



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

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**Date:** February 4, 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 18-235518 LDP**

**Applicants:** Troy Doty | NW Realty Source  
0224 SW Hamilton St., #202 | Portland, OR 97239

Sarah Radelet | Strata Land Use Planning  
PO Box 90833 | Portland, OR 97290  
[sarah@stratalanduse.com](mailto:sarah@stratalanduse.com)

**Owner:** Nandina & Co LLC  
10300 SW Greenburg Rd #270 | Tigard, OR 97223  
[DScott@SilveradoGroupLLC.com](mailto:DScott@SilveradoGroupLLC.com)

**Site Address:** Vacant site East of 3824 SE 42<sup>nd</sup> Ave; between 3819 & 3815 SE 43<sup>rd</sup> Ave.

**Legal Description:** BLOCK 3 LOT 18, REDLICHTON  
**Tax Account No.:** R693800850  
**State ID No.:** 1S2E07CB 02100  
**Quarter Section:** 3435  
**Neighborhood:** Creston-Kenilworth, contact Joe Hovey at [ckna.landchair@gmail.com](mailto:ckna.landchair@gmail.com)  
**Business District:** None  
**District Coalition:** Southeast Uplift, contact Leah Fisher at 503-232-0010.  
**Zoning:** Residential 2,000 (R2).  
**Case Type:** Land Division Partition (LDP).  
**Procedure:** Type Ix, an administrative decision with appeal to the Oregon Land Use Board of Appeals (LUBA).

**Proposal:** The applicant proposes a two-parcel partition of a 3,992 square-foot site to create parcels for attached houses. Parcels 1 and 2 are each proposed to be 1,996 square-feet in area. Sanitary sewer and water are proposed to be provided from existing utilities located in SE 43<sup>rd</sup> Avenue. Stormwater is proposed to be managed by a shared, on-site drywell. Driveway access is proposed from SE 43<sup>rd</sup> Avenue. The site contains a tree subject to the tree preservation standards of Chapter 33.630.

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

For purposes of State Law, this land division is considered a partition. To partition land is to divide an area or tract of land into two or three parcels within a calendar year (See ORS 92.010). ORS 92.010 defines “parcel” as a single unit of land created by a partition of land. The applicant’s proposal is to create two 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 vacant site is characterized by generally level topography, with approximately 1.5-feet of elevation change across the site. The surrounding neighborhood is developed primarily with single-dwelling development, with multi-dwelling development located primarily west of the site. Creston Park is located directly east of the site, with Creston Elementary School adjoining the park to the east.

### Infrastructure:

- **Streets** – The site has approximately 50-feet of frontage on SE 43rd Avenue. At this location, the City’s Transportation System Plan (TSP) classifies SE 43rd Avenue as a Local Service for all modes. Tri-Met bus lines #9 and #75 are located within a quarter-mile of the site at SE Powell Boulevard and SE Cesar Chavez Boulevard.

SE 43<sup>rd</sup> Avenue is a 25-foot wide right of way adjacent to the Creston Park parking lot and is partially improved with off-set paving to the east, lacking a curb or sidewalks. Additionally, there is an existing pedestrian improvement within the right of way of SE 43<sup>rd</sup> Avenue abutting the site that provides connectivity to SE Frances Street.

- **Water Service** – There is an existing four-inch water main in SE 43rd Avenue.
- **Sanitary Service** - There is an existing 8-inch public combination sewer line located in SE 43rd Avenue.
- **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 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 **November 26, 2018**. No written responses have been received from the Creston-Kenilworth Neighborhood Association in response to the proposal. Two written responses have been received from notified property owners in response to the proposal.

**Issues:** Two neighbors commented in response to the Notice of Proposal (Exhibit F.1 and F.2). Preservation of the Cedar tree is the main issue raised by the comments, with concerns expressed regarding damage to the roots of the tree. Additional information was provided to the neighbor (Exhibit F.1) who had questions about the proposed development.

**Staff Response:** Tree preservation is discussed below in Section B *Trees*. The applicant proposes to preserve the tree and has provided an arborist report supporting tree preservation. Please refer to Section B *Trees* for details.

## ZONING CODE APPROVAL CRITERIA

### APPROVAL CRITERIA FOR LAND DIVISIONS IN OPEN SPACE AND RESIDENTIAL ZONES

**33.660.120** *The Preliminary Plan for a land division will be approved if the review body finds that the applicant has shown that all of the following approval criteria have been met.*

Due to the specific location of this site, and the nature of the proposal, some of the criteria are not applicable. The following table summarizes the criteria that are **not** applicable. Applicable criteria are addressed below the table.

