



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

FROM CONCEPT TO CONSTRUCTION

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Date: December 23, 2013
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NOTICE OF A TYPE IIx 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 the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 13-187794 LDS

GENERAL INFORMATION

Applicant/Owners: Mark Lisac/Lisac Brothers Construction Inc
PO Box 2422 / Clackamas OR 97015

Property Owners: Ronnie Wilson/Wilson Construction Company, LLC
PO Box 1489 / Clackamas OR 97015

Contact Person: Chris Goodell/AKS Engineering And Forestry
13910 SW Galbreath Drive/Suite 100 / Sherwood OR 97140

Site Address: 7116 N Montana Avenue

Legal Description: BLOCK 15 LOT 7&8 S 1/2 OF LOT 9, GOOD MORNING ADD
Tax Account No.: R332303090
State ID No.: 1N1E15BB 09900 **Quarter Section:** 2329
Neighborhood: Arbor Lodge/Nate Young/503-679-9929
Business District: Interstate Corridor Business Association/Alexsandra Johnson/503-735-4420
District Coalition: North Portland Neighborhood Services/Mary Jaron Kelley/503-823-4099
Zoning: High Density Residential (RH)
Design (d) overlay

Plan District: North Interstate
Case Type: Land Division/Subdivision (LDS)
Procedure: Type IIx, an administrative decision with appeal to the Hearings Officer

Proposal: The applicant proposes a **Land Division/Subdivision** to divide an approximately 9,157 square foot lot into 8 parcels with a tract for a private street/shared court. The applicant indicates the existing development will be removed and the site will be redeveloped with attached houses. Each lot will be approximately 680 square feet in size.

This subdivision proposal is reviewed through a Type IIx procedure because: (1) the site is in a residential zone; (2) four to ten dwelling units are proposed, not including accessory dwelling units (see 33.660.110).

For purposes of State Law, this land division is considered a subdivision. To subdivide land is to divide an area or tract of land into four or more lots within a calendar year, according to ORS 92.010. ORS 92.010 defines "lot" as a single unit of land created by a subdivision of land. The

applicant's proposal is to create 9 units of land (8 lots and 1 tract). Therefore, this land division is considered a subdivision.

Additionally, since the site is located within a Design (d) overlay, all new development on the site must comply with Community Design Standards (33.218) or it will be subject to Design Review (33.420). The applicant has indicated the project will be designed to meet the Community Design Standards. Compliance with these standards will be evaluated at the time of building permits or, in the event the standards are not met, through a separate land use review process.

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**.

FACTS

Site and Vicinity: The subject site is a rectangular lot, approximately 9,157 square feet in area, and relatively flat. The site has frontage on N Montana Avenue and is located approximately mid block, between N Buffalo to the north and N Bryant to the south.

The site is currently developed with a single-family dwelling (1,000 square feet), a detached garage (200 square foot), and an additional accessory garage structure (500 square feet). There are several large trees located around the perimeter of the property.

The immediately abutting properties to the north, west, and south are located in the same multi-dwelling zone (RH) as the subject site. Like the subject site, the existing development on these properties consists primarily of one and two story houses, and does not reflect the scale of development allowed by the current zoning designation. The east side of the site is bordered by an undeveloped alley adjacent to the I-5 freeway. An approximately 10-foot tall concrete sound barrier wall is constructed between the alley and the freeway embankment. A Fred Meyer store, with associated surface parking lots, is located immediately north of N Buffalo street, approximately 300 feet north of the site. N Interstate Avenue is located approximately 600 feet to the west and this corridor is developed with a mix of multi-dwelling, commercial, and employment uses. A branch of the MAX light rail line also runs along N Interstate Avenue.

Infrastructure:

Streets –The site has approximately 83 feet of frontage on N Montana Avenue (west) and on an undeveloped alleyway (east). There are two driveways entering the site that serve the existing house on the site. At this location, N Montana is classified as a Local Service Street for all modes. It is improved with a 9-5-2 sidewalk configuration. Parking is allowed on both sides of the street.

Tri-Met provides transit service approximately 600 feet west of the site at N Interstate Avenue via the MAX-Interstate Line and approximately 900 feet north of the site on N Lombard via Bus Lines 4 and 75.

Water Service – There is an existing 8-inch CI water main in N Montana Avenue. The existing house is served by a 5/8-inch metered service from this main.

Sanitary Service - There is a public 12" combined sewer in N Montana Avenue (BES project 1321) and a public 18" combined sewer in the abutting alley (BES project 1097).

Stormwater Disposal – There is no public storm-only sewer currently available to this property.

Zoning: The site is located in a High Density Multi-Dwelling Zone (RH) and within a Design (d) overlay. The site is also located within the North Interstate Plan District.

In the RH zone (33.120) allowed housing is characterized by medium to high height and a relatively high percentage of building coverage. The major types of new housing development will be low,

medium, and high-rise apartments and condominiums. Generally, RH zones will be well served by transit facilities or be near areas with supportive commercial services.

The Design Overlay Zone (33.420) promotes the conservation, enhancement, and continued vitality of areas of the City with special scenic, architectural, or cultural value. The Design Overlay Zone also promotes quality high-density development adjacent to transit facilities.

The applicant has indicated the new development on the lots will be designed to meet the Community Design Standards. *The Community Design Standards (33.218) provide an alternative process to design review and historic resource review for some proposals.* Otherwise, the development on the lots will be subject to Design Review

The North Interstate Plan District (33.561) provides for an urban level of mixed-use development to support the MAX line and the surrounding neighborhoods by encouraging development that increases neighborhood economic vitality, amenities, and services and successfully accommodates additional density. The proposed houses on the lots will be required to comply with any applicable plan district regulations at the time of development.

Land Use History: City records indicate there are 2 prior land use reviews for this site.

- **LU 04-006571 ZC:** Zone Change to change the zoning from R5a (Single Dwelling Residential with Alternative Design Density overlay) to RHd (High Density Multi-dwelling Residential with Design Review overlay) in conformance with the City's comprehensive plan designation. The request was approved by the Hearings Officer, appealed by the Arbor Lodge Neighborhood, and upheld by the City Council in November of 2004.

