



City of Lake Oswego

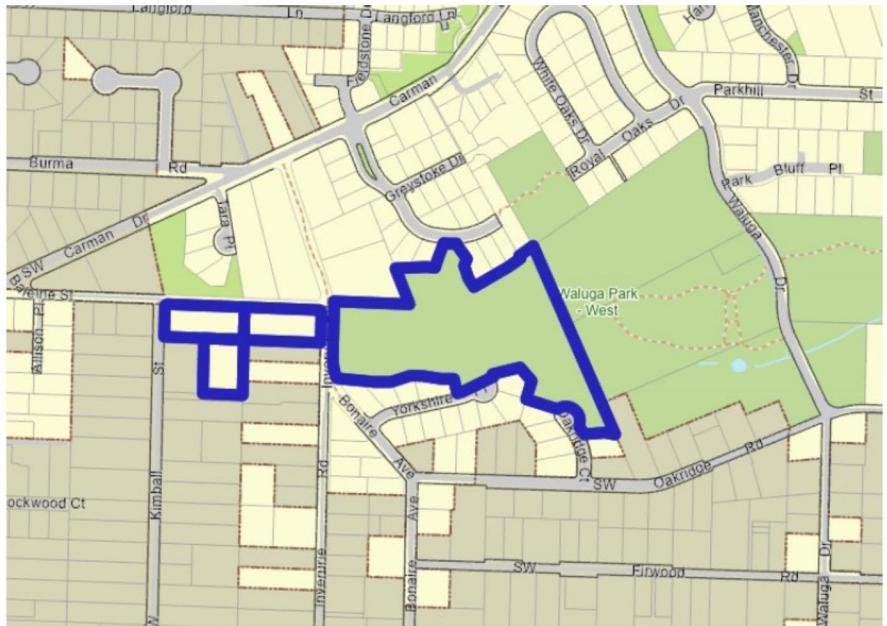
Planning Division

File Number	LU 23-0002	Report Date	October 25, 2023
Applicant's Representative	Danelle Isenhardt, Emerio Design	Owner	Hail Capital, LLC (-100, 2902, 3000); City of Lake Oswego(2209)
		Applicant	New Look Development
Site Address	No Situs	Tax Reference	21E07CA02902, 3000, 100, and 21E07DB02209
Zoning	R-7.5	Neighborhood	Lake Forest
120-day Deadline	February 12, 2024	Staff	Ellen Davis, AICP, Senior Planner

I. APPLICANT'S REQUEST

The applicant is requesting approval of:

- Serial lot line adjustments resulting in five (5) residential lots, two of which are flag lots;
- Unavoidable utility (sewer) crossing of a delineated Resource Protection (RP) District (a Class 2 wetland); and
- Removal of 43 trees.



II. RECOMMENDATION

Approval of LU 23-0002, with conditions. The conditions of approval are listed below.

Conditions of Approval			Post Approval Use Only	
A.	Prior to Approval of the Final Lot Line Adjustment Plan (Replat or two partition plats), the Applicant/Owner shall:		Notes/Status	Dept.
1.	Submit the replat (or two partition plats) for review and approval by staff substantially similar to configuration shown in Exhibits E-004 and E-005. Per LOC 50.07.007.3.a.i, the final replat or partition plats must be recorded			

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		<p>within three years of the date of this decision. <u>The deadline to record the final replat or plats to City staff is October 25, 2026.</u> The final plan must be dimensioned as depicted in Exhibit E-005, and reference this land use application – City of Lake Oswego Planning and Building Services, Case File LU 23-0002. Upon written application, prior to expiration of the 3-year period, the City Manager shall, in writing, grant a one-year extension. Additional extensions may be requested in writing and must be submitted to the City Manager for review of the project for conformance with current law, development standards and compatibility with development that may have occurred in the surrounding area. The extension may be granted or denied and, if granted, may be conditioned to require modification to bring the project into compliance with current law and compatibility with surrounding development. Failure to submit the final replat or partition plats by the deadline or to obtain an extension voids the serial lot line adjustment approval.</p> <p>The plan(s) shall include (but are not limited to) the following:</p>		
		a. Common private access and utility easement over the northerly common private access lane for the benefit of Lots 1, 2 and 3.		
		b. Common private access and utility easement over Lot 4 for the benefit of Lot 5.		
		c. Common private stormwater easements as necessary for any shared stormwater management facilities for the common private access lanes.		
		d. Private sanitary easement over Lot 4 for the benefit of Lot 5.		
		e. Public utility easements as necessary to the satisfaction of the franchise utility companies.		
		f. RP District boundaries as established in LU 22-0019, if required by Clackamas County.		
	2.	<p>If there are any liens and encumbrances on the subject site(s), a recordable affidavit from any holder of any lien or encumbrance consenting to the lot line adjustment is required.</p> <p>If the encumbrance is a mortgage, trust deed or land sale contract, a form of recordable document amending the description of the land is necessary to reflect the reconfigured lot.</p>		
	3.	<p>Submit engineered construction drawings for the public improvements for review and approval by the City Engineer. Drawings shall conform to the City's most current design standards and the drafting specifications. All final engineering design drawings and as-built plans submitted for the creation of public facilities shall be vertically controlled by the City Datum (NGVD'29) and horizontally controlled by the Oregon State Plane coordinate system (NAD 83/91). [Note: receiving construction plan approval is not a pre-requisite for recording the final replat or plats.]</p> <p>The plans shall include the following:</p>		
		a. Design to extend an 8-inch public sewer main from the existing public sanitary sewer main located in Waluga Park, along the site frontage of Baleine Street and along Kimball Street to an extension point of		

		the south boundary of Tax Lot 2902 to Kimball Street, as generally shown on the preliminary Baleine Street Sewer Extension plans (Exhibit E-006).																
		b. Design of the private sanitary services per Engineering Department design standards.																
		c. Design of the private water services per the Lake Grove Water District design standards.																
		d. Design of the driveway approaches serving the development per Engineering Department design standards. The plans shall show the clear vision triangles for the driveway approaches in compliance with both the AASHTO guidelines and the City’s sight distance standards. The design drawings shall show the vegetation required to be removed along the site frontage. Non-exempt vegetation and other obstructions within the clear sight triangles shall be cleared as needed to meet the sight distance requirements. (Note: The design for improvements on Kimball Street shall also be approved by Clackamas County Engineering.)																
		e. Indicate the location(s) of all native soil stockpiles on the plans.																
		f. Show restoration of the informal pedestrian pathway within the Baleine Street right-of-way to existing conditions after native soil has been replaced.																
	4.	Submit a preliminary title report or lot book report showing the status of title and any liens and encumbrances.																
	5.	Submit for review a new or an amended maintenance agreement for the shared access lane and utility easements, to be recorded with the final replat or plats.																
	6.	Submit a Notice of Development Restriction (template to be provided by staff) containing the restrictions, below, for review and approval of staff. The development restriction shall include the following information: a. Lot 4 is a new flag lot. Development of structures on this parcel shall comply with the provisions of LOC 50.07.007.2 regarding building and site design standards. The following development restrictions apply: <table><tr><th>Limitations & Requirements</th><th>Parcel 4</th></tr><tr><td>Structure Height</td><td>23.7 feet, regardless of slope</td></tr><tr><td>Front Facade Orientation</td><td>West property line</td></tr><tr><td>Front Setback</td><td>15 feet (Structure) 20 feet (Garage) Measured from edge of access lane</td></tr><tr><td>Side Setbacks</td><td>North: 10 feet South: 10 feet</td></tr><tr><td>Rear Setback</td><td>East: 25 feet</td></tr><tr><td>6-foot Rear Landscape Buffer</td><td>Rear (East) yard</td></tr></table>	Limitations & Requirements	Parcel 4	Structure Height	23.7 feet, regardless of slope	Front Facade Orientation	West property line	Front Setback	15 feet (Structure) 20 feet (Garage) Measured from edge of access lane	Side Setbacks	North: 10 feet South: 10 feet	Rear Setback	East: 25 feet	6-foot Rear Landscape Buffer	Rear (East) yard		
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		<p>b. Lot 5 is a flag lot created in Clackamas County prior to annexation. Development of structures on this parcel shall comply with the provisions in place at the time of lot creation. The following development restrictions apply:</p> <table><tr><th>Limitations & Requirements</th><th>Parcel 5</th></tr><tr><td>Minimum Lot Size</td><td>10,000 sq. ft.</td></tr><tr><td>Structure Height</td><td>35 feet</td></tr><tr><td>Front Facade Orientation</td><td>West property line</td></tr><tr><td>Front Setback</td><td>20 feet</td></tr><tr><td>Side Setbacks</td><td>5 feet</td></tr><tr><td>Rear Setback</td><td>20 feet</td></tr><tr><td>Maximum Lot Coverage</td><td>35% (Primary Use Structures) 40% (Primary and Accessory Structures)</td></tr></table> <p>Note: See separate Notice of Development Restriction recorded at Fee No. 2023-014056 in the Official Records of Clackamas County, Oregon, regarding the delineated Resource Protection (RP) District on Lots 3 and 4.</p>	Limitations & Requirements	Parcel 5	Minimum Lot Size	10,000 sq. ft.	Structure Height	35 feet	Front Facade Orientation	West property line	Front Setback	20 feet	Side Setbacks	5 feet	Rear Setback	20 feet	Maximum Lot Coverage	35% (Primary Use Structures) 40% (Primary and Accessory Structures)		
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	7.	Submit a final landscape plan that shows the following planting, screening, and buffering measures, to the satisfaction of Planning staff:																		
		a. <u>Rear Yard Landscaping for Lot 4</u> : The size and density of the evergreen or deciduous shrubs necessary to create a continuous and complete 6-foot wide hedge along the east property line of Lot 4. The size/species/density shall be a minimum four ft. in height at planting and which will grow to a height of at least six ft. within two years. Plantings within the delineated RP District must be a native species per the Lake Oswego Master Plant List (LOC 50.11.004 - Appendix D). Existing vegetation may be used towards meeting this standard.																		
		b. <u>Fence</u> . A 6-foot wood fence along the east property line of Lot 4 where located outside the delineated RP District.																		
		c. <u>Verification Mitigation Trees</u> . 48 mitigation trees, 47 of which must be native species, 2-inch caliper or 8 feet in height at time of planting and capable of reaching a mature height of 30 feet pursuant to LOC 50.07.007.2.f.v.																		
		d. <u>Access Lane Screening</u> . Access lane screening along south and west sides of the access lane.																		
	8.	Submit for review and approval a maintenance and monitoring plan for the RP District mitigation/restoration areas for three consecutive years.																		
	9.	Apply for and obtain a Verification tree removal permit for the forty-three trees approved for removal. The Verification application shall include a copy of the tree removal and final mitigation plans, showing a minimum of 48 mitigation trees, 47 of which must be native species. All 48 mitigation trees must be capable of attaining a mature height of at least 30 feet and must be 2-inch caliper (deciduous) or eight feet tall (evergreen) at time of planting pursuant to LOC 50.07.007.2.f.v. The native species requirement will depend on a tree’s planting location:																		

		<ul style="list-style-type: none"> • If planted outside the delineated RP District, the species must be selected from LOC Appendix 55.02-1, Native Mitigation Tree List • If planted inside the delineated RP District, the species must be selected from LOC Appendix D, Lake Oswego Master Plan List. <p>Note: Staff recommends avoiding the ash species if possible due to the threat of the Ash borer.</p>		
B.	Prior to the Issuance of any Grading or Building Permits to Construct Any Dwelling, the Applicant/Owner Shall:			
	1.	Record the staff-reviewed and approved replat or partition plats as depicted in Exhibit E-005, together with Affidavits of Consent and Amendments to Mortgage, Trust Deed or Land Sale Contract as applicable.		
	2.	Provide electronic copies of the recorded (re)plat(s) and all associated recorded documents as listed in Conditions A(1), A(2), A(5), A(6) and B(1).		
	3.	Submit a final drainage report, prepared by a registered engineer, that complies with the Stormwater Management Code and LOSWMM, to the satisfaction of the City Engineer. If the final design is as proposed, the final design report must include facility sizing calculations, to demonstrate that the proposed stormwater management facilities have sufficient storage capacity to infiltrate the 10-year, 24-year storm event. Ensure the proper design infiltration rate is used.		
	4.	Submit final plans for all stormwater management facilities. Final facility placement must adhere to setback requirements from building foundations (10 feet) and property lines (5 feet) per LOSWMM Table 3.1.		
		a. If the final design plans are to be consistent with the preliminary plans, the applicant is required to register and obtain DEQ authorization for use of any proposed UIC system. In addition, the applicant will be required to provide pretreatment if drywells are proposed.		
		b. If the applicant chooses to use a private drywell system in the final design, the applicant is required provide pretreatment prior to the drywell that meets the requirements in LOSWMM 4.6.4.		
		c. If the final design plans are to be consistent with the preliminary plans, the applicant must demonstrate that the grading of the south access lane drains to the proposed stormwater management facility or facilities.		
	5.	Per LOC Chapter 52, submit an Erosion Control Plan and apply for and obtain an erosion prevention and sediment control permit issued through the City of Lake Oswego and a NPDES 1200-C Permit from Oregon DEQ. Install and maintain all erosion control BMPs as indicated in the permits.		
C.	Prior to the Final Building Inspection on any Lot or Occupancy or any Dwelling, the Applicant/Owner Shall:		Notes/ Status	Dept.
	1.	Complete all public improvements as required by Condition A(3) above, submit certified "as-built" drawings, and receive a certificate of completion and acceptance by the City.		
	2.	Obtain all necessary permits from Clackamas County Engineering for driveway approaches and work within the right-of-way along Kimball Street. All pavement restoration within Kimball Street shall be to the satisfaction of Clackamas County.		

