



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

Ted Wheeler, Mayor  
Rebecca Esau, Director  
Phone: (503) 823-7300  
Fax: (503) 823-5630  
TTY: (503) 823-6868  
[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**Date:** May 31, 2019  
**To:** Interested Person  
**From:** Leah Dawkins, Land Use Services  
503-823-7830 / [Leah.Dawkins@portlandoregon.gov](mailto:Leah.Dawkins@portlandoregon.gov)

## **NOTICE OF A TYPE II<sub>x</sub> DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD**

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

### **CASE FILE NUMBER: LU 18-176513 LDP AD**

#### **GENERAL INFORMATION**

**Applicant:** Colleen Spurgeon, Township Surveys LLC  
1415 Washington St / Oregon City, OR 97045  
(503) 656-4915

**Owner:** Thomas R Peabody, Rose M Kurtti  
1733 SE 40th Ave / Portland, OR 97214-5223

**Site Address:** 1733 SE 40th Ave, 1815 SE 40th Ave

**Legal Description:** TL 5900 0.40 ACRES, SECTION 01 1S 1E; TL 6000 0.20 ACRES, SECTION 01 1S 1E

**Tax Account No.:** R991012350, R991012370

**State ID No.:** 1S1E01DA 05900, 1S1E01DA 06000

**Quarter Section:** 3234

**Neighborhood:** Richmond, contact Matt Otis at [richmond.pdx.lutc@gmail.com](mailto:richmond.pdx.lutc@gmail.com)

**Business District:** Hawthorne Blvd. Bus. Assoc., contact Greg Moon at [gmoon@westernseminary.edu](mailto:gmoon@westernseminary.edu)

**District Coalition:** Southeast Uplift, contact Leah Fisher at 503-232-0010.

**Zoning:** R5- Single-Dwelling Residential

**Case Type:** LDP- Land Division Partition; AD- Adjustment Review

**Procedure:** Type II<sub>x</sub>, an administrative decision with appeal to the Hearings Officer.

#### **Proposal:**

The applicant is proposing to divide the subject site into two parcels. Parcel 1 is proposed to be 6,250 square feet in size and will retain the existing single dwelling structure. Parcel 2 is proposed to be 11,262 square feet in size and will retain the existing pool, existing covered deck, play structure, and existing accessory dwelling unit, which will be converted to a primary structure. The site is located within 500 feet of frequent transit lines, so no parking is proposed

or required for Parcel 2. Three trees are proposed for preservation. No additional development is proposed for the site as a result of this land division.

An Adjustment to maximum lot size is being requested to allow Parcel 2 to be larger than the maximum allowed lot size of 8,500 square feet in the R5 zone.

The current zoning on the subject site is R2.5. However, this application was submitted prior to May 24<sup>th</sup>, 2018, when the 2035 Comprehensive Plan and associated zoning code changes went into effect. Therefore, this proposal is being reviewed under the prior zoning regulations for the R5 zone.

This partition proposal is reviewed through a Type IIx procedure because: (1) the site is in a residential zone; (2) 10 or fewer lots are proposed; and (3) a concurrent review (Adjustment) is required (see 33.660.110).

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

**Relevant Approval Criteria:** In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are:

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

## FACTS

**Site and Vicinity:** The subject site is a flat oversized lot with a some medium-sized trees but otherwise minimal landscaping vegetation. The site is developed with a primary single-dwelling structure, an accessory dwelling unit, an in-ground swimming pool, a detached covered deck, and a play structure. The housing surrounding the site consists primarily of single-dwelling structures on 5,000 square foot lots. The site is one block east of SE Cesar Chavez Blvd, which is a major city traffic street with a mix of commercial and residential development. The site lacks strong east-west connectivity, due to limited opportunities for new east-west public streets.

### Infrastructure:

- **Streets** – The site has approximately 100 feet of frontage on SE 40<sup>th</sup> Avenue. There is one driveway entering the site that serves the existing house on the site. At this location, SE 40<sup>th</sup> Avenue is classified as a Local Service Street for all modes in the Transportation System Plan (TSP). Tri-Met provides transit service approximately 600 feet from the site at SE Hawthorne Blvd via Bus 14 and approximately 200 feet from the site at Cesar Chavez Blvd via Bus 75.

