



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

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Date: April 17, 2020
To: Interested Person
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NOTICE OF A TYPE IIx 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 19-118250 LDS

GENERAL INFORMATION

Applicant: Adam Monkaba
4636 NE Garfield Street / Portland OR 97211
(248) 229-4912 / amonk.arch@gmail.com

Owner: Juliet T Moran and James A Moran, Moran Family Rev Tr
4029 SW Hamilton Street / Portland OR 97221-3607

Site Address: 4029 SW Hamilton Street
Legal Description: TL 7100 1.54 ACRES, SECTION 08 1S 1E
Tax Account No.: R991081080
State ID No.: 1S1E08CC 07100
Quarter Section: 3425

Neighborhood: Bridlemile, contact at contact-bridlemile@swni.org
Business District: None
District Coalition: Southwest Neighborhoods Inc., contact Sylvia Bogert at 503-823-4592

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

Plan District: None
Other Designations: Potential Landslide Hazard Area; Stream Channel; Wildfire Hazard Area; Environmental Resource Site 124/*Fanno Creek Tributaries Conservation Plan*

Case Type: Lot Validation and Land Division-Subdivision (LDS)
Procedure: Type IIx, an administrative decision with appeal to the Hearings Officer.

Proposal: The applicant requests a **Lot Validation**, in order to establish the subject property as a legal lot. At the time the subject property was sold to the current owners (October 1, 1998), the boundaries had been changed without the required city process, so the reconfigured property is not recognized as a *legal lot* or *lot of record*. Oregon Revised Statutes (ORS 92.176) provides a pathway to remedy the unlawful division of land that occurred prior to January 1, 2007, and

permits the validation of a unit of land, if it could have complied with the criteria that was applicable when the unit of land was sold.

The Lot Validation will be reviewed concurrently with the **Land Division-Subdivision** proposal, which is to divide the subject property into 3 lots, a private street tract and an environmental resource tract. A 10-foot right-of-way dedication along the SW Hamilton Street frontage is also proposed. An existing house is proposed to remain and be situated on proposed Lot 2. New water, sanitary and stormwater management facilities are proposed in the private street tract to serve the 3 lots.

This subdivision proposal is reviewed through a Type IIx 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 or Flood Hazard Area; and (4) a concurrent review (Lot Validation) is required (see 33.660.110).

For purposes of State Law, this land division is considered a subdivision. To subdivide land is to divide an area or tract of land into four or more lots within a calendar year, according to ORS 92.010. ORS 92.010 defines “lot” as a single unit of land created by a subdivision of land. The applicant’s proposal is to create 5 units of land (3 lots and 2 tracts). Therefore, this land division is considered a subdivision.

Additionally, to fulfill the Environmental Zone regulations, the applicant proposes to meet the Environmental Standards for Land Divisions (33.430.160).

Relevant Approval Criteria: In order to be approved, this proposal must comply with the following approval criteria:

- **Oregon Revised Statutes (ORS) 92.176:** Validation of unit of land not lawfully established;
- **City of Portland-Title 34:** Section 34.30.030, Approval Procedure and Approval Criteria – (Subdivision and Partitioning Regulations in effect in 1998); and
- **City of Portland-Title 33:** Section 33.660.120, Approval Criteria for Land Divisions in Open Space and Residential Zones.

FACTS

Site and Vicinity: The subject property is a large “flag shaped” site that slopes up from SW Hamilton Street, within an approximately 40-foot by 165-foot “pole”, and then widens out to approximately 140 feet in width over the balance of the site. A driveway provides access to an existing multi-level house and attached garage situated near the center of the site. North of the house, the grade slopes down to a stream channel (generally known a Bridlemile Creek), which traverses through the site, and is a tributary to Fanno Creek, which flows into the Tualatin River, which flows into the Willamette River. The area adjacent to the stream is wooded, with predominately Douglas fir and Big Leaf Maple trees, and the balance of the site includes many non-native and nuisance trees along the perimeter and open lawn areas close to the house.

The environmental resources on the property are identified in Site 124, *Fanno Creek and Tributaries Conservation Plan* (1993), and include: values and functions afforded by the mixed coniferous and deciduous forest and the stream channel.

The surrounding street network includes some major connected corridors and is otherwise fragmented with many dead-end streets, due to the presence of various stream channels and the sloped wooded terrain in the area.

Most of the nearby development consists of one and two story houses on lots in the same or slightly higher density single dwelling zones (R10 and R7). Bridlemile Elementary School and Hamilton Park are located on SW Hamilton Street, to the west of the site, and a commercial district is located south of the site along Beaverton Hillsdale Highway.

Infrastructure:

Streets: The site has approximately 40 feet of frontage on SW Hamilton Street. There is one driveway entering the site that serves the existing house. At this location, the City's Transportation System Plan (TSP) classifies SW Hamilton Street as a *Neighborhood Collector, Community Transit Street, City Bikeway, City Walkway, and Local Service* for all remaining modes.

According to City GIS, at this location, SW Hamilton Street is improved with a 22-foot paved roadway with a centerline, in a 50-foot right-of-way. There are no curbs, sidewalks, or planter areas along the frontage.

Tri-Met provides transit service via Bus Lines 51, 54, 55, and 56, which are within one mile of the site. The nearest bus stop is approximately 150 feet to the west at SW 41st Avenue.

Water Service: There is an existing 8-inch main in SW Hamilton Street and the existing house is served by this main.

Sanitary Service: There is an existing public 8-inch concrete sanitary-only sewer in SW Hamilton.

Stormwater Disposal: There is no public storm-only sewer currently available to this property. BES notes there is a shallow ditch-culvert system along the north side of SW Hamilton Street that flows to the west.

Zoning: The property is within the Single Dwelling Residential 10,000 (R10) zone. Single dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households.

The north half of the site also has Environmental Conservation (c) and Environmental Protection (p) overlay zones flanking the open channel stream that traverses the site. Environmental zones protect resources and functional values that have been identified by the City as providing benefits to the public. The environmental regulations encourage flexibility and innovation in site planning and provide for development that is carefully designed to be sensitive to the site's protected resources.

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: An initial *Notice of Proposal in Your Neighborhood* was mailed on August 9, 2019, and an *Amended Notice of Proposal in Your Neighborhood* was mailed on February 12, 2020. Four written responses were received, with concerns related to resource protection, tree preservation, stormwater management, lighting levels in the private street, and future development on the lots.

As shown on the project plans and discussed in Criterion H, Tracts and Easements, and in the Development Standards section, the proposal will establish an environmental resource tract on the site, which will encompass the stream, trees and other vegetations within the environmental resource area and all other environmentally zoned land within 50 feet of the top of the stream bank. Initially, the applicant proposed to remove several trees in the environmental zone. Subsequently, the applicant amended the proposal, and now no tree removal is proposed in the environmental resource tract. Outside of the environmental zone, some trees will be removed for the construction of the private street, and specific trees will be protected in designated tree protection areas on the lots (discussed in Criterion B, Trees).

Stormwater Management has been evaluated for the public and private rights-of-way and the lots as discussed in Criterion L, Services, and facilities will be constructed to manage stormwater from the streets and lots.

No street lighting is proposed in the private right-of-way. In the event lighting is proposed in the future, the lighting must comply with the Off-Site Impact regulations for Glare (33.262.080), which limit illumination onto other properties, and with the Administrative Rules for Private Rights of Way, as discussed in Criterion L, Services.

This proposal does not include an evaluation of any specific future development on the lots. All development must comply with the Zoning and other application regulations in effect at the time of that development. The current maximum height limit in the R10 zone is 30 feet.

LOT VALIDATION

LOT VALIDATION

ORS 92.176 Validation of unit of land not lawfully established.