	3.	Provide certification from the engineer of record that the stormwater facilities were constructed per the design and are functioning properly.		
	4.	Provide proof of recorded operations and maintenance plans (OMPs) for each stormwater facility. The OMPs must describe how to properly maintain the facilities, the frequency of maintenance required and the party responsible for maintaining the facilities.		
	5.	Provide a Final Sight Distance Certification from the engineer of record documenting available sight distances from the new accesses. Non-exempt vegetation and other obstructions within the clear sight triangles shall be cleared as needed to meet the sight distance requirements.		
	6.	Submit a comprehensive final landscape plan illustrating:		
		a. 48 Mitigation trees from the verification permit per Condition A(9) and any mitigation trees required for Type II tree removal for the development of dwelling(s).		
		b. Flag lot screening along the south and west sides of the access lane and the rear property line of Lot 4 as discussed above under Condition A(7).		
		c. RP District mitigation plantings, including all 292 required mitigation trees and 1,458 shrubs, as depicted in Exhibit F-005, pg. 17. Note that all plantings within the delineated RP District must be selected from LOC Appendix D, Lake Oswego Master Plan List.		
	7.	Provide certification from the engineer of record that the access lane has been designed to Fire Code emergency vehicle load standards, to the satisfaction of the Fire Marshal.		
	8.	Post addresses for Lots 4 and 5 at the end of the shared access lane, to the satisfaction of the Fire Marshal.		
	9.	Install all required RP District mitigation, tree removal mitigation, and flag lot screening and buffering plantings as shown on the final landscape plan [see Condition C(6), above], and request a final inspection by Planning staff.		
	10.	Post a performance bond or letter of credit to the City that is equal to 120% of the value of the RP District mitigation plantings installed pursuant to the final Sensitive Lands mitigation plan, as required by Condition A(8), above, for a 3-year period, to the satisfaction of staff.		
D.	Miscellaneous: Sensitive Lands Maintenance & Monitoring			
	1.	The property owner(s) shall maintain the RP District mitigation in accordance with the approved maintenance and monitoring plan and shall provide an annual report to the Planning Department by October 31 st of each year for a 3-year period, commencing on the 31 st of October following the date of issuance of the Final Building Inspection. The report, which may be combined for the various parcels, shall be prepared by a qualified professional and shall document all site conditions with a narrative and pictures.		

Code Requirements:

1. **Expiration of Development Permit:** Per LOC 50.07.003.17, the Development approved by this decision shall expire three years following the effective date of the development permit, and

may be extended by the City Manager pursuant to the provisions of this section.

2. **Tree Protection:** Submit a tree protection site plan and application as required by LOC 55.08.020 and 55.08.030 for review and approval by staff, including off-site trees that are within the tree protection zone of a protected tree or within a development area for the project. The plan shall include:
 - a. The location of proposed tree protection measures (i.e. temporary tree protection fencing, rigid surface, wood chips, etc.). Tree protection fencing shall consist of a minimum 4-foot high metal fence secured by metal posts at the edge of the tree protection zone, or as recommended by a certified arborist and approved by the Planning Division.
 - b. A note stating that no construction activities shall occur within the fenced protected area of any of the trees, or that if construction activities are unavoidable, tree protection measures as recommended by a certified arborist will be followed to reduce or mitigate the impact of construction activities. The note shall also inform contractors that supervision by a certified arborist is required on site to oversee construction activities within the tree protection zone.
 - c. A note that clearly informs all site contractors about the necessity of preventing damage to the trees, including bark and root zone. The applicant and contractor(s) shall be subject to fines, penalties and mitigation for trees that are damaged or destroyed during construction.
 - d. A sign shall be attached to the tree protection fencing which states that inside the fencing is a tree protection zone, not to be disturbed unless prior written approval has been obtained from the City Manager and project arborist.

Notes:

1. The applicant is advised to take part in a post-Land Use Approval meeting. City staff would like to offer an opportunity to meet and discuss this decision and the conditions of approval necessary to finalize the project. The purpose of the meeting is to ensure all conditions are understood and to identify other permits necessary to complete the project. To take advantage of this meeting, please contact the staff coordinator at (503) 635-0290.
2. The land use approval for this project does not imply approval of a particular design, product, material, size, method of work, or layout of public infrastructure except where a condition of approval has been devised to control a particular design element or material.
3. Development plans review, permit approval, and inspections by the City of Lake Oswego Planning and Building Services Department are limited to compliance with the Lake Oswego Community Development Code, and related code provisions. The applicant is advised to review plans for compliance with applicable state and federal laws and regulations that could relate to the development, i.e., Americans with Disabilities Act, Endangered Species Act. Staff may advise the applicants of issues regarding state and federal laws that staff member believes would be helpful to the applicants, but any such advice or comment is not a determination or interpretation of federal or state law or regulation.

III. APPLICABLE REGULATIONS

CODE CRITERIA APPLICABLE TO APPLICANT'S REQUEST				
Code Section	Title	Condition (C), Variance (V), or Exception (E)	Criteria Met	Page # in Staff Report
50.03.002.2	Residential Use Table		Y	14-15
50.04.001.1	Residential Low Density Zones Dimensional Standards Table		Y	15-16
50.04.002	Special Street Setbacks		Y	16
50.05.010; 50.07.004.8	Sensitive Lands Overlay Districts		Y	17-23
50.06.002	Parking		Y	23-24
50.06.003.1	Access/Access Lanes (Flag Lots)		Y	24-25
50.06.003.2	On Site Circulation – Driveways & Fire Access Roads		Y	25-26
50.06.006.1	Weak Foundation Soils		Y	26
50.06.006.3; 50.07.004.1	Stormwater Management Standards	C	Y	26-27
50.06.008; 50.07.004.11	Utilities		Y	27
50.07.003.1	Application Procedures			
50.07.003.5	Conditions on Development			
50.07.003.6	Effect of Decision			
50.07.003.7	Appeals			
50.07.003.10	Certificate of Occupancy			
50.07.003.14	Minor Development Decisions			
50.07.007.2	Flag Lots	C	Y	27-31
42.03.130	Sight Distance at Roadway Intersections, Private Streets and Driveways	C	Y	33
38.25	Stormwater Management Code	C	Y	31-32
42.03.130	Sight Distance at Roadway Intersections, Private Streets & Driveways	C	Y	33
42.03.135	Method of Establishing Special Street Setback Reference Line		Y	16
55.02.010 – 55.02.084	Tree Removal and Protection	C	Y	33-41

Previous Cases

LU 22-0019 – RP Delineation

IV. BACKGROUND/EXISTING CONDITIONS

1. Tax Lot¹ 100 is approximately 31,000 sq. ft., Tax Lot 3000 is approximately 32,000 sq. ft., and Tax Lot 2902 is approximately 27,200 sq. ft. in size (Exhibit E-002). Tax Lot 100 has frontage on Inverurie Road and an unopened² portion of the SW Baleine Street Public right-of-way. Tax Lot 3000 has frontage on SW Kimball Street and an unopened portion of the SW Baleine Street Public right-of-way. Tax lot 2902 does not have frontage on any roadway but accesses SW Kimball Street through a 15-foot private access easement along the north property line of 15868 SW Kimball Street. The proposed sewer installation will also cross Tax Lot 2209 (a part of West Waluga Park), which is approximately 330,279 sq. ft. in area. This tax lot has frontage on Inverurie Road, Oakridge Court, Royal Oaks Drive, and Yorkshire Place (Exhibit E-002).
2. Tax lots 2902, 3000, and 100 are zoned R-7.5 (low density residential) and are vacant. West Waluga Park (Tax lot 2209) is zoned PNA (Parks and Natural Area) and is developed as a public park (Exhibit E-002). The surrounding properties to the north are zoned R-15 and developed with single-family dwellings and/or an HOA open space tract. The properties to the west and south are located in Clackamas County and are developed with single-family dwellings, though one site is vacant, and are designated as R-7.5 in the Comprehensive Plan (Exhibit E-001).
3. The property (all lots) contains a Resource Protection (RP) District with a Class 2 wetland, which was delineated in LU 22-0019.
4. Tax Lot 2902 was created as a flag lot in Clackamas County as documented in the case file record (Exhibit F-015). The Clackamas County zoning ordinance in effect at the time of flag lot creation is included in Exhibit F-014.

V. PUBLIC NOTICE OF APPLICATION AND APPLICANTS' BURDEN OF PROOF

A. Neighborhood Meeting:

A neighborhood meeting is not required per LOC 50.07.003.1.f.

B. Public Notice to Surrounding Area:

Minor Development: The City has provided adequate public notice and opportunity to comment on this application pursuant to LOC 50.07.003.3.a. The public notice period was re-started with a new mailed notice and new signs from September 22 through October 6, 2023 because the applicant submitted additional material related to stormwater management and sensitive lands. Twenty-six public comments in opposition to the application were received,

¹ A tax lot is not actually a unit of land. It is created by the Assessor's Office for the assessment purposes. A "lot" is defined by LOC 50.10.003.2 in include units of land that are created by subdivision (a "lot" under state law reference) or a partition (a "parcel" under state law reference.) For ease of reference to the different units of land in this report, the area may be referred to by its tax lot number, rather than its platted or metes and bounds description, or by "lot" or "parcel."

² An unopened right-of-way is a public right-of-way that the City does not maintain for either pedestrian or vehicular use at this time; it could be opened and maintained by the City at some time in the future. (An unimproved right-of-way has been opened for pedestrian or vehicle travel but does not have pavement or any street infrastructure or improvements.) As an unopened public right-of-way, abutting owners and the public may make use of the right-of-way area at their own risk.

including two sets of duplicate comments (Exhibits G-500 through G-525); the items raised in these comments are discussed below and/or under the pertinent code section below.

Exhibit G-502 states that there has been insufficient engagement and support from the City. Exhibit G-511 inquires what public notice to neighbors was provided and states that the commenter saw no notice. Staff notes that all public notice requirements in LOC 50.07.003.3.a have been followed. Staff notes that the submission of this comment, in addition to 25 other comments on this application indicates compliance with the public notice process.

Exhibit G-511 states that “the city promised to hold a hearing but did not? (pg. 2)” The subject application is considered minor development pursuant to LOC 50.07.003.14.a.ii(6 and 16). This staff report is part of the staff-level administrative review of the project pursuant to LOC 50.07.003.14.d.i. If this administrative decision is appealed, a public hearing will be scheduled pursuant to LOC 50.07.003.7.

Neighborhood Meeting

Exhibit G-500 requests a neighborhood meeting for the application pursuant to LOC 50.07.003.1.f. A neighborhood meeting is *not* required prior to application submittal for serial lot line adjustments or an unavoidable utility crossing pursuant to LOC 50.07.003.1.f. The purpose of a neighborhood contact meeting is “to identify potential issues or conflicts regarding a proposed application so that they may be addressed prior to filing.” As an application must be approved if it meets the applicable criteria or standards, or can be conditioned to do so, the “issues or conflicts” are with regard to applicable criteria and standards. The commenter has the opportunity now to identify criteria or standards that are not met.

City Charter

Exhibit G-516, pg. 1-2, states that the proposed sewer construction within West Waluga Park violates Chapter X, Park Development Limitation (Sections 41 – 46) of the City Charter. This comment states that construction of underground infrastructure does not meet Section 43, Limitations on Development, which states, “The City of Lake Oswego shall insure that all development within a Nature Preserve is consistent with the preservation of a Nature Preserve as a natural area available for public enjoyment.” Exhibit G-516, pg. 1, states that “trenching to extend a public utility is inconsistent with protecting the Nature Preserve against loss, damage or injury.”; this quotation is from the comment in Exhibit G-516, not from Chapter X.

City Charter Chapter X (Section 43) are not land use regulation “standards and criteria”.

The applicability of Chapter X to a land use application was raised in LU 20-0027, an application by the City, through a minor development application, for a development permit for minor park improvements to the existing indoor tennis center at Springbrook Park. Springbrook Park is also a “nature preserve” that is subject to the provisions of Section 43. Staff found that Section 43 of the City Charter was not land use regulation criteria and standards to be applied as review criteria for a minor development permit (Staff Memo, dated Feb. 17, 2021, pg. 16-18, Exhibit F-012), but rather was a proprietary restriction on the

ability of the City upon its activities as owner of Springbrook Park. The Development Review Commission adopted these Staff findings in the Commission's March 15, 2021 Findings, Conclusion and Order, pg. 3, lines 11-16, by incorporation. Those Staff findings in Exhibit F-012, pg. 16-18 are incorporated herein.

Staff notes that in this proceeding the application is not submitted by the City for development within West Waluga Park but is submitted by a separate entity, and that the development limitations in Section 43 restrict the City from doing indirectly by "allow[ing] any person to construct or develop" that which the City is not permitted by Section 43 from doing directly. Similar to the Staff findings in LU 20-0027, this would apply to the City's proprietary capacity in granting approval by the Parks and Recreation Department for an entity to undertake the work within the Park property. The determination of the applicability of the proposed activities as being within the limitations of Section 43 would not be through the land use review appeal process, e.g., Oregon Land Use Board of Appeals, but rather would be reviewed and enforced through Circuit Court proceedings.

If City Charter Chapter X (Section 43) Were Applicable Land Use Regulation Criteria and Standards

Even if the City Charter Chapter X provisions were applicable land use regulations to be applied as applicable standard and criteria for a minor development permit (which they are not), Staff finds that based on the text and context of Section 43, the first paragraph, quoted above, is a purpose clause for the paragraphs that follow within Section 43 because, if the first paragraph were an operational standard, there would be no need for the seven development limitation paragraphs that follow.

Even if the first paragraph was a standalone standard, no evidence has been presented that shows installation of an underground sewer pipe would not be "consistent with the preservation of a Nature Preserve as a natural area available for public enjoyment" of West Waluga Park because the pipe will be buried underground and will not be visible above ground nor will it prevent any park uses. Staff notes that the area of sewer installation is not currently used as an active recreation area, nor can it be converted to an active recreation area pursuant to Chapter X of the City Charter, so installation and use of the underground sewer main in West Waluga Park is "consistent with the preservation of a Nature Preserve as a natural area available for public enjoyment."

