



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

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Date: September 25, 2019
To: Interested Person
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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 18-144767 LDS

GENERAL INFORMATION

Applicant: Mark Dane, Mark Dane Planning / (503) 332-7167
12725 SW Glenhaven St, Portland, OR 97225

Owner: Vladimir V Kaminskiy / 722 SE 111th Ave / Portland, OR 97216

Site Address: 722 SE 111TH AVE
Legal Description: LOT 30-33 TL 800 S 110' OF N 170' OF LOT 31-33, HOMESTAKE GARDENS

Tax Account No.: R400901190
State ID No.: 1S2E03BA 00800
Quarter Section: 3141
Neighborhood: Mill Park, contact Trevor Hopper at mill.park.pdx.chair@gmail.com
Business District: Gateway Area Business Association, contact at gabapdxboard@gmail.com

District Coalition: East Portland Community Office, contact Victor Salinas at 503-823-6694.

Zoning: R5a – Single Family Residential 5,000 with an “a” Alternative Design Density Overlay

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

Proposal:

The applicant is proposing a 3-lot subdivision for this 21,317 square foot interior site, with 2 standard lots, one flag lot and a tree preservation tract. Lots will range from 3,888 to 7,501 square feet. The existing house will remain on Lot 1. Off-street parking is proposed for all lots.

There are 6 trees on the site that are subject to the tree preservation requirements of 33.630 (including trees that are partially on the site). The applicant has proposed to preserve five of

the trees in a tree preservation tract at the east end of the site. In order to improve the tree preservation proposal, the applicant has requested to modify the flag lot landscaping standard of 33.110.240.F.2 along the east property line of lot 3 to minimize disturbance within the proposed root protection zone of trees 1 to 5, which is allowed per 33.630.400. The existing trees preserved within the tract will provide a landscape buffer. The modification can be approved if it results in improved tree preservation and is consistent with the purpose of the regulation being modified.

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

For purposes of State Law, this land division is considered a subdivision. To subdivide land is to divide an area or tract of land into four or more lots within a calendar year, according to ORS 92.010. ORS 92.010 defines "lot" as a single unit of land created by a subdivision of land. The applicant's proposal is to create 4 units of land (3 lots and 1 tract). Therefore, this land division is considered a subdivision.

Relevant Approval Criteria:

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

FACTS

Site and Vicinity: The site is an interior lot developed with a house constructed in 2018. The surrounding development east of the site is generally single-family residential development. The East Portland Community Center is located just to the west of the site. Mall 205 and other commercial areas along SE Stark and Washington Streets are located ~1/2 mile to the west.

Infrastructure:

- **Streets –**

The site has approximately 107 feet of frontage on SE 111th Avenue. There is one driveway entering the site that serves the existing house. At the time of the land use review application, at this location SE 111th Avenue was classified as a Local Service Street for all modes in the Transportation System Plan (TSP). (Note that it has since been re-classified as a City Walkway and Local Service Street for all other modes) Tri-Met provides frequent bus service within a half mile of the site at SE Cherry Blossom Drive via #15 Belmont/NW 23rd, and non-frequent bus service 0.10 mile to the north of the site along SE Stark Street via Line #20- Burnside/Stark.

At this location SE 111th Ave. is improved with a 32-ft paved roadway in a 47-foot right-of-way. The frontage is improved with a standard 11-foot sidewalk corridor consisting of a 0.5-ft curb, 4-ft furnishing zone, 6-foot sidewalk, and 0.5-ft frontage zone.

- **Water Service –** There is an existing 6-inch water main in SE 111th Avenue. The existing house is served by a 3/4-inch metered service from this main.
- **Sanitary Service –** There is an existing 8-inch PVC public combination sewer line in SE 111th Avenue.
- **Stormwater Disposal –** There is no public storm-only sewer currently available to this property.

Zoning: R5a – Single Family Residential 5,000 with an "a" Alternative Design Density Overlay

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.

