



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

FROM CONCEPT TO CONSTRUCTION

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Date: June 20, 2016
To: Interested Person
From: Kate Green, 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 mailed copy of this document is only a summary of the decision.

The reasons for the decision are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 16-155264 PUD

GENERAL INFORMATION

Applicant: Shannah Anderson, City of Portland Bureau of Environmental Services
1120 SW 5th Avenue, Room 1000
Portland OR 97202

Property Owner: Starpointe Owners Association
PMB 525 12042 SE Sunnyside Road
Clackamas OR 97015

Site Address: Tract F (Common Open Space) of Starpointe Subdivision
(near SE Deardorff Road and SE Tenino-see attached Zoning Map)

Legal Description: LOT F TL 301 SPLIT MAP R275458 (R792300070), STARPOINTE; LOT
F TL 301 SPLIT MAP R275457 (R792300060), STARPOINTE

Tax Account No.: R792300060, R792300070

State ID No.: 1S2E23D 00101, 1S2E23AD 00301

Quarter Section: 3744

Neighborhood: Pleasant Valley / Steve Montgomery / foxtrotlove@hotmail.com

Business District: None

District Coalition: East Portland Neighborhood Office / Richard Bixby / 503-823-4550

Zoning: Single Dwelling Residential 10,000 (R10)
Environmental Protection (p) overlay

Plan District: Johnson Creek Basin - South

Other Designations: Streams, Regulatory Landslide Hazard Area, Environmental Resource
Site 30g/Deardorff Creek

Case Type: Planned Unit Development Amendment (PUD)

Procedure: Type II_x, an administrative decision with appeal to the Hearings Officer

Modified Proposal: The applicant requests a **Planned Unit Development-Amendment** (PUD) in order to transfer the ownership of Tract F of the Starpointe Subdivision from the Starpointe Owners Association to the City of Portland, Bureau of Environmental Services (BES).

Tract F is an approximately 36-acre forested area containing eight headwater tributary stream channels to the Johnson Creek mainstem. It was established as a common open space tract, as part of a land use decision for the Starpointe Subdivision (LUR 96-00249 SU PU EN).

That 1996 land use decision required Tract F to be in common ownership. Under the current Zoning Code regulations (33.430.160.C), open space (environmental resource) tracts may 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.

BES staff have indicated that the requested amendment will allow for city ownership and management of Tract F and greater protection and enhancement of the site.

The applicable PUD review process is based on whether the proposed change is designated as a major or minor change. The proposed ownership transfer is not listed as a major change (33.668.050); so, as a minor change, this proposal is subject to a Type Ix procedure (33.668.100.B).

Additionally, during the course of this review, BDS staff determined that a subsequent land use review (LUR 97-00496 EN), which was required as a condition of the Starpointe Subdivision (LUR 96-00249 SU PU EN) included a condition about signs that also necessitates evaluation through this review, if the ownership changes. The condition (Condition I) called for signs reading "Starpointe Homeowners Association-Natural Area-Please Do Not Disturb" to be installed in 35 locations. Two of those signs abut Tract F. If the ownership of Tract F changes, then it follows that the condition related to the language on the signs should also change. This proposal has been modified to consider a change to that prior condition as well.

Relevant Approval Criteria: In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are:

33.668.200 Changes to an approved Planned Unit Development

ANALYSIS

Site and Vicinity: Tract F is an approximately 36-acre forested area containing eight headwater tributary stream channels to the Johnson Creek mainstem. It was established as a common open space tract, as part of a land use decision for the Starpointe Subdivision (LUR 96-00249 SU PU EN). The Starpointe Subdivision is located in a residential area that is generally bounded by SE Deardorff Road to the west, SE Clatsop Street to the south, the Buttes Natural Area to the east, and Johnson Creek to the north.

In addition to Tract F, the Starpointe Subdivision established 112 residential lots and multiple tracts and public streets in two phases. Based on 2015 aerial photos and a site visit in April 2016, the public streets and infrastructure and residential development for the entire subdivision have been completed.

Tract F is situated north of the lots within the Starpointe Subdivision and between several similar open space tracts associated with other adjacent residential subdivisions (Cedar Bridge to the west and Eastridge Park to the east).

The surrounding area consists predominantly of developed residential lots near the ridgelines of steep hills that are flanked by expansive open space areas that include private tracts, public

land, and parks with steep wooded terrain and many stream channels that flow north toward Johnson Creek.

