



City of Portland  
**Bureau of Development Services**  
Land Use Services Division

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**Date:** June 18, 2008  
**To:** Interested Person  
**From:** Shawn Burgett, Land Use Services  
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## **NOTICE OF A TYPE II<sub>x</sub> DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD**

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

### **CASE FILE NUMBER: LU 08-106433 LDP**

#### **GENERAL INFORMATION**

**Applicant:** Vincent & Janet Camelio  
3334 SW Ridge Dr  
Portland, OR 97219  
503-244-6306

**Site Address:** 2666 NE Fremont Dr

**Legal Description:** LOT 6 BLOCK C, ROCKY BUTTE ADD  
**Tax Account No.:** R716600380  
**State ID No.:** 1N2E28BD 05600  
**Quarter Section:** 2739

**Neighborhood:** Madison South, contact Frank Walsh at 503-216-8090.  
**Business District:** Parkrose Business Association, contact Wayne Stoll at 503-284-1921.  
**District Coalition:** Central Northeast Neighbors, contact Alison Stoll at 503-823-3156.

**Zoning:** R5h (Single Family Residential-5,000 with "h" Aircraft Land Zone Overlay)

**Case Type:** LDP (Land Division Partition)  
**Procedure:** Type II<sub>x</sub>, an administrative decision with appeal to the Hearings Officer.

#### **Proposal:**

The applicant is proposing a 2-lot land division. Proposed Parcel 1 will measure approximately 6,608 sq. ft and retain the existing house with street frontage along NE Fremont Dr. Proposed Parcel 2 will measure approximately 4,499 sq. ft. and will have street frontage along NE 92<sup>nd</sup> avenue. The applicant has been granted a plumbing code appeal (ID# 5060) to create an 8 ft wide easement (smaller than the minimum 10 ft. wide easement required) over the northern portion of parcel 1, for the benefit of Parcel 2. The applicant is proposing to send sanitary and stormwater water from parcel 2, down-slope towards to the

storm and sanitary sewer systems located in NE Fremont Drive. Based on the applicant's geotechnical report, Site Development does not recommend on-site infiltration of stormwater for proposed parcel 2.

This partition proposal is reviewed through a Type IIX procedure because: (1) the site is in a residential zone; (2) two or three lots are proposed; and (3) the site is located within a Potential Landslide Hazard or Flood Hazard Area (see 33.660.110).

For purposes of State Law, this land division is considered a partition. To partition land is to divide an area or tract of land into two or three parcels within a calendar year (See ORS 92.010).

**Relevant Approval Criteria:**

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

- 33.660.120, Approval Criteria for Land Divisions in Open Space and Residential Zones.

## ANALYSIS

**Site and Vicinity:** The site currently is a through lot with frontage along two public streets (NE 92<sup>nd</sup> Ave and NE Fremont Dr.). There is one existing single-family home and detached garage located on the site that face NE Fremont Dr. that will remain. The topography of the site slopes downward from east to west. The adjacent development located along NE Fremont Drive and NE 92<sup>nd</sup> Ave in the vicinity of the site are made up of predominantly single family homes of various types and sizes.

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

The Aircraft Landing ("h") overlay zone provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures and vegetation. The allowed height limit for buildings and vegetation on the site per the "h" overlay is 380 feet above the lowest base point at Portland International Airport. The airport low base point is at an elevation of 18.3 feet. Therefore, the topographical elevation of the site PLUS the proposed building cannot exceed 398 feet. The highest ground elevation on the site is approximately 220 feet. Therefore, buildings and vegetation on the site cannot exceed 178 feet in height. On this site, however, the base zone (R5) height limit of 30 feet is more restrictive than the 'h' overlay allows and cannot be exceeded without a future adjustment review.

**Land Use History:** City records indicate no previous land use history

**Agency and Neighborhood Review:** A Notice of Proposal in your Neighborhood was mailed on April 23, 2008

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

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

## APPROVAL CRITERIA-

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

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

The relevant criteria are found in Section **33.660.120 [A-L], Approval Criteria for Land Divisions in Open Space and Residential Zones**. Due to the specific location of this site, and the nature of the proposal, some of the criteria are not applicable. The following table summarizes the applicability of each criterion.

Criterion	Code Chapter	Topic	Applicability Findings
A	33.610	Lots	Applicable - See findings below
B	33.630	Trees	Applicable - See findings below.
C	33.631	Flood Hazard Area	Not applicable - The site is not within the flood hazard area.
D	33.632	Potential Landslide Hazard Area	Applicable – See findings below.
E	33.633	Phased Land Division or Staged Final Plat	Not applicable - A phased land division or staged final plat has not been proposed.
F	33.634	Recreation Area	Not applicable - This is not required where the proposed density is less than 40 units.
G	33.635 .100	Clearing and Grading	Applicable - See findings below.
G	33.635 .200	Land Suitability	Applicable - See findings below.
H	33.636	Tracts and Easements	Applicable - See findings below.
I	33.639	Solar Access	Not Applicable - All of the proposed parcels are interior lots (not on a corner). In this context, solar access standards express no lot configuration preference.
J	33.640	Streams, Springs, and Seeps	Not applicable - No streams, springs, or seeps are evident on the site.
K	33.641	Transportation Impacts	Applicable - See findings below
L	33.651 - 33.654	Services and Utilities	Applicable - See findings below

