



City of Portland
Bureau of Development Services
Land Use Services Division

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Date: January 8, 2009
To: Interested Person
From: Rachael Hoy, Land Use Services
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NOTICE OF A TYPE I DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

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

CASE FILE NUMBER: LU 08-138886 LDP

GENERAL INFORMATION

Applicant: Bogdan Popescu,
Bmp Design Llc
17701 NE 24th St
Vancouver, Wa 98684

Owner: Vasile Procopoi
3227 SE 118th Ave
Portland, OR 97266-1607

Site Address: 3227 SE 118TH AVE

Legal Description: LOT 14, NEELS TR 2
Tax Account No.: R598900540
State ID No.: 1S2E10AD 11600 **Quarter Section:** 3342
Neighborhood: Powellhurst-Gilbert, contact John McDonald at 503-753-4226.
Business District: Midway, contact Bill Dayton at 503-252-2017.
District Coalition: East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550.

Plan District: Johnson Creek Basin
Zoning: R2.5a – Single Family Residential 2,500 with an “a” Alternative Design Density Overlay.

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

Proposal:
Applicant is proposing to divide the 14,775 square foot site to create two parcels. The existing house will be retained on Parcel 1(6,351 square feet). Parcel 2 will be 8,424 square feet and will be a flag lot available for development consistent with R2.5a zoning district standards. Flag Lot standards (33.110.240.F) apply.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are:

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

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

ANALYSIS

Site and Vicinity: The site is relatively flat. There is an existing house on the property to remain. The surrounding neighborhood consists of one and two story single family homes and stands of mature Douglas Fir trees along SE 118th and SE Powell Blvd.

Zoning: The R2.5 designation is one of the City's single-dwelling zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing. The "a" overlay is intended to allow increased density that meets design compatibility requirements. It focuses development on vacant sites, preserves existing housing stock, and encourages new development that is compatible with the surrounding residential neighborhood. The 'a' overlay is not being used as part of this proposal.

Land Use History: City records indicate that one prior land use review (LU 05-116046 LDS) received preliminary approval of a 4 lot subdivision and a private street. The applicant requested to withdraw the case at the final plat stage.

Agency and Neighborhood Review: A Notice of Proposal in your Neighborhood was mailed on July 2, 2008.

- 1. Agency Review:** Several Bureaus and agencies have responded to this proposal. Please see Exhibits E for details. The comments are addressed under the appropriate criteria for review of the proposal.
- 2. Neighborhood Review:** No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

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

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

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

Criterion	Code Chapter	Topic	Applicability Findings
A	33.611	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.

Criterion	Code Chapter	Topic	Applicability Findings
D	33.632	Potential Landslide Hazard Area	Not applicable - The site is not within the potential landslide hazard area.
E	33.633	Phased Land Division or Staged Final Plat	Not applicable - A phased land division or staged final plat has not been proposed.
F	33.634	Recreation Area	Not applicable - This is not required where the proposed density is less than 40 units.
G	33.635 .100	Clearing and Grading	Applicable - See findings below.
G	33.635 .200	Land Suitability	Applicable - See findings below.
H	33.636	Tracts and Easements	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	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 33.611 contains the density and lot standards applicable in the R2.5 zone. 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 = (14,775 square feet * .80) ÷ 5,000 square feet = 2.3 (which rounds down to a minimum of 2 lots, per 33.930.020.A)

Maximum = 14,775 square feet ÷ 2,500 square feet = 5.91 (which rounds up to a maximum of 6 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 is shown in the following table (this information is found in Chapter 33.611 of the Zoning Code):

	R2.5 Zone Requirement	Proposed Parcel 1	Proposed Parcel 2
Minimum Lot Area	1,600 sq. ft.	6,351 sq. ft.***	8,424 sq. ft.***
Maximum Lot Area	NA		
Minimum Lot Width*	36 ft.	71.41 ft	
Minimum Lot Depth	40 ft.	82.72 ft	
Minimum Front Lot Line	30 ft.	71.41 ft	24 ft
Minimum Flag Lot Width**	40 ft.		101 ft
Minimum Flag Lot Depth**	40 ft.		60 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.

