



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

FROM CONCEPT TO CONSTRUCTION

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**Date:** December 14, 2016  
**To:** Interested Person  
**From:** Jason P. McNeil, 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 16-210875 LDP**

#### **GENERAL INFORMATION**

**Applicant:** Carla Shetzline  
3808 NE Rodney Ave  
Portland, OR 97212

**Owner:** Erica F Shetzline,  
39454 Mohawk Loop Rd  
Marcola, OR 97454

**Site Address:** 3808 NE RODNEY AVE

**Legal Description:** BLOCK 14 LOT 13, ALBINA HMSTD  
**Tax Account No.:** R010503270  
**State ID No.:** 1N1E22DD 11300  
**Quarter Section:** 2630

**Neighborhood:** Boise, contact [boiselanduse@gmail.com](mailto:boiselanduse@gmail.com)  
**Business District:** North-Northeast Business Assoc, contact at [chair@nnebaportland.org](mailto:chair@nnebaportland.org)  
**District Coalition:** Northeast Coalition of Neighborhoods, contact Zena Rockowitz at 503-388-5070.

**Plan District:** None  
**Zoning:** R2.5 a – Residential 2500 with an ‘a’ Alternative Design Density overlay zone  
**Case Type:** LDP – Land Division Partition  
**Procedure:** Type IX, an administrative decision with appeal to the Oregon Land Use Board of Appeals (LUBA).

**Proposal:**

The applicant is proposing a two-parcel land division on this 5,000-square foot lot, resulting in two new parcels. Parcel 1 will be 1,900 square feet and contain the existing house on the site. Parcel 2 will be a 3,100-square foot flag lot and would be available for development with a new single dwelling unit. The site is not located within 500 feet of frequent transit and therefore one off-street parking space will be provided on each parcel. The applicant is proposing to preserve both of the nonexempt trees on the site.

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 two lots. 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 approval criteria are found in Section 33.660.120, Approval Criteria for Land Divisions in Open Space and Residential Zones.

**ANALYSIS**

**Site and Vicinity:** This relatively flat site is currently occupied by a two-story single dwelling unit built in 1885. There is an accessory structure on the site that will remain on the “flag” portion of the lot. There are two trees on the site that will be retained. The immediate area around the site is comprised of one and two-story single dwellings, some of which were built in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries. Two blocks to the west is the N Williams commercial corridor, dominated by multi-dwelling buildings and streetfront-oriented commercial development. Three blocks to the east is the Martin Luther King Jr. (MLK) Blvd. commercial corridor. The areas between the site and these two corridors are a mix of single and multi-dwelling residential uses. The street grid in the area is regular and characterized by paved streets with curbs and sidewalks.

**Infrastructure:**

**Streets** – The site has approximately 50 feet of frontage on NE Rodney Avenue. The owner closed the curb cut that previously served a driveway on the site, so there is no on-site parking. At this location, NE Rodney is classified as a Local Service Street for all modes in the Transportation System Plan (TSP). Tri-Met provides transit service approximately 525 feet from the site at N Williams Avenue via Bus Line 44 and 620 feet away on N MLK Boulevard via Bus Line 6.

NE Rodney Avenue has a 36-foot curb-to-curb paved surface within a 60-foot right-of-way with parking on both sides. Along the 50-foot wide site frontage, the pedestrian corridor includes a 4-foot wide planter area, curb, 6-foot sidewalk and a 2-foot wide buffer at the back of the sidewalk (4-6-2 configuration).

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

**Sanitary Service** - There is an existing 16-inch clay public combination sewer line in NE Rodney Avenue.

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

**Zoning:**

The R2.5 designation is one of the City's single-dwelling zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing.

The "a" overlay is intended to allow increased density that meets design compatibility requirements. It fosters owner-occupancy, focuses development on vacant sites, preserves existing housing stock, and encourages new development that is compatible with the surrounding residential neighborhood. This land division is not using any provisions of the "a" overlay.

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

- **LU 08-119962 LDP:** Approval of a Land Division – Partition creating one (1) standard lot and one (1) flag lot. *The final plat for this land division was never completed and voided in 2011. This proposal is similar to the 2008 land division.*

**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 **October 25, 2016**. One (1) written response has been received from a notified neighbor in response to the proposal.

- Intensity of Development: The neighbor noted that all of the homes on the immediate block are single-family homes.

*Staff Response: This proposal is for a land division to create a lot for an additional single-family dwelling.*

- Parking and access: Concern that the curb cut for an on-site parking space has been closed and that off-street parking availability will be impacted.

