

**IN THE CITY COUNCIL OF THE  
CITY OF  
PORTLAND OREGON**

**IN THE MATTER OF AN APPLICATION  
BY EVERETT CUSTOM HOMES FOR A  
TYPE III LAND DIVISION SUBDIVISION  
AND ENVIRONMENTAL REVIEW  
5920 SW 48TH AVENUE**

**LU 16-159330 LDS EN**

---

**FINDINGS AND CONCLUSIONS**

---

**ADOPTED BY THE CITY COUNCIL ON  
September 6, 2017**

**(DENIAL OF APPEAL AND APPROVAL of a TYPE III LAND DIVISION SUBDIVISION  
AND ENVIRONMENTAL REVIEW)**

IN THE CITY COUNCIL OF THE  
CITY OF  
PORTLAND, OREGON

IN THE MATTER OF AN APPLICATION  
BY EVERETT CUSTOM HOMES FOR A  
TYPE III LAND DIVISION SUBDIVISION  
AND ENVIRONMENTAL REVIEW  
5920 SW 48TH AVENUE

LU 16-159330 LDS EN

---

FINDINGS AND CONCLUSIONS

---

The findings and conclusions of the City Council in this matter are set forth below.

**I. GENERAL INFORMATION**

This matter concerns an appeal of Hearings Officer Decision 4160024, which approved a subdivision and environmental review for an 11-lot subdivision located at 5920 SW 48th Avenue (referred to herein as the “Application” or the “Project”). An Appeal of the Hearings Officer’s decision was filed by the Hayhurst Neighborhood Association.

*Hearings Officer Decision Incorporated*

The City Council accepts, adopts and incorporates within these findings, by reference, the findings made by the Hearings Officer in Decision Number 4160024, issued on April 28, 2017 consisting of 70 pages. In the event of a conflict between the Hearings Officer’s decision and these Findings and Conclusions, these Findings and Conclusions shall control.

**II. INTRODUCTION AND PROCEDURAL HISTORY**

**Original Proposal: The Applicant proposes to divide the 2.3-acre site to create 11 lots, an environmental resource tract, and an extension of SW Pendleton (a public street).**

**Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the approval criteria of Title 33, Portland Zoning Code. The applicable approval criteria are:

- PCC 33.660.120, Approval Criteria for Land Divisions in Open Space and Residential Zones
- PCC 33.430.250.A, Approval Criteria for Environmental Review

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 filed, provided that the application is complete at the time of filing, or complete within 180 days. This application was filed on April 22, 2016, and determined to be complete on August 5,

2016. Therefore, the regulations in effect on April 22, 2016 govern review of the Application.

**Procedural History:**

The Applicant submitted the Application for an 11-lot subdivision and environmental review on April 22, 2016. The Application was deemed complete on August 5, 2016.

A Request for Response was mailed on August 15, 2016 to the Hayhurst Neighborhood Association. Notice was originally posted on the site on January 9, 2017. Updated notice was posted on February 2, 2017 and February 6, 2017. A notice of public hearing was mailed on February 16, 2017.

The Hearings Officer held a public hearing on March 8, 2017 and held the record open until April 12, 2017. The Hearings Officer's decision was mailed on April 28, 2017.

On May 12, 2017 the Hayhurst Neighborhood Association filed an appeal. The City mailed notice of the appeal hearing on May 25, 2017. The City Council held the public hearing on June 22, 2017, closed the public hearing and continued the matter to August 9, 2017 for deliberation. The City Council left the record open for submittals from any interested party until July 6, 2017, rebuttals of these submissions by any party until July 13, 2017 and the Applicant's final written argument until July 20, 2017.

On August 9, the City Council tentatively voted to deny the Appeal and approve the Application.

**III. ANALYSIS**

**Site and Vicinity:** The Project site is 5920 SW 48th Avenue, Tax Lot 7300. The site is 2.31 acres and located in Section 18, 1S 1E, in the Hayhurst neighborhood.

The site contains an existing single family home and garage. The site also contains approximately 7,630 square feet of forested wetland located within the environmental conservation overlay zone. The site is heavily vegetated with invasive trees and shrubs and many species on the land outside of the environmental conservation zone are nuisance species. The environmental conservation zone area is dominated by native Oregon ash trees.

Nearby development is primarily detached single family homes. Hayhurst Elementary School and Pendleton Park are within one quarter mile of the site.

**Zoning:** The site is zoned R7c; with a base zone of Single Dwelling Residential 7,000 square feet, and within the Environmental Conservation overlay zone. The site is also designated as a potential landslide hazard area.

**Land Use History:** The City Council incorporates the history of land use decisions for the site as stated in the Hearings Officer's decision, Number 4160024 rendered on April 28, 2017 at page 6, as stated below. Aside from the Hearings Officer's decision on appeal in this case, no additional land use decisions besides those listed apply to the site.

City records indicate the following prior land use reviews:

- **CU 036-71:** In conjunction with site area to the northwest, a conditional use application to construct 39 single-dwelling units grouped in clusters, plus two existing houses, accessed via private roads. The development was not completed and the approval expired. The Flower Place subdivision to the northeast was later approved under S 007-75.
- **LUR 92-00570:** Two-lot partition, retaining the existing house on a large lot. Required a reserve area for future extension of SW Pendleton Street, to expire upon dedication of the street. This partition was not completed and expired.
- **LUR 97-00218 ZC:** A Zone Map Error Correction that resolved a discrepancy in mapping of environmental zoning for this property and lot to the south. Decision found that the Environmental Conservation zone line is intended to protect the open drainageway and any associated wetlands or riparian areas, and not an area that was legally piped and filled before the application of the environmental zone in 1994

#### **Agency and Neighborhood Review:**

1. **Agency Review:** City Staff from relevant agencies, including PBOT, BES and BDS provided comments that the City Council considered during the Appeal.
2. **Neighborhood Review:** The Hayhurst Neighborhood Association initially provided comments on the Project before it was approved by the Hearings Officer. After approval, the Neighborhood Association filed this Appeal. Responses to the issues raised by HNA and other opponents are summarized under the relevant approval criteria below.

#### **IV. ZONING CODE APPROVAL CRITERIA AND FINDINGS**

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

**PCC 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.**

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

**Findings:** The City Council adopts and incorporates the Hearings Officer's response to this criterion on pages 14-15, as stated below. Opponents did not raise any additional issues regarding the Application's ability to meet this criterion during the Appeal period.

The City Council finds that Chapter 33.610 contains the density and lot dimension requirements applicable in the RF through R5 zones. Based on the applicant's narrative, the site area is 100,356 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. A new street is proposed; therefore, the maximum density is based on 85 percent of the site area. The site has a maximum density of 12 units. The applicant is proposing 11 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>	<b>4,200</b>	<b>12,000</b>	<b>40</b>	<b>55</b>	<b>30</b>
Lot 1	5,211		55	94	58
Lot 2	4,832		50	96	50
Lot 3	5,051		53	96	51
Lot 4	4,266		50	85	50
Lot 5	4,427		45	77	31.5
Lot 6	6,402		40	131	30.8
Lot 7	6,102		50	122	50
Lot 8	6,084		50	121	50
Lot 9	4,200		44	90	43
Lot 10	4,200		46	90	46
Lot 11	4,558		48	90	47

\* 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.

Based on the findings above, the density and lot dimension standards are met.

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

**Findings:** The City Council adopts and incorporates the Hearings Officer's response to this criterion on pages 6-7, 12, and 15-16 and the condition of approval required for this criterion to be met, as stated below. Opponents did not raise any new issues regarding the Application's ability to meet this criterion during the Appeal period.

The City Council finds that extensive information regarding tree preservation requirements and mitigation have been presented by the Applicant, and are summarized below in findings for the applicable Land Division and Environmental Review approval criteria (PCC 33.630.200) below. Opponents focused their objections on the removal of trees from the upland portion of the site. However, because the site includes an Environmental zone, the Code requires consideration of tree preservation across the entire site. The Applicant will preserve the majority of trees in the Environmental zone. In exchange, the Applicant must concentrate the development on smaller lots in the upland portions of the site, which limits the ability to preserve additional trees. In addition, grading associated with the required street connection further limits the Applicant's ability to preserve trees on this site. The Applicant will remove 21 non-exempt trees from the site, including five trees within the Environmental zone to construct right-of-way improvements required by Portland's Bureau of Transportation (PBOT). The Applicant proposes tree mitigation plantings within proposed Tract A. 24 native trees will be planted within, and 31 trees will be planted outside of the Environmental zone. A payment into the Tree Preservation and Planting Fund for an additional 55.5 inches will be made.

Allegations that trees were illegally removed from this site are not relevant to the proposed development. If true, such activities would be a violation subject to enforcement. However, those activities are not proposed as part of this development.

The City Council further finds that

Concerns were expressed about a large Western Red cedar proposed to be removed within the existing SW Pendleton Street right-of-way, east of the site.

City Council finds that the tree in question is in existing right-of-way and therefore regulated by Urban Forestry. The response from Forestry (Exhibit E.6) acknowledged the tree and indicated that it appeared that it needed to be removed due to the required street extension of SW Pendleton Street. Inquiries about the tree were forwarded to the Forestry staff person who is working with the PBOT public works engineer to investigate options for retaining the tree. The fate of this tree cannot be determined without additional street improvement designs and analysis. Therefore, the Hearings Officer could not impose a condition of approval requiring preservation of this tree. The Applicant agreed to a condition requiring the Applicant work with Urban Forestry staff and Public Works Project Managers to determine the feasibility of preserving this significant tree. Condition of approval B.1 should be modified to that effect.

The City Council further finds that 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. These regulations apply to trees located on the site (prior to any street dedication) and outside of the Environmental overlay zone. Trees within the Environmental zone are subject to the regulations of PCC 33.430 and are addressed in that section of these findings.

In order to identify which trees are subject to these requirements, the Applicant provided the location of trees on the existing conditions plan and a tree table (Exhibits C.3 and C.4) and an arborist report (Exhibit A.5.b) that identifies each tree, its condition and suitability for preservation or its exempt status, and specifies tree protection measures for tree to be preserved.

Based on this information, there are 19 trees on the site that are subject to these regulations, which total 313 inches of tree diameter, and seven trees that are 20 or more inches in diameter. A number of trees included in the tree inventory are exempt from the regulations of PCC 33.630 because they are off-site, within the Environmental zone, are nuisance species, or are identified as dead, diseased, or dying by the applicant's arborist.

The Applicant proposes to preserve three non-exempt trees outside of the environmental zone: #20078, 11-inch Oregon ash (in Tract A, near Lot 4), #20165, 17-inch Leyland cypress at the rear of Lot 8, and #20174, 16-inch cottonwood in Tract A near 6. In order to ensure that future owners 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 per PCC 33.630.600. The acknowledgement must identify that development on Lot 8 and within Tract A must be carried out in conformance with the Tree Preservation Plan (Exhibit C.11) and the Arborist Report (Exhibit A.5.b).

This site is not subject to the minimum tree preservation standards of PCC 33.630.100 because the proposal includes a concurrent Environmental Review. However, the approval criteria of PCC 33.630.200 apply and are addressed below.

#### **PCC 33.630.200 Tree Preservation Approval Criteria**

**Applicants must demonstrate how the proposed tree plan will meet the following tree preservation criteria. In meeting these criteria, applicants may use options available in this and other chapters of this Title to modify development standards and minimum density in order to preserve trees.**

**A. 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. However, specific characteristics of the trees, site and surrounding area should be considered and may call for different priorities, such as native tree growth rates and priority tree sizes as described in the Portland Plant List, buffering natural resources, preventing erosion or slope destabilization and limiting impacts on adjacent sites;**

**Findings:** The City Council adopts and incorporates the Hearings Officer's response to this criterion on pages 16-17.

City Council finds that the site contains seven trees that are 20 or more inches in diameter located outside of the Environmental overlay zone, all of which are proposed for removal to allow for construction of streets and homes. These larger trees are scattered around the site and are not located in areas that allow for their preservation without major changes to the development plan. The Code requires that these trees be given the highest priority for preservation. In other words, if there is a choice between removing such large trees or smaller trees on the site, preference should be given for preserving the larger trees. This section does not require the sacrifice of other goals or elimination of lots for the preservation of large trees. No tree groves have been identified, although the grouping of native trees within the environmental zone would likely qualify as such. On this site, the Applicant has prioritized preservation of trees within the environmental zone, which contains a number of native trees of varying sizes as well as a stream channel and wetland area. Only two non-nuisance trees are proposed to be removed in the environmental zone, due to street improvements on SW 48th Avenue. The remainder of the trees proposed for removal in the environmental zone are located in the existing SW 48th Avenue right-of-way or they are nuisance species.

The three trees proposed for preservation outside of the environmental zone are on the perimeter of the lots where they will help buffer the environmental zone and the adjacent site to the south.

On Appeal, Opponents again argued that the seven large trees should be preserved because the connectivity requirements (requiring connection of SW Pendleton Street) should not trump tree preservation, especially because there is not a demonstrated need for connection of SW Pendleton Street.

The City Council finds that this approval criterion requires the City to give larger trees the "highest priority" when considering practicable development scenarios. The City Council finds that, as used in this approval criterion, the "practicable" alternatives that must be considered are those that meet the Code requirements, which in this case are only those alternatives that allow the Project to meet the connectivity standards and provide for the SW Pendleton Street connection. The tree preservation requirements in this section do not allow the City to weigh the value of mature trees against the "need" for a street connection, as Opponents appear to argue. The City Council finds that the street connectivity requirements for this Project have been determined through the approval criteria for street connectivity as discussed below, and are not properly considered under this approval criterion.

**B. Trees proposed for preservation are suitable based on their health, overall condition and potential for long-term viability, considering the anticipated impact of development and tolerance typical for the tree species;**

**Findings:** The City Council adopts and incorporates the Hearings Officer's response to this criterion on page 17. Opponents did not raise any additional issues regarding the Application's ability to meet this criterion during the Appeal period.

City Council finds that the Applicant indicates that the trees proposed for preservation are well-established and generally in good health. The arborist noted that the cottonwood has “trunk swoop,” but did not identify any concerns about the long-term viability of the trees to be preserved. Two of the trees will have minor encroachments within the standard root protection zone in accordance with the allowances of Title 11. This criterion is met.

**C. Tree preservation is maximized to the extent practicable while allowing for reasonable development of the site, considering the following:**

- 1. The specific development proposed;**
- 2. The uses and intensity of development expected in the zone and the area in which the site is located;**
- 3. Requirements to provide services to the site under Chapters 33.651 through 33.654, including street connectivity and street plan requirements. Options to limit impacts on trees while meeting these service requirements must be evaluated;**
- 4. Requirements to protect resources in Environmental, Pleasant Valley Natural Resources, or Greenway Natural, Water Quality, and River Environmental overlay zones. Protection of environmental resources and retention of benefits from trees should be maximized for the site as a whole; and**
- 5. Other site constraints that may conflict with tree preservation, such as small or oddly shaped sites or trees located in existing utility easements.**

**Findings:** The City Council adopts and incorporates the Hearings Officer’s response to this criterion on pages 6-7 and 17-18 and the condition of approval required for this criterion to be met. .

The City Council finds that the Applicant has presented extensive findings regarding tree preservation and mitigation.

Opponents focused their objections on the removal of trees from the upland portion of the site. However, because the site includes an Environmental zone, the Code requires consideration of tree preservation across the entire site. The Applicant will preserve the majority of trees in the Environmental zone. In exchange, the Applicant must concentrate the development on smaller lots in the upland portions of the site, which limits the ability to preserve additional trees. In addition, grading associated with the required street connection further limits the Applicant’s ability to preserve trees on this site. The Applicant will remove 21 non-exempt trees from the site, including five trees within the Environmental zone to construct right-of-way improvements required by Portland’s Bureau of Transportation (PBOT). The Applicant proposes tree mitigation plantings within proposed Tract A. 24 native trees will be planted within, and 31 trees will be planted outside of the Environmental zone. A payment into the Tree Preservation and Planting Fund for an additional 55.5 inches will be made.

Allegations that trees were illegally removed from this site are not relevant to the proposed development. If true, such activities would be a violation subject to enforcement. However, those activities are not proposed as part of this development.

City Council further finds that the Applicant is proposing a land division with 11 single-dwelling lots, a 25,430 square foot Environmental Resource tract, a new public street connection, as well as street dedication and improvements on existing street frontages. Many of the trees proposed for removal are located within or near the proposed street



alignment. Other trees are located near the center of the proposed lots. Preservation of the environmental zone site concentrates development on smaller lots in the upland portion of the site, which reduces the Applicant's ability to preserve trees in the upland areas. The site would allow a maximum density of 12 lots; therefore, the proposal is consistent with the use and intensity of development expected in the R7 zone. There is no minimum density on the site; therefore, it would be possible to develop the site with fewer lots. However, due to the location of non-exempt trees and the site grading needed to install the required street connection, it is not clear that proposing fewer lots would make a significant difference in terms of preservation of desirable trees. In addition, nothing in the plain language of the Code requires applicants to eliminate lots to preserve trees outside of Environmental zones. The Applicant will remove 17 non-exempt trees and preserve 92 trees on the site. As described under "B" above, impacts within the environmental zone are limited and will result in the removal of only two native trees in that area. Tree preservation is maximized to the extent practicable, while allowing for reasonable development of the site. With the condition that the tree preservation plan is implemented per Exhibit C.11 and the Applicant's arborist report, this criterion is met.

As noted above, on Appeal, Opponents argued that additional trees could be preserved if the street connection was not required or fewer lots were developed. The City Council finds that the street connection is required, and it is not practicable to develop the site without providing this connection as required to meet the connectivity standards. As noted above, the City Council finds, as the Hearings Officer did, that the proposed tree removal plan maximizes tree preservation to the extent practicable while allowing for reasonable development of the site, considering the relevant factors in the Code.

**D. Mitigation. Where the minimum tree preservation standards of PCC 33.630.100 cannot be fully met, as determined by evaluating the above criteria, or when there is a concurrent Environmental Review and the minimum tree preservation standards do not apply, mitigation must be provided as needed to replace the functions of trees removed from the site. Options for mitigation may include preservation of smaller diameter or native trees, permanent preservation of trees within a tree preservation or environmental resource tract, tree planting, payment into the City's Tree Planting and Preservation Fund, or other options that are consistent with the purpose of this chapter.**

**Findings:** The City Council adopts and incorporates the Hearings Officer's response to this criterion on pages 18-19, as stated below. Opponents did not raise any additional issues regarding the Application's ability to meet this criterion during the Appeal period.

City Council finds that this site is not subject to the tree preservation standards of PCC 33.630.100 because the proposal includes a concurrent Environmental Review. However, the tree preservation standards provide a basis to judge the tree preservation proposal and the amount of mitigation warranted.

The Applicant proposes mitigation based on Option 3 of the tree preservation standards, which requires 50 percent of the trees 20 inches or more and 30 percent of the total tree diameter be preserved, which is commonly used by applicants. As described above, there are 19 trees on the site that are subject to these regulations, which total 313 inches of tree diameter, and seven trees that are 20 or more inches in diameter. The Applicant is proposing to preserve three trees that amount to 44 inches (14 percent of total tree diameter) and no individual trees that are 20 or more inches in size. To meet Option 3, four of the seven large trees would be required to be preserved. Using the two largest and two smallest of these trees, a total of 102 inches of mitigation

is required. This would also mitigate for the 50 inches the Applicant is short in total tree diameter.

The Applicant proposes to mitigate for the 102 inches with a combination of tree planting within Tract A outside of the environmental zone and a payment into the Tree Preservation and Planting Fund. This is in addition to tree planting that will be required within Tract A for mitigation of environmental zone impacts.

The planting plan (Exhibit C.12) shows 31 trees to be planted in Tract A outside of the environmental zone, which will provide for 46.5 inches (based on 1.5 caliper inches per tree). These trees include a variety of native species, which includes a mix of smaller and larger trees at maturity and deciduous and conifer trees. These trees will buffer the environmental zone from the adjacent development and help prevent erosion of sloped areas. The Applicant will also be removing several nuisance tree species in the area of the mitigation tree planting, which will enhance the quality of the mitigation area and help reduce the spread of invasive species into the environmental zone and surrounding area.

It is anticipated that additional tree plantings will be provided on the individual lots at the time of development, however such plantings are required to meet the tree density standards of Title 11 (11.50), and therefore would not count toward mitigation.

A payment for 55.5 caliper inches is proposed to make up the balance of the mitigation requirement, for a total of 102 inches. The payment will provide for additional tree planting off the site, but within the same watershed, thereby contributing to the tree canopy and benefits of trees in the larger area.

The tree planting must be shown on the Site Development permit for the site and installed prior to final inspection approval of that permit. In addition, the payment must occur prior to final plat approval. With these conditions, the mitigation plan will replace the functions of trees removed from the site outside of the environmental zone and this criterion is 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 City Council adopts and incorporates the Hearings Officer's response to this criterion on pages 19-20 and the conditions of approval required for this criterion to be met, as stated below.

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

In order to evaluate the proposal against this criteria, the Applicant submitted a Geotechnical Engineering Report and Landslide Hazard Area Report (Exhibit A.1.f), prepared by a Certified Engineering Geologist and a Geotechnical Engineer, and responses to staff and neighbor comments (Exhibits A.2.d and Attachment 4 of Exhibit H-61a) prepared by the engineers noted above.

Site Development, the division of BDS that makes determinations regarding soil stability, has evaluated the reports provided and found that they satisfy the submittal

requirements and approval criteria (see Exhibits E.5 and H.60). The reports conclude that the site is stable and is suitable for development and that the proposed grading, including extensive fill, will not adversely impact the stability of the site, provided the recommendations in the Geotechnical Engineering Report are implemented during the design and construction of the proposed development. The Applicant will strip the existing topsoil from the site and create benched areas to support placement of fill on the underlying soils. Although the subsurface soils on the site are clay, there is no evidence to support Opponents' assertions that clay soils are inherently unstable. City Council finds that the clay soils on the site can support the proposed fill, based on the expert testimony of the engineers for the Applicant and the City. Neighbor's assertions of "common knowledge" are not sufficient to counter this expert testimony.

The Neighborhood Association asserted that the Applicant's analysis failed to include all of the information required by PCC 33.730.060.D(1)(f). (Exhibit H-43). However, this is a submittal requirement, not an approval criterion. The City accepted the Application as complete without all of the listed information. The Hearings Officer had no authority to review the City's completeness determination or to deny the application for failure to comply with the submittal requirements. As LUBA stated:

An applicant's failure to include information that a local ordinance requires to be submitted as part of a land use permit application does not necessarily constitute a basis for remand. That failure must result in an evidentiary shortcoming that prevents a required demonstration of compliance with one or more mandatory applicable approval criteria. *Frewing v. City of Tigard*, LUBA No. 2003-194 citing *McConnell v. City of West Linn*, 17 Or LUBA 502 (1989).

