



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

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**Date:** October 29, 2008  
**To:** Interested Person  
**From:** Mark Bello, Land Use Services  
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## **NOTICE OF A TYPE I DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD**

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it to the Oregon Land Use Board of Appeals (LUBA) at 550 Capitol St. NE, Suite 235, Salem, OR 97301. The phone number for LUBA is 1-503-373-1265. Information on how to appeal this decision is listed at the end of this notice.

### **CASE FILE NUMBER: LU 07-167968 LDP**

#### **GENERAL INFORMATION**

**Applicant:** Wayne J Sullivan, Ray Sullivan  
3655 SE Van Water St  
Portland OR 97222

**Site Address:** 3655 SE VAN WATERS ST  
**Legal Description:** Tax Lot 1301, N.E. ¼ Section 25, T.1S, R.1E, W. M.  
**Tax Account No.:** C234212  
**State ID No.:** 11E25AA01301  
**Quarter Section:** 3934

**Neighborhood:** Ardenwald-Johnson Creek, contact Scott Spears at 971-275-3133.  
**District Coalition:** Southeast Uplift, contact Gary Berger at 503-232-0010.

**Zoning:** R7 Residential 7,000

**Case Type:** LDP Land Division/Partition  
**Procedure:** Type I, an administrative decision with appeal to the Oregon Land Use Board of Appeals (LUBA).

#### **Proposal:**

The applicant proposes to partition this interior lot on the north side of Van Waters Street at Van Waters Court, in the City of Portland and in Clackamas County.

The site has approximately 102 feet of frontage on Van Waters. The applicant proposes to create a flag lot with a 19.9-foot access drive or "pole". The existing residence will remain on proposed parcel 1 (7,242 square feet in area). A new building site will be created on the flag lot, which is proposed parcel 2 (7,013-sq. ft.)

The arborist report notes eight trees on site. Only two trees are not exempt from tree preservation requirements. The applicant proposes to retain a 42.5-inch Deodar Cedar.

This partition is reviewed through a Type I land use review because: (1) the site is in a residential zone; (2) fewer than four lots are proposed; (3) none of the lots, utilities, or services are proposed within a Potential Landslide Hazard or Flood Hazard Area, and; (4) no other concurrent land use reviews (such as an Adjustment, Design Review, or Environmental Review) are requested or required (see 33.660.110).

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

**Relevant Approval Criteria:**

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

## ANALYSIS

**Site and Vicinity:** The site is located in Clackamas County within the boundary of the City of Portland on SE Van Waters Street. SE Van Waters Street is a dead-end, local service street developed within an area of relatively large, irregular blocks. Development in the surrounding neighborhood is primarily detached single-family homes.

The site is relatively flat and currently developed with a 1-story single family residence. There are several trees located to the rear of the existing house along the property lines, and a large Douglas Fir tree is located within the City right-of-way along SE Van Waters Street.

**Zoning:** The R7 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 February 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:** The Ardenwald-Johnson Creek Neighborhood has written in opposition to this proposal. The neighborhood comments that these developments "rarely benefit the fabric of the community as a whole" and "presents the landowner with a one time source of income while alienating the neighborhood with no guarantee of quality construction or ownership of the new development." Also, an adjacent property owner expressed concerns over increased density and lot size, tree removal, stormwater management, the applicant placing Parcel 2 on the market prior to approval of the proposal and the review process.

**Staff Response:** *The R7 zone allows density of approximately one dwelling per 7,000 square feet with a minimum lot size of 4,200 square feet. The proposed lot sizes of 7,013 square feet and 7,242 square feet meet these lot size and density requirements. The Zoning Code allows flag lots in limited situations, allowing land to be divided per the density of the underlying zone on lots that cannot otherwise meet the lot dimension standards. In this situation, the site is more than twice the required density (1 unit per 7,000 square feet) and the existing house is located too close to the west property line to create a standard lot.*

*At the time of development, the applicant will be required to meet the setback and landscaping standards for flag lots which are intended to provide separation and privacy for new*

development and adjacent lots. Additionally, the applicant has proposed to preserve the large Deodar Cedar tree located in the northeast corner of Parcel 2. The location of the tree will limit construction in the area adjacent to the concerned neighbor's property and will also provide additional screening.

The applicant proposal has been reviewed and found acceptable by both the City's Site Development section of the Bureau of Development Services and the Bureau of Environmental Services. Please refer to the discussion concerning approval criterion L, Services and Utilities, starting on page 7. As recommended by these bureaus conditions of approval are attached to this decision.

