



**CITY OF**

**PORTLAND, OREGON**

**OFFICE OF THE CITY AUDITOR  
Hearings Office**

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**DECISION OF THE HEARINGS OFFICER**

**I. GENERAL INFORMATION**

**File No.:** LU 10-113710 LDS (HO 4100010)

**Applicant:** Eric Evans  
Emerio Design, LLC  
6107 SW Murray Road, Suite 147  
Beaverton, OR 97008

**Property Owner:** OHSU Apartments LLC  
735 SW 158th Avenue, Suite 158  
Beaverton, OR 97008

**Hearings Officer:** Gregory J. Frank

**Bureau of Development Services (BDS) Staff Representative:** Kate Green

**Site Address:** 1023 SW CURRY STREET

**Legal Description:** BLOCK 59, LOTS 5 & 6, PORTLAND CITY HMSTD

**Tax Account No.:** R668003550

**State ID No.:** 1S1E09AC 09400

**Quarter Section:** 3328

**Neighborhood:** Homestead

**Business District:** None

**District Coalition:** Southwest Neighborhoods Inc.

**Zoning:** Mixed Commercial/Residential (CM)

**Plan District:** None

**Other Designations:** Potential Landslide Hazard, Wildfire Hazard, 20% Slope

**Land Use Review:** Type III, Land Division-Subdivision (LDS)

**BDS Staff Recommendation to Hearings Officer:** Approval with conditions

**Public Hearing:** The hearing was opened at 9:00 a.m. on July 28, 2010, in the 3<sup>rd</sup> floor hearing room, 1900 SW 4<sup>th</sup> Avenue, Portland, Oregon, and was closed at 9:54 a.m. The Applicant waived Applicant's rights granted by ORS 197.763 (6)(e), if any, to an additional 7 day time period to submit written rebuttal into the record. The record was closed to all testimony and/or written submissions at the end of the hearing.

**Testified at the Hearing:**

Kate Green, BDS Staff Representative

Kirsten Van Loo, Emerio Design LLC, 6107 SW Murray Road, Suite 147, Beaverton, OR 97008

Eric-Evans, Emerio Design, 6900 SW 105<sup>th</sup> Ave., Suite C, Beaverton, OR 97008

**Proposal:** The Applicant proposes to divide a 10,000 square foot corner site into seven lots. The lots will range in size from 1,200 to 2,000 square feet. A shared access and utility easement is proposed for Lots 1 through 5. Stormwater is proposed to be managed via on-site planters that discharge to the public system.

A 4-foot right-of-way dedication is proposed along the SW 11<sup>th</sup> Avenue frontage, and the site frontages along both SW 11<sup>th</sup> Avenue and SW Curry Street are proposed to be improved with sidewalks, stormwater facilities, planters, and street trees.

The site survey showed 10 trees are located on the lot, and three are located in the abutting rights-of-way. At the time the BDS staff report was written, a tree Preservation Plan (Exhibit A attachment – February 8, 2010) proposed all trees were to be removed. An updated Tree Preservation Plan was submitted by the Applicant at the public hearing (Exhibit H-6) and noted that trees 524, 525, 526 and 527 are located on (in part or entirely) on adjacent property and would be protected and retained unless the adjacent property owner approved the removal of the trees.

The site had been developed with a house that has since been removed per Demolition Permit 08-128510 RS.

The property has a *Potential Landslide Hazard* designation, so the Applicant has provided a geotechnical report (Exhibit A-2) to address how the property can be developed without creating additional risk to neighboring properties.

This proposal is reviewed through a Type III procedure because: (1) the site is in a commercial zone; (2) four or more lots are proposed; and (3) the site is located within a *Potential Landslide Hazard Area* (see Portland City Code (PCC) 33.662.110).

For purposes of State Law, this land division is considered a subdivision. To subdivide land is to divide an area or tract of land into four or more lots within a calendar year (see Oregon Revised Statute (ORS) 92.010).

**Relevant Approval Criteria:** In order to be approved, this proposal must comply with the criteria of Title 33. The relevant criteria are:

**33.662.120, Approval Criteria for Land Divisions in Commercial, Employment, and Industrial Zones.**

## **II. ANALYSIS**

**Site and Vicinity:** The Subject Site is located on an east facing slope in the “west hills” above the OHSU campus. The Subject Site is a square lot located on the northeast corner of SW Curry Street and SW 11<sup>th</sup> Avenue. The 10,000 square foot Subject Site slopes down steeply from SW 11<sup>th</sup> Avenue to the east. A house formerly occupied the Subject Site and has been removed per Demolition Permit 08-128510 RS. Large trees are located around the perimeter of the Subject Site.

The Subject Site has approximately 100 feet of frontage on both SW 11<sup>th</sup> Avenue and SW Curry Street. At this location, SW 11<sup>th</sup> Avenue is classified as a Neighborhood Collector, Transit Access Street, City Walkway, and a Local Service Street for all other transportation modes in the City’s Transportation System Plan; and SW Curry Avenue is classified as a Local Service Street for all transportation modes in the City’s Transportation System Plan. Both streets are improved with paved roadways. There are currently no curbs, planter strips, or sidewalks along the Subject Site’s frontages. TriMet bus Line 8 provides transit service along SW 11<sup>th</sup> Avenue.

All the surrounding properties appear to be in residential use with single-dwelling or multi-dwelling structures. It is noted that properties located north of Curry and east of 11<sup>th</sup> are zoned commercial.

**Zoning:** The subject site is located in a **Mixed Commercial/Residential (CM)** zone. The CM zone promotes development that combines commercial and housing uses on a single site.

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

**Agency and Neighborhood Review:** A Notice of Proposal in your Neighborhood was mailed on July 2, 2010, and a revised notice was sent on July 7, 2010.

1. **Agency Review:** Several Bureaus and agencies have responded to this proposal (E Exhibits). The comments are addressed under the appropriate criteria for review of the proposal.
2. **Neighborhood Review:** No written responses were received by BDS staff prior to issuance of the staff report (Exhibit H-4). One letter was received at the hearing (Exhibit H-3) expressing concerns regarding parking and stormwater. No oral testimony, at the public hearing, was received from any person in opposition to the application. The parking and stormwater issues are addressed in approval criteria below.

