



## CITY OF PORTLAND

Office of City Auditor Mary Hull Caballero

### Hearings Office

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## DECISION OF THE HEARINGS OFFICER

### I. GENERAL INFORMATION

**File No.:** LU 13-211305 LDS  
(HO 4140027)

**Applicant:** Ken Hodges  
KH Engineering  
124 Harding Boulevard  
Oregon City, OR 97045

**Property Owners:** Victoria and Gene Pukhalsky  
6122 SE Jenne Road  
Portland, OR 97236-1645

**Hearings Officer:** Gregory J. Frank

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

**Site Address:** 6122 SE Jenne Road

**Legal Description:** LOT 53 TL 1900, JENNELYND AC

**Tax Account No.:** R428506400

**State ID No.:** 1S3E18CD 01900

**Quarter Section:** 3647

**Neighborhood:** Pleasant Valley

**Business District:** None

**District Coalition:** East Portland Neighborhood Office

**Zoning:** Single Dwelling Residential 10,000 (R10)

**Plan District:** Johnson Creek Basin – South

**Other Designations:** Potential Landslide Hazard

**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 9:01 a.m. on December 10, 2014, in the 3<sup>rd</sup> floor hearing room, 1900 SW 4<sup>th</sup> Avenue, Portland, Oregon, and was closed at 10:06 a.m. The record was held open until 4:30 p.m. on December 17, 2014 for new evidence and/or argument from all parties and until 3:30 p.m. on December 24, 2014 for final argument by the Applicant only. By Interim Order of the Hearings Officer, mailed on January 8, 2015, new deadlines were set. The Interim Order re-opened the record for the submission of new evidence and/or argument from all parties until 4:30 p.m. on January 29, 2015. The Interim Order provided that the Applicant would have until 4:30 p.m. on February 5, 2015 to submit its final argument. Therefore, the record for this case closed at 4:31 p.m. on February 5, 2015.

**Testified at the Hearing:**

Kate Green  
Bob Haley  
Ken Hodges  
Gene Pukhalsk  
Linda Bauer

**Proposal:** Ken Hodges of KH Engineering (“Applicant”) proposed to divide a 2.5 acre property commonly referred to as 6122 SE Jenne Road, Portland, Oregon (the “Subject Property”) to create 9 lots for single dwelling homes. The proposed lots range in size from 6,018 to 15,930\* square feet. The existing house on the Subject Property will be retained as proposed Lot 5. Other structures on the Subject Property will be removed. A 15,392\* square foot tree preservation tract (Tract “A”) is proposed in the southwest corner of the Subject Property, between SE Jenne Road and proposed Lot 5.

*\* During the course of the review, the Applicant shifted the proposed lot lines for Lot 5, Tract A, and the public pedestrian corridor, so the existing house would meet the required setbacks from the new lot boundaries. The sizes of the lots and tract have been updated to reflect those changes.*

The proposed lots will be accessed by a new public street (SE Manley Street) entering the Subject Property from SE Platt Avenue. The new public street will be a dead-end, terminating in a cul-de-sac for vehicles, with a public pedestrian connection extending to SE Jenne Road. Street frontage improvements are also proposed along SE Jenne Road and SE Platt Avenue.

Stormwater from the proposed development will be treated and detained with flow-through planters and then directed to the existing public storm system on SE Jenne Road. Public sanitary sewer and water extensions will be provided to serve the new lots.

The proposed subdivision is reviewed through a Type III procedure because: (1) the Subject Property is in a residential zone; (2) four or more dwelling units are proposed, not including

accessory dwelling units; and (3) the Subject Property is located within a Potential Landslide Hazard or Flood Hazard Area (see 33.660.110).

For purposes of State Law, the proposed 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, according to ORS 92.010. ORS 92.010 defines "lot" as a single unit of land created by a subdivision of land. The Applicant's proposal is to create 10 units of land (9 lots and 1 tract). Therefore, the proposed land division is considered a subdivision.

**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**.

## **II. ANALYSIS**

**Site and Vicinity:** The Subject Property is an approximately 2.5 acre (109,916 square feet) property bordered by SE Jenne Road to the west and SE Platt Avenue to the east. The Subject Property slopes up steeply (>20 percent) from SE Jenne Road and then levels off to a more gradual slope that extends across the property to SE Platt Avenue.

The west half of the Subject Property is developed with a single dwelling residence, detached garage/shed, and a circular driveway connection to SE Jenne Road. A number of large evergreen trees are located along the steep hill slope between the house and the SE Jenne Road right-of-way ("ROW"). The east half of the Subject Property is a grassy field, which has been used as pasture.

Properties to the south and east are located in the same R10 zone and Johnson Creek Basin Plan District-South Subdistrict, as the Subject Property, and those properties are developed with one and two-story houses on lots that are 10,000 square feet or larger. To the north and west, the nearby properties are outside of the city limits, but within an area of Multnomah County that has City of Portland zoning. The zoning is Residential Farm/Forest (RF), with a Pleasant Valley Natural Resources (v) overlay zone, and this area of the county is within the Pleasant Valley Plan District. The properties in this area are a half acre or larger and are developed with one or two-story houses and other detached structures, such as barns. Much of this area has steep wooded slopes, stream channels and wetlands.

### **Infrastructure:**

**Streets** – The Subject Property has approximately 274 feet of frontage on SE Jenne Road. There is one driveway entering the Subject Property from SE Jenne Road that provides access to the existing house. A portion of the driveway is also within an easement to provide access to a public storm facility on the abutting property to the south. At this location, SE Jenne Road is classified as a Neighborhood Collector, Community Transit Street, City Bikeway, City Walkway, Major Emergency Response Street and a Local Service Street for all other modes, in the Transportation System Plan (TSP). In front of the Subject Property, the SE Jenne frontage includes a paved roadway and a drainage ditch. No parking is allowed along this frontage.

The Subject Property also has approximately 240 feet of frontage along SE Platt Avenue. SE Platt Avenue is classified as a Local Service Street for all modes in the TSP. The SE Platt frontage includes a paved roadway and curb, but no pedestrian or stormwater facilities.

The nearest TriMet transit service is approximately one mile to the north along SE Powell Boulevard via Bus #9.

**Water Service** – There is a 12-inch DI water main in SE Jenne Road. The existing house on the Subject Property is served by a 5/8-inch metered service from this main. The estimated static water pressure range for this location is 71 psi to 89 psi at the existing SE Jenne Road property street frontage elevation of 324 feet.

**Sanitary Service** - There is an 8-inch VSP sanitary-only sewer in SE Platt Avenue (BES project #6161). There is a 24-inch City of Gresham RCP sewer in SE Jenne Road (City of Gresham CIP #314900).

**Stormwater Disposal** – There is a 30-inch RCP public storm-only sewer in SE Platt Avenue. There is an 18-inch RCP public storm-only sewer, which discharges water from a regional facility located south of the Subject Property and then onto a BES facility across SE Jenne Road. A ditch is also located along the east side of Jenne Road, which flows north into an area maintained by Multnomah County. See additional comments from BES regarding the stormwater drainage path in Exhibit H.7.

**Zoning:** The Subject Property is located within 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.

The Subject Property is also within the Johnson Creek Basin Plan District-South Subdistrict. The subdistrict regulations are intended to mitigate the negative impacts that may result from the development of areas where flooding and landslides are common. Limitations on development density, tree removal, and impervious surface area reduce stormwater runoff, provide groundwater recharge, reduce erosion, protect water quality, and retain native vegetation. These regulations work together to protect watershed health while allowing the safe and efficient development of unconstrained lands.

**Land Use History:** City records indicate the following prior land use reviews for the Subject Property.

- LUR 85-001904 and 85-001905 (CU 044-85): Request for Zone Change and Planned Unit Development-Denied
- LU 07-179732 LDS: 9-lot Land Division with private street and tree tracts-Void

Since these cases were denied or voided, there are no conditions that have a bearing on the pending land use case.

**Agency Review:** A "Request for Response" was mailed October 9, 2014. Several bureaus have responded to this proposal and relevant comments are addressed under the applicable approval criteria. The "E" exhibits contain the complete responses.

**Neighborhood Review:** A "Posting Notice" was placed at the site on November 7, 2014, and a "Notice of Proposal in Your Neighborhood" was mailed on November 14, 2014. One written response was received from Ms. Linda Bauer ("Bauer"), on behalf of the Pleasant Valley Neighborhood Association ("PVNA"), which noted concerns about the SE Jenne Road improvements not matching the street design proposed in the TSP (Exhibit F.1).

Bauer appeared at the scheduled December 10, 2014 public hearing (the "Hearing") and testified against the proposed land division on the Subject Property. Bauer also submitted documents related to her opposition to the proposal (Exhibits H.5 and H.8). Bauer again raised transportation related issues and also raised issues regarding stormwater management. The transportation and stormwater management issues, raised by Bauer, relate to relevant approval criteria and shall be addressed in the findings below.

### **ZONING CODE APPROVAL CRITERIA**

#### ***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 the Subject Property, 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.

<b>Criterion</b>	<b>Code Chapter/Section and Topic</b>	<b>Findings: Not applicable because:</b>
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.
J	33.640 - Streams, Springs, and Seeps	No streams, springs, or seeps are evident on the site.
L	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.D - Common Greens	No common greens are 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.B - Existing public dead-end streets and pedestrian connections	No public dead-end streets or pedestrian connections exist that must be extended onto the site.
	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 addition, the proposal must comply with the density provisions of the Johnson Creek Plan District-South Subdistrict, below:

**33.537.140.E**

**Maximum Density for Land Divisions and Planned Developments.** *The maximum allowed density of development for Land Divisions and Planned Developments is determined by calculating the number of acres in each land classification and multiplying those figures by the following fractions in Table 537-1, below.*

<b>Table 537-1</b>		
<b>Land Class Characteristics and Density Restrictions</b>		
<b>Land Class</b>	<b>Characteristics of the Land Class</b>	<b>Maximum Density</b>
<i>Class I lands</i>	<i>Located on slopes with a grade of 30 percent or greater.</i>	<i>One-fourth the maximum density allowed in the base zone.</i>
<i>Class II lands</i>	<i>Located on slopes with grade of 20 percent or greater, but less than 30 percent.</i>	<i>One-half the maximum density allowed in the base zone.</i>
<i>Class III lands</i>	<i>Located on slopes with grade of less than 20 percent.</i>	<i>Maximum density allowed in base zone.</i>

The Applicant provided a narrative (Exhibit A.4), which outlines the land classification for, and density calculations for, the site, as follows:

<b>Land Class</b>	<b>Area (square feet)</b>	<b>Maximum Density</b>
<i>Class I lands</i>	<i>6,901</i>	<i><math>6,901 \times .85 \times .25 / 10,000 = .15</math></i>
<i>Class II lands</i>	<i>3,029</i>	<i><math>3,029 \times .85 \times .50 / 10,000 = .13</math></i>
<i>Class III lands</i>	<i>99,986</i>	<i><math>99,986 \times .85 / 10,000 = 8.49</math></i>
<b>Total</b>	<b>109,916</b>	<b>8.77, which rounds up to 9 lots</b>

When a proposal includes a new street, the maximum density is based on a percentage of the total site area, per 33.610.100.D. Based on the calculations above, the maximum density is 9 units. The Subject Property is within a potential landslide hazard area, so there is no required minimum density. The Applicant is proposing 9 lots for single dwelling development, which meets the density standards.

