

**BEFORE THE CITY COUNCIL**  
**FOR THE CITY OF PORTLAND, OREGON**

<b>In the Matter of the Appeal of the</b>	<b>)</b>	<b>FILE NO: LU 16-159330 LDS EN</b>
<b>Hearings Officer's Approval of</b>	<b>)</b>	
<b>EVERETT CUSTOM HOMES, INC.'S</b>	<b>)</b>	
<b>Application for Subdivision Approval</b>	<b>)</b>	
<b>and Environmental Compliance</b>	<b>)</b>	
<b>Review</b>	<b>)</b>	
<b>(Type III Proceeding)</b>	<b>)</b>	

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**HAYHURST NEIGHBORHOOD  
ASSOCIATION'S MEMORANDUM  
IN OPPOSITION TO 11-LOT  
SUBDIVISION, AS PROPOSED**

**SUBMITTED BY:**

**Peggy Hennessy, OSB #872505**  
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**Attorneys for the Hayhurst  
Neighborhood Association**

**June 22, 2017**

BEFORE THE CITY COUNCIL  
FOR THE CITY OF PORTLAND, OREGON

In the Matter of the Appeal of the	)	FILE NO: LU 16-159330 LDS EN
Hearings Officer's Approval of	)	
EVERETT CUSTOM HOMES, INC.'S	)	HAYHURST NEIGHBORHOOD
Application for Subdivision Approval and	)	ASSOCIATION'S MEMORANDUM
Environmental Compliance Review	)	IN OPPOSITION TO 11-LOT
(Type III Proceeding)	)	SUBDIVISION, AS PROPOSED

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**I. INTRODUCTION**

This memorandum is filed on behalf of the Hayhurst Neighborhood Association (hereinafter, referred to as "HNA"), in support of the appeal of the Hearings Officer's approval of the Applicant's 11-lot subdivision on environmentally constrained property. HNA is not opposed to residential development of the subject property *per se*. However, the Hearings Officer erred in finding that the proposed subdivision satisfies all of the mandatory approval criteria set forth in the Portland City Code ("PCC"). The current project, as proposed, violates the following approval standards:

- (1) **PCC 33.640.200**, which requires inclusion of onsite seeps and springs in an environmentally protected tract;
- (2) **PCC 33.630.200**, which requires preservation of healthy, native or non-nuisance trees that are 20 inches in diameter, to the extent practicable;
- (3) **PCC 33.641.020**, which requires demonstration that the transportation system [including all modes such as pedestrian and bicycle transportation] can safely support the new development *in addition to the existing uses* [The existing uses include bicycle and pedestrian paths recognized as part of the Safe Routes to School program]; and

(4) **PCC 33.430.250 (A)**, which requires that proposed development designs have the least significant detrimental impact to identified resources and functional values. This approval criterion further requires that there be no significant detrimental impact on resources and functional values in areas designated to be left undisturbed.

The adverse impacts of this project can be reduced by expanding the protected environmental tract to include all onsite seeps and springs (as required by PCC 33.640.200), eliminating the through street connection for SW Pendleton Street to preserve significant trees and to reduce impervious surfaces, protecting the bicycle and pedestrian paths to assure the continued safety of this designated safe route to Hayhurst Elementary School, and revising the storm water management plan to treat and redirect storm water to the existing wetlands. These project modifications may result in a reduction of the number of lots; however, there is no minimum density requirement for the site, the environmental protection is mandatory, and PCC 33.430.250 (A) (4) specifically allows reduction in the number of lots or units to protect environmental resources.

The burden of proof is on the Applicant to show compliance with each approval standard. Failure to satisfy a single mandatory approval criterion requires denial of the application. In this case, the Applicant has failed to demonstrate satisfaction of PCC 33.640.200, PCC 33.630.200, PCC 33.641.020, and PCC 33.430.250 (A). Accordingly, the hearings officer's approval of this 11-lot subdivision, as proposed, must be reversed. Alternatively, if the approval is upheld, the HNA proposes additional conditions which are necessary to bring the project into compliance with the applicable approval standards.

## **II. ARGUMENT**

### **A. The Hearings Officer Erred in Finding that the Mandatory Protection of Seeps and Springs under PCC 33.640 is Satisfied**

#### **1. Purpose and Application**

The purpose of the standards in PCC Chapter 33.640 is to ensure that important streams, seeps and springs that are not already protected by the Environmental Overlay Zones, are maintained in their natural state. PCC 33.640.010. The standards apply to all land divisions where a stream, spring, or seep on the site is outside of an Environmental Overlay Zone. PCC 33.640.020.

