



## Hearings Office

### City of Portland

1900 SW 4<sup>th</sup> Avenue, Room 3100, Portland, OR 97201

[www.portlandoregon.gov/hearings](http://www.portlandoregon.gov/hearings)

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## DECISION OF THE HEARINGS OFFICER

### I. GENERAL INFORMATION

**File Number:** LU 19-246030 LDS (Hearings Office 4200013)

**Applicant:** Sarah Radelet  
Strata Land Use Planning  
PO Box 90833  
Portland, OR 97290

**Purchaser:** Bruce Howard  
PDX Business Investments LLC  
8213 SW Kingfisher Way  
Durham, OR 97224

**Property Owners:** Colleen Blazer and Don Blazer  
11007 SW 32nd Avenue  
Portland, OR 97219

**Hearings Officer:** William Guzman

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

**Site Address:** SW Comus Street

**Legal Description:** LOT 6, CRYSTAL WOODS

**Tax Account Number:** R190430300

**State ID Number:** 1S1E32AB 00106

**Quarter Section:** 4126

**Neighborhood:** Arnold Creek

**Business District:** None

**District Neighborhood Coalition:** Southwest Neighborhoods, Inc.

**Zoning:** Single Dwelling Residential 10,000 (R10)

**Land Use Review:** Type III, Land Division-Subdivision (LDS)

**BDS Staff Recommendation to Hearings Officer:** Approval with conditions.

**Public Hearing:** The hearing was opened at 1:30 PM on August 12, 2020 and was closed at 2:41 PM. Due to COVID-19, the hearing was held remotely via the Zoom platform. The record was held open until 4:00 PM on August 19, 2020 for new evidence; until 4:00 PM on August 26, 2020 for response to new evidence; and until 4:00 PM on September 2, 2020 for the Applicant's final rebuttal. The record was closed at 4:00 PM on September 2, 2020.

**Testified at the Hearing:**

Kate Green  
Sarah Radelet  
Barbara Geltosky  
Michael Jones  
Tammy Boren-King  
Eric Evans

**II. ANALYSIS**

The revised staff report (Exhibit H-16) provides an excellent summary of the proposed Land Division-Subdivision and the Subject Property:

“Proposal: The applicant proposes a Land Division-Subdivision to divide a vacant 1.9 acre property into 8 lots for detached residential dwellings. The lots range in size from 8,269 square feet to 11,943 square feet. The applicant also proposes a right-of-way dedication and improvements in SW Comus Street to provide access and public services to the lots.

This subdivision proposal is reviewed through a Type III procedure because: (1) the site is in a residential zone; (2) four or more lots are proposed; and (3) the site is located within a Potential Landslide Hazard or Flood Hazard Area (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 8 units of land (8 lots). Therefore, this land division is considered a subdivision.

Relevant Approval Criteria: In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are found in Section 33.660.120, Approval Criteria for Land Divisions in Open Space and Residential Zones.”

The Hearings Officer, as the designated review body in Title 33, may adopt, modify, or reject the BDS recommendation. The Hearings Officer has reviewed the record in its entirety and based upon an independent review and analysis hereby adopts the revised staff report, which is attached to this Order and incorporated herein by reference; the only modifications are those requested by BDS Staff Kate Green in their August 26, 2020 Memo. The Hearings Officer’s decision, therefore, will focus on analyzing the issues that were raised in opposition to the application so that these issues are well-briefed in the event the decision is appealed to City Council.

### **Background**

This land use case was originally scheduled to be heard on Wednesday, July 15, 2020. The Applicant submitted a request to break the Hearing into two-parts. The reason for the request was that the Portland Fire Bureau raised concerns about the application (lack of required fire access requirements) and the staff report recommended a denial of the application because this single remaining requirement was not met. The Hearings Officer denied the motion for a two-part hearing but granted a request to reschedule the Hearing to a future date thereby providing the Applicant sufficient time to make revisions and amendments to the application. At the time of the scheduled Hearing on Wednesday, August 12, 2020, the Applicant was able to resolve the issue with the Portland Fire Bureau and the revised staff report’s tentative conclusion was changed to recommend approval with conditions.

### **Trees**

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. The rules are written with the objective of allowing flexibility and creativity in the design process. Other than traffic and parking impacts, perhaps no other development criterion receives as much scrutiny, as that of tree preservation. This makes sense because trees are such an important aspect of life in Portland because they offer so many benefits including:

- Protecting public health through the absorption of air pollutants, contamination, and capturing carbon dioxide;
- Buffering from noise, wind, and storms;
- Providing visual screening and summer cooling;
- Reducing energy demand and urban heat island impacts;
- Filtering stormwater and reducing stormwater runoff;
- Reducing erosion, siltation, and flooding;
- Stabilizing slopes;

- Enhancing property values;
- Providing fish and wildlife habitat, including support for native species biodiversity through the preservation and planting of native trees;
- Providing food for people and wildlife; and
- Contributing to the beauty of the City, its natural heritage, and the character of its neighborhoods.

In addition to the benefits of tree preservation, trees can also cause safety concerns. The Hearing included testimony from the public related to adequate safety precautions and plans to protect the root systems of protected or preserved trees so that the trees do not pose an increased risk of falling and damaging property and persons. These are all valid and important concerns that the Hearings Officer will address in this section of the decision.

Title 33.630.100 provides several options for applicants to meet Minimum Tree Preservation Standards. To assist in the evaluation of the trees on the site, the Applicant submitted an inventory of trees; the report was compiled by an International Society of Arboriculture (ISA) Certified Arborist. The Hearings Officer is in agreement with the Applicant's proposal and the revised staff report's recommendation that the minimum requirements will be met through 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." Public testimony in opposition to the application did not specifically dispute that Option 3 of this criterion was not met. Rather, the testimony (oral and written) addressed concerns about specific trees. The Applicant and the City have gone to great lengths in this case to satisfy neighbors' interests and preserve those specific trees and to provide assurances to neighbors that preserved trees will be adequately protected.

The Applicant's site design has focused on preserving trees in their existing stands on the hillside north of the proposed parcels. This makes the most sense when taking into consideration all aspects of the site and the proposed development. The Applicant was very responsive to neighbors' desire to preserve certain trees. The Hearings Officer is satisfied that Trees #75 and #76 are included in the plans to receive protection. In addition, the arborist report has been edited to note that Tree #169 on the adjacent property will be not be removed. This agreement resolves any objection to the application related to the tree preservation criterion.

In addition, Tree #7 received scrutiny from the public concerned about safety issues due to the close proximity of their home to this tree. This tree is located on the proposed fire turn around which is an adjacent property. The Applicant's *Arborists Notes for Preservation of Tree 7* dated August 17, 2020, took special consideration of this tree after the testimony at the Hearing. And the City's Urban Forester assigned to this land use case also submitted additional consideration of Tree #7. It is the Hearings Officer's intent to incorporate Urban Forestry's recommendations into the land use decision including revisions to Condition B.3 and B.4 and C.2 in the decision section below. The Hearings Officer finds that the

recommended changes and additional inspections and protections will adequately protect the Tree #7 and thereby minimize risk of safety concerns. Any additional issues or concerns with this Tree #7 can be dealt with under Title 11.

To ensure that future owners of the lots are aware of the tree preservation requirements outlined in the revised staff report and associated reports, the Applicant must record an Acknowledgement of Tree Preservation Land Use Conditions, at the time of final plat as specified herein. With the implementation of the noted conditions herein and in the revised staff report, the tree preservation approval criteria will be met.

### **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. The Hearings Officer finds that the proposed site is in a 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.

City records indicate there are several prior land use reviews related to this site. LUR 99-00134 (approval of a 6-lot land division, Crystal Woods. The Subject Site was established as Lot 6) has a condition related to the criteria of Potential Landslide Hazard Area:

“Future building permits applications for each lot shall include a copy of the A W Geotechnical Resources soils report with a supplemental letter from a geotechnical engineer stating the plans are consistent with the findings and recommendations of the original soils report. Geotechnical inspection of the foundation excavations shall be done through the Special Inspections program (Exhibit C5a).”

The Applicant has provided the required geotechnical report and a supplemental report for the current proposal, as noted in the Site Development response (Exhibit E.5). 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). Site Development, the division of BDS that makes determinations regarding soil stability, has evaluated the Landslide Hazard Study and provided the following responses:

“Site Development has reviewed the April 30, 2019 Hardman Geotechnical Services, Inc. Landslide Hazard Study. The report concludes the site is suitable for the proposed development. The information provided is acceptable and satisfies the approval criterion of Section 33.632.100.”

Although Site Development notes that further geotechnical evaluation may be required for specific building plans at the time of construction plan review, for purposes of this review process, based on these factors, the Hearings Officer is convinced this criterion is met.

