



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

FROM CONCEPT TO CONSTRUCTION

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Date: May 26, 2016
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NOTICE OF A REVISED TYPE IX DECISION
ON A PROPOSAL IN YOUR NEIGHBORHOOD

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

CASE FILE NUMBER: LU 14-103851 LDP

Applicant: Mike Coyle / Faster Permits
14334 NW Eagleridge Lane / Portland OR 97229

Property Owner: Gerry Engler / Sage Equities
2075 SW First Avenue, Suite E / Portland OR 97201

Representative: Christopher P Koback / Hathaway Koback Connors LLP
520 SW Yamhill Street, Suite 235 / Portland OR 97204

Site Address: 6515 SE 78TH AVENUE
Legal Description: BLOCK 3 LOT 3, WESTON
Tax Account No.: R899500290
State ID No.: 1S2E20AA 13000
Quarter Section: 3738
Neighborhood: Brentwood-Darlington / David Messenheimer / trimess@hotmail.com
Business District: Eighty-Second Ave of Roses Business Association / Richard Kiely / 503-504-2273.

District Coalition: Southeast Uplift / Leah Fisher / 503-232-0010
Zoning: Single Dwelling Residential 2,500 (R2.5)
Alternative Design Density (a) overlay

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

Proposal: The applicant requests a **Land Division-Partition** in order to divide an approximately 5,368 square foot property into 2 parcels. A 6-foot wide right-of-way dedication is to be provided along the site's frontage for street improvements. Each parcel is proposed to be 25 feet wide and approximately 101 feet in depth.

The existing house, garage, and outbuildings are proposed to be removed.

Sanitary and water services are proposed to be provided via existing public lines in SE 78th Avenue. Individual drywells are proposed on each parcel to provide stormwater management.

This partition is reviewed through a Type Ix 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 (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). ORS 92.010 defines “parcel” as a single unit of land created by a partition of land. The applicant’s proposal is to create 2 units of land (2 parcels). Therefore, this land division is considered a partition.

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

FACTS

Site and Vicinity: The subject site is a relatively flat 5,368 square foot lot. It is presently developed with a single story house and detached garage/carport and outbuilding. All existing buildings are proposed to be removed, as they cross over the proposed new lot line (as shown on Exhibit H.13).

The nearby properties within 500 feet to the north, west, and south are within the same R2.5 zone as the site or in another lower density single dwelling residential zone (R5). Most of these lots are 50 feet in width and most are developed with single or two-story detached houses or duplexes. The property directly east of the site is also in the R2.5 zone and it is developed with the Woodmere Elementary School. East of the school site, across SE 80th Avenue, the zoning changes to a higher density multi-dwelling zone (R1) that extends to a commercial corridor along SE 82nd Avenue.

Infrastructure:

Streets – The site has approximately 50 feet of frontage on SE 78th Avenue. There is one driveway entering the site that serves the existing house.

At this location, SE 78th Avenue is classified as a *Local Service Street* in the *Transportation System Plan* (TSP). SE 78th Avenue is improved with a 22-foot wide center-strip pavement within a 50-foot wide right-of-way, with parking on both sides. There are no curbs or sidewalks.

Tri-Met provides transit service approximately 100 feet north of the site along SE Duke Street via Bus Line 19, and approximately 1,000 feet to the east of the site along SE 82nd Avenue via Bus Line 72.

Water Service – There is an existing 11-inch CI water main in SE 78th Avenue. The existing house is served by a 5/8-inch metered service from this main (Serial #21000682, Account #2953735200). The existing service may potentially be used as is to provide water to the proposed new house on the proposed Parcel 2. A new service connection will be required for proposed Parcel 1.

Sanitary Service - There is an existing 8-inch PVC public sanitary-only sewer located in SE 78th that can serve the sanitary disposal needs of this project (BES project #4988).

Zoning: The site is located in a **Single Dwelling Residential 2,500 (R2.5)** zone. *Single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households.*

The site also has an **Alternative Design Density (a)** overlay designation. *The purpose of the Alternative Design Density Overlay Zone is 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 applicant has not elected to use the provisions of the a-overlay.

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

Agency Review: Several Bureaus have responded to this proposal and relevant comments are addressed under the applicable approval criteria. Exhibits “E” contain the complete responses.

Neighborhood Review: An initial *Notice of Proposal in Your Neighborhood* was mailed on **February 18, 2015**. One written response was received in response to the initial notice, which noted concerns about the scale of the proposed development. There is some discussion of the general scale of the development in the findings regarding narrow lots in PCC 33.660.120, Criterion A, below. Otherwise, generally at the time of building permit review, future development must meet the development standards in the R2.5 zone.

Procedural History: The City issued a denial of the proposed land division on June 1, 2015. The record of that decision is included in the record for this revised decision. The City’s initial decision on the proposed land division was appealed to the Land Use Board of Appeals (LUBA).

LUBA remanded the proposal to the City, so the City could reevaluate and further address the issues related to weighing and balancing the lot dimension provisions; allowing the applicant time to respond to the tree preservation regulations; and explaining city staff findings regarding the shared driveway and related easement.

The following timeline explains the events that occurred during the remand process:
October 27, 2015: The applicant requested the city proceed with an evaluation of the proposal upon remand.

November 6, 2015: The city issued a notice regarding the remand from LUBA, which identified the issues that were to be addressed in the City’s revised decision. No comments were received by the neighbors or neighborhood groups, in response to this notice.

The applicant provided the following materials:

- November 30, 2015: Engler email/memo with updated narrative and tree report and plan. (Exhibit H.6)
- January 1, 2016: Engler email/memo regarding plan and narrative corrections, responses to code criteria, and opinion regarding review process. (Exhibit H.8)
- January 4, 2016: Koback email/memo regarding on-site parking and transportation impacts. (Exhibit H.9)
- January 7, 2016: Engler email/memo response to city staff email regarding tree preservation information. (Exhibit H.10)

The City issued a revised decision on January 25, 2016 approving with conditions the applicant’s proposal.

The applicant subsequently appealed the revised decision to LUBA. The City then withdrew the revised decision for reconsideration on March 3, 2016.

This decision is the City’s revised decision upon reconsideration of this proposal.

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.

Due to the specific location of this site, and the nature of the proposal, some of the criteria are not applicable. The following table summarizes the criteria that are not applicable. Applicable criteria are addressed below the table.

Criterion	Code Chapter/Section and Topic	Findings: Not applicable because:
C	33.631 - Flood Hazard Area	The site is not within the flood hazard area.
D	33.632 - Potential Landslide Hazard Area	The site is not within the potential landslide hazard area.
E	33.633 - Phased Land Division or Staged Final Plat	A phased land division or staged final plat has not been proposed.
F	33.634 - Recreation Area	The proposed density is less than 40 units.
I	33.639 - Solar Access	The proposed parcels are both interior lots and the solar access standards express no preference that one be wider or narrower than the other.
J	33.640 - Streams, Springs, and Seeps	No streams, springs, or seeps are evident on the site outside of environmental zones.
L	33.654.110.B.2 - Dead end streets	No dead end streets are proposed.
	33.654.110.B.3 - Pedestrian connections in the I zones	The site is not located within an I zone.
	33.654.110.B.4 - Alleys in all zones	No alleys are proposed or required.
	33.654.120.C.3.c - Turnarounds	No turnarounds are proposed or required.
	33.654.120.D - Common Greens	No common greens are proposed or required.
	33.654.120.E - Pedestrian Connections	No pedestrian connections are proposed or required.
	33.654.120.F - Alleys	No alleys are proposed or required.
	33.654.120.G - Shared Courts	No shared courts are proposed or required.
	33.654.130.B - Existing public dead-end streets and pedestrian connections	No public dead-end streets or pedestrian connections exist that must be extended onto the site.
	33.654.130.C - Future extension of dead-end streets and pedestrian connections	No dead-end street or pedestrian connections are proposed or required.
	33.654.130.D - Partial rights-of-way	No partial streets are proposed or required.

Applicable Approval Criteria are:

The applicable approval criteria are set out below. PCC 33.660.120.A, Lots, requires application of several related code sections. PCC 33.660.120.A is addressed in pages 4 through 11 and first applies PCC 33.611.200.C.2 (Minimum Lot Width-Narrow Lots). Additionally, PCC 33.611.200.C.2.a requires application of PCC 33.611.200.A (Purpose-Lot Dimension Regulations), which is discussed on pages 5 to 11. Finally, PCC 33.611.200.A requires application of the purpose of the chapter, PCC 33.611.010 (Purpose-Lots in the R2.5 Zone) on pages 7 to 9.

