



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

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**Date:** January 23, 2019  
**To:** Interested Person  
**From:** Brandon Rogers, Land Use Services  
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## **NOTICE OF A TYPE Ix DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD**

The Bureau of Development Services has approved a proposal in your neighborhood. The mailed copy of this document is only a summary of the decision. The reasons for the decision are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

### **CASE FILE NUMBER: LU 18-175622 LDP**

#### **GENERAL INFORMATION**

**Applicant/Owner:** Kenneth Kwong & Chun Xia Kwong  
3035 SE 92nd Ave. | Portland, OR 97266  
[springkwong@hotmail.com](mailto:springkwong@hotmail.com)

**Site Address:** 13995 SE POWELL BLVD  
**Legal Description:** E 1/2 OF LOT 8 EXC N 130', POULSEN AC  
**Tax Account No.:** R671700430  
**State ID No.:** 1S2E11AD 04600  
**Quarter Section:** 3344  
**Neighborhood:** Powellhurst-Gilbert, contact at [pgnaboard@gmail.com](mailto:pgnaboard@gmail.com)  
**Business District:** Midway, contact [info@midwaybusiness.org](mailto:info@midwaybusiness.org).  
**District Coalition:** East Portland Community Office, contact Victor Salinas at 503-823-6694.

**Plan District:** Johnson Creek Basin.  
**Zoning:** Residential 2,000 (R2) with the Alternative Design Density "a" overlay zone.

**Case Type:** Land Division Partition (LDP).  
**Procedure:** Type Ix, an administrative decision with appeal to the Oregon Land Use Board of Appeals (LUBA).

**Proposal:** The applicant proposes a three-parcel partition of a 13,995 square-foot site to create three lots for single dwelling development. The existing house is proposed to remain at the site. The site contains trees subject to the tree preservation standards of Chapter 33.630. Water and sanitary sewer service is proposed to be provided from existing utilities located within SE 140<sup>th</sup> Avenue. Driveway access is proposed from SE 140<sup>th</sup> Avenue. Stormwater management will be provided by on-site drywells. Street frontage improvements are required to be constructed along SE Powell Blvd and SE 140<sup>th</sup> Avenue.

This partition is reviewed through a Type Ix land use review because: (1) the site is in a residential zone; (2) fewer than four lots are proposed; (3) none of the lots, utilities, or services are proposed within a Potential Landslide Hazard or Flood Hazard Area, and; (4) no

other concurrent land use reviews (such as an Adjustment, Design Review, or Environmental Review) are requested or required (see 33.660.110).

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

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

## FACTS

**Site and Vicinity:** The site is developed with a single dwelling and accessory structures. Topography is generally level, with an elevation change of six-feet across the site from north to south. The surrounding neighborhood is developed primarily with single dwelling development, with multi dwelling development located along SE Powell Blvd. Powel Butte Nature Park is located approximately 2,400 feet south east of the site.

### Infrastructure:

- **Streets** – The site has approximately 179-feet of frontage on SE 140<sup>th</sup> Avenue and approximately 75-feet of frontage on SE Powell Blvd. One driveway connecting to SE 140<sup>th</sup> Avenue serves the existing house on the site. At this location, the City’s Transportation System Plan classifies SE Powell as a Major City Traffic street, Transit Access street, City Bikeway, City Walkway and a Regional Corridor. SE 140<sup>th</sup> Ave is classified as a Local Service street for all modes. SE Powell is also identified as State Route No. 26 with access and other jurisdictional authority under the Oregon Department of Transportation (ODOT). Tri Met provides bus service along SE Powell Boulevard via bus #9.
- **Water Service** – There is an existing 6-inch water main located in SE 140<sup>th</sup> Avenue. The existing house is served from this water main.
- **Sanitary Service** - There is an existing 18-inch sanitary sewer located in SE 140<sup>th</sup> Ave and an existing 42-inch sanitary sewer in SE Powell Blvd.
- **Stormwater Disposal** – There is no public storm-only sewer currently available to this property.