*Staff Response: This proposal includes two (2) off-site parking spaces on the new lots, which will result in a net gain of parking on this block. The applicant will be required to reopen the curb cut as part of this proposal. Additionally, the Bureau of Transportation (PBOT) has indicated that the size and location of the proposed curb cut will not result in the loss of any on-street parking.*

- Accessory Structure: There is an existing accessory structure on the site that may not be up to code.

*Staff Response: The applicant is required to move the existing accessory structure to meet zoning requirements. Additionally, the structure will be required to meet code as part of the building permit process for any new dwelling on Parcel 2.*

- Bed & Breakfast Operation: The neighbor stated that the applicant currently operates a bed and breakfast out of the existing home.

*Staff Response: This land division does not constitute approval of an Accessory Short Term Rental (ASTR) use. No evidence has been presented that the applicant is operating an ASTR on the site; however, concerned neighbors can call BDS Compliance Services for a further investigation of unauthorized uses at (503) 823-CODE (2633).*

- Applicant/Owner: The applicant for this proposal is not the owner of the property.

*Staff Response: The applicant is the property owner's sister. Land use review applications are allowed to be submitted by a representative of the property owner, provided the*

*property owner provides written authorization. In this case, Erica Shetzline, the owner of this property, signed the application form that was submitted to the City. Additionally, Erica Shetzline was sent notice of the application to her listed address.*

- **Fire Pit:** The neighbor stated that a fire pit on the site creates off-site impacts, for which the Fire Department has been called.

*Staff Response: Recreational fires within a fire pit are allowed by the Portland Fire Bureau (PFB), with some conditions. PFB is the agency with the authority to limit or restrict recreational fires in the City. Concerns should be directed to PFB at (503) 823-3700.*

## 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	A phased land division or staged final plat has not been proposed.
F	33.634 - Recreation Area	The proposed density is less than 40 units.
I	33.639 - Solar Access	All of the proposed parcels are interior lots (not on a corner). In this context, solar access standards express no lot configuration preference.
J	33.640 - Streams, Springs, and Seeps	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	There are 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	No dead-end street or pedestrian connections are proposed or required.

	connections	
	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 33.611 contains the density and lot dimension requirements applicable in the R2.5 zone. Based on the applicant's survey, the site area is 5,000 square feet. The maximum density in the R2.5 zone is one unit per 2,500 square feet. Minimum density is one unit per 5,000 square feet based on 80 percent of the site area.

The site has a maximum density of two (2) units and a minimum required density of one (1) units. The applicant is proposing two (2) single dwelling parcels/lots. The density standards are therefore met.

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

	<b>Min. Lot Area (square feet)</b>	<b>Max. Lot Area (square feet)</b>	<b>Min. Lot Width* (feet)</b>	<b>Min. Depth (feet)</b>	<b>Min. Front Lot Line (feet)</b>	<b>Min. Flag Lot Width (feet)</b>	<b>Min. Flag Lot Depth (feet)</b>
<b>R2.5 Zone</b>	1,600	N/A	36	40	30	40	40
Parcel 1	1,900		38	50	38	N/A	N/A
Parcel 2**	2,500		N/A	N/A	N/A	50	50

\* Width is measured by placing a rectangle along the minimum front building setback line specified for the zone. The rectangle must have a minimum depth of 40 feet, or extend to the rear of the property line, whichever is less.

\*\* For flag lots: (1) width and depth are measured at the midpoint of the opposite lot lines in the "flag" portion of the lot; and (2) lot area calculations do not include the "pole" portion of the lot.

Flag Lots

**When allowed**

In this case the applicant is proposing 2 parcels, only one of which is a flag lot. The existing dwelling unit has been on the property for at least 5-years and is located so that it precludes a land division that meets minimum lot width standards. The minimum density standards are met. Therefore the thresholds for when a flag lot is allowed to be created have been met.

**Dimensions**

The proposed flag lot meets applicable Zoning Code standards found in 33.611.400 because it has a "pole" at least 12 feet wide that connects to a street, and as shown above, meets the minimum lot area, width and depth standards.

**Vehicle Access**

Where it is practical, vehicle access must be shared between the flag lot and the lots between the flag portion of the lot and the street. Factors that may be considered include the location of existing garages, driveways, and curb cuts, stormwater management needs, and tree preservation. Access easements may be used.

In this case, the flag portion of Parcel 2 will provide off-street parking access for both parcels. The shared vehicle access minimizes the need for additional curb-cuts along the street and the impervious area resulting from paved surfaces for vehicle access. A private access easement will be placed over the entirety of the pole to allow shared access.

