



**City of Portland, Oregon**  
**Bureau of Development Services**  
**Land Use Services**  
FROM CONCEPT TO CONSTRUCTION

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**Date:** June 7, 2016  
**To:** Interested Person  
**From:** Kate Green, Land Use Services  
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**NOTICE OF A TYPE Ix DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD**

The Bureau of Development Services has **approved** a proposal in your neighborhood. The mailed copy of this document is only a summary of the decision.

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 15-272520 LDP**

**GENERAL INFORMATION**

**Applicant:** Dan Williams / Faster Permits  
14334 NW Eagleridge Lane  
Portland OR 97229

**Property Owners:** Devin and Jasper Morrow  
4001 SE 36th Avenue  
Portland OR 97202-3216

**Site Address:** 4001 SE 36TH AVENUE  
**Legal Description:** TL 6800 0.19 ACRES, SECTION 12 1S 1E  
**Tax Account No.:** R991120740  
**State ID No.:** 1S1E12DB 06800  
**Quarter Section:** 3434

**Neighborhood:** Creston-Kenilworth, contact Zachary Smith at 503-866-8575  
**Business District:** Greater Brooklyn, contact David Weislogel at 503-872-9320  
**District Coalition:** Southeast Uplift, contact Leah Fisher at 503-232-0010

**Zoning:** Multi-Dwelling Residential 2,000 (R2)  
**Case Type:** Land Division-Partition (LDP)  
**Procedure:** Type Ix, an administrative decision with appeal to the Oregon Land Use Board of Appeals (LUBA)

**Proposal:** The applicant requests a **Land Division-Partition** to divide an approximately 8,415 square foot property into 2 parcels. A 9-foot wide dedication will be provided along the site frontage on SE 36<sup>th</sup> Avenue for right-of-way improvements.

Proposed Parcel 1 (3,636 square feet) is to be developed with a new house and an attached accessory dwelling unit and the existing house and garage will remain on proposed Parcel 2 (4,090 square feet). Each parcel is proposed to have 2 on-site parking spaces.

Water and sewer services for the parcels are proposed via connections to public lines in SE 36<sup>th</sup> Avenue. A new drywell is proposed for stormwater management for Parcel 1.

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

For purposes of State Law, this land division is considered a partition. To partition land is to divide an area or tract of land into two or three parcels within a calendar year (See ORS 92.010). ORS 92.010 defines “parcel” as a single unit of land created by a partition of land. The applicant’s proposal is to create 2 units of land (2 parcels). Therefore, this land division is considered a partition.

**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 approximately 8,415 square feet in size. A house and detached garage are located on the south side of the property and are proposed to be retained on one of the new parcels (Parcel 2). The north side of the property has been in use as the yard for the house and has several large trees and other landscaping. Overall, the site is relatively flat except along the eastern boundary where there is an approximately 5 foot grade difference between the front of the house and the street grade.

All the abutting properties to the north, west, and south as well as those directly across SE 36<sup>th</sup> Avenue to the east are in the same R2 zone as the subject site. The nearby development includes single dwelling one and two-story houses, one and two-story apartment complexes and a senior residential care facility.

The abutting property directly to the north was recently divided into 8 lots for new single-dwelling homes.

### **Infrastructure:**

**Streets** –The site has approximately 76 feet of frontage on SE 36<sup>th</sup> Avenue. SE 36<sup>th</sup> Avenue is improved with 16-feet of paved roadway and a curb within a 20-foot wide right-of-way.

At this location, SE 36<sup>th</sup> Avenue is classified as Local Service Streets for all modes in the Transportation System Plan (TSP). The City Public Right-of-Way Standards call for 50-foot wide rights-of-way with 28-foot wide roadways and two 11-foot wide pedestrian corridors. A Public Works Appeal was approved to allow a modification of this standard along SE 36<sup>th</sup> Avenue, which allows for a 16-foot wide pervious pavement roadway and an 11-foot wide sidewalk corridor. A 9-foot wide dedication is required for the SE 36<sup>th</sup> Avenue improvements. These improvements are being reviewed via Public Works Permit 16-129798 WT/TH0330.

There is one curbcut along SE 36<sup>th</sup> Avenue, which connects to a driveway serving the existing house.

Within approximately 1,000 feet of the site, Tri-Met provides transit service along SE Powell Boulevard via Bus Lines #9 and #66, and along SE Cesar Chavez Boulevard via Bus Line #75.

**Water Service** – There is an existing 2-inch Galvanized water main in SE 36<sup>th</sup> Avenue, which currently provides service for the existing house and can also provide service for the proposed parcel. All new and existing water services must meet City Title 21 requirements for service location and sizing.

**Sanitary Service** - There is currently no sewer in SE 36<sup>th</sup> Avenue. A Public Works Permit is currently under review for the sanitary extension to serve the proposed parcels, which has received concept design approval.

**Stormwater Disposal** – There is no public storm-only sewer currently available to this property. A Public Works Permit is currently under review for public drainage improvements in SE 36<sup>th</sup> Avenue, and the project has received conceptual design approval for pervious pavement in SE 36<sup>th</sup> Avenue.

**Zoning:** The site is situated in the **Multi-Dwelling Residential 2,000 (R2)** zone. The R2 zone is a low density multi-dwelling zone.

**Land Use History:** City records indicate there is one prior land use review for this site.

- LU 15-130598 LDP: This case was withdrawn.

**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 on **February 26, 2016**. 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.