### **Transportation Impacts**

In development cases such as this one, it is common for the public to be concerned about the impact on the neighborhood as it relates to the availability of on-street parking and increases to vehicle or bicycle/pedestrian traffic. The approval criteria of Chapter 33.641, Transportation Impacts, must be met in this case. The Portland Bureau of Transportation (PBOT) analyzes the impact the proposed development will have on the neighborhood. The analysis is based on the number of additional lots that will be created; in this instance the single parcel is being divided into a total of eight lots, so the impact on the neighborhood was measured by the addition of seven new lots.

The Hearings Officer is aware of the importance of adequate on-street parking and the impact that increased neighborhood density has on traffic flow. The revised staff report describes the current street infrastructure as follows:

“Streets –The site has approximately 662 feet of frontage on SW Comus Street. The right-of-way for SW Comus Street currently extends from SW 35th Avenue (west) to SW 28th Drive (east), though the developed roadway does not extend for this entire distance. There are limited right-of-way improvements along the site frontage. A portion of the south half of the street is improved with a paved roadway and sidewalks and the balance is unimproved. At this location, SW Comus Street is classified in the Transportation System Plan as a Local Service Street for all modes and is not in a pedestrian district. Tri-Met provides transit service west of the site, along SW 35th Avenue, via Bus Line 38.”

The Applicant is choosing to voluntarily provide an extension of the 26-foot paved roadway with curbs on both sides for the currently unimproved portion (as compared to the half street improvements that are typically required). Additionally, the standard sidewalk corridor is proposed along the entire site frontage.

The Hearings Officer finds that the current neighborhood consists of a winding and fragmented street network; the development proposed is going to increase the availability of street parking and improve traffic flow. The proposed extension of the full width roadway, SW Comus Street, will have adequate capacity to absorb the increase in vehicle and bicycle trips from the addition of seven single dwelling lots. With the installation of a standard separated sidewalk corridor for the full length of the site frontage, the impact of the additional pedestrian trips will also be offset. In addition, each lot is large enough to provide two off-street parking spaces for vehicles. As mentioned above, the extension of the street at a full 26-foot in width will allow for on-street parking on both sides of the roadway, substantially

increasing the amount of on-street parking available. The approval criteria of Chapter 33.641 related to Transportation Impacts has clearly been met.

The additional analysis provided by the Hearings Officer in this section is meant to highlight the objections or concerns raised by the public related to transportation issues (available parking and increased traffic). The revised staff report's complete assessment of this criteria is wholly incorporated into this analysis by reference and nothing in this section of the decision is intended to modify the revised staff report's conditions and analysis required to meet the criteria.

### III. CONCLUSIONS

Based on the revised staff report from Kate Green (BDS Land Use Services) recommending approval with conditions, the testimony of all present at the hearing, including written testimony received prior to the close of the record, the Hearings Officer finds that the Applicant has met their burden of satisfying all of the applicable approval criteria. Therefore, the Hearings Officer adopts the revised staff report as their own, the application is APPROVED with the conditions of approval set forth in the revised staff report and incorporated herein by reference subject to the modifications set forth below in the decision related to tree protections specified in Urban Forester's post-hearing report related to Tree #7 on the adjacent property.

### IV. DECISION

**Approval** of a Preliminary Plan for an 8-lot subdivision, that will result in eight standard lots, as illustrated with Exhibit C.1, subject to the following conditions:

#### A. The final plat must show the following:

1. The Applicant shall meet the street dedication requirements of the City Engineer for SW Comus Street. The required right-of-way dedication must be shown on the final plat.
2. A recording block for each of the legal documents such as maintenance agreement(s), acknowledgement of special land use conditions, or Declarations of Covenants, Conditions, and Restrictions (CC&Rs) as required by Conditions B.9 and B.10 below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: "A Declaration of Maintenance Agreement for (name of feature) has been recorded as document no. \_\_\_\_\_, Multnomah County Deed Records."

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

## Streets

1. The Applicant shall meet the requirements of the City Engineer for right-of-way improvements along the site's street frontage; and for the fire turnaround within an easement to the City of Portland, in accordance with the conditions outlined in Fire Code Appeal 23885 and Exhibit E.4.b, the Applicant shall submit an application for a Public Works Permit and provide plans and financial assurances to the satisfaction of the Portland Bureau of Transportation, the Bureau of Environmental Services, and the Fire Bureau for required street frontage and fire turnaround improvements. Prior to ground disturbing activity related to the public works permit, the Applicant must obtain an approved tree protection inspection for the Bureau of Development Services Permit required by Condition B.4.
2. An Emergency Vehicle Access Easement, granted to the City of Portland, shall be shown over the entirety of the fire access turnaround to the satisfaction of the Fire Bureau.
3. The Applicant shall submit an application for a Site Development Permit for mass grading and related site development improvements *not associated with the new public street*, or the Applicant shall provide a letter confirming the onsite grading will be limited to the public works improvements until time of future development on the lots. The plans must be in substantial conformance with Exhibit C.4 or C.5, depending on the option chosen, and must show root protection zones of the trees to be preserved per Conditions C.1 and C.2.
4. The Applicant shall obtain a Bureau of Development Services Permit to install tree protection and document the limits of disturbance for grading. This may be shown on the Site Development Permit required under Condition B.3 or, if no Site Development is required, a separate Zoning Permit must be obtained. 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.4 or C.5) and include:
  - Tree Protection consistent with Conditions C.1 and C.2.
  - Construction limits of disturbance.
  - The temporary staging and stockpile areas.
  - 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

5. The Applicant shall meet the requirements of the Water Bureau for providing financial assurances for the water main extension in SW Comus Street.

### Required Legal Documents

6. The Applicant shall execute an Easement and Maintenance Agreement for the Emergency Vehicle Access Easement to the City of Portland for the fire access turnaround located on private property. The agreement must acknowledge the limitations on the easement areas to the satisfaction of the beneficiary service agencies. The easement and maintenance agreement must be reviewed by the City Attorney, Portland Fire Bureau, Portland Bureau of Transportation, and the Bureau of Development Services, and approved as to form, prior to recording. The approved easement must be recorded prior to final plat approval.
7. The Applicant shall execute an Acknowledgement of Tree Preservation Land Use Conditions that notes tree preservation requirements that apply to Lots 1-8. 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.
8. The Applicant shall execute an Acknowledgement of Special Land Use conditions requiring residential development on Lots 1-8 to contain internal fire suppression sprinklers to the satisfaction of the Fire Bureau. The acknowledgement shall be referenced on, and recorded with, the final plat.

### Other requirements

9. The Applicant shall pay into the City Tree Preservation and Planting Fund [Street Trees – permanent loss of planting space] a Fee in Lieu of Planting four 1.5-inch caliper street trees. Payment must be made to the Bureau of Development Services, which administers the fund for the Parks Bureau.
10. Prior to removal of the existing easement on Lots 5 and 6, the Applicant must provide the following to the satisfaction of the Bureau of Environmental Services, to ensure sanitary and stormwater management services are maintained to the adjacent parcels approved through LUR 94-00429:
  - Sanitary Services: Prior to final plat approval, the Applicant must verify through scope, dye test, or other means that each parcel approved in LUR 94-00429 has an existing sanitary sewer connection (or future route of connection) that does not depend on the private easement proposed to be removed; and
  - Stormwater Management: Prior to final plat approval, the Applicant must verify through scope or other means that each parcel approved in LUR 94-00429 has an

existing storm system that does not depend on the private easement proposed to be removed.

Or, in the event the easement on the Subject Site is retained for the parcels in LUR 94-00429, the tree plan and arborist report, required per Condition C.1, must be amended to include measures to protect all trees located within the easement area and the trees that have any portion of their root protection zones in the easement area, and the related maintenance agreement must be amended accordingly, to the satisfaction of the Bureau of Development Services.

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

1. Any grading and development on Lots 1-8 shall be in conformance with the Tree Preservation Plan (Exhibit C.9) and the Applicant's arborist report (Exhibit A.4.b) or the Applicant's amended arborist report, per Condition B.12. 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.
2. Prior to any grading activities for the fire turnaround at 11007 SW 32<sup>nd</sup> Avenue, the Applicant shall show any tree removal complies with Title 11 requirements and protection of the trees on that site shall be provided as set forth in Kate Green's memo and the Urban Forestry comments, Exhibits H-22a and H-22b (dated August 26, 2020).
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. Permits for residential structures on Lots 1-8 must include residential sprinkler plans for review by the Plumbing Department for the Bureau of Development Services at the time of permit application.
5. If there is a standard that needs to be verified with the final plat and the Applicant could request a Fire Code Appeal, then the Applicant will be required to meet any requirements identified through a Fire Code Appeal. Please refer to the final plat approval report for details on whether or not this requirement applies.