The Zoning Code does not specify when or how an applicant can advertise the property. However, the lot cannot be legally sold until the applicant has received approval of the preliminary plat review and the final plat review and the lot has been recorded with the county.

## 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.

| Criterion | Code Chapter | Topic                                     | Applicability Findings   |
|-----------|--------------|---|--|
| A         | 33.610       | Lots                                      | <b>Applicable - See findings below</b>   |
| B         | 33.630       | Trees                                     | <b>Applicable - See findings below.</b>  |
| C         | 33.631       | Flood Hazard Area                         | Not applicable - The site is not within the flood hazard area.   |
| D         | 33.632       | Potential Landslide Hazard Area           | Not applicable - The site is not within the potential landslide hazard area.   |
| E         | 33.633       | Phased Land Division or Staged Final Plat | Not applicable - A phased land division or staged final plat has not been proposed.  |
| F         | 33.634       | Recreation Area                           | Not applicable - This is not required where the proposed density is less than 40 units.  |
| G         | 33.635 .100  | Clearing and Grading                      | <b>Applicable - See findings below.</b>  |
| G         | 33.635 .200  | Land Suitability                          | <b>Applicable - See findings below.</b>  |
| H         | 33.636       | Tracts and Easements                      | Not applicable - No tracts or easements have been proposed or will be required.  |
| 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                    | <b>Applicable - See findings below</b>   |

| Criterion | Code Chapter       | Topic                     | Applicability Findings                 |
|-----------|--------------------|---------------------------|--|
| L         | 33.651 -<br>33.654 | Services and<br>Utilities | <b>Applicable - See findings below</b> |

**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, and the site is not within the environmental zone, potential landslide hazard area, or flood hazard area. Therefore, the maximum and minimum density for this site is as follows:

Minimum =  $(14,255 \text{ square feet} * .80) \div 7,000 \text{ square feet} = 1.62$  (which rounds up to a minimum of 2 lots, per 33.930.020.A)

Maximum =  $14,255 \text{ square feet} \div 7,000 \text{ square feet} = 2.03$  (which rounds down to a maximum of 2 lots, per 33.930.020.B)

If the minimum required density is equal to or larger than the maximum allowed density, then the minimum density is automatically reduced to one less than the maximum. Therefore in this case the minimum density is reduced to 1.

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 is shown in the following table (this information is found in Table 610-2 of the Zoning Code):

|                          | <b>R7 Zone Requirement</b> | <b>Proposed Parcel 1</b> | <b>Proposed Parcel 2</b> |
|--------------------------|----------------------------|--------------------------|--------------------------|
| Minimum Lot Area         | 4,200 sq. ft.              | 7,242 sq. ft.            | 7,013 sq. ft.            |
| Maximum Lot Area         | 12,000 sq. ft.             | ft.                      | ft.                      |
| Minimum Lot Width*       | 40 ft.                     | 83 ft.                   | --                       |
| Minimum Lot Depth        | 55 ft.                     | 91 ft.                   | --                       |
| Minimum Front Lot Line   | 30 ft.                     | 83 ft.                   | --                       |
| Minimum Flag Lot Width** | 40 ft.                     | --                       | 96 ft.                   |
| Minimum Flag Lot Depth** | 40 ft.                     | --                       | 59 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 very 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 is 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 24 feet from the west property line and 12 feet from the east property line, which would preclude the creation of a lot that would meet the minimum width standard of the R7 zone of 40 feet. Two parcels 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 19-foot wide "pole" that connects to a street, 7-feet wider than the 12 feet required, and as shown above, it 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-3). 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:

| <b>Tree #</b> | <b>Species</b>         | <b>Diameter (inches)</b> | <b>Significant? (On Table 630-1)</b> | <b>Exempt? (per 33.630.030)</b> | <b>To be retained?</b> | <b>RPZ (Root Protection Zone)</b> |
|---------------|------------------------|--------------------------|--------------------------------------|---------------------------------|------------------------|-----------------------------------|
| 1             | Douglas Fir*           | 24                       | Yes                                  | Yes                             | No                     | --                                |
| 2             | Cypress                | 7.2                      | No                                   | No                              | No                     | --                                |
| 3             | Tree-of-Heaven         | 11                       | No                                   | Yes                             | No                     | --                                |
| 4             | Cypress 3-stem         | 11                       | No                                   | Yes                             | No                     | --                                |
| 5             | Cypress 4-stem         | 14.8                     | No                                   | Yes                             | No                     | --                                |
| 6             | European Weeping Birch | 15.9                     | No                                   | Yes                             | No                     | --                                |
| 7             | Deodar Cedar           | 42.5                     | Yes                                  | No                              | Yes                    | 20 ft.                            |
| 8             | English Walnut         | 9.5                      | No                                   | Yes                             | No                     | --                                |

\*This tree is within the SE Van Waters Street right-of-way, and therefore is exempt from the Tree Preservation Plan. However, Urban Forestry has indicated that this tree should be preserved during sidewalk construction.