<b>Criterion</b>	<b>Code and Topic</b>	<b>Findings: Not applicable because:</b>
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.
H	33.636 - Tracts and Easements	No tracts or easements are proposed or required.
I	33.639 - Solar Access	All of the proposed parcels are interior lots. In this context, solar access standards express no lot configuration preference.
J	33.640 - Streams, Springs, and Seeps	No streams, springs, or seeps are evident on the site.
L	33.654.110.B.2 - Dead end streets	No dead end streets are proposed.
	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	No pedestrian connections proposed or required.
	33.654.120.F - Alleys	No alleys are proposed or required.

	33.654.120.G - Shared Courts	No shared courts 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 R3 through IR zones. The applicant is proposing 2 parcels for single-dwelling residences, so the proposed parcels must meet minimum density and not exceed the maximum density stated in Table 120-3.

Minimum density in the R2 zone is one unit per 2,500 square feet and the maximum density is one unit per 2,000 square feet. After deducting the 688.5 square foot right-of-way dedication required along SE 36<sup>th</sup> Avenue from the 8,415 square foot property, the remaining site area is 7,726.5 square feet. Based on this, both the minimum and maximum density for the site is 3 units. The applicant has proposed to meet the density provisions by retaining the existing house to provide 1 unit of density on Parcel 2 and by constructing a new house with an accessory dwelling unit to create 2 units of density on Parcel 1.

However, as shown in the lot dimension table below, Parcels 1 and 2 meet the lot dimensions for attached houses, detached houses, and duplexes; and Parcel 2 also meets the lot dimensions for multi-dwelling development.

Required and proposed lot dimensions:

R2	Minimum lot area (square feet)	Minimum lot width (feet)	Minimum lot depth (feet)	Minimum front lot line (feet)
<b>Multi Dwelling</b>	4,000	33	70	30
<b>Attached Houses</b>	1,600	15	none	15
<b>Detached Houses</b>	1,600	25	none	25
<b>Duplexes</b>	2,000	33	50	30
Parcel 1	3,636	36	101	36
Parcel 2 (existing house)	4,090	40	101	40

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

Therefore, in order to avoid further division of the parcels that could result in non-compliance with the overall density requirements for the land division site, it is necessary to condition the minimum and maximum density allowance on each parcel, as follows:

Density	Minimum	Maximum
Parcel 1	2	2
Parcel 2 (existing house)	1	1

While the applicant has proposed to construct a house with an accessory dwelling unit to provide the 2 units of minimum density required on Parcel 1, based on the lot dimensions, the applicant could also elect to provide the 2 units by constructing a duplex on Parcel 1.

With the noted condition, the applicable density and lot dimension standards will be met. Therefore, this criterion is met.

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

**Findings:** The regulations of Chapter 33.630 require that trees be considered early in the design process with the goal of preserving high value trees and, when necessary, mitigating for the loss of trees.

To satisfy these requirements, the applicant must provide a tree plan that demonstrates, to the greatest extent practicable, the trees to be preserved provide the greatest environmental and aesthetic benefits for the site and the surrounding area. The tree plan must also show that trees are suitable for preservation, considering the health and condition of the tree and development impacts anticipated.

Some trees are exempt from the requirements of this chapter, if they are unhealthy, a nuisance species, within 10 feet of a building to remain on the site, within an existing right-of-way, or within an environmental zone.

In order to identify which trees are subject to these requirements, the applicant provided a tree survey (Exhibit C.1) that shows the location and size of trees on and adjacent to the site. The applicant also provided an arborist report (Exhibit A.1) that identifies each tree, its condition and suitability for preservation or its exempt status.

Based on this information, one 22-inch diameter Black Walnut tree (Tree #3) is subject to the preservation requirements of this chapter. The tree is noted as have some mechanical damage to the root crown, but it is a non-nuisance species and it is 20 or more inches in diameter, so the tree is appropriate for preservation.

To address the protection of this tree, the applicant provided a two additional arborist reports (Exhibit A.2 and Exhibit A.3), which indicate that a variable 12 to 16-foot root protection zone (RPZ) will be sufficient for the tree considering its species, size, location, extent of root cover, and past known impacts. The report indicates that the proposed root protection zone will allow for the type of development anticipated in the R2 zone and will not conflict with any existing utility easements, proposed services or site grading.

Since the proposal will retain the single regulated tree, it complies with: *Option 1-Preserve all of the trees that are 20 or more inches in diameter and at least 20 percent of the total tree diameter on the site.*

Based on this, no additional mitigation is warranted to satisfy the approval criteria.

In order to ensure that future owners of the parcels are aware of the tree preservation requirements, the applicant must record an Acknowledgement of Tree Preservation Land Use Conditions, at the time of final plat. The acknowledgement must identify that development on Parcel 1 must be carried out in conformance with the Tree Preservation Plan (Exhibit C.2) and the third Arborist Report (Exhibit A.3).

With the implementation of the noted conditions, the approval criteria will be met.

Additionally, residential development must meet the *Title 11-Tree Code* provisions, which require a specific amount of site area for tree planting based on the size of the property and the scale of the development. Due to the land division, Parcel 2 with existing house will no longer meet this standard; so, prior to final plat approval, the applicant must meet this requirement by either planting trees on Parcel 2 or making a payment into the City Tree Fund. At the time of development, the Title 11 requirements must be met on Parcel 1, and the tree to be retained as part of this review may be applied toward meeting these requirements.

**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 limits the impacts of erosion and sedimentation to help protect water quality and aquatic habitat. Additionally, where geologic conditions or historic uses of the site indicate that a hazard may exist, the applicant must show that the proposed land division will result in lots that are suitable for development.

Clearing and Grading: The site is not located in a designated landslide hazard area. Overall, the majority of the site is relatively flat except where it slopes down to the street east of the existing house.

