



**City of Portland, Oregon**  
**Bureau of Development Services**  
**Land Use Services**

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**Date:** June 2, 2009  
**To:** Interested Person  
**From:** Stephanie Beckman, Land Use Services  
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**NOTICE OF A TYPE I DECISION ON A PROPOSAL IN  
YOUR NEIGHBORHOOD**

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it to the Oregon Land Use Board of Appeals (LUBA) at 550 Capitol St. NE, Suite 235, Salem, OR 97301. The phone number for LUBA is 1-503-373-1265. Information on how to appeal this decision is listed at the end of this notice.

**CASE FILE NUMBER: LU 09-101124 LDP**

**GENERAL INFORMATION**

**Representatives:** Jeff Caines 503-469-1213  
SR Design LLC  
8196 SW Hall Blvd, Ste. 232  
Beaverton, Oregon 97008

Sean Heyworth 503-740-8391  
Heyworth Development & Remodeling LLC  
6341 SW Garden Home Road  
Portland, OR 97219

**Owner:** Donald H Emry & Rhondie R Emry 503-318-9549  
6036 SE 34th Ave  
Portland, OR 97202-8102

**Site Address:** 6036 SE 34TH AVE

**Legal Description:** TL 9100 BLOCK 43 LTS 1&2&13&14, EASTMORELAND

**Tax Account No.:** R231511130

**State ID No.:** 1S1E13DC 09100 **Quarter Section:** 3634

**Neighborhood:** Eastmoreland, contact Kathy Ten Pas at 503-771-0010.

**District Coalition:** Southeast Uplift, contact Leah Hyman at 503-232-0010.

**Plan District:** Eastmoreland

**Zoning:** R5 – Single Family Residential 5,000

**Case Type:** LDP – Land Division Partition

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

**Proposal:**

The applicant is proposing to divide the existing 11,026 parcel site to create two parcels. The existing house will be retained on Parcel 1, which is proposed to be 6,718 square feet in area. Parcel 2 is proposed to be 4,308 square feet and will provide a vacant building site for a single-family home. The applicant proposes to remove all of the trees from the site and

use of the mitigation option in lieu of meeting tree preservation requirements (see Zoning Code Section 33.630.300).

For purposes of State Law, this land division is considered a partition. To partition land is to divide an area or tract of land into two or three parcels within a calendar year (See ORS 92.010). This partition is reviewed through a Type I land use review because: (1) the site is in a residential zone; (2) fewer than four lots are proposed; (3) none of the lots, utilities, or services are proposed within a Potential Landslide Hazard or Flood Hazard Area, and; (4) no other concurrent land use reviews (such as an Adjustment, Design Review, or Environmental Review) are requested or required (see 33.660.110).

**Relevant Approval Criteria:**

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

## ANALYSIS

**Site and Vicinity:** The site is primarily flat and situated on the corner of SE 34<sup>th</sup> Avenue and SE Martins Street. Both streets are fully developed with sidewalks and planter strips. The site contains an existing single-family residence with an attached garage. There are five trees on the site, located on proposed Parcel 2. The surrounding neighborhood is characterized by single-family residences.

**Zoning:** The site is in the R5 designation, which is one of the City's single-dwelling zones intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing. The site is also in the Eastmoreland Plan District. The Plan District enforces special setback requirements to maintain the established character of the Eastmoreland area, characterized by homes with larger than normal building setbacks from the street.

**Land Use History:** City records indicate the following land history for this site:

- LU 08-116448 AD: Approval of an Adjustment to the maximum lot size standard in the R5 zone. Needed for approval of a Property Line Adjustment (PLA) with the property to the north.
- PR 08-116454: Property Line Adjustment with the property to the north that created the current lot configuration.

**Agency and Neighborhood Review:** A Notice of Proposal in your Neighborhood was mailed on February 17, 2009.

**1. Agency Review:** Several Bureaus and agencies have responded to this proposal. Please see Exhibits E for details. The comments are addressed under the appropriate criteria for review of the proposal.

**2. Neighborhood Review:** No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

## APPROVAL CRITERIA

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

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

The relevant criteria are found in Section **33.660.120 [A-L], Approval Criteria for Land Divisions in Open Space and Residential Zones.** 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 applicability of each criterion.