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William Guzman, Hearings Officer

September 17, 2020

Date

<b>Application Determined Complete:</b>	April 27, 2020
<b>Report to Hearings Officer:</b>	July 2, 2020
<b>Decision Mailed:</b>	September 17, 2020
<b>Last Date to Appeal:</b>	4:30 p.m., October 1, 2020
<b>Effective Date (if no appeal):</b>	October 2, 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 E-MAILED TO [LANDUSEINTAKE@PORTLANDOREGON.GOV](mailto:LANDUSEINTAKE@PORTLANDOREGON.GOV). The appeal application form can be accessed at <https://www.portlandoregon.gov/bds/45477>. If you do not have access to e-mail, please telephone (503) 823-7617 for assistance on how to submit the appeal; please allow one business day for staff to respond. An appeal fee of \$3,100.00 will be charged (one-half the application fee for this case, up to a maximum of \$5,000.00.)

**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.**

**EXHIBITS**  
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  - 1. Initial Submittal
  - 2. Revised Submittal, May 26, 2020
    - a. Arborist Report
  - 3. Timeline Extensions, May 1, 2020 and May 26, 2020
- B. Zoning Map
- C. Plans and Drawings
  - 1. Preliminary Plat
  - 2. Site and Utility Plan
  - 3. Existing Conditions, Demolition, Tree Removal, Tree Preservation
  - 4. Grading Plan-street
  - 5. Grading Plan-lots
  - 6. SW Comus Street Profile
  - 7. Aerial Photo
  - 8. 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
    - a. Fire Code Appeal
  - 5. Site Development/Bureau of Development Services
  - 6. Urban Forestry/Parks
  - 7. Life Safety/Bureau of Development Services
- F. Letters: (none received)
- 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. Hearing Notice - Green, Kate

2. Email with attachment - Jones, Michael and Kim
  - a. 6/29/20 letter - Jones, Michael and Kim
3. Staff Report - Green, Kate
4. 7/6/20 Email - Cummins, Meg
5. 7/9/20 Email - Cummins, Meg
6. PowerPoint presentation - Green, Kate
7. 7/14/20 Email - Radelet, Sarah
8. 7/14/20 Email with attachments - Radelet, Sarah
  - a. Tree Plan for Land Division - Radelet, Sarah
  - b. Tree Table for Land Division - Radelet, Sarah
  - c. 7/14/20 Memo - Radelet, Sarah
  - d. Appeal Summary - Radelet, Sarah
  - e. Fire Code Appeal Schedule Emails - Radelet, Sarah
  - f. Existing Conditions & Demolition Plan Tree Removal & Preservation Plan - Radelet, Sarah
  - g. PowerPoint - Radelet, Sarah
9. 7/14/20 Email - Marantz, Elizabeth
10. 7/15/20 Email Denial of two-part hearing - Hearings Officer
11. 7/15/20 Email response to Hearings Officer's Email - Green, Kate
12. 7/15/20 Email with attachments - Radelet, Sarah
  - a. 7/15/20 Memo requesting reschedule - Radelet, Sarah
  - b. Request for Extension of 120-day Review Period for 245 days - Radelet, Sarah
13. Reschedule Emails - Hearings Officer
14. Reschedule Clarification Emails - Hearings Officer
15. Hearing Notice - Green, Kate
16. Revised Staff Report - Green, Kate (**attached**)
17. Revised PowerPoint presentation - Green, Kate
18. Record Closing Information - Hearings Office
19. 8/14/20 Email with attachments - Green, Kate
  - a. Plans submitted by applicant on July 14 & August 4, 2020 - Green, Kate
  - b. Tree Report submitted by applicant on 7/14/20 - Green, Kate
  - c. Tree Table submitted by applicant on 7/14/20 - Green, Kate
20. 8/18/20 Email with attachments - Radelet, Sarah
  - a. 8/18/20 Memo - Radelet, Sarah
  - b. 8/17/20 Arborist Notes for Preservation of Tree 7 - Radelet, Sarah
21. 8/18/20 Email with attachment - Jones, Michael and Kim
  - a. 8/18/20 Memo - Jones, Michael and Kim
  - b. 11.60.030 Tree Protection Specifications - Jones, Michael and Kim
22. 8/26/20 Email with attachments - Green, Kate
  - a. 8/26/20 Memo - Green, Kate
  - b. Urban Forestry Staff Comments - Green, Kate
23. 8/31/20 Email - Radelet, Sarah

**REVISED STAFF REPORT AND RECOMMENDATION TO THE HEARINGS OFFICER**

CASE FILE: LU 19-246030 LDS  
PC # 19-123976  
REVIEW BY: Hearings Officer  
WHEN: Wednesday, August 12, 2020 at 1:30 PM

**Due to the City's Emergency Response to COVID-19, the above-referenced land use hearing will be limited to remote participation. There is not an in-person attendance option. The instructions to participate can be accessed online: <https://www.portlandoregon.gov/hearings/article/761599>.**

It is important to submit all evidence to the Hearings Officer. City Council will not accept additional evidence if there is an appeal of this proposal.

**BUREAU OF DEVELOPMENT SERVICES STAFF: KATE GREEN / KATE.GREEN@PORTLANDOREGON.GOV**

**GENERAL INFORMATION**

**Applicant:** Sarah Radelet / Strata Land Use Planning  
PO Box 90833 / Portland OR 97290  
503-320-0273 / sarah@stratalanduse.com

**Purchaser:** Bruce Howard / PDX Business Investments LLC  
8213 SW Kingfisher Way / Durham OR 97224

**Property Owners:** Colleen Blazer and Don Blazer  
11007 SW 32nd Avenue / Portland OR 97219

**Site Address:** SW COMUS STREET  
**Legal Description:** LOT 6, CRYSTAL WOODS  
**Tax Account No.:** R190430300  
**State ID No.:** 1S1E32AB 00106  
**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 10,000 (R10)  
**Other Designations:** Potential Landslide Hazard Area

**Case Type:** Land Division-Subdivision (LDS)  
**Procedure:** Type III, with a public hearing before the Hearings Officer. The decision of the Hearings Officer can be appealed to City Council.

**Proposal:** The applicant proposes a **Land Division-Subdivision** to divide a vacant 1.9 acre property into 8 lots for detached residential dwellings. The lots range in size from 8,269 square feet to 11,943 square feet. The applicant also proposes a right-of-way dedication and improvements in SW Comus Street to provide access and public services to the lots.

This subdivision proposal is reviewed through a Type III procedure because: (1) the site is in a residential zone; (2) four or more lots are proposed; and (3) the site is located within a Potential Landslide Hazard or Flood Hazard Area (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 8 units of land (8 lots). Therefore, this land division is considered a subdivision.

**Relevant Approval Criteria:** In order to be approved, this proposal must comply with the approval criteria of *Title 33*. The relevant criteria are found in **Section 33.660.120, Approval Criteria for Land Divisions in Open Space and Residential Zones**.

## FACTS

**Site and Vicinity:** The subject site is a vacant, approximately 1.9 acre property. The site is moderately to steeply sloped rising up from the SW Comus Street right-of-way to the abutting residential lots to the north. Many large diameter native and non-native trees and some nuisance trees are situated throughout the site.

The site is situated in a residential area that consists of larger lots and multi-story houses typical of the R10 zone. Jackson Middle School is also located approximately 1,000 feet northwest of the site, and Stephenson Elementary School is located approximately 2,000 feet southeast of the site.

The surrounding area includes varied terrain and a generally winding, fragmented street network, due, in part, to the stream channels and wooded natural areas nearby. A tributary of Arnold Creek crosses through the SW Comus right-of-way and the abutting properties approximately 200 feet west of the site. Arnold Creek is located approximately 1,000 feet to the south of the subject site.

### Infrastructure:

- **Streets** –The site has approximately 662 feet of frontage on SW Comus Street. The right-of-way for SW Comus Street currently extends from SW 35<sup>th</sup> Avenue (west) to SW 28<sup>th</sup> Drive (east), though the developed roadway does not extend for this entire distance. There are limited right-of-way improvements along the site frontage. A portion of the south half of the street is improved with a paved roadway and sidewalks and the balance is unimproved. At this location, SW Comus Street is classified in the Transportation System Plan as a Local Service Street for all modes and is not in a pedestrian district. Tri-Met provides transit service west of the site, along SW 35<sup>th</sup> Avenue, via Bus Line 38.
- **Water Service** – There is an existing 8-inch water main within a portion of the SW Comus Street frontage.
- **Sanitary Service** - There is an existing 8-inch CSP sanitary sewer in SW Comus Street (BES as-built #3374).
- **Stormwater Disposal** – There is a 12-inch PVC storm system within a portion of SW Comus Street frontage, near the intersection with SW 30<sup>th</sup> Place and to the east (BES as-built #8135).