The clearing is expected to be limited to the non-regulated trees. Grading will be required for the right-of-way improvements along SE 36<sup>th</sup> Avenue; to reconstruct vehicle and pedestrian access to Parcel 2; and to construct a foundation, driveway access and utility connections for development on Parcel 1.

The applicant provided a Preliminary Clearing and Grading Plan (Exhibit C.3) that shows existing and proposed grades, tree protection, and a stockpile area. The plan also shows proposed sediment fencing; however, the location of the sediment fencing along the north side of the proposed house on Parcel 1 does not encompass the grading that is shown to extend to the north property line of Parcel 1.

Nevertheless, the proposed clearing and grading appears reasonable given the site conditions and infrastructure needs. Further, the tree preservation requirements (outlined in the findings for Criterion B, Tree Preservation) will limit disturbance in proximity to the east boundary of the site. Additionally, erosion control measures will be required as part of the permit for the new development and must be installed prior to starting any grading work. The required tree protection and erosion controls will help to limit impacts, such as runoff or sedimentation, from the anticipated grading, which will help to protect water quality and aquatic habitat.

Land Suitability: The site is currently in residential use, and there is no record of any other use in the past. Although the site is currently connected to the public sanitary sewer, there is an old septic system on the site, and the City has no record that this facility was ever decommissioned. Prior to final plat, the applicant must meet the requirements of the Site Development/BDS for the decommissioning of this facility.

Additionally, there is a deck and stairs that are attached to north side of the existing house that would extend across the proposed new lot line. The applicant has indicated that that deck and stairs will be removed to ensure future development is not encumbered on Parcel 1. To ensure the deck and stairs are removed and the remaining development meets the required setbacks from the new lot line, a condition will be applied which requires that the applicant must (1) remove the deck and stairs that cross the proposed property line; (2) submit before and after photos of the removal (with the same perspective); and (3) provide a supplemental survey showing the location of the existing buildings and remaining accessory structures relative to the adjacent new lot line. Also, prior to removal of the deck and stairs, the required tree protection must be installed in accordance with the approved Tree Preservation Plan. In addition, in the event replacement stairs will be installed on the north side of the existing house, the applicant must obtain a permit to document the size, location and height of the stairs will meet the R2 zone setback provisions and show the new stairs on the supplemental plan.

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

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

**Findings:** 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.

Portland Transportation reviewed the applicant's proposal and provided the following:

*The minimal expected added vehicle trips (1 AM peak hour trip/ 1 PM peak hour trip/ 10 total new daily trips) will not adversely impact the operations of area intersections. The proposed partition will not have any negative effect to transit service or any other mode of travel. The required sidewalk corridor construction along SE 36<sup>th</sup> Ave will enhance the area's pedestrian environment.*

*On-street parking impacts were thoroughly reviewed in relation to the abutting subdivision (13-235349 LDS) that was approved in Jan/2015. Given the number of lots (8) and the unique configuration of SE 36<sup>th</sup> Ave measuring only 16-ft in width (curb-to-curb), which does not accommodate on-street parking on either side of the street, the applicant for said subdivision was required to have a parking analysis performed in relation to the traffic study the was also prepared. In relation to the City's decision for this abutting subdivision, the approval was conditioned such that each lot would need to provide at least 2 on-site parking spaces to minimize on-street parking impacts. Similarly, to minimize impacts to on-street parking related to the subject land division request, PBOT will also recommend the same condition of approval – that each parcel provide at least 2 on-site parking spaces.*

*With the provision of at least 2 on-site parking spaces on each proposed parcel, the transportation system is capable of safely supporting the proposed development in addition to existing uses in the area.*

Based on these factors, with the noted condition, this criterion will be 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 criteria and standards are met as shown in the following table:

<b>33.651 Water Service standard</b> – See Exhibit E.3 for detailed bureau comments.
The Water Bureau has indicated that service is available to the site, as noted on page 3 of this report. The water service standards of 33.651 have been verified.
<b>33.652 Sanitary Sewer Disposal Service standards</b> – See Exhibit E.1 for detailed comments.
The Bureau of Environmental Services has indicated that sanitary sewer service will be provided to the site as follows:  <i>The applicant is proposing an extension of the sanitary sewer that is currently under construction north of the site in SE 36<sup>th</sup> (BES Job #EP110). The sewer is proposed to extend at least 5-feet south of the northern proposed property line providing adequate sanitary access to both lots.</i>
BES recommends the following conditions be applied to ensure these improvements are

provided:

*The applicant is required to construct a sanitary sewer to provide service to the proposed parcels. The sewer must be constructed in order to maintain sewer service to the existing house on Parcel 2. Prior to final plat approval the applicant must construct a public sewer to the satisfaction of BES and obtain final permit approval to connect existing development to the new public sewer.*

*Prior to final plat approval the applicant must cap the sewer lateral serving the existing structure on Parcel 2, and establish a new service connection within the Parcel 2 frontage, with plumbing and connection permits finalized, to the new public sewer.*

Therefore, with the application of the noted conditions, this criterion will be met.

### **33.653.020 & .030 Stormwater Management criteria and standards – See Exhibits E.1**

No stormwater tract is proposed or required. BES reviewed the proposed stormwater management methods and provided the following information:

- **Public Street Improvements:** BES has indicated that pervious pavement is proposed to provide stormwater management for the redeveloped area in the street and recommends the following condition:

*Prior to final plat approval, the applicant must complete the following related to the construction of public stormwater facilities within the site's frontages, to the satisfaction of BES: through the Public Works Permit submit approved engineered plans, provide a financial guarantee, pay all outstanding fees, and provide a signed permit document.*

- **Onsite Improvements:** Staff reviewed the project's Infiltration Testing Results from GeoPacific dated 7/29/14. The report describes Presumptive Approach infiltration test results of 9 and 6 inches per hour at 5 and 10 feet deep, respectively. According to the Simplified Approach stormwater management report from Emerio Design (dated 2/22/16) the applicant proposes to infiltrate runoff from the development onsite through a new drywell on Parcel 1 and through downspout extensions on Parcel 2's existing house.