City staff reviewed the Application and concluded that although the report could be more explicit, it is sufficient to demonstrate compliance with the applicable approval criteria. Exhibit H-60. The Applicant will be required to submit additional, more detailed, analysis as part of the grading permit review process, including specific factors of safety and analysis of settling potential. See Attachment 4 of Exhibit H-61a and Exhibit H-60. The Applicant is not required to provide detailed engineering designs at this stage of review. The purpose of this preliminary review is to determine whether it is feasible to comply with applicable criteria. The preliminary engineering plans are conceptual, and analysis of all technical details is not required. See *Meyer v. City of Portland*, 67 Or App 274, n 6, 678 P2d 741, rev den 297 Or 82 (1984). ("[C]onditions of approval may include conditions that specific technical solutions to identified development problems be submitted and reviewed and approved by the government's technical staff"). To require complete, detailed plans prior to preliminary approval would require re-working the entire design any time amendments or modifications of the project are required. This would be highly inefficient and is not necessary to protect the public interest. City staff's review of the final engineering plans provides adequate protection of the public interest. The law does not require an opportunity for public review of the final plans. However, the Applicant's final engineering plans are public records that the public may review.

Opponents noted a recent landslide on another property in the area. However, there is no evidence that that landslide was in an area of engineered fill as is proposed here.

The geotechnical reports also summarize the results of onsite infiltration tests and conclude that the rates are low. While the reports do not specifically recommend against onsite infiltration of stormwater, the Applicant proposes to direct stormwater off-site due to the low infiltration rates observed, with the exception of Lots 4 and 5 that will outfall to the wetland area. The stormwater disposal approach is in conformance

with the recommendations of the Applicant's engineers. Based on these factors, this criterion is met.

If necessary based on the final grading plans, the Applicant will install drains in the fill areas to prevent the accumulation of groundwater that could impact the stability of filled areas. The Applicant will also install drains behind the proposed retaining wall to collect and direct groundwater around the wall. These drains will likely discharge overland to the on-site wetland, which will help maintain the existing wetland hydrology.

On Appeal, Opponents argued that the number of lots should be reduced in order to reduce potential landslide hazards. Opponents argued that lot reduction could reduce potential hazards without the need for extensive site grading, which would result in fewer impacts to the environmental resources in the environmental overlay area.

The City Council finds that the approval criteria require the City to determine if the "proposed layout and design reasonably limits the risk of a landslide." Project features to meet limit a landslide may include "specific improvements, engineering requirements, techniques or systems, or alternative development options, including alternative housing types and reduced density," when "required in order to facilitate a suitable development that limits the risk to a reasonable level."

The City Council finds that the landslide evaluation prepared by the Applicant contains sufficient information to determine that the proposed layout and design reasonably limit the risk of a landslide. The City Council therefore finds that there is not a need to reduce density on the site in order to reduce landslide risks. The City Council further finds that this approval criterion does not require the Applicant or the City to consider environmental impacts of a chosen landslide strategy and therefore Opponents' arguments that lot reduction should be required in order to reduce grading for environmental reasons are not relevant to the Project's ability to meet this criterion.

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

***PCC 33.635.100 Clearing and Grading Approval Criteria  
The Preliminary Clearing and Grading Plan must meet the following approval criteria:***

***A. Existing contours and drainage patterns of the site must be left intact wherever practicable. Where alteration to existing drainage patterns is proposed, it must not adversely impact adjacent properties by significantly increasing volume of runoff or erosion;***

**Findings:** The City Council adopts and incorporates the Hearings Officer's response to this criterion on pages 21-24, as stated below.

City Council finds that the Applicant submitted a Preliminary Grading Plan (Exhibit C.8) and a Construction Management Plan (Exhibit C.16) that shows the existing and proposed contours, as well as Preliminary Site Sections (Exhibit C.9) that show existing and finished ground elevations at various locations through the site. The existing topography of the site slopes from east to west and existing drainage follows the site topography, flowing to the existing wetland area and drainageway in the southwest corner of the site.

The proposed grading will significantly alter the existing contours of the site. Fills up to 17 feet are proposed, 2:1 slopes in some locations, and a 6-foot high retaining wall at the rear of Lot 6, 7, and 8 and along the southeastern edge of Tract A. Modest cuts up to four feet are proposed. Due to the proposed grading, street, and home construction, drainage patterns will also be significantly altered. Stormwater collected from most of the new impervious surfaces will be directed to storm sewers that carry water away from the site to the west. Stormwater from Lots 4 and 5 will be directed to the wetland, which mimics current drainage patterns. Stormwater from the SW 48th Avenue right-of-way improvements will be directed to the new culvert under SW 48th Avenue. In addition, the proposed lots will generally step down and/or slope down toward the environmental zone, so any stormwater that hits ground surfaces will flow in that direction as it does today.

Grading on this site is complicated by a number of factors including existing slopes (12-15 percent), the requirement for a street connection between the two dead-end segments of SW Pendleton Street that abut the site to meet the connectivity requirements of PCC 33.654, and the requirements to avoid impacts to the Environmental Conservation overlay zone, including a stream and wetland, in the southwest corner of the site. No clearing and grading activities are proposed within the environmental zone, with the exception of work related to the public street improvements on SW 48th Avenue, which are the subject of the concurrent Environmental Review, and removal of nuisance plant species. The Applicant has provided an extensive narrative explaining why it was not practicable to leave the existing contours and drainage patterns intact (Exhibits A.3.a and A.4.b), which is summarized below.

PCC 33.910.030 defines “practicable” as “capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.” In this case, the overall project purposes include the connection of existing SW Pendleton Street through the site consistent with City plans, protection of the environmental zone, creating residential buildable residential lots at R7 densities, and directing stormwater runoff to appropriate collection points.

Providing street connectivity between the two existing streets with a street design that meets City of Portland Street Design standards creates a fill condition along the majority of the proposed street. The grade of this new street connection is restricted by the existing grades of the southern and northern portions of SW Pendleton Street, requiring up to 10 feet of fill before any lots or homes are constructed. In addition, constructing the new street connection within a 54-foot right-of-way width (street, planter strip, and sidewalk) that is perpendicular to the existing grade requires a balancing of fills on the downhill side and cuts on the uphill side.

In addition to grading necessary for street construction, the proposed grading plan includes work to prepare the lots for future construction. Because this site is a multi-lot development, there is an opportunity to reduce overall construction impacts. By anticipating planned future site development, and completing overall site grading required for development of the street and lots at one time, the Applicant realizes efficiencies by having one contractor conduct the work, as well as allowing better control of earthwork, erosion control, and grading based on the specific product type to be placed on the lots. Opponents argued that lot grading should be performed on a lot-by-lot basis as homes are constructed in order to preserve additional trees. However, given the location of existing trees on the site, the amount of grading required for the required street connection, and the relatively small size of the proposed lots, it is not practicable to preserve additional trees.

The lot layout accommodates the challenges of the existing topography as described below. Grading of the lots is designed to direct as much lot drainage as possible back toward the public streets and avoid directing drainage toward the garages, which would create drainage issues for the homeowners in the future. Creating usable yard space on the lots was also a goal. Lots 1-3 match the existing grade of SW Pendleton Street. The building pads will step down east to west between the new street connection and SW 48th Avenue. To minimize the amount of fill on the lots, Lots 4 and 5 are designed to have daylight basements with one story below the street grade. Drainage from these lots will be directed toward the existing wetland in the southwest corner. Lots 6 through 8 are designed with a stepped grading plan that includes a four-foot stem wall with deck at the rear of each house and six-foot retaining wall toward the rear of the lots. Stairs will provide access to the lower level of these lots. Daylight basements were considered for these three lots; however, that would have increased drainage toward the back of these lots adjacent to other property owners to the south, potentially increasing runoff onto adjacent properties. Lots 9-11, which are above the adjacent street grade, will be developed with “garage under” homes, with the garage at the level of the driveway and living area above the garage. The 10-foot garage floor to first floor dimension allows the house to fit the rise in grade from front of lot to back of lot.

Based on the information provided (as summarized above), the Applicant has demonstrated that it is not practicable to leave existing contours and drainage patterns intact and develop the site as proposed. Opponents argued that the Applicant could reduce the grading required on this site by reducing the number of lots, altering the design of the street connection, and changing the type of homes proposed on the site. However, the required street grading creates the need for the majority of grading on this site. As discussed below, it is not feasible to modify the required street connection in compliance with applicable criteria. The Applicant did modify the design of the homes on the lots to accommodate existing slopes and reduce grading; using tuck under garages and daylight basements where appropriate. It is not practicable to significantly alter the proposed grading to increase retention of the existing contours on this site sloped site with a required through street connection.

The proposed grading will alter the existing drainage patterns, but it will not adversely impact adjacent properties by significantly increasing the volume of runoff or potential for erosion. Given the existing topography of the site, the majority of stormwater falling on the site currently flows downhill to the on-site stream and into the culvert under SW 48th Avenue. Some runoff may flow onto adjacent properties to the south, but no more than occurs under existing conditions. As described above, with the proposed development, most of the stormwater from the site will be collected and directed to the storm sewer in SW Pendleton Street and carried away from the site, which will reduce the amount of stormwater runoff flowing onto adjacent properties from this site. This development will reduce the volume of runoff flowing to the SW 48th Avenue culvert and across downstream properties culvert by 30 percent during the 25-year design storm. Exhibit H-51. Required street improvements along the SW 48th Avenue Street frontage will replace the existing ditch with pavement, curb, and gutter, and stormwater runoff from the street will be routed through a stormwater planter and then conveyed to the new culvert at the location of the existing culvert in 48th Avenue. This will eliminate existing runoff flowing from this street onto abutting properties to the east. It is anticipated that these improvements will reduce current runoff and flooding issues in this location.

The Applicant indicates that during site development, and prior to home construction, there is a portion of Lot 8 that will slope to the east to match existing grades. The small drainage ditch this creates will be temporary. The home footprint will ultimately extend to the bottom of this embankment along the side yard reducing the exposed landscape

area and embankment slope adjacent to the eastern property. In both the temporary and final condition, drainage from this area will overland flow to the south and west, similar to the existing condition.

The grading plan shows a slope below the retaining wall on Lots 6, 7, and 8, which could result in water from this area flowing toward the neighboring property to the south. The volume of water is expected to be small because only the yard area will drain to the rear. Most of the area of these lots will be covered by roofs and driveways that collect water and direct it to the storm sewer. The fill slope described will hit natural contours 15 to 20 feet from the property line. The natural contours direct drainage to the southwest and therefore should carry runoff in that direction, toward the stream. In addition, the Applicant is proposing to retain trees along the rear property line of these lots and protect off-site trees along the property line, which will help absorb any additional runoff in this location. The proposed development will not significantly increase the volume of runoff flowing onto adjacent properties in this area.

No concerns have been identified regarding erosion impacts to adjacent properties. As discussed above, the Applicant is not required to remedy potential off-site flooding and erosion caused by the undersized culvert west of the site that may occur during larger storm events. The grading plans will be reviewed in more detail for adequate erosion control measures during review of the of the Site Development permit for mass grading of the site. The Applicant indicates that initial erosion and sediment control measures include sediment barriers placed downhill of embankment slopes as shown on the construction management plan (Exhibit C.16) and inlet protection for existing and proposed inlets. Once the lot grading activities are relatively complete, secondary sediment barriers will be placed along steep slopes to control erosion. Seeding may also be required along these slopes to provide stabilization. A concrete truck washout area will be provided to clean concrete trucks and dispose of excess concrete after concrete placement.

The Applicant has demonstrated that the alteration to existing drainage patterns will not adversely impact adjacent properties by significantly increasing volume of runoff or erosion.

On Appeal, Opponents argued that the Project could not meet the requirements of this criterion because planned site grading will adversely impact the wetland features by causing less stormwater or water from wet features on the property to run to the wetland area. Even if we agree with opponents that such hydrology impacts may occur, the City Council finds that this criterion is met. This criterion requires that alteration to existing drainage patterns not adversely impact “adjacent properties,” through significantly increased volume of runoff or erosion. Opponents contend that there may be impacts to the development site, which is a single property, due to a decrease in runoff. The City Council finds that impacts to the development property through decreased runoff are not relevant to this approval criterion. The City Council further finds that Opponents have not identified any “adjacent properties” that they contend will be adversely affected by changes in the drainage patterns due to grading.

**B. Clearing and grading should be sufficient for construction of development shown on the Preliminary Clearing and Grading Plan;**

**C. Clearing and grading should be limited to areas of the site that are reasonably necessary for construction of development shown on the Preliminary Clearing and Grading Plan;**

**Findings:** The City Council adopts and incorporates the Hearings Officer's response to this criterion on pages 24-25 and the conditions of approval required for this criterion to be met, as stated below. Opponents did not raise any additional issues regarding the Application's ability to meet this criterion during the Appeal period.

City Council finds that the proposed clearing and grading shown on the Preliminary Grading Plan is intended to be sufficient for construction of the public street, installation of utilities, and preparation of the lots for future construction of dwellings.

The existing site has relatively steep topography and the proposed grading is dictated by existing elevations/grades of adjacent streets to be connected through the site. The new street is located such that it allows for a through-street connection while keeping outside the environmental overlay zone. The proposed streets are designed to City standards for vertical and horizontal alignments and provide public street frontage for the proposed lots.

The proposed lot grading provides for clearing and grading within the proposed building footprints and attempts to minimize disturbance at the rear of the lots to protect trees along the eastern and southern perimeter of the site and minimize impacts to adjacent lot drainage. The extent of grading provides for home construction of the specific types and models proposed by the Applicant as the "developer/builder." This will provide more efficient construction by minimizing additional grading required with each building permit, allowing grading across internal lot lines and reducing temporary cut/fill slopes required if grading was completed on a lot-by-lot basis.

The Applicant proposes a retaining wall spanning portions of Tract A, Lot 6, Lot 7, and Lot 8 in order to accomplish the site grading. The retaining wall is necessary to support the proposed slopes while preserving trees on the site and without extending grading into the environmental zone. The code does not prohibit use of retaining walls or regulate the aesthetics of retaining wall design. PCC 33.110.010 cited by Opponents (Exhibit H-50) is a purpose statement, not an applicable approval criterion. The maintenance of the retaining wall should be shared in common between the owners of Tract A, Lot 6, Lot 7, and Lot 8. Access to the wall will need to be provided to perform maintenance; therefore, the final plat must show an easement to allow for maintenance of the retaining wall. The dimensions of the easement or tract will be determined based on the retaining wall design as shown on the approved permit drawings. A supplemental plan showing the location of the retaining wall, easement, and lots must be provided with the final plat as documentation.

The proposed grades and retaining wall will limit access between the upper and lower portions of some lots. As noted above, the Applicant proposed to install stairways to facilitate access in these areas. If desired, future residents can plant the slopes and lower areas of these lots with low maintenance landscaping to avoid the need to move lawnmowers and other equipment up and down the slopes. The Zoning Code does not require fencing on top of retaining walls or steep slopes. However, the Applicant and/or future residents may need to install such fencing to avoid potential hazards created by these features.

The Site Development Section of BDS requires that the Applicant submit a Site Development Permit for clearing, mass grading, including rough grading for the public street extension, and retaining wall construction, prior to final plat approval. A condition is required to ensure that the clearing and grading shown at the time of permit substantially conforms to the current proposal.

With the conditions described above, these criteria are met.



**D. Topsoil must be preserved on site to the extent practicable for use on the site after grading is complete;**

**E. Soil stockpiles must be kept on the site and located in areas designated for clearing and grading as much as is practicable; and**

**Findings:** The City Council adopts and incorporates the Hearings Officer's response to this criterion on page 25, as stated below. Opponents did not raise any additional issues regarding the Application's ability to meet this criterion during the Appeal period.

City Council finds that the Applicant indicates that topsoil from stripping will be preserved for reuse as fill on the lots for yard landscaping and within Tract A outside the Environmental Conservation zone. The Construction Management Plan (Exhibit C.16) shows a soil stockpile area on proposed Lots 2 and 3, within the disturbance limits and away from the Environmental zone. This criterion is met.

**F. The limits of disturbance and tree protection measures shown on the preliminary Clearing and Grading Plan must be adequate to protect trees to be retained on the tree preservation plan.**

**Findings:** The City Council adopts and incorporates the Hearings Officer's response to this criterion on page 25, as stated below. Opponents did not raise any additional issues regarding the Application's ability to meet this criterion during the Appeal period.

City Council finds that the Preliminary Grading Plan (Exhibit C.8) and Construction Management Plan (Exhibit C.16) indicate a limit of disturbance and tree protection fencing that is consistent with that shown on the Preliminary Tree Plan (Exhibit C.11). This criterion is met.

#### **PCC 33.635.200 Land Suitability Approval Criterion**

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 in order to make the lots suitable for their intended uses and the provision of services and utilities.

**Findings:** The City Council adopts and incorporates the Hearings Officer's response to this criterion on page 26 and the condition of approval required for this criterion to be met, as stated below. Opponents did not raise any additional issues regarding the Application's ability to meet this criterion during the Appeal period.

City Council finds that no geologic hazards have been identified by the Applicant's geotechnical evaluation or by the Site Development Section of BDS, other than the potential landslide hazard mapping discussed above. The site is currently in residential use and there is no record of any other use in the past. The Applicant has proposed to remove the existing house and garage and redevelop the site. In order to ensure that the new lots are suitable for development, a permit must be obtained and finalized for demolition of all structures on the site, sewer capping, and decommissioning of the old septic system on the site prior to final plat approval.

With this condition, the new lots can be considered suitable for development, and this criterion is met.

The Applicant will be required to comply with all applicable building demolition regulations in effect when a demolition permit application is submitted for removal of the existing structures. The Hearings Officer had no authority to impose any additional demolition limitations or conditions as conditions of this development approval.

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

**Findings:** The City Council adopts and incorporates the Hearings Officer's response to this criterion on page 26 and the condition of approval required for this criterion to be met. An environmental tract, as well as sewer and private access easements are proposed along with a condition of approval to ensure maintenance. Opponents did not raise any additional issues regarding the Application's ability to meet this criterion during the Appeal period.

The City Council finds that an Environmental Resource tract is required. The tract shall be labeled "Tract A: Open Space (Environmental Resource Area and Drainage Reserve)" on the final plat. Ownership of the tract must meet the requirements of PCC 33.430.160.E. This can include common ownership by all lots in the land division site, a Homeowner's Association, or other options.

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

Private Sanitary Sewer Easements across Tract A, for sanitary sewer lateral connections to the sewer in SW 48th Avenue that will serve Lots 4 and 5.

Private Storm Sewer Easement within Tract A for stormwater facilities (pipes and outfalls) serving Lots 4 and 5.

Private Access Easement for maintenance of the proposed retaining wall shall be shown and labeled over the relevant portions of Lots 6, 7, and 8 and Tract A.

As stated in Section 33.636.100 of the Code, maintenance agreements 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 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 City Council adopts and incorporates the Hearings Officer's response to this criterion on page 27, as stated below. Opponents did not raise any additional issues regarding the Application's ability to meet this criterion during the Appeal period.

The City Council finds that 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.

The western and eastern portions of SW Pendleton Street are within 30 degrees of a true east-west axis. Lot 2 is the only interior lot within the land division site fronting on the western segment of Pendleton. It is slightly narrower than the corner lot (Lot 3). Lots 6,

7, and 8 are interior lots fronting on the newly extended eastern segment of Pendleton. These lots are narrower than the existing corner outside of the land division site. The east-west lots are consistent with Figure 639-2.

On the new north-south segment of SW Pendleton Street, Lots 4 and 10 are interior lots. Lot 4 is wider than Lot 5 to the south, consistent with Figure 639-2. Lot 10 is effectively the same size and width as the corner lot (Lot 10). These lots are 4,200 square feet, which is the minimum lot size in the R7 zone. There are limited opportunities to modify these lots because of the required street connection. Therefore, the solar access requirements are superseded by the requirements of PCC 33.610 for Lot 10. This criterion is met.

**J. Streams, springs, and seeps. The approval criteria of Chapter 33.640, Streams, Springs, and Seeps, must be met;**

**Findings:** The City Council adopts and incorporates the Hearings Officer's response to this criterion on pages 8 and 27-28, as stated below.

The City Council finds that Opponents and BES staff asserted that there may be additional springs or seeps on the site that are located outside of proposed Tract A.

The City Council finds that the Applicant provided documentation that no seeps or springs are located on the site outside of the environmental zone, which would warrant additional protection measures.

The City Council further finds that questions were raised about the presence of streams, springs, or seeps outside of the Environmental overlay zone by both City staff and Opponents. The Applicant has provided information responding to these questions. The Landslide Hazard Study prepared by Hardman Geotechnical Services (Exhibit A.1.f) indicates that no seeps or springs were observed on the site. The Applicant's environmental consultant, Anchor QEA, conducted a wetland delineation on the site (Exhibit A.2.g), responded to questions raised by staff (Exhibit A.3.a) and provided follow-up memos responding to Opponent concerns (Exhibits A.4.c, H-10, and Attachment 1 of Exhibit H-48a). In summary, the information from Anchor QEA states that environmental professionals have evaluated the entire site for the presence of streams, springs, and seeps, as defined by PCC 33.910, outside of the environmental zone and identified no such features. Additionally, no other wetlands were identified other than that identified in the wetland delineation report.

BES staff noted one or more potential springs that may be located outside the boundaries of proposed Tract A. Exhibits H-8 and H-59. The neighborhood association and other area residents argued that there are additional springs and seeps throughout the site. However, these features are not "seeps or springs" as defined by the Code.

PCC 33.910.010 provides, "Words used in the zoning code have their normal dictionary meaning unless they are listed in 33.910.030 below. Words listed in 33.910.030 have the specific meaning stated, unless the context clearly indicates another meaning." The version of PCC 33.910 in effect when this application was filed defines "Seep or Spring" 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." The Code does not define the term "aquifer." Therefore, pursuant to PCC 33.910.010, the Hearings Officer had to rely on the dictionary definition of that term. The dictionary defines "aquifer" as "a water-bearing stratum of permeable rock, sand, or gravel." Aquifer. (n.d.). In Merriam Webster Online, Retrieved April 26, 2017, from <https://www.merriam-webster.com/dictionary/aquifer>.

