



City of Portland
Bureau of Development Services
Land Use Services Division

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Date: June 13, 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 08-111260 LDP

GENERAL INFORMATION

Applicant: Hardy Li
Convergent Pacific
8975 SW Center St
Tigard, OR 97223

Owners: Binh Thi Cao. Tuyet Thi Bach Bui
9030 SE Emily Pkwy
Portland, OR 97286

Site Address: 3624 SE 130TH AVE
Legal Description: TL 1000 LOT 8, LINN PK
Tax Account No.: R500301280
State ID No.: 1S2E11CA 01000
Quarter Section: 3443
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
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 three - parcel partition accessed by a new private street tract. The site currently contains 19,622 square feet. After the land division Parcel 1 will contain approximately 5,489 square feet, Parcel 2 will contain 4,230 square feet of and Parcel 3, 4,640 square feet of site area. The private street will contain about 5,551 square feet. There are no trees located on the site.

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).

For purposes of State Law, this land division is considered a partition. To partition land is to divide an area or tract of land into two or three parcels within a calendar year (See ORS 92.010).

Relevant Approval Criteria:

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

ANALYSIS

Site and Vicinity: The site is relatively flat and contains an existing house that will remain. It is located approximately 445 feet south of SE Powell Blvd. The lots along S.E Powell in this area are zoned R2 which allows multifamily development. As such higher density development is within close proximity to the north of the subject property. The existing garage will be removed and access to a new garage will be from the new private street tract. Properties to the southwest and east are zoned R5 and developed with single-family homes on lots consistent with the intent of R5 zone.

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 application.

The property is located within The Johnson Creek Basin plan district. This plan district provides for the safe, orderly, and efficient development of lands which are subject to a number of physical constraints, including significant natural resources, steep and hazardous slopes, flood plains, wetlands, and the lack of streets, sewers, and water services.

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

Agency Review: A Notice of Proposal in your Neighborhood was mailed on **May 5, 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	Not applicable - No significant trees or trees in excess of 6 inches in diameter located fully on the site/outside of the environmental zone on the site.
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 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 = 19,574 square feet * .68 ÷ 5,000 square feet = 2.6 (which rounds up to a minimum of 3 lots, per 33.930.020.A)

Maximum = 19,574 square feet * .85 ÷ 5,000 square feet = 3.3 (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 the Zoning Code):

	R5 Zone Requirement	Proposed Lot 1	Proposed Lot 2	Proposed Lot 3
Minimum Lot Area	3,000 sq. ft.	5,293	4,060	4,640
Maximum Lot Area	8,500 sq. ft.			
Minimum Lot Width*	36 ft.	53.9	80	52
Minimum Lot Depth	50 ft.	98.2	52	55.3
Minimum Front Lot Line	30 ft.	53.9	85.73	40

* Width is measured at the minimum front building setback line

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-3) 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-3 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 directing stormwater to an 8' wide infiltration swale located along the south side of the street to assure 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 limits of disturbance will also allow for the existing detached garage on the site to be demolished and any debris associated with this building to be removed. There are not trees on the site that are required to be preserved.

The clearing and grading plan indicates areas of topsoil storage and general stockpiling located on the southern portion of proposed Parcel 3.

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 (Name of Street).

With a condition that the proposed tracts be owned in common by the owners of lots 1 through 3, 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.

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

"A Declaration of Maintenance agreement for Tract A: Private Street (street name) 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 83.9 feet of frontage on SE 130th Avenue. SE 130th Avenue is classified as a City Walkway and local service street for all modes in the Transportation Element of the Comprehensive Plan. Tri-Met provides transit service approximately 436 feet from the site on SE Powell Blvd via bus #9. Parking is currently observed on SE 130th on one side. There is one driveway entering the site that provides access to off-street parking for the existing house.

SE 130th Avenue is improved with a paved roadway, and a gravel shoulder on both sides. 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 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 an associated stormwater facility discussed later in this report, additional right-of-way 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 associated stormwater management facility 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 6- inch water main is available in SE 130th located approximately 7' west of the existing front property line. Water is available to serve the proposed development from the water main in SE 130th. As described above, street improvements are required for SE 130th avenue including curbs, sidewalk and stormwater facility. The Water Bureau has noted that if either the required curb or stormwater facility is located less than 2' from existing water main then water main relocation is required by Portland Bureau at the applicant's expense. In addition each parcel is required to have a separate connection to the water main SE 130th Avenue. See Exhibit E-3 for more details.

