



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

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**Date:** April 3, 2023  
**To:** Interested Person  
**From:** Kate Green, Land Use Services  
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**NOTICE OF A TYPE IIx 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 22-151314 LDS**

**GENERAL INFORMATION**

**Applicant:** Debbie Cleek / The Bookin Group  
1120 SW Taylor Street, Suite 555 / Portland OR 97205  
[cleek@bookingroup.com](mailto:cleek@bookingroup.com) / 503-241-2423

**Owners Representative:** Frederick Shervey / Frederick G Shervey Construction Inc  
PO Box 66320 / Portland OR 97290

**Property Owner:** Floorcovering Supermart Inc  
PO Box 66320 / Portland OR 97290

**Surveyor:** Thomas Beinhauer / Marx And Associates  
18615 E Burnside Street / Portland OR 97233

**Site Address:** 6022 SE 136th Avenue  
**Legal Description:** S 92.5' OF LOT 1, LAMARGENT PK NO 2  
**Tax Account No.:** R466200380  
**State ID No.:** 1S2E14DC 00600  
**Quarter Section:** 3644

**Neighborhood:** Pleasant Valley, contact Steve Montgomery at [foxtrotlove@hotmail.com](mailto:foxtrotlove@hotmail.com)  
& Powellhurst-Gilbert, contact at [pgnaboard@gmail.com](mailto:pgnaboard@gmail.com)

**Business District:** Midway, contact [info@midwaybusiness.org](mailto:info@midwaybusiness.org)  
**District Coalition:** East Portland Community Office, contact at [info@eastportland.org](mailto:info@eastportland.org)

**Zoning:** Residential 5000 (R5)  
**Plan District:** Johnson Creek Basin

**Case Type:** Land Division-Subdivision (LDS)  
**Procedure:** Type IIx, an administrative decision with appeal to the Hearings Officer.

**Proposal:** The applicant proposes a **Land Division-Subdivision** to divide an approximately 39,956 square foot site into 6 lots with access via a private street tract. Within the private street tract, easements are proposed to provide new water, sanitary and storm facilities for the lots.

Five trees are proposed for removal to accommodate the private street tract and utilities and future development on the lots.

An existing house and detached garage are proposed to remain on Lot 1 with access from an existing driveway via SE 136<sup>th</sup> Avenue. To show feasibility of providing services and other criteria, the applicant has provided a conceptual development plan showing single dwelling houses on each of the other lots (Lots 2-6) with on-site parking accessed via the proposed private street. Please note that the proposed lots qualify for additional density under the Residential Infill Options (33.110.265) and on-site parking is not required (33.266.110).

This subdivision proposal is reviewed through a Type IIx procedure because: (1) the site is in a residential zone; (2) four to ten lots are proposed (see 33.660.110).

For purposes of State Law, this land division is considered a subdivision. To subdivide land is to divide an area or tract of land into four or more lots within a calendar year, according to ORS 92.010. ORS 92.010 defines “lot” as a single unit of land created by a subdivision of land. The applicant’s proposal is to create 7 units of land (6 lots and 1 tract). Therefore, this land division is considered a subdivision.

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

## FACTS

**Site and Vicinity:** The subject site is approximately 39,956 square feet in area and is relatively flat. An existing house and detached garage are situated on the west side of the site, and front onto SE 136<sup>th</sup> Avenue. The balance of the site is vacant and several large diameter trees are situated near the center of the site. Neighboring development consists of detached houses and multi-dwelling structures, a religious institution, and a residential care facility. Gilbert Park Elementary School and Park are located several blocks to the west; the Springwater trail corridor is located several blocks to the north; and a number of other open space areas (including Powell Butte, Buttes Natural Area, Leach Botanical Garden) and Johnson Creek are located to east and south of the subject property.

The surrounding street grid includes some major north-south and east-west corridors that are spaced at approximately ½ mile or greater intervals, but it is otherwise generally fragmented and includes limited through street connections.

### Infrastructure:

- **Streets:** The site has approximately 92 feet of frontage on SE 136<sup>th</sup> Avenue. There are two driveways entering the site that serve the existing house. The site is not in a pedestrian district. At this location, SE 136<sup>th</sup> Avenue is classified in the Transportation System Plan as a Neighborhood Collector, Transit Access Street, City Walkway, City Bikeway and Local Service truck Street. The design classification is Community Corridor. SE 136<sup>th</sup> Avenue is developed with a paved roadway, bike lanes, stormwater planters, curb and sidewalks, and street trees.

Tri-Met provides transit service on SE 136<sup>th</sup> Avenue via Bus Line 10.

- **Water Service** – There is an existing 16-inch water main in SE 136<sup>th</sup> Avenue. The existing house is served by a 5/8-inch metered service from this main.
- **Fire Hydrants:** City maps show there are 2 fire hydrants located on SE 136<sup>th</sup> Avenue within 200 feet of the subject site.
- **Sanitary Service** - There is an existing public 8-inch PVC sanitary sewer in SE 136<sup>th</sup> Ave (BES as-built # 4987).

- **Stormwater Disposal:** According to available GIS data, the following stormwater infrastructure is located in the vicinity of the project site:
  - There are no public storm-only sewers available to this property.
  - Public underground injection control (UIC) systems (“sumps”) infiltrate stormwater runoff from the public right-of-way in the vicinity of the site. Stormwater from private development cannot be discharged to public UICs.

**Zoning:** The site is situated in the Residential 5000 (R5) zone and within the Johnson Creek Basin Plan District.

The R5 zone is intended to preserve land for housing and to provide housing opportunities for individual households.

The Johnson Creek Basin Plan District aims to provide for the safe, orderly, and efficient development of lands which are subject to a number of physical constraints, including significant natural resources, steep and hazardous slopes, flood plains, wetlands, and the lack of streets, sewers, and water services.

**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 **September 19, 2022**. No written responses have been received from the Neighborhood Association or notified property owners in response to the proposal.

## ZONING CODE APPROVAL CRITERIA

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

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

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

Criterion	Code Chapter/Section and Topic	Findings: Not applicable because:
C	33.631 - Flood Hazard Area	The site is not within the flood hazard area.
D	33.632 - Potential Landslide Hazard Area	The site is not within the potential landslide hazard area.
E	33.633 - Phased Land Division or Staged Final Plat	A phased land division or staged final plat has not been proposed.
F	33.634 - Recreation Area	The proposed density is less than 40 units.
J	33.640 - Streams, Springs, Seeps and Wetlands	No streams, springs, seeps or wetlands are evident on the site.
L	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.D - Common Greens	No common greens are proposed or required.
	33.654.120.E - Pedestrian Connections	No pedestrian connections are 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	No public dead-end streets or pedestrian connections

	dead-end streets and pedestrian connections	exist that must be extended onto the site.
	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.

**Applicable Approval Criteria are:**

**A. Lots. The standards and approval criteria of Chapters 33.605 through 33.612 must be met.**

**Findings:** Chapter 33.610 contains the density and lot dimension requirements applicable in the R5 zone. Based on the applicant's survey, the site area is 39,956 square feet. A new street is proposed; therefore, the maximum density is based on 85 percent of the site area and minimum density is based 68 percent of the site area. As such, the site has a maximum density of 6.79, which rounds up to 7 lots and a minimum required density of 5.43, which rounds down to 5 lots. The applicant is proposing 6 lots. The density standards are therefore met.