The "a" overlay is intended to allow increased density that meets design compatibility requirements. It fosters owner-occupancy, focuses development on vacant sites, preserves existing housing stock, and encourages new development that is compatible with the surrounding residential neighborhood. This land division is not using any provisions of the "a" overlay.

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 **July 2, 2019**. 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.

| Criterion | Code Chapter/Section and Topic | Findings: Not applicable because: |
|------------------|--|---|
| C | 33.631 - Flood Hazard Area | The site is not within the flood hazard area. |
| D | 33.632 - Potential Landslide Hazard Area | The site is not within the potential landslide hazard area. |
| E | 33.633 - Phased Land Division or Staged Final Plat | 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. |
| 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 21,317 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 4 units and a minimum required density of 3 units. The applicant is proposing 3 single dwelling lots. The density standards are therefore met.

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) | Min. Flag Lot Width (feet) | Min. Flag Lot Depth (feet) |
|----------------|-----------------------------|-----------------------------|------------------------|-------------------|----------------------------|----------------------------|----------------------------|
| R5 Zone | 3,000 | 8,500 | 36 | 50 | 30 | 40 | 40 |
| Lot 1 | 6372 | | 59 | 108 | 59 | NA | NA |
| Lot 2 | 3888 | | 36 | 108 | 36 | NA | NA |
| Lot 3 | 7501 (6160 w/out pole) | | NA | NA | NA | 56 | 110 |

* 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 3 parcels, only one of which is a flag lot. The site has dimensions which preclude a land division that meets the minimum lot width standard. 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 (Lot 3) meets the 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.

In this case, the flag portion of Lot 3 will be located to the north of the existing house, while the attached garage is located on the south side of the house. Due to the location of the existing attached garage, a shared access is not feasible. No other alternatives beyond the proposed location were suitable for the additional vehicle access.

Lot 3 has met the thresholds for when a flag lot is allowed. Therefore, Lot 3 is allowed.

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

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

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

To satisfy these requirements, the applicant must provide a tree plan that demonstrates, to the greatest extent practicable, the trees to be preserved provide the greatest environmental and aesthetic benefits for the site and the surrounding area. The tree plan must also show that trees are suitable for preservation, considering the health and condition of the tree and development impacts anticipated. Tree preservation must be maximized, to the extent practicable, while allowing for reasonable development considering the intensity of development allowed in the zone and site constraints, including existing utility easements and requirements for services and streets.

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

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

In order to identify which trees are subject to these requirements, the applicant provided a tree survey (Exhibit C.2) that shows the location and size of trees on and adjacent to the site. The applicant also provided an arborist report (Exhibit A.10) that identifies each tree, its condition and suitability for preservation or its exempt status, and specifies a root protection zone and tree protection measures for each tree to be preserved.

Based on this information, 6 trees, which provide a total of 223 inches of tree diameter are subject to the preservation requirements of this chapter. All six of the trees are over 20" in diameter. Please note that the tree survey shows 2 additional trees in the front yard of the existing house; these trees were legally removed through RS 17-248651 prior to the applicant submitting the land division application, and are therefore not subject to the tree preservation regulations.

The applicant proposes to retain trees 1 to 5 in a tree preservation tract at the east end of the site abutting Lot 3. The preservation proposal represents 83% of the overall tree diameter on the site and 83% percent of the trees that are 20 or more inches in diameter. The proposal complies with Options 2 and 3 of the tree preservation standards:

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

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

The proposed tree preservation meets the prescriptive path protection method for trees 4 and 5. The arborist notes that the performance path will be used for trees 1, 2 and 3. The arborist allowed encroachment into the critical root zones (.5 ft radius per 1 foot of tree diameter) of Trees 2 and 3 with the application of mulch and other construction considerations. The applicant subsequently proposed to install tree protection fencing to prohibit encroachment into the critical root zones. With the higher level of protection afforded by the fencing, the mulch and other construction considerations will not be required. At the time of building permit, additional encroachment into the specified root protection zones may only occur if it meets the Tree Protection Specifications of 11.60.030.

