



Portland City Auditor

Hearings Office

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## DECISION OF THE HEARINGS OFFICER

### I. GENERAL INFORMATION

**File Number:** LU 18-169865 CU AD (Hearings Office 4180031)

**Applicant:** Tamara DeRidder  
TDR & Associates  
1707 NE 52<sup>nd</sup> Avenue  
Portland, OR 97213

**Property Owner:** Portland Public Schools  
Attn: Stephen Effros  
PO Box 3107  
Portland, OR 97208-3107

**Hearings Officer:** Helle Rode

**Bureau of Development Services (BDS) Staff Representative:** Andrew Gulizia

**Site Address:** 6909 SE Powell Boulevard

**Legal Description:** TL 9200 6.18 ACRES, SECTION 08 1S 2E; TL 7600 0.45 ACRES, CANCEL INTO R333132 / SECTION 08 1S 2E, TL 7600 0.45 ACRES; TL 7500 0.42 ACRES, CANCEL INTO R333132 / SECTION 08 1S 2E, TL 7500 0.42 ACRES

**Tax Account Number:** R992080520, R992080570, R992082300

**State ID Number:** 1S2E08BD 09200, 1S2E08BD 07600, 1S2E08BD 07500

**Quarter Section:** 3337

**Neighborhood:** South Tabor

**Business District:** None

**District Neighborhood Coalition:** Southeast Uplift

**Zoning:** R1a - Multi-Dwelling Residential 1,000 base zone with Alternative Design Density ("a") overlay zone; R2a - Multi-Dwelling Residential 2,000 base zone with Alternative Design Density ("a") overlay zone; R5a - Single-Dwelling Residential 5,000 base zone with Alternative Design Density ("a") overlay zone

**Land Use Review:** Type III, CU AD – Conditional Use Review and Adjustment Review

**BDS Staff Recommendation to Hearings Officer:** Approval with conditions.

**Public Hearing:** The hearing was opened at 9:02 a.m. on December 5, 2018 in the third-floor hearing room, 1900 SW 4<sup>th</sup> Avenue, Portland, Oregon, and was closed at 10:50 a.m. The record was closed at that time.

**Testified at the Hearing:**

Andy Gulizia  
Tamara DeRidder  
Tim Ayersman  
Steve Effros

**Proposal:** The applicant requests Type III Conditional Use approval for a new middle school on the subject site. The site is in the R1, R2, and R5 residential zones, and each of these residential zones requires Conditional Use Review for schools (Zoning Code Sections 33.120.100.C, 33.110.100.C). The new school building would be 108,478 square feet, and the site would also be improved with 35 surface parking spaces, a bus loop, a drop-off and pick-up area, and recreation areas.<sup>1</sup>

In addition to the Conditional Use Review, the applicant requests the following Adjustments to Zoning Code requirements:

- Reduce the minimum building setback from the south lot line from 20 feet to 10 feet (Zoning Code Section 33.120.275.C);
- Increase the maximum building length within 30 feet of the south lot line from 100 feet to 159 feet (Zoning Code Section 33.120.230.B);
- Reduce the minimum percentage of the south facade which must be within 20 feet of the south lot line from 50 percent to 48 percent (Zoning Code Section 33.120.220.C);
- Waive the required 5-foot-wide landscaping buffers on the north and south sides of the parking lot west of the school building (Zoning Code Section 33.266.130.G.2);

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<sup>1</sup> The record contains conflicting information regarding whether there will be a student drop-off and pick-up area. Compare Exhibit E-2 to the Staff Report, pages 3 and 8. The Hearings Officer, based on testimony at the hearing, concludes that such an area is included in the plan and will be located at the north end of the parking lot on the west side of the property.

- Increase the maximum height of a fence within the minimum building setback from the SE Franklin Street lot line from 3.5 feet to 6 feet (Zoning Code Section 33.110.255.C); and
- Increase the maximum height of a fence within the minimum building setback from the SE Powell Street lot line from 3.5 feet to 8 feet (Zoning Code Section 33.120.285.C).

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

- Zoning Code Section 33.815.105.A-E (Conditional Use Review)
- Zoning Code Section 33.805.040.A-F (Adjustment Review)<sup>2</sup>

## II. ANALYSIS

**Site and Vicinity:** The subject site is approximately five acres in size and is located on the northeast corner of SE 69<sup>th</sup> Avenue and SE Powell Boulevard. The site is currently vacant. The property was previously developed with two middle school buildings, but the school closed in 2007 and the buildings were recently demolished. The property has frontage on SE Powell Boulevard, an arterial road and state highway, and three local streets: SE 69<sup>th</sup> Avenue, SE Kelly Avenue, and SE Franklin Street. The site is fairly flat and contains several mature trees. Except for a few commercial and multi-dwelling residential buildings along SE Powell Boulevard, neighboring properties are developed with single-dwelling homes. Mount Tabor Park is approximately a half-mile north of the site, and a commercial corridor along SE 82<sup>nd</sup> Avenue is approximately a half-mile to the east.

**Zoning:** The southern portion of the site is designated with the R1 and R2 base zones (Exhibit B to the Staff Report). The R1 and R2 zones are multi-dwelling residential zones which are intended to preserve land for urban housing and to provide opportunities for multi-dwelling housing. The development standards work together to create desirable residential areas by promoting aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities.

The remainder of the site is designated with the R5 base zone. The R5 zone is a single-dwelling residential zone which is intended to preserve land for housing and to promote housing opportunities for individual households. The development standards work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities.

In each of the three base zones which apply to this site (R1, R2, and R5), institutional uses such as schools may be allowed through Conditional Use Review (Zoning Code Sections 33.120.100.C and 33.110.100.C).

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<sup>2</sup> Only Portland City Code 33.805.040A, B, C, and E are applicable to this matter.

The entire site is also designated with the Alternative Design Density ("a") overlay zone. The purpose of the "a" overlay zone is to focus development on vacant sites, preserve existing housing, and encourage new development that is compatible with and supportive of the positive qualities of residential neighborhoods. The "a" overlay regulations are not applicable to this proposal.

**Land Use Review History:** City records indicate that prior land use reviews include the following:

- LU 15-215984 CU: 2015 Conditional Use approval to re-establish a school use in the buildings on the site.
- CU 103-87: 1987 Conditional Use approval for an addition to the school annex building.
- CU 105-86: 1986 Conditional Use approval for an addition to the school building.

The buildings referenced in the above land use reviews were recently demolished.

**Agency Review:** A "Request for Response" was sent to City agencies on October 23, 2018. The following bureaus responded:

- The Bureau of Environmental Services (BES) evaluated the approval criterion related to sanitary sewer service and storm water disposal. The response is referenced in Staff's findings for Zoning Code Section 33.815.105.D.3. (Exhibit E-1 to the Staff Report).
- The Portland Bureau of Transportation (PBOT) evaluated the approval criteria related to the transportation system. The response is referenced in Staff's findings for Zoning Code Section 33.815.105.D.1-2. (Exhibit E-2 to the Staff Report).
- The Water Bureau responded with information on water service and raised no objections to the proposal. (Exhibit E-3 to the Staff Report).
- The Fire Bureau noted fire safety requirements that would apply at the time of building permit review but raised no objections to the proposal. (Exhibit E-4 to the Staff Report).
- The Police Bureau stated that police services are adequate for the proposed development. (Exhibit E-5 to the Staff Report).
- The Site Development Review Section of BDS responded with information on building permit requirements and raised no objections to the proposal. (Exhibit E-6 to the Staff Report).

- The Life Safety Review Section of BDS responded with information on building permit requirements and raised no objections to the proposal. (Exhibit E-7 to the Staff Report).
- The Urban Forestry Division of Portland Parks & Recreation responded with information on Tree Code (Title 11) requirements and raised no objections to the proposal. (Exhibit E-8 to the Staff Report).

**Neighborhood Review:** The South Tabor Neighborhood Association submitted a letter dated November 15, 2018, in support of the proposal (Exhibit F-1). This letter also advocated for public access to the site outside of school hours.

#### **BDS Conclusions:**

"The proposal for a new Kellogg Middle School would not significantly lessen the residential appearance and function of the area, as the subject site was already developed with a school for many years. Differences in appearance and scale with neighboring residential development would be mitigated with the proposed building setbacks, building design, and landscaping plan. The proposal would not cause significant, adverse impacts on the livability of the neighborhood. The transportation system and other public services are adequate to support the proposal, and the proposal is consistent with the South Tabor Neighborhood Plan and the Outer Southeast Community Plan.

"The proposed Adjustments would be consistent with the purposes of the standards to be modified. The Adjustments would not significantly detract from the livability or appearance of the neighborhood or from the overall purpose of the zoning designations which apply to the site.

"Staff finds that each of the applicable approval criteria are met or can be met with conditions of approval. Therefore, staff recommends approval of the proposal with the conditions of approval listed below."

#### **STAFF'S RECOMMENDATION**

"**Approval** of a Conditional Use Review for a new Kellogg Middle School on the subject site, replacing the previous Conditional Use Review approvals for the site; and

"**Approval** of the following Adjustments:

- Reduce the minimum building setback from the south lot line from 20 feet to 10 feet (Zoning Code Section 33.120.275.C);

- Increase the maximum building length within 30 feet of the south lot line from 100 feet to 159 feet (Zoning Code Section 33.120.230.B);
- Reduce the minimum percentage of the south facade which must be within 20 feet of the south lot line from 50% to 48% (Zoning Code Section 33.120.220.C);
- Waive the required 5-foot-wide landscaping buffers on the north and south sides of the parking lot west of the school building (Zoning Code Section 33.266.130.G.2);
- Increase the maximum height of a fence within the minimum building setback from the SE Franklin Street lot line from 3.5 feet to 6 feet (Zoning Code Section 33.110.255.C); and
- Increase the maximum height of a fence within the minimum building setback from the SE Powell Street lot line from 3.5 feet to 8 feet (Zoning Code Section 33.120.285.C).

all per the approved plans, Exhibits C-1 through C-3 [to the Staff Report], and subject to the following conditions of approval:

- "A. As part of the building permit application submittal, each of the required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C-1 through C-3 [to the Staff Report]. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 18-169865 CU AD."
- "B. The minimum long-term bike parking requirement for the site is 128 bike parking spaces.
- "C. Prior to occupancy of the new school, the applicant must obtain approval from the Portland Bureau of Transportation of a final Transportation Demand Management Plan. The Transportation Demand Management Plan must include measures to promote alternative modes of transportation such as transit, bicycling, carpooling, and walking. Once approved by the Portland Bureau of Transportation, the Transportation Demand Management Plan must be continually implemented.
- "D. Prior to occupancy of the new school, the Portland Bureau of Transportation must approve the sight distance at any new or modified access points. The sight distance at new or modified access points must be documented and stamped by a registered professional Civil or Traffic Engineer licensed in the State of Oregon."

No appeals were filed.

Three neighbors submitted letters either in opposition or in favor of the proposals.

### **Neighbors' Letters:**

**Brian Harper, Vice-Chair of the Kellogg Middle School Design Advisory Group (DAG),** submitted a letter (Exhibit H-5) in support of the proposal, stating:

"The Portland Public School District has been very transparent with the challenges and opportunities that a new school presents, and have (sic)utilized a Design Advisory Group to work through many of these issues. This group is parent-led and represents many hours of volunteer time, all working towards a common goal of a new Kellogg Middle School that we can be proud of."

**Judy Hilsenteger** wrote that she has lived in the Kellogg area for over 50 years, her three children attended Kellogg Middle School, and she served on the Design Advisory Committee (Exhibit H-6). She stated that "[t]he professionals were great. I think the building will not only be a good school but will add to the neighborhood. The design fits the property."

**Rick and Sarah-Keats Toth** wrote to object to portions of the proposal as concerned neighbors and a "former design group member of the Kellogg middle school" (Exhibit H-4). The Toths explained that their property abuts the rear entrance to the Kellogg school property, where the eastside lot line meets the dead end of SE Franklin Street. They have had many issues with the property since 2006 (the property has been vacant since 2007) and have had to notify City of Portland code enforcement. For example, they:

"have experienced dumpster mobilization with backup beepers and other loud noises outside statutory limits \*\*\*, homeless encampment and associated litter and drug paraphernalia on the property unmitigated, use of basketball court as a parking lot in violation of conditions of use, employees leaving the property at excessive speed endangering our young children, service trucks blocking our drive way for extended periods of time which has caused issue with my wife and families (sic) ability to leave."

The Toths list concerns about design issues relating to Safety, Privacy, and Noise issues.

### **Safety:**

The Toths object to a courtyard planned for the east side of the property which "creates a large void that is not visible from any street. This void abuts [their] property line." The Toths state that "the school has been used when unattended as a place for homeless encampments as well as drug use." They do not propose a solution to this issue beyond what the "design team" has proposed in terms of lighting and cameras.

The Toths also object to a gate that is planned at the Franklin Street entrance to the school property. They explain that their "driveway abuts the school entrance and the street is narrow. Idling delivery trucks awaiting entry through the gate block our driveway which impede our ability to exit our driveway in emergency circumstances \*\*\* would have safety implications for us." The Toths suggest two possible solutions: 1) "installation of an automatic gate rather than a manual gate;" and 2) move the gate "onto the Kellogg property a sufficient distance to ensure that trucks awaiting access are not blocking the Toth's driveway. The orientation of the gate could be turned to an East/West orientation rather than North/South to accommodate this." The Toths acknowledge that an automatic gate would not ensure that third party drivers who do not have electronic access would not block their driveway.

The Toths state they would prefer that the fencing at the end of SE Franklin where it abuts the east side lot line of the school property be seven-foot high rather than the six-foot high as proposed. They state that this will provide more security and privacy but provide no evidence to support this proposition.

The Toths are concerned that "a loading dock is being planned in very close proximity to [their] property using the Franklin entrance as the only entrance." They are concerned that their driveway "is blind to the school entrance at Franklin Street [and] it is not possible for us to see approaching truck traffic exiting the school property as [they] leave their driveway." The Toths propose that the Franklin Street entry not be used for any purpose other than emergency fire department access.

#### Privacy:

The Toths are concerned about sight lines from the new school building: "the new school structure is planned to be taller than (sic) previous and without the annex between our property and the school. We have serious concerns about site (sic) lines from windows of a taller structure giving direct view into our yard." The Toths propose increasing "the height of the north facing windows to a height adequate to retain [their] privacy."

The Toths are concerned that "[s]ite surveillance cameras will be covering the property and cameras not trained properly could be recording neighbors' activities on adjacent properties." They propose that adjoining neighbors have access to available camera commissioning documents.

The Toths are also concerned that site lighting could be an issue for adjoining properties. They propose that adjoining neighbors have access to site lighting commissioning documents.

#### Noise:

The Toths are concerned about the loading dock being near their house:



- a) The planned manual gate operation will be noisy in front of their house with no fencing to mitigate the noise;
- b) Truck idling during manual gate operation will be noisy in front of their house;
- c) The loading dock is proximal to their sleeping areas. Though fencing may mitigate the noise, there is a planned turnaround area at the dock location and delivery vehicles use back up beepers;
- d) Manual locks on gates cannot ensure that third party deliveries of food or garbage services operate within permissible hours. This has been an ongoing issue for over a decade which has required contacting City code enforcement.

The Toths propose:

- a) "Locate the dock in a location not proximal to an adjoining property \*\*\*.
- b) "Electronic gate security of some type to ensure that deliveries and garbage service occur only during permissible hours;
- c) "Move access gates onto the [subject property] rather than at the property line;
- d) "[the City of Portland Bureau of Transportation] should consider limiting the truck size and weight for Franklin Street [on the short portion which abuts the subject property from 71<sup>st</sup> Street south to the eastside Kellogg property line.] In addition to the noise and safety concerns associated with the use of this piece of road for heavy commercial traffic the road bed does not appear to be designed for this traffic type."<sup>3</sup>

The applicant submitted a letter written by Tamara DeRidder on December 5, 2018 (Exhibit H-7) addressing the concerns raised by the Toths. The applicant explains that the original middle school at this location was built in 1917 and used until it was closed in 2008. It has largely not been used for the past 10 years except for limited administrative use. She states that the Portland Public Schools (PPS) Planning Team has actively engaged Rick Toth, and his wife Sarah, in addressing their concerns about the Kellogg site. She responds as follows to the Toth's letter of concern (Exhibit H-3).

#### **Courtyard:**

The project site is about one-third of the amount of land area typical for a middle school.

"Every square foot of space has been planned to provide for multiple uses, where possible. This is the case with the design of this School Commons Courtyard on top of the fire access cul-de-sac bulb located at the end of the Service Access Road. The southern property line of the Toth's property of residence abuts the north end of the proposed courtyard for an approximate

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<sup>3</sup> Tim Ayersman, Project Manager, OH Architecture and Design, confirmed that SE Franklin is cleared for truck traffic including fire trucks.

length of 62 feet. This southerly property line for 7012 NE Franklin is located approximately 100 feet from the Toth's residence."

"The courtyard will become a center piece for student outdoor activity as it abuts the Commons that contains the school cafeteria. It provides space for non-programmed activities such as amphitheater seating and outdoor picnics as well as an optional outdoor classroom space."

DeRidder explains that one of the best ways to prevent "use of a space by the homeless or for illegal activity is to reclaim it for active use and [this is what the PPS plan does.] It is true that this area will be isolated in the sense that a 6-foot high perimeter fence will secure the Courtyard Area. The courtyard will be used actively during school hours on weekdays." PPS proposes lighting, lockable gates, and security cameras to prevent unauthorized use during non-school hours. Also, safety and custodial personnel will have visual access to the area after hours. "[T]he northern and southern fences and gates [have been designed to be] partially sight-obscuring to allow visual access into [ the courtyard] area after hours by safety personnel."

#### **Gate where SE Franklin Street dead ends at the east property line of the property**

DeRidder and her team have had ongoing discussions with the Toths about the gate over the last year. The Toths have only recently proposed that the gate be located internal to the property. According to DeRidder, this proposal will not work because the gate is designed to limit vehicular traffic onto the site and limited access is one of the design team's primary concerns as it allows more secure grounds for the students. Also, moving the access gate internal to the site would use up more of the very limited grounds to create space for a vehicle turn-around prior to the gate. And, "additional fencing would be needed to limit drivers from accessing school grounds. [Otherwise, this proposal] would allow access by non-authorized personnel onto PPS property. Only a regulated vehicle gate along the property line at the dead-end of SE Franklin St. can resolve that issue."

DeRidder further explains that the vehicle gate will include a time-limited access lock allowing vendor/trucks access between 7 a.m. and 9 p.m. only to reduce the sound of waste disposal trucks and back up vehicle beeping. The manual gate system proposed has proven to be the most reliable equipment in the experience of PPS and other users nationwide. The time for a driver to get out, open the gate and drive through averages three minutes. This is comparable to the current waste disposal services that serve the residents along SE Franklin.

The number of vehicles accessing the site from SE Franklin Street is reduced by the current plan because only service vehicles and authorized personnel will have access to the electronic key fob needed to access the site. In addition, the design team proposed limiting the number of parents dropping off students on SE Franklin by closing the street for parking half an hour before school starts until half an hour after school starts.

### **Noise from the loading area:**

In Exhibit H-7, DeRidder states that "PPS is installing a 6' high concrete wall/fence along the full length of the east side of Service Access Road to mitigate any noise that may be created by this loading area. This concrete wall continues south along the eastern property line to 20' from the southern property line of the site." Listen Acoustics has verified that this provides the "greatest sound barrier available. \*\*\* This structure together with the time-limited vehicular access will minimize the noise of school- related activities that may impact the neighboring properties."

BDS staff clarified that the 6-foot masonry wall will end a few feet south of the SE Franklin Street and the remainder of the fence will be chain link (before and after the vehicle access gate).

### **Views:**

In Exhibit H-7, the applicant explains that the Learning Center classroom building is "located over 140 feet from the southerly property line of the Toth property of residence at 7020 SE Franklin Street. This portion of the [school] building has been reduced from an original 4-story to a 3-story structure and pulled as far as possible westward to mitigate any potential view conflict." The applicant explains that the Toths are concerned about users of the upper story classrooms having views into their property, especially in the winter. The applicant states that any views that might be available to users will be mitigated by trees and evergreen vegetation and that all the [school building] windows are elevated at least 48 inches above the floor to limit views out and limit views in for student safety issues. The applicant states "[i]t is our determination that our proposed location of the structure, landscaping, and window designs mitigate the issue of possible views into the neighboring properties."