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

**Land Use History:** City records indicate there are several prior land use reviews related to this site.

**LUR 99-00134:** Approval of a 6 lot land division, Crystal Woods. The subject site was established as Lot 6. Several conditions apply to the subject site, outlined below:

3. *Future building permits applications for each lot shall include a copy of the A W Geotechnical Resources soils report with a supplemental letter from a geotechnical engineer stating the plans are consistent with the findings and recommendations of the original soils report. Geotechnical inspection of the foundation excavations shall be done through the Special Inspections program (Exhibit C5a).*
10. *No building permit approval or further division of Lot 6 should occur until necessary right-of-way for SW Comus Street is secured, or alternative access provided, and appropriate performance guarantees provided as required by the City Engineer (Exhibit C3).*

The applicant has provided the required geotechnical report and a supplemental report for the current proposal, as noted in the Site Development response (Exhibit E.5). Additionally, the proposal includes improvements to SW Comus Street, as outlined in the response from PBOT (Exhibit E.2). Initially, an acceptable route for fire department access was not provided, but that has now been resolved per the revised Fire Bureau response (Exhibit E.4.b). See additional details in findings for Criterion L, Services.

**LUR 94-00429:** Approval of a 3 parcel partition. The subject site was not directly part of this 1994 land use case; however, there are several easements on the subject site, which benefit the parcels established through this 1994 case. The existing private easements across the subject site appear to have been required as part of the 1994 case, specifically to fulfill the following conditions: *“Bureau of Environmental Services: 3a. Prior to plat approval, each lot must have an identified means of individual gravity service to a public sanitary sewer as approved by BES. 3b. Prior to plat approval, each lot must have an identified means of direct access for storm water disposal, as approved by BES and the Bureau of Building’s Plumbing Division.”*

The applicant is showing the easements on the submitted site plans but has separately inquired about removing the eastern easement, which runs through the center of the site. The eastern easement is in an area the applicant has identified for tree preservation and a retaining wall on Lots 5 and 6. To ensure there are no future conflicts with the tree protection plan for the subject site, the applicant has sought the removal of the eastern easement, and has coordinated with the owners of the properties benefitted by the eastern easement to allow for its removal.

However, as noted in the BES response, prior to removing the easement, it is the applicant’s responsibility to verify that no sanitary or storm system is in the easement. Placement, modification, or removal of a private easement must be agreed on by the private parties involved.

BES provided the following information about the sanitary and storm sewer records for the parcels approved in the 1994 case:

Sanitary Services: *Permit records and sewer TV for 3138 and 3124 SW Dickinson indicate they have sanitary service connections to the public sanitary sewer in SW Dickinson rather than through the private easement to the south. The applicant has indicated that no sanitary line runs in the east easement.*

*The applicant has not inquired about removing the west easement, which would remain available to 3226 SW Dickinson. This is prudent because based on permit records and sewer TV, it appears that lot may be using onsite septic and would need a future connection to sanitary sewer. Although the sanitary sewer in SW Dickinson is in the frontage of the lot, it appears unlikely that a gravity connection from the existing home would be feasible. Therefore, BES recommends the west easement remain.*

*BES recommends the following: Prior to final plat approval, the applicant must verify through scope, dye test, or other means that each lot in the original land division has an existing sanitary sewer connection (or future route of connection) that does not depend on the private easement proposed to be removed.*

Stormwater Management: *It is unlikely that there would be a storm line in the west easement based on the lack of pipe or ditch in SW Comus and common practice at the time of construction. The applicant has indicated that no storm system runs in the east easement. However, there are no permit records for stormwater management for 3226, 3138, and 3124 SW Dickinson. (Beyond that, the property owner(s) may consider the value of retaining the easement in order to establish a connection to the new storm sewer in the future, but that is at their discretion.)*

*BES recommends: Prior to final plat approval, the applicant must verify through scope or other means that each lot in the original land division has an existing storm system that does not depend on the private easement proposed to be removed.*

Alternatively, if the easement is retained, the applicant will need to amend the current easement and maintenance agreement to ensure adequate protection for the trees within and adjacent to the easement, as discussed in Criterion B, Trees.

**Agency Review:** A “Request for Response” was mailed **May 29, 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 **June 24, 2020**. No written responses have been received from the Neighborhood Association or notified property owners in response to the proposal.

### **ZONING CODE APPROVAL CRITERIA**

***APPROVAL CRITERIA FOR LAND DIVISIONS IN OPEN SPACE AND RESIDENTIAL ZONES***

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

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

<b>Criterion</b>	<b>Code Chapter/Section and Topic</b>	<b>Findings: Not applicable because:</b>
C	33.631 - Flood Hazard Area	The site is not within the flood hazard area.
E	33.633 - Phased Land Division or Staged Final Plat	A phased land division or staged final plat has not been proposed.
F	33.634 - Recreation Area	The proposed density is less than 40 units.
I	33.639 - Solar Access	All of the proposed parcels are interior lots (not on a corner). In this context, solar access standards express no lot configuration preference.

J	33.640 - Streams, Springs, Seeps and Wetlands	No streams, springs, seeps or wetlands are evident on the site.
L	33.654.110.B.2 - Dead end streets	No dead end streets are proposed.
	33.654.110.B.3 - Pedestrian connections in the I zones	The site is not located within an I zone.
	33.654.110.B.4 - Alleys in all zones	No alleys are proposed or required.
	33.654.120.D - Common Greens	No common greens are proposed or required.
	33.654.120.E - Pedestrian Connections	There are no pedestrian connections proposed or required.
	33.654.120.F - Alleys	No alleys are proposed or required.
	33.654.120.G - Shared Courts	No shared courts are proposed or required.
	33.654.130.B - Existing 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.C - Future extension of dead-end streets and pedestrian connections	No dead-end street or pedestrian connections are proposed or required.
	33.654.130.D - Partial rights-of-way	No partial public streets are proposed or required.
	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. There is no minimum density requirement, due to the landslide hazard designation. Based on the applicant’s survey, the site area is 83,145 square feet, so the maximum density is 8. The applicant is proposing 8 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)
<b>R10 Zone</b>	6,000	17,000	50	60	30
Lot 1	10,560		73	148	73
Lot 2	10,366		70	148	70
Lot 3	10,365		70	148	70
Lot 4	10,364		70	148	70
Lot 5	11,943		80	148	80
Lot 6	8,342		101	83	101
Lot 7	8,299		100	83	100
Lot 8	8,269		99	83	99

\* 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.

In order to identify which trees are subject to these requirements, the applicant provided a tree survey (Exhibit C.3) that shows the location and size of trees on and adjacent to the site. The applicant also provided an arborist report (Exhibit A.2.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. Prior to the initial hearing the applicant submitted a memo (Exhibit A.4.a), revised tree plan (Exhibit C.9) and an amended arborist report and tree table (Exhibit A.4.b) which described several changes, as follows:

*The immediate neighbor to the east has requested preservation of two additional trees (#75 and #76) located in the northeast corner of the site. Tree #75 is a 10-inch incense cedar and Tree #76 is an 8-inch western red cedar. We have modified the tree preservation plan and arborist report to include preservation of these two trees. In addition, the arborist report has been edited to note that tree #169 on the adjacent property will be not be removed.*

The following findings reflect these updates:

*The project arborist notes: 15 of 21 large diameter (20-inches and larger), viable, non-exempt trees and 71 percent of the viable tree diameter will be protected on the site.*

*The site design has focused on preserving trees in their existing stands on the hillside north of the proposed parcels. Some trees will be removed from within these stands because they will become hazardous to future development or extend into the buildable areas because of phototropism. Trees being removed on lots one through five that are within the RPZs (root protection zones) of protected trees will be cut by a chainsaw operator using directional felling techniques.*

*Stumps within the RPZs of protected trees shall not be dug out using a backhoe or similar piece of equipment. Stumps will either be ground using a stump-grinder or left on site. Tree parts that need to be removed from tree protection zones after felling shall be yarded out with cable or rope. Heavy equipment shall not enter the RPZs of protected trees. Care will be taken to avoid mechanical damage to protected trees during tree removal operations.*

Based on this information, the trees proposed for preservation are in good condition, include native/non-nuisance species, and the proposed root protection zones will allow for the type of development anticipated in the R10 zone. Performance root protection zones are proposed for several large diameter Douglas fir trees on Lots 5 and 6; otherwise the Prescriptive root protection zones are shown for all other trees to be retained. Based on these factors, the proposal will meet *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.*

However, some of the trees or the root protection zones of trees proposed to be retained on Lots 5 and 6 are located within an existing easement that benefits the neighboring properties, established through LUR 94-00429. As discussed previously, the applicant has proposed to remove the easement to avoid conflicts with the tree preservation measures. If the easement is removed that will ensure no clearing or grading occurs within the easement area, as currently allowed by the existing maintenance agreement for the easement. In the event the easement is retained, the tree plan and arborist report must be amended to include measures to protect all trees located within the easement area and the trees that have any portion of their root protection

zones in the easement area, and the related maintenance agreement must be amended accordingly, to the satisfaction of BDS.

