



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

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Date: September 21, 2021
To: Interested Person
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NOTICE OF A TYPE II_x DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

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

CASE FILE NUMBER: LU 17-140551 LDS

GENERAL INFORMATION

Applicant: Michael Susak | (503) 888-2233
6663 SW Beaverton-Hillsdale Hwy. #194 | Portland, OR 97221

Owner: Damir Karin | Dk Homes LLC
PO Box 90277 | Portland, OR 97209

Site Address: 2721 SE 101st Ave
Legal Description: BLOCK 87 LOT 2, PLYMPTON AC & PLAT 2 & 3
Tax Account No.: R665206060
State ID No.: 1S2E09AA 04800
Quarter Section: 3340
Neighborhood: Powellhurst-Gilbert, contact pgnaboard@gmail.com
Business District: Midway, contact info@midwaybusiness.org.
District Coalition: East Portland Neighborhood Office, contact at 503-823-4550.
Plan District: Johnson Creek Basin
Zoning: R5a (Single Family Residential 5,000 with "a" Alternative Design Density Overlay Zone)

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

PROPOSAL:

The applicant is proposing a 5-lot subdivision for detached housing for this 31,356 square foot interior lot. The existing development will remain on Lot 1. A private street will serve the new homes. The lots will range in area from 3,272 to 5,779 square feet. Off-street parking is proposed for the new homes and visitor parking will be provided in the private street. Frontage improvements (sidewalk and planter strip) are required to be installed along SE 101st Avenue. The applicant is not proposing to preserve any trees on the site.

This subdivision proposal is reviewed through a Type II_x procedure because: (1) the site is in a residential zone; (2) four to ten dwelling units are proposed, not including accessory dwelling units (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 6 units of land (5 lots and 1 tract). 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 site is a ~31,000 square foot interior lot developed with a detached house constructed in 1939. The area surrounding the site is generally zoned for and developed with single-family residential homes. Pockets of commercial development are located along SE Clinton St and SE Division St to the north. I-205 highway is located ~1000 feet to the west.

Infrastructure:

- **Streets –**
The site has approximately 81 feet of frontage on SE 101st Avenue. There is one driveway entering the site that serves the existing house. At this location SE 101st Avenue is classified as a Local Service Street for all modes in the Transportation System Plan (TSP). According to City GIS, SE 101st Ave is improved with 32-ft of paving and a curb only, no sidewalk, within a 50-ft wide right-of-way (ROW). Tri-Met provides transit service approximately 650 feet from the site at SE Division Street via Bus #2.
- **Water Service –** There is an existing 6-inch CI water main in SE 101st Avenue. The existing house is served by a 5/8-inch metered service from this main.
- **Sanitary Service -** There is an existing 8-inch PVC sanitary sewer main and a 4-inch sanitary sewer pressure main line in SE 101st Avenue.
- **Stormwater Disposal –** There is no public storm-only sewer currently available to this property.

Zoning:

Residential 5,000 – The R5 zone is intended to foster the development of single-dwelling residences on lots having a minimum area of 3,000 square feet, with minimum width and depth dimensions of 36 and 50 feet, respectively. Newly created lots must have a maximum density of 1 lot per 5,000 square feet of site area.

Alternative Design Density Overlay Zone (33.405) – The “a” overlay is intended to allow increased density that meets design compatibility requirements. It focuses development on vacant sites, preserves existing housing stock, and encourages new development that is compatible with the surrounding residential neighborhood. This proposal is not using provisions of the “a” overlay.

Johnson Creek Basin Plan District – The Johnson Creek Basin plan district provides for the safe, orderly, and efficient development of lands which are subject to a number of physical constraints, including significant natural resources, steep and hazardous slopes, flood plains, wetlands, and the lack of streets, sewers, and water services.

Land Use History: City records indicate there are 3 prior land use reviews for this site.

- **LUR 04-097247:** 5 lot subdivision proposal. The application expired.
- **LUR 05-160059:** 5 lot subdivision proposal. The application was withdrawn.
- **LUR 07-120287:** 5 lot subdivision. The preliminary proposal was approved, but the final plat application expired.

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

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on **June 15, 2018**. 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.

Criterion	Code Chapter/Section and Topic	Findings: Not applicable because:
C	33.631 - Flood Hazard Area	The site is not within the flood hazard area.
D	33.632 - Potential Landslide Hazard Area	The site is not within the potential landslide 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.
J	33.640 - Streams, Springs, Seeps and Wetlands	No streams, springs, seeps or wetlands are evident on the site.
	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.D - Partial rights-of-way	No partial public streets are proposed or required.