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

Zone	Min. Lot Area (square feet)	Max. Lot Area (square feet)	Min. Lot Width* (feet)	Min. Depth (feet)	Min. Front Lot Line (feet)
<b>R5</b>	3,000	8,500	36	50	30
Lot 1 (existing house)	6,185		61	110	61
Lot 2	4,120		65	61	85
Lot 3	3,650		83	61	83
Lot 4	3,784		133	64	133
Lot 5	3,389		102	63	102
Lot 6	3,271		54	61	54

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

Late in the review process, the applicant submitted a proposed change to the configuration of all the lots, in particular Lot 1 and the private right-of-way tract (Exhibit A7b), which is further discussed in the findings for the water services and the private right-of-way design. Fundamentally, the Water Bureau, BDS Plumbing, BDS Site Development, and BDS Land Use need to review the proposed water line configuration, to verify if the proposed lot and tract layout allocates sufficient space to install and maintain the proposed water services, in accordance with city regulations. The applicant has not offered additional time for a full review of those changes, so a condition will be applied, as follows: Minor variations to Lot 1 and Tract A are allowable, above the limits in 33.663.200, subject to Water Bureau, BDS Plumbing, BDS Site Development, and BDS Land Use approval of the water service locations within the private street tract, prior to final plat approval. With such a condition, the Lot 1 property lines will generally be straight, except along the boundary of the private street tract.

Similarly, the front lot lines for Lots 2-5 are irregular where they abut the private right-of-way (Tract A), due to the configuration of the proposed parking areas and fire department access, but the side lot lines are perpendicular to that private street. All the lot lines for Lot 6 are straight and the side lot lines are perpendicular to the private street.

Overall, the findings above show that the applicable density and lot dimension standards are met. Accordingly, 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.

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.

In order to identify which trees are subject to these requirements, the applicant provided a tree table and tree tag map (Exhibits A1g and A1h) that shows the location and size of trees on and adjacent to the site. The applicant also provided an arborist report (Exhibit A1f) 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, there are 10 trees on the site. The arborist report indicates nine of these trees (Trees 1-5 and 7-10) are subject to the preservation regulations and provide a total of 200 inches of tree diameter. The applicant proposes to retain and protect 4 of these trees, including:

Tree 1: Saucer Magnolia (*Magnolia x soulangeana*) 14-inches  
Tree 4: Coast Redwood (*Sequoia sempervirens*) 30 inches  
Tree 5: Giant Sequoia (*Sequoiadendron giganteum*) 25 inches  
Tree 10: Douglas fir (*Pseudotsuga menziesii*) 44-inches

These 4 trees provide 113 inches of the total tree diameter on the site, and comprise 60 percent of the trees that are 20 or more inches in diameter and 56 percent of the total tree diameter. Based on this, the proposal complies with the preservation *Option 3: Preserve at least 50 percent of the trees that are 20 or more inches in diameter and at least 30 percent of the total tree diameter on the site.*

The trees proposed for preservation are noted to be in good condition and include native and non-nuisance species. The proposed performance root protection zones for the trees to be retained will allow for the type of development anticipated in the R5 zone and the arborist indicates the performance measures will afford protection comparable to that provided by the prescriptive tree preservation standards.

Trees 3, 8 and 9 are within the proposed street tract area, so it appears impractical to retain those trees. The arborist report indicates Tree 6 (17-inch diameter Western Red Cedar) is exempt due to some basal decay and Tree 7 (6-inch English Walnut) will be removed from the site. However, no information is provided to explain how those trees can be removed without impacting the nearby trees (Trees 4 and 5), which are noted to be retained. Therefore, to ensure tree preservation is maximized to the extent practical, a revised arborist report and tree protection plan must be provided, at the time of final plat, to verify how Tree 6 and Tree 7 will be removed without harm to the remaining trees.

Other changes will also need to be made to the grading and construction management plans, as discussed in the findings for Criterion G, below, to ensure the tree protection measures are clearly established for the on-site trees that are to be preserved and to protect three off-site trees (off-site Trees 11, 12 and 13) that are within 15 feet of potential disturbance area on the proposed lots.

Additionally, to ensure that future owners of the lots 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 Lots 1-5 must be carried out in conformance with the revised tree preservation plan and arborist report, as outlined in the conditions above.

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

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

**G. Clearing, Grading and Land Suitability. The approval criteria of Chapter 33.635, Clearing, Grading and Land Suitability must be met.**

**Findings:** The regulations of Chapter 33.635 ensure that the proposed clearing and grading is reasonable given the infrastructure needs, site conditions, tree preservation requirements, and limit the impacts of erosion and sedimentation to help protect water quality and aquatic habitat.

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

Clearing and Grading: In this case, the site is relatively flat, and is not located within the Potential Landslide Hazard Area. A new private street and associated utilities are proposed as part of the land division, which will require grading on the site.

The applicant has submitted a Preliminary Grading Plan and a Preliminary Construction Management Plan (Exhibit A2f, Sheets C3 and C4) that depict the proposed work, including existing and proposed elevation contours, soil stockpile areas, and the overall limits of disturbed area.

The proposed grading represents a minimal amount of change to the existing contours and drainage patterns of the site to provide for a level street surface. The grading plan indicates areas of topsoil storage and general stockpiling that are located directly adjacent to the new street tract. The plans show erosion control measures, which will be required to be installed prior to starting the grading work to protect neighboring properties and rights-of-way. Similarly, stormwater runoff from the new street and lots will be appropriately managed to assure that the runoff will not adversely impact adjacent properties (see detailed discussion of stormwater management later in this report).

However, the grading and construction management plans do not show the protection measures for the trees to be retained on Lots 1-5 or the protection measures for the off-site trees on the abutting lots, per the applicant's Tree Preservation Plan. Therefore, to ensure the required root protection zones will be undisturbed during the clearing and grading activities for the private street (and future development on the lots), the final clearing, grading and construction management plans must include the required root protection zones and the required fencing around the protected on-site trees and for off-site Trees 11, 12 and 13). With such a condition, these measures should help to ensure both the on-site and off-site trees are adequately protected during the site clearing and grading activities.

A Site Development Permit will be required for the construction of the proposed private street. The permit application must include a final clearing and grading plan. With a condition that the applicant's final clearing and grading plan is consistent with the preliminary clearing and grading plan with the changes regarding tree protection, noted above, this criterion will be met.

Additionally, Site Development has noted that a geotechnical report for the proposed private street addressing pavement design and subgrade preparation will be required. Special Inspections will be required on construction of the Private Street. These requirements will be specified during permit review of the Site Development Permit.

Land Suitability: The site is currently in residential use, and there is no record of any other use in the past. As indicated above, the site is relatively flat and contains no known geological

hazards. However, City records do not show that the septic system on the site was decommissioned at the time the existing house was connected to the public sewer system. Therefore, prior to final plat approval, the applicant must obtain final approval of a decommissioning permit. Please visit the Bureau of Development Services (BDS) web site at <https://www.portland.gov/bds/septic-decommissioning-permits> for information on obtaining a decommissioning permit.

With this condition, the new lots can be considered suitable for development, and this criterion is met.

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

**Findings:** The following tract is proposed:

- Tract A: Private Street (Name of Street)

With a condition that the proposed tracts be owned in common by the owners of Lots 1 through 6 or a Homeowner's Association, this criterion can be met.

The following easements are proposed and/or required for this land division:

- A Public Access Easement is required over the sidewalk portion of the private street.
- An Emergency Vehicle Access Easement is required over the relevant portions of the private street.
- A public sanitary sewer easement, granted to the City of Portland, is required over the relevant portions of the private street.

As stated in Section 33.636.100 of the Zoning Code, a maintenance agreement(s) will be required describing maintenance responsibilities for the tracts and 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.

**I. Solar access. If single-dwelling detached development is proposed for the site, the approval criteria of Chapter 33.639, Solar Access, must be met.**

**Findings:** The solar access regulations encourage variation in the width of lots to maximize solar access for single-dwelling detached development and minimize shade on adjacent properties.

