

**ORDER OF COUNCIL ON APPEAL OF
EAST COLUMBIA NEIGHBORHOOD ASSOCIATION AGAINST HEARINGS OFFICER'S
DECISION TO APPROVE WITH CONDITIONS THE APPLICATION OF HOWARD
BRANDWEIN AND JERI GEBLIN FOR A LAND DIVISION WITH CONCURRENT
ENVIRONMENTAL REVIEW AND ADJUSTMENTS FOR A 49-LOT SUBDIVISION AT 9801 NE
13TH AVENUE (HEARING; LU 09-134484 LDS EN AD)**

Appeal of East Columbia Neighborhood Association against Hearings Officer's decision to approve with conditions the application of Howard Brandwein and Jeri Geblin for a land division with concurrent environmental review and adjustments for a 49-lot subdivision at 9801 NE 13th Ave (Hearing; LU 09-134484 LDS EN AD)

Applicants: Howard J. Brandwein and Jeri Geblin
945 Waterbury Lane
Ventura, CA 93001-3843

**Applicants'
Representative:** Mimi Doukas
Cardno / WRG
5415 SW Westgate Drive
Portland, OR 97221

Hearings Officer: Gregory J. Frank

BDS Staff Representative: Rachel Whiteside / Shawn Burgett

Site Address: 9801 NE 13TH AVE

Legal Description: TL 200 22.28 ACRES, SECTION 02 1N 1E

Tax Account No.: R941020310

State ID No.: 1N1E02C00200

Quarter Section: 2031

Neighborhood: East Columbia NA

Business District: Columbia Corridor Association

District Coalition: North Portland Neighborhood Services

Plan District: None

Zoning: R10 c,h – Single Dwelling Residential 10,000 with Environmental Conservation and an Aircraft Landing Overlay zones.

Other Designations: East Columbia Neighborhood N.R.M.P. and 100-year floodplain

Land Use Review: Type III, LDS EN AD – Land Division (Subdivision), Environmental Review and Adjustment Review

Proposal: The applicants propose to subdivide the 23.5-acre site into 49 lots for single-family development, public streets, Recreation Tract for the use of residents, large Open Space Tract and a Wetland Preservation Tract.

In preparation for this proposal, the applicants have secured approval from the Division of State Lands (“DSL”) to fill and grade the site so that some of the existing wetlands will be filled and others enhanced. There are three existing wetlands on this site – Wetland A: in the west with 6.4 acres, Wetland B: in the center with .82 acres, and Wetland C: at eastern end of site with .86 acres. Wetlands B and C, totaling 1.7 acres, will be filled. The mitigation for this work will restore 2.6 acres of historic wetlands and enhance another 1.5 of wetland area. The restored and enhanced wetlands, along with preservation of Wetland A, will all be preserved in a 12.53-acre non-development Open Space Tract in the western half of the site. Also, as a result of this work, the ground levels in the area proposed for future development will be modified in such a way that all of the proposed lots will be outside of the flood plain.

The applicants requested two Adjustments as part of this proposal. The first is to reduce the size of the required recreation area (Portland City Code (“PCC”) 33.634) so that it is 10 percent of the area proposed for development rather than 10 percent of the total site. This would result in a 1.11-acre Recreation Tract. The applicants have proposed an information and viewing kiosk along the eastern side of the Open Space and Wetland Tracts to provide additional passive recreational amenities for the residents. The second Adjustment is to waive the requirement for a tract (PCC 33.640) over an existing wetland area (Wetlands B and C described above) that has been approved for fill by DSL and to allow grading in Tract B to all for the wetland enhancement for the fill. Wetlands to be enhanced will be placed in a 12.53 acre Open Space Tract west of the proposed development.

The proposal includes a Tree Preservation Plan meeting Options 2 and 3 in PCC Chapter 33.630. Sanitary sewer and water main line extensions are proposed in the new public streets to serve the lots. Stormwater for the new homes will be directed to flow-through planters and then to the street system. Stormwater from the public street improvements will be managed via street-side swales with an outfall and disposal to the drainage ditch along the southern boundary of this site.

This southern drainage ditch is within the Environmental Conservation Overlay zone and the proposed stormwater outfall facility will go into the Environmental Conservation zone. This outfall does not meet the environmental standards for land divisions in PCC Section 33.430.160, therefore a Type II Environmental Review is required for the outfall.

This land division proposal is reviewed through a Type III procedure because: (1) the proposal requires a concurrent Environmental Review; and (2) more than ten dwelling units are proposed (see PCC 33.660.110). For purposes of State Law, this land division is considered a subdivision. To subdivide land is to divide an area or tract of land into four or more lots within a calendar year (See ORS 92.010).