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 1-8 must be carried out in conformance with the Revised Tree Preservation Plan (Exhibit C.9) and the revised arborist report (Exhibit A.4.b) or an amended arborist report, as discussed above.

With the implementation of the noted conditions, the approval criteria will be met.

The applicant is also proposing tree removal and tree protection measures within the existing SW Comus right-of-way and on the site (11007 SW 32<sup>nd</sup> Avenue) where the Fire Department turnaround is proposed. The right-of-way trees are subject to review by Urban Forestry, and the private property trees are regulated by Title 11. These trees are further addressed in the findings for Criterion G, below.

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.

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). Site Development, the division of Development Services that makes determinations regarding soil stability, has evaluated the Landslide Hazard Study and provided the following responses:

*Site Development has reviewed the April 30, 2019 Hardman Geotechnical Services, Inc. Landslide Hazard Study. The report concludes 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 has steep grades (over 20%), is located in the Potential Landslide Hazard area and requires extensive tree removal and clearing and grading for an extension of and improvements to the SW Comus Street right-of-way and for the lot development. The clearing and grading associated with preparation of the right-of-way and the lots must occur in a way that will limit erosion concerns and assure that the protected trees will not be disturbed.

The applicant has submitted two grading plans and indicates Sheet 7 (Exhibit C.4) shows the grading for the public street and off-site turnaround construction and Sheet 8 (Exhibit C.5) shows the grading for the lot development. Sheet 8 appears to include all the grading shown on Sheet 7 and additional grading on the lots and a retaining wall over portions of Lots 5 and 6. A more limited work boundary and limited tree protection measures are shown on Sheet 7, compared to a more extensive grading area and tree protection measures noted on Sheet 8. Both plans show comparable stockpile and staging areas. Neither grading plan includes the revised tree protection addressed in Criterion B, above.

The proposed contour changes should not increase runoff or erosion because all of the erosion control measures shown on the grading plan must be installed prior to starting the grading work. Preserving trees will also help limit erosion by assuring that the tree roots will help to hold the soil in place. Site Development has also noted that the following erosion control requirements will apply to the project.

**Erosion Control**

*Erosion prevention and sediment control requirements found in Title 10 apply to both site preparation work and development. 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. 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 building permit applications.*

Additionally, stormwater will be appropriately managed to assure that adjacent properties will not be adversely impacted (see detailed discussion of stormwater management later in this report).

Site Development has reviewed the grading plans and provided the following response:

**Public Street/Mass Grading**

*The proposal includes a public street and grading on private property. The site plans indicate that most of the proposed grading is that which is needed to construct the public street and will be permitted through the public works process.*

*A limited amount of additional grading is proposed to prepare the lots for development. The additional grading on the lots can be permitted in whole through a Site Development permit or can be permitted on a lot by lot basis through the residential building permits. If a Site Development permit for mass grading is issued, the permit will need to be finalized prior to issuance of residential building permits.*

To address these possible scenarios, the following condition will be applied:

The applicant shall submit an application for a Site Development Permit for mass grading and related site development improvements *not associated with the new public street, or* the applicant shall provide a letter confirming the onsite grading will be limited to the public works improvements until time of future development on the lots. The final grading plans must be in

substantial conformance with Exhibit C.4 or C.5, depending on the option chosen, and must show root protection zones of the trees to be preserved, as discussed in Criterion B.

For the off-site trees at 11007 SW 32<sup>nd</sup> Avenue, the applicant will need to show any tree removal and protection of trees on that site complies with Title 11 requirements, prior to any grading activities for the fire turnaround.

With the application of these conditions, this criterion will be met.

Land Suitability: The site is currently vacant and there is no record of any other use in the past, with the possible exception of sanitary or storm lines serving the neighboring properties to the north, as discussed previously.

In any event, as indicated above, the landslide hazard study provided by the applicant indicates the site is suitable for the proposed development, and Site Development noted concurrence with the report. Based on these factors, and with the noted conditions to address any potential facilities in the easements on the subject property, this criterion will be met.

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

**Findings:** No tracts are proposed or required for this land division. The following easement is proposed and will be required for this land division:

- An Emergency Vehicle Access Easement is required over the entirety of the fire department turnaround located on the adjacent private property to the satisfaction of the Fire Bureau.

As stated in Section 33.636.100 of the Zoning Code, a maintenance agreement(s) will be required describing maintenance responsibilities for the easement described above and facilities within those areas. This criterion can be met with the condition that a maintenance agreement(s) is prepared and recorded prior to final plat approval.

With the condition 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):

**Safety and Street Capacity:** *The site is on the north side of SW Comus St. approximately 100 feet west of the intersection of SW Comus St. and SW 29<sup>th</sup> Ct. The improved portion of SW Comus St. currently terminates 139-ft west the intersection of SW Comus St. and SW 30<sup>th</sup> Place. The improved (easterly) portion of SW Comus. has a 26-foot paved roadway surface with no curbs or sidewalks in the frontage of the subject lot. A curb and curb tight sidewalk exist on the southerly side of SW Comus St. across from the subject frontage. The westerly approximately 340 feet of the site's frontage is unimproved.*

*The addition of seven lots to the neighborhood is anticipated to increase trips via all modes. Adding additional pedestrian trips to an area where pedestrian facilities are incomplete will have an incremental negative impact. Adding trips to a wholly unimproved right-of-way is not feasible. As such, the applicants are proposing improvements including a paved roadway, curb, stormwater facility, and separated sidewalk.*

*When developing property abutting an unbuilt right-of-way, applicants are typically asked to provide a 20-foot wide paved roadway surface to accommodate two-way vehicle travel plus a curb and standard sidewalk corridor within the frontage of the site being developed. The applicant is choosing to voluntarily provide an extension of the 26-foot paved roadway with curbs on both sides for the currently unimproved portion. Additionally, the standard sidewalk corridor is proposed along the entire site frontage. This includes a 0.5-ft curb, 8-ft public stormwater facility/furnishing zone, 5-ft sidewalk, and 0.5-ft frontage zone. Seven feet of dedication is proposed in order to accommodate these improvements.*

*The platted right-of-way continues past the subject site, meaning a through street may someday be possible as a result of future development. The roadway currently terminates in a barricade with no turn around for larger vehicles such as fire apparatus. A dedicated public turn around such as a cul-du-sac is not desirable when a roadway may become a through street. As such, the proposal includes the construction of a fire apparatus turn around in an easement on the property to the south. This provides a tangible increase in safety over the current terminus which does not include a turn around.*

*Twenty-six feet is the standard street width for local service streets with on-street parking on both sides in residential zones per [Creating Public Streets and Pedestrian Connections through the Land Use and Building Permit Process](#). Due to the local service classification and low vehicle speeds, the roadway width is also adequate to serve as a shared bicycle facility, as is standard for streets which are local service traffic streets and local service bikeways. With the proposed extension of the full width roadway, SW Comus St. will have adequate capacity to absorb the increase in vehicle and bicycle trips from the addition of seven single dwelling lots. With the installation of a standard separated sidewalk corridor for the full length of the site frontage, the impact of the additional pedestrian trips will also be offset.*

*Based on information in the City's database on Portland Traffic Deaths and Injuries since 2008, there have been no fatal or injury accidents on SW Comus Ave. from SW 28<sup>th</sup> Dr. to its current terminus. The currently improved portion is relatively straight and flat with acceptable sight distance. Staff anticipates the extension of SW Comus St. will continue to operate as a low volume, low speed street given it will continue to be a dead end street providing access only to single dwelling residential development.*

**Level of service:** *This is a term used to describe vehicular traffic; it currently has little to no meaning for other modes. At this location, SW Comus St. is a local service street for which traffic count data is not available. It is believed this segment sees a small amount of vehicular traffic due to its short length, dead end nature, and lack of connectivity to any use other than single family residential lots. PBOT has not identified any level of service concerns with this segment of SW Comus St. in the TSP or other planning documents. With the full width extension of the roadway and sidewalk, it is anticipated this segment will continue to function well for vehicular travel and has capacity to absorb the anticipated trips from seven additional residential lots.*

**Connectivity:** *The Connectivity and Location of Rights-of-Way standards in 33.654.110 recommend through streets or pedestrian connections where appropriate and practicable. Detailed findings are under that code section within this report. PBOT recommends the extension of SW Comus St. be required, but has not recommended a north/south connection be created due to the terrain characteristics of the site and the development pattern to the north.*

