



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

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**Date:** December 27, 2019  
**To:** Interested Person  
**From:** Lois Jennings, Land Use Services  
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## **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 19-129717 LDP AD**

#### **GENERAL INFORMATION**

**Applicant/Owner:** Jason Rucker, 2nd Story Investments LLC  
4804 SW Bethany Blvd, Ste 1-2 #232  
Portland, OR 97229  
Phone#: 503-810-7270 or [jason@2ndstoryinvestments.com](mailto:jason@2ndstoryinvestments.com)

**Representative:** Trisha Clark, NW Land Planning  
PO Box 1073  
Goldendale, WA 98620  
Phone#: 503-330-2019 or [trisha\\_clark@hotmail.com](mailto:trisha_clark@hotmail.com)

**Site Address:** 5351 SE 88th Ave

**Legal Description:** TL 6200 0.26 ACRES, SECTION 16 1S 2E  
**Tax Account No.:** R992160290  
**State ID No.:** 1S2E16BD 06200  
**Quarter Section:** 3539

**Neighborhood:** Lents, contact [lentsneighborhood@gmail.com](mailto:lentsneighborhood@gmail.com)  
**Business District:** Eighty-Second Ave of Roses Business Association, contact [info@82ndave.org](mailto:info@82ndave.org) & Lents Grown Business Association, contact [lentsgrown@gmail.com](mailto:lentsgrown@gmail.com)

**District Coalition:** East Portland Community Office, contact 503-823-4550  
**Plan District:** None

**Zoning:** R2- Low Density Multi-Family Residential zone (1 unit per 2,000 s.f.) with an "a"-Alternative Density Overlay

**Case Type:** LDP-Land Division Partition with a AD-Adjustment  
**Procedure:** Type II<sub>x</sub>, an administrative decision with appeal to the Hearings Officer.

**Proposal:** The applicant is proposing to divide this 11,137 s.f. corner property into three parcels. The existing house will be Parcel 1, which will be 4,131 s.f. in area. Parcel 2 will be

2,356 s.f. in area and will be developed with a detached single-family house. Parcel 3 will be 3,079 s.f. in area and will be developed with a duplex. Three trees exist on the property which are subject to the tree preservation standards. The applicant is proposing to preserve the two trees, 11-inch-Norway Spruce and 16-inch Blue Spruce on Parcel 1 with the existing house. The applicant's preliminary site and utility plan shows how services (sanitary, stormwater and water) will be provided for each parcel. Portland Bureau of Transportation is requiring street dedication along this sites frontage to improve the pedestrian corridor.

No on-site parking is required for Parcels 2 and 3, since this portion of the site is within 500 ft. of a Transit Street, SE Ellis Street, and Trimet provides frequent transit service via Bus Line #10. However, the location of Parcel 1 is just outside the 500-ft., therefore on-site parking is required to be provided for the existing house on Parcel 1. The applicant is requesting a concurrent Adjustment to not provide on-site parking (3.266.110.B.2) for the existing house on Parcel 1.

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 Adjustment review 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 three parcels. Therefore, this land division is considered a partition.

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

- **Section 33.660.120 Approval Criteria for Land Division in Open Space and Residential Zones**
- **Section 33.805.040.A-F, Approval Criteria for Adjustments.**

## FACTS

**Site and Vicinity:** The site is a corner lot on the west side of SE 88<sup>th</sup> Avenue and SE Insley Street. A one- story bungalow style house built in 1917 exists on the northern portion of the site. The site is relatively flat with a chain link fence enclosing the property with evergreen shrubs creating privacy from the both streets and the alley. Three trees exist on the site, two evergreen trees (spruces) in front of the house and an English Walnut in the backyard area of the site.

The surrounding neighborhood is developed with mainly single-family residences. However, there are apartment complexes mixed in to the neighborhood closer to the main arterial streets. The zoning directly surrounding this site is R2. The zoning changes to CM3-Mixed Commercial zoning further west along SE 82<sup>nd</sup> Avenue and along SE Foster Road. Lents Park is approximately 350-ft. to the northeast of this site.

### Infrastructure:

- **Streets** –The site has approximately 75-ft. of frontage on 88th Avenue and 148.5-ft. of frontage on SE Insley Street. There is one driveway entering the site from the unimproved alley that serves the existing house. At this location, SE 88th Avenue and SE Insley Street are classified as a City Bikeway and Local Service Street for all modes in the Transportation System Plan (TSP). Tri-Met provides transit service approximately 485-ft. from the site at SE Ellis Street via Bus #10 and #14- Tri-Met service is provided along SE Foster Road.

SE 88<sup>th</sup> Avenue has an approximately a 30-ft.paved roadway with a curb-tight sidewalk within a 40-ft. right-of-way with parking on both sides. SE Insley Street is approximately a 28-ft. wide paved roadway with curb-tight sidewalk within a 37.5-ft. right-of-way.

- **Water Service** – There is an existing 8-inch water main in SE 88th Avenue and SE Insley Street. The existing house is served by a metered service from the main in SE 88th Avenue.
- **Sanitary Service** - There is an existing 8-inch VSP public combination sewer line in SE 88th Avenue (BES as-built# 4988).
- **Stormwater Disposal** – There is no public storm-only sewer currently available to this property.

**Zoning:** The R2 designation is one of the City’s multi-dwelling zones which is intended to create and maintain higher density residential neighborhoods. The zone implements the comprehensive plan policies and designations for multi-dwelling housing.

The “a”-Alternative Design Density 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 June 12, 2019. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

## ZONING CODE APPROVAL CRITERIA

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

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

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

<b>Criterion</b>	<b>Code Chapter/Section and Topic</b>	<b>Findings: Not applicable because:</b>
C	33.631 - Flood Hazard Area	The site is not within the flood hazard area.
D	33.632 - Potential Landslide Hazard Area	The site is not within the potential landslide hazard area.
E	33.633 - Phased Land Division or Staged Final Plat	Not applicable. These standards only apply to land divisions in the RF through R2.5 zones.
F	33.634 - Recreation Area	Not applicable. The proposed density is less than 40 units.
I	33.639 - Solar Access	Maintaining existing development on the site limits new parcel configuration (33.610.200 supersedes 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 33.612 contains the density and lot dimension requirements applicable in the R3 through IR zones. The applicant is proposing two (2) single-family lots (Parcels 1 and 2) and one duplex lot (Parcel 3).

This site is in an R2 zone. Minimum density in the R2 zone is one unit per 2,500 square feet and the maximum density is one unit per 2,000 square feet. The total site area shown on the applicant's survey is 11,029 square feet. Site area devoted to streets is subtracted from the total site area in order to calculate the minimum and maximum density. Street dedication is required to occur along both street frontage, which totals 1,424 square feet in area. Therefore, the resulting lot size for calculating density is 9,605 square feet. The site has a minimum required density of 3.8 rounds up to 4 units and a maximum density of 4.8 is rounded up to 5 units (per 33.930 rounding).

