



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

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**Date:** February 23, 2017  
**To:** Interested Person  
**From:** Sean Williams, Land Use Services  
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## **NOTICE OF A TYPE II<sub>x</sub> 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 15-253310 LDP AD**

#### **GENERAL INFORMATION**

**Applicant:** Kym Nguyen  
Concept Design & Associates  
Po Box 8464  
Portland, OR 97207

**Owner:** Jia N Rong  
159 W Bond Street  
Astoria, OR 97103

**Site Address:** 2724 SE 112<sup>th</sup> Avenue

**Legal Description:** BLOCK 2 W 1/2 OF LOT 2 EXC PT IN ST, MCGREWS TR  
**Tax Account No.:** R550000580  
**State ID No.:** 1S2E10AB 07600  
**Quarter Section:** 3342  
**Neighborhood:** Powellhurst-Gilbert, contact Powellhurst-Gilbert at [pgnaboard@gmail.com](mailto:pgnaboard@gmail.com)  
**Business District:** Midway, contact [info@midwaybusiness.org](mailto:info@midwaybusiness.org).  
**District Coalition:** East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550.  
**Plan District:** Johnson Creek Basin  
**Zoning:** Residential 5,000 (R5) w/ Alternative Design Density Overlay (a)  
**Case Type:** Land Division Partition (LDP)  
**Procedure:** Type II<sub>x</sub>, an administrative decision with appeal to the Hearings Officer.

#### **Proposal:**

The Applicant is proposing to partition the subject property into two parcels of approximately 4,127 (Parcel 1) and 5,888 (Parcel 2) square feet in size. Parcel 1 is a standard lot that will retain the existing single family home and Parcel 2 is a flag lot that will be made available for a new detached house. A concurrent Adjustment review is also requested to eliminate a portion of the required flag lot landscape buffer on Parcel 2.

This partition proposal is reviewed through a Type IIX procedure because: (1) the site is in a residential zone; (2) 10 or fewer lots are proposed; and (3) a concurrent review (Adjustment) is 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 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 criteria are:

- **Section 33.660.120, Approval Criteria for Land Divisions in Open Space and Residential Zones;**
- **Section 33.805.040.A-F, Approval Criteria for Adjustments.**

## FACTS

**Site and Vicinity:** The site is located on the east side of SE 112<sup>th</sup> Avenue approximately 75 feet south of SE Clinton Street. An existing one story single family residence and attached garage is located on the western portion of the site. A driveway, located within an easement, runs along the northern property line and serves a new single family residence that was recently constructed (16-170872 RS) on the adjacent landlocked property to the east. The site is relatively flat and contains several trees.

**Infrastructure:**

- **Streets** – The site has approximately 75 feet of frontage on SE 112<sup>th</sup> Avenue. There is one driveway entering the site that serves the existing house. At this location, SE 112<sup>th</sup> Avenue is classified as a Neighborhood Collector, Community Transit street, City Bikeway, City Walkway and a Community Corridor in the Transportation System Plan (TSP). Tri-Met provides transit service approximately 650 feet north of the site on SE Division Street via Bus #4. At this location, SE 112<sup>th</sup> Avenue is improved with a 44 foot paved roadway surface and curb only (no sidewalk) within a 60 foot wide right-of-way.
- **Water Service** – There is an existing 6-inch CI water main in SE 112<sup>th</sup> Avenue. The existing house is served by a 5/8-inch metered service from this main.
- **Sanitary Service** - There is an existing 8-inch PVC sanitary only sewer main in SE 112<sup>th</sup> Avenue. According to City records, the existing house is connected to the sewer in SE 112<sup>th</sup> Avenue through a lateral located approximately 193-feet from the manhole to the south.

**Zoning:** The R5 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.

The Johnson Creek Basin plan district provides for the safe, orderly, and efficient development of lands which are subject to a number of physical constraints, including significant natural resources, steep and hazardous slopes, flood plains, wetlands, and the lack of streets, sewers,

and water services. At certain locations, the density of development is limited by applying special regulations to new land division proposals. In addition, restrictions are placed on all new land uses and activities to reduce stormwater runoff, provide groundwater recharge, reduce erosion, enhance water quality, and retain and enhance native vegetation throughout the plan district. At other locations, development is encouraged and mechanisms are included that provide relief from environmental restrictions.

