



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

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Date: April 8, 2011
To: Interested Person
From: Kate Green, Land Use Services
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**NOTICE OF A TYPE II_x DECISION ON A PROPOSAL
IN YOUR NEIGHBORHOOD**

The Bureau of Development Services has **denied** a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 10-100336 LDP AD

GENERAL INFORMATION

Applicant: Robert Evenson
1530 SW Skyline Boulevard
Portland OR 97221

Property Owners: Linda M and John S Andrews
1205 SW Myrtle Drive
Portland OR 97201

Site Address: 1205 SW Myrtle Drive

Legal Description: LOT 31-34 TL 1700 CARDINELL HTS
Tax Account No.: R135402060
State ID No.: 1S1E04DC 01700
Quarter Section: 3228

Neighborhood: Southwest Hills Residential League, Nancy Seton at 503-224-3840
District Coalition: Southwest Neighborhoods Inc., Leonard Gard at 503-823-4592

Zoning: Single Dwelling Residential 10,000 (R10)
Other Designations: Potential Landslide Hazard, 20% Slopes

Case Type: Land Division-Partition (LDP)
Adjustment Review (AD)

Procedure: Type II_x, an administrative decision with appeal to the Hearings Officer.

Proposal: The applicant proposes a Land Division-Partition to divide an approximately 28,000 (30,334*) square foot 'lot of record' into 2 parcels. The property owner also owns an adjacent 1,350 (1,389*) square foot 'lot remnant' (Lot 35 TL 2400 CARDINELL HTS), but has not elected to include that as part of the land division site. **The numbers shown in the parenthesis are those identified by the surveyor; the others are those noted in the Multnomah County property records.*

An existing house, garage, driveway, and landscaped yard are to be retained on proposed Parcel 1, which is to be approximately 22,534 square feet. Proposed Parcel 2 is to be approximately 7,800 square feet.

The subject site has frontages on SW Myrtle Drive, SW Myrtle Court, and SW Rivington Drive. Access to the existing house is via a driveway from SW Myrtle Drive. The house, garage, and driveway are located on a relatively flat area of the site, while the balance of the property is densely vegetated and slopes steeply downhill to SW Myrtle Court and SW Rivington Drive. A seep and wetland are located in the northwest portion of the site.

The applicant proposes to remove all the trees on Parcel 2; direct the seep into a subsurface pipe; place fill in the ravine and wetland; and construct a new single-dwelling residence where the seep and wetland are presently located.

The applicant also requests an **Adjustment** to allow proposed Parcel 1 to be approximately 22,534 square feet in area, which exceeds the maximum lot area (17,000 square feet) allowed in the R10 zone.

This partition proposal is reviewed through a Type IIx procedure because: (1) the site is in a residential zone; (2) two or three lots are proposed; (3) the site is located within a Potential Landslide Hazard Area; and (4) a concurrent review (Adjustment) is requested (see 33.660.110).

For purposes of State Law, this land division is considered a partition. To partition land is to divide an area or tract of land into two or three parcels within a calendar year (See ORS 92.010). ORS 92.010 defines “parcel” as a single unit of land created by a partition of land. The applicant’s proposal is to create 2 units of land (2 parcels). Therefore this land division is considered a partition.

Relevant Approval Criteria: In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are found in **Section 33.660.120, Approval Criteria for Land Divisions in Open Space and Residential Zones**, and **Section 33.805.040, Approval Criteria for Adjustments**.

FACTS

Site and Vicinity: According to the applicant’s surveyor, the subject site is approximately 30,334 square feet in area. There is a narrow, 28-foot wide and 100-foot long pole-like section where a driveway connection to SW Myrtle is located, and the balance of the site consists of a large, somewhat irregularly shaped area that has frontage along SW Myrtle Court and SW Rivington Drive. A 4,000 square foot, multi-story residence, and a detached garage are located near the center, and southeast half of the site on a relatively flat plateau. To the east and north of the house, the site slopes down steeply (18 to 30 percent) to SW Rivington Drive.

The flatter areas on the west and south side of the residence are developed with driveway and parking areas and landscaping; a flat area on the east side of the house is also developed with a paved patio and landscaping. The steeper areas to north and east are separated from the residence by a wood retaining wall, and this area is vegetated with deciduous and evergreen trees, and a mixed understory.

As noted in two reports provided by the applicant (Geologic Hazards Evaluation, and Delineation of Wetlands and Other Waters), several seeps, springs, and a wetland are located on the property. One of the seeps and the wetland are located near the west lot line and northwest corner of the site. This seep is bordered by a variety of predominately deciduous trees.

The site is situated in a residential area typified by steep hilly terrain, with large (10,000 to 20,000 square feet or more) lots situated along winding roads. The nearby homes are generally 3,000 to 5,000 square feet in size. Governor’s Park is approximately 200 feet to the west of the site. The I-405 freeway is located approximately 800 feet to the northeast of the site.

Infrastructure:

Streets – The site has approximately 30 feet of frontage on SW Myrtle Drive. There is one driveway entering the site from SW Myrtle Drive that serves the existing house. The site also has

approximately 80 feet of frontage on SW Myrtle Court, and about 210 feet of frontage on SW Rivington Drive. At this location, each of these streets is classified as a Local Service Street in the Transportation System Plan; additionally, SW Rivington is classified as a City Bikeway.

These streets are developed with 24-foot wide paved roadways and curbs, but no sidewalks are provided along any of the frontages.

The nearest Tri-Met transit service is approximately 1,500 feet to the east of the site and approximately 1,400 feet to the west.

Water Service – There is an existing 6-inch DI water main in SW Rivington Drive, and the existing house is served by a one-inch metered service from this main. There is also an 8-inch DI water main in SW Myrtle Court.

Sanitary Service - There is an existing 8-inch concrete public combined gravity sewer located in SW Rivington Drive that can serve the sanitary disposal needs of this project (BES project #1856).

According to sewer branch permit #64343 (dated September 8, 1952), the existing house is served by a lateral 44 feet north of manhole ABU461 in SW Rivington Drive near the southeast corner of the subject site.

Zoning: The site is located in the **Single Dwelling Residential 10,000 (R10)** zone. The single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households.

Land Use History: City records indicate no prior land use reviews for this site.

Agency Review: Several Bureaus have responded to this proposal and relevant comments are addressed under the applicable approval criteria. Please see Exhibits “E” for details.

