

STAFF REPORT
CITY OF LAKE OSWEGO

PLANNING DIVISION

APPLICANT/OWNER:

Kenneth E. Jernstedt

FILE NO:

LU 13-0044

TAX LOT REFERENCE:

Tax Lot 500 of Tax Map 2 1E 04 BA

STAFF:

Debra Andreades

LOCATION:

12800 Goodall Road

DATE OF REPORT:

September 27, 2013

COMP. PLAN DESCRIPTION:

R-7.5

120-DAY DECISION DATE:

January 14, 2014

ZONING DESIGNATION:

R-7.5

NEIGHBORHOOD ASSOCIATION:

Forest Highlands

I. APPLICANT'S REQUEST

The applicant is requesting approval of a minor land partition to divide the 7.35-acre site into three parcels. Two trees are proposed for removal to accommodate the project.

II. PRELIMINARY DECISION

Approval of LU 13-0044 with conditions. The complete listing of conditions is provided on pages 16-21 of this report.

III. APPLICABLE REGULATIONS

A. City of Lake Oswego Community Development Code (Chapter LOC 50):

LOC 50.03.002.2	Residential Districts Use Table
LOC 50.04.001.1	Dimensional Table for Residential Zones
LOC 50.04.002.5	Special Street Setback
LOC 50.06.001.2-50.06.001.3	Structure Design-Residential Zones
LOC 50.06.002	Parking
LOC 50.06.003.1	Access
LOC 50.06.003.2	On-Site Circulation - Driveways and Fire Access Roads
LOC 50.06.003.4	Local Street Connectivity
LOC 50.06.004.1	Landscaping, Screening and Buffering
LOC 50.06.004.3	Lighting Standard
LOC 50.06.006.2	Hillside Protection
LOC 50.06.006.3	Drainage Standards
LOC 50.06.007.1	Solar Access
LOC 50.06.008.1-6	Utility Standard
LOC 50.06.011.1-3	Vision Clearance
LOC 50.07.003.3	Public Notice/Opportunity for Public Comment
LOC 50.07.003.4	Hearings
LOC 50.07.003.5	Conditions on Development
LOC 50.07.003.7	Appeals
LOC 50.07.003.14	Minor Development Decision
LOC 50.09.002.5	Compliance with Approved Permit

B. City of Lake Oswego Streets and Sidewalks Code [LOC Chapter 42]:

LOC 42.08.400-42.08.470	Streets and Sidewalks
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C. City of Lake Oswego Tree Chapter [LOC Chapter 55]:

LOC 55.02.010 - 55.02.080	Tree Removal
LOC 55.02.084	Mitigation Requirements
LOC 55.08.020	Tree Protection Plan Required
LOC 55.08.030	Tree Protection Measures Required

D. City Charter

Section 40	Major Road Expenditures.
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IV. FINDINGS

A. Background/Existing Conditions:

1. The property is approximately 7.35 acres in size, and is located at the intersection of Goodall Road and Knaus Road, both of which are classified as neighborhood collectors (Exhibit E-1).
2. The site is zoned R-7.5, as are the properties to the south across Knaus Road and the southwest across Goodall Road (Exhibit E-2). Properties to the east and west are part

of unincorporated Clackamas County. Properties to the north are in the City of Portland and/or Multnomah County. All surrounding properties are developed with single family homes.

3. The site contains an existing single-family dwelling that will remain (Exhibit E-4). The site slopes down towards the south at approximately 12-20% (Exhibit E-9) and contains mature conifers along the perimeter of the site and a cluster of mature deciduous trees adjacent to the existing house on the north portion of the site.
4. The applicant states that the eventual plan is to create 17 lots through a serial partition process or a Master Plan process with a Development Agreement, working with the Forest Highlands neighborhood on the details. The current request for a three lot partition may be the first step in achieving that eventual plan; nevertheless, this application is reviewed based solely upon the scope of the request – a single three lot partition. [A land division of the site into three parcels was approved in 2007 (LU 07-0063), however, the partition plat was never recorded. Also in 2007, a different applicant entered into a Development Agreement with the City of Lake Oswego (LU 07-0089) that was designed to accommodate a phased development of the site; the phasing was to be through a series of partitions over a period of three years that would result in 18 lots coinciding with a master plan approved in 2008 (LU 08-0019), similar to what the present applicant contemplates. That development was never carried out.]

V. REVIEW AND APPROVAL PROCEDURES

A. Neighborhood Meeting

The applicant held the required neighborhood meeting on August 5, 2013, and an additional meeting on August 21, 2013. The minutes of the meetings are included in this report as Exhibit F-6.

B. Public Notice to Surrounding Area

The City has provided adequate public notice and opportunity to comment on this application pursuant to LOC 50.07.003. No letters were received as of the date of this report.

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 this report.

VI. MINOR DEVELOPMENT

A. Classification of Application

LOC 50.07.003.14.a.ii(8) describes a partition as minor development.

B. Criteria for Review of Application

Per LOC 50.07.003.14.d, for any minor development application to be approved, it shall first be established that the proposal complies with:

1. **The requirements of the zone in which it is located;**

R-7.5 Dimensional Standards [LOC 50.04.001.1]

The site is zoned R-7.5. The applicant proposes to divide the site into three parcels. The existing structure on the site will remain on Parcel 3. Construction of future structures on each parcel will be subject to the site development requirements that are in effect at the time of building permit application or at the time of construction if no building permit is required. The current lot dimensional standards for the R-7.5 zone are listed in the matrix below.