**Applicable Approval Criteria are:**

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

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

Density Standards

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

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

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

Minimum = [11,107 square feet minus portion of site in landslide hazard area (the whole site is considered within the landslide hazard area \* .80) ÷ 5,000 square feet = 0

Maximum = 11,107square feet ÷ 5,000 square feet = 2.22 (which rounds down to a maximum of 2 lots, per 33.930.020.B)

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

Lot Dimensions

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

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

	<b>R5 Zone Requirement</b>	<b>Proposed Lot 1</b>	<b>Proposed Lot 2</b>
Minimum Lot Area	3,000 sq. ft.	6,608 sq.	4,499 sq.
Maximum Lot Area	8,500 sq. ft.	ft.	ft.
Minimum Lot Width*	36 ft.	60 ft.	65.82 ft.
Minimum Lot Depth	50 ft.	107 ft.	70.5 ft.
Minimum Front Lot Line	30 ft.	60 ft.	65.82 ft.

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

The findings above describe how the applicable lot standards are met. This criterion is therefore met.

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

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

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

Tree #	Species	Diameter (inches)	Significant? (On Table 630-1)	Exempt? (per 33.630.030)	To be retained?	RPZ (Root Protection Zone)
381	Douglas Fir	18"	Yes	No	Yes	15'
382	Deodar cedar	19"	No	No	Up to applicant	
383	Bigleaf Maple	20"	Yes	No	Up to applicant	

The total non-exempt tree diameter on the site is 57 inches. The applicant proposes to preserve tree 381, which comprises 18 inches of diameter, or 31 percent of the total non-exempt tree diameter. This proposal complies with Option 2 of the tree preservation standards, which requires at least 50 percent of the significant trees on the site and at least 30 percent of the total tree diameter on the site to be preserved.

This criterion is met, subject to the condition that development on Parcel 1 be carried out in conformance with the Tree Preservation Plan (Exhibit C-1) and the applicant's arborist report (Exhibit A-2).

**D. Potential Landslide Hazard Area. If any portion of the site is in a Potential Landslide Hazard Area, the approval criteria of Chapter 33.632, Sites in Potential Landslide Hazard Areas, must be met.**

**33.632.100 Landslide Hazard Area Approval Criterion**

**The following approval criterion must be met: Locate the lots, buildings, services and utilities on the safest part of the site so that the risk of a landslide affecting the site, adjacent sites, and sites directly across a street or alley from the site, is reasonably limited.**

**Determination of whether the proposed layout and design reasonably limits the risk of a landslide will include evaluation of the Landslide Hazard Study and will take into consideration accepted industry standards for factor of safety. Alternative development options including alternative housing types and reduced density may be required in order to limit the risk to a reasonable level.**

**Findings:** A small portion of this site, the area where parcel 2 abuts NE 92<sup>nd</sup> Ave, is located within the Potential Landslide Hazard Area. The approval criteria states that the lots, buildings, services, and utilities must be located on the safest part of the site so that the

risk of a landslide affecting the site, adjacent sites, and sites directly across a street or alley from the site is reasonably limited.

In order to evaluate the proposal against this criteria, the applicant has submitted a geotechnical evaluation of the site and proposed land division, prepared by a Certified Engineering Geologist and a Geotechnical Engineer (Exhibit A-3). That report was evaluated by the Site Development Division of the Bureau of Development Services, the City agency that makes determinations regarding soil stability.

The applicant's geotechnical evaluation indicates that the risk of potential landslide hazard at the site is relatively low, given the soil composition, topography, and other risk factors. The proposed land division will result in lots, buildings, services, and utilities that will not significantly increase the risk of landslide potential on the site or other properties in the vicinity of the site. In addition, the geotechnical evaluation has concurred that the applicant's proposed method of stormwater disposal at the site will not have a significant detrimental impact on the slope stability on or around the site. This conclusion was reached because stormwater will not be disposed on the site itself, it will be treated and discharged into an existing public storm sewer as discussed later in this report under the findings for "Stormwater Management Approval Criteria."

Site Development has concurred with the findings of the applicant's geotechnical report. This criterion is met.

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

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

**33.635.100 – Clearing and Grading**

- A. Existing contours and drainage patterns of the site must be left intact wherever practicable. Where alteration to existing drainage patterns is proposed, it must not adversely impact adjacent properties by significantly increasing volume of runoff or erosion;**
- B. Clearing and grading should be sufficient for construction of development shown on the Preliminary Clearing and Grading Plan;**
- C. Clearing and grading should be limited to areas of the site that are reasonably necessary for construction of development shown on the Preliminary Clearing and Grading Plan;**
- D. Topsoil must be preserved on site to the extent practicable for use on the site after grading is complete; and**
- E. Soil stockpiles must be kept on the site and located in areas designated for clearing and grading as much as is practicable.**

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

In this case, the site has steep grades (over 20%), and is partially located in the Potential Landslide Hazard area. Therefore, the clearing and grading associated with preparation of the lots must occur in a way that will limit erosion concerns and assure that the preserved trees on the site will not be disturbed.