<b>Criterion</b>	<b>Code Chapter</b>	<b>Topic</b>	<b>Applicability Findings</b>
<b>A</b>	<b>33.610</b>	<b>Lots</b>	<b>Applicable - See findings below</b>
<b>B</b>	<b>33.630</b>	<b>Trees</b>	<b>Applicable - See findings below.</b>
C	33.631	Flood Hazard Area	Not applicable - The site is not within the flood hazard area.
D	33.632	Potential Landslide Hazard Area	Not applicable - The site is not within the potential landslide hazard area.
E	33.633	Phased Land Division or Staged Final Plat	Not applicable - A phased land division or staged final plat has not been proposed.
F	33.634	Recreation Area	Not applicable - This is not required where the proposed density is less than 40 units.
<b>G</b>	<b>33.635 .100</b>	<b>Clearing and Grading</b>	<b>Applicable - See findings below.</b>
<b>G</b>	<b>33.635 .200</b>	<b>Land Suitability</b>	<b>Applicable - See findings below.</b>
H	33.636	Tracts and Easements	Not applicable - No tracts or easements have been proposed or will be required.
I	33.639	Solar Access	Not Applicable - Maintaining existing development on the site limits new parcel configuration (33.610.200 supercedes 33.639).
J	33.640	Streams, Springs, and Seeps	Not applicable - No streams, springs, or seeps are evident on the site.
<b>K</b>	<b>33.641</b>	<b>Transportation Impacts</b>	<b>Applicable - See findings below</b>
<b>L</b>	<b>33.651 - 33.654</b>	<b>Services and Utilities</b>	<b>Applicable - See findings below</b>

**Applicable Approval Criteria are:**

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

**Findings:** Chapter 33.610 contains the density and lot standards applicable in the RF through R5 zones. These density and lot dimension standards ensure that lots are consistent with the desired character of each zone while allowing lots to vary in size and shape provided the planned intensity of each zone is respected.

**Density Standards**

Density standards match housing density with the availability of services and with the carrying capacity of the land in order to promote efficient use of land, and maximize the benefits to the public from investment in infrastructure and services. These standards promote development opportunities for housing and promote urban densities in less developed areas. Maximum densities ensure that the number of lots created does not exceed the intensity planned for the area, given the base zone, overlay zone, and plan district regulations. Minimum densities ensure that enough dwelling units can be developed to accommodate the projected need for housing.

The method used to calculate density depends on whether a street is created as part of the land division, and whether the site is subject to certain environmental constraints.

In this case, a street is not proposed or required, and the site is not within the environmental zone, potential landslide hazard area, or flood hazard area. Therefore, the maximum and minimum density for this site is as follows:

Minimum =  $(11,026 \text{ square feet} * .80) \div 5,000 \text{ square feet} = 1.76$  (which rounds up to a minimum of 2 lots, per 33.930.020.A)

Maximum =  $11,026 \text{ square feet} \div 5,000 \text{ square feet} = 2.20$  (which rounds down to a maximum of 2 lots, per 33.930.020.B)

If the minimum required density is equal to or larger than the maximum allowed density, then the minimum density is automatically reduced to one less than the maximum. Therefore, in this case the minimum density is reduced to 1.

The applicant is proposing 2 lots. The density standards are therefore met.

#### Lot Dimensions

The lot dimension standards ensure that: (1) each lot has enough room for a reasonably-sized house and garage; (2) lots are of a size and shape that development on each lot can meet the development standards of the Zoning Code; (3) lots are not too large relative to the planned density; (4) each lot has room for at least a small, private outdoor area; (5) lots are compatible with existing lots; (6) lots are wide enough to allow development to orient toward the street; (7) lots don't narrow to an unbuildable width close to the street; (8) each lot has adequate access from the street; (9) each lot has access for utilities and services; and (10) lots are not landlocked.

The dimensions of the proposed lots as compared to the required lot dimension standards is shown in the following table (this information is found in Table 610-2 of the Zoning Code):

	<b>R5 Zone Requirement</b>	<b>Proposed Parcel 1</b>	<b>Proposed Parcel 2</b>
Minimum Lot Area	3,000 sq. ft.	6,718 sq.ft.	4,308 sq.ft.
Maximum Lot Area	8,500 sq. ft.		
Minimum Lot Width*	36 ft.	65 ft.	57 ft.
Minimum Lot Depth	50 ft.	104 ft.	75 ft.
Minimum Front Lot Line	30 ft.	60 ft.	57 ft.

\* Width is measured at the minimum front building setback line

The findings above describe how the applicable lot standards are met.

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

**Findings:** The regulations of Chapter 33.630 preserve trees and mitigate for the loss of trees. Certain trees are exempt from the requirements of this chapter.

The applicant has submitted an arborist report that inventories the trees within the land division site and evaluates their condition (Exhibit A.2). The inventory identifies the following trees on the site:

<b>Tree</b>	<b>Species</b>	<b>Diameter (inches)</b>	<b>Significant? (On Table 630-1)</b>	<b>Exempt? (per 33.630.030)</b>	<b>To be retained?</b>
<b>1</b>	European White Birch	19	No	No	No
<b>2</b>	European White Birch	10	No	No	No
<b>3</b>	European White Birch	14	No	No	No
<b>4</b>	European White Birch	14	No	No	No
<b>5</b>	Lodgepole Pine	16	No	No	No

The applicant proposed to remove all of the trees on the site that are subject to the regulations of this Chapter. This proposal does not meet any of the tree preservation options in 66.630.100. The applicant proposes instead to use the mitigation options of 33.630.300:

### **33.630.300 Mitigation Option**

**As an alternative to meeting Section 33.630.100, approval of a mitigation plan may be requested. The review body will approve the mitigation plan where the applicant has shown that the applicant has met criteria A. and B. and one of the criteria in C., below:**