As discussed in Exhibit H-10 and Attachments 1 and 2 of Exhibit H-48a, the water discharges noted by BES staff and Opponents are not associated with an aquifer. The water is perched groundwater flowing through the topsoil on the site, not from “a water-bearing stratum of permeable rock, sand, or gravel.” Therefore, the source of the water noted by BES staff is not from an aquifer intersecting with the ground surface. In addition, the water from these discharges does not flow into a stream channel. Water from these sources sheet flows overland to the on-site wetlands. Therefore, because these features do not meet the Code definition of “seep or spring,” they are not regulated by PCC 33.640 and the requirement of PCC 33.640.220.A requiring streams, springs, and seeps outside of an Environmental overlay zone be located in a tract are not applicable to the subject site.

BES argued to the Hearings Officer that if the noted water discharges do not constitute “springs or seeps” as defined by the Code, they should still be located in the tract in order to avoid potential impacts to the natural surface and subsurface flow of water that occurs across this site. Exhibit H-59. However, BES failed to identify any Code requirement that would support such a condition. The noted discharges are not “drainageways” as defined by PCC 33.910.010, which provides, “Drainageway. A constructed or natural channel or depression, which at any time collects and conveys water. It may be permanently or temporarily inundated.” As discussed in Exhibit H-10 and Attachments 1 and 2 of Exhibit H-48a, water from these discharges surface flows to the wetland. There are no identifiable channels or depressions to convey this water.

On Appeal, Opponents again argued that the seep and spring-like water features outside of the environmental tract must be preserved pursuant to PCC Chapter 33.640. However, both the Portland Bureau of Development Services’ (“BDS”) analysis and the Applicant’s substantial evidence demonstrate that the features in question do not meet the definition of seeps and springs found in PCC Chapter 33.910 in effect on the date this application was submitted (April 22, 2016), despite arguments to the contrary by Opponents. This Code section defines “seeps and springs” 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.” This definition contains three elements: an aquifer, water from an aquifer discharging into a stream channel, and that that stream channel then flows into a wetland or other water body. The City Council interprets this definition to require that the water from an aquifer flow directly into a stream channel and then flow into a wetland or other water body. In this case, based on the evidence presented by the Applicant, Opponents, and BDS the City Council concludes that the wet features outside of the environmental zone do not meet the definition of “seep or spring.”

The Code does not define “aquifer.” Applicant and Opponents provided evidence from a wetland scientist and hydrologist, respectively, which disagreed regarding whether an aquifer is present at the Project site necessary to satisfy the first prong of the seeps and springs definition. The City Council finds the evidence provided by the Applicant and the conclusion made by the Hearings Officer that an aquifer is not present to be more persuasive on this point. However, even if the City Council found the Opponents’ evidence more compelling, on this point, it is not enough to meet the definition.

BDS and the Applicant submitted testimony that the wet features, even if they arise from an aquifer, do not directly “discharge water into a stream channel,” as required by prong two of the definition. Evidence provided by the Applicant’s consultant, which is not contradicted by Opponents or their hydrologist, demonstrates that the water from the wet features flows along the ground surface (not through a stream channel) from its origin to the wetland.

Opponents appear to argue that because the water from these features *eventually* flows to a stream channel (which is downstream of the wetland), the features meet the definition of “seeps or springs.” The City Council finds that the plain language of the definition requires that the water from the aquifer flow directly to a stream channel and from that channel, flow into a wetland or water body. The City Council does not find the Opponents’ argument, which appears to be that any water that eventually reaches a channel must be classified as a seep or spring, meets the definition.

The City Council therefore finds that the wet features outside of the Environmental Conservation overlay zone are not seeps or springs and therefore cannot be regulated pursuant to PCC 33.640.

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

**Findings:** The City Council adopts and incorporates the Hearings Officer’s response to this criterion on pages 28-35, as stated below.

The City Council finds that 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 Applicant provided a Transportation Impact Study prepared by Kittelson and Associates (Exhibit A.2.e) evaluating the transportation impacts of the proposed subdivision. The Development Review Section of PBOT has reviewed the Application against the evaluation factors and has provided the following findings (see Exhibit E.2):

“Street capacity and level-of-service

Per Portland Policy Document TRN-10.27 - Traffic Capacity Analysis for Land Use Review Cases: For traffic impact studies required in the course of land use review or development, the following standards apply:

1. For signalized intersections, adequate level of service is LOS D, based on a weighted average of vehicle delay for the intersection.
2. For stop-controlled intersections, adequate level of service is LOS E, based on individual vehicle movement.

The industry standard is to measure street capacity and level-of-service (LOS) only at intersections during the critical time period, such as AM or PM peak hour. Although capacity is a part of the LOS, the City of Portland’s performance standards are defined only by LOS, which is defined by average vehicle delay. The City does not have performance standards for any of the other evaluation factors.

Using the evaluation factors listed in this code section, the Applicant should provide a narrative and all necessary plans and documentation to demonstrate that the transportation system is capable of safely supporting the proposed development in addition to the existing uses in the area. The Applicant included a professionally prepared Traffic Impact Study (TIS) to adequately address the above referenced approval criterion. The following discussion is based on PBOT’s assessment of the submitted TIS and transportation impacts for this proposal.

The Applicant proposes to divide the approximately 2.3 acre site to create 11 lots for single dwelling development, an environmental resource tract, and a public street extension. PBOT identified the following intersections within the site vicinity to be analyzed for the purposes of assessing the impacts of the subdivision in relation to the current and expected future operations of said intersections.

All level-of-service (capacity) analyses conducted at the study intersections were performed in accordance with the procedures stated in the 2000 Highway Capacity Manual. To ensure that the analyses were based on a reasonable worst-case scenario, the peak 15-minute flow rates were used in the evaluation of all intersection levels of service (LOS). Manual turning movement counts at the study intersections were conducted in March 2016 on a typical weekday when classes were in session at the nearby Hayhurst School. The counts were conducted during weekday morning (7:00 to 9:00 AM) and evening (4:00 to 6:00 PM) time periods [standard peak periods of travel].

<u>Intersection</u>	Existing LOS	Projected LOS
	<u>AM Peak/PM Peak</u>	
	<u>AM Peak/PM Peak</u>	
SW Cameron Rd/SW Shattuck Rd	B/B	B/B
SW Cameron Rd/SW 48th Avenue	A/A	A/A
SW Pendleton St/SW 48th Avenue (west)	A/A	A/A
SW Pendleton St/SW 48th Avenue (east)	A/A	A/A
SW Pendleton St/SW 47 <sup>th</sup> Avenue	A/A	A/A
SW Pendleton St/SW 45 <sup>th</sup> Avenue	B/B	B/B
SW Vermont St/SW 45 <sup>th</sup> Avenue	B/B	C/B

The Institute of Transportation Engineers (ITE) Trip Generation Manual [9<sup>th</sup> Edition] was used to estimate the number of new trips generated by the 11 new homes associated with the proposed subdivision. ITE Code #210 (single-family detached homes) was referred to in calculating the expected trip generation, which include 8 AM peak hour trips, 11 PM peak hour trips and a total daily number of 104 vehicle trips. Projecting trip distribution from the new vehicle trips expected to be generated by the proposed development into the transportation system and including anticipated background trips through the subdivision's buildout year of 2017 then allowed the Applicant's traffic consultant to calculate the resulting LOS at the study intersections noted above. As identified, the operations of the study intersections will mostly remain unchanged in terms of levels of service – the only minor change will be during the AM peak hour at the intersection of SW Vermont St/SW 45<sup>th</sup> Ave, which will continue to satisfy the City's performance measure.

The Applicant's traffic consultant should be commended for providing the following additional analysis that further demonstrates that the proposed subdivision will satisfy this subject evaluation factor. To address overall connectivity goals, the Applicant will be required to connect the eastern and western termini of SW Pendleton via a new north-south public street. This new street system will provide pedestrians, bicyclists and motorists another connection between SW 45<sup>th</sup> Avenue and SW Cameron Rd.

To account for potential traffic diversion associated with the additional connectivity, the TIS provides a reasonable assumption that a portion of the existing weekday AM traffic on SW 45<sup>th</sup> Avenue that currently turns onto SW Pendleton and uses SW 47<sup>th</sup> Avenue to access the school would divert to the new route between SW Cameron Rd and SW 45<sup>th</sup> Avenue. During the weekday AM peak hour, a conservative assumption was made that

approximately 75% of the south-bound right-turns and east-bound left-turns at SW Pendleton/SW 45th would divert to this new route. This would result in 28 vehicles southbound on SW 48th Avenue to access SW 47th Avenue south of Pendleton and 11 vehicles northbound on the same route. The modified weekday AM peak hour total traffic volumes with the school traffic diversion results in a change in intersection operations at only one of the study intersections - SW Pendleton/SW 47th shifts from LOS A to LOS B. As shown, even with the potential diversion, each of the study intersections is forecast to continue operating acceptably.

Using industry accepted methodologies, practices, conservative assumptions and accurate calculations, the submitted TIS confirms that this evaluation factor is met.

#### Vehicle access and loading

The subject property is located somewhat centralized between a number of arterial roadways (SW Cameron to the north, SW 45th Avenue to the east, SW Vermont to the south and SW Shattuck to the west). Currently, direct access to [the] site is via the two unconnected segments of SW Pendleton – as described herein and demonstrated on the submitted plans, the proposed subdivision will connect these two segments of SW Pendleton via a new north/south public street. Vehicle access to the site will be facilitated by the new connection.

Loading activities associated with residential land uses are typically light and infrequent, and there is ample space for these activities to occur on-site on the proposed driveways as well as along the abutting existing and proposed public rights-of-ways.

The subject site provides adequate access for motor vehicles as well as other modes. Vehicle access and loading space at this location are sufficient to accommodate the existing uses as well as the proposed Project. This evaluation factor is satisfied.

#### On-street parking impacts

To estimate the potential impacts on the availability of on-street parking in the vicinity of the proposed subdivision, the Applicant conducted parking observations of existing on-street parking demand on an hourly basis through the course of a typical weekday (6:00 AM to 7:00 PM) in March 2016 while school was in-session. Again, PBOT wants to acknowledge that this data collection is well above and beyond the time frames during which on-street parking demand is typically considered in relation to residential development. This data was measured on the following streets:

- SW Pendleton Street east of SW 48th Avenue (3 on-street spaces provided);
- SW 48th Avenue south of SW Pendleton Street (no existing on-street supply provided); and,
- SW 47th Avenue south of SW Pendleton St, both sides between SW Pendleton & SW Iowa (25 on-street spaces measured).

The data included in the Applicant's TIS shows that the existing parking demand in the study area is minimal today with the peak hour for parking demand occurring at 6:00 AM. During this period 3 vehicles were measured along SW 47th Avenue south of SW Pendleton Street. There are approximately 28 on-street parking spaces currently provided today adjacent to the subdivision - the 3 vehicles parked equate to 11% of the overall parking supply being utilized.

The Institute of Transportation Engineers Parking Generation, (4th Edition) was used by the Applicant's traffic consultant to estimate the parking demand expected to be generated by the 11 new homes. The proposed subdivision is estimated to generate the need for 20 parking spaces. As part of the proposed development, on-site parking will

be provided for each home via a single car garage (some may have a double car garage) and a driveway that accommodates a minimum of one vehicle. Conservatively assuming that each home only provides one space within the lot, 9 additional on-street spaces would be needed. Per the results of the parking demand study, there are 25 unused spaces today adjacent to the site. With 9 of these utilized by the new homes, there will still be ample parking supply (i.e., 16 unused spaces) on the surrounding streets. This does not take into consideration the number of approximate on-street parking spaces that will be created in relation to the new street construction within the proposed subdivision site. With respect to the current layout of the streets within the subdivision site, including current driveway locations, there will be approximately 10 additional on-street parking opportunities (PBOT recognizes that the number of on-street parking spaces may change based on the ultimate design of the various public stormwater management facilities associated with the project). Utilization of these spaces by future residents/visitors of the proposed subdivision will further minimize on-street parking impacts throughout the broader area. Accordingly, no on-street parking impacts are anticipated; this evaluation factor is satisfied.

#### Availability of transit service and facilities and connections to transit

Tri-Met provides transit service in the area via bus route 1 (Vermont). Nearby bus stops are located at SW Cameron Rd/SW Fairvale Ct (approximately 800-ft and north from the site) and at SW 45<sup>th</sup> Ave/SW Pendleton Street (approximately 600-ft and east from the site). No changes to the transit service are proposed or needed to serve the proposed subdivision. New sidewalks that will be included in relation to the new public street construction through the subject site will facilitate connection to these bus stops. Existing transit service is available; this evaluation factor is satisfied.

#### Impacts on the immediate/adjacent neighborhoods

As analyzed above, the impact of the proposed project's vehicle trip generation on area intersections and streets will be negligible and the operations of the transportation system will continue to be acceptable. Currently, there is sufficient on-street parking to serve the demand of the existing uses in the area. As demonstrated above, adequate on-street parking opportunities will remain after the construction of the proposed subdivision. From a transportation perspective, these noted items (intersection operations and parking impacts) are impacts that can adversely affect neighborhoods. These issues are not expected to negatively impact the immediate or adjacent neighborhoods. This evaluation factor is satisfied.

#### Safety for all modes

Crash records were examined by the Applicant's traffic consultant for the most recent reporting time frame available (2010-2014). No crashes were reported for 5 of the 7 study intersections (previously identified). The 8 total crashes reported for the remaining 2 study intersections result in crash rates of 0.09 CMEV and 0.04 CMEV (crashes per million entering vehicles). Crash rates greater than 1.0 CMEV are generally indicative of a need for further investigation and possible mitigation. Crash rates and patterns were below a level indicative of potential safety concerns, and there were no apparent safety deficiencies noted during site visits. Based on the detailed crash data and the calculated crash rates, there are no apparent existing safety deficiencies at the study intersections where data was available.

Regarding active modes, the streets in the nearby vicinity of the site are low-speed, low-volume residential roads that can safely be shared between bicycles and motor vehicles. With regard to bicyclists, there are identified bike facilities (Portland Bike/Walk Map) in the area, including "shared roadways" along SE Cameron (north of the site), SW 45<sup>th</sup> Avenue (east of the site) and SW Illinois (south of the site).



Sidewalks are not available throughout the area for safer pedestrian passage. Pedestrians walk along the shoulders of the neighborhood streets. The lack of sidewalks in the area is largely a reflection of the street standards in-place at the time south-west Portland neighborhoods were constructed, and mostly, as a result of the challenging topography and stormwater management limitations of this area of the city. New sidewalks will be included in relation to the street construction along the site's public rights-of-ways. These sidewalks will facilitate pedestrian travel through and around the subdivision site. Pedestrian travel and safety will be enhanced by the proposed subdivision.

This evaluation factor has been questioned by the area's Hayhurst Neighborhood Association (HNA) – a letter from the HNA was submitted into the record voicing safety concerns throughout the area that will be aggravated as a result of the proposed subdivision. These concerns include (verbatim):

- The unimproved section of SW 48th Avenue from SW Flower Ct to SW Cameron Rd must be improved to city standards, and is not included in the current plan;
- Parts of this section of SW 48th Avenue are only 9-ft wide;
- The intersection of SW 48th Ave/SW Cameron Rd is also unimproved, and has dangerously limited visibility. Without street improvements, increased traffic turning onto SW Cameron Road, and vice versa, will create an additional safety hazard for pedestrians and drivers, alike;
- There is a bus stop at the corner of SW Cameron Rd/SW 48th Avenue that would subject riders to increased vehicular traffic resulting from through street drivers turning onto SW Cameron Rd.

In response, PBOT only has the authority, through Title 17, to require right-of-way improvements associated with the proposed subdivision to be constructed along the site's frontages. The section of SW 48th Avenue identified above by the HNA is not along the subject site. The Applicant will be required to construct the proportionate share of standard improvements along the site's SW 48th Avenue frontage which will include a 20-ft wide pavement section and sidewalk. The stop-controlled intersection of SW Cameron/SW 48th Avenue is improved with pavement but lacks sidewalks, similar to the broader area. The alleged limited visibility is likely the result of private development including fencing on properties on the east and west sides of SW 48th Avenue (near SW Cameron). With respect to the asserted additional safety hazard, the crash history report previously referenced in this response identified that there were no reported crashes at intersection of SW Cameron/SW 48th Avenue. Lastly, according to available records, the nearest Tri-Met bus stop is not located at the corner of SW Cameron/SW 48th Ave, but instead, is located along SW Cameron west of SW Fairvale Ct.

Related to the above referenced modes of travel, none will be adversely affected by the proposed land division and subsequent construction of 11 new single-family homes. This evaluation factor is satisfied.

In summary, as analyzed above and as evidenced in the submitted TIS, with acceptable analyses, methodologies and conclusions, all of which PBOT staff supports, the Applicant has clearly demonstrated that 'the transportation system is capable of safely supporting the proposed development in addition to the existing uses in the area.'

PBOT has reviewed and concurs with the information supplied the methodology, assumptions and conclusions made by the Applicant's traffic consultant. As discussed in more detail under PCC 33.654 below, the Applicant will be required to construct a public street connection through the site and improve the site's existing frontages along SW 48th Avenue and SW Pendleton Street. These criteria are met."

Opponents argued that this development and the proposed street connection will cause a “significant” increase in traffic that will create a hazard for pedestrians and cyclists using the roads in the area. However, the Code does not use or define the subjective term “significant” in relation to traffic. The Hearings Officer had to review the traffic impacts of this development based on the objective standards in the Code, and we the City Council are bound by the same standard. Based on the conservative cut-through traffic assumptions in the Applicant’s traffic study, traffic generated from this development and the connection of SW Pendleton Street through the site will increase traffic on the section of SW 48th Avenue north of Pendleton Street by 72 trips in the a.m. peak hour and 71 trips during the p.m. peak hour. This development and street connection will add 70 trips at the 47<sup>th</sup> Avenue/Pendleton Street intersection during the p.m. peak hour and 69 trips during the a.m. peak hour. This additional traffic will be perceptible to area residents. However, as PBOT noted above, it will not exceed the capacity of area streets or create a hazard. In addition, as discussed in Exhibit H-54, the traffic study likely overestimates the amount of cut-through traffic created by this street connection. The proposed street connection will not provide a faster connection for the majority of vehicle trips, because drivers would need to turn off the higher speed arterial roads (Cameron and 48th Avenue) to travel on less improved local streets with lower speed limits and stop controlled intersections.

For people who have lived along what have heretofore been dead-end streets, the change created by the extension of SW Pendleton Street through the site will be more significant. They have enjoyed a lower level of traffic given their location in an otherwise urbanized area. However, this street extension was foreseeable and is in the broader public's interest; this street connection is shown on the City’s Master Street Plan and it will enhance emergency access in the area and allow vehicles to disperse on multiple streets. The additional traffic generated by this subdivision may pose an increased risk for drivers, cyclists and pedestrians in the area; higher vehicular traffic volume creates a marginally higher risk for pedestrians and bicyclists. It may well warrant a heightened degree of attentiveness to traffic when driving, cycling, or walking in the neighborhood. However, those risks are consistent with the location of the site in the urban area where City plans call for the sort of development being proposed. Reasonably prudent drivers will observe the posted speed limit. Unfortunately, not all drivers are prudent. However, there is no evidence that the development proposed in this Application will contribute a disproportionate share of imprudent drivers.

Opponents’ assertions that the intersection of SW Cameron Road and 48th Avenue is hazardous due to limited sight distance and the steeper grade on 48th Avenue are not supported by the crash history. No accidents have been reported for this intersection during the past five years (See Table 3 of the applicant’s traffic study, Exhibit A.1.g).

The Applicant will construct sidewalks and other street improvements on roads within and abutting the site, which will improve safety for pedestrians using these road sections. Those sidewalks will not connect to other sidewalks in the area. Many streets in this area are not improved to current standards; sidewalks are lacking and pedestrians must walk on the shoulder. However, similar conditions exist on streets throughout this area. The Applicant cannot be required to improve all existing and perceived deficiencies in the area, because such a requirement would be disproportionate to the impacts of the proposed development. This development will only generate 104 new vehicle trips per day; eight trips during the a.m. peak hour and 11 during the p.m. peak hour. The remainder of the potential cut-through traffic currently travels on streets in this area.

The City's Safe Routes to Schools and Vision Zero plans are not applicable approval criteria for this application.

Additionally, Opponents made several arguments on Appeal regarding potential transportation impacts of the Project on appeal, which the City Council considers in turn.

*Potential Impacts to Transportation Safety:*

Opponents argued on Appeal that the blind corner on a 12-foot wide illegally paved road will impact transportation safety if the Project is constructed. Opponents do not provide additional details regarding this situation. The City Council finds, based on the testimony of PBOT staff, that the Project improvements will enhance transportation safety by bringing sub-standard facilities up to Code standards on abutting streets through paving and the addition of sidewalks.

On Appeal, Opponents also cited increased traffic as a safety concern. The City Council finds that the Project will not negatively impact transportation safety. The Applicant's transportation engineer evaluated existing conditions and projected impacts to the multimodal transportation system from developing the Subdivision and concluded that, subject to completing frontage and sidewalk improvements on SW 48th Avenue and SW Pendleton Street and subject to completing the new north-south street connection between the two legs of SW Pendleton Street, the multimodal transportation system is adequate to support the proposed Project. The Applicant's transportation engineer concluded that, after build-out, all study intersections are expected to satisfy the City's operational and performance standards. PBOT staff reviewed the Applicant's traffic data and concurred with the Applicant's traffic engineer's findings and recommendations. The Hearings Officer relied upon the Applicant's traffic analysis to find that the Application satisfies the applicable criteria and the City Council agrees with this analysis. The Opponents have not submitted any evidence that undermines this testimony nor have they adequately explained how the Hearings Officer erred in his analysis of this issue. As the Hearings Officer noted, residents will likely perceive an increase in traffic in the immediate area upon build-out of the subdivision. However, a perceptible increase in traffic that does not violate City standards is not a basis to deny or further condition the Application.

*Safety for Pedestrians:*

Opponents argued on Appeal that the Project would decrease pedestrian safety, in part because pedestrians currently walk in streets and traffic in these streets may increase due to the Project. The City Council finds that the Project will increase pedestrian safety in the neighborhood by providing sidewalks on streets that are currently not improved with sidewalks. Although the Project will not provide sidewalks on all streets in the neighborhood, the provision of some sidewalks will increase pedestrian safety.

*Cut-Through Traffic:*

On Appeal, Opponents argued that the connection of SW Pendleton Street would cause traffic from other surrounding streets to "cut-through" the Project along the newly connected street so that the streets would be unsafe.

