



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

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**Date:** March 25, 2019  
**To:** Interested Person  
**From:** Lois Jennings, 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 18-224543 LDP**

#### **GENERAL INFORMATION**

**Applicant:** Kevin Partain | Urban Visions Planning Services Inc.  
223 NE 56th Avenue | Portland, OR, 97213  
503-421-2967 | [kevin@gorge.net](mailto:kevin@gorge.net)

**Owner:** Urban Housing Development LLC  
P.O. Box 11930 | Portland, OR, 97211  
503-998-8444 | [begletsalex@gmail.com](mailto:begletsalex@gmail.com)

**Site Address:** 28 SE 50TH AVE  
**Legal Description:** N 32.67' OF LOT 21 S 34' OF LOT 22, CURRYS MT TABOR ADD  
**Tax Account No.:** R191400830  
**State ID No.:** 1N2E31CD 00500  
**Quarter Section:** 3035  
**Neighborhood:** Mt. Tabor, contact Stephanie Stewart at 503-230-9364.  
**Business District:** None  
**District Coalition:** Southeast Uplift, contact Leah Fisher at 503-232-0010.  
**Plan District:** None  
**Other Designations:** None  
**Zoning:** Single Dwelling Residential 5,000 (R5)  
**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 is proposing to partition a 10,017 square foot site into two parcels. Parcel 1 will be 4,107 square feet in area and Parcel 2 will be 5,910 square feet and will be configured as a flag lot. The existing single-family dwelling will remain on Parcel 1. The subject site is located within 500-feet of a transit street (Burnside St.) with 20-minute peak hour transit service via Bus #20. Therefore, parking is not required, and the applicant has elected not to provide replacement Parking for Parcel 1. Parking will be provided for Parcel 2

and will be accessed via the “pole” portion of the flag lot abutting SE 50<sup>th</sup> Ave. At this location, the SE 50<sup>th</sup> Ave. right-of-way does not meet the pedestrian corridor standards for Local Service Streets; however, Administrative Rule TRN 1.22 applies at this location. Therefore, the applicant is not required to replace the existing sidewalk corridor. The existing house on Parcel 1 will maintain the water and sewer services from SE 50<sup>th</sup> Ave and stormwater will be managed via existing downspouts and splash blocks. Downspouts for the existing house will be modified to be 6-feet from the foundation of the building and 5-feet from property lines. Parcel 2 will gain water service and sewer service from SE 50<sup>th</sup> Ave. via the “pole” portion of the flag lot. Parcel 2 will utilize a standard drywell behind the new single-family residence to manage stormwater.

There is a total of 4 trees onsite which are subject to tree preservation requirements. One tree will be retained to address the tree preservation requirements of Chapter 33.630. On Parcel 2 the applicant has proposed to preserve a mature 41-inch chestnut tree (*Castanea dentata*).

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.

For purposes of State Law, this land division is considered a partition. To partition land is to divide an area or tract of land into two or three parcels within a calendar year (See ORS 92.010). ORS 92.010 defines “parcel” as a single unit of land created by a partition of land. The applicant’s proposal is to create 2 units of land (2 parcels). Therefore, this land division is considered a partition.

**Relevant Approval Criteria:**

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

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. This application was submitted on August 21, 2018 and determined to be complete on November 26, 2018.

## FACTS

**Site and Vicinity:** The project site is an interior lot on the east side of SE 50<sup>th</sup> Avenue. A one-story house built in 1937 and a garage exist on this relatively flat lot. Shrubs and a tree provide shade to the existing driveway that provides vehicle access to the detached garage from SE 50<sup>th</sup> Avenue. Many of the trees are located within backyard of this property.

R1-Multi-dwelling zoning is to the north and east of the site. Apartment complexes exist within this R1 zoning along E. Burnside Street. The R5-Single Family Residential zoning is south and west of the site, where most properties are developed with single-family homes.

**Infrastructure:**

- **Streets** –The site has approximately 66.67 feet of frontage on SE 50<sup>th</sup> Avenue. There is one driveway entering the site that serves the existing house on the site. At this location, SE 50<sup>th</sup> Avenue is classified as a Local Service Street for all modes in the Transportation System Plan (TSP). Tri-Met provides frequent transit service approximately 125 feet from the site at E. Burnside Street via Bus #20.

