



# Portland City Auditor

## Hearings Office

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### RECOMMENDATION OF THE HEARINGS OFFICER

#### I. GENERAL INFORMATION

**File Number:** LU 16-133809 CP ZC (Hearings Office 4160007)

**Applicant:** Madeline Kovacs  
Orange Splot LLC  
4757 NE Going Street  
Portland, OR 97218

**Hearings Officer:** Gregory J. Frank

**Bureau of Development Services ("BDS") Staff Representative:** Matt Wickstrom

**Site Address:** 4736-4752 NE Going Street

**Legal Description:** TL 12100 0.45 ACRES, SECTION 19 1N 2E; TL 12200 0.45 ACRES, SECTION 19 1N 2E

**Tax Account Number:** R942192060, R942194560

**State ID Number:** 1N2E19BD 12100, 1N2E19BD 12600

**Neighborhood:** Cully

**District Neighborhood Coalition:** Central Northeast Neighbors

**Zoning:** The Subject Property is zoned R5h (Residential 5,000 with an Aircraft Landing Zone Overlay).

**Land Use Review:** Type III, CP ZC (Comprehensive Plan Map Amendment Review with a concurrent Zoning Map Amendment Review)

**BDS Staff Recommendation to Hearings Officer:** Approval with conditions

**Public Hearing:** The hearing was opened at 9:00 a.m. on June 27, 2016, in the 3<sup>rd</sup> floor hearing room, 1900 SW 4<sup>th</sup> Avenue, Portland, Oregon, and was closed at 11:08 a.m. The record was closed at that time.

**Testified at the Hearing:**

Matt Wickstrom  
Eli Spevak  
Ted Snider  
Katie Ullrich  
Laura Moulton  
Coen Parzybok  
Sylvie Parzybok  
Bruce Nelson  
Michael Beach  
George Jacobs  
Fabio de Freitas  
Chris Brehmer

**Proposal:**

Applicant proposed a Comprehensive Plan Map Amendment and Zoning Map Amendment for real property described above (the "Subject Property"). The Comprehensive Plan Map Amendment would change the Comprehensive Plan Map designation of the Subject Property from a High Density Single-Dwelling designation to a Townhouse Multi-Dwelling designation. The Zoning Map Amendment would change the zoning on the Subject Property from (Residential 5,000) to R3 (Residential 3,000). The ultimate project would result in a 23-home development comprised of small detached homes, duplexes, and triplexes. Three of the units are proposed to be permanently affordable through a partnership with Proud Ground. The project would also include surface parking areas for residents and guests, pedestrian connections, detached guest homes, community gardens, and other amenities.

**Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the criteria of Title 33. The relevant criteria are:

- 33.810.050 Comprehensive Plan Map Amendment Review
- 33.855.050 Zoning Map Amendment Review

**II. ANALYSIS**

**Site and Vicinity:** The Subject Property, which is the focus of this decision, consists of two tax lots and is 39,200 square feet in area. The Subject Property is adjacent to another tax lot owned by Applicant which is already zoned R3 (Residential 3,000). The Subject Property is located on the south side on NE Going Street, two lots east of the intersection of NE Going Street and NE 47<sup>th</sup> Avenue. Both lots of the Subject Property are currently developed with single-dwelling residences. To the north of the Subject Property, existing development includes a large single-dwelling home with an accessory dwelling unit, and Cully Grove, a planned development with 16 stand-alone

homes, duplexes or triplexes, and a six lot subdivision. To the south, existing development includes single-dwelling homes and two-story apartments. To the west, existing development includes two single-dwelling homes and a commercial business. Lots further west beyond NE 47<sup>th</sup> Avenue are primarily developed with single-dwelling residences. To the east, existing development includes single-dwelling homes, many on flag lots, and small multi-dwelling development. NE 42<sup>nd</sup> Avenue is approximately five blocks from the site and serves as the local retail district for this area.

**Zoning:** The Subject Property is currently zoned R5h (Residential 5,000 with an Aircraft Landing Zone Overlay). The R5 zone is intended to preserve land for housing and to provide housing opportunities for individual households. A tax lot to the south side of the Subject Property is also owned by Applicant and already zoned R3 (Residential 3,000).

The R3 (Residential 3,000) zone is intended to preserve land for urban housing and to provide opportunities for multi-dwelling housing. The R3 zone is the least dense of any multi-dwelling zone. The "h" overlay provides safer operating conditions for aircraft in the vicinity of the Portland International Airport by limiting the height of structures, vegetation, and construction equipment. (The allowed base zone heights in the R5 and R3 zones are less than the 180-foot maximum height limit imposed by the "h" overlay). The R3 zone is the least dense multi-dwelling zone. The R5 zone is the densest single-dwelling zone, aside from the R2.5 zone, which allows attached houses.

The Portland City Council adopted an update to the City's Comprehensive Plan on June 17, 2016, including updates to the Comprehensive Plan Map and Zoning Map. The update changes the Comprehensive Plan Map designation, for the Subject Property, from High Density Single-Dwelling Residential to Townhouse Multi-Dwelling Residential. It also changes the Zoning Map designation from R5 (Residential 5,000) to R3 (Residential 3,000). The Comprehensive Plan Update is currently under State of Oregon review and is expected to become effective in early 2018.

**Land Use History:** City records indicate there are no prior land use reviews for the Subject Property.

**Agency Review:** A "Request for Response" was mailed May 12, 2016. The following bureaus responded:

The Bureau of Environmental Services ("BES") responded with no objections to the proposal. Comments were provided regarding BES standards and requirements that will apply at time of building permit review, including sanitary service and stormwater management requirements (Exhibit E-1).

The Portland Bureau of Transportation ("PBOT") responded with comments regarding potential impacts to the public right-of-way, traffic impacts, and conformance with adopted policies, street

designations, Title 33, Title 17, and for potential impacts upon transportation services (Exhibit E-2).

The Water Bureau responded with no concerns with the proposed Comprehensive Plan Map Amendment and Zoning Map Amendment. The response includes information on water service serving the Subject Property. The response also notes that a tax lot consolidation will be required prior to Water Bureau approval of any building permits (Exhibit E-3).

The Fire Bureau responded that all applicable Fire Code requirements will apply at time of building permit review and development (Exhibit E-4).

The Police Bureau responded with no objections or conditions of approval. The response includes recommendations to make sure addresses are easily identified during the day and night and that the Homeowners Association ("HOA") rules should reference a maintenance plan to keep the site physically and visibly accessible (Exhibit E-5).

The Site Development Section of the Bureau of Development Services ("Site Development") responded with site-specific information including information about grading and erosion control (Exhibit E-6).

The Life Safety Section ("Life Safety") of the Bureau of Development Services responded that separate building permits will be necessary for the future work proposed (Exhibit E-7).

**Neighborhood Review:** A number of written responses were received, prior to the June 27, 2016 hearing (the "Hearing"), by the BDS Staff Planner assigned to this case. In addition, a letter of support written by the Cully Association of Neighbors ("CNA") dated November 24, 2015, was submitted with the application. The CNA letter indicates support for three features of the proposal including the relatively smaller sizes of the proposed homes, the request to change the zoning of the Subject Property, and the preservation of street trees (Exhibit A).

A letter was also received, by BDS Staff prior to the Hearing, from a neighbor who lives in the R5 zone and whose lot abuts the portion of the Subject Property zoned. The neighbor stated that the Cully Grove development, across NE Going Street from the Subject Property, has increased traffic. The neighbor stated that the development of the Subject Property will result in a year of construction noise, overpopulation in the neighborhood, and gentrification. His letter stated that guests will park in neighbors' driveways and refers to the development that will occur at the Subject Property as "unaffordable." He also states that development will be five feet from his property line, which is too close (Exhibit F-1).

*BDS Staff response (from the BDS Staff Report – Exhibit E.2): "The current zoning of the site, would allow 18 dwelling units on the site through a Planned Development Review – 8 dwelling units on the R5 portion of the site and 10 dwelling units on the*

*R3 portion of the site, assuming amenity bonuses are used. Noise impacts are regulated in Portland Zoning Code Chapter 33.262 Off-Site Impacts. Title 18 Noise Control regulates the hours when construction can occur. The PBOT reviewer reviewed the submitted traffic report and the applicant's responses to the transportation-related approval criteria and found that the proposed zoning is compatible with levels of service and street designation requirements. The 23 dwelling units planned for the site do not represent a significant increase in the allowed density at the site especially considering the relatively smaller size of dwelling units planned and that 3 of the dwelling units will be affordable. The applicable development standards of the R3 zone would apply to proposed development."*

Another letter was received from a neighbor who lives approximately three lots to the northwest of the Subject Property on the west side of NE 47<sup>th</sup> Avenue in the R7 zone. The letter stated that a 20 dwelling unit project will impact parking, noise, and the tranquility of the neighborhood. The neighbor stated concern for traffic accidents since a school is nearby (Exhibit F-2).

*BDS Staff response (from the BDS Staff Report – Exhibit E.2): "PBOT reviewed the proposal, the applicant's submitted traffic analysis and the applicant's response to the approval criteria and found that the transportation system is capable of supporting the uses allowed and the proposal will not adversely impact the pedestrian and bicycle network in the area. As noted above, the Portland Zoning Code regulates noise in Chapter 33.262 Off-Site Impacts and Title 18 Noise Control regulates hours when construction may occur. These comments are addressed in more detail in the findings below."*

A third letter came from a neighbor who lives about three lots to the west on the west side of NE 47<sup>th</sup> Avenue in the R3 zone. The letter stated that development of the Subject Property (either at the current density allowed or at a higher density associated with the R3 zone), will increase air pollution, result in insufficient on-street parking, and decrease privacy and green space. The neighbor stated that new dwelling units constructed will be expensive and hypothesized that limiting growth and change can occur by limiting the construction of new dwelling units because those new dwelling units will increase traffic and remove green space. The neighbor stated that increased density should be located in places where it is currently allowed. The neighbor requested that Applicant make a compelling case for why the extra density is necessary.

