



City of Portland  
**Bureau of Development Services**  
Land Use Services Division

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**Date:** June 9, 2008  
**To:** Interested Person  
**From:** Stephanie Beckman, Land Use Services  
503-823-7056 / BeckmanS@ci.portland.or.us

**NOTICE OF A TYPE II<sub>x</sub> DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD**

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

**CASE FILE NUMBER: LU 07-157763 LDS**

**GENERAL INFORMATION**

**Applicant:** Bonnie and Timothy Vaughan  
14309 SE Foster Rd  
Portland, OR 97236-4465

**Representative:** Planning Resources 503-684-1020  
7160 SW Fir Loop, Suite 201  
Portland, OR 97223

**Site Address:** 14309 SE Foster Rd  
**Legal Description:** TL 600 LOT 10, JOHNSON CREEK PK  
**Tax Account No.:** R431102100 **State ID No.:** 1S2E13CC 00600  
**Quarter Section:** 3645  
**Neighborhood:** Pleasant Valley, contact Linda Bauer at 503-761-2941.  
**District Coalition:** East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550.

**Plan District:** Johnson Creek Basin  
**Zoning:** R5 – Residential 5,000  
**Case Type:** LDS – Land Division Subdivision  
**Procedure:** Type IIX, an administrative decision with appeal to the Hearings Officer.

**Proposal:**

The applicant is proposing to divide the existing site into five lots, a private street tract, an open space tract and a stormwater tract. A public pedestrian connection will also be dedicated at the northern edge of the property. The lots available for future residential development would range in size from 3,109 square feet to 4,225 square feet. The 32,123 square foot open space tract encompasses the northeast half of the site that lies within the 100-year floodplain. The stormwater tract will measure 614 square feet. A 17-foot wide private street tract is proposed to provide frontage and access for the existing home to remain on Lot 1 and future development on Lot 5. A shared private driveway is proposed to provide access for lots 2 and 3. Lot 4 will be accessed separately from a private driveway. An arborist report has been provided and two trees are recommended for protection.

**Relevant Approval Criteria:**

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

This partition proposal is reviewed through a Type IIX procedure because: (1) the site is in a residential zone; (2) four to ten dwelling units are proposed, not including accessory dwelling units; and (3) the site is located within a Flood Hazard Area (see 33.660.110). For purposes of State Law, this land division is considered a subdivision. To subdivide land is to divide an area or tract of land into four or more lots within a calendar year (See ORS 92.010).

**ANALYSIS**

**Site and Vicinity:** The site is relatively flat and rectangular and is currently occupied by a single dwelling residence and a shed. The site was once in agricultural use and is now primarily open grassy and marshy areas. The marshy areas occupy the northeastern portion of the site, which is located within the flood hazard area. The flood hazard area extends southeast beyond the marshy areas and covers approximately two thirds of the site. The existing home is located in the southwestern corner of the property, outside of the flood area. A gravel drive provides access to the house and the shed, located to the rear of the house. A gravel parking area is located in the area to the rear of the house and around the shed. There are also several trees scattered throughout the site and near the existing house.

The subject site is located in an area of the city that is a mix of suburban development and open space. To the south and east are developments consisting of single family homes. Areas to the north and east of the site are open space. Farther to the northeast is the Powell Butte Nature Preserve. The site is also located in the vicinity of Johnson Creek.

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

The Johnson Creek Basin plan district provides for the safe, orderly, and efficient development of lands which are subject to a number of physical constraints, including significant natural resources, steep and hazardous slopes, flood plains, wetlands, and the lack of streets, sewers, and water services. The floodplain standards of 33.537.150 apply to the site.

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

**Agency and Neighborhood Review:** A Notice of Proposal in your Neighborhood was mailed on **December 7, 2008.**

**1. Agency Review: Several** Bureaus and agencies have responded to this proposal. Please see Exhibits E for details. The comments are addressed under the appropriate criteria for review of the proposal.

**2. Neighborhood Review:** No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

## ZONING CODE APPROVAL CRITERIA

### APPROVAL CRITERIA FOR LAND DIVISIONS IN OPEN SPACE AND RESIDENTIAL ZONES

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

The relevant criteria are found in Section **33.660.120 [A-L], Approval Criteria for Land Divisions in Open Space and Residential Zones**. Due to the specific location of this site, and the nature of the proposal, some of the criteria are not applicable. The following table summarizes the applicability of each criterion.

Criterion	Code Chapter	Topic	Applicability Findings
A	33.610	Lots	<b>Applicable - See findings below</b>
B	33.630	Trees	<b>Applicable - See findings below.</b>
C	33.631	Flood Hazard Area	<b>Applicable - See findings below.</b>
D	33.632	Potential Landslide Hazard Area	Not applicable - The site is not within the potential landslide hazard area.
E	33.633	Phased Land Division or Staged Final Plat	Not applicable - A phased land division or staged final plat has not been proposed.
F	33.634	Recreation Area	Not applicable - This is not required where the proposed density is less than 40 units.
G	33.635 .100	Clearing and Grading	<b>Applicable - See findings below.</b>
G	33.635 .200	Land Suitability	<b>Applicable - See findings below.</b>
H	33.636	Tracts and Easements	<b>Applicable - See findings below.</b>
I	33.639	Solar Access	Not Applicable - Maintaining existing development on the site and floodplain constraints limit new parcel configuration (33.610.200 and 33.631 supercede 33.639).
J	33.640	Streams, Springs, and Seeps	Not applicable - No streams, springs, or seeps are evident on the site.
K	33.641	Transportation Impacts	<b>Applicable - See findings below</b>
L	33.651 - 33.654	Services and Utilities	<b>Applicable - See findings below</b>

#### Applicable Approval Criteria are:

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

**Findings:** Chapter 33.610 contains the density and lot standards applicable in the RF through R5 zones. These density and lot dimension standards ensure that lots are consistent with the desired character of each zone while allowing lots to vary in size and shape provided the planned intensity of each zone is respected.

Density Standards

Density standards match housing density with the availability of services and with the carrying capacity of the land in order to promote efficient use of land, and maximize the benefits to the public from investment in infrastructure and services. These standards promote development opportunities for housing and promote urban densities in less developed areas. Maximum densities ensure that the number of lots created does not exceed the intensity planned for the area, given the base zone, overlay zone, and plan district regulations. Minimum densities ensure that enough dwelling units can be developed to accommodate the projected need for housing.

The method used to calculate density depends on whether a street is created as part of the land division, and whether the site is subject to certain environmental constraints.

In this case, a street is proposed or required and the site is within the flood hazard area. Therefore, the maximum and minimum density for this site is as follows:

Minimum = (56,835 square feet – 34,828 square feet) \* .68 ÷ 5,000 square feet = 2.99 (which rounds up to a minimum of 3 lots, per 33.930.020.A)

Maximum = 56,835 square feet \* .85 ÷ 5,000 square feet = 9.66 (which rounds down to a maximum of 9 lots, per 33.930.020.B)

The applicant is proposing 5 lots. The density standards are therefore met.

Lot Dimensions

The lot dimension standards ensure that: (1) each lot has enough room for a reasonably-sized house and garage; (2) lots are of a size and shape that development on each lot can meet the development standards of the Zoning Code; (3) lots are not too large relative to the planned density; (4) each lot has room for at least a small, private outdoor area; (5) lots are compatible with existing lots; (6) lots are wide enough to allow development to orient toward the street; (7) lots don't narrow to an unbuildable width close to the street; (8) each lot has adequate access from the street; (9) each lot has access for utilities and services; and (10) lots are not landlocked.

The dimensions of the proposed lots as compared to the required lot dimension standards is shown in the following table (this information is found in Table 610-2 of the Zoning Code):

<b>R5 Zone Requirements</b>					
<b>Lot</b>	<b>Minimum Lot Area</b>	<b>Maximum Lot Area</b>	<b>Minimum Lot Width*</b>	<b>Minimum Front Lot Line</b>	<b>Minimum Lot Depth</b>
	<b>3,000 sf.</b>	<b>8,500 sf.</b>	<b>36 ft.</b>	<b>30 ft.</b>	<b>50 ft.</b>
1	4,225 sf.		43 ft.	43 ft.	106 ft.
2	3,937 sf.		36 ft.	36 ft.	110 ft.
3	3,126 sf.		36 ft.	36 ft.	86 ft.
4	3,109 sf.		52 ft.	52 ft.	60 ft.
5	3,455 sf.		29 ft.	17 ft.	63 ft.

\* Width is measured at the minimum front building setback line

Narrow Lots

Lot 5 is 29 feet wide – narrower than the minimum 36 feet for the R5 zone. Section 33.610.200.D of the Zoning Code allows narrower lots if the future development can meet

certain standards. The front lot line can also be reduced if the lot meets the following standards:

- **If the lot abuts an alley, then vehicle access is allowed only from the alley;**
- **If the lot does not have vehicle access from an alley, then there must be at least 15 contiguous feet of uninterrupted curb space on the abutting street for each lot being created under these provisions (lots that abut a pedestrian connection or common green are exempt from this standard).**
- **Lots must be configured so that at the time of development the length of the garage wall will be no more than 50% of the length of the street facing building façade.**
- **Lots that will be developed with attached houses must be configured so that 60 percent of the area between the front lot line and the front building line can be landscaped at the time of development;**
- **When a driveway is proposed to provide vehicle access to more than two lots, it must be an alley; and**

The applicant has demonstrated that Lot 5 can meet the narrow lot standards for the following reasons:

***Alley access:***

- The site does not have access from an alley, so this standard does not apply.