### **Meetings with the Toths:**

The applicant documented several meetings with the Toths relating to the issues discussed above. These meetings have taken place over the last year (Exhibit H-7, Attachments B-F).

### **Design Overview Memorandum by OH Planning + Design, Architecture**

The applicant submitted a memorandum from OH Planning + Design (OH) dated December 4, 2018, prepared by Tim Ayersman, Project Manager (Exhibit H-7, Attachment A).

Ayersman's memorandum addresses safety, privacy, and noise impacts on the Toth's properties.

**Safety:**

"A fire turnaround is located on the east side of the property providing [required] fire access. \*\*\*. This turnaround is being dual purposed to be used as an exterior courtyard for the school and is fully enclosed with a fence. The school has windows along the ground floor facing this courtyard from the library/media and commons room providing visibility and security.

"The locations for the bus loop, teacher parking/parent drop off, and deliveries have been separated from each other for safety. Students arriving or departing from the school do not cross the path of a vehicle with this separation. \*\*\* The gate at Franklin Street prevents unauthorized vehicles on the east side of the property from driving onto the site where students are."

**Privacy:**

"A site obscuring masonry fence is [planned] for the east side of the property from SE Franklin Street south. This fence will screen the neighboring properties from the deliveries and reduce noise better than the chain link fence that is currently there. \*\*\* In [the] new design the three-story classrooms are located 20 feet off Powell [rather than in the center of the site where the old classroom building was]. This moves the three-story portion of the building 70 feet further to the south, away from residential homes. This keeps the outdoor area protected from Powell and increases the field area for students and community while separating the classrooms from the neighbors, increasing the privacy."

Also, the height of the bottom of all of the windows has been raised by 12 inches to "48 inches above the finish floor [to limit views out as well as into the classrooms for safety reasons.] \*\*\* This increases safety at the ground floor from Powell by decreasing the visibility into the classroom and decreases the students' visibility at the upper floors from neighboring properties." This gives a balance which limits visibility in and out of the classrooms while still maintaining essential natural daylight.

**Noise:**

Based on acoustical studies, "a continuous masonry wall is designed to go from Franklin Street south (towards Powell) to within 20 feet of the property line. The resulting level of sound reduction from this wall will now reduce the sound level of a large truck to the range of the current ambient levels." Exhibit H-7, Attachment F, Report of Tobin Cooley, P.E., of Listen Acoustics dated October 10, 2018. Cooley states that the "masonry construction is the most expensive option but provides the best possible sound reduction for the neighbors [on Franklin Street]. The length of the barrier is also extended as far as possible in the site design

to reduce noise to the widest area possible on the opposite side [where the residential properties are.]”

### **Summary of the Conditional Use Review and Adjustment Review Hearing:**

The Hearings Officer held a public hearing regarding this matter on December 5, 2018. The Hearings Officer notified all present of their rights under ORS 197.763 and disclaimed any *ex parte* contacts, bias, or conflicts of interest. The following is a summary by the Hearings Officer of selected relevant testimony offered at the hearing.

**BDS Staff testimony:** Andy Gulizia, Planner II, provided a PowerPoint overview of the application (Exhibit H-8) and concluded that all relevant approval criteria have been met for both the Conditional Use Review and Adjustment Review with certain conditions of approval. Staff noted that the proposed site for the new Kellogg Middle School is a five-acre site (6909 SE Powell Boulevard) currently consisting of fenced vacant land with some trees and vegetation, including a row of maple trees along SE 69<sup>th</sup> Avenue on the west side of the site. The site is zoned R1a and R2a at the southern end of the property abutting SE Powell Boulevard (Powell), a state highway, and R5a along the northern portion of the property. The “a” overlay regulations do not apply here. The west side of the property abuts SE 69<sup>th</sup> which runs north/south and both SE Kelly and SE Franklin which run east/west. On the eastside, SE Franklin dead ends into the site at approximately the middle of the property.

The proposed school design places the tallest building, the Learning Center, at the south end of the property near Powell and SE 69<sup>th</sup> Avenue, which is zoned R1 and R2. The tallest building is three stories and tapers to two stories near the middle of the property. The other school buildings are one to two stories. The area surrounding the north end of the property is zoned R5 and is mostly single-family dwellings.

A photograph of SE Franklin Street looking west toward the school grounds shows two homes on the south side of the street<sup>4</sup> whose driveways abut SE Franklin Street and a temporary barrier where the street dead ends into the site. Photographs of SE 69<sup>th</sup> Avenue show that housing on SE 69<sup>th</sup> Avenue consists of single family residences across 69<sup>th</sup> Avenue from the site.

The site plan includes 35 parking spaces (33 on the west side and two on the east side of the site), bicycle parking for 128 bicycles, a bus loop for school buses, a drop off and pick up area on the west side and a loading area, garbage pickup, courtyard, and fire and emergency access on the east side of the property. Extensive landscaping is either existing or will be planted throughout the site. The north end of the site will be reserved for sports fields and a playground. There will be no lighting for the fields or playground, so it is anticipated that they

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<sup>4</sup> These two homes are owned by the Toths according to their statement, Exhibit H-4.

will only be used during the day. Code required setbacks for the fields and playground will be met.

The site plan also depicts setbacks that are further than required for all the buildings except along the southeast lot line on Powell. Articulated facades and variations in materials are planned for the main school building.

Anticipated use of the site will be during the school day with some evening activities such as graduations, parent-teacher meetings, and performances. As mentioned, the sports fields will not be lit and will therefore be used during daylight hours.

Staff discussed the approval criteria in Portland City Code (Code) 33.815.105 (Conditional Use Approval Criteria for Institutional and Other Uses in R Zones) and 33.805.040A., B., C., and E. (Adjustment Review Approval Criteria) and reported that all relevant approval criteria are met by the proposal assuming the conditions of approval recommended by Staff are implemented (see below).

Staff reported that BDS had received three letters in support of the application and one letter in opposition. These letters are summarized above.

Staff recommended the following conditions of approval:

- A. As part of the building permit application submittal, each of the required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C-1 through C-3. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 18-169865 CU AD."
- B. The minimum long-term bike parking requirement for the site be 128 bike parking spaces.
- C. Prior to occupancy of the new school, the applicant must obtain approval from PBOT of a final Transportation Demand Management Plan. The Transportation Demand Management Plan must include measures to promote alternative modes of transportation such as transit, bicycling, carpooling, and walking. Once approved by the PBOT, the Transportation Demand Management Plan must be continually implemented.
- D. Prior to occupancy of the new school, PBOT must approve the sight distance at any new or modified access points. The sight distance at new or modified access points must be documented and stamped by a registered professional Civil or Traffic Engineer licensed in the State of Oregon.

Regarding the livability criterion, Staff commented as follows:

**Noise:**

Most of the activity on the site would occur indoors; the most significant noise from outdoor activities would be from truck deliveries in the loading area on the east side and from the sports fields and playground on the north portion of the property. A six-foot masonry wall adjacent to the loading area is required and will help reduce noise impacts from truck deliveries. The playground would be set back 25 feet from the nearest lot line and the sports fields will be unlit, have no permanent amplification systems, and be set back 50 feet from the nearest lot lines. Some noise will be audible on neighboring properties but would not create a significant adverse impact on neighborhood livability.

**Glare from Lights:**

No lighting that is not typical for a school, such as lighting of vehicle areas and pedestrian lighting, is proposed. Many trees and shrubs at the perimeter of the site will reduce glare impacts on nearby homes. The sports fields and playgrounds will not be lit. Activities at the school will normally be finished by 9 p.m.

**Late-night Operations:**

No late-night operations are proposed. Evening activities on the site will be limited to meetings and performances which will typically end by 9:00 p.m. Without lights, the fields and playground will not be used after dark.

**Odors:**

No unusual or disturbing odors are anticipated.

**Litter:**

The applicant states that a PPS maintenance person will pick up litter daily.

**Window Height/Privacy:**

Placing the tallest portion of the school building adjacent to Powell (south lot line) and tapering the height of the building down in height toward the local residential streets and lots will help preserve privacy for the neighboring properties. Also, the main building will be set back further than required from all lot lines except the south lot line which abuts Powell. Windows on second and third floors will be in classrooms typically only occupied during the day. Trees will screen views between school building windows and neighboring properties.

**Safety:**

The Police and Fire Bureaus reviewed the proposal and raised no concerns about the adequacy of police and fire services or potential safety impacts. PBOT also reviewed the proposal and found the development will not increase accidents on neighboring streets. The applicant states that security cameras will monitor the site.

**No adverse livability impacts:**

Staff reported that PBOT found the transportation system is adequate to support the proposal, on-site parking is sufficient; 35 parking spaces onsite combined with on-street parking is adequate. The applicant requested that 128 bicycle parking spaces be required. PBOT found this amount adequate for demand. PBOT recommended two conditions of approval: 1) PBOT to approve a final Transportation Demand Management Plan to promote alternative modes of transportation; 2) PBOT to double check the sight distance requirements for the new accesses to the school before the building is occupied.

The Water, Police, and Fire Bureaus all found that public services were adequate. BES accepted the applicant's proposal for sanitary sewer disposal and on-site storm water disposal.

Staff analyzed and concluded that the proposal is consistent with any area plans adopted by the City Council as part of Portland's Comprehensive Plan, including the South Tabor Neighborhood Plan and the Outer Southeast Community Plan.

Staff explained that the applicant is requesting approval of the following Adjustments:

- Reduce the minimum building setback from the south lot line from 20 feet to 10 feet (Zoning Code Section 33.120.275.C);
- Increase the maximum building length within 30 feet of the south lot line from 100 feet to 159 feet (Zoning Code Section 33.120.230.B);
- Reduce the minimum percentage of the south facade which must be within 20 feet of the south lot line from 50 percent to 48 percent (Zoning Code Section 33.120.220.C);
- Waive the required 5-foot-wide landscaping buffers on the north and south sides of the parking lot west of the school building (Zoning Code Section 33.266.130.G.2);
- Increase the maximum height of a fence within the minimum building setback from the SE Franklin Street lot line from 3.5 feet to 6 feet (Zoning Code Section 33.110.255.C); and
- Increase the maximum height of a fence within the minimum building setback from the SE Powell Street lot line from 3.5 feet to 8 feet (Zoning Code Section 33.120.285.C).

The relevant approval criteria in Code 33.805.040A, B, C, and E were discussed by Staff and Staff found that the adjustments requested equally or better meet the purpose of the



regulation to be modified. Staff's findings and recommendations related to the Adjustment Requests are adopted by the Hearings Officer and incorporated herein by this reference.

Staff advised that three letters in favor of the proposal and one letter in opposition were received prior to the hearing. The letters in favor are discussed above. The letter in opposition was from Rick and Sarah-Keats Toth and was received on Monday, December 3, 2018, two days before the December 5, 2018 hearing and well after the Staff Report was issued.

Staff responded to the letter in opposition from Mr. and Mrs. Toth as follows:

- 1) The Toths live on SE Franklin Street at the end of the street which dead ends into the east lot line of the site. They also own the house next door to the east.
- 2) The Toths raise a concern that the courtyard will not be visible from the street and could be used for camping or drug activity. Staff counters with the Police Bureau's assessment that the site plan does not raise safety concerns. Also, the applicant states that security cameras will be used to monitor the site.
- 3) The Toths raise concerns about lighting impacts on neighbors and the possibility that security cameras could be trained on neighbors. Staff counters that there is no unusual outdoor lighting proposed. The sports fields will not be illuminated, and the applicant stated that the purpose of the cameras is to secure the school property not to observe neighbors.
- 4) The Toths raise a privacy concern about the height of the windows in the main school building; they want the upper story windows in the classroom building to be set higher. Staff reports that these windows are about 150 feet from the back-lot line of the Toth's property. The upper story windows of the Learning Center will typically only be used during the daytime and several trees and bushes exist or will be planted between the Toth's property and the upper story windows.
- 5) The Toths raise a concern about fencing along the east lot line of the site. The Toths prefer the fence to be seven feet tall as opposed to the six-foot tall fence that is proposed. Staff did not find that a seven-foot tall fence was necessary to meet the approval criteria and posited that since one of the proposed adjustments was a six-foot tall fence, adjusting the height to seven feet would require restarting the public notice process.
- 6) The Toths raised a concern about truck access to the site via a gate at the point where SE Franklin dead ends into the east lot line of the site. This location is immediately south of the Toth's property which abuts the east lot line of the site. The Toths were concerned about idling trucks causing noise and that trucks would block their driveway while waiting to access the site. To mitigate this, the Toths requested that the loading area be relocated, that the gate be set further into the property rather than at the lot line, or that the gate be automatically operated rather than manually operated as proposed.

According to Staff, the possibility of trucks idling in front of the Toth's residence might impact the livability criteria for approval and therefore Staff contacted the applicant after the Toth's letter was received. The applicant and advisors to the applicant have addressed the issue in their testimony and written submissions. Staff indicates that one or more conditions of approval might be appropriate to address the Toth's concerns.

Staff advises that while the applicant is opposed to an automatic gate this seems to be a requirement that the Toths insist on. Staff suggests there might be an appropriate condition of approval to address this issue: for example, a condition of approval might be to address how long a truck may remain at the gate and what hours the gate may be operated.

**Tim Ayersman, OH Planning & Design, Project Manager**, testified that the school district has seen an increase in the number of students so the district decided to rebuild Kellogg Middle School with a new school building. They put together a DAG which included volunteers from the community, neighbors, and parents. The DAG brought issues and concerns to the design team. Safety for students was a major concern, especially regarding vehicles that will use the property. The site is small and must incorporate a bus loop, drop off and pick up of students, teacher parking, and deliveries. Vehicle entry to the site from Powell was not considered an option because of the heavy flow of traffic on Powell. The team tried to avoid any vehicles crossing the site to avoid contact with students. Therefore, the bus loop and drop off/pickup were placed off SE 69<sup>th</sup> Avenue and deliveries were brought to the back of the school so delivery vehicles would not encounter students participating in physical education. This plan went through many stages and was proposed to the DAG for their input.

The team also looked at the site location of the main school building, the Learning Center, and moved it from its prior location in the center of the site closer to Powell. They designed it to scale down from three stories at the south (Powell) end to two stories and then one story as it moves into the residential area to the north. This works better with the community and the neighborhood and seemed to be well received. The athletic fields and playground at the north end can be used by the neighbors and community.

They had an acoustical engineer analyze noise throughout the site. The engineer recommended mitigation of the loading dock area noise on the east side. The engineer proposed a 6-foot high masonry wall along the east side of the site which he reports will reduce the noise level to near the range of ambient noise levels on the site, but truck noise may still be partially audible. Exhibit H-7, Attachment F, page 1.

The courtyard is gated and there will be security cameras on site to address potential camping and drug use issues. Also, the first story windows of the building look out onto the courtyard area. Except in emergency situations, there is no access to the courtyard other than from the school building so the assumption is that the area will not be used at night. Also,

people in the building day or night can see into the courtyard area further reducing the risk of misuse.

Ayersman also testified that SE Franklin Street can handle truck traffic including fire apparatus. He said that there will be no access from SE Franklin to the site during construction.

**The applicant, Tamara DeRidder, Principal, TDR & Associates, and the public engagement person, contractor and land use planner for the application,** testified in support of the proposal. DeRidder addressed the issues raised in the Toth's letter of concern and explained that her team prepared a written response to the Toth's letter, which includes the acoustical report discussed by Ayersman (Exhibit H-7, Attachment F) and the spreadsheets illustrating the concerns they have discussed with the Toths over the past year or so (Exhibit H-7, Attachments B-E).

Regarding use of the courtyard space for camping or illegal activities, according to DeRidder the best defense to this issue is to make sure the space is actively used. Also, the plan includes fencing and partial sight obscuring gates to limit the people who can use the space and when. Except for lighting for emergency egress and exiting the building, the area would not be lit at night but custodial staff and others in the building in the evening would be able to see out into the courtyard area and address inappropriate activities, if any.

DeRidder concurs with the findings and recommendations in the Staff Report regarding livability (City Code 33.815.105.C.).

There are a number of reasons why the gate at the dead end of Franklin can't be internal to the site: 1) this would allow non-PPS employees to drive or park on the site creating a safety issue for students; 2) the plan for fire access from the east side of the campus is to move students from the south end into the north end of the site where the athletic fields are using the access road and surrounding property. If the gate were internal, PPS would need a fence to block any unauthorized vehicular access. A fence that reduces available space and access could potentially require a crowd of children into a smaller space for purposes of emergency egress.

DeRidder proposes that the gate remain at the end of Franklin and be a manual gate with an electronic key. To open the gate, a driver would get out of the vehicle, use the electronic key or a code to open the gate, open the gate manually and drive through. The total time needed will be about three minutes. This is no different from the amount of time a garbage truck uses to pick up garbage at one house. They have limited those who will have access to the site to 1) waste disposal trucks; 2) the food delivery trucks; and 3) anyone needing a loading dock, and have reduced the hours when a truck may make deliveries or pick up garbage to between 7 a.m. and 9 p.m.

They have found at PPS and through nationwide research that automatic gates have a high failure/malfunction rate and therefore they recommend a manual gate.

DeRidder described the privacy issue as “awkward” because there are over 140 feet between the Learning Center and the southern property line of the Toth’s property. There is also vegetation in between the Learning Center and the Toth’s property. And, as previously explained, the bottom of the window sills for the windows in the Learning Center classrooms will be 48 inches above the floor (standard is 36 inches above the floor) to add security and limit visibility looking into and out of the building. This creates more privacy for the Toths and better security for the students who can’t as easily be seen from the outside. Also, the Learning Center will generally not be in use after school hours. Access to the public beyond the ground floor level after school hours can and will be limited. There are doors and gates that limit access as needed.

**Stephen Effros, PPS Senior Project Manager**, testified that the proposed fence between the loading dock and the Toth property is for the most part a long concrete wall. The buildings adjacent to the loading dock are all one story. There will be landscaping on both sides of the wall.

The fence/concrete wall is illustrated in the landscaping plan. With the fencing plan the district addresses privacy, security, noise, access, and viewability of the site where appropriate to discourage use by unauthorized people and illegal activity.

Effros’s understanding is that there is some lighting on the building for security and building egress and access. This lighting points down into the site and will come on if there is a fire or emergency or as needed for egress and access. The courtyard does not have after hours lighting and there should typically not be pedestrians in the area after dark.

Typical after school hours use would be of the commons and the gym. There would also be occasional use of the first floor until 9:00 p.m. Use of the upper floors can be restricted per school policy and electronically shut down at specified times.

The Toths suggested that site lighting and surveillance commissions be supplied to the neighbors. Effros said they agreed in a prior meeting with the Toths that when they are going through the commissioning process of the surveillance cameras, the neighbors who are interested will be included. They are also willing to include neighbors in a discussion of lighting in and around the building.

PPS agrees to the Conditions of Approval set forth in the Staff Report (Exhibit H-1).

**Gulizia, BDS, made a few additional comments:**

The solid wall along the east lot line from the loading area transitions to a chain link fence where the property abuts SE Franklin Street about 10 feet on either side of the gate. The fact that one can see through the fence for security purposes is relevant to the approval criteria.

The lower part of the site is zoned for apartment buildings. The middle part of the site is zoned for single- family dwellings.

The neighbors' concern about camping is a legitimate concern and has been addressed.

The approval criteria can be met even if there is a possibility that the site could be misused by someone or something. The applicant does not have to show in too much detail that this would never happen.

As regards safety, they rely heavily on the Police Bureau's review and the Police Bureau did not raise objections based on safety.

Code lighting standards will apply regardless.

One should consider that other buildings, like apartment buildings or houses along a street, could also have lighting and views that might impact neighbors. For example, if someone was on the second or third floor of the Learning Center in the evening, such as for a parent/teacher night, this would not necessarily be any different from someone looking out from a multi-story apartment building. While such use will not be typical, it is not necessary to establish that it will never happen. It is not necessary to require that the upper floors be closed off at a certain time to meet the approval criteria.

### **III. HEARINGS OFFICER OVERVIEW**

The Hearings Officer concludes that the affirmative findings in the Staff Report and Recommendation to the Hearings Officer show that the proposed development does or can comply with the applicable standards of the Code, provided that the applicant complies with the recommended conditions of approval, set forth below. The Hearings Officer adopts the affirmative findings in the Staff Report as her own, except to the extent they are inconsistent with the following findings.

The Hearings Officer provides the following supplemental findings regarding the approval criteria.

