

Zoning: RFcs – Residential Farm/Forest with Environmental Conservation and Scenic Resource Overlay Zones

Land Use Review: Type III LDS ENM – Land Division with a concurrent Environmental Review and Modification through Environmental Review

BDS Staff Recommendation to Hearings Officer: Approval with conditions

Public Hearing: The hearing was opened at 9 a.m. on April 1, 2009 in the 3rd floor hearing room, 1900 SW 4th Avenue, Portland OR, and was closed at 10:18 a.m. The record was held open until 4:30 p.m. on April 15, 2009 for new evidence, until 4:30 p.m. on April 22, 2009 for rebuttal, and until 4:30 p.m. on April 29, 2009 for Applicant’s rebuttal. The record was closed at that time.

Testified at the Hearing:

Shawn Burgett - BDS Staff Representative

Rachel Whiteside - BDS Staff Representative

Bruce Goldson, Compass Engineering, 4105 SE International Way, Ste. 501, Milwaukie, OR 97222
Richard Jaffe, Skyline Homeowners Assn., 11100 NW Saltzman Rd., Portland OR 97229

Proposal:

The Public Hearing for this proposal was held on April 1, 2009. A Bureau of Development Services (BDS) Staff Report and Recommendation dated March 20, 2009 (“3/20/09 Staff Report”) recommended denial because the applicant had not met several of the relevant factors in the approval criteria. (Exhibit H.2). The BDS staff indicated that they may be willing to change the recommendation from denial to approval if the applicant could submit evidence into the record documenting that they could meet the outstanding criteria. At the public hearing on April 1, 2009, the record was left open until 4:30pm on April 15, 2009 for new evidence to be submitted. Applicant submitted additional evidence into the record (see H.15 exhibits).

The applicant proposes to divide the 745,671 square foot site into three parcels, an environmental resource tract, and a private street tract. Proposed parcel sizes are 101,385 (Parcel 1), 97,235 (Parcel 2) and 107,954 square feet (Parcel 3). The parcel shapes are both large and irregular due to site topography, the boundary of the existing resource area, the location of trees to be preserved, and the desire to maintain the potential for future land divisions. Tract B is an environmental resource tract that will contain undisturbed areas of the Environmental Conservation overlay zone, as well as additional trees outside of the Environmental zone.

Tract C is a dead-end private street. The private street is proposed to have a substandard 20-foot wide driving surface, due to the rural nature of the property and the desire to preserve existing trees on the site. The applicant has received an approved Fire Bureau appeal No. 5670 to allow a 20-foot wide driving surface with no turnouts (except at the location of the proposed hydrant), and driveways that do not meet Fire Bureau access requirements of being within 250 feet from all sides of a structure. As a condition of that appeal, the Fire Bureau is requiring the applicant to install a

residential sprinkler system in each new home. The private street tract also includes a five-foot wide, separated sidewalk paralleling the road surface.

The applicant proposed to direct stormwater from the private street to a stormwater swale in the street tract, which will connect to the existing ditch in NW Saltzman Road via a pipe across the abutting property to the southeast in the same ownership. Additionally, the applicant proposes to use individual sand filter facilities to manage stormwater from the improvements on the lots with conveyance to the road discharge point.

There is no public sewer available to serve the site. The applicant has proposed to use on-site sanitary sewage disposal systems. A Land Feasibility Study has been submitted by the applicant and reviewed by BDS Site Development for the minimum requirements regarding on site sewage disposal.

A large section of the site is located within the Environmental Conservation overlay zone. Most of this area has been placed into Tract B, a 404,888 square foot environmental resource tract. The applicant proposes to encroach into the "c" conservation zone with proposed Parcels 1 and 2 to accommodate proposed development and to preserve the possibility of achieving future density. To offset for these impacts, the applicant proposes to add additional area outside of the c-zone to Tract B. A storm sewer line, detention facility, and outfall are also proposed through the Environmental zone on the adjacent property to the south in the same ownership.

The original application, reviewed in the 3/20/09 Staff Report included a request for a Modification through the Environmental Review to allow any future land division on this site to have Parcel sizes reduced below the minimum lot/parcel size in the RF zone. The applicant has since removed this request from the proposal.

The land division proposal does not meet all of the Standards for Land Divisions in PCC 33.430.160, therefore the proposal is subject to Environmental Review. This land division proposal is reviewed through the Type III land use review procedure because it is a land division which also requires an Environmental Review (See PCC 33.660.110).

Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33, Portland Zoning Code. The applicable approval criteria are:

- PCC 33.660.120 Review of Land Divisions in Open Space and Residential Zones
- PCC 33.430.250.A Environmental Review Approval Criteria

Zoning Code Section PCC 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was filed, provided that the application is complete at the time of filing, or complete within 180 days. This application was filed on April 30, 2008 and determined to be complete on October 22, 2008.

Preliminary Note: Throughout the BDS staff reports/recommendations and written comments included in the record of this case, references are made to “subdivision,” “partition,” “lot,” and “parcel.” The Hearings Officer notes that these terms were often used imprecisely and may, in certain instances, cause confusion to anyone reading these documents. The terms are defined, for the purposes of this decision, as follows:

Parcel:	single unit of land created by a partition of land [ORS 92.010(6)]
Lot:	single unit of land that is created by a subdivision of land [ORS 92.010(4)]
Partition:	partition land means to divide land to create not more than three parcels of land within a calendar year [ORS 92.010(8)]
Subdivision:	divide land to create four or more lots within a calendar year [ORS 92.010(16)]

The Hearings Officer attempted to use the terms appropriately throughout this decision.

II. ANALYSIS

Site and Vicinity: The 17.12 acre site is located on the west side of NW Skyline Boulevard and north of NW Saltzman Road. NW Saltzman Road and NW Skyline Boulevard are classified as local service streets for all modes in the Transportation System Plan, except that NW Skyline Boulevard is a designated City Bikeway. There is no transit service within one mile of the site. NW Skyline Boulevard is improved with a 20-foot roadway, but no sidewalks or curbs. NW Saltzman Road is currently gravel.

The site slopes generally down from NW Skyline Boulevard. The entire site is covered in forest canopy with four different cover types, all of which appear to be second growth. The flatter, higher elevation portion of the site (mostly outside of the Environmental Conservation zone) is covered with a thick stand of Douglas fir. Historic aerial photos suggest that these trees were planted sometime in the mid-to late 1980's. The forest canopy on the southern portion of the ownership (which is mostly on the lot to the south) is dominated by maturing hardwoods with a lesser component of maturing conifers. The largest cover type on the property is composed of a fairly open stand of maturing, mixed conifers and hardwoods. In the northwestern corner (zoned with Environmental protection overlay) an open stand of mature hardwoods exists around the headwaters of a small stream that drains west to Bronson Creek.

The predominant development pattern in the immediate vicinity is sparse, rural development. Newer “estate” type development is beginning to infill. The City of Portland boundary abuts the site to the west. Development to the west of the site is in unincorporated Multnomah County. The Skyline Memorial Gardens cemetery is located less than a half-mile south on NW Skyline Boulevard. Forest Park is approximately 600 feet east of the site.

Zoning: Zoning on the site includes the Residential Farm/Forest (RF) base zone with Environmental Conservation (c), Environmental Protection (p), and Scenic Resource (s) overlay zones. The site is also within the Northwest Hills Plan District (“Plan District”), in the Skyline Subdistrict.

The RF zone is intended to foster the development of single-dwelling residences on lots having a minimum area of 52,000 square feet, with minimum width and depth dimensions of 60 and 60 feet, respectively. Newly created lots must have a maximum density of one lot per 87,120 square feet of site area.

The Northwest Hills Plan District protects sites with sensitive and highly valued resources and functional values. The Plan District also promotes the orderly development of the Skyline Subdistrict while assuring that adequate services are available to support development.

Environmental overlay zones protect environmental resources and functional values that have been identified by the City as providing benefits to the public. The environmental regulations encourage flexibility and innovation in site planning and provide for development that is carefully designed to preserve the site's protected resources. Environmental zones are intended to protect the most important environmental features and resources while allowing environmentally sensitive urban development where resources are less significant.

The scenic resource overlay zone is intended to protect Portland's significant scenic resources. NW Skyline Boulevard is a designated scenic corridor due to its listing as a scenic drive (SD 15-09) in the *Scenic Resource Protection Plan*.

The site is also mapped within Portland's potential Landslide Hazard Area.

Environmental Resources: The application of the Environmental overlay zones is based on detailed studies that have been carried out within ten separate areas of the City. Environmental resources and functional values present in Environmental zones are described in environmental inventory reports for these study areas.

The project site is mapped within the *Skyline West Conservation Plan* as Site #144, Bronson Creek Headwaters. The types of resources found in the Bronson Creek Headwaters Site include forest, wildlife habitat, sensitive fauna, creek headwaters, palustrine wetlands, groundwater and open space. The functional values include food, water, cover, and territory for wildlife; groundwater recharge and discharge; slope stabilization, sediment and erosion control; microclimate amelioration; air and water quality protection; and scenic values.

Land Use History: City records indicate that prior land use history includes:

- **LUR 99-00235 MP:** Approval of a Minor Partition to create three lots (Tax Lots 601, 602 and 603) and an Open Space and Resource Preservation Tract (Tract A).
- **PR 03-179620:** Approval of a Property Line Adjustment to reorient the common boundary between Tax Lots 602 and 603
- **PR 07-117291:** Approval of a Property Line Adjustment to reorient the common boundary between Tax Lots 601 and 602 from roughly north/south to roughly east/west.

Summary of Applicant's Statement: The applicant proposes, in this application, to divide the existing Tax Lot 601 into three parcels; ultimately applicant has described a Master Plan for Tax Lot 601 to include the following:

- Increasing the area of the protected resource by securing 62,546 square feet of unencumbered land during this partition;
- Provide mitigation and remediation for the proposed 16,863 square feet of disturbance within the Environmental Conservation zone by enhancing the structural and species diversity of the highest wildlife value habitat in the adjacent tracts;
- Access the proposed parcels under this application and the lots under the future land division via a private street within a commonly owned and maintained tract;
- Serve the land division(s) by a City of Portland water main and support private septic systems for each lot;
- All homes constructed to be equipped with a residential fire sprinkler system;
- Build homes to meet U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) Green Building Rating System, achieving a minimum Gold Level in the LEED-H program.

Agency Review: A "Request for Response" was mailed October 24, 2008. Several Bureaus and agencies have responded to this proposal. See Exhibits E.1 through E.13 and H.14, H.16 and H.17 for details. The comments are addressed under the appropriate approval criteria for review of the proposal.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on March 9, 2009. Testimony by neighboring property owners was provided at the public hearing. A letter from Ball Janik, representing some neighboring property owners, was submitted directly to the Hearings Office (Exhibit H.3). An additional letter (Exhibit H.24) was submitted from Christie White, attorney, on behalf of the Skyline Meadows Neighborhood Association ("Skyline Meadows"). Responsive comments to the testimony and written comments are addressed in the relevant approval criteria findings below.

ZONING CODE APPROVAL CRITERIA

APPROVAL CRITERIA FOR LAND DIVISIONS IN OPEN SPACE AND RESIDENTIAL ZONES

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

Note: This land division is for three parcels. However, applicant has provided a discussion of additional lots/parcels that can be created through future land division applications. Nothing in this decision shall be construed as endorsement or approval of additional land divisions on Tax Lot 601.

The relevant criteria are found in PCC **33.660.120 [A-L], Approval Criteria for Land Divisions in Open Space and Residential Zones**. Due to the specific location of this site, and the nature of the proposal, some of the criteria are not applicable. The following table summarizes the applicability of each criterion.

Criterion	Code Chapter	Topic	Applicability Findings
A	33.610	Lots	Applicable - See findings below
B	33.630	Trees	Applicable - See findings below.
C	33.631	Flood Hazard Area	Not applicable - The site is not within the flood hazard area.
D	33.632	Potential Landslide Hazard Area	Applicable - See findings below.
E	33.633	Phased Land Division or Staged Final Plat	Not applicable - A phased land division or staged final plat has not been proposed. The applicants intends to go through separate land division applications to carry out the future development described in this report.
F	33.634	Recreation Area	Not applicable - This is not required where the proposed density is less than 40 units.
G	33.635 .100	Clearing and Grading	Applicable - See findings below.
G	33.635 .200	Land Suitability	Applicable - See findings below.
H	33.636	Tracts and Easements	Applicable - See findings below.
I	33.639	Solar Access	Applicable - See findings below.
J	33.640	Streams, Springs, and Seeps	Not applicable - No streams, springs, or seeps are evident on the site.
K	33.641	Transportation Impacts	Applicable - See findings below
L	33.651 - 33.654	Services and Utilities	Applicable - See findings below

Applicable Approval Criteria are:

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

Findings: PCC 33.610 contains the density and lot standards applicable in the RF through R5 zones. These density and lot dimension standards ensure that lots are consistent with the desired character of each zone while allowing lots to vary in size and shape provided the planned intensity of each zone is respected.

Density Standards

Density standards match housing density with the availability of services and with the carrying capacity of the land in order to promote efficient use of land, and maximize the benefits to the public from investment in infrastructure and services. These standards promote development opportunities for housing and promote urban densities in less developed areas. Maximum densities ensure that the number of lots created does not exceed the intensity planned for the area, given the base zone, overlay zone, and plan district regulations. Minimum densities ensure that enough dwelling units can be developed to accommodate the projected need for housing.

The method used to calculate density depends on whether a street is created as part of the land division, and whether the site is subject to certain environmental constraints.

