



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

FROM CONCEPT TO CONSTRUCTION

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Date: May 8, 2015
To: Interested Person
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**NOTICE OF A TYPE Ix DECISION ON A PROPOSAL
IN YOUR NEIGHBORHOOD**

The Bureau of Development Services has **approved** a proposal in your neighborhood. The mailed copy of this document is only a summary of the decision. The reasons for the decision, including the written response to the approval criteria and to public comments received on this application, 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 14-255354 LDP

GENERAL INFORMATION

Applicant: Barry Smith / Portland Development Group / (971) 563-9356
4224 NE Halsey Street, Suite 300 / Portland OR 97213

Property Owner: Bessie L Green / 4723 NE 13th Avenue / Portland OR 97211-4635

Site Address: 4723 NE 13TH AVENUE

Legal Description: BLOCK 9 LOT 12, HIGHLAND
Tax Account No.: R384301100
State ID No.: 1N1E23BD 15100
Quarter Section: 2531
Neighborhood: King, contact Leigh Rappaport / 503-490-8388
Business District: North-Northeast Business Assoc, contact Joice Taylor / 503-841-5032
District Coalition: Northeast Coalition of Neighborhoods, contact Claire Adamsick / 503-388-9030

Zoning: R2.5ah - Single Family Residential 2,500 with "a" alternative design density overlay zone and "h" aircraft land zone (height) overlay.

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

Proposal: The applicant is proposing a 2-parcel **Land Division-Partition** for this 5,000 square foot corner site. Each parcel will be approximately 50 by 50 feet (2,500 in area). The existing house will be demolished. There is one tree on the site that the applicant has proposed to remove. Off-street parking is proposed for each house.

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

For purposes of State Law, this land division is considered a partition. To partition land is to divide an area or tract of land into two or three parcels within a calendar year (See ORS 92.010). ORS 92.010 defines “parcel” as a single unit of land created by a partition of land. The applicant’s proposal is to create 2 units of land (2 parcels); therefore, this land division is considered a partition.

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

FACTS

Site and Vicinity: The 5,000 square foot site is on the southwest corner of NE 13th Avenue and NE Wygant Street. The site is relatively flat and is currently development with as single story house with an attached garage. There is spruce tree located in the rear yard behind the house. There are also several street trees along the SE Wygant Street frontage.

As shown on the attached Zoning Map, to the north, the nearby residential area includes R2.5 zoned parcels that extend to a commercially zoned corridor of variable lot sizes along NE Alberta Avenue; to the east, an adjacent block of R2.5 zoned parcels abutting an area of R5 zoned lots to NE 15th Avenue; to the south, an abutting lot in the R2.5 zone bordered by a larger area of R5 zoned parcels that extends past NE Prescott Street; and, to the east, an area of R2.5 zoned parcels that extends beyond NE 7th Avenue. There is a generally well developed street grid in the surrounding residential area.

Nearly all of the nearby residential properties are of a comparable size and scale to the existing development on the subject site. However, there have been a variety of newer developments in the surrounding area and most of those have been on lots that are 2,500 square feet in size.

Infrastructure:

Streets – The site has approximately 50-feet of frontage on NE 13th Avenue and approximately 100-feet of frontage along NE Wygant Street. There is one driveway entering the site from NE 13th Avenue. At this location, both NE 13th and NE Wygant are classified as Local Service Streets for all modes in the Transportation System Plan. NE Wygant is improved with a 10-foot sidewalk corridor with a 3-5-2 configuration. NE 13th is improved with an 11-foot sidewalk with a 3-6-1 configuration. According to Portland Transportation, both frontage are very close to current City standards and are exempt from the requirement to reconstruct under TRN 1.22. Bus service is provided via TriMet Lines 8 and 72.

Water Service – There is an existing 8-inch CI water main in NE 13th Avenue, which may be used to serve proposed Parcel 2. The existing house has a 5/8” metered service (Serial #94044584, Account #2950146000) from this main.

There is currently no water available to proposed Parcel 1. The applicant must satisfy the Water Bureau requirements for a water main extension in NE Wygant Street to serve that proposed parcel.

The estimated static water pressure range for this location is 44 psi to 56 psi at the existing service elevation of 233 ft.

Sanitary Service - There is an existing 8-inch concrete public combined gravity sewer located in NE 13th Avenue that can serve the sanitary disposal needs of this project (BES project #0430). There is no sewer service available in NE Wygant Street along the site's frontage.

