



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

FROM CONCEPT TO CONSTRUCTION

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**Date:** September 17, 2014  
**To:** Interested Person  
**From:** Kathy Harnden, Land Use Services  
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## **NOTICE OF A TYPE Ix 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 the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

### **CASE FILE NUMBER: LU 14-113286 LDP**

#### **GENERAL INFORMATION**

**Applicant:** Daniel R and Sandra M Weaver  
31313 SE Walnut Ave / Eagle Creek OR 97022

**Party of Interest:** Ron Bender  
28577 SE Judd Rd / Eagle Creek OR 97022

**Site Address:** 721 SE 139TH AVE

**Legal Description:** BLOCK 3 N 47' OF S 70' OF LOT 5, HOOD ACRES & PLAT 2 & 3  
**Tax Account No.:** R401401980  
**State ID No.:** 1S2E02AA 12500  
**Quarter Section:** 3144  
**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:** R5a – Residential 5000, with the Alternative Design Density 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 proposes a Land Division Partition to divide this basically flat and currently vacant 13,515 square-foot lot into two parcels that will be consistent with the site's R5 zoning. The existing lot is approximately 47 feet wide by 287 feet deep. The proposed land division will result in one narrow lot fronting SE 139<sup>th</sup> Avenue and one flag lot at the rear of the site. Access to the flag lot will be via a pole running along the south side of the property. Parcel 1 will have 5,005 square feet and be 35 feet wide by 143 feet long. Parcel 2, the flag lot, will be 47 feet wide and 142.55 feet deep (not counting the pole). The flag lot contains 1 small pear, 2 large sycamore, and 4 large Douglas fir trees. The 4 Douglas fir trees will be preserved, and the 5-inch diameter pear and 16 and 17-inch sycamore maples will be removed.

Public water and sanitary sewer are located in SE 139<sup>th</sup> Avenue. Water is provided by the Rockwood Water People's Utility District.

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 or required (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. Therefore this land division is considered a partition.

**Relevant Approval Criteria:**

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

**FACTS**

**Site and Vicinity:** This basically flat site is fairly narrow at 47 feet in width, and long at 287.5 feet in length. The site is currently vacant as the existing house was recently demolished. The former house and garage were setback about 88 feet from the property line adjacent to SE 139<sup>th</sup> Avenue. The site contains seven trees, six of which are regulated trees as they are 6 inches in diameter or larger.

The 1200 feet along SE 139<sup>th</sup> between SE Stark Street to the north and SE Taylor Street to the south is uninterrupted by cross streets. The development pattern varies from long, linear lots on the east side of the block, to smaller squarish lots on the west side. Most of the lots on the subject block are long and vary in width from 46 to 75 feet or more. There are six existing flag lots on this block, south of the site. Several larger lots containing churches and several businesses occupy the lots at the north end of this section of SW 139<sup>th</sup> Avenue.

**Infrastructure:**

- **Streets** – The site has approximately 47 feet of frontage on SE 139<sup>th</sup> Avenue, which is classified as a Neighborhood Collector, City Walkway and a Local Service Street for all other modes in the Transportation System Plan (TSP). At this location, SE 139<sup>th</sup> Avenue is improved with 40 feet of paved roadway surface and a 10-foot sidewalk corridor that consists of a 5.5-foot sidewalk and a 1.5 foot frontage zone within a 60-foot right of way. Tri-Met provides transit service on SE Stark via Bus #20.
- **Water Service** – The Rockwood Water People's Utility District provides service to this site.
- **Sanitary Service** – There is an 8-inch PVC public sanitary gravity sewer located in SE 139<sup>th</sup> Avenue that can continue serving the sanitary disposal needs of this project through an existing lateral to the site. In addition, an existing cesspool on the site has been decommissioned.

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

The "a" overlay is intended to allow increased density that meets design compatibility

requirements. It focuses development on vacant sites, preserves existing housing stock, and encourages new development that is compatible with the surrounding residential neighborhood. This land division proposal is not using any of the provisions of the “a” overlay.

**Land Use History:** City records indicate there is one prior land use review for this site, a property line adjustment approved in PR 13-164697. The subject site and the also-owned abutting lot to the south were part of a property line adjustment which moved the common property line three feet northward onto the subject property, reducing the lot width of the subject property from 50 feet to 47 feet.