In this case, a street is proposed and the site is partially located within the Environmental zone and completely located in the potential Landslide Hazard Area. Therefore, the maximum and minimum density for this site are as follows:

Minimum = Entire site area located in Landslide Hazard zone, therefore no minimum density of this site per PCC 33.610.100.

Skyline Meadows' attorney disputed the methodology used by BDS staff in calculating maximum density. (Exhibit H.24). The attorney states that the density calculation, in the BDS staff recommendations (Exhibits H.2 and H.18), utilized "8 lots Not 3 Lots." (Exhibit H.24). The attorney asserts that calculating density using a potential full division of the subject property into eight lots is inappropriate. The Hearings Officer disagrees with this argument. The Hearings Officer finds that whether or not the maximum density is calculated using a potential of eight lots (BDS calculation – Exhibit H.18) or seven lots (Skyline Meadows' calculation – Exhibit H.24) is immaterial to *this* decision.

However, in response to Skyline Meadows' attorney's argument Hearings Officer finds that the BDS calculation method (Exhibit H.18) is a reasonable approach and there is no direct prohibition to such method in the Code.

PCC 33.610.100 D sets forth the standards in calculating density in the RF through R5 zones. PCC 33.610.100 D.1 states: "Maximum density. Maximum density based on the zone, the size of the site and whether a street is being created. The following formula is used to determine the maximum number of lots allowed on the site: Square footage of site x 0.85 divided by Maximum density from

Table 610-1 = Maximum number of lots allowed.” Table 610-1 established one unit per 87,120 square feet.

PCC 33.910 defines site for land divisions as “the site is the lots, lots of record, or tracts proposed to be divided or reconfigured.” The Hearing Officer notes that the balance of the PCC 33.910 site definition does not relate to land divisions. The Hearings Officer finds that for land divisions only the section quoted in this paragraph is to be used in defining “site.”

The Hearings Officer finds that the “site,” for the purposes of the maximum density calculation, is limited to the “lots, lots of record, or tracts proposed to be divided or reconfigured.” In this case Tax Lot 601 is the lot to be divided in this application and therefore, should be included in the definition of “site.”

BDS staff and applicant also included a proportionate share of a previously divided environmental tract (Tract A). Skyline Meadows’ attorney argues that the proportion of Tract A utilized by BDS staff and applicant was incorrect. Skyline Meadows’ attorney did not argue that it was improper to include “some” proportion of Tract A. The Hearings Officer, therefore, finds that to include “some” proportion of Tract A is appropriate. The balance of the discussion shall relate to the Skyline Meadows’ attorney’s argument that the proportion used by BDS/applicant is incorrect.

It seems to the Hearings Officer that the allocation of Tract A could be calculated in a number of ways. For example, one method would be to use a direct square footage comparison (Tax Lot 601 square footage divided by the total of Tax Lot 601 square footage + Tax Lot 602 square footage + Tax Lot 3 square footage). Another method is to determine the percentage of parcels being proposed for Tax Lot 601 (three parcels) compared to the total of parcels to be created on Tax Lots 601, 602 and 603 (3 parcels + 2 parcels + 1 parcel = 6 parcels). Another method would be to estimate the total maximum number of lots/parcels that could be created in the future for Tax Lot 601 and compare that number to the total number of lots/parcels that could be developed, in the future, on Tax Lots 601, 602 and 603 (BDS staff and applicant’s approach). Skyline Meadows’ attorney suggests the current proposed number of parcels to be created on Tax Lot 601 (three parcels) be compared to the total number of lots/parcels that could be developed in the future, on Tax Lots 601, 602 and 603.

The Hearings Officer notes that the direct square footage method was suggested by nobody in this case. The Hearings Officer notes that comparing the currently proposed number of parcels (Tax Lot 601 with 3, Tax Lot 602 with 2 and Tax Lot 601 with 1) was also not suggested by anyone in the case. The Hearing Officer finds that Skyline Meadows’ approach is akin to comparing apples to oranges; it compares the current number of parcels requested for Tax Lot 601 with an projected total number of parcels/lots that could be created in the future on Tax Lots 601, 602 and 603. (Exhibit H.24). The Skyline Meadows approach makes no sense to the Hearings Officer. Skyline Meadows’ approach uses, as a denominator, 11 *potential* parcels/lots (future estimate) and three, as the numerator (*current* application). The Hearings Officer also notes that the Skyline Meadows method utilizes the assumption that eight parcels/lots can be developed on Tax Lot 601 when calculating the 11 *potential* parcels/lots it used in its calculations.

The Zoning Code does not dictate an approach to allocate Tract A for maximum density calculations for Tax Lot 601. The Hearing Officer finds that, for the purposes of this decision (not precedential for any subsequent application to further divide the three parcels being created on Tax Lot 601 in this application) the BDS/applicant approach shall be used. The Hearings Officer finds that utilizing anticipated future maximum density to calculate of the allocation of area from Tract A to Tax Lot 601 is appropriate.

As stated above, for this approval criteria (maximum density calculation), it makes no difference to the land division in this application if the maximum density is seven parcels/lots or eight parcels/lots.

Based upon the calculations below, the Hearing Officer finds the maximum density for Tax Lot 601, including an 8/11th Tract A allocation, is eight.

Pursuant to PCC 33.610.100 D. maximum density, for this application, is calculated as follows:

Formula:	Square footage of site x .0.85 divided by 87,120
Application of Formula:	Tax Lot 601 = 745,671 square feet Tract A allocation = 8/11 x 86,724 square feet Site: = 745,671+ 63,072 = 808,743 square feet 808,743 square feet x .85 = 687,431 square feet 687,431 square feet/87,120 square feet = 7.89 7.89 is rounded up to 8 (per PCC 33.930.020 B.2.b(2))

The maximum density (using the above calculations) is eight. The application, in this case, is for a three parcel partition and therefore, the application is for a number of parcels less than the maximum.

Lot Dimensions

The lot dimension standards (in this case, parcel dimension standards) ensure that: (1) each parcel has enough room for a reasonably-sized house and garage; (2) parcels are of a size and shape that development on each parcel can meet the development standards of the Zoning Code; (3) parcels are not too large relative to the planned density; (4) each parcel has room for at least a small, private outdoor area; (5) parcels are compatible with existing lots; (6) parcels are wide enough to allow development to orient toward the street; (7) parcels do not narrow to an unbuildable width close to the street; (8) each parcel has adequate access from the street; (9) each parcel has access for utilities and services; and (10) parcels are not landlocked.

The dimensions of the proposed parcels as compared to the required lot/parcel dimension standards is shown in the following table (this information is found in Table 610-2 of the Zoning Code):

	RF Zone Requirement	Proposed Parcel 1	Proposed Parcel 2	Proposed Parcel 3
Minimum Parcel Area	52,000 sq. ft.	101,385	97,235 sq.	107,965
Maximum Parcel Area	151,000 sq. ft.	sq. ft.	ft.	sq. ft.
Minimum Parcel Width*	60 ft.	464 ft.	292 ft.	346.95 ft.
Minimum Parcel Depth	60 ft.	350 ft.	273 ft.	213 ft.
Minimum Front Parcel Line	30 ft.	464 ft.	292 ft.	168.66 ft.

* Width is measured at the minimum front building setback line, all measurements are approximate, see Exhibit H-15.h for details

Through-Lots/Parcels

Proposed Lot 3 is a through-lot. Through-lots/parcels are allowed only where both front lot/parcel lines are on local service streets. NW Skyline Boulevard and the proposed private street tract are both local service streets therefore, Parcel 1 is allowed. The minimum front lot line and minimum width standards apply to one frontage of the through-lot/parcel.

The findings above describe how the applicable lot standards are met. This criterion *is met*.

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

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

The applicant has submitted an arborist report that inventories the trees within the land division site, evaluates their condition and specifies root protection zones (Exhibit A-4). Some trees have been exempted by the arborist because they are either too small, unhealthy, a nuisance species, located partially off the property or partially within the Environmental zone.

The total non-exempt tree diameter on the site is 12,939 inches. The applicant proposes to preserve 4,530 inches of diameter, or 35 percent of the total non-exempt tree diameter. This proposal complies with Option 1 of the tree preservation standards, which requires at least 35 percent of the total tree diameter on the site to be preserved. The applicant provided a Tree Preservation summary table documenting the preserved trees (Exhibit H-15.f) and the required root protection zones (Exhibit H-15.i, sheet 10).

This criterion *is met*, subject to the condition that development on Lots 1-3 is carried out in conformance with the final Tree Preservation Plan (Exhibits H-15.f in correlation with Exhibit H-15.i, sheet 10).

D. Potential Landslide Hazard Area. If any portion of the site is in a Potential Landslide Hazard Area, the approval criteria of Chapter 33.632, Sites in Potential Landslide Hazard Areas, must be met.

33.632.100 Landslide Hazard Area Approval Criterion

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

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

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

In order to evaluate the proposal against this criterion, the applicant submitted a geotechnical evaluation (“Geotech Report[s]”) of the site and proposed land division, prepared by a Certified Engineering Geologist and a Geotechnical Engineer (Exhibits A.2, A.26, and H-5). The Geotech Report[s] was evaluated by the Site Development Division of BDS, the City agency that makes determinations regarding soil stability.

The applicant's Geotech Report[s] (Exhibit A.2) indicated that the risk of potential Landslide Hazard at the site is relatively low, given the soil composition, topography, and other risk factors. The Geotech Report[s] stated “The published geologic mapping and our field review indicate that the site property is not within an identified deep-seated landslide. In our opinion, potential slope instability on the site is limited to shallow landsliding of weathered soil layer in areas of relatively steep slopes with the ravine area in the northwester part of the site” (Exhibit A.2). The ravine area that the Geotech Report[s] is referring to is located within proposed Tract B and no development is proposed within that area.

The proposed land division will result in parcels, buildings, services, and utilities that will not significantly increase the risk of landslide potential on the site or other properties in the vicinity of the site. In addition, the BDS geotechnical evaluation concurred that the applicant's proposed method of stormwater and septic disposal systems (drainfields) at the site will not have a significant detrimental impact on the slope stability on or around the site. This BDS conclusion was reached because stormwater will not be disposed on the site itself, it will be treated and discharged into a drainage ditch along NW Saltzman Road as discussed later in this decision under the findings for

"Stormwater Management Approval Criteria." The applicant's Geotech Report[s] went on to state, "Each lot will also have its own septic disposal system; the drainfields for these systems are shown on figure 3", adding, "In our opinion, these facilities will not have an adverse impact on slope stability as long as they are located outside of the Slope Hazard areas shown on figure 3," adding, "In our opinion, septic drain fields located within the Geotechnical Assessment Area will not adversely impact slope stability and will not require further geotechnical review." None of the stormwater facilities or drainfields proposed are located within the Slope Hazard area shown in Figure 3 of the Geotech Report[s] (Exhibit A.2).

Since the date that the Geotech Report[s] was published on April 28, 2009 (Exhibit A.2), the applicant's site plan layout has changed slightly, including stormwater management and septic drainfield locations. The Site Development section of BDS requested (Exhibit E.5) that the applicant submit an addendum to their initial Geotech Report[s], addressing any changes shown on the applicant's site plan since the first geotechnical review was done on the 4/28/08. The addendum to this report would need to be stamped by an Engineering Geologist and Geotechnical Engineer, which provided stamps for the 4/28/08 Landslide Hazard reports. The applicant submitted an addendum to the Landslide Hazard report (Exhibit H.5), which is acceptable to Site Development.

Based on the discussion above, this criterion *is met*.

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

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

33.635.100 – Clearing and Grading

- A. Existing contours and drainage patterns of the site must be left intact wherever practicable. Where alteration to existing drainage patterns is proposed, it must not adversely impact adjacent properties by significantly increasing volume of runoff or erosion;**
- B. Clearing and grading should be sufficient for construction of development shown on the Preliminary Clearing and Grading Plan;**
- C. Clearing and grading should be limited to areas of the site that are reasonably necessary for construction of development shown on the Preliminary Clearing and Grading Plan;**
- D. Topsoil must be preserved on site to the extent practicable for use on the site after grading is complete; and**
- E. Soil stockpiles must be kept on the site and located in areas designated for clearing and grading as much as is practicable.**

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

In this case, the site has some areas with steep grades, and is fully located in the Potential Landslide Hazard area. Therefore, the clearing and grading associated with preparation of the private street and the parcels must occur in a way that will limit erosion concerns and assure that the preserved trees on the site will not be disturbed.

A Preliminary Clearing and Grading Plan has been submitted (Exhibit H-15.i, sheet 9) and the applicant also submitted Geotech Report[s] (Exhibit A.2, A.26 and H.5) that describes how clearing and grading should occur on the site to minimize erosion risks. The Site Development section of BDS has reviewed and accepted these reports.

Applicant also provided a Tree Preservation Plan (Exhibit H-15.i, sheet 10 in correlation with Exhibit H-15.f, the Tree Preservation Summary table) that designates areas on the site outside of Tract B where grading should not occur. The grading plan shown in Exhibit H.15.i, sheet 9 conforms to the Tree Preservation Plan with the exception of tree number 8451 located on Parcel 1, which is located within an area where future grading is shown. The applicant will be required to revise the grading plan during the final plat process to show no grading done within the root protection zone of this tree, unless it is allowed with written approval from a Certified Arborist.

