



**City of Portland, Oregon**  
**Bureau of Development Services**  
**Land Use Services**  
FROM CONCEPT TO CONSTRUCTION

Dan Saltzman, Commissioner  
Paul L. Scarlett, Director  
Phone: (503) 823-7300  
Fax: (503) 823-5630  
TTY: (503) 823-6868  
[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**Date:** March 3, 2016  
**To:** Interested Person  
**From:** Sean Williams, Land Use Services  
503-823-7612 / [Sean.Williams@portlandoregon.gov](mailto:Sean.Williams@portlandoregon.gov)

## **NOTICE OF A TYPE II<sub>x</sub> DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD**

The Bureau of Development Services has approved a proposal in your neighborhood. The mailed copy of this document is only a summary of the decision. 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 14-181111 LDP**

#### **GENERAL INFORMATION**

**Applicant/Owner:** Benjamin H Walsh  
4615  
SW 39<sup>th</sup> Drive  
Portland, OR 97221

**Surveyor:** David Foster  
Foster & Maddux Surveying Inc.  
708 NE 238<sup>th</sup> Place  
Wood Village, OR 97060

**Site Address:** 4615 SW 39<sup>th</sup> Drive

**Legal Description:** S 110' OF LOT 18, HOMESDALE  
**Tax Account No.:** R400400170  
**State ID No.:** 1S1E17BA 04400  
**Quarter Section:** 3525  
**Neighborhood:** Bridlemile, contact Claire Colman-Evans at 503-740-7460.  
**Business District:** None  
**District Coalition:** Southwest Neighborhoods Inc., contact Leonard Gard at 503-823-4592.  
**Plan District:** None  
**Other Designations:** Potential Landslide Hazard  
**Zoning:** Residential 10,000 (R10) w/ Environmental Protection Overlay (p)  
**Case Type:** Land Division Partition (LDP)  
**Procedure:** Type II<sub>x</sub>, an administrative decision with appeal to the Hearings Officer.

#### **Proposal:**

The applicant is proposing to partition the subject property into two parcels and an environmental resource tract of approximately 16,932 (Parcel 1), 16,841 (Parcel 2), and 689 (Tract A) square feet in size. Parcel 1 is a standard lot that will retain the existing single family residence and detached garage and Parcel 2 is a flag lot.

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

For purposes of State Law, this land division is considered a partition. To partition land is to divide an area or tract of land into two or three parcels within a calendar year (See ORS 92.010). ORS 92.010 defines “parcel” as a single unit of land created by a partition of land. The applicant’s proposal is to create 3 units of land (2 lots and 1 tract). 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.**
- **Section 33.430.160, Standards for Land Divisions and Planned Developments.**

## FACTS

**Site and Vicinity:** The site is located on the west side of SW 39<sup>th</sup> Drive approximately 260 feet south of SW Hamilton Street. Existing improvements consist of a one story single family home and detached garaged located on the easternmost portion of the site. The site moderately slopes downward from SW 39<sup>th</sup> Drive towards Ivey Creek to the west. The surrounding vicinity is primarily developed with single family homes.

### Infrastructure:

- **Streets** – The site has approximately 109 feet of frontage on SW 39<sup>th</sup> Drive. There is one driveway entering the site that serves the existing house. At this location, SW 39<sup>th</sup> Drive is classified as a Local Service Street for all modes in the Transportation System Plan (TSP). Tri-Met provides transit service approximately 260 feet north of the site on SW Hamilton Street via Bus #55. At this location, SW 39<sup>th</sup> Drive is improved with a 32 foot paved roadway surface and curb only within a 50 foot wide right-of-way.
- **Water Service** – There is an existing 6-inch CI water main in SW 39<sup>th</sup> Drive. The existing house is served by a 5/8-inch metered service from this main.
- **Sanitary Service** - There is an existing 8-inch CSP sanitary sewer main in SW 39<sup>th</sup> Drive.

**Zoning:** The R10 designation is one of the City’s single-dwelling zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing.

Environmental overlay zones (“c” or “p”) protect environmental resources and functional values that have been identified by the City as providing benefits to the public. The environmental regulations encourage flexibility and innovation in site planning and provide for development that is carefully designed to preserve the site’s protected resources. They protect the most important environmental features and resources while allowing environmentally sensitive urban development where resources are less significant.

**Land Use History:** City records indicate the following prior land use reviews for this site:

- **LU 13-192395 LDP:** Proposal for a 2 parcel partition that was withdrawn.

**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 **October 26, 2015**. One written response was received from the Bridlemile Neighborhood Association regarding this proposal (Exhibit F.1). The response expressed no opposition to the proposal with the exception of a requirement to install a sidewalk along the frontage of the site, per the Portland Bureau of Transportation (Exhibit E.2). The applicant requested an appeal to this requirement but was denied (Exhibit G.3). Therefore, the applicant will be required to install the sidewalk prior to final plat approval.

