



Hearings Office

City of Portland

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CORRECTED DECISION OF THE HEARINGS OFFICER

I. GENERAL INFORMATION

File Number: LU 19-257182 LDP EN (Hearings Office 4200005)

Applicant(s): Danelle Isenhardt/Emerio Design
6445 SW Fallbrook Place #100 Beaverton, OR 97008

Applicant's Representative(s): None

Property Owner(s): Shawn Liroy-Ryan and Daniel Liroy-Ryan
8105 SE 21st Avenue Portland, OR 97202

Hearings Officer: Gregory Frank

Bureau of Development Services (BDS) Staff Representative: Kate Green

Site Address: 11536 SW 33RD AVENUE
Legal Description: TL 3000 1.36 ACRES, SECTION 32 1S 1E
Tax Account No.: R991321780
State ID No.: 1S1E32AC 03000
Quarter Section: 4126

Neighborhood: Arnold Creek / contact@arnoldcreek.org
Business District: None
District Coalition: Southwest Neighborhoods Inc / Sylvia Bogert / 503-823-4592

Zoning: Single Dwelling Residential (R20)
Environmental Protection (p) and Conservation (c) overlays

Plan District: None

Other Designations: Environmental Resource Site #121, Arnold Creek
Headwaters/*Southwest Hills Resource Protection Plan*, Stream,
Potential Landslide Hazard

Land Use Review: Type III, Land Division Partition Environment Review

BDS Staff Recommendation to Hearings Officer: Approval

Public Hearing: The hearing was opened at 1:30 p.m. on May 27, 2020 via Zoom teleconference meeting, and was closed at 2:09 p.m. The record was closed at that time.

Testified at the Hearing:

Kate Green
Danelle Isenhart

II. ANALYSIS

Preliminary Findings:

The Hearings Officer reviewed the record and determined that two letters/emails (Exhibits F.1 and H.5) were submitted from interested parties (other than City staff and Applicant). Exhibit F.1, from Elizabeth Marantz, expressed concerns related to tree preservation and tree replacement aspects of Applicant's proposal. Exhibit H. 5, also submitted by Marantz, stated the following:

"Arnold Creek Neighborhood Association (ACNA) is submitting the following comments on the land division and environmental review for 11536 SW 33rd. ACNA has no objections to the proposed Land Division-Partition of 11536 SW 33rd. ACNA commends the placing of the environmental resources into a separate Tract which keeps the new lot outside of the Environmental Zone. ACNA is appreciative that the applicant listened to neighborhood input and modified the initial design to move the proposed driveway for the new house further away from a neighbor's property. Respectfully Submitted on behalf of the Arnold Creek Neighborhood Association by Elizabeth Marantz, ACNA Land Use Chair."

At the May 27, 2020 public hearing City Staff (Planner Kate Green) and Applicant's representative (Danelle Isenhart) were the only persons to testify and offer evidence into the record. Planner Kate Green presented a summary of the City Staff analysis (See Exhibit H.6 PowerPoint). Isenhart testified that the Applicant was in agreement with the Staff Report (Exhibit H.4), the findings and conditions contained therein.

The Hearings Officer reviewed the Staff Report (Exhibit H.4) and finds that it contains an accurate description of Applicant's proposal. The Hearings Officer finds the Staff analysis of the relevant approval criteria, contained in the Staff Report (Exhibit H.4), is factually and legally supportable. The Hearings Officer concurs with the Staff Report (Exhibit H.4) including its recommendation of approval and conditions.

The Hearings Officer includes below, largely unedited, the analysis and conclusions set forth in the Staff Report. The original decision issued by the Hearings Officer, in this case, failed to include Staff recommended conditions of approval. The Hearings Officer intended to

incorporate such conditions in the original decision. This corrected decision approves the Applicant's request with conditions.

Site and Vicinity: The 1.36-acre site is developed with a two-story house (constructed in 1967) with a basement and an open carport situated near the center of the property. A stream channel traverses the south east end of the site, and SW 33rd Avenue terminates at the north boundary. The site has a slight to moderate slope between the street and the existing house, west of the house there is a slight rise, and to the south of the house the site slopes more steeply down to the stream. The property is densely forested with many native trees, predominately Douglas fir and Big Leaf Maple, there is very little shrub or groundcover understory.

The site is in a relatively low density wooded residential area situated in the south end of Portland close to the border with the City of Lake Oswego. The neighboring properties are developed with single dwelling houses on lots ranging in size from around 7,000 to 20,000 square feet or more. The surrounding area is hilly and has a winding and somewhat fragmented street system, due to the topography and a network of stream channels. The I-5 Freeway is approximately $\frac{3}{4}$ to 1 mile to the west, and the Willamette River is about 2 miles to the east. There are a number of parks and open areas and public schools and college campuses within the surrounding neighborhood.

Environmental Resources: The site is within Environmental Resource Site #121, Arnold Creek Headwaters/*Southwest Hills Resource Protection Plan*, and features of the resource site include: perennial creeks, open space, forest, wildlife habitat, recreation and scenic resources.

In particular, this resource site is noted for containing the headwaters of Arnold Creek and it is part of the Tryon Creek basin, which is part of the Willamette River Watershed. At least five well established seasonal creeks provide a large quantity of surface water which support high quality habitat. The area forest vegetation includes mature second growth Douglas fir, mature western red cedar, western hemlock, bigleaf maple, red alder and pacific yew.

The riparian corridors and forested areas provide a multitude of watershed functions that provide wildlife corridors, food and forage, nesting and breeding sites and cover. Forest vegetation also helps to intercept, absorb and store rain fall and keep soil, air and stream temperatures lower.

The specific resources at the site include a stream channel within a moderately dense forest of native trees. These features are part of larger connected and vegetated corridors that provide functional values, which include food, water, cover, and territory for wildlife; groundwater recharge and discharge; slope stabilization, sediment and erosion control; microclimate amelioration; air and water quality protection; scenic, recreational and educational values.

Infrastructure:

Streets – The site has approximately 40 feet of frontage on SW 33rd Avenue, which is a dead-end street that currently terminates at the north end of the site. The 40-foot wide right-of-way is improved with an approximately 12-foot wide pavement section without curbs, sidewalks, planters or a turn-around for emergency vehicles. There is one driveway entering the site that serves the existing house.

At this location, the Transportation System Plan classification for SW 33rd Avenue is a Local Service Street for all modes and the area is not in a pedestrian district.

Tri-Met provides transit service approximately ½ to ¾ miles from the site, along SW Boones Ferry Road and SW Capital Highway.

Water Service – There is an existing 4-inch main in SW 33rd Avenue. The existing house is served from this main. The static water pressure is estimated as 67 – 83 psi.

Sanitary Service – According to available GIS data, the following sewer infrastructure is located in the vicinity of the project site:

- Public 8-inch CSP sanitary sewer in SW 33rd Avenue (BES as-built #3374).
- Public 8-inch variable material sanitary sewer that goes west from SW 33rd Avenue in a public sewer easement north of the subject site (BES as-built #3374).