The total non-exempt tree diameter on the site is 49.7 inches. The applicant proposes to preserve tree number 7 which comprises 42.5 inches of diameter, or 85 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. The applicant has provided a Tree Preservation Plan showing the preserved trees and the required root protection zones (Exhibit C-2).

**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 primarily flat, and is not located within the Potential Landslide Hazard Area. Therefore, no significant clearing or grading will be required on the site to make the new lots developable. In addition, there are no trees required to be preserved in the areas where new development on the site is anticipated. This criterion is met.

**33.635.200 – Land Suitability**

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

The site is currently in residential use, and there is no record of any other use in the past. City records indicate that stormwater drains from the existing house connect to two drywells located in the area of the proposed driveway for Parcel 2 (see detailed discussion of stormwater management below). Prior to final plat, the applicant must meet the requirements of the Site Development Section of the Bureau of Development Services for the decommissioning of this facility. With this condition, the new lots can be considered suitable for new development, and this criterion is met.

**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 102 feet of frontage on SE Van Waters Street. SE Van Waters Street is classified as a local service street for all modes in the Transportation Element of the Comprehensive Plan. Tri-Met provides transit service approximately 280 feet from the site on SE Johnson Creek Boulevard via bus 75. Parking is currently allowed on SE Van Waters Street on both sides. There is one driveway entering the site that provides access to off-street parking for the existing house.

SE Van Waters Street is improved with a paved roadway and curbs on both sides. 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 must be made in order to ensure that safe pedestrian travel is possible within the proposed development. The Office of Transportation will require a 4-foot wide planter strip and a 5-foot wide sidewalk with a 6-inch wide buffer zone between the property line and the sidewalk. Frontage improvements for Parcel 1 must be completed prior to final plat approval. Improvements for Parcel 2 can be completed at the time of site development as a condition of the building permit. With those improvements, one additional dwelling 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 sidewalk improvements are made.

**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. Water is available to serve the proposed development from an existing 6-inch water main in SE Van Waters Street. Lot 1 has an existing water service from that main. See Exhibit E-3 for more details.

- The sanitary sewer standards of 33.652 have been verified. There is an existing 8-inch city-owned, sanitary-only sewer located in SE Van Waters Street that can serve the sanitary needs of the proposed lots. Lot 1 has an existing sewer service from that main. See Exhibit E-1 for more details.
- The technical standards of Chapter 33.653 related to stormwater management have been verified. The findings below for the Stormwater Management Approval Criteria of 33.653.020 incorporate a discussion of how the technical standards have been satisfied by the applicant's stormwater proposal.

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

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

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

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

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

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

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

- **Public Street Improvements:** As a condition of this land use approval, the Office of Transportation requires the applicant to improve the frontage of the site to City standards (discussed earlier in this report). 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 (the lot with the existing house):** At the time of application, the existing house had downspouts that drained into underground pipes. Site Development noted in an original review of the proposal (February 25, 2008) that the downspouts were connected to two drywells located west of the existing house in the area where the new driveway for Parcel 2 is proposed. In response, two permits were pulled for resolving issues. Drywells



have been decommissioned and gutter downspouts will drain into the yard utilizing splash blocks. Site Development has revised its recommendation to approval with conditions that are part of this decision.

- **Lot 2:** Stormwater from this lot will be directed to an on-site private drywell. The proposed drywell will accept roof water from the residence and driveway. The proposed location for the drywell is approximately 30 feet from the south property line. Site Development has indicated conceptual approval. To ensure that the size and setback requirements of the Stormwater Management Manual can be met, specific information regarding the existing building locations, future building footprints and the location for stormwater facilities shall be provided on the supplemental site plan prior to final plat approval by BES.

