



**City of Portland, Oregon**  
**Bureau of Development Services**  
**Land Use Services**

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**Date:** October 27, 2008  
**To:** Interested Person  
**From:** John Cole, Land Use Services  
503-823-3475 / [ColeJA@ci.portland.or.us](mailto:ColeJA@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 08-138736 LDP**

**GENERAL INFORMATION**

**Applicant:** Mike Montgomery  
Ez Permits.Com  
9824 SW 60th Ave  
Portland, OR 97219

**Owner:** Regina and Clifford B Jr Ellis  
2903 SW Moss St  
Portland, OR 97219-2402

**Site Address:** 2903 SW Moss St

**Legal Description:** W 75' OF LOT 3 BLOCK 3, RYAN PL  
**Tax Account No.:** R734301240  
**State ID No.:** 1S1E20DA 03300 **Quarter Section:** 3826  
**Neighborhood:** Multnomah, contact Mary Verghies at 503-244-3553.  
**Business District:** Multnomah Village, contact Don Snedecor at 503-244-6933.  
**District Coalition:** Southwest Neighborhoods Inc., contact Leonard Gard at 503-823-4592.  
**Plan District:** None  
**Zoning:** R5 Single Dwelling Residence 5,000  
**Case Type:** LDP Land Division Partition  
**Procedure:** Type IIX, an administrative decision with appeal to the Hearings Officer.

**Proposal:**

To divide an existing 12,975 square foot property into two parcels. (See attached proposed site plan.) Parcel 1 will be 6,854 square feet in size and will retain the existing residence. The detached garage will either be demolished or remodeled and relocated. Parcel 2 will be 6,127 square feet in size and made available for development consistent with city zoning code requirements for flaglots in the R5 zone. Stormwater from Parcel 2 will be managed through the use of a flow through planter discharging to SW Moss. Additional stormwater management improvements will also be required to the existing residence to remain on Parcel 1. Tree preservation requirements will be met on-site. A modification to reduce the required setback between new construction on proposed Parcel 2 and its southern and western property lines is considered in this decision as a method of increasing the root protection zone surrounding the 33" Fir tree located at the northeast corner of the site.

This partition proposal is reviewed through a Type IIX procedure because: (1) the site is in a residential zone; (2) two or three lots are proposed; and (3) the site is located within a Potential Landslide Hazard or Flood Hazard Area (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 criteria are:

- 33.660.120 Approval Criteria for Land Divisions in Open Space and Residential Zones

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## ANALYSIS

**Site and Vicinity:** The site is a midblock lot located on the north side of Moss Street. It slopes moderately upward to the north. An existing single family residence is located towards the front of the property. A detached garage and separate small shed are located towards the western property line. The surrounding neighborhood is a mixture of single-dwelling and multi-dwelling residences while commercial development occurs to the northwest on SW Capitol Highway and south along portions of SW Multnomah Boulevard.

**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.

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

**Agency and Neighborhood Review:** A Notice of Proposal in your Neighborhood was mailed on September 19, 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:** One written response has been received from a notified property owner who expressed concerns generally over development in the neighborhood and specifically regarding the loss of privacy that will occur once the new structure on proposed Parcel 2 is built.

**Staff Response:** Flag lot land divisions are permitted within this zone when the density is met and the placement of an existing residence on the property prohibits a more standard lot configuration. This application meets those requirements. There are additional screening and setback standards applied to development on flaglots that will be required at the time a building permit is issued on this new parcel that attempt to address some of the privacy concerns raised by the neighbor.

## ZONING CODE APPROVAL CRITERIA

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

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

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

<b>Criterion</b>	<b>Code Chapter</b>	<b>Topic</b>	<b>Applicability Findings</b>
A	33.610	Lots	Applicable - See findings below
B	33.630	Trees	Applicable - See findings below.
C	33.631	Flood Hazard Area	Not applicable - The site is not within the flood hazard area.
D	33.632	Potential Landslide Hazard Area	Applicable - See findings below.
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 - All of the proposed parcels are interior lots (not on a corner). In this context, solar access standards express no lot configuration preference.
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 not proposed or required, but the site is within the potential landslide hazard area. Therefore, the maximum and minimum density for this site is as follows:

Minimum = Not applicable. There is no minimum density required for sites located within a potential landslide hazard area.