(1) A County or city may approve an application to validate a unit of land that was created by a sale that did not comply with the applicable criteria for creation of a unit of land if the unit of land:

- (a) Is not a lawfully established unit of land; and**
- (b) Could have complied with the applicable criteria for the creation of a lawfully established unit of land in effect when the unit of land was sold.**

Findings: Oregon Revised Statutes (ORS 92.176) provides a pathway to remedy the unlawful division of land that occurred prior to January 1, 2007, and permits the validation of a unit of land, if it could have complied with the criteria that was applicable when the unit of land was sold. The applicant provided information to show the property was sold to the current owners in October 1, 1998, without the required city process, so the property is not recognized as lawfully established unit of land; and to be approved the unit of land must comply with the criteria that were applicable at that time, as addressed below:

Title 34 Approval Criteria for a Minor Partition for the City of Portland in 1998

34.30.030.B Approval Criteria:

The applicant will demonstrate that each proposed lot or parcel will meet all of the following approval criteria:

1. It is in conformance with the Comprehensive Plan map designation.

Findings: In 1998, the Comprehensive Plan Map designation for this site was Single Dwelling Residential, with an R7 zoning designation, while the assigned zoning was R10, which is a lower density single-dwelling zone. The applicant's proposal meets this requirement because the proposed residential use is allowed in both the R7 and R10 zones. This criterion is met.

2. It is in conformance with the design standards for lots and parcels specified in Section 34.60.030 of this Title.

Findings: The size, width, shape and orientation of the subject site must be consistent with the following provisions in Section 34.60.030:

- A. *The size, width, shape and orientation of lots and parcels shall be appropriate for the location of the land division and for the type of development and use contemplated, and shall be consistent with the lot size provisions of Title 33 of the City of Portland Code with the following exceptions:*
 - 1. *In areas that will not be served by a public sewer, minimum lot and parcel sizes shall permit compliance with the requirements of the Department of Environmental Quality and shall take into consideration problems of sewage disposal, particularly problems*

- of soil structure and water table as related to sewage disposal by septic tank.*
- B. *The side lines of a lot or parcel shall run at right angles to the street on which it faces as far as is practicable, or on curved streets shall be radial to the curve as far as practicable.*
- C. *Double frontage lots and parcels shall be avoided except where essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography and orientation.*
- D. *All lots and parcels must abut a street other than an alley for a width of at least 25 feet except for those listed below:*
1. *The minimum street frontage for an attached residential lot is the minimum width required by Title 22; and*
 2. *The pole portion of a flag lot must be at least 12 feet wide.*
- E. *Each lot or parcel shall contain a usable building site having an elevation at least 1 foot above the level of a predictable regional (100-year) flood as determined by the United States Corps of Army Engineers.*

As shown on the existing condition plan (Exhibit C.3), the size, width, shape and orientation of the subject site is consistent with the lot size provisions of Title 33 (1998 Code) as shown below:

| Title 33-Lot Dimensions | R10 Zone requirements | Subject Site |
|--------------------------------|------------------------------|---------------------|
| Minimum Lot Area (square feet) | 10,000 | 66,700 |
| Minimum Lot Width* (feet) | 70 | 140 |
| Minimum Lot Depth* (feet) | 100 | 594 |

**Lot width and depth are measured from the midpoint of the opposite lines, per 33.930.100*

The subject property has 40 feet of frontage on SW Hamilton Street. The west side lot line is straight and perpendicular to SW Hamilton Street. The east side lot line is straight and perpendicular to SW Hamilton Street for approximately 162 feet, then the line jogs east, at approximately 90 degrees, for 100 feet, where it then jogs north, at approximately 90 degrees for 429 feet to the rear lot line. This results in a “flag shaped” property, which is large enough to accommodate a variety of residential development designs that can meet the zoning code’s development standards. This subject site has a suitable building site at least 1-foot above the level of predictable regional flood. This criterion is met.

3. The continuation of existing principal streets in surrounding areas will not be partially or fully blocked.

Findings: No through streets are anticipated on the site, due to the presence of an open stream channel that traverses the site and adjacent properties. In any event, the proposal will not block the continuation of existing principal streets in the surrounding areas. This criterion is met.

4. Access to adjacent property from streets, as required by City Code will not be partially or fully eliminated.

Findings: As noted in the applicant’s response, the subject property takes access from SW Hamilton Street and abutting properties take access from SW 41st Avenue, SW 40th Avenue, SW Bancroft Street and SW 40th Place. The neighboring properties do not rely on the subject site for access, and the proposal will not affect access to adjacent properties. This criterion is met.

5. Water, sanitary sewer or approved subsurface disposal systems and drainage facilities, which meet City requirements are available or can be provided.

Findings: The Water Bureau (Exhibit E.3) and the Bureau of Environmental Services (BES) (Exhibit E.1) have determined that water, sanitary sewer, and drainage facilities (stormwater management) are available or can be provided, as noted on page 3 of this report. Therefore,

this criterion is met.

6. All requirements of Title 17 can be met.

Findings: PBOT has reviewed the proposal and determined the requirements of Title 17 can be met (Exhibit E.2); so, this criterion is met.

7. In RF through R5 zones, each lot contains at least 1,600 square feet of area which complies with all of the following:

- a. The 1,600 square feet area is located outside of an EC or EP zone, or the request creates lots that meet the applicable Development Standards of Sections 33.430.140 through .170 or has been approved through an Environmental Review as specified by Chapter 33.430 Environmental Zones; and,
- b. The 1,600 square foot area has been a minimum dimension of 40 feet by 40 feet in all cases except for attached houses on corner lots.
- c. The 1,600 square feet area is located outside of the required setbacks; and,
- d. The 1,600 square feet area is located outside of a severe land hazard area, as shown on the city's land hazard maps, or on the Multnomah County slope hazard maps, or the applicant has provided preliminary soils and geologic engineering documentation describing how the site can be developed safely; and,
- e. The 1,600 square feet area is located outside of the 100 year flood plain or the applicant has provided documentation of alternative compliance with the city's flood plain regulations.

Findings: The site is in the R10 zone and contains 1,600 square feet of area that has a minimum dimension of 40 feet by 40 feet and is outside of the environmental overlay, outside of required setbacks; and outside of the 100-year floodplain. The entire site has a potential landslide hazard designation, and the applicant has provided a landslide hazard study (Exhibit A.1), which Site Development (Exhibit E.5) has determined is sufficient to demonstrate the site can be developed safely. Based on these factors, this criterion is met.

8. In all other zones, the request creates lots that meet the applicable Development Standards of Section 33.430.140 through .170 or has been approved through an Environmental Review as specified by Chapter 33.430, Environmental Zones.

Findings: This site is in the R10 zone, so this criterion does not apply.

9. The water, sewer, stormwater disposal services and private and public utilities services, vehicular access, parking and maneuvering areas located on the lot will not be located in or cross an EC or EP zoned area unless the request meets the applicable Development Standards of Section 33.430.150 or has been approved through an Environmental Review as specified by Chapter 33.430 Environmental Zones.

Findings: The water, sewer, stormwater disposal services and private and public utilities services, vehicular access, parking and maneuvering areas on the site are not located or proposed to be placed within the environmental zoned areas of the site, so this criterion is met.

34.50.010 Conformance with Plans. A land division, whether by subdivision or partitioning shall conform to the Comprehensive Plan, shall take into consideration any preliminary plans made in anticipation thereof, and shall conform to the principles of acceptability and the design standards established in this Title. Where such is not shown in adopted or preliminary plans the arrangement of streets shall either:

- A. Provide for the continuation or appropriate projection of existing arterial or collector streets in surrounding area, or

- B. Conform to a plan for the neighborhood approved or adopted by the Planning Commission to meet a particular situation where topography or other conditions make continuance or conformance to existing streets impracticable.

Findings: No continuation of existing arterial or collector streets is required at this site. This regulation is met.