## **ZONING CODE APPROVAL CRITERIA**

### **APPROVAL CRITERIA FOR LAND DIVISIONS IN A COMMERCIAL, EMPLOYMENT, OR INDUSTRIAL ZONE**

**33.662.120 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.**

The relevant criteria are found in PCC section 33.662.120 [A-K], **Approval Criteria for Land Divisions in Commercial, Employment and Industrial Zones**. 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 applicability of each criterion.

<b>Criterion</b>	<b>Code Chapter</b>	<b>Topic</b>	<b>Applicability Findings</b>
<b>A</b>	<b>33.613</b>	<b>Lots</b>	<b>Applicable - See findings below</b>
<b>B</b>	<b>33.630</b>	<b>Trees</b>	<b>Applicable - See findings below.</b>
<b>C</b>	<b>33.631</b>	<b>Flood Hazard Area</b>	<b>Not applicable - The site is not within the flood hazard area.</b>
<b>D</b>	<b>33.632</b>	<b>Potential Landslide Hazard Area</b>	<b>Applicable - See findings below.</b>
<b>E</b>	<b>33.633</b>	<b>Phased Land Division or Staged Final Plat</b>	<b>Not applicable - A phased land division or staged final plat has not been proposed.</b>
<b>F</b>	<b>33.635.100</b>	<b>Clearing and Grading</b>	<b>Applicable - See findings below.</b>
<b>F</b>	<b>33.635.200</b>	<b>Land Suitability</b>	<b>Applicable - See findings below.</b>
<b>G</b>	<b>33.636</b>	<b>Tracts and Easements</b>	<b>Applicable - See findings below.</b>
<b>H</b>	<b>33.639</b>	<b>Solar Access</b>	<b>Applicable - See findings below.</b>
<b>I</b>	<b>33.640</b>	<b>Streams, Springs, and Seeps</b>	<b>Not applicable - No streams, springs, or seeps are evident on the site.</b>
<b>J</b>	<b>33.641</b>	<b>Transportation Impacts</b>	<b>Applicable - See findings below</b>
<b>K</b>	<b>33.651-33.654</b>	<b>Services and Utilities</b>	<b>Applicable - See findings below</b>

**A. Lots.** The standards and approval criteria of Chapters 33.613 through 33.615 must be met;

**Findings:** PCC Chapter 33.613 contains the lot standards applicable in the commercial zones. PCC Chapter 33.613 works in conjunction with other chapters of the Zoning Code to ensure that land divisions create lots that can support appropriate uses and development. The standards are as follows:

#### **33.613.100 Minimum Front Lot Line Standard**

**Each lot must have a front lot line that is at least 10 feet long.**

**33.613.200 Minimum Lot Area, Width and Depth Approval Criterion**

**There are no minimum lot area, width or depth standards. Lots must be of a size, shape, and orientation that is appropriate for the location of the land division and for the type of development and use that is contemplated.**

Each proposed lot meets the commercial lot standards, as noted below:

Lot	Front Lot Line (feet)	Lot Area (square feet)	Lot Width (feet)	Lot Depth (feet)
	Minimum: 10	Minimum: none	Minimum: none	Minimum: none
1	20	1,200	20	60
2	20	1,200	20	60
3	20	1,200	20	60
4	20	1,200	20	60
5	20	1,200	20	60
6	20	2,000	20	100
7	20	2,000	20	100

Due to the wide range of uses that are allowed in the commercial zones, the size, shape, and amount of land needed for commercial developments vary considerably. In this situation, residential uses are proposed for the entire Subject Site, so the lots must be sized sufficiently to meet the CM zone standards, as well as the specific development standards required for residential development in the CM zone. The standards for residential development call for main entrances to be oriented toward the street; street-facing façades to include a minimum area of windows and doors; and the length of the garage wall facing the street to be limited. Additional standards apply for mixed use development in the CM zone, and would be triggered if a combination of residential and non-residential uses were proposed.

At 1,200 to 2,000 square feet, the proposed lots will be considerably smaller than the abutting CM zoned properties, which range in size from 5,000 to 15, 000 square feet in area and appear to be developed with multi-dwelling structures and no commercial uses. Yet, with houses that satisfy the minimum building coverage requirement of 50 percent, and garage access from the rear of the detached structures, it appears feasible for Lots 1 through 5 to satisfy the noted CM standards. The proposed developments on Lots 6 and 7 do not appear to meet the 10-foot maximum building setback in the CM zone; nor will those lots have rear garage access, so options for residential development and garage locations on those properties will need to account for these zoning provisions. Since the site meets the Parking Exemption for its close proximity to transit and no parking is required on the lots, this allows for more flexibility in the building design.

Overall, since each lot meets the minimum lot width and appears to be of sufficient size to accommodate a range of residential uses or a combination of residential and non-residential uses, the proposal complies with the applicable lot standards. Therefore, this criterion is met.

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

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

The Applicant has submitted an arborist report that inventories the trees within the land division site, and includes five trees in the public right-of-way, and four trees on the adjacent property (Exhibit A-1). The inventory identifies the following trees on the subject site (Exhibit C-1a):

Tree #	Species	Diameter (inches)	Significant? (Table 630-1)	Exempt? (33.630.030)	To be retained?
1 (343)	Ilex spp/Holly	Topped 3 x 10		nuisance	N
2 (344)	Ilex spp/Holly	Topped 8/14		nuisance	N
3 (381)	Prunus avium/Cherry	Multi-stemmed 8/14		diseased	N
4 (382)	Juglans regia/Walnut	24	Y	diseased	N
5 (384)	Prunus spp/Pear	10		diseased	N
6 (386)	Acer macrophyllum/Bigleaf Maple	12		diseased	N
7 (387)	Acer macrophyllum/Bigleaf Maple	14		diseased	N
8 (388)	Acer macrophyllum/Bigleaf Maple	14		diseased	N
9 ((389)	Acer macrophyllum/Bigleaf Maple	16		diseased	N
10 (393)	Prunus spp/Pear	Multi-stemmed 10/14		diseased	N

The arborist notes all the trees are exempt because they are either unhealthy, a nuisance species, or located off the property. Based on a Subject Site visit on July 13, 2010, staff concurs with the arborist's assessment. Therefore, none of the trees are required to be preserved. The Applicant is not required to remove the trees and may elect to retain some or all of the trees; however, no preservation or mitigation requirements will apply. Trees number 524, 525, 526 and 527 (see Exhibit C-1a for locations) are not located on the Subject Site and therefore should not be considered in this decision. Applicant noted, at the public hearing, that one or more of the trees (524, 525, 526 and 527) may be diseased and or create safety issues and if the adjacent neighbor agrees, one or more of the trees (524, 525, 526 and 527) will be removed (Exhibit H-6 contains an "updated tree inventory").