**Land Use History:** City records indicate there are no prior land use reviews for this site.

**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 27, 2016**. No written responses have been received from the Neighborhood Association or notified property owners in response to the proposal.

## 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	Maintaining existing development on the site limits new parcel configuration (33.610.200 supercedes 33.639).
J	33.640 - Streams, Springs, and Seeps	No streams, springs, or seeps are evident on the site outside of environmental zones.
L	33.654.110.B.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 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 33.610 contains the density and lot dimension requirements applicable in the RF through R5 zones. The applicant is proposing to create one standard lot that will retain the existing house (Parcel 1) and one flag lot (Parcel 2). The minimum and maximum density for the site is as follows:

Minimum =  $(11,100 \text{ square feet} * .80) \div 5,000 \text{ square feet} = 1.77$  (which rounds up to a minimum of 2 parcels, per 33.930.020.A.2)

Maximum =  $11,100 \text{ square feet} \div 5,000 \text{ square feet} = 2.22$  (which rounds down to a maximum of 2 parcels, per 33.930.020.B.2)

If the minimum required density is equal to or larger than the maximum allowed density, then the minimum density is automatically reduced to one less than the maximum. Therefore, in this case the minimum density is reduced to 1.

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

	Min. Lot Area (square feet)	Max. Lot Area (square feet)	Min. Lot Width* (feet)	Min. Depth (feet)	Min. Front Lot Line (feet)	Min. Flag Lot Width (feet)	Min. Flag Lot Depth (feet)
<b>R5 Zone</b>	3,000	8,500	36	50	30	40	40
Parcel 1	4,127		63.32	65.19	63.32	n/a	n/a
Parcel 2**	6,719		n/a	n/a	n/a	75.30	79

\* 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 and attached garage have been on the property for at least 5-years and are located so that it precludes a land division that meets minimum lot width. 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 33.610.400 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, one large curb cut provides access to the attached garage associated with the existing house to be retained on Parcel 1 as well as a driveway located within the pole portion of Parcel 2 that serves a landlocked property to the east (2714 SE 112<sup>th</sup> Avenue). This driveway is covered by an existing easement and will also serve future development on the flag lot. 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.

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 an Existing Conditions Plan (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.6) 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, 13 trees, which provide a total of 297 inches of tree diameter, are subject to the preservation requirements of this chapter. The applicant has proposed to retain tree #1 (24” Sycamore maple), #5 (29” Big leaf maple), #10 (30” Douglas fir), #16 (26” Western red cedar), and #17 (20” Western red cedar), which represents 55 percent of the trees that are 20 more inches and 43 percent of the total non-exempt tree diameter on site. Therefore, the

proposal complies with Option 3 of the minimum tree preservation standards, which requires preservation of at least 50 percent of the trees that are 20 or more inches in diameter and at least 30 percent of the total tree diameter on the site.

The trees proposed for preservation are in good condition and include native/non-nuisance species. In this instance, tree preservation is maximized to the extent practicable while allowing for reasonable development of the site considering the proposal to create a flag lot and location of existing trees. All of the trees are suitable for preservation, considering the anticipated impact of development, with the exception of tree #1 (24" Sycamore maple), which requires further evaluation based on requirements to provide services to the site under Chapter 33.654. As discussed later in this report, the applicant will be required to construct sidewalk improvements along the frontage of proposed Parcel 1, which includes right-of-way dedication. The improvements will be located close in proximity to Tree #1. Therefore, the applicant provided an addendum to the arborist report (2/17/17), which includes construction management methods to be implemented at the time of sidewalk installation. The recommendations, in part, require arborist supervision at the time of construction. Subject to a condition that requires compliance with the construction management methods at the time of sidewalk construction, the approval criteria will be met.

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 Partition Plat (Exhibit C.2) and the Arborist Report (Exhibit A.6).