Lot 1 is a corner lot on the southeast corner of the existing north-south street, SE 136<sup>th</sup> Avenue, and the proposed east-west private street. Lots 2-6 are interior lots on the south side of the proposed east-west private street. The solar standards indicate the narrowest lots should be the interior lots. In this case, Lot 1 is narrower than several of the other lots; however, the size of Lot 1 is contingent upon the size of the existing development to remain and the required size of the proposed private street. Accordingly, these lot size variations are allowable, and this criterion is met.

**K. Transportation impacts. The approval criteria of Chapter 33.641, Transportation Impacts, must be met.**

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

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

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

*The applicant provided a narrative addressing each evaluation factor. Staff generally concurs with the applicant's findings though does note the potential trip generation from the site is higher than the 1 single family home per lot the applicant's narrative states. Each proposed lot will exceed 3,000 square feet in lot area. Given the infill development options of 33.110.265.E, a four plex could be placed on each lot. The existing lot is eligible for a single 4-plex. Staff has applied the Institute of Transportation Engineers (ITE) Code 220- Multi-family Low Rise, Not Close To Rail Transit. This ITE code estimates 6.74 trips per day per unit of which 0.51 trips per unit can be expected in the PM peak hour. This results in a potential increase in daily trips of 135 daily trips, of which 10 can be expected in the PM peak hour. Traffic counts were taken on SE 136<sup>th</sup> within the block face of the subject site between 9-4-2019 and 9-6-2019. These counts show the daily trips on SE 136<sup>th</sup> being a total of 8,203 vehicles. The proposal will result in an approximately 1.6% increase in daily trips if built out as a 4-plex on each lot. As submitted, the conceptual development plan is retaining the existing house on lot 1 and building a single new house on each of the other 5 proposed lots. This would result in a total projected increase of 50 trips per day, which is approximately a 0.6% increase, which is well within the day to day fluctuations of traffic on any given collector street. To staff's knowledge, PBOT has not identified any level of service concerns with this segment in the TSP or other planning documents. It is believed this segment functions well for travel via all modes and has capacity to absorb the anticipated vehicle trips from five additional residential lots, even if they are built to full allowed density of 4 units per lot.*

*The frontage of the subject site contains a paved street with a protected bicycle lane, curbs, landscaped furnishing zone, and paved sidewalk. The submitted survey shows the sidewalk within the subject frontage meeting the full current City standard of a 0.5-ft curb, 4-ft furnishing zone, 6-ft sidewalk, and 1.5-ft frontage zone. In the area of the subject site, the surrounding blocks have paved streets though many lack curbs and sidewalks. Notably, SE Foster Road has incomplete sidewalks in the vicinity of the subject site.*

*Connectivity generally does not meet City standards in this area. The City's standard is for through streets every 530-feet or pedestrian connections every 330-feet. The subject block is approximately 875-feet long north to south. A through connection going east/west through the block would help meet City connectivity standards. The southern end of the subject site is approximately 330-feet south of SE Knight St, making the subject site a potential location for a pedestrian connection. The site does not span the whole block. The small lot development pattern fronting on SE 138<sup>th</sup> Place makes it very unlikely these lots will be further divided. In addition, there is a narrow strip of privately owned land spanning the full block length abutting the rear property line. This strip of land is too narrow to be developable. It essentially functions as an access control strip, preventing a through connection east/west through this block. Given the existing development pattern, a through connection is highly unlikely. As such, dedication for a partial connection is not being sought through this land division.*

*The area is served by Tri-Met service line 10, which runs on SE 136<sup>th</sup> Ave. with the closest stop being approximately 100-feet south of the subject site. Route 10 provides daily service between Lents Town Center and the Central City. Staff concurs the site has adequate access to transit.*

*The network of interconnected paved streets provides a variety of low stress bike facilities. In addition, the site is approximately 830-feet south of the Springwater Corridor. There is an entrance to the Springwater on SE 136<sup>th</sup> Ave. The Springwater Corridor is a multi-use path providing east/west connectivity from the subject site to the larger city for cyclists. The*



*Springwater Corridor trail is mostly separate from auto traffic, but has connection points to other area roadways, making it a premier facility for bicycle travel.*

*SE 136<sup>th</sup> Ave. is a collector street with bicycle lanes and centerline markings. As such, driveways are not allowed to back out onto SE 136<sup>th</sup> Ave. per TRN 10.40.D.4. The proposed new private street will serve as the access point for lots 2-5, allowing forward motion ingress and egress when entering SE 136<sup>th</sup> Ave. The existing house is proposed for retention on proposed Lot 1. The applicants obtained a Driveway Design Exception to allow the retention of this driveway within 100-feet of the proposed private street driveway. Forward motion was not waived as part of the Driveway Design Exception. The applicants proposed the addition of an on-site turn around on Lot 1 to allow vehicles to enter and exit the roadway in a forward motion as a safety measure. Staff recommends the installation of this turn around be a condition of approval prior to final plat.*

*The impact from the trips that will be associated with the single new lot are not sufficient to warrant off site mitigation. The existing sidewalk within the site's frontage is built to current standards. It is anticipated some of the existing improvements will be damaged or destroyed when installing the proposed private street. A minor improvement permit will be required to be associated with the building permit for the proposed private street. This minor improvement permit will cover the necessary driveway and sidewalk reconstruction within the public right-of-way.*

PBOT has determined the transportation system will be able to support the proposed development, in addition to the existing uses in the area, with the provision of a permit for minor sidewalk corridor repairs in association with the proposed private street construction; and with the requirements for a permit for the vehicle maneuvering on Lot 1 to provide forward motion in and out of the site to contribute to safety. With the implementation of the noted conditions, these criteria are met.

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

**Findings:** Chapters 33.651 through 33.654 address water service standards, sanitary sewer disposal standards, stormwater management, utilities and rights of way. The criteria and standards are met as shown in the following table:

**33.651 Water Service standard – See Exhibit E.3 and Exhibit E.4**

The Water Bureau has reviewed the proposal and provided the following:

*Water is available from the 16" main in SE 136<sup>th</sup> Ave.*

- ***Lot 1** has a 5/8" metered domestic service that may continue to serve the existing house. If the service is not used, it must be removed at the time new services are installed. If the existing house is reviewed under a building permit, the meter size will be reviewed for adequacy. If found to be inadequate the applicant will be responsible for all fees to upsize the service.*
- ***Lots 2,3,4,5 & 6** have available service from the main in SE 136<sup>th</sup> Ave. The updated civil plan is showing a header service with 5 meters located outside the boundaries of private Tract A. At the time of building permit review the applicant will be advised to relocate the header service within the boundaries of private Tract A as required by Title 21.12.010.*

As noted in the finding for Lots, above, the applicant submitted a change to the configuration of Lot 1 and the private right-of-way tract (Tract A); however, the applicant did not grant any time for a full review of those updates, so Water has not had an opportunity to review those changes or provide an updated response. With the condition outlined previously, the location of the water services and the configuration the Lot 1 and Tract A will need approval from the Water Bureau, BDS Plumbing, BDS Site Development, and BDS Land Use, prior to final plat approval. Additionally, any allowed changes to the water service location will need to be reflected in the related Public Works Permit plans.

The Fire Bureau has reviewed the fire flow and noted no concerns about fire hydrant capacity.

Based on these factors, with the aforementioned conditions, the water service standards of 33.651 have been verified.