Zoning: The site has a **Single Family Residential 2,500 (R2.5)** base zone designation. The single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households.

The site is also within the **Alternative Design Density (a) overlay** zone, which aims to encourage new development that is compatible with and supportive of the positive qualities of residential neighborhoods. *The applicant has not elected to use the a-overlay options.*

In addition, the site is within the **Aircraft Landing (h) overlay** zone, which is intended to provide safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures, vegetation, and construction equipment. *In the R2.5 zone, structures must meet the base zone height limit of 35 feet.*

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

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

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on **February 24, 2015**. A total of ten written responses have been received. The neighbors raised concerns about the potential removal of the large spruce tree on the property, and compatibility with the neighborhood. Tree Preservation requirements are addressed in the findings for Criterion B, below. Neighborhood compatibility is not a specific criterion for this pending review. Any future development on the property must comply with the standards applicable at that time.

ZONING CODE APPROVAL CRITERIA

APPROVAL CRITERIA FOR LAND DIVISIONS IN OPEN SPACE AND RESIDENTIAL ZONES

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

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

Criterion	Code Chapter/Section and Topic	Findings: Not applicable because:
C	33.631 - Flood Hazard Area	The site is not within the flood hazard area.
D	33.632 - Potential Landslide Hazard Area	The site is not within the potential landslide hazard area.
E	33.633 - Phased Land Division or Staged Final Plat	A phased land division or staged final plat has not been proposed.
F	33.634 - Recreation Area	The proposed density is less than 40 units.
J	33.640 - Streams, Springs, and Seeps	No streams, springs, or seeps are evident on the site.
L	33.654.110.B.2 - Dead end streets	No dead end streets are proposed.
	33.654.110.B.3 - Pedestrian connections in the I zones	The site is not located within an I zone.
	33.654.110.B.4 - Alleys in all zones	No alleys are proposed or required.
	33.654.120.C.3.c - Turnarounds	No turnarounds are proposed or required.
	33.654.120.D - Common Greens	No common greens are proposed or required.

	33.654.120.E - Pedestrian Connections	There are no pedestrian connections proposed or required.
	33.654.120.F - Alleys	No alleys are proposed or required.
	33.654.120.G - Shared Courts	No shared courts are proposed or required.
	33.654.130.B - Existing public dead-end streets and pedestrian connections	No public dead-end streets or pedestrian connections exist that must be extended onto the site.
	33.654.130.C - Future extension of dead-end streets and pedestrian connections	No dead-end street or pedestrian connections are proposed or required.
	33.654.130.D - Partial rights-of-way	No partial public streets are proposed or required.

Applicable Approval Criteria are:

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

Findings: Chapter 33.611 contains the density and lot dimension requirements applicable in the R2.5 zone. The maximum density is one unit per 2,500 square feet. Minimum density is one unit per 5,000 square feet based on 80 percent of the site area. The 5,000 square foot site has a minimum required density of 1 units and a maximum density of 2 units. The applicant is proposing 2 single dwelling parcels, which meets the allowed density standards.

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

	Min. Lot Area (square feet)	Max. Lot Area (square feet)	Min. Lot Width* (feet)	Min. Depth (feet)	Min. Front Lot Line (feet)
R2.5 Zone	1,600	NA	36	40	30
Parcel 1	2,500		50	50	50
Parcel 2	2,500		50	50	50

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

The 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 aim to preserve trees and mitigate for the loss of trees. Certain trees are exempt from the requirements of this chapter.

In this situation, there is one tree on the site, as noted in the two arborists' reports provided by the applicant. However, the species and size of the tree differs in each arborist report, and the tree size shown on the plans also differ. One report, prepared by Lorin Fielding, is not dated, but was submitted with the December 31, 2014 land use application, and indicates the tree is a Sitka spruce (*Picea sitchensis*), 23-inches in diameter, 55-feet tall, and healthy (Exhibit A.2). The other report, prepared by Teragan and Associates, is dated February 14, 2015, and notes the tree is a Blue Spruce (*Picea pungens*), 26-inches in diameter and in good condition with good structure (Exhibit A.3). The site survey (Exhibit C.1), dated December 1, 2014, shows the tree as 23-inches in diameter, while the Conceptual Development Plans (Exhibits C.2 and C.3), show the tree at 26-inches in diameter.