- The sanitary sewer standards of 33.652 have been verified. There is an existing 8” public sanitary sewer located in SE 130th that can serve the sanitary needs of the proposed parcels. Each lot must have a separate means of access and individual connection to the public sanitary sewer, as approved by BES. 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 (ExhibitC-1), and the Bureaus have responded as follows (Exhibits E-1 and E-5).

- **Private Street:** Stormwater will be directed to an 8 -foot wide infiltration swale located within the street tract. 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. The Site Development Section has indicated conceptual approval of the proposed swale location and size. Private utilities may not cross under the proposed swale.
- **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 has confirmed that the proposed swale is an appropriate method of stormwater disposal. They have indicated that details regarding the swale shall be determined at the time of the Office of Transportation's Pre-design Meeting. To accommodate this stormwater facility within the public right-of-way, additional dedication along the frontage of the site may be required and shown 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.

- **Parcels 2 & 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.
- **Parcel 1 (the lot with the existing house):** The existing house has downspouts that drain onto the ground. The downspout on the southeast corner of the house is missing and must be replaced. The proposed drywell for the existing house and new garage is acceptable. The applicant is required to finalize plumbing permits prior to final plat approval to install rain drains and the new drywell. All gutters and downspouts must be in good repair and must drain to the new drywell, unless otherwise approved by Site Development.

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	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	Not applicable - 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.

Code Section	Topic	Applicability Findings
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.
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	Applicable – See findings below.

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 Powell Blvd. and SE Center Street, which have a distance between them of approximately 1,500 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 contains sufficient width to allow the creation of a public east/west through street. However, 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. Specifically, the property abutting the site to the west is subdivided into a private street and lots that are not further dividable. These properties are located in the area where a public through street would naturally be located. Therefore a

public street connection is not desirable or practical at this location. 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.

The site is within the Portland Master Street Plan for the Far Southeast District. However no through east/west connections have been identified for this area. Therefore, the proposal is consistent with the master street plan.

The only new through pedestrian connections included in the proposal are new sidewalks along the frontage of the site along SE 130th Street. This is a straight-line connection on which users will be able to see the ending of the pedestrian route from the entrance.

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 and pedestrian connection, 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 168 feet in length from the frontage along SE 130th Street to the center of the hammerhead turn-around. 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 30-foot wide tract, terminating in a 20-foot hammerhead turn-around 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 less than 4 lots. The proposed 30' width will provide room for the construction of a 18-foot wide paved roadway that allows two travel lanes, two 1-foot mountable curbs, a 8' wide infiltration swale, and a 1-foot setback between the street improvements and private property. 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 8-feet wide--4 feet wider than the recommended 4-foot planter strip. These elements, including the swale can be accommodated in a 30-foot wide tract.

A sidewalk is not required as part of the private street.

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.

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: Although it is not required, the applicant is proposing hammerhead turn-around at the terminus of the private street tract. The configuration of the turn-around has been reviewed by the Site Development Section of the Bureau of Development Services. Site Development has indicated that the size and configuration of the turn-around are adequate to provide safe vehicular and bicycle movement for the 3 new lots that will use private street. The proposed street tract has been sized to provide adequate room for the turn-around. 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: Utilities are defined in the Zoning Code as telephone, cable, natural gas, electric, and telecommunication facilities. Any easements that may be needed for private utilities that cannot be accommodated within the proposed 30-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 are already subdivided. There is no practicable opportunity to provide a through connection from the site, so there is no need to extend the proposed street to the western boundary of the site. This criterion is met.

- D. Partial rights-of-way. Partial rights-of-way and street improvements may be appropriate where the proposed right-of-way and street improvements are expected to be provided by the owner of the adjacent property. Partial rights-of-way and street improvements may also be required where needed to provide future access to adjacent sites. The Office of Transportation must approve the configuration of a partial right-of-way or public street improvement.**

Findings: The properties to the north and south of the site have potential to further develop under current zoning. However the properties to the north and south have adequate street frontage to provide access to future development. Therefore a public partial street is not required.