#### **2. Mandatory Protection**

Once a stream, spring, or seep located outside of an Environmental Overlay Zone has been identified, it must be preserved in a tract. 33.640.200 (A) (1) provides:

**Preservation in a tract.** Streams, springs, and seeps must be preserved in a tract as follows:

The edges of the tract must be at least 15 feet from the edges of the stream, spring, or seep. The edges of a seep or spring are determined through a wetland delineation, performed by an environmental scientist, and approved by BDS. If one or more wetland characteristics are absent from the resource, the delineation will be based on the wetland characteristics present. The edges of a stream are defined as the top-of-bank. Where the edge of the stream, spring, or seep is less than 15 feet from the edge of the site, the tract boundary will be located along the edge of the site.

This provision is stated in mandatory terms - the springs and seeps **must** be preserved in a tract. The Applicant contends that there are no streams, springs, or seeps located outside of the Environmental Conservation zone on the property and that this provision is inapplicable. However, there is substantial evidence, including expert testimony, in the record showing that



there are at least three springs which are located outside of the Environmental Conservation zone which have not been included within the boundaries of an environmental protection tract.

### **3. Evidence of Newly Discovered Seeps and Springs**

On March 1, 2017, Jennifer Antak, a Watershed Ecologist – Hydrologist who works for the city’s Bureau of Environmental Services (“BES”), conducted a site visit and noticed several springs flowing toward the delineated wetland. A copy of Ms. Antak’s March 7, 2017 memorandum is attached as Exhibit 1. In response to this new information, Stephanie Beckman, the Senior Planner on this case, *recommended denial* of the application, as proposed. She specifically found that:

There are outstanding questions about whether 33.640 applies. It should be noted that this issue could impact other approval criteria depending on changes needed to the site plan. To resolve this issue, staff requests that the applicant do the following:

- Survey the location of identified seeps in the field to determine if they are within or outside of the environmental overlay zone.
- Provide an evaluation by a qualified professional as to whether the identified features must be preserved based on the regulations of 33.640 and , if so, the appropriate location of the boundary and limit of disturbance; and
- Update the plans and other materials to respond to any changes required to the site plan.

A copy of Ms. Beckman’s March 7, 2017 memorandum is attached as Exhibit 2.

#### **a. Applicant’s Expert’s Response To Newly Discovered Spring Information.**

In response to the new information regarding seeps and springs outside of the Environmental Tract designated for protection, the Applicant submitted a statement from its consultant. They acknowledged that three of the BES-identified “springs” are outside of the EC

zone, but contended that the newly identified springs do not meet the City's definition of a "seep or spring" because, allegedly,

- they are not associated with an aquifer; and
- they do not discharge directly to a stream channel.

Anchor QEA March 22, 2017 Memorandum (Matt Kuziinsky and Greg Summers) at page 2. The then-applicable version of Section 33.910.030 of the PCC,<sup>1</sup> defined "seep or spring" as follows:

Seep or Spring: The point where an aquifer intersects with the ground surface and discharges water into a stream channel that flows into a wetland or other water body.

The Applicant's geotechnical engineer agreed with the Anchor QEA conclusion that the newly identified springs do not meet the definition of "seep or spring" because, in his opinion, the "source zone is not an aquifer." Hardman Memorandum at 2. However, further analysis of the meaning of the word "aquifer" and its use in this code section show that the springs clearly qualify for protection under PCC 33.640.200 (A).

**b. HNA's Expert's Findings and Analysis Support Confirmation of the Newly Discovered Springs.**

After reviewing the Applicant's submittals and visiting the subject property, HNA's expert hydrologist, Jonathan Rhodes, concluded that the springs do, indeed, qualify as "seeps or springs" under the City's own rules of construction. [Mr. Rhodes' full report is submitted with this memorandum.] Pursuant to PCC 33.910.010, words used in the zoning code have their normal dictionary meaning unless they are listed in PCC 33.910.030. Seeps and springs are listed in PCC

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<sup>1</sup> On March 31, 2017, the City revised the definition of Seep or Spring: An area where groundwater is discharged onto the land surface, creating either saturated soil conditions or visible flow at the land surface. As Jonathan Rhodes (HNA's expert hydrologist) explains out, the seeps and springs which have been identified as being outside of the environmental overlay zone qualify under both the former definition and the current definition of seep or spring. Rhodes Report, pages 2-3.