Environmental Resources: Tract F is located within Resource Site 30g-Deardorf Creek, which is described in the *Boring Lava Domes Supplement to the Johnson Creek Basin Protection Plan*, as follows:

This watershed is located east of Wahoo Creek. Resources in the watershed include Deardorf Creek its tributaries, habitat areas, and forested slopes. Deardorf Creek and its tributaries and the forested drainages are of “a (high) quality” and are located in open space tracts, vacant parcels, back portions of developed lots, proposed development areas, and cemetery property. The adjacent forested uplands are of “b (medium) quality” and are located in open space tracts, the back portions of developed lots, and on proposed development areas. There are approximately 118.68 acres of “a” resources and 70.95 acres of “b” resources within the watershed.

Zoning: The site is located in the **Single Dwelling Residential 10,000 (R10)** zone and the **Environmental Protection (p)** overlay zone.

The single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households.

At the time the Starpointe Subdivision was initially established, Tract F, as well as other portions of the subdivision property, had an Environmental Conservation (c) overlay. In 1997, a legislative project: Boring Lava Domes Environmental Zone Remapping Project (Ordinance 171740) changed the environmental zoning on the property from Environmental Conservation (c) to Environmental Protection (p) overlay.

The Environmental Protection overlay zone is applied wherever the City determines that highly significant resources and functional values are present. The Environmental Protection zone provides the highest level of protection to the most important resources and functional values. These resources and functional values are identified and assigned value in the inventory and economic, social, environmental, and energy (ESEE) analysis for each specific study area. Development will be approved in the environmental protection zone only in rare and unusual circumstances.

The site is also within the **Johnson Creek Basin Plan District-South Subdistrict**. This plan district is intended to be used in conjunction with environmental zoning placed on significant resources and functional values in the Johnson Creek basin, to protect resources and functional values.

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

- LUR 96-00249 SU PU EN: Approved with conditions a 2-phase subdivision for 112 lots and multiple tracts (including Tract F) and public streets.
- LUR 97-00496 EN: Approved with conditions an environmental review required as a conditions for the PUD. *As noted in the Modified Proposal description above, this review included Condition I, which called for 35 signs to be installed to inform future property owner of the natural areas. The signs were required to say “Starpointe Homeowners Association-Natural Area-Please Do Not Disturb”. Two of the signs were required to be placed adjacent to Tract F; one at the southwest corner of Lot 80 and another at the north end of the shared property line between Lots 91 and 92. The other signs were to be placed adjacent to other tracts and easements in the Starpointe Subdivision.*

- LUR 98-00133 EN PU AD: Approved with conditions amendments to the PUD and environmental review related to grading, development and vegetation removal. This decision includes conditions for removal of trees and required mitigation plantings.
- LU 05-181994 EN: Approved with conditions an Environmental Review for modifications to the tree preservation plan for the PUD-Phase 2.
- LU 06-175616 EV: Approved with conditions an Environmental Violation Review for clearing and grading for development on Lot 93 (13869 SE Tenino) Starpointe No.2, which extended into the adjacent Open Space Tracts F and J.

Conditions pertinent to Tract F continue to apply, regardless of ownership, unless modified through this or a subsequent land use review.

Neighborhood Review: A “Notice of Proposal in Your Neighborhood” was mailed **May 10, 2016**. Three written responses have been received. Each response raised questions about the ownership change allowing future residential development, new trails, and/or crime in Tract F.

Staff response: Tract F was established as an open space tract as part of the Starpointe Subdivision and must be maintained for that purpose regardless of ownership.

In response to the neighborhood comments, the applicant confirmed that the Bureau of Environmental Services *is not proposing any development on this property- we are pursuing protection and restoration of the streambanks for long-term water quality and watershed health purposes.*

Further, unless a subsequent Planned Unit Development Amendment and an Environmental Review, which would require public notification and a public hearing, were evaluated and approved, no residential development will be allowed in Tract F.

Whether Tract F is owned by the Starpointe Homeowners Association or transferred to the City of Portland, trails are allowed to be constructed in the environmental zones without a land use review, provided specific Zoning Code provisions are satisfied (33.430.080.D.10, trail exemptions, or 33.430.190, standards for public recreational trails). If these trail regulations cannot be met, then any trail improvements would trigger an Environmental Review (33.430.250), which would include public notification and comment opportunities.

As outlined in the applicant’s narrative for this review, the only anticipated changes to the site include the removal of nuisance species and the installation of native vegetation. Regardless of ownership, these activities must be performed in accordance with the applicable Zoning Code provisions (including: 33.430.080.C.7 and 33.430.080.D.1, exemptions, or 33.430.170, standards for resource enhancement projects) or evaluated through an Environmental Review (33.430.250).