SE 40<sup>th</sup> Avenue has a 28-foot curb to curb paved surface within a 60-foot right-of-way with parking on both sides. Along the 100-foot wide site frontage the pedestrian corridor includes a 9-foot wide planter area, curb, 6-foot sidewalk and a 1-foot wide buffer at the back of the sidewalk (9-6-1 configuration).

- **Water Service** – There is an existing 8-inch CI water main in SE 40<sup>th</sup> Avenue. The existing house is served by a 1-inch metered service from this main.
- **Sanitary Service** - There is an existing 12-inch RSP public combination sewer line in SE 40<sup>th</sup> Avenue.

- **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 is one prior land use reviews for this site.

- **LU 04-023605 AD:** Approval of an Adjustment to reduce ADU setbacks and increase the maximum height of the ADU from 18 feet to 23.5 feet.

**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 **April 1, 2019**. No written responses have been received from the Neighborhood Association or notified property owners in response to the proposal.

## ZONING CODE APPROVAL CRITERIA

### LAND DIVISION

#### **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	Maintaining existing development on the site limits new parcel configuration (33.610.200 supercedes 33.639).
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 17,500 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 3 units and a minimum required density of 2 units. The applicant is proposing 2 single dwelling parcels. The density standards are therefore met.

The applicant is proposing an adjustment to maximum lot size for Parcel 2. This will allow for a new parcel that is larger than typical R5 lots and will allow Parcel 2 to be re-divided in the future. The approval criteria for this adjustment are addressed later in this document.

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

	Min. Lot Area (square feet)	Max. Lot Area (square feet)	Min. Lot Width* (feet)	Min. Depth (feet)	Min. Front Lot Line (feet)
<b>R5 Zone</b>	3,000	8,500	36	50	30
Parcel 1	6,250		50	125	50
Parcel 2	11,250		50	175	50

\* 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.

These criteria are met for Parcel 1. Minimum lot, width, depth, and front lot line criteria have been met for Parcel 2. Approval criteria for an adjustment to the maximum lot area for Parcel 2 are addressed later in this decision.

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

**Findings:** The regulations of Chapter 33.630 require that trees be considered early in the design process with the goal of preserving high value trees and, when necessary, mitigating for the loss of trees.

To satisfy these requirements, the applicant must provide a tree plan that demonstrates, to the greatest extent practicable, the trees to be preserved provide the greatest environmental and aesthetic benefits for the site and the surrounding area. The tree plan must also show that trees are suitable for preservation, considering the health and condition of the tree and development impacts anticipated. Tree preservation must be maximized, to the extent

practicable, while allowing for reasonable development considering the intensity of development allowed in the zone and site constraints, including existing utility easements and requirements for services and streets.

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

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

In order to identify which trees are subject to these requirements, the applicant provided an existing conditions survey (Exhibit C.1) that shows the location and size of trees on and adjacent to the site. The applicant also provided an arborist report (Exhibit A.3) that identifies each tree, its condition and suitability for preservation or its exempt status and specifies a root protection zone.

Based on this information, 6 trees, which provide a total of 86 inches of tree diameter, are subject to the preservation requirements of this chapter.

The trees proposed for preservation are in good condition, include native/non-nuisance species, and two of the trees are 20 or more inches in diameter. The proposed root protection zones for the trees 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.

Specifically, the applicant proposes to retain all of the trees that are 20 or more inches and 60 inches of the total tree diameter, so the proposal complies with:

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

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

In order to ensure that future owners of the parcels are aware of the tree preservation requirements, the applicant must record an Acknowledgement of Tree Preservation Land Use Conditions, at the time of final plat. The acknowledgement must identify that development on Parcels 1 and 2 must be carried out in conformance with the Tree Preservation Plan (Exhibit C.3) and the Arborist Report (Exhibit A.3).