The applicant's Geotech Report[s](Exhibit A.2) supports the applicant's Clearing and Grading Plan because construction activities related to site development are located outside of the Slope Hazard area on the site. The Geotech Report[s] states "The Slope Hazard Area does include small areas within two of the lots (rear of Lots 2 and 3), and we recommend that no development activities, including clearing and grading, or construction of permanent facilities be allowed in these areas" (Exhibit A.2). Additionally, as noted in the Geotech Report[s], "septic drainfields or stormwater discharge locations falling within the Geotechnical Assessment Area will not adversely impact slope stability and will not require further geotechnical review". Currently no development is proposed within those two areas. Therefore, the applicant's Clearing and Grading Plan meets the requirements of the applicant's Landslide Hazard Report.

Both the applicant's geotechnical engineer and arborist recommend that the amount of grading work occurring on the site be minimized as much as possible. It is anticipated that the grading will primarily involve excavating for the foundations of the new houses and trenching for the utilities and the private street tract. Following the recommendations of the Landslide Hazard Study will help to limit erosion and sedimentation concerns. Stormwater runoff from the parcels will be appropriately managed by piping all stormwater offsite through an easement across Tax Lot 602 and into a proposed detention system located on Tax Lot 602, which will then release water slowly into a proposed ditch systems located on the west side of NW Saltzman Road that will take the water into a stormwater catch basin at the end of NW Saltzman Rd., which is maintained by Multnomah County to assure that the runoff will not adversely impact adjacent properties (see discussion of stormwater management later in this decision). In addition, no clearing and grading will be permitted within the root protection zones of the trees on the site that are required to be preserved unless permitted by a certified arborist. Preserving these trees will help limit erosion by assuring that the tree roots will help to hold the soil in place. Topsoil storage and general

stockpiling on the site should only occur if it will not create any additional erosion concerns as recommended by the geotechnical engineer.

Additionally, it should be noted that the applicant's Clearing and Grading plan (Exhibit H-15.i, sheet 9) shows multiple home locations which are feasible on each parcel. However, the applicant will only be allowed to clear and grade for one home on each parcel. Therefore, as a condition of approval, the applicant's Clearing and Grading Plan submitted at the time of final plat shall only show clearing and grading for one home site on each lot proposed.

As shown above the clearing and grading anticipated to occur on the site can meet the approval criteria. At the time of building permit submittal on the individual parcels a Clearing, Grading and Erosion Control Plan will be submitted to the Site Development Section of BDS. Site Development will review the Grading Plan against the applicant's Landslide Hazard Study as well as any additional geotechnical information required at the time of permit submittal to assure that the grading will not create any erosion risks. In addition, the plans will be reviewed for compliance with the applicant's Tree Preservation Plan (Exhibit H-15.i, sheet 10 in correlation with Exhibit H-15.f, the Tree Preservation Summary table).

This criterion *is met*.

33.635.200 – Land Suitability

Where geologic conditions or historic uses of the site indicate a hazard may exist, the applicant must show that the proposed land division will result in lots that are suitable for development. The applicant may be required to make specific improvements in order to make the lots suitable for their intended uses and the provision of services and utilities.

The site is currently vacant, and there is no record of any other use in the past. The site area proposed for development is located primarily outside of any step slopes and contains no known geological hazards. Therefore, there are no anticipated land suitability issues and the new lots can be considered suitable for new development. This criterion *is met*.

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

33.636.100 Requirements for Tracts and Easements

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

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

3. **A public or private non-profit organization; or**
4. **The City or other jurisdiction.**

Findings: The following tracts are proposed: private street tract (Tract C), Environmental Resource Tract (Tract B). With a condition that the proposed tracts be owned in common by the owners of Parcels 1 through 3 this approval criteria *can be met*.

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

Findings: The following easements are proposed and/or required for this land division:

- A Private Storm Sewer Easement is required across the relevant portions Parcel 1 and Tax Lot 602 (under common ownership) for improvements from the private street tract (Tract C) and stormwater sent into the private street tract from Parcels 2 and 3. This criterion *is met*.

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

“A Declaration of Maintenance Agreement for (name of feature) has been recorded as document no. _____, Multnomah County Deed Records.”

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

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

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

33.641.020. The transportation system must be capable of safely supporting the proposed development in addition to the existing uses in the area. Evaluation factors include: street capacity and level-of-service; vehicle access and loading; on-street parking impacts; the

availability of transit service and facilities and connections to transit; impacts on the immediate and adjacent neighborhoods; and safety for all modes.

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

Findings: The regulations of PCC 33.641 allow the traffic impacts caused by dividing and then developing land to be identified, evaluated, and mitigated for if necessary. Small land divisions involving only a few dwelling units may not require a formal transportation impact study, while it might be required for larger projects (Title 17 includes technical standards describing when a more formal study is required). In this case a Transportation Impact Study was submitted (Exhibit A-18).

The site has approximately 746 feet of frontage on NW Skyline Boulevard and approximately 250 feet of frontage along NW Saltzman Road. NW Skyline Boulevard and NW Saltzman Road are both classified as local service street for all modes in the Transportation Element of the Comprehensive Plan. It should be noted that NW Skyline Boulevard is also a City Bikeway and Greenspace Street in the City's Transportation System Plan. TriMet does not provide transit service in this area. Parking is not allowed on either side of NW Skyline Boulevard. There appears to be room for some parking in the gravel shoulder on the east side of NW Saltzman Road. The site is vacant, and there are no existing off-street parking spaces on the site.

NW Skyline Boulevard is improved with a paved roadway, no sidewalks, curbs or planter strips. NW Saltzman Road is unimproved, with only a gravel roadway. In reviewing this land division, Portland Transportation (PBOT) relied on accepted civil and traffic engineering standards and specifications to determine if existing street improvements for motor vehicles, pedestrians and bicyclists can safely and efficiently serve the proposed new development. In this case, PBOT determined that substandard street improvements (20-foot wide paving, no curbs or sidewalks) must be made to NW Saltzman Road to ensure that safe vehicle travel is possible within the proposed development. This determination was also reached because there are several large properties located within the City of Portland, south of this site along NW Saltzman Road that are potentially further dividable, including Tax Lot 602, which is currently going through the land division process and is proposing to create two parcels with frontage along NW Saltzman Road. With those improvements, up to three additional dwellings (plus any future lots created) can be safely served by this existing street without having any significant impact on the level-of-service provided.

As mentioned above, the applicant provided a Traffic Impact Study (Exhibit A.18), prepared by Lancaster Engineering, which examined this site to its full development potential, including the additional vehicle trips and their impacts if LU 08-125814 were to be approved. Lancaster's Report examined the transportation impacts on the existing infrastructure if the entire ownership reached its full developable potential of ten lots. The Transportation Study stated "Given the small size of the

subdivision and the expected lack of significant growth in the area in the near term, a growth rate was not applied to the existing traffic volumes, as demonstrated later in this report, the intersection operation is favorable. Even if a significant growth rate were used, the intersection would still have adequate capacity” (Exhibit A.18). The Transportation Study concluded, “The intersection of Saltzman and Skyline Boulevard is currently operating acceptably during both peak hours and will continue to operate acceptably with the proposed development in place. No mitigation at the intersection are necessary or recommended” (Exhibit A.18).

This criterion *is met*, with the condition that street improvements are made along NW Saltzman Road.

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

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

- The water standards of PCC 33.651 have been verified. An existing 16-inch water main is available in NW Skyline Boulevard and an exiting eight-inch water main is available in NW Saltzman Road. The applicant is proposing water service off of the private street tract (Tract C) for all the parcels proposed within this partition. Water is available to serve the lots via water laterals proposed within the private street tract via the eight-inch water main in NW Saltzman Road. See Exhibit E-3 for more details.
- There are no public sanitary sewers available to serve the proposed parcels. The Site Development Section of BDS has approved the use. Location, design and capacity of on-site sanitary sewage disposal systems. See Exhibits A.10, E.5, E.8, E.10 and H.17 for details.
- The technical standards of PCC 33.653 related to stormwater management have been verified. The findings below for the Stormwater Management Approval Criteria of PCC 33.653.020 incorporate a discussion of how the technical standards have been satisfied by the applicant's stormwater proposal.

This approval criteria *is met*.

33.653.020 Stormwater Management Approval Criteria

- A. If a stormwater tract is proposed or required, an adequate amount of land and an appropriate location must be designated on the Preliminary Plan; and**
- B. The application must show that a stormwater management system can be designed that will provide adequate capacity for the expected amount of stormwater.**

Findings: No stormwater tract is proposed or required. Therefore, *criterion A is not applicable.*

The City of Portland requires that stormwater from development be cleaned and disposed of in a manner that meets the requirements of the City's Stormwater Management Manual. In order to meet this approval criterion, land division proposals must demonstrate an approved method of cleaning (water quality treatment), detention (delayed release), and an approved disposal point.

The Stormwater Management Manual contains a hierarchy of acceptable methods of stormwater treatment and disposal. The hierarchy requires that applicants first explore the use of methods that have a lower potential impact on groundwater, such as on-site surface infiltration swales and infiltration planters. If these methods are not feasible on a site, applicants may move lower on the hierarchy, to methods that inject water deeper into the ground through mechanical devices such as drywells or sumps, or carry it off of the site into storm sewers, drainageways, or other approved disposal points.

In addition to determining appropriate treatment and disposal methods by working through the hierarchy in the Stormwater Management Manual, stormwater facilities must be sized, through engineering calculations, to accommodate the expected amounts of stormwater. In some cases, sizing a stormwater facility necessitates testing the infiltration rate of the soil at the site.

The applicant proposed the following stormwater management methods (Exhibits A.19, C.7 and H-15.i, sheet 7), and the Bureaus have responded as follows (Exhibits E.1, E.5, E.10, E.11, H.14, H.16 and H.17):

- **Private Street:** Based on the applicant's infiltration tests, stormwater infiltration is not feasible at this site. Stormwater will be directed into a six-foot wide street swale located within the private street tract. Water from the private street will then be piped over Parcel 1 via an easement, that will then cross over Tax Lot 602 (under common ownership) and into a detention facility located within the easement area on Tax Lot 602. Treated water will then be disposed into the ditch system within the public right-of-way along NW Saltzman Road. Since the area on Tax Lot 602 is located within the Environmental Conservation zone, the disturbance caused by this proposal is covered in the Environmental Review section of this decision. The applicant submitted stormwater calculations that indicate the size of the proposed swale within the private street tract can accommodate the volume of stormwater runoff from the impervious areas of the private street and development of the three lots. The Site Development Section of BDS indicated conceptual approval of the proposed swale location and size (see Exhibits E-5 & H.17)

The Bureau of Environmental Services (BES) has to approve of this stormwater disposal system since the ditch is located within the public right-of-way. Once the stormwater enters the proposed ditch system along NW Saltzman Road, it then travels south into a facility regulated by Multnomah County.

BES reviewed the ditch improvements proposed in NW Saltzman Road (Exhibits E.1, E.10, and H.14) to ensure compliance with applicable regulations. BES indicated conceptual approval of the proposed ditch improvements (Exhibit H.14). Additionally, Multnomah County conceptually approved of the stormwater being discharged from this site into their jurisdiction via NW Saltzman Road (Exhibit H.16). Conceptual approval is based on the use of the detention facility, which maintains stormwater flow at pre-development discharge rates.

The applicant has recorded a covenant to record a future easement across Tax Lot 602 to ensure that there is access across the lot to the future ditch in NW Saltzman Road (Exhibit H.6). In addition, this easement area must be approved through the Environmental Review for the disturbance area. With the covenant and environmental approval (discussed later in report) this criterion *can be met*.

- **Public Street Improvements:** As a condition of this land use approval, PBOT requires the applicant to improve NW Saltzman Road with a substandard street job (20 feet of paving, no curbs or sidewalks, discussed earlier in this report). The stormwater detention facility located on Tax Lot 602, and the stormwater treatment and conveyance facility located in NW Saltzman Road (swale) are both sized to accommodate the stormwater disposal associated with the street improvements from the entire frontage of Tax Lots 601 and 602. The detention facility is designed with a control structure designed to meet quantity control measures, per Multnomah County requirements. BES has confirmed that the proposed swale and ditch system along NW Saltzman Road is of a size and design that is adequate to provide management of the stormwater generated from the new impervious areas described above. Multnomah County has conceptually approved of the stormwater being discharged from this site into their jurisdiction via NW Saltzman Road (Exhibit H.16) with a condition of approval requiring that stormwater calculations are submitted and reviewed again by the County prior to final plat approval.

BES requires a Public Works Permit for the construction of such a swale. The applicant must provide engineered designs and financial guarantees of performance prior to final plat approval. This criterion *can be met*.

- **Parcels 1-3:** Stormwater from all parcels will be directed into individual flow-through planters on each lot that remove pollutants and suspended solids. The water will drain from the planters to a six-foot wide swale in the private street tract which will then flow to the main conveyance system over Parcel 1, through a storm sewer easement over Tax Lot 602, and into the detention facility proposed on Tax Lot 602. Each lot has sufficient size for individual planter boxes, and BES, and Multnomah County have indicated that the treated water can be directed to the proposed drainage ditch along NW Saltzman Road. It should be noted that the question regarding any pool water disposal on the site has been resolved. The applicant has indicated that any water used in swimming pools will not be disposed of on the site itself, but will meet all DEQ regulations and will be taken off site to an appropriate disposal point if necessary, which can be accomplished with a pump and a vehicle capable of hauling water.

Generally, Skyline Meadows, an opponent to this application, expressed concern regarding stormwater released into a ditch along NW Saltzman Road. The Hearings Officer finds that Skyline Meadows’ concerns (testimony of Mr. Jaffe) were anecdotal and not supported with any professional engineering data or conclusions. The Hearings Officer finds that comments from the BDS Site Development section and BES are based upon professional expertise and a review of engineering data and conclusions. The Hearings Officer finds that so long as any approval of this application results in pre-development discharge rates into the ditch on NW Saltzman Road, the concerns of Skyline Meadows are not persuasive.