The appeal hearing before the City Council was opened in the Council Chambers, 1221 SW 4th Avenue on February 18, 2010 at approximately 3:30 p.m. At the conclusion of the public hearing and after hearing public testimony, Council voted 4-0 to tentatively deny the appeal of the East Columbia Neighborhood Association and uphold the Hearings Officer’s decision and directed staff to prepare findings and conclusions for March 3, 2010, at 9:30 a.m. On March 3, 2010, at approximately 9:30 a.m., Council voted 3-0 to deny the appeal of the East Columbia Neighborhood Association; uphold the Hearings Officer’s decision and adopted findings and conclusions.

Based on evidence in the record and adoption of the Council's Findings and Decision in **Case File LU 09-134484 LDS EN AD** and by this reference made a part of this Order, City Council hereby denies the appeal of the East Columbia Neighborhood Association and upholds the Hearings Officer's decision to approve the land division with concurrent environmental review and adjustments for a 49-lot subdivision at 9801 NE 13th Avenue.

DECISION

It is the decision of Council to deny the appeal by East Columbia Neighborhood Association and uphold the approval of the Hearings Officer for:

Approval of Environmental Review for a stormwater outfall associated with the proposed 49-lot subdivision.

Approval of an Adjustment to reduce the size of the required recreation area (PCC 33.634) so that it is 10 percent of the area proposed for development rather than 10 percent of the total site.

Approval of an Adjustment to waive the requirement for a tract (PCC 33.640) over an existing wetland area (Wetlands B and C described above) that has been approved for fill by DSL and to allow grading in Tract B to accommodate the grading activities associated with the wetland enhancement.

Approval of a Preliminary Plan for a 49-lot subdivision, that will result in 49 standard lots, new public streets, a common Recreation Tract and Wetland Protection Reserve as illustrated with Exhibit C.1, subject to the following conditions:

A. Supplemental Plan. Three copies of an additional supplemental plan shall be submitted with the final plat survey. That plan must portray how the conditions of approval listed below are met. In addition, the supplemental plan must show the surveyed location of the following:

- Any buildings or accessory structures on the site at the time of the final plat application;
- Any driveways and off-street vehicle parking areas on the site at the time of the final plat application;
- The proposed general location of drainage reserve on Lots 4-9, along with future building footprints and stormwater facilities for each of the vacant lots.
- Any other information specifically noted in the conditions listed below.

B. The final plat must show the following:

1. The applicants shall meet the street dedication requirements of the City Engineer for NE 13th Ave. along with the new public streets within the site. The required right-of-way dedication must be shown on the final plat, along with any additional dedication needed to accommodate stormwater management facilities in NE 13th Ave.
2. Tract A shall be noted on the plat as "Tract A: (Common Recreation Area). A note must also be provided on the plat indicating that the tract will commonly owned and maintained by the owners of Lots 1 through 49.
3. Tract B shall be noted on the plat as "Tract B: (Wetland Protection Reserve). A note must also be provided on the plat indicating that the tract will commonly owned and maintained by the owners of Lots 1 through 49.
4. Tract C shall be noted on the plat as "Tract C: (Stormwater Management Tract). A note must also be provided on the plat indicating that the tract will commonly owned and maintained by the owners of Lots 1 through 49.
5. Tract D shall be noted on the plat as "Tract D: (Common Open Space). A note must also be provided on the plat indicating that the tract will commonly owned and maintained by the owners of Lots 1 through 49 or by any other individual or group allowed under Code section 33.636.100.A.

6. The pathway and viewing kiosk between Lots 36 and 37 must be placed in a separate Open Space Tract located at least 15 ft. from the edge of the wetland. The size of Tract B may be reduced accordingly.
7. 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 Condition C.8 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."
8. Prior to final plat approval, the 10' public easement over the drainageway at the north property line near NE 13th Ave. must be removed, and the applicants must submit a revised plan showing: the location of the drainageway at the northeastern portion of the property, the required drainage reserve, and conceptual building footprints located outside the drainage reserve.
9. Prior to final plat approval, based on the standards of Zoning Code Section 33.639.100 (Solar access), the following changes must occur:
 - Lot 2 should be wider than Lots 1 and 3.
 - Lot 9 should be narrower than Lots 5-8.
 - Lot 45 should be wider than Lots 44 and 46.
 - Lot 48 should be wider than Lots 47 and 49.