**Zoning:** Residential 2,000 (R2). 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.

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

**Agency Review:** Several Bureaus and ODOT 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 **September 17, 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 proposed density is less than 40 units.
H	33.636 - Tracts and Easements	No tracts or easements have been proposed or will be required.
J	33.640 - Streams, Springs, Seeps and Wetlands	No streams, springs, seeps or wetlands are evident on the site add if site has e-zoning 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.
	33.655 - School District Enrollment Capacity	The proposal is for less than 11 lots or is not in the David Douglas School District.

**Applicable Approval Criteria are:****A. Lots. The standards and approval criteria of Chapters 33.605 through 33.612 must be met.**

**Findings:** Chapter 33.612 contains the density and lot dimension requirements applicable in the R3 through IR zones. The applicant is proposing three lots for single-dwelling development. Single-dwelling or duplex development is proposed 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 density in the R2 zone is calculated at one unit per 2,500 square feet of site area and the maximum density is calculated at one unit per 2,000 square feet of site area. Site area devoted to streets is subtracted from the total site area to calculate the minimum and maximum density. The total site area shown on the applicant's survey is 11,022 square feet. Street dedications are required for SE Powell Boulevard and SE 140<sup>th</sup> Avenue as follows; an 8-foot street dedication is required along SE Powell Boulevard and a 5-foot dedication is required along SE 140<sup>th</sup> Avenue. The total area of street dedications is approximately 1,520 square feet. Therefore, density is based upon the reduced site area of 9,502 square feet.

Based upon the information above, the site has a minimum required density of 4 units and a maximum density of 5 units. The applicant proposes three lots for single dwelling development. Section 33.205.050 states that Accessory Dwelling Units (ADU's) are included in the minimum density calculations but are not included in the maximum density calculations. To meet minimum density calculations, the applicant proposes to assign two units of density to Parcel 3.

The required and proposed lot dimensions 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>Detached Houses</b>	1,600	25	none	25
Parcel 1	2,736	40	69	40
Parcel 2	2,736	40	69	40
Parcel 3	5,550	69	81	66

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

The findings above show that the applicable density and lot dimension standards are met. Therefore, this criterion is met.

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

**Findings:** The regulations of Chapter 33.630 require that trees be considered early in the design process with the goal of preserving high value trees and, when necessary, mitigating for the loss of trees. To satisfy these requirements, the applicant must provide a tree plan that demonstrates, to the greatest extent practicable, the trees to be preserved provide the greatest environmental and aesthetic benefits for the site and the surrounding area. The tree plan must also show that trees are suitable for preservation, considering the health and condition of the tree and development impacts anticipated. Tree preservation must be maximized, to the extent practicable, while allowing for reasonable development considering the intensity of development allowed in the zone and site constraints, including existing utility easements and requirements for services and streets.

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

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

In order to identify which trees are subject to these requirements, the applicant provided a tree survey (Exhibit C.5) that shows the location and size of trees on and adjacent to the site. The applicant also provided an arborist report (Exhibit A.4) that identifies each tree, its condition and suitability for preservation, or its exempt status. The report indicates the site contains 14 trees measuring 6-inches diameter at breast height (DBH) or greater. 13 of the trees are exempt because they are classified as a nuisance species by the Portland Plant List, including Norway Maple, European Mountain Ash, English Hawthorn, European Birch (*Betula pendula*) and Sweet Cherry. Therefore, one tree, a 12-inch Monkey Puzzle tree, is subject to the preservation standards of this section.

The applicant's arborist states that preservation of the 12-inch Monkey Puzzle tree is not possible, based upon the characteristics of the species and the development proposed. The arborist states that the species is averse to root disruption, and that the site soils are shallow and rocky. The proposed development plan illustrates the location of the tree and the location of a proposed building meeting minimum setback requirements of the R2 zone. The proposed development on Parcels 1 and 2 is within the RPZ of the tree. The proposed house on Parcel 1 is located approximately 2-feet from the tree. The arborist states that the potential for long-term viability is low, even if the performance path of protection were proposed for the tree, such as a reduced RPZ. Therefore, the applicant proposes payment to the City Tree Planting and Preservation Fund as mitigation.

