



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

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**Date:** August 15, 2008  
**To:** Interested Person  
**From:** Paul Cathcart, Land Use Services  
Paul.Cathcart@ci.portland.or.us

**NOTICE OF A TYPE II<sub>x</sub> DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD**

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

**CASE FILE NUMBER: LU 07-150208 LDS AD**

**GENERAL INFORMATION**

**Applicant:** Buena-Hayden LLC  
4800 SW Macadam #120  
Portland, OR 97201

**Representative:** Megan Decker Walseth  
Ball Janik LLP  
101 SW Main St, Suite 1100  
Portland, OR 97204

**Site Address:** 12125 N Center Ave., 12229 NE M L King Blvd., 12005 N Center Ave.,  
12105 N Center Ave., 11915 N. Center Ave.

**Legal Description:** TL 700 0.90 ACRES, SECTION 34 2 N 1 E; TL 600 0.33 ACRES LAND ONLY, SECTION 34 2 N 1 E; TL 1100 0.95 ACRES, SECTION 34 2 N 1 E; TL 900 1.14 ACRES, SECTION 34 2 N 1 E; TL 1200 1.87 ACRES, SECTION 34 2N 1E; TL 800 0.11 ACRES, SECTION 34 2N 1E; TL 1000 0.02 ACRES, SECTION 34 2N 1E

**Tax Account No.:** R951340120, R951340130, R951340300, R951340310, R951340380, R951340460, R951340930

**State ID No.:** 2N1E34C 00700, 2N1E34C 00600, 2N1E34C 01100, 2N1E34C 00900, 2N1E34C 01200, 2N1E34C 00800, 2N1E34C 01000

**Quarter Section:** 1829

**Neighborhood:** Hayden Island, contact Roger Staver at 503-297-6601.

**Business District:** Columbia Corridor Association, contact Land Use at 503-287-8686.

**District Coalition:** North Portland Neighborhood Services, contact Mary Jaron Kelley at 503-823-4099.

**Zoning:** Central Commercial (CG) with Portland International Airport Noise Impact Zone (x)

**Case Type:** Land Division Subdivision (LDS) and Adjustment Review (AD)

**Procedure:** Type IIX, an administrative decision with appeal to the Hearings Officer.

**Proposal:**

The applicant proposes to divide the 229,135 square foot property identified above into 6 lots and one tract. The lots would range from 20,304 to 51,524 square feet. With the exception of proposed Lot 1, each lot would contain an existing commercial building and site improvements. The tract would contain the existing pylon sign.

The applicant is also requesting approval of an Adjustment to the perimeter parking lot setback and landscape area standards of Section 33.266.130.G to allow the proposed property lines to run through parking spaces without landscaping and to reduce the minimum setback for parking areas along a lot line abutting a C zoned lot.

This subdivision proposal is reviewed through a Type IIx procedure because: (1) the site is in a commercial zone; (2) six lots are proposed; and (3) a concurrent review (Adjustment) is required (see 33.660.110).

For purposes of State Law, this land division is considered a subdivision. To subdivide land is to divide an area or tract of land into four or more lots within a calendar year (See ORS 92.010).

**Relevant Approval Criteria:**

In order to be approved, this proposal must comply with Zoning Code sections 33.662.120, Approval Criteria for Land Divisions in a Commercial, Employment, and Industrial Zones and section 33.805.040, Approval Criteria for Adjustments.

**ANALYSIS**

**Site and Vicinity:** The site is located on Hayden Island, bounded on the west and south by N. Center Avenue and the east and north by Interstate-5. The site is currently developed with 5 commercial buildings and associated parking areas and landscape improvements. The Jantzen Beach Super Center is located on the west side of N. Center Ave.

**Zoning:** The CG zone is intended to allow auto-accommodating commercial development in areas already predominantly built in this manner and in most newer commercial areas. The zone allows a full range of retail and service businesses with a local or regional market.

The “x” overlay provides additional criteria to reduce the impact of aircraft noise on development within the noise impact area surrounding the Portland International Airport.

**Land Use History:** City records indicate that case file LU 06-136902 AD granted Adjustments to the Transit Street Setbacks, Vehicle Area location, and the Transit Street Main Entrance requirements for proposed new development on Lots 1 and 2.

**Agency and Neighborhood Review:** A Notice of Proposal in your Neighborhood was mailed on December 11, 2007.

**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 COMMERCIAL, EMPLOYMENT, AND INDUSTRIAL ZONES**

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

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

<b>Criterion</b>	<b>Code Chapter</b>	<b>Topic</b>	<b>Applicability Findings</b>
A	33.613	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	33.635 .100	Clearing and Grading	Applicable - See findings below.
F	33.635 .200	Land Suitability	Applicable - See findings below.
G	33.636	Tracts and Easements	Applicable - See findings below.
H	33.639	Solar Access	Not applicable – Single Dwelling Detached development is not proposed for the site.
I	33.640	Streams, Springs, and Seeps	Not applicable - No streams, springs, or seeps are evident on the site.
J	33.641	Transportation Impacts	Applicable - See findings below.
K	33.651 - 33.654	Services and Utilities	Applicable - See findings below.

**Applicable Approval Criteria are:**

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

**Findings:** Chapter 33.613 contains the lot standards applicable in the commercial zones. Chapter 33.613 works in conjunction with other chapters of the Zoning Code to ensure that land divisions create lots that can support appropriate uses and development. The standards are as follows:

**33.613.100 Minimum Front Lot Line Standard**

**Each lot must have a front lot line that is at least 10 feet long.**

Each proposed lot has a front lot line that is at least 10 feet long.. This standard is met.

**33.613.200 Minimum Lot Area, Width and Depth Approval Criterion**

**There are no minimum lot area, width or depth standards. Lots must be of a size, shape, and orientation that is appropriate for the location of the land division and for the type of development and use that is contemplated.**

**Findings:** Proposed Lots 2 through 6 would contain an existing retail development consisting of a commercial structure and related parking and landscape improvements. Proposed Lot 1 (Tax Lot 600) has been issued a building permit for 7,500 square foot commercial building (06-164250 CO). Proposed Lot 2 (Tax Lot 700) has been issued a building permit for a 6,500 square foot commercial building (06-164263 CO). The existing commercial development of the site jointly use the existing parking areas and drive aisles to facilitate vehicular traffic through the site.