Staff also notes that two of the Section 43 Limitations on Development expressly and implicitly permit underground sewer facilities:

To facilitate public access and use, the City of Lake Oswego **may build trails** for hiking, jogging, horseback and bicycle riding, may provide benches and **interpretive displays**, and may **provide picnic** and **sanitary facilities** within a Nature Preserve."

The construction of trails, interpretative displays, picnic facilities and sanitary facilities would well involve temporary construction vehicle access, and the construction of sanitary facilities would involve installation of use of underground sewer pipes.

"The City of Lake Oswego shall not construct or develop (or allow any person to construct or develop) any facility or any **structure above ground** that would impair or be inconsistent with the natural conditions of a Nature Preserve."

The express prohibition on development of above ground structures implicitly provides that underground structures would not be subject to this prohibition on development.

Exhibit G-516 further states that installation of the proposed sewer line “would require a temporary ‘road’ for construction motorized vehicles (pg. 2).” This argument is presumably based on a portion of the third paragraph of Section 43:

The City of Lake Oswego shall not construct or develop (or allow any person to construct or develop) any Athletic Facility, any Telecommunications Facility, or any parking lot, **road**, or trail for motorized vehicles within a Nature Preserve.

The term “road” is not defined in Chapter X of the City Charter, so the context, any legislative (voter) history on the subject, and rules of construction are applied³ in an effort to ascertain what was intended by the “road” prohibition.

- Context: Looking to the context based on other paragraphs of this Section 43 discussed above, construction activity is permitted in nature preserves for the construction of trails, interpretative displays, picnic facilities, and sanitary facilities and for the construction of underground structures. It is foreseeable that some of this construction would involve temporary construction vehicle access.
- Legislative History: The voter-approved amendments to Chapter X were by Measure 3-568. From the Clackamas County Official Voter’s Pamphlet, the Explanatory Statement, on the issue of roads, parroted the amendment text: “Prohibits athletic facilities, parking lots, and roads or trails for motorized vehicles.” A competing measure was put forward to the voters as Measure 3-575. The Explanatory Statement stated that, if approved:

“The Amendment would prohibit construction of new athletic facilities, commercial logging, construction of **new public streets and roads**, and construction or installation of new telecommunications facilities in designated Natural Areas.”

- An argument in favor of Measure 3-568 stated that the opposing Measure 3-575 would allow “parking lots, paved trails and non-public roads within park boundaries which will destroy natural habitat and allow tree removal.” An opponent of Measure 3-568 stated that it would “It **prohibits the vehicular access needed by Parks maintenance to repair trails and bring in supplies,**

³ “We interpret city charter provisions “by the same means as other legislation, including attention to the meaning intended by those who adopted it if that can be ascertained.” *DeFazio v. WPPSS*, 296 Ore. 550, 569, 679 P2d 1316 (1984). Because the charter provision was adopted by the voters, “[o]ur task is to discern what the voters intended * * *, which we derive by first looking to the text and context of the provision, taking into account any history of the measure that illuminates the voters’ intent.” *Burke v. DLCD*, 241 Ore. App. 658, 665, 251 P3d 796, *rev allowed*, 350 Ore. 532, 258 P.3d 526 (2011) (applying those principles to construction of a statute enacted by legislative referral); see also *Stranahan v. Fred Meyer, Inc.*, 331 Ore. 38, 56-57, 11 P3d 228 (2000) (applying the same principles to a constitutional amendment enacted by referendum); *Ecumenical Ministries v. Oregon State Lottery Comm.*, 318 Ore. 551, 559 n 7, 871 P2d 106 (1994) (noting that caution is required in ending the analysis before considering the history of an initiated constitutional provision).” [Brown v. City of Eugene \(In re Brown\)](#), 250 Ore. App. 132, 136-137, 279 P.3d 298, 301 (2012).

remove dangerous accumulations of dead materials, build fire breaks, provide for emergency vehicles, and respond to climate change.

To the extent “roads” are discussed in the legislative history most readily available to the voters, e.g., the county’s official voter’s pamphlet, the contrast of Measure 3-568 to Measure 3-575 was about the nature of the users of “new public streets and roads” and “non-public roads”, rather than any prohibition of temporary construction vehicle access. The contrast of “roads” with “new public streets and roads” is one of public use v. City (owner) use, such that, for example, a City-use-only roadway for permanent access in a park to a water reservoir within the park would be subject to the same limitation on development under Measure 3-565. Neither measure individually, or by contrast with the other, addresses temporary construction vehicle access by “road” or “new public streets and roads.”

Looking at the legislative history, there is nothing to indicate that the voters would have understood “road” to include temporary construction vehicle access for development otherwise permitted by Section 43.

- Rules of Construction:
 - As Section 43 was voter approved, one looks to a generally available dictionary definition of “road” to ascertain what the voters thought a “road” meant. A temporary construction vehicle-only access to a construction site does not meet the Merriam-Webster Dictionary definition of “road”: “an open way for vehicles, persons, and animals”⁴ because the construction access is limited to construction vehicles and does not provide for passage of general cars or pedestrians.
 - To define a term that is part of a list, one looks at the other items in the list to see if there is a common characteristic. The other items in the list – parking lot and “trail for motorized vehicles within a Nature Preserve” – are permanent facilities, not items that are constructed and removed within several weeks.

Applying these rules of construction, “road” would not include temporary construction vehicle access.

Staff finds that (1) Section 43 is not an applicable land use regulation standard or criteria to be applied in review of this application, and (2) even if it were, Section 43 does not prohibit either underground sewer lines or temporary construction vehicle access and therefore, if applicable (which it is not), the proposed infrastructure installation would not violate Section 43 of City Charter Chapter X.

Miscellaneous

- Exhibit G-501 expresses disappointment that a pre-application conference was not held. To the contrary, two pre-application conferences were held prior to application submittal: PA 21-0120, held on December 30, 2021 and a follow-up meeting occurred on June 27, 2022. Carolyn Krebs attended the first pre-application conference as a

⁴ <https://www.merriam-webster.com/dictionary/road#dictionary-entry-1>

representative for the Lake Forest Neighborhood Association; no neighborhood association representative attended the follow-up pre-application conference.

- Exhibit G-501 states that the “Lake Forest Neighborhood Association overlay” calls for protection of trees and “pathway ways” and that the proposed sewer construction is at odds with that. There is no such overlay in the Development Code (LOC Ch. 50) and the site is not subject to any neighborhood overlay zone.
- Exhibit G-502 discusses past actions, including annexation (AN 21-0003) and wetland delineation on the subject property (LU 22-0019), but does not clarify the applicable criteria related to the subject application to which these references pertain.
- Exhibit G-505 states that future structures constructed on the subject site may not be able to withstand an earthquake. This application is for lot line adjustments and is limited to relevant lot dimensional criteria. Any Building Code requirements related to earthquake safety for future structures that may be constructed on the reconfigured lots will be reviewed at the time of building permit application submittal for any future structures.
- Exhibit G-506/G-507 (duplicate) discusses home sales on other sites and financial gain of outsiders. Exhibits G-509 and G-510 mention “asset value to home owners.” Exhibit G-511, pg. 3 discusses the commenter’s plans to sell their own home and concerns related to their future potential sale. Exhibit G-521 expresses concerns about reduced property values. No applicable criteria are identified.
- Exhibit G-517 states that the developer is maximizing residential houses instead of preserving integrity and sanctity of the neighborhood. No applicable criteria are provided.

C. Burden of Proof:

Per LOC 50.07.003.1.b, the applicant for a development permit shall bear the burden of proof that the application complies with all applicable review criteria or can be made to comply with applicable criteria by imposition of conditions of approval. The applicant has provided sufficient evidence to enable staff to evaluate the proposal. These documents are listed as exhibits at the end of this report.

VI. MINOR DEVELOPMENT

A. Classification of Application:

LOC 50.07.003.14.a.ii(6) describes a Lot Line Adjustment that increases allowable (residential) density on one of the lots as a minor development.

LOC 50.07.003.14.a.ii(16) describes the construction of a utility in an RP District as minor development.

B. Criteria for Review of Application [LOC 50.07.003.14.a]

1. **The Requirements of the Zone in Which it is Located**

Use Table [LOC 50.03.002]

The portion of the site comprised of Tax Lots 2902, 3000, and 100 are zoned R-7.5 Residential. Future residential use in the R-7.5 zoned lots of the new sewer line is proposed (Exhibit F-001, pg. 2). Residential use is permitted in the R-7.5 zone.

Minor public facilities (sewer line) is a permitted use in the PNA zone (West Waluga Park).

R-7.5 Zone Dimensional Standards [LOC 50.04.001.1; Table 50.04.001-1]

Tax Lots 2902, 3000, and 100 consist of five platted lots, Lots 1, 2, 69, and 70, Block 1, of the Lake Forest plat (Exhibit E-011) and Parcel 2 of Partition Plat 2007-142 (Exhibit E-008), as shown on the tax map (Exhibit E-001, pg.1). All five platted lots are vacant. The tables, below, illustrate the lot size and dimensional requirements applicable to the proposed adjusted lots through each step in the series of lot line adjustments shown in Exhibit E-004:

LLA 1 : R-7.5 ZONE STANDARDS AND ANALYSIS OF COMPLIANCE (Exhibit E-004 Survey 1)					
	Standard	Tract 1⁵ before adjustment	Tract 2 before adjustment	Tract 1 after adjustment	Tract 2 after adjustment
Minimum Lot Area	7,500 sf	16,089 sf	16,110 sf	9,607 sf	22,592 sf
Minimum Lot Width	50 feet	140.2 feet	140.1	83.5 feet	196.5 feet

LLA 2 : R-7.5 ZONE STANDARDS AND ANALYSIS OF COMPLIANCE (Exhibit E-004 Survey 2)					
	Standard	Tract 1 before adjustment	Tract 2 before adjustment	Tract 1 after adjustment	Tract 2 after adjustment
Minimum Lot Area	7,500 sf	22,592 sf	27,220 sf	36,219 sf	13,594 sf
Minimum Lot Width	50 feet	196.5 feet	193.9 feet	196.5 feet	96.7 feet

LLA 3 : R-7.5 ZONE STANDARDS AND ANALYSIS OF COMPLIANCE (Exhibit E-004 Survey 3)					
	Standard	Tract 1 before adjustment	Tract 2 before adjustment	Tract 1 after adjustment	Tract 2 after adjustment
Minimum Lot Area	7,500 sf	15,565 sf	36,219 sf	53,629 sf	11,534* sf
Minimum Lot Width	50 feet	135.1 feet	196.6 feet	331.7 feet	97.2 feet

⁵ For purposes of tracking compliance of series of lot line adjustments with the lot dimensional standards, the interim lot configurations are designated by the applicant in Exhibit E-004 as "tracts." In point of fact, as each "tract" configuration must meet the lot dimensional standards, and lot line adjustment deeds must be recorded for each step in the series of lot line adjustments, the "tracts" are "lots" as defined by LOC 50.01.003.2. However, the nomenclature used is not material to the determination of compliance of each step in the series of lot line adjustments, and thus for consistency with Exhibit E-004, "tracts" is used in these tables.

*The area in an access easement and on-lane parking space is not included in lot area for a newly created flag lot, even a flag lot created through a lot line adjustment process.

LLA 4 : R-7.5 ZONE STANDARDS AND ANALYSIS OF COMPLIANCE (Exhibit E-004 Survey 4)					
	Standard	Tract 1 before adjustment	Tract 2 before adjustment	Tract 1 after adjustment	Tract 2 after adjustment
Minimum Lot Area	7,500 sf	37,934 sf	15,415sf	9,570 sf	44,059 sf
Minimum Lot Width	50 feet	330 feet	135.1 feet	83.3 feet	383.5 feet

As illustrated in the table, above, and the preliminary lot line adjustment plans (Exhibit E-004), the proposed lots⁶ comply with the R-7.5 zone dimensional standards after each step in the series of proposed adjustments. This standard is met.

Special Street Setbacks [LOC 50.04.002]

The purpose of the Special Street Setback is to assure an adequate front yard setback is available in the event of possible future street improvements, such as additional lanes, pedestrian and bicycle facilities, transit facilities, drainage management improvements, lighting, and street landscaping.

Inverurie Road is identified as having a special street setback of 20 feet, measured 20 feet from the centerline of the right-of-way, unless the special street setback reference line is established pursuant to LOC 42.03.135. As discussed below under Method of Establishing Special Street Setback Reference Line [LOC 42.03.135], the City Engineer finds that in this case, the special street setback reference line shall be a line that is equidistant between the boundary lines of the right-of-way for this portion of Inverurie Road. Yard setbacks shall be measured starting from the special street setback reference line or from the lot line abutting the street, whichever is furthest from special street setback reference line.

Because this application is reviewed as a series of lot line adjustments, the relevancy of the special street setback is only for the final lot line adjustment. In this particular case, no access is proposed from Inverurie Road, and the new residential structure on the lot adjacent to Inverurie Road will be constructed along the west of the wetland on this lot; therefore, the special street setback will not be relevant in determining the setback for new construction.

Method of Establishing Special Street Setback Reference Line [LOC 42.03.135]

Per LOC 42.03.135(1)(b), property owner may initiate the determination of the special street setback reference line to a street, or any portion, listed in LOC 50.04.002.5, by the filing of a development permit application. The special street setback reference line is the line equidistant between the boundary lines of the right-of-way unless the City Engineer finds, based on site-specific factors, that an alternative method is reasonable for the continuous alignment of the centerline of the existing or anticipated future traveled surface of a street. LOC 42.03.135(2)(a, b). The City Engineer finds that in this case, no site-specific factors exist that would necessitate an exception of the special street setback reference line being a line that is equidistant between the boundary lines of the right-of-way.