The zoning for the site and abutting lots was subsequently changed to RHd as part of the rezoning for the North Interstate Plan District, which was established in 2008.

- **LU 05-118594 DZM:** Design Review with Modifications for a 26 unit residential development. Approved with conditions.

This Design Review decision is valid until June 30, 2014.

Agency Review: Several Bureaus have responded to this proposal and relevant comments are addressed under the applicable approval criteria. Exhibits "E" contain the complete responses.

Neighborhood Review: A *Notice of Proposal in Your Neighborhood* was mailed **November 1, 2013**. No written responses have been received.

ZONING CODE APPROVAL CRITERIA

APPROVAL CRITERIA FOR LAND DIVISIONS IN OPEN SPACE AND RESIDENTIAL ZONES

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

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 criteria that are not applicable. Applicable criteria are addressed below the table.

Criterion	Code Chapter/Section and Topic	Findings: Not applicable because:
C	33.631 - Flood Hazard Area	The site is not within the flood hazard area.
D	33.632 - Potential Landslide Hazard Area	The site is not within the potential landslide hazard area.
E	33.633 - Phased Land Division or Staged Final Plat	Not applicable. These standards only apply to land divisions in the RF through R2.5 zones.

F	33.634 - Recreation Area	Not applicable. The minimum required density is less than 40 units.
I	33.639 - Solar Access	The proposed development is for something other than single-dwelling detached homes.
J	33.640 - Streams, Springs, and Seeps	No streams, springs, or seeps are evident on the site outside of environmental zones.
L	33.654.110.B.3 - Pedestrian connections in the I zones	The site is not located within an I zone.
	33.654.110.B.4 - Alleys in all zones	No alleys are proposed or required
	33.654.120.C.3.c - Turnarounds	No turnarounds are proposed or required
	33.654.120.D - Common Greens	No common greens are proposed or required
	33.654.120.E - Pedestrian Connections	There are no pedestrian connections proposed or required
	33.654.120.F - Alleys	No alleys are proposed or required
	33.654.130.B - Existing public dead-end streets and pedestrian connections	No public dead-end streets or pedestrian connections exist that must be extended onto the site.
	33.654.130.C - Future extension of dead-end streets and pedestrian connections	No dead-end street or pedestrian connections are proposed or required.
	33.654.130.D - Partial rights-of-way	No partial public streets are proposed or required.

Applicable Approval Criteria are:

A. Lots. The standards and approval criteria of Chapters 33.605 through 33.612 must be met.

Findings: Chapter 33.612 contains the density and lot dimension requirements applicable in the RH zone.

In the RH zone, the minimum density is 1 unit/1,000 square feet of site area; and, when single-dwelling or duplex development is proposed, the site area devoted to streets is subtracted from the total site area in order to calculate minimum density. In this case, the total site area is approximately 8,157 square feet, the area for the shared court is approximately 3,718 square feet, so the balance of 4,439 square feet triggers a minimum density of 4 units. The applicant is proposing 8 lots for attached or detached houses or duplex units, so the minimum density will be met.

The maximum density is based on a floor area ratio (FAR), which allows a specific amount of floor area relative to the overall site area. At this location, the maximum FAR is 4:1. Generally, there is no maximum limit on the number of dwelling units within the allowable floor area, though the units must comply with all building and housing code requirements. However, in the RH zone, lots for multi-dwelling development must be a minimum of 10,000 square feet in size. As noted in the table below, none of the lots will meet the minimum lot area for multi-dwelling development. Since multi-dwelling development will not be allowed, it is necessary to condition the maximum density allowance on each lot to a maximum of 2 units per lot.

The required and proposed lot dimensions are shown in the following table:

RH	Minimum lot area (square feet)	Minimum lot width (square feet)	Minimum lot depth (square feet)	Minimum front lot line (square feet)
Attached Houses/Detached Houses/ Duplexes	none	none	none	10
Lot 1	680	23	28	23
Lot 2	680	23	28	23
Lot 3	680	23	28	23

Lot 4	680	23	28	23
Lot 5	680	23	28	23
Lot 6	680	23	28	23
Lot 7	680	23	28	23
Lot 8	680	23	28	23

* Width is measured from the midpoints of opposite lot lines.

With the implementation of the noted condition regarding density, these standards will be met. Therefore, this criterion will be 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 provided an arborist report that inventories the trees within the land division site and evaluates their condition (Exhibit A.4). A total of 4 trees have been identified on the site. The arborist has identified 3 of the trees (2 Big Leaf Maples and 1 Japanese Maple) as exempt as dangerous trees. The other tree is a 28-inch diameter Western Red Cedar (*Thuja plicata*) and is subject to the preservation standards. This tree is not proposed to be preserved, so the proposal does not meet any of the tree preservation options in 66.630.100.

Instead, the applicant proposes to use the mitigation options of 33.630.300. The applicant notes the proposed development is an allowed housing type in the RH zone and the conceptual design will preclude the retention of the cedar tree. The applicant proposes to mitigate the tree removal through tree planting on the lots and in the shared court, and by installing pervious pavement in the shared court.

The use of pervious pavement will help contribute to filtering stormwater and reducing stormwater runoff, which is consistent with the purpose of the tree preservation regulations; however, additional tree plantings are already required on the lots and within the shared court to meet the development standards for new residences and to meet the standards for shared courts. Additionally, given the proposed size of the lots, it is not practical for additional trees beyond the T1 standard to be planted without jeopardizing the overall health of all of the trees on the site.

Alternatively, mitigation via a contribution to the City’s Tree Fund would allow for the installation of additional trees in the Columbia Slough watershed in which the site is located, and those trees will help absorb air pollutants and contamination, and contribute to the City’s general beauty. The cost to purchase and plant trees is determined each year by the Urban Forester based on current market prices per inch for materials, labor, and maintenance. At this time, the requirement is \$300 per inch of tree to be installed.