Applicable Approval Criteria are:

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

Findings: Chapter 33.610 contains the density and lot dimension requirements applicable in the RF through R5 zones. Based on the applicant’s survey, the site area is 31,365 square feet. The maximum density in the R5 zone is one unit per 5,000 square feet. Minimum density is one unit per 5,000 square feet based on 80 percent of the site area.

A new street is proposed, therefore the maximum density is based on 85 percent of the site area and minimum density is based 68 percent of the site area. The site has a maximum density of 5 units and a minimum required density of 4 units. The applicant is proposing 5 single dwelling lots. The density standards are therefore met.

The lot dimensions required and proposed 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)
R5 Zone	3,000	8,500	36	50	30
Lot 1	5000		52.44	98	52.44
Lot 2	3,312		50.03	52.44	84.39
Lot 3	3,217		59.3	52.44	108.19
Lot 4	3,270		56.7	52.43	129.97
Lot 5	4,986		80.95	67.47	66.2

* 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.

To satisfy these requirements, the applicant must provide a tree plan that demonstrates, to the greatest extent practicable, the trees to be preserved provide the greatest environmental and aesthetic benefits for the site and the surrounding area. The tree plan must also show that trees are suitable for preservation, considering the health and condition of the tree and development impacts anticipated. Tree preservation must be maximized, to the extent practicable, while allowing for reasonable development considering the intensity of development allowed in the zone and site constraints, including existing utility easements and requirements for services and streets.

Trees that are healthy, native and non-nuisance species, 20 or more inches in diameter and in tree groves are the highest priority for preservation. Additional considerations include trees that are slower growing native species, buffering natural resources, preventing erosion and slope destabilization and limiting impacts on adjacent sites.

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

In order to identify which trees are subject to these requirements, the applicant provided a tree survey (Exhibit C.2) that shows the location and size of trees on and adjacent to the site. The applicant also provided an arborist report (Exhibit A.16) that identifies each tree, its condition and suitability for preservation or its exempt status, and specifies a root protection zone and tree protection measures for each tree to be preserved.

Based on this information, 1 tree, a 40" Douglas Fir, is subject to the preservation requirements of this chapter. The applicant is proposing to retain the existing house and install

a private street along the north side of the site to serve new lots to the west of the house. In this case, retaining the existing development on the site dictates the layout for the private street and new lots. It is not possible to save the 40" Douglas Fir and still install the new private street to serve the proposed subdivision.

The applicant proposes to mitigate for tree removal with a combination of planting trees on the site and making a payment into the City Tree Preservation and Planting Fund. The Title 11 tree density standards will require that trees be planted on the lots at the time of building permit. The applicant proposed the following planting plan to demonstrate that 5 additional mitigation trees can be accommodated on the site, in addition to the trees that will be required to satisfy Title 11 requirements, without jeopardizing the overall health of the trees as they mature (trees planted for mitigation cannot count toward Title 11 density requirements). The proposed mitigation trees will be either conifer or native species.

Mitigation proposal:

Lot	Area	Title 11 Density trees	33.630 mitigation trees
1	5,000	2 large	2
3	3,217	1 large and 1 small	1
5	4,986	2 large	2

The applicant is required to mitigate for the full 40" of on-site tree diameter that was required to be preserved. Typically, mitigation credit is provided at a rate of 1.5" per new tree. The applicant has proposed to plant native and/or conifer species, which better meet the approval criteria that prioritize native trees, have a higher likelihood of survival due to their suitability to the local climate, and will provide higher quality habitat for urban wildlife. Given these benefits it is reasonable to provide additional mitigation credit for planting native and conifer species. At a rate of 2" of credit per tree, planting 5 mitigation trees represents 10" of tree diameter. With the proposed tree planting and a payment to the Tree Planting and Preservation Fund for 30 inches (currently \$450 per inch), the mitigation proposal is acceptable for removal of 40" of on-site trees.

This mitigation will be consistent with the purpose of the tree preservation regulations, since it will provide for the installation of other trees that will contribute to the general beauty and natural heritage of the City, if not directly on the site, and help to absorb air pollutants and contamination; provide buffering from noise and wind; provide visual screening from the adjacent properties; filter stormwater runoff and the reduce the possibility for erosion; and as mentioned previously, the native trees will provide quality habitat to support wildlife.

In order to ensure the mitigation is provided, the applicant must plant 2 mitigation trees on Lot 1 and make a payment to Tree Planting and Preservation Fund for 30 inches prior to final plat approval. Installation of the mitigation trees must be documented with a zoning or building permit. The applicant must plant 3 additional mitigation trees, one on Lot 3 and two on Lot 5, at the time of building permit approval.