An accessory structure is located within the Tree Preservation Tract that must be removed prior to final plat approval. The arborist report did not address this work. Prior to structure removal, the applicant must submit an arborist report that describes how the removal can take place without damaging the trees. If ground disturbance will occur, the applicant will need to obtain a Zoning Permit to ensure that the arborist recommendations are installed prior to work within the tract.

To ensure that future owners of Lot 3 and the Tree Preservation tract 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 Lot 3 and within Tract A must be carried out in conformance with the Tree Preservation Plan (Exhibit C.1) and the Arborist Report (Exhibit A.10).

With the implementation of the noted conditions, the approval criteria will be met and no additional mitigation is warranted to satisfy the criteria.

In order to improve the tree preservation proposal, the applicant has requested to modify the flag lot landscaped buffer standard of 33.110.240.F.2 along the east property line of lot 3 to minimize disturbance within the proposed root protection zone of trees 1 to 5. The modification can be approved if it results in improved tree preservation and is consistent with the purpose of the regulation being modified.

The flag lot landscaped buffer area standard requires that landscaping be installed in an area at least 5 feet deep and be landscaped to at least the L3 standard. The L3 standard requires enough evergreen high shrubs to form a screen 6 feet high. In addition, one large tree is required per 30 linear feet of landscaped area, one medium tree per 22 linear feet of landscaped area, or one small tree per 15 linear feet of landscaped area. Ground cover plants must fully cover the remainder of the landscaped area.

Meeting the standard would require the installation of trees, shrubs and groundcovers along the eastern five feet of lot three, which is within the prescriptive root protection zone of the large Douglas Fir trees that will be preserved in the Tree Preservation Tract. The installation of the required plants would disturb the ground in the vicinity of the trees to be preserved, and as the required trees grow, they would compete with the existing trees for air, light and soil space. Therefore, allowing the modification to the landscaping standard would prevent this competition and disturbance for the existing trees to be preserved, thereby improving the tree preservation proposal. Furthermore, the mature Douglas Fir trees to be preserved will block rainfall and shade the new plants, generally inhibiting ideal growing conditions for the new plants.

Flag lots are allowed in single-dwelling zones through the Alternative Development Options (33.110.240), which allow a variety of different structure types and site configurations in

certain circumstances. The purpose statement of the Alternative Development Options sections is as follows:

33.110.240.A - The alternative development options allow for variety in development standards while maintaining the overall character of a single-dwelling neighborhood. These options have several public benefits:

- *They allow for development that is sensitive to the environment, especially in hilly areas and areas with water features and natural drainageways;*
- *They allow for the preservation of open and natural areas;*
- *They promote better site layout and opportunities for private recreational areas;*
- *They promote opportunities for affordable housing;*
- *They promote energy-efficient development;*
- *They allow for the provision of alternative structure types where density standards are met; and*
- *They reduce the impact that new development may have on surrounding residential development.*

The primary purpose of the flag lot development standards is to protect the privacy of surrounding residences, as stated in the introduction to the development standards for flag lots:

33.110.240.F - The development standards for flag lots include specific screening and setback requirements to protect the privacy of abutting residences.

The applicant is proposing to preserve several large Douglas Fir trees in the Tree Preservation tract, which comprises the eastern 32 feet of the site. The tract is located between Lot 3 and the abutting lot to the east. The trees to be preserved are distributed throughout the tract and form a fairly solid buffer between Lot 3 and the adjacent site to the east. There is also a fence installed along the eastern lot line of the site which provides further screening and privacy for the abutting lot to the east. The 10-foot flag lot setback will also be required along the eastern lot line of Lot 3; adding this to the 32-foot-wide tract will ensure a 42-foot setback to the adjacent lot to the east. The privacy of abutting residences will be protected with the existing trees and fence in the tree preservation tract and the 42-foot-wide setback. Therefore the modification can be approved.

At the time of development, the individual lots 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.

