



Portland City Auditor

Hearings Office

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DECISION OF THE HEARINGS OFFICER

I. GENERAL INFORMATION

File Number: LU 16-213734 LDS EN M EV (Hearings Officer (4170027))

Applicant: Riverview Abbey Mausoleum Company
Contact: Steve Griffith
0319 SW Taylors Ferry Road
Portland, OR 97219-4668

**Applicant's
Representatives:** Emerio Design
Contact: AnneMarie Skinner
8285 SW Nimbus Avenue, Suite 180
Beaverton, OR 97008

Christopher Koback
Hathaway Larson LLP
1331 NW Lovejoy Street, Suite 950
Portland, OR 97209

Hearings Officer: Melvin Oden-Orr

Bureau of Development Services (BDS) Staff Representatives: Kate Green and Sean Williams

Site Address: Multiple undeveloped properties adjacent to SW Taylors Ferry Road, SW Canby Street, SW Hume Street (*subject property is adjacent to 0319 SW Taylors Ferry Road/Riverview Abbey Mausoleum*)

Legal Description: W 100' OF BLOCK 39 EXC PT IN ST, CARSON HTS; BLOCK 39 EXC W 100' & EXC PT IN ST, CARSON HTS; TL 1300 12.04 ACRES, SECTION 22 1S 1E

Tax Account Numbers: R139705750, R139705790, R991220220

State ID Numbers: 1S1E22CB 04300, 1S1E22CB 04200, 1S1E22CB 01300

Quarter Section: 3829

Neighborhood: South Burlingame

Neighborhoods within 1,000 feet: South Portland and Collins View

Business District: None

District Neighborhood Coalition: Southwest Neighborhoods Inc.

Zoning: Single Dwelling Residential 10,000 (R10)
Environmental Protection (p) overlay
Environmental Conservation (c) overlay

Plan District: None

Other Designations: Streams/Stephens Creek/Ruby Creek, City of Portland Wetlands, Potential Landslide Hazard, Southwest Hills Resource Protection Plan/Resource Site 117, Wildfire Hazard

Land Use Review: Type III, Land Division Subdivision (LDS), Environmental Review (EN) with Modifications (M), Environmental Violation Review (EV)

BDS Staff Recommendation to Hearings Officer:

Public Hearing: The hearing was opened at 8:34 a.m. on October 16, 2017, at 1900 SW Fourth Avenue, Room 2500, Portland, Oregon, and was closed at 10:27 a.m. The applicant had until October 20, 2017, to submit argument as to why a new application should not be required given their proposed changes to their proposal announced at the October 16th hearing, and BDS had until October 25, 2017, to provide a response. The hearing was continued to 8:30 a.m. on October 30, 2017. The continued hearing was opened at 8:30 a.m. on October 30, 2017, at 1900 SW Fourth Avenue, Room 2500, Portland, Oregon, and was closed at 11:00 a.m. The record was held open until 4:00 p.m. on November 6, 2017, for new evidence and until 4:00 p.m. on November 13, 2017 for rebuttal evidence and final argument; no new evidence. An Interim Order was issued on November 20, 2017, which reopened the record until 4:00 p.m. on December 7, 2017, for new evidence consistent with Oregon Revised Statute (ORS) 197.763(7), and until 4:00 p.m. on December 14, 2017, for the applicant's final argument; no new evidence. The record closed at 4:01 p.m. on December 14, 2017.

Testified at the October 16, 2017 Hearing:

Sean Williams, Kate Green, Christopher Koback, Lynn Greenough, James Carleton, Chuck Greenough, Michael Baranow, Susan Kauffman, Robert Lennox, Michelle Lennox, Theodore Norton, Michael Andrews, James Hussey, Fredericus Kieleman, and Linda Meier

Testified at the October 30, 2017 Hearing:

Chris Koback, Stephen Griffith, Barbara Griffith, Anna Griffith, Robert Griffith, Seth Dryden, Michael Andrews, Chuck Greenough, Jan Friedman, Lynn Greenough, Carol Lidberg, Patricia Dennis, Robert Lennox, David Lacka, Krista Peterson, Shannon Hiller-Webb, Michelle Lennox, Sean Williams, and Kate Green

Proposal: The applicant proposes a **Land Division-Subdivision** in order to divide a 14.17-acre site into 23 lots for detached single-dwelling residential homes. The lot sizes are proposed to range from 5,000 to 7,924 square feet in area. The proposal includes a new public dead-end street (Street A) and a new public pedestrian connection to serve the proposed lots, as well as the extension of and the widening of existing rights-of-way (SW Hume Street and SW Taylor's Ferry Road) abutting the site. Public water and sanitary sewer services will be extended to serve the proposed lots. Stormwater facilities are proposed throughout the site with final disposal to the onsite streams (Ruby Creek and Stephens Creek).

Two tracts were initially proposed: Tract A, an approximately 9.65-acre open space/environmental resource tract, and an approximately 4,018 square foot Tract B, an open space/landscape buffer tract. Public and private easements are also proposed for utilities and a drainage reserve. In a modified proposal, preferred Alternative 4A, the number of tracts has been increased to three, adding Tract C, an approximately .27-acre scenic resource tract by removing what was originally designated as Lots 1 and 2.

At the October 16, 2017 evidentiary hearing, Applicant announced changes to its proposal and, based on comments from staff and neighbors, it was seeking approval of its new preferred Alternative 4A. The hearing was continued to October 30th to allow BDS Staff an opportunity to review the revised proposal and preferred Alternative 4A. The key changes in preferred Alternative 4A are best summarized by Applicant's counsel. They write:

"Alternative 4A removes Lots 1 and 2, and in their place adds a scenic resource tract. It reduces the size of Lot 23, resulting in the preservation of additional resource area and at least one significant tree. Alternative 4A responds to staff concerns that 40% of the lots remained over the minimum size, reducing the the [sic] number of lots to 28.5%. It reduces the disturbance area to 29.5%, and increases open space tracts to 70.5%. It increases the resource area to 10.01 acres out of the 14.17 acre site."

Exhibit H-51, page 3.

In addition, Applicant has essentially withdrawn its request for modification of the paving requirements. See Exhibit H-51, page 7 ("The Applicant is not going to argue against staffs position on its request for a modification to the paving requirements on Lots 22 and 23."). In conjunction with consideration of Alternative 4A, is the issue of a new modification request to reduce the size of lot 23.

An **Environmental Review** is requested to allow the proposed lots, streets, utilities, and related development within the resource area of the Environmental Conservation zone; and to allow storm sewer and sanitary sewer construction within the Environmental Conservation and Environmental Protections zones.

Environmental Modifications are also requested to allow for reductions to the minimum lot area in the R10 zone from 6,000 square feet to 5,000 square feet; and to reduce the minimum side building setback for each lot from 10 feet to 5 feet.

Additionally, the application includes an **Environmental Violation Review** to address several compliance issues related to the following:

- Violation 1: Trees and shrubs topped, cut, and pruned within the environmental conservation and protection overlays planted as mitigation for LU 06-107286 EN.
- Violation 2: Ground disturbance (survey work with track machine off SW Hume Street) within the resource area of the Environmental Conservation Zone without the required review.

This subdivision proposal is reviewed through a Type III procedure because: (1) more than ten dwelling units are proposed, (2) the site is located within a Potential Landslide Hazard; and (3) the proposal includes an Environmental Review (see 33.660.110).

For purposes of state law, this land division is considered a subdivision. Under ORS 92.010, to subdivide land is to divide an area or tract of land into four or more lots within a calendar year. ORS 92.010 defines "lot" as a single unit of land created by a subdivision of land. The Applicant's initial proposal was to create 25 units of land (23 lots and 2 tracts). This has been modified at the October 16th hearing to 21 lots and 3 tracts: Tract A, B, and C. Therefore, this land division is considered a subdivision.

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:

- **33.430.250.A / Environmental Review**
- **33.430.280 / Environmental Modifications**
- **33.430.250.G / Corrections to Violations**
- **33.660.120 / Land Divisions in Open Space and Residential Zones**

FACTS

A few excerpts from the Decision Report (Exhibit H-1) details the background of the Site and the proposal, explaining the following:

“Site and Vicinity: The site is approximately 14.17 acres in size and consists of four tax accounts or portions thereof, which, in combination, have been demonstrated to be a separate lot of record from adjacent property in the same ownership. The site is undeveloped, heavily forested, and contains steep slopes with the presence of Stephens and Ruby Creek on the northern portion of the site. Ruby Creek is a tributary to Stephens Creek, and flows from the western property boundary northeast across the site to Stephens Creek, which runs from west to east at the northern end of the site.

“The site borders the South Portland neighborhood to the north, which is developed with single family homes on lots that have an R5 zoning designation and are of a size consistent with that zone. A subdivision to the west of the site is developed with single family homes on larger lots that have an R10 zoning designation. Property adjacent to the east is under the same ownership and developed with the Riverview Abbey Mausoleum, which is located on a lot of similar size to the project site and zoned Open Space.”

Exhibit H-1, page 3.

The Decision Report details the environmental resources at the Site. They write:

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

“The project site is mapped within the *Southwest Hills Resource Protection Plan* as Site 117: Stephens Creek/River View Cemetery. The habitat classifications found within Site 117 include: Upland Coniferous/Broadleaf Deciduous Forest; Riverine, Upper Perennial; and Palustrine, Forested Wetland.

“Type of resources found within Site 117 include: perennial creek, groundwater, scenic, open space, wildlife habitat and corridor, forest, education and historic. Site 117 is noted for having vegetation and habitat that support over 60 bird and 30 mammal species, and the wildlife habitat interspersed with Tryon Creek State Park and surrounding forests is a significant feature.

“The soils within Site 117 are prone to slides and slumps when saturated. Steep, sloped ravines are at particular risk and erosion caused by the failure of these slopes would negatively impact the habitat and water quality.

“The *Scenic Resource Protection Plan* also identifies eight scenic corridors that are located within the boundaries of the *Southwest Hills Resource Protection Plan*. A scenic

corridor is defined as a linear scenic resource that may include streets, bikeways, trails or waterways (rivers, creeks, sloughs) through parks, natural or urban areas. The corridor may include scenic views along it, but may also be valued for its intrinsic scenic qualities such as a winding road through a wooded area. In this case, the scenic resources affiliated with the subject site include: The tree-covered condition that contributes to the neighborhood character and Scenic Drive (SD 38-27, *Scenic Resources Protection Plan*), which includes a section of the subject site's SW Taylors Ferry Road frontage.

"As outlined in the BES response, the site resources provide important watershed functions, described below:

'Natural resources at this site were identified in the City of Portland's Natural Resource Inventory, an inventory of locally significant riparian corridors and wildlife habitat. Specified resources and functions include the following:

'Regionally Significant Riparian Corridors: Vegetated riparian corridors provide important natural watershed functions. Tree canopy shades streams, helping to keep streams cool. Riparian vegetation helps to stabilize stream banks, capture sediment in stormwater runoff, support the water cycle and the cycling of nutrients, and provide a source of woody materials to the streams.

- *Microclimate and Shade: Riparian vegetation helps lower soil, air, and stream temperatures. Stream temperature influences in-stream processes and can be a critical factor for the health and survival of aquatic organisms.*
- *Streamflow Moderation and Flood Storage: Stormwater runoff can cause erosion and sedimentation in rivers and streams. Vegetation intercepts, absorbs and stores rainfall before it reaches the stream channel. These areas can also help provide cool groundwater to streams during the dry season.*
- *Water Quality: Riparian vegetation can filter, trap and store excess nutrients such as nitrogen and phosphorus found in fertilizers, and pollutants such herbicides and industrial chemicals that are carried in surface water.*
- *Large Wood and Channel Dynamics: Riparian areas contribute woody debris that help to form channel features and provide in-stream cover for fish. Large in-channel wood also controls the routing of water and sediment, dissipates stream energy, protects stream banks, stabilizes streambeds, helps retain organic matter, and acts as a surface for biological activity.*
- *Organic Inputs and Food Web: Forest ecosystems adjacent to stream corridors provide over 99 percent of the energy and carbon sources in aquatic food cycles.*
- *Wildlife Movement Corridor: Riparian vegetation provides wildlife movement corridors and migration routes, food and forage, nesting and breeding sites, and cover.*

Regionally Significant Wildlife Habitat: These resources provide important feeding, breeding, and rearing habitat for native wildlife. The wildlife resources on this site provide the following functions and values:

- *Habitat patch size: Larger patches of undisturbed land provide critical habitat for aquatic and terrestrial species. These large patches provide greater opportunity for foraging, breeding, and rearing to a larger number and greater diversity of species. Small patches of land that are well-connected to other patches also provide important functions for wildlife.*
- *Interior habitat area: Large areas of habitat protect wildlife from excessive disturbance, while the edge effect of residential development negatively affects at-risk wildlife.*
- *Connectivity: As cities and neighborhoods grow, the areas animals need to survive become smaller and isolated. Connections between various aquatic and terrestrial habitat types (such as rivers, streams, wetlands, forests, and meadows) are important to the survival of many wildlife species.'*

“Additionally, as outlined in the BES responses: Stephens Creek is one of the few remaining open stream channels in Portland, and the confluence of Stephens Creek and the Willamette River (off site to the east) provides critical off-channel rearing and refuge habitat for native, ESA-listed Chinook and coho salmon and steelhead trout, as well as rainbow and cutthroat trout, and Pacific and brook lamprey.”

Exhibit H-1, page 3-4 (emphasis in original).

The Decision Report details the infrastructure and services:

“Infrastructure:

- **Streets:** The site has frontage on SW Taylors Ferry Road, SW Hume Street, SW Ruby Terrace, SW Front Street, SW Canby Street, and SW Brier Place. Only SW Taylors Ferry Road and SW Ruby Terrace are improved along the site’s frontage. At this location, all of the above streets are classified as Local Service Streets for all modes in the Transportation System Plan (TSP) with the exception of SW Taylors Ferry Road, which is classified as a District Collector. Tri-Met provides transit service along the site’s SW Taylors Ferry frontage via Bus #43.
- **Water Service:** There is an existing 6-inch DI water main in both SW Ruby Terrace and SW Taylors Ferry Road.
- **Sanitary Sewer:** The following sanitary sewer infrastructure is located on or in the vicinity of the project site:

1. There is an 8-inch CSP public sanitary-only sewer on the subject property that runs northeast from SW Ruby Terrace (BES project # 20501). This sewer is within or next to Ruby Creek, a tributary of Stephens Creek. Most of the sewer appears to be within the Environmental Protection Zone. This sewer is within a 10-foot wide City of Portland easement (Ordinance 104182). There are several short stretches on this line where the sewer has been exposed by erosion.
 2. There is an 8-inch concrete sanitary-only sewer in SW Hume (BES project # 2175). According to City mapping there are two private pressure lines in the SW Hume right-of-way serving the homes at 11 and 17 SW Taylors Ferry Road.
 3. The 36-inch Burlingame Sanitary Trunk runs east west on the subject property and is parallel to Stephens Creek. The sewer was rehabbed in 2007 under BES project # 8227. The sewer continues north in SW Taylors Ferry. The sewer is within a permanent sewer easement (County document 2007-201954, BES tracking number 7042).
 4. There is an 8-inch sanitary-only sewer between the SW Kelly right-of-way and the Burlingame Trunk (BES project # 3830). The sewer is within a 20-foot sewer easement (Ordinance # 151656).
- **Stormwater Disposal:** The following stormwater infrastructure is located on or in the vicinity of the project site:
 1. There is a storm culvert that crosses Ruby Terrace near the proposed pedestrian dedication that discharges to Ruby Creek which is a tributary of Stephens Creek. The culvert and outfall are not owned or maintained by the City of Portland. The Ruby Terrace inlets in the right-of-way and the private lots to the west drain to the culvert. The outfall at the head of Ruby Creek is damaged and it has been noted to potentially threaten the structural integrity of the adjacent sanitary sewer.
 2. There is a mapped ditch along the north side of Taylors Ferry with an inlet on the east edge of the proposed street improvements that drains to a shallow 12-inch HDPE crossing of Taylors Ferry. The HDPE discharges to a 12-inch corrugated ADS line that is pinned to the surface. The ADS is partially connected to a large CMP at the base of the ravine. Based on the BES site visit on 2/23/17 the drainage system south of Taylors Ferry is deficient for the existing and proposed flows.
 3. There is a 12-inch CSP public storm-only sewer south of the SW Kelly right-of-way that discharges directly to Stephens Creek (BES project # 3830). The sewer is within a 20-foot sewer easement (Ordinance # 151656)."

Exhibit H-1, page 4-5.

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.

Environmental overlay zones ("c" or "p") protect environmental resources and functional values that have been identified by the City as providing benefits to the public. The environmental regulations encourage flexibility and innovation in site planning and provide for development that is carefully designed to preserve the site's protected resources. They protect the most important environmental features and resources while allowing environmentally sensitive urban development where resources are less significant. The purpose of this land use review is to ensure compliance with the regulations of the environmental zones.

Land Use History: City records indicate the following prior land use reviews for this site:

- **LU 06-107286 EN:** Approval of an Environmental Review to repair, replace, and protect approximately 4,300 feet of the 36-inch diameter Burlingame Trunk Sewer between SW Taylors Ferry and Interstate-5. There is also an existing 12-inch pipe parallel to the 36-inch pipe; it will be removed or abandoned in place along its entire length. The trunk sewer is along Stephens Creek.
- **LU 14-235643 LDS EN M AD:** Proposal to subdivide the site into 46-lots for single dwelling homes including new public and private streets (common greens) and alleys, as well as extensions of existing rights-of-way. A concurrent Environmental Review was requested to allow the proposed lots, streets, alley, trails, and related development within the resource area of the Environmental Conservation zone; and to allow storm sewer and sanitary sewer construction within the Environmental Conservation and Environmental Protections zones. Environmental Modifications are also requested to allow for reductions to the minimum lot dimensions for the R10 zone and to reduce the minimum side building setback from 10 feet to 4 feet. The Applicant has also requested Adjustments to Tree Preservation and Recreation Area Tract requirements. *This application was withdrawn.*
- **LU 17-109933 EN:** Approval of an Environmental Review for repairing and improving stormwater outfalls at three sites in Stephens Creek Watershed. The outfalls that were repaired on or in the vicinity of this land division site were located adjacent to the intersection of SW Canby Street and SW Brier Place.

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

Neighborhood Review: A *Notice of Proposal in Your Neighborhood* was mailed on September 25, 2017. See Exhibit D-.6. Nine written responses have been received in support of the proposal.