With the conditions of approval described above, *the stormwater management criteria are met*. As shown by the findings above, the Services and Utilities criteria are met.

Right of Way Approval Criteria

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

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

Code Section	Topic	Applicability Findings
33.654.130.B	Extension of existing public dead-end streets and pedestrian connections	Not applicable – There are no existing public dead-end street or pedestrian connections adjacent to the site.
33.654.130.C	Future extension of proposed dead-end streets and pedestrian connections	Not applicable – No street extensions are required to serve abutting sites that are further dividable.
33.654.130.D	Partial rights-of-way	Not applicable – No partial public streets are proposed or required.

Applicable Approval Criteria are:

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

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

Findings: The site is located at the intersection of NW Skyline Boulevard and NW Saltzman Road. The western edge of the site abuts the City’s boundary with unincorporated Multnomah County.

The site is located southwest of NW Skyline Boulevard and north/northwest of NW Saltzman Road. Skyline Boulevard runs north to south at an east/west angle and intersects with NW Saltzman Road, which also runs north to south at an east/west angle. There is approximately 1,000 feet between the western edge of this site and the intersection of NW Skyline Boulevard and NW Saltzman Road along the northeastern edge of this site. If this distance is measured against the optimum spacing requirement of 200 to 530 feet, it is conceivable that a north/south through-street could be provided in the vicinity of the site. There are no other north/south or east/west through-streets between these two streets and the topography in the area (steep slopes) and environmental zoning would not allow the creation of any east/west or north/south through-streets in the vicinity of the site. Additionally, the property located directly east of the site is outside of the City of Portland's jurisdiction, and completely forested, so an east/west street through this site is not feasible.

The site contains sufficient width to allow the creation of a public through-street. However, as mentioned above, the Hearings Officer finds that the area is not appropriate for a public through-street based on the natural features of the area, the Environmental zoning designation on the site, the need to minimize impervious surface and disturbance area, and the surrounding properties not being appropriate for any street extensions. So, although the optimum spacing criteria would indicate the need for a through-street or pedestrian connection at this site, the Hearings Officer finds that there is no practicable opportunity to provide them in this land division.

In addition, the site is not within an area that has an adopted Master Street Plan, so criterion d. does not apply.

The only new pedestrian connection included in the proposal are new sidewalks along the private street tract. This is a somewhat straight-line connection, it meanders due to the topography, but is fairly straight, and users will be able to see the ending of the pedestrian route from the entrance.

For the reasons described above, this criterion *is met*.

33.654.110.B.2 Approval criterion for dead-end streets in OS, R, C, and E zones. In OS, R, C, and E zones, dead-end streets may be provided where through streets are not required. Dead-end streets should generally not exceed 200 feet in length, and should generally not serve more than 18 dwelling units. Public dead-end streets should generally be at least 200 feet apart.

Findings: The proposal includes a private dead-end street and pedestrian connection, which will be located in the new private street tract. As discussed under the findings for through-streets above, a new public east/west, north/south through-street is not required for this proposal. The private dead-end street is currently proposed to serve three lots and is approximately 500 feet in length to the center of the radius turn-around. The street is longer than the typical dead-end street you might find in higher density single-family dwelling zones, and longer than the approval criteria recommends. Due to the nature of the Zoning in the area (RF) and the fact that this zoning designation allows large lots, and is located in a rural area that is not very dense, the length of the private street tract

was deemed appropriate for the intended uses, even though it exceeds the 200 foot guideline mentioned in Zoning Code PCC 33.654.110.B.2. This criterion *is met*.

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

Findings: The proposed private street will serve three parcels, although applicant has designed the private street to accommodate the maximum development potential of eight lots. The applicant has proposed that a 40-foot wide tract, terminating in a 60-foot outside radius turn-around, which is sufficient to accommodate the expected users now and in the future. The Administrative Rules for Private Rights of Way are the standards that govern the construction of private streets. These rules recommend a width of 38 feet for dead-end streets more than 300 feet long, serving four or more lots. The Administrative Rules for Private Rights of Way recommended width provides room for the construction of a 26-foot wide paved roadway that allows two travel lanes, parking on one side, two six-inch curbs, a five-foot wide sidewalk on one side of the street, a four-foot wide planter strip, and a one-foot setback between the street improvements and private property.

Due to the rural nature of the site (large parcels/lots proposed which will provide ample off street parking and long private driveways) and the existing terrain (the applicant expressed a desire to save as many trees as possible), the applicant applied for a Building Code appeal to the private street standards (Exhibit A.14, appeal No. 5746). The applicant requested and was granted the right to reduce the size of the paved roadway within the private street tract to 20 feet in width, with a flush curb along the down slope side of the roadway adjacent to the drainage swale. A flush curb is being proposed to control velocity of stormwater. It will sheet flow the stormwater for the road into the swale instead of concentrating the flow. Additionally, a five-foot wide sidewalk will be located along the private street tract, separated by a five-foot buffer between the sidewalk and the driving surface on the private street tract where a planter strip is typically located. These elements, including the swale, can be accommodated in a 40-foot wide tract.

A sidewalk is required as part of the private street. In order to assure access to this sidewalk for visitors, delivery persons and the general public, a public walkway easement must be shown over the sidewalk portion of the street.

The proposed tract width is sufficient to accommodate the elements of a street adequate for the three parcels proposed and the additional future development potential. This criterion *is met*.

33.654.120.C.3.c. Approval criterion for turnarounds. The turnaround must:

- **Be of a size to accommodate expected users, taking into consideration the characteristics of the site such as existing structures, natural features, the length of the street, and the number of housing units served by the street;**

- **Minimize paved area;**
- **Provide adequate area for safe vehicular movement; and**
- **Provide adequate area for safe and convenient movement by bicyclists and pedestrians traveling on the street or traveling from the street to a pedestrian connection.**

Findings: A 60-foot outside radius turn-around with an interior island inside the cul-de-sac where the applicant wants to save some trees is proposed at the terminus of the private street tract. The applicant presented this configuration to the Site Development Section of BDS through the Building Code appeal process (Exhibit A.14, appeal No. 5746) and the Fire Bureau through the Fire Bureau appeal process (Exhibit A.11, appeal No. 5670) and was approved in both cases. Site Development and the Fire Bureau have indicated that the size and configuration of the turn-around are adequate to provide safe vehicular movement for the three parcels proposed, and the eight lots for which the applicant has expressed a desire to develop. A sidewalk is required along one side of the street that extends all the way around to edge of the turn-around, which will provide for safe and convenient pedestrian access along the private street and from the interior of the land division site to NW Saltzman Road. The proposed street tract has been sized to provide adequate room for the turn-around. This criterion *is met*.

33.654.120.E. Approval criterion for the width of pedestrian connections. The width of the pedestrian connection right-of-way must be sufficient to accommodate expected users and provide a safe environment, taking into consideration the characteristics of the site and vicinity, such as the existing street and pedestrian system improvements, existing structures, natural features, and total length of the pedestrian connection. As much as is possible, the users should be able to stand at one end of the connection and see the other end.

Findings: The proposed public pedestrian connection within the private street tract is 5 ft. wide and is separated from the private street tract by a 5 ft. wide buffer. This connection provides a relatively straight line connection (it meanders slightly due to the topography at the site) between the inside edge of the cul-de-sac and the public right of way along NW Saltzman Rd. This criterion *is met*.

Utility Location, Extension of Streets, Partial Rights of Way

33.654.130 Additional Approval Criteria for Rights-of-Way

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

Findings: Utilities are defined in the Zoning Code as telephone, cable, natural gas, electric, and telecommunication facilities. Any easements that may be needed for private utilities that cannot be accommodated within the proposed 40-foot width of the private street tract can be provided on the final plat. At this time, no specific utility easements adjacent to the street tract have been identified as being necessary. Therefore, this criterion *is met*.

Northwest Hills Plan District Standards

The site is within the Skyline Subdistrict of the Plan District and subject to PCC 33.563.410 Land Division and Planned Developments in the Skyline Subdistrict.

33.563.410 Land Divisions and Planned Developments

The following regulations apply to land divisions that will create four or more lots and to all Planned Developments within the Skyline subdistrict. Adjustments are prohibited.

- A. Supplemental application requirements. The following supplemental application requirements apply to proposals for land divisions or Planned Developments on sites of 5 acres or larger:**
- 1. Sites of 5 acres or larger. Applications for a land division or Planned Development on sites of 5 acres or larger must include a transportation analysis with the following information:**
 - a. The potential daily and peak hour traffic volumes that will be generated by the site;**
 - b. Distribution on the street system of the traffic that will be generated by the site;**
 - c. The extent to which ridesharing and transit incentive programs might reduce the vehicle trips generated by the site; and,**
 - d. Current traffic volumes on the principal roadways relative to the site;**
 - 2. Sites of more than 20 acres. Applications for a land division or Planned Development on sites of more than 20 acres must expand the transportation analysis required in Paragraph A.1, above, to include the projected traffic volumes on the principal roadways relative to the site should the proposed development and other approved, but undeveloped proposals, be fully developed.**
- B. Additional requirements for approval. In order to be approved, proposed land divisions and Planned Developments must meet the following requirements:**
- 1. Public sewer and water service must be available to the site; and**
 - 2. The applicant must either:**
 - a. Show that the existing public transportation is adequate; or**
 - b. Participate in or subsidize a private transportation service.**

Findings: No party involved in this case disputes that the Subject Property is entirely within the Skyline Subdistrict of the Plan District. Portland City Council adopted the Plan District to protect sites with highly valued resources and functional values. (see PCC 33.563.010) A purpose of the Plan District is to promote “the orderly development of the Skyline Subdistrict while assuring that adequate services are available to support development.” (PCC 33.563.020)

PCC 33.563.410 begins by stating that the “*following regulations apply to land divisions that will create four or more lots* and to all Planned Developments within the Skyline Subdistrict.”

(*emphasis added*) PCC 33.563.410.B.1 states, in relevant part, that “to be approved, proposed land divisions and Planned Developments must meet the following requirements: 1. Public sewer and water service must be available to the site...”

An attorney for Skyline Meadows stated that “the applicants are requesting approval for phase I of a serial subdivision in order to avoid the requirement of extending public sewer.” (Exhibit H.24) The Skyline Meadows’ attorney concludes that the applicant’s serial subdivision is contrary to the requirements of the Plan District, because no public sewer service is contemplated in the application. A neighbor/opponent stated that “common sense recognizes what these proposals really are, a subdivision requiring public sewer.” (Exhibit H.20).

The Hearings Officer agrees with the Skyline Meadows’ attorney that what applicants have done, are now doing, and expected to do once again, may be fairly characterized as a “serial subdivision”; a series of land divisions with the ultimate result of creating more than four lots. The Hearings Officer notes that a land division was approved for a three parcel partition in 1999 (LUR 99-00235 MP). The applicant has now applied to further divide the 1999 three parcel partition once again. Applicant acknowledges an intent to further divide the parcels created if this application is approved. The net result of all of this partitioning activity is, unquestionably, a project with more than four lots. However, the Hearings Officer’s task is not to ascertain the applicant’s intent but rather judge the present application in the context of the relevant approval criteria. As will be explained below, the Hearings Officer finds that the process used by applicants does not violate any relevant approval criteria.

The Hearings Officer finds it necessary to determine whether or not PCC 33.563.410 B.1. is an applicable approval criteria. Attorneys for Skyline Meadows addressed this issue in Exhibits H.3 and H.24, and the attorney for applicant addressed the issue in Exhibits H.22 and H.27. The Hearings Officer found the discussion by the attorneys in Exhibits H.3, H.22, H.24 and H.27 to be of great assistance.

An attorney for Skyline Meadows stated the following (exhibit H.3):

“Under PCC 33.563.410(B)(1), land divisions that will create four or more lots within the Skyline Subdistrict must show that public sewer is available to the site. The Staff Report concluded that this standard did not apply because the Applicant was only proposing three lots in this particular application. We disagree with the Staff Report’s analysis for the following reasons: This Application is not simply a three-lot division. It must be put in perspective with the Applicant’s broader intentions for all of the property at Rubicon. At full build out, the Applicant intends, and seeks partial approval in this application, to create 11 lots at Rubicon...”

Applicant’s attorney responded that the proper analytical perspective to be taken by the Hearings Officer is that “this application is for a single land division resulting in 3 new parcels in the Skyline Subdistrict of the Northwest Hills Plan District.” (Exhibit H.22). Applicant’s attorney went on to say that “PCC 33.563.410 Skyline Subdistrict regulations do not allow for, let alone require, the consolidation of separate land use applications within the district.” (Exhibit H.22).

A successor attorney for Skyline Meadows took a somewhat different tact. (Exhibit H.24). This attorney suggested that

“Tax Lot 601 is proposed for division into 3 enlarged lots ... Tax Lot 602 contiguous and adjacent to Tax Lot 601 is proposed for division into 2 lots (LU 08-125814). The applicant and owner is [sic] the same in both proceedings. Together, the land divisions request approval for the creation of 5 lots. Normally this number of lots would trigger the requirement to extend public sewer to the site. However, the applicant has divided the applications to keep both under the 4-lot trigger for sewer lines and has...attempted to disguise an 8-lot environmental review for a 3-lot environmental review.” (exhibit H.24)

This attorney then summarizes the definitions of “land division” and “site” and concludes that five lots will be created and sewer public sewer is required.