**Parcel 1:** Stormwater from is parcel is proposed to be directed to an onsite drywell. BES has indicated conceptual approval of the drywell.

**Parcel 2 (existing house):** The downspout on the northwest corner of the existing structure discharges toward the proposed property line and will need to meet the SWMM (Stormwater Management Manual) prior to final plat approval. In addition, additional site grading and modifications to the structures on the site appear to be necessary.

To ensure that the storm system on the Parcel 2 will meet the SWMM, BES recommends the following conditions be applied:

*Prior to final plat approval the applicant must modify the stormwater disposal system serving the existing structure on Parcel 2 according to BES and SWMM requirements. Obtain finalized permits as necessary prior to final plat approval.*

*Prior to final plat approval the applicant must submit a revised supplemental plan to the satisfaction of BES that depicts completed Parcel 2 improvements that include stormwater retrofits that meet the SWMM and a new sewer lateral according to the Sewer Design Manual.*

With the implementation of the noted conditions, this criterion will be met.

### **33.654.110.B.1 Through streets and pedestrian connections**

Generally, through street should be between 200 and 530 feet apart and pedestrian connections should be between 200 and 330 feet apart.



The site is situated directly across from SE Center Street and is approximately mid block between SE Francis (north) and SE Gladstone (south), which are approximately 450 feet apart. Since the established east-west streets located to the north and south of the site are within 450 feet of one another, an additional through street is not warranted at this location.

Additionally, Portland Transportation has indicated that no street connections have been identified in the vicinity of this property in the Portland Master Street Plan and, given the existing street and development pattern, that the location of the subject site is not a desirable location to provide a new public street or pedestrian connection through the block to the west.

Based on these considerations, there is no need for this site to extend a street or pedestrian connection. As such, this criterion is met.

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

Portland Transportation reviewed the proposal and provided the following information regarding the right-of-way width and elements:

*At this location, the City's Transportation System Plan classifies SE 36<sup>th</sup> Ave as a Local Service street for all modes.*

*At this location, according to City GIS, SE 36<sup>th</sup> Ave is improved with 16-ft of paved roadway width and a curb only (no sidewalk) within a 20-ft wide r.o.w.*

*For Local Service classified streets abutting an R2-zoned site, the City's Pedestrian Design Guide recommends an 11-ft wide sidewalk corridor comprised of a 0.5-ft curb, 4-ft wide furnishing zone, 6-ft wide sidewalk and a 0.5-ft wide frontage zone.*

*The site's existing SE 36<sup>th</sup> Ave frontage improvements do not satisfy the above referenced 11-ft wide standard sidewalk corridor, and, the existing roadway is too narrow. For Local Service classified streets abutting R2-zoned sites, the City's public r.o.w. standards document requires a 50-ft wide r.o.w. width to accommodate a 28-ft roadway width (which would allow parking along one side) & two 11-ft wide sidewalk corridors.*

*To facilitate two-way vehicular travel, in light of the 2 proposed parcels that will take access from SE 36<sup>th</sup> Ave, and to address the additional parking demands and impacts expected from the proposed partition, the applicant would typically be required to widen SE 36<sup>th</sup> Ave along the site's frontage and construct the standard sidewalk corridor.*

*However, and again in relation to the abutting and approved subdivision just north of the subject site, through the City's Public Works appeal process, the above referenced standard street section was waived. In lieu of the standard street section, an alternative solution was approved, including retaining the existing curb line and street width but re-constructing the roadway section with a pervious paving system and providing the standard 11-ft wide sidewalk corridor. Similarly, the applicant for the subject land division project requested an Alternative Review for the same r.o.w. improvements that were approved for the abutting subdivision. In February of this year, the City's Public Works Alternative Review Committee approved 16-108931 PW. This will allow the applicant to extend the r.o.w. improvements that was approved for the subdivision to the north across the subject site – this will include retaining the curb in its current location and constructing the 11-ft wide standard sidewalk corridor (0.5-ft curb, 4-ft wide furnishing zone, 6-ft wide sidewalk and 0.5-ft wide frontage zone). To accommodate these improvements, the applicant will also be required to dedicate 9-ft of property. The submitted plans reflect the improvements and property dedication. The applicant has also initiated the Public Works Permit review for said required improvements via*

*the submittal of 16-129798 WT/TH0330.*

With the noted conditions for the right-of-way dedication and improvements, this criterion will be met.

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

At this time no specific utility easements adjacent to the right-of-way have been identified as being necessary. 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. As such, this criterion is 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:

- Detached Houses- Section 33.120.270.D of the Zoning Code allows reduced side setbacks (3-feet from property lines) for detached houses in the multi-dwelling zones on lots that are at least 25 feet wide. This allowance only applies to the setbacks that are interior to the site. The setbacks around the perimeter of the land division site are that of the base zone. This proposal is eligible to use these provisions. **To take advantage of this allowance the reduced side setbacks must be shown on a supplemental survey for the land division at the time of final plat approval.**

**Existing Development:** The existing development on the site will remain and be located on Parcel 2. The division of the property may not cause the structures to move out of conformance or further out of conformance to any development standard applicable in the R2 zone. Per 33.700.015, if a proposed land division will cause conforming development to move out of conformance with any regulation of the zoning code, and if the regulation may be adjusted, the land division request must include a request for an adjustment (Please see section on Other Technical Standards for Building Code standards.)