- A. As many trees as possible are preserved; and**
- B. The applicant has submitted a mitigation plan that adequately mitigates for the loss of trees, and shows how the mitigation plan equally or better meets the purpose of this chapter. Mitigation can include tree planting, preservation of groups of smaller trees, eco-roof, porous paving, or pervious surface permanently preserved in a tract.**
- C. It is not possible under any reasonable scenario to meet Section 33.630.100 and meet one of the following:**
  - 1. Minimum density;**
  - 2. All service requirements of Chapters 33.651 through 33.654, including connectivity;**
  - 3. Implementation of an adopted street plan;**
  - 4. On sites 15,000 square feet or less in area, a practicable arrangement of lots, tracts, and streets within the site that would allow for the division of the site with enough room for a reasonable building site on each lot;**
  - 5. In E and I zones, provide a practicable arrangement of lots, tracts, and streets within the site that would allow for the division of the site with enough room for a reasonable building site on each lot, considering the uses and development allowed in the zone; or**
  - 6. Preserve the trees within the environmental zones on site while providing a practicable arrangement of building sites and disturbance area.**

**Findings:** The site is less than 15,000 square feet in area. The applicant wishes to divide the site to create an additional lot for a detached house, which is an allowed housing type in the R5 zone. Given the location and size of the existing home, there is no other reasonable lot configuration than what is proposed. The applicant has provided a building footprint which appears to be reasonable in comparison to other homes in the area. This footprint would be significantly impacted by the root protection zone of the trees on the site (see Exhibit C.2). The pine tree is clearly in an area that would be difficult to build around, however the applicant was asked to provide additional analysis of whether any of the birch trees could be preserved with a reduced root protection zone. The applicant's arborist indicates that it would not be feasible to reduce the root protection zones to accommodate these trees for preservation due to the spreading and weeping branch habit of the birch trees. In addition, the arborist notes other issues such as pest and limited lifespan as reasons that support removal of the trees with mitigation as opposed to preservation (see Exhibit A.2). Therefore, preservation of trees on this site would prevent a land division that would result in a practicable arrangement of lots that could each contain a reasonable building area and no trees can be preserved. Criteria A and C.4 above are met.

To meet tree preservation standards, the applicant would be required to preserve approximately 25 tree diameter inches (35% of the total on site). The applicant has submitted a mitigation plan that proposes the following:

- Plant 3 Paperbark Maple trees on Parcel 1 (the lot with the existing house); and
- Plant 3 Incense Cedar trees on Parcel 2 (the vacant lot) at the time of development.

This plan will provide additional tree canopy on the site and the inclusion of conifer trees will provide additional stormwater benefits associated with this type of tree which should be

recognized. However, this proposal is significantly less in terms of inches than would have been maintained on the site if the standards were met. To further mitigate for the removal of mature trees on the site, the applicant should also be required to make a payment into the City's tree fund to pay for planting of trees in public spaces. The payment will contribute to the general beauty and natural heritage of the City, if not directly on the site. A payment equivalent to 10 caliper inches will result in an overall mitigation that is roughly equivalent to the preservation requirement for the site, while recognizing that the site provides limited options for mitigation and that the trees being removed may not have been the best choice for long-term preservation.

Criteria B is met with the condition that the tree planting proposed occur and a payment into the tree fund for 10 caliper inches is made. Planting on Parcel 1 must occur prior to final plat approval. Planting on Parcel 2 must occur with the building permit and may count toward the T1 tree standard. The tree fund payment must occur prior to final plat approval.

As conditioned, the mitigation criteria are met.

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

*The approval criteria of Chapter 33.635 are found in two groups – clearing and grading, and land suitability.*

**33.635.100 – Clearing and Grading**

- A. 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;**
- B. Clearing and grading should be sufficient for construction of development shown on the Preliminary Clearing and Grading Plan;**
- C. Clearing and grading should be limited to areas of the site that are reasonably necessary for construction of development shown on the Preliminary Clearing and Grading Plan;**
- D. Topsoil must be preserved on site to the extent practicable for use on the site after grading is complete; and**
- E. Soil stockpiles must be kept on the site and located in areas designated for clearing and grading as much as is practicable.**

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

In this case the site is primarily flat, and is not located within the Potential Landslide Hazard Area. No significant clearing or grading will be required on the site to make the new lot developable. In addition, there are no trees required to be preserved. These criteria are met.

**33.635.200 – Land Suitability**

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

**Findings:** The site is currently in residential use, and there is no record of any other use in the past. The site is relatively flat and contains no known geological hazards. Therefore,

there are no anticipated land suitability issues and the new lot can be considered suitable for new development. This criterion is met.