Stormwater Disposal – There is no public storm-only sewer currently available to this property.

Zoning: The site is in the **Single Dwelling Residential (R20)** base zone. *The single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households.*

Additionally, the site has **Environmental Protection (p)** and **Environmental Conservation (c)** overlay designations. *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: A *Request for Response* was mailed **March 6, 2020**. Several Bureaus have responded to this proposal and relevant comments are addressed under the applicable approval criteria. Exhibits "E" contain the complete responses.

Neighborhood Review: A *Notice of Proposal in Your Neighborhood* was mailed on **May 5, 2020**. One written response has been received, which includes inquiries about tree preservation and replacement.

The applicants provided the following response to the neighbor's inquiry: *Replacement plantings or mitigation are not required as the proposed tree protection (outside of the environmental zone) meets protection Option 3 of the tree preservation code.*

The driveway relocation was done as part of the comments from the neighborhood meeting. That change did allow trees 22 and 23 be retained. The house footprint also has been moved to the north to allow for more trees to be retained on the south portion of Parcel 1, compared to what was shown at the neighborhood meeting.

Tree 11 is shown to be removed as it is a 40" tree the required turnaround and grading for that turnaround is significantly within the required tree protection area for that tree.

The findings for the Environmental Review and for the Tree Preservation Criteria address how trees on the site will be preserved and where replacement will be provided.

Zoning Code Approval Criteria

This proposal must satisfy the approval criteria for both the Environmental Review and the Land Division Review.

APPROVAL CRITERIA FOR ENVIRONMENTAL REVIEW

33.430.250 An environmental review application will be approved if the review body finds that the applicant has shown that all of the applicable approval criteria are met. When environmental review is required because a proposal does not meet one or more of the development standards of Section 33.430.140 through .170, then the approval criteria will only be applied to the aspect of the proposal that does not meet the development standard or standards.

Findings: The applicable development standards for a land division are provided in section 33.430.160. The proposal does not meet the following development standards:

- 33.430.160.D – maximum disturbance area in the resource area
- 33.430.160.G/33.430.140.N – maximum front building setback

Therefore, these aspects of the proposal are subject to environmental review. The applicable approval criteria are found in Section 33.430.250.A.1 and A.4. The applicant has provided findings for these approval criteria and BDS Land Use Services staff have revised these findings or added conditions, where necessary to meet the approval criteria.

A. Public safety facilities, rights-of-way, driveways, walkways, outfalls, utilities, land divisions, Property Line Adjustments, Planned Developments, and Planned Unit

Developments. Within the resource areas of environmental zones, the applicant's impact evaluation must demonstrate that all of the general criteria in Paragraph A.1 and the applicable specific criteria of Paragraphs A.2, 3, or 4, below, have been met:

1. General criteria for public safety facilities, rights-of-way, driveways, walkways, outfalls, utilities, land divisions, Property Line Adjustments, Planned Developments, and Planned Unit Developments;
 - a. Proposed development locations, designs, and construction methods have the least significant detrimental impact to identified resources and functional values of other practicable and significantly different alternatives including alternatives outside the resource area of the environmental zone;
 - b. There will be no significant detrimental impact on resources and functional values in areas designated to be left undisturbed;
 - c. The mitigation plan demonstrates that all significant detrimental impacts on resources and functional values will be compensated for;
 - d. Mitigation will occur within the same watershed as the proposed use or development and within the Portland city limits except when the purpose of the mitigation could be better provided elsewhere; and
 - e. The applicant owns the mitigation site; possesses a legal instrument that is approved by the City (such as an easement or deed restriction) sufficient to carry out and ensure the success of the mitigation program; or can demonstrate legal authority to acquire property through eminent domain.

4. Land divisions, Property Line Adjustments, Planned Developments, and Planned Unit Developments:
 - a. Proposed uses and development must be outside the resource area of the Environmental Protection zone except as provided under Paragraph A.3 above. Other resource areas of Environmental Protection zones must be in environmental resource tracts;
 - b. There are no practicable arrangements for the proposed lots, tracts, roads, or parcels within the same site, that would allow for the provision of significantly more of the building sites, vehicular access, utility service areas, and other development on lands outside resource areas of a conservation zone; and
 - c. Development, including building sites, vehicular access and utilities, within the resource area of a conservation zone must have the least amount of detrimental impact on identified resources and functional values as is practicable. Significantly different but practicable development alternatives, including alternative housing types or a reduction in the number of proposed or required units or lots, may be required if the alternative will have less impact on the identified resources and functional values than the proposed development.

These criteria require the applicant to demonstrate that alternatives were considered during the design process, that there are no practicable alternatives that would be less detrimental

to the identified resources and functional values, and requires the protection of resources outside of the proposed disturbance area from impacts related to the proposal, such as damage to vegetation, erosion of soils off the site, and downstream impacts to water quality and fish habitat from increased stormwater runoff and erosion off the site. (See Portland Zoning Code Section 33.910 for definitions of the term *significant detrimental impact*). The following findings provide an evaluation of the proposed project purpose and alternatives; the anticipated project impacts; and the proposed mitigation measures.

Project Purpose and Alternatives: The applicants note *[t]he purpose of this project, a 2-parcel partition, is to create a buildable lot for a new dwelling outside of the environmental zone and to retain the existing dwelling. This provides for infill on a property that is not fully utilized.* And though not explicitly stated in the applicant's project purpose narrative, the project plans also establish an environmental resource tract.

Alternative 1-No Build: The applicants indicate this alternative would leave the site as is, with the existing dwelling and no new parcel. The applicants note that the lot is further dividable, and will otherwise result in a loss of infill housing.

While the site is large enough to divide, the site does not have any minimum required density, due to its environmental zoning and landslide hazard designation. Nevertheless, this alternative would not achieve part of the applicants' project purpose, which is to create an additional building site.

Alternative 2-Remove Existing House: The applicants note the existing house could be removed from the site and two new parcels could be created entirely outside of the environmental zone. The applicants indicate it would be costly to remove the existing house and construct a new house outside of the environmental resource area.

Most likely the removal of the existing house could provide an opportunity to repair and enhance the environmental resource area. However, this alternative does not meet the applicants' project purpose, which in part is to retain the existing house.

Alternative 3-Full Cul-de-Sac Right-of-Way: The applicants sought an alternative design for the terminus of SW 33rd Avenue from PBOT and Portland Fire, and approval for a hammer-head street design was granted, which provides for a fire turn-around and maneuvering areas in easements on the parcels. The applicants note the standard cul-de-sac improvements would allow the existing house to be closer to the right-of-way (to potentially comply with the maximum front building setback), but such improvements would increase the construction impacts and tree removal in the environmental conservation zone and necessitate additional public facilities for stormwater management. The applicants identified this alternative would create more disturbance in the resource area than the applicants' preferred alternative (Alternative 4). BDS Staff concur.