Standard	Minimum	Parcel 1	Parcel 2	Parcel 3 (Existing house)
Lot Area	7,500 sq. ft.	100,646 sq. ft.	86,842 sq. ft.	123,160 sq. ft.
Lot Width	50 ft.	~495 ft.*	~130 ft. (Knaus Rd.)* ~222 ft. (Goodall Rd.)	~60 ft.
Setbacks				
-Front	25 ft.	Undeveloped	Undeveloped	~280 ft.
-Side	5 ft. min, 10 ft. combined	Undeveloped	Undeveloped	85 ft. (north) 104 ft. (south)
-Rear	30 ft.	Undeveloped	Undeveloped	120 ft.
Height	28-35 ft., depending on slope of lot	Undeveloped	Undeveloped	24 feet
Lot Coverage	30% (for dwelling ≤24' in height) =36,948 sf.	Undeveloped	Undeveloped	36,948 sf (30%) allowed 4,454 sf existing (.03 %)
Floor Area	3,000 sq. ft. + [(actual lot size – 5,800 sq. ft.) x 0.19], + 600 sq. ft. if garage provided	Undeveloped	Undeveloped	25,898 sf allowed (Total existing square footage not provided, however existing house is well under permitted maximum)

*Lot with double frontage

As illustrated in the table above and on Exhibit E-6, the proposed parcels comply with all lot dimensional standards of the zone. In addition to the standards outlined above, the dwelling design and garage appearance and location standards of LOC 50.06.001.1 are applicable to the house that will remain on Parcel 3, where the side lot line of the lot has changed from what it is today; and to future structures on Parcels 1 and 2. Compliance with these standards will be reviewed at the time of building permit application.

Special Street Setbacks [LOC 50.04.002.5]

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. All yards are measured from the special street setback line. Knaus Road has a special street setback of 30 feet measured from the special street setback reference line (as

established pursuant to LOC 42.03.135), which in this case is the center line of the road. The existing right-of way is 40 feet, therefore, a 10-foot special street setback would be applied to the front yards of Parcels 1 and 2.

The applicant has indicated a 10-foot dedication along Knaus Road on the preliminary plat (Exhibit E-6), and is also showing a 5-foot dedication along the Goodall Road frontage. However, as discussed under Chapter 42 Streets and Sidewalks, additional dedication will be required. A special street setback is in anticipation of possible future improvements in the right of way to assure an adequate front yard setback is available after the future street improvements. A front yard setback is measured from the special street setback line. Following dedication, no additional special street setback on Parcels 1 and 2 will be required because the special street setback will match the street right-of-way on Knaus Road.

R-7.5 Structure Design Standards [LOC 50.06.001.2]

These standards are applicable to future structures on Parcels 1 and 2. Compliance with these standards for Parcels 1 and 2 will be assured during the building permit approval process. These standards are also applicable to the house that will remain on Parcel 3 because the partition establishes new lot lines from which the standards are measured. See analysis below.

Street Front Setback Plane

This standard is not applicable to the existing house on Parcel 3 because the front lot line is not changing from where it is currently (west property line). This standard is either met or, if the house is non-conforming it is permitted to remain (LOC 50.01.006.1.d).

Side Yard Setback Plane

The side profile of a structure is required to fit behind a plane that starts at the side property line and extends upward to 12 feet in height, sloping towards the center of the lot at a 12:12 pitch up to the maximum allowed height.

The south side lot line of proposed Parcel 3 has changed from a street side to an internal side lot line. Therefore, this standard is applicable to the existing house on Parcel 3 that is proposed to remain. As indicated on Exhibits E-6 and E-7, the existing house complies with the side yard setback plane.

Side Yard Appearance and Screening

The development must comply with one of the side yard appearance and screening treatments: Maximum Side Yard Plane, Side Yard Features, or Screening. As discussed above, this standard is applicable to any development that will remain on Parcel 3 and is applicable to both interior side yards and side yards that abut streets. However, because the orientation of the lot is not changing with regard to this standard (the south side yard is still an interior side yard or a side yard that abuts a street) if the existing house does not meet this standard, it would be considered non-conforming and would be permitted to remain (LOC 50.01.006.1.d).

Garage Appearance and Location

The garage appearance and location standards apply unless a garage is located at least 60 feet from a public right-of-way. The garage of the existing house is located approximately 270 feet from Goodall Road; therefore, this standard does not apply.

2. The Development Standards applicable to minor developments;

Off Street Parking, Loading and Bicycle Access [LOC 50.06.002]

This standard requires that a single-family dwelling provide one off-street parking space. Exhibit E-6 illustrates that the proposed parcels are of sufficient size to accommodate the required off-street parking spaces. Compliance with this standard will be assured during the building permit review process for Parcels 1 and 2; Parcel 3 complies now.

Access [LOC 50.06.003.1]

This standard requires that every lot abut a street for at least 25 feet (except flag lots), and prescribes standards for access lanes. As shown on Exhibit E-6, Parcel 1 has 495 feet of frontage on Knaus Road and 226 feet of frontage on Goodall Road. Parcel 2 has 242 feet of frontage on Goodall Road and 130 feet of frontage on Knaus Road. Parcel 3 has 42 feet of frontage on Goodall Road, complying with the requirement.

This standard also addresses site access (driveway) impact on the adjacent streets. The Engineering staff finds that neither of the frontage streets requires restricted access; only the location of the driveways are regulated. No proposed driveway locations are shown on the application drawings. There are also design guidelines in the City Engineer's policy memorandum, Guidelines and Standards for New Streets and Frontage Improvements in the Urbanizing Rural Fringe and Transition Neighborhoods, effective February 1, 2005, describing that driveway approaches shall be asphalt and limited to 16 feet wide, irrespective of the number of garage doors facing the street. The existing driveway on Parcel 3 complies with this standard. As part of the building permit application for Parcels 1 and 2, a site plan will be required showing that the location of the proposed driveway approach for each driveway complies with these standards. As conditioned, this standard is met.

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

This standard contains the geometric design standards for proposed driveways that serve as fire department access roads, and other design features such as slope and width of driveway approaches. The maximum grade and cross slope for a driveway is 15% and 5%, respectively. Engineering staff states that on corner lots where the adjacent streets are not fully improved to their anticipated ultimate width, the nearest edge of the proposed driveway to the intersection shall be no closer than 30 feet when measured from the lot corner. The lot lines after street dedication shall be used as the basis for determining compliance with this standard which will be assured during building permit review.

