



Portland City Auditor

Hearings Office

1900 SW 4th Avenue, Room 3100, Portland, OR 97201
www.portlandoregon.gov/auditor/hearings

phone: (503) 823-7307
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DECISION OF THE HEARINGS OFFICER IN UNCONTESTED CASE

File No.: LU 14-235840 CU AD
(Hearings Office - 4150035)

Applicant: Arthur Marx
WasteXpress of International Resource Management, Inc.
P.O. Box 83492
Portland, OR 97283

Representative: Hann Lee, Engineering Consultant
H. Lee & Associates
P.O. Box 1849
Vancouver, WA 98668

Hearings Officer: Gregory J. Frank

Bureau of Development Services (BDS) Representative: Sheila Frugoli

Site Address: 11618 N Lombard Street

Legal Description: TL 1600 0.64 ACRES, SECTION 35 2N 1W

Tax Account No.: R971350050

State ID No.: 2N1W35D 01600

Quarter Section: 1820

Neighborhood: St. Johns

Business District: Columbia Corridor Association

District Coalition: North Portland Neighborhood Services

Zoning: IH – Heavy Industrial

Land Use Review: Type III, Conditional Use Review and Adjustment (CU AD)

BDS Staff Recommendation to Hearings Officer: Approval with Conditions

Public Hearing: The hearing was opened at 9:00 a.m. on March 30, 2016, in the 3rd floor hearing room, 1900 SW 4th Avenue, Portland, Oregon, and was closed at 9:24 a.m. The applicant waived applicant's rights granted by ORS 197.763 (6)(e), if any, to an additional 7 day time period to submit written rebuttal into the record. The record was closed at the end of the hearing.

Testified at the Hearing:

- Sheila Frugoli
- Arthur Marx
- Hann Lee

Proposal: The applicant is requesting a Conditional Use Review to legally establish and expand the existing facilities for WasteXpress, a full service waste transportation, disposal and remediation contractor. The business accepts hazardous wastes such as solvents, acids and heavy metal materials as well as non-hazardous wastes such as latex paints and garden products. Other materials such as oil products, batteries, pesticides, asbestos and medical waste are also accepted. Because the Portland Zoning Code classifies this as a Waste-Related Use, it is only allowed in Industrial zones as a Conditional Use. The applicant intends to replace the existing shop with a larger, approximately 10,500 square-foot shop/warehouse building with 5 loading bays. This building will house the operations of the Waste-Related Use. A modular office building will be located on the site during construction. After the new shop is completed, a 2-story accessory office building and associated parking will be constructed to serve the business.

Also requested are the following Adjustments: (1) To reduce the 100-foot setback requirement from all property lines for waste-related uses (33.254.080.A); (2) Waive the landscaping (L1-general standard and L3-high screen standard) that is required within the 100-foot setback (33.254.080.B); (3) Waive the required setback and perimeter landscaping requirement between the north property line and the proposed parking area (33.266.130.G.2); (4) Waive the setback and landscape standard between the truck loading area and the north property line (33.266.310.E); and (5) Waive the requirement that a fence be installed on the interior side of the required 100-foot setback for the waste-related use (33.254.080.B).

The applicant recently received City Council approval to vacate N. Terminal Road (VAC-10096). Access onto the site will be provided on the existing paved roadway via an access easement granted from the northern-abutting property owner.

Approval Criteria: In order to be approved, this proposal must comply with the approval criteria of Title 33, Portland Zoning Code. The applicable approval criteria are:

- 33.815.220 – Conditional Use Mining and Waste-Related
- 33.805.040.A-F, Adjustments

Hearings Officer Decision: It is the decision of the Hearings Officer to adopt and incorporate into this decision the facts, findings, and conclusions of the Bureau of Development Services in their Staff Report and Recommendation to the Hearings Officer dated March 18, 2016, and to issue the following approval:

Approval of a Conditional Use to establish a Waste-Related Use that provides waste-transfer services where customer waste is transported to the facility in sealed containers, is consolidated in containers and is temporarily stored on-site and then transported off-site for disposal, recycling or incineration, as described in Exhibits A.1.- A.14, and

Approval of an Adjustment to:

1. Reduce the required 100-foot setback to 10 feet (33.254.080.A);
 2. Waive the L1, General Landscaping requirement within the required setback and the L3 landscaping standard along the required fence 33.254.080.B);
 3. Waive the requirement of a fence being installed on the interior side of the required setback (Section 33.254.080.B),
 4. Waive the required parking area setback and perimeter landscaping along the northern property line (33.266.130.G.2); and
 5. Waive the required loading area setback and landscaping along the northern property line (33.266.310.E), subject to the following conditions:
- A. As part of the building permit application submittal, the following development-related conditions (B and C) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 13-181212 CU AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
 - B. The acceptance, transport, storage and processing of waste-related materials must occur within a designated building that is fully enclosed and has been constructed in compliance with Bureau of Environmental Service secondary containment requirements.
 - C. The address for the facility must be prominently displayed and a sign, which identifies the business, a business representative with a phone number, must be installed on the entrance gate to the facility. The sign must include 24-hour emergency contact information.
 - D. A copy of the recorded easement for vehicle access on the northern abutting property must be included in the Building Permit application submittal.
 - E. At least 10 on-site vehicle parking spaces must be provided to serve the Waste-Related Use.

Basis for the Decision: BDS Staff Report in LU 14-235840 CU AD, Exhibits A.1 through H.7, and the hearing testimony from those listed above.



Gregory J. Frank, Hearings Officer

3/31/16

Date

Application Determined Complete: May 1, 2015
Report to Hearings Officer: March 18, 2016
Decision Mailed: April 4, 2016
Last Date to Appeal: 4:30 pm, April 18, 2016
Effective Date (if no appeal): April 19, 2016

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.

Appeal of the decision: The decision of the Hearings Officer may be appealed to City Council, who will hold a public hearing. If you or anyone else appeals the decision of the Hearings Officer, City Council will hold an evidentiary hearing, one in which new evidence can be submitted to them. Upon submission of their application, the applicant for this land use review chose to waive the 120-day time frame in which the City must render a decision. This additional time allows for any appeal of this proposal to be held as an evidentiary hearing.

Who can appeal: You may appeal the decision only if you write a letter which is received before the close of the record on hearing or if you testify at the hearing, or if you are the property owner

or applicant. Appeals must be filed within 14 days of the decision. **An appeal fee of \$5,000.00 will be charged (one-half of the BDS application fee, up to a maximum of \$5,000.00).**

Appeal Fee Waivers: Neighborhood associations recognized by the Office of Neighborhood Involvement may qualify for a waiver of the appeal fee provided that the association has standing to appeal. The appeal must contain the signature of the Chair person or other person authorized by the association, confirming the vote to appeal was done in accordance with the organization's bylaws.

Neighborhood associations, who wish to qualify for a fee waiver, must complete the Type III Appeal Fee Waiver Request for Organizations Form and submit it prior to the appeal deadline. The Type III Appeal Fee Waiver Request for Organizations Form contains instructions on how to apply for a fee waiver, including the required vote to appeal.

Recording the final decision.

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- **By Mail:** Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- **In Person:** Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034
For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new

land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Project and Business Description and Development Proposal
 - 2. Operational Description
 - 3. Code Review
 - 4. Written Response to Pre-Application Conference Information
 - 5. Graded Soil Management Plan and DEQ Environmental Clean Up Site Information
 - 6. Geotechnical Site Investigation Report, Prepared by Strata Design
 - 7. Stormwater Design Drainage Study Report, Prepared by KH Engineering
 - 8. Traffic Impact Study, Prepared by H. Lee & Assoc.
 - 9. Transportation Management Plan
 - 10. Nuisance Mitigation Plan
 - 11. Response to Adjustment Approval Criteria
 - 12. Applicants Supplemental Response to Staff's Completeness Letter, April 28, 2015
 - 13. Updated Operations Plan, January 2015
 - 14. Updated Sanitary Service and Stormwater Management Plan, March 3, 2016
 - 15. 120-Day Waiver
 - 16. Request to Reschedule Hearing, Submitted Dec. 22, 2015
 - 17. Request to Reschedule Hearing, Submitted Jan. 19, 2016
 - 18. Applicant's Formal Waiver of All Statutory Time Limits for LUR, Jan. 19, 2016
 - 19. Agreement for Easement for Access to Property
- B. Zoning Map
- C. Plans and Drawings
 - 1. Site Plan, Submitted Nov. 18, 2015
 - 2. Preliminary Utility and Grading Plan, Submitted March 3, 2016
 - 3. Preliminary Landscaping Plan, Submitted Nov. 18, 2015
 - 4. Site Plan – Section 1. Submitted Nov. 18, 2015
 - 5. Site Plan – Section 2 Submitted Nov. 18, 2015
 - 6. Site Plan – Easement and Street Vacation Submitted Nov. 18, 2015
 - 7. Site Plan – Phasing Submitted Nov. 18, 2015
 - 8. Site Plan – Existing/Proposed Fencing Submitted Nov. 18, 2015
 - 9. Preliminary Storm/Grading/Utility Plan Submitted Nov. 18, 2015
 - 10. Survey- Existing Development
 - 11. Preliminary Building Elevations
 - 12. Original Site Plan, Submitted Nov. 7, 2014
 - 13. Original Utility/Grading Plan, Submitted Nov. 7, 2014
 - 14. Original Landscaping Plan, Submitted Nov. 7, 2014
- D. Notification information