Applicant’s attorney, in his final argument submission, states that “whether or not the five lots proposed in Rubicon 1 and Rubicon 2 constitutes a ‘site’ under PCC 33.910.030, is irrelevant to the trigger of the PCC 33.563.410 sewer requirement” and “the definition of ‘land division’ is not synonymous with ‘site’ as claimed by Opponents.” (Exhibit H.27).

The Hearings Officer finds the word “site” is only used in one place in PCC 33.563.410 and that is in section B.1 (“Public sewer and water service must be available to the site”). The Hearings Officer finds that subsection B.1 only applies when a “land division” creates four or more lots. Therefore, unless the precedent requirement that there is a land division that creates four or more lots the Hearings Officer finds that B.1 may not be applied.

“Land division” is defined, in PCC 33.910, as “the act of dividing land to create new lots or tracts, or to reconfigure lots or tracts within a recorded land division.” The Hearings Officer finds the definition of “land division” is application based; an application is considered as it stands including the description of land to be divided. The Hearings Officer finds that the applicant provides the legal description of the land that is to be divided and that land, and only that land is considered a “land division.” The Hearings Officer finds the argument of Skyline Meadows’ successor attorney (Exhibit H.24) not to be persuasive. The Hearings Officer finds that applicant described the Rubicon 1 land division to include Tax Lot 601 and only Tax Lot 601.

The extension of Skyline Meadows’ “site” and “land division” argument is that the applications for Tax Lot 601 (Rubicon 1 – LU 08-125809) and Tax Lot 602 (Rubicon 2 – LU 08-125814) must, in the most basic planning lexicon, be consolidated. If the Hearings Officer were to consolidate the applications (Tax Lot 601 and Tax Lot 602) the result would be to exceed the four lot threshold set forth in PCC 563.410 and trigger PCC 33.563.410 B.1.

The Hearings Officer takes note of ORS 174.010 which states that when construing a law, such as the Portland Zoning Code, a decision maker such as a Hearings Officer, “is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted.” In essence, the language of a provision of the Portland Zoning

Code is the best evidence of the intent of the legislative intent of the Portland City Council. *PGE v. Bureau of Labor and Industries*, 317 Or 606, 859 P 2nd 1143 (1993)

The Hearings Officer finds no reference in PCC 33.563.410 to consolidating land use applications. The Hearings Officer finds that no express authority exists in PCC 33.563.410 to support consolidating the applications for Tax Lot 601 (Rubicon 1 – LU 08-125809) and Tax Lot 602 (Rubicon 2 – LU 08-125814) for the purposes of analysis under PCC 33.563.410. The Hearings Officer, therefore, treats the applications in LU 08-125809 and LU 08-125814 independently of one another for the purposes of analysis under PCC 33.563.410. The Hearings Officer finds that application for Tax Lot 601 (Rubicon 1 – LU 08-125809) seeks three new parcels and therefore, PCC 33.563.410 B.1 does not apply. The Hearings Officer finds that the application subject to this decision does not trigger the need for public sewers (PCC 33.563.410 B.1) and that it would be improper to condition a future application (which must be considered on its own merits under the relevant approval criteria applicable at the time the application is deemed complete) to require public sewer.

This proposal is for three parcels, therefore the regulations of the Skyline Subdistrict *do not apply*.

APPROVAL CRITERIA FOR ENVIRONMENTAL REVIEW AND MODIFICATIONS

33.430.250 Approval Criteria

An environmental review application will be approved if the review body finds that the applicant has shown that all of the applicable approval criteria are met. When environmental review is required because a proposal does not meet one or more of the development standards of Section 33.430.140 through .170, then the approval criteria will only be applied to the aspect of the proposal that does not meet the development standard or standards.

Findings: The approval criteria which apply to the proposed new partition are found in PCC 33.430.250.A.

The proposed partition does not meet the following development standards:

- PCC 33.430.160.D – disturbance area
- PCC 33.430.140.N – maximum front setback

A. Public safety facilities, roads, driveways, walkways, outfalls, utilities, land divisions, Property Line Adjustments, Planned Developments and Planned Unit Developments. Within the resource areas of environmental zones, the applicant's impact evaluation must demonstrate that all of the general criteria in Paragraph A.1 and the applicable specific criteria of Paragraphs A.2, 3, or 4, below, have been met:

- 1. General criteria for public safety facilities, roads, driveways, walkways, outfalls, utilities, land divisions, Property Line Adjustments, Planned Developments and Planned Unit Developments;**
 - a. Proposed development locations, designs, and construction methods have the least significant detrimental impact to identified resources and functional values of other practicable and significantly different alternatives including alternatives outside the resource area of the environmental zone;**
 - b. There will be no significant detrimental impact on resources and functional values in areas designated to be left undisturbed;**
- 3. Roads, driveways, walkways, outfalls, and utilities;**
 - a. The location, design, and construction method of any outfall or utility proposed within the resource area of an environmental protection zone has the least significant detrimental impact to the identified resources and functional values of other practicable alternatives including alternatives outside the resource area of the environmental protection zone;**
 - b. There will be no significant detrimental impact on water bodies for the migration, rearing, feeding, or spawning of fish; and**
 - c. Water bodies are crossed only when there are no practicable alternatives with fewer significant detrimental impacts.**
- 4. Land divisions, Property Line Adjustments, Planned Developments and Planned Unit Developments:**
 - a. Proposed uses and development must be outside the resource area of the Environmental Protection zone except as provided under Paragraph A.3 above. Other resource areas of Environmental Protection zones must be in environmental resource tracts;**
 - b. There are no practicable arrangements for the proposed lots, tracts, roads, or parcels within the same site, that would allow for the provision of significantly more of the building sites, vehicular access, utility service areas, and other development on lands outside resource areas of a conservation zone; and**
 - c. Development, including building sites, vehicular access and utilities, within the resource area of a conservation zone must have the least amount of detrimental impact on identified resources and functional values as is practicable. Significantly different but practicable development alternatives, including alternative housing types or a reduction in the number of proposed or required units or lots, may be required if the alternative will have less impact on the identified resources and functional values than the proposed development.**

Findings:

Location and Design:

The interpretation and application of PCC 33.430.250 A.1.a. generated significant controversy in this case. Interpretation and application of this section has historically challenged applicants,

opponents, BDS staff, the Hearings Office, and on occasion City Council. PCC 33.430.250 A.1.a. was reviewed by this Hearings Officer, in some detail, in a recent land division decision (LU 07-158286 (HO 4080036 – decision issued 12/23/08) and Pages 12-17 of that decision are attached hereto as Exhibit H.29. The Hearings Officer finds that the interpretation findings in Exhibit H.29 remain relevant and appropriate to the decision in this case.

The Hearings Officer interprets PCC 33.430.250 A.1.a to require the applicant to do the following:

- Propose alternative development locations, designs and construction methods; and
- select a preferred alternative that is practicable; and
- provide evidence that the not-selected alternatives is significantly different from the preferred alternative and the not-selected alternatives are *or* are not practicable and;
- at least one of the proposed alternatives must be outside the resource area of the Environmental zone; and
- compare the preferred alternatives to any remaining alternatives that are practicable and significantly different from the preferred alternative to determine if the preferred alternative has the least significant detrimental impacts upon the identified environmental resources and functional values.

The applicant, in this case, submitted two separate alternative analysis discussions and they are described in Exhibits A.6/A.7/A.8 and H.15g. In its application materials (Exhibits A.6, A.7 & A.8) the applicant analyzed seven alternatives (one of which was selected as the “preferred alternative”). During the open record period applicant submitted a Supplemental Alternatives Analysis with three alternatives with one selected as the “preferred alternative.” (Exhibit H.15g). The Hearings Officer, as part of this alternatives analysis, considered the alternatives in Exhibits A.6/A.7/A.8 and H.15g.

The Hearing Officer finds that applicant proposed alternative development locations and designs. Generally the applicant is in control of deciding what alternatives are to be considered. The only constraints upon this process are that the applicant must provide evidence regarding the practicability of each proposed alternative and whether each proposed alternative is significantly different. The Hearings Officer finds that the phrase “significantly different” is to be considered in light of environmental protection. (see Exhibit H.29). The Hearings Officer finds that the alternatives proposed in Exhibits A.6 and H.15g meet the requirements of being “significantly different.” The Hearings Officer finds that each of applicant’s proposed alternatives impacts the environmental resources differently that the preferred alternative.

The Hearings Officer finds that applicant provided a “preferred alternative.” The Hearings Officer finds that applicant provided incomplete information regarding the practicability of the preferred alternative and some of the other alternatives.

Applicant’s attorney and Skyline Meadows’ attorney disagree on how the word “practicable,” as used in PCC 33.430.250 A.1.a, should be interpreted in this case. Practicable is defined, in PCC 33.910, as “capable of being done, after taking into consideration cost, existing technology and

logistics in light of the overall project purposes.” Skyline Meadows’ attorney (Exhibit H.24) stated that “applicant and staff have turned this definition on its head...”

Documents submitted by attorneys for Skyline Meadows (Exhibits H.3 and H.24) seem to suggest, when considering practicability, it is improper to consider future actions (additional land division[s]) that may occur on an alternative property; such as a future land division creating seven or eight lots from the three parcels as discussed by applicant. Skyline attorneys’ argument is that practicability must be considered only for the three parcels – period, end of story! The Hearings Officer both agrees and disagrees with this argument.

The Hearings Officer agrees with the practicability argument made by Skyline Meadows’ attorneys that the practicability analysis must be based upon the application in this case; a three parcel partition. However, the Hearings Officer disagrees with the argument made by Skyline Meadows’ attorney that the applicant in this case is precluded from considering value impacts of potential future actions that could be taken with respect to the three parcel partition.

The Hearings Officer finds that the applicant, in its feasibility analysis (which is part of the practicability analysis – “capable of being done after taking into consideration cost...”), can consider the value impacts of possible future land divisions. The applicant’s future land division analysis is, however, limited to considering future land divisions that are consistent with the Portland Zoning Code.

In its original application applicant proposed seven alternatives (Exhibit A.6) and in a supplemental submission proposed three alternatives (Exhibit H.15g). Using the information provided in Exhibits A.6 and H.15g, the Hearings Officer prepared the following summary chart (alternatives are labeled consistent with Exhibits A.6 and H.15g).

Hearings Officer’s Summary Chart of Applicant’s Alternatives

Alternative	# of lots/parcels	Size of lots/parcels (sq.ft)	Encroachment into “c” zone	Financial return (feasibility)*
9A	8	22,860-53,630	Yes	+\$ 548,928
9B	8	32,923-58,021	No	- \$ 35,094
9C	7	41,391-56,102	No	- \$ 32,847
9D & 3	3	115,869	No	-\$1,765,229
9E	8 townhouse		No	-\$3,624,786
9F	7	70,561-148,904	Yes	+ \$ 459,427
9G	8	42,868-87,702	Yes	+ \$ 714,000
1	3	97,235-107,954	Yes	No information
2	3	111,069-114,110	Yes	No information

* See exhibits A.8 and H.15g

Alternatives 9A, 9B, 9C and 9G propose future land divisions which are not permitted outright by the Portland Zoning Code (see PCC 33.610.200, Table 610-2). The subject property is zoned RF and within the RF zone the minimum lot area is 52,000 square feet. Options 9A, 9B, 9C and 9G propose minimum lot sizes of 22,860 square feet, 32,923 square feet, 41,391 square feet, and 42,868 square feet respectively. Based upon Table 610-2 the proposed minimum lot sizes are not permitted outright. However, the Hearings Officer acknowledges that the applicant did (in its original application), and could in the future, request an Environmental Modification to reduce the minimum lot size in the RF zone. The Hearings Officer finds that Environmental Modifications are frequently approved if an applicant can demonstrate that reduction in lot size will have a net positive impact upon the environmental resources. Therefore, the Hearings Officer finds, for the purposes of considering economic impacts of future land divisions, the applicant may utilize parcel/lot sizes less than the RF minimum lot size; land divisions anticipating parcel/lot sizes less than the RF minimum are contemplated in PCC 33.430.280.

The Hearings Officer's Chart above raises an additional alternatives analysis concern; is there adequate evidence in the record to determine if the "preferred alternative" and comparison alternatives are economically feasible in the context of practicability? The Hearings Officer finds there is no direct economic feasibility evidence provided by applicant that alternative 1, the applicant's preferred alternative (Exhibit H.15g), is practicable. The Hearings Officer takes note that alternative 1 is a three parcel version of the eight lot alternative 9A. The Hearings Officer takes note of applicant's assertion that a three parcel land division is considered, under the concept of practicability, not to be economically feasible without the three parcels being further divided. The applicant repeated a number of times that alternatives 3 & 9D (the same three parcel land division alternative) "shows a large negative number, exceeding one million dollars." (Exhibit H.15g). The Hearings Officer finds that all three parcel land divisions proposed by applicant, standing alone as three parcel land divisions without the possibility of future land divisions, are not practicable.

This leaves the Hearings Officer in a dilemma. On one hand the applicant's most recent Alternatives Analysis Summary (Exhibit H.15g) focuses upon the present application for three parcels and only three parcels; per applicant's own statements (Exhibit H.15g) a three parcel land division is, if there are no further land divisions, not economically feasible and therefore, not practicable. On the other hand, applicant states that alternatives 1 and 2 (Exhibit H.15g) "add to the potential value to the property by allowing for the greatest potential for future redevelopment." It is unclear to the Hearings Officer if the applicant is incorporating the economic analysis for alternative 9A (Exhibit A.8) as the economic analysis for alternative 1. The Hearings Officer could find no economic analysis for alternative 2.