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:** 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.

Additionally, where geologic conditions or historic uses of the site indicate that a hazard may exist, the applicant must show that the proposed land division will result in lots that are suitable for development. The applicant may be required to make specific improvements to make the lots suitable for their intended uses and the provision of services and utilities.

Clearing and Grading: In this case, the site is primarily flat and is not located within the Potential Landslide Hazard Area. Therefore, no significant clearing or grading will be required

on the site to make the new lots developable. In addition, there is no development anticipated as a result of this land use review that will affect tree preservation. 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. Therefore, there are no anticipated land suitability issues and the new lots can be considered suitable for new development. 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 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 within the R2.5 zone, although the proposal was submitted prior to the adoption of the 2035 Comprehensive Plan, therefore the application is being reviewed under the previous R5 zoning requirements. The proposal includes partitioning off the existing home (Proposed Parcel 1) from the existing ADU and pool (Proposed Parcel 2) which will become the new primary structure on its own lot. Based upon trip generation estimates from the Institute of Transportation Engineers (ITE) Trip Generation Manual, 10th Edition, the proposed partition is projected to generate approximately one morning peak hour and one evening peak hour trip, for approximately ten daily trips for the new parcel. The small number of trips added into the transportation system resulting from the development will not adversely impact the operations of area intersections, posing a minimal impact to immediate and surrounding neighborhood. The applicant proposes to utilize the existing driveway curb cut for access to both lots, which maximizes on-street parking and minimizes potential conflicts with pedestrians. The site is served by the sufficient transportation facilities to reduce impacts to the neighborhood and provide safety for all modes. Access to Tri-Met Bus service #14-Hawthorne approximately 600 feet to the north. SE Lincoln and Se 41st are identified City Bikeway to the south and east respectively, which provides numerous bicycling connections to other nodes within Portland. There are continuous sidewalks in place adjacent to the site and into the surrounding area. Therefore, the transportation system is capable of safely supporting the proposed development in addition to existing uses in the area and will not negatively impact transit service or safety for any mode.*

PBOT has reviewed and concurs with the information supplied and available evidence. No mitigation is necessary for the transportation system to be 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.</p> <p>As a result of the proposed land division, the accessory dwelling unit (ADU) will become a primary structure on its own lot. The ADU currently shares water service with the existing primary structure on the site. Therefore, prior to final plat, a new water meter must be installed and connected to the ADU. With this condition, the water service standards of 33.651 have been verified.</p>
<p><b>33.652 Sanitary Sewer Disposal Service standards</b> – See Exhibit E.1 for detailed comments.</p> <p>The Bureau of Environmental Services has indicated that service is available to the site, as noted on page 2 of this report.</p> <p>The ADU on the site currently shares sanitary service with the primary structure on the site. As a result of the proposed land division, the ADU will become a primary structure on Parcel 2 and will no longer be allowed to share service with the home on Parcel 1. The applicant must confirm that sanitary service for each parcel is separate and establish a new service connection from the existing structure on Parcel 2 to the public sewer. The applicant must obtain finalized plumbing permits for this work prior to final plat approval. With this condition, 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.</p> <p>The applicant has proposed the following stormwater management methods:</p> <ul style="list-style-type: none"> <li>• <b>Parcel 1 (existing house):</b> The existing house has downspouts that drain onto the public combined sewer.</li> <li>• <b>Parcel 2 (existing ADU):</b> Stormwater from the existing ADU is shown to be directed to an individual drywell that meets setback standards to the proposed property line.</li> </ul> <p>BES has indicated that the existing stormwater management facilities are acceptable for the purpose of approving the preliminary land division.</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. Therefore, there should be an east-west through street provided in the vicinity of the site. However, the properties adjacent to the portion of the site where the street would terminate are already developed, and not configured in a manner that would easily allow the further extension of a street from the site. So, although the optimum spacing criteria would indicate the need for an east-west through street or pedestrian connection at this site, there is no practicable opportunity to provide them in this land division. In addition, the site is not within an area that has an adopted Master Street Plan, so criterion d. does not apply.</p> <p>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, PBOT relies on accepted civil and traffic engineering standards and specifications to determine if existing street improvements for motor vehicles, pedestrians and bicyclists can safely and efficiently serve the proposed new development. PBOT has indicated that the existing street is currently improved to City standards. PBOT has not identified or been made aware of any factors related to this proposal that lead to a conclusion other than that one additional dwelling can be safely served by this existing street without having any significant impact on the level of service provided. This criterion is met.</p>
<p><b>33.654.130.A - Utilities (defined as telephone, cable, natural gas, electric, etc.)</b></p>