## 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.  |
| 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  | Maintaining existing development on the site limits new parcel configuration (33.610.200 supercedes 33.639). |
| 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  | 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.  |

**Applicable Approval Criteria are:****A. Lots. The standards and approval criteria of Chapters 33.605 through 33.612 must be met.**

**Findings:** Chapter 33.610 contains the density and lot dimension requirements applicable in the RF through R5 zones. The applicant is proposing to create one standard lot (Parcel 1) and one flag lot (Parcel 2). The minimum and maximum density for the site is as follows:

Minimum = There is no minimum density as the entire site is located within the potential landslide hazard area (33.610.100).

Maximum =  $34,540 \div 10,000$  square feet = 3.45 (which rounds down to a maximum of 3 lots, per 33.930.020.B)

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

|                 | <b>Min. Lot Area**<br/>(square feet)</b> | <b>Max. Lot Area<br/>(square feet)</b> | <b>Min. Lot Width*<br/>(feet)</b> | <b>Min. Depth<br/>(feet)</b> | <b>Min. Front Lot Line<br/>(feet)</b> | <b>Min. Flag Lot Width<br/>(feet)</b> | <b>Min. Flag Lot Depth<br/>(feet)</b> |
|-----------------|--|--|-----------------------------------|------------------------------|---------------------------------------|---------------------------------------|---------------------------------------|
| <b>R10 Zone</b> | 6,000                                    | 17,000                                 | 50                                | 60                           | 30                                    | 40                                    | 40                                    |
| Parcel 1        | 16,932                                   |  | 94.72                             | 178.68                       | 94.72                                 | n/a                                   | n/a                                   |
| Parcel 2        | 16,841 w/ pole<br>14,160 w/o pole        |  | n/a                               | n/a                          | n/a                                   | 109.72                                | 135                                   |

\* 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.

Flag Lots**When allowed**

In this case the applicant is proposing 2 parcels, only one of which is a flag lot. The existing dwelling unit has been on the property for at least 5-years and is located so that it precludes a land division that meets minimum lot width standards. The minimum density standards are met. Therefore the thresholds for when a flag lot is allowed to be created have been met.

**Dimensions**

The proposed flag lot meets applicable Zoning Code standards found in 33.610.400 because it has a "pole" at least 12 feet wide that connects to a street, and as shown above, meets the minimum lot area, width and depth standards.

**Vehicle Access**

Where it is practical, vehicle access must be shared between the flag lot and the lots between the flag portion of the lot and the street. Factors that may be considered include the location of existing garages, driveways, and curb cuts, stormwater management needs, and tree preservation. Access easements may be used.

In this case, the applicant is proposing to locate the pole portion of the flag lot to the south of the existing house as there is an established detached garage located along the northern property line of the land division site. Due to the location of the existing detached garage there is no opportunity to provide shared access. No other alternatives beyond the proposed location were suitable for the additional vehicle access.

Parcel 2 has met the thresholds for when a flag lot is allowed. Therefore, Parcel 2 is allowed.

The findings above show that the applicable density and lot dimension standards are met. Therefore, this criterion is met.

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

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

The applicant has provided an arborist report that inventories the trees within the land division site, evaluates their condition and specifies root protection zones (Exhibit A.2). The arborist report has identified 6 trees, of which 4 trees have been determined to be exempt as they have been classified as hazardous. Thus, two non-exempt trees, a 6 inch Dogwood and 14 inch pear, are subject to the preservation requirements of this chapter.

The applicant proposes to preserve both of the non-exempt trees within the land division site, which comprise 20 inches of diameter, or 100 percent of the total non-exempt tree diameter. This proposal complies with Option 1 of the tree preservation standards, which requires at least 35 percent of the total non-exempt tree diameter on the site to be preserved. The trees to be preserved and the required root protection zones are shown on the applicant's Site Plan (Exhibit C.2).

In order 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 is met, subject to the condition that development on Parcels 1 and 2 are carried out in conformance with the Site Plan (Exhibit C.2) and the applicant's arborist report (Exhibit A.2) and an Acknowledgement of Tree Preservation Land Use Conditions is recorded with the final plat.

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

**Findings:** The entire site is located within the Potential Landslide Hazard Area. The approval criteria state that the lots, buildings, services, and utilities must be located on the safest part of the site so that the risk of a landslide affecting the site, adjacent sites, and sites directly across a street or alley from the site is reasonably limited

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

The applicant's geotechnical evaluation indicates that the risk of potential landslide hazard at the site is relatively low, given the soil composition, topography, and other risk factors. The proposed land division will result in lots, buildings, services, and utilities that will not significantly increase the risk of landslide potential on the site or other properties in the vicinity of the site. In addition, the geotechnical evaluation has concurred that the applicant's proposed method of stormwater disposal at the site will not have a significant detrimental impact on the slope stability on or around the site. This conclusion was reached because the soils and slopes at the site indicate that an on-site method of disposal such as the proposed chamber system that infiltrates like a soakage trench is acceptable.

