



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

1900 SW 4th Avenue, Suite 5000  
Portland, Oregon 97201  
503-823-7300  
Fax 503-823-5630  
TTY 503-823-6868  
[www.portlandonline.com/bds](http://www.portlandonline.com/bds)

**Date:** December 11, 2009  
**To:** Interested Person  
**From:** Sean Williams, Land Use Services  
503-823-7612 / [sean.williams@ci.portland.or.us](mailto:sean.williams@ci.portland.or.us)

**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 09-158979 LDP**

**GENERAL INFORMATION**

**Applicant:** Eric Jacobson  
Portland Development Commission  
222 NW 5<sup>th</sup> Avenue  
Portland OR 97209

Doug Shapiro  
Hoyt Street Properties LLC  
1022 NW Marshall Street, Suite 270  
Portland, OR 97209-2989

**Representative:** Keith Jones  
Haper Houf Peterson Righellis, Inc.  
205 SE Spokane Street, Suite 200  
Portland, OR 97202

**Site Address:** 949 NW Overton Street

**Legal Description:** LOT 23&24 TL 2627, HOYT STREET YARDS NO 2  
**Tax Account No.:** R405841250  
**State ID No.:** 1N1E34BB 02627  
**Quarter Section:** 2929  
**Neighborhood:** NW/NW, Pearl District, contact Patricia Gardner at 503-228-3273.  
**Business District:** Pearl District Business Association, contact Adele Nofield at 503-223-0070.  
**District Coalition:** Neighbors West/Northwest, contact Mark Sieber at 503-823-4212.  
**Plan District:** Central City: River District, North Pearl  
**Zoning:** Central Employment (EX) w/ Design (d) Overlay  
**Case Type:** Land Division Partition (LDP)  
**Procedure:** Type I, an administrative decision with appeal to the Oregon Land Use Board of Appeals (LUBA).

**Proposal:**

The applicant is proposing to divide the subject property for the purposes of creating a tract of land to be associated with the adjacent property to the south. The purpose of the proposed tract is to encompass the existing fire lane/public pedestrian walkway associated with the Encore Condominium building. The planned use of proposed Parcel 1 is a conveyance to the City of Portland for a future park.

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 no more than three parcels within a calendar year (See ORS 92.010).

**Relevant Approval Criteria:**

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

**ANALYSIS**

**Site and Vicinity:** The land division site is north of 949 NW Overton Street which houses the Encore condo building. Existing improvements consist of a fire lane/public pedestrian walkway associated with the Encore condo building. The site is accessible via two pedestrian tracts from NW Overton Street that terminates at the northernmost portion of proposed Parcel 1. Two vacant properties located along the western border of these pedestrian tracts are owned by Portland Parks and Recreation and along with proposed Parcel 1 are intended for the site of a public park in the future.

**Zoning:** The EX zone allows mixed-uses and is intended for areas in the center of the City that have predominantly industrial type development. The intent of the zone is to allow industrial and commercial uses which need a central location. Residential uses are allowed, but are not intended to predominate or set development standards for other uses in the area.

The “d” overlay promotes the conservation and enhancement of areas of the City with special historic, architectural or cultural value. New development and exterior modifications to existing development must meet the Community Design Standards (Chapter 33.218) or are subject to design review.

The Central City plan district implements the Central City Plan and other plans applicable to the Central City area. The district implements portions of these plans by adding code provisions which address special circumstances existing in the Central City area.

**Land Use History:** City records indicate that prior land use reviews include the following:

- DZ 91-89/7948: Glacier Park proposal for a Central City Master Plan approved in November 1989, which included a Zone Change in compliance with the Comprehensive Plan. At the time, an applicant was required to execute an acceptance of the decision and to record it, but the applicant did not do so within the allotted time period, therefore a Late Acceptance review was required.
- LUR 92-00798 MS LA: Approval of Late Acceptance and Central City Master Plan for Hoyt Street Yards. Condition E allows for additional east-west and north-south pedestrian/bicycle paths to be required by design review.
- LUR 95-00241 SU MS: Amendment to Hoyt Street Yards Master Plan (condition “G”) and Subdivision for 20 lots south of Lovejoy.