All driveway approaches shall be located and designed so that the driver entering or exiting the driveway can see approaching traffic for a sufficient distance to make a safe entrance and exit. American Association of State Highway and Transportation Officials (AASHTO)

standards shall be used in determining compliance with this standard. Compliance with this standard will be assured during building permit review.

This standard also regulates aspects of design related to emergency vehicle access. On properties served by dead-end driveways that exceed 150 feet in length, the applicant must provide either an approved fire department turnaround or an alternative method of fire suppression, such as residential sprinklers. Although no house designs have been submitted for Parcels 1 and 2, those parcels are large enough that this could present an issue. The existing house on Parcel 3 is more than 150 feet from the street but no additional square footage is proposed. Therefore, the Fire Marshal states that it is considered non-conforming and the access can remain as is. Compliance with this standard for Parcels 1 and 2 will be assured during the building permit review process. This standard can be met.

Local Street Connectivity [LOC 50.06.003.4]

This standard is applicable because the proposed development site is larger than 1.75 acres. This standard prohibits the construction of closed end streets longer than 200 feet; development is to be designed so that streets create connections to adjacent developable properties.

No new streets are proposed as part of this application. When an applicant proposes construction of a structure that does not require the construction of a street, but is located on a site larger than 1.75 acres, a future connectivity plan is required to be filed with the City and recorded with the County Clerk, as a condition of development approval. The future connectivity plan shall show how the location of future streets, access lanes, and accessways will provide for full development of the subject parcel as well as any abutting properties and the placement of future structures that will allow construction of the future access, in order to meet the standard. As indicated in the future development plan, Exhibit E-13, the future street will be able to connect to the property to the east that could be redeveloped. As a condition of approval, this plan shall be recorded with the County Clerk at the time the plat is recorded. As conditioned, this standard is met.

Landscaping, Screening and Buffering [LOC 50.06.004.1]

This standard applies only to partitions involving the creation of a street. This partition does not involve the creation of a street; therefore this standard is not applicable.

Lighting [LOC 50.06.004.3]

This standard prescribes lighting standards for public and private streets, pathways, accessways and parking lots. There are no existing street lights along Goodall Road or Knaus Road in the immediate vicinity of the site. Street lights are not required except at street intersections for collector level roads. This development will create increased traffic, bike, and pedestrian trips to the intersection of Goodall Road and Knaus Road, thus requiring this intersection to have a street light.

There is an existing utility pole at the intersection but there is no street light on the pole. This development will create increased traffic (average 10 vehicle trips per day per new dwelling), bike, and pedestrian trips to the intersection of Goodall Road and Knaus Road thus requiring the need to mitigate for the impacts of the new development to the transportation system. Staff finds that the impacts upon the transportation system

created by an additional lot would generally meet the Dolan exaction requirement of rough proportionality¹ for a new street light and pole. If the applicant chooses to install a new street lighting pole and light, that would be acceptable as well.

As a condition of approval a street light shall be installed at the intersection of Knaus and Goodall Roads. As conditioned, this standard is met.

Hillside Protection [LOC 50.06.006.2]

This standard applies to all development that includes hillsides or areas with erosion potential and requires that development on undisturbed slopes exceeding 20% grade be kept to a minimum. If the site contains areas over 20% slope, a slope analysis map is required. The purpose of this standard is to maintain slope/soil stability on adjacent properties and protect natural vegetation.

On land with undisturbed slopes in excess of 12%, cuts and fills shall be regulated such that no more than 65% of area in undisturbed slopes of 20% to 50% shall be graded or stripped of vegetation. In addition, land over 50% undisturbed slope shall be developed only where density transfer is not feasible.

The applicant has submitted a slope analysis map, (Exhibit E-9). The majority of the site is in the range of 0-20% with small areas of slope in the 20-50% range in the vicinity of the existing home and at the far east of the site which also contains a very small area of 50% slope. The applicant states that these areas were previously disturbed by grading and terracing during development of the existing home and driveway (Exhibit F-1) which resulted in artificially created slopes in the 20-30% range. Undisturbed slopes are defined as those that:

Undisturbed Slopes: Slopes, or portions of slopes, that have not been previously altered from the natural topography for slope stability, i.e., re-contoured, graded, and/or terraced and the altered slope was either performed in accordance with or subsequently approved by a licensed geotechnical engineer, registered civil engineer experienced in soils engineering, or licensed engineering geologist.

Undisturbed slopes consist of natural topography, vegetation, and soils.

The topographic map of the site (Exhibit E-5) confirms that the natural topography is broken in this area. The Geotechnical Report (Exhibit F-4) states that although no undocumented fill was encountered in the test pits that were dug, it appears that fill was placed in this area. [Staff notes that a prior analysis was done by the previous applicant for the site. The Geotechnical report states that, in addition, undocumented fill was encountered and soils in this area are stable. This report is part of the previous file, LU 07-0063]. Because the land in slopes of 20-50% is defined as disturbed, LOC 50.06.006.2.d.4 does not apply. This standard is met.

¹See discussion in LOC Chapter 42 Streets and Sidewalks for general discussion about exactions.

Drainage Standard for Minor Development [LOC 50.06.006.3]

This standard requires that drainage improvements be provided to ensure that the proposed development will not adversely affect surrounding properties. The determination of whether or not the application complies with the requirements of this standard is under the review authority of the City Manager or City Engineer.

The Engineering staff has made the following findings and conditions of approval:

All surface runoff created from the new impervious surfaces shall be managed on-site. This project shall be developed to maximize the amount of storm water runoff which is percolated into the soil and to minimize direct overland runoff into streets, drainage systems, and/or adjoining property. Storm water runoff from roofs and other impervious surfaces should be diverted into swales, terraces and/or water percolation devices on the lots when possible. Storm water management will be required for the impervious surfaces from the new roof areas and driveways.