After evaluating the codes applicable to PCC 33.660.120, Criterion A, Lots, staff return to the evaluation of the remainder of the applicable approval criteria in PCC 33.660.120 on pages 11 to 20.

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

Findings: Chapter 33.611 contains the density and lot dimension requirements applicable in the R2.5 zone. Minimum density is one unit per 5,000 square feet based on 80 percent of the site area. The maximum density is one unit per 2,500 square feet.

The overall site area is shown as 5,368 square feet, so the site has a minimum required density of 1 unit and a maximum density of 2 units.

The applicant is proposing 2 single dwelling parcels, which is within the allowed density provisions.

The required and proposed lot dimensions are shown in the following table:

	Min. Lot Area (square feet)	Max. Lot Area (square feet)	Min. Lot Width* (feet)	Min. Depth (feet)	Min. Front Lot Line (feet)
R2.5 Zone	1,600	NA	36	40	30
Parcel 1	2,534**		25	101	25
Parcel 2	2,534**		25	101	25

* Width is measured by placing a rectangle along the minimum front building setback line specified for the zone. The rectangle must have a minimum depth of 40 feet, or extend to the rear of the property line, whichever is less.

**The project plans continue to show each parcel as 2,684 square feet in size, which does not account for the dedication in site area required for the right-of-way dedication.

As shown in the table above, each of the proposed parcels is narrower than the minimum width required for the R2.5 zone. The Zoning Code allows narrower lots (referred to hereout as “narrow lots”) if the proposal can meet the regulations of PCC 33.611.200.C.2, or if the proposal is approved through a Planned Development Review, per PCC 33.665.

In this case, the applicant proposes to meet the regulations of PCC 33.611.200.C.2, which are discussed below, and did not request evaluation of the proposal through a Planned Development Review.

Narrow Lots

33.611.200.C.2. Minimum lot width may be reduced below 36 feet, if all of the following are met:

- a. On balance, the proposed lots will have dimensions that are consistent with the purpose of this section;

The purpose of the Lot Dimension Regulations is outlined below. For ease of discussion, city staff have assigned a number to each of the nine items listed in the purpose statement:

This regulation calls for an evaluation of each of these factors to determine if the dimensions of the parcels will be consistent with the purpose of this section, *on balance*. The code does not assign any specific weight to any of these factors. In the findings and discussion below, city staff first considers each factor individually and then assesses the relative weight to these factors.

33.611.200.A. Purpose. The lot dimension regulations ensure that:

- 1. Each lot has enough room for a reasonably-sized attached or detached house;

To demonstrate that the proposed parcels have enough room for a reasonably-sized house, the applicant submitted a proposed improvement map (Exhibit C.1, labeled Preliminary Plat), as required by PCC 33.730.060.D, Application Requirements. The applicant’s map shows a 15-foot wide by 56-foot deep detached house on each of the proposed 25-foot wide parcels, and the applicant’s narrative indicates there are comparably sized 15-foot wide houses on 25-foot wide lots in numerous locations in Portland. Staff concurs with the applicant that there are many examples of houses and lots of this size throughout the city.

Additionally, the proposed improvement map demonstrates that the proposed parcels could meet the minimum setback, maximum building coverage and required outdoor area standards for the R2.5 zone as shown in the table below:

Standard	R2.5	Proposal
	detached attached See 33.110.240.C	The proposed improvement map shows the same lot size and development concept for each parcel

Minimum Setbacks - Front building setback	10 ft.	10 ft.	10 ft.
- Side building setback	5 ft.	0/5 ft	5 ft.
- Rear building setback	5 ft.	5 ft.	35 ft.
- Garage entrance setback (See 33.110.220)	18 ft.	18 ft.	no garage is proposed
Maximum Building Coverage -Less than 3,000 sq. ft. lot (33.110.225/Table 110-4)	50%	50%	Lot size = 2,534 sq. ft. Allowable Building Coverage = 1,267 sq. ft. Proposed Building Coverage = 840 sq. ft.
Required Outdoor Area - Minimum area	250 sq. ft.	200 sq. ft.	322 sq. ft.
- Minimum dimension (See 33.110.235)	12 ft. x 12 ft.	10 ft. x 10 ft.	14 ft. x 23 ft.

Based on the table above, the proposed improvement map demonstrates that a 25-foot wide parcel has enough room for a 15-foot wide detached house.

Likewise, based on the applicant's proposed improvement map, it appears that at 25-feet in width each parcel also has enough room to accommodate a 20-foot wide attached house, which is another housing type that would be allowable at the time of development.

The applicant's proposed improvement map also shows an on-site parking space on each parcel that meets the minimum parking space requirements of PCC 33.266.120.D, and the applicant has indicated that on-site parking is a fundamental component of a reasonably-sized house. However, as discussed in more detail in PCC 33.611.200.C.2.d, below, on-site parking is not required on this site, given the proximity of transit with the required peak house service via TriMet Bus Line #19 (33.266.110.D). So, the applicant could remove the parking from the proposal, without compromising (and, in fact, affording more) room for allowed development on each parcel.

Further, as discussed in PCC 33.660.120.B, Trees, below, the on-site parking is proposed in the same location as a regulated tree, which is required to be preserved. And, as discussed in PCC 33.660.120.B, Trees, below, measures can be implemented to preserve the regulated tree and retain sufficient room for houses that are the same or a similar size to those shown on the applicant's proposed improvement map.

In addition, except for the requirement to preserve the regulated tree, there are no other constraints, such as steep slopes, streams, or other physical features that could reduce the amount of room available for a house on either parcel or otherwise limit the location or placement of structures on the proposed parcels.

Further, as noted in PCC 33.611.200.C.2.d, below, staff have provided examples that show that the proposed parcels have enough room for a variety of house sizes, which are comparable to those presented by the applicant, and which show the proposed parcels have enough room to also preserve the regulated tree, provide on-site parking and meet the development standards noted above.

Based on these factors, staff find each proposed 25-foot wide parcel has enough room to accommodate a reasonably-sized detached or attached house.

It should be noted, however, that this land division review is not approving or requiring construction of any development shown on applicant's proposed improvement map or the examples presented by staff, in PCC 33.611.200.C.2.d, below. The proposed improvement map is evaluated only to determine whether the lots can accommodate a

reasonably-sized house (and associated services, such as stormwater and sewer, addressed in PCC 33.660.120.L, Services and Utilities, below).

2. *Lots are of a size and shape that development on each lot can meet the development standards of the R2.5 zone;*

At 25 feet in width and 101 feet in length, the size and shape of the proposed parcels are uniform and will not pose constraints that would preclude development that could meet the development standards of the R2.5 zone.

3. *Lots are not so large that they seem to be able to be further divided to exceed the maximum allowed density of the site in the future;*

Each parcel is proposed to be 2,534 square feet in area. Neither parcel is large enough to be further divided to exceed the maximum allowed density for the site, which is 2 parcels.

4. *Each lot has room for at least a small, private outdoor area;*

In the R2.5 zone, a minimum 250 square foot outdoor area, which can fit a 12-foot x 12-foot box, must be provided for each residence, per PCC 33.110.235. The applicant's proposed improvement map does not show an area specifically designated as a private outdoor area on either parcel. However, based on measurements using the scale shown on the map, it appears there is sufficient space to provide this minimum outdoor area in the rear of each parcel. City staff finds this space should afford at least a small private outdoor area for each parcel consistent with the R2.5 zone development standard.

5. *Lots are wide enough to allow development to orient toward the street;*

Each parcel is proposed to be 25 feet wide and will have 25 feet of frontage along the abutting street, SE 78th Avenue. This is a sufficient width to allow development on each parcel to orient toward the street.

6. *Each lot has access for utilities and services;*

The applicant has provided a preliminary utility plan that demonstrates that each parcel has access for utilities and services.

7. *Lots are not landlocked;*

Each parcel is proposed to have 25-feet of frontage on SE 78th Avenue, so neither parcel is landlocked.

8. *Lots don't narrow to an unworkable width close to the street; and*

Each parcel has 25-feet of frontage along SE 78th Avenue, which should be sufficient to provide a reasonably sized house and utilities, as noted above. The lots do not narrow to an unworkable width near the street.