SE 50<sup>th</sup> Avenue is improved with a 28-foot curb to curb paved surface within a 50-foot right-of-way with parking on one/both sides. Along the 66-ft. wide site frontage

the pedestrian corridor includes a 4-foot wide planter area, 6-foot sidewalk and a 1-foot wide buffer at the back of the sidewalk (4-6-1 configuration).

- **Water Service** – There is an existing 8-inch CI water main in SE 50<sup>th</sup> Avenue. The existing house is served by a metered service from this main.
- **Fire Hydrant Water Service-** The nearest fire hydrant is adjacent to this site’s frontage at the SE 50<sup>th</sup> Avenue & E. Burnside Street and the estimated to have a flow of 2,500 gpm with an estimated static residual pressure of 73.51 psi to 91.88 psi (Kelly Butte 427 Tank).
- **Sanitary Service** - There is an existing Public 8-inch variable material combined sewer in SE 50<sup>th</sup> Ave (BES as-built # 21211).
- **Stormwater Disposal** – There is no public storm-only sewer currently available to this property.

**Zoning:** The R5 designation is one of the City’s single-dwelling zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing.

**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 December 3, 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	A phased land division or staged final plat has not been proposed.
F	33.634 - Recreation Area	The proposed density is less than 40 units.
H	33.636 - Tracts and Easements	No tracts or easements have been proposed or will be required.
I	33.639 - Solar Access	All of the proposed parcels are interior lots (not on a corner). In this context, solar access standards express no lot configuration preference.
J	33.640 - Streams, Springs, 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 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 33.610 contains the density and lot dimension requirements applicable in the RF through R5 zones. Based on the applicant's survey, the site area is 10,017 square feet. The maximum density in the R5 zone is one unit per 5,000 square feet. Minimum density is one unit per 5,000 square feet based on 80 percent of the site area.

The site has a maximum density of two (2) units and a minimum required density of 1.6 rounds up 2 units. If the minimum required density is equal to or larger than the maximum allowed density, then the minimum density is automatically reduced to one less than the maximum. Therefore, in this case the minimum density is reduced to one (1) unit.

The applicant is proposing two (2) single-dwelling parcels. The density standards are therefore met.

	Min. Lot Area (square feet)	Max. Lot Area (square feet)	Min. Lot Width* (feet)	Min. Depth (feet)	Min. Front Lot Line (feet)	Min. Flag Lot Width (feet)	Min. Flag Lot Depth (feet)
<b>R5 Zone</b>	3,000	8,500	36	50	30	40	40
Parcel 1	4,107		54.67	75.12	54.67	-	-
Parcel 2	5,910		-	-	-	66.67	75.12

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

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

### **Flag Lots**

#### ***When allowed***

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

#### **Dimensions**

The proposed flag lot meets applicable Zoning Code standards found in 33.610.400 because it has a "pole" at least 12 feet wide that connects to a street, and as shown above, meets the minimum lot area, width and depth standards.

#### **Vehicle Access**

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

Currently the existing house on Parcel 1 will be losing an on-site parking space with the removal of the garage. The existing driveway which provides access to the detached garage will straddle the lot line and therefore will need to be removed at the time the garage is removed. The applicant proposes no on-site parking for the existing house, at this time, since none is required per 33.266.110. B.1 and the site is within 500 ft. of a transit street, E. Burnside Street, which provides frequent transit service (Bus #20) during peak hour service.

Nevertheless, to allow the potential for the installation of on-site parking on Parcel 1 in the future, an access easement will be placed over the entirety of the pole on Parcel 2 to allow shared access for both Parcels. The shared vehicle access minimizes the need for additional curb-cuts along the street and the impervious area resulting from paved surfaces for vehicle access.

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

The findings above show that the applicable density and lot dimension standards are met. Therefore, with the provision of the private access easement, 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.1) that shows the location and size of trees on and adjacent to the site. The applicant also provided two arborist reports (Exhibit A.3 & A.11) that identify each tree, its condition and suitability for preservation or its exempt status and specifies a root protection zone and tree protection measures for each tree to be preserved.