Single-dwelling or duplex development is proposed for all of the site; therefore, the applicant must demonstrate how the proposed lots meet the minimum density and not exceed the maximum density (Exhibit C.2 & A.9 & A.10). As shown below to meet minimum density on this site the applicant is proposing two (2)-detached house lots, Parcels 1 and 2 and a duplex lot, Parcel 3, to meet the minimum density of four units. For this reason, it is necessary to condition the minimum and maximum density allowance on each lot in the land division, to avoid development on the site or further division of lots that would result in non-compliance with the overall density requirements of the site.

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

<b>R2</b>	<b>Minimum lot area (square feet)</b>	<b>Minimum lot width (feet)</b>	<b>Minimum lot depth (feet)</b>	<b>Minimum front lot line (feet)</b>
<b>Detached Houses</b>	1,600	25	none	25
<b>Duplexes</b>	2,000	33	50	30
Parcel 1-Detached House	4,131	44	93.5	44.27
Parcel 2-Detached House	2,356	25	94	25
Parcel 3- Duplex	3,079	44	69	44.67

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

The findings above show that the applicable density and lot dimension standards are met. With the condition noted above, 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 A.17) that shows the location and size of trees on and adjacent to the site. The applicant also provided an arborist report (Exhibit A.11 & A.24) 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, three trees, a 11-inch Norway Spruce (#1), 18-inch Blue Spruce (#2) and 24-inch English Walnut (#3), which provide a total of 53-inches of tree diameter are subject to the preservation requirements of this chapter.

The applicant is proposing to preserve Tree #1 -11-inch Norway Spruce, #2-18-inch Blue Spruce. A total of 2 of the 3 nonexempt trees and a total of 29-inches being preserved, which is 54-percent of the total tree diameter. All two trees being proposed to be preserved are less than 20 inches in diameter. Therefore, none of the minimum tree preservation standard options listed above are being met and the applicant is proposing mitigation.

In this case, the site is zoned -R2- low density multi-family development, which would allow for a maximum density of 5 units. A variety of housing types can be developed on this site from multi-family apartment buildings, attached housing, detached single family houses or

duplexes, as long as maximum density is not exceeded. The applicant's proposed land division layout is just meeting minimum density requirement for this zone. The location of the 24-inch-English Walnut Tree #3 tree would impact the scale of development anticipated in this zone if retained. So, it is reasonable to consider mitigation options that will replace the functions of the tree to be removed.

The applicant's mitigation proposal is to preserve the existing smaller evergreen trees (#1 and #2) on the lot with the house. The tree preservation standard if all trees on the site were less than 20-inches would require up to 35 percent of the total non-exempt tree diameter on the site be preserved. For this site, it would amount to 19-inches being retained. The applicant is preserving two small trees which totals 29 inches, which is 54-percent of the total tree diameter on the site.

Trees #1 and #2 are on the eastern portion of the site, adjacent to SE 88<sup>th</sup> Avenue where sidewalk corridor improvements will be occurring to bring the site into compliance with City pedestrian corridor standards. A sanitary line will be placed within the root protection zone of tree #2 for the future development on Parcel 3. There is an existing sanitary line within the root-protection zone of tree #1. The arborist report (Exhibit A.11 & A.23) requires the sanitary line to be bored within the root-protection zone area of the tree and requires the performance path to protect both trees during construction of the sidewalk. To ensure these trees are protected during construction of the sidewalk frontage improvements along Parcel 1's frontage, the applicant must obtain a zoning permit and receive an approved tree protection inspection from the BDS. After the sidewalk work is completed along the frontage of Parcel 1 and new sanitary sewer is constructed for the existing house or when the sanitary-sewer line is constructed for the new development on Parcel 3 the arborist must provide a final arborist report verifying the viability of the trees. This arborist report will be required to be submitted for the existing house on Parcel 1 prior to final plat approval. An arborist report will be required prior to final inspection of the new development on Parcel 3 to ensure viability of the trees after the sanitary connection is constructed.

Preserving a total of 29-inches, more than 35% of the total tree diameter on the site, does mitigate for the removal of the 24-inch English Walnut tree. Retaining these two small trees will also count towards meeting Title 11 requirement for tree density for Parcel 1.

This mitigation will be consistent with the purpose of the tree preservation regulations, since it will provide for the preservation of other trees that will contribute to the retaining the tree canopy and general beauty and natural heritage of the City. Retaining and preserving these two evergreen trees will also provide the following:

- Help to absorb air pollutants and contamination;
- Provide buffering from noise and wind;
- Provide visual screening from the adjacent properties;
- Reduce energy demand and urban heat island impacts;
- Filter stormwater runoff and the reduce the possibility for erosion;

In order to ensure that future owners of the Parcel 1 are aware of the tree preservation requirements, the applicant must record an Acknowledgement of Tree Preservation Land Use Conditions, at the time of final plat. The acknowledgement must identify that development on Parcel 1 must be carried out in conformance with the Tree Preservation Plan (Exhibit C.2) and the Arborist Report (Exhibit A.23).

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

Based on these factors, this criterion is 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. The arborist report submitted has discussed how these trees can be protected during construction of the sidewalk improvements and new sanitary connection to the future development on Parcel 3. 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. Although the site is currently connected to the public sanitary sewer, there is an old septic system on the site. The City has no record that this facility was ever decommissioned. Prior to final plat, the applicant must meet the requirements of the Site Development Section of the Bureau of Development Services for the decommissioning of this facility. With this condition, 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:** No tracts are proposed or required for this land division, so criterion A does not apply. The following easements are proposed and/or required for this land division:

- A Private Sanitary Sewer Easement is required across the relevant portions of Parcel 1 for a sanitary sewer lateral connection that will serve Parcel 3.

As stated in Section 33.636.100 of the Zoning Code, a maintenance agreement(s) will be required describing maintenance responsibilities for the easement described above and facilities within those areas. This criterion can be met with the condition that a maintenance agreement(s) is prepared and recorded with the final plat. In addition, the plat must reference the recorded maintenance agreement(s) with a recording block 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 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; a finding of failure in one or more factors may be acceptable if the failure is not a result of the proposed development, and any additional impacts on the system from the proposed development are mitigated as required by 33.641.020.B.

The Development Review Section of the Portland Bureau of Transportation (PBOT) has reviewed the application against the evaluation factors and comments are summarized below (see Exhibit E.2a-b for specific details):

Portland Transportation/Development Review has reviewed the application for its potential impacts regarding the public right-of-way, traffic impacts and conformance with adopted policies, street designations, Title 33, Title 17, and for potential impacts upon transportation services in relationship to Approval Criterion 33.641.020.A.

### **Street Capacity and Levels of Service**

The proposal will result in an increase of 3 single-family residences. These residences can be expected to generate 30 daily vehicle trips with 3 trips occurring in each of the AM and PM Peak Hours. This small increase in peak hour vehicles will not have significant impact on intersection levels of service or street capacity. No mitigation is needed.

### **Connectivity**

The site is a corner lot. Connectivity standards are not applicable.