**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:** A Notice of Proposal in Your Neighborhood was mailed on **July 17, 2014**. No written responses have been received from either the Neighborhood Association or notified property owners in response to the 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	All of the proposed parcels are interior lots (not on a corner). In this context, solar access standards express no lot configuration preference.
J	33.640 - Streams, Springs, and Seeps	No streams, springs, or seeps are evident and there are not environmental zones on the site.
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	There are no pedestrian connections 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 public streets are proposed or required.

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

**Findings:** Chapter 33.610 contains the density and lot dimension requirements applicable in the RF through R5 zones. The applicant is proposing a 2-parcel partition that will result in one narrow lot and one flag lot. Density is based on the area of the lot prior to the required street dedication. The 13,515 square-foot site has a minimum density of 2 lots.

The applicant proposed 2 parcels in the R5 zone, one standard lot and one flag lot (Parcel 2), so the density standards are met.

The lot dimensions for standard lots and flag lots 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)	Min. Flag Lot Width (feet)	Min. Flag Lot Depth (feet)
<b>R5 Zone</b>	3,000	8,500	36	50	30	40	40
Parcel 1	5,005		35	143	35		
Parcel 2 (flag lot)	6,700 (flag portion only)					47.0	142.55

\* 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.

\*\* For flag lots: (1) width and depth are measured at the midpoint of the opposite lot lines in the "flag" portion of the lot; and (2) lot area calculations do not include the pole portion of the lot.

**Parcel 1 – Narrow Lot Requirements**

The lot width of proposed Parcel 1 will be 35 feet rather than 36 feet. Per 33.610.200.D.2, minimum lot width may be reduced if all of six requirements can be met. These six requirements are described below.

**D. Minimum lot width.** Each lot must meet one of the following regulations. Lots that do not meet these regulations may be requested through Planned Development Review. Adjustments to the regulations are prohibited.

- On balance, the proposed lots will have dimensions that are consistent with the purpose of the Lot Dimension Regulations;
- The minimum width for lots that will be developed with detached houses may not be reduced below 25 feet;
- 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;
- 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;
- 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

- f. In areas where parking is not required by this Title, lots may be proposed that will not accommodate on-site 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. The covenant must:
- (1) State that the owner will develop the property without parking, and that a driveway for access to on-site parking may not be created in the future, unless it is in conformance with regulations in effect at the time;
  - (2) Meet the requirements of Section 33.700.060, Covenants with the City; and
  - (3) Be attached to, and recorded with the deed for the new lot.

The width of proposed Parcel 1 must be reduced to 35 feet instead of the required 36 feet in order to accommodate the 12-foot wide flag pole, which will be used to provide access to both Parcels 1 and 2. The site does not abut an alley.

The lot dimensions of both proposed rectangular parcels, at 35' x 143' for Parcel 1, which will contain 5,005 square feet, and 47' by 142.55' for Parcel 2, which will contain 6,700 square feet, are consistent with requirements that each lot has enough room for a reasonably-sized house; that each has a size and shape that can meet remaining development standards; and that each will have room for a decently-sized outdoor area as illustrated on Exhibit C.2. The lots will be compatible with other lots in the area, as there are six existing flag lots on the block, and the one located at 753 SE 139<sup>th</sup>, just three lots south of the site is an approximately 42-foot wide narrow lot with a flag lot in the back. Each of the proposed houses will have a garage, and development on Parcel 1 will be oriented towards the street. Neither lot will narrow at all, and each has room for adequate access from the street through the flag pole and for utilities and services. Neither will be landlocked. Therefore, both lots are able to meet all of the purposes of the lot dimension regulations.

#### Parcel 2 – Flag Lot Requirements

Flag Lots are allowed in limited circumstances, per 33.610.400. In this case, the original site dimensions are such that they preclude a lot configuration that meets the minimum lot width standard. However, the proposed flag lot will provide a 12-foot pole that will connect the flag to SE 139<sup>th</sup> Avenue and the flag, at 6,700 square feet, meets the lot area, width and depth standards for flag lots.

In addition, shared vehicle access is required where practical, and the applicant proposes that the pole portion of Parcel 2 will provide access for both proposed parcels. This will minimize the need for additional curb-cuts along the street and reduces the amount of impervious area needed for vehicle access. A private access easement will be placed over the entirety of the pole to allow the shared use of the driveway (see further details in Criterion H, below).

Based on the foregoing, the applicable density and lot dimension standards will be met, and with a condition requiring a private access easement over the “pole” of Parcel 1 to allow shared use of the driveway, 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 both preserve and mitigate for the loss of trees. Certain trees are exempt from the requirements of this chapter.