33.50.015 Minimum Density. In the RF through R2.5 zones, the minimum density for land divisions must be at least 90 percent of the maximum density allowed by Title 33, except in the following situations:

- A. Land within an Environmental zone may be subtracted from the calculation of minimum density;
- B. Land within the Johnson Creek Flood Plain subdistrict of the Johnson Creek plan district may be subtracted from calculations of minimum density; and
- C. Minimum density is not required where it is unfeasible due to constraints such as land hazards, topography, solar or tree preservation requirements, access limitation or other similar constraints.

Findings: The maximum density for the R10 zone is 4.4 units per acre. The site is approximately 66,700 square feet or approximately 1.53 acres; and about 32,866 square feet (or .75 acres) of the site is in the environmental zone. Deducting the environmental zone area, the maximum density is 3.4, which rounds down to 3 based on the 1998 rounding standards. The minimum density is based on 90 percent of 3, which is 2.7, which rounds down to 2, based on the 1998 rounding standards. However, due to the landslide hazard designation, there is no minimum required density. This criterion is met.

34.50.020 Future Extensions of Streets. Where a Subdivision or partition associated with any major or minor land division adjoins unsubdivided land, streets, which should be continued in the event of the division of the adjoining land, will be required to be provided to the boundary lines of the tract. Reserve strips or street plugs may be required to preserve the objectives of street extensions.

Findings: As noted above, due the presence of an onsite stream, a through street is not warranted at this location, so this regulation does not apply.

34.50.050 Frontage on Arterial Streets. Wherever a Subdivision or partition abuts or contains an existing or proposed arterial street, the Hearings Officer may require frontage streets, reversed frontage lots with suitable depth, screen planting contained in a non-access reservation along the rear property line or such other treatment as may be necessary for adequate protection of residential properties and to afford separation of through and local traffic.

Findings: The site has frontage on SW Hamilton Street, which is an arterial street. PBOT has not identified the need for any specific treatment along the arterial street at this location. As such, this regulation is met.

33.65.030 Solar Design Standard. At least 80 percent of the lots in a development subject to this ordinance shall comply with one or more of the options in this section.

- A. Basic Requirement. A lot complies with this section if it:
 1. Has a north-south dimension of 90 feet or more; and
 2. Has a front lot line that is oriented within 30 degrees of a true east-west axis

Findings: The subject site has a north-south dimension of approximately 594 feet; and the front lot line is within 30 degrees of the east-west axis along SW Hamilton Street. This standard is met.

CONCLUSIONS FOR LOT VALIDATION

The applicant proposes to validate an approximately 66,700 square feet unit of land, which is within the jurisdiction of the City of Portland and was sold to the current owners on October 1, 1998.

As discussed above, the Lot Validation has been reviewed per ORS 92.176, and the subject property has been shown to meet the required standards for the creation of a unit of land; thereby validating this unit of land in its current configuration, as shown on Exhibit C.3.

As such, the requested Land Division proposal can proceed and is discussed below.

LAND DIVISION

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 100-year flood hazard area regulated by this provision. |
| 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, the solar access standards express no lot configuration preference. Additionally, maintaining existing development on the site limits new parcel configuration (33.610.200 supercedes 33.639). |
| J | 33.640 - Streams, Springs, Seeps and Wetlands | No streams, springs, seeps or wetlands are evident on the site outside of environmental zones. |
| L | 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.D - Common Greens | No common greens are proposed or required. |
| | 33.654.120.E - Pedestrian Connections | No pedestrian connections are 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 public dead-end streets and pedestrian connections | No public dead-end streets or pedestrian connections exist that must be extended onto the site. |
| | 33.654.130.D - Partial rights-of-way | No partial public streets are proposed or required. |
| | 33.655 - School District Enrollment Capacity | The proposal is for less than 11 lots or is not in the David Douglas School District. |

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 R10 zone. The maximum density in the R10 zone is one unit per 10,000 square feet.

Based on the applicant's submittal, the site area is approximately 66,700 square feet. A new private street is proposed and the site is within a potential landslide hazard area, so the maximum allowed density is 5 units, and there is no required minimum density. The applicant is proposing 3 single dwelling lots; so, the density standards are met.

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) |
|-----------------|--|--|---------------------------------------|----------------------------------|---|
| R10 Zone | 6,000 | 17,000 | 50 | 60 | 30 |
| Lot 1 | 6,812 | | 69 | 100 | 69 |
| Lot 2 | 11,823 | | 100 | 107 | 77 |
| Lot 3 | 6,326 | | 62 | 88 | 40 |

* 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.

With regard to all lot lines being as straight as is practical, in this case, Lot 1 is rectangular with straight lot lines and side lot lines perpendicular to the new private street. Lot 2 has one irregular side lot line, which borders Lot 3 and extends at an angle from the new private street and curves along the edge of the environmental conservation zoning line. Lot 3 has two irregular lot lines, the rear (north) lot line, which the applicant has shown to correspond generally with the 50-foot setback from the on-site stream, and the shared side lot line with Lot 2, as described above. City staff and the applicant discussed options to create more regular lot lines and configure the lots so they would be entirely outside of the environmentally zoned portions from the site, which would provide more certainty at the time of future development. However, the applicant prefers the proposed layout and acknowledges that future development on Lot 3 will be subject to additional regulations due to the configuration of that lot. Though several of the lot lines for Lot 2 and Lot 3 are irregular, each lot has sufficient area for a house, outdoor area, on-site parking, and utilities, and will limit intrusion into the environmental resource and stream setback areas. So, the lot lines are otherwise generally consistent with the purpose of the lot dimension standards and are acceptable.

The findings above show that the applicable density and lot dimension standards are met. However, as noted in the Fire Bureau response (Exhibit E.4) additional details are needed to confirm the design of the private street tract (identified by city staff as Tract A) is adequate to provide the required emergency access. As such, potential changes to the private street tract could affect the lot dimensions beyond the minor variations allowed at the time of final plat review (33.663.200). Therefore, a condition will be applied, which allows for changes to the lot dimensions that may be triggered by changes to the tract configuration, provided the minimum lot dimensions of the R10 zone continue to be met. With this allowance, this lots will continue to meet the required dimensions and this criterion will be met.

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

Findings: The regulations of Chapter 33.630 require that trees be considered early in the design process with the goal of preserving high value trees and, when necessary, mitigating for the loss of trees.

Tree preservation must be maximized, to the extent practicable, while allowing for reasonable development considering the intensity of development allowed in the zone and site constraints, including existing utility easements and requirements for services and streets. Trees that are healthy, native and non-nuisance species, 20 or more inches in diameter and in tree groves are the highest priority for preservation. Additional considerations include trees that are slower growing native species, buffering natural resources, preventing erosion and slope destabilization and limiting impacts on adjacent sites.

Some trees are exempt from the requirements of this chapter, if they are unhealthy, a nuisance species, within 10 feet of a building to remain on the site, within an existing right-of-way, or within an environmental zone.

To identify which trees are subject to these requirements, the applicant provided a tree survey (Exhibit C.4) that shows the location and size of most of the trees on and adjacent to the site. The applicant also provided an arborist report (Exhibit A.1.a) that identifies most of the trees, their condition and suitability for preservation or exempt status, and specifies a root protection zone and tree protection measures for each tree to be preserved. There are different numbering systems used in the documents, but the last 3 numbers listed in the arborist report match those on the tree plan. The tree survey and arborist report do not list all the trees in the environmental zones, since those are subject to the Environmental Zone regulations in 33.430 instead, and nearly all will be protected within an environmental resource tract. Based on this information, excluding exempt trees that are less than 6-inches in diameter, nuisance species, off-site, or in the environmental zones, 32 trees, which provide a total of 373 inches of tree diameter are subject to the preservation requirements of this chapter. Two of the 32 trees are over 20-inches in diameter.

The applicant proposes to retain 11 of the regulated trees, which the arborist report indicates are healthy and suitable for preservation. The 11 trees provide 114 inches of tree diameter or 30 percent of the total non-exempt tree diameter. One of these trees is over 20-inch in diameter. This proposal is consistent with the Option 3 standard, which calls for the preservation of at least 50 percent of the trees over 20 inches and at least 30 percent of the total tree diameter.

