/modify rain drains and a new drywell will be required.

#### **Required Legal Documents**

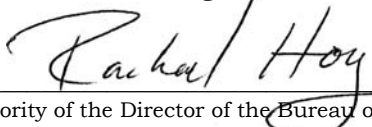
12. The applicant shall execute a Maintenance Agreement for the private street tract. The agreement shall assign common, undivided ownership of the tract to the owners of Lots 1-4 and include provisions assigning maintenance responsibilities for the tract and any shared facilities within that area. The agreement must also acknowledge all easements granted within the street tract, the beneficiaries of those easements, and the limitations on the easement areas to the satisfaction of the beneficiary service agencies. The agreement must reference the requirement for no parking signs to be posted for the private street. Also, the agreement must specify that a fence is not allowed along the southern boundary of the street tract abutting the public pedestrian connection, or within 5 feet of the pedestrian connection along the southern boundary of lot 4. The maintenance agreement must be reviewed by the City Attorney and the Bureau of Development Services, and approved as to form, prior to final plat approval.

#### **Other requirements**

14. The applicant will be required to plant two, 1.5 inch trees on parcel 1, the parcel with the existing house, prior to final plat approval. A Zoning Permit must be obtained, and receive final inspection approval verifying that these trees have been planted.

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

1. The first lift of paving for the private street shall be installed prior to issuance of any permits for residential construction.
2. Prior to finalizing the Site Development permit for the private street, a plumbing permit must be obtained and finalized for the new utility lines that will be constructed beneath the paved surface of the new street.
3. The applicant must post the private street with "No Parking" signs to the satisfaction of the Fire Bureau.
4. Any fence on Lot 4 shall be setback at least 5 feet from the southern lot line. The fence setback must be shown on the building permit plans for lot 4.
5. The applicant will be required to provide a turning area, no less than 9 feet wide and 18 feet long, to serve as a turn-around on lot 4 to assure that vehicles exiting lot 4 may do so in a forward motion. This area shall not be used for parking.
6. All fire access lanes shall have a turning radius of 25 feet inside and 45 feet outside.

**Decision rendered by:**  **on 4/22/08**

By authority of the Director of the Bureau of Development Services

**Decision mailed (within 5 days of dec. date) 4/24/08**

**Staff Planner: Rachael Hoy**

**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 July 19, 2007, and was determined to be complete on December 7, 2007.

*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 July 19, 2007.

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

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

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

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

**Appealing this decision.** This decision may be appealed to the Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on 5/8/08** at 1900 SW Fourth Ave. Appeals may be filed on the first floor in the Development Services Center until 3 p.m. After 3 p.m., appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. Recognized neighborhood associations are not subject to the appeal fee. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please contact the receptionist at 503-823-0625 to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal

to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at [www.ci.portland.or.us](http://www.ci.portland.or.us).

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

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

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

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

A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with these concurrent land use reviews. The applicant, builder, or their representative may record the final decisions on these concurrent land use decisions as follows:

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

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

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

The following approvals were necessary for the land division to be approved: Adjustment to the Turnaround Standard for the private street. This approval expires if:

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



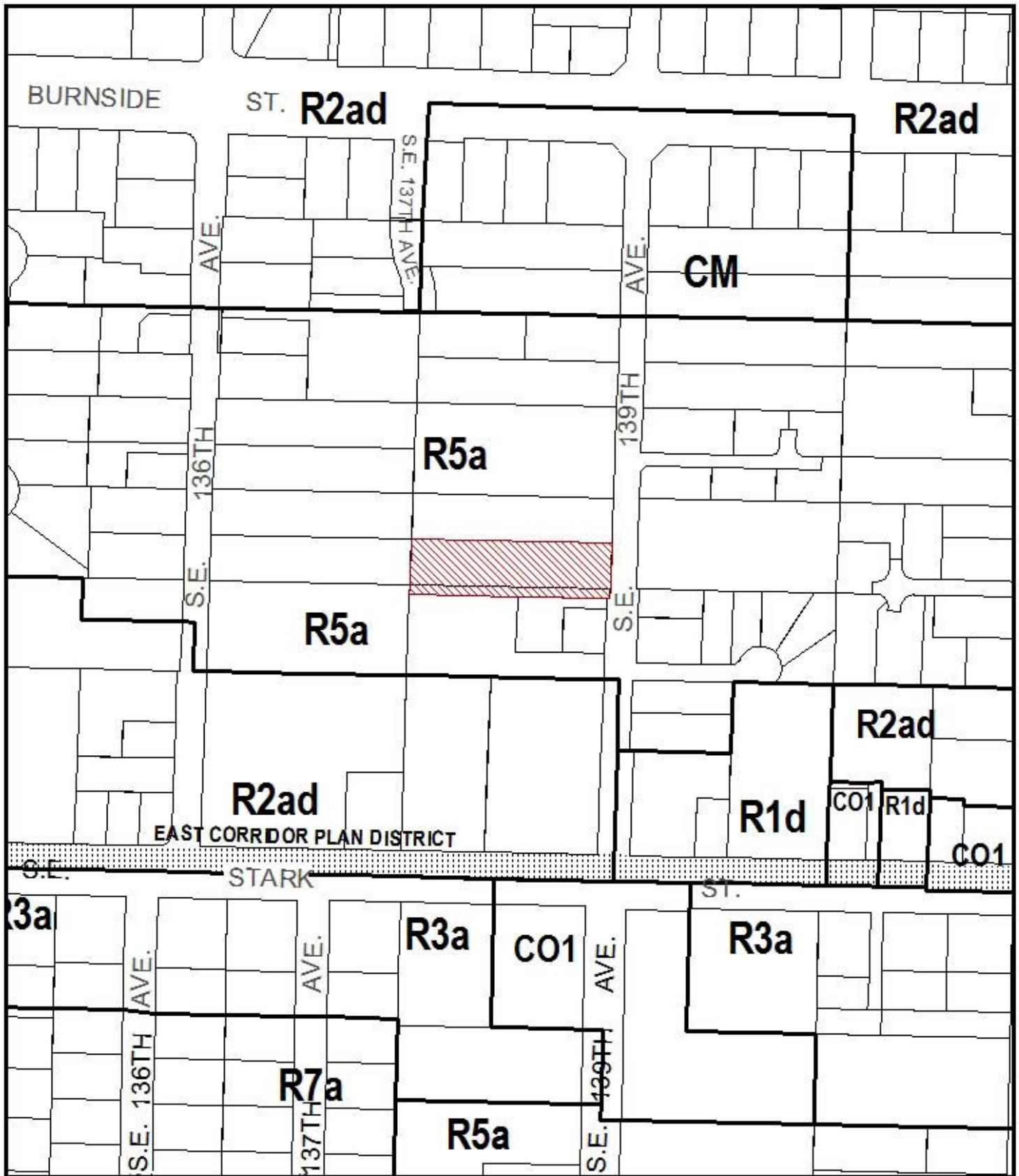
All other concurrent approvals expire three years from the date rendered, unless a building permit has been issued, or the approved activity has begun. Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

**EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  - 1. Narrative
  - 2. Arborist report
  - 3. 120 day waiver
  - 4. Stormwater Report dated January 22, 2008
  - 5. Infiltration testing dated January 10, 2008
  - 6. Stormwater Report Addendum dated February 20, 2008
  - 7. Stormwater Report Addendum dated April 4, 2008
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Clearing and Grading Plan
  - 3. Utility Plan
  - 4. Existing Conditions
- 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
- F. Correspondence:
  - 1. Jake and Cherill Mary, 240 SE 136<sup>th</sup> Avenue, letter in opposition, March 3, 2008
  - 2. Elaine and Bob Schaaf, 328 SE 136<sup>th</sup> Avenue, no objection to development, March 7, 2008
- G. Other:
  - 1. Original LU Application
  - 2. Site History Research
  - 3. Incomplete letter
  - 4. Neighborhood Contact Information

