



City of Portland
Bureau of Development Services
Land Use Services Division

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Date: May 16, 2008
To: Interested Person
From: Mieke Stekelenburg, Land Use Services
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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 this notice. 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 07-170405 LDS

GENERAL INFORMATION

Applicant:	Dale Marx Dale Marx Associates Po Box 565 Gresham, OR 97030	Owner: Faithworks Development 825 Harritt Dr NW Salem, OR 97304
Site Address:	2719 SE 133RD AVE	
Legal Description:	TL 10100 0.52 ACRES, SECTION 11 1 S 2 E	
Tax Account No.:	R992113190	
State ID No.:	1S2E11AB 10100	
Quarter Section:	3344	
Neighborhood:	Powellhurst-Gilbert, contact James Chasse at 503-762-0863.	
Business District:	Midway, contact Donna Dionne at 503-252-2017.	
District Coalition:	East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550.	
Plan District:	Johnson Creek Basin	
Zoning:	R5a – Residential 5,000 with the Alternative Design Density Overlay	
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 is proposing a 3-lot subdivision, private street tract, and an open space tract on a site that contains approximately 22,435 square feet of site area, an existing house and several trees. After division Lots 2 and 3 will be about 3,524 square feet, Lot 1 will be approximately 8,038 square feet and the tree preservation tract will be 3,305 square feet. Stormwater from the private street will be managed through an infiltration swale located along the north side of the street. Public street improvements including a curb, sidewalk, and stormwater management facility are required as part of this land division. Stormwater from the public street improvements will be managed through an 8' wide vegetated infiltration swale located along SE 133rd Avenue between the curb and the sidewalk.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are found in 33.660, Reviews in Open Space and Residential Zones.

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).

This partition is reviewed through a Type I land use review because: (1) the site is in a residential 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 33.660.110).

ANALYSIS

Site and Vicinity: The site is heavily treed and contains an existing house. The existing house will remain on proposed Parcel 1. The property to the north has an approved preliminary land use decision LU 05-12229 LDS AD that includes several lots and a private street tract. Many of the surrounding properties have the ability to further divide.

The site and vicinity is relatively flat and developed with single family detached houses.

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. The applicant is not using the "a" overlay as part of this land division.

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 March 13, 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: No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

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

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

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

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

Applicable Approval Criteria are:

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

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

Density Standards

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

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

In this case, a street is proposed 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 = 22,435 square feet * .68 ÷ 5,000 square feet = 3.05 (which rounds down to a minimum of 3 lots, per 33.930.020.A)

Maximum = 22,435 square feet * .85 ÷ 5,000 square feet = 3.8 (which rounds down to a maximum of 3 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 2.

The applicant is proposing 3 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):

	R5 Zone Requirement	Proposed Parcel 1	Proposed Parcel 2	Proposed Parcel 3
Minimum Lot Area	3,000 sq. ft.	8,038	3,524	3,524
Maximum Lot Area	8,500 sq. ft.			
Minimum Lot Width*	36 ft.	79	66.5	53
Minimum Lot Depth	50 ft.	98	53	66.5
Minimum Front Lot Line	30 ft.	30	66.5	53

- Width is measured at the minimum front building setback line

The lot dimension criteria is therefor 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, located partially off the property or located within 10 feet of an existing structure to remain on the property. The inventory identifies 41 trees on site. See Exhibit A-2 for a complete list of the available trees.

The total non-exempt tree diameter on the site is 372 inches. The applicant proposes to preserve trees 2, 3, 11, 37, 39, and 40, 41 and 36, which comprise of 141 inches of diameter, or 38 percent of the total non-exempt tree diameter. However, trees numbered 2, and 3 have root protection zones that encroach into the required Right of Way dedication. Curb and sidewalk improvements are required within the area of the root protection zone precluding the ability of trees 2 and 3 to be preserved. Therefor the

applicant will only be preserving 123" of diameter or 33% of the non-exempt trees on the site.