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 grading proposed within the root protection zones of the trees to be preserved in Tract A at the east end of the site. 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. The existing house on Lot 1 directs stormwater to a cesspool that has been converted to a drywell that will be located on Lot 3 after the land division, which is not allowed because it will cross property lines. The applicant proposes to install a new drywell on Lot 1 to serve the existing house. Abandoned drywells must be decommissioned. At the time of final plat approval, if the drywell in question is abandoned, Site Development would either need to see the drywell included in a building permit that is under review at the time of final plat; the applicant must submit a letter from Oregon DEQ indicating that they take no exception to abandonment of the UIC on Lot 3; or the applicant must submit the Oregon DEQ UIC decommissioning paper work for the Drywell on Lot 3. With the condition described above, the new lots can be considered suitable for new development, and this criterion is met.

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

Findings: The following tract is proposed and will be owned by Lot 3:

- Tract A: Private Tree Preservation Reserve

As stated in Section 33.636.100 of the Zoning Code, a maintenance agreement will be required describing maintenance responsibilities for the tract described above. This criterion can be met with the condition that a maintenance agreement is prepared and recorded with the final plat. In addition, the plat must reference the recorded maintenance agreement 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 supporting the proposed development in addition to the existing uses in the area.

Evaluation factors include: street capacity and level-of-service; vehicle access and loading; on-street parking impacts: the availability of transit service and facilities and connections to transit; impacts on the immediate and adjacent neighborhoods; and safety for all modes. Mitigation may be necessary to reduce impacts.

The 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 application for this land division was submitted on April 3, 2018, at which time SE 111th Ave. was classified as a Local Service Street for all modes. The analysis below is based on the classifications in effect at the time of application. Any future development will be evaluated under the current classifications.

The applicant provided a written narrative addressing the transportation approval criteria above. The applicant recently built a new single family home on the site in permit 17-248651-RS, which will be retained. As part of the building permit process, the owner dedicated 7-feet of right-of-way for the full width of the site. The owner also constructed sidewalks to city standard in sidewalk permit 90617, which received final inspection on 4-10-18.

Based upon trip generation estimates from the Institute of Transportation Engineers (ITE) Trip Generation Manual, 10th Edition, each proposed parcel is projected to generate one additional morning and evening trip, for approximately ten daily trips for each new parcel. The net addition of two single-family residences added to the transportation system resulting from the

development will not adversely impact the operations of area intersections and is consistent with the zoning of the property. Therefore, the transportation system is capable of safely supporting the proposed development in addition to existing uses in the area.

The three proposed lots will each have driveway access to SE 111th Ave. The applicant's narrative states each lot will have on site parking, which is consistent with surrounding uses. The proposal is consistent with the established neighborhood pattern of the area, and the anticipated demand for additional on-street parking is expected to be minimal.

The site is served by transportation options to reduce impacts to the neighborhood and provide safety for all modes, including Tri-Met frequent bus service # 15 Belmont/NW 23rd within half mile from the site, and Line #20- Burnside/Stark providing rush hour service within a quarter mile. The streets of SE Stark St, SE 106th Ave, SE 117th Ave, and SE Cherry Blossom Drive are identified City Bikeways, providing safe routes to other areas in the City on surrounding low volume traffic streets. The pedestrian corridor abutting the subject site is built to City standards, including a 6-ft wide sidewalk. While sidewalk facilities are intermittent throughout this area, the scope of the development does not justify asking for the construction of offsite pedestrian facilities.

PBOT has reviewed and concurs with the information supplied and available evidence. 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>33.651 Water Service standard – See Exhibit E.3 for detailed bureau comments.</p> <p>As a result of the proposed land division, the water line that provides service to the existing home on Lot 1 will no longer be located entirely on the same lot as the home. Title 21 requires that the water service connection be located within the frontage of the lot to be served. The applicant has paid for a new service installation for water meter within the frontage of Lot 1.</p> <p>Lot 2 can use the existing ¾” metered service.</p> <p>Lot 3 has water available from the 6” main in SE 111th Avenue.</p> <p>The water service standards of 33.651 have been verified.</p> |
| <p>33.652 Sanitary Sewer Disposal Service standards – See Exhibit E.1 for detailed comments.</p> <p>The Bureau of Environmental Services has indicated that service is available to the site, as noted on page 2 of this report. The sanitary sewer service standards of 33.652 have been verified. Therefore, this criteria is met.</p> |
| <p>33.653.020 & .030 Stormwater Management criteria and standards – 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"> • Lots 2 and 3: Stormwater from these lots will be directed to individual drywells that will treat the water and slowly infiltrate it into the ground. Each of these lots has sufficient area for a stormwater facility that can be adequately sized and located to meet setback standards, and accommodate water from a reasonably-sized home. BES |