Alternative 4-Applicants' Proposal: The applicants affirm that allowing the existing dwelling to remain on Parcel 2 will create the fewest impacts practicable. In response to discussions with BDS-Staff, the applicants made some minor reconfigurations to the boundaries of Parcel 2 and Tract A by reducing the space between the existing house and the proposed lot lines. This change keeps Parcel 2 at least 50-feet from the top of the stream bank and allows for slight expansion of an open space/environmental resource tract (proposed Tract A), where the applicants propose to remove a portion of paving and replant the area with native species.

Based on the foregoing, the applicants' preferred alternative appears to be the only option that achieves the project purpose in the manner that affords the most protection of the environmental resources.

Potential Project Impacts/Mitigation Measures: Based on the amount of site area that is outside of the environmental zone, the environmental standards do not allow for any disturbance within the environmental resource area on this site. However, to meet their project purpose, the applicants wish to retain the existing house, and its associated outdoor area and parking, which occupies approximately 10,000 square feet of the environmental resource area on the site.

To temper this disturbance area, the project plans show the applicants have generally limited the setbacks between the existing house and Tract A to the 10-foot minimum allowed in the R20 zone, which helps to minimize the size of Parcel 2. Additionally, the applicants have configured Tract A, to encompass an area nearly equivalent to the disturbance on Parcel 2, which includes a portion of the environmental transition area and a portion of the site outside of the environmental overlay zone. There are a number of large native trees in these areas of the site, which will be afforded more protection by being placed within Tract A.

Further, groves of native trees that are outside of the environmental zone are proposed for preservation and protection through the Land Division, Tree Preservation criteria, addressed in more detail, in the Land Division findings, below, which will also help to temper impacts from the existing encroachment into the resource area. However, no specific measures have been provided to show how trees within Tract A will be protected over the long term. The applicants' narrative notes the tree protection measures provided for the trees on the parcels will suffice, since no new development is planned near Tract A. However, many of the trees within Tract A are less than 20 feet from the boundaries of Parcel 1 and Parcel 2 and could be impacted by future development, unless specific measures are applied to protect those trees. Therefore, a condition will be applied that all native and non-nuisance trees in Tract A that are within 50 feet of Parcel 1 or 2 must be identified on the permits for future development on those parcels and protected in accordance Title 11. Tree protection fencing must be provided along the property line or on the parcel, where warranted, and no fencing is to encroach into Tract A. To further protect the habitat values of Tract A, a condition will be applied to require the removal of the one identified nuisance tree (Tree 103) a Norway maple in Tract A. This can

be accomplished with a condition that the Norway maple (Tree 103) must be removed in accordance with the Tree Removal Timing and Procedures noted in the Arborist Report (Exhibit A.4) for other trees within designated root protection zones. The removal of nuisance species will reduce the likelihood of further propagation of such species and provide more space for appropriate native species, which the applicant proposes to install, as discussed below.

Another measure to moderate impacts includes the applicants' proposal to remove a portion of the onsite paving and replant the area in accordance with *Table 430-2, Option 2- Impervious Area Reduction*, as shown on Exhibit C.3. The applicant is proposing to install groundcover and shrub species, where the pavement is removed, and then to distribute the required trees throughout Tract A, which is acceptable and will allow for a larger portion of the tract to be enhanced. This will help to provide a wider buffer between the parcels and environmental resources in Tract A and improve the species diversity in the resource area. However, since the applicants' plan does not provide the scientific name of the proposed plant species, a condition will be applied that all plantings to be installed in Tract A must be selected from the *Western Hemlock-Douglas Fir Forest* list in the *Portland Plant List*. To ensure the success of these measures, conditions requiring documentation of the paving removal and planting installation will be applied, along with a 2-year monitoring period to ensure plant survival. Additionally, though the applicants' plans show tree protection fencing around the pavement removal area, which will allow for access to remove the paving, BDS-Staff will apply a condition that the fencing must be moved to the boundary of Parcel 2, after the pavement is removed, to provide more protection of the new plantings and native trees in Tract A, prior to final plat approval.

As described in more detail in the Land Division findings for Land Suitability, below, and the Site Development response (Exhibit E.5), the applicants will also be required to decommission an existing septic system, which the applicants show is located beneath a covered deck on the southwest side of the house. BDS-Staff requested details about the proposed decommissioning methods to allow for an evaluation of those actions on the large native trees nearby. Based on communications with the applicants, the decommissioning will be conducted within the existing disturbance area and with as little ground disturbance as possible; however, no specific tree protection measures were provided. Therefore, a condition will be applied that the septic decommissioning must occur under arborist supervision and with no ground disturbance outside of the perimeter of the existing deck, as shown on Exhibit C.3, prior to final plat approval.

With regard to the maximum setback, the general goal of the maximum setback is to afford more separation between new development and the environmental resources on the site. In this case, the existing house has been in place since 1967 and allowing the dwelling to exceed the maximum 20-foot setback is not expected to diminish the environmental resources on the site. With the noted measures to provide an open space tract to protect the bulk of the existing forested habitat and stream channel and the installation of new native vegetation to

add to the plant diversity, allowing the existing house to remain in its current location will not result in additional impacts and is consistent with the applicants' project purpose to retain the existing home.

Overall, with the noted measures, onsite resources will be protected and enhanced on the subject site under the authority of the property owners, in a manner that is least detrimental to the environmental zone, while achieving the project purpose. Accordingly, with the application of the noted conditions, these criteria are met.

APPROVAL CRITERIA FOR LAND DIVISIONS IN OPEN SPACE AND RESIDENTIAL ZONES

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

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

Criterion	Code Chapter/Section and Topic	Findings: Not applicable because:
C	33.631 - Flood Hazard Area	The site is not within the flood hazard area.
E	33.633 - Phased Land Division or Staged Final Plat	A phased land division or staged final plat has not been proposed.
F	33.634 - Recreation Area	The proposed density is less than 40 units.
I	33.639 - Solar Access	Maintaining existing development on the site limits new parcel configuration (33.610.200 supersedes 33.639).
J	33.640 - Streams, Springs, Seeps and Wetlands	The onsite stream is within the environmental zones, and has been addressed in the Environmental Review findings. No other streams, springs, seeps or wetlands have been identified outside of the 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	There are no pedestrian connections proposed or required.
	33.654.120.F - Alleys	No alleys are proposed or required.
	33.654.120.G - Shared Courts	No shared courts are proposed or required.

	33.655 - School District Enrollment Capacity	The proposal is for less than 11 lots or is not in the David Douglas School District.
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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 R20 zone. The maximum density in the R20 zone is one unit per 20,000 square feet. A new street extension is proposed, so the maximum density is based on 85 percent of the site area. Because the site is within the potential landslide hazard area there is no minimum density.

Based on the applicant’s survey, the site area is 59,487 square feet, so the maximum density is 2.5 which rounds down to 2 units. The applicant is proposing 2 parcels, 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)
R20 Zone	12,000	34,500	60	60	30
Parcel 1	12,454		83	162	41
Parcel 2	20,394		135	179	51

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

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

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

Findings: The regulations of Chapter 33.630 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. A

concurrent Environmental Review is required for the proposed development; therefore, the tree plan must demonstrate that the benefits from trees are maximized for the site as a whole. 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. 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 applicants provided a tree survey (Exhibit C.7) that shows the location and size of trees on and adjacent to the site. The applicants also provided an arborist report (Exhibits A.4 and A.4.a) that identifies each tree, its condition and suitability for preservation or its exempt status, and specifies a root protection zone and tree protection measures for each tree to be preserved.