Site Development has concurred with the findings of the applicant's geotechnical report, but notes that further geotechnical evaluation may be required for specific building plans at the time of construction plan review. This criterion is met.

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

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

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

A Preliminary Clearing and Grading Plan was not submitted with the land division application however, the applicant did submit a Geotechnical Report and Landslide Hazard Study (Exhibit A.3) that describes how clearing and grading should occur on the site to minimize erosion risks. The applicant also provided a Site Plan (Exhibit C.2) that designates areas on the site where grading should not occur in order to protect the roots of the trees on the site that will be preserved, and an arborist report (Exhibit A.2) that further discusses grading on the site.

Both the applicant's geotechnical engineer and arborist recommend that the amount of grading work occurring on the site be minimized as much as possible. It is anticipated that the grading will primarily involve excavating for the foundation of the new house on Parcel 2 and trenching for the utilities, but will not include mass grading of the site to alter the existing contours. Following the recommendations of the Landslide Hazard Study will help to limit erosion and sedimentation concerns. Stormwater runoff from the lots will be appropriately managed by a chamber system that infiltrates like a soakage trench to assure that the runoff will not adversely impact adjacent properties (see detailed discussion of stormwater management later in this report). In addition, no clearing and grading will be permitted within the root protection zones of the trees on the site that are required to be preserved. Preserving these trees will help limit erosion by assuring that the tree roots will help to hold the soil in place. Topsoil storage and general stockpiling on the site should only occur if it will not create any additional erosion concerns as recommended by the geotechnical engineer.

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

***Land Suitability***

The site is currently in residential use, and there is no record of any other use in the past. As indicated above, the site is relatively flat and contains no known geological hazards. Therefore, there are no anticipated land suitability issues and the new lots can be considered suitable for new development. This criterion is met.

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

**Findings:** An Open Space (Environmental Resource Area) Tract (Tract A) is proposed in the northwest corner of Parcel 2. In order to ensure the correct boundary of the tract, the supplemental survey shall include the environmental protection zone boundary. The applicant has also proposed a 10-foot wide private pedestrian access easement over the relevant portions

of Parcel 2 for the benefit of Parcel 1. This easement will allow for Tract A to be accessible to Parcel 1.

As stated in Section 33.636.100 of the Zoning Code, a maintenance agreement(s) will be required describing maintenance responsibilities for the tract and easement described above and facilities within those areas as well as limitations on uses and development in the tract. 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 (name of feature) has been recorded as document no. \_\_\_\_\_, Multnomah County Deed Records."*

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

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

**Findings:** The transportation system must be capable of safely supporting the proposed development in addition to the existing uses in the area. The Development Review Section of the Portland Bureau of Transportation has reviewed the application for its potential impacts regarding the public right-of-way, traffic impacts and conformance with adopted policies, street designations, and for potential impacts upon transportation services. The applicant provided a narrative (Exhibit A.1) and site distance assessment (Exhibit A.5) to address this criterion. PBOT has provided the following findings (see Exhibit E.2):

**Street Capacity and Levels of Service**

The proposal will result in a net increase of 1 single-family residence. This residence can be expected to generate 10 daily vehicle trips with 1 trip occurring in each of the AM and PM Peak Hours. This small increase in peak hour vehicles will not have significant impact on intersection levels of service or street capacity. No mitigation is needed.

**Vehicle Access/Loading**

The new lot will have a driveway to provide access to parking and loading.

**On-Street Parking Impacts**

The new lot will have at least one on-site parking space with an additional space between the garage and the front property line. Impacts to the on-street parking supply should be minimal.

**Availability of Transit**

Tri Met Bus Line #54 is available to serve the site 1/2 mile away at the SW Beaverton-Hillsdale Transit Center.

**Neighborhood Impacts**

The site is being developed with a new single-family residence in compliance with the existing R10 zoning. In addition, standard frontage improvements including sidewalks will reduce the potential for conflicts between pedestrians and vehicles.

**Safety for All Modes**

Given the low vehicle speeds and volumes on SW 39th, pedestrians and cyclists can share the roadway.