Additionally, the applicant has proposed to protect 6 large diameter trees in the environmental transition area, on Lot 3, which are part of a grove that extends into the protected environmental resource area. This will help to ensure the trees to be preserved provide the greatest environmental and aesthetic benefits for the site and surrounding area, in alignment with the approval criteria. The applicant also indicates an existing dead tree will be retained in the environmental transition area, to avoid impacts its removal could cause to the nearby trees and to allow its habitat values to remain.

Based on these factors, many of the large healthy regulated trees on the lots will be retained, while allowing for the type of development anticipated in the zone; and with the preservation of trees on Lot 3 that are part of a grove that extends into the environmental resource area, the protection of environmental resources and retention of benefits from trees will be maximized for the site as a whole. As such, no additional mitigation is warranted to satisfy the approval criteria.

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. The acknowledgement must identify that development on Lots 1-3 must be carried out in conformance with the Tree Preservation Plan (Exhibit C.2) and the Arborist Report (Exhibit A.1.a). With the implementation of the noted conditions, the approval criteria will be met.

At the time of development, the individual lots must also meet the Title 11-Tree Code provisions, which require a specific amount of site area for tree planting based on the size of the property and the scale of the development. The trees to be retained as part of this review may be applied toward meeting those Title 11 requirements.

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 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 these criteria, the applicant has submitted a Landslide Hazard Study of the site and proposed land division, prepared by a Certified Engineering Geologist and a Geotechnical Engineer (Exhibit A.2). The Site Development division of Development Services, which makes determinations regarding soil stability, has evaluated the proposal and provided the following comments: *The site is located in the Potential Landslide Hazard Area. Site Development has reviewed the February 13, 2017 Rapid Soil Solutions, LLC Geologic Hazard Site Review and the April 9, 2019 Geologic Hazard Assessment by Gary C. Sandstrom, CEG. The reports conclude the site is suitable for the proposed development. The information provided is acceptable and satisfies the approval criterion of Section 33.632.100.*

Site Development notes that further geotechnical evaluation may be required for specific building plans at the time of construction plan review.

Based on these factors, 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: 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.

Additionally, where geologic conditions or historic uses of the site indicate that 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 to make the lots suitable for their intended uses and the provision of services and utilities.

Clearing and Grading: The site is in a Potential Landslide Hazard area and has some minor to moderate grades. Some minor clearing and grading will be required for the new private street and associated stormwater facilities and other utilities. The clearing and grading must be conducted in a way that will limit erosion concerns and assure that the preserved trees on the site and trees on the adjacent properties will not be disturbed.

The proposed clearing and grading shown on Exhibit C.2 includes removal of trees, existing and proposed elevation contours for grading of the street area and construction access to the staging and soil stockpile areas on Lots 1 and 3. The plan also includes locations where construction fencing will be installed to avoid intrusion into the root protection zone of existing trees that must be preserved on site, as discussed in more detail in Criterion B, above. Additionally, the arborist report (Exhibit A.1.a) identifies measures that will be implemented to limit impacts to 2 neighboring trees adjacent to the new private street, including boring the utilities, or using an AirSpade trench, with arborist oversight, to locate, and if necessary prune, roots over 3-inches in diameter.

The applicant's plan does not show specific erosion and sedimentation controls; and, Site Development has noted that the project area meets the criteria specified in City Code 10.30.030 as a Special Site with additional requirements for erosion, sediment and pollution control. Therefore, an erosion control plan prepared by a Certified Professional in Erosion and Sediment Control (CPESC) or State of Oregon registered professional engineer will be required at the time of permit application for the private street and future development. This will ensure effective erosion control measures are installed prior to starting the grading work. Additionally, preserving the protected trees will help limit erosion by assuring the tree roots help to hold the soil in place.

Stormwater will be appropriately managed by a flow through planter system sized to treat and detain runoff from the private street, rooftops, and driveways to assure that adjacent properties will not be adversely impacted (see detailed discussion of stormwater management later in this report).

Based on these factors, with a condition that the noted tree protection and erosion control measures must be included in a final clearing and grading plan, which is required as part of the Site Development Permit for the private street, discussed in more detail below, the preliminary clearing and grading plan will meet this approval criteria.

Land Suitability: The site is currently in residential use, and there is no record of any other use in the past. As indicated above and in the Site Development response (Exhibit E.5), the site has a landslide designation, the northern portion of the site has some moderate slopes and a water course, which is not mapped within the FEMA Special (100-year) Flood Hazard Area or the 1996 Flood Inundation Area. Site Development has noted that the *site plan indicates that the unidentified watercourse floodway, creek banks, and an area including greater than 50-foot setback from the top of bank will be located entirely within the proposed environmental tract and will not be subject to future development.* As such, there are no anticipated land suitability issues with the new lots and the 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.

Findings: The following tracts are proposed or required:

- Tract A: [Name of Street] (Private Street)
- Tract B: Open Space (Environmental Resource Area)

The Zoning Code requires ownership of these tracts as follows:

- The street tract must be owned in common by the owners of Lots 1 through 3; or a Homeowners' Association.
- The environmental tract must be owned in common by the owners of Lots 1 through 3; a Homeowners' Association; a public agency; or a non-profit organization, per the Environmental Standards for Land Divisions (33.430.160.E).

The applicant must clarify the ownership of the tracts at the time of final plat.

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

- An Emergency Vehicle Access Easement is required over the private street.
- A Private Access Easement is required over a portion of Lot 3 to provide a minimum 10-foot wide accessway for Lot 1 and Lot 2 to the environmental tract (Tract B).
- A Private Storm Sewer Easement is required *if* the applicant elects to provide a private storm easement over Lot 1 for the benefit of Lot 2, to meet the BES requirements for stormwater management for the existing house on Lot 2, as discussed in more detail in the stormwater section below.

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

"A Declaration of Maintenance agreement for (name of feature) has been recorded as document no. _____, Multnomah County Deed Records."

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

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

Findings: The transportation system must be capable of supporting the proposed development in addition to the existing uses in the area.

Evaluation factors include: safety, street capacity, level of service, connectivity, transit availability, availability of pedestrian and bicycle networks, on-street parking impacts, access restrictions, neighborhood impacts, impacts on pedestrian, bicycle, and transit circulation. Evaluation factors may be balanced and measures to mitigate impacts may be necessary.

Portland Bureau of Transportation (PBOT) has reviewed the application against the evaluation factors and has provided the findings below (see Exhibit E.2). The PBOT response refers to the subject site as a “flag lot”; and though the site is “flag shaped”, it is not technically a “flag lot”, since it meets the minimum size requirements for a standard lot in the R10 zone. In any event, the flag-lot reference does not affect the outcome of the findings.

The applicant provided a written narrative addressing the transportation approval criteria above. The application proposes to divide the existing flag lot into three developable lots, one of which will retain the existing home, and two tracts. Based upon trip generation estimates from the Institute of Transportation Engineers (ITE) Trip Generation Manual, 10th Edition, each proposed parcel is projected to generate one additional morning and one evening trip, for approximately ten daily trips for each new parcel. Most recent traffic volume data on this portion of SW Hamilton is 1,083 vehicles on a typical weekday. The net addition of two single-family residences added to the transportation system resulting from the development will not adversely impact the operations of area intersections and is consistent with the zoning of the property. Therefore, the transportation system is capable of safely supporting the proposed development in addition to existing uses in the area. The site is well served by four TriMet bus lines (#51, 54, 55, 56) nearby to reduce impacts the neighborhood, all within one mile from the site. SW Hamilton is identified as a City Walkway and City Bikeway, which provides access to nearby low, volume traffic streets which allows pedestrians and cyclists to connect with other parts of the neighborhood. Therefore, the proposed development will not negatively impact transit access or other transportation modes. The subject property is a Flag lot, which does not have access to on-street parking. Each of the proposed house will have individual garages and driveways, and the ability to accommodate the demand of two vehicles in addition to any guest parking that may be needed within the private drive tract. Therefore, the proposal is consistent with the established neighborhood pattern of the area, and with ample space to be provided on-site, demand for additional on-street parking is expected to be negligible.