The tree preservation standards require up to 35 percent of the total non-exempt tree diameter on the site be preserved. This amounts to 5 inches on this site (12-inches x .35 = 4.2, rounds up to 5-inches). With the condition that a payment equivalent to 5 inches be paid to the City Tree Planting and Preservation Fund prior to final plat approval, tree removal will be adequately mitigated.

This mitigation will be consistent with the purpose of the tree preservation regulations, since it will provide for the planting of other trees 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.

The applicant's tree survey indicates two off-site trees located within 15-feet of future development on Parcels 1 and 2. The survey illustrates that with the minimum setback requirements of 5-feet from the rear property lines, the Prescriptive Path of tree protection can be used to protect these off-site trees from damage during development. A condition of approval will require these two trees to be protected at the time of development.

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

Topography of the site is primarily level, as indicated on the applicant's preliminary clearing and grading plan (Exhibit C.3) and the site is not located within the Potential Landslide Hazard Area. The clearing and grading plan shows no areas of cuts or fills at the site. Therefore, no significant clearing or grading will be required on the site to make the new lots developable. In addition, there are no trees required to be preserved in the areas where new development on the site is anticipated. Soil disturbance will be required for street improvements for SE 140<sup>th</sup> Avenue and SE Powell Boulevard, however this work and erosion control requirements will be reviewed by the City Engineer and inspected as part of the street improvements. 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.

BES has identified that this property is associated with a listing in DEQ's Leaking Underground Storage Tank Inventory (LUST) under ID#26-10-1234. BES has commented that infiltrating stormwater in the vicinity of the heating oil tank may exacerbate soil contamination on the property. This approval criterion requires the applicant to show that the proposed land division will result in lots that are suitable for development, and state that the applicant may be required to make specific improvements in order to make the lots suitable for their intended uses. Therefore, a condition of approval will require the applicant to provide documentation that the leaking underground storage tank has been cleaned up to the satisfaction of DEQ prior to approval of the final plat.

Although the site is currently connected to the public sanitary sewer, there are two old cesspools on the site. The City has no record that these facilities were 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 both of these facilities. With this condition, the new lots can be considered suitable for new development, and 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.

All of the proposed lots are on the west side of a north-south oriented street. The existing house to remain is located on Parcel 3, which is the widest lot. Solar access standards require the interior lots on the west side of the street to be the widest lots. This standard is not met by the proposal. Maintaining the existing development at the site prevents the standard from being met. It is not practicable to meet this standard and to also meet the required setback standards of the R2 zone. To provide adequate room for the existing development, this standard cannot be met, and it is not practicable to meet the standards of 33.639 while maintaining existing development at the site.

### **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 minimal expected added vehicle trips (2 AM peak hour trip/2 PM peak hour trip/20 total new daily trips) will not adversely impact the operations of area intersections. There appears to be little demand for on-street parking. Most homes along the streets in the immediate area (SE 140th Avenue and SE 141st Avenue) include driveways and garages that accommodate multiple vehicles. The proposed partition will not have any effect to transit service or any other mode of travel. Pedestrian travel will be enhanced by this proposal since the frontages of the site will be improved with pedestrian facilities. As discussed under 33.654.120, right of way dedication is needed to accommodate these improvements. With right of way dedication and improvements, 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. With conditions for dedication and improvements, the transportation system is capable of safely supporting the proposed development in addition to the existing uses in the area. These criteria are met.