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

- Minimum Setbacks – The existing structures identified to remain on the site must meet the required Zoning Code setbacks from the proposed new lot lines. Alternatively, existing buildings must be set back from the new lot lines in conformance with an approved Adjustment or other Land Use Review decision that specifically approves alternative setbacks. In this case, a new property line is proposed on the north side of the existing house. The house is shown to be at least 6 feet from the proposed lot line, so the required setback appears it will be met. To ensure the side setback standards continue to be met at the final plat stage, the final plat must be accompanied by a supplemental survey showing the location of the existing building relative to the adjacent new lot lines and north building elevation to show the overall area of the building plane.

Additionally, due to the required 11-foot right-of-way dedication, the east lot line will also be closer to the existing house. However, when a right-of-way dedication is required on a site with existing development, the minimum setback between the existing building and the right-of-way may be reduced (33.120.220.B.2.e). In this situation, it appears the house will be at least 20 feet from relocated east lot line.

- **Accessory Structures** – Structures are not allowed to remain on a proposed lot line. Therefore, in order for the proposed new lots to be approved, the accessory structure (deck and stairs) that straddle the line between proposed Parcels 1 and 2 must be removed prior to final plat. The applicant must submit before and after photos to document removal of the structure. To ensure that this standard is met, a condition requiring such will be applied. Additionally, if replacement stairs will be installed on the north side of the existing house, the applicant must obtain a permit to document the size, location and height of the stairs will meet the R2 zone setback provisions and show the new stairs on the supplemental plan.
- **T11 Tree Standard** – Residential development has a tree density requirement that is currently met on the site. Due to the land division, and associated tree removal, Parcel 2 with existing house will no longer meet this standard. Prior to final plat approval, the applicant must meet the tree density requirement in 11.50.050.C by either planting trees on Parcel 2 or making the equivalent payment into the City Tree Fund.

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

## OTHER TECHNICAL REQUIREMENTS

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

Bureau	Code Authority and Topic
Development Services/503-823-7300 <a href="http://www.portlandonline.com/bds">www.portlandonline.com/bds</a>	Title 24 – Building Code, Flood plain Title 10 – Erosion Control, Site Development Administrative Rules for Private Rights-of-Way
Environmental Services/503-823-7740 <a href="http://www.portlandonline.com/bes">www.portlandonline.com/bes</a>	Title 17 – Sewer Improvements 2008 Stormwater Management Manual
Fire Bureau/503-823-3700 <a href="http://www.portlandonline.com/fire">www.portlandonline.com/fire</a>	Title 31 Policy B-1 – Emergency Access
Transportation/503-823-5185 <a href="http://www.portlandonline.com/transportation">www.portlandonline.com/transportation</a>	Title 17 – Public Right-of-Way Improvements Transportation System Plan
Urban Forestry (Parks)/503-823-4489 <a href="http://www.portlandonline.com/parks">www.portlandonline.com/parks</a>	Title 11 – Trees
Water Bureau/503-823-7404 <a href="http://www.portlandonline.com/water">www.portlandonline.com/water</a>	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.

**Fire Bureau:** The applicant must meet the requirements of the Fire Bureau in regards to fire apparatus access roads, fire flow/water supply, addressing of structures, and aerial fire department access roads. If these conditions cannot be met, an appeal providing an alternative method is an option for the applicant. If the applicant chooses to appeal a requirement, the appeal must be listed as a condition in the decision. These requirements are based on the 2014 Oregon Fire Code and the technical standards of Title 31 and Fire Bureau Policy B-1.

**Urban Forestry:** The applicant must meet the requirements of Urban Forestry for street tree planting as part of the frontage improvements required along the site's SE 36<sup>th</sup> Avenue frontage. Urban Forestry has noted the specific requirements for street tree planting will be determined under the public works permit #2016-12978-000-00-WT, and must be verified prior to final plat approval.

## CONCLUSIONS

The applicant has proposed a 2-parcel partition, as shown on the attached preliminary plan (Exhibit C.1). The primary issues identified with this proposal are:

- Density
- Modifications to existing development
- Tree preservation
- Tree replacement for existing house
- Right-of-way dedication and frontage improvements
- Fire Bureau requirements
- Onsite parking requirements

As discussed in this report, the relevant standards and approval criteria have been met, or can be met with conditions. Accordingly, this proposal can be approved.

## ADMINISTRATIVE DECISION

**Approval** of a Preliminary Plan for a 2-parcel partition that will result in one single-dwelling or duplex parcel (Parcel 1) and one single dwelling parcel (Parcel 2, existing house) and right-of-way dedication for SE 36<sup>th</sup> Avenue, as illustrated with Exhibit C.1, subject to the following conditions:

**A. Supplemental Plan.** Four copies of an additional supplemental plan shall be submitted with the final plat survey for Land Use, BES, Site Development and Fire review and approval. That plan must portray how the conditions listed below are met. In addition, the supplemental plan must show the surveyed location of the following:

- Any buildings or accessory structures on the site at the time of the final plat application;
- Any driveways and off-street vehicle parking areas on the site at the time of the final plat application;
- The reduced side setbacks for detached houses allowed under 33.120.270.D, if requesting and eligible;
- Completed Parcel 2 improvements that include stormwater retrofits that meet the SWMM and a new sewer lateral according to the Sewer Design Manual;
- Any other information specifically noted in the conditions listed below.

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

1. The applicant shall meet the street dedication requirements of the City Engineer for SE 36<sup>th</sup> Avenue. The required right-of-way dedication must be shown on the final plat.
2. A recording block for each of the legal documents such as maintenance agreement(s), acknowledgement of special land use conditions, or Declarations of Covenants, Conditions, and Restrictions (CC&Rs) as required by Condition C.11 and C.12 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."