Parcel 2 has met the thresholds for when a flag lot is allowed. Therefore, Parcel 2 is allowed.

The findings above show that the applicable density and lot dimension standards are 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. Tree preservation must be maximized, to the extent practicable, while allowing for reasonable development considering the intensity of development allowed in the zone and site constraints, including existing utility easements and requirements for services and streets.

Trees that are healthy, native and non-nuisance species, 20 or more inches in diameter and in tree groves are the highest priority for preservation. Additional considerations include trees that are slower growing native species, buffering natural resources, preventing erosion and slope destabilization and limiting impacts on adjacent sites.

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.3) that shows the location and size of trees on and adjacent to the site. The applicant also provided an arborist report (Exhibit A.2) that identifies each tree, its condition and suitability for preservation or its exempt status, and specifies a root protection zone and tree protection measures for each tree to be preserved.

Based on this information, two (2) trees, which provide a total of 20 inches of tree diameter, are subject to the preservation requirements of this chapter.

The trees proposed for preservation are in good condition, include non-nuisance species, and none of the trees are 20 or more inches in diameter. The proposed root protection zones for the trees to be retained will allow for the type of development anticipated in the R2.5 zone and will not conflict with any existing utility easements, proposed services or site grading.

All the trees are less than 20 inches in diameter and the applicant proposes to retain 20 inches of tree diameter, which is equivalent to 100 percent of the total tree diameter, so the proposal complies with Option 4.

In addition, the applicant's arborist report has also identified one tree on an adjacent site that is within 15 feet of potential disturbance area on the proposed lots. In order to protect the off-site tree from construction impacts, the arborist recommends a 17-foot root-protection zone (RPZ), reflected on the tree preservation plan, with allowed encroachments into the RPZ provided the protective measures for foundation excavation and driveway construction, as described in the arborist report, are followed.

Based on these factors, 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 Parcels 1 and 2 must be carried out in conformance with the Tree Preservation Plan (Exhibit C.3) and the Arborist Report (Exhibit A.2).

At the time of development, the individual parcels must also 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. The trees to be retained as part of this review may be applied toward meeting those Title 11 requirements.

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

**Findings:**

***Clearing and Grading***

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

In this case, the site is primarily flat and is not located within the Potential Landslide Hazard Area. Therefore, no significant clearing or grading will be required on the site to make the new lots developable. The RPZ for one off-site tree extends onto the site into the area of the proposed building footprint and driveway on Parcel 2. The applicant's arborist states that, with additional protections and alternative construction techniques for the foundation and driveway, the area within the RPZ can be developed without harming the tree. This criterion is met.

***Land Suitability***

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

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

**Findings:** No tracts are proposed or required for this land division, so criterion A does not apply.

The following easement is required for this land division:

- A Private Access Easement is required over the flag pole of Parcel 2 to provide a shared access serving Parcels 1 and 2.

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

*"A Declaration of Maintenance agreement for the Private Access Easement has been recorded as document no. \_\_\_\_\_, Multnomah County Deed Records."*

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

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

**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. Mitigation may be necessary to reduce impacts.

The Development Review Section of the Portland Bureau of Transportation (PBOT) has reviewed the application against the evaluation factors and has provided the following findings (see Exhibit E.2):

*The applicant provided a response to the transportation approval criteria. According to the ITE Trip Generation Manual, 9<sup>th</sup> Edition, a new single-family detached dwelling is expected to generate approximately ten trips per day, including one additional trip during the morning peak hour and one additional trip during the evening peak hour. The proposed land division will create two lots. One additional dwelling will be located on the property to be divided. Based on the ITE Trip Generation Manual data, the dwelling will generate approximately 10 trips per day, including one additional trip in the morning peak and one additional trip in the evening peak. Based on that information, the proposed development will not significantly impact street capacity or level-of-service. The proposed curbside vehicle access and loading area for the residential use at this location is sufficient to accommodate two dwellings. The proposed 12-ft driveway with 3-ft wings will remove approximately 18-ft of on-street parking, 15-ft of which will be on the frontage of the subject parcel. However, approximately 35-ft of on-street parking will remain, which is sufficient to provide space on the subject frontage for two small cars. Bus stops for lines #44 and #6 are within 1,200-ft of the subject parcel. Existing frontage improvements on NE Rodney include an 11-ft sidewalk corridor (4-6-2 configuration). This sidewalk corridor includes a 6-ft pedestrian through-zone that provides a sufficient pedestrian level-of-service. The transportation system is capable of safely supporting the proposed development in addition to existing uses in the area. The proposed development will not negatively impact transit service or safety for any mode.*