**Transit Availability:** *The subject area is not well served by transit. The closest transit to the site is available on SW 35<sup>th</sup> Ave. There is no direct pedestrian connection to SW 35<sup>th</sup> Ave. Riders would have to travel east to SW 29<sup>th</sup> Ave, north to SW Dickinson, which is discontinuous as a paved roadway but is passable on foot though may not be passable to people using mobility devices, and then west to SW 35<sup>th</sup> Ave. Tri-Met service line 38 provides weekday peak-hour only service southward to the Tualatin Hills Park and Ride and northward to the City Center on SW 35<sup>th</sup> Ave. The next closest service is almost a mile west of the site on SW Capitol Highway. The addition of seven lots to the neighborhood is not anticipated to have a substantial impact on transit ridership.*

**Availability of Pedestrian and Bicycle Networks:** *The historic land development patterns in this area have led to a low level of connectivity, which is especially impactful for pedestrians and cyclists. Much of this area was originally developed outside of the City's jurisdiction. The terrain can be quite steep and is within the regulatory landslide hazard area. Given the terrain characteristics, the majority of the through connections in this area are provided by collector streets. These are typically higher speed streets without bicycle lanes or continuous sidewalks. Horizontal and vertical curves in these roadways often creates sight distance issues. The extension of SW Comus St. as a full standard width roadway with a separated sidewalk for the entire length of the site's frontage will alleviate a portion of the need for pedestrian and bicycle networks in the area.*

**On street parking impacts:** *The subject request should have a positive impact regarding on street parking. The project will add seven lots to neighborhood, all of which are proposed to have on-site parking. A single dwelling is anticipated to generate the need for two parking spaces. Each proposed homesite is shown having onsite parking adequate to accommodate those two spaces. The additional parking generated by visitors will need to be accommodated on street. The proposal includes a full-width street extension rather than the more typical ½ street improvement. The extension of the street at a full 26-feet in width will allow for on-street parking on both sides of the roadway, substantially increasing the amount of on-street parking available.*

**Access Restrictions:** *As part of this project, SW Comus St. will become a full width paved local service street for the entire length of the subject site's frontage. The roadway will be relatively flat with acceptable sight distance. No access restrictions are warranted.*

**Neighborhood impacts:** *The proposed development is anticipated to add a small number of trips from all modes into the neighborhood system. All eight lots are proposed to have on-site vehicle parking. The proposal includes a full width street extension with a separated sidewalk corridor. While SW Comus St. will be extended, it will remain a dead end street. The proposal includes the construction of a fire apparatus turn around in an easement on the property to the south, increasing ability of emergency service providers to access existing and future homes along SW Comus St. It is anticipated there will be few overall impacts to the neighborhood from the additional lots.*

**Impacts on pedestrian, bicycle, and transit circulation:** *Pedestrian and bicycle circulation through the surrounding area is constrained. As noted above, the street network is discontinuous. Area arterials provide the only hard surfaced through connections, though an informal pedestrian through connection does exist in the SW Dickinson right-of-way. The closest arterials are SW Arnold St. for east/west travel and SW 35<sup>th</sup> Ave. for north/south travel. Neither have bicycle lanes or continuous sidewalks. As noted above under the transit availability evaluation factor, there is little transit service available in the area. The discontinuous nature of the streets and general lack of sidewalks in the surrounding area make accessing the transit which does exist difficult. The proposal does include extending SW Comus St. including a standard sidewalk corridor and standard full width roadway for the full length of the site frontage. This will have an incremental positive impact on the pedestrian and bicycle network. The proposal is not anticipated to have any impact on transit circulation.*

With the proposed right-of-way dedication and improvements, discussed in Criterion L. 33.654, below, additional transportation facilities will be provided for the new development. Additionally, the proposed fire department turnaround on an adjacent private property, which initially had not been approved by the Fire Bureau (Exhibit E.4 and E.4.a), has now been resolved as outlined in the revised Fire Bureau response and an affirmative outcome of the applicant’s second Fire Code Appeal (Exhibit E.4.b and E.4.c). As such, the fire department turnaround on private property, along with the right-of-way improvements, will provide facilities sufficient to serve the anticipated users and the existing uses in the area. With the application of conditions to ensure those improvements are made, these criteria will be 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:

<b>33.651 Water Service standard – See Exhibits E.3 and E.4</b>
<p>The Water Bureau has reviewed the site for availability of water services and provided the following response:  <i>Lots 1-5 - Water is available from the 8” main in SW Comus St to serve Lots 1-5.</i></p> <p><i>Lots 6-8 - A new water main will have to be installed to serve Lots 6-8 of the proposed development. At the expense of the applicant, the Water Bureau will design and construct a water main to the point of connection the applicant chooses. The point must be a minimum of 7' inside of Lot 8. The applicant is responsible for clearing, grubbing, grading and graveling a minimum of a 20ft roadway in preparation of the main construction.</i></p> <p>The Fire Bureau initially noted a new fire hydrant would be needed (Exhibit E.4). However, the Fire Bureau has now found the fire flow/water requirements for the proposal will be met with the provision of sprinklers for structures on the proposed lots (Exhibit E.4.b).</p> <p>Based on these factors, the applicant must make arrangements to extend a new water main in SW Comus Street, to ensure service is available to the proposed lots. In order to meet the standards of 33.651 and the technical requirements of Title 21, appropriate plans and assurances for the water main extension must be provided to the Water Bureau, prior to final plat approval. With these conditions, the water service standards will be met.</p>
<b>33.652 Sanitary Sewer Disposal Service standards – See Exhibit E.1</b>
<p>The Bureau of Environmental Services has indicated that service is available to the site, as noted on page 2 of this report. The sanitary sewer service standards of 33.652 have been verified.</p>
<b>33.653.020 &amp; .030 Stormwater Management criteria and standards – See Exhibits E.1</b>
<p>No stormwater tract is proposed or required. The applicant provided information about stormwater management for the public right-of-way and the private lots. BES reviewed the proposal and provided the following:</p> <p><b>Public Street Improvements:</b></p> <ul style="list-style-type: none"> <li>o <i>Public Right-of-Way Stormwater Management: 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.</i></li> </ul>

- *PBOT requires the construction of public frontage improvements, which trigger public stormwater management improvements per the standards of the SWMM and the Sewer and Drainage Facilities Design Manual. Per Public Works Permit (PWP) #20-148250, stormwater from the public right-of-way will be managed with installation of vegetated storm facilities in SW Comus St. BES Development Engineering approved the Concept Development plans (i.e. 30% design) for the right-of-way stormwater improvements; therefore, BES finds that public stormwater facilities can be constructed as shown on the applicant's Preliminary Site Utility Plan. Prior to final plat approval BES will require approved plans, a financial guarantee, receipt of all outstanding fees, and a signed permit document.*

**Lots 1-8:**

- *Private Property Stormwater Management: Stormwater runoff from this project must comply with all applicable standards of the SWMM and SCM and be conveyed to a discharge point along a route of service approved by the BES Director or the Director's designee.*
  - *The applicant submitted a stormwater report from Emerio Design (November 26, 2019) and a Landslide Hazard Study (LHS) from Hardman Geotechnical Services Inc (April 30, 2019). The LHS includes infiltration test results of 0.2 inches per hour and recommends against infiltrating post-development stormwater runoff onsite; therefore the applicant proposes to discharge runoff offsite to the new public storm sewer after pollution reduction and flow and volume control standards are met with individual lined planters for each lot sized per the Simplified Approach.*
  - *In order to accommodate this configuration, an extension of public storm sewer is required. Under Public Works Permit (PWP) #20-148250, BES Development Engineering approved the Concept Development plans (i.e. 30% design) for the sewer extension; therefore BES finds that an offsite discharge location can be made available to Lots 1-8 as shown. Prior to final plat approval BES will require approved plans, a financial guarantee, receipt of all outstanding fees, and a signed permit document.*

With the application of conditions for these public and private stormwater management facilities, these standards and criteria will be met.

**33.654.110.B.1 Through streets and pedestrian connections**

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 block on which the subject property is located does not meet the noted spacing requirements for a north-south street. Additionally, the adopted Master Street Plan for the area (*SW and Far SE Master Street Plan, 2001-Southwest District, Quarter Section 4126*) shows the area does not meet the street-spacing standard and specifically calls for a connection to the south at SW Comus to SW 32<sup>nd</sup> Avenue. The noted connection south of SW Comus is anticipated in the general location where the fire department turnaround has been proposed.