1. Request for Response
 2. Posting Letter Sent to Applicant for Rescheduled Hearing, November 24, 2015
 3. Posting Letter Sent to Applicant for Rescheduled Hearing, Dec. 23, 2015
 4. Posting Letter Sent to Applicant for Rescheduled Hearing, Feb. 26, 2016
 5. Notice to be Posted, Feb. 26, 2016
 6. Applicant's Statement Certifying Posting, Jan. 14, 2016
 7. Applicant's Statement Certifying Posting, March 10, 2016
 8. Hearing Notice Mailing List
 9. Mailed Notice
- E. Agency Responses
1. Portland Bureau of Transportation, Updated Response, March 9, 2016
 2. Bureau of Environmental Services, March 11, 2016
 3. Water Bureau
 4. Fire Bureau
 5. Police Bureau
 6. Site Development Review Section of Bureau of Development Services
 7. Life Safety Plan Review Section of Bureau of Development Services
 8. Portland Bureau of Transportation, Nov. 19, 2015
 9. Bureau of Environmental Services, Jan. 28, 2016
- F. Letters: NONE
- G. Other
1. Original LUR Application
 2. Completeness Review Letter to Applicant from Staff
 3. Pre-Application Conference Summary Report
 4. Recorded Street Vacation - N. Terminal Road
- H. Received in the Hearings Office
1. Request to reschedule -- Frugoli, Sheila
 2. Request to reschedule -- Frugoli, Sheila
 3. E-mails -- Frugoli, Sheila
 4. Hearing Notice -- Frugoli, Sheila
 5. Staff Report -- Frugoli, Sheila (**attached**)
 6. PowerPoint Presentation - Frugoli, Sheila
 7. Record Closing Information -- Frugoli, Sheila



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

STAFF REPORT AND RECOMMENDATION TO THE HEARINGS OFFICER

CASE FILE: LU 14-235840 CU AD
PC # 13-218185 EA

03-18-16P01:25 RCVD

REVIEW BY: Hearings Officer

WHEN: March 30, 2016 at 9:00 AM

WHERE: 1900 SW Fourth Ave., Suite 3000
Portland, OR 97201

RECEIVED

MAR 18 2016

BUREAU OF DEVELOPMENT SERVICES STAFF: SHEILA FRUGOLI / SHEILA.FRUGOLI@PORTLANDOREGON.GOV

HEARINGS OFFICE

GENERAL INFORMATION

Applicant: Arthur Marx
WasteXpress of International Resource Management, Inc.
Po Box 83492
Portland, OR 97283

Representative: Hann Lee, Engineering Consultant
H. Lee & Associates
P.O. Box 1849
Vancouver, WA 98668

Site Address: 11618 N LOMBARD ST

Legal Description: TL 1600 0.64 ACRES, SECTION 35 2N 1W
Tax Account No.: R971350050
State ID No.: 2N1W35D 01600
Quarter Section: 1820
Neighborhood: St. Johns, contact Josh Leslie at 503-505-8495.
Business District: Columbia Corridor Association, contact Debbie Deetz-Silva at 503-978-6044.
District Coalition: North Portland Neighborhood Services, contact Mary Jaron Kelley at 503-823-4099.

Zoning: IH - Heavy Industrial
Case Type: CU AD - Conditional Use Review and Adjustment
Procedure: Type III, with a public hearing before the Hearings Officer. The decision of the Hearings Officer can be appealed to City Council.

Proposal: The applicant is requesting a Conditional Use Review to legally establish and expand the existing facilities for WasteXpress, a full service waste transportation, disposal and remediation contractor. The business accepts hazardous wastes such as solvents, acids and heavy metal materials as well as non-hazardous wastes such as latex paints and garden products. Other materials such as oil products, batteries, pesticides, asbestos and medical waste are also accepted. Because the Portland Zoning Code classifies this as a Waste-Related Use, it is only allowed in Industrial zones as a Conditional Use. The applicant intends to replace the existing

shop with a larger, approximately 10,500 square-foot shop/warehouse building with 5 loading bays. This building will house the operations of the Waste-Related Use. A modular office building will be located on the site during construction. After the new shop is completed, a 2-story accessory office building and associated parking will be constructed to serve the business.

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The applicant recently received City Council approval to vacate N. Terminal Road (VAC-10096). Access onto the site will be provided on the existing paved roadway via an access easement granted from the northern-abutting property owner.

Approval Criteria: In order to be approved, this proposal must comply with the approval criteria of Title 33, Portland Zoning Code. The applicable approval criteria are:

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ANALYSIS

Site and Vicinity: The subject property is approximately an acre in size, located near the Terminal 4, a Port of Portland facility. The site has frontage on N Lombard Street. Recently, the City Council approved the vacation of N. Terminal Road that also fronted the site. Vehicle access to the site will be provided at the signalized intersection on the portion of the vacated street that is owned by the northern abutting property owner. The applicant is in the process of obtaining an access easement. The subject property, a triangle-shaped lot, is located immediately north of a rail corridor that runs east-west, connecting the Port terminal and other northeast Portland industrial areas. The site is comprised primarily of a gravel surface with two portable office buildings, a metal storage/shop building and an exterior storage area with cargo containers, numerous "oil drum" containers and other associated equipment. The property is enclosed by chain link fencing and corrugated metal panels.

The northern abutting site is a large cargo container storage and transfer business. The site has Conditional Use Review approval to operate, on a small portion of the site, a Waste-Related Use (land use history: LUR 94-00847 CU EN AD, LUR 01-008044 CU AD and LU 06-150267 CU). A landscaped berm and fence separate the container transfer business from the subject site. Immediately south of the subject site is a railroad corridor for the O.W.R.&N Railroad Company. The railroad tracks sit at a lower elevation, approximately 15 feet lower than the adjacent properties. The rail tracks runs under N. Lombard where the roadway is constructed on a bridge structure. There is vegetation growing on the elevated berms that enclose the rail line. To the east is designated Open Space, owned by the City of Portland which includes Chimney Park, a public park. Residentially-zoned, single-dwelling lots are located over 2,000 feet south of the subject site.

Zoning: The site is within the IH, Heavy Industrial zone. The Heavy Industrial zone is one of three zones that implements the Industrial Sanctuary Comprehensive Plan Map designation. The zone provides areas where industrial uses may locate, including those uses that are not desirable

in other zones due to their objectionable impacts or appearance. Waste-Related facilities are permitted in the IH zone only through an approved Conditional Use review.

Land Use History: City records indicate there is land use review history for this site. In 1979, Multnomah County approved a Design Review MCF 79-11-15/HV 87-79 for a temporary office to be used for a vehicle towing company.

Summary of Applicant's Statement: The application includes the following information:

WasteXpress has operated at its current location since 2001, and is planning to expand its facility by constructing a new warehouse building and remodeling the existing warehouse building into an administrative building. WasteXpress is also applying for a DEQ Transfer Station Solid Waste Permit per Oregon Revised Status (ORS) 459, as required by the Oregon Department of Environmental Quality (DEQ). WasteXpress is submitting this Land Use Application for a Type III Conditional Use to comply with City Code requirements for the proposed site expansion activities, and to fulfill the requirements of the DEQ Solid Waste Program.

The WasteXpress Transfer Station facility accepts customers' sealed, containerized waste (e.g., in a 55-gallon drum, original product containers, pails, totes, etc), and manages the containers on-site by characterizing the contents as needed (determining whether it's hazardous, non-hazardous, universal waste, etc), and consolidating or transferring the contents for transport to an authorized off-site recycling business, permitted incinerator, or licensed disposal facility. (Exhibit A.1 and A.2).

Agency Review: A "Request for Response" was mailed **November 24, 2015**. Bureaus have submitted responses, as follows:

The **Bureau of Environmental Services (BES)** responded with the following key comments:

SANITARY SERVICE

For the conditional use application to be approved, the applicant must show that the proposal complies with the public services approval criterion related to sanitary waste disposal (PCC 33.815.220.F.3). The comments below are in response to this criterion.

Existing Sanitary Infrastructure: According to best available GIS data, the following public sewer infrastructure is located in the vicinity of the project site:

- *15" CSP gravity sanitary sewer (west):* located approximately 850 ft to the west of the subject site on privately owned property within a public sewer easement (BES as-built #2859).
- *15" CSP gravity sanitary sewer (south):* located in N Lombard St approximately 200 ft south of – and on the opposite side of a 20 ft rail cut from – the subject site (BES as-built #2859).
- *14" DIP pressure gravity sewer:* located across N Burgard Rd to the west on privately owned property within a public sewer easement (BES as-built #2859)

Access to Service: Sanitary connections from private property that are to be permitted according to PCC 17.32.090 must be separately conveyed to the property line and connected through individual laterals to a City sanitary or combined sewer. All discharge must be connected via a route of service approved by the BES Chief Engineer.