Since both arborists identify the tree as a spruce, and neither noted species is a nuisance tree or a native tree in the Portland environs, it is not critical to determine which specific species it is. Also, the 26-inch tree diameter noted in the Teragan and Associates arborist report will be used for this analysis, since that report was prepared more recently than the Fielding arborist report.

Initially, the applicant proposed a conceptual development plan (Exhibit C.2) that showed the spruce tree to be removed. During the course of the review, eight neighbors responded to the public notice and raised concerns about the removal of the tree; and BDS staff and the applicant discussed potential options to retain the tree, including: a reduced root protection zone, a different lot layout, a reconfigured house design, and potential modifications to reduce the standard building setbacks. As part of those discussions, the applicant provided several alternative conceptual development plans (Exhibits C.3.a through C.3.c). One included an alternative house layout (Exhibit C.3.b), with reduced setbacks along the NE Wygant Street frontage of proposed Parcel 1, but the plan did not resolve how construction activities could occur outside of the minimum root protection zone.

The applicant also received the following information about the city stormwater program that offers incentives for retaining mature trees, in the response from the Bureau of Environmental Services (Exhibit E.1): *The site appears to contain a mature tree, which is beneficial because trees intercept at least 30% of precipitation that falls on the canopy, filter stormwater, help prevent erosion, and provide shade which cools the air and stormwater runoff. It is difficult to mitigate for the removal of mature trees as it can take decades for new trees to provide equivalent benefits. BES recommends that future development at this site include measures to preserve as many of the site's existing trees as possible. Financial incentives for existing trees taller than 15 feet on private property may be available for ratepayers who register with [Clean River Rewards](#), the City's stormwater discount program. Call 503-823-1371 for more information.*

The applicant also inquired about withdrawing this land use application, and removing the tree, as allowed by the Tree Code, Title 11, which became effective on January 2, 2015, then reapplying to divide the subject site at a later date. The Title 11 provisions allow for any tree located within 10 feet of a building (in this case, the existing house) to be removed, if one tree is replanted for each tree removed (Title 11, Section 11.40.050/Table 40-3).

Ultimately, the applicant decided to proceed with this pending land use application, and indicated that it was not feasible to retain the spruce tree.

Without a preservation plan for the spruce tree, the proposal will not meet any of the tree preservation options in 33.630.100; so, instead, the applicant proposes to use the mitigation options allowed in 33.630.300.

In order to use the mitigation option (33.630.300), the applicant must demonstrate that as many trees as possible are preserved (Criterion A) and an adequate mitigation plan must be provided (Criterion B). Additionally, the applicant must demonstrate that it is not possible under any reasonable scenario to meet 33.630.100 and one of the following (Criterion C):

1. Meet minimum density;
2. Meet all service requirements of Chapters 33.651 through 33.654, including connectivity;
3. Implement an adopted street plan;
4. On sites 15,000 square feet or less in area, provide a practicable arrangement of lots, tracts, and streets within the site that would allow for the division of the site with enough room for a reasonable building site on each lot;
5. In E and I zones, provide a practicable arrangement of lots, tracts, and streets within the site that would allow for the division of the site with enough room for a reasonable building site on each lot, considering the uses and development allowed in the zone, or
6. Preserve the trees within the environmental zones on site while providing a practicable arrangement of building sites and disturbance area.
7. Preserve trees within an easement that:
 - a. Is held by a utility or service agency; and
 - b. That was held by the utility or service agency before the application for preliminary plan review of the land division was filed.

The Teragan and Associates arborist report indicates that the proposal satisfies the mitigation option criteria, since the 5,000 square foot site does not have sufficient space to

provide the minimum 13-foot diameter root protection zone needed to assure adequate protection of the spruce tree, and provide an adequate developable building site on each parcel, even if modifications to the setbacks were allowed. The arborist further states it is not possible to retain the single tree on the site, so mitigation is the only feasible alternative.

To mitigate for the removal of the 26-inch caliper tree, the arborist recommends that five 2-inch caliper native evergreen trees be installed on the site. The arborist notes this mitigation plan would provide a total of 10-inches of tree diameter, which is equivalent to approximately 35 percent of the tree diameter provided by the 26-inch diameter spruce, and is comparable to the Option 1 Tree Preservation Standard (33.630.100.A).

