



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

1900 SW 4th Avenue, Suite 5000
Portland, Oregon 97201
503-823-7300
Fax 503-823-5630
TTY 503-823-6868
www.portlandonline.com/bds

Date: September 17, 2010
To: Interested Person
From: Kate Green, Land Use Services
503-823-5868

NOTICE OF A TYPE I DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

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

CASE FILE NUMBER: LU 10-108512 LDP

GENERAL INFORMATION

Applicant: Dale Marx, Marx Associates
PO Box 565
Gresham OR 97030

Property Owners: Hau Howard Quang and Yen Susan Quang
3424 NE 82nd Avenue
Portland OR 97220

Site Address: 13039 E BURNSIDE STREET
Legal Description: TL 13000 0.21 ACRES, SECTION 35 1N 2E
Tax Account No.: R942350470
State ID No.: 1N2E35CA 13000
Quarter Section: 3043

Neighborhood: Hazelwood, contact Arlene Kimura at 503-252-9429
Business District: Gateway Area Business Association, contact Fred Sanchez at 503-256-3910
District Coalition: East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550

Zoning: Multi-Dwelling Residential 2,000 (R2)
Alternative Design Density Overlay (a)
Design Overlay (d)

Plan District: East Corridor

Case Type: Land Division-Partition (LDP)
Procedure: Type I, an administrative decision with appeal to the Oregon Land Use Board of Appeals (LUBA).

Proposal: The applicant proposes to divide an 8,889 square foot lot into 2 parcels, and a 3-foot dedication is to be provided along the E Burnside frontage. Parcel 1 will be approximately 5,732 square feet and the existing house is proposed to remain on this lot. Additional density is proposed on this parcel at the time of redevelopment. Parcel 2 will be approximately 2,857 square feet and is proposed to be developed with a detached house.

Since the light rail tracks are located between the subject site and the public sanitary sewer on E Burnside, a 10-foot wide Private Sewer Easement is proposed on Parcel 1 with a wye at the curb to provide a sanitary connection for Parcel 2. An onsite drywell is proposed for stormwater management for new development on Parcel 2. Splash blocks on the existing house are to be positioned to meet setbacks from adjacent lot lines and provide stormwater management for Parcel 1.

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 or “units of land” within a calendar year (See ORS 92.010).

This partition is reviewed through a Type I land use review because: (1) the site is in a residential zone; (2) fewer than four lots are proposed; (3) none of the lots, utilities, or services are proposed within a Potential Landslide Hazard or Flood Hazard Area, and; (4) no other concurrent land use reviews (such as an Adjustment, Design Review, or Environmental Review) are requested or required (see 33.660.110).

Since the property is within the Design Overlay, new development on Parcel 2, and changes to development on Parcel 1 must meet the Community Design Standards (33.218) at the time of development, or a Design Review will be triggered (33.420 and 33.825). In addition, the standards of the East Corridor Plan District (33.521) will apply to all new development or changes to the existing development.

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

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

ANALYSIS

Site and Vicinity: The subject site is a relatively flat rectangular property located on the north side of E Burnside Street. The site is currently developed with a single-story house, driveway, and yard.

Light rail (MAX) lines run down the middle of E Burnside and restrict vehicle access to specific intersections to the east and west of the site, so the street corridor along the site is effectively one-way on either side of the transit lines.

The surrounding development consists of predominately of single-story homes on 8,000 square feet or larger lots that do not reflect the scale of development or density anticipated by the current zoning and plan district regulations. A public elementary school and park (Menlo Park) is located approximately 300 feet to the west of the subject site, and a ball field (Park Rose Little League) is located approximately 800 feet to the east.