**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. In addition, the tree protection measures shown on the Partition Plat (Exhibit C.2) are adequate to preserve the trees on site without conflicting with anticipated areas of development, with the exception of recommendations noted above related to sidewalk construction. Note, the conceptual development footprint on proposed Parcel 2 extends within the standard root protection zone of Trees #5, 10, 16, and 17. However, this appears to fall within allowed Prescriptive Path encroachments of Title 11 (11.60.030.C.1.a(3)). 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. Although the site is currently connected to the public sanitary sewer, there is an old septic system on the site. 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 Section of the Bureau of Development Services for the decommissioning of this facility. With a condition requiring final inspection for a decommissioning permit, the new lots can be considered suitable for new development, and 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 minimal expected added vehicle trips (1 AM peak hour trips/ 1 PM peak hour trips/ 10 total new daily trips) will not adversely impact the operations of area intersections. PBOT has no concerns with regard to any of the other evaluation factors; on-street parking demand does not appear to be significant in the area (existing homes along this segment of SE 112h Ave include driveways and garages sized to accommodate at least one vehicle/lot; nearby transit service nor any other mode of travel will not be adversely impacted by the additional home expected to be constructed on Proposed Parcel 1. The transportation system is capable of safely supporting the proposed development in addition to existing uses in the area.*

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. Requirements for right-of-way improvements are described in findings associated with chapter 33.654, below. 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:

<p><b>33.651 Water Service standard</b> – See Exhibit E.3</p> <p>The Water Bureau has indicated that service is available to the site from the 6-inch CI water main in SE 112<sup>th</sup> Avenue. The water service standards of 33.651 have been verified. Therefore, this criterion is met.</p>
<p><b>33.652 Sanitary Sewer Disposal Service standards</b> – See Exhibit E.1</p> <p>The Bureau of Environmental Services (BES) has indicated that service is available to the site from the 8-inch PVC sanitary only sewer main in SE 112<sup>th</sup> Avenue. BES also notes the presence of two sewer easements located across the northern 10-feet of the land division site.</p> <p>One easement, a City of Portland Sewer Easement (Multnomah County Bk.2459 Pg.786 1991), only allows new piping via a BES easement encroachment. Therefore, prior to final plat approval, the applicant must either quit claim the existing City of Portland Sewer Easement or provide an approved easement encroachment and show the easement on the final plat.</p> <p>The second easement is a private utility easement (Multnomah County doc. 2012-141352) that burdens the land division site and is for the benefit of the adjacent landlocked property to the east (2714 SE 112<sup>th</sup> Avenue). This existing easement is required to be shown on the final plat. In addition, the applicant shall provide a supplemental plan prior to final plat approval that shows all utilities located within Parcel 2 that serve existing development at 2714 SE 112<sup>th</sup> Avenue as well as the future development on this parcel. Adequate separation distances between the sanitary laterals and water lines must be shown.</p>

The sanitary sewer service standards of 33.652 have been verified. Subject to the conditions noted above this criterion can be met.

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

No stormwater tract is proposed or required. Therefore, criterion A is not applicable. The applicant submitted a Infiltration Testing (Exhibit A.5) to address this criterion and has proposed the following stormwater management methods:

- **Public Street Improvements:** As a condition of this land use approval, the Bureau of Transportation requires the applicant to improve the frontage of the site to City standards (discussed later in this report). A new sidewalk is required, but the curb already exists. BES has indicated that the sidewalk must be constructed so that it will slope towards the planter strip, allowing the stormwater runoff from the sidewalk to be deposited in a vegetated area, which meets the requirements of the Stormwater Management Manual.
- **Parcel 1 (the parcel with the existing house):** The applicant provided a plan (Exhibit C.2) that shows downspouts on the northern elevation of the existing home to be retained on this parcel but does not show the direction of flow. Splash blocks should discharge 2 feet from slab on grade, 6 feet from foundations with basements, 5 feet from property lines, and 10 feet from all neighboring structures. Therefore, prior to final plat approval, the applicant will need to confirm that infiltration setbacks are met from the proposed property line. To meet this condition the applicant/owner should forward photo-documentation of the downspouts and the downspout extensions on the north edge of the house. Subsurface scoping with location may be required for subsurface systems.
- **Parcel 2:** 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.