Neighborhood Review: *A Notice of Proposal in Your Neighborhood* was mailed on **March 4, 2010**. Seven written responses have been received from the Neighborhood Association or notified property owners in response to the proposal. The concerns noted in the letter include:

- Neighborhood Contact requirements
- landslide hazards and steep slopes
- clearing and tree removal
- seeps, springs, wetlands and drainage issues
- congestion and conflicts on the narrow roads
- covenants, conditions, and restrictions (CC&Rs)

Staff response: The applicant submitted the required documentation to demonstrate the Neighborhood Contact requirements were met (Exhibit G.2).

Tree preservation, landslide hazards, and seeps, springs and wetland are addressed in the findings below for Criterion B, Criterion D, and Criterion J. Transportation issues are addressed in the findings for Criteria K and L. Drainage or stormwater management issues are also addressed in the findings for Criterion L.

With regard to CC&Rs that may apply to the site, generally, the city does not have a role in the application of covenants, unless the covenants were applied through a city regulated process, such as through a prior city approved land division. One letter indicates these requirements originated as part of the 1949 Cardinell Heights subdivision and deed restrictions. However, no specific details or documentation of the Cardinell Heights requirements or covenants were provided, and none were found in city records. City land divisions regulations became effective in 1979. As one of the neighbors indicated, it is likely the CC&Rs must be addressed through discussions between the private parties.

The applicant has been provided copies of the letters to foster direct communication with the neighbors about these issues and concerns.

ZONING CODE APPROVAL CRITERIA

This proposal includes a **Land Division Review** and an **Adjustment Review**. In order to be approved, the proposal must comply with the approval criteria for both reviews, as outlined below:

Section A: Land Division Review 33.610.120
Section B: Adjustment Review 33.805.040

SECTION A: LAND DIVISION REVIEW

APPROVAL CRITERIA FOR LAND DIVISIONS IN OPEN SPACE AND RESIDENTIAL ZONES

33.660.120 The Preliminary Plan for a land division will be approved if the review body finds that the applicant has shown that all of the following approval criteria have been met.

Due to the specific location of this site, and the nature of the proposal, some of the criteria are not applicable. The following table summarizes the criteria that are not applicable. Applicable criteria are addressed below the table.

Criterion	Code Chapter/Section and Topic	Findings: Not applicable because:
C	33.631 - Flood Hazard Area	The site is not within the flood hazard area.
E	33.633 - Phased Land Division or Staged Final Plat	A phased land division or staged final plat has not been proposed.
F	33.634 - Recreation Area	The proposed density is less than 40 units.
L	33.654.110.B.2 - Dead end streets	No dead end streets are proposed.
	33.654.110.B.3 - Pedestrian connections in the I zones	The site is not located within an I zone.
	33.654.110.B.4 - Alleys in all zones	No alleys are proposed or required
	33.654.120.C.3.c - Turnarounds	No turnarounds are proposed or required
	33.654.120.D - Common Greens	No common greens are proposed or required
	33.654.120.E - Pedestrian Connections	No pedestrian connections proposed or required
	33.654.120.F - Alleys	No alleys are proposed or required
	33.654.120.G - Shared Courts	No shared courts are proposed or required
	33.654.130.D - Partial rights-of-way	No partial public streets are proposed or required

Applicable Approval Criteria are:

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

Findings: Chapter 33. 610 contains the density and lot dimension requirements applicable in the RF through R5 zones.

In the R10 zone, the maximum density is one unit per 10,000 square feet. Using the site area identified by the surveyor, 30,334 square feet, a maximum of 3 units could be allowed. There is no minimum required density since the site has a Potential Landslide Hazard designation. The applicant is proposing two parcels, so the proposed density is within the allowed standards.

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

	Minimum Lot Area (square feet)	Maximum Lot Area (square feet)	Minimum Lot Width* (feet)	Minimum Depth (feet)	Minimum Front Lot Line (feet)
R10 Zone	6,000	17,000	50	60	30
Parcel 1 (existing house)	22,534 An Adjustment to the maximum lot area has been requested (see findings in Section B, below).		130	120	142
Parcel 2	7,800		100	70	130

* 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.

Through Lots

Parcel 1 is currently a through-lot, and, as proposed, it would continue to be configured as a through-lot. Through lots are allowed only where both front lot lines are on Local Service Streets. SW Myrtle Drive and SW Rivington Drive are both local service streets, therefore Parcel 1 is allowed. The minimum front lot line and minimum width standards apply to one frontage of the through lot. In this case, the width standards could be met on the SW Rivington Drive frontage.

The findings above show that the applicable density standards are met. However, since the proposal does not meet the Adjustment approval criteria to allow the proposed maximum lot area, the lot area dimensions are not met. As such, this criterion is not met.

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

Findings: The regulations of Chapter 33.630 preserve trees and mitigate for the loss of trees. Certain trees are exempt from the requirements of this chapter.

The applicant provided a Tree Preservation Plan, prepared by Huntington & Kiest, Landscape Architects, dated December 15, 2009 (Exhibit A.2), which includes an inventory of the trees within the land division site, evaluates their condition, and specifies root protection zones. The report notes that some trees have not been identified in the report, including those within 10 feet of an existing structure to remain on the property; located partially off the property; listed as a nuisance or prohibited species; or less than 6-inches in diameter and not listed as a significant tree in Table 630-1 per 33.630.

The landscape architect notes the total number of non-exempt trees is 59 and their total diameter is 777 inches. The applicant proposes to preserve 23 trees, which comprise 292 inches of diameter, or 37 percent of the total non-exempt tree diameter.

Technically, this proposal complies with Option 1 of the tree preservation standards, which requires at least 35 percent of the total tree diameter on the site to be preserved.

However, since the proposed tree preservation plan is based on a lot layout and building location that have not been shown to be feasible (see findings for Criterion D and Criterion J, below), and the applicant has not provided a tract around the seep (see findings for Criterion J) near the west lot line, which is where many of the trees are located on proposed Parcel 2, the tree preservation plan is inherently deficient.

Without providing a feasible lot layout and building location, the applicant cannot provide a meaningful tree report that sufficiently addresses the tree preservation requirements to satisfy this criterion. As such, this criterion is not 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 subject site has a Potential Landslide Hazard designation. To address this criterion, the applicant must submit a Landslide Hazard Study of the site and the proposed land division prepared by a Certified Engineering Geologist and a Geotechnical Engineer. The study must demonstrate how the layout of the lots and the design of the buildings, services, and utilities will reasonably limit the risk of a landslide on the site and adjacent properties, based on accepted industry standards for factors of safety.