9. *Lots are compatible with existing lots while also considering the purpose of this chapter.*

The purpose of this chapter is as follows:

33.611.010 Purpose

This chapter contains the density and lot dimension requirements for approval of a Preliminary Plan for a land division in the R2.5 zone. These requirements ensure that lots are consistent with the desired character of the zone while allowing lots to

vary in size and shape provided the planned intensity of the zone is respected. This chapter works in conjunction with other chapters of this Title to ensure that land divisions create lots that can support appropriate structures in accordance with the planned intensity of the R2.5 zone.

The Zoning Code defines *Desired Character* (PCC 33.910) as the preferred or envisioned character of an area based on the purpose of the base zone (and other applicable overlay or plan district provisions), as well as any adopted area plan or applicable design guidelines.

Generally, the area considered for this evaluation includes the surrounding R2.5 zoned properties within an approximately 500 foot (2-block) radius. As shown on the Zoning Map, the nearby lots in the R2.5 zone are predominately regularly shaped and most are at least 30 feet to 50 feet in width. As noted during a site visit on January 23, 2014, most of the nearby properties are developed with single or two-story detached houses or duplexes.

The *Comprehensive Plan* describes the R2.5 zone as attached residential and allows a mixture of housing types for areas with complete public services and without development constraint. The neighborhood plans, including *Policy 4: Housing* (page 45, *Brentwood Darlington Neighborhood Plan-1992*) and *Housing Policy* (page 49, *Outer Southeast Community Plan-1996*), promote maintaining and improving existing housing and providing opportunities for new housing development.

To address compatibility with the existing lots, the applicant provided a map and real estate listings of lots in the R2.5 zone and the R1 zone (a medium density multi-dwelling zone) that are within 800 feet of the subject site (Exhibit A.5). The applicant also included references to land use cases for narrow lots within approximately 1,500 feet of the subject site. The applicant notes that the real estate listings were selected based on site area (less than 2,999 square feet) and width (less than 36 feet wide). The applicant's inventory shows the overall size of some nearby lots, but it does not provide information about the width of those lots or the scale of development on those properties. The applicant acknowledges that the information in the real estate listings was not verified and may have errors.

The applicant also provided a proposed improvement map and building elevations for development on the proposed parcels (Exhibits C.1, C.5). The development on the parcels is proposed to consist of 15-foot wide, two-story detached houses that are set back from the front lot line 10 feet. Each house is shown to have a single-story front porch. Each parcel is proposed to have parking in the rear yard via a shared driveway. The building elevations also show the structures will have hip roofs, horizontal siding, and trim.

However, this application is to consider the applicant's proposal to divide the subject site into two parcels and that is all the City is evaluating here. None of the applicable land division criteria require construction of the homes or parking areas shown on the applicant's proposed improvement map.

While the size of the proposed parcels is a departure from the form of other existing lots and the scale of detached single family development on those properties, as noted previously, the proposed parcels are of a sufficient size to support the development of two detached houses, as shown on the applicant's proposed improvement map and as shown in examples presented by staff below (Options 1 and 2). The proposed parcels are also of a sufficient size to support the development of two attached houses consistent with the R2.5 development standards, and this scale of development would be comparable with other attached duplex development in the surrounding area. The proposed land division would allow for either of these future development scenarios.

As such, the proposed parcels will provide opportunities for new housing, which is compatible with the noted policies of the neighborhood plans. Hence, the proposal is consistent with the purpose of and the intended density in the R2.5 zone.

City staff find that each of the factors in the purpose statement is met, so no balancing is necessary in this case. For the reasons stated above, regulation “a” is met.

b. The minimum width for lots that will be developed with detached houses may not be reduced below 25 feet;

The parcels are 25 feet wide, so this regulation is met.

c. If the lot abuts a public alley, then vehicle access must be from the alley. This requirement will be imposed as a condition of approval of the land division;

The site does not abut a public alley, so this regulation does not apply.

d. Lots must be configured so that development on the site will be able to meet the garage limitation standard of Subsection 33.110.253.E, at the time of development;

Garages are not proposed and attached garages would not be allowed unless a Planned Development review was requested. The garage limitations outlined in PCC 33.110.253.E do not allow a garage on a façade that is less than 22 feet wide on a newly created narrow lot. The parcels are proposed to be 25 feet wide, narrow lots. With 5-foot wide side building setbacks, a detached residence could be no more than 15 feet wide and attached houses could be no more than 20 feet wide, so a garage would not be allowed on the front façade of the proposed residences.

Therefore, this regulation can be met by 1) demonstrating that parking can be accommodated in a manner that does not include a garage within the front façade of the house and complies with parking standards or 2) not providing on-site parking, which is possible in this case because on-site parking is not required (see the findings in PCC 33.611.200.C.2.f, below).

The applicant has indicated that they wish to provide on-site vehicle access and parking, as shown in the proposed improvement map (Exhibit C.1). However, the parking is located at the rear of the lots where it conflicts with preservation of the one regulated tree on the site (see discussion under PCC 33.660.120.B, Trees, below).

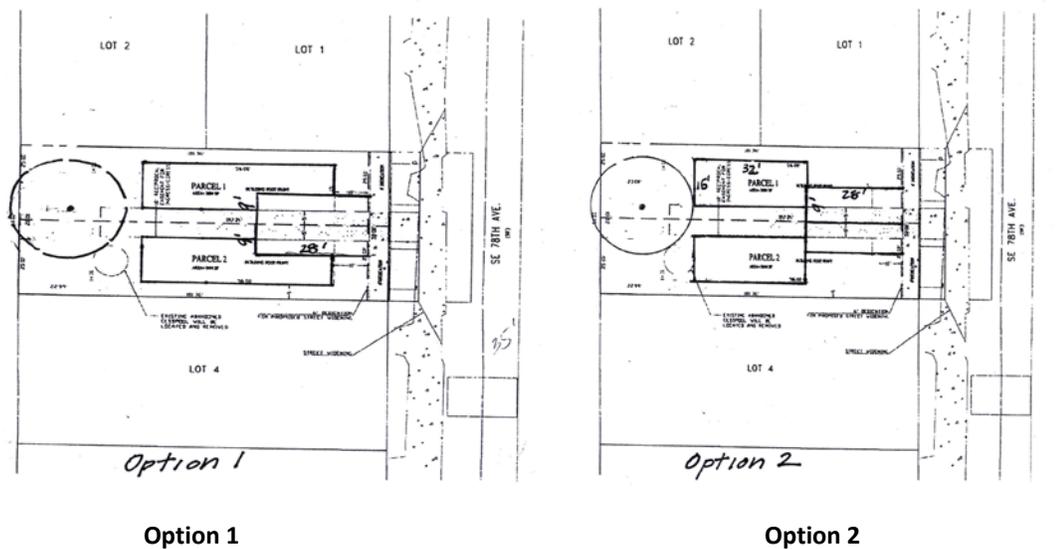
As noted above, this land division application is to consider if the applicant’s property can be divided into two parcels and that is all the City is evaluating here. Neither the regulations for narrow lots (PCC 33.611.200.C.2) nor the other evaluation factors for PCC 33.660.120.A, Lots, nor this decision requires the City to approve any particular structures. Nor does this decision require construction of the homes or parking shown on the applicant’s proposed improvement map.

There are other feasible options to develop the lots with parking at the front of the parcels. Homes can be notched along their front facades to provide a parking pad (see Option 1, below) or homes could be set back further into the parcel (see Option 2, below). The conceptual home dimensions and locations represented on the proposed improvements map (Exhibit C.1) are not approved through this land division review. The building footprints are conceptual only and have been evaluated only in regard to the narrow lot provisions (discussed throughout these findings for PCC 33.660.120.A, Lots) and the feasibility of services (discussed in PCC 33.660.120.L, Services and Utilities, below).

What is permitted in the future as new single family dwellings will not necessarily have the same dimensions or be in the same locations as the conceptual building envelopes and parking locations shown on applicant’s proposed improvements map. The applicant

could propose and construct attached or detached homes on these lots at the time of building permit application.