Existing Development: According to the applicant's narrative and the Multnomah County Sanitarian, the existing development on the site is currently served by an on-site cesspool that was permitted in 1979.

Proposed Development: For the application to be approved, the applicant must propose a waste disposal system that can serve the proposed improvements and expansion of the business operation to the satisfaction of BES. As discussed in BES comments dated January 28th, 2016 two of the three above-described sewer connection routes cannot be used to serve this site:

- 15" CSP gravity sewer (south): In order to access this sewer, the applicant previously proposed to construct a private pressure sewer line in the public right-of-way to be attached to the existing bridge over the rail cut. PBOT denied the applicant's request for an encroachment permit to allow this configuration, therefore this method of waste disposal is not approvable.
- 14" DIP pressure gravity sewer: Private connections to public force mains are prohibited, therefore a connection to this sewer is not approvable.

The remaining method by which sewer service could be provided to this site is for the applicant to extend a public or private sewer from the 15" CSP main west of the site. Although BES is willing to allow the applicant to construct such an extension as either a public sewer – which would be reviewed through a Public Works Permit – or potentially as a private sewer, both options would require the applicant to obtain easements from private landowners necessary to construct the sewer, and the private option would require an approved encroachment permit from PBOT to allow a private line to cross the entire width of the N Burgard Rd right-of-way. As discussed in the February 10, 2016 meeting, BDS Site Development has indicated that due to these constraints they would deem public sewer to be not available and therefore an on-site option can be permitted. The applicant has proposed on their new Preliminary Utility/Grading Plan an on-site sanitary holding tank. Provided that the submitted material is acceptable to BDS Site Development, BES has no objections to this proposal.

Staff finds the applicant's proposed sanitary sewer service acceptable for the purpose of reviewing the conditional use application against the sanitary sewer disposal approval criterion.

STORMWATER MANAGEMENT

For the conditional use application to be approved, the applicant must show that the proposal complies with the public services approval criterion related to stormwater disposal (PCC 33.815.220.F.3). The comments below are in response to this criterion.

Existing Stormwater Infrastructure: According to best available GIS data, the following public stormwater infrastructure is located in the vicinity of the project site:

21" RCP storm sewer in vacated N Terminal Rd (BES as-built # E08626). The vacation was approved by City Council in September 2015 (ordinance #187338), but conditions and reservations apply that must be met before the vacation can be considered effective.

Onsite Stormwater Management: Stormwater runoff from this project must comply with all applicable standards of the SWMM and be conveyed to a discharge point along a route of service approved by the BES Director or the Director's designee. The applicant submitted a stormwater report from KH Engineering (November 7, 2014) and a geotechnical report from Strata Design, LLC (October 15, 2014). The geotechnical report includes infiltration test results of 1.5 inches per hour at a depth of 6 feet in TP-1, and includes a recommendation against on-site infiltration due to close proximity to the rail slope cut just south of the site. For these reasons, the applicant proposes to meet SWMM requirements via Category 3 pollution reduction and flow control standards, with discharge to the public storm-only sewer in vacated N Terminal Rd. To that end, the applicant has proposed two separate stormwater management facilities for runoff from the proposed buildings and paved areas, each sized per the Presumptive Approach.

The applicant's proposed facilities meet the requirements of the SMWM related to pollution

reduction and flow control. In addition, with regard to BES's policy related to new discharges to the City of Portland's Municipal Separate Storm Sewer System (MS4) from known or suspected contaminated properties, the applicant will not be required to demonstrate compliance with federal and state water quality standards or other screening criteria.

Staff finds the applicant's proposed stormwater management plan acceptable for the purpose of reviewing the conditional use application against the stormwater management approval criterion.

SITE CONSIDERATIONS

The following information relates to specific site conditions or features that may impact the proposed project.

Sewer Easement Present: Per Condition b.4 in street vacation ordinance #187338, a 20 foot sewer easement granted to the City of Portland will exist over the public storm sewer that runs across a portion of this site in former N Terminal Rd. The applicant should be aware that all sewer easements granted to the City of Portland are exclusive. No other utilities, facilities, or easements are to be located within the boundaries of these sewer easements without prior written consent of the Director of the Bureau of Environmental Services. Sewer easements granted to the City of Portland include the right of access for construction, inspection, maintenance, or other sewerage system activities. In addition, no building construction, material storage, grade reduction, or tree planting shall be permitted within these sewer easements without the prior written consent of the Chief Engineer of the Bureau of Environmental Services, City of Portland. Landscaping, which by its nature is shallow rooted and may be easily removed to permit access to sewer lines, shall be allowed to be planted within sewer easements granted to the City of Portland. However, no deep-rooted vegetation (such as certain trees) is to be located within the boundaries of these sewer easements.

CONDITIONS OF APPROVAL: BES has no recommended conditions of approval. (Exhibit E.2)

The **Portland Bureau of Transportation (PBOT)** response includes findings that address approval criterion 33.815.220.F.1 and F.2. The PBOT response includes the following key requirements that will apply at Building Permit review:

City Council approved the vacation of N Terminal and that decision has now been recorded. The applicant will be required to obtain an easement from the owners of the northern half of the vacated N Terminal for vehicle access to their site. The easement will be required prior to building permit approval.

A recent City CIP project reconstructed part of the site's frontage on N Lombard and intersection of the now vacated N Terminal. As a condition of building permit approval, the applicant must dedicate approximately 2-3 feet and reconstruct the existing curb tight sidewalk with a new sidewalk with a 4.5-6-1.5 configuration. The applicant will be required to construct this improvement plus improvements made a condition of the street vacation under a separate public works permit to City standards per the requirements of the City Engineer. A concrete band between the curb returns on N Lombard is also required. This band denotes that this will no longer be an intersection of two public streets. (Exhibit E.1)

The **Water Bureau** responded with the following comments: There is an existing 5/8" metered service which is provided water from the 24" DI main in N. Lombard Street. The estimated static water pressure range for this location is 67 to 84 psi at the existing service elevation of 74 feet. All new and existing water services must meet City Title 21 requirements for location and sizing.

State of Oregon 333 Rules apply for a minimum of 5' horizontal spacing between water service lines and all sanitary laterals in the public right of way. With reference to the addition of vacated property to this site, where water services are to be shared between multiple properties, City Title 21.12.070 will apply and a Tax Lot Account consolidation will be required prior to the Water Bureau approval of any building permits and or selling any water services to the property (Exhibit E.3).

The **Fire Bureau** responded with the following comments: A separate building permit is required for this proposal. All applicable Fire Code requirements shall apply at time of permit review and development. Additional permit from the Fire Marshall's Office may be required when a complete review of the project is completed (Exhibit E.4).

The **Police Bureau** response includes a recommendation that the address of the property be prominent so that it is easily identifiable. Also, Police Bureau staff noted that alarm systems must have an alarm permit and the importance of maintaining landscaping to allow surveillance and (Exhibit E.5).

The **Site Development Section of BDS** responded with the following comments:

The site is relatively flat, is located in the Potential Landslide Hazard Area, and is not within the 100-year floodplain.

According to records on file (permit #554 dated September 19, 1979), the existing building is connected to a septic tank and seepage pit. There is no as-built record showing the location of the system. Site Development requires a utility plan that accurately shows the location of the existing septic tank and seepage pit. The location of the existing system must be determined using metal tracer wire detection, video scoping, or an equivalent, acceptable method. Site Development will also require a narrative description of the current usage of the site and any proposed future use of the site. The description of the use of the site needs to reference the current and proposed future water usage at the site.

If a change in use or an increase in use is proposed, such as a new connection to the existing system, the applicant will be required to obtain an Authorization Notice. To apply for an Authorization Notice, the applicant will need to complete a Sanitary Evaluation application form and provide a detailed site plan. The purpose of the Authorization Notice is to verify that the existing onsite wastewater disposal system has adequate capacity for the proposed use. If no change in use is proposed, Site Development will check that the system meets the setback requirements at the time of building permit application.

If groundwater is found within the seepage pit, the system will be considered to be failing and system must be decommissioned. In this case, it may be necessary to install a holding tank. Site Development will require written documentation from BES that public sewer service is not available. If BES confirms that public sewer service is not available, then a holding tank that conforms to Oregon Onsite Wastewater Treatment System Rules (OAR 340-071-0340) will be required to serve the proposed new development. The proposed location for a holding tank system must be shown the preliminary utility plan. All proposed connections to the system must be shown on the preliminary utility plan; including any floor drains, loading docks, or other fixtures and treatment systems.

Please refer to the response from BES for additional comments regarding public sewer service and Source Control requirements (Exhibit E.6).