As outlined in the application requirements for a land division (33.730.060.D.1.g), the study must:

- identify potential landslides hazards on the site and identify the safest part of the site in terms of the risk of a landslide affecting the site, adjacent sites, and sites directly across a street or alley from the site
- provide recommendations regarding the layout and design of the land division and proposed development
- provide details about the design of proposed structures and improvements to address on-site slope stability after the development is complete; and
- address the estimated effect of the proposed development on stormwater and groundwater runoff as it relates to slope stability and landslide hazard, and a proposed method of control.

The applicant submitted a Geologic Hazards Evaluation, prepared by Professional Services Industries (PSI), dated December 7, 2009 (Exhibit A.3), which includes an evaluation of the applicant's proposal to create two lots, and construct a two story residence. The report also refers to the applicant's proposal to reroute a drainageway through a flow through planter, and grade the site for an engineered retaining wall to allow a deck and driveway for the new residence.

The Geologic Hazards Evaluation describes regional geologic conditions, site geology, and a LIDAR mapping review; and it indicates a site reconnaissance was conducted on August 15, 2009. The summary of the reconnaissance refers to a triangular shaped site that slopes to the north with slope inclinations of 18 to 30 degrees. The report describes that the site is vegetated with 6 to 20 inch diameter deciduous and evergreen trees, and a mixed understory. Based on this description, and the lack of any mention of the existing house, garage, and paved areas, it appears the evaluation was limited to the area within proposed Parcel 2.

The report refers to a north flowing drainageway, near the west lot line, with water emerging from an approximately 12-inch diameter hole. The report notes the location of the hole corresponds to city records for a stormwater outfall, based on a map found on portlandmaps.com, but no such map or other supporting information is provided.

The report further notes a minor seep from basalt rock exposures near the north eastern side of the site, a spring with minor flow from a rock exposure near the northeastern property corner, and another seep from the natural silt near the northwest property corner, and indicates these features are shown on Figure 3. Figure 3 shows the general configuration of proposed Parcel 2, and includes a reference to the existing house, but no other information or details about Parcel 1 is included. Adjacent sites and sites directly across the street were also not addressed.

This localized area of review also seems to be the case in the Delineation of Wetlands and Other Waters, prepared by WH Pacific, and dated January 17, 2011 (Exhibit A.4). The Delineation of Wetlands and Other Waters identifies the seep and wetland along the west lot line, but does not provide information about any of the other seep and spring features noted in the Geologic Hazards Evaluation. The Delineation of Wetlands and Other Waters does mention an additional spring and unvegetated channel, but provides no other details about these features or where they are located on the site. Further, the Delineation of Wetlands and Other Waters reports no sign of a stormwater outfall at the top of the seep, as indicated in the Geologic Hazards Evaluation; and, instead, concluded that a spring is the source of the channel that runs down the hillside. In any event, the applicant's plans do not show the full extent of all of the water features noted in these two reports.

In the Conclusions and Recommendations of the Geologic Hazards Evaluation, the authors opine that the site is stable with respect to deep seated landslides, and is suitable for development. However, the report goes on to indicate the presence of exposed water in the drainageway on the west side of the site, and related soft silt soil below the proposed residence are key geologic and geotechnical issues to be incorporated during the civil engineering design. The report further notes that after determining the nature of the specific subsurface conditions, appropriate geotechnical recommendations can be provided. The report indicates these factors, which are crucial in making a thorough assessment of the landslide hazards on the site and evaluating what bearing those factors may have on the configuration of the lots and the location of the proposed development, and potential impacts to neighboring lands, were not evaluated in the submitted report. Similarly, the Geologic Hazards Evaluation does not address alternative building locations or development options.

As noted in the response from BDS-Site Development, the division which makes determinations regarding soil stability, the Geologic Hazards Evaluation indicates additional subsurface investigation will be needed to determine appropriate geotechnical engineering recommendations for site development. BDS-Site Development further notes that the proposed drainageway relocation has been presented in concept only, and no engineering details have been provided. BDS-Site Development also notes that as shown on the project plans, a shoring wall design would be needed to install the flow through planter and retaining wall at the rear of the proposed house. And though BDS-Site Development previously requested an addendum to the LHS to address this issue, no new information has been provided.

Yet, the applicant's narrative states the proposed lot and new development have been placed on the flattest and safest part of the entire site, although the slope cross-sections provided on the Proposed Land Division Plan (Exhibit C.2) address the area only within proposed Parcel 2, and not across the entire site. Additionally, the applicant has noted that the flat areas on the plateau adjacent to the existing house are not suitable for development, since new development in that area would not meet the property owners' preference for privacy.

The applicant also provided an Alternative House Location Plan (Exhibit C.6), which shows a house crossing over the proposed property lines, near the top of the slope on Parcel 2. However, the applicant then discounts this layout, since it *still requires the seep and drainageway to be disturbed or relocated*, and does not meet the property owners' *requirements for privacy and separation*. The Geologic Hazards Evaluation does not address this or any other alternative concept.

Given the limited scope of the Geologic Hazards Evaluation, and the deficiencies noted by BDS-Site Development, the applicant has not demonstrated that the lot layout and location for the proposed house and associated utilities have been configured to reasonably limit the risk of a landslide on the site and adjacent properties. Nor has the applicant provided sufficient geotechnical rationale for or evaluation of the proposed realignment of the drainageway or fill of the wetland. Further, notwithstanding the owners' preference, privacy is not an evaluation factor for this criterion. Based on these factors, this criterion is not met.

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

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

In this case, there are over 59 trees and a delineated seep and wetland on the property. It also has steep grades (over 18 to 30%) and is located in the Potential Landslide Hazard area. Therefore, the clearing and grading associated with preparation of the lots must occur in a way that will limit erosion concerns and assure that the waterways and trees to be preserved will not be disturbed.

The application materials do not provide a rationale for clearing all 36 trees from Parcel 2, other than to note that some of trees have been topped and are unsightly, but no specific details about which trees have been topped are noted in the tree report from the Landscape Architect.