PBOT has reviewed and concurs with the information supplied and available evidence. No mitigation is necessary for the transportation system to be capable of safely supporting the proposed development in addition to the existing uses in the area. These criteria are 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 2 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 service is available to the site, as noted on page 2 of this report. The sanitary sewer service standards of 33.652 have been verified.
<b>33.653.020 &amp; .030 Stormwater Management criteria and standards</b> – See Exhibits E.1
No stormwater tract is proposed or required. Therefore, criterion A is not applicable.
The applicant has proposed the following stormwater management methods:
<b>Parcel 2:</b> Stormwater from this lot will be directed to an individual drywell that will treat the



water and slowly infiltrate it into the ground. This lot has sufficient area for a stormwater facility that can be adequately sized and located to meet setback standards, and accommodate water from a reasonably-sized home. BES has indicated conceptual approval of the drywell.

**Parcel 1 (the lot with the existing house):** The existing house has downspouts that drain onto the ground.

This criterion is met.

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

Generally, through streets should be provided no more than 530 feet apart and pedestrian connections should be provided no more than 330 feet apart. Through streets and pedestrian connections should generally be at least 200 feet apart.

The block on which the subject property is located meets the noted spacing requirements for streets but not for pedestrian connections; however, the site is approximately 150 feet south of NE Failing Street and slightly less than 200 feet north of NE Beech street, therefore a pedestrian connection at this location would not comply with the 200-foot minimum distance.

In addition, the site is not within an area that has an adopted Master Street Plan, so criterion d. does not apply.

For the reasons described above, this criterion is met.

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

In reviewing this land division, Portland Transportation relies on accepted civil and traffic engineering standards and specifications to determine if existing street improvements for motor vehicles, pedestrians and bicyclists can safely and efficiently serve the proposed new development. Portland Transportation has indicated that the existing street is currently improved in a manner that is sufficient to serve the expected users. Portland Transportation has not identified or been made aware of any factors related to this proposal that lead to a conclusion other than that one additional dwelling can be safely served by this existing street without having any significant impact on the level of service provided.

The proposed development on the site includes a shared driveway with a single curb cut centered on the flagpole portion of Parcel 2, which is the location of a driveway that once served this site. That driveway has since been removed and the curb cut closed. At the time of development, PBOT will require the applicant to reopen the curb cut and reconstruct the pedestrian corridor along the site frontage to City standards with a 4-foot wide planting strip between the curb and 6-foot wide sidewalk with a 2-foot buffer at the back of the sidewalk next to the property line. The applicant may be required to reconstruct the curb along the entire site if it does not provide at least four (4) inches of exposure. This will be required as a condition of development on Parcel 1 related to installing the parking space.

With the conditions of approval described above, this criterion is 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. At this time no specific utility easements adjacent to the right-of-way have been identified as being necessary. Therefore, 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:

- Flag Lots-- special setback standards apply to flag lots in the RF-R2.5 zone, and special landscape standards apply to flag lots that are 10,000 square feet or less in area in the R7-R2.5 zones (33.110.240.F). These standards apply to Parcel 2.

**Existing development that will remain after the land division.** The existing development on the site will remain and be located on Parcel 1. The division of the property may not cause the structures to move out of conformance or further out of conformance to any development standard applicable in the R2.5 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 house identified to remain on the site must meet the required Zoning Code setbacks from the proposed new lot lines. Alternatively, existing buildings must be set back from the new lot lines in conformance with an approved Adjustment or other Land Use Review decision that specifically approves alternative setbacks. The existing house will be 4.6 feet from the new side lot line (the flagpole), which is allowed per Section 33.110.220.D.2, and 12 feet from the rear lot line. Therefore, the required setbacks are being met. To ensure this standard continues to be met at the final plat stage, the final plat must be accompanied by a supplemental plan showing the surveyed location of the existing building relative to the adjacent new lot lines.
- Accessory Structures – In this zone, accessory structures are not allowed on a lot without a primary structure; however, Section 33.110.250.B.3.a allows the applicant to execute a covenant to allow the structure to remain for up to 2 years or until a new primary structure is built on the lot. The applicant states that they would like to retain the existing accessory structure for use with the proposed new dwelling on Parcel 2. The applicant may execute a covenant with the City to retain the accessory structure for up to two years without a primary structure. The covenant must meet the requirements of 33.700.600 and be executed prior to or with the Final Plat. Alternatively, the accessory structure on Parcel 2 may be removed prior to final plat. Because the structure is less than 200 square feet in size, a demolition permit is not required. The applicant would be required to submit before and after photos to document removal of the structure.
- Required Off-Street Parking – In this zone, one parking space per dwelling unit is required. There is currently no off-street parking space serving the existing house on Parcel 1; however there was on-site parking previously before the owner removed the curb cut. In order to ensure that parking requirements are met, a new parking space for the existing house must be constructed on Parcel 1 prior to final plat approval. Permits must be obtained to construct a new parking space. Documentation of final inspection of this new parking space will be required prior to final plat approval.