Below are representations of how these two options for on-site parking at the front of the lots could be achieved. The example on the left (Option 1/Exhibit I.2) shows a 4-foot notch in the front of the houses to allow the minimum required parking space of 9 feet by 18 feet to be located outside the 10-foot front setback, resulting in a 9-foot by 28-foot paved area on each lot. Option 1 reduces the size of the houses proposed by applicant by 72 square feet (4-feet by 18-feet) and this square footage (or more) could be replaced by extending the length of the house toward the back of the parcel. The example on the right (Option 2/Exhibit I.3) shows the homes pushed back on the lot to provide the 9-foot by 28-foot paved area for parking in front of the houses. These house dimensions are smaller than what the applicant shows on his proposed improvement map, but, like Option 1, additional square footage could be added, in this instance, toward the front of the parcels. Each of these options shows how a house of comparable size to that shown on the applicant's proposed improvement map could fit on the proposed 25-foot wide parcels. Each of these options also retain the regulated tree and provided on-site parking.



In addition, as described under PCC 33.660.120.B, Trees, below, there are other options that would allow the parking dimensions to be reduced, so the development could be located further from the regulated tree; or alternatively, would allow for minor encroachments into the root protection zone of the regulated tree so the development could be placed slightly closer to the tree. These options provide additional flexibility for the size and placement of the houses and parking areas.

These options show that it is feasible to provide parking on the site without a garage. These options also allow for a shared curbcut, which would help to retain on-street parking, as discussed in PCC 33.660.120.K, Transportation Impacts, below. However, as noted previously, no specific building envelopes or parking layouts are being approved through this preliminary land division review. The applicant also has the option to provide no on-site parking, per PCC 33.266.110.D.

Therefore, the garage limitation standard of PCC 33.110.253.E can be met and this regulation is satisfied.

- e. Lots that will be developed with attached houses must be configured so that 60 percent of the area between the front lot line and the front building line can be landscaped at the time of development; and*

The applicant's proposed improvement map proposes a detached house on each parcel. If that is what the applicant proposes at the time of building permit application, this standard is inapplicable. If the applicant proposes attached housing at the time of building permit application, the applicant will need to satisfy this standard (as carried out by PCC 33.110.240.C.2.d, attached houses). There is nothing about the size or shape of these parcels that precludes the applicant from complying with this standard and this regulation is satisfied.

f. In areas where parking is not required by this Title, lots may be proposed that will not accommodate onsite vehicle access and parking. Such lots do not have to meet the requirements of subparagraphs 2.c and d. As a condition of approval of the land division, the property owner must execute a covenant with the city.

Parking is not required at this location, due to the site's close proximity to transit service with the required peak house service via TriMet Bus Line #19 (PCC 33.266.110.D).

However, the applicant wishes to provide on-site parking and the proposed parcels can accommodate on-site vehicle access and parking as described under regulation "d" above. Therefore, a covenant is not required. The applicant may still choose not to provide on-site parking at the time of development.

Overall, based on the foregoing, Criterion A, Lots, is satisfied.

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.

33.630.100 Tree Preservation Standards

A. Existing trees must be preserved. The total tree diameter on the site is the total diameter of all trees on the site, minus the diameter of trees that are listed in Section 33.630.030, Exempt From These Regulations. The applicant must choose one of the following options. Significant trees are listed in Table 630-1:

- 1. Option 1: Preserve at least 35 percent of the total tree diameter on the site;*
- 2. Option 2: Preserve at least 50 percent of the significant trees on the site and at least 30 percent of the total tree diameter on the site;*
- 3. Option 3: Preserve at least 75 percent of the significant trees on the site and at least 25 percent of the total tree diameter on the site;*
- 4. Option 4: Preserve all of the significant trees on the site and at least 20 percent of the total tree diameter on the site; or*
- 5. Option 5: If the site is larger than one acre, preserve at least 35 percent of the total tree canopy area on the site.*

City staff considered the most recent arborist report (Exhibit H.6) that inventories the trees within the land division site and evaluates their condition.

The report indicates there are 6 trees on the site. All but one of these trees is identified as exempt from the requirements of this chapter. The 5 exempt trees include nuisance species (Trees 327 and 345) or trees that are diseased in a manner that threatens their continued viability (Trees 326, 342 and 343). Additionally, Trees 326 and 327 are located along the site frontage and will be within the area of the required right-of-way dedication, which will place them under the jurisdiction of Urban Forestry.

The one tree that is subject to the preservation regulations is Tree 344, a 14-inch diameter pine (*Pinus nigra*).

The arborist report notes that none of the preservation options can be satisfied, since the applicant's proposed development/tree preservation plan (Exhibit H.6.a) shows the removal of all the trees on the property, including the regulated tree. The arborist report includes information to address the mitigation requirements instead.

The mitigation option criteria are addressed below:

33.630.300 Mitigation Option

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

A. As many trees as possible are preserved; and

As shown on the *staff-modified* tree preservation plan (Exhibit H.13), the location of the one regulated tree coincides with the location of the on-site parking stalls shown on the applicant's proposed improvement map (Exhibit C.1). The applicant states that it is not possible to preserve the one regulated tree, since the tree is located where he proposes to install on-site parking for each parcel.

This site is within an area served by frequent transit and therefore there is no minimum parking required at this location per PCC 33.266.110.D. The one regulated tree is located near the rear of the proposed parcels outside of the conceptual building footprints. As described above under Criterion "a", there are also other development options allowed that could accommodate on-site parking at the front of the lots and maintain a similar building footprint. City staff find it is possible to retain the noted tree because parking is not required to be provided on site or parking can be provided at the front of the lots. In fact, one of the applicant's earliest plans, dated January 9, 2014 and labeled Tree Preservation Plan (Exhibit A.1), shows tree protection fencing around regulated Tree 344 (as well as exempt Tree 343).

Furthermore, the Tree Preservation chapter includes additional provisions that allow for modifications to site-related development standards (PCC 33.630.400) in order to afford greater protection for trees and better meet the tree preservation requirements. For instance, the applicant could have proposed parking in the front setback to accommodate a 9-foot by 18-foot parking pad rather than a 9-foot by 28-foot parking pad, through this modification provision (PCC 33.630.400). This is an additional criterion that would be addressed as part of the land division review had the applicant requested the modification.

Similarly, the PCC Title 11, Trees, provides options for an applicant to provide reduced root protection zones or other alternative tree preservation measures, in order to provide a different means to achieve a level of tree protection comparable to the standard root protection zone requirements, per PCC 60.030.C.2. Additionally, PCC 11.60.030.C.1 provides a prescriptive path which would allow development to encroach up to 25% of the total root protection zone provided the encroachment is no closer than ½ the required radius distance.

While the applicant did not request any such modifications, similar land division applications have requested such options to allow for alternative measures to protect regulated trees.

The inclusion of options for no parking (per PCC 33.266.110.D), or modifying the parking standards to better protect trees (per PCC 33.630.400), or allowing encroachment into the tree's root protection zone (per PCC 11.60.030.C.1 and PCC 11.60.030.C.2) demonstrates the city's recognition of the need for flexibility in accommodating and prioritizing the preservation of regulated trees.

The applicant has not demonstrated that as many trees as possible are preserved. This criterion is not met.

B. The applicant has submitted a mitigation plan that adequately mitigates for the loss of trees, and shows how the mitigation plan equally or better meets the

purpose of this chapter. Mitigation can include tree planting, preservation of groups of smaller trees, eco-roof, porous paving, or pervious surface permanently preserved in a tract.

The applicant provided an arborist report that proposes several elements to mitigate for the removal of the 14-inch pine (Tree 344). The arborist report notes that the proposed mitigation is intended to address the current tree preservation standards as provided in Title 33, Zoning Code, and Title 11, Tree Code. However, the Title 11 tree preservation requirements were implemented in January 2015, after this land use application was submitted, and do not apply to a site that undergoes a land division (per PCC 11.50.040.B.4). However, the Title 11 tree density standards (PCC 11.50.050), which are planting standards, will apply to the lots at the time of development. Likewise, the current Tree Preservation regulations that the arborist report references, PCC 33.630.200.D, Mitigation, are not applicable to this proposal, since they became effective after this application was submitted.

In any event, city staff understand the proposed mitigation to include the following:

- Payment into the tree fund of a dollar value equivalent to two trees. That fund is used to plant and maintain trees on public or private property in the same watershed as the site from which the funds were collected; purchase conservation easements for the perpetual retention of trees and tree canopy; or to acquire land to permanently protect existing trees.
- The installation of one tree in each of the planting areas on each parcel (Exhibit C.3) for a total of 2 trees on each parcel and 4 trees overall. The trees are proposed to include a “large statured” Oregon white oak (*Quercus garryana*) in the planting areas shown in the rear yard of each parcel and a “small statured” ‘Dawyk purple’ European beech (*Fagus sylvatica ‘Dawyk’*) in the planting areas shown in the front yard of each parcel.

