



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

Dan Ryan, Commissioner  
Rebecca Esau, Director  
Phone: (503) 823-7300  
Fax: (503) 823-5630  
TTY: (503) 823-6868  
[www.portland.gov/bds](http://www.portland.gov/bds)

**Date:** November 5, 2021  
**To:** Interested Person  
**From:** Shawn Burgett, Land Use Services  
503-865-6734 / [shawn.burgett@portlandoregon.gov](mailto:shawn.burgett@portlandoregon.gov)

## **NOTICE OF A TYPE II<sub>x</sub> 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 21-002089 LDS**

#### **GENERAL INFORMATION**

**Applicant:** Sarah Radelet  
Strata Land Use Planning  
Po Box 90833  
Portland, OR 97290  
[Sarah@stratalanduse.com](mailto:Sarah@stratalanduse.com)

**Representative:** Eric Evans  
Emerio Design, LLC  
6445 SW Fallbrook Pl #100  
Beaverton OR 97008

**Owners:** Michael Luk & Macey Howard  
4701 SW Miles Ct  
Portland, OR 97219

**Site Address:** Adjacent to 4701 SW Miles Ct

**Legal Description:** ACRES 0.49, SECTION 19 1S 1E  
**Tax Account No.:** R991196690  
**State ID No.:** 1S1E19AD 2101  
**Quarter Section:** 3724

**Neighborhood:** Maplewood Neighborhood Association contact Claire Carder at [scherzcarder@comcast.net](mailto:scherzcarder@comcast.net)

**Business District:** None  
**District Coalition:** In care of Office of Community and Civic Life, contact Shuk Arifdjanov at [shuk.arifdjanov@portlandoregon.gov](mailto:shuk.arifdjanov@portlandoregon.gov).

**Plan District:** None

**Zoning:** R7/R7c (Single Family Residential 7,000 sq. ft. with "c" Environmental Conservation overlay zone)

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

**Proposal:**

The applicant is proposing a 2-lot land division on the 24,216 sq. ft. vacant lot. The lots will measure between 7,040 and 7,070 sq. ft in area. The applicant is also proposing an Environmental Resource Tract (labeled Tract A on the site plan) within the Resource Area of the Environmental zone (area on the site shown with “c” overlay on attached Zoning Map) that will measure 6,677 sq. ft. in area. In addition, the applicant is proposing an Open Space/Tree Preservation Tract (labeled Tract B on site plan) within the 25’ deep Transition Area at the edge of the Environmental Zone. The 25’ deep Transition Area separates the Resources Area of the Environmental Zone from the portion of the site located outside the Environmental Zone where Lots 1 and 2 are proposed (both lots are located completely outside the Environmental zone).

Tracts A and B will be commonly owned by Lots 1 and 2. No development can occur within Tract A based on this review (Environmental Review would be required, which has not been requested under this review). The attached site plan shows conceptual building footprints on each lot. The applicant is proposing to protect all the trees on the site within the rear of each lot and within Tract’s A and B as shown on attached Development Plan.

This subdivision proposal is reviewed through a Type IIX procedure because: (1) the site is in a residential zone; (2) two or three lots are proposed; 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 four units of land (two lots and two tracts). 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.**

This project must also meet Section 33.430.160, Standards for Land Divisions and Planned Developments in Environmental Overlay Zones.

## FACTS

**Site and Vicinity:** The site is vacant and mostly forested primarily with a mixture of western red cedars, big leaf maples and Douglas Fir trees. The site slopes downward towards the north and rear of the site which is located within the Environmental conservation zone. The site abuts a large multi-unit residential development to the north and has detached single family homes on large lots abutting its east and western property boundary.

**Infrastructure:**

- **Streets** –The site has approximately 101 feet of frontage on SW Miles Court. The site is currently vacant. At this location, SW Miles Place is classified as a City Walkway and Local Service Street for all modes in the Transportation System Plan (TSP). Tri-Met provides transit service approximately 530 feet from the site at SW 45th Avenue via Bus 1. SW Miles Place has a 16-foot paved roadway within a 28-foot right-of-way with no room for parking on either side of roadway. The right of way has no curbs, sidewalks or planter areas.
- **Water Service** – There is an existing 4-inch CI water main in SW Miles Place.

