

Zoning: RFc – Residential Farm/Forest with Environmental Conservation Overlay Zone

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 10:46 a.m. on April 1, 2009, in the 3rd floor hearing room, 1900 SW 4th Avenue, Portland, OR, and was closed at 11:48 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

Scott Taylor, 918 NW Turnberry Terrace, Beaverton, OR 97006

Richard Jaffe, 11100 NW Saltzman Rd., Portland, OR 97229

Nancy Johnson, 11175 NW Saltzman Rd., Portland, OR 97229

Proposal:

The Public Hearing for this proposal was held on April 1, 2009. The 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). In the 3/20/09 Staff Report, 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 4:30 p.m. on April 15, 2009 for any new evidence to be submitted. The applicant submitted additional evidence into the record (see H exhibits) which will be discussed throughout this decision.

The applicant proposes to divide the 156,188 square foot site into two parcels, an environmental resource tract, and an open space tract. Proposed parcel sizes are 45,153 square feet (Parcel 1) and 43,239 (Parcel 2). The shape of Parcel 1 is irregular in order to preserve as many trees as possible both within and outside of the Environmental zone in the 61,276 square foot Tract E. Tract E is an environmental resource tract that will contain undisturbed areas of the Environmental Conservation overlay zone. Tract D is an open space tract.

Both parcels will obtain vehicle access from NW Saltzman Road. Stormwater will be managed by individual sand filtration facilities that overflow to the existing ditch in NW Saltzman. 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 on the site.

Over two-thirds of the site is located within the Environmental Conservation overlay zone. Much of this area has been placed into Tract E, a 61,276 square foot environmental resource tract. The applicant proposes to encroach into the “c” Conservation zone with proposed Parcel 1 to accommodate one home and the associated septic drainfield. A private stormwater connection will connect through the Conservation zone. Mitigation is proposed for Tract E and the open space on the abutting property in the same ownership. A request for Modification through Environmental Review has been made to allow both Parcels 1 and 2 to be smaller than the minimum lot/parcel size in the RF zone (52,000 square feet).

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 that also requires an Environmental Review (See PCC 33.660.110). For purposes of State Law, this land division is considered a Partition.

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
- PCC 33.430.280 Modifications which will better meet Environmental Review requirements

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 3.59 acre site is located on the west side of NW Saltzman Road, just south of NW Skyline Boulevard. 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 down from north to south/southwest. While the entire site is covered in forest canopy, the property is dominated by maturing hardwoods with a lesser component of maturing conifers in the northern portion of the site. Inspection of historic aerial photos indicates that these trees were planted sometime in the mid-to late 1980's. The area has a structurally diverse tree canopy that includes younger trees along with a diverse shrub and herbaceous layer. There are no streams or water features on the property.

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 and the Environmental Conservation (c), Environmental Protection (p) 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/parcels having a minimum area of 52,000 square feet, with minimum width and depth dimensions of 60 feet and 60 feet, respectively. Newly created lots/parcels must have a maximum density of one lot/parcel 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. They protect the most important environmental features and resources while allowing environmentally sensitive urban development where resources are less significant.

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 parcels and an Open Space/Resource Preservation Tract.
- **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 division of Rubicon 2, per the application, has been designed to include the following:

- To maximize land within environmental resource tracts on site;
- Provide mitigation and remediation for the proposed 39,616 square feet of disturbance within the Environmental Conservation zone by enhancing the structural and species diversity of the adjacent tracts;
- Access to the two parcels will be via NW Saltzman Road;
- Each parcel will be served by a City of Portland water main and support a private septic system;
- All homes are planned to be equipped with a residential fire sprinkler system;
- To provide a strategy for the future partitioning of the land that meets the density available to Tax Lot 601; and
- The current parcel configuration was developed as part of the Master Plan for the abutting site, Rubicon 1.

Hearings Officer Note: It should be noted that the applicant refers to Parcels 1 and 2 (Rubicon 2) interchangeably with Parcels 4 and 5 for the same area. This is due to the Master Plan described in Exhibit C.2. Parcel 1 is sometimes referred to as Parcel 4 in the applicant’s correspondence and in some of the Bureau responses; in addition, Parcel 2 is sometimes referred to as Parcel 5 in the applicant’s correspondence and in some of the Bureau responses. Only two parcels are proposed through this review.

Agency Review: A “Request for Response” was mailed **October 24, 2008**. Several bureaus and agencies responded. Please see Exhibits E.1 through E.12, H.15, H.17 and H.18 for details. The comments are addressed under the appropriate 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). Written correspondence from neighbors in opposition and an attorney representing the Skyline Meadows Neighborhood Association (“Skyline Meadows”) was received during the open-record period.

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.

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.
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.

Criterion	Code Chapter	Topic	Applicability Findings
I	33.639	Solar Access	Not Applicable - All of the proposed parcels are interior lots (not on a corner). In this context, solar access standards express no lot configuration preference.
J	33.640	Streams, Springs, and Seeps	Not applicable - No streams, springs, or seeps are evident on the site outside of Environmental zones.
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/parcel standards applicable in the RF through R5 zones. These density and lot/parcel dimension standards ensure that lots/parcels are consistent with the desired character of each zone while allowing lots/parcels 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/parcels 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, density was determined based on the following factors:

On October 3, 2000, LUR 99-00235 MP was preliminary approved, it divided the original 24.7 acre (1,076,146 square feet) property into three parcels ranging in site area from 271,133 square feet to 360,802 square feet, and a 86,724 square foot common open space tract (Shown as Tract “A” partition plat 2002-60). The three parcels resulted in Parcels 1-3 (see Exhibit G.7). During the original land division of the site (LUR-99-00235 MP) a future development plan was proposed, and was shown as Exhibit C-3 from LUR 99-00235 MP (Exhibit G.8). This future development plan showed the site being divided into a total of 11 lots; resulting in the maximum density allowed based on the original site area of 1,076,146 square feet. Based on this future development plan, the Maintenance Agreement for Tract A was written with the following reference: “In the event a parcel shall be further lawfully divided or partitioned, the owners of such additional new lots or parcels shall also acquire an undivided interest in Tract A; in equal proportion to all lots or parcels having common interest in Tract A.” (Exhibit G.9)

Following the original land division described above, two property line adjustments were done which resulted in the following parcel sizes for each tax lot involved in LUR 99-000235 MP that was used to determine density:

Land use case number	Tax Lot 601	Tax Lot 602	Tax Lot 603	Tract A
LUR 99-00235 MP	271,133 sq. ft.	357, 802 sq. ft.	360,487 sq. ft.	86,724 sq. ft.
PR 03-179620 (Exhibit A-24)	271,133 sq. ft.	632,413 sq. ft.	85, 874 sq. ft.	86,724 sq. ft.
PR 07-117291 (Exhibit A-1)	745, 671 sq. ft.	156, 185 sq. ft.	85,874 sq. ft.	86,724 sq. ft.