Maximum =  $12,981 \text{ square feet} \div 5,000 \text{ square feet} = 2.59$  (which rounds down to a maximum of 2 lots, per 33.930.020.B)

The applicant is proposing 2 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 are shown in the following table (this information is found in Table 610-2/ of the Zoning Code):

	<b>R5 Zone Requirement</b>	<b>Proposed Parcel 1</b>	<b>Proposed Parcel 2</b>
Minimum Lot Area	3,000 sq. ft.	6,854 sf	6,127 sf
Maximum Lot Area	8,500 sq. ft.		
Minimum Lot Width*	36 ft.	63 ft	
Minimum Lot Depth	50 ft.	109 ft	
Minimum Front Lot Line	30 ft.	63 ft	
Minimum Flag Lot Width**	40 ft.		21 ft
Minimum Flag Lot Depth**	40 ft.		64 ft

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

\*\* For flag lots, width is measured at the midpoint of the opposite lot lines in the "flag" portion of the lot.

#### Flag Lots

Parcel 2 is a flag lot. Zoning Code standards allow the creation of flag lots in limited circumstances. The limitations minimize the negative impacts of flag lots on an area while allowing land to be divided when other options are not achievable. A flag lot is allowed only when all of the following are true: (1) an existing dwelling unit on the site is located so that it precludes a land division that meets the minimum lot width standards; and (2) only two lots are proposed; and (3) minimum density requirements for the site will be met. In this case there is an existing house on the site that would preclude the creation of standard lots. The house

is located 9.8 feet from the eastern property line and 35 feet from the western property line, which would preclude the creation of a second lot that would meet the minimum width standard of the R5 zone of 36 feet. Two lots are proposed. As discussed above, minimum density has been met. The proposed flag lot meets applicable Zoning Code standards found in 33.610.400 because it has a “pole” at least 12 feet wide that connects to a street, and as shown above, meets the minimum width and depth standard of 40 feet. Therefore, Parcel 2 is allowed.

The findings above describe how the applicable lot standards are met. This criterion is therefore met.

**B. Trees. The standards and approval criteria of Chapter 33.630, Tree Preservation, must be met.**

**Findings:** The regulations of Chapter 33.630 preserve trees and mitigate for the loss of trees. Certain trees are exempt from the requirements of this chapter.

The applicant has submitted an arborist report that inventories the trees within the land division site, evaluates their condition and specifies root protection zones (Exhibit A-2). Some trees have been exempted by the arborist because they are either too small, unhealthy, a nuisance species, located partially off the property or located within 10 feet of an existing structure to remain on the property. The inventory identifies the following trees on the site:

Tree #	Species	Diameter (inches)	Significant? (On Table 630-1)	Exempt? (per 33.630.030)	To be retained?	RPZ (Root Protection Zone)
1	Douglas Fir	33	yes	no	yes	12' *
2	Apple	10.5	no	no	no	-
3	Shore Pine	19.5	no	no	no	-
4	Deodar Cedar	24	yes	no	yes	24' *

\* see exhibit C-1 for RPZ detail.

The total non-exempt tree diameter on the site is 87 inches. The applicant proposes to preserve trees 1 and 4, which comprise of 57 inches of diameter, or 65 percent of the total non-exempt tree diameter. This proposal complies with Option 1 of the tree preservation standards, which requires at least 35 percent of the total tree diameter on the site to be preserved. A Tree Preservation Plan showing the preserved trees and the required root protection zones is provided on Exhibit C-1.

This criterion is met, subject to the condition that development on Parcels 1 and 2 be carried out in conformance with the Tree Preservation Plan (Exhibit C-1) and the applicant's arborist report (Exhibit A-2).

**Modifications that will better meet tree preservation requirements**

Code section 33.630.400 permits consideration of adjustments to site related development standards where they better meet tree preservation requirements. Such adjustments are considered modifications when they are included with a land division application and do not require a separate land use review.