A Preliminary Clearing and Grading Plan was not submitted with the land division application however, the applicant did submit a Landslide Hazard Report (Exhibit A-3) that describes how clearing and grading should occur on the site to minimize erosion risks. The applicant also provided a Tree Protection Plan (Exhibit C-1) that designates areas on the site where grading should not occur in order to protect the roots of the trees on the site that will be preserved, and an arborist report (Exhibit A-2) that further discusses grading on the site. The tree that is designated for protection is located directly west of the existing house that the applicant has proposed to retain on Parcel 1, so the clearing and grading performed on parcel 2 should have no effect on this protected tree.

The Landslide Hazard Report (exhibit A-3) generally recommends that “adequate excavations to stable soil and proper draining of both terrestrial water and shallow groundwater will reduce the risk” adding, “all cuts should be buttressed with a retaining wall and properly drained.” The landslide hazard report goes on to state that all stormwater should be directed off site into the City’s storm drainage system (see detailed discussion of stormwater management later in this report), the method of disposal has been deemed feasible by Site Development and BES (Exhibits E-1 and E-5). The Landslide hazard study also refers to “construction monitoring” as a key in determining that excavation work is done correctly. The geotechnical report (exhibit A-3) recommended that “an engineering geologist/geotechnical engineer be kept involved in the project to observe all final excavations, subgrade preparation (prior to pouring footings), and drainage behind retaining walls and along the foundations (prior to backfilling).

Following the recommendations of the Landslide Hazard Study will help to limit erosion and sedimentation concerns. Topsoil storage and general stockpiling on the site should only occur if it will not create any additional erosion concerns as recommended by the geotechnical engineer.

As shown above, the clearing and grading anticipated to occur on the site can meet the approval criteria. At the time of building permit submittal on the individual lots a clearing, grading and erosion control plan will be submitted to the Site Development Section of the Bureau of Development Services. Site Development will review the grading plan against the applicant’s Landslide Hazard Study as well as any additional geotechnical information required at the time of permit submittal to assure that the grading will not create any erosion risks. In addition the plans will be reviewed for compliance with the applicant’s tree preservation plan and arborist report. With the conditions noted above requiring that the building permit for Parcel 2 comply with the recommendations of the Landslide Hazard Study, this criteria is met.

### **33.635.200 – Land Suitability**

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

The site is currently in residential use, and there is no record of any other use in the past. The site is currently connected to the public sanitary sewer. City records indicate that the existing house on parcel 1 was served by a cesspool prior to being connected to the public sewer system in 1973. Site Development considers it likely that the cesspool was decommissioned at that time. However, in the event that the cesspool is located and has not filled, a decommissioning permit will be required

Prior to final plat, the applicant must meet the requirements of the Site Development Section of the Bureau of Development Services for the decommissioning of this facility. With this condition, the new lots can be considered suitable for new development, and this criterion is met.

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

**33.636.100 Requirements for Tracts and Easements**

**A. Ownership of tracts. Tracts must be owned as follows unless otherwise specified in this Title or the land use decision:**

- 1. The owners of property served by the tract, or by any other individual or group of people. When the tract is owned by more than one person it must be held in common with an undivided interest;**
- 2. The Homeowners' Association for the area served by the tract;**
- 3. A public or private non-profit organization; or**
- 4. The City or other jurisdiction.**

**Findings:** No tracts are proposed or required for this land division, so criterion A does not apply.

**B. Maintenance agreement. The applicant must record with the County Recorder a maintenance agreement that commits the owners or owners' designee to maintain all elements of the tract or easement; however, facilities within the tract or easement that will be maintained by a specified City agency may be recorded in a separate maintenance agreement. The maintenance agreement must be approved by BDS and the City Attorney in advance of Final Plat approval and must be submitted to the County Recorder to be recorded with the Final Plat. For a Planned Development not done in conjunction with a land division, the maintenance agreement must be submitted to the County Recorder to be recorded prior to issuance of the first building permit related to the development.**

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

- A Private Sanitary Sewer/Private Storm Sewer Easement is required across the relevant portions of Parcel 1, for sanitary and storm sewer laterals that will serve Parcel 2.
- A Private Storm Sewer Easement is required across the relevant portions of Parcel 2, for an existing drywell that will provide stormwater disposal for the existing house on parcel 1.

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

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

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

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

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

**33.641.020. The transportation system must be capable of safely supporting the proposed development in addition to the existing uses in the area. Evaluation factors include: street capacity and level-of-service; vehicle access and loading; on-street parking impacts; the availability of transit service and facilities and connections to transit; impacts on the immediate and adjacent neighborhoods; and safety for all modes.**

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

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

The site is a through lot and has approximately 60 feet of frontage on NE Fremont Dr. and approximately 66 ft. of frontage along NE 92<sup>nd</sup> Ave. NE Fremont Drive and NE 92<sup>nd</sup> Ave are both classified as a local service street for all modes in the Transportation Element of the Comprehensive Plan. Tri-Met provides transit service adjacent to the site along NE 92<sup>nd</sup> Ave via bus 33. Parking is currently allowed on NE Fremont Dr. on both sides and on NE 92<sup>nd</sup> Ave on the east side of the street. There is one driveway entering the site that provides access to off-street parking for the existing house.