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

### Streets

1. The applicant shall meet the requirements of the City Engineer for right-of-way improvements along the site's street frontage. The applicant shall submit an application for a Public Works Permit and provide plans and financial assurances to the satisfaction of

the Portland Bureau of Transportation, the Bureau of Environmental Services, and Urban Forestry for required street frontage improvements.

### **Utilities**

2. The applicant shall meet the requirements of the Bureau of Environmental Services (BES) for the construction of public stormwater facilities within the site's frontages through a Public Works Permit, per Condition C.1. As part of the Public Works Permit, the applicant must provide engineered designs, and performance guarantees for the public stormwater facilities to the satisfaction of BES.
3. The applicant shall meet the requirements of the Bureau of Environmental Services (BES) for the construction of a public sanitary sewer to provide service to Parcels 1 and 2 through a Public Works Permit. The following must be completed to the satisfaction of BES and with plumbing and connection permits finalized: install the new public sanitary sewer; establish a new sewer service connection within the frontage of Parcel 2; connect the existing house on Parcel 2 to the new public sewer; and cap the existing sewer lateral serving the existing house on Parcel 2.
4. The applicant shall meet the requirements of the Site Development Section of the Bureau of Development Services for decommissioning the existing sanitary sewer system on the site.
5. 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.
6. The applicant must meet the requirements of the Fire Bureau for providing an adequate fire apparatus access road or obtain approval through the Fire Code Appeal process for fire department access roads that do not meet the minimum standards approved by the Transportation requirements. Any outcome of a Fire Code Appeal shall be listed as a condition of approval of the final plat if applicable.

### **Existing Development**

7. The applicant must remove the sufficient portions of the accessory deck and stairs that that cross the proposed property line to show the remaining development meets the side setback requirement in the R2 zone. The applicant must submit before and after photos of the removal (with the same perspective). The remaining development must be shown on the supplemental plan. Prior to removal of these structures, tree protection must be installed in accordance with the approved Tree Preservation Plan, per Condition D.1. Additionally, if replacement stairs are installed on the north side of the existing house, the applicant must obtain a permit to document the size, location and height of the stairs will meet the R2 zone setback provisions and show the new stairs on the supplemental plan.
8. Two parking spaces must be provided on Parcel 2. The location and configuration of the parking spaces must conform to the parking standards of Chapter 33.266 and the tree preservation requirements per Condition D.1. Provide a supplemental plan that shows how the existing garage and/or driveway can provide the two required parking spaces. Or obtain and finalize a Zoning Permit for the installation of the two required parking spaces on Parcel 2. The permit plans must include the note: *This permit fulfills requirements of Condition C.8 of LU 15-272520.* Any new parking spaces must also be shown on the supplemental plan.
9. The applicant must meet the requirements of BES for the stormwater systems on the existing house to remain on Parcel 2. Specifically, the gutters and downspouts must direct water to an approved disposal point that meets setback requirements from the new lot



**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 December 3, 2015, and was determined to be complete on February 23, 2016.

*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 December 3, 2015.

*ORS 227.178* states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant requested that the 120-day review period be extended by 90-days (Exhibit A.4). Unless further extended by the applicant, **the 120 days will expire on: September 20, 2016.**

**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. Contact LUBA at 775 Summer St NE Suite 330, Salem, OR 97301-1283 or phone 1-503-373-1265 for further information.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 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.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 Assessor's 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.**

