

IMPACT STATEMENT

Legislation title: Appeal of the Hayhurst Neighborhood Association against the Hearings Officer's decision to approve, with conditions, an 11-lot subdivision at 5920 SW 48th Avenue (Hearing; LU 16-159330 LDS EN)

Contact name: Stephanie Beckman, Interim Supervising Planner, Land Use Services

Contact phone: 503-823-6979

Presenter name: Stephanie Beckman and Stacey Castleberry

Purpose of proposed legislation and background information:

This is an appeal of a Type III Land Use Review decision (a quasi-judicial action). Title 33, Zoning Code Section 33.730.030.F provides that Type III Land Use Review decisions may be appealed to City Council. The Hearings Officer decision for the proposed subdivision and environmental review (Everett Heights Subdivision) was appealed by the Hayhurst Neighborhood Association.

Financial and budgetary impacts:

This is an appeal of a Type III quasi-judicial land use review (not legislation). The City Council decision on this matter will not have financial or budgetary impacts on the City.

Generally, Land Use Reviews are fee supported. In this case, the appeal fee was waived because the appellant is a Recognized Organization as defined by 33.910. City costs associated with this appeal are for staff time to process the appeal.

Community impacts and community involvement:

The notification procedures for this Type III land use application followed the public involvement requirements contained within the Portland Zoning Code, as reviewed and adopted by the Portland City Council.

For Type III Land Use Reviews, the Zoning Code requires public notice be mailed to recognized neighborhood and business associations that are within 1,000 feet of the site. For this site, the Hayhurst Neighborhood Association, and Southwest Neighborhoods Inc. (district coalition) received notice. In addition, all property owners within the 400 feet of the site were mailed notice of the public hearing and the site was posted with notice boards. City Bureaus, Tri-Met, and METRO, Northwest Natural Gas, Pacific Power & Light, the Portland School District #1, Oregon State Fish & Wildlife, and the Wilkes Community Group were also mailed notice. Interested persons were encouraged to write and/or testify at the public hearing conducted before the Hearings Officer.

Extensive comments from the public, including from the appellant (Hayhurst Neighborhood Association), were submitted to the Hearings Officer as both oral and written testimony during the review process. After the hearing held on March 8, 2017, the review process included a 4 week period for additional testimony to be submitted by any party.

The City Council decision on this appeal will be the final decision of the City, per Zoning Code Section 33.730.030.H.9. However, the City Council's decision may be appealed to the Oregon Land Use Board of Appeals (LUBA).

Budgetary Impact Worksheet

Does this action change appropriations?

☐ **YES:** Please complete the information below.

☒ **NO:** Skip this section

Fund	Fund Center	Commitment Item	Functional Area	Funded Program	Grant	Sponsored Program	Amount

Motions

896 TIME CERTAIN: 3:30 PM – Appeal of the Hayhurst Neighborhood Association against the Hearings Officer's decision to approve the application with conditions of Vic Remmers, Everett Custom Homes, for an 11-lot subdivision at 5920 SW 48th Ave (Previous Agenda 737; LU 16-159330 LDS EN)

August 9, 2017

Motion to accept condition of approval agreed to by the Applicant and Appellant: the Applicant and the Hayhurst Neighborhood Association shall agree upon a plan for barricading the extension of SW Pendleton St, and such agreement shall not be unreasonably withheld, so that the extension may be used only by pedestrians, bicyclists and emergency vehicles; and such plan shall be approved by Portland Bureau of Transportation prior to the approval of final plans for the subdivision's construction and any ground disturbing activities except for site testing: Moved by Saltzman and seconded by Wheeler.

COMMISSIONERS VOTED AS FOLLOWS:

YEAS: Saltzman

NAYS: Eudaly, Fritz, Fish, Wheeler.

Motion failed.

Motion to tentatively deny the appeal and uphold the Hearings Officer's decision to approve the application with conditions: Moved by Fritz and seconded by Fish.

COMMISSIONERS VOTED AS FOLLOWS:

YEAS: Eudaly, Fritz, Fish, Wheeler

NAYS: Saltzman

Disposition

**TENTATIVELY DENY APPEAL AND UPHOLD HEARINGS OFFICER'S DECISION;
PREPARE FINDINGS FOR SEPTEMBER 6, 2017 AT 11:00 AM TIME CERTAIN**

September 6

Motion to deny the appeal and uphold Hearings Officer's decision and adopt findings: Moved by Fish and seconded by Fritz

COMMISSIONERS VOTED AS FOLLOWS:

YEAS: Eudaly, Fritz, Fish, Wheeler

ABSENT: Saltzman

Disposition

FINDINGS ADOPTED

June 22, 2017

Appeal of the Hayhurst Neighborhood Association against the Hearings Officer's decision to approve the application with conditions of Vic Remmers, Everett Custom Homes, for an 11-lot subdivision at 5920 SW 48th Ave (Hearing; LU 16-159330 LDS EN)

The Hearing is continued to August 9, 2017 at 3:30 pm Time Certain.

The evidentiary record will remain open for 14 days until 5:00 pm on July 6, 2017. Anyone wishing to submit additional written testimony or information should submit it to the Council Clerk by 5:00 pm on July 6, 2017. Email cctestimony@portlandoregon.gov

The record will then remain open for rebuttal to evidence submitted during the previous 14-day period. No new evidence will be accepted during this time. Any rebuttal must be submitted to the Council Clerk by July 13, 2017 at 5:00 p.m.

After the record is closed to all other parties, the applicant is entitled to submit final written argument until July 20, 2017 at 5:00 pm. No new evidence will be accepted during this time.



City of Portland, Oregon
Bureau of Development Services
Land Use Services

1900 SW 4th Avenue, Suite 5000
Portland, Oregon 97201
503-823-7300
Fax 503-823-5630
TTY 503-823-6868
www.portlandonline.com/bds

MEMORANDUM

Date: July 13, 2017

To: Mayor Ted Wheeler
Commissioner Chloe Eudaly
Commissioner Nick Fish
Commissioner Amanda Fritz
Commissioner Dan Saltzman

From: Stephanie Beckman, Interim Supervising Planner, BDS Land Use Services
Stacey Castleberry, Senior City Planner, BDS Land Use Services

Subject: City Council Appeal Hearing on LU 16-159330 LDS EN, 5920 SW 48th Avenue

The purpose of this memorandum is to provide a brief response to testimony received at and following the June 22, 2017 City Council Appeal Hearing of the Everett Heights Subdivision.

Seeps and Springs Regulations of PCC 33.640

The June 22, 2017 Hayhurst Neighborhood Association's Memorandum claims that the Everett Heights Subdivision proposal violates the standards of PCC 33.640.200, which requires that seeps and springs be protected in a tract.

The Zoning Code in effect at the time the subject application was submitted defined seeps and springs as follows, "Seep or Spring. The point where an aquifer intersects with the ground surface and discharges water into a stream channel that flows into a wetland or other water body" (33.910.030 Definitions).

There is significant evidence in the record (including the LU 16-159330 LDS EN Hearings Officer's Decision) demonstrating that the Zoning Code definition of a seep or spring was not met by the features identified on the site because the water in question does not discharge into a stream channel. There is some question with regards to the presence of an aquifer in this area, however, without the existence of a defined stream channel, the Zoning Code definition is not met and the requirements in PCC 33.640 do not apply.

Testimony has also been provided asserting that the requirements of PCC 33.635 Clearing, Grading, and Land Suitability are not met because existing contours will be changed and drainage patterns may be affected by construction near these areas of seasonal ground-water emergence. Criterion 33.635.100 (A) requires existing contours and drainage patterns be left intact wherever practicable. Testimony presented by appellants, suggests that the proposal be revised to move construction activities farther away from these ground-water features.

The Hearings Officer made findings that "...it is not practicable to leave existing contours and drainage patterns intact and develop the site as proposed." In addition, the Hearings Officer found that the proposed changes in drainage patterns will not adversely impact adjacent properties (Page 22 and 23 of LU 16-159330 LDS EN Hearings Officer's Decision). However, the

Hearings Officer findings do not go into a detailed analysis of specific revisions to the grading plans which might move grading activities and the proposed retaining wall farther away from the wet areas mapped outside of the environmental zones. While this may be a possible means of keeping existing contours around the wet areas intact, it is not clear whether or not such a design change is practicable (“capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes” --PCC 33.910.030 Definitions).