33.910.030, but the definition includes the term “aquifer,” which is not defined and must be considered under the dictionary definition and the context of the code provision. As Mr. Rhodes points out, based on common dictionary definitions as well as more technical handbook definitions in the field of geology,

The existence of a spring, which inherently involves stored water in permeable geologic materials being transmitted to surface, is diagnostic of the presence of an aquifer intersecting the ground surface. Rhodes Report, page 3.

Moreover, when taken in context, in light of the protective purposes of PCC Chapter 33.640 and consistent with the provisions of the Fanno Creek and Tributaries Conservation Plan, it is clear that the newly identified springs were found at the point where an aquifer intersects with the ground surface and discharges water into a stream channel that flows into the delineated wetland on the subject property. Therefore, the requirements of PCC 33.640 apply. Accordingly, the Applicant must expand the environmental protection tract to extend at least 15 feet beyond the newly discovered springs located outside of the EC zone.

The Fanno Creek Plan acknowledges that shallow seasonally-saturated aquifers commonly occur in the subject watershed. Thus, the newly found springs are likely fed by a shallow perched aquifer and those springs clearly drain into the delineated wetland. Rhodes Report, page 4.

During wet periods, the water discharged to the wetland flows into the stream channel on the southwest part of the site, which flows through a culvert into a tributary of Pendleton Creek, which flows into Fanno Creek, which is a water body. Rhodes Report, page 7. Therefore, the newly identified springs meet all elements of the applicable “seep or spring” definition:

**Seep or Spring:** The point where an aquifer intersects with the ground surface and discharges water into a stream channel that flows into a wetland or other water body.

Because there is substantial evidence in the record to support a finding that there are three newly identified springs located outside of the designated Environmental Conservation zone, those springs must be preserved in a tract. Furthermore, the edges of the tract must be at least 15 feet from the edge of the each spring. PCC 33.640.200 (A) (1). The current plan does not recognize or protect any of the newly discovered springs. Therefore, the Applicant failed to satisfy this mandatory approval criterion and the Hearings Officer's decision should be reversed.

**B. The Hearings Officer Erred in Finding that the Tree Preservation Requirements of PCC 33.630 are Met**

**1. Purpose and Application**

The purpose of the standards in PCC Chapter 33.630 is to provide flexibility in the land division process with the goal of preserving high value trees and mitigating for the loss of trees. PCC 33.630.010. The tree preservation approval criteria anticipate that an applicant may modify development standards and minimum density requirements in order to preserve trees. In this case, because the property is located within a Landslide Hazard Area, there are no applicable minimum density requirements; however, connectivity and road construction standards can, and should, be modified to protect significant trees which qualify for the highest priority for protection.

**2. Tree Preservation.**

PCC 33.630.200 (A) provides, *in relevant part*,

To the extent practicable, trees proposed for preservation provide the greatest benefits as identified in the purpose of this chapter. In general, healthy, native or non-nuisance trees that are 20 or more inches in diameter and tree groves, are the highest priority for preservation.

The site contains seven trees outside of the environmental protection overlay zone that qualify as trees of the “highest priority for preservation.” HO Decision, page 16. They are healthy, native, non-nuisance trees that are 20 or more inches in diameter. All seven trees are proposed for removal to accommodate construction of streets and homes. Notwithstanding the loss of all seven trees, the Hearings Officer found that tree preservation has been maximized “to the extent practicable” based, in part, on the specific development proposed and a “required street connection.” However, the record clearly shows that the Portland City Code does not mandate a connection of SW Pendleton Street through this property, nor does it require construction of a 54-foot right-of-way which would result in the loss of significant trees.

### **3. Connection of Existing Streets Does Not Trump Tree Preservation**

The site plan calls for connection of SW Pendleton Street through the site by development of a new 54-foot wide curved right-of-way. This connection would require extensive grading and removal of multiple trees which are to be given the “highest priority for preservation.”

The Hearings Officer found that the extension of SW Pendleton Street as a through street for this development is “required” because a potential street connection is shown on the City’s Master Street Plan (Map 11.11.6). However, the master plan is conceptual and the meaning of the chevrons/arrows on the map is unclear. Phil Healy, a transportation planner with over 20 years of experience, reviewed the proposed connection under PCC 33.654.010 requirements for Connectivity and Location of Rights-of-Way and concluded that:

1. there is not a compelling need for additional connectivity for cars in this area;
2. the new street would be spaced less than 200 feet from SW 48<sup>th</sup> Avenue (in violation of 33.654.110 (B) (1) (a)); and

3. it would be of minimal benefit compared to the impact to terrain and other natural resources on the site.