In order to provide a level of mitigation comparable to the 35 percent that would otherwise be required by the Option 1 Tree Preservation Standard, the applicant will need to provide a payment to the Tree Fund to cover 10-inches of tree diameter. This mitigation, along with pervious pavement in the shared court, will help to offset the loss of the tree diameter that is presently provided by the 28-inch caliper Western Red Cedar. This mitigation will provide for the installation of trees in the same watershed as the site and serve to equally meet the purpose of the Tree Preservation regulations. With the implementation of this condition, prior to final plat, this criterion will be met.

Additionally, as noted in the Urban Forestry comments, street trees will be required along the frontage of each lot, and this will also contribute to enhancing the beauty of the street and replace some of the values removed by the existing tree.

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

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.

Clearing and Grading: In this case, the site is relatively flat, and is not located within the Potential Landslide Hazard Area. The applicant provided a Preliminary Grading and Erosion Control Plan (Exhibit C.5) for the new street/shared court. The plan also includes grading for the lots, to allow the majority of the clearing and grading to be conducted on the site at one time. Erosion controls have been identified to manage erosion and sedimentation, and limit the disturbance on the adjacent properties. The clearing and grading plan also shows temporary soil stockpile and staging areas.

The proposed grading represents a minimal amount of change to the existing contours and drainage patterns of the site to provide for a level street surface. The contour changes proposed should not increase runoff or erosion because all of the erosion control measures shown on the grading plan must be installed prior to starting the grading work.

Stormwater runoff from the new street/shared court and lots is required to be appropriately managed to assure that the runoff will not adversely impact adjacent properties (see detailed discussion of stormwater management later in this report).

As discussed later in this report, BDS-Site Development requires a Site Development Permit for the private street/shared court. The permit application must include a final grading plan that is consistent with the preliminary grading plan approved with the land division.

Land Suitability: The site is currently in residential use, and there is no record of any other use in the past. The applicant has proposed to remove the existing house and garages and redevelop the site. In order to ensure that the new lots are suitable for development, permits must be obtained and finalized for demolition of all structures on the site and sewer capping prior to final plat approval.

Additionally, the applicant is proposing to use pervious pavers to allow onsite infiltration to manage the stormwater from the shared court. However, as noted on the response from BES, *the conclusions of the Infiltration Test Results report recommends against the infiltration of stormwater into undocumented fill, which extends to a depth of 1.5 feet in the two test pits within the future street tract (TP-1 and TP-3).* Therefore, as part of the Site Development Permit for the shared court, the applicant must remove the undocumented fill and replace it with an appropriate structural fill material to ensure the shared court can be safely developed with pervious pavement to the satisfaction of Site Development and Environmental Services.

With these conditions, the new lots can be considered suitable for development, and this criterion will be met.

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

Findings: The following tracts are proposed:

- Tract A: Private Street/Shared Court (Name of Street) and Public Utility Easement

With a condition that the proposed tract is owned in common by the owners of Lots 1 through 8 or a Homeowner's Association, this criterion can be met.

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

- A public sanitary sewer easement must be provided for the public sewer in the private street/shared court tract to the satisfaction of BES.
- A Public Access Easement is required to allow public access to the private street/shared court tract.

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

“A Declaration of Maintenance agreement for (name of feature) has been recorded as document no. _____, Multnomah County Deed Records.”

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,

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

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. Chapters 33.651 through 33.654 address water service standards, sanitary sewer disposal standards, stormwater management, utilities and rights of way. The criteria and standards are met as shown in the following table:

<p>33.651 Water Service standard – See Exhibit E.3 for detailed bureau comments.</p> <p>The water service standards of 33.651 have been verified. The Water Bureau has indicated that service is available to the site, as noted on page 2 of this report. Specifically, the Water Bureau has noted the water services for Lots 1 and 8 will need to be located within the frontage of these lots with N Montana Avenue, within the public right-of-way. The water services for Lots 2 through 6 will need to be located within the frontage of the Common Tract “A” at N Montana Avenue. New street trees must be planted at least 10-feet away from new water services.</p>
<p>33.652 Sanitary Sewer Disposal Service standards – See Exhibit E.1 for detailed comments.</p> <p>The sanitary sewer service standards of 33.652 have been verified. The Bureau of Environmental Services has indicated that service is available to the site, as noted on page 2 of this report. Additionally, BES provided the following information regarding the requirements that will apply to the sanitary service within the shared court:</p> <p><i>Each lot must be shown to have a means of access and individual connection to a public sewer as approved by BES. The applicant proposes a public sanitary sewer in the shared court, with one individual service lateral for each of the eight proposed lots. BES Development Engineering has received plans to review the sewer extension under the required public works permit (PWP), and has approved the project to move past the Concept Review phase. Therefore BES has adequate information to confirm that individual sanitary services can be constructed for each lot. The applicant must show on the final plat a sewer easement to the City of Portland over the entirety of the street tract.</i></p>
<p>33.653.020 & .030 Stormwater Management criteria and standards – See Exhibits E.1 & E.5</p> <p>No stormwater tract is proposed or required. BES evaluated the proposed stormwater management methods, and provided the following comments:</p> <p>On-Site Stormwater Management: <i>The applicant has submitted a stormwater report prepared by AKS Engineering & Forestry, dated July 2013. The includes as appendices two geotechnical reports, both prepared by GeoPacific. The first, Infiltration Test Results dated May 9, 2013, documents that the site soils exhibit adequate infiltration rates to allow anticipated runoff to flow to infiltration facilities. The second, Infiltration Facility Slope Setback Recommendations dated</i></p>

May 22, 2013, recommends a minimum setback of 30 feet from drywells to the top of the slope east of the site, and states that the proposed pervious pavement (which will extend to within 40 feet of the top of slope) will not impact the stability of the existing slope to the east of the property.

The applicant proposes to infiltrate runoff from future development on the proposed lots via Flo-Well drywells that are stacked two in series. The entire private street tract will be pervious pavement, which will allow stormwater to infiltrate directly into the ground. Note that the conclusions and recommendations of the Infiltration Test Results report recommends against the infiltration of stormwater into undocumented fill, which extends to a depth of 1.5 feet in the two test pits within the future street tract (TP-1 and TP-3). Therefore, during City review of the private street under a Site Development permit, the City will require that the applicant remove the undocumented fill and replace it with an appropriate structural fill material. Contact BDS Site Development review staff for further details.

