

# Exhibit A

## DEVELOPMENT FEE AGREEMENT

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This Development Agreement (“Agreement”) is made and entered into this 10th day of August, 2018, by and between Fernhill Crossing, an Oregon limited liability company (LLC), and the **CITY OF PORTLAND** (the “City”), an Oregon municipal corporation, for the purpose of the payment of a fee by Fernhill Crossing LLC, to provide for transportation system improvements in relation to the development of property located at 4250 NE Portland Highway and more particularly described in Exhibit A-1 and referred to herein as the “Development.” The frontages adjacent to the development site as well as the proposed development are more particularly described in LU 17-199218 ZC PD approved by the Hearings officer on March 21, 2018, which is attached as Exhibit B-1 and referred to herein as the “Decision.” The fee described above and more particularly described in this Agreement is referred to herein as the “Fee.” Fernhill Crossing LLC is individually referred to herein as a “Developer.” The Developer and the City are collectively referred to herein as the “Parties.” Each of Fernhill Crossing LLC and the City is referred to herein as a “Party.”

### RECITALS

- A. The Developer owns land in the City of Portland and is presently, and in the future, undertaking development of his/her/their property (a “Development”). As described in the Decision, the Portland Bureau of Transportation (PBOT) identified public improvements required within the rights-of-way adjacent to the Development.
- B. The Parties are interested in payment of a fee by the Developer to the City, to provide for future public improvements adjacent to the development site.
- C. The fee is \$60,000 (sixty thousand US dollars). The Developer is entirely responsible for the fee. The fee will be used by the City to construct improvements along the site’s frontage in conjunction with the NE 42<sup>nd</sup> Ave Bridge Replacement Project (project #P00713). PBOT may adopt a different name for that project in the future; however, it is a bridge project at NE 42<sup>nd</sup> and Portland Highway.
- D. Payment of the fee does not relieve requirements related to the future development on the subject parcel(s) that generates and increase in vehicle trips, is deemed a “significant alteration,” or for which the City has authority to require future improvements. Future development does not include development specifically approved as part of LU 17-199218 ZC PD.
- E. The applicant will remit the fee, payable to: City of Portland – Bureau of Transportation, at the 5<sup>th</sup> Floor Reception, Attn: PBOT Building Plan and Development Review (299/5000), 1900 SW 4th Ave, Portland OR 97201.
- F. As used in this Agreement, the terms “site” or “development site” or words of similar import herein refer to “site” as defined in City of Portland Zoning Code, Title 33.920 (p.32).
- G. As used in this Agreement, the term “Development” refers to “Development, New” as defined in City of Portland Zoning Code, Title 33.910 (p.5).

- H. As used in this Agreement, the terms “construct”, “construction of,” or words of similar import with respect to the improvements described herein include all aspects of planning, procurement, construction, managing and administering and other work related to the Project including, without limitation, the following: designing, engineering and securing all necessary permits for the Project; procuring all necessary equipment, labor and materials for the Project; and constructing and completing all work on the Project in accordance with applicable law and this Agreement. “Construct”, “construction of,” and words of similar import specifically exclude any obligation of the Developer to secure additional necessary or desirable right-of-way dedications or easements, which is instead the exclusive obligation.

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of the foregoing and the respective covenants of the Parties set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree that the foregoing recitals are true and correct and are incorporated into and made a part of this Agreement as if fully set forth herein and hereby further agree as follows:

**City Approvals.** Payment of the fee satisfies the condition of Development approval LU 17-199218 ZC PD “*As a condition of Building Permit Approval, the applicant shall provide a performance bond in lieu of the design and construction of improvements on the northern frontage of NE 42<sup>nd</sup> and the entire frontage of NE Portland Highway.*”

### **Construction.**

2.1 Payment of the fee will relieve the applicant from the requirement to construct public improvements on NE Portland Highway and the *northern* frontage of NE 42<sup>nd</sup>, adjacent to the proposed site. The applicant is responsible for constructing vehicle access to the site via NE 42<sup>nd</sup> that meets the requirements of Title 17.28.110 and the City Traffic Engineer.

2.2 Upon payment of the fee and construction of the site access as referenced in 2.1 above, the City will not require further construction of improvement(s) adjacent to the development site in relation to development approved by LU 17-199218 ZC PD.

### **Representations and Warranties**

**Authority to Sign.** Each of the individuals executing this Agreement on behalf of a Party has full power and authority to execute and deliver this Agreement on behalf of such Party.

**Binding Agreement.** This Agreement has been duly executed and delivered by each Party hereto and is a valid and binding obligation of each Party, enforceable against each Party in accordance with its terms.

**No Conflicts.** The execution, delivery, and performance of this Agreement by each Party will not conflict with or breach any law, regulation, judgment, order, decree, writ, injunction, contract, agreement or instrument to which each such Party is bound or subject; and each has obtained any consent, approval,

authorization or order of any court or governmental agency or body required for the execution, delivery and performance of such Party thereby.

**Default; Termination.** In the event of a material breach of this Agreement, a non-breaching Party may terminate this Agreement on thirty (30) days prior written notice to the breaching Party and to each other non-breaching Party, unless the breach of this Agreement is cured within such thirty (30) day period or, if a complete cure may not practicably be completed within such time period, such additional reasonable period of time, provided that the breaching Party has taken all reasonable steps to commence the cure within the first thirty (30) days and such cure is diligently completed thereafter. If any Party fails to perform its obligations under this Agreement in any material respect, any other Party shall be entitled to pursue all remedies available under this Agreement and any remedies available at law or in equity; provided, however, that all Parties waive the right to consequential damages.

**Notices.** All notices, demands, consents, approvals and other communications that are required or desired to be given by any Party to any other Party or Parties hereunder shall be in writing and shall be hand delivered, sent by overnight courier or United States mail, or sent by certified or registered mail, return receipt requested, with all applicable delivery and postage charges prepaid, to the applicable address set forth below or to such other address as a Party shall have last designated by a notice given in accordance with this Section 13. Notices, demands, consents, approvals, and other communications shall be deemed given upon the earlier of actual delivery or refusal of a Party to accept delivery thereof, which refusal shall include ignoring delivery attempts:

If to the City:                      Portland Bureau of Transportation  
Attn: Kurt Krueger  
1120 SW Fifth Avenue, Suite 800  
Portland, OR 97204

with a copy to:                      City of Portland Attorney's Office  
Attn: Ken McGair  
1221 SW Fourth Avenue, Suite 430  
Portland, OR 97204

If to Fernhill Crossing LLC:  
222 NE Oregon St, Ste. 209  
Portland, OR 97209

with a copy to:                      Kyle Wuepper  
Brix Law  
75 SE Yamhill St #202  
Portland OR 97214

### **Miscellaneous**

a.        **Good Faith and Reasonableness.** The Parties intend that the obligations of good faith and fair dealing apply to this Agreement generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement. The obligation to be reasonable shall only be negated if the right to act arbitrarily is clearly and explicitly provided in this

Agreement as to the specific item in question, such as in the case of a Party being given “sole discretion” or being allowed to make a decision in its “sole judgment.”

b. **Further Assurances.** Each Party, upon request of any other Party, shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary in connection with this Agreement or better to give effect to this Agreement, including the performance of its obligations hereunder in good faith, to carry out the intent of the Parties as contemplated in this Agreement.

c. **Nature of Agreement.** Each Party to this Agreement, respectively, hereby confirms, each on its own behalf, that it has approved and executed this Agreement pursuant to its governing organizational documents or charter, as applicable, and not pursuant to ORS 94.504 *et seq.*, and does further confirm that this Agreement does not constitute or concern the adoption, amendment, or application of the Statewide Planning Goals, a comprehensive plan provision, or a land use regulation.

d. **Relationship.** Nothing herein shall be construed to create an agency relationship or a partnership or joint venture between the Parties.

e. **Burden and Benefit; Assignment.** The covenants and agreements contained herein shall be binding upon and inure to the benefit of the Parties and their successors and assigns. The Developer may assign or delegate their interest in or obligations under this Agreement with the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. The City shall not assign or delegate its interest in or obligations under this Agreement.

f. **No Continuing Waiver.** The waiver of any Party of any breach of this Agreement shall not operate or be construed to be a waiver of any subsequent breach.

g. **Applicable Law.** This Agreement shall be interpreted under the laws of the State of Oregon.

h. **Rights Cumulative.** All rights, remedies, powers and privileges conferred under this Agreement on the Parties shall be cumulative of and in addition to, but not restrictive or in lieu of, those conferred by law.

i. **No Third-Party Beneficiaries.** None of the duties and obligations of any Party under this Agreement shall in any way or in any manner be deemed to create any rights in any person or entity other than the Parties hereto.

j. **Merger.** This Agreement contains the entire agreement among the Parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous written or oral agreements, understandings, representations or communications of every kind among the Parties with respect to such subject matter.

k. **Calculation of Time.** All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays observed by the State of Oregon, except that if the last day of any period falls

on any Saturday, Sunday, or legal holiday observed by the State of Oregon, the period shall be extended to include the next day that is not a Saturday, Sunday, or such a holiday.

l. **Construction.** In construing this Agreement, (a) singular pronouns shall be taken to mean and include the plural and the masculine pronoun shall be taken to mean and include the feminine and the neuter, as the context may require, (b) “including” means including without limitation, (c) “shall” means mandatory and imperative, and (d) “business days” means each day of the week other than Saturdays, Sundays and legal holidays observed by the State of Oregon.

l. **Severability.** If any clause, sentence or any other portion of the terms and conditions of this Agreement becomes illegal, null or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law.

m. **Cooperation in the Event of Legal Challenge.** If any legal action is instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the Parties agree to cooperate in defending such action.

n. **Enforced Delay, Extension of Times of Performance.** In addition to the specific provisions of this Agreement, a Party shall not be in default of this Agreement for delay or failure to perform by such Party to the extent such delay or failure is due to: war; insurrection; strikes; riots; floods; drought; earthquakes; fires; casualties; acts of God; governmental restrictions imposed or mandated by governmental entities; as relates to any obligation of the Parties, enactment of conflicting state or federal laws or regulations; new or supplementary environmental regulations; litigation (except to the extent arising out of the Party’s material breach of this Agreement or applicable law); similar bases for excused performance; and other events that are not within the reasonable control of the Party to be excused (“force majeure”); provided, however, the Party claiming such force majeure shall (a) give the other Parties prompt written notice describing the particulars of the force majeure as soon as it is discovered, (b) perform all its obligations to the extent such force majeure does not prevent such performance, (c) use commercially reasonable efforts to overcome or mitigate the effects of such force majeure occurrence, and (d) keep the other Parties apprised of the status of the force majeure event and obligations affected.

o. **Modification and Cancellation.** This Agreement, including exhibits, may be modified or canceled only by written agreement signed by both Parties, or their permitted successors or assigns.

p. **Headings.** The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Agreement nor in any way affect the terms of provisions hereof.

q. **Attorneys’ Fees.** If a suit, action, arbitration, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under the US Bankruptcy Code, is instituted, or the services of an attorney are retained, to interpret or enforce any provision of this Agreement or with

respect to any dispute relating to this Agreement, each Party shall be responsible for its own attorneys' fees and costs.

r. **Survival.** Sections 2, 8, 9, 10 (for a period of one (1) year), and 13 of this Agreement shall survive the expiration or earlier termination of this Agreement.

s. **Execution and Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts, taken together, shall constitute one and the same agreement.

t. **Exhibits.** Each exhibit now or hereafter attached hereto is incorporated herein and made a part of this Agreement. The exhibits are identified below.

- Exhibit A-1: Description of Subject Property
- Exhibit B-1: LU 17-199218 ZC PD approved by the Hearings Officer on March 21, 2018.

*(Remainder of Page Intentionally Left Blank. Signatures on Following Page)*

This Agreement has been executed by the Parties as of the day and year first above written.