Criterion	Code Chapter/Section and Topic	Findings: Not applicable because:
C	33.631 - Flood Hazard Area	The site is not within the flood hazard area.
D	33.632 - Potential Landslide Hazard Area	The site is not within the potential landslide hazard area.
E	33.633 - Phased Land Division or Staged Final Plat	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.
I	33.639 - Solar Access	The proposed development is for something other than single-dwelling detached homes.
J	33.640 - Streams, Springs, Seeps and Wetlands	No streams, springs, seeps or wetlands 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	No partial public streets are proposed or required.

	rights-of-way	
	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 two lots for attached houses. Single-dwelling or duplex development is proposed for the site, therefore at the time of the preliminary plan review the applicant must demonstrate how the proposed lots meet the minimum density and do not exceed the maximum density stated in Table 120-3. Minimum density in the R2 zone is calculated at one unit per 2,500 square feet and the maximum density is calculated at one unit per 2,000 square feet. Site area dedicated to streets is removed from the minimum and maximum density calculations.

The total site area shown on the applicant's survey is 3,992 square feet. No street dedications are required. Based upon this information, the site has a minimum required density of 2 units and a maximum density of 2 units. The applicant proposes two attached, single-dwelling houses. Therefore, this criterion is met.

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>Attached Houses</b>	1,600	15	none	15
Parcel 1	1,996	25	79	25
Parcel 2	1,996	25	79	25

\* 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.2) that shows the location and size of the tree on the site. The applicant did not identify any off-site trees on adjacent lots located within 15-feet of future disturbance areas. The applicant also provided arborist reports (Exhibits A.3, A.4) that identifies the tree, evaluates its condition and suitability for preservation, and specifies a root protection zone and tree protection measures for the tree to be preserved.

The site contains one tree subject to the tree preservation standards of this section, a 67-inch Cedar. The applicant's original arborist report (Exhibit A.3) states that the tree is exempt from preservation and states that the tree is dangerous. The applicant submitted a tree removal permit for this tree, which was denied by Urban Forestry because the tree was inspected and determined to be healthy (Exhibit E.6a).

As part of the partition review, Land Use Services requested a consultation and peer review from the Urban Forestry section of Portland Parks to review the applicant's arborist report, conduct an inspection and to report on the health of the tree and comment on its viability for preservation. Urban Forestry responded (Exhibit E.6a) that the tree is not considered to be a dangerous tree. Urban Forestry responded that the tree has a common defect of a bark inclusion of codominant stems, which presents risks that can be abated through cabling, bracing and potential pruning. Urban Forestry recommends preservation of the tree.

Based on this information, the tree is not exempt from preservation, and is subject to the preservation requirements of this chapter. The applicant provided a revised arborist report (Exhibit A.4) addressing tree preservation and protection requirements of Chapter 33.630. The City of Portland Urban Forestry peer reviewed the arborist report and conducted a site investigation with the applicant's arborist. Urban Forestry concurs with the proposed performance path of protection.

The applicant's revised arborist report proposes the Performance Path of tree protection, as allowed under paragraph 11.60.030.C.2. While preparing the report, the applicant's arborist visited the site and inspected hand dug trenches located at the proposed building foundation line. The arborist states that no roots greater than one-inch were observed. The arborist will be on site during trenching for the foundation and utilities to investigate for any tree roots. Utilities will be constructed by boring, or by hand dug trenches inspected by an ISA certified arborist. The report indicates that alternative construction techniques should be employed for driveway construction, including limiting changes to soil depth to not more than 12-inches. Because the proposed driveways are located within the root zone of the tree, a pervious surface for the driveways will be required as a condition of approval. Conditions of approval will require the applicant to illustrate construction methods for the utilities at the time of building permit, including providing a contract for services for an ISA certified arborist to be on-site at the time of foundation and utility trenching.

To support preservation of the cedar tree, the applicant proposes to use a single, shared drywell placed on Parcel 1 for the benefit of Parcels 1 and 2. This will reduce soil disturbance within the root protection zone of the Cedar tree. The applicant has received approval of Public Works Alternative Review PW 17-261693 (Exhibit E.2), which relieves the applicant from constructing frontage improvements at the site. This will further support tree preservation by limiting disturbance to tree roots that may be caused by excavation and construction of street improvements.