This proposal does not comply with Option 1 of the tree preservation standards, which requires at least 35 percent or 130 inches of the total tree diameter on the site to be preserved. The applicant has provided a Tree Preservation Plan showing the preserved trees and the required root protection zones (Exhibit C-2).

The proposal does not meet any of the tree preservation options in 66.630.100. The applicant proposes instead to use the mitigation option 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 public street improvements along the frontage of SE 133rd Avenue. In addition, the applicant has proposed a private street to serve the interior of the site. The location of 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.

Several of the trees on the site are located in area that will be impacted by the required street improvements. Without these trees available for preservation, the applicant cannot meet any of the tree preservation options in 33.630.100. Therefore, the applicant cannot meet the service requirements of 33.663 and still preserve the required number of tree inches. Criterion C.2 above is met.

There are numerous trees located within the area to become Parcel 2 and Parcel 3. Most of these trees are located in an area of the new parcels where a building would naturally go. Trees that are located on the perimeter of Parcels 1 and 2 are large and would require root protection zones that would interfere with the development. The applicant is proposing to preserve tree #11 which is located on the proposed property line between Parcels 2 and 3 on the northern portion of the site. This is the only practical tree preservation opportunity on this area of the site. The remaining non-exempt trees to be preserved are located behind the existing house in the north west corner of Parcel 1. No construction is proposed in this area

making preservation of these trees possible. Therefore, the applicant has meet Criteria A, because as many trees as possible will be preserved.

The applicant has submitted a tree mitigation plan that proposes the creation of an Open Space Tract (Tract B). This tract will be approximately 3,305 square feet and will designate a portion of the site for open space. No construction is permitted within the Tract. Tree #40 and the associated RPZ in located entirely within the Tract. Trees # 39 will have a root protection zone that extends beyond the boundary of the Tract. As mentioned above, under Option 1 the applicant would be required to preserve 130" of tree diameter. They are preserving 123" leaving a deficit of 7". The applicant is proposing to plant 10 – 2.5" diameter trees in the Tree Preservation Tract (Tract B), or 25" of new tree diameter as part of their mitigation plan. However they are only required to plant 7" of diameter in the Open Space Tract. The arborist report recommends planting a variety of trees, including Crimson Queen Maples, Aspen, Birch, cultivars of smaller populous, Flowering Plum and Cherry. A maintenance agreement is required for this tract that will detail the tree preservation requirements within the proposed tract.

The required mitigation plan provides for the same caliper inches as Option 1 of the Tree Preservation Chapter. Option 1 would require that 35% or 130 inches of the existing tree diameter on site be preserved. The addition of 7" of tree diameter will compensate for the loss of tree diameter on the site by providing a total of 35% of tree diameter on the site. Therefore, the planting the required 7" of diameter in conjunction with the Open Space Tract equally meets the purpose of the tree preservation chapter. The new trees will help absorb air pollutants and contamination, provide buffering from noise and wind, and provide visual screening from the adjacent properties.

Section 33.248.020.H, known as the T1 tree planting standard, requires trees to be planted on new lots as part of the approval of future building permits. The T1 tree standard requires the planting of at least 2 inches of tree caliper per 1,000 square feet of site area, which will result in 8 inches of new trees planted for Parcels 2 and 3 at the time of development. Because the mitigation trees will all be planted in the open space tract additional trees can be planted on the lots without jeopardizing the overall health of the mitigation trees or the trees planted to meet the T1 requirement. Therefore the mitigation trees must be provided in addition to the trees planted on each lot to meet the T1 requirement. It is noted that tree #11 count toward meeting the T1 standards.

Criteria B is met with a condition of approval requiring 7" of tree diameter to be planted in the tree tract prior to final plat approval. The trees should be chosen from those provided in the Arborist Report (Exhibit A-2). A Zoning Permit must be obtained, and receive final inspection approval verifying that these trees have been planted.