The City Council finds that there is no evidence in the record to support the Opponents' contentions that cut-through traffic along SW Pendleton will result in intersections not operating at acceptable levels. The SW Pendleton Street connection will provide a new route between SW Cameron Road and SW 45th Avenue. The Applicant's traffic engineer

testified that it was unlikely that a significant amount of traffic would divert from the existing route and use the SW Pendleton as a “cut-through” because the existing route (SW 45th Avenue to SW Cameron Road) is more direct, has fewer turns, and a higher speed limit. By contrast, the Pendleton route is less direct, has five turns, multiple stop signs, and a slower speed limit, as well as topographical and grade differences. As a result, the existing route is faster and more convenient, which suggests that it will be the preferred route for drivers. The Applicant’s traffic engineer further testified that, even conservatively factoring in potential cut-through traffic, each of the study intersections would continue to operate acceptably under applicable City standards. Opponents did not present any testimony or traffic data that undermines the Applicant’s traffic engineer’s analysis and conclusions. Therefore, the City Council finds that there is substantial evidence in the record to conclude that potential “cut-through” traffic along the improved streets constructed by the Project will not detrimentally impact the transportation system.

### *Safe Routes to Schools*

On Appeal, Opponents again argued that the Project would be inconsistent with the City’s Safe Routes to Schools (“SR2S”) program. The City Council finds that compatibility with the SR2S program is not an approval criterion for the Project. However, even if such compatibility were a criterion, the City Council finds that there is evidence in the record showing that the Project is compatible with safe walking and biking to Hayhurst Elementary School, as also found by the Hearings officer on pages 10-11 of the decision.

As noted in the Hearings Officer’s decision, the City’s website includes a map of recommended walking and biking route to local schools called “Safe Routes to Schools.” The website includes a disclaimer stating that it is offered for “convenience” and does not include any representations or warranties regarding actual conditions. Nothing in the PCC or other City plan or ordinance makes the Safe Routes to Schools map or program an approval criterion for land divisions such as this Application. To the extent SR2S does apply, the Project is consistent with this program for the reasons explained by PBOT staff. Development of the Subdivision will require completion of the SW Pendleton Street connection and frontage improvements on SW 48th Avenue and SW Pendleton Street, all of which will include sidewalks built to City standards. Thus, the Subdivision will enhance pedestrian and bicyclist safety and increase, not decrease, the number of safe bicycling and pedestrian routes to and from Hayhurst Elementary School. Furthermore, the current SR2S route for Hayhurst Elementary relies on a path (south of SW 48th Avenue) that crosses private property and may become unusable in the future. Upgrading streets and providing sidewalks near the School, as the Project will do, will enhance pedestrian and bicycle safety in the area, which will contribute to additional safe route options in the future if these are needed.

### *Vision Zero*

Opponents also argued on Appeal that the Project is contrary to the City’s “Vision Zero” program, which focuses on eliminating risk of death and serious injury by setting safe speeds along streets with multiple travel modes and separating travel modes along streets with higher speeds. The City Council finds that compatibility with the Vision Zero program is not an approval criterion for the Project. However, even if such compatibility were a criterion, the City Council finds, as the Hearings Officer did on page 11 of the decision, that there is evidence in the record showing that the Project is compatible with the goals of the Vision Zero program by providing street and sidewalk improvements which will separate pedestrians from vehicles in the roadway.

As noted in the Hearings Officer's decision, the City and its partners "are working to eliminate deaths and serious injuries in our streets by 2025" through the Vision Zero program. Neither the PCC nor any other City plan or ordinance identifies the Vision Zero program as an approval criterion applicable to land divisions such as the Application. However, as summarized by City staff in the Hearings Officer staff report, to the extent the Vision Zero program is applicable, the Project and its related street and sidewalk improvements (where none currently exist) on SW Pendleton Street, SW 48th Avenue, and the connection of SW Pendleton Street will enhance safety for pedestrians and bicyclists. Opponents testified that pedestrians currently walk in the roadway of some streets surrounding the Project site. Provision of sidewalks and improvement of these streets will provide a safe alternative for pedestrians, consistent with the Vision Zero goals. Therefore these safety enhancements are consistent with the City's Vision Zero program.

### *Traffic Calming*

Opponents argued on Appeal that the connection of SW Pendleton Street warrants additional traffic calming measures. However, based on the evidence in the record provided by PBOT, the City Council finds that traffic calming measures are not justified for two reasons: First, the characteristics of the SW Pendleton Connection will naturally calm traffic. For example, the SW Pendleton Street connection winds, has a significant grade, and will have on-street parking. Second, PBOT staff testified, speed bumps and other calming measures must satisfy national warrants, which are likely not currently met in this area.

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

#### **PCC 33.651 Water Service standard**

**Findings:** The City Council adopts and incorporates the Hearings Officer's response to this criterion on pages 35-36 and the condition of approval required for this criterion to be met, as stated below. Opponents did not raise any additional issues regarding the Application's ability to meet this criterion during the Appeal period.

The City Council finds that the Water Bureau has indicated that water system improvements will be required to serve the site. The Applicant must upsize the existing water main in the eastern segment of SW Pendleton Street and make arrangements to extend the water main in the newly dedicated street to serve the proposed development. In addition, the existing water main in SW 48th Avenue is located under proposed curb/gutter, street trees, and/or swales on SW 48th Avenue. The water main must be relocated to allow a minimum of 2 feet of clearance from the curb/gutter.

The required water system improvements must include fire hydrants that meet the spacing standards and fire flow requirements of the Fire Bureau. In order to meet the standards of PCC 33.651 and the technical requirements of Title 21, appropriate plans and assurances must be provided to meet Water Bureau and Fire Bureau requirements prior to final plat approval. With this condition, the water service standards of PCC 33.651 have been verified.

#### **PCC 33.652 Sanitary Sewer Disposal Service standards**

**Findings:** The City Council adopts and incorporates the Hearings Officer's response to this criterion on page 36 and the conditions of approval required for this criterion to be

met, as stated below. Opponents did not raise any additional issues regarding the Application's ability to meet this criterion during the Appeal period.

City Council finds that proposed lots with frontage on SW Pendleton Street and SW 48th Avenue may be served by the existing sanitary sewer mains in those streets. The Applicant proposes to serve Lots 4 and 5 from SW 48th Avenue via an easement over Tract A from SW 48th Avenue. BES has indicated this route of service is acceptable. The easement must be shown on the final plat. In order to provide individual service connections for Lots 6-8, the Applicant must extend the public sewer in the newly created right-of-way that will connect the two segments of SW Pendleton Street. The public works permit for the sewer extension has been initiated and BES has provided a conceptual approval of Concept Development plans (i.e. 30 percent design) thereby demonstrating that the proposed design is feasible. However, BES staff noted issues with the site utility plan provided and requests a plan be provided that shows feasible locations of storm and sanitary connections for each lot that does not conflict with proposed public stormwater facilities, street trees, and/or other utilities. BES has determined that it is possible for storm and sanitary connections to be relocated to meet BES requirements; therefore, this requirement can be met prior to final plat approval.

Prior to final plat approval, the Applicant must meet BES requirements to provide an easement on the plat benefiting Lots 4 and 5, the updated site utility plan described above, and approved public works plans, a financial guarantee, receipt of all outstanding fees, and a signed permit document for the required sewer extension. With these conditions, the sanitary sewer service standards of PCC 33.652 have been verified.

**PCC 33.653.020, Stormwater management must meet the following approval criteria:**

**A. If a stormwater tract is proposed or required, an adequate amount of land and an appropriate location must be designated on the Preliminary Plan; and**

**Findings:** A stormwater tract is not required; therefore this criterion is not applicable to the Application.

**B. The application must show that a stormwater management system can be designed that will provide adequate capacity for the expected amount of stormwater.**

**Findings:** The City Council adopts and incorporates the Hearings Officer's response to this criterion on pages 7, as stated below and 37, as stated under the responses to PCC 33.653.030, below.

City Council finds as follows:

Stormwater Management and Existing Flooding

Opponents noted that under existing conditions stormwater flows from SW Pendleton Street onto SW 48th Avenue and then onto adjacent properties west of the site.

The City Council finds that the Applicant will construct right-of-way improvements along SW 48th Avenue (currently a non-City-maintained street), which will improve existing drainage issues in SW 48th Avenue. The Applicant will improve SW 48th Avenue abutting the site to include sloping the street east to direct stormwater runoff to a new public stormwater management facility (designed for treatment and detention) located along the east side of SW 48th Avenue. The Applicant will install LIDA facilities

within the SW 48th Avenue right-of-way for treatment and detention. The Bureau of Environmental Services (BES) recommended these facilities be unlined to allow some stormwater to infiltrate on the site.

Concerns were expressed that the larger culvert beneath SW 48th Avenue will cause flooding on downstream properties.

City Council finds that the Applicant is required to replace the existing 18-inch diameter culvert beneath SW 48th Avenue with a 36-inch culvert; under existing conditions the inlet of the culvert becomes submerged and surcharged during the 25-year design storm, which increases the velocity of water flowing through the culvert, potentially causing erosion and scouring near the outfall of the culvert. Opponents expressed concern this larger culvert will cause flooding when water reaches the existing 18-inch culvert on the downstream property west of the site. The Applicant's engineer demonstrated that the proposed development, with the new culvert, will reduce the volume of water flowing beneath SW 48th Avenue during the 25-year design storm. Attachment 3 of Exhibit H-58.<sup>1</sup> The Applicant will collect stormwater from the site and areas of SW Pendleton Street that currently flow through the 48th Avenue culvert and direct it to storm sewers in SW Pendleton Street, thereby reducing the volume of stormwater flowing through the culvert during the design storm.

The larger culvert may allow higher rates of stormwater runoff during the 100-year storm, which may exceed the capacity of the downstream culverts and cause flooding. However, as BES noted in Exhibit H-59, the downstream culverts were installed without permits and are undersized for expected stormwater flows. The Applicant is not required to remedy this existing condition.

PCC 17.38.035.C(1), cited by the Opponents, is not an applicable approval criterion for this Application. However, this development is consistent with this Application, which prohibits increased rates of flow leaving a site during design storms. As noted above, this development will reduce the volume and rate of stormwater leaving the site during the design storm.

Opponents disputed the Applicant's stormwater calculations, which showed stormwater backups at the existing 48th Avenue culvert flowing over SW 48th Avenue. They testified that stormwater has never been observed overtopping this street.

The City Council finds that the Applicant's stormwater calculations create a very conservative analysis, based on theoretical full-buildout of the drainage basin. Attachment 2 of Exhibit H-61. City regulations require replacement of the existing culvert based on this conservative analysis.

The Applicant's initial analysis determined the existing culvert in SW Pendleton Street did not have adequate capacity to accommodate stormwater runoff from this site and needed to be replaced.

The City Council finds that no modifications are required for the existing culvert in SW Pendleton Street. The original calculations for this culvert were based on incorrect elevations, which indicated a flatter gradient. The Applicant revised the calculations using the actual culvert elevations, which demonstrated that this culvert can

---

<sup>1</sup> Mr. Robinson attached additional documents to his letters, which he labeled "Exhibits." In order to avoid confusion, these documents are referred to as "Attachments" to the relevant exhibit number of Mr. Robinson's letter.

accommodate the expected stormwater flows. Attachment 3 of Exhibit H-48 and Exhibit H-51.

The City Council finds, based on the evidence in the record, that the Applicant's proposed stormwater plan will provide adequate capacity for the expected stormwater at the site. There is currently a 12-inch public concrete storm sewer in SW Pendleton Street and an 18-inch private culvert that runs under SW 48th Avenue. As part of this approval, BES determined that the Applicant is required to upgrade the culvert in SW 48th Avenue to a 25-year storm design, which requires a 36-inch culvert at this location.

During the Appeal period, Project Opponents argued that the installation of the 36-inch culvert would increase stormwater flows under 48th Avenue and cause flooding when this larger culvert drained into an 18-inch culvert on adjacent private property downstream from the Project site. However, the Applicant provided rebuttal evidence from the Project engineer that the stormwater plan will remove stormwater from the channel leading to this culvert by splitting flows and sending some stormwater further west of the site via the storm sewer in SW Pendleton Street. Therefore, less stormwater will pass through the new culvert into the 18-inch private culvert than regularly occurs today. Additionally, the Project will also reduce stormwater through the channel under SW 48th Avenue by using vegetated stormwater facilities that provide both a water quality and water retention function. The City Council finds the Applicant's evidence compelling that the stormwater management system can be designed to provide adequate capacity for the expected amount of stormwater with the addition of the 36 inch culvert. Furthermore, the City Council finds that the Applicant is not required to upgrade the 18-inch culvert on the adjacent private property.

**PCC 33.653.030, Stormwater management facilities must meet the following standards.**

**A. The Bureau of Environmental Services has preliminarily approved the capacity, type, location, feasibility and land area required of the proposed stormwater management system and stormwater disposal facilities as well as any connection to off-site facilities. The approval is based on the Sewer Design Manual and the Stormwater Management Manual;**

**B. The Bureau of Development Services has preliminarily approved the capacity, type, location, feasibility, and land area required of any proposed private on-site stormwater disposal facilities; and**

**C. Ownership and maintenance. (Omitted - not applicable)**

**Findings:** The City Council adopts and incorporates the Hearings Officer's response to this criterion on page 37 and the conditions of approval required for this criterion to be met, as stated below. Opponents did not raise any additional issues regarding the Application's ability to meet this criterion during the Appeal period.

The City Council finds that a stormwater tract is not proposed or required; therefore, criterion PCC 33.653.020.A does not apply.

The Applicant has proposed the following stormwater management methods, shown on the site utility plan (Exhibit C.10) and in the Applicant's stormwater report. (Exhibit A.4.d)



**Public Street Improvements:** Stormwater from the street improvements, including improvements on the existing frontages and the new public street extension will be directed into flow-through planters located in the public right-of-way that detain the water, remove pollutants and suspended solids, and discharge into the public storm sewer network. Stormwater from the street improvements along the existing frontage on SW Pendleton Street will be directed to the existing storm sewer in SW Pendleton Street that conveys water to the west. A new storm sewer will be required in the new public street, which also connects to the existing storm sewer in SW Pendleton Street and travels to the west. Stormwater from the street improvements in SW 48th Avenue are proposed to be directed to the culvert at the stream crossing in SW 48th Avenue. The culvert will be increased in size to address capacity issues. The Applicant has initiated the public works permit for the public stormwater improvements and BES has provided conceptual approval of their Concept Development plans (i.e. 30 percent design), thereby demonstrating that the proposed design is feasible and has capacity for the expected amount of stormwater generated by the proposed development. To ensure the public improvements are completed, the Applicant must meet BES requirements for public works permit completion prior to final plat approval.

**Lots:** Stormwater from the individual lots is proposed to be managed by flow through planters on each lot that is discharged to new/existing storm sewers (described above), with the exception of Lots 4 and 5 that are proposed to have individual outfalls within Tract A (outside of the Environmental overlay zone) for disposal to the wetland area. An easement over Tract A is proposed for the stormwater outfalls. The Applicant's utility plan shows the location and size of the proposed planters along with conceptual building footprints to demonstrate that there is adequate room on the lot to meet stormwater requirements. BES, which reviews on-site stormwater on the behalf of BDS, has indicated that the treated water can be directed to the existing and proposed storm sewers and to the on-site wetland as proposed. However, BES staff noted issues with the site utility plan provided and requests a plan be provided that shows feasible locations of storm and sanitary connections for each lot that does not conflict with proposed public stormwater facilities, street trees, and/or other utilities. BES has determined that it is feasible for storm and sanitary connections to be relocated to meet BES requirements; therefore, this requirement can be met prior to final plat approval.

As described above, the Applicant has demonstrated that the proposed stormwater system is adequate for the expected amount of stormwater from the proposed development. BES has preliminarily approved the capacity, type, location, feasibility and land area required for the stormwater proposal, including the connection to off-site facilities. With the conditions described above, these standards and criteria are met.

#### **PCC 33.654.110.B.1 Through Streets and Pedestrian Connections**

#### **PCC 33.654.130.B Extension of Existing Public Dead-End Streets and Pedestrian Connections**

**Findings:** The City Council adopts and incorporates the Hearings Officer's response to this criterion on pages 9-10 and 38-39.

City Council finds as follows:

##### Street Connectivity

Opponents voiced concerns related to the connectivity approval criteria (PCC 33.654.110.B). Before the Hearings Officer, the HNA suggested that "connectivity is unwarranted, unjustified and unsupported by all neighbors and the HNA." The HNA further claimed "PBOT's requirement to connect both segments of SW Pendleton Street

violates the neighborhood's established Safe Route to School" (SR2S) and "is in stark conflict to the Vision Zero program" (see Exhibit F.1).

PBOT responded to the HNA comments as follows (see Exhibit E.1):

- "The stated goals for public through streets and pedestrian connections stem from the City's Comprehensive Plan as well as the City's Transportation System Plan. As a required approval criterion that must be met in order for the proposed subdivision to be approved, an evaluation of said connectivity goals is certainly warranted. As to the justification, in that said connectivity goals are not currently satisfied in the area of the proposed subdivision site, and that providing a public street connection (including the accompanying new sidewalks) through the subject site will further and enhance the area's lack of connectivity, requiring the Applicant to construct the street network as identified on the submitted plans, will enable the City to support the proposed land use request. Lastly, the above referenced approval criterion does not include that neighborhood support is necessary or required for the provision of a new connecting public street or sidewalk system through a new subdivision.
- The HNA is presumably referring to the Hayhurst Elementary SR2S map that can be found on PBOT's website (<http://www.portlandoregon.gov/transportation/article/478734>). The comments that have been made by the HNA do not explain why the street connection requirement violates the "established" SR2S. As also identified on PBOT's website (<http://www.portlandoregon.gov/transportation/article/536548>), the Safe Routes school maps highlight:
  - a) recommended walking and biking routes to a local school
  - b) neighborhood parks
  - c) safer low-traffic streets, off-street paths and bikes lanes
  - d) difficult intersections, high traffic streets and traffic signals
  - e) streets with sidewalks are denoted on the SW school maps

Further, "the City of Portland and authors of this map ("City") provide this map "as is" for the user's convenience and expressly disclaim any representations or warranties regarding map information and road conditions. There may be discrepancies between what is shown on the map and actual conditions so riders are reminded to remain vigilant for road hazards". This is noted here in relation to additional information that PBOT has gathered from the SR2S program staff. A formal engineering analysis has not been conducted to inform and help develop the SR2S program for Hayhurst Elementary. The referenced map therefore, should be considered as such – a reference for folks to utilize for the purposes stated above.

Notwithstanding the status of the referenced map, SR2S staff, including the section's engineering staff, have indicated that the required right-of-way improvements would in no manner hinder the recommended walking and biking routes to the Hayhurst Elementary School. With new sidewalks and streets constructed to current City standards, pedestrian safety will be enhanced and greater opportunities for children walking to the school will be made available. The further development of the City's public transportation system does not inherently result in conflicts with the fundamental purposes of established SR2S programs.

Lastly, and perhaps most importantly, PBOT would like to emphasize that while there may be overlapping and comparable City-wide goals found between applicable land division-specific approval criteria, SR2S and Vision Zero goals, the burden of proof that must be satisfied by the Applicant is explicitly identified in PCC Chapter 33.654.

- In as far as the HNA's assertions that the requirement for the new public street through the subdivision site is in stark conflict with the City's Vision Zero program, as identified on PBOT's web-site (<http://www.portlandoregon.gov/transportation/40390>), "through the Vision Zero program, the City of Portland and our partners are working to eliminate deaths and serious injuries on our streets by 2025". Further, "in designing streets, the City can eliminate deaths and serious injuries by:
  - a) setting speeds that are safe for all people using the street, including people driving, walking and biking. This is what Portland does through its Neighborhood Greenways program, which mixes people who are traveling in different ways at low speeds; and,
  - b) for streets with higher speeds, separating people who are traveling in different ways to provide buffers.

Accordingly, requiring the construction of a new public street consistent with City standards in relation to the proposed subdivision, will, aside from improving connectivity in the area (the relative approval criterion), also enhance the safety of people walking and biking with the inclusion of City approved sidewalks, which do not exist for the most part, in vicinity of the subject site. Parents will be able to safely walk with their children to and from Hayhurst Elementary School along newly constructed sidewalks through the subject site (and along the abutting segment of SW 48th Ave). The resulting safer passage for pedestrians is clearly in alignment with the goals of Vision Zero.

As with the previous response to the HNA's concerns, PBOT would like to emphasize that while there may be overlapping and comparable City-wide goals found between applicable land division-specific approval criteria, SR2S and Vision Zero goals, the burden of proof that must be satisfied by the applicant is explicitly identified in PCC Chapter 33.654."

City Council further finds that through streets should generally 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. Existing public dead-end streets and pedestrian connections adjacent to the site must be extended onto the site as needed to serve the site.

The block on which the subject property is located does not meet the noted spacing requirements. This condition is not atypical of the broader southwest Portland area of the city due to topographic, geologic, and environmental sensitivities (zoning) found throughout the area. In this case, there are two nearby large land uses (Hayhurst Elementary and Pendleton Park) that also have historically prevented the realization of the above referenced spacing goals. The site is located within the Southwest District Master Street Plan, Map 11.11.6, which indicates a connection to continue from the portion of SW Pendleton Street that currently dead ends at the east side of the site. A specific alignment is not indicated.

The project site is at the juncture of two existing legs of SW Pendleton Street, one which abuts and aligns with the site's northern boundary and the other that intersects at approximately the mid-point along the site's eastern boundary. Accordingly, the proposed subdivision offers an excellent and plausible opportunity to improve upon the lack of connectivity for motorists, bicyclists and pedestrians alike. The connection of the two existing dead-end streets with a new north-south public street (including sidewalks), as well as the requirements to improve the existing SW Pendleton street segments and the site's SW 48th Avenue frontage to City standards, will facilitate passage of all modes of travel in the area. Further, an improvement to emergency vehicle access may also result in relation to the street connection and improvements.

The construction of a through connection and street improvements will allow for a greater variety of vehicle trip distribution throughout the neighborhood (and thereby relieve some roadways of current vehicle trip patterns), provide for additional bicycling routes, and allow for pedestrians to walk throughout the area in a more direct manner.

Opponents noted that the Transportation Planning Rule allows variation from the 530-foot street connection standard when topography prevents such connections. Exhibit H-43. However, topography will not prevent this connection; the Applicant's grading and engineering plans demonstrate the feasibility of constructing the proposed connection. See Exhibit H-54. Construction of the proposed street connection will require extensive grading due to the topography in the area. However, grading is not proposed within environmental zone on the site. Any street connection in this area, where the City's Master Street Plan calls for a connection, is likely to require similar grading.