PBOT has reviewed and concurs with the information supplied and available evidence. No mitigation is necessary for the transportation system to be capable of safely supporting the proposed development in addition to the existing uses in the area. Requirements for frontage improvements on SW 39<sup>th</sup> Drive are described in findings associated with chapter 33.654, below. These criteria are 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:

|  |
|--|
| <b>33.651 Water Service standard – See Exhibit E.3</b>   |
| <p>The Water Bureau has indicated that service is available to the site from the 6-inch CI water main in SW 39<sup>th</sup> Drive, as noted on page 2 of this report. The water service standards of 33.651 have been verified. This criterion is met.</p>   |
| <b>33.652 Sanitary Sewer Disposal Service standards – See Exhibit E.1</b>  |
| <p>The Bureau of Environmental Services has indicated that service is available to the site from the 8-inch CSP sanitary sewer main in SW 39<sup>th</sup> Drive, as noted on page 2 of this report. The sanitary sewer service standards of 33.652 have been verified. This criterion is met.</p>  |
| <b>33.653.020 &amp; .030 Stormwater Management criteria and standards – See Exhibits E.1 &amp; E.5</b>   |
| <p>No stormwater tract is proposed or required. Therefore, criterion A is not applicable. The applicant submitted a Geotechnical Report/Landslide Hazard Study (Exhibit A.3) and stormwater calculations (Exhibit A.4) to address this criterion and has proposed the following stormwater management methods:</p> <ul style="list-style-type: none"> <li>• <b>Public Street Improvements:</b> As a condition of this land use approval, the Bureau of Transportation requires the applicant to improve the frontage of the site to City standards (discussed later in this report). A new sidewalk is required, but the curb already exists. BES has indicated that the sidewalk must be constructed so that it will slope towards the planter strip, allowing the stormwater runoff from the sidewalk to be deposited in a vegetated area, which meets the requirements of the Stormwater Management Manual.</li> <li>• <b>Parcel 1 (the parcel with the existing house):</b> The existing house has downspouts that discharge stormwater to an existing rock-less infiltration trench on the west side of the house. The proposed property line will not conflict with the existing facilities.</li> <li>• <b>Parcel 2:</b> The applicant proposes to infiltrate runoff from the development through a chamber system that infiltrates like a soakage trench. The provided plan demonstrates that the facility can meet minimum setbacks as established in the facility design standards. Additionally, pervious pavement is proposed for the driveway and parking area associated with this Parcel.</li> </ul> <p>The Geotechnical Report and Landslide Hazard Study includes infiltration test results of 4 inches per hour and concludes that the proposed development, including onsite infiltration of stormwater runoff, will not significantly increase slope instability on or adjacent to the project site. BES has indicated conceptual approval of the applicants existing and proposed method of stormwater management. Therefore, this criterion is met.</p> |
| <b>33.654.110.B.1 Through streets and pedestrian connections</b>   |
| <p>Generally, through streets should be provided no more than 530 feet apart and at least 200 feet apart. The Portland Bureau of Transportation has provided the following evaluation of connectivity for this proposal (Exhibit E.2):</p> <p>Environmental protection overlay zoning immediately west of the site</p>   |



prevents the ability for any east/west connectivity.

For the reasons described above this criterion is met.

### **33.654.120.B & C Width & elements of the right-of-way**

At this location, SW 39<sup>th</sup> Drive is improved with a 32 foot paved roadway surface and curb only within a 50 foot wide right-of-way. In reviewing this land division, Portland Transportation relies on accepted civil and traffic engineering standards and specifications to determine if existing street improvements for motor vehicles, pedestrians and bicyclists can safely and efficiently serve the proposed new development. In this case Portland Transportation has determined that 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.

This criterion is met, with the condition that sidewalk improvements are made, and the required right-of-way dedication is shown on the Final Plat.

### **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. Therefore, this criterion is met.

## **DEVELOPMENT STANDARDS**

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

### **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.

**Existing development that will remain after the land division.** The existing development on the site will remain and be located on Parcel 1. The division of the property may not cause the structures to move out of conformance or further out of conformance to any development standard applicable in the R10 zone. Per 33.700.015, if a proposed land division will cause conforming development to move out of conformance with any regulation of the zoning code, and if the regulation may be adjusted, the land division request must include a request for an adjustment (Please see section on Other Technical Standards for Building Code standards.) In this case, there are several Zoning Code standards that relate to existing development on the site:

- Minimum Setbacks – The existing house identified to remain on the site must meet the required Zoning Code setbacks from the proposed new lot lines. Alternatively, existing buildings must be set back from the new lot lines in conformance with an approved Adjustment or other Land Use Review decision that specifically approves alternative setbacks. The existing house will be 81.5 feet from the new property line. Therefore, the required setbacks are being met. To ensure this standard continues to be met at the final plat stage, the final plat must be accompanied by a supplemental survey showing the location of the existing building relative to the adjacent new lot lines.

- **Accessory Structures** – In this zone, accessory structures are not allowed on a lot without a primary structure. Therefore, the detached shed on Parcel 2 must be removed prior to final plat. The applicant must submit before and after photos to document removal of the structure. To ensure that this standard is met, a condition of approval is necessary. Alternately, the applicant can execute a covenant with the City stating that the structure will be removed if a primary structure has not received final inspection on Parcel 2 with the accessory structure within two years of final plat approval. The covenant must be recorded with Multnomah County prior to final plat approval. However, the structure must be moved to meet the minimum flag lot setback of 15-feet to qualify for this option.
- **T11 Tree Standard** – Residential development has a tree density requirement that is currently met on the site. Due to the land division, and associated tree removal, Parcel 1 with the existing house will no longer meet this standard. Parcel 1 is 16,932 square feet. Therefore the required tree area is 40 percent of the site, or 6,773 square feet, per 11.50.050.C. Prior to final plat approval, the applicant must meet the required tree density or make the equivalent payment into the City Tree Fund. Note, the 6 inch Dogwood to be retained on this parcel per tree preservation requirements will be credited towards meeting this requirement.