### **Vehicle Access/Loading**

There are no current access restrictions for the existing lot and none of the lots are proposed to include any on-site parking – there are no vehicle access issues in relation to the proposed project. Loading associated with residential uses can be easily accommodated along the site's frontages within the public r.o.w.

### **On-Street Parking Impacts**

Although the applicant is proposing to develop the site without any on-site parking for any of the lots, only the lot that will retain the existing residence triggers the associated parking Adjustment request. The new lots with new residential units to be constructed are exempt from providing on-site given the provisions in PCC Chapter 33.266. PBOT has no objections to the project as proposed with no on-site parking provided for any of the units given what appears to be an ample supply of on-street parking in the area. The demand for parking from the proposed project can be absorbed into the existing parking supply. The majority of the homes in the area have sufficient driveways (lengths) and garages to accommodate multiple parked vehicles – there appears to be little demand for on-site parking in the area, especially along SE Insley. With no curb-cuts/driveways associated with the proposed project, there will be no reduction in curb length along either site frontage – all of the available curb length that accommodates on-street parking today, will be retained. Impacts to the on-street parking supply is expected to be minimized – PBOT is supportive of the parking Adjustment request.

### **Availability of pedestrian and bicycle networks**

The site is in an area with a typical street grid pattern common to Portland's older neighborhoods. Area streets have sidewalks along both sides, and both SE 88<sup>th</sup> and SE Insley are classified as City Bikeways.

### **Availability of Transit**

Tri Met Bus Line #10 is available to serve the site Ellis/86<sup>th</sup> Ct, #17 at Holgate/88<sup>th</sup> Ave, and the #14 at Foster/88<sup>th</sup> Av.

### **Neighborhood Impacts**

The site is being developed with net increase of 1 new single-family residence and a duplex in compliance with the existing R2 zoning. In addition, standard frontage improvements including wider sidewalks will reduce the potential for conflicts between pedestrians and vehicles.

### **Safety for All Modes**

New wider sidewalks along the site frontages will provide adequate pedestrian facilities. Vehicle volumes and speed are low enough on these sections of SE Insley and SE 88<sup>th</sup> that bicycles can safely share the roadway with vehicle traffic.

The existing street frontages, SE 88<sup>th</sup> Avenue and SE Insley Street and the existing alley, currently do not meet City Standards. The right-of-way dedications and improvements are further discussed under Criterion L of 33.654.120.B.

As such, with the conditions noted above, PBOT concludes the existing transportation system will be able to support the proposed development, in addition to the existing uses in the area. Therefore, 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:

<b>33.651 Water Service standard</b> – See Exhibit E.3 for detailed bureau comments.
<p>The Water Bureau has indicated that service is available to the site, as noted on page 3 of this report. The water service standards of 33.651 have been verified.</p> <p>The existing house may continue to use the existing water service from the 8-inch main in SE 88<sup>th</sup> Avenue. Water Service is available to the new parcels.</p> <p>The Fire Bureau has reviewed and verified the Fire Flow information (Exhibit A.15) from the nearest fire hydrant has adequate capacity to serve the proposed development.</p> <p>The water service standards of 33.651 have been verified.</p>
<b>33.652 Sanitary Sewer Disposal Service standards</b> – See Exhibit E.1 for detailed comments.
<p>The Bureau of Environmental Services (BES) has reviewed the applicant’s site utility plan and narrative and comments are summarized below:</p> <p><i>Existing Sanitary Infrastructure:</i> According to available data, the following sewer infrastructure is located in the vicinity of the project site:</p> <ul style="list-style-type: none"> <li>• 8-inch PVC sanitary sewer in SE 88<sup>th</sup> Ave (BES as-built # 4988).</li> </ul> <p>The applicant proposes the following (Exhibit A.18 &amp; C.2):</p> <ul style="list-style-type: none"> <li>• <i>Existing House on Parcel 1:</i> A new sanitary connection will be provided for the house on Parcel 1.</li> <li>• Parcel 2 will be connected to sanitary sewer in SE 88<sup>th</sup> Ave within its frontage .</li> <li>• Parcel 3 will be served by a new connection to the sanitary sewer in SE 88<sup>th</sup> Ave via a lateral located within a private sewer easement located on Parcel 1.</li> </ul> <p>The existing house on Parcel 1 is currently connected to sanitary sewer via a lateral located approximately 354.5 feet south of the manhole in SE Steele St (Manhole ID ACK019). This indicates that the existing lateral will cross the proposed new lot line. At the time of final plat application the applicant must either demonstrates that the service lateral for the existing house is within the frontage of Parcel 1; or if as a result of the proposed land division, the existing sewer connection that serves the house on Parcel 1 will cross over Parcel 2 to reach the sewer main in SE 88<sup>th</sup> Avenue, then the applicant must cap the existing sewer connection and establish a new service for the house located entirely on Parcel 1. The existing lateral may provide future service to Parcel 2. All required plumbing and connection permits must receive final inspection approval prior to Final Plat approval. The new service lateral for Parcel 1 must be shown on the on the supplemental survey site plan prior to final plat approval.</p> <p>There is no public sanitary sewer available in SE Insley Street along this site’s frontage. The applicant proposes to provide legal access to public sanitary service for Parcel 3 via a private sanitary easement over Parcel 1 (Exhibit C.2). A plumbing code appeal (Exhibit A.24) was approved to allow the private sanitary sewer easement to be less than 10-ft. wide. BES will</p>

review the easement to ensure that a route of sewer service has been provided for the benefit of Parcel 3. The private sanitary easement must be shown on the final plat. BES has indicated this route of service is acceptable.

With the recommended conditions noted above, BES staff finds the applicant's proposed sanitary sewer service acceptable. The sanitary sewer service standards of 33.652 have been verified.

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

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

As a condition of this land use approval, the Portland Bureau of Transportation (PBOT) requires the applicant to upgrade the frontage to City standards. A new sidewalk is required, but the curb already exists. Stormwater runoff from public right-of-way improvements as required by the PBOT must be managed according to the standards of SWMM and Sewer and Drainage Facilities Design Manual. There are no public right-of-way improvements that will trigger BES public stormwater drainage improvements.

The applicant has proposed the following stormwater management methods for the individual lots (See Exhibit A.10 & C.2)

- **Parcel 1 -the lot with the existing house to be retained:** The existing house has downspouts that drain into a weep hole in the right-of-way (SE 88<sup>th</sup> Avenue).
- **Parcel 2 –(Detached single-family house lot):** Stormwater from these lot will be directed to an individual drywell that will treat the water and slowly infiltrate it into the ground. These lots have 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.
- **Parcel 3 (Duplex Lot):** Stormwater from these lot will be directed to an individual drywell that will treat the water and slowly infiltrate it into the ground. These lots have sufficient area for a stormwater facility that can be adequately sized and located to meet setback standards and accommodate water from a reasonably-sized duplex structure.