The CG Zone allows a building coverage of 85 percent and a floor area ratio of 3 to 1. As proposed, the land division would create lots with the following building coverages and floor area ratios based on existing development:

<b>Lot</b>	<b>Lot Size</b>	<b>Building Size</b>	<b>Building Coverage</b>	<b>Allowable Floor Area</b>
1	20,304 sq. ft.	6,500 sq. ft.	32%	60,912 sq. ft.
2	34,025 sq. ft.	4,302 sq. ft.	13%	102,075 sq. ft.
3	47,610 sq. ft.	6,908 sq. ft.	15%	142,830 sq. ft.
4	40,547 sq. ft.	3,036 sq. ft.	7%	121,641 sq. ft.
5	24,092 sq. ft.	5,038 sq. ft.	21%	72,276 sq. ft.
6	51,524 sq. ft.	14,905 sq. ft.	29%	154,572 sq. ft.

The existing development on the proposed lots would fit within the allowed building coverage and floor area ratio of the CG Zone. The proposed lot sizes would also allow reasonable building sizes for any future redevelopment of the lots.

With the exception of the development on proposed Lot 5, the layout of the existing development on the site would not meet the maximum transit street setback of 10 feet. However, the lots are of a width (with the exception of Lot 2) that future development on the lots could meet this setback requirement. The proposed development on Lots 1 and 2 (06-164250 CO and 06-164263 CO) has received approval of Adjustments to the maximum building setback for transit streets, and the transit street main entrance requirement (LU 06-136902 AD).

Lots 1, 2, 5, and 6 can meet the vehicle area limitation of 50 percent along the street frontage for each lot of 33.266.130.C.3.b. Lots 2,3, 4 and 6 can meet this requirement at the time of redevelopment. The site currently does not meet this standard. Each lot has an associated commercial use (building) that uses the parking areas and will not be used for commercial parking purposes.

Based on the findings above, the requirements of 33.613.200 are 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 (Exhibit A.3) that inventories the trees within the land division site and evaluates their condition. The Existing Tree Map (Exhibit C.3) shows the location of trees on the site. Analysis of the tree preservation standards in this decision are based on the arborist report. Some trees have been exempted by the arborist because they are located within 10 feet of an existing structure to remain on the property or are nuisance species. The inventory identifies 34 trees on the site, 6 of which are identified as exempt for reasons stated above.

The total non-exempt tree diameter on the site is 329 inches. To meet Option 1 of the tree preservation standards, 116 inches of tree diameter must be preserved. The applicant does not propose to preserve any trees in the interior of the site in an effort to ensure flexibility in the redevelopment of the proposed lots. The proposal does not meet any of the tree preservation options in Section 33.630.100 of the Zoning Code. The applicant proposes instead to use the mitigation options of 33.630.300:

**33.630.300 Mitigation Option**

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

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

The applicant is proposing mitigation to allow the removal of trees on the site as the proposed lots redevelop in the future. The owner maintains ground leases over the existing development on the proposed lots. With the exception of proposed development on Lots 1 and 2, redevelopment plans have not been identified for the proposed lots. As the existing ground leases expire at varying times, flexibility is requested in the preservation of existing trees and placement of mitigation trees on the site.

As noted below, the Office of Transportation is requiring a 12-foot right-of-way dedication and sidewalk corridor improvement along the N. Center Avenue frontage of the site. The required right-of-way dedication will occur at the time of the final plat. Improvements to the N. Center Ave. frontage of the site will occur at the time of an increase in floor area of any building on the site by 20 percent. The location of the pedestrian connection along the frontage of the site is dictated by the existing on site development and the lack of opportunity to provide a pedestrian connection through the site.

Several of the trees on the site are located in area that will be impacted by the sidewalk corridor improvements. This dedication and improvement would place most of the perimeter trees (10 trees: (9000-9002, 9006-9009, and 9011-9013)) or 98 inches of tree diameter within public right-of-way. As noted above, the existing trees in the parking area will be removed as each proposed lot redevelops. Without the perimeter trees available for preservation, the applicant cannot meet any of the tree preservation options in Section 33.630.100. Therefore, the

applicant cannot meet the connectivity requirements of 33.654 and still preserve the required number of tree inches. Criterion C.2 above is met.

All the trees on the site were planted as parking area trees or perimeter landscape trees for the existing commercial development. It does not appear that the site contains any trees native to the site prior to development of the site. The value of the existing trees is found largely in how they function as parking lot landscaping for the current layout of the site. Preserving existing trees on the site would lock the current site configuration in place and limit redevelopment potential of each lot. The purposes of the tree preservation regulations of 33.630 will be better met through the use of mitigation trees that will be incorporated into the landscape plans of each redeveloped lot.

The applicant proposes a tree mitigation plan that would require each proposed lot's portion of the 116 inches of tree diameter that will be mitigated for to be planted in conjunction with a building permit for an exterior alteration that would trigger the compliance threshold for non-conforming development stated in Section 33.258.070.D.2.a of the Zoning Code. This tree quantity can be met using the tree diameter listed below, by planting new trees that meet the requirement of 33.248.030.D.1 of the Zoning Code, or by payment into the City Tree Fund an amount based on tree diameter.

Lot	Tree diameter per lot (inches)	Tree per Section 33.248.030.D.1
1	11	2 medium
2	18	3 medium
3	25	4 medium
4	22	4 medium
5	13	2 medium
6	27	5 medium

Trees planted to meet this minimum tree quantity requirement may be located anywhere on the lot and may include existing or new trees. Newly planted trees shall be a native species chosen from the Portland Plant List. Existing trees may be of any size and of any species. Approval of a Zoning permit to determine that the required quantity of trees has been preserved or planted will be required prior to the final inspection of any building permit on each lot (or Site Development permit for parking alteration) for an exterior alteration that meets the threshold requirement of Section 33.258.070.D.2.a.