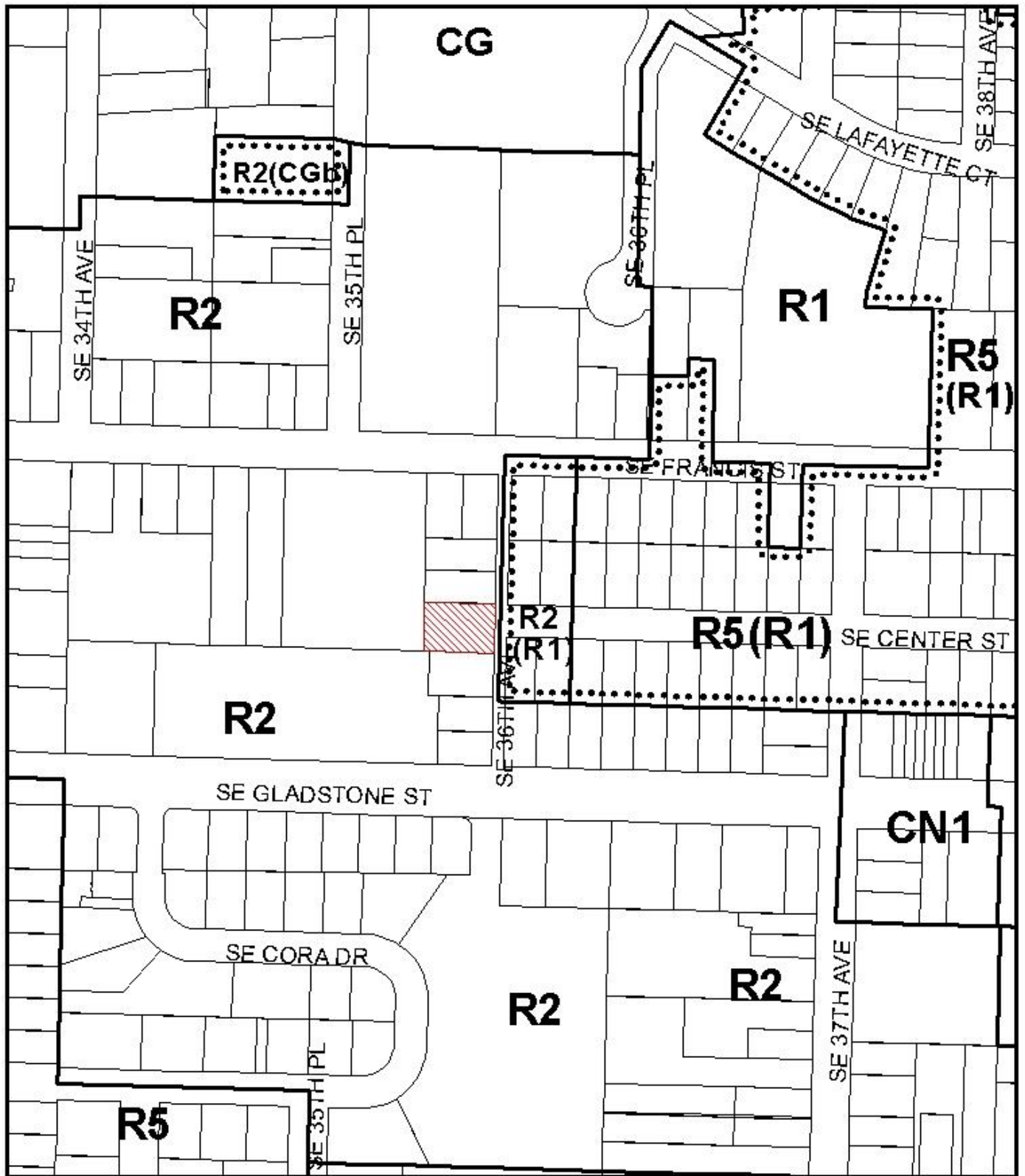
#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  - 1. Initial Submittal
  - 2. Supplemental Narrative, February 23, 2016
  - 3. Revised Arborist Report-Adjusted RPZ/Grading and Tree Preservation Plan, April 29, 2016
  - 4. Timeline Extensions: March 31, April 15 and May 4, 2016
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Preliminary Plat (reduced copy attached)
  - 2. Revised Preliminary Grading/Tree Preservation Plan, May 20, 2016 (reduced copy attached)
  - 3. Preliminary Site/Utility Plan
  - 4. Existing Conditions Plan
  - 5. Site Survey
- 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 Parks
  - 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).**