The proposed stormwater management plan is acceptable, provided that the applicant confirms the use of pervious pavement in the private street tract during review of the Site Development permit. If changes are made that removes the pervious pavement from the tract, BES will require the applicant to amend the design of the tract, which may include vegetated stormwater treatment facilities prior to disposal to a drywell.

Public Right-of-Way Stormwater Management: *Staff understands that PBOT will require new sidewalk construction in a pedestrian corridor where a curb and paved street already exist. Constructing the sidewalk so that it slopes toward a vegetated area and/or planting street trees will be a viable alternative to constructing stormwater management facilities, and will be reviewed with the public works permit.*

With the implementation of conditions to assure the shared court is designed in accordance with the requirements outlined above, this criterion will be met.

33.654.110.B.1 Through streets and pedestrian connections

Generally, through streets should be provided no more than 530 feet apart and at least 200 feet apart. The block on which the subject property is located meets the noted spacing requirements, and the frontages are improved with pedestrian corridors. No further public through streets to satisfy these requirements. A public access easement will be required on the private street/shared court, which will provide a connection to the existing pedestrian infrastructure. No additional improvements are required to satisfy this criterion.

33.654.110.B.2 Approval criterion for dead-end streets in OS, R, C, and E zones.

The proposal includes a dead-end private street/shared court tract. As discussed under the findings for through streets, above, a new public east-west through street is not required at this location. The private dead-end street/shared court will serve no more than 8 to 16 dwelling units and is approximately 145 feet in length, so it is consistent with this provision, which limits dead-end streets to 200 feet in length, and serving no more than 18 dwelling units. Accordingly, this criterion is met.

33.641 – Transportation Impacts – 33.641.020 and 33.641.030

33.654.120.B & C Width & elements of the right-of-way –See Exhibit E.2

The transportation system must be capable of safely supporting the proposed development in addition to the existing uses in the area. Portland Transportation has reviewed the application for its potential impacts regarding the public right-of-way, traffic impacts and conformance with adopted policies, street designations, and for potential impacts upon transportation services, and provided the following comments:

The applicant has provided a traffic impact analyses (TIA) prepared by Lancaster Engineering that documents transportation facilities can safely support the new residences in addition to the existing uses in the area. The proposal will result in a net increase of 7 new residential units. It can be expected that these residences will generate 36 new daily vehicle trips with 3 new trips

in the AM and PM Peak Hours.

Street Capacity and Level of Service: *The TIA documents that nearby intersections will continue to operate at acceptable levels,*

Vehicle Access and Loading: *The eight lots of the subject property are planned to take access from a shared court constructed with the project. One garage space is being provided for each unit.*

On-street Parking Impacts: *The TIA documented that in evening peak demand period for residential parking; approximately 60% of the on-street parking supply was available. With the provision of on-site parking for each unit and the relatively low usage of on-street parking, impacts to the supply on on-street parking should be minimal.*

Availability and Access to Transit: *The site is in close proximity to Tri Met Light Rail and two Tri Met bus lines, the numbers 4 and 75. Access to transit is sufficient to serve the proposal.*

Impacts on the Immediate and Adjacent Neighborhoods: *The land division is not expected to create a significant impact on the immediate neighborhood. The traffic generated by the site can conveniently access N Interstate, N Lombard, and Interstate 5. Since the neighborhood south of the site has traffic calming measures, little impact is expected to occur to the immediate neighborhood and little to no impact is expected to occur to any adjacent neighborhood.*

Safety for All Modes: *Traffic volumes on the existing residential streets within the immediate site vicinity are very low with travel speeds limited by the statutory residential speed limit of 25 mph as well as speed bumps along N Montana Avenue. The shared court is designed with a variety of surface texture treatments including the use of planters near the east end that will act as sufficient traffic calming measures. Cyclists can safely share the roadway with motorized vehicles. Existing sidewalks are in place along both sides of N Montana Avenue. The existing pedestrian facilities within the immediate area are adequate to safely serve the proposal in addition to the existing uses in the area.*

Conclusion: *Based on the evaluation of the transportation approval criteria, the transportation system is capable of safely serving the proposed development in addition to the existing uses in the area.*

However, as noted in the response from Portland Transportation, the N Montana frontage does not meet the required sidewalk configuration, and the frontage must be reconstructed to replace the 5-foot wide sidewalk with a 6-foot sidewalk separated from the curb with a 9-foot furnishing zone and a 1.5-foot frontage zone. No dedication is needed. Portland Transportation has noted that the applicant has submitted an approved 30 percent concept plan for a limited public works permit for the sidewalk improvements along the site frontage on N Montana Avenue. A bond and contract ensuring this improvement will be completed shall be a condition of final plat approval. In addition, vehicle access to on-site parking must be limited to the shared court and no additional curb cuts will be allowed.

With the conditions regarding the sidewalk improvements, this criterion will be met.

33.654.120.G – Approval criteria for shared courts

33.654.150.B.5- Ownership, Maintenance, and Public Use of Rights-Of-Way

The purpose of the shared court standards is to allow streets that accommodate pedestrians and vehicles within the same circulation area, while ensuring that all can use the area safely. The shared court must have a site-specific roadway design to accommodate both vehicles and pedestrians – and must include a designated Clear Zone and an Amenity Zone, as outlined in the *Permanent Administrative Rules for Private Rights-of-Way*.

Overall, the size of the proposed shared court tract (Tract A) is approximately 3,718 square feet in area and approximately 145 feet long. The width varies from 15 feet to 26 feet.

The shared court consists of a clear zone that is configured to allow access to garages on Lots 1 through 8 and to one guest parking space within the shared court.