*BDS Staff response (from the BDS Staff Report – Exhibit E.2): "PBOT reviewed the traffic analysis and transportation-related narrative submitted by the applicant and provided comments on the relevant approval criteria including the availability of on-street parking. As noted previously, the site could currently be developed with 18 dwelling units through a Planned Development Review. The increase in the density allowed by applying the R3 zoning to the entire site results in an approximately 25*

*percent increase in density (approximately half the site is already zoned R3). The approval criteria does not state that the applicant must make a compelling case for why extra density is necessary. It does, however, require the applicant to demonstrate that the proposal is on balance equally or more supportive of the goals and policies in the Comprehensive Plan and that services (water, sewer, stormwater, police, fire and transportation) are available to support development in the proposed zone. These comments are also addressed in more detail in the findings below. The applicant's narrative, traffic study, and Bureau responses are all part of the public record in the project file."*

Additional testimony was received from neighbors following the June 17, 2016, publishing of the BDS Staff Report. Testimony is similar to the testimony described under the Neighborhood Review and is included as Exhibits F-4 through F-10. Some neighbors commented that the proposed zoning change makes sense given current City policies and need for additional housing in Portland. Other neighbors expressed concerns about additional density, parking, traffic conflicts, and changes to the character of the area. Two neighbors addressed the Comprehensive Plan Map Amendment approval criteria and stated the proposal does not meet the criteria.

At the Hearing, testimony was received from neighbors and persons interested in this application. Testimony received at the Hearing and relevant to approval criteria will be addressed in the findings below.

## **ZONING CODE APPROVAL CRITERIA**

### **33.810.050 Approval Criteria (Comprehensive Plan Map Amendments)**

**A. Quasi-Judicial. Amendments to the Comprehensive Plan Map which are quasi-judicial will be approved if the review body finds that the applicant has shown that all of the following criteria are met:**

- 1. The requested designation for the site has been evaluated against relevant Comprehensive Plan policies and on balance has been found to be equally or more supportive of the Comprehensive Plan as a whole than the old designation;**

**Findings:** The following analysis includes an assessment of the Comprehensive Plan goals, policies, and objectives relevant to this proposal. Based on this analysis, the Hearings Officer determined that on balance the proposed designation is equally or more supportive of the Comprehensive Plan than the old designation. Therefore, the Hearings Officer finds this approval criterion is met.

## **Comprehensive Plan Goals and Policies**

**Goal 1 Metropolitan Coordination:** *This goal seeks to ensure that the Comprehensive Plan is coordinated with federal and state law, and supports goals, objectives, and plans adopted by the Metropolitan Service District.*

**Findings:** The *Urban Growth Management Functional Plan* was approved November 21, 1996, by the Metro Council and became effective February 19, 1997. The purpose of the plan is to implement the Regional Urban Growth Goals and Objectives (“RUGGO”), including the 2040 Growth Concept. Local jurisdictions must address the Functional Plan when Comprehensive Plan Map Amendments are proposed through the quasi-judicial or legislative processes. The *Urban Growth Management Functional Plan* is Section 3.07 of the Metro Code.

The City of Portland’s Comprehensive Plan and the implementing Zoning regulations of PCC Title 33 are either in compliance with, or are not inconsistent with, the applicable Metro Titles. The Hearings Officer finds this proposal is consistent with the Metro Titles that are applicable.

The 14 Metro Titles in that section are summarized and addressed below.

### **Urban Growth Management Functional Plan**

**Title 1 Housing Capacity.** This title calls for compact urban form and a “fair-share” approach to meeting the regional housing needs. It is accomplished by requiring each city and county to maintain or increase its housing capacity. This requirement is generally implemented through city-wide analysis based on calculated capacities from land use designations.

**Findings:** The requested amendment changes the housing capacity of the Subject Property. The current Comprehensive Plan designation of High Density Single-Dwelling and implementing zone of R5 (Residential 5,000) allows a maximum of eight dwelling units on the northern two lots on the Subject Property. The proposed Comprehensive Plan designation of Townhouse Multi-Dwelling and implementing zone of R3 (Residential 3,000) allows 13 dwelling units on the Subject Property. As the proposal is to increase the housing capacity at the Subject Property, it is consistent with Metro’s Housing Capacity title.

**Title 2 Regional Parking Policy.** This title was repealed and transferred to the Regional Transportation Functional Plan.

**Title 3 Water Quality and Flood Management.** This title protects the beneficial water uses, functions, and values of resources by limiting or mitigating the impact of development activities on these areas.

**Findings:** Compliance with this title is achieved in this area through the review of development against the current Stormwater Manual regulations at the time of building permit. BES provided comments and noted that BES standards and requirements that will apply at the time of building permit review. The Subject Property is not located in a floodway. Information concerning the BES response is addressed below under Approval Criteria for Base Zone Changes and is included as Exhibit E-1.

**Title 4 Industrial and Other Employment Areas.** This title seeks to provide and protect a supply of sites for employment by limiting the types and scale of non-industrial uses in Regionally Significant Industrial Areas. The title also seeks to provide the benefits of "clustering" to those industries that operate more productively and efficiently in proximity to one another than in dispersed locations. It further seeks to protect the capacity and efficiency of the region's transportation system for the movement of goods and services and to encourage the location of other types of employment in Centers, Corridors, Main Streets and Station Communities.

**Findings:** The Subject Property is not located in a Regionally Significant Industrial Area. It also is not "clustered" around other industries. The Hearings Officer finds this title is not applicable.

**Title 5 Neighbor Cities and Rural Reserves.** This title defines Metro policy with regard to areas outside the Metro urban growth boundary.

**Findings:** The proposal is within the urban growth boundary and has no impact on neighboring cities or rural reserves. The Hearings Officer finds this title is not applicable.

**Title 6 Centers, Corridors, Station Communities and Main Streets.** The Regional Framework Plan identifies Centers, Corridors, Main Streets and Station Communities throughout the region and recognizes them as the principle centers of urban life in the region. This title calls for actions and investments by cities and counties, complemented by regional investments, to enhance this role. A regional investment is an investment in a new high-capacity transit line or designated a regional investment in a grant or funding program administered by Metro or subject to Metro's approval.



**Findings:** Because the proposal is for a Subject Property that is not within the Central City, nor is the area designated as a Regional or Town Center or a Station Community, nor are the adjacent streets classified as corridors or main streets, the Hearings Officer finds this proposal has no impact on this title.

**Title 7 Housing Choice.** This title calls for the establishment of voluntary affordable housing production goals to be adopted by local governments and assistance from local governments on reports on progress toward increasing the supply of affordable housing.

**Findings:** The Hearings Officer finds Applicant's proposal provides more opportunities for housing choice by increasing residential capacity on the Subject Property. Development planned for the Subject Property will be a range of compact and thereby more affordable homes in one, two, and three unit structures. A condition of approval addressed later in this recommendation ensures the development of these types of structures. Of the 23 planned new residences on the Subject Property, as shown on the site plan provided, three are proposed to be affordable to buyers at or below 80 percent of Median Family Income through a partnership with Proud Ground. This will ensure affordable housing at the Subject Property. A condition of approval addressed later in this recommendation ensures the partnership with Proud Ground (or comparable organization specializing in the provision of affordable housing) for three dwelling units of affordable housing. The Hearings Officer finds the application in this case makes it more likely that affordable housing is located on the Subject Property compared to leaving the Subject Property in its current mapping designations and relying upon market forces. The Hearings Officer finds this Title is better met by the proposal.

**Title 8 Compliance Procedures.** This title outlines compliance procedures for amendments to comprehensive plans and implementing ordinances.

**Findings:** The Hearings Officer finds that the proposal meets this title by fulfilling the notice requirements for Type III land use reviews, as outlined in Portland Zoning Code, section 33.810, Comprehensive Plan Map Amendments. In addition to notifying the affected neighborhood associations and property owners within a 400-foot radius of the Subject Property, a Notice of Proposal has also been sent to Metro and to the Department of Land Conservation and Development. Applicant has also voluntarily met with interested neighbors and the CNA on several occasions. Therefore, the Hearings Officer finds the proposal is consistent with the title and canvassed the nearby neighbors to inform them of the neighborhood association meeting where the proposal would be discussed.

**Title 9 Performance Measures.** Title 9 was repealed.

**Title 10 Definitions.** This title defines the words and terms used in the *Urban Growth Management Functional Plan*.

**Title 11 Planning for New Urban Areas.** This title guides planning for areas brought into the Urban Growth Boundary for conversion from rural to urban use.

**Findings:** The Hearings Officer finds the proposal has no impact on, and therefore is not inconsistent with, Titles 9, 10, and 11.

**Title 12 Protection of Residential Neighborhoods.** The purpose of this title is to protect the region's existing residential neighborhoods from air and water pollution, noise and crime and to provide adequate levels of service.

**Findings:** Applicant's proposal is subject to review and evaluation against existing and future demand on public services, and whether there are adequate levels of same to support the proposed re-designation and zoning pattern. To the extent that the proposal meets the criteria found at 33.855.050 B, as discussed below, Applicant's proposal is consistent with the intent of this title. Pollution and noise control is achieved via compliance with other City regulations at time of building permit review for new development. Crime control is addressed via the City of Portland – Police Bureau, as noted in Exhibit E- 5. Therefore, the Hearings Officer finds Applicant's proposal is consistent with this title.

**Title 13 Nature in Neighborhoods.** The purpose of this title is to conserve, protect and restore a continuous ecologically viable streamside corridor system that is integrated with upland wildlife habitat and the surrounding urban landscape.

**Findings:** The Subject Property has no streams, nor any Environmental zoning overlays. Any future development will be required to meet all of the applicable Stormwater Management requirements, thus ensuring that water pollution is reduced and water quality is improved prior to release into the overall stormwater system. Therefore, the Hearings Officer finds Applicant's proposal is consistent with this Title.

**Title 14 Urban Growth Boundary.** This title prescribes criteria and procedures for amendments to the urban growth boundary.

**Findings:** The Subject Property is already located within the Urban Growth Boundary. In summary, Applicant's proposal will have little or no effect on the intent of above discussed titles or these titles will be met through compliance with other applicable City regulations. Therefore, the request is equally or more supportive of the regional planning framework, and this Goal [*Metropolitan Coordination*] is met.