**CITY OF PORTLAND, OREGON**, a municipal corporation of the State of Oregon

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
City Attorney for City of Portland

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form: \_\_\_\_\_ Portland Bureau of  
Transportation, City of Portland

Fernhill Crossing LLC, an Oregon Corporation

By: \_\_\_\_\_

Name: Paul Del Vecchio

Title: \_\_\_\_\_



**Exhibit A-1**

**Description of Subject Property**

**Site Address:** 4250 NE Portland Highway

**Legal Description:** TL 12200 0.11 ACRES, SECTION 18 1N 2E; TL 11700 0.39 ACRES, SECTION 18 1N 2E; TL 11800 0.19 ACRES, SECTION 18 1N 2E, TL 11000 0.23 ACRES, SECTION 18 1N 2E; TL 11600 0.05 ACRES, SECTION 18 1N 2E; TL 11500 0.06 ACRES, SECTION 18 1N 2E

**Tax Account No.:** R942180940, R942182690, R942182760, R942183140, R942183850, R942183860

Exhibit B-1

LU 17-199218 ZC PD



# Portland City Auditor

Hearings Office

1900 SW 4<sup>th</sup> Avenue, Room 3100, Portland, OR 97201

[www.portlandoregon.gov/auditor/hearings](http://www.portlandoregon.gov/auditor/hearings)

phone: (503) 823-7307

fax: (503) 823-4347



## DECISION OF THE HEARINGS OFFICER

### I. GENERAL INFORMATION

**File Number:** LU 17-199218 ZC PD (Hearings Office 4170034)

**Applicant:** Terry Amundson  
Koble Creative Architecture LLC  
2117 NE Oregon #701  
Portland, OR 97232

**Owner:** Fernhill Crossing, LLC  
2225 NE 45th Avenue  
Portland, OR 97213

**Owner's Agent:** Paul Delvecchio  
Ethos Development LLC  
2225 NE 45th Avenue  
Portland, OR 97213

**Hearings Officer:** Joe Turner

**Bureau of Development Services (BDS) Staff Representative:** Leah Dawkins

**Site Address:** 4250 NE Portland Highway

**Legal Description:** TL 12200 0.11 ACRES, SECTION 18 1N 2E; TL 11700 0.39 ACRES, SECTION 18 1N 2E; TL 11800 0.19 ACRES, SECTION 18 1N 2E; TL 11000 0.23 ACRES, SECTION 18 1N 2E; TL 11600 0.05 ACRES, SECTION 18 1N 2E; TL 11500 0.06 ACRES, SECTION 18 1N 2E

**Tax Account No.:** R942180940, R942182690, R942182760, R942183140, R942183850, R942183860

**State ID No.:** 1N2E18CB 12200, 1N2E18CB 11700, 1N2E18CB 11800, 1N2E18CB 11000, 1N2E18CB 11600, 1N2E18CB 11500, 1N2E18CB 12200

**Quarter Section:** 2435

**Neighborhood:** Cully

**Business District:** Forty-Second Avenue

**District Coalition:** Central Northeast Neighbors

**Zoning:** R2- Multi-Dwelling Residential Zone (2000);  
R10(R5)h- Single Dwelling Residential Zone (10,000) with Comprehensive  
Plan Map designation of R5- Single Dwelling Residential (5,000);  
“h” Aircraft Land Zone Overlay

**Land Use Review:** Type III ZC PD- Zone Map Amendment with a Planned Development Review

**Public Hearing:** The hearing was opened at 9:00 a.m. on March 7, 2018, in the 3<sup>rd</sup> floor hearing room, 1900 SW 4<sup>th</sup> Avenue, Portland, Oregon, and was closed at 9:44 a.m. The applicant waived applicant’s rights granted by ORS 197.763 (6)(e), if any, to an additional seven day time period to submit written rebuttal into the record. The record was closed to all testimony and/or written submissions at the end of the hearing.

**Testified at the Hearing:**

Leah Dawkins  
Terry Amundson  
Paul Delvecchio  
Dave Olhausen

**Proposal:**

The applicant is proposing a 19-unit Planned Development on a 44,960-square foot split-zoned site. The Planned Development review is in conjunction with a Zone Map Amendment request to bring the site in conformance with the Comprehensive Plan by changing a portion of the site from Residential 10,000 (R10h) to Residential 5,000 (R5h). The purpose of the Planned Development review is to allow transfer of development rights across zoning lines within the site; and to allow multi-dwelling residential development within a single dwelling zone.

The applicant is proposing the following modifications to site-related development standards as part of the Planned Development Review:

- A modification to the 20-foot maximum front setback from transit streets to allow greater setbacks from NE Portland Highway and NE 42<sup>nd</sup> Avenue. (33.120.220.C). A setback of 70 feet from NE Portland Highway is proposed. A setback of between 40 feet and 70 feet from the northern frontage of NE 42<sup>nd</sup> is proposed.
- A modification to allow vehicle area between the proposed buildings and the transit street NE Portland Highway and on NE 42<sup>nd</sup> Avenue (33.266.130.C.1). A parking lot is proposed

between NE Portland Highway and the residential structures. A driveway access is proposed between NE 42<sup>nd</sup> and the residential structures.

- A modification to allow more than 50 percent of the frontages along NE Portland Highway and NE 42<sup>nd</sup> to be used as vehicle area (33.266.130.C.3). The entire frontages along NE Portland Highway and the northern frontage of NE 42<sup>nd</sup> are proposed to be used as vehicle area.
- A modification to eliminate the perimeter landscaping requirement adjacent to the access driveway (33.266.130.G.2.d(2)).
- A modification to the pedestrian standards of the multi-dwelling zone (33.120.B.1.a(2)) to eliminate the requirement for an additional pedestrian connection between NE Portland Highway and a pedestrian entrance on the site.
- A modification to allow increased building coverage within the single-dwelling zoned portion of the site (33.110.225). The maximum allowed building coverage for this portion of the site is 3,002 square feet. The proposed building coverage is 4,117 square feet.

The applicant is proposing to retain and renovate an existing single dwelling structure on the site. The applicant will remove the existing accessory building. The new development is proposed as a mix of townhouse and apartment style development. A parking lot with 22 parking spaces is proposed. Proposed amenities include community garden space, recreational area, short-term covered loading spaces, and short-term bicycle parking. The site will be accessed from NE 42<sup>nd</sup> Avenue via a private driveway. Public street improvements are proposed along the southern frontage of NE 42<sup>nd</sup> Avenue through a Public Works permit.

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

- **33.855.050, Approval Criteria for Base Zone Changes**
- **33.665.310, Approval Criteria for Planned Developments in All Zones**
- **33.665.320, Approval Criteria for Modification of Site-Related Development Standards**
- **33.665.340, Approval Criteria for Proposals Without a Land Division**

## II. ANALYSIS

**Site and Vicinity:** The subject site, just over an acre in size, is located at the intersection of NE Portland Highway and NE 42<sup>nd</sup> Avenue. A large portion of the site is underdeveloped and consists primarily of a grassy slope surrounded by overgrown shrubs. There is one existing home and a large accessory structure on the site. The site slopes down from NE 42<sup>nd</sup> Avenue to the northeast toward NE Portland Highway.

The site is surrounded by small single dwelling structures. To the northwest of the site, there is a bridge overpass which provides vehicle access across NE Portland Highway to the industrial area north of the subject site. Primary access to the site is via a private 20-foot driveway off NE 42<sup>nd</sup> Avenue. This driveway also provides access to six other single dwelling lots, which are not part of the subject site. The street grid surrounding the site is limited by NE Portland Highway, which is a state highway. The street grid to the south of the site provides reasonably good connectivity to the neighborhoods and business district south of the site.

#### **Infrastructure:**

- **Streets** –The site has approximately 107 feet of frontage on NE 42nd Avenue, broken into two segments of frontage. The site has approximately 150 feet of frontage on NE Portland Highway. There is one driveway entering the site. At this location, NE 42<sup>nd</sup> Avenue is classified as a Neighborhood Collector, Transit Access Street, City Bikeway, City Walkway, and an Urban Road in the Transportation System Plan (TSP).

NE Portland Highway is classified as a Regional Transportation Major City Traffic Street, Community Transit Street, City Bikeway, City Walkway, and an Urban Road. TriMet provides transit service adjacent to the site on NE 42<sup>nd</sup> Avenue via Bus 75.

NE 42<sup>nd</sup> Avenue has a 30-foot curb-to-curb paved surface within an 83-foot right-of-way with no parking. A five-foot sidewalk corridor was constructed with the overpass at this location, however no sidewalk corridor or curb on NE 42<sup>nd</sup> was constructed for the remainder of the frontage.

NE Portland Highway has a 55-foot paved roadway within a 72-foot right-of-way and a curb-tight sidewalk approximately 6-feet wide.

- **Water Service** – There is an existing 8-inch CI water main in NE Portland Highway.
- **Sanitary Service** - There is an existing 24-inch CSP sanitary-only sewer in NE Portland Highway. There is an existing 8-inch PVC sanitary-only sewer in NE 42<sup>nd</sup> Avenue. There is an existing 8-inch PVC sanitary only sewer in an easement on R317669, the lot containing the driveway accessing the site from NE 42<sup>nd</sup> Avenue.
- **Stormwater Disposal** – There is no public storm-only sewer currently available to this property.

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

The R10 designation is one of the City's single-dwelling zones, which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing.

R5 Proposed Zoning- The R5 designation is one of the City's single-dwelling zones, which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing.

**Land Use History:** City records indicate there 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. The E Exhibits contain the complete responses.

**Neighborhood Review:** A Notice of Public Hearing was mailed on February 25, 2018. No written responses have been received from the Neighborhood Association or notified property owners in response to the proposal. One area resident appeared at the hearing and testified with questions about the application. Another resident testified in writing. Exhibit H-6.

## ZONING CODE APPROVAL CRITERIA

### *Approval Criteria For Zoning Map Amendments*

#### **33.855.050 Approval Criteria for Base Zone Changes**

An amendment to the base zone designation on the Official Zoning Maps will be approved (either quasi-judicial or legislative) if the review body finds that the applicant has shown that all of the following approval criteria are met:

- A. Compliance with the Comprehensive Plan Map.** The zone change is to a corresponding zone of the Comprehensive Plan Map.

**Findings:** The zone change from R10 to R5 is in compliance with the Comprehensive Plan Map. The R5 zone is the only corresponding zone of the Comprehensive Plan Map.

1. When the Comprehensive Plan Map designation has more than one corresponding zone, it must be shown that the proposed zone is the most appropriate, taking into consideration the purposes of each zone and the zoning pattern of surrounding land.

**Findings:** The Comprehensive Plan designation is R5. This designation has only one corresponding zone, R5. Therefore, this criterion does not apply.

2. Where R zoned lands have a C, E, or I designation with a Buffer overlay, the zone change will only be approved if it is for the expansion of a use from abutting nonresidential land. Zone changes for new uses that are not expansions are prohibited.

**Findings:** This site does not have a C, E, or I designation or a Buffer overlay, so this criterion does not apply.

3. When the zone change request is from a higher-density residential zone to a lower-density residential zone, or from the CM zone to the CS zone, then the approval criterion in 33.810.050 A.2 must be met.

**Findings:** The requested zone change is not from a higher density residential zone to a lower density residential zone or from the CM zone to the CS zone. Therefore, this criterion does not apply.

**B. Adequate public services.**

1. Adequacy of services applies only to the specific zone change site.
2. Adequacy of services is determined based on performance standards established by the service bureaus. The burden of proof is on the applicant to provide the necessary analysis. Factors to consider include the projected service demands of the site, the ability of the existing and proposed public services to accommodate those demand numbers, and the characteristics of the site and development proposal, if any.
  - a. Public services for water supply, and capacity, and police and fire protection are capable of supporting the uses allowed by the zone or will be capable by the time development is complete.
  - b. Proposed sanitary waste disposal and stormwater disposal systems are or will be made acceptable to the Bureau of Environmental Services. Performance standards must be applied to the specific site design. Limitations on development level, mitigation measures or discharge restrictions may be necessary in order to assure these services are adequate.
  - c. Public services for transportation system facilities are capable of supporting the uses allowed by the zone or will be capable by the time development is complete. Transportation capacity must be capable of supporting the uses allowed by the zone by the time development is complete, and in the planning period defined by the Oregon Transportation Rule, which is 20 years from the date the Transportation System Plan was adopted. Limitations on development level or mitigation measures may be necessary in order to assure transportation services are adequate.

**Findings:** The adequacy of services findings below apply only to the specific zone change site. As indicated in the following summary of bureau responses, the Water Bureau, Police Bureau, Fire Bureau, Bureau of Environmental Services (BES), and Portland Bureau of Transportation (PBOT) all noted that adequate services are available for the anticipated level of use that would be allowed



to occur, which will be one additional dwelling unit. Therefore, in accordance with the responses summarized below, this criterion has been met.

Water Bureau (Exhibit E.3).

The Water Bureau has indicated that service is available to the site from the 8-inch CI water main in NE Portland Highway, if all tax lots are consolidated into a single tax account through the Multnomah County Tax Assessor's Office. Tax lot consolidation can take place prior to the submission of building permits for the site.

Police Bureau (Exhibit E.8).

The Police Bureau does not anticipate any impact in services as a result of the proposed zone change and therefore has no concerns.

Fire Bureau (Exhibit E.4).

The Fire Bureau has reviewed the applicant's Zoning Map Amendment request and has no issues with the ability of its bureau to serve the uses and development allowed under the proposed R5 zone. The Fire Bureau has required several Conditions at the time of development, which are addressed under the Technical Requirements section of this decision.

BES (Exhibit E.1)

BES has indicated that sanitary service is available to the site from a public 24-inch CSP sanitary-only sewer main in NE Portland Highway, a public 8-inch PVC sanitary-only sewer in NE 42<sup>nd</sup> Avenue, and a public 8-inch sanitary only sewer in an easement on Tax lot R317669, the tax lot containing the private driveway accessing the site. The applicant has proposed to provide a new sanitary connection to the existing 8-inch sanitary only sewer located northwest of the site, within the right-of-way adjacent to the NE 42<sup>nd</sup> Avenue overpass bridge.