#### **MANUAL VS. ELECTRONIC GATE/IDLING:**

The Toth's express concern regarding noise caused by trucks idling at the Franklin Street gate and their preference for an automatic gate that would allow ingress and egress of trucks more quickly. The Toths also express concern that trucks will block their driveway.<sup>5</sup>

The Hearings Officer finds that a manual gate is more appropriate at this location because according to the hearing testimony, such gates are more reliable than similar "automatic" gates.

The District proposes that the time frame when trucks may enter and leave through the SE Franklin Street gate be limited to 7 a.m. to 9 p.m., thereby reducing the hours of truck noise near the gate. The Hearings Officer finds that this proposal is reasonable except on weekends when the time frame should be further limited to 8 a.m. to 8 p.m. This limitation on access should be a condition of approval.

The Hearings Officer finds it is necessary to restrict the amount of time trucks on school business may idle at the SE Franklin Street gate (whether entering or exiting). The Hearings Officer, based on the testimony regarding how much time is needed to enter and exit, finds that a limit on idling of three to four minutes in either direction is reasonable. The Hearings Officer finds that a condition of approval is appropriate here, to wit, the District must limit the time that a truck or other vehicle entering or exiting on school business can idle at the SE Franklin Street gate while entering or exiting school property to 4 minutes in either direction.<sup>6</sup>

#### **NOISE FROM THE LOADING DOCK AREA:**

The Toths express concerns about potential noise from the Loading Dock area. The District has addressed this with a proposal to build a 6-foot tall masonry fence along much of the east property line from north of the courtyard to the SE Franklin Street gate (partial-sight-obscuring chain link fencing will replace the masonry wall as it approaches SE Franklin and continues to the north end of the property). Appropriate landscaping is planned. Based on the report of the Acoustical Engineer, Exhibit H-7, Attachment F, Page 1, and together with the time and idling restrictions on use of the SE Franklin Street gate by trucks on school business, the Hearings Officer finds that this is adequate to address noise issues related to the loading dock area provided the masonry fence is a condition of approval.

The Hearings Officer finds that the 6-foot high masonry fence proposed by the District along the east lot line of the property extending from the loading dock area to a few feet south of the Franklin Street gate, landscaping to comply with City Code and the District's plans, is a condition of approval relating to the livability criteria. See Exhibit H-7, Attachment F, page 2.

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<sup>5</sup> See <https://www.portlandoregon.gov/transportation/article/64557>

<sup>6</sup> See Idle-Free Schools Program sponsored by the City of Portland, Bureau of Transportation, <https://www.portlandoregon.gov/transportation/article/563487>

#### **LIGHTING ON THE PREMISES:**

The Toths express concern about lighting on the property. The fields, courtyard, and playground will not be lit. All lighting must comply with the Code. The Hearings Officer finds that lighting issues are adequately addressed by the District's plan and by Code compliance requirements.

#### **LOCATION OF THE MANUAL GATE:**

The District proposes that the manual gate at the dead end of SE Franklin Street be located at the east lot line where it abuts SE Franklin. The Toths propose that the location of the gate be moved onto the school property. The District explains that moving the gate onto the school property is not desirable because of the overall small size of the property and the need for space on the other (west) side of the gate for student egress in emergencies. Also, the District points out that unless additional fencing were added, this would leave PPS property on the east side of the gate available to the public to park, stop, or loiter which would not be desirable for safety and other livability reasons. The Hearings Officer finds that leaving the gate at the dead end of SE Franklin Street is reasonable.

#### **HEIGHT OF THE FENCE ALONG THE EAST LOT LINE:**

In their letter of December 3, 2018 (Exhibit H-3), the Toths suggest a 7-foot fence rather than a 6-foot fence. The Hearings Officer assumes that they are referring to the 6-foot masonry fence that will run a substantial distance along the east lot line from north of the courtyard to the vicinity of SE Franklin Street. This fence (at the 6-foot height) was proposed as an adjustment and the Hearings Officer adopts the findings of the Staff Report regarding this adjustment. The Toths submit no evidence that increasing the fence height by one foot would provide more security, less noise, or more privacy for their property. Therefore, the Hearings Officer finds that a 6-foot high masonry fence is adequate.

#### **SIGHT LINES FROM THE LEARNING CENTER:**

The Toths express concern about the ability of persons using the Learning Center to see into their yard. They suggest increasing the height of the north facing windows to a height adequate to retain their privacy. The District proposes increasing the height of the bottom windowsills of all Learning Center windows to 48 inches from the finish floor; typically, the height is 36 inches from the finish floor. The Hearings Officer finds that this adequately addresses the Toth's concerns regarding sight lines from the Learning Center into their yard.

#### **SIGHT LIGHTING AND SURVEILLANCE CAMERAS:**

The Toths request that the District make "camera commissioning documents" and "site lighting commissioning documents" available to adjoining neighbors. The District

representative advised at the hearing that the District will work with the neighbors on lighting and surveillance issues, including meeting with interested neighbors. It is not the District's intent to train surveillance cameras on neighboring properties but rather to use them to maintain the security of the school grounds. The Hearings Officer finds the District's representations together with Code lighting requirements and general legal principles relating to privacy rights are adequate to address the Toth's concerns regarding site lighting documents and surveillance camera commissioning documents.

#### **VISIBILITY OF TRUCKS EXITING FROM THE SE FRANKLIN STREET GATE:**

The Toths express concern regarding their ability to see trucks exiting the SE Franklin Street gate where it abuts their driveway. The Hearings Officer finds that this issue is addressed by Staff's proposed condition of approval adopted by the Hearings Officer requiring that PBOT approve the sight distance at any new or modified access points.

#### **"VOID" CAUSED BY THE COURTYARD AND POTENTIAL ILLEGAL USE:**

The District explains that active use of the courtyard will prevent camping and/or illegal use of the courtyard and that fencing and gates will prevent unauthorized entry. The District further explains that visibility into the area from the school building will help assure that illegal activities are not occurring. The Police Bureau review did not reveal safety concerns on their part.

The Hearings Officer finds that the courtyard design with fencing, gates, and limited access should be allowed and that sufficient precautions have been taken to prevent improper use of the courtyard.

#### **IV. CONCLUSIONS**

PPS requests Conditional Use approval to rebuild Kellogg Middle School on the existing currently vacant site. The new buildings and grounds will greatly enhance the educational experiences of students attending Kellogg. PPS also requests Adjustments to six Zoning Code development standards.

Neighbors, Rick and Sarah Toth, raised several issues related to the Kellogg Middle School proposal. Included in the issues raised by the neighbors were concerns related to 1) noise from the loading dock/delivery area; 2) noise related to the SE Franklin Street gate near their residence caused by idling trucks; 3) the location and type of proposed gate to be used at the end of SE Franklin Street; 4) sight lines from the Learning Center looking north; and, 5) a "void" caused by a planned courtyard on the east side of the building.

The Hearings Officer shares the neighbors' concerns regarding noise from the loading dock/delivery area and the SE Franklin Street gate, trucks idling on or near the school



property, especially before exiting from or entering onto SE Franklin Street, and the sight lines from the Learning Center towards the neighbors' yard. The Hearings Officer finds that provided certain conditions of approval are met, these concerns can be met. The Hearings Officer does not agree with the neighbors' concerns or proposals regarding a manual vs. automatic gate, moving the location of the gate to be internal to the property, or eliminating or modifying the proposed courtyard.

The Hearings Officer finds that with the conditions set forth below, the PPS application should be approved.

## V. DECISION

As referenced above, the Hearings Officer adopts the findings in the Staff Report, Exhibit H-2, except to the extent they conflict with the decision below. The Staff Report is hereby incorporated by this reference.

**Approval** of a Conditional Use Review for a new Kellogg Middle School on the subject site, replacing the previous Conditional Use Review approvals for the site; and

**Approval** of the following Adjustments:

- Reduce the minimum building setback from the south lot line from 20 feet to 10 feet (Zoning Code Section 33.120.275.C);
- Increase the maximum building length within 30 feet of the south lot line from 100 feet to 159 feet (Zoning Code Section 33.120.230.B);
- Reduce the minimum percentage of the south facade which must be within 20 feet of the south lot line from 50 percent to 48 percent (Zoning Code Section 33.120.220.C);
- Waive the required 5-foot-wide landscaping buffers on the north and south sides of the parking lot west of the school building (Zoning Code Section 33.266.130.G.2);
- Increase the maximum height of a fence within the minimum building setback from the SE Franklin Street lot line from 3.5 feet to 6 feet (Zoning Code Section 33.110.255.C); and
- Increase the maximum height of a fence within the minimum building setback from the SE Powell Street lot line from 3.5 feet to 8 feet (Zoning Code Section 33.120.285.C).

all per the approved plans, Exhibits C-1 through C-3 to the Staff Report, and subject to the following conditions of approval:

- A. As part of the building permit application submittal, each of the required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C-1 through C-3 to the Staff Report. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 18-169865 CU AD."

- B. The minimum long-term bike parking requirement for the site is 128 bike parking spaces.
- C. Prior to occupancy of the new school, the applicant must obtain approval from the Portland Bureau of Transportation of a final Transportation Demand Management Plan. The Transportation Demand Management Plan must include measures, including signage, to promote alternative modes of transportation such as transit, bicycling, carpooling, and walking and to reduce issues related to idling trucks and/or other vehicles on the property or entering or exiting the property at all locations where ingress or egress of vehicles is allowed.
- D. Vehicle idling time at the SE Franklin Street gate, shall be limited to four minutes in either direction for trucks or vehicles entering or exiting school property on school-related business.
- E. Once approved by the Portland Bureau of Transportation, the Transportation Demand Management Plan must be continually implemented.
- F. Prior to occupancy of the new school, the Portland Bureau of Transportation must approve the sight distance at any new or modified access points. The sight distance at new or modified access points must be documented and stamped by a registered professional Civil or Traffic Engineer licensed in the State of Oregon.
- G. Except for Fire/Emergency vehicles, vehicular access through the SE Franklin Street gate (entering or exiting), shall be limited to the hours of 7 a.m. to 9 p.m. weekdays and 8:00 a.m. to 8 p.m. on Saturday and Sunday.
- H. A six-foot masonry fence as illustrated in Exhibits C-1 to C-3 to the Staff Report, landscaping to comply with City Code and the District's plan, shall be built to reduce noise from the loading dock/garbage collection areas.
- I. The window sills in the Learning Center classrooms shall all be 48 inches from the finish floor for greater student safety and less ability to see into the neighbors' yard.

  
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Helle Rode, Hearings Officer

  
\_\_\_\_\_  
Date

Application Determined Complete:      October 18, 2018

<b>Application Determined Complete:</b>	October 18, 2018
<b>Report to Hearings Officer:</b>	November 21, 2018
<b>Decision Mailed:</b>	December 21, 2018
<b>Last Date to Appeal:</b>	4:30 p.m., January 4, 2019
<b>Effective Date (if no appeal):</b>	January 7, 2019

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

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

**Appeal of the decision.** ANY APPEAL OF THE HEARINGS OFFICER'S DECISION MUST BE FILED AT 1900 SW 4<sup>TH</sup> AVENUE, PORTLAND, OR 97201. Appeals can be filed at the 5<sup>th</sup> floor reception desk of 1900 SW 4<sup>th</sup> Avenue, Monday through Friday between 8:00 a.m. and 4:30 p.m. **An appeal fee of \$5,000.00 will be charged (one-half of the application fee for this case, up to a maximum of \$5,000).** Information and assistance in filing an appeal can be obtained from the Bureau of Development Services at the Development Services Center.

**Who can appeal:** You may appeal the decision only if you wrote a letter which is received before the close of the record on hearing or if you testified at the hearing, or if you are the property owner or applicant. If you or anyone else appeals the decision of the Hearings Officer, City Council will hold an evidentiary hearing, one in which new evidence can be submitted to them. Upon submission of their application, the applicant for this land use review chose to waive the 120-day time frame in which the City must render a decision. This additional time allows for any appeal of this proposal to be held as an evidentiary hearing.

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

Neighborhood associations who wish to qualify for a fee waiver must complete the Type III Appeal Fee Waiver Request for Organizations Form and submit it prior to the appeal deadline.

The Type III Appeal Fee Waiver Request for Organizations Form contains instructions on how to apply for a fee waiver, including the required vote to appeal.

**Recording the final decision.** If this Land Use Review is approved the final decision will be recorded with the Multnomah County Recorder. The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder.

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

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

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

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

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

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

## EXHIBITS

Not Attached Unless Indicated

### H. Received in the Hearings Office

1. Hearing Notice - Gulizia, Andrew
2. Staff Report - Gulizia, Andrew (**attached**)
3. Letter to Andy Gulizia from Toth - Gulizia, Andrew
4. Letter from Rick and Sarah-Keats Toth - Gulizia, Andrew
5. 12/4/18 letter from Brian Harper - Gulizia, Andrew
6. 12/4/18 Email from Judy Hilsenteger - Gulizia, Andrew
7. Letter dated 12/4/18 with attachments - DeRidder, Tamara
8. Power Point Presentation Printout - Gulizia, Andrew
9. Record Closing Information - Hearings Office





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

Ted Wheeler, Mayor  
 Rebecca Esau, Director  
 Phone: (503) 823-7300  
 Fax: (503) 823-5630  
 TTY: (503) 823-6868  
[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**STAFF REPORT AND RECOMMENDATION TO THE HEARINGS OFFICER**

**CASE FILE:** LU 18-169865 CU AD (PC # 18-114122)  
**REVIEW BY:** Hearings Officer  
**WHEN:** December 5, 2018 at 9:00am  
**WHERE:** 1900 SW 4<sup>th</sup> Ave., Suite 3000  
 Portland, OR 97201

**BUREAU OF DEVELOPMENT SERVICES STAFF: ANDREW GULIZIA / ANDREW.GULIZIA@PORTLANDOREGON.GOV**

**GENERAL INFORMATION**

**Applicant:** Tamara DeRidder  
 TDR & Associates  
 1707 NE 52<sup>nd</sup> Ave.  
 Portland, OR 97213

11-21-18 P01:31 RCVD  
**RECEIVED**

**Property Owner:** Portland Public Schools  
 Attn: Stephen Effros  
 PO Box 3107  
 Portland, OR 97208-3107

NOV 21 2018

**HEARINGS OFFICE**

**Site Address:** 6909 SE Powell Blvd.

**Legal Description:** TL 9200 6.18 ACRES, SECTION 08 1S 2E; TL 7600 0.45 ACRES, CANCEL INTO R333132 / SECTION 08 1S 2E, TL 7600 0.45 ACRES; TL 7500 0.42 ACRES, CANCEL INTO R333132 / SECTION 08 1S 2E, TL 7500 0.42 ACRES

**Tax Account No.:** R992080520, R992080570, R992082300  
**State ID No.:** 1S2E08BD 09200, 1S2E08BD 07600, 1S2E08BD 07500

**Quarter Section:** 3337  
**Neighborhood:** South Tabor, contact John Carr at [jcarrpdx@gmail.com](mailto:jcarrpdx@gmail.com)

**Business District:** None  
**District Coalition:** Southeast Uplift, contact Leah Fisher at 503-232-0010

**Zoning:** R1a - Multi-Dwelling Residential 1,000 base zone with Alternative Design Density ("a") overlay zone  
 R2a - Multi-Dwelling Residential 2,000 base zone with Alternative Design Density ("a") overlay zone  
 R5a - Single-Dwelling Residential 5,000 base zone with Alternative Design Density ("a") overlay zone

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

**Proposal:** The applicant requests Type III Conditional Use approval for a new middle school on the subject site. The site is in the R1, R2, and R5 residential zones, and each of these residential zones requires Conditional Use Review for schools (Zoning Code Sections 33.120.100.C,

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CITY OF PORTLAND  
 HEARINGS OFFICE  
 Exhibit #H-2  
 Case # 4180031  
 Bureau Case # 18-169865 CU AD

33.110.100.C). The new school building would be 108,478 square feet, and the site would also be improved with 35 surface parking spaces, a bus drop-off and pick-up area, and recreation areas.

In addition to the Conditional Use Review, the applicant requests the following Adjustments to Zoning Code requirements:

- Reduce the minimum building setback from the south lot line from 20 feet to 10 feet (Zoning Code Section 33.120.275.C);
- Increase the maximum building length within 30 feet of the south lot line from 100 feet to 159 feet (Zoning Code Section 33.120.230.B);
- Reduce the minimum percentage of the south facade which must be within 20 feet of the south lot line from 50% to 48% (Zoning Code Section 33.120.220.C);
- Waive the required 5-foot-wide landscaping buffers on the north and south sides of the parking lot west of the school building (Zoning Code Section 33.266.130.G.2);
- Increase the maximum height of a fence within the minimum building setback from the SE Franklin Street lot line from 3.5 feet to 6 feet (Zoning Code Section 33.110.255.C); and
- Increase the maximum height of a fence within the minimum building setback from the SE Powell Street lot line from 3.5 feet to 8 feet (Zoning Code Section 33.120.285.C).

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

- Zoning Code Section 33.815.105.A-E (Conditional Use Review)
- Zoning Code Section 33.805.040.A-F (Adjustment Review)

## ANALYSIS

**Site and Vicinity:** The subject site is approximately 5 acres in size and is located on the northeast corner of SE 69<sup>th</sup> Avenue and SE Powell Boulevard. The site is currently vacant. The property had been developed with two middle school buildings, but the school closed in 2007 and these buildings were recently demolished. The property has frontage on SE Powell Boulevard, an arterial road and state highway, and three local streets: SE 69<sup>th</sup> Avenue, SE Kelly Avenue, and SE Franklin Street. The site is fairly flat and contains several mature trees. Except for a few commercial and multi-dwelling residential buildings along SE Powell Boulevard, neighboring properties are developed with single-dwelling houses. Mount Tabor Park is approximately a half-mile north of the site, and a commercial corridor along SE 82<sup>nd</sup> Avenue is approximately a half-mile to the east.

**Zoning:** The southern portion of the site is designated with the R1 and R2 base zones (Exhibit B). The R1 and R2 zones are multi-dwelling residential zones which are intended to preserve land for urban housing and to provide opportunities for multi-dwelling housing. The development standards work together to create desirable residential areas by promoting aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities.

The remainder of the site is designated with the R5 base zone. The R5 zone is a single-dwelling residential zone which is intended to preserve land for housing and to promote housing opportunities for individual households. The development standards work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities.

In each of the three base zones which apply to this site (R1, R2, and R5), institutional uses such as schools may be allowed through Conditional Use Review (Zoning Code Sections 33.120.100.C, 33.110.100.C).



The entire site is also designated with the Alternative Design Density ("a") overlay zone. The purpose of the "a" overlay zone is to focus development on vacant sites, preserve existing housing, and encourage new development that is compatible with and supportive of the positive qualities of residential neighborhoods. The "a" overlay regulations are not applicable to this proposal.

**Land Use Review History:** City records indicate that prior land use reviews include the following:

- LU 15-215984 CU: 2015 Conditional Use approval to re-establish a school use in the buildings on the site.
- CU 103-87: 1987 Conditional Use approval for an addition to the school annex building.
- CU 105-86: 1986 Conditional Use approval for an addition to the school building.

The buildings referenced in the above land use reviews were recently demolished.

**Agency Review:** A "Request for Response" was sent to City agencies October 23, 2018. The following Bureaus responded:

- The Bureau of Environmental Services (BES) evaluated the approval criterion related to sanitary sewer service and stormwater disposal. The response is referenced in the findings for Zoning Code Section 33.815.105.D.3, below. (Exhibit E-1)
- The Portland Bureau of Transportation (PBOT) evaluated the approval criteria related to the transportation system. The response is referenced in the findings for Zoning Code Section 33.815.105.D.1-2, below. (Exhibit E-2)
- The Water Bureau responded with information on water service and raised no objections to the proposal. (Exhibit E-3)
- The Fire Bureau noted fire safety requirements that would apply at the time of building permit review but raised no objections to the proposal. (Exhibit E-4)
- The Police Bureau stated that police services are adequate for the proposed development. (Exhibit E-5)
- The Site Development Review Section of BDS responded with information on building permit requirements and raised no objections to the proposal. (Exhibit E-6)
- The Life Safety Review Section of BDS responded with information on building permit requirements and raised no objections to the proposal. (Exhibit E-7)
- The Urban Forestry Division of Portland Parks & Recreation responded with information on Tree Code (Title 11) requirements and raised no objections to the proposal. (Exhibit E-8)

**Neighborhood Review:** A "Notice of Public Hearing" was mailed on November 15, 2018. The South Tabor Neighborhood Association submitted a letter in support of the proposal (Exhibit F-1). This letter also advocated for public access to the site outside of school hours. This issue is discussed below in the findings for Zoning Code Section 33.815.105.E.