Letters were also received from the South Burlingame Neighborhood Association and the Collins View Neighborhood Association. BDS Staff categorized neighborhood concerns and BDS Staff comments as follows:

- **Neighborhood Contact:** "The South Burlingame Neighborhood Association raises concerns that the applicants did not request a meeting with the neighborhood to discuss proposed changes to the project. Based on the materials provided by the applicants, the neighborhood did not respond in a timely manner to the applicants' request to meet, and the requirements for Neighborhood Contact were satisfied, as specified in 33.700.025." See Exhibit H-1, page 6
- **Traffic Impacts:** "The neighborhoods cite a variety of concerns about the proposal creating additional impacts to the existing substandard roadway infrastructure. Transportation issues are addressed in the Land Division findings, Criterion 33.660.120.K, and in the Portland Transportation response (Exhibit E.2)." See Exhibit H-1, page 6
- **Environmental Impacts:** "The neighborhoods note deficiencies in the applicants' alternative analysis and impacts to neighborhood character. These issues are address in the Environmental Review findings." See Exhibit H-1, page 6
- **Geotechnical Impacts:** "The neighborhoods raise concerns about tree removal and landslide hazards. These issues are addressed in the Environmental Review findings, the Land Division findings for tree preservation and landslide hazards, and the Site Development response (Exhibit E.5)." See Exhibit H-1, page 6

ZONING CODE APPROVAL CRITERIA

This proposal must satisfy the approval criteria for each of the requested reviews. Findings for the following reviews are provided below:

Part A: Environmental Review, Environmental Modifications, and Environmental Violation

Part B: Land Division

PART A.

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." PZC 33.430.250. "When environmental review is required because a proposal does not meet one or more of the development standards of Section 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." *Id.*

BDS Staff determined that the project failed to meet the following development standards, explaining:

“Findings: The proposed subdivision does not meet the following development standards, due to the proposed lot and street layout, and the stormwater disposal methods:

- 33.430.160.A – development in protection zone
- 33.430.160.D – disturbance area
- 33.430.160.F – tree removal
- 33.430.160.G –setback from protection zone and water body (33.430.140.B and C)
- 33.430.160.G – all planting in the resource area must be native (33.430.140.K, L and M)
- 33.430.160.G – nuisance plants (33.430.140.L)
- 33.430.160.G – tree replacement (33.430.140.M)
- 33.430.160.H – setbacks from waterbody
- 33.430.160.I – maximum right-of-way widths

The approval criteria which apply to the proposed subdivision are found in Section 33.430.250.A. The criteria in 33.430.250.A.2 are not applicable, since the proposal does not include a public safety facility. The relevant criteria in A.1, A.3 and A.4 are addressed below.

“A. Public safety facilities, rights-of-way, driveways, walkways, outfalls, utilities, land divisions, Property Line Adjustments, Planned Developments, and Planned Unit Developments.

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

“* * * * *

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.

BDS Staff summarized the requirements of the approval criteria. They write:

“Criteria A.1.a, A.3.a, A.3.c, and A.4.c require the applicant to demonstrate that alternatives were considered during the design process, and that there are no practicable alternatives that would be less detrimental to the identified resources and functional values than the applicants’ preferred alternative. * * * .

“Criteria A.1.b, A.3.b, A.4.a and A.4.b require the protection of resources *outside of the proposed disturbance area* from impacts related to the proposal, such as damage to vegetation, erosion of soils off the site, and downstream impacts to water quality and fish habitat from increased stormwater runoff and erosion off the site. * * * .

“Criteria A.1.c, d and e require the applicant to assess unavoidable impacts and propose mitigation that is proportional to the impacts, as well as sufficient in character and quantity to replace all lost resource functions and values. * * * .”

See Exhibit H-1, page 8.

ALTERNATIVES ANALYSIS

BDS Staff reviewed the alternative analysis that has since been superseded by Exhibit H-100b. In its review of Applicant’s initial analysis, however, BDS Staff made a number of findings that it determined supported denial of the application. The Hearings Officer will address each in turn.

Disturbance Area

BDS Staff raised concerns about the modest change in the amount of disturbance area for the alternatives. They write:

“In general, each of the applicants’ alternatives creates fewer lots, and in some instances, smaller lots, than are allowed in the R10 zone, which should help to avoid disturbances to the balance of the site. Overall, the applicants indicate that the primary intent in their preferred alternative is to cluster development on smaller lots away from the streams and steep slopes on the site and to protect a majority of the site in an environmental resource tract. So, *the applicants’ approach is basically consistent with the environmental regulations, since development can be consolidated into a smaller portion of the resource area, which can help to limit the overall area of disturbance and which can also help to reduce the cost of roads and water and sewer lines.*

“Yet, the area of disturbance for Alternatives 2, 3 and 4 is very similar, and *details are absent or incomplete to explain how the applicants’ preferred alternative (Alternative 4) is significantly different from other practicable alternatives or how it creates the fewest detrimental impacts as compared to the other alternatives.*

“For instance, in Alternatives 1, 3 and 4, all or up to nearly 60 percent of the proposed lots are configured to be smaller than the minimum lot area required in the R10 zone (see additional discussion regarding the lot size in the Modification findings, below). The narrative indicates the smaller lots could support the scale of development anticipated in the R10 zone, but with less impact to the resources on the site.

“However, in Alternative 4, almost 40 percent of the proposed lots exceed the minimum lot area of the R10 zone, which appears to potentially create *avoidable* disturbances to the resource area* * *”

Exhibit H-1, page 10-11 (emphasis added).

Applicant responded to comments in two instances. First, in correspondence to BDS Staff dated October 25, 2017. *See* Exhibit H-107n. In that correspondence, Applicant provided an addendum to the alternatives analysis highlighting the point that a total of eleven alternatives were analyzed. Applicant summarized this analysis stating the following:

“As noted elsewhere in the application, there were many different alternatives explored for the site during the last 4 years that considered a variety of development access points, alternative housing types, varying lot sizes, lots on an alleyway and common green, town-houses, smaller houses, medium sized houses, etc. These Number 5 to 11 alternatives below were also carefully considered, but ultimately considered not practicable for a variety of reasons. In total including iterations, well over a dozen total alternatives were considered for the site. Alternative 4A is a new variant of Alternative 4 and is summarized later in this narrative. Alternative 4A was created October 14, 2017 and is considered the new preferred alternative.”

Exhibit H-107n(Supplemental Alternatives Narrative, page 1) (Emphasis added).

However, very little information is provided regarding options 5-11 aside from the number of lots. There is information, nevertheless, detailing some likely impacts of these additional alternatives. For example, alternative 5 would have required a large bridge over Stephens Creek at the north end of the site. Exhibit H-107n, page 1. Alternative 6 would have a required “connect to Ruby Terrace and the new street would be difficult to meet current road width standards and avoid the current environmental P zone at Ruby Creek.” *Id.* at 2. For alternative 7, “BES requested expanded open space on the East boarder near to the neighboring open space tract owned by the mausoleum.” *Id.* Finally, alternatives 9 and 10 involved ground disturbances greater than preferred Alternative 4. *Id.*

Applicant provided information it deemed supplemental to its alternatives analysis for alternatives 1 through 4. They write:

“To supplement, the alternative information in the application, here are some key details on Alternatives 1-4:

“Alternative 1 was rejected as it *resulted in significantly more site disturbance* than the preferred Alternative 4 (59% vs 32% for Alternative 4). Also it had the *potential to adverse impacts to the key site specific resources note above in Ruby Creek and North*. Alternative 1 *would result in cutting an estimated 513 additional trees*. Alternative 4 has less environmental impacts than Alternative 1.

“Alternative 2 generally followed the regular base zone development for R10 with an average lot size of 6,796 SF, but keeping all lot development South of Ruby Creek. It protected the Key Environmental resources in Ruby Creek and North in a 8.91 acre open space tract. However, *by contrast, the preferred Alternative 4 protected more of the surrounding area to Ruby Creek on the North (lots 9-11) and (lots 21-23) and also protected lands to the East lots 15-18 that backed up the open space tract on the east.* Alternative 4 provided additional protections by reducing the minimum lot size to 5,000 SF on the sides of the development toward the environmental resource tract. Also, *Alternative 2 had more ground disturbance (33% vs 32% for Alternative 4) and would result in 130 additional trees to be cut than preferred Alternative 4.* For these reasons Alternative 2 was rejected as Alternative 4 had less environmental impacts.

“Alternative 3 explored a smaller lot concept with alley access for garages and home entrances on a green common. This option (including Smaller lot size, alley ways, common green, etc) was rigorously opposed by the neighborhood association. This alternative which maximized density using average lots of 3,480 SF, *resulted in a greater amount of ground disturbance on the North and East side than preferred Alternative 4. Total disturbance for Alternative 3 was 33% vs 32% for Alternative 4.* Alternative 3 involved a *greater amount of grading than Alternative 4.* Also, Alternative 3 had more ground disturbance and *would result in 150 additional trees to be cut than Alternative 4.* For these reasons alternative 3 was rejected as Alternative 4 had less environmental impacts.”

Exhibit H-107n (Supplemental Alternatives Narrative, page 5).

Second, Applicant provided an October 30, 2017 letter to the Hearings Officer. See Exhibit H-51. In it, among other things, Applicant proposed replacing Lots 1 and 2 with Tract C, a scenic resource tract. They write:

“The Applicant included four alternative development plans with the application. *It disagrees with staff that the alternatives were substantially similar.* They included different housing types and different layouts. Staff noted that at least two alternatives resulted in the same 33% disturbance area. The Applicant feels that staff over emphasizes that one point and overlooks the fact that due to the environmental constraints, all development on the site will have to be confined to a single area where the land is mostly flat and there are less significant resources. Thus, any project that has market feasibility will produce a similar percentage in disturbance area.

“In addition, the Applicant believes that it is important to consider that over the four years it has been working on development that would be acceptable to staff,

it developed 12 alternatives. The applicant and its representatives had substantial communications with staff about all of its alternatives before and during the application process. *A large number of alternatives were rejected based upon staff's comments.* So the record is completed, the Applicant has submitted a comprehensive alternative analysis that includes all of the alternatives considered.

"Preferred Alternative 4A

"The Applicant has included in its alternative analysis its current preferred alternative, Alternative 4A. Alternative 4A was developed in response to the latest staff comments in its report for the hearing. In developing and refining Alternative 4A, the Applicant also addressed Staffs concerns related to environmental review.

"Overall Disturbance

"Alternative 4A removes Lots 1 and 2, and in their place adds a scenic resource tract. It reduces the size of Lot 23, resulting in the preservation of additional resource area and at least one significant tree. *Alternative 4A responds to staff concerns that 40% of the lots remained over the minimum size, reducing the the number of such lots to 28.5%. It reduces the disturbance area to 29.5%, and increases open space tracts to 70.5%. It increases the resource area to 10.01 acres out of the 14.17 acre site."*

Exhibit H-51 (emphasis added).

Lots 1 and 2

BDS Staff raised a number of concerns related to Lots 1 and 2, including concerns about the through lot intended for Lot 2. They write:

"Lots 1 and 2: The size of these lots exceeds the minimum lot area for the R10 zone. There is a grove of large Douglas fir and cedar trees that extend over Lots 1 and 2 (Exhibit C.15, Tree Removal and Protection Plan), which provide scenic and resource values along SW Taylors Ferry Road and add to the scenic character of the residential area. As described in the Facts section above, these resources contribute to the visual quality of Scenic Drive, SD 38-27, as well as the character of the residential area. Additionally, these large trees intercept precipitation that falls on the canopy, filter stormwater, help prevent erosion, and provide shade which cools the air and

stormwater runoff. It is difficult to mitigate for the removal of mature trees as it can take decades for new trees to provide equivalent benefits.

“The narrative (Page 55, Revised Narrative, Exhibit A.3.a) notes and the project plans (Exhibits C.7 and C.15) show all the trees on Lots 1 and 2 will be removed to accommodate grading for the proposed street improvements or development on the lots. The narrative does not appear to recognize the need to address the scenic resources provided on these lots, as outlined in 33.480.060, Relationship to Environmental Zones: *When an environmental zone has been applied at the location of a designated scenic resource, the environmental review must include consideration of the scenic qualities of the resource as identified in the ESEE Analysis for Scenic Resources. The development standards of this Chapter must be considered as part of that review.*

“Yet, the narrative indicates that per the Scenic Overlay Standard (33.480.040.B.2.e), a 20-foot deep planting area will be provided along the SW Taylors frontages of Lots 1 and 2, with plantings to meet the L1 Landscape Standard (33.248) or better, though *no specific planting details are provided to explain if those plantings will also afford any mitigation for the trees (and related functions) proposed for removal.*

“Additionally, Lot 2 is proposed to be a through (and corner) lot with frontages on SW Hume and SW Taylors Ferry. Since SW Taylors Ferry Road is a District Collector, a through lot is not allowed (per 33.610.300), unless an exception (Adjustment or Modification) were approved for that configuration. No request for that exception has been provided in the application, so it is not possible to conclude that the configuration of Lot 2 will be allowable or result in the fewest detrimental impacts.

“For these reasons, it has not been demonstrated that Lots 1 and 2 effectively limit disturbances or mitigate for impacts to the scenic or habitat values afforded by the grove of large trees.”

Exhibit H-1, page 10-11.

Applicant responded to comments in the Decision Report with their October 30, 2017 letter to the Hearings Officer. In it, among other things, Applicant proposed replacing Lots 1 and 2 with Tract C, a scenic resource tract. They write:

“Lots 1 and 2

“As noted, removing Lots 1 and 2, and replacing them with a scenic resource tract significantly impacts the overall disturbance area and the amount of land preserved. It eliminates staff's concern the Lot 2 was a through lot. It responds as well as possible to staff's comments regarding the scenic resources on _Lots 1 and 2. The area will be a

scenic resource tract that the Applicant will enhance through mitigation planting that is heavily weighted with native trees.

“There is no way possible to preserve all of the existing native trees in the new scenic resource tract. Most of the trees on Lot 1 and many trees on Lot 2 cannot be preserved because of the grading required to install the street into the development. The current access point at SW Taylors Ferry was the location consistently preferred by staff. The Applicant had previously proposed using the Front Street right of way, but due to significant grading required and other reasons, staff did not support that location. See Alternatives 3, 8 and 11. The Applicant had one alternative where all access came into the development from Ruby Terrace. See Alternative 6. Staff did not support that configuration because it did not have two access points for safety vehicles and did not promote connectivity. The current street alignment is the alignment that received the most support.”

Exhibit H-51, page 2-3 (emphasis added).

Based in part on BDS Staff’s review of documents submitted with Exhibit 51, it was determined that any issues related to the through-lot on Lot 2 were resolved. See Exhibit H-94. However, BDS Staff continued to have concerns with the details of “Tract C.” They write in their November 6th Memo to the Hearings Officer submitted during the initial open record period:

“Tract C: The applicant has removed Lots 1 and 2 from the proposal and proposes a tract (Tract C) instead. The applicant indicates this tract is intended to be a scenic resource tract in revised Alternative 4A. The updated grading plan appears to show nearly all the trees will be removed from Tract C (formerly labeled as Lots 1 and 2) and the extent of the grading will be similar to that shown in the initial Alternative 4. The new grading plan also shows new retaining walls along the SW Taylors Ferry frontage, but offers few details about those walls or any explanation about whether protection of the scenic and environmental resources were factored into their placement, design or construction. In other words, the narrative does not address how the proposal has avoided or minimized impacts to the scenic and environmental resource located within the proposed tract. The narrative instead indicates the scenic and environmental values afforded by the stand of large diameter Douglas fir and cedar trees will be replaced with new plantings although a planting plan has not been provided. Without more information about the measures the applicant has implemented to avoid and limit impacts to the scenic and environmental impacts, it is not possible to conclude that the proposed mitigation is sufficient.”

Exhibit H-94, page 2 (emphasis added).

Applicant endeavored to further respond. They write in their November 8th Memo:

“As described in the previous 10-26-17 Memo, creation of Tract C (Scenic Tract) reduces total permanent disturbance area and impervious surface from the development as well as increasing proposed Mitigation area by approximately 0.27 acres. The planting table and associated Representative Planting Plan for Tract C were provided in that Memo.

“As explained previously, due to the existing slope and the requirements for the road, significant grading will still be required in this area however, creation of the Tract will allow for the preservation of a grove of 19 trees within the Tract and the existing Front St. ROW. The majority of these trees is native maples and will preserve existing scenic and environmental functions in this Scenic area to the extent possible. The entire 11,787sf temporarily disturbed area will be replanted with a mix of native trees (predominantly Douglas fir), shrubs and groundcover plants. Because the proposed Tract will already be significant disturbed from grading it is proposed that some of the trees be larger in size than required ½" minimum (up to 2" caliper and/or 8-10' in height). This will expedite the restoration of native scenic resource but require special attention in planting and maintenance to ensure survival of the larger trees. Preserved and restored functions will include precipitation interception, stormwater, nutrient and sediment absorption, as well as habitat and scenic values. As much as possible existing native trees have been retained in the resource area and will retain their current environmental and scenic functions and values in this area. Non-native and invasive understory shall be removed and replaced with native shrub and groundcover species as shown in the Table below and Representative Planting Detail.”

Exhibit H-105h, page 2 (emphasis added).

Lots 3-8

BDS Staff raised an issue regarding the minimum lot area for lots 3-8 and the impact to the resource area. They write:

“Lots 3-8: Each of these lots exceed the minimum lot area required in the R10 zone and include area outside of the environmental resource area. Portions of Lots 3 and 4 are entirely outside of the e-zone and portions of Lots 3-8 include environmental transition area. The environmental regulations call for development to be directed to such portions of the property to avoid impacts to the resource area.

“At the same time, the applicants’ project plans (Exhibits C.7 and C.18) show no tree removal or grading within the environmental transition area on these lots, and the

narrative indicates the environmental transition area will provide a buffer between the existing residences and the proposed development.

“However, the applicants provide no details to explain if there are significant environmental resources that should be retained on these lots, which are outside of the environmental resource area, or how the proposal will provide protection of any such resources. If valuable resources exist in the environmental transition area, then the applicants should identify those features and demonstrate the need and methodology to protect those features, such as establishing a special purpose tract.

“Based on the materials provided, the applicants have not demonstrated that Lots 3-8 have been configured in a manner that will avoid or have the least amount of detrimental impact on identified resources and functional values as compared to the smaller lot sizes shown for 14 of the other lots in their preferred alternative (Alternative 4) or the smaller lot sizes shown in Alternatives 1 and 3.”

Exhibit H-1, page 12 (emphasis added).

Applicant responded to BDS Staff’s comments in correspondence to BDS Staff dated October 25, 2017, highlighting that lots 3-8 contain fewer resource values. See Exhibit H-107n. In that correspondence, Applicant explained:

“Proposed Lots 3-8 utilize areas outside the environmental C zone, utilize the environmental transition areas which lessen the impact to the environmental C-Zone to an average of less than 6,000 SF per lot. There is no specific requirement that each lot be near the minimum size for the zone as the City has implied.

** * * * **

“The Southwest Hills Resource Protection Plan site 117 was referenced in the staff recommendation memo. In that Resource plan, it explains that the site boundaries are not defined by geology rather by logical boundaries like zip codes. However the City seems to draw an improper conclusion that site 117 is homogeneous, when in fact it is not. The City has ignored the site specific information about the location of key environmental assets all being located on the property from Ruby Creek North (per Schott Mitigation and Monitoring plan). The area South of Ruby Creek, accordingly, is the portion of the property with less significant environmental resources... this is the portion of the property for environmentally sensitive urban development where the resources are less. This is the portion of the site that should be dedicated to the housing development as this is the area with less significant environmental resources.

