

**IN THE CITY COUNCIL OF THE
CITY OF
PORTLAND OREGON**

IN THE MATTER OF AN APPLICATION]	
BY BRETT LAURILA]	
FOR A LAND DIVISION, ENVIRONMENTAL]	LU 11-153362 LDS ENM
REVIEW AND MODIFICATIONS AT]	
SE BERKLEY WAY AND SE]	
CESAR CHAVEZ BOULEVARD]	

FINDINGS AND CONCLUSIONS

**ADOPTED BY THE CITY COUNCIL ON
OCTOBER 31, 2012**

**(APPROVAL of a LAND DIVISION, ENVIRONMENTAL REVIEW, and
MODIFICATIONS)**

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FINDINGS AND CONCLUSIONS

The findings and conclusions of the City Council in this matter are set forth below.

I. GENERAL INFORMATION

File No. LU 11-153362 LDS ENM (HO 4120015)

**Appellant/
Applicant/Owner:** Brett Laurila
5505 SE Oetkin Drive
Milwaukie, OR 97267-4110

Hearings Officer: Gregory J. Frank

Bureau of Development Services (BDS) Representative: Rachel Whiteside

Site Address: Vacant site on the SE corner of SE Berkeley Way and SE Cesar Chavez Boulevard

Legal Description: BLOCK A, BERKELEY

Quarter Section: 3834

Tax Account No.: R070912980

State ID No.: 1S1E24DD 01700

Neighborhoods: Ardenwald-Johnson Creek and Woodstock

Business District: None

District Coalition: Southeast Uplift

Plan District: Johnson Creek Basin

Other Designations: Potential Landslide Hazard Area, Special Flood Hazard Area

Zoning: R10c,p – Single-Dwelling Residential 10,000 with Environmental Conservation (c) and Environmental Protection (p) Overlay Zones

Land Use Review: Type III, Land Division with an Environmental Review and Modifications through Environmental Review (LDS ENM)

II. INTRODUCTION AND PROCEDURAL HISTORY

Proposal: The Applicant proposes to divide a 53,115-square foot property (the “Site”) into four lots and a large open space tract. Proposed lots range in size from 3,460 to 5,289 square feet. Tract A is an environmental resource tract that will contain undisturbed areas of the Environmental Conservation and Protection overlay zones. Tract A is proposed to be 36,894 square feet and will be owned in common by the owners of the lots or possibly transferred to a public agency.

Proposed Lots 1-3 will front on SE Berkeley Way, which is currently unimproved, and Lot 4 will front on SE Tenino Street. The Applicant proposes to improve the SE Berkeley Way right-of-way with a 20-foot wide street and a 10-foot wide swale for stormwater. A water line will be installed within SE Berkeley to serve the Site. There is an existing 8-inch concrete public combination sewer line in SE Berkeley Way. New service branches are proposed to serve the three SE Berkeley Way lots. Due to the limited access for fire apparatus maneuvering, all four lots are proposed to have residential fire suppression systems within the new developments. (Exhibit C.1)

The Applicant proposes to use flow-through planter boxes to manage stormwater from the improvements on the individual lots. The approximate location of the planter boxes are shown on plans. (Exhibit C.3) Stormwater from the private street is proposed to be treated by planter boxes and then piped to the combination sewer line in SE Berkeley Way for disposal. (Exhibit C.3)

The entire Site is within the Environmental Conservation and Protection overlay zones. Therefore, the proposal must meet the Portland City Code (“PCC”) development standards for environmental zones (PCC 33.430.160 Standards for Land Divisions and Planned Developments). The Applicant proposes lots, street improvements, and stormwater facilities in the Environmental Conservation zones; development is not proposed in the Environmental Protection zone. The total development exceeds the allowed disturbance area (Standard D) and a portion of the development is within 50 feet of an identified wetland (Standard G). Therefore, the development standards cannot be met and an Environmental Review is required.

The Applicant requested Modifications through Environmental Review for the following development standards:

- Reduce the minimum lot size from 6,000 square feet to 3,460 square feet for Lot 1; 3,926 square feet for Lot 2; 5,289 square feet for Lot 3; and 3,499 square feet for Lot 4.
- Reduce the minimum lot depth for Lot 1 from 60 feet to 38.5 feet.
- Reduce the minimum street frontage for Lot 4 from 30 feet to 21 feet.
- Reduce the minimum lot width from 50 feet to 45 feet for Lot 2 and to 21 feet for Lot 4.
- Reduce the minimum side and rear setbacks from 10 feet to 5 feet for all lots except where the geotechnical engineer has recommended a specific slope setback on Lots 3 and 4.
- Increase the maximum height limit from 30 feet to 35 feet for all lots.

The Applicant proposed over 8,400 square feet of native plantings within the 15-foot deep slope setback, per geotechnical recommendation, as part of a mitigation plan to compensate for significant impacts. The mitigation plantings are also designed to act as a buffer between proposed development on the “plateau” portion of the Site and the undisturbed resource tract, Johnson Creek, and Springwater Trail to the south and east.

This subdivision proposal is reviewed through the Type III land use review procedure because it is a land division that also requires Environmental Review (See PCC 33.660.110). For purposes of State Law, this land division is considered a Subdivision. To subdivide land is to divide land into four or more lots (or tracts of land) within a calendar year (See Oregon Revised Statutes 92.010).

Relevant 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 Approval Criteria for Land Divisions in Residential Zones
- PCC 33.430.250.A Approval Criteria for Environmental Review
- PCC 33.430.280 Approval Criteria for Environmental Modification

Procedural History:

1. The Bureau of Development Services issued a Staff Report and Recommendation of Approval subject to conditions on July 20, 2012.
2. Hearings Officer's Decision. The hearing was opened at approximately 9:00 am on July 30, 2012 in the 3rd floor hearing room, 1900 SW 4th Avenue, Portland, OR. The record was held open until 4:30 PM on August 6, 2012, for additional written testimony from anyone, and until August 13, 2012, for a written response to the new testimony and final rebuttal from the applicant. The record was closed at that time.

The following people testified at the Hearing:

Rachel Whiteside, BDS Staff Representative
Brett Laurila, 5505 SE Oetkin Drive, Milwaukie, OR 97267
Cindy Laurila, 5505 SE Oetkin Drive, Milwaukie, OR 97267
Daniel Eggleston, 8251 SE Cesar Chavez Boulevard, Portland, OR 97202
Sharon Larisch, 8242 SE Cesar A. Chavez Boulevard, Portland, OR 97202
Kym McCown, 8260 SE Cesar Chavez Boulevard, Portland, OR 97202
Terry Griffiths, 4128 SE Reedway, Portland, OR 97202

The Hearings Officer denied the requested Land Division with Environmental Review and Modifications in a decision mailed on August 22, 2012. The decision for denial was issued because, in the Hearings Officer's words, "the applicant failed to provide sufficient evidence to satisfy PCC 33.430.250 A.1, A.3 and A.4 and also PC 33.641." Specifically, the Applicant did not meet the burden of proof for an adequate alternatives analysis required for the Environmental Review and the record did not address on-street parking impacts for the Land Division.

An appeal period was provided until September 5, 2012.

3. Appeal by Brett Laurila. Mr. Laurila submitted an appeal to the decision of the Hearings Officer on September 5, 2012. The written statement submitted by the Appellant provided new evidence in the form of a financial analysis determining practicability, plans for alternative site layouts, and an on-street parking analysis (submitted September 11, 2012). An updated appeal statement was received October 7, 2012.
4. City Council Decision. The hearing was opened at approximately 2:00 pm on October 10, 2012, in Council Chambers at which time both staff and the appellant were afforded an opportunity to present Council with information contained in the appeal statements. Specifically, additional information documenting the practicable site alternatives, related environmental impacts, and available on-street parking was

presented. The Woodstock Neighborhood Association, Friends of Tideman Johnson, and two neighboring property owners testified in opposition of the proposal.

The following people testified at the Hearing:

Rachel Whiteside, BDS Staff Representative
Robert Haley, PBOT Staff Representative
Brett Laurila, 5505 SE Oetkin Drive, Milwaukie, OR 97267
Cindy Laurila, 5505 SE Oetkin Drive, Milwaukie, OR 97267
Michelle Smit, 4000 SE Tenino Street, Portland, OR 97202
Scott Walker, 6443 SW Beaverton-Hillsdale Hwy, Portland, OR 97225
Dale Dilorsto, 6443 SW Beaverton-Hillsdale Hwy, Portland, OR 97225
John Williamson, 735 SE 33rd Avenue, Portland, OR 97214
Bill Berry, 20514 S Springwater Road, Estacada, OR
Marianne Colgrove, 3707 SE Berkley Way, Portland, OR 97202
Terry Griffiths, 4128 SE Reedway, Portland, OR 97202
Kym McCown, 8260 SE Cesar Chavez Boulevard, Portland, OR 97202
Daniel Eggleston, 8251 SE Cesar Chavez Boulevard, Portland, OR 97202

After reviewing the Applicant's information and considering the oral and written testimony submitted, the City Council made a tentative decision that the criteria for approving a land division, including the applicable criteria in PCC Chapter 33.641, and the criteria for approving an environmental review, including the criteria in PCC 33.430.250.A, had been met. On October 31, 2012, the Council adopted Findings and Conclusions consistent with the tentative decision and made a final decision to grant the appeal, overturn the Hearings Office's decision and approve the proposed land division, environmental review and modifications through environmental review, all with conditions of approval.

III. ANALYSIS

Site and Vicinity: The Site is located in Southeast Portland at the terminus of SE Cesar E. Chavez Boulevard (formerly 39th Avenue) on a bluff above the Springwater Corridor. The approximately 53,115-square foot Site is triangle-shaped, with the northern tip reaching up to SE Tenino Street.

The topography of the Site creates three distinct areas. The western corner of the Site consists of a flat plateau that is bordered by a steep slope on the south and east, with another relatively flat area of bottomland at the southeast corner, adjacent to Johnson Creek. The Springwater Trail and Tideman-Johnson Nature Park are adjacent to the property to the south.

The upper plateau was formed by fill that was placed on the Site sometime in the late 1960's. Vegetation in this area consists primarily of non-native and invasive species, despite periodic efforts to control the invasives. There is a cluster of large cottonwood trees and a few clusters of small red alder on the plateau. The remaining vegetation is non-native. Tree of heaven, black locust, and Himalayan blackberry dominate the plateau and slope area. The bottomland area is surrounded by a thicket of blackberry, although it contains clusters of native willow species.

The Site is currently vacant. Residential development to the north and west of the Site are characterized by one- to two-story homes on lots ranging in size from 2,500 to 14,000 square feet. The City of Portland (Bureau of Environmental Services) owns all of the properties immediately east and south of the Site. All of the City-owned properties are undeveloped or have development for limited recreational use, such as trails, benches, and viewpoints.

Infrastructure:

Streets – The Site has approximately 204 feet of frontage on SE Berkley Way and 20 feet of frontage on SE Tenino Street. At this location, both streets are classified as Local Service Streets for all modes in the Transportation System Plan. TriMet provides transit service approximately 1,290 feet from the Site at SE 45th Avenue via Bus #75.

According to City database sources, SE Berkley Way is an unimproved 40-foot right-of-way. It is located at the southern terminus of SE Cesar E. Chavez Boulevard. Tenino Street has a 30-foot curb-to-curb paved surface within a 50-foot right-of-way with parking on both sides. There are no sidewalks along the entire block and the paved roadway terminates at the eastern property line of the Site.

- **Water Service** – There is an existing 5/8-inch metered irrigation service (Serial #21002778, Account #2996677800) which provides water to this location from the existing 2-inch Galvanized water main in SE Berkeley Way.
- **Sanitary Service** - There is an existing 8-inch concrete public combination sewer line in SE Berkley Way and a 6-inch concrete public combination sewer line in SE Tenino Street.

Zoning: The R10 designation is one of the City's single-dwelling zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing.

The 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. The environmental regulations protect the most important environmental features and resources while allowing environmentally sensitive urban development where resources are less significant. The purpose of this land use review is to ensure compliance with the regulations of the PCC.

Environmental Resources: The application of the environmental zones is based on detailed studies that have been carried out within various areas of the City. The City's policy objectives for these study areas are described in reports that identify the resources and describe the functional values of the resource sites. Functional values are the benefits provided by resources. The values for each resource site are described in the inventory section of these reports.

The Site is mapped within the *Johnson Creek Basin Protection Plan* as Site #6, 39th-42nd Wetland. Resource values listed for Site #6 include water, storm drainage, water quality, fish and wildlife habitat, interspersed, flood storage, scenic beauty, and education. This wetland and associated upland provide a biological and hydrological link to the Johnson Creek corridor. The wetland provides habitat for many bird and other wildlife species. It also provides storm water retention, groundwater recharge, and water quality filtration to the adjacent Tideman-Johnson Park and Johnson Creek.

The upper plateau area, including the portion of vacated SE Berkley Way, contains 66 trees. Of those, 27 are nuisance species (Black Locust and Ailanthus). Most of these nuisance trees are located around the perimeter of the upper plateau, near the top-of-slope. A total of 22 native alder trees are within the vacated SE Berkley right-of-way. An additional 17 native trees (mostly cottonwood and some alder) are located on the upper plateau.

