



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

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Date: May 22, 2009
To: Interested Person
From: Sean Williams, Land Use Services
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NOTICE OF A TYPE II_x 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 08-168843 LDP AD

GENERAL INFORMATION

Applicant: Terry Shanley
219 NW 12th Avenue, Suite 203
Portland, OR 97209

Representative: Dale Marx
Po Box 565
Gresham, OR 97030

Site Address: 1441 SW Stephenson Street

Legal Description: TL 3100 0.92 ACRES, SECTION 33 1 S 1 E
Tax Account No.: R991330340
State ID No.: 1S1E33BD 03100
Quarter Section: 4127
Neighborhood: Arnold Creek, contact Nancy Hand at 503-452-9483.
District Coalition: Southwest Neighborhoods Inc., contact Leonard Gard at 503-823-4592.
Plan District: None
Other Designations: Potential Landslide Hazard Area
Zoning: Residential 10,000 (R10)
Case Type: Land Division Partition (LDP) w/ Adjustment (AD)
Procedure: Type II_x, an administrative decision with appeal to the Hearings Officer.

Proposal:

The applicant is proposing to divide the subject property into two parcels of approximately 20,341 square feet (Parcel 1) and 18,999 (Parcel 2) square feet in size. Parcel 1 is a standard lot that will retain the existing single family residence and Parcel 2 is a flag lot that will be available for development consistent with the R10 zone standards. An adjustment to the maximum lot size (17,000 sq. ft.) for both parcels has also been requested.

This partition proposal is reviewed through a Type II_x procedure because: (1) the site is in a residential zone; (2) two or three lots are proposed; (3) the site is located within a Potential Landslide Hazard; and (4) a concurrent review (Adjustment) is required (see 33.660.110).

For purposes of State Law, this land division is considered a partition. To partition land is to divide an area or tract of land into two or three parcels within a calendar year (See ORS 92.010).

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are found in sections(s):

- **33.660.120, Approval Criteria for Land Divisions in Open Space and Residential Zones**
- **33.805.040 A.-F., Approval Criteria for Adjustments**

ANALYSIS

Site and Vicinity: The subject property is located on the north side of SW Stephenson Street approximately 100 feet west of SW Lancaster Road. A single family residence is situated in the southern half of the lot and is accessible via a driveway that leads to a detached garage and vehicle paving area behind the residence. 22 trees have been identified on the site subject to preservation standards. Topography of the site moderately slopes upward from SW Stephenson Street. The surrounding vicinity is predominantly zoned R10 and R20 with single family development.

Zoning: The R10 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.

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 March 23, 2009.

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.

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	Applicable - See findings below.
B	33.630	Trees	Applicable - See findings below.

Criterion	Code Chapter	Topic	Applicability Findings
C	33.631	Flood Hazard Area	Not applicable - The site is not within the flood hazard area.
D	33.632	Potential Landslide Hazard Area	Applicable - See findings below.
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 when the minimum density for the site is less than 40 units.
G	33.635 .100	Clearing and Grading	Applicable - See findings below.
G	33.635 .200	Land Suitability	Applicable - See findings below.
H	33.636	Tracts and Easements	Applicable - See findings below.
I	33.639	Solar Access	Not Applicable - Maintaining existing development on the site limits new parcel configuration (33.610.200 supercedes 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	Applicable - See findings below.
L	33.651 - 33.654	Services and Utilities	Applicable - See findings below.

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 not proposed or required, but the site is within the potential landslide hazard area. Therefore, the maximum and minimum density for this site is as follows:

Minimum = If any portion of the site is within the potential landslide hazard area, the minimum density requirement is reduced to zero (per 33.610.100).

Maximum = 40,040 square feet ÷ 10,000 square feet = 4

The applicant is proposing 2 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):

	R10 Zone Requirement	Proposed Lot 1	Proposed Lot 2
Minimum Lot Area	6,000 sq. ft.	20,341 sq. ft.	18,999 sq.ft.
Maximum Lot Area	17,000 sq. ft.		
Minimum Lot Width*	50 ft.	120 ft.	
Minimum Lot Depth	60 ft.	165 ft.	
Minimum Front Lot Line	30 ft.	120 ft.	
Minimum Flag Lot Width**	40 ft.		70 ft.
Minimum Flag Lot Depth**	40 ft.		112 ft.