Exhibit H-107n (Supplemental Alternatives Narrative, page 7-8)(emphasis added).

Lot 23

BDS Staff raised an issue regarding the minimum lot area for lot 23. They write:

“Lot 23: This lot has a width of 40 feet, which does not meet the R10 minimum lot width standard of 50 feet. The application did not include any information to demonstrate how the lot complies with the requirements of 33.610.200.D.2, which allow for the lot width to be reduced, if specific provisions are satisfied. Nor did the application include a request for a Planned Development Review, which is required if those specific provisions cannot be met. As such, the applicant has not demonstrated that Lot 23 is configured in a manner that is allowable or will have the fewest detrimental impacts on the environmental resources as practicable.”

Exhibit H-1, page 12.

Applicant responded to comments in the Decision Report with their October 30, 2017 letter to the Hearings Officer. In it, among other things, Applicant proposed reducing the size of Lot 23 in order to reduce the overall disturbance area and preserve a tree. They write:

*“Alternative 4A reduces the size of Lot 23 to 5,734, which is less than the minimum lot size in an R10 zone. *The reduction reduces the overall disturbance area and preserves at least one significant tree.* The Applicant assumes staff will support the reduction below the minimum lot size since it supported similar reductions for Lots 9 through 22.”*

Exhibit H-51, page 4 (emphasis added).

BDS Staff did indeed support the proposed narrower lot 23. They write in their November 6th Memo to the Hearings Officer:

*“Proposed Lot 23 is narrower than the minimum width of the R10 zone and the applicant had not addressed appropriate regulations (PCC 33.610.200.D.2) to allow a reduction in width. The applicant has now addressed these regulations and *Staff finds the request for a reduction in width for Lot 23 acceptable.*”*

Exhibit H-94, page 1(emphasis added).

Based on this information, and as further detailed under the Environmental Modification section, the Hearings Officer find that the reduced lot width for Lot 23 is acceptable as substantial evidence shows

that it will reduce the detrimental impacts on environmental resources.

Rights-of-way and Public Work Concept

BDS Staff determined that Applicant failed to provide sufficient detail to demonstrate that the rights-of-ways of preferred Alternative 4 had the fewest detrimental impacts to allow BES approval of preliminary stormwater and sanitary facilities and their impact on the right-of-way. They write:

“Rights-of-way: The proposal includes a new public dead-end street (Street A) and a new public pedestrian connection to serve the proposed lots, as well as the extension of and the widening of existing rights-of-way (SW Hume Street and SW Taylor’s Ferry Road) abutting the site. At this time, the Public Works Review of the right-of-way improvements has not been accepted; Urban Forestry has noted that a significant 54-inch diameter Douglas fir within an undeveloped portion of the SW Hume right-of-way (near Lot 2) must be protected; the Fire Bureau has noted that a Fire Code Appeal must be submitted and approved for the proposed fire access between Lots 8 and 9; BES has noted the Public Works Review has not been completed to verify the stormwater and sanitary services can be provided as proposed; and insufficient details have been provided about the retaining walls noted in and adjacent to the rights-of-way. It is unknown how the applicants will address these requirements, and their responses may necessitate a reconfiguration of the street and lot layout. As such, there is not sufficient resolution of the right-of-way design to verify that the proposed limits of disturbance are appropriate.”

Exhibit H-1, page 12(emphasis added).

As discussed in greater detail under land division, Chapter 33.654 ultimately requires PBOT approval of the right-of-way. See PZC 33.654.120.C.2. Chapters 33.652 and 33.653 require BES approval for sewer and stormwater facilities. See PZC 33.652.020 and 33.653.030. Tree removal requires preliminary approval of the City Forester in consultation with the City Engineer. See PZC 33.654.120.H. The Hearings Officer agrees with BDS Staff’s assessment.

Applicant has submitted the Fire Code Appeal, which was approved with conditions. See Exhibit H-55 and Exhibit H-105m. The other approvals, however, raise a serious question as to the disturbance area. All these approvals are within the province of the respective bureau based on their respective approval criteria. None of them have been denied. Thus, if other aspects of the criteria can be met, the Hearings Officer finds that the disturbance area involved in the Environmental Review criteria can be met with conditions.

Tract B

BDS Staff determined that Applicant failed to provide sufficient detail to demonstrate that Tract B of preferred Alternative 4 had the fewest detrimental impacts. They write:

“Tract B: The applicants propose Tract B will be a landscape buffer tract to be owned by the current property owners. The project plans show all the trees within the tract area are to be removed and the entire tract area is to be graded and a retaining wall installed on the east side of the tract. Like Lots 1 and 2, there are a number of large Douglas fir, cedar and maple trees within Tract B, which provide visual and habitat values for the site and scenic corridor along SW Taylors Ferry Road. No specific mitigation measures are identified for Tract B (per Exhibit C.13) and the Planting Plans (Exhibits C.9 and C.11) show the tract is to be replanted with mixture of native and non-native species, not entirely native species as required by the Environmental Standards. Nor are any details of the proposed retaining wall provided to demonstrate that the construction limits (which are shown to extend off site onto a neighboring lot) are sufficient for the proposed alterations.

“Staff finds no information in the narrative to explain how Tract B preserves or replaces the scenic or habitat resources currently afforded within the tract area.”

Exhibit H-1, page 12 (emphasis added).

In their November 6th Memo, BDS Staff also raised concerns that no corresponding site plan had been provided in conjunction with the new preferred Alternative 4A. See Exhibit H-94, page 2. Applicant responded to comments in the Decision Report with a Memo Staff Report and Recommendations dated November 3, 2017, detailing, among other things, the impacts and mitigation for Tract B for preferred Alternative 4A.¹ They write:

“Due to the steep slope significant cut and grading is required to locate the road adjacent to Tract B and it is not feasible to retain most of the existing trees and vegetation. However, 4 trees further away from the roadway will be protected. These trees consist of all native species; one cedar in 'good' condition and 3 maples in 'fair' condition. The remainder of the tract will be restored with a mix of native trees, shrubs and groundcover species. A revised planting plan including only native species has been provided for Tract B. This planting plan reflects General Development Standards requirements as per 33.430.140.H and I with proposed plant densities based on the required 3 shrubs and 8 groundcover per 10sf. At a 15' OC density this allows for a total of 20 trees within Tract B. The four existing trees shall be removed from this number for a total of 16 trees to be planted. Preservation of 4 trees in fair to good condition as well

¹ Schotts & Associates note that the memo “replaces any previously provided information responding to City Staff Report and Recommendations.” Exhibit H-100b, page 1.

as restoration with native trees, shrubs and groundcover will preserve and replace to the extent possible existing scenic and habitat resources located within the tract. Part of the tract is within the transition zone and not the resource area and will be restored to the same high quality condition. Species chosen include a variety of native wildflowers to provide an aesthetic landscape at the entrance to the development."

Exhibit H-100b, page 5 (emphasis added).

In addition, on October 26, 2017, Applicant provided BDS Staff a revised tree protection plan. See Exhibit H-107o(4). Schotts & Associates notes the apparent oversight in their November 3rd Memo. They write:

*"This comment does not appear to take into account the revised planting plan reflecting the concerns with proposed planting of Douglas firs and other species. The revisions were provided in a Memo from Schott and Associates dated 10-26-17 and in all subsequent memos. In response to Staff suggestion the number of Douglas firs was reduced from the Tract A Mitigation Planting Plan and the majority of the Douglas firs are proposed in areas which will have greater sun exposure such as the proposed buffer adjacent to development, Tract B and Tract C. Douglas firs were replaced with species such as grand fir, western red cedar and yew which are more shade tolerant. An additional species which could be included in this palette is western hemlock (*Tsuga heterophylla*). The applicant has made every attempt to provide adequate tree replacement to meet City approval with respect to existing high canopy conditions on the site and is open to a condition of approval with regards to required tree diversity if the City deems it appropriate."*

See Exhibit H-100b, pages 1-2 (emphasis added).

Storm and Sanitary Sewer

BDS Staff determined that Applicant failed to provide sufficient detail to demonstrate that the storm and sanitary sewer connections of preferred Alternative 4 had the fewest detrimental impacts and again questioned whether the disturbance area had been adequately identified. They write:

"Storm and sanitary sewer connections: To address stormwater management for the proposed lots and rights-of-way, a new outfall is proposed where Ruby Creek enters the site and another new outfall is proposed near the downstream end of Ruby Creek, within a proposed 30-foot wide Storm and Sanitary Easement (within Tract A).

“BES is generally supportive of a new outfall where Ruby Creek enters the site, and expects it will help to temper erosion of the stream channel as anticipated by the applicants. However, few details are provided to explain how the configuration and construction of either proposed outfall will be limited to minimize impacts to Ruby Creek. Site Development notes that the area of disturbance for the rockery retaining wall associated with the outfall does not appear adequate for construction, and the wall design must demonstrate adequate safety for stability. Site Development also notes that the outfall appears to be located within the floodway and a no-rise analysis must be reviewed to confirm that no changes to the design are required. Additionally, the Public Works Review of the outfall designs is still pending. For these reasons, it is unclear if the disturbance areas designated for the outfall work are appropriate.

“With regard to sanitary sewers, there are presently sewer lines located within the Ruby Creek and Stephens Creek drainageways which are within the p-zone. The proposal includes re-routing a section of the sewer currently located within Ruby Creek with a new sanitary line located outside of the Ruby Creek drainageway and within the proposed public pedestrian corridor. At the east end of the pedestrian corridor the sewer line is then to be routed to a new connection within the proposed new road (Street A) and then downslope to a connection nearer to Stephen Creek. The Storm and Sanitary Sewer Easement, noted above, is proposed for the portion of the sewer facilities that will be within Tract A (Exhibit C.6, Preliminary Plat). Additionally, in response to comments from BDS and BES staff, the applicants presented 2 alternatives for the alignment of the proposed storm and sanitary sewer connections (Exhibit C.26). That plan show the applicants’ preferred alternative (Option 1) would warrant the removal of 4 trees, whereas the other alternative (Option 2) would necessitate the removal of 12 trees.

“City staff recognize the value of rerouting the sanitary line to avoid potential impacts to Ruby Creek, and preserving as many healthy trees as possible is a valid objective. *However, additional information is needed to fully evaluate the differences in the alternative alignments, such as the size, species, or condition of the trees to be removed; the differences in the disturbance area and construction methods for the options. Without those details, the applicant has not demonstrated that the proposed sanitary sewer alternative (Option 1) will have fewer detrimental impacts than Option 2.*

“As described above, *the applicants have not provided sufficient details to demonstrate that the proposed lot and street and utility layout will have the least significant detrimental impact to identified resources and functional values as other practicable and significantly different alternatives.*

“The applicants have the burden to demonstrate that their proposal will have the least amount of detrimental impact on the identified resources and functional values as is practicable. Based on the foregoing, the applicants have not met that burden.”

Exhibit H-1, page 12(emphasis added).

A construction management site plan is required piece of supplemental information in an Environmental Review. A construction management site plan must “identify measures that will be taken during construction or remediation to protect the remaining resources and functional values at and near the construction site and a description of how undisturbed areas will be protected.” PZC 33.430.240.B.2. As an example, the plan should “describe how trees will be protected, erosion controlled, construction equipment controlled, and the timing of construction.” *Id.*

Under 33.430.240.A.3, a construction management site plan must show the following:

- “a. Areas that will be temporarily or permanently disturbed, including equipment maneuvering areas, and perimeter controls;
- “b. Areas where existing topography and vegetation will be left undisturbed;
- “c. Location of site access and egress;
- “d. Equipment and material staging and stockpile areas;
- “e. Erosion control measures; and
- “f. Measures to protect trees and vegetation. Tree protection must meet the requirements of Chapter 11.60, Technical Specifications.”

Applicant previously provided a Construction Management Plan (Exhibit C.14) and proposed several construction management techniques to demonstrate how impacts to identified resources and functional values designated to be left undisturbed will be minimized. Based on a review of Exhibits C.15-C.18, BDS Staff determined those proposed techniques initially included:

- Work area isolation, erosion controls and stormwater management to minimize erosion and protect slope and water quality.
- Consideration of bird breeding seasons when scheduling tree removal to avoid impacts to occupied nests.

BDS Staff raised a number of concerns, including that “no specific root protection zones have been designated for trees at the edge of the grading disturbance, or for trees on adjacent properties near the property line and sediment fencing is not an acceptable tree protection method.” Exhibit H-1, page 14.

They also noted “few details are provided about the construction schedule or equipment or methods to explain when or how work will be conducted within Ruby Creek to avoid impacts to the water resources and surrounding vegetation,” and ultimately determined that, “without specific details and

approved methods of protection, the applicant has not met the burden to show trees, waterways and other resources outside of the improvement area(s) will be effectively protected.” Exhibit H-1, page 14. More specifically, BDS Staff have noted that Applicant failed to provide plans showing a 60-foot wide construction area or a full explanation of the need for a corridor of that size “or what impact additional trees and other resources may be impacted by that additional disturbance area.” See Exhibit H-94, page 3.

On October 26, 2017, Applicant provided an updated Construction Management Plan (Exhibit H-107o(3)) and Tree Preservation Plan (Exhibit H-107o(4)-(6)), a letter from a civil construction company, MEI Group (Exhibits H-107j), and an unsigned memo from Applicant dated October 12, 2017 (Exhibit H-107k). In these documents, they explain, among other things, that “an additional 15’ on each side of the easement for temporary work area to safely and productively perform all the pipe installation” because some areas require larger pieces of equipment. Exhibit H-107j, page 2. They also explain the required tree removal: “Trees will need to be removed from all sewer easements and ROW dedications prior to pipe installation and only ground cover should be planted to ensure future access.” *Id.*

Applicant’s environmental consultant, Schott & Associates, followed up on this information with a November memo explaining the impact of the work on the resources and functional values. Schotts writes:

“Based on recent information provided by the contractor, additional temporary disturbance area will be required for installation of the proposed stormwater/sewer line referenced above as well as for the restoration of the existing Ruby Creek stormwater outfall.

“A total of 15, 014sf of temporary impact is shown as the disturbance area. The proposed 8,677sf (30’ corridor) shall be restored as outlined below to ensure no trees planted over the utility lines. These temporary impacts will be replanted as required by 33.430.150.D with only shrubs and groundcover as shown in Table 5 below. The remaining temporary disturbance area within the larger construction work area is included in the proposed mitigation planting area and will be planted with trees, shrubs and groundcover as shown in Table 6 and 7.

Table 5. Temporary Impact Area - Sewer Easement Restoration
 (8,677sf of 15, 014sf)

Scientific Name	Common Name	Type	# to be planted
<i>Oemleria cerasiformis</i>	Indian plum	Shrub	200
<i>Holodiscus discolor</i>	Oceanspray	Shrub	200
<i>Symphoricarpos albus</i>	Snowberry	Shrub	800

Scientific Name	Common Name	Type	# to be planted
<i>Berberis nervosa</i>	Oregon grape	Shrub	800
<i>Acer circinatum</i>	Vine maple	Shrub	53
<i>Physocarpus capitatus</i>	Pacific ninebark	Shrub	150
<i>Rosa pisocarpa</i>	Small fruited rose	Shrub	150
<i>Rubus spectabilis</i>	Salmonberry	Shrub	250
<i>Polystichum munitum</i>	Sword fem	Groundcover	3,500
<i>Tolmeia menziesii</i>	PiQ:Q:V back plant	Groundcover	1,200
<i>Achlys tryphylla</i>	Vanilla leaf	Groundcover	1,142
<i>Smilacina racemosa</i>	False solomon's seal	Groundcover	1,100
Total Shrubs			2,603
Total Groundcover			6,942

“A total of 4,342sf of temporary impact is shown as the temporary disturbance area for the upgrade to Ruby Creek outfall. The original 861sf along the utility line shall be restored with native shrubs and groundcover as required by 33.430.150.D to ensure no trees planted over the utility lines (Table 6). The remaining temporary disturbance area within the larger construction work area is included in the proposed mitigation planting area and will be planted with trees, shrubs and groundcover as shown in Table 6 and 7.

Table 6. Temporary Impact Area-Ruby Creek Outfall Restoration (861sf of 4,342sf)

Scientific Name	Common Name	Type	# to be planted
<i>Oemleria cerasiformis</i>	Indian plum	Shrub	20
<i>Holodiscus discolor</i>	Oceanspray	Shrub	20
<i>Symphoricarpos a/bus</i>	Snowberry	Shrub	68
<i>Berberis nervosa</i>	Oregon grape	Shrub	50
<i>Physocarpus capitatus</i>	Pacific ninebark	Shrub	15
<i>Rosa pisocarpa</i>	Smallfruited rose	Shrub	15
<i>Rubus spectabilis</i>	Salmonberry	Shrub	20
<i>Polystichum munitum</i>	Sword fem	Groundcover	200
<i>Tolmeia menziesii</i>	Piggy back plant	Groundcover	169
<i>Achlys trvvhylla</i>	Vanilla leaf	Groundcover	160
<i>Smilacina racemosa</i>	False solomon's seal	Groundcover	160
Total Shrubs			258
Total Groundcover			689

Exhibit H-100b, page 9 and 10.

Unavoidable Impacts and Mitigation Measures

The purpose of a mitigation or remediation plan is to compensate for unavoidable significant detrimental impacts that result from the chosen development alternative or violation as identified in the impact evaluation. PZC 33.430.240.B.3. They must include:

- “a. Resources and functional values to be restored, created, or enhanced on the mitigation or remediation site;
- “b. Documentation of coordination with appropriate local, regional, special district, state, and federal regulatory agencies;
- “c. Construction timetables;
- “d. Operations and maintenance practices;
- “e. Monitoring and evaluation procedures;
- “f. Remedial actions for unsuccessful mitigation; and
- “g. Information showing compliance with Section 33.248.090, Mitigation and Restoration Plantings.”

Applicant initially indicated a number of impacts resulting from preferred Alternative 4 associated with permanent development of streets, lots, stormwater facilities, and utilities on an approximately 4.6-acre area of the site. BDS Staff acknowledged that Applicant indicated significant unavoidable impacts to the environmental resources on the site, namely:

“Permanent Disturbance: removal of upland forest, grading, and the construction of impervious development over 4.6 acres in c-zone

“Temporary Disturbance: tree removal, grading and construction impacts to 8,035 square feet of the resource area, including 5,487 square feet in c-zone and 2,548 square feet in p-zone

“Tree Removal: removal of 527 trees, including 497 native or non-nuisance trees and 30 nuisance trees.”

Exhibit H-1, page 14 (referencing Exhibit A.1, page 10).