The applicant has submitted a preliminary storm water report prepared by a registered engineer (Exhibit F-3). The drainage report shows that each parcel will have an individual private storm water infiltration trench system for the new impervious area. Sizing of the trench was based on a contributing area of 3,030 square feet of impervious area, resulting in an infiltration trench of 8 feet wide by 40 feet long by 5 feet deep. Engineering staff notes that the impervious area for each parcel will likely be larger than 3,030 square feet of contributing impervious area, thus requiring a larger infiltration trench than what is indicated in the calculations.

Parcels 1 and 2: Because there is adequate area on each parcel to construct a larger infiltration trench if needed, Engineering staff finds the proposed method of storm water management acceptable. Final trench design and sizing calculations will be reviewed at the time of building permit submittal, when the final home design and driveway locations are determined. Engineering staff also notes that subsurface disposal systems are regulated under the Oregon Department of Environmental Quality's Underground Injection Control (UIC) program, and the design shall meet all applicable requirements if a UIC is installed for stormwater disposal. Driveway runoff cannot be directed to a subsurface disposal system without DEQ approval.

As a condition of approval, each future building permit application for the individual parcels will be required to submit design calculations for the infiltration storm disposal systems to ensure they are adequately sized for the new impervious surface on each parcel. Alternative storm water management facilities such as rain gardens or infiltration swales can also be proposed, subject to review and approval by the City Engineer.

Parcel 3: Demonstrate to the City Engineer's satisfaction that the existing drainage from Parcel 3 either:

- a. Does not cross Parcels 1 and 2 and is contained on Parcel 3 or is discharged into an approved storm drainage facility as approved by the City Engineer, or

- b. There is a drainage easement across Parcels 1 and 2 for the current drainage pattern.

As conditioned, this standard is met.

Solar Access [LOC 50.06.007]

This standard requires that 80 percent of the parcels resulting from a partition approval comply with the solar design standard. All three parcels, therefore, must comply with one of the three alternatives: (a) Basic Requirement, (b) Protected Solar Building Line, or (c) Performance Option. A lot complies with the Basic Requirement if it has a north-south dimension of at least 90 feet and has a front lot line that is oriented within 30 degrees of a true east-west axis. As shown on Exhibit E-6, the basic standard is met for Parcels 1 and 2 but not for Parcel 3 because it does not have a front lot line within 30 degrees of a true east/west axis.

As an alternative, the applicant can show that Parcel 3 meets the Protected Solar Building line option, which requires that there be at least 70 feet between the middle of the north-south lot dimension on the lot to the south and the Protected Solar Building line on the Parcel 3 and at least 45 feet between the protected solar building line and the north edge of the building area of the parcel. As indicated on Exhibit E-6, Parcel 3 can meet this option. As a condition of approval, the parcels must be identified as solar lots in a "Notice of Development Restriction" recorded with the plat. As conditioned, this standard can be met.

In addition all single-family detached structures in any zone are required to meet the Maximum Shade Point Height Standard [LOC 50.06.007.2.c], which protects structures located to the north of the site from shading. Compliance will be assured during building permit review.

Utility Standard [LOC 50.06.008]

The Engineering staff has reviewed the application and finds that utilities are available or can be made available as follows:

Sanitary Sewer: Sewer service for this development will be obtained by extending a public sewer from an existing 8-inch line in Goodall Road, located approximately 220 feet south of Knaus Road.² This development will be required to bring public sewer up Goodall Road to the north property line of Parcel 2, approximately 420 feet north of Knaus Road. Public sanitary sewers shall be located within the public street, and service laterals shall be provided directly to a parcel, without crossing other parcels with a public sewer easement unless the use of the private sewer easement is for a driveway, per City Engineer policy (LOC 50.06.008.4.f). The Utility Plan, Exhibit E-12 shows that all lots can be served directly by the sewer line in Goodall Road if the sewer line is extended north of the north property line of Parcel 2. The applicant has proposed, however, that the sanitary line to Parcel 3 cross Parcel 2, but the applicant does not show that the area is a driveway. Presumably this is based upon the applicant's final build-out plan, Exhibit E-13, which shows that, upon that event, the Engineering Division's requirement will be met. However, because approval of this application must be based solely upon the proposed partition, not the applicant's

² The sewer line does not need to be extended to the north boundary of Parcel 3, as is usually required per LOC 50.06.008.3.d because the property borders the City of Portland and the parcels are at the top of the drainage basin. The City Wastewater Master Plan does not plan for facilities further upstream.

build-out plan, a condition of approval is required that, prior to issuance of a building permit on any lot, that compiles with one of the following:

- a. The sewer line must be extended on Goodall Road to north of the north property line of Parcel 2 and that the public sanitary sewer shall be located within the public right-of-way, and service laterals shall be provided directly to a parcel, without crossing other parcels within a private sewer easement; or
- b. The public sewer easement is shown to be located in a driveway; or
- c. A subsequent partition or subdivision approval shows that the public sewer line will not cross any lots.

As conditioned, this standard is met.

Water and Hydrants: There is an existing 8-inch City water main located in Knaus Road. This project will require an 8-inch public water extension be brought up to the north property line of Parcel 2, approximately 410 feet north of Knaus Road as a condition of approval. As conditioned, this standard is met. The Fire Marshal states that hydrant location is adequate for the project.

Sidewalks: Asphalt pathways exist across the street from the site along Knaus Road. There are no existing sidewalks or pathways located along Goodall Road; however, there is an existing sidewalk located along the south side of Adrian Court across from the northwest corner of the site. See discussion below under LOC Chapter 42.

Other Utilities: It is the applicant's responsibility to ascertain the availability of electric, gas, telecommunications and cable TV. All new utilities shall be installed underground.