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

The Bureau of Environmental Services (BES) has reviewed the proposed improvement and utility plan and the response is summarized below:

- *Existing Development: According to City records, the existing structure on proposed Lot 1 is currently connected to sewer via a lateral located approximately 68 feet from the maintenance hole in SE 136th. This places the lateral within the frontage of Lot 1.*
- *Proposed Development: The applicant is required to construct a sanitary sewer to provide service to the proposed development. In order to provide an individual service connection for Lots 2 - 6 the applicant has proposed to extend public sewer and construct a maintenance hole into the private street tract. BES has approved the applicant's Concept Development plans (i.e. 30% design) through a Public Works Permit (PWP) prior to approval of the preliminary land division plan. Prior to final plat approval BES will require approved plans, a financial guarantee, receipt of all outstanding fees, and a signed permit document. In addition, where easements need to be granted to the City to accommodate the required public improvements on private property, those must be shown on the plat prior to approval.*

With the noted conditions, the sanitary sewer service standards of 33.652 have been verified. This criterion is met.

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

The Bureau of Environmental Services (BES) reviewed the applicant's proposed improvement and utility plan and storm report against the stormwater management approval criteria and standards, and determined that a stormwater management system can be designed that will provide adequate capacity and disposal for the expected amount of stormwater, as summarized below:

*Private Property Stormwater Management: Stormwater runoff from this project must comply with all applicable standards of the SWMM and SCM and be conveyed to a discharge point along a route of service approved by the BES Director or the Director's designee.*

- *Existing Development: The submitted narrative indicates that the stormwater for existing house and garage on proposed Lot 1 will be managed by a drywell. This stormwater retrofit must be completed and have a finalized permit prior to final plat approval.*
- *Proposed Development: Private Property Stormwater Management: Stormwater runoff from this project must comply with all applicable standards of the SWMM and the SCM and be conveyed to a discharge point along a route of service approved by the BES Director or the Director's designee. Staff review the submitted Performance Approach stormwater report from Sisul Engineering (May 2022) and infiltration testing report from Rapid Soil Solutions. The submitted infiltration testing report includes Open Pit infiltration test results of 180 inches per hour on this site and a rate of 20 inches per hour will be used for sizing calculations. The applicant proposes to infiltrate runoff from the development onsite via drywells that can meet minimum setbacks as established in the facility design standards and Table 2-1 of the SWMM.*
- *Private Rights-of-Way: The proposed private right-of-way tract must include stormwater management facilities that meet the requirements of the SWMM and the [Permanent Administrative Rules for Private Rights-of-Way](#). Staff review the submitted Performance Approach stormwater report from Sisul Engineering (May 2022) and infiltration testing report from Rapid Soil Solutions. The submitted infiltration testing report includes Open Pit infiltration test results of 180 inches per hour on this site and a rate of 20 inches per hour will be used for sizing calculations. The applicant proposes to infiltrate runoff from the Private Street Tract via drywells sized to meet the 100-year storm event.*

BES determined the proposal is acceptable for reviewing the land division against the stormwater management approval criteria and standards. With the noted conditions, this criterion is met.

### **33.654.110.B.1 Through streets and pedestrian connections**

The site is within the Portland Master Street Plan for the *Far Southeast District*. No specific connections have been identified on the subject site, so the proposal is subject to the general spacing standards, which aim for through streets to be provided no more than 530 feet apart and pedestrian connections to be provided no more than 330 feet apart; and for through streets and pedestrian connections generally to be at least 200 feet apart.

The block on which the subject property is located is approximately 875-feet long north (SE Knight) to south (SE Foster) and does not meet the noted spacing requirements. A through east/west connection would help meet City connectivity standards. However, given the surrounding lot and development pattern, a through connection is not practical at this subject site. Based on these factors, this criterion is met.

### **33.654.110.B.2 Approval criterion for dead-end streets in OS, R, C, and E zones**

### **33.654.130.C Future extension of proposed dead-end streets & pedestrian connections**

The proposal includes a private dead-end street, which will be located in the new street tract. As discussed under the findings for through streets above, a new public east-west through street is not required for this proposal. The private dead-end street is proposed to serve 6 dwelling units and it is approximately 432 feet in length. This exceeds the preferred maximum length of 200 feet; however, a turnaround has been provided to the satisfaction of the Fire Bureau, and dead-end streets are allowable where through streets are not required. Also, as noted above, due to the surrounding lot and development pattern, a future extension of the proposed private dead-end street is not warranted at this location. As such, these criteria are met.

### **33.654.120.B & C Width & elements of the right-of-way – See Exhibit E.2 and Exhibit E.5**

### **33.644.120.H Street Trees – See Exhibit E.6**

The width of the local street right-of-way must be sufficient to accommodate expected users, taking into consideration the characteristics of the site and vicinity, such as the existing street and pedestrian system improvements, existing structures, and natural features.

For public streets, PBOT reviews the configuration of elements within the street right-of-way for consistency with city standards and specifications; and Urban Forestry addresses the retention and installation requirements for street trees.

For private streets, the Bureau of Development Services reviews the configuration of elements within the street right-of-way for consistency with the standards in *Administrative Rules for Private Rights of Way* (generally referred to as the “Private Street Rules”).

**Public right-of-way:** PBOT notes *the City’s Pedestrian Design Guide recommends a 12-foot sidewalk corridor on a Community Corridor outside of a pedestrian district. The [existing SE 136<sup>th</sup> Avenue] sidewalk corridor consists of a 0.5-ft curb, 4-ft furnishing zone, 6-ft sidewalk, and 1.5-ft frontage zone, which is what the applicant’s survey shows currently exists within the site’s frontage. No dedication is required. Any sidewalk panels that are damaged or destroyed during construction will need to be rebuilt. It is anticipated this can be accommodated via a Minor Improvement Permit associated with the building permit for the new development.*

Based on these factors, the existing street is improved in a manner that is sufficient to serve the expected users.

**Street Trees:** Urban Forestry evaluated the provision of street trees and planting areas for the public right-of-way and determined no street tree plantings are required, based on the following:

*According to available GIS data, the frontages have the following configuration.  
SE 136th Ave: The site has approximately 92 feet of street frontage. The right-of-way is improved with pavement, curbs, sidewalks, and a rainwater retention facility. There are no overhead high voltage power lines. There are 0 street trees.*

*Due to the existing condition of the right-of-way, street tree planting may not be required unless PBOT requires frontage improvements.*

**Private Street Tract:** The Administrative Rules for Private Rights of Way are the standards that govern the construction of private streets. The elements of the right-of-way are features that require horizontal space, such as roadway surfaces, curbs, pedestrian walkways, stormwater facilities, tree planting areas, parking lanes, utilities and setbacks. The total right-of-way (tract) width is based on which of these right-of-way elements are deemed necessary to serve the expected users of the street, per Zoning Code approval criteria in Chapter 33.654.

In this case, the street tract is proposed to serve 6 lots, serve as a fire apparatus access road, and include parking. The project plans show a 31-foot wide tract, with a 20-foot wide paved roadway, two 6-inch curbs, a 5-foot to 7-foot wide sidewalk on one side of the street, nine (4-foot by 6-foot) tree wells along the sidewalk, and a 1-foot setback between the street improvements and private property. A drywell is also proposed within the street tract to serve as a disposal point for stormwater from the private street. Four parking spaces and a fire department turnaround are proposed perpendicular to the roadway. The applicant notes this perpendicular configuration of the parking and turnaround is intended to reduce the overall width and paving of the private right-of-way.

Site Development reviewed the proposed right-of-way tract and found it appears to comply with the recommendations found in Figure 2 of the Administrative Rules that govern private rights-of-way. Further, though the perpendicular parking and turnaround result in some irregularity to the lot lines of Lots 3-5, the proposed tract width and size of the noted features meet the required dimensions and the tract width should be sufficient to serve the expected users.