The mitigation plan noted above would fulfill the mitigation requirements of Section 33.630.300 in the following ways:

- The mitigation proposal provides for approximately the same caliper inches as Option 1 of the Tree Preservation Chapter. Option 1 would require that 35% or 116 inches of the existing tree diameter on site be preserved. The mitigation requirement, as noted above, is roughly equivalent to the 116 inches that would be required to be preserved.
- Requiring the replacement trees to be native species, chosen from the Portland Plant List, will help to foster and maintain the City's natural heritage.
- The new trees that will be planted as part of the mitigation plan will help absorb air pollutants and contamination, provide buffering from noise and wind, and provide visual screening from the adjacent properties.
- The dispersion of the mitigation trees over each lot allows more areas of the site to reap the benefits of trees that are described in the purpose statement for the Tree Preservation Chapter. In addition, the trees will grow over time to provide additional benefits.

Tree removal, as allowed by the Zoning Code, prior to building permit issuance is allowed. Any existing tree to be removed would be shown as part of a building permit for redevelopment of a lot. Therefore, the applicant has met Criteria A, because as many trees as possible will be preserved until the lots are redeveloped.

Criteria B is met with a condition of approval requiring that 116 inches of tree diameter are to be planted and/or retained as the proposed lots redevelop.

Therefore, these criteria are met.

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

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

**33.635.100 – Clearing and Grading**

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

**Findings:** In this case the site is primarily flat, and is not located within the Potential Landslide Hazard Area. The proposed lots will contain existing development. Therefore, no significant clearing or grading will be required on the site to make the new lots developable. There are no trees required to be preserved in the areas where new development on the site is anticipated. These criteria are 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.**

**Findings:** The site is currently in commercial use, and there is no record of any other use in the past. The Site Development Section of the Bureau of Development Services has indicated a concern that the land division will result in party sewers. While the Utility Plan (Exhibit C.4) identifies the location of the existing private sanitary sewer lines on the site, none of the submitted plans identify the location of easements that will ensure each lot will have a connection to the public sewer. The existing utility lines are serving existing development. The maintenance of the existing utilities as proposed in the CC&Rs submitted with this application (Exhibit A.6) do not adequately provide for the independent provision of utilities for each lot. Prior to final plat approval, private sanitary sewer easements will need to be shown on the plat for each of the private sanitary sewer lines that provide service to the public sewer. With this condition, 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:** One Tract for the existing pylon sign is proposed. Tract A will be owned by Buena-Hayden LLC which will be served by the Tract. This criterion can be met.

**B. Maintenance agreement. The applicant must record with the County Recorder a maintenance agreement that commits the owners or owners' designee to maintain all elements of the tract or easement; however, facilities within the tract or easement that will be maintained by a specified City agency may be recorded in a separate maintenance agreement. The maintenance agreement must be approved by BDS and the City Attorney in advance of Final Plat approval and must be submitted to the County Recorder to be recorded with the Final Plat. For a Planned Development not done in conjunction with a land division, the maintenance agreement must be submitted to the County Recorder to be recorded prior to issuance of the first building permit related to the development.**

**Findings:** The following easements are required for this land division:

- Private Sanitary Sewer Easements are required from each lot to a connection point to a public sanitary sewer.
- Sewer easements to the City of Portland, at least 15-feet in width, must be shown over the relevant portions of the existing sanitary sewer.

As stated in Section 33.636.100 of the Zoning Code, a maintenance agreement(s) will be required describing maintenance responsibilities for the tract and easements 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 for each agreement, substantially similar to the following example:

*"A Declaration of Maintenance agreement for (name of feature) has been recorded as document no. \_\_\_\_\_, Multnomah County Deed Records."*

The proposed CC&Rs provide reciprocal parking and access rights to allow shared use and access of parking areas and drive aisles. Upon redevelopment of each lot, the location of the existing private stormwater system will be need to be identified and if required, easement(s) and maintenance agreement(s) developed to ensure the proper functioning of any storm sewer system that benefits adjoining lots.

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 792 feet of frontage on N. Center Avenue. N. Center Avenue is a private street classified as a local service street for all modes in the Transportation Element of the Comprehensive Plan. Tri-Met provides frequent transit service on N. Center Avenue via bus 6. Parking is not allowed on N. Center Avenue. There are several driveways entering the site that provides access to off-street parking areas for adjacent commercial development.

N. Center Avenue is improved with a paved roadway and curb. There are no 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 sidewalk improvements to meet the City's sidewalk corridor requirements must be made in order to ensure that safe pedestrian travel is possible. These improvements will be made at such time as a new building permit is requested to increase the floor area of buildings on any of Lots 2-6 by more than 20 percent, whether by alteration or by new 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, the proposed land division 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 sidewalk improvements are made, and the required right-of-way dedication is shown on the Final Plat. See Exhibit G.6 for more details.

**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 12-inch water main is available in N. Center Avenue. The site currently has three 1.5-inch services. One of these services may be used to serve Lot 1. Water currently services and is available to serve all the proposed lots from the water main in N. Center Avenue. As a result of the proposed land division, the water lines that provides service to the Lots 2, 3, 4, and 5 will no longer be located entirely on the same lot as the development. Title 21 requires that the water service connection be located along the frontage of the lot to be served. Water service connections are not allowed by means of an easement. The Portland Water Bureau has agreed to waive this requirement until redevelopment occurs on the proposed lots or the existing buildings are redeveloped. As noted in Exhibit A-1, the Portland Water Bureau will require any development, redevelopment or plumbing permit to modify the water system on a lot meet the applicable requirements of Title 21 in effect at the time. Property owners are

responsible for upgrades to water services (including fire flow) required by redevelopment of the lots. See Exhibit E.3 and A.1 for more details.