3. Any additional statutory, regulatory or Lake Oswego Code provisions which may be applicable to the specific minor development application;

City of Lake Oswego Streets and Sidewalks Ordinance [LOC Chapter 42]

Vision Clearance [LOC 42.03.130]

This standard requires that no vegetation, fence or signage higher than 30 inches be located within a "vision clearance triangle." The vision clearance triangles for a driveway are formed by 10-foot legs extending from the intersection of the driveway and the street travel lane. No driveway approaches are shown with the proposed partition development. As a condition of approval, at the time of building permit review, the proposed driveway approach location for each parcel shall demonstrate compliance with this standard. As conditioned, this standard is met.

Street and Sidewalk Improvements [LOC 42.03.005 –.125]

This Chapter authorizes the City Engineer to make specific street and sidewalk improvement recommendations after taking a variety of policy and site specific factors into consideration.³ The City Engineer's comments are included for review of

³To 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 50.79.025(1) (c). 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 overall understanding of the project. The City Engineer's conditions of approval are included, as they must be included in the decision, to find that the application will comply with this article.

The Engineering staff has reviewed the development proposal and field conditions in the context of the City's codes, improvement policies and Transportation System Plan (TSP), and offers the following findings and conditions of approval:

The proposed 3-parcel partition can be expected to contribute 10 vehicle trips to the City's street system per parcel per average weekday.⁴ Additional pedestrian and bicycle trips can be expected as well. The cumulative effect of new trips (all modes), imposes an additional burden and concomitant concerns for preserving street capacity and public safety, particularly for bicycles and pedestrians.

The City has a governmental interest in assuring that new development does not contribute to a degradation of adequate, safe and efficient public transportation facilities. New development should mitigate the negative impacts (increased noise, and the degradation of aesthetics, safety, system capacity, and bicycle and pedestrian mobility) resulting from new development. The City has adopted a broad array of policies, plans, regulations, and fees that have been designed to offset the adverse impacts of development on the natural and built environment. In this regard, the following regulations and standards reflect the governmental interest in preserving the functionality and safety of the public infrastructure, and are particularly relevant to this development proposal:

- LOC Chapter 42 requires frontage improvements to be constructed when property is developed.
- LOC Chapter 42 directs the City Engineer to recommend to the decision making authority the appropriate width of public rights of way, and the width and character of the improvements contained therein.
- Street frontage improvements, landscaping and pathway improvements shall comply with the City Engineer's policy memorandum, Guidelines and Standards for New Streets and Frontage Improvements in the Urbanizing Rural Fringe and Transition Neighborhoods, effective February 1, 2005.

The implementation of the City's plans, policies, and regulations will offset to some degree the negative impacts of development on the public infrastructure. LOC 50.07.003.5 allows the reviewing authority to impose conditions of approval on a development permit when the condition is reasonably related to alleviation of a need for public services or facilities created or contributed to by the proposed development. In addition, the US Supreme Court has ruled (*Dolan v. City of Tigard*) that, in order to require exactions, the local government must apply a test of "rough proportionality" between the impacts of the proposed development and the need for the exaction.

Goodall Road and Knaus Road are designated as a "neighborhood collector" in the City's functional classification system. The City's Comprehensive Plan identifies Goodall Road south of Knaus Road as shared roadway bike route and needing a pathway. Goodall Road is a direct route to Boones Ferry north of the site, thus also needing a shared roadway. The Comprehensive plan also identifies Knaus Road as a shared roadway. The existing pavement widths along these roads are substandard for this designation. A

⁴ Trip Generation (8th edition), Institute of Transportation Engineers

standard engineering design of a shared lane is 14 feet wide. The existing pavement width varies along the site frontages of these two roads, but in some areas the entire roadway width is approximately 18-feet wide, within a 40-foot wide right-of-way. Goodall Road and Knaus Road are also identified as a proposed "Community Connector Trail/Pathway" route in the Lake Oswego Trails and Pathways Master Plan.

The applicant has indicated a 10-foot voluntary dedication along Knaus Road on the preliminary plat (Exhibit E-6), and is also voluntarily showing a 5-foot dedication along the Goodall Road frontage. (The applicant anticipates submission of future serial partition applications or a development agreement for the future development of the site, which in turn would result in analysis and possible exaction of 10-foot right-of-way dedication. The applicant prefers to proceed with the dedication voluntarily at this point.) Because of the applicant's indicated voluntary dedication, staff review of the application for purposes of meeting the Special Street Setback and Onsite Circulation standards, as well as the requirements of the Street and Sidewalk Improvements standards, has assumed that the dedication will occur. Accordingly, the dedication will be included as a condition of approval; if the applicant decides not to make the voluntary dedications, then the applicant must seek a modification of this approval in order for the conditions of approval and Dolan exaction findings relative to the dedication to be made which would reflect only this three lot partition.

For exaction purposes, based on increase of two additional parcels and given the site is a 7.35 acre corner parcel, the development will be required to dedicate sufficient right-of-way for required frontage improvements; however, construction of the street frontage improvements will not be required at this time. In addition, sufficient right-of-way dedication along the site frontage of Goodall Road and Knaus Road shall be provided as a condition of this development, to achieve a future half-street section of 14-feet of pavement from the traveled centerline, a 3-foot wide gravel shoulder, an 8-foot wide drainage swale, and a 6-foot wide asphalt pathway at the back of the right-of-way. The dedication shall occur with the recording of the plat.

Existing overhead utilities along Goodall Road are required to be installed underground along the site frontage and may be allowed to be located within a public utility easement adjacent to the dedicated right-of-way. A public pathway within an easement will be allowed in lieu of a pathway in the right-of-way only at locations where the pathway must jog onto private property around existing trees that will be preserved. However, given the 7.35 acre parcel size and that it is a corner lot, there is not sufficient rough proportionality to require the construction to be undertaken at this time. An LID Waiver will be required in order to defer undergrounding of utilities at this time. The LID Waiver may be terminated if the area is partitioned or subdivided in the future and the additional lot creation, along with this 3-lot partition, meets the required rough proportionality test and utilities are required to be placed underground.