Applicability of Environmental Zoning Regulations of PCC 33.430

The June 22, 2017 Hayhurst Neighborhood Association’s Memorandum (pages 3, 10, 11) states that PCC 33.430.250 A is not met by the project because the applicant could expand the protected environmental tract to include all seeps and springs, eliminate the Pendleton through street connection to preserve trees and reduce impervious surfaces, protect bicycle and pedestrian paths to ensure safety of the pedestrian route, and revise the stormwater plan to direct stormwater to wetlands on the site. The Memorandum further proposes reducing the number of lots to protect environmental resources.

It is important to recognize that the standards and criteria of the Environmental Zones (PCC 33.430), including the requirement for an alternatives analysis and for limiting and minimizing impacts on environmental resources, apply within the Environmental overlay zones as shown on the City’s official Zoning Map. They do not apply on areas of the subject site outside of the mapped Environmental Conservation overlay zone (PCC 33.430.060 Where These Regulations Apply).

The environmental tract as proposed by the applicant already covers the entire Environmental Conservation overlay zone, with the exception of the SW 48th Avenue improvements. The site area, trees, and other features described on page 3 of the Hayhurst Neighborhood Association’s Memorandum are outside of the City’s Environmental Conservation overlay zone, and PCC 33.430 does not apply there.

Lastly, 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.” In this case, the only elements of the proposal that do not meet the environmental development standards are the City-required right of way improvements on SW 48th Avenue. Therefore, the Zoning Code specifically limits the application of the approval criteria to the City-required right of way improvements on SW 48th Avenue.

Preservation of Off-Site Street Tree

Concerns were raised in testimony about the removal of a 42-inch diameter Western Red Cedar tree in the existing SW Pendleton right-of-way (just east of the project site). The Hearings Officer Decision (page 51, condition B.1) requires that the applicant work with the Public Works and Urban Forestry staff to retain the tree if feasible. A final determination will be made as the public works plans progress, but the Public Works project manager has indicated that it appears feasible to do so.



CITY OF PORTLAND ENVIRONMENTAL SERVICES



1120 SW Fifth Avenue, Room 1000, Portland, Oregon 97204 ■ Nick Fish, Commissioner ■ Michael Jordan, Director

Memorandum

Date: July 13, 2017

To: Portland City Council

From: Jocelyn Tunnard, BES System Development
503-823-5780, Jocelyn.Tunnard@portlandoregon.gov
Rodney Krauter, BES Development Engineering

Case File: LU 16-159330 LDS EN

Location: 5920 SW 48TH AVE

BES has read the testimony provided to the Portland City Council for consideration. BES would like to provide additional comments in response to the testimony submitted by Al Iverson dated July 6, 2017, April 5, 2017 and March 16, 2017 (refer to Aug 9 Hayhurst testimony 7-6 Individuals under Pending Items). Mr. Iverson's testimony relates to the applicant's proposed stormwater management plan. The following additional comments are intended to assist City Council members with their review of this land division project:

1. The culvert under SW 48th Avenue was required to be upsized from 18 inches to 36 inches because BES stormwater management standards required it to be sized to accommodate flow rates from the 25-year design storm event and, with upstream improvements, BES determined that stormwater runoff would be sufficiently attenuated to meet BES requirements as identified in previous BES memos identifying there will be a reduction in the overall flow rate (despite the larger culvert). Note that Otak has proposed a rock grate structure on the upstream end of the culvert to prevent erosion.
2. Mr. Iverson proposes stormwater runoff from public right-of-way improvements and private properties be directed to the wetland located within the proposed environmental resource tract (Tract A) and for BES to purchase Tract A in order to manage the wetland as a public stormwater facility that contains a mix of public and private stormwater runoff. If directed by Council BES would need sufficient time to consider the proposal in detail, including whether this proposal would create additional system benefits that could justify the case of using ratepayer dollars in this way. Note that approval from State and Federal agencies would also be required.

In addition, information provided in previous BES memos sufficiently addresses concerns raised in the documents submitted to Portland City Council for review.

PBOT

PORTLAND BUREAU OF TRANSPORTATION

1120 SW Fifth Avenue, Suite 800 Portland, OR 97204 503.823.5185

Fax 503.823.7576 TTY 503.823.6868 www.portlandoregon.gov/transportation

Dan Saltzman Commissioner **Leah Treat** Director

July 11th, 2017

Council Clerk
City of Portland
1221 SW Fourth Avenue, Rm. 130
Portland OR 97204

FROM: Abra McNair, Safe Routes to School - Active Transportation & Safety

RE: Safe Routes to School Map for Hayhurst Elementary

The Safe Routes to School program maps are developed and used as an outreach tool to provide information for families using active transportation to get to school. The maps are intended to educate and promote the Safe Routes to School programs in the schools.

There are currently two maps in the record for Hayhurst Elementary. To the extent City Council considers a Safe Routes to School map relevant to this land use decision, PBOT recommends that Council consider the 2014 map as the most accurate map.

The 2014 map was created using a GIS pedestrian/walking layer. In February 2017, the Safe Routes to School maps were updated for all schools within the City. The purpose of the 2017 citywide update was to include school enrollment boundary information. The 2017 update used an existing GIS city bike map layer rather than the GIS pedestrian/walking layer, which was used in the 2014 map. This change in the existing data layer used on the map resulted in a change in routes shown on the map for Hayhurst Elementary between the 2014 and 2017 versions.

However, the 2014 map with the walking layer better reflects the recommended routes for walking to school.



The Portland Bureau of Transportation fully complies with Title VI of the Civil Rights Act of 1964, the ADA Title II, and related statutes and regulations in all programs and activities. For accommodations, complaints and information, call (503) 823-5185, City TTY (503) 823-6868, or use Oregon Relay Service: 711.



City of Portland, Oregon
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Land Use Services

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MEMORANDUM

Date: July 3, 2017
To: City Council
From: Stephanie Beckman, Interim Supervising Planner, Land Use Services
Stacey Castleberry, Senior City Planner, Land Use Services
Re: Context Information for LU 16-159330 LDS EN, Everett Heights Subdivision,
Type III Appeal of Hearings Officer Decision