The arborist report indicates these measures mitigate for and replace the values afforded by the existing regulated tree and will equally or better meet the purpose of the applicable tree preservation standards, as well as the newer, current tree preservation standards.

The purpose of the tree preservation chapter (PCC 33.630.010) reads:

33.630.010 Purpose

The regulations of this chapter preserve trees and mitigate for the loss of trees to:

- *Protect public health through the absorption of air pollutants and contamination;*
- *Provide buffering from noise, wind, and storms;*
- *Provide visual screening and summer cooling;*
- *Reduce urban heat island impacts;*
- *Maintain property values;*
- *Maintain wildlife habitat; and*
- *Maintain the beauty of the City and its natural heritage.*

The preservation of trees on a land division site also will:

- *Preserve trees when it is feasible to preserve trees and still meet the other regulations of this Title;*
- *Reduce erosion, siltation, and flooding;*
- *Filter stormwater and reduce stormwater runoff;*
- *Stabilize slopes; and*
- *Retain options for property owners to preserve trees and vegetation at the time of development.*

Certainly the proposed tree planting would provide some replacement of the values provided by the regulated tree, such as filtering stormwater; providing visual screening and summer cooling; and absorbing air pollutants. However, per PCC 33.910, Definitions, *mitigation is to rectify, repair or compensate for impacts which result from other actions.*

Tree planting is already required on the parcels at the time of development per Title 11, PCC 11.50.050 and the applicant has not provided information to distinguish what tree plantings would be provided at the time of development under Title 11, from those proposed as mitigation.

The planting proposed would satisfy the tree density standard (PCC 11.50.050), but the tree density requirements will apply to the parcels at the time of development, regardless of whether trees are preserved.

The only proposed mitigation appears to be the payment for two trees into the tree fund, which is assumed to be for 4-inches. This would not rectify, repair, or compensate for the removal of the 14-inch pine tree, since it would replace only a small fraction of the tree diameter that would be removed.

Four inches of newly planted trees in the watershed will not provide the same absorption of pollutants, contaminates, and stormwater filtering as a more mature 14-inch tree. The new plantings would also take some time to grow large enough to provide buffering from noise, wind, and storms; and cooling and reduction in urban heat island impacts.

Therefore, the proposed planting is not considered adequate, as it would not equally or better meet the purpose of this chapter. This criterion is not met.

- C. *It is not possible under any reasonable scenario to meet Section 33.630.100 and one of the following:*
1. *Meet minimum density;*
 2. *Meet all service requirements of Chapters 33.651 through 33.654, including connectivity;*
 3. *Implement an adopted street plan;*
 4. *On sites 15,000 square feet or less in area, provide a practicable arrangement of lots, tracts, and streets within the site that would allow for the division of the site with enough room for a reasonable building site on each lot;*
 5. *In E and I zones, provide a practicable arrangement of lots, tracts, and streets within the site that would allow for the division of the site with enough room for a reasonable building site on each lot, considering the uses and development allowed in the zone, or*
 6. *Preserve the trees within the environmental zones on site while providing a practicable arrangement of building sites and disturbance area.*
 7. *Preserve trees within an easement that:*
 - a. *Is held by a utility or service agency; and*
 - b. *That was held by the utility or service agency before the application for preliminary plan review of the land division was filed.*

The applicant notes that PCC 33.630.300, Criterion C.4 is satisfied, since the site is less than 15,000 square feet in area and the location of the tree will prohibit the applicant from developing the 5,368 square foot site with detached houses and parking at the rear of the parcels. Therefore, the applicant asserts, it is not possible under any reasonable scenario to retain the tree and have a lot arrangement with enough room for a reasonable building site on each lot.

The applicant states that the inclusion of parking in his proposal is reasonable and should be included when considering what a “reasonable building site” is.

As discussed earlier, the applicant's proposed improvement map showing a detached house on each parcel appears to meet all required development standards, including setbacks, outdoor area, and building coverage provisions in the R2.5 zone. The applicant also provided utility plans that show connections to sewer and water will be in front of the site in SE 78th Avenue, which should have no bearing on the protection of the regulated tree in the rear yards. Additionally, there appears to be sufficient space in the rear yards to install the proposed drywell on each parcel, outside of the standard root protection zone. The one aspect of the development proposal that conflicts with the regulated tree is the proposed on-site parking located at the rear of the lots. However, as noted previously, no on-site parking is required at this location and providing on-site parking is optional. It is not uncommon for development to be proposed without parking where it is optional. Therefore, city staff find that in this situation a "reasonable building site" can be provided on each lot without parking. In addition, as described under PCC 33.660.120.A, Lots, parking can be provided at the front of the lot on parking pads. Therefore, City staff find there are options to provide a reasonable building site on each lot that include parking and would allow preservation of the tree.

The applicant also states (Exhibit H.7) that he cannot find a code section "that requires them to have zero parking" and that the parking regulations in PCC 33.266.110.D (200s series of the Zoning Code) supercede the regulations in the 600s series of chapters (Land Divisions and Planned Development), based on the hierarchy of regulations described in PCC 33.700.070.E.

As highlighted in **bold**, below, city staff find the noted parking regulation state that there is no minimum parking required for this site, which is served by transit with 20-minute peak hour service, per the following:

33.266.110 Minimum Required Parking Spaces

D. Minimum for sites well served by transit. *For sites located less than 1500 feet from a transit station or less than 500 feet from a transit street with 20-minute peak hour service, the minimum parking requirement standards of this subsection apply. Applicants meeting these standards must provide a map identifying the site and TriMet schedules for all transit routes within 500 feet of the site. The minimum number of parking spaces is:*

1. *Household Living uses. The minimum number of parking spaces required for sites with Household Living uses is:*
 - a. *Where there are up to 30 units on the site, **no parking is required**;*

Further, city staff find that the noted hierarchy of regulations section indicates regulations in the 200s supercede those in the 600s series, *when there is a conflict in those regulations*, as highlighted in **bold**, below:

33.700.070 General Rules for Application of the Code Language

The rules of this section apply to this Title and any conditions of a land use approval granted under this Title.

E. Hierarchy of regulations.

1. *Different levels of regulations. In general, an area with base zoning, overlay zoning, or an area in a plan district is subject to all of the regulations of each. Where a land division is requested, the regulations of the 33.600s series of chapters also must be met.*

When the regulations conflict, unless specifically indicated otherwise, the following rules apply:

- a. *The regulations in a plan district supersede regulations in overlay zones, base zones, and regulations in the 600s series of chapters;*

- b. *The regulations in an overlay zone supersede regulations in base zones and regulations in the 600s series of chapters;*
- c. *The regulations for plan districts and overlay zones also supersede conflicting regulations for a specific use or development stated in the 200s series of chapters; and*
- d. *The regulations in the 200s series of chapters supersede regulations in the 600s series of chapters.*

As noted previously, city staff have found that the applicant's specific proposal to provide non-required parking *in the same location* where a regulated tree is growing to be incompatible, but the parking regulations and tree preservation regulations are not inherently in conflict. These provisions address different issues, which can be met simultaneously. It is possible to provide on-site parking and protect trees. The fact that the requirement to preserve the regulated tree and install parking cannot be achieved as depicted in the proposed improvement map does not mean there is a conflict with the regulations. Therefore, the code provision regarding the hierarchy of regulations is not pertinent to these particular provisions.

Based on the foregoing, the location of the regulated tree does not appear to impinge upon the opportunity to configure the proposed parcels to contain a reasonable building area. As such, PCC 33.630.300, Criterion C.4 is not met.

Likewise, none of the other items in PCC 33.630.300 Criterion C are relevant to this proposal. Therefore, the proposal has not met the threshold that allows for mitigation.

Based on the foregoing, the mitigation option criteria in PCC 33.630.300 are not satisfied.

However, with a condition that Tree 344, the 14-inch pine, be preserved at the time of development, the tree preservation standards of PCC 33.630.100 will be met. Since the one regulated tree will be preserved, the mitigation criteria, above, would not apply.