Based on the discussion above, and for the purpose of this density section, the applicant has indicated that they would like to use their allotted portion of Tract A to determine density for Tax Lot 602, the parcel going through this land division.

The applicant is currently proposing to divide Tax Lot 602 into two parcels. BDS staff and the applicant reasoned that Tax Lot 602 has a maximum density of two parcels if you take into account Tax Lot 602’s share of Tract A from LUR 99-00235.

BDS staff and applicant reasoned (Exhibit A.1) that Tax Lot 601 (not part of this review) has a 8/11 share of Tract A or 63,072 square feet to use for the purpose of density in addition to the 746,671 square feet of site area, for a total site area of 808,743 square feet. Tax Lot 602, which measures 156,185 square feet has a 2/11 share of Tract A, or 15,767 square feet to use for the purpose of determining density, for a total site area of 171,952 square feet. Tax Lot 603 (which is not part of this review) from LUR 99-00235 is 85,874 square feet and will maintain a 1/11 interest in Tract A based on the discussion above, but will not be further dividable.

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.19), 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 8 for Tax Lot 601 is inappropriate.

However, in response to Skyline Meadows' attorney's argument the Hearings Officer finds that the BDS calculation method (Exhibit H.19) 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 C.1 states "Maximum density. Maximum density is based on the zone and the size of the site. The following formula is used to determine the maximum number of lots/parcels allowed on the site: Square footage of the site divided by maximum density from Table 610-1 = Maximum number of lots/parcels allowed."

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 602 is the parcel 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 percentage 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 602 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 602 (two parcels) compared to the total of parcels to be *created at this time* 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 602 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 suggested, with respect to Tax Lot 601, that 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 three, Tax Lot 602 with two and Tax Lot 601 with one) 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 (using only Tax Lot 601 as an example) the *current number* of parcels requested for Tax Lot 601 with a *projected total number* of lots/parcels 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* lots/parcels (future estimate) and three, as the numerator (*current* application). The Hearings Officer also notes that the Skyline Meadows method utilizes the assumption that eight lots/parcels can be developed on Tax Lot 601 when calculating the 11 *potential* lots/parcels it used in its calculations.

The Zoning Code does not dictate an approach to allocate Tract A for maximum density calculations for Tax Lot 602. The Hearing Officer finds that, for the purposes of this decision (not precedent for any subsequent application to further divide the three parcels being created on Tax Lot 602 in this application), the BDS/applicant approach shall be used. The Hearings Officer finds that utilizing anticipated future maximum density (total of 11 lots/parcels) to calculate of the allocation of area from Tract A to Tax Lot 602 is appropriate.

Based on the discussion above, Tax Lot 602 has a total site area of 171, 952 square feet for purposes of calculating density.

In this case, a street is not 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 is as follows:

Minimum= $171,952 \text{ square feet (minus entire site area located in Landslide Hazard zone (171,952 \text{ square feet}) * .68} \div 87,120 \text{ square feet} = 0$ (since the whole site is located in the Landslide Hazard zone, there is no minimum density of this site)

Skyline Meadows' attorney disputed the methodology used by BDS staff in calculating maximum density in another land use application. (LU 08 125809) Because the Skyline Meadows' attorney combined her responses for this case and the other case in one document the Hearings Officer could possibly infer that the methodology of allocating Tract A open space to this application may also be incorrect. However, the Skyline Meadows' attorney does not provide any discussion regarding density calculations specifically for this case and therefore, the Hearings Officer finds that the BDS Staff methodology, as set forth in Exhibit H.19 is correct.

Maximum = 171, 952 square feet ÷ 87,120 square feet = 1.97 (which rounds up to a maximum of 2 lots/parcels, per PCC 33.930.020.B)

The applicant is currently proposing two parcels. The density standards are therefore met.

Parcel Dimensions

The lot/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 parcels; (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 parcel dimension standards are 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
Minimum Parcel Area	52,000 sq. ft.	45,153 sq.	43,239 sq.
Maximum Parcel Area	151,000 sq. ft.	ft.**	ft.**
Minimum Parcel Width*	60 ft.	120 ft.	282 ft.
Minimum Parcel Depth	60 ft.	315 ft.	165 ft.
Minimum Front Parcel Line	30 ft.	120 ft.	282 ft.

* Width is measured at the minimum front building setback line

All measurements are approximate, see Exhibit H.16-f for details

**Parcels 1 and 2 are going through Environmental Review (discussed later in decision, to allow the parcels to be below the minimum lot/parcel size allowed in the RF zone)

The applicant has asked for permission through the Environmental Review (discussed later in decision) to reduce the size of two parcels proposed in this land division proposal to be allowed to be below the minimum lot/parcel size in the RF zone of 52,000 square feet.

The findings above describe how the applicable lot/parcel standards are met. Provided that the reduced parcel sizes are approved through the Environmental Review, this criterion can be met.

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

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 submitted an arborist report that inventories the trees within the RF zoned section of this land division site, evaluates their condition and specifies root protection zones (Exhibits A-4 and A-21). Some trees have been exempted by the arborist because they are either too small, unhealthy, a nuisance species, located partially off the property or located within 10 feet of an existing structure to remain on the property, or partially within the Environmental zone. The tree inventory and preservation information can be found under Exhibit H-16-e.

The total non-exempt tree diameter on the site is 1,648 inches. Applicant proposes to preserve a large number of trees found throughout the site in clusters for a total of 719 inches or 43.60% of the total non-exempt tree diameter on the RF zoned portion of the site. Each tree is identified by number and location on the applicant's Tree Preservation Plan (Exhibits H.16-e in correlation with Exhibit H.16-g, sheet 3). 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, because 43.60 percent of the total tree diameter outside of the Environmental zone will be preserved. The applicant provided a Tree Preservation Plan showing the preserved trees and the required root protection zones (Exhibit H.16-g, sheet 3). The Tree Preservation Plan discussed above will not effect Parcel 1, since Parcel 1 it is located fully within the Environmental Overlay zone.

This criterion is met, subject to the condition that development on Parcel 2 is carried out in conformance with the Tree Preservation Plan (Exhibits H.16-e in correlation with Exhibit H.16-g, sheet 3).

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 this proposal against these criteria, the applicant has submitted a geotechnical evaluation of the site and proposed land division, prepared by a Certified Engineering Geologist and a Geotechnical Engineer (“Geotech Report[s]”) (Exhibits A.2, A.24, and H.5). The Geotech Report[s] were evaluated by the Site Development Division of the Bureau of Development Services (BDS), the City agency that makes determinations regarding soil stability.

