



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

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**Date:** January 20, 2022  
**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 20-200644 LDP**

#### **GENERAL INFORMATION**

**Applicant:** Zac Horton  
Faster Permits  
2000 SW 1<sup>st</sup> Avenue, #420  
Portland, OR 97201  
(503) 438-9654 / [zac@fasterpermits.com](mailto:zac@fasterpermits.com)

**Owner/Agent:** Adam Tyler  
Volta Llc (Fka Oeb Investors, LLC)  
1615 SE 3<sup>rd</sup> Avenue, Suite 100  
Portland, OR 97214

**Site Address:** 1709 SE 3<sup>rd</sup> Avenue

**Legal Description:** TL 3700 0.21 ACRES, SECTION 03 1S 1E; TL 3800 1.07 ACRES, SECTION 03 1S 1E

**Tax Account No.:** R991030020, R991030260

**State ID No.:** 1S1E03DA 03700, 1S1E03DA 03800

**Quarter Section:** 3230

**Neighborhood:** Hosford-Abernethy, contact Michael Wade at [wade.michael@comcast.net](mailto:wade.michael@comcast.net)

**Business District:** Central Eastside Industrial Council, contact [ceic@ceic.cc](mailto:ceic@ceic.cc).

**District Coalition:** Southeast Uplift, contact Matchu Williams at [matchu@seuplift.org](mailto:matchu@seuplift.org)

**Plan District:** Central City - Central Eastside

**Zoning:** General Industrial 1 (IG1)

**Case Type:** Land Division Partition (LDP)

**Procedure:** Type Ix, an administrative decision with appeal to the Oregon Land Use Board of Appeals (LUBA).

**Proposal:**

The applicant is proposing to partition the subject property into two parcels of approximately 23,876 (Parcel 1) and 26,846 (Parcel 2) square feet in size. Existing development consists of a building that will be retained on Parcel 1 and a surface parking lot that will be retained on Parcel 2. A 24-foot right-of-way dedication was recently executed along the site's SE Market Street frontage to accommodate future street improvements, which will eventually require removal of a portion of the existing building. Various easements are proposed on both parcels to accommodate access and utilities.

This partition is reviewed through a Type Ix land use review because: (1) the site is in a commercial, employment, or industrial 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 33.662.110).

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

**Relevant Approval Criteria:** In order to be approved, this proposal must comply with the approval criteria of *Title 33*. The relevant criteria are found in **Section 33.662.120, Approval Criteria for Land Divisions in Commercial, Employment, and Industrial zones.**

**FACTS**

**Site and Vicinity:** The subject site is in the heart of the Central Eastside industrial area just two blocks south of the Hawthorne Bridge and three blocks east of the Willamette River. OMSI is three blocks to the southwest. There is an approximately 22,100 square foot industrial/office building on the north side of the site and a surface parking lot on the south portion. The site slopes downward from east to west. The surrounding vicinity is developed with a mix of industrial and office/commercial uses.

**Infrastructure:**

- **Streets** – The site has approximately 215-feet of frontage on SE Market Street and 235-feet of frontage on SE 3<sup>rd</sup> Avenue. There is one curb cut on the site's SE 3<sup>rd</sup> Avenue frontage that accesses the surface parking lot. Transit service is available two blocks east of the site on SE MLK Boulevard and SE Grande Avenue via Tri-Met Bus #30 and the Portland Streetcar.
- **Water Service** – There is an existing 14" cast iron water main in SE Market Street and the 8" cast Iron main in SE 3<sup>rd</sup> Avenue.
- **Sanitary Service** - There is an 8-inch combined sewer of unspecified material located on the east side of SE 3<sup>rd</sup> Avenue (BES as-built #2-0828). The Eastside Combined Sewer Overflow tunnel is located approximately 100 feet below the center of SE 3<sup>rd</sup> Avenue (refer to BES job #E05516). There is no sanitary/combined sewer in SE Market Street within the frontage of the site.
- **Stormwater Disposal** – There is a Public 12-inch CSP storm-only main in SE 2<sup>nd</sup> Avenue (BES as-built # unknown).