PBOT concurs with the information supplied and has indicated minor frontage improvements will be required to serve the proposed development (see criterion L. 33.654); otherwise, PBOT notes no mitigation is necessary for the transportation system to be capable of 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:

33.651 Water Service standard – See Exhibit E.3 and E.4

The Water Bureau (Exhibit E.3) has indicated that service is available to the site, as noted on page 3 of this report. However, the Fire Bureau (Exhibit E.4) has indicated additional details about hydrants locations, fire flow, and water supply must be provided prior to final plat, to confirm the existing services are adequate for fire suppression; otherwise, improvements will be required if the Fire Bureau standards are not met. With conditions to address the Fire Bureau requirements, the water service standards of 33.651 will be verified, prior to final plat.

33.652 Sanitary Sewer Disposal Service standards – See Exhibit E.1.

The Bureau of Environmental Services has indicated that service is available to the site, as noted on page 3 of this report. BES provided the following comments about existing and proposed sanitary services:

- *Existing Development: According to historic plumbing records, the existing structure on proposed Lot 2 is currently connected to the sanitary-only sewer in SW Hamilton via a lateral located approximately 190 feet from the manhole in SW 41st Avenue. Per the submitted site plan, this connection will be located within the proposed private street tract and will not cross the new proposed lots.*
- *Proposed Development: Lots 1 and 3 will be served by individual connections to the sanitary-only sewer in SW Hamilton within the private street tract.*

BES staff finds the applicant's proposed sanitary sewer service acceptable for the purpose of reviewing the preliminary land division application against the sanitary sewer disposal approval criterion. Accordingly, the sanitary sewer service standards of 33.652 have been verified.

33.653.020 & .030 Stormwater Management criteria and standards – See Exhibits E.1

BES evaluated the applicant's proposal for stormwater facilities and provided comments summarized below:

Public Right-of-Way: Stormwater runoff from public right-of-way improvements as required by the City of Portland Bureau of Transportation (PBOT) must be managed according to the standards of the SWMM and the Sewer and Drainage Facilities Design Manual. BES determined there are no public right-of-way improvements that will trigger BES public stormwater drainage improvements.

Lot 2 (the lot with the existing house): To ensure the stormwater management system for the existing house continues to meet BES requirements, once the property is divided, BES has identified the following must occur:

Prior to final plat approval, the applicant must do one of the following to resolve the existing stormwater disposal system for the house on Lot 2, to the satisfaction of BES:

- On the final plat, provide a private storm sewer easement for the benefit of Lot 2 over the relevant portions of Lot 1,
- Reroute the existing storm connection so that it does not cross Lot 1, with all necessary permits finalized, or
- Connect stormwater runoff from the existing building into the proposed new stormwater management system and facility. This would necessitate the facility to be built, with required permits finalized, prior to BES approval of the final plat.

BES also noted if the applicant elects to provide a private storm easement over Lot 1 for the benefit of Lot 2, then BES will review the easement to ensure that it covers an approvable route of stormwater discharge for the included lots. Per the BDS [Private Sewer Easements Code Guide](#), private sewer easements should be a minimum of 10 feet in width unless specific criteria are met allowing a reduction to 5 feet, as determined by BDS.

Proposed New Development and Private Street Tract: The applicant submitted a geologic hazard assessment document from Gary C. Sandstrom, CEG, RPG, which recommends that stormwater runoff from the proposed development be discharged offsite to SW Hamilton Street due to existing runoff issues and shallow groundwater in this area. BES also reviewed the submitted stormwater report from KPFF (dated July 2019), which proposes for runoff from the private street tract, all driveways, and future development on Lots 1 and 3 to be discharged offsite to the ditch in SW Hamilton after pollution reduction and flow and volume control standards are met with a shared planter sized per the Performance Approach. The proposed planter will have a 5/8-inch orifice to meet flow control requirements. The proposed stormwater management system is acceptable to BES and meets SWMM requirements. However, BES noted since the facility will be shared between all three properties and the private street tract, a plumbing code appeal is required.

To address this requirement, the applicant obtained an approved plumbing code appeal (ID #22201) related to the proposed stormwater system design. Therefore, BES determined the proposal for Lots 1 and 3 and the private street tract is acceptable.

Overall, with conditions to meet the noted BES requirements, these criteria and standards will be met.

33.654.110.B.1 Through streets and pedestrian connections

33.654.110.B.2 Approval criterion for dead-end streets in OS, R, C, and E zones.

Generally, through streets should be provided no more than 530 feet apart and pedestrian connections should be provided no more than 330 feet apart. Through streets and pedestrian connections should generally be at least 200 feet apart.

The *SW and Far SE Master Street Plan*, which applies in this location, does not identify any specific street connections at the site, so the standard spacing requirements apply.

The block on which the subject property is located does not meet the noted spacing requirements. However, due to the presence of an open stream channel that traverses the site and adjacent properties and the environmental resources within and along the waterway, a through street is not warranted on the site. Therefore, the applicant's proposal to provide a private dead-end street is allowable, since the street will serve only 3 dwelling units and will meet the dimensional requirements for private rights-of-way, as discussed in more detail in the sections below.

Based on these factors, these criteria are met.

33.654.120.B & C Width & elements of the right-of-way

33.654.110.B.2 Approval criterion for dead-end streets in OS, R, C, and E zones

33.654.120.C.3.c Approval criterion for turnarounds

33.654.130.C Future extension of proposed dead-end streets & pedestrian connections

The required width and elements for the public and private rights-of-way are addressed below:

Public Right-of-Way: SW Hamilton Street is a Neighborhood Collector, so the right-of-way width and all elements must be consistent with PBOT standards.

According to PBOT (Exhibit E.2), standard improvements at this location include a 20-foot wide paved roadway, 9-foot wide buffered bike lanes, and a 16-foot wide sidewalk corridor. Presently, the site frontage on SW Hamilton Street is improved with an approximate 22-foot paved roadway with a centerline stripping, within a 50-foot right-of-way, and lacks curbs and sidewalk.

PBOT notes *[c]onsistent with past shoulder widening improvements on SW Hamilton, an Internal Alternative Review (19-125833 PW) has been approved, noting that the proposed 20-ft driveway approach would serve the same function as shoulder widening. Therefore, the project may retain the current configuration with a new asphalt connection to City*

standards. PBOT notes the proposed 20-foot driveway approach/widening shall be completed prior to the finalization of the private street tract, through a Minor Improvement Permit. PBOT also identified a 9-foot dedication will be required for future improvements to SW Hamilton.

With conditions for the noted dedication and driveway improvements, the public right-of-way width and elements will meet PBOT requirements.

Private Right-of-Way: The width and elements for private rights-of-way must meet the Zoning Code regulations in 33.654.120.C and the standards in the *Administrative Rules for Private Rights of Way*, which govern the construction of private streets.