- LUR 99-00541 MS: withdrawn on 7/8/99 & combined with LUR 99-00542 SU.
- LUR 99-00542 SU MS: Approval with conditions of 43-lot subdivision and amendments to Hoyt Street Yards Master Plan.
- LUR 00-00021 DZM MS: Design Review approval of Street Car Lofts and Master Plan Amendment to change pedestrian tracts A-C to public street (Marshall Street).
- LU 05-181234 DZM AD: The Encore - approval of 16-story mixed-use development that includes 177 residential units, 10,945 square feet of retail and 3 levels of residential parking, providing 210 parking spaces.
- LU 06-103275 DA: design advice for a master plan of the development of Hoyt Street Properties' 8.5 acres in the northern portion of the River District. The plan includes initial concepts for building programming, massing, height, parking and access, pedestrian spaces and community.
- LU 08-110777 DZ: Review of fire lane serving the Encore to be constructed within the southern portion of Tract E as well as the portion existing in the tract being proposed as part of this land use review to provide fire access and a pedestrian/bicycle path.
- LU 08-139993 LDP: Partition to divide an existing pedestrian tract (Tract E of Hoyt Street Yards) to create two contiguous pedestrian tracts running in a north-south direction

**Agency and Neighborhood Review:** A Notice of Proposal in your Neighborhood was mailed on October 13, 2009.

**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	33.614	Lots	<b>Applicable - See findings below.</b>
B	33.630	Trees	Not applicable - No significant trees or trees in excess of 6 inches in diameter located fully on the site.
C	33.631	Flood Hazard Area	Not applicable - The site is not within the flood hazard area.
D	33.632	Potential Landslide Hazard Area	Not applicable - The site is not within the potential landslide hazard area.

Criterion	Code Chapter	Topic	Applicability Findings
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	<b>Applicable - See findings below.</b>
I	33.639	Solar Access	Not applicable - The proposed development is for something other than single-dwelling detached homes.
J	33.640	Streams, Springs, and Seeps	Not applicable - No streams, springs, or seeps are evident on the site outside of environmental zones.
K	33.641	Transportation Impacts	<b>Applicable - See findings below.</b>
L	33.651 - 33.654	Services and 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 33.614 contains the lot standards applicable in the employment zones. Chapter 33.614 works in conjunction with other chapters of the Zoning Code to ensure that land divisions create lots that can support appropriate uses and development. The standards are as follows:

**33.614.100 Minimum Lot Dimension Standards.**

**All lots must meet the following minimum size and dimension standards. An exception is allowed under the provisions of Section 33.614.200.**

**C. EX zone. Each lot must have a front lot line that is at least 10 feet long. There are no other required minimum lot dimensions for lots in the EX zone.**

**Findings:** Tract G of Hoyt Street Yards No. 3 adjacent to the western property line of Proposed Parcel 1 of this request is considered right-of-way frontage for this parcel. Therefore, Parcel 1 contains of front lot line of approximately 289 feet as demonstrated in Exhibit C-1. Based on the proposal of a front lot line greater than 10 feet in length, the minimum lot dimensions applicable to the Central Employment (EX) zone are satisfied. This criterion is therefore met.

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

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

### **33.635.100 – Clearing and Grading**

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

**Findings:** 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. The larger subdivision site previously underwent mass grading when the streets were constructed and the lots were prepared for development. The land division site is primarily flat with the exception of a moderate slope downward towards the railroad tracks. Proposed Tract A is already developed with a fire lane constructed of concrete and concrete pavers, and a concrete paver entry plaza that was approved through design review (08-110777 DZ). Proposed Parcel 1 is planned for a future park along with other adjacent lots to the west and must undergo separate land use approval prior to any specific development. All standard erosion control and stormwater management practices will be required at the time of development. The proposed division of the site into one parcel and fire lane/public pedestrian walkway tract will not impact clearing and grading. 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.**