The **Life Safety Plan Review Section of BDS** responded with the following comments:

It is recommended the applicant request a Preliminary Life Safety Meeting to verify building code requirements. See <http://www.portlandonline.com/bds/index.cfm?c=45054&a=94545>
A separate Mechanical Permit is required for the work proposed. OMSC 106.1

For the purposes of determining the required wall and opening protection and roof-covering requirements, buildings on the same lot shall be assumed to have an imaginary property line somewhere between them. OSSC 705.3

Exterior walls less than 30 feet to property line must be 1-hour fire-rated construction. Exterior walls located less than or equal to 10 feet to a property line must be one-hour fire-rated for exposure to fire from both sides. Exterior walls located more than 10 feet to a property line must be one-hour fire-rated for exposure to fire from the inside only. OSSC 602.1, 705.5. Openings in exterior walls less than 3 feet to a property line are not allowed. Unprotected openings in exterior walls less than 5 feet to a property line are not allowed in an unsprinklered building. OSSC 705.8

Landings are required on both sides of a doorway. The landings must be as wide as the doorway and at least 44 inches long in the direction of travel. The landing must be level, except the exterior landing may have a slope of not more than 2 percent. The door threshold must be not more than ½ inch higher than the landing surface on both sides. OSSC 1008.1.5, 1008.1.6, 1008.1.7. The exit discharge shall provide a direct and unobstructed access to a public way. OSSC 1027.6 The exit discharge shall provide a direct and unobstructed access to a public way. OSSC 1027.6 (Exhibit E.7).

Neighborhood Review: A Notice of a Public Hearing on a Proposal in Your Neighborhood was mailed March 10, 2016. No written response have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

CONDITIONAL USES

33.815.220 Mining and Waste Related These approval criteria allow these uses in locations where their large size and potential nuisance and environmental impacts will not harm surrounding land uses. The approval criteria are as follows:

- A.** There are adequate nearby lands available for the development of more intense industrial uses;

Findings: The site is in an IH, Heavy Industrial zone, which allows a mix of uses with a strong industrial orientation. The approximate 1 acre site has limited potential for more intensive uses as the property is pie-shaped with a fully developed industrial site located to the north and an active railroad corridor to the south. Large warehouse or storage facilities would be severely constrained on such a narrow site. But, because the site is near the Port of Portland – Terminal 4 a 262-acre industrial area, there are many very large industrial properties available, with railroad, river and truck access. Terminal 4 is directly south of the Rivergate Industrial area with over 4,000 acres of industrial land. The sites are within a designated freight district and many have rail and river access. This criterion is met.

B. The proposed use will not significantly alter the overall industrial character of the area, based on the existing proportion and type of industrial uses;

Findings: As noted above, there is a significant amount of industrial development in the immediate vicinity. In the immediate area there are large transportation (rail, truck and ship) container facilities, manufacturing uses and warehouse distribution facilities. The WasteXpress business picks up and accepts delivery of waste, in sealed containers from off-site sources and provides temporary storage and/or consolidation of the materials before shipment to an off-site location for final disposal and/or recycling. The processing and disposal of waste materials is classified as a Waste-Related use; however, the development that is associated with the WasteXpress operation is similar to a Warehouse Distribution or Industrial Service Use where materials are brought to the site for processing and transport. The applicant's plans show no proposed exterior work activity or storage area. A proposed new parking lot and 2-story, 3,000 square-foot accessory office building will be located between the proposed warehouse and N. Lombard Street. The applicant has requested Adjustments to waive the required 100 foot setback and the perimeter landscaping and fencing requirement. The Adjustment requests and their individual and cumulative impacts to the desired character of the area will be analyzed later in this report.

According to the submitted traffic impact study, prepared by H. Lee and Associates, the development is expected to generate 75 net new daily trips, 11 net new AM peak hour and 5 net new PM peak hour trips. Based on the trip generation estimates and the distribution/assignment information, all intersections are forecast to continue to operate acceptably (Exhibit A.8). PBOT staff concurs with the analysis.

Because the waste-related use activities will occur within a large warehouse-like building, the development and business operations will not result in permanent impacts to the site or surrounding development. When, or if, the activity is removed, the site will be available for other industrial uses. In both the short and long term, the existing industrial character of the area will be retained. For these reasons, staff finds that this criterion is met.

C. There will be no significant health or safety risk to nearby uses;

Findings: The application states there will be no health or safety risks because:

- All transfer activities will occur inside the contained warehouse building;
- All worker activities will fulfill all required OSHA training and other safety requirements;
- Flammable consolidation activities will occur within a designated enclosure separate from other site activities;
- The facility will have security measures that only allow authorized persons allowed to enter the facility. When the facility is closed, all entrances to the buildings and yard will be securely locked, the vehicle gate locked, and the alarm system engaged. The alarm system notifies the local police department in the event the alarm is triggered;
- Appropriate warning signs will be posed at the entrance to the site
- The warehouse will have secondary containment that will retain the volume as required by code to prevent spills from entering the environment.

To ensure the waste-materials are securely processed and stored, staff recommends a condition that will require that the loading, transfer, storage and processing of all waste-related materials occur within the designated warehouse building and that the building meet BES secondary containment requirements so that spills do not escape the building. Neither the Police nor Fire Bureau staff flagged concerns regarding health or safety risks. However, the Police Bureau staff requested the facility have a prominently displayed address. Staff recommends a condition that requires both the address and a sign be posted on the site that provides contact information in case of an emergency. With, these conditions, staff finds this criterion will be met.

- D. There will not be significant detrimental environmental impacts to any nearby environmentally sensitive areas;

Findings: The subject site is not located within or adjacent to property that is designated with environmental zoning. The closest environmentally-zoned property is located approximately 700 feet to the east on the City of Portland Chimney Park site. As found under Criterion C and G, off-site impacts will be nonexistent. The waste-related activities will occur within a fully enclosed building on a fully fenced site. As discussed under Criterion F.3 below, the Bureau of Environmental Services (BES) and BDS Site Development state that the facilities on the site are currently served by an on-site cesspool that was permitted in 1979. BES and Site Development will support the use of a new on-site sanitary system that entails an underground holding tank that will be sized appropriately. The waste will be pumped from the tank for off-site disposal. This approach was determined acceptable after the applicant's request for a public right-of-way encroachment permit to allow a private sewer connection on the bridge that extends over the adjacent railroad corridor was denied. BES has determined that lined on-site stormwater facilities that detain and treat the runoff before discharge to the storm sewer that is located in the former (now vacated) N. Terminal Road storm sewer connection is acceptable.

For these reasons, staff finds that this criterion is met.

- E. The proposed use adequately addresses potential nuisance-related impacts such as litter;

Findings: Because the operations of the facility will occur within a building and only "containerized" waste is accepted, staff does not anticipate any nuisance-related impacts associated with this business. This criterion is met.

- F. Public services.

1. The proposed use is in conformance with either the street designations shown in the Transportation Element of the Comprehensive Plan;
2. The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street capacity, level of service or other performance measures; access to arterials; connectivity; transit availability; on-street parking impacts; access requirements; neighborhood impacts; impacts on pedestrian, bicycle, and transit circulation; and safety for all modes; and

Findings: The PBOT staff finds the following:

At this location, N Lombard is classified as a Major City Traffic street, Transit Access Street, City Bikeway, City Walkway, Priority Truck Street, Major Emergency Response Street, and an Urban Road in the City's Transportation System Plan. The proposed use is in conformance with the street classifications of N Lombard.

The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street capacity, level of service, or other performance measures; access to arterials; connectivity; transit availability; on-street parking impacts; access restrictions; neighborhood impacts; impacts on pedestrian, bicycle, and transit circulation; and safety for all modes.

Street Capacity and Levels of Service

The applicant traffic study prepared by H Lee & Associates shows that the intersection of N Lombard with the signalized site driveway (vacated N Terminal) will continue to operate at acceptable levels. The proposal will result in a net increase of 75 daily vehicles with 11 new AM

trips and 5 new PM trips. This relatively small increase in peak hour trips is will have minimal impacts to intersection operation. No mitigation is needed.

Access to Arterials

The site has direct access to N Lombard which is classified as an arterial street.

Connectivity

Because of the City's desire to preserve larger industrial sites, connectivity standards do not apply in this zone.

Availability of Transit

Tri Met Bus Lines #44 and #75 are available to serve the site 0.5 miles away at Pair Park.

On-Street Parking Impacts

There is no on-street parking on N Lombard so no impacts are expected. The proposal will be providing 14 on-site parking spaces plus truck loading areas. The site is anticipated to have 10 employees on-site with 3 driver employees who will only be on-site at the beginning and end of each work day.

Access Restrictions

There are no access restrictions to N Lombard from the site.

Neighborhood Impacts

The neighborhood is made up of industrial users. The transportation impacts will be minimal.

Impacts on Pedestrian , Bicycle, and Transit circulation/ Safety for All Modes

Sidewalks along the east side of N Lombard provide adequate pedestrian facilities. There is a varying width of paved shoulder beyond the fog line on N Lombard that provides an area for cyclists outside of the vehicle travel lanes. There is currently no transit service along this section of N Lombard. If there were, the impacts would be minimal since the site's driveway onto N Lombard is signalized.

PBOT finds that the transportation system is capable of supporting the proposed use in addition to the existing uses in the area.