**Goal 2 Urban Development:** *This goal calls for the maintenance of the City's role as a regional employment, population, and cultural center through public policies that encourage expanded opportunity for housing and jobs, while retaining the character of established residential neighborhoods and business centers.*

**Findings:** The Hearings Officer finds Applicant's proposal is consistent with the following applicable policies: Policy 2.1, *Population Growth*, Policy 2.2, *Urban Diversity*, Policy 2.9, *Residential Neighborhoods*, and Policy 2.19, *Infill and Redevelopment*.

Because of the proposal's consistency with these Policies, the Hearings Officer finds Applicant's proposal, on balance, is equally or more supportive of Goal 2 [Urban Development] of the Comprehensive Plan. A detailed analysis of the applicable policies follows, below.

**Policy 2.1 Population Growth.** *Allow for population growth within the existing city boundary by providing land use opportunities that will accommodate the projected increases in city households by the year 2000.*

**Findings:** Applicant's proposal would increase the potential for housing on the Subject Property. Currently, the portion of Subject Property zoned R5 (Residential 5,000) could include up to eight dwelling units if approved through a Planned Unit Development. This portion of the Subject Property could include up to 13 dwelling units at the proposed R3 (Residential 3,000) Zoning Map designation. The Hearings Officer finds this policy is better met by Applicant's proposal as compared to the existing zoning.

**Policy 2.2 Urban Diversity.** *Promote a range of living environments and employment opportunities for Portland residents in order to attract and retain a stable and diversified population.*

**Policy 2.9 Residential Neighborhoods.** *Allow for a range of housing types to accommodate increased population growth while improving and protecting the city's residential neighborhoods.*

**Policy 2.19 Infill and Redevelopment.** *Encourage infill and redevelopment as a way to implement the Livable City growth principles and accommodate expected increases in population and employment. Encourage infill and redevelopment in the Central City, at transit stations, along Main Streets, and as neighborhood infill in existing residential, commercial and industrial areas.*

**Findings:** The proposed Comprehensive Plan Map designation of Townhouse Multi-Dwelling and corresponding Zoning Map designation of R3 (Residential 3,000) allows a

broader array of housing types than the current designations. The Hearings Officer finds Applicant's proposal promotes a range of living environments, housing types, and helps accommodate expected increases in population. In order to ensure that the project provides the range of housing types proposed, while also protecting the character of the surrounding residential neighborhood, BDS Staff recommended a condition of approval is necessary requiring the proposal to include one, two, and three-unit structure types. The Hearings Officer finds this policy is better met by Applicant's proposal as compared to the existing zoning.

**Goal 2 Summary:** In summary, the Hearings Officer finds Applicant's proposal better meets Goal 2 than the current zoning. The Hearings Officer finds this Goal is met.

**Goal 3 Neighborhoods:** *This goal seeks to preserve and reinforce the stability and diversity of the City's neighborhoods while allowing for increased density in order to attract and retain long-term residents and businesses. The goal also seeks to ensure the City's residential quality and economic vitality.*

**Findings:** The Hearings Officer finds Applicant's proposal provides additional vitality to the surrounding area. The Hearings Officer finds the added vitality can be expected to translate into increased stability for the area. Applicant's proposal will introduce additional diversity and will increase the density to the area. The Hearings Officer finds Applicant's proposal is equally or more supportive of the following applicable policies: Policy 3.5, *Neighborhood Involvement*, and Policy 3.6, *Neighborhood Plan*.

**Policy 3.3 Neighborhood Involvement.** *Provide for the active involvement of neighborhood residents and businesses in decisions affecting their neighborhood through the promotion of neighborhood and business associations. Provide information to neighborhood and business associations which allows them to monitor the impact of the Comprehensive Plan and to report their findings annually to the Planning Commission.*

**Findings:** Materials submitted with the Comprehensive Plan Map Amendment and Zoning Map Amendment Review application include a letter of support from the CNA indicating that Applicant provided information on the project to the CNA. Information regarding the proposed Comprehensive Plan Map Amendment and Zoning Map Amendment was also available to surrounding neighbors through the posting of the Subject Property with a description explaining the proposal, as well as mailed notices to surrounding property owners and organizations recognized by the Office of Neighborhood Involvement. The Hearings Officer finds Applicant's proposal is equally supportive of this policy.

**Policy 3.6 Neighborhood Plan. *Maintain and enforce neighborhood plans that are consistent with the Comprehensive Plan and that have been adopted by City Council.***

**Findings:** The Cully Neighborhood Plan (“CNP”) was adopted in 1992. One policy and several objectives in the plan address housing. One objective is relevant to Applicant’s proposal. Objective 3A-4, states: ***Encourage good quality, owner-occupied multifamily residential use on transit arterials and areas zoned for multifamily use.*** The proposal will result in a development type that is attractive to a range of family-types and owners due to its smaller size and array of amenities. The Hearings Officer finds Applicant’s proposal equally supports this CNP policy.

**Goal 3 Summary:** In summary, the Hearings Officer finds Applicant’s proposal is equally or more supportive of Goal 3 Neighborhoods, and this Goal is met.

**Goal 4 Housing: *This goal seeks to further Portland as the center of the region’s housing market by providing housing of different types, tenures, densities, sizes, costs and locations.***

**Findings:** The Hearings Officer finds Applicant’s proposal is consistent with Policy 4.3, *Sustainable Housing*, Policy 4.7, *Balanced Communities*, Policy 4.10 *Housing Diversity*, Policy 4.11 *Housing Affordability*, and 4.13 *Humble Housing*. The Hearings Officer finds Applicant’s proposal is equally or more supportive of this policy.

**Policy 4.3 Sustainable Housing. *Encourage housing that supports sustainable development patterns by promoting the efficient use of land, conservation of natural resources, easy access to public transit and other efficient modes of transportation, easy access to services and parks, resource efficient design and construction, and the use of renewable energy resources.***

**Findings:** The Hearings Officer finds Applicant’s proposal meets this policy by providing an efficient use of urban land, additional housing to support mass transit ridership, and additional housing directly adjacent to the bikeways along NE Alberta Court and NE 47<sup>th</sup> Avenue. The structure types described are relatively more compact than traditional housing development which in turn is more energy and resource efficient. The Hearings Officer finds Applicant’s proposal is equally or more supportive of this policy.

**Policy 4.7 Balanced Communities. *Strive for livable mixed-income neighborhoods throughout Portland that collectively reflect the diversity of housing types, tenures (rental and ownership) and income levels of the region.***

**Findings:** Applicant's proposal meets this policy by allowing for a greater variety of housing types. Applicant's proposal has the ability to provide for a larger mix of incomes and diverse housing needs at the Subject Property. In addition, three dwelling units are proposed to be affordable to families earning under 80 percent Median Family Income through a partnership with Proud Ground. This in turn provides housing for a greater range of income levels. In order to ensure three dwelling units of affordable housing, a condition of approval has been added to this review. The Hearings Officer finds Applicant's proposal better meets this policy as compared to the existing zoning.

**Policy 4.10 Housing Diversity. *Promote creation of a range of housing types, prices, and rents to 1) create culturally and economically diverse neighborhoods; and 2) allow those whose housing needs change to find housing that meets their needs within their existing community.***

**Findings:** Applicant's proposal meets this policy by allowing for a greater mix of housing structure types with the ability serve a larger range of incomes and housing needs. The condition of approval that three dwelling units must be affordable to families earning under 80 percent Median Family Income also helps ensure the project serves a larger range of incomes. These factors may help ensure more culturally and economically diverse residents. The Hearings Officer finds Applicant's proposal better meets this policy as compared to the existing zoning.

**Policy 4.11 Housing Affordability. *Promote the development and preservation of quality housing that is affordable across the full spectrum of incomes.***

**Policy 4.13 Humble Housing. *Ensure that there are opportunities for development of small homes with basic amenities to ensure housing opportunities for low-income households, members of protected classes, households with children, and households supportive of reduced resource consumption.***

**Findings:** The Hearings Officer finds Applicant's proposal, with conditions of approval that structure types range from one, two, and three dwelling unit buildings and three units be affordable to families earning less than 80 percent Median Family Income, meets this policy. Opposition testimony, at the Hearing (George Jacobs) and a written submission (Chrys Pappas – Exhibit H.8) argued that affordability could be attained while retaining the existing zoning. The Hearings Officer agrees, in theory, with this argument. However, the Hearings Officer finds it is more likely that a development with increased density and smaller units will actually result in lower priced (more affordable) residential units.

The Hearings Officer finds Applicant's proposal, with increased allowed density, will result in a greater diversity of structure types constructed on one lot. The Hearings Officer finds increased density can help reduce the cost of each housing unit. The Hearings Officer finds the provision of affordable housing ensures a greater number of housing units are available to a broader range of incomes. The Hearings Officer finds Applicant's proposal better meets this policy as compared to the existing zoning.

**Goal 4 Summary:** In summary, the proposal is equally or more supportive of Goal 4 Housing, and this Goal is met.

**Goal 5 Economic Development:** *This goal seeks to foster a strong and diverse economy that provides a full range of employment and economic choices.*

**Findings:** Applicant's proposal is consistent with Policy 5.1 Urban Development and Revitalization. One objective of this policy is to provide a diversity of housing types and price ranges to meet the varied needs of Portland citizens, including market, moderate, and low income housing. Based on the two conditions of approval which require structure types on the site to be one, two, and three dwelling unit buildings and the condition that three of the dwelling units be available to families earning less than 80 percent of Median Family Income, the proposal is consistent with this policy. Additionally, increasing the residential density on the site helps support the nearby emerging commercial corridor along NE 42<sup>nd</sup> Avenue. The Hearings Officer finds Applicant's proposal better meets this policy as compared to the existing zoning.

**Goal 5 Summary:** In summary, the Hearings Officer finds Applicant's proposal is equally or more supportive of Goal 5 Economic Development, and this Goal is met.

