



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

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**Date:** March 5, 2018  
**To:** Interested Person  
**From:** Lois Jennings, 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 17-205888 LDS**

#### **GENERAL INFORMATION**

**Applicant:** Danelle Isenhart | Isenhart Consulting, Llc  
PO Box 2364 | Beaverton OR 97075  
Phone#: 503-880-4979 | e-mail: [danelle@isenhartconsulting.com](mailto:danelle@isenhartconsulting.com)

**Owner:** Charles Thomas | Eden Enterprises, LLC  
5505 SW Delker Rd | Tualatin, OR 97062

**Site Address:** 5543 NE Killingsworth St

**Legal Description:** TL 5200 0.44 ACRES, SECTION 18 1N 2E  
**Tax Account No.:** R942181450  
**State ID No.:** 1N2E18DC 05200  
**Quarter Section:** 2436

**Neighborhood:** Cully, contact David Sweet at 503-493-9434.  
**Business District:** None  
**District Coalition:** Central Northeast Neighbors, contact Sandra Lefrancois at 503- 823-2780.

**Plan District:** None  
**Zoning:** R2-Low Density Multi-Dwelling Zone (1 unit per 2,000 s.f. of site area) with an "h"-Aircraft Landing Zone overlay

**Case Type:** LDS -Land Division for a Subdivision  
**Procedure:** Type II<sub>x</sub>, an administrative decision with appeal to the Hearings Officer.

**Proposal:** The applicant is proposing to divide the property into six lots. Lots 1, 2, 3 and 4 will be for detached single family houses, with the existing house remaining on Lot 2. Lots 5 and 6 will be developed with attached housing with each having an accessory dwelling unit within them. Attached accessory dwelling units are being proposed on Lots 5 and 6 to meet minimum density requirement for the R2 zone. Twelve trees exist on the site, but only six are subject to the tree preservation requirement. Three trees (#1-Red Maple, #2-English Walnut, #10-Japanese Maple) are proposed to be preserved. The applicant proposes to mitigate the removal of the Grand Fir tree by contributing to the tree fund. The applicant is utilizing Section 33.120.270.D to reduce the side setback of the interior lot line to 3 feet for the future development of a house on Lots 3 and 4. On-site parking is being proposed for Lots 1, 3 and 4 and none is being proposed for Lots 2, 5 and 6. The applicant is utilizing Section

33.266.110.D.1 of Title 33, where the code does not require a parking space on-site when the site is within 500 feet of a transit street (NE Killingsworth) and transit service, #72 TriMet Bus Line, provides 20 minute peak hour service to this area. Portland Bureau of Transportation is requiring street dedication along NE Killingsworth Street and NE 55<sup>th</sup> Avenue street frontage with sidewalk improvements to meet the Pedestrian Design Guide.

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

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

**RELEVANT APPROVAL CRITERIA:**

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

**FACTS**

**Site and Vicinity:** The site is rectangular in shape, fairly flat for the main portion of the site except for the 1-1.5 ft. grade change along the NE 55<sup>th</sup> Avenue frontage, where a small rock wall is located. A row of evergreen shrubs screen the main entrance to the existing two story single family house from NE Killingsworth street. A pedestrian walkway from the driveway to entry stairway deck provides access to the main entrance of house on the south elevation which is oriented towards NE Killingsworth street. Three driveways provide access to this site, two directly from NE 55<sup>th</sup> Avenue and one from NE Killingsworth Street. A walkway runs along south side of the detached garage to the rear entrance of the house from a deck located on the north exterior elevation. The existing detached garage with an attached entry cover is in the northwest corner of the site and will be removed to create Lot 1. The existing house will need to be altered (main entrance, removal of decks and stairway main entrance deck), so the existing house will be in compliance with Title 33 development standards on its new lot, Lot 2.

North of the site is R7-single family residential zoning and properties are developed with single story ranch style houses. To the west and east of the site along NE Killingsworth Street where the zoning designation is R2, there exists a mixture of multi-residential housing from duplexes to multi-family apartment complexes with a few lots still developed with just single family residences. On the south side of NE Killingsworth the zoning designation is R7, R5 and R3, and a majority of the properties are developed with detached single family residences, with the exception of the religious institution which includes a private school.

**Infrastructure:**

- **Streets:** The site has approximately 100 ft. of frontage on N.E. Killingsworth Street and 175 ft. of frontage on N.E. 55<sup>th</sup> Avenue. There are currently three driveways, two from NE 55<sup>th</sup> Avenue and one from NE Killingsworth Street, that serve the existing house on the site.

At this location N.E. Killingsworth Street is classified as a District Collector, Major Transit Priority Street, a City Bikeway, a City Walkway, a Major Emergency Response route, a Community Corridor, and a Local Service Freight Street in the Transportation System Plan (TSP). The TSP classifies N.E. 55<sup>th</sup> Avenue as a Local Service Street for all modes. Tri-Met provides transit service that is less than 500 ft. from the site on N.E. Killingsworth Street, via Bus 72.

Northeast Killingsworth Street is an 80-ft. wide right-of-way (r-o-w) improved with a 66-ft. wide paved roadway and a curb located 7-ft. from the property line. Northeast 55<sup>th</sup> Avenue is a 50-ft. wide r-o-w, improved with a 32-ft. paved roadway and a curb located approximately 9-ft. from the property line.

- Water Service** – There is an existing 6-inch CI water main in NE 55<sup>th</sup> Avenue. There is an existing 6-inch CI water main and also an existing 12-inch DI water main in NE Killingsworth street. The existing house is served by metered service from the 12-inch main in NE Killingsworth Street. The applicant is proposing to utilize this metered service for future Lot 6. Water Bureau requirements are further discussed under Services approval criterion and specifically water service standard 33.651.

The nearest fire hydrant is approximately 250 ft. west of the property on the south side of NE Killingsworth Street. A fire hydrant flow test was not available, so fire flow availability is an estimated flow obtained using a hydraulic model. The estimated water flow is 2600 gpm and estimated pressure of 20 psi for the fire hydrant connected to the 12-inch DI water main in NE Killingsworth street.

- Sanitary Service** - There is an existing 12 inch concrete sanitary sewer line in N.E. 55<sup>th</sup> Avenue (BES as -built 4328). According to City plumbing record #991326 (dated 9/12/89), there is an existing sanitary utility approximately 94 feet upstream of manhole ID #ANN758 that serves the existing house to be retained on Lot 2.

A 12-inch CSP sanitary service in NE Killingsworth ends at Manhole ID #ANN761 which is approximately 30 -40 feet to the west of this property and 8-inch PVC sanitary service ends at Manhole ID# ANN740 which is approximately 25-30 ft. east of this property.

There is no sanitary service within the NE Killingsworth frontage of Lots 4, 5 and 6 of this property. The applicant is proposing to provide legal access to public sanitary service in NE 55<sup>th</sup> Avenue via a private sanitary easement over Lots 2 and 3, which is discussed further under services approval criterion and specifically the sanitary service standard 33.652 listed below.

- Stormwater Disposal** – There is no public storm-only sewer currently available to this property. The applicant is proposing drywells for disposal of stormwater for the future development on these new lots and is further discussed under stormwater standard 33.653 listed below.