An arborist report was submitted that inventoried the trees within the land division site, evaluated their conditions and specified root protection zones (Exhibit A.2). Although two of the trees were described as poorly structured and one had trunk decay, the arborist did not exempt any of the trees from protection.

The 7 trees on the site have a combined total diameter of 117 inches. Of these, the applicant proposes to preserve the four large Douglas fir trees located at the rear of the site a combined diameter of 89 inches. The tree preservation requirements of Chapter 33.630.A, require at least 35 percent of the total tree diameter on a site to be preserved. The proposed preservation of 89 inches equals 76 percent of the total tree diameter. Therefore, this proposal complies with Option 1 of the tree preservation standards.

Typical tree preservation plans require one foot of root protection zone (RPZ) for each inch of tree diameter preserved. In this case, the tree protection fencing should be located 23 feet from the nearest tree. However, the arborist allowed a somewhat smaller RPZ of 20 feet for all protected trees, and also required the protection fence to be erected prior to any kind of ground disturbing activity on the site. This fencing must remain in place until all construction activity is completed.

Further, the arborist recommended that an arborist be contacted for additional evaluation if the applicant finds roots greater than 3 inches in diameter during construction. The trees to be preserved and the required root protection zones are shown on the applicant's Tree Preservation Plan/Proposed Development Plan (Exhibit C.2).

To ensure that future owners of the lots are aware of the tree preservation requirements, the applicant must record an Acknowledgement of Tree Preservation Land Use Conditions at the time of final plat.

This criterion will be met subject to the conditions that 1) development on Parcel 2, the flag lot, is carried out in conformance with the Tree Preservation Plan (Exhibit C.2) which requires a minimum 20-foot root protection zone around the four trees to be preserved and with the arborist report (Exhibit A.3). In addition, an Acknowledgement of Tree Preservation Requirements must be completed and recorded with the final plat.

With the conditions noted above, this criterion 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:**

***Clearing and Grading***

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 limits the impacts of erosion and sedimentation to help protect water quality and aquatic habitat.

A Preliminary Clearing and Grading Plan was not submitted with the land division application for this predominantly flat site. Because the site is relatively flat, removal of the three trees will not require significant grading.

***Land Suitability***

As noted earlier in this report, the site has been in residential use and there is no record of any other use in the past. The site was previously developed with a house that was recently demolished, and which had been connected to public sewer. However, a cesspool was located on the site, but has been decommissioned per comments made by the Site Development Section of the Bureau of Development Services. Therefore there are no septic concerns on this site. As indicated above, the site is relatively flat and contains no known geological hazards.

Therefore, there are no anticipated clearing, grading or 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;**

**Findings:** No tracts are proposed or required for this land division, so criterion A does not apply. Parcel 1 will be accessed via the “pole” belonging to Parcel 2. The “pole” will provide access to Parcel 1 along its entire length. Therefore, the following easement is required and must be shown on the Final Plat:

- A Private Access Easement shall be shown and labeled over the “flag pole” portion of Parcel 2 for the benefit of Parcel 1. The easement shall allow shared use of this area for all the purposes for which a driveway would typically be used;

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

*“A Declaration of Maintenance agreement for a Private Access Easement 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,**

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

<p><b>3.651 Water Service standard</b> – See Exhibit E.3</p> <p>The water standards of 33.651 have been verified. Water is available to serve the proposed development from Rockwood Water People’s Water Bureau. Therefore, this criterion is met.</p>
<p><b>33.652 Sanitary Sewer Disposal Service standards</b> – See Exhibit E.1</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><b>33.653.020 &amp; .030 Stormwater Management criteria and standards</b> – See Exhibit E.1</p> <p>No stormwater tract is proposed or required. Therefore, criterion A is not applicable.</p> <p>The Bureau of Environmental Services (BES) has reviewed the stormwater report and determined that due to the nature of the site, infiltration tests will not be required (Exhibit E.1). The applicant has proposed to:</p> <p>Stormwater from these lots will be directed to splash blocks located a minimum of 10 feet from all neighboring structures and at least 5 feet from property lines. Downspouts must be discharged 2 feet from slab on grade and structures with crawl spaces, and 6 feet from all foundations with basements.</p> <p>Pervious pavement is to be used on the driveway.</p> <p>BES has no objections to the above proposed stormwater management approaches for the purposes of land use review.</p>