Opponents argued that this street connection ignores "[a] City of Portland decree that 48th Avenue would remain closed to through traffic." Exhibit H-52. However, Opponents failed to cite to such a decree or provide any other support for this statement.

Other street connections were considered and determined not to be desirable, including an east-west connection to SW 48th Avenue due to Environmental overlay zone impacts and a connection to the south because of the limited development potential of the adjacent site. With the required north-south street connection and improvements to all abutting streets, the spacing goals for public through streets and public pedestrian connections will be furthered and the requirement to extend existing public dead-end streets is being met. These criteria are met.

On Appeal, Opponents argued that SW Pendleton Street, which dead-ends into the Project site on two sides, should not be connected with through-street segments.

The City Council finds that the connection of SW Pendleton Street is required, practicable, and appropriate. Connectivity is required in municipal street systems pursuant to the Oregon Transportation Planning Rule, as implemented by the City's Transportation System Plan and the City Code. PCC 33.654.110.A.1 requires street and pedestrian connections in residential zoning districts, taking into account existing street patterns and master street plans for the area. In this case, both existing street patterns and the applicable master street plan call for the connection of SW Pendleton Street through the site. SW Pendleton dead-ends into the site on two frontages. Therefore, the Project must provide a connection that fits into this existing street pattern by connecting the two dead-end sections of SW Pendleton Street. Additionally, the City's adopted master street plan for the area, (the Southwest Portland Master Street Plan Map 11.11.6) requires a "connected street system" and identifies a needed connection between the two legs of SW Pendleton Street.

The City Council further finds that this Project does not meet the requirements for an exception to the connectivity standard, which can be granted if a street connection is not "appropriate or practicable." "Practicable" is defined as "[c]apable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes." PCC 33.910. The Applicant has analyzed site conditions and determined that it is "practicable" to provide the SW Pendleton Street connection and the Applicant's traffic engineer concludes that the SW Pendleton Street connection is "appropriate" in light of the location and spacing of existing roadways. Professionally prepared engineered plans for the street connection have been reviewed and conceptually approved by the City. PBOT concurs that it is practicable and appropriate to provide the street connection and has noted the many benefits of providing this

connection, including dispersing traffic, providing alternate routes, and facilitating emergency response.

**PCC 33.654.120.B and C Width & Elements of the Right-of-Way**

**Findings:** The City Council adopts and incorporates the Hearings Officer's response to this criterion on pages 39-40 and finds that the Application meets this approval criterion with the conditions adopted by the Hearings Officer, as stated below.

The City Council finds that at this location, SW Pendleton Street and SW 48th Avenue are classified as Local Service streets for all transportation modes in the City's Transportation System Plan. The new public street connection will also be a local service street, therefore the approval criteria and standards of PCC 33.654.120.C apply.

SW Pendleton Street abutting the site's northern property line is improved with a 20-foot wide paved roadway and a curb only (no sidewalk or planting strip) within an approximately 24-foot wide right-of-way. Southwest Pendleton Street east of the subject site is improved with a 30-foot wide paved roadway and curbs (no sidewalks or planting strip) within a 50-foot wide right-of-way. The street terminates with a guardrail abutting the site's eastern property line. Southwest 48th Avenue abutting the site is comprised of a gravel base but is an otherwise unimproved 40-foot wide right-of-way.

For Local Service classified streets abutting R7-zoned lots, the City's public right-of-way standards require a 54-foot right-of-way width to accommodate a 26-foot wide roadway (which would allow parking along both sides) and two 14-foot wide sidewalk corridors (0.5-foot curb, 8-foot wide stormwater management facility, 5-foot wide sidewalk, and 0.5-foot frontage zone). For existing streets, improvement and dedication are required on the site frontage only. Any remaining dedication and improvements to achieve full build-out of the street would be made with new development on the other side of the street. This is the case on the existing frontages on SW Pendleton Street and SW 48th Avenue.

The Applicant has submitted land use review plans showing public street improvements along all of the existing street frontages and for extension of the new public street through the site (Exhibits C.5 and C.6). In addition, the Applicant has initiated the public works permit process for the required improvements. These plans include a paved roadway, curb, planting strip/stormwater facility, and sidewalk on all existing street frontages and on both sides of the new public street, which meet the public street standards for the site with minor modifications to address site specific conditions (see Exhibit E.2 for a detailed description of the street improvements). It should be noted that the Applicant made a request through the Public Works Alternative Review process and was approved to construct a curb-tight sidewalk for a portion of the SW 48th Avenue frontage to reduce impacts to the Environmental Conservation overlay zone. However, through the review process it was determined that a separated sidewalk was needed due to the necessary location of the stormwater facility for that street. In order to accommodate the street improvements, street dedications are required including seven feet on SW 48th Avenue, 17 feet on SW Pendleton Street (north of the site), and 49 to 54 feet for the new public street. The right-of-way width of the new public street is narrower where it connects to the eastern segment of SW Pendleton Street, which has a 50-foot right-of-way.

With the dedications noted, the width of the streets serving the development will be sufficient to accommodate the expected users, which includes future residents of the development and their visitors, nearby residents traveling through the area, and other common service providers within residential neighborhoods (deliveries, trash pick-up,

and emergency vehicles). PBOT has provided conceptual approval of the proposed elements within the right-of-way and any outstanding details will be addressed during the public works permit review.

The Applicant must provide plans and financial assurances for the construction of the street improvements prior to final plat approval. In addition, the right-of-way dedication necessary to accommodate the improvements must be shown on the final plat. With these conditions, this criterion is met.

On Appeal, Opponents again argued that full width streets and sidewalks should not be required because providing these facilities will detrimentally impact environmental resources on the Project site. The City Council finds, as the Hearings Officer did, that this application criterion requires the width of streets to accommodate the expected users, which the proposed street widths accomplish. The City Council further finds that proposed street widths comply with City standards for public streets in this zone and are not larger than required to accommodate the proposed uses, as Opponents allege.

### **PCC 33.654.120.H Standard for Street Trees**

**Findings:** The City Council adopts and incorporates the Hearings Officer's response to this criterion on pages 12 and 40 and finds that the Application meets this approval criterion with the condition adopted by the Hearings Officer, as stated below.

City Council finds as follows:

#### Trees in Existing Right-of-Way

Concerns were expressed about a large Western Red cedar proposed to be removed within the existing SW Pendleton Street right-of-way, east of the site.

City Council finds that the tree in question is in existing right-of-way and therefore regulated by Urban Forestry. The response from Forestry (Exhibit E.6) acknowledged the tree and indicated that it appeared that it needed to be removed due to the required street extension of SW Pendleton Street. Inquiries about the tree were forwarded to the Forestry staff person who is working with the PBOT public works engineer to investigate options for retaining the tree. The fate of this tree cannot be determined without additional street improvement designs and analysis. Therefore, the Hearings Officer could not impose a condition of approval requiring preservation of this tree. The Applicant agreed to a condition requiring the Applicant work with Urban Forestry staff and Public Works Project Managers to determine the feasibility of preserving this significant tree. Condition of approval B.1 should be modified to that effect.

City Council further finds that the Applicant submitted information showing existing street trees within adjacent rights-of-way to be retained and removed and a street tree planting proposal for the improved streets (Exhibits C.11 and C.12). Urban Forestry staff reviewed the proposal and indicated that trees within the right-of-way may be removed as indicated to allow for required street improvements. Mitigation through either planting or a payment in lieu of planting will be obtained as part of the public works permit for the street improvements. An Opponent expressed concerns about removal of an existing 42-inch diameter Western Red cedar (tree #20201) in the existing SW Pendleton Street right-of-way east of the site. As discussed above, the Applicant is required to work with Urban Forestry staff and Public Works Project Managers to determine if it is possible to retain that tree. That determination will be made during the next phase of the public works permit.

Street tree planting within the new planting strips will be required to the extent feasible as part of the public works permit. Generally, one street tree is required for every 25 feet of frontage per Title 11 planting standards. The Applicant's proposal does not meet this requirement on the new public street or on SW Pendleton Street (north of the site) due to stormwater facilities and driveways. Forestry has reviewed these plans through the public works permit process and has raised no objections. It is anticipated that a payment into the tree fund will be required as part of the public works permit. In addition, Forestry has indicated that prior to the land division there would be 12 street trees required along the site's frontage on SW 48th Avenue. After the land division, there will be 11 trees required based on the separate frontages of Lot 1 and Tract A. Therefore, a fee in lieu of planting is required for the permanent loss of a planting space which must be paid prior to final plat approval. With this condition, the standard for street trees is met.

On Appeal, a project neighbor reiterated concerns raised to the Hearings Officer regarding potential removal of a 42-inch western red cedar tree located within the SW Pendleton right-of-way east of the site. As explained by the Hearings Officer's decision on page 12, this tree will be retained if possible, but the decision to retain or remove the tree will be determined by Public Works and Urban Forestry later in the Public Works review process. The neighbor expressed concerns that removal of the tree could damage slopes on her property, but did not provide any evidence regarding these potential impacts. The Applicant proposed a condition of approval that would require the Applicant to fund repairs to the neighbor's property caused by tree removal, if any. However, the City Council determined that this condition is unnecessary in order for the Application to meet this criterion.

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

**Findings:** The City Council adopts and incorporates the Hearings Officer's response to this criterion on pages 40-41, as stated below. Opponents did not raise any additional issues regarding the Application's ability to meet this criterion during the Appeal period.

City Council finds that the preliminary plat shows a 6-foot wide public utility easement along all frontages of the lots adjacent to the right-of-way, with the exception of the Lot 1 frontage on SW 48th Avenue. No easement is shown on the frontage of Tract A on SW 48th Avenue, which would conflict with the Environmental overlay zone. The proposed easements should be sufficient to provide space for private utilities that cannot be accommodated within the adjacent rights-of-way. No conflicts have been identified between the utility easement and trees to be preserved. This criterion is met.

**APPROVAL CRITERIA FOR ENVIRONMENTAL REVIEW OF LAND DIVISIONS**  
**PCC 33.430.250 Approval Criteria for Environmental Review**

**Findings:** The City Council adopts and incorporates the Hearings Officer's response to this criterion on page 41, as stated below.

The City Council finds that a portion of the right-of-way dedication along SW 48th Avenue will occur within the resource area of the Environmental Conservation overlay zone and within the delineated wetland area; the proposed SW 48th Avenue sidewalk improvements and LIDA stormwater facility will be constructed within the delineated wetland and within the resource area of the environmental zone; and the replacement culvert will extend into the resource area beyond the SW 48th Avenue right-of-way and within 50 feet of the wetland. Therefore, the right-of-way dedication, the sidewalk

improvements (and planter strip), and the replacement culvert must be approved through Environmental Review.

The approval criteria applicable to the proposed land division include those found in Section 33.430.250.A. The Applicant has provided findings for these approval criteria and BDS Land Use Services staff has appended these findings or added conditions where necessary to meet the approval criteria.

The Fanno Creek Plan is not an approval criterion for this development and the Code does not require preservation of upland forest habitat on this site. Clearing and development on this site will eliminate habitat for wildlife in the upland areas of the site. The Code does not prohibit such an effect. On the contrary, it is an inevitable consequence of concentrating new development in the urban area. None of the animals observed on this site are listed as endangered or threatened. They are commonly observed in the urban area. Vegetation retained and enhanced within Tract A will retain some wildlife habitat on the site and provide connections to other habitat areas in the area.

**A.1.General criteria for public safety facilities, rights-of-way, driveways, walkways, outfalls, utilities, land divisions, Property Line Adjustments, Planned Developments, and Planned Unit Developments;**

**A.1.a. Proposed development locations, designs, and construction methods have the least significant detrimental impact to identified resources and functional values of other practicable and significantly different alternatives including alternatives outside the resource area of the environmental zone;**

**Findings:**

The City Council finds that this criterion requires the Applicant to demonstrate that alternatives to proposed impacts to the resource area were considered during the design process and that there are no practicable alternatives that would be less detrimental to the identified resources and functional values. In order to meet this approval criterion, the Applicant must consider alternative locations, designs, and construction methods for those elements of the proposal that do not meet the environmental development standards: the 7-foot-wide SW 48th Avenue right-of-way dedication within the Environmental overlay zone, a portion of the 8-foot by 67-foot LIDA stormwater facility, the proposed 170-foot by 5-foot sidewalk and planter strip proposed within the Environmental zone, and the extension of the new, 36-inch diameter culvert beneath SW 48th Avenue a total of 12 feet into the resource area (seven feet within right-of-way proposed to be dedicated, and five feet within proposed Tract A).

The Applicant provided an alternatives analysis that can be found in the Application case file in Appendix G, Environmental Review Report (Exhibit A.3.e). The alternatives analysis is presented on pages 15 through 18 of that report.

The existing 48th Avenue right-of-way is located adjacent to the site and partially within the environmental zone. The temporary and permanent impacts to the area related to installation of sidewalks and a new culvert are proposed as part of meeting stormwater management needs and required right-of-way dedication and improvements to offset transportation impacts.

The Applicant assessed five alternative layouts for the proposed Everett Heights development project. Alternative 1 consists of an 11-lot subdivision, with lot sizes



averaging 7,453 square feet and no through street connecting the two segments of SW Pendleton Street. Street and sidewalk improvements are included along SW 48th Avenue and cover approximately 1,400 square feet of the environmental zone. This alternative includes lots entirely within the environmental resource areas and would result in complete removal of the existing wetland.

Alternatives 2 and 3 depict most of the lots outside of the environmental zone altogether with the exception of a 334 square-foot portion of Lot 5 in the transition area. The average lot size for these alternatives is 4,335 square feet and 4,894 square feet, respectively. Street and sidewalk improvements are included along SW 48th Avenue, but these alternative plans do not depict right-of-way dedication or street improvements within the wetland area or within the environmental zone. The improvements are necked down in both of these alternatives to avoid construction within the environmental zone.

Alternative 4 includes an additional 191 square feet of encroachment into the environmental transition area by Lot 5, and the same amount of encroachment for the SW 48th Avenue street improvements as Alternatives 2 and 3--these alternatives are not significantly different.

Alternative 5 is the preferred alternative. This alternative is similar to Alternatives 3 and 4, except that all of the private lots are entirely outside of the Environmental overlay zone. The Applicant's alternatives analysis depicts this layout with no permanent development within the resource area of the environmental zone or wetland area associated with SW 48th Avenue improvements. Current plans proposed by the Applicant, however (Exhibits C.11, C.15, and C.16), depict a 7-foot-wide by 170-foot-long right-of-way dedication through the transition area and resource area of the Environmental overlay zone, and through the delineated wetland, to accommodate standard sidewalk improvements and a planter strip throughout this area, with the LIDA stormwater facility partially within the wetland and resource area.

The Applicant's alternative analysis does not address this revision to the original proposal. However, in a February 15, 2017 e-mail exchange, the Applicant explained the following:

At the September 23, 2016 Pubic Works Concept review meeting, the Applicant reviewed the 48th Avenue design with City staff. The initial design had a curb-tight sidewalk and pushed the LIDA facilities outside the environmental zone. This discussion centered around the complex design considerations for 48th Avenue, including stormwater treatment requirements (and the required elevation of stormwater facilities), vertical alignment of curb line, transition of grade to existing roadway surface and properties/driveways to the west, drainage concerns from neighbors, pedestrian connectivity to school, pipe cover requirements for replacing the existing culvert under 48th Avenue, and waterline relocation. While discussing all these parameters, it was decided that moving back to a standard sidewalk section, and pushing the LIDA facilities closer to the low point of the street (within the wetland/resource area) would be necessary.

It was determined to be not "practicable" to align the sidewalk curb-tight along the resource area, as originally proposed, and the City's Public Works' review resulted in the LIDA facility being moved into the resource area, and into the wetland area, between the street and sidewalk. This, subsequently, placed the sidewalk further into the resource area, along its entire alignment, as currently proposed.

Although the proposed work would eliminate most of the existing vegetation on the upland portion of the project site, much of the existing vegetation is non-native and listed as nuisance species on the Portland Plant List. Nearly all of the existing native vegetation will remain within the environmental zoned portion of the site, and will continue to provide many of the existing functional values provided by the site. The majority of the environmental zone, including the unnamed tributary to Pendleton Creek and associated forested wetland, will be preserved in proposed Tract A. Following completion of the development, the mitigation area and all remaining environmental zoned areas on the site will be incorporated into an Environmental Resource Tract A that will be owned by a homeowner's association. The homeowner's association will be responsible for on-going maintenance of the open space tract. The City can ensure compliance with maintenance requirements through its Code Enforcement process.

Given the significant limitations placed on the location, design, and potential construction techniques for these street, stormwater, and sidewalk improvements, there are no practicable alternatives to the proposal currently set forward by the Applicant.

On Appeal, Opponents argued that the proposed grading and stormwater plan for the Project will have detrimental impacts on identified resources and functional values both within the EC area and within the greater watershed. Opponents further contend that a variety of alternatives would lessen these impacts, including removing fewer trees from the site, creating fewer lots, creating less impervious surface, and not grading the site as proposed.

Opponents' hydrologist testified that significant values within the environmental zone include pollution control and water supply and that these values would be detrimentally affected by the Project. The hydrologist further argues that rerouting a large portion of the stormwater will impact supply to the wetland and downstream water systems and infiltration and groundwater recharge.

The Applicant's wetland scientist testified that the water supply to the wetland would be minimally impacted due to the relatively small amount of new development being added to the fully developed watershed. The wetland scientist concludes that after the Project is developed, most of the water currently entering the wetland would still enter the wetland through the high seasonal water table or direct precipitation. Stormwater that is captured during the wet season will be routed to the unnamed tributary downstream from the site after treatment, where it would have discharged after flowing through the wetland.

The City Council finds that this criterion is part of the required environmental review for the property which is required in order to assess impacts of development within the environmental overlay zone area. PCC 33.430.060, Where These Regulations Apply, states that the Environmental Zone Regulations apply within the environmental zone. In addition, PCC 33.430.250 provides, "...the approval criteria will only be applied to the aspect of the proposal that does not meet the development standard or standards." Therefore, the City Council interprets this Code section to require an analysis of alternatives to the Project as it relates to development within the environmental resource area itself, rather than development on portions of the property that are outside of the environmental area. The City Council finds that alternative locations, designs, and methods that do not change the disturbance in or development of the environmental resource area are not required to be analyzed in determining compliance with this criterion.

Therefore, it would not be appropriate for the City Council to sustain opponents' arguments that various changes to the Project outside of the resource area would ultimately lead to fewer indirect impacts to the environmental resource values and functions under this criterion because these alternatives would not actually reduce the disturbance in the resource area of the environmental zone. For instance, no lots are located within the resource area, so the Applicant is not required to consider alternatives that involve reducing site density because reducing the site density will not allow a practicable alternative to locating the sidewalk, culvert, right-of-way, and stormwater improvements within the resource area of the environmental zone that would otherwise satisfy PCC standards, such as street and sidewalk connectivity and pipe cover requirements for the replacement culvert.

The City Council finds, as the Hearings Officer did, that the Applicant analyzed five alternatives that differed in their extent of impacts to the environmental resource area while meeting other required Code criteria that apply to the Application. The Applicant selected the alternative that, of the five studied, has the least detrimental impacts on identified resources and functional values of the environmental area.

Opponents have not presented any evidence to contradict the Applicant's alternatives analysis or suggested other alternatives to the proposed development within the environmental resource area that meet the Code criteria but would have fewer impacts on identified resources and functional values.

Therefore, the City Council finds that this criterion is met.

Under the Council's interpretation, Opponents' arguments about impacts from development outside the resource area are not relevant to this approval criterion. However, to the extent that this criterion could be interpreted to require an analysis of other development options outside of the resource area, the City Council finds that the arguments made by Opponents' hydrologist do not specifically show that changes to the Project as Opponents suggest (e.g. creating fewer lots, less impervious surface, or removing fewer trees) would reduce impacts to identified resources and functional values. The City Council relies on evidence from the Applicant's wetland scientist that the stormwater plan and routing of existing waters on the site will minimize impacts to these functional values from the Project.

**A.1.b. There will be no significant detrimental impact on resources and functional values in areas designated to be left undisturbed;**

**Findings:**

The City Council finds that this approval criterion requires the protection of resources outside of the proposed disturbance area from impacts related to the proposal, such as damage to vegetation beyond the approved limits of disturbance, erosion of soils off the site, and downstream impacts to water quality and fish habitat from increased stormwater runoff and erosion off the site. The Applicant provided a detailed description of the proposed stormwater management plan and the construction management plan in the Application case file (Exhibits A.3.e, and A.4.d), in addition to a graphic construction management site plan (Exhibit C.16).

The stormwater plan submitted with this Application proposes to collect storm runoff and treat it within flow-through planters on the individual lots (Exhibit C.10), with two of the planters using outfalls onto the slopes uphill of the wetland. Because the outfalls will be located within Tract A, but outside of the environmental zone, the prohibition of

more than one outfall in PCC 33.430.180.H is inapplicable. Stormwater from SW 48th Avenue is proposed to be collected in the LIDA facility (roughly 540 square feet in area) along the east edge of the street.

Construction management techniques have been proposed by the Applicant, as described below, to minimize impacts to identified resources and functional values designated to be left undisturbed.

Construction access to the project site will be from SW Pendleton Street (north) at the new street intersection near the existing residence. Construction traffic will be utilizing SW 48th Avenue north of the site for this access. Stockpiles and storage areas for construction will be located along the northern property line near the access.

Frontage improvements for SW 48th Avenue will require some grading activity and disturbance within the environmental zone. These improvements will include new curb, sidewalk, and pavement over the existing gravel surface as well as culvert improvements, construction of the new LIDA stormwater facility, and standard planter strip to the south of the facility. Temporary disturbance areas along SW 48th Avenue are depicted to allow the contractor room for constructing these improvements. No other site construction activities are planned near the environmental zone aside from mitigation plantings. The Applicant's construction management plan includes:

Construction access limited to the north end of the site near the existing residence, with construction traffic using SW 48th Avenue north of SW Pendleton Street rather than the narrow southern portion that passes through the environmental zone.

Erosion and sediment control measures including barriers placed downhill of embankment slopes.

Inlet protection for existing and proposed inlets.

Secondary sediment barriers along long, steep slopes after initial grading activities.

Seeding temporary disturbance areas following construction.

Concrete truck washout area.