Given the size of the subject site and the size of the proposed parcels and the minimum root protection zone that would be required to effectively protect the spruce tree, it appears there are limited opportunities to provide a reasonable building site on each of the proposed parcels, and retain the 26-inch spruce, so mitigation is warranted.

The mitigation must be shown to equally or better meet the purpose of the Tree Preservation chapter, 33.630.010. While the provision of on-site mitigation trees will help to ensure some replacement of the values provided by the existing spruce tree within the subject site, it is not sufficient to simply replace 35 percent of the existing tree diameter, as noted in the arborist report. A smaller quantity of tree diameter will not afford benefits comparable to those provided by the existing 26-inch spruce, such as filtering stormwater, visual screening, wildlife habitat, and buffering from noise and wind, as well as neighborhood character and beauty, as noted in the neighborhood comments. Therefore, to equally or better satisfy the purpose of the tree preservation regulations, in addition to onsite tree planting, additional mitigation for the existing tree diameter is warranted.

Given the relatively small size of the proposed parcels, there is limited space available to install all the mitigation trees on the site; therefore, additional mitigation through a payment to the City Tree Fund is a preferable option. A contribution to the City Tree Fund will allow for the installation of trees in the Columbia Slough watershed, in which the site is located, and those trees will help absorb air pollutants and contamination, and contribute to the City's general beauty. The cost to purchase and plant trees is determined each year by the Urban Forester based on current market prices per inch for materials, labor, and maintenance. At this time, the requirement is \$300 per inch of tree to be installed.

For the onsite mitigation, the arborist's mitigation plan (Exhibit A.3) and project plans (Exhibits C.2, C.3.c) show three different scenarios for the locations and species for the mitigation trees. However, at the time of development, each parcel is also required to comply with the On-Site Tree Density Standards of Title 11, which require trees to be planted at varying rates depending on the mature canopy size of each tree. In order to avoid overplanting on the site and to clarify the on-site tree mitigation, the following condition will be applied: At the time of development, trees must be planted on each parcel in accordance with Title 11, and no payment or street tree may be credited in lieu of these on-site mitigation trees. The Title 11 On-Site Tree Density Standards will provide for one to four trees to be planted on each parcel.

Overall, with the provision of Title 11 trees on each parcel, which will provide a canopy replacement comparable to approximately 10-inches of tree diameter on the site, and a payment for 16-inches of tree diameter in to the Tree Fund, this mitigation will provide for the replacement of some tree diameter on the subject property and some in the same watershed as the site. This will avoid overcrowding of the mitigation trees on the parcels, and provide for the installation of other mitigation trees in the nearby area. Together these mitigation trees will replace the 26-inches of tree diameter provided by the spruce tree and will serve to equally meet the purpose of the Tree Preservation regulations.

With the implementation of these conditions, this criterion will be met.

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

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

Clearing and Grading: In this case, the site is primarily flat and is not located within the Potential Landslide Hazard Area. So, aside from removal of the existing development, no significant clearing or grading will be required to make the new lots developable. In addition, erosion control measures will be required to be implemented at the time of permits to help protect water quality.

Land Suitability: The site is currently in residential use, and there is no record of any other use in the past. The applicant has proposed to remove the existing house and redevelop the site. In order to ensure that the new lots are suitable for development, a permit must be obtained and finalized for demolition of all structures on the site and sewer capping prior to final plat approval.

Additionally, as noted in the responses from Environmental Services (Exhibit E.1) and Site Development (Exhibit E.5), the existing residence is connected to drywells, and the drywells need to be located and decommissioned during the demolition of the residence. The decommissioning of drywells is regulated by the Oregon Department of Environmental Quality (DEQ). In order to ensure the drywells do not pose a hazard to future development on the proposed parcels, the applicant must locate and decommission the drywells, in accordance with the DEQ requirements, and provide documentation of compliance with those DEQ requirements, prior to final plat approval.

With the noted conditions, the new lots can be considered suitable for development, and this criterion will be met.

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

Findings: No tracts are proposed or required for this land division. The following easements are proposed and/or required for this land division:

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

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

“A Declaration of Maintenance agreement for (name of feature) has been recorded as document no. _____, Multnomah County Deed Records.”

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

I. Solar access. If single-dwelling detached development is proposed for the site, the approval criteria of Chapter 33.639, Solar Access, must be met.

Findings: The solar access regulations encourage variation in the width of lots to maximize solar access for single-dwelling detached development and minimize shade on adjacent properties.