However, the proposal includes several corner lots (Lots 1, 6, and 9), which, if developed with duplexes or further divided for attached houses, per the Alternative Development Standards in the R10 zone (33.110.240.E), would exceed the allowed maximum density of 9. Therefore, in order to ensure the maximum density provisions are not exceeded, BDS staff proposed a condition limiting the maximum density to one unit per lot. The Hearings Officer concurred with the BDS

recommended condition limiting the maximum density to one unit per lot (lots approved in this application).

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

	Min. Lot Area (square feet)	Max. Lot Area (square feet)	Min. Lot Width* (feet)	Min. Depth (feet)	Min. Front Lot Line (feet)
<b>R10 Zone</b>	6,000	17,000	50	60	30
Lot 1	6,018		59	102	59
Lot 2	6,018		59	102	59
Lot 3	6,018		59	102	59
Lot 4	6,376		60	105	60
Lot 5 (existing house)	15,930		95	175	89
Lot 6	7,253		75	80	80
Lot 7	6,027		95	75	121
Lot 8	6,035		78	76	78
Lot 9	6,285		78	80	78

\* 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.

The findings above demonstrate that the applicable density and lot dimension standards are met. Therefore, the Hearings Officer finds this approval criterion is 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. In addition, the proposal must comply with tree standards in the Johnson Creek Basin Plan District, 33.537.125, which limit tree removal to specific situations or require a separate Tree Review to remove trees not otherwise allowed to be removed by those standards.

In this case, the Applicant provided an Arborist Report that inventories the trees within the land division site, evaluates their condition, and specifies root protection zones (Exhibit A.1.e). A revised Arborist Report (Exhibit A.5) and Alternative Tree Protection Plan (Exhibit C.5) were subsequently provided to align with the revised site layout concept, and to provide alternative root protection zones for some of the trees to be preserved in areas near utilities and ROW improvements.

Some of the trees have been identified as being “exempt” from the tree preservation standards, since they are too small, damaged, or diseased. In addition, the Applicant provided a narrative (Exhibit A.3), which noted the only trees proposed for removal are diseased or would be within the proposed

ROW, in accordance with the Tree Removal Standards that apply in the Johnson Creek Basin Plan District (33.537.125).

Overall, the Arborist Report notes that the Subject Property has 830-inches of non-exempt tree diameter that is subject to the tree preservation regulations. The proposal is to preserve 333 inches, or 40 percent, of the tree diameter in accordance with Option 1 of the tree preservation standards.

The trees to be preserved and the alternative root protection zones are shown on the Applicant's Alternative Tree Protection Plan (Exhibit C.5) and noted in the revised Arborist Report (Exhibit A.5), and include trees within a Tree Preservation Tract (Tract A), and Lots 3, 4, 5 and 6, as follows:

Tree #	Species	Diameter (inches)	Alternative RPZ (Root Protection Zone)	Location
4	Douglas fir	17	12	Tract A
6	Douglas fir	27	20	Tract A
7	Douglas fir	43	24	Tract A
8	Douglas fir	23	24	Tract A
9	Western red cedar	15	12	Tract A
10	Douglas fir	28	20	Tract A
11	Douglas fir	26	20	Tract A
12	Douglas fir	18	16	Tract A
17	Douglas fir	35	24	Tract A
27	Douglas fir	22	18	Tract A
18	Red pine	6	6	Lot 5
19	White spruce	7	6	Lot 5
20	Blue spruce	9	8	Lot 5
28	Apple	18	12	Lots 3 and 4
51	Douglas fir	23	20	Lot 6
52	Western red cedar	16	16	Lot 6
<b>Total</b>		<b>333</b>		

The tree tract encompasses an area where most of the trees are to be retained and includes space for the alternative root protection zones of those trees. The size of the tract also includes a new public easement and an existing public easement that is proposed to be modified and expanded, in order to provide sanitary and storm line extensions to serve the proposal.

A paved driveway that currently supplies access to the existing house is also located within the tract and a portion of that driveway also provides access to the existing public easement and to a public



storm facility on the abutting property to the south. The project plans show those portions of the driveway that serve the residence will be removed (Exhibit C.2), while the paved area within the public easement will be retained for utility vehicles. The Arborist Report describes how the pavement removal will be undertaken to assure protection of the trees within the tract. To ensure the paving for the residential drive is removed, as proposed, a condition must be imposed which requires the Applicant to obtain and final a permit to document the driveway removal work is completed in accordance with the Arborist Report.

Further, in order to ensure that future owners of the lots and tract are aware of the tree preservation requirements, BDS proposed a condition that required the Applicant to record an Acknowledgement of Tree Preservation Land Use Conditions, at the time of final plat. The acknowledgement will identify that development on Lots 3, 4, 5 and 6 and within Tract A must be carried out in conformance with the Alternative Tree Preservation Plan (Exhibit C.5) and the revised Arborist Report (Exhibit A.5).

With the implementation of the noted conditions, the Hearings Officer finds that this approval criterion can be 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 Property 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 Subject Property so that the risk of a landslide affecting the site, adjacent sites, and sites directly across a street or alley from the Subject Property is reasonably limited.

The Applicant submitted a geotechnical evaluation of the Subject Property and proposed land division, prepared by a Certified Engineering Geologist and a Geotechnical Engineer. Site Development-BDS reviewed the Geotechnical and Landslide Hazard Study ("LHS") Report dated March 11, 2013, by Strata Design (Exhibit A.1.a) and the subsequent addendum (Exhibit A.6) dated November 25, 2014, which provides updated recommendations for Lot 6.

The LHS noted that the western side of the Subject Property has steep slopes and old fill along the top of the slope, and engineered retaining walls must be provided for the SE Jenne Road improvements to buttress new cuts. The LHS also noted that storm water should be directed to suitable discharge areas and not toward the steeper slope area along SE Jenne Road.

Additionally, the LHS noted the eastern half of the Subject Property is adversely impacted by naturally formed perched water and seepages, so ground infiltration cannot be accommodated on that portion of the site. Generally, seeps are required to be placed in tracts that limit development to protect those features. However, based on the materials provided by the Applicant, the seepages do not meet the Zoning Code definition of a seep, below, since the water from the seeps does not discharge into a stream channel.

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

Therefore, those seepage areas are not required to be placed in tracts. The LHS noted that the final grading and stormwater plan needed to address the high water table and seepage. The LHS report also indicated groundwater infiltration cannot be accommodated on the east portion of the Subject Property, while it may be feasible on the west half of the Subject Property provided a 50-foot buffer is applied for the outer west slope. As discussed in Criterion L, below, no onsite infiltration is proposed.

In addition, the LHS report addendum (Exhibit A.6) included recommendations for a landslide hazard buffer (setback) and alternative foundation designs for structures on Lot 6.

Overall, Site Development-BDS concurred with the findings of the Applicant's geotechnical report and addendum and noted that Applicant must also submit a geotechnical report at the time of plan review to ensure the foundation design of the proposed structures will comply with the Oregon Structural Specialty Code, and to ensure that slope setbacks, foundation drainage, and stormwater disposal are in accordance with the recommendations of the Landslide Hazard Study and addendum.

With the implementation of the noted conditions, the Hearings Officer finds this approval criterion will be 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 limit the impacts of erosion and sedimentation to help protect water quality and aquatic habitat.

Clearing and Grading: In this case, the Subject Property has steep grades (over 20 percent), is located in the Potential Landslide Hazard area, and requires clearing and grading for a new public street and pedestrian connection and utilities.

As shown on the Applicant's preliminary clearing and grading plan (Exhibit C.4), the clearing and grading associated with the street and utility construction will also warrant some minor grading on the lots. This will allow the Applicant to conduct the majority of the clearing and grading on the Subject Property at one time. All the clearing and grading work must occur in a way that will limit erosion concerns and assure that the preserved trees on the Subject Property will not be disturbed.

The preliminary clearing and grading plan shows proposed temporary soil stockpile areas and contour changes, as well as erosion control measures that are to be installed prior to any grading work, but it does not currently show the required root protection zones for the trees that must be preserved. In order to ensure all the tree preservation measures are also in place before any clearing or grading work, the plan must be revised to include the root protection zones noted on the alternative Tree Protection Plan (Exhibit C.5).

As noted in the response from Site Development, a Site Development Permit is required for the mass grading associated with the street construction and for utility installation. To ensure these requirements are met, the permit application must include a final clearing and grading plan that is consistent with the preliminary clearing and grading plan and the tree preservation plan. With these conditions, the Hearings Officer finds this approval criterion will be met.

Land Suitability: The Subject Property is currently in residential use and there is no record of any other use in the past. The Applicant proposed to remove a garage/shed structure that is located on Lot 7 and within the right-of-way for SE Manley. With a condition that a permit must be obtained and finalized for demolition of that structure, this will ensure future development is not encumbered.

In addition, at this time, the existing house on the Subject Property is served by an onsite septic system. That onsite system must be decommissioned and the house must be connected to public sanitary sewer, as discussed in more detail in Criterion L, below. Since the Applicant must construct a new sanitary sewer extension to serve the existing house and the other proposed lots, the timing for the decommissioning of the onsite septic system must be synchronized with and occur after the installation of that new sanitary service. The Applicant indicated the new sanitary sewer extension will be installed and the onsite system will be decommissioned prior to final plat. With conditions to that effect, the Subject Property will have the required sanitary services. Alternatively, covenants must be provided, which will not allow for any of the lots to be sold until the sanitary sewer extension is installed to the satisfaction of BES, and all required permits finalized for service to the existing house, and the onsite system has been decommissioned to the satisfaction of Site Development.

With the implementation of the conditions referenced in the findings above, the Hearings Officer finds these criteria will be met.

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

**Findings:** The Applicant indicated that a tract is proposed and will be owned by the owners of Lot 5, Tract A: Private Tree Preservation Reserve.

In addition, an easement for public sanitary and public storm sewers will be located within Tract A. BES requires an easement be granted to the City of Portland where City sewers or City access/maintenance areas are located outside of the public ROW.

In this case, as noted in the response from BES, there are two existing City access and maintenance easements that are adjacent to each other:

- Documentation of the triangular easement that is 574 square feet can be found under BES tracking # 810 or County record 98-130030.

- Documentation of the 1339 square foot easement can be found under Ordinance 172463 (County record 98-143360) which is an Amendment to the SE Fern vacation ordinance (166187).

BES noted that these easements will be incorporated into a larger City easement that will accommodate access and maintenance for the existing facilities as well as the proposed infrastructure improvements. The extent of easements will need to incorporate all of the historic easement area as well as the additional area that is necessary for the proposed infrastructure. The resultant easement will need to be at least 20 feet wide where there is more than one line constructed or proposed.

Additionally, BES commented that SE Fern Street was vacated under City Ordinance No. 166187, and the Ordinance also intended the termination of the permanent sewer easement of the vacated SE Fern ROW. Ordinance No. 172463 amended the original ordinance creating the 574 and 1339 square foot easements but the original 40-foot easement has not been quit claimed.

Therefore, BES indicated that Applicant must quit claim the 40-foot City easement over the vacated 40-foot SE Fern ROW that was terminated as part of Ordinances 166187 and 172463, prior to final plat. A note will need to be shown on the plat in the area of the old easement with a space for the recording number of the of the quitclaim deed.