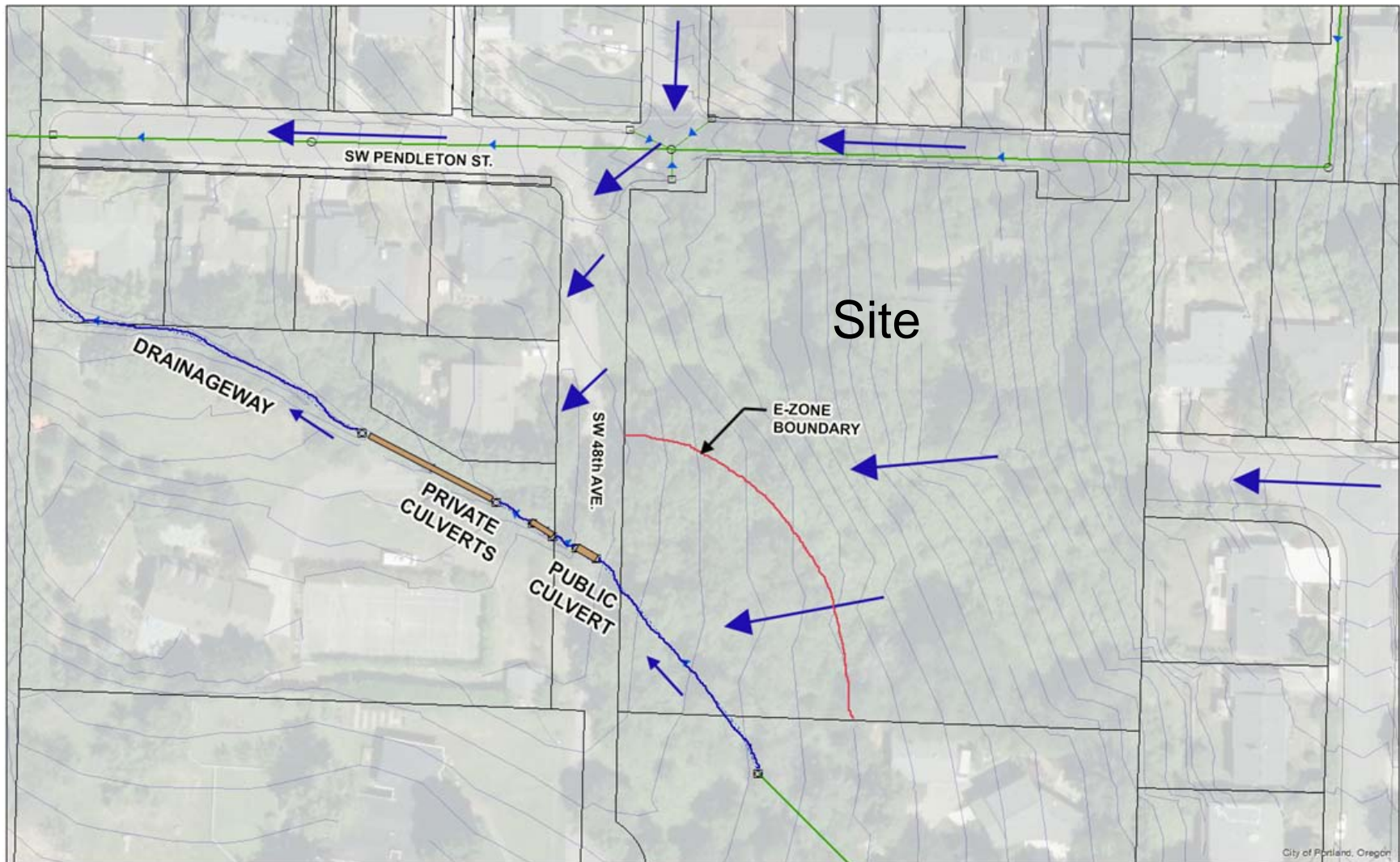
At the hearing held on June 22, 2017 regarding the Everett Heights Subdivision appeal (LU 16-159330 LDS EN), there were requests for additional context information. To this end, staff is providing the attached maps for City Council consideration.

The following is attached:

- Drainage pattern maps (existing and proposed)
- Aerial photograph of vicinity
- Context map with environmental zones and streams shown
- Current Safe Routes to Schools map for Hayhurst Elementary School
- TSP Map Street Plan Map 11.11.16 for Southwest District (full sheet and blow-up)
- Select site plans (existing conditions plan, site plan, street cross sections and tree plan)