Based on this information, four (4) trees, which provide a total of 94 inches of tree diameter, are subject to the preservation requirements of this chapter.

The 41-inch Chestnut tree (#43) is proposed for preservation is a non-nuisance species and is the healthier of the two trees greater than 20-inches in diameter on the site. The proposed root protection zone for this tree to be retained will allow for the type of development anticipated in the R5 zone and will not conflict with any existing utility easements, proposed services or site grading. The arborist provided a detailed alternative tree protection plan in the arborist report (Exhibit A.11) for preserving this Chestnut (#43) at the time of development. The arborist report notes this is a tentative tree protection plan, since detailed development plans have not been provided. Therefore, to ensure that the alternative tree protection plan is followed, and that additional information will be provided to the City by the arborist at the time of building permit we will require the arborist to on-site during construction of the future house on Parcel 2, Flag lot. At the time of building permit application, the applicant/owner will provide a copy of the contract for arborist services prior to permit issuance and a final report from the arborist documenting the inspections and verifying the viability of the Chestnut tree (#43) prior to the final inspection of the house on Parcel 2, Flag Lot.

The applicant proposes to retain 1 of the 2 trees that are 20 or more inches and 41 inches of the total tree diameter, so the proposal complies with Option #3 listed below:

*Option 3: Preserve at least 50 percent of the trees that are 20 or more inches in diameter and at least 30 percent of the total tree diameter on the site.*

Based on these factors, no additional mitigation is warranted to satisfy the approval criteria.

To ensure that future owners of Parcel 2, the flag lot, 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 and must be carried out in conformance with the Tree Preservation plan and arborist reports.

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

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.

In this case, the site is primarily flat and is not located within the Potential Landslide Hazard Area. Therefore, no significant clearing or grading will be required on the site to make the new lots developable. The applicant's site plan shows the removal of the existing garage and the location of the future development and undisturbed areas are consistent with the root protection zones of trees to be preserved, per the applicant's Tree Preservation Plan (Exhibit C.1) and arborist report (Exhibit A.11), and the overall limits of disturbed area. This criterion is met.

### **Land Suitability**

The site is currently in residential use, and there is no record of any other use in the past. As indicated above, the site is relatively flat and contains no known geological hazards. The applicant is proposing to remove the garage and driveway to be able to create Parcel 2, the flag lot. To ensure that the site is suitable for development, a permit for the removal of the garage and driveway must be obtained and finalized prior to final plat approval. With this condition, the new parcels can be considered suitable for development, and this criterion is met.

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

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

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

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

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

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

### **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 proposes to partition a single parcel with an existing house into two parcels, to include one flag lot (Parcel 2), on which a new dwelling will be constructed. Therefore, the proposed development will result in one additional dwelling. According to the *ITE Trip Generation Manual, 9<sup>th</sup> Edition*, one new single-family dwelling is expected to generate nearly

ten trips per day, including one additional trip during the morning peak hour and one additional trip during the evening peak hour. The proposed development is therefore expected to add minimal impacts, created by one additional dwelling, to the transportation system. Therefore, the proposed development is therefore not expected to significantly impact safety, street capacity, or level-of-service. The development site is in an area with a gridded street pattern, which provides sufficient connectivity. Additionally, the existing sidewalk corridor to be retained provides pedestrian access and connectivity. The proposed development is within close distance of several transit stops; approximately 75-ft from a stop for the #12 bus, 0.1 mile from a stop for the #9, and 0.3 miles from a stop for the #19. Sufficient access to transit service and facilities is provided. The site is less than 1,000 ft from NE Everett and less than 3,000 ft from NE Main, both Major City Bikeways. The adjacent right-of-way, SE 50<sup>th</sup>, is of low volume and low vehicle speeds; the roadway is sufficient to accommodate bicyclists. BDS specified that parking is not required in relation to the proposed development; the applicant elected not to retain on-site parking for the existing home. Parking will be provided on-site on Parcel 2, to be accessed via the pole portion of the flag lot (Parcel 2); the proposed development will retain greater than 2 on-street parking spaces. There are no access restrictions to the proposed development site. The proposed development is expected to result in relatively few impacts to the transportation system, and few negative impacts on immediate and adjacent neighborhoods. The proposed development maintains the existing sidewalk corridor and street pattern; it does not adversely affect pedestrian, bicycle or transit circulation.