**Zoning:** The R2 designation is one of the City’s multi-dwelling zones which is intended to create and maintain higher density residential neighborhoods. The zone implements the comprehensive plan policies and designations for multi-dwelling housing.

The Aircraft Landing (“h”) overlay zone provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures and vegetation. No special height limit for residential zones.

**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 **January 18, 2018**. 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.

<b>Criterion</b>	<b>Code Chapter/Section and Topic</b>	<b>Findings: Not applicable because:</b>
C	33.631 - Flood Hazard Area	The site is not within the flood hazard area.

D	33.632 - Potential Landslide Hazard Area	The site is not within the potential landslide hazard area.
E	33.633 - Phased Land Division or Staged Final Plat	Not applicable. These standards only apply to land divisions in the RF through R2.5 zones.
F	33.634 - Recreation Area	Not applicable. The minimum required density is less than 40 units.
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 connections	No dead-end street or pedestrian connections are proposed or required.
	33.654.130.D - Partial rights-of-way	No partial public streets are proposed or required.

**Applicable Approval Criteria are:**

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

**Findings:** Chapter 33.612 contains the density and lot dimension requirements applicable in the R3 through IR zones.

Minimum density in the R2 zone is one unit per 2,500 square feet and the maximum density is one unit per 2,000 square feet. The total site areas shown on the applicant's survey is 19,260 square feet. Site area devoted to streets is subtracted from the total site area in order to calculate the minimum and maximum density. A street dedication is required NE Killingsworth Street and NE 55<sup>th</sup> Avenue, the combined street dedication totals 890 square feet. Therefore the resulting lot size for calculating density per the survey is 18,370 square feet. The site has a minimum required density of 7 units and a maximum density of 9 units.

Single-dwelling development is proposed for the site, therefore the applicant must demonstrate how the proposed lots meet the minimum density and not exceed the maximum density stated in Table 120-3 at the time of the preliminary plan review. Minimum and maximum density will be assigned to these lots as part of this land division decision.

The applicant is proposing four detached house lots and two attached housing lots. To meet minimum density the applicant is proposing to have attached accessory dwelling units within the attached houses on Lots 5 and 6. Accessory dwelling units are allowed by right with a single family residence and is allowed to count towards minimum density in the multi-family zone. However, there is another option for this land division proposal to meet minimum

density without conditioning accessory dwelling units being developed with the attached housing lots.

The applicant currently is retaining the existing house on Lot 2. Lot 2's lot dimensions and lot area is to accommodate retaining the existing house, so all requirements of Title 33 (building coverage, setbacks) can continue to be met. The submitted existing conditions site plan does not reflect stairways & landing to the main entrance of house or the existing cover area attached to the detached garage (Exhibit C.2). The proposed preliminary plan does not reflect the rear deck or main entrance stairways, therefore to retain the existing house on this lot it will need to be altered to be in compliance with some of Title 33 development standards. No adjustments were requested as part of this land division proposal for the existing house to be retained on its new lot. The lot dimension of Lot 1 and Lot 2 may be modified to accommodate retaining the existing house and to be able to be in compliance with Title 33 development standards. The owner of the property, Eden Enterprises submitted a letter dated February 23, 2018 stating "they intend to demolish the existing detached garage/attached cover area and altering the existing house to meet zoning code requirements prior to final plat approval (Exhibit A.11).

The lot area and lot dimensions of Lot 2 meet the minimum dimensional standards of a multi-family development lot. The existing house on lot 2 could potentially be converted to a duplex or a triplex or the site could be redeveloped with two to three units. Therefore, it is not necessary for the applicant to propose accessory dwelling units within the attached housing lots (Lots 5 and 6) to meet minimum density, since Lot 2 will be required to accommodate two units if redeveloped in the future, therefore meeting minimum density requirements for the site are met and maximum density for the site as a whole is not exceeded.

Lots 3 and 4 meet the dimensional and area requirements for a duplex lot, however the applicant is utilizing the Alternative Development Option 33.120.270 which allows a reduced side setback of 3 feet on lot lines internal to the land division site for lots created for detached houses. These detached house lots are required to be at least 25 feet wide. Prior to final plat approval a supplemental survey is required to show the reduced side setbacks on these detached single family house lots, excluding Lot 2.

Because Lots 1, 3, 4, 5 and 6 will be developed with one dwelling unit, the remainder of the minimum density for the site as a whole must be met on Lot 2 at the time of redevelopment. A condition is necessary to ensure that density requirements of the land division site will be met.

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

<b>R2</b>	<b>Minimum lot area (square feet)</b>	<b>Minimum lot width (feet)</b>	<b>Minimum lot depth (feet)</b>	<b>Minimum front lot line (feet)</b>
<b>Multi-Dwelling</b>	4,000 s.f.	33 ft.	70 ft.	30 ft.
<b>Attached Houses</b>	1,600 s.f.	15 ft.	none	15 ft.
<b>Detached Houses</b>	1,600 s.f.	25 ft.	none	25 ft.
Lot 1- Detached House	3,564 s.f.	33 ft.	108 ft.	33 ft.
Lot 2- retaining existing House but Multi-Dwelling Lot	7,132 s.f.	66.6 ft.	108 ft.	66.6 ft.
Lot 3- Detached House	2,030 s.f.	35 ft.	58 ft.	35.44 ft.
Lot 4- Detached House	2,050 s.f.	35 ft.	58 ft.	35 ft.
Lot 5- Attached House or Detached House	1,761 s.f.	25 ft.	70 ft.	25 ft.
Lot 6- Attached House or Detached House	1,761 s.f.	25 ft.	70 ft.	25 ft.

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

With the conditions noted above, 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 A.2) that shows the location and size of trees on and adjacent to the site. The applicant also provided an arborist report (Exhibit A.5 & A.7) 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 there are six trees on the site and one tree is greater than 20-inches in diameter. These six trees provide a total of 88 inches of tree diameter and are subject to the preservation requirements of this chapter.

*Option 1: Preserve all of the trees that are 20 or more inches in diameter and at least 20 percent of the total tree diameter on the site.*

*Option 2: Preserve at least 75 percent of the trees that are 20 or more inches in diameter and at least 25 percent of the total tree diameter on the site.*

*Option 3: Preserve 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.*

*Option 4: All the trees are less than 20 inches in diameter and at least 35 percent of the total tree diameter is being preserved.*

The applicant is proposing to preserve Tree #1 -16-inches (English Walnut per Urban Forestry/Red Maple per arborist report), #2- 16-inches (Red Maple per Urban Forestry/English Walnut per arborist report) and #10-8-inch Japanese Maple, but not tree #7- 33-inch Grand Fir. A total of 3 of the 6 nonexempt trees and a total of 40-inches being preserved, which is 45% of the total tree diameter. All three trees being proposed to be preserved are less than 20 inches in diameter. Therefore none of the minimum tree preservation standard options listed above are being met and the applicant is proposing mitigation.