**33.654.110.B.1 Through streets and pedestrian connections**

The City's spacing goals for through streets should be provided no more than 530 feet apart and at least 200 feet apart. Portland Bureau of Transportation has provided the following findings (see Exhibit E.2):

*No street connections have been identified in the vicinity of this property in the Portland Master Street Plan document. The subject block and others in the vicinity do not satisfy the public street or pedestrian connection spacing goals. Though the subject site is situated in what appears to be a reasonable location along the subject block to make a connection to an existing public right of way west of the subject site (SE 137<sup>th</sup> Ave), which makes it a desirable location to provide at least a pedestrian connection through the block, it is not feasible without eliminating existing development on abutting lot(s). Further, considering that the pole access to the proposed parcels will be via a driveway along the southern property line of the site, these facts also do not make any broader connectivity opportunities to the west feasible. In addition, given the size of the subject site, providing a pedestrian connection through the subject site (or block) would compromise the ability to create the proposed parcels. These impacts do not make further connectivity through the subject site or block practicable.*

For the reasons described here, this criterion is met.

**33.641 – Transportation Impacts – 33.641.020 and 33.641.030**  
**33.654.120.B & C Width and elements of the street right-of-way**  
**33.654.130.D Partial Rights of way**

As outlined in the response from Portland Transportation, the proposed land division will create two new parcels (from the existing lot) in order to accommodate two new detached single-family homes. Referring to the ITE Trip Generation Manual, 8<sup>th</sup> Edition, there will be one new AM peak hour trips and one additional PM peak hour trips (10 total new/daily trips) that may result from the development proposal on the site. The new peak hour trips are insignificant and do not warrant any mitigation to nearby intersections. The intersection will continue to operate at current levels without further degradation from the vehicle trips generated by the proposed project.

Access to the site will be via a shared driveway along the pole portion of proposed Parcel 2, which minimizes impacts to on-street parking and to potential conflicts to pedestrians and bicycles. New residences to be developed on the site will include on-site parking opportunities for at least one vehicle per parcel. With only one (existing) curb cut/driveway proposed for the land division, as many on-street parking opportunities as possible will be retained along the street.

Given the area in which the site is located, the minimal increase in vehicle trips that will be generated by the proposed partition, and the classification of the streets within the transportation system, Portland Transportation expects that the transportation system will be able to support the existing development in the area as well as the proposed development.

Based on these factors, Portland Transportation determined that no significant negative impacts are expected to occur in relation to any of the other evaluation factors, including 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.

At this location for a City Walkway classified street abutting an R5-zoned lot, the City's Pedestrian Design Guide recommends a 12-foot wide sidewalk corridor comprised of a 0.5ft curb, 4-ft wide furnishing zone, 6-ft wide sidewalk and a 1.5-ft wide frontage zone. 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, additional right-of-way must be dedicated along the frontage of the site. With those improvements, one additional dwelling can be safely served by this existing street without having any significant impact on the level of service provided.



Therefore, prior to the issuance of a Building Permit for the new home on Parcel 1, the existing sidewalk corridor along the site's frontage must be re-constructed to meet current City standards. A Minor Improvement Permit shall be obtained for said sidewalk corridor re-construction. To accommodate the 12-foot wide standard sidewalk corridor, the applicant will be required to dedicate 2 feet of property. The dedication of property can occur in relation to the Final Plat stage of this land division.

With the conditions of approval for the right-of-way dedication and sidewalk corridor improvements, this criterion will be met.

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

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. At this time no specific utility easements adjacent to the right-of-way have been identified as being necessary. (OR) The applicant has proposed an \*-foot utility easement adjacent to the proposed public/private street. Therefore, this criterion is met.

## **DEVELOPMENT STANDARDS**

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

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

- Flag Lots-special setback standards apply to flag lots in the RF-R2.5 zone, and special landscape standards apply to flag lots that are 10,000 square feet or less in area in the R7-R2.5 zones (33.110.240.F). These standards apply to Parcel 2, the flag lot.
- Narrow Lots-- development on Parcel 1 will be subject to the following standards at the time of development permitting:
  - Height of the structures will be limited to 1.2/1.5 times the width of the structure, per 33.110.215.B.2; and
  - Garages can be no wider than 50% of the width of the front façade of the house, per 33.110.253.E.3.a
  - Attached garages are not permitted where the street facing façade of a unit will be less than 22 feet per 33.110.253.E.3.b. Detached dwelling units are not permitted on lots that are less than 25 feet in width.
- The site is currently vacant, so the division of the property will not cause structures to move out of conformance or further out of conformance with any development standard applicable in the R5 zone. Therefore, this land division proposal can meet the requirements of 33.700.015.