In addition, the applicant's arborist report has identified 2 trees on adjacent sites that are within 15 feet of potential disturbance area on the proposed lots (trees #3 and #5). In order to protect tree #3, a 32" western red cedar located 4 feet away from the NW corner of the site, the arborist recommends a 12-foot root protection zone (measured from the lot lines of Lot 5) during construction of the new home on Lot 5. The arborist recommends arborist supervision for excavation within 18 feet of tree #5, a 24" Norway maple (10 feet from the north lot line of the site). These protection measures are shown on Exhibit C.1.

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

G. Clearing, Grading and Land Suitability. The approval criteria of Chapter 33.635, Clearing, Grading and Land Suitability must be met.

Findings:***Clearing and Grading***

The regulations of Chapter 33.635 ensure that the proposed clearing and grading is reasonable given the infrastructure needs, site conditions, tree preservation requirements, and limit the impacts of erosion and sedimentation to help protect water quality and aquatic habitat.

In this case, the site is relatively flat, and is not located within the Potential Landslide Hazard Area. However a new street and associated utilities are proposed as part of the land division, which will require minor grading on the site. The applicant has submitted a Preliminary Grading Plan (Exhibit C.3) that depicts the proposed work, including existing and proposed elevation contours and undisturbed areas consistent with the root protection zones of trees to be protected during site development and construction of the new home on Lot 5, as explained in Section B above.

The proposed clearing and grading shown on Exhibit C.3 represents a minimal amount of change to the existing contours and drainage patterns of the site to provide for a level street surface. The contour changes proposed 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. Stormwater runoff from the new street and lots will be appropriately managed by drywells to assure that the runoff will not adversely impact adjacent properties (see detailed discussion of stormwater management later in this report).

The clearing and grading proposed is sufficient for the construction of the new street and the preparation of the lots, without being excessive. The limits of disturbance are the site boundaries, with the exception of the NW corner of the site where the root protection zone of the off-site tree is located. This disturbance area will allow for a reasonable maneuvering area for earth-moving equipment needed to level the street and an adequate area to stockpile excess material.

The clearing and grading plan does not indicate show topsoil storage, or a stockpile area, but there is ample room on the site to locate soil stockpiles. A condition of approval will require the clearing and grading plan submitted with the Site Development permit indicate the location of stockpile areas.

As shown above, the Preliminary Grading Plan meets the approval criteria. The Site Development Section of the Bureau of Development Services requires that the applicant apply for a Site Development Permit for the construction of the proposed private street. The permit application must include a final clearing and grading plan that is consistent with the preliminary clearing and grading plan approved with the land division and shows the location of topsoil storage and stockpile areas. With a condition of approval that the applicant's final clearing and grading plan is consistent with the preliminary clearing and grading plan with the changes noted above, this criterion is met.

Land Suitability

The site is currently in residential use, and there is no record of any other use in the past. Although the site is currently connected to the public sanitary sewer, there are 2 historic cesspools on the site. The City has no record that these facilities were ever decommissioned. Prior to final plat approval, the applicant must meet the requirements of the Site Development Section of the Bureau of Development Services for decommissioning these facilities. With a condition requiring final inspection for a decommissioning permit, the new lots can be considered suitable for new development, and this criterion is met.

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

Findings: The following tract is proposed:

- Tract A: Private Street

With a condition that the proposed tract be owned in common by the owners of Lots 1 through 5 or a Homeowner's Association, this criterion can be met.

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

- Sewer easement to the City of Portland over the private street tract.
- A Public Access Easement is required over the sidewalk portion of the private street.

As stated in Section 33.636.100 of the Zoning Code, a maintenance agreement will be required describing maintenance responsibilities for the tract described above and facilities within that area. The easements within the street tract noted above must be acknowledged within the maintenance agreement. This criterion can be met with the condition that maintenance agreements are prepared and recorded with the final plat. In addition, the plat must reference the recorded maintenance agreements with a recording block for each agreement, substantially similar to the following example:

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

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

I. Solar access. If single-dwelling detached development is proposed for the site, the approval criteria of Chapter 33.639, Solar Access, must be met.

Findings: The solar access regulations encourage variation in the width of lots to maximize solar access for single-dwelling detached development and minimize shade on adjacent properties. All of the proposed lots are on the south side of an east-west oriented street. Lot 1 will be on the corner, and will be wider than the other lots. This criterion is therefore met.

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

Findings: The transportation system must be capable of safely supporting the proposed development in addition to the existing uses in the area. Evaluation factors include: street capacity and level-of-service; vehicle access and loading; on-street parking impacts; the availability of transit service and facilities and connections to transit; impacts on the immediate and adjacent neighborhoods; and safety for all modes. Mitigation may be necessary to reduce impacts.