In this case the land division proposal relies in part on the preservation of a 33” Douglas Fir Tree located in the northeast corner of proposed Parcel 2. The applicant has requested a modification from the standard 10-foot setback from Parcel 2’s southern and western property lines from ten feet required to three feet. Staff is supportive of the reduction to three feet for the southern property line only. This reduction which is internal to the land division site has the benefit of providing more buildable area along the narrowest dimension of the lot. It will permit additional flexibility in house placement while maintaining the required 12’ radius root protection zone for the Douglas fir tree. This is a zone setback reduction only. Applicable building and plumbing code requirements continue including any applicable codes related to the placement of stormwater management facilities. Staff is not supportive of the requested

setback modification from the western property line because it is not internal to the land division site and has the potential of negatively impacting the privacy of the adjoining lot. There is also greater flexibility for house placement along this long dimension of Parcel 2 without the need for such a modification. Accordingly staff does not find that this second modification is necessary to better meet tree preservation requirements.

**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 located in the Potential Landslide Hazard area. Therefore, the clearing and grading associated with preparation of the lot must occur in a way that will limit erosion concerns and assure that the preserved trees on the site will not be disturbed.

A Preliminary Clearing and Grading Plan was not submitted with the land division application. However, the applicant did submit a Landslide Hazard Report (Exhibit A-3) that indicated compliance with applicable building codes would be sufficient to protect against erosion or slope instability during the development of the new house on Parcel 2. The applicant also provided a Tree Protection Plan (Exhibit C-1) that designates areas on the site where grading should not occur in order to protect the roots of the trees on the site that will be preserved, and an arborist report (Exhibit A-2) that further discusses construction limits on the site.

Both the applicant's geotechnical engineer and arborist recommend that the amount of grading work occurring on the site be minimized as much as possible. It is anticipated that the grading will primarily involve excavating for the foundations of the new houses and trenching for the utilities, but will not include mass grading of the site to alter the existing contours. Stormwater runoff from the lots will be appropriately managed by directing run-off from the new house on Parcel 2 through a flow through planter to the public storm sewer in SW Moss. Run-off from the existing house will be directed to a new soakage trench or drywell. These methods will assure that the runoff will not adversely impact adjacent properties (see detailed discussion of stormwater management later in this report). In addition, no clearing and grading will be permitted within the root protection zones of the trees on the site that are required to be preserved. Preserving these trees will help limit erosion by assuring that the tree roots will help to hold the soil in place. Topsoil storage and general stockpiling on the site should only occur if it will not create any additional erosion concerns as recommended by the geotechnical engineer,

As shown above the clearing and grading anticipated to occur on the site can meet the approval criteria. At the time of building permit submittal a clearing, grading and erosion control plan will be submitted to the Site Development Section of the Bureau of Development Services. Site Development will review the grading plan against the applicant's Landslide Hazard Study as well as any additional geotechnical information required at the time of permit submittal to assure that the grading will not create any erosion risks. In addition the plans will be reviewed for compliance with the applicant's tree preservation plan and arborist report. This criteria is met.

### **33.635.200 – Land Suitability**

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

The site is currently in residential use, and there is no record of any other use in the past. As indicated above, an analysis of the suitability of this site for development has been conducted by a geotechnical engineer and an engineering geologist. No specific constraints to development because of site conditions were identified by this analysis. Therefore, there are no anticipated land suitability issues and the new lots can be considered suitable for new development. This criterion is met.

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

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

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

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

**Findings:** No tracts are proposed or required for this land division, so criterion A does not apply.

**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 easement will be required (only) if the applicant proposes to serve both parcels with a single driveway spanning the shared property line:

- A Reciprocal Access Easement allowing shared use of a driveway that will straddle the proposed lot line;

As stated in Section 33.636.100 of the Zoning Code, a maintenance agreement would be required describing maintenance responsibilities for such easement described above and facilities within its area. This criterion can be met with the condition that a maintenance agreement be 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 a Reciprocal Access Easement has been recorded as document no. \_\_\_\_\_, Multnomah County Deed Records.”*

With the conditions of approval discussed above, this criterion can be met if the applicant decides to use a shared driveway.

**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 75 feet of frontage on SW Moss St. which is classified as a local service street for all modes in the Transportation System Plan. Tri-Met provides transit service approximately 750 feet from the site on SW Capitol Highway via bus 44. Parking is currently allowed on both sides of SW Moss. There is one driveway entering the site that provides access to off-street parking for the existing house.