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

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

<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 2 of this report. The water service standards of 33.651 have been verified.</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 2 of this report.</p> <p>According to City records, the existing structure on proposed Parcel 3 is currently connected to the sanitary sewer via a lateral located approximately 127 feet upstream of manhole ACA752 (in intersection with Powell). As a result of the land division, the sanitary sewer connection would no longer be located within the frontage of Parcel 3. Based on the submitted site plan, the applicant has proposed to cap this lateral (to be available to extend onto Parcel 2) and establish a new connection within the frontage of Parcel 3 on SE 140th Ave. This proposal is acceptable to BES. Permits for this work will need to be finalized prior to final plat approval.</p> <p>With conditions of approval requiring the applicant to cap the existing lateral and establish a new sanitary sewer connection within the frontage of Parcel 3, the sanitary sewer service standards of 33.652 can be verified.</p>
<p><b>33.653.020 &amp; .030 Stormwater Management criteria and standards</b> – See Exhibits E.1</p>
<p>No stormwater tract is proposed or required. Therefore, criterion A is not applicable. The applicant has proposed the following stormwater management methods</p> <ul style="list-style-type: none"> <li> <p><b>Public Street Improvements:</b> As a condition of approval of the proposed land division, the Bureau of Transportation requires street improvements to be constructed along SE Powell Boulevard and SE 140<sup>th</sup> Avenue, including construction of curbs, furnishing zones, sidewalks and street widening. A Public Works Permit is required to construct these improvements. BES will review the Public Works Permit for compliance with the Stormwater management Manual as part of the Public Works Permit review. BES has indicated that public underground injection control (UIC) systems (“sumps”) infiltrate stormwater runoff from the public right-of-way in this location. Note that ODOT regulates stormwater within the ODOT right-of-way of SE Powell Boulevard. An ODOT Miscellaneous Permit is required for connection to state</p> </li> </ul>

highway drainage facilities. Connection will only be considered if the site's drainage naturally enters ODOT right of way. The applicant must provide ODOT District with a preliminary drainage plan showing impacts to the highway right of way.

- **Parcels 1 and 2:** Stormwater from these parcels will be directed to individual soakage 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. BES has indicated conceptual approval of the drywells.
- **Parcel 3 (with the existing house):** BES has responded that it is unclear where stormwater from the existing house on Parcel 3 currently discharges. Prior to final plat approval, the applicant must demonstrate that the stormwater management for existing structure will meet applicable SWMM requirements and will not be impacted by the proposed lot lines.

With conditions of approval requiring a Public Works Permit for frontage improvements and that the applicant locate the existing stormwater management facilities for the house to remain on Parcel 3 and submit a supplemental plan illustrating those facilities and retrofitting the existing stormwater facilities according to SWMM standards prior to approval of the final plat, these standards 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 pedestrian connections should be provided no more than 330 feet apart. Through streets and pedestrian connections should generally be at least 200 feet apart.

No street connections have been identified in the vicinity of this property in the Portland Master Street Plan document, so criterion d. does not apply. The location of the subject site within its block (corner site) is not a desirable location to provide a new public street or pedestrian connection through the block. It is not feasible without eliminating existing development on abutting lot(s), to provide any additional connectivity. These impacts do not make further connectivity through the subject site feasible.

For the reasons described above, this criterion is met.

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

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. PBOT has responded that frontage improvements are required along the frontage of the site.

Improvements along SE Powell Boulevard will be subject to the Outer Powell Boulevard Design Concept Plan and the Outer Powell Transportation Safety Project that PBOT and ODOT have jointly developed. The applicant is advised that the standard 4-ft wide furnishing zone, 6-ft wide sidewalk and 1.5-ft wide frontage zone must be constructed along the SE Powell frontage of the site in relation to the Final Plat phase of the expected Land Division request, because it fronts along the existing house to remain. To accommodate these improvements, an 8-ft property conveyance must be provided for public right of way purposes. The applicant should refer to ODOT's submitted response (dated June 14, 2018) for this land use request for additional information (Exhibit E.7).

Improvements along SE 140th Avenue shall include the construction of the Pedestrian Design Guide's standard 11-ft wide sidewalk corridor comprised of a 0.5-ft curb, 4-ft wide furnishing zone, 6-ft wide sidewalk and 0.5-ft wide frontage zone. Construction of the standard sidewalk corridor along the SE 140th Ave frontage of Parcel 3 shall occur as part of the Final Plat review phase of this land division process; construction of the standard sidewalk corridor along the SE 140th Ave frontages of Parcels 1 and 2 will occur as part of

the Building Permit review in relation to the new homes on said lots. To accommodate the 11-ft wide standard sidewalk along the site's SE 140th Ave frontage, it appears that a 5-ft dedication of property is necessary.