Site Development further notes:

*A Site Development Permit is required for the construction of private rights-of-way. A permit submittal must be made prior to final plat approval. While it's not necessary for the permit to be issued prior to final plat approval, site development will not support releasing the plat until the permit submittal is in an approvable state. A maintenance agreement that commits owners to maintain all elements of the private right-of-way will be required as part of the land division process. A performance guarantee is required and also must be submitted prior to final plat approval. Additionally, a separate plumbing permit is required for the plumbing component of the street construction. Finally, the first lift of paving for the street must be installed before permits for residential construction on any of the individual parcels will be issued. All private streets and alleys that exceed 500 square feet of impervious surface must be designed by a professional engineer. Please visit the Bureau of Development Services (BDS) web site at [www.portlandonline.com/bds](http://www.portlandonline.com/bds) for information on obtaining a permit.*

Services and Utilities in a Private Right-of-way (Section IV):

BES has noted that sanitary sewer services for Lots 2-6 and stormwater management facilities for the private street are shown within the proposed private street tract (as discussed in the service comments above). Water has noted that the proposed water header services are shown extending over Lot 1, and the water lines for Lots 2-6 are also shown over Lot 1. These proposed water service locations are not consistent with the private street rule, which requires:

*The service branches must access the public water main via the private right-of-way tract. Water meters must be located in the public right-of-way within the frontage of the private right-of-way tract (Section IV.C.3).*

Accordingly, the location of the water header service and water lines must be changed to align with these requirements. As noted in the findings for Lots and Water services, the applicant submitted some changes to address these requirements, but did not allocate time for city staff to conduct a full review of those updates. As such, conditions must be applied to ensure these location changes are acceptable to the Water Bureau, BDS Plumbing, BDS Site Development and BDS Land Use and identified on the related public works and private street permits, prior to final plat approval.

Optimally, the size of the tract should be sufficient to accommodate all the necessary elements without warranting irregular property lines for the lots; however, given the constraints of the location of the existing house and the existing public storm planters in the SE 136<sup>th</sup> frontage, some variations to the tract configuration are reasonably needed. In any event, with the conditions described above, and in the Lot and Water service findings, the proposed tract width will generally be sufficient or will be made sufficient to accommodate the elements of a street that are adequate for 6 lots by the Administrative Rules governing private streets. As such, this criterion will be met.

#### **33.654.120.C.3.c. Approval criterion for turnarounds.**

A hammer-head turn-around is proposed within the private street tract. The configuration of the turn-around has been reviewed by the Site Development Section of the Bureau of Development Services and the Fire Bureau. Site Development and the Fire Bureau have indicated that the size and configuration of the turn-around will be adequate to provide safe vehicular and bicycle movement for the 6 new lots that will use private street. A sidewalk is required along one side of the street that extends across the turn-around, which will provide for safe and convenient pedestrian access along the private street and from the interior of the land division to the abutting sidewalk along the frontage of SE 136<sup>th</sup> Avenue. The proposed street tract has been sized to provide adequate room for the turn-around. This criterion is met.

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

At this time no specific utility easements adjacent to the rights-of-way have been identified as being necessary. 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. Accordingly, this criterion is met.

## **DEVELOPMENT STANDARDS**

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

**Future development.** The applicant's conceptual development plan (Exhibit A2b) does not appear to show the required 10-foot building setbacks along the entirety of the irregular front lot lines on Lots 2-5, so the applicant is advised to take note that the front lot lines for those lots are the entirety of the lines that abut the private street, and to ensure any permit plans for development on those lots include the correct setback. Future development must comply with all applicable development standards.

**Existing development that will remain after the land division.** The existing development on the site will remain and be located on Lot 1. The division of the property may not cause the structures to move out of conformance or further out of conformance to any development standard applicable in the R5 zone. Per 33.700.015, if a proposed land division will cause conforming development to move out of conformance with any regulation of the zoning code,

and if the regulation may be adjusted, the land division request must include a request for an adjustment (Please see section on Other Technical Standards for Building Code standards.)

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

- **Minimum Setbacks:** The existing house and detached garage are identified to remain on the site and 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 and detached garage will be at least 5 feet from the new property lines, which meets the minimum setback standards (33.110.220.B/Table 110-4 and 33.110.245.C.2). However a patio roof on the northeast corner of the house appears to be less than 5 feet from the proposed new property lines. There is an exception to the setback standards that allow the minimum setback between an existing building and a side lot line along a proposed street tract to be reduced to 3 feet (33.110.220. D.7); however, the project plans do not identify the width of the existing setback to verify this exception is met. Therefore, prior to final plat approval, the applicant must provide a detailed supplemental plan, with the surveyed location of the existing building relative to the adjacent new lot lines, to show the patio roof on Lot 1 will meet the minimum 5-foot setback standard or the noted setback exception; or the applicant must finalize a building permit to remove or make modifications to the patio roof to demonstrate compliance with those standards.
- **Street-Facing Facades in R10 through R2.5 Zones:** In this zone, street-facing facades of residential structures are required to have windows that comprise at least 15 percent of the façade area. The existing house that will remain on Lot 1 currently meets this standard on the front of the house, which is oriented toward SE 136<sup>th</sup> Avenue. After the land division, this house will also have frontage on the new private street. Prior to final plat approval, the applicant must provide plans and building elevations to show the house on Lot 1 will meet this standard along the façade facing the private right-of-way or the applicant must finalize a building permit to make modifications to that façade to demonstrate compliance with 33.110.232.C.
- **Title 11 Tree Density Standard:** This site has a minimum tree density requirement per 11.50.050 that is currently met on the site. Due to the land division, and associated tree removal, Lot 1 with existing house will no longer meet this standard. Lot 1 is 6,312 square feet; therefore 2,525 square feet of tree area is required. Prior to final plat approval, the applicant must meet this requirement by either planting trees on Lot 1 or making the equivalent payment into the City Tree Preservation and Planting Fund. Tree planting must be documented with a finalized Zoning Permit.
- **Parking/Vehicle Area:** As outlined in the Technical Requirements section, below, PBOT has identified changes to the onsite vehicle area will be required to provide forward access into and out of Lot 1. Therefore, prior to final plat approval, the applicant must obtain and finalize permits to show the required vehicle turn around has been installed and the amount of paving for parking and vehicle area meet the Parking Area Location standards in 33.266.130.C; and the applicant must show the approved vehicle and parking areas on a supplemental plan.

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

## **OTHER TECHNICAL REQUIREMENTS**

Technical decisions have been made as part of this review process. These decisions have been made based on other City Titles, adopted technical manuals, and the technical expertise of appropriate service agencies. These related technical decisions are not considered land use actions. If future technical decisions result in changes that bring the project out of conformance

with this land use decision, a new land use review may be required. The following is a summary of technical service standards applicable to this preliminary partition proposal.

<b>Bureau</b>	<b>Code Authority and Topic</b>
Development Services/503-823-7300 <a href="https://www.portland.gov/bds">https://www.portland.gov/bds</a>	Title 24 – Building Code, Flood Hazard, Clearing and Grading Title 10 – Erosion Control, Site Development Administrative Rules for Private Rights-of-Way OAR 340-071 and OAR 340-073 – Onsite Wastewater Treatment Systems
Environmental Services/503-823-7740 <a href="https://www.portland.gov/bes">https://www.portland.gov/bes</a>	Title 17 – Sewer Improvements Stormwater Management Manual
Fire Bureau/503-823-3700 <a href="https://www.portland.gov/fire">https://www.portland.gov/fire</a>	Title 31 – Fire Regulations Portland Fire Code
Transportation/503-823-5185 <a href="https://www.portland.gov/transportation">https://www.portland.gov/transportation</a>	Title 17 – Public Right-of-Way Improvements Transportation System Plan
Urban Forestry (Parks)/503-823-4489 <a href="https://www.portland.gov/parks">https://www.portland.gov/parks</a>	Title 11 – Trees
Water Bureau/503-823-7404 <a href="https://www.portland.gov/water">https://www.portland.gov/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.