Note: The applicant will be required to obtain an easement from the owners of the northern half of the vacated N Terminal for vehicle access to their site. The easement will be required prior to building permit approval. Additional conditions of building permit approval will be to dedicate ROW along the N Lombard frontage to provide 12-ft of ROW measured from the face of the existing curb and construct a 4.5-6-1.5 sidewalk corridor. This sidewalk improvement can be combined with the public works permit for the intersection improvements required as conditions of the street vacation.

Table 266-2 of the Zoning Code states that minimum and maximum parking requirements may be established through a Conditional Use review. Staff recommends a condition that requires at least 10 on-site parking spaces to serve the anticipated number of employees working at the facility. Because the application does not include a copy of the recorded access easement, staff recommends a condition that requires the easement be submitted at time of Building Permit review.

With these conditions, this criterion can be met.

3. Public services for water supply, police and fire protection are capable of serving the proposed use, and proposed sanitary waste disposal and stormwater disposal systems are acceptable to the Bureau of Environmental Services.

Findings: As noted on pages 3-6 of this report, the site is adequately served. The site has water service. The Fire Bureau has no concerns and the Police Bureau did not identify any issues, except that the address for the facility must be clearly visible. BES reports that due to constraints that preclude the site from connecting to the public sanitary sewer, BDS Site Development has indicated that they have deemed public sewer to be not available and therefore an on-site option that conforms to Oregon On-Site Treatment System Rules can be permitted. BES has no objections to the applicant's proposed on-site sanitary holding tank. For these reasons, staff finds that this criterion is met.

- G. The proposal complies with the regulations of Chapter 33.254, Mining and Waste-Related Uses;

Findings: The regulations of Chapter 33.254 and discussion of how the proposal meets the requirements are as follows:

33.254.020 Limitations

- A. **Accessory uses.** Concrete batching, asphalt mixing, rock crushing, or clay bulking in connection with a Mining use are prohibited except in IH and IG zones.
- B. **Hazardous wastes.** The disposal of hazardous wastes, as defined by OAR 340.100 to 340.110, is prohibited.

Findings: The proposal does not involve mining activity. The applicant describes the business as a "waste transfer facility, meaning customer waste is shipped to the facility in sealed containers, temporarily stored on-site and then transported off-site for disposal, recycling, or incineration". Therefore, this standard will be met.

33.254.030 Location and Vehicle Access Uses must be located so that vehicle access is restricted to Major City Traffic Streets or to streets in Freight Districts, as designated in the Transportation Element of the Comprehensive Plan.

Findings: At the site, N. Lombard is classified as a Major City Traffic Street. Therefore, this standard is met.

33.254.040 Operations

- A. **On-site queuing.** The site layout must include adequate areas to accommodate the peak number of vehicles expected to come to the site at any one time.

Findings: Access from N. Lombard to the proposed parking and loading areas will be provided on the northern half of vacated N. Terminal Road via an access easement provided from the northern abutting property owner. At time of Building Permit review, PBOT will require the frontage improvements and a condition of approval will require the submittal of documentation of a recorded easement that allows access on the adjacent property to the proposed vehicle areas. PBOT has reviewed the proposal and has no objections.

Therefore, this standard will be met.

- B. **Processing of waste products.** In the case of Waste-Related uses other than landfills and composting operations, all activities relating to the receiving, sorting, processing, storage, transfer, and shipping of wastes must take place entirely within enclosed structures. The transfer of waste products from one vehicle or container to another vehicle or container and the cleaning of such vehicles or containers must be

done within a containment area designed to ensure that waste materials will be confined so as to not enter the groundwater or any water body.

Findings: The applicant intends to construct a new, approximately 10,000 square foot warehouse building. The application states that the existing shop will be used while the new building is being constructed. Acceptance and processing of waste materials including the transfer of waste from one vehicle or container to another, will occur only in a fully enclosed structure. This standard will be met.

- C. Liquid waste pretreatment.** The use, if other than a sewage treatment facility, must provide pretreatment of any liquids being discharged into the City's stormwater or sanitary disposal system. The pretreatment must meet the standards of the Bureau of Environmental Services.

Findings: The waste materials accepted at the facility are transported off-site for disposal. No liquids will be discharged into the City's sewer system. The site will have no sanitary sewer connection and will not use an on-site cesspool system. A condition of approval will require that the BES standards for secondary containment be met. BES supports the installation of an on-site holding tank for liquid waste that is generated at the facility.

- D. Posted information.** A sign must be posted near the entrance to the site, stating the telephone number(s) where a representative of the use may be reached at all times.

Findings: Staff is recommending a condition that requires a sign, with the necessary emergency contact information, be posted at the entrance gate. Compliance with this condition will satisfy this requirement.

33.254.050 Traffic Impact Study A traffic impact study must be submitted for the proposed use. As part of the study, measures must be proposed for mitigating traffic impacts resulting from vehicles going to and from the site. The study must also include a plan and mechanisms to ensure that traffic, especially trucks, travel primarily on truck routes or major City traffic streets when near the site. The traffic study must include information of proposed access points, types of vehicles, and frequency of trips.

Findings: As discussed under criterion F, the applicant's consultant—H Lee and Associates--submitted a traffic impact study to assess the adequacy of transportation services. The Bureau of Transportation has reviewed the analysis and concluded that with the exception of providing evidence at time of building permit review of a recorded access easement to the site, via the property to the north, no traffic mitigation measures are needed (Exhibit E.1). This standard is met.

33.254.060 Nuisance Mitigation Plan The applicant must submit a report that addresses potential nuisance impacts (Exhibit A.10). The plan speaks the following components:

- A. Off-site impacts.** The plan must document that the use will comply with the off-site impact standards stated in Chapter 33.262;

Findings: Below are the regulations of 33.262 and discussion of how the proposal addresses them:

33.262.050 Noise The City noise standards are stated in Title 18, Nuisance Abatement and Noise Control. In addition, the Department of Environmental Quality has regulations which apply to firms adjacent to or near noise sensitive uses such as dwellings, religious institutions, schools, and hospitals.

Findings: Noise generated by the facility will be primarily in the form of trucks and vehicles used for the delivery of containers. The trucks and equipment are similar to that used by many nearby industrial uses. Additionally, all activities that are associated with the use will occur within a fully-enclosed building. Staff anticipates that the City's noise standards will be met.

33.262.060 Vibration

- A. Vibration standard.** Continuous, frequent, or repetitive vibrations which exceed 0.002g peak may not be produced. In general, this means that a person of normal sensitivities should not be able to feel any vibrations.
- B. Exceptions.** Vibrations from temporary construction and vehicles which leave the site (such as trucks, trains, airplanes and helicopters) are exempt. Vibrations lasting less than 5 minutes per day are also exempt. Vibrations from primarily on-site vehicles and equipment are not exempt.
- C. Measurement.** Seismic or electronic vibration measuring equipment may be used for measurements when there are doubts about the level of vibration.

Findings: This proposal does not involve activities such as manufacturing or demolition that requires heavy pounding or breaking of materials and therefore will not create vibrations. Staff anticipates that the proposal will comply with this standard.

33.262.070 Odor

- A. Odor standard.** Continuous, frequent, or repetitive odors may not be produced. The odor threshold is the point at which an odor may just be detected
- B. Exception.** An odor detected for less than 15 minutes per day is exempt.

Findings: All waste materials are brought to the site in closed containers. The materials will be processed inside a fully-enclosed structure. Therefore, the facility will not create noxious odor impacts. Staff expects that this standard will be met.

33.262.080 Glare

- A. Glare standard.** Glare is illumination caused by all types of lighting and from high temperature processes such as welding or metallurgical refining. Glare may not directly, or indirectly from reflection, cause illumination on other properties in excess of a measurement of 0.5 foot candles of light.
- B. Strobe lights.** Strobe lights visible from another property are not allowed.

Findings: The proposal will not require excessively bright or special lighting that will cause illumination on properties in excess of 0.5 foot candles of light. Additionally, no strobe lights are proposed. This standard will be met.

- B. Litter.** For Waste-Related uses, the plan must address litter generated on the site and litter along roadways leading to the use that is generated by vehicles coming to the site. The plan must also address illegally dumped waste products near the site. The plan must provide for regular litter removal. The plan must also include means to limit litter from vehicles coming to site; and

Findings: Unlike other Waste-Related uses such as recycling centers and landfills, this use does not process solid or putrescible waste. Therefore, the application does not spell out means to reducing litter. This standard does not apply.

- C. Dust, mud, and vector control.** The plan must provide mechanisms to limit impacts from dust, mud, and disease carrying organisms such as rats and mosquitoes.

Findings: Because the facility only accepts waste materials in sealed containers and no other materials such as landscape materials, food waste or other putrescible waste is accepted, there

will be no dust, mud or vector problems. Therefore, the application does not spell out means to reducing dust, insects or rats. This standard does not apply.

33.254.070 Reclamation Plan for Landfills The applicant for a landfill use in the Waste-Related use category must submit a reclamation plan. The Bureaus of Buildings and Environmental Services will provide a technical review of the plan. Mining uses are subject to State requirements for reclamation plans.