To serve the 3 lots, the applicant has proposed a 40-foot wide private dead-end street tract, with a 20-foot wide paved roadway terminating in an 18-foot radius turn-around. The roadway will be bordered by mountable curbs and approximately 4-foot wide planters. Some new and existing trees are shown in the planters; groundcover plantings must also be provided within the planter areas in accordance with the *Administrative Rules for Private Rights of Way*. A stormwater planter, which will treat runoff from the street and lots, is proposed in the southwest corner of the private street tract. The plans do not show a location for the required street name sign within the street tract; however, sufficient space for the required signs appears available in the bordering planter areas. A note on the plans indicates “No Parking” signs are proposed along the street tract to comply with the Fire Bureau requirements for access, and adequate space also appears available for those signs. However, as noted in the response from the Fire Bureau (Exhibit E.4) details about the fire apparatus access and access specifications must be further resolved. The applicant has several options to address these requirements and must demonstrate the requirements can be met to the satisfaction of the Fire Bureau. As noted in the “Lots” findings in Criterion A, an additional allowance for variations in the size of the lots has been provided, in the event the lot sizes need to change to accommodate the Fire Bureau requirements for the access and turnaround design within the private street tract. With this allowance, the overall width of the proposed tract width will be sufficient to accommodate the elements of a street that are adequate for 3 lots. No extension of the dead-end private street or future extension of a pedestrian corridor is warranted at this time, based on the configuration of the abutting development and the environmental resources on the site and neighboring properties.

As noted in the Site Development response (Exhibit E.5), *a Site Development Permit is required for the construction of private rights-of-way. A permit submittal must be made prior to final plat approval. A performance guarantee is required and also must be submitted prior to final plat approval. Additionally, a separate plumbing permit is required for the plumbing component of the street construction. Finally, the first lift of paving for the street must be installed before permits for residential construction on any of the individual parcels will be issued. All private streets and alleys that exceed 500 square feet of impervious surface must be designed by a professional engineer.*

Any noted deficiencies regarding plantings, street signs, and fire access must be resolved on the permit plans for the private street, which are required prior to final plat approval.

Based on the foregoing, with the conditions described above, this criterion will be 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 rights-of-way 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. As such, this criterion is met.

DEVELOPMENT STANDARDS

Development standards that are not relevant to the land division review, have not been addressed in the review. 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 11 can be met, and those 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.

Future Development: The future development on Lot 3 will be subject to the Environmental Zone regulations and development standards in 33.430.

Existing Development: The existing development on the site will remain and be located on Lot 2. 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:

- **Building Coverage:** The existing house to remain on Lot 2 includes a raised deck, a portion of which appears to be over 6 feet above grade. Decks over 6 feet above grade must be included in the building coverage calculations. The applicant has not provided calculations for the building coverage to remain on Lot 2. Therefore, to ensure this standard continues to be met at the final plat stage, the applicant shall be required to provide drawings and calculations to demonstrate the building coverage standard will continue to be met on Lot 2.
- **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 at least 10 feet from the new property lines. 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 plan showing the surveyed location of the existing building relative to the adjacent new lot lines.
- **Street-Facing Facades in R10 through R2.5 Zones** -- In this zone, street-facing facades of residential structures are required to have windows that comprise at least 15 percent of the façade area. After the land division, the street frontage for the existing house will be provided by the new private street. Prior to final plat approval, the applicant must demonstrate compliance with 33.110.232.C; and, if modifications must be made to meet the standard, the applicant must obtain and finalize a building permit for those changes.
- **Required Off-Street Parking:** The project plans show a new driveway is proposed to connect the parking for the existing house to the new private street. Prior to final plat approval, the applicant must obtain and finalize a Zoning Permit to document that the driveway changes for the existing house on Lot 2 comply with the parking space and paving limitations in 33.266.120, and reflect those changes on the supplemental plan. The new driveway does not have to connect to the street until the private street is built. Additionally, the design for the private street must include a driveway approach and curb cut in a location that can provide access to the required parking on the lot with the existing house that will remain.
- **Title 11 Tree Density Standard** – The minimum tree density requirement, per 11.50.050 is currently met on the site. Due to the land division, and associated tree removal, Lot 2, with existing house, will have only one tree and will no longer meet this standard. Prior to final

plat approval, the applicant must meet this requirement by either planting trees on Lot 2 or making the equivalent payment into the City Tree Preservation and Planting Fund. Tree planting must be documented with a finalized Zoning Permit.

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

Environmental Standards: The standards of Section 33.430.160 Standards for Land Divisions and Planned Developments apply to the proposal. Conditions have been included for the tract requirements that apply at the time of final plat. The other noted standards will apply at the time of development:

- The entire environmental resource area and all environmentally zoned land within 50-feet of the top of the stream bank shall be placed entirely within an environmental resource tract. The tract 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.E and 33.430.140.C).
- The minimum front and street building setback and garage entrance setback of the base zone may be reduced to any distance between the base zone minimum and zero. Parking spaces may be allowed within the first 10 feet from a front lot line (33.430.140.N).
- The front building or street setback of the base zone is the maximum building setback for primary structures (33.430.140.O).
- Fences are allowed only within the disturbance area (lots) (33.430.140.P).
- Exterior lights within the environmental zone 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.R).

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 11 –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.

- Private Street: The applicant is required to make improvements to the proposed private street. Several conditions are required, including provision of plans and financial assurances, initiating a permit, and providing a maintenance agreement. In addition to the approval criteria of Title 33, these requirements are also based on the technical standards of

Title 17 and Title 24.

- Fire Bureau: The applicant must meet the requirements of the Fire Bureau in regards to fire apparatus access and maneuvering; fire flow/water supply; hydrant spacing; design and maintenance of the private street; posting of "No Parking" signs in the private street; and addressing requirements; as outlined in the Fire Bureau response (Exhibit E.4). These requirements are based on the 2016 Portland Fire Code, technical standards of Title 31 and Fire Bureau Policy B-1.
- Water Bureau: The Water Bureau response summarizes the service and separation requirements that must be met to serve the site, per Title 21:

Water services must be placed in the private tract and meet the separation requirements below. The proposed water service shall:

- *be located at the standard location behind curb in the furnishing zone.*
- *not be located in any types of storm sewer facilities like swale, planter box, etc...*
- *be at a minimum of 5ft clearance (skin to skin) to sanitary sewer line, power pole, street light, street trees and any above ground structures*
- *be at a minimum of 3ft clearance (skin to skin) to any other utilities or catch basins.*
- *be sited out of driveway wings*
- *meet the clearance per PWB standard plan P-845*

CONCLUSIONS

The applicant has demonstrated that the existing unit of land can be validated in its current configuration, as shown on Exhibit C.3, since it meets the 1998 land division approval criteria and ORS 92.176. The Lot Validation approval allows for the Land Division to proceed.

The applicant has proposed a Land Division for three (3) lots with a private street tract (Tract A) and an environmental resource tract (Tract B), as shown on the attached preliminary plan (Exhibit C.1). As discussed in this report, the primary issues identified with this Land Division proposal are:

- Right-of-way dedication for SW Hamilton Street and Minor Improvement Permit for a new connection to the private street tract
- Private Street plans and permits
- Tree preservation
- Modifications to the existing development: stormwater management, driveway connection to private street, tree density, accessory structure, development standards
- Fire protection

Neighbors also raised concerns about environmental resources, tree protection, stormwater management, future development on the lots, and lighting in the private street. As noted in the Neighborhood Review Section, above, an environmental resource tract will be established to protect the stream, trees, and other environmental features in the environmental zones. The trees noted for removal are those within the private street tract, many of which are nuisance species, and several within the proposed development area on Lot 1. Except for those noted for protection on the lots and in the environmental resource tract, the preservation of the other trees will be that the discretion of the property owner(s). The Bureau of Environmental Services has evaluated the proposed stormwater management facilities for the public and private rights-of-way and the lots and found stormwater will be effectively managed to avoid off-site impacts. Future development on the lots must comply with the regulations in effect at the time of that development and is not required to be evaluated as part of this application. No lighting is proposed in the private right-of-way.

Based on the findings in this report, the relevant standards and approval criteria have been met or can be met with conditions. Accordingly, this proposal can be approved.

ADMINISTRATIVE DECISION

Approval of a Validation of a Unit of Land per ORS 92.176, as illustrated by Exhibit C.3.