Zoning: The property has the following zoning designations:

- **Multi-Dwelling Residential 2,000 (R2)** is a low density multi-dwelling zone. The major types of new development will be duplexes, townhouses, rowhouses and garden apartments. These housing types are intended to be compatible with adjacent houses. Generally, R2 zoning will be applied near Major City Traffic Streets, Neighborhood Collector and District Collector streets, and local streets adjacent to commercial areas and transit streets.
- **Alternative Design Density Overlay (a)** aims to focus development on vacant sites, preserve existing housing and encourage new development that is compatible with and supportive of the positive qualities of residential neighborhoods. The concept for the zone is to allow increased density for development that meets additional design compatibility requirements. The proposal is not utilizing any provisions of the a-overlay.
- **Design Overlay (d)** promotes the conservation, enhancement, and continued vitality of areas of the City with special scenic, architectural, or cultural value. The Design Overlay Zone also

promotes quality high-density development adjacent to transit facilities. Development on the property must comply with the *Community Design Standards*, or it will be subject to Design Review. The applicant indicates the new development will be designed to meet the *Community Design Standards* as an alternative to Design Review. If the project triggers Design Review, the decision on this pending Land Division application will need to be amended and a new Land Division with a concurrent Design Review application must be submitted.

- **East Corridor Plan District** includes three light rail stations and three Pedestrian Districts. The area is targeted to receive a significant share of the city's growth. It is envisioned that future development will transform the areas surrounding the light rail stations into vibrant mixed-use areas of retail, office, and housing with a high level of pedestrian amenities. Lower density residential and commercial development will continue to surround the Pedestrian Districts. At the time of new development or changes to the existing development, those improvements must comply with the applicable plan district regulations.

Land Use History: City records indicate there are no prior land use reviews for this site.

Agency and Neighborhood Review: A Notice of Proposal in your Neighborhood was mailed on **July 7, 2010**.

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.

ZONING CODE APPROVAL CRITERIA

APPROVAL CRITERIA FOR LAND DIVISIONS IN OPEN SPACE AND RESIDENTIAL ZONES

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

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	33.612	Lots	Applicable - See findings below
B	33.630	Trees	Not 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	Not applicable - The site is not within the potential landslide hazard area.
E	33.633	Phased Land Division or Staged Final Plat	Not applicable - A phased land division or staged final plat has not been proposed.
F	33.634	Recreation Area	Not applicable - This is not required when the minimum density for the site 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.

Criterion	Code Chapter	Topic	Applicability Findings
J	33.640	Streams, Springs, and Seeps	Not applicable - No streams, springs, or seeps are evident on the site outside of environmental zones.
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 33.612 contains the lot dimension requirements applicable in the Multi-dwelling zones. These density and lot dimension requirements 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.

When single-dwelling or duplex development is proposed for some or all of the site, the applicant must show how the proposed lots can meet minimum density and not exceed the maximum density stated in Table 120-3.

The total site area shown on the applicant's survey is 8,889 square feet. Site area devoted to streets is subtracted from the total site area in order to calculate the minimum and maximum density. The applicant will be required to dedicate approximately 300 square feet of site area along the frontage of E Burnside Street for right-of-way purposes (as described later in this report). Therefore, the resulting lot size for calculating density is 8,589 square feet.

In this case, Parcels 1 and 2 are proposed for single dwelling and/or duplex development, so the density requirements for this site are calculated as follows:

Minimum = 3

8,589 square feet (site area) ÷ 1 unit/2,500 square feet of site area (minimum density from Table 120-3) = 3.43 (which rounds down to a minimum of 3 units, per 33.930.020.A).

Maximum = 4

8,589 square feet (site area) ÷ 1 unit/2,000 square feet of site area (maximum density from Table 120-3) = 4.29 (which rounds down to a maximum of 4 units, per 33.930.020.B).

Because Parcel 1 is currently developed with a single-dwelling residence and the proposed area of Parcel 2 would only trigger a minimum density requirement of 1, conditions are needed to ensure that the minimum density requirements of the land division site will be met at time of new development on Parcel 2 and at the time of redevelopment on Parcel 1.