The Hearings Officer finds that it is reasonable, based upon the comments of applicant (Exhibits H.15g and H.27), that the economic analysis for alternative 9A (Exhibit A.8) supports the applicant's conclusion that alternative 1 is practicable. The Hearings Officer finds that the preferred alternative is practicable. The Hearings Officer reiterates that the findings in this section

relate to practicability of the alternatives and not a final determination that eight lots will ultimately be approved for Tax Lot 601.

The Hearings Officer, despite the applicant's conclusory statement that alternative 2 is practicable (Exhibit H.15g), finds there is no evidence to support alternative 2 being practicable. The Hearings Officer finds alternative 2 is not practicable. The Hearings Officer finds that alternatives (in addition to the preferred alternative) 9F and 9G are economically feasible and practicable.

The Hearings Officer finds the applicant's discussion (Exhibits A.6, A.7, H.8, and H.15g) and BDS Staff discussion (Exhibit H.18) comparing the impacts upon the identified environmental resources and functional values of the preferred alternative to the other alternatives to be credible and persuasive. The Hearings Officer finds that the preferred alternative has the least significant detrimental impacts to the identified resources and functional values compared to the other alternatives.

The Hearings Officer finds that alternatives 9B, 9C, 9D and 9E are alternatives outside the resource area of the Environmental zone. (exhibit A.8)

This approval criterion *is met*.

The Hearings Officer has, for a number of years, expressed that PCC 33.430.250 A.1 alternatives analysis approval criteria places a heavy and uncertain burden on applicants. The Hearings Officer has, and continues to do so, suggest City Council consider revising the "alternatives analysis" approval criteria and clarify the requirements of an applicant.

- Streets – All parts of the proposed private street – roadway, sidewalk, and turnaround – stay entirely outside of the Environmental zones. Previously the applicant considered an Y-shaped street that extended into the resource area of the Conservation zone with its northern arm. A third street alignment was considered, however it did not result in fewer lots in the resource area. Therefore, impacts from the proposed street have been minimized with the applicant's preferred alternative.

Street improvements to NW Saltzman Road include substandard improvements of 20-feet of paving. However, all improvements along NW Saltzman Road will also be outside of the Environmental zones.

- Utilities – There is no public sanitary sewer available to this site and BES does not currently have a plan established to provide sewer to this area. The DEQ regulates on-site wastewater treatment systems (ORS 340-071). Section 340-071-0160 requires the following for availability:

(A) Physical availability.

(i) A sewerage system is considered available if topographic or man-made features do not make connection physically impractical and one of the following applies.

(I) For a single family dwelling or other establishment with a maximum projected daily sewage flow not exceeding 899 gallons, the nearest sewerage connection point from the property to be served is within 300 feet.

(II) For a proposed subdivision or group of two to five single family dwellings or other establishment with the equivalent projected daily sewage flow, the nearest sewerage connection point from the property to be served is not further than 200 feet multiplied by the number of dwellings or dwelling equivalents.

(III) For proposed subdivisions or other developments with more than five single family dwellings or equivalent flows, the agent will determine sewerage availability.

Only three parcels are proposed in this application. Therefore, the development does not meet the availability threshold for DEQ and the only practicable alternative is for individual onsite systems. The applicant submitted a land feasibility study to the Site Development section of BDS. The site evaluation report determined that all lots are approved for Alternative Treatment Technology (ATT) with primary and replacement drainfield areas in compliance with OAR 340-71-260 through 360.

The applicant has proposed two AX20's with a 1500-gallon septic tank, a 1500-gallon processing tank, and a 500-gallon dosing tank that discharges to a hydro splitter with 200 lineal feet of equally distributed drainfield installed at a minimum depth of 18 inches. This is approved and required for each parcel as in an equally sized replacement area.

The applicant proposes one outfall to the ditch in NW Saltzman Road. The pipe will extend through the Environmental Conservation zone along the western lot line of the parcel to the south. Two alternative alignments were examined that only impacted the transition area of the Conservation zone. The first alternative was for an outfall between Parcels 1 and 2. This alternative, determined to be unfeasible due to slope and soil type, could have resulted in negative impacts on the resources to be protected in Tract B. A second alternative was for a swale through the transition area on the parcel to the south. This option was also determined to be unfeasible because the swale would not have enough downward slope to be functional without a significant amount of grading. This would have impacted numerous trees within the resource area.

The use of a combination of underground detention/treatment facilities and vegetated planters on the lots minimizes disturbance area at the site. Alternative stormwater facilities, such as stormwater ponds would require additional disturbance area and grading at the site. Therefore, the underground facility with outfall will have less detrimental impact than other practicable alternatives.

- Front setback for development on new lots – The maximum front setback in the environmental general development standards (PCC 33.430.140.N) applies to development on the proposed parcels, including any future development created by future land divisions. The applicant requests to waive the maximum front setback of 20 feet.

The applicant states that each proposed home location has been thoughtfully selected for that specific lot's topography, onsite septic requirements, access, and the preservation of trees and

natural areas. The unique locations and tree preservation goals necessitate a larger front setback for the proposed parcels. Additionally, house locations were designed to allow for continuous habitat access for wildlife traveling through the area.

Allowing flexibility through the Environmental Review process encourages the innovative site design employed by the applicant. Additionally, the greater setbacks will give the development an overall look consistent with the rural nature of the Skyline area and promote additional privacy to the residents. Disturbance areas are strictly limited to the proposed parcel areas and the temporary disturbance for utility connections.

As described earlier in this decision, significant consideration was given to alternative designs on this site. Applicant preferred design attempted to reduce the three parcel sizes, maximize tree protection, and limit disturbance in the resource area. The requested maximum setback modification is necessary to facilitate the applicant's proposal, specifically to meet the tree protection requirements outside of the environmental zones, and will, on balance, be consistent with the purposes of the applicable regulations.

Construction Methods: Construction management techniques are necessary to minimize impacts to identified resources and functional values designated to be left undisturbed. Construction practices relevant to this criterion should include:

- Areas to be preserved will be protected by construction fencing indicating that vehicles and storage are not to occur there.
- Equipment and materials will be staged on the lots outside of Environmental zones.
- No tree removal is proposed outside of approved lots.
- The building contractor will place silt fences around the perimeters of the construction disturbance area (as shown on Exhibit H.15.i, sheet 9), and at downhill portions of the site prior to the commencement of construction activities. The sedimentation fence will remain in place until all the above mentioned construction activities are completed. The silt fencing must be located within approved disturbance areas.
- Vegetation outside the limits of disturbance will be protected. The Final Clearing and Grading Plan (Site Development Permit) must be submitted at final plat and show any trees located within 50-feet of disturbance areas in Environmental zones. Tree species and size must be indicated on this plan. An Arborist Report must be submitted if any of the root protection zones extend into disturbance areas.

With conditions for construction management methods, *these criteria are met.*

A.1.c. The mitigation plan demonstrates that all significant detrimental impacts on resources and functional values will be compensated for;

A.1.d. Mitigation will occur within the same watershed as the proposed use or development and within the Portland city limits except when the purpose of the mitigation could be better provided elsewhere; and

A.1.e. The applicant owns the mitigation site; possesses a legal instrument that is approved by the City (such as an easement or deed restriction) sufficient to carry out and ensure the success of the mitigation program; or can demonstrate legal authority to acquire property through eminent domain.

Findings: These criteria require the applicant to assess unavoidable impacts and propose mitigation that is proportional to the impacts, as well as sufficient in character and quantity to replace all lost resource functions and values.

Impacts resulting from this proposal include temporary and permanent impacts associated with construction of the lots and stormwater outfall. The lots and future development reduce wildlife habitat, increase impervious surface, and reduce the overall scenic character of the area. The stormwater outfall has the potential to impact pollution and nutrient retention/removal, sediment trapping and erosion control from the construction and disturbance area.

The applicant identified 26 trees within the parcel areas (Exhibit H.15.i, sheet 10, Tree Preservation Plan). The environmental regulations consider parcels as disturbance area and treat these trees as if they will be removed. Trees to be removed range in size from six to thirty inches in diameter. In addition to removal of up to 26 trees, permanent developable areas will be created of 16,863 square feet. The land division standards in PCC 33.430.160 do not allow any disturbance within the resource area because of the amount of unencumbered land on the site.

To replace the 26 trees within the proposed parcels, Development Standard PCC 33.430.140 K requires 55 trees and 63 shrubs to be planted. The applicant proposes to meet this standard by planting 19 Douglas fir, 16 Western Red Cedar, 20 Western Hemlock, and 63 native shrubs chosen from the *Portland Native Plant List* (Exhibit A.7). To offset the impacts of permanent development in the Environmental zone, the applicant proposes to create a 404,888 square-foot environmental resource tract that also protects 62,546 square feet of canopy outside the designated environmental zone.

The applicant indicates that additional native plantings are proposed for the “fingers” of the resource tract that extend between the proposed parcels in the preferred alternative in order to compensate for the general disturbance within the resource area. Proposed plantings include 73 trees planted roughly ten feet on center (one tree per 314 square feet) and 114 shrubs planted eight feet on center (one shrub per 201 square feet). All plant materials are from the *Portland Native Plant List* (Exhibit H.8).

In addition to plantings, the applicant has proposed placement of downed woody debris (DWD) that includes placing the trunks of large trees removed during the development process into the Conservation zone. DWD provides feeding sites for pileated woodpeckers, cover from predators for small mammals, travel routes for small mammals, moist microsites for salamanders, habitat for innumerable species of invertebrates, and a source of nutrients for forest soil development.

BDS indicated that there are many benefits to having DWD on a site. (Exhibit H.18). However, BDS did not support the placement of DWD throughout Tracts A & B, because of the impacts caused by the equipment used for placement of the logs. BDS recommended a condition limiting the placement of up to 20 pieces of DWD to the area not more than 30 feet from platted lots, the long-term benefits of DWD outweigh the temporary disturbance caused by its placement. The Hearings Officer concurs with this recommendation by BDS.

The Hearings Officer finds that the mitigation plan will compensate for impacts at the site for the following reasons:

- The area protected by Tract B exceeds the disturbance area 24:1.
- A total of 62,546 square feet of canopy area outside of the conservation zone is permanently protected.
- Trees removed will be replaced with a variety of trees and shrubs, improving wildlife cover, nesting, roosting, and feeding habitat in the resource tract.
- Placement of downed wood will create additional foraging and denning opportunities.
- The plantings will provide pollution control and nutrient retention and removal, sediment trapping and erosion control.
- The plantings recommended, below, for the stormwater outfall will prevent erosion, downcutting, and protect slope stability.

The disturbance areas for the stormwater pipes and facilities have not been proposed for replanting. Disturbance areas for the pipe and facility in the Environmental Conservation zoned portion of Tax Lot 602 must be vegetated with the following to provide vegetative cover to reduce the possibility of erosion in the open space tract:

- Three different native shrub species are required at a minimum one-gallon size or bare root, planter at a density of three plants per ten square feet.
- The remaining area must be planted with native groundcover using a minimum of four-inch pots at a density of eight plants per ten square feet.
- The rock-lined ditch in NW Saltzman Road receiving the water must be planted with native plants from the *Portland Native Plant List* in compliance with the *Stormwater Management Manual*.

Often, grading and construction of infrastructure are completed during the summer months. BDS staff noted that this time of the year is not appropriate to install mitigation plantings because of the heat and dry soil conditions. BDS staff typically recommends installation of mitigation plants occur between October 1 and March 31, when the weather is cooler and soil is moist. Mitigation plantings should be included as part of the Site Development Permit for the utility installation. In the event that inspection of improvements occurs outside of the planting season, the applicant can obtain a Zoning Permit for the purpose of inspection of the mitigation plantings. The Hearings Officer concurs with this BDS staff recommendation.

Due to the large number of plants to be installed, the Site Development Review Section of BDS requested that the applicant be required, as part of the permit, to submit third party landscape

verification. To meet this requirement, a registered landscape architect, a registered landscape contractor, or the designer of record must certify that all the required mitigation plantings were installed as required. After installation, a Landscape Certification Form to this effect, must be signed by the registered landscape professional. The signed Landscape Certification Form shall be submitted to the Site Development Section of BDS, confirming that all required mitigation plantings have been installed in accordance with these conditions of approval. The Hearings Officer concurs with this BDS Site Development Review Section recommendation.

As assurance that the plantings will be installed, the Hearings Officer finds that the applicant must provide a performance guarantee prior to final plat, for the installation of the mitigation plantings and five years of monitoring. The performance guarantee must meet the requirements of PCC 33.700.050. This section requires the amount of performance to be equal to at least 110 percent of the estimated cost of performance. The applicant must provide estimates by three contractors with their names and addresses. The estimates must include as separate items all materials, labor, and any other costs.

Monitoring and Maintenance:

The Zoning Code requires that shrubs and trees to be planted will survive until maturity. Monitoring and maintenance of the plantings for a period of five years will ensure survival during the most critical period of establishment of new plantings. 100 percent of the planted trees must survive the five-year monitoring period, or be replaced. Maintaining shrub and groundcover survival so that 80 percent of the planted areas are covered by native vegetation, will ensure a healthy understory is established. Limiting intrusion into planted areas by invasive species, as well as providing water during the dry summer months, for the first few years, will also help to ensure survival of the mitigation plantings. Documentation of these monitoring and maintenance practices should be included in an annual monitoring report for a period of five years to demonstrate success of the mitigation plan.