**Findings:** Land suitability issues were identified under the prior subdivision review (LUR 99-00542 SU MS) which included fill and soft soils unsuitable for support of multi-story building foundations, possible methane gas issues due to fill materials and liquefaction and lateral spreading risk. A construction management plan and detailed geotechnical report were required with the grading permit for the subdivision site to address these issues. Soil and groundwater contamination issues exist in the area and the property owner is working with the State Department of Environmental Quality to address these issues as property is developed. No land suitability issues have been identified with the current proposal to divide the pedestrian tract. 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:** Zoning Code Section 33.654.150.B.6 requires that pedestrian connections be owned by a Homeowner's Association or owned in common by the lots served by the tract. This proposal is to place the existing fire lane/public pedestrian walkway within a tract to be owned and maintained by the homeowner's association of the adjacent encore building. Parcel 1 is then intended to be conveyed to Portland Parks and Recreation for a future park. With a condition that the proposed tract be owned in common by the homeowner's association of the Encore building, this criterion can be met.

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

**Findings:** The existing fire lane/public pedestrian walkway to be located within the area of Tract A is currently encompassed within a 20 foot wide access easement (Doc. No. 2008-065345). The applicant is proposing to amend the Covenants and Restrictions (CC&Rs) of the homeowners association of the Encore Building to address maintenance provisions for the fire lane/public pedestrian walkway tract. This criterion can be met with the condition that the existing CC&Rs be amended and recorded with the final plat. In addition, the plat must reference the recorded CC&Rs.

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 proposal to divide the subject property into one parcel and a fire lane/public pedestrian walkway tract will not impact transportation services to the area. Existing pedestrian Tracts F and G of Hoyt Street Yards No. 3 provide access to Parcel 1 and the fire lane/public pedestrian walkway tract from NW Overton Street. Tract F contains improvements that correspond with the concrete and concrete pavers within Tract A of this proposal. Tract G, proposed Parcel 1 and other adjacent properties to the west are to be conveyed to Portland Parks and Recreation for the development of a park. The Portland Bureau of Transportation has interest in development of future bike/pedestrian connections within the planned park and has indicated that recommendations will be made at the time of design review for the new park. Therefore, 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 will not be impacted by the land division based on the proposal to convey Parcel 1 to Portland Parks and Recreation for a future park. Proposed parcel 1 does not have access to water service. Although, water mains are available in NW 11<sup>th</sup> Avenue and NW Overton Street. With the understanding that Parcel 1 will be developed as a future park with adjacent properties to the west that do have access to the water services mentioned above, the Portland Water Bureau has no objection to this proposal. See Exhibit E-3 for more details.
- The sanitary sewer standards of 33.652 will not be impacted by the land division based on the proposal to convey Parcel 1 to Portland Parks and Recreation for a future park. Parcel 1 does not have access to public sanitary sewer. Although, public sewer service is available in NW 11<sup>th</sup> Avenue and NW Overton Street. With the understanding that Parcel 1 will be developed as a future park with adjacent properties to the west that do have access to the public sewer services mentioned above, the Bureau of Environmental Services has no objection to this proposal. However, in the event that Parcel 1 is developed in such a way that an individual connection to sanitary sewer is required, the property owner will be responsible for constructing a public sanitary sewer extension to serve the site or otherwise show that legal individual access to sanitary sewer is available at the time of development. BES has additionally noted that the presence of the Tanner Creek sewer in the vacated NW 10th Avenue right-of-way may affect the allowed route of sanitary service, possibly limiting connections to the public sanitary sewer in NW 11th Ave. With the condition of approval described above, this criterion is met. 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.

In this situation, the fire lane/public pedestrian walkway tract is already built out and contains stormwater management facilities that were permitted and inspected in conjunction with the Encore building. Site Development has no objections to the continued use of these facilities. Past development activity and high groundwater on the site would likely limit the potential for on-site infiltration of stormwater for Parcel 1. Therefore any future development of new impervious area must include vegetated stormwater treatment facilities prior to discharge to storm sewers. The Bureau of Environmental Services has indicated that there are multiple storm sewers located on and near the subject property that may accommodate future stormwater discharge from the site. As no specific development plan is proposed as part of this review, BES presumes that there is adequate area on the site to include stormwater management at the time of future development. Therefore, 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.