- The sanitary sewer standards of 33.652 have been verified. There are two public sanitary sewer lines that serve the site: an 8-inch CSP branch that serves 3 existing structures on the north side of the site and a 6-inch CSP branch that serves 3 existing structures on the south side of the site. It is uncertain as to the location and connection point of the private sanitary sewer laterals serving individual buildings. No easements have been proposed that identify which lots are burdened and benefited by the existing sanitary sewer laterals. Without this information, the existing laterals would become party sewers after the land division, which is not allowed. The applicant has proposed draft CC&Rs that will require future lot owners to cooperate with each other in the replacement and maintenance of utility lines. This does not demonstrate that each lot has or can have access to the public sewer.

As a result of the proposed land division, the existing sewer connections that serve the existing commercial structures will cross over property lines respectively to reach the existing public sanitary sewer mains in the site. The applicant must provide easements for the sewer lines on the Final Plat. Maintenance Agreements for the easements must be submitted for approval by BDS and the City Attorney and must be recorded with the Final Plat. See Exhibit E-1.b and E-5 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 (Exhibit C.4, and the Bureaus have responded as follows (Exhibits E-1 and E-5):

- **Public Pedestrian 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 sidewalk corridor improvements (discussed earlier in this report). Stormwater from these new impervious area in the sidewalk corridor improvements will need to be captured and treated per the City's Stormwater Management Manual.

A new sidewalk is required, but the curb already exists. BES has indicated that the sidewalk must be constructed so that it will slope towards the planter strip, allowing the stormwater runoff from the sidewalk to be deposited in a vegetated area, which meets the requirements of the Stormwater Management Manual.

- **Lot 1-6 (lots with existing development):** Stormwater treatment of the development on the existing lots goes into an existing stormwater system. While the submitted utility plan (Exhibit C.4) shows the location of the storm sewer lines on the property, the plan notes that "The firm Alpha Community Development does not certify the correctness or accuracy of the underground utilities as shown hereon". A memo from the engineering firm of MacKay and Sposito, Inc. (Exhibit A.5) indicates that the property "is served by an existing storm drainage system and feasible options exist for accommodating storm drainage from future redevelopment on the site". The applicant proposes to place a blanket storm sewer easement over the entire site to allow for joint access and maintenance of the storm sewer system, wherever the final location of the sewer is determined on individual lots. Site Development finds this proposal acceptable with the condition that as each lot redevelops, the location of the existing storm system shall be determined, and each lot shall provide for the continuing maintenance of service to adjoining lots as long as the storm sewer remains in use.

Infiltration testing has been performed on the site (Exhibit A.8). The Site Development Section of BDS concurs with the testing results and finds that infiltration is feasible on the site. Each lot has sufficient area for a stormwater facility that can be adequately sized and located to meet setback standards, and accommodate water from a reasonably sized structure at the time of redevelopment of each lot. Site Development notes that as each lot redevelops with an infiltration facility, the location of the existing stormwater system will need to be determined and maintained if the system benefits adjacent property owners.

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

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

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

<b>Code Section</b>	<b>Topic</b>	<b>Applicability Findings</b>
33.654.110.B.1	Through streets and pedestrian connections	Applicable - See findings below
33.654.110.B.2	Dead end streets	Not applicable - No dead end streets are proposed.
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.

<b>Code Section</b>	<b>Topic</b>	<b>Applicability Findings</b>
33.654.120.C.1	Width of the street right-of-way	Not applicable – The proposal does not include a street.
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	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.
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	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 surrounded on the west and south side by N. Center Avenue and on the east and north by Interstate 5. N. Center Avenue is a private street. At its furthest, the distance between N. Center Avenue and I-5 is approximately 310 feet. The distance between the southeast corner of the subject site and the right-of-way for the southbound ramp of Interstate 5 is approximately 810 feet. N. Center Avenue connects to N. Jantzen Drive under Interstate 5 at the south end of the site. N. Hayden Island Drive is an east-west private street approximately 1,500 feet north of the connection of N. Center Avenue and N. Jantzen Drive.

There is not an east-west through street between N. Hayden Island Drive and N. Jantzen Drive. 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. 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 subject property does not front a public through street. However, the Office of Transportation is requiring the dedication of 12-feet of public right-of-way (except in areas that may encroach into existing structures) to accommodate improvements that meet the City's sidewalk corridor requirements along the project frontage of N. Center Avenue in order to provide a pedestrian corridor along the frontage of the site. The Office of Transportation is not requiring the dedication of N. Center Avenue as a public street at this time as a master street plan is being considered as part of the Hayden Island Plan under development by the Bureau of Planning.

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

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

With the conditions described above, 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 44-foot width of N. Center Avenue, 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.

### **ADJUSTMENT**

#### **33.805.010 Purpose**

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity,

some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue to provide certainty and rapid processing for land use applications.

### **33.805.040 Approval Criteria**

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. have been met.

As outlined on page 2 of this decision, the applicant has requested an adjustment to the Zoning Code to waive the parking lot perimeter setback and landscaping requirement of 33.266.130.G to allow lot lines to cross parking spaces and parking lot landscaping islands. Other than the improvements proposed for new commercial structures on Lots 1 (06-164250 CO) and 2 (06-164263 CO), no redevelopment is currently proposed for the site.

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

Parking lot perimeter setback and landscaping requirement (33.266.130.G and Table 266-5)

**Findings:** Generally, the purpose of the parking lot perimeter setback and landscaping requirement is to improve and soften the appearance of parking areas, reduce the visual impact of parking areas from sidewalks, streets, direct traffic in parking areas; shade and cool parking areas; reduce the amount and rate of stormwater runoff from vehicle areas; reduce pollution and temperature of stormwater runoff from vehicle areas; and decrease airborne and waterborne pollution.