Further, as stated in Section 33.636.100 of the Zoning Code, a maintenance agreement(s) will be required describing maintenance responsibilities for the tracts and easements described above and facilities within those areas. The Hearings Officer finds this approval criterion can be met with the condition that a maintenance agreement(s) is prepared and recorded with the final plat. In addition, the Hearings Officer finds that 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 referenced in the findings above, the Hearings Officer finds that this approval criterion is met.

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

**Findings:** The 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.

Lots 2, 3, 4, 5, 7 and 8 are interior lots on the north or south side of an east-west oriented street (proposed SE Manley Street). Lots 1, 6, and 9 are corner lots. In this context, the corner lots on the north side of the street (lots 6 and 9) and the interior lots on the south side of the street (Lots 1 through 5) should be narrower than the other lots.

However, the proposed land division layout was, in part, dictated by the need to provide public street connectivity, per 33.654; to preserve some of the significant trees on the site, per 33.630; and to meet lot dimensions for the lot with the existing house (Lot 5). Meeting those provisions limited the opportunity for lot size variations. Those other standards supersede the solar access provisions. Therefore, the Hearings Officer finds this approval criterion does not apply.

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

**Findings:** Bauer, in her original comments (prior to the Hearing – Exhibit F.1), her Hearing testimony and subsequent documentary submissions (Exhibits H.5 and H.8) asserted that this approval criterion had not been adequately addressed. Bauer argued that neither the Applicant nor BDS staff adequately addressed issues related to the TSP, pedestrian/bicycle access and safety for all modes.

The Applicant provided a transportation study (Exhibit A.1.b) and a supplemental analysis (Exhibit H.14a) addressing this approval criterion. The Portland Bureau of Transportation (“PBOT”) provided a review of the Applicant’s original and supplemental submissions (Exhibits E.2 and H.13).

The Hearings Officer reviewed Bauer’s arguments, PBOT’s comments and the Applicant’s submissions in making the findings for this approval criterion. The Hearings Officer found the Applicant’s supplemental submission to be credible and provided the most persuasive evidence related to this approval criterion. The Hearings Officer adopts, as additional findings for this approval criterion, Exhibit H.14a.

The transportation system must be capable of safely supporting the proposed development in addition to the existing uses in the area. The Development Review Section of PBOT has reviewed the application for its potential impacts regarding the public ROW, traffic impacts and conformance with adopted policies, street designations, and for potential impacts upon transportation services.

The Applicant, in Exhibit 14a, provided the following comments:

*“Street Capacity and Levels of Service: Street capacity and level of service was explicitly evaluated in the March, 2013 Vienna Estates Subdivision Traffic Impact Study prepared by H. Lee and Associates. The traffic impact study accounted for the impact of ten homes within the proposed subdivision, although the current development proposal includes only nine homes. Accordingly, the analysis was conservative and the roadways and intersections will operate at least as well as projected in the March, 2013 study.*

*Based on the detailed traffic counts and operational analysis, the study area intersections will meet or exceed City of Portland standards either with or without the addition of site trips from the proposed development. The area streets were found to have sufficient capacity to accommodate the projected future traffic volumes, and no operational mitigations were recommended.*

***Vehicle Access/Loading:*** Vehicles will access the subject property via a new cul-de-sac street intersecting SE Platt Avenue. Each of the nine proposed lots includes a driveway which will be the primary means of access and loading for the proposed homes.

SE Platt Avenue connects to SE McKinley Road south of the subject property, which in turn connects to SE Jenne Road and SE 182<sup>nd</sup> Avenue, which provide connectivity to the greater transportation system.

The subject site provides adequate access and loading opportunities for vehicles.

***On-Street Parking Impacts:*** The parking demand that will be generated as a result of the proposed land division was estimated using rates from Parking Generation. [footnote omitted from this quoted material] The data utilized to determine the parking demand for the additional single-family dwellings were for land use #210, Single-Family Detached Housing. Based upon this data, the 85<sup>th</sup> percentile peak parking demand for nine proposed new residences is 19 parking spaces.

Each of the proposed homes includes a driveway that can accommodate at least two vehicles, in addition to potential parking within garages. Even if the garages are not used for vehicles, a total of 18 off-street parking spaces will be available. Since the proposed development includes sufficient space for more than one vehicle to park along the new roadway serving the proposed subdivision, there is sufficient parking available within the development to accommodate the projected parking demands. Accordingly, no impacts to on-street parking in the surrounding communities are projected.

The existing residential development in the site vicinity is similar in character to the proposed development. Two and three car garages are present for the homes in the vicinity, and there is little demand for on-street parking.

Based on the analysis and observations, there is sufficient on-street parking available for the existing uses in the vicinity, and sufficient on-street parking will remain available following completion of the proposed development.

***Availability of Transit:*** The transit routes nearest the proposed development are Tri-Met route #10, Harold Street, and #87, Airport Way/181<sup>st</sup>. Both bus routes are accessible at stops located a little under two miles from the subject property.

Route #10, Harold Street, provides service weekdays from about 5:30 AM to 8:30 PM with 20- to 30-minute headways. The nearest stops are located near the intersection of SE Foster Road at SE 136<sup>th</sup> Avenue.

Route #10, Harold Street, [correct reference believed to be Route #87, Airport Way/181<sup>st</sup>] provides service weekdays from about 6:00 AM to 7:00 PM with 70-minute headways. The nearest stops are located near the intersection of SW Highland Drive and SW 14<sup>th</sup> Drive.

*It is anticipated that as residential density increases in the site vicinity, opportunities for access to transit will also further improve.*

***Impacts on the Immediate & Adjacent Neighborhoods:*** *The impacts associated with the nine added single-family dwellings are expected to be minor, and primarily consist of the small increase in vehicular traffic associated with the new residences.*

*As described previously, the added trips will not have a significant effect on efficiency or safety of the nearby street system, and the parking supply in the neighborhood is adequate to serve projected demands. The proposed development keeps with the residential character of the existing neighborhood. The development will therefore have minimal impacts felt by the neighborhood.*

***Safety for All Modes:*** *Based on safety concerns raised by the public, all crash data available online through the Oregon Department of Transportation's Crash Analysis and Reporting Unit for SE Jenne Road within the City of Portland was reviewed. The data covers the period from January 1, 2009 through May 31, 2014. Since crashes may have occurred at locations other than intersections, the crash data was examined for both intersection and non-intersection crashes. Based on the data, all reported collisions...*

*Crash rates were calculated under the common assumption that traffic counted during the PM peak period represents 10% of annual average daily traffic (AADT) at the intersection. Crash rates account for both the number of crashes and the volume of traffic in order to allow comparison of crash risk at intersections with widely different characteristics. Crash rates are expressed as the number of crashes per million entering vehicles (CMEV). Often, crash rates in excess of one to two CMEV may be indicative of specific safety hazards and require detailed review of crash patterns to identify whether there are design deficiencies that may be contributing to the crash history. Special attention was also given to any crashes involving vulnerable road users to identify specific safety issues along this road.*

*Jenne Road had 25 crashes during the analysis period. Of these 25 crashes, one crash occurred at the road's intersection with SE Baldry Street; 12 crashes occurred at the intersection with SE Foster Road; and 12 occurred at the intersection with SE McKinley.*

*The single crash at SE Baldry Street was a rear-end type crash that occurred when a driver was following too closely behind another driver who had stopped to make a right turn onto SE Baldry Street. This crash resulted in damage to property only. The crash rate was calculated to be 0.05 CMEV.*

*Of the 12 crashes at SE Jenne Road's intersection with SE Foster Road, 6 were rear-end type crashes, 3 were turning-type crashes, 1 was non-collision that resulted in an overturned vehicle caused by reckless driving, 1 was a single driver's collision with a fixed object, and 1 involved an animal that had run into the street. Of these 12 crashes, one resulted in a non-incapacitating injury (Injury B), four resulted in a possible injury or complaint of pain (Injury C), and the remainder resulted in damage to property. The crash rate was calculated to be 0.32 CMEV.*

*Of the 12 crashes at SE Jenne Road's intersection with SE McKinley Road, 6 were rear-end type crashes, 2 involved collisions with fixed objects, and the remaining four crashes involved a turning-type collisions, and angle-type collision, one head-on collision, and one backing-up type collision, respectively. Four of these crashes resulted in an Injury C, and one crash resulted in an Injury B. The remaining incidents resulted in damage to property only. The crash rate was calculated to be 0.58 CMEV.*

*The details of the individual crashes are not indicative of any apparent safety issues in the site vicinity. All of the intersections are operating acceptably with respect to crash history. There were no reported crashes involving pedestrians, bicyclists, or other vulnerable road users within the portion of SE Jenne Road operating under the jurisdiction of the City of Portland. The majority of the crashes resulted in property damage only. No incapacitating injuries or fatalities were reported. Only two non-incapacitating injuries and nine reports of a 'possible injury/complaint of pain' were included in the crash data for SE Jenne Road during the most recent five years.*

*In addition to evaluation of the segment of SE Jenne Road within the City of Portland, the most recent five years of crash data for the segment of SE Jenne Road within unincorporated Multnomah County was examined to determine whether there were any pedestrian or bicycle crashes along SE Jenne Road north of the project site. Based on the data, there were no pedestrian or bicycle crashes along any portion of SE Jenne Road.*

*Bicycles can safely share the roadway with motorized vehicle traffic on the proposed ne cul-de-sac roadway as well as on SE Platt Avenue and other low-speed, low-volume local streets in the site vicinity.*

*SE McKinley Road has a posted speed limit of 40 mph in the site vicinity. It is a relatively low volume facility that has sidewalks along the north side of the roadway that can be used by both pedestrians and cautious bicyclists. More experienced riders can share the roadway with motorized traffic.*

*SE Jenne Road has a posted speed limit of 35 mph. It is a relatively high volume facility. Sidewalks are in place along the east side of the roadway extending south from the subject property to SE McKinley Road. Again, cautious riders can use the sidewalks while more experienced riders can share the roadway with motorized traffic.*

*The local residential streets in the immediate site vicinity generally have sidewalks in place along the frontages of developed properties. Continuous sidewalks are available along both sides of SE Platt Avenue south of the subject property, as well as along SE Sawtooth Street, Bearspaw Street, SE Manley Street, SE Dunbar Drive and SE Johnston Drive. Existing sidewalks are also in place along the north side of SE McKinley Road from SE Jenne Road to SE Equestrian Drive and along the east side of SE Jenne Road south of the subject property to SE McKinley Road.*



*Pedestrians, cyclists and transit users may also use the Springwater Trail, located approximately one-half mile north of the subject property.*

*The proposed development includes some improvements to the pedestrian system. New sidewalks will be constructed on the east side of SE Jenne Road along the site frontage, on the west side of SE Platt Avenue along the site frontage, and along both sides of the new cul-de-sac roadway serving the subject property. In addition, a pedestrian path will be constructed connecting the west end of the new roadway to the sidewalks along the east side of SE Jenne Road.*

*Pedestrian connectivity in the site vicinity is generally favorable, and will be further improved upon completion of the proposed development.*

*Based on the detailed safety review, the transportation is currently operating acceptably with respect to safety for all modes. The transportation system is capable of safely supporting the proposed development in addition to the existing uses in the area.*