SW Moss is improved with an 18-foot wide paved roadway within a 50-foot right of way. 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. Because none of the other frontages have been improved on this street, Portland Transportation has determined that an isolated improvement at this location would not be meaningful. If the street is to be improved, it would be more appropriate to complete the improvements as one LID project. Therefore, the applicant will be required to sign street and storm sewer waivers of remonstrance (for participation in future street and storm sewer improvements) prior to final plat approval.

**Driveway separation:** The Bureau of Transportation anticipates that the applicants will install separate driveways for each of the resulting parcels. Curb cut and driveway location must meet



requirements of Portland City Code Section 17.28. This will require that the driveway and approach to Parcel 1 be relocated to a minimum side setback distance of 8 feet from the west property line and that the driveway to Parcel 2 be relocated into the proposed flagpole. A condition of approval enforcing this requirement is included in this decision.

Alternatively the land division can be served by a single, shared driveway in which case a reciprocal access easement must be shown on the final plat and supported by a maintenance agreement

This criterion is met, with conditions that: a) the required waivers are signed prior to final plat approval and b) that either an easement be placed on the final plat supporting a shared driveway for both Parcels 1 and 2 or that the (two) new driveways comply with Driveway and Curb cut requirements of PCC Section 17.28.

**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 SW Moss Street to serve the proposed development. This main currently provides water to the existing residence through a service line that can continue to be used after the land division. See Exhibit E-3 for more details.
- The sanitary sewer standards of 33.652 have been verified. There is an existing 8" CSP public sanitary sewer located in SW Moss Street that can serve the sanitary needs of the proposed lots. Parcel 1 has an existing sewer service from that main that can remain. 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.
- Chapter 33.654 includes technical standards related to proposed public and private rights of way, including improvements within streets, pedestrian connections, common greens, and alleys. However, no new streets, pedestrian connections, common greens, or alleys are proposed or required within the land division site. The site meets the through street and pedestrian connectivity requirements of the City of Portland. This criterion is met. As a result, the remaining standards and approval criteria related to street, location, and design are met or not applicable.

**33.653.020 Stormwater Management Approval Criteria**

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

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

The City of Portland requires that stormwater from development be cleaned and disposed of in a manner that meets the requirements of the City's Stormwater Management Manual. In order to meet this approval criterion, land division proposals must demonstrate an approved method

of cleaning (water quality treatment), detention (delayed release), and an approved disposal point.

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

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

The applicant has proposed the following stormwater management methods (Exhibits A-3, A-4 and C-1) and the Bureaus have responded as follows (Exhibits E-1 and E-5):

- **Parcel 1 (the lot with the existing house):** The existing house has downspouts that drain onto the ground. Site Development has indicated that this is not acceptable and must be corrected prior to final plat approval. The applicant will be required to finalize plumbing permits prior to final plat approval for modifications to the stormwater disposal system on the existing house that will result in properly functioning gutters, downspouts, and disposal points, located outside of required setbacks.
- **Parcel 2:** Stormwater from this lot will be directed into a flow-through planter that removes pollutants and suspended solids. The water will drain from the planter to the existing storm sewer in SW Moss Street. This lot has sufficient size for an individual planter box, and the Bureau of Environmental Services has indicated that the treated water can be directed to the existing storm sewer at the frontage of the site.

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.

## 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 this lot, the applicant should take note of:

- Flag Lots-- Special setback standards apply to flag lots in the RF-R2.5 zone. Special landscape standards apply to flag lots that are 10,000 square feet or less in area in the R7-R2.5 zones (33.110.240.F).

A modification from the ten foot setback required along Parcel 2's southern property line (only) has been included in this decision. This modification, allowed per code section 33.630.400 will permit the placement of a new dwelling on Parcel 2 to be located up to three feet from its southern property line. This modification applies only to zoning requirements. Any setbacks required by the building code, or the plumbing code for stormwater facilities must continue to be met or receive an applicable code appeal.

- Accessory Structure – Structures are not allowed to remain on a proposed lot line. Therefore, in order for the proposed new lots to be approved, the detached garage that will straddle the line between proposed Parcels 1 and 2 must be removed prior to final plat. Demolition permits or a building permit to relocate this structure in conformance with all relevant building and zoning codes are required. The applicant must provide documentation prior to final plat approval that all required demolition or relocation permits have received final inspection. Similarly a smaller shed is identified on Parcel 2 behind the garage which must be removed as well. To ensure that this standard is met, a condition of approval is necessary.