***The Department of Transportation is requiring a 5-foot dedication along SE 118th Avenue. Parcel 1 will become 5,999.95 sq. ft and Parcel 2 will become 8,304 square feet after the dedication is taken.

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 38.5 feet from the southern property line and 5 feet from the northern property line, which would preclude the creation of a lot that would meet the minimum width standard in the R2.5 zone of 36 feet, plus a 5 foot setback. 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)
2	Douglas fir	32 in.	Yes	No	Yes	24 ft.
3	Douglas fir	34	Yes	No	No	
4	Pacific dogwood	16	No	Yes	No	
5	Western catalpa	15	Yes	No	No	
6	Goldenchain	7	No	Yes	No	
7	Western red cedar	19	Yes	Yes	No	
8	Bird cherry	7	No	Yes	No	
9	Douglas fir	12	Yes	No	No	

The total non-exempt tree diameter on the site is 93 inches. The applicant proposes to preserve tree #2, which comprise of 32 inches of diameter, or 34 percent of the total non-exempt tree diameter. This proposal complies with Option 2 of the tree preservation standards, which requires at least 50 percent of the significant trees on the site and at least 30 percent of the total tree diameter on the site be preserved. The applicant has provided a Tree Preservation Plan showing the preserved trees and the required root protection zones (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).

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

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

33.635.100 – Clearing and Grading

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

Findings: The regulations of Chapter 33.635 ensure that the proposed clearing and grading is reasonable given the infrastructure needs, site conditions, tree preservation requirements, and limit the impacts of erosion and sedimentation to help protect water quality and aquatic habitat.

In this case the site is relatively flat as shown on Exhibit C.2, 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. The tree to be preserved is located on parcel 1, with the existing house. The root protection zone for this tree is 24 ft as identified on the Tree Preservation Plan (Exhibit C.1) and the Clearing and Grading plan (Exhibit C.2). 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.

Findings: The site is currently in residential use, and there is no record of any other use in the past. As indicated above, the site is relatively flat and contains no known geological hazards. Therefore, there are no anticipated land suitability issues and the new lots can be considered suitable for new development. This criterion is met.

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

33.636.100 Requirements for Tracts and Easements

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

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

Findings: 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 easements are proposed and/or required for this land division:

- A Private Sanitary Sewer Easement may be required across the relevant portions of Parcel 2, for a sanitary sewer lateral connection that serves Parcel 1. The sewer lateral for the existing house shown on the site plan does not match the location shown on permit records for building permit 02-113176 RS and associated plumbing records. Prior to final plat approval, the applicant will need to identify the correct location by using a metal tracer wire detection, a video sewer scope or by an equivalent method. The correct location must be shown on a supplemental survey. If the sewer line crosses the new property line then it must be placed in an easement, or the applicant can obtain and have finalized a plumbing permit to cap and relocate the sewer line prior to final plat approval.

As stated in Section 33.636.100 of the Zoning Code, a maintenance agreement will be required describing maintenance responsibilities for the easement described above and facilities within those areas. This criterion can be met with the condition that a maintenance agreement is prepared and recorded with the final plat. In addition, the plat must reference the recorded maintenance agreement(s) with a recording block substantially similar to the following example:

“A Declaration of Maintenance agreement for a private sanitary sewer easement has been recorded as document no. _____, Multnomah County Deed Records.”

With the conditions of approval discussed above, this criterion is met.

K. Transportation impacts. The approval criteria of Chapter 33.641, Transportation Impacts, must be met; and,

The relevant approval criteria of Chapter 33.641 are found in the two paragraphs below.

33.641.020. The transportation system must be capable of safely supporting the proposed development in addition to the existing uses in the area. Evaluation factors include: street capacity and level-of-service; vehicle access and loading; on-street parking impacts; the availability of transit service and facilities and connections to transit; impacts on the immediate and adjacent neighborhoods; and safety for all modes.

33.641.030. The applicant may meet the criterion in Section 33.641.020, above, by including mitigation measures as part of the land division proposal. Mitigation measures must be acceptable to the City Engineer and may include providing transportation demand management measures, an access management plan, constructing streets or bicycle, pedestrian, or transit facilities on or off the site or other capital improvement projects such as traffic calming devices.