PBOT has indicated that the proposed street widths after dedication and improvements are sufficient to serve these expected users. The applicant must provide plans and financial assurances for the construction of the improvements adjacent to Parcel 3 prior to final plat approval. In addition, the right-of-way dedication necessary to accommodate the improvements must be shown on the final plat.

This criterion is met, with the condition that curb and sidewalk improvements are made as discussed above, and the required rights-of-way dedications are 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.

## **DEVELOPMENT STANDARDS**

Development standards that are not relevant to the land division review, have not been addressed in the review. Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 11 can be met, and those of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

### **Future Development**

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

- **Development Standards:** The Land Use Review for the partition is vested in the R2 (Residential 2,000) zone, which was the zoning in place at the time the application was submitted on May 22, 2018. Zoning on the site changed on May 24, 2018 to R5 (Residential 5,000). Therefore, development standards of the R5 zone are applicable at the time of development.

**Existing development that will remain after the land division.** The existing development on the site will remain and be located on Parcel 3. The division of the property may not cause the structures to move out of conformance or further out of conformance to any development standard applicable in the R2 zone. Per 33.700.015, if a proposed land division will cause conforming development to move out of conformance with any regulation of the zoning code, and if the regulation may be adjusted, the land division request must include a request for an adjustment (Please see section on Other Technical Standards for Building Code standards.)

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

- **Minimum Setbacks** – The existing 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 located 5 feet from the new northerly property line, which meets the minimum setback requirements. At the eastern property line, the required right-of-way dedication for SE 140<sup>th</sup> Avenue will cause the existing garage to be located over the property line. The garage is currently located approximately 3.5-feet from the east property line. Therefore, prior to final plat approval the applicant must acquire a finalized building permit to alter the existing building to meet setback requirements.

Subparagraph 33.120.220.B.2.e allows the front building setback to be reduced to zero, since the public right of way dedication along SE 140<sup>th</sup> Avenue is required along the frontage of the street adjacent to the existing building. Note that this provision does not apply to garages, therefore the existing garage door will have to be removed and this portion of the structure must be converted from a garage to another use. The existing garage door would be required to be removed and parking would no longer be allowed within the structure.

Note that the site is exempt from the requirement to provide off-street parking, because it is located within 500-feet of frequent transit. If off-street parking is desired at the site, the applicant must obtain a finalized zoning permit to construct a replacement off-street parking space and driveway elsewhere on Parcel 3.

To ensure the setback standard is met at the final plat stage, a condition of approval requires that the final plat must be accompanied by a supplemental survey showing the location of the existing building relative to the adjacent new lot line to the east of the garage. Additionally, a condition of approval requires the applicant to obtain a finalized building permit to remove the garage door and alter the building to meet setback requirements. A zoning permit is required to replace off-street parking at the site.

- Accessory Structures – In this zone, accessory structures are not allowed on a lot without a primary structure. Therefore, in order for the proposed new lots to meet this standard, all accessory structures on Parcels 1 and 2 must be removed prior to approval of the final plat. Because the structures are less than 200 square feet in size, a demolition permit is not required. A condition of approval will require the applicant to submit before and after photos to document removal of the structure, prior to approval of the final plat.
- Off-Street Parking - A garage provides parking for the existing house on Parcel 3. The Portland Zoning Code does not require off-street parking on sites that are located less than 500 feet from a transit street with 20-minute peak-hour bus, streetcar, or light rail service. Tri-Met provides transit service adjacent to the site on SE Powell Boulevard via bus route number 9, which provides peak-hour service meeting this requirement. As a result, no replacement parking is required for Parcel 3.
- 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, Parcel 1 with existing house will no longer meet this standard. Parcel 1 is 5,550 square feet in area, therefore 2,220 square feet of tree area is required. Prior to final plat approval, the applicant must meet this requirement by either planting trees on Parcel 3 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.