## ZONING CODE APPROVAL CRITERIA

### Conditional Use Review

#### **33.815.105 Institutional and Other Uses in R Zones**

These approval criteria apply to all conditional uses in R zones except those specifically listed in sections below. The approval criteria allow institutions and other non-Household Living uses in a residential zone that maintain or do not significantly conflict with the appearance and function of residential areas. The approval criteria are:

**A. Proportion of Household Living uses.** The overall residential appearance and function of the area will not be significantly lessened due to the increased proportion of uses not in the Household Living category in the residential area. Consideration includes the proposal by itself and in combination with other uses in the area not in the Household Living category and is specifically based on:

1. The number, size, and location of other uses not in the Household Living category in the residential area; and
2. The intensity and scale of the proposed use and of existing Household Living uses and other uses.

**Findings:** For purposes of this approval criterion, staff considered the “residential area” to be residentially-zoned lots between SE Powell Boulevard to the south and SE Woodward Street to the north, and from SE 67<sup>th</sup> Avenue to the west and SE 73rd Avenue to the east.

The subject site was first developed with a public school more than 100 years ago. The previous middle school on the site closed in 2007 and the buildings were recently demolished. However, the new middle school would be on the same property as the previous middle school. The applicant does not propose to acquire any new property for the school or expand the boundaries of the previously-approved Conditional Use site.

All of the properties within the residential area defined above are in Household Living (residential) use except for the subject site, a church at 3132 SE 67th Avenue, and another church at 3025 SE 73rd Avenue. The two churches are at the edge of the defined residential area. The three lots (including the subject site) which have non-residential uses are less than 2% of the 188 lots within the defined residential area.

The intensity and scale of the proposed use would be typical for a middle school. The peak use of the site would be during school hours, from 9:15 am to 3:45 pm on weekdays during the school year. These hours do not coincide with the peak hours for the other nonresidential uses in the residential area since the heaviest use of church properties is typically during evenings and weekends.

The applicant states the school property would also be used for school events (such as back to school night and graduation), student performances, meetings (such as Parent Teacher Students Association meetings), and community events outside of the regular school hours. These types of uses are typical for a middle school campus, and the applicant states the overall intensity of the use would be similar to the previous middle school on the site.

The applicant states the new middle school would accommodate as many as 680 students and 49 staff (Exhibit A-11). The previous middle school on the site, which closed in 2007, accommodated a similar number of students in peak enrollment years. In the 2002-2003 school year, 671 students were enrolled (Exhibit A-18). At 108,478 square feet, the new school

would also be similar in physical size to the previous middle school, which had 96,973 square feet of floor area in two buildings.

As discussed in detail in the findings for Conditional Use approval criterion D, below, adequate public services are available to accommodate the applicant's proposal. PBOT evaluated the proposal and found the new school would not impose unreasonable traffic or parking impacts on neighboring residential streets.

For the reasons discussed above, staff finds the proposal would not significantly lessen the overall residential appearance and function of the neighborhood. Therefore, staff finds approval criterion A is met.

## **B. Physical compatibility.**

1. The proposal will preserve any City-designated scenic resources; and

**Findings:** City-designated scenic resources are identified on the official zoning maps with a lower case "s." There are no City-designated scenic resources on the site or in the surrounding area. Therefore, criterion B.1 is not applicable.

2. The proposal will be compatible with adjacent residential developments based on characteristics such as the site size, building scale and style, setbacks, tree preservation, and landscaping; or
3. The proposal will mitigate differences in appearance or scale through such means as setbacks, screening, landscaping, tree preservation, and other design features.

**Findings:** The subject property is significantly larger in site area than neighboring residential lots and the proposed school building would be significantly larger than neighboring homes. However, the property has been developed with a public school for more than 100 years, and no expansion in the existing site area is proposed. At 108,478 square feet, the proposed school building would be only about 12% larger than the combined floor area of the school buildings which were recently demolished (96,973 square feet).

Differences in appearance and scale between the subject site and neighboring residential development are mitigated in several ways. The tallest (3-story) part of the school building would be near the south lot line abutting SE Powell Boulevard, a 4-lane arterial road. The southern portion of the site is designated with the R1 and R2 multi-dwelling residential zones, which anticipate and allow a greater intensity of development than the R5 single-dwelling residential zone which applies to the rest of the site. Placing the tallest part of the building in the southern portion of the site allows the building to step down in height toward the local residential streets and single-dwelling residential lots adjacent to the central and northern portions of the site. The only proposed Adjustment to minimum building setback requirements is for the building setback from the south lot line abutting SE Powell Boulevard. The building would be set back further than required from all other lot lines.

Since the school building would be constructed close to SE Powell Boulevard, the northern third of the site would be improved only with landscaping, a bus pick-up and drop-off area, pedestrian pathways, a playground, and unlighted sports fields. The playground would be set back 25 feet from the nearest lot line, as required by Zoning Code Section 33.110.245.C.4, and the sports fields would be set back 50 feet from the nearest lot lines, as required by Zoning Code Section 33.279.040.B.1.

The proposed building design for the school includes an articulated façade and variations in exterior siding materials. These design features would help to break down the mass of the building into distinct sections and reduce the overall appearance of bulk and scale.

The applicant's tree plan (Exhibit A-24) shows 11 existing trees on the property which would be preserved and protected during construction. These trees include a large (29-inch-diameter) Douglas fir tree near the northwest corner of the site and a row of 7 Norway maple trees which would partially screen the bus pick-up and drop-off area from SE 69<sup>th</sup> Avenue. In addition to the existing trees to be preserved, the proposed landscaping plan (Exhibit C-3) shows 137 new trees to be planted throughout the site. Large-sized tree varieties (8 Douglas firs and 11 western redcedars) are included in the tree planting plan. The abundance of trees on the site would improve the property's appearance and make it more compatible with the surrounding residential neighborhood. The number of trees preserved and planted would meet the minimum tree preservation and tree density standards of the Portland Tree Code (Title 11).

Finally, as required by Zoning Code Section 33.266.130.G.2, the vehicle areas on the east and west sides of the school building would be set back from the adjacent lot lines behind landscaped areas which are at least 5 feet wide. (The north and south perimeters of the surface parking lot located to the west of the building will be discussed later in this report in response to the Adjustment approval criteria.) To comply with requirements in Zoning Code Sections 33.266.130.G.2 and 33.248.020.B-C, these landscaping buffers would be planted with rows of trees and evergreen shrubs to comply with the L2 (low screen) landscaping standard along street lot lines and the L3 (high screen) landscaping standard where lot lines abut residential property. In addition to the required landscaping, Zoning Code Sections 33.266.310.E and 33.248.020.D require a 6-foot-tall masonry wall abutting the proposed loading area east of the school building. The required masonry wall is shown in the applicant's landscaping plan (Exhibit C-3).

For the reasons discussed above, staff finds the proposal would effectively mitigate differences in appearance and scale with neighboring residential development. Therefore, staff finds approval criterion B.3 is met. (Since B.3 is found to be met, B.2 does not have to be addressed.)

**C. Livability.** The proposal will not have significant adverse impacts on the livability of nearby residential zoned lands due to:

1. Noise, glare from lights, late-night operations, odors, and litter; and
2. Privacy and safety issues.

**Findings:** The components of approval criterion C are discussed separately below:

Noise

Most of the activity on the site would occur indoors. The most significant noise from outdoor activities would be from truck deliveries in the loading area east of the school building and from the playground and sports fields in the northern portion of the site. The required 6-foot-tall masonry wall adjacent to the loading area (Exhibit C-3) would help to reduce noise impacts from truck deliveries. The playground would be set back 25 feet from the nearest lot line, as required by Zoning Code Section 33.110.245.C.4, and the sports fields, with no permanent amplification systems proposed, would be set back 50 feet from the nearest lot lines, as required by Zoning Code Section 33.279.040.B.1. No lighting is proposed for the playground and sports fields, so use of these facilities would be limited to daylight hours.

For the reasons discussed above, staff finds that while the proposal would create some noise that would be audible on neighboring properties, noise from the school campus would not create a *significant* adverse impact on neighborhood livability.

#### Glare from lights

No lighting that is not typical for a school (lighting of vehicle areas, pedestrian level lighting) is proposed, and large numbers of trees and shrubs at the perimeters of the site (Exhibit C-3) would help to prevent significant glare impacts on nearby homes. The playground and sports fields on the site would not be illuminated.

#### Late-night operations

No late-night operations are proposed. The applicant states that evening activities on the site such as meetings and performances would typically end by 9:00 pm (Exhibit A-11). With the sports fields not illuminated, there would not be late night games or practices occurring on these fields.

#### Odors

No aspects of the proposed middle school would generate unusual or disturbing odors.

#### Litter

The applicant states that Portland Public Schools maintenance staff would pick up litter from the site daily (Exhibit A-11).

#### Privacy

As mentioned in the findings for approval criterion B, placing the tallest (3-story) part of the school building near the south lot line allows the building to step down in height toward the local residential streets and single-dwelling residential lots adjacent to the central and northern portions of the site. The building would be set back further than required from all lot lines except the south lot line, which abuts the 112-foot-wide right-of-way for SE Powell Boulevard rather than residential properties. Windows above the ground floor would be in classrooms typically occupied during the school day only (Exhibit A-19). In addition, the school would be surrounded by trees (on-site and in the adjacent rights-of-way) that would screen views between the school campus and neighboring properties (Exhibit C-3). Sight-obscuring fences and walls along the east lot line would further protect the privacy of homes adjacent to the courtyard and vehicle area east of the school building (Exhibit C-3).

#### Safety

The Police and Fire Bureaus reviewed the proposal and raised no concerns about the adequacy of police and fire services or potential safety impacts from the proposed use (Exhibits E-5 and E-4, respectively). PBOT also reviewed the proposal and found the development would not increase accidents on neighboring streets (Exhibit E-2). The applicant also states that security cameras would monitor the site (Exhibit A-11).

#### Summary

For the reasons discussed above, staff finds the proposal would not have significant, adverse livability impacts on nearby residences in terms of noise, glare, light-night operations, odors, litter, privacy, or safety. Staff finds approval criterion C is met.

### **D. Public services.**

1. The proposal is supportive of the street designations of the Transportation Element of the Comprehensive Plan;
2. The transportation system is capable of supporting the proposal in addition to the existing uses in the area. Evaluation factors include street capacity, level of service, and other

performance measures; access to arterials; connectivity; transit availability; on-street parking impacts; access restrictions; neighborhood impacts; impacts on pedestrian, bicycle, and transit circulation; safety for all modes; and adequate transportation demand management strategies;

**Findings:** PBOT reviewed the proposal and the professional Transportation Impact Analysis submitted by the applicant (Exhibit A-12). PBOT submitted the following response to approval criteria D.1 and D.2 (Exhibit E-2):

*Future operating conditions were analyzed at the study intersections for the year of opening (2021 total volume). Future traffic volumes were estimated at the study intersections in order to assess traffic conditions with future growth and project traffic. Future year 2021 total traffic volume forecasts were developed using a one percent per year growth on all City roadways and three percent per year growth on SE Powell Boulevard for eastbound-westbound only volumes, and include the trips generated from the worst-case enrollment of 680 students at day of opening. The weekday a.m. and p.m. peak hour traffic volumes used to analyze the 2021 total traffic scenario are shown on the attached Transportation Impact Analysis (TIA) report.*

*The proposed Kellogg Middle School proposes three access points on SE 69th Ave. which is classified as a Local Service Street. The trip generation projected for the site is estimated not to exceed 400 peak hour trips 1.102 daily trips. These trips then are distributed throughout the area. Service deliveries and refuse pick up will be the bulk of the limited trips generated on SE Franklin through the gated entrance to the service access road. The majority of the trips generated by the school will impact the SE 69th Ave/ SE Powell Blvd. intersection to reach this nearest east-west arterial. SE Powell Blvd. is classified as: Major City Traffic Street; Transit Access St.; City Walkway; Major Truck Street; Major Emergency Response Street; a Regional Corridor; and a Local Service Bikeway St. The largest impact will be at highest trip generation count projected generated from the Kellogg site in 2021 on weekdays: SE Powell and 69th Ave. intersection is a "C" at the AM Peak; SE 67th Ave./ Division v/c (volume/capacity) shows "A/C" at AM peak and "B/D" at the PM peak. During those periods the level of service remains within the acceptable mobility target for these facilities. All modes of functionality identified by the Comprehensive plan for SE Powell corridor and surrounding service streets are supported by this proposed use based on the attached DKS Traffic Impact Analysis (TIA).*

#### Street Intersection Capacity and Level of Service

*The City's performance standards (v/c ratio and LOS) are met at all study intersections with the built proposed project. The DKS Traffic Impact Assessment (TIA), Table 12: 2021-Total Traffic Intersection Operations-Peak Hours, identifies the impacted street intersections when the Kellogg Middle School opens. The increased number of trips is shown. Even with these additional trips all intersections maintain acceptable levels of service and satisfy the jurisdiction's mobility targets during both peak periods. No capacity mitigations are recommended.*

#### Access to Arterials and Connectivity

*The site is located adjacent to SE Powell Boulevard, a Major City Traffic Street that runs east-west. Several other arterials are located in the greater vicinity including SE Division Street, SE 52nd Avenue, and SE 82nd Avenue. Together, these roads ensure ample access to and from the site for motorized modes.*

*For other modes, despite several long blocks the grid system in the vicinity of the site is reasonably complete, allowing multiple routes for people walking and cycling. The Linear Park/Plaza along the SE Powell Blvd. frontage provides a pedestrian connection from the sidewalk along this frontage that runs diagonally northwesterly that provides access to the main entrance of the school on SE 69th Ave.*

*The school site has adequate connectivity and access to arterials. No mitigations are recommended.*

#### Transit Availability

*The site is located within 500 feet from a transit stop served by Tri-Met Bus Line #9, 'Powell Blvd', as a Frequent Service Route that maintains headways of 20-minute peak hour service on weekdays. The nearest stops in both directions are located in close proximity to the intersection of SE Powell Boulevard at SE 69th Avenue. Safe and comfortable walking routes to the nearest bus stops are available via the signal at this intersection and continuous sidewalks in place between the school and the bus stops.*

*The available transit service is sufficient to meet the needs of the proposed site use in addition to the existing uses in the site vicinity.*

#### Student Drop-Off and Pick-Up Locations

*The site plan designates a student drop-off/pick-up area on-site at the north end of the parking lot. The designated student loading area is approximately 80 feet in length. Vehicles would circulate counter-clockwise around the staff/visitor parking and stop along the sidewalk in the parking lot. Since the parking lot does not provide much space for student drop-off and pick-up, parallel parking spaces along the east side of SE 69th Avenue, north of the staff/visitor parking lot driveway, will be provided for loading of students. These areas will be restricted to parent pick-up and drop-off activity for one hour in the morning and one hour in the afternoon (approximately 30 minutes before and after school start and end times). Sidewalks along SE 69th Avenue and a raised pedestrian crossing through the parking lot provide a safe path to the school entrance for the students.*

*The east side of SE 69th Avenue from SE Powell Boulevard to the proposed parking lot driveway will be signed as a no parking zone. This section of SE 69th Avenue is approximately 30 feet wide and can only accommodate two 11.5-foot travel lanes and 7 feet of parking (west side). Signing this as a no parking zone will prevent parents from dropping off or picking up students here and stopping traffic on SE 69th Avenue near the SE Powell Boulevard intersection.*

*To deter the possibility of families using the SE Franklin St. frontage for drop-off/pick-up activity the available parallel parking along the block from the Kellogg site to 71st Ave. will be restricted as 'No Parking' for one hour in the morning and one hour in the afternoon (approximately 30 minutes before and after school start and end times).*

#### On-Street Parking Impacts & On-Site Parking

*The City of Portland Code does not require any parking if the proposed project is located within 500 feet from a transit street with 20-minute peak hour service. However, the on-street impact is still required to be studied per the City of Portland, and to study the on-street impact, the school's parking demand must be determined. City of Portland Code requires a minimum of 1.0 and a maximum of 1.5 parking spaces per classroom for*

*middle schools. The Kellogg Middle School Master Plan proposes a total of 35 classrooms. Therefore, the school is required to provide a minimum of 35 and a maximum of 53 parking spaces as indicated in Table 1.*

*Table 1: School Parking Requirements – City of Portland Development Code*

<i>Land Use</i>	<i>Proposed Classrooms</i>	<i>Parking Rate (Minimum – Maximum)</i>	<i>Total Parking</i>
<i>Middle School</i>	<i>35</i>	<i>1.0 – 1.5/classroom</i>	<i>35 - 53</i>

*The proposed site plan shows 35 off-street vehicular parking spaces, including two ADA parking spaces, two carpool parking spaces, and two restricted for vendors/staff along the service road. There are an estimated 16 parallel parking spaces along SE 69th Avenue together with the 33 parking lot spaces bring a total of 49 available parking spaces. The site plan shows sufficient parking spaces per the City of Portland code requirements.*

*The ITE Parking Generation Manual reports an average peak period parking demand rate of 0.09 spaces per student for a middle school. Assuming this rate, the estimated demand for parking spaces would be 61 spaces. Given the proposed site plan, 49 of the parking spaces would be available on-site and abutting the site while the remaining 12 vehicles would need to find parking on-street near the school.*

*A modal split survey from Faubion School, a K-8th school in the Portland Public School District, showed that approximately 56% of faculty either drove or took carpool to school. The remaining used public transit, walked, or biked to school. If the rate of 56% is applied to the Kellogg Middle School staff of 49 people, then vehicle parking demand would be 28 parking spaces. The demand is met with the current site plan.*

*The school should also provide additional parking for special events, which can have higher parking demands than the typical school day. Special events could include monthly PTSA meetings, family movie nights, theater performances, and sports events. However, the middle school does not need to provide enough parking spaces to fully accommodate special events. The site plan layout shows 33 parking spaces in the school parking lot. In addition, there are approximately 16 parallel parking spaces on SE 69th Avenue, for a total of up to 49 parking spaces along SE 69th Ave. Additional special event parking could be provided within the bus loop and parallel parking on the nearby streets. A parking survey of the nearby neighborhood streets was conducted to estimate the amount of available parking space in the nearby neighborhood. Based on field observations, an estimated 132 parking spaces are available in nearby neighborhood streets (streets listed below) west of the site. Parked vehicles were counted at 6:15 a.m., 8:15 a.m., and 3:15 p.m. on the following streets:*

- SE 69th Avenue (from SE Powell Boulevard to SE Kelly Street)*
- SE 68th Avenue (from SE Powell Boulevard to SE Kelly Street)*
- SE Kelly Street (from SE 67th Avenue to SE 69th Avenue)*
- SE Franklin Street (from SE 67th Avenue to SE 69th Avenue)*

*A total of 55 vehicles were counted on the neighborhood streets listed above at 6:15 a.m., 46 vehicles at 8:15 a.m., and 40 vehicles at 3:15 p.m. These parked vehicle counts represent only resident parking in the nearby neighborhood as the middle school building has been non-operational since 2007. Based on the existing parked vehicle counts, there*



were approximately 6 – 8 vehicles parked along the east side of SE 69th Avenue at the various times throughout the day. The available curb space in the nearby neighborhoods appeared to be sufficient curb space for vehicles to park off-site during special events at the middle school during the afternoon or evening hours and not displace existing resident parking.

On-street parking restrictions will need to be provided on the east side of SE 69th Avenue along the school. It is recommended that the segment north of the staff/ visitor parking lot driveway be designated as a regulated parking area as shown in the proposed site plan. This area will be designated as a loading/unloading area that lasts for one hour in the morning and one hour in the afternoon (approximately 30 minutes before and after school start and end times). It is also recommended that the segment south of the parking lot down to SE Powell Boulevard be signed as a no parking zone as the roadway width is too narrow to allow vehicles to park on the east side of SE 69th Avenue without blocking traffic.