**Existing development that will remain after the land division.** 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 R5 zone. Therefore, this land division proposal can meet the requirements of 33.700.015.

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

## **OTHER TECHNICAL REQUIREMENTS**

Technical decisions have been made as part of this review process. These decisions have

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

<b>Bureau</b>	<b>Code Authority and Topic</b>
Development Services/503-823-7300 <a href="http://www.portlandonline.com/bds">www.portlandonline.com/bds</a>	Title 10 – Erosion Control, Site Development Administrative Rules for Private Rights-of-Way
Environmental Services/503-823-7740 <a href="http://www.portlandonline.com/bes">www.portlandonline.com/bes</a>	Title 17 – Sewer Improvements 2008 Stormwater Management Manual
Fire Bureau/503-823-3700 <a href="http://www.portlandonline.com/fire">www.portlandonline.com/fire</a>	Title 31 Policy B-1 – Emergency Access
Transportation/503-823-5185 <a href="http://www.portlandonline.com/transportation">www.portlandonline.com/transportation</a>	Title 17 – Public Right-of-Way Improvements Transportation System Plan
Urban Forestry (Parks)/503-823-4489 <a href="http://www.portlandonline.com/parks">www.portlandonline.com/parks</a>	Title 20 – Street Trees and other Public Trees
Water Bureau/503-823-7404 <a href="http://www.portlandonline.com/water">www.portlandonline.com/water</a>	Title 21 – Water availability

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.

**Fire Bureau:** The applicant must meet the requirements of the Fire Bureau in regard to: ensuring adequate fire-flow and hydrant spacing; turning radii for fire trucks and driving surface; and fire apparatus access roads including aerial access, or exception for automatic sprinklers. If the exception is taken, an Acknowledgment of Special Land Use Conditions form must be completed, referenced on and recorded with the Final Plat. These requirements are based on the technical standards of Title 31 and Fire Bureau Policy B-1.

**Urban Forestry:** Street trees may be required along the reconstructed public frontage.

## CONCLUSIONS

The applicant has proposed a 2-parcel, flag-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: tree preservation, access easement, sidewalk improvements and Fire Code requirements. With conditions that address these requirements, this proposal can be approved.

## ADMINISTRATIVE DECISION

**Approval** of a Preliminary Plan for a 2-parcel partition, that will result in one narrow lot and one flag lot, as illustrated with Exhibits C.1 and C.2, 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 139<sup>th</sup> Avenue. The required right-of-way dedication must be shown on the final plat.
2. A Private Access Easement over the “flag pole” portion of Parcel 2 for the benefit of Parcel 1 shall be shown and labeled on the final plat. The easement shall allow shared use of this area for all of the purposes for which a driveway would be typically used.

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 Conditions B.3 and B.4, below. The recording blocks 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:**

**Utilities**

1. The applicant shall meet the requirements of the Fire Bureau for ensuring adequate hydrant spacing and hydrant flow. 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 to final plat approval.
2. The applicant must meet the requirements of the Fire Bureau for providing an adequate fire access way for Parcel 2, as required in Chapter 5 of the Oregon Fire Code including distance from fire access, turning radius, and access road width. Alternately, the applicant will be required to install residential sprinklers in the new house on Parcel 2, if applying the exception. An Acknowledgement of Special Land Use Conditions describing the sprinkler requirement must be referenced on and recorded with the final plat.

**Required Legal Documents**

3. A Maintenance Agreement shall be executed for the Private Access Easement described in Condition A.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.
4. The applicant shall execute an Acknowledgement of Tree Preservation Land Use Conditions that notes tree preservation requirements that apply to Parcel 2, the flag lot. A copy of the approved Tree Preservation Plan (Exhibit C.2) must be included as an Exhibit to the Acknowledgement. The acknowledgment shall be recorded with Multnomah County and referenced on the final plat.