The following features are included to fulfill the amenity zone provisions:

- An approximately 255 square foot grassy area at the south east corner of the shared court-250 square feet of this space fulfills the outdoor area standard of 33.654.120.G.1.
- Four tree planters, 2 on the north side and 2 on the south side of west half the shared court. Each planter is approximately 15 square feet in size. Each tree planter must be planted with a street tree that conforms to the City Forester's Street Tree List
- Three landscape planters bordering the clear zone on the east half of the shared court. Each planter is approximately 50 square feet in size. Smaller planter areas are provided around the entire east end of the clear zone.
- Other features noted within the shared court include a path to the grassy area, a 6-foot tall cedar fence along the eastern perimeter, and, if required by the Fire Bureau, no parking signs.

The applicant provided information on vehicle turning and maneuvering movements to demonstrate that the configuration of the shared court will allow vehicles to enter and exit from the adjacent public street in a forward motion. The Fire Bureau and Portland Transportation have not noted any need for a turnaround.

The shared court paving also includes materials to distinguish the pedestrian connections and visitor parking space from the balance of the paved clear zone area. Within the clear zone, two different paving surfaces are proposed, and the applicant's traffic engineer has indicated the mix of paving will effectively serve as a traffic calming measure to reduce vehicle speeds in the shared court. The arrangement of the street trees along the clear zone will also contribute to the type of traffic calming measures and accessibility options noted in the Permanent Administrative Rules for Private Rights-of-Way (Figures 17 and 18).

The shared court will provide pedestrian access from the existing sidewalks on N Montana Avenue. Additionally, a public access easement will be required to allow public access to all parts of the shared court tract.

Vehicle access will not be provided to the abutting alley. As noted in Portland Transportation's initial response to the proposal, improvements would be required to the abutting alley would if vehicle access were to be provided. In order to demonstrate that there will be no vehicle connection between the shared court and the abutting alley, the applicant proposes to install a curb and fencing at the east end of the shared court, as shown on Exhibits C.5 and C.12. While vehicle access to the alley must be restricted, pedestrian access may be allowed. Therefore, curbing will be required to ensure vehicles will not access the site via the alley; however, pedestrian access and a gate (no more than 5 feet in width) may be allowed between the shared court and the alley.

The shared court tract (Tract A) must be owned by the Homeowners' Association or owned in common by the owners of property served by the shared court, and a maintenance agreement must be recorded that commits the owner to maintain all elements of the right-of-way.

BDS-Site Development has reviewed the shared court design for the technical provisions of the Administrative Rules for Private Rights-of-Way, and provided the following comments:

A Site Development Permit is required for the construction of private rights-of-way. A permit submittal must be made prior to final plat approval. A performance guarantee is required and also must be submitted prior to final plat approval. If a public right-of-way is part of the proposal, a single permit for mass grading, utility installation and private right-of-way construction may be submitted. Additionally, a separate plumbing permit is required for the plumbing component of the street construction. Finally, the pervious pavers for the street must

be installed before permits for residential construction on any of the individual parcels will be issued.

Site Development has also noted that the residential building permit drawings must include an approved pervious pavement protection plan.

Additionally, per the *Administrative Rules for Private Rights-of-Way*, private rights-of-way must be named to the Satisfaction of the City Engineer.

Based on these factors, the size and configuration of the shared court is sufficient to accommodate the expected users. With the implementation of the noted conditions, this criterion will be met.

33.654.130.A - Utilities (defined as telephone, cable, natural gas, electric, etc.)

Any easements that may be needed for private utilities that cannot be accommodated within the adjacent right-of-ways can be provided on the final plat. The project plans show a proposed alignment for franchise utilities over Lot 1 and through the shared court. These utilities are shown crossing the public sewer line and several of the proposed private water lines. The franchise utilities will be subject to compliance with the provisions of the maintenance agreement for the shared court tract and any public utility easements within the shared court. As such, this criterion will be met.

DEVELOPMENT STANDARDS

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.

Future Development: Among the various development standards that will be applicable to this lot, the applicant should take note of:

Design Overlay (33.420)/Community Design Standards (33.218): New development on the lots must comply with the applicable Community Design Standards or the development will be subject to Design Review (33.825).

Houses, detached houses and duplexes accessed by common greens, shared courts, or alleys-- special requirements apply to this type of development per Section 33.120.270.E.

Existing development that will remain after the land division. The applicant is proposing to remove all of the existing structures on the site, so the division of the property will not cause the structures to move out of conformance or further out of conformance with any development standard applicable in the RH zone. Therefore, with conditions for finalized demolition permits, prior to final plat approval, 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 and Topic
Development Services/503-823-7300 www.portlandonline.com/bds	Title 24 – Building Code, Flood plain Title 10 – Erosion Control, Site Development Administrative Rules for Private Rights-of-Way
Environmental Services/503-823-7740 www.portlandonline.com/bes	Title 17 – Sewer Improvements 2008 Stormwater Management Manual
Fire Bureau/503-823-3700 www.portlandonline.com/fire	Title 31 Policy B-1 – Emergency Access

Transportation/503-823-5185 www.portlandonline.com/transportation	Title 17 – Public Right-of-Way Improvements Transportation System Plan
Urban Forestry (Parks)/503-823-4489 www.portlandonline.com/parks	Title 20 – Street Trees and other Public Trees
Water Bureau/503-823-7404 www.portlandonline.com/water	Title 21 – Water availability

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.

Private Street/Shared Court: The applicant is required to make improvements to the proposed private street/shared court. Several conditions are required, including provision of plans and financial assurances, initiating a building permit, and providing a maintenance agreement. In addition to the approval criteria of Title 33, these requirements are also based on the technical standards of Title 17 and Title 24.

Fire Bureau: The applicant must meet the requirements of the Fire Bureau in regards to addressing; hydrant flow; hydrant spacing; and if required, an Acknowledgement of Special Land Use Conditions; and fire code appeal requirements for aerial fire department access roads.

Information related to future development:

Street Trees: Street trees will be required along all public street frontages. Tree species in the public right-of-way and within the private street/shared court will be reviewed by the City Forester during building permit application and/or street improvement plans. Street trees required for residential sites are to be 2-inch caliper in size. The Water Bureau notes new street trees must be planted at least 10 feet away from new water services.