As noted in the responses from BDS-Site Development and BES, the applicant proposes significant grading on the north portion of proposed Parcel 2, in order to re-route an existing drainage channel into a culvert and fill the existing channel, which is where many of the trees on Parcel 2 are located. The feasibility of this fill and grading is not supported in the documentation provided by the applicant; nor is it consistent with the approval criteria for landslide hazards, as noted in the findings for Criterion D, above; or with the regulations that apply to streams, seeps, and springs, as addressed in the findings for Criterion J, below.

Instead of orienting development on the flatter portions of the property, for instance, nearer to the existing house, where clearing and grading may be able to be more localized, the proposal calls for extensive clearing and grading and the installation of fill on Parcel 2, which will significantly alter existing contours and drainage patterns on the site.

Only a conceptual boundary for the grading for the seep, wetland, and placement of fill is shown on the proposed Grading and Erosion Control Plan (Exhibit C.4). Zoning Code Section 33.730.060.D requires proposed contours to be shown. Furthermore, without complete details about the extent of grading on the site, it is not possible to verify if the grading will occur outside of the root zone of the trees that are proposed to be protected, or if stormwater could be effectively managed from each parcel.

As such, the applicant has not demonstrated that existing contours and drainage patterns of the site have been left intact, where practical; or that the clearing or grading has been limited to only those areas necessary for development. Therefore, this criterion is not met.

33.635.200 – Land Suitability

Where geologic conditions or historic uses of the site indicate 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.

The site is currently in residential use, and there is no record of any other use in the past. However, as noted in Criterion D above, the site has a potential land slide hazard designation, and the applicant has not demonstrated that the property can be developed in accordance with the landslide hazard regulations.

Additionally, there are several seeps and springs on the site, as noted in reports provided by the applicant (Exhibits A.3 and A.4). However, the applicant has not provided a delineation of all of these features on the proposed plans; nor has the applicant adequately addressed what bearing the proposed filling and alterations to one of the seeps and a wetland area may have on the development potential of the proposed parcels.

Without information that sufficiently addresses these issues, the applicant has not demonstrated that the proposed parcel configuration is feasible or that the property is suitable for the proposed development. Accordingly, this criterion is not met.

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

Findings: As noted in the findings for Criterion J, below, the seeps, springs, and wetland on the site must be located within a tract(s). Additionally, as noted in the response from BDS-Site Development, an easement may be needed to provide stormwater disposal for Parcel 1 over Parcel 2, if the required permits and upgrades cannot be obtained to reconnect the existing stormwater catch basin to the public combination sewer system.

The applicant has not designated the required tract(s) or ownership thereof; nor has the applicant demonstrated that the stormwater disposal for Parcel 1 is feasible and will not require an easement on Parcel 2. Therefore, the applicant has not demonstrated how these requirements will be met. As such, this criterion is not met.

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

Findings: The solar access regulations encourage variation in the width of lots to maximize solar access for single-dwelling detached development and minimize shade on adjacent properties.

The applicant states the solar access requirements do not apply, as the requirements for tree preservation would preclude any possibility for solar access.

Yet, as noted above, the proposed lot layout has not been shown to be feasible; and, as such, the applicant has not demonstrated that the tree preservation requirements can be satisfied. Furthermore, without a practicable lot layout, the applicant's conclusion that the tree preservation would preclude solar access is unsubstantiated. Based on these factors, this criterion is not met.

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

Findings: As noted in the findings for Criterion D, above, the Geologic Hazards Report and the Delineation of Wetlands and Other Waters submitted with the application indicate the presence of seeps, springs, and wetlands on the site. This criterion requires the applicant to preserve these features within a tract(s) meeting the standards of 33.640.200.A, which calls for the edges of the tract to be at least 15 feet from the edges of the stream, spring, or seep. This criterion also calls for the tract(s) to be identified on the final plat for the land division as "Tract *: Open Space (seep or spring protection reserve)". In addition, a maintenance agreement must be executed for the tract(s), per the standards of 33.640.200.B. In this case, since no rights-of-way or street tract is proposed to cross the seeps, springs, or wetland, the standards of 33.640.200.C do not apply.

As noted previously, the Existing Conditions Plan (Exhibit C.1) and Proposed Land Division Plan (Exhibit C.2) show the location of the seep and wetland identified near the west lot line and northwest corner of the site, but these plans does not include the delineated location and boundaries of all the identified seeps and springs; nor has a tract(s) been provided for any of these waterway features. Instead the applicant proposes to reroute the one seep shown on the plans, and fill the ravine and an adjacent wetland and construct a new residence in that location.

The applicant also provided an Alternate House Locations drawing (Exhibit C.6), but this plan too shows no tract for the seeps, springs, or wetlands.

The applicant has not provided a tract(s) for any of the identified water bodies; as such, the applicant has not demonstrated that these requirements are met. Based on the foregoing, this criterion is not met.

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

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

Findings: The regulations of Chapter 33.641 allow the traffic impacts caused by dividing and then developing land to be identified, evaluated, and mitigated for if necessary. Chapters 33.651 through 33.654 address water service standards, sanitary sewer disposal standards, stormwater management, utilities and rights of way. The criteria and standards are met as shown in the following table:

33.651 Water Service standard -See Exhibit E.3 for detailed bureau comments.
The water standards of 33.651 have been verified. Water is available to serve the proposed development from the 6-inch water main in SW Rivington. Parcel 1 has an existing water service from this main. Water is available to serve Parcel 2 from the water main in SW Rivington or from an 8-inch DI water main in SW Myrtle Court.
33.652 Sanitary Sewer Disposal Service standards -See Exhibit E.1 for detailed comments.
The sanitary sewer standards of 33.652 have been verified. There is an existing 8-inch concrete public combined gravity sewer located in SW Rivington Drive that can serve the sanitary disposal needs of this project (BES project #1856).

According to sewer branch permit #64343 dated 9/8/1952, the existing house is served by a lateral 44 feet north of manhole ABU461 in SW Rivington Drive near the southeast corner of the subject site.

33.653.020 & .030 Stormwater Management criteria and standards—See Exhibits E.1 & E.5

No stormwater tract is proposed or required, so Criterion A is not applicable. Based on the responses from BES and BDS-Site Development, Criterion B is not met since insufficient information has been provided to show the stormwater management system can be designed to provide adequate capacity for the expected amount of stormwater.