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.

## **ADJUSTMENT**

### **33.805.040 Approval Criteria**

The applicant has requested an adjustment to the maximum allowed lot size of 8,500 square feet in the R5 zone for Parcel 2. The applicant has proposed that Parcel 2 be 11,262 square feet in size. Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. below, have been met.

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

##### **Maximum Lot Size**

**Findings:** Chapter 33.610 contains the lot dimension standards for approval of a Preliminary Plan for a Land Division in the RF through R5 zones. These standards ensure that lots are consistent with the desired character of each zone while allowing lots to *vary in size and shape* provided the planned intensity of each zone is respected.

The purpose of the lot dimension standards of Code Section 33.610.200 is to ensure that:

- Each lot has enough room for a reasonably-sized house and garage;
- Lots are of a size and shape that development on each lot can meet the development standards of the zoning code;
- Lots are not so large that they seem to be able to be further divided to exceed the maximum allowed density of the site in the future;
- Each lot has room for at least a small, private outdoor area;
- Lots are compatible with existing lots;
- Lots are wide enough to allow development to orient toward the street;
- Lots don't narrow to an unbuildable width close to the street;
- Each lot has adequate access from the street;
- Each lot has access for utilities and services; and,
- Lots are not landlocked.

The overall site has a maximum density of 3 units. The site has a maximum density of 7 units under the current zoning of R2.5. The applicant has proposed a 2-parcel land division at this time. Parcel 2 is further dividable, but not to exceed the maximum allowed density. Any future division will be subject to regulations that apply at the time.

The applicant has proposed to keep the existing house on Parcel 1 (meets R5 lot size standards) and convert an existing ADU on Parcel 2 to a single dwelling home. Parcel 2 will be of a size and shape that any development on the site will be able to meet the standards of the R5 or R2.5 zone. The existing structure on the site is oriented toward SE 40<sup>th</sup> and that orientation will not change as a result of this Adjustment. Additionally, the width of Parcel 2 is similar to surrounding lots as shown on the Exhibit B zoning map, so Parcel 2 will not be incompatible with existing development. Each lot has significant area for a private outdoor area. Access for utilities and services will be retained for Parcel 2, as previously noted in this report. Additionally, lots are not landlocked. Therefore, this criterion is met.

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

**Findings:** The requested Adjustment is for an existing 17,500 square foot site in a residential zone that allows a variety of lot sizes, lot configurations, and housing types. The applicant has proposed that Parcel 2 be 50 feet in width, which is a typical lot width in the surrounding

residential area. Additionally, the ADU on Parcel 2 will be converted into a primary structure. Based on photos submitted by the applicant (Exhibit A.5), visually the ADU already appears to be a primary structure as compared to the adjacent homes. The overall appearance of the site will not change as a result of this adjustment. Therefore, granting the Adjustment will have no impact on the livability or appearance of the residential area. This criterion can be met.

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

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

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

**Findings:** There are no such resources on the site; this criterion is not applicable.

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

**Findings:** The site will ultimately appear to be unchanged as a result of the adjustment, given that the proposed lot width of Parcel 2 is 50 feet and the existing structure on the site is going to be retained. No existing landscaping has been proposed to be changed. The existing access to the site will remain and will be shared by both parcels. There are no visual or practical impacts created by the adjustment, therefore no mitigation is necessary. This criterion is met.