PBOT has reviewed and concurs with the information supplied and available evidence. No mitigation is necessary since the existing 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:

**33.651 Water Service standard** – See Exhibit E.3 for detailed bureau comments.

The Water Bureau has indicated that service is available to the site, as noted on page 3 of this report. Parcel 1 will continue to use the existing water service and Parcel 2 will receive service from the 8-inch water main in SE 50<sup>th</sup> Avenue.

The Fire Bureau has reviewed and verified the Fire Flow information (Exhibit A.18) from the nearest fire hydrant has adequate capacity to serve the proposed development.

The water service standards of 33.651 have been verified.

**33.652 Sanitary Sewer Disposal Service standards** – See Exhibit E.1 for detailed comments.

The Bureau of Environmental Services (BES) has indicated that service is available to the site, as noted on page 3 of this report.

Bureau of Environmental Services notes the following:

*Service Availability:* Sanitary connections from private property that are to be permitted according to PCC 17.32.090 must be separately conveyed to the property line and connected through individual laterals to a City sanitary or combined sewer. All discharge must be connected via a route of service approved by the BES Chief Engineer. According to City plumbing records (1941) and BES as-built (21211), there is an existing lateral approximately 43 feet to the north of manhole ABM300 that serves the existing structure on Parcel 1.

The applicant has submitted a photo of the sewer lateral locate which indicates that the lateral is roughly in the middle of the driveway. The submitted site survey of existing conditions indicates that the lateral is located slightly north of the existing driveway. Given the conflicting information, it is unclear whether the existing lateral will cross the proposed new lot line. To resolve the issue of the location were the existing sanitary line to the house is in association to the new property line, the applicant provided additional information for BES to review.

BES has determined based on the submitted site plans and supporting documents, the existing lateral serving the house to remain appears to be within the frontage of proposed Parcel 1. Proposed Parcel 2 will be served by a new connection to the combined sewer in SE 50<sup>th</sup> within the frontage of Parcel 2.

BES has no further objections to approval of the land division application. The sanitary sewer service standards of 33.652 have been verified.

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

No stormwater tract is proposed or required. Therefore, criterion A is not applicable.

The applicant has proposed the following stormwater management methods:

- **Parcel 1 with the existing house:** The existing house has downspouts that drain onto the ground. Stormwater discharge from the existing house appear to meet the setbacks from the proposed new property line.
- **Parcel 2-Flag lot:** Stormwater from this lot will be directed to an individual drywell that will treat the water and slowly infiltrate it into the ground. This lot has sufficient area for a stormwater facility that can be adequately sized and located to meet setback standards and accommodate water from a reasonably-sized home.

The 9-ft. wide driveway will be constructed within the access pole to a 3-3-3 configuration with 3-ft. pavement, 3-ft-grass area and 3-ft pavement the distance of the access pole and then widen out on the flag portion of the lot. Stormwater from the driveway within the access pole will slope towards the grass area.

Bureau of Environmental Services (BES) reviewed the stormwater proposal and provided the following comments (see Exhibit E.1 & E.1.a for full details):

BES Staff reviewed the project's stormwater report from Rapid Soil Solutions (dated 5/7/18-Exhibit A.9) that describes Simplified Approach infiltration test results of 3.25 inches per hour on this site. The applicant proposes to infiltrate runoff from the development onsite via a drywell that can meet minimum setbacks as established in the facility design standards and Table 2-1 of the SWMM.

A revised site plan dated 1/22/19(Exhibit C.1) was provided to BES to address how stormwater for the driveway can meet the stormwater management requirements for Parcel 2.

Based on this additional information, BES has determined that sufficient information has been provided to demonstrate a feasible stormwater management plan for the driveway and proposed development on Parcel 2 to the satisfaction of BES.

BES staff finds the applicant's proposed stormwater management plan acceptable for reviewing the preliminary land division application against the stormwater management standard and approval criterion. The stormwater management criterion and standards are 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.