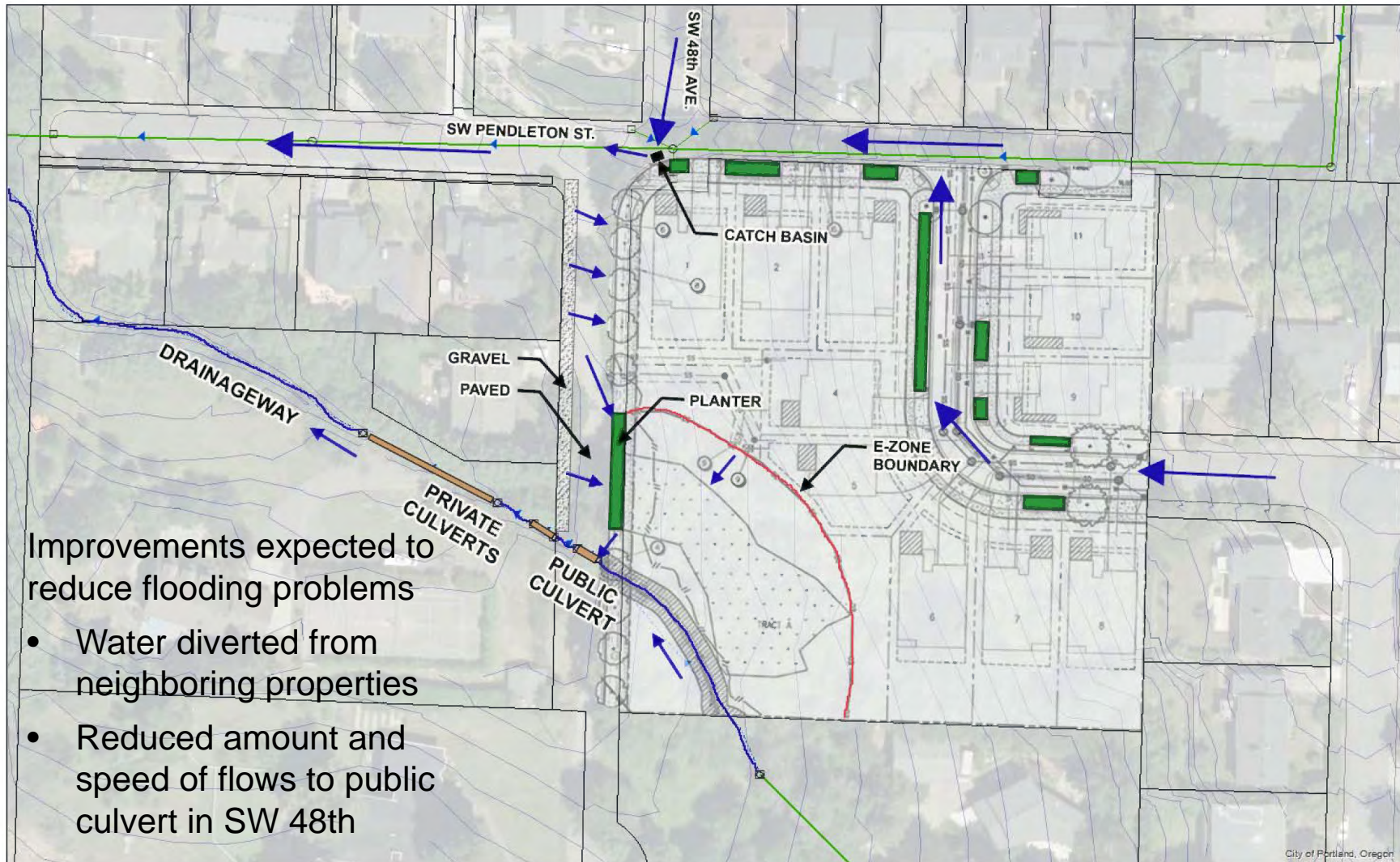
Stormwater Management

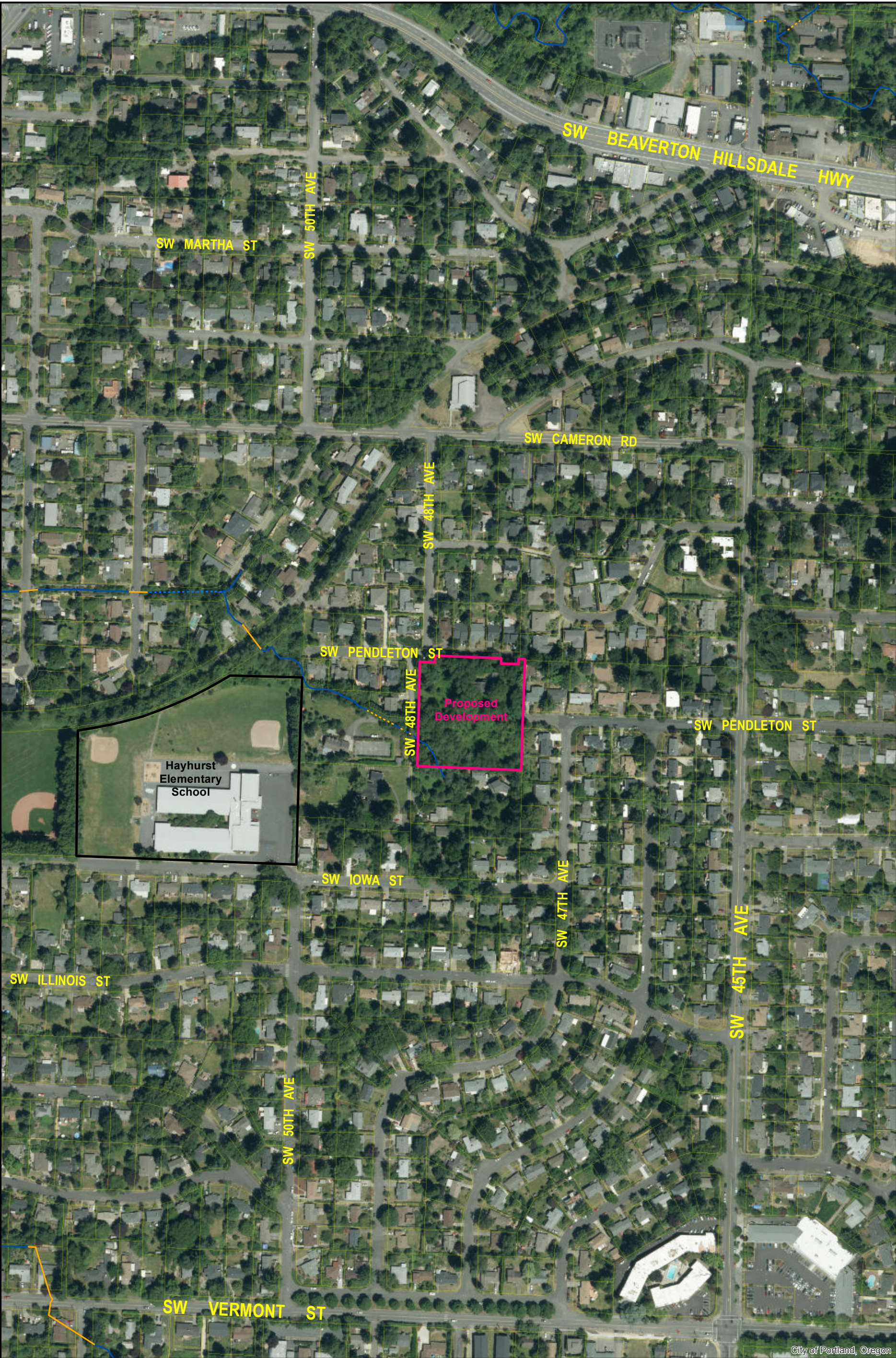
EXISTING DRAINAGE PATTERN



PROPOSED DRAINAGE PATTERN

Each lot will have a private stormwater planter



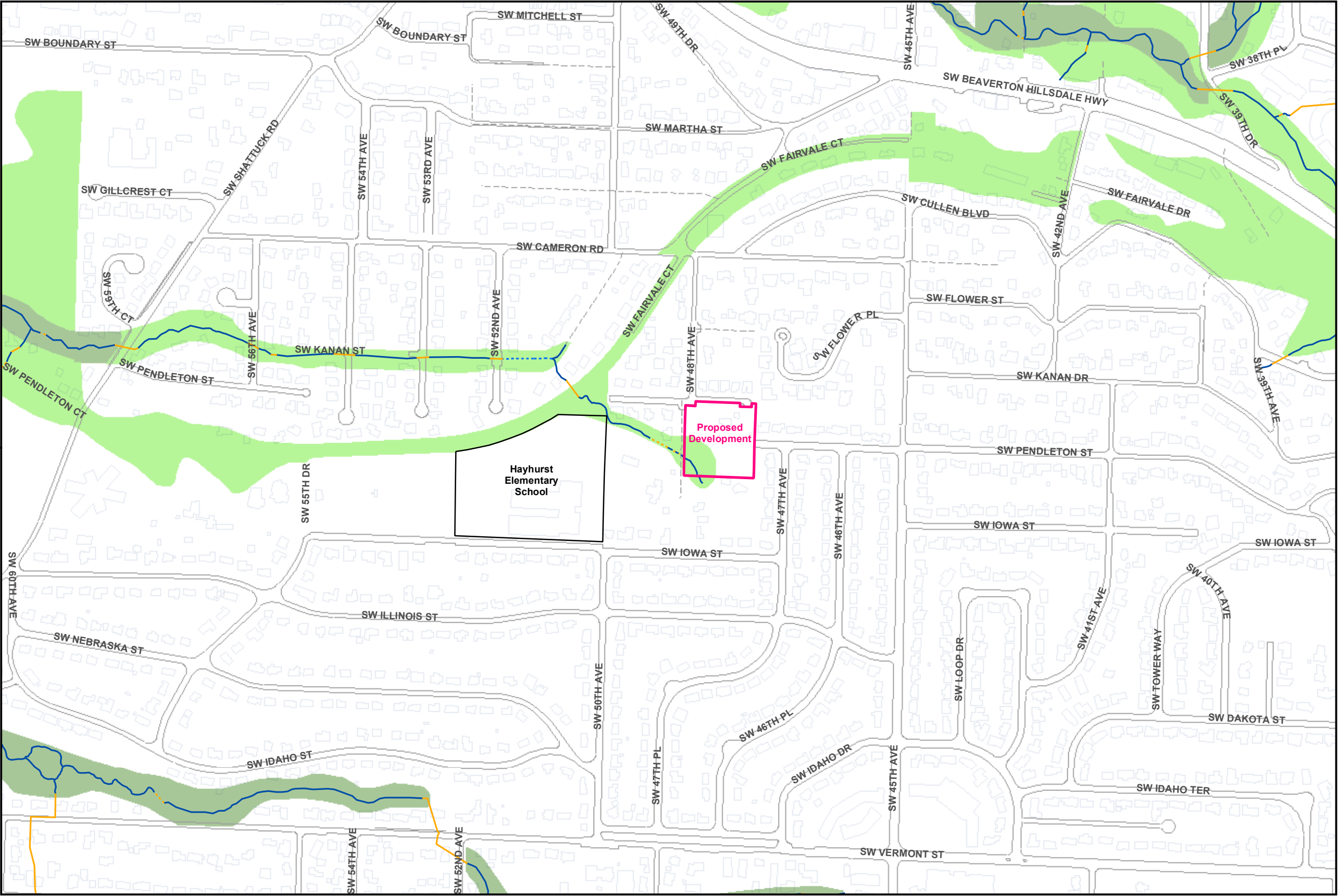


City of Portland, Oregon

Everett Heights: Aerial View (2016)

1 inch = 250 feet
Date: 6/30/2017





- Legend**
- Street Names for Taxlots
 - Open Channel
 - Ditch
 - Water Body
 - Stormwater Pipe
 - Stormwater Culvert
 - Combined Stormwater/Sewer Pipe
 - Building Footprints
 - Curbs
 - Unimproved Right-of-Way
 - Conservation zone (c)
 - Protection zone (p)
 - Pleasant Valley natural resource (v)



1 inch = 400 feet

Date: 6/30/2017



Everett Heights: Context Map


City of Portland government use only. Use for any other purpose is entirely at the risk of the user. This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.


