



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

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Date: March 2, 2022
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 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 21-027354 LDP

GENERAL INFORMATION

Applicant: Mike Montgomery, Simpl Home Designs
4931 SW 76th Ave, Pmb 211 Portland, OR 97225
mike@simplhomedesigns.com 503-515-6495

Owner: Douglas Tansill, 4914 NE 17th Ave Portland, OR 97211
luketansill@yahoo.com 917-678-0230

Site Address: 4553 NE ALBERTA STREET

Legal Description: E 50' OF LOT 39 W 25' OF LOT 40, BOUNDARY ACRES
Tax Account No.: R094101110
State ID No.: 1N2E19BB 13700
Quarter Section: 2535

Neighborhood: Cully, contact David Sweet at cullyguy@gmail.com
Business District: None
District Coalition: Central Northeast Neighbors, contact Alison Stoll at 503-823-2778.

Zoning: Residential 5,000 (R5) **Overlay Zone:** Aircraft Landing Zone ("h")
Case Type: Land Division – Partition (LDP)
Procedure: Type Ix, an administrative decision with appeal to the Oregon Land Use Board of Appeals (LUBA).

Proposal:

The applicant proposes to divide this 13,500 square foot lot into 2 parcels. Parcel 2 is proposed to be 5,395 square feet and will contain the existing house and existing accessory dwelling unit (ADU). Parcel 1 is proposed to be an 8,105 square foot flag lot, with the "flag" portion of that lot proposed to be 6,755 square feet. Parcel 1 will be available for residential development. The applicant proposes to preserve the 1 on-site tree.

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 3 units of land (3 lots). Therefore, this land division is considered a partition.

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

FACTS

Site and Vicinity: The subject site is situated in a residential area, with a mix of single-dwelling residential zones, including R5h and Residential 7,000 (R7h) and contains almost all single dwelling homes. There are some lower density multi-family zoning districts along NE Killingsworth Street, NE Prescott Street, as well as along NE 42nd Avenue. NE 42nd Avenue also contains a good amount of commercial zoning west of the site. Khunamokwst Park is approximately 1,700 feet to the east, Rigler Elementary is 1,800 feet to the southeast, and Alliance High School is approximately 1,100 feet to the west.

Infrastructure:

- **Streets –**

The site has approximately 75 feet of frontage on NE Alberta Street. There is one driveway entering the site that serves the existing house on the site. At this location, NE Alberta Street is classified as a Local Service Street for all modes in the Transportation System Plan (TSP). Tri-Met provides transit service approximately 1,050 feet from the site at NE 42nd Avenue via Bus #75.

NE Alberta Street has a 20-foot wide curb to curb paved asphalt surface with a center stripe within a 50-foot right-of-way some parking available in places on graveled shoulders. The roadway at this location is lacking curb and a pedestrian corridor including a sidewalk.

- **Water Service –** There is an existing 6-inch water main in NE Alberta Street. The existing house is served by a 3/4-inch metered service from this main.
- **Fire Hydrants** The nearest fire hydrant is located approximately 35 feet away at 442 NE Alberta with a hydrant flow of 1,400 gpm with a minimum pressure of 20 psi. A second fire hydrant is located approximately 60 feet away at the corner of NE Alberta & 47th with a hydrant flow of 1,800 gpm with a minimum pressure of 20 psi. The combined flow is 2,300 gpm.
- **Sanitary Service –** There is an existing 8-inch PVC sanitary-only line in NE Alberta Street.
- **Stormwater Disposal –** There is no public storm-only sewer currently available to this property.

Zoning: Residential 5,000 (R5) The single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households. The zones implement the comprehensive plan policies and designations for single-dwelling housing and

provide options for infill housing that is compatible with the scale of the single-dwelling neighborhood.

Overlay Zone: Aircraft Landing Zone (“h”): The Aircraft Landing Overlay Zone provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures, vegetation, and construction equipment. In the residential zones, structures are regulated by the base zone height limits rather than the height limits of this chapter.

Land Use History: City records indicate there is 1 prior land use review for this site, but it was withdrawn, 17-241702-LDP.

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 **December 30, 2021**. No written responses have been received from the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

APPROVAL CRITERIA FOR LAND DIVISIONS IN OPEN SPACE AND RESIDENTIAL ZONES

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

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

Criterion	Code Chapter/Section and Topic	Findings: Not applicable because:
C	33.631 - Flood Hazard Area	The site is not within the flood hazard area.
D	33.632 - Potential Landslide Hazard Area	The site is not within the potential landslide hazard area.
E	33.633 - Phased Land Division or Staged Final Plat	A phased land division or staged final plat has not been proposed.
F	33.634 - Recreation Area	The proposed density is less than 40 units.
I	33.639 - Solar Access	All of the proposed parcels are interior lots (not on a corner). In this context, solar access standards express no lot configuration preference.
J	33.640 - Streams, Springs, Seeps and Wetlands	No streams, springs, seeps or wetlands 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	No pedestrian connections are proposed or required.
	33.654.120.F - Alleys	No alleys are proposed or required.