- **Site Development:** The applicant is required to make improvements to the proposed private street. Several conditions are required, including provision of plans and financial assurances, initiating a building permit, and providing a maintenance agreement. In addition to the approval criteria of Title 33, these requirements are also based on the technical standards of the *Administrative Rules for Private Rights-of-Way*.
- **Water Bureau:** The water header service for Lots 2-6 must be located to be within the frontage of private Tract A, as required by Title 21.12.010, and reflected on the related permit(s). (*Also related requirements in the Lots, Water service and private right-of-way findings.*)
- **Fire Bureau:** The applicant must meet the requirements of the Fire Bureau regarding a designated fire department access lane and approved turnaround within the private street, including aerial access; posting of "No Parking" signs within the private street; addressing of structures; providing an Emergency Vehicle Access Easement over the private street tract; turning radius; driving surfaces; and residential fire sprinklers. These requirements are based on the technical standards of Title 31 and the Portland Fire Code.
- **PBOT:** Curb cuts and driveway construction must meet the requirements in Title 17 (Section 17.28). Based on the applicant's narrative and submitted plan, the existing driveway is proposed to remain on Lot 1. Prior to final plat, the applicant must obtain a permit and construct an on-site turn around to allow vehicles to enter and exit proposed Lot 1 in a forward motion. Additionally, a minor improvement permit will be required to be associated with the permit for the proposed private street.

## CONCLUSIONS

The applicant has proposed a 6-lot subdivision with a private street tract, as shown on the attached preliminary plan (Exhibit C1). The primary issues identified with this proposal include:

- Revisions to the clearing, grading and tree protection measures
- Revisions to the private street design and details for utility services, including provisions for fire department access, water services, and easements and maintenance of the private street elements
- Requirements for permits for the public improvements; private street; services to the existing house and proposed lots; and changes to the existing development to remain on Lot 1.

As discussed in this report, the relevant standards and approval criteria are met or conditions have been applied to ensure the criteria will be met. Accordingly, this proposal can be approved.

## **ADMINISTRATIVE DECISION**

**Approval** of a Preliminary Plan for a 6-lot subdivision, that will result in 6 standard lots and a private street tract (Tract A), as illustrated with Exhibits C1 – C3, subject to the following conditions:

**A. Supplemental Plan.** An additional supplemental plan shall be submitted with the final plat survey for Land Use, BES, Fire, Water, BDS Plumbing, Site Development, and PBOT review and approval. That plan must portray how the conditions of approval listed below are met. In addition, the supplemental plan must show the following:

- The surveyed location of any buildings or accessory structures on the site at the time of the final plat application;
- The surveyed location of any driveways and off-street vehicle parking areas on the site at the time of the final plat application;
- Any other information specifically noted in the conditions listed below.

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

1. The front lot line, width, and area of Lot 1 and the size of Tract A may vary beyond the standards allowed at the time of final plat (33.663.200), to accommodate water services within the private street tract to the satisfaction of the Water Bureau, BDS Plumbing, BDS Site Development, and BDS Land Use.
2. A public sanitary sewer easement, granted to the City of Portland, shall be shown over the relevant portions of the private street to the satisfaction of the Bureau of Environmental Services.
3. An Emergency Vehicle Access Easement, granted to the City of Portland, shall be shown over the relevant portions of the private street to the satisfaction of the Fire Bureau.
4. The private street tract shall be named, with approval from the City Engineer, and noted on the plat as "Tract A: Private Street (*the name of street will be provided by the city at the time of final plat*)"
5. A note must be provided on the plat indicating that the private street tract will commonly owned and maintained by the owners of Lots 1 through 6 or a homeowners' association.
6. A Public Access Easement must be shown over the sidewalk portion(s) of the street tract.
7. A recording block for each of the legal documents such as maintenance agreement(s), acknowledgement of special land use conditions, or Declarations of Covenants, Conditions, and Restrictions (CC&Rs) as required by Conditions C.11 and C.12 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 submit an application for a Site Development Permit for construction of the private street and related site development improvements. Street design plans must be prepared by, or under the direction of, an Oregon licensed



civil engineer. The plans must be in substantial conformance with Exhibit C1 and the *Private Street Administrative Rule*. A minor improvement permit shall be required to be associated with the permit for the proposed private street. In addition, the street shall include the following:

- Fire Department Access Road, turning radius, turnaround configuration, driving surface and "No Parking" signs to the satisfaction of the Fire Bureau.
  - Water service lines for Lots 2-6 in a location consistent with Condition C5.
2. The applicant shall furnish a financial guarantee of performance, as approved by the Bureau of Development Services, for 125 percent of the estimated construction cost for the private street and all required site development improvements. The applicant shall provide an engineer's estimate of the costs of performance including the costs for temporary erosion control measures required during construction. The financial guarantee of performance shall be accompanied by a performance agreement with the Bureau of Development Services to complete the required improvements.
  3. The applicant shall provide a clearing and grading plan with the Site Development permit required for the private street described in Condition C.1. The clearing and grading plan must substantially conform to the Preliminary Clearing and Grading Plan approved with this decision (Exhibit C3) with the following additions:
    - Tree Protection consistent with Condition D.1
    - Construction limits of disturbance
    - The temporary staging and stockpile areas
    - A note that topsoil must be stockpiled on site and re-used to the extent practicable.
    - A note that a tree protection inspection must be approved prior to the start of ground disturbing activity.

### **Utilities**

4. The applicant shall meet the requirements of the Bureau of Environmental Services (BES) for extending a public sewer main in the private street tract. The public sewer extension requires a Public Works Permit, which must be initiated and at a stage acceptable to BES prior to final plat approval. As part of the Public Works Permit, the applicant must provide engineered designs, and performance guarantees for the sewer extension to BES prior to final plat approval.
5. The applicant shall meet the requirements of the Water Bureau for the location of the water header service to serve Lots 2-6, in a location acceptable to BDS Plumbing, BDS Site Development, and BDS Land Use. The approved water service must be reflected on the Site Development permit plans required under Condition C.1.

### **Existing Development**

6. 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. Tree protection shall be installed prior to any site work associated with the septic decommissioning, in accordance with Condition D.1.
7. The applicant shall provide supplemental plans that show the existing development conforms to the standards listed below in relation to the proposed new lot lines or the applicant shall obtain a finalized building permit(s) for modifications to the existing house that will remain on proposed Lot 1 that demonstrate compliance with these standards. The permit plans must include the note: *This permit fulfills requirements of Condition C.7 of LU 22-151314 LDS.*
  - 33.110.232.C (standards for street-facing facades);
  - 33.110.220 (setback standards for primary and accessory structures);

8. The applicant shall meet BES requirements to modify the stormwater disposal system serving the existing structures on Lot 1 according to BES and Stormwater Management Manual requirements; and obtain finalized permits, as necessary.
9. The applicant shall meet the tree density standard of 11.50.050 on Lot 1, with the existing house, by either planting trees on the lot or making the equivalent payment into the City Tree Preservation and Planting Fund. A finalized Zoning Permit must be obtained to document tree planting prior to final plat approval.
10. The applicant shall obtain a permit and construct an on-site turn around to allow vehicles to enter and exit proposed Lot 1 in a forward motion, in accordance with 33.266.120 (parking standards for houses, duplexes, triplexes and fourplexes) and to the satisfaction of Portland Transportation.