It appears that the required right-of-way dedication will be approximately 10-feet along the site frontage of both roads; however, a final engineering analysis will need to be submitted for review prior to recording the partition plat to verify if 10-foot dedication is sufficient for the future street improvements identified above. A 10-foot public utility easement along the site frontage of Goodall Road may also be required for undergrounding the existing franchise utilities.

As a condition of approval of the proposed development, the City will require the following exactions:

- Dedicate sufficient right-of-way to accommodate the following anticipated half-street improvements along the site frontage of Goodall Road and Knaus Road:
 - For the widening of the pavement along the east side of Goodall Road and the north side of Knaus Road along the entire site frontage to achieve a 14-foot wide shared travel lane (measured from the existing painted yellow centerline) and construct a minimum 3-foot wide, compacted crushed rock shoulder.
 - For the construction of an 8-foot wide drainage swale along the site frontage on Goodall Road and Knaus Road. A culvert shall be provided at pedestrian crossing where the pathway will connect back to the edge of road and at driveway approaches.
 - For the construction of a 6-foot wide asphalt pedestrian pathway behind the drainage swale along the entire site frontage on Goodall Road and Knaus Road, with a connection back to the edge of the road.
- Grant a public utility easement (according to the minimum width standards for the franchise utility companies) along the site frontage of Goodall Road for undergrounding the existing overhead utilities or franchise utilities.

The City finds that exacting the right-of-way dedication and public utility easement for future street improvements is directly related to the increased traffic, bike, and pedestrian trips that will be created by this development.

The City also finds that requiring the right-of-way dedication and public utility easement along the site frontage is roughly proportional to the adverse impacts created by the development because:

- The development will generate 10 additional vehicle trips per additional parcel per day using Goodall Road, Knaus Road and the adjacent local street system.
- The additional site generated traffic creates an increased point of conflict between pedestrian and bicycles using the adjacent street system. By providing right-of-way dedication and public utility easement for future street improvements along the site frontage, the public safety will be maintained.
- The new future pathway will result in a greater use of alternative modes of travel (pedestrian, bicycle, transit), both today and in the future, as traffic volumes increase in the area. These additional alternative mode travel trips will partially offset the additional vehicle trips generated by the development.
- Similar exactions for right-of-way dedication and public utility easements have been required for similar developments in the area, with the result being that such exactions for street frontage improvements have mitigated the increased traffic (vehicle, pedestrian, and bicycle) by preserving the functionality and public safety features of the public street system.
- The additional right-of-way dedication will be approximately 11,750 square feet, or 3.7% of the 320,166 square feet (7.35 acres) square foot development site.
- The additional public utility easement along Goodall Road will be approximately 5,350 square feet, or 1.7% of the 320,166 square feet (7.35 acres) square foot

development site.

In light of the above facts and Code requirements, staff finds that the development of this site will place sufficient additional demand on this local street to justify the right-of-way dedication and public utility easement at this time, and that the required dedication and easement are roughly proportional to the degree of impact imposed by the new development, as described above, and consistent with the improvements of similar developments of land along Goodall and Knaus Road, as required by the U.S. Supreme Court in the case of Dolan v. the City of Tigard.

City of Lake Oswego Tree Code [LOC Chapter 55]

Tree Removal

This Code requires approval of a permit for removal of any tree in excess of 5-inches in diameter, subject to Type II criteria as listed in LOC 55.02.080(1-4), and prescribes protection measures for trees to remain during construction. The utility and tree removal plans (Exhibits E-12 and E-8) indicate two trees (pines) are proposed for removal to extend the sewer line into the site. Compliance with LOC 55.02.080 is required for such tree removal. Any trees proposed for removal will be granted tree removal permits [LOC 55.02.035; 55.02.080], if they:

- Must be removed for development or landscaping purposes;
- Will not have a significant negative impact on erosion, soil stability, flow of surface waters, protection of adjacent trees, or existing windbreaks;
- Will not have a significant negative impact on the character, aesthetics, or property values of the neighborhood, except when alternatives to tree removal have been considered and no reasonable alternative exists to allow the property to be used as permitted in the zone; and,
- The sole purpose is not for the purpose of providing or enhancing views.

Regarding the removal of these trees, staff finds that:

- Removal is necessary for development because these trees are located in the area where utilities will be extended into the site (Exhibit E-12). Otherwise, the trees would be damaged by the proposed construction.
- Removal of the trees will not have a significant negative impact on erosion, soil stability, flow of surface waters, protection of adjacent trees, or existing windbreaks because there are numerous other trees that are clustered that provide windbreak, erosion control and soil stability. There are larger trees in the rear of the site, on the perimeter of the site and adjacent to the existing house that provide windbreak, erosion control, and soil stability (Exhibit E-12).
- Removal will not have a significant negative impact on the character, aesthetics, or property values of the neighborhood because the trees, are not the dominant trees from the street.
- The trees are not being removed for view enhancement, because the removal will not improve any view, and as stated above, are being removed for development.

The applicant should apply for a verification tree removal permit for two trees with mitigation plan showing two new trees to be planted, prior to approval of any construction plans.

Mitigation

Any tree approved for removal should be mitigated at a minimum 1:1 ratio. Mitigation trees are required to be a minimum 2-inch caliper for deciduous trees and a minimum 6-8-foot height (excluding leader) for evergreen trees. The final landscape plan will be required to show two new trees that will be planted for mitigation. All burlap and wire cages shall be removed before trees are planted which will be a condition of approval.

Tree Protection

The Code requires tree protection measures when a tree protection zone or drip line of a tree is within the construction zone, whether on or off-site [LOC 55.08.030(1)]. The protective fencing shall be placed at the tree protection zone, which is the zone required to protect the critical root area necessary for the continued health of the trees. The applicant should propose the tree protection zone for each tree, for review and approval by City staff, on site. As required by LOC 55.08.030(7), no construction, excavation, root pruning or other activity shall occur within the tree protection zone unless directed by an arborist present on site and approved by the City.