**Goal 6 Transportation:** *This goal seeks to provide for and protect the public's interest and investment in the public right-of-way and transportation system by encouraging the development of a balanced, affordable and efficient transportation system consistent with the Arterial Streets Classifications and Policies.*

**Findings:** PBOT reviewed Applicant's proposal for its potential impacts regarding the public right-of-way, traffic impacts, and conformance with adopted policies, street designations, Title 33, Title 17, and for potential impacts upon transportation services. PBOT staff concurred with Applicant's transportation analysis and findings. Because of the proposal's consistency with these Policies, the Hearings Officer finds Applicant's proposal, on balance, is equally supportive of Goal 6, Transportation of the Comprehensive Plan. The following analysis is excerpted from PBOT's formal response, contained in the record as Exhibit E-2:

***"Policies and Objectives:***

Policies 6.1, 6.2 are met by the land use noticing requirements.

Policy 6.3 is not applicable to this site.

**Policies 6.4, 6.5, 6.6, 6.7, 6.8, 6.9, 6.10, and 6.11 Street Classification Descriptions**

At this location, NE Going and NE 47<sup>th</sup> Ave are classified as Local Service streets for all transportation modes in the City's Transportation System Plan.

The TSP states that Local Service Traffic streets are intended to distribute local traffic and provide access to local residences or commercial uses. Local Service Transit streets should give preference to access for individual properties and to the specific needs of property owners and residents along the street. These streets may carry school buses. Local Service Bike streets should not have a side effect of creating, accommodating or encouraging automobile through-traffic. Local Service Walkways are usually located in residential, commercial or industrial areas on Local Service Traffic streets. Local Service Design streets are multimodal, but are not intended for trucks (other than local deliveries) in residential areas. Their design includes many connections with other streets, sidewalk and on-street parking.

The street system in the area surrounding this site provides a transportation system that serves all modes. The proposed Comprehensive Plan Amendment is consistent with the previously referenced street classifications for the abutting streets, NE 47<sup>th</sup> Ave and NE Going. This policy is met.

**Policy 6.12 Regional and City Travel Patterns**

The site has nearby access to NE Prescott and NE Sandy, which lead to State Hwy 30 and 213 (NE 82<sup>nd</sup> Ave) which in turn have access to Interstate-205, which are all State of Oregon facilities. The proposed Comprehensive Plan Amendment will not result in changes to interregional trips onto the City's local transportation system. The surrounding grid system that serves the immediate neighborhood will be capable of supporting site related trips expected to be generated in relation to the proposed land use action. This policy is met.

**Policy 6.13 Traffic Calming**

The proposed Comprehensive Plan Map Amendment from the existing High Density-Single Dwelling designation to a Townhouse Multi-dwelling designation will not warrant traffic calming measures (such as speed bumps, curb extensions, etc) since as identified in the submitted Traffic Impact Study (TIS), the applicant's traffic consultant has determined that the proposed



Comprehensive Plan Map will result in traffic continually being managed consistent with the land uses they serve and preserving and enhancing neighborhood livability. This policy is met.

Policy 6.14 and 6.15 are not applicable to this site.

**Policy 6.16 Access Management**

As indicated in the public notification for this land use request, the ultimate project on the subject site would result in a 23-home development, with access to parking areas from both of the site's abutting streets. As classified Local Service streets, NE Going and NE 47<sup>th</sup> Ave are designed to serve as access to the type of development expected to occur on the subject site. This policy is met.

Policy 6.17 is met by the land use noticing requirements.

**Policy 6.18 Adequacy of Transportation Facilities**

Performance Standards

The most recent amendments to the State's Transportation Planning Rule (TPR) went into effect in 2013. Oregon Administrative Rule 660-012-0060(1) states that 'if an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule' Acceptable level-of-service for signalized intersections that are under City of Portland authority is LOS 'D' or better. Acceptable level-of-service for unsignalized intersections that are under City of Portland authority is LOS 'E' or better.

The applicant has submitted a professionally prepared Transportation Impact Study (TIS) in relation to the proposed Comprehensive Plan Map and Zone Change. The study was prepared to address transportation impacts associated with the proposed Comprehensive Plan Amendment and Zone Change. The TIS compares the reasonable worst-case scenario for the existing site zoning with the reasonable worst-case scenario for the proposed R3 zoning. In summary (and to be discussed in greater detail under discussion of the Zone Map Amendment approval criteria) the results of the TIS indicate that the transportation system, will have adequate level-of-service to support the proposed Comprehensive Plan Map and Zone Change. This policy is met.

#### Policy 6.19 Transit Oriented Development

Stated objectives of this policy include to 'consider the existing or planned availability of high-quality transit service when adopting more intensive residential, commercial, and employment designations' and to 'require commercial and multifamily development to orient to and provide pedestrian and bicycle connections to transit streets and, for major developments, provides transit facilities on a site or adjacent to a transit stop.'

All of the adjacent streets are classified as local service transit streets, except NE Prescott St, which is classified as a Transit Access street. The expected development on the subject site will trigger sidewalk corridor enhancements/ construction along the site's frontages. Tri-Met operates *Route 75 - Cesar Chavez/Lombard* along NE 42<sup>nd</sup> Ave. This route connects the St.Johns neighborhood with Milwaukie. Service is available seven days a week and stops are provided adjacent to the NE Prescott/NE 42<sup>nd</sup> Ave intersection. The transit system serves the neighborhood today and is adequate to serve the uses associated with the proposed Comprehensive Map change. This policy is met.

#### Policy 6.20 Connectivity

Support development of an interconnected, multimodal transportation system to serve mixed-use areas, residential neighborhoods, and other activity centers. Stated objectives of this policy include to 'provide interconnected local and collector streets to serve new and redeveloping areas and to ensure safe, efficient, and convenient pedestrian, bicycle, and vehicle access with preference for public streets over private streets'; and, to 'use large-scale Green Streets as a means of connecting neighborhoods, using the right-of-way efficiently, and enhancing neighborhood livability'. The proposed Comprehensive Plan Amendment will not result in development that will impact the existing interconnected local and collector streets – the street patterns will remain unchanged. The required r.o.w. improvements along NE Going that will be triggered by the expected development will include 'green street' elements for stormwater management purposes. This policy is met.

Policy 6.21 is not applicable to this site.

#### Policy 6.22 and 6.23 Pedestrian and Bicycle Transportation

According to City database sources, at this location, NE Going is improved with approx 28-ft of paving (only, no curb or sidewalk) within a 50-ft wide r.o.w. NE 47<sup>th</sup> Ave is improved with a 32-ft wide paved roadway and a curb only (no sidewalk) within a 50-ft wide r.o.w. For Local Service streets

abutting R3/R5-zoned lots, the City's Pedestrian Design Guide recommends an 11-ft wide sidewalk corridor comprised of a 0.5-ft curb, 4-ft wide furnishing zone, 6-ft wide sidewalk and 0.5-ft wide furnishing zone. As mentioned previously, the expected development on the subject site will trigger r.o.w. improvements to be constructed to the satisfaction of the City Engineer and consistent with the above referenced standards. There are minimal existing sidewalks in the nearby vicinity to the subject site and beyond. Similar to other parts of the City along low volume and low speed Local Service streets, pedestrians (and bicyclists) are expected to share the roadway. The required r.o.w. improvements, including new sidewalks along both site frontages, associated with the expected development on the subject site will facilitate and enhance the existing pedestrian environment. According to the Portland Bike/Walk Map, there are designated bicycle facilities in proximity to the subject site including "shared roadways" along NE 47<sup>th</sup> Ave and NE Prescott and a "Neighborhood Greenway/Signed-Marked Route" along NE Alberta Ct to facilitate bicycle travel in the area. The proposed Comprehensive Plan Map will not adversely impact these facilities. These policies are met.

Policy 6.24 is not applicable to this site.

#### Policy 6.25, 6.26 and 6.27 Parking

Objectives of these goals include 'the consideration of transportation capacity and parking demand for all motor vehicles in the regulation of the parking supply', 'maintaining existing on-street parking in older neighborhoods and commercial areas where off-street parking is inadequate, except where parking removal is necessary to accommodate alternatives to the automobile', and 'considering eliminating requirements for off-street parking in areas of the City where there is existing or planned high-quality transit service and good pedestrian and bicycle access.'

Potential parking generation under the current zoning has a fairly small range of possible values, given the potential allowed development types. The proposed zoning allows for greater flexibility regarding how the subject site could be redeveloped. However, the applicant has submitted a proposed site plan for a development of 23-homes (combination of small detached, duplexes and triplexes). The plan also includes two distinct parking areas that will accommodate approx 20 vehicles. Though the on-site parking supply is not sufficient to accommodate the expected demand from the proposed development, there appears to be an abundance of on-street parking supply in the area to provide for any parking needs that can't be met on-site. Homes in the area include parking areas/garages that accommodate

more than one vehicle/lot and parking is allowed on both sides of the abutting streets. This goal is met.

Policies 6.28 - 6.34 are not applicable to this site.”

The Hearings Officer finds Applicant’s traffic consultant and the PBOT reviewing planner are qualified transportation/traffic experts. The Hearings Officer finds the PBOT comments, as quoted above, are credible.

The Hearings Officer acknowledges Hearing testimony and written submissions from opponents raised transportation related concerns about Applicant’s proposal. The Hearings Officer was particularly impressed with the testimony of Coen Parzybok and Sylvie Parzybok. The Hearings Officer found their testimony regarding the increased danger of biking/walking to/from school to be perceptive and likely accurate. The Hearings Officer also found the testimony of Laura Moulton, George Jacobs, Bruce Nelson, and Michael Beach to be credible. However, the Hearings Officer finds the PBOT comments made above to be more responsive to the relevant policies than the testimony of the Parzyboks, Moulton, Jacobs, Nelson, and Beach.

The Hearings Officer finds right-of-way improvements to be made at the Subject Property will marginally improve/enhance pedestrian movement and safety. The Hearings Officer finds additional on-street parking may cause additional impediments to bicycle movement in the area. The Hearings Officer finds Applicant’s proposal will have, if any, only a marginal negative effect upon the overall area’s pedestrian and bicycle transportation system. The Hearings Officer finds approval of Applicant’s proposal will equally address/meet Policies 6.22 and 6.23.