PBOT states the following "Regarding the *Connectivity and Location of Rights-of-Way Criteria*," the proposed development is located 127-ft from the nearest corner. Therefore, a pedestrian connection is not required."

For the reasons described above, this criterion is met.

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

In reviewing this land division, Portland Transportation relies on accepted civil and traffic engineering standards and specifications to determine if existing street improvements for motor vehicles, pedestrians and bicyclists can safely and efficiently serve the proposed new development.

Existing improvements: SE 50<sup>th</sup> Avenue is improved with a 28-ft. paved roadway and 11-ft. sidewalk (4-5-1 configuration) that currently does not comply with City standard, in a 50-ft. right-of-way.

The City's Transportation System Plan (TSP) classifies SE 50<sup>th</sup> Avenue as a Local Service Street for all modes. Portland's public right-of-way standards document "Creating Public Streets", recommends an 11-ft. sidewalk corridor, to consist of a 0.5-ft. curb, 4-ft. furnishing zone, 6-ft. sidewalk, and 0.5-ft. frontage zone. However, TRN 1.22 "Infill Development on Streets with an Existing Sidewalk Corridor" applies to this site. No dedication is required in relation to the proposed development. Therefore, the applicant is not required to replace the sidewalk corridor in relation to the proposed development. The applicant is required, however to repair and replace any segments of the sidewalk that are in disrepair, as a condition of building permit.

Curb cuts and driveways must meet the requirement in Title 17. The Title 17, specifically Section 17.28 driveway and curb cut requirements will be enforced during the review of building permits. As a condition of building permit, the applicant is required to reconstruct any curb cuts to provide access to legal parking space and close any section of the curb cut that does not align with that access. Reconstruction of the driveway will require a minor improvement permit.

Based on these factors, the width of the right-of-way will be sufficient to accommodate the expected users. This criterion is met.

### **33.654.120.H. Street Trees Standard**

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

#### **Existing Street Conditions:**

- SE 50<sup>th</sup> Avenue: The site has approximately 66 feet of street frontage. The right-of-way is improved with pavement, curbs, planting strip, and sidewalks. There are overhead high voltage power lines. There is an existing street tree, 45-inch Maple Tree.

#### **Street Tree Planting (11.50.060.C):**

One street tree must be planted or retained for each full increment of 25 linear feet (11.50.060.C.1). Street trees must be planted at a minimum of 1.5 caliper inches and be a species chosen from an approved street tree list. Street tree planting may be exempt under 11.50.00060.B when existing above or below utilities prevent planting street trees or when the existing planting strip is less than 3-feet wide. Street trees are required to be planted through building permit.

The applicant did not provide a conceptual street tree planting plan. The site plan shows the existing street tree being retained.

Urban Forestry has no objections to this proposal. This criterion is met.

### **33.654.130.A - Utilities (defined as telephone, cable, natural gas, electric, etc.)**

Any easements that may be needed for private utilities that cannot be accommodated within the adjacent rights-of-way 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:

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

**Existing development that will remain after the land division.** The existing house on the site will remain and be located on Parcel 1. The division of the property may not cause the structures to move out of conformance or further out of conformance to any development standard applicable in the R5 zone. Per 33.700.015, if a proposed land division will cause conforming development to move out of conformance with any regulation of the zoning code, and if the regulation may be adjusted, the land division request must include a request for an adjustment (Please see section on Other Technical Standards for Building Code standards.)

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

- Minimum Setbacks – The existing house identified to remain on the site must meet the required Zoning Code setbacks from the proposed new lot lines. Alternatively, existing buildings must be set back from the new lot lines in conformance with an approved Adjustment or other Land Use Review decision that specifically approves alternative setbacks. The existing house will be 5 feet from the new property line. Therefore, the required setbacks are being met. To ensure this standard continues to be met at the final plat stage, the final plat must be accompanied by a supplemental plan showing the surveyed location of the existing building relative to the adjacent new lot lines.
- Accessory Structures – Structures are not allowed to remain on a proposed lot line. Therefore, in order for the proposed new lots to be approved, the accessory structure(garage) that straddles the line between proposed Parcels 1 and 2 must be removed prior to final plat. Demolition permits are required. The applicant must provide documentation prior to final plat approval that the required demolition permit has received final inspection. To ensure that this standard is met, a condition of approval is necessary.
- Required Off-Street Parking - A paved driveway provides access to the parking space within the existing detached garage for the existing house on Parcel 1. As a result of this land division, the driveway will not be completely located on this property and the detached garage will be removed to create Parcel 2's access pole. The remainder of the driveway on Parcel 1 does not meet the parking standard for on-site parking spaces and the flag lot standards requires the two parcels to share the access pole for vehicle access. Therefore, vehicle access and on-site parking via the Parcel 1's frontage will no longer be available for the existing house. To ensure the driveway area for the existing house is not retained, it will be required to be removed as part of the demolition permit for the detached garage.