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: 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, undisturbed areas consistent with the root protection zones of trees to be preserved, per the applicant's Tree Preservation Plan, 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 private street will be appropriately managed by directing water to a 5' wide vegetated infiltration swale to assure that the runoff will not adversely impact adjacent properties (see detailed discussion of stormwater management later in this report).

The clearing and grading proposed is sufficient for the construction of the new street and the preparation of the lots, without being excessive. 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, assure that the necessary tree protection measures are in place before the grading begins and limit the disturbance on the adjacent properties. In addition, no clearing and grading is proposed within the root protection zone of the trees on the site that are required to be preserved.

The clearing and grading plan does not indicate topsoil storage, or a stockpile area, but there is ample room on the site to locate soil stockpiles. A condition of approval will require the clearing and grading plan submitted with the Site Development permit indicate the topsoil storage, location of stockpile areas and the limits of disturbance be extended to include these areas.

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 with the changes noted above, 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. 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.

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 Tract

Tract B: Open Space Tract

With a condition that proposed Tract A be owned in common by the owners of lots 1 through 3, this criterion can be met. Since Tract "B" will be served by Parcel 1, Parcel 1 shall be the sole owner of the Tract B, and have full maintenance responsibilities.

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.

As stated in Section 33.636.100 of the Zoning Code, a maintenance agreement(s) will be required describing maintenance responsibilities for the tracts described above and facilities within those areas. The maintenance agreement for the Open Space Tract must describe tree preservation/protection provisions. 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(s) with a recording block for each agreement, substantially similar to the following example:

"A Declaration of Maintenance agreement for Tract A: Private Street (or Tract B: Open Space) 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 78 feet of frontage on SE 133rd Avenue. SE 133rd is classified as a local service street for all modes in the Transportation System Plan. Tri-Met provides transit service approximately 590 feet from the site on SE Division via bus #4. Parking is observed on SE 133rd on both sides. There is one driveway entering the site that provides access to off-street parking for the existing house.

SE 133rd Avenue is improved with a 28' wide paved roadway. There are no curbs, planter strips, or sidewalks. In reviewing this land division, Portland Transportation relies on accepted civil and traffic engineering standards and specifications to determine if existing street improvements for motor vehicles, pedestrians and bicyclists can safely and efficiently serve the proposed new development. In this case Portland Transportation has determined that curb, sidewalk, and additional paving improvements must be made in order to ensure that safe pedestrian travel for all modes of transportation is possible within the proposed development. To accommodate these improvements, as well as an associated stormwater facility discussed later in this report, additional right-of-way of approximately 5' must be dedicated along the frontage of the site. With those improvements, two additional dwellings can be safely served by this existing street without having any significant impact on the level of service provided.

This criterion is met, with the condition that curb, sidewalk and street paving improvements are made, and the required right-of-way dedication is shown on the Final Plat.

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. An existing 4 inch water main is available in SE 133rd Avenue. Water is available to serve the proposed development from the water main in SW 33rd Avenue. See Exhibit E-3 for more details. The applicant will need to purchase a separate metered water service for Parcels 1 & 2. Water service for Parcel 1 must be installed prior to final plat approval.

The applicant must provide evidence of an existing fire hydrant with adequate flow within 600 feet of the development prior to final plat approval. If a hydrant is required it must be purchased through the water bureau. Receipts of purchase must be supplied to the Fire Bureau prior to final plat approval.

- The sanitary sewer standards of 33.652 have been verified. There is an existing 8 inch PVC public sanitary gravity main located in SE 133rd that can serve the sanitary needs of the proposed lots. 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: No stormwater tract is proposed or required. Therefore, criterion A is not applicable.

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

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

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

The applicant has proposed the following stormwater management methods (Exhibits C-2 and A-3), and the Bureaus have responded as follows (Exhibits E-1 and E-5).