These potential trail and revegetation efforts could occur no matter the ownership of Tract F, so a change in ownership is not expected to be a catalyst for crime.

Agency Review: The following Bureaus have responded with no issues or concerns about the requested amendment:

- Bureau of Environmental Services
- Portland Transportation
- Water Bureau
- Fire Bureau
- Site Development/BDS
- Life Safety/BDS

Urban Forestry/Parks provided information about Title 11, Tree Code, and indicated trees on city property have greater protection than those on private property. Therefore, if Tract F is

owned by the City of Portland, the trees within the tract will be regulated as “city trees”, which as those on land in public ownership or in the public right-of-way. Title 11 applies to “city trees” that are 3-inches in diameter or larger, whereas “private trees” (those on privately owned property) are generally only regulated when the trees are 6-inches in diameter or larger.

ZONING CODE APPROVAL CRITERIA

REVIEW OF CHANGES TO AN APPROVED PLANNED UNIT DEVELOPMENT

33.668.200 Approval Criteria

Requests for changes to an approved PUD will be approved if the review body finds that the applicant has shown that all of the following criteria are met:

A. On balance, compared to the approved PUD, the change will equally or better meet the following:

Findings: As outlined in the findings below, each of the applicable criteria are met; therefore, no balancing of these factors is warranted.

1. Promote an attractive and safe living environment in residential zones;
2. Provide for efficient use of services and improvements;
3. Minimize site grading;
4. Provide energy efficient development;
5. Allow for conservation of natural features;
6. Provide an opportunity for innovative and creative development;
7. Be integrated into the neighborhood; and
8. Where the PUD includes commercial uses, promote attractive and functional business environments in nonresidential zones which are compatible with the development intended for the zone and neighborhood; and

Findings: Tract F was established, in part, to meet the Open Areas (33.269.135) and the Preservation of Water Features (33.269.145) regulations in the original PUD review (LUR 96-00249), which called for at least half of the open area and all water features (streams, ponds, etc) to be in common ownership.

Since 1996, the Zoning Code requirements for ownership of open space tracts have changed. Now, under the current Zoning Code regulations (33.430160.C), open space (environmental resource) tracts may 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.

As outlined in the applicant’s narrative, the purpose of this requested amendment is to allow for the ownership of Tract F to be transferred from the Starpointe Homeowners’ Association to the City of Portland. Under this application, only a change in ownership of Tract F is proposed. No grading, development or commercial uses are proposed. BES has indicated that city ownership of Tract F will not change the purpose or use Tract F, but will allow for more effective management of the natural resources within Tract F.

In the application narrative (Exhibit A.1), the applicant further describes the rationale for seeking ownership of Tract F, as follows:

Acquisition of natural area lands is a tool the Bureau of Environmental Services has utilized since the 1990s to manage stormwater naturally; protect clean water, habitat, and other ecosystem functions; and avoid erosion, landslides, and flooding. BES partners with Portland Parks & Recreation for land management purposes. The Bureaus jointly develop stabilization plans and long-term management goals to bring the properties to a high level of natural resource function. Since 2008, BES & PP&R have purchased over 400 acres citywide. Acquisition of Starpointe [Tract F] has been a long-term goal for both Bureaus, and will enable the City to manage almost 200 acres of natural area as a contiguous unit, connecting Deardorff Creek Natural Area to Buttes Natural Area and protecting multiple tributaries to Johnson Creek.

The Starpointe subdivision was constructed prior to the implementation of the City's current stormwater management program. Stormwater discharge to the existing steep terrain is causing erosion and destabilization of the stream banks.

Current site conditions include erosion and downcutting of streambeds, sedimentation of the stream channels, and a lack of cobbles and gravels (important for aquatic habitat). Much of this is due to the topography (steep slopes greater than 40%) combined with stormwater inputs. Invasive plant species on this site are currently not significant, but left unmanaged can dominate the landscape and decrease or eliminate native species, including trees. This alteration in vegetation community structure can have significant, negative consequences and result in severe alteration of hydrologic functions and water quality.

The City's management plan will include a two year stabilization period during which BES will assess the site and apply the appropriate ecological prescriptions such as invasive removal and revegetation with native plantings to stabilize the stream banks and improve the hydrology and water quality on the site.

Future restoration activities may include some earthwork related to stream bank stabilization and enhancement. If that is to occur, future reviews will evaluate that work to ensure that disturbance areas will be limited to the greatest extent possible and that all applicable City regulations are met.