In this case, the site is zoned -R2- low density multi-family development, which would allow for a maximum density of 9 units. A variety of housing types can be developed on this site from multi-family apartment buildings, attached housing, detached single family houses or duplexes, as long as maximum density is not exceeded. The applicant's proposed land division layout is just meeting minimum density requirement for this zone. The location of the Grand Fir #7 tree and smaller nonexempt trees (#4 & #6) over future Lots 3-6 would impact the scale of development anticipated in this zone if retained. So it is reasonable to consider mitigation options that will replace the functions of the trees to be removed.

The applicant's original mitigation proposal was only to preserve the existing smaller trees (#1,#2 and #10) on the site, which did not mitigate fully for the removal of 33-inch Grand Fir

(A.1 and A.5). There was also discussion to plant additional trees on the future lots. These future lot sizes range from 1,761 to 3,564 in lot area. At the time of development of these small lots, Title 11-tree density standard would be required to be met. Given the future required tree planting, there is not sufficient room on these small lots for additional tree planting to mitigate for tree removal without jeopardizing the overall health of the trees as they mature.

The applicant then revised the mitigation proposal by proposing to preserve some existing small trees on Lot 2 where the existing house is being retained and also provide a payment into the City's Tree Preservation and Planting fund for removal of the 33-inch Grand Fir tree (Exhibit A.6 & A.7). The long-term health of one of the trees proposed to be preserved, Tree #1, could possibly be impacted by the sidewalk improvements along NE 55<sup>th</sup> Avenue. Therefore, it is optional for this tree to be retained. The impact of the future development and removal of existing development appear to have less impact on Trees #2 and #10 and therefore may be preserved and counted towards tree mitigation.

The tree preservation standard if all trees on the site were less than 20-inches would require up to 35 percent of the total non-exempt tree diameter on the site be preserved. This amounts to 31 inches on this site. The applicant is preserving two small trees (24-inches) to assist in mitigating for the removal of the 33-inch Grand Fir tree. Retaining these two small trees will also count towards meeting Title 11 requirement for tree density for Lot 2. The City acknowledges that the applicant is preserving these two smaller trees to assist in mitigating the removal of a very significant 33-inch native Grand Fir tree. By preserving these two trees (#2 & #10), the applicant will only be required to make a payment equivalent to 21-inches into the City's Tree Preservation and Planting fund for mitigation of the removal of the 33-inch Grand Fir tree.

With the condition that Tree #2 and #10 be preserved and a payment equivalent to 21 inches be paid to the City Tree Planting and Preservation Fund prior to final plat approval, tree removal will be adequately mitigated. In order to ensure that future owners of the Lots 1 and 2 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 Lots 1 and 2 must be carried out in conformance with the Tree Preservation Plan (Exhibit C.1) and the Arborist Report (Exhibit A.5 and A.7).

This mitigation will be consistent with the purpose of the tree preservation regulations, since it will provide for the installation of other trees to be planted throughout the City that will contribute to the general beauty and natural heritage of the City, if not directly on the site, and

- help to absorb air pollutants and contamination;
- provide buffering from noise and wind;
- provide visual screening from the adjacent properties;
- reduce energy demand and urban heat island impacts;
- filter stormwater runoff and the reduce the possibility for erosion;
- help with slope stabilization;
- the native trees will provide habitat to support wildlife;
- the edible species will provide food for people and wildlife.

In order to ensure the mitigation is provided, the applicant must make a payment to Tree Planting and Preservation Fund for 21-inches prior to final plat approval.

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

Based on these factors, this criterion is met.

**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, there are the two trees being preserved on Lot 2 where the existing house is being retained and they will be protected when any ground disturbance occurs within the root-protection zone of these two trees. The arborist report did not address how trees (#2 & #10) will be protected when demolition work occurs on Lots 1 and 2 and therefore will need to be addressed at the time of building permit review.

### ***Land Suitability***

The site is currently in residential use, and there is no record of any other use in the past. The existing house was built in 1912 but not connected to sewer until 1989. Although the site is currently connected to the public sanitary sewer, the City's plumbing records do not show that the former on-site sanitation system (septic/cesspool) was 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 this condition, the new lots can be considered suitable for new development, and this criterion is met.

The applicant has proposed to remove existing garage with attached covered area from the site to be able to redevelop the site. In order to ensure that the new lots are suitable for development, a permit must be obtained and finalized for demolition of the garage prior to final plat approval. With this condition, the new lots can be considered suitable for development, and 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 easements are proposed and/or required for this land division:

- A Private Sanitary Sewer Easement is required across the relevant portions of Lot 2, for a sanitary sewer lateral connection that will serve Lot 6.
- A Private Sanitary Sewer Easement is required across the relevant portions of Lot 3, for a sanitary sewer lateral connection that will serve Lot 5.

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

*"A Declaration of Maintenance agreement for (name of feature) has been recorded as document no. \_\_\_\_\_, Multnomah County Deed Records."*

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

### **I. Solar access. If single-dwelling detached development is proposed for the site, the approval criteria of Chapter 33.639, Solar Access, must be met.**

**Findings:** The solar access regulations encourage variation in the width of lots to maximize solar access for single-dwelling detached development and minimize shade on adjacent properties.

Lot 2 is a multi-family lot, which will retain a single-family house, until redeveloped in the future. Lots 5 and 6 will be developed with attached houses. So this solar standard does not apply to these lots.

Lots 1 through 4 are on the east side of a north-south oriented street. Lot 4 will be on the northeast corner of an east-west oriented street, and will be narrower than the Lots 2 and Lot 3.



The density and lot dimension standards of 33.612 ensure each lot has enough room for development to meet all requirements of the zoning code and housing goals are still met for the City. The site layout for this land division is set by the retaining the house on Lot 2. This land division proposal involves single family housing lots (Lots 1, 3, 4, 5 and 6), therefore minimum density and maximum density is considered as part of this land division proposal. Lot 2's lot dimensions and area is set by the location of the existing house and showing the existing house can still be in compliance with Title 33 development standards (setbacks, building coverage etc.). Lot 2's area and dimensions meet the lot size requirements for a multi-family development lot, which allows for the existing house to be converted into a duplex or even in a triplex in the future. The lot area and lot dimension of lot 2, provides the ability for the site to meet minimum density in the future while preserving the existing house or redeveloping the site in the future. Therefore, Lot 1's narrow width is set by the location of the house on lot 2. In this proposal, the site layout necessary to meet 33.612 is in conflict with the solar access criteria. Those other requirements supersede 33.639; therefore, the solar access criteria do not apply.

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

**Findings:** 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 regulations of this Chapter allow the traffic impacts caused by dividing and developing land to be identified, evaluated, and mitigated if necessary. The following approval criterion applies to all land divisions in all zones: *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.* To address the approval criteria, the applicant submitted a narrative.