* Width is measured at the minimum front building setback line

** For flag lots, width is measured at the midpoint of the opposite lot lines in the "flag" portion of the lot.

Flag Lots

Parcel 2 is a flag lot. Zoning Code standards allow the creation of flag lots in very limited circumstances. The limitations minimize the negative impacts of flag lots on an area while allowing land to be divided when other options are not achievable. A flag lot is allowed only when all of the following is true: (1) an existing dwelling unit on the site is located so that it precludes a land division that meets the minimum lot width standards; and (2) only two lots are proposed; and (3) minimum density requirements for the site will be met. In this case there is an existing house on the site that would preclude the creation of standard lots. The house is located 27 feet from the west property line and 32 feet from the east property line, which would preclude the creation of a lot that would meet the minimum width standard of the R10 zone of 50 feet. Two lots are proposed. As discussed above, minimum density has been met. The proposed flag lot meets applicable Zoning Code standards found in 33.610.400 because it has a "pole" at least 12 feet wide that connects to a street, and as shown above, meets the minimum width and depth standard of 40 feet. Therefore, Parcel 2 is allowed.

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 (Exhibit A-3). Some trees have been exempted by the arborist because they are either unhealthy, a nuisance species, located partially off the property or located within 10 feet of an existing structure to remain on the property. The arborist report identifies 22 trees on the site of which 17 are determined to be non-exempt.

The total non-exempt tree diameter on the site is 233 inches. The applicant originally proposed to preserve approximately 54 percent of the total non-exempt tree diameter, of which one tree is a nuisance species (#13: Hawthorne, non-native) and another tree is actually considered an arborescent shrub (#4: Vine Maple). With removal of these trees and selection of the highest value species to meet the requirements of Option 1 the applicant will be required to preserve trees 1, 11, 12, 14 and 15, which equates to 88.5 inches of diameter, or 37 percent of the total non-exempt tree diameter. This proposal complies with Option 1 of the tree preservation standards, which requires at least 35 percent of the total tree diameter on the site to be preserved. The applicant has provided a Tree Preservation Plan showing the preserved trees and the required root protection zones (Exhibit C-1).

This criterion is met, subject to the condition that development on Parcel 1 be carried out in conformance with the Tree Preservation Plan (Exhibit C-1) and the applicant's arborist report (Exhibit A-3).

D. Potential Landslide Hazard Area. If any portion of the site is in a Potential Landslide Hazard Area, the approval criteria of Chapter 33.632, Sites in Potential Landslide Hazard Areas, must be met.

33.632.100 Landslide Hazard Area Approval Criterion

The following approval criterion must be met: Locate the lots, buildings, services and utilities on the safest part of the site so that the risk of a landslide affecting the site, adjacent sites, and sites directly across a street or alley from the site, is reasonably limited.

Determination of whether the proposed layout and design reasonably limits the risk of a landslide will include evaluation of the Landslide Hazard Study and will take into consideration accepted industry standards for factor of safety. Alternative development options including alternative housing types and reduced density may be required in order to limit the risk to a reasonable level.

Findings: The entire site is located within the Potential Landslide Hazard Area. The approval criteria state that the lots, buildings, services, and utilities must be located on the safest part of the site so that the risk of a landslide affecting the site, adjacent sites, and sites directly across a street or alley from the site is reasonably limited.

In order to evaluate the proposal against this criterion, the applicant has submitted a geotechnical evaluation of the site and proposed land division, prepared by a Certified Engineering Geologist and a Geotechnical Engineer (Exhibit A-4). That report was evaluated by the Site Development Division of the Bureau of Development Services, the City agency that makes determinations regarding soil stability.

The applicant's geotechnical evaluation indicates that the risk of potential landslide hazard at the site is relatively low, given the soil composition, topography, and other risk factors. The proposed land division will result in lots, buildings, services, and utilities that will not significantly increase the risk of landslide potential on the site or other properties in the vicinity of the site. In addition, the geotechnical evaluation has concurred that the applicant's

proposed method of stormwater disposal at the site will not have a significant detrimental impact on the slope stability on or around the site. This conclusion was reached because stormwater will not be disposed on the site itself, it will be treated and discharged into an existing drainage ditch as discussed later in this report under the findings for "Stormwater Management Approval Criteria."