The Geotech Report[s] indicate 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 land sliding of weathered soil layer in areas of relatively steep slopes with the ravine area in the northwester part of the site.” (Exhibits A.2 and A.24). The ravine area that the Geotech Report[s] is referring to is located within proposed Tract B of the land division proposal on Tax Lot 601 (LU 08-125809) and no development is proposed within that area that is not part of this land division site.

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 Geotech Report[s] 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 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 the Geotech Report[s] 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 or Geotechnical investigation area shown in Figure 3 of the applicant’s Geotech Report[s] (Exhibit A.2).

Overall, the applicants Geotech Report[s] concluded, “Because proposed construction activities related to site development are located outside of the Slope Hazard Area, they are located within the areas of the site least likely of causing landslides on the site or adjacent properties and are likewise protected from the effects of land sliding.” (Exhibit A.2)

Since the date that the applicant’s original Geotech Report[s] was published on April 28, 2008 (Exhibit A.2), the applicant’s site plan layout has changed slightly, including stormwater management and septic drainfield location. The Site Development section of BDS requested

(Exhibits E.5 and E.10) that the applicant submit an addendum to the original Geotech Report[s] (Exhibit A.2), addressing any changes shown on the applicant's site plan since the first geotechnical review was done on the April 28, 2008 Landslide Hazard report. The addendum to this Geotech Report[s] would need to be stamped by an Engineering Geologist and Geotechnical Engineer, which provided stamps for the earlier Landslide Hazard reports. The applicant submitted such an addendum to the Landslide Hazard report (Exhibit H.5), which was found acceptable by Site Development.

Site Development has concurred with the findings of the applicant's Geotech Report[s].

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 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.16-g, sheet 4) and the applicant also submitted a Landslide Hazard report (Exhibits A.2, A.24, and H.5) that describes how clearing and grading should occur on the site to minimize erosion risks. The applicant also provided a Tree Protection Plan (Exhibit H.16-e in correlation with Exhibit H.16-g, sheet 3) that

designates areas on the site outside of Tracts D and E where grading should not occur in order to protect the roots of the trees on the RF zoned section of the site that will be preserved. No grading is currently proposed within the root protection zones of any protected trees.

The Geotech Report[s] supported 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] went on to state, "The proposed road access and utility infrastructure lie outside of the Geotechnical Assessment area and require no further assessment of slope stability impacts. We recommend any development activity planned within the Geological Assessment area should be viewed by a geotechnical engineer and engineering geologist for potential impacts on slope stability." No development is proposed within the Geotechnical assessment area on Tax Lot 602. At this time, the applicant is proposing to only clear and grade the areas associated with the proposed building footprints for the two parcels currently proposed, along with the associated private driveways, utilities, drainfields and public street improvements (all of these elements, including the drainfields are located outside of the Geological Investigation area shown in the applicant's Geotech Report[s]). Therefore, the applicant's Clearing and Grading Plan meets the requirements of the applicant's Geotech Report[s].

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 driveways. Following the recommendations of the Landslide Hazard Study will help to limit erosion and sedimentation concerns. Stormwater runoff from the parcels will be managed by piping all stormwater into a proposed detention system located in Tract E. The water will then be released slowly into the existing ditch system located on the west side of NW Saltzman Road. The Bureau of Environmental Services (BES) reviewed necessary improvements to the ditch system and Site Development reviewed the grading associated with these improvements. The improved ditch leads to a catch basin at the end of NW Saltzman Road that is maintained by Multnomah County. This proposal assures that runoff will not adversely impact adjacent properties (see detailed 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. 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.

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.16-e in correlation with Exhibit H.16-g, sheet 3). This criteria 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 steep slopes and contains no known geological hazards. Therefore, there are no anticipated land suitability issues and the new parcels 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: Common Open Space Tract (Tract D) and Environmental Resource Tract (Tract E) and with a condition that the proposed tracts be owned in common by the owners of Parcels 1 and 2, this criterion 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 of Tract E for storm pipes that will provide stormwater disposal for Parcel 1.
- A Private Storm Sewer Easement is required across relevant portions of Tract E for a storm pipe that will collect water from the proposed development on the adjacent Tax Lot 601 (under common ownership) to be discharged into a detention system within Tract E.
- A Public Storm Sewer Easement is required across the relevant portions of Tract E for storm pipes that will connect the improved ditch in NW Saltzman Road to the detention system with Tract E.

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.17).

The site has approximately 927 feet of frontage on NW Saltzman Road. NW Saltzman Road is classified as a local service street for all modes in the Transportation Element of the Comprehensive Plan. TriMet does not provide transit service in this area. 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 Saltzman Road is unimproved, with only a gravel roadway. In reviewing this land division, Portland Bureau of Transportation (PBOT) relies on accepted civil and traffic engineering standards and specifications to determine if existing street improvements for motor vehicles, pedestrians and bicyclists can safely and efficiently serve the proposed new development. In this case, PBOT has 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 that are located near the site along NW Saltzman Road, that are potentially further dividable, including Tax Lot 601, which is currently going through the land division process and is proposing to create three parcels with private street frontage along NW Saltzman Road. With those improvements, up to two additional dwellings 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.17), prepared by Lancaster Engineering, which examined this and an adjacent land division at maximum density (per applicant's and BDS staff's calculations). Lancaster's Report examined the transportation impact on the existing infrastructure if the two sites reached the full development potential. 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.17). 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 mitigations at the intersection are necessary or recommended" (Exhibit A.17).

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 PCC 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 8-inch water main is available in NW Saltzman Road that can serve the water service needs of the northern most parcel, Parcel 2. Water service is not currently available for the southern most parcel (Parcel 1). The water main in NW Saltzman Road ends approximately 520 feet south of NW Skyline Boulevard. At the applicant's expense, the Water Bureau will require the applicant to extend the water main in NW Saltzman Road to a point at least five feet past the north property line of Parcel 1 (the proposed parcel located the farthest south). 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 of on-site sanitary sewage disposal systems. See Exhibits A.10 and H.18 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.

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 has proposed the following stormwater management methods (Exhibits A.18 and H.16-g, sheet 4), and Bureaus have responded as follows (Exhibits E.1, E.5, E.10, E.11, H.15, H.17 and H.18):

- **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). Based on the applicant's infiltration tests, stormwater infiltration is not feasible at this site, therefore the applicant is proposing to send all stormwater from the public street improvements into the public disposal system. Stormwater will be directed into a swale (ditch) system proposed within the public right-of-way along NW Saltzman Road. The swale connects to a detention facility located within Tract E, and then back into the ditch system located along NW Saltzman Road. 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 and into an inlet located in NW Saltzman Road. The inlet and downstream portions are regulated by Multnomah County. The detention facility located within Tract E lies within the Environmental Conservation zone, therefore any disturbance caused by this proposal within the Environmental zone is covered in the Environmental Review section of this report.