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

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

- Minimum Setbacks – The existing house identified to remain on the site must meet the required Zoning Code setbacks from the proposed new lot lines. Alternatively, existing buildings must be set back from the new lot lines in conformance with an approved Adjustment or other Land Use Review decision that specifically approves alternative setbacks. The existing house will be 22/23 feet from the new property lines. 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.
- Accessory Structure – Structures are not allowed to remain on a proposed lot line. Therefore, in order for the proposed new lots to be approved, the accessory structure that straddles the line between proposed Parcels 1 and 2 and the small shed behind it must be removed or relocated prior to final plat. Demolition permits are required. The applicant must provide documentation prior to final plat approval that all required demolition/relocation permits have received final inspection. To ensure that this standard is met, a condition of approval is necessary.
- Required Off-Street Parking – In this zone, one parking space per dwelling unit is required. A parking garage provides this required parking for the existing house on Parcel 1. As a result of this land division, the garage will be demolished or remodeled. In order to ensure that parking requirements continue to be met, a 9X18' paved parking space for the existing house must be identified somewhere on Parcel 1 or constructed prior to final plat approval. Documentation, including but not limited to, final inspection of a zoning permit for this new parking space will be required prior to final plat approval.

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 addressing requirements for flag lots/ensuring adequate hydrant flow from the nearest fire hydrant or obtaining an approved Fire Bureau appeal to this requirement/documenting approved fire access to Parcel 2 or recording an Acknowledgement of Special Land Use Conditions that requires the provision of internal fire suppression sprinklers during construction on Parcel 2. These requirements are based on the technical standards of Title 31 and the Fire Code.

## CONCLUSIONS

The applicant has proposed a 2 lot partition, as shown on the attached preliminary plan (Exhibit C-1) including a modification to the southern and western property line of Parcel 2 to better meet tree preservation requirements. As discussed in this report, the relevant standards and approval criteria have been met, or can be met with conditions and a modification to the setback from Parcel 2's southern property line (only) will enhance tree preservation efforts. The primary issues identified with this proposal include tree preservation, stormwater management, demolition or relocation of the detached structures and compliance with Fire Bureau conditions. With conditions of approval that address these requirements this proposal can be approved.

## ADMINISTRATIVE DECISION

**Approval** of a Preliminary Plan for a 2-lot partition, that will result on flaglot and one standard lot illustrated by Exhibit C-1,

**Approval** of a modification reducing the flaglot setback required from the southern property line of Parcel 2 (only) from ten feet required to three feet.

These approvals are subject to the following conditions:

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

- Any buildings or accessory structures on the site at the time of the final plat application;
- Any driveways and off-street vehicle parking areas on the site at the time of the final plat application;
- The location of Parcel 1's replacement parking space
- The proposed general location of future building footprints and stormwater facilities on the vacant lot.

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

1. A Reciprocal Access Easement over portions of Parcels 1 and 2 shall be shown and labeled on the final plat if the applicant proposes to provide a single, shared driveway to serve both Parcels 1 and 2. The easement shall allow shared use of this area for all of the purposes that a driveway would be typically used for.
2. Recording blocks for any maintenance agreement as may be required in support of a Reciprocal Access Easement and any acknowledgement of special land use conditions required by the Fire Bureau. The recording block(s) shall, at a minimum, include language substantially similar to the following example:

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

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

1. The applicant shall sign street and storm sewer waivers of remonstrance (for future street and storm sewer improvements) as required by the City Engineer. Waiver forms will be provided to the applicant during the final plat review process.
2. The applicant shall meet the requirements of the Fire Bureau for ensuring adequate hydrant flow from the nearest hydrant or obtain an approved Fire Bureau appeal to this requirement.
3. The applicant must meet the requirements of the Fire Bureau for providing an adequate fire accessway for Parcel 2. Alternately, the applicant will be required to install residential sprinklers in the new house on Parcel 2. An Acknowledgement of Special Land Use Conditions describing the sprinkler requirement must be referenced on and recorded with the final plat.