Bureau	Code Authority and Topic
Development Services/503-823-7300 <a href="http://www.portlandonline.com/bds">www.portlandonline.com/bds</a>	Title 24 – Building Code, Flood plain Title 10 – Erosion Control, Site Development Administrative Rules for Private Rights-of-Way
Environmental Services/503-823-7740 <a href="http://www.portlandonline.com/bes">www.portlandonline.com/bes</a>	Title 17 – Sewer Improvements 2008 Stormwater Management Manual
Fire Bureau/503-823-3700 <a href="http://www.portlandonline.com/fire">www.portlandonline.com/fire</a>	Title 31 Policy B-1 – Emergency Access
Transportation/503-823-5185 <a href="http://www.portlandonline.com/transportation">www.portlandonline.com/transportation</a>	Title 17 – Public Right-of-Way Improvements Transportation System Plan
Urban Forestry (Parks)/503-823-4489 <a href="http://www.portlandonline.com/parks">www.portlandonline.com/parks</a>	Title 11 – Trees
Water Bureau/503-823-7404 <a href="http://www.portlandonline.com/water">www.portlandonline.com/water</a>	Title 21 – Water availability

As authorized in Section 33.800.070 of the Zoning Code conditions of approval related to these technical standards have been included in the Administrative Decision on this proposal.

- 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.

## CONCLUSIONS

The applicant has proposed a two-parcel partition as shown on the attached preliminary plan (Exhibit C.2), the clearing and grading plan (Exhibit C.3), the Utility Plan (Exhibit C.4) and the Tree Survey (Exhibit C.5) and the existing conditions 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: cesspool decommissioning, tree mitigation, public street dedications and improvements, life safety requirements for the existing building to remain, sanitary sewer connection requirements. With conditions of approval that address these requirements this proposal can be approved.

## ADMINISTRATIVE DECISION

**Approval** of a Preliminary Plan for a three-parcel partition that will result in three single-dwelling parcels as illustrated with Exhibit C.2 – C.5, subject to the following conditions:

- A. Supplemental Plan.** Three copies of an additional supplemental plan shall be submitted with the final plat survey for review and approval by the Land Use Services section of BDS and the Bureau of Environmental Services (BES). 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;

- 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/donation requirements of the City Engineer and ODOT for SE 140<sup>th</sup> Ave and SE Powell Blvd. The required right-of-way dedications/donations must be shown on the final plat.

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

**Streets**

1. The applicant shall meet the requirements of the City Engineer and ODOT for right of way improvements along the street frontages of Parcel 3 (the parcel with the existing house). The applicant shall submit an application for a Public Works Permit and provide plans and financial assurances to the satisfaction of ODOT, the Portland Bureau of Transportation and the Bureau of Environmental Services for required street frontage improvements.

**Utilities**

2. The applicant must obtain final permits to cap the existing sanitary sewer lateral and establish a new connection to the existing house within the frontage of proposed Parcel 3.

**Existing Development**

3. The applicant must remove the sheds/accessory structures on Parcel 1. The applicant must submit before and after photos of the removal (with the same perspective).
4. The applicant shall meet the requirements of the Site Development Section of the Bureau of Development Services for the decommissioning two cesspools on the site.
5. The applicant must obtain a finalized building permit for modifications to the existing house and attached garage that will remain on proposed Parcel 3. The permit must demonstrate compliance with the setback standards listed below in relation to the proposed new lot lines and must comply with building code requirements to the satisfaction of the Life Safety Section of BDS. The existing garage door and driveway approach must be removed, and this portion of the building cannot be used for parking. The permit plans must include the note: *This permit fulfills requirements of Condition C.5 of LU 18-175622 LDP.*
  - 33.120.220 Setbacks--specifically, the permit must show removal of sufficient portions of the attached garage to meet the front setback requirements as regulated by Subparagraph 33.120.220.B.2.e.
  - If off street parking is desired by the applicant for Parcel 3, a finalized permit is required to construct a replacement off-street parking space on Parcel 3. The parking space must be a minimum of 9' x 18' and located out of the new front setback for the lot with the existing house. The applicant must obtain a finalized permit for installation of the parking space. The new parking space must also be shown on the supplemental plan.
6. Prior to final plat approval the applicant must document the location of the stormwater disposal system serving the existing structure to confirm whether it will be located entirely within Parcel 3 and meet all required setbacks and other applicable Portland City Code related to stormwater drainage. This information must be shown on the supplemental plan. If the system will extend beyond the boundaries of Parcel 3 or no