Based on this information, there are 59 trees on the site, outside of the environmental zones, which are regulated by these standards; and 26 of those have diameters of 20-inches or more. The applicants propose to retain 39 of the overall number of regulated trees, including 17 of the large diameter trees. The trees proposed for removal appear to be limited to those within the areas designated for the street extension and emergency vehicle turnaround and to provide a building site on Parcel 1. The trees to be protected are identified as viable native Douglas fir and big leaf maple. The arborist initially noted that the Title 11 prescriptive path root protection zones would be applied. However, after additional discussion with BDS-Staff and exploring options to retain additional trees on Parcel 1, the arborist determined that performance path root protection zones were appropriate for several of the trees on Parcel 1 and to protect several trees in Tract A, near the existing vehicle area on Parcel 2, and will afford effective protection of the trees to be preserved. At this time, the proposal shows tree protection fencing will be provided up to the front northeast corner and a portion of the west side of the existing house, and no specific protection measures are provided for the 5 trees further to the sides or south of the house. The applicants note that no changes are proposed in those areas and a tree protection plan will need to be considered at the time any future development is proposed. The project arborist recommends any future development be to the north of the existing dwelling to avoid impacts to those trees. Absent any performance path proposal, BDS-Staff find it necessary to apply a condition that root protection zones must be provided for Trees 85, 86, 87, 89 and 90 on Parcel 2, in accordance with Title 11, at time of development. Additionally, as discussed in the Environmental Review findings, a condition will be applied to protect trees in Tract A at the time of future development, so trees proximate to the existing house will also be protected.

Based on these factors, the applicants' proposal will provide for the preservation of 65 percent of the large diameter trees and 66 percent of the overall regulated tree diameter, which will exceed the requirements outlined in the preservation Option 3: *Preserve at least 50 percent of the trees that are 20 or more inches in diameter and at least 30 percent of the total tree diameter on the site.*

The preservation of the trees on each parcel, along with the condition to protect trees within Tract A, as noted in the Environmental Review, above, will allow for anticipated development in the zone and for the benefits from trees to be maximized to the extent practicable on the entire site. To ensure the benefits of the protected trees are retained long term, a condition will be applied that requires permanent preservation of all trees on Parcel 2. In the event, the applicants proposed changes to the tree plan in the future, any changes would be subject to a Tree Review (per 33.853).

Based on these factors, except for the additional Urban Forestry regulations that will apply to the six onsite trees, which will be located within the dedicated right-of-way, as noted in the Urban Forestry response (Exhibit E.6) and the findings for Criterion L, below, no additional mitigation is warranted to satisfy the approval criteria.

In order to ensure that future owners of the parcels and tract are aware of the tree preservation requirements, the applicants must record an Acknowledgement of Tree Preservation Land Use Conditions, at the time of final plat. The acknowledgement must identify that development on Parcels 1 and 2 must be carried out in conformance with the Tree Preservation Plan (Exhibit C.3) and the Arborist Report (Exhibit A.4), and with the conditions noted above, and as outlined in the Environmental Review. With the implementation of these noted conditions, the tree plan will maximize the benefits from trees for the site as a whole; and these approval criteria will be met.

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 has a Potential Landslide Hazard Area designation. 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.

Site Development, the division of Development Services that makes determinations regarding soil stability, has reviewed the applicants' geotechnical report prepared by HGSI (Exhibit A.1), and concurs there is a low potential for landslide hazards impacting the site. Site Development notes the applicants' information demonstrates that the proposed lots are suitable for development and the proposed development minimizes potential damage from landslides on the site and on neighboring sites. As such, 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 subject site has a landslide hazard designation and some steeper slopes in the rear of the site near the stream channel; otherwise, the site is only gently to moderately sloped. Tree removal and grading are proposed for the installation of a gravel street extension of SW 33rd Avenue and fire turnarounds on the parcels, as well as for future development on Parcel 1.

The applicants' grading plan (Exhibit C.2) and the narrative indicate site grading will be the minimum necessary to allow for adequate grades for the proposed street extension, fire turnaround, driveways, building pad and drainage; and topsoil will be preserved onsite in a designated area to the extent practicable for use onsite after grading is complete. The clearing and grading plan shows areas of topsoil storage and general stockpiling that are located directly adjacent to the new street tract/right of way, and outside of the root protection zones of the trees on the site to be preserved. Construction management consists of tree protection fencing along the root protection zones of the trees to be retained, with sediment fencing and erosion control measures to be installed prior to the cul-de-sac construction and future house construction on Parcel 1. The narrative indicates the proposed tree protection measures will also avoid trees on adjacent sites that are within 15 feet of potential disturbance area. The work for the roadway extension is also subject to review by PBOT and Urban Forestry.

As discussed in the findings regarding tree protection, in Criterion B, above, and in the Environmental Review, prior to any site work, the tree protection fencing must be installed and inspected. With the application of this requirement, the site clearing and grading will be the minimal necessary for the required improvements and will be conducted to protect trees and limit erosion, which will safeguard the environmental resources on the site and adjacent properties. Accordingly, this criterion is met.

Land Suitability: The site is currently in residential use, and there is no record of any other use in the past. Although the site is currently connected to the public sanitary sewer, there is an old septic system on the site. The City has no record that this facility was ever decommissioned, and Site Development has noted the facility must be decommissioned, prior to final plat.

As discussed in the Environmental Review findings, above, the applicant has identified the septic tank is located under a covered deck on the west side of the existing house, which is within the environmental resource area on the site. Therefore, the decommissioning must be conducted in accordance with the construction limits and tree protection measures outlined in the conditions discussed in the Environmental Review findings. With those measures and a condition requiring final inspection for a decommissioning permit, prior to final plat approval, the new lots can be considered suitable for new development. Based on the foregoing, and with the noted conditions, this criterion will be met.

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

Findings: The following tracts are proposed:

- Tract A: Open Space (Environmental Resource Area)

With a condition that the proposed tract be owned in common by the owners of Parcel 1 and Parcel 2; a Homeowner's Association; a public agency; or a non-profit organization, this criterion can be met.

The following easement is proposed and/or required for this land division:

- An Emergency Vehicle Access Easement is required over the fire turnarounds/private driveways on each parcel to provide emergency vehicle access, in accordance with Fire Code Appeal 19-63 and 19-106.

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.

The Development Review Section of the Portland Bureau of Transportation (PBOT) has reviewed the application against the evaluation factors and has provided the following findings (see Exhibit E.2):

The applicant provided a written narrative addressing the transportation approval criteria above. Staff generally concurs with this narrative. The applicant will retain the existing home and partition off the west of the property with separate vehicular access to SW 33rd Ave. The applicant is proposing right-of-way dedication to create a cul-du-sac ending of SW 33rd Ave. and emergency vehicle hammerhead turnaround inside of access easements on the two lots.