NE Fremont Dr. is fully improved with a paved roadway, curbs, planting strips, and sidewalks. NE 92<sup>nd</sup> Ave is improved with a paved roadway, and a gravel parking lane on both sides. There are no curbs, planter strips, or sidewalks along NE 92<sup>nd</sup> Ave in this vicinity. In reviewing this land division, Portland Transportation relies on accepted civil and traffic engineering standards and specifications to determine if existing street improvements for motor vehicles, pedestrians and bicyclists can safely and efficiently serve the proposed new development.

In regard to NE Fremont Dr., Portland Transportation has not identified or been made aware of any factors related to this proposal that lead to a conclusion other than that one additional dwelling can be safely served by this existing street without having any significant impact on the level of service provided.

In regard to NE 92<sup>nd</sup> Ave in this vicinity, because none of the other frontages have been improved on this street, Portland Transportation has determined that an isolated improvement at this location would not be meaningful. If the street is to be improved, it would be more appropriate to complete the improvements as one LID project. Therefore, the applicant will be required to sign street and storm sewer waivers of remonstrance (for participation in future street and storm sewer improvements) prior to final plat approval.

This criterion is met, with the condition that the required waivers are signed prior to final plat approval.

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

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

- The water standards of 33.651 have been verified. An existing 5/8 inch water main is available in NE Fremont Dr. The house on Parcel 1 has existing water service from that main. Water is available to serve the proposed development on parcel 2 from the water main in NE 92<sup>nd</sup> Ave. See Exhibit E-3 for more details.
- The sanitary sewer standards of 33.652 have been verified. There is an existing 8-inch public sanitary sewer located in NE Fremont Dr. that can serve the sanitary needs of the proposed lots. Parcel 1 has an existing sewer service from that main. Since NE Fremont Dr. is located downhill from parcel 2, the sanitary sewer located in NE Fremont Dr. is preferred for this proposal since gravity flow could be utilized. In order to access the sanitary sewer in NE Fremont Dr. an easement will have to be shown on the final plat across parcel 1 for the benefit of parcel 2. Typically, all easements are required to be a minimum of 10 ft. in width. The widest area available over parcel 1 to allow a sewer easement to benefit parcel 2 is located within the northern setback of parcel 1, where there is approximately 8 ft. between the existing detached garage on Parcel 1 and the northern property line of parcel 1. The applicant has applied for and received a plumbing code appeal (ID #5060) to allow the easement width to be reduced from 10 ft. to 8 ft. in width.

City Records on file do not provide sufficient information to determine whether the sewer lateral for the existing house on Parcel 1 will cross the proposed private sewer easement or affect the new sanitary sewer connection for Parcel 2. Prior to final plat approval, the applicant shall provide documentation that demonstrates where the sewer lateral serving the existing house is located to the satisfaction of Site development. If the lateral must be relocated, then final approval of a plumbing permit will be required prior to final plat approval. See exhibits E.1 and E.5.

- The technical standards of Chapter 33.653 related to stormwater management have been verified. The findings below for the Stormwater Management Approval Criteria of 33.653.020 incorporate a discussion of how the technical standards have been satisfied by the applicant's stormwater proposal.

**33.653.020 Stormwater Management Approval Criteria**

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

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

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

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

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

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

- **Lot 2:** Stormwater from this lot will be directed into a flow-through planter that remove pollutants and suspended solids. The water will drain from the planters to the existing storm sewer in NE Fremont Drive. There is an existing 12-inch public storm sewer located on NE Fremont Dr. that can serve the overflow stormwater disposal for proposed Parcel 2. Each lot has sufficient size for individual planter boxes, and the Bureau of Environmental Services has indicated that the treated water can be directed to the existing storm sewer in NE Fremont Drive. Due to the steep slope adjacent to NE 92<sup>nd</sup> Avenue, Site development will require engineered driveway plans at the time of building permit review, the driveway plans must include a method of stormwater treatment and disposal for driveway runoff.
- **Lot 1 (the lot with the existing house):** The downspouts of the existing house and garage are connected to on-site drywells. The proposed drywell easement on Parcel 2 for the benefit of the existing house on Parcel 1 is acceptable. Prior to final plat approval, the location of the drywell on the north side of the garage should be accurately determined to ensure that the proposed sanitary and storm sewer lines will not affect the existing drywell. If the drywell must be relocated, then prior to final plat approval a plumbing permit will be required and must include decommissioning of the drywell.

With the conditions of approval described above, the stormwater management criteria are met. As shown by the findings above, the Services and Utilities criteria are met.