The Johnson Creek Basin Plan District provides for the safe, orderly, and efficient development of lands which are subject to a number of physical constraints, including significant natural resources, steep and hazardous slopes, flood plains, wetlands, and the lack of streets, sewers, and water services.

Land Use History: City records indicate one prior land use review for the Site that was withdrawn.

Agency Review: Several bureaus have responded to this proposal and relevant comments are addressed under the applicable approval criteria. The E Exhibits contain complete details.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on July 2, 2012. At the public hearing a number of persons appeared and testified in opposition; some personally and some on behalf of recognized neighborhood associations. Written testimony, both in favor of the proposal and in opposition to the proposal, was submitted at the hearing and during the open-record period (Exhibits H.5, H.6, H.7, and H.9-H.13). Additional written testimony was submitted directly to Council (Exhibits I.5, I.7, and I.8). Six people provided oral testimony in support of the project and four people in opposition. Issues raised by those testifying at the hearing and in written submissions that relate to relevant approval criteria are addressed in the findings below.

IV. ZONING CODE APPROVAL CRITERIA AND FINDINGS

Subdividing this property requires approval through both Land Division/Subdivision Review and Environmental Review. The approval criteria for each review are presented separately below.

APPROVAL CRITERIA FOR ENVIRONMENTAL REVIEW

PCC 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 PCC 33.430.140 through .190, 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 total development exceeds the allowed disturbance area (Standard D) and a portion of the development is within 50 feet of an identified wetland (Standard G). The approval criteria which apply to the proposed new subdivision are found in PCC 33.430.250.A. The following findings relate to PCC 33.430.250.A.

A. Public safety facilities, rights-of-way, 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, rights-of-way, 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. Rights-of-way, 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: These criteria require an applicant to consider alternative locations, designs and construction methods. Further, these criteria require an applicant to demonstrate whether each of the proposed alternatives is practicable and which of the practicable alternatives has the least significant detrimental impacts upon the identified resources and functional values.¹

¹ PCC 33.910 environmental definitions relevant to this case:

Significant Detrimental Impact. An impact that affects the natural environment to the point where existing ecological systems are disrupted or destroyed. It is an impact that results in the loss of vegetation, land, water, food, cover, or nesting sites. These elements are considered vital or important for the continued use of the area by wildlife, fish, and plants, or the enjoyment of the area's scenic qualities.

Practicable. Capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Functional Values. Functional values are the benefits provided by resources. The functional value may be physical, aesthetic, scenic, educational, or some other nonphysical function, or a combination of these. For example, two values of a wetland could be its ability to provide stormwater detention for x units of water draining y acres, and its ability to provide food and shelter for z varieties of migrating waterfowl. As another example, an unusual native species of

The identified resources and functional values on the site are identified on Page 4 of this report. A description of the site conditions can be found on Pages 2-3 of this report and in the Applicant's narrative (Exhibits A.1 and A.4). The Applicant also provided an alternatives analysis that can be found in the application case file in Exhibits A.1, A.4, I.1, and I.6, and is described below.

Location and Design:

The Applicant proposes a four-lot subdivision with all of the lots located within the environmental conservation zone. The remainder of the conservation and protection zone are to be placed within a tract. Alternatives available to the Applicant are limited because the entire site is within the environmental zones. Therefore, no alternative was possible that would keep all development outside of the environmental zones. There are six other possible scenarios for development on the site, all of which were addressed by the Applicant in Exhibit I.6:

- Alternative Location
- More Lots
- Fewer Lots
- Larger Lots
- Smaller Lots
- Alternative Housing Type

The only alternative building area on the site is the lower plateau area, as the cliff face separating the two areas is too steep for building. Because of the steep cliff separating the two areas, the lower plateau is not a practicable option as vehicle access would require extensive grading. The lower plateau area also includes an identified wetland area and special flood hazard area within the environmental protection zone. New lots are not allowed within the environmental protection zone. Council finds that development at the bottom of the cliff face adjacent to the protection zone is not practicable nor would it reduce environmental impacts.

The Applicant is proposing four lots, whereas the maximum density for the site is five lots. A five-lot proposal was rejected as having more environmental impacts than the applicant's preferred alternative. Council found that a fifth lot at the end of SE Berkely Way would result in an additional 3,500 square feet of disturbance area and the loss of 16 additional trees. Council found that a fifth lot located on the lower plateau is not practicable for the same reasons discussed above.

An alternative with three lots was deemed not practicable by the Applicant due to the cost of infrastructure required to improve the site. Exhibits I.1.b and I.6 include an accounting of the costs for required water and right-of-way improvements and rough application and recording costs. As noted in Exhibit I.6, this analysis is exclusive of the Applicant's costs for public works permits and review fees associated with the design and permitting of the improvements. Factoring in the cost of public works permits brings the development costs even higher. The Applicant testified that he withdrew his 2007 application for a three-lot land division when he learned of the required infrastructure costs.

Testimony by the Woodstock Neighborhood Association questioned why a shorter street was not possible to reduce costs and the number of lots along SE Berkely Way. PBOT staff testified that a significantly shorter street is not possible because there are

plant in a natural resource area could be of educational, heritage, and scientific value. Most natural resources have many functional values.

developable lots on the north side of SE Berkley Way that will require street access when they are developed in the future. PBOT staff also testified that the 20-foot wide roadway with no turnaround is the smallest roadway width allowed by the City Engineer. Council found it is not practicable to provide a smaller roadway to reduce development costs.

Further, should the number of lots be reduced, eliminating Lot 4 results in the most environmental benefit because of its proximity to the environmental protection zone and unstable slopes on the adjacent property. This would result in a proposal with three lots along SE Berkley Way – the exact proposal that was previously withdrawn by the Applicant. Council found an alternative with three lots is not practicable after taking into consideration costs in light of the project purpose.

Larger lots sizes, even those meeting the minimum lot size, clearly result in increased disturbance area. Increasing the size of the lots would also eliminate the area between the lots and the Springwater Trail that is currently proposed for mitigation plantings. Council found that larger lots result in more disturbance within the environmental zones and more impacts to the scenic resources of the Johnson Creek Basin.

Design options are somewhat limited by the triangle shape of the property that restricts practical development in the corners. Due to the nature and location of the vegetation on the upper plateau, smaller lots would not necessarily have less impact than the Applicant's preferred alternative. For example, placing the west corner of Lot 1 in the tract would conserve no additional trees. Similarly pulling in the eastern side of Lot 3 by as much as 20 feet to reduce its size would only impact five nuisance trees, which are already allowed to be removed by code. Council found the few native trees present on the upper plateau are in locations that would be impacted by any reasonable development of the site. Council found reducing the size of Lots 1-3 does not result in a proposal with significantly fewer environmental impacts.

Alternative development types (such as attached housing or condominiums) may be considered through the environmental review process, if they have fewer environmental impacts. The primary housing type in the vicinity is detached single-family homes. Council found the smaller lots afforded by attached housing would not have less impact than the Applicant's preferred alternative for the same reasons smaller lots in general do not have less impacts – the trees around the perimeter are nuisance species that are allowed to be removed. Council found that attached houses on individual lots would require modifications to height and building coverage, which are objectionable to the Neighborhood Association. Council found that eliminating the land division by proposing condominiums does not eliminate the required street improvements in SE Berkley Way and, thus, does not reduce the cost of development.

Council found that the Applicant considered six distinct alternatives in addition to his preferred alternative. Council finds the Applicant submitted plans and costs for development. Council finds the Applicant clearly identified which alternatives were rejected as not practicable. PCC 33.910 defines practicable as "capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes." Council finds that of the practicable alternatives, the Applicant's proposal creates the least significant detrimental impact upon the identified resources and functional values.

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 must 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 within the areas of the lots approved for development, outside of the slope setback.
- Tree protection measures shall be provided, as shown on Exhibit C.7, to protect those trees on Exhibit C.6 identified for preservation.
- Silt fences and related erosion control measures will be placed around the perimeters of the construction disturbance area, as shown on Exhibit C.4. 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. A Final Clearing and Grading Plan (60% public works plan submittal) 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.
- H-piles used for the stabilization of Lot 4 (or other similar stabilization measures) shall be restricted to within the boundaries of Lot 4. Construction activities are not allowed closer than 5 feet to the environmental protection zoned area within the adjacent Tract A.

During the course of this land use review, a landslide occurred on the City-owned property to the east that could impact proposed Lot 4. In the absence of a permanent fix by the City, the applicant's geotechnical engineer has recommended driving steel H-piles every seven feet along the east property of Lot 4. As long as these piles and all construction activities associated with the piles are located within the lot area of Lot 4, no additional environmental review is required. No disturbance for slope stabilization measures beyond the boundaries of Lot 4 was requested by the applicant or reviewed by the City.

Council found that with conditions for the construction management methods identified above, *these criteria are met.*

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

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

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

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

Impacts resulting from this proposal include permanent disturbance associated with construction of the street, stormwater planter, and new lots. The total amount of disturbance for all activities proposed within the resource area is approximately 24,000 square feet. The primary impact of the proposed development will be the removal of 17

native trees and 22 nuisance trees. Other effects include the temporary loss of some native vegetation, disturbance of topsoil, and increased impervious surface areas due to home and street construction. These activities have the potential to affect storm drainage, groundwater recharge and discharge, pollution and nutrient retention/removal, and sediment trapping and erosion control due to the paving.

The Applicant proposed, as mitigation, to plant 37 trees and 45 shrubs. The total planting area is roughly 8,600 square feet. The total disturbance area in the environmental resource area is approximately 24,000 square feet (including the right-of-way), with approximately an additional 2,000 square feet of disturbance in the transition area. The only temporary disturbance areas that are not part of the permanent disturbance area are those areas identified for invasive species removal and mitigation plantings. Approximately 36,894 square feet are proposed to be retained in an environmental protection tract.

The mitigation plan will compensate for impacts at the site for the following reasons:

- The portion of the site preserved in the environmental protection tract is significantly larger than the area of disturbance.
- All temporary disturbance areas will be planted with native vegetation.
- The interface between the lots and resource areas will be buffered with the mitigation plantings.
- The mitigation plantings within the slope setback area will prevent erosion and protect slope stability.
- The mitigation plantings within the slope setback area are specifically located to provide a visual buffer between the proposed development and the public trails to the south where there is a gap in existing vegetation.
- Native plantings will provide assistance with pollution and nutrient retention and removal, sediment trapping and erosion control.

Additional landscaping is proposed within the public right-of-way. BDS does not require mitigation plantings within public rights-of-way where there may be a need for removal in the future to accommodate a wider roadway, sidewalk, or other amenities. Because the right-of-way is within the environmental zone, all plant species should be selected from the *Portland Native Plant List*.

Often grading and construction of infrastructure are completed during the summer months. 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. Because right-of-way improvements are permitted through the Public Works process, a separate Zoning Permit shall be required to document installation of mitigation plantings. This permit would have to be applied for prior to final plat approval.

The mitigation area will not be impacted by the right-of-way improvements or development of the lots, therefore, the plantings may be installed prior to final plat approval and a performance guarantee is not necessary. Should the Applicant choose not to install the plantings prior to final plat approval, the Applicant would be required to provide a performance guarantee prior to final plat, for the installation of the mitigation plantings and 5 years of monitoring. The performance guarantee would need to meet the requirements of Section 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 would be required to provide estimates by three contractors with their names and addresses. The estimates must include as separate items all materials, labor, and any other costs.

Opponents, in testimony at the public hearings before the Hearings Officer and the City Council, argued that the plan described above did not adequately mitigate visual impacts of houses on the proposed lots upon the Springwater Corridor and Tideman-Johnson Park. In a written submission an opponent asserts that the proposed mitigation plan does not (as it should) include "an array of native plants" and therefore does not provide the vegetative diversity. (Exhibit H.10)

The Hearings Officer found and Council agreed that some visual impacts will result from the proposed development. However, the Hearings Officer also found and Council agreed it is unreasonable to require that residences be 100% screened by mitigation plantings. The Hearings Officer found and Council agreed that the Applicant's proposed mitigation plan (Exhibit C.7) plan, so long as all plants are native species selected from the *Portland Native Plant List*, demonstrates that all significant detrimental impacts on resources and functional values will be compensated for.

Monitoring and Maintenance:

The Zoning Code requires that shrubs and trees to be planted will survive until maturity. The Hearings Officer found and Council agreed that monitoring and maintenance of the plantings, for a period of five years, would ensure survival during the most critical period of establishment of new plantings. One hundred 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 would 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, would also help to ensure survival of the mitigation plantings. Documentation of these monitoring and maintenance practices would be required to be included in an annual monitoring report for a period of 5 years to demonstrate success of the mitigation plan.

To ensure that the monitoring and maintenance responsibilities are carried out, the Applicant must provide to both the Woodstock Neighborhood Association and the Ardenwald-Johnson Creek Neighborhood Association a copy of the annual monitoring and maintenance reports that are submitted to the City to fulfill monitoring and maintenance requirements.