The tree proposed for preservation is in good condition and is a non-nuisance species. The proposed root protection zone for the tree to be preserved allows for the type of development anticipated in the R2 zone and will not conflict with any existing utility easements, proposed services or site grading.

The proposal complies with Option 1 of the tree preservation standards. Specifically, the applicant proposes to retain all the trees that are 20 or more inches in diameter, and 67 inches (100%) of the total tree diameter. Option 1 requires the applicant to preserve all the

trees that are 20 or more inches in diameter and at least 20 percent of the total tree diameter on the site. Therefore, the Tree Preservation Standards and Approval Criteria are met.

To ensure that future owners of the parcels are aware of the tree preservation requirements, the applicant must record an Acknowledgement of Tree Preservation Land Use Conditions at the time of final plat. The acknowledgement must identify that development on Parcel 2 must be carried out in conformance with the Tree Preservation Plan (Exhibit C.1) and the revised arborist report (Exhibit A.4).

Note that at the time of development, the individual parcels must also meet the Title 11-Tree Code provisions, which require a specific amount of site area for tree planting based on the size of the property and the scale of the development. The tree to be retained as part of this review may be applied toward meeting those Title 11 requirements for Parcel 2.

**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 topography is primarily flat, and the site is not located within the Potential Landslide Hazard Area. No significant clearing or grading will be required on the site to make the new parcels developable. The tree to be preserved on site will be protected with fencing at the time of development. This criterion is met.

***Land Suitability***

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

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

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

- A Private Storm Sewer Easement is required across the relevant portions of Parcel 1 for the benefit of Parcel 2, for a shared stormwater system and drywell that will provide stormwater disposal for both parcels.

As stated in Section 33.636.100 of the Zoning Code, a maintenance agreement will be required describing maintenance responsibilities for the easement described above and facilities within 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 substantially similar to the following example:

*“A Declaration of Maintenance agreement for a Shared Storm Sewer System has been recorded as document no. \_\_\_\_\_, Multnomah County Deed Records.”*

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

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

**Findings:** The transportation system must be capable of safely supporting the proposed development in addition to the existing uses in the area.

Evaluation factors include: safety, street capacity, level of service, connectivity, transit availability, availability of pedestrian and bicycle networks, on-street parking impacts, access restrictions, neighborhood impacts, impacts on pedestrian, bicycle, and transit circulation. Evaluation factors may be balanced and measures to mitigate impacts may be necessary.

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

The applicant provided a written narrative addressing the transportation approval criteria above. The applicant proposes a two-lot partition of a vacant parcel, located at the southwestern edge of Creston Park. The proposed partition is projected to generate approximately 10 trips for each new parcel per day. The small number of trips added into the transportation system resulting from the development will not adversely impact the operations of area intersections and is consistent with the zoning of the property.

The applicant's narrative states the surrounding street capacity will pose minimal impacts to immediate and adjacent neighborhoods. Vehicle access for the two proposed homes will be via individual 10-ft wide driveways. The existing street frontage presently lacks curb and sidewalks, however a Public Works Alternative Review (18-216985 PW) was approved to remove the dedication and improvement required. Street and stormwater waivers of remonstrance will be required at time of Final Plat. Public Works Alternative Review PW 18-216985 has been approved, waiving the requirement for street dedication. Due to this section of street terminating for vehicle access, there is not sufficient room for an on-street parking spot adjacent to the sites, however within the right of way and park parcel across the street, there are 23 public parking spaces immediately available to accommodate potential off-site parking demand.

The site is served by sufficient transportation facilities to reduce impacts to the neighborhood and provide safety for all modes, including service to Tri-Met bus line #9 and #75 within a quarter-mile of the site. The site is also located in close proximity to the SE Francis Street and SE 42nd Avenue Bikeways, which provide bicycling routes on surrounding, low-volume streets. Therefore, the transportation system is capable of safely supporting the proposed development in addition to existing uses in the area. The proposed development will not negatively impact transit service or safety for any mode.

While limited, PBOT has indicated that there will be additional traffic generated as a result of this project. Waivers of remonstrance for future street improvements are required, which will obligate future owners of the land division site to participate in the event a local improvement district (LID) is organized to fund a larger collective improvement project along SE 42nd Avenue. Such improvements would address the cumulative transportation impacts of additional development on this street and in the surrounding area. The future residents of the land division site would benefit from future improvements by having improved facilities for walking, cycling, and driving.