The applicant is proposing to divide the subject property into six lots. Lots 1-4 will be developed with single-family detached homes, the existing home will remain on Lot 2, and Lots 5 and 6 will be developed with attached housing. Accordingly, the proposed development will result in a net increase of 5 new homes. Based upon trip generation estimates obtained from the Institute of Transportation Engineers (ITE) *Trip Generation Manual, 9<sup>th</sup> Edition*, the project is projected to generate 5 additional trips during both the morning and evening peak hours (50 additional trips in total each day). *The number of trips that will be added into the transportation system as a result of the proposed development will not adversely impact the operations of area intersections.*

Per Section 33.266.110.D.1 of the Zoning Code, on-site parking is not required due to the site's proximity to transit. However, the applicant is proposing on-site parking spaces to serve Lots 1, 3, and 4. On-street parking is permitted along both NE 55<sup>th</sup> and NE Killingsworth abutting this site. With the development of the two driveways on NE 55<sup>th</sup> as proposed, there will continue to be sufficient full-height curb to accommodate approximately 10 on-street parking spaces abutting the site. The existing curb-cuts on NE Killingsworth and NE 55<sup>th</sup> will be closed. Given the on-site parking opportunities to be provided with this development, the on-street parking in the area will continue to be able to support the existing uses in the area as well as any additional demand generated by the proposed development.

The site is within 500-ft of a transit street (NE Killingsworth) and transit service, via #72 TriMet Bus Line, provides 20 minute peak hour service in this area. The proposed development will not have a negative impact to transit and the required public improvements, discussed below under Section 33.654.120, will facilitate pedestrian access to said facilities. The transportation system is capable of supporting the proposed development in addition to existing uses in the area.

Based on the findings above, this criterion is met. Standard frontage improvements along NE Killingsworth Street and NE 55<sup>th</sup> Avenue are required under 33.654.

**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 with the noted conditions as shown in the following table:

<p><b>33.651 Water Service standard</b> – See Exhibit E.3 for detailed bureau comments.</p> <p>The Water Bureau has indicated that service is available to the site, as noted on page 3 of this report.</p> <p>The Fire Bureau has reviewed the fire water information provided and determined that water facilities for fire suppression from the nearest fire hydrant has adequate capacity and pressure to be available to serve the proposed development.</p> <p>The Water Bureau notes as a result of the proposed land division, the water line that provides service to the existing home on Lot 2 will no longer be located entirely on the same lot as the home. Title 21 requires that the water service connection be located along the frontage of the lot to be served. Water service connections are not allowed by means of an easement. Therefore, prior to final plat, the water service for the existing home must be relocated, so that the service connection will be located along the NE 55<sup>th</sup> Avenue frontage of Lot 2. A new service must be installed in NE 55<sup>th</sup> Avenue and connected to the existing house prior to final plat approval. The existing service will be used for the future development on Lot 6. At the time of building permit submission for development on Lot 6, the existing meter size will be reviewed, if the meter size at that time is determined to be inadequate it will be resized at the expense of the applicant.</p> <p>With this condition, the water service standards of 33.651 will be met.</p>
<p><b>33.652 Sanitary Sewer Disposal Service standards</b> – See Exhibit E.1 for detailed comments.</p> <p>The Bureau of Environmental Services has indicated that service is available to the site, as noted on page 3 of this report. Currently, there is no public sanitary sewer available within the frontage of NE Killingsworth Street for Lots 4, 5 and 6. The nearest available sanitary service within NE Killingsworth is approximately 25-30 ft. from this sites Killingsworth frontage. The applicant would need extend this sanitary line through a public works permit to obtain sanitary services from NE Killingsworth Street. There is a 12-inch public sanitary sewer available in NE 55<sup>th</sup> Avenue. The applicant proposes sanitary service to Lots 5 and 6 via a private sanitary sewer easement over lots 2 and 3 to provide legal access to the public sanitary sewer line service within NE 55<sup>th</sup> Avenue.</p> <p>Bureau of Environmental Services has reviewed the applicant’s proposal and has provided the following comments:</p> <p>The existing house on proposed lot 2, is currently connected to the 12-inch public sanitary sewer line in NE 55<sup>th</sup> Avenue. The applicant provided a sewer inspection report (Exhibit A.8) and the proposed existing conditions plan (Exhibit A.9) and preliminary plan (Exhibit A.10) which shows the sanitary lateral for the existing house located completely on Lot 2.</p> <p>Proposed development on Lots 1, and 3-6 will be served by new connections to the 12-in sanitary sewer in NE 55<sup>th</sup> Avenue. Sanitary service for Lots 1, 3 and 4 will be within their own frontage. In order to access the public sewer in NE 55<sup>th</sup> Avenue, the applicant must provide legal access across Lot 2 and 3. The applicant proposes to receive sanitary service for Lot 5 via a five-foot private sanitary easement over Lot 3. Lot 6 will receive sanitary service from a 5-foot private sanitary sewer easement over Lot 2. BES will allow individual sanitary laterals for Lot 5 and Lot 6 to be located within private sanitary sewer easements. The private sanitary easement width is below the minimum width of 10 feet, therefore the applicant will be required to show how the proposed reduced width meets the requirements of the BDS Private Sewer Easements Code Guide, prior to final plat approval. To ensure legal access to public sanitary service from NE 55<sup>th</sup> Avenue is provided for Lots 5 and 6 a private sanitary sewer easement must be shown on the final plat.</p>

With the conditions noted above, the sanitary sewer service standards of 33.652 have been verified.

**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.

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. 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.

The applicant has proposed the following stormwater management methods for the individual lots (See Exhibit A.9):

- **Lots 1, 3 and 4:** Stormwater from these lots will be directed to individual drywells that will treat the water and slowly infiltrate it into the ground. Each of these lots 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.
- **Lot 2 -the lot with the existing house to be retained:** The existing house has downspouts that drain onto the ground. The applicant notes all four downspouts are proposed to be relocated/placed on splash blocks and directed to the front or rear of the property to avoid water crossing property lines.
- **Lots 5 and 6 (Attached Housing Lots):** Stormwater from these lot will be directed to an individual drywell that will treat the water and slowly infiltrate it into the ground. These lots have 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 finds the proposed stormwater management plan acceptable for the future lots (1, 3-6) for the purpose of this land division application. In regards to Lot 2, BES notes the applicant proposes to modify the storm system for the existing house on Lot 2. Prior to final plat approval, the applicant must document the location of the stormwater disposal for the existing house, to the satisfaction of BES. The applicant must modify the stormwater system for the existing house as necessary to comply with Stormwater Management Manual prior to final plat approval. Any required plumbing permits must have final inspection approval.

**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. This site is located at the intersection of two public street. The properties to the north/east of the site are already developed. PBOT identified no further opportunities to improve connectivity in relation to the proposed subdivision (Exhibit E.2).

For the reasons described above, this criterion is met.

**33.654.120.B 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. This section requires approval by PBOT for the elements within the right-of-way. Frontage improvements will be required in relation to the proposed development and are discussed in more detail below.

The Transportation System Plan (TSP) classifies NE Killingsworth as a District Collector, a Major Transit Priority Street, a City Bikeway, a City Walkway, a Major Emergency Response

Route, a Community Corridor, and a Local Service Freight Street. NE 55<sup>th</sup> is a Local Service Street for all modes.

According to City GIS information, NE Killingsworth is an 80-ft wide ROW improved with a 66-ft wide paved roadway and a curb located 7-ft from the property line. NE 55<sup>th</sup> is a 50-ft wide ROW improved with a 32-ft wide paved roadway and a curb located approximately 9-ft from the property line.