⁶ See prior footnote.

Sensitive Lands Overlay Districts [LOC 50.05.010, 50.07.004.8]

Among the purposes of the Sensitive Lands districts, as designated on the City's Sensitive Lands Map, is to protect wildlife habitat and water quality. There is a delineated RP District (Class 2 wetland) on the site (LU 22-0019). The applicant is proposing to construct a sewer utility line through the un-delineated wetlands in the unopened Baleine Street public right-of-way and in West Waluga Park (Exhibits E-005 and E-006).

Unavoidable Crossing/Potential Impacts to Natural Resources

Exhibits G-500, G-501, G-503 through G-505, G-509 through G-512, G-515, G-517, G-520, G-521, G-523, and G-525 oppose the unavoidable crossing and/or express concerns for impacts to wetlands, wildlife, or other natural resources. See Sensitive Lands [LOC 50.05.010] discussion, below.

- Exhibits G-500, G-501, G-506/G-507 (duplicate), G-508, and G-515 state that other sewer alignments than the proposal are more viable (Exhibit G-501), practicable (Exhibit G-500, pg. 2) or exist (Exhibit G-506/7, G-508, G-511, G-512, G-515, G-516, G-521, G-525). Exhibit G-501 states that the City should create an alternate sewer connection and that the developer (i.e. applicant) should not be solely responsible for infrastructure construction.
- Exhibit G-505 states that all sewer should be installed entirely on-site with no off-site connections to the public sewer system and Exhibit G-512 states that septic systems should be installed instead of connections to the public sewer system. Staff notes that new on-site septic systems are not allowed within City Limits where a connection to the public sewer system is legally and physically available (LOC 38.20.310).
- Exhibit G-500 implies that the proposed sewer alignment will cross the open space tract for Winfield Estates (pg. 2). No portion of the proposed sewer will cross the property line into the private open space tract and all areas of work will be located on Waluga Park property, the public right of way, and the subject site (Exhibit E-006).
- Exhibit G-500 states that the RP district will be impacted as demonstrated by the provision of a mitigation plan as required by code (pg. 3). Staff notes that, if avoidance of a resource is not practicable, then impacts must be minimized and mitigated pursuant to LOC 50.05.010.6.c and Subsection 4.e.
- Exhibit G-500 questions requirements for mitigation (pg. 3) and Exhibit G-515 states that provision of manholes and sewer cleanouts pursuant to the City's infrastructure detail standards will not meet the requirements for mitigation and requests that 100% mitigation be provided on site. Mitigation requirements are discussed below under LOC 50.05.010.4.g and Conditions of approval [Conditions A(7)-A(9), C(6), C(9), C(10), and D(1)].
- Exhibit G-516 disagrees with the adopted Wastewater Master Plan Update⁷, which is cited, and the future service area map that is copied in the comment. The future service area map provided in the comment shows the proposed sewer alignment, however, the commenter takes issue with the adopted plan and proposes a STEP system instead. STEP systems are further discussed under LOC 50.05.010.4.e, below.

- Exhibit G-516 states that the proposed mitigation plan in Exhibit F-005, pg. 12 will substantially impact placement of future structures and yards on Lots 3 and 4. Staff notes that Exhibit F-005, pg. 12, shows buildable envelopes commensurate to typical buildable areas with the R-7.5 zone on which the standard floor area could be placed in compliance with applicable code.
- Exhibit G-517 states that no development should be allowed in Class 2 wetlands because the property is not owned by the property owner, which is not a required criteria for approval of an unavoidable crossing, and because the City has “delegated [sic] the area as a delineated resource protection district.”
- Exhibit G-521 states that the proposed sewer connection will decrease property values and privacy and requests an environmental impact study. No applicable criteria of approval are cited.

See further discussion under LOC 50.05.010, below.

Construction Standards Applicable to Sensitive Lands Districts [LOC 50.05.010.4.d]

Compliance with these standards is required when any grading, clearing, or construction is proposed on a site that contains an RP District. The applicant is required to submit grading and construction plans that demonstrate compliance with these standards. The sewer extension plans (Exhibit E-006) show existing grades and proposed elevations for the new sewer line. Applicable construction standards include staking the RP District boundaries on the site prior to placement of protection fencing at the delineated boundaries [subsections d.i and .ii]; the requirement that no construction, demolition, grading or site clearing shall begin until after protective measures and erosion control measures have been inspected and approved by the City [subsection d.iv]; the prohibition of stockpiling fill materials and parking or storage of construction equipment within a resource district [subsection d.v]; the requirement that utilities approved within a delineated RP district shall be constructed in such a way that a minimum of excavation is required and so that no permanent draining or filling of a stream corridor or wetland will occur [subsection d.vi]; and the requirement that surface runoff and other water sources supplying hydrology to an RP district shall be designed and maintained so as not to adversely impact the functions and values of the resource [subsection d.vii].

The submitted sewer extension plans (Exhibit E-006) and narrative (Exhibit F-001, pg. 8) demonstrate that it is feasible to meet the construction standards at the time of construction. Compliance with the construction standards will be assured prior to the commencement of any grading activities on the site. This portion of the standard can be met.

Land Divisions and Lot Line Adjustments in an RP District [Subsection 6.c.iii]

The following standards apply to properties containing an RP District for applications for land divisions including partitions and subdivisions and to lot line adjustments:

(1) New lots that include an RP District shall have designated sites for buildings that are located outside of the RP District. A land division or lot line adjustment shall not create a lot that would necessitate an exception to Subsection 6.d in order to site a dwelling upon the proposed lot.

A lot zoned R-7.5 has a minimum lot size of 7,500 sq. ft. with a potential building envelope of approximately 2,700 sq. ft. (calculated by subtracting sq. footage in required front, side, and rear yard setbacks). The serial lot line adjustment plans demonstrate compliance with this requirement by increasing the size of the lot(s) containing sensitive lands in surveys 2-4 (survey 1 does not alter the size of a lot containing sensitive lands) (Exhibit E-004). At every step of the proposed serial lot line adjustments, a larger buildable area outside the sensitive lands is established by the lot line adjustment; no proposed adjustment decreases the potential building envelope on a lot with sensitive lands at any point (Exhibit E-004)⁸. This standard is met.

(2) Exception: This standard shall not apply to lots established as open space tracts, for transfer to a public agency or private trustee to manage as a natural area, or where the entire lot is included in a conservation easement that prohibits development on the site.

The applicant is not proposing any open space tracts or conservation easements on any tract within each step in the series of lot line adjustments, or for the final lot line adjustment. This portion of the standard is not applicable.

Progressive Mitigation [LOC 50.05.010.4.e-g]

Development shall not be placed within an RP District unless there is no other practicable alternative, and the criteria for avoidance, minimization and mitigation are met.

Avoidance (LOC 50.05.010.4.e):

The applicant shall endeavor to avoid detrimental impacts on the resource altogether by providing alternative site plans along with the development proposal demonstrating that alternative designs have been explored. If disturbance of a resource district is proposed, the applicant shall first demonstrate that intrusion into the resource district cannot be avoided by a reduction in the size or configuration of the proposed development or by changes in the design that would avoid adverse effects on the resource while still allowing development of the property [subsection f.i].

The applicant is proposing to construct a utility crossing (sewer line) through the RP District within West Waluga Park (tax lot 2209) and within the unopened right-of-way of Baleine Street in order to connect to the closest legally and physically available public sewer system located within West Waluga Park. The applicant has considered various options for connection to the public sewer system prior to application submittal; however, intrusion into the resource cannot be avoided.

Exhibits G-500, G-501, G-506/G-507 (duplicate), G-508, G-515, G-516, G-521, and G-525 discuss potential alternatives to the proposed sewer extension, including septic systems and connections to other public sewer locations.

Any new homes constructed on these lots shall be connected to the City's public sewer system (LOC 38.20.310). Following the City's Wastewater Master Plan Update (WMPU),

⁸ Looking at each step in the series of lot line adjustments a buildable area outside the sensitive lands is provided such that this standard would be met with every lot line adjustment.

dated March 2013, sanitary sewer can be made available from an existing public sewer line that is located in Waluga Park approximately 525 feet east of Inverurie Road. The Lake Oswego Comprehensive Plan Urbanization Policy C-4 and the annexation for the development site (AN 21-0003) “requires that urban services commensurate with the scale of the proposed development are available and are adequate to serve the property or can be made available in a timely manner prior to the annexation of non-island properties.”

To comply with the above Policy, the annexation finding, and with other related policies that are criteria for annexation of the subject development site, the Owner agreed that it would proceed with construction of public sanitary sewer lines to serve the development on the respective properties consistent with the City’s Wastewater Master Plan (WWMPU), and the Owner recorded a covenant in the Clackamas County Official Records (Clackamas County recording #2022-011231) obligating the public sewer main to be constructed to the upstream boundary of each of the subject properties prior to issuance of a building permit for each home. In this case, the public sewer extension would be required through the park and along Baleine Street and south along Kimball Street to the southern boundary of Tax Lot 2902. The applicant submitted a preliminary plan and profile titled *Baleine Street Sewer Extension* (Exhibit E-006) showing that a public sewer extension is feasible and can be constructed to the upstream boundary of the Tax Lot 2902, according to the City’s Wastewater Master Plan.

Exhibit G-516 discusses alternative sanitary sewer systems and alignment for the proposed development to avoid constructing the public sewer through the wetlands and Waluga Park. Specifically, this comment emphasizes Septic Tank Effluent Pumps (STEPS):

“Lake Forest NA contends that the City can permit and possibly also maintain, and the applicant can install, (a) STEP system(s) or services(s) as described in the WWMPU as a practicable alternative, expected to be less expensive than the proposed sewer extension and would not require the RP crossing, thereby balancing cost, existing technology and logistics, per LOC 50.10.003 (Exhibit G-516, pg. 4).”

As a condition of annexation and precedent to development on the lots, the owner is required to extend the public sewer main from West Waluga Park to the lots, and the proposed development on the lots is premised on extension of the sewer main. Accordingly, as extended, sewer service will be “legally and physically available” to the lots as defined in OAR 340-071-0160(4)(f)(A). Single-family dwellings located within 300 ft. of the extended sewer main are then required to connect to the then existing City main unless an exception applies under LOC 38.18.305(2); the exception would not apply because there is not a single-family dwelling existing on the lot and there is no alternative sewage disposal system in good working order on any lot.

Even if any future residences on the lot were eligible for an alternative sewage disposal system under LOC 38.20.315, subsection 2 prohibits use of a STEP system.

Staff notes that the City’s WWMPU shows a gravity mainline extension through Waluga Park from Royal Oaks Drive, heading west along Baleine Street and then south along Kimball Street (Fig 6.14 Southwood/South Lake Future Service Area). The existing public sanitary sewer systems located to the west near Allison Place and to the southeast along Inverurie Road are too shallow to serve the development site and the properties to the south along Kimball Street. In order to provide gravity service for the site and beyond, the public

sanitary sewer extension must be constructed following the alignment as shown in the WMPU Fig 6.14.

The subject lots are required to connect to sewer when developed (LOC 38.18.305) and pursuant to the annexation requirement; the applicant is proposing to do so. The extension of the sewer line through West Waluga Park provides an extension and connection that can serve other properties along Kimball Street in the future pursuant to the City's WWMPU. No evidence of an alternative to the proposed sewer alignment has been presented that can meet these requirements. The proposed sewer crossing within the Park and right-of-way within the RP District cannot be avoided. Staff finds that this portion of the standard is met.

Minimization (LOC 50.05.010.4.f):

If impacts to the resource cannot be avoided, the applicant shall minimize impacts by demonstrating that the chosen alternative is the least environmentally damaging, and that there will be no net loss of resource area, functions or values as a result of the development [subsections f.i and .ii].

The intrusion into the RP District is minimized by its placement in the unopened Baleine Street right-of-way, which contains less area in the wetlands than alignments within the lots (Exhibit F-005, pg. 3), and by limiting the number of manholes in the Park, which is the only permanent impact to the resource creating the lowest number allowed by code (Exhibit F-005, pg. 3). The 17-foot proposed width of the construction area for pipe installation in the Park and right-of-way is the minimum width necessary for construction equipment and side cast of excavated material (Exhibit F-005, pg. 3).

The applicant states that ground surface will be restored to pre-project grades with native soil, thereby limiting the alteration of the subsurface conditions (Exhibit F-005, pg. 4). The applicant states, and staff concurs, that the proposal will result in no net loss of habitat value or functions as only a minor area of the district will be disturbed with permanent manhole installation at ground level (37.5 sq. ft. total area); all other conditions will be maintained after installation and all temporary and permanent disturbance will be mitigated within the district (Exhibit F-005, pg. 4).

Staff finds that this portion of the standard is met.

Mitigation (LOC 50.05.010.4.g):

For impacts to a Class 2 wetland, the mitigation ratio is 2:1, and the mitigation must be on-site where possible [subsections g.iv and .v]. As discussed and illustrated in the applicant's Sensitive Lands Report (Exhibit F-005, pg. 2 and pg. 11), the construction of the sewer line will impact 14,579 sq. ft. during construction, of which 37.5 sq. ft. of wetland will be permanently impacted with the surface of each manhole structure (Exhibit F-005, pg. 4). The proposed 29,158 sq. ft. mitigation area is located in the Baleine Street right-of-way, West Waluga Park, and on the private development lots (Exhibit F-005, pg. 13). This portion of the standard is met.