The Applicant owns the mitigation site currently. All mitigation plantings are to be located within Tract A which will be owned in common by the future lot owners or a Homeowners' Association. The owners of Lots 1-4 will ultimately own the resource tract and be responsible for mitigation plantings. The maintenance agreement for Tract A must include language describing these responsibilities. Therefore, with conditions of approval for mitigation plantings, a Zoning Permit and/or performance agreement, and a maintenance agreement for Tract A, these criteria *can be met*.

33.430.280 Modifications which better meet Environmental Review Requirements
The review body may consider modifications for lot dimension standards or 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. For modifications to lot dimension standards, the review body must also find that the development will not significantly detract from the livability or appearance of the area.

Findings: Modifications to the following site-related development standards must be requested² in order to better protect the resources and functional values identified on the site:

- Reduce the minimum lot size from 6,000 square feet to 3,460 square feet for Lot 1; 3,926 square feet for Lot 2; 5,289 square feet for Lot 3; and 3,499 square feet for Lot 4.
- Reduce the minimum lot depth for Lot 1 from 60 feet to 38.5 feet.
- Reduce the minimum street frontage for Lot 4 from 30 feet to 21 feet.
- Reduce the minimum lot width from 50 feet to 45 feet for Lot 2 and to 21 feet for Lot 4.
- Reduce the minimum side and rear setbacks from 10 feet to 5 feet for all lots except where the geotechnical engineer has recommended a specific slope setback on Lots 3 and 4.
- Increase the maximum height from 30 feet to 35 feet for Lot 4.

Lot Dimension Standards

The lot dimensions required and proposed are shown in the following table:

	Min. Lot Area (square feet)	Max. Lot Area (square feet)	Min. Lot Width (feet)	Min. Depth (feet)	Min. Front Lot Line (feet)
R10 Zone	6,000	17,000	50	60	30
Lot 1	3,460		92.6	38.5*	92.6
Lot 2	3,926		45.5*	88.5	45.5
Lot 3	5,289		69.5	88.5	69.5
Lot 4	3,499		20.7*	100.0	20.7*

*A Modification through Environmental Review has been requested to reduce this dimension below the minimum.

Although the effect of these modifications will make Lots 2 and 4 appear as narrow lots, technically they would still be standard lots with modified dimensions.

“greater protection of resources”

Council found that restricting the lots to the upper plateau would maximize the quantity and integrity of the wetland. The wetland area provides critical habitat area, stormwater retention, groundwater recharge, and water quality filtration to the adjacent Tideman-Johnson Park and Johnson Creek. Reduced lot sizes allow for more of the Site to be placed within the environmental resource tract. Council found that Lots 1-3 could have extended all the way to the south property line and been widened to meet the minimum size and dimensions. Council found that Lot 4 could also have been stretched to incorporate more of the vacated right-of-way in order to increase the site size. Council found that wrapping the resource tract around Lots 1-4 ensures that development will remain only on the upper plateau, better protecting the steep slopes and providing a permanent buffer to the wetland area below and Johnson Creek.

² The Applicant’s original proposal included a request for an environmental modification to increase the maximum height limit from 30 feet to 35 feet for all lots. At the public hearing before the Hearings Officer, the Applicant withdrew the height modification request for Lots 1-3. The Hearings Officer decision failed to include findings for the height modification for Lot 4.

The Applicant reiterated his request for a height modification for Lot 4 as part of his appeal.

“consistent with the purpose of the regulation”

Section 33.610.200.A states that the lot dimension standards ensure that:

- Each lot has enough room for a reasonably-sized house and garage.
- Lots are of a size and shape that development on each lot can meet the standards of the zoning code.
- Lots are not so large that they seem to be able to be further divided to exceed the maximum allowed density of the site in the future.
- Each lot has room for at least a small, private outdoor area.
- Lots are compatible with existing lots.
- Lots are wide enough to allow development to orient toward the street.
- Lots don't narrow to an unbuildable width close to the street.
- Each lot has access for utilities and services.
- Lots are not landlocked.

Exhibit C.1 shows conceptual building footprints. Council found Exhibit C.1 demonstrates that each lot has enough room for a reasonably-sized house and garage that complies with modified development standards, has plenty of outdoor area, and can orient toward the street. None of the lots are landlocked. Lots 1-3 have frontage, access to utilities and services, and vehicle access from SE Berkley Way. Lot 4 has frontage, access to utilities and services, and vehicle access from SE Tenino Street. The 20-feet of street frontage on Lot 4 is enough to allow for the minimum driveway width of 9-feet at the street. The lot immediately widens enough to allow for a 15-foot wide house that still meets the maximum R10 setback.

Adjacent developed lots within a two block radius range in size from 2,500 to 14,000 square feet in area. Council found that lots ranging in size from 3,460 to 5,289 square feet are generally compatible with existing surrounding lots.

For these reasons, the purposes for the lot dimension standards will still be met by the proposal.

“will not detract significantly from livability or appearance of the area”

Council found that allowing detached single-family homes on smaller lot sizes is generally consistent with the existing character of the area. Council found that clustering new homes near existing development and protecting the wetland area at the south end of the Site will help to maintain the existing development pattern and appearance of the immediate neighborhood. The environmental review criteria allow for consideration of alternative housing types, such as attached rowhomes where it would better protect resources. However, keeping Lot 4 along SE Tenino, as proposed, is more consistent with the development pattern of the neighborhood and provides equal resource protection.

Side and rear building setbacks and maximum height in the R10 zone

Table 110-3 requires 10-foot side and rear building setbacks and limits height in the R10 zone to 30 feet.

“greater protection of resources”

Council found that keeping lots as small as possible preserves the integrity of the wetland area which provides critical habitat area, stormwater retention, groundwater recharge, and water quality filtration to the adjacent Tideman-Johnson Park and Johnson Creek. Council finds that satisfaction of this goal is not possible without modifying certain site-related development standards. Allowing five-foot building setbacks and slightly taller buildings facilitates the clustering of development farther from sensitive resource areas and steep slopes. The modifications are necessary to

allow for homes similar in scale to the surrounding neighborhood while promoting the smaller lot sizes desired for environmentally sensitive areas.

“consistent with the purpose of the regulation”

Section 33.110. 220.A lists the purpose of the setback regulations as:

1. They maintain light, air, separation for fire protection, and access for fire fighting;
2. They reflect the general building scale and placement of houses in the city's neighborhoods;
3. They promote a reasonable physical relationship between residences;
4. They promote options for privacy for neighboring properties;
5. They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;
6. They provide adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity; and
7. They provide room for a car to park in front of a garage door without overhanging the street or sidewalk, and they enhance driver visibility when backing onto the street.

The setback regulations contain similar purpose statements to and are intended to work in tandem with the height regulations to govern the overall size of structures, ergo the purpose statements in Section 33.110.215 are the same as statements 2-4, above.

The front building and garage entrance setbacks may be reduced to zero per Standard 33.430.140.N, therefore purpose statements #5 and 7 do not apply.

A total of 10 feet between structures exceeds the minimum building code separation for fire protection. Additionally, the future homes on Lots 1-3 are already required to be fully equipped with sprinklers to meet the terms of the fire code appeal granted for SE Berkley Way. Development on Lot 4 would be more than 25 feet from the home to the west, and development of the City-owned property to the east is unlikely due to topographic and natural features.

Five feet is the minimum setback required for all adjacent development to the north where the base zone is R5. Therefore, a five foot setback will reflect the general scale of the neighborhood and promote a reasonable physical relationship between residences. The physical separation by the right-of-way will maintain options for privacy, as will the landscaping to be installed within SE Berkley Way. Lot 4 is the last house on a dead-end street, surrounded by City-owned property, an open space tract, and the 50-foot wide SE Tenino right-of-way. Council found that the location of the adjacent house to the west is more than 25 feet away from the building site on Lot 4. Therefore, the Council found that neighborhood privacy would not be compromised by the requested modifications to setbacks and height.

Building setbacks are intended to provide flexibility in siting a building so that it may fit the topography of the site, while allowing compatible development with architectural interest. Due to the steep slope that bisects the site, future development of these lots will need to incorporate innovative design in order to site a home. Reducing the setbacks to five feet will allow for homes to be designed that utilize the safest parts of the lots and will likely result in shorter homes.

Summary of Findings

In summary, Council found that modifying the lot dimension standards, reducing the minimum side and rear setbacks, and increasing the maximum height on Lot 4 will help to provide greater protection of environmental resources, while still meeting the

purpose statements for the modified regulations and maintaining the livability and appearance of the area. This criterion is met for all requested modifications.

APPROVAL CRITERIA FOR LAND DIVISIONS

33.660 Land Division Review

Note that findings, above, for the Environmental Review demonstrate that alternative lot dimensions meet the applicable Environmental Review approval criteria. Therefore, findings for the Land Division approval criteria, which follow, address these reduced lot sizes.

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 Section **33.660.120 [A-L], Approval Criteria for Land Divisions in Open Space and Residential Zones**. Due to the specific location of the 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/Section and Topic	Findings: Not applicable because:
B	33.630 – Tree Preservation	No significant trees or trees in excess of 6-inches in diameter are located fully on the Site or outside of the Environmental zone on the Site.
E	33.633 - Phased Land Division or Staged Final Plat	A phased land division or staged final plat has not been proposed.
F	33.634 - Recreation Area	The proposed density is less than 40 units.
J	33.640 - Streams, Springs, and Seeps	No streams, springs, or seeps are evident on the Site outside of Environmental zones.
	33.654.110.B.3 - Pedestrian connections in the I zones	The Site is not located within an I zone.
	33.654.110.B.4 - Alleys in all zones	No alleys are proposed or required.
	33.654.120.C.3.c - Turnarounds	This criterion applies to private streets. Southeast Berkley Way is a public street and all elements of the public right-of-way have been approved by the Office of Transportation.
	33.654.120.D - Common Greens	No common greens are proposed or required.
	33.654.120.E - Pedestrian Connections	There are no pedestrian connections proposed or required.
	33.654.120.F - Alleys	No alleys are proposed or required.
	33.654.120.G - Shared Courts	No shared courts are proposed or required.
	33.654.130.D - Partial rights-of-way	No partial public streets are proposed or required.

Applicable Approval Criteria are:**A. Lots. The standards and approval criteria of Chapters 33.605 through 33.612 must be met.**

Findings: Chapter 33.610 contains the density and lot dimension requirements applicable in the RF through R5 zones. The maximum density is one unit per 10,000 square feet. Because the Site is within the Environmental zones, a potential landslide hazard area, and flood hazard area, there is no minimum density requirement. The Site is 53,115 square feet and the Applicant is proposing four single-family lots. The density standards are therefore met.

The lot dimensions required and proposed are shown in the following table:

	Min. Lot Area (square feet)	Max. Lot Area (square feet)	Min. Lot Width* (feet)	Min. Depth (feet)	Min. Front Lot Line (feet)
R10 Zone	6,000	17,000	50	60	30
Lot 1	3,460		92.6	38.5*	92.6
Lot 2	3,926		45.5*	88.5	45.5
Lot 3	5,289		69.5	88.5	69.5
Lot 4	3,499		20.7*	100.0	20.7*

+ Width is measured by placing a rectangle along the minimum front building setback line specified for the zone. The rectangle must have a minimum depth of 40 feet, or extend to the rear of the property line, whichever is less.

*A Modification through Environmental Review has been requested to reduce this dimension below the minimum. See the findings under criterion 33.430.280 earlier in this decision.

The findings above show that the applicable density standards are met. The Modifications findings demonstrate the requested reductions to the minimum depth for Lot 1, the minimum width for Lot 2, and the minimum width and front lot line for Lot 4 can meet the approval criteria for a Modification through Environmental Review. Therefore, this criterion can be met.

C. Flood Hazard Area. If any portion of the site is within the flood hazard area, the approval criteria of Chapter 33.631, Sites in Flood Hazard Areas, must be met.

Findings: Portions of the Site are within the flood hazard area. The approval criteria in the RF through R2.5 zones state that where possible, all lots must be located outside of the flood hazard area. Where it is not possible to have all lots outside of the flood hazard area, all proposed building areas must be outside of the flood hazard area. In addition, services in the flood hazard area must be located and built to minimize or eliminate flood damage to the services, and the floodway must be entirely within a flood hazard tract.

The proposed land division will result in all lots and services located outside of the flood hazard area. The floodway does not extend onto this Site, so there is no requirement for a flood hazard tract. This criterion is met.

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.

Findings: A portion of the Site is located within the Potential Landslide Hazard Area. The approval criteria state that the lots, buildings, services, and utilities must be located on the safest part of the Site so that the risk of a landslide affecting the Site, adjacent sites, and sites directly across a street or alley from the Site is reasonably limited. In order to evaluate the proposal against this criterion, the Applicant submitted a geotechnical evaluation of the Site and proposed land division, prepared by a GeoPacific Engineering, Inc. (Exhibit A.2). That report was evaluated by the Site Development Division of BDS ("Site Development"), the City agency that makes determinations regarding soil stability. Additional information was requested by Site Development and provided by the Applicant in Exhibits A.8 and A.9.