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

*The relevant approval criteria of Chapter 33.641 are found in the two paragraphs below.*

**33.641.020. 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.**

**33.641.030. The applicant may meet the criterion in Section 33.641.020, above, by including mitigation measures as part of the land division proposal. Mitigation measures must be acceptable to the City Engineer and may include providing transportation demand management measures, an access management plan, constructing streets or bicycle, pedestrian, or transit facilities on or off the site or other capital improvement projects such as traffic calming devices.**

**Findings:** The regulations of Chapter 33.641 allow the traffic impacts caused by dividing and then developing land to be identified, evaluated, and mitigated for if necessary. Small land divisions involving only a few dwelling units may not require a formal transportation impact study, while it might be required for larger projects (Title 17 includes technical standards describing when a more formal study is required).

The site is a corner lot located at the intersection of SE 34<sup>th</sup> Avenue and SE Martins Street. The site has approximately 157-feet of frontage on SE 34<sup>th</sup> Avenue, and has approximately 60-feet of frontage on SE Martins Street. Both streets are classified as local service streets for all modes in the Transportation Element of the Comprehensive Plan. Tri-Met provides transit service approximately 145 feet from the site on SE Woodstock Street via bus 19. On-street parking is currently allowed on SE 34<sup>th</sup> Avenue and SE Martins Street, on both sides. There is currently one driveway entering the site that provides access to off-street parking for the existing house that will remain on Parcel 1. The existing driveway is proposed to remain.

SE 34<sup>th</sup> Avenue and SE Martins Street are fully improved with a paved roadway, curbs, planting strips, and sidewalks. In reviewing this land division, Portland Transportation relies on accepted civil and traffic engineering standards and specifications to determine if existing street improvements for motor vehicles, pedestrians and bicyclists can safely and efficiently serve the proposed new development. Portland Transportation has not identified or been made aware of any factors related to this proposal that lead to a conclusion other than that one additional dwelling can be safely served by the existing streets without having any significant impact on the level of service provided.

Portland Transportation notes that standard driveway separation requirements (5 feet) and sidewalk repair requirements (if needed) will apply at the time of development (see Exhibit E.2 for additional information).

This criterion is met.

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

**Findings:** Chapters 33.651 through 33.654 address water service standards, sanitary sewer disposal standards, stormwater management, utilities and rights of way.

- The water standards of 33.651 have been verified. An existing 8-inch water main is available in SE Martins Street and in SE 34<sup>th</sup> Avenue. Water is available to serve Parcel 2 from the main in SE 34<sup>th</sup> Avenue. Parcel 1 has an existing water service from the main in SE Martins Street. See Exhibit E-3 for more details.
- The sanitary sewer standards of 33.652 have been verified. There are existing 18-inch public combined sewer mains in SE 34<sup>th</sup> Avenue and SE Martins. Parcel 2 can be served from the main in SE 34<sup>th</sup>. Parcel 1 has an existing sewer service from the main in SE Martins. See Exhibit E-1 for more details.
- The technical standards of Chapter 33.653 related to stormwater management have been verified. The findings below for the Stormwater Management Approval Criteria of 33.653.020 incorporate a discussion of how the technical standards have been satisfied by the applicant's stormwater proposal.

### **33.653.020 Stormwater Management Approval Criteria**

- A. If a stormwater tract is proposed or required, an adequate amount of land and an appropriate location must be designated on the Preliminary Plan; and**
- B. The application must show that a stormwater management system can be designed that will provide adequate capacity for the expected amount of stormwater.**

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

The City of Portland requires that stormwater from development be cleaned and disposed of in a manner that meets the requirements of the City's Stormwater Management Manual. In order to meet this approval criterion, land division proposals must demonstrate an approved method of cleaning (water quality treatment), detention (delayed release), and an approved disposal point.

The Stormwater Management Manual contains a hierarchy of acceptable methods of stormwater treatment and disposal. The hierarchy requires that applicants first explore the use of methods that have a lower potential impact on groundwater, such as on-site surface infiltration swales and infiltration planters. If these methods are not feasible on a site, applicants may move lower on the hierarchy, to methods that inject water deeper into the ground through mechanical devices such as drywells or sumps, or carry it off of the site into storm sewers, drainageways, or other approved disposal points.

In addition to determining appropriate treatment and disposal methods by working through the hierarchy in the Stormwater Management Manual, stormwater facilities must be sized, through engineering calculations, to accommodate the expected amounts of stormwater. In some cases, sizing a stormwater facility necessitates testing the infiltration rate of the soil at the site.

The applicant has proposed the following stormwater management methods (Exhibit C-1), and the Bureaus have responded as follows (Exhibits E-1 and E-5):

- **Parcel 1 (the lot with the existing house):** The existing house has downspouts that are connected to rain drains that are generally consistent with the locations shown on plumbing permit 96399 dated 4/9/31. According to the permit, the rain drains discharge to the public sewer system, which is acceptable. However the downspout on the northwest corner of the existing garage drains onto the ground, which does not comply with Stormwater Management Manual requirements. Site Development has noted that prior to final plat approval, the applicant must resolve this issue through a stormwater retrofit permit. Site Development has described this requirement and a



method to resolve the issue in Alert Folder (09-112946 AL), which includes a stormwater retrofit plan approved by Mike Ebeling on 3/4/09. An as-built plan showing the stormwater retrofit must be provided prior to final plat approval. BES concurred with this requirement.