Per Subsection 4.g.viii, there are minimum planting densities, sizes, and species diversity requirements. Staff reviewed the proposal and finds the following:

- The minimum required density is five trees and 25 shrubs for every 500 sq. ft. of impact [Subsection 4.g.vii(1)]. With 14,579 sq. ft. of RP District impact, a total of 292 trees and 1,458 shrubs are required. The report and plans show a total of 292 trees and 1,458 shrubs (Exhibit F-005, pg. 2). The minimum density requirements are met.
- Trees must be planted 8-12 feet apart and shrubs must be planted 4-5 feet apart [Subsection 4.g.viii(3)]. The mitigation planting plan does not show the location of the shrubs and trees, or include spacing (Exhibit F-005, pag. 13). The plan does not provide sufficient information to determine compliance with spacing requirements.
- Shrubs must include at least two species and be 1-gallon in size [Subsections 4.g.viii(2) and (4)]. The proposed shrub plantings include eight species: black twinberry, Nootka rose, hazelnut, Red osier dogwood, Pacific ninebark, Clustered rose, Douglas spirea, and Western serviceberry all with a 1-gallon planting size. The shrub variety and size requirements are met.
- If ten or more trees are planted, no more than 50% of the trees may be of the same genus and must be 0.5-inch caliper in size [Subsection 4.g.viii(2) and (4)]. The trees include five genera: *Alnus*, *Crataegus*, *Quercus*, *Thuja*, and *Salix*. The applicant states that 47 of the mitigation trees will be 2-inch caliper in size and species capable of attaining a mature height over 30 feet in order to qualify as flag lot mitigation trees and the applicant states that all other trees will be 1.5" caliper at time of planting (Exhibit F-005, pg. 5). However, staff notes that trees that do not count toward flag lot mitigation requirements may be 0.5-inch caliper at time of planting. The tree variety and size requirements are met.
- The proposed groundcover includes native grass seeds: spike bentgrass. Staff notes that Tall mangrass is not listed as a native grass in the master plant list and should not be planted within the mitigation area, which must be replanted with native plants listed in the master plant list. The groundcover requirements are met with the listed spike bentgrass (Exhibit F-005, pg. 13).

Based on the above findings, the following conditions of approval [Conditions A(7), A(8), C(6), C(9), C(10), and D(1)] are necessary to ensure compliance with Sensitive Lands mitigation standards:

- The applicant shall provide an updated RP District mitigation plan that illustrates the location and spacing dimensions of all shrubs and trees by species, specific to the stream corridor and wetland areas, compliant with the spacing requirements of this standard (Subsection 4.g.i(1)) as required with Condition A(7)).
- Prior to recording the replat or plats(s), the applicant shall submit a maintenance and monitoring plan to monitor the mitigation areas for three consecutive years (Condition A(8)). The plan must specify that during the 3-year monitoring period, dead trees, shrubs, and herbaceous plants will be replaced as needed to ensure an 80% survival rate at the end of the monitoring time, and that invasive plants will be removed to ensure less than 10% cover of invasive species within the mitigation planting areas (Subsection 4.g.i.(2)).
- The applicant shall post a performance bond or letter of credit to the City that is equal to 120% of the value of the improvements and then provide an annual monitoring report to staff on October 31st of each year for the 3-year monitoring period [Condition C(10)]. The report shall summarize the overall success of the total mitigation efforts. It shall include photographs of the mitigation sites and

narrative describing site conditions, including the plant survival rate and invasive species coverage. Each annual report shall also describe any required replanting or invasive species removal necessary to meet the success criteria described above (Subsection 4.g.ix).

As conditioned, this portion of the standard can be met.

Utilities in an RP District [LOC 50.05.010.6.c.ii(1)(c)]

Public or private utilities shall not be placed within an RP District unless tunneling under a resource will not cause any adverse effect upon the resource and the functions and values of a resource will be maintained, or there is no other practicable alternative. Practicable is defined as “capable of being done after considering and balancing cost, existing technology, and logistics in light of overall project purposes” (LOC 50.10.003.2). If a public or private utility is allowed within an RP District, mitigation shall be required pursuant to mitigation per LOC 50.05.010.4.e through 50.05.010.4.g. See the discussion, above, regarding compliance with mitigation standards.

Per LOC 50.05.010.6.c.ii(1)(c)(i), the first step is avoidance. Utility pipes shall be maintained in public rights-of-way and routed around significant resources rather than through a resource wherever possible, except that tunneling under a resource shall be permitted where tunneling will not cause any adverse effect upon the resource or tree roots, and the functions and values of a resource will be maintained.

The applicant is required to connect to a public sewer system by constructing a public sewer line through an undelineated RP district within the public right-of-way of Baleine Street and West Waluga Park to connect to an existing public sewer main in the park as discussed above under subsection 4.e Avoidance and Exhibit F-005, pg. 2. The public sewer extension will serve the five lots reconfigured with these serial lot line adjustments and will allow other properties on Kimball Street to connect to City sewer in the future, pursuant to the WWMPU as discussed under subsection 4.e (Exhibit E-006). The applicant states that boring the sewer extension is not possible due to the shallow slope and high probability of rocks (Exhibit F-001, pg. 10). Staff concurs with the applicant’s findings that there is no practicable alternative for installation of sewer in compliance with City regulations except the proposed alignment and construction methods proposed. See Subsection 4.g, above, for discussion of the progressive mitigation steps.

Staff finds that the avoidance of any impacts to the resource to install the sewer line is not possible and the proposed installation with restoration of native soil to maintain pre-project conditions will minimize impacts to the wetland. Work within the wetland may be subject to state or federal permits; it is the applicant’s responsibility to obtain all necessary permits. This standard is met.

Conclusion: As conditioned, the Sensitive Lands Overlay Districts standard is met.

2. The development standards applicable to minor developments;

Parking [LOC 50.06.002]

This standard applies to “all development that generates a parking need.” Although a lot line adjustment does not itself create a parking need, it does permit ministerial development upon the reconfigured lots and the outright permitted ministerial development, e.g. residential development, would generate a parking need. The purpose of this review is to assure that it is feasible for each reconfigured lot in the step of series of lot line adjustments complies with the Parking Standards.

This standard requires that a single-family dwelling provide one off-street parking space, which may be located in a garage [Table 50.06.002-3: Minimum Off-Street Parking Space Requirements]. As shown in Exhibits E-004 and E-005, the buildable envelopes for each tract / lot are large enough to accommodate one off-street parking space in compliance with the Parking standard. No step of the serial lot line adjustment will create a substandard lot (Exhibit E-004). Compliance with this standard will be assured during the building permit review process for the future dwellings on the final reconfiguration of the lots. This standard is met.

Access/Access Lanes (Flag Lots) [LOC 50.06.003.1]

This standard addresses site access impacts on the adjacent street. This site⁹ has access to a public local street located along the east boundary of the site (Inverurie Road) and also the west boundary of the site (Kimball Street) (Exhibit E-002). The Baleine Street right-of-way to the north of the site is unopened; pedestrian passage may be possible but if so, the City has neither created nor maintains such passage (Exhibit E-003). Access design is to be based on criteria relating to the topography, current and projected traffic volume and classification of the street, and traffic volume of the development pursuant to Subsection c.ii.

Subsection 1.c.i requires that every lot, except flag lots, abut a street for at least 25 feet and regulates the access point design and location. Per Subsection 1.c.ii, access design is to be based on criteria relating to the topography, current and projected traffic volume and classification of the street, and traffic volume of the development. As shown in Exhibit E-004 (for all steps in the series of lot line adjustments) and Exhibit E-005, Lots 1-3 abut the unopened right-of-way of Baleine Street and Lots 4-5 are flag lots that will access Kimball Street with a shared access lane. The applicant’s engineer reviewed the criteria and set forth findings in Exhibit F-006 demonstrating that the access design permits safe entrance and exiting from the street. Engineering staff concurs with the applicant’s findings (see discussion in LOC 50.06.003.2, below). The Engineering staff did not find any topographical constrictions with the proposed access location and design considering the traffic volumes on this neighborhood collector street. Subsections 1.c.i and 1.c.ii are met.

Subsections 1.d.i and 1.d.ii state that an access lane may serve 2-3 dwellings, must be located in a minimum 20-foot easement, and have a minimum of 12 feet of pavement. The lane shall include 4-foot shoulders (if only 12 feet of pavement) or the access lane may be paved to the full 20-foot width. The general minimum spacing requirement for access lanes on local streets is 50 feet where practicable [LOC Table 50.06.003-2]. As shown in Exhibit E-005 (and Exhibit E-004, Survey 3), the access lane will serve two lots total, both flag lots (Lots 4 and 5). The access lane is included in a 25-foot access easement and the pavement will be at least 12 feet wide with 4-foot shoulders (Exhibit E-005). The nearest access lane or driveway on the abutting

⁹ For purposes of review for compliance with the development standards, use of “site” shall exclude West Waluga Park.

property to the south is approximately 38 feet from the proposed south access lane (Exhibit E-005). Subsections 1.d.i and 1.d.ii are met.

Subsection 1.d.iii requires one standard “on-lane” parking space to be provided for the new flag lot (Lot 4) served by an access lane. Lot 5 is an existing flag lot; therefore, this standard does not apply to Lot 5. One parking space is shown along the access lane frontage (Exhibit E-005). Per an 11/2/18 staff interpretation, “on-lane” parking spaces may be located within the required setbacks without conflicting with LOC 50.06.002.2.a.iii(1) [*...Parking may not be located in a required yard ... except ...for parking established by the zone or use...*] if the on-lane parking space is part of the shared access lane (included in the access easement). The proposed access lane incorporates the “on-lane” parking space for the new flag lot (Lot 4) in compliance with this portion of the standard and interpretation (Exhibits E-005). Subsection 1.d.iii is met.

As discussed and conditioned [Conditions A(3)d, and C(5)] , this standard is met.

On-Site Circulation – Driveways & Fire Access [LOC 50.06.003.2]

This standard regulates driveways, including slopes and geometric design, particularly those related to emergency vehicle access. The maximum slope and cross slope for a driveway is 15% and 5%, respectively [Subsections 2.b.iii(1) and (5)]. Driveway approaches shall be located and designed so that drivers entering or exiting the driveway can safely see approaching traffic for a sufficient distance. The American Association of State Highway and Transportation Officials (AASHTO) guidelines for intersection sight distance shall be used in determining compliance with this standard, while achieving stopping sight distance at a minimum [Subsection 2.b.i(4)].

The applicant is proposing serial lot line adjustments (Exhibit E-004), including a lot line adjustment that creates a new flag lot (Lot 4), served by a new access lane (Exhibit E-005). Lot 5 is an existing flag lot. A second approach, that is not part of this application because it does not serve any flag lot created through the serial lot line adjustment, is proposed to serve Lots 1-3 and will be located approximately 14 feet north of the southern property line and approximately 13 feet north of the southern access lane (Exhibit E-005).

The applicant submitted a Preliminary Sight Distance Certification (Exhibit F-006) that describes sight distance from both accesses. Following the clearing of vegetation on-site and within the public right-of-way along the site frontage, intersection sight distance for the northern driveway serving three lots is expected to have at least 280 feet of sight distance to the south and 137 feet of sight distance to the north to the intersection of Kimball Street and Baleine Street. Following the clearing of vegetation, intersection sight distance for the southern driveway serving two lots is expected to have at least 280 feet of sight distance to the south and 149 feet of sight distance to the north, again to the intersection of Kimball Street and Baleine Street.

Based on Kimball Street’s statutory residential speed limit of 25 mph, intersection sight distance from the proposed accesses should extend at least 280 feet in both directions. Although sight distance to the north from both driveways is not expected to meet the intersection sight distance requirements, the reported visibility of at least 137 feet of sight distance would be adequate for southbound vehicles traveling at up to 22 mph to slow or stop to avoid collisions with entering traffic (based on calculations of stopping sight distance

from the 7th Edition of AASHTO's *A Policy on Geometric Design of Highways and Streets* and assuming a level grade over the braking distance).

The City Engineer has reviewed the analysis in Exhibit F-006¹⁰ and concurs with the findings that a driver entering or exiting the sites should be able to see approaching traffic for a sufficient distance to make a safe entrance or exit from the access, subject to compliance with the following conditions:

- a. Non-exempt vegetation and other obstructions within the clear sight triangles shall be cleared as needed to meet the sight distance requirements.
- b. A Final Sight Distance Certification documenting available sight distances from the new accesses shall be prepared by a licensed engineer and submitted prior to occupancy.

As conditioned [Conditions A(3)d and C(5)], this standard is met.

Lighting [LOC 50.06.004.3]

This standard prescribes equipment and lighting standards for public and private streets, pathways, accessways and parking lots, and requires street lights only at intersections along local level roads. Since this development will not create increased traffic, bike and pedestrian trips at the street intersections within the vicinity of the site (because the number of legal lots of record is not changed at any step during the series of lot line adjustments (and no development will be occurring on any of the reconfigured lots before the final step in the series)), no additional street lighting will be required for this development. This standard is met.

Weak Foundation Soils [LOC 50.06.006.1]

The site is identified as having weak foundation soils on the City's soil inventory map. The actual presence of weak foundation soil is not a cause for denying development, but may cause structural modifications to be required, or structures to be relocated [Subsection d]. The applicant should contact the Building Division to determine whether the nature of this proposal warrants any special reports or engineering. This standard is met.

Stormwater Management [LOC 50.06.006.3.b]

This standard is applicable to all development where:

- i. Greater than 1,000 sq. ft. of impervious surface is created; or
 - ii. The sum of impervious surface created and/or replaced is greater than 3,000 sq. ft.; or
 - iii. Maintenance is performed on greater than or equal to 3,000 sq. ft. of existing impervious surface that results in an additional offsite hydrological impact.
- LOC 50.06.006.3.a.