has indicated conceptual approval of the drywells.

- **Lot 1 (the lot with the existing house):** The existing house on Lot 1 directs stormwater to a converted cesspool that will be located on Lot 3 after the land division, which is not allowed because it will cross property lines. The applicant proposes to install a new drywell on Lot 1 to serve the existing house. The applicant is required to finalize plumbing permits prior to final plat approval for modifications to the stormwater disposal system for the existing house, to the satisfaction of BES. Any required plumbing permits must have final inspection approval.

Subject to the noted conditions above, this criterion is 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.

The block on which the subject property is located does not meet the noted spacing requirements for east-west oriented streets. There is ~485 feet between the E-W street to the north (SE Alder Street) and to the south (SE Yamhill Street). The properties abutting the site to the east are not future dividable, and the subject site is not located in a section of the block that would be a good location for a new east-west street. 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.

The site is within the Portland Master Street Plan for the SW and Far SE District and the Division Midway District. There are no connections called for at this site. Therefore, the proposal is consistent with the master street plan.

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, 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.

At the time of the land use review application, at this location SE 111th Avenue was classified as a Local Service Street for all modes in the Transportation System Plan (TSP). At this location SE 111th Ave. is improved with a 32-ft paved roadway in a 47-foot right-of-way. The frontage is improved with a standard 11-foot sidewalk corridor consisting of a 0.5-ft curb, 4-ft furnishing zone, 6-foot sidewalk, and 0.5-ft frontage zone.

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 two additional dwellings can be safely served by this existing street without having any significant impact on the level of service provided.

Please note: The Comprehensive Plan and Transportation System Plan were updated May 24, 2018 and classified SE 111th Ave. as a City Walkway and a Local Service Street for all other modes. Future development, which is not vested in the prior TSP will be required to meet City standards for a City Walkway. Currently, the Pedestrian Design Guide recommends a 12-foot sidewalk corridor for City Walkways outside of pedestrian districts regardless of zoning or street classification.

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

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

Any easements that may be needed for private utilities that cannot be accommodated within the adjacent right-of-ways can be provided on the final plat. At this time no specific utility easements adjacent to the right-of-way have been identified as being necessary. Therefore, this criterion is met.

DEVELOPMENT STANDARDS

Development standards that are not relevant to the land division review, have not been addressed in the review. 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 Lot 3. The landscaped buffer is not required along the east lot line of Lot 3 through an approved modification for Tree Preservation. See section B for more information.

Existing development that will remain after the land division. The existing development on the site will remain and be located on Lot 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 4 feet from the new property line. Therefore, the required setbacks are being met (per 33.110.220.D.2 the lot in front of a flag lot may reduce its side building setback along the flag pole to 3 feet). 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 – An accessory structure is located on Tract A, which will be owned in common with Lot 3. In this zone, accessory structures are not allowed on a lot without a primary structure. Therefore, in order for the proposed new lots to meet this standard, the accessory structure must be removed prior to final plat. Because the structure is less than 200 square feet in size, a demolition permit is not required. The applicant must submit before and after photos to document removal of the 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, Lot 1 with existing house will no longer meet this standard. Lot 1 is 6372 square feet, therefore 2549 square feet of tree are is required. Prior to final plat approval, the applicant must meet this requirement by either planting trees on Lot 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.