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

The minimal expected added vehicle trips (4 AM peak hour trip/ 4 PM peak hour trip/ 40 total new daily trips) will not adversely impact the operations of area intersections. There does not appear to be a significant demand for on-street parking in the area - homes along SE 101st Ave and beyond include driveways/garages which can accommodate multiple vehicles. The proposed partition will not have any effect to transit service (the closest Tri-Met service [Division/#2] is ~650 feet north of the subject site) or any other mode of travel. Pedestrian travel will be enhanced by this proposal since the applicant will be constructing a standard sidewalk corridor along the site's frontage. The transportation system is capable of safely supporting the proposed development in addition to existing uses in the area.

PBOT has reviewed and concurs with the information supplied and available evidence. Standard sidewalk corridor improvements will be required to serve the proposed development (see criterion L. 33.654). These criteria are met.

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

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

<p>33.651 Water Service standard – See Exhibit E.3 for detailed bureau comments.</p>
<p>The Water Bureau has indicated that service is available to the site, as noted on page 2 of this report.</p> <p>The existing home can continue to use the existing water service. Service to Lots 2 to 5 must be installed within Tract A. The water service standards of 33.651 have been verified.</p>
<p>33.652 Sanitary Sewer Disposal Service standards – See Exhibit E.1 for detailed comments.</p>
<p>The Bureau of Environmental Services has indicated that service is available for Lot 1, as noted on page 2 of this report.</p> <p>As a result of the proposed land division, the existing sewer connection that serves the house on Lot 1 may cross over Tract A to reach the sewer main in SE 101st Avenue. Prior to final plat approval the applicant must demonstrate to the satisfaction of BES that the sewer lateral serving the existing structure is located entirely within Lot 1. If modifications to the lateral are necessary to re-route the lateral so that it is located entirely within Lot 1, the applicant must obtain finalized plumbing permits for this work prior to final plat approval. With this condition, the sanitary sewer service standards of 33.652 have been verified.</p> <p>In order to provide service to Lots 2 to 5 the applicant must obtain a public works permit to extend the public sewer to this site prior to final plat approval.</p> <p>With the conditions of approval listed above, the sanitary sewer service standards of 33.652 are verified.</p>
<p>33.653.020 & .030 Stormwater Management criteria and standards – See Exhibits E.1</p>
<p>No stormwater tract is proposed or required. Therefore, criterion A is not applicable.</p> <p>The applicant has proposed the following stormwater management methods:</p> <ul style="list-style-type: none"> • Private Street: Stormwater will be directed to a sedimentation manhole located in the private street that will remove suspended solids, and from there to a drywell facility, also located in the street tract, that will infiltrate the water into the ground. BES has indicated conceptual approval of the proposed location and size of these facilities. • Public Street Improvements: As a condition of this land use approval, the Bureau of Transportation requires the applicant to improve the frontage of the site to City standards (discussed earlier in this report). A new sidewalk is required, but the curb already exists. BES has indicated that the sidewalk must be constructed so that it will slope towards the planter strip, allowing the stormwater runoff from the sidewalk to be deposited in a vegetated area, which meets the requirements of the Stormwater Management Manual. • Lots 2 to 5: Stormwater from these lots will be directed to individual drywells that will treat the water and slowly infiltrate it into the ground. The applicant submitted infiltration testing that shows the site has adequate infiltration rates and each of these lots has sufficient area for a stormwater facility that can be adequately sized and located to meet setback standards, and accommodate water from a reasonably-sized home. BES has indicated conceptual approval of the drywells. • Lot 1 (the lot with the existing house): The submitted plans do not indicate where the stormwater for the existing house is directed. Prior to final plat approval, the

applicant must document the location of the stormwater disposal for the existing house, to the satisfaction of BES. The applicant must modify the stormwater system for the existing house as necessary to comply with Stormwater Management Manual prior to final plat approval. Any required plumbing permits must have final inspection approval.

33.654.110.B.1 Through streets and pedestrian connections

33.654.130.C Future extension of proposed dead-end streets & 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 north-south streets. However, the properties abutting the site to the west, north and south are already developed and are not dividable, and are not configured in a manner that would easily allow the further extension of a street from the site. So, although the optimum spacing criteria would indicate the need for a new public north-south through street or pedestrian connection at this site, there is no practicable opportunity to provide them in this land division. In addition, no street connections have been identified in the vicinity of this site in the Portland Master Street Plan. This criterion is met.

As discussed above, the adjacent sites to the west, north and south of the site are already developed and are not further dividable. There is no practicable opportunity to provide a through connection from the site, so there is no need to extend the proposed dead-end street to the boundary of the site. This criterion is met.

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

The proposal includes a private dead-end street, which will be located in the new street tract. The proposed dead-end street exceeds a length of 200 feet. This street length is appropriate because the private dead-end street will serve 5 lots and includes a turnaround that allows for two-way movement in the roadway. Fire standards will be met with the installation of sprinklers on the new homes on lots 2 to 5. As discussed under the findings for through streets above, a new public east-west or north-south through street is not required for this proposal, and could not be extended outside of the site because all of the abutting properties are developed and are not further dividable. This criterion is met.