Again, these are impacts connected with preferred Alternative 4. BDS Staff summarized the nature of Applicant’s proposed mitigation. They write:

“To mitigate for these permanent impacts, the applicant proposes

- Removal of invasive plant species and installation of native trees, shrubs and groundcover within the stream channels to enhance the upland forest and riparian habitat.

- Re-route a portion of a public sewer line within the Ruby Creek drainageway to eliminate a potential failure of sewage into the creek. The applicants note this will provide a significant public improvement to the site.”

Exhibit H-1, page 14.

On November 13, 2017, Applicant submitted an updated Memo from its environmental consultant, Schotts & Associates, dated November 3, 2017, which states: “This Memo should replace any previously provided information responding to City Staff Report and Recommendations.” See Exhibit 105h, page 1. For this reason, the Hearings Officer will disregard Exhibits H-107m. Applicant subsequently provided an additional memo from the consultant dated November 8, 2017. Exhibit 105h.

In its recommendation for denial, BDS raised a number of issues, but ultimately concluded:

“In any event, since the extent and configuration of the proposed lots, rights-of-way and utilities is unresolved, it is not possible to conclude that the scale and scope of the proposed mitigation is sufficient.”

Exhibit H-1, page 15.

Applicant attempted to address the issues raised in the Decision Report by submitting additional evidence just prior to the October 30th continued hearing, which included:

- 12 site layout alternatives that were evaluated during the time the subject project was being discussed with the City;
- A narrative describing each alternative and explaining why alternatives other than 4A were not pursued);
- Excerpts from the monitoring and mitigation plan that highlighted the primary resources and responded to BDS and BES comments on mitigation proposed;
- Revised plan sheets 4, 6, 14, 15, 16 and 18 that reflect revisions required by eliminating Lots 1 and 2 and reducing the size of Lot 23;
- A memorandum from the environmental consultant Schott and Associates responding to issues in the staff report;
- Construction management plans for both outfalls in Ruby Creek;
- a letter from MEI, the contractor, explaining the scope and timing of that work (Exhibits H-107j);
- A memorandum addressing the lot dimension standards related to the width of Lot 23;
- A tree protection plan;
- Larger sized plan sheets of the previously submitted sheets; and

- A supplemental slope stability analysis from Geo Consultants Northwest, Inc..

Exhibit H-100, page 1.

Despite this additional evidence, with respect to the Environmental Review, BDS Staff determined that the approval criteria were not met, explaining:

“Based on the materials available, the extent of the disturbance area within the environmental zones for the proposed lots, streets, utilities, and tracts is still not clearly defined. This makes it problematic to evaluate how the proposal effectively limits impacts to resources to be retained and adequately mitigates for unavoidable impacts.

“During the October 30, 2017 continued hearing, the applicant's representative, Christopher P. Koback, indicated the details about the lot, street and utility layout, as well as the associated public work permit could be worked out at a later time, such as during the detailed engineering and permitting phases for the project.

“However, staff find that without specifying the boundaries of the disturbance area within the environmental conservation and environmental protection zones, the applicant has not demonstrated how the proposal will satisfy the Environmental Review approval criteria. Staff find those disturbance area boundaries hinge upon surer details about the lot layout, including the configuration of the rights-of-way and water, sewer and storm services.”

Exhibit H-94, page 4(emphasis added).

Some specific concerns highlighted in the Decision Report impacting a final determination of the disturbance area were identified:

“At this time, as summarized below, there remain a number of unresolved factors that have a bearing on the configuration of the disturbance limits:

- Site Development commented on the design and factors of safety for the rockery retaining walls proposed adjacent to Ruby Creek as follows: *‘It does not appear that an adequate area of disturbance has been provided for the construction of the retaining Walls’*. Further, *‘Site Development recommends the design team submit preliminary retaining wall design calculations and typical cross sections to verify the proposed limits of disturbance are adequate’*. * * *.
- Bureau of Environmental Service (BES) noted the conceptual configuration of the stormwater management facilities for the public rights-of-way and the outfall and sewer facilities adjacent to and within Ruby Creek, as well the disturbance area

needed for the construction of those features remains unresolved and the applicant has not provided responses to address these issues in either the land use or public works plans. City staff reviewing the public works concept have noted requirements that will necessitate changes to the location and design of the outfall and stormwater management facilities, which will in turn warrant changes to the disturbance area. The updated response also indicates: *'BES staff previously noted in land use response comments dated 3/ 20/ 17 and in land use addendum comments dated 10/ 4/ 17 that the intended construction method, including types of equipment and associated disturbance limits, were a critical element of the City's review of the proposed public improvements, and that they remained insufficiently addressed by the applicant.'* * * *

- Portland Transportation noted the Land Division approval criterion related to safety for all modes and transit availability (33.641.020) remains un met. Staff understands that should additional improvements be warranted to demonstrate how that criterion can be met, those too may affect the right-of-way configuration, which in turn may affect the limits of disturbance. * * *
- Fire Bureau records show the applicant has requested a Fire Code Appeal (16067) seeking approval for an alternative fire apparatus turnaround on proposed Street A. That appeal is still pending. Absent a conclusion on the design of the fire apparatus turnaround and the potential effect that may have on the street and lot layout, staff cannot conclude the applicant has demonstrated that the limits of disturbance are adequate.
- Urban Forestry identified that a 54-inch Douglas fir tree in the undeveloped portion of the SW Hume Street right-of-way street near proposed Lot 2 (now proposed Tract C) *'warrants efforts to preserve'*. The applicant's recent communications indicate their project arborist determined that tree cannot be retained. Nothing in the record demonstrates that the applicant or the project arborist consulted with the Urban Forestry staff regarding options for the right-of-way design or other measures that could be taken to retain that tree; or to address what mitigation would be necessary, if Urban Forestry approved removal of the tree.

"BDS staff find these additional factors are crucial in determining what the boundaries of the disturbance area are so they may be evaluated through the land use review process. * * *"

Exhibit H-94, page 4-5 (emphasis in original).

BES' key issue was their belief that Applicant would have insufficient time to respond to comments it provided after the initial evidentiary hearing that relate to the final disturbance area and the impact on the ability to the Public Works concept. BES writes:

“As previously noted, the applicant submitted revisions to the public works proposal but the information was not provided with sufficient time for the applicant to be able to respond to PWP redline corrections transmitted to the applicant’s engineer on 10/26/17 from BES Development Engineering (DE) staff, therefore there is not yet an approved Public Works concept.”

Exhibit H-94 (BES Land Use Response Addendum #3, page 2)(emphasis added).

In its initial final argument, Applicant responded to the question about the final disturbance area concern. They write:

“Land Use Planning raised an issue over whether the final disturbance area has been established. It has. Staff identifies two area where it feel that the disturbance area may change. The first is where the Applicant is reconstructing one, and constructing another, outfall at Ruby Creek. There are two components to this issue. Initially, the Applicant showed a 15-foot easement/disturbance area for the work to reconstruct the existing outfall at Ruby Terrace and a 30-foot wide easement/disturbance area for the new outfall it is constructing, in part to remove a section of the failing sanitary line in Ruby Creek. The Applicant’s construction consultant expressed that it required an additional 15 feet on either side of the initially shown easement as a temporary work area. That translates into a 60-foot wide disturbance area for the new outfall and a 45-foot wide area for the reconstructed outfall.

“The Applicant has prepared new drawings that illustrate the expanded disturbance areas for that work. To correspond with those drawings and to ensure that the final disturbance area is determined and mitigated, the Applicant’s consultants prepared a revised drawing that depicts the final disturbance area limit and tree protection plan. We have enclosed copies of those drawings. The Applicant’s environmental consultant Schott and Associates prepared a revised memorandum that includes the new disturbance area. The Applicant has fully addressed this issue staff raised.”

Exhibit H-105 (emphasis added).

Applicant responded to the issue of the need for approved concept drawings. They write:

“Staff commented that the final public works drawing must match alternative 4A. Land Use planning staff was vague in explaining exactly what it means by that comment, but when read with BES’ s revised comments, it appears that Land Use planning staff is referring to the latest redline comments BES provided to the Applicant’s public works conceptual drawings.

“It appears to the Applicant that Land Use Planning and BES waited until the final moments and tried to present another new issue to stop the proposal. On October 26, 2017, BES finally provided its comments to the Applicant's September 16, 2017 revised drawings. It is important to understand the timing of the relevant events before evaluating the Applicant's response on this issue. On March, 2017, the Applicant's engineer submitted the Applicant's conceptual plans. BES delayed the 30% meeting until June 2017. On July 7, 2017 BES provided its redline comments. We have included a copy of those comments. As the hearings officer will see, the comments were not significant. *There was nothing to indicate that the concept for the public works improvements that the Applicant proposed had problems.*

“In its October 6, 2017 staff report, Land Use Planning staff argued that without final concept approval, it could not determine the final disturbance area and thus, could not state whether the Applicant met the environmental review criteria. After the initial October 16, 2017 hearing that was continued, Public Works staff indicated that the second set of redline comments would be issued that week. They were not. In our written material prepared for the October 30, 2017 hearing, we explained that the Applicant's revised plans demonstrate that the public improvement could be constructed as designed and thus, the final disturbance area was established. We illustrated that a failure to review is not a basis to conclude that the standards cannot be met.

“It appears that just prior to the October 30, 2017 continued hearing, staff decided to take a completely different approach on stormwater and then tried to use that changed approach to create a situation where the Applicant could not determine the final disturbance area. BES staff now, for the first time, and months after its first comments, decided that it wants changes to the stormwater planter boxes within the proposed development. Some of those planters will be smaller. BES staff indicated that this change ‘may’ require that the Applicant construct an additional planter near the end of the proposed cul de sac. A new planter in that area could require more permanent disturbance, but it will be insignificant. It would add 1,385 square feet of disturbance area. The total disturbance area will still be under 30% for the full 14 acre site. We enclosed a set of BES new redline comments to compare them with its initial comments. The new comments certainly could have been made in July, 2017.

“Notwithstanding the timing of BES making its new comments, the Applicant has been able to address them within Alternative 4A. The project engineer prepared a revised drawing depicting the reduced planters within the right-of-way of the proposed cul de sac street. He was able to calculate the approximate additional stormwater capacity the project may need to accommodate that change and has included in his

drawings a proposed new planter north of Lot 11. We enclosed a copy of the Technical Memorandum from Emerio Design that contains the appropriate calculations and concludes that the revised plan satisfies the requirements of the 2016 Stormwater Manual.

"In addition, the Applicant's disturbance limit and tree protection drawings we alluded to previously were updated to reflect the possibility of the new planter. The Schott and Associates' Revised November 8, 2017 memorandum also addresses the revised BES comments. Thus, despite staff throwing another issue at the Applicant last minute, the Applicant has been able to demonstrate with substantial evidence that it will satisfy the relevant approval criteria.

"On the second issue, with the additional time allowed by keeping the record open, the Applicant was able to revise drawings to show the temporary disturbance area needed to construct both outfalls consistent with the City's requirements and the contractor's preferred construction methods. I have included those drawings with this letter. The Applicant also had its environmental consultant prepare a revised memorandum describing the resources that will be impacted and how the new temporary disturbance area will be mitigated. The Applicant has also included a revised tree protection plan that reflects the added temporary disturbance area for the outfall construction."

Exhibit H-105, page 4-5(emphasis added).

Based on this information, the Hearings Officer finds that the Applicant has considered significantly different alternatives as required by PZC 33.430.250.A.4.c and that there could likely be no practicable alternatives that would be less detrimental to the identified resources and functional values than the preferred alternative if certain conditions are met. In addition, the Hearings Officer finds that substantial evidence exists that resources outside the proposed disturbance area will be protected.

ENVIRONMENTAL MODIFICATIONS

Applicant initially sought modification to three standards as part of the Environmental Review: minimum lot area; minimum side building setback; and parking. Applicant has essentially withdrawn its request for modification of the paving requirements. See Exhibit H-51, page 7 ("The Applicant is not going to argue against staff's position on its request for a modification to the paving requirements on Lots 22 and 23."). Such modifications are approvable during Environmental Review. PZC 33.430.280 explains:

"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. Adjustments to use-related development standards (such as floor-area ratios, intensity of use, size of the use, number of units, or concentration of uses) are subject to the adjustment process of Chapter 33.805. *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.”

Each of the requests is considered below.

Lot Dimensions

The purpose of the lot dimensions is to *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 development 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 adequate access from the street;*
- *Each lot has access for utilities and services;*
- *Lots are not landlocked; and*
- *Lots are regularly shaped.*

PZC 33.610.200.A.

The following excerpt from Table 610-2 (33.110) identifies the minimum lot dimensions required for the R10 through R5 zones, and will be referenced throughout these findings.

Table 610-2 / Lot Dimension Standards			
	R10	R7	R5
<i>Minimum Lot Area</i>	<i>6,000 sq. ft.</i>	<i>4,200 sq. ft.</i>	<i>3,000 sq. ft.</i>
<i>Maximum Lot Area</i>	<i>17,000 sq. ft.</i>	<i>12,000 sq. ft.</i>	<i>8,500 sq. ft.</i>
<i>Minimum Lot Width</i>	<i>50 ft.[1]</i>	<i>40 ft.[1]</i>	<i>36 ft.[1]</i>
<i>Minimum Front Lot Line</i>	<i>30 ft.</i>	<i>30 ft.</i>	<i>30 ft.</i>
<i>Minimum Lot Depth</i>	<i>60 ft.</i>	<i>55 ft.</i>	<i>50 ft.</i>

Notes: [1] See 33.930.100.A for how lot width is measured.

Minimum Lot Area

The applicant has requested reductions to the minimum lot area in the R10 zone from 6,000 square feet to 5,000 square feet. The Preliminary Plat (Exhibit C.6) shows 14 of the proposed 23 lots will be between 5,000 and 5,822 square feet (Lots 9-22). The other 9 lots are shown to be between 6,076 and 7,924 square feet, which exceeds the minimum lot area for the R10 zone. This evaluation considers only the 14 lots shown to be less than 6,000 square feet.

BDS Staff explained the following in recommending approval:

"The narrative indicates the applicant proposes smaller lot sizes in order to afford more protection of the environmental resources and to compliment a denser lot pattern found in the nearby residential areas.

"Lots 9-22 are proposed to meet or exceed each of the other minimum lot dimensions (lot width, front lot line, and lot depth) for the R10 zone; and none are landlocked. Generally, the lots are regularly shaped, except where the fronts of the lots curve to follow the road alignment (Lots 11, 13, 14 and 20) or where the back of the lot is angled to maintain a minimum distance from the p-zone and Ruby Creek (Lot 11).

"The Preliminary Site Plan (Exhibit C.4) shows an approximately 40-foot x 40-foot area for a house on each lot, regardless of the size of the proposed lots (5,000 square feet or over 6,000 square feet). So, the smaller proposed lots are expected to provide sufficient room for a reasonably-sized house and garage and outdoor area. The proposed development is oriented toward the street where access, services, and utilities are proposed to be provided. The lots would not be further dividable to exceed maximum density currently allowed in the R10 zone.

"Based on these factors, the size of Lots 9-22 will remain consistent with the purpose of the lot dimension standards.

"The applicant also notes the smaller lots will be "more in keeping with the minimum dimensions on the number of nearby properties in the R5 zone" and will allow "a greater area to be placed in the permanent protection resource tract" (Page 50, Exhibit A.3.a).

"BDS staff concurs that the smaller lots can help to afford greater protection of the resources and functional values on the site by localizing disturbance and impacts into a smaller portion of the environmental resource area. Additionally, BDS staff finds the smaller lot size is not expected to detract from the livability or appearance of nearby

properties, since the proposed lots are comparable in size to those in the nearby R5 zones to the north and west and the lots will be suitable for the scale of development that is allowable in the R10 zone. Accordingly, the requested reduction in the lot areas for Lots 9-22 is approvable.”

Exhibit H-1.

After Applicant changed its proposal from preferred Alternative 4 to 4A, which continues to seek the lot area modification, BDS Staff had no revised comment. Neighbors continued to maintain their objections.

Accordingly, the Hearings Officer finds that the modification to the lot dimension, on balance, are consistent with the purpose of PZC 33.610.200 and will provide greater protection of the resources and functional values of the Site. In addition, because the proposed lots are comparable in size to those *nearby properties in the R5*], the Hearings Officer finds that the modification will not significantly detract from the livability of the appearance of the area.

Side Setbacks:

Under PZC 33.110.220.D.3, the single dwelling zones automatically allows for front building and garage entrance setbacks and side setbacks along a street lot line to be reduced to zero. It provides:

“The front building and garage entrance setback may be reduced to zero *where any portion of the site is in an environmental overlay zone*. Where a side lot line is also a street lot line the side building and garage entrance setback may be reduced to zero. All other provisions of this Title apply to the building and garage entrance.”

PZC 33.110.220.D.3 (emphasis added).

The environmental overlay zone, instead of requiring minimum setbacks, applies a maximum front building and street setback to require the placement of buildings close to the street. It provides:

“Maximum front or street setbacks are as follows:

- “1. The front building or street setback of the base zone is the maximum building setback for primary structures.
- “2. On a lot with more than one street lot line the maximum setback standard applies to the street lot line that is farthest from the resource area.
- “3. In zones with no minimum front or street setback, the maximum setback is 10 feet.”

PZC 33.430.140.O.

In this case, in addition to applying the noted base zone and overlay zone setback allowances, the applicant requests a reduction in the side building setbacks. Instead of providing the 10-foot wide setback required in the R10 zone, the applicant requests that 5-foot side setbacks be allowed to align with the minimum side setback standard for the R5 zones.

The purpose of the setback standards are to

- *maintain light, air, separation for fire protection, and access for fire fighting;*
- *reflect the general building scale and placement of houses in the city's neighborhoods;*
- *promote a reasonable physical relationship between residences;*
- *promote options for privacy for neighboring properties;*
- *require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;*
- *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*
- *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.*

See PZC 33.110.220.A.

BDS Staff found the modification of the side setbacks for lots 9-22 approvable, but not lot 1 through 8, or 23, in part because of the outstanding question of the limits of the disturbance area. They write:

“As discussed above, the applicants indicate that smaller lots are proposed to reflect the R5 lot size standard and to reduce impacts to environmental resources. The applicants assert that reducing the side building setbacks to align with the minimum side setback standard for the R5 zone is also necessary to fit the scale of development otherwise allowed in the R10 zone.

“The narrative describes that 5-foot setbacks are necessary to place a ‘normal-sized house’ and ‘normal back yard’ on the lot and to be in keeping with the livability and appearance of the area (Page 51, Exhibit A.3.a, revised narrative).

“However, 9 of the proposed lots exceed the minimum lot area required in the R10 zone; and, with the exception of Lot 23 (which is one of the largest proposed lots, though it does not meet the minimum lot width), all other 22 of the proposed lots meet or exceed the R10 minimum lot width.