There is an existing easement granted to the City of Portland over the public sanitary sewer located within the driveway area. The applicant provided a revised exhibit showing the private stormwater pipe and catch basin the applicant proposed to install within this City easement. BES has reviewed the proposed encroachment and preliminarily determined that the proposed encroachment is approvable, provided that the sanitary pipe location shown on the submitted survey is accurate relative to the proposed private encroachments. At the time of permit review, BES will provide an encroachment agreement document, which must be signed by the applicants/owners, and will be recorded against the property.

BES has also granted concept approval of the applicant's proposed method of stormwater management for the site. The revised stormwater report addresses the concerns described in the initial BES response regarding the infiltration rate used to size the proposed facilities, and the proposed infiltration into fill. The report was revised so that the proposed drywells are sized using the infiltration rate recommended by the geotechnical engineer. In addition, the report indicates that the proposed drywells will only infiltrate stormwater below the existing fill material on the site; the drywells are designed so that only the bottom portion of the drywell will be perforated, corresponding with the depth of fill identified by the geotechnical engineer.

As described above, BES has found sanitary and storm services are adequate to serve the proposed development, which includes the extra unit of density under the zone change.

PBOT Engineering and Development Review (Exhibit E.2).

The Development Review Section of PBOT has reviewed the application for its potential impacts regarding the public right-of-way, traffic impacts and conformance with adopted policies, street designations, and for potential impacts upon transportation services. The applicant has submitted a Transportation Impact Analysis and analysis of the Transportation Planning Rule (Exhibit A.2) to address this approval criterion. PBOT's Analysis is quoted, in part, as follows:

*"The applicant provided a professionally prepared Transportation Impact Study (TIS) to address the transportation approval criteria. The TIS addresses the 'reasonable worst-case scenario' under the existing and proposed zoning for the 2035 planning horizon. The TIS demonstrated that sufficient capacity exists at study intersections to accommodate the proposed development."*

More detailed analysis of street systems is also addressed below under Criterion G, Transportation Impacts and under the Technical Requirements section of this Final Order.

In summary, as noted in findings above, the public services for this site have been found to be adequate. Therefore, this criterion is met.

3. Services to a site that is requesting rezoning to IR Institutional Residential, will be considered adequate if the development proposed is mitigated through an approved impact mitigation plan or conditional use master plan for the institution.

**Findings:** The request does not include rezoning the site to the IR zone, so this criterion does not apply.

- C. When the requested zone is IR, Institutional Residential.** In addition to the criteria listed in subsections A. and B. of this Section, a site being rezoned to IR, Institutional Residential must be under the control of an institution that is a participant in an approved impact mitigation plan or conditional use master plan that includes the site. A site will be considered under an institution's control when it is owned by the institution or when the institution holds a lease for use of the site that covers the next 20 years or more.

**Findings:** The request does not include rezoning the site to the IR zone, so this criterion does not apply.

- D. Location.** The site must be within the City's boundary of incorporation. See Section 33.855.080.

**Findings:** The site is within the incorporated boundaries of the City of Portland. Therefore, this criterion is met.

### **APPROVAL CRITERIA FOR PLANNED DEVELOPMENT REVIEW**

#### **33.665.300 Approval Criteria in General**

The approval criteria for Planned Developments are stated below. Planned Developments in all zones must meet the criteria in Section 33.665.310. Some proposals must also meet additional approval criteria, as follows:

- A. Proposals to modify site-related development standards must meet the criteria in Section 33.665.320.
- B. Proposals for commercial uses in residential zones must meet the criteria in residential zones must meet the criteria in Section 33.665.330.
- C. Proposals that do not include a land division must meet the criteria in Section 33.665.340.

The proposal to transfer density across zone boundaries on the site and the request to allow multi-dwelling development in a single dwelling zone require a Planned Development. A request for a Planned Development will be approved if the review body finds that the applicant has shown that all of the approval criteria have been met. Approval criteria B does not apply to this proposal, because no commercial uses are proposed.

#### **33.665.310 Approval Criteria for Planned Developments in All Zones**

- A. Visually integrate both the natural and built features of the site and the natural and built features of the surrounding area. Aspects to be considered include:
  - 1. Orienting the site and development to the public realm, while limiting less active uses of the site such as parking and storage areas along the public realm;

**Findings:** The context of the subject site is that it is located at the intersection of two streets of high traffic classification in the Transportation Systems Plan. Because of the steep topography across the site and lack of pedestrian infrastructure, the site is not readily accessible from either NE Portland Highway or NE 42<sup>nd</sup> Avenue. Access is limited to NE Portland Highway by Oregon Department of Transportation (ODOT) standards, speeds, and visibility along this very busy state highway. In this context, it would be difficult to orient development on the site to the public realm. Instead, the applicant will orient development on the site toward central common areas within the middle of the site. Parking will be limited to a single shared parking lot located at the north edge of the site, which will be buffered from the residential development by significant landscaping. The parking area will be located at a lower elevation than the proposed residential dwelling, further limiting the impact of parking on the residential portion of the site. The parking area itself will be highly landscaped. In addition, the parking area will be located approximately 10 feet above NE Portland Highway and approximately 10 feet below NE 42<sup>nd</sup> Avenue, which will limit the visual impact of the parking area from the street. The proposed development includes on-site amenities such as a community garden space, an open recreational area, and a network of paths connecting each building within the development. The scale of the buildings within the

development will be 1.5 to two stories in height, which will limit the overall scale of the development. The buildings within the development will include main entrances and windows facing toward the center of the site, which will provide interaction between the interior of the units and the shared central area of the development. The development will create a public realm within the site itself. This criterion is met.

2. Preservation of natural features on the site, such as stands of trees, water features or topographical elements;

**Findings:** The subject property contains no significant landscaping features or water features. The existing site topography slopes extensively from the south down to the north, where it is lowest along the NE Portland Highway frontage. The applicant states in their narrative (Exhibit A.1) that “[s]ite grading has been minimized by locating parking along Portland Highway at the lower area of the site, with dwelling units arranged at the upper level consistent with area development.” The applicant has made an effort to minimize impacts to the natural topography of the site through the placement of the parking area and structures. This criterion is met.

3. Inclusion of architectural features that complement positive characteristics of surrounding development, such as similar building scale and style, building materials, setbacks, and landscaping;

**Findings:** The site is located in the Cully neighborhood, at the very northern edge of residential development within the neighborhood. Based on photographic evidence submitted by the applicant (Exhibit C.5), the development immediately surrounding the subject site mostly consists of small one-story single dwelling structures. In general, lots in the Cully neighborhood tend to be large underdeveloped lots with small homes. There is also some duplex development, and a multi-dwelling development is proposed on a site just south of the subject site. Additional multi-dwelling developments can be found adjacent to NE Portland Highway both east and west of the subject site. The applicant states the following about their proposal:

*Building scale and configuration were designed for compatibility with the surrounding neighborhood, and to meet a specific unit type need in this neighborhood. The buildings consist of two primary unit types; single level flats in the (8) unit 2-story building, and loft style units arranged in both duplex and 4-plex buildings. An existing single-family home was left onsite to aid in transitioning into the site from NE 42<sup>nd</sup> Avenue.*

*The buildings are 1-1/2 to 2 stories maximum, with low pitched roofs, primarily sloping down toward adjacent properties to minimize massing and impacts on adjacent sites. Building materials consist of horizontal lap siding as the primary cladding materials, with complementary metal panel entryway and addressing accents. The buildings and site structures will be finished in natural earthtones, assuring compatibility and consistency with surrounding residential development.*

The applicant has submitted elevation drawings providing details about the architecture and materials used for the buildings (Exhibits C.6 and C.7). The proposed buildings are complementary to the surrounding development and the unit mix reflects the scale and variety of housing types within the Cully neighborhood. The materials are durable, modest, and are not out of character with the surrounding development. At maturity, the proposed landscaping (Exhibit C.2) will provide visually interesting green spaces within the development and a natural buffer for the surrounding existing homes. This criterion is met.

4. Mitigation of differences in appearance through means such as setbacks, screening, landscaping and other design features;

**Findings:** Mitigation of differences in appearance is provided primarily through significant landscaping (Exhibit C.2) and the necessary setback of the development from both NE Portland Highway and NE 42<sup>nd</sup> Avenue. The most dramatic difference in the appearance of the proposed development will be the shared parking lot adjacent to NE Portland Highway. The parking lot will be heavily landscaped with large trees to soften the impact of a vehicle area adjacent to potential future pedestrian improvements along NE Portland Highway. Additionally, the parking area is set back 70 feet from the actual roadway of NE Portland Highway and at a higher elevation, which will further buffer the difference in appearance. This criterion is met.

5. Minimizing potential negative effects on surrounding residential uses;

**Findings:** As described above, the development pattern and appearance of the development proposed for this site is not significantly different from the surrounding development and is generally acceptable for the R2 multi-dwelling zoning of the majority of the subject site. Any negative impacts that do occur because of the new development will be minimized by the provision of landscaping along the property boundaries, provision of development that is not exceedingly tall, and placement of the parking area away from the existing homes surrounding the site. The existing shared driveway, which currently provides access to six homes, will be impacted by additional vehicular traffic. This impact will be mitigated through the proposed driveway improvements: widening the driveway, improving the surface, adding a sidewalk adjacent to the driveway for safe pedestrian access, and provision of pedestrian improvements along NE 42<sup>nd</sup> at the driveway entrance. These improvements, along with landscaping and the placement of vehicles along the north edge of the site will help to minimize impacts on neighboring homes clustered around the southern portion of the site. This criterion is met.

6. Preservation of any City-designated scenic resources; and

**Findings:** There are no City-designated scenic resources on the site. Therefore, this criterion does not apply.

- B. Provision of adequate open area on sites zoned RF through R2.5 where proposed development includes attached houses, duplexes, attached duplexes, or multi-dwelling structures. Open area does not include vehicle areas.

**Findings:** The portion of the subject site that is proposed to be rezoned to R5 consists of approximately 10,000 square feet of the 45,000-square foot site. If this portion of the site were developed to the maximum density with two single dwelling structures, 500 square feet of outdoor area would be required. The remaining 17 units of density within the R2 zoned portion of the site require 816 square feet of outdoor area, which can be provided for individual units or within a common area. The applicant has proposed approximately 4,000 square feet of open area throughout the site. The Site and Context Plan (Exhibit C.1) specifically calls out areas for a pavilion and a playground structure that will be provided as amenities for the residents. This space and the proposed amenities will provide sufficient open area for the residents. This criterion is met.

### **33.665.320 Additional Approval Criteria for Modifications of Site-Related Development Standards**

The following criteria apply to modifications of site-related development standards, including parking standards. These modifications are done as part of the Planned Development review and do not have to go through the adjustment process. The modification will be approved if the following approval criteria are met:

- A. Better meets approval criteria.** The resulting development will better meet the approval criteria of Section 33.665.310, above;

**Findings:** The applicant has requested modifications to the following development standards:

- A modification to the 20-foot maximum front setback from transit streets to allow a greater setback from NE Portland Highway and NE 42<sup>nd</sup> Avenue. (33.120.220.C). A setback of 70 feet from NE Portland Highway is proposed. A setback of between 40 feet and 70 feet from NE 42<sup>nd</sup> is proposed.
- A modification to allow vehicle area between the proposed buildings and the transit street on NE Portland Highway and on NE 42<sup>nd</sup> Avenue (33.266.130.C.1). A parking lot is proposed between NE Portland Highway and the residential structures. A driveway access and parking area is proposed between NE 42<sup>nd</sup> and the residential structures.
- A modification to allow more than 50 percent of the frontages along NE Portland Highway to be used as vehicle area (33.266.130.C.3). The entire frontage along NE Portland is proposed to be used as vehicle area.
- A modification to eliminate the perimeter landscaping requirement adjacent to the access driveway (33.266.130.G.2.d(2)).
- A modification to the pedestrian standards of the multi-dwelling zone (33.120.B.1.a(2)) to eliminate the requirement for an additional pedestrian connection between NE Portland Highway and a pedestrian entrance on the site.

- A modification to allow increased building coverage within the single-dwelling zoned portion of the site (33.110.225). The maximum allowed building coverage for this portion of the site is 3,002 square feet. The proposed building coverage is 4,117 square feet.