Because this development would authorize outright permitted development that will exceed 1,000 sq. ft. of impervious surface, the applicant must demonstrate that, based upon LOC Article 38.25, Stormwater Management Code, the capacity, type, location, feasibility and land

¹⁰ Looking at each step in the series of lot line adjustments, it is feasible to place a driveway or the access lane in such a location that the sight distances would comply with the AASHTO standards.

area required of the proposed stormwater management system and stormwater disposal facilities as well as any connection to off-site facilities can (possible, likely, and reasonably certain to succeed) be provided. The final stormwater management design plan will be reviewed by the City Engineer for compliance with the Stormwater Management Code, including the Stormwater Management Manual.

See discussion under LOC 38.25, Stormwater Management Code, below. As conditioned, below, [Conditions B(3)-(4) and C(3)-(4)], this standard is met.

Utility Standard [LOC 50.06.008]¹¹

This standard is applicable to “all development requiring connection to utilities.” A lot line adjustment does not itself require connection to utilities; it does permit ministerial development upon the reconfigured lots and the outright permitted ministerial development, e.g., residential development, would require connection to utilities. However, for purposes of this review, if the reconfiguration does not increase the intensity of connection, any nonconformance would be permitted to continue for the reconfigured lots. LOC 50.01.006.2.a. Review of this standard would be made at the time of ministerial application for building permits on each of the lots¹².

A comment was received from the abutting property owner to the south (15868 Kimball Street) regarding sewer lateral points of connection (POC’s) for five existing neighbors (Exhibit G-519, pg. 2). Engineering advises that a “tee” may be required at locations of potential future points of connections approved by the Engineering Department when the location of future service laterals is determined; however, constructing the service laterals to other properties would not be the responsibility of the developer and is not required for the public sewer extension. If the neighbors wish to work independently with the developer to install a specific lateral(s), that is up to them, by means of a voluntary agreement between the developer and the property owner(s).

Exhibit G-519 requests that a 3rd sewer lateral be provided in the southerly access lane for 15868 SW Kimball Street; however, staff notes that the lateral for that lot will need to be located along its own street frontage and cannot be located within the access lane by Engineering policy to limit sewer laterals to only lots that are served by the access lane.

Flag Lots [LOC 50.07.007.2]

The proposed serial LLAs will result in three regular lots, Lots 1, 2, and 3, one new flag lot, Lot 4, and will modify an existing flag lot, Lot 5. Lot 4 will become a new flag lot as a result of the adjustment at Step 3, which requires compliance with the Flag Lot standards. Lot 5, a flag lot created as Parcel 2 of Partition Plat 2007-142 (Exhibit F-015), is modified by reduction in size at Step 2 and then creating Lot 4 in Step 3. Per LOC 50.07.007.2.a.ii, Exception, “the standards applicable at the time of creation remain applicable” for Lot 5, e.g., Clackamas County Planning Dept. ZO427-07-PLA, Exhibits F-014 and F-015, apply.

¹¹ LOC 50.06.008 was extensively amended by Ord. 2908, effective July 6, 2023. Because this application was submitted on January 17, 2023, prior to the effective of Ord. 2908, the standards and criteria of LOC 50.06.0008 existing at the time of submission of the application are applied, per LOC 227.178(3)(a).

¹² The applicant should note that LOC 50.06.008 was amended and the amended (current) version would apply to future increases of residential density by additional dwelling units, e.g., more than one dwelling unit per lot.

A. Lot 5

As noted above, the reconfiguration of Parcel 2 of PP 2007-142, a flag lot¹³ created in 2007 in the County, is required to continue to comply with the 2007 County flag lot standards. LOC 50.07.007.2.a.ii, Exception.

County Regulations in Effect in 2007, R10 Zone (Exhibit F-014)		
	County Regulation	Proposal
Minimum Lot Size	10,000 sq. ft.	13,594
Front Yard Setback	20 ft.	N/A
Side Yard Setback	5 ft.	N/A
Rear Yard Setback	20 ft.	N/A
Maximum Building Height	35 ft. (measured from average elevation of finished grade adjacent to the structure to the highest point of the structure)	N/A
Maximum Lot Coverage	35% (primary uses) 40% (primary and accessory uses)	N/A

No development on Lot 5 is proposed as part of this request. Exhibit E-004, pg. 2, and the table above demonstrate that the proposed LLA to alter the existing flag lot (Lot 5) complies with the minimum lot size requirement that was in place in Clackamas County at the time of lot creation. Per the Exception and LOC 50.01.004.6.f, compliance with these standards in Exhibit F-014 will be assured during the building permit review process for the future dwelling on Lot 5. This standard is met.

B. Lot 4

Flag lots are regulated by the applicable criteria of the underlying zone, as well as additional specific requirements of LOC 50.07.007.2. The applicant's materials address the specific requirements of this section of the Code (Exhibits E-004, E-005, E-010, and F-001, pg. 27-31).

Parcelization Plan [LOC 50.07.007.2.a.iv]

An application to create a flag lot shall include a conceptual plan of complete parcelization of the subject property and shall include a site plan illustrating the location of existing structures on adjacent parcels. The reviewing authority may impose conditions in order to ensure that parcelization of the subject property will not preclude the development of surrounding properties. Such conditions may be related (but not limited) to access, circulation, building location, utility availability, and natural resource protection.

No further parcelization is possible because no more than two flag lots may be served by an access lane; Lots 4 and 5 are proposed to be served by an access lane. No further parcelization is permitted. This portion of the standard is met.

¹³ Flag Lot: A lot that was created after September 6, 1998, and: a. Has the actual building site located behind another lot; and b. Takes access from the street via: i. A driveway or access lane that is part of the lot and the width narrows to less than the minimum lot width for the zone; or ii. An access easement. LOC 50.10.003.2.

Access [LOC 50.07.007.2.c]

Street frontage for a flag lot is not required, but access to a public or private street is [LOC 50.06.003.1.c; 50.07.007.2.c.ii]. Access must be consolidated, including consolidation with the non-flag lot(s), unless not practicable.

As shown on the applicant's site plan, Exhibit E-005, access from Kimball Street to Lot 4 will be consolidated and provided via a shared access lane located along the existing access easement currently serving Parcel 2 of Partition Plat No. 2007-142 (Exhibits E-005 and E-008). LOC 50.06.003.1.d.i,ii requires that an access lane shall serve 2-3 dwellings, be located in a minimum 20-foot easement, and have a minimum of 12 feet of pavement. As shown in Exhibit E-005, the access lane will serve one existing flag lot (Lot 5) and one new flag lot (Lot 4) and provide access to a dwelling or duplex on each lot, for a total of two residential flag lots. The access lane includes a 20-foot access easement and the pavement will be at least 12 feet wide. The applicant shall provide 4-foot shoulders or may pave the access lane to the full 20-foot width. In order to accommodate the full 20-foot minimum easement width, a new access easement across proposed Lots 1 and 2 for the benefit of proposed Lot 4 will be required [Condition A(1)a].

LOC 50.07.007.2.c.iii limits the use of access lanes to no more than two flag lots and one non-flag lot. The general minimum spacing requirement for access lanes on local streets is 50 feet where practicable [LOC 50.06.003.1.d, LOC Table 50.06.003-2]. All buildings on flag lots must post an address at the beginning of the access lane [LOC 50.07.007.2.c.v]. There are not more than two driveways or access lanes within 50 feet of the subject access lane (Exhibit E-005). The nearest access lane or driveway on the abutting property to the south is approximately 38 feet from the proposed south access lane (Exhibit E-005) and approximately 60 feet from the proposed northern site access (not included in this application). Therefore, there are not more than two driveways or access lanes within 50 feet in compliance with LOC 50.07.007.2.c.iv. These standards are or can be met.

Lot Configuration [LOC 50.07.007.2.d]

The front yard of the proposed flag lot, Lot 4, is measured from the access lane along the west side of the property per Subsection 2.d.i(1) (Exhibit E-005). Subsections 2.d.ii and iii prescribe the lot width and lot size requirements. Both the lot width and lot size requirements are met as proposed per Subsections 2.d.ii, iii (Exhibits E-005 and F-001, pg. 26).

These standards are met.

Building Orientation and Height [LOC 50.07.007.2.e.i and e.ii]

Except for dwellings on flag lots at the farthest end of the access lane or flag lots served by a driveway, new dwellings on flag lots shall have the front of the house oriented towards the access lane [Subsection 2.e.i(1)]. Building Orientation should provide the maximum separation and privacy from existing dwellings on abutting lots [Subsection 2.e.i(2)]. The proposal creates one new flag lot, proposed Lot 4. The applicant's narrative states that the front of the future dwelling will be oriented toward the access lane (Exhibit F-001, pg. 27).

The applicant states that the front lot line of Lot 4 is the west property line (access lane), and that the setbacks for Lot 4 "provide for the maximum separation and privacy from the abutting

lots to the east by providing the minimum side setbacks of 10 feet and providing a 25-foot rear yard. There is no structure on abutting TL 200 and the nearest structure on TL 300 is 166.3 feet from the rear (east) property line of Lot 4 (Exhibit F-001, pg. 27).” Staff finds that the dwelling on Lot 4 will be oriented in a manner that will provide maximum separation and privacy to existing dwellings on the abutting lots because the front of the house will be oriented toward the access lane, side yards will be oriented toward the north and south, and the larger rear yard will be oriented toward the east outside the development site.

Structures on flag lots shall not exceed either the average height of all dwellings on properties abutting the development site or 22 feet, whichever is taller. Where there is no dwelling on a property, or where a dwelling is located more than 100 feet away from the development site, the maximum height permitted in the underlying zone is used for the calculation (Subsection 2.e.i). The applicant provided the height of the abutting dwellings at 15868 Kimball St. (10.3 feet) and 15930 Kimball St. (24.2 feet) in Exhibit F-001, pg. 28; the 28-foot maximum height in the R-7.5 zone was used for tax lot 200 (vacant) and for 15883 and 15891 Inverurie Rd. (dwellings more than 100 feet distant) (Exhibit E-003). The average height of the dwellings on all of the abutting lots is 23.7 feet. As a condition of approval, the 23.7-foot height restriction for Lot 4 will be included in a Notice of Development Restrictions to be recorded along with the final plat [Condition A(6)]. As conditioned, this portion of the standard is met.

Setback Requirements

The standard front, side and rear yard setbacks for primary structures in the R-7.5 zone are superseded by the yard setbacks as outlined in LOC 50.07.007.2.e.iv. Side and rear setbacks are established at the time of flag lot creation. The table, below, lists the setbacks applicable to the new proposed flag lot, lot 4.

Flag Lot Setbacks for Lot 4 [LOC 50.07.007.2.e.iv]			
	Numerical Requirements	Additional Requirements	Required Setbacks for Lot 4
Front Setback	15 feet (Structure) 20 feet (Garage)	Measured from access lane	15 feet to structure, 20 feet to garage face, measured from the access lane
Sum of Side and Rear Setbacks	Not less than 45 feet; in no case shall a rear or side setback be less than 10 feet	Provide setbacks similar to those on abutting properties	North: 10 feet South: 10 feet East: 25 feet

The rear setback for Lot 4 is shown as 25 feet from the east property line and 10-foot side yard setbacks are provided from the north and south property lines for a combined total of 45 feet in compliance with this standard (Exhibit E-005). As a condition of approval, the setbacks must be recorded in the Notice of Development Restrictions [Condition A(6)]. No existing dwellings will be located within five feet of the proposed access lane (Exhibit E-005). As conditioned, this portion of the standard is met.

Landscaping and Screening [LOC 50.07.007.2.f]

Subsections 2.f.iii and 2.f.iv require that the perimeter of flag lots be screened from adjacent properties with a 6-foot tall fence and a 6-foot wide landscaped buffer along the property line

within the deepest side or rear yard, except where the fence would be located in a wetland. The deepest yard of Lot 4 is the easterly rear yard. Therefore, a 6-foot tall screening fence is required in the rear (east) yard of Lot 4 only outside of the delineated wetland shown in the site plan (Exhibit E-005). The applicant has provided a preliminary landscape plan (Exhibit E-010) that does not call out the 6-foot fence location outside the RP district and does not show the native screening plantings required within the RP district. Conditions A(7) and C(6) require a final landscape plan, including native species selected from LOC 50.11.004.1 within the RP district along the rear property line of Lot 4. As conditioned, this portion of the standard is met.

Per Subsection 2.f.i and f.ii, a minimum 5-foot landscape buffer must be provided along the access lane at the perimeter of the flag lot site or other measures that provide effective buffering and screening such as landscape islands, fencing, and meandering access lanes. Because LOC 50.07.007.2 is only applicable to access lanes serving flag lots, the 5-foot landscape buffer is only required for the access lane serving Lot 4. The 5-foot landscape buffer along the perimeter of the development site is required along the south and west sides of the access lane serving Lot 4. The proposed landscaping plan (Exhibit E-010) shows landscaping along the south side of the proposed access lane, but does not show the landscaping buffer as required along the west property line of Lot 4. A final landscape plan that shows the 5-foot landscape buffer required along the west property line of Lot 4 is required [Conditions A(7) and C(6)].

Screening [Subsection 2.f.iii-iv]:

- A landscaped buffer within the deepest side or rear yard of the new flag lot, Lot 4, shall be landscaped with a 6-foot wide buffer planted with a deciduous or evergreen hedge, a minimum four ft. in height at planting, which shall grow to a height of six ft. within two years. Within the RP district, native plantings chosen from LOC 50.11.004.1 are required.
- The perimeter of the new flag lot shall be screened with a 6-foot tall fence, except within the delineated wetland.
- Trees removed for site development purposes and for the first dwelling on a flag lot shall be mitigated with trees that will attain a minimum height of 30 feet. Deciduous trees at planting shall be a minimum of **2"** caliper and evergreen trees shall be a minimum of **eight feet** tall. Existing mature vegetation and trees shall be integrated for screening where practicable. A landscape plan should be included that shows the landscape buffers and fencing. See standards for additional details and exceptions.

Staff finds that, as conditioned, the proposal for Lot 4 can be made to comply with the requirements of the Flag Lot standards [Conditions A(1), A(6), A(7), C(6), and C(9)]. This standard can be met.