To ensure this condition is effective, and since the project plans do not specify a detailed root protection zone for Tree 344, the standard measurement designated in the Zoning Code should be applied:

33.930.140 Measuring the Root Protection Zone

The root protection zone is a circular area around a tree that is based on the diameter of the tree. Each 1 inch diameter of tree equals 1 foot radius for the root protection zone.

Based on this, a root protection zone with a 14-foot radius must be provided around the 14-inch tree, as noted on the *staff-modified* Tree Preservation Plan (Exhibit H.13). There are, however, provisions under Title 11 that would allow modification of the root protection zone by right under the prescriptive path for tree protection at the time of development (PCC 11.60.030.C.1). This would allow a 25% encroachment into the area of the root protection zone, provided the encroachment is no closer than ½ of the required root protection zone radius. These provisions will allow for additional flexibility for tree protection at the time of development. The applicant also has the option under PCC 11.60.030.C.2 to provide alternative measures through submittal of an arborist report.

In addition, to ensure that future property owners are aware of the requirement to preserve the tree, an acknowledgement of tree preservation conditions must be referenced on and recorded with the plat.

In summary, with a condition requiring the protection of Tree 344, and an acknowledgement of the tree preservation requirements to be recorded with the plat, this criterion, PCC 33.660.120.B, Trees, will be met.

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

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. Also, where geologic conditions or historic uses of the site indicate that a hazard may exist, the applicant must show that the proposed land division will result in lots that are suitable for development.

Clearing and Grading: Aside from the removal of the existing structures and several trees, only minor clearing and grading will be required for the street improvements and to install new utilities for the parcels. Stormwater runoff from the new street improvements and the 2 parcels will be managed to assure that the runoff will not adversely impact adjacent properties (see detailed discussion of stormwater management later in this report).

Generally, clearing and grading is not permitted within the root protection zones of a tree that is required to be preserved, and this helps to limit erosion by assuring that the tree roots will help to hold the soil in place. As discussed in Criterion B, Trees, above, with a condition that a root protection zone must be provided for the regulated tree, this could ensure that the tree is not damaged and erosion is not exacerbated during the minor site clearing and grading.

Overall, since the site is relatively flat and is not located within the Potential Landslide Hazard Area, and erosion controls will be required at the time of demolition and new construction, the limited clearing and grading is not expected to pose any hazard to the neighboring properties. With the noted condition to assure sufficient tree protection, this criterion will be met.

Land Suitability: The site is currently in residential use, and there is no record of any other use in the past. Though the site is currently connected to the public sanitary sewer, city records show there is an old cesspool on the site, and the City has no record that this facility was ever decommissioned.

The applicant has proposed to remove the existing house and garage and redevelop the site. To ensure the new lots are suitable for redevelopment, a permit must be obtained and finalized for demolition of all structures on the site, prior to final plat approval. The demolition permit must also include sewer capping and decommissioning of the on-site sewage disposal system (cesspool). The applicant must meet the requirements of BDS-Site Development for the cesspool decommissioning. With the noted condition, this criterion will be met.

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

Findings: No tracts are proposed or required for this land division. A Reciprocal Access Easement is proposed to allow shared use of a driveway that straddles the lot line between Parcel 1 and Parcel 2.

Generally, to satisfy this criterion, a maintenance agreement must be provided for any proposed easement and the maintenance agreement must be noted on a recording block on the plat and recorded with the plat. This requirement is typically addressed by means of a condition, which requires the noted items be provided prior to final plat approval.

As discussed, above, the location of the proposed parking, which is shown to be accessed via the proposed shared driveway and easement, coincides with the location of the one regulated tree that is subject to the tree preservation requirements. As outlined in the findings in PCC 33.660.120.B, Trees, conditions will require preservation of the tree and, therefore, parking at the rear of lots will not be possible.

Therefore, the proposed easement is unnecessary and this criterion 33.660.120.H, Tracts and Easements, is not applicable.

In the event the applicant modifies the length or configuration of the proposed houses and accommodates on-site parking outside of the required root protection zone for the regulated tree, a private shared driveway easement could be evaluated at the time of building permit application, and would be required to satisfy the requirements in PCC 33.266.120.D.3. There is nothing about the proposed size or shape of the lots that precludes the applicant from doing so for purposes of approving this land division.

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

Findings: To satisfy this criterion, 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.

As outlined in the initial response to this proposal, Portland Transportation (PBOT) reviewed the proposal against the noted evaluation factors and concluded:

The minimal expected added vehicle trips (1 AM peak hour trip/ 1 PM peak hour trip/ 10 total new daily trips) will not adversely impact the operations of area intersections. On-street parking will not be adversely impacted given the proposed shared driveway that will serve to access on-site parking areas at the rear of both proposed lots. This configuration will retain 17-ft of uninterrupted curb length along each parcel frontage which may accommodate one car along each parcel frontage. There appears to be an abundance of on-street parking spaces currently available along the shoulders of both sides of the street. To ensure the availability of on-street parking along the site's frontage, PBOT will recommend a condition of approval requiring the shared driveway as shown on the submittal plans. The proposed lot split will not have any effect to transit service or any other mode of travel. The transportation system is capable of safely supporting the proposed development in addition to existing uses in the area.

Now, as noted above, both the applicant and city staff have determined that the site is located in an area that allows for an exception to the on-site parking requirements given the proximity of frequent transit service.

Nevertheless, as the applicant has noted, on-site parking can still be required through this Transportation Impacts criterion, if the proposal will generate a parking demand that has detrimental impacts to on-street parking supply. The applicant asserts that by recommending a condition that a shared driveway be provided, this means Portland Transportation has required that on-site parking must be provided.

The record does not appear to support that assessment. The record does not include a formal transportation report or on-street parking inventory. PBOT's initial response noted that there is ample on-street parking, indicating that parking is not an issue in this area.

Further, in response to the LUBA remand, PBOT provided a revised response (Exhibit H.11), which clarified that a condition regarding the provision of a shared driveway should be imposed in order to preserve on-street parking, *if* on-site parking is provided. For this reconsideration, PBOT further indicated the shared driveway should be limited an overall width of 20-feet (Exhibit I.4).

Based on these factors, the record does not show that on-site parking must be provided to meet this criterion. However, in the event on-site parking is proposed at the time of new development, staff find that requiring a shared driveway and limiting the overall width of 20-feet will help to preserve on-street parking, as noted in the PBOT response. As such, a condition requiring such will be applied.

Based on the foregoing and with the noted condition, Criterion K, Transportation Impacts, 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. The criteria and standards are met as shown in the following table:

<p>33.651 Water Service standard – See Exhibit E.3 for detailed bureau comments.</p> <p>The Water Bureau has indicated that service is available to the site, as noted on page 2 of this report, so the water service standards of 33.651 have been verified.</p> <p>However, as noted in the Water Bureau response: <i>The existing house which straddles the two lots will need to be removed, or an issued demo permit in place, prior to the Water Bureau signing off on the Final plat, to meet City Title requirements for 21.12.010 and 21.12.070, which do not allow water services to cross property boundaries.</i></p> <p>With such a condition, this criterion will be met.</p>
<p>33.652 Sanitary Sewer Disposal Service standards – See Exhibit E.1 for detailed comments.</p> <p>The Bureau of Environmental Services has indicated that service is available to the site, as noted on page 2 of this report. The sanitary sewer service standards of 33.652 have been verified.</p> <p>BES also noted the following:</p> <ul style="list-style-type: none"> ▪ <i>The existing house at 6515 SE 78th is connected to the sewer through a lateral located 348 feet from the manhole to the south. The sewer will need to be capped at time of demolition.</i> ▪ <i>The available lateral can be used by Parcel 1.</i> ▪ <i>A new lateral will need to be constructed to serve Parcel 2 at the developer's expense at the time of development.</i> ▪ <i>Connection to public sewers must meet the standards of the City of Portland's Sewer and Drainage Facilities Design Manual.</i> <p>With the previously noted condition regarding capping of the existing sewer service as part of the demolition of the existing house, this criterion will be met.</p>
<p>33.653.020 & .030 Stormwater Management criteria and standards – See Exhibit E.1</p> <p>No stormwater tract is proposed or required. The applicant has proposed the following stormwater management methods:</p> <p>Public Street Improvements: Public drainage improvements are required within the street improvements of SE 78th Avenue. As noted in the initial BES response, the applicant had not provided the required infiltration test results needed to determine the design infiltration rate. Subsequently, as noted in the BES response addendum, the applicant provided the requested information, including Presumptive Approach stormwater facility calculations, as part of the Public Works review. The applicant has completed Concept Approval of the Public Works permit (EP102) for the street improvements. BES requests the following condition: <i>Prior to final plat approval, the applicant must submit engineered plans, a financial guarantee and design/inspection fees for the public works permit, subject to BES approval.</i></p> <p>Parcels 1 and 2: Stormwater from these parcels will be directed to individual drywells that will treat the water and slowly infiltrate it into the ground. As noted above, the required infiltration test results were not initially provided. Since that information was subsequently submitted, BES has indicated conceptual approval of the drywells.</p> <p>With the aforementioned condition regarding the right-of-way improvements, this criterion</p>

can be met.