As discussed in more detail below, Parcel 1 meets the lot dimensions for multi-dwelling development, and with a maximum density for the site of 4, the maximum density could be allocated to allow 3 units on Parcel 1. However, the applicant has requested that the density be allocated to provide a maximum of 2 units per parcel. Therefore, the density standard can be met with a condition that the minimum and maximum density for the parcels in this land division is as follows:

Parcel	Minimum Density	Maximum Density
1	2	2
2	1	2

Lot Dimensions: The lot dimension requirements ensure that: (1) Each lot has enough room for development that meets all the requirements of the zoning code; (2) Lots are an appropriate size and shape so that development on each lot can be oriented toward the street as much as possible; (3) The multi-dwelling zones can be developed to full potential; and (4) Housing goals for the City are met.

The dimensions of the proposed lots as compared to the required lot dimension requirements are shown in the following table (this information is found in Chapter 33.612 of the Zoning Code):

	R2 Zone Requirement	Proposed Parcel 1	Proposed Parcel 2
Lots for Multi-Dwelling Development			
Minimum Lot Area (square feet)	4,000	5,732	-----
Minimum Lot Width* (feet)	33	66	-----
Minimum Lot Depth (feet)	70	85	-----
Minimum Front Lot Line (feet)	30	66	-----
Lots for Detached Houses			
Minimum Lot Area (square feet)	1,600	5,732	2,857
Minimum Lot Width* (feet)	25	66	33
Minimum Lot Depth (feet)	none	85	84
Minimum Front Lot Line (feet)	25	66	33
Lots for Duplexes			
Minimum Lot Area (square feet)	2,000	5,732	2,857
Minimum Lot Width* (feet)	33	66	33
Minimum Lot Depth (feet)	50	85	84
Minimum Front Lot Line (feet)	30	66	33

*Width is measured from the midpoints of the side lot lines.

Parcel 1 is of sufficient size to meet the lot dimensions for multi-dwelling development, as well as for detached houses or duplexes. However, the applicant has elected to allocate the density for the site to allow only a maximum of 2 units on Parcel 1, so multi-dwelling development will not be allowed on Parcel 1. Parcel 2 is not large enough to allow multi-dwelling development, but it does meet the lot dimensions to allow one detached house or one duplex.

Based on the property dimensions summarized in the table, above, and the allocation of density requested by the applicant, the lot standards for detached houses and duplexes are met.

Overall, with a condition to allocate minimum and maximum density requirements, as described above, this criterion will be 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, because they are either too small, unhealthy, a nuisance species, located partially off the property or located within 10 feet of an existing structure to remain on the property.

In this case, the plans show one 12-inch maple tree on the site, which the applicant notes is exempt from these regulations, since it is located within 10 feet of the existing house.

However, based on a site visit on August 12, 2010, several stumps indicated other trees had been growing on the site. Upon consultation with the Urban Forestry office, the Urban Forester visited the site and reported that 3 trees had been removed from the site, but the trees were nuisance species and did not require a permit for removal. Therefore, these standards do not apply, since all of the trees are exempt from these standards. Accordingly this criterion does not apply.

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

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

33.635.100 – Clearing and Grading

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

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

In this case the site is primarily flat, and is not located within the Potential Landslide Hazard Area. Therefore, no significant clearing or grading will be required on the site to make the new lots developable. In addition, there are no trees required to be preserved in the areas where new development on the site is anticipated. This criterion 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. As indicated above, the site is relatively flat and contains no known geological hazards. Therefore, there are no anticipated land suitability issues and the new lots can be considered suitable for new development. 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.**
- 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: No tracts are proposed or required for this land division, so criterion A does not apply.

The following easement is proposed and/or required for this land division:

- A Private Sanitary Sewer Easement is required across the relevant portions of Parcel 1, for a sanitary sewer lateral connection that will serve Parcel 2.

As outlined in the findings for Criterion L, Services and Utilities, below, this easement is needed to provide the required sanitary sewer service for the proposed parcel.

As stated in Section 33.636.100 of the Zoning Code, a maintenance agreement(s) will be required describing maintenance responsibilities for the easement described above and facilities within that area. This criterion can be met with the condition that a maintenance agreement(s) is prepared and recorded with the final plat. In addition, the plat must reference the recorded maintenance agreement(s) with a recording block, 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 has approximately 100 feet of frontage on E Burnside Street, which is classified as a Neighborhood Collector, Regional Transitway/Major Transit Priority Street, City Bikeway, City Walkway, and a Community Corridor, in the Transportation Element of the Comprehensive Plan.