The Bureau of Environmental Services (BES) has indicated conceptual approval of the applicants proposed method of stormwater management, subject to the condition noted above. Therefore, this criterion can be met.

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

Generally, through streets should be provided no more than 530 feet apart and at least 200 feet apart. The Portland Bureau of Transportation has provided the following evaluation of connectivity for this proposal (Exhibit E.2):

*No street connections have been identified in the vicinity of this property in the Portland Master Street Plan document. The subject block, does not satisfy the above referenced spacing goals. The location of the subject site is not located within its block to potentially improve connectivity in the area – this would need to occur much further south than through the subject site. PBOT has no concerns relative to this approval criterion.*

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**

At this location, SE 112<sup>th</sup> Avenue is improved with a 44 foot paved roadway surface and curb only within a 60 foot wide right-of-way. There is no planter strip or sidewalk. In reviewing this land division, Portland Transportation relies on accepted civil and traffic engineering standards and specifications to determine if existing street improvements for motor vehicles, pedestrians and bicyclists can safely and efficiently serve the proposed new development. In



this case Portland Transportation has determined that sidewalk improvements must be made in order to meet City standards to ensure that safe pedestrian travel is possible within the proposed development. To accommodate these improvements, additional right-of-way must be dedicated along the frontage of the site. With those improvements, one additional dwelling can be safely served by this existing street without having any significant impact on the level of service provided.

This criterion is met, with the condition that sidewalk improvements are made, and the required right-of-way dedication is shown on the Final Plat.

### **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.

## **APPROVAL CRITERIA FOR ADJUSTMENTS**

### **33.805.010 Purpose**

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue to provide certainty and rapid processing for land use applications.

### **33.805.040 Adjustment Approval Criteria**

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. stated below, have been met.

#### **A. Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and**

**Findings:** The applicant has requested to eliminate the required flag lot landscape buffer area (33.110.240.F.2) for Parcel 2 along the northern and eastern property lines. The purpose of Alternative Development Options (33.110.240.A), which contains provisions for flag lot development standards, is to allow for variety in development standards while maintaining the overall character of a single-dwelling neighborhood. Specifically, the most relevant element of this purpose statement is to reduce the impact that new development may have on surrounding residential development.

The applicant's purpose for requesting this adjustment is twofold. The first reason is due to the presence of an existing access and utility easement located across the northern 10-feet of the land division site for the benefit of the adjacent landlocked property to the east (2714 SE 112<sup>th</sup> Avenue). Due to the presence of an existing driveway in this area it is not feasible to install the required 5-foot deep landscaped buffer area.

The second reason is due to the presence of a row of trees (#11-17) along the eastern property line of the flag lot of which some are proposed for preservation, as addressed in findings associated with Criterion B, above. The flag lot landscape buffer area requires compliance with at least the L3 Landscaping and Screening Standard (33.248.020.C), which consists of trees, enough high shrubs to form a screen 6-feet high, and groundcover plants. The trees in this area will satisfy this requirement. However, the project arborist has recommended that shrubs not be placed within the drip line of any protected trees (Exhibit A.6).

The area where the flag lot landscape buffer area is proposed to be eliminated along the northern property line is the rear lot line of an adjacent lot (11228 SE Clinton Street). An existing fence is located in this area that sufficiently screens that property from proposed Parcel 2. A new fence was also installed on the adjacent landlocked property to the east (2714 SE 112<sup>th</sup> Avenue) that provides screening along the eastern property line of proposed Parcel 2. In addition, the existing row of mature trees in this area provides greater screening than the landscape buffer area would provide. The presence of these screening elements would appear to reduce any impact that proposed development on Parcel 2 may have on surrounding residential development.

Based on preceding findings, the requested Adjustment will equally or better meet the purpose of the regulation to be modified. Therefore, this criterion can be met.

**B. If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and**

**Findings:** The site is in a residential zone and is located within the Powellhurst-Gilbert Neighborhood. The residential area considered is defined as shown on the Zone Map (Exhibit B). The requested adjustment will not detract from the appearance of the residential area as the flag lot landscape buffer area requested to be eliminated would not have been visible from the public realm. In addition, the proposal will not detract from the livability of the residential area as sufficient screening is in place to serve the same functions as the landscape buffer area. Therefore, this criterion is met.