- **Public Street Improvements:** As a condition of this land use approval, the Office of Transportation requires the applicant to improve the frontage of the site to City standards, with curbs and sidewalks (discussed earlier in this report). Stormwater from these new impervious areas will be directed into an 8-foot wide infiltration swale located 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 agency suggests that the infiltration swale be 8' to 9' in width. The applicant has proposed an 8' wide swale. Additional width requirements, if any, will be determined at the pre-design meeting prior to final plat approval. 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.

The Public Works permit for street improvements must include construction of the swale. The applicant must provide engineered designs and financial guarantees of performance to the satisfaction of BES prior to final plat approval.

- **Parcels 2 and 3:** Stormwater from these lots will be directed to individual drywells that will treat the water and slowly infiltrate it into the ground. Each of these lots has sufficient area for a stormwater facility that can be adequately sized and located to meet setback standards, and accommodate water from a reasonably-sized home. Site

Development has indicated conceptual approval of the drywells. To ensure that the size and setback requirements of the Stormwater Management Manual continue to be met, specific information regarding the existing building locations, future building footprints and the location for stormwater facilities shall be provided on the supplemental site plan prior to final plat approval.

- Parcel 1 (the lot with the existing house):** The existing house has downspouts that drain to an undetermined location. Site Development has noted that there are no City records indicating where the pipes are directed. Prior to final plat approval, the applicant must document the location of the stormwater disposal for the existing house, to the satisfaction of Site Development. If the stormwater disposal system for the existing house will not be fully located on the parcel it serves after the land division, then appropriate easements must be provided on the final plat. Alternately, the applicant must modify the stormwater system for the existing house to the specifications of Site Development and obtain finalized plumbing permits for the modifications prior to final plat approval.

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.

Code Section	Topic	Applicability Findings
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	Not applicable – No turnarounds are proposed or required.
33.654.120.D	Common Greens	Not applicable – No common greens are proposed or required.
33.654.120.E	Pedestrian Connections	There are no pedestrian connections proposed or required.
33.654.120.F	Alleys	Not applicable – No alleys are proposed or required.
33.654.120.G	Shared Courts	Not applicable – No shared courts are proposed or required.
33.654.130.A	Utilities	Applicable - See findings below.
33.654.130.B	Extension of existing public dead-end streets and pedestrian connections	Not applicable – There are no existing public dead-end street or pedestrian connections adjacent to the site.

Code Section	Topic	Applicability Findings
33.654.130.C	Future extension of proposed dead-end streets and pedestrian connections	Not applicable – No street extensions are required to serve abutting sites that are further dividable.
33.654.130.D	Partial rights-of-way	Not applicable – No partial public streets are proposed or required.

Applicable Approval Criteria are:

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

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

Findings: The site is located between SE Division to the north and SE Powell Blvd to the South, which have a distance between them of approximately 2,300 feet. There are no other east/west through streets between these two streets. If the distance between these existing streets is evaluated against the optimum spacing requirement of 530 feet, one can conclude that there should be an east/west through street provided in the vicinity of the site.

The site does not contain sufficient width to allow the creation of a public east/west through street. In addition the properties adjacent to the portion of the site where the street would terminate are already developed, and not configured in a manner that would easily allow the further extension of a street from the site. So, although the optimum spacing criteria would indicate the need for an east/west through street or pedestrian connection at this site, there is no practicable opportunity to provide them in this land division.

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

No pedestrian connection is proposed or required as part of this land division. Criterion “e” is not applicable.

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, which will be located in the new street tract. 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 3 dwelling units and it is approximately 147 feet in length from the frontage along SE 133rd Avenue Street to the terminus of the street at Parcel 1. 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 3 parcels. The applicant has proposed that a 27-foot wide tract, 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 18’ of paved roadway for dead-end streets less than 300 feet long, serving less than 4 lots. The proposed 27’ width will provide room for the construction of an 18’ wide paved roadway that allows two travel lanes, two 1-foot mountable curbs, a 5-foot wide infiltration swale, and 2 - 1-foot setbacks on each side. In this proposal, the applicant will be disposing of stormwater from the private street within an infiltration swale located in the area where the standard planter strip would be located. As previously discussed in this report, the proposed swale is 5-feet wide--1 foot wider than the recommended 4-foot planter strip. These elements, including the swale can be accommodated in a 27-foot wide tract.