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.

#### **33.632.100 Landslide Hazard Area Approval Criterion**

The following approval criterion must be met: Locate the lots, buildings, services and utilities on the safest part of the site so that the risk of a landslide affecting the site, adjacent sites, and sites directly across a street or alley from the site, is reasonably limited.

**Determination of whether the proposed layout and design reasonably limits the risk of a landslide will include evaluation of the Landslide Hazard Study and will take into consideration accepted industry standards for factor of safety. Alternative development options including alternative housing types and reduced density may be required in order to limit the risk to a reasonable level.**

**Findings:** The Subject Site is located within the Potential Landslide Hazard Area. The approval criteria state that the lots, buildings, services, and utilities must be located on the safest part of the site so that the risk of a landslide affecting the Subject Site, adjacent sites, and sites directly across a street or alley from the site is reasonably limited.

In order to address this criteria, the Applicant submitted a geotechnical evaluation of the site and proposed land division, prepared by a Certified Engineering Geologist and a Geotechnical Engineer (Exhibit A-2), which outlines recommendations for slope stability, stormwater management, site preparation and undocumented fill removal, engineered fill, wet weather earthwork, structural foundations, footing and roof drains, retaining walls, seismic design, excavation conditions and utility trenches, pavement sections, and erosion control considerations. The evaluation indicates that the recommendations of the report assume that the structures will have raised floors and crawlspaces.

Generally, the conclusions and recommendations indicate that slope geomorphology at the proposed home sites is consistent with relatively stable slope conditions, and with the use of flow-through planters with overflow directed into the public storm drain system, stormwater will be discharged in a controlled manner away from structures and slopes.

The report was evaluated by the Site Development Section of BDS, which assesses slope stability. Site Development notes that the proposed Grading Plan shows temporary 1.5:1 slopes. The maximum allowable gradient for slopes is 2:1. These slopes may be altered for final foundation design at the time of building permit review.

Overall, Site Development has concurred with the findings of the Applicant's geotechnical report, but notes that further geotechnical evaluation may be required for specific building plans at the time of construction plan review. Based on the foregoing, this criterion is met.

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

*The approval criteria of Chapter 33.635 are found in two groups – clearing and grading, and land suitability.*

**33.635.100 – Clearing and Grading**

**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;**

- 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;**
- D. Topsoil must be preserved on site to the extent practicable for use on the site after grading is complete; and**
- E. Soil stockpiles must be kept on the site and located in areas designated for clearing and grading as much as is practicable.**

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

In this case, the Subject Site has steep grades and is located in the Potential Landslide Hazard area; so the clearing and grading associated with preparation of the lots must occur in a way that will limit erosion concerns. The Geotechnical Engineering Study and Landslide Hazard Evaluation prepared by GeoPacific (Exhibit A-2) notes the anticipated grading will consist of cuts up to six feet deep and fill about two feet high for the proposed seven detached houses and associated foundations, driveways, and retaining walls. Stormwater runoff from the lots is proposed to be managed via onsite planters that discharge to the public system.

The Preliminary Grading Plan (Exhibit C-1e) shows the entire Subject Site will be graded for foundations for the new houses and trenching for utilities. As noted in the comments from Site Development, the maximum allowable gradient for slopes is two (horizontal) to one (vertical), and the Grading Plan must be amended at time of building permit review.

At the time of building permit submittal on the individual lots, a Clearing, Grading and Erosion Control Plan will be submitted to the Site Development Section of BDS. Site Development will review the Grading Plan against the Applicant's Landslide Hazard Study, as well as any additional geotechnical information required at the time of permit submittal, to assure that the grading will not create any erosion risks. Based on these factors, with conditions, these criteria will be 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.**

Based on City records, the Subject Site has historically been in residential use, and there is no record of any other use in the past. The Applicant has removed the existing house, per Demolition Permit 08-128510 RS, and intends to redevelop the site. Since the permit for demolition of all structures on the Subject Site and sewer capping has been completed, the new lots can be considered suitable for development, and this criterion is met.



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

**33.636.100 Requirements for Tracts and Easements**

**A. Ownership of tracts. Tracts must be owned as follows unless otherwise specified in this Title or the land use decision:**

- 1. The owners of property served by the tract, or by any other individual or group of people. When the tract is owned by more than one person it must be held in common with an undivided interest;**
- 2. The Homeowners' Association for the area served by the tract;**
- 3. A public or private non-profit organization; or**
- 4. The City or other jurisdiction.**

**B. Maintenance agreement. The applicant must record with the County Recorder a maintenance agreement that commits the owners or owners' designee to maintain all elements of the tract or easement; however, facilities within the tract or easement that will be maintained by a specified City agency may be recorded in a separate maintenance agreement. The maintenance agreement must be approved by BDS and the City Attorney in advance of Final Plat approval and must be submitted to the County Recorder to be recorded with the Final Plat. For a Planned Development not done in conjunction with a land division, the maintenance agreement must be submitted to the County Recorder to be recorded prior to issuance of the first building permit related to the development.**

**Findings:** No tracts are proposed or required for this land division, so criterion A does not apply. However, the following easements are proposed and/or required for this land division:

- A Reciprocal Access Easement is proposed to allow shared use of the driveway that will cross Lots 1 through 6;
- A Private Sanitary Sewer Easement is required across the relevant portions of Lots 2 through 5, for the benefit of Lots 2 through 4.
- A Private Storm Sewer Easement, which must include all stormwater facilities receiving runoff from the shared driveway, is required across the relevant portions of all lots discharging to the shared storm line.

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

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

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

- 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.