To ensure that the monitoring and maintenance responsibilities are carried out, the Hearings Officer finds that applicant must provide the Forest Park Neighborhood Association a copy of the annual monitoring and maintenance reports that are submitted to the City to fulfill monitoring and maintenance requirements.

Mitigation plantings will be installed as part of the Site Development permit required for grading of the site in preparation for street construction. The Site Development permit must be applied for prior to final plat approval.

The applicant owns the mitigation site currently and will be establishing a Homeowners' Association. The Homeowners' Association will ultimately own the resource tracts and be responsible for mitigation plantings. Therefore, with conditions of approval for mitigation plantings and monitoring, these criteria *can be met*.

III. CONCLUSIONS

The applicant proposes to subdivide the 17.1-acre site into three parcels, a private street tract and an open space (environmental resource) tract. The three parcels range in size from 97,235 to 107,954 square feet. The environmental resource tract (Tract B) will protect 404,888 square feet of tree canopy, including, 342,342 square feet of resource area in the Environmental Conservation overlay zone.

The Hearings Officer found that the application in this case, as revised by Exhibits H.15 et.seq. satisfy the land division approval criteria. The Hearings Officer found that applicant not satisfy the Environmental Review approval criteria. As such, the application for the three parcel land division can, with conditions, be approved.

All references to “lots” in this application and within Exhibits H.15.h and H.15.i (sheet 1-10) should be replaced with “parcels.”

IV. DECISION

Approval of a Preliminary Plan for a three-parcel Partition, a private street tract and an open space (environmental resource) tract (with conditions below);

Approval of an Environmental Review for:

- creation of three parcels for single-dwelling development, one partially within the Environmental Conservation zone; and
- a stormwater management facility with outfall within the Environmental Conservation zone (with conditions below);

As illustrated with Exhibits H.15.h & H.15.i (sheets 1-10), subject to the following conditions:

A. The final plat must show the following:

1. A private storm sewer easement, for the benefit of the private street tract and Parcels 2 and 3, shall be shown and labeled over the relevant portions of Parcel 1.
2. The Environmental Resource tract shall be noted on the plat as "Tract B: Open Space (Environmental Resource)." A note must also be provided on the plat indicating that the tract will commonly owned and maintained by the owners of Parcels 1 through 3 and any future parcels/lots that are created on this site.
3. An Emergency Vehicle Access Easement, granted to the City of Portland, shall be shown over the entirety of the private street to the satisfaction of the Fire Bureau.
4. The private street tract shall be named, with approval from the City Engineer, and noted on the plat as "Tract #: Private Street *name of street*".

5. A public walkway easement must be shown over the sidewalk portion of the street tract.
6. A recording block for each of the legal documents such as maintenance agreement(s), acknowledgement of special land use conditions, or Declarations of Covenants, Conditions, and Restrictions (CC&Rs) as required by Conditions B.7-B.10 below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: “A Declaration of Maintenance Agreement for (name of feature) has been recorded as document no. _____, Multnomah County Deed Records.”

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

Streets

1. The applicant shall meet the requirements of the City Engineer for right-of-way improvements along the frontage of NW Saltzman Road. The applicant shall provide plans and financial assurances to the satisfaction of PBOT and BES for required street frontage improvements.
2. The applicant shall submit an application for a Site Development Permit for construction of the private street and related site development improvements. Street design plans must be prepared by, or under the direction of, an Oregon licensed Civil Engineer.
3. The applicant shall furnish a financial guarantee of performance, as approved by BDS, for 125 percent of the estimated construction cost for the private street and all required site development improvements. The applicant shall provide an engineer’s estimate of the costs of performance including the costs for temporary erosion control measures required during construction. The financial guarantee of performance shall be accompanied by a performance agreement with BDS complete the required improvements.
4. The applicant shall provide a Clearing and Grading Plan with the Site Development permit required for the private street described in Condition B.2. The Clearing and Grading Plan must substantially conform to the Preliminary Clearing and Grading Plan approved with this decision (Exhibit H.15.i, sheet 9) with the following additions:
 - It must show root protection zones of the trees to be preserved on the Tree Preservation Plan (Exhibits H-15.f and H-15.i, sheet 10); including tree number 8451
 - It must show stockpile areas;
 - It must note that topsoil must be stockpiled on site and re-used to the extent practicable;
 - Mitigation plantings described in Condition C.1.
 - It must show no more clearing and grading than necessary for one home site on each parcel.

Utilities

5. The applicant shall meet the requirements of the Fire Bureau for installing a new fire hydrant. The applicant must contact the Water Bureau to purchase the hydrant. Verification of the purchase must be provided to the Fire Bureau before Final Plat approval.
6. The applicant shall meet the requirements of Multnomah County and provide stormwater calculations for the stormwater outfall proposed into the County's jurisdiction demonstrating that water flow to Multnomah County does not exceed pre-development rates.

Required Legal Documents

7. A Maintenance Agreement shall be executed for the tract described in Conditions A.2 and A.6 above. The agreement shall include provisions assigning maintenance responsibilities for the tract and any shared facilities within the areas, consistent with the purpose of the tract, and all applicable City Code standards. The tract must be owned in common by the owners of Parcels 1-3 (and any future parcels/lots created within Parcels 1-3) or a Homeowner's Association. The agreement must be reviewed by the City Attorney and BDS, and approved as to form, prior to final plat approval. The agreement must include:
 - a. Provisions assigning maintenance responsibilities for mitigation plantings located within the tracts.
 - b. Provisions assigning maintenance responsibilities for the stormwater facilities.
8. A Maintenance Agreement shall be executed for the Stormwater Management Easement area described in Condition A.1 above. The agreement shall include provisions assigning maintenance responsibilities for the easement area and any shared facilities within that area, consistent with the purpose of the easement, and all applicable City Code standards. The agreement must be reviewed by the City Attorney and BDS, and approved as to form, prior to final plat approval.
9. The applicant shall execute a Maintenance Agreement for the private street tract. The agreement shall assign common, undivided ownership of the tract to the owners of Parcels 1-3 and any future parcels/lots created within these parcels and include provisions assigning maintenance responsibilities for the tract and any shared facilities within that area. The agreement must also acknowledge all easements granted within the street tract, the beneficiaries of those easements, and the limitations on the easement areas to the satisfaction of the beneficiary service agencies. The Maintenance Agreement must be reviewed by the City Attorney and BDS, and approved as to form, prior to final plat approval.
10. The applicant shall execute an Acknowledgement of Special Land Use conditions, requiring residential development on any lot created within this site to contain internal fire suppression sprinklers, per Fire Bureau appeal No. 5670. The acknowledgement shall be recorded with Multnomah County, and referenced on the final plat.
11. The applicant shall submit a Performance Guarantee, meeting the requirements of PCC 33.700.050, for (1) installation of plantings at the site and (2) five years of monitoring and

maintenance (as specified in Condition E) to BDS. The Performance Guarantee must be accompanied by a contract approved by the City Attorney.

- a. Performance Guarantee for the estimated cost of installation of plantings
If the applicant or subsequent owners of the site do not install plantings as required by Condition C.1 below, the City shall use the performance guarantee to install required plantings. BDS will return/release unused portions of the required performance guarantee allocated to installation of plantings to the applicant only after BDS inspectors determine that all required plantings have been completed and invasive species have been removed with ten-feet of all required native plantings.
- b. Performance Guarantee for estimated costs of monitoring and maintenance
If the applicant or subsequent owners of the site do not monitor and maintain the plantings, as required by Condition E below, the City shall use the performance guarantee to monitor and maintain the required plantings. BDS will return/release portions of the required performance guarantee allocated for each year of the five-year monitoring period to the applicant only after BDS has approved the annual monitoring report (including replacement of dead plants).

C. Other Requirements

1. A Site Development Permit shall be submitted prior to Final Plat approval for the purpose of grading for the private utilities and installation of mitigation plantings. A minimum of 119 trees and 159 shrubs shall be planted in the environmental resource tract in substantial conformance with planting guidelines in Exhibits A.7 and H.8. Disturbance areas for the pipe and facility in the Environmental Conservation zoned portion of Tax Lot 602 must be vegetated with the following to provide vegetative cover to reduce the possibility of erosion in the open space tract:
 - Three different native shrub species are required at a minimum one-gallon size or bare root, planter at a density of three plants per ten square feet.
 - The remaining area must be planted with native groundcover using a minimum of four-inch pots at a density of eight plants per ten square feet.
 - The rock-lined ditch in NW Saltzman Road receiving the water must be planted with native plants from the *Portland Native Plant List* in compliance with the *Stormwater Management Manual*.

Grading limits shall be in substantial conformance with Exhibit H-15.i, sheet 9, Preliminary Clearing and Grading Plan.

- a. Plantings shall be installed between October 1 and March 31 (the planting season).
- b. Prior to installing required mitigation plantings, non-native invasive plants shall be removed from all areas within ten feet of mitigation plantings, using handheld equipment.
- c. All mitigation and remediation shrubs and trees shall be marked in the field by a

tag attached to the top of the plant for easy identification by the City Inspector. All tape shall be a contrasting color that is easily seen and identified.

- d. Plantings shall be installed between October 1 and March 31 (the planting season). Any changes or substitutions to approved planting plans shall first receive written approval from BDS Land Use Review staff.
- a. The applicant shall have a registered landscape architect, a registered landscape contractor, or the designer of record certify that all the required mitigation plantings were installed as required. After installation, the applicant shall submit a Landscape Certification Form to this effect, signed by the registered landscape professional. The signed Landscape Certification Form shall be submitted to the Site Development Section of BDS, confirming that all required mitigation plantings have been installed in accordance with these conditions of approval.
- e. An inspection of **Permanent Erosion Control Measures** shall be required to document installation of the required mitigation plantings.
 1. The **Permanent Erosion Control Measures** inspection (IVR 210) shall not be approved until the required mitigation plantings have been installed (as described above);

--OR--

2. If the **Permanent Erosion Control Measures** inspection (IVR 210) occurs outside the planting season (as described above), then the Permanent Erosion Control Measures inspection may be approved prior to installation of the required mitigation plantings – if the applicant obtains a separate **Zoning Permit** for the purpose of ensuring an inspection of the required mitigation plantings by March 31 of the following year.

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

1. **An on-site meeting between the applicant, the contractor, and City staff is required** prior to any ground disturbing work. Conditions a. and b. below shall be completed prior to the scheduled meeting and condition c shall be shown on all permit plans:
 - a. The applicant shall contact Site Development for a pre-construction meeting at least one week in advance of any ground disturbing work or clearing and grading for site preparation. Work shall not commence without authorization by Site Development.
 - b. Temporary construction fencing shall be installed according to PCC 33.248.068 (Tree Protection Requirements), except as noted below. Construction fencing shall be placed along the Limits of Construction Disturbance for the approved development, as depicted on Exhibit H.15.i, sheet 9, Preliminary Clearing and Grading Plan, or as required by inspection staff during the plan review and/or inspection stages. Tree removal and

protection shall be in substantial conformance with Exhibit H.15.i, sheet 10, Preliminary Tree Preservation Plan.

- c. No mechanized construction vehicles are permitted outside of the approved “Limits of Construction Disturbance” delineated by the temporary construction fence. All planting work, invasive vegetation removal, and other work to be done outside the Limits of Construction Disturbance, shall be conducted using hand held equipment.
2. Development on parcels shall be in conformance with the following:
 - a. The minimum front, street, or garage setbacks of the base zone may be reduced to any distance between the base zone minimum and zero.
 - b. Future development, including development on future parcels/lots created by further land division, is not subject to the maximum front setback.
 - c. Fences are allowed only within parcels (not within any of the tracts).
 - d. Exterior lights must be spaced at least 25 feet apart. Incandescent lights exceeding 200 watts (or other light types exceeding the brightness of a 200-watt incandescent light) must be placed so they do not shine directly into resource areas. This condition applies to parcels that abut any Environmental zoning on the site.
 3. The following apply to the open space tract:
 - a. All vegetation planted in a resource area of Environmental zones is native and listed on the Portland Plant List. Plants listed on the Portland Nuisance Plant List or Prohibited Plant List are prohibited.
 - b. Fences are not allowed within the resource area the Environmental zone.
 4. Development on Parcels 1-3 shall be in conformance with the Tree Preservation Plan (Exhibit H-15.i, sheet 10) and the applicant's Tree Preservation Summary table (Exhibit H-15.f). Encroachment into the specified root protection zones may only occur under the supervision of a Certified Arborist. Planning and Zoning approval of development in the root protection zones is subject to receipt of a report from an arborist, explaining that the arborist has approved of the specified methods of construction, and that the activities will be performed under his supervision. The report from an arborist and any revisions to permit plans reflecting new root protection zones must be submitted and approved by Planning and Zoning prior to any working occurring in the root protection zone. If work is conducted in the RPZ and Planning & Zoning approval is not obtained before the work begins and the tree subsequently falls, it may result in a violation.
 5. The first lift of paving for the private street and the stormwater detention facility on Tax Lot 602 shall be installed prior to issuance of any permits for residential construction.

6. Prior to finalizing the Site Development permit for the private street, a plumbing permit must be obtained and finalized for the new utility lines that will be constructed beneath the paved surface of the new street.
7. The applicant must post the private street with "No Parking" signs to the satisfaction of the Fire Bureau.
8. The applicant will be required to install residential sprinklers in the new houses on Parcels 1- 3 to the satisfaction of the Fire Bureau.