***Uninterrupted curb space***

- Exhibit C-1 shows that 15-feet of uninterrupted curb space will be preserved for the narrow lot along the new private street after provision of driveways serving the lots.

***50 percent garage wall limitation***

- Based on the dimensions of Lot 5, a 48 foot wide home could be built on the lot maintaining standard setbacks. This would allow up to a 24 foot wide garage wall facing the street. Therefore, meeting the 50 percent garage limitation will not be an issue.

***60 percent landscaping requirement for attached houses***

- The applicant has proposed detached single dwelling development for Lot 5, therefore this standard does not apply.

The findings above describe how the applicable lot standards are met. This criterion is therefore met.

**B. Trees. The standards and approval criteria of Chapter 33.630, Tree Preservation, must be met.**

**Findings:** The regulations of Chapter 33.630 preserve trees and mitigate for the loss of trees. Certain trees are exempt from the requirements of this chapter.

The applicant has submitted an arborist report that inventories the trees within the land division site, evaluates their condition and specifies root protection zones (ExhibitA-2). Some trees have been exempted by the arborist because they are either too small, unhealthy, a nuisance species, located partially off the property or located within 10 feet of an existing structure to remain on the property. The inventory identifies the following trees on the site:

Tree #	Species	Diameter (inches)	Significant? (On Table 630-1)	Exempt? (per 33.630.030)	To be retained? *	RPZ (Root Protection Zone)
1	Red Maple	7	No	Yes-proximity to bldg	No	
2	Douglas Fir	23	Yes	No	No	
3	Giant Sequoia	10	No	No	No	
4	Apple	22	Yes	Yes-health	No	
5	European White Birch	7	No	No	Yes	7 ft.
6	Oregon Ash	8	No	No	Yes	8 ft.
7	Pear	17	No	Yes-health	No	
8	Willow	22	Yes	Yes-health	No	
9	Willow	25	Yes	Yes-health	No	
10	Sweet Cherry	11	No	Yes-species	No	
11	Willow	14	No	Yes-health	No	

\* Non-exempt trees in the Johnson Creek Basin Plan District can only be removed in limited circumstances.

The total non-exempt tree diameter on the site is 48 inches. The applicant proposes to preserve trees 5 and 6, which comprise of 15 inches of diameter, or 31% percent of the total non-exempt tree diameter. The proposal does not meet any of the tree preservation options in 66.630.100. The applicant proposes instead to use the mitigation options of 33.630.300.

The applicant has provided a Tree Preservation Plan showing the preserved trees and the required root protection zones (Exhibit C-2). As noted on the grading plan (Exhibit C.3), an additional tree (#3) is required to be preserved during site preparation and grading to meet the Johnson Creek Basin Plan District, Floodplain Subdistrict Standards. However, this tree may be removed at the time of development of the lots, if it meets standards for tree removal at that time.

**33.630.300 Mitigation Option**

**As an alternative to meeting Section 33.630.100, approval of a mitigation plan may be requested. The review body will approve the mitigation plan where the applicant has shown that the applicant has met criteria A. and B. and one of the criteria in C., below:**

- A. As many trees as possible are preserved; and**
- B. The applicant has submitted a mitigation plan that adequately mitigates for the loss of trees, and shows how the mitigation plan equally or better meets the purpose of this chapter. Mitigation can include tree planting, preservation of groups of smaller trees, eco-roof, porous paving, or pervious surface permanently preserved in a tract.**
- C. It is not possible under any reasonable scenario to meet Section 33.630.100 and meet one of the following:**
  - 1. Minimum density;**
  - 2. All service requirements of Chapters 33.651 through 33.654, including connectivity;**
  - 3. Implementation of an adopted street plan;**
  - 4. On sites 15,000 square feet or less in area, a practicable arrangement of lots, tracts, and streets within the site that would allow for the division of the site with enough room for a reasonable building site on each lot;**
  - 5. In E and I zones, provide a practicable arrangement of lots, tracts, and streets within the site that would allow for the division of the site with**

- enough room for a reasonable building site on each lot, considering the uses and development allowed in the zone; or**
- 6. Preserve the trees within the environmental zones on site while providing a practicable arrangement of building sites and disturbance area.**

**Findings:** The applicant has proposed an open space tract that comprises nearly two thirds of the total site area. This tract is intended to preserve the portion of the site within the Johnson Creek Flood Plain and to prevent development in the Flood Hazard Area. The size of this tract has significantly limited the developable area on the site. There are only 4 non-exempt trees on the site (#2, 3, 5 and 6). Trees 5 and 6 will be preserved. Tree #2 is a large Douglas Fir that is located very close to SE Foster and will be impacted by the required public street improvements. The one other tree that is eligible for preservation is #3, a 10" Giant Sequoia, which is located on Lot 2, in the center of the developable area where access is proposed to Lots 2 and 3. Because developable area is so limited on this site, it is not possible to save this tree without significantly impacting the proposal. Therefore, as many trees as possible are proposed for preservation and with the required street improvements, it is not possible to meet the service requirements and meet the tree preservation standards.

The applicant did not provide a mitigation plan for the current proposal. Previous proposals included payment into the City's tree fund as mitigation. However, there is ample room in the large open space tract to accommodate tree planting on the site. To meet the preservation standards, the applicant would have been required to preserve at least tree #3, a 10" tree. To replace this tree, the applicant will be required to plant 10 caliper inches of trees within the open space tract. The trees shall be native species appropriate for planting in wet soils, as documented by an arborist or other qualified landscape professional. The plantings shall be shown on the Site Development permit for private street construction and site preparation and must be installed prior to final inspection approval of the permit. Requiring the replacement trees to be native species, chosen from the Portland Plant List, will help to foster and maintain the City's natural heritage. The new trees that will be planted as part of the mitigation plan will help absorb air pollutants and contamination, provide buffering from noise and wind, and provide visual screening from the adjacent properties. Maintenance of the tree planting shall be addressed in the agreement for the open space tract.

With the condition for tree planting, these criteria are met.

- C. Flood Hazard Area. If any portion of the site is within the flood hazard area, the approval criteria of Chapter 33.631, Sites in Flood Hazard Areas, must be met.**

**33.631.100 Flood Hazard Area Approval Criteria**

- A. RF through R2.5 zones. The following criteria must be met in the RF through R2.5 zones:**
- 1. Where possible, all lots must be outside of the flood hazard area; and**
  - 2. Where it is not possible to have all lots outside of the flood hazard area, all proposed building areas must be outside of the flood hazard area.**
- B. R3 through IR, C, E, and I zones. The following criteria must be met in the R3 through IR, C, E, and I zones:**
- 1. Where possible, each lot must have adequate area outside of the flood hazard area to accommodate allowed or proposed uses. This criterion does not apply to river-dependent uses; and**

2. **Where it is not possible to create lots that have adequate area outside of the flood hazard area to accommodate allowed or proposed uses, the following must be met:**
    - a. **Lots must be configured so that development on them will reduce the impact of flooding and to provide the greatest protection for development from flooding;**
    - b. **Lots must be configured so that allowed or proposed uses that are not river-dependent will be able to locate on the highest ground and near the highest point of access, and so that development on the lots can be configured in a manner that will minimize obstruction of floodwaters; and**
    - c. **Where the proposed uses and development are river-dependent, lots must be configured so that development on them will minimize obstruction of floodwaters.**
- C. In all zones. The following criteria must be met in all zones:**
1. **Services proposed in the flood hazard area must be located and built to minimize or eliminate flood damage to the services; and**
  2. **The floodway must be entirely within a flood hazard tract unless river-dependent land-uses and development are proposed on the site.**

**Findings:** This site is within the R5 zone. A large portion of this site is within the flood hazard area (floodplain). The maximum density for the site is 9 lots, however the applicant has proposed 5 lots, with almost all of the floodplain area being placed in an open space tract, to be labeled "Open Space (Flood Hazard)". Because of the small size and irregular shape of the portion of the site outside of the floodplain and the location of the existing house, it would be difficult to configure the lots so that they are all completely outside of the floodplain. The applicant's proposal includes small areas on Lots 3, 4 and 5 that are within the floodplain at the rear of the lots. This area will be available to serve as outdoor area for the lots. The proposed building area on the lots is outside of the floodplain as shown on the preliminary plan (Exhibit C.1). The allowed building areas must be shown on the supplemental plan provided with the final plat and buildings will be restricted to those areas outside of the floodplain at the time of development.

The only services proposed within the flood hazard area are stormwater facilities, primarily for disposal of stormwater from the lots and private street. BDS Site Development and BES have reviewed the proposal and have not expressed concerns about flood damage to the facilities. The floodway does not extend onto this site, however a large open space/flood hazard tract will be created. This criterion is met with the conditions noted above.

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

*The approval criteria of Chapter 33.635 are found in two groups – clearing and grading, and land suitability.*

**33.635.100 – Clearing and Grading**

- A. **Existing contours and drainage patterns of the site must be left intact wherever practicable. Where alteration to existing drainage patterns is proposed, it must not adversely impact adjacent properties by significantly increasing volume of runoff or erosion;**
- B. **Clearing and grading should be sufficient for construction of development shown on the Preliminary Clearing and Grading Plan;**



- C. Clearing and grading should be limited to areas of the site that are reasonably necessary for construction of development shown on the Preliminary Clearing and Grading Plan;**
- D. Topsoil must be preserved on site to the extent practicable for use on the site after grading is complete; and**
- E. Soil stockpiles must be kept on the site and located in areas designated for clearing and grading as much as is practicable.**

**Findings:** The regulations of Chapter 33.635 ensure that the proposed clearing and grading is reasonable given the infrastructure needs, site conditions, tree preservation requirements, and limit the impacts of erosion and sedimentation to help protect water quality and aquatic habitat.