Site Development has concurred with the findings of the applicant's geotechnical report, but notes that further geotechnical evaluation may be required for specific building plans at the time of construction plan review. This criterion is met.

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 is located in the Potential Landslide Hazard area. Therefore, the clearing and grading associated with preparation of the lots must occur in a way that will limit erosion concerns and assure that the preserved trees on the site will not be disturbed.

A Preliminary Clearing and Grading Plan was not submitted with the land division application. However, the applicant did submit a Landslide Hazard Report (Exhibit A-4) that describes how clearing and grading should occur on the site to minimize erosion risks. The applicant also provided a Tree Protection Plan (Exhibit C-1) that designates areas on the site where grading should not occur in order to protect the roots of the trees on the site that will be preserved, and an arborist report (Exhibit A-4) that further discusses grading on the site. Both the applicant's geotechnical engineer and arborist recommend that the amount of grading work occurring on the site be minimized as much as possible. It is anticipated that the grading will primarily involve excavating for the foundations of the new houses and trenching for the utilities, but will not include mass grading of the site to alter the existing contours.

Following the recommendations of the Landslide Hazard Study will help to limit erosion and sedimentation concerns. Stormwater runoff from the lots will be appropriately managed by filtered collection and disposal to the ditch in SW Stephenson Street to assure that the runoff will not adversely impact adjacent properties (see detailed discussion of stormwater management later in this report). In addition, no clearing and grading will be permitted within the root protection zones of the trees on the site that are required to be preserved. Preserving these trees will help limit erosion by assuring that the tree roots will help to hold the soil in

place. Topsoil storage and general stockpiling on the site should only occur if it will not create any additional erosion concerns as recommended by the geotechnical engineer

As shown above the clearing and grading anticipated to occur on the site can meet the approval criteria. At the time of building permit submittal on the individual lots additional geotechnical information may be required per the Site Development Section of the Bureau of Development Services. 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.

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

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

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

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 Private Access Easement over the "flag pole" portion of Parcel 2 for the benefit of Parcel 1 is proposed to allow use of a driveway that will be located within the pole portion of the flag lot (Parcel 2);

As stated in Section 33.636.100 of the Zoning Code, a maintenance agreement will be required describing maintenance responsibilities for the easement described above and facilities within

this area. This criterion can be met with the condition that a maintenance agreement is prepared and recorded with the final plat. In addition, the plat must reference the recorded maintenance agreement with a recording block, substantially similar to the following example:

“A Declaration of Maintenance agreement for (Private Access Easement) 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 140 feet of frontage on SW Stephenson Street. SW Stephenson Street is classified as a Neighborhood Collector Street, Community Transit Street, City Bikeway, City Walkway, Major Emergency Response and Local Service Street for all other modes in the City’s Transportation System Plan. Tri-Met provides transit service approximately 965 feet from the site on SW Boones Ferry Road via bus number 38. Parking is currently not allowed on either side of SW Stephenson Street. There is one driveway entering the site that provides access to off-street parking for the existing house.

At this location, SW Stephenson Street is improved with a variable width of paved roadway ranging from 24 to 32 feet within a 55 foot wide right of way. There are no curbs, planter strips, or sidewalks along this sites frontage. In reviewing this land division, Portland Transportation relies on accepted civil and traffic engineering standards and specifications to determine if existing street improvements for motor vehicles, pedestrians and bicyclists can safely and efficiently serve the proposed new development. Portland Transportation has identified a number of properties on the north side of SW Stephenson Street that lack pedestrian corridor improvements, possess further development potential and have signed street and storm sewer waivers of remonstrance. Therefore, because none of the other frontages have yet to be improved on this street, Portland Transportation has determined that an isolated improvement at this location would not be meaningful. If the street is to be improved, it would be more appropriate to complete the improvements as one LID project. Therefore, the applicant will be required to sign street and storm sewer waivers of remonstrance (for participation in future street and storm sewer improvements) prior to final plat approval. In addition, in order to accommodate said future improvements 5 feet of additional right-of-way must be dedicated along the frontage of the site. Further, PBOT has identified the presence of a large laurel hedge

within the SW Stephenson Street right of way associated with this site that will require removal prior to final plat approval.