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                               | <b>Applicable - See findings below</b>  |
| 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.  |
| 33.654.120.C.1      | Width of the street right-of-way   | Not applicable - No streets are proposed.   |
| 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  | <b>Applicable - See findings below.</b>   |
| 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 located on SE Van Waters street, which is a dead end street. The property is situated approximately 200 feet from the corner of SE Van Waters Street and SE 36<sup>th</sup> Avenue to the west and approximately 720 feet from the terminus of SE Van Waters Street to the east. There are no other north-south through streets between along SE Van Waters Street. If the distance between these existing streets is evaluated against the optimum spacing requirement of 530 feet, one can conclude that there should be a north-south through street along SE Van Waters Street. However, this site is not a practical location for a north-south connection as it is only 200 feet east of SE 36<sup>th</sup> Avenue.

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 SE Van Waters Street. This is a straight-line connection on which users will be able to see the ending of the pedestrian route from the entrance.

For the reasons described above, this criterion is met.

#### **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:** No new streets are proposed. This criterion is not applicable.

## **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, and 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)

**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 R7 zone (Please see section on Other Technical Standards for Building Code standards.)

In this case, there is one Zoning Code standard that relates to existing development on the site:

- Minimum Setbacks – The existing house identified to remain on the site must meet the required Zoning Code setbacks from the proposed new lot lines. Alternatively, existing buildings must be set back from the new lot lines in conformance with an approved Adjustment or other Land Use Review decision that specifically approves alternative setbacks. The existing house will be 6.2 feet from the new property line along the flagpole and 30 feet from the new rear property line. The R7 zone requires a minimum setback of 5 feet from side and rear setbacks, with the exception of a 3-foot setback along the flagpole. 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.

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.

| <b>Bureau</b>          | <b>Code Authority</b>                                   | <b>Topic</b>   | <b>Contact Information</b>  |
|------------------------|---|--|---|
| Water Works            | Title 21  | Water availability   | 503-823-7404<br><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<br>Stormwater Management  | 503-823-7740<br><a href="http://www.bes.ci.portland.or.us/">http://www.bes.ci.portland.or.us/</a>     |
| Fire Bureau            | Title 31<br>Policy B-1                                  | Emergency Access   | 503-823-3700<br><a href="http://www.fire.ci.portland.or.us/">http://www.fire.ci.portland.or.us/</a>   |
| Transportation         | Title 17,<br>Transportation System Plan                 | Design of public street  | 503-823-5185<br><a href="http://www.trans.ci.portland.or.us/">http://www.trans.ci.portland.or.us/</a> |
| Development Services   | Titles 24 –27,<br>Admin Rules for Private Rights of Way | Building Code,<br>Erosion Control,<br>Flood plain, Site Development &<br>Private Streets | 503-823-7300<br><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, driveway surfacing, access and turning radius. These requirements are based on the technical standards of Title 31 and Fire Bureau Policy B-1.
- The applicant must meet the requirements of Urban Forestry for street tree planting in the new planter strip adjacent to Parcel 1 prior to final plat approval. Also, Urban Forestry has stated that the Douglas Fir tree located in the city right-of-way must be protected during sidewalk construction. These requirements are based on the standards of Title 20.

## **CONCLUSIONS**

The applicant has proposed a 2-lot partition, as shown on the attached preliminary plan (Exhibit C-1). As discussed in this report, the relevant standards and approval criteria have been met, or can be met with conditions. The primary issues identified with this proposal are:

- Tree Preservation, on-site and off
- Sidewalk improvement requirements
- Disconnecting the house from the existing drywells

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 in one standard lot and one flag lot, as illustrated with Exhibit C-1, subject to the following conditions:**

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

- Any buildings or accessory structures on the site at the time of the final plat application;
- Any driveways and off-street vehicle parking areas on the site at the time of the final plat application;
- Location and 20 ft. root protection zone area of Tree #7, Deodar Cedar;
- The proposed general location of future building footprints, setbacks, and stormwater facilities for each of the vacant lots.
- Any other information specifically noted in the conditions listed below.

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

**Streets**

1. The applicant shall meet the requirements of the City Engineer and the City Forester for right-of-way improvements along the frontage of SE Van Waters Street. 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. The improvements along the frontage of Parcel 1, where the existing house will be retained, must be constructed prior to final plat approval. The improvements along the frontage of Parcel 2 may be constructed with new development on the lot.