The subject site is at the current terminus of SW 33rd Ave., which is an approximately 625 foot long dead end street with no turn around for emergency vehicles. The 40-foot right-of-way is improved with an approximately 12-foot wide pavement section without curbs. Gravel shoulders exist for portions of the frontage but not others. This segment of SW 33rd Ave. currently provides access for vehicular traffic, bicycle traffic, and pedestrians all within the 12-ft roadway surface. There are no sidewalks along either side of SW 33rd Ave. from SW Palatine St. to its terminus. The roadway serves 9 single family lots, and the proposal will result in a 10th lot on this low speed, low volume roadway.

Based on data available from PBOT's database of Portland Traffic Deaths and Injuries since 2008, there have been zero fatal or injury crashes on SW 33rd Ave. or on SW Palatine St. It is believed this segment of SW 33rd Ave. sees a small amount of vehicular traffic due to its lack of connectivity to any use other than 9 existing single family residential lots. PBOT has not identified any level of service concerns with this segment of SW 33rd Ave. in the TSP or other planning documents. It is believed this segment has capacity to absorb the anticipated trips from one additional residential lot.

The site is an area with low connectivity; city standards are not met throughout the neighborhood. The area is hilly with many streets dead ending where topography becomes too steep to provide a roadway. The subject site is mapped as being 20% in slope or greater on the southern end and is within the "p" environmental protection overlay zone. A substantial portion of the southern half of the lot is being segregated in an environmental conversation tract in order to meet the zoning code requirements for environmentally zoned lots. The surrounding properties which could result in an eventual connection through to SW 35th Ave. or SW Stephenson St. have already been developed with dead end streets and without pedestrian connections. Given the existing pattern of the surrounding lots, the steepness of the grade, and the presence of environmental zoning, no through connection is feasible from the subject site.

On street parking is generally not available on SW 33rd Ave. due to the narrow width of the roadway. The homes along the streets in the immediate area include driveways and garages that accommodate multiple vehicles. The applicant's narrative states the proposed new

homes will have on-site parking to accommodate at least 2 vehicles per lot. This parking will be outside of the hammerheads reserved in easements for emergency vehicle turn-arounds. SW 33rd Ave has a 12-foot paved roadway surface which currently accommodates two-way vehicle travel as well as any bicycle or pedestrian travel. The City recommends a minimum of 20-feet of pavement width to accommodate 2-way vehicle travel. While 12-ft is not adequate width for two vehicles to pass, there are opportunities to pull into a gravel shoulder to let an oncoming vehicle pass. In this case, requiring the last house on an approximately 625-foot long undersized roadway to widen the entire length of the roadway would be out of proportion to the request to add a single lot, which is anticipated to generate 10 additional vehicle trips per day. Storm sewers are not available, making any stormwater generated by additional paving difficult and costly to address, especially given the fact the roadway is within the Regulatory Landslide Hazard area.

The current configuration of the site's frontage requires pedestrians to share a travel lane with vehicular and bicycle traffic which discourages travel by these modes. The addition of one single family lot to the neighborhood is anticipated to increase trips via all modes including 10 vehicle trips per day. Adding additional trips from any mode to an area where facilities are incomplete will have an incremental negative impact. Adding an additional single family lot to an over 600-foot long 12-ft wide dead end street with no emergency vehicle turn around will also have an incremental negative impact.

[Overall, PBOT concludes], the addition of a single lot to this undersized roadway will have an incremental negative impact. This impact will be offset by the proposal in multiple ways. A portion of the impact will be offset through payment of the Local Transportation Infrastructure Charge and signing waivers of remonstrance against any future Local Improvement District which may improve the road closer to City standards. Additionally, a substantial portion of the impact will be offset by the applicant's proposal to dedicate land, construct a 36-foot cul-du-sac end treatment for SW 33rd Ave, and construct a hammer-head style emergency vehicle turn around. The surfaces will be gravel due to the difficulty in providing stormwater management at this location.

Creating the amount of pavement needed to provide full standard improvements creates large issues with stormwater management as well as preservation of protected trees. The applicant proposed an alternative configuration which was reviewed in Public Works Alternative Review 19-161765-PW. The applicant's proposal is to provide a paved hammerhead turnaround on each lot for fire access and to dedicate ROW to accommodate a 36-ft cul-de-sac. (Fire Appeal #20576 for configuration with pavement surface and Fire Appeal #22106 re-appeal to allow gravel surface) The Public Works Alternative Review committee was supportive of the applicant's approach provided the applicant pays the LTIC and meets the following conditions:

- Property dedication necessary to accommodate a 36-ft cul-de-sac*
- Waivers of Remonstrance*

-Improvements within cul-de-sac are limited to clearing, grading and gravel with permit type to be determined by Public Works.

With conditions of approval requiring the dedication, waivers, and improvements, the impacts of the proposal will be mitigated.

Based on these factors and with the noted conditions, PBOT concludes the transportation system will be capable of supporting the proposed development in addition to the existing uses in the area. Accordingly, 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 – Exhibit E.3 and E.4

The Water Bureau reviewed the proposal and provided the following comments:

The submitted grade and gravel permit, GG004, shows property dedication for a required cul de sac. The Portland Water Bureau requires water mains to extend within 10' of the end of a public right of way if the water main will be providing water service to a property whose frontage is at the end of that right of way. Therefore, a water main extension will be required in the cul de sac to provide water service to Parcel 1 and Parcel 2.

At the expense of the applicant, a water main would need to be extended from the existing main in SW 33rd Ave to Street, to a minimum of 10' from end of the new cul de sac. The Water Bureau would design and construct the water main, the applicant is responsible for clearing, grubbing, grading and graveling a minimum of a 20-ft roadway in preparation of the main construction. The existing water service will be transferred to the new water main as well and a new water service will be installed to serve the existing home. At the time the existing water service is transferred to the new min, the applicant will want to coordinate with crews to connect to the new service being installed for the existing home. The existing service may be used for future development after being transferred to the new main.

The Fire Bureau noted residential sprinklers must be provided for future development on Parcel 1 to address fire suppression requirements, and otherwise noted no concerns about water services for emergency purposes.

Based on these comments, to meet the standards of 33.651 and the technical requirements of Title 21, and ensure service is available to each parcel, the applicant must provide payment to the Water Bureau to extend a new water main in SW 33rd Avenue. With this condition, the water service standards of 33.651 have been verified.

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

The Bureau of Environmental Services (BES) has indicated that service is available to the site, as noted on page 3 of this report and [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.* As such, the sanitary sewer service standards of 33.652 have been verified.