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

In reviewing this land division, Portland Transportation relies on accepted civil and traffic engineering standards and specifications to determine if existing street improvements for motor vehicles, pedestrians and bicyclists can safely and efficiently serve the proposed new development.

At this location, the City's Transportation System Plan classifies SE 101st Ave as a Local Service street for all modes. According to City GIS, SE 101st Ave is improved with 32-ft of paving and a curb only, no sidewalk, within a 50-ft wide r.o.w. In this case Portland Transportation has determined that curb and sidewalk improvements must be made in order to meet City standards ensure that safe pedestrian travel is possible to and from the proposed development.

For Local Service streets abutting R5-zoned sites, the City's Pedestrian Design Guide requires an 11-ft wide sidewalk corridor comprised of a 0.5-ft curb, 4-ft wide furnishing zone, 6-ft wide sidewalk and 0.5-ft wide frontage zone. This 11-ft wide standard sidewalk corridor will need to be constructed along the frontage of Proposed Lot 1 prior to Final Plat approval via a Minor Improvement Permit. The driveway access onto the proposed private street will trigger a separate Minor Improvement Permit from PBOT in relation to the Site Development Permit for the private street. To accommodate these improvements additional right-of-way

must be dedicated along the frontage of the site (2-feet). With these improvements, four additional dwellings can be safely served by this existing street without having any significant impact on the level of service provided.

The applicant has proposed that a 318-foot-long, 28.5-foot-wide tract with a hammerhead turn around is sufficient to accommodate the expected users for the 5-lot subdivision. The *Administrative Rules for Private Rights of Way* are the standards that govern the construction of private streets. These rules recommend a tract width of 36 feet, which would accommodate a 26-foot wide roadway width. In this case, the applicant received approval of a building code appeal (ID# 18396) to reduce the roadway width to 20 feet with “no parking” signs installed along both sides of the street. In addition to the 20-foot wide paved roadway, the 28.5 foot wide tract contains a 7-foot wide sidewalk corridor with tree wells for street trees, one standard 6-inch curb, one mountable curb, and a 1-foot setback between the street and the adjacent property to the north. Three on-street parking spaces will be accommodated with parking bays in the private street tract. In this proposal, the applicant will be disposing of stormwater from the private street to a sedimentation system then to a drywell.

With the conditions described above and the approved building code appeal reducing the roadway width, the proposed tract width is sufficient to accommodate the elements of a street that are adequate for 5 lots by the *Administrative Rules* governing private streets.

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

33.654.120.C.3.c. Approval criterion for turnarounds.

A hammer-head turn-around is proposed to serve the private street tract. The configuration of the turn-around has been reviewed by the Site Development Section of the Bureau of Development Services. Site Development has indicated that the size and configuration of the turn-around are adequate to provide safe vehicular and bicycle movement for the 5 new lots that will use private street. A sidewalk is required along one side of the street that is consistent with the alternative layout option shown in Figure 14 of the *Administrative Rules*, which will provide for safe and convenient pedestrian access along the private street and from the interior of the land division to the abutting sidewalk along the frontage of SE 101st Avenue. The proposed street tract has been sized to provide adequate room for the turn-around. This criterion is met.

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

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

DEVELOPMENT STANDARDS

Development standards that are not relevant to the land division review, have not been addressed in the review. 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 that will remain after the land division. The existing development on the site will remain and be located on Lot 1. The division of the property may not cause the structures to move out of conformance or further out of conformance to any development standard applicable in the R5 zone. Per 33.700.015, if a proposed land division will cause conforming development to move out of conformance with any regulation of the zoning code,

and if the regulation may be adjusted, the land division request must include a request for an adjustment (Please see section on Other Technical Standards for Building Code standards.)

In this case, there are two Zoning Code standards that relate to existing development on the site:

- **Minimum Setbacks** – The existing house identified to remain on the site must meet the required Zoning Code setbacks from the proposed new lot lines. Alternatively, existing buildings must be set back from the new lot lines in conformance with an approved Adjustment or other Land Use Review decision that specifically approves alternative setbacks. The existing house will be ~25 feet from the new property line to the west, and ~7.5 feet to the new property line to the north. Therefore, the required setbacks are being met. To ensure this standard continues to be met at the final plat stage, the final plat must be accompanied by a supplemental plan showing the surveyed location of the existing building relative to the adjacent new lot lines.
- **Title 11 Tree Density Standard** – This site has a minimum tree density requirement per 11.50.050 that is currently met on the site. Due to the land division, and associated tree removal, Lot 1 with existing house will no longer meet this standard. Lot 1 is 5,000 square feet, therefore 2,000 square feet of tree area is required. Prior to final plat approval, the applicant must meet this requirement by either planting trees on Lot 1 or making the equivalent payment into the City Tree Preservation and Planting Fund. Tree planting must be documented with a finalized Zoning Permit.

