



City of Portland, Oregon Bureau of Development Services

Land Use Services

FROM CONCEPT TO CONSTRUCTION

Carmen Rubio, Commissioner Rebecca Esau, Director Phone: (503) 823-7300 TTY: 711 www.portland.gov/bds

Date: July 24, 2023

To: Interested Person

From: Sean Williams, Land Use Services

503-865-6441 / Sean.Williams@portlandoregon.gov

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 23-029941 AS

GENERAL INFORMATION

Applicant: Paul Del Vecchio

Ethos Development LLC 2222 NE Oregon Street, #208

Portland, OR 97232

971-806-6255, paul@ethosdevelopmentllc.com

Owner: Cece LLC

2222 NE Oregon Street, #208

Portland, OR 97232

Site Address: NE Roselawn Street and NE 74th Avenue

Legal Description: TL 9200 3.81 ACRES, SECTION 20 1N 2E

Tax Account No.: R942200630 **State ID No.:** 1N2E20AB 09200

Quarter Section: 2538

Neighborhood: Cully, contact Zach Powers at zachmull@gmail.com

Business District: None

District Coalition: Central Northeast Neighbors, contact Alison Stoll at

alisons@cnncoalition.org

Plan District: North Cully

Zoning: Residential 5,000 (R5), Aircraft Landing Zone (h) Overlay

Case Type: Subdivision Amendment (AS)

Procedure: Type Ix, an administrative decision with appeal to the Oregon Land

Use Board of Appeals (LUBA).

Proposal:

The applicant has requested a Subdivision Amendment because of changes proposed to an approved preliminary plan for a 27-lot subdivision (LU 19-130312 LDS). The revised proposal includes the elimination of one lot and changes to lot dimensions for Lots 13 through 26. A separate but related Public Works Alternative Review (22-214734 PW) was approved to eliminate an 18-foot right-of-way dedication for NE Roselawn Street east of NE 75th Avenue, which will result in additional area being distributed throughout the lots. The proposed changes exceed the variations allowed in conformance with the preliminary plan. Therefore, a Subdivision Amendment is required.

Relevant Approval Criteria: In order to be approved, this proposal must comply with the approval criteria of *Title 33*. Changes to the Preliminary Plan that are listed in Subsection 33.660.310.B must meet the approval criteria of **Section 33.660.320.B**, **Approval Criteria for Other Changes**.

FACTS

Site and Vicinity: The site is located between NE 74th and 75th Avenues approximately 530-feet south of NE Killingsworth Street. The site is approximately 3.82 acres in size and is a former gravel quarry that has been filled since mining operations ceased. No physical improvements or trees are located within the site. The site is bordered by Sacajawea Park (OS) to the east and a large tract of land to the west zoned General Employment 2 (EG2). The surrounding vicinity is primarily developed with single family homes with a zoning designation of Residential 7,000 (R7).

Infrastructure:

• **Streets** – The site has approximately 450-feet of frontage on NE Roselawn Street, 248-feet of frontage on NE 74th Avenue, and 160-feet of frontage on NE Alberta Street. At this location, NE Roselawn Street, NE 74th Avenue, and NE Alberta Street are classified as Local Service Streets for all modes in the Transportation System Plan (TSP). Tri-Met provides transit service approximately 560-feet north of the site on NE Killingsworth Street via Bus #72.

At this location NE Roselawn Street and NE 74th Avenue are unimproved gravel streets with right-of-way widths of 30 and 20-feet, respectively. NE Alberta Street is improved with a variable width paved roadway surface and pedestrian corridor that consists of a 6-foot sidewalk and 4-foot planter strip, along a majority of the site's frontage, within a 50-foot right-of-way.

- Water Service The following water infrastructure is in the vicinity of the site:
 - There is 4-inch CI water main in a portion of the site's NE Roselawn Street frontage.
 - There is an 8-inch DI water main in NE Alberta Street.
 - There are 4-inch CI water mains in NE 74th and 75th Avenues north of the site.
- **Sanitary Service** The following sewer infrastructure is in the vicinity of the project site:
 - There are 8-inch PVC sanitary sewers north of the site in both NE 74th and 75th Avenues that end at the intersections with NE Roselawn Street (BES project numbers 5049 and 5318, respectively).
 - There is an 8-inch PVC sanitary sewer in NE Alberta Street (BES project number 5049).
 - Currently there are no public sewers in Roselawn along the site's northern boundary, or in 74th along the site's western boundary.
- **Stormwater Disposal** There is no public storm-only sewer currently available to this property. There is an ODOT-owned storm system in NE Killingsworth Street to the north of this site.