As proposed, the lot configuration would divide parking spaces, or locate a new lot line at the edge of parking between Lots 1 and 2, 2 and 3, and 3 and 4. The layout of existing development on the site is based on ground lease areas. The proposed lot configuration follows those ground leases areas. The exemption for shared driveways and parking aisles that straddle lot line provided in 33.266.130.G.2.b would not easily conform to the arrangement of current development on the site. The requested adjustment can equally meet the purpose of 33.266.130.G for the following reasons:

- Parking is not required for this site given the proximity of frequent transit availability. Therefore there are no per lot parking space allocation issues to be concerned with for those lot lines that divide parking spaces between adjoining lots.
- The proposed CC&Rs for the subdivision allocate the parking areas as a shared resources with all lots having access and use of all parking to keep the existing functionality of the parking areas for tenants and lease holders. Requiring perimeter landscaping along property lines would prohibit this flexibility in parking and would direct parking lot traffic in out of direction travel patterns.
- The affected parking spaces are interior to the lot, therefore the visual impact of the parking area from the street should not be impacted. Redevelopment of each lot will require compliance with the interior and perimeter landscaping requirements of 33.266.130.G.2.

For the above reasons and for this adjustment, this criterion is met.

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

**Findings:** The site is in the CG (General Commercial) zone. The desired character of the CG zone is fully described above on page 2, under Zoning, and generally is a zone that allows auto-accommodating uses. When a CG zone is located adjacent to a transit street, the site may be developed with auto-accommodating uses, but attention must be given to pedestrians and transit users. Shared parking areas are common for commercial development on Hayden Island. The requirement by PDOT for the development of a sidewalk corridor along the N. Center Avenue frontage of the site will allow pedestrian access along the frontage of the site. The proposed Adjustment would not increase parking for the project, but would allow the existing parking configuration to continue to function. This criterion is met.

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

**Findings:** Only one Adjustment is requested. This criterion is not applicable.

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

**Findings:** There are no city-designated scenic or historic resources on this site, so this approval criterion is not applicable.

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

**Findings:** The proposed Adjustment is not proposing to alter the existing conditions relative to interior parking lot landscaping. As individual lots redevelop, compliance with the parking area setback and landscape requirements will be required, or approval of an Adjustment to these standards will be required.

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

**Findings:** The subject site is not located within an Environmental Zone, so this approval criterion is not applicable.

As noted in the findings above, the Adjustment criteria have been 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.

Among the various development standards that will be applicable to these lots, the applicant should take note of:

**Existing development that will remain after the land division.** The existing development on the site will remain and will be located on the proposed Lots. 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 CG zone (Please see section on Other Technical Standards for Building Code standards.)

In this case, there are several Zoning Code standards that relate to existing development on the site:

- Minimum Setbacks – The existing structures identified to remain on the site must meet the required Zoning Code setbacks from the proposed new lot lines. The proposed lots are subject to the maximum transit street setback requirements of 33.130.215. The proposed land division would not cause any of the structures on the proposed lots to go further out of conformance with this requirement. Redevelopment of these lots will be required to meet this standard.
- Required Off-Street Parking – Existing development is served by a shared parking area west of the existing development and east of N. Center Avenue. As a result of this land division, the parking area for the existing commercial developments will be located amongst the proposed lots. 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 frequent transit service on N. Center Avenue via bus number 6. As a result, no replacement parking is required for the proposed Lots.

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

## OTHER TECHNICAL REQUIREMENTS

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

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



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

- The applicant must meet the requirements of the Fire Bureau in regards to ensuring adequate hydrant flow from the nearest fire hydrant for each lot or obtaining an approved Fire Bureau appeal to this requirement; providing Emergency Vehicle Access Easements over Lots 1 and 5 for fire department access. These requirements are based on the technical standards of Title 31 and the Fire Code.
- The applicant must meet the requirements of Urban Forestry for street tree planting in the sidewalk corridor improvements along N. Center Avenue. Any removal of an existing tree greater than 12-inches in diameter requires a permit from Urban Forestry. This requirement is based on the standards of Title 20.

## CONCLUSIONS

The applicant has proposed a 6 lot subdivision, as shown on the attached preliminary plan (Exhibit C.2) and an Adjustment to the parking lot perimeter setback and landscaping requirements. 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 mitigation through the retention of existing trees, planting of new trees, or payment into the City Tree Fund on each lot that will provide 116 inches of tree diameter over the land division site.
- 12-foot right-of-way dedication along N. Center Avenue and sidewalk corridor improvements in conjunction with an increase in the floor area of buildings on any of Lots 2-6 by more than 20 percent.
- Location of easements for existing private sanitary sewer lines and maintenance agreements prior to final plat approval.
- Water service to be located along the frontage of each lot as they redevelop.

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

## ADMINISTRATIVE DECISION

**Approval** of a Preliminary Plan for a 6-lot subdivision, as illustrated with Exhibit C.2, subject to the conditions below:

**Approval** of an Adjustment to the parking lot perimeter setback and landscaping requirement subject to the conditions below.

**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.
- The location of all known public and private sanitary sewer lines and any required easements

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

1. The applicant shall meet the public pedestrian right-of-way dedication requirements of the City Engineer for N. Center Avenue. Specifically, a 12-foot right-of-way dedication shall be shown on the final plat, except that the width of the dedication may be reduced as

necessary to avoid encroachment by existing structures. The required right-of-way dedication must be shown on the final plat.

2. Private sanitary sewer easements as required by BDS to demonstrate that each lot has a connection to the public sanitary sewer.
3. A sanitary sewer easement, granted to the City of Portland, shall be shown over the relevant portions of the existing sanitary sewer system, to the satisfaction of the Bureau of Environmental Services for each public sanitary sewer line. The easement shall permit the applicant to relocate public sanitary sewer lines in connection with future redevelopment.
4. A 20-foot wide Emergency Vehicle Access Easement, granted to the City of Portland, shall be shown over the relevant portions of the Lot 1 to access Lot 2, and if required, Lot 3, and over Lot 5 to access Lot 6 to the satisfaction of the Fire Bureau.
5. Tract A shall be noted on the plat as "Tract A: (name of tract). A note must be provided on the plat that indicates the ownership of the tract.
6. A recording block for each of the legal documents such as maintenance agreement(s), acknowledgement of special land use conditions, or Declarations of Covenants, Conditions, and Restrictions (CC&Rs) as required by Condition C.2, and C.3 below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: "A Declaration of Maintenance Agreement for (name of feature) has been recorded as document no. \_\_\_\_\_, Multnomah County Deed Records."