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

Streets

1. The applicants shall meet the requirements of the City Engineer for right-of-way improvements along the frontage of NE 13th Ave. and the new public streets that will access the site as shown in Exhibit C-1. The applicants shall provide plans and financial assurances to the satisfaction of the Bureau of Transportation Engineering and Development Review, and the Bureau of Environmental Services for required street frontage improvements.
2. The applicants shall submit an application and have finalized a Site Development Permit for mass grading and utility construction for the new public street and related site development improvements. Street design plans must be prepared by, or under the direction of, an Oregon licensed civil engineer. The Site development permit should also include:
 - Mitigation approved as part of the Compensatory Wetland Mitigation Plan will restore 2.6 acres of historic wetlands and enhance 1.5 acres of existing wetland. This mitigation will be provided on the western end of the site within the proposed 12.53 acre Tract B
 - Construction of the stormwater outfall, which must also include the wetland benching approved under LU 07-143290 EN
 - Written proof of Completion of the Compensatory Wetland Mitigation Plan from DSL and receipt of the final Conditional Letter of Map Revision (CLOMR) application through FEMA must be submitted and approved by BDS prior to final plat approval
 - All grading work must be completed consistent with the Compensatory Wetland Mitigation Plan and CLOMR prior to final plat approval.
 - A continuous channel at a maximum elevation of 5' (NAVD 1988) is to be located in Tract B between the north and south wetlands to allow free passage of flood waters. If a channel cannot be delineated at existing grades, a channel may need to be graded in place. The construction limits should be modified as needed to accommodate grading for the channel.
 - Final approval of decommissioning permits for the existing on-site sewage disposal systems and any drywells shall be required prior to final plat approval, or final approval of demolition permits (or permits to move the structures) for removal of the existing structures that include all required decommissioning shall be required prior to final plat approval.
 - Demonstrate compliance with all applicable erosion control requirements.

3. The applicants shall provide a Clearing and Grading Plan with the Site Development permit required for the mass grading described in Condition C-2. The Clearing and Grading Plan must substantially conform to the Preliminary Clearing and Grading Plan approved with this decision (Exhibits C.5 and C.6) including grading within Tract B and on Lots 16, 17, 44 and 45 where protected trees are located.

Utilities

4. The applicants shall meet the requirements of the Bureau of Environmental Services (BES) for sanitary and stormwater improvement into the new public right-of-way. The public sewer extension requires a Public Works Permit, which must be initiated prior to final plat approval. In addition, the applicants must provide engineered designs, and performance guarantees for the sewer extension to BES prior to final plat approval.
5. Final approval of decommissioning permits for the existing on-site sewage disposal systems and any drywells shall be required prior to final plat approval, or final approval of demolition permits (or permits to move the structures) for removal of the existing structures that include all required decommissioning inspections shall be required prior to final plat approval.
6. The applicants shall meet the requirements of the Water Bureau for providing plans and financial assurances for the water main extension into the new public rights-of-way.
7. The applicants shall meet the requirements of the Fire Bureau. Fire hydrant systems shall comply with the Fire Code. Where a portion of the facility or building hereafter constructed or moved into that is Group R-3 or Group U within the jurisdiction is more than 600 feet from a hydrant on a fire apparatus access road, as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains shall be provided where required by the Fire Marshal.

Required Legal Documents

8. The applicants shall execute a Maintenance Agreements for Tracts A, B and C, D and the Open Space Tract required for the viewing kiosk, as described in Conditions B.2-B.6 above. The agreement shall assign common, undivided ownership of the tracts to the owners of Lots 1-49 (or owners allowed under Code Section 33.636.100 A.) and include provisions assigning maintenance responsibilities for the tract and any shared facilities within that area. The Maintenance Agreement must be reviewed by the City Attorney and the Bureau of Development Services, and approved as to form, prior to final plat approval.
 9. The applicants shall submit a Performance Guarantee and construction timing agreement specifying the installation schedule of improvements, as approved by the Bureau of Development Services, for 125 percent of the estimated construction cost for the recreational tract and viewing Kiosk and associated improvements in conformance with exhibit C.9, meeting the requirements of PCC Section 33.700.050. The Performance Guarantee must be accompanied by a contract approved by the City Attorney.
 10. Prior to final plat approval, the applicants will be required to apply for a zoning permit for installation and construction of mitigation approved as part of the Adjustment Reviews including viewing kiosk along the eastern side of the Wetland Tract. The viewing station must be surrounded by a physical barrier, such as a split-rail fence and educational signage informing visitors of potential impacts from human disturbances and recreational amenities within Tract A in substantial conformance with Exhibit C.9, including at least two benches, three types of playground amenities within the pay equipment area and at least three types of additional amenities required for mitigation described in the adjustment review. The zoning permit must be final prior to the final of permits for residential development as specified in Condition D.3 below.
- D. The following conditions are applicable to site preparation and the development of individual lots:**