Based upon the classifications of the abutting ROW's and the zoning of the property, the site's frontages do not meet the standards of the *Pedestrian Design Guide* and the following improvements will be required:

- **NE Killingsworth:** 12-ft wide side sidewalk corridor (0.5-ft curb, 4-ft furnishing zone, 6-ft sidewalk, and 1.5-ft frontage zone). ***An estimated 5-ft dedication of property for ROW purposes is necessary to accommodate standard improvements.***
- **NE 55<sup>th</sup>:** 11-ft wide sidewalk corridor (0.5-ft curb, 4-ft furnishing zone, 6-ft sidewalk, and 0.5-ft frontage zone). ***An estimated 2-ft dedication of property for ROW purposes is necessary to accommodate standard improvements.*** If the retention wall is located within the existing or future ROW along NE 55<sup>th</sup>, the applicant must either remove the wall or obtain approval of a Revocable Encroachment Permit prior to Final Plat approval.
- **Corner** - The existing corner does not meet current ADA standards and will be required to be reconstructed. Based upon the TSP classifications, the corner would meet PBOT's criteria for a curb extension into NE Killingsworth. However, the requirement for a curb extension and subsequent design will be determined during the Public Works process. The applicant is advised that the existing utility pole at the corner will likely have to be relocated to accommodate corner upgrades.

The applicant referenced a City of Portland project, 'Cully Sidewalk Infill T00460', that is estimated to start construction in the summer of 2019. This project will be constructing sidewalks along NE Killingsworth, however, as with most CIP projects, the City is not able to acquire the additional ROW from abutting private property owners necessary to accommodate standard improvements and must work within the existing ROW. However, consistent with Title 17 requirements, the existence of this CIP sidewalk project does not obviate the applicant's requirement to dedicate and construct improvements consistent with the *Pedestrian Design Guide*. Accordingly, the applicant will be required to complete the dedications/improvements in relation to the proposed development.

At the time of Final Plat approval:

- 1) Property dedication, necessary to accommodate standard sidewalk improvements, shall be completed along NE 55<sup>th</sup> and NE Killingsworth.
- 2) The sidewalk abutting Lot 2 must be constructed under a Minor Improvement Permit (MIP) from the Bureau of Transportation.

Prior to Building Permit approval:

- 3) The sidewalks abutting the remaining lots will be required to be construction under a MIP as a condition of Building Permit approval for the new homes.
- 4) As a condition of Building Permit approval for Lot 4, the applicant will be required to reconstruct the corner to meet current ADA standards under a Public Works Permit. The sidewalk construction behind the existing curb (exclusive of the corner) can be accomplished under a Minor Improvement Permit or incorporated into the Public Works Permit for the corner reconstruction.

In this case Portland Transportation has determined that sidewalk and corner improvements must be made in order to ensure that safe pedestrian travel is possible to and from proposed development. To accommodate these improvements, additional right-of-way must be dedicated along the frontage of the site. With those improvements, the additional dwelling units proposed 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 and corner improvements are made, and the required right-of-way dedication is shown on the Final Plat.

### **33.654.120.H – Standard for Street Trees (See Exhibit E.6)**

The City Forester reviewed this land division proposal for its impact on existing street trees, heritage trees, street tree requirements and related mitigation, in accordance with Title 11, Trees Code.

**Findings:** There are no existing street trees currently along either of these street frontages. After the street dedication, one potential street tree would exist along NE Killingsworth Street. This tree can be removed with no mitigation due to species, size, and health condition.

The applicant provided a conceptual street tree planting plan, which showed only street tree plantings along NE 55<sup>th</sup> Avenue and none proposed along the NE Killingsworth's street frontage. One street tree must be planted or retained for each full increment of 25 linear feet (11.50.060.C.1). Street trees must be planted at a minimum of 1.5 caliper inches and be a species chosen from an approved street tree list. Trees will be required to be planted through building permit or public works permit. The tree planting must be shown on permit plans.

A fee is required for loss of street tree planting locations. Each street tree requires 25 linear feet for planting.

- NE 55<sup>th</sup> Avenue: Approximately 175 feet of street frontage would allow for seven street trees to be planted.
- NE Killingsworth Street: Approximately 110 feet of street frontage would allow for four (4) street trees to be planted.

Prior to lot division there is room for seven (7) street trees to be planted along NE 55<sup>th</sup> Avenue. After the proposed lot division there will be room for five (5) street trees. Therefore, a loss of potential location of two street trees along NE 55<sup>th</sup> Avenue's street frontage will be required due to loss of two available planting spaces. A fee for 3-inches (currently is \$325 an inch, which is 325 x 3=\$975) will be required for the elimination of two potential street tree planting locations as a result of this land division.

With the condition that the applicant must pay into the City Tree Preservation and Planting Fund for the loss of two street trees, a fee in Lieu (1.5 per inch per tree) the amount equivalent to three inches prior to final plat approval, 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:

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

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

The existing conditions supplemental survey and the preliminary plan submitted did not accurately reflect all existing improvements (walkways, stairways and decks etc.). At the time of final plat application a revised supplemental survey must be submitted showing all improvements and buildings on the site in relationship to the new lots and dimensions provided to new lot lines. The applicant must note on the supplemental survey what existing improvements, buildings, structures etc. will be removed/alterd from the site. A revised supplemental survey will be submitted once all alterations have been made to document no structures/eaves/decks straddle the new lot lines.

In this case, there are several Zoning Code standards that relate to existing development being retained on future Lot 2:

- Minimum Setbacks (33.120.220) – 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. Currently there is an existing rear deck and front entry deck with stairways not reflected on the existing conditions site plan. These decks/entry stairs will need to be removed and or altered so the existing house will be in compliance with the minimum setbacks from the proposed new property lines. To ensure this standard is met at the final plat stage, the final plat must be accompanied by a supplemental survey showing the location of the existing building (including decks, stairs, eaves etc.) relative to the adjacent new lot lines. An exterior elevation plan to scale of the deck/stairways/porch will be required to determine if it meets the allowance as a minor projection into the minimum required setback.
- Accessory Structures – An accessory structure is not allowed on a lot without a primary structure. The existing detached garage with attached covered area would no longer be on the lot with the existing house. Structures are not allowed to remain on a proposed lot line or straddle the lot line. Therefore, in order for the proposed new lots to be approved, the accessory structure (detached garage and attached covered area) on Lot 1 must be removed prior to final plat. Demolition permits are required. The applicant must provide documentation prior to final plat approval that all required demolition permits have received final inspection. To ensure that this standard is met, a condition of approval is necessary.
- Required Off-Street Parking - A paved parking pad/garage provides parking for the existing house on Lot 2. As a result of this land division, the parking space for the existing house will be located on a different lot, and will no longer be available to Lot 2. The Portland Zoning Code does not require off-street parking on sites that are less than 500 feet from a transit street with 20-minute peak-hour bus, streetcar, or light rail service. Tri-Met provides transit service approximately [distance to street] feet from the site on NE Killingsworth Street via bus number 72. Bus number 72 provides peak-hour service meeting this requirement. As a result, no replacement parking is required for Lot 2.
- Main Entrances -- In this zone, the main entrance of a house must face a street, or open onto a porch that faces the street. The main entrance for the existing house that will remain on Lot 2 currently faces NE Killingsworth Street. Because new Lots 3-4 will be created between Lot 2 and NE Killingsworth Street, the main entrance on the existing house must be modified to face NE 55<sup>th</sup> Avenue, or a porch must be added to bring the house into conformance with the main entrance standards. Therefore, prior

to final plat approval, the applicant must finalize a building permit to make modifications to the house that will remain on Lot 2 to demonstrate continued compliance with 33.120.231.C after the land division is recorded.