	33.654.120.G - Shared Courts	No shared courts are proposed or required.
	33.654.130.B - Existing public dead-end streets and pedestrian connections	No public dead-end streets or pedestrian connections exist that must be extended onto the site.
	33.654.130.C - Future extension of dead-end streets and pedestrian connections	No dead-end street or pedestrian connections are proposed or required.
	33.654.130.D - Partial rights-of-way	No partial public streets are proposed or required.
	33.655 - School District Enrollment Capacity	The proposal is for less than 11 lots or is not in the David Douglas School District.

Applicable Approval Criteria are:

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

Findings: Chapter 33.610 contains the density and lot dimension requirements applicable in the R5 zones. Based on the applicant's survey, the site area is 13,500 square feet. The maximum density in the R5 zone is one unit per 5,000 square feet. Minimum density is one unit per 5,000 square feet based on 80 percent of the site area.

The site has a maximum density of 2 units and a minimum required density of 2 units.

If the minimum required density is equal to or larger than the maximum allowed density, then the minimum density is automatically reduced to one less than the maximum. Therefore, in this case the minimum density is reduced to 1 parcel.

The applicant is proposing 2 single dwelling parcels.

The density standards are therefore met.

	Min. Lot Area (square feet)	Max. Lot Area (square feet)	Min. Lot Width* (feet)	Min. Depth (feet)	Min. Front Lot Line (feet)	Min. Flag Lot Width (feet)	Min. Flag Lot Depth (feet)
R5 Zone	3,000	8,500	36	50	30	40	40
Parcel 1	6,755 flag portion 1,350 pole portion					75	90.08
Parcel 2	5,395		60	90.08	60		

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

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

Flag Lots

When allowed

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

Dimensions

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

Vehicle Access

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

In this case, the flag pole portion of Parcel 1 will provide off street parking access for both parcels. The shared vehicle access minimizes the need for additional curb-cuts along the street and the impervious area resulting from paved surfaces for vehicle access. An access easement will be placed over the entirety of the pole to allow shared access. Since vehicle access to Parcel 2 must be from the flag pole of Parcel 1, a driveway will not be allowed along the frontage of Parcel 2. To accommodate the shared access, an easement will be required over the entirety of the pole.

Parcel 1 has met the thresholds for when a flag lot is allowed. Therefore, Parcel 1 is allowed, subject to a condition for shared access via the pole on Parcel 1.

The findings above show that the applicable density and lot dimension standards are met. With the noted condition, 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 require that trees be considered early in the design process with the goal of preserving high value trees and, when necessary, mitigating for the loss of trees.

Tree preservation must be maximized, to the extent practicable, while allowing for reasonable development considering the intensity of development allowed in the zone and site constraints, including existing utility easements and requirements for services and streets.

In order to identify which trees are subject to these requirements, the applicant provided a tree survey (Exhibit C1) that shows the location and size of trees on and adjacent to the site. The applicant also provided an arborist report (Exhibit A4) that identifies each tree, its condition and suitability for preservation or its exempt status, and specifies a root protection zone and tree protection measures for each tree to be preserved.

Based on this information, the 1 on-site tree, which provides a total of 34 inches of tree diameter, is subject to the preservation requirements of this chapter.

The tree proposed for preservation is in good condition, is a native species, and is 20 inches or more inches in diameter. Urban Forestry reviewed the tree preservation and utility plan as well as the arborist report in consultation with Land Use Services staff (Exhibit C4). Our tree inspector recommends the following to amend the existing tree preservation plan and arborist report (Exhibits C1 and A4 respectively):

- A certified arborist be on-site during bore bit drilling, driveway removal, driveway construction, and any other ground disturbance in the prescriptive root protection area (34-foot radius from tree #1).
- The existing concrete driveway must not be removed until after all construction is completed on Parcel 1. The new driveway must be constructed after all the construction on Parcel 1 is completed.

- A certified arborist must be on-site during the concrete driveway removal and determine if a new paved driveway for the whole of the Parcel 1 flag pole will require a change in grading so as to lessen the impact on the significant portion of the root system. The driveway may need to be raised if it cannot be poured without impacting tree roots.
- Stockpiling must be kept from the graveled parking strip in front of Parcels 1 and 2.
- Six to Twelve inches of mulch must be added to the graveled and paved driveway areas on Parcels 1 and 2 in a 34-foot radius from tree #1.