Findings: The regulations of Chapter 33.641 allow the traffic impacts caused by dividing and then developing land to be identified, evaluated, and mitigated for if necessary. Small land divisions involving only a few dwelling units may not require a formal transportation impact study, while it might be required for larger projects (Title 17 includes technical standards describing when a more formal study is required).

The site has approximately 95 feet of frontage on SE 118th Avenue. SE 118th Avenue is classified as a local service street for all modes in the Transportation System Plan. Tri-Met provides transit service approximately 520 feet from the site on SE Powell boulevard via bus 9. Parking is currently allowed on both sides of the street. There is one driveway entering the site that provides access to off-street parking for the existing house. PDOT estimates that adding one additional dwelling unit will increase the daily trips to less than 10 per day with the majority of trips occurring during the non peak hour times (Exhibit E.2). PDOT staff have reviewed the availability of transit service to the site, the limited increase in traffic resulting from this proposal, and the availability of alternative routes for vehicle access to and from the subject site. Given the minimal increase in vehicles trips that will be added to the existing transportation system, PDOT staff does not anticipate this minor partition to create a significant impact.

SE 118th street is improved with a 28 foot paved roadway within a 40 foot wide right of way. The existing corridor provides a 6-foot curb tight sidewalk with no planter strip or frontage buffer zone. The recommended pedestrian corridor width is 11 feet with a 6 foot sidewalk separated by a 4 foot planter strip. 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 will require a 5 foot dedication along SE 118th Avenue. PDOT has determined that the existing

curb-tight sidewalk is consistent with development in the general area. The planter strip within the pedestrian corridor may be satisfied at the back of the existing sidewalk for this location. This will help to preserve the existing mature trees along the frontage of Parcel 1. 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. The dedication will preserve the ability to comply with City Standards in the future.

Additionally PDOT has noted that there is an existing fence along the frontage of the site, located at the back of the sidewalk that will need to be moved out of the public right-of-way prior to final plat approval. Also, at the time of development of parcel 2, relocation of the speed bump may be required if it is in direct alignment with the flag lots pole access. In addition, as a condition of development of parcel 2, forward motion egress on to SE 118th Avenue will be required.

With the conditions of approval described above, this criterion is met.

L. Services and utilities. The regulations and criteria of Chapters 33.651 through 33.654, which address services and utilities, must be met.

Findings: Chapters 33.651 through 33.654 address water service standards, sanitary sewer disposal standards, stormwater management, utilities and rights of way.

- The water standards of 33.651 have been verified. An existing 6 inch water main is available in SE 118th Avenue. Water is available to serve the proposed development from this water main. Parcel 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 PVC public sanitary sewer located in SE 118th Avenue that can serve the sanitary needs of the proposed lots. Parcel 1 has an existing sewer service from that main. As a result of the proposed land division, the existing sewer connection that serves the house on Parcel 1 may cross over Parcel 2 to reach the sewer main in SE 118th Avenue. The sewer lateral for the existing house shown on the site plan does not match the location shown on permit records for building permit 02-113176 RS and associated plumbing records. Prior to final plat approval, the applicant will need to identify the correct location by using a metal tracer wire detection, a video sewer scope or by an equivalent method. The correct location must be shown on a supplemental survey. If the sewer line crosses the new property line then it must be placed in an easement, or the applicant can obtain and have finalized a plumbing permit to cap and relocate the sewer line prior to final plat approval. If an easement is provided, a Maintenance Agreement for the easement must be submitted for approval by BDS and the City Attorney and must be recorded with the Final Plat. See Exhibit E-1 and E-5 for more details.
- The technical standards of Chapter 33.653 related to stormwater management have been verified. The findings below for the Stormwater Management Approval Criteria of 33.653.020 incorporate a discussion of how the technical standards have been satisfied by the applicant's stormwater proposal.