The applicant stated they do not intend to provide on-site parking for the existing house, since the Portland Zoning Code does not require off-street parking on sites that are less than 500 feet from a transit street with 20-minute peak-hour bus, streetcar, or light rail service. Tri-Met provides transit service approximately feet from the site on E. Burnside Street via Bus Line #20. Bus Line #20 provides peak-hour service meeting this requirement. As a result, no replacement parking is required for the existing house on Parcel 1. If in the future the existing house would like to have on-site parking, then vehicle access is required to be from the access easement on the flag pole of Parcel 2. No vehicle access may be from the street frontage of Parcel 1.

- 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 4,107 square feet; therefore 1,643 square feet of tree canopy area is required. Prior to final plat approval, the applicant must meet this requirement by either planting trees on Parcel 1 or making the equivalent payment into the City Tree Preservation and Planting Fund. Tree planting must be documented with a finalized Zoning Permit.

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

## **OTHER TECHNICAL REQUIREMENTS**

Technical decisions have been made as part of this review process. These decisions have been made based on other City Titles, adopted technical manuals, and the technical

expertise of appropriate service agencies. These related technical decisions are not considered land use actions. If future technical decisions result in changes that bring the project out of conformance with this land use decision, a new land use review may be required. The following is a summary of technical service standards applicable to this preliminary partition proposal.

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

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

- Building Code (Life Safety Section of BDS): A Building Permit is required to remove the existing garage from the site. The building permit to remove the garage/accessory structure must receive all inspection and a final prior to final plat approval. These requirements are based on the 2017 Oregon Residential Specialty Code (ORSC), henceforth referred to as the Building Code.
- The applicant must meet the requirements of the Fire Bureau for addressing requirements for a flag lot, Parcel 2. Fire apparatus access road is not met, so residential sprinklers will be required for the new development on Parcel 2. 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.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:

- Exact location of existing sanitary line for existing house on Parcel 1
- Tree Preservation Plan for the Chestnut tree
- Tree density for the existing house on Parcel 1
- Demolition of existing driveway and detached garage to create Parcel 2
- Fire apparatus access road is not met, so residential sprinklers will be required for the new development on Parcel 2.
- Providing an access easement over the access pole of Parcel 2 for the benefit of Parcel 1.

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 one standard single-dwelling lot and one flag lot, as illustrated with Exhibit C.1, subject to the following conditions:

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

- Any buildings or accessory structures on the site at the time of the final plat application;
- Any driveways and off-street vehicle parking areas on the site at the time of the final plat application;
- The surveyor shall document the removal of the existing driveway and detached garage.
- Any other information specifically noted in the conditions listed below.

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

1. A Private Access Easement over the “flag pole” portion of Parcel 2 for the benefit of Parcel 1 shall be shown and labeled on the final plat. The easement shall allow shared use of this area for all the purposes that a driveway would be typically used for.
2. A recording block for each of the legal documents such as maintenance agreement(s), acknowledgement of special land use conditions, or Declarations of Covenants, Conditions, and Restrictions (CC&Rs) as required by Conditions C.3, C.4 & C.5. The recording block(s) shall, at a minimum, include language substantially similar to the following example: “A Declaration of Maintenance Agreement for (name of feature) has been recorded as document no. \_\_\_\_\_, Multnomah County Deed Records.”

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

**Existing Development**

1. The applicant must obtain a finalized demolition permit for removal of the existing driveway and garage on Parcel 1.
2. The applicant must meet the tree density standard of 11.50.050 on Parcel 1 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.