Staff agrees with Urban Forestry's assessment that as long as these recommendations are followed that the large Douglas Fir will be successfully preserved post construction on Parcel 2. Therefore, staff has incorporated a condition that a revised tree preservation / construction plan to protect the tree to Urban Forestry's recommendations be provided for review and approval prior to final plat. With that condition, the proposed performance root protection zone for the tree to be retained will allow for the type of development anticipated in the R5 zone and will not conflict with any existing utilities, proposed services, or site grading.

Specifically, the applicant proposes to retain the tree that is 20 or more inches and 34 inches of the total tree diameter, so the proposal complies with:

Option 1: Preserve all of the trees that are 20 or more inches in diameter and at least 20 percent of the total tree diameter on the site.

In addition, the applicant's arborist report has also identified 1 tree on adjacent sites that is within 15 feet of potential disturbance area on the proposed lots. In order to protect the off-site tree from construction impacts, the arborist recommends an 18-foot root protection zone, which is reflected on the tree preservation plan for off-site tree #3 (Exhibit C1).

Based on these factors, no additional mitigation is warranted to satisfy the approval criteria.

In order to ensure that future owners of the parcels are aware of the tree preservation requirements, the applicant must record an Acknowledgement of Tree Preservation Land Use Conditions, at the time of final plat. The acknowledgement must identify that development on Parcels 1 and 2 must be carried out in conformance with the Tree Preservation Plan (Exhibit C1), the revised preservation and construction plan the follows Condition C4 and (Exhibit C4), and the Arborist Report (Exhibit A4).

With the implementation of the noted conditions, the approval criteria will be met.

At the time of development, the individual parcels must also meet the Title 11-Tree Code provisions, which require a specific amount of site area for tree planting based on the size of the property and the scale of the development. The trees to be retained as part of this review may be applied toward meeting those Title 11 requirements.

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. The applicant may be required to make specific improvements to make the lots suitable for their intended uses and the provision of services and utilities.

Clearing and Grading: In this case, the site is primarily flat and is not located within the Potential Landslide Hazard Area. Therefore, no significant clearing or grading will be required on the site to make the new lots developable. As discussed in B. Trees, the applicant will need to revise their tree preservation/construction plan prior to final plat so that the on-site Douglas Fir will be able to be successfully preserved after construction (Exhibit C4). With this condition, this criterion is met.

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

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

Findings: No tracts are proposed or required for this land division, so criterion A does not apply.

The following easement is proposed and/or required for this land division:

- A Private Access Easement is required over the flag pole of Parcel 1 to provide a shared access serving Parcels 1 and 2.

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

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

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

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

Findings: The transportation system must be capable of supporting the proposed development in addition to the existing uses in the area.

Evaluation factors include: safety, street capacity, level of service, connectivity, transit availability, availability of pedestrian and bicycle networks, on-street parking impacts, access restrictions, neighborhood impacts, impacts on pedestrian, bicycle, and transit circulation. Evaluation factors may be balanced and measures to mitigate impacts may be necessary.

The Development Review Section of the Portland Bureau of Transportation (PBOT) has reviewed the application against the evaluation factors and has provided the following findings (see Exhibit E2):

The applicant provided a written narrative addressing the transportation approval criteria above. The application proposes to divide the existing 13,500 square foot lot into two parcels. The existing home and ADU will be located on proposed Parcel 2, the southern lot fronting directly onto NE Alberta Street. Proposed Parcel 1 will be a flag lot located behind (north) of Parcel 2, which the applicant proposes to develop with a triplex rowhouse. Each of the new residences will have its own dedicated garage, plus a back-up area which allows vehicles to exit the site in a forward motion. Both parcels will utilize the Parcel 1’s “flagpole” for vehicular access, which minimizes driveways, reduces potential conflicts, and maximizes potential on-street parking. The approach will be required to meet all Title 17 requirements

at time of building permit. A condition of approval at the time of building permit requiring a consolidated access for Parcel 1 and 2 over the flag pole of Parcel 1 has been incorporated. The applicant has chosen to pay into the Local Transportation Infrastructure Charge (LTIC) in lieu of constructing Right-of-Way (ROW) improvements. Therefore, PBOT finds that neighborhood livability and on-street parking demand is expected to be negligible in this case.

Based upon trip generation estimates from the Institute of Transportation Engineers (ITE) Trip Generation Manual, 11th Edition, each of the proposed SFRs is projected to generate one additional morning and one evening trip, for approximately thirty daily trips combined. The net addition of three SFRs added to the transportation system resulting from the development will not adversely impact the operations of area intersections, as the proposed development adds negligible trips to the transportation network compared to existing volumes in the area and is consistent with the zoning of the property. Therefore, the transportation system is capable of safely supporting the proposed development in addition to existing uses in the area and capable of maintaining acceptable levels of service.