A copy of Mr. Healy's written testimony is attached as Exhibit 3. An HNA representative will address Mr. Healy's position in more detail through her testimony.

**4. Modified Standards Would Allow Reasonable Development of this Property.**

This property could be developed with modified development standards in order to preserve trees and protect the environmental resources. Mr. Healy has demonstrated that connectivity of SW Pendleton Street is not warranted under PCC Chapter 33.654. Many of the adverse impacts of the proposed through street could be reduced or avoided by eliminating the connection. The Applicant could reasonably develop this property with alternate access, which would result in fewer environmental and safety impacts. Therefore, the SW Pendleton Street connection through this development should be eliminated.

**C. The Hearings Officer Erred in Finding that PCC 33.641 is Met because the Transportation System Cannot Safely Support the New Development**

**1. Purpose and Application**

The purpose of the standards in PCC Chapter 33.641 is to allow identification, evaluation, and mitigation of traffic impacts caused by land divisions. The standards apply to all land divisions. PCC 33.641.015.

**2. Safety Evaluation Factors.**

PCC 33.641.020 requires demonstration that the transportation system can safely support the new development *in addition to the existing uses* in the area. There is substantial evidence in the record showing that there will be negative impacts on the immediate and adjacent

neighborhoods. This area is included in the City's Safe Routes to School program because it provides safe and convenient access to Hayhurst Elementary School for neighborhood children.

33.641.020 requires consideration of "safety for all modes" of transportation. Here, the bicycle and pedestrian paths constitute a safe method of travel for pedestrians and bicyclists. The proposed development would convert this neighborhood path into a street with vehicle traffic which would in turn conflict with its use as a safe route to Hayhurst Elementary School. HNA representatives raised these issues before the Hearings Officer, but he found that the Safe Routes to School program was not an applicable approval criterion and summarily dismissed the neighbors' concerns about introducing vehicle traffic along the pedestrian and bicycle paths.

The fact that the existing pedestrian path provides safe access to Hayhurst Elementary School is certainly relevant to whether the transportation system can safely accommodate new development. Accordingly, the Hearings Officer erred in finding compliance with PCC 33.641.020.

**D. The Hearings Officer Erred in Finding that PCC 33.430 is Satisfied because there are Other Designs with Fewer Detrimental Impacts on Protected Resources.**

**1. Purpose and Application**

The purpose of the standards in PCC Chapter 33.430, as it applies to the Environmental Conservation zone is to conserve important resources and functional values where they can be protected while allowing environmentally sensitive urban development. PCC 33.430.017. Environmental review is intended to prevent harm to identified resources and provide a mechanism for modifying development standards if the project cannot meet the protective purpose

of the regulations. The review provides for consideration of alternative designs for development that have the least impact on protected resources in the EC zone. PCC 33.430.210.

## **2. Least Detrimental Impacts on Identified Resources and Functional Values**

PCC 33.430.250 (A) (1) (a), as applied to land divisions, requires that the:

[p]roposed development locations, designs, and construction methods have the least significant detrimental impact to identified resources and functional values of other practicable and significantly different alternatives including alternatives outside the resource area of the environmental zone.

Subsection (b) further requires that there be “no significant detrimental impact on resources and functional values in areas designated to be left undisturbed.” Through the environmental review process, the City may require a reduction in the number of proposed lots, provision of alternate vehicle access, modification of storm water management plans, or other development modifications if the alternatives will have fewer impacts on the identified resources and functional values. PCC 33.430.250 (A) (4).

Shane Latimer, HNA’s wetlands specialist, has pointed out that the storm water management system will divert a substantial amount of runoff into the City’s storm water system and this issue does not appear to have been addressed. Latimer Report, page 2. Not only will there be reduced upland infiltration due to the impervious surfaces, but the runoff will be piped into the City system and could affect groundwater recharge and subsequent groundwater discharge. This is a significant function associated with the identified wetland, riparian, and uplands habitats in this area. Latimer Report, page 2.

According to Mr. Latimer, alternative designs are possible in which all or most storm water runoff may be treated and discharged on site, potentially alleviating, to a reasonable



degree, the impact of outdated storm water management techniques such as piping off-site. Latimer Report, pages 2-3. Mr. Latimer notes that the applicant does not appear to have assessed the likely effects of diverting a majority of surface water away from the wetlands by piping it off site. Latimer Report, page 2.