The applicant has proposed the following stormwater management methods:

Parcel 2: Stormwater from this parcel is proposed to be directed into a flow-through planter that will remove pollutants and suspended solids. The water is proposed to drain from the planters to the existing combination sewer in SW Rivington. However, BES notes the flow control requirements have not been adequately addressed. Furthermore, BES cites the proposal to reroute the seep in the location of the proposed development and flow-through planter is not consistent with the Streams, Springs, and Seeps requirements of Title 33; nor is it consistent with Title 17, specifically Section 17.38.030, Protection of Drainage Areas.

Parcel 1 (with the existing house): The existing house has downspouts that drain into underground pipes. BES has noted City plumbing permit #34134 (9/5/1952) depicts a catch basin approximately where the catch basin currently exists on Parcel 1. The permit indicates that at one time the catch basin was connected to the house's plumbing system, which discharges to the public sewer in SW Rivington. The applicant has described and shown on the utility plan that the existing catch basin was redirected in recent years to outfall to the top of the slope above the proposed residence on Parcel 2.

To accommodate the land division, the applicant proposes to reconnect the catch basin to the public sewer system. BES noted that because the catch basin was historically connected to the combined sewer, re-connecting this system to the existing plumbing for Parcel 1 will not constitute a "new connection" as defined by the SWMM, and therefore flow control and pollution reduction requirements will not apply to the runoff collected by the catch basin.

BES further noted that the applicant would need to demonstrate that the catch basin system has been re-routed to remain on Parcel 1, with appropriate permits obtained and finalized, prior to final plat approval. However, as noted in the response from BDS-Site Development, only a conceptual design for re-routing the existing system was provided, and an engineered design is required to determine correct pipes sizes and to ensure any needed backflow devices are provided; otherwise, an easement across Parcel 2 may be required if the catch basin line cannot be rerouted as shown in the conceptual plan.

33.654.110.B.1 -Through streets and pedestrian connections

33.654.130.B - Extension of existing public dead-end streets & pedestrian connections

33.654.130.C - Future extension of proposed dead-end streets & pedestrian connections

Generally, through streets should be provided no more than 530 feet apart and at least 200 feet apart. In this case, Portland Transportation finds this property frontage is located where SW Myrtle and SW Rivington have several sharp horizontal and vertical curves which do not provide a tangent property line or a direct line-of-sight access for additional connectivity. Additionally, the property is located at a very steep location with the topography being perpendicular to the direction a new connection would be required. It also appears that the adjacent property would be required to partition in a similar manner as the subject property (which is not anticipated at this time) in order to complete any connection. Requiring additional connectivity at this location does not appear to be practical or feasible and would provide minimal (if any) benefit at this location. Therefore, Portland Transportation is not requesting additional connectivity at this time, so Criterion 33.654.110.B.1 is met.

There are no dead end streets or pedestrian connections abutting the site, so Criterion 33.654.130.B and C are not applicable.

**33.641 – Transportation Impacts – 33.641.020 and 33.641.030
33.654.120.B & C Width and elements of the street right-of-way
33.654.130.D Partial Rights of way**

As outlined in the response from Portland Transportation:

Based on the available information, the estimated increase in daily trips is less than 10 total trips per day with the majority of trips occurring during non peak hours, as provided by the Institute of Transportation Engineers – Trip Generation Manual (8th Edition). Additionally, consideration is also given to the likely division of the anticipated increase of <10 total trips per day being factored by two possible route directions to and from this location. In consideration of the limited increase in anticipated traffic generated from this proposal, and the availability of alternative routes for vehicle access to and from the subject site, it is reasonably anticipated by PBOT staff (including registered traffic engineers) that this minimal increase to the existing transportation system facilities and capacity will not create a significant impact. A Transportation Study is not required at this time.

As further outlined in their response, Portland Transportation finds it does not appear practical or feasible to require standard or substandard pedestrian improvements. Additional considerations include: there are no other sidewalks in the general area, the subject site's topography is steeper than other locations, the slope extends well into the current right-of-way and slope stability may be compromised or a structural retaining wall would likely be required (possibly raising development proportionality issues) in order to provide minimal benefit at an isolated location. Other considerations which make the development of a meaningful pedestrian corridor in the general area unlikely, includes: minimal future development is anticipated in the general area at this time, the location/relocation of existing utility poles and fire hydrant, existing retaining walls and steep slopes at/near the back of curb in the general area, creation of additional slope stability issues in the general area.

Based on these considerations, Portland Transportation has approved a Design Exception Alternative, and determined if the street is to be improved, it would be more appropriate to complete the improvements as one LID project. Therefore, the applicant will be required to sign street and storm sewer waivers of remonstrance (for participation in future street and storm sewer improvements) prior to final plat approval. With the conditions of approval described above, this criterion is met.

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

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

DEVELOPMENT STANDARDS

Development standards that are not relevant to the land division review, have not been addressed in the review, but will have to be met at the time that each of the proposed lots is developed.

Existing development that will remain after the land division. The existing development on the site is proposed to remain and would be located on Parcel 1. The division of the property may not cause the structures to move out of conformance or further out of conformance with any development standard applicable in the R10 zone.

Per 33.700.015, if a proposed land division will cause conforming development to move out of conformance with any regulation of the zoning code, and if the regulation may be adjusted, the land division request must include a request for an adjustment.

In this case, the applicant has not requested any adjustments to the R10 development standards. However, the applicant has also not demonstrated that the proposed lot layout is feasible, so it is problematic to evaluate how the Zoning Code standards might relate to the existing development on the site. If a lot layout was presented that could meet the applicable approval criteria, then a condition could be imposed requiring the submittal of a supplemental survey show the location of the existing building relative to the adjacent new lot lines to ensure the applicable zoning standards would be met at time of final plat. With such a condition, an approvable land division proposal could be evaluated to confirm the requirements of 33.700.015 will be met.

OTHER TECHNICAL REQUIREMENTS

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

Bureau	Code Authority and Topic
Water Bureau , 503-823-7404 www.portlandonline.com/water	Title 21 - Water availability
Environmental Services , 503-823-7740 www.portlandonline.com/bes	Title 17; 2008 Stormwater Manual Sewer availability & Stormwater Management
Fire Bureau , 503-823-3700 www.portlandonline.com/fire	Title 31 Policy B-1 - Emergency Access
Transportation , 503-823-5185 www.portlandonline.com/transportation	Title 17, Transportation System Plan Design of public street
Development Services , 503-823-7300 www.portlandonline.com/bds	Titles 24 -27, Admin Rules for Private Rights of Way Building Code, Erosion Control, Flood plain, Site Development & Private Streets

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

- The Fire Bureau has noted the proposal must requirements regarding fire flow/water supply; fire hydrant spacing; wildland fire hazard fire flow; grade of fire department access, prior to final plat; and the requirement for aerial fire department access roads must be met at time of development. These requirements are based on the technical standards of Title 31 and Fire Bureau Policy B-1.