Tri-Met provides transit service directly in front of the site via the MAX blue line. MAX stations are located approximately 2,000 feet to the west at 122nd Avenue, and approximately 5,000 feet to the east at 148th Avenue.

Parking is not currently allowed on either side of the street. There is currently one driveway entering the site that provides access to off-street parking for the existing house.

E Burnside Street is fully improved with a paved roadway, curbs, planting strips, and sidewalks, as well as light rail lines. 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 this case Portland Transportation has determined that curb and sidewalk improvements must be made in order to ensure that safe pedestrian travel is possible within the proposed development. To accommodate these improvements, as well as any associated stormwater facility discussed later in this report, additional right-of-way must be dedicated along the frontage of the site. With those improvements, Portland Transportation finds one or two additional dwelling can be safely served by this existing street without having any significant impact on the level of service provided.

With conditions that the right-of-way dedication must be shown on the final plat, and the required curb and sidewalk improvements must be made along Parcel 1, prior to final plat, and along Parcel 2, prior to building permit issuance, this criterion will be met.

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

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

Water: The water standards of 33.651 have been verified. An existing 6-inch water main is available in E Burnside Street. Parcel 1 has an existing water service from that main. A new service will be required for Parcel 2, and will involve crossing the light rail tracks. Standard service costs will not apply to services crossing the light rail tracks. See Exhibit E-3 for more details.

Sanitary Sewer: The sanitary sewer standards of 33.652 have been verified. There is a public 8-inch concrete sanitary-only sewer located in E Burnside that can serve the sanitary needs of the proposed parcels. Parcel 1 has an existing sewer service from that main. A new service lateral must be constructed to serve proposed Parcel 2. A wye off of the existing sanitary lateral will be allowed, but the current configuration shown (with the wye located on private property) is not allowed – the wye must be in the public right-of-way at the curb. However, the proposed 10-foot wide private sewer easement can accommodate an acceptable sewer configuration. If an easement is provided, a Maintenance Agreement for the easement must be submitted for approval by BDS and the City Attorney and must be recorded with the Final Plat. At the time of building permit, a sanitary connection must be provided to the satisfaction of the Bureau of Environmental Services. See Exhibit E-1 for more details.

Stormwater: 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.

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, and the Bureaus have responded as follows (Exhibits E-1 and E-5):

- **Public Street Improvements:** As a condition of this land use approval, Portland Transportation requires the applicant to improve the frontage of the site to City standards (discussed earlier in this report). A new sidewalk is required, but the curb already exists. BES notes that constructing the sidewalk so that it slopes toward a vegetated area and/or planting street trees may be a viable alternative to constructing stormwater management facilities, and will be reviewed with the public works permit.
- **Parcel 1 (with the existing house):** BES notes that the stormwater system for the existing house is shown as downspouts directed to splash blocks. BES has no objection to the system shown; however, additional information may be required at the time of building permit review.
- **Parcel 2:** The applicant submitted Simplified infiltration test results that indicate onsite stormwater infiltration will be acceptable. At time of building permit review, a stormwater management facility must be provided to the satisfaction of BES.

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

Right of Way Approval Criteria

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

Code Section	Topic	Applicability Findings
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	Applicable - See findings below.
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.
33.654.130.E	Ownership of Alleys	Not applicable- No alleys 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: As noted in the response from Portland Transportation, no street connections have been identified in the vicinity of this property in the Portland Master Street Plan document. The 530-ft spacing goal for public through streets and the 330-ft spacing goal for pedestrian connections is not satisfied on the subject block. However, given the size of the subject site, the configuration and orientation of surrounding lots and the existing lot and development patterns, providing any connections through the subject site is not feasible. Portland Transportation has no concerns relative to connectivity or locations of rights-of-way associates with the proposed land division partition.