With the condition for waivers discussed above, the transportation system is capable of 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. The sanitary sewer service standards of 33.652 have been 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>
<p>Stormwater from Parcel 1 and 2 will be directed to a shared drywell that will treat the water and slowly infiltrate it into the ground. The site has sufficient area for a stormwater facility that can be adequately sized and located to meet setback standards and accommodate water from reasonably-sized homes. Shared drywells are regulated by the BDS Shared Drywell Code Guide. An easement, a maintenance agreement and an Operations &amp; Maintenance Plan for the shared drywell is required prior to final plat approval, to be reviewed by BDS prior to recording with the appropriate county recorder.</p>
<p>With conditions of approval requiring an easement and maintenance agreement for the shared drywell and this criterion is met. BES has indicated conceptual approval of the shared drywell. BES notes that submittal of an Operations &amp; Maintenance Plan (O&amp;M) for the shared drywell is required at the time of building permit.</p>
<p><b>33.654.110.B.1 Through streets and pedestrian connections</b></p>
<p>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.</p>
<p>The block on which the subject property is located does not meet the noted spacing requirements for pedestrian connections. Therefore, the block should have an east-west pedestrian connection. However, the location of the site is 100-feet north of the intersection of SE 43rd Avenue and SE Francis Street, which is too close for a pedestrian connection. Also, the existing development west of the site would prevent construction of a pedestrian connection. Although the optimum spacing criteria would indicate the need for an east-west pedestrian connection on the block on which the site is located, there is no practicable opportunity to provide the connection in this land division.</p>
<p>The site is located within a well-connected neighborhood with SE Powell Blvd, SE Francis Street, NE 42<sup>nd</sup> Avenue and established streets and connections nearby; as well directly across the street from Creston Park.</p>
<p>In addition, the site is not within an area that has an adopted Master Street Plan, so criterion d. does not apply. For the reasons described above, this criterion is met.</p>
<p><b>33.654.120.B &amp; C Width &amp; elements of the right-of-way</b> – See Exhibit E.2 for bureau comment</p>
<p>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.</p>
<p>At this location, SE 43rd Avenue is a 25-foot wide right of way adjacent to the Creston Park parking lot. The roadway is partially improved with off-set paving to the east, lacking a curb,</p>

gutter or sidewalks. Additionally, SE 43<sup>rd</sup> Avenue narrows south of the site to provide pedestrian-only connection to SE Frances Street.

Local Service streets within an R2 zone typically require an 11-foot wide sidewalk corridor. However, given the existing configuration of SE 43<sup>rd</sup> Avenue and the development pattern in the area, the applicant will not be required to construct standard improvements within the SE 43<sup>rd</sup> Avenue right of way. No right of way dedications are required, as determined by the Alternative Review Committee's decision (18-216985 PW). However, the applicant will have to execute street and stormwater waivers of remonstrance prior to final plat approval.

This criterion is met, with the condition that the required waivers are signed prior to final plat approval.

### **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 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:

- **Attached Houses:** Development standards for attached houses are stated in Subsection 33.120.270.C

**Existing development that will remain after the land division.** The site is currently vacant, so the division of the property will not cause the structures to move out of conformance or further out of conformance with any development standard applicable in the R2 zone. Therefore, this land division proposal can meet the requirements of 33.700.015.

## **OTHER TECHNICAL REQUIREMENTS**

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

<b>Bureau</b>	<b>Code Authority and Topic</b>
Development Services/503-823-7300 <a href="http://www.portlandonline.com/bds">www.portlandonline.com/bds</a>	Title 24 – Building Code, Flood plain Title 10 – Erosion Control, Site Development Administrative Rules for Private Rights-of-Way
Environmental Services/503-823-7740 <a href="http://www.portlandonline.com/bes">www.portlandonline.com/bes</a>	Title 17 – Sewer Improvements 2008 Stormwater Management Manual
Fire Bureau/503-823-3700 <a href="http://www.portlandonline.com/fire">www.portlandonline.com/fire</a>	Title 31 Policy B-1 – Emergency Access

Transportation/503-823-5185 <a href="http://www.portlandonline.com/transportation">www.portlandonline.com/transportation</a>	Title 17 – Public Right-of-Way Improvements Transportation System Plan
Urban Forestry (Parks)/503-823-4489 <a href="http://www.portlandonline.com/parks">www.portlandonline.com/parks</a>	Title 11 – Trees
Water Bureau/503-823-7404 <a href="http://www.portlandonline.com/water">www.portlandonline.com/water</a>	Title 21 – Water availability

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

- The applicant must meet the requirements of the Fire Bureau in regards to addressing requirements and 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 for single dwelling development as shown on the attached preliminary land division plan (Exhibit C.3), the Proposed Improvements and Tree Preservation 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: tree preservation, easement and maintenance agreement for a shared stormwater system. With conditions of approval that address these requirements this proposal can be approved.