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

The regulations of the North Cully Plan District are intended to ensure compatible redevelopment of certain large parcels as set forth in the Cully Neighborhood Plan. These parcels are developed with gravel pits, a number of smaller, older single-family dwellings and trailer parks with redevelopment probable in the next two decades. Properties should be developed in a cohesive pattern in order to encourage compatible development with the neighborhood to the south. Sites that are 5 acres and larger are subject to North Cully development review, which is a master plan review intended to ensure compatibility and cohesive design. This site is exempt from this requirement as it is less than 5 acres in size.

The Aircraft Landing ("h") overlay zone provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures and vegetation. In the residential zones, structures are regulated by the base zone height limits rather than the height limits of this overlay.

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

- **LU 03-177121 CP ZC:** Approval of a Comprehensive Plan Map Amendment, per Exhibit B-2, Proposed Zoning, to change the designation of the site from Medium Density Single Dwelling to a combination of designations as follows:
 - 8.72 acres of the site [generally the easterly two-thirds of the site area] changed to the Mixed Employment designation;
 - 3.90 acres of the site changed to the High Density Single Dwelling designation; and
 - 3.36 acres of the site changed to the Open Space designation.

Approval of a Zoning Map Amendment, per Exhibit B-2, Proposed Zoning, to change the zoning on the site from Single Dwelling Residential 7,000 (R7) to the following:

- 8.72 acres of the site [generally the easterly two-thirds of the site area] changed to EG2h zoning in compliance with the approved Mixed Employment designation;
- 7.26 acres of the site changed to R5h zone in compliance with the approved High Density Single Dwelling designation, of which 3.36 acres will have a designation of Open Space; and
- The 'h' Airport Landing overlay zone will remain over the entire site area.

Approval of the use of up to a maximum of 31 units from the City's Housing Pool.

• **LU 19-130312 LDS:** Approval of a 27-lot subdivision, that will result in 27 standard lots with new public street extensions. This approval is proposed to be amended through this review and the Final Plat application is currently under review.

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 **May 4, 2023**. One written response has been received from a notified property owner (Exhibit F.1). Following is staff's response to the issues raised in the correspondence:

1. Stormwater: Stormwater planters will be required to address runoff from the new street areas and future development, which will then discharge into a public main after being filtered. This method of stormwater management was required due to poor infiltration

- rates and past uses of the site. Trees will be required to be planted on the lots with future development and in the right-of-way at the discretion of Urban Forestry.
- 2. Housing Accessibility: Any future development that consists of a triplex, fourplex, or cottage cluster is required to meet Visitability requirements (33.110.265.E.3/33.110.265.G.13), which calls for some units to have a visitable entrance, bathroom, living area, and doors.
- 3. Wildlife: Noted, however since there is no environmental zoning present on the site there are no protections provided to perceived resources or wildlife as a part of the land division process.

ZONING CODE APPROVAL CRITERIA

Review of Changes to an Approved Preliminary Plan

33.660.320 Approval Criteria

Changes to an approved Preliminary Plan will be approved if the review body finds that the applicant has shown that all of the following approval criteria have been met:

A. Approval criteria for changes listed in Subsection 33.660.310.B. Changes to the Preliminary Plan that are listed in Subsection 33.660.310.B must meet the approval criteria of Section 33.660.120, Approval Criteria.

Findings: The proposed changes are not listed in Subsection 33.660.310.B, therefore this criterion does not apply.