PCC 33.430.250 (A) (1) requires implementation of alternatives, such as treatment of storm water on site and discharge into the wetland, where the alternatives are necessary to protect the resource. Because the Applicant did not even assess the likely effects of piping the storm water off site, the Applicant has not carried its burden to show compliance with the mandatory standards of the City Code.

The adverse impacts of this project can be significantly reduced by expanding the protected environmental tract to include all onsite seeps and spring (as required by the city code), eliminating the through street connection for SW Pendleton Street to preserve significant trees and reduce impervious surfaces, protecting the bicycle and pedestrian paths to assure the continued safety of this designated safe route to Hayhurst Elementary School, and revising the storm water management plan to treat and redirect storm water to the existing wetlands. These project modifications may result in vehicle access modification, reduction of the number of lots or other plan modifications; however, there is no minimum density requirement for the site, alternate access is feasible, and environmental protection is mandatory. Therefore, the Hearings Officer's approval of this project, as proposed, should be reversed.

### **III. CONCLUSION REGARDING HEARINGS OFFICER'S DECISION**

The Hearings Officer erred in approving the 11-Lot Subdivision, as proposed, and the decision must be reversed because the Applicant has failed to satisfy several approval standards. Failure to satisfy a single mandatory approval criterion requires denial of the application.

### **IV. PROPOSED CONDITIONS, IF APPROVAL IS UPHELD**

The HNA does not support approval of this 11-lot Subdivision, as proposed; however, if approved, HNA respectfully requests the imposition of the following conditions as mitigation measures to address the adverse impacts identified above. These conditions are necessary to assure compliance with the mandatory approval criteria for this proposed development on environmentally constrained property.

1. All permits for the SW 48th Avenue improvements be filed and approved (with the Department of State Lands and US Army Corps of Engineers) before any ground-disturbing site construction begins.
2. The through street connection for SW Pendleton Street shall be eliminated to reduce the adverse impacts on the site's natural resources, including loss of trees, creation of excessive impervious surfaces, dewatering of wetland area.
3. Reduce the total number of lots to reduce significant detrimental impact to identified resources and functional values of the site.
4. Reduce the overall area of the proposed building footprints on the developable lots to preserve additional trees and reduce the impervious surfaces.
5. Require preservation of all significant trees outside the final, approved building footprints.
6. If a road is built, once it is complete, prohibit use of SW 48<sup>th</sup> Avenue by construction traffic.
7. Require a good neighbor agreement for construction traffic, noise, erosion control and construction parking.

8. Require photographic documentation of existing conditions on all roadways, including SW Pendleton Street and SW 48<sup>th</sup> Avenue to Cameron Street prior to construction and provide a sufficient bond to cover repair of damage to existing streets during construction.
9. Provide a construction parking plan to indicate that all construction parking will be on site so as not to reduce the capacity of local streets for emergency vehicles and neighborhood use.
10. Require “Working wet” demolition of current home and outbuilding, using current technology to complete lead containment.
11. Eliminate streetlight on SW 48th Avenue due to the proximity to the EC zone, given the impact on wildlife.
12. Complete all public improvements prior to sale of any lots.
13. Storm water runoff shall be treated and discharged on site to protect the wetlands.

#### **V. FINAL CONCLUSION**

Based upon the foregoing, the HNA respectfully request that the Hearings Officer’s decision to approve this 11-Lot Subdivision be reversed. In the alternative, if the Hearings Offer’s approval is upheld, the HNA requests that the City Council impose the proposed conditions in order to reduce the impacts on the protected environmental resources and the existing uses (including impacts on the use by elementary school children of the local streets and pathways as part of the Safe Routes to School program).

DATED this 22<sup>nd</sup> day of June, 2017.

Respectfully submitted,

REEVES, KAHN, HENNESSY & ELKINS



Peggy Hennessy, OSB #872505  
Of Attorneys for the Hayhurst  
Neighborhood Association

**Jennifer Antak**  
**Watershed Ecologist – Hydrologist**

**March 7, 2017 Memorandum**

**EXHIBIT 1**

**Beckman, Stephanie**

---

**From:** Antak, Jennifer  
**Sent:** Tuesday, March 07, 2017 9:42 AM  
**To:** Tunnard, Jocelyn; Beckman, Stephanie  
**Subject:** SW 48th  
**Attachments:** SW48th.jpg