3. Any additional statutory, regulatory or Lake Oswego Code provisions which may be applicable to the specific minor development application (Stormwater Management Code (LOC Article 38.25), streets and sidewalks chapter (LOC Chapter 42), and the tree cutting chapter (LOC Chapter 55)).

City of Lake Oswego Stormwater Management Code [LOC Chapter 38.25]

Exhibit G-501 states that neighbors' challenges with water mitigation are being disregarded and that future hardscape and potential backfill "is questionable" with regards to "mitigating their

water impact.” Exhibits G-502 and G-524 state that the area is oversaturated and express concerns related to flooding of properties on Tara Place. Exhibits G-503/G-514 and G-508 also express concern for potential water runoff from future home construction. No evidence or applicable code sections are cited. See Stormwater Discussions (50.06.006.3; 38.25), below, for discussion of applicable stormwater management standards.

At this stage of the project, the question per LOC 50.06.006.3.b is whether the applicant can demonstrate that it is possible, likely, and reasonably certain to succeed that the requirement of the Stormwater Management Code can be met, based upon the development activities and impervious area thresholds in LOC 38.25.120. [LOC 38.25.100(2)(a)].

All stormwater management facilities shall meet the standards for “large projects” if the new and/or redeveloped impervious area is greater than or equal to 3,000 sq. ft. For purposes of determining applicability, all applications on a given parcel or contiguous parcels under common ownership conducted within a three-year period shall be considered cumulatively. This proposal will result in development (the access lane area) that exceeds 3,000 square feet of new impervious surface and is therefore reviewed as a “large project” ($\geq 3,000$ sq. ft. impervious area). [LOC 38.25.120(1)(d)(i)].

The applicant has submitted a preliminary drainage report prepared by a registered engineer (Exhibit F-010) and preliminary site and utility plan (Exhibits E-005 and E-007). The City’s contract Stormwater Review Engineer reviewed the project and detailed the findings in Exhibit F-011, which documents applicant information and findings related to LOC 38.25.120.1, Project Classification Procedures and Requirements. The Lake Oswego Stormwater Management Manual (LOSWMM) provides additional information including specifications and procedures for the proper implementation of the requirements of the Stormwater Management Code and is referenced as applicable [LOC 38.25.110].

Based upon the preliminary stormwater design submitted to demonstrate the feasibility of a final stormwater design complying with the Stormwater Management Code, staff finds the preliminary stormwater design is feasible as submitted.

As discussed in Exhibit F-011 and conditioned, this standard is met.

Streets and Sidewalks [LOC Chapter 42]

Exhibits G-503/G-514 state that Baleine Street is insufficient for five additional dwellings (pg. 2). Exhibit G-516 states that public improvements, including right-of-way dedication or street improvements to Baleine Street should be required “because additional lots are being created with the serial partitioning (pg. 6).” Staff notes that no partition is proposed; the current application is for a series of lot line adjustments do not create any new parcels of land as a partition would. There are currently five lots of record existing on the subject site and five lots are proposed at the end of the lot line adjustments (Exhibit E-005). See further discussion below.

“Street” Defined; New Development Street Improvements; Acceptance by City [LOC 42.03.020] (and LOC 50.07.003.5 Conditions of Approval)

This Chapter authorizes the City Engineer to require the development make specific street and sidewalk improvements after taking a variety of policy and site-specific factors into

consideration.¹⁴ The City Engineer's comments are included for the review of the overall understanding of the project.

No new lots are proposed to be created with this application: the proposed lot line adjustments shift the five existing legal lots of record into a new configuration without creating any new lots (Exhibit E-004). Therefore, no right-of-way dedication, public street improvements or public pathway/sidewalk improvements are required as a condition of approval. No additional vehicle trips or pedestrian trips are being generated to the overall transportation system as the number of legal lots of record will remain the same with this proposal; hence, there are no requirements for mitigating street improvements along the overall site frontage that would be justified to be roughly proportional to the degree of impact imposed by the new development, as required by the U.S. Supreme Court in the case of *Dolan v. the City of Tigard*.

Baleine Street Pathway

Exhibits G-500, G-508, G-516, and G-519 request the construction of a new pathway or boardwalk, or improvement of the existing pathway within the unopened Baleine Street right-of-way. Exhibits G-500 (pg. 6-7) and G-516 (pg. 6) state that a pathway in this location is included in the Lake Forest Neighborhood Plan. No public improvements, including public improvements to pathways, can be required as neither nexus nor rough proportionality to support such off-site improvements exist for a lot line adjustment that does not create any new lots.

Exhibits G-504 and G-518 oppose removal of the existing pedestrian pathway and Exhibit G-519 requests re-installation of the existing gravel pathway after construction. As a condition of approval, the existing pathway will be restored to its current condition after construction is complete [Condition A(3)f].

Sight Distance at Roadway Intersections, Private Streets and Driveways – [LOC 42.03.130]

This standard requires that non-exempt vegetation, fence, or signage be located higher than 30 inches within a “clear sight triangle.” The clear sight triangle is that area enclosed by the lines formed by the intersection approach legs of roadways, private streets and driveways and a straight line drawn diagonally across the corner, connecting those lines at the various distances per AASHTO guidelines. Compliance with this standard will be assured during the building permit review process for future construction. This standard is met

City of Lake Oswego Tree Code [LOC Chapter 55]

Type II Tree Removal [LOC 55.02.080(2)]

¹⁴*To meet the review criteria for a minor development, the applicant must comply with "any additional ... Lake Oswego Code provisions which may be applicable to the specific minor development application, such as ... the Streets and Sidewalks Ordinance." LOC 50.07.003.14.d. The determination of whether or not the application meets the requirements of LOC Chapter 42, Streets and Sidewalks, is under the review authority of the City Manager or City Engineer; the requirements of this Chapter are not under the review authority of a hearing body, other than to find whether or not the City Engineer or City Manager has found that the application complies with LOC Chapter 42, or whether conditions of approval are required for compliance with this Chapter.*

The Tree Code is intended to preserve trees. Only those trees which must be removed in order to site proposed improvements will be granted tree cutting permits under LOC 55.02.080(2). There are numerous trees on this site (Exhibit E-003). Forty-three trees are requested for removal to construct the sewer line and the proposed access lane serving Lots 4 and 5 (Exhibits E-009 and F-003, pg. 2-3 and 11). The trees shown with gray X's on Exhibit E-009 are not proposed for removal with this application and will require a Type II Tree Removal application with the development in the future.

Exhibits G-500, G-502, G-508, G-513, G-516 through G-518, G-520, G-522, G-523 and G-525 oppose the proposed tree removal. Exhibit G-513 opposes the proposed tree removal specifically with respect to habitat loss for specific species of squirrel and bird and the existing trees' suitability to the site. Exhibit G-518 states that the proposed tree removal would strip the neighborhood of cooler temperatures. Exhibit G-517 states that "losing the oak forest would lead to: increased noise pollution from the 5 freeway and carmen drive [sic], increased effects of climate change, increased car traffic through the neighborhood with added/completed through streets, decrease in safe walking pathways through the neighborhood impacting quality of life of the residents, and decrease in wildlife habitat." Exhibit G-522 also opposes the proposed tree removal because "the climate is heating up..."; Exhibit G-524 expresses concerns about the potential for future tree fall on neighboring properties due to excess water on site.

As staff as previously summarized, the Development Review Commission and City Council have repeatedly rejected consideration of arguments regarding impact of tree removal that do not address the applicable code criteria (LOC 55.02.080):

"The decisions of this Commission and of the Council, which this Commission is bound to follow in the Commission's interpretation and application of the Code in reaching its decision, have previously concluded that the cited additional items are not to be considered in determining whether to approve a requested tree removal under LOC 55.02.080. (Roderick Family, LLC, AP 20-01, DRC Findings, pg. 9-10, Council Findings, pg. 3; Renaissance Custom Homes, AP 19-07, DRC Findings, pg. 8; Council Findings, pg. 2 ("heating and cooling, greenhouse gases, air quality, water quality, habitat loss, pollution, privacy and buffering, physical and mental health, property values and so forth [sequestration of carbon dioxide, production of oxygen, reduction of energy costs, effect on animal habitat, and buffering of road noise]" are not tree removal criteria; Roderick Family, LLC, AP 20-01, DRC Findings, pg. 9-10, Council Findings, pg. 3; Renaissance Custom Homes, AP 19-07, DRC Findings, pg. 8; Council Findings, pg. 2 (Healthy Ecosystems Chapter of the Comprehensive Plan is not applicable criteria under LOC 55.02.080)).

A tree removal permit must be approved or denied based upon findings as to whether the criteria in LOC 55.02.080 are met.

Staff Report, Renaissance Custom Homes, Ap 22-04 (adopted by reference by the Commission and City Council)

None of the referenced issues raised are criteria for tree removal. See Type II Tree Removal (LOC 55.02.080(2)) discussion, below.

Exhibit G-519 requests that three trees located at 15858 SW Kimball Street in unincorporated Clackamas County, outside City limits, be protected during access lane construction. Staff

confirms that off-site trees that have tree protection zones within the City jurisdiction are subject to the City's tree protection measures during construction. Tree protection measures will be reviewed and inspected prior to start of work on access lane construction. However, staff notes that, as the three trees (and their canopy) discussed in Exhibit G-519 are located in a different jurisdiction, protection and removal of those trees would be pursuant to any applicable requirements in unincorporated Clackamas County, and the applicant is advised to contact the County for its requirements.

Other comments related to trees that do not address specific criteria of approval include:

- Exhibit G-500 states that the provided maps do not indicate tree location. Staff finds that the tree locations, including identification numbers that align with the tree inventory in Exhibit F-003, are provided in Exhibit E-009.
- Exhibit G-500 states that the "applicant's narrative is insufficient to make the case for Type II tree removal (pg. 4)." Staff notes that responses to the Type II tree removal criteria are provided in a separate arborist report, Exhibit F-003. See discussion below regarding LOC 55.02.080 Tree Removal.
- Exhibits G-500 and G-508 state that the applicant does not account for future tree removal (Exhibit G-500, pg. 5 and Exhibit G-508, pg. 2). Only trees requested for removal with this land use application are reviewed at this time. Any future requests for tree removal, including that for construction of dwellings, must be applied for separately under the appropriate tree removal application at the time of submittal.

See further discussion below.

Trees proposed for removal in conjunction with a minor development permit can be granted tree removal permits if the follow criteria are met:

1. *The tree is proposed for removal because it has outgrown its landscape area or the removal is part of a landscape plan, or in order to construct development approved or allowed pursuant to the Lake Oswego Code or other applicable development regulations;*

This criterion is met if the tree proposed for removal is within the development area proposed by the applicant; whether an alternative development analysis is required is addressed under Criterion #3, below. [See Kash Investments (LU 17-0006); Mission Homes NW (LU 17-0016); Blue Palouse Properties LLC (TR 499-17-02043/AP 17-05).]

Exhibit G-513 questions the reason for removal of trees located near the proposed sewer line that are not directly within the footprint of the new pipe alignment. Staff notes that the proposed trenching will cut roots and disturb trees' root protection zones along the new alignment even where trees are not immediately centered over the future pipe. The proposed trench width is approximately seven feet in each direction from the centerline of the proposed pipe (Exhibit E-009). The trees proposed for removal are requested for removal for installation of new sewer infrastructure and a new access lane to serve the newly created flag lot, Lot 4, and the existing flag lot, Lot 5.

Staff finds that this criterion is met because the applicant has shown that the trees requested for removal are within the construction areas for the new access lane and/or the trench and soil stockpiling areas for installation of the new sewer pipe (Exhibit E-009).

2. *Removal of trees, considering proposed mitigation measures, will not have a significant negative impact on erosion, soil stability, flow of surface waters, protection of adjacent trees, or existing windbreaks;*

Staff concurs with the Applicant's arborist's findings, Exhibit F-003, pg. 3-4, addressing tree removal for sewer line installation and access lane construction.

Exhibit G-502 opposes tree removal as "water-absorbing flora." The erosion / flow of surface waters elements are examined on a "tree-specific" analysis, not on a site-wide development basis:

The Commission finds that the material question is whether the proposed four tree removals would have a "significant negative impact on erosion, ... flow of surface waters..." While the testimony received noted an existing elevation difference on the property, the question is whether the tree removals – not the overall proposed development -- would result in negative impacts on erosion or flow of surface waters, notwithstanding compliance with the development's stormwater management measures on the site, e.g., erosion control fencing and related measures at the time of tree removal and house construction. [DRC Findings, Conclusions and Order ("Findings"), pg. 3, *adopted by incorporation*, Council Findings, pg. 3, Renaissance Homes, LLC, AP 22-03 and AP 22-04).

The evidence showing an erosion / flow of surface waters impact should address the effects of the removal of the proposed specific trees, not of the development generally:

More specifically to the criterion, the Commission finds that no contrary evidence by a qualified professional was submitted that identified the specific impact of the removal of the four subject trees, then analyzed the quantitative or qualitative impact on erosion and flow of surface waters on the site resulting from the removal of the four subject trees, and finally, in reviewing the erosion and stormwater management measures required by code in conjunction with development of the site, including LOC 38.25.120 and LOC 38.25.110, concluded the measures would not be adequate to prevent "significant negative impact on erosion, ... flow of surface waters..." on adjacent and nearby properties. [DRC Findings, Conclusions and Order ("Findings"), pgs. 3-4, *adopted by incorporation*, Council Findings, pg. 3, Renaissance Homes, LLC, AP 22-03 and AP 22-04).

Although the applicant's arborist's report did not perform a tree-specific analysis as to erosion / flow of surface waters from the 46 specific trees, the arborist did find that the erosion and stormwater management measures required by code in conjunction with development of the site:

- No open surface water courses cross the site;
- Many existing mature trees will remain (298 out of 344 trees will remain) (Exhibit F-003, pgs 2-4); and

- Native soil is proposed to be returned to its location after pipe installation (Exhibit F-005, pg. 4).