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

**Findings:** The site is not in an environmental zone; this criterion is not applicable.

## DEVELOPMENT STANDARDS

Development standards that are not relevant to the land division review, have not been addressed in the review. 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.

**Existing development that will remain after the land division.** The existing development on the site will remain and be located on Parcels 1 and 2. The division of the property may not cause the structures to move out of conformance or further out of conformance to any development standard applicable in the 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 structures 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 on Parcel 1 will be 16 feet from the new property line and the structure on Parcel 2 will be 17 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 buildings 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 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 all required demolition permits have received final inspection. To ensure that this standard is met, a condition of approval is necessary.
- Required Off-Street Parking - A garage provides parking for the existing house on Parcel 1. As a result of this land division, the garage for the existing house will be removed, and will no longer be available to Parcel 1. 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 200 feet from the site on Cesar Chavez Blvd via bus number 75. Bus number 75 provides peak-hour service meeting this requirement. As a result, no replacement parking is required for Parcel 1. However, a parking space will be retained on Parcel 1 after the garage structure is removed.
- Accessory Dwelling Unit -In this zone, Accessory Dwelling Units (ADU) are not allowed on lots without a primary structure. Therefore, in order for the proposed new lots to meet this standard, the ADU must be converted to a primary structure prior to approval of the final plat. The applicant must obtain a finalized building permit for modifications to the ADU that demonstrate conversion of the ADU to a primary single-dwelling structure.
- 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 6,250 square feet, therefore 2,500 square feet of tree are 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.

- The applicant must meet the requirements of the Fire Bureau in regards to addressing requirements. These requirements are based on the technical standards of Title 31 and Fire Bureau Policy B-1.

## CONCLUSIONS

The applicant has proposed a 2 parcel partition and an adjustment to maximum lot size, as shown on the attached preliminary plan (Exhibit C.2). As discussed in this report, the relevant standards and approval criteria have been met, or can be met with conditions. The primary issues identified with this proposal are: conversion of an accessory dwelling unit to a primary structure, maximum lot size, and tree preservation.

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

## ADMINISTRATIVE DECISION

**Approval** of an adjustment to allow Parcel 2 (shown on Exhibit C.2) to increase the maximum lot size to 11,262 square feet;

**Approval** of a Preliminary Plan for a 2-parcel partition, that will result in one standard parcel (Parcel 1) and one oversized parcel (Parcel 2) in the R5 zone, as illustrated with Exhibit C.2.

Approvals are subject to following conditions:

**A. Supplemental Plan.** Three 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;
- Any other information specifically noted in the conditions listed below.

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

1. A recording block for each of the legal documents such as maintenance agreement(s), acknowledgement of special land use conditions, or Declarations of Covenants, Conditions, and Restrictions (CC&Rs) as required by Condition C.5 below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: “A Declaration of Maintenance Agreement for (name of feature) has been recorded as document no. \_\_\_\_\_, Multnomah County Deed Records.”

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

### Utilities

1. The applicant shall meet the requirements of the Bureau of Environmental Services (BES) for the installation of a new sanitary service for the primary structure on Parcel 2.

The applicant must confirm that sanitary service for each parcel is separate and establish a new service connection from the existing structure on Parcel 2 to a public sewer. Plumbing permits must be finalized prior to final plat approval.

2. The applicant shall meet the requirements of the Water Bureau concerning the installation and connection of the water service to the primary structure on Parcel 2.

#### **Existing Development**

3. 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.
4. The applicant must obtain a finalized demolition permit for removing the garage on Parcel 1. Prior to removal of these structures, tree protection must be installed in accordance with the approved Tree Preservation Plan, per Condition D.1.

#### **Required Legal Documents**

5. The applicant shall execute an Acknowledgement of Tree Preservation Land Use Conditions that notes tree preservation requirements that apply to Parcels 1 and 2. A copy of the approved Tree Preservation Plan must be included as an Exhibit to the Acknowledgement. The acknowledgment shall be referenced on and recorded with the final plat.