The proposed tract width is sufficient to accommodate the elements of a street that is presumed to be adequate for 3 lots by the *Administrative Rules* governing private streets. 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 27-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.

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 is one Zoning Code standard 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 11 feet from the new property line. Therefore, the required front building setback of 10' is 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	Topic	Contact Information
Water Works	Title 21	Water availability	503-823-7404 http://www.water.ci.portland.or.us/
Environmental Services	Title 17; 2002 Stormwater Manual	Sewer availability Stormwater Management	503-823-7740 http://www.bes.ci.portland.or.us/
Fire Bureau	Title 31 Policy B-1	Emergency Access	503-823-3700 http://www.fire.ci.portland.or.us/
Transportation	Title 17, Transportation System Plan	Design of public street	503-823-5185 http://www.trans.ci.portland.or.us/

Bureau	Code Authority	Topic	Contact Information
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 http://www.bds.ci.portland.or.us .

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 Fire Bureau requirements for the proposed development.

- The private street must have an unobstructed width of 20' and a vertical clearance of at least 13'6".
- Access to the private street from SE 133rd shall have a turning radius of 25' inside, and 45' outside. The applicant shall provide information that the proposal can meet this requirement prior to final plat approval.
- The private street must be posted with no parking on both sides.
- The maintenance agreement for the Private Street Tract shall include provisions for maintenance of the required "No Parking" signs located on each side of the street.
- All building must be within 150 feet of the Fire Bureau Access Road. This distance may be extended to 250 feet if internal fire suppression sprinkles are provided.

These requirements are based on the technical standards of Title 31 and the Fire Code.

CONCLUSIONS

The applicant has proposed a 3-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:

- Tree preservation/mitigation
- Fire Bureau requirements
- Private street construction and permitting
- Public street improvements

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

ADMINISTRATIVE DECISION

Approval of a Preliminary Plan for a 3-lot subdivision, that will result in 3 standard lots for, a private street, and a tree preservation tract as illustrated with Exhibit C-1 and C-2, 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;
- The proposed general location of future building footprints, utilities and stormwater facilities for each of the vacant lots.
- 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 133rd Avenue. The required right-of-way dedication must be shown on the final plat.
2. The tree preservation tract shall be noted on the plat as "Tract B: (Open Space). A note must also be provided on the plat indicating that the tract will be owned and maintained by the owner of Parcel 1.
3. The private street tract shall be noted on the plat as "Tract A: (Private Street). A note must also be provided on the plat indicating the tract will owned and maintained by Parcels 1-3.
4. An Emergency Vehicle Access Easement, granted to the City of Portland, shall be shown over the relevant portion of the private street.
5. A recording block for each of the legal documents such as maintenance agreement(s), acknowledgement of special land use conditions, as required by Condition C8 and C9 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 133rd Avenue. 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 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.
3. 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.
4. The applicant shall provide a clearing and grading plan with the Site Development permit required for the private street described in Condition C-2. The clearing and grading plan must substantially conform to the Preliminary Clearing and Grading Plan approved with this decision (Exhibit C-2) with the following additions:
 - It must show stockpile areas;
 - It must note that topsoil must be stockpiled on site and re-used to the extent practicable.
 - It must show trees to be removed and preserved with the relevant root protection zones.

Utilities

5. The applicant shall meet the requirements of the Fire Bureau. The applicant must provide evidence that a fire hydrant with adequate flow exists within 600 feet of the site,

or they must meet requirements 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.