- **Parcel 2:** The applicant proposes to direct stormwater to an individual soakage trench that will treat the water and slowly infiltrate it into the ground. As shown Exhibit C.1, which includes a conceptual building footprint, this lot has sufficient area for a stormwater facility that can be adequately sized and located to meet setback standards, and accommodate water from a reasonably-sized home. Site Development has indicated conceptual approval of the soakage trench. However, at the time of building permit review the results of infiltration testing will be required to confirm soakage trench sizing requirements.

With the conditions of approval described above, the stormwater management criteria are met.

### **Right of Way Approval Criteria**

Chapter 33.654 contains standards and approval criteria for rights of way. Due to the location of this site, and the type of street that is proposed, some of the criteria are not applicable. The following table summarizes the applicability of each criterion.

<b>Code Section</b>	<b>Topic</b>	<b>Applicability Findings</b>
<b>33.654.110.B.1</b>	<b>Through streets and pedestrian connections</b>	<b>Applicable - See findings below</b>
33.654.110.B.2	Dead end streets	Not applicable - No dead end streets are proposed.
33.654.110.B.3	Pedestrian connections in the I zones	Not applicable - The site is not located within an I zone.
33.654.110.B.4	Alleys in all zones	Not applicable - No alleys are proposed or required.
33.654.120.C.1	Width of the street right-of-way	Not applicable - No public or private street is proposed.
33.654.120.C.3.c	Turnarounds	Not applicable - No turnarounds are proposed or required.
33.654.120.D	Common Greens	Not applicable - No common greens are proposed or required.
33.654.120.E	Pedestrian Connections	Not applicable - There are no pedestrian connections proposed or required.
33.654.120.F	Alleys	Not applicable - No alleys are proposed or required.
33.654.120.G	Shared Courts	Not applicable - No shared courts are proposed or required.
<b>33.654.130.A</b>	<b>Utilities</b>	<b>Applicable - See findings below.</b>
33.654.130.B	Extension of existing public dead-end streets and pedestrian connections	Not applicable - There are no existing public dead-end street or pedestrian connections adjacent to the site.
33.654.130.C	Future extension of proposed dead-end streets and pedestrian connections	Not applicable - No street extensions are required to serve abutting sites that are further dividable.
33.654.130.D	Partial rights-of-way	Not applicable - No partial public streets are proposed or required.

**Applicable Approval Criteria are:**

**33.654.110.B.1 Approval criterion for through streets and pedestrian connections in OS, R, C, and E Zones.** In OS, R, C, and E zones, through streets and pedestrian connections are required where appropriate and practicable, taking the following into consideration:

- a. Through streets should generally be provided no more than 530 feet apart, and pedestrian connections should generally be provided no more than 330 feet apart. Through street and pedestrian connections should generally be at least 200 feet apart;
- b. Where the street pattern in the area immediately surrounding the site meets the spacing of subparagraph a., above, the existing street pattern should be extended onto the site;
- c. Characteristics of the site, adjacent sites, and vicinity, such as: (1) Terrain; (2) Whether adjacent sites may be further divided; (3) The location of existing streets and pedestrian connections; (4) Whether narrow frontages will constrain creation of a through street or pedestrian connection; (5) Whether environmental overlay zones interrupt the expected path of a through street or pedestrian connection; and (6) Whether existing dwelling units on- or off-site obstruct the expected path of a through street or pedestrian connection. Alternative locations or designs of rights-of-way should be considered that avoid existing dwelling units. However, provision of through streets or pedestrian connections should take precedence over protection of existing dwelling units where the surrounding transportation system will be significantly affected if a new through street or pedestrian connection is not created;
- d. Master street plans for the area identified in Goal 11B of the Comprehensive Plan;
- e. Pedestrian connections should take the most direct route practicable. Users should be able to see the ending of the connection from the entrance point, if possible.

**Findings:** The site is located at the corner of SE 34<sup>th</sup> Avenue and SE Martin Street. Due to the site's corner location, no additional through street or pedestrian connection is necessary or practicable. In addition, the site is not within an area that has an adopted Master Street Plan, so criterion d. does not apply. For the reasons described above, this criterion is met.

#### **Utility Location, Extension of Streets, Partial Rights of Way**

#### **33.654.130 Additional Approval Criteria for Rights-of-Way**

- A. Utilities.** Utilities must be located within rights-of-way or utility easements that are adjacent to rights-of-way to the maximum extent practicable. Utility easements up to 15 feet in width may be required adjacent to rights-of-way.

**Findings:** Utilities are defined in the Zoning Code as telephone, cable, natural gas, electric, and telecommunication facilities. At this time no specific utility easements adjacent to the street tract or right-of-way have been identified as being necessary. Therefore, this criterion is met.

As shown by the findings above, the Services and Utilities criteria are met.

### **DEVELOPMENT STANDARDS**

**General Information about Development Standards and Approval Criteria.** The Zoning Code contains two types of regulations: Development standards and Approval criteria.