CONCLUSIONS

The applicant has proposed an 8-lot subdivision with a private street/shared court tract, as shown on the attached preliminary plan (Exhibit C.3). 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:

- Private Street/Shared Court Tract
- Shared Court amenities
- Public Sanitary Sewer Easement
- Public Access Easement
- Density
- Tree Mitigation
- Fire Bureau requirements
- Demolition of existing structures
- Right-of-way improvements

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

ADMINISTRATIVE DECISION

Approval of a Preliminary Plan for a 8-lot subdivision that will result in 8-lots for detached, attached, or duplex units; and a tract for a private street/shared court, as illustrated with Exhibit C.3, subject to the following conditions:

A. The final plat must show the following:

1. A public sanitary sewer easement, granted to the City of Portland, shall be shown over the relevant portions of the private street/shared court, to the satisfaction of the Bureau of Environmental Services. The easement must be labeled as “Public Sewer Easement to COP”.

2. The private street tract shall be named, with approval from the City Engineer, and noted on the plat as "Tract A: Private Shared Court *name of street*".
3. A Public Access Easement must be shown over the sidewalk portion(s) of the street tract.
4. 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 Conditions B.10 and B.11 below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: "A Declaration of Maintenance Agreement for (name of feature) has been recorded as document no. _____, Multnomah County Deed Records."

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

Streets

1. The applicant shall providing a bond and contract for the sidewalk improvements along N Montana Avenue to the satisfaction of Portland Transportation.
2. The applicant shall submit an application for a Site Development Permit for construction of the private street/shared court and related site development improvements. Street design plans must be prepared by, or under the direction of, an Oregon licensed civil engineer. The plans must be in substantial conformance with Exhibits C.5, C.7, and C.12 and the *Private Street Administrative Rule*. In addition, the street shall include the following:
 - One visitor parking space, a minimum 255-square foot grassy area, four minimum 15-square foot tree planters, four minimum 50-square foot landscape planters, vertical curbing along the east perimeter of the clear zone and visitor parking space to restrict vehicle access to the alley, and solid wood fencing along the east perimeter of the shared court [one pedestrian gate, no more than 5-feet wide, is allowed within the fence].
 - The tree species in the tree planters must meet the standards in Section III-I-2 of the *Private Street Administrative Rule* to the satisfaction of Urban Forestry.
3. As part of the Site Development Permit for the shared court, the applicant must remove the undocumented fill within the shared court and replace it with an appropriate structural fill material to ensure the shared court can be safely developed with pervious pavement to the satisfaction of Site Development and Environmental Services.
4. The applicant shall furnish a financial guarantee of performance, as approved by the Bureau of Development Services, for 125 percent of the estimated construction cost for the private street/shared court and all required site development improvements. The applicant shall provide an engineer's estimate of the costs of performance including the costs for temporary erosion control measures required during construction. The financial guarantee of performance shall be accompanied by a performance agreement with the Bureau of Development Services to complete the required improvements.

Utilities

5. The applicant shall meet the requirements of the Bureau of Environmental Services (BES) for extending a public sewer main in the private street/shared court tract. The public sewer extension requires a Public Works Permit, which must be initiated and at a stage acceptable to BES prior to final plat approval. As part of the Public Works Permit, the applicant must provide engineered designs, and performance guarantees for the sewer extension to BES prior to final plat approval.
6. The applicant shall meet the requirements of the Fire Bureau for ensuring adequate hydrant flow from the nearest hydrant. The applicant must provide verification to the Fire Bureau that

Appendix B of the Fire Code is met, the exception is used, or provide an approved Fire Code Appeal prior final plat approval.

7. The applicant shall meet the requirements of the Fire Bureau for fire hydrant spacing. Spacing and number of hydrants must meet the requirements of Appendix C of the Fire Code to the satisfaction of the Fire Bureau.

Existing Development

8. A finalized permit must be obtained for demolition of the existing residence on the site and capping the existing sanitary sewer connection. Note that Title 24 requires a 35-day demolition delay period for most residential structures.
9. The applicant must obtain finalized demolition permits for removing the 2 garages/ accessory structures on the site.

Required Legal Documents

10. The applicant shall execute a Maintenance Agreement for the private street/shared court tract. The agreement shall assign common, undivided ownership of the tract to the owners of Lots 1-8 and include provisions assigning maintenance responsibilities for the tract and any shared facilities within that area. The agreement must also acknowledge all easements granted within the street tract, the beneficiaries of those easements, and the limitations on the easement areas to the satisfaction of the beneficiary service agencies. The agreement must include a clause assigning maintenance and replacement responsibilities for "no parking" signs, if buildings will be over 30-feet in height. The maintenance agreement must be reviewed by the City Attorney and the Bureau of Development Services, and approved as to form, prior to final plat approval.
11. If the Fire Bureau requires an Acknowledgement of Special Land Use Conditions form, the acknowledgement shall be recorded with Multnomah County and referenced on the final plat.

Other requirements

12. The applicant must pay into the City Tree Fund the amount equivalent to 10 inches of trees. Payment must be made to the Bureau of Development Services, who administer the fund for the Parks Bureau.

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

1. Each lot has a minimum density of 1 unit and a maximum density of 2 units.
2. Pervious pavements must be installed and a pervious pavement protection plan approved by Site Development prior to issuance of any permits for residential construction.
3. Residential building permit drawings must include the approved pervious pavement protection plan.
4. Final approval of a plumbing permit for installation of utilities shall be required prior to final approval of the Site Development Permit for the private street.
5. Vehicle access from N Montana Avenue will be limited to one curb cut/driveway serving the shared court only. No additional curb cuts/driveways will be permitted for any of the proposed lots.
6. The applicant must meet the sign and addressing requirements of the Fire Bureau for structures and the private street/shared court.

- 7. If the proposed buildings will exceed 30 feet in height, as measure to the bottom of the eave of the structure or the top of the parapet for a flat roof, the applicant must obtain a Fire Code Appeal to the Aerial Fire Department Access Road requirements and comply with any conditions of a granted appeal to the satisfaction of the Fire Bureau.

Staff Planner: Kate Green

Decision rendered by: Kimberly Tallant **on December 19, 2013**
 By authority of the Director of the Bureau of Development Services

Decision mailed December 23, 2013

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 August 1, 2013, and was determined to be complete on October 29, 2013.

