



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

Dan Saltzman, Commissioner
Paul L. Scarlett, Director
Phone: (503) 823-7300
Fax: (503) 823-5630
TTY: (503) 823-6868
www.portlandoregon.gov/bds

Date: September 23, 2015
To: Interested Person
From: Sean Williams, Land Use Services
503-823-7612 / Sean.Williams@portlandoregon.gov

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 mailed copy of this document is only a summary of the decision. The reasons for the decision, including the written response to the approval criteria and to public comments received on this application, are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 14-232468 LDP

GENERAL INFORMATION

Applicant: Timur Tursunbaev / Timurland Construction LLC
5152 SW 49th Dr / Portland OR 97221

Owner: Gennadiy Morozov
4227 SW 40th Ave / Portland OR 97221-4014

Site Address: 4227 SW 40th Avenue

Legal Description: TL 8700 0.96 ACRES, SECTION 08 1S 1E
Tax Account No.: R991081240
State ID No.: 1S1E08CD 08700
Quarter Section: 3425
Neighborhood: Bridlemile, contact Claire Colman-Evans at 503-740-7460.
Business District: None
District Coalition: Southwest Neighborhoods Inc., contact Leonard Gard at 503-823-4592.
Plan District: None
Other Designations: Potential Landslide Hazard, Environmental Resource Site #124
Zoning: Residential 10,000 (R10) w/ Environmental Conservation (c) and Protection (p) Overlay

Case Type: Land Division Partition (LDP)
Procedure: Type II_x, an administrative decision with appeal to the Hearings Officer.

Proposal:

The applicant is requesting to partition the subject property into two parcels and an environmental resource tract of approximately 15,498 (Parcel 1), 11,295 (Parcel 2), and 12,297 (Tract A) square feet in size.

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; and (3) the site is located within a Potential Landslide Hazard Area (see 33.660.110).

For purposes of State Law, this land division is considered a partition. To partition land is to divide an area or tract of land into two or three parcels within a calendar year (See ORS 92.010). ORS 92.010 defines “parcel” as a single unit of land created by a partition of land. The applicant’s proposal is to create 3 units of land (2 lots and 1 tract). Therefore this land division is considered a partition.

Relevant Approval Criteria:

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

- **33.660.120, Approval Criteria for Land Divisions in Open Space and Residential Zones.**
- **33.430.160, Standards for Land Divisions and Planned Developments.**

FACTS

Site and Vicinity: The site is located on the west side of SW 40th Avenue approximately 300 feet north of SW Hamilton Street. Existing development consists of a single family home that will be retained within Parcel 1. The site topography moderately slopes downward to the west with the steepest area being the northwest corner of the site. An unnamed open stream channel is located northwest of the site. Many significant Douglas firs are located within the site, primarily north of the house within the environmental overlay zones. Surrounding development primarily consists of single dwelling homes. Bridlemile Elementary School is located approximately ¼ mile west of the site.

Infrastructure:

- **Streets** – The site has approximately 200 feet of frontage on SW 40th Avenue. There is one driveway entering the site that serves the existing house. At this location, SW 40th Avenue is classified as a Local Service Street for all modes in the Transportation System Plan (TSP). Tri-Met provides transit service approximately 300 feet south of the site on SW Hamilton Street via Bus #55. At this location, SW 40th Avenue is improved with approximately 15 feet of paving within a 25 foot wide right-of-way. There are no curbs, planter strips, or sidewalks.
- **Water Service** – There is an existing 6-inch DI water main in SW 40th Avenue. The existing house is served by a 1-inch metered service from this main.
- **Sanitary Service** - There is an existing 8-inch CSP sanitary sewer main in SW 40th Avenue that continues north adjacent to the eastern property boundary of the site eventually connecting to a main in SW Bridlemile Court. The existing house is served by a lateral from this main located approximately 72 feet north of the southern property line of the site.

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.

The “c” overlay is intended to conserve important environmental features and resources while still allowing compatible development. New development and exterior modifications to existing development must meet environmental standards or are subject to environmental review.

The “p” overlay provides the highest level of protection to the most important resources and functional values. Development will be approved in the environmental protection zone only in limited circumstances through environmental review.