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

**Environmental Standards.** In this case, there are several Zoning Code standards that apply to the proposed land division. The standards of Section 33.430.160 Standards for Land Divisions and Planned Developments apply to the proposal. Conditions have been included for requirements that apply at the time of final plat and at the time of development. The applicant has demonstrated that the standards of Section 33.430.160 have been met. The standards listed below can be met with conditions:

- Resource areas outside designated disturbance areas must be placed entirely within environmental resource tracts. The tracts must be owned in common by all of the owners of the land division site, by a Homeowners' Association, by a public agency, or by a non-profit organization (33.430.160.C).
- All vegetation planted in a resource area is native and listed on the Portland Plant List. Plants listed on the Nuisance Plant List are prohibited (33.430.140.L)
- Fences are allowed only within the disturbance area (lots) (33.430.140.O).
- Exterior lights must be spaced at least 25 feet apart. Incandescent lights exceeding 200 watts (or other light types exceeding the brightness of a 200-watt incandescent light) must be placed so they do not shine directly into resource areas (33.430.140.Q).

## 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<br><a href="http://www.portlandonline.com/bds">www.portlandonline.com/bds</a>   | Title 24 – Building Code, Flood plain<br>Title 10 – Erosion Control, Site Development<br>Administrative Rules for Private Rights-of-Way |
| Environmental Services/503-823-7740<br><a href="http://www.portlandonline.com/bes">www.portlandonline.com/bes</a> | Title 17 – Sewer Improvements<br>2008 Stormwater Management Manual  |
| Fire Bureau/503-823-3700<br><a href="http://www.portlandonline.com/fire">www.portlandonline.com/fire</a>          | Title 31 Policy B-1 – Emergency Access  |

|   |   |
|---|---|
| Transportation/503-823-5185<br><a href="http://www.portlandonline.com/transportation">www.portlandonline.com/transportation</a> | Title 17 – Public Right-of-Way Improvements<br>Transportation System Plan |
| Urban Forestry (Parks)/503-823-4489<br><a href="http://www.portlandonline.com/parks">www.portlandonline.com/parks</a>           | Title 11 –Trees   |
| Water Bureau/503-823-7404<br><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.

- The applicant must meet the requirements of the Fire Bureau in regards to recording an Acknowledgement of Special Land Use Conditions that requires the provision of internal fire suppression sprinklers on Parcel 2, per fire code appeal #13010; Addressing; and aerial fire department access roads. These requirements are based on the technical standards of Title 31 and 2014 Oregon Fire Code (Exhibit E.4).
- The applicant must meet the requirements of Urban Forestry for street tree planting in the future planter strip adjacent to Parcel 1 prior to final plat approval. This requirement is based on the standards of Title 11 (Exhibit E.6).

## CONCLUSIONS

The applicant has proposed a 2 parcel partition, as shown on the attached preliminary plan (Exhibit C.2). 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, tracts/easements, and services/utilities. With conditions of approval 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 standard lot (Parcel 1), one flag lot (Parcel 2), and an Environmental Resource Tract (Tract A), as illustrated with Exhibit C.2, subject to the following conditions:

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

- Any buildings or accessory structures on the site at the time of the final plat application;
- Any driveways and off-street vehicle parking areas on the site at the time of the final plat application;
- Environmental protection zone boundary;
- Any other information specifically noted in the conditions listed below.

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

1. The applicant shall meet the street dedication requirements of the City Engineer for SW 39<sup>th</sup> Drive. The required right-of-way dedication must be shown on the final plat.
2. The Environmental Resource tract shall be noted on the plat as "Tract A: Open Space (Environmental Resource Area). A note must also be provided on the plat indicating that the tract will commonly owned and maintained by the owners of Parcels 1 and 2.
3. A 10-foot wide private pedestrian access easement, for the benefit of Parcel 1, shall be shown and labeled over the relevant portions of Parcel 2. The easement shall allow for pedestrian access from Parcel 1 to the Environmental Resource tract (Tract A).

4. 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 C.5-8 below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: "A Declaration of Maintenance Agreement for (name of feature) has been recorded as document no. \_\_\_\_\_, Multnomah County Deed Records."