BES finds the proposed stormwater management plan acceptable for the purpose of reviewing the preliminary land division application against the stormwater approval criterion and standards. This stormwater management standard is verified, and 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 subject site is not within an adopted street plan. This corner lot is within an established block with two intersecting streets. Additional connections are neither required nor desired at this location.

For the reasons described above, this criterion is met.

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

In reviewing this land division, Portland Bureau of Transportation/Development Review (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 comments are summarized

below:

At this location, SE 88<sup>th</sup> Ave is classified as a City Bikeway and a Local Service Street for all other modes. The current City standard is for an 11-ft wide sidewalk corridor consisting of the 0.5-ft existing curb, 4-ft furnishing zone, 6-ft sidewalk and a 0.5-ft frontage zone.

AT this location, SE Insley St is classified as a City Bikeway, and a Local Service Street for all other modes. Based on City GIS, the frontage is improved with a 5-ft curb tight sidewalk with approximately 5-ft or ROW behind the sidewalk. The current City standard is for an 11-ft wide sidewalk corridor consisting of the 0.5-ft existing curb, 4-ft furnishing zone, 6-ft sidewalk and a 0.5-ft frontage zone.

**Existing conditions:**

- SE 88<sup>th</sup> Avenues is improved with a substandard 5-ft curb tight sidewalk. SE Insley Street is the frontage is improved with a 5-ft curb tight sidewalk with approximately 5-ft or ROW behind the sidewalk. Both streets do not meet City standards.
- SE Insley St is improved with a 5-ft curb tight sidewalk with approximately 5-ft or ROW behind the sidewalk.
- An unimproved alley abuts the rear of the site.

Both Streets do not meet current City standards.

**Required Street Improvements and Dedications:**

For both SE 88<sup>th</sup> Avenue and SE Insley Street standard improvements will be required to meet the current City standards for a sidewalk corridor. As noted above for these street classifications in an R5 zone that standard is a 11-ft wide sidewalk corridor consisting of the 0.5-ft existing curb, 4-ft furnishing zone, 6-ft sidewalk and a 0.5-ft frontage zone.

In order to provide adequate right-of-way (ROW) width for this improvement on SE 88<sup>th</sup> Avenue, a 6-ft dedication shall be a condition of final plat approval. Since the existing house will be retained, the sidewalk reconstruction along that lots' frontage shall be done prior to final plat approval. For SE Insley Street in order to provide adequate right-of-way (ROW) width for improvement approximate 1-ft dedication shall be a condition of final plat approval.

However, upon receiving the property survey from the applicant, the actual sidewalk corridor along the SE Insley frontage is different than described above – the existing curb-tight sidewalk varies between 4.5 – 6.1 ft with minimal public r.o.w. behind the sidewalk at the western end of this frontage. The City has approved 19-242949 PW to allow the new sidewalk corridor along SE Insley to be constructed with the following configuration: 6-ft wide sidewalk with no frontage zone separated from the curb by a variable width (3.8 – 4.7 ft) furnishing zone. To accommodate this sidewalk corridor, a variable width property dedication will be required (4.4 – 5.3 ft).

The reconstruction of the sidewalk in front of the lot with the existing residence can be done with a Minor Improvement Permit (MIP) from PBOT. The rest of the sidewalk on SE 88<sup>th</sup>, corner ADA ramp, and SE Insley St must be constructed under a separate public works permit to current City standards per the requirements of the City Engineer. A bond and contract ensuring the improvements will be completed shall a condition of final plat approval.

With the required street dedication and frontage improvements, the width of the right-of-way will be sufficient to accommodate the expected users, including residents of this site, their guests and other users passing through this area. PBOT has no objections to this land division proposal and has approved the elements within this right-of-way. With the conditions of approval described above, this criterion is met.

**33.654.120.F. Approval criterion for the width of alleys. The width of the alley right-of-way must be sufficient to accommodate expected users, taking into consideration the characteristics of the site and vicinity such as existing street and pedestrian system improvements, existing structures, and natural features.**

In reviewing this land division, Portland Bureau of Transportation/Development Review (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 comments are summarized below:

Standard alley widths are 20-feet to meet City Standards. If on-site parking will be accessed from the alley, there will need to be up to 8-ft of setback provided from the property line that existed prior to the land division. If the applicant provides a garage door that is 12-ft wide, 2-ft setback is required from the location of the existing property line; 11-ft wide, 16-ft setback is required; 10-ft wide, 6-ft of setback is required; 9-ft or less, 8-ft of setback is required.

**Existing Conditions:** At this location SE 87<sup>th</sup> Court at this location is an unimproved alley within 12-ft of ROW. The existing alley does not meet City standards.

**Standard Improvements & Dedication:**

A dedication of 4-ft on the alley will be required and if the alley is proposed for access to on-site parking at the time of development, the applicant must provide a concrete surface for the first 25-ft and gravel the remaining alley frontage. This work can be done with a Minor Improvement Permit (MIP) from PBOT.

With the required alley dedication and improvements if access is taken from the alley, PBOT has determined, the width of the alley will be sufficient to accommodate the expected users. With the conditions noted above, this criterion is met.

**33.654.120.H- Street Trees – See Exhibit E.6 for Service comments**

The City Forester reviews this land division proposal for its impact on existing trees, heritage trees, street tree requirements and related mitigation, in accordance with Title 11, Tree Code. One street tree must be planted or retained for each full increment of 25 linear feet (11.50.060.C.1). Street trees are required to be planted through building permit

**Existing Street Conditions:**

- SE Insley Street: The site has approximately 149-ft. of street frontage. The right-of-way is improved with pavement, curbs and sidewalks. There are no overhead high voltage power lines. There are no street trees.
- SE 88<sup>th</sup> Avenue: The site has approximately 74-ft. of street frontage. The right-of-way is improved with pavement, curbs and sidewalk. There are no overhead voltage power lines. There are no street trees.

Urban Forestry comments are summarized below:

Street Tree Planting (11.50.060.C) and Street Tree Preservation (11.50.040): Prior to the land division there is room for five (5) street trees. After the proposed land division there will be only room for four (4) street trees. There is a loss of one street tree planting spaces along this street frontage due to the land division. A fee of \$675.00 (\$450.00 per 1.5” required size x 1 trees) is required for loss of street tree planting spaces. This fee is required to be paid prior to final plat approval.

With the noted condition of approval, Urban Forestry has no objections to this land division proposal 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 rights-of-way can be provided on the final plat. At this time no specific utility easements adjacent to the right-of-way have been identified as being necessary. Therefore, this criterion is met.

## **APPROVAL CRITERIA FOR ADJUSTMENTS -33.805**

### **APPROVAL CRITERIA FOR ADJUSTMENTS**

#### **33.805.010 Purpose**

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue to provide certainty and rapid processing for land use applications.

#### **33.805.040 Adjustment Approval Criteria:**

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. stated below, have been met.

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

**Findings:** The applicant has requested an Adjustment to reduce the required parking from one space to zero for the existing house on its future lot, Parcel 1.