According to the Applicant's geotechnical evaluation, the primary slope instability hazard at the Site is potential failure of the approximately 30-foot high fill slope that descends below the proposed home street and lots. These slopes incline at estimated grades of about 80 to 100 percent. While the fill has been in place a number of years and the slope formed by the fill has generally remained stable during this period, there is a potential for surficial slope instability, erosion and sloughing to impact the proposed homes. This is particularly true for Lot 4 where the slope failed in December 2011 or January 2012.

Opponents, at the public hearing before the Hearings Officer, raised issues regarding the credibility of the Applicant's geotechnical evaluation. (Eggleston, Larisch, McCown and Griffiths) One concern was that the fill material is of unknown composition. (Eggleston and Larisch) BDS staff noted, in its closing comments before the Hearings Officer, that the geotechnical report (Exhibit A.2) did reference test pit logs that indicated the composition of the fill (at least in those test pits). The Hearings Officer found and Council agreed that digging test pits does provide some insight into the composition of the fill material.

One opponent argued that the geotechnical report did not answer the question of whether or not toxic/hazardous materials are present in the fill material. The Hearings Officer found and Council agreed that this approval criterion is focused on potential landslide hazards; not toxic/hazardous waste risks. Although the Council sympathizes with the opponent's toxic/hazardous materials concerns, the Council found that such issue is not properly addressed under this approval criterion.

To mitigate the potential impact of surficial slope instability on the proposed lots, GeoPacific made recommendations for specific foundation types, although they also note that additional lot specific investigation will be necessary at the time of development. In addition, a 15-foot minimum structure-to-slope setback should be maintained, measured horizontally from the outside edge of the nearest structural element and the top of the steep slope for all lots. On Lot 4, adjacent to the slope failure on the neighboring property, GeoPacific has recommended additional slope stabilization measures in the form of steel "H" beams driven 7 feet on center along the length of the proposed east property line. On site stormwater disposal is not feasible for any of the lots due to slope stability and geotechnical concerns.

BDS Site Development concurred with the findings of the Applicant's geotechnical report, but notes that further geotechnical evaluation will be required for specific building plans at the time of construction plan review. The Applicant documented that lots, services, and utilities will be located to minimize the risk of landslide, however conditions of approval are necessary to assure that the actual construction of residences will not create an unreasonable landslide hazard risk. Conditions include including the aforementioned geotechnical studies be conducted and also that a No

Build Easement be recorded. The Hearings Officer found and Council agreed that with conditions this approval criterion can be met.

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

Findings:

Clearing and Grading

The regulations of Chapter 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 steep grades (over 80 percent for the cliff face), and is located in a Potential Landslide Hazard area. Therefore, the clearing and grading associated with preparation of the lots must occur in a way that will limit erosion concerns and assure that the preserved trees on the Site will not be disturbed.

A new street and associated stormwater system is proposed as part of the land division, which will require grading on the Site. The Applicant submitted a Preliminary Clearing and Grading Plan (Exhibit C.4) depicting the proposed work, undisturbed areas consistent with the root protection zones of trees to be preserved per the Applicant's Mitigation and Landscape Plan, and the overall limits of disturbed area.

The proposed clearing and grading shown on Exhibit C.4 represents a minimal amount of change to the existing contours and drainage patterns of the Site to provide for a level street surface. The contour changes proposed should not increase runoff or erosion because all of the erosion control measures shown on the grading plan must be installed prior to starting the grading work. Stormwater runoff from the new street and lots will be appropriately managed by lined stormwater planters connected to the combined sewer in SE Berkeley Way to assure that the runoff will not adversely impact adjacent properties (see detailed discussion of stormwater management later in this decision).

The clearing and grading proposed is sufficient, without being excessive, for the construction of the new street. The limits of disturbance shown on the Applicant's plan does not extend more than 15 feet outside of the area proposed for the roadway, which will allow for a reasonable maneuvering area for earth-moving equipment needed to level the street and an adequate area to stockpile excess material.

The Applicant submitted a Landslide Hazard Report (Exhibit A.2) that describes how clearing and grading should occur on the Site to minimize erosion risks. The Applicant also provided a Tree Protection Plan (Exhibit C.7) that designates areas on the Site where grading should not occur in order to protect the roots of the trees on the site that will be preserved.

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 lots, a clearing, grading and erosion control plan will be submitted to Site Development. 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. This criterion is met.

Land Suitability

As described under Criterion D, above, there is a substantial thickness of undocumented fill on the Site. GeoPacific recommended that lot specific geotechnical investigation or reviews take place at the time of development to determine the appropriate foundation type for each specific house plan. Site Development concurs that geotechnical design and construction criteria for individual house foundations should be provided on a case by case basis. With conditions of approval requiring that future building foundations be designed by a registered design professional licensed in the state of Oregon on the recommendations of a soils report specific to the proposed construction, this criterion is met.

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

Findings: One Open Space (Environmental Resource Area) tract is proposed. With a condition that the proposed tract be owned in common by the owners of Lots 1 through 4, this criterion can be met. Alternatively, the Applicant may deed the tract to the City if the City is willing to accept ownership and maintenance responsibilities.

No easements are proposed, however the Applicant's geotechnical engineer has recommended, and Site Development concurred, that a 15-foot slope easement to limit construction within the first 15 feet from the top of slope.

As stated in Section 33.636.100 of the Zoning Code, a maintenance agreement(s) will be required describing maintenance responsibilities for the tract(s) described above and any facilities within those area(s). 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, substantially similar to the following example:

"A Declaration of Maintenance agreement for Tract A: Open Space (Environmental Resource Area) has been recorded as document no. _____, Multnomah County Deed Records."

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

I. Solar access. If single-dwelling detached development is proposed for the site, the approval criteria of Chapter 33.639, Solar Access, must be met.

Findings: The solar access regulations encourage variation in the width of lots to maximize solar access for single-dwelling detached development and minimize shade on adjacent properties.

In this case the Site fronts on SE Berkley Way and SE Tenino Street, which are both east-west streets. All of the proposed lots are on the south side of an east-west oriented street, and are considered interior lots (not on a corner). In this context there is no preference that any one lot be wider or narrower than the other lots. This criterion is met.

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

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

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

PCC 33.651 Water Service standard – See Exhibit E.3 for detailed bureau comments.

There is currently no water available for the proposed development of Lots 1, 2 and 3, as the existing 2-inch galvanized water mains located in SE 39th Avenue and SE Berkeley Way are over necessary capacity to provide water to any additional development. The existing 2-inch galvanized water main in SE 39th Avenue from SE Tenino Street to SE Berkeley Way will need to be upsized to a minimum size of 6 inches, and a 4-inch water main extension will need to be installed in SE Berkeley Way from the intersection of SE 39th Avenue, east to 5 feet inside the property line of Lot 3 at the Applicant's expense. There is water available to Lot 4 from the existing 6-inch CI water main in SE Tenino Street.

The water standards of PCC 33.651 have been verified. The Applicant will need to pay in full, his portion of the cost for the Water Bureau to install an upsized water main in SE 39th Avenue and a 4-inch water main in SE Berkeley Way as described above, prior to final plat approval.

PCC 33.652 Sanitary Sewer Disposal Service standards - See Exhibits E.1a-b for detailed comments.

The sanitary sewer standards of PCC 33.652 have been verified. There is an existing 8-inch concrete public combined gravity sewer located in SE Berkeley Way that can serve the sanitary needs of proposed Lots 1-3 and a 6-inch concrete public combined gravity sewer in SE Tenino Street that can serve proposed Lot 4. Each lot must be shown to have a means of access and individual connection to a public sewer, as approved by BES, prior to final plat approval. All new laterals required to serve the project must be constructed to the public main at the Applicant's or owner's expense at the time of development.

PCC 33.653.020 and .030 Stormwater Management criteria and standards – See Exhibits E.1a-b and E.5

BES has verified that a stormwater management system can be designed that will provide adequate capacity for the expected amount of stormwater.

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

The Applicant has proposed the following stormwater management methods:

- **Public Street Improvements:** Stormwater from these new impervious areas will be directed into a 320 square foot stormwater planter with impervious liner located at the east end of the new roadway. The Applicant's geotechnical engineer indicated that stormwater infiltration is not appropriate for this Site (Exhibit A.3) and BDS Site Development has reviewed and concurred with that report (Exhibit E.5a-b). BES reviewed and confirmed that the proposed planter is of a size and proposed design that is adequate to provide treatment for the quantity of water generated from the new impervious areas.

BES will require a Public Works Permit for the construction of such a planter. The Applicant must provide engineered designs and financial guarantees of performance prior to final plat approval.

- **Lots 1-4:** Stormwater from these lots will be directed into flow-through planters that remove pollutants and suspended solids. The water will drain from the planters to the existing combined sewer in SE Berkeley Way for Lots 1-3 and SE Tenino Street for Lot 4. Each lot has sufficient size for individual planter boxes, and BES indicated that the treated water can be directed to the existing combination sewers.

Each lot must be shown to have a means of access and individual connection to a public sewer, as approved by BES, prior to final plat approval. All new laterals required to serve the project must be constructed to the public main at the Applicant's or owner's expense at the time of development.

PCC 33.654.110.B.1 - Through streets and pedestrian connections

PCC 33.654.130.B - Extension of existing public dead-end streets and pedestrian connections

PCC 33.654.130.C - Future extension of proposed dead-end streets and pedestrian connections

In residential zones, through streets and pedestrian connections are required where appropriate and practicable. Generally, through streets should be provided no more than 530 feet apart and pedestrian connections should be no more than 330 feet apart. Through streets and pedestrian connections should generally be at least 200 feet apart.

The block on which the Site is located did meet the noted spacing requirements prior to the vacation of the northern half of SE Berkeley Way. It was determined through vacation case R/W #7012 that the SE Berkeley Way connection was not necessary to provide access for future development. Additionally, a steep change in grade does not permit a through street or pedestrian connection from Berkeley Way east to SE Umatilla Street (an undeveloped "paper street"). Topography also prevents a pedestrian connection south to the Springwater Trail. The properties to the north of the Site appear to have potential to further divide under current zoning. However, they have sufficient frontage on SE Berkeley Way to provide access to the interior of the property. So, although the optimum spacing criteria would indicate the need for an east-west and north-south through street or pedestrian connection at this Site, there is no need for a connection to the north and a connection to the east is not practicable.

In addition, the Site is not within an area that has an adopted Master Street Plan, so criterion d. does not apply. A pedestrian connection is provided to the Springwater Trail one block west at SE 37th Avenue. For these reasons, these criteria are met.

PCC 33.654.110.B.2 Approval criterion for dead-end streets in OS, R, C, and E zones.

The proposal includes a dead-end street, which will be located in the existing public right-of-way. As discussed under the findings for through streets above, a new public east-west or north-south through street is not required for this proposal. The private dead-end street will serve only three dwelling units and it is approximately 235 feet in length from the frontage along SE Cesar E. Chavez Boulevard to the end of the roadway. The proposed dead-end street exceeds the recommended maximum length of 200 feet. This street length is appropriate because the additional length provides access for maintenance of the proposed stormwater planter and existing utilities in the vacated portion of SE Berkeley Way. For these reasons, this criterion is met.

PCC 33.641 - Transportation Impacts - PCC 33.641.020 and PCC 33.641.030

PCC 33.654.120.B and C Width and elements of the street right-of-way

PCC 33.654.130.D Partial Rights of way

The Applicant submitted an approvable 30 percent engineered public works permit that documents adequate transportation facilities can be provided to serve the proposed 4-lot project. Three of the lots will be served by a 20-foot new roadway and the fourth lot has frontage on SE Tenino. The four new single-family residences can be expected to generate 40 daily vehicle trips with four trips occurring in each of the AM and PM Peak Hours. This small amount of trips will have an insignificant impact on Level of Service ("LOS") standards or street capacity. Each lot will have on-site parking. Impacts on all other transportation evaluation factors will also be insignificant. The Portland Bureau of Transportation (PBOT) staff found that, with the street improvements to SE Berkeley Way, there will be a minimal impact on existing facilities and capacity and that the limited traffic study submitted as Exhibit A.7 is all that is warranted for this proposal (see Exhibit E.2b for the complete analysis).

The Site has roughly 20 feet of frontage on SE Tenino Street which is improved with a paved roadway, and a gravel shoulder on both sides. There are no curbs, planter strips, or sidewalks. In reviewing this land division, PBOT relied on accepted civil and traffic engineering standards and specifications to determine if existing street improvements for motor vehicles, pedestrians and bicyclists can safely and efficiently serve the proposed new development. Because none of the other frontages have been improved on this street, PBOT determined that an isolated improvement at this location would not be meaningful. If the street is to be improved, it would be more appropriate to complete the improvements as one local improvement district project. Therefore, the Applicant will be required to sign street and storm sewer waivers of remonstrance (for participation in future street and storm sewer improvements) prior to final plat approval.