**C. If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and**

**Findings:** Only one adjustment is being requested. Therefore, this criterion is not applicable.

**D. City-designated scenic resources and historic resources are preserved; and**

**Findings:** The site is not located within a scenic or historic overlay zone and no historic resources are on or adjacent to the site. Therefore, this criterion is not applicable.

**E. Any impacts resulting from the adjustments are mitigated to the extent practical;**

**Findings:** As addressed in the preceding findings, there are no discernible impacts that will result from the proposed adjustment. This criterion is satisfied.

**F. If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;**

**Findings:** The site is not located within an environmental overlay (“c” or “p”) zone. Therefore, this criterion is not applicable.

## **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. An Adjustment to remove a portion of the flag lot landscape buffer is addressed above.

**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 R5 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 approximately 5 feet from the new north property line and 16 feet from the east property 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.

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 fire apparatus access, fire flow/water supply, addressing, and aerial Fire Department access roads. These

requirements are based on the technical standards of the 2016 Portland Fire Code (Exhibit E.4).

- The applicant must meet the requirements of Urban Forestry for street tree planting in the existing planter strip adjacent to Parcel 1 and paying a fee in lieu for 1 lost street tree planting space, prior to final plat approval. These requirements are based on the standards of Title 11 (Exhibit E.6).

## CONCLUSIONS

The applicant has proposed a 2 parcel partition with a concurrent Adjustment review to eliminate a portion of the required flag lot landscape buffer area on Parcel 2, as shown on the attached preliminary plan (Exhibits C.2). 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, services/utilizes, and the Adjustment.

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

## ADMINISTRATIVE DECISION

**Approval** of an Adjustment to eliminate the required flag lot landscape buffer area (33.110.240.F.2) on the northern and eastern property line of Parcel 2, per Exhibit C.2;

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

**A. Supplemental Plan.** Three copies of an additional supplemental plan shall be submitted with the final plat survey for BES 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;
- All utilities located within Parcel 2 that serve existing development at 2714 SE 112<sup>th</sup> Avenue as well as the future development on this parcel. Adequate separation distances between the sanitary laterals and water lines must be shown;
- 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 112<sup>th</sup> Avenue. The required right-of-way dedication must be shown on the final plat.
2. The applicant must show the existing access and utility easements located over the relevant portions of Parcel 2, per Multnomah County document records 2012-141352 and Book 2518, Page 1344-46.
3. If the applicant does not quit claim the existing public sanitary sewer easement it must be shown on the final plat, to the satisfaction of the Bureau of Environmental Services. The easement must be labeled as "Public Sewer Easement to COP".
4. A recording block for each of the legal documents such as maintenance agreement(s), acknowledgement of special land use conditions, or Declarations of Covenants, Conditions, and Restrictions (CC&Rs) as required by Condition C.10 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:**

1. The applicant shall meet the requirements of the City Engineer for right of way improvements along the site's SE 112<sup>th</sup> Avenue street frontage. The applicant must obtain a Minor Improvement permit from the Portland Bureau of Transportation to install the required sidewalk corridor. Prior to construction of the sidewalk the applicant must provide a contract with a certified Arborist conforming with Exhibit A.6, which clearly indicates that an Arborist has been hired to supervise said work.
2. The applicant must meet the requirements of BES to either quit claim the existing public sanitary sewer easement or receive approval of an easement encroachment for any new piping within this area.
3. 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.
4. The applicant must meet the requirements of the Fire Bureau for providing an adequate fire access way for Parcel 2, as required in Chapter 5 of the Oregon Fire Code. Alternately, the applicant will be required to install residential sprinklers in the new house on Parcel 2, if applying the exception. An Acknowledgement of Special Land Use Conditions describing the sprinkler requirement must be referenced on and recorded with the final plat.
5. The applicant must obtain a finalized demolition permit for removing the shed located on Parcel 2. 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 structure will be removed if a primary structure has not received final inspection on the parcel with the accessory structure within two years of final plat approval. The covenant must be recorded with Multnomah County prior to final plat approval.
6. The applicant shall meet the requirements of the Site Development Section of the Bureau of Development Services for the decommissioning the septic system on the site.
7. The applicant must meet the requirements of BES for the stormwater systems on the existing house to remain on Parcel 1. Specifically, the gutters and downspouts must direct water to an approved disposal point that meets setback requirements from the new lot lines. To meet the condition the applicant should forward photo-documentation of the downspouts and the downspout extensions on the north edge of the house. Subsurface scoping with location may be required for subsurface systems. If modifications to the system are required by BES, the applicant must obtain finalized plumbing permits for this work prior to final plat approval.
8. The applicant must meet the requirements of Urban Forestry to plant 2 street trees in the new planter strip on SE 112<sup>th</sup> Avenue adjacent to Parcel 1. The applicant must contact Urban Forestry at 503-823-TREE (8733) prior to selecting trees to discuss the species of trees that are permitted and to obtain the planting permit.
9. The applicant must meet the requirements of Urban Forestry to pay a fee in lieu for 1 lost street tree planting space.
10. 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.