33.653.020 & .030 Stormwater Management criteria and standards – Exhibits E.1 & E.5

No stormwater tract is proposed or required. BES has reviewed the applicants' proposed stormwater management methods and notes [BES] *Staff finds the applicant's proposed stormwater management plan acceptable for the purpose of reviewing the preliminary land division application against the stormwater management approval criterion, as follows:*

- **Public Street Improvements:** BES notes that *PBOT requires the construction of public frontage improvements but gravel will be used and therefore public stormwater is not triggered.*
- **Parcel 1:** Stormwater from this lot will be directed to an individual drywell that will treat the water and slowly infiltrate it into the ground. BES *Staff reviewed the project's stormwater report from Emerio (February 28, 2020) and geotechnical report from HGSI (November 18, 2019). The geotech report includes infiltration test results of 4 inches per hour and concludes that onsite infiltration of stormwater runoff is not anticipated to contribute toward slope instability; therefore the applicant proposes to infiltrate runoff from the new development via an onsite drywell that can meet minimum setbacks as established in the facility design standards and Table 2-1 of the SWMM.*
- **Parcel 2 (with the existing house):** BES finds *the submitted preliminary site utility plan also shows that runoff from the exiting development on Parcel 2 goes to disconnected downspouts and will not cross the proposed property lines.*

Based on the foregoing, the stormwater management standards and criteria of 33.653 have been verified and are met.

33.654.110.B.1 Through streets and pedestrian connections

33.654.110.B.2 Dead-end streets in OS, R, C, and E zones

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

33.654.120.C.3.c Turnarounds

33.654.120.H Street Trees

33.654.130.B Extension of existing public dead-end streets & pedestrian connections

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

See Exhibits E.1, E.2, E.4, and E.6

The location and design of rights-of-way are based on many factors with a goal to ensure provision of efficient access to as many lots as possible, and enhance direct movement by pedestrians, bicycles, and motor vehicles between destinations. The specific location of rights-

of-way is influenced by a variety of conditions, including existing development, streets and lot patterns, and environmental features.

The street spacing standards would generally call for a through street or pedestrian connection at this location; however, given the environmental zoning and stream corridor on the south end of the site, those features make a through connection less appropriate or practicable. As such, it is more appropriate to create a serviceable dead-end street at the terminus of SW 33rd Avenue, with a small street extension and improved emergency vehicle access, as discussed in the Transportation Impact findings for Criterion K, above. Based on these same factors, no future extensions of the dead-end street have been identified as being necessary by PBOT.

With regard to the width and elements for the right-of-way and turnaround, the applicants' narrative notes: *SW 33rd Avenue is proposed to remain a dead-end street with a 36-foot cul-de-sac proposed on the site. The reduced cul-de-sac with hammerhead (in easements) for fire turnaround has been reviewed through a fire code appeal and public works process. This street after the partition will serve 10 units. SW 33rd Avenue is an existing dead-end street that is longer than 300 feet. The proposed cul-de-sac and hammerhead turnaround easements will allow for a fire truck biggest user) to turnaround and exit on SW 33rd Avenue in a forward motion. A turning exhibit has been provided for the fire truck turnaround movements [Exhibit C.6]. The pavement area has been minimized as gravel (compacted) is proposed. The proposed end of SW 33rd Avenue provides for safe vehicular movement. Bicycles and pedestrians currently share the roadway on SW 33rd Avenue as there are no sidewalks or bike lanes. The existing ped path (dirt) connects to a portion of SW 33rd Avenue north of the site. This access to the path is not proposed to be changed or impacted by the gravel end of the roadway.*

PBOT provided the following: *The applicant originally submitted public works permit TH0965, which shows pavement within the ROW to provide access to the two lots. After coordination with the Bureau of Environmental Services, the Public Works Alternative Review Committee and the Fire Bureau to allow a gravel surface, TH0965 was cancelled. The applicant resubmitted for Public Works Grade and Gravel Permit GG004 on 2/18/2020. Based on communications with PBOT staff on May 5, 2020, the revised permit type has received Public Works concept approval, and PBOT recommends a Public Works performance guarantee for the required right-of-way improvements must be completed to the satisfaction of Public Works, be applied as a condition of final plat approval.*

The BES response indicates no public stormwater facilities are warranted for a gravel extension of the public right-of-way.

The Fire Bureau indicates the proposed hammer-head fire department turnaround on Parcel 1 and Parcel 2 received approval through Fire Code Appeals 19-63 and 19-106, with provisions that an Emergency Vehicle Access Easement be provided on the turnaround. The Fire Bureau

response also notes that conditions regarding the construction of the turnaround, and a maintenance agreement for the turnaround must be applied, prior to final plat approval to ensure compliance with the Fire Code and the noted appeals. Based on these factors, the design of the turnaround will accommodate expected users; minimize paved area; and provide for safe vehicular movement.

With regard to street trees, Urban Forestry has identified two trees in the right-of-way and six onsite trees are proposed for removal for the street extension. Urban Forestry recommends all trees within the proposed right-of-way be managed through the pending Public Works Grade and Gravel Permit GG004. With that allowance, Urban Forestry will work in consultation the City Engineer to ensure the street tree standards are fulfilled.

Based on the foregoing and with the conditions noted here and in the findings for Criterion K, Transportation Impacts, the proposed location, width and design of the dead-end right-of-way will be sufficient to accommodate the expected users. Accordingly, this criterion is met.

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

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

III. CONCLUSIONS

As noted by the Hearings Officer in the Preliminary Findings the Applicant's proposal, as set forth in this Decision, was not meaningfully opposed through any substantial evidence contained in the record. The Hearings Officer relied upon the Staff Report (Exhibit H.4) in making this Decision. The Hearings Officer found, based upon the evidence in the record, that the Applicant's proposal met/satisfied all relevant approval criteria. The original decision in this case was issued in error because the Hearings Officer failed to include Staff recommended conditions of approval. This corrected decision includes conditions of approval intended by the Hearings Officer to be included in the original decision.

IV. CORRECTED DECISION

Approval of an Environmental Review for creation of two parcels and one open space tract, and for the allowance for a permanent disturbance area on Parcel 2, and for the allowance of a maximum setback that exceeds 20 feet for the existing house on Parcel 2; and

Approval of a Preliminary Plan for a two-parcel partition that will result in two standard parcels, one open space tract (Tract A), and an extension of SW 33rd Avenue.

The above approvals are illustrated with Exhibit C.1-C.7 and are subject to the following conditions:

A. Supplemental Plan. An additional supplemental plan shall be submitted with the final plat survey for review and approval by Land Use and Fire. 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;
- A fire department turnaround on Parcels 1 and 2 to the satisfaction of the Fire Bureau;
- 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 33rd Avenue. The required right-of-way dedication must be shown on the final plat.
2. An Emergency Vehicle Access Easement, granted to the City of Portland, shall be shown over the relevant portions of Parcels 1 and 2 to the satisfaction of the Fire Bureau.
3. The open space tract shall be noted on the plat as "Tract A: Environmental Resource Area. The tract must be commonly owned and maintained by the owners of Parcels 1 and 2; a Homeowner's Association; a public agency; or a non-profit organization; and noted as such on the plat.
4. 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.8-C.11, below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: "A Declaration of Maintenance Agreement for (name of feature) has been recorded as document no. _____, Multnomah County Deed Records."

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

Streets

1. The applicant shall pay the Local Transportation Infrastructure Charge and complete street and storm sewer waivers of remonstrance (for future street and storm sewer improvements) as required by the City Engineer. *Payment details and waiver forms*

and instructions will be provided to the applicant during the final plat review process.