A new public street will serve Lots 1-3. The street is anticipated to serve the vehicle traffic, pedestrians and bicyclists accessing these lots, as well as one vacant lot on the north side of the street. The existing 40-foot wide right-of-way is adequate to provide room for the construction of a 20-foot wide paved roadway that allows two travel lanes, two 6-inch curbs, and a 320 square foot lined stormwater planter at the east end. As discussed previously in this decision, the proposed planter box will be connected to the combined sewer pipe in SE Berkeley Way. PBOT indicated that the proposed street width and improvements are sufficient to serve expected users. The Applicant must provide plans and financial assurances for the construction of this street prior to final plat approval.

Opponents, at the public hearing before the Hearings Officer, testified that the proposed 20-foot wide street would be inadequate to accommodate the demand for on-street parking. (Eggleston and McCown) Written comments from opponents also raised concerns about on-street parking. (Exhibit H.13) As part of his appeal statement, the Applicant submitted an on-street parking study documenting the availability of on-street parking within 300 feet of the site that addressed the Hearings Officer's concerns about impacts to on-street parking.

The City Council found the PCC 33.641.020 approval criterion, related to on-street parking impacts, is met by the Applicant's submission of an on-street parking study. With the conditions of approval described above, Council found these criteria are met.

PCC 33.654.130.A - Utilities (defined as telephone, cable, natural gas, electric, etc.)

Any easements that may be needed for private utilities that cannot be accommodated within the adjacent right-of-ways can be provided on the final plat. At this time, no specific utility easements adjacent to the right-of-way have been identified as being necessary. Therefore, this criterion is met.

Development Standards:

Development standards that are not relevant to the land division review, have not been addressed in the review, but will have to be met at the time that each of the proposed lots is developed.

Application of PCC 33.537.130 Springwater Corridor Standards. Opponents, in Exhibit H.10, suggest that PCC 33.537.130 is an applicable approval standard. PCC 33.537.130 applies to specific properties within the Johnson Creek Basin Plan District. The specific properties include sites that abut the Springwater Corridor. In this case, the environmental tract will abut the Springwater Corridor. The Hearings Officer finds and Council agrees that the proposed lots do not "abut" the Springwater Corridor. Therefore, the Hearings Officer finds and Council agrees that only the environmental tract is subject to the Springwater Corridor Standards found in PCC 33.537.130. The Hearings Officer finds and Council agrees that there are no proposed motor vehicle areas, no waste collection/storage areas and no tree removal within the environmental

tract. The Hearings Officer finds and Council agrees that, to the limited extent that they are applicable, the PCC 33.537.130 standards are met by the environmental tract (the portion of the site abutting the Springwater Corridor).

Existing development that will remain after the land division. The site is currently vacant, so the division of the property will not cause any structures to move out of conformance or further out of conformance with any development standard applicable in the R10 zone. Therefore, this land division proposal can meet the requirements of 33.700.015.

Standards that apply to the land division. In this case, there are several Zoning Code standards that apply to the proposed land division. The standards of Section 33.430.160 Standards for Land Divisions and Planned Developments apply to the proposal. Conditions have been included for requirements that apply at the time of final plat and at the time of development.

- Resource areas outside designated disturbance areas must be placed entirely within environmental resource tracts. The tracts must be owned in common by all of the owners of the land division site, by a Homeowners' Association, by a public agency, or by a non-profit organization (33.430.160.C or E). *The applicant has proposed that Tract A: Open Space (Environmental Resource Area) be owned in common by the owners of Lots 1-4. This standard is met.*
- The combined total diameter of trees cut may not exceed 225 inches per dwelling unit in residential zones (33.430.160.F). *A total of 252 caliper inches is proposed for removal. This standard is met.*
- Trees cut are replaced as shown on Table 430-3 (33.430.140.K). *The applicant has provided a landscape plan (Exhibit C.7) meeting Table 430-3. This standard can be met with a condition requiring the mitigation plantings.*
- All vegetation planted in a resource area is native and listed on the Portland Plant List. Plants listed on the Nuisance Plant List are prohibited (33.430.140.L). *This standard continues to apply.*
- The minimum front and street building setback and garage entrance setback of the base zone may be reduced to any distance between the base zone minimum and zero. Where a side lot line is also a street lot line the side building and garage entrance setback may be reduced to any distance between the base zone minimum and zero. Parking spaces may be allowed within the first 10 feet from a front lot line and within a minimum side street setback (33.430.140.M). *This standard will be reviewed at the time of development.*
- The front building or street setback of the base zone is the maximum building setback for primary structures (33.430.140.N). *This standard will be reviewed at the time of development.*
- Fences are allowed only within the disturbance area (lots) (33.430.140.O). *This standard will be reviewed at the time of development.*
- 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 (33.430.140.Q). *This standard will be reviewed at the time of development.*
- Utility construction must meet the applicable standards of Section 33.430.150. Private utility lines on a lot where the entire area of the lot is approved to be disturbed and where the private utility line provides connecting service directly to the lot from a public system or exempt from this standard (33.430.160.J). *The proposed utility connections qualify for this exemption.*

Other Technical Requirements:

Technical decisions have been made as part of this review process. These decisions have been made based on other City Titles, adopted technical manuals, and the technical expertise of appropriate service agencies. These related technical decisions are not considered land use actions. If future technical decisions result in changes that bring the project out of conformance with this land use decision, a new land use review may be required. The following is a summary of technical service standards applicable to this preliminary partition proposal.

Bureau	Code Authority and Topic	Contact Information
Water Bureau	Title 21 - Water availability	503-823-7404 www.portlandonline.com/water
Environmental Services	Title 17; 2008 Stormwater Manual Sewer availability & Stormwater Management	503-823-7740 www.portlandonline.com/bes
Fire Bureau	Title 31 Policy B-1 - Emergency Access	503-823-3700 www.portlandonline.com/fire
Transportation	Title 17, Transportation System Plan Design of public street	503-823-5185 www.portlandonline.com/transportation
Development Services	Titles 24 -27, Admin Rules for Private Rights of Way Building Code, Erosion Control, Flood plain, Site Development & Private Streets	503-823-7300 www.portlandonline.com/bds

As authorized in Section 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 to addressing requirements; posting of "No Parking" signs on SE Berkley Way; installing a new hydrant; adequate fire flow water supply, turning radius on a fire access lane and recording an Acknowledgement of Special Land Use Conditions that requires the provision of internal fire suppression sprinklers on Lots 1-3. These requirements are based on the technical standards of Title 31 and Fire Bureau Policy B-1. See Exhibit 4.b for a complete list of detailed technical requirements.
- The applicant must meet the requirements of Urban Forestry for tree removal within the public right-of-way. This requirement is based on the standards of Title 20.

V. CONCLUSIONS

The Applicant proposed a four-lot subdivision with an open space tract, as shown on the attached preliminary plan (Exhibit C.1). The Site is located wholly within the City environmental zones. The Site is irregularly shaped. The Site has an upper plateau area, a steeply sloped area and a lower plateau which includes a wetland. The upper plateau was created in whole, or in part, by the depositing of fill materials prior to application of City environmental zoning. A portion of the Site, including the area proposed to be developed with lots, has been designated by the City as a Potential Landslide Area.

The Hearings Officer found the geotechnical evaluation provided by the Applicant assessed the Site and determined that the proposed lot locations, with mitigation activities, reasonably limited the risk of landslide. The Hearings Officer found that the

PCC 33.632.100 approval criterion related to potential landslide areas was met and City Council agreed.

PCC 33.430.250 A.1, A.3 and A.4 require an applicant to conduct an environmental alternatives analysis related to locations, designs and construction methods. The alternatives analysis must consider whether or not proposed alternatives are practicable and then determine which of the practicable alternatives creates the least significant detrimental impacts upon identified environmental resources and functional values. The Hearings Officer found these criteria were not met. City Council found that the information submitted with the Applicant's appeal statements provided substantial evidence to satisfy the PCC 33.430.250 A.1, A.3 and A.4 criteria.

PCC 33.641 requires the applicant to provide evidence, in the record, sufficient to demonstrate that identified evaluation factors are satisfied. One of the evaluation factors requires the applicant to review on-street parking impacts of the proposed development. The Hearings Officer found this criterion was not met. City Council found the on-street parking analysis provided by the Applicant adequate evidence to satisfy the PCC 33.641 approval criterion.

City Council found issues raised by opponents of the proposal were adequately addressed and that additional materials provided by the Applicant sufficiently address deficiencies identified the Hearings Officer. City Council found that, with conditions of approval related to the geological conditions (landslide hazard, wetland area, and flood hazard area), improvements to the SE Berkley Way right-of-way, and the modifications requested to lot size and development standards, there is sufficient evidence to approve the application.

VI. DECISION

It is the decision of Council to:

Grant the appeal of Brett Laurila, overturn the Hearing's Officer's decision and approve a land Division, Environmental Review and Environmental Modification, specifically:

Approval of a Preliminary Plan for 4 standard lots and an open space (environmental resource) tract;

Approval of an Environmental Review for the creation of 4 lots for single-family development and street improvements within SE Berkley Way;

Approval of Environmental Modifications to:

- Reduce the minimum lot size from 6,000 square feet to 3,460 square feet for Lot 1; 3,926 square feet for Lot 2; 5,289 square feet for Lot 3; and 3,499 square feet for Lot 4.
- Reduce the minimum lot depth for Lot 1 from 60 feet to 38.5 feet.
- Reduce the minimum street frontage for Lot 4 from 30 feet to 21 feet.
- Reduce the minimum lot width from 50 feet to 45 feet for Lot 2 and to 21 feet for Lot 4;
- Reduce the minimum side and rear setbacks from 10 feet to 5 feet for all lots except where the geotechnical engineer has recommended a specific slope setback on Lots 3 and 4; and
- Increase the maximum height limit from 30 feet to 35 feet for Lot 4.

As illustrated with Exhibits C.1 and C.3-C.7, subject to the following conditions:

A. Supplemental Plan. Three copies of an additional supplemental plan shall be submitted with the final plat survey for Land Use Review, BES, and Fire review and approval. 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:

- The proposed general location of future building footprints, individual sanitary connections, and stormwater facilities for each of the vacant lots.
- The fire access lane with a turning radius of 28 feet inside, 48 feet outside.
- Top of slope and minimum slope setback lines as recommended in the Geotechnical Engineering Report and Landslide Hazard Study.
- Trees to be preserved and associated tree protection fencing.
- Clearing and grading limits consistent with the 60% design submittal for the right-of-way improvements, all erosion control measures, and stockpile locations.
- Any other information specifically noted in the conditions listed below.

B. The final plat must show the following:

1. A no build easement or tract for the purpose of a structure-to-slope setback as recommended in the Geotechnical Engineering Report and Landslide Hazard Study (Exhibits A.2 and A.8). The easement shall restrict use of this area consistent with the recommendations of the geotechnical engineer and as approved by the Site Development Section of BDS.
2. The open space tract shall be noted on the plat as "Tract A: Open Space (Environmental Resource 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 4.
3. 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 * 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."

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

Streets

1. The applicant shall complete street and storm sewer waivers of remonstrance (for future street and storm sewer improvements) as required by the City Engineer for SE Tenino Street. Waiver forms and instructions will be provided to the applicant during the final plat review process.
2. The applicant shall meet the requirements of the City Engineer for right of way improvements within SE Berkley Way. The applicant shall submit an application for a Public Works Permit and provide plans and financial assurances to the satisfaction of the Portland Bureau of Transportation and the Bureau of Environmental Services for required street improvements.

Utilities

3. The applicant shall meet the requirements of the Water Bureau for providing plans and financial assurances for the water main extensions in SE Cesar E Chavez Boulevard and SE Berkley Way.
4. The applicant shall meet the requirements of the Fire Bureau for installing a new fire hydrant. The applicant must contact the Water Bureau, Development Services Department at 503-823-7368, for fee installation information related to the purchase and installation of fire hydrants. The applicant must purchase the hydrant and provide verification to the Fire Bureau that the Water Bureau will be installing the required fire hydrant, with the required fire flow and pressure.
5. The applicant must meet the requirements of the Fire Bureau for providing an adequate fire access way for Lots 1-4, as required in Chapter 5 of the Oregon Fire Code. Alternately, the applicant will be required to install residential sprinklers in the new house on Lots 1-4, if applying the exception. An Acknowledgement of Special Land Use Conditions describing the sprinkler requirement must be referenced on and recorded with the final plat.