In this case, the site has a modest slope and is not located within the Potential Landslide Hazard Area. The area of the site within the floodplain is subject to balanced cut and fill requirements which limits work within that area and will be reviewed in more detail on the required Site Development permit. Public street improvements and a private street and associated stormwater system is proposed as part of the land division, which will require grading on the site. The applicant has submitted a Preliminary Clearing and Grading Plan (Exhibit C-3). With the minor notes and revisions by staff, the plan adequately depicts the proposed work, including existing and proposed elevation contours, soil stockpile areas, undisturbed areas consistent with the root protection zones of trees to be preserved, per the applicant's Tree Preservation Plan, and the overall limits of disturbed area.

The proposed clearing and grading shown on Exhibit C-3 represents a modest changes to the existing contours and drainage patterns of the site to provide for the public street improvements on SE Foster and a level private street surface. The contour changes proposed should not increase runoff or erosion because erosion control measures will be required as part of permit review and must be installed prior to starting the grading work. Stormwater runoff from the streets and lots will be appropriately managed by flow through planters and swales (see detailed discussion of stormwater management later in this report).

The clearing and grading proposed is sufficient for the construction of the new street and public street improvements and removal of the existing shed without being excessive. Some site preparation activities may occur on the remainder of the lots, however as noted on the plan, tree #3 must be retained during the work to comply with Johnson Creek Floodplain standards.

The clearing and grading plan indicates areas of topsoil storage and general stockpiling that are located directly adjacent to the new street tract and public right of way, and outside of the root protection zones of the trees on the site to be preserved.

As shown above, the Preliminary Clearing and Grading Plan meets the approval criteria. As discussed later in this report, the Site Development Section of the Bureau of Development Services requires that the applicant apply for a Site Development Permit for the construction of the proposed private street. The permit application must include a final clearing and grading plan, that must be consistent with the preliminary clearing and grading plan approved with the land division. With a condition of approval that the applicant's final clearing and grading plan is consistent with the preliminary clearing and grading plan, this criterion is met.

### **33.635.200 – Land Suitability**

**Where geologic conditions or historic uses of the site indicate a hazard may exist, the applicant must show that the proposed land division will result in lots that are suitable for development. The applicant may be required to make specific improvements in order to make the lots suitable for their intended uses and the provision of services and utilities.**

The site is currently in residential use, and there is no record of any other use in the past. Although the site is currently connected to the public sanitary sewer, there is an old septic system on the site. The City has no record that this facility was ever decommissioned. Prior to final plat, the applicant must meet the requirements of the Site Development Section of the Bureau of Development Services for the decommissioning of this facility. With this condition, the new lots can be considered suitable for new development, and this criterion is met.

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

### **33.636.100 Requirements for Tracts and Easements**

**A. Ownership of tracts. Tracts must be owned as follows unless otherwise specified in this Title or the land use decision:**

- 1. The owners of property served by the tract, or by any other individual or group of people. When the tract is owned by more than one person it must be held in common with an undivided interest;**
- 2. The Homeowners' Association for the area served by the tract;**
- 3. A public or private non-profit organization; or**
- 4. The City or other jurisdiction.**

**Findings:** The following tracts are proposed:

- Tract A: Private Street
- Tract B: Private Stormwater Management
- Tract C: Private Open Space (Flood Hazard)

Tract A will be created to provide street frontage and access for Lots 1 and 5. Tract B will be the location of the stormwater facilities for the private street. Tract C will contain most of the portion of the site that is within the Flood Hazard Area, with the exception of a small part of the Flood Hazard Area that is within Lots 3, 4 and 5.

To comply with ownership requirements on 33.653 and 33.654, proposed Tracts A and B must be owned in common by the owners of Lots 1 and 5, the lots served by the those tracts. Tract C will be commonly used for stormwater disposal from all of the lots and will serve as a location for mitigation tree plantings. Therefore, the open space tract should also be owned in common by Lots 1 through 5 to facilitate the shared used and maintenance of this area. With these conditions, this criterion can be met.

**B. Maintenance agreement. The applicant must record with the County Recorder a maintenance agreement that commits the owners or owners' designee to maintain all elements of the tract or easement; however, facilities within the tract or easement that will be maintained by a specified City agency may be recorded in a separate maintenance agreement. The maintenance agreement must be approved by BDS and the City Attorney in advance of Final Plat approval and must be submitted to the County Recorder to be recorded with the Final Plat. For a Planned Development not done in conjunction with a**

**land division, the maintenance agreement must be submitted to the County Recorder to be recorded prior to issuance of the first building permit related to the development.**

**Findings:** The following easements are proposed and/or required for this land division:

- A Reciprocal Access Easement over portions of Lots 2 and 3 is proposed to allow shared use of a driveway that will straddle proposed lot lines;

Access to Lots 2 and 3 will be from a shared driveway from SE Foster Road. This driveway configuration will allow for forward motion entrance and exit from the lots and reduce the number of curb cuts along SE Foster Road.

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

*“A Declaration of Maintenance Agreement for (name of feature) has been recorded as document no. \_\_\_\_\_, Multnomah County Deed Records.”*

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

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

*The relevant approval criteria of Chapter 33.641 are found in the two paragraphs below.*

**33.641.020. The transportation system must be capable of safely supporting the proposed development in addition to the existing uses in the area. Evaluation factors include: street capacity and level-of-service; vehicle access and loading; on-street parking impacts; the availability of transit service and facilities and connections to transit; impacts on the immediate and adjacent neighborhoods; and safety for all modes.**

**33.641.030. The applicant may meet the criterion in Section 33.641.020, above, by including mitigation measures as part of the land division proposal. Mitigation measures must be acceptable to the City Engineer and may include providing transportation demand management measures, an access management plan, constructing streets or bicycle, pedestrian, or transit facilities on or off the site or other capital improvement projects such as traffic calming devices.**

**Findings:** The regulations of Chapter 33.641 allow the traffic impacts caused by dividing and then developing land to be identified, evaluated, and mitigated for if necessary. Small land divisions involving only a few dwelling units may not require a formal transportation impact study, while it might be required for larger projects (Title 17 includes technical standards describing when a more formal study is required).

The site has approximately 182 feet of frontage on SE Foster Road. SE Foster Road is classified as a Major Transit Street, District Collector, City Bikeway and City Walkway in the Transportation Element of the Comprehensive Plan. Tri-Met provides transit service approximately 1,850 feet from the site on SE 136<sup>th</sup> Avenue via bus 10. Parking is currently

not allowed on SE Foster Road. There is one driveway entering the site that provides access to off-street parking for the existing house.

SE Foster Road is improved with a paved roadway and a gravel shoulder on both sides. There are no curbs, planter strips, or sidewalks. In reviewing this land division, Portland Transportation relies on accepted civil and traffic engineering standards and specifications to determine if existing street improvements for motor vehicles, pedestrians and bicyclists can safely and efficiently serve the proposed new development. In this case Portland Transportation has determined that street improvements must be made in order to ensure that safe travel is possible to and from the proposed development. The applicant will be required to widen the paved roadway, construct a curb to match the existing curb adjacent to the site, and provide a 6-foot sidewalk and 8-foot swale along the frontage of the site. To accommodate these improvements, an additional 10 feet of right-of-way must be dedicated along the SE Foster Road frontage of the site. In addition, to avoid traffic conflicts, PDOT indicates that all driveways must be designed to allow vehicles to enter and exit the lots in a forward motion. The applicant has provided a driveway plan, which includes a reciprocal access easement serving Lots 2 and 3, to show it will be possible to meet this requirement (Exhibit C.1). With the requirements noted above, four additional dwellings can be safely served by the existing street without having a significant impact on the level of service provided.

This criterion is met, with the conditions described above.

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

**Findings:** Chapters 33.651 through 33.654 address water service standards, sanitary sewer disposal standards, stormwater management, utilities and rights of way.

- The water standards of 33.651 have been verified. An existing 16-inch water main is available in SE Foster Road to serve the proposed development. Lot 1 has an existing water service from that main that can continue to be used. Service for Lot 5 must be installed within the proposed private street tract. See Exhibit E-3 for more details.
- The sanitary sewer standards of 33.652 have been verified. There is an existing 8-inch public sanitary sewer located in SE Foster Road that can serve the sanitary needs of the proposed lots. Lot 1 has an existing sewer service from that main that can continue to be used. See Exhibit E-1 for more details.
- The technical standards of Chapter 33.653 related to stormwater management have been verified. The findings below for the Stormwater Management Approval Criteria of 33.653.020 incorporate a discussion of how the technical standards have been satisfied by the applicant's stormwater proposal.

**33.653.020 Stormwater Management Approval Criteria**

- A. If a Stormwater Tract is proposed or required, an adequate amount of land and an appropriate location must be designated on the Preliminary Plan; and**
- B. The application must show that a stormwater management system can be designed that will provide adequate capacity for the expected amount of stormwater.**

**Findings:** A stormwater tract (Tract B) is proposed. The method used to determine the size and location of the stormwater tract is discussed below under criterion B.