- **Sanitary Service** - There is an existing 8-inch CSP public sanitary sewer line in SW Miles Place.
- **Stormwater Disposal** – There is no public storm-only sewer currently available to this property.

**Zoning:** The R7 designation is one of the City’s single-dwelling zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing.

The “c” overlay is intended to conserve important environmental features and resources while still allowing compatible development. New development and exterior modifications to existing development must meet environmental standards or are subject to environmental review.

**Land Use History:** City records indicate the prior land use reviews for this site:

- PR 20-118892 LC (Lot Confirmation) was approved on 2/24/21 and confirmed subject site as Tract 1 per review.

**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 23, 2021**. 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 outside of environmental zones.
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.C.3.c - Turnarounds	No turnarounds are proposed or required.

	33.654.120.D - Common Greens	No common greens are proposed or required.
	33.654.120.E - Pedestrian Connections	No pedestrian connections are proposed or required.
	33.654.120.F - Alleys	No alleys are proposed or required.
	33.654.120.G - Shared Courts	No shared courts are proposed or required.
	33.654.130.B - Existing public dead-end streets and pedestrian connections	No public dead-end streets or pedestrian connections exist that must be extended onto the site.
	33.654.130.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 RF through R5 zones. Based on the applicant's survey, the site area is 24,216 square feet. The maximum density in the R7 zone is one unit per 7,000 square feet.

Because the site is within the potential landslide hazard area there is no minimum density. The site has a maximum density of 3 units. The applicant is proposing two single dwelling lots. The density standards are therefore met.

The lot dimensions required and proposed are shown in the following table:

	<b>Min. Lot Area (square feet)</b>	<b>Max. Lot Area (square feet)</b>	<b>Min. Lot Width* (feet)</b>	<b>Min. Depth (feet)</b>	<b>Min. Front Lot Line (feet)</b>
<b>R7 Zone</b>	4,200	12,000	40	55	30
Lot 1	7,070 SF		50.36'	140'	50.36'
Lot 2	7,040 SF		50.42'	139'	50.42'

\* 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.

Overall, the findings above show that the applicable density and lot dimension standards are met. Additionally, the lot lines are straight and side lot lines are perpendicular to the street.

Accordingly, this criterion is met.

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

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

Tree preservation must be maximized, to the extent practicable, while allowing for reasonable development considering the intensity of development allowed in the zone and site constraints, including existing utility easements and requirements for services and streets.

In order to identify which trees are subject to these requirements, the applicant provided a tree survey (Exhibit C.1) that shows the location and size of trees on and adjacent to the site. The applicant also provided an arborist report (Exhibit A.3) 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. It should be noted that the trees located within the Environmental Zone (outside the 25' transition area) within proposed Tract A (Environmental Resource Tract) will all be preserved and are not subject to this criterion. In addition, all the trees located in Tract B (25' environmental zone transition area) will also be preserved. Tract B is a Tree preservation tract located in the transition area of the Environmental zone which will be discussed below. The preservation of existing trees in Tract A and B will result in the preservation of 637" of tree diameter as noted in applicant's arborist report in addition to the tree diameter protected outside the environmental zone as discussed below.

Based on the applicants arborist report (Exhibit A.3), 45 trees are located on the site outside the Environmental zone providing a total of 579 inches of non-exempt tree diameter and are subject to this criteria.

The trees proposed for preservation outside the environmental zone are in good condition and include native/non-nuisance species. 9 of the non-exempt trees are 20 or more inches in diameter. The proposed root protection zones for the trees to be retained will allow for the type of development anticipated in the R7 zone if the recommendations of the arborist report are followed and will not conflict with any existing utility easements, proposed services or site grading.

The applicant proposes to retain 4 of the 9 (44 percent) non-exempt Trees on the site that are 20" or larger and 174 of the 579 inches (30 percent) of total tree diameter of trees outside the Environmental zone on Lots 1 and 2. This proposal does not comply with Options 1-3 shown below:

*Option 1: Preserve all of the trees that are 20 or more inches in diameter and at least 20 percent of the total tree diameter on the site.*

*Option 2: Preserve at least 75 percent of the trees that are 20 or more inches in diameter and at least 25 percent of the total tree diameter on the site.*

*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.*

In this case, several of the 20" or larger diameter trees located outside the Environmental zone and subject to this criterion are not suitable for preservation since they are located in the only reasonable area available on the site to construct new homes on Lots 1 and 2. The trees best suited for preservation are located in the rear of Lots 1 and 2.