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

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

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

- The water standards of 33.651 have been verified. An existing 12-inch water main is available in SW Stephenson Street from which Parcel 1 has an existing service. Water is available to proposed Parcel 2 from the water main in Stephenson Street. See Exhibit E-3 for more details.
- The sanitary sewer standards of 33.652 have been verified. There is an existing 8-inch concrete sanitary-only sewer main located in SW Stephenson Street that can serve the sanitary needs of the proposed parcels. Parcel 1 has an existing sewer service from that main. 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.
- Chapter 33.654 includes technical standards related to proposed public and private rights of way, including improvements within streets, pedestrian connections, common greens, and alleys. However, no new streets, pedestrian connections, common greens, or alleys are proposed or required within the land division site. Generally, through streets should be provided no more than 530 feet apart and at least 200 feet apart. Portland Transportation has indicated that topography in the area, the non-grid street pattern through this part of the city and existing lot configurations preclude the ability to provide a public street or pedestrian connection through this site. Therefore, the Bureau of Transportation has concluded that connectivity requirements are adequately met for this site. As a result, the remaining standards and approval criteria related to street connectivity, location, and design are met or not applicable.

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: No stormwater tract is proposed or required. Therefore, criterion A is not applicable.

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 proposed the following stormwater management methods (Exhibit C-1), and the Bureaus have responded as follows (Exhibits E-1 and E-5):

- **Parcel 1 (the parcel with the existing house):** The existing house has downspouts that drain into underground pipes with a trench and area drain on the north side of the house. Site Development has noted that some of the downspouts and gutters for the house had been removed and the trench drain was under repair. There are no City records indicating where the pipes are directed. Prior to final plat approval, the applicant must document the location of the stormwater disposal for the existing house, to the satisfaction of Site Development. If permits are required to retrofit the existing stormwater system, then the permits must be finalized prior to final plat approval and the as-built location of the new stormwater management systems must be shown on a supplemental plan after the required inspections are approved.
- **Parcel 2:** If stormwater is directed to the proposed sand filter then it will require to be reviewed by Bureau of Environmental Services under the Performance Design Approach. Site Development has no objection for the stormwater from this parcel to be directed into a flow-through planter that will remove pollutants and suspended solids. The parcel has sufficient size for the planter box, and the Bureau of Environmental Services has indicated that the treated water can be directed to the existing ditch in SW Stephenson Street. An original proposal had the storm sewer line associated with the collection method described above located in an easement through the west side of Parcel 1 to SW Stephenson Street. This would have resulted in the pipe being located in the root protection zones of some of the trees proposed for preservation on Parcel 1. Therefore, in order to resolve this conflict the applicant submitted a revised proposal to locate the storm sewer pipe through the pole portion of the flag lot in order to avoid any conflicts.

With the conditions of approval described above, the stormwater management criteria are met. As shown by the findings above, the Services and Utilities criteria are met.

APPROVAL CRITERIA FOR ADJUSTMENTS

33.805.010 Purpose

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue to provide certainty and rapid processing for land use applications.

33.805.40 Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F., below, have been met. Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

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

Findings: The applicant is requesting two adjustments to allow Parcel 1 (20,341 sq.ft.) and Parcel 2 (18,999 sq.ft.) to exceed the maximum lot size in the R10 zone of 17,000 square feet. The purpose of the lot dimension standards for lots in the RF through R5 zones (33.610.200) ensure that:

- **Each lot has enough room for a reasonably-sized house and garage;**
- **Lots are of a size and shape that development on each lot can meet the development standards of the zoning code;**
- **Lots are not so large that they seem to be able to be further divided to exceed the maximum allowed density of the site in the future;**
- **Each lot has room for at least a small, private outdoor area;**
- **Lots are compatible with existing lots;**
- **Lots are wide enough to allow development to orient toward the street;**
- **Lots don't narrow to an unbuildable width close to the street**
- **Each lot has adequate access from the street;**
- **Each lot has access for utilities and services; and**
- **Lots are not landlocked.**

The land division site has a maximum density of 3 lots with the provision of a street, which would be necessary to develop this site based on existing lot dimensions. However, desired retention of the existing single family dwelling within this site limits development options and precludes the ability to provide a private street to serve an additional lot to meet the maximum density. Therefore, based on the approximate size of 40,040 square feet a two lot land division would result in each parcel exceeding the maximum lot size of 17,000 square feet in the R10 zone.