#### *Conclusions*

*Based on the detailed review of the City of Portland's evaluation factors per Portland City Code 33.641.020, the transportation system in the vicinity of the proposed residential development is capable of safely supporting the proposed development in addition to the existing uses in the area. With completion of the new street, path and sidewalk facilities that are part of the proposed development, safety for all modes will be improved in the site vicinity."*

PBOT staff provided a response (Exhibit H.13) to the Applicant's above-quoted open-record submission. PBOT, in relevant part, stated the following:

*"Applicant's 'supplemental technical memorandum provides an updated response to each of the six evaluation factors in this criterion with an emphasis on 'safety for all modes.' PBOT staff has reviewed this memorandum and concurs with Lancaster that the transportation system is capable of safely serving the proposed development in addition to the exiting uses in the area. With the completion of new street, pedestrian connection, and sidewalk facilities that are part of the development, safety for all modes will be improved in the site vicinity."*

PBOT, in Exhibit E.2, stated the following:

*"A concern has been raised that the project does not comply with the Transportation System Plan (TSP) in the Transportation Element of the Comprehensive Plan because the required frontage improvements do not match a future project identified in Major Transportation Improvement List. The TSP Major Transportation Project List for Jenne/174<sup>th</sup> (Foster-Powell) #80007 calls for Jenne Road to have 3-lanes, bike lanes, and sidewalks. PBOT is requiring the applicant to match the existing curb location abutting the southern property line and construct a standard sidewalk corridor. The TSP project list is for future City projects constructed as a Capitol Improvement Project (CIP). Private development is not responsible for those improvements. Providing a 3-lane*

*roadway is not practical or desirable at this location. The site is the last property within the City of Portland at this location on SE Jenne Road. Even if a 3-lane road section were practical, the reduction to 2-lanes to match the County road improvements once outside of City limits would have to occur just prior to the subject site's frontage. Also constructing a bike lane for just this frontage is not practical since there is none where the existing curb to the south is located, and to the north is outside of City limits.*

*The required improvements identified for SE Jenne as part of the land division will already result in the need for significant retaining walls behind the required sidewalk corridor on SE Jenne. Building a 3 lane roadway with bike lanes on both sides will require even more significant retaining walls on the subject site frontage. In addition, the west side of SE Jenne Road would need a significant amount of fill and an elevated structure to provide support for the additional lanes, and sidewalk. Given the existing topographical constraints, PBOT development review staff has requested that the project for this section of SE Jenne be reevaluated in the on-going TSP update being prepared by PBOT Planning Staff in coordination with the Bureau of Planning and Sustainability.*

*Furthermore, PBOT Development Review staff can find no approval criteria in the land division chapter of Title 33 that requires existing roadways to meet any requirements in the Transportation System Plan within the Transportation Element of the Comprehensive Plan. The only mention of meeting any Comprehensive Plan goals or policies related to transportation approval criteria is in 33.645.110.B.e. This section deals with street connectivity and addresses new public streets, not existing streets. It says that master street plans for the area in identified in Goal 11B of the Comprehensive Plan should be considered when determining the location of new public through streets." (Exhibit E.2)*

Finally, in Exhibit E.2, PBOT stated the following:

***"Connectivity:** The project will extend SE Manley Street from SE Platt through the site to the northern property line for future extension. In addition, a pedestrian connection from the end of the new cul-de-sac to SE Jenne Road is being provided."*

The Hearings Officer finds that there is credible evidence in the record related to all of the evaluation factors referenced in this approval criterion. The Hearings Officer finds that the transportation system is capable of supporting the proposed land division as well as other existing uses in the area. The Hearings Officer finds this approval criterion is 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:** Chapters 33.651 through 33.654 address water service standards, sanitary sewer disposal standards, stormwater management, utilities and ROWs. The Hearings Officer finds these approval criteria and standards are met as shown in the following table:

**33.651 Water Service standard – See Exhibit E.3 for detailed bureau comments.**

**Findings:** The Water Bureau provided the following comments about the existing and required water services for the site:

*“There is an existing 5/8” metered services, (Serial #55550110, Account #2965089900) which provides water to the existing house at this location from the existing 12” DI water main in SE Jenne Rd.*

*City Title 21.12.010 and 21.12.070 state that a water service must front and supply a property for which the water service is providing service and cannot cross other properties. The applicant will need to establish in writing that the Tract “A” will remain in the ownership of the existing house and the proposed Lot 5 prior to the Water Bureau being able to sign off on the final plat. This must be done to meet current City Title requirements for providing Water Service to this house, to allow continual occupancy of the house and may affect phasing of the proposed project, since the backside service line will need to be maintained until it can be relocated as shown in the proposed plans. Once the new water main is installed as shown in the proposed new public street for this subdivision, this service may be killed by Water Bureau crews at the applicant's expense, and relocated as shown in the proposed plans to the Lot 5 street frontage off the new public street where the existing house will reside, also at the applicant's expense. The SDC credit may be applied to the new water service to be purchased for this property.*

*Regarding the water main shown in the presented subdivision plans, the applicant has the option of paying for the Water Bureau to design and install this water main, or installing it themselves prior to dedication and paying the Water Bureau to review the developers plans and inspect construction of, and connect the new water main to the existing 12” DI water main in SE Platt Ave as shown. The applicant will need to pay the fee for a water main installation by the Water Bureau or pay for an inspection and connection estimate for the proposed development contractor water main installation work prior to the Water Bureau being able to sign off on the final plat.*

*For the proposed lots 1 thru 9, City title 21.12.010 will require any new building construction, or any construction that will need water, to have a water service and meter of appropriate size installed within the public right-of-way and within the specific property boundary/frontage for which it will serve. A Water Bureau review for fixture count will need to be submitted by the applicant at the time of submittal of the building permit to appropriately size the water service and meter for each lot location. All applicable costs will be the responsibility of the applicant.*

*Also for all lots, the sanitary lateral must be installed in a manner which provides 5’ minimum of horizontal skin to skin clearance from the new water services and service lines within the right-of-way in order to meet Oregon State OAR 333 rules for proximity of sewer line to potable water lines.*

*Based on this information, in order to meet the standards of 33.651 and the technical requirements of Title 21, the Water Bureau calls for the following conditions:*

- *The applicant will need to request and pay the fee for a water main installation by the Water Bureau, or request and pay for an inspection and connection estimate for the proposed development contractor water main installation work as stated above, prior to the Water Bureau being able to sign off on the final plat.*

- *The applicant must assign ownership of the proposed "Tract A" to Lot 5 in writing, where the existing house will remain in order to continue to serve water to the existing house from the existing water service, and continue to provide water through this service to the existing house until such time as this service may be transferred to the Lot 5 frontage off from the proposed new public street, or provide the Water Bureau and BDS with a document stating that the house will not be occupied at the time of final plat and through the construction process until water service may be supplied from the proposed new water main, prior to the Water Bureau being able to sign off on the final plat."*

With the implementation of these conditions, the Hearings Officer finds this approval criterion will be met.

### **33.652 Sanitary Sewer Disposal Service standards – See Exhibit E.1 and E.5**

**Findings:** BES reviewed the proposed sanitary services proposed by the Applicant. BES also noted that the Applicant provided a letter from the City of Gresham, dated December 10, 2012, with notes the Wastewater Division Manager will allow connection of the subject properties to the SE Jenne Road interceptor. To provide that connection the Applicant will be required to construct a new public sewer, which is proposed to run down the proposed new public street, SE Manley Street, through an easement within Tract A, and into the SE Jenne ROW to the City of Gresham manhole.

Where the sewer is located outside of the public ROW, it must be located in an easement to the City of Portland. The easement must be a minimum of 20-feet wide.

Additionally, the house that is proposed to be retained on Lot 5 is currently served by a septic system, and Site Development and BES noted that the house must be connected to the public sewer system in order to meet these standards.

The Hearings Officer finds that to assure the proposal will meet the sewer service standards, the following conditions must be applied prior to final plat approval:

- The Applicant must obtain a public works permit and construct the new sewer connection to the satisfaction of BES or the Applicant must provide approvable plans, financial guarantees, and fees for the public works permit for the sewer connection and street improvements to the satisfaction of BES; and
- The existing house must be connected to the public sewer system to the satisfaction of BES and the existing on-site septic system must be decommissioned to the satisfaction of Site Development; or covenants for future easements that will not allow any of the proposed lots to be sold or developed until the sewer connection for the existing house is installed must be provided to the satisfaction of BES, Site Development, and Land Use. If a new sewer connection is established for the house, all plumbing permits must receive final inspection; and
- Any required easements must be identified on the plat to the satisfaction of BES, Site Development, and Land Use. If any easements are provided, a Maintenance Agreement for each easement must be submitted for approval by BDS and the City Attorney and must be recorded with the Final Plat.

With the implementation of these conditions, the Hearings Officer finds the sanitary sewer service standards of 33.652 can be met.

**33.653.020 & .030 Stormwater Management criteria and standards – See Exhibits E.1**

**Findings:** Bauer, in Hearing testimony and in Exhibits H.5 and H.8, asserts that this approval criterion is not met. Bauer argued that 32,979 square feet of impervious surface will be created on the Subject Property as part of the proposed development. The Hearings Officer believes Bauer (see Exhibit H.8, page 5) is suggesting that all of the runoff, from the 32,979 square feet of impervious surface created by the proposed development, will be “added to the wetland at the base of Jenne Road.” (See Exhibit H.8, page 3) Bauer argued that the stormwater will flow to the “BES Schweitzer Floodplain Restoration project” (Exhibit H.5, pages 5, 6, 7 and 8) which is “several properties away and has no physical or piped connection to the wetland beneath Jenne Road.” Bauer, in Exhibit H.12 (pages 1 and 2), stated the following, “This subdivision, as currently proposed, violates the current ‘Stormwater Management Manual-January 2014’, which states ‘Stormwater that is generated from public property mu[s]t be managed on public property, in publicly maintained facilities.’ Since this proposed subdivision does not meet the requirements of the Stormwater Management Manual-January, 2014, I request that this subdivision LU 13-211305 LDS be denied.” Bauer, in Exhibit H.12 (page 2) went on to say the following:

“During the summer of 2014, the City of Portland was approached thru the willing seller program with an offer to sell 5939 SE Jenne Lane to the City of Portland. At that time the City of Portland (BES) declined to buy 5989 SE Jenne Lane. I did not find a written legal agreement between the new owner and the City of Portland (BES) that was approved by the Portland City Council to allow 5889 SE Jenne Road to be a ‘shared facility’. And since the first floor Development Services Center has identified that the City of Portland (BES) does not own the facilities on 5989 SE Jenne Road no additional new public stormwater is allowed to enter this property as per the Portland Stormwater Management Manual-January 2014.”

BES reviewed the proposed sanitary services and indicated that the Applicant provided a letter from the City of Gresham, dated December 10, 2012, which noted that the Gresham Wastewater Division Manager would allow connection of the Subject Property, as proposed to be developed, to the SE Jenne Road interceptor. (See Exhibit E.1.) To provide that connection, the Applicant will be required to construct a new public sewer, which is proposed to run down the proposed new public street, SE Manley Street, through an easement within Tract A, and into the SE Jenne ROW to the City of Gresham manhole.