The applicant's arborist has recommended arborist oversight for several protected trees on Lots 1 and 2 where allowances within the Root Protection Zones (RPZ) of these trees must meet the requirements of the Arborist who is utilizing the "performance path" which allows the RPZ of a tree to be reduced if approved by a certified arborist and the recommendations of the arborist are followed. In this case, the arborist recommendation requires arborist oversight for encroachments into the RPZ of trees 62, 75, 76 and 77 which will become a condition of approval. The applicant will be required to produce a contract documenting that a certified arborist has been hired to provide oversight as proposed.

In order to mitigate for not meeting the minimum preservation requirement noted above the applicant has proposed to protect all the trees (13 trees) located within the transition area of the Environmental Zone within a Tree Preservation Tract (labeled Tract B) which will measure 2,520 sq. ft. in area and protect 206” of additional tree diameter that are not subject to this criterion (trees located in Environmental Zone are not subject to this criteria). Tract B will be owned in common between lots 1 and 2.

This mitigation will be consistent with the purpose of the tree preservation regulations, since it will provide for the preservation 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;
- Reduce energy demand and urban heat island impacts;
- Filter stormwater runoff and the reduce the possibility for erosion;
- Help with slope stabilization;
- The native trees will provide habitat to support wildlife;
- The edible species will provide food for people and wildlife.

In order to ensure the mitigation is provided, the applicant must provide a tract and maintenance agreement that outlines the tree preservation requirements within Tract B.

In addition, the applicant’s arborist report has also identified 14 trees on adjacent sites that are within 15 feet of potential disturbance area on the proposed lots. In order to protect the off-site trees from construction impacts, the arborist recommends arborist oversight near offsite trees numbered 1, 8, 44, 45 and 85 if encroachment exceeds the prescriptive path as defined by Title 11, which is reflected on the tree preservation plan (Exhibits A.3 and C.1).

In order to ensure that future owners of the lots are aware of the tree preservation requirements, the applicant must record an Acknowledgement of Tree Preservation Land Use Conditions, at the time of final plat. The acknowledgement must identify that development on Lots 1 and 2 and within Tract B must be carried out in conformance with the Tree Preservation Plan (Exhibit C.1) and the Arborist Report (Exhibit A.3). The document must also reference the tree preservation requirement that applies to Tract A for clarity.

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

**D. Potential Landslide Hazard Area. If any portion of the site is in a Potential Landslide Hazard Area, the approval criteria of Chapter 33.632, Sites in Potential Landslide Hazard Areas, must be met.**

**Findings:** The entire site is located within the Potential Landslide Hazard Area. The approval criteria state that the lots, buildings, services, and utilities must be located on parts of the site that are suitable for development in a manner that reasonably limits the risk of a landslide affecting the site, adjacent sites, and sites directly across a street or alley from the site.

In order to evaluate the proposal against this criterion, 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, A.7 and A.10).

Site Development, the division of Development Services that makes determinations regarding soil stability, has evaluated the Landslide Hazard Study and concurred with the recommendations. The report indicates that the site is suitable for development and the proposal reasonably limit the risk of landslide potential on the site and other properties in the vicinity given the soil composition, topography, and other risk factors.

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: In this case, the site slopes down towards the north (back of lot) and is located in the Potential Landslide Hazard area. Therefore, the clearing and grading associated with preparation of the lots must occur in a way that will limit erosion concerns and assure that the preserved trees on the site will not be disturbed.

A Preliminary Clearing and Grading Plan (exhibit C.3) was submitted with the land division application and the applicant submitted a Landslide Hazard Report (Exhibits A.2, A.7 and A.10) that describes how clearing and grading should occur on the site to minimize erosion risks. The applicant also provided a Tree Protection Plan (Exhibit C.1) that designates areas on the site where grading should not occur in order to protect the roots of the trees on the site that will be preserved, and an arborist report (Exhibit A.3) that further discusses grading on the site.