Approval of a Preliminary Plan for a Land Division-Subdivision, that will result in three lots, one private street tract (Tract A), and one environmental resource tract (Tract B), 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 for Land Use, BES, and Site Development review and approval. That plan must portray how the conditions of approval listed below are met. In addition, the supplemental plan must show the surveyed location of the following:

- Any buildings or accessory structures on the site at the time of the final plat application;
- Any driveways and off-street vehicle parking areas on the site at the time of the final plat application;
- The location of any existing or required stormwater systems serving the existing home to the satisfaction of BES;
- 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 Hamilton Street.
2. An Emergency Vehicle Access Easement, granted to the City of Portland, shall be shown over the relevant portions of the private street to the satisfaction of the Fire Bureau.
3. The private street tract shall be named, with approval from the City Engineer, and noted on the plat as " Tract A: [Name of Street] (Private Street)". The street tract must be owned in common and maintained by the owners of Lots 1 through 3; or a Homeowners' Association; and noted as such on the plat.
4. The environmental resource tract shall be noted on the plat as "Tract B: Open Space (Environmental Resource Area). The environmental tract must be owned in common and maintained by the owners of Lots 1 through 3; a Homeowners' Association; a public agency; or a non-profit organization; and noted as such on the plat.
5. A private access easement shall be provided on Lot 3 to provide access to Tract B for Lot 1 and Lot 2; and noted on the plat.
6. 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 C.10-C.14 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."
7. Lot sizes shall remain consistent the variances allowed at the time of final plat (33.663.200), except additional changes are allowed, if necessary to comply with access requirements of the Fire Bureau for the private street tract (Tract B), provided the minimum lot dimensions of the base zone continue to be met.

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

Streets

1. The applicant shall submit a Site Development Permit for construction of the private street and related site development improvements. Street design plans must be prepared

by, or under the direction of, an Oregon licensed civil engineer. The plans must be in substantial conformance with Exhibit C.2 and the Administrative Rules for Private Rights of Way. In addition, the street shall include the following:

- All required street signs and plantings
 - Fire apparatus access and access specifications, including “No Parking” signs, to the satisfaction of the Fire Bureau
 - Stormwater management facilities to the satisfaction of BES
 - Water services must meet the separation requirements of the Water Bureau
 - The design for the private street must include a driveway approach and curb cut in a location that can provide access to the required parking on the lot with the existing house that will remain
2. The applicant shall furnish a financial guarantee of performance, as approved by the Bureau of Development Services, for 125 percent of the estimated construction cost for the private street and all required site development improvements. The applicant shall provide an engineer’s estimate of the costs of performance including the costs for temporary erosion control measures required during construction. The financial guarantee of performance shall be accompanied by a performance agreement with the Bureau of Development Services to complete the required improvements.
 3. The applicant shall provide a clearing and grading plan with the Site Development permit required for the private street described in Condition C.1. The clearing and grading plan must substantially conform to the preliminary plan (Exhibit C.2) approved with this decision with the following additions:
 - Tree Protection for onsite trees consistent with Condition D.1
 - Tree Protection for offsite trees (Trees 10118 and 10119) consistent with the Arborist’s Report (Exhibit A.1.a), including arborist oversight of grading and utility work for private street
 - Erosion controls to the satisfaction of Site Development
 - Construction limits of disturbance
 - A note that topsoil must be stockpiled on site and re-used to the extent practicable
 - A note that a tree protection inspection must be approved prior to the start of ground disturbing activity

Utilities

4. 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. If a new hydrant is required by the Fire Bureau, the applicant shall meet the requirements of the Fire Bureau for installing 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.
5. The applicant shall meet the requirements of the Fire Bureau for providing an adequate fire access way to Lots 1-3, as required in Chapter 5 of the Oregon Fire Code. Alternately, the applicant will be required to install residential sprinklers in the new houses, 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.

Existing Development

6. The applicant shall provide building elevations and calculations to show the existing house to remain on proposed Lot 2 meets the following development standards relative to the new lot configuration:

- 33.110.225 Building Coverage
- 33.110.232 Street-Facing Facades

If changes must be made to the existing development to meet the standards, then the applicant shall obtain a finalized building permit for those modifications. The permit plans shall include the note: *This permit fulfills requirements of Condition C.6 of LU 19-118250.*

7. The applicant shall do one of the following to resolve the existing stormwater disposal system for the house on Lot 2, to the satisfaction of BES:
 - On the final plat, provide a private storm sewer easement for the benefit of Lot 2 over the relevant portions of Lot 1, and record a maintenance agreement for the easement area; or
 - Reroute the existing storm connection so that it does not cross Lot 1, with all necessary permits finalized; or
 - Connect stormwater runoff from the existing building into the proposed new stormwater management system and facility, with all necessary permits finalized.

The location of any existing or required stormwater systems serving the existing home must be shown on the Supplemental Plan.
8. The applicant shall obtain and finalize a Zoning Permit to document that the driveway changes for the existing house on Lot 2 comply with the parking space and paving limitations in 33.266.120, and reflect those changes on the supplemental plan. The new driveway does not have to connect to the street until the private street is built.
9. The applicant must meet the tree density standard of 11.50.050 on Lot 2 with the existing house by either planting trees on the lot or making the equivalent payment into the City Tree Preservation and Planting Fund. A finalized Zoning Permit must be obtained to document tree planting prior to final plat approval.

Required Legal Documents

10. The applicant shall execute a Maintenance Agreement for the private street tract (Tract A). The agreement shall assign common, undivided ownership of the tract to the owners of Lots 1-3 or a homeowner's association and include provisions assigning maintenance responsibilities for the tract and any shared facilities within that area. The agreement must also acknowledge all easements granted within the street tract, the beneficiaries of those easements, and the limitations on the easement areas to the satisfaction of the beneficiary service agencies. The maintenance agreement must be reviewed by the City Attorney and the Bureau of Development Services, and approved as to form, prior to final plat approval.
11. The applicant shall execute a Maintenance Agreement for the environmental resource tract (Tract B). 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:
 - assign common, undivided ownership of the tract to the owners of all lots, a homeowner's association or meet the requirements of 33.430.160.E;
 - include provisions for assigning maintenance responsibilities for the tract;
 - include provisions assigning maintenance responsibilities for required plantings located within the tract;
 - include a description of allowed/prohibited activities consistent with Chapter 33.430;
 - include conditions of this land use decision that apply to the tract.
12. The applicant shall execute a Maintenance Agreement for a Private Access Easement described in Condition B.5 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.

13. If the Fire Bureau requires an Acknowledgement of Special Land Use Conditions, the applicant shall execute an acknowledgement to the satisfaction of the Fire Bureau and the acknowledgement shall be referenced on and recorded with the final plat.

14. The applicant shall execute an Acknowledgement of Tree Preservation Land Use Conditions that notes tree preservation requirements that apply to Lots 1-3. 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.

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

1. Development on Lots 1-3 shall be in conformance with the Tree Preservation Plan (Exhibit C.2) and the applicant's arborist report (Exhibit A.1.a). Specifically, trees numbered 387-393, 399-401 on Lot 1; tree number 320 on Lot 2; and trees numbered 291, 292, 322, 323, 451 and 452 on Lot 3 are required to be preserved, with the root protection zones indicated on Exhibit C.2. Tree protection fencing is required along the root protection zone of the trees 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 if it meets the Tree Protection Specifications of 11.60.030.
2. Development on Lot 3 shall be in conformance with the following Environmental Standards:
 - The minimum front and street building setback and garage entrance setback of the base zone may be reduced to any distance between the base zone minimum and zero. Parking spaces may be allowed within the first 10 feet from a front lot line (33.430.140.N).
 - The front building or street setback of the base zone is the maximum building setback for primary structures (33.430.140.O).
 - Fences are allowed only within the disturbance area (lots) (33.430.140.P).
 - Exterior lights within the environmental zone 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.R).
3. Prior to issuance of any permits for residential construction, the first lift of paving for the private street shall be installed.
4. The applicant must post the private street with "No Parking" signs to the satisfaction of the Fire Bureau. The location of the sign(s) must be shown on the development permit(s).
5. Prior to finalizing the Site Development permit for the private street, a plumbing permit must be obtained and finalized for the new utility lines that will be constructed beneath the paved surface of the new street.
6. Prior to finalizing the Site Development permit for the private street, the applicant shall obtain a Minor Improvement Permit and complete a 20-foot driveway approach/widening on SW Hamilton Street to the satisfaction of the City Engineer.
7. The applicant shall meet the addressing requirements of the Fire Bureau. The location of the signs must be shown on the building permits.
8. If the Fire Bureau standards that need to be verified with the final plat are resolved through use of a Fire Code Exception or a Fire Code Appeal, then the applicant shall meet any requirements identified through the exception(s) or appeal(s). Please refer to the final plat approval report for details on whether this requirement applies.