2. The applicant shall meet the requirements of the City Engineer for right of way improvements along the site's street frontage. The applicant shall provide plans and financial assurances to the satisfaction of the Portland Bureau of Transportation for required street frontage improvements. Prior to ground disturbing activity related to the public works permit, the applicant must obtain an approved tree protection inspection for the BDS Permit required by Condition C.3.
3. The applicant shall obtain a BDS Permit to install tree protection and document the limits of disturbance for grading associated with the public works improvements and associated onsite alterations to the vehicle area. The clearing and grading plan submitted with the permit must substantially conform to the Preliminary Clearing and Grading Plan approved with this decision (Exhibit C.2) and include:
 - a. Tree Protection consistent with Condition D.1;
 - b. Construction limits of disturbance;
 - c. The temporary staging and stockpile areas;
 - d. A note that topsoil must be stockpiled on site and re-used to the extent practicable; and
 - e. 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 Water Bureau for providing financial assurances for the water main extension in SW 33rd Avenue.
5. The applicant shall obtain and finalize a permit for the installation of a fire department turnaround and No Parking postings, in accordance with all applicable Fire Code requirements and with the paving limitations in 33.266.120. The fire department access shall be installed within the Emergency Vehicle Access Easement to be established on the site. The approved fire department turnaround shall be identified on the supplemental plan and the applicant shall provide verification that the turnaround is constructed to the satisfaction of the Fire Bureau.

Existing Development

6. The applicant shall meet the requirements of the Site Development Section of the Bureau of Development Services for the decommissioning the septic system on the site. The septic decommissioning shall be conducted under arborist supervision and with no ground disturbance outside of the perimeter of the existing deck, as shown on Exhibit C.3.

7. The applicant shall obtain and finalize a permit for the removal of the Norway maple (Tree 103) in Tract A, in accordance with the Tree Removal Timing and Procedures noted in the Arborist Report (Exhibit A.4); and the removal of the portion of the onsite paving in Tract A, as shown on Exhibit C.3; and installation of native planting in Tract A in accordance with *Table 430-2, Option 2-Impervious Area Reduction*. Once the pavement is removed, the tree protection fencing around the pavement removal area in Tract A shall be moved to the boundary of Parcel 2. All plantings to be installed in Tract A shall be selected from the *Western Hemlock–Douglas Fir Forest* list in the *Portland Plant List*. The planting plans shall show the location, size, and species of required landscaping and be labeled as “new required landscaping”. The land owner is responsible for ongoing survival of required plantings during and beyond the designated two-year monitoring period.

Required Legal Documents

8. A Maintenance Agreement shall be executed for the Emergency Vehicle Access Easement, described in Condition B.2 above, in accordance with the Fire Code and to the satisfaction of the Fire Bureau. 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.
9. A Maintenance Agreement shall be executed for the open space tract described in Condition B.3 above. The agreement shall include provisions assigning maintenance responsibilities for the tract and any shared facilities within the areas, consistent with the purpose of the tract, 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. The agreement must also:
 - a. assign common, undivided ownership of the tract to the owners of all parcels; a Homeowner’s Association; a public agency; or a non-profit organization;
 - b. include provisions for assigning maintenance responsibilities for the tract;
 - c. include provisions assigning maintenance responsibilities for mitigation plantings located within the tract;
 - d. include a description of allowed/prohibited activities consistent with Chapter 33.430; and
 - e. include conditions of this land use approval that apply to the tract.
10. The applicant shall execute an Acknowledgement of Special Land Use conditions, requiring residential development on Parcel 1 to contain internal fire suppression sprinklers, per Fire Bureau Appeals 19-63 and 19-106. The acknowledgement shall be referenced on and recorded with the final plat.

11. The applicant shall execute an Acknowledgement of Tree Preservation Land Use Conditions that notes tree preservation requirements that apply to Parcels 1 and 2. A copy of the approved Tree Preservation Plan must be included as an exhibit to the Acknowledgement. The acknowledgment shall be referenced on and recorded with the final plat.

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

1. Development on Parcels 1 and 2 shall be in conformance with the Tree Preservation Plan (Exhibit C.3) and the applicant's arborist report (Exhibit A.4). Specifically, the 23 trees on Parcel 2 and the 16 trees on Parcel 1, as listed in the Tree Table (Exhibit A.4.a) shall be preserved, with the root protection zones indicated on the Tree Table and as shown on the Tree Preservation Plan. The trees on Parcel 2 shall be permanently preserved. 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. Additionally, all trees in Tract A that are within 50 feet of Parcel 1 or 2 shall be identified on the permits for Parcels 1 and 2; and those trees shall be protected in accordance Title 11. Tree protection fencing shall be provided along the property line or on the parcel, where warranted. No fencing shall encroach into Tract A.
2. Development on Parcel 2 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).
 - 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. The applicant shall meet the addressing requirements of the Fire Bureau. The location of the sign must be shown on the building permit.
4. The applicant shall be required to install residential sprinklers in the new house on Parcel 1 to the satisfaction of the Fire Bureau.

5. The land owner shall maintain the required plantings in Tract A, per Condition C.7, to ensure survival and replacement. The land owner is responsible for ongoing survival of required plantings during and beyond the designated two-year monitoring period. After the 2-year initial establishment period, the landowner shall:
 - a. Obtain a Zoning Permit for a final inspection at the end of the 2-year maintenance and monitoring period. The applicant shall arrange to accompany the BDS inspector to the site to locate mitigation plantings for inspection. The permit must be finalized no later than 2 years from the final inspection for the installation of mitigation planting, for the purpose of ensuring that the required plantings remain.
 - b. All required landscaping shall be continuously maintained, by the land owner in a healthy manner, with no more than 15% cover by invasive species. Required plants that die shall be replaced in kind, or with an appropriate native species from the *Portland Plant List*, as noted on the approved plans.



Gregory Frank, Hearings Officer
June 18, 2020

Application Determined Complete: March 2, 2020
Report to Hearings Officer: May 15, 2020
Corrected Decision Mailed: June 18, 2020
Last Date to Appeal: July 2, 2020 4:30 p.m.
Effective Date (if no appeal): July 6, 2020

Conditions of Approval. 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.

Appeal of the decision. ANY APPEAL OF THE HEARINGS OFFICER'S DECISION MUST BE FILED AT 1900 SW 4TH AVENUE, PORTLAND, OREGON 97201. Appeals can be filed at the 5th floor reception desk, Monday through Friday between 8:00 a.m. and 4:30 p.m. **An appeal fee of \$3,700.00 will be charged (one-half of the application fee for this case, up to a maximum of \$5,000.00).** Information and assistance in filing an appeal can be obtained from the Bureau of Development Services at the Development Services Center.

Who can appeal: You may appeal the decision only if you wrote a letter which is received before the close of the record on hearing or if you testified at the hearing, or if you are the property owner or applicant. If you or anyone else appeals the decision of the Hearings Officer, only evidence previously presented to the Hearings Officer will be considered by the City Council.