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

OTHER TECHNICAL REQUIREMENTS

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

Bureau	Code Authority and Topic
Development Services/503-823-7300 www.portlandonline.com/bds	Title 24 – Building Code, Flood plain Title 10 – Erosion Control, Site Development Administrative Rules for Private Rights-of-Way
Environmental Services/503-823-7740 www.portlandonline.com/bes	Title 17 – Sewer Improvements 2008 Stormwater Management Manual
Fire Bureau/503-823-3700 www.portlandonline.com/fire	Title 31 Policy B-1 – Emergency Access
Transportation/503-823-5185 www.portlandonline.com/transportation	Title 17 – Public Right-of-Way Improvements Transportation System Plan
Urban Forestry (Parks)/503-823-4489 www.portlandonline.com/parks	Title 11 –Trees
Water Bureau/503-823-7404 www.portlandonline.com/water	Title 21 – Water availability

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

- The applicant is required to make improvements to the proposed private street. Several conditions are required, including provision of plans and financial assurances, initiating a building permit, and providing a maintenance agreement. In addition to the approval criteria of Title 33, these requirements are also based on the technical standards of Title 17 and Title 24.
- The applicant must meet the requirements of the Fire Bureau, as stated in the approval for Fire Code Appeal 24699, in regards to recording an Acknowledgement of Special Land Use Conditions that requires the provision of internal fire suppression sprinklers on Lots 2-5 and Class A roof covering and non-combustible siding on Lots 4 and 5. These requirements are based on the technical standards of Title 31 and Fire Bureau Policy B-1.
- The applicant must meet the requirements of Urban Forestry for loss of street tree planting area and street tree planting in the new planter strip adjacent to Lot 1 prior to final plat approval. This requirement is based on the standards of Title 11.

CONCLUSIONS

The applicant has proposed a 5-lot subdivision with a new private street, as shown on the attached preliminary plan (Exhibit C.1). As discussed in this report, the relevant standards and approval criteria have been met, or can be met with conditions related to existing development, utilities, tree protection, and installation of the new private street.

With conditions of approval that address these requirements this proposal can be approved.

ADMINISTRATIVE DECISION

Approval of a Preliminary Plan for a 5-lot subdivision, that will result in 5 standard lots and a new private street, as illustrated with Exhibits C.1 to C.4, subject to the following conditions:

A. Supplemental Plan. Three copies of an additional supplemental plan shall be submitted with the final plat survey for Land Use Services and BES review and approval. That plan must portray how the conditions of approval listed below are met. In addition, the supplemental plan must show the surveyed location of the following:

- Any buildings or accessory structures on the site at the time of the final plat application;
- Any driveways and off-street vehicle parking areas on the site at the time of the final plat application;
- The location of the sewer lateral serving the existing structure on Lot 1;
- The location of the stormwater disposal system serving the existing structure on Lot 1; and
- Any other information specifically noted in the conditions listed below.

B. The final plat must show the following:

1. The applicant shall meet the street dedication requirements of the City Engineer for SE 101st Avenue. The required right-of-way dedication must be shown on the final plat.
2. A public sanitary sewer easement, granted to the City of Portland, shall be shown over the relevant portions of the private street, to the satisfaction of the Bureau of Environmental Services.
3. The private street tract shall be named, with approval from the City Engineer, and noted on the plat as "Tract A: Private Street (*name of street*)".
4. A Public Access Easement must be shown over the sidewalk portion(s) of the street tract.
5. A recording block for each of the legal documents such as maintenance agreement(s), acknowledgement of special land use conditions, or Declarations of Covenants, Conditions,

and Restrictions (CC&Rs) as required by Conditions C.11 to C.13 below. The recording blocks shall, at a minimum, include language substantially similar to the following example: “A *Declaration of Maintenance Agreement for (name of feature)* has been recorded as document no. _____, Multnomah County Deed Records.”

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

Streets

1. The applicant shall meet the requirements of the City Engineer for right of way improvements along the site’s street frontage of Lot 1. The applicant must obtain an approved Right Of Way permit from the Portland Bureau of Transportation to install the required sidewalk corridor.
2. The applicant shall submit an application for a Site Development Permit for construction of the private street and related site development improvements. Street design plans must be prepared by, or under the direction of, an Oregon licensed civil engineer. The plans must be in substantial conformance with Exhibit C.1 and the Private Street Administrative Rule.
3. The applicant shall furnish a financial guarantee of performance, as approved by the Bureau of Development Services, for 125 percent of the estimated construction cost for the private street and all required site development improvements. The applicant shall provide an engineer’s estimate of the costs of performance including the costs for temporary erosion control measures required during construction. The financial guarantee of performance shall be accompanied by a performance agreement with the Bureau of Development Services to complete the required improvements.
4. The applicant shall provide a clearing and grading plan with the Site Development permit required for the private street described in Condition C.2. The clearing and grading plan must substantially conform to the Preliminary Grading Plan approved with this decision (Exhibit C.3) with the following additions:
 - It must show root protection zones of the off-site trees to be protected, as shown on Exhibit C.1;
 - It must show stockpile areas;
 - It must note that topsoil must be stockpiled on site and re-used to the extent practicable.