Environmental Resources: The application of the environmental overlay zones is based on detailed studies that have been carried out within separate areas of the City. Environmental resources and functional values present in environmental zones are described in environmental inventory reports for these study areas.

The project site is mapped within the *Fanno Creek and Tributaries Conservation Plan* as Resource Site #124, Fanno Creek Tributaries North of SW Hamilton Road and East of SW Dosch Road. The types of resources found in Resource Site #124 include forest, wildlife habitat, intermittent and perennial creeks, palustrine wetlands, groundwater and open space. The functional values include feeding, watering, hiding, and dispersion areas for fish; groundwater discharge; maintaining native forest microclimate; and, stabilization of slopes.

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

Agency Review: Several Bureaus have responded to this proposal and relevant comments are addressed under the applicable approval criteria. Exhibits “E” contain the complete responses.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on **March 11, 2015**. One written response was received from a notified property owner regarding this proposal (Exhibit F.1). The correspondence primarily expressed concerns regarding trees. The applicant has demonstrated compliance with tree preservation standards via preserving three significant Douglas fir trees located outside of the environmental zone. No trees located within the environmental zone will be removed.

ZONING CODE APPROVAL CRITERIA

APPROVAL CRITERIA FOR LAND DIVISIONS IN OPEN SPACE AND RESIDENTIAL ZONES

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

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

Criterion	Code Chapter/Section and Topic	Findings: Not applicable because:
C	33.631 - Flood Hazard Area	The site is not within the flood hazard area.
E	33.633 - Phased Land Division or Staged Final Plat	A phased land division or staged final plat has not been proposed.
F	33.634 - Recreation Area	The proposed density is less than 40 units.
I	33.639 - Solar Access	All of the proposed parcels are interior lots (not on a corner). In this context, solar access standards express no lot configuration preference.
J	33.640 - Streams, Springs, and Seeps	No streams, springs, or seeps are evident on the site outside of environmental zones.
L	33.654.110.B.2 - Dead end streets	No dead end streets are proposed.
	33.654.110.B.3 - Pedestrian connections in the I zones	The site is not located within an I zone.
	33.654.110.B.4 - Alleys in all zones	No alleys are proposed or required.
	33.654.120.C.3.c - Turnarounds	No turnarounds are proposed or required.
	33.654.120.D - Common Greens	No common greens are proposed or required.
	33.654.120.E - Pedestrian Connections	There are no pedestrian connections proposed or required.
	33.654.120.F - Alleys	No alleys are proposed or required.
	33.654.120.G - Shared Courts	No shared courts are proposed or required.
	33.654.130.B - Existing	No public dead-end streets or pedestrian

	public dead-end streets and pedestrian connections	connections exist that must be extended onto the site.
	33.654.130.C - Future extension of dead-end streets and pedestrian connections	No dead-end street or pedestrian connections are proposed or required.
	33.654.130.D - Partial rights-of-way	No partial public streets are proposed or required.

Applicable Approval Criteria are:

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

Findings: Chapter 33.610 contains the density and lot dimension requirements applicable in the RF through R5 zones. The applicant is proposing to create two standard lots. The minimum and maximum density for the site is as follows:

Minimum = There is no minimum density as the entire site is located within the potential landslide hazard area (33.610.100).

Maximum = $41,995 \div 10,000$ square feet = 4.19 (which rounds down to a maximum of 4 lots, per 33.930.020.B)

The required and proposed lot dimensions are shown in the following table:

	Min. Lot Area (square feet)	Max. Lot Area (square feet)	Min. Lot Width* (feet)	Min. Depth (feet)	Min. Front Lot Line (feet)	Min. Flag Lot Width (feet)	Min. Flag Lot Depth (feet)
R10 Zone	6,000	17,000	50	60	30	40	40
Parcel 1	15,498		114	≈75	124	N/A	N/A
Parcel 2	11,295		90	140	90	N/A	N/A

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

The findings above show that the applicable density and lot dimension standards are met. Therefore, this criterion is met.