<b>Code Section</b>	<b>Topic</b>	<b>Applicability Findings</b>
33.654.110.B.1	Through streets and pedestrian connections	Not applicable – The proposal is to place the existing fire lane/public pedestrian walkway into a tract, which will not impact connectivity.
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 – The proposal includes a pedestrian connection instead of a traditional street.
33.654.120.C.3.c	Turnarounds	Not applicable – No turnarounds are proposed or required.
33.654.120.D	Common Greens	Not applicable – No common greens are proposed or required.
33.654.120.E	Pedestrian Connections	<b>Applicable - See findings below.</b>
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.
33.654.130.E	Ownership of Alleys	Not applicable- No alleys are proposed or required.

**Applicable Approval Criteria are:**

**33.654.120.E. Approval criterion for the width of pedestrian connections. The width of the pedestrian connection right-of-way must be sufficient to accommodate expected users and provide a safe environment, taking into consideration the characteristics of the site and vicinity, such as the existing street and pedestrian system improvements, existing structures, natural features, and total length of the pedestrian connection. As much as is possible, the users should be able to stand at one end of the connection and see the other end.**

**Findings:** This proposal is to place an existing fire lane/public pedestrian walkway into a tract for the purposes of conveying proposed Parcel to Portland Parks. The existing

improvements will not be altered as a result of this land division and the tract will continue to provide pedestrian and emergency vehicle access. Therefore, 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. 60 foot wide easements for public utilities are located over the land division site in the areas of the vacated NW Pettygrove Street and NW 10<sup>th</sup> Avenue right-of-ways which will remain in effect with the proposed land division. Therefore, this criterion is 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.

## **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 <a href="http://www.water.ci.portland.or.us/">http://www.water.ci.portland.or.us/</a>
Environmental Services	Title 17; 2002 Stormwater Manual	Sewer availability Stormwater Management	503-823-7740 <a href="http://www.bes.ci.portland.or.us/">http://www.bes.ci.portland.or.us/</a>
Fire Bureau	Title 31 Policy B-1	Emergency Access	503-823-3700 <a href="http://www.fire.ci.portland.or.us/">http://www.fire.ci.portland.or.us/</a>

<b>Bureau</b>	<b>Code Authority</b>	<b>Topic</b>	<b>Contact Information</b>
Transportation	Title 17, Transportation System Plan	Design of public street	503-823-5185 <a href="http://www.trans.ci.portland.or.us/">http://www.trans.ci.portland.or.us/</a>
Development Services	Titles 24 -27, Admin Rules for Private Rights of Way	Building Code, Erosion Control, Flood plain, Site Development & Private Streets	503-823-7300 <a href="http://www.bds.ci.portland.or.us.">http://www.bds.ci.portland.or.us.</a>

## CONCLUSIONS

The applicant has proposed to partition the subject property for the purposes of placing an existing fire lane/public pedestrian walkway associated with the Encore condo building into a tract. Proposed Parcel 1 is then intended for conveyance to Portland Parks and Recreation for a planned park. As discussed in this report, the relevant standards and approval criteria have been met, or can be met with conditions. The primary issue identified with this proposal is the ability to provide utility services to proposed Parcel 1 for future development should the need arise. With a condition of approval that addresses these requirements this proposal can be approved.

## ADMINISTRATIVE DECISION

**Approval** of a Preliminary Plan for a partition that will result in one parcel and one tract that encompasses an existing fire lane/public pedestrian walkway, as illustrated with Exhibit C-1, subject to the following conditions:

### A. The final plat must show the following:

1. Tract A shall be shown on the plat and identified as a “public pedestrian tract”. A note must also be provided on the plat indicating that the tract will commonly owned and maintained by the homeowners association of the Encore condo building.
2. A recording block for the Declaration of Covenants, Conditions, and Restrictions (CC&Rs) as required by Condition B-1 below. The recording block shall, at a minimum, include language substantially similar to the following example: “Covenants, Conditions, and Restrictions (CC&Rs) has been recorded as document no. \_\_\_\_\_, Multnomah County Deed Records.”

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

1. The CC&Rs for the homeowners association of the Encore condo building must be amended to describe the ownership and maintenance provisions for the fire lane/public pedestrian walkway tracts. The agreement shall include provisions assigning maintenance responsibilities for the tract and any the facilities within those areas, consistent with the purpose of the tract to provide public pedestrian and emergency vehicle access, 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.