The above conditions are adequate to prevent erosion / flow of surface water impacts from the development generally, and thus any erosion / flow of surface water impacts, if any, that may have resulted from removal of the specific trees would not impact adjacent and nearby properties.

As discussed in Exhibit F-003 pg. 3-4 and Exhibit F-005, pg. 4, this criterion is met.

3. *The removal will not have a significant negative impact on the character or aesthetics of the neighborhood. This standard is met when removal of the trees does not involve:*

- A “significant tree” (over 15” DBH, healthy, noninvasive, and is considered significant to the neighborhood due to size, species, or distinctive character, or the only remaining tree on a property) [LOC 55.02.020 Definitions];*

Element #1 – Healthy:

“Healthy” is “good” or “fair” health. See DRC adoption by incorporation of Staff Reports in Richard (AP 21-03); Roderick Family LLC (AP 20-01). The applicant’s arborist finds 30 of the trees requested for removal are in good health (Exhibit F-003, pg. 11)

Element #2 – Noninvasive:

None of the trees requested for removal are invasive per the Invasive Tree Species List¹⁵ (Exhibit F-003, pg. 11).

Element #3 – Over 15” DBH:

Of the 30 trees that are in good or fair health, there are five trees larger than 15 inches DBH (Exhibit F-003, pgs. 4, 11): Trees 31, 44, 59, 294 and 296. [The applicant’s arborist’s report misapplies Element #3 to Trees 5 and 38, which are 15” dbh (Exhibit F-003, pgs. 4, 11); this element applies to trees with “greater than 15” dbh”].

Subconclusion – Elements #1-3: Five trees, Trees 31, 44, 59, 294, and 296, meet the first three elements of the definition of “significant tree.” (Exhibit F-003, pg. 11).

The applicant does not address whether these five trees are, or are not, “significant trees” as defined in the Tree Code. (Exhibit F-003). [The applicant’s arborist refers to nine trees (Exhibit F-003, pg. 4) – but only lists seven (Exhibit F-003, pg. 4) -- including trees 15 inches DBH or larger, as “significant trees.” As noted above, Trees 5 and 38 are 15” dbh, and thus are not considered under Element #3 as a “significant tree.”] Failure to address the criteria results in a failure to meet the burden of proof relative to the criteria, and accordingly the five trees shall be deemed to each be a “significant tree.”

¹⁵http://www.ci.oswego.or.us/sites/default/files/fileattachments/planning/webpage/12530/invasive_tree_species_list.pdf

Exhibit G-513 states that Oregon white oaks provide a special environmental benefit, are slow growing, and often are not planted in new landscaping. This comment appears to address the “species” component of the “significant tree” definition in LOC 55.02.020. As stated, the applicant has failed to address the criteria for “significant tree,” so all five potentially significant trees are reviewed as “significant trees.” For lack of any evidence submitted by the applicant, staff has reviewed the request with the assumption that all five trees are significant trees.

Element #7 – Sole Remaining Tree

The trees that are considered for this element are the five trees that meet Elements #1-3. Exhibit G-516 states that Trees 254, 294, and 296 are “significant trees” as the last remaining trees on the property because other trees are speculated to be removed when dwellings are later developed on the respective lots. The determination of “last tree” is made at the time of the decision, not speculating on what trees may be removed in the future. Exhibit E-009 demonstrates that many other trees remain on all lots. Staff finds that this criterion is met as no tree proposed for removal is the last remaining tree on any lot.

Subconclusion – Subcriterion (a): Staff finds that the applicant has not offered any argument to Subcriteria (a) and accordingly each of the five trees shall be deemed a “significant tree.” An exception analysis is required for the proposed removal of Trees 31, 44, 59, 294 and 296.

- b. Alterations to the distinctive features or continuity of the neighborhood skyline, as viewed from all public streets and properties within 300 feet of the property;*

Exhibit G-518 states that the proposed tree removal “would strip our neighborhood of the beauty Lake Oswego is prized for.” However, no specific tree or specific alteration to a distinctive feature or continuity of neighborhood skyline is provided.

The applicant’s arborist states that the proposed tree removal will not alter distinctive features or the neighborhood skyline because there are many other trees in the vicinity (Exhibit F-003, pg. 4). Staff concurs that the area is heavily treed and that the 43 trees proposed for removal are not prominent or distinctive and that the continuity of the neighborhood skyline will be maintained by the many (298) other trees to remain on the subject site, within the unopened Baleine Street right-of-way, and within West Waluga Park, maintaining the continuity of the neighborhood skyline.

Staff finds that the removal does not alter a “distinctive feature or continuity of the neighborhood skyline.”

- c. A tree that serves as a visual screen between a residential zone and an abutting non-residential zone, or between a low density residential zone and a medium or high density residential zone, or between a medium and high density residential zone;*

The subject site and the surrounding properties are all low-density residential zones that do not require buffering. West Waluga Park, however, is zoned PNA, which differs from the low-density residential zoning surrounding the park. There are thirteen trees located within West Waluga Park or its frontage which are proposed to be removed. However, staff finds that these thirteen trees do not serve as a visual screen because a dense thicket of trees located in the southern side yard of the abutting property to the north block of the park property

from the neighbor's view entirely (Exhibit E-009, pg. 2). No tree that serves as a visual screen is proposed for removal.

d. A street trees, or,

The applicant's arborist states that 22 trees (Trees 59, 345, 58, 57, 56, 55, 50, 49, 47, 44, 43, 38, 37, 36, 34, 33, 31, 30, 28, 27, 26, 25, 24) proposed for removal are located in the public right-of-way, albeit unopened. (Exhibit F-003, pg. 4). Conclusion: An Exception analysis for the 22 street trees requested for removal is warranted under this subcriterion.

e. Greater than 50% of a stand of trees.

A "stand of trees" is defined as "... a group of trees (of the same species or a mixture) that forms a visual and biological unit of at least 15 ft. in height with a contiguous crown width of at least 120 feet (LOC 55.02.020)." The applicant's arborist states that there are 344 trees on the property and in the neighboring wetland. Assuming those 344 trees make up the stand, the applicant's arborist states that 46 [sic] trees proposed for removal make up only 13% of that stand (Exhibit F-003, pg. 5). As such, the proposed tree removal is less than 50% of a stand of trees.

Note: 43 trees are proposed for removal in this application. Three other trees (Trees 255, 286, and 295) are dead/dying trees, located outside the RP district, that will be removed under a separate dead tree removal application (Exhibit F-003, pg. 11).

Subconclusion – Subcriteria (a)-(e):

Staff finds that the applicant has not shown that proposed tree removal will not involve a "significant tree" for the two potentially significant trees discussed (Trees 294 and 296) above. Staff also finds that 22 trees are located within the public right-of-way (albeit unopened) and are therefore considered "street trees." Therefore, an Exceptions analysis to Criterion 3 is required for removal of twenty-four trees.

Exceptions: Criterion 3 is not applicable when:

- a. A tree is likely to or will continue to cause damage to a permanent, viable existing structure, or to infrastructure, such as utilities or paved landscape features, that cannot be remedied through reasonable tree maintenance or pruning; or*

Tree removal is for development purposes; this Exception criterion is not applicable.

- b. Alternatives to the tree removal have been considered and no reasonable alternative exists to allow the property to be used as permitted in the zone. In making this determination, the City may consider alternative site plans or placement of structures (development purpose) or alternate landscaping designs (outgrown landscape area; landscape plan) that would lessen the impact on trees, so long as the alternatives continue to comply with other provisions of the Lake Oswego Code.*

The arborist report (Exhibit F-003, pg. 2) states that the proposed tree removal is required for construction access for sewer installation and access lane construction.

22 Trees within Unopened Baleine Street: As discussed above under LOC 50.05.010.4.f, there are no alternative locations for the proposed sewer line that would allow this site, and neighboring properties in the future, to be used residentially as allowed in the R-7.5 zone.

Trees 294 and 296: Regarding the removal of Trees 294 and 296 for construction of the new access lane, there is no alternative location to allow access to Lots 4 and 5 without requiring full opening and improvement of Baleine Street, in order to re-locate the access lane to be served by the new road way. Full improvement of the unopened Baleine Street right-of-way with full local street improvements would require significantly more tree removal than the currently proposed access lane alignment. Therefore, there are no alternatives to the access lane location that would result in removal of fewer trees while still allowing Lots 4 and 5 to be used residentially as allowed in the zone (Exhibit F-003, pg. 5).

Exhibit G-500 states that no evidence of alternative site plans is provided by the applicant as required in Exception 3.b. Exhibit G-516 states that alternatives to removal of Trees 254, 294 and 296 should be explored through an alternative design of the access lane. Staff notes that Tree 254 is only 13-inches DBH and therefore cannot qualify as a potentially significant tree and is therefore not subject to an Exceptions analysis for alternative development plans. The access lane is located within an existing access easement to the existing flag lot (Lot 5) which cannot be shifted to another location (Exhibit E-008). There is no alternative location available for the proposed access lane; without site access, Lots 4 and 5 cannot be developed as permitted in the zone as access is required for residential use, the primary allowed use in the R-7.5 zone.

Staff finds that there is no reasonable alternative to removal. This Exception criterion is met.

4. Removal of the tree is not for the sole purpose of providing or enhancing views.

Removal of the trees is not for the sole purpose of providing or enhancing views because the trees are being removed for development purposes, as stated, above, under Criterion #1. This criterion is met.

Conclusion: For the reasons outlined, above, staff concludes that the proposed tree removal complies with applicable criteria. As a condition of approval, the applicant shall apply for and receive a verification tree removal permit for the 43 trees prior to approval of any construction plans [Condition A(9)]. As conditioned, this standard is met.

Mitigation [LOC 55.02.084(4)(a)(ii)]

Any tree approved for removal under the Type II tree analysis shall be mitigated at a minimum 1:1 ratio. Mitigation trees shall have a minimum 1.5-inch caliper diameter for deciduous trees and a minimum 6-foot height for evergreen trees. All native trees must be mitigated with a native species selected from LOC Appendix 55.02-1, Native Mitigation Tree List.

42 of the 43 trees requested for removal are native species, including the five “significant trees” per LOC 55.02.020. Therefore, native species mitigation shall be required at a 2:1 ratio for the five “significant trees,” a 1:1 native species mitigation ratio for all other native trees requested for removal, and one mitigation tree that is not required to be a native species if it is not located within a sensitive lands area: 48 total mitigation trees are required, of which 47 trees

must be native species mitigation trees. As a condition of approval, a copy of the final mitigation plan showing 48 mitigation trees, 47 of which must be native species, must be included with the verification tree removal application [Condition A(9)]; A staff inspection of the planted mitigation trees is required by Condition C(9).

4. Any applicable condition of approval imposed pursuant to an approved ODPS or prior development permit affecting the subject property.

None found.

VII. CONCLUSION

Based upon the materials submitted by the applicant and findings presented in this report, staff concludes that LU 23-0002 complies with all applicable criteria and standards or can be made to comply through the imposition of conditions.

VIII. ACTION TAKEN

Approval of LU 23-0002, subject to the conditions identified on pages 1-6.

Prepared By	Reviewed By	Approved By	Date
Ellen Davis, AICP Senior Planner	Evan Boone Deputy City Attorney	Evan Fransted, AICP Acting Planning Manager	October 25, 2023
EHD	EB	<i>EF</i>	

EXHIBITS

A-D. [No current exhibits; reserved for hearing use]

E. GRAPHICS/PLANS

E-001 Tax Maps
E-002 Vicinity Map
E-003 Existing Conditions Map
E-004 Serial Lot Line Adjustment Plans
E-005 Site Plan
E-006 Sewer Extension Plan
E-007 Utility Plan
E-008 Partition Plat 2007-142
E-009 Tree Plan
E-010 Landscape Plan
E-011 Lake Forest Plat 1925

F. WRITTEN MATERIALS

F-001 Applicant's Narrative
F-002 Fire Marshal Comments

F-003 Arborist Report
F-004 Water Service Provider Letter
F-005 Sensitive Lands Report
F-006 Preliminary Sight Distance Letter
F-007 Clackamas County Replat Evaluation form
F-008 DSL Wetland Land Use Notice
F-009 DSL Wetland Response
F-010 Stormwater Reports
F-011 Brown & Caldwell, Stormwater Analysis
F-012 Staff Memo LU 20-0027
F-013 Email from Clackamas County 10-20-2022

G. LETTERS

Neither for nor Against (G-001-099)

None

Support (G-100-199)

None

Opposition (G-200+)

G-500 Krebs 07-10-2023
G-501 Meyers 07-10-2023
G-502 Bauer 07-10-2023
G-503 Glazer 07-10-2023
G-504 Lundeen 07-10-2023
G-505 Jameson 07-25-2023
G-506 Decker 07-26-2023
G-507 Decker 07-26-2023 (duplicate)
G-508 Shold 07-28-2023
G-509 Fichter 07-31-2023
G-510 Chung 07-31-2023
G-511 Fichter 08-01-2023
G-512 Villalobos 08-01-2023
G-513 DiLoreto 08-01-2023
G-514 Glazer 08-02-2023
G-515 Reid 08-02-2023
G-516 Lake Forest NA 08-02-2023
G-517 Wheeler 08-02-2023
G-518 Heath 08-02-2023
G-519 Paul 08-02-2023
G-520 Villalobos 09-26-2023
G-521 Fichter 10-02-2023
G-522 Linkfield 10-02-2023
G-523 Heath 10-02-2023
G-524 Bauer 10-06-2023
G-525 Jameson 10-06-2023

Date of Application Submittal: January 17, 2023

Date Application Determined to be Complete: July 14, 2023