Each of the proposed parcels is on the south side of an east-west oriented street. Parcel 2 will be on the corner, and Parcel 1 will be an interior parcel. The standards call for the interior parcel to be the narrowest. However, both parcels have the same width. This lot configuration affords a more uniform lot pattern, which is more consistent with the purpose of the lot dimension standards in Chapter 33.612. Those other requirements supersede 33.639; therefore, the solar access criteria do not apply.

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. Evaluation factors include: street capacity and level-of-service; vehicle access and loading; on-street parking impacts; the availability of transit service and facilities and connections to transit; impacts on the immediate and adjacent neighborhoods; and safety for all modes.

Portland Transportation reviewed the proposal and provided the following comments:

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.*

Connectivity: *The site is a corner lot. Connectivity requirements do not apply.*

Vehicle Access/Loading: *The new lots will have a driveway to provide access to parking and loading.*

On-Street Parking Impacts: *The new lots will have at least one on-site parking space. Impacts to the on-street parking supply should be minimal.*

Availability of Transit: *Tri Met Bus Lines #8 & #72 are available to serve the site.*

Neighborhood Impacts: *The site is being developed with two new single-family residences with a net increase of one home in compliance with the existing R2.5 zoning. In addition, standard frontage improvements including sidewalks will reduce the potential for conflicts between pedestrians and vehicles.*

Safety for All Modes: *Sidewalks along both sides of the area streets provide adequate pedestrian facilities. Give the low vehicle speeds and volumes on NE 13th and NE Wygant, cyclists can safely share the roadway.*

Based on these factors, Portland Transportation has determined that 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. 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:

33.651 Water Service standard – See Exhibit E.3 for detailed bureau comments.

The Water Bureau has indicated that service is available to serve proposed Parcel 2, as noted on page 2 of this report; however, there is no existing water service on NE Wygant Street to serve proposed Parcel 1. Therefore, the applicant must make arrangements to extend a new water main in NE Wygant Street to ensure service is available to Parcel 1. In order to meet the standards of 33.651 and the technical requirements of Title 21, appropriate plans and assurances must be provided to the Water Bureau, prior to final plat approval.

Additionally, as noted in the Water Bureau response, the existing home which straddles the two parcels will need to be removed, in order to meet City Title requirements for 21.12.010 and 21.12.070, which do not allow water services to cross property boundaries.

With the implementation of the noted conditions, this standard will be satisfied.

33.652 Sanitary Sewer Disposal Service standards – See Exhibit E.1 for detailed comments.

The Bureau of Environmental Services has indicated that service is available to the site, as noted on page 2 of this report. However, BES also notes: *In order to access the public sewer in NE 13th Avenue, BES has allowed a private easement across the northern portion of proposed Parcel 2 for the benefit of Parcel 1. Per BDS Plumbing, private sewer easements should be a minimum of 10 feet in width (www.portlandoregon.gov/bds/article/68619), which the applicant has shown on the submitted Site Plan. Note that a plumbing code appeal may be required for private sewer easements less than 10 feet in width; see the [BDS Appeals](#) page for more information, including an online appeals form. Please be aware that BES may require proof of legal access prior to issuance of sewer connection permits.*

If a private sewer easement is provided, the easement must be shown and noted on the final plat and a maintenance agreement for the easement must be submitted for approval by BDS and the City Attorney and must be recorded with the final plat.

With the implementation of the foregoing conditions, the sanitary sewer service standards of 33.652 will be met.

33.653.020 & .030 Stormwater Management criteria and standards – See Exhibits E.1

No stormwater tract is proposed or required. BES reviewed the proposed stormwater management methods and provided the following comments:

Parcels 1 and 2: *The applicant submitted a stormwater report from dated December 31, 2014. The report includes Simplified Approach infiltration test results of 2 inches per hour, and proposes for runoff to from the development to be infiltrated onsite via drywells on each parcel. Proposed driveways for each parcel can be sloped towards vegetated areas. If the proposed drywells temporarily fail or rainfall exceeds the facility design capacity flows will overflow to the street, which is acceptable. Staff concurs with this conceptual approach for the purpose of reviewing the preliminary land division plan against the stormwater management approval criterion.*

The Oregon Department of Environmental Quality (DEQ) regulates underground injection control (UIC) facilities to protect groundwater. Drywells and soakage trenches are examples of UICs. It is the applicant's responsibility to register all on-site UICs with DEQ, as appropriate. To learn more visit [DEQ's website](#) or contact the DEQ UIC Program at 503-229-5945. The [SWMM](#) also includes general UIC information.