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 6.43 feet from the new property line to the north and between 28-30-feet to the property line to the east. Therefore, the required setbacks are being met. To ensure this standard continues to be met at the final plat stage, the final plat must be accompanied by a supplemental survey showing the location of the existing building relative to the adjacent new lot lines.
- Required Off-Street Parking - A paved garage provides parking for the existing house on Parcel 1. As a result of this land division, the parking space for the existing house will be removed for construction of the private street. 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 436 feet from the site on SE Powell Blvd. via bus number 9. Bus number 9 provides peak-hour service meeting this requirement. As a result, no replacement parking is required for Parcel 1.
- Street-Facing Facades in R10 through R2.5 Zones --In this zone, street-facing facades of residential structures are required to have windows that comprise at least 15 percent of the façade area. The existing house that will remain on Parcel 1 currently meets this standard on the front of the house, which is oriented toward SE 130th Avenue. After the land division, the existing house will have additional street frontage on the new private street. Prior to final plat approval, the applicant must finalize a building permit to make modifications to the house that will remain on Parcel 1 or otherwise document compliance with 33.110.232.C. Alternately, an Adjustment to this standard must be approved.

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/
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 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 posting no parking signs along the private street and providing an Emergency Vehicle Access Easement over the private street tract. These requirements are based on the technical standards of Title 31 and Fire Bureau Policy B-1.
- The applicant must meet the requirements of Urban Forestry for street tree planting in the existing planter strip adjacent to Parcel 1 prior to final plat approval. This requirement is based on the standards of Title 20.

CONCLUSIONS

The applicant has proposed a 3 – parcel partition and private street tract, 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:

- Street frontage improvements along SE 130th Avenue
- Stormwater requirements
- Private street construction.
- Utility installation

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

ADMINISTRATIVE DECISION

Approval of a Preliminary Plan for a 3-parcel partition, that will result in 3 standard parcels and a private street tract as illustrated with Exhibit C-1, subject to the following conditions:

A. Supplemental Plan. Three copies of an additional supplemental plan shall be submitted with the final plat survey. 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 130th Avenue. The required right-of-way dedication must be shown on the final plat.
2. An Emergency Vehicle Access Easement, granted to the City of Portland, shall be shown over the relevant portions 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*)."
4. A recording block for each of the legal documents such as maintenance agreement(s), as required by Condition C10 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 (street name) 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 130th 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 C2. The clearing and grading plan must substantially conform to the Preliminary Clearing and Grading Plan approved with this decision (Exhibit C-3).

Utilities

5. 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.
6. The applicant shall meet the requirements of the Water Bureau for separation between street frontage improvements and the existing main. If the required improvements do not provide a minimum 2' clearance to the existing main located in SE 130th then the water main will need to be relocated at the owner's expense. If the relocation is required the applicant shall meet the requirements of the Water Bureau for providing plans and financial assurances for the water main relocation.

Existing Development

7. The applicant must obtain a finalized building permit for modifications to the existing house that will remain on proposed Parcel or otherwise demonstrate compliance with the following standards in relation to the proposed new lot lines:

- 33.110.232.C (standards for Street-Facing Facades in the R10-R2.5 Zones)

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

8. The applicant must meet the requirements of Site Development for the stormwater systems on the existing house to remain on Parcel 1. Specifically, at least one new gutter is required on the southwest corner of the house. The gutters must drain to the new drywell. If modifications to the system are required by Site Development, including the proposed drywell, the applicant must obtain finalized plumbing permits for this work prior to final plat approval.
9. The applicant must plant 2 street tree(s) in the new planter strip on SE 130th Avenue adjacent to parcel 1. Street trees will be chosen from the City's approved street tree list for the 8- foot swale. Tree size requirements for residential sites are to be 2-inch caliper. The applicant must contact Urban Forestry at 503-823-4018 prior to selecting trees to discuss the species of trees that are permitted and to obtain the planting permit. Urban Forestry must inspect and approve the newly planted trees prior to final plat approval.

Required Legal Documents

10. 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 Parcels 1-3 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 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.

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. The applicant must post the private street with "No Parking" signs to the satisfaction of the Fire Bureau.

Decision rendered by:  on June 9, 2008

By authority of the Director of the Bureau of Development Services

Decision mailed June 13, 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 February 25, 2008, and was determined to be complete on April 23, 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 February 25, 2008.

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.