Tract F, once stabilized and under city management, will be part of a healthy connected system of natural areas within the city. The site will provide neighbors with access to open space, clean water, and breaks from urban density - all essential elements of a healthy community.

BES also notes that the Covenants, Codes, and Restrictions (CC&Rs) associated with the Starpointe Subdivision require a 75% consent of owners for any amendment to their CC&Rs. This consent was secured through the Starpointe Neighborhood Association during two voting periods - one in 2013 and one in 2014.

Based on these factors, the requested amendment to allow for a change in ownership to Tract F will help to facilitate efforts to improve the management of the forest and watershed, on par with that intended in the original PUD decision, and in accordance with current ownership provisions for open space-environmental tracts.

Additionally, if the ownership changes, the requirement for signs placed adjacent to Tract F to read "Starpointe Homeowners Association-Natural Area-Please Do Not Disturb" will no longer be practical. Allowing the signs to be changed to exclude the reference to "Starpointe Homeowners Association" will retain the original purpose of the signs which was to inform property owners about the natural areas. This change too is in keeping with the original PUD decision.

As such, this criterion is met.

B. Any significant adverse impacts caused by the change are mitigated.

Findings: As discussed above, the requested change in ownership of Tract F is not expected to result in adverse impacts, so no mitigation is warranted. As such, this criterion is met.

DEVELOPMENT STANDARDS

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

CONCLUSIONS

The applicant has requested an amendment to an approved Planned Unit Development (Starpointe Subdivision-LUR 96-00249 SU PU EN) in order to allow the ownership of Tract F, an open space tract, to be transferred from the homeowners association to the City of Portland, and to allow the reference to the “Starpointe Homeowners Association” to be removed from the signs required to be installed adjacent to Tract F.

Tract F is an approximate 36-acre forest containing 8 headwater tributary stream channels to Johnson Creek. The area has been identified by City of Portland and Metro inventories as a significant natural resource, part of an important forested migratory corridor that connects Deardorff Natural Area to Buttes Natural Area. The forest and woodlands provide food and shelter for a variety of birds, mammals, and other species.

BES has noted that City’s ownership and management of this Tract F will allow for greater protection and enhancement of the site to bring the property to a high level of natural resource function, and is in alignment with the current zoning regulations regarding ownership for open space-environmental tracts.

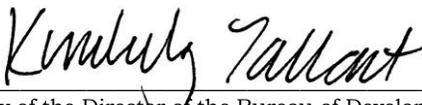
Tract F was established to fulfill the Open Areas requirements for the PUD. The requested amendment will foster the on-going management of the natural features within Tract F and maintain the tract as an open area in a manner comparable to that afforded by the original PUD. Therefore, the requested amendment to the original PUD should be approved.

ADMINISTRATIVE DECISION

Approval of a Planned Unit Development Amendment to allow the following change to Starpointe Subdivision (LUR 96-00249 SU PU EN):

- A. Tract F of the Starpointe Subdivision may be owned by all of the owners of the land division site, by a Homeowners’ Association, by a public agency, or by a non-profit organization.
- B. “Starpointe Homeowners Association” may be removed from the signs abutting Tract F (modification of Condition I, Exhibit C.4, of the LUR 97-00496 EN decision).

Staff Planner: Kate Green

Decision rendered by:  **on June 16, 2016**
By authority of the Director of the Bureau of Development Services

Decision mailed June 20, 2016

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

Procedural Information. The application for this land use review was submitted on April 19, 2016, and was determined to be complete on May 6, 2016.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on April 19, 2016.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on: September 2, 2016.**

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 July 5, 2016** 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 final decision. If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- *Unless appealed*, The final decision may be recorded on or after **July 6, 2016**.
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision 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. For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this planned development approval. This approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun. If the approved project includes more than one component, such as multiple buildings, or multiple phases that will be broken into separate building permit applications, at least one permit must be obtained within 3 years of the date of this decision, and all permits must be obtained within ten years of the date of this decision. After that ten-year period, a new land use review will be required before permits will be issued for any remaining project components that have not yet been permitted, subject to the Zoning Code in effect at that time.