The subject site is located within a quarter mile of two TriMet bus services, *75-NE 42nd* and *72-NE Killingsworth*, each offering frequent service. For bicycles, NE Alberta Street and NE 47th Avenue are identified Neighborhood Greenways, which have lower traffic volumes with pavement markings and directional signs to guide cyclists. The remaining low-volume street environment in the area provides for safe and comfortable riding conditions to connect to larger nearby facilities located elsewhere in the neighborhood. There is not an established sidewalk network in the area, however due to the low traffic volumes, the street is consistent with a shared street environment in which a narrower roadway and wider shoulders allow all users to a shared space which facilitates slower speed, eye contact, and provides for a safer pedestrian environment. Therefore, the resulting proposed development will not negatively impact transit access or other transportation modes and will maintain the established low volume pedestrian environment.

PBOT has reviewed and concurs with the information supplied and available evidence. No mitigation is necessary for the transportation system to be capable of 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

The Water Bureau has indicated that service is available to the site, as noted on page 2 of this report.

The Fire Bureau has reviewed the fire flow and determined the nearest fire hydrant has adequate capacity.

The water service standards of 33.651 have been verified.

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

The Bureau of Environmental Services has indicated that service is available to the site, as noted on page 2 of this report.

BES reviewed the proposed improvement and utility plan, and the response is summarized below:

The existing structures (home and ADU) on proposed Parcel 2 are currently connected to the sanitary-only sewer in NE Alberta Street. This places the lateral approximately within the frontage of Parcel 2.

New development on proposed Parcel 1 will be served a new connection to the sanitary-only sewer in NE Alberta Street within its frontage.

BES determined the applicant's proposal for sanitary service acceptable for the purpose of reviewing the preliminary land division application against the sanitary sewer disposal standard and approval criterion.

The sanitary sewer service standards of 33.652 have been verified. This criterion is met.

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

BES reviewed the applicant's proposed improvement and utility plan and Simplified Approach Form against the stormwater management approval criteria and standards, and determined that a stormwater management system can be designed that will provide adequate capacity and disposal for the expected amount of stormwater, as summarized below:

No stormwater tract is proposed or required.

The applicant has proposed the following stormwater management methods:

- **Parcel 1 (new development):** The applicant proposes to infiltrate runoff from the new development onsite with pervious paving for the driveway and drywells for the residential structure which can meet minimum setbacks as established in the facility design standards and Table 2-1 of Portland's Stormwater Management Manual (SWMM).
- **Parcel 2 (the lot with the existing house):** According to the submitted utility plan, stormwater from the existing home and ADU on Parcel 2 is being managed by mini-drywells (flo-wells). As a result of the land division, the drywell on the north side of the ADU will cross the new property line. The submitted utility plan shows the applicant's intent to remove this drywell and install a new mini drywell on the east side of the ADU to meet required setbacks from the proposed new property line. Prior to final plat approval, the applicant must demonstrate that the stormwater management for existing development will meet applicable SWMM requirements and will not be impacted by the proposed lot lines.

BES determined the proposal is acceptable for reviewing the land division against the stormwater management approval criteria and standards. With the noted conditions, this criterion is met.

33.654.110.B.1 Through streets and pedestrian connections

Generally, through streets should be provided no more than 530 feet apart and pedestrian connections should be provided no more than 330 feet apart. Through streets and pedestrian connections should generally be at least 200 feet apart.

The subject site is approximately 330 feet from NE 47th Avenue to the east, therefore the city would look for a possible north-south pedestrian connection somewhere in this vicinity to improve connectivity. However, further analysis finds there is no practicable opportunity to provide a through connection at this location since the properties further north along NE Sumner Street are developed. Moreover, given the block length, said connection would more feasible located further west than the subject site. Therefore, additional connections are not required at this location nor are any specific connections noted at this location in the Cully Master Street Plan.

For the reasons described above, this criterion is met.

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

33.644.120.H Street Trees – See Exhibit E.6

The width of the local street right-of way must be sufficient to accommodate expected users, taking into consideration the characteristics of the site and vicinity, such as the existing street and pedestrian system improvements, existing structures, and natural features.

For public streets, PBOT reviews the configuration of elements within the street right-of-way for consistency with city standards and specifications; and Urban Forestry addresses the retention and installation requirements for street trees.

NE Alberta Street is improved with a paved roadway, and a gravel parking lane on one side or both sides depending on the exact location. There are no curbs, planter strips, or sidewalks. In reviewing this land division, PBOT 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. Because none of the other frontages have been improved on this street, PBOT has determined that an isolated improvement at this location would not be meaningful. If the street is to be improved, it would be more appropriate to complete the improvements as one LID project. Therefore, the applicant will be required to sign street and storm sewer waivers of remonstrance (for participation in future street and storm sewer improvements) prior to final plat approval.