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

1. In the event that Parcel 1 is developed in such a way that an individual connection to sanitary sewer is required, the property owner will be responsible for constructing a public sanitary sewer extension to serve the site or otherwise show that legal individual access to sanitary sewer is available at the time of development.

**Decision rendered by:**  **on December 7, 2009**

By authority of the Director of the Bureau of Development Services

**Decision mailed: December 11, 2009**

**Staff Planner: Sean Williams**

**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 30, 2009, and was determined to be complete on September 18, 2009.

*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 September 18, 2009.

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

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

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

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

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this

land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

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

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

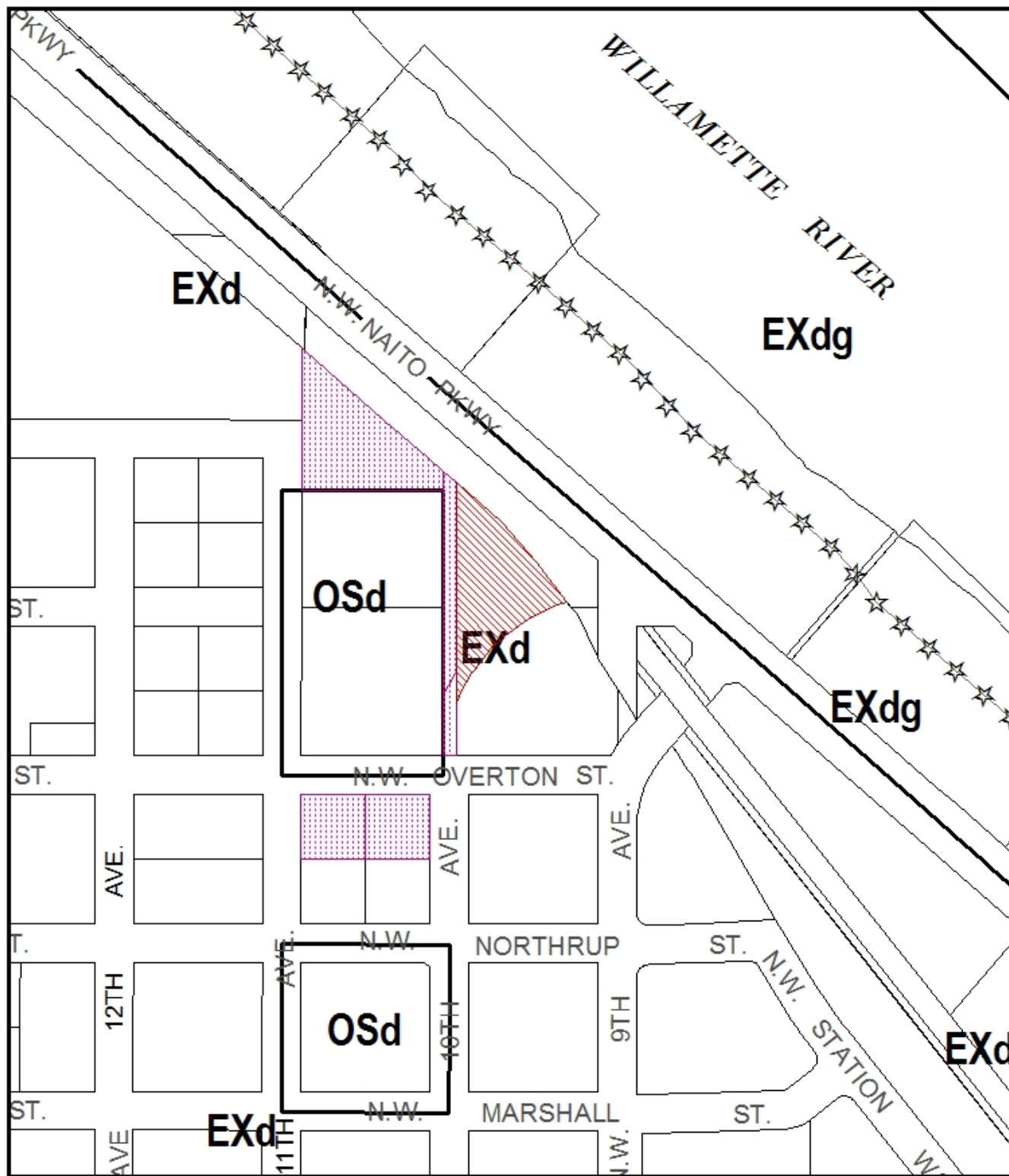
**Recording the land division.** The final land division plat **must** be submitted to the City **within three years** of the date of the City's final approval of the preliminary plan. This final plat must be recorded with the County Recorder and Assessors Office after it is signed by the Planning Director 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 Statement
  - 1. Land Division Approval Criteria
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Preliminary Land Division Plan (attached)
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services w/ addendum
  - 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 & Life Safety Plans Examiner
- 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 503-823-7300 (TTY 503-823-6868).**