SECTION B: ADJUSTMENT REVIEW

APPROVAL CRITERIA FOR ADJUSTMENTS

33.805.040 Approval Criteria

- A.** Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

Findings: The applicant requests an Adjustment to allow Parcel 1 to be 22,534 square feet, which would exceed the 17,000 square foot maximum lot area allowed in the R10 zone.

The purpose of this lot dimension regulations are as follows:

33.610.200 Lot Dimension Regulations

- A. Purpose.** The lot dimension regulations ensure that:

- Each lot has enough room for a reasonably-sized house and garage;
- Lots are of a size and shape that development on each lot can meet the development standards of the zoning code;

- *Lots are not so large that they seem to be able to be further divided to exceed the maximum allowed density of the site in the future;*
- *Each lot has room for at least a small, private outdoor area;*
- *Lots are compatible with existing lots;*
- *Lots are wide enough to allow development to orient toward the street;*
- *Lots don't narrow to an unbuildable width close to the street*
- *Each lot has adequate access from the street;*
- *Each lot has access for utilities and services; and*
- *Lots are not landlocked.*

As noted in the findings for the land division, the applicant has not demonstrated that the proposed lot layout is feasible, so evaluating a larger lot size for Parcel 1 cannot be considered outside of this context. Given this, the applicant has not demonstrated how Parcel 1 will satisfy the purpose of the lot dimension regulations. As such, this criterion is not met.

- B.** If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in a C, E, or I zone, the proposal will be consistent with the desired character of the area; and

Findings: Many of the nearby lots are around 20,000 square feet in area, which is larger than the maximum lot area currently allowed in the R10 zone. As such, the proposed size of Parcel 1 is not expected to detract from the appearance of the surrounding residential area, which, as noted in the Site and Vicinity section above, consists of lots and houses of comparable size.

However, as noted in the land division findings above, the proposed lot layout has not been demonstrated to be feasible relative to the landslide hazard; tree preservation; seep, spring, and wetland; land suitability; tracts; and utility criteria. As such, the proposed configuration of Parcel 1 is not feasible; and, thereby, as proposed, it would detract from the livability of the residential area. As such, this criterion is not met.

- C.** If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and

Findings: Only one adjustment is requested. This criterion is not applicable.

- D.** City-designated scenic resources and historic resources are preserved; and

Findings: City designated resources are shown on the zoning map by the 's' overlay; historic resources are designated by a large dot. There are no such resources present on the site. Therefore, this criterion is not applicable.

- E.** Any impacts resulting from the adjustment are mitigated to the extent practical; and

Findings: The configuration of Parcel 1 is contingent upon the overall layout of the proposed land division, which, as noted above, has not been demonstrated to be feasible. As such, the proposal could have impacts related to landslide hazards; seeps, springs, and wetlands; trees, and utilities. No mitigating measures have been presented to address these potential impacts, so this criterion is not met.

- F.** If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

Findings: The site is not within an environmental zone, which is designated on the zoning map by either a "c" or "p" overlay. Therefore, this criterion is not applicable.

CONCLUSIONS

The applicant has proposed a 2 parcel Land Division-Partition, as shown on the attached Preliminary Land Division Plan (Exhibit C.2). The applicant has also requested an Adjustment to the maximum lot size for Parcel 2. The primary issues identified with this proposal are:

- Tree Preservation
- Potential Landslide Hazards
- Clearing and Grading
- Seeps, Springs, and Wetlands
- Tracts
- Utilities-Stormwater Management

As discussed throughout this report, the proposal has not met a number of the relevant standards and approval criteria. Fundamentally, the applicant has not provided sufficient information to demonstrate that the lots and future development have been configured to assure the risk of land slide hazards to the site and adjacent lands has been reasonably limited. As such, the proposed lot layout and building location that have not been shown to be feasible. Therefore, the related materials regarding tree preservation; clearing and grading; seeps, springs, and wetlands; tracts; and utilities are inherently deficient as well.

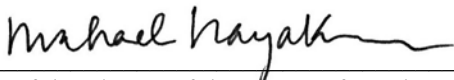
Based on these factors, the applicant has not sufficiently demonstrated how the Land Division and Adjustment criteria can be satisfied. As outlined in Zoning Code Section 33.800.060, the burden of proof is on the applicant to show that the approval criteria are met. The burden is not on the City or other parties to show that the criteria have not been met. The applicant has not met this burden; therefore, the proposal should be denied.

ADMINISTRATIVE DECISION

Denial of a Preliminary Plan for a 2 parcel Land Division-Partition.

Denial of an Adjustment to increase the lot area of Parcel 1.

Staff Planner: Kate Green

Decision rendered by:  **on April 6, 2011**
By authority of the Director of the Bureau of Development Services

Decision mailed April 8, 2011

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

Procedural Information. The application for this land use review was submitted on January 5, 2010, and was determined to be complete on **July 1, 2010**.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on January 5, 2010.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant waived the 120-day review period (Exhibit G.5). The applicant has already extended the review timeline for the full 245 days, so **the 120 days will expire on June 29, 2011.**

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

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

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

Appealing this decision. This decision may be appealed to the Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on April 22, 2011** at 1900 SW Fourth Avenue. Appeals may be filed Tuesday through Friday on the first floor in the Development Services Center until 3 p.m. After 3 p.m. and on Mondays, appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. Assistance in filing the appeal is available from BDS in the Development Services Center. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please contact the receptionist at 503-823-7617 to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.ci.portland.or.us.

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 550 Capitol St. NE, Suite 235, Salem, Oregon 97301 or phone 1-503-373-1265 for further information.