Urban Forestry evaluated the provision of street trees and planting areas for the public right-of-way and determined:

The applicant has not provided a conceptual street tree planting plan. However, it appears that the right-of-way may be configured in a manner that reduces impacts to the large Douglas Fir tree located on-site. Urban Forestry supports an alternative configuration that reduces impacts to this tree's roots even as it prevents new street trees from being planted.

Based on the foregoing, the width of the right-of-way will be sufficient to accommodate the expected users. This criterion is met, with the condition that the required waivers are signed prior to final plat approval.

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

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

DEVELOPMENT STANDARDS

Development standards that are not relevant to the land division review, have not been addressed in the review. 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 11 can be met, and those of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

Future Development

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

- Flag Lots-- special setback standards apply to flag lots in the RF-R2.5 zone, and special landscape standards apply to flag lots that are 10,000 square feet or less in area in the R7-R2.5 zones (33.110.240.F). These standards apply to Parcel 1.

Existing Development:

In this case, there are a few Zoning Code standards that relate to existing development on the site:

- Minimum Setbacks – The existing house identified to remain on the site must meet the required Zoning Code setbacks from the proposed new lot lines. Alternatively, existing buildings must be set back from the new lot lines in conformance with an approved Adjustment or other Land Use Review decision that specifically approves alternative setbacks. The existing house will be 4-feet, 10-inches feet from the new property line and the existing ADU will be 5-feet from the new property line. Therefore, the required setbacks are being met. To ensure this standard continues to be met at the final plat stage, the final plat must be accompanied by a supplemental plan showing the surveyed location of the existing building relative to the adjacent new lot lines.
- Required Off-Street Parking – In this zone, one parking space per dwelling unit is required. A paved parking pad/garage provides this required parking for the existing house on Parcel 2. As a result of this land division, the required parking space for the existing house will be located on a different lot. In order to ensure that parking requirements continue to be met, a new parking space for the existing house must be constructed on Parcel 2 prior to final plat approval. Permits must be obtained to construct a new parking space. Documentation of final inspection of this new parking space will be required prior to final plat approval.

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 11 –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.

- The applicant must meet the requirements of the Fire Bureau in regards to addressing requirements; recording an Acknowledgement of Special Land Use Conditions that requires the provision of internal fire suppression sprinklers on Parcel 1; fire apparatus access, including aerial access. These requirements are based on the technical standards of Title 31 and Fire Bureau Policy B-1.

CONCLUSIONS

The applicant has proposed a 2-parcel partition, as shown on the attached preliminary plan (Exhibit C1). As discussed in this report, the relevant standards and approval criteria have been met, or can be met with conditions. The primary issues identified with this proposal are: tree preservation, shared driveway easement, and alterations to existing development.

With conditions of approval that address these requirements this proposal can be approved.

ADMINISTRATIVE DECISION

Approval of a Preliminary Plan for a 2-parcel partition, that will result in one standard and one flag lot as illustrated with Exhibits C1 through C5, subject to the following conditions:

- A. Supplemental Plan.** An additional supplemental plan shall be submitted with the final plat survey for Land Use Review and BES review and approval. That plan must portray how the conditions of approval listed below are met. In addition, the supplemental plan must show the following:
- The surveyed location of any buildings or accessory structures on the site at the time of the final plat application;
 - The surveyed location of any driveways and off-street vehicle parking areas on the site at the time of the final plat application;
 - The location of the relocated drywell for the existing ADU on Parcel 2.
 - The proposed general location of future building footprints and stormwater facilities for the vacant lot.
 - Any other information specifically noted in the conditions listed below.

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

1. A Private Access Easement over the “flag pole” portion of Parcel 1 for the benefit of Parcel 2 shall be shown and labeled on the final plat. The easement shall allow shared use of this area for all of the purposes that a driveway would be typically used for.
2. A recording block for each of the legal documents such as maintenance agreement(s) or acknowledgement of special land use conditions, as required by Conditions C5, C6, and C7 below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: “A Declaration of Maintenance Agreement for (name of feature) has been recorded as document no. _____, Multnomah County Deed Records.”

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

Streets

1. The applicant shall complete street and storm sewer waivers of remonstrance (for future street and storm sewer improvements) as required by the City Engineer. Waiver forms and instructions will be provided to the applicant during the final plat review process.