**Zoning:** The site is in the General Industrial 1 (IG1) zone. Industrial zones are reserved for industrial uses and for areas that have a mix of uses with a strong industrial orientation. The zones reflect the diversity of industrial and business areas in the City. The IG1 zone is one of the three zones that implement the Industrial Sanctuary map designation of the Comprehensive Plan. The zone provides areas where most industrial uses may locate, while

other uses are restricted to prevent potential conflicts and to preserve land for industry. IG1 zoned areas generally have smaller lots and a grid block pattern. Development standards are intended to allow for flexibility of development while maintaining compatibility within the City's various neighborhoods.

The Central City plan district implements the Central City 2035 Plan. The regulations address the unique role the Central City plays as the region's premier center for jobs, health and human services, tourism, entertainment and urban living. The regulations encourage a high-density urban area with a broad mix of commercial, residential, industrial and institutional uses, and foster transit-supportive development, pedestrian and bicycle-friendly streets, a vibrant public realm and a healthy urban river. This site is located within the Central Eastside Subdistrict.

**Land Use History:** City records indicate the following prior land use reviews for this site:

- **LU 20-122399 AD:** Approval of an Adjustment to reduce the minimum drive aisle width from 20 feet to 18 feet – 6 inches for an approximately 40-foot stretch of the new structured parking area (Section 33.266.130.F.2, Table 266-4).

**Agency Review:** Several Bureaus have responded to this proposal and relevant comments are addressed under the applicable approval criteria. Exhibit's "E" contain the complete responses.

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on **February 26, 2021**. No written responses have been received from the Neighborhood Association or notified property owners regarding the proposal.

## ZONING CODE APPROVAL CRITERIA

**APPROVAL CRITERIA FOR LAND DIVISIONS IN COMMERCIAL, EMPLOYMENT, OR INDUSTRIAL ZONES 33.662.120** *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:
B	33.630 – Tree Preservation	The site is within the Central City Plan District, therefore this chapter does not apply
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.
G	33.636 - Tracts and Easements	No tracts or easements have been proposed or will be required.
H	33.639 - Solar Access	The proposed development is for something other than single-dwelling detached homes.
I	33.640 - Streams, Springs, and Seeps	No streams, springs, or seeps are evident on the site outside of environmental zones.

K	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 33.613 through 33.615 must be met.**

**Findings:** Chapter 33. 615 contains the lot standards applicable in the industrial zones. The required and proposed lot dimensions are shown in the following table:

	<b>Min. Lot Area (square feet)</b>	<b>Min. Dimensions (feet)</b>	<b>Min. Front Lot Line (feet)</b>
<b>IG1 Zone</b>	10,000	75 x 75	35
Parcel 1	23,876	111 x 215	111
Parcel 2	26,846	124 x 215	124

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

**F. 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, tree preservation requirements do not apply as the site is in the Central City Plan District.

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

**G. 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 Access Easement is proposed across the relevant portions of Parcel 2, for a pedestrian access way serving Parcel 1.
- A Private Storm Sewer Easement is required across the relevant portions of Parcel 1, for a stormwater facility that serves Parcel 2.

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

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

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

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

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

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

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

*The applicant has provided a Transportation Impact Analysis (TIA) prepared by Kittelson & Associated dated Sept 1, 2020. PBOT staff as reviewed the TIA and concurs with the traffic engineer that the transportation system is capable of supporting the proposed development in addition to the existing uses in the area.*

**Safety**

*Based on a review of the crash data, it did not reveal any consistent trends amongst the crashes recorded, either on approach, time of day or condition of road. As such, we conclude that the land division meets the safety-related criterion*

**Street Capacity and Level of Service**

*The land division could result in a reduction in the number of daily and weekday AM peak hour trips generated by the property along with the potential for a single additional PM peak hour trip. As such and in accordance with Portland's Title 17 TRN 10.27, the potential redevelopment scenarios associated with the land division are not anticipated to increase the trips at nearby intersections above the level that could occur under the existing parcel redevelopment. As such, there are no capacity-related impacts, and this criterion is met.*

**Connectivity**

*The site is located on a site with a small block layout consistent with the IG1 zone. No changes to the city street connectivity is proposed as part of the land division. As such, this criterion is met.*