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 August 1, 2013.

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. Unless further extended by the applicant, **the 120 days will expire on: February 26, 2014.**

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

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

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

Appealing this decision. This decision may be appealed to the Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on January 6, 2014** at 1900 SW Fourth Ave. Appeals may be filed Tuesday through Friday on the first floor in the Development Services Center

until 3 p.m. After 3 p.m. and on Mondays, appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please contact the receptionist at 503-823-7617 to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.ci.portland.or.us .

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 775 Summer St. NE, Suite 330, Salem, Oregon 97301 or phone 1-503-373-1265 for further information.

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

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

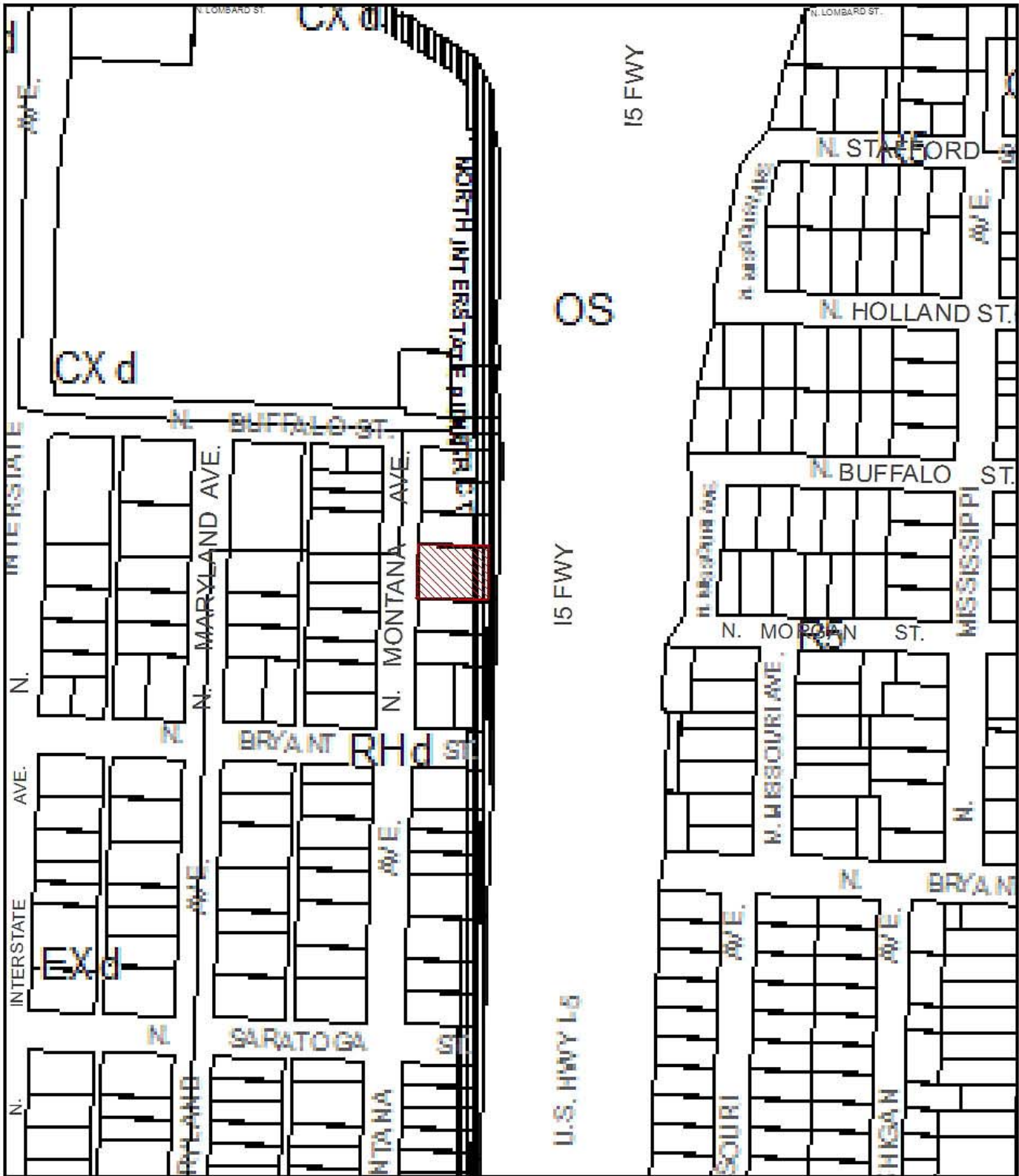
EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Application Narrative
 - 2. Neighborhood Contact
 - 3. Initial Plan Set
 - 4. July 10, 2013 Supplemental Arborist Report
 - 5. July 22, 2013 Transportation Analysis Letter
 - 6. July 23, 2013 Vehicular Turning and Sweep Analysis
 - 7. July 2013 Preliminary Stormwater Report
 - 8. October 22, 2013 Supplemental Narrative-Response to Completeness Review
 - 9. October 30, 2013 Revised Plan Set
 - 10. Property Deed
 - 11. October 17, 2013 Revised Vehicular Turning and Sweep Analysis
 - 12. October 22, 2013 Traffic Calming Measures
 - 13. November 20, 2013 Modified Plan Set
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Vicinity Map
 - 2. Existing Conditions Plan
 - 3. Preliminary Subdivision Plat (reduced copy attached)
 - 4. Preliminary Dimensioned Site Plan
 - 5. Preliminary Site Plan

6. Preliminary Clearing, Grading, and Demolition Plan
 7. Preliminary Street Plan/Cross Sections
 8. Preliminary Emergency Vehicle Access Plan
 9. Preliminary Utility Plan
 10. Preliminary Tree Removal Plan
 11. Preliminary Landscape and Tree Mitigation Plan
 12. Preliminary Shared Court Landscape Plan (reduced copy attached)
 13. Shared Court Fence Detail
- D. Notification information:
1. Mailing list
 2. Mailed notice
- E. Agency Responses:
1. Bureau of Environmental Services
 2. Portland Transportation
 3. Water Bureau
 4. Fire Bureau
 5. Site Development/BDS
 6. Urban Forestry
 7. Life Safety/BDS
- F. Correspondence: (none received)
- G. Other:
1. Original LU Application
 2. Letter to applicant re: incomplete application
 3. Emails to/from applicant

The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).