Hayhurst Elementary School



5037 SW Iowa St


District: Portland Updated: 2/25/2017


**Recommended routes to school**



**Recommended routes with sidewalk**


**Streets with sidewalk**


**Off-street paths (no motor vehicles)**


**Pedestrian paths (no motor vehicles or bikes)**


**Bike lanes (Painted lanes on higher traffic streets. Adult supervision is recommended for younger children.)**


**Streets with more traffic (Adult supervision is recommended for younger children.)**


**Difficult intersection (use caution)**


**Traffic signal (better crossing of busy streets)**


**MAX route/stops**

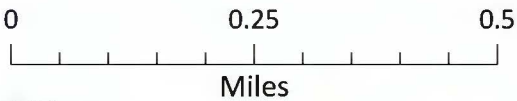
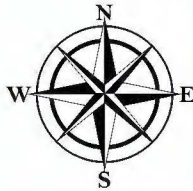
**TriMet bus line and route number**

**Stairs**

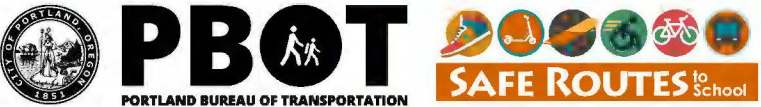
**Steep hill**

**School**

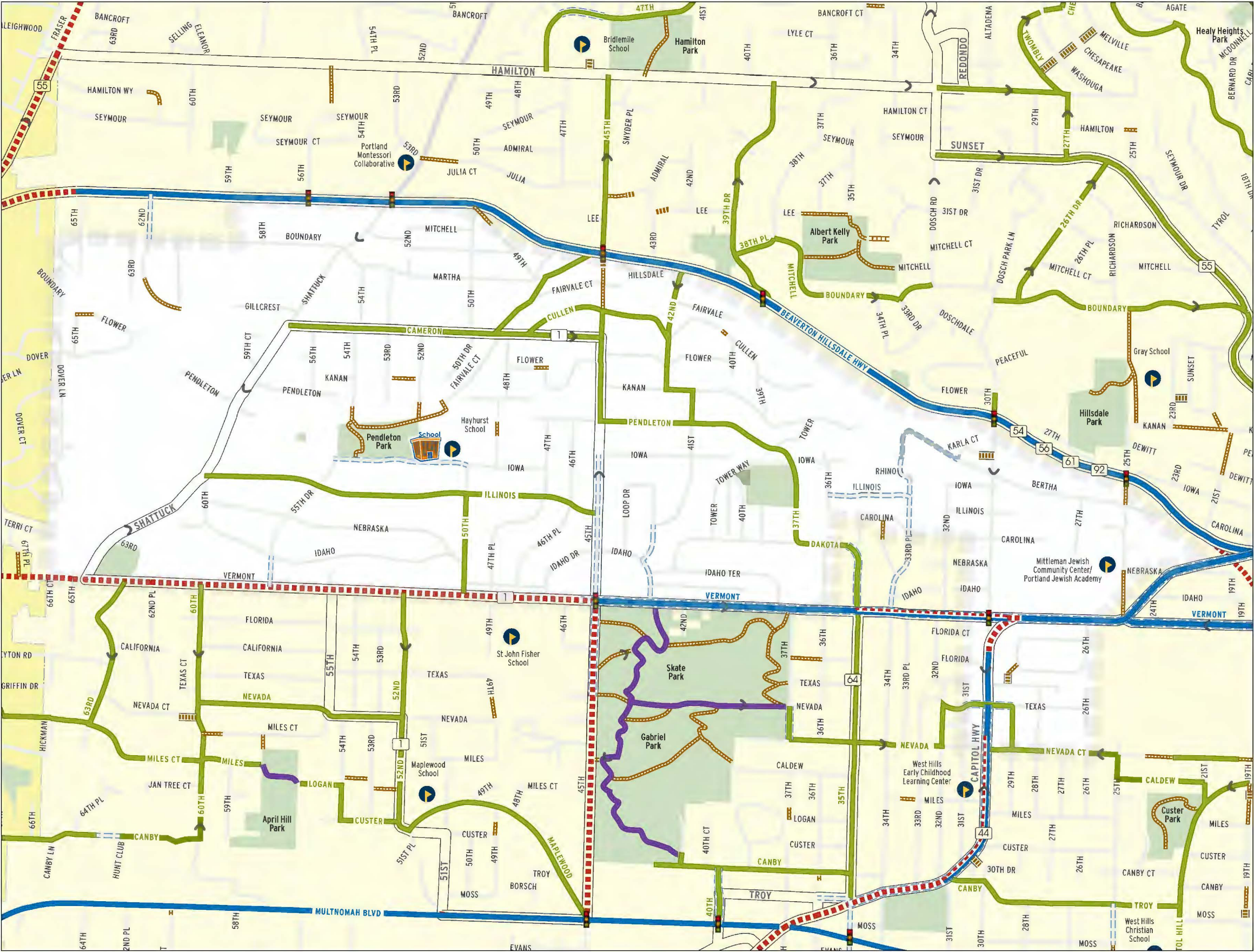
**School attendance boundary**



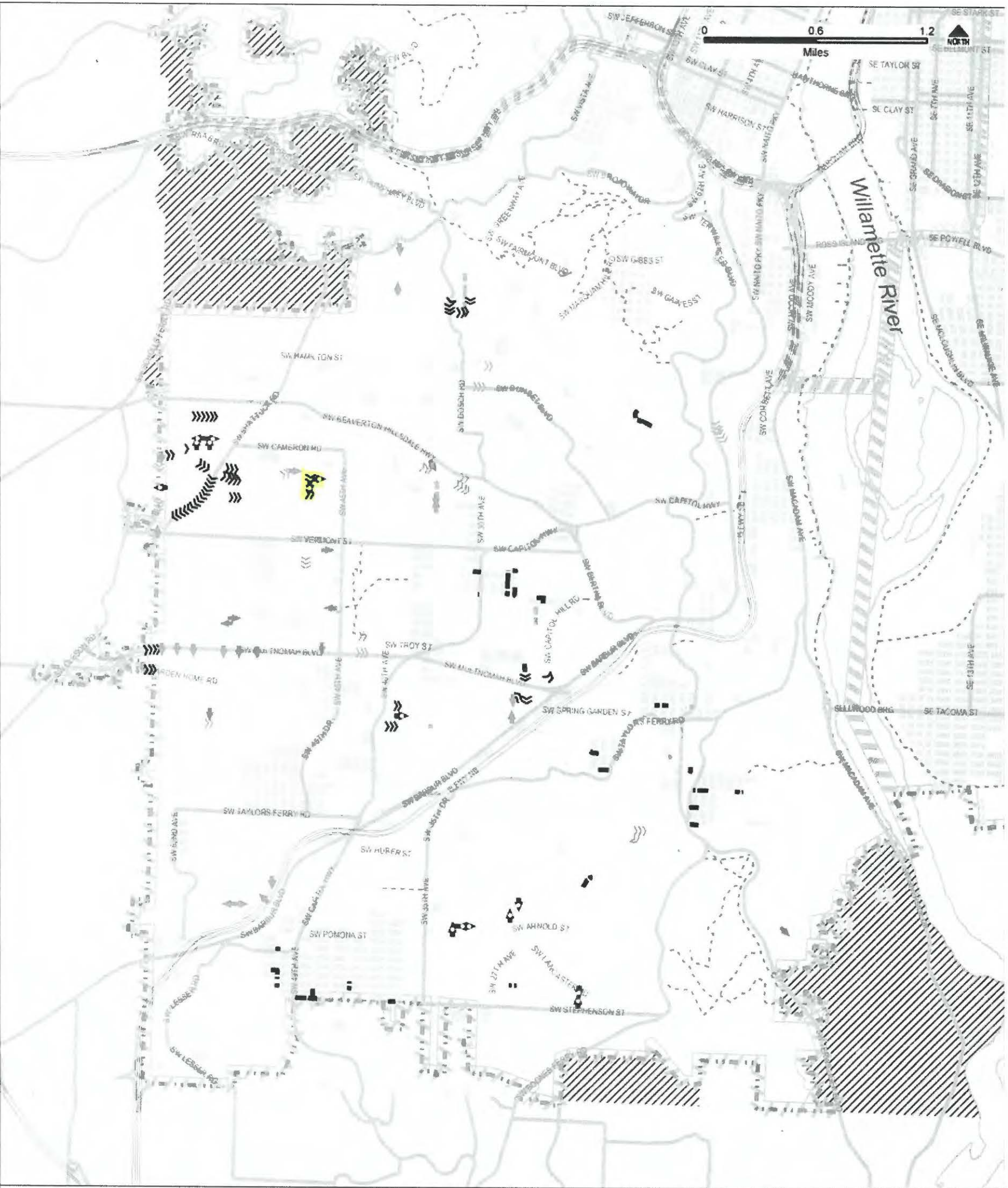
1 inch equals 1,042 feet 1:12,500



If you see safety problems along the recommended routes, please contact Janis McDonald at (503) 823-5358 or SafeRoutes@portlandoregon.gov