The City of Portland requires that stormwater from development be cleaned and disposed of in a manner that meets the requirements of the City's Stormwater Management Manual. In order to meet this approval criterion, land division proposals must demonstrate an approved method of cleaning (water quality treatment), detention (delayed release), and an approved disposal point.

The Stormwater Management Manual contains a hierarchy of acceptable methods of stormwater treatment and disposal. The hierarchy requires that applicants first explore the use of methods that have a lower potential impact on groundwater, such as on-site surface infiltration swales and infiltration planters. If these methods are not feasible on a site, applicants may move lower on the hierarchy, to methods that inject water deeper into the ground through mechanical devices such as drywells or sumps, or carry it off of the site into storm sewers, drainageways, or other approved disposal points.

In addition to determining appropriate treatment and disposal methods by working through the hierarchy in the Stormwater Management Manual, stormwater facilities must be sized, through engineering calculations, to accommodate the expected amounts of stormwater. In some cases, sizing a stormwater facility necessitates testing the infiltration rate of the soil at the site.

The applicant has provided stormwater calculations (Exhibit A.3), a geotechnical report (Exhibit A.4) and a utility plan that includes stormwater management facilities (Exhibit C.3). Due to poor infiltration and high groundwater on this site, the applicant is proposing to use flow-through stormwater facilities for water quality treatment and detention of stormwater. Stormwater from the private development will be directed to the large open space tract north of the lots. BES has reviewed the current proposal and has recommended approval with the proposed disposal point for the private development (Exhibits E-1 and E-5). The specific methods are described below:

- **Public Street Improvements:** As a condition of this land use approval, the Office of Transportation requires the applicant to improve the SE Foster Road frontage of the site to City standards, with paving, curbs and sidewalks (discussed earlier in this report). Stormwater from these new impervious areas will be directed into 8-foot wide flow-through swales located between the curb and the new sidewalk. BES has indicated that, due to high groundwater at this location, surface infiltration is not the preferred method of public stormwater disposal at this site. Therefore, stormwater from the swales will be conveyed along SE Foster Road by construction of an asphalt berm to a disposal point to the east (Johnson Creek). BES has reviewed the current proposal and recommends approval. To accommodate the proposed swale within the public right-of-way, a dedication along the frontage of the site must be provided on the final plat. In addition, BES requirements for the Public Works Permit for the street improvements must be met prior to final plat approval. The applicant must provide engineered designs and financial guarantees of performance.
- **Private Street:** Stormwater will be directed to a 10-foot wide flow-through swale located within Tract B, the stormwater tract, with outfall to Tract C, the open space tract. The outfall will consist of a rip rap outfall with a level spreader. The Site Development Section has indicated conceptual approval of the proposed swale location and size.
- **Lots 2 - 5:** Stormwater from these lots will be directed into flow-through planters. The water will drain from the planters to rip rap outfalls with level spreaders located in the

open space tract. Each lot has sufficient size for individual planter boxes as shown on the Exhibit C.3. BDS Site Development has noted that piping and disposal for all of the lots is not shown on the utility plan. In addition, an easement may be needed for the stormwater system proposed for the shared driveway serving Lots 2 and 3. However, Site Development notes that there should be adequate disturbance area shown to accommodate the piping and outfalls.

- **Lot 1 (the lot with the existing house):** The existing house has downspouts that drain to the ground and to indeterminate locations. The Site Development Section of BDS indicates that stormwater from the existing house must be shown to be collected or otherwise comply with the Stormwater Manual prior to final plat approval. The applicant is showing a new flow-through planter box on Lot 1, however the disposal point for the planter is not shown.

In order to ensure that all lots have adequate stormwater disposal and that any easements are provided on the plat, a supplemental stormwater plan showing all piping and outfalls and easements shall with the plat for review and approval by BDS Site Development.

With the conditions of approval described above, the stormwater management criteria are met.

### **Right of Way Approval Criteria**

Chapter 33.654 contains standards and approval criteria for rights of way. Due to the location of this site, and the type of street that is proposed, some of the criteria are not applicable. The following table summarizes the applicability of each criterion.

<b>Code Section</b>	<b>Topic</b>	<b>Applicability Findings</b>
33.654.110.B.1	Through streets and pedestrian connections	<b>Applicable - See findings below</b>
33.654.110.B.2	Dead end streets	<b>Applicable - See findings below.</b>
33.654.110.B.3	Pedestrian connections in the I zones	Not applicable - The site is not located within an I zone.
33.654.110.B.4	Alleys in all zones	Not applicable – No alleys are proposed or required.
33.654.120.C.1	Width of the street right-of-way	<b>Applicable - See findings below.</b>
33.654.120.C.3.c	Turnarounds	Not applicable – No turnarounds are proposed or required.
33.654.120.D	Common Greens	Not applicable – No common greens are proposed or required.
33.654.120.E	Pedestrian Connections	<b>Applicable - See findings below.</b>
33.654.120.F	Alleys	Not applicable – No alleys are proposed or required.
33.654.120.G	Shared Courts	Not applicable – No shared courts are proposed or required.
33.654.130.A	Utilities	<b>Applicable - See findings below.</b>

<b>Code Section</b>	<b>Topic</b>	<b>Applicability Findings</b>
33.654.130.B	Extension of existing public dead-end streets and pedestrian connections	<b>Applicable - See findings below</b>
33.654.130.C	Future extension of proposed dead-end streets and pedestrian connections	<b>Applicable - See findings below</b>
33.654.130.D	Partial rights-of-way	Applicable - See findings below

**Applicable Approval Criteria are:**

**33.654.110.B.1 Approval criterion for through streets and pedestrian connections in OS, R, C, and E Zones. In OS, R, C, and E zones, through streets and pedestrian connections are required where appropriate and practicable, taking the following into consideration:**

- a. **Through streets should generally be provided no more than 530 feet apart, and pedestrian connections should generally be provided no more than 330 feet apart. Through street and pedestrian connections should generally be at least 200 feet apart;**
- b. **Where the street pattern in the area immediately surrounding the site meets the spacing of subparagraph a., above, the existing street pattern should be extended onto the site;**
- c. **Characteristics of the site, adjacent sites, and vicinity, such as: (1) Terrain; (2) Whether adjacent sites may be further divided; (3) The location of existing streets and pedestrian connections; (4) Whether narrow frontages will constrain creation of a through street or pedestrian connection; (5) Whether environmental overlay zones interrupt the expected path of a through street or pedestrian connection; and (6) Whether existing dwelling units on- or off-site obstruct the expected path of a through street or pedestrian connection. Alternative locations or designs of rights-of-way should be considered that avoid existing dwelling units. However, provision of through streets or pedestrian connections should take precedence over protection of existing dwelling units where the surrounding transportation system will be significantly affected if a new through street or pedestrian connection is not created;**
- d. **Master street plans for the area identified in Goal 11B of the Comprehensive Plan;**
- e. **Pedestrian connections should take the most direct route practicable. Users should be able to see the ending of the connection from the entrance point, if possible.**

**Findings:** The site is located on SE Foster Road, an east-west through street. SE Carlton Street, an east-west street, dead-ends at the northwest corner of the site. The nearest north-south through streets are SE 141<sup>st</sup> Avenue and SE 145<sup>th</sup> Avenue, which have a distance between them of approximately 820 feet. If the distance between these existing streets is evaluated against the optimum spacing requirement of 530 feet, one can conclude that another north-south through street is necessary in the vicinity of the site. However, environmental constraints impact the provisions of streets in this area. SE 142<sup>nd</sup> Avenue, a north-south street just west of the site dead-ends at a large open space tract and turns east

into SE Carlton Court where it dead-ends at this site. It appears as though SE 142<sup>nd</sup> did not continue through to the north because of flood-plain issues. A through street on this site would not be appropriate for the same reason: the northern portion of the site is within the floodplain and new single-dwelling lots can not be created in the floodplain.

As noted above, SE Carlton Street terminates at the site. This is a logical location to extend SE Carlton, however, the area where the street would be extended is located in the floodplain and is not a practical location for a street extension, particularly since no lots would be served by the street extension. Instead, Portland Transportation requests a 12-foot wide dedication for a future pedestrian connection between SE Carlton and SE 145<sup>th</sup> to provide for minimal connectivity through this area. This dedication must be shown on the final plat.

The site is within the Portland Master Street Plan for the Far Southeast District. The Master Plan for this area does not indicate the need for an additional through street connection. Therefore, the proposal is consistent with the master street plan.

With the condition described above, this criterion is met.

**33.654.110.B.2 Approval criterion for dead-end streets in OS, R, C, and E zones. In OS, R, C, and E zones, dead-end streets may be provided where through streets are not required. Dead-end streets should generally not exceed 200 feet in length, and should generally not serve more than 18 dwelling units. Public dead-end streets should generally be at least 200 feet apart.**

**Findings:** The proposal includes a private dead-end street. As discussed under the findings for through streets above, a new public north-south through street is not feasible at this location. The private dead-end street will serve only 2 dwelling units and it is approximately 124 feet in length from the frontage along SE Foster Road. This criterion is met.