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

Findings: The regulations of Chapter 33.630 preserve trees and mitigate for the loss of trees. Certain trees are exempt from the requirements of this chapter. Trees in environmental overlay zones are subject to the Environmental Zone Regulations (33.430) and none of those trees are proposed for removal.

The applicant has provided an arborist report that inventories the trees within the land division site, evaluates their condition and specifies root protection zones (Exhibit A.2). The arborist report identifies 57 trees, of which 48 trees have been determined to be exempt as they are either located within the Environmental zone (#19-57), listed as a nuisance species (#8-11 and 17), are diseased in a manner that threatens continued viability (#7), located within 10-feet of an existing building to remain on the site (#1), or are dead (#16 and 18). Thus, 9 non-exempt trees are subject to the preservation requirements of this chapter. These non-exempt trees comprise 264-inches in total diameter.

The applicant proposes to preserve trees #12 (34" Douglas fir), #13 (30" Douglas fir), and #14 (28" Douglas fir), which comprise of 92 inches of diameter, or 35 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 non-exempt tree diameter on the site to be preserved. The trees to be preserved and the required root protection zones are shown on the applicant's Grading and Utility Plan (Exhibit C.5).

In order to ensure that future owners of the lots are aware of the tree preservation requirements, the applicant must record an Acknowledgement of Tree Preservation Land Use Conditions at the time of final plat.

This criterion is met, subject to the condition that development on Parcel 2 be carried out in conformance with the Grading and Utility Plan (Exhibit C.5) and the applicant's arborist report (Exhibit A.2) and an Acknowledgement of Tree Preservation Land Use Conditions is recorded with the final plat.

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.

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 parts of the site that are suitable for development in a manner that reasonably limits the risk of a landslide affecting the site, adjacent sites, and sites directly across a street or alley from the site.

In order to evaluate the proposal against this criterion, the applicant has submitted a geotechnical evaluation of the site and proposed land division and a Landslide Hazard Study, prepared by a Certified Engineering Geologist and a Geotechnical Engineer (Exhibit A.5, A.6 and A.8). These reports were 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 the soils and slopes at the site indicate that an on-site method of disposal such as the proposed soakage trenches is acceptable.

Site Development has concurred with the findings of the applicant's geotechnical report. 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.

Findings:

Clearing and Grading

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.

The Grading and Utility Plan (Exhibit C.5) and the Landslide Hazard Study (Exhibit A.6 and A.8) submitted with the land division application describe how clearing and grading should be

conducted to minimize erosion risks. This plan and the Arborist Report (Exhibit A.2) identify areas where grading should not occur in order to protect the roots of the trees 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 foundation of the new house on Parcel 2 and trenching for the utilities, including a soakage trench for the existing house on Parcel 1, 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 "Westside soakage trenches" 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 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 anticipated clearing and grading on the site can meet the approval criteria. At the time of building permit submittal on the individual lots a clearing, grading and erosion control plan will be submitted to the Site Development Section of the Bureau of Development Services. Site Development will review the grading plan against the applicant's Landslide Hazard Study as well as any additional geotechnical information required at the time of permit submittal to assure that the grading will not create any erosion risks. In addition the plans will be reviewed for compliance with the applicant's tree preservation plan and arborist report. This criterion is met with the noted conditions.

Land Suitability

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 a condition requiring final inspection for a decommissioning permit, the new lots can be considered suitable for new development, and this criterion will be met.

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

Findings: The following tract is required:

- Tract A: Open Space (Environmental Resource Area)

As stated in Section 33.636.100 of the Zoning Code, a maintenance agreement will be required describing maintenance responsibilities for the tract 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 Environmental Resource Tract has been recorded as document no. _____, Multnomah County Deed Records."

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

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

Findings: The transportation system must be capable of safely supporting the proposed development in addition to the existing uses in the area. The Development Review Section of the Portland Bureau of Transportation (PBOT) has reviewed the application for its potential

impacts regarding the public right-of-way, traffic impacts and conformance with adopted policies, street designations, and for potential impacts upon transportation services. The applicant submitted a Transportation Impact Analysis to address this criterion (Exhibit A.3). PBOT's Analysis (Exhibit E.2) is quoted, in part, as follows:

The minimal expected added vehicle trips (1 AM peak hour trip/1 PM peak hour trip/10 total new daily trips) will not adversely impact the operations of area intersections. On-street parking will not be adversely impacted given that on-street parking is currently not allowed along the street (on-site parking opportunities for more than one car will be provided on the new lot). The proposed lot split will not have any effect to transit service or any other mode of travel. The applicant submitted a professionally prepared Transportation Impact Study which provides technical support for these findings. The transportation system is therefore capable of safely supporting the proposed development in addition to existing uses in the area.