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

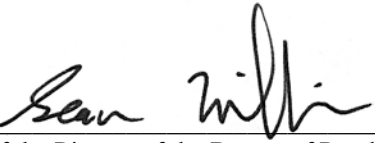
1. The applicant shall meet the requirements of the City Engineer for right of way improvements along the site's street frontage. The applicant must obtain an approved Right Of Way permit from the Portland Bureau of Transportation to install the required sidewalk corridor. The improvements along the frontage of Parcel 1, where the existing house will be retained, must be constructed prior to final plat approval. The improvements along the frontage Parcel 2 may be constructed at the time of development as per the City Engineer's discretion.
2. The applicant must remove the shed on Parcel 2. 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 the approved Tree Preservation Plan, per Condition C.1. Alternately, the applicant can execute a covenant with the City stating that the structure will be removed if a primary structure has not received final inspection on Parcel 2 with the accessory structure within two years of final plat approval. The covenant must be recorded with Multnomah County prior to final plat approval. In order to qualify for this option, the shed must be moved on Parcel 2 to meet the minimum flag lot setback of 15-feet.
3. The applicant must plant 4 street tree(s) in the new planter strip on SW 39<sup>th</sup> Drive adjacent to Parcel 1. Street trees will be chosen from the City's approved street tree list for the 4-foot planting strip. Tree size requirements for residential sites are to be 2-inch caliper. The applicant must contact Urban Forestry at 503-823-4018 prior to selecting trees to discuss the species of trees that are permitted and to obtain the planting permit. Urban Forestry must inspect and approve the newly planted trees prior to final plat approval.
4. The applicant must meet the on-site tree density requirement of Title 11 on Parcel 1 with the existing house by either planting trees on this parcel or making the equivalent payment into the City Tree Fund. A finalized Zoning Permit must be obtained to document tree planting prior to final plat approval.
5. A Maintenance Agreement shall be executed for the private pedestrian access easement described in Condition B.3 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.
6. A Maintenance Agreement shall be executed for the tract described in Condition B.2 above. The agreement shall include provisions assigning maintenance responsibilities for the tract and any shared facilities within this area, consistent with the purpose of the tract, and all applicable City Code standards. The tract must be owned in common by the homeowner's association. 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. The agreement must also include:
  - a. assign common, undivided ownership of the tract to the owners of all lots;
  - b. include provisions for assigning maintenance responsibilities for the tract;
  - c. include a description of allowed/prohibited activities consistent with Chapter 33.430; and
  - d. include conditions of this land use approval that apply to the tract.

7. The applicant shall execute an Acknowledgement of Special Land Use conditions, requiring residential development on Parcel 2 to contain internal fire suppression sprinklers, per Fire Bureau Appeal #13010. The acknowledgement shall be referenced on and recorded with the final plat.
8. The applicant shall execute an Acknowledgement of Tree Preservation Land Use Conditions that notes tree preservation requirements that apply to Parcels 1 and 2. A copy of the approved Tree Preservation Plan must be included as an Exhibit to the Acknowledgement. The acknowledgment shall be referenced on and recorded with the final plat.

**D. 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 Site Plan (Exhibit C.2) and the applicant's arborist report (Exhibit A.2). Specifically, trees #2 (6" Flowering dogwood) and #3 (14" Pear) are required to be preserved, with the root protection zones 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/her supervision.
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. The applicant will be required to install residential sprinklers in the new house on Parcel 2 to the satisfaction of the Fire Bureau.
4. Fences are allowed only within lots (not within any of the tracts).
5. In environmental zone resource or transition areas, exterior lights must be spaced at least 25 feet apart. Incandescent lights exceeding 200 watts (or other light types exceeding the brightness of a 200-watt incandescent light) must be placed so they do not shine directly into resource areas. This condition applies to lots that abut any environmental zoning on the site.
6. In resource areas of environmental zones, all vegetation planted must be native and listed on the Portland Plant List. Plants listed on the Nuisance Plants List are prohibited.

**Staff Planner: Sean Williams**

**Decision rendered by:**  **on March 1, 2016**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: March 3, 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 July 9, 2014, and was determined to be complete on **April 29, 2015**.

*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 July 9, 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 A.6. Unless further extended by the applicant, **the 120 days will expire on: April 23, 2016.**

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

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

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

**Appealing this decision.** This decision may be appealed to the Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on March 17, 2016** at 1900 SW Fourth Ave. Appeals can be filed at the Development Services Center Monday through Wednesday and Fridays between 8:00 am to 3:00 pm and on Thursdays between 8:00 am to 2:00 pm. After 3:00 pm Monday through Wednesday and Fridays, and after 2:00 pm on Thursdays, appeals must be submitted at the reception desk on the 5<sup>th</sup> floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please contact the receptionist at 503-823-7617 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.ci.portland.or.us](http://www.ci.portland.or.us).

**Attending the hearing.** If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283 or phone 1-503-373-1265 for further information.