**Existing Development**

2. The applicant must meet the requirements of Site Development for the stormwater systems on the existing house to remain on Lot 1. Prior to final plat approval, the applicant must request an inspection by Site development to confirm that downspouts that drain to the ground have been redirected to discharge to splash blocks that drain to vegetated areas at least 5 feet from property lines and 10 feet from structures on adjacent properties, or to an approved subsurface stormwater system. If a plumbing permit is required to install a stormwater retrofit system, then the permit must be finalized prior to final plat approval.
3. The applicant must plant street trees in the planter strip on SE Van Waters Street adjacent to parcel 1. Street trees will be chosen from the City's approved street tree list for the 4-foot planting strip. Tree size requirements for residential sites are to be 2-inch caliper. The applicant must contact Urban Forestry at 503-823-4018 prior to selecting trees to discuss the species of trees that are permitted and to obtain the planting permit. Urban Forestry must inspect and approve the newly planted trees prior to final plat approval.

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

1. Development on Lot 2 shall be in conformance with the Tree Preservation Plan (Exhibit C-2) and the applicant's arborist report (Exhibit A-2). Specifically, tree number 7 is required to be preserved, with the root protection zones indicated on Exhibit C-2. Encroachment into the specified root protection zones may only occur under the supervision of a certified arborist. Planning and Zoning approval of development in the root protection zones is subject to receipt of a report from an arborist, explaining that the arborist has approved of the specified methods of construction, and that the activities will be performed under his supervision.
2. The applicant must meet the addressing and access requirements of the Fire Bureau for Parcel 2, the flag lot.

Decision rendered by:  on October 27, 2008  
By authority of the Director of the Bureau of Development Services

**Decision mailed October 29, 2008**

**Staff Planner: Mark Bello**

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

**Procedural Information.** The application for this land use review was submitted on October 8, 2007, and was determined to be complete on February 14, 2008.

*Zoning Code Section 33.700.080* states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on October 8, 2007.

*ORS 227.178* states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period.

**Some of the information contained in this report was provided by the applicant.**

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

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

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

**This decision, and any conditions associated with it, is final.** It may be appealed to the Oregon Land Use Board of Appeals (LUBA), within 21 days of the date the decision is mailed, as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that a petitioner at LUBA must have submitted written testimony during the comment period for this land use review. You may call LUBA at 1-503-373-1265 for further information on filing an appeal.

The file and all evidence on this case are available for your review by appointment. Please contact the receptionist at 503-823-7967 to schedule an appointment. Copies of all information in the file can be obtained for a fee equal to the cost for such services. You may also find additional information about the City of Portland and City Bureaus, as well as a

digital copy of the Portland Zoning Code, by visiting the City's homepage on the Internet at [www.portlandonline.com](http://www.portlandonline.com).