PBOT has reviewed and concurs with the information supplied and available evidence. No mitigation is necessary for the transportation system to be capable of safely supporting the proposed development in addition to the existing uses in the area. These criteria are met.

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

Findings: Chapters 33.651 through 33.654 address water service standards, sanitary sewer disposal standards, stormwater management, utilities and rights of way. The criteria and standards are met as shown in the following table:

<p>33.651 Water Service standard – See Exhibit E.3</p> <p>The Water Bureau has indicated that service is available to the site from the 6-inch DI water main in SW 40th Avenue, as noted on page 2 of this report. As a result of the proposed land division, the water line that provides service to the existing home on Parcel 1 will no longer be located entirely on the same lot as the home. Title 21 requires that the water service connection be located along the frontage of the lot to be served. Water service connections are not allowed by means of an easement. Therefore, prior to final plat, the water service for the existing home must be relocated, so that the service connection will be located along the frontage of the Parcel 1. The water service standards of 33.651 have been verified. This criterion is met, with the noted condition.</p>
<p>33.652 Sanitary Sewer Disposal Service standards – See Exhibit E.1</p> <p>The Bureau of Environmental Services has indicated that service is available to the site from the 8-inch CSP sanitary sewer main in SW 40th Avenue, as noted on page 2 of this report. As a result of the proposed land division, the existing sewer connection that serves the house on Parcel 1 will cross over Parcel 2 to reach the sewer main in SW 40th Avenue. Therefore, the applicant must obtain a plumbing permit to cap the existing sewer connection and establish a new service for the house located entirely on Parcel 1. All plumbing permits must receive final inspection approval prior to Final Plat approval. The sanitary sewer service standards of 33.652 have been verified. With this condition, this criterion is met.</p>
<p>33.653.020 & .030 Stormwater Management criteria and standards – See Exhibits E.1</p> <p>No stormwater tract is proposed or required. Therefore, criterion A is not applicable. The applicant submitted multiple infiltration reports as well as a geotechnical report and landslide hazard study (Exhibits A.4-8) to address this criterion and has proposed the following stormwater management methods:</p> <ul style="list-style-type: none"> • Parcel 1 (the lot with the existing house): The existing house has downspouts that drain onto the ground. The applicant has proposed to collect stormwater runoff from

existing development on this parcel and route it to a “Westside soakage trench” sized per Stormwater Management Manual (SWMM) standards. Therefore, prior to final plat approval, the applicant must receive final inspection approval of plumbing permits for the proposed stormwater improvements on Parcel 1.

- **Parcel 2:** Stormwater from this lot will be directed to an individual “Westside soakage trench” that will treat the water and slowly infiltrate it into the ground. This lot has sufficient area for a stormwater facility that can be adequately sized and located to meet setback standards, and accommodate water from a reasonably-sized home. BES has indicated conceptual approval of the proposed soakage trench.

33.654.110.B.1 Through streets and pedestrian connections

Generally, through streets should be provided no more than 530 feet apart and at least 200 feet apart. The Portland Bureau of Transportation has provided the following evaluation of connectivity for this proposal (Exhibit E.2):

No street connections have been identified in the vicinity of this property in the Portland Master Street Plan document. The location of the subject site within its block is not a desirable location to provide a new public street or pedestrian connection through the block. Areas to the north and west of the subject site are topographically and geographically challenged (environmentally zoned and potential landslide hazard areas). Extending either a public street or pedestrian connection through the site in any direction would be contrary to other City policies and goals. These impacts do not make further connectivity through the subject site or block feasible.

For the reasons described above, this criterion is met.