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

1. Development on Parcel 2, the flag lot, shall be in conformance with the Tree Preservation Plan (Exhibit C.2) and the applicant's arborist report (Exhibit A.3). Specifically, trees numbered 4, 5, 6, and 7 in the Tree Preservation Plan are required to be preserved, with a minimum 20-foot root protection zone as indicated on Exhibit C.2. 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. Encroachment into the specified root protection zones may only occur under the supervision of a certified arborist. Planning and Zoning approval of development in the root protection zones is subject to receipt of a report from an arborist, explaining that the arborist has approved of the specified methods of construction, and that the activities will be performed under his supervision.
2. The applicant shall meet the requirements of the City Engineer for right of way improvements along the site's street frontage. Prior to the issuance of a Building Permit for the new house on Parcel 1, the existing sidewalk corridor along the site'

frontage shall be re-constructed to current City standards. A Minor Improvement Permit shall be obtained for the sidewalk corridor re-construction.

3. Vehicle access to Parcel 1 must be from the flag pole of Parcel 2. A driveway is not allowed along the frontage of Parcel 1.
4. The applicant must meet the addressing and aerial fire access requirements of the Portland Fire Bureau. Aerial access applies to buildings that exceed 30 feet in height as measured to the bottom of the eave of the structure or the top of the parapet for a flat roof.
5. The applicant must meet Fire Bureau requirements for access to Parcel 2, the Flag Lot, including turning radius, width and driving surface. Alternatively, these requirements may be waived if sprinklers are installed. See Final Plat approval report for details.

**Staff Planner: Kathy Harnden**

**Decision rendered by:**  **on September 15, 2014**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: September 17, 2014**

**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 4, 2014, and was determined to be complete on **July 16, 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 February 4, 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 waived the 120-day review period, as stated with Exhibit G.3.

**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](http://www.portlandonline.com).

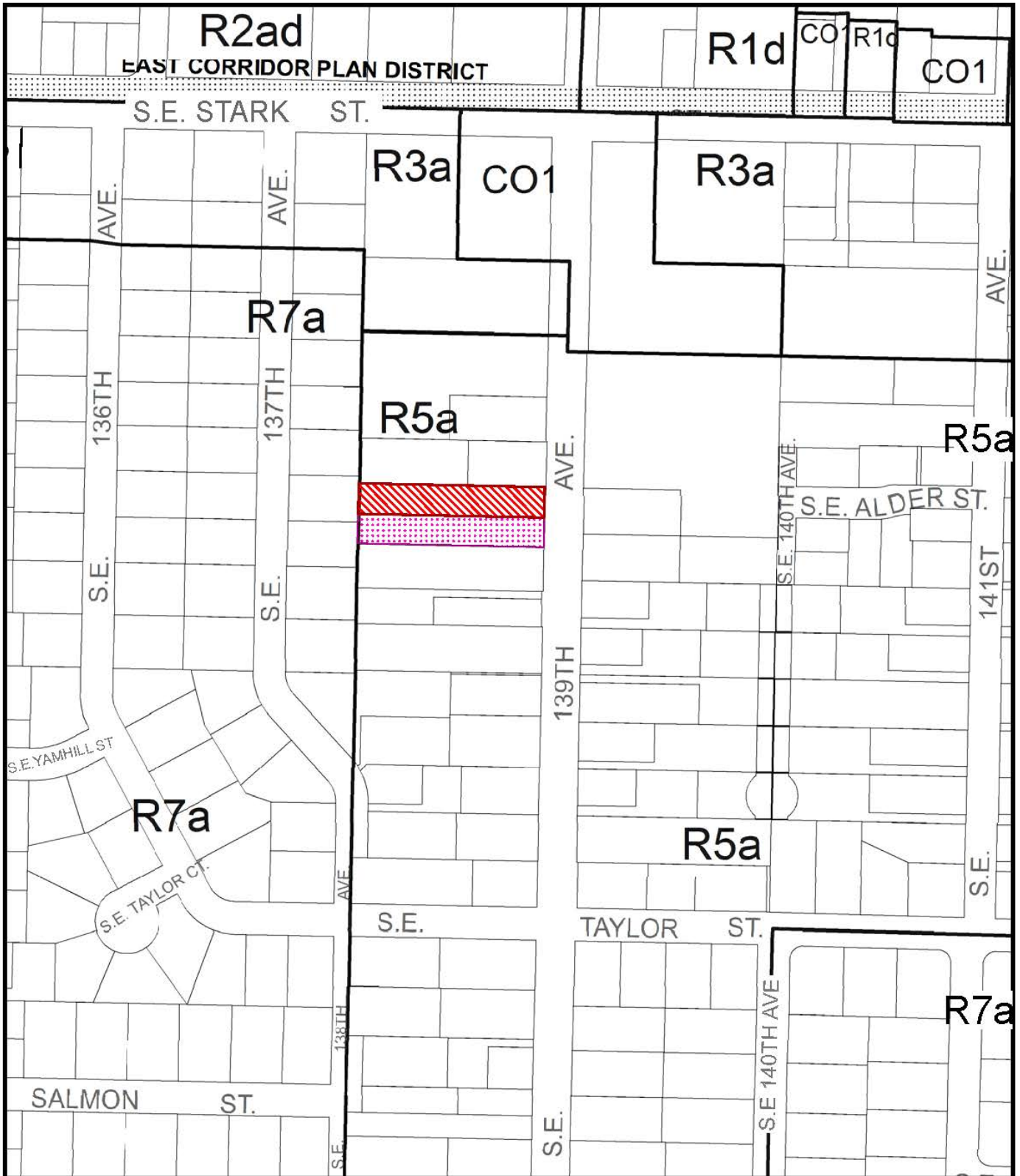
**Recording the land division.** The final land division plat **must** be submitted to the City **within three years** of the date of the City's final approval of the preliminary plan. This final plat must be recorded with the County Recorder and Assessors Office after it is signed by the Planning Director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

#### EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  - 1. Original Narrative
  - 2. Revised Narrative
  - 3. Arborist Report
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Preliminary Plat (attached)
  - 2. Conceptual Development/Tree Preservation (attached)
  - 3. Proposed Driveway Stormwater Management Plan
  - 4. Proposed Utility Plan
  - 5. Fire Bureau Turning Radius
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Portland Transportation
  - 3.a. Water Bureau
  - 3.b. Rockwood Water People's Utility District
  - 4. Fire Bureau
  - 5. Site Development/BDS
  - 6. Urban Forestry
- F. Correspondence: (none received)
- G. Other:
  - 1. Original LU Application
  - 2. Letter to applicant re: incomplete application w/Service Bureau Incomplete Letters Attached
  - 3. 120-day Waiver

**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
-  Also Owned



This site lies within the:  
 EAST PORTLAND NEIGHBORHOOD  
 HAZELWOOD  
 GATEWAY AREA

File No. LU 14-113286 LDP  
 1/4 Section 3144  
 Scale 1 inch = 200 feet  
 State\_Id 1S2E02AA 12500  
 Exhibit B (Feb 05, 2014)

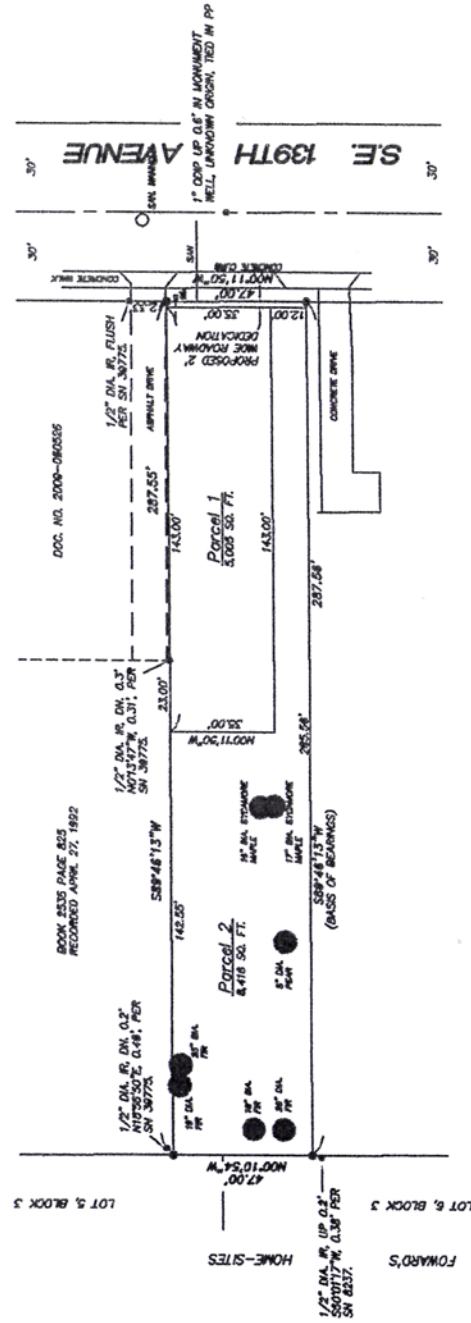
REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