Existing Drywells: *City plumbing records indicate there are existing drywells on this site. If the project will impact existing drywells then be aware that the Department of Environmental Quality (DEQ) has rules governing the decommissioning (closure) of drywells (underground injection controls). Please contact the DEQ Underground Injection Control (UIC) Program at 503-229-5696 or 1-800-452-4011 for their closure rules. Note that BDS and BES do not inspect drywell decommissioning.*

Based on the foregoing, the stormwater management requirements will be met.

33.654.110.B.1 Through streets and pedestrian connections

The site is located on a corner and has developed frontages. No additional street or pedestrian connections are warranted. As such, this criterion is satisfied.

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

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. Portland Transportation has not identified or been made aware of any factors related to this proposal that lead to a conclusion other than that two dwellings can be safely served by this existing street without having any significant impact on the level of service provided. Therefore, this criterion is met.

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

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

DEVELOPMENT STANDARDS

Development standards that are not relevant to the land division 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.

Existing development that will remain after the land division. The applicant is proposing to remove all of the existing structures on the site, so the division of the property will not cause the structures to move out of conformance or further out of conformance with any development standard applicable in the R2.5 zone. Therefore, this land division proposal can meet the requirements of 33.700.015.

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

OTHER TECHNICAL REQUIREMENTS

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

Bureau	Code Authority and Topic
Development Services/503-823-7300 www.portlandonline.com/bds	Title 24 – Building Code, Flood plain Title 10 – Erosion Control, Site Development Administrative Rules for Private Rights-of-Way
Environmental Services/503-823-7740 www.portlandonline.com/bes	Title 17 – Sewer Improvements 2008 Stormwater Management Manual
Fire Bureau/503-823-3700 www.portlandonline.com/fire	Title 31 Policy B-1 – Emergency Access
Transportation/503-823-5185 www.portlandonline.com/transportation	Title 17 – Public Right-of-Way Improvements Transportation System Plan
Urban Forestry (Parks)/503-823-4489 www.portlandonline.com/parks	Title 20 – Street Trees and other Public Trees
Water Bureau/503-823-7404 www.portlandonline.com/water	Title 21 – Water availability

As authorized in Section 33.800.070 of the Zoning Code conditions of approval related to these technical standards have been included in the Administrative Decision on this proposal.

- **Fire Bureau:** The applicant must meet the requirements of the Fire Bureau in regards to fire flow/water supply, fire hydrant spacing, addressing of structures, and aerial fire department access roads. These requirements are based on the 2014 Oregon Fire Code and the technical standards of Title 31 and Fire Bureau Policy B-1.
- **Urban Forestry:** The applicant must meet the Urban Forestry regulations for protecting existing street trees, including the requirement that a root pruning inspection will be required during development for a driveway for Parcel 1. The inspection must take place once roots have been exposed and prior to any root cutting. These requirements are based on the standards of Title 20.

CONCLUSIONS

The applicant has proposed a 2 parcel partition, as shown on the attached preliminary plan (Exhibit C.1). As discussed in this report, the primary issues identified with this proposal are:

- Neighborhood concerns related to tree preservation.
- Tree Mitigation via on-site tree planting and payment to the Tree Fund.
- Sanitary sewer service via a private easement.
- Water main extension to serve Parcel 1.
- Demolition of existing development, including sewer capping and drywell decommissioning.

Based on the findings throughout this report, the relevant standards and approval criteria have been met or can be met with conditions. Therefore, the proposal should be approved.

ADMINISTRATIVE DECISION

Approval of a Preliminary Plan for a 2-parcel partition that will result in 2 standard lots, as illustrated with Exhibit C.1, subject to the following conditions:

A. The final plat must show the following:

1. A private sanitary sewer easement, for the benefit of Parcel 1, shall be shown and labeled over the relevant portions of Parcel 2.
2. A recording block for each of the legal documents such as maintenance agreement(s), acknowledgement of special land use conditions, or Declarations of Covenants, Conditions, and Restrictions (CC&Rs) as required by Condition C.6 below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: "A Declaration of Maintenance Agreement for (name of feature) has been recorded as document no. _____, Multnomah County Deed Records."