### Right of Way Approval Criteria

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

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

**Applicable Approval Criteria are:**

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

- a. Through streets should generally be provided no more than 530 feet apart, and pedestrian connections should generally be provided no more than 330 feet apart. Through street and pedestrian connections should generally be at least 200 feet apart;**
- b. Where the street pattern in the area immediately surrounding the site meets the spacing of subparagraph a., above, the existing street pattern should be extended onto the site;**
- c. Characteristics of the site, adjacent sites, and vicinity, such as: (1) Terrain; (2) Whether adjacent sites may be further divided; (3) The location of existing**

- streets and pedestrian connections; (4) Whether narrow frontages will constrain creation of a through street or pedestrian connection; (5) Whether environmental overlay zones interrupt the expected path of a through street or pedestrian connection; and (6) Whether existing dwelling units on- or off-site obstruct the expected path of a through street or pedestrian connection. Alternative locations or designs of rights-of-way should be considered that avoid existing dwelling units. However, provision of through streets or pedestrian connections should take precedence over protection of existing dwelling units where the surrounding transportation system will be significantly affected if a new through street or pedestrian connection is not created;**
- d. Master street plans for the area identified in Goal 11B of the Comprehensive Plan;**
  - e. Pedestrian connections should take the most direct route practicable. Users should be able to see the ending of the connection from the entrance point, if possible.**

**Findings:** The site is located between NE Fremont Dr. and NE 92<sup>nd</sup> Ave, which have a distance between them of approximately 183 feet. There are no other north/south through streets between these two streets. The site is also located between NE Siskiyou St and NE Russell St. which has a distance between them of approximately 1,300 sq. ft. There are no other east/west through streets between these two streets. If the distance between these existing streets is evaluated against the optimum spacing requirement of 530 feet, one can conclude that there should be an east-west through street provided in the vicinity of the site.

The site contains sufficient width to allow the creation of a public east-west through street. However, the properties adjacent to the portion of the site where the street would terminate are already developed, and not configured in a manner that would easily allow the further extension of a street from the site. So, although the optimum spacing criteria would indicate the need for an east-west through street or pedestrian connection at this site, there is no practicable opportunity to provide them in this land division.

In addition, the site is within the Portland Master Street Plan for the Northeast District which does not show an east-west through street at this location. Therefore, the proposal is consistent with the master street plan.

For the reasons described above, this criterion is met.

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

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

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

**Findings:** Utilities are defined in the Zoning Code as telephone, cable, natural gas, electric, and telecommunication facilities. Any easements that may be needed for private utilities that cannot be accommodated within the right-of-way can be provided on the final plat. At this time no specific utility easements adjacent to the right-of-way have been identified as being necessary. Therefore, this criterion is met.

## DEVELOPMENT STANDARDS

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

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

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

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

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

- Minimum Setbacks – The existing house identified to remain on the site must meet the required Zoning Code setbacks from the proposed new lot lines. Alternatively, existing buildings must be set back from the new lot lines in conformance with an approved Adjustment or other Land Use Review decision that specifically approves alternative setbacks. The existing house will be 10 feet from the new property line. Therefore, the required setbacks are being met. To ensure this standard continues to be met at the final plat stage, the final plat must be accompanied by a supplemental survey showing the location of the existing building relative to the adjacent new lot lines.
- Accessory Structures – In this zone, accessory structures are not allowed on a lot without a primary structure. Therefore, in order for the proposed new lots to meet this standard, all accessory structures on Parcel 2 must be removed prior to final plat. The applicant must provide documentation prior to final plat approval that the shed on parcel 2 has been removed. To ensure that this standard is met, a condition of approval is necessary.

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

## OTHER TECHNICAL REQUIREMENTS

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

required. The following is a summary of technical service standards applicable to this preliminary partition proposal.

<b>Bureau</b>	<b>Code Authority</b>	<b>Topic</b>	<b>Contact Information</b>
Water Works	Title 21	Water availability	503-823-7404 <a href="http://www.water.ci.portland.or.us/">http://www.water.ci.portland.or.us/</a>
Environmental Services	Title 17; 2002 Stormwater Manual	Sewer availability Stormwater Management	503-823-7740 <a href="http://www.bes.ci.portland.or.us/">http://www.bes.ci.portland.or.us/</a>
Fire Bureau	Title 31 Policy B-1	Emergency Access	503-823-3700 <a href="http://www.fire.ci.portland.or.us/">http://www.fire.ci.portland.or.us/</a>
Transportation	Title 17, Transportation System Plan	Design of public street	503-823-5185 <a href="http://www.trans.ci.portland.or.us/">http://www.trans.ci.portland.or.us/</a>
Development Services	Titles 24 -27, Admin Rules for Private Rights of Way	Building Code, Erosion Control, Flood plain, Site Development & Private Streets	503-823-7300 <a href="http://www.bds.ci.portland.or.us.">http://www.bds.ci.portland.or.us.</a>

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

- The applicant must meet the requirements of the Fire Bureau in regards to ensuring adequate hydrant flow from the nearest fire hydrant/obtaining an approved Fire Bureau appeal to this requirement/ recording an Acknowledgement of Special Land Use Conditions that require the provision of internal fire suppression sprinklers on Lot 2. It should be noted that the staff planner has contacted the Water Bureau's Fire Flow line (attached to exhibit E-3) and has received verification that the Fire Bureau's minimum fire flow requirements can be met at this site. These requirements are based on the technical standards of Title 31 and Fire Bureau Policy B-1.