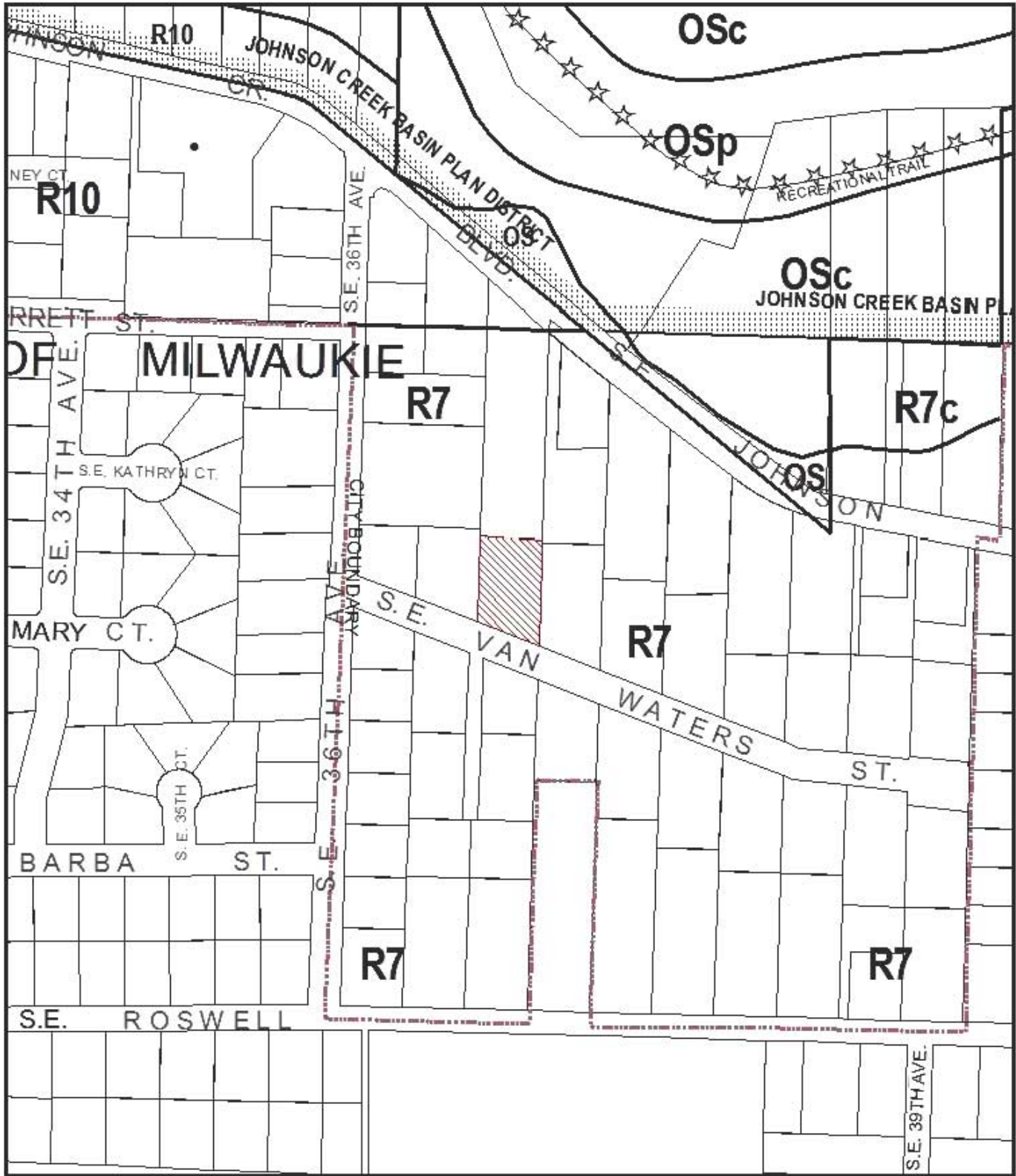
**Recording the land division.** The final land division plat **must** be submitted to the City **within three years** of the date of the City's final approval of the preliminary plan. This final plat must be recorded with the County Recorder and Assessors Office after it is signed by the Planning Director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

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Submittal
  - 1. Applicant's Narrative
  - 2. Stormwater Narrative
  - 3. Arborist Report
  - 4. Site Development Plan Narrative
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Preliminary Plan (attached)
  - 2. Tree Preservation Plan (attached)
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Bureau of Transportation Engineering and Development Review
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Site Development Review Section of BDS (5.1, February 23, 2008 and 5.2 October 20, 2008)
  - 6. Bureau of Parks, Forestry Division
  - 7. Life Safety
- F. Correspondence:
  - 1. Diane and Samuel Kerns, March 15, 2008: concerns regarding lot size and density, privacy, tree preservation, tree removal, stormwater drainage.
  - 2. Scott Spears, Ardenwald-Johnson Creek Neighborhood, March 20, 2008: concerns regarding neighborhood fabric, quality of development.
- G. Other:
  - 1. Original LU Application
  - 2. Site History Research
  - 3. 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. LU 07-167968 LDP  
 1/4 Section 3934  
 Scale 1 inch = 200 feet  
 State Id 11E25AA01301  
 Exhibit B (Oct 24, 2007)