Appeal Fee Waivers: Neighborhood associations recognized by the Office of Neighborhood Involvement may qualify for a waiver of the appeal fee provided that the association has standing to appeal. The appeal must contain the signature of the Chair person or other person authorized by the association, confirming the vote to appeal was done in accordance with the organization's bylaws.

Neighborhood associations, who wish to qualify for a fee waiver, must complete the Type III Appeal Fee Waiver Request for Organizations Form and submit it prior to the appeal deadline. The Type III Appeal Fee Waiver Request for Organizations Form contains instructions on how to apply for a fee waiver, including the required vote to appeal.

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.** If the preliminary land division approval also contains approval of other land use decisions (examples include adjustments, conditional uses, and environmental reviews), these other approvals will be recorded with the Multnomah County Recorder. The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder. For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of concurrent approvals. The preliminary land division approval also includes concurrent approval of an Environmental Review. 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 Environmental Review approval was necessary for the land division to be approved, so that approval expires if:

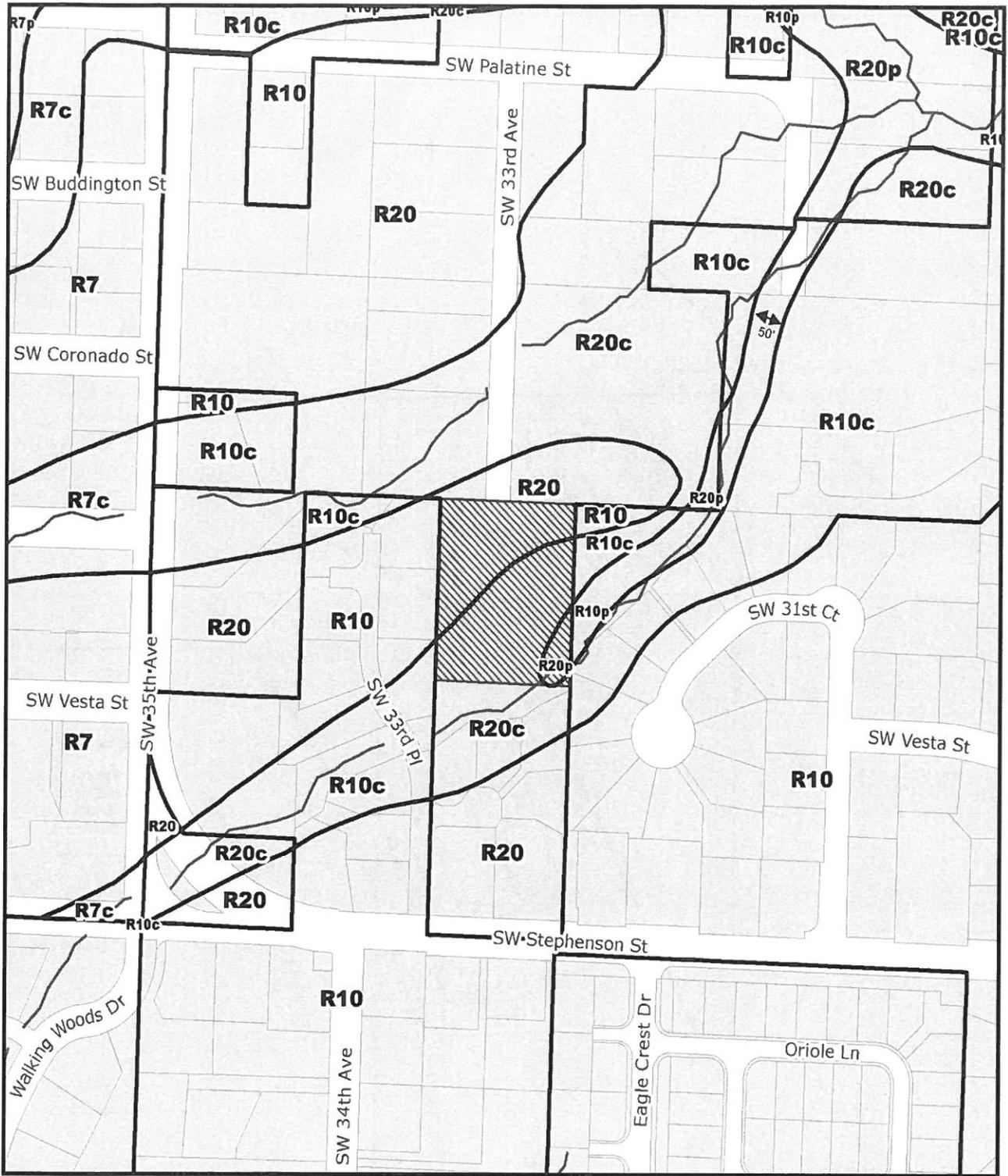
- The final plat is not approved and recorded within the time specified above, or
- Three years after the final plat is recorded, none of the approved development or other improvements (buildings, streets, utilities, grading, and mitigation enhancements) have been made to the site.

EXHIBITS
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement:
 - 1. Initial Submittal
 - 2. Amended Submittal
 - 3. Emails regarding septic decommissioning (received April 30, 2020)
 - 4. Revised Arborist Report (received May 11, 2020)
 - a. Tree Table (received May 11, 2020)
 - 5. Supplemental Narrative (received May 11, 2020)
 - 6. Timeline Extension
- B. Zoning Map (**attached**)
- C. Plans & Drawings:
 - 1. Preliminary Plat (**attached**)
 - 2. Preliminary Grading/Erosion Control Plan (**attached**)
 - 3. Preliminary Tree Mitigation Plan (**attached**)
 - 4. Preliminary Site/Utility Plan
 - 5. Existing Condition/Demolition Plan
 - 6. Fire Truck Plan
 - 7. Tree Exhibit (**attached**)
 - 8. Vicinity Map/Cover Sheet
- D. Notification information:
 - 1. Request for response
 - 2. Posting letter sent to applicant
 - 3. Notice to be posted
 - 4. Applicant's statement certifying posting
 - 5. Mailing list
 - 6. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development/Bureau of Development Services
 - 6. Urban Forestry/Parks
 - 7. Life Safety/Bureau of Development Services
- F. Letters:
 - 1. Elizabeth Marantz, May 13, 2020, re: inquiry about tree preservation and replacement
- G. Other:
 - 1. Original LUR Application
 - 2. Expedited Land Use Form
 - 3. Letter to applicant re: incomplete application
 - 4. Correspondence to/from applicant

H. Received in the Hearings Office:

1. Request to Reschedule - Green, Kate
2. Request for Extension of 120-Day Review Period - Green, Kate
3. Notice of Public Hearing - Green, Kate
4. Staff Report May 15, 2020 - Green, Kate
5. Public comments - Marantz, Elizabeth
6. Planner Presentation - Green, Kate



ZONING



 Site
 Stream

File No. LU 19 - 257182 LDP EN
 1/4 Section 4126
 Scale 1 inch = 200 feet
 State ID 1S1E32AC 3000
 Exhibit B Nov 27, 2019