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

## OTHER TECHNICAL REQUIREMENTS

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

<b>Bureau</b>	<b>Code Authority and Topic</b>
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.

- The applicant must meet the requirements of the Fire Bureau in regards to addressing requirements; ensuring adequate hydrant flow from the nearest fire hydrant or obtaining an approved Fire Bureau appeal to this requirement; fire apparatus access, including aerial access. These requirements are based on the technical standards of Title 31 and Fire Bureau Policy B-1.
- The applicant must meet the requirements of Urban Forestry for street tree mitigation prior to final plat approval. Specifically, the applicant must pay the fee-in-lieu of the equivalent of 1.5 inches of trees to mitigate for the loss of planting space for one (1) street tree. This requirement is based on the standards of Title 11.

## CONCLUSIONS

The applicant has proposed a two (2) parcel partition, as shown on the attached preliminary plan (Exhibit C.4). As discussed in this report, the relevant standards and approval criteria have been met, or can be met with conditions. The primary issues identified with this proposal are: tree preservation, off-site parking, and an existing accessory structure.

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

## ADMINISTRATIVE DECISION

**Approval** of a Preliminary Plan for a two (2) parcel partition, that will result in one (1) standard lot and one (1) flag lot as illustrated with Exhibit C.4, subject to the following conditions:

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

- Any buildings or accessory structures on the site at the time of the final plat application;
- Any driveways and off-street vehicle parking areas on the site at the time of the final plat application;
- The proposed general location of future building footprints and stormwater facilities for each of the vacant lots.
- Any other information specifically noted in the conditions listed below.

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

1. A Private Access Easement over the “flag pole” portion of Parcel 2 for the benefit of Parcel 1 shall be shown and labeled on the final plat. The easement shall allow shared use of this area for all of the purposes that a driveway would be typically used for.
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 Conditions C.5 and C.6 below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: “A Declaration of Maintenance Agreement for the Private Access Easement has been recorded as document no. \_\_\_\_\_, Multnomah County Deed Records.”

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

**Streets**

1. The applicant shall meet the requirements of the City Engineer for right of way improvements along the site’s street frontage. The applicant must obtain an approved Right of Way permit from the Portland Bureau of Transportation for sidewalk and curb cut/driveway reconstruction, which may include reconstruction of the curb if it does not provide at least four (4) inches of curb exposure. The improvements may be constructed with development as per the City Engineer’s discretion.

**Utilities**

2. 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.

**Existing Development**

3. The applicant must remove the accessory structure on Parcel 2. The applicant must submit before and after photos of the removal (with the same perspective). Prior to removal of these structures, tree protection must be installed in accordance with the approved Tree Preservation Plan, per Condition D.1. Alternately, the applicant can execute a covenant with the City stating that the structures will be removed if a primary structure has not received final inspection on the lot with the accessory structure within two years of final plat approval. The covenant must be recorded with Multnomah County prior to final plat approval.
4. A parking space shall be installed on Parcel 1, in conformance with the applicable requirements of the Portland Zoning Code. The parking space must be a minimum of 9' x 18' and located out of the new front setback for the lot with the existing house. The applicant must obtain a finalized Zoning Permit for installation of the parking space. The permit plans must include the note: *This permit fulfills requirements of Condition C.4 of*

*LU 16-210875 LDP.* The new parking space must also be shown on the supplemental plan.

### **Required Legal Documents**

5. A Maintenance Agreement shall be executed for the Private Access Easement described in Condition B.1 above. The agreement shall include provisions assigning maintenance responsibilities for the easement area and any shared facilities within that area, consistent with the purpose of the easement, and all applicable City Code standards. The agreement must be reviewed by the City Attorney and the Bureau of Development Services, and approved as to form, prior to final plat approval.
6. The applicant shall execute an Acknowledgement of Tree Preservation Land Use Conditions that notes tree preservation requirements that apply to Parcels 1 and 2. A copy of the approved Tree Preservation Plan must be included as an Exhibit to the Acknowledgement. The acknowledgment shall be referenced on and recorded with the final plat.