*The solar access criteria are applied to proposed lots based on the orientation of the streets, as described below.*

**33.639.100, Solar Access Approval Criteria**

**On streets that are within 30 degrees of a true east-west axis, the narrowest lots should be interior lots on the south side of the street and corner lots on the north side of the street.**

**On streets that are within 30 degrees of a true north-south axis, the widest lots should be interior lots on the east or west side of the street.**

**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.

In this case the Subject Site is on a corner, and fronts on both SW 11<sup>th</sup> Avenue and SW Curry Street. Lots 1 through 4 will be interior lots of equal width on the east side of a north/south street (SW 11<sup>th</sup> Avenue). This criterion calls for the widest lots to be interior lots on the east or west side of the street, so the proposal is consistent with this criterion. Lot 5 will be a corner lot on the north side of an east/west street (SW Curry Street), which is consistent with the solar access criterion. Lots 6 and 7 will be on the north side of an east/west street (SW Curry Street), and are considered interior lots and are of equal width. In this context, there is no preference that any one lot be wider or narrower than the other lots. Based on the foregoing, this criterion is met.

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

*The relevant approval criteria of Chapter 33.641 are found in the two paragraphs below.*

**33.641.020.** 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.

**33.641.030.** The applicant may meet the criterion in Section 33.641.020, above, by including mitigation measures as part of the land division proposal. Mitigation measures must be acceptable to the City Engineer and may include providing transportation demand management measures, an access management plan, constructing streets or bicycle, pedestrian, or transit facilities on or off the site or other capital improvement projects such as traffic calming devices.

**Findings:** The regulations of PCC Chapter 33.641 require the traffic impacts caused by dividing and then developing land to be identified, evaluated, and mitigated for if necessary. Small land divisions involving only a few dwelling units may not require a formal Transportation Impact Study, while it might be required for larger projects (Title 17 includes technical standards describing when a more formal study is required) (See Exhibit E-2).

As noted in the introductory Analysis section, above, the Subject Site has approximately 100 feet of frontage on both SW 11<sup>th</sup> Avenue and SW Curry Street. Both streets are improved with paved roadways. There are currently no curbs, planter strips, or sidewalks along the site's frontages.

In reviewing this land division, the Portland Bureau of Transportation (PBOT) relies on accepted civil and traffic engineering standards and specifications to determine if existing street improvements for motor vehicles, pedestrians and bicyclists can safely and efficiently serve the proposed new development (Exhibit E-2).

PBOT found that the seven attached housing units can be expected to generate approximately 56 daily vehicle trips with six of those trips occurring in each AM and PM peak hour. The CM zoning would allow up to 10,000 square feet of commercial floor area with two stories of housing above outright without any land use reviews. The proposed seven lot land division will generate much less traffic than full build out allowed by the base zone (Exhibit E-2).

A letter was received from a neighboring property owner (Exhibit H-3) expressing concern regarding on-street parking. This neighbor stated that "as long as adjacent street parking is available for existing residents we have no objection" (Exhibit H-3). PBOT, in Exhibit E-2, noted that "on street parking will be allowed along both frontages except where new driveways are provided to serve on-site parking." Exhibit C-1d (Preliminary Plan) shows no driveway access to the proposed lots to be located on SW 11<sup>th</sup> and three access points on SW Curry. On-street parking, therefore, will be permitted on SW 11<sup>th</sup> and a small section of SW Curry upon completion of the proposed development. The Hearings Officer finds that with the street improvements made along SW 11<sup>th</sup> and SW Curry (providing on-street parking spaces) and the provision of off-street parking within the proposed development, there will be adequate on-street parking if the proposal is approved.

In order to ensure that safe pedestrian travel is possible with the proposed development, PBOT determined that curb and sidewalk improvements must be made. To accommodate these improvements, as well as an associated stormwater facility discussed later in this report, four feet of additional right-of-way must be dedicated along the SW 11<sup>th</sup> Avenue frontage. With the requirement for new sidewalks along both frontages, the project will provide its share of constructing pedestrian facilities in the area, and the transportation system can adequately serve the proposed development in addition to existing uses in the area. Based on these factors, and with the noted conditions, this criterion can be met.

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

**Findings:** PCC Chapters 33.651 through 33.654 address water service standards, sanitary sewer disposal standards, stormwater management, utilities and rights-of-way.

**Water Service:** The water standards of PCC 33.651 have been verified (Exhibit E-3). An existing 5/8" service (Serial #20143478, Account #2966549800) that is addressed as 3422 SW 11<sup>th</sup> Avenue provides water to the above mentioned property listed as 1023 SW Curry Street. This meter could possibly be used to provide water to Lots 1 or 2, but the location must be verified and the meter size evaluated by the Water Bureau for the building it would provide water to, based upon building fixture count.

For Lots 1 through 5, excluding the one that might possibly be served by the existing metered water service, PCC 21.12.010 will require any new buildings that need water, to have a water service/meter installed within the public-right-of-way, and within the specific property boundary/frontage for which it will serve. A water main extension in SW Curry Street will be required to supply water to Lot 6 and Lot 7, and would be constructed by Water Bureau crews at the Applicant's expense.

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 the Water Bureau prior to Final Plat approval.

**Sanitary Sewer Disposal:** The sanitary sewer standards of PCC 33.652 have been verified as follows:

***Existing Sanitary Infrastructure:*** There is an 8-inch CSP public combined gravity sewer located in SW 11<sup>th</sup> Avenue, which begins at the north edge of the site, and a 10-inch CSP public combined gravity sewer located in SW Curry Street (Bureau of Environmental Services (BES) project # 1182) (Exhibit E-1).

***Sanitary Connections:*** The proposal has been revised to show individual sanitary connections for each lot. Lot 1 will utilize an existing lateral to the public sewer in SW 11<sup>th</sup> Avenue; if gravity service is not possible with the new structure, all pumping will be the responsibility of the Applicant and the lateral in the right-of-way must be gravity. Lots 2 through 4 will each have individual laterals in the private shared utility easement east of the proposed lots that connect to the public sewer in SW Curry. Lots 5 through 7 will each have individual laterals that connect directly to the public sewer in SW Curry Street. It is the responsibility of the Applicant to ensure that at the time of connection there is a minimum separation of three feet between the outside diameter of each lateral, per BES *Rules of Connection* and the City of Portland's Sewer and Drainage Facilities Design Manual.