## **CONCLUSIONS**

The applicant has proposed a 2-lot partition, as shown on the attached preliminary plan (Exhibit C-1). As discussed in this report, the relevant standards and approval criteria have been met, or can be met with conditions. The primary issues identified with this proposal are: submittal of waivers of remonstrance and verifying utilities location for sewer line and drywell associated with existing house.

With conditions of approval that address these requirements this proposal can be approved.

## **ADMINISTRATIVE DECISION**

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

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

- Any buildings or accessory structures on the site at the time of the final plat application;
- Any driveways and off-street vehicle parking areas on the site at the time of the final plat application;
- The proposed general location of future building footprints, driveways and stormwater facilities for Parcel 2.
- Any other information specifically noted in the conditions listed below.

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

1. A private sanitary and storm sewer easement, for the benefit of Parcel 2, shall be shown and labeled over the relevant portions of Parcel 1.
2. A private storm sewer easement, for the benefit of the existing drywell associated with Parcel 1, shall be shown and labeled over the relevant portions of Parcel 2.
3. A recording block for each of the legal documents such as maintenance agreement(s), acknowledgement of special land use conditions, or Declarations of Covenants, Conditions, and Restrictions (CC&Rs) as required by Condition C.7 below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: "A Declaration of Maintenance Agreement for (easement) has been recorded as document no. \_\_\_\_\_, Multnomah County Deed Records."

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

**Streets**

1. The applicant shall sign street and storm sewer waivers of remonstrance (for future street and storm sewer improvements) as required by the City Engineer. Waiver forms will be provided to the applicant during the final plat review process.

**Utilities**

2. The applicant shall meet the requirements of the Site Development Section of the Bureau of Development Services for the decommissioning of the existing sanitary sewer system on the site.
3. The applicant shall meet the requirements of the Fire Bureau for ensuring adequate hydrant flow from the nearest hydrant or obtain an approved Fire Bureau appeal to this requirement.

**Existing Development**

4. The applicant must provide documentation to the Final Plat planner that documents that the shed on Lot 2 has been removed. Alternately, the applicant can execute a covenant with the City stating that the structures will be removed if a primary structure has not received final inspection on the lot(s) with the accessory structure(s) within two years of final plat approval. The covenant must be recorded with Multnomah County prior to final plat approval.

5. The applicant must meet the requirements of Site Development for the stormwater system associated with on the existing development to remain on Lot 1. The location of the drywell on the north side of the garage should be accurately determined to ensure that the proposed sanitary and storm sewer lines proposed in association with new development on Lot 2 will not affect the existing drywell. If the drywell must be relocated, then a plumbing permit will be required and must include decommissioning of the drywell.
6. The applicant shall meet the requirements of the Site Development section of the Bureau of Development Services in regard to the sanitary sewer lateral associated with the existing development to remain on lot 1. The applicant must provide information that documents the location of the sewer lateral. Based on that information, Site Development will determine whether or not it affects the new sewer lateral connection proposed for parcel 2. If the lateral must be located, then a finalized plumbing permit must be finalized prior to final plat approval.

#### **Required Legal Documents**

7. A Maintenance Agreement shall be executed for the Private Sewer/Stormwater Management Easement areas described in Conditions B.1 and B.2 above. The agreement shall include provisions assigning maintenance responsibilities for the easement area and any shared facilities within that area, consistent with the purpose of the easement, and all applicable City Code standards. The agreement must be reviewed by the City Attorney and the Bureau of Development Services, and approved as to form, prior to final plat approval.
8. If required, the applicant shall execute an Acknowledgement of Special Land Use conditions, requiring residential development on Lot 2 to contain internal fire suppression sprinklers. The acknowledgement shall be recorded with Multnomah County, and referenced on the final plat.

#### **Other requirements**

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

1. Development on Lot 1 shall be in conformance with the Tree Preservation Plan (Exhibit C-1) and the applicant's arborist report (Exhibit A-2). Specifically, tree number 381 is required to be preserved, with the root protection zones indicated on Exhibit C-1. Encroachment into the specified root protection zones may only occur under the supervision of a certified arborist. Planning and Zoning approval of development in the root protection zones is subject to receipt of a report from an arborist, explaining that the arborist has approved of the specified methods of construction, and that the activities will be performed under his supervision.
2. If required per condition C.7 above (check final plat approval report), The applicant will be required to install residential sprinklers in the new houses on Lot 2 to the satisfaction of the Fire Bureau.
3. The applicant will be required to meet Site Developments requirements in regard to new development on parcel 2. Due to the steep slope adjacent to NE 92<sup>nd</sup> Avenue, the applicant must provide engineered driveway plans that must include a method of

stormwater treatment and disposal for driveway runoff. Additionally, the landslide hazard report(exhibit A-3) recommends that a Geotechnical engineer monitor excavation work on the site during constuction.