### **Setback Modification**

Modifications to the 20-foot maximum front setback from a transit street (33.120.220.C) are requested to allow the buildings on the site to be located more than 20 feet from both NE Portland Highway and NE 42<sup>nd</sup> Avenue. The modifications are necessary to allow the placement of the site's shared parking lot away from the residential structures and to create a cluster of residential units at the higher end of the site surrounding a central common area. (Exhibit C.1 Concept Plan). The property lines of the site adjacent to the rights-of-way are setback a significant distance from the actual finished portions of the rights-of-way. Additionally, NE Portland Highway is a high traffic thoroughfare that will not provide access to the site and does not provide an environment that is particularly conducive to pedestrian or bicycle movement, although there are limited improvements for both modes. Along NE 42<sup>nd</sup> Avenue the site fronts a small segment of the right-of-way that transitions into the bridge overpass. Given this environment, the proposal to place the parking area closer to the streets allows more opportunity for the residential structures to be oriented toward the public realm internal to the site. It will also buffer the residences from the impacts of traffic and noise coming from both streets. The placement of the parking area reduces the vehicle orientation of the site and locates the parking at the lowest part of the site. Allowing the modification places the less active uses at the edge of the site and provides better opportunities within the center of the site for the provision of amenities and open space. Significant landscaping beyond the minimum development requirements is proposed along the edges of the parking area to visually buffer the parking from the streets and mitigate for the parking being placed closer to the transit streets. This criterion is met.

### **Modifications to Vehicle Area Standards**

The applicant is proposing two modifications to vehicle area standards to allow vehicle area between the street and the structures, and to allow more than 50 percent of the street frontage to be used for vehicle area (33.266.130.C.1 and 3). As discussed in the setback modification, the proposed placement of the parking area at the edge of the site limits the impacts of vehicle area on the residences within the site, screens the residences from the noise and traffic, allows for better open space within the site, and uses the natural grade of the site in the most practical manner. The applicant notes that *"the parking location allows for the primary active uses of the site to be located in more direct proximity to the residential neighborhood, providing a better fit with the existing neighbors and strengthening the sense of community within the project, enhancing safety for both the residents and the neighborhood. The length of the parking area along the highway allows for increased parking onsite to minimize impacts on the surrounding neighborhood. The north parking and landscaping also provides acoustic and visual screening from the parking and the highway."* As with the setback, the placement of the parking areas in front of the structures is mitigated through the planting of significant landscaping and large trees. Additional landscaping is provided between the parking area and the residential structures. This criterion is met.

### **Modification to Vehicle Area Landscaping**

The applicant is proposing to use and upgrade an existing driveway from NE 42<sup>nd</sup> Avenue to access the site. This driveway currently provides access to five existing lots through an easement agreement. The applicant proposed to repave the surface of the driveway and construct a 5-foot elevated sidewalk along the north side of the driveway to provide safer pedestrian access to the site. Because the driveway will continue to provide access to the existing lots, it is not feasible or practical to require a landscaped buffer on either side of the driveway. Providing landscaping would in effect increase the negative impacts to surrounding development by diminishing space available for the provision of the sidewalk and by limiting access for existing residents. The driveway will be preserved in its current use, and improved to provide better, safer access for all users. This criterion is met.

### **Pedestrian Standard Modification**

As discussed in other parts of this Final Order, no direct pedestrian access is proposed between the site and NE Portland Highway. The pedestrian environment along the frontage of NE Portland Highway is incomplete and is not an inviting space for pedestrian use. ODOT has also indicated that it would like pedestrian access to NE Portland Highway from this site limited because of safety concerns and in anticipation of future safer corridor improvements. Eliminating the pedestrian connection between the site and NE Portland Highway will limit the need for pedestrians to cross the parking lot to get to the active internal areas of the site and allow a more solid landscaping buffer between the parking area and the highway. This will minimize the impacts of noise and pollution from the highway. Eliminating the pedestrian access to NE Portland Highway will not create a discernable difference in appearance to the site, particularly because there is extremely limited pedestrian use of NE Portland Highway. Within the context of the overall site design, it is more practical and meaningful to eliminate direct pedestrian access to NE Portland Highway in favor of focusing pedestrian activity at the center of the site and guiding pedestrians to access the development from NE 42<sup>nd</sup> Avenue. This criterion is met.

### **Building Coverage Modification**

The subject site consists of two zones: 10,000 square feet within the R10 (R5) zone, and 34,671 square feet within the R2 zone. Building coverage in the R10 (R5) zone is limited to 3,000 square feet. Building coverage in the R2 zone is limited to 17,335 square feet. The total building coverage allowed for the site is 20,335 square feet. The applicant is proposing a total of 11,179 square feet of building coverage across the entire site. The applicant has requested a modification to allow 4,103 square feet of building coverage within the R10 (R5) zone. Single dwelling zones have conservative building coverage allowances because those zones envision a single-family dwelling on a single lot. In this case, 19 units are being provided across a 44,671-square foot site. The total building coverage is well below what is allowed for the entire site. Development on the site has been placed closer to the single dwelling zone to better integrate with the existing homes and community to the south and east of the site. Pushing the bulk of the development toward the southern portion of the site allows for a more communal feel within the site and creates distance between the passive parking area and the active open spaces within the site. In this context, allowing greater building coverage within the single dwelling area of the site is reasonable. This criterion is met.



**B. Purpose of the standard.** On balance, the proposal will be consistent with the purpose of the standards for which a modification is requested.

**Findings:**

**Multi-Dwelling Transit Street Setbacks**

The purpose of Setbacks (33.120.220) is as follows:

*Purpose. The building setback regulations serve several purposes:*

- *They maintain light, air, separation for fire protection, and access for fire fighting;*
- *They reflect the general building scale and placement of multi-dwelling development in the City's neighborhoods;*
- *They promote a reasonable physical relationship between residences;*
- *They promote options for privacy for neighboring properties;*
- *They provide adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity;*
- *Setback requirements along transit streets create an environment that is inviting to pedestrians and transit users; and*
- *They provide room for a car to park in front of a garage door without overhanging the street or sidewalk, and they enhance driver visibility when backing onto the street.*

The primary purpose of limiting the setback from Transit Streets is to create an environment that is inviting to pedestrians and transit users. The transit streets adjacent to this site are very auto-oriented, allowing relatively high vehicle speeds, which limit opportunities for pedestrians to safely walk adjacent to the site. The applicant states:

*"Vehicle access to the site is not allowed on NE Portland Highway, and as such, residential units have been sited to orient to the west and south site areas. Community and pedestrian pathways and connections are internally focused given the primarily land-locked aspect of this site. Locating residential units directly along Portland Highway is not a realistic option from a livability and functionality standpoint, hence the lack of any prior development or construction of the sites fronting the highway. Frontage along NE 42<sup>nd</sup> Avenue exists only at a portion of the elevated overpass. Locating residential structures on the overpass frontage would not enhance the pedestrian environment or be realistic from a constructability standpoint given the topography and impacts of the overpass on the site."*

The Hearings Officer finds that it is not practical to locate structures within the transit street setback and would do little to enhance the pedestrian environment. The scale and placement of the multi-dwelling structures away from the streets is appropriate within the context of this site. This criterion is met.

**Vehicle Area Development Standards for all other development (not single dwelling or duplex)**

The purpose for Development Standards for All Other Development (33.266.130) is as follows:

*Purpose. The development standards promote vehicle areas which are safe and attractive for motorists and pedestrians. Vehicle area locations are restricted in some zones to promote the desired character of those zones. Together with the transit street building setback standards in the base zone chapters, the vehicle area restrictions for sites on transit streets and in Pedestrian Districts:*

- Provide a pedestrian access that is protected from auto traffic; and*
- Create an environment that is inviting to pedestrians and transit users.*

*The parking area layout standards are intended to promote safe circulation within the parking area, provide for the effective management of stormwater runoff from vehicle areas, and provide for convenient entry and exit of vehicles. The setback and landscaping standards:*

- Improve and soften the appearance of parking areas;*
- Reduce the visual impact of parking areas from sidewalks, streets, and especially from adjacent residential zones;*
- Provide flexibility to reduce the visual impacts of small residential parking lots;*
- Direct traffic in parking areas;*
- Shade and cool parking areas;*
- Reduce the amount and rate of stormwater runoff from vehicle areas;*
- Reduce pollution and temperature of stormwater runoff from vehicle areas; and*
- Decrease airborne and waterborne pollution*

The development standards for vehicle areas ensure that developments will not be overly auto-oriented by providing protected pedestrian access, creating an inviting pedestrian environment, and by requiring landscaping and buffers within and around parking areas to soften the impacts of parking on residential uses. As noted above, the parking area for this site is located away from the most active residential portion of the site. The applicant noted the following:

*“The transit street parking location requirements encourage an environment that is inviting to pedestrians and transit users. Portland Highway is not a pedestrian oriented street frontage, and site design and configuration was developed to provide the optimal integration with the existing neighborhood development patterns, while providing improved safety for area residents. The parking size and location allows for the residential structures to be located for the best fit and integration with the neighborhood. Pedestrian connections are oriented toward the more pedestrian friendly NE 42<sup>nd</sup> Avenue frontage, also a transit street.”*

In reviewing the modifications to allow vehicle area in the setback, allow greater vehicle area within the frontage of the site, and eliminate the perimeter landscaping requirements along the

driveway, the Hearings Officer finds that the proposed parking lot still meets the primary purpose of the development standards by providing parking that is safely accessed away from primary uses on the site and meets the zoning code standards for parking lot landscaping. Although landscaping will not be provided along the driveway, more landscaping than is required by development standards is being provided across the entirety of the site. Eliminating driveway landscaping will not increase the visual impact of the existing driveway and will allow the opportunity to improve the pedestrian environment through the addition of a raised sidewalk providing access to the site and the neighboring development. This criterion is met.

### **Pedestrian Standards**

The purpose of Pedestrian Standards (33.120.225) is as follows:

*The pedestrian standards encourage a safe, attractive, and usable pedestrian circulation system in all developments. They ensure a direct pedestrian connection between abutting streets and buildings on the site, and between buildings and other activities within the site. In addition, they provide for connections between adjacent sites, where feasible. The standards promote configurations that minimize conflicts between pedestrians and vehicles. In order to facilitate additional pedestrian oriented space and less impervious surface, the standards also provide opportunities for accessways with low traffic volumes, serving a limited number of residential units, to be designed to accommodate pedestrians and vehicles within the same space when special paving treatments are used to signify their intended use by pedestrians as well as vehicles.*

Pedestrian standards in the multi-dwelling zone ensure that larger multi-dwelling developments provide safe pedestrian access to and throughout development sites. In this case, providing a pedestrian access directly to NE Portland Highway is not practical or feasible because of limitations presented by ODOT and the nature of the highway itself, which is an environment that is not conducive to safe pedestrian movement. Providing a pedestrian access to NE Portland Highway would also diminish safety for residents by requiring pedestrians to cross the parking area in order to access NE Portland Highway. This site is designed with an accessible network of paths within the site that provide safe access to each unit on the site, as well as a direct pedestrian connection to NE 42<sup>nd</sup> Avenue. The overall purpose of the pedestrian standards is met without the provision of a direct access to NE Portland Highway. This criterion is met.

### **Building Coverage**

The purpose of Building Coverage in Single-Dwelling Zones (33.110.225) is as follows:

*The building coverage standards, together with the height and setback standards control the overall bulk of structures. They are intended to assure that taller buildings will not have such a large footprint that their total bulk will overwhelm adjacent houses. Additionally, the standards help define the character of the different zones by limiting the amount of buildings allowed on a site.*

Building coverage standards are used to limit the impact of new development on surrounding sites by controlling the bulk and massing of structures. In this case, the overall allowed building coverage for the site is 20,335 square feet. The proposed building coverage 11,179 square feet of building coverage across the entire site. Allowing a greater amount of building coverage within the single dwelling zoned portion of the site will not overwhelm adjacent homes because the proposed development will be limited in height and bulk. Setbacks will be maintained and landscaping will be provided within the setbacks (Exhibit C.2) to buffer the new development from existing homes. This criterion is met.

**33.665.340 Proposals Without a Land Division**

The approval criteria of this section apply to Planned Developments that do not include a land division. 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:

Criterion	Code Chapter/Section and Topic	Findings: Not applicable because:
B	33.665.340.B Tree Preservation	No trees in excess of six inches in diameter are located fully or partially on the site, or the trees are nuisance species or exempt due to poor condition.
C	33.665.340.C - Flood hazard areas	The site is not within the flood hazard area.
D	33.665.340.D - Landslide hazard areas	The site is not within the potential landslide hazard area.
F	33.665.340.F - Streams, springs, seeps, and wetlands	No streams, springs, or seeps are evident on the site.

The applicable approval criteria are:

**A. Services.**

1. The proposed use must be in conformance with the Arterial Streets Classifications and Policies of the Transportation Element of the Comprehensive Plan;

**Findings:** At this location, NE Portland Highway is classified in the Portland Transportation System Plan as Regional Transportation Major City Traffic Street, Community Transit Street, City Bikeway, City Walkway, and an Urban Road (design mode). Northeast 42<sup>nd</sup> is classified in the TSP as a Neighborhood Collector, Transit Access Street, City Bikeway, City Walkway, and an Urban Road (design mode). The applicant’s transportation impact analysis found, and PBOT concurs, that the proposal is in conformance with the Transportation Element of the Comprehensive Plan (Exhibit E.2). Therefore, this criterion is met.