longer meet setback requirements per the SWMM, then the applicant must meet the following:

- a. Obtain finalized permits for modifications to the stormwater system so that it results in a system which meets the City's Stormwater Management Manual and other BES requirements.
7. The applicant must meet the tree density standard of 11.50.050 on Parcel 3 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 must be obtained to document tree planting prior to final plat approval.
8. The applicant shall provide documentation that the leaking underground storage tank has been cleaned up to the satisfaction of DEQ prior to approval of the final plat.

**Other requirements**

9. The applicant must pay into the City Tree Preservation and Planting Fund [Private Property Trees – Planting and Establishment, fee in Lieu (per inch)] the amount equivalent to 5-inches of trees. Payment must be made to the Bureau of Development Services, who administers the fund for the Parks Bureau. Payment must be completed prior to any tree removal, or prior to Final Plat approval, whichever would occur first.

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

1. At the time of redevelopment, the minimum density for Parcel 3 is two units. This can be either a single dwelling residence with an ADU or a duplex.
2. The applicant shall meet the requirements of the City Engineer for right of way improvements along the frontage of Parcels 1 and 2.
3. 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.
4. At the time of development of Parcels 1 and 2, the applicant shall protect the two off-site trees (7" and 11") as shown 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.

**Staff Planner: Brandon Rogers**

**Decision rendered by:**  **on January 18, 2019**  
By authority of the Director of the Bureau of Development Services

**Decision mailed January 23, 2019**

**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 May 22, 2018, and was determined to be complete on September 10, 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 May 22, 2018.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case the applicant requested that the 120-day review period be extended by 80-days (Exhibit G.2). Unless further extended by the applicant, **the 120 days will expire on: March 29, 2019.**

**Some of the information contained in this report was provided by the applicant.**

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

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

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

**This decision, and any conditions associated with it, is final.** It may be appealed to the Oregon Land Use Board of Appeals (LUBA), within 21 days of the date the decision is mailed, as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that a petitioner at LUBA must have submitted written testimony during the comment period for this land use review. Contact LUBA at 775 Summer St NE Suite 330, Salem, OR 97301-1283 or phone 1-503-373-1265 for further information.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at [www.portlandonline.com](http://www.portlandonline.com)