#### **Other requirements**

6. The applicant must obtain a finalized building permit to convert the existing Accessory Dwelling Unit to a New Single Dwelling Residence, including payment of relevant SDC fees, to the satisfaction of each agency.

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

1. Development on Parcels 1 and 2 shall be in conformance with the Tree Preservation Plan (Exhibit C.3) and the applicant's arborist report (Exhibit A.3). Specifically, trees numbered 1, 4, and 6 are required to be preserved, with the root protection zones indicated on Exhibit C.3. Tree protection fencing is required along the root protection zone of the trees to be preserved. The fence must be 6-foot high chain link and be secured to the ground with 8-foot metal posts driven into the ground. Encroachment into the specified root protection zones may only occur if it meets the Tree Protection Specifications of 11.60.030.
2. The applicant must meet the addressing requirements of the Fire Bureau for Parcel 2. The location of the sign must be shown on the building permit.

**Staff Planner: Leah Dawkins**



**Decision rendered by:** \_\_\_\_\_ **on May 29, 2019**

By authority of the Director of the Bureau of Development Services

**Decision mailed (within 5 days of dec. date) May 31, 2019**

**About this Decision.** This land use decision is **not a permit** for development. A Final Plat must be completed and recorded before the proposed lots can be sold or developed. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

**Procedural Information.** The application for this land use review was submitted on May 23, 2018, and was determined to be complete on November 13, 2018.

*Zoning Code Section 33.700.080* states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on May 23, 2018.

*ORS 227.178* states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant requested that the 120-day review period be extended by 150 days, as stated with Exhibit A.8. Unless further extended by the applicant, **the 120 days will expire on: August 10, 2019.**

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

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

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

**Appealing this decision.** This decision may be appealed to the Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on June 14, 2019** at 1900 SW Fourth Ave. Appeals can be filed at the 5<sup>th</sup> floor reception desk of 1900 SW 4<sup>th</sup> Avenue Monday through Friday between 8:00 am and 4:30 pm. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

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

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

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

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

**Recording concurrent approvals.**

If the preliminary land division approval also contains approval of other land use decisions (examples include adjustments, conditional uses, and environmental reviews), these other approvals will be recorded with the Multnomah County Recorder.

- *Unless appealed*, the final decision will be recorded after **June 14, 2019** by the Bureau of Development Services.

The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder.

For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

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

The following approvals were necessary for the land division to be approved: Adjustment. This approval expires if:

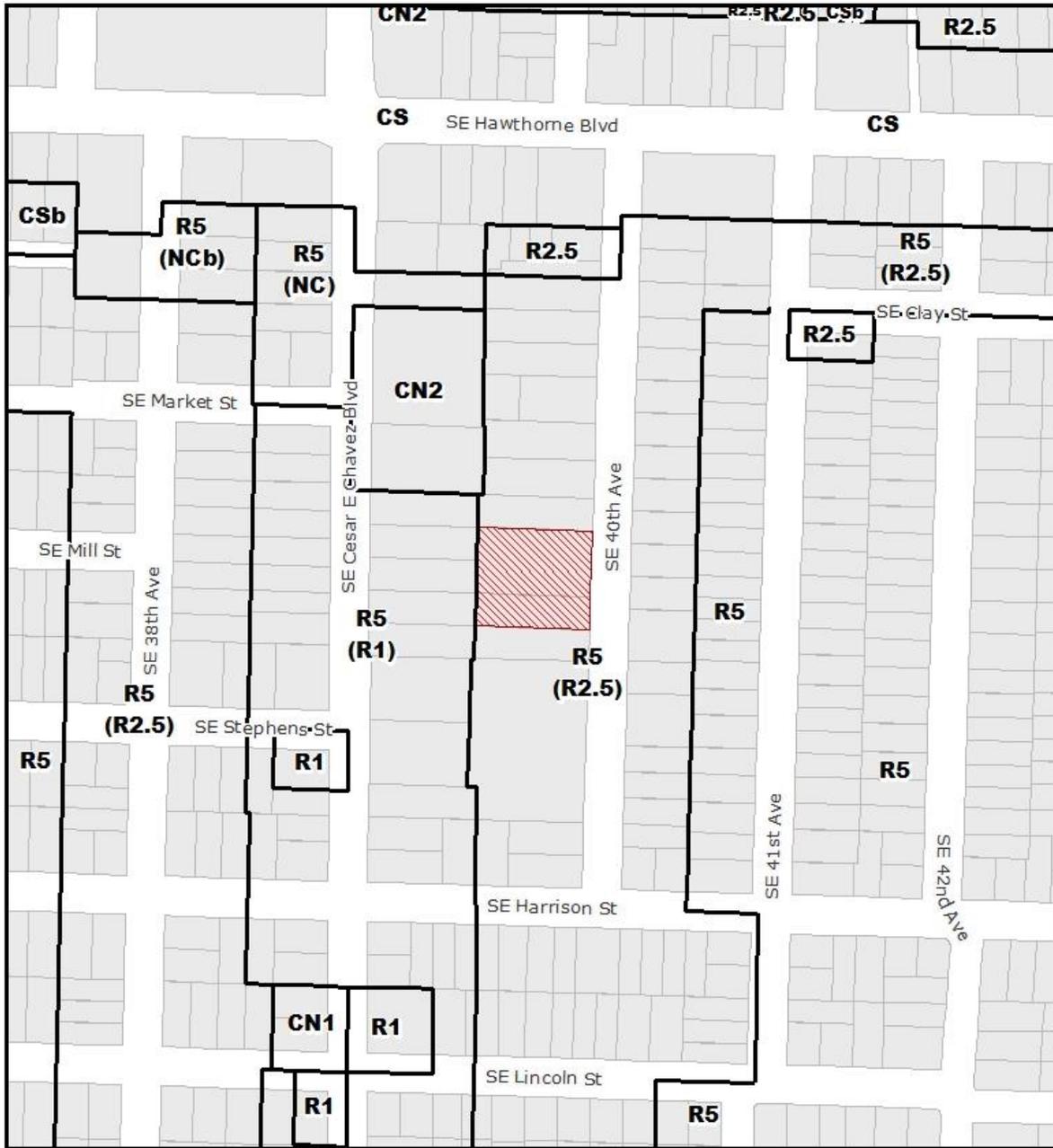
- The final plat is not approved and recorded within the time specified above, or
- Three years after the final plat is recorded, none of the approved development or other improvements (buildings, streets, utilities, grading, and mitigation enhancements) have been made to the site.

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

**EXHIBITS**  
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  - 1. Original Narrative Submittal
  - 2. Adjustment Narrative
  - 3. Arborist Report
  - 4. Resubmittal Memo
  - 5. Site Context Photos
  - 6. Title Report
  - 7. Original Site Plan Submittal
  - 8. Timeline Extension Requests
  - 9. Neighborhood Notification Letters
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Existing Conditions Survey
  - 2. Site Plan
  - 3. Tree Preservation Plan (attached)
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Bureau of Transportation Engineering and Development Review
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Site Development Review Section of BDS
  - 6. Bureau of Parks, Forestry Division
  - 7. Life Safety Section of Bureau of Development Services
- F. Correspondence: None Submitted
- G. Other:
  - 1. Original LU Application
  - 2. Incomplete Letter