2. The approval criteria of Section 33.654.110, Connectivity and Location of Rights-of-Way, must be met;

**Findings:** Generally, through streets should be provided no more than 530 feet apart and at least 200 feet apart. 33.654.110.B.1.a. The site is located at the intersection of NE Portland Highway and NE 42<sup>nd</sup> Avenue. The block on which the subject property is located does not meet the noted spacing requirements. Although the site contains sufficient width to provide a north-south public connection through the site, additional public street connections to NE Portland Highway are not allowed or practicable because it is a state highway. The site could potentially provide an east-west dead-end street from NE 42<sup>nd</sup> Avenue. However, the properties adjacent to the portion of the site where the street would terminate are already developed, and not configured in a manner that would easily allow the further extension of a street from the site. So, although the optimum spacing criteria would indicate the need for east-west and north-south through streets or pedestrian connections at this site, there is no practicable opportunity to provide them in this land division.

3. The standards of Section 33.651.020, Water Service Standards, must be met;

**Findings:** The Water Bureau has indicated that service is available to the site from an 8-inch main in NE Portland Highway. The water service standards of 33.651.020 have been verified. This criterion can be met.

4. The standard of Section 33.652.020, Sanitary Sewer Disposal Service Standard, must be met; and,

**Findings:** BES has indicated that service is available to the site from a 24-inch CSP sanitary-only sewer main in NE Portland Highway, an 8-inch PVC sanitary-only sewer in NE 42<sup>nd</sup> Avenue, and an 8-inch PVC sanitary-only sewer in an easement within the driveway tax lot. BES provided the following comments about the easement encroachment required for the driveway access:

*“There is an existing easement granted to the City of Portland over the public sanitary sewer located within the driveway area. The applicant provided a revised exhibit showing the private stormwater pipe and catch basin that are proposed to be installed within this easement granted to the City of Portland. BES has reviewed the proposed encroachment and has preliminarily determined that the proposed encroachment is approvable, provided that the sanitary pipe location shown on the submitted survey is accurate relative to the proposed private encroachments. At the time of permit review, BES will provide an encroachment agreement document, which must be signed by the applicants/owners, and will be recorded against the property.”*

The sanitary sewer service standards of 33.652 have been verified. Therefore, this criterion can be met.

5. The application must show that a stormwater management system can be designed that will provide adequate capacity for the expected amount of stormwater.

**Findings:** The Applicant submitted a Stormwater Management Report (Exhibits A.4 and A.5) and a Geotechnical Report (Exhibit A.7) and has noted that the reports demonstrate capacity of the proposed drywells located on the site. BES has provided the following response regarding the Applicant's proposed method of stormwater management (Exhibit E.1):

*"The revised stormwater report addresses the concerns described in the initial BES response regarding the infiltration rate used to size the proposed facilities, and the proposed infiltration into fill. The report was revised so that the proposed drywells are sized using the infiltration rate recommended by the geotechnical engineer. In addition, the report indicates that the proposed drywells will only infiltrate stormwater below the existing fill material on the site. The drywells are designed so that only the bottom portion of the drywell will be perforated, corresponding with the depth of fill identified by the geotechnical engineer."*

BES has indicated conceptual approval of the applicant's proposed method of stormwater management. Therefore, this criterion can be met.

**E. Clearing, grading, and land suitability.**

1. Existing contours and drainage patterns of the site must be left intact wherever practicable. Where alteration to existing drainage patterns is proposed, it must not adversely impact adjacent properties by significantly increasing volume of runoff or erosion;
2. Clearing and grading should be sufficient for construction of development shown on the Clearing and Grading Plan;
3. Clearing and grading should be limited to areas of the site that are reasonably necessary for construction of development shown on the Clearing and Grading Plan;
4. Topsoil must be preserved on site to the extent practicable for use on the site after grading is complete;
5. Soil stockpiles must be on the site and located in areas designated for clearing and grading, if practicable;
6. The limits of disturbance and tree protection measures shown on the Preliminary Clearing and Grading Plan must be adequate to protect trees shown to be retained on the tree preservation plan; and
7. Where geologic conditions or historic uses of the site indicate that a hazard may exist, the applicant must show that the site is suitable for the proposed development. The applicant may be required to make specific improvements in order to make the site suitable for the intended uses and the provision of services and utilities.

**Findings:**

***Clearing and Grading***

The Clearing and Grading approval criteria 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.

In this case, the site has steep grades (over 20 percent). Therefore, the clearing and grading associated with site preparation must occur in a way that will limit erosion concerns. However, large portions of the site are relatively flat to gently sloping.

A Preliminary Clearing and Grading Plan (Exhibit C.3) was submitted with the Planned Development application. However, the applicant did submit a Geotechnical Engineering Report (Exhibit A.7) that describes how clearing and grading should occur on the site to minimize erosion risks. It is anticipated that the grading will be limited to grading to create the driveway extension through the site, creation of the pad for the parking lot, excavation for the new residential structures, and trenching for utilities. The report found a significant amount of undocumented fill soils on the site. The report generally recommends removal and replacement of undocumented fills, limitations to wet-weather earthwork, seismic design, stormwater management using deep drywells, and limiting erosion using standard erosion control methods. Stormwater runoff from the lots will be appropriately managed by drywells, which drain water below existing fill to assure that the runoff will not adversely impact adjacent properties (see detailed discussion of stormwater management earlier in this Final Order).

As shown above, the clearing and grading anticipated to occur on the site can meet the approval criteria. At the time of building permit submittal, grading and erosion control plans will be further reviewed by the Site Development Section of BDS. This criterion is met.

### ***Land Suitability***

The site is currently in residential use, and there is no record of any other use in the past. Although the site is currently connected to the public sanitary sewer, there is an old septic system on the site. The City has no record that this facility was ever decommissioned. Prior to development, the applicant must meet the requirements of the Site Development Section of BDS for the decommissioning of this facility. This criterion is met.

- G. Transportation Impacts.** The transportation system must be capable of safely supporting the proposed development in addition to the existing uses in the area. Evaluation factors include: street capacity and performance standards; vehicle access and loading; on-street parking impacts; the availability of transit service and facilities and connections to transit; impacts on the immediate and adjacent neighborhoods; and safety for all modes. A Traffic Impact Study may be required by the City Engineer in order to determine if the criterion is met. In addition, mitigation measures approved by the City Engineer may be included in the proposal as a way to meet this criterion.

**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: street capacity and level-of-service; vehicle access and loading; on-street parking impacts: the availability

of transit service and facilities and connections to transit; impacts on the immediate and adjacent neighborhoods; and safety for all modes. Mitigation may be necessary to reduce impacts.

The applicant submitted a TIS to address this criterion (Exhibit A.10). The Development Review Section of PBOT has reviewed the application against the evaluation factors and has provided the following findings (see Exhibit E.2):

*“The applicant provided a professionally prepared Transportation Impact Study (TIS) to address the transportation approval criteria. The TIS concluded that the applicable transportation approval criteria are satisfied.*

**Street capacity and level-of-service**

*The TIS addresses the ‘reasonable worst-case scenario’ for trip generation under the existing (R10) and proposed (R5) zoning for the 2035 planning horizon, and estimated the total number of trips to be generated by the proposed 18 residential dwelling units (p. 7). To estimate the number of trips that will be generated by the proposed development and under existing and proposed zoning, the applicant used trip rates from the Trip Generation Manual, 9<sup>th</sup> Edition, published by the Institute of Transportation Engineers (ITE). The TIS estimated the trips to include an increase of 13 trips in the morning peak hour and 18 trips in the evening peak hour. The TIS added the number of estimated trips to the projected year 2035 planning horizon traffic volumes, and concluded that adequacy of transportation services is provided.*

*The TIS demonstrates that sufficient capacity exists at study intersections to accommodate the proposed development. All study intersections are currently and projected to operate acceptably per City of Portland standards through the 2019 build-out year of the proposed development. Additionally, all study intersections are projected to operate acceptably through the 2015 planning horizon either with or without the addition of potential site trips from development under the proposed zoning. The TIS concludes that no mitigation is necessary or recommended.*

**Vehicle Access and Loading**

*The TIS states that the proposed development will provide loading at the proposed on-site parking lot and concludes that the street network in the area is sufficient to provide access.*

**On-Street Parking Impacts**

*The TIS states that ‘impacts from the proposed development on existing [on-street parking] facilities are projected to be negligible and therefore, no mitigation is necessary or recommended as part of the proposed use.’ The plans submitted on October 30, 2017 show 25 parking spaces proposed.*

**The availability of transit service and facilities and connections to transit**



*The TIS specifies that bus stops for bus #75 are located at or near NE 42<sup>nd</sup> and Holman, and sufficient pedestrian access is provided to those bus stops, and concludes that adequate transit service is provided.*

***Impacts on the Immediate and Adjacent Neighborhoods***

*The TIS concludes 'The daily activities associated with the proposed residential development are not expected to significantly impact the local neighborhood with respect to transportation... Based on the detailed analysis, the proposed development will not have significant transportation impacts to the surrounding neighborhood.'*

***Safety for All Modes***

*The TIS concluded that the existing streets and transportation infrastructure in the site vicinity are sufficient to provide safe access for all modes of travel. The TIS concludes: 'Based on the most recent five years of crash data, no significant trends or crash patterns were identified (in) any of the study intersections and no specific safety mitigation is recommended.' For bicycles, the area in which the development is proposed has adequate facilities, including higher volume streets with bicycle lanes and neighborhood streets. For pedestrians, area streets provide sidewalks and/or speeds at lower volumes, thereby maintaining pedestrian safety. Existing streets and transportation infrastructure are sufficient to provide safe transit access. Google street view showed that vegetation-obscured site distance to the north of Unnamed Road. However, PBOT Development Review understands that this vegetation was removed as part of street repair at this location, and the TIS submitted verifies on p. 18 that this tree was removed.*

*The TIS concluded that the applicable transportation approval criteria are satisfied, including the Transportation Planning Rule and the City of Portland Title 33, Sections 33.665.340.G and 33.855.050.B.2.c.*

***Connectivity***

*This section requires street and pedestrian connections where appropriate and practical, taking a number of factors into consideration. The City's spacing goals for public through streets/pedestrian connections is a maximum of 530-feet and 330-feet respectively. The proposed development site is approximately 195-feet in length, although the street frontage on NE 42<sup>nd</sup> is approximately 260-feet in length. In 2017, PBOT also conducted a site visit that showed that significant grades exist on-site that impede the construction of a pedestrian connection. Therefore, a pedestrian connection at this location is considered impractical and is not required."*

PBOT has reviewed and concurs with the information supplied the methodology, assumptions, and conclusions made by the applicant's traffic consultant. PBOT has identified the need for future improvements along the northern portion of the NE 42<sup>nd</sup> Avenue frontage and is requiring

improvements for the southern portion of the NE 42<sup>nd</sup> Avenue frontage at the time of building permit. With the conditions described above, these criteria are met.

### **DEVELOPMENT STANDARDS**

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

### **Future Development**

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

- Setbacks for Detached Accessory Structures- Section 33.120.280 of the Zoning Code requires detached covered accessory structures within a multi-dwelling development to meet required building setbacks. The proposed covered parking area for loading and unloading must meet setback standards from the adjacent R-zoned lots at the time of permitting.
- Screening for Mechanical Equipment- Section 33.120.250 of the Zoning Code requires landscaping or screening around mechanical equipment located on the ground. The proposed compressors on the site must meet screening standards at the time of permitting.
- Perimeter Landscaping for Parking Areas- Section 33.266.130.G of the Zoning Code requires five feet of L3 perimeter landscaping around surface parking where the parking abuts a lot line of an R zone. At the time of permit review, the applicant must meet these standards for the areas adjacent to the covered loading spaces and the northeast portion of the parking lot.

### **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	Title 24 – Building Code, Flood plain

<b>Bureau</b>	<b>Code Authority and Topic</b>
<a href="http://www.portlandonline.com/bds">www.portlandonline.com/bds</a>	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 Final Order for this proposal.

- The applicant must meet Fire Bureau requirements requiring posting of "No Parking" signs in the driveway; installing new hydrants and ensuring adequate hydrant flow from the nearest fire hydrant; designating the private driveway as a Fire Department Access Lane; and providing an area for fire apparatus turnaround. These requirements are based on the technical standards of Title 31 and Fire Bureau Policy B-1.
- The applicant must meet the requirements of PBOT regarding curb and sidewalk improvements in order to meet City standards. At this location, NE 42<sup>nd</sup> is improved with a paved roadway that includes 11-foot travel lanes within an 83-foot right-of-way. Portland's Pedestrian Design Guide specifies that standard improvements at this location include a 16-foot sidewalk corridor, to consist of a 0.5-foot curb, 8-foot stormwater facility, 4-foot sidewalk, and 1.5-foot frontage zone. The width of the stormwater facility may be reduced with BES approval. PBOT's right-of-way standards document specifies that the standard street widths at this location are to be determined on a case-by-case basis. Based on this, the PBOT standard includes 9-feet of paving from the inside of the existing fog line to provide for a bicycle lane. A 5-foot sidewalk corridor was constructed over the overpass at this location; however, no sidewalk corridor or curb on NE 42<sup>nd</sup> was constructed for the remainder of the frontage.