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



# ZONING



Site



NORTH

This site lies within the:  
EAST CORRIDOR PLAN DISTRICT

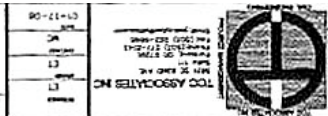
File No. LU 07-148268 LDS AD  
 1/4 Section 3044  
 Scale 1 inch = 200 feet  
 State\_Id 1N2E35DD 6900  
 Exhibit B (Apr 11, 2008)



JAMEY'S PARTITION  
305 SE 139TH AVE  
PORTLAND, OREGON 97223  
TL 6900, 11th RZE, SEC 3500  
MULTNOMAH COUNTY

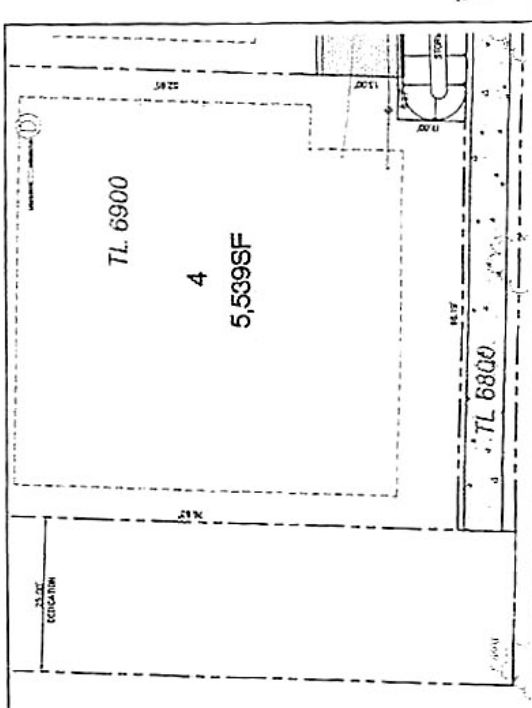
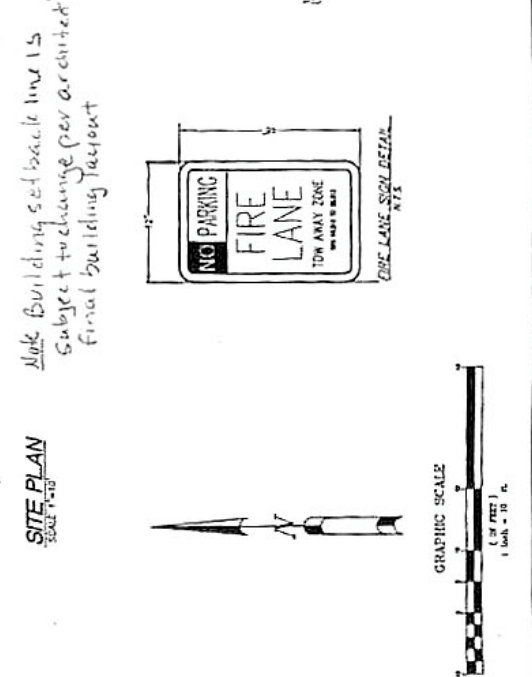
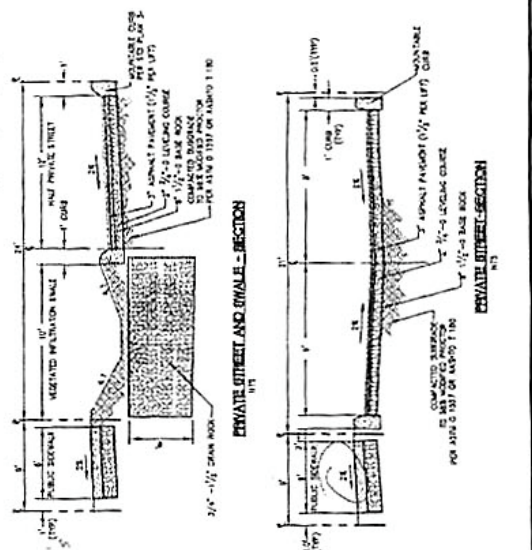
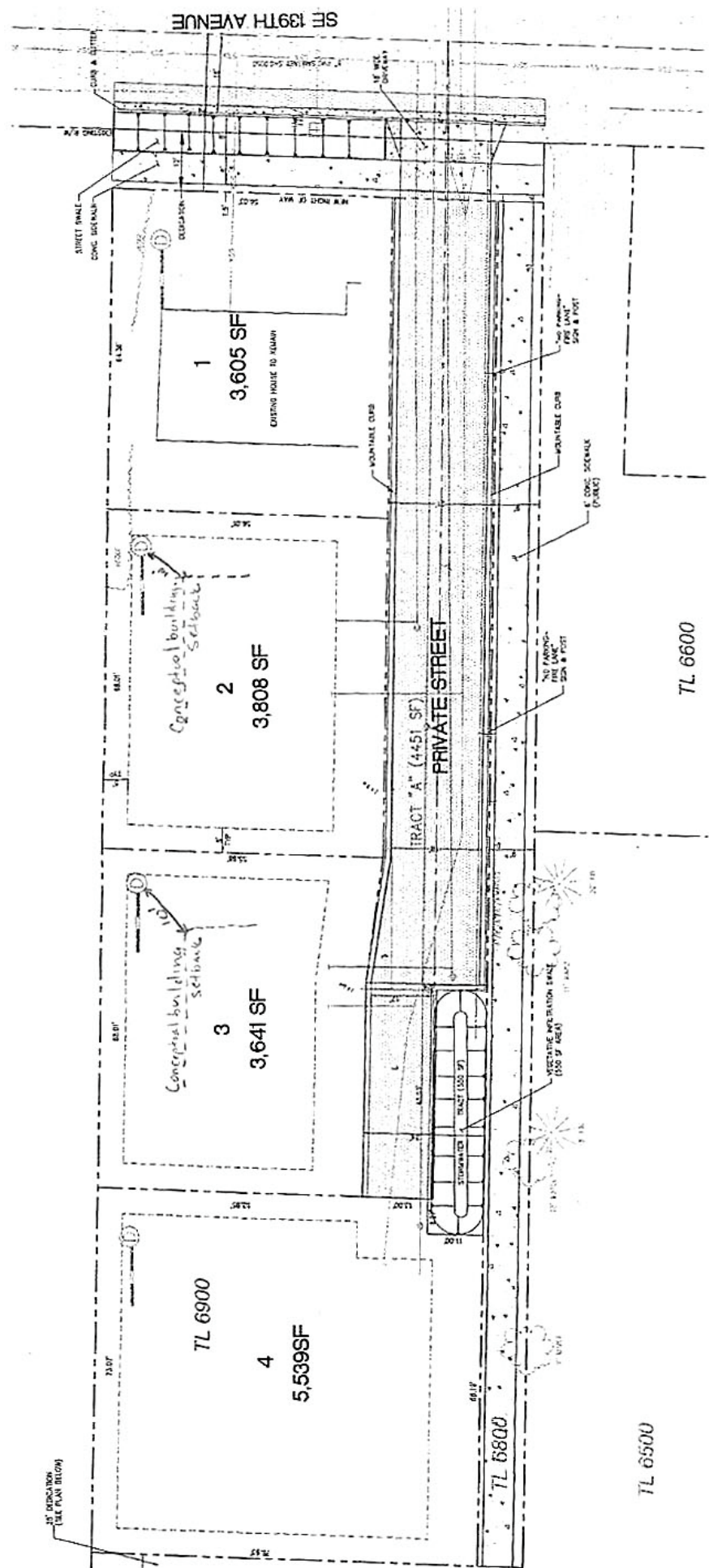
PRELIMINARY  
SITE PLAN

DATE: 08-11-08  
DRAWN BY: [unintelligible]  
CHECKED BY: [unintelligible]  
SCALE: AS SHOWN



JAMEY LAW  
PHETSANA LAW  
13222 NE FALLING CT  
PORTLAND, OREGON 97220-2708  
FAX: (503) 255-6919  
TEL: (503) 255-6919

08-003  
3



CASE NO. 07-148268 CDSAD  
EXHIBIT C-1