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

Utilities

1. The applicant shall meet the requirements of the Water Bureau for a water main extension to be constructed by the Water Bureau in NE Wygant Street to provide water to the proposed Parcel 1.
2. The applicant shall meet the requirements of the Oregon Department of Environmental Quality (DEQ) for the decommissioning the onsite drywells on the site, and provide documentation of compliance with those DEQ requirements.

3. The applicant shall meet the requirements of the Fire Bureau for ensuring adequate hydrant flow/water supply from the nearest hydrant. The applicant must provide verification to the Fire Bureau that Appendix B of the Fire Code is met, the exception is used, or provide an approved Fire Code Appeal.
4. The applicant shall meet the requirements of the Fire Bureau for ensuring adequate fire hydrant spacing. The applicant must provide verification to the Fire Bureau that Appendix C of the Fire Code is met.

Existing Development

5. A finalized permit must be obtained for demolition of the existing residence on the site and capping the existing sanitary sewer connection. Note that Title 24 requires a 35-day demolition delay period for most residential structures.

Required Legal Documents

6. A Maintenance Agreement shall be executed for the Private Sewer Easement described in Condition A.1 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.
7. If the Fire Bureau has required an Acknowledgement of Special Land Use Conditions, the applicant shall execute an Acknowledgement of Special Land Use conditions to the satisfaction of the Fire Bureau. The acknowledgement shall be referenced on and recorded with the final plat.

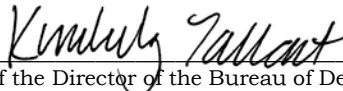
Other requirements

8. The applicant must pay into the City Tree Fund the amount equivalent to 16 inches of tree diameter. Payment must be made to the Bureau of Development Services, which administers the fund for the Parks Bureau.

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

1. On-site mitigation trees must be provided on each parcel, at the time of development, in accordance with the Title 11 On-Site Tree Density Standards. The on-site mitigation trees must be labeled as such on the permit plans, and no payment or street tree may be credited in lieu of these on-site mitigation trees.
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 shall meet the Urban Forestry requirements regarding a root pruning inspection for the proposed driveway for Parcel 1. The inspection must take place once roots have been exposed and prior to any root cutting.

Staff Planner: Kate Green

Decision rendered by:  **on May 5, 2015**

By authority of the Director of the Bureau of Development Services

Decision mailed May 8, 2015

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 December 31, 2014, and was determined to be complete on **February 17, 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 December 31, 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 did not waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on: June 17, 2015**.

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

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

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

This decision, and any conditions associated with it, is final. It may be appealed to the Oregon Land Use Board of Appeals (LUBA), within 21 days of the date the decision is mailed, as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that a petitioner at LUBA must have submitted written testimony during the comment period for this land use review. Contact LUBA at 775 Summer St NE Suite 330, Salem, OR 97301-1283 or phone 1-503-373-1265 for further information.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.portlandonline.com.