# ZONING

-  Site
-  Also Owned



This site lies within the:  
CENTRAL CITY PLAN DISTRICT

File No.	LU 09-158979 LDP
1/4 Section	2929
Scale	1 inch = 200 feet
State_Id	1N1E34BB 2627
Exhibit	B (Sep 21, 2009)

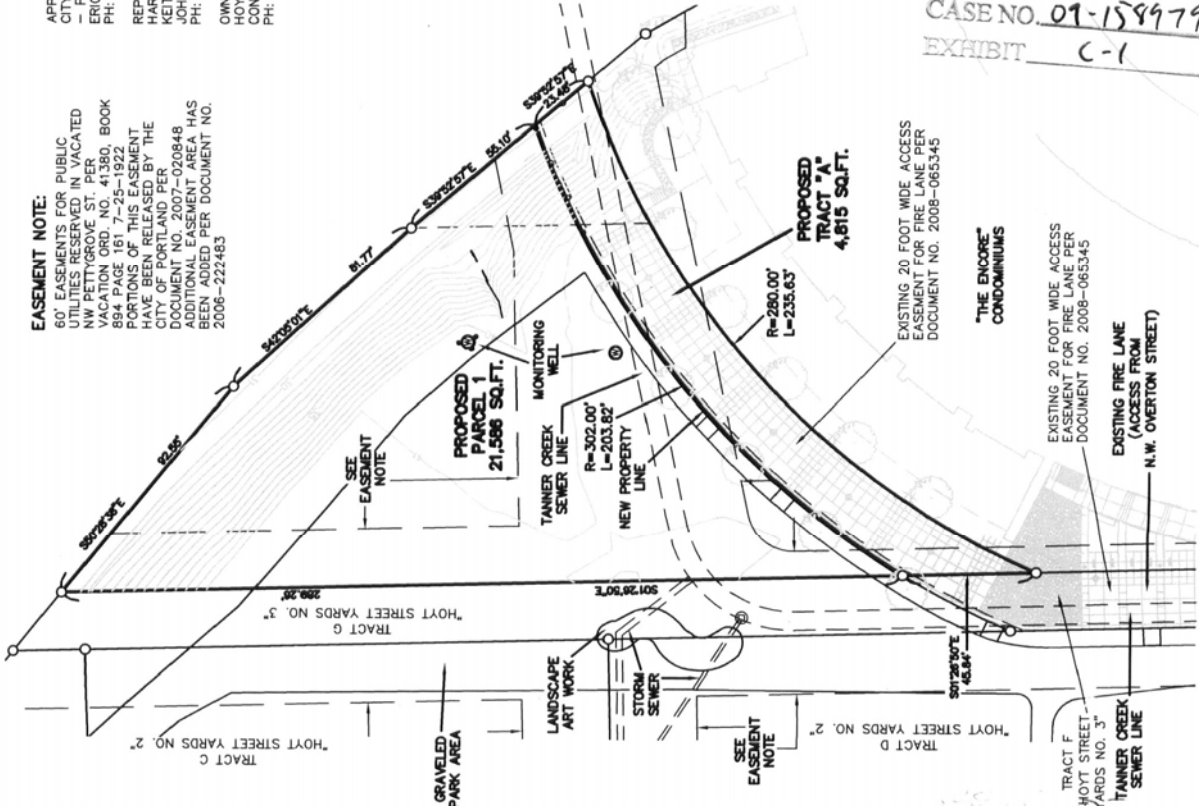
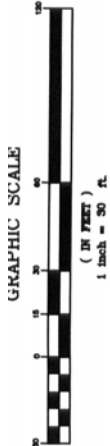
**EXISTING CONDITION PLAN  
PRELIMINARY LAND DIVISION PLAN  
UTILITY PLAN  
SEPTEMBER 17, 2008  
JOB NO. PDC-07**