Staff Planner: Kate Green

Decision rendered by:  **on April 17, 2020**
By authority of the Director of the Bureau of Development Services

Decision mailed April 17, 2020

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 February 8, 2019 and was determined to be complete on July 31, 2019.

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 February 8, 2019.

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 (Exhibit A.3). Unless further extended by the applicant, **the 120 days will expire on: July 30, 2020.**

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, and if appealed a hearing will be held. The appeal application form can be accessed at <https://www.portlandoregon.gov/bds/45477>. Appeals must be received by 4:30 PM on May 1, 2020. **Towards promoting social distancing during the COVID-19 pandemic, the completed appeal application form must be e-mailed to BDSLUSTeamTech@portlandoregon.gov and to the planner listed on the first page of this decision.** If you do not have access to e-mail, please telephone the planner listed on the front page of this notice about submitting the appeal application. An appeal fee of \$250 will be charged. Once the completed appeal application form is received, Bureau of Development Services staff will contact you regarding paying the appeal fee. The appeal fee will be refunded if

the appellant prevails. There is no fee for ONI recognized organizations for the appeal of Type II and IIX decisions on property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Please contact the planner listed on the front page of this decision for assistance in filing the appeal and information on fee waivers. Please see the appeal form for additional information.

If you are interested in viewing information in the file, please contact the planner listed on the front of this decision. The planner can provide some information over the phone. Please note that due to COVID-19 and limited accessibility to files, only digital copies of material in the file are available for viewing. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at <https://www.portlandoregon.gov/citycode/28197>.

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.**

Expiration of concurrent approvals. The preliminary land division approval also includes concurrent approval of a Lot Validation. 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 approval was necessary for the land division to be approved: Lot Validation. This approval expires if:

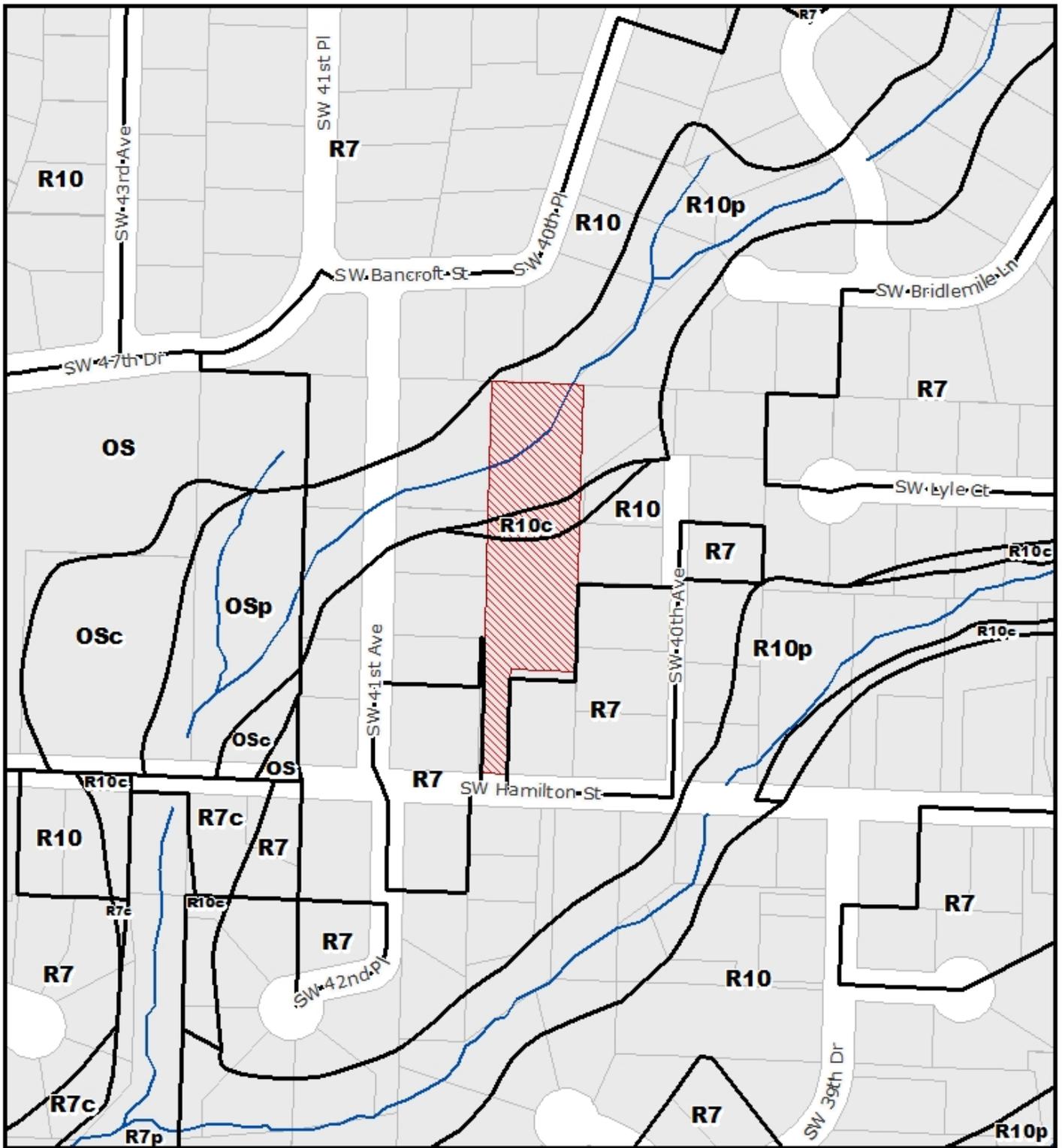
- The final plat is not approved and recorded within the time specified above, or
- Three years after the final plat is recorded, none of the approved development or other improvements (buildings, streets, utilities, grading, and mitigation enhancements) have been made to the site.

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. Supplemental Submittals
 - a. Arborist Report
 - 2. Lot Validation Submittal
 - 3. Timeline Extensions
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Preliminary Plat (attached)
 - 2. Preliminary Grading, Street and Tree Plan (attached)
 - 3. Existing Conditions Plan (attached)
 - 4. Complete Plan Set
- 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
 - 5. Site Development/BDS
 - 6. Urban Forestry/Parks
 - 7. Life Safety
 - 8. Division of State Lands
- F. Correspondence:
 - 1. Linda McCarthy, August 28, 2019, re: concerns about stormwater
 - 2. Jack and Karen Peterson, September 3, 2019, re: concerns about tree protection
 - 3. Murray McLachlan, September 3, 2019, re: concerns about environmental zone protection, height of buildings, and lights on the private street
 - 4. Gwen White and Jim Arnoux, September 3, 2019, re: concerns about tree preservation and stormwater management
- G. Other:
 - 1. Original LU Application
 - 2. Amended LU Application
 - 3. Correspondence to/from applicant

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



ZONING  NORTH

 Site
 Stream

| | |
|-------------|-------------------|
| File No. | LU 19-118250 LDS |
| 1/4 Section | 3425 |
| Scale | 1 inch = 200 feet |
| State ID | 1S1E08CC 7100 |
| Exhibit | B Feb 11, 2019 |