Based on the analysis above the application satisfies this criterion subject to the following conditions:

- The proposed site plan shows 35 off-street parking spaces, including two ADA parking spaces, two restricted vendor/ staff parking spaces on the service access road, and 16 on-street vehicular parking spaces for a total of 51 parking spaces. This meets the City of Portland code requirements. However, the school should also consider parking for special events. A parking survey of the nearby neighborhood streets showed that there is sufficient curb space for off-site, special event parking without displacing current resident parking.
- Provide signage on the east side of SE 69th Avenue to designate area north of the staff/ visitor parking lot driveway as a loading/unloading area that lasts for one hour in the morning and one hour in the afternoon (approximately 30 minutes before and after school start and end times). Also provide signage south of the staff/ visitor parking lot that prohibits parking on the east side of SE 69th Avenue to prevent stopped traffic.
- Provide 'No Parking' signs restricting parking for one hour in the morning and one hour in the afternoon (approximately 30 minutes before and after school start and end times) on SE Franklin St. from the school site to SE 71st Ave.

[BDS staff note: BDS staff confirmed that PBOT did not intend for the three bulleted items above to be conditions of approval for this land use review, given these are requirements within the public right-of-way and therefore not regulated by the Portland Zoning Code. PBOT will require these items to be addressed with the public works permit for the school.]

#### Site Access/ Sight Distance

There are currently three vehicular driveways and the dead end of SE Franklin St. providing on-site access to the existing school property. According to the proposed plan provided, there will be a total of four site access driveways. There will be one full-access driveway to the staff/ visitor parking lot, which will also serve as the SPED student drop-off and pick-up area. Another two driveways on 69th Avenue will provide a school bus only loading area. There will also be a gated, delivery truck/ emergency vehicle only access off Franklin Street on the east side of the project site. Permits for these new curb

*cut/driveways are currently under review with PBOT with anticipated completion prior to staff report development.*

*During a field observation visit, the preliminary sight distance at the existing site driveways appear to have sufficient sight distance. Prior to occupancy, sight distance at any new or modified access points will need to be verified, documented, and stamped by a registered professional Civil or Traffic Engineer licensed in the State of Oregon.*

#### Access Spacing

*SE 69th Avenue is classified as a local street by the City of Portland. Portland's code requires a minimum access spacing of 25 feet from the corner of a lot where two streets intersect. The proposed main visitor/staff site access along SE 69th Avenue is proposed to be approximately 200 feet north of the SE Powell Boulevard/ SE 69th Avenue intersection, meeting code requirements. The two driveways providing access to the on-site school bus pick-up/drop-off loop are located approximately 250 feet north of the main visitor/staff site access driveway and are spaced 250 feet apart. All of the proposed accesses would meet the City's access spacing standards.*

*With the following condition of approval this criterion will be satisfied:*

- Prior to occupancy, sight distance at any new or modified access points will need to be verified, documented, and stamped by a registered professional Civil or Traffic Engineer licensed in the State of Oregon.*

#### Bus Loading and Access

*It is anticipated that up to nine full-sized school buses (40 feet in length) and two special education (SPED) buses (24 feet in length) will transport students to and from Kellogg Middle School during normal school hours. All full-sized school buses will enter the school site via the site access on SE 69th Avenue. All buses would exit the site from the site access just north of that school bus entrance. The new bus loading area includes approximately 230 feet of curb space in the circulating aisle, which is sufficient to accommodate 5 buses at once. The remaining four school buses will park along the east side of SE 69th Avenue. A paved walkway will be provided between the bus loading area and the school entrance in order to ensure safe access to the building. The two SPED buses will enter the site at the main visitor/staff parking lot and park in front of the school entrance.*

#### Pedestrian and Bicycle Impacts/Access/School Crosswalks

*The local streets in the vicinity of the site do not have heavy volumes of pedestrians or bicycles at present. The site plan is expected to provide adequate pedestrian and bicycle facilities on the site as long as all sidewalks are constructed to meet ADA requirements. A network of on-site pathways will provide access for pedestrians and bicyclists from adjacent street sidewalks to the school entrance. The Linear Park/Plaza along the SE Powell Blvd. frontage provides for extended pedestrian access from the sidewalks along frontage to the school's main entrance on SE 69th thereby satisfying the pedestrian access connection to the school from that frontage. The walkway fronting the school building will be covered by a canopy as well. A raised pedestrian crossing is provided through the staff/visitor parking lot, connection the sidewalk on SE 69th Avenue to the school entrance.*

*For off-site facilities, the two pedestrian crossing ramps located on the north side of SE Powell Boulevard at SE 70th Avenue are recommended to be removed to improve pedestrian safety as this is not a recommended crossing location. In addition, "crosswalk closed" barricades should be installed at each pedestrian ramp on the north and south side of SE Powell Boulevard (total 4 barricades) at this intersection to discourage pedestrian crossings.*

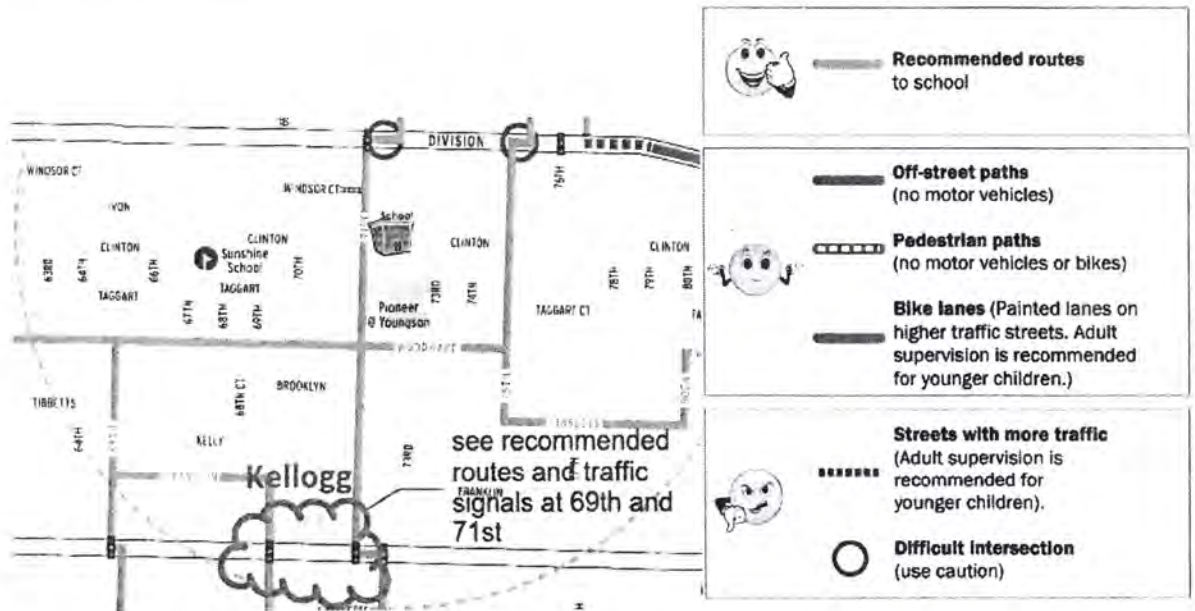
*The existing traffic signal at SE Powell Boulevard/ SE 69th Avenue provides protected pedestrian crossings across all four legs of the intersection and all satisfy current ADA standards. All curb ramps at this intersection currently meet current ADA standards. However, the pushbutton located on the northwest corner of the intersection will need to be updated to current ADA standards. This may include relocating the pushbuttons and some minor signal modifications.*

*Additionally, Curb ramps on the east side of SE 69th Avenue at Franklin Street and Kelly Street will need to be reconstructed near the school site to meet ADA requirements as well.*

*The proposed site plan shows existing sidewalks along the entire school frontage. We propose retaining the SE 69th Ave. 10-foot wide sidewalk, consisting of a 0-10-0 configuration, as an exemption in TRN 1.22 as this is within 1-ft of the 11-ft standard. Powell Blvd. is improved with an 11-702 configuration that exceeds the minimum 12-ft. wide corridor. No improvements or dedications are needed.*

#### *Bicycle Circulation and Parking*

*Bicycle circulation and access has been designed into the hard-scape of the proposed site. It is anticipated that at least 4% of the student and faculty population will access the site by bicycle. Neighbors are also likely to use bicycles to access the open space and recreation area on the school grounds. The eastern section of SE Franklin St. that dead ends into the middle of the site will include a bike/ped threshold separate from the vehicular gate. This access is to be improved to provide an east-west connection between the two ends of Franklin St. through the site. The Safe Routes to Schools routes in the Kellogg Middle School area are shown in Figure 1 identifying recommended east-west corridor routes along SE Woodward and Franklin Streets and north-south corridor routes as 65th, 69th, and 71st Avenues, including signalized intersections at SE Powell Blvd. The traffic signal and crosswalks have been improved to ODOT standards at the SE 69th Ave. and Powell Blvd. intersection abutting the school site to facilitate this bicycle crossing.*



City of Portland Code requires that middle schools provide 4 bicycle parking spaces per classroom. With approximately 35 classrooms projected for the rebuilt middle school, a total minimum of 140 long-term bicycle parking spaces is required. Long-term spaces are designed to accommodate persons that can be expected to leave their bicycle parked longer than two hours. The current site plan shows 128 bicycle parking spaces, with 66 of the spaces located on a covered walkway.

A modal split survey from Faubion School, a K-8th school in the Portland Public School District, showed that approximately 4% of students biked to school. If this rate is applied to the Kellogg Middle School enrollment of 680 students, then bicycle parking demand would be 28 bicycle parking spaces. The current site plan shows enough bicycle parking spaces to provide parking for 17% of the student enrollment. The proposed 128 bicycle parking spaces is a sufficient amount of parking for the middle school.

[BDS staff note: For schools, Zoning Code Table 266-6 allows the bike parking requirement to be set in the Conditional Use Review. In Exhibit A-16, the applicant requested that the Conditional Use Review set the long-term bike parking requirement at 128 spaces. In the paragraph above, PBOT found that 128 long-term bike parking spaces would be sufficient to meet demand. Therefore, BDS staff recommends a condition of approval setting the long-term bike parking requirement for the school at 128 spaces.]

Student Drop-Off and Pick-Up Locations

The site plan does not designate a student drop-off area within the site. It is likely that parents will drop off students in two locations. The first area would be the parent and teacher parking lot on SE 69th Avenue. Vehicles would circulate counter-clockwise around the proposed staff/visitor parking and drop off along 65 feet of sidewalk in the parking lot. The other location will likely be along SE 69th Avenue. The site plan proposes at least regulated 8 parallel parking spaces on the east side of SE 69th Avenue fronting the school that could serve as a drop-off and bus staging location. Sidewalks along SE 69th Avenue provide safe paths to the school entrance for the students.

### Neighborhood Impacts

*Transportation-related impacts to the neighborhood resulting from the proposed re-establishment of the school will primarily be related to pick-up and drop-off activities occurring during arrival and dismissal times. While the new traffic from the school will represent a significant increase over current levels, the periods of these impacts will be brief. Of course, schools are commonly located in areas that are primarily residential in nature, and PPS regularly works with neighborhoods surrounding schools to ensure a harmonious relationship.*

*A set of transportation demand management measures identified in the Transportation Impact Analysis (TIA) will be required to be implemented to coincide with the reestablishment of a school at the site. It is noted that providing an environment that is safe for students who would like to cycle or walk to school is the most effective way to reduce transportation-related impacts to the surrounding neighborhood. This requires a citywide commitment to active transportation, and PBOT and other agencies are currently engaged in a number of projects to facilitate this. No other mitigations are needed or recommended.*

### Safety for All Modes and School Speed Zones

*As described in the TIA the crash histories of intersections within the vicinity of the site do not suggest any safety concerns and no apparent safety deficiencies were noted during site visits.*

*The redevelopment of Kellogg School at the site will increase travel to and from the site for multiple modes. Inevitably, this will result in introducing conflicts between people cycling, driving, and walking. If the principal of Kellogg School submits a letter of support/commitment that that crosswalks will be monitored by school staff or volunteers, PBOT should consider striping and signing the crosswalks across SE 69th Avenue at SE Franklin Street to increase the visibility of people crossing at that location and to remind people driving to yield right-of-way to people walking.*

*The residential streets in the vicinity of the school offer safe and comfortable opportunities for people walking or cycling in the vicinity. The main arterial in the site vicinity, SE Powell Boulevard, will be improved with a linear park/plaza to enhance travel to the site. SE 69th Ave. is proposed to retain the existing sidewalk that is curb-tight to the street. A network of walkways is proposed internal to the site. Together, the walkways will provide access to the adjacent sidewalks and a safe opportunity to cross SE Powell Blvd. is available at its signalized intersection with SE 69th Avenue.*

*The area around the project site currently has no apparent safety deficiencies. The recommended crosswalks, ADA ramps, and the proposed TDM measures combine to provide continued safe travel opportunities for all modes following the redevelopment of the School.*

*There is an existing school speed zone (20 mph) on SE 69th Avenue adjacent to the existing school. The reduced speed limit is in effect on school days during the hours of 7 a.m. – 5 p.m. It is recommended that the existing school speed zone on SE 69th Avenue be maintained for the rebuild of the middle school. There is currently no school speed zone located on SE Powell Boulevard as it was removed when the school closed. According to the Guide for School Area Safety<sup>31</sup>, school speed zones are recommended where all the following conditions exist:*

- *The roadway is adjacent to the school grounds (not limited to front of school buildings).*
- *There is at least one marked school crosswalk within the proposed school zone which is not protected by a signal or STOP sign.*
- *The property houses a public or private elementary or middle school (grades K-8).*
- *The posted speed is 40 mph or below.*

*In the case of Kellogg Middle School, all but one of the conditions listed above apply. The crosswalks at SE Powell Boulevard/ SE 69th Avenue intersection are signalized, but there is an expected increase in pedestrian and bicyclist activity here with the opening of the school. Therefore, it is recommended to again implement a school speed zone of 20 mph on SE Powell Boulevard extending 200 feet beyond the school site in either direction. The school speed limit should be enforceable when warning lights are flashing. Reduced Speed School Zone Ahead Warning signs should also be placed on SE Powell Boulevard approximately 100 to 400 feet prior to the school reduced speed zone.*

*Transportation Demand Management Strategies*

*The reopening of Kellogg School will by definition change the travel behaviors of the students, parents, faculty, and staff travelling to and from the school. This represents an ideal time to employ transportation demand management strategies to encourage green, sustainable travel to the school. To support this the TDM strategies has been included as an addendum to the TIA report.*

*Subject to the following conditions to support the TDM goals the TDM strategies will be satisfied:*

*Kellogg Middle School administration and PPS will strive to reduce the number of single occupancy vehicle use to/from the school by students and faculty by:*

*Promoting alternative modes of travel (walking, bicycle riding, transit).*

*Encourage parents that are driving their student to school to join an existing or develop a new carpool/rideshare route with other nearby parents.*

*Offering transit passes to students/teachers/administrators; identifying the school's/PPS' goals for mode split achievement at each school, etc. For employees this may include use of the current transportation deduction program that allows Portland Public School staff to purchase a monthly Tri-Met transit pass on a pre-tax basis. Staff can use this to ride any combination of buses, MAX Light Rail, and Portland Streetcar to complete their trip.*

*The school shall be required to implement the submitted TDM plan (submitted as a separate document as a condition of occupancy when the school opens).*

*RECOMMENDATION*

*No objection to approval as proposed subject to the following conditions:*

- *Upon school opening, the applicant shall be required to implement their Transportation Demand Management Plan submitted under a separate document.*

- *Prior to occupancy, sight distance at any new or modified access points will need to be verified, documented, and stamped by a registered professional Civil or Traffic Engineer licensed in the State of Oregon.*

Based on these findings from PBOT, staff finds approval criteria D.1 and D.2 are met with these conditions of approval:

- Prior to occupancy of the new school, the applicant must obtain approval from the Portland Bureau of Transportation of a final Transportation Demand Management Plan. The Transportation Demand Management Plan must include measures to promote alternative modes of transportation such as transit, bicycling, carpooling, and walking. Once approved by the Portland Bureau of Transportation, the Transportation Demand Management Plan must be continually implemented.
  - Prior to occupancy of the new school, the Portland Bureau of Transportation must approve the sight distance at any new or modified access points. The sight distance at new or modified access points must be documented and stamped by a registered professional Civil or Traffic Engineer licensed in the State of Oregon.
3. Public services for water supply, police and fire protection are capable of serving the proposed use, and proposed sanitary waste disposal and stormwater disposal systems are acceptable to the Bureau of Environmental Services.

**Findings:** The Water Bureau reviewed the proposal and raised no objections, noting that water is available from mains in SE 69<sup>th</sup> Avenue and SE Powell Boulevard (Exhibit E-3). The Police Bureau reviewed the proposal and stated that police could adequately serve the proposed development (Exhibit E-5). The Fire Bureau noted fire safety requirements for the building permit review but raised no objections to the proposed Conditional Use, indicating that adequate fire protection can be provided (Exhibit E-4). BES responded that the proposed connections to sanitary sewer facilities in adjacent rights-of-way were acceptable. BES also found the applicant's proposal to infiltrate stormwater on-site with stormwater trenches and stormwater basins was acceptable (Exhibit E-1).

For these reasons, staff finds approval criterion D.3 is met.

- E. Area plans.** The proposal is consistent with any area plans adopted by the City Council as part of the Comprehensive Plan, such as neighborhood or community plans.

**Findings:** The site is within the boundaries of the South Tabor Neighborhood Plan and the Outer Southeast Community Plan. Both of these plans were adopted by the City Council as part of the Comprehensive Plan.

Staff finds the following statements from the South Tabor Neighborhood Plan to be relevant to this proposal:

- Policy 2 (Transportation), Objective 1:  
*Control neighborhood traffic and parking to ensure safety and livability for neighborhood residents.*
- Policy 2 (Transportation), Objective 2:  
*Increase the use of mass transit.*
- Policy 2 (Transportation), Objective 3:  
*Support improvements for pedestrian and bicycle use and safety.*

- Policy 2 (Transportation), Objective 4:  
*Encourage shared off-street parking for commercial and institutional uses.*
- Policy 2 (Transportation), Program T6:  
*Encourage neighborhood employers to provide incentives to their employees for the use of alternative transportation modes such as the subsidized Tri-Met pass.*
- Policy 4 (Public Safety), Objective 3:  
*Enhance a feeling of safety on all streets for pedestrians through landscape design, adequate lighting and sidewalks.*
- Policy 5 (Social, Cultural and Educational Environment), Objective 2:  
*Ensure the availability of physical facilities to meet the needs of residents.*
- Policy 5 (Social, Cultural and Educational Environment), Objective 4:  
*Encourage nearby public and private educational institutions to better serve the South Tabor neighborhood.*
- Policy 5 (Social, Cultural and Educational Environment), Program S7:  
*Encourage the utilization of unused public facilities to benefit and support the neighborhood.*
- Policy 6 (Parks, Recreation and Open Space), Objective 3:  
*Encourage multiple use of greenspaces surrounding schools and churches.*
- Policy 6 (Parks, Recreation and Open Space), Objective 5:  
*Foster a sense of openness in our developed areas.*
- Policy 7 (Urban Design, Historic Preservation, and Neighborhood Livability), Objective 1:  
*Support higher density housing and mixed-use development along Powell, 82<sup>nd</sup> and Division.*
- Policy 7 (Urban Design, Historic Preservation, and Neighborhood Livability), Objective 2:  
*Encourage site and design review to promote functional, safe and attractive developments which are compatible with surrounding developments and uses and with the natural environment.*
- Policy 7 (Urban Design, Historic Preservation, and Neighborhood Livability), Objective 4:  
*Improve the appearance of the neighborhood.*
- Policy 7 (Urban Design, Historic Preservation, and Neighborhood Livability), Program U5:  
*Encourage the planting of more street trees by working with Friends of Trees or other arboricultural organizations.*

Staff finds the following statements from the Outer Southeast Community Plan to be relevant to this proposal:

- Transportation Policy, Objective 1:  
*Reduce the amount of automobile driving done by area residents by making it more convenient to use public transit.*
  - a. *Increase housing densities within one-quarter mile of transit streets.*



- b. *Encourage of a mix of multifamily housing and shopping opportunities in areas with good transit service.*
- *Transportation Policy, Objective 2:*  
*Support better mass transit service by creating opportunities to develop higher-density housing on or near streets with public transit service or planned public transit service. Ensure that this housing blends in with that of surrounding residential areas.*
  - *Housing Policy, Objective 1:*  
*Construct 14,000 new housing units in the Outer Southeast Community Plan area by 2015.*
  - *Housing Policy, Objective 2:*  
*Stimulate production of new housing units by both private and nonprofit housing producers to accommodate expected population growth.*
  - *Housing Policy, Objective 3:*  
*Increase opportunity for building more single-family housing in outer southeast neighborhoods.*
  - *Housing Policy, Objective 5:*  
*Increase opportunities for multifamily housing in areas convenient to shopping and transit.*
  - *Open Space and Environment Policy, Objective 9:*  
*Improve the appearance and livability of outer southeast neighborhoods.*
  - *Public Safety Policy, Objective 2:*  
*Encourage building designs that restrict access to areas vulnerable to crime such as building entrances, sidewalks, parking lots, and loading and delivery areas. The following are examples of how to carry out this idea:*
    - a. *Provide opportunities for retail uses on the ground floor perimeter of the building adjacent to public areas. Encourage sidewalk cafes and coffee shops with windows overlooking sidewalks and parking lots.*
    - b. *Locate windows in building walls that abut such public areas as sidewalks, plazas, parks, and parking lots.*
    - c. *Situate windows so that building users can easily watch over sidewalks, parking, and entrances. This will also make it easier to watch activities inside and facilitate police patrol.*
    - d. *Locate and design entrances so that they can be watched from both the street and from inside the building.*
    - e. *Control access to loading and delivery areas, unless these areas can be easily watched from either inside the building, the street, or both.*
    - f. *Situate areas intended for exterior activities, displays, products and produce so that they can be easily watched from inside the building and from the street.*
    - g. *Illuminate walkways so that they can be easily seen from both the street and inside the building.*
  - *Subarea Policy I (Traditional Urban Neighborhoods), Objective 3:*  
*Create opportunities for new multifamily housing along streets with transit service.*

- Subarea Policy I (Traditional Urban Neighborhoods), Objective 4:  
*Encourage compatible infill at densities which support transit on vacant lots in established residential areas.*

The proposal for a new middle school on the subject site would not create additional housing opportunities in the neighborhood or near transit service on SE Powell Boulevard. However, the new middle school would improve access to educational opportunities in the neighborhood, as specifically called for in the South Tabor Neighborhood Plan. Furthermore, the subject site was previously developed with a middle school, so no existing housing would be lost as a result of this proposal.