The applicant has submitted stormwater calculations that indicate the size of the proposed swale along NW Saltzman Road and the proposed detention facility within Tract E can accommodate the volume of stormwater runoff from the new impervious areas proposed within NW Saltzman Road, and the development on the two proposed parcels. As previously noted, the stormwater system along NW Saltzman Road (including the detention facility located within Tract E) are also designed to accommodate the three parcels currently proposed under LU 08-125809 on Tax Lot 601. Stormwater from these new impervious areas will be directed into a swale along NW Saltzman Road, then be conveyed to a detention facility located in the northwest corner of Tax Lot 602. The detention facility is designed with a control structure 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 proposed design that is adequate to provide adequate water management for the stormwater generated from the new impervious areas described above. Multnomah County has confirmed that the proposal meets the County's requirements for preliminary approval (Exhibit H.17); although an updated stormwater plan must be provided prior to final plat approval in order to the County officially grant final plat approval.

Additionally, BES requires a Public Works Permit for the construction of the swale (improved ditch) in the public right-of-way. The applicant must provide engineered designs and financial guarantees of performance prior to final plat approval.

- **Parcels 1-2:** Stormwater from the proposed parcels will be directed into flow-through planters to remove pollutants and suspend solids. Stormwater from Parcel 2 will drain from the

proposed planter to the swale proposed along NW Saltzman Road. Stormwater from Parcel 1 is proposed to be piped from the planter box to the detention facility in Tract E prior to being discharged into the swale located along NW Saltzman Road. Each parcel has sufficient size for individual planter boxes, and both BES and Multnomah County have indicated that the treated water can be directed to the proposed swale along NW Saltzman Road.

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 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	Not Applicable – No dead-end streets are proposed or required.
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	Not Applicable – No streets are proposed or required
33.654.120.C.3.c	Turnarounds	Not Applicable – No turnarounds are proposed or required

Code Section	Topic	Applicability Findings
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	Not Applicable - No specific utility easements adjacent to the right-of-way have been identified as being necessary. Therefore this criterion is met.
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 near the intersection of NW Skyline Boulevard and NW Saltzman Road. The site is located southwest of NW Skyline Boulevard and directly west of NW Saltzman Road. NW Skyline Boulevard runs north to south at an east/west angle, which intersects with NW Saltzman Road, which also runs north to south at an east/west angle. There is approximately 1,000 feet between the southern 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 feet, one may conclude 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. As previously noted Tax Lot 601, directly to the west, is currently being proposed for a three parcel land division and a private street tract. In addition, the properties located 350 feet southwest of this site along NW Saltzman Road are located outside of the City of Portland's jurisdiction, and completely forested, so an east/west or north/south 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 area is not appropriate for a public through-street based on the natural features of the area and the Environmental zoning designation on the site and the surrounding properties. So, although the optimum spacing criteria would indicate the need for a through-street or pedestrian connection at this site, 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.

No new through pedestrian connections were included in the proposal or required. PBOT considered requiring a separated sidewalk along NW Saltzman Road. However, due to the steep grade separating the public right-of-way from the site along NW Saltzman Road and the amount of trees that would be required to be removed, it was determined unnecessary because it is not anticipated that the sidewalk would serve enough users to justify the grading and tree removal that would be necessary to create a sidewalk.

For the reasons described above, 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;**
- 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 person 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 the applicants have done and are now doing 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. The net result of all of this partitioning activity could be construed as a project with more than four lots. However, the Hearing Officer’s task is to review 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 the applicants does not violate any relevant approval criteria or relevant/applicable Portland Zoning Code provision.

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 the applicant addressed the issue in Exhibits H.23 and H.27. The Hearings Officer found the discussion by the attorneys in Exhibits H.3, H.23, 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 2 new parcels in the Skyline Subdistrict of the Northwest Hills Plan District” (Exhibit H.23). 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.23).

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 applications constitute a ‘site’ as the term is defined at PCC 33.910.030, is inapposite to the of whether the PCC 33.563.410 are applicable to this application” (Exhibit H.27).

The Hearings Officer finds the word “site” is only used in one place in PCC 33.563.410 and that is within 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 2 land division to include Tax Lot 602 and *only* Tax Lot 602.

Skyline Meadows’ attorney appears, to the Hearings Officer, to extend the “site” and “land division” argument to require the applications for Tax Lot 1 and Tax Lot 2 be “consolidated.” If the Hearings Officer were to consolidate the applications (Tax Lot 601 and Tax Lot 602) the result would be a proposal exceeding the four lot threshold set forth in PCC 563.410 and then 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 requiring the consolidation of 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 602 (Rubicon 2 – LU 08-125814) seeks two 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 two 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 subdivision are found in PCC 33.430.250.A. The applicant has provided findings for these approval criteria and BDS Land Use Services staff have revised these findings or added conditions, where necessary to meet the approval criteria.

The proposed subdivision does not meet the following development standards:

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

The project includes required improvements in the NW Saltzman Road right-of-way. Public street improvements within an existing right-of-way used by truck or automobile traffic that do not exceed the minimum width standards of PBOT are exempt from Environmental Review.

The individual stormwater pipe from Parcel 1, connecting to the combined stormwater facility in Tract E, can meet the standards for utility connections in PCC 33.430.150 and is not subject to Environmental Review.

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: The identified resources on the site include forest, wildlife habitat, sensitive fauna, creek headwaters, palustrine wetlands, groundwater, and open space. The functional values provided by these resources 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.

An impact evaluation was prepared by Pacific Habitat Services, Inc. (Exhibits A.7 and A.20) that discusses the onsite resources in detail. The report found that, while the entire site is covered in forest canopy, the property is dominated by maturing hardwoods with a lesser component of maturing conifers in the northern portion of the site. Inspection of historic aerial photos indicates that these trees were planted sometime in the mid- to late 1980's. The area has a structurally diverse tree canopy that includes younger trees along with a diverse shrub and herbaceous layer. There are no streams or water features on the property.

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; 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.

Location and Design:

Land Division. The applicant proposed six development alternative locations/designs. (Exhibits A.6 and A.8) The Hearings Officer finds that alternative C is the applicant's preferred alternative and that alternative C is practicable so long as the modification request in this case is approved. (Exhibit A.8) The Hearings Officer reviewed each alternative, including the preferred alternative, in the context of design and location. The Hearings Officer finds that the other alternatives are significantly different as compared to the preferred alternative. The Hearings Officer finds, based upon a review of Exhibits A.6 and A.8, that alternatives A, F, and G are also practicable if modifications could be approved.