**Decision rendered by:** \_\_\_\_\_ **on June 13, 2008**

By authority of the Director of the Bureau of Development Services

**Decision mailed June 18, 2008**

**Staff Planner: Shawn Burgett**

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

**Procedural Information.** The application for this land use review was submitted on February 1, 2008, and was determined to be complete on April 17, 2008.

*Zoning Code Section 33.700.080* states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on February 1, 2008.

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

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

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

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

**Appealing this decision.** This decision may be appealed to the Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on July 2, 2008** at 1900 SW Fourth Ave. Appeals may be filed on the first floor in the Development Services Center until 3 p.m.

After 3 p.m., appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please contact the receptionist at 503-823-0625 to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at [www.ci.portland.or.us](http://www.ci.portland.or.us).

**Attending the hearing.** If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 550 Capitol St. NE, Suite 235, Salem, Oregon 97301 or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Hearings Officer an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

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

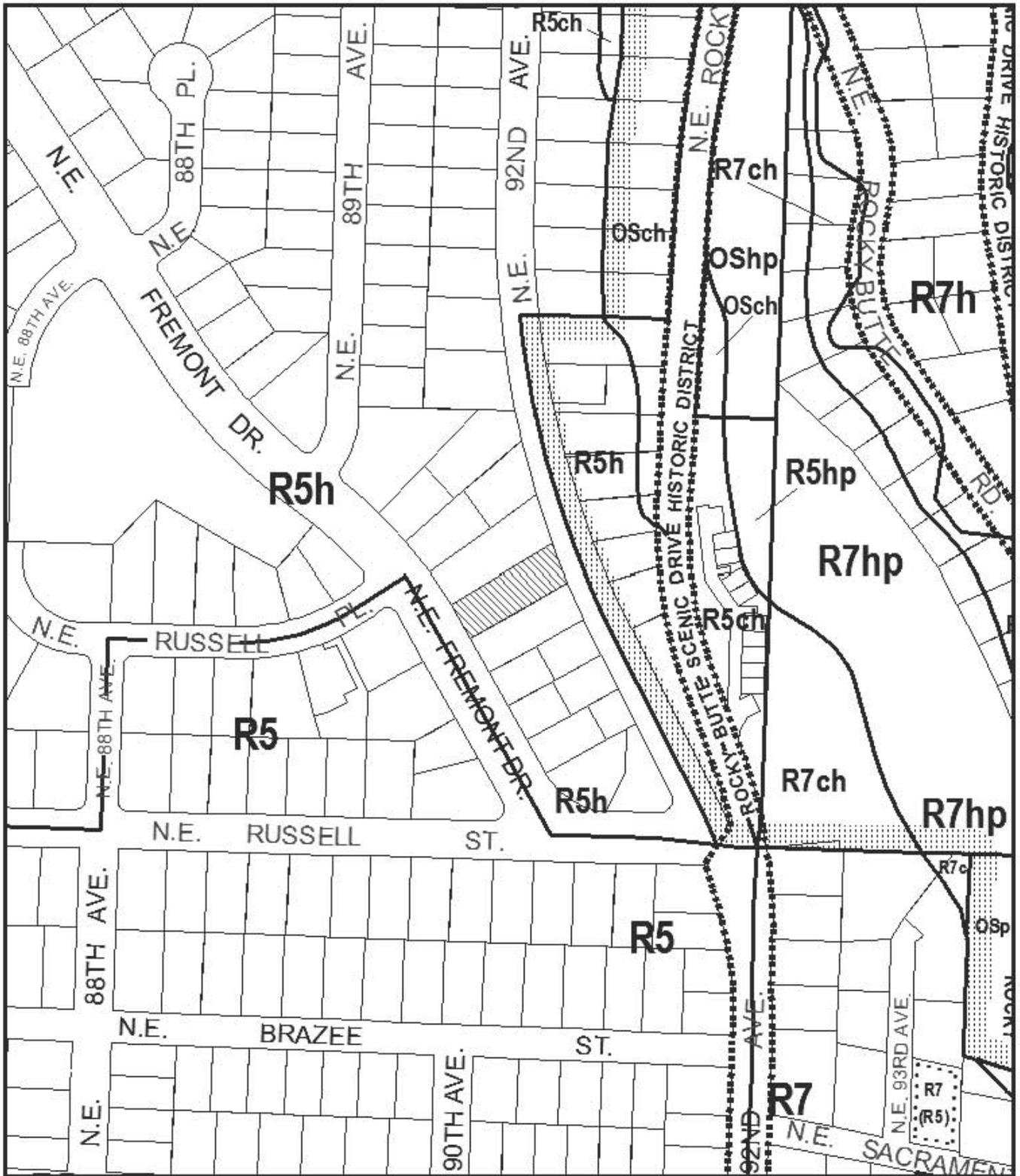
#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  - 1. Applicants narrative
  - 2. Arborist Report
  - 3. Geotechnical Report
  - 4. Applicants documentation of early neighborhood notification.
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Bureau of Transportation Engineering and Development Review

3. Water Bureau
  4. Fire Bureau
  5. Site Development Review Section of BDS
  6. Bureau of Parks, Forestry Division
  7. Life Safety
- F. Correspondence:
1. None received
- G. Other:
1. Original LU Application
  2. Site History Research
  3. Incomplete Letter

**The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-0625 (TTY 503-823-6868).**



# ZONING

 Site



File No.	LU 08-106433 LDP
1/4 Section	2739
Scale	1 inch = 200 feet
State_Id	1N2E28BD 5600
Exhibit	B (Feb 04,2008)

**NOTES**

SUBCONTRACTOR TO SPECIFY EXACT LOCATION OF UTILITY LATERALS.