- At the time of building permit application for the alteration of the main entrance to be oriented towards NE 55<sup>th</sup> Avenue, the Addressing Section of Bureau of Development Services will reassign an address to the existing house to be addressed from NE 55<sup>th</sup> Avenue versus NE Killingsworth Street.
- Title 11 Tree Density Standard – This site has a minimum tree density requirement per 11.50.050 that is currently met on the site. Due to the land division, and associated tree removal, Lot 2 with existing house will no longer meet this standard. Lot 2 is 7,132 square feet, therefore 2853 square feet of tree area is required. Even with the preservation of Tree #2 and #10, the tree density is still not met (2853-1500= 1353 s.f.). Prior to final plat approval, the applicant must meet this requirement by either planting trees on Lot 2 or making the equivalent payment into the City Tree Preservation and Planting Fund. Tree planting must be documented with a finalized Zoning Permit.

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 document/show how the existing building and any accessory structures will remain in compliance with the building code on its new lot prior to final plat approval. Any building permits required to modify/alter a house or remove the accessory structure(s) from the site will need to receive final inspections prior to final plat approval. A revised supplemental survey showing the surveyed in location of all structures, decks, eaves etc. in association to the new lot lines must be submitted prior to final plat approval. (See Exhibit E.7)
- The applicant must meet the requirements of the Fire Bureau in regards to addressing requirements; fire apparatus access, including aerial access. These requirements are based on the technical standards of Title 31 and Fire Bureau Policy B-1. (see Exhibit E.4)

## CONCLUSIONS

The applicant has proposed a six lot subdivision, as shown on the attached preliminary plan (Exhibit C.1). 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: PBOT is requiring dedication and street frontage along both street frontages to be in compliance with the City's pedestrian guideline standards. Urban Forestry notes due to the land division layout there is a loss available planting spaces for two street trees along NE 55<sup>th</sup> Avenue's street frontage. BES requires private sanitary easement over Lots 2 and 3 to provide for legal access to public sanitary service for future Lots 5 and 6. Water Bureau requires a new water service to be provided for the existing house from its new frontage abutting NE 55<sup>th</sup> Avenue to be in compliance with Title 21 requirements. To mitigate the removal of a healthy 33-inch Grand Fir Tree the applicant is preserving two small trees on Lot 2 and making payment into the City Tree Preservation and Planting fund. Elements of the existing house will need to either be removed, altered or modified, for the house to remain on future Lot 2 to be in compliance with building code and zoning code. The existing detached garage with a covered area will no longer be on the lot with the existing house.

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

## ADMINISTRATIVE DECISION

**Approval** of a Preliminary Plan for a six lot subdivision, that will result in five (5) single dwelling lots (Lot 1, 3, 4, 5 & 6) and one (1) multi-dwelling lot (Lot 2), as illustrated with Exhibit C.1 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 Review Section of BDS, Bureau of Environmental Services, Life Safety Section of BDS and PBOT 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, all improvements (walkways, driveways, patios, vehicle areas etc.) on the site at the time of the final plat application;
- The reduced side setbacks allowed under 33.120.270.D, if eligible & proposed;
- The exact location of the existing retaining/rock wall in association to the right-of-way after street dedication;
- The exact location of eaves, decks, stairways, porches, building(s) in association to the new lot lines once structure(s) have been altered/modified or removed from the site;
- Documentation of stormwater retrofit of existing house on Lot 2 to meet BES requirements;
- 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 NE Killingsworth Street and NE 55<sup>th</sup> Avenue. The required right-of-way dedication must be shown on the final plat.
2. A private sanitary sewer easement, for the benefit of Lot 6, shall be shown and labeled over the relevant portions of Lot 2.
3. A private sanitary sewer easement for the benefit of Lot 5, shall be shown and labeled over the relevant portions of Lot 3.
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.12 & C.13 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."
5. The lot dimensions and area for Lots 1 and 2 may change at the time of final plat to allow for the existing house to be retained on Lot 2 and be in compliance with building and zoning code requirements. The lots must still meet lot dimension standards.



**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 (NE 55<sup>th</sup> Avenue & NE Killingsworth Street). The applicant must obtain an approved Minor Improvement permit from the Portland Bureau of Transportation to install the required sidewalk corridor. The improvements along the frontage of Lot 2, where the existing house will be retained, must be constructed prior to final plat approval. The improvements along the frontage of the undeveloped lot(s) may be constructed with development on each lot as per the City Engineer's discretion. Alternatively, the Right-of-Way improvements abutting Lot 2 may be constructed under a Public Works Permit that includes the entire frontage including the corner reconstruction. In this instance, performance guarantees, fees and contract must be submitted, as identified in the Public Works Concept Review, prior to final plat approval.
2. The applicant must document the exact location of the existing retention/retaining wall in association to the right-of-way (after street dedication) and if within the right-of-way then it must be removed prior to final plat approval.

**Utilities**

3. The applicant shall meet the requirements of the Water Bureau concerning relocation of the water service connection to the existing home.
4. The applicant must document how the proposed 5-ft wide private sanitary easements meet BDS Private Sewer Easements Code Guide or receive an approved plumbing code appeal for the future sanitary service line to Lots 5 and 6.

**Existing Development**

5. The applicant must document the existing house (which includes stairs, porches etc.) being retained on future Lot 2 will meet building code requirements in relationship to the new property lines. If any building permits are required to alter the building to be in compliance with the residential building code, then these permits must be approved, inspected and finalized prior to final plat approval.
6. The applicant must obtain a finalized demolition permit for removing the garage/accessory structure on Lot 1. Prior to removal of these structures, tree protection must be installed in accordance with the approved Tree Preservation Plan, per Condition D.1.
7. The applicant shall meet the requirements of the Site Development Section of the Bureau of Development Services for the decommissioning the septic system/cesspool on the site.
8. The applicant must obtain a finalized building permit for modifications to the existing house that will remain on proposed Lot 2, that demonstrate compliance with the standards listed below in relation to the proposed new lot lines. The permit plans must include the note:  
*This permit fulfills requirements of Condition C.8 of LU18-205888 LDS*
  - 33.120.231.C (standards for Main Entrances in the Multi-Dwelling zones);
  - 33.120.220 (Setbacks--specifically, the permit must show removal of sufficient portions of the porch/deck to meet side setback requirement of R2 zone or show the allowance for minor projections into the setback are met);
9. The applicant must document the Addressing Section of BDS has assigned a new address for the existing house, to be from NE 55<sup>th</sup> Avenue frontage.
10. The applicant must meet the requirements of BES for the stormwater systems on the existing house to remain on Lot 2. Specifically, the gutters and downspouts must direct water to an approved disposal point that meets setback requirements from the new lot lines. If modifications to the system are required by BES, the applicant must final any required plumbing permits for this work prior to final plat approval.