As shown above the clearing and grading anticipated to occur on the site can meet the approval criteria. At the time of building permit submittal on the individual lots a clearing, grading and erosion control plan will be submitted to the Site Development Section of the Bureau of Development Services. Site Development will review the grading plan against the applicant's Landslide Hazard Study as well as any additional geotechnical information required at the time of permit submittal to assure that the grading will not create any erosion risks. In addition the plans will be reviewed for compliance with the applicant's tree preservation plan and arborist report. This criteria is met.

Land Suitability: The site is currently vacant, and there is no record of any other use in the past. No known geological hazards exist beyond the potential landslide hazard area addressed under Criterion D above. Therefore, there are no anticipated land suitability issues and the new lots can be considered suitable for new development. This criterion is met.

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

**Findings:** The following tracts are proposed:

- Tract A: Open Space (Environmental Resource Area)
- Tract B: Open Space (Tree Preservation)

With a condition that the proposed tracts be owned in common by the owners of Lots 1 and 2, this criterion can be met.

The following easements are required for this land division:

- A Private Sanitary Sewer Easement is required across the relevant portions of Lot 2, for a sanitary sewer lateral connection that will serve Lot 1.

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

*“A Declaration of Maintenance agreement for (name of feature) has been recorded as document no. \_\_\_\_\_, Multnomah County Deed Records.”*

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

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

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

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

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

The applicant provided a written narrative addressing the transportation approval criteria above. The application proposes to divide the existing 24,216 square foot vacant lot into two parcels plus two open space / environmental tracts. The remaining two proposed developable lots will measure between 7,040 and 7,070 square feet in area, fronting onto SW Miles Ct. and each provide on-site parking. Because the applicant has chosen to pay into the Local Transportation Infrastructure Charge (LTIC) in lieu of constructing Right-of-Way (ROW) improvements, access to the site will likely be accommodated by an asphalt approach, which will be required to meet all Title 17 requirements at time of building permit. This will leave sufficient space for approximately two on-street parking spaces within the unimproved portion of SW Miles Ct. Therefore, given SW Miles Ct is a dead-end street with limited parcels accessing the street, PBOT finds that neighborhood livability and on-street parking demand is expected to be negligible in this case.

Based upon trip generation estimates from the Institute of Transportation Engineers (ITE) Trip Generation Manual, 10<sup>th</sup> Edition, each new proposed parcel is projected to generate one additional morning and one evening trip, for approximately ten daily trips. The net addition of two single-family residences added to the transportation system resulting from the development will not adversely impact the operations of area intersections, as the proposed development adds negligible trips to the transportation network compared to existing volumes in the area and is consistent with the zoning of the property. Therefore, the transportation system is capable of safely supporting the proposed development in addition to existing uses in the area and capable of maintaining acceptable levels of service.

The subject site is located within half mile of two TriMet bus services: #1-Vermont located at the intersection of SW 51<sup>st</sup> and SW Custer, and #45-Garden Home to the south. For bicycles, SW Maplewood is an identified City Bikeway, with the remaining low-volume street environment in the area provides for safe and comfortable riding conditions to connect to larger nearby facilities located elsewhere in the neighborhood. There is not an established sidewalk network in the area, however due to the limited number properties which abut the street, the minimal traffic



volumes of the street is consistent with a shared street environment in which a narrower roadway forces all users to a shared space which facilitates slower speed, eye contact, and provides for a safer pedestrian environment. Therefore, the resulting proposed development will not negatively impact transit access or other transportation modes and will maintain the established low-volume pedestrian environment.