**APPLICANT:**  
CITY OF PORTLAND  
- PORTLAND DEVELOPMENT COMMISSION  
ERIC D. JACOBSON - PMP  
PH: 503-823-3306

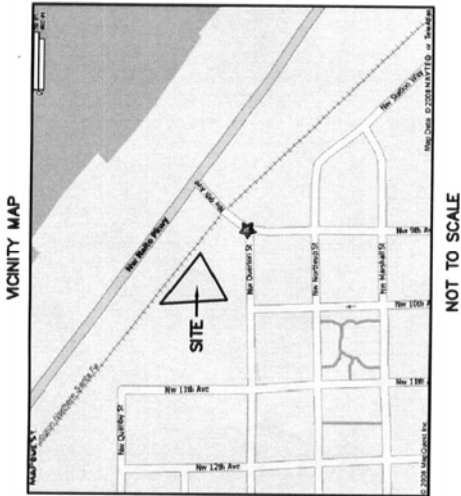
**REPRESENTATIVE:**  
HARPER HOUF PETERSON RIGHELLIS  
KEITH JONES - PLANNER  
JOHN CAMPBELL - SURVEYOR  
PH: 503-221-1131

**OWNER:**  
HOYT STREET PROPERTIES, LLC  
CONTACT - DOUG SHAPIRO  
PH: 503-227-6677

**EASEMENT NOTE:**  
60' EASEMENTS FOR PUBLIC UTILITIES RESERVED IN VACATED NW PETTYGROVE ST. PER VACATION ORD. NO. 41380, BOOK 884 PAGE 161 7-25-1922 PORTIONS OF THIS EASEMENT HAVE BEEN RELEASED BY THE CITY OF PORTLAND. SEE ADDITIONAL EASEMENT AREA HAS BEEN ADDED PER DOCUMENT NO. 2006-222483



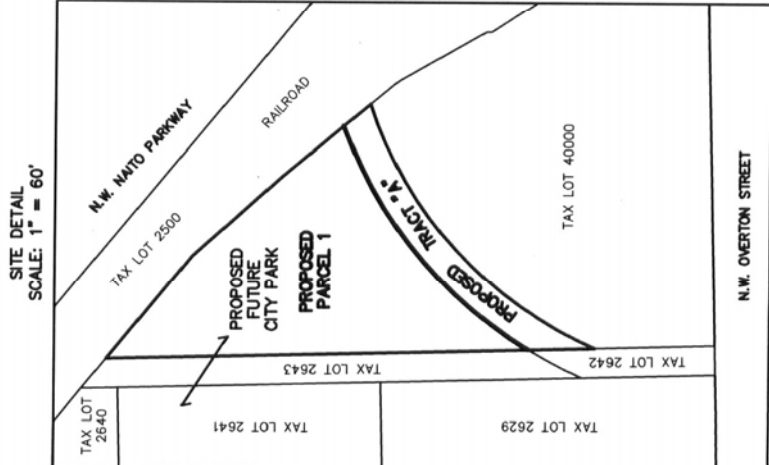
CASE NO. 09-158979  
EXHIBIT C-1



**BENCHMARK:**  
CITY OF PORTLAND I.D. NUMBER 55  
DESCRIPTION: BRASS DISK LOCATED ON THE SOUTHEAST CORNER OF THE BROADWAY BRIDGE'S PIER ON THE WEST SIDE OF FRONT AVENUE.  
ELEVATION: CITY OF PORTLAND DATUM = 32.683'



**HHPR**  
Harper Houf Peterson Righellis Inc.  
REGISTERED PROFESSIONAL LAND SURVEYORS  
205 SE SPOKANE STREET, SUITE 200, PORTLAND, OR 97202  
TEL: 503.221.1131 www.hhpr.com FAX: 503.221.1171



NOT TO SCALE