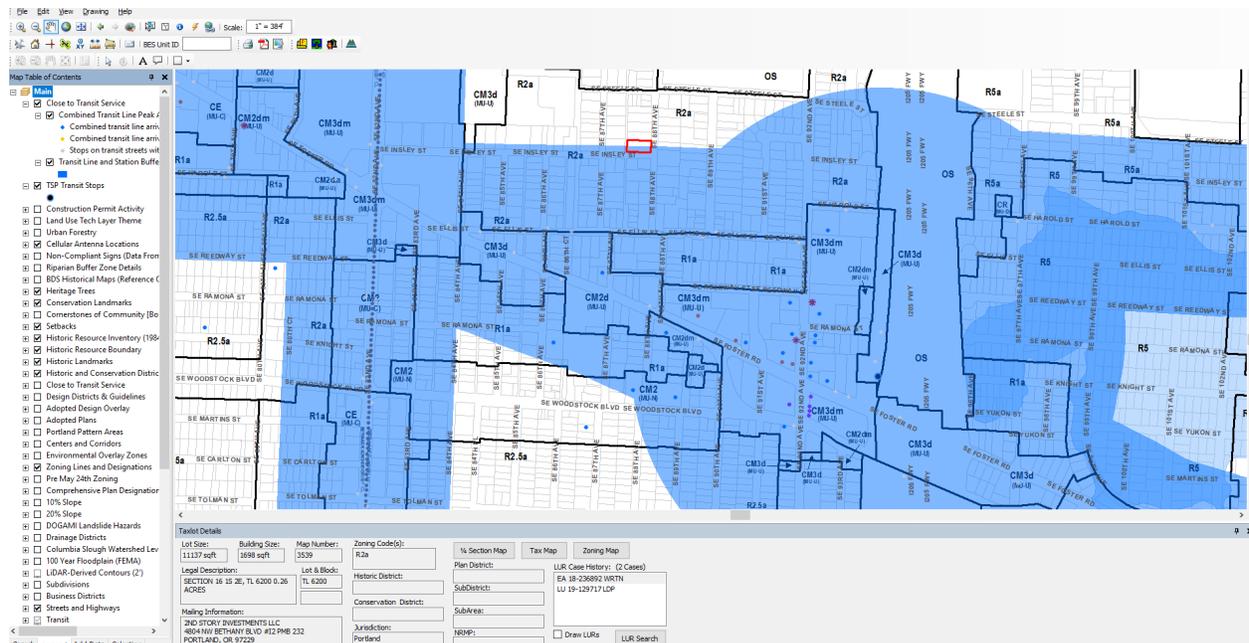
The purpose of the minimum number of parking spaces is stated below:

#### ***33.266.110- Minimum Required Parking Spaces.***

***The purpose of required parking spaces is to provide enough on-site parking to accommodate the majority of traffic generated by the range of uses which might locate at the site over time. Sites that are located in close proximity to transit, have good street connectivity, and good pedestrian facilities may need little or no off-street parking. Parking requirements should be balanced with an active pedestrian network to minimize pedestrian, bicycle and vehicle conflicts as much as possible. Transit-supportive plazas and bicycle parking may be substituted for some required parking on a site to encourage transit use and bicycling by employees and visitors to the site. The required parking numbers correspond to broad use categories, not specific uses, in response to this long-term emphasis. Provision of carpool parking, and locating it close to the building entrance, will encourage carpool use.***

The R2 zone allows residential uses at an intended density of one unit per 2,000 square feet and the applicant is proposing to divide the existing site into three parcels. The existing house is being retained on Parcel 1.

Section 33.266.110.B states there is no minimum parking for household living uses for site with less than 30 units if the site is located close to transit. For sites located 1500 feet or less from a transit station, or 500 feet or less from a transit street with 20-minute peak hour service there is not parking requirement. The Bureau of Transportation (PBOT) will publishes a map annually, showing sites that meet these service thresholds. As shown below on PBOT published map shows almost ½ of this site is close to frequent transit service. Therefore, the site as a whole would not be required to provide on-site parking for the existing house. However, when the northern portion of the site with the existing house is divided off as future Parcel 1, then Parcel 1 is just shy of being with 500-ft. from a transit street with frequent transit service as shown on the PBOT map below.

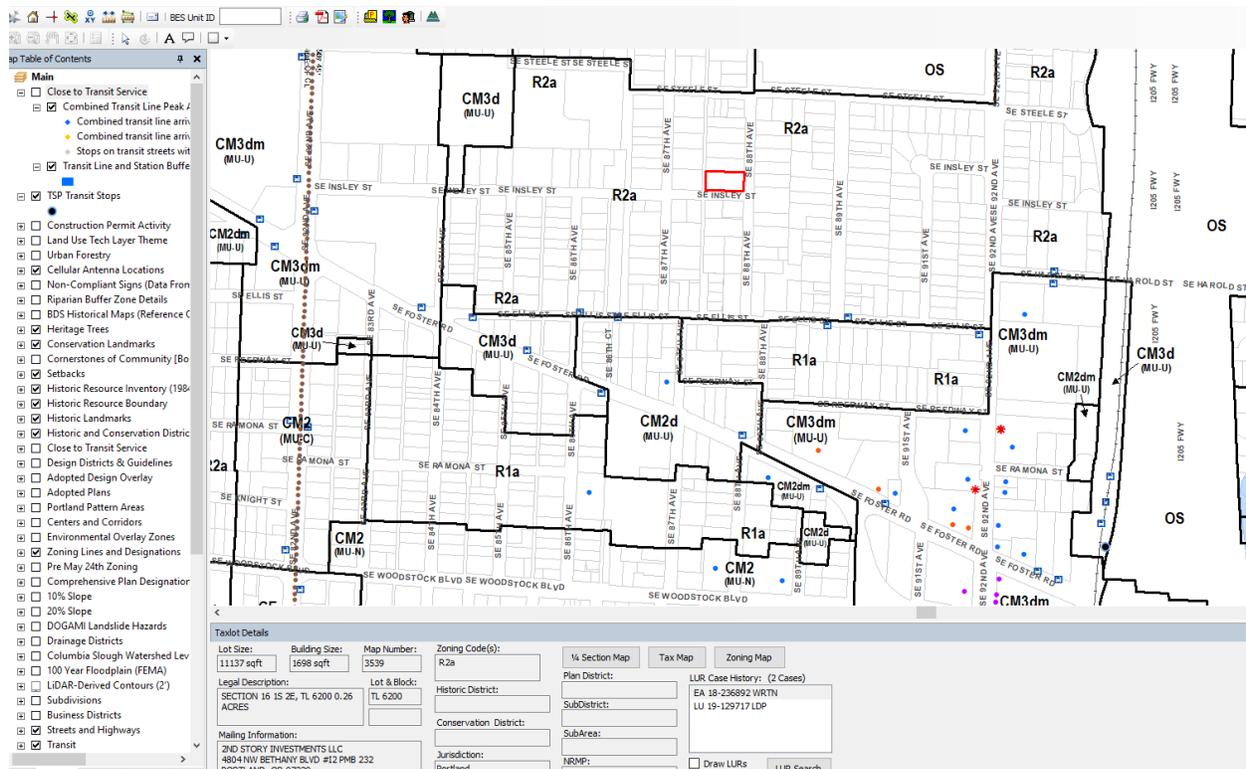


Streets adjacent to the site and within surrounding areas are improved with sidewalks. The street network is a grid system, generally forming 117-ft. x 360-ft. blocks and provides good street connectivity.