### **Other requirements**

7. The applicant must pay into the Street Tree Planting Fund the amount equivalent to 1.5 inches of trees. Payment must be made to the Bureau of Development Services, who administers the fund for the Parks Bureau.

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

1. Development on Parcels 1 and 2 shall be in conformance with the Tree Preservation Plan (Exhibit C.3) and the applicant's arborist report (Exhibit A.2). Specifically, trees numbered 2 and 3 are required to be preserved, with the root protection zones indicated on Exhibit C.3. Tree protection fencing is required along the root protection zone of each tree to be preserved. The fence must be 6-foot high chain link and be secured to the ground with 8-foot metal posts driven into the ground. Encroachment into the specified root protection zones may only occur if it meets the Prescriptive Path allowances of 11.60.030 or is under the supervision of a certified arborist. Planning and Zoning approval of development in the root protection zones beyond the allowances of 11.60.030 is subject to receipt of a report from an arborist, explaining that the arborist has approved of the specified methods of construction, and that the activities will be performed under his/her supervision.
2. The applicant must meet the Fire Bureau requirements for addressing and aerial fire department access. Aerial access applies to buildings that exceed 30 feet in height from the fire access as measured to the bottom of the eave of the structure or the top of the parapet for a flat roof.
3. Vehicle access to Parcel 1 must be from the flag pole of Parcel 2. A driveway is not allowed along the frontage of Parcel 1.

**Staff Planner: Jason P. McNeil**

**Decision rendered by:** \_\_\_\_\_  **on December 12, 2016**

By authority of the Director of the Bureau of Development Services

**Decision mailed December 14, 2016**

**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 July 25, 2016, and was determined to be complete on October 18, 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 July 25, 2016.