Utilities

5. The applicant shall meet the requirements of the Bureau of Environmental Services (BES) for extending a public sewer main in the private street tract. Prior to final plat approval, the applicant must complete one of the following to the satisfaction of BES:
 - Through a Public Works Permit submit approved engineered plans, provide a financial guarantee, pay all outstanding fees, and provide a signed permit document.
 - Construct the public sewer and pay associated fees under a BES Simplified Permit.

Existing Development

6. The applicant shall meet the requirements of the Site Development Section of the Bureau of Development Services for decommissioning the septic system on the site.
7. The applicant must demonstrate to the satisfaction of BES that the sewer lateral serving the existing structure is located entirely within Lot 1. If modifications to the

lateral are necessary, the applicant must obtain finalized plumbing permits for this work prior to final plat approval.

8. The applicant must meet one of the following requirements of BES for the stormwater system associated with the existing house to remain on Lot 1:

Demonstrate that the stormwater disposal system for the existing structure(s) to remain on Lot 1 is adequate, to the satisfaction of BES; or

Modify the stormwater disposal system serving the existing structure on Parcel 1 according to BES and SWMM requirements. If modifications to the system are required, the applicant must obtain finalized plumbing permits for this work prior to final plat approval.

9. The applicant must meet the requirements of Urban Forestry to plant 1 street tree in the planter strip on SE 101st Avenue adjacent to Lot 1. The applicant must contact Urban Forestry at 503-823-TREE (8733) prior to selecting trees to discuss the species of trees that are permitted and to obtain the planting permit.
10. The applicant must meet the tree density standard of 11.50.050 on Lot 1 with the existing house by either planting trees on the lot or making the equivalent payment into the City Tree Preservation and Planting Fund. Additionally, the applicant must plant 2 mitigation trees on Lot 1 as part of the mitigation proposal addressing 33.630. The mitigation trees are required to be planted in addition to trees planted to meet Title 11 Density requirements, and must be native or conifer species. Installation of the trees must be documented with a zoning or building permit.

Required Legal Documents

11. The applicant shall execute a Maintenance Agreement for the private street tract. The agreement shall assign common, undivided ownership of the tract to the owners of Lots 1 to 5 and include provisions assigning maintenance responsibilities for the tract and any shared facilities within that area. The agreement must also acknowledge all easements granted within the street tract, the beneficiaries of those easements, and the limitations on the easement areas to the satisfaction of the beneficiary service agencies. The maintenance agreement must be reviewed by the City Attorney and the Bureau of Development Services, and approved as to form, prior to final plat approval.
12. The applicant shall execute an Acknowledgement of Special Land Use conditions requiring residential development on Lots 4 and 5 to contain internal fire suppression sprinklers, noncombustible siding and Class A roofing, per Fire Bureau Appeal no 24699. The acknowledgement shall be referenced on and recorded with the final plat.
13. The applicant shall execute an Acknowledgement of Special Land Use conditions, requiring residential development on Lots 2 and 3 to contain internal fire suppression sprinklers, per Fire Access requirements (automatic exception). The acknowledgement shall be referenced on and recorded with the final plat.

Other requirements

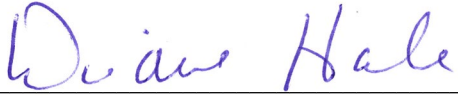
14. The applicant must pay into the City Tree Preservation and Planting Fund [Private Property Trees – Planting and Establishment, fee in Lieu (per inch)] the amount equivalent to 30 inches of trees. Payment must be made to the Bureau of Development Services, who administers the fund for the Parks Bureau. Payment must be completed prior to any tree removal, or prior to Final Plat approval, whichever would occur first.
15. The applicant must pay into the City Tree Preservation and Planting Fund [Street Trees – Fee in Lieu of Planting and Establishment (per inch)] the amount equivalent to 1.5

inches of trees for loss of street tree planting area. Payment must be made to the Bureau of Development Services, who administers the fund for the Parks Bureau.