### **Required Legal Documents**

11. The applicant shall execute a Maintenance Agreement for the private street tract (Tract A). The agreement shall assign common, undivided ownership of the tract to the owners of Lots 1-6 and include provisions assigning maintenance responsibilities for the tract and any shared facilities within that area. The agreement must also acknowledge all easements granted within the street tract, the beneficiaries of those easements, and the limitations on the easement areas to the satisfaction of the beneficiary service agencies. The maintenance agreement must be reviewed by the City Attorney and the Bureau of Development Services, and approved as to form, prior to final plat approval.
12. The applicant shall execute an Acknowledgement of Tree Preservation Land Use Conditions that notes tree preservation requirements that apply to Lots 1-5. A copy of the approved Tree Preservation Plan must be included as an Exhibit to the Acknowledgement. The acknowledgment shall be referenced on and recorded with the final plat.

### **Other requirements**


13. The applicant shall submit a final arborist report and final tree protection plan to document adequate removal methods for on-site Trees 6 and 7, in addition to the protection measures provided for on-site Trees 1, 4, 5 and 10 and off-site Trees 11-13.

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

1. Development on Lots 1-5 and within Tract A shall be in conformance with the final arborist report and final tree protection plan required per Condition C.13. Specifically, on-site Trees 1, 4, 5 and 10 are required to be preserved and off-site Trees 11-13 must be protected during new home construction in accordance with the final arborist report and final tree protection plan. Tree protection fencing is required along the approved root protection zone of these noted trees in accordance with the final arborist report and final tree protection plan. Encroachment into the specified root protection zones may only occur if it meets the Tree Protection Specifications of 11.60.030.
2. The first lift of paving for the private street shall be installed prior to issuance of any permits for residential construction.
3. Prior to finalizing the Site Development permit for the private street, a plumbing permit must be obtained and finalized for the new utility lines that will be constructed beneath the paved surface of the new street.

4. The applicant must post the private street with "No Parking" signs to the satisfaction of the Fire Bureau. The location of the sign must be shown on the development permit.
5. The applicant shall meet the Fire Bureau requirements for addressing and aerial fire department access.
6. Any lots that require residential fire sprinklers per the Fire Code or through a Fire Code appeal shall meet the requirements of the Fire Bureau (see Exhibit E4b).

**Staff Planner: Kate Green**

**Decision rendered by:**  **on March 29, 2023**

By authority of the Director of the Bureau of Development Services

**Decision mailed April 3, 2023**

**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 June 8, 2022, and was determined to be complete on September 14, 2022.

*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 June 8, 2022.

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 for 146 days (Exhibit A8). Unless further extended by the applicant, **the 120 days will expire on: June 7, 2023.**

**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, and if appealed a hearing will be held. The appeal application form can be accessed at <https://www.portlandoregon.gov/bds/45477>. Appeals must be received **by 4:30 PM on April 17, 2023. The completed appeal application form must be emailed to [LandUseIntake@portlandoregon.gov](mailto:LandUseIntake@portlandoregon.gov) and to the planner listed on the first page of this decision.** If you do not have access to e-mail, please telephone the planner listed on the front page of this notice about submitting the appeal application. **An appeal fee of \$250 will be charged.** Once the completed appeal application form is received, Bureau of Development Services staff will contact you regarding paying the appeal fee. The appeal fee will be refunded if the appellant prevails. There is no fee for Office of Community and Civic Life recognized organizations for the appeal of Type II and IIx decisions on property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Please contact the planner listed on the front page of this decision for assistance in filing the appeal and information on fee waivers. Please see the appeal form for additional information.

If you are interested in viewing information in this file, please contact the planner listed on the front of this notice. The planner can email you documents from the file. A fee would be required for all requests for paper copies of file documents. Additional information about the City of Portland, and city bureaus is available online at <https://www.portland.gov>. A digital copy of the Portland Zoning Code is available online at <https://www.portlandoregon.gov/zoningcode>.

**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.**

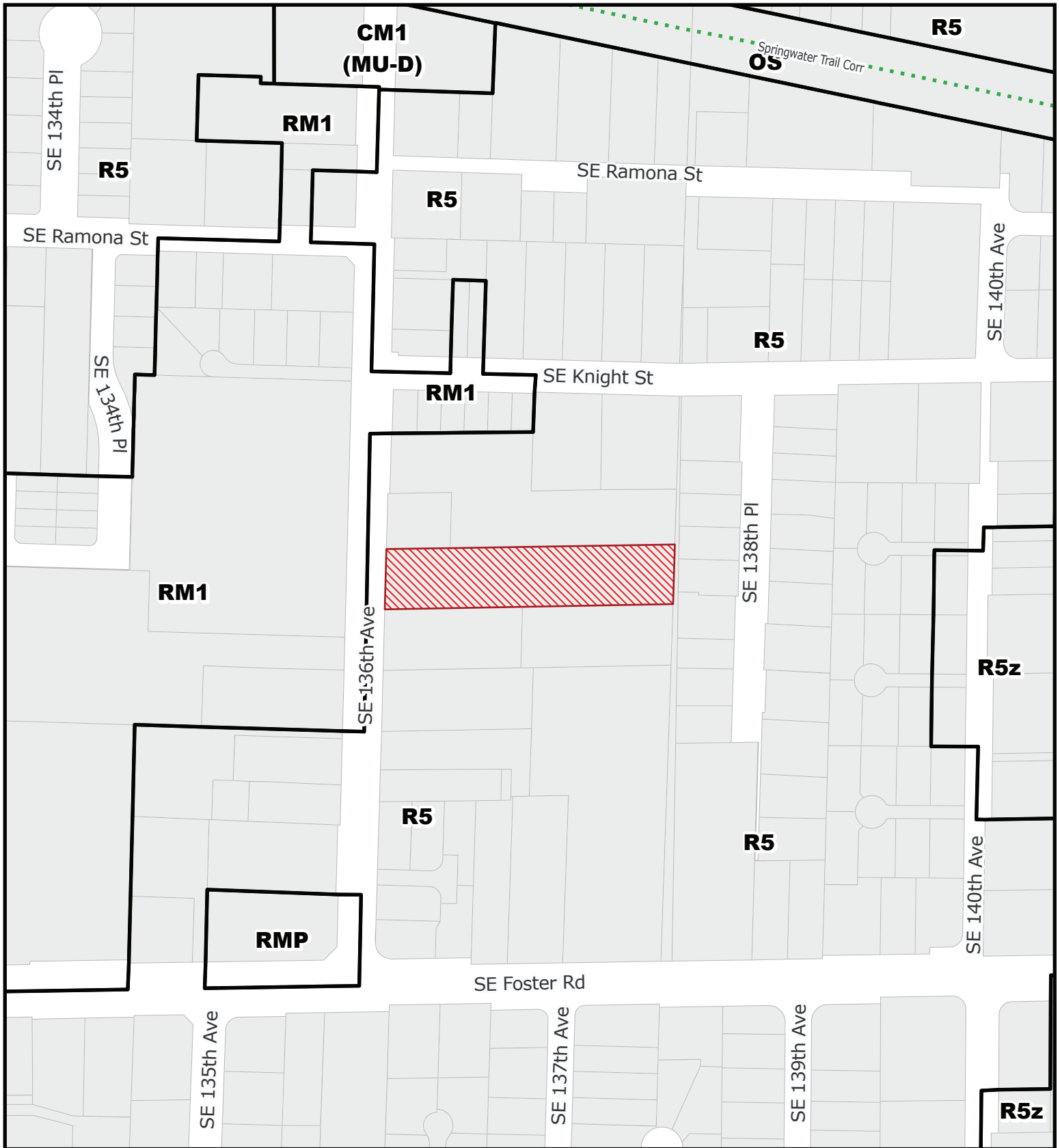
#### EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  - 1. Initial Submittal
    - a. Preliminary Plat
    - b. Preliminary Grading Plan
    - c. Preliminary Construction Management
    - d. Preliminary Utility Plan
    - e. Preliminary Stormwater Calculations
    - f. Arborist Report
    - g. Tree Table
    - h. Tree Tags
    - i. Photo-posting sign
    - j. Neighborhood Certification
    - k. Fire Flow
    - l. Narrative