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

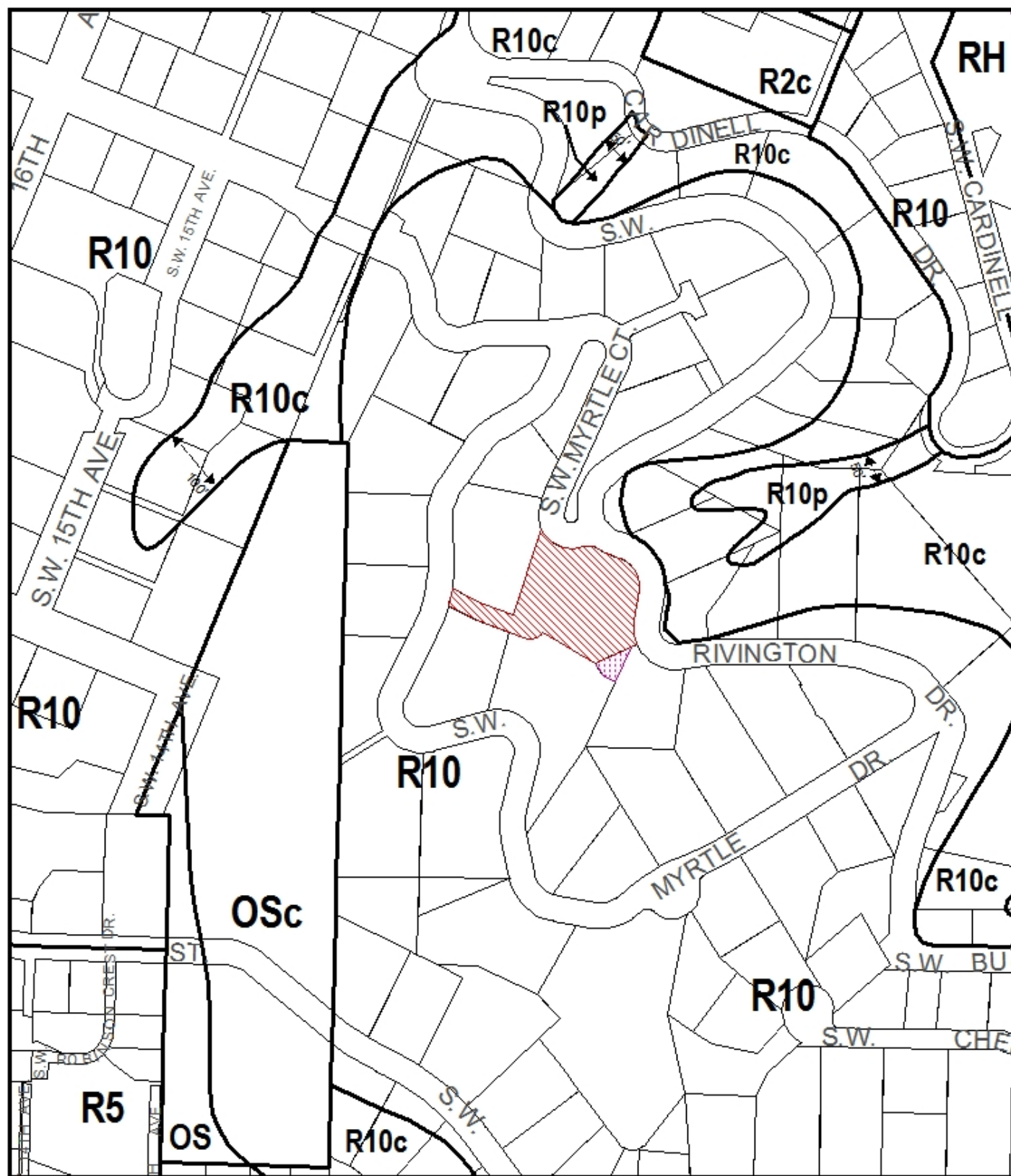
The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).

EXHIBITS

NOT ATTACHED UNLESS INDICATED

A. Applicant’s Statement, Initial Submittal, January 5, 2010

1. Applicant's Supplemental Narrative, April 5, 2010
 - a. Additional Revised Narrative, February 23, 2011
2. Tree Preservation Plan
 - a. Supplemental Information re: Tree Preservation Plan
3. Geological Hazards Evaluation
4. Delineation of Wetlands and Other Waters
5. Stormwater Management Report
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Existing Conditions Plan/Site Survey with Wetland Notations
 2. Proposed Land Division Plan (reduced copy attached)
 3. Proposed Site Improvements Plan/Utility Plan (reduced copy attached)
 4. Preliminary Clearing and Grading Plan
 5. Tree Preservation Plan
 6. Alternate House Locations Plan
 7. Existing Neighborhood Development Plan
 8. Original Plan Set
- D. Notification information:
 1. Mailing list
 2. Mailed notice
- E. Agency Responses:
 1. Bureau of Environmental Services
 2. Portland Transportation
 3. Water Bureau
 4. Fire Bureau
 5. BDS-Site Development
 6. Urban Forestry
 7. BDS-Life Safety
- F. Correspondence:
 1. Allan Pike, March 7, 2011, concerns about landslide hazards; drainage; and clearing
 2. Dr. D.A. Service, March 8, 2011, concerns about landslide hazards and clearing
 3. Simone Goldfeder, SWHRL Neighborhood, March 9, 2011, concerns about Neighborhood Contact requirements; seeps, springs, wetlands; steep slopes; landslide hazards; and clearing
 4. Kris and Gregor Mitchell, letter dated March 11, 2011 and email dated March 17, 2011, concerns about streams, seeps, and springs, tree preservation, and lot dimensions
 5. Mine Boyd and Donald Welch, March 12, 2011, concerns about congestion and conflicts on narrow roads; views; tree removal and erosion; and CC&Rs
 6. Nancy Seaton, SWHRL Neighborhood Land Use Chair, April 2, 2011, concerns about application of restrictions from 1949 land division; tree removal; landslide hazards; clearing; seeps and wetlands; stormwater management; right of way improvements; Adjustment request; viable alternatives; completeness of application
 7. Andrew York, April 4, 2011; concerns about springs, wetlands, and drainage; landslides; tree removal; views; and wetland review
- G. Other:
 1. Original LU Application
 2. Neighborhood Notification Letters
 3. Site History Research
 4. Letter to applicant re: incomplete application
 5. 120-day waiver
 6. Emails to/from applicant and property owner
 7. Property deed records
 8. 2009 Aerial photo-City of Portland GIS
 9. Request for Completeness Review



ZONING



Site

Also Owned



File No. LU 10-100336 LDP

1/4 Section 3228

Scale 1 inch = 200 feet

State_Id 1S1E04DC 1700

Exhibit B (Jan 05,2010)

[illegible]

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11/11/2011 11:52 AM

LU 10-100336

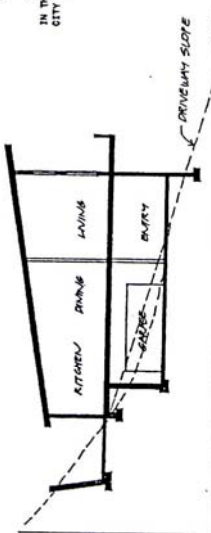
PROPOSED LAND DIVISION PLAN

- Create new lot, Parcel 1 = 22,534 SF with existing residence reduced from 30,334 SF, thereby closer to current code compliance.
- Parcel 1 fronts on SW Myrtle Drive
- Create new lot, Parcel 2 = 7,800 SF
- Parcel 2 fronts on SW Myrtle Court / Rivington Drive.