Northeast Portland Highway has a 72-foot right-of-way, with a 55-foot paved roadway. PBOT conducted a site visit in Fall 2017 that showed that the improvements on NE Portland Highway at this location include an approximately 6-foot temporary bicycle lane that is located behind the curb. Standard improvements include a 6-foot bicycle lane and separated 12-foot sidewalk located behind the curb.

The City of Portland's Public Works Alternative (PWA) Review Committee approved a Public Works Alternative (PWA 17-232608) that allowed an alternative improvement on NE Portland Highway. That document required the construction of a 12-foot sidewalk on NE 42<sup>nd</sup> and a pedestrian connection between Portland Highway and NE 42<sup>nd</sup>. Since the PWA decision was issued, PBOT received additional information regarding imminent bridge improvements planned for NE 42<sup>nd</sup>. That information indicates that a new bridge will conflict with the improvements required by the PWA response. PBOT also conducted a site visit that showed that significant grades exist on-site that impede the construction of the identified improvements. Therefore, a sidewalk corridor at the subject location will need to be coordinated with bridge construction to ensure feasibility, and a pedestrian connection at this location may be infeasible. As a condition of Building Permit approval, the applicant will be required to provide a performance bond in lieu of the design and construction of improvements on the northern frontage of NE 42<sup>nd</sup> and the entire frontage of NE Portland Highway. Standard improvements are required on the southern frontage of NE Portland Highway to the satisfaction of the City Engineer.

#### **ODOT Requirements for NE Portland Highway**

ODOT provided a response letter to PBOT (Exhibit E.2a). The applicant is advised to review that response. Further requirements related to ODOT fee-simple facility NE Portland Highway are described below. The applicant is advised to contact ODOT District Contact Aref Bozorgnia (971-673-1268, [aref.bozorgnia@odot.state.or.us](mailto:aref.bozorgnia@odot.state.or.us)) with any questions.

On NE Portland Highway, permits as necessary, including approach permits and any "Miscellaneous Permits" will need to be obtained from ODOT prior to PBOT Building Permit approval as a condition of building permit approval.

Gate, NE Portland Highway: PBOT recommends to ODOT that the applicant be required to provide a gate to restrict access to NE Portland Highway. ODOT addresses access at this location in the ODOT letter.

Trees: The applicant must obtain an ODOT permit to place trees in the state right of way on NE Portland Highway. Tree spacing and design must be consistent with the ODOT Highway Design Manual ([https://www.oregon.gov/ODOT/HWY/ENGSERVICES/Pages/hwy\\_manuals.aspx](https://www.oregon.gov/ODOT/HWY/ENGSERVICES/Pages/hwy_manuals.aspx)) or ODOT must approve a Design Exception.

### **III. CONCLUSIONS**

The applicant has proposed a Zone Map Amendment to change the R10 zoned portion of the site to R5 in conformance with the Comprehensive Plan Map and a Planned Development review for a 19-unit multi-dwelling development partially within a single-dwelling zone, as shown on the site plans (Exhibit C.1-7). The development will consist of four buildings (a combination of one existing single-dwelling structure, one 8-plex, two 4-plexes and one duplex), 22 surface parking spaces for

residents, three covered parking spaces for loading and unloading, and shared outdoor common space. Proposed accessory structures include a trash enclosure and a covered loading area. Concurrent modifications have been requested to increase transit street setbacks (33.120.220.C) from 20 feet to 40-70 feet, allow placement of vehicle area in front of structures and within more than 50 percent of the street frontage (33.266.130.C.1 and 3), and increase the maximum building coverage allowed in the single dwelling zone (33.110.225) from 3,000 to approximately 4,103 square feet. As addressed in the findings above, the proposal meets the applicable criteria for the Zoning Map Amendment and Planned Developments, and should be approved.

#### IV. DECISION

**Approval** of a Zoning Map Amendment, in compliance with the Comprehensive Plan Map designation, from R10 to R5;

**Approval** of a Planned Development review for a 19-unit multi-dwelling development partially in a single dwelling zone, including modifications to site-related development standards as follows:

- Increase Transit Street setbacks (33.120.220.C) from 20 feet to 40-70 feet;
- Allow the placement of vehicle area between the street and structures (33.266.130.C.1);
- Allow more than 50 percent of the street frontage to be in vehicle area (33.226.130.C.3);
- Remove the perimeter landscaping requirement along driveway vehicle area (33.266.130.G.2.d(2));
- Remove the additional pedestrian connection requirement between NE Portland Highway and a pedestrian entrance on the site (33.120.B.1.a(2));
- Increase maximum building coverage in the single dwelling residential zone from 3,000 square feet to 4,103 square feet (33.110.225).

The above approvals are subject to the following conditions:

- A. As part of the building permit application submittal, each of the four required site plans, building elevations, landscape plans, and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C.2, C.4, C.6, and C.7. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File #LU 17-199218 ZC PD. No field changes allowed."
- B. At the time of building permit review, the following development standards must be met:

- Mechanical equipment located on the ground on the site must meet screening standards;
  - The proposed covered parking area for loading and unloading must meet setback standards from the adjacent R-zoned lot;
  - Five feet of L3 perimeter landscaping must be provided for the areas adjacent to the covered loading spaces and the northeast portion of the parking lot abutting the lot line to the east.
- C. As a condition of Building Permit Approval, the applicant is required to provide a performance bond in lieu of the design and construction of improvements on the northern frontage of NE 42<sup>nd</sup> and the entire frontage of NE Portland Highway.
- D. As a condition of Building Permit approval, the applicant is required to permit and bond improvements for the southern frontage of NE 42<sup>nd</sup> Avenue to the satisfaction of the City Engineer and provide dedication if necessary.
- E. As a condition of Building Permit approval, the applicant is required to obtain public works, street closure, and inspection permits from ODOT for work on NE Portland Highway.
- F. At the time of development, the applicant must meet the following Fire Bureau requirements:
- Designation of the private driveway as a Fire Bureau Access Lane, meeting the specifications of the Fire Marshal, having an unobstructed width of not less than 20 feet;
  - Posting the private driveway with "No Parking" signs to the satisfaction of the Fire Bureau. The location must be shown on the development permit;
  - Installation of a new fire hydrant to the satisfaction of the Fire Bureau and meeting the requirements of the Fire Bureau for ensuring adequate hydrant flow from the new hydrant;
  - Provision of 26-feet of access lane width within 20 feet of the hydrant for staging apparatus, or receiving a Fire Code Appeal to this requirement;
  - Provision of a turn-around for fire apparatus meeting Fire Marshal specifications;
  - The driving surface of the private driveway shall be accessible to fire department apparatus road with an asphalt, concrete, or other approved driving surface capable of supporting the imposed load of fire apparatus weighing at least 75,000 pounds;
  - Meeting the Fire Bureau requirements for addressing.

  
\_\_\_\_\_  
Joe Turner, Hearings Officer

March 21, 2018

\_\_\_\_\_  
Date

**Application Determined Complete:** October 30, 2017  
**Report to Hearings Officer:** February 23, 2018  
**Decision Mailed:** March 21, 2018  
**Last Date to Appeal:** 4:30 p.m., April 4, 2018  
**Effective Date (if no appeal):** April 5, 2018

**Conditions of Approval.** 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.

**Appeal of the decision.** ANY APPEAL OF THE HEARINGS OFFICER'S DECISION MUST BE FILED AT 1900 SW 4<sup>TH</sup> AVENUE, PORTLAND, OR 97201. Appeals can be filed at the 5<sup>th</sup> floor reception desk of 1900 SW 4<sup>th</sup> Avenue, Monday through Friday between 8:00 am and 4:30 pm. **An appeal fee of \$5,000.00 will be charged (one-half of the application fee for this case, up to a maximum of \$5,000).** Information and assistance in filing an appeal can be obtained from the Bureau of Development Services at the Development Services Center.

**Who can appeal:** You may appeal the decision only if you wrote a letter which is received before the close of the record on hearing or if you testified at the hearing, or if you are the property owner or applicant. If you or anyone else appeals the decision of the Hearings Officer, only evidence previously presented to the Hearings Officer will be considered by the City Council.

**Appeal Fee Waivers:** Neighborhood associations recognized by the Office of Neighborhood Involvement may qualify for a waiver of the appeal fee provided that the association has standing to appeal. The appeal must contain the signature of the Chair person or other person authorized by the association, confirming the vote to appeal was done in accordance with the organization's bylaws.

Neighborhood associations, who wish to qualify for a fee waiver, must complete the Type III Appeal Fee Waiver Request for Organizations Form and submit it prior to the appeal deadline. The Type III Appeal Fee Waiver Request for Organizations Form contains instructions on how to apply for a fee waiver, including the required vote to appeal.

**Recording the final decision.**

If this Land Use Review is approved the final decision will be recorded with the Multnomah County Recorder.

- *Unless appealed*, the final decision will be recorded 14 days after the city's final decision is issued by the Bureau of Development Services.

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

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

**Expiration of this planned development approval.** This approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun. If the approved project includes more than one component, such as multiple buildings, or multiple phases that will be broken into separate building permit applications, at least one permit must be obtained within 3 years of the date of this decision, and all permits must be obtained within ten years of the date of this decision. After that ten-year period, a new land use review will be required before permits will be issued for any remaining project components that have not yet been permitted, subject to the Zoning Code in effect at that time.

**Expiration of concurrent approvals.** The planned development approval also includes concurrent approval of a Zone Map Amendment and Planned Development review. For purposes of determining the expiration date, there are two kinds of concurrent approvals: 1) concurrent approvals that were necessary in order for the planned development to be approved; and 2) other approvals that were voluntarily included with the land division application.

The following approvals were necessary for the planned development to be approved: Zone Map Amendment. This approval expires if:

- The planned development expires, as described above, or
- None of the approved development or other improvements (buildings, streets, utilities, grading, and mitigation enhancements) have been made to the site within 3 years of the date the planned development approval was rendered.