| Bureau | Code Authority and Topic |
|---|---|
| Development Services/503-823-7300 www.portlandonline.com/bds | Title 24 – Building Code, Flood plain Title 10 – Erosion Control, Site Development Administrative Rules for Private Rights-of-Way |
| Environmental Services/503-823-7740 www.portlandonline.com/bes | Title 17 – Sewer Improvements 2008 Stormwater Management Manual |
| Fire Bureau/503-823-3700 www.portlandonline.com/fire | Title 31 Policy B-1 – Emergency Access |
| Transportation/503-823-5185 www.portlandonline.com/transportation | Title 17 – Public Right-of-Way Improvements Transportation System Plan |
| Urban Forestry (Parks)/503-823-4489 www.portlandonline.com/parks | Title 11 –Trees |
| Water Bureau/503-823-7404 www.portlandonline.com/water | 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; installing a new hydrant; ensuring adequate hydrant flow from the nearest fire hydrant or obtaining an approved Fire Bureau appeal to this requirement; recording an Acknowledgement of Special Land Use Conditions that requires the provision of internal fire suppression sprinklers on Lot 3; and fire apparatus access, including aerial access. Please note that the applicant may be able to demonstrate compliance with some of these standards (hydrant spacing, hydrant flow, apparatus access) prior to final plat approval. In that case, some of the above requirements would not apply to the proposal. These requirements are based on the technical standards of Title 31 and Fire Bureau Policy B-1.
- The applicant must meet the requirements of Urban Forestry for loss of street tree planting area. This requirement is based on the standards of Title 11.

CONCLUSIONS

The applicant has proposed a 3-lot subdivision, as shown on the attached preliminary plan (Exhibit C.1). As discussed in this report, the relevant standards and approval criteria have

been met, or can be met with conditions related to tree preservation, fire standards, zoning code development standards and stormwater management.

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

ADMINISTRATIVE DECISION

Approval of a Preliminary Plan for a 3-lot subdivision, that will result in 2 standard lots, 1 flag lot and a tree preservation tract as illustrated with Exhibit C.1

Approval of a modification to the flag lot landscaped buffer standard for the east lot line of Lot 3

Subject to the following conditions:

A. Supplemental Plan. Three copies of an additional supplemental plan shall be submitted with the final plat survey for Land Use review 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. The Tree Preservation tract shall be noted on the plat as "Tract A: Private Tree Preservation Reserve". A note must also be provided on the plat indicating that the tract will be owned and maintained by the owners of Lot 3.
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.4, C.5 and C.6 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. If required, the applicant shall meet the requirements of the Fire Bureau for installing a new fire hydrant. The applicant must contact the Water Bureau, Development Services Department at 503-823-7368, for fee installation information related to the purchase and installation of fire hydrants. The applicant must purchase the hydrant and provide verification to the Fire Bureau that the Water Bureau will be installing the required fire hydrant, with the required fire flow and pressure.
2. The applicant shall meet the requirements of the Fire Bureau for ensuring adequate hydrant flow from the nearest hydrant. The applicant must provide verification to the Fire Bureau that Appendix B of the Fire Code is met, the exception is used, or provide an approved Fire Code Appeal prior final plat approval.
3. The applicant must meet the requirements of the Fire Bureau for providing an adequate fire access way for Lot 3, as required in Chapter 5 of the Oregon Fire Code. Alternately, the applicant will be required to install residential sprinklers in the new house on Lot 3, if applying the exception. An Acknowledgement of Special Land Use

Conditions describing the sprinkler requirement must be referenced on and recorded with the final plat.

Required Legal Documents

4. A Maintenance Agreement shall be executed for Tract A described in Condition B.1 above. The agreement shall include provisions assigning maintenance responsibilities for the tract 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.
5. If required, the applicant shall execute an Acknowledgement of Special Land Use conditions, requiring residential development on Lot 3 to contain internal fire suppression sprinklers. The acknowledgement shall be referenced on and recorded with the final plat.
6. The applicant shall execute an Acknowledgement of Tree Preservation Land Use Conditions that notes tree preservation requirements that apply to Lot 3 and the Tree Preservation Tract. A copy of the approved Tree Preservation Plan and Arborist Report must be included as an Exhibit to the Acknowledgement. The Acknowledgment shall be referenced on and recorded with the final plat.