Hi Jocelyn and Stephanie,

During our sight visit on March 1<sup>st</sup> 2017, I noticed several springs flowing toward the delineated wetland. This spring flow and low depth to groundwater are likely what provides the hydrology for the wetland. I used a Trimble GPS to map the location of the springs. It appears that a majority of the springs are either within the wetland or within the environmental tract with the exception of three springs. Two of these three springs were not flowing and were located within a test pit the applicant said was dug for infiltration testing. It appeared these two springs had enough flow to scour soils from beneath adjacent vegetation roots. But it is not clear whether those springs would have presented as surface water if the test pit were not dug in that location. The springs may have instead remained under ground and as groundwater flow. The third spring however, was flowing at the time of the site visit. I took a video of the flow and mapped its location. Please see the attached map. What is unknown is the accuracy of the GPS point. Since the spring location is so critical for this development, the applicant may need to have the spring(s) professionally surveyed, which would get it to sub-centimeter accuracy. If so, I can go back out to the site and flag the location of the spring(s).

Hope this is helpful,  
Jennifer

**Jennifer Antak**

Watershed Ecologist – Hydrologist  
Science Integration Division - Ecosystem Sciences  
City of Portland Environmental Services  
1120 SW 5th Ave., Room 1000  
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503-823-2731

[jennifer.antak@portlandoregon.gov](mailto:jennifer.antak@portlandoregon.gov)

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**Stephanie Beckman  
Senior Planner**

**March 7, 2017 Memorandum**

**EXHIBIT 2**





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

Chloe Eudaly, Commissioner  
Paul L. Scarlett, Director  
Phone: (503) 823-7300  
Fax: (503) 823-6983  
TTY: (503) 823-6868  
[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**MEMO**

**Date:** March 7, 2017  
**To:** Hearings Officer  
**From:** Stephanie Beckman, Senior Planner, Land Use Services  
Phone number: 503-823-6979  
**Re:** LU 16-159330 LDS EN, EVERETT HEIGHTS SUBDIVISION

**Summary**

The staff report for this land use case was issued on February 24, 2017. The hearing will be held Wednesday, March 8, 2017 at 1:30 p.m. The staff report recommends approval of the application, with conditions. However, new information has become available that raises questions about whether the approval criterion addressing 33.640, Streams, springs and seeps has been met. As a result staff is revising the staff recommendation to denial based on the information currently in the record. It is requested that the record be held open to allow time for the applicant to respond to the new information and for staff to review the information and provide an updated recommendation.

**Background**

An additional site visit was conducted on March 1, 2017 in response to phone calls and emails from neighbors to Bureau of Environmental Services staff with concerns about water resources on the site. At that site visit, springs were identified by BES staff and located using a hand-held GPS device (see attached email and map). Based on this information, it appears as though some of the identified springs are outside of the environmental conservation overlay zone boundary, and therefore may be subject to the regulations of 33.640. However, as noted by BES staff, the accuracy of the GPS device is not exact and it is recommended that the applicant provide a surveyed location to determine where the springs are located.

The exact location is important because seeps or springs (as defined in 33.910) that are located outside of the environmental zone, must be placed in a tract and preserved in their natural state per 33.640. Any seeps or springs located within the environmental overlay zone are subject to 33.430 and would be preserved within Tract A under the current proposal.

"Seep or Spring" is defined in 33.910 as "The point where an aquifer intersects with the ground surface and discharges water into a stream channel that flows into a wetland or other water body."

As stated in the staff report under 33.660.120.J (page 17), the applicant has previously responded to the question about the presence of seeps and springs outside of the environmental zone. The most recent correspondence on this topic was a memo dated 1/20/17 from Anchor QEA, the applicant's environmental consultant, (Exhibit A.4.c) responding to neighbor concerns. In summary, the memo states that all water features are within the environmental overlay zone and there are no streams, springs or seeps within 25 feet of the edge of the overlay zone.

Based on the information from BES staff described above, there are outstanding questions about whether 33.640 applies. It should also be noted that this issue could impact other

approval criteria depending on changes needed to the site plan. To resolve this issue, staff requests that the applicant do the following:

- Survey the location of identified seeps in the field to determine if they are within or outside of the environmental overlay zone;
- Provide an evaluation by a qualified professional as to whether the identified features must be preserved based on the regulations of 33.640 and, if so, the appropriate location of the tract boundary and limit of disturbance; and
- Update the plans and other materials as needed to respond to any changes required to the site plan.

**Revised Staff Recommendation**

Based on the current information in the record, the staff recommendation of the proposed 11-lot subdivision is denial.