**Approval criteria**, such as those listed earlier in this report, are administered through a land use review process. Approval criteria are regulations where the decision-maker must exercise discretion to determine if the regulation is met. Public notice is provided and public comments received that address the approval criteria are addressed in the decision.

**Development Standards:** Development standards are clear and objective regulations (for example: building setbacks; number of required parking spaces; and maximum floor area). Compliance with development standards is reviewed as part of the administrative permitting process and are not considered to be discretionary reviews. Development standards that are not relevant to the land division review, have not been addressed in the review, but will have to be met at the time that each of the proposed lots is developed.

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

**Existing development that will remain after the land division.** The existing development on the site will remain and be located on Parcel 1. The division of the property may not cause the structures to move out of conformance or further out of conformance to any development standard applicable in the R5 zone (Please see section on Other Technical Standards for Building Code standards.)

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

- Minimum Setbacks – The existing house identified to remain on the site must meet the required Zoning Code setbacks from the proposed new lot lines. Alternatively, existing buildings must be set back from the new lot lines in conformance with an approved Adjustment or other Land Use Review decision that specifically approves alternative setbacks. The existing house will be 5-feet from the new property line north of the existing house. Therefore, the required setbacks are being met. To ensure this standard continues to be met at the final plat stage, the final plat must be accompanied by a supplemental survey showing the location of the existing building relative to the adjacent new lot lines.

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

## OTHER TECHNICAL REQUIREMENTS

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

Bureau	Code Authority	Topic	Contact Information
Water Works	Title 21	Water availability	503-823-7404 <a href="http://www.water.ci.portland.or.us/">http://www.water.ci.portland.or.us/</a>
Environmental Services	Title 17; 2002 Stormwater Manual	Sewer availability Stormwater Management	503-823-7740 <a href="http://www.bes.ci.portland.or.us/">http://www.bes.ci.portland.or.us/</a>
Fire Bureau	Title 31 Policy B-1	Emergency Access	503-823-3700 <a href="http://www.fire.ci.portland.or.us/">http://www.fire.ci.portland.or.us/</a>
Transportation	Title 17, Transportation System Plan	Design of public street	503-823-5185 <a href="http://www.trans.ci.portland.or.us/">http://www.trans.ci.portland.or.us/</a>

Bureau	Code Authority	Topic	Contact Information
Development Services	Titles 24 –27, Admin Rules for Private Rights of Way	Building Code, Erosion Control, Flood plain, Site Development & Private Streets	503-823-7300 <a href="http://www.bds.ci.portland.or.us">http://www.bds.ci.portland.or.us</a>

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

## CONCLUSIONS

The applicant has proposed a 2-lot partition, as shown on the attached preliminary plan (Exhibit C-1). As discussed in this report, the relevant standards and approval criteria have been met, or can be met with conditions. The primary issue identified with this proposal is mitigation for tree removal. With conditions of approval that address this issue, the proposal can be approved.

## ADMINISTRATIVE DECISION

**Approval** of a Preliminary Plan for a 2-lot partition, that will result in two standard lots as illustrated with Exhibit C.1 and C.2, subject to the following conditions:

**A. Supplemental Plan.** Three copies of an additional supplemental plan shall be submitted with the final plat survey. That plan must portray how the conditions of approval listed below are met. In addition, the supplemental plan must show the surveyed location of the following:

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

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

### Existing Development

1. The applicant must meet the requirements of BDS Site Development to retrofit the stormwater system for the existing house that will remain on Parcel 1. A plumbing permit must be obtained and finalized to complete the work specified in the Alert Folder 09-112946 AL and on the retrofit plan approved on 3/4/09, or an alternative approved by BDS Site Development. Prior to final plat approval, an as-built plan must be provided to document that the system meets setback requirements.

### Other requirements

2. The applicant must pay into the City Tree Fund the amount equivalent to 10 inches of trees. Payment must be made to the Bureau of Development Services, who administer the fund for the Parks Bureau.
3. The applicant must obtain and final a Zoning Permit for planting three (3) trees on Parcel 1 as mitigation for tree removal. The trees must be minimum 2-inch caliper at the time of planting.

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

1. At the time of development on Parcel 2, the applicant shall plant three (3) trees as mitigation for tree removal. The tree species must be Incense Cedars or another conifer species of a similar growth habit and size. The trees shall be shown on the building

permit site plan and installed prior to final inspection. Trees planted on Parcel 2 may count toward other tree requirements for the lot (such as the T1 tree standard).

**Decision rendered by:** S. Beekman **on May 28, 2009**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: June 2, 2009**

**About this Decision.** This land use decision is **not a permit** for development. A Final Plat must be completed and recorded before the proposed lots can be sold or developed. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

**Procedural Information.** The application for this land use review was submitted on January 8, 2009, and was determined to be complete on February 11, 2009.

*Zoning Code Section 33.700.080* states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on January 8, 2009.