The environmental impact analyses provided by the applicant (Exhibits A.7, A.20, H.6 and H.7) demonstrates that alternative C impacts smaller trees, many of which are in poor condition as

identified by applicant's arborist (Exhibit A.16), and has less total disturbance in the resource area. Alternative C preserves a slightly smaller amount of total canopy area, but protects more of the resource area and contains equal opportunities for mitigation plantings and placement of downed woody debris. Alternative C has also been demonstrated as financially feasible (Exhibit A.8). For these reasons, BDS supported alternative C over the other significantly different and practicable alternatives. In order to meet the approval criteria, the applicant has chosen to alter their land division proposal and provide plans in conformance with alternative C. The Hearings Officer finds that alternative C creates the least significant detrimental impacts upon the identified resources and functional values as compared to other alternatives. The Hearings Officer finds applicant considered two alternatives totally outside the resource area (alternatives B and D).

Stormwater. The project includes required improvements in the NW Saltzman Road right-of-way. This includes 20 feet of paving and improvements to the ditch along the north/west side of NW Saltzman Road. Multnomah County has indicated that post-development flows must not be greater than pre-development flow. Because onsite disposal is not possible (Exhibits A.2, A.24, and H.5), the applicant proposes a detention facility in Tract E to collect treated stormwater and then slowly meter it back out to the ditch in NW Saltzman Road for disposal.

The required improvements in NW Saltzman Road **must** extend the entire length of the applicant's site frontage. The stormwater catch basin **must** be at the lowest point in order to capture all of the generated stormwater. For these reasons the stormwater facility must be located at the southern most point of the site. **There is no other practicable alternative.**

In a recent decision (LU 07-158386 EN M/ HO 4080036) the Hearings Officer was faced with a similar situation as exists with stormwater in this case. In that decision the Hearings Officer stated the following:

“The Hearings Officer finds that the term “alternatives” is considered in the context of the phrase “practicable and significantly different.” The Hearings Officer notes that there are circumstances, such as the location of the sanitary sewer utility location in this case, where there are no other practicable and significantly different alternatives possible. In the case of the sanitary sewer in this case there is only one practicable location where the sanitary sewer can connect and as such there are no practicable and significantly different alternatives. The Hearings Officer finds that an interpretation denying an application, under this approval criteria, for the location of a sewer line from the residence to discharge point because the applicants could not provide practicable and significantly different alternatives, would be absurd. Where the language of a Code section admits of two constructions, one absurd and the other reasonable, the absurd result should be avoided. *Hollinger v. Blair*, 270 Or 46, 526 P2d 1015 (1974). The reasonable interpretation, in the sanitary sewer example, is that if there are practicable and significantly different alternatives then such alternatives need to be considered but if there are no practicable alternatives then the application should not be denied on that basis alone.” (LU 07-158386 EN M -- HO 4080036, Decision of the Hearings Officer on Appeal of Administrative Decision, 12/23/08)

The Hearings Officer finds that the preceding paragraph is the proper interpretation, under this approval criteria, when no other practicable alternatives exist. The Hearings officer finds, with respect to stormwater, that applicant's proposal is the only practicable alternative and therefore this approval criteria is met.

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 Department of Environmental Quality (DEQ) regulates on-site wastewater treatment systems per OAR 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 two parcels are proposed. 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 (Exhibit A.23). The site evaluation report determined that all parcels are approved for Alternative Treatment Technology (ATT) with primary and replacement drainfield areas in compliance with OAR 340-71-260 through 360 (Exhibit A.10).

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 is an equally sized replacement area.

The Hearings Officer finds that public sewer is not a practicable alternative. The Hearings Officer finds that the applicant's proposed sanitary sewage proposal is the only practicable alternative. The Hearings Officer finds, with respect to sanitary sewage disposal, the applicant's proposal meets the this approval criteria.

Front setback for development on new parcels. The maximum front setback in the environmental general development standards (PCC 33.430.140.N) applies to development on the proposed parcels. The applicant requests to waive the maximum front setback of 20 feet.

The applicant states that each proposed home location has been selected for that specific parcel'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. These statements also hold true for development alternative C, the option identified by BDS as having less detrimental impact.

Allowing flexibility through the Environmental Review process encourages innovative site design. 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 above, the applicant has modified their request to utilize the alternative with the least impact. Overall, the applicant's proposal will result in greater protection of the resources and functional values identified on the site. 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 parcels outside of Environmental zones.
- No tree removal is allowed outside of approved parcels.
- The building contractor will place silt fences around the perimeters of the construction disturbance area (as shown on Exhibit H.16.g, sheet 4 Grading Plan), 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 can be met for alternative C (Exhibit H.16.f).

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 the proposal described above include temporary and permanent impacts associated with construction of Parcel 1. Development of the parcel will reduce wildlife habitat, increase impervious surface, and reduce the overall scenic character of the area.

The development proposal affects a total of 131 trees, totaling 1,614 caliper inches within proposed Parcel 1 and the stormwater management area (Exhibit H.16.g, sheet 3 Tree Preservation Plan). Trees to be removed range in size from 6 to 60 inches in diameter. In addition to removal of up to 131 trees, permanent developable areas will be created of 39,616 square feet within the resource area of the Environmental Conservation zone. 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 131 trees impacted by the proposal, Zoning Code Development Standard PCC 33.430.140 K requires a certain ratio of trees shrubs to be replanted based on the size of the affected trees. The applicant proposed to meet this standard for their preferred proposal by planting a mixture of Douglas fir, Western Red Cedar, Western Hemlock, and native shrubs chosen from the *Portland Native Plant List* in conformance with Table 430-3 (Exhibit H.7). A total of 259 trees and 180 shrubs is required. To offset the impacts of permanent development in the Environmental zone, the proposal creates a 61,276 square-foot environmental resource tract.

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.

The Hearings Officer concurs that there are many benefits to having DWD on a site. However, based upon BDS comments the Hearings Officer does not support the placement of DWD

throughout Tract A on the abutting site, because of the impacts caused by the equipment used to transport the logs across the abutting open space. The Hearings Officer finds that with a condition limiting placement of up to 20 pieces of DWD to the area not more than 30 feet from platted parcels or public right-of-way, the long-term benefits of DWD outweigh the temporary disturbance caused by its placement.

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 1.5:1.
- A total of 6,530 square feet of canopy area outside of the Conservation zone is permanently protected in Tract D.
- 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.

An outfall is proposed which may require a riprap pad to assist with stormwater dissipation. The disturbance areas for these improvements have not been proposed for replanting. The Hearings Officer finds that the disturbance areas for the outfall in the Environmental Conservation zone 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 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. The Hearings Officer finds that this time of the year is not appropriate to install mitigation plantings because of the heat and dry soil conditions. It is typically best to install mitigation plants between October 1 and March 31, when the weather is cooler and soil is moist. The Hearings Officer finds that 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.