All of the environmental zone on the site, outside of the final alignment of the SW 48th Avenue right-of-way, will be protected in proposed Tract A. Following completion of the development, the mitigation area and all remaining environmental zone on the site will be incorporated into an Environmental Resource Tract A that will be owned by a homeowner's association, cleared of invasive vegetation, planted with native vegetation, and protected in a natural state. Concerns were expressed that the proposed mitigation plantings will impact the wetland. Exhibit H-43. The proposed mitigation plantings are intended to replicate the natural condition in this area to the extent feasible, with wetland areas planted with native wetland species and upland areas planted with upland species. The tree mitigation plantings on the site will be in the upland area of Tract A, outside the wetland.

The proposed 36-inch replacement culvert under SW 48th Avenue will not dewater the wetland. As discussed in Attachment 2 of Exhibit H-61, the conceptual stormwater report states that a grade control structure should be constructed upstream of the culvert to prevent upstream erosion. The grade control structure will maintain the drainageway at its existing grade and prevent potential dewatering of the wetland.

In addition, the Applicant provided a preliminary Tree Plan (Exhibit C.11), and an associated arborists report, which highlights the conditions of existing trees and whether or not they will be removed. The Tree Plan shows a tree protection fence meeting the requirements of Title 11 along the east edge of construction disturbance for

the SW 48th Avenue sidewalk improvements. In general, this fencing will provide adequate protection for the native trees to remain in the environmental zone. However, there are three Oregon ash trees (12 inches, 18 inches, and 24 inches in diameter) located along SW 48th Avenue and in the southwest corner of the site which are within six feet to 12 feet of the tree fence. This does not meet the tree protection requirements of Title 11. Condition of Approval B.2 will ensure compliance with the tree protection requirements for these trees, which will ensure compliance with PCC 33.430.250.A.1.b as to trees.

On Appeal, Opponents expressed concerns that the proposed development will alter the wetland hydrology on this site. As discussed in Exhibit H-49, there are three potential existing hydrology sources for the wetland on this site: runoff from the section of SW Pendleton Street east of the site, backwater from the undersized culvert beneath 48th Avenue, and seepage from shallow perched groundwater. The proposed development will eliminate runoff from SW Pendleton Street and backwater from the culvert. Groundwater will continue to flow to the wetland because the topography after grading on the site will not alter the elevation of the wetland in relation to the groundwater table. Groundwater from the entire uphill catchment area will continue to feed into the wetland. In addition, stormwater runoff from proposed Lots 4 and 5 will flow to the wetland from the uphill outfalls and perched groundwater that may be collected by the retaining wall and fill drains, if any, will also be discharged to the wetland. Staff considered options to maintain additional sources of hydrology, such as directing stormwater from the street improvements to the wetland. However, staff determined that the alternatives are not practicable due to the unknown capacity of the wetland to retain and absorb this volume of water and potential downstream capacity constraints.

On Appeal, Opponents' hydrologist presented testimony that the Project would impact downstream significant resources and functional values, including water supply and fish habitat due to new impervious surface and stormwater diversion. The hydrologist also argues that the proposed roads will exacerbate elevated temperatures downstream (presumably by providing additional road surfaces over which storm water may flow). Finally, the hydrologist argues that the "seep or spring"-like features on the site must be protected to ensure that their flows will reach the wetland.

The Applicant's wetland scientist refuted these contentions and testified that the proposed stormwater plan would capture stormwater flows from the new impervious surfaces and discharge these back into the same watershed they would have flowed into, after treatment. By capturing the flows, the Project will avoid stormwater heating that occurs when stormwater runs across paved surfaces (such as the newly paved Project streets). The Applicant also testified that flows from the wet areas outside of the Environmental Conservation zone will be routed toward a retaining wall which will direct these flows to the wetland to ensure any hydrological benefit these flows provide to the wetland will continue.

The City Council finds that this criterion is required in order to assess impacts of development within the environmental overlay zone area. Based on PCC 33.430.060, and PCC 33.430.250 referenced above, the City Council interprets this Code section to require an evaluation of impacts as it relates to development within the environmental overlay zone itself, rather than development on portions of the property that are outside of the environmental zone area. In this case, development within the environmental zone is limited to the work within and adjacent to the SW 48<sup>th</sup> Street right-of-way. The City Council finds that the construction management plan, and associated erosion control and tree protection (as conditioned above) will protect resources in areas to be left undisturbed.

Therefore, with conditions for a supplemental tree protection plan, this criterion can be met by the proposal.

Under the Council's interpretation, Opponent's arguments about impacts from development outside the resource area are not relevant to this approval criterion. However, to the extent that this criterion could be interpreted to require evaluation of impacts from development activities occurring outside of the environmental zone, the City Council finds that the testimony provided by the Applicant's wetland scientist is compelling evidence. The Applicant's stormwater plan will improve the quality of water entering the watershed and avoid flooding impacts that currently occur on streets surrounding the site. Opponents argued that water crossing 48th Avenue will increase in temperature before reaching the watershed, further exacerbating water temperature issues in this system. The Applicant has demonstrated that its stormwater upgrades will capture stormwater that would otherwise flow across SW 48th and divert this water to the watershed without allowing for the street warming to occur.

To extent that flowing water is discovered on the site outside of the EC area, the Applicant's proposed grading plan will divert these flows to a retaining wall with drainage infrastructure, from which they will eventually flow to the wetland. Furthermore, the Applicant's stormwater plan will capture existing flows on the site and direct a portion of the water to the wetland area to retain hydrology and the remainder downstream to the larger watershed after treatment. The City Council relies on evidence in the record provided by the Applicant's wetland scientist to draw these conclusions.

**A.1.c. The mitigation plan demonstrates that all significant detrimental impacts on resources and functional values will be compensated for;**

**Findings:** The City Council adopts and incorporates the Hearings Officer's response to this criterion on pages 46-47 and the conditions of approval required for this criterion to be met, as stated below. Opponents did not raise any additional issues regarding the Application's ability to meet this criterion during the Appeal period.

City Council finds that this criterion requires the Applicant to assess unavoidable impacts and propose mitigation that is proportional to the impacts, as well as sufficient in character and quantity to replace lost resource functions and values. The proposed mitigation plan is described in the Applicant's Environmental Report. (Exhibit A.3.e).

The Applicant described the impacts to the resource in Exhibit A.3.e, and in subsequent e-mail messages, as follows:

The impacts in the environmental zone will result from the proposed right-of-way improvements along SW 48th Avenue, including the expansion of right-of-way, replacement of the existing culvert, construction of a LIDA planter for stormwater treatment, and construction of sidewalks, and include both temporary and permanent impacts. Temporary impacts would occur during construction and would include disturbances related to vehicle and equipment access required to construct the proposed improvements. A total 1,300 square feet (0.03 acre) of proposed temporary environmental zone impacts will result. Permanent impacts would include vegetation removal, grading, and replacement of natural areas with various structures (e.g., roadway, LIDA stormwater planter, sidewalk, culvert). Proposed permanent impacts total 3,093 square feet (0.071 acre) in the environmental zone. On January 30, 2017, the applicant indicated an additional 190 square feet of disturbance area for the SW 48th Avenue culvert replacement. Lastly, four trees are proposed to be removed from the environmental zone on the site.

Proposed mitigation for unavoidable temporary and permanent project impacts to the on-site Environmental transition and resource zones associated with the required improvement of SW 48th Avenue is depicted in Exhibits 5 and 6. As indicated, mitigation actions will include a combination of temporary impact restoration, tree replacement, native vegetation plantings, and the removal of non-native, invasive woody vegetation from the environmental transition zone. In addition, downed trees and woody debris will be placed in the environmental zone for additional habitat. The mitigation plan will also include any additional mitigation measures required under the future US Army Corps of Engineers and Oregon DSL permits for the culvert replacement work in the jurisdictional wetland.

Proposed mitigation activities will provide enhanced wildlife habitat value for urban wildlife in both the developed and undeveloped portions of the project site by providing additional food sources, increased native cover, improved foraging areas, and additional nesting and denning sites for a variety of wildlife. In addition, mitigation actions will enhance and increase other natural resource functions and values on the site including water quality improvement, erosion control, streambank stabilization, pollution control, and aesthetics.

The Applicant proposes to replace the four trees to be removed from the environmental zones by planting 24 native trees within that area; which well exceeds the 17 replacement trees that are required by standard. In addition, over 450 native shrubs will be planted around the perimeter of the mitigation area in order to both offset temporary and permanent construction impacts and to provide a dense planted buffer between the resource area to be protected and developed areas both in the subdivision and along SW 48th Avenue. Further, the Applicant proposes to remove all non-native trees and shrubs from the environmental zones on the site. The removal of invasive species will be conducted using hand held equipment and dead standing trees will be left as wildlife snags when possible given safety considerations. Mitigation is proposed to be conducted prior to, or concurrent with, the construction of the project.

Removal of trees from the environmental zone will result in a loss of organic input, a loss of some wildlife habitat functions, and of forest structure. To offset these impacts, the Applicant proposes to retain all sections of tree trunks on the site in order to replace some of these lost functions.

The proposed Mitigation Plan will be installed and maintained under the regulations outlined in Section 33.248.040.A-D (Landscaping and Screening). A two-year monitoring plan is described in the Applicant's narrative and will ensure survival of all proposed mitigation plantings. To confirm maintenance of the required plantings for the initial establishment period, the Applicant will be required to have the plantings inspected two years after plantings are installed.

With conditions to ensure that all cut trees with trunks greater than 12 inches in diameter are retained on site, and that plantings required for this Environmental Review are maintained and inspected, this criterion can be met.

**A.1.d. Mitigation will occur within the same watershed as the proposed use or development and within the Portland city limits except when the purpose of the mitigation could be better provided elsewhere; and**

**A.1.e. The Applicant owns the mitigation site; possesses a legal instrument that is approved by the City (such as an easement or deed restriction) sufficient to carry out and ensure the success of the mitigation program; or can demonstrate legal authority to acquire property through eminent domain.**

**Findings:** The City Council adopts and incorporates the Hearings Officer's response to this criterion on page 47, as stated below. Opponents did not raise any additional issues regarding the Application's ability to meet this criterion during the Appeal period.

City Council finds that mitigation for significant detrimental impacts will be conducted on the same site as the proposed use or development, and the Applicant owns the proposed on-site mitigation area.  
These criteria are met.

### **A.3. Rights-of-way, driveways, walkways, outfalls, and utilities;**

#### **A.3.a. The location, design, and construction method of any outfall or utility proposed within the resource area of an environmental protection zone has the least significant detrimental impact to the identified resources and functional values of other practicable alternatives including alternatives outside the resource area of the environmental protection zone;**

**Findings:** The City Council adopts and incorporates the Hearings Officer's response to this criterion on page 48 and finds that it is inapplicable, as stated below. Opponents did not raise any additional issues regarding the Application's ability to meet this criterion during the Appeal period.

City Council finds that there are no Environmental Protection overlay zones mapped on the project site or on adjacent properties. As such, the requirements of this subsection of the approval criteria are not applicable to the project.

#### **A.3.b. There will be no significant detrimental impact on water bodies for the migration, rearing, feeding, or spawning of fish; and**

**Findings:** The City Council adopts and incorporates the Hearings Officer's response to this criterion on page 48, as stated below.

City Council finds that due to its relatively small size and the fact that downstream portions are piped, it is unlikely that the onsite tributary to Pendleton Creek supports migration, rearing, or spawning of fish. Although this tributary may contribute food sources (e.g., macroinvertebrates) to downstream waterbodies that do support fish, this function would not be adversely impacted by the proposed project. The on-site portion of the tributary, its associated riparian area, and the adjacent forested wetland will remain on the project site and will not be disturbed by the proposed development, ensuring that the conditions that provide this function remain intact. Although the improvement work along SW 48th Avenue will require replacement of the existing culvert, all instream work will be performed during the dry season when there is minimal to no water present in the drainage. As such, no significant detrimental impacts to downstream fish use in Pendleton Creek or other streams would be expected to occur. This criterion is also met.

On Appeal, Opponents' hydrologist testified that the Fanno Creek Plan identifies fish rearing, hiding, dispersion and migration as significant functions in the "resource area." However, the hydrologist did not provide evidence that the Project would directly impact fish in the Fanno Creek Watershed. The hydrologist contends that the Project would exacerbate existing water temperature issues in the Fanno Creek watershed reducing water supply and through the heating of stormwater flowing across streets paved as part of the Project.



The Applicant's wetland scientist refutes these claims and argues that the downstream watershed will not be impacted since the existing sources of water on the project site (stormwater, rainfall and groundwater migration) will either be unaffected or will be captured by the Project's stormwater infrastructure and treated and discharged to the wetland or lower into the watershed. Furthermore, the stormwater plan will capture flows that would otherwise flow across paved roads and prevent these flows from being heated before they are discharged into the watershed.

The City Council interprets this criterion to apply to the development proposed within the environmental zone, which includes street improvements and culvert replacement on SW 48<sup>th</sup> Avenue. The City Council finds that Opponents have not shown that significant detrimental impacts on water bodies for the migration, rearing, feeding, or spawning of fish will occur as a result of the limited work within the environmental zone on this site..

**A.3.c. Water bodies are crossed only when there are no practicable alternatives with fewer significant detrimental impacts.**

**Findings:** The City Council adopts and incorporates the Hearings Officer's response to this criterion on page 48, as stated below. Opponents did not raise any new issues regarding the Application's ability to meet this criterion during the Appeal period.

City Council finds that the proposed project does not include any new water body crossings; however, it would include the replacement and extension of the existing culvert under SW 48th Avenue in order to bring it up to current design standards for stormwater capacity and conveyance. Due to the existing location of SW 48th Avenue, City requirements for standard street improvements, and its proximity to the environmental zone in this area, there are no practicable alternatives with fewer significant detrimental impacts and this criterion is met.

**ARGUMENTS ADVANCED BY OPPONENTS THAT ARE NOT RELEVANT TO THE APPROVAL CRITERIA**

Opponents made a number of arguments on appeal that are not relevant to the approval criteria for the Project. The City Council makes the following findings regarding these arguments.

- Opponents contend that the sidewalks associated with the Subdivision will be islands, and the City should therefore deny the Application.

**Findings:** The City Council finds that some of the sidewalks required to be constructed in conjunction with the Project will not currently connect to other sidewalks because the existing sidewalk network in the neighborhood is incomplete. However, as surrounding properties develop and redevelop, they, too, will be required to install sidewalks, which will facilitate a complete sidewalk network over time. The City Council finds that there is no legal basis for the City to require the Applicant to complete the entire sidewalk network in the neighborhood. Further, the City Council finds that the lack of sidewalks in the area is not a basis to allow the Applicant not to comply with the requirement to install sidewalks that are required on certain frontages as part of the Project.

- Opponents argue that the Project will cause property values in the neighborhood to decrease.

**Findings:** The City Council finds that impacts to property values of surrounding areas is not an approval criterion for the Application. Furthermore, the City Council finds that there is no substantial evidence in the record to support Opponents' claim that property values will decrease due to approval of the Application.

- Opponents argue that the Project will lead to increased vandalism.

**Findings:** The City Council finds that a potential increase in vandalism is not an approval criterion for the Application. Furthermore, the City Council finds that there is no substantial evidence in the record to support Opponents' claim that vandalism will increase due to approval of the Application.

- Opponents make a number of arguments regarding the purpose statements for various approval criteria.

**Findings:** The City Council finds that purpose statements are not independent approval criteria.

- Opponents argue that the City ignored neighborhood requests to put photos and records from the landslide study into the record

**Findings:** The City Council finds that if these items were placed before the City Council or Hearings Officer they are part of the record for this decision. This is not an approval criterion for the Application.

- Opponents argue that PBOT used the "streetview" tool instead of making a site visit and therefore, PBOT's analysis regarding the Application is flawed.

**Findings:** The City Council finds that PBOT provided technical advice regarding traffic issues. PBOT's use of "streetview" is not a relevant approval criterion for the Application. Furthermore, Opponents have not provided any substantial evidence that calls PBOT's analysis into question.

- Opponents argue that Portland Public Schools ("PPS") is severely congested in southwest Portland and it not clear that area schools can accommodate children from 11 new homes.

**Findings:** The City Council finds that PPS's ability to serve children in the area is not an approval criterion for the proposed subdivision. Furthermore, PPS frequently shifts boundaries of its schools to accommodate shifting populations. Opponents have provided no evidence in the record to support their contention that PPS could not serve children that might move into houses which may eventually be built on the lots.

- Opponents argue that the neighborhood was not planned to accommodate this many new homes.

**Findings:** The City Council finds that the Application complies with the maximum and minimum lot size requirements for the site. The base and overlay zone standards in place for the site allow 11 lots to be created.

- Opponents argue that the proposed development will not aesthetically "fit" with or be compatible with the existing homes in the neighborhood.

**Findings:** The City Council finds that the design of the homes that may occupy the 11 lots created by the Project are not subject to discretionary review, as the property is not within a design overlay zone and is not subject to other regulations that would require aesthetic compatibility. The City Council further finds that the Application proposes creation of 11 lots and an environmental resource tract and does not propose any development of the lots at this time. For these reasons, aesthetic compatibility with the existing neighborhood is not relevant to approval of the Project.

- Opponents also argue that the Project will lead to continued gentrification of Southwest Portland.

**Findings:** The City Council finds that gentrification risk is not an approval criterion for the Application.

- Opponents argue that the Project will not help with the affordable housing crisis.

**Findings:** The City Council finds that provision of affordable housing is not an approval criterion for the Application. However, the City Council finds that approval of the Application will increase the City's potential housing supply by increasing the number of buildable lots.

## **DEVELOPMENT STANDARDS**

The Applicant is proposing to remove all of the existing structures on the site 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 PCC 33.700.015.

The City Council adopts the findings of the Hearings Officer regarding the environmental standards that apply to the land division under PCC 33.430.160 and this approval includes conditions for requirements that apply at the time of final plat and at the time of development.

## **OTHER TECHNICAL REQUIREMENTS**

The City Council adopts and incorporates the Hearings Officer's findings regarding technical decisions that have been made as part of this review process, which are not considered land use actions.

## **V. CONCLUSIONS**

The City Council finds that there is substantial evidence in the record to support the findings made herein. This evidence supports approval of the Application.

## **VI. DECISION**

It is the decision of the City Council to deny the Appeal and approve the Application with all of the Conditions of Approval adopted by the Hearings Officer.

**Therefore, the City Council approves:**

**1) A Preliminary Plan for an 11-lot subdivision, that will result in 11 standard lots, an environmental resource tract, and a new public street; and**

**2) An Environmental review for proposed right-of-way dedication and construction of street improvements on SW 48th Avenue, associated LIDA stormwater facility, sidewalk improvements, and new culvert construction in the Environmental Conservation overlay zone;**

**The Approval shall be 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 48th Avenue, SW Pendleton Street, and the new public street connection. The required right-of-way dedication must be shown on the final plat.
2. The environmental resource tract shall be noted on the plat as "Tract A: Open Space (Environmental Resource and Drainage Reserve)." A note must also be provided on the plat indicating that the tract will be commonly owned and maintained by the owners of Lots 1 through 11, or be consistent with the ownership requirements of PCC 33.430.160.E.
3. A private sanitary sewer easement, for the benefit of Lots 4 and 5, shall be shown and labeled over the relevant portions of Tract A.
4. A private storm sewer easement, for the benefit of Lots 4 and 5, shall be shown and labeled over the relevant portions of Tract A.
5. A private access easement for maintenance of the proposed retaining wall shall be shown and labeled over the relevant portions of Lots 6, 7, and 8 and Tract A. The dimensions of the easement must be established from the retaining wall design as shown on the approved permit drawings.
6. 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&R's) as required by Conditions B.9- B.12 below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: "A (name of document) has been recorded as document no. \_\_\_\_\_ Multnomah County Deed Records."

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

**Streets and Site Preparation**

1. The Applicant shall meet the requirements of the City Engineer for right-of-way improvements along the site's street frontages and the new public street connection. The Applicant shall submit an application for a Public Works Permit and provide plans and financial assurances to the satisfaction of the Portland Bureau of Transportation and the Bureau of Environmental Services for required street frontage improvements. In addition, the Applicant shall work with Urban Forestry staff and Public Works Project Managers to determine if it is possible to retain the existing 42-inch diameter Western Red cedar (Tree #20201) located in the SW Pendleton Street right-of-way and revise the plans accordingly.
2. The Applicant shall submit a Site Development Permit for mass grading of the site and construction of the retaining wall that crosses Lots 6, 7, and 8 and Tract A. The permit plans must substantially conform to the preliminary grading plan (Exhibit C.8),

tree preservation plan (Exhibit C.11), and construction management plan (Exhibit C.16), with the following additions:

- It must show root protection zones of the trees to be preserved on the Tree Plan (Exhibit C.1 1);
- The Applicant shall provide a Supplemental Tree Plan demonstrating how Trees #20005, 20068, and 20069 will specifically be protected according to the requirements of Title 11 during construction of road, planter, and sidewalk improvements in SW 48th Avenue;
- It must include mitigation plantings indicated on Exhibit C.12 and as required in Condition D.2.

3. A supplemental plan using the final plat survey as a base map shall be provided for review and approval by the Bureau of Development Services Land Use Services and Site Development review and approval showing the location of the retaining wall spanning Tract A and Lots 6, 7, and 8 and the maintenance access easement. The location of the retaining wall on this supplemental plan shall match that shown on plans for the Site Development Permit required in Condition B.2.

### **Utilities**

4. The Applicant shall meet the requirements of the Bureau of Environmental Services for extending public sanitary and storm sewer mains in the new public road. The public sewer extensions require a Public Works Permit, which must be at a stage acceptable to the Bureau of Environmental Services prior to final plat approval. As part of the Public Works Permit, the Applicant must provide engineered designs and performance guarantees for the sewer extensions to the Bureau of Environmental Services prior to final plat approval.

5. The Applicant must submit a revised site utility plan for review and approval by the Bureau of Environmental Services that shows feasible locations of storm and sanitary connections for each lot that do not conflict with proposed public stormwater facilities, street trees, and/or other utilities.

6. The Applicant shall meet the requirements of the Water Bureau for providing plans and financial assurances for water system improvements to serve the proposed development. These plans must include fire hydrants to meet Fire Bureau requirements as indicated in Condition B.7.

7. The Applicant shall meet the requirements of the Fire Bureau for installing new fire hydrants as part of the water system improvements and documenting that new and existing hydrants serving the development meet fire flow requirements. Documentation must be provided to the Fire Bureau prior to final plat approval.

### **Existing Development**

8. Finalized permits must be obtained for demolition of the existing residence and all accessory structures on the site, capping the existing sanitary sewer connection, and decommissioning the old septic system. Note that Title 24 requires a 35-day demolition delay period for most residential structures. All demolition work must be in conformance with the Tree Preservation Plan (Exhibit C.11) and the applicant's arborist report (Exhibit A.5.b).