6. The applicant must install a new water lateral for the existing house that will remain on Parcel 1.
7. The applicant must meet the requirements of the Fire Bureau for providing an adequate fire accessway for Parcel 1 and 2. An adequate turning radius of 25' inside and 45' outside must be provided.

Existing Development

8. Documentation of the location of the stormwater disposal system for the existing house shall be submitted to the Site Development Section of the Bureau of Development Services. The location of any existing or required stormwater systems serving the existing home must be shown on the Supplemental Plan. If, as a result of final plat approval, the stormwater system for the existing home will extend beyond the boundaries of Parcel 1 (the lot with the existing home), then the applicant must meet one of the following:
 - Provide private stormwater easements on the final plat as necessary to ensure operation and maintenance of those systems, and record a maintenance agreement for the easement area; or
 - Provide finalized plumbing permits for modifications to the stormwater system that result in a system that meets City requirements.

Required Legal Documents

9. A Maintenance Agreement shall be executed for the Private Street Tract area described in Condition B3 above. The agreement shall include provisions assigning maintenance responsibilities for the Tract area and any shared facilities within that area, consistent with the purpose of the Tract, and all applicable City Code standards. The agreement must be reviewed by the City Attorney and the Bureau of Development Services, and approved as to form, prior to final plat approval.
10. A Maintenance Agreement shall be executed for the Open Space Tract area described in Condition B2 above. The agreement shall include provisions assigning maintenance responsibilities for the Tract area including tree maintenance consistent with the purpose of the Tract, and all applicable City Code standards. The agreement must be reviewed by the City Attorney and the Bureau of Development Services, and approved as to form, prior to final plat approval.

Other requirements

11. The applicant must plant 10 2.5" inch trees to the specifications of the arborist in (Tract B shown on Exhibit C-2). Prior to final plat the applicant a must receive final inspection approval of a Zoning Permit verifying that the trees have been planted.

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

1. Development on Parcels 2 and 3 shall be in conformance with the Tree Preservation Plan (Exhibit C-2) and the applicant's arborist report (Exhibit A-2). Specifically, trees numbered 11, 37, 39 and 40 must be preserved with the root protection zones indicated on Exhibit C-2. Encroachment into the specified root protection zones may only occur under the supervision of a certified arborist. Planning and Zoning approval of development in the root protection zones is subject to receipt of a report from an

arborist, explaining that the arborist has approved of the specified methods of construction, and that the activities will be performed under their supervision.

Decision rendered by:  **on May 9, 2008**
By authority of the Director of the Bureau of Development Services

Decision mailed: May 16, 2008

Staff Planner: Mieke Stekelenburg

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 October 17, 2007, and was determined to be complete on March 3, 2008.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on October 17, 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 did not waive or extend the 120-day review period.

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 is available for your review by appointment. Please contact the receptionist at 503-823-7967 to schedule an appointment. Copies of all

information in the file can be obtained for a fee equal to the cost for such services. You may also find additional information about the City of Portland and City Bureaus, as well as a digital copy of the Portland Zoning Code, by visiting the City's homepage on the Internet at www.portlandonline.com.