Preliminary Plan

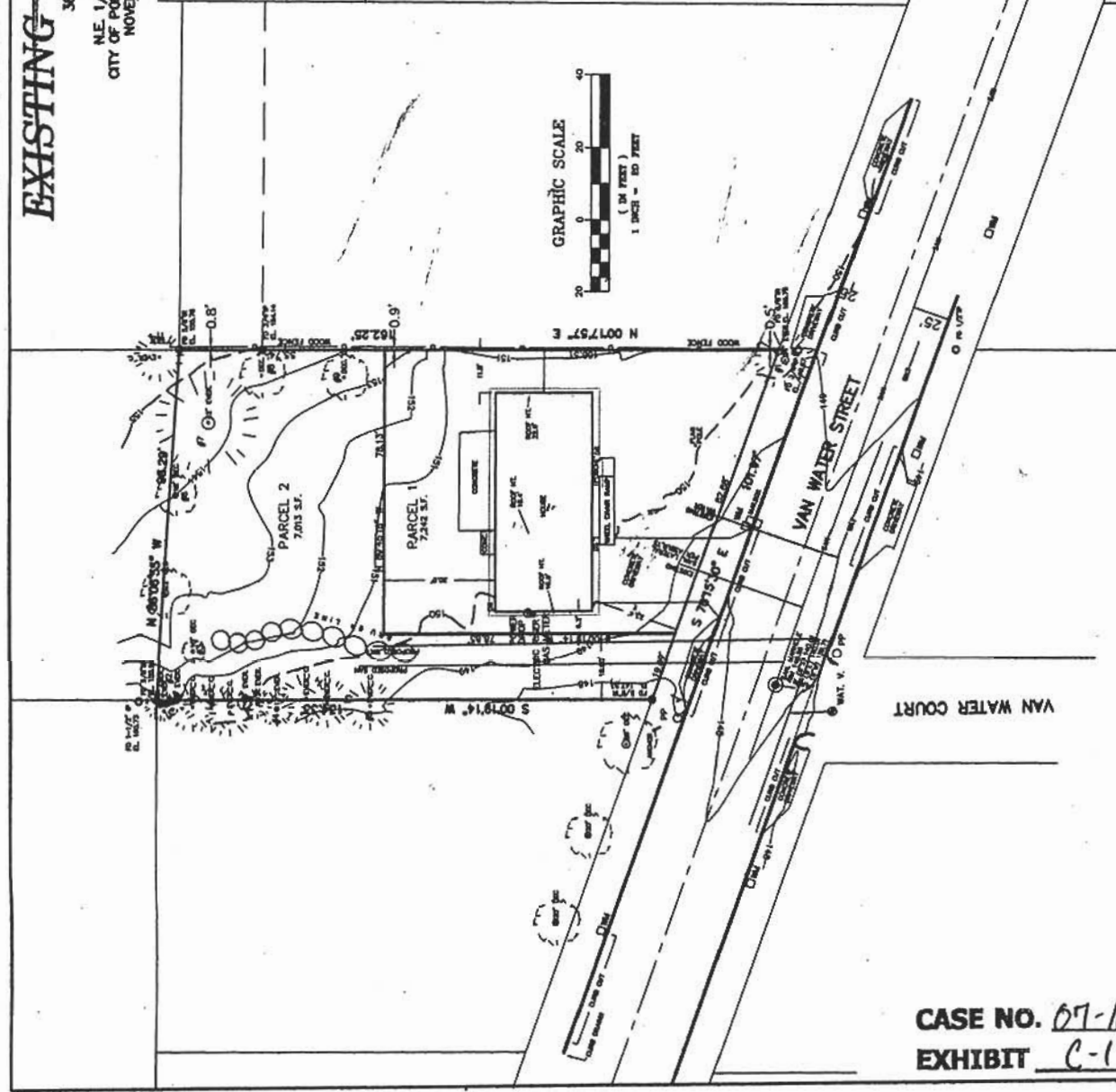
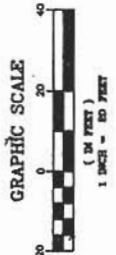
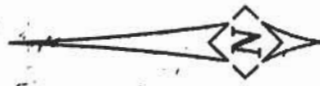
# EXISTING CONDITIONS MAP

3655 SE VAN WATERS STREET  
TAX LOT 1301  
NE 1/4 SECTION 25, T.1S., R.1E., W.M.,  
CITY OF PORTLAND, CLATSOP COUNTY, OREGON  
NOVEMBER 8, 2007 SCALE 1"=20'

--- METRIC CONTROL FROM CITY OF PORTLAND RECORD MAP NO. 2554 LOCATED AT 23RD AVENUE AND SHREVE STREET WITH AN ELEVATION OF 147.254

LEGGING:  
WM = WATER METER  
DM = DOWNSPOUT  
CS = CATCHBASIN  
CO = CLEANOUT

SANITARY EXISTING HOUSE CONNECTS SANITARY LINE IN PARCEL 2 TO EXISTING WATER LATERAL. PROPOSED PARCEL 2 TO CONNECT WITH NEW SANITARY LATERAL.  
WATER EXISTING HOUSE CONNECTS WATER LINE IN VAN WATERS STREET WITH EXISTING WATER LATERAL. PROPOSED PARCEL 2 TO CONNECT WITH NEW WATER LATERAL.  
STORMWATER WATER TO DRAIN TO VAN WATERS STREET WITH CURB DOWNS USED FOR MANAGEMENT OF STORMWATER.