### **Required Legal Documents**

9. A Maintenance Agreement shall be executed for Tract A, the Environmental Resource tract described in Condition A.2 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 PCC 33.430.160.E;
- b. include provisions for assigning maintenance responsibilities for the tract;
- c. provisions assigning maintenance responsibilities for mitigation plantings located within the tract;
- d. Include a description of allowed/prohibited activities consistent with Chapter 33.430;
- e. acknowledge easements within the tract and related facilities; and
- f. include conditions of this land use approval that apply to the tract.

10. A Maintenance Agreement shall be executed for the Private Sanitary and Storm Sewer Easements described in Conditions A.3 and A.4 above. The agreement shall include provisions assigning maintenance responsibilities for the easement area and the proposed 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.

11. A Maintenance Agreement shall be executed for the shared retaining wall on Tract A, Lot 6, Lot 7, and Lot 8 to be located within a Private Access Easement, as described in Condition A.5. The agreement shall include provisions assigning maintenance responsibilities for the easement area, the retaining wall, and any other 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.

12. The Applicant shall execute an Acknowledgement of Tree Preservation Land Use Conditions that notes tree preservation requirements that apply to Lot 8 and Tract A. 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.

#### **Other requirements**

13. The Applicant must pay into the City Tree Preservation and Planting Fund the amount equivalent to 55.5 inches of trees. Payment must be made to the Bureau of Development Services, who administers the fund for the Parks Bureau.

14. The Applicant must meet the Urban Forestry requirement to pay a fee in lieu of planting one street tree (1.5 inch equivalent) for the permanent loss of planting space on the site's SW 48th Avenue frontage.

#### **C. The following is required as part of the Site Development permit for grading:**

1. Tree protection fencing shall be provided according to Title 11 Tree Code, Chapter 11.60, Tree Protection Measures, except as otherwise specified below. Title 11 tree protection fencing shall be placed as shown on Exhibit C.11 Preliminary Tree Plan, as recommended in the Applicant's Supplemental Tree Plan required in Condition B.2 above, or as required by inspection staff during the plan review and/or inspection stages.

a. All construction plans, grading plans, and any other plans depicting construction fencing and/or tree protection fencing shall be updated to match Exhibit C.11. Plans shall include erosion control fencing between the tree protection fence and construction areas. Erosion control fencing shall be located one foot from the tree protection fencing. All such plans shall also depict erosion control fencing and tree protection fencing around the SW 48th Avenue culvert replacement in conformance with that area shown on Exhibit C.16.

b. Nuisance species trees shown as being retained on the site outside of the Environmental Overlay zone are optional and may be removed.

c. No mechanized construction vehicles are permitted beyond the approved "Limits of Construction Disturbance" delineated by the construction fence. All planting work, invasive vegetation removal, and other work to be done beyond the Limits of Construction Disturbance shall be conducted using hand held equipment.

2. Mitigation Plantings shall be planted in Tract A, in substantial conformance (location and species) with Exhibit C.12, Preliminary Planting Plan, as follows:

a. At the time of permit review for grading at the site, the approved Planting Plan shall be submitted to the Bureau of Development Services, in substantial conformance with Exhibit C.12.

b. A total of 24 trees, 456 shrubs, 1,682 ground covers, and native seed mix are required to be planted in Tract A in the environmental zone.

c. A total of 31 trees are required to be planted in Tract A outside of the environmental zone (for mitigation required under PCC 33.630).

d. Any disturbance areas in the environmental zones not planted as required above must be seeded with a native seed mix with species contained in the Portland Plant List.

e. All portions of trees to be removed, that are 12 inches or greater in diameter, shall be placed within the environmental zone in Tract A.

f. All mitigation shrubs and trees shall be marked in the field by a tag attached to the top of the plant for easy identification by the City Inspector/Landscape Professional. All tape shall be a contrasting color that is easily seen and identified.

g. Plantings shall be installed between October 1 and March 31 (the planting season). Any changes or substitutions to approved planting plans shall first receive written approval from Bureau of Development Services Land Use Review staff.

- h. Prior to installing required mitigation plantings, non-native invasive plants shall be removed from all areas within 10 feet of mitigation plantings, using handheld equipment.
- 3. An inspection of Permanent Erosion Control Measures shall be required to document installation of the required mitigation plantings.
  - a. The Permanent Erosion Control Measures inspection (IVR 210) shall not be approved until the required mitigation plantings have been installed (as described in Condition C.2 above);
  - b. If the Permanent Erosion Control Measures inspection (IVR 210) occurs outside the planting season (as described in Condition E.2 above), then the Permanent Erosion Control Measures inspection may be approved prior to installation of the required mitigation plantings - if the Applicant obtains a separate Zoning Permit for the purpose of ensuring an inspection of the required mitigation plantings by March 31 of the following year.

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

1. Development on Lot 8 and within Tract A shall be in conformance with the Tree Preservation Plan (Exhibit C.11) and the applicant's arborist report (Exhibit A.5.b) for preservation of trees outside of the environmental zone. Specifically, trees numbered, #20078 (11-inch Oregon ash), #20165 (17-inch Leyland cypress), and #20174 (16-inch cottonwood) are required to be preserved, with the root protection zones indicated on Exhibit C.11. Nuisance species trees shown as being retained on the site outside of the Environmental overlay zone are optional and may be removed.

Tree protection fencing is required along the root protection zone of each tree to be preserved. The fence must be 6-foot high chain link and be secured to the ground with 8-foot metal posts driven into the ground. Encroachment into the specified root protection zones may only occur if it meets the Prescriptive Path allowances of 11.60.030 or is under the supervision of a certified arborist. Planning and Zoning approval of development in the root protection zones beyond the allowances of 11.60.030 is subject to receipt of a report from an arborist explaining that the arborist has approved of the specified methods of construction, and that the activities will be performed under his/her supervision.

2. The Applicant must meet the Fire Bureau requirements for addressing and aerial fire department access. Aerial access applies to buildings that exceed 30 feet in height from the fire access as measured to the bottom of the eave of the structure or the top of the parapet for a flat roof.

3. Prior to issuance of building permits for the site, the Applicant must meet the Portland Bureau of Transportation requirements for street frontage improvements to the satisfaction of the City Engineer, including the existing frontages of SW Pendleton Street and SW 48th Avenue and the new public street extension through the site.

4. Development on lots shall be in conformance with the following:

- a. Prior to starting home construction on Lots 1, 2, 4, 5, and 6, the Applicant shall install 4-foot high temporary construction fencing along any lot line that abuts an open space tract. The fence must be shown on building permit plans.



- The fence shall remain in place until the final erosion control inspection is completed.
- b. Fences are allowed only within lots (not within any of the tracts).
  - c. Exterior lights must be spaced at least 25 feet apart. Incandescent lights exceeding 200 watts (or other light types exceeding the brightness of a 200-watt incandescent light) must be placed so they do not shine directly into resource areas. This condition applies to lots that abut any environmental zoning on the site.
5. The following apply to environmental zones:
- a. All vegetation planted in a resource area of environmental zones is native and listed on the Portland Plant List. Plants listed on the Portland Nuisance Plant List or Prohibited Plant List are prohibited.
  - b. Fences are not allowed within a resource area of environmental zones.

**E. The landowner shall maintain the required plantings for two years to ensure survival and replacement. The landowner is responsible for ongoing survival of required plantings during and beyond the designated two-year monitoring period. The landowner shall:**

1. Obtain a Zoning Permit for a final inspection at the end of the 2-year maintenance and monitoring period. The permit must be finalized no later than two years from the final inspection for the installation of mitigation planting, for the purpose of ensuring that the required plantings remain. Any required plantings that have not survived must be replaced.

**F. Failure to comply with any of these conditions may result in the City's reconsideration of this land use approval pursuant to Portland Zoning Code Section 33. 700.040 and/or enforcement of these conditions in any manner authorized by law.**

**Conditions of Approval.** This project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such. These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the Applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

## **VII. APPEAL INFORMATION**

### **Appeals to the Land Use Board of Appeals (LUBA)**

This is the City's final decision on this matter. It may be appealed to the Oregon Land Use Board of Appeals (LUBA), within 21 days of the date of the decision, as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that a petitioner at LUBA must have submitted written testimony during the comment period or this land use review. You may call LUBA at 1 (503) 373-1265 for further information on filing an appeal.

## EXHIBITS NOT ATTACHED UNLESS INDICATED

## A. Applicant's Statement:

1. Original submittal (4/22/16)
  - a. Cover sheet and narrative
  - b. Pre-application conference notes
  - c. Neighborhood Contact Documentation
  - d. Arborist report and tree table
  - e. Stormwater report
  - f. Geotechnical report and landslide hazard area report
  - g. Transportation Impact Study
  - h. Environmental Review report
  - i. Plan set (19 sheets)
2. Additional submittal (8/5/16)
  - a. Cover sheet and revised narrative, dated 8/5/16
  - b. Revised arborist report and tree table, dated 6/22/16
  - c. Revised stormwater report, dated 7/27/16
  - d. Response memo from Hardman Geotechnical Services, dated 7/6/16
  - e. Revised Transportation Impact Study, dated 6/6/16
  - f. Revised Environmental Review report, dated August 2016
  - g. Wetland delineation report, dated July 2016
  - h. Response to Fire Bureau comments
  - i. Revised plan set (19 sheets)
3. Additional submittal (11/21/16)
  - a. Cover sheet and response memo
  - b. Revised narrative, dated 11/18/16
  - c. Revised tree table, dated 11/11/16
  - d. Revised stormwater report, dated 11/4/16
  - e. Revised Environmental Review report, dated 11/21/16
  - f. Revised plan set (22 sheets)
4. Additional submittal (1/31/17)
  - a. Cover sheet and response memo
  - b. Revised narrative, dated 1/31/17
  - c. Anchor QEA memo, dated 1/20/17
  - d. Revised stormwater report, dated 1/13/17
  - e. Revised plan set (21 sheets)
5. Additional submittal (2/17/17)
  - a. Response memo
  - b. Revised arborist report and tree table, dated 2/17/17
  - c. Revised plan sheets 11, 12 and 13
6. Information regarding release of easements (10/5/16 email)
7. 120-day waiver
8. Hearing reschedule requests

B. Zoning Map (**attached**)

## C. Plans &amp; Drawings:

1. Cover sheet
2. Aerial photo

3. Existing conditions
  4. Tree table
  5. Preliminary Site Plan (**attached**)
  6. Street cross sections
  7. Preliminary Subdivision Plat (**attached**)
  8. Preliminary Grading Plan
  9. Preliminary Site Sections
  10. Composite Utility Plan
  11. Preliminary Tree Plan (**attached**)
  12. Preliminary Planting Plan (**attached**)
  13. Preliminary Planting Notes
  14. Environmental Review Existing Conditions
  15. Environmental Review Site Development Plan
  16. Environmental Review Construction Management Plan (**attached**)
  17. Additional public works plan sheets (5 pages, sheets 17 – 22)
  18. Existing Conditions Survey
- D. Notification information:
1. Request for response
  2. Posting letter sent to applicant with notice to be posted (a & b)
  3. Applicant's statement certifying posting (a & b)
  5. Hearing notice Mailing list
  6. Mailed hearing notice
- E. Agency Responses:
1. Bureau of Environmental Services (a-c)
  2. Bureau of Transportation Engineering and Development Review
  3. Water Bureau
  4. Fire Bureau
  5. Site Development Review Section of Bureau of Development Services
  6. Bureau of Parks, Forestry Division
  7. Life Safety Section of BDS
- F. Letters:
1. Hayhurst Neighborhood Association (9/9/16)
  2. Randi Sachs and Drew Bradbury (7/6/16, 1/18/17)
  3. Randi Sachs (2/9/17)
  4. Leslie Hammond (2/13/17)
  5. Tim Van Wormer (2/21/17)
  6. Ed and Sharon Castro (2/22/17)
- G. Other:
1. Original LUR Application
  2. Incomplete letter
  3. DSL Wetland Land Use Notification Response
- H. Received in the Hearings Office
1. Request to reschedule - Beckman, Stephanie
  2. Request to reschedule - Beckman, Stephanie
  3. Hearing Notice - Beckman, Stephanie
  4. Staff Report - Beckman, Stephanie

5. 3/1/17 letter - Bernards, Laura
6. 3/6/17 letter - Hammond, Leslie
7. Email from Laura Bernards to Stephanie Beckman dated 3/1/17 - Beckman, Stephanie
8. Revised Staff Recommendation to Denial - Beckman, Stephanie
  - a. Email from Jennifer Antak to Tunnard and Beckman dated 3/7/17 - Beckman, Stephanie
  - b. Color Map - Beckman, Stephanie
9. PowerPoint presentation printout - Beckman, Stephanie
10. 3/8/17 Memo from Matt Kuziinsky, Anchor QEA, LLC - Robinson, Michael
  - a. Figure 1 - Robinson, Michael
  - b. 3/7/17 Memo from Stephanie Beckman - Robinson, Michael
  - c. Wetland Determination Data Form - Robinson, Michael
  - d. Photo - Robinson, Michael
11. Hayhurst NA Testimony (notebook) - King, Susan
  - a. 3/7/17 letter, Janet Hawkins/Hayhurst NA to Stephanie Beckman - King, Susan
  - b. 3/8/17 Memo (38 pages) - King, Susan
  - c. Preliminary Tree Plan - Site Clearance & Disturbance - King, Susan
  - d. Preliminary Tree Plan (4 pages) - King, Susan
  - e. Drainage patterns - King, Susan
  - f. Intersections - King, Susan
  - g. SW 48th Sight Distance (2 pages) - King, Susan
  - h. Street conditions (3 pages) - King, Susan
  - i. Diagram (3 pages) - King, Susan
  - j. Photos (2 pages) - King, Susan
  - k. LED Street Conversion in Portland: Good News or Bad? (2 pages) - King, Susan
  - l. Aerial view - King, Susan
  - m. 12/22/16 Memo, Rodney Krauter to Joshua Owens - King, Susan
  - n. 2/5/15 Memo from Commissioner Amanda Fritz (4 pages) - King, Susan
  - o. Diagram (6 pages) - King, Susan
  - p. Photos - King, Susan
12. Due process note - Van Wormer, Tim
  - a. Land Use Review Application - LU 16-159330 LDS EN - Van Wormer, Tim
  - b. Incomplete letter - LU 16-159330 LDS EN M - Van Wormer, Tim
  - c. 5/20/16 Memo, Response to BDS from PBOT - Van Wormer, Tim
  - d. 5/12/16 Memo from Jocelyn Tunnard/BES to Stephanie Beckman/BDS - Van Wormer, Tim
  - e. 5/18/16 Review for Completeness Response Memo from BDS - Van Wormer, Tim
  - f. 5/20/16 letter from BDS to Li Alligood - Van Wormer, Tim
  - g. 1/20/17 Memo from Greg Summers/Matt Kuziinsky, Anchor QEA to Vic Remmers - Van Wormer, Tim
  - h. Figure 1 - Wetlands and Environmental Overlays - Van Wormer, Tim
13. Written testimony (3 pages) - Van Wormer, Tim

- a. Photos (5 pages) - Van Wormer, Tim
- b. Stormwater Starts at Home! PowerPoint printout (2 pages) - Van Wormer, Tim
- c. Written testimony - Van Wormer, Tim
- d. Existing Conditions Map - Van Wormer, Tim
- e. Aerial view/diagram - Van Wormer, Tim
- 14. 3/30/16 Landslide Hazard Study - Van Wormer, Tim
- 15. cd - Sachs, Randi
- 16. cd - Sachs, Randi
- 17. 3/8/17 letter - Sachs, Randi
- 18. Neighborhood Petition - Sachs, Randi
- 19. 3/6/17 letter from Margaret McSorley - Sachs, Randi
- 20. 3/7/17 letter from Wendy Morgan - Sachs, Randi
- 21. 3/8/17 letter from Frank and Jan Crow - Sachs, Randi
- 22. Letter from Sally Anne Giedrys and Michael Carroll - Sachs, Randi
- 23. 3/6/17 letter from Nathan, Bethany, and Larken Hale - Sachs, Randi
- 24. Letter from Jill and Jeff Martini - Sachs, Randi
- 25. Letter from Rob, Carol, and Luke Malnati - Sachs, Randi
- 26. Letter from Sarah Watson - Sachs, Randi
- 27. Dangerous, Unimproved Road - Hurwitz, Brynna
  - a. Google Map printout - Hurwitz, Brynna
- 28. Safe Route to School - Hurwitz, Brynna
  - a. Photo - Hurwitz, Brynna
- 29. Watershed Issues - Hurwitz, Brynna
- 30. Code Compliance Issues - Hurwitz, Brynna
  - a. 4/7/16 Email - Hurwitz, Brynna
  - b. 3/1/17 Email - Hurwitz, Brynna
  - c. Feb. 2017 Emails - Hurwitz, Brynna
  - d. 1/20/17 Memo from Anchor QEA - Hurwitz, Brynna
  - e. Photos (3 pages) - Hurwitz, Brynna
- 31. Figure 1 - Wetlands and Environmental Overlays - Hurwitz, Brynna
  - a. March 2017 BES info. - Hurwitz, Brynna
- 32. 3/6/17 letter - Foster, Aletha
- 33. Written testimony - King, David
- 34. Written testimony - Hanawalt, Barbara
- 35. Letter from Steven and Marie Gouz - Hanawalt, Barbara
- 36. 3/7/17 letter from Christopher Silkie - Silkie, Sarah
- 37. Sewer Assets - Peebles, Mike
  - a. Figure 3: Drainage Basins for Flood Hazard Area and Downstream Capacity Analyses - Peebles, Mike
  - b. Existing Drainage - Peebles, Mike
  - c. Photos - Peebles, Mike
  - d. Proposed Drainage - Peebles, Mike
- 38. Record Closing Information - Hearings Office
- 39. E-mail from Mary Ann Schwab - Beckman, Stephanie
- 40. Photos from 3/1/17 site visit - Beckman, Stephanie

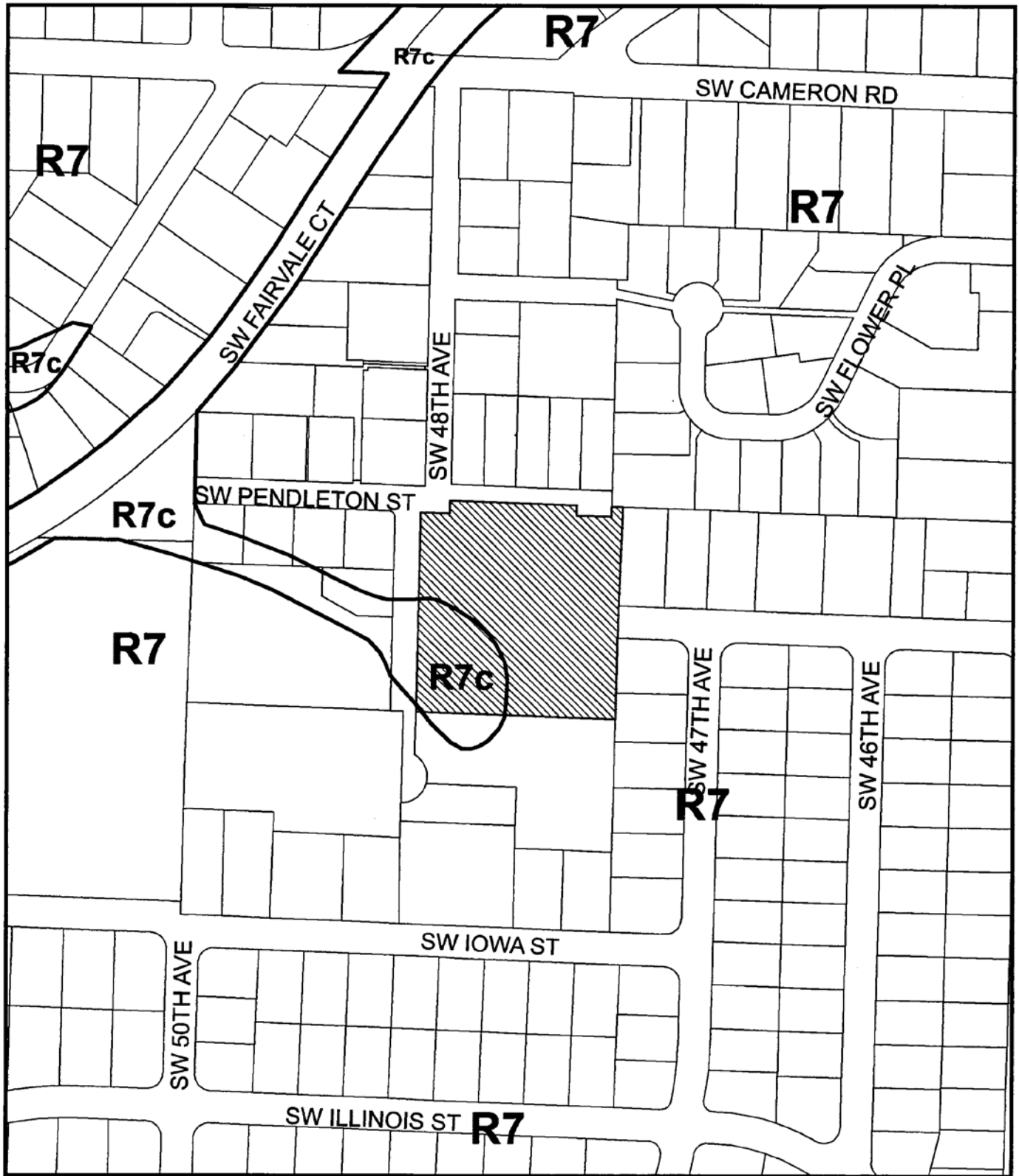
41. Stormwater Management Comments - Iverson, Al
42. Faxed letter from Tom Rollman - Robinson, Michael
43. Memo (12 pages) - Hayhurst Neighborhood Association
  - a. Portland Transportation System Plan (Page 11-27 & 11-28) - Hayhurst Neighborhood Association
44. 3/1/17 letter from Kelly Carnevale - Sachs, Randi
45. 3/1/17 letter from Paul Carnevale - Sachs, Randi
46. 3/21/17 letter from Albert & Sandra Marron - Sachs, Randi
47. 3/15/17 E-mail from Randi Sachs - Beckman, Stephanie
  - a. Photos - Beckman, Stephanie
48. Cover Sheet letter dated 3/22/17 - Robinson, Michael
  - a. Perkins Coie Letter dated 3/22/17 to the Hearings Officer - Robinson, Michael
49. Memo dated 3/22/17 to Hearings Officer - Beckman, Stephanie
50. Report - Van Wormer, Tim
51. Memorandum dated 3/22/17 to Hearings Officer - Tunnard, Jocelyn
52. Letter dated 3/21/17 - Hale, Nathan
  - a. Photographs and Map - Hale, Nathan
  - b. Map "Pedestrian Walk Path/Flow - Hale, Nathan
  - c. Map "Bike Stroller Flow" - Hale, Nathan
53. Portland Bureau of Transportation website Printout " Letter from the Commissioner" - Hale, Nathan
  - a. Portland Bureau of Transportation website Printout "Why Vision Zero?" (5 pages) - Hale, Nathan
54. Memo dated 3/22/17 from de Freitas to Hearings Officer - de Freitas, Fabio
55. 4/5/17 written comments - Iverson, Al
56. Rebuttal letter dated 4/5/17 (16 pages) - Hayhurst Neighborhood Association
  - a. Exhibit "A" Email dated 9/6/16 from Beckman to Peebles and Castleberry - Hayhurst Neighborhood Association
  - b. Exhibit "B" Fanno Creek Plan dated 1/19/1994 - Hayhurst Neighborhood Association
  - c. Exhibit "C" Metromap - Hayhurst Neighborhood Association
  - d. Exhibit "D" Natural Resources Inventory Map - Hayhurst Neighborhood Association
  - e. Exhibit "E" Natural Resources Inventory Map Layer List - Hayhurst Neighborhood Association
  - f. Exhibit "F" Natural Resources Inventory Map Layer List - Hayhurst Neighborhood Association
  - g. Exhibit "G" Oregon's Statewide Planning Goals & Guidelines - Hayhurst Neighborhood Association
  - h. Exhibit "H" Everett Heights Subdivision Map - Hayhurst Neighborhood Association
  - i. Exhibit "I" Hayhurst Neighborhood Map - Hayhurst Neighborhood Association
57. Letter dated 4/5/17 - Sachs, Randi
58. Memo dated 4/5/17 - Beckman, Stephanie