Proposed Parcel 2 of this request contains more than adequate room for a reasonably sized house and garage and each Parcel is configured in a manner that applicable development standards may be met including outdoor area. Parcel 1 is large enough to accommodate future division with the removal of the existing dwelling and Parcel 2 is just under the minimum lot size necessary to attain a density of 2. However, there is no circumstance in which further division of the proposed parcels would result in exceeding the maximum density for the original land division site. The proposed lots are compatible with a majority of adjacent lots, particularly to the north where a significant amount of Residential 20,000 (R20) zoned lots are present. Each Parcel has adequate vehicle access and may be served by utilities in SW Stephenson Street per the City service bureaus.

Based on the discussion above, the purpose of the maximum lot area standard can continue to be met and, therefore, this Adjustment criteria is satisfied.

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: The neighborhood has similar types of development (flag lots) and similar housing stock (single family). As noted above, similarly sized lots are prevalent in this area and the proposal is consistent with the character of this southwest Portland neighborhood. The increase of the lot area dimension will not detract from the livability or appearance of the residential area. This criterion 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 R10 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. Granting the two adjustments will allow for a land division that will preserve the existing house and provide an opportunity to increase the housing stock of the area. Therefore, the proposal will still result in a project that is consistent with the overall purpose of the zone.

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

Findings: The site does not contain any scenic or historic resource designations. This criterion is not applicable.

E. Any impacts resulting from the adjustments are mitigated to the extent practical;

Findings: As addressed in the preceding findings, there are no discernable impacts that will result from the proposed adjustments. Therefore, no mitigation is necessary and this criterion 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: The site is not within an environmental overlay zone. This criterion is not applicable.

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.

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

- Flag Lots-- special setback standards apply to flag lots in the RF-R2.5 zone (33.110.240.F).

Existing development that will remain after the land division. The existing development on the site will remain and be located on Parcel 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 R10 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 approximately 8 feet from the new flag pole for Parcel 2 which does not meet the minimum side building setback of 10 feet for the R10 zone. However, an exception is allowed to reduce the side building setback along a flag pole to 3 feet. To ensure this standard continues 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, the detached garage on Parcel 2 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. A paved parking pad/garage provides this required parking for the existing house on Parcel 1. As a result of this land division, the detached garage associated with the house on parcel 1 will be located on Parcel 2. However, a significant amount of vehicle paving area is available on Parcel 1 behind the existing house to allow for a parking space that meets zoning code requirements.

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

OTHER TECHNICAL REQUIREMENTS

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

Bureau	Code Authority	Topic	Contact Information
Water Works	Title 21	Water availability	503-823-7404 http://www.water.ci.portland.or.us/
Environmental Services	Title 17; 2002 Stormwater Manual	Sewer availability Stormwater Management	503-823-7740 http://www.bes.ci.portland.or.us/
Fire Bureau	Title 31 Policy B-1	Emergency Access	503-823-3700 http://www.fire.ci.portland.or.us/
Transportation	Title 17, Transportation System Plan	Design of public street	503-823-5185 http://www.trans.ci.portland.or.us/
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 http://www.bds.ci.portland.or.us.

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

- The applicant must meet the requirements of the Fire Bureau in regards to addressing of structures, fire apparatus access, turning radius and driving surfaces. These requirements are based on the technical standards of Title 31 and Oregon Fire Code. See Exhibit E-4 for more details.

CONCLUSIONS

The applicant has proposed a 2 parcel partition in conjunction with an adjustment to maximum lot size for each parcel, 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 are: maximum lot size adjustment(s), transportation impacts and potential landslide hazard designation.

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

ADMINISTRATIVE DECISION

Approval of two adjustments to the maximum lot size of the R10 zone to allow for an approximate lot size of 20,341 square feet for Parcel 1 and 18,999 square feet for Parcel 2.