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

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

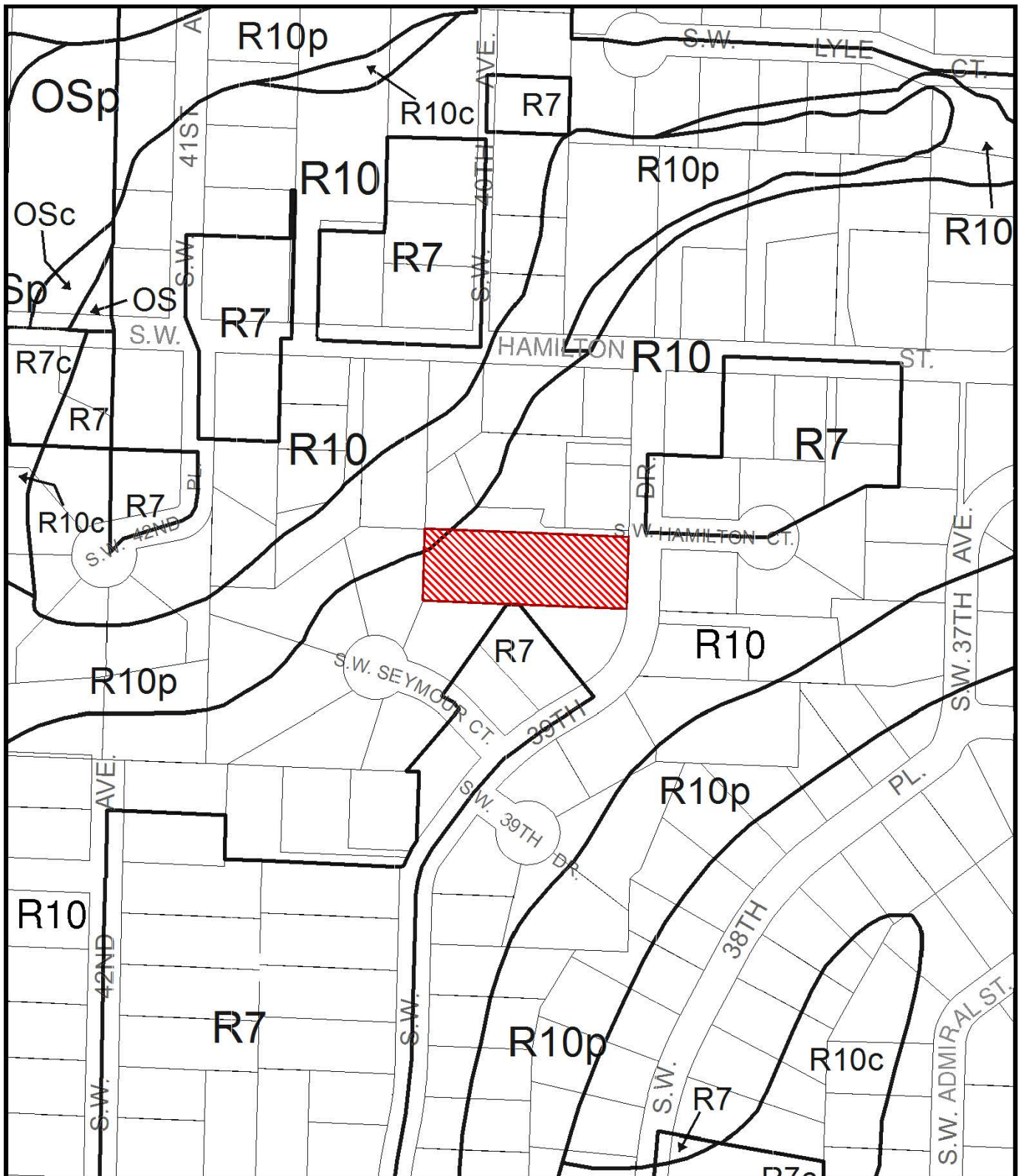
#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  - 1. Narrative
  - 2. Arborist report
  - 3. Geotechnical report and landslide hazard study
  - 4. Stormwater calculations
  - 5. Site distance assessment
  - 6. Request for extension of 120 day review period
  - 7. Neighborhood contact
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Topographic survey
  - 2. Site Plan (attached)
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services w/ addendum
  - 2. Bureau of Transportation Engineering and Development Review
  - 3. Water Bureau
  - 4. Fire Bureau w/ approved appeal (#13010)
  - 5. Site Development Review Section of BDS w/ addendums
  - 6. Bureau of Parks, Forestry Division
  - 7. Life Safety Plans Examiner
- F. Correspondence:
  - 1. Bridlemile Neighborhood Association (5/13/15)
- G. Other:
  - 1. Original LU Application
  - 2. Incomplete letter w/ RFC responses
  - 3. Public works appeal