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

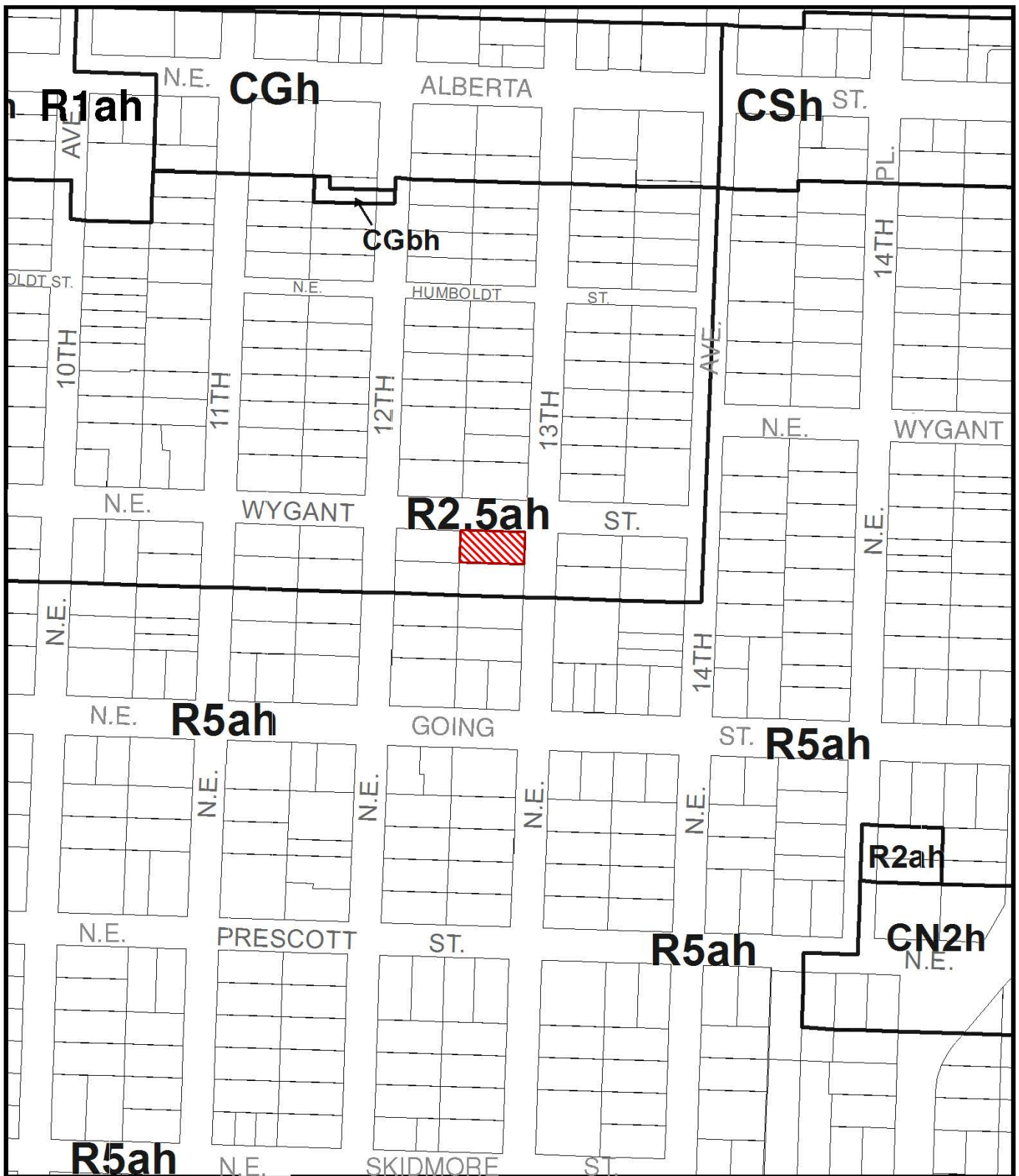
and approved by the County Surveyor. **The approved preliminary plan will expire unless a final plat is submitted within three years of the date of the City's approval of the preliminary plan.**

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Initial Narrative
 - 2. Arborist Report: Lorin Fielding
 - 3. Arborist Report: Teragan and Associates/response to completeness review letter
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Survey: Existing/Proposed Conditions (reduced copy attached)
 - 2. Conceptual Development Plan-initial proposal
 - 3. Alternative Conceptual Plans
 - a. April 2, 2015
 - b. April 8, 2015
 - c. April 16, 2015
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Portland Transportation
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development/BDS
 - 6. Urban Forestry/Parks
 - 7. Life Safety/BDS
- F. Correspondence:
 - 1. Gerard Lester, March 26, 2015, re: concerns about tree preservation
 - 2. Dawn Nafus, March 26, 2015, re: concerns about tree preservation
 - 3. Jody De La Vergne, March 25, 2015 (email) and February 27, 2015 (letter), re: concerns about neighborhood compatibility and tree removal
 - 4. Gladine Reynolds, March 25, 2015, re: concerns about tree preservation
 - 5. Dan Jaffee, March 25, 2015 and March 21, 2015, re: concerns about tree preservation
 - 6. Ariel M Kempf, March 24, 2015, re: concerns about tree preservation
 - 7. Nate Kavan, March 22, 2015, re: concerns about tree preservation
 - 8. Danielle Kavan, March 22, 2015, re: concerns about tree preservation
 - 9. *Michael Lanaghan, March 28, 2015 (comment received after close of comment period), re: concerns about tree removal*
- G. Other:
 - 1. Original LU Application
 - 2. Letter to applicant re: incomplete application
 - 3. Emails to/from applicant

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 14-255354 LDP
 1/4 Section 2531
 Scale 1 inch = 200 feet
 State_Id 1N1E23BD 15100
 Exhibit B (May 06,2015)