**33.654.120.C.1 Approval criterion for width of the right-of-way. The width of the local street right-of-way must be sufficient to accommodate expected users, taking into consideration the characteristics of the site and vicinity, such as the existing street and pedestrian system improvements, existing structures, and natural features.**

**Findings:** The private street will serve 2 lots. The applicant has proposed that a 17-foot wide tract is sufficient to accommodate the expected users. The *Administrative Rules for Private Rights of Way* are the standards that govern the construction of private streets. These rules recommend a width of 22 feet for dead-end streets less than 300 feet long, serving 3 or less lots. In this case, the location of existing development on the site limits the width of the private street tract. The private street will provide access to only two lots, Lot 1 and Lot 5, and will therefore function more as a shared driveway than a street. In addition, the Fire Bureau has confirmed that the turning radius into the street and the width are adequate for fire access (minimum 12 feet). BDS Site Development has raised no concerns about the width of the private street being adequate to accommodate all required elements. Therefore, the reduced width of the street tract to 17 feet, with 13 feet of paving, 1-foot mountable curbs, and 1-foot setbacks are acceptable. The proposed tract width is sufficient to accommodate the elements of a street to serve 2 lots. This criterion is met.

**33.654.120.E. Approval criterion for the width of pedestrian connections. The width of the pedestrian connection right-of-way must be sufficient to accommodate expected users and provide a safe environment, taking into consideration the characteristics of the site and vicinity, such as the existing street and pedestrian**



**system improvements, existing structures, natural features, and total length of the pedestrian connection. As much as is possible, the users should be able to stand at one end of the connection and see the other end.**

**Findings:** Portland Transportation requires a 12-foot wide dedication to accommodate a future pedestrian connection between SE Carlton and SE 145<sup>th</sup> Avenue. This will accommodate a 6-foot wide sidewalk and landscaping on both sides, which is adequate to provide for bicycle and pedestrian traffic between these two streets. The location of the dedication will provide a straight connection. This criterion is met.

#### **Utility Location, Extension of Streets, Partial Rights of Way**

##### **33.654.130 Additional Approval Criteria for Rights-of-Way**

**A. Utilities. Utilities must be located within rights-of-way or utility easements that are adjacent to rights-of-way to the maximum extent practicable. Utility easements up to 15 feet in width may be required adjacent to rights-of-way.**

**Findings:** The applicant is proposing an 8-foot wide Public Utility Easement along the frontage of the site to provide for utility service to the site. No additional requirements for utility easements have been identified. Therefore, this criterion is met.

**B. Extension of existing public dead-end streets and pedestrian connections. Existing public dead-end streets and pedestrian connections adjacent to the site must be extended onto the site as needed to serve the site.**

**Findings:** SE Carlton Street is a dead-end street that terminates at the northwest corner of the site. Due to the location of the flood plain area, no new development is allowed on the portion of the site where SE Carlton Street would be extended or on the abutting property to the north. Therefore, an extension of the street would be impractical. The applicant will be required to dedicate 12-feet for a future pedestrian connection along the northern edge of the site that will provide connectivity to the east of the site. However, the adjacent site is not developed and the Office of Transportation has indicated that it will not be necessary to construct the pedestrian connection at this time. This criterion is met.

**C. Future extension of proposed dead-end streets and pedestrian connections. Where the land division site is adjacent to sites that may be divided under current zoning, dead-end streets and pedestrian connections must be extended to the boundary of the site as needed to provide future access to the adjacent sites. The following factors are considered when determining if there is a need to make provisions for future access to adjacent sites. A need may exist if:**

- 1. The site is within a block that does not comply with the spacing standards or adopted street plan of the Transportation Element of the Comprehensive Plan;**
- or**
- 2. The full development potential of adjacent sites within the block will not be realized unless a more complete street system is provided to improve access to those sites.**

**Findings:** The properties to the east and north would have potential to further divide solely based on current zoning. However, both of these properties are heavily impacted by the floodplain, where new single family lots cannot be created. Therefore, extension of a street thorough this area is not practicable. A 12-foot dedication will be extended through the site to provide for a future pedestrian connection at this location. This criterion is met.

As shown by the findings above, the Services and Utilities criteria are met.

## DEVELOPMENT STANDARDS

**General Information about Development Standards and Approval Criteria.** The Zoning Code contains two types of regulations: Development standards and Approval criteria.

**Approval criteria**, such as those listed earlier in this report, are administered through a land use review process. Approval criteria are regulations where the decision-maker must exercise discretion to determine if the regulation is met. Public notice is provided and public comments received that address the approval criteria are addressed in the decision.

**Development Standards:** Development standards are clear and objective regulations (for example: building setbacks; number of required parking spaces; and maximum floor area). Compliance with development standards is reviewed as part of the administrative permitting process and are not considered to be discretionary reviews. Development standards that are not relevant to the land division review, have not been addressed in the review, but will have to be met at the time that each of the proposed lots is developed.

- Narrow Lots-- development on Lot 5 will be subject to the following standards at the time of development permitting:
  - Height of the structures will be limited to 1.2 times the width of the structure, per 33.110.215.B.2; and
  - Garages can be no wider than 50% of the width of the front façade of the house, per 33.110.250.E.4.c (1)
- Johnson Creek Basin Plan District, Floodplain Subdistrict (33.537.150) – Impervious surface and tree removal restrictions will apply to lots that have any portion in the floodplain (Lots 3, 4 and 5).
- Front yard paving (33.266.120.C) – No more than 40 percent of the area between the front lot line and front building line can be paved. Plans indicated it was possible to meet this requirement with turnarounds to comply with the PDOT requirement for forward entry and exit. However, issues may be identified based on the final site plan for provided for building permits.

**Existing development that will remain after the land division.** The existing development on the site will remain and be located on Lot 1. The division of the property may not cause the structures to move out of conformance or further out of conformance to any development standard applicable in the R5 zone (Please see section on Other Technical Standards for Building Code standards.)

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

- Minimum Setbacks – The existing house identified to remain on the site must meet the required Zoning Code setbacks from the proposed new lot lines. Alternatively, existing buildings must be set back from the new lot lines in conformance with an approved Adjustment or other Land Use Review decision that specifically approves alternative setbacks. The existing house will be 3 feet from the new western property line next to the private street, and 5 feet from the new north and east property lines. To ensure these standards continue to be met at the final plat stage, the final plat must be accompanied by a supplemental survey showing the location of the existing building relative to the adjacent new lot lines.

- Accessory Structures – In this zone, accessory structures are not allowed on a lot without a primary structure. Therefore, in order for the proposed new lots to meet this standard, all accessory structures on Tract C must be removed prior to final plat. Demolition permits are required. The applicant must provide documentation prior to final plat approval that all required demolition permits have received final inspection. To ensure that this standard is met, a condition of approval is necessary.
- Required Off-Street Parking – In this zone, one parking space per dwelling unit is required. As a result of this land division, the required parking space for the existing house will be located on a different lot. In order to ensure that parking requirements continue to be met, a new parking space for the existing house must be constructed on Lot 1 prior to final plat approval. Permits must be obtained to construct a new parking space. Documentation of final inspection of this new parking space will be required prior to final plat approval.

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

### **OTHER TECHNICAL REQUIREMENTS**

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

<b>Bureau</b>	<b>Code Authority</b>	<b>Topic</b>	<b>Contact Information</b>
Water Works	Title 21	Water availability	503-823-7404 <a href="http://www.water.ci.portland.or.us/">http://www.water.ci.portland.or.us/</a>
Environmental Services	Title 17; 2002 Stormwater Manual	Sewer availability Stormwater Management	503-823-7740 <a href="http://www.bes.ci.portland.or.us/">http://www.bes.ci.portland.or.us/</a>
Fire Bureau	Title 31 Fire Code	Emergency Access	503-823-3700 <a href="http://www.fire.ci.portland.or.us/">http://www.fire.ci.portland.or.us/</a>
Transportation	Title 17, Transportation System Plan	Design of public street	503-823-5185 <a href="http://www.trans.ci.portland.or.us/">http://www.trans.ci.portland.or.us/</a>
Development Services	Titles 24 –27, Admin Rules for Private Rights of Way	Building Code, Erosion Control, Flood plain, Site Development & Private Streets	503-823-7300 <a href="http://www.bds.ci.portland.or.us.">http://www.bds.ci.portland.or.us.</a>

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

- The applicant is required to make improvements to the proposed private street and related stormwater facility. Several conditions are required, including provision of plans

and financial assurances, initiating a site development permit, and providing a maintenance agreement. In addition to the approval criteria of Title 33, these requirements are also based on the technical standards of Title 17 and Title 24.

- The applicant must meet the requirements of the Fire Bureau in regards to posting of "No Parking" signs in private street, providing an Emergency Vehicle Access Easement over the private street, turning radius and driving surface for the private street. These requirements are based on the technical standards of Title 31 and the Fire Code.

## CONCLUSIONS

The applicant has proposed a 5-lot subdivision with a private street, stormwater tract, open space tract and dedication for a future public pedestrian connection, as shown on the attached preliminary plan (Exhibit C-1). As discussed in this report, the relevant standards and approval criteria have been met, or can be met with conditions. The primary issues identified with this proposal include stormwater management, tree preservation and mitigation, and the site's location within the flood hazard area. With conditions of approval that address these issues, this proposal can be approved.

## ADMINISTRATIVE DECISION

**Approval** of a Preliminary Plan for a 5-lot subdivision, that will result in four standard lots, one narrow lot (Lot 5), a private street tract, a stormwater tract, an open space tract and a public pedestrian connection, as illustrated with Exhibit C-1, subject to the following conditions:

**A. Supplemental Plan.** Three copies of an additional supplemental plan shall be submitted with the final plat survey. That plan must portray how the conditions of approval listed below are met. In addition, the supplemental plan must show the surveyed location of the following:

- Any buildings or accessory structures on the site at the time of the final plat application;
- Any driveways and off-street vehicle parking areas on the site at the time of the final plat application;
- The location of stormwater facilities, piping and outfalls for each lot and any necessary easements;
- The location of the 100-year floodplain and allowable building areas outside of the floodplain;
- Any other information specifically noted in the conditions listed below.