PBOT had the following requirement:

**ROW Improvement Requirements:** Title 17.88.020.A outlines two thresholds in which frontage improvements and/or right-of-way dedication are necessary to accommodate the City's pedestrian corridor standards; an increase in Trips/Occupancy, including the construction of a new dwelling unit, and/or a Significant Alteration (as defined as 17.88.010), which includes a replacement home. The creation of new Parcels constitutes an increase in occupancy; thus, frontage improvements are required. *The applicant has indicated they will pay LTIC in lieu of required frontage improvements. Payment, street and storm waivers, and dedication will be a condition of Final Plat approval*

Based on the condition not above, this criterion is 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><b>33.651 Water Service standard</b> – See Exhibit E.3</p> <p>The Water Bureau has indicated that service is available to the site, as noted on page 3 of this report.</p> <p>The water service standards of 33.651 have been verified.</p>
<p><b>33.652 Sanitary Sewer Disposal Service standards</b> – See Exhibit E.1</p> <p>The Bureau of Environmental Services has indicated that service is available to the site, as noted on page 3 of this report.</p> <p>BES reviewed the proposed improvement and utility plan and the response is summarized below:</p> <p><i>Proposed Development:</i> The proposed lots will be served by a new connection to the sewer in SW Miles Ct within the frontage of Lot 2.</p> <p><i>Private Easements:</i> In order to access the public sewer in SW Miles Ct, the applicant must provide legal access across lot 2; per BDS, access should be provided through a private sewer easement. BES will review the easement to ensure that a route of sewer service has been provided for the benefit of Lot 1. A sanitary sewer easement is shown on the plans.</p> <p>To ensure the availability of sewer service to the benefit of Lot 1, a private sanitary sewer easement shall be shown and labeled over the relevant portions of Lot 2.</p> <p>With this condition, the sanitary sewer service standards of 33.652 have been verified.</p>
<p><b>33.653.020 &amp; .030 Stormwater Management criteria and standards</b> – See Exhibits E.1 &amp; E.5</p> <p>BES reviewed the applicant's proposed improvement and utility plan and storm report (exhibits A.8 and A.11) against the stormwater management approval criteria and standards, and determined that a stormwater management system can be designed that will provide adequate capacity and disposal for the expected amount of stormwater, as summarized</p>

below:

BES noted that “The LHS includes Open Pit infiltration test results of 1.1 inches per hour and concludes that onsite infiltration of stormwater runoff is not anticipated to contribute toward slope instability or landslide risk; therefore the applicant proposes to infiltrate runoff from the development via onsite stormwater chambers that can meet minimum setbacks as established in the facility design standards and Table 2-1 of the SWMM.” Site Development also had no concerns.

No stormwater tract is proposed or required.

The applicant has proposed the following stormwater management methods:

**Lots 1-2:** Stormwater from these lots will be directed to individual StormTech Chamber systems on each lot, BES has indicated conceptual approval of the proposed system.

BES determined the proposal is acceptable for reviewing the land division against the stormwater management approval criteria and standards.

### **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. Therefore, there should be a north-south through street provided in the vicinity of the site.

PBOT had the following comment:

Southwest Miles Ct is a dead-end street with connection via SW 48th Avenue to SW Maplewood Road. There are not opportunities for additional connectivity to the north of the subject site, given that that northern property is a condominium development. To the east is a religious institution; that property could potentially redevelop in the future, thus providing the potential for additional connectivity. Therefore, creating additional connections is not practical at this time.

In addition to PBOT’s comments above, the location of the environmental zone on the northern end of site and the topography would make a new of a new north-south street infeasible. So, although the optimum spacing criteria would indicate the need for an east-north-south through street or pedestrian connection at this site, there is no practicable opportunity to provide them in this land division.

The site is within the Portland Master Street Plan for the Southwest District and is consistent with the master street plan.

For the reasons described above, this criterion is met.

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

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.

For public streets, PBOT reviews the configuration of elements within the street right-of-way for consistency with city standards and specifications; and Urban Forestry addresses the retention and installation requirements for street trees. Urban Forestry had no concerns (Exhibit E.6).

PBOT had the following comment (Exhibit E.2):

At this location, the City's Transportation System Plan (TSP) classifies SW Miles Ct as a *Neighborhood Walkway, Local Service* for all remaining modes, which is improved with an approximate 16-ft wide paved roadway within a 28-ft wide Right-of-Way (ROW) which is lacking a curb and a pedestrian corridor.

**ROW Improvement Requirements:** Title 17.88.020.A outlines two thresholds in which frontage improvements and/or right-of-way dedication are necessary to accommodate the City's pedestrian corridor standards; an increase in Trips/Occupancy, including the construction of a new dwelling unit, and/or a Significant Alteration (as defined as 17.88.010), which includes a replacement home. The creation of new Parcels constitutes an increase in occupancy; thus, frontage improvements are required.