33.653.020 Stormwater Management Approval Criteria

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

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

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

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

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

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

- **Parcel 2:** Stormwater from this lot will be directed to an individual soakage trench that will treat the water and slowly infiltrate it into the ground. This lot has sufficient area for a stormwater facility that can be adequately sized and located to meet setback standards, and accommodate water from a reasonably-sized home. Site Development has indicated conceptual approval of the soakage trench.
- **Parcel 1 (the lot with the existing house):** Site Development has indicated that the downspouts of the existing house are connected to a drywell located in the front yard, east of the house, which is acceptable.

With the conditions of approval described above, the stormwater management criteria are met

Right of Way Approval Criteria

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

Code Section	Topic	Applicability Findings
33.654.110.B.1	Through streets and pedestrian connections	Applicable - See findings below
33.654.110.B.2	Dead end streets	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 street proposed or required.
33.654.120.C.3.c	Turnarounds	Not applicable – No turnarounds are proposed or required.
33.654.120.D	Common Greens	Not applicable – No common greens are proposed or required.
33.654.120.E	Pedestrian Connections	Not applicable – There are no pedestrian connections proposed or required.
33.654.120.F	Alleys	Not applicable – No alleys are proposed or required.
33.654.120.G	Shared Courts	Not applicable – No shared courts are proposed or required.
33.654.130.A	Utilities	Applicable - See findings below.
33.654.130.B	Extension of existing public dead-end streets and pedestrian connections	Not applicable – There are no existing public dead-end street or pedestrian connections adjacent to the site.
33.654.130.C	Future extension of proposed dead-end streets and pedestrian connections	Not applicable – No street extensions are required to serve abutting sites that are further dividable.
33.654.130.D	Partial rights-of-way	Not applicable – No partial public streets are proposed or required.

Applicable Approval Criteria are:

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

- a. **Through streets should generally be provided no more than 530 feet apart, and pedestrian connections should generally be provided no more than 330 feet apart. Through street and pedestrian connections should generally be at least 200 feet apart;**
- b. **Where the street pattern in the area immediately surrounding the site meets the spacing of subparagraph a., above, the existing street pattern should be extended onto the site;**
- c. **Characteristics of the site, adjacent sites, and vicinity, such as: (1) Terrain; (2) Whether adjacent sites may be further divided; (3) The location of existing streets and pedestrian connections; (4) Whether narrow frontages will constrain creation of a through street or pedestrian connection; (5) Whether environmental overlay zones interrupt the expected path of a through street or**

- pedestrian connection; and (6) Whether existing dwelling units on- or off-site obstruct the expected path of a through street or pedestrian connection. Alternative locations or designs of rights-of-way should be considered that avoid existing dwelling units. However, provision of through streets or pedestrian connections should take precedence over protection of existing dwelling units where the surrounding transportation system will be significantly affected if a new through street or pedestrian connection is not created;**
- d. Master street plans for the area identified in Goal 11B of the Comprehensive Plan;**
 - e. Pedestrian connections should take the most direct route practicable. Users should be able to see the ending of the connection from the entrance point, if possible.**

Findings: The site is located between two north-south through streets that meet the optimum spacing criteria described above. The site is located approximately 508 feet north of the nearest east-west through street (SE Powell Boulevard) to the south, and nearest east-west through street to the north is 1,923 feet away. If the distance between these existing east-west streets is evaluated against the optimum spacing requirement of 530 feet, one can conclude that there should be an east-west through street provided in the vicinity of the site. However, there is approximately 39 feet between the south property line of the site and the south side of the existing house. This distance is enough to provide a partial public street dedication (generally 35-39 feet). However, the property immediately west of the site is developed with an existing house that is located within 20 feet of the south property line. In addition, the existing lot pattern, ownership and existing structures of the properties to the southwest would make it challenging to continue a through street or pedestrian connection. Therefore, even if a public street or pedestrian connection was started on this site, it could not be continued to the west or south without removal of existing houses. Under these circumstances, through streets are not generally required.

It is also important to note that PDOT initially requested a 7.5 foot dedication along the southern property line of this site to allow for a partial pedestrian connection that would be extended to the south and west as other properties divide in the future. PDOT noted that a pedestrian connection at this location could be beneficial to the school to the north along SE Division Street. However, after further discussion with the school district, PDOT determined that directing pedestrian traffic from 118th to 116th, which is a less improved route, would not be desirable.