Portland Bureau of Transportation (PBOT) provide the following comments:

Although the applicant is proposing to develop the site without any on-site parking for any of the lots, only the lot that will retain the existing residence triggers the associated parking Adjustment request. The new lots with new residential units to be constructed are exempt from providing on-site given the provisions in PCC Chapter 33.266. PBOT has no objections to the project as proposed with no on-site parking provided for any of the units given what appears to be an ample supply of on-street parking in the area. The demand for parking from the proposed project can be absorbed into the existing parking supply. The majority of the homes in the area have sufficient driveways (lengths) and garages to accommodate multiple parked vehicles – there appears to be little demand for on-site parking in the area, especially along SE Insley. With no curb-cuts/driveways associated with the proposed project, there will be no reduction in curb length along either site frontage – all of the available curb length that accommodates on-street parking today, will be retained. Impacts to the on-street parking supply is expected to be minimized – PBOT is supportive of the parking Adjustment request

The vicinity of the site includes the characteristics that are reflective of areas where the purpose statement indicates little or no off-street parking is needed. Regarding the proximity to transit, there is frequent transit service via bus line #10 on SE Ellis Street to the south, and further south via bus line #14 along SE Foster Road & SE 88<sup>th</sup> Avenue; then to the west along SE 82<sup>nd</sup> Avenue & SE Insley via bus line #72 and then to the southeast the max light rail station is at SE 94<sup>th</sup> & Foster Road as shown in the map below.



Given the proximity of transit service, the connected street pattern and developed pedestrian network and availability of on-street parking on surrounding streets, the Adjustment to reduce the required minimum vehicle parking space from one to zero spaces equally meets the purpose of the regulation and 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 site is in an R2 residential zone. The proposal is to divide the existing site into three lots and to retain the existing house on one of the lots. The existing house on the future lot, with the exception of the not providing an on-site parking space, would be able to comply with all of the R2 development standards. By not providing an on-site parking space provides for an additional on-street parking spaces and assists preserving two trees (#1 & #2) on-site. The site currently does not have any vehicle access from this frontage. Not providing an on-site parking space on the lot with the house does not significantly detract from the livability or appearance of the residential area. This criterion is met.

**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 this criterion is not applicable.

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

**Findings:** The site is not located within a scenic or historic overlay zone and no historic resources are on or adjacent to the site. Therefore, this criterion is not applicable.

**D. Any impacts resulting from the adjustments are mitigated to the extent practical;**

**Findings:** As noted in the findings for Criterion A and B, the requested adjustment to not provide on-site parking for the existing house on its future lot equally meets the purpose of the regulation. Not providing a parking space on-site will not adversely impact the livability or appearance of the residential area. Transit service is nearby therefore, no mitigation is required to be provided. PBOT has no objections to not providing on-site parking for the existing house on its new parcel. This criterion is met.

**E. 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 located within an environmental overlay (“c” or “p”) zone. Therefore, 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.

### **Future Development**

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

- Detached Houses- Section 33.120.270.D of the Zoning Code allows reduced side setbacks (3-feet from property lines) for detached houses in the multi-dwelling zones on lots that are at least 25 feet wide. This allowance only applies to the setbacks that are interior to the site. The setbacks around the perimeter of the land division site are that of the base zone. This proposal is eligible to use these provisions. **To take advantage of this allowance the reduced side setbacks must be shown on a supplemental survey for the land division at the time of final plat approval.**

**Existing development that will remain after the land division.** The existing development on the site will remain and be located on Parcel 1. The division of the property may not cause the structures to move out of conformance or further out of conformance to any development standard applicable in the R2 zone. Per 33.700.015, if a proposed land division will cause conforming development to move out of conformance with any regulation of the zoning code, and if the regulation may be adjusted, the land division request must include a request for an adjustment (Please see section on Other Technical Standards for Building Code standards.)

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

- Minimum Setbacks (33.120.220)- The existing house identified to remain on the site must meet the required Zoning Code setbacks from the proposed new lot lines. Alternatively, existing buildings must be set back from the new lot lines in conformance with an approved Adjustment or other Land Use Review decision that specifically approves alternative setbacks. The existing house will be 5-feet from the new property line. Therefore, the required setbacks are being met. To ensure this standard continues to be met at the final plat stage, the final plat must be accompanied by a supplemental survey showing the location of the existing building relative to the adjacent new lot lines.
- Required Off-Street Parking (33.266.110) – In this zone, one parking space per dwelling unit is required. Currently the existing house has a vehicle access and a parking space off the existing unimproved alley. As a result of this land division, the required parking space for the existing house will be located on a different lot.

In order to ensure that parking requirements continue to be met, a new parking space for the existing house must be constructed on Parcel 1 prior to final plat approval. Alternatively, to not provide an on-site parking space for the existing house on the new lot, Parcel 1, an approved Adjustment request would be required to this development standard. The applicant requested an Adjustment to not provide on-site parking for the existing house being retained on Parcel 1. The Adjustment request is addressed above under 33.805.040.

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

## OTHER TECHNICAL REQUIREMENTS

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

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

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

- Building Code (Life Safety Section of BDS -Exhibit E.7 & E.7.a): The City of Portland did not have a record of a building permit for construction of the rear deck which was covered, and then removed and new stairs constructed to the rear entry. Based on the information provided by the applicant (Exhibit E.7a). A building permit would not have been required for since it was less than 200 square feet (ORSC R302.1 & ORSC R105). These requirements are based on 2017 Oregon Residential Specialty Code (ORSC, henceforward referred to as the Building Code).
- The applicant must meet the requirements of the Fire Bureau in regard to addressing requirements; and fire apparatus access, including aerial access at the time of development. These requirements are based on the technical standards of Title 31 and Fire Bureau Policy B-1.
- Driveways & Curb Cuts (Section 17.28): Driveways must be located a minimum of 25-ft from a lot line abutting an intersection with a street or alley. If this separation requirement cannot be met, the applicant must apply for a Driveway Design Exception (DDE). Application forms for a DDE can be found at the following link:  
<https://www.portlandoregon.gov/transportation/77521>.

## CONCLUSIONS

The applicant has proposed a three-parcel partition, that will result in two detached house lots (Parcel 1 and Parcel 2) and a Duplex Lot, Parcel 3 as shown on the attached preliminary plan (Exhibit C.1). The existing house will be retained on Parcel 1. As discussed in this report, the relevant standards and approval criteria have been met, or can be met with conditions.