## ADMINISTRATIVE DECISION

**Approval** of a Preliminary Plan for a two-parcel partition that will result in two parcels for single dwelling development as illustrated with Exhibit C.1, C.2 and C.3, subject to the following conditions:

### A. The final plat must show the following:

1. A Private Stormwater Management Easement, for the benefit of Parcel 2 and burdening Parcel 1 shall be shown and labeled over the relevant portions of Parcel 1.
2. A recording block for each of the legal documents such as maintenance agreement(s), acknowledgement of special land use conditions, or Declarations of Covenants, Conditions, and Restrictions (CC&Rs) as required by Condition B.2 below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: “A Declaration of Maintenance Agreement for a Private Stormwater Management Easement has been recorded as document no. \_\_\_\_\_, Multnomah County Deed Records.”

### B. The following must occur prior to Final Plat approval:

#### Streets and Utilities

1. The applicant shall complete street and storm sewer waivers of remonstrance (for future street and storm sewer improvements) as required by the City Engineer. Waiver forms and instructions will be provided to the applicant during the final plat review process.

#### Required Legal Documents

2. A Maintenance Agreement shall be executed for the Private Stormwater Management Easement described in Condition A.1 above. The agreement shall include provisions assigning maintenance responsibilities for the easement area and any shared facilities within that area, consistent with the purpose of the easement, and all applicable City

Code standards. The agreement must be reviewed by the City Attorney and the Bureau of Development Services, and approved as to form, prior to final plat approval.

3. The applicant shall execute an Acknowledgement of Tree Preservation Land Use Conditions that notes tree preservation requirements that apply to Parcel 2. A copy of the approved Tree Preservation Plan must be included as an Exhibit to the Acknowledgement. The acknowledgment shall be referenced on and recorded with the final plat.

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

1. Development on Parcel 2 shall be in conformance with the Tree Preservation Plan (Exhibit C.1 and the applicant's arborist report (Exhibit A.4). Specifically, tree number 1 (a 67-inch Deodar Cedar Tree) is required to be preserved, with the root protection zone indicated on Exhibit C.1. Tree protection fencing is required along the root protection zone. 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 zone may only occur under the supervision of a certified arborist.
2. The applicant shall submit a copy of the contract for on-site arborist services prior to permit issuance and shall submit a final report from the arborist documenting the inspections and verifying the viability of the tree prior to the City's final inspection. The arborist shall be on site during trenching for the foundation and utilities on Parcel 2 to investigate for any tree roots. Construction of utilities shall be constructed by boring, or by hand dug trenches inspected by a certified arborist.
3. Driveways serving Parcels 1 and 2 shall be constructed of pervious paving and be in conformance with the arborist recommendations to limit changes to soil depth to not more than 12-inches. Building permit plans shall illustrate driveway construction techniques.
4. 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: Brandon Rogers**



**Decision rendered by:** \_\_\_\_\_ **on January 31, 2019**  
By authority of the Director of the Bureau of Development Services

**Decision mailed February 4, 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 September 10, 2018, and was determined to be complete on November 19, 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 September 10, 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 did not waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on: March 19, 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).