“If a lot meets the minimum lot width of the zone and the minimum lot area, then it is generally expected that the lot can be developed in a manner consistent with the scale of

development anticipated in the zone. Therefore, while a 5-foot setback may continue to meet the purpose of the setback regulations, the applicant has not demonstrated how a smaller setback on the lots (Lots 1-8) that meet the R10 standard for lot width and lot area will better protect the environmental resources and functional values on the site. Additionally, though Lot 23 is smaller in width than the R10 standard, it exceeds the minimum lot area for the zone, *and the applicant has not addressed how smaller side setbacks on this lot will afford more protection of the designated resources.* Therefore, Modifications for reduced setbacks for Lots 1-8 and 23 do not satisfy this criterion.

“On the other hand, if the lots with smaller areas (Lots 9-22) have reduced side setbacks, this may help to provide flexibility to fit development that is compatible with the neighborhood, and the smaller lots are expected to be more protective of the environmental resources on the property. Accordingly, a Modification to the side setback for Lots 9-22 could be approvable. However, since the lot configuration for the overall proposal is unresolved, it is not possible to fully assess the potential impacts of the Environmental Review or the associated Modifications. Therefore, this criterion is not met.”

Exhibit H-1, page 18.²

Applicant addressed BDS Staff’s reservations regarding Lot 23 in their preferred Alternative 4A. They write:

“Alternative 4A reduces the size of Lot 23 to 5,734, which is less than the minimum lot size in an R10 zone. The reduction reduces the overall disturbance area and preserves at least on significant tree. The Applicant assumes staff will support the reduction below the minimum lot size since it supported similar reductions for Lots 9 through 22.”

Exhibit H-51, page 4.

With respect to the remaining lots 3 through 8, Applicant argues that the overall project as modified in preferred Alternative 4A supports the modification with respect to Lots 3 through 8. They explain:

*“Alternative 4A, Lots 1 and 2 are removed. Thus, the modification would only apply to Lots 3 through 8. The Applicant believes that when the hearings officer examines all of the measures it has done to preserve resources and lessen disturbance, the modification for Lots 3 through 8 is appropriate. * * * Lots 3 through 8 are significantly smaller than the maximum lot size in the R10 zone. They are smaller*

² Note that Lots 1 and 2 have been replaced with a proposed Tract C scenic resource tract.

than an average sized lot in that zone. In fact, they are smaller than lots that can be approved in the R7 zone. The Applicant has limited its development beyond what other developments have done to protect resources and limit development. *Allowing a 5-foot side setback is appropriate to account for the limitations the applicant placed on the development.*

Exhibit H-51, page 7.

Applicant's environmental consultant describes the impact this modification will have on the functions and values. They write:

"The forest resource through the entire southern section of the subject property generally consists of a low level predominantly maple canopy with mostly invasive English ivy understory. The transition zone adjacent to the homes along Ruby Creek however, does contain several conifers (Douglas fir and western red cedar) identified as in 'good' condition by the arborist. As part of the development in order to transition lot sizes to fit the neighborhood character, as well as to provide a natural buffer between the new development and the existing residences, the plan maintains the back (western) portion of the lots as undeveloped forest with direct impacts from homes to be located in the eastern portion of the lots adjacent to the street and maintaining the clustered development. This allows retention of 34 trees including several Douglas fir trees and western red cedar trees as well as one 25" Oregon white oak tree. Three of the conifers are 18" or larger in diameter and all are in 'good' condition. Additionally, two large cedars located on adjacent properties would potentially be negatively impacted by disturbance in this area and will be protected through preservation of the buffer. Only two conifers (as well as maples and some other non-native trees), both less than 10" in diameter, will be removed within the resource area for Lots 3-8.

"While this treed area is to be located within the lots, it results in the preservation of 34 trees including 7 conifers and one oak in good condition. These species are less common on the site and represent the more mature forest type that should be developing. Retaining these species preserves high quality tree resources. A deed restriction or other protective measure is proposed to be placed on the back of the lots, preserving them as a natural buffer between the existing and proposed residential areas. Additionally, if approved, the back 20' of the lots could be enhanced by removing invasive understory and replanting with native shrubs and trees where applicable.

"Moving the entire development plan to the west and into the transition zone would result in locating the development closer to a higher value resource (Ruby Creek) and move it into the steeper slope area which is less functional for development and poses

more potential erosion issues. *Overall additional impact area from these larger lots is minimal (averaged as 9,000sf or - 2/10th of an acre) in comparison to the entire area being avoided (9.69 acres).* For the most part there will be no actual disturbance to existing native vegetation.

Exhibit H-100b, page 8 (emphasis added).

Accordingly, the Hearings Officer finds that the modification to the side setbacks of Lots 3-8, on balance, meets the purpose of PZC 33.610.200 and will provide greater protection of the resources and functional values of the Site. In addition, because the proposed lots are comparable in size to those nearby properties in the R5 zone, the Hearings Officer finds that the modification will not significantly detract from the livability of the appearance of the area.

Paving-Front Yard Restrictions:

The applicant originally requested the vehicle area allowance be increased from 40 to 60 percent on Lots 22 and 23. Again, that request has been withdrawn. *See Exhibit H-51, page 7; see also* Hearings Officer Land Use Rules of Procedure, Rule 1.9, permitting withdrawal at anytime.

ENVIRONMENTAL VIOLATION

33.430.250.G. Corrections to violations. For corrections to violations of this Chapter the application must meet all applicable approval criteria stated in subsections A through F above, and paragraphs 1, 2.b and 2.c, below. If these criteria cannot be met, then the applicant's remediation plan must demonstrate that all of the following are met:

1. The remediation is done in the same area as the violation; and
2. The remediation plan demonstrates that after its implementation there will be:
 - a. No permanent loss of any type of resource or functional value;
 - b. A significant improvement of a least one functional value; and
 - c. There will be minimal loss of resources and functional values during remediation until the full remediation program is established.

Findings: The applicant's narrative (Exhibit A.2, Schott and Associates Report) indicates the approval criteria in subsections 33.430.250.A through F cannot be met; therefore, the applicant proposes to meet Criterion G.1 and 2, above.

In reviewing the application, BDS found the following:

"Based on city records, 2 violations occurred during the past 3 years, as described below. The applicant asserts that the impacts from the vegetation cutting and removal did not result in an appreciable loss of resources or functional values at the time the violations occurred. Nonetheless, the applicant proposes to remediate for the violations and indicates that the loss of resources during the remediation will be minimal as well.

- Violation 1: Trees and shrubs topped, cut, and pruned within the environmental conservation and protection overlays planted along Stephens Creek as mitigation for LU 06-107286 EN.

“The applicant indicates no further work proposed in this area. To remediate Violation 1, the applicant proposes to retain topped trees on bank of Stephens Creek, and to add new riparian plantings in the Ruby Creek corridor. Specifically, the applicant proposes to install 100 alder trees and 400 salmonberry plantings in a 10,000 square foot area noted as “Riparian Mitigation Area” on Exhibit C.13.

- Violation 2: Ground disturbance (survey work with track machine off SW Hume Street) within the resource area of the Environmental Conservation Zone without the required review.

“This involved approximately 12,727 square feet of groundcover disturbance, characterized as ivy removal within the right-of-way and proposed development area for Lots 3-23.

“The applicant indicates onsite remediation is proposed within same forest resource, though not the exact area of the violations. Remediation is not proposed within the area of the violation, since that is where the new lots and streets are proposed.

“To remediate Violation 2, the applicant proposes to remove invasive species from an area of the site equivalent to the area of ground disturbance impact and replant the area with native species. Specific plantings are proposed to include 38 trees, 90 shrubs, and 50 groundcover consisting of Douglas fir, Indian plum, service berry, snowberry, Oregon grape. The native species are proposed to be installed in a 12,727 square foot area labeled as “Upland Mitigation Area” on Exhibit C.13.

“The narrative indicates the plantings will increase habitat and habitat values for birds and mammals that reside in the forest habitat by providing seeds, fruit, buds, needles, bark, foliage, and twigs. If successfully installed and maintained, the new vegetation is expected to improve plant diversity and cover.

“The narrative indicates the new plantings will be installed “after clearing”; however, no details about the “clearing” are provided; nor is there any information about the timing for the clearing.

“In order to ensure there is no further diminishment of the impacted upland and riparian habitat and that a significant improvement to at least one functional value will be realized, the remediation measures must be implemented in a timely manner.

“To accomplish this, a condition will be applied which requires the following: A BDS Zoning Permit is required to be finalized by March 31, 2018 for inspection and approval of remediation plantings. Copies of Exhibit C.13 from LU 16-213734 and conditions limits below shall be included within all plan sets submitted for permits (Zoning Permits). These exhibits shall include the following statement, ‘Any field changes must be in substantial conformance with approved Exhibit C.13 from LU 16-213734’. To obtain the permit, the applicant must submit a Remediation Planting Plan which provides the following:

- removal of all non-native nuisance vegetation from the ‘upland and riparian remediation areas’ shown on Exhibit C.13,
- installation of native species within the 12,727 square foot ‘upland remediation area’ at the following rate: 1 tree, 1 shrub, and 5 groundcover plants for every 50 square feet of planting area.
- installation of native species within the 10,000 square foot ‘riparian remediation area’ at the following rate: 1 tree, 1 shrub, and 5 groundcover plants for every 50 square feet of planting area.
- Plants must be native and selected from the *Portland Plant List*. A minimum of 3 different tree species, 5 different shrub species; and 5 different groundcover species must be provided in each remediation area.
- All nuisance plant removal and plant installation work must be conducted with hand-held equipment.
- All remediation trees and shrubs shall be marked in the field by a tag attached to the top of the plant for easy identification by the City Inspector. All tape shall be a contrasting color that is easily seen and identified.

“The land owner shall maintain the required planting for two years to ensure survival and replacement. The land owner is responsible for the ongoing survival of the required plantings during and beyond the designated 2-year monitoring period. At the end of the 2-year maintenance and monitoring period, the land owner shall obtain a second (final) Zoning Permit for a final inspection of the remediation plantings for the purpose of ensuring the required plantings remain. The permit must be finalized no later than 2 years from the final inspection of the initial installation of the remediation plantings. Any required plantings that have not survived must be replaced.

“With the implementation of this condition, these criteria will be met.”

Exhibit H-1, page 19-21.

Based on this information, the Hearings Officer finds that this criteria can be met with conditions.

PART B.

LAND DIVISION

Approval Criteria For Land Divisions in Open Space and Residential Zones

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

- "A. Lots.** The standards and approval criteria of Chapters 33.605 through 33.612 must be met;
- "B. Trees.** The standards and approval criteria of Chapter 33.630, Tree Preservation, must be met;
- "C. Special flood hazard area.** If any portion of the site contains special flood hazard area, the approval criteria of Chapter 33.631, Sites in Special Flood Hazard Areas, must be 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;
- "E. Phased Plans and Staged Final Plat.** If the Preliminary Plan will be phased or if the Final Plat will be staged, the standards of Chapter 33.633, Phased Land Divisions and Staged Final Plat, must be met;
- "F. Required recreation area.** If 40 or more lots or dwelling units are proposed, the standards and approval criteria of Chapter 33.634, Required Recreation Areas, must be met;
- "G. Clearing, grading, and land suitability.** The approval criteria of Chapter 33.635, Clearing, Grading, and Land Suitability must be met;
- "H. Tracts and easements.** The standards of Chapter 33.636, Tracts and Easements must be 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;
- "J. Streams, springs, and seeps.** The approval criteria of Chapter 33.640, Streams, Springs, and Seeps, must be 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.

PZC 33.660.120.

BDS Staff determined that due to the specific location of the Site, and the nature of the proposal, some of the criteria are not applicable. BDS Staff provided the following table to summarize the criteria that are not applicable:

Criterion	Code Chapter/Section and Topic	Findings: Not applicable because:
C	33.631 - Flood Hazard Area	The site is not within the flood hazard area.
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.
I	33.639 - Solar Access	It is not practicable to meet both the approval criteria of this chapter and the standards and approval criteria of other chapters in the 600's (33.610.200 supersedes 33.639).
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.D - Common Greens	No common greens are 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.

See Exhibit H-1, page 21.

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 allowed density in the R10 zone is one unit per 10,000 square feet. See Table 610-1. BDS Staff found that because a new street is proposed the maximum allowed density is based on 85 percent of the site area. See 33.610.100.D.1. In addition, they found that because the site is within the potential landslide hazard area, there is no minimum required density. The Hearings Officer concurs with these findings. Based on the applicant's survey, the site area is approximately 14.17 acres (617,245 square feet). See Exhibit H-1, page 22. Therefore, the site has a maximum allowed density of 52 units and no minimum required density. The applicant is proposing 21 single dwelling lots in its preferred Alternative 4A. The Hearings Officer therefore finds that the density standards are therefore met.

The required and proposed lot dimensions 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	6,076		56	≈72	93
Lot 2	7,911		50	156	52 & 67
Lot 3	7,924		50.5	150	42
Lot 4	7,500		50	150	50
Lot 5	7,500		50	150	50
Lot 6	7,500		50	150	50
Lot 7	7,500		50	150	50
Lot 8	7,500		50	150	50
Lot 9	5,000		50	50	50
Lot 10	5,000		50	50	50
Lot 11	5,043		53	98	55
Lot 12	5,001		54	93	54
Lot 13	5,822		54	119	56
Lot 14	5,595		59	100	56.5
Lot 15	5,000		50	100	50
Lot 16	5,000		50	100	50
Lot 17	5,000		50	100	50
Lot 18	5,000		50	100	50
Lot 19	5,010		60	84	60
Lot 20	5,020		50	101	59
Lot 21	5,000		50	116	58
Lot 22	5,119		50	102	33
Lot 23	7,534		39	116	30

* 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.

As shown above, Lots 1 and 3 through 8 meet the lot dimension standards of the R10 zone.

Proposed Lot 2 was originally a through-lot, but Lots 1 and 2 are replaced with Tract C.

Proposed Lot 23 is 39 feet wide, which is narrower than the minimum width of the R10 zone, as shown in the table above. The Zoning Code allows the minimum lot width to be reduced below the dimension stated above if the regulations of 33.610.200.D are met. It provides as follows in relevant part:

“Minimum lot width may be reduced below the dimensions stated in Table 610-2, if all of the following are met:

- "a. On balance, the proposed lots will have dimensions that are consistent with the purpose of the Lot Dimension Regulations;
- "b. The minimum width for lots that will be developed with detached houses may not be reduced below 25 feet;
- "c. If the lot abuts a public alley, then vehicle access must be from the alley. This requirement will be imposed as a condition of approval of the land division;
- "d. Lots must be configured so that development on the site will be able to meet the garage limitation standard of Subsection 33.110.253.D at the time of development;
- "e. Lots that will be developed with attached houses must be configured so that 60 percent of the area between the front lot line and the front building line can be landscaped at the time of development; and
- "f. In areas where parking is not required by this Title, lots may be proposed that will not accommodate on-site vehicle access and parking. Such lots do not have to meet the requirements of subparagraphs 2.c and d. As a condition of approval of the land division, the property owner must execute a covenant with the city. The covenant must:
 1. State that the owner will develop the property without parking, and that a driveway for access to on-site parking may not be created in the future, unless it is in conformance with regulations in effect at the time;
 2. Meet the requirements of Section 33.700.060, Covenants with the City; and
 3. Be attached to, and recorded with the deed for the new lot."

PZC 33.610.200.D.2

BDS Staff explained the following with respect to Lots 9-22:

"The applicant requested Modifications via Environmental Review (33.430.280) to the minimum lot area of the R10 zone from 6,000 to 5,000 square feet for an unspecified number of lots (addressed earlier in this report). However, it's assumed the requested modification applies to any proposed lot that is less than 6,000 square feet in area (Lots 9-22). As addressed in preceding findings, Staff approved the requested modification. Therefore, Staff finds that proposed Lots 9 through 22 may be approved."

Exhibit H-1, page 23

The Hearings Officer adopts BDS Staff's recommendations and finds that this criterion is therefore met with respect to Lots 9-22.

As explained previously, Applicant proposed reducing the size of Lot 23 to reduce the overall disturbance area. They write:

“Alternative 4A reduces the size of Lot 23 to 5,734, which is less than the minimum lot size in an R10 zone. *The reduction reduces the overall disturbance area and preserves at least one significant tree.* The Applicant assumes staff will support the reduction below the minimum lot size since it supported similar reductions for Lots 9 through 22.”

Exhibit H-51, page 4 (emphasis added).

BDS Staff did indeed support the proposed narrower lot 23. They write in their November 6th Memo to the Hearings Officer:

“Proposed Lot 23 is narrower than the minimum width of the R10 zone and the applicant had not addressed appropriate regulations (PCC 33.610.200.D.2) to allow a reduction in width. The applicant has now addressed these regulations and *Staff finds the request for a reduction in width for Lot 23 acceptable.*

“* * * This request regarding Lot 23 was not specifically addressed in the applicant’s narrative or identified in the public notice for the proposal. If this request can be added at this time, staff finds the Modification approval criteria (33.430.280) could be met for this same reasons outlined in the findings for Lots 9-22 on Pages 16-17 of the October 6, 2017 Staff Report.”

Exhibit H-94, page 1-2 (emphasis added); *see also* Exhibit H-1, page 16-17.

The Hearings Officer adopts BDS Staff’s finding and recommendation. However, potential issues exist with a final determination on proposed disturbance area. The Hearings Officer therefore finds this criterion can be met with conditions.

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

Findings: The regulations of Chapter 33.630 require that trees be considered early in the design process with the goal of preserving high value trees and, when necessary, mitigating for the loss of trees. PZC 33.630.200 provides:

“**A.** To the extent practicable, trees proposed for preservation provide the greatest benefits as identified in the purpose of this chapter. In general, healthy, native or non-nuisance trees that are 20 or more inches in diameter and tree groves, are the highest priority for preservation. However, specific characteristics of the trees, site and surrounding area should be considered and may call for different priorities, such as native tree growth rates and

priority tree sizes as described in the *Portland Plant List*, buffering natural resources, preventing erosion or slope destabilization and limiting impacts on adjacent sites;

“B. Trees proposed for preservation are suitable based on their health, overall condition and potential for long-term viability, considering the anticipated impact of development and tolerance typical for the tree species;

“C. *Tree preservation is maximized to the extent practicable while allowing for reasonable development of the site, considering the following:*

1. The specific development proposed;
2. The uses and intensity of development expected in the zone and the area in which the site is located;
3. Requirements to provide services to the site under Chapters 33.651 through 33.654, including street connectivity and street plan requirements. Options to limit impacts on trees while meeting these service requirements must be evaluated;
4. Requirements to protect resources in Environmental, Pleasant Valley Natural Resources, or Greenway Natural, Water Quality, and River Environmental overlay zones. Protection of environmental resources and retention of benefits from trees should be maximized for the site as a whole; and
5. Other site constraints that may conflict with tree preservation, such as small or oddly shaped sites or trees located in existing utility easements.