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 17, 2017.**

**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).

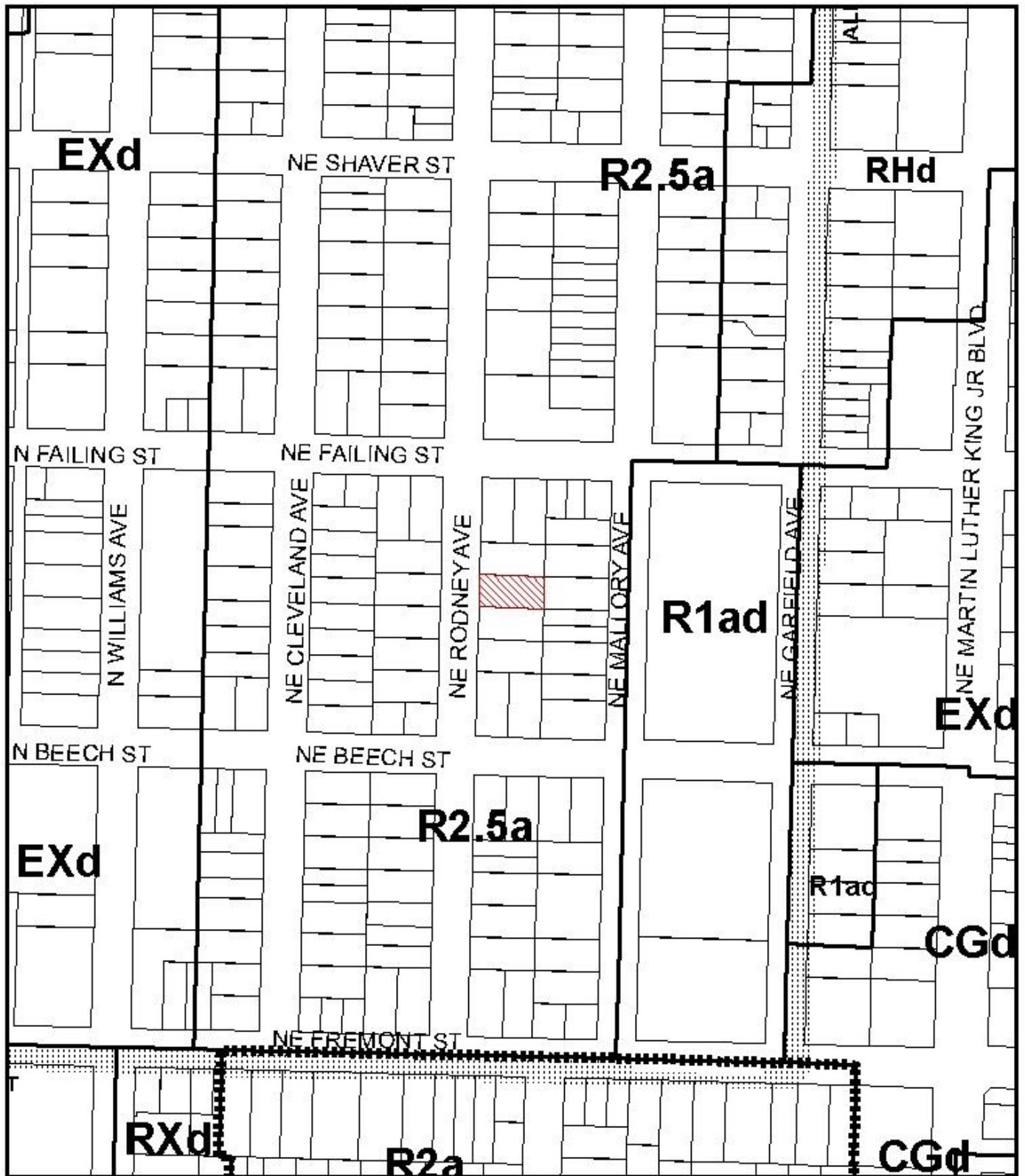
**Recording the land division.** The final land division plat **must** be submitted to the City **within three years** of the date of the City’s final approval of the preliminary plan. This final plat must be recorded with the County Recorder and Assessors Office after it is signed by the Planning Director 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 Submittal
  - 1. Applicant's statement
  - 2. Arborist report
  - 3. Stormwater information
  - 4. Elevations and revised site plan #1 – September 29, 2016
  - 5. Revised site plan #2 – October 18, 2016
  - 6. Revised site plan #3 – November 23, 2016
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Original Site Plan – July 25, 2016
  - 2. Existing Conditions
  - 3. Tree Plan
  - 4. Revised Site Plan – November 23, 2016 (attached)
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Bureau of Transportation Engineering and Development Review
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Site Development Review Section of BDS
  - 6. Bureau of Parks, Forestry Division
  - 7. Life Safety Section of BDS
- F. Correspondence:
  - 1. Robert Phillips, October 28, 2016 – Concerns about parking, accessory uses and structures on the site
  - 2. Robert Phillips, October 30, 2016 – Concern about the applicant's standing to represent the property owner
- G. Other:
  - 1. Original LU Application
  - 2. Incomplete Letter – August 15, 2016

**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



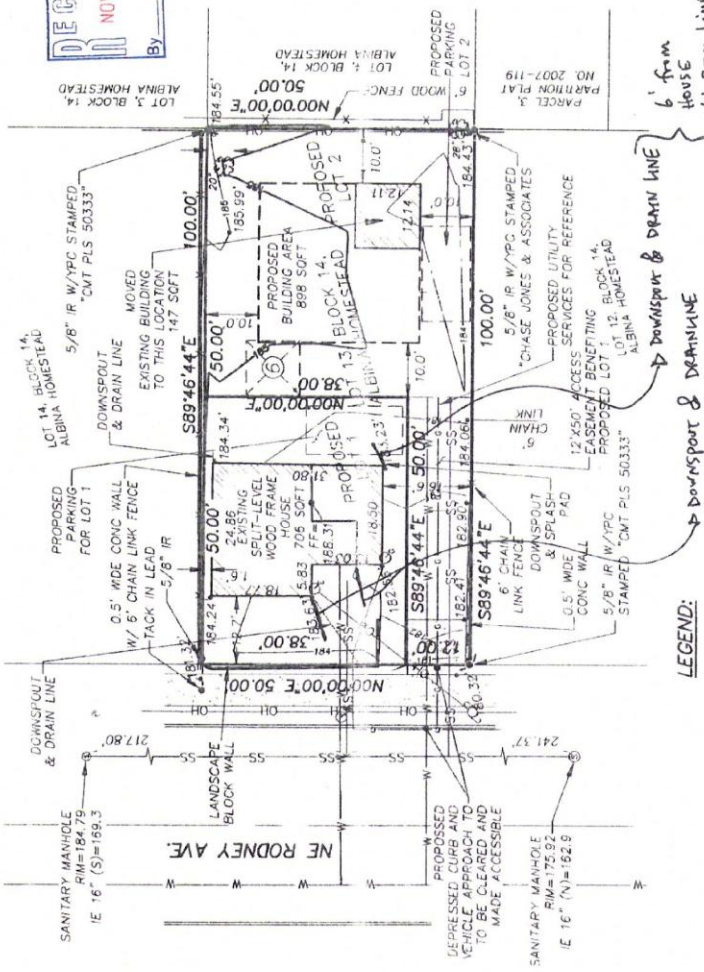
NORTH

File No.	<u>LU 16-210875 LDP</u>
1/4 Section	<u>2630</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1N1E22DD 11300</u>
Exhibit	<u>B (Jul 27, 2016)</u>