As stated above, staff requests that the record be held open to provide the applicant time to respond to the new information from BES staff and for staff to review the information and provide an updated recommendation.

Attachments:

Email from Jennifer Antak, BES, dated 3/7/17

Aerial map of site with GPS location of springs



**Beckman, Stephanie**

---

**From:** Antak, Jennifer  
**Sent:** Tuesday, March 07, 2017 9:42 AM  
**To:** Tunnard, Jocelyn; Beckman, Stephanie  
**Subject:** SW 48th  
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Hi Jocelyn and Stephanie,

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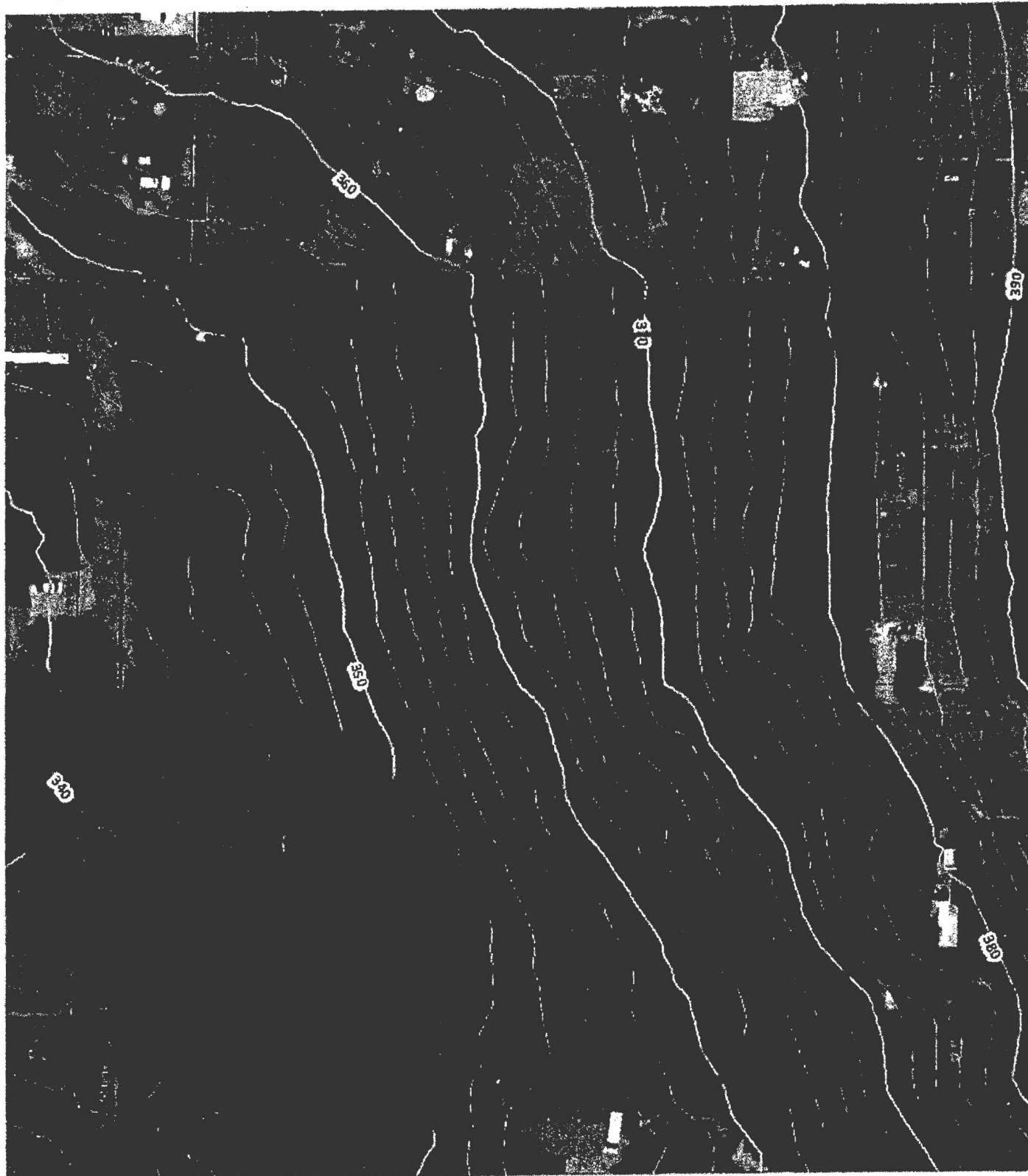
Hope this is helpful,  
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**Jennifer Antak**