“D. Mitigation. Where the minimum tree preservation standards of 33.630.100 can not be fully met, as determined by evaluating the above criteria, or when there is a concurrent Environmental Review and the minimum tree preservation standards do not apply, *mitigation must be provided as needed to replace the functions of trees removed from the site.* Options for mitigation may include preservation of smaller diameter or native trees, permanent preservation of trees within a tree preservation or environmental resource tract, tree planting, payment into the City’s Tree Planting and Preservation Fund, or other options that are consistent with the purpose of this chapter.”

PZC 33.630.200 (emphasis added).

BDS Staff found in the Decision Report that this approval criteria were not met. They explain:

“To satisfy these requirements, the applicant must provide a tree plan that demonstrates, to the greatest extent practicable, the trees to be preserved provide the

greatest environmental and aesthetic benefits for the site and the surrounding area. The tree plan must also show that trees are suitable for preservation, considering the health and condition of the tree and development impacts anticipated. Tree preservation must be maximized, to the extent practicable, while allowing for reasonable development considering the intensity of development allowed in the zone and site constraints, including existing utility easements and requirements for services and streets.

“Proposals to divide sites that are partially within an environmental overlay zone and include a concurrent environmental review are not subject to the tree preservation standards of Section 33.630.100. However, the tree preservation approval criteria in 33.630.200 apply to these proposals. This proposal includes a concurrent environmental review, therefore only the tree preservation approval criterion will apply.

“As addressed in preceding findings, the applicant has not demonstrated compliance with Environmental Review approval criteria. Therefore, it is not possible to find the Tree Preservation Approval Criteria is met as it is unclear what resources and trees are being preserved to the maximum extent practicable. Therefore, Staff finds this criterion is not met.”

Exhibit H-1, page 23-24.

After the Decision Report was released, Applicant submitted updated and additional information to which BDS Staff provided no specific response. For example, in its November 3, 2017 Memo Staff Report and Recommendations, which superseded all prior information, Applicant’s environmental consultant Schotts & Associates provided more details regarding tree removal and its mitigation plan. See Exhibit H-100b. Schotts explains the changes in response to BDS Staff comments that reduced tree removal to 505 from 527. They write:

“In response to Staff recommendations the updated development plan has increased the number of trees to be retained by a total of 35 as well as decreasing overall disturbance area in the areas of Tract C (previously Lots 1 and 2) and Lot 23. Trees retained include a grove of predominantly maple trees in the area of Tract C and the ROW for Front Street which will aid in preserving the scenic and environmental value of this area. Additionally, as described further below approximately 34 trees including at least 6 western red cedars and 2 Douglas firs are proposed to be retained in the buffer area west of Lots 3-8. Two large cedars on the adjacent properties will also be protected by avoiding direct disturbance in this area. Based on these modifications to proposed disturbance and tree removal the original tree removal table (Table 1) has been modified for a total of 505 trees removed from the previous 527.”

Exhibit H-100b, page 1.

Schotts goes on to outline its extensive mitigation plan. They write:

“As described in the July 18th 2017 Memo, representative plots were created using a plot size of 40'x40' (1,600sf) each to clarify the existing density and species information for the onsite forest community. A total of 10 plots were located randomly through the portion of the site on which the tree survey had been completed. Based on this, the average number of trees within each 1,600sf plot is 4. Extrapolating across the proposed mitigation area, this indicates that the existing number of trees in this area is approximately 392 (157,147sf /1600sf=98x4=392). Based on a 15' on center calculation for the total enhancement area a total of 693 trees could be present. This would allow for planting of approximately 301 trees onsite at an average density of 15' on center. No trees will be planted in the temporary impact area for sewer line resulting in a total trees of 273 trees to be planted within Tract A as part of the Mitigation Plan. As described below an additional 56 trees shall be planted for Mitigation within proposed Tract C. Total number of trees removed based on the updated plan is 505 and total required per Table 430-3 is 1,169. Based on this calculation all the required trees could not realistically be planted and would not be expected to survive. Total number of trees proposed is based on an estimate of existing trees and an on center planting density of 15'.

“However, due to the high existing canopy and low level of understory vegetation it would be ecologically preferable to plant less trees and a higher density of shrubs. Required number of shrubs to be planted based on the table is 1,756. Proposed number of shrubs to be planted is over 12,000. This is significantly more than the required amount and will more adequately provide erosion control and soil stability within the understory after removing non-native species. Proposed plantings are at a high density with some mortality anticipated. Planting density after mortality is expected to be appropriate to the site.

“An additional 72 trees and 4,700+ shrubs will be planted in Tract B and Tract C bringing the total number of trees to be planted onsite up to 345. These areas will be graded prior to planting and will be appropriate areas for planting additional Douglas fir trees. All vegetation within these Tracts will be native species on the Portland Plant List and shall be monitored and maintained in addition to the original mitigation area.

“Proposed mitigation has been designed to retain and enhance the existing upland and riparian forest community along Ruby Creek, Stephens Creek and throughout the northern 2/3rds of the subject property. Functions provided by the forest including precipitation interception and nutrient and sediment retention will continue to be provided in both upland and riparian communities. Proposed removal of invasive

understory species and planting of a higher diversity of native trees, shrubs and forbs will improve habitat functions such as access to food, nesting, and cover while maintaining a large undeveloped area within the City as well as the significant habitat corridor provided along Stephens Creek. Modifications to the standards of Table 430-3 as outlined above are designed to more effectively enhance the existing forest resource area in a manner compatible with the needs of the site.

“Additional mitigation activities; improving the outfall to Ruby Creek, reducing erosion and downcutting and eliminating the sewer failure hazard within onsite waterways provides significant improvement of onsite resource functions and values as well as downstream functions and values. Ruby Creek is tributary to Stephens Creek, a stream with habitat value to ESA listed species which has been the recipient of significant restoration work and funds from the City. Negative impacts from erosion or potential sewer line failure are not site specific and would have effects downstream in Stephens Creek or even into the Willamette River. Similarly, restoration activities on the subject property provide potential benefits both on and offsite.

“* * * * *

“As suggested by Staff and mentioned above, in addition to removing invasive species and interplanting native trees, shrubs and groundcover throughout the mitigation site, the applicant also proposes to establish a 20' wide perimeter between the development area and Tract A. This buffer will be planted entirely with Douglas fir trees with a dense understory of shrubs (Table I), as this area is anticipated to have more sun exposure than much of the remaining resource area. Trees shall be planted at 15' OC with allowance for existing trees within this buffer. This will provide a greater buffer between the development and the remaining resource area, further mitigating the loss of existing trees and upland habitat.”

“* * * * *

“In order to further minimize impacts to the onsite resource and to comply with standards of Scenic Areas, the creation of Tract C (Scenic Tract) is proposed to replace previous Lots 1 and 2 adjacent to Taylors Ferry. Removal of this lot reduces total permanent disturbance area and impervious surface from the development by approximately 0.27 acres. This increases onsite area which will provide functions and values such as water infiltration and soil stabilization as well as buffering of noise and pollution from Taylors Ferry and contributing to the scenic nature of this area and should be added to the total area of onsite mitigation.

“Due to the existing slope and the requirements for the road, significant grading will still be required in this area however, creation of the Tract will allow for the preservation of a grove of 19 trees within the Tract and the existing Front St. ROW. The majority of these trees is native maples and will preserve existing scenic and environmental functions in this Scenic area. The entire 11,787sf temporarily disturbed area will be replanted with a mix of native trees (predominantly Douglas fir), shrubs and groundcover plants. Because the proposed Tract will already be significant disturbed from grading it is proposed that some of the trees be larger in size than required ½" minimum (up to 2" caliper and/or 8-10' in height). This will expedite the restoration of native scenic resource but require special attention in planting and maintenance to ensure survival of the larger trees. Preserved and restored functions will include precipitation interception, stormwater, nutrient and sediment absorption, as well as habitat and scenic values. As much as possible existing native trees have been retained in the resource area and will retain their current environmental and scenic functions and values in this area. Non-native and invasive understory shall be removed and replaced with native shrub and groundcover species as shown in Table 3.”

Exhibit H-100b, page 3-6.

An additional issue was raised regarding a 54-inch Douglas fir tree in the undeveloped portion of SW Hume Street right-of-way near proposed Tract C. See Exhibit H-94, page 5. BDS Staff questioned whether the Applicant conferred with Urban Forestry given Applicant’s determination that the tree could not be saved. In response, Applicant explained the following:

“The applicant is submitting with this letter, a memorandum from its arborist explaining why it is not possible to preserve this tree that is within the public right-of- way. To achieve connectivity as required by PCC 33.654 and provide enhanced emergency vehicle access, the Applicant is required to improve the existing right-of- way. The project arborists concluded that a 27-foot root protection zone on all sides of the tree is required to preserve it. *The 54-inch tree cannot be saved because it is entirely within the right-of-way.* The Applicant is quite certain that, if the improvements to the SW Hume right-of way were part of a city-initiated project to provide connectivity, preserving that tree would not be a requirement.”

Exhibit H-105, page 5.

Applicant goes on to explain that an attempt was made to confer with Urban Forestry. They write:

“Staffs only continued comment is that the Applicant has not conferred with the City Forester regarding options to preserve the tree. This issue would have been easier to address had staff provided the Applicant with the Forester's July 12, 2017 comment before October 6, 2017. The Applicant has attempted to contact the Forester to discuss the tree, but he has not responded. We enclosed a letter the Applicant sent to the Forester after attempts to talk were not successful.”

Exhibit H-105, page 5.

Applicant’s arborist described the challenges for retaining the tree. They write:

“The location of the tree is such that the construction of SW Hume Street with the sidewalk as well as the grading necessary to the south and west of the tree make it impossible to adequately protect this tree given the proposed improvements.

“In order to adequately protect this tree, it would require an area to the south, west and east to have no construction within 54 feet of the tree and the encroachment from the north should not come any closer than 27 feet to the center of the tree.

“The current plan show that the trunk of the tree is located within the sidewalk, towards it's south edge, on the south side of SW Hume Street. Significant grading is to occur on the trees west, east and south sides with the road SW Hume to be constructed on its north side, impacting the tree on all four sides.

“While it may be possible to carefully encroach within the 27-foot distance on one side of the tree slightly, it certainly will not be possible to encroach on the other three sides any closer than 54 feet. Any encroachment within 27-feet on the one side of the tree will increase the potential of impacting the long-term health and short term structural stability of this large and mature tree.

“I don't see any possibility of retaining this tree without a major redesign of the entire project as SW Hume cannot be located where it is currently if this tree were to be retained, even if the sidewalk and the planter on the south side of SW Hume was eliminated. The grading that has to occur to install SW Hume Street will be too much of an impact for this tree.

“* * * * *

“Without a complete redesign of the project to move SW Hume Street, the major entrance and exit for the development, this tree cannot be retained given the level

of impact just from the construction of SW Hume, not to mention the planned impacts on the other three sides of the tree.”

Exhibit H-100d, pages 2-3.

Tree removal requires preliminary approval of the City Forester in consultation with the City Engineer. See PZC 33.654.120.H. Based on the forgoing, the Hearings Officer find that substantial evidence supports the determination that this criterion can be met with conditions.

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: The entire site is located within the Potential Landslide Hazard Area. The approval criteria state that the lots, buildings, services, and utilities must be located on parts of the site that are suitable for development in a manner that reasonably limits the risk of a landslide affecting the site, adjacent sites, and sites directly across a street or alley from the site. In order to evaluate the proposal against this criterion, the applicant has submitted the following technical documents:

January 30, 2017 GEO Consultants Northwest, *Geotechnical Evaluation, Macadam Ridge Planned Development, GCN Project 1161* (Exhibit A.2)

January 30, 2017 GEO Consultants Northwest, *Landslide Hazard Study, Macadam Ridge Planned Development, GCN Project 1161* (Exhibit A.2)

March 9, 2017 GEO Consultants Northwest, *Macadam Ridge Subdivision, Site Conditions Following February 2017 Rainfall Events*. (Exhibit A.5)

July 17, 2017 GEO Consultants Northwest, *Landslide Hazard Report Addendum, Site Development Request for Additional Information, Macadam Ridge Subdivision, Case File: LU 16-213734, GCN Project 1161-03*. (Exhibit A.3.d)

October 14, 2017 GEO Consultants Northwest, *Seismic Slope Stability Analysis, Macadam Ridge Subdivision, Case File: LU 16-213734, GCN Project 1161-03* (Exhibit H-40)

Site Development, the division of Development Services that makes determinations regarding soil stability, has evaluated these documents and provided the following findings:

“The LHS concludes that *the proposed development can be constructed as envisioned and will not adversely impact the Stephens Creek watershed or produce hazards to life safety related to the planned improvements*. Further, it concludes that the proposed locations of the lots, buildings, services, and utilities are suitable

for development in a manner that reasonably limits the risk of a landslide affecting the site, adjacent sites, and sites directly across the street.

“The report recommends buildings on Lots 11 and 23 be set back 20 feet from the top-of-slope or the building foundations should be deepened or pile supported to carry loads to a distance of 20 feet from the slope face.

“Additional information regarding the seismic slope stability of the site was presented in the October 14, 2017 report. The report summarizes pseudo-static slope stability analyses for three cross sections at the site. The analyses demonstrate adequate factors of safety under earthquake loading.

“A revised site grading plan, dated October 26, 2017, was submitted on October 27, 2017. The plan shows Tract C (Scenic Resource) where Lots 1 and 2 had been located. The new plan shows a rockery retaining wall along the property lines with SW Taylors Ferry Road and the proposed extension of SW Hume Street. The wall supports a tall cut slope. The proposed grades are difficult to interpret.

“It does not appear the LHS was updated to include a review of the proposed changes. However, *the proposed retaining wall and grading appears to be located within the limits of disturbance identified in the August 23, 2017 plans. In addition, the proposed grading for Tract C is similar to the original plan.*

“Site Development would prefer that the LHS include a review of the proposed grading. *However, we can find the LHS satisfies the approval criteria of PCC 33.632 and 33.730.060.D.1.f with the understanding that a rigorous slope stability analysis will accompany the retaining wall calculations which will be submitted at the time of Site Development permit for mass grading. The analyses must demonstrate adequate factors of safety under static and earthquake loading. * * **”

Exhibit H-94, Revised Land Use Review Response, Site Development Section, pages 2-3 (emphasis added).

Potential issues exist with a final determination on proposed disturbance area. Based on the findings of Site Development, therefore, the Hearings Officer finds that this criterion can be met with conditions.

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. The preliminary clearing and grading plan must meet the following approval criteria:

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

PZC 33.635.100.

BDS Staff initially noted Site Development determined that the Applicant has not adequately demonstrated that the proposed clearing and grading is sufficient. See Exhibit H-1, page 26. Applicant subsequently submitted materials in support of preferred Alternative 4A. BDS Staff did not change their finding, however, Site Development provided the following response as of November 6, 2017:

“The July 27, 2016 OTAK, revised January 27, 2017 and August 25, 2017 by Emerio Design land division and environmental review narrative discusses the proposed grading relative to the Clearing and Grading Approval Criteria, of Chapter 33.635.100.A.

‘33.635.100.A Existing contours and drainage patterns of the site must be left intact wherever practicable. Where alteration to existing drainage patterns is proposed, it must not adversely impact adjacent properties by significantly increasing volume of runoff or erosion.’

“The narrative finds that based on an evaluation of the grading relative to the overall site boundaries, rather than the proposed limits of disturbance, the proposed clearing and grading satisfies the approval criteria.

“It does not appear a revised narrative discussing the grading approval criteria was provided with the revised grading associated with Tract C. However, it is the opinion of Site Development that the change in grading does not significantly increase the volume of runoff or erosion when compared to the August 23, 2017 grading plan.

Exhibit H-94, Revised Land Use Review Response, Site Development Section, pages 3-4.

Site Development, however, did not take into consideration documents submitted by Applicant on or after November 6th. On November 6th, Applicant submitted a technical memorandum from Geo Consultants. See Exhibit H-100f. In it they explain:

“We have reviewed the revised grading plan that eliminates Lot 1 and Lot 2 and creates Tract C. The new plan shows an 8 foot tall boulder rockery with a 2.5H:1 V backslope that extends parallel to the SW Hume Street extension from SW Taylors Ferry Road. The original grade change was accomplished with several retaining walls as shown in the August 23, 2017 grading Plan.

“The changes to the grading plan do not impact our original conclusion in our January 30, 2017 Landslide Hazard Study. The development including the most recent changes to the grading plan satisfies the approval criteria of PCC 33.632 and 33.730.060.D.1.f. as originally discussed in our LHS.”

Exhibit H-100f.

In addition, Applicant submitted an updated grading plan. See Exhibit 105f (Sheet 6). However, issues may occur with respect to Urban Forester, PBOT or BES approvals that may impact the disturbance area. Nevertheless, based on this information, the Hearings Officer finds that this criteria can be met with conditions.

Land Suitability

PZC 33.635.200 states the criteria for land suitability. It provides:

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

improvements in order to make the lots suitable for their intended uses and the provision of services and utilities.”

PZC 33.635.200.

BDS Staff determined that “no geologic conditions or historic uses of the site that indicate a hazard may exist have been identified.” Exhibit H-1, page 26. BDS Staff does note, however, that Site Development has noted that additional information is necessary to demonstrate improvements associated with services and utilities are sufficient to serve the proposed lots:

“The site is not mapped within the FEMA Special (100-year) Flood Hazard Area or the community determined 1996 Flood Inundation Area. Unidentified Watercourse Flood Zones are associated with Stephens Creek and Ruby Creek. These watercourses drain one acre or more and are generally not identified in a Federal Insurance Study.

“In accordance with Section 24.50.050.H, the Bureau of Environmental Services (BES) shall determine procedures for establishing floodway boundary, flood fringe boundary, and base flood elevation data. The flood protection elevation shall be the base flood elevation plus two feet of freeboard. The width of the floodway shall not be less than 15 feet.

“Development (including fill) within the floodway is prohibited unless it is demonstrated by a technical “no-rise” analysis that the development will result in no increase in the base flood elevation. The analysis must be stamped by a professional engineer licensed in the State of Oregon.

“The stormwater outfall depicted on Sheet P 2.0 appears to be located within the 15 foot floodway. Therefore, a “no-rise” analysis must be submitted at the time of construction permit. Numerical modeling will not be required to develop the “no-rise” analysis. The analysis must demonstrate the development will not increase the 100 year floodplain elevations. The “no-rise” analyses must be reviewed and approved by the Engineering/Modeling group of BES Asset Systems Management.

“Site Development strongly encourages the applicant to submit the “no-rise” analysis prior to the completion of this land use review to confirm that no changes to the designs are required.”

Exhibit H-94, Revised Land Use Review Response, Site Development Section, pages 1-2.

Potential issues exist with a final determination on proposed disturbance area. The Hearings Officer therefore finds this criterion can be met with conditions.

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

PZC 33.636.100 contains specific requirement for ownership and maintenance of “tracts” and “easements.” It provides:

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

1. The owners of property served by the tract, or by any other individual or group of people. When the tract is owned by more than one person it must be held in common with an undivided interest;
2. The Homeowners’ Association for the area served by the tract;
3. A public or private non-profit organization; or
4. The City or other jurisdiction.