1. Development on Lots 16, 17, 44 and 45 shall be in conformance with the Tree Preservation Plan (Exhibits C.7 and C.8) and the applicants' arborist report (Exhibit A.2). Specifically, trees numbered 549, 583, 584 and 585 located on Lots 16 and 45 (with RPZ's that encroach onto adjacent Lots 17 and 44) are required to be preserved, with the root protection zones indicated on Exhibit C.8. 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.
2. The minimum rear building setback for Lots 4-9 shall be 15 feet to assure that adequate space is available to accommodate a drainage reserve that can comply with the requirements of the Stormwater Management Manual.
3. Development on lots and tracts shall be in conformance with the following:
 - a. Recreation area improvements and viewing kiosk must be installed prior to final inspection of any dwelling units in the subdivision. The zoning permit applied for in association with these improvements must be final.
 - b. All vegetation planted in a resource area is native and listed on the Portland Plant List. Plants listed on the Portland Nuisance Plant List or Prohibited Plant List are prohibited.
 - c. The minimum front, street, or garage setbacks of the base zone may be reduced to any distance between the base zone minimum and zero.
 - d. Fences are allowed only within lots (not within Tract B: Wetland Protection Reserve).
 - e. 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 lots that abut any environmental zoning on the site.
4. At the time of building permit review for the affected lots, a Notice of Condition must be recorded against the property deeds identifying the presence of a drainage reserve per Appendix A.3 of the *Stormwater Management Manual*.

IT IS SO ORDERED:

MAR 05 2010

Date



Commissioner Nick Fish
Presiding Officer at Hearing of
March 3, 2010
9:30 a.m. Session



**OFFICE OF CITY AUDITOR
CITY OF PORTLAND**

LaVonne Griffin-Valade, City Auditor
Council/Contracts Division

Mailing Address:

1221 SW 4th, Room 140
Portland, Oregon 97204-1900
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Phone: (503) 823-4086 Fax: (503) 823-4571

March 5, 2010

Howard J. Brandwein and Jeri Geblin
945 Waterbury Lane
Ventura, CA 93001-3843

RE: LU 09-134484 LDS EN AD

Appeal of East Columbia Neighborhood Association against Hearings Officer's decision to approve with conditions the application of Howard Brandwein and Jeri Geblin for a land division with concurrent environmental review and adjustments for a 49-lot subdivision at 9801 NE 13th Ave (Hearing; LU 09-134484 LDS EN AD)

To Whom It May Concern:

Enclosed is a copy of the Order of Council on LU 09-134484 LDS EN AD. This Order must be recorded with the Multnomah County Recorder within 10 days of receipt of this letter. **Please send a check for \$46.00 made payable to the Multnomah County Recorder, indicating the file number on your check to: The City of Portland, Office of the City Auditor, 1221 SE 4th Ave. Room 140, Portland, OR 97204-1900**

City Council's decision is the final review process available through the City. You may appeal this decision to the Oregon Land Use Board of Appeals (LUBA) by filing a Notice of Intent to Appeal with the Board within 21 days of the date of decision, as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that a petitioner at LUBA must have appeared orally or in writing during the City's proceedings on this land review. The Board's address is: Public Utility Commission Building, 550 Capitol Street NE, Suite 235, Salem, OR 97310-2552. You may call the Land Use Board of Appeals at 1-503-373-1265 for further information on filing an appeal.

Yours sincerely,

LaVonne Griffin-Valade
Auditor of the City of Portland

By: 

Karla Moore-Love, Council Clerk

Encl.

Cc: Mimi Doukas, Cardno / WRG



**OFFICE OF CITY AUDITOR
CITY OF PORTLAND**

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NOTICE OF FINAL DECISION

TO: All Interested Persons
DATE: March 5, 2010
RE: LU 09-134484 LDS EN AD

Appeal of East Columbia Neighborhood Association against Hearings Officer's decision to approve with conditions the application of Howard Brandwein and Jeri Geblin for a land division with concurrent environmental review and adjustments for a 49-lot subdivision at 9801 NE 13th Ave (Hearing; LU 09-134484 LDS EN AD)

Enclosed is a copy of the Order of Council on LU 09-134484 LDS EN AD denying the appeal of the East Columbia Neighborhood Association and upholding the Hearing Officer's decision. If you wish to obtain a copy of the City Council's findings and conclusions, please contact Karla Moore-Love, Council Clerk at (503) 823-4086 or by email at: Karla.Moore-Love@portlandoregon.gov

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Encl.