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

1. The applicant shall meet the street dedication requirements of the City Engineer for SE Foster Road and the east-west pedestrian connection along the northern border of the site. The required right-of-way dedications must be shown on the final plat.
2. The private street tract shall be named, with approval from the City Engineer, and noted on the plat as "Tract A: Private Street." A note must also be provided on the plat indicating that the private street tract will be commonly owned and maintained by the owners of Lot 1 and 5.
3. An Emergency Vehicle Access Easement, granted to the City of Portland, shall be shown over the entirety of the private street to the satisfaction of the Fire Bureau.

4. The stormwater tract shall be labeled on the plat as "Tract B: Stormwater Management." A note must also be provided on the plat indicating that the stormwater tract will be commonly owned and maintained by the owners of Lot 1 and 5.
5. The open space tract shall be labeled on the plat as "Tract C: Open Space (Flood Hazard)." A note must also be provided on the plat indicating that the open space tract will be commonly owned and maintained by the owners of Lots 1 through 5.
6. A Reciprocal Access Easement shall be shown and labeled on the final plat to provide for shared driveway access to Lots 2 and 3.
7. A recording block for each of the maintenance agreement(s) required by Condition C.9 below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: "A Declaration of Maintenance Agreement for (name of feature) has been recorded as document no. \_\_\_\_\_, Multnomah County Deed Records."

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

1. The applicant shall meet the requirements of the City Engineer for right of way improvements along the frontage of SE Foster Road. The applicant shall provide plans and financial assurances to the satisfaction of the Bureau of Transportation Engineering and Development Review and the Bureau of Environmental Services for required street frontage improvements.
2. The applicant shall submit an application for a Site Development Permit for construction of the private street and related site development improvements. Street design plans must be prepared by, or under the direction of, an Oregon licensed civil engineer. In addition, the permit shall include:
  - Mitigation tree planting within the open space tract consisting of 10 caliper inches of native species appropriate for planting in wet soils, as determined by an arborist or qualified landscape professional; and
  - Meet fire access requirements for turning radius, surfacing and no parking signs.
3. The applicant shall furnish a financial guarantee of performance, as approved by the Bureau of Development Services, for 125 percent of the estimated construction cost for the private street and all required site development improvements. The design for the private street must include a driveway approach and curb cut in a location that can provide access to the new parking space required on the lot with the existing house that will remain. The applicant shall provide an engineer's estimate of the costs of performance including the costs for temporary erosion control measures required during construction. The financial guarantee of performance shall be accompanied by a performance agreement with the Bureau of Development Services to complete the required improvements.
4. The applicant shall provide a clearing and grading plan with the Site Development permit required for the private street described in Condition C.2. The clearing and grading plan must substantially conform to the Preliminary Clearing and Grading Plan approved with this decision (Exhibit C-3).

**Utilities**

5. The applicant shall meet the requirements of the Site Development Section of the Bureau of Development Services for the decommissioning of the existing sanitary sewer system on the site.

**Existing Development**

6. The applicant must obtain a finalized demolition permit for removing the accessory structure within Tract C.
7. The applicant shall obtain a finalized zoning permit for a parking space installed on Lot 1. The parking space must be a minimum of 9' x 18' and located out of the new front setback for the lot with the existing house. In addition, it must be in a location that can be accessed from the new private street. The applicant does not need to connect the new parking space to the existing street with a paved driveway to meet this condition. A connecting driveway can be provided with private street construction. The new parking space must also be shown on the supplemental plan. Alternatively, an application for a Land Use Review to waive or modify parking requirements may be submitted at the Development Services Center. If granted, a copy of the approved Land Use Review decision must be submitted prior to final plat.

8. Documentation that the stormwater system for the existing house complies with the Stormwater Management Manual must be submitted to the Site Development Section of the Bureau of Development Services. The location of any existing or required stormwater systems must be shown on the Supplemental Plan. If new or modified stormwater facilities must be installed, the applicant must obtain finalized plumbing permits prior to final plat approval.

**Required Legal Documents**

9. Maintenance Agreements shall be executed for the following tracts and easements:
  - Reciprocal Access Easement on Lots 2 and 3.
  - Private Street Tract. The agreement shall assign common, undivided ownership of the tract to the owners of Lots 1 and 5 and must also acknowledge all easements granted within the street tract, the beneficiaries of those easements, and the limitations on the easement areas to the satisfaction of the beneficiary service agencies.
  - Stormwater Management Tract. The agreement shall assign common, undivided ownership of the tract to the owners of Lots 1 and 5.
  - Open Space (Flood Hazard) Tract. The agreement shall assign common, undivided ownership of the tract to the owners of Lots 1 through 5 and also include provisions assigning maintenance responsibilities for the required mitigation tree planting in the tract.
  - Any other easements determined to be necessary for stormwater disposal.

In addition, the agreements shall include provisions assigning maintenance responsibilities for the tract and easement areas and any shared facilities within those areas, consistent with the purpose of the tract or easement, and all applicable City Code standards. The agreement must be reviewed by the City Attorney and the Bureau of Development Services, and approved as to form, prior to final plat approval.

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

1. Development on Lot 4 shall be in conformance with the Tree Preservation Plan (Exhibit C-2) and the applicant's arborist report (Exhibit A-2). Specifically, trees numbered 5 and 6 are required to be preserved, with the root protection zones indicated on Exhibit C-2. Encroachment into the specified root protection zones may only occur under the supervision of a certified arborist. Planning and Zoning approval of development in the root protection zones is subject to receipt of a report from an arborist, explaining that the arborist has approved of the specified methods of construction, and that the activities will be performed under his supervision.
2. The first lift of paving for the private street shall be installed prior to issuance of any permits for residential construction on Lot 5.
3. Prior to finalizing the Site Development permit for the private street the following must occur:
  - A plumbing permit must be obtained and finalized for the new utility lines that will be constructed beneath the paved surface of the new street; and
  - Mitigation tree planting within the open space tract must be installed (10 caliper inches of native species appropriate for wet soil conditions), as required under condition C.2.

4. The applicant must post the private street with "No Parking" signs on both sides to the satisfaction of the Fire Bureau.
5. Driveway designs for Lots 1-5 must allow forward ingress and egress to the site.
6. All buildings on lots 3, 4 and 5 must be located outside of the 100-year floodplain.

Decision rendered by: S. Beckman on June 5, 2008

By authority of the Director of the Bureau of Development Services

**Decision mailed June 9, 2008**

**Staff Planner: Stephanie Beckman**

**About this Decision.** This land use decision is **not a permit** for development. A Final Plat must be completed and recorded before the proposed lots can be sold or developed. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

**Procedural Information.** The application for this land use review was submitted on August 24, 2007, and was determined to be complete on November 28, 2007.

*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 August 24, 2007.

*ORS 227.178* states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant requested that the 120-day review period be extended until January 30, 2008 {Exhibit A-5} and then waived the 120-day review period, as stated with Exhibit A-6.

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

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

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



**Appealing this decision.** This decision may be appealed to the Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on June 23, 2008** at 1900 SW Fourth Ave. Appeals may be filed on the first floor in the Development Services Center until 3 p.m. After 3 p.m., appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. Recognized neighborhood associations are not subject to the appeal fee. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please contact the receptionist at 503-823-0625 to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at [www.ci.portland.or.us](http://www.ci.portland.or.us) .

**Attending the hearing.** If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 550 Capitol St. NE, Suite 235, Salem, Oregon 97301 or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Hearings Officer an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