**Availability of Transit Bicycle and Pedestrian Networks**

*Today, sidewalks are generally provided on the nearby streets whereas cyclists generally share the road with motorists, consistent with the standards included in the Central Eastside Street Plan (published by PBOT in 2009). The nearest transit service is provided via the Portland Streetcar, with stops on NE MLK and NE Grand Avenue near the Mill Street intersections, and via bus routes 2, 6, 10 and 14 with stops to the north along SE Hawthorne Boulevard. The land division is not anticipated to measurably change the trip generation of the site and accordingly, we conclude that it will not result in a change in the number of people walking, cycling or taking transit associated with the parcel(s). As such, we conclude these criteria are met.*

**On-Street Parking Impacts**

*For the purposes of assessing parking demand, the TIA calculated the 85th percentile parking demand associated with the two redevelopment scenarios based on rates included in the Parking Generation Manual (5th Edition, Institute of Transportation Engineers). A comparison of the calculated demand is shown in Table 3 in the TIA. The office parking rates are reflective of the "dense, mixed use environment" given the location of the parcel within the Central City whereas the urban/suburban rates for retail were used.*

*In addition, at the request of PBOT, we calculated the minimum vehicular parking requirements, as established in the Table 266-2 of Chapter 33.266 in the Zoning Code. As shown in the table, for IG1 zoning, both the minimum office and minimum retail parking requirements are 1 space per 500 square feet. Table 4 in the TIA reflects the minimum parking requirement under the potential redevelopment scenarios with and without the land division. As shown in Tables 3 and 4 of the TIA, the potential redevelopment under the land division is anticipated to reduce the parking demand and the City's minimum parking requirement. As such, this criterion is met.*

**Access Restrictions**

*No access restrictions are proposed as part of the land division. As such, this criterion is met.*

**Neighborhood Impacts**

*The site will be developed subject to the development standards and allowed uses of the existing IG1 base zone. Impacts to the neighborhood are anticipated to be minimal.*

**Impacts on Pedestrian, Bicycle and Transit Circulation**

*As noted above, the potential redevelopment scenarios associated with the land division are not anticipated to increase the vehicular, transit, pedestrian activities. As such, no impacts are anticipated, and this criterion is met.*

PBOT has reviewed and concurs with the information supplied and the methodology, assumptions and conclusions made by the applicant's traffic consultant. No mitigation is necessary for the transportation system to be capable of supporting the proposed

development in addition to the existing uses in the area. Standard sidewalk corridor improvements will be required to serve the proposed development (see criterion L. 33.654). These criteria are met.

**K. Services and utilities. The regulations and criteria of Chapters 33.651 through 33.654, which address services and utilities, must be met.**

**Findings:** The regulations of Chapter 33.641 allow the traffic impacts caused by dividing and then developing land to be identified, evaluated, and mitigated for if necessary. Chapters 33.651 through 33.654 address water service standards, sanitary sewer disposal standards, stormwater management, utilities and rights of way. The criteria and standards are met as shown in the following table:

<p><b>33.651 Water Service standard – See Exhibit E.3</b></p>
<p>The Water Bureau has indicated that service is available from the 14” cast iron water main in SE Market Street and the 8” cast Iron main in SE 3<sup>rd</sup> Avenue, as noted on page 2 of this report. The water service standards of 33.651 have been verified. Therefore, this criterion is met.</p>
<p><b>33.652 Sanitary Sewer Disposal Service standards – See Exhibit E.1</b></p>
<p>The Bureau of Environmental Services has indicated there is an 8-inch combined sewer of unspecified material located on the east side of SE 3<sup>rd</sup> Avenue (BES as-built #2-0828), the Eastside Combined Sewer Overflow tunnel is located approximately 100 feet below the center of SE 3<sup>rd</sup> Avenue (refer to BES job #E05516), and there is no sanitary/combined sewer in SE Market Street within the frontage of the site. BES has indicted the following pertaining to sanitary sewer service availability:</p> <ul style="list-style-type: none"> <li>• <i>Parcel 1: According to the submitted utility plan, the existing structure on proposed Parcel 1 is currently connected to the combined sewer in SE 3rd Avenue via two laterals located within the frontage of proposed Parcel 1. Note that these existing connections appear to be partially nonconforming due to their unique configuration within the right-of-way (private laterals within the right-of-way). However, the proposed land division does not impact these connections, therefore changes are not required prior to preliminary land division approval. Note that future plumbing work on this parcel may trigger a requirement to bring the connections up to current standards. For additional information, the applicant should contact the <a href="mailto:Nonconforming@portlandoregon.gov">BES Nonconforming Sewer Program (Nonconforming@portlandoregon.gov</a> or 503-823-7869).</i></li> <li>• <i>Parcel 2: In order for BES to support the proposed land division application, the applicant must demonstrate a feasible and approvable route of sanitary service for Parcel 2. Following the previous BES response, the applicant determined that the existing laterals located within the frontage of Parcel 2 were unusable. Due to multiple large water mains located between Parcel 2 and the combined main in SE 3rd Avenue, new connections will be challenging and must be permitted through the Public Works Permits (PWP) process. Under PWP EP662, the applicant has received Concept Development (30%) Plan approval, which adequately demonstrates feasibility of constructing the proposed lateral at the time of future development. No additional requirements related to this sanitary lateral apply at the time of final plat.</i></li> </ul>
<p>The sanitary sewer service standards of 33.652 have been verified. At the time of development of Parcel 2, lateral connections to the combined sewer in SE 3<sup>rd</sup> Avenue must be built under Public Works Permit(s) or other permit(s) allowed by BES. Subject to this condition, this criterion can be met.</p>
<p><b>33.653.020 &amp; .030 Stormwater Management criteria and standards – See Exhibits E.1</b></p>

No stormwater tract is proposed or required. Therefore, criterion A is not applicable. The following stormwater management methods are proposed and/or required:

- **Public Street Improvements:** PBOT requires the construction of public frontage improvements, which trigger public stormwater management improvements per the standards of the SWMM and the Sewer and Drainage Facilities Design Manual. Per Public Works Permit (PWP) # EP601/TH1036, stormwater from the public right-of-way will be managed with installation of vegetated storm facilities in SE Market Street. BES Development Engineering approved the Concept Development plans (i.e. 30% design) for the right-of-way stormwater improvements on 7/22/21; therefore, BES finds that public stormwater facilities can be constructed as shown on the applicant's Preliminary Site Utility Plan.
- **Parcel 1:** Per the submitted materials, stormwater from the existing building on Parcel 1 currently discharges to the combined sewer in SE 3<sup>rd</sup> Avenue via the combined sewer laterals described above.
- **Parcel 2: Existing Development:** Stormwater from the parking lot on Parcel 2 currently discharges to the storm-only main in SE Market Street via a connection that crosses proposed Parcel 1 and the neighboring property to the west.
  - (1) *Existing Storm Lateral to SE Market Street:* Currently, the existing storm lateral to the main in SE Market Street (which serves Parcel 2) crosses the corner of the neighboring property to the west prior to entering the right-of-way. With the required dedication widths in SE Market Street, the portion of the lateral located on the neighboring property would become BES-owned. Therefore, BES gave the applicant the option of scoping the existing lateral and obtaining a public easement from the neighbor or relocating the lateral to be located entirely within the right-of-way. The applicant has elected to relocate the existing lateral, which is under review through the associated Public Works Permit (EP601). BES approved the Concept Development Plans (30%) on 7/22/21, therefore BES can confirm feasibility of the proposal. Prior to final plat approval, the applicant must submit approved engineered plans, provide a financial guarantee, pay all outstanding fees, and provide a signed permit document.
  - (2) *Private Storm Sewer Easement:* In order for Parcel 2 to maintain access to the public storm sewer in SE Market Street, the applicant must provide legal access across Parcel 1; per BDS, access should be provided through a private sewer easement or covenant for future easement. BES will review the easement to ensure that it covers an approvable route of stormwater discharge for the included lots. Per the BDS [Private Sewer Easements Code Guide](#), private sewer easements should be a minimum of 10 feet in width unless specific criteria are met allowing a reduction to 5 feet, as determined by BDS. The applicant is encouraged to contact BDS Plumbing directly with questions related to private easements and [plumbing code appeals](#): (503)-823-7388 for residential projects, and (503) 823-7302 for commercial projects. Prior to final plat approval, the proposed private storm easement must be shown on the submitted plat.