E. Mitigation Monitoring Requirements. The landscape professional or designer of record shall monitor the required plantings for five years to ensure survival and replacement as described below. The Homeowner's Association is responsible for ongoing survival of required plantings and shall:

1. Provide five letters (to serve as monitoring and maintenance reports) to the Forest Park Neighborhood Association, and to the Land Use Services Division of BDS (Attention: LU 08-125809 LDS ENM) containing the monitoring information described below. Submit the first letter to the Bureau of Development Services within 12 months following approval of the Permanent Erosion Control Inspection of the required mitigation plantings. Submit the subsequent letters every 12 months following the date of the first monitoring letter. All letters shall contain the following information:
 - a. A count of the number of planted trees that have died. One replacement tree must be planted for each dead tree (replacement must occur within one planting season).
 - b. The percent coverage of native shrubs and ground covers. If less than 80 percent of the mitigation planting area is covered with native shrubs or groundcovers at the time of the annual count, additional shrubs and groundcovers shall be planted to reach 80 percent cover (replacement must occur within one planting season).
 - c. A list of replacement plants that were installed.
 - d. A description of invasive species removal (English ivy, Himalayan blackberry, reed canarygrass, teasel, clematis) within ten feet of all plantings. Invasive species must be removed with ten feet of all mitigation plants.

F. Failure to comply with any of these conditions may result in the City's reconsideration of this land use approval pursuant to Portland Zoning Code PCC 33.700.040 and /or enforcement of these conditions in any manner authorized by law.

Gregory J. Frank, Hearings Officer

Date

Application Deemed Complete: October 22, 2008
Report to the Hearings Officer: March 20, 2009
Revised Report to the Hearings Officer: April 15, 2009
Decision Mailed: May 12, 2009
Last Date to Appeal: 4:30 p.m., May 26, 2009
Effective Date (if no appeal): May 27, 2009

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

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

Appeal of the decision. ANY APPEAL OF THE HEARINGS OFFICER’S DECISION MUST BE FILED AT 1900 SW 4TH AVENUE, PORTLAND, OR 97201 (823-7526). Until 3:00 p.m., Monday through Friday, file the appeal at the Development Services Center on the first floor. Between 3:00 p.m. and 4:30 p.m., file the appeal at the Reception Desk on the 4th Floor. **An appeal fee of \$4,344.50 will be charged (one-half of the application fee for this case).** Information and assistance in filing an appeal can be obtained from the Bureau of Development Services at the Development Services Center.

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

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

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

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

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

Recording concurrent approvals. The preliminary land division approval also includes concurrent approval of an Environmental Review with modifications. These other concurrent approvals must be recorded by the Multnomah County Recorder before any building or zoning permits can be issued.

A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with these concurrent land use reviews. The applicant, builder, or their representative may record the final decisions on these concurrent land use decisions as follows:

- **By Mail:** Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- **In Person:** Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034.

Expiration of concurrent approvals. The preliminary land division approval also includes concurrent approval of an Environmental Review with modifications. For purposes of determining the expiration date, there are two kinds of concurrent approvals: 1) concurrent approvals that were necessary in order for the land division to be approved; and 2) other approvals that were voluntarily included with the land division application.

The following approvals were necessary for the land division to be approved: Environmental Review with modifications.

- The final plat is not approved and recorded within the time specified above, or
- Three years after the final plat is recorded, none of the approved development or other improvements (buildings, streets, utilities, grading, and mitigation enhancements) have been made to the site.

All other concurrent approvals expire three years from the date rendered, unless a building permit has been issued, or the approved activity has begun. Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

EXHIBITS
NOT ATTACHED UNLESS INDICATED

A. Applicant's Statement:

1. Applicants Narrative, dated 4/30/08, includes documentation of early neighborhood notification, miscellaneous studies, LUR- 99-00235 MP, etc.
2. Landslide hazard Study by GeoDesign dated 4/28/08
3. Preliminary Storm drainage report prepared by Compass Engineering dated 4/24/08
4. Tree Preservation Plan dated 4/29/08, Prepared by Joseph Harrity Tree Specialist and Pat Lando and Associates.
5. Applicants Revised Narrative dated 10/15/08
6. Alternatives Analysis prepared by Jordan Schrader PC, Attorneys at law
7. Environmental Review report dated 9/28/08 prepared by Pacific Habitat
8. Financial Feasibility of Seven Development alternatives, dated 10/6/08 prepared by PGP Valuation Inc.
9. Revised Preliminary storm drainage report prepared by Compass Engineering dated 10/7/08
10. Documentation of Land feasibility Study approval dated 9/29/08
11. Documentation of Fire Bureau appeal No. 5670) dated 10/7/08
12. Documentation of Property Line Adjustment approval for 07-117291 PR and recording with County.
13. Revised Tree Preservation Plan, prepared by dated 10/18/08
14. Approved Building Code appeal to Private Street standards, appeal ID # 5746
15. Revised Tree Preservation Plan received 12/10/08
16. Revised Preliminary Storm drainage report prepared by Compass Engineering dated 1/9/09
17. Revised Tree Preservation Plan dated 1/20/09
18. Rubicon Traffic Impact Study Prepared by Lancaster Engineering dated 1/20/09
19. Revised Preliminary Storm drainage report prepared by Compass Engineering dated 2/27/09
20. Applicants narrative of Modification to Environmental Review, dated 2/27/09
21. Revised Tree Preservation Plan dated 2/13/09.
22. Applicants 120-day waiver dated 10/17/09
23. On-site sewage disposal report prepared by Smits & Associates dated 4/29/09
24. Documentation of approved property line adjustment 03-179620 PR
25. Compass Engineering's submittal to BES regarding control manhole detail, received on 3/12/09
26. Addendum to Landslide Hazard report from GeoDesign, dated 3/12/09

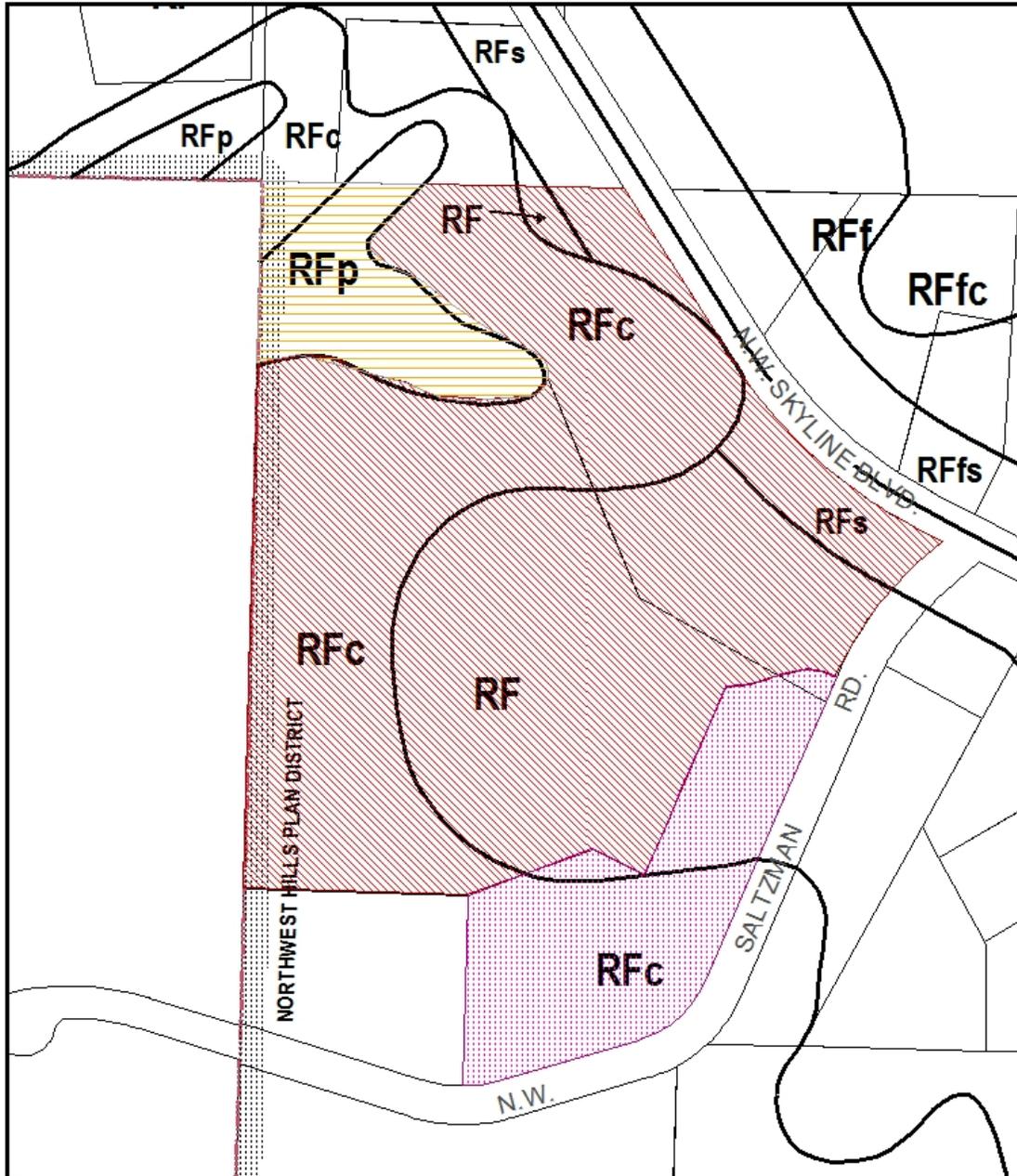
B. Zoning Map (**attached**)

C. Plans & Drawings:

1. Existing conditions Site Plan
2. Tax Lot 601 Master Plan
3. Composite Site Plan

4. Existing tree inventory
 5. Preliminary Site Plan
 6. Preliminary street profile
 7. Preliminary Utility Plan
 8. Preliminary Grading Plan
 9. Tree Preservation Exhibit
 10. Tree Preservation Plan
- D. Notification information:
1. Request for response
 2. Posting letter sent to applicant
 3. Notice to be posted
 4. Applicant's statement certifying posting
 5. Mailing list
 6. Mailed notice
- E. Agency Responses:
1. Bureau of Environmental Services
 2. Bureau of Transportation Engineering and Development Review
 3. Water Bureau
 4. Fire Bureau
 5. Site Development Review Section of Bureau of Development Services
 6. Bureau of Parks, Forestry Division
 7. Life Safety Planes examiner
 8. Site Development Site Evaluation report
 9. Clean Water Services memo
 10. Multnomah County e-mail
- F. Letters: None
- G. Other:
1. Original LUR Application
 2. Site History Research
 3. Pre-application Conference Summary Report
 4. Incomplete Letter dated 5/21/08
 5. Memo from Planning Staff to applicant dated 12/1/08
 6. Memo from Planning Staff to applicant dated 2/6/09
- H. Received in the Hearings Office:
1. Hearing Notice - Burgett, Shawn
 2. Staff report - Burgett, Shawn
 3. Letter - Janik, Stephen T.
 4. PowerPoint presentation - Burgett, Shawn
 5. Memo from GeoDesign - Burgett, Shawn
 6. Multnomah Co. Assessment & Taxation report - Burgett, Shawn
 7. Modification to Environmental Review/Revised 3/25/09 – Stafford, John
 8. Pacific Habitat Services Memo - Burgett, Shawn
 9. Compass Engineering Addendum Storm Drainage Analysis - Burgett, Shawn
 10. Duplicate of Exhibit H-8 - Burgett, Shawn

11. Compass Engineering report - Goldson, Bruce
12. Letter - Janik, Stephen T.
13. Letter to Janik & Ramis - Hearings Officer
14. Memo to Whiteside from BES, Addendum #2 - Whiteside, Rachel
15. Rubicon 1 Summary report w/attachments - Stafford, John
- 15a. Emails - Stafford, John
- 15b. Memo from GeoDesign - Stafford, John
- 15c. Multnomah Co. Recorded documents - Stafford, John
- 15d. Compass Engineering letter - Stafford, John
- 15e. Compass Engineering letter - Stafford, John
- 15f. PCC 33.630 charts - Stafford, John (**attached**)
- 15g. Jordan Schrader Ramis Alternatives Analysis Summary - Stafford, John
- 15h. Partition Plan - Stafford, John (**8 ½ x 11 attached**)
- 15i. 3-Lot Application Plan - Stafford, John (**8 ½ x 11 sheets 1-10 attached**)
16. Certification of Stormwater Service - Whiteside, Rachel
17. Memo to Burgett from Mary King - Burgett, Shawn
18. Revised Staff Report - Burgett, Shawn
19. Letter - Jaffe, Richard
20. Letter - Day, Steve
21. Letter - Goldson, Bruce
22. Memo - Ramis, Timothy
23. Memo - Whiteside, Rachel
24. Letter - White, Christie C.
25. Letter - Jaffe, Richard
26. Letter - Ramis, Timothy
27. Letter w/attachments - Ramis, Timothy
- 27a. LUBA No. 2005-136 Final Opinion and Order - Ramis, Timothy
- 27b. Case # LU 04-000959 LDS EN PD Hearings Officer Decision - Ramis, Timothy
28. Letter - Ramis, Timothy
29. Pages 12-17, Case # 4080036, Decision of Hearings Officer – Hearings Officer (**attached**)



ZONING

- Site
- Subject to EN only
- Included in Density Calculations



This site lies within the:
 NORTHWEST HILLS PLAN DISTRICT

File No.	LU 08-125809 LDS ENM
1/4 Section	2418, 2518
Scale	1 inch = 200 feet
State_Id	1N1W22AA 601
Exhibit	B (Mar 16, 2009)