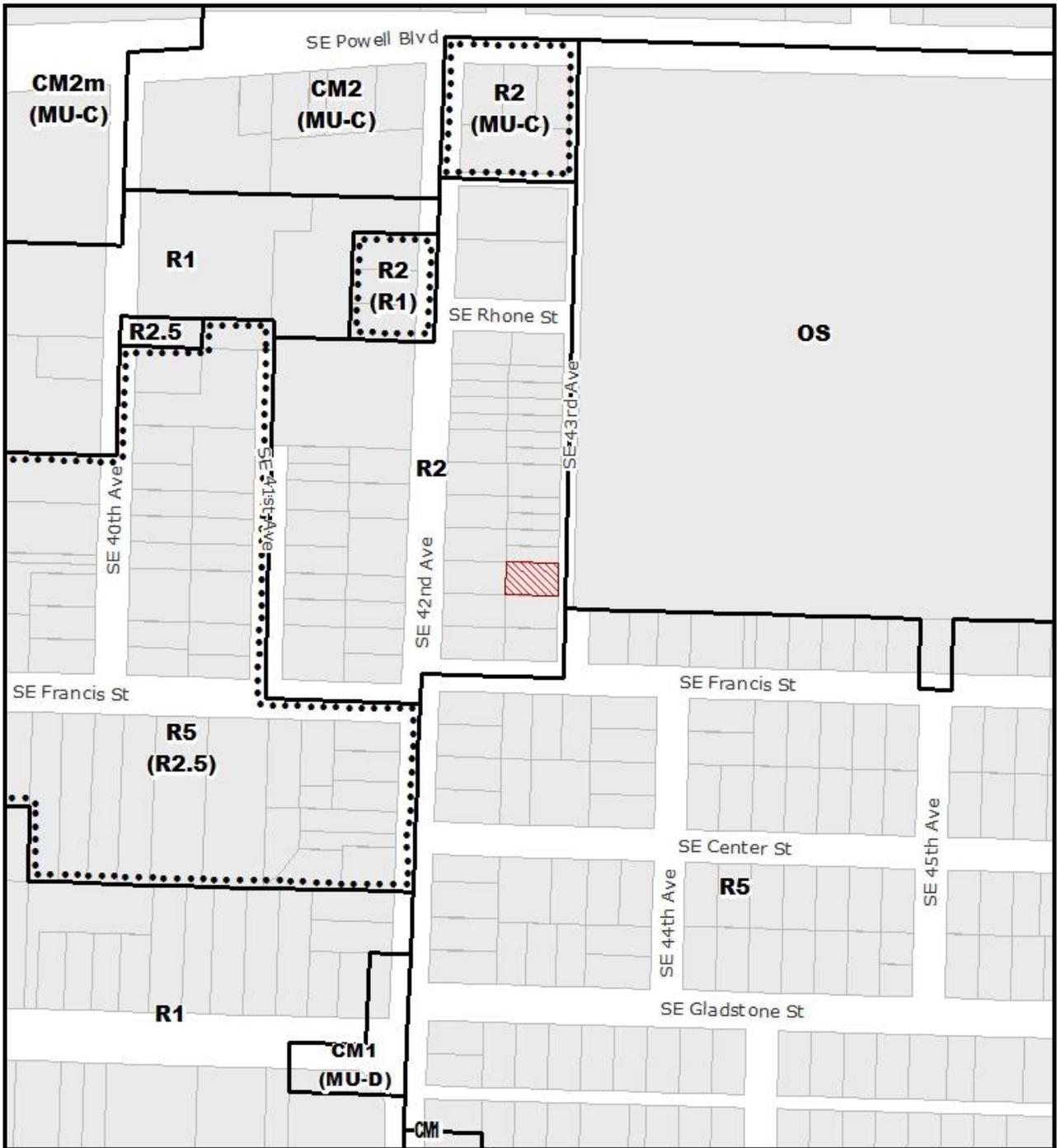
**Recording the land division.** The final land division plat **must** be submitted to the City **within three years** of the date of the City’s final approval of the preliminary plan. This final plat must be recorded with the County Recorder and Assessors Office after it is signed by the Planning Director 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. Applicant's Narrative and Original Submittal
  - 2. Applicant's Response to Completeness Letter
  - 3. Applicant's Original Arborist Report
  - 4. Applicant's Revised Arborist Report (Revised 11/9/2018)
  - 5. Applicant's Stormwater Report
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Proposed Improvements Plan, Tree Preservation Plan (revised 11/19/18) (attached)
  - 2. Existing Conditions Plan/Tree Survey
  - 3. Preliminary Land Division Plan
- 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
    - a. Correspondence
    - b. Land Use Review Response
  - 7. Life Safety section of BDS
- F. Correspondence:
  - 1. Lisa Pace, December 11, 2018
  - 2. Sarah Anderson, David Schonfeld, December 26, 2018
- G. Other:
  - 1. Original LU Application
  - 2. Completeness Letter
  - 3. 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



File No.	<u>LU 18-235518 LDP</u>
1/4 Section	<u>3435</u>
Scale	<u>1 inch = 200 feet</u>
State ID	<u>1S2E07CB 2100</u>
Exhibit	<u>B Sep 13, 2018</u>