Existing Development

2. A parking space shall be installed on Parcel 2, in conformance with the applicable requirements of the Portland Zoning Code. The parking space must be a minimum of 9' x 18' and located behind the main house and be able to maneuver from the space to exit the flag pole in a forward motion per Exhibit C2. In addition, it must be in a location that can be accessed from the flag pole of Parcel 1. The applicant must obtain a finalized Zoning Permit for installation of the parking space. The permit plans must include the note: *This permit fulfills requirements of Condition C2 of LU 21-027354-LDP.* The new parking space must also be shown on the supplemental plan.
3. Documentation of the location of the stormwater disposal system for the existing house and accessory dwelling unit shall be submitted to the Bureau of Environmental Services. The location of any existing or required stormwater systems serving the existing home and accessory dwelling unit must be shown on the Supplemental Plan. If, as a result of final plat approval, the stormwater system for the existing home will extend beyond the boundaries of Parcel 2 (the lot with the existing home), then the applicant must meet one of the following:
 - Provide private stormwater easements on the final plat as necessary to ensure operation and maintenance of those systems, and record a maintenance agreement for the easement area; or
 - Provide finalized plumbing permits for modifications to the stormwater system that result in a system that meets City requirements.
4. The applicant must present a revised tree preservation/construction plan for review and approval that complies Urban Forestry’s on-site tree preservation recommendations in Exhibit C4. Specifically:
 - A certified arborist be present on-site during bore bit drilling, driveway removal, driveway construction, and any other ground disturbance in the prescriptive root protection area (34-foot radius from tree #1).
 - The existing concrete driveway shall not be removed until after all construction is completed on Parcel 1. The existing concrete driveway is outlined in Exhibit C3. The new driveway must be constructed after all the construction on Parcel 1 is completed.

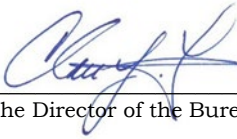
- A certified arborist must be on-site and shall determine if a new paved driveway for the whole of the Parcel 1 flag pole will require a change in grading so as to lessen the impact on the significant portion of the root system. The driveway may need to be raised if it cannot be poured without impacting tree roots.
- Stockpiling shall be kept from the graveled parking strip in front of Parcels 1 and 2.
- Twelve inches of mulch shall be added to the graveled and paved driveway areas on Parcels 1 and 2 in a 34-foot radius from tree #1.

Required Legal Documents

5. A Maintenance Agreement shall be executed for the Private Access described in Condition B1 above. The agreement shall include provisions assigning maintenance responsibilities for the easement area and any shared facilities within that area, consistent with the purpose of the easement, and all applicable City Code standards. The agreement must be reviewed by the City Attorney and the Bureau of Development Services, and approved as to form, prior to final plat approval.
6. The applicant shall execute an Acknowledgement of Special Land Use conditions, requiring residential development on Parcel 1 to contain internal fire suppression sprinklers. The acknowledgement shall be referenced on and recorded with the final plat.
7. The applicant shall execute an Acknowledgement of Tree Preservation Land Use Conditions that notes tree preservation requirements that apply to Parcels 1 and 2. A copy of the approved Tree Preservation Plan must be included as an Exhibit to the Acknowledgement. The acknowledgment shall be referenced on and recorded with the final plat.

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

1. Development on Parcel 1 and 2 shall be in conformance with the Tree Preservation Plan (Exhibit C1), the applicant's arborist report (Exhibit A4), and the approved revised tree preservation and construction plan in Condition C4. Specifically, trees numbered 1 (34-inch Douglas Fir) is required to be preserved and protected; and offsite tree 3 (18-inch Douglas Fir) is required to be preserved and protected, with the root protection zones indicated on Exhibit C1 and with the preservation and construction methods addendum approved in Condition C4. Tree protection fencing is required along the root protection zone of the trees to be preserved. The fence must be 6-foot high chain link and be secured to the ground with 8-foot metal posts driven into the ground.
2. The applicant will be required to install residential sprinklers in the new dwellings on Parcel 1 to the satisfaction of the Fire Bureau.
3. Vehicle access to Parcel 2 must be from the flag pole of Parcel 1. A driveway is not allowed along the frontage of Parcel 2.
4. The applicant must meet the addressing requirements of the Fire Bureau for Parcel 1, the flag lot. The location of the sign must be shown on the building permit.
5. The applicant must meet the Fire Bureau requirements for addressing for Parcel 2 and aerial fire department access for both parcels. 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.

Decision rendered by:  **on February 25, 2022**
By authority of the Director of the Bureau of Development Services

Decision mailed March 2, 2022

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 March 19, 2021, and was determined to be complete on September 15, 2021.

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 March 19, 2021.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant requested that the 120-day review period be extended by 75 days, as stated with Exhibit A3. Unless further extended by the applicant, **the 120 days will expire on: March 29, 2022.**

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.