**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



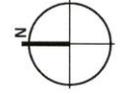
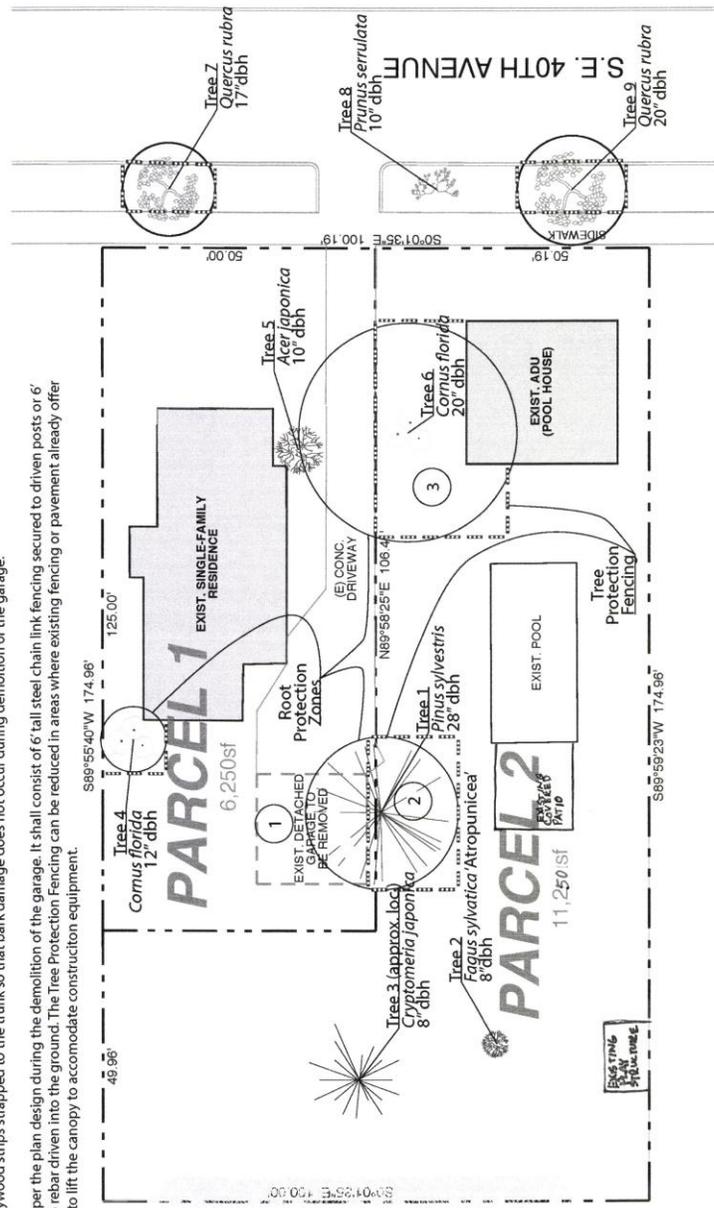
File No. LU 18-176513 LDP  
1/4 Section 3234  
Scale 1 inch = 200 feet  
State ID 1S1E01DA 5900  
Exhibit B May 29, 2018

- Tree Preservation Notes:**
- 1 During removal of the garage, the building will be demolished from the inside. The south wall will be the last wall to be removed and will be pulled onto the concrete slab. The concrete slab will be pulled up using machinery that stays on the concrete, working in a west to east progression.
  - 2 The trunk of Tree 1 will be protected by plywood strips strapped to the trunk so that bark damage does not occur during demolition of the garage.
  - 3 Tree Protection Fencing shall be installed per the plan design during the demolition of the garage. It shall consist of 6' tall steel chain link fencing secured to driven posts or 6' tall chain link panels with feet attached to rebar driven into the ground. The Tree Protection Fencing can be reduced in areas where existing fencing or pavement already offer protection. Tree 3 will need to be pruned to accommodate construction equipment.

*Ramon Soto*  
 ISA Board Certified Master Arborist PN-54748  
 Tree Risk Assessment Qualified

Tree#	DBH Species	Condition
1	28" Pinus sylvestris	Good
2	8" Fagus sylvatica Atropunicea*	Good
3	8" Cryptomeria japonica	Good
4	12" Cornus florida	Good
5	10" Acer japonica	Good
6	20" Cornus florida	Good
7	17" Quercus rubra	Good
8	10" Prunus serrulata	Good
9	20" Quercus rubra	Good

\* Designates a street tree



**EXISTING TREE MAP & PRESERVATION PLAN**  
 Tom Peabody Lot Partition LU 18-176513 LDP  
 1733 SE 40th Ave, Portland, Oregon 97214

SCALE: 1" = 20'-0"

CASE NO. ~~18-176513~~  
 EXHIBIT C-3