***Private Easements:*** The Applicant is proposing to locate sanitary sewer laterals for Lots 2 through 4 in a Private Sanitary Easement. Private utility easements must be no less than 10-feet wide. If an easement is provided, a Maintenance Agreement for the easement must be submitted for approval by BDS and the City Attorney, and must be recorded with the Final Plat (Exhibit E-1).

**Stormwater Management:** The technical standards of PCC Chapter 33.653 related to stormwater management have been verified. The findings below for the Stormwater Management Approval Criteria of PCC 33.653.020 incorporate a discussion of how the technical standards have been satisfied by the Applicant's stormwater proposal.

**33.653.020 Stormwater Management 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**
- 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:** A letter from a neighbor (Exhibit H-3) raised the issue of stormwater flowing from the Subject Site to the neighbor's property (property to the north of the Subject Site). The neighbor, in Exhibit 3, requested that stormwater issues be addressed.

Generally, when a stormwater facility serves more than one lot, it must be placed in a tract or right-of-way. However, a facility that serves five dwellings or less is allowed in an easement provided a Maintenance Agreement is recorded, per exception PCC 33.653.030.C.2.c. As discussed below, the Applicant is proposing a stormwater facility that will serve five dwelling units, so a tract is not required for the stormwater facility. No other tract is proposed or required, so Criterion A is not applicable.

The City of Portland requires that stormwater from development be cleaned and disposed of in a manner that meets the requirements of the City's Stormwater Management Manual. In order to meet this approval criterion, land division proposals must demonstrate an approved method of cleaning (water quality treatment), detention (delayed release), and an approved disposal point. In addition to determining appropriate treatment and disposal methods by working through the hierarchy in the Stormwater Management Manual, stormwater facilities must be sized, through engineering calculations, to accommodate the expected amounts of stormwater.

The Applicant has proposed the following stormwater management methods, and the Bureaus have responded as follows:

- **Lots 1 through 7:** Stormwater from each lot and the shared driveway across Lots 1 through 5 will be directed to stormwater planters on each lot and disposed of into a public combined sewer in the right-of-way. As noted in the response from BES, a Private Storm Sewer Easement, which must include all stormwater facilities receiving runoff from the shared driveway, must be provided across the relevant portions of all lots discharging to the shared storm line. As reflected in the addendum from BES, the Applicant submitted stormwater calculations that indicate the size of the proposed planters can accommodate the volume of stormwater runoff anticipated from the impervious areas. BES concurs that the stormwater concept is feasible (Exhibits E-1 and E-5).
- **Public Street Improvements:** As a condition of this land use approval, PBOT requires the Applicant to provide a dedication along the SW 11<sup>th</sup> Avenue frontage, and to improve both frontages of the site to City standards, with curbs and sidewalks (discussed earlier in this

decision). In addition, BES notes that the Final Plat must show any additional dedication to accommodate stormwater management facilities for the required street improvements.

Stormwater from these new impervious areas is proposed to be directed into stormwater planters adjacent to the sidewalks, and disposal will be via a public combination sewer. A Public Works Permit is required for the stormwater and all other noted improvements in the public rights-of-way (Condition A.4.). The Applicant must provide substantially complete plans, a financial guarantee (i.e. a bond), and engineering fees prior to Final Plat approval (Conditions B.1, B.2 and B.4).

With the conditions of approval described above, the stormwater management criteria can be met.

As shown by the findings above, the Services and Utilities criteria are met.

### **Right of Way Approval Criteria**

PCC Chapter 33.654 contains standards and approval criteria for rights-of-way. Due to the location of this site, and the type of street that is proposed, some of the criteria are not applicable. The following table summarizes the applicability of each criterion.

<b>Code Section</b>	<b>Topic</b>	<b>Applicability Findings</b>
<b>33.654.110.B.1</b>	<b>Through streets and pedestrian connections</b>	<b>Applicable - See findings below</b>
33.654.110.B.2	Dead end streets	Not applicable - No dead end streets are proposed.
33.654.110.B.3	Pedestrian connections in the I zones	Not applicable - The site is not located within an I zone.
33.654.110.B.4	Alleys in all zones	Not applicable - No alleys are proposed or required.
<b>33.654.120.C.1</b>	<b>Width of the street right-of-way</b>	<b>Applicable - See findings below.</b>
33.654.120.C.3. c	Turnarounds	Applicable - See findings below.
33.654.120.D	Common Greens	Not applicable - No common greens are proposed or required.
33.654.120.E	Pedestrian Connections	Applicable - See findings below. Not applicable - There are no pedestrian connections proposed or required.
33.654.120.F	Alleys	Not applicable - No alleys are proposed or required.
33.654.120.G	Shared Courts	Not applicable - No shared courts are proposed or required.
<b>33.654.130.A</b>	<b>Utilities</b>	<b>Applicable - See findings below.</b>
33.654.130.B	Extension of existing public dead-end streets and pedestrian connections	Applicable - See findings below Not applicable - There are no existing public dead-end street or pedestrian connections adjacent to the site.

Code Section	Topic	Applicability Findings
33.654.130.C	Future extension of proposed dead-end streets and pedestrian connections	Not applicable – No street extensions are required to serve abutting sites that are further dividable.
33.654.130.D	Partial rights-of-way	Not applicable – No partial public streets are proposed or required.
33.654.130.E	Ownership of Alleys	Not applicable- No alleys are proposed or required.