No pedestrian connections are required on the site; however, the reconstructed sidewalk along the E Burnside Street frontage will provide a straight-line connection to neighboring streets and crosswalks. Given these factors, this criterion is met.

33.654.120.C.1 Approval criterion for width of the right-of-way. The width of the local street right-of-way must be sufficient to accommodate expected users, taking into consideration the characteristics of the site and vicinity, such as the existing street and pedestrian system improvements, existing structures, and natural features.

Findings: As noted in the response from Portland Transportation, a 3-foot dedication must be provided to ensure sufficient right-of-way width for the pedestrian corridor along the E Burnside frontage. With the condition noted above, requiring the dedication be provided prior to final plat, this criterion will be 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, the only

easement shown is for the private sanitary sewer easement, as discussed in Criterion L above; and no other utility easements have been identified as being necessary, or required by this criterion. As such, 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.

Alternative Development Options: Section 33.120.270.D of the Zoning Code allows reduced side setbacks (3-feet from property lines) for detached houses in the multi-dwelling zones on lots that are at least 25 feet wide. This allowance only applies to the setbacks that are interior to the site. The setbacks around the perimeter of the land division site are that of the base zone. This proposal is eligible to use these provisions. **To take advantage of this allowance the reduced side setbacks must be shown on a supplemental survey for the land division at the time of final plat approval.**

Design Overlay and East Corridor Plan District: As noted in the Zoning section above, any new development or changes to the existing development must comply with the design regulations in Chapter 44.420 and the applicable provisions of the plan district, Chapter 33.521.

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 R2ad zone. Per 33.700.015, if a proposed land division will cause conforming development to move out of conformance with any regulation of the zoning code, and if the regulation may be adjusted, the land division request must include a request for an adjustment (Please see section on Other Technical Standards for Building Code standards.)

In this case, the following Zoning Code standard relates 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. As shown on the preliminary plan, the existing single-story house will be 5 feet from the new property line, which meets the R2 setback when the plane of the building wall is 1,000 square feet or less. To ensure this standard continues to be met at the final plat stage, the final plat must be accompanied by a supplemental survey showing the location of the existing building relative to the adjacent new lot lines.

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

OTHER TECHNICAL REQUIREMENTS

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

Bureau	Code Authority	Topic	Contact Information
Water Works	Title 21	Water availability	503-823-7404 http://www.water.ci.portland.or.us/
Environmental Services	Title 17; 2008 Stormwater Manual	Sewer availability Stormwater Management	503-823-7740 http://www.bes.ci.portland.or.us/
Fire Bureau	Title 31 Policy B-1	Emergency Access	503-823-3700 http://www.fire.ci.portland.or.us/
Transportation	Title 17, Transportation System Plan	Design of public street	503-823-5185 http://www.trans.ci.portland.or.us/
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 http://www.bds.ci.portland.or.us.

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 adequate hydrant flow from the nearest fire hydrant; fire hydrant spacing or installing a new hydrant; and aerial fire department access roads. These requirements are based on the technical standards of Title 31 and Fire Bureau Policy B-1.
- The applicant must meet the requirements of Urban Forestry for street tree planting adjacent to Parcel 1 prior to final plat approval. This requirement is based on the standards of Title 20.

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:

- Right-of-way dedication and improvements
- Sanitary sewer easement and maintenance agreement
- Fire hydrant flow and location and aerial access roads
- Street trees
- Supplemental Plan

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 one parcel for a detached house or duplex and one parcel for duplex or multi-dwelling development 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 for review and approval. 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 interior side setbacks for all of the lots if the reduced setback provisions of Section 33.120.270.D.1 are intended to be used (only allowed for detached houses).
- Any other information specifically noted in the conditions listed below.

B. The final plat must show the following:

1. The applicant shall meet the street dedication requirements of the City Engineer for E Burnside Street. The required right-of-way dedication must be shown on the final plat.
2. A Private Sanitary Sewer Easement, for the benefit of Parcel 2, shall be shown and labeled over the relevant portions of Parcel 1.
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.4 below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: "A Declaration of Maintenance Agreement for (name of feature) has been recorded as document no. _____, Multnomah County Deed Records."