- m. Applicant Email re: Neighborhood Notification
- 2. September 12, 2022 Submittal
  - a. Driveway Design Exception
  - b. Conceptual Development Plan
  - c. Front Yard Vehicle Diagram
  - d. Deed Records
  - e. Ownership
  - f. Updated Civil Plans
  - g. Updated Preliminary Plat
  - h. Updated Storm Report
- 3. September 14, 2022 Submittal
  - a. Private Street Landscape Plan
- 4. November 2, 2022 Submittal
  - a. Fire Plan
- 5. November 22, 2022 Submittal
  - a. Updated Preliminary Plat
- 6. January 30, 2023 Submittal
  - a. Stormwater Narrative-Lot 1 (existing house)
  - b. Public Works Permit Email
- 7. March 15, 2023 Submittal
  - a. Email from applicant
  - b. Revised Preliminary Plans
- 8. Timeline Extensions
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Preliminary Site Plan (attached)
  - 2. Preliminary Utility Plan
  - 3. Preliminary Grading Plan
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
    - a. Addendum
  - 2. Bureau of Transportation Engineering and Development Review
  - 3. Water Bureau
    - a. Addendum
  - 4. Fire Bureau
    - a. Revised response
    - b. Updated response
  - 5. Site Development/BDS
  - 6. Urban Forestry/Parks
  - 7. Life Safety/BDS
- F. Correspondence (none received):
- G. Other:
  - 1. Original LU Application
  - 2. Completeness Review Letter to applicant

**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).**



For Zoning Code in effect Post August 1, 2021

# ZONING

THIS SITE LIES WITHIN THE:  
JOHNSON CREEK BASIN PLAN DIST

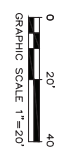
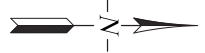
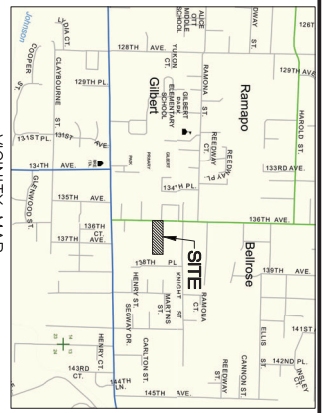
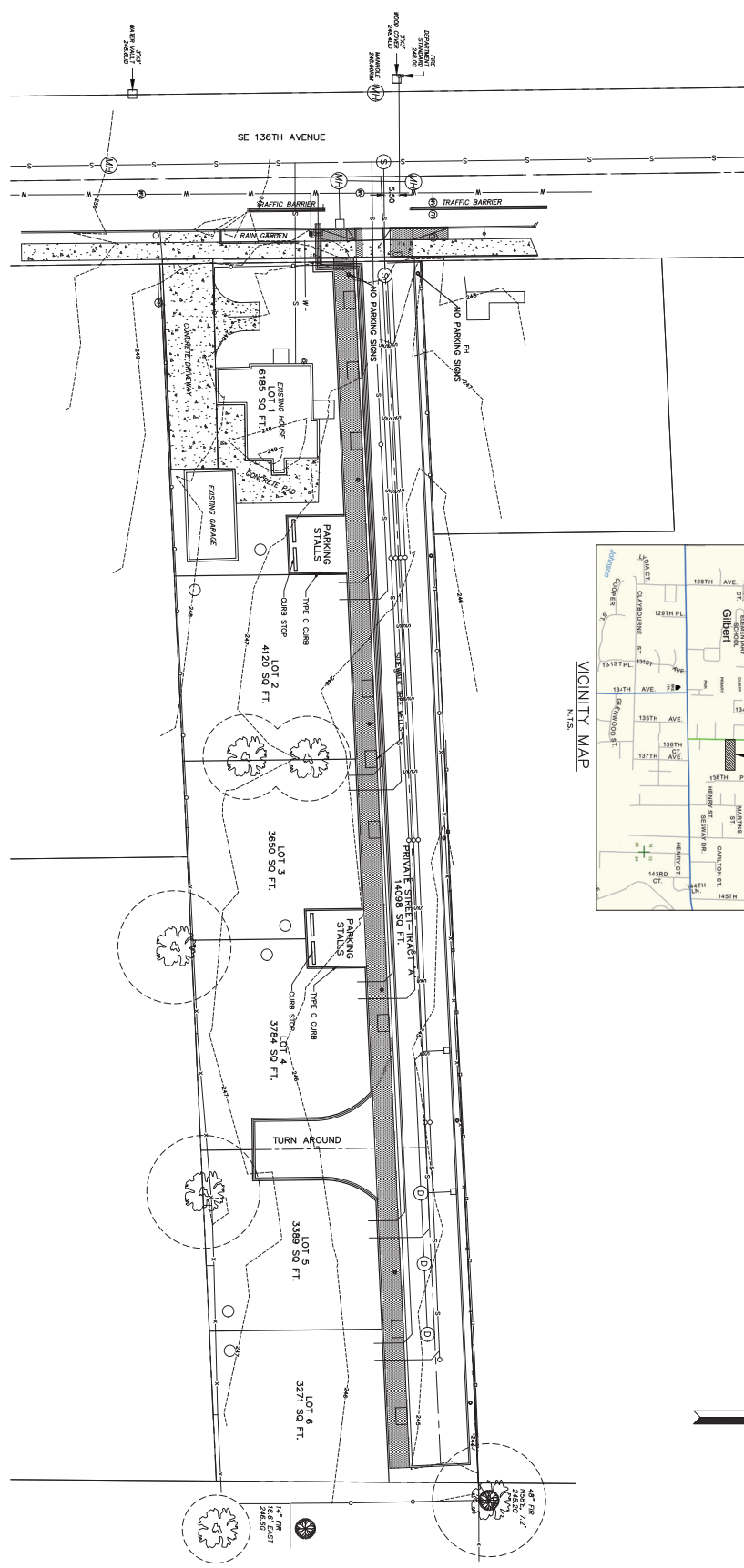


Site



Recreational Trails

File No.	<u>LU 22 - 151314 LDS</u>
1/4 Section	<u>3644</u>
Scale	<u>1 inch = 200 feet</u>
State ID	<u>1S2E14DC 600</u>
Exhibit	<u>B Jun 09, 2022</u>



PRELIMINARY NOT FOR CONSTRUCTION

REV.	DESCRIPTION	DATE
1	1-13-22	07/14/22
2	8-8-22	07/14/22
3	2-29-23	07/14/22
4		

**6022 SE 136TH AVENUE SUBDIVISION**  
 FREDERICK G. SHERVEY, CONSTRUCTION INC.

## Preliminary Site Plan

**SISUL ENGINEERING**  
 375 PORTLAND AVENUE  
 GLADSTONE, OREGON 97027  
 (503) 657-0188  
 DRAWING: 21-059 Preliminary Storm

DATE: MAY 2022  
 SCALE: 1"=20'  
 DRAWN: DJ  
 SHEET: 31-059  
**C1**

3 SHEETS  
 E:\Projects\21-059\21-059.dwg