Required Legal Documents

6. A Maintenance Agreement shall be executed for the No Build easement described in Condition B.1 above. The agreement shall include provisions assigning maintenance responsibilities for the easement area, consistent with the purpose of the easement, and all applicable City Code standards. The agreement must be reviewed by the City Attorney and the Bureau of Development Services, and approved as to form, prior to final plat approval.
7. A Maintenance Agreement shall be executed for the tracts described in Condition B.2 above. The agreement shall include provisions assigning maintenance responsibilities for the tracts and any shared facilities within the areas, consistent with the purpose of the tracts, and all applicable City Code standards. The tracts must be owned in common by the homeowner's association. The agreement must be reviewed by the City Attorney and the Bureau of Development Services, and approved as to form, prior to final plat approval. The agreement must also include:
 - a. assign common, undivided ownership of the tract to the owners of all lots;
 - b. include provisions for assigning maintenance responsibilities for the tract;
 - c. provisions assigning maintenance responsibilities for mitigation plantings located within the tract;
 - d. include a description of allowed/prohibited activities consistent with Chapter 33.430; and
 - e. include conditions of this land use approval that apply to the tract.
8. The applicant shall execute an Acknowledgement of Special Land Use conditions, requiring residential development on Lot 1-3 to contain internal fire suppression sprinklers, per Fire Bureau Appeal ID #8231. The acknowledgement shall be recorded with Multnomah County, and referenced on the final plat.
9. The applicant shall submit a Performance Guarantee, meeting the requirements of Section 33.700.050, for (1) installation of plantings at the site and (2) 5 years of monitoring and maintenance (as specified in Condition D.2) to BDS. The Performance Guarantee must be accompanied by a contract approved by the City Attorney. If the plantings are installed prior to final plat approval, a Performance Guarantee is only required for the monitoring and maintenance requirement.

- Performance Guarantee for the estimated cost of installation of plantings
If the applicant or subsequent owners of the site do not install plantings indicated on Exhibit C.7 as required by Condition D.2 below, the City shall use the performance guarantee to install required plantings. BDS will return/release unused portions of the required performance guarantee allocated to installation of plantings to the applicant only after BDS inspectors determine that all required plantings have been completed and invasive species have been removed with 10-feet of all required native plantings.
- 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.2 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 5-year monitoring period to the applicant only after BDS has approved the annual monitoring report (including replacement of dead plants).

Other requirements

D. A Zoning Permit for the mitigation plantings must be submitted that includes the following:

1. Mitigation Plantings shall be planted, in substantial conformance (location and species) with Exhibit C.7 Mitigation Plan as follows:
 - a. At the time of permit review for grading at the site, a Final Planting Plan shall be submitted to BDS showing the approximate location of the plantings required within easements (conditions c-e below). The planting plan should illustrate a naturalistic arrangement of plants and should include the location, species, quantity and size of plants to be planted.
 - b. A total of 37 trees, 45 shrubs, and 8,600 square feet of native seed mix shall be planted consistent with Exhibit C.7.
 - c. All plant species must be selected from the *Portland Plant List*.
 - 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 Bureau of Development Services Land Use Review staff.
 - e. Prior to installing required mitigation plantings, non-native invasive plants shall be removed from all areas within 10 feet of mitigation plantings (including areas to be seeded), using handheld equipment.
2. **A Final Inspection shall be required** to document installation of the required mitigation plantings.

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

1. Temporary construction fencing shall be installed according to Section 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 C.7 Mitigation Plan or as required by inspection staff during the plan review and/or

inspection stages.

- a. 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. The applicant must meet the addressing requirements of the Fire Bureau for Lots 1-4. The location of the sign must be shown on the building permit.
3. The applicant will be required to install residential sprinklers in the new houses on Lots 1-3 to the satisfaction of the Fire Bureau.
4. If required, the applicant will be required to meet any requirements identified through a Fire Code Appeal which may require installation of residential sprinklers in the new dwelling unit on Lot 4. Please refer to the final plat approval report for details on whether or not this requirement applies.
5. The applicant must provide a fire access way that meets the Fire Bureau requirements related to aerial fire department access. Aerial access applies to buildings that exceed 30 feet in height as measure to the bottom of the eave of the structure or the top of the parapet for a flat roof.
6. All existing trees in the right-of-way will be protected and preserved unless permitted for removal by Portland Parks and Recreation.
7. Development on lots shall be in conformance with the following:
 - a. Prior to starting home construction on Lots 1-4, the applicant shall install 6-foot high metal construction fencing along any lot line that abuts an open space tract. The fence must be shown on building permit plans. The fence shall remain in place until the final erosion control inspection is completed.
 - b. Development on all lots shall meet the following:
 - The minimum front, street, or garage setbacks of the base zone may be reduced to any distance between the base zone minimum and zero.
 - The maximum front building setback is 20 feet.
 - The minimum side and rear building setback is 5 feet, except where a larger setback is required to comply with the recommended slope setback identified in Condition B.1 and shown on the Supplemental Plan.
 - The maximum building height shall not exceed 35 feet.
 - c. Fences are allowed only within lots (not within any of the tracts).
 - d. Exterior lights must be spaced at least 25 feet apart. Incandescent lights exceeding 200 watts (or other light types exceeding the brightness of a 200-watt incandescent light) must be placed so they do not shine directly into resource areas. This condition applies to lots that abut any environmental zoning on the site.
8. The following apply to the open space tract:

- a. All vegetation planted in a resource area of environmental zones is native and listed on the Portland Plant List. Plants listed on the Portland Nuisance Plant List or Prohibited Plant List are prohibited.
- b. Fences are not allowed within a resource area of environmental zones.

F. 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 lot owners or Homeowners Association are responsible for ongoing survival of required plantings during and beyond the monitoring period. The lot owners shall:

1. Provide five letters (to serve as monitoring and maintenance reports) to the Woodstock and Ardenwald-Johnson Creek Neighborhood Associations, and to the Land Use Services Division of the Bureau of Development Services (Attention: LU 11-153362 LDS ENM) containing the monitoring information described below. Submit the first letter to the Bureau of Development Services within 12 months following approval of the Permanent Erosion Control Inspection of the required mitigation plantings. Submit the subsequent letters every 12 months following the date of the first monitoring letter. All letters shall contain the following information:
 - a. A count of the number of planted trees that have died. One replacement tree must be planted for each dead tree (replacement must occur within one planting season).
 - b. The percent coverage of native shrubs and ground covers. If less than 80 percent of the mitigation planting area is covered with native shrubs or groundcovers at the time of the annual count, additional shrubs and groundcovers shall be planted to reach 80 percent cover (replacement must occur within one planting season).
 - c. A list of replacement plants that were installed.
 - d. A description of invasive species removal (English ivy, Himalayan blackberry, reed canarygrass, teasel, clematis) within 10 feet of all plantings. Invasive species must be removed with 10 feet of all mitigation plants.
2. Obtain a Zoning Permit for a final inspection at the end of the 5-year maintenance and monitoring period. The permit must be finalized no later than 5 years from the final inspection for the installation of mitigation planting, for the purpose of ensuring that the required plantings remain. Any required plantings that have not survived must be replaced.

G. 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 33.700.040 and /or enforcement of these conditions in any manner authorized by law.

VII. APPEAL INFORMATION

Appeals to the Land Use Board of Appeals (LUBA)

This is the City's final decision on this matter. It may be appealed to the Oregon Land Use Board of Appeals (LUBA), within 21 days of the date of the 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 submitted written testimony during the

comment period or this land use review. You may call LUBA at 1 (503) 373-1265 for further information on filing an appeal.

Conditions of Approval. If approved, 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.

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

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

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

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

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

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

The following approvals were necessary for the land division to be approved: Environmental Review with Modifications. These approvals expire if:

- 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.

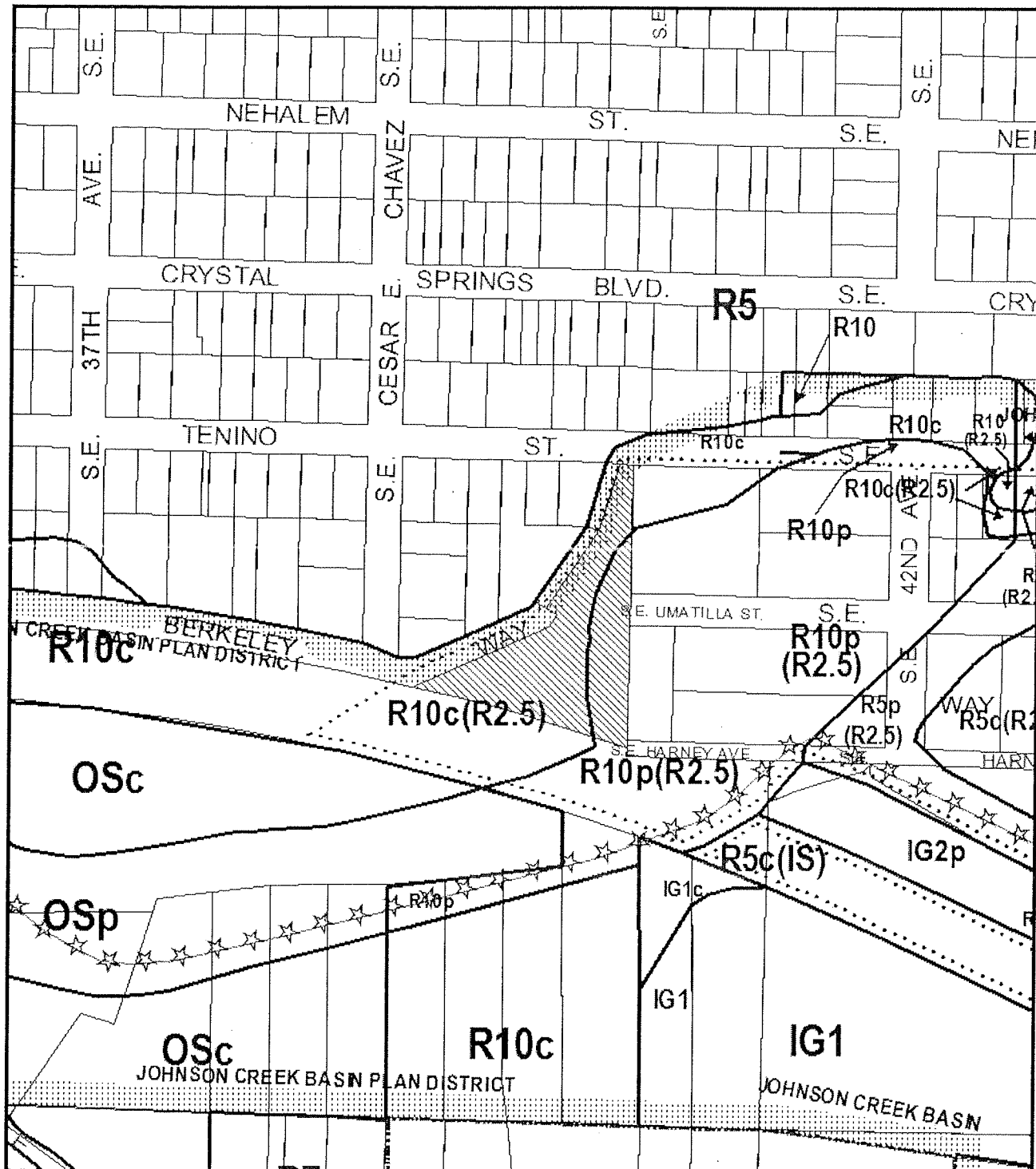
All other concurrent approvals expire three years from the date rendered, unless a building permit has been issued, or the approved activity has begun. Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Original Narrative
 - 2. Landslide Hazard Study
 - 3. Preliminary Storm Drainage Report, dated March 4, 2011
 - 4. Revised Environmental Review Narrative, received Dec. 2, 2011
 - 5. Land Division Narrative
 - 6. Landscape Mitigation Narrative
 - 7. Traffic Narrative
 - 8. Slope Setback Analysis, received Dec. 2, 2011
 - 9. Slope Stabilization Measures for Lot 5, dated July 5, 2011
 - 10. Fire Code Appeal #8231
 - 11. Revised Preliminary Storm Drainage Calculations, dated June 18, 2012
- B. Zoning Map **(attached)**
 - 1. Existing Zoning
 - 2. Proposed Zoning
- C. Plans and Drawings
 - 1. Proposed Development Plan **(attached)**
 - 2. Proposed Land Division Plan
 - 3. Onsite Utility Plan **(attached)**
 - 4. Preliminary Grading Plan **(attached)**
 - 5. Berkley Street Plan and Profile **(attached)**
 - 6. Site Plan with Tree Inventory **(attached)**
 - 7. Mitigation and Streetscape Planting Plan **(attached)**
 - 8. Stamped Survey
- 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
 - 1a. Bureau of Environmental Services
 - b. Bureau of Environmental Services, dated
 - 2a. Bureau of Transportation Engineering and Development Review
 - b. Bureau of Transportation, dated
 - 3. Water Bureau
 - 4a. Fire Bureau
 - b. Fire Bureau, dated
 - 5a. Site Development Review Section of Bureau of Development Services
 - b. Site Development, dated