However, PBOT provided the following:

*The subject site is on a block which is approximately 1,400 feet long. Ideally, there would be two north/south full public street connections between SW Comus St. and SW Dickinson St. added to this block. Existing development patterns and terrain make provision of even one north/south full street connection not practicable. The subject property is approximately half the block length. The properties to the north are mostly developed to their full potential under the zoning code. The one property with the potential to divide is 3226 SW Dickinson, which is on the westerly side of the subject site. Any potential connection would need to be located on*

*the westerly side of the lot to abut the rear property line of 3226 SW Dickinson St.*

*A potential through street connection on the westerly side of the subject site is not feasible due to terrain. The applicant's narrative and site survey document the western edge of the site slopes upwards toward SW Dickinson St. at a slope of over 29%. Per TRN 1.05, newly platted local service streets shall not exceed 18% slope. Where designs limiting the grade to 18% are impractical, maximum grades up to 22% may be approved if the Fire Chief finds conditions offered by the developer will reduce risks associated with potential delayed response. Creating an 18% to 22% sloped street is not feasible when the grade is over 29%.*

*Since the construction of a public street is not feasible due to the grade of the terrain, any pedestrian connection would need to meet the maximum grades allowed by the American's with Disabilities Act which is a maximum constructible grade of 8.33%. PBOT's public works permitting section typically asks for ADA compliant connections to be designed no steeper than 7.2% to allow for construction tolerance and still meet the maximum ADA grade. Given the steepness of the terrain, an ADA compliant pedestrian connection would require substantial switchbacks and site grading/retaining. Any pedestrian connection here would only be built to the rear property line. At the time of redevelopment, the property to the north would have to extend the connection further north to SW Dickinson St. The property to the north has 156-feet of frontage on SW Dickinson St. As mapped in City GIS, there is a 36-foot grade change over the 204-foot deep property. This translates to an approximate slope of 17.6%. This is still steep enough to require switchbacks to meet the maximum ADA grades for a pedestrian connection. Given the narrowness of the lot to the north, it seems likely that a public pedestrian connection would require a substantial portion of the lot's width, which would likely be out of proportion to a future development request on this site.*

*Due to terrain and the existing development pattern to the north, provision of a north/south street or pedestrian connection through the site is not practicable.*

Based on these factors, this criterion is met.

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

**33.654.120.C.3.c. Approval criterion for turnarounds** – See Exhibit E.4

**33.654.120.H Standards for Street Trees** – See Exhibit E.6

Generally, these approval criteria and standards require the following: The width of the local street right-of-way must be sufficient to accommodate expected users, taking into consideration the characteristics of the site and vicinity, such as the existing street and pedestrian system improvements, existing structures, and natural features; the configuration of the elements within the right-of-way must be approvable to PBOT; a turnaround must be provided when a street is over 300 feet long or when required by the Fire Bureau; and street tree standards must be found acceptable to Urban Forestry.

The east half of the site's SW Comus Street frontage has partial improvements on the south side of the street; and the balance of the site's frontage is undeveloped. Though there is existing right-of-way dedicated to the west of the site, the street effectively functions as a dead-end street, since there is a stream, with no crossing, just to the west of the site. As such, the applicant has proposed a fire department turnaround on the "also-owned" property on the south side of SW Comus (11007 SW 32<sup>nd</sup> Avenue).

As noted in the response from PBOT, and the findings for the Transportation Impacts, Criterion K, above: *The applicants have obtained concept approval of a public works permit (19-252413-WT, TH0963 EP577). PBOT recommends a condition of Final Plat approval requiring a Public Works performance guarantee for the required ROW improvements completed to the satisfaction of Public Works.* With the provision of conditions that call for these improvements and for the right-of-way dedication necessary to accommodate the right-of-way improvements must be shown on the final plat, PBOT finds the roadway elements

<p>acceptable.</p> <p>Urban Forestry notes the applicant proposes to remove all 14 of the existing street trees, due to the requirements of frontage improvements, and the applicant proposes to install 7 new street trees as part of the public works plans for the SW Comus Street improvements. Urban Forestry notes the new street trees will be required in accordance with Title 11 and will be evaluated through the public works permit.</p> <p>With regard to adequate area for street trees, Urban Forestry notes there will be a permanent loss of planting space for 4 street trees due to the proposed lot layout, and calls for a condition for a fee in lieu of planting for that loss, prior to final plat approval.</p> <p>A hammer-head turnaround is proposed to serve the subject site and is shown in an easement on the property on the south side of SW Comus Street, 11007 SW 32<sup>nd</sup> Avenue, which is in the same ownership as the subject site. As noted in the Fire Bureau response (Exhibit E.4), the turnaround is warranted due to the length of the street and number of lots that will be served and the lack of a developed through street connection.</p> <p>Initially, the applicant had not demonstrated that an acceptable turnaround would be provided (Exhibit E.4). Now, based on a revised response from the Fire Bureau, the applicant has obtained an approved Fire Code Appeal for the proposed turnaround (Exhibit E.4.b and E.4.c). Therefore, with the application of the conditions set forth in the revised Fire Bureau response (Exhibit E.4.b), the proposed turnaround and the proposed street improvements will include features to ensure a sufficient fire department access is provided.</p> <p>Accordingly, with the conditions outlined in the responses from PBOT, Fire and Urban Forestry (Exhibit E.2, E.4.b, and E.6), the design of the street and the turnaround will be adequately sized and include the necessary elements; therefore, these criteria will be met.</p>
<p><b>33.654.130.A - Utilities (defined as telephone, cable, natural gas, electric, etc.)</b></p>
<p>The project plans show an 8-foot wide public utility easement is proposed along the south frontage of each lot. This criterion is met.</p>

**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.

**Existing Development:** The site is currently vacant, so the division of the property will not cause the structures to move out of conformance or further out of conformance with any development standard applicable in the R10 zone. Therefore, this land division proposal can meet the requirements of 33.700.015.

**OTHER TECHNICAL REQUIREMENTS**

Technical decisions have been made as part of this review process. These decisions have been made based on other City Titles, adopted technical manuals, and the technical expertise of appropriate service agencies. These related technical decisions are not considered land use actions. If future technical decisions result in changes that bring the project out of conformance

with this land use decision, a new land use review may be required. The following is a summary of technical service standards applicable to this preliminary partition proposal.

<b>Bureau</b>	<b>Code Authority and Topic</b>
Development Services/503-823-7300 <a href="http://www.portlandonline.com/bds">www.portlandonline.com/bds</a>	Title 24 – Building Code, Flood plain Title 10 – Erosion Control, Site Development Administrative Rules for Private Rights-of-Way
Environmental Services/503-823-7740 <a href="http://www.portlandonline.com/bes">www.portlandonline.com/bes</a>	Title 17 – Sewer Improvements 2008 Stormwater Management Manual
Fire Bureau/503-823-3700 <a href="http://www.portlandonline.com/fire">www.portlandonline.com/fire</a>	Title 31 Policy B-1 – Emergency Access
Transportation/503-823-5185 <a href="http://www.portlandonline.com/transportation">www.portlandonline.com/transportation</a>	Title 17 – Public Right-of-Way Improvements Transportation System Plan
Urban Forestry (Parks)/503-823-4489 <a href="http://www.portlandonline.com/parks">www.portlandonline.com/parks</a>	Title 11 –Trees
Water Bureau/503-823-7404 <a href="http://www.portlandonline.com/water">www.portlandonline.com/water</a>	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.

**Bureau of Environmental Services:** Prior to removal of the existing easement on Lots 5 and 6, the applicant must provide the following to the satisfaction of BES, to ensure services are maintained to the parcels established in LUR 94-00429:

- Sanitary Services: *Prior to final plat approval, the applicant must verify through scope, dye test, or other means that each lot in the original land division has an existing sanitary sewer connection (or future route of connection) that does not depend on the private easement proposed to be removed.*
- Stormwater Management: *Prior to final plat approval, the applicant must verify through scope or other means that each lot in the original land division has an existing storm system that does not depend on the private easement proposed to be removed.*

Alternatively, if the applicant retains the easement, then the applicant must amend the current easement to ensure adequate protection for the trees within and adjacent to the easement, as discussed in Criterion B, Trees.

**Fire Bureau:** The applicant must meet the requirements of the Fire Bureau (Exhibit E.4.b) in regards to fire department turnaround, including an emergency vehicle access easement and maintenance agreement for “no parking” signs and removal of illegally parked vehicles; grades; turning radius; driving surface; fire flow/water supply; addressing; residential sprinklers for Lots 1-8; and any Fire Code Appeal requirements.

These requirements are based on the 2019 Oregon Fire Code and the technical standards of Title 31 and Fire Bureau Policy B-1.

## CONCLUSIONS

The applicant has proposed an 8-lot subdivision, as shown on the attached preliminary plan (Exhibit C.1). The primary issues identified with this proposal are: tree preservation, right-of-way dedication and improvements, fire department access, and removal of or modifications to an existing easement. At the time of the initial staff report, the applicant had not demonstrated the fire department access requirements were met, and a staff recommendation of denial was issued. Based on the revised Fire Department response and the related Fire Code Appeal (Exhibits E.4.b and E.4.c), the off-site turnaround has now been approved. Therefore, as discussed in this report,

the relevant standards and approval criteria have been met, or can be met with conditions. As such, this proposal can be approved.