Portland Bureau of Transportation (PBOT) requires street and alley right-of-way dedication along this sites frontage to bring the site into compliance with City standards. A Public Works Alternative was approved to allow a slight variation for dedication and improvements along SE Insley street. The sidewalk corridor along both frontages will be reconstructed to meet City standards. If vehicle access is taken from the alley, then alley improvements will be required. With the dedication and sidewalk corridor improvements PBOT determined the existing streets and alley can support the additional units proposed.

The existing house on its new lot, Parcel 1, can meet all the development standards with conditions except for on-site parking. An Adjustment to reduce parking from one space to zero to not provide on-site parking for the existing house has been requested with this land division proposal. To not provide on-site parking for the existing house on Parcel 1 equally meets the purpose statement since the site is within an area where there is an existing connected street pattern, where there is available on-street parking, sidewalks exist and provide a pedestrian network to frequent transit service (#10, #14, #72, Max) available within the area. Not providing an on-site parking space for the existing house on Parcel 1 has minimal impact on all modes of transportation (bicycles, vehicles, pedestrians) and does not detract from the livability or appearance of the area. In addition, by not providing a parking spaces assists in preserving the two trees being retained on Parcel 1. PBOT was supportive of the adjustment request to not provide on-site parking for the existing house on Parcel 1.

Bureau of Environmental Services requires a private sanitary sewer easement over Parcel 1 to provide legal access to public sanitary sewer in SE 88<sup>th</sup> Avenue for future development on Parcel 3. BES requires the applicant must demonstrate the existing sanitary service for the house on Parcel 1 to be within its frontage or cap the existing service and provide a new service to the house.

Urban Forestry will require payment into the tree fund for loss of one street planting space along this street frontage due to the land division.

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

## ADMINISTRATIVE DECISION

**Approval** of an Adjustment to not provide on-site parking (33.266.110) for the existing house on Parcel 1 as shown on Exhibit C.1 & C.2.

**Approval** of a Preliminary Plan for a three (3)-parcel partition that will result in two- single dwelling lots (Parcel 1 and Parcel 2) and one duplex lot (Parcel 3) as illustrated with Exhibit C.1 & C.2, 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, BES, review and approval. That plan must portray how the conditions of approval listed below are met. In addition, the supplemental plan must show the surveyed location of the following:
- Any buildings or accessory structures on the site at the time of the final plat application;
  - Any driveways and off-street vehicle parking areas on the site at the time of the final plat application;
  - The reduced side setbacks allowed under 33.120.270.D for Parcel 2, if eligible;

- BES requirements for the location of the new and existing sanitary line for existing house on Parcel 1.
- Any other information specifically noted in the conditions listed below.

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

1. The applicant shall meet the street and alley dedication requirements of the City Engineer. The required right-of-way dedication must be shown on the final plat.
2. A private sanitary sewer easement, for the benefit of Parcel 3, shall be shown and labeled over the relevant portions of Parcel 1.
3. 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 & 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:**

**Streets**

1. The applicant shall meet the requirements of the City Engineer for right of way improvements along the site's street frontage. The applicant must obtain an approved Right Of-Way (public works/minor improvement) permit from the Portland Bureau of Transportation to install the required sidewalk corridor. The improvements along the frontage of Parcel 1, where the existing house will be retained, must be constructed prior to final plat approval. The improvements along the frontage of the undeveloped lots (Parcel 2 and 3) may be constructed with development on each lot as per the City Engineer's discretion. Prior to ground disturbing activity related to the right-of-way permit along Parcel 1, the applicant must obtain an approved tree protection inspection for the BDS Zoning Permit required by Condition C.2.
2. The applicant shall obtain a BDS Permit Zoning Permit to install tree protection per the Arborist Report (Exhibit A.11, A.23 & C.2) on Parcel 1 prior to construction of the sidewalk improvements (public frontage improvements) required along SE 88<sup>th</sup> Avenue. The zoning permit may not be finalized until after the sidewalk improvements have been completed and the applicant provides a follow-up arborist report on the health of the trees required be preserved after work is completed.

**Existing Development**

3. The applicant shall meet the requirements of the Site Development Section of the Bureau of Development Services for the decommissioning the septic system on the site.
4. The applicant must demonstrate to the satisfaction of BES that the sewer lateral serving the existing structure is located within the Parcel 1 frontage or cap the existing lateral for the future use of development on Parcel 2 and establish a new service connection from the existing structure to a public sewer. If modifications to the lateral are necessary, the applicant must obtain finalized plumbing and connection permits for this work prior to final plat approval.

**Required Legal Documents**

5. A Maintenance Agreement shall be executed for the private sanitary sewer described in Condition B.2 above. The agreement shall include provisions assigning maintenance responsibilities for the easement area and any shared facilities within that area,

consistent with the purpose of the easement, and all applicable City Code standards. The agreement must be reviewed by the Bureau of Environmental Services, City Attorney and the Bureau of Development Services, and approved as to form, prior to final plat approval.

6. The applicant shall execute an Acknowledgement of Tree Preservation Land Use Conditions that notes tree preservation requirements that apply to Parcel 1. A copy of the approved Tree Preservation Plan and Arborist report must be included as an Exhibit to the Acknowledgement. The acknowledgment shall be recorded with Multnomah County and referenced on 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 for the loss of one available street tree planting space. Payment must be made to the Bureau of Development Services, who administers the fund for the Parks Bureau.

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

1. Development on Parcel 1 and the construction of the sanitary sewer for Parcel 3 shall be in conformance with the Tree Preservation Plan (Exhibit C.2) and the applicant's arborist report (Exhibit A.11 & A.23). Specifically, trees numbered 1 and 2 are required to be preserved, with the root protection zones indicated on Exhibit C.2 Tree protection fencing is required along the root protection zone of each tree to be preserved. The fence must be 6-foot high chain link and be secured to the ground with 8-foot metal posts driven into the ground. Encroachment into the specified root protection zones may only occur if it meets the Tree Protection Specifications of 11.60.030.

2. The minimum and maximum density for the lots in this land division are as follows:

Lot	Minimum Density	Maximum Density
Parcel 1	1	1
Parcel 2	1	1
Parcel 3	2	2

3. The applicant shall meet the requirements of the City Engineer for right of way improvements along the frontage of Parcel 2 and 3. The applicant constructed improvements with development on the lot.
4. The applicant must meet the Fire Bureau requirements for addressing and aerial fire department access. Aerial access applies to buildings that exceed 30 feet in height from the fire access as measured to the bottom of the eave of the structure or the top of the parapet for a flat roof.
5. Prior to final inspection of the future development on Parcel 3, a final arborist report must be provided to ensure the sanitary sewer construction was done in conformance with the arborist report and ensure the viability of tree #2 after the work was completed.

Decision rendered by: SBeeckman on December 26, 2019  
 By authority of the Director of the Bureau of Development Services

**Decision mailed December 27, 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 March 7, 2019 and was determined to be complete on June 7, 2019.

*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 March 7, 2019.