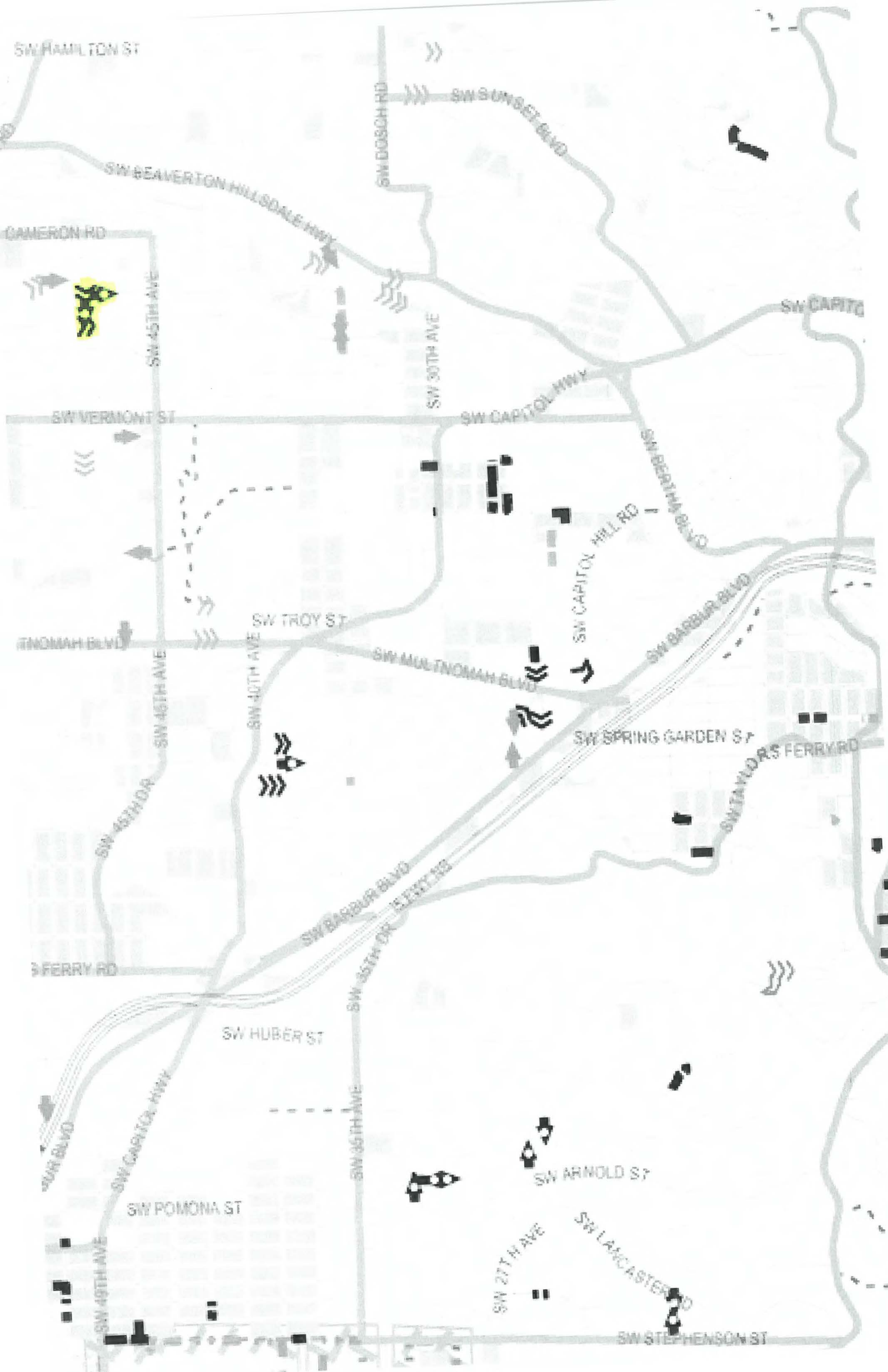
The City of Portland and authors of this map ("City") provide this map "as is" for the user's convenience and expressly disclaim any representations or warranties regarding map information and road conditions. There may be discrepancies between what is shown on the map and actual conditions so riders and walkers are reminded to remain vigilant for road hazards. The City assumes no liability for any errors, omissions, or inaccuracies in the information provided for bicyclists who choose to travel on the routes depicted. Because bicycle riding involves inherent risk, users of this map waive any and all liability against the City for use of this map or routes. The trails are intended for recreational purposes. Many of the trails are located on unimproved public right of way. The City does not maintain the trails and the footing may be uneven.

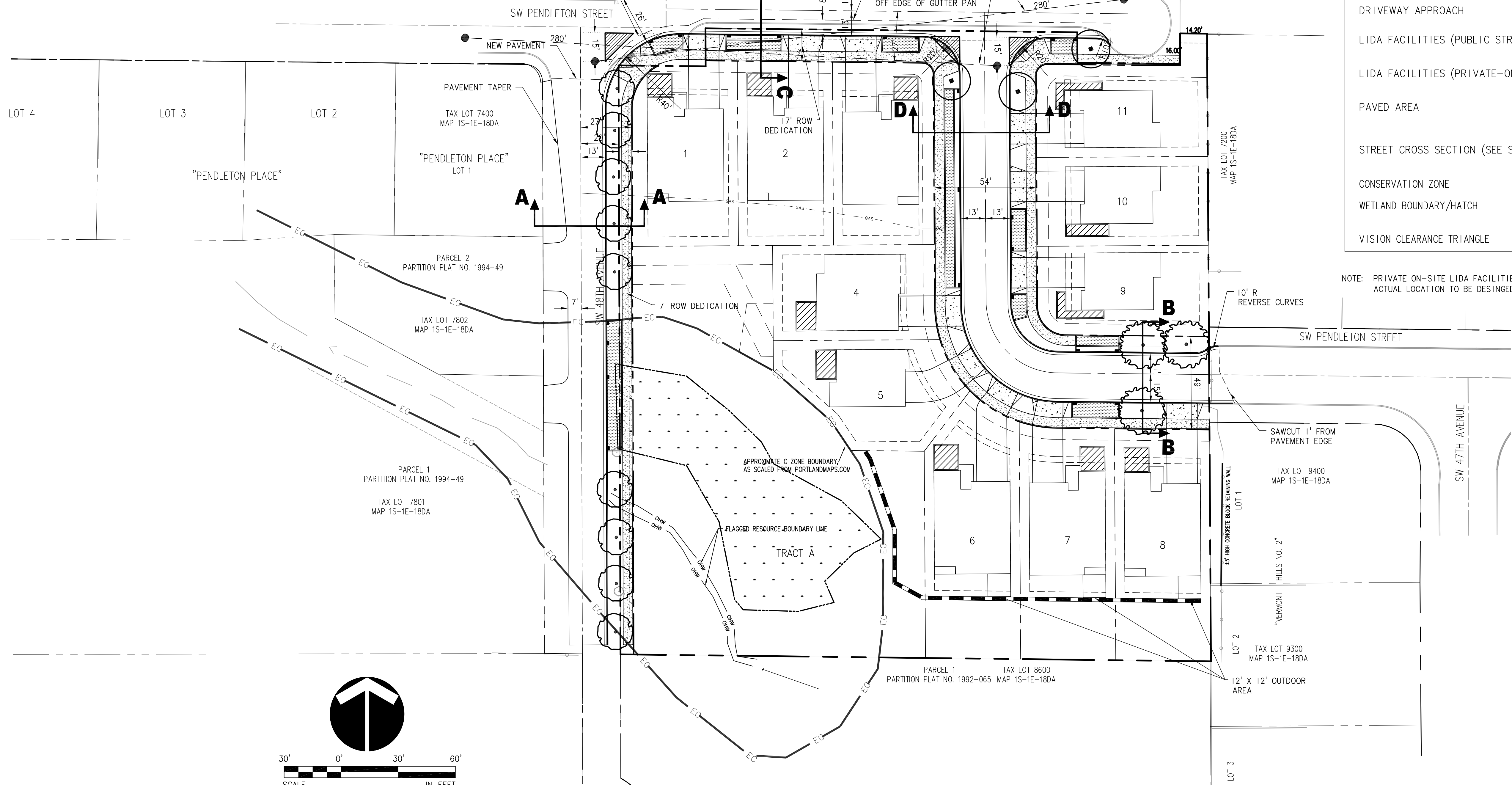


Portland Master Street Plan - Map 11.11.6
Southwest District

- | | |
|--|--|
| ~~~~~ Pedestrian/Bicycle Connection Points & Alignment Uncertain | Meets Street Spacing Standard |
| ~~~~~ Street Connection Points & Alignment Uncertain | City of Portland Boundary |
| ~~~~~ Pedestrian/Bicycle Connection Points & Alignment Certain | Transportation District Boundary |
| ~~~~~ Street Connection Points & Alignment Certain | Unincorporated Areas within the Portland Urban Services Boundary |
| ~~~~~ Pedestrian/Bicycle Connection Points Certain & Alignment Uncertain | |
| ~~~~~ Street Connection Points Certain & Alignment Uncertain | |
| ~~~~~ Existing Pedestrian Trails | |