**Applicable Approval Criteria are:**

**33.654.110.B.1 Approval criterion for through streets and pedestrian connections in OS, R, C, and E Zones. In OS, R, C, and E zones, through streets and pedestrian connections are required where appropriate and practicable, taking the following into consideration:**

- a. Through streets should generally be provided no more than 530 feet apart, and pedestrian connections should generally be provided no more than 330 feet apart. Through street and pedestrian connections should generally be at least 200 feet apart;
- b. Where the street pattern in the area immediately surrounding the site meets the spacing of subparagraph a., above, the existing street pattern should be extended onto the site;
- c. Characteristics of the site, adjacent sites, and vicinity, such as: (1) Terrain; (2) Whether adjacent sites may be further divided; (3) The location of existing streets and pedestrian connections; (4) Whether narrow frontages will constrain creation of a through street or pedestrian connection; (5) Whether environmental overlay zones interrupt the expected path of a through street or pedestrian connection; and (6) Whether existing dwelling units on- or off-site obstruct the expected path of a through street or pedestrian connection. Alternative locations or designs of rights-of-way should be considered that avoid existing dwelling units. However, provision of through streets or pedestrian connections should take precedence over protection of existing dwelling units where the surrounding transportation system will be significantly affected if a new through street or pedestrian connection is not created;
- d. Master street plans for the area identified in Goal 11B of the Comprehensive Plan;
- e. Pedestrian connections should take the most direct route practicable. Users should be able to see the ending of the connection from the entrance point, if possible.

**Findings:** Due to the steep topography in the surrounding area, and the configuration of the existing development, some of the designated rights-of-way are not developed or do not connect. For instance, SW Curry Street terminates approximately 100 feet to the east of the subject site, at an abrupt slope. The Subject Site is located in an area with an established 200-foot street grid pattern and as such, requires no additional through-streets across the Subject Site. However, as noted above, since neither frontage along the Subject Site is developed, additional right-of-way dedication and improvements are needed to accommodate pedestrians and other users on SW 11<sup>th</sup> Avenue and SW Curry Street and to provide straight-line connections along these pedestrian routes. As noted in

the response from PBOT (Exhibit E-2), and with the condition outlined above (Condition B.1), this criterion can be met.

**33.654.120.C.1 Approval criterion for width of the right-of-way.** The width of the local street right-of-way must be sufficient to accommodate expected users, taking into consideration the characteristics of the site and vicinity, such as the existing street and pedestrian system improvements, existing structures, and natural features.

**Findings:** As noted in response from PBOT, additional width is required along the SW 11<sup>th</sup> Avenue frontage to provide the required right-of-way improvements (Exhibit E-2). Additionally, improvements must be provided along the SW Curry Street frontage to accommodate all expected users. With the previously noted conditions, this criterion can be met.

#### **Utility Location, Extension of Streets, Partial Rights of Way**

##### **33.654.130 Additional Approval Criteria for Rights-of-Way**

**A. Utilities.** Utilities must be located within rights-of-way or utility easements that are adjacent to rights-of-way to the maximum extent practicable. Utility easements up to 15 feet in width may be required adjacent to rights-of-way.

**Findings:** Utilities are defined in the Zoning Code as telephone, cable, natural gas, electric, and telecommunication facilities. Any easements that may be needed for private utilities that cannot be accommodated within the proposed shared driveway or adjacent rights-of-way can be provided on the Final Plat. At this time no specific utility easements adjacent to the street tract or rights-of-way have been identified as being necessary. Therefore, this criterion is met.

#### **DEVELOPMENT STANDARDS**

**General Information about Development Standards and Approval Criteria.** The Zoning Code contains two types of regulations: Development Standards and Approval Criteria.

**Approval Criteria,** such as those listed earlier in this report, are administered through a land use review process. Approval criteria are regulations where the decision-maker must exercise discretion to determine if the regulation is met.

**Development Standards:** Development standards are clear and objective regulations (for example: building setbacks, number of required parking spaces, and maximum floor area). Compliance with development standards is reviewed as part of the administrative permitting process and are not considered to be discretionary reviews. 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.



As noted in the findings for Criterion A above, the proposed development on Lots 6 and 7 do not appear to meet the maximum building setback in the CM zone. At the time of development, any improvements on the proposed lots must satisfy all applicable CM zoning provisions.

**Existing development that will remain after the land division.** 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 CM zone. Therefore, this land division proposal can meet the requirements of PCC 33.700.015.

### 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	Topic	Contact Information
Water Works	Title 21	Water availability	503-823-7404 <a href="http://www.water.ci.portland.or.us/">http://www.water.ci.portland.or.us/</a>
Environmental Services	Title 17; 2008 Stormwater Manual	Sewer availability Stormwater Management	503-823-7740 <a href="http://www.bes.ci.portland.or.us/">http://www.bes.ci.portland.or.us/</a>
Fire Bureau	Title 31 Policy B-1	Emergency Access	503-823-3700 <a href="http://www.fire.ci.portland.or.us/">http://www.fire.ci.portland.or.us/</a>
Transportation	Title 17, Transportation System Plan	Design of public street	503-823-5185 <a href="http://www.trans.ci.portland.or.us/">http://www.trans.ci.portland.or.us/</a>
Development Services	Titles 24 –27, Admin Rules for Private Rights of Way	Building Code, Erosion Control, Flood plain, Site Development & Private Streets	503-823-7300 <a href="http://www.bds.ci.portland.or.us.">http://www.bds.ci.portland.or.us.</a>

As authorized in PCC Section 33.800.070 of the Zoning Code, conditions of approval related to these technical standards have been included in this decision.

- The Applicant must meet the requirements of the Fire Bureau in regards to fire flow/water supply; wildland fire hazard flow; roadway grade; fire apparatus access; and aerial fire department access roads. These requirements are based on the technical standards of Title 31 and Fire Bureau Policy B-1.

- The Applicant must meet the requirements of Urban Forestry for street tree planting as part of the street improvements. Include street trees on all street plans. This requirement is based on the standards of Title 20.

### **III. CONCLUSIONS**

The Applicant has proposed a seven lot subdivision, as shown on the attached Preliminary Plan (Exhibit C-1c). As discussed in this decision, the relevant standards and approval criteria have been met, or can be met with conditions. The primary issues identified with this proposal are: right-of-way dedication, frontage improvements, a water main extension, shared access and utility easements, fire flow and apparatus requirements.