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

**Utilities**

1. The applicant shall meet the requirements of the Fire Bureau for documenting availability of existing fire hydrants on site to all approved lots and documenting access to the fire supply water line in N. Center Avenue to all future lot owners.

**Required Legal Documents**

2. Maintenance Agreements shall be executed for the private sanitary sewer easements described in condition B.2 above and Tract A. The agreements shall include provisions assigning maintenance responsibilities for the easement and tract areas and any shared facilities within those areas, consistent with the purpose of the easement and 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.
3. The Declaration of Reciprocal Easements and Covenants, Conditions, and Restrictions shall be executed for the reciprocal parking and access rights and the utility easements. The CC&Rs shall include provisions assigning maintenance responsibilities for the parking and utility areas and any shared facilities within those areas, consistent with the purposes of the access and utility rights of the CC&Rs and all applicable City Code standards. The CC&Rs shall 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. Any of Lots 1-6 as depicted upon final plat recording will be required, at time of development or redevelopment when a building permit for a new structure or plumbing permit to modify the water system on a lot is requested, to meet all applicable sections of Portland City Code Title 21 Water in effect at the time. Backflow prevention requirements for protection of the public water system shall be followed at all times, on lots 1-6. Any of

lots 1-6 as depicted upon final plat recording whose water service is affected by development or redevelopment of another lot, must meet all applicable sections of Portland Code Title 21 Water.

2. The applicant shall meet the requirements of the City Engineer for right of way improvements along the frontage of N. Center Avenue, as provided in this condition. At such time as a new building permit is requested to increase the floor area of buildings on any of Lots 2-6 by more than 20 percent, whether by alteration or by new development, that lot owner will be required to construct in connection therewith the following improvement: a 6-foot wide sidewalk, 4.5-foot planting strip, and 1.5-foot frontage improvement along the entire N. Center Avenue frontage of Lots 1-6. The width of the required improvement may be reduced as necessary to avoid encroachment by existing structures. In addition, driveway approaches shall be constructed to PDOT standards in connection with the improvement. The applicant must obtain an approved Right Of Way permit from the Bureau of Transportation Engineering and Development Review to install the required sidewalk and planter strip. Development on Lot 2 that substantially conforms with that approved under Building Permit No. 06-164263 CO, if that building permit has expired, does not require construction of this improvement.

The applicant must plant street trees in the planter strip to be installed in the sidewalk corridor improvements. Street trees will be chosen from the City’s approved street tree list for the 4.5- foot-planting strip. 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 the final inspection of the right-of-way permit for the public pedestrian improvements.

3. Upon requesting a building permit for an exterior alteration to any of Lots 1-6 that would trigger the compliance threshold for nonconforming development stated in Section 33.258.070.D.2.a of the Zoning Code, the Applicant shall demonstrate that the minimum tree quantity listed below will be met for that lot. Minimum tree quantity may be demonstrated in tree diameter or by meeting the quantity of trees as defined by Section 33.248.030.D.1 of the Zoning Code. Trees used to satisfy this condition may be located anywhere on the lot and may be existing or new trees. The minimum tree quantity can also be met by payment into the City Tree Fund in an amount for the tree diameter listed below. Newly planted trees shall be a native species chosen from the Portland Plan List. Existing trees to be retained may be of any size and of any species. The minimum tree quantity will be in addition to any required tree planting necessitated by the compliance with nonconforming development noted above. Approval of a Zoning permit to determine that the required quantity of trees has been preserved, planted, or payment received into the City Tree Fund will be required prior to the final inspection of any building permit on each lot (or Site Development permit for parking alteration) for an exterior alteration that meets the threshold in PCC 33.258.070.D.2.a.

Lot	Tree diameter (inches)	Tree per Section 33.248.030.D.1
1	11	2 medium
2	18	3 medium
3	25	4 medium
4	22	4 medium
5	13	2 medium
6	27	5 medium

**Decision rendered by:** Paul Cothran **on August 13, 2008**  
 By authority of the Director of the Bureau of Development Services

**Decision mailed August 15, 2008**

**Staff Planner: Paul Cathcart**

**About this Decision.** This land use decision is **not a permit** for development. A Final Plat must be completed and recorded before the proposed lots can be sold or developed. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

**Procedural Information.** The application for this land use review was submitted on July 26, 2007, and was determined to be complete on December 5, 2007.

*Zoning Code Section 33.700.080* states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on July 26, 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 requested that the 120-day review period be extended until the issues raised by Bureau responses dated January 8-23, 2008 were addressed by the applicant. The applicant also requested an extension to the 120-day review period on July 15<sup>th</sup> to allow additional time to revised conditions of approval.

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

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

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

**Appealing this decision.** This decision may be appealed to the Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on August 29, 2008** at 1900 SW Fourth Ave. Appeals may be filed on the first floor in the Development Services Center until 3 p.m. After 3 p.m., appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. Recognized neighborhood associations are not subject to the appeal fee. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please contact the receptionist at 503-823-0625 to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at [www.ci.portland.or.us](http://www.ci.portland.or.us).

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

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

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

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

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

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

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

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

The following approvals were necessary for the land division to be approved: an Adjustment to the parking lot setback and landscape requirements. This approval expires if:

- The final plat is not approved and recorded within the time specified above, or

- Three years after the final plat is recorded, none of the approved development or other improvements (buildings, streets, utilities, grading, and mitigation enhancements) have been made to the site.