**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 Partition Plat (Exhibit C.2) and the applicant's arborist report (Exhibit A.6). Specifically, trees numbered #1 (24" Sycamore maple), #5 (29" Big leaf maple), #10 (30" Douglas fir), #16 (26" Western red cedar), and #17 (20" Western red cedar) are required to be preserved, with the root protection zones indicated on Exhibit C.2. 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. If required, the applicant shall meet any conditions identified through a Fire Code Appeal/install residential sprinklers in the new dwelling unit on Parcel 2. Please refer to the final plat approval report for details on whether or not this requirement applies.

**Staff Planner: Sean Williams**

**Decision rendered by:**  **on February 21, 2017**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: February 23, 2017**

**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 October 20, 2015, and was determined to be complete on April 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 October 20, 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, as stated with Exhibit A.4. Unless further extended by the applicant, **the 120 days will expire on: April 18, 2017.**

**Note: some of the information contained in this report was provided by the applicant.** As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the

applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

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

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

**Appealing this decision.** This decision may be appealed to the Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on March 9, 2017** at 1900 SW Fourth Ave. Appeals can be filed at the 5<sup>th</sup> floor reception desk of 1900 SW 4<sup>th</sup> Avenue Monday through Friday between 8:00 am and 4:30 pm. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

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

**Attending the hearing.** If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283 or phone 1-503-373-1265 for further information.

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

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

**Recording concurrent approvals.** The preliminary land division approval also includes concurrent approval of an Adjustment. This concurrent approval must be recorded by the Multnomah County Recorder before any building or zoning permits can be issued.

A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with this concurrent land use review. The applicant, builder, or their representative may record the final decisions on these concurrent land use decisions as follows:

- By Mail: Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- In Person: Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034.

**Expiration of concurrent approvals.** The preliminary land division approval also includes concurrent approval of an Adjustment. For purposes of determining the expiration date, there are two kinds of concurrent approvals: 1) concurrent approvals that were necessary in order for the land division to be approved; and 2) other approvals that were voluntarily included with the land division application.

The following approvals were necessary for the land division to be approved: Adjustment to flag lot landscape buffer area. This approval expires if:

- The final plat is not approved and recorded within the time specified above, or
- Three years after the final plat is recorded, none of the approved development or other improvements (buildings, streets, utilities, grading, and mitigation enhancements) have been made to the site.

All other concurrent approvals expire three years from the date rendered, unless a building permit has been issued, or the approved activity has begun. Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