*The applicant has indicated they will pay LTIC in lieu of required frontage improvements. Payment, street and storm waivers, and dedication will be a condition of Final Plat approval.*

PBOT has no objection to the proposed Land Division, subject to the following conditions:

As condition of Final Plat Approval:

- Dedicate 9-ft of property along the SW Miles Ct. frontage.
- The applicant shall pay the Local Transportation Infrastructure Charge for SW Miles Ct. and execute street and stormwater waivers of remonstrance (for participation in future street and storm sewer improvements) prior to final plat approval.

This criterion is met, with the conditions of approval described above.

### **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-way can be provided on the final plat. At this time no specific utility easements adjacent to the right-of-way have been identified as being necessary. 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 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 R7 zone. Therefore, this land division proposal can meet the requirements of 33.700.015.

**Standards that apply to the land division.** In this case, there are several Zoning Code standards that apply to the proposed land division. The standards of Section 33.430.160 Standards for Land Divisions and Planned Developments apply to the proposal. Conditions have been included for requirements that apply at the time of final plat.

- Resource areas outside designated disturbance areas must be placed entirely within an environmental resource tract. The tract must be owned in common by all of the owners of the land division site, by a Homeowners' Association, by a public agency, or by a non-profit organization (33.430.160.E).

## 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.

- The applicant must meet the requirements of the Fire Bureau in regards to addressing requirements and recording an Acknowledgement of Special Land Use Conditions that requires the provision of internal fire suppression sprinklers on Lots 1 and 2 and non-combustible roofing per the approved Fire Code Appeal (#25106). These requirements are based on the technical standards of Title 31 and Fire Bureau Policy B-1.

## CONCLUSIONS

The applicant has proposed a 2-lot subdivision with an Environmental Resource Tract (Tract A) and Tree Preservation Tract (Tract B), 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.

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

## ADMINISTRATIVE DECISION

**Approval** of a Preliminary Plan for a 2-lot subdivision, that will result in 2 lots and 2 tracts as illustrated with Exhibits A.3 and C.1-C.3, 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 Miles Ct. The required right-of-way dedication must be shown on the final plat.
2. A private sanitary sewer easement, for the benefit of Lot 1, shall be shown and labeled over the relevant portions of Lot 2.

3. The Tree Preservation tract shall be noted on the plat as "Tract B: Open Space (Tree Preservation). A note must also be provided on the plat indicating that the tract will commonly owned and maintained by the owners of Lots 1 and 2.
4. The Environmental Resource tract shall be noted on the plat as "Tract A: Open Space (Environmental Resource Area). A note must also be provided on the plat indicating that the tract will commonly owned and maintained by the owners of Lots 1 and 2.
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 B.2-B.4 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 pay the LTIC payment as required by PBOT and complete street and storm sewer waivers of remonstrance (for future street and storm sewer improvements) as required by the City Engineer. Waiver forms and instructions will be provided to the applicant during the final plat review process.

**Required Legal Documents**

2. A Maintenance Agreement shall be executed for the easement described in Condition A.2 above. The agreement shall include provisions assigning maintenance responsibilities for the easement area and any shared facilities within that area, consistent with the purpose of the easement, and all applicable City Code standards. The agreement must be reviewed by the City Attorney and the Bureau of Development Services, and approved as to form, prior to final plat approval.
3. The applicant shall execute a Maintenance Agreement for Tract B (Tree Preservation tract) described in condition A.3 above. The agreement shall assign common, undivided ownership of the tract to the owners of Lots 1-2 and include provisions assigning maintenance and tree preservation responsibilities for the tract. 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.
4. A Maintenance Agreement shall be executed for Tract A, the Environmental Resource tract described in Condition A.4 above. The agreement must be reviewed by the City Attorney and the Bureau of Development Services, and approved as to form, prior to final plat approval. The agreement must also include:
  - a. assign common, undivided ownership of the tract to the owners of all lots, a homeowner's association or meet the requirements of 33.430.160.E;
  - b. include provisions for assigning maintenance responsibilities for the tract and trees and other vegetation with the tract;
  - c. include a description of allowed/prohibited activities consistent with Chapter 33.430;
  - d. include conditions of this land use approval that apply to the tract.
5. The applicant shall execute an Acknowledgement of Special Land Use conditions, requiring residential development on Lots 1 and 2 to contain internal fire suppression sprinklers and noncombustible roofing, per Fire Bureau Appeal no 25106. The acknowledgement shall be referenced on and recorded with the final plat.
6. The applicant shall execute an Acknowledgement of Tree Preservation Land Use Conditions that notes tree preservation requirements that apply to Lots 1 and 2, and

references the additional tree preservation required on the site within Tracts A and B. 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.