SKETCHED ON:  
REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

OREGON  
NO. 2700  
MARC G. SPOFFORD III  
MADE 06/27/07

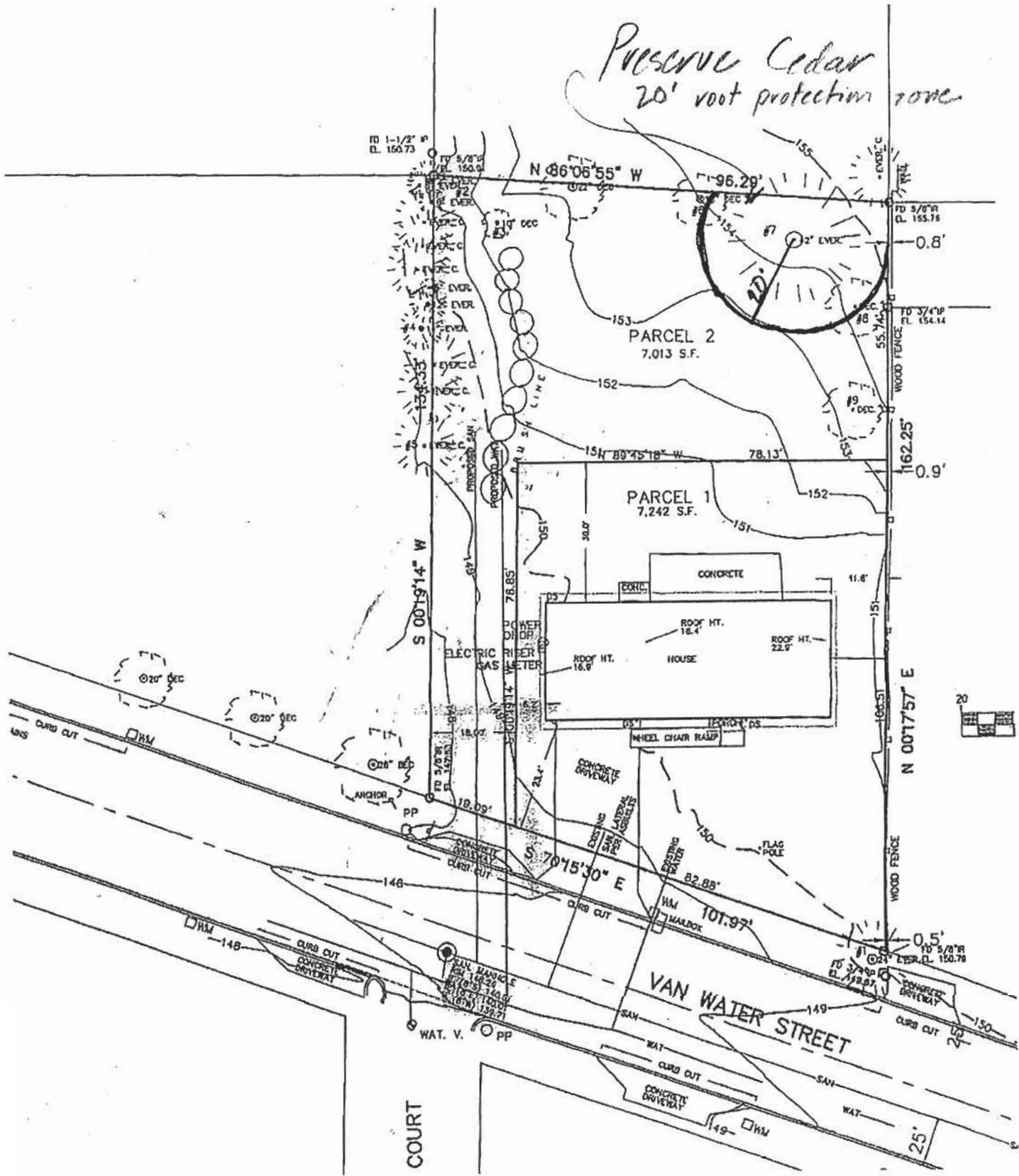
VALID THROUGH DECEMBER 31, 2007



Centerline Concepts Inc.  
700 MULALLA AVENUE, OREGON CITY, OREGON 97045  
503 850-0188 FAX 503 850-0188  
DRAWN BY: JGCS CHECKED BY: MCM ACCOUNT #150-5584  
PROJECT: 07-1167968

CASE NO. 07-1167968  
EXHIBIT C-1

Preserve Cedar  
20' root protection zone



# TREE PRESERVATION PLAN

CASE NO. 07-167968  
EXHIBIT C-2