**Existing Development**

4. The applicant must obtain a finalized building permit for removing or relocating the garage on Lot 2. Additionally the applicant must document the removal of the small shed behind the garage.
5. A replacement parking space shall be installed on Parcel 1 in conformance with the applicable requirements of the Portland Zoning Code. A copy of the final inspection approval for a Zoning Permit or other documentation shall be submitted, documenting that the parking space has been installed within the area to become Parcel 1. An application for

a Land Use Review to waive or modify parking requirements may be submitted at the Development Services Center. If granted, a copy of the approved Land Use Review decision must be submitted prior to final plat.

6. The applicant must meet the requirements of Site Development for the stormwater systems on the existing house to remain on Parcel 1. Specifically, the gutters and downspouts must function properly, and they must direct water to an approved disposal point that meets setback requirements from the new lot lines. The applicant must obtain finalized plumbing permits for this work prior to final plat approval. █
7. The applicant shall remove and relocate the existing driveway serving Parcel 1 to meet the Bureau of Transportation's requirement that this driveway be located a minimum of 8 feet away from (east) its western property line. A zoning permit must be obtained and finalized documenting the completion of this work. Alternatively the applicant shall provide a reciprocal access easement over portions of Parcel 1 and 2 in support of a single shared driveway serving both Parcels.

#### **Required Legal Documents**

8. A Maintenance Agreement shall be executed for any Reciprocal Access Easement area described above. The agreement shall include provisions assigning maintenance responsibilities for the easement area and any shared facilities within that area, consistent with the purpose of the easement, 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.
9. The applicant shall execute an Acknowledgement of Special Land Use conditions, requiring residential development on Parcel 2 to contain internal fire suppression sprinklers if such an agreement is required to meet Fire Bureau standards. Any such acknowledgement shall be recorded with Multnomah County, and referenced on the final plat.

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

1. Development on Lots 1 and 2 shall be in conformance with the Tree Preservation Plan (Exhibit C-1) and the applicant's arborist report (Exhibit A-2). Specifically, trees numbered 1 and 4 are required to be preserved, with the root protection zones indicated on Exhibit C-1. Encroachment into the specified root protection zones may only occur under the supervision of a certified arborist. Planning and Zoning approval of development in the root protection zones is subject to receipt of a report from an arborist, explaining that the arborist has approved of the specified methods of construction, and that the activities will be performed under his supervision.
2. The applicant must meet the addressing requirements of the Fire Bureau for Parcel 2, the flag lot.
3. If required, the applicant will be required to install residential sprinklers in the new dwelling unit on Parcel 2 to the satisfaction of the Fire Bureau. Please refer to the final plat approval report for details on whether or not this requirement applies.
4. The applicant must provide a fire accessway to the satisfaction of the Fire Bureau or the height of the new structures shall be limited to 30 feet, measured to the gutter line.

**Decision rendered by:**  **on October 23, 2008**

By authority of the Director of the Bureau of Development Services

**Decision mailed October 27, 2008**

**Staff Planner: John Cole**

**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 June 19, 2008, and was determined to be complete on September 17, 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 June 19, 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.

**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 November 10, 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. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. 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.**