Due to the large number of plants to be installed, BDS Site Development Review Section 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 finds third party landscape verification is necessary in this case.

The Hearings Officer finds that to assure that the plantings will be installed, 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. The Hearings Officer finds that 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. The Hearings Officer finds that 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.

The Hearings Officer finds that to ensure that the monitoring and maintenance responsibilities are carried out, the 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.

The Hearings Officer finds it necessary to require mitigation plantings be installed as part of the Site Development permit required for clearing and grading of the site in preparation construction. If no grading is to be done on the site prior to construction, a Zoning permit is required for the mitigation plantings and placement of DWD. The Site Development or Zoning 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, monitoring, and bonding prior to final plat, these criteria can be met.

33.430.280 Modifications Which Will Better Meet Environmental Review Requirements

The review body may consider adjustments for site-related development standards as part of the environmental review process. These modifications are done as part of the environmental review process and are not required to go through the adjustment process. In order to approve these modifications, the review body must find that the development will result in greater protection of the resources and functional values identified on the site and will, on balance, be consistent with the purpose of the applicable regulations.

Findings: An Environmental Modification is requested to better protect environmental resources by reducing the minimum size of Parcels 1 and 2, consistent with alternative C, from 52,000 square feet to 43,306 and 42,657 square feet, respectively. (Exhibit H.16 f.)

The lot/parcel dimension standards ensure that:

- Each parcel has enough room for a reasonably-sized house and garage;
- Parcels are of a size and shape that development on each parcel can meet the development standards of the Zoning Code;
- Each parcel has room for at least a small, private outdoor area;
- Parcels are compatible with existing parcels;
- Parcels are wide enough to allow development to orient toward the street;
- Parcels do not narrow to an unbuildable width close to the street;
- Each parcel has adequate access from the street;
- Each parcel has access for utilities and services; and
- Parcels are not landlocked.

This criterion requires that the development will result in greater protection of resources and functional values identified on the site. The layout of the land division will allow all of Parcel 2 to be outside the resource area of the Environmental zone. None of Parcel 1 will be outside the Environmental zone. Both of these parcels could have been further reduced in size so that no portion of any parcel would be located in the resource area (alternative B, Exhibit A.7). However, for the project to be economically feasible and compatible with surrounding development, providing homes and parcels of a comparable size to the surrounding area is necessary. Reduced parcel dimensions are needed to accomplish the practicability of the project and locate development away from sensitive natural resources. The applicant provided a financial feasibility report as part of the alternatives analysis (Exhibits A.6 and A.8).

The requested modification to parcel area will result in parcels that still contain sufficient room for a large “estate” home, outbuildings, driveway access, outdoor area, and septic drainfields. Home sizes will be comparable to existing development in the area. Both of the proposed parcels are adequate in size to enable development to meet the standards of the Zoning Code.

Each parcel contains enough width and street frontage to allow adequate access to services from NW Saltzman Road, onsite septic, stormwater facilities and a private driveway. Development in the RF zone is not required to orient to a street. Neither parcel is landlocked.

Although the parcels are smaller than the adjacent development along NW Skyline Boulevard and NW Saltzman Road, the parcels will have a larger look and feel to them due to the proposed open

space around them. The parcels were sized and placed to allow for the maximum building envelope outside the resource area, and also to provide the largest continuous Conservation zone possible.

Based on the above findings, the proposal meets the criteria for modifying the minimum lot/parcel size requirement for Parcels 1 and 2.

Other Requirements

As authorized in PCC 33.800.070 of the Zoning Code conditions of approval related to these technical standards have been included in the Administrative Decision on this proposal.

- The applicant must meet the requirements of the Fire Bureau in regards Fire Hydrant Spacing, verifying that the distance to the farthest point of the structure on Parcel 1 can meet the Fire Bureau's Hydrant Spacing requirement, if not, a fire hydrant with adequate flow and pressure will be required. The applicant must also record an Acknowledgement of Special Land Use Conditions that requires the provision of internal fire suppression sprinklers on Parcels 1 and 2. At time of building permit submittal, roof requirements for sites in wildland hazard zones will apply. It should be noted that the Fire Bureau requested the applicant to verify that NW Saltzman Road is a minimum of 20 feet in width for Fire Department access to the site. PBOT is requiring the applicant to improve NW Saltzman Road to 20 feet in width as a condition of approval. These requirements are based on the technical standards of Title 31 and Fire Bureau Policy B-1.
- The applicant must meet the requirements of Urban Forestry Mitigation for the loss of existing right-of-way trees. A written permit from the City Forester is required to remove, destroy, cut, break, or injure, any tree of any size in or upon any street, park, or public area as detailed in Title 20.40.090 D. This requirement is based on the standards of Title 20.

III. CONCLUSIONS

The applicant proposes to subdivide the 3.59 acre site into two parcels with an open space tract and an environmental resource tract. The parcels will range in size 43,239 to 47,064 square feet. The resource tract (Tract E) will protect 61,276 square feet of resource area in the Environmental Conservation overlay zone and the open space tract (Tract D) will protect an additional 6,530 square feet of canopy. The Hearings Officer found that the application, with preferred alternative C, meets the applicable approval criteria for Land Divisions in Residential zones.

The applicant requested Modifications to reduce the minimum parcel size in the RF zone. The Hearings Officer found that the applicant met the Modification criteria for this application.

IV. DECISION

Approval of a Preliminary Plan for a two-parcel partition, an open space tract, and an environmental resource tract;

Approval of an Environmental Review for creation of two parcels for single-dwelling development, one within the Environmental Conservation zone, and a stormwater management facility with the Environmental Conservation zone; and

Approval of an Environmental Modification to reduce the minimum lot/parcel size for Parcels 1 and 2.

As illustrated with Exhibits H.16-f and H.16-g (sheets 1-4) subject to the following conditions:

A. The final plat must show the following:

1. A private storm sewer easement, for the benefit of Parcel 1, shall be shown and labeled over the relevant portions of Tract E.
2. A private storm sewer easement, for the benefit of Tax Lot 601, shall be shown and labeled over the relevant portions of Tract E.
3. A public storm sewer easement is required across the relevant portions of Tract E for storm pipes that will connect the improved ditch in NW Saltzman Road to the detention system with Tract E.
4. The Common Open Space tract shall be noted on the plat as "Tract D: Common Open Space Tract." A note must also be provided on the plat indicating that the tract will commonly owned and maintained by the owners of Parcels 1 and 2.
5. The Environmental Resource tract shall be noted on the plat as "Tract E: Environmental Resource Tract." A note must also be provided on the plat indicating that the tract will be commonly owned and maintained by the owners of Parcels 1 and 2.
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.5-B.7 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.