**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

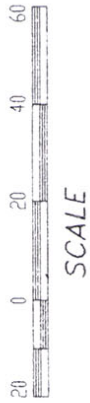


NORTH

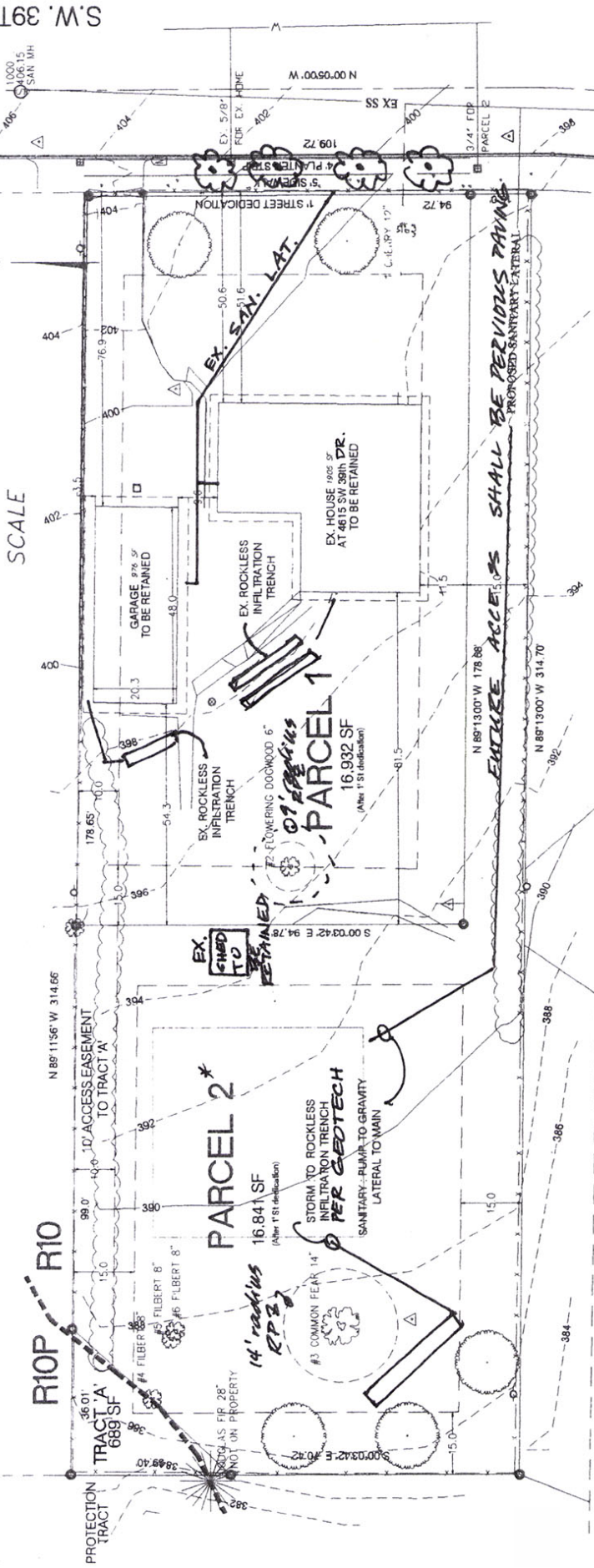
File No. LU 14-181111 LDP  
 1/4 Section 3525  
 Scale 1 inch = 200 feet  
 State\_Id 1S1E17BA 4400  
 Exhibit B (Nov 03, 2014)



S.W. 39TH DRIVE



SCALE



CITY OF PORTLAND BENCH MARK  
NO. 1756: SOUTHEAST CORNER OF  
INTERSECTION OF S.W. HAMILTON  
STREET AND S.W. 39TH AVENUE.  
ELEVATION = 417.69 FEET (CITY OF  
PORTLAND DATUM)

# TREE INVENTORY

| TREE # | COMMON NAME | SPECIES         | DBH (INCHES) | SIG. | TREE | PRESERVATION VALUE | RECOMMEND | ROOT PROTECTION ZONE |
|--------|-------------|-----------------|--------------|------|------|--------------------|-----------|----------------------|
| #1     | CHERRY      | PRUNUS SPECIES  | 11"          |      | NO   | LOW                | REMOVE    | NONE                 |
| #2     | DOGWOOD     | CORNUS FLORIDA  | 5"           |      | NO   | HIGH               | SAVE      | 6'                   |
| #3     | COMMON PEAR | PYRUS SPECIES   | 14"          |      | NO   | HIGH               | SAVE      | 14'                  |
| #4     | HAZELNUT    | CORYLUS SPECIES | 8"           |      | NO   | LOW                | REMOVE    | NONE                 |
| #5     | HAZELNUT    | CORYLUS SPECIES | 8"           |      | NO   | LOW                | REMOVE    | NONE                 |
| #6     | HAZELNUT    | CORYLUS SPECIES | 8"           |      | NO   | LOW                | REMOVE    | NONE                 |



(2) 2" caliper  
*Acer macrophyllum*  
Bigleaf Maple