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

**Applying for your permits.** A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

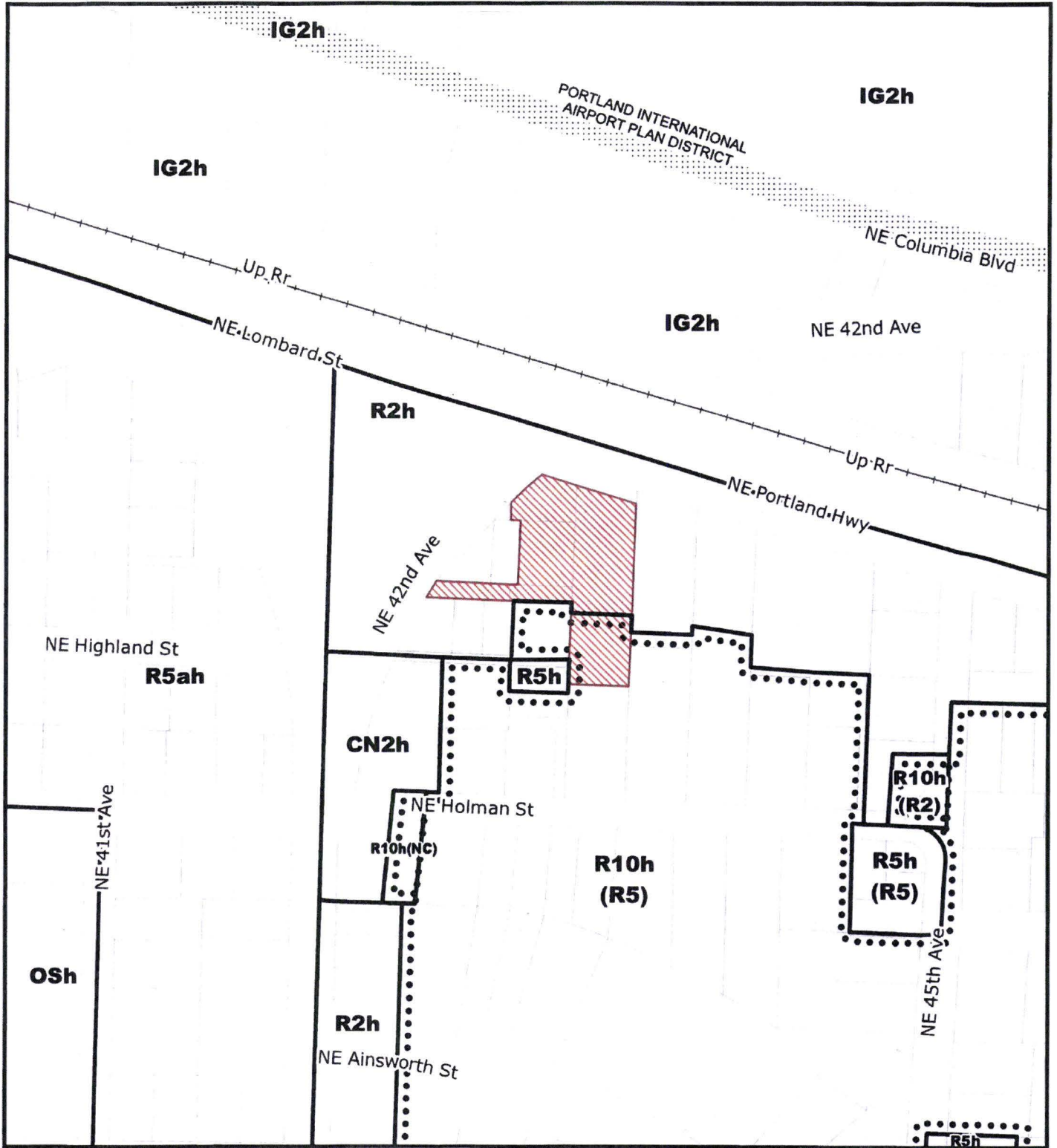


- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

**EXHIBITS**  
NOT ATTACHED UNLESS INDICATED

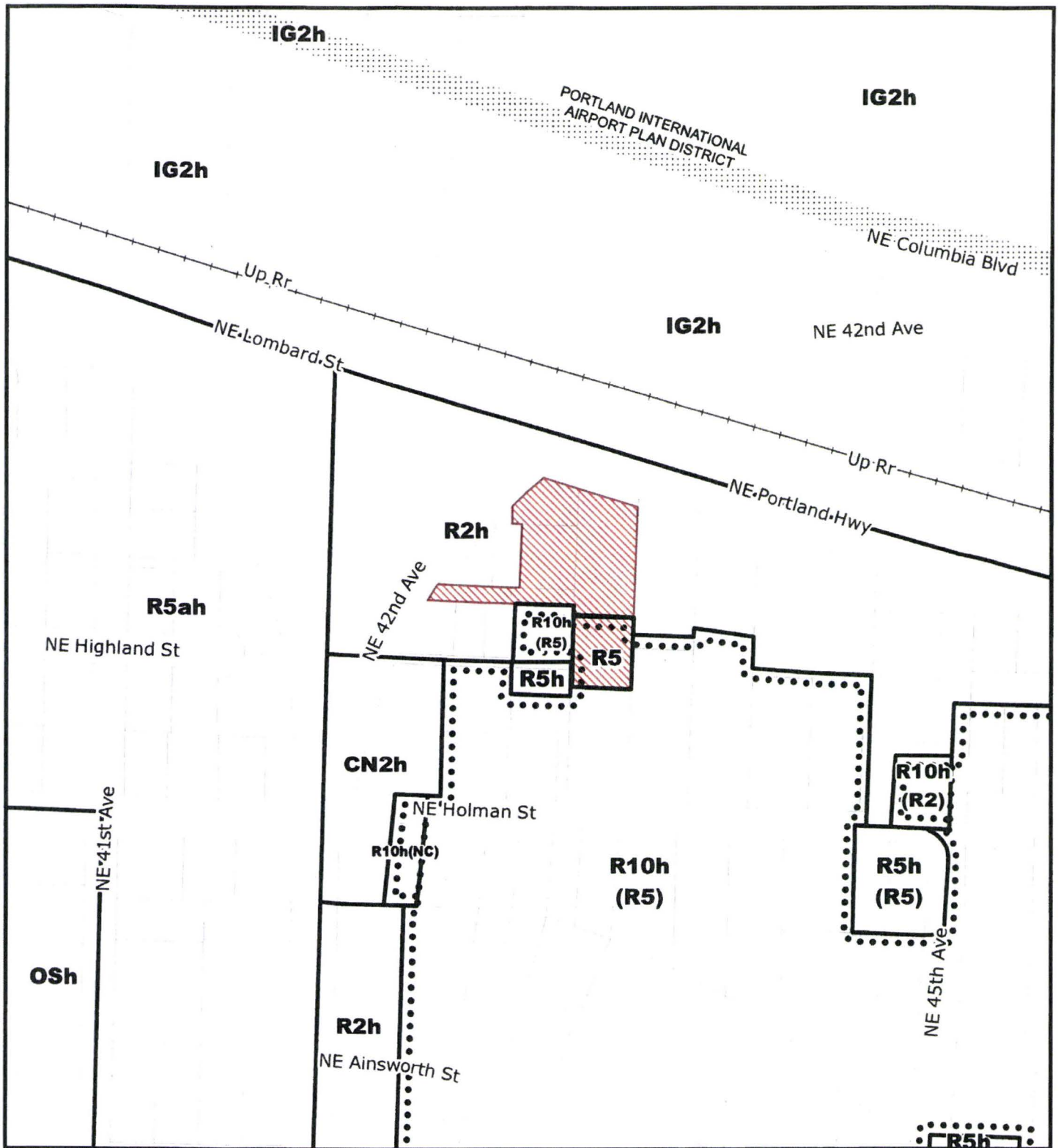
- A. Applicant's Statement
  - 1. Applicant Narrative
  - 2. Zone Map Amendment Narrative
  - 3. Revised Narrative (10/30/17)
  - 4. Preliminary Stormwater Report
  - 5. Revised Stormwater Report (10/30/17)
  - 6. Public Works Public Improvement Plan
  - 7. Geotechnical Report
  - 8. BES Encroachment Easement Application
  - 9. Sight Distance Study
  - 10. Transportation Impact Study
  - 11. Arborist Report
  - 12. Neighborhood Contact Letters
  - 13. Pre-Application Conference Notes
  - 14. Purchase and Sale Agreement
  - 15. Original Site Plan Submittal
  - 16. Timeline Extension Requests
  - 17. Applicant email clarifying building design elements
- B. Zoning Maps (**attached**)
  - 1. Existing Zoning
  - 2. Proposed Zoning
- C. Plans and Drawings
  - 1. Concept Plan
  - 2. Landscaping Plan (**attached**)
  - 3. Grading Plan
  - 4. Utility Plan (**attached**)
  - 5. Neighborhood Context Imagery
  - 6. Elevations (**attached**)
  - 7. Materials List
- D. Notification information
  - 1. Request for response
  - 2. First Posting letter sent to applicant
  - 3. Posting letter sent to applicant
  - 4. Notice to be posted
  - 5. Applicant's statement certifying posting
  - 6. Mailing list
  - 7. Mailed notice
- E. Agency Responses
  - 1. Bureau of Environmental Services
  - 2. Bureau of Transportation Engineering and Development Review

- a. ODOT Response to PBOT
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Site Development Review Section of Bureau of Development Services
  - 6. Life Safety Section of Bureau of Development Services
  - 7. Bureau of Parks, Forestry Division
  - 8. Portland Police Bureau
- F. Letters: None Submitted
- G. Other
  - 1. Original LUR Application
  - 2. Incompleteness Letter
- H. Received in the Hearings Office
  - 1. Request to reschedule - Dawkins, Leah
  - 2. Request to Reschedule – Dawkins, Leah
  - 3. Request for Reschedule - Dawkins, Leah
  - 4. Notice of Public Hearing - Dawkins, Leah
  - 5. Staff Report - Dawkins, Leah
  - 6. Email letter from Del Vecchio to Dawkins dated 3/6/18 - Dawkins, Leah
  - 7. PowerPoint Presentation Printout - Dawkins, Leah
  - 8. Record Closing Information - Hearings Office



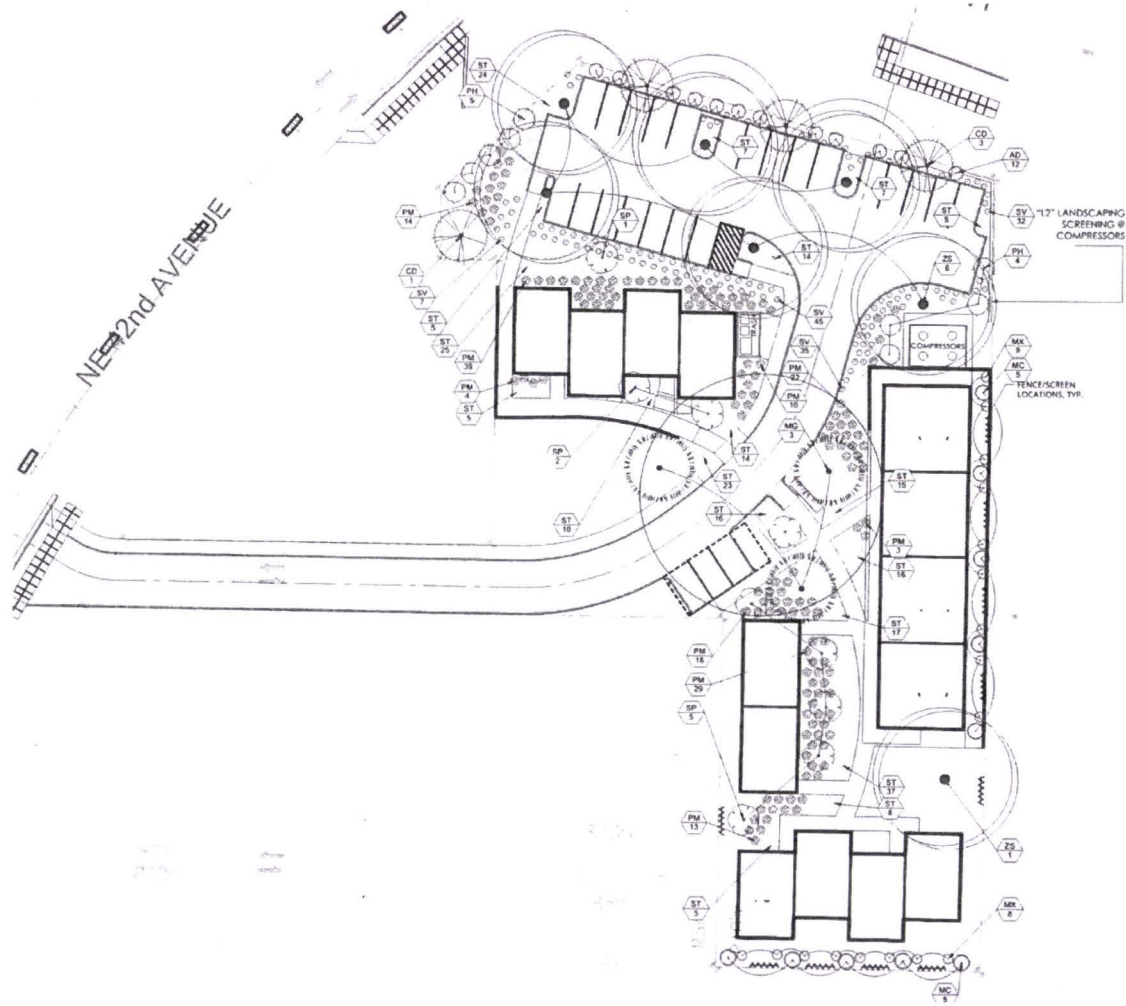
# EXISTING ZONING

File No. LU 17-199218 ZC, PD  
1/4 Section 2435  
Scale 1 inch = 200 feet  
State ID 1N2E18CB 11700  
Exhibit B1 Jul 25, 2017



# PROPOSED ZONING

File No.	LU 17-199218 ZC, PD
1/4 Section	2435
Scale	1 inch = 200 feet
State ID	1N2E18CB 11700
Exhibit	B2 Jul 25, 2017



**PLANT SCHEDULE**

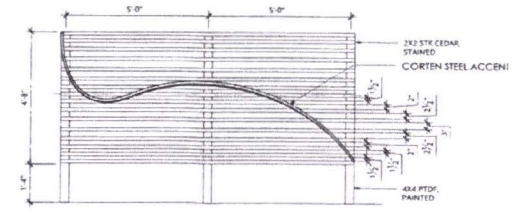
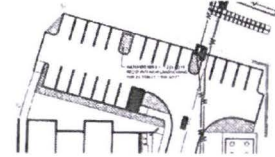
TREES	QTY	BOTANICAL NAME / COMMON NAME	CONT	CALIPER
AD	4	CALOCEDRUS DECAURENS / INCENSE CEDAR MEDIUM	15GAL	2"
MC	3	METASEQUOIA GLYPTOSTROBODES / DAWN REDWOOD MEDIUM	15GAL	2"
SP	9	STEWARTIA PSEUDOCAMELLIA / JAPANESE STEWARTIA	15GAL	
ZS	7	ZELKOVA SERRATA GREEN VASE / SAWLEAF ZELKOVA LARGE	24" BOX	2.5" MIN
SHRUBS	QTY	BOTANICAL NAME / COMMON NAME	CONT	COMMENTS
AD	12	ARCTOSTAPHYLOS URSINIFLORA HOWARD MCMINRY / HOWARD MCMINRY MANZARITA	5GAL	
MX	17	MAHONIA K LEDIA CHARITY / MAHONIA	5GAL	
MC	10	MIDRELLA CALIFORNICA / CALIFORNIA WAX MYRTLE	10GAL	
PH	9	PITTOSPORUM HETEROPHYLLUM / EVERGREEN MOCK ORANGE	5GAL	
PM	152	POLYSTICHUM MUNITUM / WESTERN SWORD FERN	1GAL	
SV	117	SANTOLINA VIRENS LEMON PIZZ / CHARTREUSE LAVENDER COTTON	1GAL	
GROUND COVERS	QTY	BOTANICAL NAME / COMMON NAME	CONT	SPACING
ST	264	STIPA TENUISSIMA / FINESTEM NEEDLEGRASS	4IN	42" c