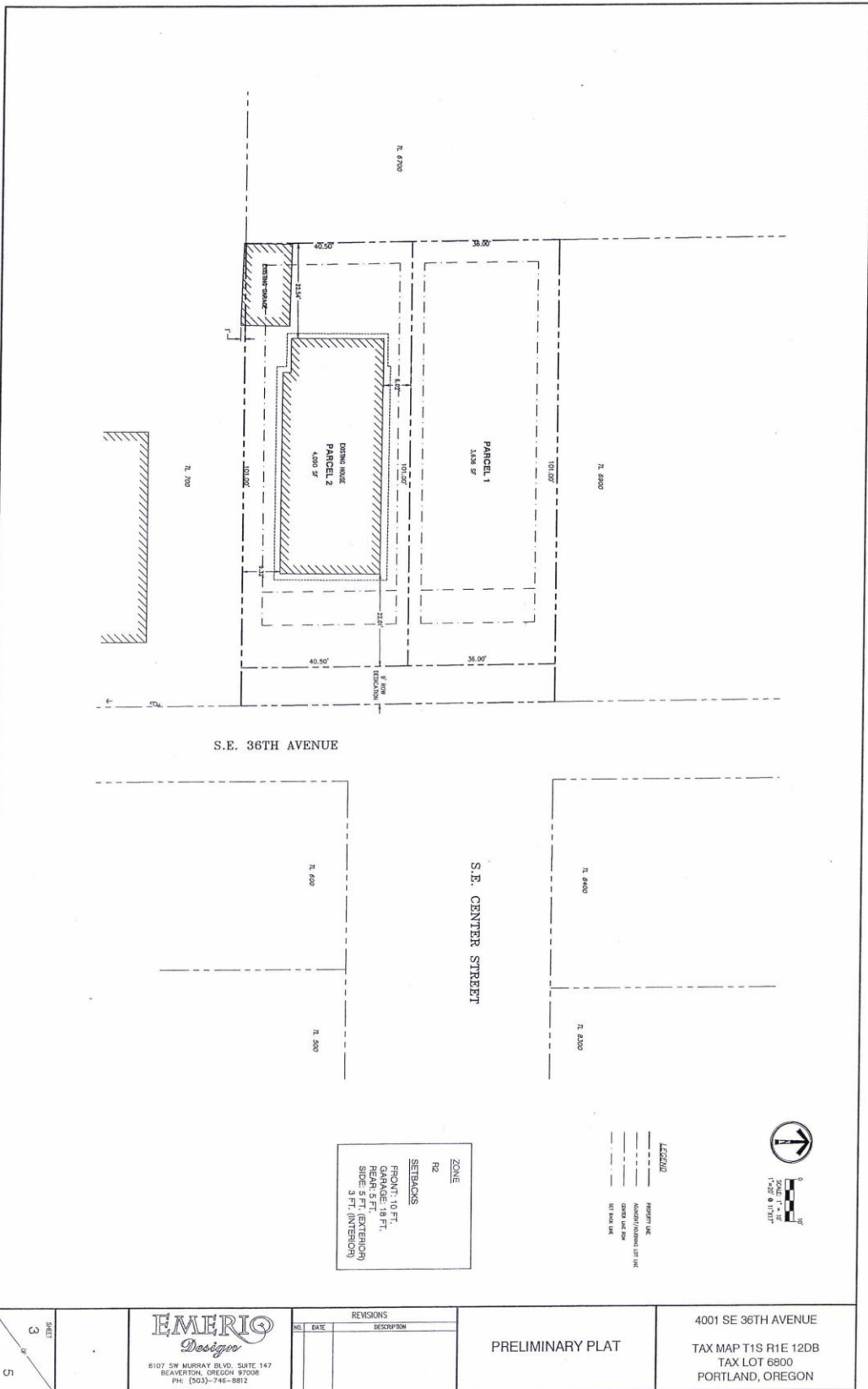


# ZONING



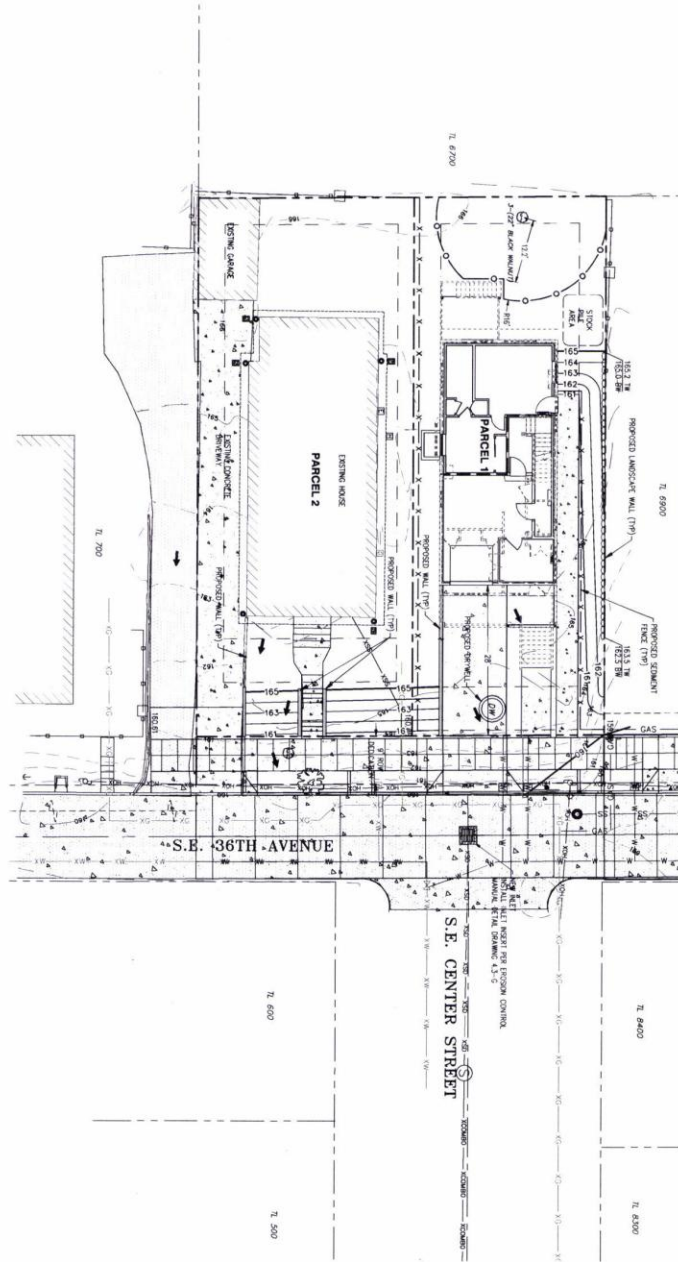
 Site

File No. LU 15-272520 LDP  
 1/4 Section 3434  
 Scale 1 inch = 200 feet  
 State\_Id 1S1E12DB 6800  
 Exhibit B (Dec 07, 2015)



15-212520  
 Exhibit C.1  
 (reduced copy)

SHEET 3 OF 5	<b>EMERIO</b> <i>Design</i> 6107 SW MURRAY BLVD, SUITE 147 BEAVERTON, OREGON 97008 PH. (503)-746-8812	REVISIONS NO. DATE DESCRIPTION	PRELIMINARY PLAT	4001 SE 36TH AVENUE TAX MAP T1S R1E 12DB TAX LOT 6800 PORTLAND, OREGON
		ZONE R2 SETBACKS FRONT: 10 FT. GARAGE: 18 FT. REAR: 5 FT. (EXTENSION) SIDE: 5 FT. (INTERIOR) 3 FT. (INTERIOR)		



- LEGEND**
- BOUNDARY LINE
  - - - - - ADJACENT/ADJOINING LOT LINE
  - CENTER LINE SIGN
  - EXISTING TOWHPINE
  - EXISTING GUY WIRE
  - EXISTING STREET LIGHT
  - EXISTING UTILITY POLE
  - EXISTING CURB BOUND
  - EXISTING STAIR WALKWAY
  - DIRECTION OF STAIR WALKWAY
  - EXISTING 1" CONTOUR LINE
  - EXISTING 5" CONTOUR LINE
  - PROPOSED 1" CONTOUR LINE
  - PROPOSED 5" CONTOUR LINE
  - PROPOSED SCREENTIN FENCE

15-272-52-0  
 Exhibit C.2  
 (reduced copy)

Revised  
 Plan  
 M 5.20.20

**EMERIO**  
*Design*  
 6107 SW MURRAY BLVD SUITE 147  
 BEAVERTON, OREGON 97008  
 PH: (503)-746-8812

REVISIONS	
NO	DATE DESCRIPTION

**PRELIMINARY GRADING & EROSION CONTROL PLAN**

4001 SE 36TH AVENUE  
 TAX MAP T1S R1E 12DB  
 TAX LOT 6800  
 PORTLAND, OREGON