- **B. Approval criteria for other changes.** All other changes to the Preliminary Plan must meet the following approval criteria:
 - 1. The proposed changes are not substantial enough, singly or in combination, to warrant a new review of the entire Preliminary Plan;

Findings: The main changes to the approved preliminary plan proposed by the applicant are the elimination of one lot, a reduction in required right-of-way dedication, and the resulting adjustment in lot dimensions for Lots 13 through 26. The preliminary plan approval (LU 19-130312 LDS) was for 27-lots and the applicant is now proposing 26-lots, which was the number of lots originally proposed until an additional lot was requested and approved by the Hearings Officer. A Public Works Alternative Review (22-214734 PW) was approved to eliminate an 18-foot right-of-way dedication for NE Roselawn Street east of NE 75th Avenue. The preliminary plan approval only required this area to be dedicated and not improved as it is unlikely a street or pedestrian connection will ever continue to the east due to significant grade changes. The elimination of right-of-way dedication in combination with reduction of one lot results in additional area being distributed throughout Lots 13 through 26, which ultimately exceeds the variations allowed in conformance with the preliminary plan at time of Final Plat.

The proposed changes to the preliminary plan layout and updated service requirements are not substantial changes to the approved preliminary plan, therefore a new review of the entire Preliminary Plan is not warranted. This criterion is met.

2. The approval criteria addressed by the approval of the Preliminary Plan can still be met, with appropriate conditions of approval.

Findings: As described above the changes involve minor adjustments to Lots 13 through 26 because of the elimination of one lot and reduction in required right-of-way dedication. The relevant approval criteria of the Preliminary Plan affected by these changes are addressed below.

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

In the R5 zone, the minimum and maximum lot area is 3,000 and 8,500 square feet, respectively. The minimum lot width is 36-feet, minimum lot depth is 50-feet, and the minimum front lot line is 30-feet. Lots 1 through 12 remain unchanged from the preliminary plan approval. Per the submitted revised preliminary plan (Exhibit C.1), Lots 13 through 26 range from 3,908 to 8,494 square feet in size, are between 104 and 110-feet deep, and have lot widths that range from 37 to 105-feet. Front lot lines primarily correspond to lot widths, with some exceptions.

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

The Portland Bureau of Transportation (Exhibit E.2) provided the following response regarding transportation impacts (33.641):

Portland Transportation/Development Review has reviewed the application for its potential impacts regarding the public right-of-way, traffic impacts and conformance with adopted policies, street designations, Title 33, Title 17, and for potential impacts upon transportation services.

PBOT has no additional requirements that would be triggered by the proposed amendment. The neighborhood has expressed concerns about the additional traffic and impacts to on-street parking since the proposal does not include any on-site parking. The State has limited the city from putting limits on middle housing density and required the removal of any on-site parking requirements for most residential development. Without any on-site parking, the maximum amount of on-street parking will be preserved since there will no driveways reducing the amount of on-street parking.

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

The Bureau of Environmental Services (Exhibit E.1) provided the following response regarding sanitary and storm service (33.652 & 33.653.020/030):

Proposed Development: The applicant will extend public sanitary and storm sewers in NE Roselawn, NE Sumner Street, NE 74th Avenue, and NE 75th Avenue in order to provide individual service connections for all proposed lots. The proposed subdivision amendment changes the lot dimensions for lots 13 through 26, partially in response to changes in right-of-way dedication amounts at the eastern end of NE Roselawn. Changes in lot lines may impact the locations of laterals proposed under Public Works Permit (PWP) # EP473. Therefore, prior to final plat approval, the applicant must complete the following related to the PWP: receive approval of design plans (60%), provide a financial guarantee, pay all outstanding fees, and provide a signed permit document.

The proposed subdivision amendment changes the amount of space available for public storm facilities within the right-of-way due to the change in dedication at the eastern end of NE Roselawn. Therefore, prior to final plat approval, the applicant must complete the following related to the PWP: receive approval of design plans (60%), provide a financial quarantee, pay all outstanding fees, and provide a signed permit document.

No other service bureaus raised any issues or concerns regarding the proposed subdivision amendment. With the conditions described above, the approval criteria from the original Preliminary Plan approval continue to be met.

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.

CONCLUSIONS

The applicant has requested a Subdivision Amendment because of changes proposed to an approved preliminary plan for a 27-lot subdivision (LU 19-130312 LDS). The revised proposal includes the elimination of one lot and changes to lot dimensions for Lots 13 through 26. A separate but related Public Works Alternative Review (22-214734 PW) was approved to eliminate an 18-foot right-of-way dedication for NE Roselawn Street east of NE 75th Avenue, which will result in additional area being distributed throughout the lots.