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

PZC 33.636.100.

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

- Tract A: Open Space (Environmental Resource Area *and Drainage Reserve*);
- Tract B: Landscape Buffer Tract;
- Tract C: Scenic Resource Tract;
- A 3.5-foot turnaround easement is proposed on Lots 8 and 9;
- A 30-foot wide sanitary and storm sewer easement to the City of Portland is proposed within Tract A.

The applicant has indicated that Tract A will be owned in common by all of the owners of the land division site or by a homeowners association, a public agency or a non-profit organization. Tract B is proposed to be owned by the current owners of the land division site (Riverview Abbey Mausoleum Company). BDS Staff found that the proposal meets the standards for ownership of tracts. The

Applicant has failed to specifically indicate who will own Tract C. The Hearings Officer, therefore, assumes that it will be the same owners as Tract B, the current owners of the land division Site.

As stated in Section 33.636.100 of the Zoning Code, maintenance agreements will be required describing maintenance responsibilities for the tracts and easements described above and facilities within those areas. The Hearings Officer finds that this criterion can be met with the condition that appropriate maintenance agreements are prepared and recorded with the final plat. In addition, the plat must reference the recorded maintenance agreements with a recording block for each agreement, substantially similar to the following example:

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

Potential issues exist with a final determination on proposed disturbance area. The Hearings Officer therefore finds this criterion can be met with conditions.

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

PZC 33.641.020 states the approval criteria for transportation impacts. It provides:

"The transportation system must be capable of safely supporting the proposed development in addition to the existing uses in the area. Evaluation factors include: street capacity and level-of-service; vehicle access and loading; on-street parking impacts: the availability of transit service and facilities and connections to transit; impacts on the immediate and adjacent neighborhoods; and safety for all modes.

PZC 33.641.020.

Under PZC 33.641.030, an applicant can meet the criteria through by including mitigation as part of the proposal. "The regulations of [Chapter 33.641] allow the *traffic impacts* caused by dividing and then developing land to be identified, evaluated, and mitigated for if necessary." PZC 33.641.010. "The purpose of a transportation impact study is *to assess the effects of routing or volume of traffic in the vicinity of the site* on traffic conditions, transit, pedestrian and bicycle movement, and neighborhood livability." *Id* (emphasis added).

Findings: The applicant submitted a Transportation Impact Study (Exhibit A.1; A.2; A.3.e) to address this approval criterion. The Development Review Section of the Portland Bureau of Transportation (PBOT) has reviewed the application against the evaluation factors, including the Transportation Impact Study (TIS) dated August 11th, 2017, and Technical Memorandum dated August 15th, 2017, and concurs with majority of findings related to the evaluation factors in 33.641.020 that the

transportation system could be capable of safely supporting the proposed development, with the exception of (1) safety for all modes, and (2) availability of transit. See Exhibit E.2, page 1. Except as noted below, PBOT's findings on the other evaluation factors (street capacity and level of service; vehicle and loading; on-street parking impacts; and neighborhood impacts) are hereby adopted by the Hearings Officer. With respect to their exceptions, PBOT concluded in their review:

"PBOT has reviewed the Transportation Impact Study (TIS) dated August 11th, 2017, and Technical Memorandum dated August 15th, 2017 and concurs with majority of findings related to the evaluation factors in 33.641.020 that the transportation system could be capable of safely supporting the proposed development. However, the applicant has not adequately addressed the safety for all modes, and availability of transit evaluation factors. Below are the TIA's findings and PBOT's comments on the two evaluation factors not adequately addressed. Therefore, PBOT cannot support approval of this proposed 23-lot subdivision."

Exhibit E.2.

Transit Availability

In response to the Applicant's analysis regarding the availability of transit (Exhibit A.3.f), PBOT questioned the thoroughness of the analysis, including the failure to include mitigation. They write:

"The nearest stops lack level, separated waiting areas. The TIS cited very low ridership at these stops. No mitigation measures were proposed. No input from TriMet has been provided. There are no existing separated pedestrian connections to the nearest stops. Instead of proposing mitigation measures, the TIS argues that pedestrians could instead choose to walk on the low volume streets north of Taylors Ferry Rd to the next closest stops to the west at Terwilliger. No input from TriMet has been provided."

Exhibit E.2, page 3.

In its memorandum addressing transportation impacts, Appellant responds to the issues raise by PBOT and details its plan to address transit availability issues. They write:

"PBOT raised an issue over availability of transit. The applicant identified several transit stops in the area that can serve the development safely. PBOT focused on two bus stops on Taylors Ferry Road, near the intersection with SW 2nd A venue. Neither stop has a level, raised surface or shelter. *There are no sidewalks anywhere along SW Taylors Ferry.* PBOT stated that the Applicant did not provide input from TriMet. Actually, the Applicant did obtain information from TriMet and included it in its TIS. *In a three month period, one rider used each of those stops on a single occasion.* With that extremely low use, the Applicant did not propose any mitigation in the form of improvements to the

two stops in question, or in the form of a separated sidewalk to along SW Taylors Ferry. *Instead, the Applicant included a pedestrian pathway from its development to Ruby Terrace which provides a safe walking route from its proposed development to other bus stops providing adequate service.*

“PBOT did not state what type in [sic] TriMet input it was looking for, but the Applicant contacted a TriMet planner about possible improvements TriMet may want to see. In light of the extremely low use of the bus stops at SW Taylors Ferry and SW 2nd Avenue, TriMet does not feel a sidewalk is necessary. It has asked the applicant to explore designing and constructing a level cement platform for the stop on the north side of SW Taylors Ferry. The Applicant attached a copy of the email from the TriMet planner to this memorandum. The Applicant is evaluating the feasibility of constructing such a stop within the existing right-of-way and it appears that that work can be completed. Furthermore, the Applicant is still discussing with TriMet the alternative of relocating that stop to its frontage where substantial sidewalk improvements will be constructed. *It will be more efficient to construct the stop TriMet desires as part of that project. Either way though, the Applicant can meet TriMet's desire for improvements to the bus stop on the north side of SW Taylors Ferry.*”

Exhibit H-54, page 2 (emphasis added).

Indeed, TriMet raised no concerns about the lack of a sidewalk to access its bus stop on Taylor Ferry. In the October 25, 2017, email exchange between Applicant and TriMet, TriMet’s planner states the following:

“Thank you for the call today. I appreciated the chance to discuss the integration of our existing bus stop with your Macadam Ridge development.

“I agree that a full sidewalk along Taylors Ferry is not necessary. I would like to see a pad at Taylors Ferry & 2nd that allows for safe and accessible boarding for customers using mobility devices and that allows pedestrians coming from SW 2nd to safely access it.

“* * * * *

“After construction, we will want to install our bus stop pole. I do not foresee that ridership will increase enough for us to install a bus stop shelter or bench.

“As a summary: We need a curb-tight 30' long boarding/ deboarding area near the intersection. The paved area should be at least 8' deep to allow for an ADA-compliant boarding area at the front door of the stopped bus. Curb height should be the standard 6". Cross-slope shall not exceed 2 percent grade.

"I've attached a photo of a recent improvement at Pacific Hwy & Bull Mountain. It is wider than what we need at Macadam Ridge because it accommodates a shelter, but it shows a development that was dealing with a similar slope issue."

Exhibit H-54, page 8 (numbered as page 1) (emphasis added).

Applicant described their proposal and the availability of transit on Taylors Ferry. They explain:

"TriMet's Bus Route 43-Taylors Ferry Rd connects Portland City Center, Burlingame, and Washington Square along 4th, 5th, Lincoln, 1st, Corbett, Virginia, Taylors Ferry, Huber, 80th, Locust and Hall. The route runs along SW Taylors Ferry Road in the vicinity of the project site. The stops closest to the development are bus stop ID 5717 and bus stop ID 5718. The westbound stop is on the north side of SW Taylors Ferry Road at the intersection with 2nd Avenue. The eastbound stop is on the south side of SW Taylors Ferry Road at the driveway serving the cemetery. However, these stops lack level, separated waiting areas, and require crossing Taylors Ferry Road if catching the eastbound bus. *Based on ridership data provided by TriMet, these stops are currently rarely used with only one person being recorded as boarding the bus at stop ID 5717 and one person alighting at stop ID 5718 in a three-month period.*"

Exhibit A.3.f, page 29 (emphasis added).

Appellant goes on to explain the project improvements that connect with transit along Taylors Ferry. They explain:

"The proposed development plan is providing sidewalks along the frontages of the new homes as well as along the northern side of SW Taylors Ferry Road on the property frontage. *These sidewalks will provide connectivity to SW Ruby Terrace, a street with low traffic volumes and low speeds where pedestrians and bicyclists can safely share the roadway with motor vehicles.*

"SW Ruby Terrace can be used to reach public transit by way of SW 2nd Avenue, another low volume, low speed Local Street, to reach stops for TriMet Bus Route 43-Taylor Ferry Road at the intersection of SW Taylors Ferry Road at SW 2nd Avenue. Unmarked crosswalks are available at the intersection to allow pedestrians to cross SW Taylors Ferry Road to walk approximately 150 feet northeast in the grass removed from traffic. *For those users seeking a safer route, additional stops that provide separated waiting areas can be reached by continuing along the low volume, low speed Local Street of SW Carson Street and using sidewalks along SW Taylors Ferry Road west of SW 4th Avenue or along SW Terwilliger Boulevard.*"

Exhibit A.3.f, page 29 (emphasis added).

Safety for All Modes

In response to the Applicant's analysis regarding the safety for all modes (Exhibit A.3.f), PBOT identifies information it deemed necessary to the analysis and the lack of mitigation proposed. They write:

- "1. Sight triangle exhibits were not provided as requested at "Hume"/Ruby Terrace, "Hume"/"Front", and "Hume"/Taylors Ferry Road. These are needed to identify any visibility obstructions and mitigation measures to achieve adequate sight distance.
- "2. A sight triangle exhibit was provided with the memo for 2nd Av/Taylors Ferry Rd. However, specific mitigations to improve the sight distance were not identified. Vegetation could be cleared. Widening for a sidewalk could improve sight distance. The exhibit did not include property lines that may limit the extent of mitigations possible. Also, this exhibit and discussion should be included in the TIS as requested.
- "3. There are not adequate bike facilities on Taylors Ferry Rd. While the TIS points to a bike connection through the cemetery, this is a private facility and its presence does not substitute for the need for a bike facility on Taylors Ferry Rd which is classified as a City Bikeway. No bicycle mode mitigation measures were proposed.
- "4. There are not adequate pedestrian facilities on Taylors Ferry Rd. While the TIS points to a network of lower volume roadways that pedestrians can use to connect to the TFR/Terwilliger node, it does not address the lack of connection to the east to Macadam and it does not substitute for the need for a pedestrian facility on Taylors Ferry Rd which is classified as a City Walkway. A potential sidewalk connection between the site and Terwilliger along Taylors Ferry Rd was discussed, but the TIS argued that the cost (acquisition of ROW needed, retaining walls needed) was not proportional to the impact of the development. A potential path connection between the site and Canby was ruled out by BDS due to the impact to the environmental protection zones. A shoulder widening or separated path along Taylors Ferry Rd in general was not discussed. No pedestrian mitigation measures were proposed beyond the site's immediate frontage improvements."

Exhibit E.2, page 5.

Applicant responds that it provided the information requested by PBOT to conduct its review and that PBOT is merely seeking a conditions of approval it cannot impose because it would be disproportional to the impacts of the project. They explain:

"The Applicant's TIS demonstrated that the proposal will produce an insignificant amount of vehicle traffic compared to the background traffic. There are expected to be 14 new trips during the peak evening hour. The total vehicle traffic from the proposal

will be .07% of the existing traffic on SW Taylors Ferry. PBOT did not lodge any objections to the Applicant's traffic engineer's conclusion that there is no safety issue associated with vehicular traffic. *PBOT identified the need for additional sight distance triangle exhibits and those have been provided to staff.*

“On bicycle and pedestrian traffic, the Applicant's traffic engineer explained that there are no sidewalks or bicycle paths on SW Taylors Ferry. Indeed, there have never been any, despite the fact that the street has heavy traffic volumes. Any safety issue for pedestrian and bicycle traffic already exists and has nothing to do with the proposed development. In fact, the Applicant is proposing to provide measures to make the situation safer. Currently, if anyone was walking or biking on SW Taylors Ferry, which is not common by any means, there is no place for them to get off Taylors Ferry onto a safer route. The proposed development includes connecting the currently unimproved SW Hume right-of-way to SW Taylors Ferry and extending it to SW Ruby Terrace. The proposal also includes a pedestrian connection through the development to SW Ruby Terrace. Pedestrians can use those facilities to walk on local streets with low traffic volume until they get to the existing sidewalks on SW Taylors ferry closer to SW Terwilliger. Bicycles can also use that safer route to get to SW Terwilliger where there are bike lanes.

“It is also important to note that for many years, bicycles have used an alternative route through the existing cemetery. Although not a public facility, it is a well-established route used daily by bicycles in recognition that to date there has not been any feasible way to eliminate lanes on SW Taylors Ferry to create usable pedestrian and bike facilities.

“Prior to the staff report, PBOT suggests that the only way the Applicant can satisfy its concern over the availability of transit is to construct a separated sidewalk and bicycle facilities from SW Macadam nearly to SW Terwilliger where there are sidewalks. The Applicant demonstrated that just to extend sidewalks from the proposed development to SW 2nd A venue on the north side of SW Taylors Ferry would exceed \$500,000. That assumes the Applicant has the right-of way it would need to complete the project, which is not currently available. The Applicant has no legal ability to acquire additional right-of way. Thus, the Applicant demonstrated that the improvements PBOT was suggesting were vastly disproportionate to the insignificant impacts created by its proposal. TIS, p. 32.

“In its response that was included in the staff report, PBOT did not include any disagreement with the Applicants statement on the lack of proportionality. PBOT did not discuss any impacts that would result from the proposal that made any facility unsafe. It did not provide any evidence on the number of pedestrians that would be walking on Taylors Ferry, or the number of bicycles that would be added to that street.

"* * * * *

"In discussion with the Applicant's traffic engineer, PBOT acknowledged that the improvements it suggested are not proportionate to impacts from the proposal. Yet, PBOT still feels it can recommend denial of the application unless the Applicant spends far in excess of \$500,000 on off-site public improvements. There is a fundamental constitutional flaw in PBOT's position. If it agrees that it cannot require the improvements because the proposal does not generate impacts that allow it to exact the improvements, it cannot deny the application based upon the impacts that do not justify the exaction.

"Under PCC 33.641, the impacts and mitigation are intertwined. If there are impacts from the proposal that render facilities unsafe for all modes of travel, then, the City can deny the application unless the impacts are mitigated for. But, the first component of any analysis requires the City to identify specific impacts that the proposal will generate that will make the existing facilities incapable of safely supporting the proposed development. In this regard, the law on exactions is relevant.

"When a condition requires an exaction, the local government must justify the exaction under the legal standard commonly referred to as the *Nollan/Dolan* test.¹ If the local government cannot satisfy the *Nollan/Dolan* test, the exaction is a taking. The first prong of the test that arose in *Nollan* is called the essential nexus test. The local government has the burden to prove that there is an essential nexus between the exaction and a legitimate governmental policy or standard that would allow the local government to deny the application without mitigation. *Nollan v. California Coastal Commission* 483 US at 836-837; *Skora v. City of Portland*, 544 F Supp 1128 (D. Oregon 2008). As the essential nexus test has been interpreted by Oregon courts, it requires an impact analysis. The local government must show that the proposal will generate impacts, that, if unmitigated, would violate some standard that provides a basis for denying the application altogether. *Brown v. Medford*, 251 Or App 42, 47 (2012). After the *Koontz v. St Johns River Water Management District*, 568 US __, the *Nolan/Dolan* test applies not only to exactions of real property, but applies equally to when a local government requires an applicant to pay for off-site public improvements. That case held that money is property like any other property.

"* * * * *

"Plainly, the law requires that to exact property from an applicant, the local government must establish a connection between actual impacts generated by the proposal and a legitimate standard that allows the local government to deny the application if mitigation of the impacts is not made.

“What PBOT is trying to do here is fundamentally the same as an exaction. PBOT acknowledges that it cannot impose a condition that the Applicant provide massive public improvements to address a long-standing issue because it cannot identify impacts that justify such a condition under *Nollan/Dolan*, and *Brown*. So, PBOT identifies the improvements it wants and then, recommends that the application be denied because those improvements are not constructed. That is a transparent and improper attempt to impose a condition without calling it a condition. If a local government agrees that it cannot condition approval on an applicant making mitigation absent specific impact from the development, it follows that the local government cannot use unidentified, and non-existent impacts to deny an application to coerce an applicant to make the improvements that it wants, but knows it cannot require.

“PBOT's desired improvements are clearly to address a general safety issue that has existing for years and has nothing to do with the proposed development. PBOT and the City have not had the ability or will to provide improvements to SW Taylors Ferry to address the long-standing issues. There is no dispute that large scale public improvements would make Taylors Ferry safer for pedestrians and bicycles. However, those improvements would be directed at a general transportation goal to make all facilities safer for all modes. It would be addressing impacts that have been there for many years and have nothing to do with the proposal. The Court in *Brown* expressly held that local governments cannot exact property from applicants to address those larger, general transportation policies. They can only require an applicant to address the specific impacts from its proposal.

“PBOT's response contains absolutely no discussion of any impacts from the proposed development that make Taylors Ferry unsafe for all modes. The safety issues all pre-existed this application. PBOT did not try to explain what impacts it expects that will make Taylors Ferry more unsafe. PBOT does not even mention what it perceives will be the non-vehicular impacts the project will have on the current facilities. That is critical because the Oregon Court of Appeals has held that when a local government does not have findings that a proposed development will generate specific non-vehicular impacts on the existing facilities, it cannot exact property for pedestrian improvements. *McClure v. City of Springfield*, 175 Or App 425,434, 28 P3d 1222 (2001). Without an ability to identify specific non-vehicular impacts from the proposal, the City can never meet its burden of showing a nexus between impacts and a legitimate policy. Nor can it ever show that the impacts from the development are roughly proportionate to the impacts on the applicant.”

Exhibit H-54, pages 2-6.

PBOT requested “sight triangle exhibits” for four separate intersections:

1. Hume/Ruby Terrace
2. Hume/Front
3. Hume/Taylor's Ferry Road; and
4. 2nd Avenue/Taylor's Ferry Road.

See Exhibit E.2, page 5.

Applicant provided the requested information, first in its Transportation Impact Study dated August 11, 2017, then in its Lancaster Engineering Memorandum dated October 16, 2017. See Exhibits A.3.f and Exhibit H-107I, respectively. There is no indication that BDS Staff reviewed the October 16th memo. See Exhibit H-94 and Exhibit E.2. Applicant's traffic engineer made the conclusions with respect to sight distance outlined below.