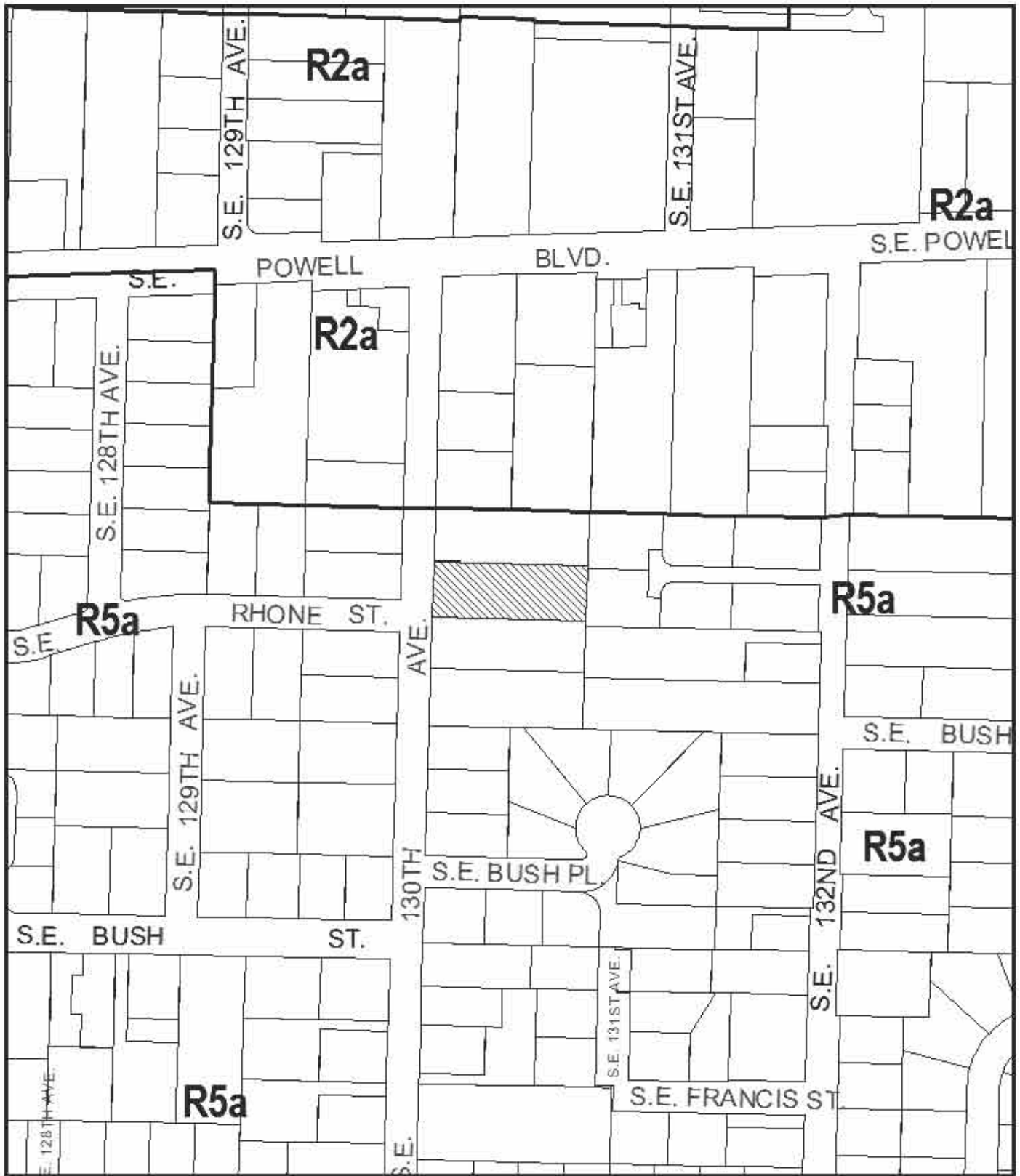
Recording the land division. The final land division plat **must** be submitted to the City **within three years** of the date of the City's final approval of the preliminary plan. This final plat must be recorded with the County Recorder and Assessors Office after it is signed by the Planning Director 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. Stormwater Report
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Large Site Plan
 - 3. Clearing & Grading Plan
- 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. Correspondence: 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



NORTH

This site lies within the:
JOHN SON CREEK BASIN PLAN DISTRICT

File No.	LU 08-111260 LDP
1/4 Section	3443
Scale	1 inch = 200 feet
State Id	1S2E11CA 1000
Exhibit	B (Feb 27, 2008)