*ORS 227.178* states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant requested that the decision not be issued for a period of approximately 6 weeks.

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

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

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

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

**This decision, and any conditions associated with it, is final.** It may be appealed to the Oregon Land Use Board of Appeals (LUBA), within 21 days of the date the decision is mailed, as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that a petitioner at LUBA must have submitted written testimony during the comment period for this land use review. You may call LUBA at 1-503-373-1265 for further information on filing an appeal.

The file and all evidence on this case is available for your review by appointment. Please contact the receptionist at 503-823-7967 to schedule an appointment. Copies of all information in the file can be obtained for a fee equal to the cost for such services. You may

also find additional information about the City of Portland and City Bureaus, as well as a digital copy of the Portland Zoning Code, by visiting the City's homepage on the Internet at [www.portlandonline.com](http://www.portlandonline.com).

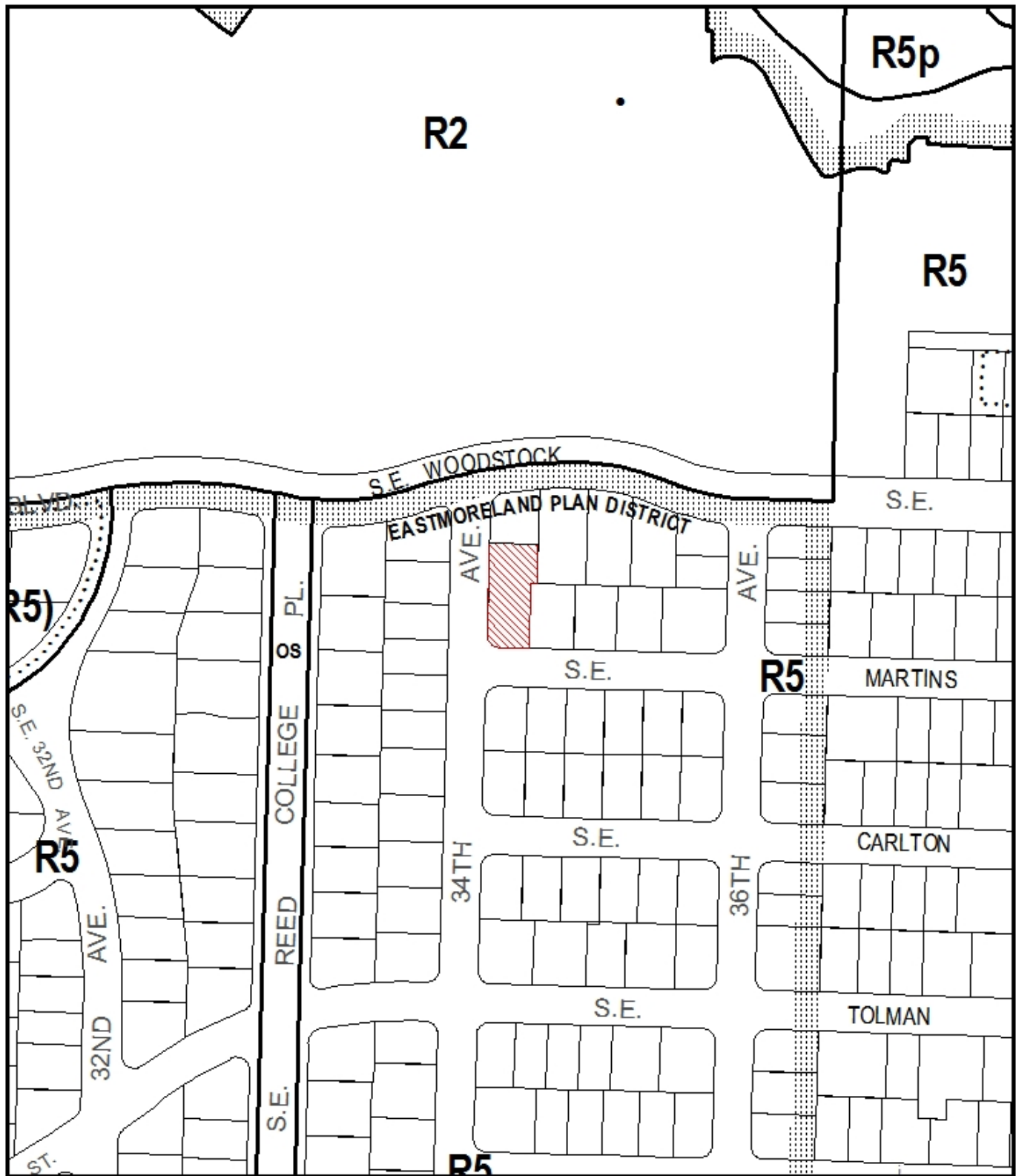
**Recording the land division.** The final land division plat **must** be submitted to the City **within three years** of the date of the City's final approval of the preliminary plan. This final plat must be recorded with the County Recorder and Assessors Office after it is signed by the Planning Director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