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

1. The applicant must protect off-site trees 3 and 5 during construction of the private street and the new home on Lot 5, per the applicant's arborist report (Exhibit A.6) and as shown on Exhibit C.1. An arborist contract must be submitted with the application for the site development permit for the new private street to ensure that arborist supervision is provided for tree 5. Encroachment into the specified root protection zones beyond that shown on Exhibit C.1 may occur if it meets the Tree Protection Specifications of 11.60.030.
2. The applicant must plant 3 mitigation trees, one on Lot 3 and two on Lot 5, at the time of building permit approval for the new homes on those lots. The mitigation trees are required to be planted in addition to trees planted to meet Title 11 Density requirements, and must be native or conifer species.
3. The first lift of paving for the private street shall be installed prior to issuance of any permits for residential construction.
4. Prior to finalizing the Site Development permit for the private street, a plumbing permit must be obtained and finalized for the new utility lines that will be constructed beneath the paved surface of the new street.
5. Prior to final inspection approval of residential building permits, sidewalks within the private street tract must be constructed.
6. The applicant will be required to install residential sprinklers in the new houses on Lots 2 through 5 to the satisfaction of the Fire Bureau. The new homes on Lots 4 and 5 must have Class A roofing and non-combustible siding per Fire Code Appeal No. 24699.

Staff Planner: Diane Hale

Decision rendered by:  **on September 17, 2021**
By authority of the Director of the Bureau of Development Services

Decision mailed September 21, 2021

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

Procedural Information. The application for this land use review was submitted on March 28, 2017, and was determined to be complete on September 25, 2017.

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 March 28, 2017.

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 waived the 120-day timeline (see Exhibit G.4).

Note: some of the information contained in this report was provided by the applicant.

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

Conditions of Approval. If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term “applicant” includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

Appealing this decision. This decision may be appealed, and if appealed a hearing will be held. The appeal application form can be accessed at <https://www.portlandoregon.gov/bds/45477>. Appeals must be received by 4:30 PM on **October 5, 2021**. **The completed appeal application form must be emailed to LandUseIntake@portlandoregon.gov and to the planner listed on the first page of this decision.** If you do not have access to e-mail, please telephone the planner listed on the front page of this notice about submitting the appeal application. An appeal fee of \$250 will be charged. Once the completed appeal application form is received, Bureau of Development Services staff will contact you regarding paying the appeal fee. The appeal fee will be refunded if the appellant prevails. There is no fee for Office of Community and Civic Life recognized organizations for the appeal of Type II and IIX decisions on property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. Please contact the planner listed on the front page of this decision for assistance in filing the appeal and information on fee waivers. Please see the appeal form for additional information.

If you are interested in viewing information in this file, please contact the planner listed on the front of this notice. The planner can email you documents from the file. A fee would be required for all requests for paper copies of file documents. Additional information about the City of Portland, and city bureaus is available online at <https://www.portland.gov>. A digital copy of the Portland Zoning Code is available online at <https://www.portlandoregon.gov/zoningcode>.

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283 or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Hearings Officer an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

Recording the land division. The final land division plat **must** be submitted to the City **within three years** of the date of the City’s final approval of the preliminary plan. This final plat must be recorded with the County Recorder and Assessors Office after it is signed by the

Planning Director or delegate, the City Engineer, and the City Land Use Hearings Officer, and approved by the County Surveyor. **The approved preliminary plan will expire unless a final plat is submitted within three years of the date of the City's approval of the preliminary plan.**

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Applicant's original submittal and plans
 - 2. Applicant's response, August 23, 2017
 - 3. Applicant's response, June 13, 2018
 - 4. Applicant's response, June 19, 2018
 - 5. Applicant's response, July 12, 2018
 - 6. Applicant's response, January 31, 2019
 - 7. Applicant's response, August 21, 2019
 - 8. Applicant's response, December 27, 2019
 - 9. Applicant's response, March 10, 2020
 - 10. Applicant's response, August 13, 2020
 - 11. Applicant's response October 10, 2020
 - 12. Applicant's response, April 7, 2020
 - 13. Applicant's response, June 22, 2021
 - 14. Applicant's response, August 30, 2021
 - 15. Stormwater Report
 - 16. Arborist report
 - 17. Neighborhood Contact Materials
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Preliminary Plat/Private Street Section/Preliminary Site Plan (attached)
 - 2. Existing Conditions Map
 - 3. Grading Plan
 - 4. Utility Plan
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Portland Bureau of Environmental Services
 - 2. Portland Bureau of Transportation Engineering and Development Review
 - 3. Portland Water Bureau
 - 4. Fire Department
 - 5. Site Development Review Section of BDS
 - 6. Life Safety Section of BDS
 - 7. Urban Forestry
- F. Correspondence:
- G. Other:
 - 1. Original LU Application
 - 2. Expedited Land Division Form
 - 3. Incomplete Letter
 - 4. Extension Forms

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).