Other requirements

7. The applicant must pay into the City Tree Preservation and Planting Fund [Street Trees – Fee in Lieu of Planting and Establishment (per inch)] the amount equivalent to 1.5 inches of trees. Payment must be made to the Bureau of Development Services, who administers the fund for the Parks Bureau.
8. The applicant must remove the accessory structure located in the Tree Preservation Tract. The applicant must submit before and after photos of the removal (with the same perspective) to verify removal. Prior to removal, the applicant must submit an arborist report recommending how the structure can be removed without damaging the trees to be preserved. If removal requires ground disturbance, the applicant must obtain a Zoning Permit to document compliance with the recommendations in the arborist report.
9. The applicant must modify the stormwater disposal system serving the existing structure on Lot 1 according to BES and SWMM requirements. All necessary plumbing permits for this work must be finalized prior to final plat.
10. The applicant shall meet the requirements of the Site Development Section of the Bureau of Development Services for decommissioning the drywell (converted cesspool) on the site that currently serves the existing house. Site Development would either need to see the drywell included in a building permit that is under review at the time of final plat; or a letter from Oregon DEQ indicating that they take no exception to abandonment of the UIC on Lot 3; or submittal of the Oregon DEQ UIC decommissioning paper work for the Drywell on Lot 3.

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

1. Development on Lot 3 shall be in conformance with the Tree Preservation Plan (Exhibit C.1) and the applicant's arborist report (Exhibit A.10). Specifically, trees numbered 1 to 5 in the Tree Preservation Tract are required to be preserved, with the root protection zones indicated on Exhibit C.1 (3 feet west of the east lot line of Lot 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 Fire Bureau requirements for addressing and aerial fire department access. Aerial access applies to buildings that exceed 30 feet in height from the fire access as measured to the bottom of the eave of the structure or the top of the parapet for a flat roof.
3. If required, the applicant will be required to install residential sprinklers in the new houses on Lot 3 to the satisfaction of the Fire Bureau. See the final plat approval letter for determination.

Staff Planner: Diane Hale

Decision rendered by:  **on September 23, 2019**
By authority of the Director of the Bureau of Development Services

Decision mailed September 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 April 3, 2018, and was determined to be complete on September 27, 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 April 3, 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 245 days. Unless further extended by the applicant, **the 120 days will expire on September 27, 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.