BES noted, in Exhibit E.1, that where the sewer is located outside of the public ROW, it must be located in an easement to the City of Portland. The easement must be a minimum of 20-foot wide.

Additionally, the house that is proposed to be retained on Lot 5 is currently served by a septic system, and Site Development and BES noted that the house must be connected to the public sewer system in order to meet these standards (Exhibit E.1).

BES, in a supplemental memorandum (Exhibit H.7), stated the following:

"Stormwater from the development and street improvements is proposed to be discharged to the 18-inch public storm line that outfalls on the east side of Jenne Road. This storm system was constructed in 1999 under a Public Works permit as part of the McKinley Estates subdivision (95-0085 LU). BES maintains the sewer to the outfall. Downstream from the outfall there is a surface flow through a defined channel that flows northwest to the base of a hill, at which point the stream discharges to what appears to be a wetland. The stream and wetland are located on property owned and maintained by BES (R340523). Discharge from the west and flows toward a pond system on the private property to the north (5989 SE Jenne Lane). Based on City as-builts from 2000, there is survey information for 3989 SE Jenne Lane noting mostly surface drainage, several culverts, and a flow control riser at the down-stream end of the pond system. Discharge from this property is to City of Portland BES property where there has been significant restoration of Johnson Creek and its floodplain to reduce local flooding, improve water quality, and restore aquatic and terrestrial habitat.

Environmental Services staff from Land Use, Development Engineering, and Watershed Services visited the site and the discharge point to the noted wetland on October 19, 2012 as part of a site evaluation for the subject land division.

The public storm system to which the subject site is proposing to connect was designed under the 1991 Sewer Design Manual, which required that 'Storm drainage conveyance facilities must be designed to carry the present and future stormwater flows from the drainage basis' (page 24-1). The subject subdivision appears to be within the drainage basis of the conveyance and discharge system built in 1999."

The Applicant, in a letter dated February 5, 2014 (Exhibit H.15) responded to Bauer's comments/allegations as follows:

"The person submitting the additional information states 'This subdivision, as currently proposed, violates the current 'Stormwater Management Manual-January 2014' which states 'Stormwater that is generated from public property much [must] be managed on public property, in a publicly maintained facilities.' This subdivision does manage the stormwater in publicly owned facilities on the proposed SE Manley St and SE Jenne Rod within the public right of way. The management facilities on SE Manley St. then discharges to the existing publicly maintained stormwater manhole (ACQ515). The management facilities on SE Jenne Rd discharges to the existing roadway ditch on SE Jenne Rd which is also publicly maintained. All of this is shown on the Preliminary Utility Plan submitted with the application. This plan also shows the future private stormwater will

be managed on private property. No shared facilities are proposed in this subdivision.

The proposed discharge points to this subdivision were reviewed by the Bureau of Environmental Services (BES) through the Land Use process and the Public Works Permit concept review. It was determined that the discharge points were acceptable to BES. Benjamin Kersens, BES Systems Development has also submitted more information addressing this item. This development also maintains the pre-developed run off rates from the site up to a 25 year storm event meeting the Johnson Creek Basin Plan District requirements which is shown in the Stormwater Report provided with the application."

The Hearings Officer also incorporates, in their entirety, BES comments made in Exhibit E.1. The Hearings Officer also incorporates all proposed BDS descriptive text and proposed findings from the Staff Report and Recommendation to the Hearings Officer (Exhibit H.2, pages 13, 14 and 15).

The Hearings Officer finds provocative the issues raised by Bauer. The Hearings Officer finds her arguments not to be persuasive. The Hearings Officer finds the Applicant submitted a series of reports related to stormwater management (Exhibits A.1.c, A.2.b, A.3 and A.4). The Hearings Officer finds these reports were prepared by an Oregon licensed engineer and reviewed and approved by professional BES staff (Exhibit E.1). The Hearings Officer finds the Applicant provided supplemental stormwater management comments (Exhibit H.15). The Hearings Officer finds BES provided supplemental comments regarding stormwater management (Exhibit H.7). The Hearings Officer finds Exhibits A.1.c, A.2.b, A.3, A.4, H.7 and H.15 represent an extensive investigatory process leading to a credible conclusion that the stormwater management proposal for the proposed land division on the Subject Property does meet the approval criteria set forth in PCC 33.653.020 and the stormwater management standards set forth in PCC 33.653.030.

The Hearings Officer finds, with the imposition of the conditions set forth in the BDS Staff Report and Recommendation to the Hearings Officer (Exhibit H.2, pages 13, 14 and 15), the stormwater management criteria and standards of PCC 33.653.020 and 030 can be met.

**33.654.110.B.1 Through streets and pedestrian connections**

**33.654.110.B.2 Approval criterion for dead-end streets in OS, R, C, and E zones.**

**33.654.120.C.3.c. Approval criterion for turnarounds.**

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

**Findings:** Generally, through streets should be provided no more than 530 feet apart and pedestrian connections should be provided no more than 330 feet apart. Also, these facilities should be at least 200 feet apart.

The Subject Property is located at the edge of the City of Portland/Multnomah County boundary and does not meet the noted spacing requirements.

To address these provisions, the proposal includes a new public street (SE Manley Street) and a new public pedestrian connection. At this time, the public street will terminate with a turn-around at the north border of the Subject Property, and the pedestrian connection will extend west from the terminus of the new street to a new sidewalk facility on SE Jenne Road. The combination of these facilities will provide a through pedestrian route, which, given the steep slopes on the west side of the site, is more feasible than a through street. In addition, the street configuration will allow for a future street extension to the north, in the event the neighboring property is developed.

A sidewalk is proposed around the entire turn-around, which will provide convenient public access along SE Manley Street.

The size and configuration of these street improvements (street, turn-around, pedestrian connection, and associated stormwater facilities) is being reviewed as part of the public work permit to ensure these facilities will provide adequate area for safe vehicular and pedestrian movement. As noted in the responses from BES and PBOT, the public works plans have received concept approval.

Based on these factors, with the implementation of conditions for the noted improvements, the Hearings Officer finds these approval criteria will be met.

**33.654.120.B & C Width & elements of the right-of-way** – See Exhibit E.2 for bureau comment.

**Findings:** The Hearings Officer incorporates, as additional findings for this approval criteria, the findings for approval criterion PCC 33.641 as set forth above.

In reviewing this land division, PBOT relied 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. In this case, PBOT determined that the following improvements must be made in order to ensure that vehicles, pedestrians, and bicyclists can safely travel within the proposed development:

- *“Dedicate a minimum of 50.5-ft for new public street to be improved with a 28-ft shed cross section roadway, curbs, 5.5-ft stormwater planter on one side and a 4-ft furnishing zone on the other side, 5-ft sidewalks, and a 0.5-ft frontage zone between the back of the sidewalk and the property line. On-street parking will be allowed on only one side of the street only. For the cul-de-sac, construct a 60-ft diameter roadway with a 10-ft sidewalk stormwater planter may be allowed. This will require a minimum 80-ft diameter dedication. At the northern edge of the cul-de-sac the dedication along the property line must be 58-ft with a 1-ft reserve strip for future street extension to the north and east through the abutting site.*
- *For SE Jenne, improvements will include matching the existing curb location to the south and construct a 12-ft sidewalk corridor consisting of the 0.5-ft new curb, 4-ft stormwater planter, 6-ft sidewalk, and a 1.5-ft frontage zone. Additional dedication may be needed depending on the type of public stormwater facilities approved by BES. The minimum roadway width must remain at 18-ft. application.*



- *Dedicate a minimum 15-ft for a public pedestrian connection from the cul-de-sac to SE Jenne Road. Within the 15-ft construct a 6-ft concrete walkway and any associated stormwater facilities approved by BES.*
- *Dedicate 5-ft along the SE Platt frontage and construct a 10-ft sidewalk corridor consisting of the existing 0.5-ft curb, 4-ft planting strip, 5-ft sidewalk, and a 0.5-ft frontage zone.” (Exhibit E.2)*

With these improvements, PBOT determined that 8 additional dwellings can be safely served by the existing street without having any significant impact on the level of service provided.

PBOT required a condition be imposed in this case to require a ROW dedication necessary to accommodate the new public street be shown on the final plat, and further, that the Applicant must provide plans and financial assurances for the construction of these street improvements prior to final plat approval.

With the conditions described above, the Hearings Officer finds this approval criterion is met.

**33.654.120.E. Approval criterion for the width of pedestrian connections.**

**Findings:** An approximately 15-foot wide pedestrian connection is proposed. The pedestrian connection will include a 6-foot wide paved pathway, a retaining wall to support the pathway, and space for stormwater management facilities for the pathway. Due to the steep site grades and tree preservation requirements, a direct line of sight from one end of the pedestrian connection and the other is not provided. However, the pedestrian connection includes a sloped walkway that is configured to tie into the site topography and provide an accessible route of travel to accommodate the expected users between SE Manley Street and SE Jenne Road. As noted in the responses from BES and PBOT, the elements within the pedestrian connection ROW have received conceptual approval as part of the public works review. Based on these factors, this criterion is met.

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

The project plans show an 8-foot Public Utility Easement on each lot adjacent to the SE Manley Street ROW. Any easements that may be needed for private utilities that cannot be accommodated within the adjacent ROWs can be provided on the final plat. As such, 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.

**Future Development:** Among the various development standards that will be applicable to this lot, the Applicant should take note of:

**Johnson Creek Basin Plan District-South Subdistrict Development Standards:** As outlined in 33.537.140, the subdistrict provisions regarding limits on tree removal and impervious surfaces must be met at the time of development. As noted in the comments regarding existing development, below, a Supplemental Plan must be provided to demonstrate how the existing

development that will remain on Lot 5 will continue to comply with or be modified to comply with these provisions.

**Existing Development:** The existing house will remain and be located on Lot 5. The division of the property may not cause the structures to move out of conformance or further out of conformance to any development standard applicable in the R10 zone and the provisions of the Johnson Creek Basin Plan District-South Subdistrict. 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 (Please see section on Other Technical Standards for Building Code standards.)

The following Zoning Code standards relate to existing development on the site:

- Minimum Setbacks – The existing house identified to remain on the site must meet the required Zoning Code setbacks from the proposed new lot lines. Alternatively, existing buildings must be set back from the new lot lines in conformance with an approved Adjustment or other Land Use Review decision that specifically approves alternative setbacks. As shown on the Site Plan (Exhibit C.2), the existing house will be at least 20 feet from the street lot lines, and at least 10 feet from the side and rear property lines, so the required setbacks are being met. To ensure this standard continues to be met at the final plat stage, the final plat must be accompanied by a supplemental survey showing the location of the existing building relative to the adjacent new lot lines.
- Accessory Structures – In this zone, accessory structures are not allowed on a lot without a primary structure or across a proposed lot line. Therefore, in order for the proposed new lots to be approved, all accessory structures on Lot 7 and in the right-of-way for the new street (SE Manley Street) must be removed prior to final plat. Demolition permits are required. To ensure that this standard is met, a condition must be applied, which requires that the applicant must provide documentation that all required demolition permits have received final inspection, prior to final plat approval.
- Required Off-Street Parking – In this zone, one parking space per dwelling unit is required. A garage provides this required parking for the existing house on Lot 5. As a result of this land division, the required parking space for the existing house will be located on a different lot. In order to ensure that parking requirements continue to be met, a new parking space for the existing house must be constructed on Lot 5 prior to final plat approval. Permits must be obtained to construct a new parking space. Documentation of final inspection of this new parking space will be required prior to final plat approval.
- Main Entrances and Street-Facing Facades - In this zone, the main entrance of residential structures must face a street, or open onto a porch that faces the street, and street-facing facades of residential structures must have windows that comprise at least 15 percent of the façade area. After the land division, the street frontage for this house will be provided by the new public street and new public pedestrian connection. The main entrance and street facing facades for the existing house that will remain on Lot 5 must meet these standards

along the new rights-of-way. The applicant provided an elevation drawing of the front façade (Exhibit C.6) to address these provisions; however, the plan does not include a measurable scale or include calculations about window area. Therefore, prior to final plat approval, the applicant must provide measureable elevation drawings of the existing house to show these provisions are met, or obtain and finalize a building permit to make modifications to the house that will remain on Lot 5, in order to demonstrate compliance with 33.110.230.C and 33.110.232.C.