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

At this location, SW 40th Avenue is improved with approximately 15 feet of paving within a 25 foot wide right-of-way. 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 determined that curb and sidewalk improvements would be required to meet City standards, which would necessitate a right-of-way dedication of 14.5 feet. However, the applicant applied for a Public Works Alternative Review (14-180795 PW) to retain the existing conditions along the frontage of the site and was approved subject to conditions that the above referenced 14.5-ft of property be dedicated for future public right-of-way functions and street and storm sewer waivers of remonstrance be completed/executed (for participation in future street and storm sewer improvements). Subject to these requirements, one additional dwelling can be safely served by this existing street without having any significant impact on the level of service provided.

With the conditions described above, this criterion is met.

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

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

DEVELOPMENT STANDARDS

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.

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. Per 33.700.015, if a proposed land division will cause conforming development to move out of conformance with any regulation of the zoning code, and if the regulation may be adjusted, the land division request must include a request for an adjustment (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 10 feet from the new property line. Therefore, the required setbacks are being met. To ensure this standard continues to be met at the final plat stage, the final plat must be accompanied by a supplemental survey showing the location of the existing building relative to the adjacent new lot lines.
- Accessory Structure – The existing detached garage located on Parcel 1 does not meet the required side building setback or garage entrance setback as a result of right-of-way dedication. Therefore, in order for the proposed new lots to be approved, this accessory structure must be removed prior to final plat. A demolition permit is required. The applicant must provide documentation prior to final plat approval that the required demolition permit has received final inspection. To ensure that this standard is met, a condition is necessary.
- Driveway – The existing driveway that serves the house to be retained on Parcel 1 is currently graveled and located along the entire frontage of the land division site. As result of the land division, this driveway will be removed and a new driveway will be established to connect to the SW 40th Avenue paved vehicle area. Therefore, prior to final plat approval, the applicant shall receive final inspection approval of a zoning permit to establish a new driveway connection to SW 40th Avenue.

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

Environmental Standards. In this case, there are several Zoning Code standards that apply to the proposed land division. The standards of Section 33.430.160 Standards for Land Divisions and Planned Developments apply to the proposal. Conditions have been included for requirements that apply at the time of final plat and at the time of development. The applicant has demonstrated that the standards of Section 33.430.160 have been met. The standards listed below can be met with conditions:

- Resource areas outside designated disturbance areas must be placed entirely within environmental resource tracts. The tracts must be owned in common by all of the owners of the land division site, by a Homeowners' Association, by a public agency, or by a non-profit organization (33.430.160.C).
- All vegetation planted in a resource area is native and listed on the Portland Plant List. Plants listed on the Nuisance Plant List are prohibited (33.430.140.L)
- Fences are allowed only within the disturbance area (lots) (33.430.140.O).
- Exterior lights must be spaced at least 25 feet apart. Incandescent lights exceeding 200 watts (or other light types exceeding the brightness of a 200-watt incandescent light) must be placed so they do not shine directly into resource areas (33.430.140.Q).

OTHER TECHNICAL REQUIREMENTS

Technical decisions have been made as part of this review process. These decisions have been

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

Bureau	Code Authority and Topic
Development Services/503-823-7300 www.portlandonline.com/bds	Title 24 – Building Code, Flood plain Title 10 – Erosion Control, Site Development Administrative Rules for Private Rights-of-Way
Environmental Services/503-823-7740 www.portlandonline.com/bes	Title 17 – Sewer Improvements 2008 Stormwater Management Manual
Fire Bureau/503-823-3700 www.portlandonline.com/fire	Title 31 Policy B-1 – Emergency Access
Transportation/503-823-5185 www.portlandonline.com/transportation	Title 17 – Public Right-of-Way Improvements Transportation System Plan
Urban Forestry (Parks)/503-823-4489 www.portlandonline.com/parks	Title 20 – Street Trees and other Public Trees
Water Bureau/503-823-7404 www.portlandonline.com/water	Title 21 – Water availability

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

- The applicant must meet the requirements of the Fire Bureau in regards to fire apparatus access, fire department access, fire flow/water supply, fire hydrant spacing, addressing, and aerial fire department access. These requirements are based on the technical standards of Title 31 and Oregon Fire Code (Exhibit E.4).