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  - 1. Narrative
  - 2. Arborist Report (a, b & c)
  - 3. Original plan submittal
  - 4. Correspondence regarding decision timelines
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Preliminary Plan/Utility Plan (attached)
  - 2. Tree Mitigation plan (attached)
  - 3. Preliminary Plat/Cover Sheet
  - 4. Existing Conditions
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Bureau of Transportation Engineering and Development Review
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Site Development Review Section of BDS
  - 6. Bureau of Parks, Forestry Division
  - 7. BDS Life Safety
- F. Correspondence from interested parties: none submitted
- G. Other:
  - 1. Original LU Application
  - 2. Site History Research
  - 3. Incomplete letter

**The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-7300 (TTY 503-823-6868).**



# ZONING



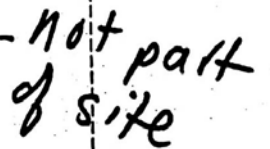
Site



NORTH

This site lies within the:  
EASTMORELAND PLAN DISTRICT

File No. LU 09-101124 LDP  
 1/4 Section 3634  
 Scale 1 inch = 200 feet  
 State\_Id 1S1E13DC 9100  
 Exhibit B (Jan 21,2009)

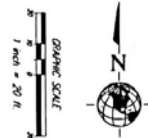
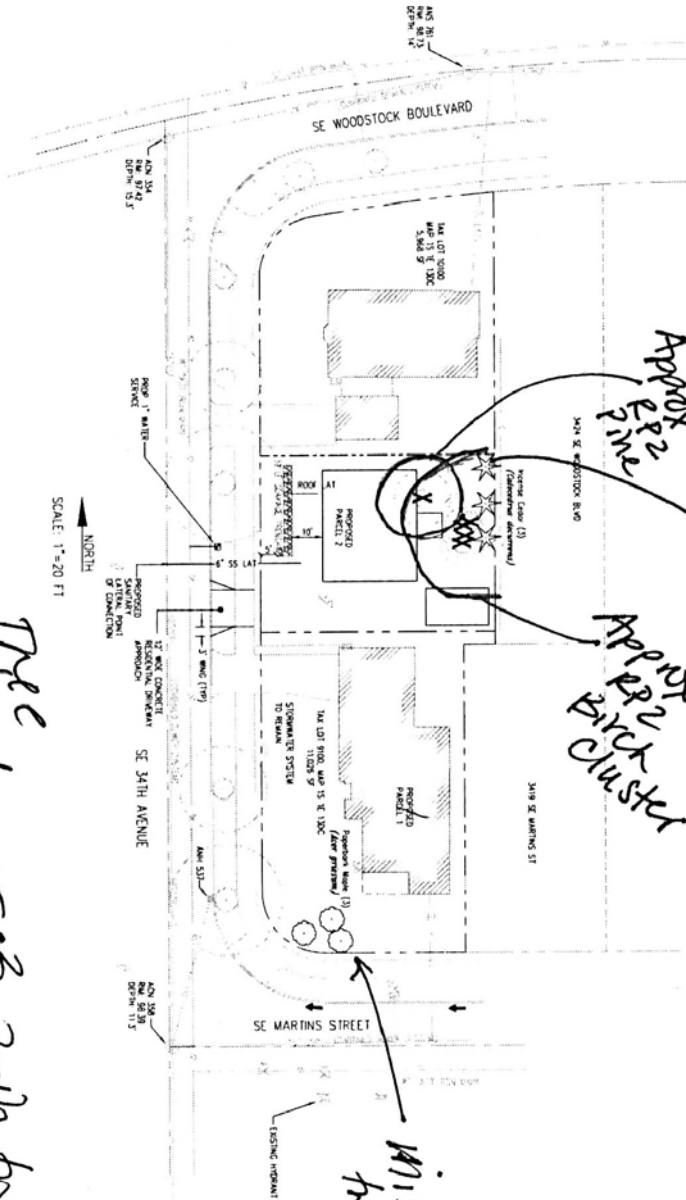


Preliminary Plan / Utility Plan

CASE NO. 44-109-101124  
EXHIBIT C.1 WDP



The mitigation = 3, 2-1h trees on Parcel 2  
 • 3 conifer trees on Parcel 2 as specified or similar species  
 • Tree bund. payment per condition



CASE NO. LU09-101124  
 EXHIBIT C.2

PROJECT NO. <b>HEY005</b>		CASE FILE NO. <b>LU09-101124 LDP</b>	
DATE	4/9/09	DESIGNED	S. ROYER
ENGINEER	S. ROYER	CHECKED	M. MATHY
SHEET TITLE <b>TREE PLAN</b>			
SHEET NUMBER <b>TR1</b>			

REV	DESCRIPTION	DATE

**TREE MITIGATION PLAN**  
**WOODSTOCK 2-PARCEL PARTITION**  
**6036 SE 34TH AVENUE**  
 PORTLAND, OREGON  
 DONALD & RHONIE EMRY, PORTLAND OR, 97202

8196 SW Hall Boulevard,  
 Suite 232  
 Beaverton, Oregon 97008  
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