A. Contents of the reclamation plan. The reclamation plan must include the following:

1. Phasing and schedule of work to be conducted;
2. Phasing and schedule of reclamation to be conducted;
3. Materials to be used in the reclamation;
4. The effect of the reclamation on surface and subsurface drainage patterns;
5. Plans for future use of the land; and
6. A discussion of how the proposed reclamation plan is consistent with the future potential uses of the land, according to the zoning and the Comprehensive Plan designation.

B. Performance guarantee. The review body as part of the conditional use review may require the applicant to post a bond or other security with the City to ensure the completion of the reclamation plan. The security must comply with the regulations for performance guarantees stated in 33.700.050.

Findings: The proposal does not include a landfill. Therefore, this standard does not apply.

33.254.080 Setbacks, Landscaping, and Screening Waste-Related uses are subject to the following setback, landscaping, and screening requirements. Mining uses are subject to State requirements for setbacks, landscaping, and screening.

A. Setback distance. Waste-Related uses must be set back 100 feet from all property and street lot lines that abut C, E, or I zones. A 200 foot setback is required along all property and street lot lines that abut OS or R zones.

Findings: The applicant is proposing a new warehouse-type building that will be used for the acceptance and processing of the waste materials. It will be located as close as 10 feet to the south property line and approximately 70 feet from the street lot line. An Adjustment to this standard has been requested. See the related findings below.

B. Landscaping and screening requirements. The setback must be landscaped to at least the L1 standard. A fence at least 6 feet high must be provided on the interior side of the setback. The fence must be screened by a high hedge meeting the L3 standard. The landscaping standards are stated in Chapter 33.248, Landscaping and Screening. In addition, gates with fencing at least 6 feet high must be provided across all entrances. The property owner must maintain the fencing and gates in good repair.

Findings: The applicant is requesting an Adjustment to waive the landscaping standard and to allow the fence to be located along the property lines, on the outside of the required setback area. See Adjustment findings below.

33.254.090 Activities in Required Setbacks Extraction, movement, or stockpiling of mineral and aggregate resources or the disposal or storage of waste products within a required setback is prohibited. The tops and toes of cut and fill slopes must remain outside the required setback. Structures, exterior storage, and parking areas for trucks or equipment are not allowed within the required setbacks. Required setbacks include all setbacks approved by the State for Mining uses.

Findings: The proposal will include a truck parking and loading area within the required 100 foot setback area. As stated above, an Adjustment is requested to allow the waste-related use, specifically the warehouse building and associated truck loading area to be located within 10 feet of the property boundary. See the related findings below.

33.254.100 Underground Utilities All underground lines and conduits on a mining or landfill site and within 50 feet of the site must be protected from damage from the use. This includes storm and sanitary sewers, and water, gas, and electric lines.

Findings: The proposed activity is for waste transfer and not mining or excavation. This requirement does not apply.

H. There is a reclamation or redevelopment plan which will ensure that the site will be suitable for an allowed use when the mining or landfill use is finished; and

Findings: This is not a mining or landfill project. This criterion does not apply.

I. Public benefits of the use outweigh any impacts which cannot be mitigated.

Findings: There will be no impacts that require mitigation. Therefore this criterion does not apply.

ADJUSTMENT REVIEW

33.805.040 Approval Criteria The adjustment requests will be approved if the review body finds that the applicant has shown that either approval criteria A. through F. or approval criteria G. through I., below, have been met.

A. Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

Findings: The applicant has requested to reduce the required setback along all property lines for the waste-related use from 100 to 10 feet, to waive the required L1 and L3 landscaping standards within the setback and to waive the requirement that a fence be installed on the interior side of the setback. Also, the proposed parking and loading areas do not comply with setback and perimeter landscaping requirements. Specifically, this proposal necessitates an Adjustment to waive the required setback and perimeter landscaping between the parking and loading areas and the north property line.

The purpose of the Mining and Waste-Related Development standards, as stated in Section 33.254.010 of the Zoning Code are to:

- *Reduce the impacts and nuisances resulting from mining and waste-related uses on surrounding land uses;*
- *Reduce the transportation impacts from these uses;*
- *Ensure that land used for these purposes is restored so that it may be reused; and*
- *Provide security measures so that these land uses are not a safety hazard to other land uses or to nearby residents.*

Section 33.266.130.A identifies the purpose of setback and landscaping requirements for parking areas as:

- *Improve and soften the appearance of parking areas;*
- *Reduce the visual impacts of parking areas from sidewalks, streets, and especially from adjacent residential zones;*

- *Shade and cool parking areas;*
- *Reduce the amount and rate of stormwater runoff from vehicle areas; and*
- *Ensure that land used for these purposes is restored so that it may be reused; and*
- *Decrease airborne and waterborne pollution.*

Lastly, Section 33.266.310.A, states the purpose of setback and landscaping requirements for loading areas is to "ensure that the appearance of loading areas will be consistent with that of parking areas".

Many waste-related uses are commonly associated with nuisances such as noise, odor, litter and vector. The required 100-foot setback, landscaping and interior fence are all intended to reduce unsightly operations and nuisance impacts to nearby uses. As the findings state under the Conditional Use criteria, this proposal will not create impacts. The waste materials will be transported to and from the site in containers. All waste-related activities will occur within a building. The building will have the same appearance as other large industrial warehouse or shop buildings found in industrial areas. Furthermore, a tall fence will be installed along the perimeter of the facility to provide security.

The subject site is constrained in size and is visually isolation from other nearby sites. The property to the north is developed with an existing roadway, which is the recently vacated N. Terminal Road. Adjacent to the roadway is a tall landscaped berm that provides visual screening between the parking and loading areas and the northern abutting site. To the south is a submerged railroad corridor that is lined with existing trees and vegetation. The applicant's proposed landscaping plan identifies a new landscape strip, at least 5 feet wide, with ground cover, shrubs, and numerous trees along the southern property line. The proposed landscaping, as well as the rail corridor provides ample separation between the loading area and the industrial sites to the south. The applicant intends to install perimeter parking lot landscaping along the west, N. Lombard Street frontage. As noted on pages 4-5 of this report, BES finds that the proposed two stormwater facilities as acceptable for meeting pollution prevention and flow control requirements. Landscaping along the west and south property lines will serve to reduce runoff and will soften the appearance of the paved areas. For these reasons, this criterion is met.

- B.** If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in a C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

Findings: As discussed under approval criterion 33.815.220.F.1, the proposal does not conflict with the street classifications and PBOT has no concerns. The site is in an IH zone. The Heavy Industrial zone, as described below under Criterion C, is characterized as a zone that "provides areas where all kinds of industries may locate including those not desirable in other zones due to their objectionable impacts or appearance." The proposed improvements, even with the requested Adjustments, will result in a development that fits in with other newly developed industrial sites. A warehouse building, with parking and loading areas, landscaped stormwater facilities and perimeter landscaping along the western and southern edge of the site will not conflict with the desired industrial character of the area. This approval criterion is met for the requested Adjustments.

- C.** If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and

Findings: The applicant is requesting Adjustments to four separate development standards. The purpose of the industrial and employment zones is found in 33.140.010, which states:

33.140.010 General Purpose of the Zones *The employment and industrial zones are for areas of the City that are reserved for industrial uses and for areas that have a mix of*

uses with a strong industrial orientation. The zones reflect the diversity of industrial and business areas in the City. The zones differ in the mix of allowed uses, the allowed intensity of development, and the development standards. The regulations promote areas which consist of uses and developments which will support the economic viability of the specific zoning district and of the City. The regulations protect the health, safety and welfare of the public, address area character, and address environmental concerns. In addition, the regulations provide certainty to property owners, developers, and neighbors about the limits of what is allowed.

Heavy Industrial. *This zone is one of the three zones that implement the Industrial Sanctuary map designation of the Comprehensive Plan. The zone provides areas where all kinds of industries may locate including those not desirable in other zones due to their objectionable impacts or appearance. The development standards are the minimum necessary to assure safe, functional, efficient, and environmentally sound development.*

The effects, both individually and cumulatively, of the Adjustments will not adversely impact an area that is designated for uses that may be deemed undesirable or having an objectionable appearance. The proposed improvements will match the development pattern of many nearby industrial properties. Waiving the setback and perimeter landscaping standard for parking and loading along the northern edge of the site will not create visual impacts. Stormwater management facilities are planned to fully comply with BES pollution prevention and detention requirements. Reducing the setback and waiving the landscaping and fence location required for the waste-related use will not preclude the use from being safe, functional and environmentally-sound. This criterion is met.

D. City-designated scenic resources and historic resources are preserved; and

Findings: City designated scenic resources are shown on the zoning map by the "s" overlay zone. Historic resources are designated by a large dot. There are no such resources present this site. This criterion does not apply.

E. Any impacts resulting from the adjustment are mitigated to the extent practical; and

Findings: There are no discernible impacts that would result from granting the requested Adjustments. This criterion is met.

F. If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

Findings. The site is not within an environmental zone, which is designated on the zoning map by either the "c" or "p" overlay zones. Therefore, this criterion is not applicable.

CONCLUSIONS

The applicant is requesting Conditional Use approval for a Waste-Related Use to operate a waste transfer facility which accepts containerized waste products for consolidation, temporary storage and transport to other facilities for disposal, recycling or incineration. The applicant is also requesting five Adjustments that address perimeter landscaping for vehicle areas and to address required setback and landscaping standards that specifically apply to Waste-Related Uses.