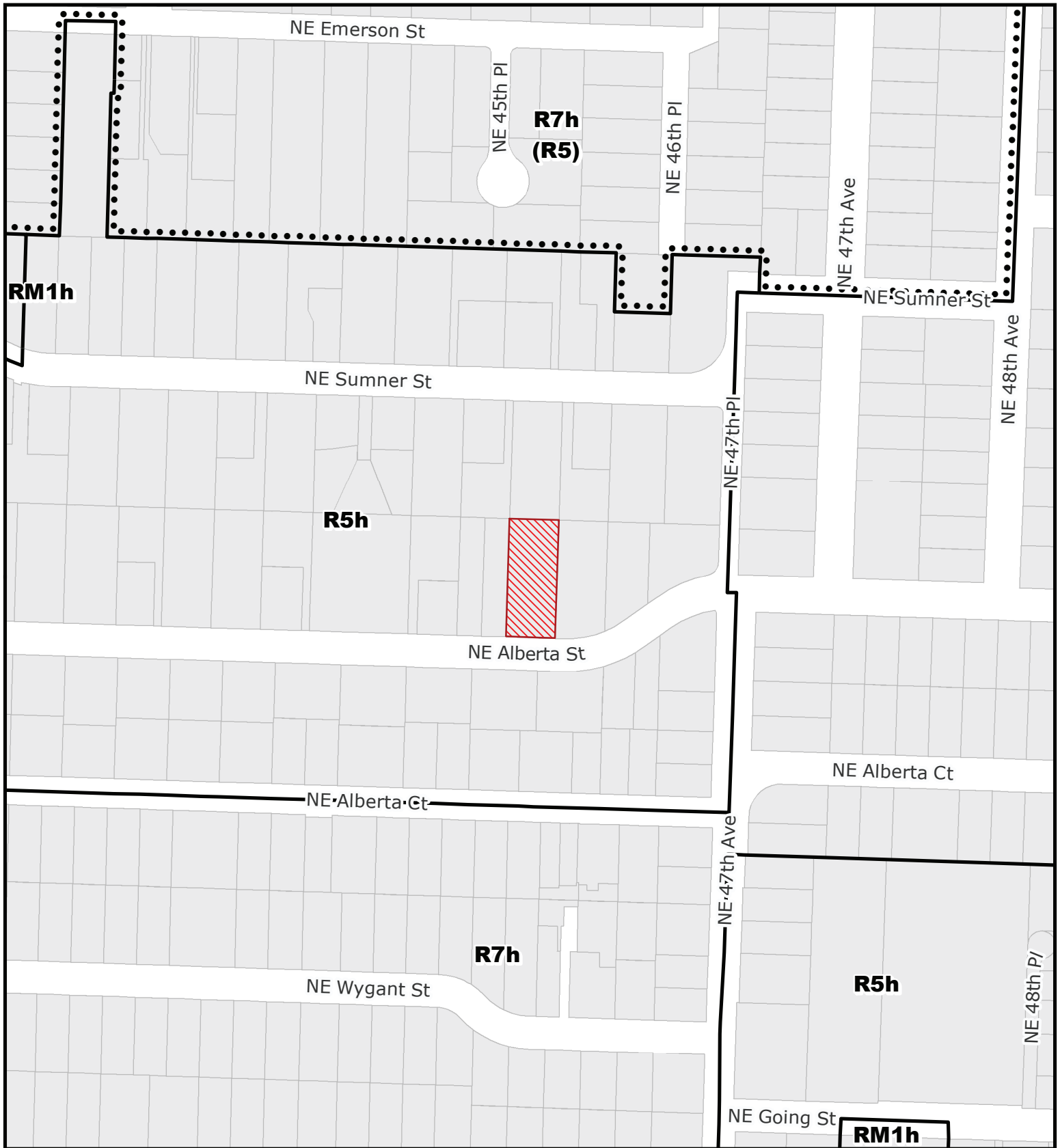
Recording the land division. The final land division plat **must** be submitted to the City **within three years** of the date of the City's final approval of the preliminary plan. This final plat must be recorded with the County Recorder and Assessors Office after it is signed by the Planning Director 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. Legal Parcel Status Deed
 - 2. Narrative
 - 3. 120 Day Extensions
 - 4. Arborist Report
 - 5. BES Simplified Approach Form
 - 6. Existing Conditions Plan
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site and Tree Preservation Plan
 - 2. Utility and Vehicular Forward Motion Plan
 - 3. Preliminary Plat, Survey, and Fire Access Plan
 - 4. Urban Forestry On-site Tree Preservation Consultation
 - 5. Reduced Size Site and Tree Preservation Plan (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Bureau of Parks, Forestry Division
 - 7. Life Safety Section of BDS
- F. Correspondence: None
- G. Other:
 - 1. Application and Expedited Form