33.654.110.B.1 Through streets and pedestrian connections

Generally, through streets should be provided no more than 530 feet apart, and pedestrian connections should be provided no more than 330 feet apart, and these connections should be at least 200 feet apart. The site is situated approximately 100 feet from SE Duke Street (north) and approximately 300 feet from SE Glenwood Street (south). Overall, the block has approximately 440 feet between the adjacent through streets, and 100 to 300 feet between the pedestrian corridors along those adjacent streets. Based on this, the through street and pedestrian connection spacing requirements are satisfied and this criterion is met.

33.654.120.B & C Width & elements of the right-of-way – See Exhibit E.2 for bureau comment

Portland Transportation provided the following comments about the street width and elements in the abutting rights-of-way:

According to City database sources, at this location, SE 78th Ave is improved with 22-ft of center-strip pavement width within a 50-ft wide r.o.w. (no curb or sidewalk).

For a Local Service street (that has no curb or sidewalk) abutting an R2.5-zoned lot, the City's public r.o.w. standards document requires a 62-ft r.o.w. width to accommodate a 32-ft wide roadway (which would allow parking along both sides) and two 15-ft wide sidewalk corridors (0.5-ft curb, 8-ft wide stormwater management facility, 6-ft wide sidewalk & 0.5-ft wide frontage zone). In relation to the proposed partition request, the improvements noted above will be required to be constructed, including the extension of the roadway paving (as necessary) to the new curb that will be located 16-ft from the r.o.w. centerline.

To accommodate said improvements, a 6-ft dedication of property will also be required; the required dedication will be processed as part of the Final Plat phase of the land division.

The applicant has initiated the review process for the above referenced standard improvement requirements with the submittal of Public Works Permits 14-221301 WT and 14-223396 WE. The applicant has already received concept design (30%) approval in relation to said Public Works Permits.

With conditions for the right-of-way dedication and improvements described above, this criterion can be met.

33.654.130.A - Utilities (defined as telephone, cable, natural gas, electric, etc.)

At this time no specific utility easements adjacent to the right-of-way have been identified as being necessary. Any easements that may be needed for private utilities that cannot be accommodated within the adjacent right-of-ways can be provided on the final plat. As such, this criterion is met.

DEVELOPMENT STANDARDS

Development standards that are not relevant to the land division, have not been addressed in this review, but will have to be met at the time that each of the proposed parcels is developed.

Future Development: Among the various development standards that will be applicable to the proposed parcels, the applicant should take note of:

Narrow Lots: Development on Parcels 1 and 2 will be subject to the following standards at the time of development permitting:

- Height of the structures will be limited to 1.5 times the width of the structure, per PCC 33.110.215.B.2; and
- Attached garages are not permitted where the street facing façade of a unit will be less than 22 feet per PCC 33.110.253.E.3.b.

Existing Development: The applicant is proposing to remove all of the existing structures on the site, so the division of the property will not cause the structures to move out of conformance or further out of conformance with any development standard applicable in the R2.5 zone. Therefore, 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 and Topic
Development Services/503-823-7300 www.portlandonline.com/bds	Title 24 – Building Code, Flood plain Title 10 – Erosion Control, Site Development Administrative Rules for Private Rights-of-Way
Environmental Services/503-823-7740 www.portlandonline.com/bes	Title 17 – Sewer Improvements 2008 Stormwater Management Manual
Fire Bureau/503-823-3700 www.portlandonline.com/fire	Title 31 Policy B-1 – Emergency Access
Transportation/503-823-5185 www.portlandonline.com/transportation	Title 17 – Public Right-of-Way Improvements Transportation System Plan
Urban Forestry (Parks)/503-823-4489 www.portlandonline.com/parks	Title 20 – Street Trees and other Public Trees
Water Bureau/503-823-7404 www.portlandonline.com/water	Title 21 – Water availability

As authorized in PCC 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.

Fire Bureau: The applicant must meet the requirements of the Fire Bureau in regards to fire flow/water supply, addressing of structures, and aerial fire department access roads. These requirements are based on the technical standards of Title 31, Fire Bureau Policy B-1 and the 2014 Oregon Fire Code.

Urban Forestry: The applicant must meet the requirements of Urban Forestry for street trees. Street trees must be chosen from an approved street tree planting list and the trees must be shown on Public Works Permit. Additionally, the two existing trees that are within the site frontage that will be dedicated for right-of-way improvements will be subject to street tree provisions for any changes to or removal of those trees and the location of those trees must be shown on the permit plans. These requirements are based on the standards of Title 20.

CONCLUSIONS

The applicant has proposed a 2-parcel partition, as shown on the attached *staff-modified* preliminary plan (Exhibit H.12). In response to the LUBA Opinion and Order, which noted deficiencies in the initial city decision on the proposal, city staff have re-evaluated this land division proposal to better address the deficiencies LUBA identified in the original decision.

In the light of new information and materials provided by the applicant, the primary issues identified with this proposal are tree preservation and on-site parking. The applicant has proposed to remove a tree that is subject to the tree preservation regulations, in order to install non-required on-site parking. The applicant believes his preference for installing non-required on-site parking supercedes the requirement to preserve the regulated tree. However, since on-site parking is not required at this property and can be provided with parking pads at the front of the lot, the applicant has failed to show why the tree can't be preserved and failed to satisfy the approval criteria for tree mitigation. As a result, Tree 344 must be preserved.

City staff find the proposal can satisfy the applicable approval criteria with conditions that require the preservation of the regulated tree. The application of other conditions related to

the removal of the existing development, required right-of-way dedication and frontage improvements, and Fire Bureau requirements for fire flow, hydrant spacing, addressing and aerial access will also ensure all applicable criteria will be met.

Therefore, since all the applicable criteria are met or can be met with the noted conditions, this proposal can be approved.

ADMINISTRATIVE DECISION

Approval of a Preliminary Plan for a 2-parcel partition that will result in 2 narrow lots, as illustrated with Exhibit H.12, subject to the following conditions:

A. The final plat must show the following:

1. The applicant shall meet the street dedication requirements of the City Engineer for SE 78th Avenue. The required right-of-way dedication must be shown on the final plat.
2. 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 Conditions B.6, 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."

B. 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 site's street frontage. The applicant shall submit an application for a Public Works Permit and provide plans and financial assurances to the satisfaction of the Portland Bureau of Transportation, the Bureau of Environmental Services, and Urban Forestry for required street frontage improvements.

Utilities

2. The applicant shall meet the requirements of the Site Development Section of the Bureau of Development Services for the decommissioning the cesspool on the site.
3. The applicant shall meet the requirements of the Fire Bureau for ensuring adequate hydrant flow from the nearest hydrant. The applicant must provide verification to the Fire Bureau that Appendix B of the Fire Code is met, the exception is used, or provide an approved Fire Code Appeal prior final plat approval.

Existing Development

4. A finalized permit must be obtained for demolition of the existing residence on the site and capping the existing sanitary sewer connection. Note that Title 24 requires a 35-day demolition delay period for most residential structures. The site plan for the demolition permit must show all trees to be preserved and root protection zones as shown on Exhibit H.13, and per Condition C.1.
5. The applicant must remove the accessory structures (shed and garage/carport) on Parcel 1. The applicant must submit before and after photos of the removal (with the same perspective). Prior to removal of these structures, tree protection must be installed in accordance with Exhibit H.13 and per Condition C.1.

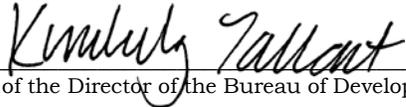
Required Legal Documents

6. The applicant shall execute an Acknowledgement of Tree Preservation Land Use Conditions that notes tree preservation requirements that apply to Parcel 1 and Parcel 2. A copy of the approved *staff-modified* Tree Preservation Plan (Exhibit H.13) must be included as an exhibit to the Acknowledgement. The acknowledgment shall be referenced on and recorded with the final plat.