**Required Legal Documents**

3. A Maintenance Agreement shall be executed for the Private Access Easement as described in Condition B.1 above. The agreement shall include provisions assigning maintenance responsibilities for the easement area and any shared facilities within that area, consistent with the purpose of the easement, and all applicable City Code standards. The agreement must be reviewed by the City Attorney and the Bureau of Development Services, and approved as to form, prior to final plat approval.
4. The applicant shall execute an Acknowledgement of Special Land Use conditions, requiring residential development on Parcel 2 to contain internal fire suppression sprinklers, per Fire Bureau. The acknowledgement shall be referenced on and recorded with the final plat.
5. 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.

**D. 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.11). Specifically, tree #43-

Chestnut is required to be preserved, with the root protection zones indicated on Exhibit C.1 following the recommendations of the arborist as found under exhibit A.11. 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. Prior to Planning & Zoning Approval of the building permit (s) for any development on Parcel 2 the applicant must provide a signed copy of the service agreement for the Arborist Services to be on-site when any work occurs within the root-protection zone of the tree to be preserved, to ensure alternative protection plan is carried out per the Arborist's recommendations. A final arborist report will be required to be submitted for the final development plan to Planning and Zoning prior to approval of the building permit. Any changes to the tree protection plan from what was submitted will be subject to receipt of a report from an arborist, explaining that the arborist has approved of the specified methods of construction, and that the activities will be performed under his/her supervision, prior to Planning approval.

2. The applicant must meet the addressing requirements of the Fire Bureau for Parcel 2, the flag lot. The location of the sign must be shown on the building permit.
3. The applicant will be required to install residential sprinklers in the new houses on Parcel 2, the flag lot to the satisfaction of the Fire Bureau.
4. A driveway is not allowed along the frontage of Parcel 1. Any future vehicle access to Parcel 1, must be via the private access easement over the pole of Parcel 2.

**Staff Planner: Lois Jennings**

**Decision rendered by:**  **on March 22, 2019.**  
By authority of the Director of the Bureau of Development Services

**Decision mailed March 25, 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 August 21, 2018 and was determined to be complete on November 26, 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 August 21, 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. The 120-day review period ends on March 26, 2019. The applicant requested a 14-day extension to this timeline (Exhibit A.18) to resolve fire bureau requirements. Unless further extended the timeline will expire on April 10, 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.**