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

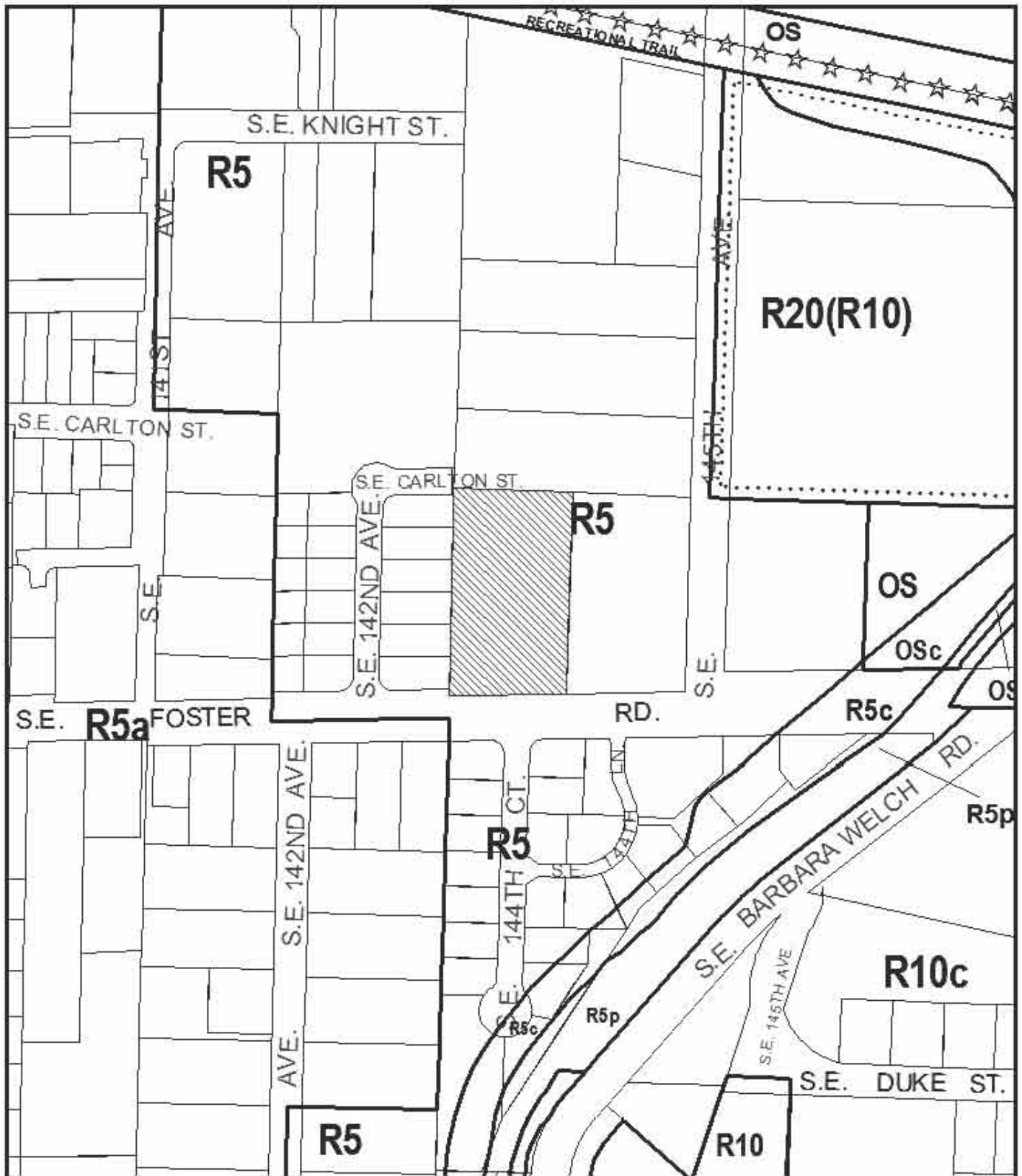
#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Submittal
  - 1. Applicant's statement
  - 2. Arborist report
  - 3. Stormwater Drainage Calculations
  - 4. Geotechnical Report – Infiltration Testing
  - 5. Email extension through 01/30/08 dated 01/08/08
  - 6. Email to waive 120 day review period dated 01/24/08
  - 7. Prior submittals (a-d)
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Preliminary Plan (attached) – 11x17 in file
  - 2. Tree Preservation Plan (attached)

3. Clearing and Grading Plan (attached) – full-size in file
  4. Existing conditions plans (3 sheets)
- D. Notification information:
1. Mailing list
  2. Mailed notice
  3. Neighborhood Contact
- E. Agency Responses:
1. Bureau of Environmental Services
  2. Bureau of Transportation Engineering and Development Review
  3. Water Bureau
  4. Fire Bureau
  5. Site Development Review Section of BDS
  6. Bureau of Parks, Forestry Division
- F. Correspondence from interested parties: None received
- G. Other:
1. Original LU Application
  2. Site History Research
  3. Incomplete Letter
  4. Case reassignment letter, dated 12/27/07
  5. Pre-application Conference summary

**The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-0625 (TTY 503-823-6868).**



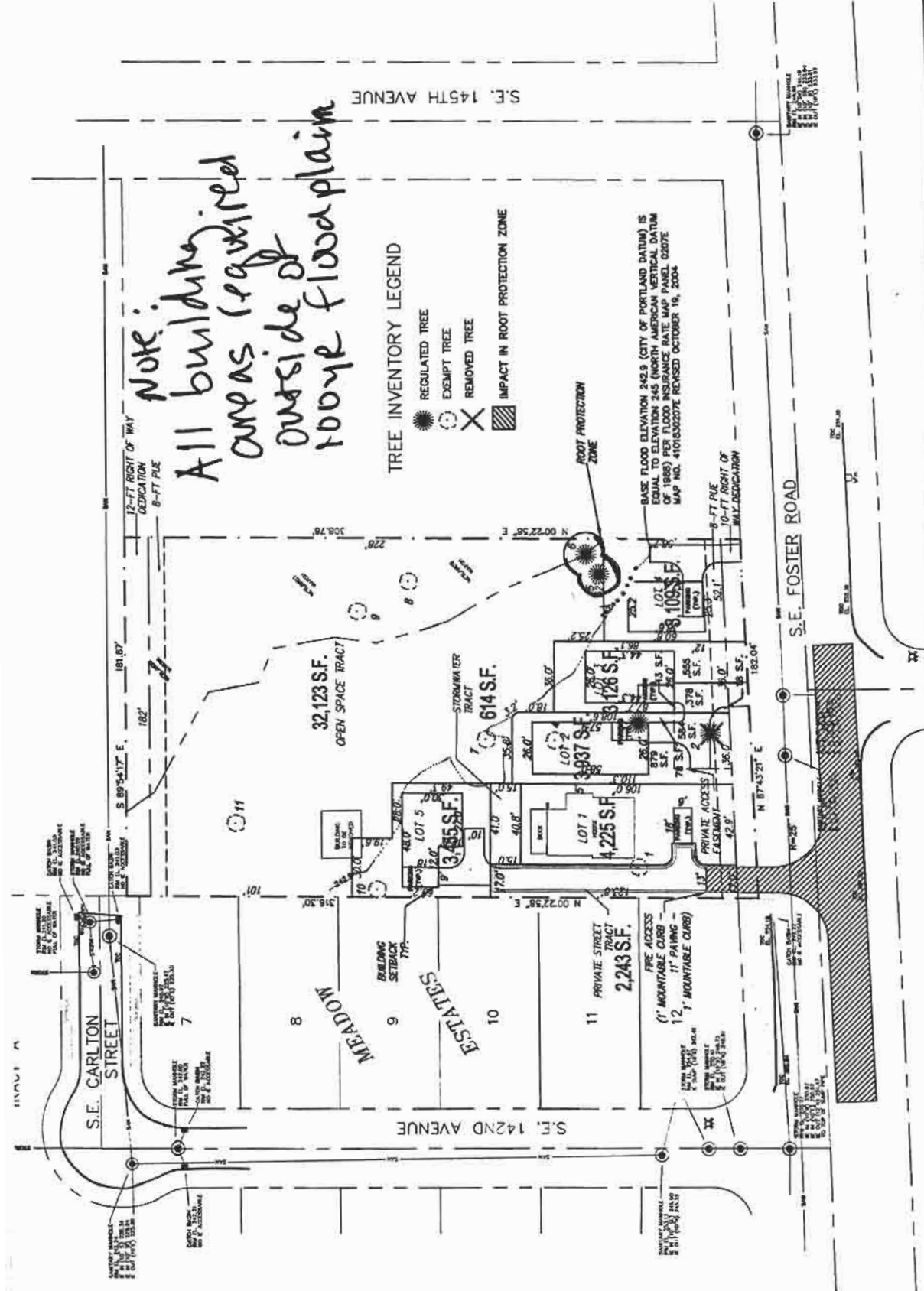
# ZONING

 Site



This site lies within the:  
JOHNSON CREEK BASIN PLAN DISTRICT

File No.	LU 07-157763 LDS
1/4 Section	3645
Scale	1 inch = 200 feet
State_Id	1S2E13CC 600
Exhibit	B (Aug 29, 2007)