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

1. Development on Parcels 1 and 2 shall be in conformance with the *staff-modified* Tree Preservation Plan (Exhibit H.13). Specifically, Tree 344 (*Pinus nigra*) is required to be preserved, with the root protection zones indicated on Exhibit H.13 or as allowed by current city code. Tree protection fencing is required along the root protection zone of each tree to be preserved. The fence must be 6-foot high chain link and be secured to the ground with 8-foot metal posts driven into the ground.
2. The applicant must meet the Fire Bureau requirements for addressing and aerial fire department access. Aerial access applies to buildings that exceed 30 feet in height from the fire access as measured to the bottom of the eave of the structure or the top of the parapet for a flat roof.
3. *If on-site parking is provided*, a single shared driveway, limited to 20-feet in width, must be provided to serve both parcels to the satisfaction of Portland Transportation.

Staff Planner: Kate Green

Decision rendered by:  **on May 23, 2016**

By authority of the Director of the Bureau of Development Services

Decision mailed May 26, 2016

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

Procedural Information. The application for this land use review was submitted on January 10, 2014, and was determined to be complete on **July 9, 2014**.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on January 10, 2014.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant requested that the 120-day review period be extended for a total of 210 days (Exhibit C.7), and the initial city decision was issued on June 1, 2015, before the extended review period expired on **June 4, 2015**.

OAR 661-010-0021 requires that the local government file the decision on reconsideration with LUBA within 90 days after the filing of the notice of withdrawal. The City's request to withdraw for reconsideration was filed on March 3, 2016. The final revised decision must be filed with the Board by June 1, 2016.

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. Contact LUBA at 775 Summer St NE Suite 330, Salem, OR 97301-1283 or phone 1-503-373-1265 for further information.

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 Assessor’s 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.**

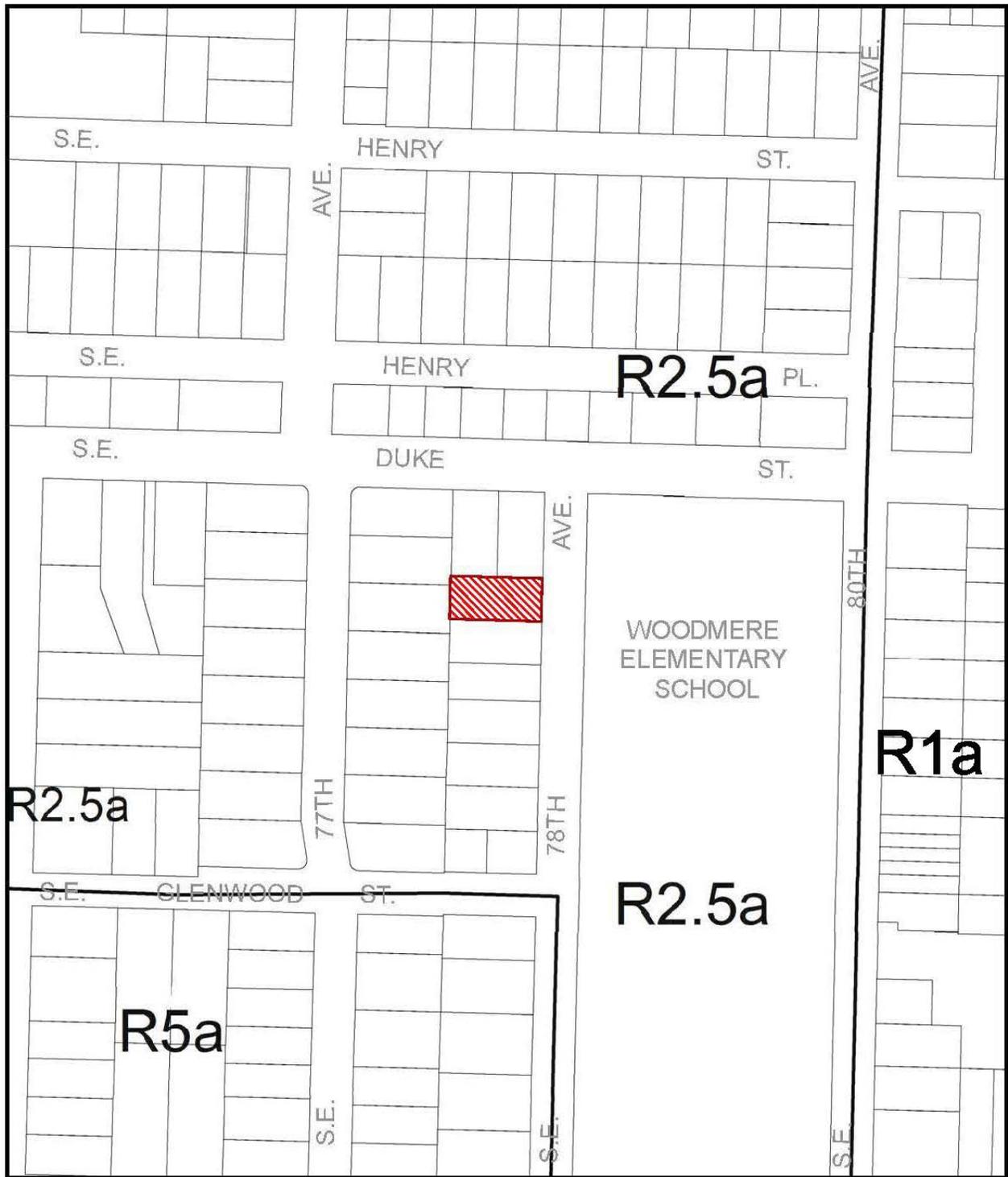
EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant’s Statement
 - 1. Initial Submittal
 - a. Arborist Report, dated December 18, 2013
 - 2. Updated Plan Set, October 8, 2014
 - a. Arborist Report, dated October 3, 2014
 - 3. Revised Submittal, December 19, 2014
 - a. Arborist Report, dated November 24, 2014
 - 4. Letter from Christopher Koback, dated January 1, 2015
 - 5. Supplemental Information, February 12, 2015
 - 6. Supplemental Narrative, May 18, 2015
 - 7. Timeline Extensions
- B. Zoning Map (**attached**)
- C. Plans/Drawings:
 - 1. Preliminary Plat-Proposed Improvement Map (**attached**)
 - 2. Grading and Utility Plan
 - 3. Tree Preservation Plan

4. Existing Conditions
5. Front Elevation, Floor Plans
- 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/BDS
 6. Urban Forestry/Parks
 - a. Urban Forestry/site visit, holly tree identification
 7. Life Safety/BDS
- F. Correspondence:
 1. Georgia O'Mary, February 21, 2015, re: concerns about scale of proposed development
- G. Other:
 1. Original LU Application
 1. Letter to applicant re: incomplete application
 2. Emails to/from applicant
- H. Remand Evidence
 1. Notice of Intent to Appeal
 2. LUBA Final Opinion and Order remanding case for reconsideration
 3. Email/letter from representative re: request to process remand, October 27, 2015
 4. Email/letter to representative re: request to process remand, November 4, 2015
 5. Notice of Reconsideration of a Type Ix Proposal with mailing list, November 6, 2015
 6. Email/memo from applicant with revised arborist report, November 30, 2015
 - a. Revised Tree Preservation Plan
 7. Emails to/ from applicant re: transit service, tree preservation, review timeline, between December 9, 2015 and January 7, 2016
 8. Email/memo from applicant, January 1, 2016
 9. Email/memo from representative, January 4, 2016
 10. Email/memo from applicant, January 7, 2016
 11. Portland Transportation revised response, January 7, 2016
 12. Staff-modified Preliminary Plat **(attached)**
 13. Staff-modified Tree Preservation Plan **(attached)**
- I. Revised Decision Exhibits
 1. January 25, 2016 Revised Type Ix Decision
 2. Parking Options-Option 1 **(attached)**
 3. Parking Options-Option 2 **(attached)**
 4. Portland Transportation supplemental response, May 23, 2016

The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).



ZONING



Site



File No. LU 14-103851 LDP
 1/4 Section 3738
 Scale 1 inch = 150 feet
 State_Id 1S2E20AA 13000
 Exhibit B (May 27, 2015)