- **T1 Tree Standard** – Residential development has a tree requirement that is currently met on the site (33.248.020.H). Lot 5, with existing house, must continue to meet this standard, after the land division and associated tree removal. Lot 5 is 15,930 square feet, so 32 inches of trees are required. Based on the tree inventory plan, there are over 55 inches of tree diameter that will be located on Lot 5, so this requirement should continue to be met. Additionally, trees on the site are subject to the Johnson Creek Basin Plan District regulations and must continue to comply with those provisions as well.
- **Impervious Area** – There is a 50 percent limitation on impervious area in the development standards for the Johnson Creek Basin Plan District-South Subdistrict. The applicant has provided calculations of the impervious area on Lot 5, to demonstrate that this requirement will be met. To show the requirement will continue to be met at the time of final plat, this information must be provided as part of the supplemental plan or the applicant must obtain and finalize permits for changes that will be made to the site to meet this provision.

With the conditions noted above, this land division proposal can meet the requirements of 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.

<b>Bureau</b>	<b>Code Authority and Topic</b>
Development Services/503-823-7300 <a href="http://www.portlandonline.com/bds">www.portlandonline.com/bds</a>	Title 24 – Building Code, Flood plain Title 10 – Erosion Control, Site Development Administrative Rules for Private Rights-of-Way
Environmental Services/503-823-7740 <a href="http://www.portlandonline.com/bes">www.portlandonline.com/bes</a>	Title 17 – Sewer Improvements 2008 Stormwater Management Manual
Fire Bureau/503-823-3700 <a href="http://www.portlandonline.com/fire">www.portlandonline.com/fire</a>	Title 31 Policy B-1 – Emergency Access
Transportation/503-823-5185 <a href="http://www.portlandonline.com/transportation">www.portlandonline.com/transportation</a>	Title 17 – Public Right-of-Way Improvements Transportation System Plan

Bureau	Code Authority and Topic
Urban Forestry (Parks)/503-823-4489 <a href="http://www.portlandonline.com/parks">www.portlandonline.com/parks</a>	Title 20 – Street Trees and other Public Trees
Water Bureau/503-823-7404 <a href="http://www.portlandonline.com/water">www.portlandonline.com/water</a>	Title 21 – Water availability

As authorized in Section 33.800.070 of the Zoning Code, conditions of approval related to these technical standards have been included in the Hearings Officer's decision on this proposal.

- **Fire Bureau:** The Applicant must meet the requirements of the Fire Bureau in regards to fire flow/water supply, fire hydrant spacing, public fire hydrant, addressing of structures, and aerial fire department access roads. Also, the proposed dead end street is shown to be 300 feet or less in length; however, if the street exceeds that length, the Fire Bureau will require a turnaround that meets the fire code. These requirements are based on the technical standards of the 2014 Oregon Fire Code.
- **Urban Forestry:** City code Title 20.40 requires a street tree review for new construction projects and improvements to existing structures that exceed \$25,000 in value and to all land use applications. Street trees requirements will be reviewed by the City Forester during building permit application. Tree species and location to be determined by the City Forester during plan review. Underground utilities shall not conflict with street tree planting.

### III. CONCLUSIONS

The Applicant proposed a 9-lot subdivision with a new public street and a public pedestrian connection, a tree tract (Tract A) as shown on the preliminary plan. Bauer, on behalf of the Pleasant Valley Neighborhood Association, opposed approval of the application based upon her opinion that approval criteria related to transportation and stormwater disposal had not be met.

The Hearings Officer found that Applicant's transportation analysis and PBOT's technical review provided substantial evidence that all transportation related criteria had been met. The Hearings Officer found Applicant's stormwater evidence and BES' technical review provided substantial evidence that all stormwater related approval criteria had been met. The Hearings Officer found all relevant standards and approval criteria were met or could be met with conditions.

The Hearings Officer found that, with conditions of approval, the application should be approved.

### IV. DECISION

**Approval** of a Preliminary Plan for a 9-lot subdivision, that will result in 9 standard lots, 1 tree tract (Tract A) and a new public street and a public pedestrian connection, as illustrated with Exhibit C.1, subject to the following conditions:

- A. Supplemental Plan.** Six copies of an additional supplemental plan shall be submitted with the final plat survey for Land Use, BES, Site Development, Fire, Water and Transportation review

and approval. That plan must portray how the conditions of approval listed below are met. In addition, the supplemental plan must show the surveyed location of the following:

- Any buildings or accessory structures on the site at the time of the final plat application;
- Any driveways and off-street vehicle parking areas on the site at the time of the final plat application;
- Current infrastructure;
- Square footage of impervious area on Lot 5; and
- Any other information specifically noted in the conditions listed below.

**B. The final plat must show the following:**

1. Applicant shall meet the street dedication requirements of the City Engineer for SE Jenne Road, SE Platt Avenue, and a new public street (SE Manley Street) and public pedestrian connection between SE Manley and SE Jenne. The required right-of-way dedications must be shown on the final plat.
2. A sewer easement, granted to the City of Portland, shall be shown over the relevant portions of the Tract A to the satisfaction of the Bureau of Environmental Services. The easement must be labeled as "Public Sewer Easement to City of Portland". Applicant must quit claim the existing easement as a note on the plat, as required by the Bureau of Environmental Services.
3. The tree preservation tract shall be noted on the plat as "Tract A: Private Tree Preservation Reserve. A note must also be provided on the plat indicating that the tract will owned and maintained by the owners of Lot 5
4. 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 Conditions C.14 and C.15 below. The recording block(s) shall, 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."

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

**Streets**

1. Applicant shall meet the requirements of the City Engineer for right of way improvements along the site's SE Jenne Road and SE Platt Avenue street frontages, new SE Manley Street and new public pedestrian connection dedications. Applicant shall submit an application for a Public Works Permit and provide plans and financial assurances to the satisfaction of the Portland Bureau of Transportation and the Bureau of Environmental Services for required street frontage improvements.

2. Applicant shall provide a clearing and grading plan with the Site Development permit required for the mass grading for public street and utility construction. The Site Development permit must be initiated and at a stage acceptable to Site Development, prior to final plat approval. The clearing and grading plan must substantially conform to the Preliminary Clearing and Grading Plan approved with this decision (Exhibit C.4) with the following additions:
  - It must show stockpile areas;
  - It must note that topsoil must be stockpiled on site and re-used to the extent practicable;
  - It must show root protection zones of the trees to be preserved on the Alternative Tree Preservation Plan (Exhibit C.5); and
  - It must note that all tree protection fencing must be installed prior to any clearing and grading and construction activities.

### Utilities

3. Applicant shall meet the requirements of the Bureau of Environmental Services (BES) for extending public sanitary and storm sewers in the new public street (SE Manley Street) and in Tract A. The public sewer extensions require a Public Works Permit, which must be initiated and at a stage acceptable to BES prior to final plat approval. As part of the Public Works Permit, the applicant must provide engineered designs, and performance guarantees for the sewer extensions to BES, or Applicant must have finalized construction of the sanitary and storm sewers.
4. Applicant shall meet the requirements of the Site Development Section of the Bureau of Development Services for the decommissioning the septic system on the site, and connect to the sewer as required by BES. If the sewer, described in Condition C.3 is not constructed, a covenant not to sell separately must be provided, which will not allow for any of the lots to be sold until the sanitary sewer is installed. The covenant may not be removed until all the required permits for the existing house and on-site system decommissioning are finalized to the satisfaction of Site Development and BES.
5. Applicant shall meet the requirements of the Water Bureau concerning relocation of the water service connection to the existing home.
6. Applicant shall meet the requirements of the Water Bureau for providing plans and financial assurances for the water main extension in the new public street (SE Manley Street).
7. Applicant shall meet the requirements of the Fire Bureau for installing a new fire hydrant. The applicant must contact the Water Bureau, Development Services Department at 503-823-7368, for fee installation information related to the purchase and installation of fire hydrants. Applicant must purchase the hydrant and provide verification to the Fire Bureau that the Water Bureau will be installing the required fire hydrant, with the required fire flow and pressure.
8. Applicant shall meet the requirements of the Fire Bureau for ensuring adequate hydrant flow from the nearest hydrant. Applicant must provide verification to the Fire Bureau that Appendix

B of the Fire Code is met, the exception is used, or provide an approved Fire Code Appeal prior final plat approval.

9. If the dead end street exceeds 300 feet in length, a fire department turnaround must be provided to the satisfaction of the Fire Bureau, in accordance with Fire Code Appendix D.

### **Existing Development**

10. Applicant must obtain a finalized demolition permit for removing the garage/shed structure on Lot 7 and within the right-of-way. Prior to removal of these structures, tree protection must be installed in accordance with the Alternative Tree Preservation Plan, per Condition D.1.

11. Applicant must provide elevation plans and a supplemental survey to show the existing house that will remain on proposed Lot 5 meets:

- 33.110.230.C (standards for Main Entrances);
- 33.110.232.C (standards for Street-Facing Facades);
- 33.110.220 (standards for Setbacks)

If any development standards are not met, the applicant must obtain a finalized building permit for modifications to the existing house to demonstrate compliance with these standards.

12. A parking space shall be installed on Lot 5. The parking space must be a minimum of 9-feet wide by 18-feet deep and located out of the new front setback for the lot with the existing house. In addition, the parking space must be in a location that can be accessed from the new public street (SE Manley Street). A copy of the final inspection approval of a Zoning Permit shall be submitted, documenting that the parking space has been installed within the area to become Lot 5. The new parking space must also be shown on the supplemental plan. Applicant does not need to connect the new parking space to the existing street with a paved driveway to meet this condition. A connecting driveway must be provided after the new street has been constructed, as outlined in Condition D.2.
13. Applicant is required to obtain and finalize permits to retrofit the existing house on Lot 5 with a stormwater facility that meets the Stormwater Management Manual to the satisfaction of BES. If the stormwater system will extend beyond the boundaries of Lot 5, then Applicant must provide a private stormwater easement(s) on the final plat as necessary to ensure operation and maintenance of the system, and record a maintenance agreement for the easement area.