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

### **IV. DECISION**

**Approval** of a Preliminary Plan for a seven lot subdivision with shared access and utility (sanitary sewer and storm sewer) easements, as illustrated with Exhibit C-1c, subject to the following conditions:

#### **A. The final plat must show the following:**

1. The Applicant must meet the street dedication requirements of the City Engineer for SW 11<sup>th</sup> Avenue. The Applicant must also show any additional right-of-way dedication to accommodate stormwater management facilities for the required street improvements on SW 11<sup>th</sup> Avenue and SW Curry Street. The required right-of-way dedication(s) must be shown on the Final Plat.
2. A Reciprocal Access Easement must be shown and labeled on the Final Plat, extending from SW Curry Street and adjacent to the rear lot lines of Lots 1 through 6, as shown on Exhibit C-1c. The easement shall allow shared use of this area for all of the purposes that a driveway would be typically used for.
3. A Private Sanitary Sewer Easement, for the benefit of Lots 2 through 4, must be shown and labeled over the relevant portions of Lots 2 through 5 to the satisfaction of the Bureau of Environmental Services.
4. A Private Storm Sewer Easement, for the benefit of Lots 1 through 5 must be shown and labeled over the relevant portions of Lots 1 through 6 to the satisfaction of the Bureau of Environmental Services. The Private Storm Sewer Easement must include all stormwater management facilities that serve the access easement and can only service Lots 1 through 5.
5. A recording block for each of the legal documents such as Maintenance Agreement(s), acknowledgement of special land use conditions, or Declarations of Covenants, Conditions, and Restrictions (CC&Rs) as required by Condition C.6 below. The recording block(s) must, at a minimum, include language substantially similar to the following example: "A Declaration of

Maintenance Agreement for (name of feature) has been recorded as document no. \_\_\_\_\_,  
Multnomah County Deed Records.”

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

**Streets**

1. The Applicant must provide plans, financial assurances, and engineering fees for a Public Works Permit for right-of-way improvements along the frontages of SW 11<sup>th</sup> Avenue and SW Curry Street to the satisfaction of the Bureau of Transportation Engineering and Development Review and the Bureau of Environmental Services.

**Utilities**

2. The Applicant must provide plans and financial assurances for the water main extension to serve Lots 6 and 7 to the satisfaction of the Water Bureau.
3. The Applicant must ensure adequate hydrant flow from the nearest hydrant, and provide an adequate fire accessway, including acceptable accessway grades, for Lots 1 through 7 to the satisfaction of the Fire Bureau. Alternately, the Applicant must obtain an approved Fire Bureau appeal to these requirements, and an Acknowledgement of Special Land Use Conditions describing the appeal provisions must be referenced on and recorded with the Final Plat to the satisfaction of the Fire Bureau.

**Required Legal Documents**

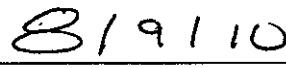
4. A Maintenance Agreement must be executed for the Reciprocal Access, Private Sanitary Sewer, and Private Stormwater Management Easement area(s) described in Conditions A.2 through A.4 above. The Maintenance Agreement must include provisions assigning maintenance responsibilities for the easement area(s) and any shared facilities within that area, consistent with the purpose of the easement, and all applicable City Code standards. The Maintenance Agreement must be reviewed by the City Attorney and the Bureau of Development Services, and approved as to form, prior to Final Plat approval.

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

1. If required, the Applicant must install residential sprinklers in the new dwelling unit on Lots 1 through 7 to the satisfaction of the Fire Bureau.
2. All utilities located under the shared driveway/access easement serving Lots 1 through 5 must be installed and the driveway must be paved and final inspection approval completed, prior to final certificate of occupancy for any dwelling unit located on these lots.

- a. A separate Site Development permit must be obtained to grade the site, install underground utilities within the shared driveway easement and pave the shared driveway.
- b. This permit must receive final inspection approval prior to issuing a final certificate of occupancy for any home located on Lots 1 through 7.
- c. The grading plan must be amended at the time of Site Development permit review to show slopes no steeper than 2 (horizontal) to 1 (vertical).

  
\_\_\_\_\_  
Gregory J. Frank, Hearings Officer

  
\_\_\_\_\_  
Date

**Application Deemed Complete:** May 21, 2010  
**Report to the Hearings Officer:** July 16, 2010  
**Decision Mailed:** August 10, 2010  
**Last Date to Appeal:** 4:30 p.m., August 24, 2010  
**Effective Date (if no appeal):** August 25, 2010 Decision may be recorded on this date.

**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.

**Appeal of the decision.** ANY APPEAL OF THE HEARINGS OFFICER'S DECISION MUST BE FILED AT 1900 SW 4<sup>TH</sup> AVENUE, PORTLAND, OR 97201 (823-7526. Until 3:00 p.m., Tuesday through Friday, file the appeal at the Development Services Center on the first floor. Between 3:00 p.m. and 4:30 p.m., and on Mondays, the appeal must be submitted at the Reception Desk on the 5th Floor. **An appeal fee of \$5,643.00 will be charged (one-half of the application fee for this case).** Information and assistance in filing an appeal can be obtained from the Bureau of Development Services at the Development Services Center.

**Who can appeal:** You may appeal the decision only if you wrote a letter which is received before the close of the record on hearing or if you testified at the hearing, or if you are the property owner or applicant. If you or anyone else appeals the decision of the Hearings Officer, only evidence previously presented to the Hearings Officer will be considered by the City Council.

**Appeal Fee Waivers:** Neighborhood Associations recognized by the Office of Neighborhood Involvement may qualify for a waiver of the appeal fee provided that the Association has standing to appeal. The appeal must contain the signature of the Chair person or other person authorized by the Association, confirming the vote to appeal was done in accordance with the organization's bylaws.

Neighborhood Associations, who wish to qualify for a fee waiver, must complete the Type III Appeal Fee Waiver Request for Organizations Form and submit it prior to the appeal deadline. The Type III Appeal Fee Waiver Request for Organizations Form contains instructions on how to apply for a fee waiver, including the required vote to appeal.