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

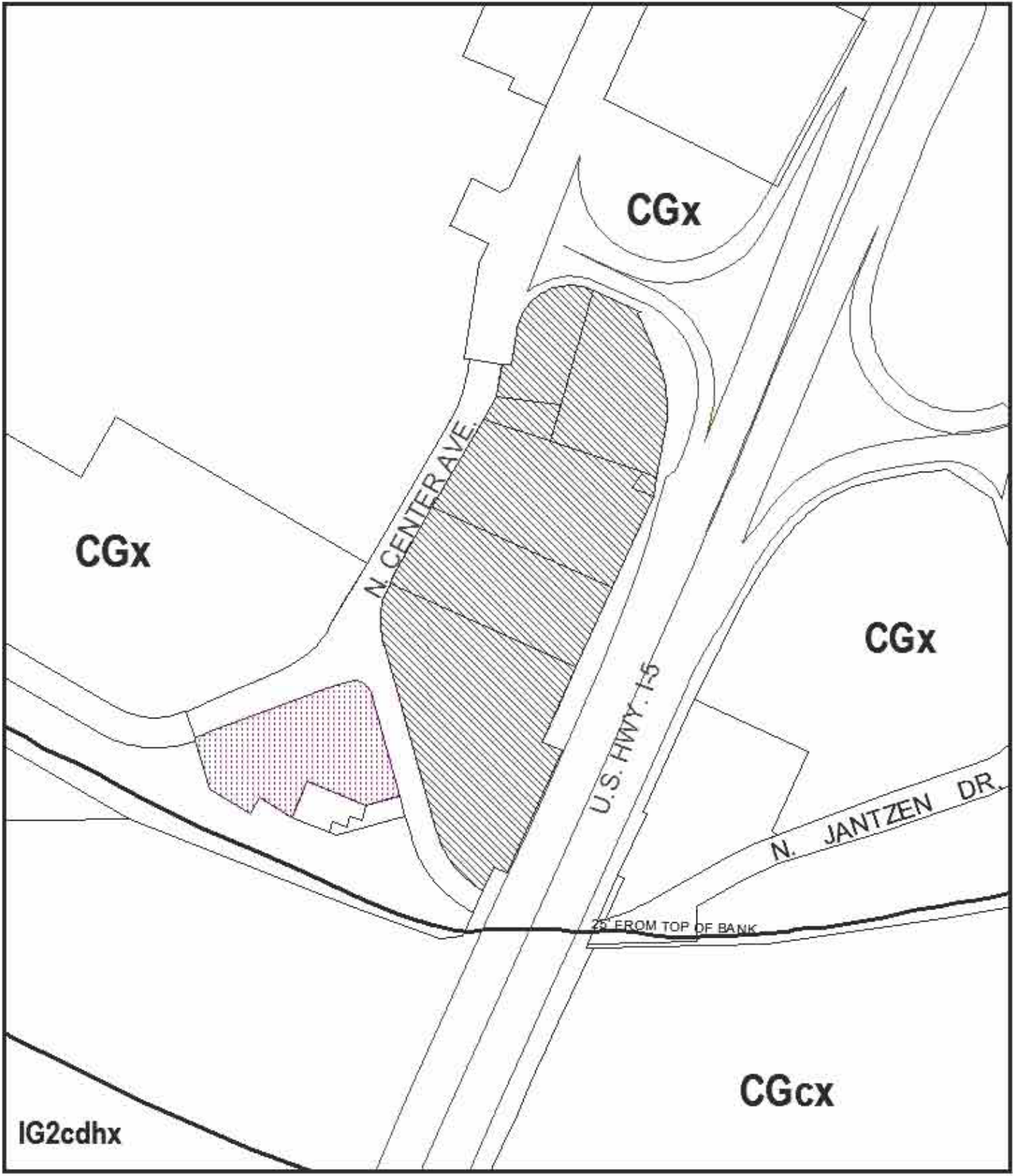
### **EXHIBITS**

#### NOT ATTACHED UNLESS INDICATED

- A. Applicant's Submittals
  1. E-mail from Dana Krawczuk to Megan Walseth dated July 25, 2007 regarding Proposed plat note language
  2. Applicant's response findings
  3. Arborist report dated September 13, 2007
  4. E-mail from Walseth, Walseth to Paul Cathcart dated April 2, 2008 regarding tree preservation alternative
  5. Letter from Damon Webster, PE to Megan Walseth dated October 19, 2007 regarding Hayden Harbor Shops Subdivision Storm Drainage Feasibility
  6. Draft Declaration of Reciprocal Easements and Covenant, Conditions and Restriction dated 11/18/07
  7. Common Ownership Agreement and Roadway Maintenance Agreement dated October 3, 2007
  8. Geotechnical report dated April 28, 2008
  9. E-mail from Robert Haley to Walseth, Walseth dated March 19, 2008 regarding PDOT sidewalk requirements (LU-150208)
  10. Letter from Megan Walseth to Paul Cathcart dated November 19, 2007 regarding LU 07-150208 LDS/11915 N. Center Avenue Incomplete Response
  11. E-mail from Megan Walseth to Paul Cathcart dated July 15, 2008 regarding LU 07-150280 – 120 day clock
  12. E-mail from Robert Haley to Megan Walseth dated August 11, 2008 regarding revised frontage condition
- B. Zoning Map (attached)
- C. Plans/Drawings:
  1. Title Sheet (Sheet 1 of 5)
  2. Land Division Plan (Sheet 2 of 5) (attached)
  3. Existing Tree Map (Sheet 3 of 5)
  4. Utility Plan (Sheet 4 of 5)
  5. Existing Conditions Map (Sheet 5 of 5)
- D. Notification information:
  1. Mailing list
  2. Mailed notice
- E. Agency Responses: No responses were received.
  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 Bureau of Development Services
  6. Bureau of Parks, Forestry Division
  7. Life Safety Section of Bureau of Development Services
- F. Correspondence: None received
- G. Other:
  1. Original LU Application
  2. Site History Research
  3. Incomplete Letter dated August 20, 2007

4. E-mail from Debbie Cleek to [Mwalseth@balljanik.com](mailto:Mwalseth@balljanik.com) dated August 22, 2007 regarding responses from the Bureau of Environmental Services and ODOT