Staff recommends approval of the Conditional Use and Adjustments, with conditions. The recommended conditions will ensure the waste-related facility will operate safely and not create off-site impacts to the surrounding uses and the transportation system.

TENTATIVE STAFF RECOMMENDATION

(May be revised upon receipt of new information at any time prior to the Hearings Officer decision)

Approval of a Conditional Use to establish a Waste-Related Use that provides waste-transfer services where customer waste is transported to the facility in sealed containers, is consolidated in containers and is temporarily stored on-site and then transported off-site for disposal, recycling or incineration, as described in Exhibits A.1.- A.14, and

Approval of an Adjustment to:

1. Reduce the required 100-foot setback to 10 feet (33.254.080.A);
 2. Waive the L1, General Landscaping requirement within the required setback and the L3 landscaping standard along the required fence 33.254.080.B);
 3. Waive the requirement of a fence being installed on the interior side of the required setback (Section 33.254.080.B),
 4. Waive the required parking area setback and perimeter landscaping along the northern property line (33.266.130.G.2); and
 5. Waive the required loading area setback and landscaping along the northern property line (33.266.310.E), subject to the following conditions:
- A. As part of the building permit application submittal, the following development-related conditions (B and C) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 13-181212 CU AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
 - B. The acceptance, transport, storage and processing of waste-related materials must occur within a designated building that is fully enclosed and has been constructed in compliance with Bureau of Environmental Service secondary containment requirements.
 - C. The address for the facility must be prominently displayed and a sign, which identifies the business, a business representative with a phone number, must be installed on the entrance gate to the facility. The sign must include 24-hour emergency contact information.
 - D. A copy of the recorded easement for vehicle access on the northern abutting property must be included in the Building Permit application submittal.
 - E. At least 10 on-site vehicle parking spaces must be provided to serve the Waste-Related Use.

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.

Procedural Information. The application for this land use review was submitted on November 7, 2014, and was determined to be complete on May 1, 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 November 7, 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, at application submittal, the applicant submitted a request for an Evidentiary Hearing and Waiver of Right to a Decision within a 120-day review period (Exhibit A.15). On January 19, 2016, the applicant submitted a formal letter stating that he is waiving all statutory time limits for the City to make a final decision and to waive his right to seek a writ of mandamus under ORS 227.179 (Exhibit A.18).

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 recommendation 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 report is not a decision. The review body for this proposal is the Hearings Officer who will make the decision on this case. This report is a recommendation to the Hearings Officer by the Bureau of Development Services. The review body may adopt, modify, or reject this recommendation. The Hearings Officer will make a decision about this proposal within 17 days of the close of the record. Your comments to the Hearings Officer can be mailed c/o the Hearings Officer, 1900 SW Fourth Ave., Suite 3100, Portland, OR 97201 or faxed to 503-823-4347.

You will receive mailed notice of the decision if you write a letter received before the hearing or testify at the hearing, or if you are the property owner or applicant. This Staff Report will be posted on the Bureau of Development Services website. Look at www.portlandonline.com. On the left side of the page use the search box to find Development Services, then click on the Zoning/Land Use section, select Notices and Hearings. Land use review notices are listed by the District Coalition shown at the beginning of this document. You may review the file on this case at the Development Services Building at 1900 SW Fourth Ave., Suite 5000, Portland, OR 97201.

Appeal of the decision: The decision of the Hearings Officer may be appealed to City Council, who will hold a public hearing. If you or anyone else appeals the decision of the Hearings Officer, City Council will hold an evidentiary hearing, one in which new evidence can be submitted to them. Upon submission of their application, the applicant for this land use review chose to waive

the 120-day time frame in which the City must render a decision. This additional time allows for any appeal of this proposal to be held as an evidentiary hearing.

Who can appeal: You may appeal the decision only if you write a letter which is received before the close of the record on hearing or if you testify at the hearing, or if you are the property owner or applicant. Appeals must be filed within 14 days of the decision. **An appeal fee of \$5,000.00 will be charged (one-half of the BDS application fee, up to a maximum of \$5,000.00).**

Appeal Fee Waivers: Neighborhood associations recognized by the Office of Neighborhood Involvement may qualify for a waiver of the appeal fee provided that the association has standing to appeal. The appeal must contain the signature of the Chair person or other person authorized by the association, confirming the vote to appeal was done in accordance with the organization's bylaws.

Neighborhood associations, who wish to qualify for a fee waiver, must complete the Type III Appeal Fee Waiver Request for Organizations Form and submit it prior to the appeal deadline. The Type III Appeal Fee Waiver Request for Organizations Form contains instructions on how to apply for a fee waiver, including the required vote to appeal.

Recording the final decision.

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- By Mail: Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- In Person: Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034
For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