11. The applicant must meet the tree density standard of 11.50.050 on Lot 2 with the existing house by either planting trees on the lot or making the equivalent payment into the City Tree Preservation and Planting Fund. A finalized Zoning Permit (or Residential permit if included in permit when altering house) must be obtained to document tree planting prior to final plat approval.

**Required Legal Documents**

12. A Maintenance Agreement shall be executed for the Private Sewer easement described in Conditions B.2 and B.3 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.
13. The applicant shall execute an Acknowledgement of Tree Preservation Land Use Conditions that notes tree preservation requirements that apply to Lots 1 and Lot 2. A copy of the approved Tree Preservation Plan must be included as an Exhibit to the Acknowledgement. The acknowledgment shall be recorded with Multnomah County and referenced on the final plat.

**Other requirements**

14. The applicant must pay into the City Tree Preservation and Planting Fund [for mitigation of Private Property Trees – Planting and Establishment, fee in Lieu (per inch)] the amount equivalent to 21 inches of trees. Payment must be made to the Bureau of Development Services, who administers the fund for the Parks Bureau.
15. Urban Forestry requires the applicant must pay into the City Tree Preservation and Planting Fund [Street Trees – Fee in Lieu of Planting and Establishment (per inch)] for the loss of planting space for two street trees in the amount equivalent to 3-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 Lots 1 and 2 shall be in conformance with the Tree Preservation Plan (Exhibit C.1) and the applicant's arborist report (Exhibit A.5 & A.7). Specifically, trees numbered 2 and 10, are required to be preserved, with the root protection zones indicated on Exhibit A.5 & A.7. 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 minimum and maximum density for the lots in this land division are as follows:

Lot	Minimum Density	Maximum Density
1	1	1
2	2	3
3	1	1
4	1	1
5	1	1
6	1	1

Lots 1, 3, 4, 5 and 6 are single dwelling lots and accessory dwelling units do not count towards maximum density. Accessory dwelling units may be added to a house or attached house per 33.205.030.

3. The applicant shall meet the requirements of the City Engineer for right of way improvements along the frontage of Lots 1, 3, 4, 5 and 6. The applicant must construct the improvements with development of the individual lots, unless a public works permit and bond were provided per Condition C.1.
4. The existing curb-cuts along this street frontage will be closed and future driveways will meet Title 17 requirements.
5. 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.

**Staff Planner: Lois Jennings**

**Decision rendered by:**  **on February 28, 2018**  
By authority of the Director of the Bureau of Development Services

**Decision mailed March 5, 2015**

**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 19, 2017, and was determined to be complete on January 12, 2018.

*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 19, 2017.

*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. The 120 days will expire on May 12, 2018. In this case, the applicant extended the 120-day review period for an additional seven (7) days (Exhibit \*\*), unless further extend the timeline will expire on May 19, 2018.

**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 19, 2016** 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.**

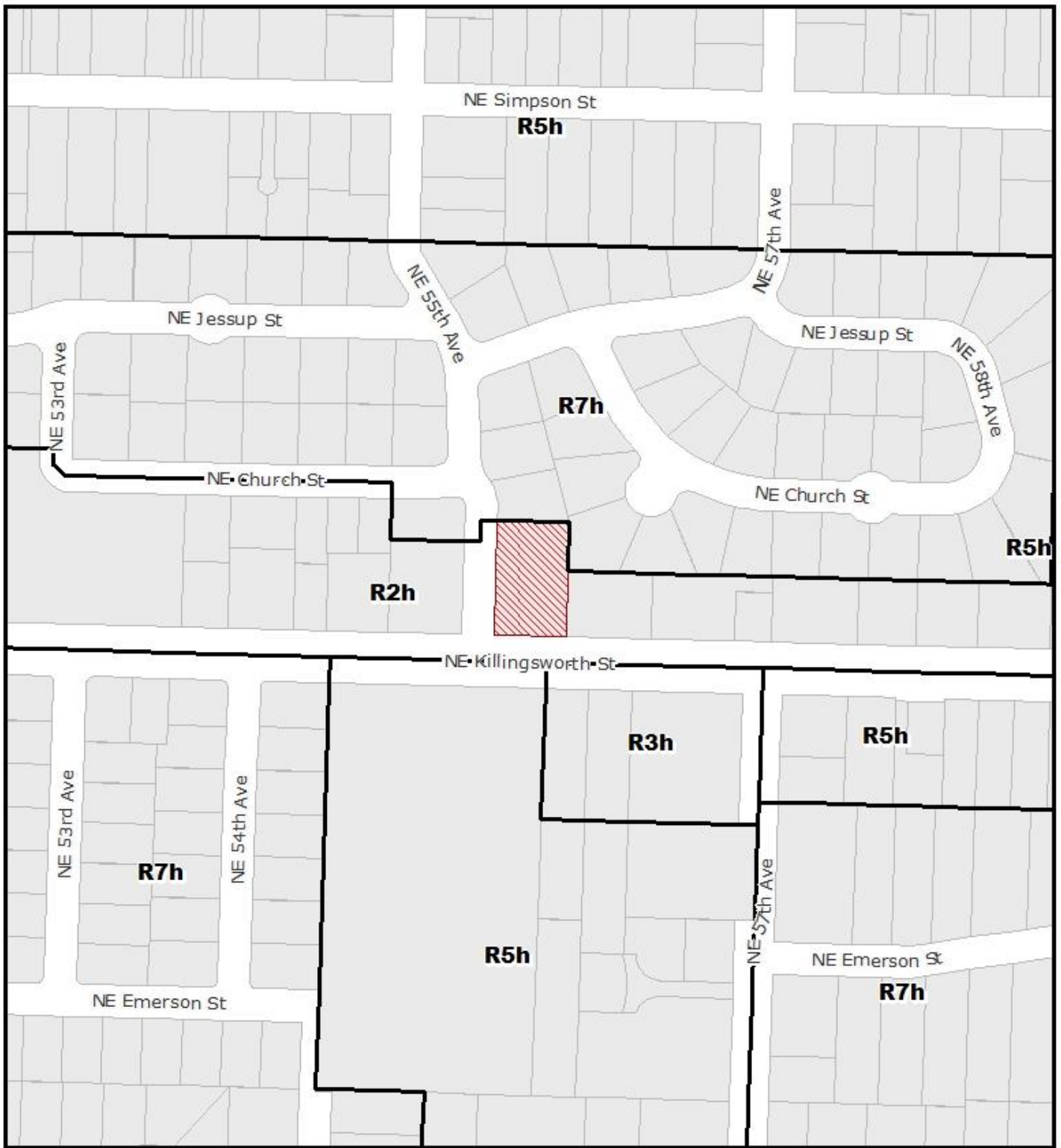
#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Information
  - 1. Neighborhood Contact Documentation
  - 2. July 19, 2017 Narrative and plans
  - 3. Portland Water Bureau Fire Flow Information
  - 4. Stormwater Simplified Approach form
  - 5. Original Arborist Report & Tree Plan
  - 6. January 12, 2018 Additional Information and revised plan
  - 7. January 12, 2018 Tree Plan
  - 8. February 14, 2018 Sewer Inspection Report
  - 9. February 15, 2018 Revised Site Utility Preliminary Plan
  - 10. February 16, 2018 Revised Existing conditions site plan
  - 11. February 26, 2018 Letter submitted from owner of property-Eden Enterprises regarding building code and zoning code issues for existing house
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Preliminary Land Division Site Plan & Tree Preservation Plan (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
  8. Police Bureau
- F. Correspondence: None
- G. Other:
1. LU Application
  2. Expedited Land Division Acknowledgement
  3. August 10, 2018 Incomplete Letter
  4. Deed Information submitted by applicant
  5. Eden Enterprises LLC Information
  6. Request for Extension of 120-day review
  7. E-mail correspondence with applicant dated from August 10, 2017- February 2018