The South Tabor Neighborhood Association submitted a letter in support of the proposal and asked that neighbors be allowed to access the site's pathways and recreation areas when school is not in session (Exhibit F-1). In Exhibits A-11 and A-25, the applicant confirmed that neighbors would have access to the site's pathways and recreation areas outside of school hours. At the west pedestrian entrance from SE 69<sup>th</sup> Avenue and the east pedestrian entrance from SE Franklin Street, "bike/pedestrian thresholds" would allow bicycle and pedestrian access to the site (Exhibits C-1 and A-25). Therefore, the proposal would create new recreational amenities that are accessible to the neighborhood.

As discussed in the findings for approval criterion B, above, the proposed building design and site design would create an attractive school campus that is compatible with the surrounding neighborhood. The building's articulated façade and variations in siding materials would help to break down the mass of the building into distinct sections and reduce the overall appearance of bulk and scale. A substantial amount of open area would remain on the site after construction of the new school building, which would cover less than 30% of the site area. The new school would be surrounded by trees, including 137 new trees within the subject property and roughly one street tree for every 25 feet of street frontage (Exhibit E-8).

As discussed in the findings for approval criterion D, above, PBOT evaluated the proposal and found the new middle school would not impose unreasonable traffic or parking impacts on neighboring residential streets. Although the applicant did not propose shared use of the school's off-street parking, PBOT found the proposed parking would be adequate for the site. PBOT recommended a condition of approval to require a final Transportation Demand Management Plan to be submitted prior to occupancy of the new school. The Transportation Demand Management Plan would encourage students and staff to travel to school by walking, bicycling, or on mass transit rather than in private vehicles.

In addition, as discussed in the findings for approval criterion D, the proposal would result in pedestrian safety improvements. New paved pathways would be provided through the subject site and pedestrian crossings in the public right-of-way would be improved to current Americans with Disability Act (ADA) standards.

The new school building would have many windows which overlook the main entrance, the adjacent sidewalks, outdoor activity areas, the loading area, and parking spaces. This visibility would contribute to public safety. The Police Bureau reviewed the proposal and raised no concerns about public safety impacts (Exhibit E-5). The applicant also states that security cameras would monitor the site (Exhibit A-11).

For these reasons, staff finds that on balance, the proposal is consistent with the South Tabor Neighborhood Plan and the Outer Southeast Community Plan. Therefore, with the condition of approval for the Transportation Demand Management Plan, staff finds approval criterion E is met.

## **Adjustment Review**

### **33.805.040 Approval Criteria**

Adjustment requests will be approved if the applicant has demonstrated that approval criteria A through F, below, have been met.

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

**Findings:** The applicant is requesting approval of the following Adjustments:

- Reduce the minimum building setback from the south lot line from 20 feet to 10 feet (Zoning Code Section 33.120.275.C);
- Increase the maximum building length within 30 feet of the south lot line from 100 feet to 159 feet (Zoning Code Section 33.120.230.B);
- Reduce the minimum percentage of the south facade which must be within 20 feet of the south lot line from 50% to 48% (Zoning Code Section 33.120.220.C);
- Waive the required 5-foot-wide landscaping buffers on the north and south sides of the parking lot west of the school building (Zoning Code Section 33.266.130.G.2);
- Increase the maximum height of a fence within the minimum building setback from the SE Franklin Street lot line from 3.5 feet to 6 feet (Zoning Code Section 33.110.255.C); and
- Increase the maximum height of a fence within the minimum building setback from the SE Powell Street lot line from 3.5 feet to 8 feet (Zoning Code Section 33.120.285.C).

The purposes of these regulations are discussed separately below.

#### **Minimum building setback from the south lot line**

The Institutional Development Standards for schools require a 20-foot minimum building setback from the south lot line abutting SE Powell Boulevard (Zoning Code Section 33.120.275.C.1-2). In the applicant's proposal, the closest corner of the new school building would be 10 feet from the south lot line.

The purpose of the Institutional Development Standards is stated in Zoning Code Section 33.120.275.A:

*The general base zone development standards in the R3 through RX zones are designed for residential buildings. Different development standards are needed for institutional uses which may be allowed in multi-dwelling zones. The intent is to maintain compatibility with and limit the negative impacts on surrounding residential areas.*

As discussed in the findings for the Conditional Use Review, above, siting the new building close to the south lot line increases compatibility with the surrounding residential area and reduces impacts. The Adjustment to reduce the minimum building setback from the south lot line, located in the R1 multi-dwelling residential zone, allows the building to be set back further from the local residential streets and residential lots adjacent to the central and northern portions of the site located in the R5 single-dwelling residential zone. For context, multi-dwelling residential development in the R1 zone is allowed a maximum height of 45 feet, with minimum required street setback of only 3 feet. The building would be set back further than required from all lot lines other than the south lot line. While the reduced setback from the south lot line would bring the building slightly closer to homes on the other side of SE Powell Boulevard, the 112-foot-wide right-of-way for SE Powell Boulevard would provide ample separation between the school building and those homes.

For these reasons, staff finds the proposed Adjustment equally meets the purpose of the minimum building setback requirement.

Maximum building length within 30 feet of the south lot line

In the R1 and R2 zones, Zoning Code Section 33.120.230.B limits building length within 30 feet of street lot lines to 100 feet. The proposed building length within 30 feet of the south lot line (abutting SE Powell Boulevard) is 159 feet.

The purpose of the maximum building length requirement is stated in Zoning Code Section 33.120.230.A:

*The maximum building length standard, along with the height and setback standard, limits the amount of bulk that can be placed close to the street. The standard assures that long building walls close to streets will be broken up into separate buildings. This will provide a feeling of transition from lower density development and help create the desired character of development in these zones.*

The building length standard was likely intended for multi-dwelling residential buildings, which are the primary development type anticipated in the R1 and R2 zones. A middle school campus would typically include a large building which is wider than 100 feet. However, while the Adjustment would substantially increase the allowable width of the building near the south lot line, several factors would reduce the perception of bulk from SE Powell Boulevard.

First, SE Powell Boulevard is a state highway with a 112-foot-wide right-of-way. The south lot line of the subject site is 20 feet from the curb of SE Powell Boulevard, so the building would not appear as close to the road as the setback distance from the lot line would suggest. Additionally, the 112-foot-wide right-of-way would provide an ample separation and transition between the school building and the lower-intensity development on the south side of SE Powell Boulevard.

Also, the portion of the south façade subject to this Adjustment would be at an angle from the street, with the façade receding from the street as viewed from right to left. This façade would have variations in siding materials and generously-sized windows. These features of the building design would increase visual interest, helping to break up the façade area and reduce the perception of bulk.

For these reasons, staff finds the proposed Adjustment equally meets the purpose of the building length requirement.

Minimum façade percentage within the maximum building setback from the south lot line

Since SE Powell Boulevard is a designated transit street, Zoning Code Section 33.120.220.C requires at least 50% of the building's ground-level, street-facing façade to be set back no more than 20 feet from the south lot line. The proposed Adjustment is for 48% (rather than 50%) of the width of the south façade to be within the 20-foot maximum building setback.

The purpose of this maximum building setback requirement is stated in Zoning Code Section 33.120.220.A:

*Setback requirements along transit streets create an environment that is inviting to pedestrians and transit users.*

(The parts of the purpose statement in Zoning Code Section 33.120.220.A which are not cited above are related to *minimum* building setback requirements rather than the maximum

building setback requirement from transit streets. For a school, the minimum building setback requirements in the Institutional Development Standards of Zoning Code Section 33.120.275 supersede the minimum building setback requirements in Zoning Code Section 33.120.220.)

Decreasing the width of the façade within 20 feet of the south lot line from 50% to 48% is a fairly small reduction that would not be readily apparent to passers-by. Approximately half the south façade would appear to be near the transit street, as intended by the standard.

In addition, the angled south façade, the variations in siding materials, and the large street-facing windows would create an attractive street presence for the new building. New landscaping, street trees, and paved walkways leading into the site would further enhance the environment for pedestrians and transit users on SE Powell Boulevard.

For these reasons, staff finds the proposed Adjustment equally meets the purpose of the maximum building setback requirement.

#### Landscaping buffers on the north and south sides of the parking lot

Zoning Code Section 33.266.130.G.2 requires 5-foot-wide landscaping buffers with rows of trees and shrubs along the west, north and south perimeters of the parking lot west of the school building. The applicant's proposal includes the required landscaping buffer along the west side of the parking lot (abutting SE 69<sup>th</sup> Avenue), but the proposed Adjustment would waive this requirement for the north and south sides of the parking lot.

The purposes of the parking lot landscaping requirements are stated in Zoning Code Section 33.266.130.A:

##### *The setback and landscaping standards:*

- *Improve and soften the appearance of parking areas;*
- *Reduce the visual impact of parking areas from sidewalks, streets, and especially from adjacent residential zones;*
- *Provide flexibility to reduce the visual impacts of small residential parking lots;*
- *Direct traffic in parking areas;*
- *Shade and cool parking areas;*
- *Reduce the amount and rate of stormwater runoff from vehicle areas;*
- *Reduce pollution and temperature of stormwater runoff from vehicle areas; and*
- *Decrease airborne and waterborne pollution.*

The parking lot west of the school building would be approximately 180 feet from the south lot line and 428 feet from the north lot line. Given these distances, staff finds that formal landscaping buffers along the north and south perimeters of the parking lot are not needed to soften the appearance of the parking area or reduce its visual impact. The applicant's landscaping plan (Exhibit C-3) includes many new trees on the site between the parking lot and the north and south lot lines. Although these new trees would not be planted in rows immediately adjacent to the north and south sides of the parking lot, these trees would further soften the limited view of the parking lot from the north and south lot lines.

The parking spaces and drive aisles in the parking lot would meet the dimensional standards in Zoning Code Section 33.266.130. Therefore, the traffic and circulation within the parking lot would be as anticipated by the Zoning Code.

New trees and shrubs proposed adjacent to and within the parking lot (Exhibit C-3) would provide substantial shading and cooling, help to manage stormwater runoff, and reduce

pollution. The Bureau of Environmental Services evaluated the proposed Adjustment and responded with no objections to approval (Exhibit E-1).

For these reasons, staff finds the proposed Adjustment equally meets the purpose of the parking lot landscaping requirement.

Maximum fence height within the minimum building setback from SE Franklin Street

A portion of the east lot line within the R5 zone abuts the right-of-way of SE Franklin Street. For zoning purposes, this street frontage is one of the site's front lot lines (Zoning Code Chapter 33.910). In the R5 zone, Zoning Code Section 33.110.255.C limits fence height within the minimum building setback from a front lot line to 3.5 feet. The proposed Adjustment would increase the maximum fence height within the minimum building setback from SE Franklin Street to 6 feet.

The purpose of the fence requirements in the R5 zone is stated in Zoning Code Section 33.110.255.A:

*The fence standards promote the positive benefits of fences without negatively impacting the community or endangering public or vehicle safety. Fences can create a sense of privacy, protect children and pets, provide separation from busy streets, and enhance the appearance of property by providing attractive landscape materials. The negative effects of fences can include the creation of street walls that inhibit police and community surveillance, decrease the sense of community, hinder emergency access, hinder the safe movement of pedestrians and vehicles, and create an unattractive appearance. These standards are intended to promote the positive aspects of fences and to limit the negative ones.*

While the Zoning Code considers the SE Franklin Street lot line a front lot line, this lot line abuts the terminus of a dead-end street and would not feel or function like a "front" for the school campus. In this context, the fencing near SE Franklin Street would enhance privacy and security without creating an unattractive, walled-off appearance. At the SE Franklin Street lot line, chain link fencing would allow views into the site and the gate would allow access for emergency vehicles (Exhibit C-1). The Police and Fire Bureaus reviewed the proposal and responded with no objections (Exhibits E-5 and E-4, respectively). As discussed in the findings for Conditional Use approval criterion E, above, pedestrians and bicyclists would have access to the site from SE Franklin Street through a "bike/pedestrian threshold."

For these reasons, staff finds the proposed Adjustment equally meets the purpose of the fence requirements in the R5 zone.

Maximum fence height within the minimum building setback from SE Powell Boulevard

The southern portion of the site is zoned R1 and abuts SE Powell Boulevard. For zoning purposes, this street frontage is the other front lot line for the site. In the R1 zone, Zoning Code Section 33.120.285.C limits fence height within the minimum building setback from a front lot line to 3.5 feet. The proposed Adjustment would increase the maximum fence height within the minimum building setback from SE Powell Boulevard to 8 feet.

The purpose of the fence requirements in the R1 zone is stated in Zoning Code Section 33.120.285.A:

*The fence standards promote the positive benefits of fences without negatively impacting the community or endangering public or vehicle safety. Fences can create a sense of privacy, protect children and pets, provide separation from busy streets, and enhance the appearance*

*of property by providing attractive landscape materials. The negative effects of fences can include the creation of street walls that inhibit police and community surveillance, decrease the sense of community, hinder emergency access, lessen solar access, hinder the safe movement of pedestrians and vehicles, and create an unattractive appearance. These standards are intended to promote the positive aspects of fences and to limit the negative ones.*

This Adjustment would allow an 8-foot-tall metal fence connecting the southeast corner of the school building to the east lot line (Exhibit C-1). The fence would be constructed at an angle from the street and would be set back between 7 feet and 10 feet from the south lot line. At 36 feet in length, this fence would enclose only a small portion of the 375-foot-wide front building setback area along SE Powell Boulevard. A large majority of the front building setback area would be open and unenclosed, with attractive landscaping and pedestrian walkways accessible from the public sidewalk. The Adjustment would not prevent access to the site for police or emergency services, and the Police and Fire Bureaus raised no concerns about the Adjustment (Exhibits E-5 and E-4, respectively). The metal fence would not be fully sight-obscuring, so the Adjustment would not promote a "street wall" appearance.

For these reasons, staff finds the proposed Adjustment equally meets the purpose of the fence requirements in the R1 zone.

#### Summary

Since staff finds that each of the proposed Adjustments equally meets the purpose of the regulation to be modified, staff finds criterion A is met.

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

**Findings:** Since the site is zoned residential, the applicant must demonstrate that the proposal would not significantly detract from the livability or appearance of the residential area. As discussed in the findings for the Conditional Use Review, above, the proposal would be compatible with the residential neighborhood and would not create significant livability impacts.

The school building would have an attractive design, with angled, articulated façades and variations in siding materials. Placing the building near the south lot line, abutting SE Powell Boulevard, allows greater setbacks than required from the other lot lines, which abut local residential streets and residential lots. At the same time, the wide right-of-way for SE Powell Boulevard would provide ample separation between the school and properties south of the site.

For these reasons, staff finds approval criterion B is met.

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

**Findings:** The site is within three different zoning districts: the R1 multi-dwelling residential zone, the R2 multi-dwelling residential zone, and the R5 single-dwelling residential zone.

The purpose of multi-dwelling residential zones such as R1 and R2 is stated in Zoning Code Section 33.120.010:

*The multi-dwelling zones are intended to preserve land for urban housing and to provide*

*opportunities for multi-dwelling housing.*

- A. *Use regulations. The use regulations are intended to create and maintain higher density residential neighborhoods. At the same time, they allow for large scale institutional campuses and other nonresidential uses but not to such an extent as to sacrifice the overall residential neighborhood image and character.*
- B. *Development standards. The six multi-dwelling zones are distinguished primarily by density and development standards. The development standards work together to create desirable residential areas by promoting aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities. The development standards generally assure that new development will be compatible with the City's character. At the same time, the standards allow for flexibility for new development. In addition, the regulations provide certainty to property owners, developers, and neighbors about the limits of what is allowed. The development standards are generally written for development on flat, regularly shaped lots. Other situations are addressed through special standards or exceptions.*

The purpose of single-dwelling residential zones such as R5 is stated in Zoning Code Section 33.110.010:

*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.*

- A. *Use regulations. The use regulations are intended to create, maintain and promote single-dwelling neighborhoods. They allow for some non-household living uses but not to such an extent as to sacrifice the overall image and character of the single-dwelling neighborhood.*
- B. *Development standards. The development standards preserve the character of neighborhoods by providing six different zones with different densities and development standards. The development standards work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities. The site development standards allow for flexibility of development while maintaining compatibility within the City's various neighborhoods. In addition, the regulations provide certainty to property owners, developers, and neighbors about the limits of what is allowed. The development standards are generally written for houses on flat, regularly shaped lots. Other situations are addressed through special regulations or exceptions.*

The purpose statements above allow for nonresidential uses such as schools as long as the overall image and character of the residential neighborhood are maintained. As discussed in the findings for Conditional Use Review approval criterion A, above, this proposal would not significantly lessen the residential appearance and function of the area. The subject site has been developed with a school for many years, and no expansion of the site area is proposed. The site design is sensitive to the residential neighborhood, concentrating the bulk of the building near the abutting arterial street and further than required from local residential streets and single-dwelling residential lots. Additionally, the school's pathways and recreation areas would be accessible to neighbors outside of school hours, creating new recreational opportunities for the neighborhood.



The school building would have an attractive design, with angled, articulated façades and variations in siding materials. Abundant trees are proposed throughout the property, promoting an attractive campus that is compatible with the neighborhood's residential character. The trees would also help maintain neighbors' privacy and promote energy conservation. The Police and Fire Bureaus reviewed the Adjustment proposals and raised no concerns about safety impacts (Exhibits E-5 and E-4, respectively).

For these reasons, staff finds the cumulative effect of the Adjustments would result in a project that is consistent with the overall purpose of the residential zoning designations. Staff finds approval criterion C is met.

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

**Findings:** City-designated scenic resources are identified on the official zoning maps with a lower case "s," and historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. As there are no scenic or historic resource designations mapped on the subject site, this criterion is not applicable.

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

**Findings:** The proposed Adjustments are discussed separately below:  
Minimum building setback from the south lot line

The south lot line abuts SE Powell Boulevard, an arterial road with a 112-foot-wide right-of-way. For this reason, staff finds constructing part of the new building less than 20 feet from the south lot line would not create negative impacts that require mitigation. There would still be ample separation between the school building and properties south of the site.

Maximum building length within 30 feet of the south lot line

Staff finds the building design effectively mitigates impacts from increasing the allowable building length near the south lot line. The portion of the south façade subject to this Adjustment would be at an angle from the street, with the façade receding from the street as viewed from right to left. This façade would have variations in siding materials and generously-sized windows. These features of the building design would increase visual interest, helping to break up the façade area and reduce the perception of bulk.