### **TENTATIVE STAFF RECOMMENDATION**

*(May be revised upon receipt of new information at any time prior to the Hearings Officer decision)*

**Approval** of a Preliminary Plan for an 8-lot subdivision, that will result in 8 standard lots, as illustrated with Exhibit C.1, subject to the following conditions:

**A. The final plat must show the following:**

1. The applicant shall meet the street dedication requirements of the City Engineer for SW Comus Street. The required right-of-way dedication must be shown on the final plat.
2. A recording block for each of the legal documents such as maintenance agreement(s), acknowledgement of special land use conditions, or Declarations of Covenants, Conditions, and Restrictions (CC&Rs) as required by Conditions B.9 and B.10 below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: "A Declaration of Maintenance Agreement for (name of feature) has been recorded as document no. \_\_\_\_\_, Multnomah County Deed Records."

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

#### **Streets**

1. The applicant shall meet the requirements of the City Engineer for right-of-way improvements along the site's street frontage; and for the fire turnaround within an easement to the City of Portland, in accordance with the conditions outlined in Fire Code Appeal 23885 and Exhibit E.4.b, the applicant shall submit an application for a Public Works Permit and provide plans and financial assurances to the satisfaction of the Portland Bureau of Transportation, the Bureau of Environmental Services and the Fire Bureau for required street frontage and fire turnaround 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 B.4.
2. An Emergency Vehicle Access Easement, granted to the City of Portland, shall be shown over the entirety of the fire access turnaround to the satisfaction of the Fire Bureau.
3. The applicant shall submit an application for a Site Development Permit for mass grading and related site development improvements *not associated with the new public street, or* the applicant shall provide a letter confirming the onsite grading will be limited to the public works improvements until time of future development on the lots. The plans must be in substantial conformance with Exhibit C.4 or C.5, depending on the option chosen, and must show root protection zones of the trees to be preserved per Condition C.1.
4. The applicant shall obtain a BDS Permit to install tree protection and document the limits of disturbance for grading. This may be shown on the Site Development Permit required under Condition C.2 or, if no Site Development is required, a separate Zoning Permit must be obtained. 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.4 or C.5) and include:
  - Tree Protection consistent with Conditions C.1 and C.2.
  - Construction limits of disturbance.
  - The temporary staging and stockpile areas.

- 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**

5. The applicant shall meet the requirements of the Water Bureau for providing financial assurances for the water main extension in SW Comus Street.

### **Required Legal Documents**

6. The applicant shall execute an Easement and Maintenance Agreement for the Emergency Vehicle Access Easement to the City of Portland for the fire access turnaround located on private property. The agreement must acknowledge the limitations on the easement areas to the satisfaction of the beneficiary service agencies. The easement and maintenance agreement must be reviewed by the City Attorney, Portland Fire Bureau, Portland Bureau of Transportation, and the Bureau of Development Services, and approved as to form, prior to recording. The approved easement must be recorded prior to final plat approval.
7. The applicant shall execute an Acknowledgement of Tree Preservation Land Use Conditions that notes tree preservation requirements that apply to Lots 1-8. 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.
8. The applicant shall execute an Acknowledgement of Special Land Use conditions, requiring residential development on Lots 1-8 to contain internal fire suppression sprinklers, to the satisfaction of the Fire Bureau. The acknowledgment shall be referenced on and recorded with the final plat.

### **Other requirements**

9. The applicant shall pay into the City Tree Preservation and Planting Fund [Street Trees – permanent loss of planting space] a Fee in Lieu of Planting four 1.5-inch caliper street trees. Payment must be made to the Bureau of Development Services, which administers the fund for the Parks Bureau.
10. Prior to removal of the existing easement on Lots 5 and 6, the applicant must provide the following to the satisfaction of BES, to ensure sanitary and stormwater management services are maintained to the adjacent parcels approved through LUR 94-00429:
  - Sanitary Services: Prior to final plat approval, the applicant must verify through scope, dye test, or other means that each parcel approved in LUR 94-00429 has an existing sanitary sewer connection (or future route of connection) that does not depend on the private easement proposed to be removed; and
  - Stormwater Management: Prior to final plat approval, the applicant must verify through scope or other means that each parcel approved in LUR 94-00429 has an existing storm system that does not depend on the private easement proposed to be removed.

Or, in the event the easement on the subject site is retained for the parcels in LUR 94-00429, the tree plan and arborist report, required per Condition C.1, must be amended to include measures to protect all trees located within the easement area and the trees that have any portion of their root protection zones in the easement area, and the related maintenance agreement must be amended accordingly, to the satisfaction of BDS.

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

1. Any grading and development on Lots 1-8 shall be in conformance with the Tree Preservation Plan (Exhibit C.9) and the applicant's arborist report (Exhibit A.4.b) or the applicant's amended arborist report, per Condition B.12. 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.
2. Prior to any grading activities for the fire turnaround at 11007 SW 32<sup>nd</sup> Avenue, the applicant shall show any tree removal and protection of trees on that site complies with Title 11 requirements.
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. Permits for residential structures on Lots 1-8 must include residential sprinkler plans for review by the Plumbing Department for the Bureau of Development Services at the time of permit application.
5. If there is a standard that needs to be verified with the final plat and the applicant could request a Fire Code appeal, then the applicant will be required to meet any requirements identified through a Fire Code Appeal. Please refer to the final plat approval report for details on whether or not this requirement applies.

**Procedural Information.** The application for this land use review was submitted on October 28, 2019, and was deemed complete at the applicant's request on April 27, 2020.

*Zoning Code Section 33.700.080* states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on October 28, 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 35 days, as stated in Exhibit A.3. Unless further extended by the applicant, **the 120 days will expire on: September 29, 2020.**

**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 recommendation 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.

**This report is not a decision. The review body for this proposal is the Hearings Officer who will make the decision on this case.** This report is a recommendation to the Hearings Officer by the Bureau of Development Services. The review body may adopt, modify, or reject this recommendation. The Hearings Officer will make a decision about this proposal within 17 days of the close of the record. Your comments to the Hearings Officer can be mailed c/o the Hearings Officer, 1900 SW Fourth Ave., Suite 3100, Portland, OR 97201, faxed to 503-823-4347 or e-mailed to [HearingsOfficeClerks@portlandoregon.gov](mailto:HearingsOfficeClerks@portlandoregon.gov), or testify during the hearing. Please see link to instructions on how to testify at the top of this staff report or contact the Hearings Office at 503-823-7307 or the email listed above.

You will receive mailed notice of the decision if you write a letter received before the hearing or testify at the hearing, or if you are the property owner or applicant. This Staff Report will be posted on the Bureau of Development Services website. Look at [www.portlandonline.com](http://www.portlandonline.com). On the left side of the page use the search box to find Development Services, then click on the Zoning/Land Use section, select Notices and Hearings. Land use review notices are listed by the District Coalition shown at the beginning of this document. If you are interested in viewing information in the file, please contact the planner listed on the front of this staff report. The planner can provide information over the phone or via email. Please note that due to COVID-19 and limited accessibility to files, only digital copies of material in the file are available. A digital copy of the Portland Zoning Code is available on the internet at <http://www.portlandonline.com/auditor/index.cfm?c=28197>

**Appeal of the decision.** The decision of the Hearings Officer may be appealed to City Council, who will hold a public hearing. 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.

**Who can appeal:** You may appeal the decision only if you write a letter which is received before the close of the record for the hearing, if you testify at the hearing, or if you are the property owner/applicant. Appeals must be filed within 14 days of the decision. **Appeals must be filed within 14 days of the decision. An appeal fee of \$3.100.00 will be charged.**

**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.**

Planner's Name: Kate Green

Date: July 31, 2020

**EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement:
  - 1. Initial Submittal
  - 2. Revised Submittal, May 26, 2020
    - a. Arborist Report
  - 3. Timeline Extensions, May 1, 2020 and May 26, 2020
  - 4. Request to Postpone Hearing
    - a. Memo
    - b. Revised Arborist Report and Tree Plan
    - c. Timeline Extension
- B. Zoning Map (attached):
- C. Plans & Drawings:
  - 1. Preliminary Plat (attached)
  - 2. Site and Utility Plan
  - 3. Existing Conditions, Demolition, Tree Removal, Tree Preservation
  - 4. Grading Plan-street (attached)
  - 5. Grading Plan-lots (attached)
  - 6. SW Comus Street Profile
  - 7. Aerial Photo
  - 8. Cover Sheet
  - 9. Revised Tree Preservation Plan (attached)
- 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
    - a. Fire Code Appeal
    - b. Revised Fire Bureau response
    - c. Second Fire Code Appeal
  - 5. Site Development/Bureau of Development Services
  - 6. Urban Forestry/Parks
  - 7. Life Safety/Bureau of Development Services
- F. Letters: (none received)
- G. Other:
  - 1. Original LUR Application
  - 2. Expedited Land Use Form
  - 3. Letter to applicant re: incomplete application
  - 4. Correspondence to/from applicant
- H.

**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).**