Utilities

2. The applicant shall meet the requirements of the Water Bureau for providing plans and financial assurances for the water main extension in NW Saltzman Road.
3. The applicant shall meet the requirements of Multnomah County and provide stormwater calculations for the stormwater outfall proposed into the County's jurisdiction to the satisfaction of Multnomah County.
4. The applicant shall meet the requirements of the Fire Bureau and verify that the distance to the farthest point of the proposed structure on Parcel 1 meets Fire Bureau Hydrant Spacing requirements. If not, the applicant must purchase 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.

Required Legal Documents

5. A Maintenance Agreement shall be executed for the Stormwater Management Easement area described in Conditions A.1 and A.2 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.
6. The applicant shall execute Maintenance Agreement for the tracts described in Conditions A.4 and A.5 above. The agreement shall assign common, undivided ownership of the tract to the owners of Parcels 1-2 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 Tract E, the beneficiaries of those easements, and the limitations on the easement areas. The Maintenance Agreement must be reviewed by the City Attorney and BDS, and approved as to form, prior to final plat approval.
7. The applicant shall execute an Acknowledgement of Special Land Use conditions, requiring residential development on Parcels 1 and 2 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.

8. 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 indicated in Exhibit H.7 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 within 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 D 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 clearing and grading the site and installation of mitigation plantings. A minimum of 259 trees and 180 shrubs shall be planted, in substantial conformance with planting guidelines in Exhibit H.7. 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.16.g sheet 4, 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.
- e. 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.
- f. 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 parcels:

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 comment without authorization by Site Development.
 - b. Temporary construction fencing (four feet high) 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.16.g sheet 4 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.16.g sheet 3 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. Fences are allowed only within parcels (not within any of the tracts).
 - c. 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 environmental resource tract (Tract E):
 - 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 Parcel 2 shall be in conformance with the Tree Preservation Plan (Exhibit H-16.e in correlation with Exhibit H-16.g, sheet 3). 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 applicant will be required to install residential sprinklers in the new houses on Parcels 1 and 2 to the satisfaction of the Fire Bureau.
 6. The applicant must show a turning radius from NW Saltzman Road to Parcel 1 that meets the requirements of Fire Bureau appeal No. 5670.

7. The applicant must meet the Fire Bureau’s roof requirements for structures located within the Wildland Fire Hazard Designation area.

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 08-125814 LDS ENM) containing the monitoring information described below. Submit the first letter to BDS 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 Section 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 \$3,294.50 will be charged (one-half of the application fee for this case).** Information and assistance in filing an appeal can be obtained from BDS 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 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 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.

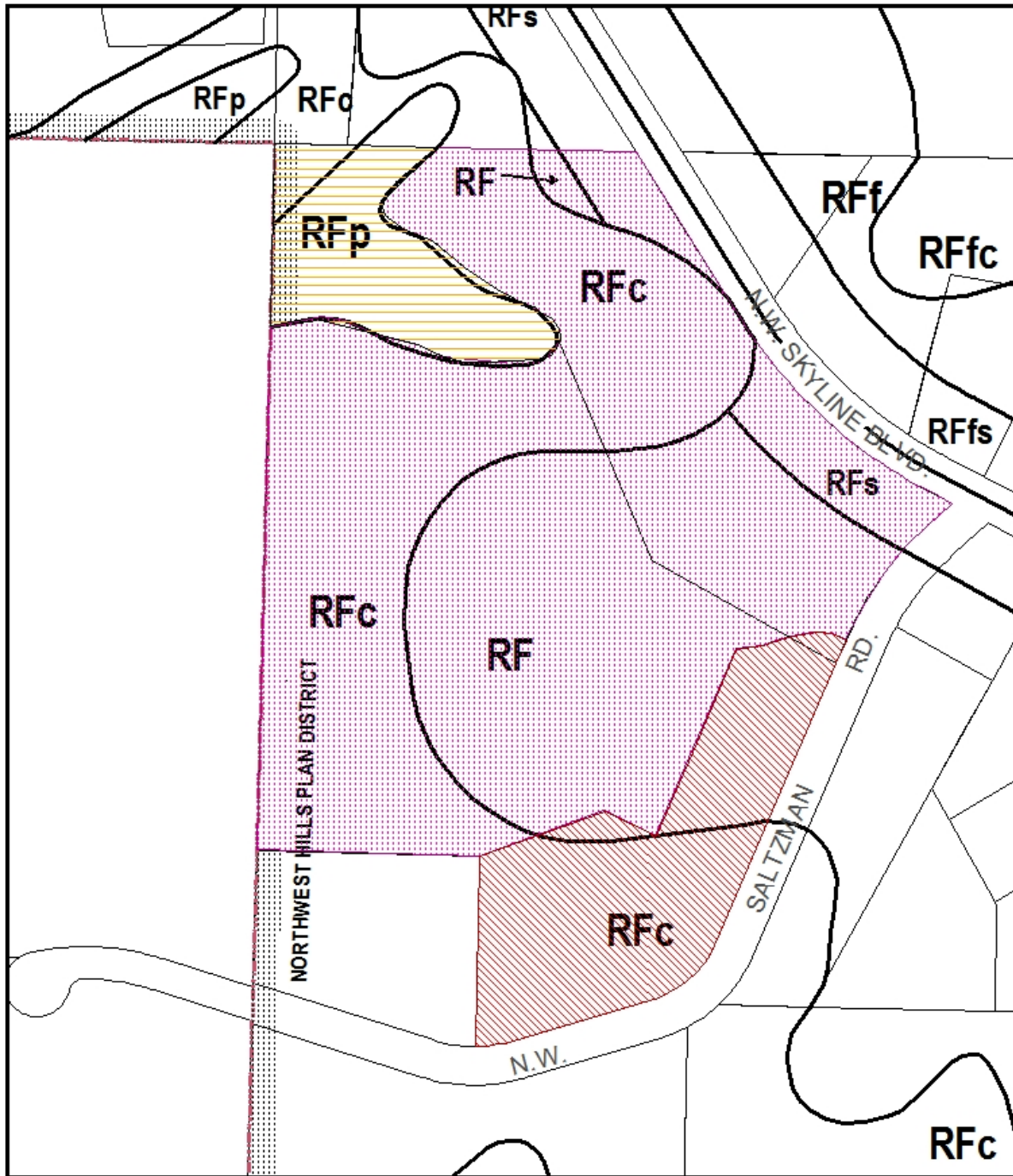
All other concurrent approvals expire three years from the date rendered, unless a building permit has been issued, or the approved activity has begun. Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