Note: I-5/Barbur Corridor and Marquam Hill are excluded. Effective November 12, 2004





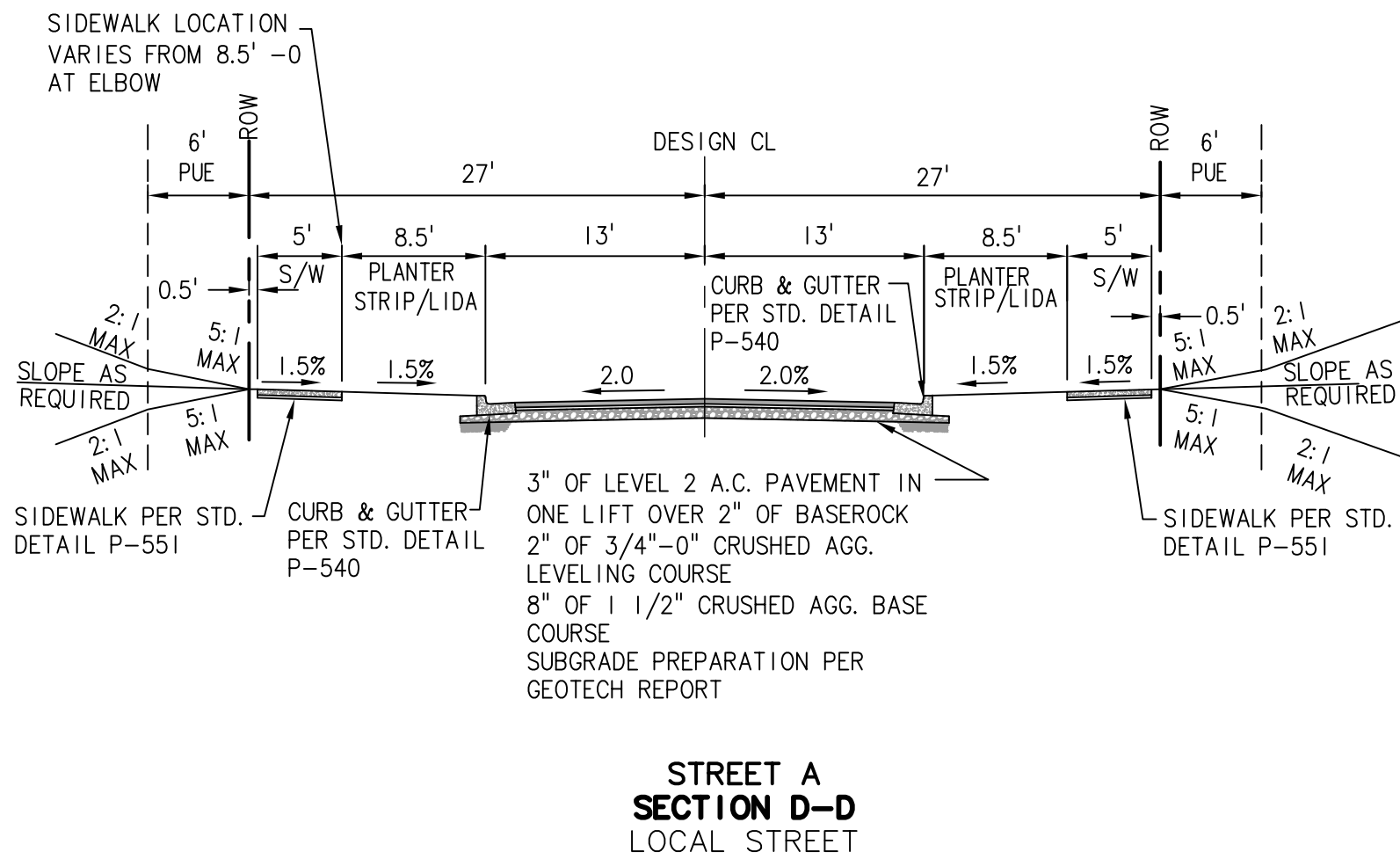
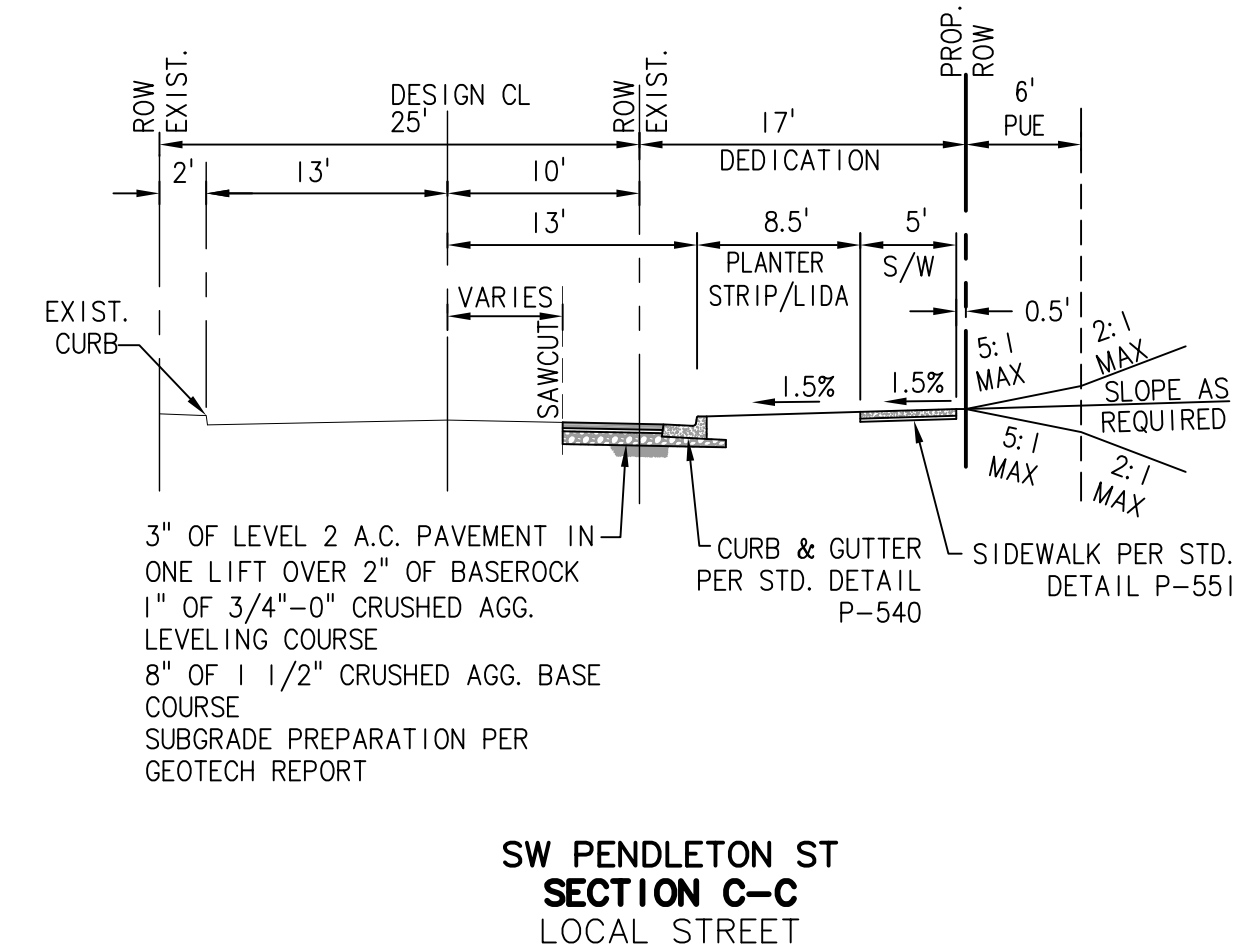
BES CHIEF ENGINEER	REG. PROF. ENGR. 16301PE
PBOT PRINCIPAL ENGINEER	REG. PROF. ENGR. 51704PE
PBOT CITY ENGINEER	REG. PROF. ENGR. 51538PE