**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).**



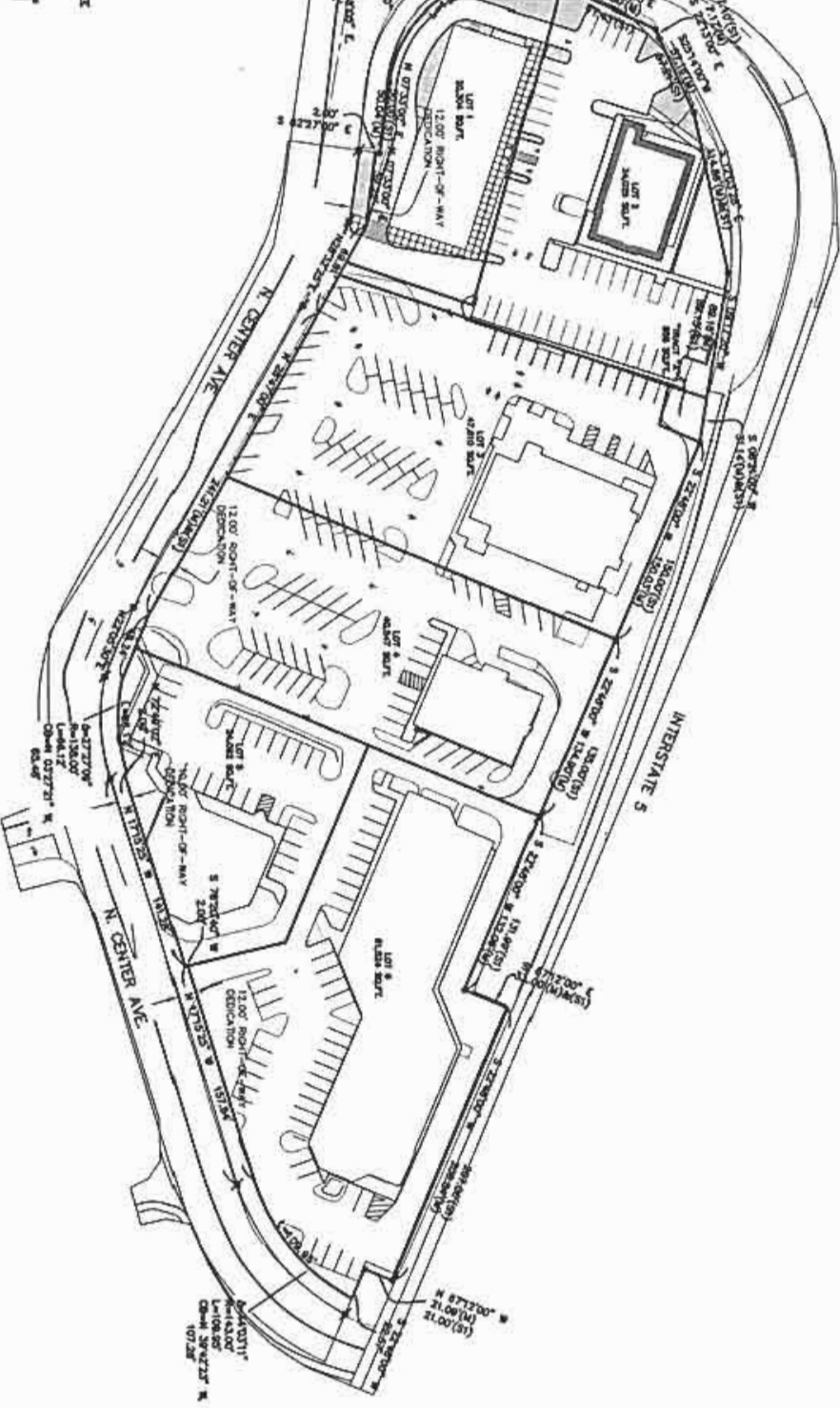
# ZONING

-  Site
-  Also Owned



File No. LU 07-150208 LDS AD  
 1/4 Section 1829  
 Scale 1 inch = 200 feet  
 State\_Id 2N1E34C 1100  
 Exhibit B (Dec. 6, 2007)





**PROPERTY ADDRESS**  
 1400 SW CORN. LANE, PORTLAND, OR

**PROJECT BOUNDARY**  
 1. THE BOUNDARY OF THE PROPERTY IS SHOWN FOR THE RECORD AND SHOULD CONFORM WITH THE RECORD.

**LEGAL DESCRIPTION**  
 PARCELS 1 OF 1000 LOTS AND 1200, RESERVED OR OTHER, LOCATED IN THE COMMUNITY DEVELOPMENT OF HAYDEN HARBOUR SHOPS, AS SHOWN ON THE PLANS OF THE SAID COMMUNITY DEVELOPMENT, AS FILED IN THE CLERK'S OFFICE OF SAID COUNTY OF SAID COUNTY, OREGON.

SCALE: 1" = 40'  
 GRAPHIC SCALE



**alpha**  
 COMMUNITY DEVELOPMENT

1400 SW CORN. LANE 200  
 PORTLAND, OR 97223  
 503-452-8023 / 503-452-8040  
 www.alphacommunitydev.com

**REVISIONS**  
 NO. DATE DESCRIPTION  
 1. 10/18/07 REMOVED LOTS 8  
 2. 10/18/07 REMOVED LOTS 9  
 3. 10/18/07 REMOVED LOTS 10  
 4. 10/18/07 REMOVED LOTS 11  
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 93. 10/18/07 REMOVED LOTS 100

**HAYDEN**  
**HARBOR SHOPS**  
**SUBDIVISION**

**LAND**  
**DIVISION**  
**PLAN**

**alpha**  
 COMMUNITY DEVELOPMENT

PROJECT NO. 1400 SW CORN. LANE  
 TYPE: SUBDIVISION  
 REVISIONS BY:  
 CASE NO. 1400 SW CORN. LANE  
 EXHIBIT C-2  
 2 OF 5