CONCLUSIONS

The applicant has proposed a two parcel partition with an environmental resource tract, as shown on the attached preliminary plans (Exhibits C.1-8). As discussed in this report, the relevant standards and approval criteria have been met, or can be met with conditions. The primary issues identified with this proposal are: tree preservation and services/utilities. With conditions that address these requirements this proposal can be approved.

ADMINISTRATIVE DECISION

Approval of a Preliminary Plan for a 2-parcel partition that will result in two standard lots, of which one will retain the existing house (Parcel 1), and an Environmental Resource Tract (Tract A), as illustrated with Exhibits C.1-8, subject to the following conditions:

A. The final plat must show the following:

1. The applicant shall meet the street dedication requirements of the City Engineer for SW 40th Avenue. The required right-of-way dedication must be shown on the final plat.
2. The Environmental Resource tract shall be noted on the plat as "Tract A: Open Space (Environmental Resource Area). A note must also be provided on the plat indicating that the tract will commonly owned and maintained by the owners of Parcels 1 and 2.
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 Conditions B.11 and B.12 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."

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

1. The applicant shall complete street and storm sewer waivers of remonstrance (for future street and storm sewer improvements) as required by the City Engineer. Waiver forms and instructions will be provided to the applicant during the final plat review process.
2. The applicant shall meet the requirements of the Site Development Section of the Bureau of Development Services for the decommissioning the septic system on the site.
3. The applicant shall meet the requirements of the Water Bureau concerning relocation of the water service connection to the existing home.
4. The applicant shall obtain finalized plumbing permits to cap the existing sewer lateral to provide service to proposed Parcel 2 and establish a new service for the existing house on Parcel 1.
5. The applicant shall obtain finalized plumbing permits to modify the stormwater disposal system serving the existing house on Parcel 1 according to Bureau of Environmental Services and Stormwater Management Manual requirements.
6. The applicant shall meet the requirements of the Fire Bureau for ensuring adequate hydrant flow from the nearest hydrant. The applicant must provide verification to the Fire Bureau that Appendix B of the Fire Code is met, the exception is used, or provide an approved Fire Code Appeal prior final plat approval.
7. The applicant must meet the requirements of the Fire Bureau for providing an adequate fire access way for Parcels 1 and 2, as required in Chapter 5 of the Oregon Fire Code. Alternately, the applicant will be required to install residential sprinklers in the new house on Parcel 2, if applying the exception. An Acknowledgement of Special Land Use Conditions describing the sprinkler requirement must be referenced on and recorded with the final plat.
8. The applicant shall meet the requirements of the Fire Bureau regarding fire hydrant spacing. If existing hydrants do not meet applicable Fire Code spacing requirements, the applicant shall be required to install a new fire hydrant. The applicant must contact the Water Bureau, Development Services Department at 503-823-7368, for fee installation information related to the purchase and installation of fire hydrants. The applicant must purchase the hydrant and provide verification to the Fire Bureau that the Water Bureau will be installing the required fire hydrant, with the required fire flow and pressure.
9. The applicant must obtain a finalized demolition permit for removing the detached garage located on Parcel 1. Prior to removal of this structure, tree protection fencing must be installed in accordance with the approved Tree Preservation Plan, per Condition C.1.
10. The existing driveway that serves the house on Parcel 1 must be connected to the paved roadway in SW 40th Avenue, in conformance with the applicable requirements of the Portland Zoning Code. The applicant must obtain a finalized Zoning Permit for installation of the driveway. The permit plans must include the note: *This permit fulfills requirements of Condition B.10 of LU 14-232468 LDP.*
11. The applicant shall execute an Acknowledgement of Tree Preservation Land Use Conditions that notes tree preservation requirements that apply to Parcel 2. A copy of the approved Tree Preservation Plan must be included as an Exhibit to the Acknowledgement. The acknowledgment shall be referenced on and recorded with the final plat.
12. A Maintenance Agreement shall be executed for the tract described in Condition A.2 above. The agreement shall include provisions assigning maintenance responsibilities for the tract and any shared facilities within this area, consistent with the purpose of the tract, and all applicable City Code standards. The tract must be owned in common by the homeowner's association. 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. The agreement must also include:

- a. assign common, undivided ownership of the tract to the owners of all lots;
- b. include provisions for assigning maintenance responsibilities for the tract;
- c. include a description of allowed/prohibited activities consistent with Chapter 33.430; and
- d. include conditions of this land use approval that apply to the tract.