The Hearings Officer takes note of PBOT’s comment that “on-street parking supply is not sufficient to accommodate the expected demand from the proposed development.” Opponents Nelson, Jacobs, and Beach all stated that on-site parking for Applicant’s proposal is inadequate. Further, these opponents indicated that the demand for on-street parking would increase if Applicant’s proposal is approved. The Hearings Officer reviewed the record and found no evidence, from opponents, documenting that on-street parking in the area is currently inadequate or, in the future, will become inadequate as a result of approval of Applicant’s proposal. The Hearings Officer finds that PBOT’s comments concluded that on-street parking was adequate to absorb any additional on-street parking demand created upon the approval of Applicant’s proposal. The Hearings Officer concurs with this PBOT conclusion.

The Hearings Officer finds policy 6.27 is also focused upon the reduction of on-site parking spaces. The Hearings Officer finds Applicant’s proposal meets that policy.

The Hearings Officer finds Applicant's proposal equally or better meets the relevant transportation related goals/policies.

**Goal 7 Energy: *This goal seeks to promote a sustainable energy future by increasing energy efficiency throughout the City by 10 percent by the year 2000.***

**Policy 7.4 Energy Efficiency through Land Use Regulations. *The City shall promote residential, commercial, and industrial energy efficiency and the use of renewable resources.***

**Findings:** This policy includes an objective which states, "reduce energy consumed for space heating residential buildings by promoting the construction and renovation of attached single and multifamily dwelling units." A condition of approval included with this recommendation requires development to be within one, two, and three dwelling unit structures which is in-line with this objective.

**Goal 7 Summary:** In summary, the Hearings Officer finds Applicant's proposal is equally supportive of Goal 7 Energy, and this Goal is met.

**Goal 8 Environment: *This policy seeks to maintain and improve the quality of Portland's air, water and land resources, and protect neighborhoods from detrimental noise pollution.***

**Findings:** The Hearings Officer finds no credible evidence in the record that Applicant's proposal will negatively impact air, water, or land resources on the Subject Property. Future development at the Subject Property will be subject to the City's noise regulations that protect neighborhoods from detrimental noise levels. The Hearings Officer finds this goal equally met by Applicant's proposal.

**Goal 9 Citizen Involvement: *This policy seeks to improve the method for citizen involvement in the on-going land use decision-making process, and providing opportunities for citizen involvement in the implementation, review and amendment of the adopted Comprehensive Plan.***

**Findings:** The Hearings Officer finds Applicant's proposal is consistent with Policy 9.1, *Citizen Involvement Coordination* and Policy 9.3, *Comprehensive Plan Amendment*.

**Policy 9.1 Citizen Involvement Coordination. *Encourage citizen involvement in land use planning projects by actively coordinating the planning process with relevant community organizations.***

**Policy 9.3 Comprehensive Plan Amendment. *Allow for the review and amendment of the Comprehensive Plan which ensures citizen involvement opportunities for the city's residents, businesses and organizations.***

**Findings:** The Portland Zoning Code requires notification of public hearings for the proposed quasi-judicial Comprehensive Plan Map and Zoning Map Amendments. Notification of Applicant's proposal and the Hearing was sent to property owners within 400 feet of the site as well as to the CNA, Beaumont-Wilshire Neighborhood Association, 42<sup>nd</sup> Avenue Business Association, and Central Northeast Neighbors District Coalition. Applicant also posted the Subject Property with a description of the proposal and notice of hearing date 30 days prior to the first public hearing for the project. In addition, Applicant presented the proposal at a monthly CNA meeting and canvassed the surrounding homes prior to the meeting so that neighbors were aware. The CNA provided a letter of support for the proposal dated November 24, 2015 (Exhibit A).

**Goal 9 Summary:** In summary, the Hearings Officer finds Applicant's proposal is consistent with Goal 9 Citizen Involvement, and this Goal is met.

**Goal 10 Plan Review and Administration: *This policy calls for periodic reviews of the Comprehensive Plan to ensure that it remains an up to date and workable framework for land use development.***

**Findings:** The Hearings Officer finds Applicant's proposal is consistent with Policy 10.7, *Amendments to the Comprehensive Plan Map*, and Policy 10.8, *Zone Changes*.

**Policy 10.7 Amendments to the Comprehensive Plan Map. *Quasi-judicial amendments to the Comprehensive Plan Map will be reviewed by the Hearings Officer prior to City Council action, using procedures stated in the zoning code. The applicant must show the requested change is:***

***1. Consistent and supportive of the appropriate Comprehensive Plan Goals and Policies;***

The analysis and findings in this recommendation demonstrate that the proposed Comprehensive Plan Map Amendment is, on balance, supportive of and consistent with the relevant goals and policies of the Comprehensive Plan. The Hearings Officer finds Applicant's proposed Comprehensive Plan Map designation is consistent with the update to the Comprehensive Plan Map adopted by Portland City Council on June 17, 2016.

**2. *Compatible with the land use pattern established by the Comprehensive Plan Map;***

The requested Comprehensive Plan Map designation and zoning for the Subject Property marginally results in a compatible zoning pattern in the area. The portion of the Subject Property proposed to change from the High Density Single-Dwelling designation with a R5 zoning designation to Townhouse Multi-Dwelling designation with a R3 zoning designation is adjacent to R3 zoned lots to the south; however, it is adjacent to R5 zoned lots to the west and east. BDS Staff, in the Staff Report, opined that it was important to note that this criterion refers to the “land use pattern” and not the zoning pattern. In this sense, the Hearings Officer finds the proposal is consistent with the criterion because the large site across NE Going Street from the lots proposed to change Comprehensive Plan Map and Zoning Map designations is already developed with townhouse style development approved through a Planned Development Review in 2010. This development is comparable to the style of development proposed for the Subject Property, especially considering a condition of approval limits development to one, two, and three dwelling unit structures. The Hearings Officer concurs with the approach (land use pattern versus zoning pattern) taken by BDS Staff in the Staff Report.

The Hearings Officer finds Applicant’s proposal will result in a consistent land use pattern as the lots to the south of the site are already zoned for townhouse style development and the large lot to the north is developed with townhouse style development.

**3. *Consistent with the Statewide Land Use Planning Goals;***

The State Land Conservation and Development Commission (“LCDC”) has acknowledged the City’s Comprehensive Plan. The City goals mentioned in LCDC and Comprehensive Plan Considerations are comparable to the statewide planning goals in that City Goal 1 is the equivalent of State Goal 2 (Land Use Planning); City Goal 2 addresses the issues of State Goal 14 (Urbanization); and City Goal 3 deals with local issues of neighborhoods. The following city and state goals are similar: City Goal 4—State Goal 10 (Housing); City Goal 5—State Goal 9 (Economic Development); City Goal 6—State Goal 12 (Transportation); City Goal 7—State Goal 13 (Energy Conservation); City Goal 8—State Goals 5, 6, and 7 (Environmental Impacts); and City Goal 9—State Goal 1 (Citizen Involvement). City Goal 10 addresses city plan amendments and rezoning, and City Goal 11 is similar to State Goal 11 (Public Facilities and Services). Other statewide goals related to coastal areas do not specifically apply to the City of Portland.

For quasi-judicial plan amendments, compliance with the City's plan goals, as discussed here, show compliance with applicable state goals. The analysis in this recommendation indicates that all of the City goals and policies are supported by the proposal. Consequently, the Hearings Officer finds Applicant's proposal is consistent with all applicable Statewide goals.

**4. *Consistent with any adopted applicable area plans adopted as part of the Comprehensive Plan.***

As previously discussed in Goal 3 Neighborhoods, the Hearings Officer finds Applicant's proposal is consistent with the Neighborhood Involvement and Neighborhood Plan policies of this goal.

**Findings:** As noted in the comments above, Applicant's proposal is consistent with the Policy 10.7 Amendments to the Comprehensive Plan Map. The proposal is consistent with the Comprehensive Plan. It will allow for a consistent land use pattern with the development allowed in the R3 zone to the south and the townhouse development that exists in the R5 zone to the north. The Hearings Officer finds Applicant's proposal is consistent with the Statewide Land Use Planning Goals. And, as previously noted, the Hearings Officer finds Applicant's proposal is consistent with the adopted CNP.

**Goal 10 Summary:** In summary, the Hearings Officer finds Applicant's proposal is equally supportive of Goal 10, Plan Review and Administration, and this Goal is met.

**Goal 11 Public Facilities:** *This goal seeks to provide a timely, orderly and efficient arrangement of public facilities and services that support existing and planned land use patterns and densities.*

**Findings:** The Hearings Officer finds Applicant's proposal is consistent with Policy 11.2 *Orderly Land Development* and 11.4 *Capital Efficiency*.

**Policy 11.2 Orderly Land Development.** *Urban development should occur only where urban public facilities and services exist or can be reasonably made available.*

**Findings:** The adequacy of public facilities is discussed in detail below in this recommendation under the criterion 33.855.050.B. To the extent that criterion is met, the proposal is consistent with the policy.



**Policy 11.4 Capital Efficiency. *Maximum use of existing public facilities and services should be supported through encouraging new development to occur at the maximum densities allowed by the Comprehensive Plan and through the development of vacant land within presently developed areas.***

**Findings:** Applicant's proposal is consistent with this policy as an overall intent of the project is to construct smaller dwelling units at the higher density allowed in the R3 zone. Considering the large size of the partially Single-Dwelling Zoned Subject Property, the proposed zoning allows for a more suitable type of the development that makes better use of existing public facilities.

**Goal 11 Summary:** In summary, the Hearings Officer finds Applicant's proposal is equally or more supportive of Goal 11, Public Facilities, and this Goal is met.

**Goal 12 Urban Design: *Enhance Portland as a livable city, attractive in its setting and dynamic in its urban character by preserving its history and building a substantial legacy of quality private developments and public improvements for future generations.***

**Findings:** Applicant's proposal is consistent with Policy 12.1, *Portland Character*, Policy 12.2, *Enhancing Variety*, and Policy 12.6, *Preserve Neighborhoods*.