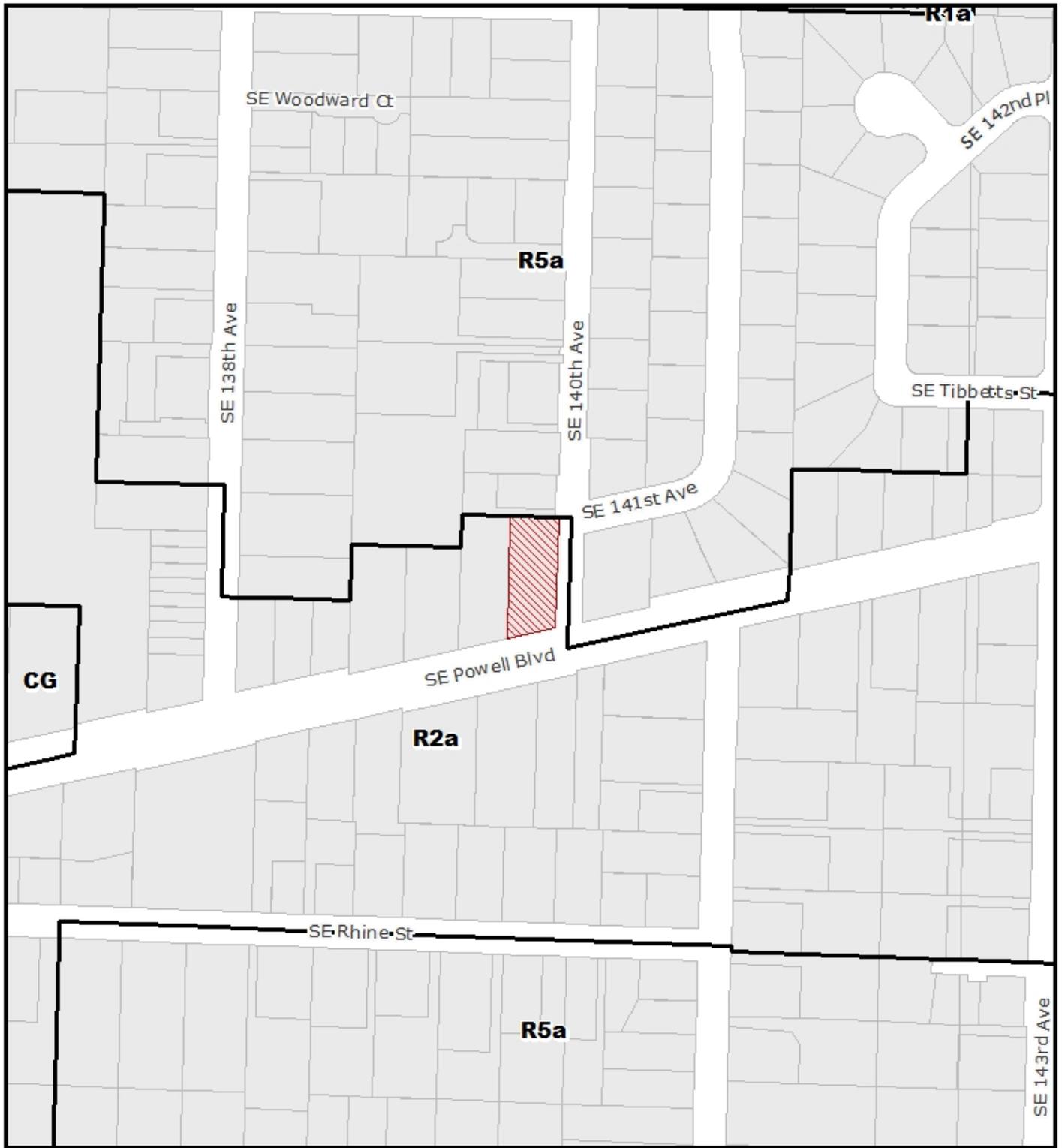
**Recording the land division.** The final land division plat **must** be submitted to the City **within three years** of the date of the City's final approval of the preliminary plan. This final plat must be recorded with the County Recorder and Assessors Office after it is signed by the Planning Director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

**EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  - 1. Original Submittal
  - 2. Applicant's Revised Submittal Memo
  - 3. Applicant's Narrative
  - 4. Applicant's Arborist Report
  - 5. Stormwater Management Plan
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Existing Conditions Plan
  - 2. Proposed Development Plan and Preliminary Land Division Plan (attached)
  - 3. Clearing and Grading Plan
  - 4. Utility Plan
  - 5. Tree Survey
- 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. Oregon Department of Transportation (ODOT)
  - 8. Life Safety section of BDS
- F. Correspondence: None
- G. Other:
  - 1. Original LU Application
  - 2. 120-Day Extension Request
  - 3. Applicant's Early Neighborhood Notification
  - 4. Completeness Letter
  - 5. Expedited Land Division Acknowledgement Form

**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  
 THIS SITE LIES WITHIN THE:  
 JOHNSON CREEK PLAN DISTRICT

 Site

File No.	LU 18-175622 LDP
1/4 Section	3344
Scale	1 inch = 200 feet
State ID	1S2E11AD 4600
Exhibit	B May 25, 2018