#### EXHIBITS

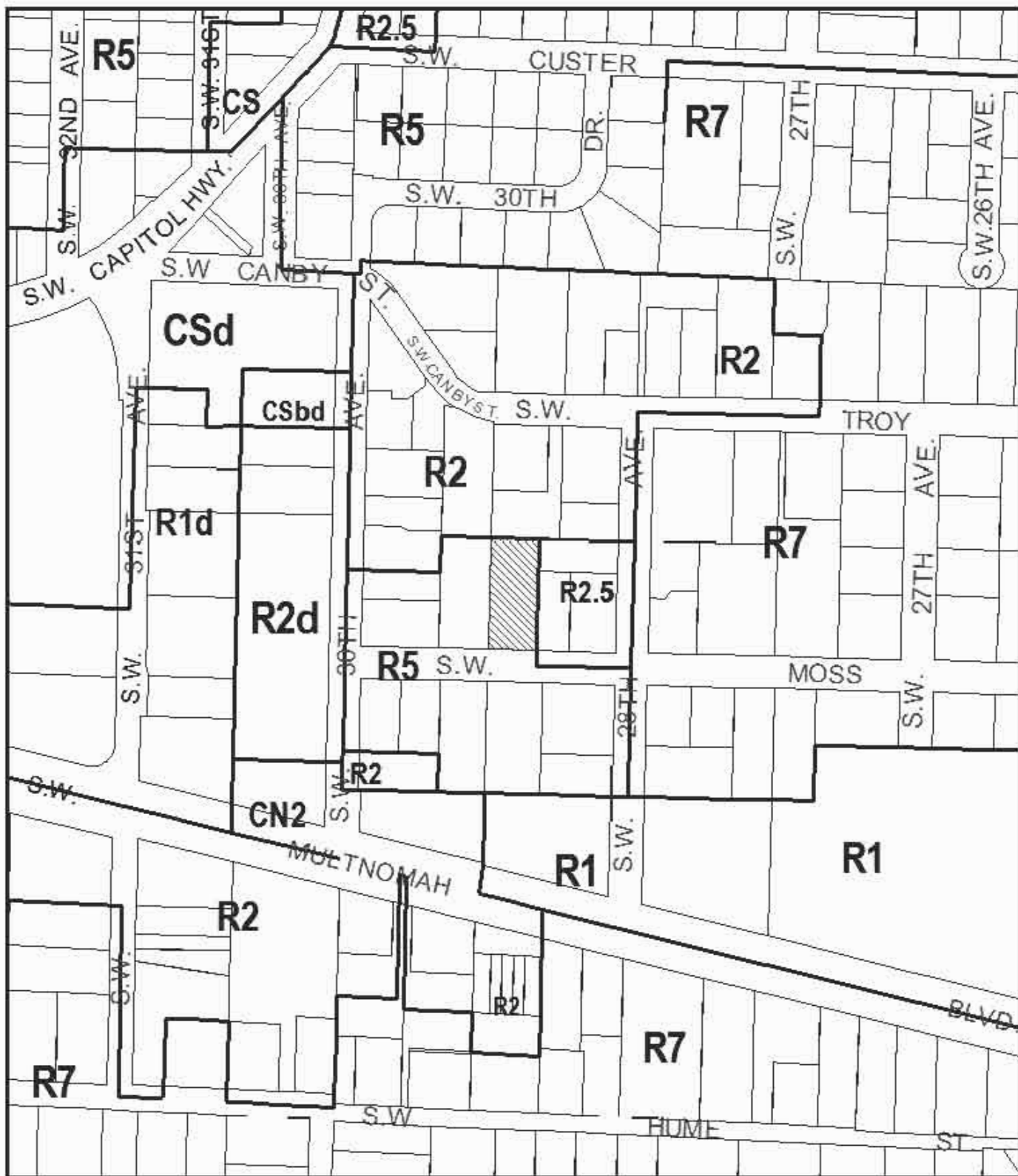
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Submittal
  - 1. Applicant narrative Including September 16, 2008 Modification request
  - 2. Arborist Report
  - 3. Landslide Hazard Study
  - 4. Supplemental Infiltration report
  - 5. Early Neighborhood Notification
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan including Tree Protection (attached)
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Bureau of Transportation Engineering and Development Review including e-mail supplement
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Site Development Review Section of BDS
  - 6. Bureau of Parks, Forestry Division
- F. Correspondence:
  - 1. E-mail from David Reines and Karmin Wilson dated 10/18/08 opposed
- 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).**