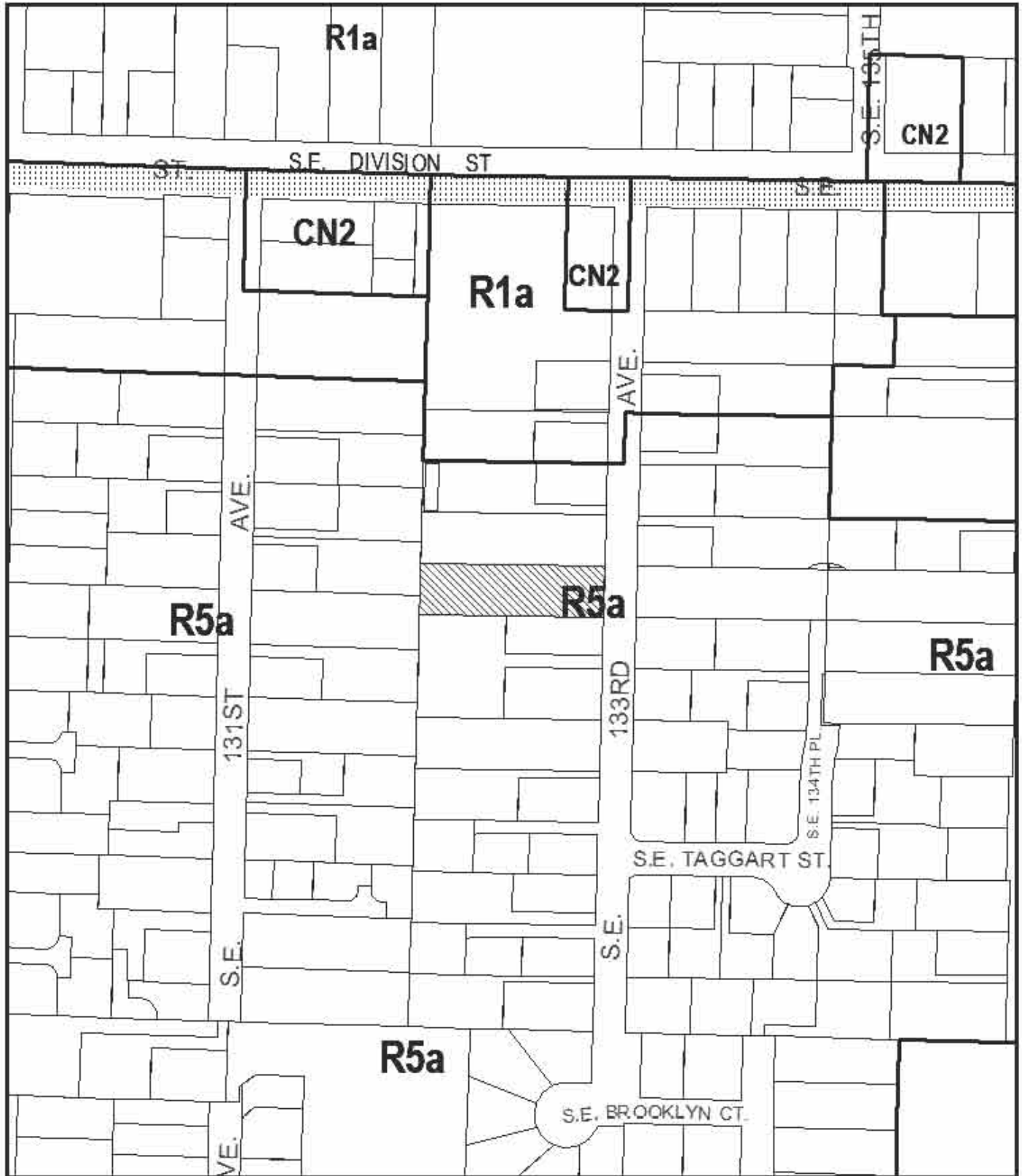
Recording the land division. The final land division plat **must** be submitted to the City **within three years** of the date of the City's final approval of the preliminary plan. This final plat must be recorded with the County Recorder and Assessors Office after it is signed by the Planning Director 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. Narrative
 - 2. Arborist Report
 - 3. Stormwater Design/Drainage Study Report
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Clearing and grading, Tree Preservation, Utilities (attached)
- 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
- F. Neighborhood Response: None Submitted
- G. Other:
 - 1. Original LU Application
 - 2. Incomplete Letter

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



This site lies within the:
JOHNSON CREEK BASIN PLAN DISTRICT

File No.	<u>LU 07-170405 LDS</u>
1/4 Section	<u>3344</u>
Scale	<u>1 inch = 200 feet</u>
State Id	<u>1S2E11AB 10100</u>
Exhibit	<u>B (May 13, 2008)</u>