A note should be placed on the construction documents that informs the site contractors about the necessity of preventing damage to these trees, including bark and root zone, and that no materials should be stored or compaction occur within the root zones of the adjacent trees [LOC 55.08.030]. The contractor shall be subject to fines, penalties and mitigation for trees that are damaged or destroyed during construction. As a condition of approval, as required by LOC 55.08.02 and 55.08.030, a tree protection plan shall be submitted with the building permit plans for staff review and approval. Tree protection measures must be installed prior to issuance of any grading or building permits. Tree protection fencing consists of 6-foot high chain link fencing supported by 6-foot high metal posts, placed a maximum of ten feet apart.

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

There are no outstanding conditions of approval that affect the subject property.

VII. CONCLUSION

Based upon the materials submitted by the applicant and findings presented in this report, staff concludes that LU 13-0044 complies with all applicable criteria and standards or can be made to comply through the imposition of conditions.

VIII. ACTION TAKEN

Approval of LU 13-0044, subject to the following conditions:

A. Prior to Approval of the Final Partition Plat, the Applicant/Owner Shall:

1. Submit a final plat to City staff for review and signature of approval within one year of the dated of this decision. **The deadline to submit the final plat to City staff is May 21, 2014.** The final plat must be dimensioned as depicted in Exhibit E-6, and reference this land use application – City of Lake Oswego Planning and Building Services, Case File LU 13-0044. Upon written application, prior to expiration of the one-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.

2. All plats and public easements submitted to the City of Lake Oswego shall have accompanying vector based electronic drawings or maps consistent with the prevailing technologies in the Civil Engineering and/or Surveying fields (e.g., current or near current versions of AutoCAD). The electronic drawings shall conform to the mapping requirements for plats adopted in ORS Chapter 92.
3. The final plat shall include the following information to the satisfaction of staff:
 - a. Dedicate sufficient public right-of-way to accommodate the required street improvements along Goodall and Knaus Roads to the satisfaction of the City Engineer. The final construction plans shall be submitted that are advanced enough to determine the right-of-way dedication width required for providing future half street improvements along the entire site frontage of Goodall and Knaus Roads. The right-of-way dedication shall be wide enough to account for the design of the following street improvements:
 - i. Widen the pavement along the east side of Goodall Road and north side of Knaus Road along the entire site frontage to achieve a 14-foot wide shared travel lane (measured from the existing painted yellow centerline) and a minimum 3-foot wide, compacted crushed rock shoulder.
 - ii. An 8-foot wide drainage swale along the entire site frontage on Goodall and Knaus Roads.
 - iii. A 6-foot wide asphalt pedestrian pathway behind the drainage swale along the site frontage on Goodall and Knaus Roads. A culvert shall be provided at the pedestrian crossings where the pathway will connect back to the edge of road.
 - iv. Undergrounding the existing overhead utilities along the entire site frontage along Goodall Road.
 - b. Grant a public utility easement (according to the minimum width standards for the franchise utility companies) along the site frontage of Goodall Road for undergrounding the existing overhead utilities or franchise utilities.
4. Submit a landscape plan to show plant species, size and spacing for the following, to the satisfaction of staff:
 - a. A future vegetated drainage swale along Goodall and Knaus Roads.
 - b. Provide a note on the final landscape plan requiring all burlap or wire cages to be completely removed from root balls of all trees and shrubs before they are planted.
5. Record a "Notice of Development Restriction" with the final plat. The Notice shall be submitted for staff review and approval prior to recording and shall contain the restrictions

listed below. A site plan showing the Protected Solar Building line shall be included and labeled as Exhibit A.

- a. Parcels 1-3 are solar lots and Parcel 3 is subject to the requirements of LOC 50.06.007.1.d.ii [Protected Solar Building Line] as indicated in Exhibit A.
 - b. Any future parcelization of Parcels 1-3 shall conform to the Parcelization and Connectivity Plan attached as Exhibit B (Exhibit E-13 of LU 13-0044).
6. Submit engineered construction drawings for the public and site improvements for review and approval by the City Engineer. Drawings shall conform to the City's design standards and the drafting specifications found in the City's booklet "CAD Standards and Design Requirements," May 2006 edition. [Note: receiving construction plan approval is not a prerequisite for recording the final plat.] The plans shall include the following:
- a. Compiles with one of the following:
 - (1) Design that brings the public sanitary sewer up Goodall Road to the north property line of Parcel 2, approximately 420 feet north of Knaus Road and that the public sanitary sewer shall be located within the public right-of-way, and service laterals shall be provided directly to a parcel, without crossing other parcels within a private sewer easement; or
 - (2) The public sewer easement is shown to be located in a driveway; or
 - (3) A subsequent partition or subdivision approval shows that the public sewer line will not cross any lots.
 - b. Design of an 8-inch public water main extension along Goodall Road up to the north property line of Parcel 2, approximately 420 feet north of Knaus Road.
 - c. Design showing the location of the private water services.
 - d. Design showing any new fire hydrants, if required by the Fire Marshal. Fire hydrants shall be installed per City standards.
 - e. At the applicant's option, either submit a design for hanging a light on the existing utility pole or submit a design showing a new street light at the intersection of Goodall and Knaus Roads, to the satisfaction of the City Engineer.
7. Construct the public improvements required by Condition A(6), above, or submit a financial guarantee to ensure construction of the public improvements per LOC 50.07.003.9. The financial guarantee shall be based on 120% of an itemized engineer's estimate of the cost of construction of the public improvements, that is in turn based on final construction plans that are far enough advanced to support the estimates, to the satisfaction of the City Engineer.
8. Submit a preliminary title report or lot book report showing the status of title and any liens and encumbrances.
9. Execute and, following City approval, record an LID Waiver to underground utilities on the utility poles. Note: the LID Waiver may be terminated by the City if the area is partitioned or subdivided in the future and the additional lot creation, along with this 3-lot partition, is adequate to meet the required rough proportionality to require the construction of undergrounding the overhead utilities.