*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 170 days (Exhibits G.5, G.6 & G.8). Unless further extended by the applicant, **the 120 days will expire on: March 23, 2020**

**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 January 10, 2020** 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 **January 10, 2020** 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 Adjustment to not provide on-site parking for the existing house on Parcel 1. 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: An Adjustment to on-site parking for Parcel 1. 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**

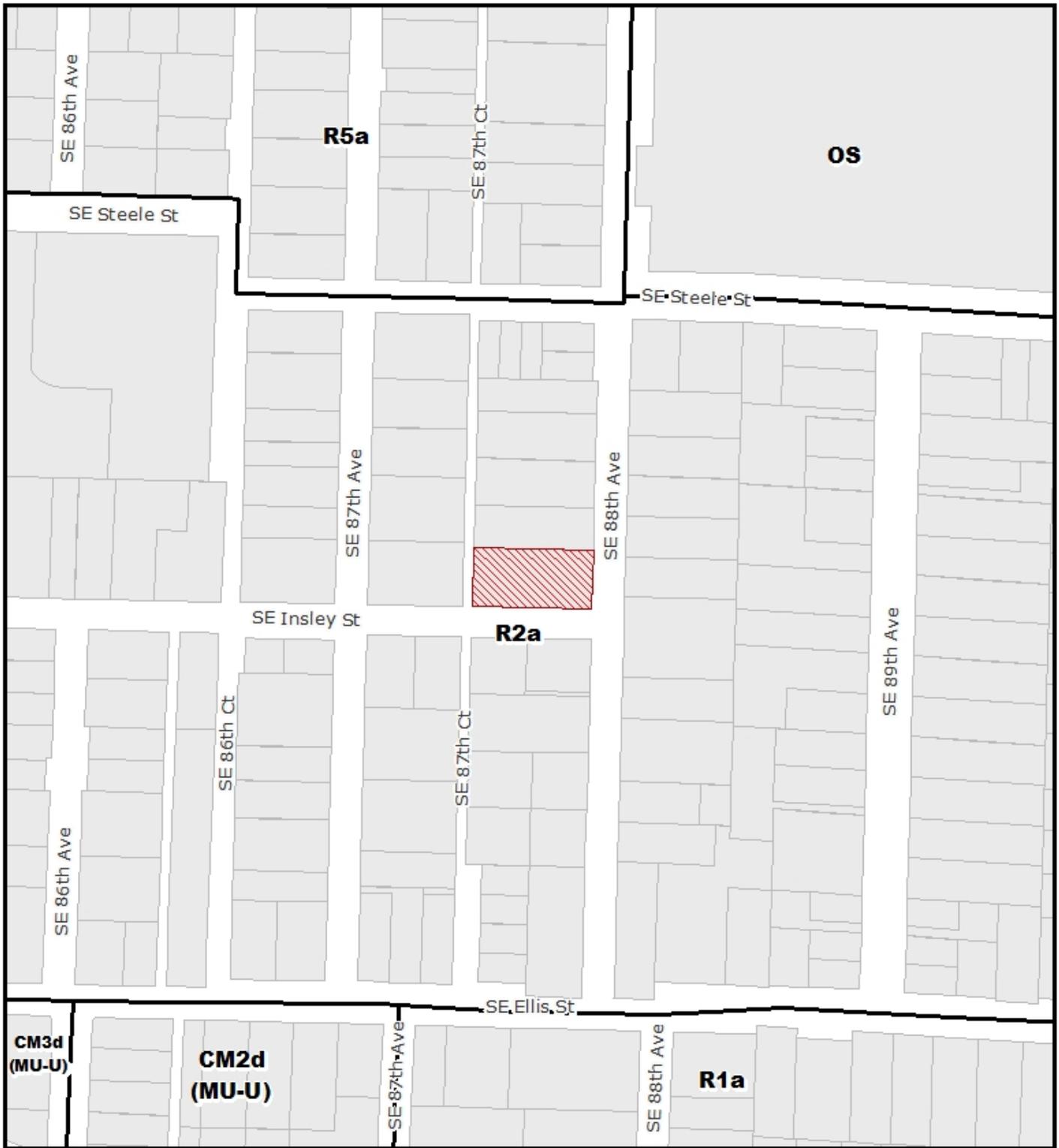
NOT ATTACHED UNLESS INDICATED

A. Applicant's Statement

1. Applicant's original four lot land division proposal, narrative and submittal
2. Neighborhood Contact
3. TriMet Bus schedule
4. Original Arborist Report dated January 16, 2019
5. Multnomah County Tax map
6. Deed
7. Original reduced copy of four lot preliminary plans

8. June 6, 2019 cover letter from applicant in response to incomplete letter
  9. Narrative for three lots and Adjustment Approval Criteria
  10. Narrative addressing Land Division Approval Criteria for three lots
  11. May 15, 2019 Arborist Report
  12. Deeds submitted June 2019
  13. Acknowledgement by Jason Rucker
  14. Operating Agreement for 2<sup>nd</sup> story Investments LLC
  15. Fire Hydrant Water Service Information
  16. Preliminary Site and Utility plans
  17. Preliminary plat survey showing trees and existing house
  18. November 12, 2019 Cover Letter
  19. Map from survey or outlining deed
  20. Land Use Application for the proposed three lots
  21. November Preliminary Plans and Utility and sidewalk improvement plans
  22. Preliminary Plat site plan with existing house
  23. Arborist report and tree preservation plan
  24. Plumbing Appeal decision
  25. Public Works Alternative Review Decision
  26. Exhibit Map showing rear covered deck
  27. Surveyor information
  28. Rear Covered Deck & elevation of covered area
  29. Proposed site and utility with road improvement plan with tree preservation
- B. Zoning Map (attached)
- C. Plans/Drawings:
1. Preliminary Site Plan (attached)
  2. Preliminary improvement, utility & tree preservation site plan
- D. Notification information:
1. Mailing list
  2. Mailed notice
- E. Agency Responses:
1. Bureau of Environmental Services (July 15, 2019)
    - a. November 21, 2019 BES memo
  2. Bureau of Transportation Engineering and Development Review (July 18, 2019)
    - a. November 25, 2019 memo from PBOT
    - b. December 16, 2019 memo from PBOT
  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
    - a. November 25, 2019 memo from Life Safety
- F. Correspondence: None
- G. Other:
1. Original LU Application for four lots
    - a. New LU application for
  2. Expedited Land Division Acknowledgement
  3. Incomplete letter
  4. July 15, 2019 letter to applicant with outstanding issues
  5. Request for Extension of 120-day review dated July 15, 2019
  6. Request for Extension of 120-day review dated September 23, 2019
  7. November 7, 2019 e-mail to applicant with outstanding issues
  8. Request for Extension of 120-day review dated November 26, 2019
  9. E-mail communication with applicant from March 2019-November 2019

**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 19-129717 LDP AD
1/4 Section	3539
Scale	1 inch = 163 feet
State ID	1S2E16BD 6200
Exhibit	B Dec 26, 2019