The amendment can be approved with conditions to clarify public works requirements associated with infrastructure improvements. In addition, conditions of the original preliminary plan approval continue to apply.

ADMINISTRATIVE DECISION

Approval of a Subdivision Amendment to LU 19-130312 LDS to allow changes to Lots 13 through 26 because of the elimination of one lot and reduction in required right-of-way dedication, as illustrated with Exhibit C.1, subject to the following conditions:

- 1. Prior to final plat approval, the applicant shall meet the requirements of the Portland Bureau of Transportation to amend Public Works permit 19-140784 WT in conformance with changes documented in the approved Public Works Alternative Review (22-214734 PW).
- 2. Prior to final plat approval, the applicant must complete the following related to the construction of public stormwater facilities within the site's frontages, to the satisfaction of BES: through the Public Works Permit receive approval of design plans (60%), provide a financial guarantee, pay all outstanding fees, and provide a signed permit document.
- 3. The applicant is required to construct public sanitary and storm sewers to provide service to the proposed development. Prior to final plat approval, the applicant must complete the following related to the construction of public sanitary and storm sewers, to the satisfaction of BES: through the Public Works Permit, receive approval of design plans (60%), provide a financial guarantee, pay all outstanding fees, and provide a signed permit document.

For convenience, conditions of the original Preliminary Plan approval (LU 19-130312 LDS) that remain in effect are listed below:

- **A. Supplemental Plan.** A supplemental plan shall be submitted with the final plat survey for Site Development review and approval that shows the approximate extent of geotechnical hazard mitigation throughout the site and ground improvement on the individual lots. The plan must show ground improvement mitigation facilitating building construction within the allowable limits of the Zoning Code.
- B. The Final Plat must show the following:

- 1. The applicant shall meet the street dedication requirements of the City Engineer for NE 74th Avenue, NE 75th Avenue, NE Roselawn Street, and NE Sumner Street. The required right-of-way dedication must be shown on the final plat.
- 2. In order to meet Solar Access approval criteria (33.639.100), the applicant must make Lots 7 and 12 narrower than Lots 8 through 11, and Lot 13 narrower than Lots 14 through 25. The Final Plat shall be exempt from the regulations of 33.663.200.A for the purposes of meeting this criterion.

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

- 1. The applicant shall meet the requirements of the City Engineer for right of way improvements associated with NE 74th Avenue, NE 75th Avenue, NE Roselawn Street, NE Sumner Street, and NE Alberta Street. The applicant shall submit an application for a Public Works Permit and provide plans and financial assurances to the satisfaction of the Portland Bureau of Transportation and the Bureau of Environmental Services for required street frontage improvements.
- 2. The applicant shall submit an application for a Site Development Permit for mass grading and utility construction for the new public streets, mitigation of geotechnical hazards, and related site development improvements. The plans must be in substantial conformance with C2.3 and C2.4 of Exhibit C.2.
- 3. The applicant shall meet the requirements of the Bureau of Environmental Services (BES) for construction of public stormwater facilities and the extension of sanitary and storm sewer mains to serve the proposed development. Prior to final plat approval, the applicant must complete the following to the satisfaction of BES: through the Public Works Permit submit approved engineered plans, provide a financial guarantee, pay all outstanding fees, and provide a signed permit document.
- 4. The applicant shall meet the requirements of the Water Bureau for providing plans and financial assurances for the water main extension in NE 74th Avenue, NE Sumner Street, and NE 75th Avenue.
- 5. The applicant shall meet the requirements of the Fire Bureau for installing a new fire hydrant. The applicant must contact the Water Bureau, Development Services Department at 503-823-7368, for fee installation information related to the purchase and installation of fire hydrants. The applicant must purchase the hydrant and provide verification to the Fire Bureau that the Water Bureau will be installing the required fire hydrant, with the required fire flow and pressure.
- 6. The applicant shall meet the requirements of the Fire Bureau for ensuring adequate hydrant flow from existing hydrants serving the site. The applicant must provide verification to the Fire Bureau that Appendix B of the Fire Code is met, the exception is used, or provide an approved Fire Code Appeal prior final plat approval.
- 7. The applicant must pay into the City Tree Preservation and Planting Fund for the loss of available street tree planting space, per the requirements of Urban Forestry. Payment must be made to the Bureau of Development Services, who administers the fund for the Parks Bureau.