Approval of a Preliminary Plan for a 2 parcel partition, that will result in one standard lot (Parcel 1) that will retain the existing dwelling and one flag lot (Parcel 2) that will be made available for development consistent with R10 zone standards, 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 proposed general location of future building footprints and stormwater facilities for each of the vacant lots.
 - If installation of subsurface stormwater system retrofits are required by Site Development for the existing house on Parcel 1, then prior to final plat approval the as-built location of the new stormwater management facilities shall be shown on a supplemental plan after any required inspections are approved and permits are finalized.
 - Turning radius from the public street to the private driveway.
 - 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 SW Stephenson Street. The required right-of-way dedication must be shown on the final plat.
2. A Private Access Easement over the “flag pole” portion of Parcel 2 for the benefit of Parcel 1 shall be shown and labeled on the final plat. The easement shall allow shared use of this area for all of the purposes that a driveway would be typically used for.
3. A recording block for each of the legal documents such as maintenance agreement(s), acknowledgement of special land use conditions, or Declarations of Covenants, Conditions, and Restrictions (CC&Rs) as required by Condition C-5 below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: “A

Declaration of Maintenance Agreement for (Private Access Easement) 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 sign street and storm sewer waivers of remonstrance (for future street and storm sewer improvements) as required by the City Engineer. Waiver forms will be provided to the applicant during the final plat review process.

Utilities

2. The applicant must meet the requirements of the Fire Bureau for providing an adequate fire accessway for Parcel 2. Alternately, the applicant will be required to install residential sprinklers in the new house on Parcel 2. An Acknowledgement of Special Land Use Conditions describing the sprinkler requirement must be referenced on and recorded with the final plat.

Existing Development

3. The applicant must obtain a finalized demolition permit for removing the garage, shed and greenhouse on Parcel 2. Alternately, the applicant can execute a covenant with the City stating that the structures will be removed if a primary structure has not received final inspection on the lot(s) with the accessory structure(s) within two years of final plat approval. The covenant must be recorded with Multnomah County prior to final plat approval.
4. The applicant must meet the requirements of Site Development for the stormwater systems on the existing house to remain on Parcel 1. If modifications to the system are required by Site Development, then the applicant must obtain final approval of any required permits for this work prior to final plat approval, and the as-built location of any new/modified subsurface stormwater facilities shall be shown on a supplemental plan after required inspections are approved and permits are finalized.
5. The applicant shall remove the laurel hedge within the SW Stephenson Street right of way in front of Parcel 1 per the requirements of the Portland Bureau of Transportation.

Required Legal Documents

6. A Maintenance Agreement shall be executed for the Private Access Easement area described in Condition B-2 above. The agreement shall include provisions assigning maintenance responsibilities for the easement area and any shared facilities within that area, consistent with the purpose of the easement, and all applicable City Code standards. The agreement must be reviewed by the City Attorney and the Bureau of Development Services, and approved as to form, prior to final plat approval.

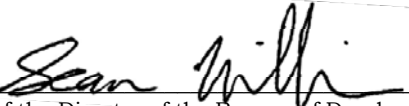
D. The following conditions are applicable to site preparation and the development of individual lots:

1. Development on Parcel 1 shall be in conformance with the Tree Preservation Plan (Exhibit C-1) and the applicant's arborist report (Exhibit A-3). Specifically, trees numbered 1, 11, 12, 14 and 15 are required to be preserved, with the root protection zones indicated on Exhibit C-1. 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. The report from an arborist and any revisions to

permit plans reflecting new root protection zones must be submitted and approved by Planning and Zoning prior to any working occurring in the root protection zone. If work is conducted in the RPZ and Planning & Zoning approval is not obtained before the work begins and the tree subsequently falls, it may result in a violation.

2. The applicant must post the flag pole driveway for Parcel 2 with "No Parking" signs to the satisfaction of the Fire Bureau.
3. The applicant must meet the addressing requirements of the Fire Bureau for Parcel 2, the flag lot.
4. The applicant must meet the requirements of the Fire Bureau regarding fire department access roads and driving surface. 12 feet of fire department access width, with a separation of 5 feet to the dwelling, is required with a driving surface capable of supporting a fire apparatus load of at least 75,000 pounds.

Staff Planner: Sean Williams

Decision rendered by:  **on May 20, 2009**
By authority of the Director of the Bureau of Development Services

Decision mailed: May 22, 2009

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 October 8, 2008, and was determined to be complete on March 18, 2009.

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 October 8, 2008.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period.

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 5, 2009** 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. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. 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 .