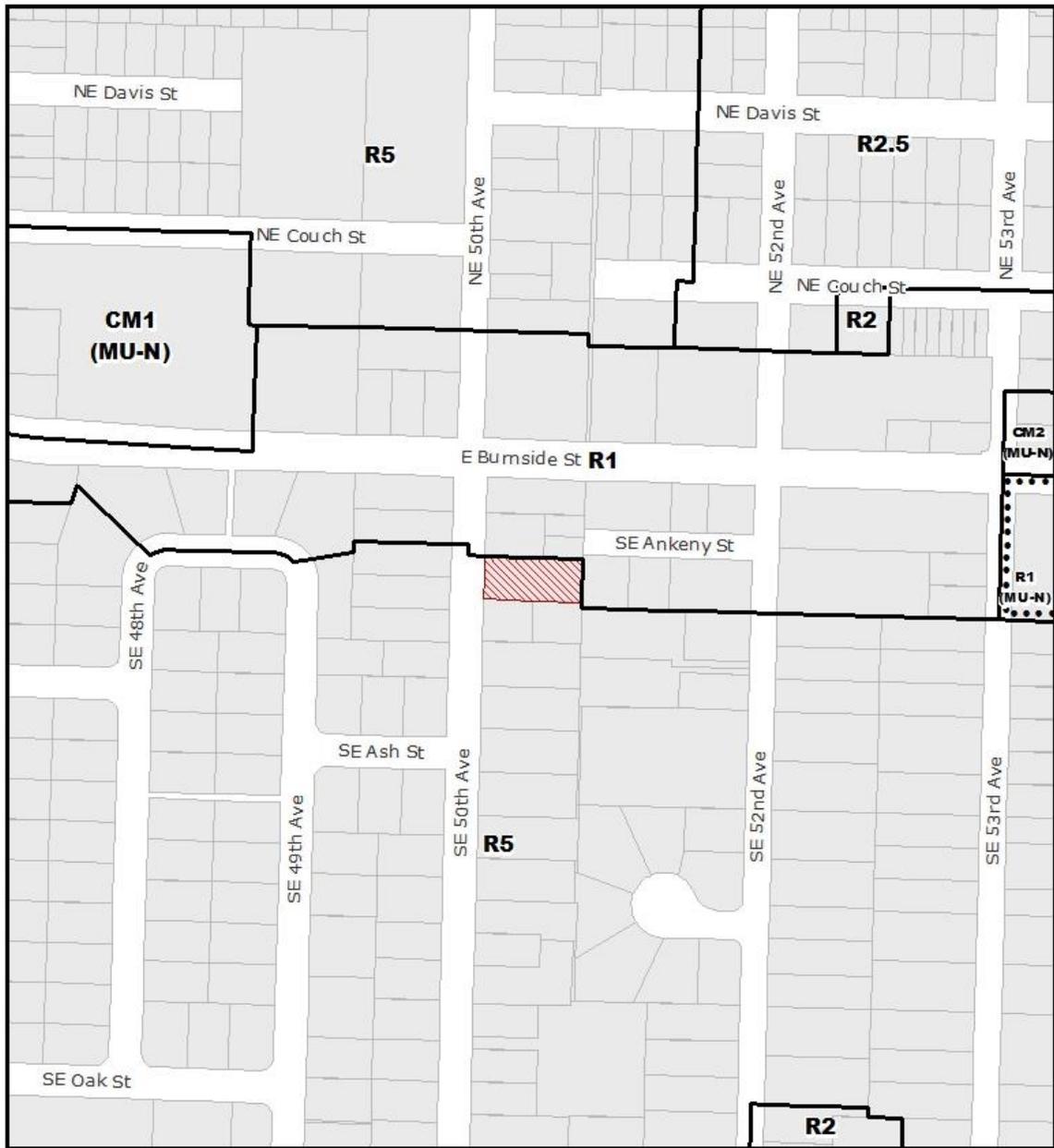
#### EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant’s Statement
  - 1. Preliminary Plan
  - 2. Narrative Addressing Approval Criteria
  - 3. Arborist Report
  - 4. November 26, 2018 cover letter in response to incomplete letter from applicant
  - 5. Copy of deed
  - 6. Copy of 2<sup>nd</sup> page of application form- signed by owner
  - 7. Existing Conditions Plan
  - 8. November 26, 2018 Revised Preliminary Plan
  - 9. Rapid Solutions Report
  - 10. Root Excavation
  - 11. November 5, 2018 Arborist Report
  - 12. Revised Narrative for Section 2-Trees submitted by applicant November 26, 2019
  - 13. E-mail from applicant dated January 9, 2019
  - 14. January 22, 2019 letter from applicant addressing sanitary and stormwater issues
  - 15. Root Excavation Invoice #24781 and photo
  - 16. January 22, 2019 Revised Preliminary Plan showing driveway layout
  - 17. Fire Service Flow information
  - 18. 120-day extension request for 14 days

- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Existing conditions site plan
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
    - a. Bureau of Environmental Services response dated \*\*\*, 2019
  - 2. Bureau of Transportation Engineering and Development Review
  - 3. Water Bureau
  - 4. Fire Bureau
    - a. Revised Fire Bureau response dated March 14, 2019
  - 5. Site Development Review Section of BDS
  - 6. Bureau of Parks, Forestry Division
  - 7. Life Safety Section of BDS
    - a. Revised Life Safety Response
- F. Correspondence: none
- G. Other:
  - 1. Original LU Application
  - 2. Incomplete Letter dated September 20, 2018
  - 3. Expedited Land Division Acknowledgement

**The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).**



**ZONING**   
NORTH

 Site

File No.	<u>LU 18-224543 LDP</u>
1/4 Section	<u>3035</u>
Scale	<u>1 inch = 200 feet</u>
State ID	<u>1N2E31CD 500</u>
Exhibit	<u>B Aug 24, 2018</u>