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

1. Development on Lots 1 and 2 shall be in conformance with the Tree Preservation Plan (Exhibit C.1) and the applicant's arborist report (Exhibit A.3). Specifically, trees numbered 60, 61, 62, 63, 75, 76, 77 on Lots 1 and 2 and all the trees within Tract B (Tree Preservation Tract) are required to be preserved, with the root protection zones indicated on Exhibit A.3. Note: no tree removal or development is allowed with Tract A (Environmental Resource Area) under this land use review.

Arborist oversight is required in correlation with any encroachments within the Root Protection zone (RPZ) of these trees as indicated on Exhibit A.3. A certified arborist must provide a letter and contract specifying that they will be onsite during the encroachment with the proposed RPZ of the trees utilizing the performance path and meeting the recommendations of the applicant's arborist report (Exhibit A.3) if encroachments are proposed that exceed the prescriptive path requirements of Title 11.

In addition, arborist oversight is required on Lots 1 and 2 if new development is proposed within the RPZ of trees located on adjacent properties numbered 1, 8, 44, 45, 48 and 86 that exceed the prescriptive path of Title 11 as specified in the Arborist report (A.3) and shown on Exhibit C.1.

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. The applicant must meet the addressing requirements of the Fire Bureau. The location of the sign must be shown on the building permit.
3. The applicant will be required to install residential sprinklers in the new houses on Lots 1 and 2 and non-combustible roofing per Fire Code appeal #25106 to the satisfaction of the Fire Bureau.
4. A geotechnical report will be required for development on Lots 1 and 2 to the satisfaction of the Site Development section of BDS.

**Staff Planner: Shawn Burgett**

**Decision rendered by:** S. Burgett **on November 3, 2021**  
By authority of the Director of the Bureau of Development Services

**Decision mailed November 5, 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 January 6, 2021, and was determined to be complete on June 9, 2021.

*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 January 6, 2021.

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 60 days (exhibits A.15 and A.16). Unless further extended by the applicant, **the 180 days will expire on: 12/6/21**

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

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

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

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

**Appealing this decision.** This decision may be appealed to the Hearings Officer, 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 11/19/21. The completed appeal application form must be emailed to [LandUseIntake@portlandoregon.gov](mailto: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. Applicants Narrative
  - 2. Geotechnical report
  - 3. Arborist Report (attached)
  - 4. Deeds
  - 5. Site Plans received 1/6/21
  - 6. Applicant resubmittal memo 6/9/21
  - 7. Geotechnical report dated 4/16/21
  - 8. Stormwater management report 6/2/21
  - 9. Applicant resubmittal memo 8/23/21
  - 10. Geotechnical report, stamp fixed 8/20/21
  - 11. Stormwater Management report 8/6/21
  - 12. Fire Flow
  - 13. Fire Code appeal submittal #25106
  - 14. Fire Code appeal approval
  - 15. 30-day extension to 120-day clock 7/29/21
  - 16. 30-day extension to 120-day clock 9/14/21
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Plat survey (attached)
  - 3. Grading Plan (attached)
  - 4. Existing conditions survey
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. a./b. Bureau of Environmental Services
  - 2. Bureau of Transportation Engineering and Development Review
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Site Development Review Section of BDS
  - 6. Bureau of Parks, Forestry Division
  - 7. Life Safety (No concerns)
- F. Correspondence: (None received)
- G. Other:
  - 1. Original LU Application/expedited land division acknowledgment
  - 2. Incomplete Letter 2/5/21
  - 3. BES RFC response
  - 4. PBOT RFC response
  - 5. Site Development RFC response

**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).**