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

1. Development on Parcel 2 shall be in conformance with the Grading and Utility Plan (Exhibit C.5) and the applicant's arborist report (Exhibit A.2). Specifically, trees #12 (34" Douglas fir), #13 (30" Douglas fir), and #14 (28" Douglas fir) are required to be preserved, with the root protection zones indicated on Exhibit C.5. Tree protection fencing is required along the root protection zone of each tree to be preserved. The fence must be 6-foot high chain link and be secured to the ground with 8-foot metal posts driven into the ground. 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/her supervision.
2. The applicant must meet the Fire Bureau requirements for addressing and aerial fire department access. Aerial access applies to buildings that exceed 30 feet in height from the fire access as measured to the bottom of the eave of the structure or the top of the parapet for a flat roof.
3. If required, the applicant shall meet Fire Code standards for installation of residential sprinklers in the new dwelling unit on Parcel 2. Please refer to the final plat approval report for details on whether or not this requirement applies.
4. Fences are allowed only within lots (not within the tract).
5. In environmental zone resource or transition areas, exterior lights must be spaced at least 25 feet apart. Incandescent lights exceeding 200 watts (or other light types exceeding the brightness of a 200-watt incandescent light) must be placed so they do not shine directly into resource areas. This condition applies to lots that abut any environmental zoning on the site.
6. In resource areas of environmental zones, all vegetation planted must be native and listed on the Portland Plant List. Plants listed on the Nuisance Plants List are prohibited.

Staff Planner: Sean Williams

Decision rendered by:  **on September 21, 2015**

By authority of the Director of the Bureau of Development Services

Decision mailed: September 23, 2015

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 30, 2014, and was determined to be complete on **March 9, 2015**.

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 30, 2014.

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, as stated with Exhibit A.10. Unless further extended by the applicant, **the 120 days will expire on: December 4, 2015.**

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 October 7, 2015** at 1900 SW Fourth Ave. Appeals can be filed at the Development Services Center Monday through Wednesday and Fridays between 8:00 am to 3:00 pm and on Thursdays between 8:00 am to 2:00 pm. After 3:00 pm Monday through Wednesday and Fridays, and after 2:00 pm on Thursdays, appeals must be submitted at the reception desk on the 5th 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. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. 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 503-823-7617 to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.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 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283 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.