6. Bureau of Parks, Forestry Division
7. Life Safety Review Section of Bureau of Development Services
- F. Letters: *none received*
- G. Other
 1. Original LUR Application
 2. Neighborhood Contact
 3. Site History Research
 4. Pre-Application Conference Notes
 5. 120-Day Waiver, received July 12, 2011
 6. Incomplete Letter, mailed July 20, 2011
- H. Received in the Hearings Office
 1. Notice of Public Hearing - Whiteside, Rachel
 2. Staff Report - Whiteside, Rachel
 3. 7/26/12 Memo - Antak, Jennifer
 - a. PBOT Tenino Landslide map - Antak, Jennifer
 4. PowerPoint presentation printout - Whiteside, Rachel
 5. 7/27/12 letter - Griffiths, Terry
 6. Photos - Eggleston, Daniel
 7. Address - Evans, Charles C.
 8. Record Closing Information - Hearings Office
 9. 8/3/12 Fax - Verna, Mark
 10. 8/3/12 Fax - Colgrove, Marianne
 11. 8/3/12 Letter - Smit, Michelle
 12. 8/1/12 Fax - Loosemore, Matt
 13. 8/4/12 letter/petition - Larisch, Sharon
 14. 8/13/12 Rebuttal response - Laurila, Brett
- I. Appeal
 1. Appeal Submittal Form
 - a. Appeal Cover Letter
 - b. Appeal Statement
 - c. On-Street Parking Analysis
 2. Appealed Decision
 3. Notice of Appeal
 4. NOA Mailing list
 5. Letter from Ardenwald-Johnson Creek, East Moreland, and Woodstock Neighborhood Associations, dated October 1, 2012
 6. Appellant's Revised Appeal Statement, dated October 7, 2012
 7. Letter from Woodstock Neighborhood Associations, dated October 8, 2012
 8. Letter from Friends of Tideman Johnson, dated October 8, 2012
 9. Staff PowerPoint Presentation Printout - Whiteside, Rachel



ZONING

 Site



This site lies within the:
JOHNSON CREEK BASIN PLAN DISTRICT

File No.	LU 11-153362 LDS,ENM
1/4 Section	3834
Scale	1 inch = 417 feet
State_Id	1S1E24DD 1700
Exhibit	B (Jul 05,2011)

BKL/A
ARCHITECTURE
1001 W. 10TH AVENUE
SUITE 100
DENVER, CO 80202
303.733.1100
WWW.BKLARCHITECT.COM

REVISIONS
1. 11/15/2011
2. 11/15/2011
3. 11/15/2011

PROPOSED DEVELOPMENT PLAN
1. 11/15/2011
2. 11/15/2011
3. 11/15/2011

LAND DIVISION
1. 11/15/2011
2. 11/15/2011
3. 11/15/2011

THE SPRINGWATER PROPERTY
1. 11/15/2011
2. 11/15/2011
3. 11/15/2011

1001 W. 10TH AVENUE
1. 11/15/2011
2. 11/15/2011
3. 11/15/2011

1001 W. 10TH AVENUE
1. 11/15/2011
2. 11/15/2011
3. 11/15/2011

1001 W. 10TH AVENUE
1. 11/15/2011
2. 11/15/2011
3. 11/15/2011

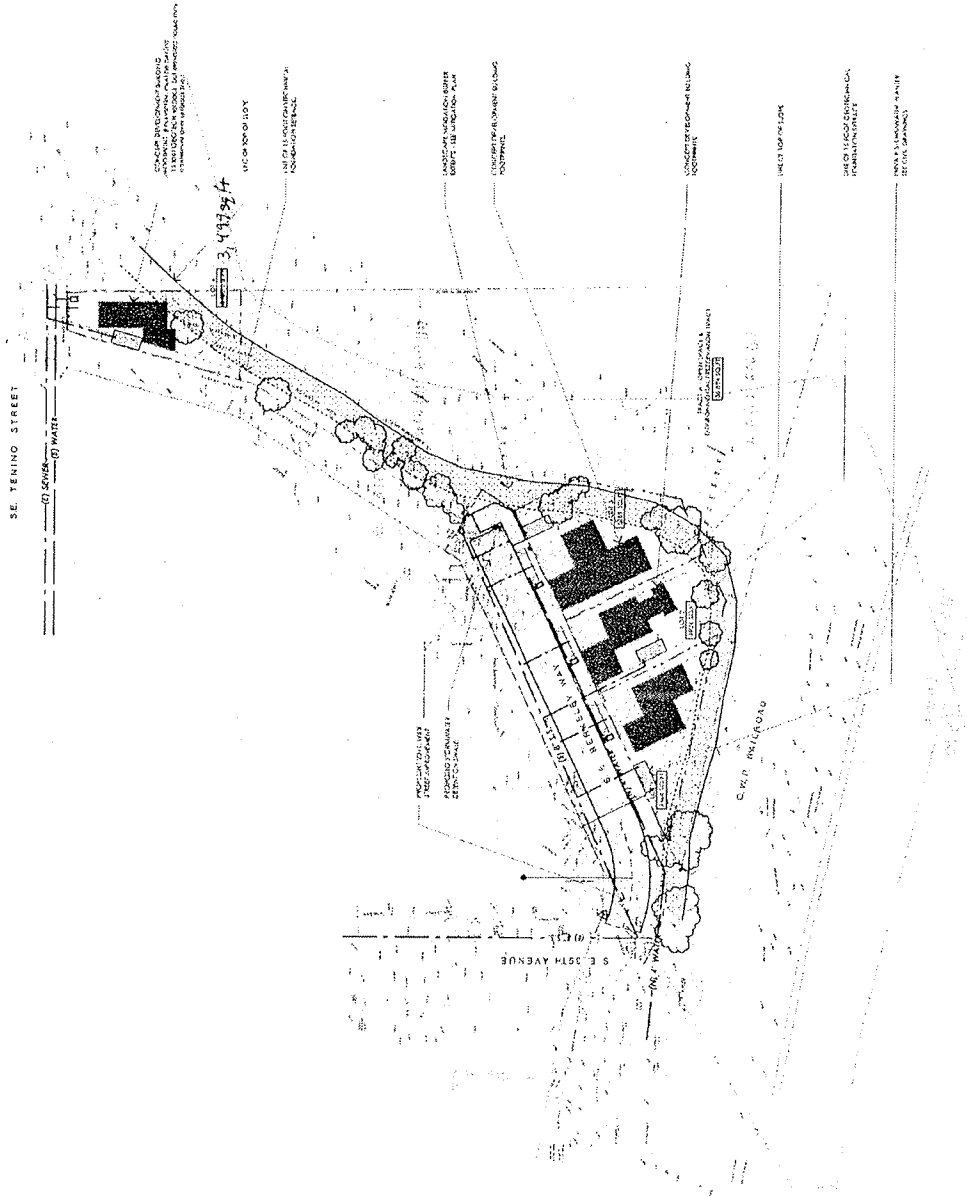
1001 W. 10TH AVENUE
1. 11/15/2011
2. 11/15/2011
3. 11/15/2011

1001 W. 10TH AVENUE
1. 11/15/2011
2. 11/15/2011
3. 11/15/2011

1001 W. 10TH AVENUE
1. 11/15/2011
2. 11/15/2011
3. 11/15/2011

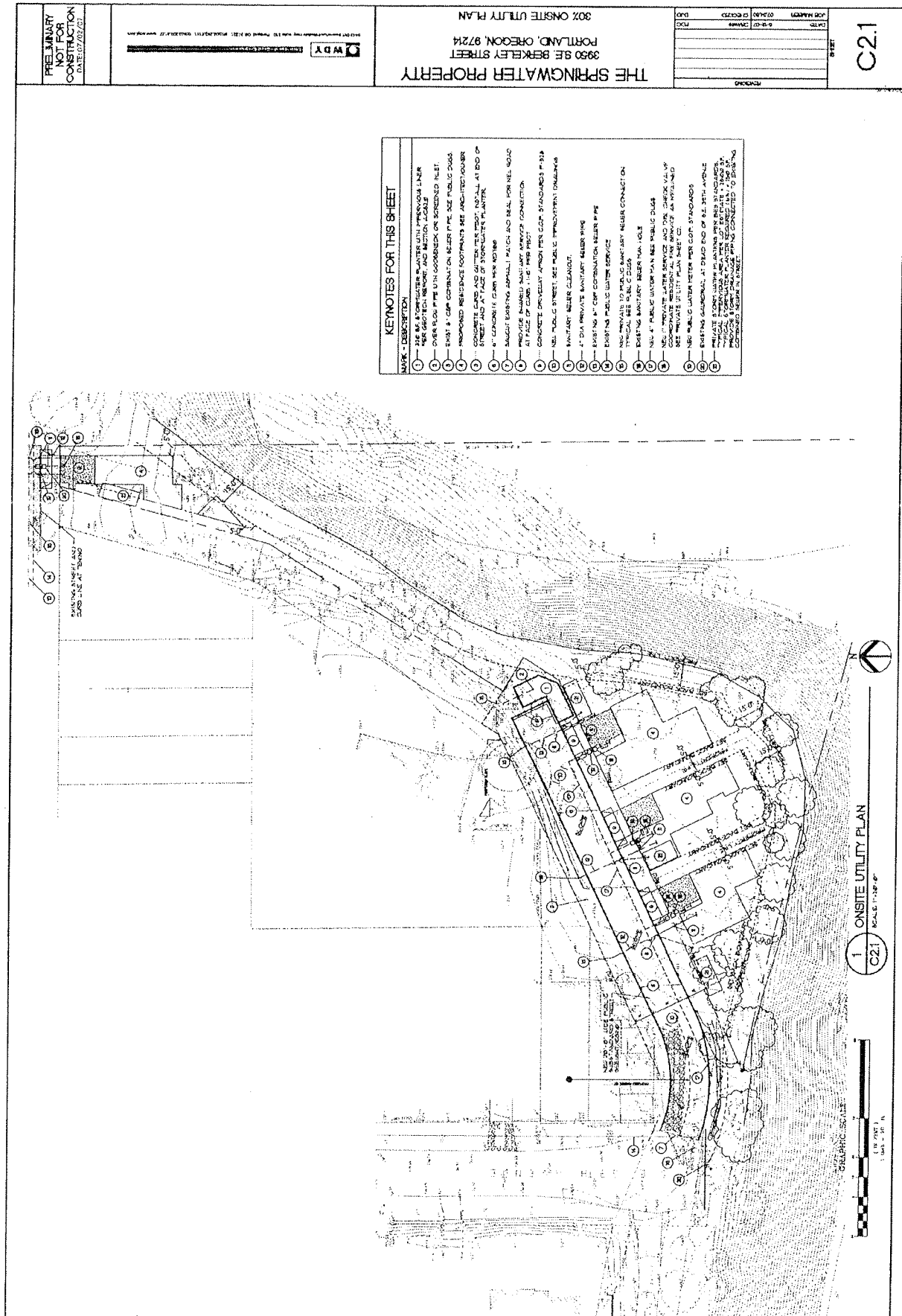
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1. 11/15/2011
2. 11/15/2011
3. 11/15/2011

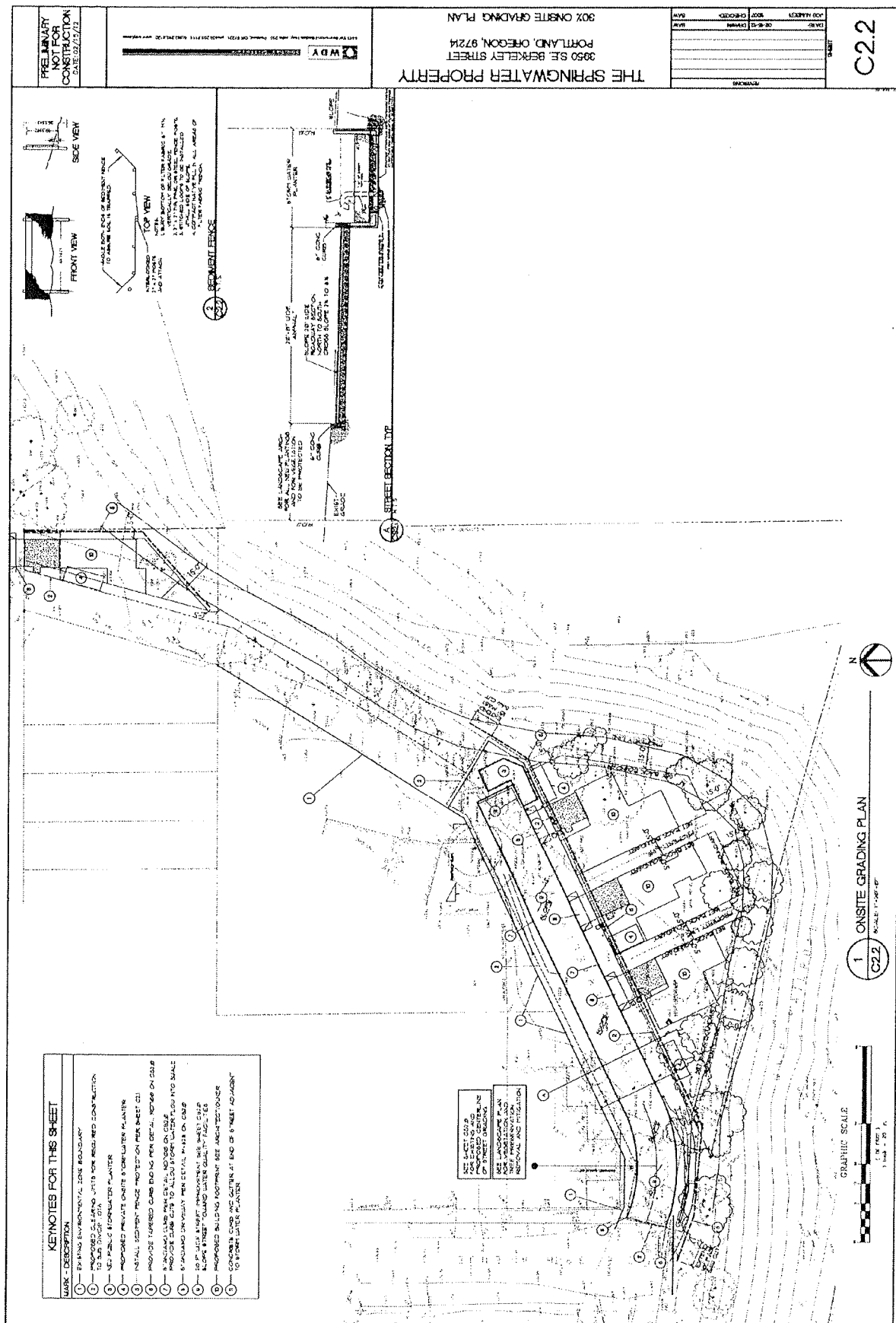
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1. 11/15/2011
2. 11/15/2011
3. 11/15/2011