Watershed Ecologist – Hydrologist  
Science Integration Division - Ecosystem Sciences  
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1120 SW 5th Ave., Room 1000  
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503-823-2731

[jennifer.antak@portlandoregon.gov](mailto:jennifer.antak@portlandoregon.gov)

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- Springs observed 3/17 not flow
- Springs observed 3/17 flowing



Conservation zone (c)



ENVIRONMENTAL SERVICES  
CITY OF PORTLAND  
working for clean rivers



0 0.003 0.006 0.012 0.018 0.024 Miles

EXHIBIT 2  
Page 4 of 4

**Phil Healy  
Transportation Planner**

**Written Testimony**

**EXHIBIT 3**

# Phil Healy

## Transportation Planner

**Education:** Bachelor of Science, Geography, 1986, Portland State University

I have completed several short courses from Oregon State University for transportation, traffic engineering, access management, site circulation, and traffic calming.

### Relevant Work Experience:

- Associate Planner, Washington County, 1988-1992
- Transportation Planner, Washington County, 1992-1997
- Senior Transportation Planner, Washington County, 1997-2007
- Senior Transportation Planner, Port of Portland, 2007-2017

My experience includes both the preparation and review of hundreds of land use staff reports, both rural and urban. I reviewed and am familiar with every aspect and issue associated with urban land development projects, including land divisions, commercial, industrial, institutional, and public transportation developments. I have a great deal of experience in implementing street, pedestrian, and bicycle connectivity requirements for all of the above categories of development.

LU 16-159330 Street Connectivity testimony

I am a transportation planner with more than twenty years of experience in Oregon. I reviewed and implemented street connectivity regulations for hundreds of residential land divisions during my previous employment at Washington County. My comments are limited to the proposal/requirement of a through public street for this subdivision.

The Portland Master Street Plan Map 11.11.6 Southwest District shows potential Street Connection Point and Alignment Uncertain chevrons directed southward from the "northern" SW Pendleton Street to the south, along with a Street Connection Point Certain arrow in the middle portion of the site directed to the south towards SW Iowa Street. This implies that a street connection must be carried through from SW Pendleton Street to SW Iowa Street. Because of scale of the map it is unclear if the connection to the south is intended to be made along the existing SW 48<sup>th</sup> Avenue or through the development site, or some other arrangement. The map also has a Street Connection Point Certain arrow directed from the middle portion of the site to the east. The exact meaning of these designations is unclear but what is clear is that they need to be considered in concert with the street connectivity requirements found in 33.654.110.

33.654.110.B.1.c. requires consideration of the terrain, natural resources, and trees on the site when making a determination about street connectivity.

*c. Characteristics of the site, adjacent sites, and vicinity, such as:*

- (1) Terrain;*
- (2) Whether adjacent sites may be further divided;*
- (3) The location of existing streets and pedestrian connections;*
- (4) Whether narrow frontages will constrain creation of a through street or pedestrian connection;*
- (5) Whether any of the following interrupt the expected path of a through street or pedestrian connection:*
  - Environmental, Pleasant Valley Natural Resource, or Greenway overlay zones;*
  - Tree groves;*
  - Streams;*
  - Special flood hazard areas; or*
  - Wetlands; and*

There have been findings made that there will be significant changes required to the terrain in order to construct the street. A pedestrian path could be constructed along the east property line with much less grading impact.

33.654.110.B.1.a requires that through streets and pedestrian connections should generally be at least 200 feet apart. The new through street will be spaced less than 200 feet from SW 48<sup>th</sup> Avenue. A pedestrian path could be constructed along the east property line that would meet the City's spacing guidelines.

Testimony has been provided that there will be minimal use of the new street for through traffic. This information diminishes the argument for the need of a through street in the first place due to its

minimal benefit to auto connectivity compared to the impact to terrain and other natural resources described in 33.654.110.B.1.c.

There is not a compelling need for additional connectivity for cars in this area. There is no significant reduction in vehicle miles travelled. In fact, it goes against the City's larger goals of trying to induce a mode shift from autos to active transportation.

Introducing additional traffic onto roadways which are not adequately surfaced and do not meet the City's engineering standards, while at the same time not requiring or assuring improvement to minimal standards, is not a benefit to the neighborhood.

The combination of the above factors builds to a determination that the construction of a through street is not only not required, but will be detrimental to the neighborhood.

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