Minimum façade percentage within the maximum building setback from the south lot line

Decreasing the width of the façade within 20 feet of the south lot line from 50% to 48% is a small reduction that would not be readily apparent to passers-by. Approximately half the south façade would appear to be near the transit street, as intended by the standard. Therefore, staff finds this Adjustment would not create negative impacts that require mitigation.

Landscaping buffers on the north and south sides of the parking lot

Staff finds the distances between the proposed parking lot and the north and south lot lines (428 feet and 180 feet, respectively) make landscaping buffers immediately adjacent to the north and south sides of the parking lot unnecessary. Trees distributed throughout the site would still soften the view of the parking area and provide various other benefits. Therefore, staff finds this Adjustment would not create negative impacts that require mitigation.

#### Maximum fence height within the minimum building setback from SE Franklin Street

The small portion of the east lot line abutting SE Franklin Street is technically a front lot line for zoning purposes, but this area would not look or function like a “front” for the school campus. Given this context, staff finds the Adjustment to allow 6-foot-tall fencing in this area would not create negative impacts that require mitigation.

#### Maximum fence height within the minimum building setback from SE Powell Boulevard

The 8-foot-tall fence subject to this Adjustment would be only 36 feet long, connecting the southeast corner of the school building to the east lot line. This fence would enclose only a small part of the 375-foot-wide building setback area along SE Powell Boulevard. Staff finds this Adjustment would not create negative impacts that require mitigation.

#### Summary

For the reasons discussed above, staff finds approval criterion E is met.

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

**Findings:** Environmental overlay zones are designated on the official zoning maps with either a lowercase “p” (Environmental Protection overlay zone) or a “c” (Environmental Conservation overlay zone). As there are no environmental overlay zones mapped on site, this criterion is not applicable.

### **DEVELOPMENT STANDARDS**

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all requirements of Title 11 can be met, and that all development standards of Title 33 can be met or have received an Adjustment or Modification via a land use review, prior to the approval of a building or zoning permit.

### **CONCLUSIONS**

The proposal for a new Kellogg Middle School would not significantly lessen the residential appearance and function of the area, as the subject site was already developed with a school for many years. Differences in appearance and scale with neighboring residential development would be mitigated with the proposed building setbacks, building design, and landscaping plan. The proposal would not cause significant, adverse impacts on the livability of the neighborhood. The transportation system and other public services are adequate to support the proposal, and the proposal is consistent with the South Tabor Neighborhood Plan and the Outer Southeast Community Plan.

The proposed Adjustments would be consistent with the purposes of the standards to be modified. The Adjustments would not significantly detract from the livability or appearance of the neighborhood or from the overall purpose of the zoning designations which apply to the site.

Staff finds that each of the applicable approval criteria are met or can be met with conditions of approval. Therefore, staff recommends approval of the proposal with the conditions of approval listed below.

**TENTATIVE STAFF RECOMMENDATION**

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

**Approval** of a Conditional Use Review for a new Kellogg Middle School on the subject site, replacing the previous Conditional Use Review approvals for the site; and

**Approval** of the following Adjustments:

- Reduce the minimum building setback from the south lot line from 20 feet to 10 feet (Zoning Code Section 33.120.275.C);
- Increase the maximum building length within 30 feet of the south lot line from 100 feet to 159 feet (Zoning Code Section 33.120.230.B);
- Reduce the minimum percentage of the south facade which must be within 20 feet of the south lot line from 50% to 48% (Zoning Code Section 33.120.220.C);
- Waive the required 5-foot-wide landscaping buffers on the north and south sides of the parking lot west of the school building (Zoning Code Section 33.266.130.G.2);
- Increase the maximum height of a fence within the minimum building setback from the SE Franklin Street lot line from 3.5 feet to 6 feet (Zoning Code Section 33.110.255.C); and
- Increase the maximum height of a fence within the minimum building setback from the SE Powell Street lot line from 3.5 feet to 8 feet (Zoning Code Section 33.120.285.C).

all per the approved plans, Exhibits C-1 through C-3, and subject to the following conditions of approval:

- A. As part of the building permit application submittal, each of the required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C-1 through C-3. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 18-169865 CU AD."
- B. The minimum long-term bike parking requirement for the site is 128 bike parking spaces.
- C. Prior to occupancy of the new school, the applicant must obtain approval from the Portland Bureau of Transportation of a final Transportation Demand Management Plan. The Transportation Demand Management Plan must include measures to promote alternative modes of transportation such as transit, bicycling, carpooling, and walking. Once approved by the Portland Bureau of Transportation, the Transportation Demand Management Plan must be continually implemented.
- D. Prior to occupancy of the new school, the Portland Bureau of Transportation must approve the sight distance at any new or modified access points. The sight distance at new or modified access points must be documented and stamped by a registered professional Civil or Traffic Engineer licensed in the State of Oregon.

**Procedural Information.** The application for this land use review was submitted on May 11, 2018 and was determined to be complete on October 18, 2018.

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 May 11, 2018.

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 extended the 120-day review

period by 245 days (Exhibit A-2). **With this extension, the 120 days will expire on October 18, 2019.**

**Some of the information contained in this report was provided by the applicant.**

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

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

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

**This report is not a decision. The review body for this proposal is the Hearings Officer who will make the decision on this case.** This report is a recommendation to the Hearings Officer by the Bureau of Development Services. The review body may adopt, modify, or reject this recommendation. The Hearings Officer will make a decision about this proposal within 17 days of the close of the record. Your comments to the Hearings Officer can be mailed c/o the Hearings Officer, 1900 SW 4<sup>th</sup> Ave., Suite 3100, Portland, OR 97201 or faxed to 503-823-4347.

You will receive mailed notice of the decision if you write a letter received before the hearing or testify at the hearing, or if you are the property owner or applicant. This Staff Report will be posted on-line at <https://www.portlandoregon.gov/bds/35625>. Land use reviews are listed by the District Coalition shown at the beginning of this document. You may review the file on this case at the Development Services Building at 1900 SW 4<sup>th</sup> Ave., Suite 5000, Portland, OR 97201.

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

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

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

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

**Recording the final decision.** If this Land Use Review is approved the final decision will be recorded with the Multnomah County Recorder. The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder.

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

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

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

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

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

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

Planner's Name: Andrew Gulizia  
Date: November 21, 2018

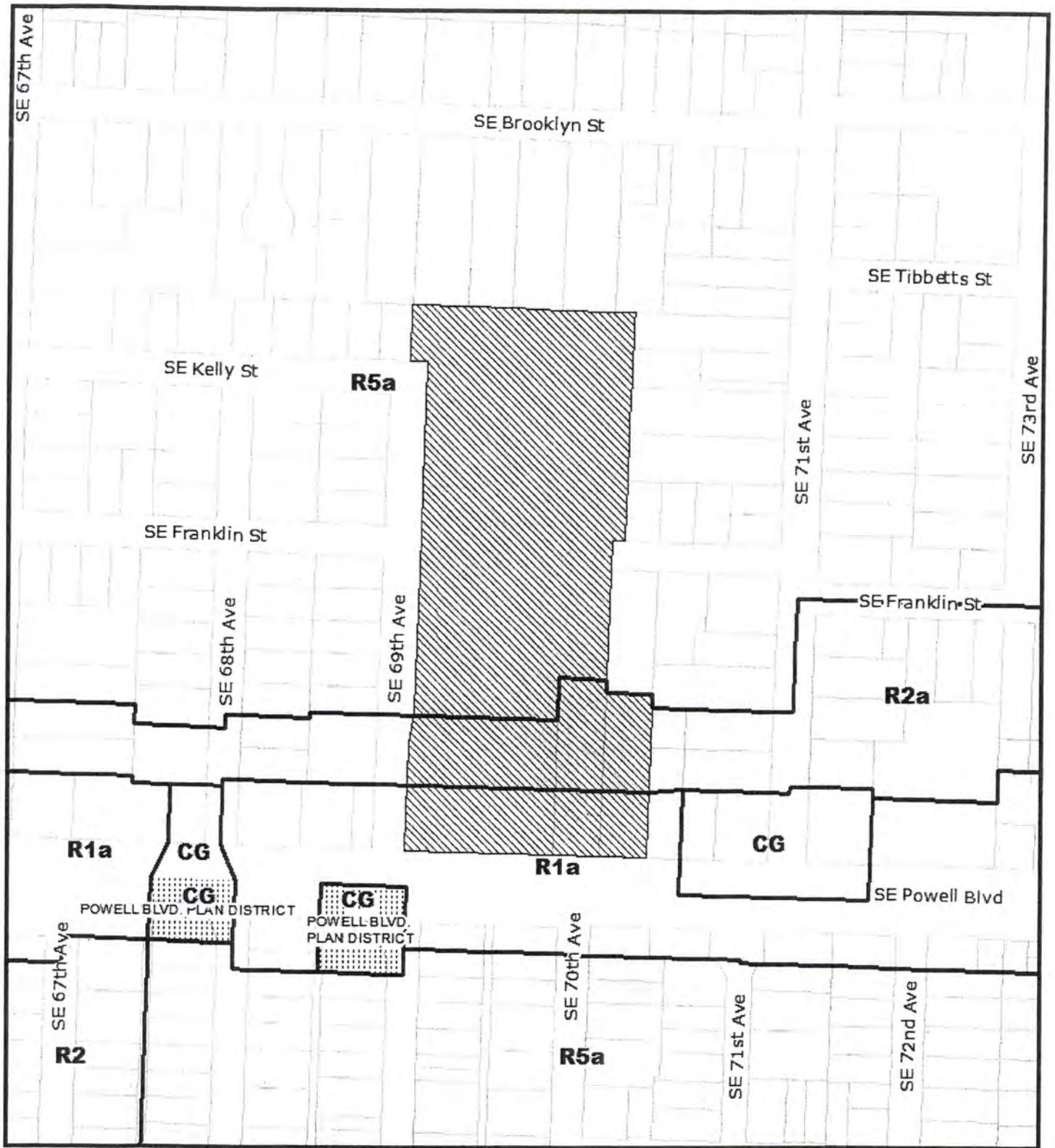
#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement:
1. Original narrative
  2. Request for evidentiary hearing and waiver of right to decision within 120 days
  3. Original transportation impact analysis
  4. Appendix to original transportation impact analysis
  5. Stormwater management report
  6. Geotechnical report
  7. Context photograph
  8. Oil tank and infiltration facilities plan
  9. Original plan set, prior to revisions
  10. Resubmittal cover letter, dated October 18, 2018
  11. Revised narrative
  12. Revised transportation impact analysis

13. Appendix to revised transportation impact analysis
  14. Letter from applicant re: building length adjustment, dated October 24, 2018
  15. Letter from applicant re: fence height adjustment, dated October 26, 2018
  16. Letter from applicant re: stormwater, bike parking, and landscaping details, dated November 7, 2018
  17. Revised stormwater management report
  18. Enrollment information from previous Kellogg Middle School
  19. Floor area ratio diagrams
  20. Color renderings of proposed building
  21. Garbage and recycling area view angles diagram
  22. Storm drainage and grading plan
  23. Utility plan
  24. Tree plan
  25. Letter from applicant re: pedestrian and bicycle access to the site, dated November 16, 2018
- B. Zoning Map (attached)
- C. Plans/Drawings:
1. Site plan (attached)
  2. Building elevations (attached)
  3. Landscaping plan (attached)
- D. Notification Information:
1. Request for Response
  2. Posting letter sent to applicant
  3. Applicant's statement certifying posting
  4. Mailing list for Notice of Public Hearing
  5. Mailed Notice of Public Hearing
- E. Agency Responses:
1. Bureau of Environmental Services
  2. Portland Bureau of Transportation
  3. Water Bureau
  4. Fire Bureau
  5. Police Bureau
  6. Site Development Review Section of BDS
  7. Life Safety Review Section of BDS
  8. Bureau of Parks, Urban Forestry Division
- F. Correspondence:
1. Letter from South Tabor Neighborhood Association, dated November 15, 2018
- G. Other:
1. Land use application form and receipt
  2. Incompleteness determination letter, dated June 1, 2018
- H. Hearing exhibits

**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

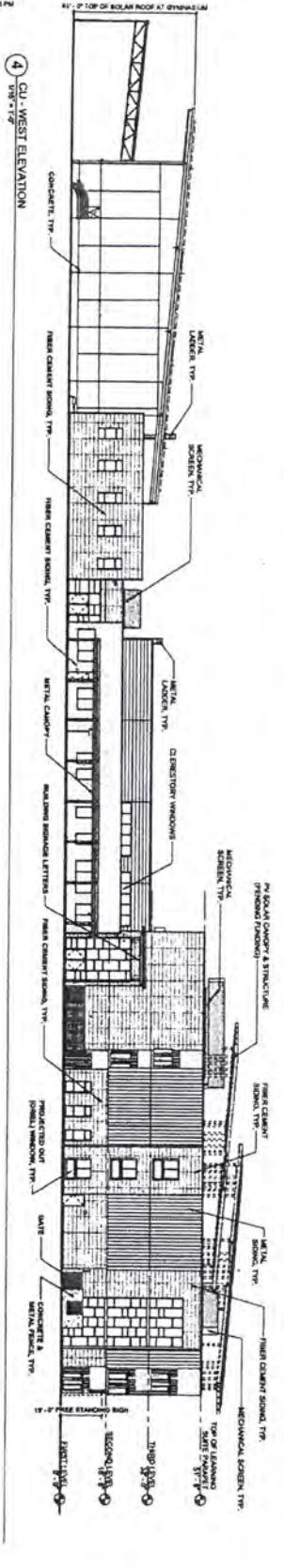
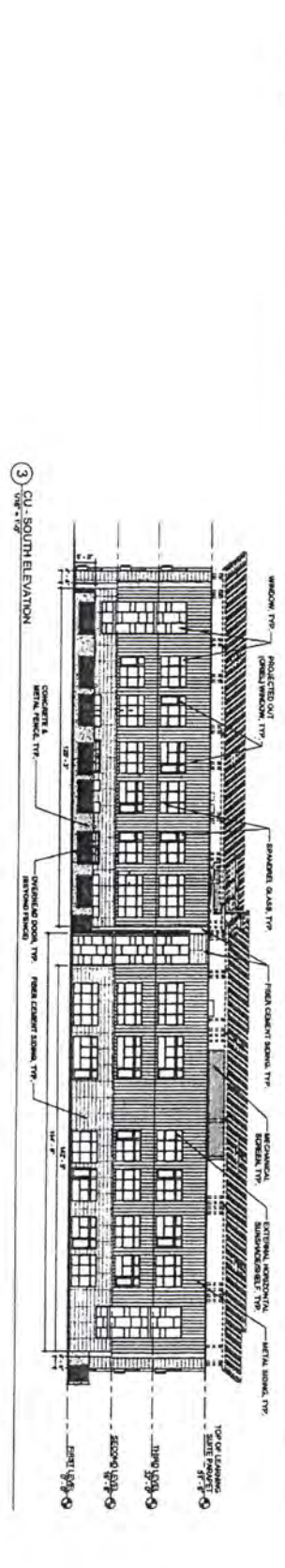
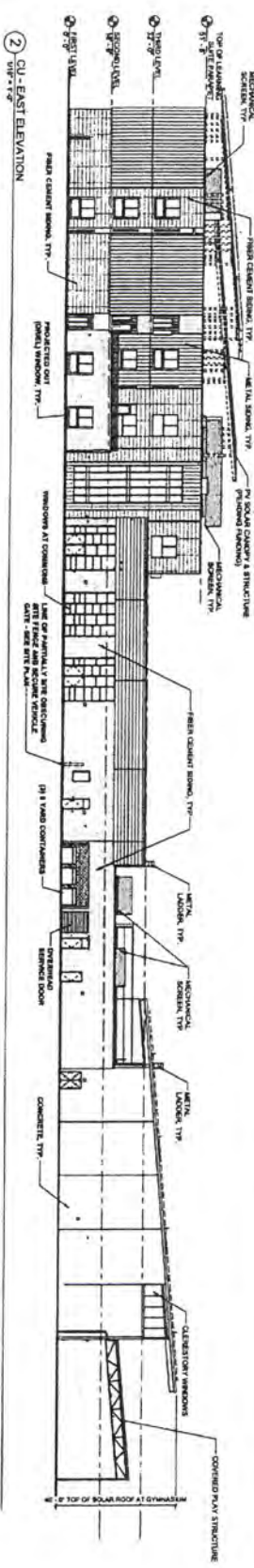
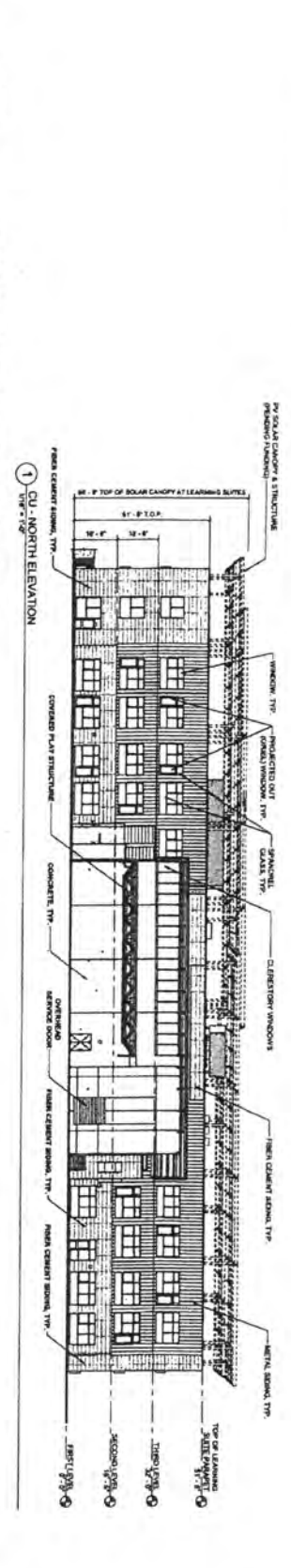
 Site

File No.	LU 18-169865 CU AD
1/4 Section	3337
Scale	1 inch = 200 feet
State ID	1S2E08BD 9200
Exhibit	B May 15, 2018





These drawings are prepared by the architect and are subject to change without notice. The contractor shall be responsible for verifying the accuracy of the information provided by the owner.



KELLOGG MIDDLE SCHOOL

Oh

DATE: 11/18/18  
 DRAWN BY: [Name]  
 CHECKED BY: [Name]  
 APPROVED BY: [Name]

KELLOGG MIDDLE SCHOOL  
 3330 SE 69TH AVE.  
 PORTLAND, OR 97206

CONDITIONAL USE DOCUMENTS  
 2118-169865 CU AD

Exhibit C-2

NOT FOR CONSTRUCTION

DATE	11/18/18
PROJECT	KELLOGG MIDDLE SCHOOL
OWNER	PPS
ARCHITECT	[Name]
DATE	11/18/18
BY	[Name]

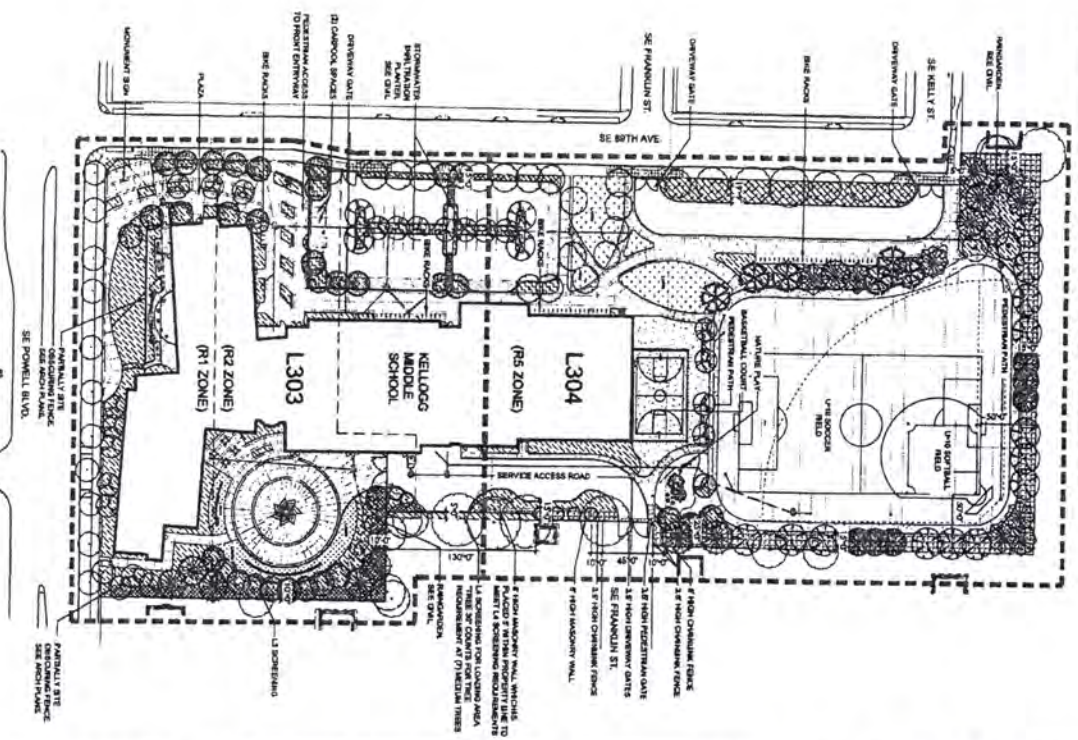
EXTERIOR ELEVATIONS

CU-102

CONDITIONAL USE DOCUMENTS

**GENERAL NOTES**

1. SEE CITY OF PORTLAND LAND USE AND ZONING CODE, SECTION 23.02 FOR ZONING REGULATIONS AND CITY TREE PLAN.
2. SEE CITY OF PORTLAND LAND USE AND ZONING CODE, SECTION 23.02 FOR ZONING REGULATIONS AND CITY TREE PLAN.
3. SEE CITY OF PORTLAND LAND USE AND ZONING CODE, SECTION 23.02 FOR ZONING REGULATIONS AND CITY TREE PLAN.
4. SEE CITY OF PORTLAND LAND USE AND ZONING CODE, SECTION 23.02 FOR ZONING REGULATIONS AND CITY TREE PLAN.