ZONING

 Site



NORTH

This site lies within the:
NORTH INTERSTATE PLAN DISTRICT

File No.	<u>LU 13-187794 LDS</u>
1/4 Section	<u>2329</u>
Scale	<u>1 inch = 200 feet</u>
State Id	<u>1N1E15BB 9900</u>
Exhibit	<u>B (Aug 05,2013)</u>

PRELIMINARY
SUBDIVISION PLAT
(LAND DIVISION)

MONTANA ROW
OREGON

PORTLAND
TAX LOT 9006



ENGINEERING - PLANNING
SURVEYING - PHOTOGRAPHY
13110 SW GARDEN ST.
PORTLAND, OREGON 97224
PHONE (503) 253-8799
FAX (503) 253-8798

DATE: 10/10/13
REGISTERED
LAND SURVEYOR
JAMES M. BROWN
NO. 12157
EXPIRES 10/10/17

JOB NUMBER
35888

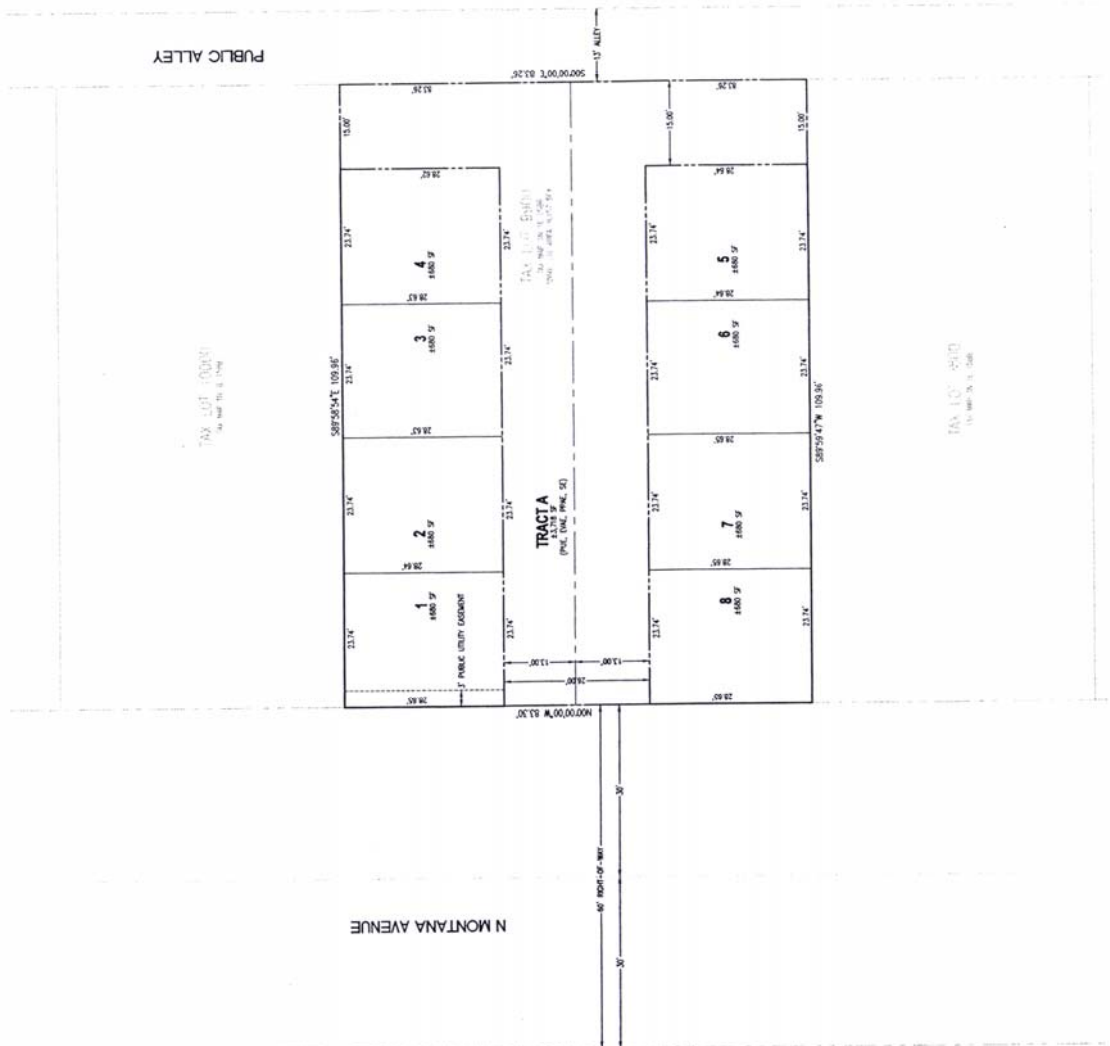
SHEET
C



PRELIMINARY SUBDIVISION PLAT NOTE:
THE PURPOSE OF THIS PRELIMINARY PLAT IS TO SHOW THE LOT DIMENSIONS FOR PLANNING PURPOSES. THIS IS NOT A FINAL PLAT AND IS NOT TO BE USED FOR SURVEYING PURPOSES.

LEGEND:
PUE - PUBLIC UTILITY EASEMENT
PUE - IMPROVED ACCESS EASEMENT
SE - SEWER EASEMENT TO THE CITY OF PORTLAND

U.S. HIGHWAY I-5



TAX LOT 9006
10,000 S.F. (APX.)

TRACTA
13.187794
PUBLIC UTILITY EASEMENT

TAX LOT 9010
10,000 S.F. (APX.)

TAX LOT 9009
10,000 S.F. (APX.)

TAX LOT 9008
10,000 S.F. (APX.)

TAX LOT 9011
10,000 S.F. (APX.)

13.187794 Exhibit C.3