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

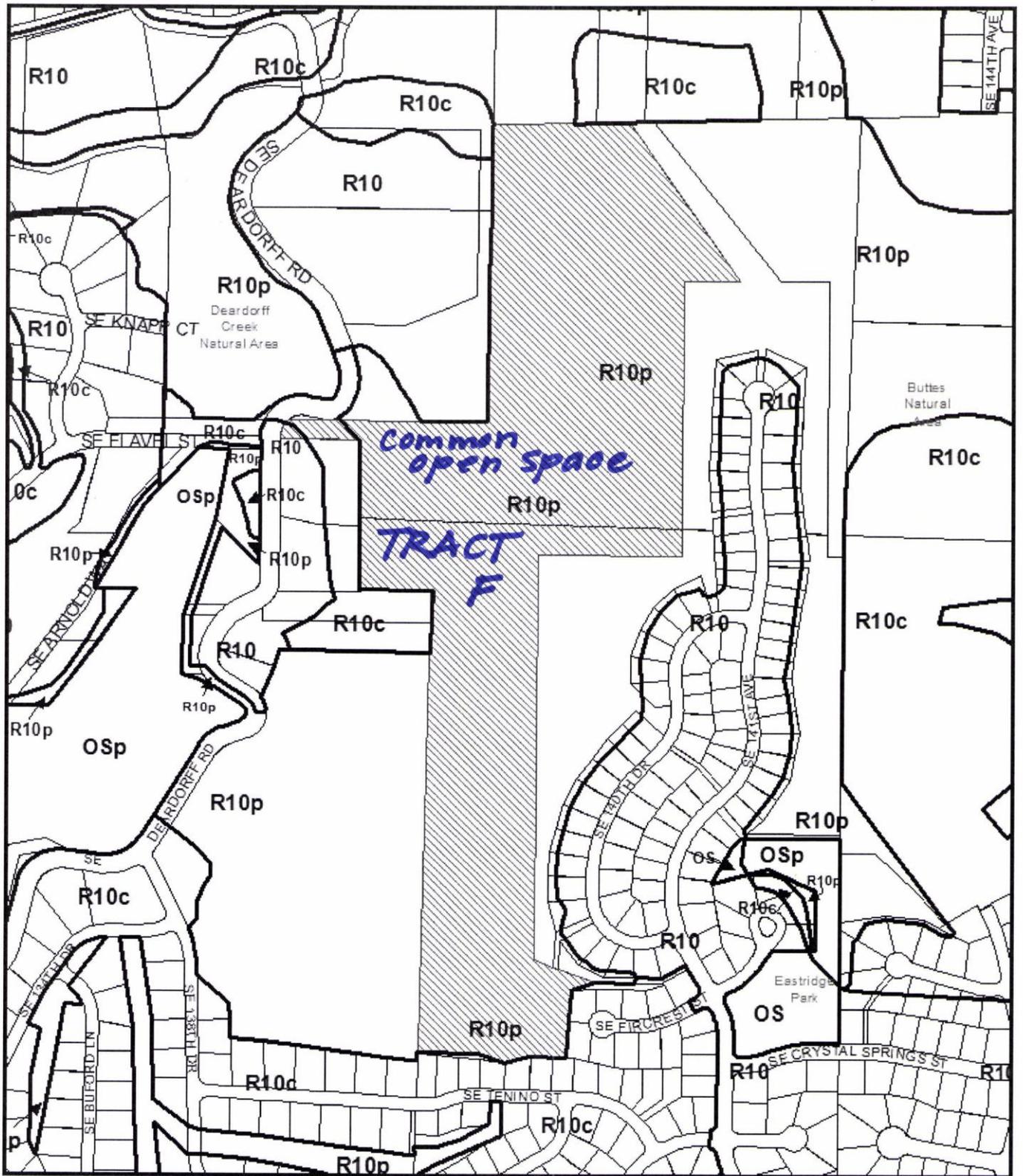
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Initial submittal
 - 2. Response to neighborhood comments
- B. Zoning Map
- 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. Portland Transportation
 - 3. Water Bureau
 - 4. Fire Bureau and Life Safety/BDS
 - 5. Site Development/BDS
 - 6. Urban Forestry/Parks
- F. Correspondence:
 - 1. Cathy Carroll, May 13, 2016, re: questions about future development
 - 2. Karen and Gilberto Alvarez, May 13, 2016, re: questions about future development
 - 3. Dave and Cathy Carroll, May 18, 2016, re: concerns about future development, trails and crime
- G. Other:
 - 1. Original LU Application
 - 2. Exhibit C.4 of LUR 97-00496

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



This site lies within the:
JOHNSON CREEK BASIN PLAN DISTRICT
SOUTH SubDistrict

Site

File No. LU 16-155264 PUD
 1/4 Section 3744 3844
 Scale 1 inch = 400 feet
 State_Id 1S2E23AD 301
 Exhibit C.1 (May 5, 2016)