01 LANDSCAPE AREA AND TREE PLAN  
SCALE: 1" = 40'-0"

**LEGEND**

	CONCRETE PAVING WITH CONTROL JOINTS		PROPERTY LINE
	ASPHALT PAVING		BRICKWORK
	NATURAL GRASS FIELD		BARE SOIL
	ARTIFICIAL PLANT TYPE		8' HIGH MASONRY WALL
	RETAINED LAWN AREA		37' HIGH CHAIN-LINK FENCE
	PERMEABLE PAVERS		8' HIGH CHAIN-LINK FENCE
	PROPOSED TREES		8' HIGH CHAIN-LINK FENCE
	EXISTING TREES TO REMAIN		8' HIGH CHAIN-LINK FENCE
	EXISTING TREES TO BE REMOVED		8' HIGH CHAIN-LINK FENCE
	NATURAL BOLDER RETAINING		8' HIGH CHAIN-LINK FENCE
	COVERED PLAY AREA		8' HIGH CHAIN-LINK FENCE
	FRESHWATER RUN		8' HIGH CHAIN-LINK FENCE

**LANDSCAPE AREA LEGEND**

	P1 INTERIM PAVING (P1.1) (2,128 S.F.)		L1-1 GENERAL SITE PLANTING (2,128 S.F.)
	L1-1 LOW PRESCRIBED VEGETATIVE SCREENING (7,128 S.F.)		L1-1 LAWN AREAS (8,432 S.F.)
	L1-1 INSTITUTIONAL (1,296 S.F.)		L1-1 NATURAL GRASS SPORTS FIELDS (9,128 S.F.)
	L1-1 LOADING AREA SCREENING (711 S.F.)		L1-1 PERMEABLE SCREENING (2,128 S.F.)

**LANDSCAPE REQUIREMENTS** Overall Area: 31,200 S.F.

MINIMUM LANDSCAPE REQUIREMENT	Overall Area
Interim Paving (P1.1)	2,128 S.F.
Low Prescribed Vegetative Screening	7,128 S.F.
Institutional	1,296 S.F.
Loading Area Screening	711 S.F.
General Site Planting	2,128 S.F.
Lawn Areas	8,432 S.F.
Natural Grass Sports Fields	9,128 S.F.
Permeable Screening	2,128 S.F.
<b>Total Landscaping Area</b>	<b>31,200 S.F.</b>

**TREE REQUIREMENTS**

TREE DIVERSITY REQUIREMENT	Overall Area
Tree Diversity Requirement	31,200 S.F.
Tree Density Calculations	31,200 S.F.
Existing Trees	31,200 S.F.
Proposed Trees	31,200 S.F.
<b>Total Tree Density</b>	<b>31,200 S.F.</b>

- NOTES**
1. SEE CITY OF PORTLAND LAND USE AND ZONING CODE, SECTION 23.02 FOR ZONING REGULATIONS AND CITY TREE PLAN.
  2. SEE CITY OF PORTLAND LAND USE AND ZONING CODE, SECTION 23.02 FOR ZONING REGULATIONS AND CITY TREE PLAN.
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  7. SEE CITY OF PORTLAND LAND USE AND ZONING CODE, SECTION 23.02 FOR ZONING REGULATIONS AND CITY TREE PLAN.
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  19. SEE CITY OF PORTLAND LAND USE AND ZONING CODE, SECTION 23.02 FOR ZONING REGULATIONS AND CITY TREE PLAN.
  20. SEE CITY OF PORTLAND LAND USE AND ZONING CODE, SECTION 23.02 FOR ZONING REGULATIONS AND CITY TREE PLAN.

**CONDITIONAL USE PACKAGE**

**L302**

LANDSCAPE AREA AND TREE PLAN

**NOT FOR CONSTRUCTION**

**KELLOGG MIDDLE SCHOOL**  
3330 SE 69TH AVE.  
PORTLAND, OR 97206

**CONDITIONAL USE PACKAGE**

**ecOTONE**

**Oh**

**PPS**

CU AD Exhibit C-3 (p 1 of 4)

Table titled 'TREE SCHEDULE' containing columns for SYMBOL, BOTANICAL NAME, COMMON NAME, SIZE, CONDITION, and QUANTITY. It lists various tree species like Quercus, Picea, and Thuja with their respective quantities.

Table titled 'SHRUB SCHEDULE' and 'GROUND COVER/GRASS SCHEDULE' containing columns for SYMBOL, BOTANICAL NAME, COMMON NAME, SIZE, CONDITION, and QUANTITY. It lists various shrub and ground cover species like Euonymus, Ligustrum, and various grasses.

NOTES

- List of notes regarding tree spacing, protection, and removal. Includes instructions on minimum spacing, protective barriers, and requirements for tree removal and replacement.

TREE DIVERSITY

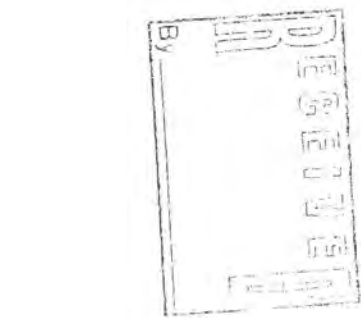
- Notes regarding tree diversity requirements, including species counts and minimum percentages for different tree types.

PLANT DIVERSITY

- Notes regarding plant diversity requirements, including species counts and minimum percentages for different plant types.

GENERAL NOTES

- General notes regarding construction, materials, and site preparation. Includes notes on soil erosion control, vegetation protection, and site cleanup.



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3330 SE 69TH AVE.  
PORTLAND, OR 97206  
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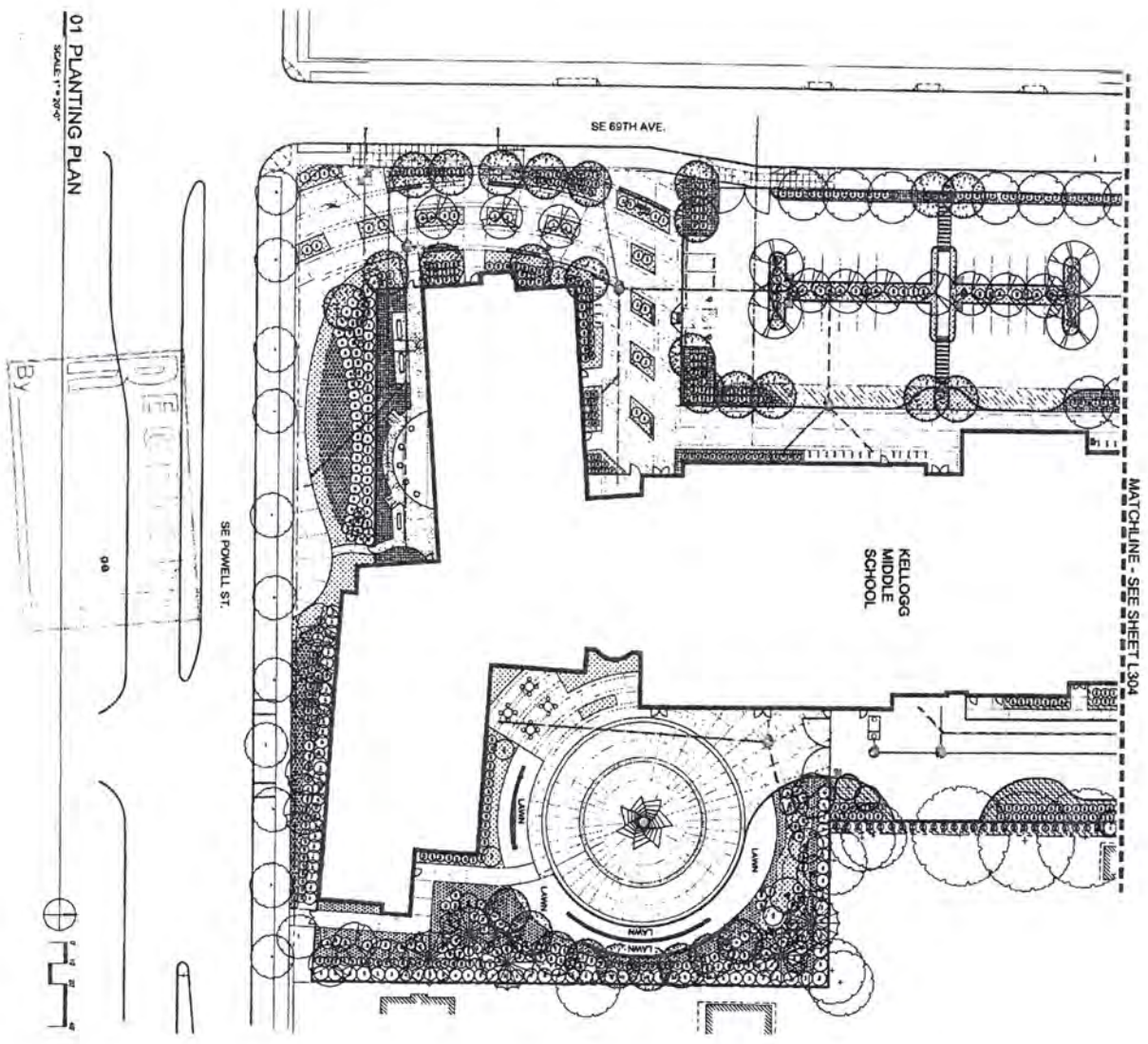
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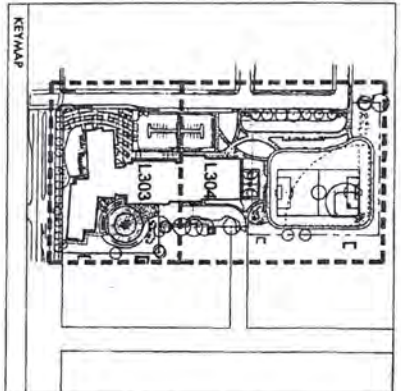
PLANTING LEGEND AND NOTES

These drawings were prepared by the undersigned for the purpose of showing the general character of the proposed work and are not to be construed as a contract. The contractor shall be responsible for the accuracy of the field data and for the proper interpretation of the same. The contractor shall also be responsible for the proper interpretation of the drawings and for the proper execution of the work. The contractor shall also be responsible for the proper interpretation of the drawings and for the proper execution of the work.



- GENERAL NOTES**
1. FOR PROPOSED TREES AND PLANT LIST, SEE SHEET L304.
  2. FOR TREES TO BE PROTECTED AND REMOVED, SEE SHEET L304.
  3. SEE CIVIL DRAWINGS FOR EXISTING AND PROPOSED UTILITY LINES, AND NEW UTILITY PLANS.
  4. SEE ELECTRICAL DRAWINGS FOR THE LIGHTING AND ELECTRICAL UTILITY PLAN.
  5. FOR THE PROTECTION/REMOVAL PLAN, SEE SHEET L304.
  6. TREE SURVEY DATA, AS SHOWN ON ATTACHED SHEET OF PROPOSED TREES AND EXISTING TREES TO BE REMOVED.
  7. SMALL TREES ARE PROPOSED AT 7' O.C., MEDIUM TREES AT 10' O.C., AND LARGE TREES AT 15' O.C.
  8. INTERIOR FINISHING FOR RECONSTRUCTION SHALL BE ACCORDING TO THE CITY OF PORTLAND PLANNING DEPARTMENT'S A LAMINATED FINISHING SYSTEM AND CONSTRUCTION TO COVER THE EXISTING AREA.
  9. ALL LAMINATED EQUIPMENT SHALL BE CONFORMED TO THE CITY OF PORTLAND PLANNING DEPARTMENT'S A LAMINATED FINISHING SYSTEM AND CONSTRUCTION TO COVER THE EXISTING AREA.
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01 PLANTING PLAN  
SCALE: 1/8" = 1'-0"  
By [Signature]

PLANTING PLAN  
L304  
CONDITIONAL USE PACKAGE

**NOT FOR CONSTRUCTION**

KELLOGG MIDDLE SCHOOL  
3330 SE 69TH AVE.  
PORTLAND, OR 97206

CONDITIONAL USE PACKAGE

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PPS

KELLOGG MIDDLE SCHOOL

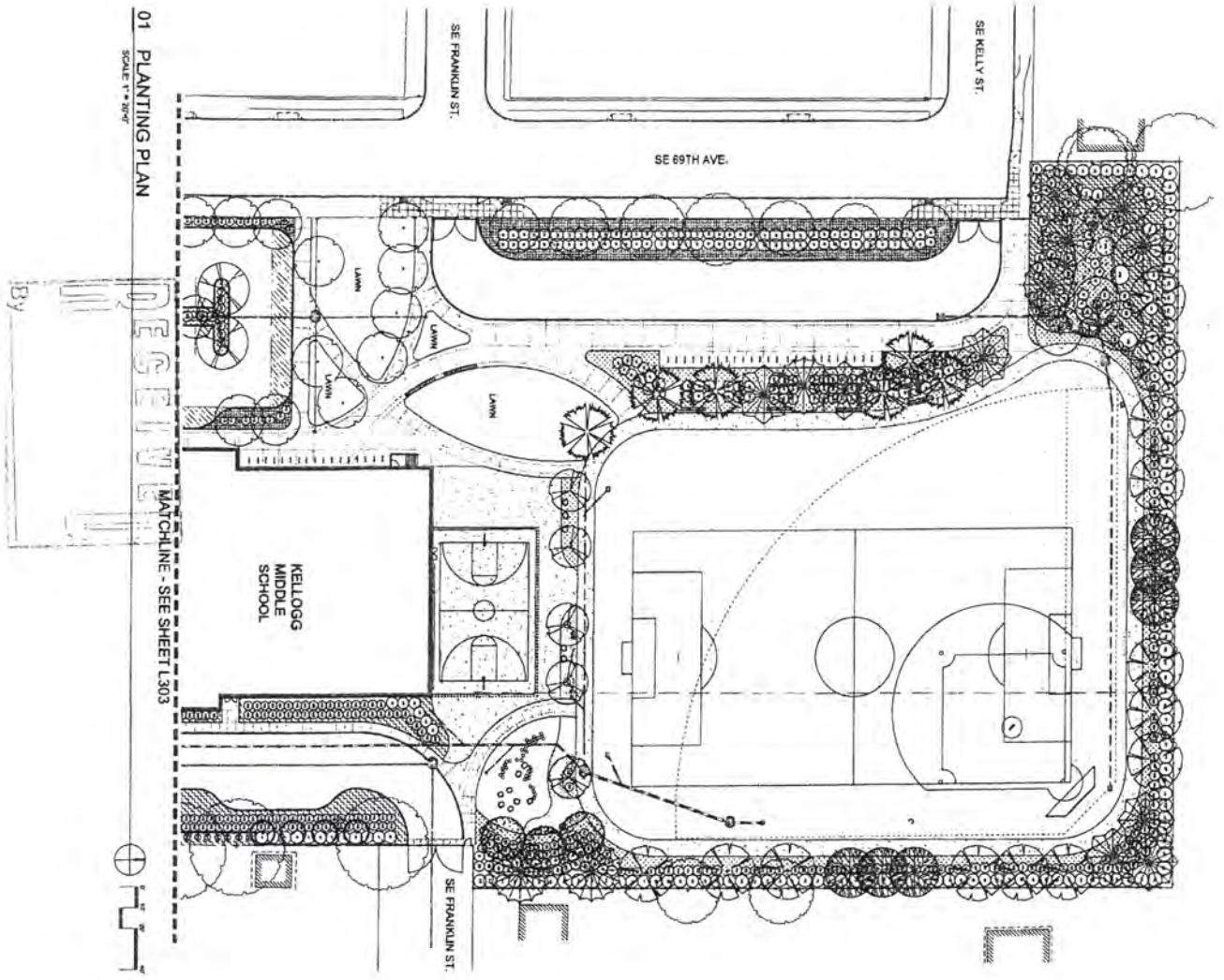
L304

1/8" = 1'-0"

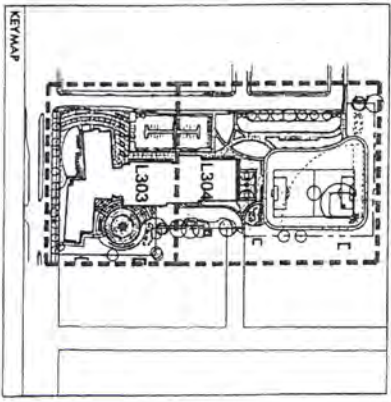
1/8" = 1'-0"

1/8" = 1'-0"

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01 PLANTING PLAN  
SCALE: 1" = 30'-0"



- NOTES**
1. SEE DIST. DRAWINGS FOR EXTERIOR OF ALL CHANGING, UTILITY, AND OTHER VERTICAL SURFACES.
  2. SEE ELECTRICAL DRAWINGS FOR SITE LIGHTING AND ELECTRICAL UTILITIES.
  3. FURNISH TREE PROTECTION BARRIERS, 4" x 4" x 36" TYP.
  4. TREE SIZE 1" CALIBER AND UNDER SHALL BE PLANTED IN 12" DIA. TRUNK GUARD RINGS AND BARRIERS SHALL BE PLACED AT 18" DIA. SPACING.
  5. SMALL TREES ARE PROPOSED AT 18" DIA. SPACING. TREES 27" C.D. AND LARGER TREES 36" C.D. CENTER.
  6. INTERIOR PLANTING LOT RECOMMENDATIONS INCLUDING 11" LAMBS, TREE RINGS AND PLANTING PANELS. ALTERNATE OFFERS TO BE SUBMITTED BY 11/15/2011. TREE RINGS TO BE PLACED AT 18" DIA. SPACING.
  7. ALL MECHANICAL EQUIPMENT SHALL BE REFERENCED TO THE L3 ON P22 DRAWING.
  8. ALL LOW VOLTAGE RECOMMENDATIONS SHALL BE REFERENCED TO THE L3 ON P22 DRAWING.
  9. ALL HIGH VOLTAGE RECOMMENDATIONS SHALL BE REFERENCED TO THE L3 ON P22 DRAWING.
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  13. ALL MECHANICAL EQUIPMENT SHALL BE REFERENCED TO THE L3 ON P22 DRAWING.
  14. STORMWATER FACILITIES SHALL BE PLACED ACCORDING TO THE CITY OF PORTLAND RES SPECIFICATIONS.

CONDITIONAL USE PACKAGE  
**L305**

PLANTING PLAN

NOT FOR CONSTRUCTION

KELLOGG MIDDLE SCHOOL  
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CONDITIONAL USE PACKAGE

**ecotone**  
1234 5th Ave, NE  
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503.255.1234  
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