59. Memorandum dated 4/5/17 - Tunnard, Jocelyn
  60. Memo from Jason Butler-Brown dated 4/5/17 - Beckman, Stephanie
  61. Cover Letter from Michael Robinson dated 4/5/17 - Robinson, Michael
    - a. Letter dated 4/5/17 from Michael Robinson with attached exhibits - Robinson, Michael
  62. Letter from Van Wormer dated 4/3/17 - Van Wormer, Tim
  63. Letter from Brynna Hurwitz dated 3/31/17 - Van Wormer, Tim
  64. Cover Letter (one page only) dated 4/12/17 - Robinson, Michael
    - a. Letter dated 4/12/17 (4 pages total) - Robinson, Michael
  65. Letter - Franz, Ian and Kelly - **Submitted After Record Closed**
- I. Council Appeal
1. Hayhurst Neighborhood Association Appeal Submittal
  2. Appealed Decision
  3. Notice of Appeal
  4. Notice of Appeal mailing list
  5. Council Appeal Packet
    - a. Memo from Rebecca Esau, BDS, received June 22, 2017
    - b. Impact Statement
 (Received before Hearing)
  6. David Pykonen letter, received June 19, 2017
  7. Ed and Sharon Castro letter, received June 19, 2017
  8. Laura Bernards letter, received June 13, 2017
  9. Kelly Carnevale letter, received June 21, 2017
  10. Michael R. Robinson of Perkins Coie, letter waiving 120-day and 365-day timelines, received June 21, 2017
  11. Michael R. Robinson of Perkins Coie, letter representing Everett Custom Homes, Inc., received June 21, 2017
    - a. Exhibit "1" Chapter 33.640 of Title 33, Planning and Zoning
    - b. Exhibit "2" Email from Stephanie Beckman June 21, 2017
    - c. Exhibit "3" Memo from Fabio de Freitas, PBOT, March 22, 2017
    - d. Exhibit "4" Chapter 33.654 of Title 33, Planning and Zoning
    - e. Exhibit "5" Memo from Greg Summers, Anchor QEA, LLC, June 20, 2017
 (Received During Hearing)
  12. Staff PowerPoint Presentation to City Council
  13. Testimony sign-up sheet, June 22, 2017
  14. Hayhurst Neighborhood Association's Memorandum in Opposition to 11-Lot Subdivision, As Proposed, submitted by Peggy Hennessy June 22, 2017
  15. Memo from Jennifer Antak, March 7, 2017
  16. Memo from Stephanie Beckman, March 7, 2017
  17. Phil Healy testimony
  18. Shane Latimer testimony, submitted by Peggy Hennessy, June 22, 2017
  19. Shane Latimer's Curriculum Vitae
  20. Jonathan J. Rhodes report, submitted by Peggy Hennessy, June 22, 2017
  21. Jonathan J. Rhodes' Curriculum Vitae
  22. Tim Van Wormer testimony, June 22, 2017
  23. Phil Healy testimony, June 22, 2017

24. Hayhurst Neighborhood Association testimony, submitted by Susan King, June 22, 2017
25. Brynna Hurwitz testimony, June 22, 2017
26. Leslie Hammond testimony, June 22, 2017
27. Petition with 306 signees, submitted by Drew Bradbury, June 22, 2017
28. Randi Sachs, on behalf of Phil Healy, testimony, June 22, 2017
29. Irene Jarrett testimony, June 22, 2017  
(Received After Hearing)
30. Southwest Neighborhoods Inc. letter, submitted by John Gibbon, received June 29, 2017
31. Ian and Kelly Frantz letter, July 2, 2017
32. Memo from Stephanie Beckman and Stacey Castleberry, BDS, received July 3, 2017
33. Stormwater Management Existing Drainage Pattern Map
34. Proposed Drainage Pattern Map
35. Everett Heights: Aerial View (2016)
36. Everett Heights: Context Map
37. Hayhurst Elementary School Safe Routes Map, February 2017
38. Portland Transportation System Plan, Portland Master Street Plan Map  
11.11.6, Southwest District
39. Close-up of Map 11.11.6, Southwest District
40. Everett Heights Subdivision Existing Conditions
41. Everett Heights Subdivision Street Cross Sections
42. Everett Heights Subdivision Preliminary Tree Plan
43. Hayhurst Neighborhood Association, "One Page of Concerns: Condensed Version," received July 6, 2017
44. Phil Healy's Transportation Report
45. Jonathan J. Rhodes Addendum, dated July 5, 2017
46. Pendleton Creek Sub-Basin Drainage Areas
47. Map of Tributaries to Fanno Creek
48. PPS School Finder 2017-2018
49. Unique Water Traits of Portland's Westside
50. Aletha Lincoln Foster letter, received July 6, 2017
51. Casey and Joel Grabenstein letter, received July 6, 2017
52. B. Hurwitz letter, received July 6, 2017
53. Alvin Iverson letter, received July 6, 2017
54. Hayhurst Neighborhood Association letter, submitted by Randi Sachs, received July 6, 2017
55. "Hayhurst neighbors worry new development will compromise safety," by Catherine Van for KATU News, June 26, 2017
56. Christopher Silkie letter, received July 6, 2017
57. Tim Van Wormer letter, received July 6, 2017
58. Michael C. Robinson of Perkins Coie, on behalf of Everett Custom Homes, received July 6, 2017
59. Exhibit 1: Memo from Julia Kuhn, Wade Scarbrough, and Chris Brehmer of Kittleson & Associates, July 3, 2017




60. Exhibit 2: School map
61. Exhibit 3: “Supplemental Information Submittal” Memo from Greg Summers of Anchor QEA, LLC
62. Hayhurst Neighborhood Association rebuttal letter, received July 11, 2017
63. Hayhurst Elementary Safe Routes, January 17, 2014
64. Hayhurst Elementary Safe Routes, February 25, 2017
65. Hayhurst Neighborhood Association letter c/o Janet Hawkins, dated July 13, 2017
66. Michael R. Robinson of Perkins Coie, letter representing Everett Custom Homes, Inc., received July 13, 2017
67. Memo from Stephanie Beckman and Stacey Castleberry, BDS, received July 13, 2017
68. Memo from Jocelyn Tunnard, BES, received July 13, 2017
69. Memo from Abra McNair, PBOT, received July 13, 2017
70. Hayhurst Neighborhood Association letter, received July 20, 2017
71. Michael R. Robinson of Perkins Coie, letter representing Everett Custom Homes, Inc., received July 20, 2017

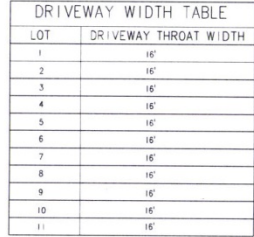


# ZONING



 Site



File No. LU 16-159330 LDS EN  
 1/4 Section 3624  
 Scale 1 inch = 200 feet  
 State\_Id 1S1E18DA 7300  
 Exhibit B (Feb. 23, 2017)



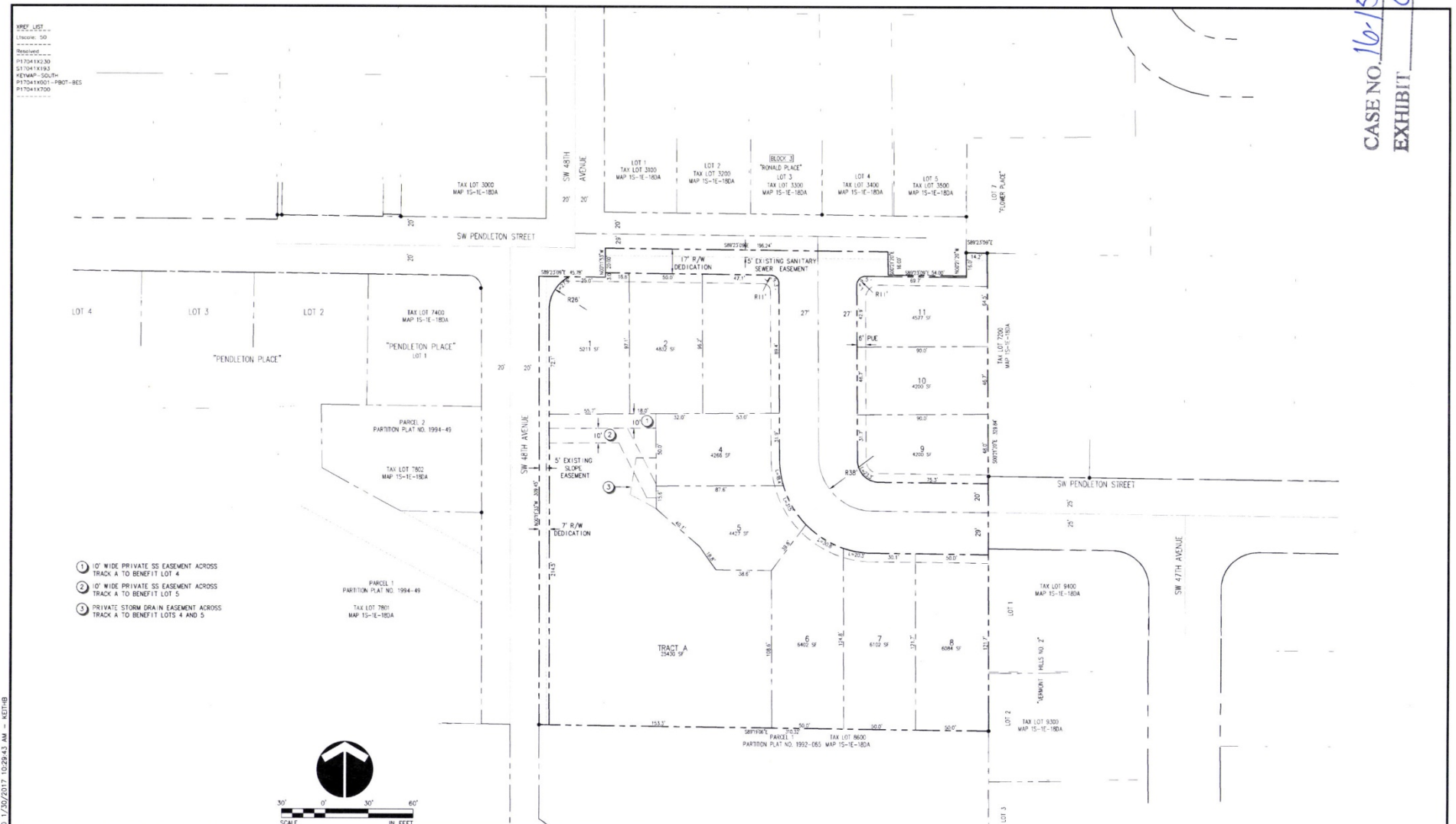
**LEGEND**

SITE	EXISTING	PROPOSED
RIGHT OF WAY		
CENTER LINE		
LOT LINE		
LOT NUMBER / NAME	2	2
EASEMENT LINE		
STANDARD CURB		
EDGE OF PAVEMENT		
RETAINING WALLS		
SIDEWALK		
DRIVEWAY APPROACH		
LIDA FACILITIES (PUBLIC STREET)		
LIDA FACILITIES (PRIVATE-ONSITE)		
PAVED AREA		
STREET CROSS SECTION (SEE SHEET P2.1 FOR DETAILS)		
CONSERVATION ZONE		
WETLAND BOUNDARY/HATCH		
VISION CLEARANCE TRIANGLE		

NOTE: PRIVATE ON-SITE LIDA FACILITIES ARE SHOWN FOR REFERENCE/LOCATION ONLY.  
ACTUAL LOCATION TO BE DESIGNED/PERMITTED WITH HOME CONSTRUCTION UNDER SEPARATE PERMIT.

NO. DATE DESCRIPTION REVISIONS		DESIGNED BY DATE APPROVED SECTION ENGR MAP COMPLETED BY CHECKED BY CHECKED BY FINAL MAP DATA		APPROVALS: RES. CHIEF ENGINEER REG. PROF. ENGR. 16301P PRINCIPAL ENGINEER REG. PROF. ENGR. 51704P CITY ENGINEER REG. PROF. ENGR. 51538P		BUREAU OF ENVIRONMENTAL SERVICES NICK FISH COMMISSIONER WILLIAM F. RYAN, P.E. CHIEF ENGINEER		BUREAU OF TRANSPORTATION STEVE NOVICK COMMISSIONER STEVE TOWNSEN, P.E. CITY ENGINEER		 HannelGlobal Partner 808 W 3rd Ave., Ste. 300 Portland, OR 97204 Phone: (503) 597-4653 Fax: (503) 415-2304 www.otak.com OTAK PROJECT NUMBER 17677		 EVERETT HEIGHTS SUBDIVISION PORTLAND, OREGON PRELIMINARY SITE PLAN EXPIRES: 12/31/2017		RES. JOB NO. EP-301 PROJ. JOB NO. T30049 SHEET NO. P2.0 5 of 21	
--------------------------------	--	---	--	--	--	--	--	--	--	---	--	---	--	--	--

CASE NO. 16-159330  
EXHIBIT C.7



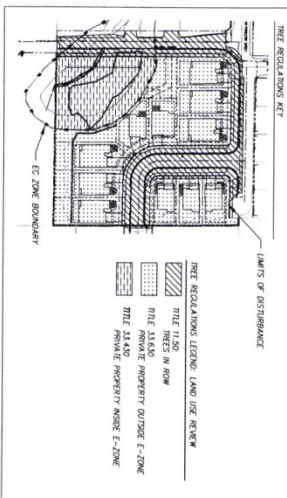
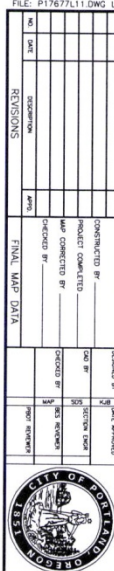
- ① 10' WIDE PRIVATE SE EASEMENT ACROSS TRACK A TO BENEFIT LOT 4
- ② 10' WIDE PRIVATE SE EASEMENT ACROSS TRACK A TO BENEFIT LOT 5
- ③ PRIVATE STORM DRAIN EASEMENT ACROSS TRACK A TO BENEFIT LOTS 4 AND 5



<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th>NO.</th> <th>DATE</th> <th>DESCRIPTION</th> <th>APPROVED</th> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </table>		NO.	DATE	DESCRIPTION	APPROVED													DESIGNED BY: _____ DATE APPROVED: _____ CHECKED BY: _____ DATE: _____ DES REVENUE: _____ PROTOT REVIEWER: _____			<b>APPROVALS:</b> RES CHIEF ENGINEER: _____ REG. PROF. ENGR. 18301R PROTOT PRINCIPAL ENGINEER: _____ REG. PROF. ENGR. 51704R PROTOT CITY ENGINEER: _____ REG. PROF. ENGR. 51538R		<b>BUREAU OF ENVIRONMENTAL SERVICES</b> NICK FISH, COMMISSIONER WILLIAM F. RYAN, P.E., CHIEF ENGINEER		<b>BUREAU OF TRANSPORTATION</b> STEVE NOVICK, COMMISSIONER STEVE TOWNSEN, P.E., CITY ENGINEER		 Harrell Global Partner 808 SW 3rd Ave., Ste. 300 Portland, OR 97204 Phone: (503) 297-4825 Fax: (503) 455-2304 www.otak.com OTAK PROJECT NUMBER: 17677		 EVERETT HEIGHTS SUBDIVISION PORTLAND, OREGON PRELIMINARY SUBDIVISION PLAT		RES. JOB NO.: EP301 PROTOT JOB NO.: TB0049 SHEET NO.: P3.0 7 of 21	
		NO.	DATE	DESCRIPTION	APPROVED																											
PROJECT COMPLETED: _____ MAP CORRECTED BY: _____ CHECKED BY: _____		CONSTRUCTED BY: _____ PROJECT COMPLETED: _____ MAP CORRECTED BY: _____ CHECKED BY: _____		REVISIONS: _____ FINAL MAP DATA: _____		REVISIONS: _____ FINAL MAP DATA: _____		REVISIONS: _____ FINAL MAP DATA: _____		REVISIONS: _____ FINAL MAP DATA: _____																						
DESIGNED BY: _____ DATE APPROVED: _____ CHECKED BY: _____ DATE: _____ DES REVENUE: _____ PROTOT REVIEWER: _____		DESIGNED BY: _____ DATE APPROVED: _____ CHECKED BY: _____ DATE: _____ DES REVENUE: _____ PROTOT REVIEWER: _____		DESIGNED BY: _____ DATE APPROVED: _____ CHECKED BY: _____ DATE: _____ DES REVENUE: _____ PROTOT REVIEWER: _____		DESIGNED BY: _____ DATE APPROVED: _____ CHECKED BY: _____ DATE: _____ DES REVENUE: _____ PROTOT REVIEWER: _____		DESIGNED BY: _____ DATE APPROVED: _____ CHECKED BY: _____ DATE: _____ DES REVENUE: _____ PROTOT REVIEWER: _____		DESIGNED BY: _____ DATE APPROVED: _____ CHECKED BY: _____ DATE: _____ DES REVENUE: _____ PROTOT REVIEWER: _____																						
DESIGNED BY: _____ DATE APPROVED: _____ CHECKED BY: _____ DATE: _____ DES REVENUE: _____ PROTOT REVIEWER: _____		DESIGNED BY: _____ DATE APPROVED: _____ CHECKED BY: _____ DATE: _____ DES REVENUE: _____ PROTOT REVIEWER: _____		DESIGNED BY: _____ DATE APPROVED: _____ CHECKED BY: _____ DATE: _____ DES REVENUE: _____ PROTOT REVIEWER: _____		DESIGNED BY: _____ DATE APPROVED: _____ CHECKED BY: _____ DATE: _____ DES REVENUE: _____ PROTOT REVIEWER: _____		DESIGNED BY: _____ DATE APPROVED: _____ CHECKED BY: _____ DATE: _____ DES REVENUE: _____ PROTOT REVIEWER: _____		DESIGNED BY: _____ DATE APPROVED: _____ CHECKED BY: _____ DATE: _____ DES REVENUE: _____ PROTOT REVIEWER: _____																						

FILE: P:\17677\17677.DWG PLO 1/20/2017 10:29:43 AM - KETHUB



[illegible]

RECS. CHIEF ENGINEER	REC. PROJ. DNR 14501PM
PROJ. PRINCIPAL ENGINEER	REC. PROJ. DNR 51704PM
PROJ. CITY ENGINEER	REC. PROJ. DNR 51553PM

**BUREAU OF  
ENVIRONMENTAL SERVICES**

NICK FISH                      COMMISSIONER

WILLIAM F. RYAN, P.E.      CHIEF ENGINEER

**BUREAU OF  
TRANSPORTATION**

STEVE NOWICK      COMMISSIONER  
STEVE TOMNSEN, P.E.      CITY ENGINEER

**otak**

MEMBER OF THE **OTAK PROJECT**

800 3rd Ave., Ste. 300  
Portland, OR 97204  
Phone (503) 287-4625  
Fax: (503) 415-1204

[www.otak.com](http://www.otak.com)

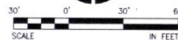
EVER  
SU  
FOR  
PP

ETT HEIGHTS DIVISION TILAND, OREGON ELIMINARY FREE PLAN	SHEET NO. L1.1 11 of 21	ETT JOB NO. EP301 PREP JOB NO. TB0049
---	-------------------------------	--









					CONSTRUCTED BY _____		DESIGNED BY _____	DATE APPROVED _____
					PROJECT COMPLETED _____		CAD BY _____	SECTION ENGR _____
					MAP CORRECTED BY _____		CHECKED BY _____	RES REVIEWER _____
					CHECKED BY _____			
NO.	DATE	DESCRIPTION	APPROVED	FINAL MAP DATA				FIRST REVIEWER _____



BES CHIEF ENGINEER	REG. PROF. ENGR. 163011
PBOT PRINCIPAL ENGINEER	REG. PROF. ENGR. 517041
PBOT CITY ENGINEER	REG. PROF. ENGR. 515381

NICK FISH  
WILLIAM F. RYAN, P.E.

STEVE NOVICK	COMMISSIONER
STEVE TOWNSEN, P.E.	CITY ENGINEER



**HanmiGlobal Partner**  
808 SW 3rd Ave., Ste. 30  
Portland, OR 97204  
Phone: (503) 287-6882  
Fax: (503) 415-2300  
[www.olak.com](http://www.olak.com)



EVERETT HEIGHTS  
SUBDIVISION  
PORTLAND, OREGON  
ENVIRONMENTAL REVIEW  
CONSTRUCTION MANAGEMENT PLAN

DES. JOB NO.	EP301
PROJ. JOB NO.	TB0049
SHEET NO.	P6.2 16 of 21

CASE NO. 16-159330  
EXHIBIT C.16