Total Site Area: 45,739 sqft  
 20% Tree Cover Required per Title 11: 9,148 sqft

Tree Cover Provided

Quantity	Size Category	Soft Canopy	Soft Canopy Total
7	Large	1,000	7,000
7	Medium	500	2,500
9	Small	300	2,700
		Total Canopy Provided: 12,200 sqft	

Internal Parking Landscaping  
 Parking Stalls Shown: 22  
 Planting Area Total (45 sqft per stall): 990 sqft  
 Internal Parking Landscaping Provided: 1,225 sqft



FENCE SCREEN ELEVATION



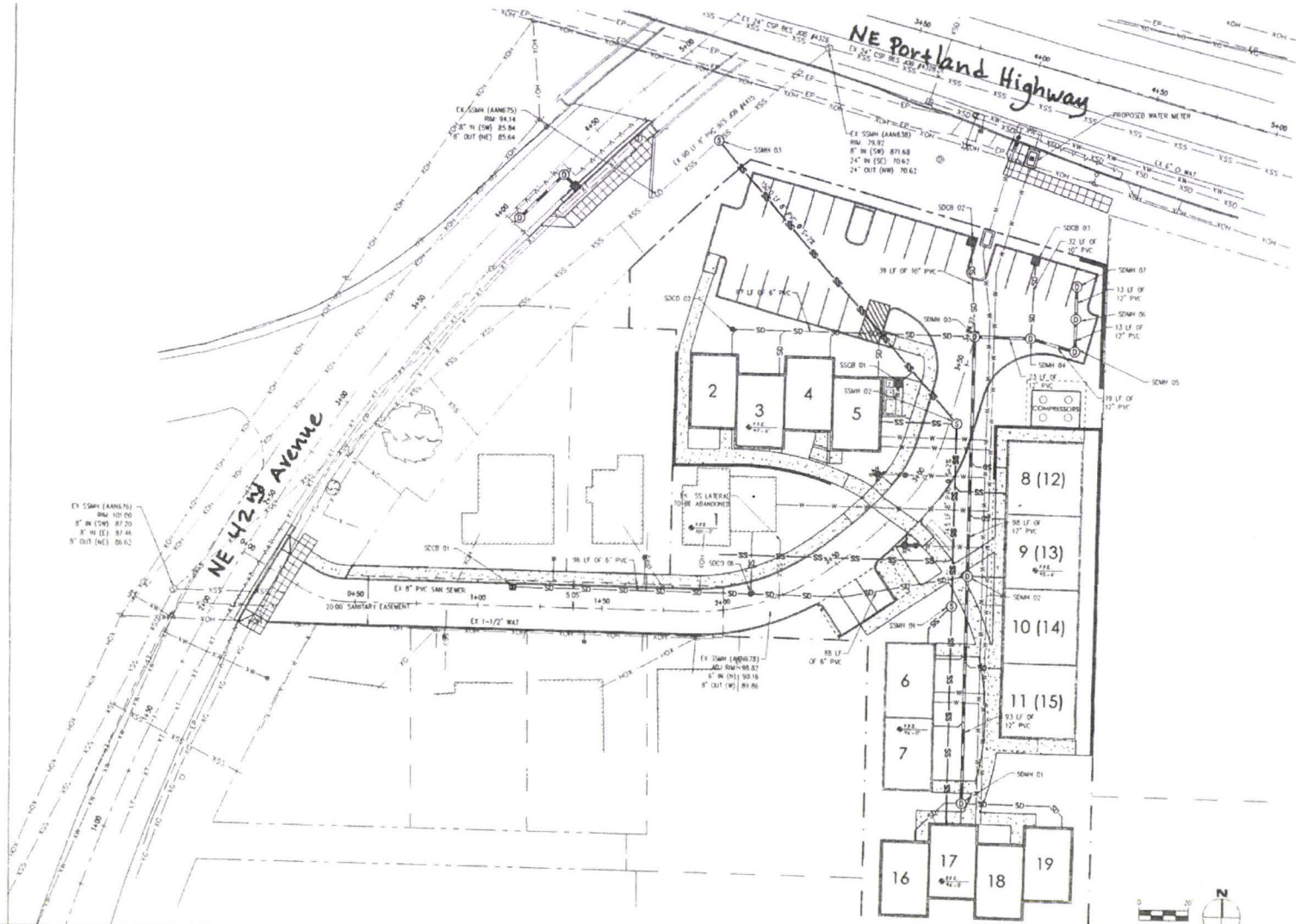
/kōblə/CREATIVE  
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 EMERIO

**FERNHILL CROSSING**

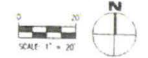
NE 42nd & NE Portland Hwy.  
 Portland, OR 97218

REVISED PLANTING PLAN  
 Page 1 of 8  
 INCOMPLETENESS RESPONSE PACKAGE  
 CASE NO. 1-199218 October 25, 2017  
 EXHIBIT C.2

**\*Approved\***  
 City of Portland - Bureau of Development Services  
 Planner Leah M. Davis Date 2/22/18  
 \* This approval applies only to the reviews requested and is not valid for other applications of approval. Additional zoning requirements may apply.



STORM MANHOLE TABLE:	
SMNH 01 (48" DIA)	R/W 95.87
6" E IN (S): 90.15	
12" E OUT (N): 89.65	
SMNH 02 (48" DIA)	R/W 95.29
6" E IN (S): 89.07	
10" E IN (W): 88.10	
12" E IN (S): 88.00	
12" E OUT (N): 87.80	
SMNH 03 (48" DIA)	R/W 88.67
6" E IN (S): 82.22	
6" E IN (W): 85.2	
8" E IN (S): 79.00	
12" E OUT (E): 78.90	
SMNH 04 (48" SEDIMENTATION)	R/W 88.56
10" E IN (N): 81.4	
12" E IN (W): 77.80	
12" E OUT (E): 77.90	
SLUMP: 73.90	
SMNH 05 (48" DRYWELL)	R/W 88.69
12" E IN (W): 77.00	
12" E IN (S): 74.00	
SLUMP: 58.86	
SMNH 06 (48" DRYWELL)	R/W 88.20
12" E IN (S): 74.00	
SLUMP: 58.86	
SMNH 07 (48" DRYWELL)	R/W 87.46
12" E IN (S): 74.00	
SLUMP: 58.86	
CATCH BASIN TABLE:	
SCB 01	R/W 100.85
5" E OUT 95.37	
SCB 02	R/W 87.10
10" E OUT 83.00	
SCB 03	R/W 85.55
10" E OUT 83.00	
SCB 04	R/W 90.90
6" E OUT 87.32	
CLEANOUT TABLE:	
SCCO 01	R/W 99.19
6" E 91.23	
SCCO 02	R/W 92.53
6" E 87.90	
SANITARY MANHOLE TABLE:	
SMNH 01 (48" DIA)	R/W 92.57
6" E IN (S): 87.17	
8" E OUT (N): 86.87	
SMNH 02 (48" DIA)	R/W 91.27
6" E IN (W): 85.53	
8" E IN (S): 85.50	
8" E OUT (W): 85.09	
SMNH 03 (48" DIA)	R/W 89.86
5" E IN (S): 82.00	
EX 6" E 50.59	



KOBIA/CREATIVE  
EXHIBIT C.4  
CASE NO. 17-199218

ETHOS  
EMERIO

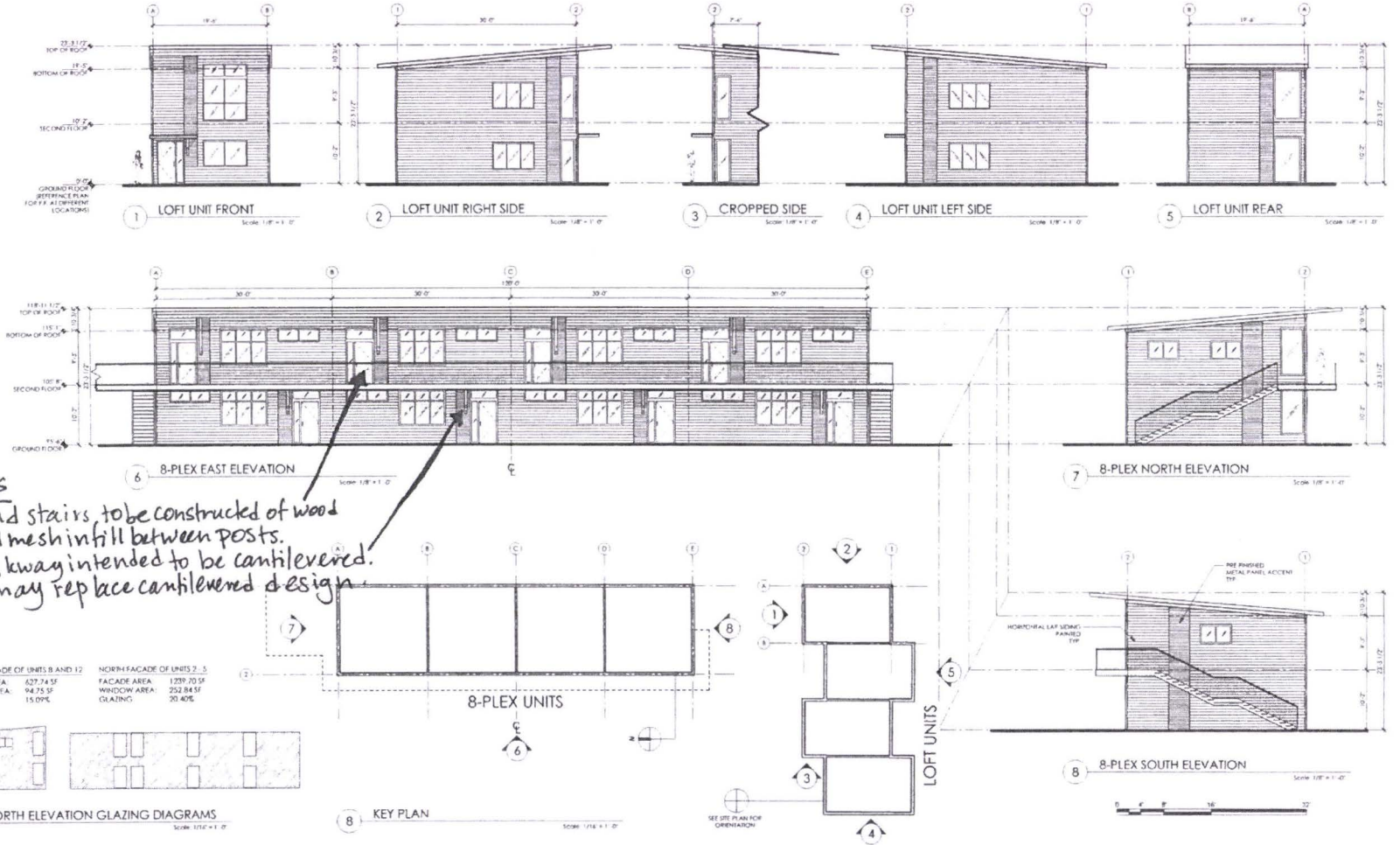
## FERNHILL CROSSING

NE 42nd & NE Portland Hwy.  
Portland, OR 97218

REVISED COMPOSITE UTILITY PLAN  
Page 6 of 8

INCOMPLETENESS RESPONSE  
PACKAGE  
October 25, 2017

**\*Approved\***  
City of Portland - Bureau of Development Services  
Planner Clah M. Davis Date 2/22/19  
\* This approval applies only to the reviews requested and is sub-  
ject to the conditions of approval. Additional zoning requirements may apply.



/kōbiə/CREATIVE  
 EXHIBIT C.6  
 CASE NO. 17-199218

ETHOS  
 EMBRIO

FERNHILL CROSSING

REVISED PROPOSED ELEVATIONS  
 Page 7 of 8

INCOMPLETENESS RESPONSE  
 PACKAGE  
 October 25, 2017

NE 42nd & NE Portland Hwy,  
 \*Approved\* OR 97218  
 City of Portland - Bureau of Development Services  
 Planner Leah A. Panti Date 2/22/18  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.