### **Required Legal Documents**

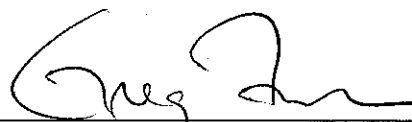
14. Applicant shall execute a Maintenance Agreement for the Tree Preservation Reserve tract. The agreement shall assign ownership of the tract to the owners of Lot 5 and include provisions assigning maintenance responsibilities for the tract and any facilities within that area. The agreement must also acknowledge all easements granted within the street tract, the beneficiaries of those easements, and the limitations on the easement areas to the satisfaction of the beneficiary service agencies. The agreement must also address the water service through the

tract. 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.

15. Applicant shall execute an Acknowledgement of Tree Preservation Land Use Conditions that notes tree preservation requirements that apply to Tract A, and Lots 3, 4, 5 and 6. A copy of the Alternative Tree Preservation Plan must be included as an exhibit to the acknowledgement. The acknowledgment shall be referenced on and recorded with the final plat.

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

1. Prior to any clearing, grading, demolition or development on Lots 3, 4, 5, 6 and Tract A, tree preservation fencing must be installed in conformance with the Alternative Tree Preservation Plan (Exhibit C.5) and the Revised Arborist Report (Exhibit A.5). Specifically, the 16 trees numbered 4, 6 through 12, 17 through 20, 28, 28, 51, and 52 are required to be preserved, with the root protection zones indicated on Exhibit C.5. Tree protection fencing is required along the root protection zone of each tree to be preserved. The fence must be 6-foot high chain link and be secured to the ground with 8-foot metal posts driven into the ground. Encroachment into the specified root protection zones may only occur under the supervision of a certified arborist. Planning and Zoning approval of development in the root protection zones is subject to receipt of a report from an arborist, explaining that the arborist has approved of the specified methods of construction, and that the activities will be performed under his supervision.
2. After the new public street (SE Manley) is installed, Lot 5 must take access from the new public street. A permit must be obtained and finalized for a new driveway connection for Lot 5 to the new street and for the removal of the portion of the existing driveway, within Tract A and Lot 5, shown on Exhibit C.2. This work must be completed in accordance with the Tree Preservation Plan, as outlined in Condition D.1.
3. Each lot has a maximum density of one unit. Accessory dwelling units are not included in the maximum density calculations.
4. A landslide hazard buffer setback or alternative foundation design must be provided for structures on Lot 6 in accordance with the Geotechnical and Landslide Hazard Study Report and Addendum (Exhibits A.1.a and A.6) to the satisfaction of Site Development.
5. Applicant must meet the Fire Bureau requirements for addressing and aerial fire department access. Aerial access applies to buildings that exceed 30 feet in height from the fire access as measured to the bottom of the eave of the structure or the top of the parapet for a flat roof.



Gregory J. Frank, Hearings Officer

FEBRUARY 17, 2015  
Date



Application Determined Complete:	March 31, 2014
Report to Hearings Officer:	November 26, 2014
Decision Mailed:	February 19, 2015
Last Date to Appeal:	4:30 p.m. March 5, 2015
Effective Date (if no appeal):	March 6, 2015

**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 (503-823-7526). Appeals can be filed at the Development Services Center Monday through Wednesday and Fridays between 8:00 am to 3:00 pm and on Thursdays between 8:00 am to 2:00 pm. After 3:00 pm Monday through Wednesday and Fridays, and after 2:00 pm on Thursdays, appeals must be submitted at the reception desk on the 5<sup>th</sup> floor. **An appeal fee of \$5,000 will be charged (one-half of the application fee for this case, up to a maximum of \$5,000).** 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.

**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 Assessor's 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. Initial Narrative
    - a. Geotechnical and Landslide Hazard Study Report
    - b. Traffic Impact Study
    - c. Stormwater Report
    - d. Certification of Stormwater Service-City of Gresham
    - e. Arborist Report
    - f. Preapplication Conference Summary
    - g. Letter to Neighborhood
  - 2. Revised Narrative in response to completeness review (March 31, 2104)
    - a. Legal Lot documents
    - b. Updated Stormwater Report
    - c. Wetland Delineation
  - 3. Supplemental Narrative (received October 1, 2014)
    - a. Revised Stormwater Report
  - 4. Updated Narrative (received November 5, 2014)
    - a. Revised Stormwater Report
  - 5. Revised Arborist Report and Tree Preservation Plan (received November 18, 2014)
  - 6. Landslide Hazard Study-Addendum (received November 25, 2014)
  - 7. 120-day review timeline extensions
- B. Zoning Map (**attached**)
- C. Plans and Drawings
  - 1. Preliminary Plat
  - 2. Site Plan
  - 3. Preliminary Utility Plan
  - 4. Preliminary Grading Plan
  - 5. Alternative Tree Preservation Plan
  - 6. Street Facing Façade-existing house
- 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
  - 6. Mailed notice
- E. Agency Responses
  - 1. Bureau of Environmental Services
  - 2. Portland Transportation
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Site Development/BDS
  - 6. Urban Forestry/Parks

- 7. Life Safety
- F. Letters
  - 1. Linda Bauer, October 16, 2014, re: concerns about SE Jenne Road improvements
- G. Other
  - 1. Original LUR Application
  - 2. Letter to applicant re: incomplete application
  - 3. Communications to/from applicant
- H. Received in the Hearings Office
  - 1. Hearing Notice -- Green, Kate
  - 2. Staff Report Green, Kate
  - 3. 11/20/14 letter -- Malnar, James P.
  - 4. 11/20/14 letter -- Malnar, James P.
  - 5. Report -- Bauer, Linda
  - 6. Record Closing Information -- Hearings Office
  - 7. 12/17/14 Memo -- Kersens, Benjamin
  - 8. Letter 8 pgs. -- Bauer, Linda
  - 9. 12/23/14 Letter -- Hodges, Ken
  - 10. PowerPoint presentation -- Green, Kate
  - 11. Request to Reopen -- Pukhalsky, Gene
  - 12. Letter/packet of information -- Bauer, Linda
  - 13. 1/29/15 Memo -- Haley, Bob
  - 14. 1/29/15 letter with attachment -- Hodges, Ken
    - a. 1/28/15 Memo, Michael Ard/Rebecca Hamilton to Bob Haley -- Hodges, Ken
  - 15. 2/5/15 Letter -- Hodges, Ken

File No. LU 13-211305 LDS  
1/4 Section 3647  
Scale 1 inch = 200 feet  
State\_Id 1S3E18CD 1900  
Exhibit B (Nov 20, 2014)

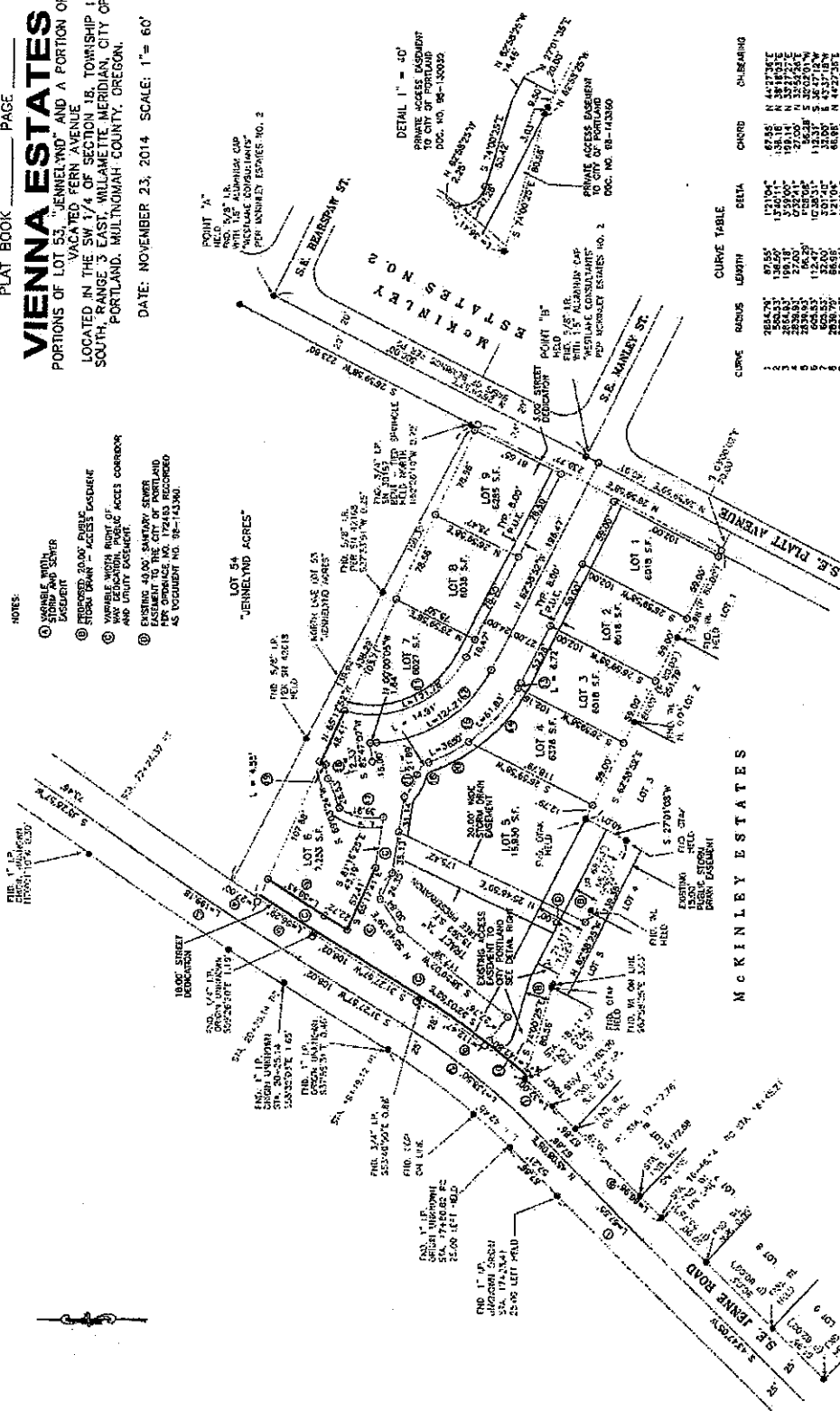
# VIENNA ESTATES

PORTIONS OF LOT 53, "JENNELYND" AND A PORTION OF  
VACATED FERN AVENUE  
LOCATED IN THE SW 1/4 OF SECTION 18, TOWNSHIP 1  
SOUTH, RANGE 3 EAST, WILLAMETTE MERIDIAN, CITY OF  
PORTLAND, MULTNOMAH COUNTY, OREGON.