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.**

Recording concurrent approvals. The preliminary land division approval also includes concurrent approval of adjustments. These other concurrent approvals must be recorded by the Multnomah County Recorder before any building or zoning permits can be issued.

A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with these concurrent land use reviews. The applicant, builder, or their representative may record the final decisions on these concurrent land use decisions as follows:

- By Mail: Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- In Person: Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034.

Expiration of concurrent approvals. The preliminary land division approval also includes concurrent approval of adjustments. For purposes of determining the expiration date, there are two kinds of concurrent approvals: 1) concurrent approvals that were necessary in order for the land division to be approved; and 2) other approvals that were voluntarily included with the land division application.

The following approvals were necessary for the land division to be approved: adjustments to maximum lot size for Parcels 1 and 2. These approval(s) expires if:

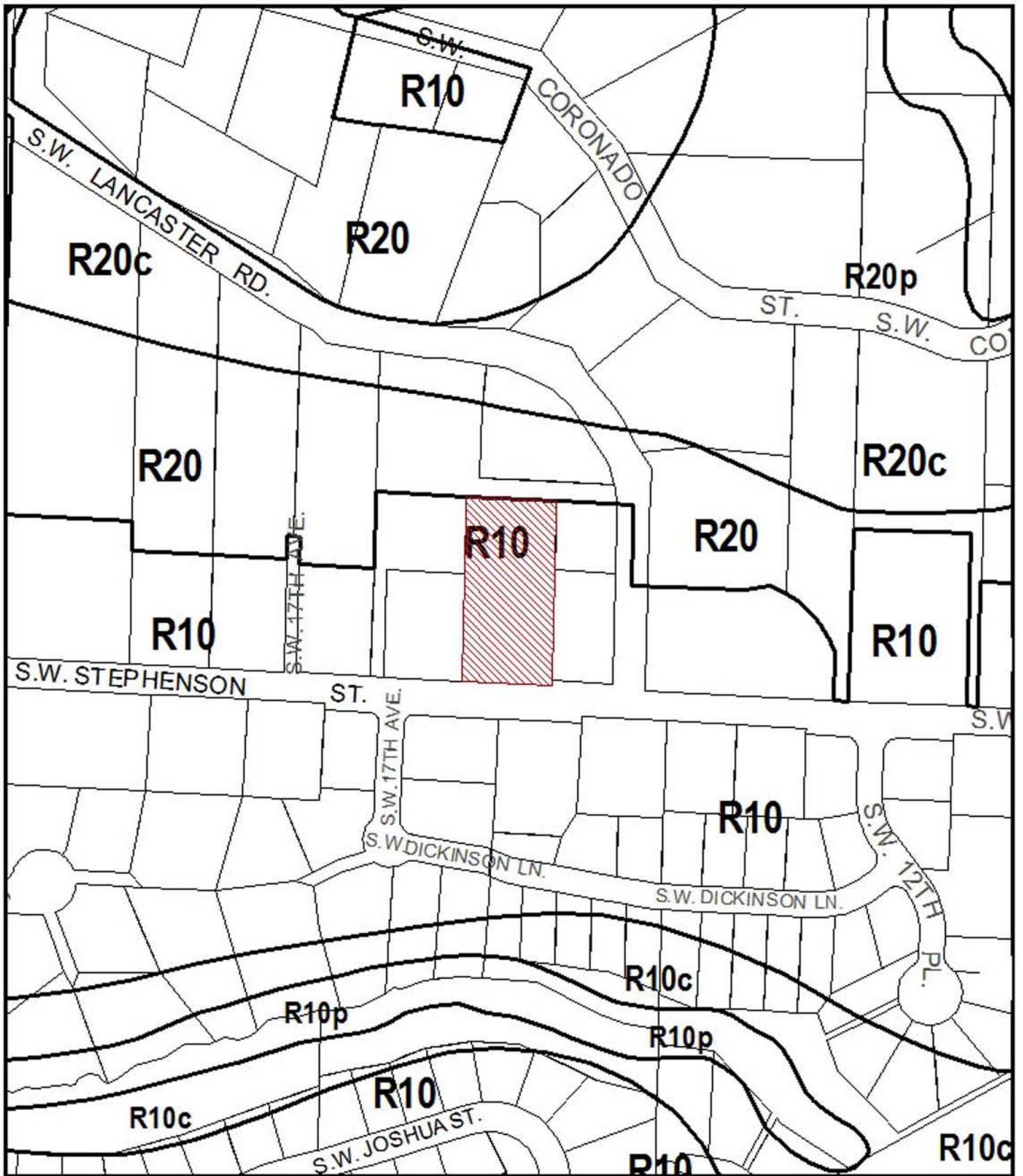
- The final plat is not approved and recorded within the time specified above, or
- Three years after the final plat is recorded, none of the approved development or other improvements (buildings, streets, utilities, grading, and mitigation enhancements) have been made to the site.