# SITE PLAN

LOT 13, BLOCK 14, ALBINA HOMESTEAD,  
SITUATED IN THE S.E. 1/4 OF  
SECTION 22, T.1N, R.1E, W.M.  
CITY OF PORTLAND,  
MULTNOMAH COUNTY, OREGON



### NOTES:

- HORIZONTAL DATUM: BASIS OF BEARING IS NORTH 00°00'00" WEST ALONG THE EAST RIGHT-OF-WAY LINE OF NE RODNEY AVENUE AS SHOWN ON THAT CERTAIN RECORD OF SURVEY, SURVEY NUMBER 64371, RECORDS OF MULTNOMAH COUNTY, OREGON.
- VERTICAL DATUM: 2.173" CITY OF PORTLAND BRASS DICK STAMPED "BENCH MARK NO. 1111" AT THE SOUTHEAST CORNER OF NE WILLIAMS AVENUE AND NE FREMONT STREET ALONG NE WILLIAMS AVENUE CURB LINE, ELEVATION BEING 174.61', CITY OF PORTLAND DATUM.
- THE UTILITIES SHOWN ON THIS MAP ARE LOCATED FROM APPARENT SURFACE FEATURES AND PAINT MARKS ON THE GROUND AS LOCATED BY OTHERS. PIPE LOCATIONS ARE THE RESULT OF OUR DRAWING A STRAIGHT LINE BETWEEN SURFACE FEATURES AND PAINT MARKS. SURFACE FEATURES MAY INCLUDE WATER VALVES, MANHOLES, ETC.
- WE MAKE NO GUARANTEE TO THE ACCURACY OR COMPLETENESS OF ANY UTILITY INFORMATION SHOWN ON OUR MAP. WE HAVE NO INFORMATION TO GUARANTEE THAT THE PIPES ARE IN FACT A STRAIGHT LINE BETWEEN SURFACE FEATURES OR THAT THE PAINT MARKS ARE ACCURATELY LOCATED.
- SEWER MANHOLE INVERTS SHOWN ARE BASED ON CITY OF PORTLAND DATA.
- SUBJECT PROPERTY IS LOT 13, BLOCK 14, ALBINA HOMESTEAD, CONTAINING 5,000 SQ. FT. OR 0.11 ACRES MORE OR LESS. PROPOSED LOT 1 CONTAINS 1900 SQ. FT. AND PROPOSED LOT 2 CONTAINS 3100 SQ. FT.
- LOCATION OF PROPOSED DRYWELL AND EASEMENT.

### SURVEYED FOR:

CARLA SHETZLINE  
3808 NE RODNEY AVE  
PORTLAND, OR 97212

CASE NO. LU 14-210815  
EXHIBIT C-4



REGISTERED  
PROFESSIONAL  
LAND SURVEYOR  
THOMAS G. NELSON  
JULY 26, 1988  
#2351

## Tom Nelson & Associates, L.L.C.

4838 NE SANDY BLVD, SUITE 200, PORTLAND, OREGON 97213  
PHONE: (503) 230-1932 | FAX: (503) 230-1962

FILE: 16021	DATE: OCTOBER 17, 2016
DRAWN BY: SRZ	SHEET: 1 OF 1

- ### LEGEND:
- FOUND MONUMENT
  - POWER POLE
  - POWER METER
  - WATER METER
  - GAS METER
  - SANITARY SEWER MANHOLE
  - DECIDUOUS TREE WITH SIZE
  - 111.11' SPOT ELEVATION
  - PAVEMENT SURFACE
  - SUBJECT PROPERTY
  - FENCELINE
  - WATER LINE
  - OVERHEAD POWER LINE
  - SANITARY SEWER LINE
  - GAS LINE
  - WALL LINE
  - BUILDING
  - CONCRETE SURFACE

CASE NO. LU 14-210815  
EXHIBIT C-4

RENEWAL 12/31/16