**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**  NORTH

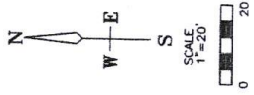
 Site

File No.	LU 17-205888 LDS
1/4 Section	2436
Scale	1 inch = 200 feet
State ID	1N2E18DC 5200
Exhibit	B Jul 20, 2017

RECEIVED

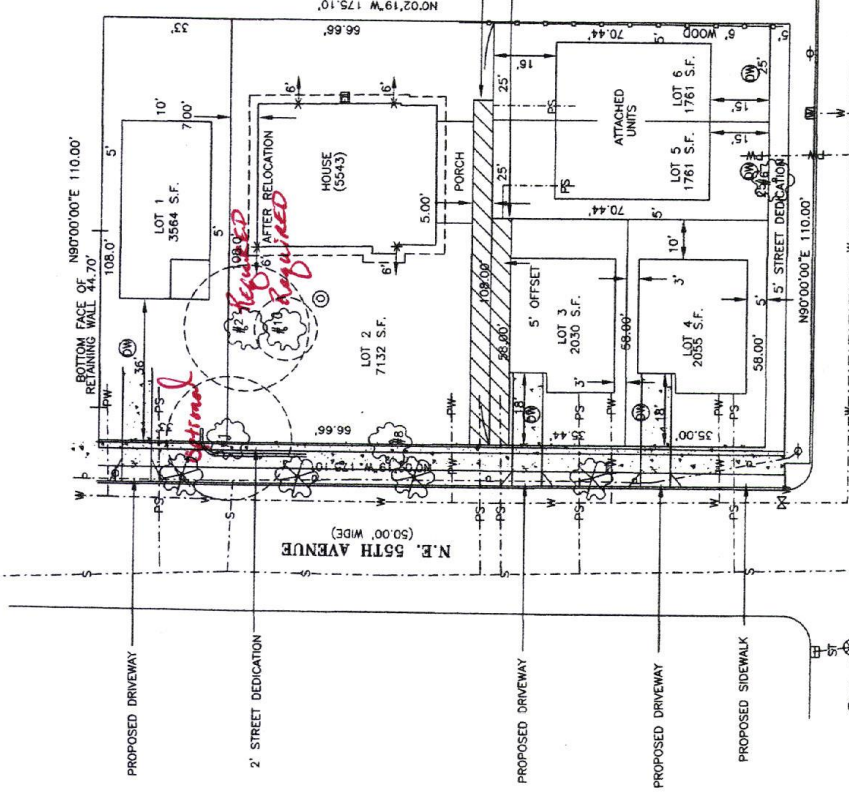
JAN 1 2018

Preliminary Land Division Site Plan  
Division Site Plan  
Site Plan  
Tree Preservation Plan

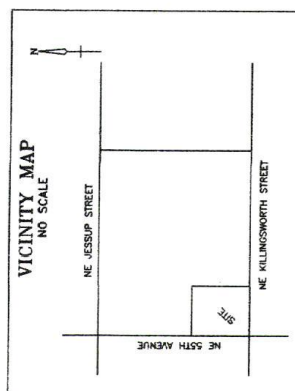


PROPOSED SIDEWALK SECTION ON NE 55TH AVE  
1.5' CURB  
1.5' PLANTER  
1.5' WALK  
0.5' CLEAR ZONE

TOTAL LOT AREA 19,260 S.F.  
TOTAL LOT AREA AFTER DEDICATION 18,370 S.F.



- SYMBOLS**
- ⊕ = POWER POLE
  - ⊙ = GUY ANCHOR
  - ⊠ = WATER METER
  - ⊡ = GAS METER
  - ⊠ = ELECTRIC METER
  - ⊠ = WATER VALVE
  - ⊠ = GAS VALVE
  - ⊠ = SANITARY MANHOLE
  - ⊠ = CLEAN OUT
  - ⊠ = CATCH BASIN
  - ⊠ = FIRE HYDRANT
  - ⊠ = DOWN SPOUTS
  - ⊠ = DOWNSPOUT TO PIPE
  - ⊠ = STORM MANHOLE
  - ⊠ = TELEPHONE LINE
  - W— = WATER LINE
  - PW— = PROPOSED WATER LINE
  - G— = GAS LINE
  - E— = ELECTRIC LINE
  - PS— = PROPOSED SANITARY SEWER
  - S— = SANITARY SEWER
  - ST— = STORM SEWER
  - ⊙ = OIL FILL
  - ⊕ = PROPOSED DRYWELL
  - \*EPL\* = LINE TO CONFIRM
  - ⊠ = DECIDUOUS TREE
  - ⊠ = CONIFER TREE
  - ⊠ = PROPOSED NEW STREET TREE



TREES TO BE PRESERVED  
#2 and #10

MH #1008  
RIM ELEV = 131.73'  
IE IN SOUTH = -13.22'  
IE OUT EAST = -13.37'

Percentage improvements along NE Killingsworth and the corner ramp will be included in the City of Transportation Connected Duty Sidewalk Infill Project (T0480)

MH #1001  
RIM ELEV = 132.22'  
IE IN WEST = -15.60'  
IE OUT NORTH = -15.83'

NOTE: ELEVATION DATUM IS PER CITY OF PORTLAND BENCHMARK NO. 3327

REGISTERED PROFESSIONAL LAND SURVEYOR  
JOE H. FERGUSON  
JULY 25, 1990  
RENEWAL DATE 12/31/19

DATE: MAY 9, 2017  
JOB NO. 17-075  
DRAFTED 5.9.17  
REVISED 7/10/2018  
CASE NO. C.1  
SHEET 1 OF 1

DEZ DEVELOPMENT LLC  
SLAVIK DEZHNYUK  
1017 SE SUNNYSIDE ROAD  
SUITE F1123  
CLACKAMAS, OR 97015

PROPOSED CONDITIONS MAP  
IN THE SE 1/4 SECTION 18, T.1N., R.2E., W.4M.  
PORTLAND, MULTNOMAH COUNTY, OREGON

Ferguson Land Surveying, Inc.  
646 SE 106TH AVE. PORTLAND, OR 97216  
Phone (503) 408-0601 Fax (503) 408-0602  
www.FergusonLandSurveying.com

CASE NO. 17-205888 LDS  
EXHIBIT C.1

LU 17-205888