Planner's Name: Sheila Frugoli

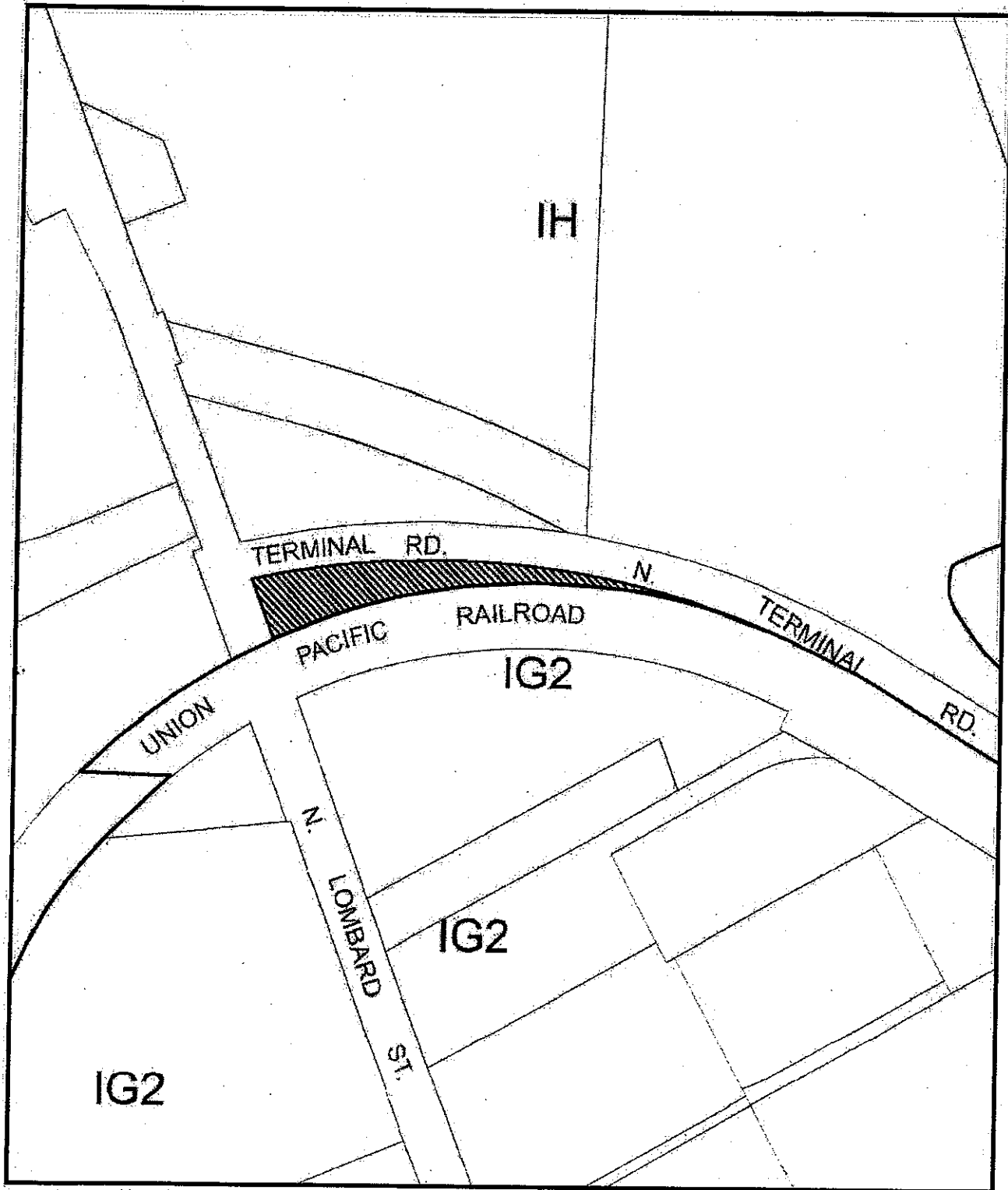
Date: March 18, 2016

EXHIBITS
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement:
 - 1. Project and Business Description and Development Proposal
 - 2. Operational Description
 - 3. Code Review
 - 4. Written Response to Pre-Application Conference Information
 - 5. Graded Soil Management Plan and DEQ Environmental Clean Up Site Information
 - 6. Geotechnical Site Investigation Report, Prepared by Strata Design
 - 7. Stormwater Design Drainage Study Report, Prepared by KH Engineering
 - 8. Traffic Impact Study, Prepared by H. Lee & Assoc.
 - 9. Transportation Management Plan
 - 10. Nuisance Mitigation Plan
 - 11. Response to Adjustment Approval Criteria
 - 12. Applicants Supplemental Response to Staff's Completeness Letter, April 28, 2015
 - 13. Updated Operations Plan, January 2015
 - 14. Updated Sanitary Service and Stormwater Management Plan, March 3, 2016
 - 15. 120-Day Waiver
 - 16. Request to Reschedule Hearing, Submitted Dec. 22, 2015
 - 17. Request to Reschedule Hearing, Submitted Jan. 19, 2016
 - 18. Applicant's Formal Waiver of All Statutory Time Limits for LUR, Jan. 19, 2016
 - 19. Agreement for Easement for Access to Property
- B. Zoning Map (attached)
- C. Plans & Drawings:
 - 1. Site Plan, Submitted Nov. 18, 2015 (attached)
 - 2. Preliminary Utility and Grading Plan, Submitted March 3, 2016 (attached)
 - 3. Preliminary Landscaping Plan, Submitted Nov. 18, 2015 (attached)
 - 4. Site Plan - Section 1. Submitted Nov. 18, 2015
 - 5. Site Plan - Section 2 Submitted Nov. 18, 2015
 - 6. Site Plan - Easement and Street Vacation Submitted Nov. 18, 2015
 - 7. Site Plan - Phasing Submitted Nov. 18, 2015
 - 8. Site Plan - Existing/Proposed Fencing Submitted Nov. 18, 2015
 - 9. Preliminary Storm/Grading/Utility Plan Submitted Nov. 18, 2015
 - 10. Survey- Existing Development
 - 11. Preliminary Building Elevations
 - 12. Original Site Plan, Submitted Nov. 7, 2014
 - 13. Original Utility/Grading Plan, Submitted Nov. 7, 2014
 - 14. Original Landscaping Plan, Submitted Nov. 7, 2014
- D. Notification information:
 - 1. Request for Response
 - 2. Posting Letter Sent to Applicant for Rescheduled Hearing, November 24, 2015

3. Posting Letter Sent to Applicant for Rescheduled Hearing, Dec. 23, 2015
 4. Posting Letter Sent to Applicant for Rescheduled Hearing, Feb. 26, 2016
 5. Notice to be Posted, Feb. 26, 2016
 6. Applicant's Statement Certifying Posting, Jan. 14, 2016
 7. Applicant's Statement Certifying Posting, March 10, 2016
 8. Hearing Notice Mailing List
 9. Mailed Notice
- E. Agency Responses:
1. Portland Bureau of Transportation, Updated Response, March 9, 2016
 2. Bureau of Environmental Services, March 11, 2016
 3. Water Bureau
 4. Fire Bureau
 5. Police Bureau
 6. Site Development Review Section of Bureau of Development Services
 7. Life Safety Plan Review Section of Bureau of Development Services
 8. Portland Bureau of Transportation, Nov. 19, 2015
 9. Bureau of Environmental Services, Jan. 28, 2016
- F. Letters: NONE
- G. Other:
1. Original LUR Application
 2. Completeness Review Letter to Applicant from Staff
 3. Pre-Application Conference Summary Report
 4. Recorded Street Vacation - N. Terminal Road
- H.

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



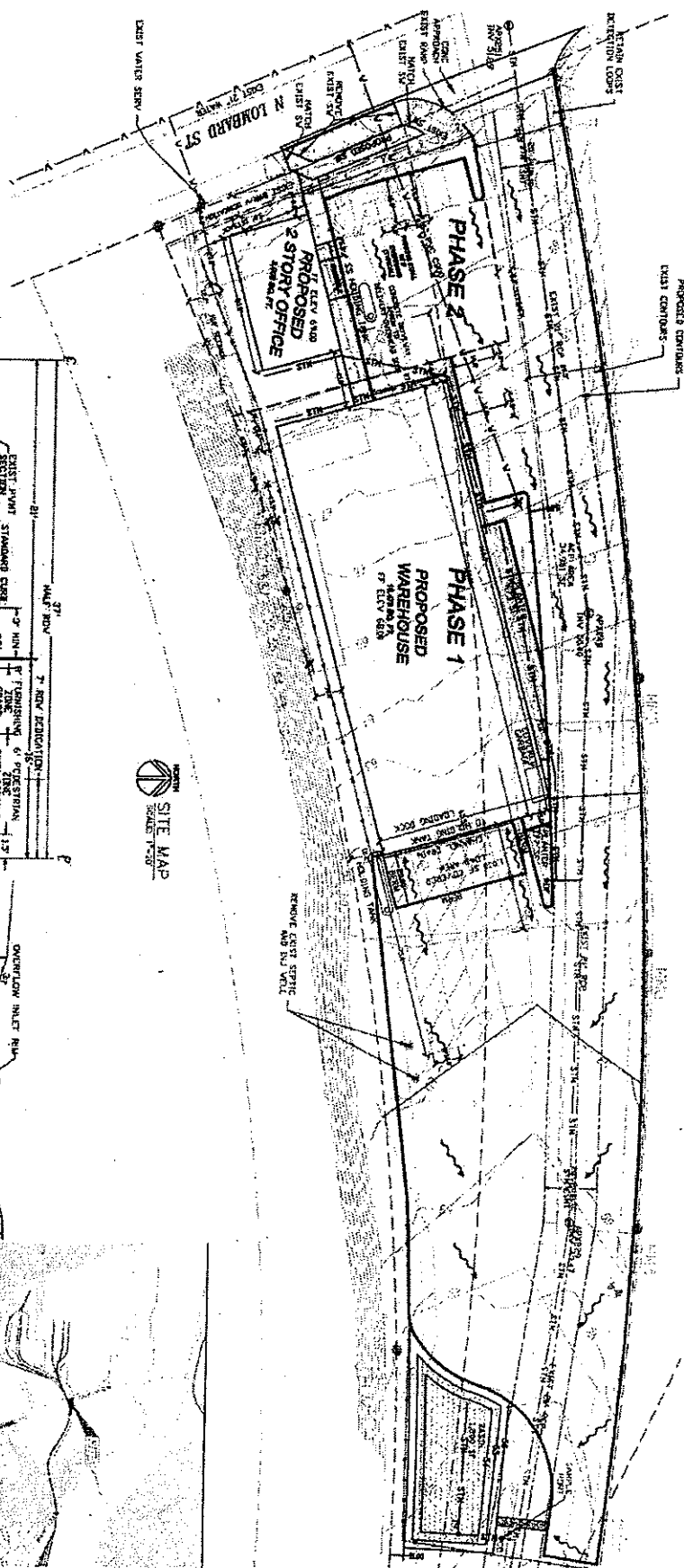
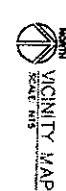
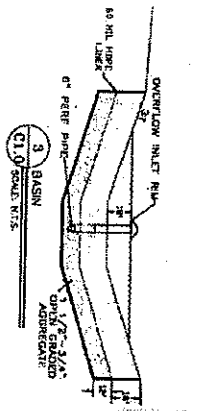
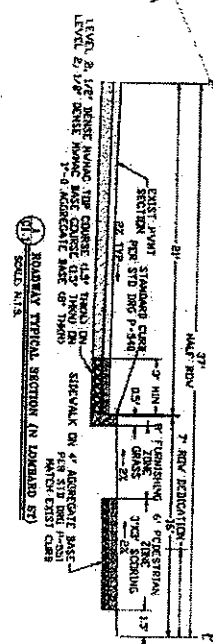
File No. LU 14-235840 CU AD AD
 1/4 Section 1820, 1821
 Scale 1 inch = 200 feet
 State Id 2N1W35D 1600
 Exhibit B (Nov. 10, 2014)

GRADING NOTES:

1. ALL GRADING SHALL BE CONFORMANT TO 90 PERCENT OF CHANAMAN AND 10 PERCENT OF THE CITY OF CHANAMAN.
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GENERAL UTILITY NOTES:

1. ALL UTILITIES SHALL BE CONFORMANT TO THE CITY OF CHANAMAN AND 10 PERCENT OF THE CITY OF CHANAMAN.
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PRELIM UTILITY/GRADING PLAN C1.0 SHEET NO. 14-001	WASTE PRESS PROJECT NO. K. 10025 DATE 10/1/14 DRAWN BY J. 10025 CHECKED BY J. 10025 PROJECT NO. K. 10025	KHEngineering CIVIL DESIGN	Date: _____ Revision: _____ By: _____
	INTERNATIONAL BUSINESS DEVELOPMENT, INC. 10000 W. 10TH AVE. SUITE 100 DENVER, CO 80202	PROJECT NO. K. 10025 DATE 10/1/14 DRAWN BY J. 10025 CHECKED BY J. 10025 PROJECT NO. K. 10025	PROJECT NO. K. 10025 DATE 10/1/14 DRAWN BY J. 10025 CHECKED BY J. 10025 PROJECT NO. K. 10025

Lu 14-235840 CU AD Exh. C.2