So, although the optimum spacing criteria would indicate the need for an east-west through street in the vicinity of the site, there is no practicable opportunity to provide it as part of this partition. This criterion is met.

In addition, the site is within Portland Master Street Plan for the Far SE District and there are no through street or pedestrian connections shown at this location.

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: Utilities are defined in the Zoning Code as telephone, cable, natural gas, electric, and telecommunication facilities. Any easements that may be needed for private utilities that cannot be accommodated within the right-of-way can be provided on the final plat. At

this time no specific utility easements within the right-of-way have been identified as being necessary. Therefore, this criterion is 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, 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 R 2.5 zone (Please see section on Other Technical Standards for Building Code standards.)

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

- Minimum Setbacks – The existing house identified to remain on the site must meet the required Zoning Code setbacks from the proposed new lot lines. Alternatively, existing buildings must be set back from the new lot lines in conformance with an approved Adjustment or other Land Use Review decision that specifically approves alternative setbacks. The existing house will be approximately 10 feet from the new property line to the south and 7 feet from the new property line to the west. 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 Structures – In this zone, accessory structures are not allowed on a lot without a primary structure. Therefore, in order for the proposed new lots to meet this standard, all accessory structures on Parcel 2 must be removed prior to final plat. Demolition permits are required. The applicant must provide documentation prior to final plat approval that all required demolition permits have received final inspection. To ensure that this standard is met, a condition of approval is necessary.

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

OTHER TECHNICAL REQUIREMENTS

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

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

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

- The applicant must meet the requirements of the Fire Bureau in regards to meeting turning radius requirements of 25 feet inside and 45 feet outside; addressing requirements, surfacing and aerial access. 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). 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: PDOT Right-of-way dedication, sewer line location and fire bureau requirements.

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 in this R2.5 zone 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 for BDS Land Use Review, BES, and BDS Site Development review and approval. 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 of existing and proposed sewer lines. (see Condition C.2 below)
- Any other information specifically noted in the conditions listed below.

B. The final plat must show the following:

1. The applicant shall meet the street dedication requirements of the City Engineer for SE 118th Avenue. The required right-of-way dedication must be shown on the final plat.
2. If applicable, a private sanitary sewer easement, for the benefit of Parcel 1, shall be shown and labeled over the relevant portions of Parcel 2.
3. If applicable, A recording block for each of the legal documents such as maintenance agreement(s), acknowledgement of special land use conditions, or Declarations of Covenants, Conditions, and Restrictions (CC&Rs) as required by Condition C.3 below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: *“A Declaration of Maintenance Agreement for a private sanitary sewer easement has been recorded as document no. _____, Multnomah County Deed Records.”*

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

Streets

1. The applicant shall remove the existing fence out of the right of way currently located at the back of the sidewalk. After the fence has been moved applicant shall call Wayne Close at 503-823-7647 for an inspection.

Existing Development

2. The applicant must obtain a finalized demolition permit for removing the sheds on Parcel 2. Alternately, the applicant can execute a covenant with the City stating that the structures will be removed if a primary structure has not received final inspection on the lot(s) with the accessory structure(s) within two years of final plat approval. The covenant must be recorded with Multnomah County prior to final plat approval.

Utilities

3. The applicant shall identify the correct location of the sewer lateral for the existing house by using a metal tracer wire detection, a video sewer scope or by an equivalent method. If the sewer line crosses the new property line then it must be placed in an easement, or the applicant can obtain and have finalized a plumbing permit to cap and relocate the sewer line prior to final plat approval. If an easement is proposed conditions B.2, B.3 and C.3 apply.

Required Legal Documents

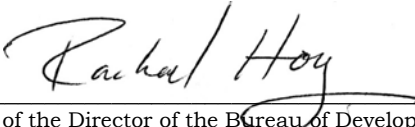
4. If applicable, A Maintenance Agreement shall be executed for the Private Sewer Easement area described in Condition B.3 above. The agreement shall include provisions assigning maintenance responsibilities for the easement area and any shared facilities within that area, consistent with the purpose 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.