**Policy 12.1 Portland Character. *Enhance and extend Portland's attractive identity. Build on design elements, features and themes identified with the City. Recognize and extend the use of City themes that establish a basis of a shared identity reinforcing the individual's sense of participation in a larger community.***

**Findings:** The required development standards ensure that the relevant design issues identified in this goal are met. The development standards of the corresponding zone for both the existing and proposed designation regulate where buildings may be placed on the Subject Property including, but not limited to, setbacks, building coverage, height, minimum window area, location of entrances, pedestrian circulation, landscaping, and screening. These standards are intended to create desirable and consistent livable areas that are aesthetically pleasing, and to ensure the development will be compatible with the envisioned character of the area in Portland. Additionally, to better ensure the type of housing to be developed is compatible with nearby single-dwelling development, a condition of approval will limit dwellings on the Subject Property to one, two, and three unit structures. The Hearings Officer finds Applicant's proposal meets this policy.

**Policy 12.2 Enhancing Variety. *Promote the development of areas of special identity and urban character. Portland is a city built from the aggregation of***

***formerly independent settlements. The City's residential, commercial and industrial areas should have attractive identities that enhance the urbanity of the City.***

***Policy 12.6 Preserve Neighborhoods. Preserve and support the qualities of individual neighborhoods that help to make them attractive places. Encourage neighborhoods to express their design values in neighborhood and community panning projects. Seek ways to respect and strengthen neighborhood values in new development projects that implement this Comprehensive Plan.***

**Findings:** A special identity of the Cully neighborhood is the large deep lots. The proposal allows the Subject Property to be developed without further dividing the Subject Property, yet still respecting the existing scale of development, and therefore maintaining this identity. The Hearings Officer finds Applicant's proposal meets this policy.

**Goal 12 Summary:** In summary, the Hearings Officer finds Applicant's proposal is equally supportive of Goal 12, Urban Design, and this Goal is met.

**2. When the requested amendment is:**

- **From a residential Comprehensive Plan Map designation to a commercial, employment, industrial, or institutional campus Comprehensive Plan Map designation; or**
- **From the urban commercial Comprehensive Plan Map designation with CM zoning to another commercial, employment, industrial, or institutional campus Comprehensive Plan Map designation;**

**The requested change will not result in a net loss of potential housing units. The number of potential housing units lost may not be greater than the potential housing units gained. The method for calculating potential housing units is specified in subparagraph A.2.a, below; potential housing units may be gained as specified in subparagraph A.2.b, below.**

**Findings:** The Hearings Officer finds this criterion is not applicable to Applicant's proposal.

- 3. When the requested amendment is from an Industrial Sanctuary or Mixed Employment Comprehensive Plan Map designation, in order to prevent the displacement of industrial and employment uses and preserve land primarily for these uses, the following criteria must also be met:**

**Findings:** The Hearings Officer finds this criterion is not applicable to Applicant's proposal.

### **Summary of Findings related to requested Comprehensive Map Amendment.**

The Hearings Officer reviewed the relevant Comprehensive Plan policies. The Hearings Officer finds the standard of review, for a request for Comprehensive Plan Map amendment, is whether or not there is evidence in the record demonstrating that an Applicant's proposal is, "on balance," equally or more supportive of the relevant policies than the old map designation.

As indicated by the findings above, the Hearings Officer reviewed numerous policies. The Hearings Officer found Applicant's proposal was equally or more supportive of virtually all of the relevant Comprehensive Plan policies. Even if the Hearings Officer were to agree with opponents of Applicant's proposal that Comprehensive Plan policies 6.22, 6.23, 6.25, 6.26, 6.27, and 10.7 did not rise to the level of "equally" supportive, as compared to the existing Comprehensive Plan Map designation, the Hearings Officer would have found that overall Applicant's proposal met the required "on balance" test. With that said, the Hearings Officer disagreed with opponents' arguments that Comprehensive Plan policies 6.22, 6.23, 6.25, 6.26, 6.27, and 10.7 were not "equally" supportive.

#### **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.**
- 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 Map designation is 'Townhouse Residential.' There is only one zone that corresponds to this designation, R3, which is the zone that is being requested. The Hearings Officer finds this criterion is not applicable.

- 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:** The Subject Property does not have any such designation, nor is there a Buffer overlay. The Hearings Officer finds this criterion is not applicable.

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 zone change request is not from a higher density residential zone to a lower density residential zone, or from the CM zone to the CS zone. The Hearings Officer finds this criterion is not applicable.

**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.**

**Findings:** As indicated in the bureau responses below, the Hearings Officer finds this criterion is met.

Water Bureau: The Water Bureau responded with no concerns with the proposed Comprehensive Plan Map Amendment and Zoning Map Amendment and their ability of supporting the use and density allowed under the proposed R3 zone. The Water Bureau required no conditions of approval. The response includes information on water service serving the three lots. The response also notes that a tax lot consolidation will be required prior to Water Bureau approval of any building permits (Exhibit E-3).

Police Bureau: The Police Bureau had no issue with their ability to support the density and use and required no conditions of approval. The Police Bureau response included recommendations to make sure addresses are easily identified during the day and night and that the HOA rules should reference a maintenance plan to keep the Subject Property physically and visibly accessible (Exhibit E-5).

Fire Bureau: The Fire Bureau responded that all applicable Fire Code requirements will apply at time of building permit review and development.

They expressed no issues with being able to support the density and uses allowed under the proposed R3 zone (Exhibit E-4).

- 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.**

**Findings:** BES responded with the following information (Exhibit E-1):

*Sanitary Service "Staff finds the applicant's proposed sanitary sewer service acceptable for the purpose of reviewing the Zone Map and Comprehensive Plan Amendment application against the sanitary sewer disposal approval criterion".*

*Stormwater Management "Staff finds the applicant's proposed stormwater management plan acceptable for the purpose of reviewing the Zone Map and Comprehensive Plan Amendment application against the stormwater management approval criterion."*

The Hearings Officer finds BES determined that the sanitary waste disposal and stormwater disposal systems are or will be made acceptable. The Hearings Officer finds this criterion is met.

- 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:** PBOT responded with the following information (Exhibit E-2):

*"The applicant submitted a professionally prepared Transportation Impact Study (TIS) to address the transportation-related approval criteria associated with this Zone Change request. The TIS compares the potential worse case development scenario for the current R5 zoning with the worse case development scenario for the proposed R3 zoning.*

*Transportation Capacity Implications*

The City of Portland Administrative Rule *TRN 10.27 - Administrative Rules for Traffic Capacity Analysis in Land Use Review Cases* provides standards for traffic impact studies required in the course of land use review or development. These include:

- 1. For signalized intersections, adequate level of service is LOS D, based on a weighted average of vehicle delay for the intersection.*
- 2. For stop-controlled intersections, adequate level of service is LOS E. Level of service for two-way stop-controlled intersections is based on individual vehicle movement, and all-way stop controlled intersections is based on a weighted average of vehicle delay for the intersection.*
- 3. An amendment or other land use application that requires analysis of traffic capacity and allows development that either (1) may cause a transportation facility to perform below the standards established in sections 1 and 2, or (2) adds vehicle trips to a facility that is already performing below the standards established in sections 1 and 2 may be approved if:
  - a. Development resulting from the amendment or other land use application will mitigate the impacts of the amendment or other land use application in a manner that avoids further degradation to the performance of the facility by the time of development through one or more of the following:
    - (i) the development is limited to result in no net increase in vehicle trips over what is allowed by the existing zoning; OR*
    - (ii) one or more combination of transportation improvements or measures are imposed to mitigate the transportation impacts of the amendment or other land use application in a manner that avoids further degradation to the performance of the facility by the time of any development.***

For purposes of this analysis, the applicant's traffic consultant analyzed whether the reasonable 'worse case' development under the proposed zoning would provide a higher impact to the transportation system than a permitted use scenario would provide. Based on discussions with PBOT staff, review of the city's Zoning Code, and information provided by the project team, the following

uses could be developed under the existing zoning as well as the proposed R-3 zoning:

- Permitted R-5 Zoning – development of up to 8 single family homes
- Proposed R-3 Zoning – 13 apartments or 13 townhomes

Trip generation estimates associated with the two scenarios were prepared using rates provided in *Trip Generation*, 9th Edition (Institute of Transportation Engineers, 2012) – the applicant’s traffic consultant used the apartment trip generation rates as they are slightly higher than the townhome rate.

The development of 13 apartments on this property would result in a minor increase in daily trips (10 additional trips), 1 new weekday AM peak hour trip and no new weekday PM peak hour trips as compared to what the development of single family homes would generate. Based on the provisions cited in Administrative Rule TRN 10.27(3)(a)(i), the zone change impacts are *“limited to result in no net increase in vehicle trips over what is allowed by the existing zoning”* during the critical PM peak hour and only one additional trip during the weekday AM peak hour. It should be noted that if the development of 13 townhomes were assumed on the property associated with the R-3 zoning instead of 13 apartments, there would be no increase in daily, weekday AM nor in weekday PM peak hour trips.

#### *Intersection Operations Analysis*

In a ‘worst-case’ apartment development scenario, the proposed rezone is projected to add up to one weekday AM peak hour trip to the local transportation system. Per direction from PBOT staff, the applicant’s traffic consultant analyzed future 20-year (year 2036) conditions at the nearby intersection of NE 47<sup>th</sup> Ave/NE Prescott St (the nearest stop-controlled intersection with a higher than Local Service classified street – of note, there are no nearby signalized intersections in the area) as a surrogate to test available vehicular capacity.

Traffic counts were collected at the two-way stop controlled NE 47<sup>th</sup> Ave/NE Prescott St intersection in April 2016 during the 7:00-9:00 AM period. The traffic counts from the current morning peak hour (7:50-8:50 AM) were then grown by an assumed one percent per

year compounded growth rate to approximate year 2036 conditions. One additional site-generated trip (exiting the site) was then added to the intersection southbound right-turn movement based on the existing turn movement patterns. As indicated in the submitted TIS, the critical southbound approach at the intersection is projected to operate at Level of Service 'D' with or without the proposed rezone, satisfying the criteria of Portland Administrative Rule TRN 10.27.

Accordingly, the applicant has adequately demonstrated to PBOT's satisfaction that 'the transportation system facilities and capacity will be capable of supporting the proposal in addition to existing uses in the area.'