All other concurrent approvals expire three years from the date rendered, unless a building permit has been issued, or the approved activity has begun. Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Narrative for Land Division
 - 2. Narrative for Adjustment Review
 - 3. Arborist Report
 - 4. Geotechnical Landslide Hazard Report
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Bureau of Parks, Forestry Division & Life Safety Plans Examiner
- F. Correspondence: NONE
- G. Other:
 - 1. Original LU Application
 - 2. Incomplete Letter
 - 3. Neighborhood Contact



ZONING

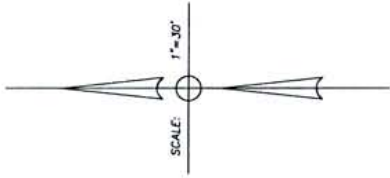


File No. LU 08-168843 LDPAD
 1/4 Section 4127
 Scale 1 inch = 200 feet
 State_Id 1S1E33BD 3100
 Exhibit B (Oct 10, 2008)

TENTATIVE PLAN FOR LAND DIVISION, EXISTING CONDITIONS,
 PROPOSED UTILITIES, IMPROVEMENTS AND TREE PLAN
 SITUATED IN THE NW 1/4 SECTION 33, T.1S., R.2E. W.M.
 MULTNOMAH CO., OREGON

MARY ASSOCIATES
 18615 E. BURNSIDE STREET
 PORTLAND, OR 97233
 TEL: 503-687-5550
 FAX: 503-666-6666
 EMAIL: DALEMARK@NTEGRAONLINE.COM

DATE DRAWN: AUGUST 22, 2008
 DRAWING NO. 070731P
 ACCOUNT NO. 07073
 REVISED: 12-08-08
 REVISED: 01-26-09
 PER CHARLES LANE, PE
 REVISED: 04-17-09
 REVISED: 05-15-09



CASE NO. 08-168843
 EXHIBIT C-1

REGISTERED
 PROFESSIONAL
 LAND SURVEYOR

OREGON
 FEBRUARY 14, 1985
 DANIEL R. BAUER
 2123

EXPIRATION DATE: 12/31/09

NOTES & LEGEND:

- BENCHMARK IS A MULTNOMAH COUNTY BRASS CAP AT THE CENTER OF SECTION 33, ELEV=444.32
- VERTICAL VALUES ARE TAKEN TO THE NORMAL POINT OR THE LEADER POINT OF THE ELEVATION. VALUES IN PARENTHESES (XXX.XX) ARE GUTTER SHOTS.
- EP* DENOTES EDGE OF PAVEMENT.
 - C* DENOTES GROUND.
 - CH* DENOTES CONCRETE WALK.
 - CM* DENOTES CONCRETE WALK.
 - CL* DENOTES CHAINLINK FENCE.
 - CI* DENOTES CATCH INLET.
 - EW* DENOTES EXISTING WATER LINE.
 - EW- DENOTES EXISTING WATER LINE.
 - WP* DENOTES PROPOSED WATER LINE.
 - WP- DENOTES PROPOSED WATER LINE.
 - TS* DENOTES TO BE REMOVED.
 - TBR* DENOTES TO BE REMOVED.
 - NSFR* DENOTES NEW SINGLE FAMILY RESIDENCE.
 - SS* DENOTES SQUARE FEET SECTION ZONE.
 - 00* DENOTES DOWNSHOUT TO FRENCH DRAIN.

LEGAL: OWNERSHIP:
 1441 SW STEPHENSON STREET
 15TEJ38D TL 3100 R 3J511
 LIVING TRUST STEPHENSON STREET
 PORTLAND, OREGON 97219

ZONE/OVERLAY:
 R10

LOT SIZE:
 40,031 SF

PP 2002-70