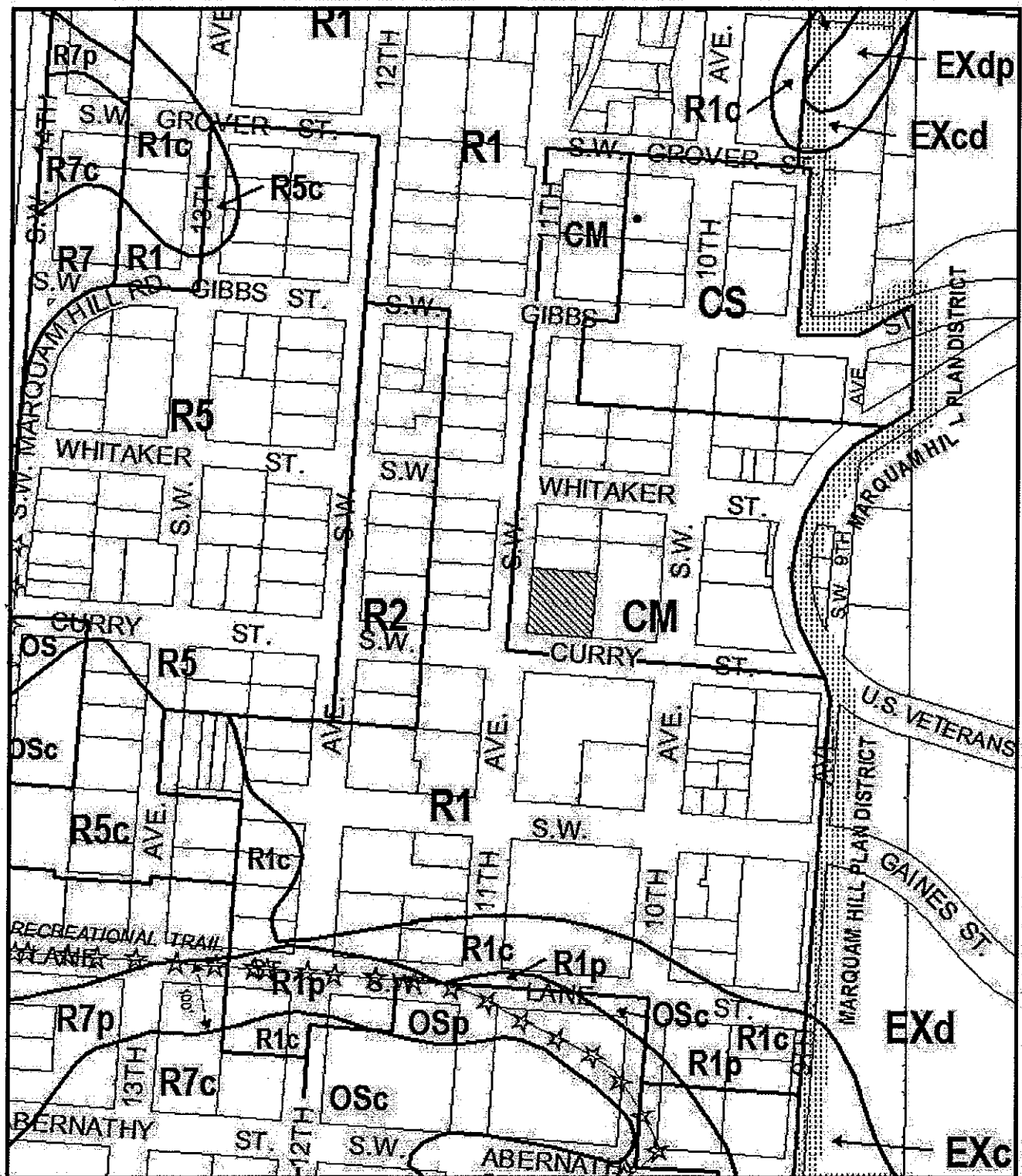
BDS may also grant fee waivers to low income applicants appealing a land use decision on their primary residence that they own in whole or in part. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Individuals requesting fee waivers must submit documentation certifying their annual gross income and household size (copies of tax returns or documentation of public assistance is acceptable). Fee waivers for low-income individuals must be approved prior to filing your appeal; please allow three working days for fee waiver approval.

**Recording the land division.** The final land division plat **must** be submitted to the City **within three years** of the date of the City's final approval of the preliminary plan. This final plat must be recorded with the County Recorder and Assessors Office after it is signed by the Planning Director or delegate, the City Engineer, and the City Land Use Hearings Officer, and approved by the County Surveyor. **The approved preliminary plan will expire unless a final plat is submitted within three years of the date of the City's approval of the preliminary plan.**

**EXHIBITS**  
**NOT ATTACHED UNLESS INDICATED**

- A. Applicant's Statement
  - 1. Revised Narrative
  - 2. Geotechnical Engineering Study and Landslide Hazard Evaluation
  - 3. Revised Preliminary Stormwater Management Report, July 2, 2010
    - a. Preliminary Stormwater Management Report, May 20, 2010
- B. Zoning Map (**attached**)
- C. Plans and Drawings
  - 1. Revised Plan Set
    - a. Existing Conditions, Tree Protection, and Demolition
    - b. Lot Analysis
    - c. Preliminary Plat (**reduced copy attached**)
    - d. Preliminary Site Plan
    - e. Grading and Erosion Control
    - f. SW Curry Street and Storm Drain Improvements
    - g. SW 11<sup>th</sup> Avenue and Storm Drain Improvements
    - h. Private Storm Drain
    - i. SW Curry Street Sanitary Sewer and Water
    - j. SW 11<sup>th</sup> Avenue Sanitary Sewer and Water
    - k. Private Sanitary Sewer
  - 2. Topographic/Site Survey
  - 3. Record of Survey
  - 4. Preliminary Plan Set
- D. Notification information
  - 1. Request for response
  - 2. Posting letter sent to Applicant
  - 3. Notice to be posted
  - 4. Applicant's statement certifying posting
  - 5. Mailing list
  - 5. Mailed notice
  - 6. Revised notice
- E. Agency Responses
  - 1. Bureau of Environmental Services
  - 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
- F. Letters: (none received)
- G. Other
  - 1. Original LUR Application

2. Site History Research
  3. Letter to Applicant re: incomplete application
- H. Received in the Hearings Office
1. Hearing Notice - Green, Kate
  2. Revised Hearing Notice - Green, Kate
  3. Letter - Grace, Stephen G.
  4. Staff Report - Green, Kate
  5. PowerPoint - Green, Kate
  6. Revised Tree Preservation Plan dated 7/23/10 - Van Loo, Kirsten



# ZONING



Site



NORTH

File No.	LU 10-113710 LDS
1/4 Section	3328
Scale	1 inch = 200 feet
State Id	1S1E09AC 9400
Exhibit	B (May 25, 2010)