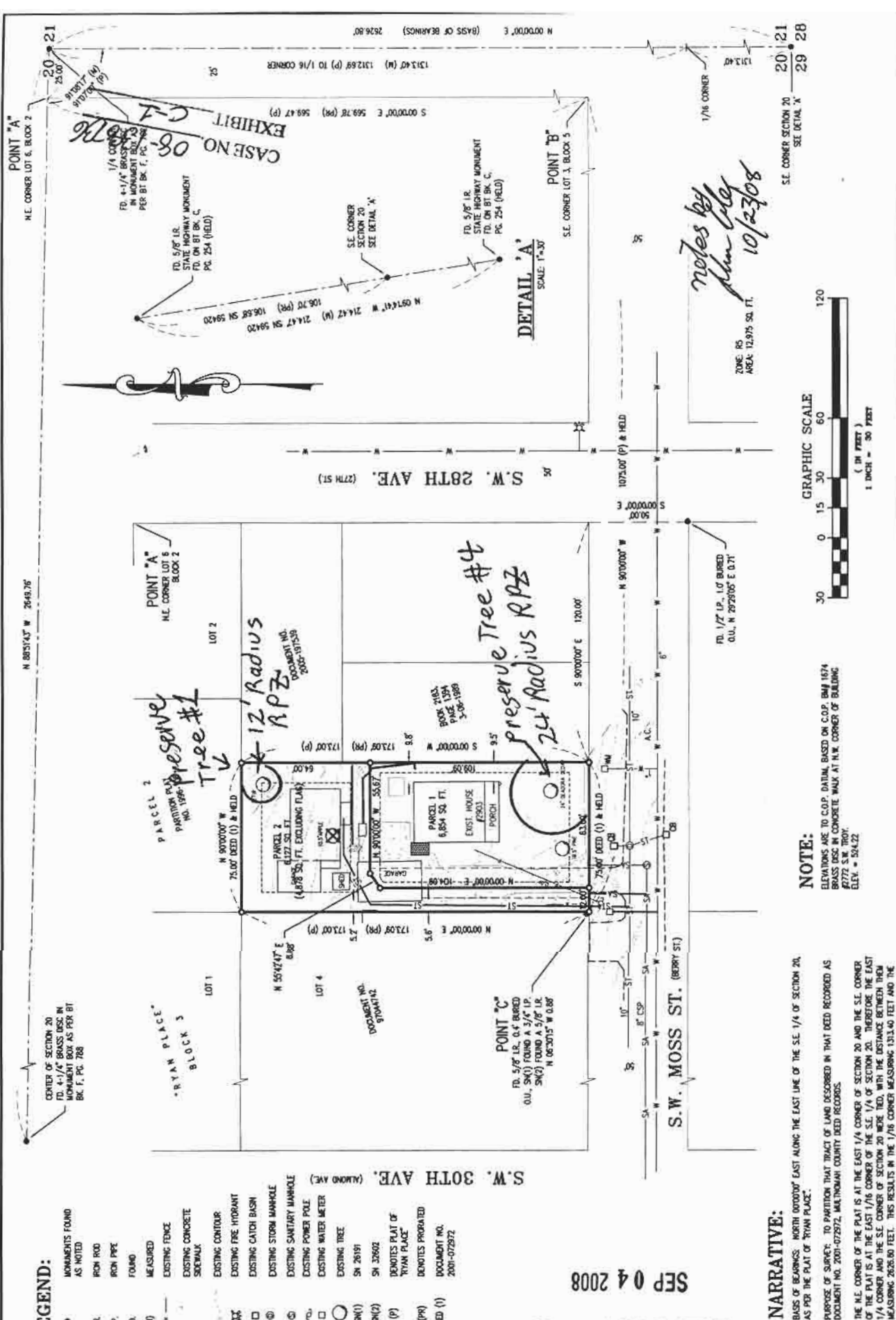


# ZONING

 Site



File No.	<u>LU 08-138736 LDP</u>
1/4 Section	<u>3826</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1S1E20DA 3300</u>
Exhibit	<u>B (Jun 20,2008)</u>



**ZTEC ENGINEERS INC.**  
3737 S.E. 8TH AVE., PORTLAND, OREGON 97202  
PH: (503) 235-8795 FAX: (503) 233-7889

REGISTERED PROFESSIONAL LAND SURVEYOR  
OREGON No. 1944  
CHRIS FISCHBORN 1944

**CLIFF ELLIS**  
w/Tree Preservation  
PRELIMINARY PLAT

LOCATED IN THE S.E. 1/4 OF SECTION 20,  
T.1S., R.1E., W.M., IN THE CITY OF PORTLAND,  
MULTNOMAH COUNTY, OREGON

JOB#: N33564-1  
DATE: 11-29-06  
SCALE: 1"=30'  
DRAWN: JHH  
CHECK: COF  
FILE: N33564PRE  
PLOT: 8-26-08

**DETAIL 'A'**  
SCALE: 1"=30'

**DETAIL 'B'**  
SCALE: 1"=30'

**DETAIL 'C'**  
SCALE: 1"=30'

GRAPHIC SCALE  
1 INCH = 30 FEET

ZONE: R5  
AREA: 12,875 SQ. FT.

notes by  
plan file  
10/23/08