*Proposed Development:* Staff reviewed the submitted Performance Approach stormwater report from Humber Design Group, Inc.(dated 1/22/21) and Report of Geotechnical Engineering Services (including infiltration testing) from GeoDesign, Inc. (dated 9/16/19). The submitted geotechnical report includes infiltration test results of 45 inches per hour on this site. The conceptual stormwater management plan proposes for future development on both lots to manage stormwater runoff using a minimum 60% ecoroof and planters to meet pollution reduction and flow control requirements prior to discharge to the storm-only sewer in SE Market. This conceptual stormwater management plan adequately demonstrates compliance with the 2020 SWMM and is acceptable for the purpose of this land use review. Sizing and



other design details of proposed stormwater management systems will be reviewed in additional detail with future land use or permit submittals. If less than 60% ecoroof is proposed at the time of future land use or permit review, onsite infiltration of stormwater will be reassessed by BES. Note that maximum allowed building coverage is not an adequate reason to exempt onsite infiltration of stormwater.

The Bureau of Environmental Services (BES) has indicated conceptual approval of the existing and proposed method of stormwater management. Subject to the condition of approval noted above, this criterion can be met.

### **33.654.110.B.3 - Pedestrian connections in the I zones**

Pedestrian connections to all Regional Transitways, Major Transit Priority Streets, Transit Access Streets, Community Transit Streets, Off-Street Paths, and recreational trails within 1,300 feet of the site area required where practicable and appropriate. The Development Review Section of the Portland Bureau of Transportation (PBOT) has provided the following analysis (Exhibit E.2):

*The site is located on a site with a small block layout consistent with the IG1 zone. No changes to the city street connectivity is proposed as part of the land division. As such, this criterion is met.*

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**

SE Market Street is improved with just a paved roadway surface adjacent to the site's frontage. There are no curbs, planter strips, or sidewalks. 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. In this case, PBOT has determined that curb and sidewalk improvements must be made in order to ensure that safe pedestrian travel is possible within the proposed development. To accommodate these improvements, as well as an associated stormwater facility discussed later in this report, additional right-of-way has been dedicated along the frontage of the site (2021-053673). With those improvements, the existing and proposed development can be safely served without having any significant impact on the level of service provided. This criterion is met, with the condition that curb and sidewalk improvements are made.

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

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

## **DEVELOPMENT STANDARDS**

Development standards that are not relevant to the land division review, have not been addressed in the review. Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 11 can be met, and those of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

## 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.

- The applicant must meet the requirements of Urban Forestry for the loss of one required street tree planting space, prior to final plat approval. This requirement is based on the standards of Title 20 (Exhibit E.6).
- The applicant must meet the requirements of the Life Safety Plans Examiner regarding building code fire separation for the existing building to be retained on Parcel 1 in relation to the new property line, prior to final plat approval (Exhibit E.7).

## CONCLUSIONS

The applicant has proposed a 2-parcel partition, as shown on the attached preliminary plans (Exhibit C.1-5). As discussed in this report, the relevant standards and approval criteria have been met, or can be met with conditions. The primary issues identified with this proposal are easements, services/utilities, and other technical requirements. With conditions of approval that address these requirements this proposal can be approved.

## ADMINISTRATIVE DECISION

**Approval** of a Preliminary Plan for a 2-parcel partition, that will result in one parcel that will retain the existing building (Parcel 1) and one parcel that will retain the existing surface parking lot (Parcel 2), as illustrated with Exhibits C.1-5, subject to the following conditions:

### A. The Final Plat must show the following:

1. A private storm sewer easement, for the benefit of Parcel 2, shall be shown and labeled over the relevant portions of Parcel 1.
2. A private access easement, for the benefit of Parcel 1, shall be shown and labeled over the relevant portions of Parcel 2 for a private pedestrian and bicycle access way for ingress and egress.