Other requirements

5. The applicant must meet Fire Bureau requirements for a turning radius of 25 feet inside and 45 feet outside.

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

1. Development on Parcel 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, tree number 2 is 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 requirements of the Fire Bureau for Parcel 2, the flag lot, including:
 - Addressing
 - Improved 12 foot wide access with approved surfacing for fire access
 - Height is limited to 30 feet to eave unless aerial access requirement is met.

Decision rendered by:  on January 6, 2009
By authority of the Director of the Bureau of Development Services

Decision mailed January 8, 2009

Staff Planner: Rachael Hoy

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 June 30, 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 requested that the 120-day review period be extended 150 days until March 27, 2009 (Exhibits A 3-6).

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 applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

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

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

The file and all evidence on this case is available for your review by appointment. Please contact the receptionist at 503-823-7967 to schedule an appointment. Copies of all information in the file can be obtained for a fee equal to the cost for such services. You may also find additional information about the City of Portland and City Bureaus, as well as a digital copy of the Portland Zoning Code, by visiting the City’s homepage on the Internet at www.portlandonline.com.

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

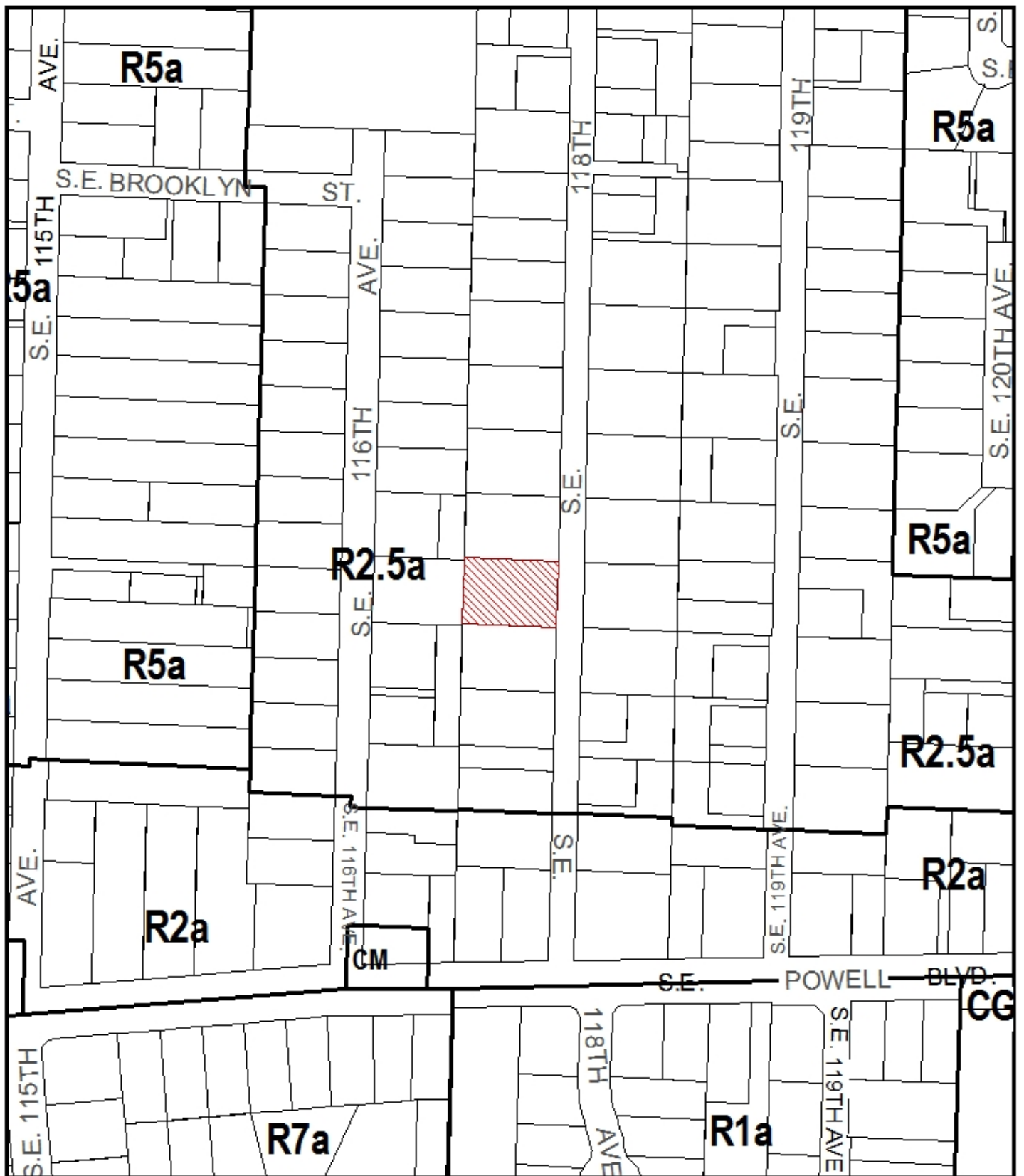
EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. 1. Applicant’s Statement and infiltration test
 - 2. Arborist report
 - 3. 120 day extension – 8/18/08 thru 9/18/08
 - 4. 120 day extension – 9/18/08 thru 11/17/08
 - 5. 120 day extension – 11/17/08 thru 12/16/08
 - 6. 120 day extension – 12/16/08 thru 1/15/08
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan and Tree Preservation Plan(attached)
 - 2. Clearing and Grading Plan
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS

- 6. Bureau of Parks, Forestry Division
- F. Correspondence: none
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research

The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-0625 (TTY 503-823-6868).



ZONING

 Site



This site lies within the:
JOHNSON CREEK BASIN PLAN DISTRICT

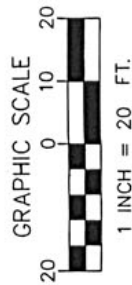
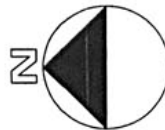
File No.	<u>LU 08-138886 LDP</u>
1/4 Section	<u>3342</u>
Scale	<u>1 inch = 200 feet</u>
State Id	<u>1S2E10AD 11600</u>
Exhibit	<u>B (Jun 23, 2008)</u>

LEGEND / NOTES

- EXTG CONTOUR LINE
- ① INSTALL 4" PVC SS LATERAL
- ② INSTALL 1" WATER SERVICE / METER
- ③ SAWCUT EXTG NORTH SIDE WING FROM EXTG DWY. MEET AND MATCH NEW DRIVEWAY.
- ④ INSTALL ROOF STORM WATER INFILTRATION TRENCH PER COP
- ✖ EXTG TREE TO BE REMOVED

REED VILLAGE
 LOT 10
 3228 SE 116TH AVE.

S89°16'50"E 140.00'(2)



LOT 11

CASE NO. 08-139886
 EXHIBIT C-1

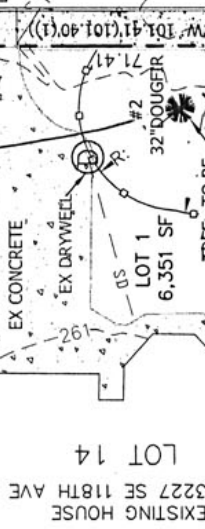
MARSHALL TAYLOR TRACT

Will be removed
 Lot 33, 110, 240, E

6.19.08

REGISTERED PROFESSIONAL
 ENGINEER
 OREGON
 BOGDAN M. POPESCU
 EXPIRATION DATE 12/31/08

Project No. 241
 12/2



PROPOSED "ANNIE'S PLACE" 2 LOTS PARTITION
 ZONING: R2.5

NEELS TRACT NO.2

PRELIMINARY PLAN

PROPOSED IMPROVEMENTS & TREE PRESERVATION PLAN

PROJECT NAME: ANNIE'S PLACE
 3227 SE 118TH AVE, PORTLAND OR 97266

REVISION/DATE DESCRIPTION	BY	CHK

SHEET 2
 4
 04-118
 04118-9-05C.dwg
 06/16/2008

REGISTERED PROFESSIONAL ENGINEER OREGON BOGDAN M. POPESCU EXPIRATION DATE 12/31/08