The amended Transportation Planning Rule (effective January 1, 2012) generally requires a local government to determine whether certain regulatory amendments will 'significantly affect an existing or planned transportation facility.' The land use actions that trigger compliance with this requirement are amendments to a functional plan, comprehensive plan, or a land use regulation (including a Zoning Map Amendment). (OAR 660-012-0060(1)) If the local government finds an amendment has a significant effect, it must take one or more specifically identified steps to address and remedy this conflict. (OAR 660-012-0060(2)).

The analysis in the submitted TIS considered conditions in the year 2036 (20 years from the existing conditions). The City's Transportation System Plan update was adopted in 2011. As reflected previously in this response, the applicant has demonstrated to PBOT's satisfaction that the minimal net increase in trips generated by the potential development allowed as a result of the change in zoning of the subject property will not significantly impact the functionality of the existing transportation system. The analyzed intersection will function at the same level regardless of whether or not the development allowed with the zone change occurs. Based on the detailed analysis, the proposed zone change will not degrade the performance of any existing or planned transportation facility to less than acceptable performance measures. Accordingly, the Transportation Planning Rule is satisfied.

*Based on the above referenced analysis, PBOT has found that the applicant has demonstrated compliance with the applicable transportation-related approval criteria. PBOT is therefore supportive*



*of the proposed Comprehensive Plan/Zone Change (with no recommended conditions of approval)."*

The Hearings Officer finds the PBOT analysis and conclusions are credible and authoritative. The Hearings Officer, based upon the PBOT analysis as quoted above, and Applicant's TIS, demonstrate 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:** Applicant is not requesting IR (Institutional Residential) zoning; therefore, 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:** Applicant is not requesting IR (Institutional Residential) zoning. The Hearings Officer finds this criterion does not apply.

### **Development Standards**

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 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.

### **III. CONCLUSIONS**

Applicant, in this case, requested a Comprehensive Plan Map Amendment and concurrent Zone Map Amendment to change the current designation and zoning for the Subject Property. Applicant requested a change from the Comprehensive Plan Map designation of High Density Single Dwelling and a Zoning Map designation of R5 (Residential 5,000) to a Comprehensive Plan Map designation of Townhouse Multi-Dwelling Residential and a Zoning Map designation of R3 (Residential 3,000).

The Hearings Officer notes that a request for a change in a Comprehensive Plan Map designation will be granted even if one or more of the policies is not equally or better met by a proposal. In this case, the Hearings Officer found virtually all of the relevant policies would be equally or better met by approval of Applicant's proposal. In this case, the only "close calls" related to Policies 6 and 10. The Hearings Officer found that even for those Policies (6 and 10), Applicant's proposal would at least equally meet the Policy as compared to retaining the existing Comprehensive Map designation. The Hearings Officer concluded that the relevant Comprehensive Plan policies were, on balance, equally or more supportive by approval of Applicant's proposal than by retaining the existing map designation.

The Hearings Officer reviewed the relevant approval criteria for a base zone change request. The Hearings Officer, following review, determined all relevant base zone change approval criteria were met by Applicant's proposal.

BDS Staff recommended conditions of approval (BDS Staff Report and Exhibit H.3). The Hearings Officer concurred with the BDS Staff recommended conditions of approval. In particular, the Hearings Officer found a proposed condition limiting development to one, two, and three dwelling unit structures was necessary. Also, the Hearings Officer found a proposed condition related to affordability within the proposed development was appropriate.

#### **IV. RECOMMENDATION**

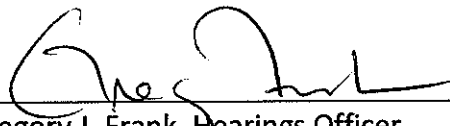
Approval of:

- A Comprehensive Plan Map Amendment to change the designation on the Subject Property from High Density Single Dwelling Residential to Townhouse Multi-Dwelling Residential; and
- A Zone Map Amendment to change the zoning on the Subject Property from R5 (Residential 5,000) to R3 (Residential 3,000)

subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B through C) must be noted on each of the four required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 16-133809 CP ZC." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. Dwelling units at the site are limited to one, two, and three-unit structure types.

1. For an ownership development, three dwelling units must be permanently affordable at 80 percent median family income in partnership with Proud Ground or equivalent organization, subject to Portland Housing Bureau investment at the level of their Downpayment Assistance Loan Program. If no such investment is available, this requirement is reduced to one dwelling unit. For a rental project, three units must be affordable at 60 percent median family income for 10 years following issuance of certificates of occupancy. Verification must be provided at time of building permit. The owner must maintain documentation of compliance with this requirement for the 20-year duration of this condition. Affordable dwelling units may be provided at 4540 NE 47<sup>th</sup> Avenue if under the same ownership at the Subject Property.

  
\_\_\_\_\_  
Gregory J. Frank, Hearings Officer  
  
7/26/16  
\_\_\_\_\_  
Date

**Application Determined Complete:** May 4, 2016  
**Report to Hearings Officer:** June 17, 2016  
**Recommendation Mailed:** July 27, 2016

**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.

**City Council Hearing.** The City Code requires the City Council to hold a public hearing on this case and you will have the opportunity to testify. The hearing will be scheduled by the City Auditor upon receipt of the Hearings Officer's recommendation. If you wish to speak at the Council

hearing, you are encouraged to submit written materials upon which your testimony will be based, to the City Auditor.

**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 of decision, 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.

**Recording the final decision.**

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- **By Mail:** Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- **In Person:** Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034  
For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

**Expiration of approval.** 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.

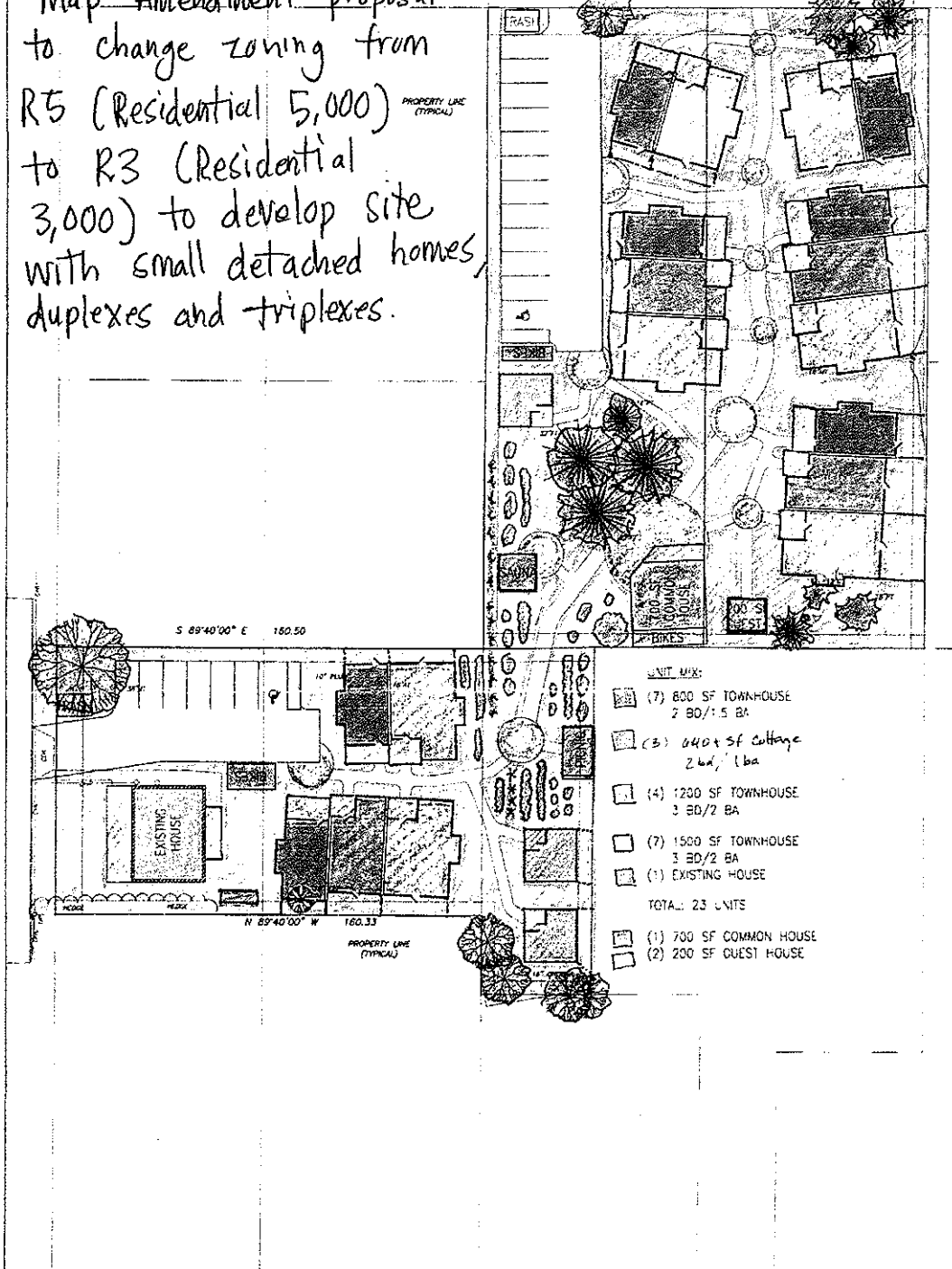
**EXHIBITS**  
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement and Original LU Application
  - 1. Supplemental transportation information submitted on May 12, 2016
- B. Zoning Map
  - 1. Existing Zoning
  - 2. Proposed Zoning
- C. Plans and Drawings
  - 1. Site Plan **(attached)**
- D. Notification information
  - 1. Request for response
  - 2. Posting letter sent to applicant
  - 3. Notice to be posted
  - 4. Applicant's statement certifying posting
  - 5. Mailing list
  - 6. 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. Police Bureau
  - 6. Site Development Review Section of Bureau of Development Services
  - 7. Life Safety Section of BDS
- F. Letters
  - 1. Michael Beach, 6/15/16, opposition
  - 2. Maurice Spencer, 6/16/16, opposition
  - 3. John Marks, 6/6/16, opposition
- G. Letter not used
- H. Received in the Hearings Office
  - 1. Hearing Notice - Wickstrom, Matt
  - 2. Staff Report and Recommendation to the Hearings Officer - Wickstrom, Matt
  - 3. 6/24/16 Memo - Wickstrom, Matt
  - 4. Existing Zoning Map - Wickstrom, Matt **(attached)**
  - 5. Proposed Zoning Map - Wickstrom, Matt **(attached)**
  - 6. Property Information - Comp. Plan Changes - Wickstrom, Matt
  - 7. 6/27/16 E-mail from Thomas Mack - Wickstrom, Matt
  - 8. E-mail from Chrys Pappas - Wickstrom, Matt
  - 9. E-mail from Kristin and Matt Bacon-Brenes - Wickstrom, Matt

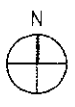
10. Potential future safety projects in Cully - Spevak, Eli
11. Maps - Spevak, Eli
12. Address - Reg, Bob
13. Record Closing Information - Hearings Office

Comprehensive Plan Map  
 Amendment and Zoning  
 Map Amendment proposal  
 to change zoning from  
 R5 (Residential 5,000)  
 to R3 (Residential  
 3,000) to develop site  
 with small detached homes,  
 duplexes and triplexes.