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



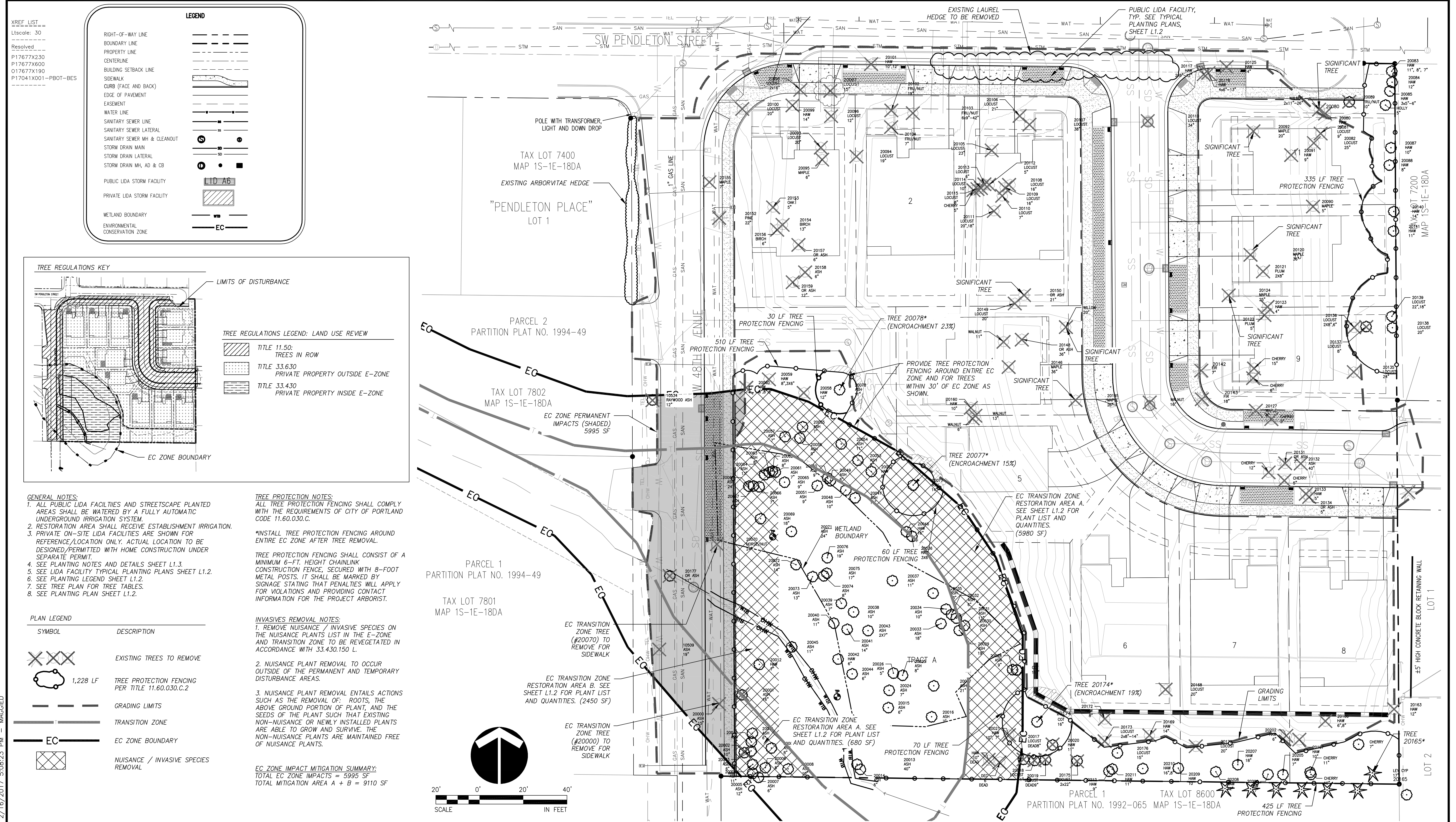
NOTE: PRIVATE ON-SITE LIDA FACILITIES ARE SHOWN FOR REFERENCE/LOCATION ONLY.
ACTUAL LOCATION TO BE DESIGNED/PERMITTED WITH HOME CONSTRUCTION UNDER SEPARATE PERMIT.

LOT	DRIVEWAY THROAT WIDTH
1	16'
2	16'
3	16'
4	16'
5	16'
6	16'
7	16'
8	16'
9	16'
10	16'
11	16'



SCALE: 1" = 10'
(SEE SHEET P2.0 FOR SECTION LOCATIONS)

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City of Portland, Oregon
Bureau of Development Services
Office of the Director
FROM CONCEPT TO CONSTRUCTION

Ted Wheeler, Mayor
Rebecca Esau, Interim Director
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MEMORANDUM

June 22, 2017

To: Mayor Ted Wheeler
Commissioner Chloe Eudaly
Commissioner Nick Fish
Commissioner Amanda Fritz
Commissioner Dan Saltzman

From: Rebecca Esau, Interim Director *Re*
Bureau of Development Services

Subject: City Council Appeal Hearing on LU 16-159330 LDS EN, 5920 SW 48th Avenue

The purpose of this memorandum is to provide a summary and brief description of the land use review decision that has been appealed and will be presented to you in public hearing on June 22, 2017 at 2 PM, time certain. This will be an evidentiary hearing.

BDS Representatives: Stephanie Beckman, Interim Supervising Planner, Land Use Services
503-823-6979, Stephanie.Beckman@portlandoregon.gov
Stacey Castleberry, Senior City Planner, Land Use Services
503-823-7586, Stacey.Castleberry@portlandoregon.gov

1. Land Use Reviews Requested: Type III Land Division Review (LDS) and Environmental Review (EN).

2. Key Elements of Proposal:

Applicant: Vic Remmers, Everett Custom Homes
Owner: Thomas E Rollman and Corrie H Jackson
Representatives: Li Alligood, Otak, Inc. and Michael Robinson, Perkins Coie LLP
Site Location: 5920 SW 48TH AVE
Site Size: 2.3 acres (100,188 SF)
Zoning: R7, Single Dwelling Residential 7,000

Proposal: The applicant proposes to subdivide a 2.3-acre site to create 11 single dwelling lots (ranging in size from 4,200 to 6,402 square feet), an environmental resource tract (25,430 square feet in area), and a public street extension to connect the two segments of SW Pendleton Street that abut the site on its north and east boundaries. Public street dedication and improvements are also proposed on the site's west boundary along SW 48th and the north boundary along SW Pendleton.

Environmental Review is required because right-of-way dedication on SW 48th Avenue and associated street improvements, stormwater facility, and sidewalk improvements would occur within wetland areas, and in the resource area of the Environmental Conservation overlay zone.

3. Hearings Officer Decision: Approval with conditions.

4. Appellant: Hayhurst Neighborhood Association

5. Alternatives Facing Council:

- Deny the appeal, and uphold the Hearings Officer's decision to approve the application with conditions.
- Deny the appeal, and uphold the Hearings Officer's decision to approve the application, with modifications.
- Grant the appeal and overturn the Hearings Officer's decision, thereby denying the application.