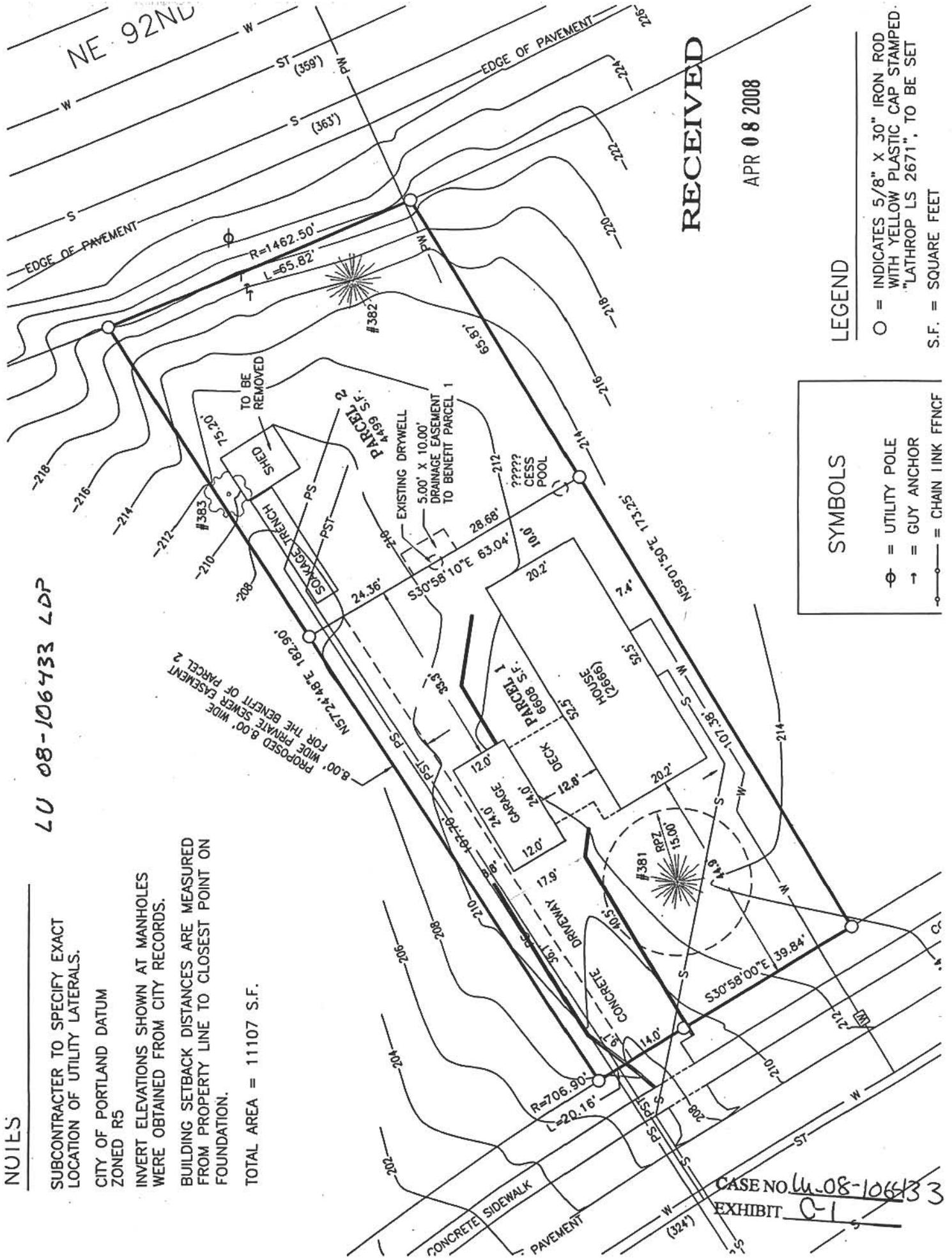
CITY OF PORTLAND DATUM ZONED R5

INVERT ELEVATIONS SHOWN AT MANHOLES WERE OBTAINED FROM CITY RECORDS.

BUILDING SETBACK DISTANCES ARE MEASURED FROM PROPERTY LINE TO CLOSEST POINT ON FOUNDATION.

TOTAL AREA = 11107 S.F.

LU 08-106433 LDP



**LEGEND**

- = INDICATES 5/8" X 30" IRON ROD WITH YELLOW PLASTIC CAP STAMPED "LATHROP LS 2671", TO BE SET
- S.F. = SQUARE FEET

**SYMBOLS**

- ⊕ = UTILITY POLE
- = GUY ANCHOR
- = CHAIN LINK FFNCF

RECEIVED

APR 08 2008

CASE NO LU-08-106433  
EXHIBIT C-1