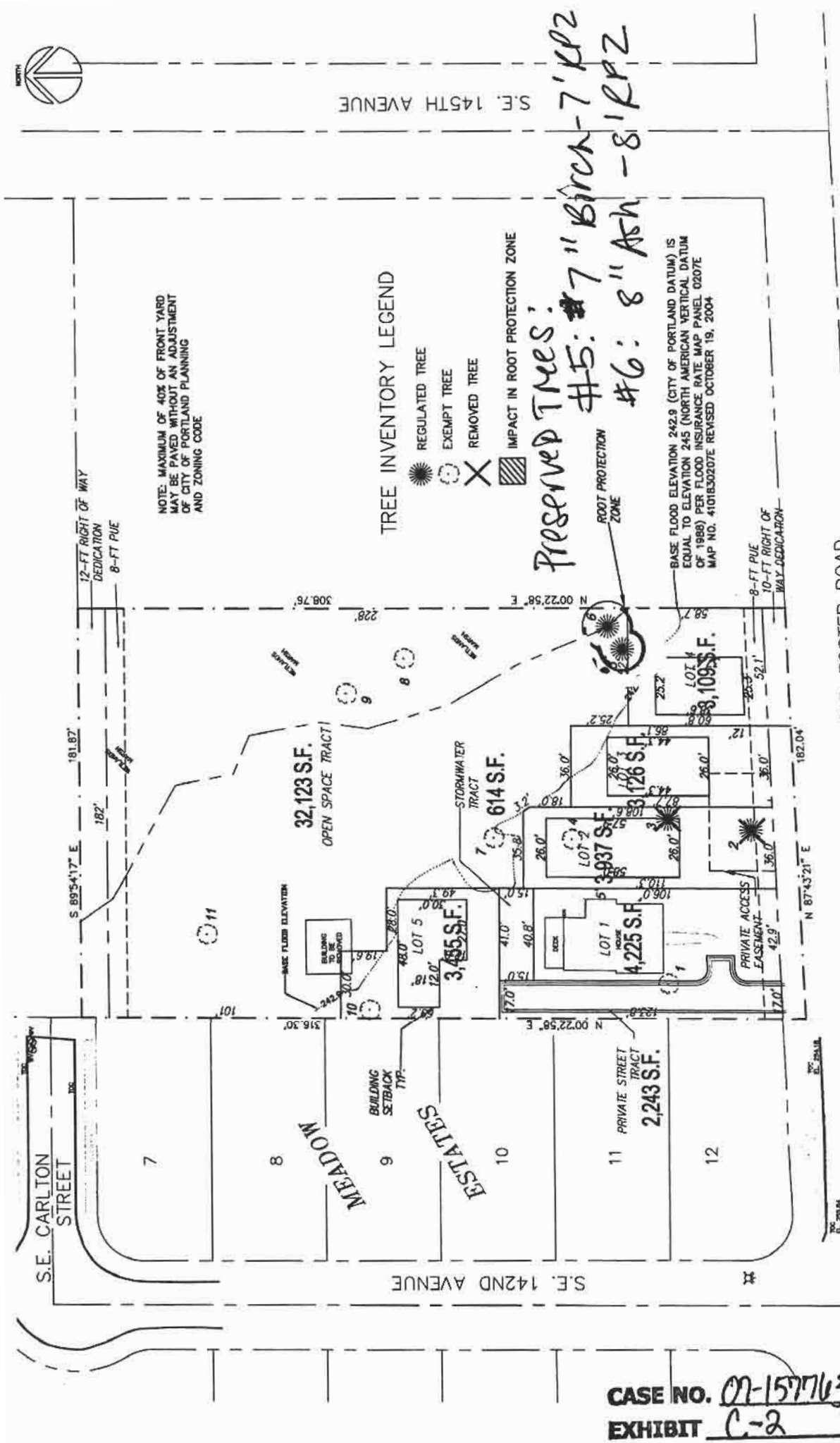


APPLICANT: TIM VAUGHAN  
1165 HAZEL STREET  
JEFFERSON, OR 97352  
PH: (503) 781-8688

planningResourcesinc.  
Partnerships & Performance  
1165 HAZEL STREET, SUITE 201  
JEFFERSON, OR 97352  
PH: (503) 781-8688

DATE	REVISED

CASE NO. 07-157763  
EXHIBIT C-1



APPLICANT: TIM VAUGHAN  
 1165 HAZEL STREET  
 JEFFERSON, OR 97352  
 PH: (503) 761-8868

NO.	DATE	REVISED

CASE NO. 07-157763  
 EXHIBIT C-2

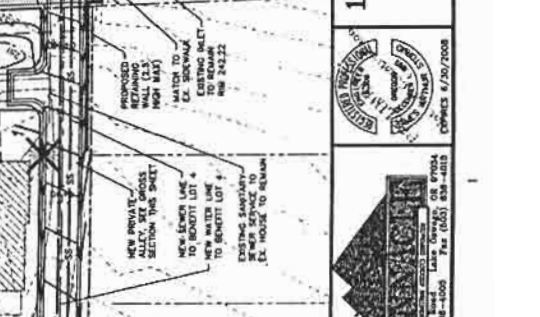
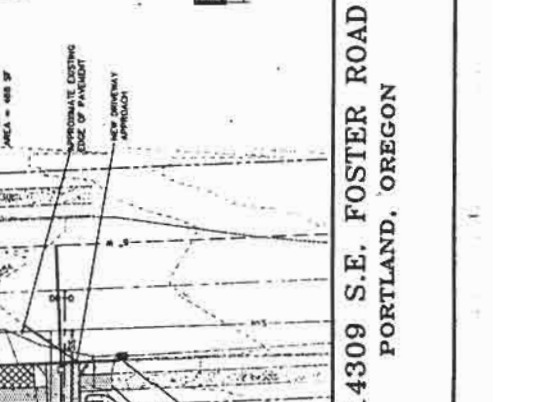
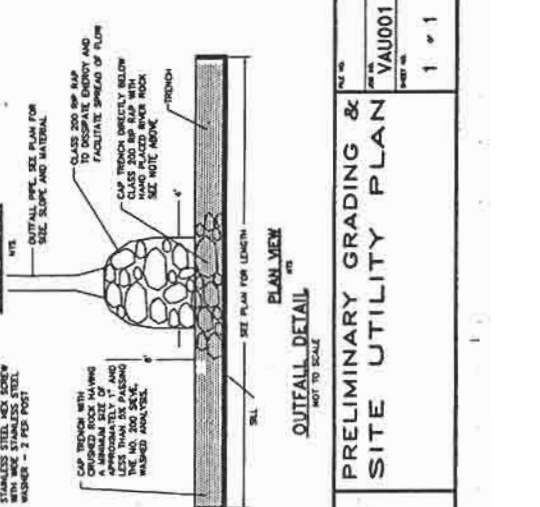
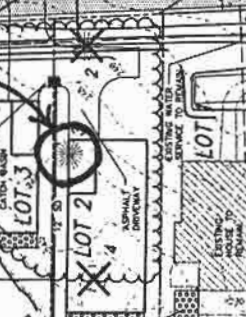
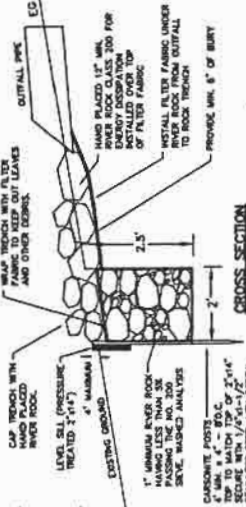
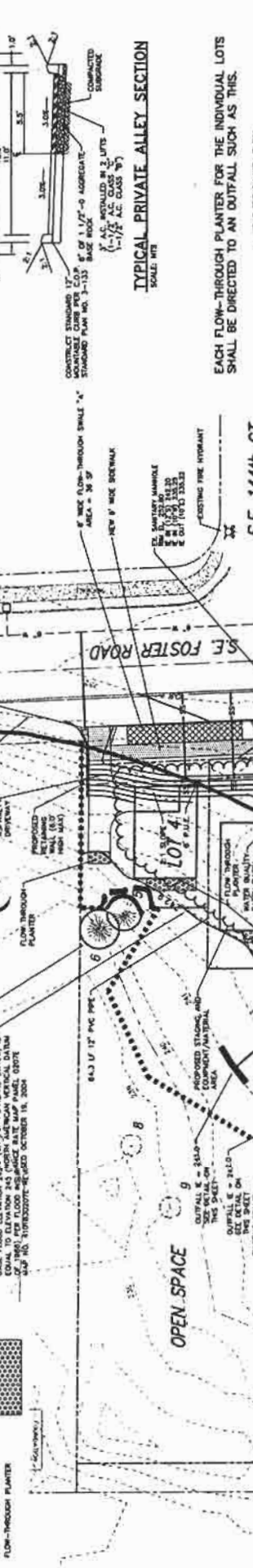
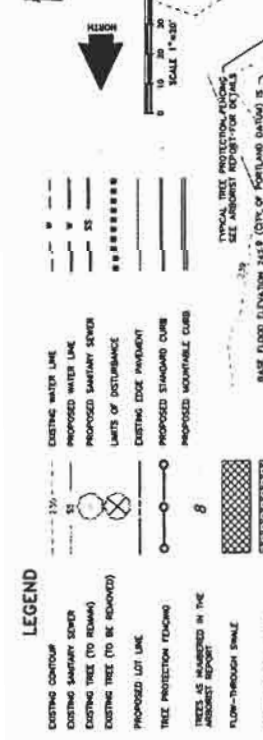
**STORMWATER MANAGEMENT SUMMARY**

ALL PROPOSED LOTS (1 THROUGH 5) WILL BE REQUIRED TO UTILIZE A FLOW-THROUGH PLANTER OR OTHER APPROVED METHOD WITH THE LOT WATER QUALITY REQUIREMENTS AS WELL AS THE FLOW-THROUGH PLANTER. ALL FACILITIES SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE CITY OF PORTLAND STORMWATER MANAGEMENT MANUAL. THE CITY OF PORTLAND STORMWATER MANAGEMENT MANUAL IS AVAILABLE TO THE OPEN SPACE AND UTILITIES DEPARTMENT ON THIS DATE.

STORMWATER COLLECTED WITHIN THE HALF STREET IMPROVEMENTS OF SE FOSTER ROAD WILL BE ROUTED TO THE PROPOSED PUBLIC FLOW-THROUGH SWALE LOCATED BETWEEN THE CURB AND SIDEWALK.

AREA OF DISTURBANCE = 23,500 SQUARE FEET  
 APPROXIMATE VOLUME OF DISTURBED GROUND = 890 CUBIC YARDS

*Note: Tree #3 10" Sequoia must be protected during site preparation per JCBDD std. (32557)*



<p>PLANNING RESOURCES          7160 SW 7th Loop, Suite 201          Portland, OR 97233          PHONE (503) 681-1020          FAX (503) 681-1028</p>	<p>SEAL          REGISTERED PROFESSIONAL ENGINEER          CIVIL ENGINEERING          STATE OF OREGON          NO. 12345          EXPIRES 6/30/2008</p>
<p>PROJECTED BY          J. STOKO          CHECKED BY          J. STOKO          DATE          8-4-08</p>	<p>REVISION</p>

14309 S.E. FOSTER ROAD  
 PORTLAND, OREGON

PRELIMINARY GRADING &  
 SITE UTILITY PLAN

CASE NO. 07-157M63  
 EXHIBIT C-3