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

Streets

1. The applicant shall meet the requirements of the City Engineer for right of way improvements along the frontage of E Burnside Street. The applicant must obtain an approved Right Of Way permit from the Bureau of Transportation Engineering and Development Review to reconstruct the sidewalk. The improvements along the frontage of Parcel 1, where the existing house will be retained, must be constructed prior to final plat approval. The improvements along the frontage of the Parcel 2 must be constructed prior to issuance of a building permit for a new residence on that parcel.

Utilities

2. The applicant shall meet the requirements of the Fire Bureau for ensuring adequate hydrant spacing and flow from the nearest hydrant or obtain an approved Fire Bureau appeal to this requirement. If a new hydrant is required by the Fire Bureau, the applicant shall meet the requirements of the Fire Bureau for installing a new fire hydrant. The applicant must contact the Water Bureau to purchase the hydrant. Verification of the purchase must be provided to the Fire Bureau before Final Plat approval.

Existing Development

3. The applicant must plant street tree(s) along E Burnside Street adjacent to Parcel 1. Tree size requirements for residential sites are to be 2-inch caliper. The applicant must contact Urban Forestry at 503-823-4018 prior to selecting trees to discuss the species of trees that are permitted and to obtain the planting permit. Urban Forestry must inspect and approve the newly planted trees prior to final plat approval.

Required Legal Documents

4. A Maintenance Agreement shall be executed for the Private Sanitary Sewer Easement area described in Condition 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.
5. If the Fire Bureau requires an Acknowledgement of Special Land Use Conditions form, the applicant shall execute an Acknowledgement of Special Land Use conditions to the

satisfaction of the Fire Bureau. The acknowledgement shall be recorded with Multnomah County, and referenced on the final plat.

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

1. The minimum and maximum density for the lots in this land division are as follows:

Parcel	Minimum Density	Maximum Density
1	2	2
2	1	2

2. The applicant must provide a fire accessway to the satisfaction of the Fire Bureau or the height of the new structures shall be limited to 30 feet, measured to the gutter line.
3. The applicant shall meet the requirements of the City Engineer for right of way improvements along the frontage of E Burnside Street. The applicant must obtain an approved right of way permit from the Bureau of Transportation Engineering and Development Review to reconstruct the sidewalk. The improvements along the frontage of the Parcel 2 must be constructed prior to issuance of a building permit for a new residence on that parcel.

Staff Planner: Kate Green

Decision rendered by: Michael Nayak **on September 14, 2010**
By authority of the Director of the Bureau of Development Services

Decision mailed September 17, 2010

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 2, 2010, and was determined to be complete on July 1, 2010.

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 2, 2010.

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 waived the 120-day review period, as stated with Exhibit G.4. Based on the applicant's full extension of the review period, **the 120 days will expire on: February 1, 2010.**

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

Conditions of Approval. If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project

elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

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

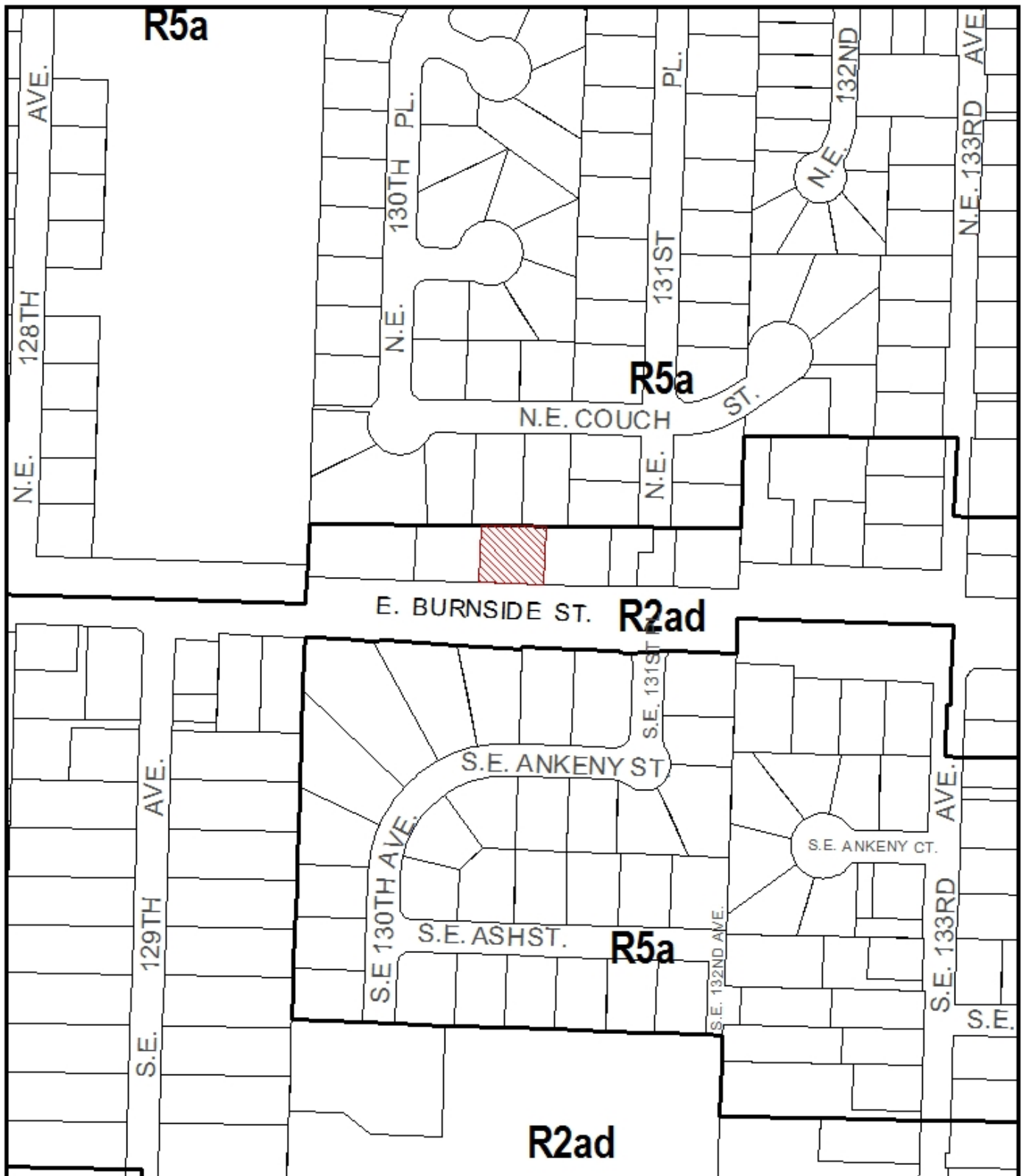
This decision, and any conditions associated with it, is final. It may be appealed to the Oregon Land Use Board of Appeals (LUBA), within 21 days of the date the decision is mailed, as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that a petitioner at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

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, 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.portlandonline.com.

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

EXHIBITS (NOT ATTACHED UNLESS INDICATED)

- A. Applicant’s Statement
 - 1. Supplemental Narrative, Stormwater Form
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Revised Preliminary Plan-July 10, 2010 (reduced copy attached, full size copy in file)
 - 2. Preliminary Plat -June 1, 2010
 - 3. Initial Submittal
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Portland Transportation
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Bureau of Parks, Forestry Division
- F. Correspondence: (none received)
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research
 - 3. Letter to applicant re: incomplete application
 - 4. 120-day review extension
 - 5. Email from applicant re: density
 - 6. Site Photo



ZONING



This site lies within the:
EAST CORRIDOR PLAN DISTRICT

File No.	<u>LU 10-108512 LDP</u>
1/4 Section	<u>3043</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1N2E35CA 13000</u>
Exhibit	<u>B</u> (Feb 03,2010)