EXHIBITS
NOT ATTACHED UNLESS INDICATED




- A. Applicant's Statement:
1. Original Narrative, dated 4/30/08 includes documentation of early neighborhood notification, miscellaneous studies, LUR 99-00235 MP, etc.
 2. Landslide Hazard Report dated 4/28/08
 3. Preliminary Storm Drainage Report dated 4/24/08
 4. Tree Report dated 4/29/08
 5. Revised Narrative, dated 10/15/08
 6. Alternatives Analysis Summary, Jordan Schrader PC
 7. Environmental Analysis, Pacific Habitat Services dated 9/28/08
 8. Financial Feasibility Report, PGP Valuation
 9. Revised Preliminary Storm Drainage Report, dated 10/7/08
 10. Onsite Sewage Feasibility Approval dated 9/29/08
 11. Fire Bureau appeal No. 5670, dated 10/7/08
 12. Property Line Adjustment Approval (07-117291 PC)
 13. Revised Tree Preservation Plan, received 11/5/08, dated 10/18/08
 14. Revised Tree Preservation Plan, received 12/10/08
 15. Revised Preliminary Storm Drainage Report, dated 1/9/09
 16. Revised Tree Preservation Plan, dated 1/20/09
 17. Traffic Impact Study dated 1/21/09
 18. Revised Preliminary Storm Drainage Report, dated 2/27/09
 19. Modification through Environmental Review narrative dated 2/27/09
 20. Revised Environmental Analysis, received 3/2/09
 21. Revised Tree Preservation Plan, received 3/4/09
 22. Extensions to the 120-day review period
 23. Soil Feasibility Report dated 4/29/08
 24. GeoDesign, addendum to Landslide Hazard report, dated 3/12/09
 25. Compass Engineering's submittal to BES re: control manhole detail, received on 3/12/09
 26. PLA approval 03-179620 PR
- B. Zoning Map (**attached**)
- C. Plans & Drawings
1. Existing Conditions Plan
 2. Rubicon 1 Master Plan
 3. Composite Site Plan
 4. Existing Tree Plan
 5. Preliminary Utility and Grading Plans
 6. Tree Preservation and Clearing and Grading limits
 7. Preliminary Site Plan
 8. Tree Preservation Plan (4 sheets)
 9. Preliminary Street Profile
- 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. BES, dated 11/26/08
 2. PBOT and Development Review, dated 12/3/08
 3. Water Bureau, dated 11/24/08
 4. Fire Bureau, dated 11/24/08
 5. Site Development Review Section of BDS, dated 11/20/08
 6. Bureau of Parks, Forestry Division, dated 12/4/08
 7. Life Safety Review Section of BDS, dated 11/14/08
 8. Environmental Soils Section of BDS – Site Evaluation Report, dated 11/20/08
 9. Clean Water Services, dated 12/16/08
 10. Addendum to Site Development response, dated 3/16/09
 11. Addendum to BES response, dated 3/19/09
 12. Addendum to PBOT response, dated 3/18/09
 13. Multnomah County, dated 3/19/09 (this information received too late to be included in this staff report & reviewed by BES or Site Development prior to publishing this staff report)
- F. Letters: None
- G. Other:
1. Original LUR Application
 2. Site History Research
 3. Pre-application File 07-120271
 4. Incomplete Letter, mailed May 21, 2008
 5. Additional information request, mailed December 1, 2008
 6. Additional information request, mailed February 6, 2009
 7. LUR 99-000235 MP
 8. Exhibit C-3 from LUR 99-000235 MP
 9. Maintenance Agreement for Tract A from LUR 99-000235 MP
 10. E-Mail sent to applicant on 3/17/09
 11. E-Mail sent to applicant re: Tree Preservation Plan issues dated 3/10/09
 12. E-mail correspondence sent to applicant from Planning Staff
 13. E-mail correspondence regarding status of EN review to applicant from Planning staff
- H. Received in the Hearings Office:
1. Hearing Notice - Whiteside, Rachel
 2. Staff report - Whiteside, Rachel
 3. Letter to Hearings Officer - Janik, Stephen T.
 4. PowerPoint presentation - Whiteside, Rachel
 5. Memo, Steve Palmer to John Stafford - Whiteside, Rachel
 6. Memo from Pacific Habitat Services - Whiteside, Rachel
 7. Memo from Pacific Habitat Services - Whiteside, Rachel
 8. Compass Engineering Addendum - Whiteside, Rachel

9. Alternative A Plan - Whiteside, Rachel
10. Preferred Alternative C Plan - Whiteside, Rachel
11. Property Line Adjustment/Preliminary Partition Plan - Whiteside, Rachel
12. Rubicon 2 Summary w/attachments - Goldson, Bruce
- 12a. E-mails - Goldson, Bruce
- 12b. Memo, Palmer to Stafford - Goldson, Bruce
- 12c. E-mails - Goldson, Bruce
13. Letter - Janik, Stephen
14. Letter to Janik and Ramis - Hearings Officer
15. Memo to Whiteside from BES - Whiteside, Rachel
16. Rubicon 2 Summary report - Stafford, John
- 16a. Copies of emails/various - Stafford, John
- 16b. GeoDesign memo - Stafford, John
- 16c. Compass Engineering report w/map - Stafford, John
- 16d. Compass Engineering report - Stafford, John
- 16e. PCC 33.630 charts - Stafford, John (**attached**)
- 16f. Partition Plan - Stafford, John (**8 ½ x 11 attached**)
- 16g. Existing Conditions/Preliminary Street Plans-Stafford, John (**8 ½ x 11 sheets 1-4 attached**)
17. Certification of Stormwater Service - Whiteside, Rachel
18. Memo to Whiteside from Mary King - Burgett, Shawn
19. Revised Staff Report - Burgett, Shawn
20. Letter - Jaffe, Richard
21. Letter - Day, Steve
22. Letter - Goldson, Bruce
23. Memo - Ramis, Timothy
24. Letter - White, Christie C.
25. Letter - Jaffe, Richard
26. Letter - Ramis, Timothy
27. Letter - Ramis, Timothy
- 27a. LUBA No. 2005-136 Final Opinion and Order - Ramis, Timothy
- 27b. LU 04-000959 LDS EN PD Hearings Officer Decision - Ramis, Timothy
28. Letter - Ramis, Timothy



ZONING

-  Site
-  Also Owned
-  Included in Density Calculations



This site lies within the:
 NORTHWEST HILLS PLAN DISTRICT

File No. LU 08-125814 LDS ENM
 1/4 Section 2418, 2518
 Scale 1 inch = 200 feet
 State_Id 1N1W22AA 602
 Exhibit B (Mar 16, 2009)