DATE: NOVEMBER 23, 2014 SCALE: 1"= 60'

## NOTES:

1. CORNER WITH STATION 10+00.00
2. PROPOSED 20'00" PUBLIC EASEMENT
3. PROPOSED 20'00" PUBLIC EASEMENT
4. VARIABLE WIDTH RIGHT OF WAY EASEMENT, PUBLIC ACCESS CORRIDOR AND UTILITY EASEMENT.
5. EXISTING 4'00" SANITARY SEWER
6. EXISTING 18" WATER MAIN
7. PER ORANGE CO. 172453 RECORDED AS DOCUMENT NO. 08-143360



## MCKINLEY ESTATES

- LEGEND:
- TO BE SET 5/8" I.R. WITH ORANGE PLASTIC CAP MARKED "MANWELL LS 57148"
  - FOUND MONUMENT AS NOTED
  - FND. FOUND
  - I.R. IRON ROD
  - SN SURVEY NUMBER
  - ( ) MULTNOMAH COUNTY SURVEY RECORDS
  - ( ) RECORD DATA
  - S.F. SQUARE FEET
  - W/UTIC FOUND 5/8" I.R. W/UTIC MARKED "WESTLAKE CONSULTANTS" PER PLAT OF "MCKINLEY ESTATES"
  - OTAK FOUND 5/8" I.R. W/UTIC MARKED "OTAK INC" PER SN 55353
  - COP FOUND 5/8" I.R. W/UTIC MARKED "COP" PER SN 57651
  - P DATA PER THE PLAT OF "MCKINLEY ESTATES"
  - P2 DATA PER THE PLAT OF "MCKINLEY ESTATES NO. 2"
  - W/UTIC WITH YELLOW PLASTIC CAP
  - P.U.C. PUBLIC UTILITY EASEMENT

CURVE	RADIUS	LENGTH	DELTA	CHORD	CHORD BEARING
1	784.47'	89.55'	121.04°	67.15'	N 42.77° E
2	284.43'	195.18'	5.9900°	195.14'	N 88.11° E
3	284.43'	27.00'	0.7254°	27.00'	N 88.11° E
4	284.43'	12.47'	0.3351°	12.47'	N 88.11° E
5	284.43'	22.00'	0.7254°	22.00'	N 88.11° E
6	284.43'	22.00'	0.7254°	22.00'	N 88.11° E
7	284.43'	22.00'	0.7254°	22.00'	N 88.11° E
8	284.43'	22.00'	0.7254°	22.00'	N 88.11° E
9	284.43'	22.00'	0.7254°	22.00'	N 88.11° E
10	284.43'	22.00'	0.7254°	22.00'	N 88.11° E
11	284.43'	22.00'	0.7254°	22.00'	N 88.11° E
12	284.43'	22.00'	0.7254°	22.00'	N 88.11° E
13	284.43'	22.00'	0.7254°	22.00'	N 88.11° E
14	284.43'	22.00'	0.7254°	22.00'	N 88.11° E
15	284.43'	22.00'	0.7254°	22.00'	N 88.11° E
16	284.43'	22.00'	0.7254°	22.00'	N 88.11° E
17	284.43'	22.00'	0.7254°	22.00'	N 88.11° E
18	284.43'	22.00'	0.7254°	22.00'	N 88.11° E
19	284.43'	22.00'	0.7254°	22.00'	N 88.11° E
20	284.43'	22.00'	0.7254°	22.00'	N 88.11° E
21	284.43'	22.00'	0.7254°	22.00'	N 88.11° E

**MICHAEL LEE MANWELL**  
Professional Land Surveyor  
3947 SE 18TH CIRCLE  
GRESHAM, OREGON 97080  
(503) 661-3270  
email: mmanwell@comcast.net

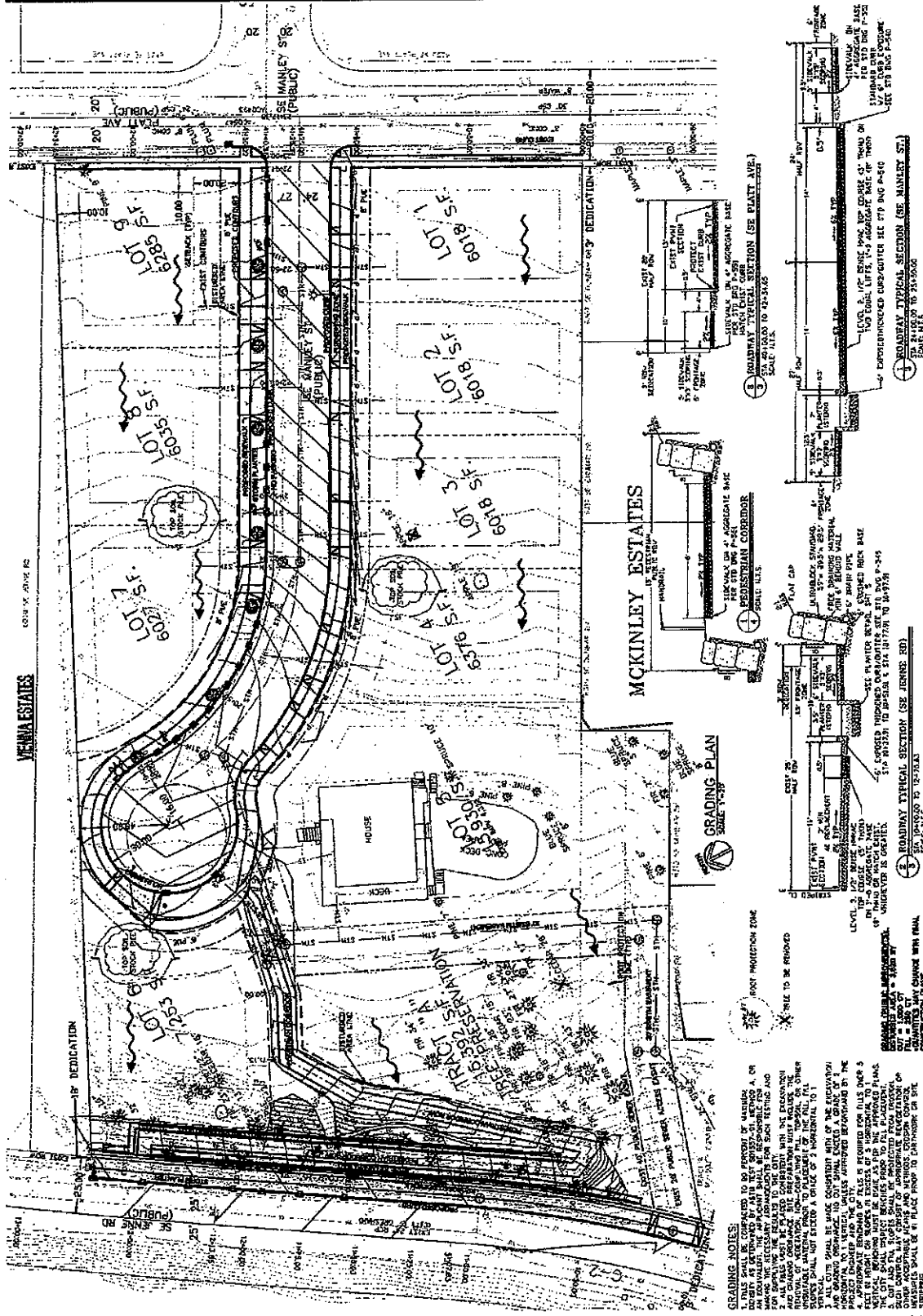
LV 13-211305  
Exhibit C-1





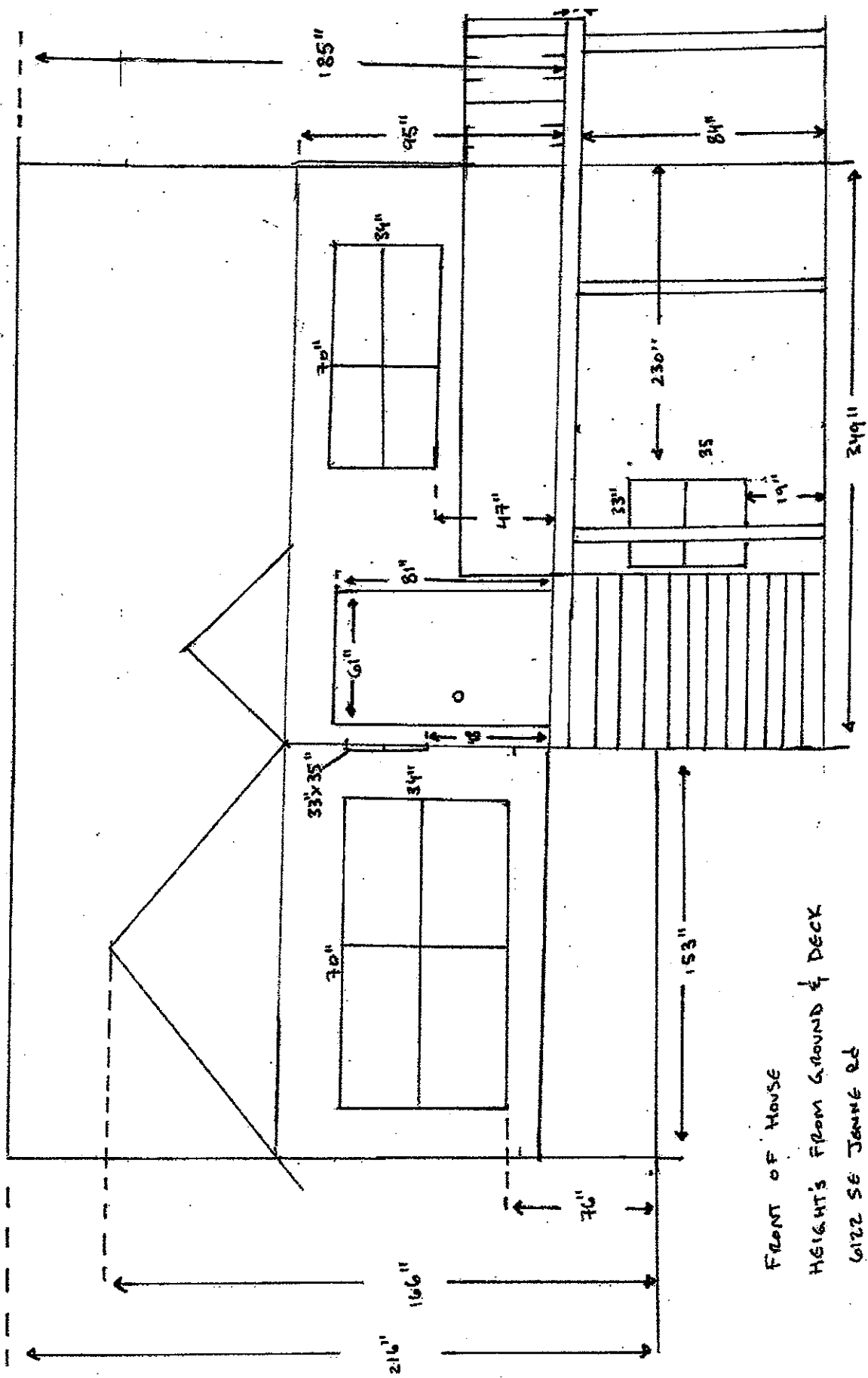


		<b>KHE Engineering</b> CIVIL DESIGN 12-148988-MI GREG A. VIKTORIA CIVIL ENGINEER 12-148988-MI PORTLAND, OR 97204		<b>PRELIM GRADING PLAN</b> Sheet No. <b>3</b> DATE: 12-01-12	
Project No.	12-148988-MI	Drawn	12/23/14	Checked	12/23/14
Project Title: <b>VIENNA ESTATES</b> 12-148988-MI GREG A. VIKTORIA CIVIL ENGINEER 12-148988-MI PORTLAND, OR 97204					



LU13-211305  
Exhibit C.4





FRONT OF HOUSE  
 HEIGHT'S FROM GROUND & DECK  
 6122 SE JENNE RD

LV 13-2-11 305  
 Exhibit C-6