OREGON  
JANUARY 16, 1982  
RUTH H. SUPER  
1976  
VALID THRU 6/30/15  
PROJECT: 1302

PRELIMINARY LAND DIVISION AND EXISTING CONDITIONS PLAN

A Partition of a portion of Lot 5, Block 3, Hood Acres  
IN THE NE 1/4 OF SECTION 2, T1S, R2E, W4M, CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON  
July 8, 2014 Scale: 1" = 30'

For Daniel R. and Sandra M. Weaver



- NOTES:**
1. AREA OF LAND PROPOSED TO BE PARTITIONED = 13,516 SQ. FT.
  2. PROPERTY IS UNIMPROVED, NO STRUCTURES
  3. CORRECTION ZONE: P5

RECEIVED  
JUL 09 2014  
By

LU 14-113286 LDP  
Exhibit C.1

PREPARED BY:  
ASSOCIATED LAND SURVEYORS, INC.  
375 PORTLAND AVE.  
GLADSTONE, OREGON 97037  
PHONE: (503) 655-9440

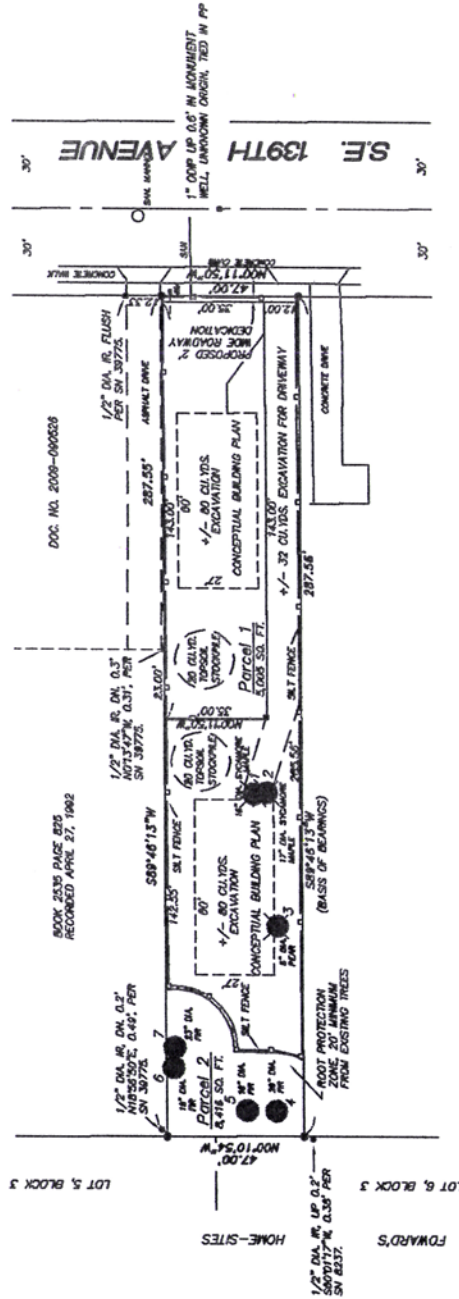
REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

OREGON  
JANUARY 1983  
KURTIS H. KUMPER  
1875  
VALID THRU 6/30/15  
PROJECT 1302

CLEARING, GRADING AND TREE PRESERVATION PLAN

A Partition of a portion of Lot 5, Block 3, Hood Acres  
IN THE NE 1/4 OF SECTION 2, T1.S. R.2E, W4M, CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON  
July 18, 2014 Scale: 1" = 30'

For Daniel R. and Sandra M. Weaver



- NOTES:**
1. AREA OF LAND PROPOSED TO BE PARTITIONED = 14,515 SQ. FT.
  2. PROPERTY IS VACANT, NO STRUCTURES
  3. CURRENT ZONE: R3
  4. NO ON-SITE CLEARING REQUIRED
  5. MINIMAL EXPECTED GRADING
- 1 TREE AND NUMBER CORRESPONDING TO TREE INVENTORY REPORT  
TREE TO BE REMOVED



Lu 14-113286LDP  
Exhibit C.2

PREPARED BY:  
ASSOCIATED LAND SURVEYORS, INC.  
375 PORTLAND AVE.  
GASTON, OREGON 97027  
PHONE: (503) 628-9440