CASE NO. 10-100336
EXHIBIT C.2

- Divide land so as not to disturb existing residence or other valuable site amenities including garage, mature landscaping, water features, driveway access from Myrtle Drive.
- Divide land so as to provide separate access from Southwest Rivington Drive or Myrtle Court below.
- Divide land so as to provide privacy and separateness for each lot and residence.
- Divide land so as to minimize environmental impact on the total existing site.
- Divide land so as to enhance but not degrade the neighborhood in any way.

FOR SCOTT ANDREWS
IN LOTS 31-38 "CARDINELL HEIGHTS"
IN THE SE 1/4 OF SEC. 4, T. 18, N. 1E, W. 1E,
CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON
SCALE: 1"= 20' MAY 28, 2009



CROSS SECTION AT DENVERWAY

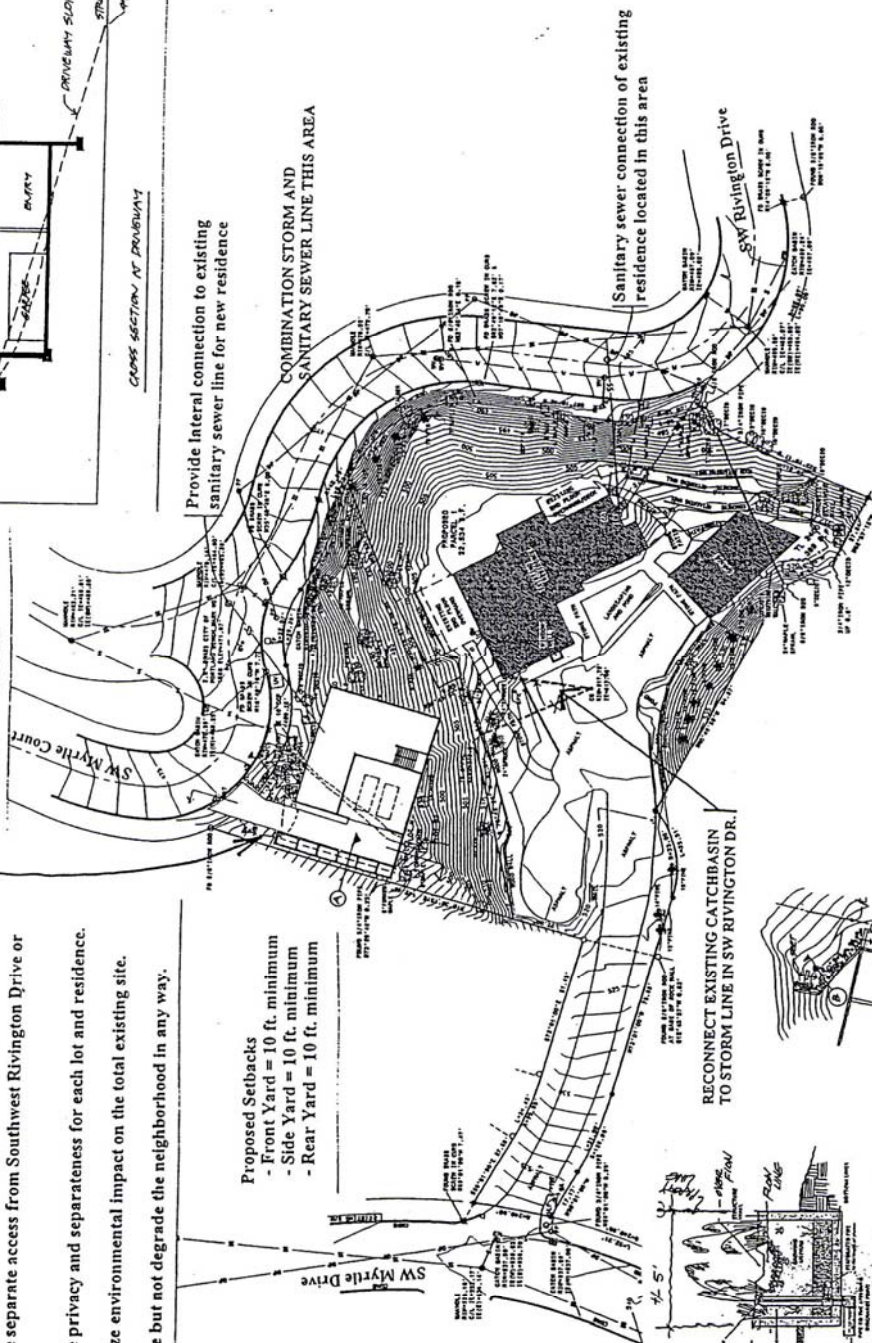
Provide lateral connection to existing sanitary sewer line for new residence

COMBINATION STORM AND
SANITARY SEWER LINE THIS AREA

Proposed Setbacks

- Front Yard = 10 ft. minimum
- Side Yard = 10 ft. minimum
- Rear Yard = 10 ft. minimum

CASE NO. 10-100336
EXHIBIT C.3

[illegible]

PROPOSED SITE IMPROVEMENTS PLAN INCLUDING UTILITY PLAN

PARTIAL ENLARGED PLAN

SECTION (A) FLY THROUGH PRIMER

Storm Water Planter

SECTION (B) COLLECTIVE TRAINING

PROVISIONS:	DATE	BY	REVISION
	11/10/2011	11/10/2011	11/10/2011

LU 10-100336

NAME	DATE	TIME	LOCATION	REMARKS
JOHN J. B. J.	10/10/10	11:00	1000	