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

EXHIBITS

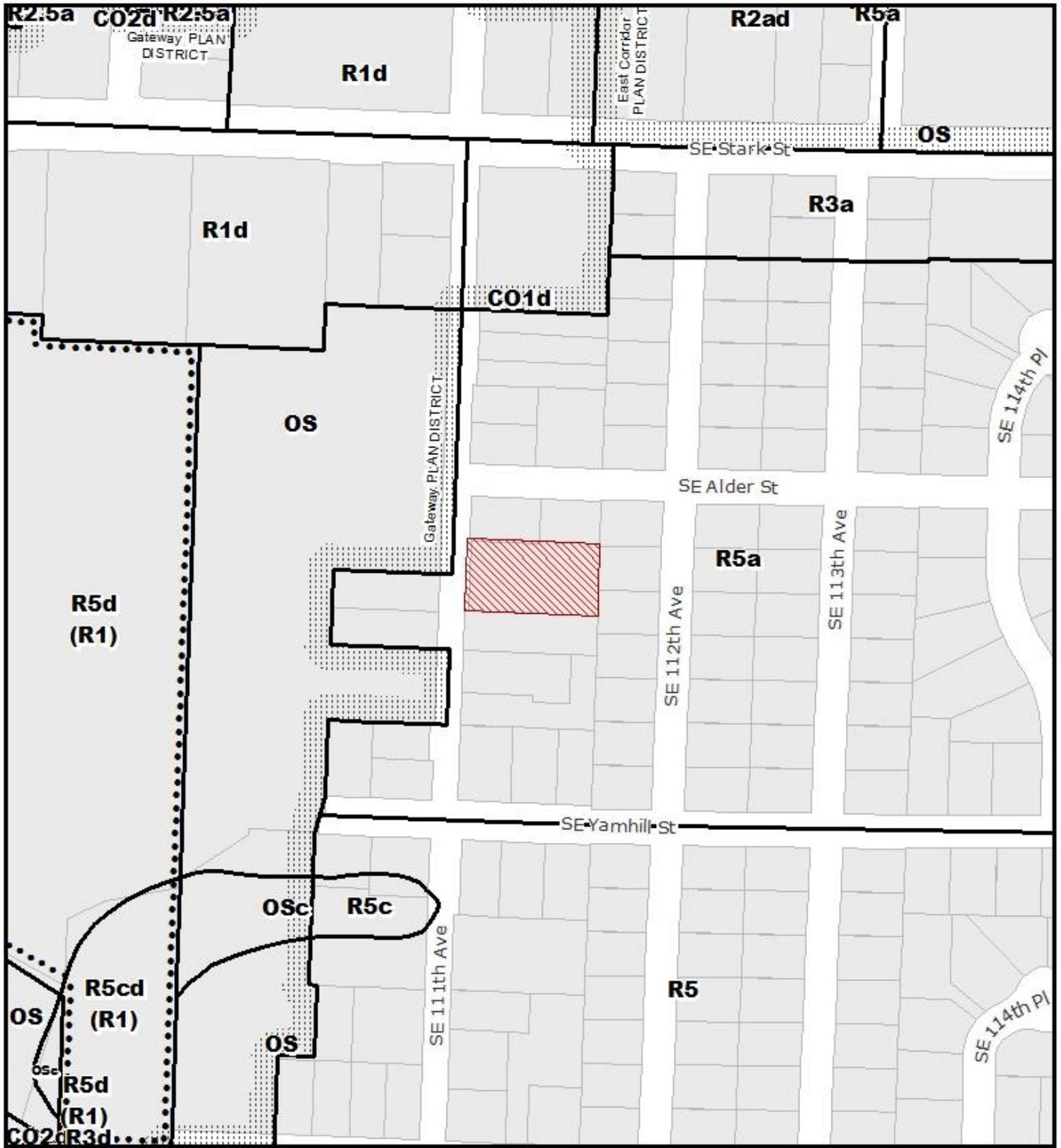
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Applicant's original submittal and plans
 - 2. Applicant's response, January 23, 2019
 - 3. Applicant's response, May 7, 2019
 - 4. Applicant's response, June 24, 2019
 - 5. Applicant's response, June 25, 2019
 - 6. Applicant's response, July 31, 2019
 - 7. Applicant's response, September 18, 2019
 - 8. Applicant's response, September 20, 2019
 - 9. Stormwater Report
 - 10. Arborist report
- A. Zoning Map (attached)
- B. Plans/Drawings:
 - 1. Conceptual Site Plan (attached)
 - 1. Existing Conditions Map
 - 2. Tree Preservation Plan
 - 3. Conceptual Clearing and Grading Plan
 - 4. Preliminary Plat
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Portland Bureau of Environmental Services
 - 2. Portland Bureau of Transportation Engineering and Development Review
 - 3. Portland Water Bureau
 - 4. Fire Department
 - 5. Site Development Review Section of BDS
 - 6. Life Safety Section of BDS
 - 7. Urban Forestry
- F. Correspondence:

G. Other:

1. Original LU Application
2. Expedited Land Division Form
3. Incomplete Letter
4. Extension Form

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



ZONING 
NORTH

 Site

| | |
|-------------|-------------------|
| File No. | LU 18-144767 LDS |
| 1/4 Section | 3141 |
| Scale | 1 inch = 200 feet |
| State ID | 1S2E03BA 800 |
| Exhibit | B May 24, 2019 |