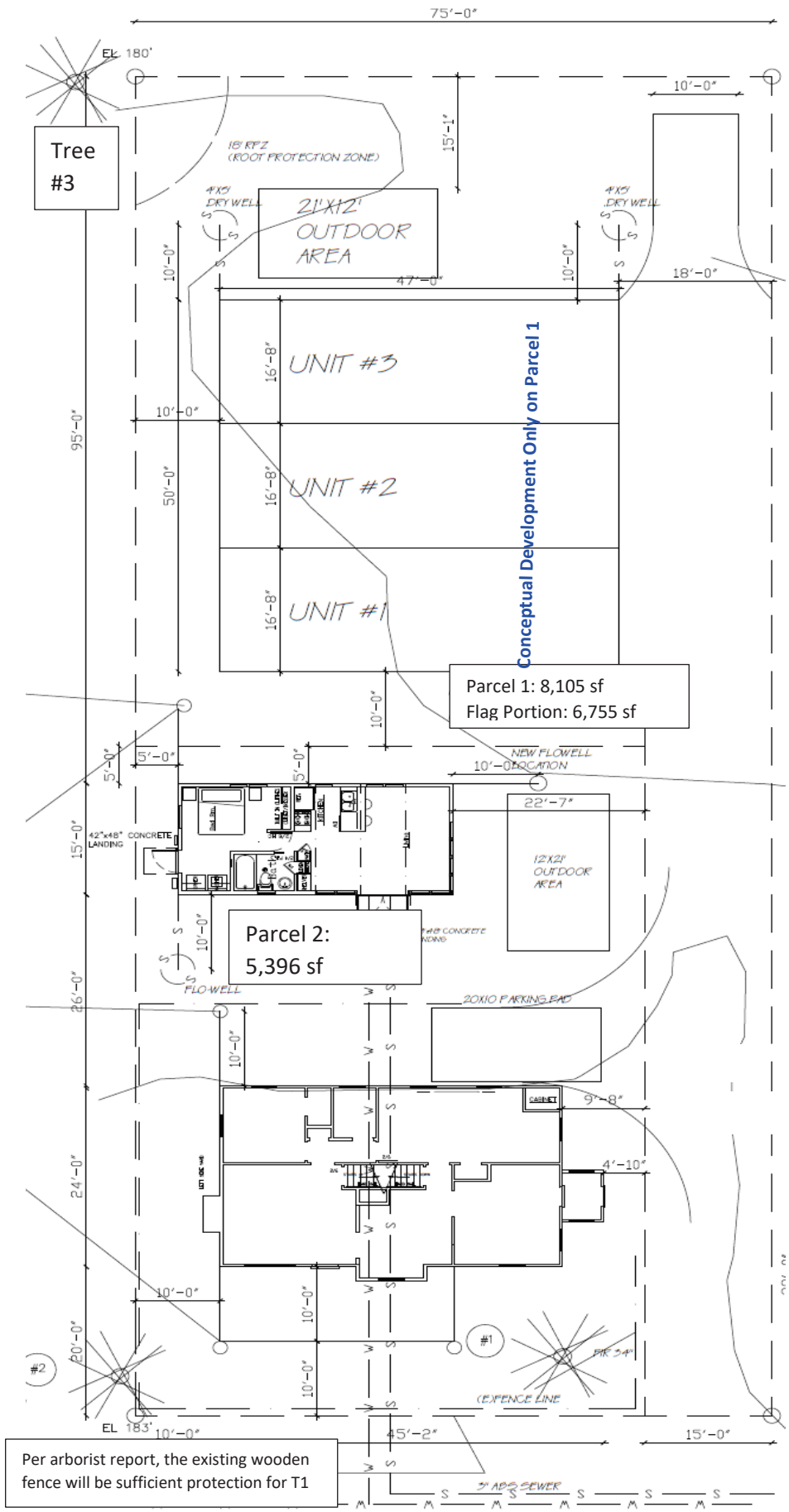
The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).



ZONING 
NORTH

 Site

File No.	<u>LU 21 - 027354 LDP</u>
1/4 Section	<u>2535</u>
Scale	<u>1 inch = 200 feet</u>
State ID	<u>1N2E19BB 13700</u>
Exhibit	<u>B Mar 19, 2021</u>



Tree #3

18' RFPZ (ROOT PROTECTION ZONE)
4'x5' DRY WELL
21'x12' OUTDOOR AREA

UNIT #3

UNIT #2

UNIT #1

Conceptual Development Only on Parcel 1

Parcel 1: 8,105 sf
Flag Portion: 6,755 sf

Parcel 2:
5,396 sf

NEW FLOWWELL
10'-0" OCCUPATION
22'-7"
12'x21' OUTDOOR AREA

4" Ø CONCRETE PIPING

20X10 PARKING PAD

#1
CE/FENCE LINE
4" Ø SEWER

Per arborist report, the existing wooden fence will be sufficient protection for T1

4553 NE ALBERTA ST

21-027354-LDP
Exhibit C5