3. If required, a No Build Easement must be shown over the relevant portions of Parcel 2 to the satisfaction of the Life Safety Section of BDS.
4. 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 B.4 and B.5, below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: "A Declaration of Maintenance Agreement for (name of feature) has been recorded as document no. \_\_\_\_\_, Multnomah County Deed Records."

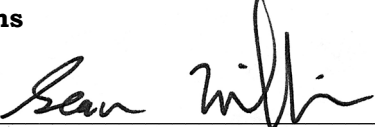
**B. The following must occur prior to Final Plat approval:**

1. The applicant shall meet the requirements of the City Engineer for right of way improvements along the site's SE Market Street frontage. The applicant shall submit an application for a Public Works Permit and provide plans and financial assurances to the satisfaction of the Portland Bureau of Transportation and the Bureau of Environmental Services for required street frontage improvements.
2. The applicant must complete the following related to the construction of public stormwater infrastructure within the site's frontages, to the satisfaction of BES: through the Public Works Permit submit approved engineered plans, provide a financial guarantee, pay all outstanding fees, and provide a signed permit document.
3. The applicant shall meet the requirements of the Life Safety section of BDS regarding building code fire separation for the existing building to be retained on Parcel 1. The applicant must either execute a covenant not to sell properties separately, obtain approval of a Building Code Appeal with "No Build Easement", or obtain final inspection approval of a building permit to modify the existing structure to meet code requirements.
4. A Maintenance Agreement shall be executed for the Private Storm Sewer Easement described in Condition A.1 above. The agreement shall include provisions assigning maintenance responsibilities for the easement area and any shared facilities within that area, consistent with the purpose of the easement, and all applicable City Code standards. The agreement must be reviewed by the City Attorney and the Bureau of Development Services, and approved as to form, prior to final plat approval.
5. A Maintenance Agreement shall be executed for the Private Access Easement described in Condition A.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 City Attorney and the Bureau of Development Services, and approved as to form, prior to final plat approval.
6. 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 2.5 inches of trees. Payment must be made to the Bureau of Development Services, who administers the fund for the Parks Bureau.

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

1. At the time of development of Parcel 2, lateral connections to the combined sewer in SE 3<sup>rd</sup> Avenue must be built under Public Works Permit(s) or other permit(s) allowed by BES.

**Staff Planner: Sean Williams**

**Decision rendered by:**  **on January 18, 2022**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: January 20, 2022**

**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 October 7, 2020, and was determined to be complete on January 27, 2021.

*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 October 7, 2020.

*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, as stated with Exhibit A.9. Unless further extended by the applicant, **the 120 days will expire on: January 27, 2022.**

**Some of the information contained in this report was provided by the applicant.**

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

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

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

**This decision, and any conditions associated with it, is final.** It may be appealed to the Oregon Land Use Board of Appeals (LUBA), within 21 days of the date the decision is mailed, as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that a petitioner at LUBA must have submitted written testimony during the comment period for this land use review. Contact LUBA at 775 Summer St NE Suite 330, Salem, OR 97301-1283 or phone 1-503-373-1265 for further information.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-

823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at [www.portlandonline.com](http://www.portlandonline.com).

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

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  - 1. Approval Criteria
  - 2. Incomplete Letter Memo (1/25/21)
  - 3. Response to Bureau Reviews (12/10/21)
  - 4. Stormwater Report
  - 5. Traffic Study
  - 6. Land Use Application & Expedited Land Division Form
  - 7. Title Report
  - 8. LLC Documents
  - 9. Request for Extension of 120-Day Review Period
  - 10. Lot of Record Deed
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Boundary & Topographic Survey
  - 2. Preliminary Partition Plat (attached)
  - 3. Preliminary Grading Plan
  - 4. Proposed Improvement Plan
  - 5. Utility Plan (attached)
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services w/ Addendum
  - 2. Bureau of Transportation Engineering and Development Review
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Site Development Review Section of BDS
  - 6. Bureau of Parks, Forestry Division
  - 7. Life Safety Plans Examiner
- F. Correspondence: NONE
- G. Other:
  - 1. Original LU Application Submittal
  - 2. Incomplete Letter

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