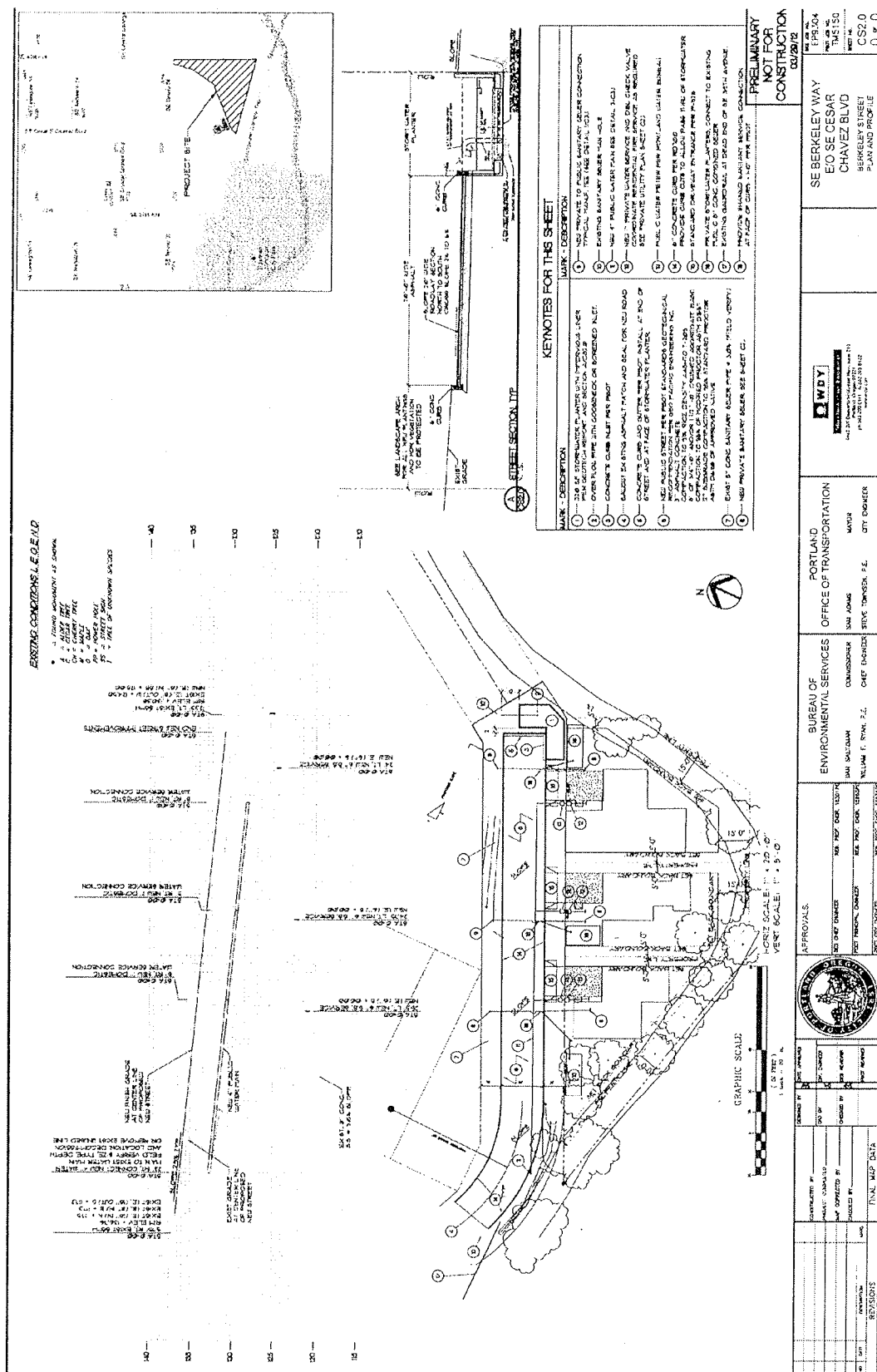


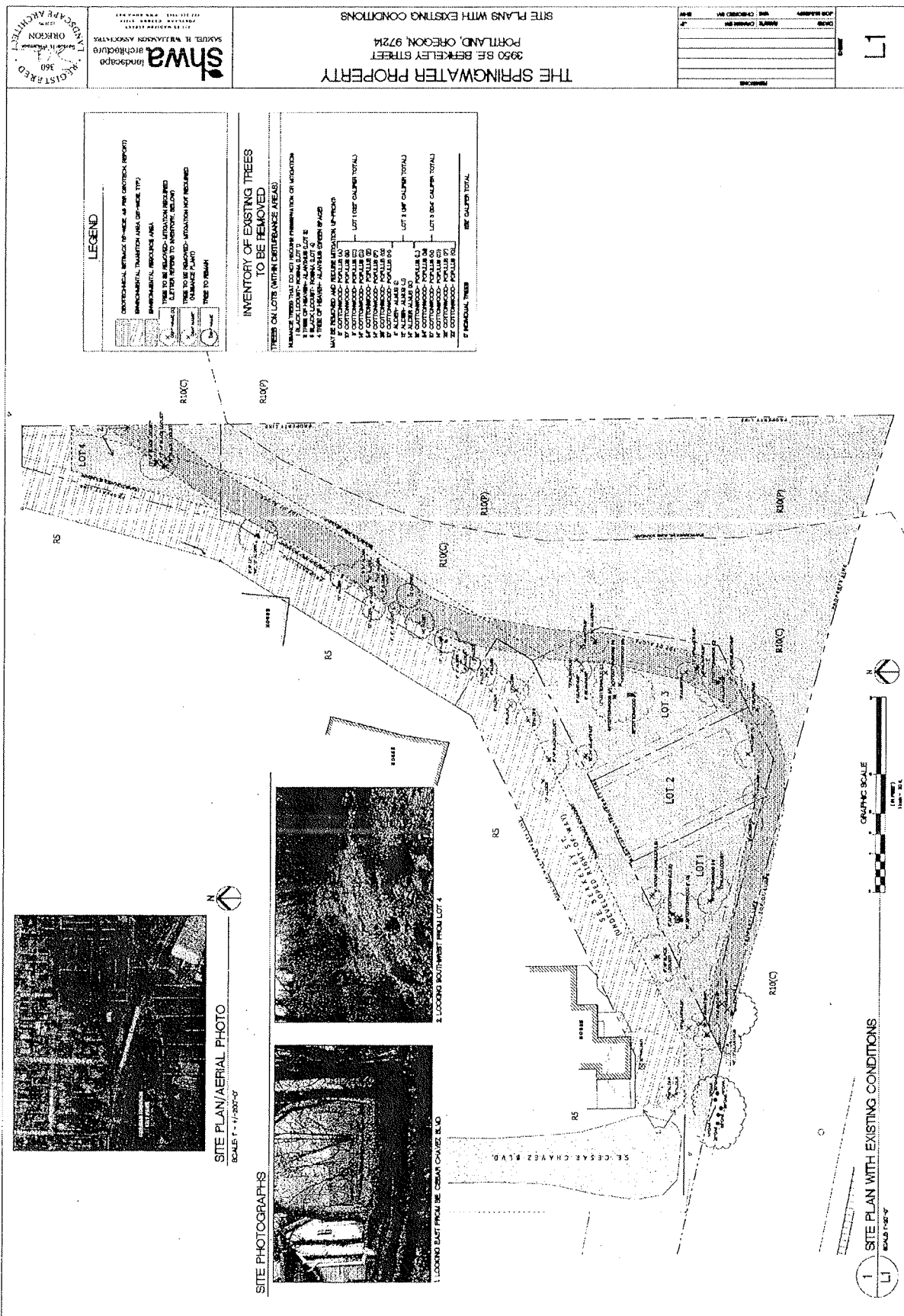
PROPOSED DEVELOPMENT PLAN
SCALE: 1" = 30'-0"

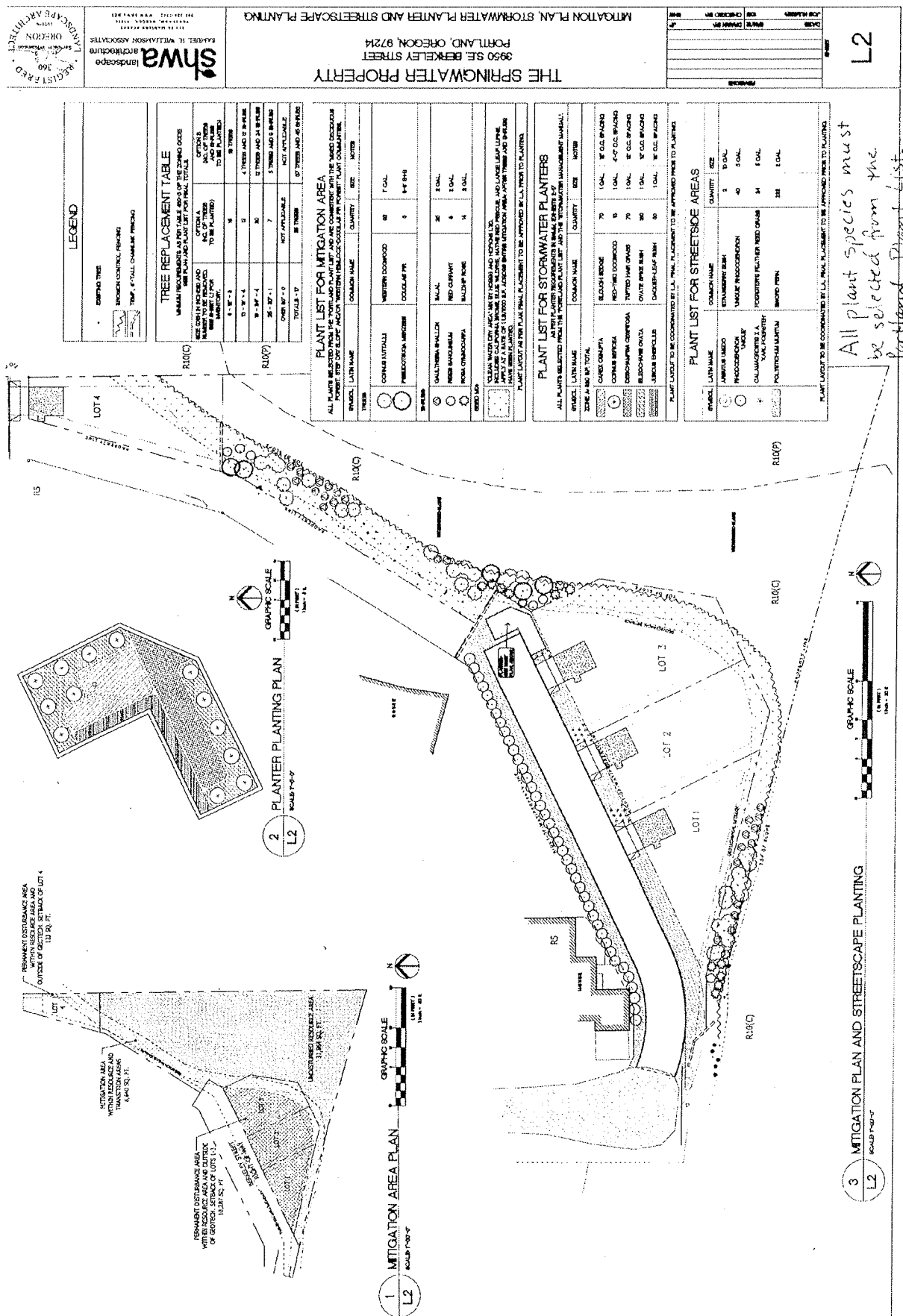
CASE NO. 11-153362 LDS ENM
EXHIBIT C-1











CASE NO. 11-15336-2 (DS ENM)
EXHIBIT C-7