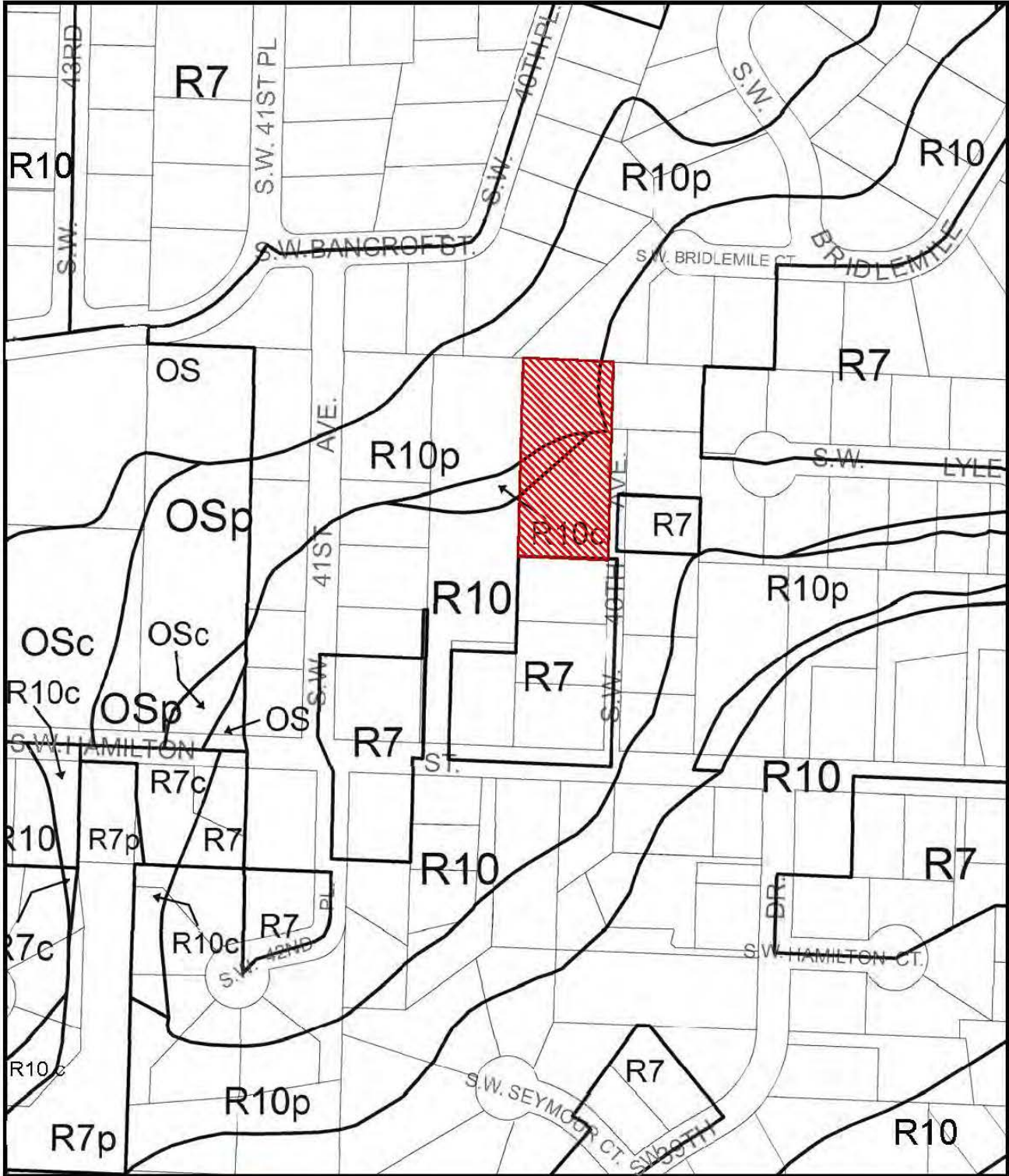
Recording the land division. The final land division plat **must** be submitted to the City **within three years** of the date of the City's final approval of the preliminary plan. This final plat must be recorded with the County Recorder and Assessors Office after it is signed by the Planning Director 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 Statement
 - 1. Narrative
 - 2. Arborist Report
 - 3. Transportation impact study
 - 4. Summary of soil infiltration testing (8/28/14)
 - 5. Engineering geologic hazard report (10/6/14)
 - 6. Landslide hazard study and slope stability analysis (12/23/14)
 - 7. Simplified approach stormwater report (1/16/15)
 - 8. Revised landslide hazard study (5/2/15 and 7/19/15)
 - 9. Neighborhood contact
 - 10. Request for extension of 120-day review period
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Cover sheet
 - 2. Existing conditions plan
 - 3. Preliminary land division plan (attached)
 - 4. Site plan
 - 5. Grading and utility plan (attached)
 - 6. Stormwater management plan
 - 7. Tree preservation plan
 - 8. Fire department access plan
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services w/ Revision
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Water Bureau w/ Revision
 - 4. Fire Bureau w/ Revision
 - 5. Site Development Review Section of BDS w/ Revision
 - 6. Life Safety Plans Examiner
- F. Correspondence:
 - 1. Greg Schifsky (5/3/15)
- G. Other:
 - 1. Original LU Application
 - 2. Incomplete Letter
 - 3. Public works alternative review decision

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



ZONING

 Site



File No. LU 14-232468 LDP
 1/4 Section 3425
 Scale 1 inch = 200 feet
 State_Id 1S1E08CD 8700
 Exhibit B (Nov. 3, 2014)