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

1. 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.

- 2. Stormwater discharge from individual lots shall meet BDS Site Development requirements for off-site disposal and must be in conformance with the recommendations of a geotechnical engineer.
- 3. All site-wide mitigation of geotechnical hazards must be complete prior to issuance of building permits on individual lots. Prior to issuance of permits on individual lots, the Site Development section of BDS must receive a final letter from the geotechnical engineer indicating that mitigation shown on the Site Development permit drawings is complete and consistent with the recommendations of the geotechnical report and applicable geotechnical addenda.
- 4. A geotechnical report must be submitted with each building permit application for residential construction to the satisfaction of the Site Development section of BDS.

Staff Planner: Sean Williams

Decision rendered by: Sew W/ on July 20, 2023

By authority of the Director of the Bureau of Development Services

Decision mailed: July 24, 2023

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 April 10, 2023, and was determined to be complete on May 1, 2023.

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 April 10, 2023.

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: August 29, 2023.**

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.

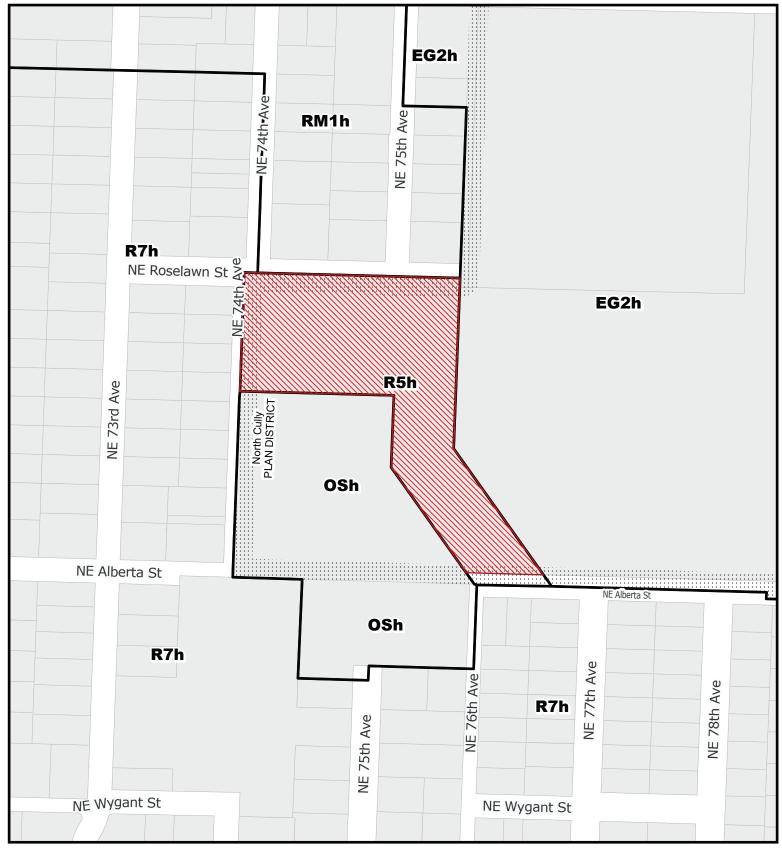
Recording the land division. The final land division plat must be submitted to the City within three years of the date of the City's final approval of the preliminary plan. This final plat must be recorded with the County Recorder and Assessors Office after it is signed by the Planning Director or delegate, 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. Narrative
 - 2. Approval Criteria Response
 - 3. 22-214734 PW Decision
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site 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; Fire Bureau
 - 4. Site Development Review Section of BDS
 - 5. Life Safety Plans Examiner
- F. Correspondence:
 - 1. Roxy Nayar (6/5/23)
- G. Other:
 - 1. LU Application
 - 2. ELD 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).



For Zoning Code in Effect Post October 1, 2022



THIS SITE LIES WITHIN THE: NORTH CULLY PLAN DISTRICT



File No.	LU 23 - 029941 AS
1/4 Section	2538
	1 inch =200 feet
State ID	1N2E20AB 9200
Exhibit	B Apr 10, 2023