B. Within 90 Days of the Recordation of the Final Partition Plat, the Applicant/Owner Shall:

1. Submit a final title report, or lot book report from a title company demonstrating that the plat was recorded and that the private and public easements and Notice of Development Restrictions are valid and subsisting, and that the parcels are either free and clear of liens or encumbrances, or that the holders of the liens and encumbrances consent to the creation and recordation of the easements, maintenance agreement and Notice of Development Restriction.

C. Prior to the Issuance of any Grading or Building Permits to Construct Any Structures on Parcels 1-3, the Applicant/Owner Shall:

1. Complete all public and site improvements as required by Condition A(6), above, submit certified "as-built" drawings, and receive a certificate of completion and acceptance by the City.
 - a. Parcels 1 and 2: Submit a storm water disposal plan for each parcel. Installation of a subsurface infiltration facility or rain garden on the individual parcels is an acceptable method for storm water disposal. The plan must include design calculations to ensure they are adequately sized. Stormwater disposal facilities shall meet minimum setbacks of five feet from property lines and 10 feet from building foundations. Subsurface disposal systems (i.e., drywells or storm chamber systems) shall be engineered. Driveway runoff shall not be directed to a subsurface infiltration disposal system without Department of Environmental Quality (DEQ) approval. Any emergency overflow shall be conveyed to an approved point of disposal.
 - b. Parcel 3: Demonstrate to the City Engineer's satisfaction that the existing drainage from Parcel 3 either:
 - i. Does not cross Parcels 1 and 2 and is contained on Parcel 3 or is discharged into an approved storm drainage facility as approved by the City Engineer, or
 - ii. There is a drainage easement across Parcels 1 and 2 for the current drainage pattern.
2. Apply for an erosion control permit and install the erosion control fencing as required by LOC 45. These measures shall remain in place throughout construction period.
3. Demonstrate that driveway approaches comply with the "vision clearance triangle" standards. No vegetation, fence, or signage higher than 30 inches will be allowed within the area formed by ten-foot legs extending from the intersection of the driveway and the street travel lanes.
 - i. Driveway approaches shall be asphalt and limited to 16 feet wide, irrespective of the number of garage doors facing the street. Culverts meeting City standards shall be located across the driveway approaches. The size of the culvert shall be engineered, but shall not be less than 10 inches in diameter.
 - ii. Provide evidence from a traffic engineer that the driveway approaches are located and designed so that the driver entering or exiting the driveway can see approaching traffic for a sufficient distance to make a safe entrance and exit. American Association of State Highway and Transportation Officials (AASHTO) standards shall be used in determining compliance with this standard. Any sight-obstructing vegetation along the

Goodall Road or Knaus Road site frontage as one exits the driveway approach shall be permanently removed.

4. If dead-end driveways on Parcels 1 and 2 exceed 150 feet in length, or additional square footage is added to the structure on Parcel 3, the applicant must provide either an approved fire department turnaround or an alternative method of fire suppression, such as residential sprinklers.
5. Apply for and obtain a verification tree removal permit for two trees, including a mitigation plan that shows a total of two mitigation trees.
6. For each parcel, apply for and obtain the appropriate tree removal permit, if necessary, and submit mitigation plans.
7. Install all tree protection fencing as required by the Tree Code (LOC 55), below. All protection fencing shall be inspected and approved by staff prior to the issuance of any grading or building permits.

D. Prior to the Final Building Inspection or Occupancy of any Dwelling on any Parcel, the Applicant/Owner Shall:

1. Provide certification from the engineer of record that the stormwater facility for each parcel was constructed according to the design and is functioning properly.

Code Requirements:

1. **Tree Protection:** Submit a tree protection permit application as required by LOC 55.08.020 and 55.08.030 for review and approval of staff, including off-site trees that are within the construction zone. This plan shall be attached to the construction documents or printed on the construction site plans, and shall include:
 - a. The location of temporary tree protection fencing, consisting of a minimum 6-foot high cyclone fence secured by steel posts, around the tree protection zone, or as recommended by the project arborist and approved by the City.
 - b. A note stating that no fill or compaction shall occur within the critical root zones of any of the trees, or that if fill or compaction is unavoidable, measures will be taken as recommended by a certified arborist to reduce or mitigate the impact of the fill or compaction. Such measures shall be clearly outlined in the tree protection plan. The note shall also inform contractors that the project arborist shall be on site and oversee all 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 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 you 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 you understand all the conditions and to identify other permits necessary to complete the project. If you like 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 applicants are 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.

EXHIBITS

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

E. GRAPHICS/PLANS

- E-1 Tax Map
- E-2 Vicinity map with zoning
- E-3 Aerial View of the Site
- E-4 Site Survey with Trees
- E-5 Existing Conditions
- E-6 Proposed Partition Site Plan with Protected Solar Building Line
- E-7 Side Yard Setback Plane Compliance
- E-8 Tree Removal Plan
- E-9 Slope Analysis
- E-10 Future Parcelization and Connectivity Plan
- E-11 Erosion Control Plan
- E-12 Utility Plan
- E-13 Final Build-Out Plan and Design Elements (2 pages)

F. WRITTEN MATERIALS

- F-1 Applicant's Narrative
- F-2 Applicant's Addendum Narrative
- F-3 Preliminary Storm Drainage Report, prepared by 3J Consulting, Inc., dated September 3, 2013
- F-4 Geotechnical Report, prepared by Geo Pacific Engineering, Inc., dated September 3, 2013
- F-5 Arborist Report, prepared by Walter H. Knapp & Associates, LLC, dated September 12, 2013
- F-6 Minutes of Neighborhood Meetings, August 5, 2013 and August 21, 2013

G. LETTERS

Neither for nor Against (G1-99):

None

Support (G100-199):

None

Opposition (G200+):

None

Date of Application Submittal: September 3, 2013

Date Application Determined to be Complete: September 16, 2013

State Mandated 120-Day Rule: January 14, 2013