### **EXHIBITS**

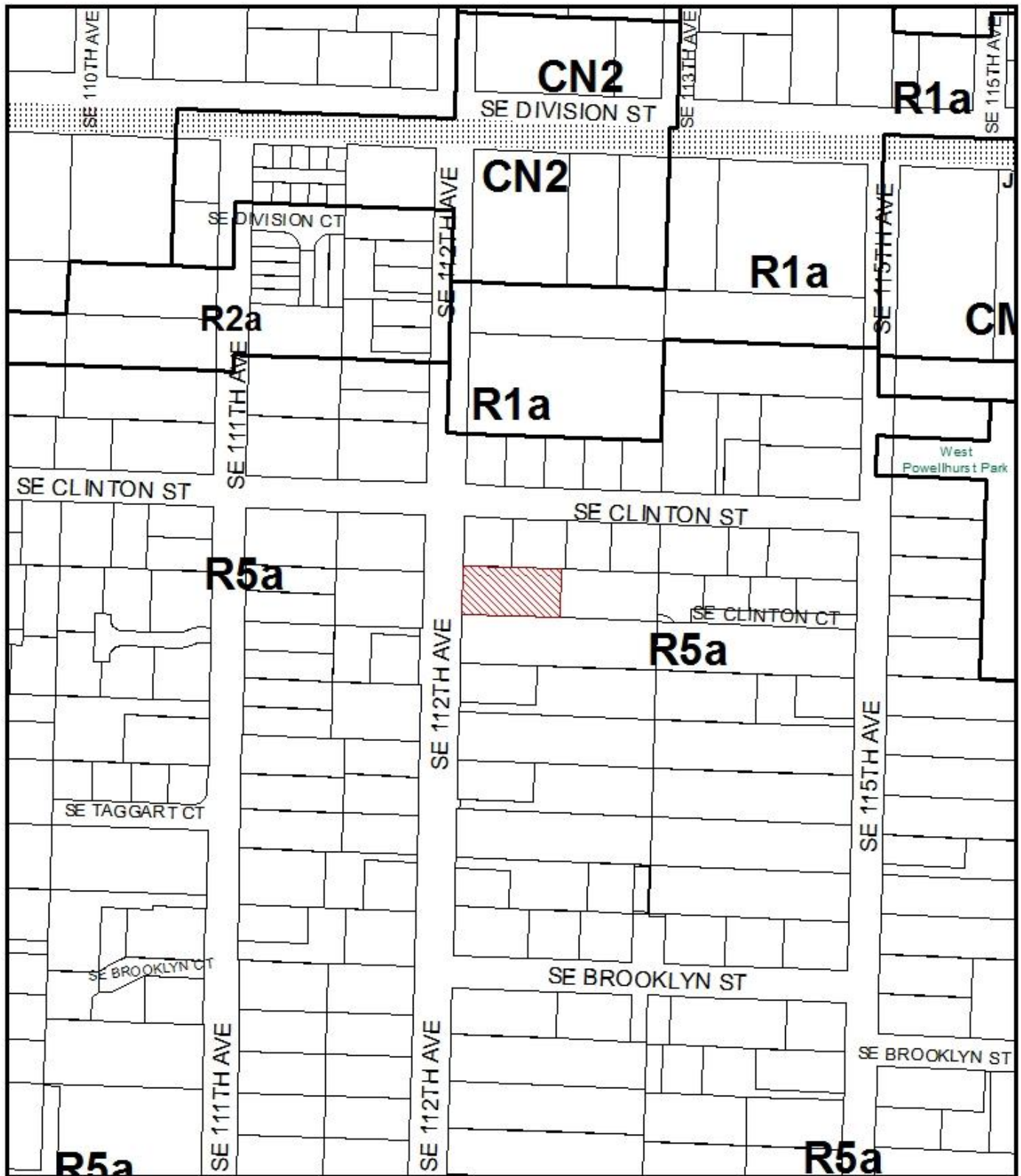
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  1. Narrative
  2. Response to incomplete letter
  3. Neighborhood contact
  4. Request for extension to 120-day review period
  5. Infiltration testing
  6. Arborist report (9/11/15; 6/3/16; 2/17/17)
  7. Utility easement
  8. Access easement
- B. Zoning Map (attached)
- C. Plans/Drawings:
  1. Existing conditions plan
  2. Partition plat (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 Plans Examiner
- F. Correspondence: NONE
- G. Other:
1. Original LU Application
  2. Incomplete letter w/ RFC responses

**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

This site lies within the:  
JOHNSON CREEK BASIN PLAN DISTRICT



File No. LU 15-253310 LDP AD  
 1/4 Section 3342  
 Scale 1 inch = 200 feet  
 State\_Id 1S2E10AB 7600  
 Exhibit B (Jun 28, 2016)