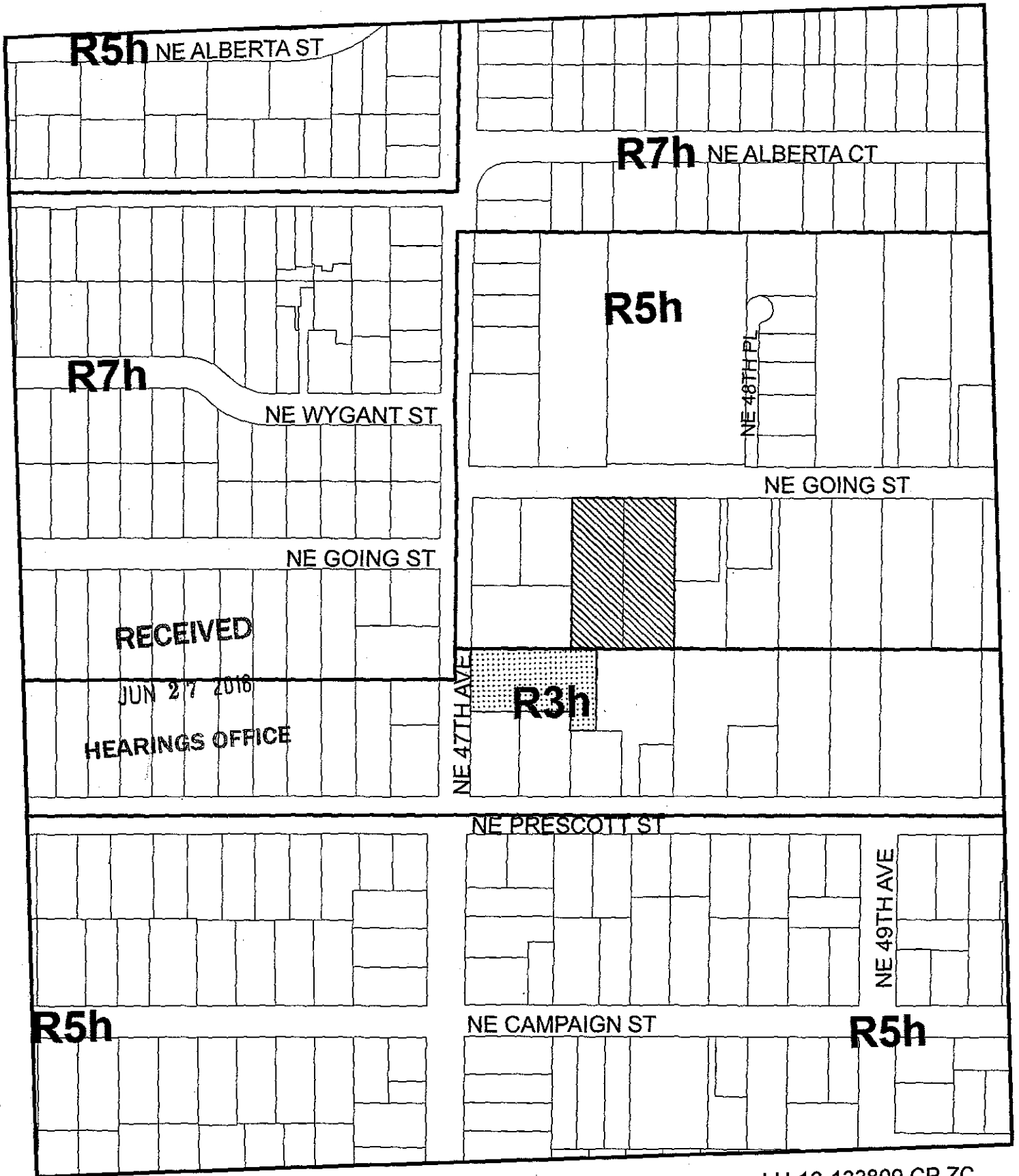
W 16 - 133809CP-ZC



○ SITE PLAN  
 SCALE: 1"=40'-0"  
 DATE: 10-12-2015








**EXISTING ZONING**

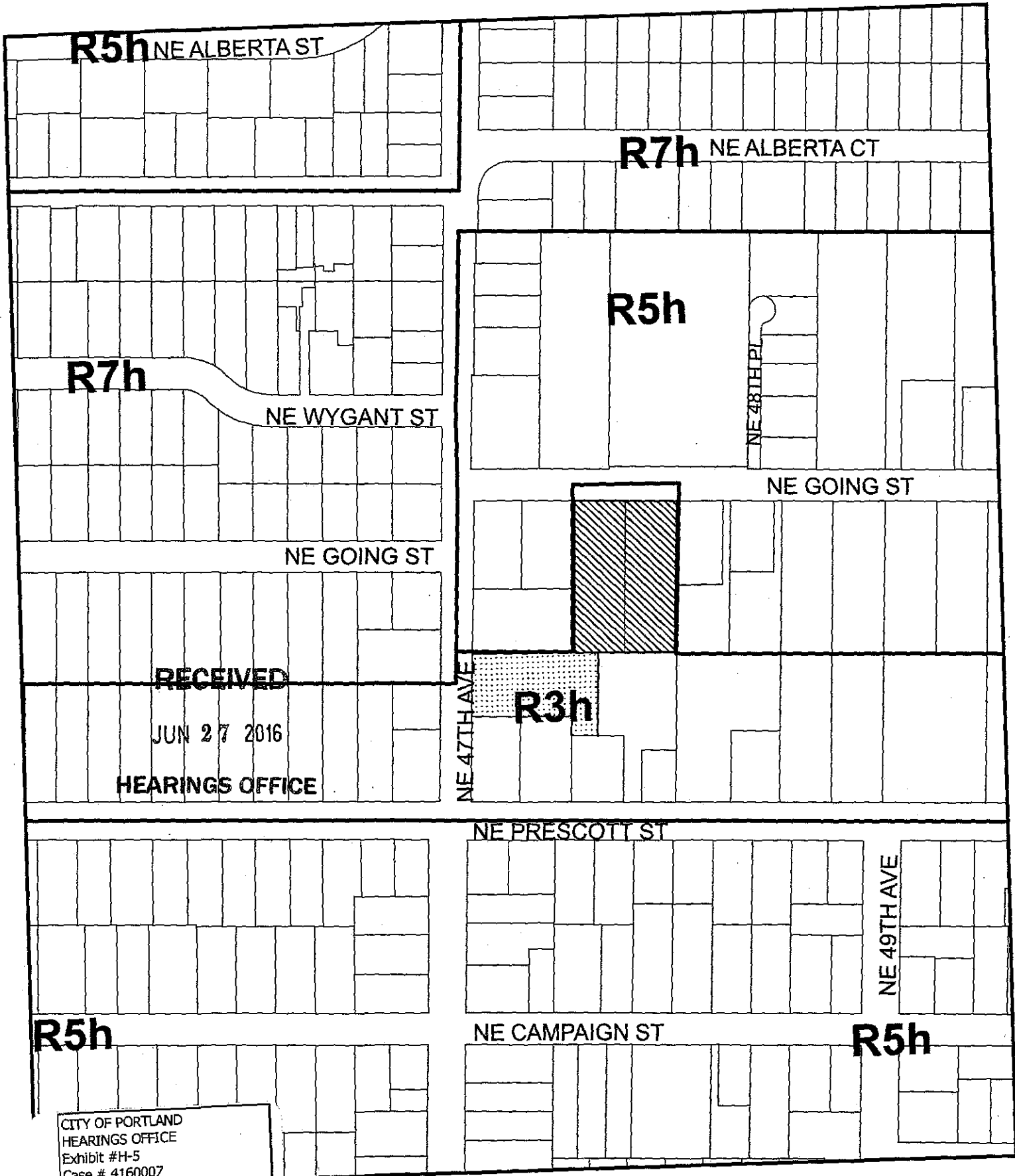


 Site

 Also Owned

CITY OF PORTLAND  
 HEARINGS OFFICE  
 Exhibit #H-4  
 Case # 4160007  
 Bureau Case # 16-133809 CP ZC

File No. LU 16-133809 CP ZC  
 1/4 Section 2535  
 Scale 1 inch = 200 feet  
 State Id 1N2E19BD 12200  
 Exhibit B (Jun 23, 2016)



RECEIVED

JUN 27 2016

HEARINGS OFFICE

CITY OF PORTLAND  
 HEARINGS OFFICE  
 Exhibit #H-5  
 Case # 4160007  
 Bureau Case # 16-133809 CP ZC

# PROPOSED ZONING

-  NORTH
-  Site
-  Also Owned

File No. LU 16-133809 CP ZC  
 1/4 Section 2535  
 Scale 1 inch = 200 feet  
 State\_Id 1N2E19BD 12200  
 Exhibit B (Jun 23, 2016)