Hume/Taylor's Ferry Road

"Based on the posted speed of 40 mph along SW Taylor's Ferry Road, the required intersection sight distance is 445 feet for the intersection to operate efficiently with minimal impact to the flow of through traffic. For safe operation of the proposed intersection, *a minimum of 365 feet of stopping sight distance is required for traffic traveling eastbound while a minimum of 270 feet of stopping sight distance is required for traffic traveling westbound.* The stopping sight distance calculations conservatively assume a 2.5-second perception-reaction time, a comfortable 11.2 ft/sec² rate of deceleration, and an average grade of ten percent over the braking distance.

"* * * * *

"Sight distance for the proposed SW Hume Street connection was measured to be in excess of 800 feet to the west and 365 feet to the east limited by vegetation along the frontage of the property. With the vegetation cleared along the right-of-way, sight distance could be improved beyond 500 feet to the east. *The available sight distance was found to be adequate for the safe operation of the proposed access.*

"A comparison of sight distance at the location of the proposed SW Hume Street connection was made to the existing alignment of SW 2nd Avenue where it intersects with SW Taylor's Ferry Road. Sight distance for traffic turning left from SW 2nd Avenue was measured to the west to be 255 feet, limited by vegetation and a horizontal curve in the roadway. Sight distance for traffic approaching a vehicle waiting in the through lane to turn left onto SW 2nd Avenue was measured to be 344 feet, limited by the horizontal curve. Sight distance to the east was in excess of 600 feet."

Exhibit A.3.f, page 16.

Other Intersections

"Hume Street Sight Distance

"As shown in Figures 1, 2, and 3 attached to this memorandum, intersection sight distance will be available at all three of the identified intersections with Hume Street. Sight distance was measured in accordance with AASHTO standards, with the driver's eye on the stop-controlled approach being 14.4 feet behind the edge of the near-side travel lane. The driver's eye and the height of an oncoming vehicle were both taken to be 3.5 feet above the roadway surface.

"It should be noted that at the Ruby Terrace intersection (Figure 1), the street south of the intersection essentially becomes a dead end and serves two separate driveways. As such, there is no line of sight shown to the south. As the figures demonstrate, the line of sight necessary to achieve the required sight distance remains on public right of way and does not impact private property on any adjacent lots. It is recommended that any vegetation obstructing the sight lines shown is removed.

"SW 2nd Avenue Sight Distance

"The previously-submitted sight distance exhibit at the intersection of SW Taylors Ferry Road and SW 2nd Avenue does not identify mitigation to improve the line of sight. While clearing of vegetation within the right-of-way would help, the sight distance at this intersection is not relevant to the subject application, provided left turns are allowed at the new intersection of SW Taylors Ferry Road at SW Hume Street since the project would not any trips to the stop-controlled approach.

Exhibit H-107I.

Thus, Applicant's sign distance analysis showed no deficits requiring mitigation.

Based on this information, the Hearings Officer finds the proposal meets Transportation Impact approval criterion evaluation factors except as noted with respect to bus stops. In addition, potential issues exist with a final determination on proposed disturbance area. The Hearings Officer therefore finds this criterion can be met with conditions.

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

Findings: Chapters 33.651 through 33.654 address water service standards, sanitary sewer disposal standards, stormwater management, utilities and rights of way. Chapter 33.654 ultimately requires PBOT approval of the right-of-way design. See PZC 33.654.120.C.2. Chapters 33.652 and 33.653

requires BES approval for sewer and stormwater facilities. See PZC 33.652.020 and 33.653.030. BDS Staff have determined that Concept approval of a public works permit is necessary. See Exhibit H-94, page 6. Applicant argues that it is not. Applicant write:

“The current revised plans are substantial evidence that the Applicant can construct all needed public improvements to meet the applicable substantive standards, as shown on the revised plans and in the current proposed locations. Thus, there is substantial evidence to establish the disturbance area associated with those improvements. Public Works reviewed the initial plans without indicating any substantive issues that precluded the Applicant from meeting the requirements. Public Works provided comments on the plans and the project engineer addressed those comments in revised drawings. To date, Public Works has not rejected the plans or provided any statement that the improvements reflected therein cannot be constructed consistent with applicable standards.

“Thus, there is no competing evidence from which the hearings officer could conclude that the Applicant cannot construct the required public improvements as proposed. on the revised plans. Under *Garcia v. Boise Cascade Corp.*, 309 Or 292, 295, 787 P2d 884 (1990), the hearings officer must conclude that the substantial evidence in the record establishes that the approval criteria related to providing public improvements and services can be met. Consequently, Staff cannot use the argument the Applicant has not demonstrated the final disturbance area associated with those improvements as a basis for denying environmental review.

“A statement that Public Works may not have completed its review is not evidence of noncompliance with the environmental review standards. The code does not state that formal approval of conceptual drawings is a criteria for either environmental review or a land division. An applicant must demonstrate that they can comply. A formal approval of conceptual plans is one piece of evidence that an applicant can meet the criteria, but it is not the only evidence that can carry the applicant's burden. Here, the only evidence in the record are the revised plans from the project engineer that show that the Applicant can meet the criteria. Staff did not provide any evidence in the Staff report that the Applicant cannot meet any substantive criteria.

“Under Staff's view, if formal approval is the only evidence under which an Applicant can meet the relevant criteria related to public improvements, the City could delay review and approval of conceptual drawings whenever it desired and then deny any application it wanted using the lack of conceptual drawing approval as the basis for a denial. The Applicant submits that it has provided substantial evidence in the record that its conceptual drawings demonstrate compliance with the relevant criteria.”

As outlined below, the Hearings Officer finds that “conceptual approval is not part of the approval criteria, however, that Chapter 33.654 ultimately requires PBOT approval of the right-of-way. See PZC 33.654.120.C.2. Chapters 33.652 and 33.653 require BES approval for sewer and stormwater facilities. See PZC 33.652.020 and 33.653.030. The criteria and standards are met as shown in the following table:

33.651 Water Service standard – See Exhibit E.3

The Water Bureau has indicated that new water mains would need to be installed to serve the proposed development in order to meet the standards of 33.651. Subject to providing appropriate plans and financial assurances to the Water Bureau prior to final plat approval, this criterion could be met. PZC 33.651.020 requires that “the Water Bureau or District and the Fire Bureau have verified that water facilities with adequate capacity and pressure are available to serve the proposed development.

The Hearings Officer adopts BDS Staff’s finding on this point. However, potential issues exist with a final determination on proposed disturbance area. The Hearings Officer therefore finds this criterion can be met with conditions.

33.652 Sanitary Sewer Disposal Service standards – See Exhibit E.1

The Bureau of Environmental Services has noted sanitary sewer infrastructure that is on or in the vicinity of the site (Page 3 of this report). The applicant proposes to extend a sewer main from the 8-inch CSP public sanitary-only sewer in SW Ruby Terrace through the proposed public pedestrian connection to the new north-south public street (Street A). A new main is proposed within Street A that extends south and into a portion SW Hume Street and to the north, through proposed Tract A, to connect to a main located within Ruby Creek, via a sewer easement to the City of Portland. Under PZC 33.652.020, BES must approve public sewer facilities. Potential issues exist with a final determination on proposed disturbance area. The Hearings Officer therefore finds this criterion can be met with conditions.

33.653.020 & .030 Stormwater Management criteria and standards – See Exhibit E.1

The Bureau of Environmental Services has noted sanitary sewer infrastructure that is on or in the vicinity of the site (Page 3 of this report). No stormwater tract is proposed or required. Therefore, criterion A is not applicable. The applicant submitted a Stormwater Management Report (Exhibit A.1; A.2; A.3.e) to address this approval criterion.

BDS Staff explain:

“Stormwater associated with the individual lots will be directed into flow-through planters that remove pollutants and suspended solids. The water will drain from the planters to a new storm sewer main within proposed Street A and SW Hume Street, which then outfalls within Ruby creek, via a sewer easement to the City of Portland. Stormwater associated with portions of SW Hume and Street A will be directed into infiltration swales located between the curb and the new sidewalk. These swales will then discharge to the mains noted above.

Stormwater management associated with portions of SW Hume and Taylors Ferry Road will also be treated by swales but will discharge to an existing main in SW Taylors Ferry Road that discharges to an outfall on the south side of this street.”

Exhibit H-1, page 34.

The Hearings Officer adopts BDS Staff’s finding. BES is required to approve stormwater facilities. See PZC 33.653.030.A In addition, potential issues exist with a final determination on proposed disturbance area. The Hearings Officer therefore finds this criterion can be met with conditions.

33.654.110.B.1 Through streets and pedestrian connections

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

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

Through streets should generally be provided no more than 530 feet apart, and pedestrian connections should generally be provided no more than 330 feet apart. Through street and pedestrian connections should generally be at least 200 feet apart. The Portland Bureau of Transportation has provided the following evaluation of connectivity for this proposal (Exhibit E.2):

“The proposal will construct a new public street connection (SW Hume) from SW Taylors Ferry Road to SW Ruby Terrace constructed to city standards. A street connection directly north is not feasible due to the steep topography and environmental overlay zones. A new pedestrian connection between the new dead end public street and SW Ruby Terrace will be provided approximately 400-ft north of the intersection of SW Hume and SW Ruby.”

See Exhibit H-1, page 34.

The applicant is proposing to improve SW Hume Street and extend this right-of-way to SW Taylors Ferry Road. A new north-south public right-of-way, identified as Street A, is proposed to be extended north from SW Hume Street through the site for a length of approximately 500 feet. In addition, a public pedestrian connection is proposed to connect SW Ruby Terrace to Street A. BDS Staff made the following findings:

“Due to the presence of environmental zoning, steep terrain, and natural features such as Stephens and Ruby Creeks, the proposed street and pedestrian connections appear to be the extent of what can be achieved on this site without creating significant detrimental impacts to the resources in this area. For these same reasons, it is not feasible to extend SW Brier Place or SW Canby Street onto the site. Based on the preceding findings, Staff finds the connectivity and locations of rights-of-way sufficient for this proposal. * * *”

Exhibit H-1, page 34.

The Hearings Officer adopts BDS Staff's finding. However, potential issues exist with a final determination on proposed disturbance area. The Hearings Officer therefore finds this criterion can be met with conditions.

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

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

The proposal includes a new north-south dead-end street (Street A) located within a public right-of-way. This right-of-way will serve 18 dwelling units and is approximately 460-feet in length from the intersection with SW Hume Street to the center of the radius turn-around. BDS Staff made the following finding:

“As discussed under the findings for through streets above, Staff finds the proposal to create a dead-end street appropriate as a through street(s) would result in significant detrimental impacts to identified resources in this area.”

Exhibit H-1, page 34.

The Hearings Officer adopts BDS Staff's finding. However, potential issues exist with a final determination on proposed disturbance area. The Hearings Officer therefore finds this criterion can be met with conditions.

33.654.120.B & C Width & elements of the right-of-way – See Exhibit E.2

The site has frontage on SW Taylors Ferry Road, SW Hume Street, SW Ruby Terrace, SW Front Street, SW Canby Street, and SW Brier Place. Only SW Taylors Ferry Road and SW Ruby Terrace are improved (substandard) along the site's frontage. In reviewing this land division, Portland Transportation relies on accepted civil and traffic engineering standards and specifications to determine if existing street improvements for motor vehicles, pedestrians and bicyclists can safely and efficiently serve the proposed new development. In this case Portland Transportation has determined that the following improvements are required to meet City standards:

SW Taylors Ferry Road: Construct a buffered (3-ft) 6-ft bike lane beyond the fog line, 0.5-ft curb, 8-ft swale, 6-ft sidewalk, and a 1.5-ft frontage zone. Survey will be required to determine needed dedications.

SW Ruby Terrace: Construct standard half-street improvements including a minimum 20-ft roadway, curb 16-ft from ROW centerline, 8-ft swale, 5-ft sidewalk, and a 0.5-ft

frontage zone. Approximate dedication is 2-ft.

SW Hume Street: Improvements must connect to SW Ruby. Construct standard half-street improvements including a minimum 20-ft roadway, curb 16-ft from ROW centerline, 8-ft swale, 5-ft sidewalk, and a 0.5-ft frontage zone along sections of Hume where the site only abuts one side of the street. For sections of the site the front both sides of SW Hume, construct full width street improvements with 26-ft of roadway with 14-ft sidewalk corridors along both sides. Dedicate whatever is needed to provide 54-ft of ROW.

New access street from SW Taylors Ferry (identified as SW Hume Street): construct a 26-ft roadway with curbs 8-ft public storm water facilities, 5-ft sidewalks, 0.5-ft frontage zone. Dedicate 54-ft of ROW. New road grades not to exceed 15%.

A new north-south public dead-end street (Street A) is proposed to serve the lots within the land division site. The street is anticipated to serve the vehicle traffic, pedestrians and bicyclists accessing the lots within this subdivision. The street dedication is proposed to be 60 feet wide, to provide room for the construction of a 32-foot wide paved roadway that allows two travel lanes, parking on both sides, two 6-inch curbs, stormwater swales and 5-foot wide sidewalks. The elements of the proposed right-of-way appear to meet applicable standards (Exhibit E.2). The Hearings Officer adopts BDS Staff's finding. However, potential issues exist with a final determination on proposed disturbance area. The Hearings Officer therefore finds this criterion can be met with conditions.

33.654.120.C.3.c. Approval criterion for turnarounds.

A 35-foot radius turn-around is proposed at the terminus of the proposed north-south public street (Street A). In addition, a fire turnaround is proposed where the proposed public pedestrian connection meets Street A, which also necessitates easements on adjacent Lots 8 and 9.

The Portland Bureau of Transportation has indicated that the proposed cul-de-sac at the terminus of the public street is not large enough for a fire turnaround but will function for trash haulers and delivery trucks (Exhibit E.2). This turnaround is sufficient to provide safe vehicular and bicycle movement for the expected users and a sidewalk extends around its entirety to provide safe and convenient access for pedestrians traveling on the street or to the nearby pedestrian connection that is proposed. The Portland Bureau of Transportation approves of the configuration of elements within the turnaround right-of-way. The Fire Bureau has approved Applicant's appeal of the turnaround requirements. However, potential issues exist with a final determination on proposed disturbance area. The Hearings Officer therefore finds this criterion can be met with conditions.

33.654.120.E. Approval criterion for the width of pedestrian connections.

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

The applicant has proposed a public pedestrian connection between SW Ruby Terrace and the proposed north-south public street (Street A) within the land division site. The proposed pedestrian connection contains a 6-foot wide path that is approximately 300-feet in length and is located within a right-of-way that varies in width between 15 and 23 feet. The proposed pedestrian connection right-of-way appears sufficient to accommodate expected users and provide a safe environment considering existing (7827 SW Ruby Terrace) and proposed (Lots 8 and 9) structures that can provide "eyes" on this area. The applicant indicated that no pedestrian way lighting is proposed but the proximity of nearby homes should provide sufficient ambient lighting. In addition, it appears that users should be able to stand at one end of the connection and see the other end. BDS Staff has determined that the proposed pedestrian connection appears to meet this approval criterion. The Hearings Officer adopts BDS Staff's finding. However, potential issues exist with a final determination on proposed disturbance area. The Hearings Officer therefore finds this criterion can be met with conditions.

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. The applicant has proposed a 6-foot utility easement adjacent to the proposed public street(s). BDS Staff has determined that this criterion can be met. The Hearings Officer adopts those findings and finds that this criterion can be 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.

Future Development

Among the various development standards that will be applicable to this lot, the applicant should take note of:

Environmental standards that apply to the land division. In this case, the standards of Section 33.430.160 Standards for Land Divisions and Planned Developments apply to the proposal.

- 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.E).— *This is proposed by the applicant.*
- All vegetation planted in a resource area is native and listed on the Portland Plant List. Plants listed on the Portland Nuisance Plant List or Prohibited Plant List are prohibited (33.430.140.M)
- The minimum front, street, or garage setbacks of the base zone may be reduced to any distance between the base zone minimum and zero (33.430.140.N).
- Maximum front or street setbacks are as follows:
 1. The front building or street setback of the base zone is the maximum building setback for primary structures.
 2. On a lot with more than one street lot line the maximum setback standard applies to the street lot line that is farthest from the resource area.
- Fences are allowed only within the disturbance area (lots) (33.430.140.P).
- 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.R).

Existing development that will remain after the land division. The site is currently vacant, so the division of the property will not cause the 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.

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
Development Services/503-823-7300 www.portlandonline.com/bds	Title 24 – Building Code, Flood plain Title 10 – Erosion Control, Site Development Administrative Rules for Private Rights-of-Way
Environmental Services/503-823-7740 www.portlandonline.com/bes	Title 17 – Sewer Improvements 2008 Stormwater Management Manual
Fire Bureau/503-823-3700 www.portlandonline.com/fire	Title 31 Policy B-1 – Emergency Access
Transportation/503-823-5185 www.portlandonline.com/transportation	Title 17 – Public Right-of-Way Improvements Transportation System Plan

Bureau	Code Authority and Topic
Urban Forestry (Parks)/503-823-4489 www.portlandonline.com/parks	Title 11 –Trees
Water Bureau/503-823-7404 www.portlandonline.com/water	Title 21 – Water availability

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.

II. CONCLUSIONS

The applicant requests approval of a Land Division and Environmental Review for a 21-lot subdivision for single-dwelling development, an environmental resource tract, a landscape buffer tract, a scenic resource tract, a new pedestrian connection, a new street, and improvements to existing rights-of-ways.

As discussed in this Decision, due to the pending approvals from BES, PBOT, and Urban Forestry, the final disturbance area has not been determined. However, based upon substantial evidence in the record, Environmental Review can be met with appropriate conditions. In addition, the Environmental Modifications can be met with conditions as well.

The applicant also requests approval of an Environmental Violation Review to address unauthorized tree cutting and ground disturbances in the environmental overlay zone. The Hearings Officer finds with conditions for replanting, the impacted resources will be remediated. As such, the Environmental Violation Review should be approved.

Finally, Applicant's land division is also approvable with conditions.

III. DECISION

Approval of Environmental Violation Review, subject to the following conditions:

- A. A BDS Zoning Permit is required to be finalized by March 31, 2018 for inspection and approval of remediation plantings. Copies of Exhibit C.13 from LU 16-213734 and conditions limits below shall be included within all plan sets submitted for permits (Zoning Permits). These exhibits shall include the following statement, "Any field changes must be in substantial conformance with approved Exhibit C.13 from LU 16-213734". To obtain the permit, the applicant must submit a Remediation Planting Plan which provides the following:
 - removal of all non-native nuisance vegetation from the "upland and riparian remediation areas" shown on Exhibit C.13.

- installation of native species within the 12,727 square foot “upland remediation area” at the following rate: 1 tree, 1 shrub, and 5 groundcover plants for every 50 square feet of planting area.
 - installation of native species within the 10,000 square foot “riparian remediation area” at the following rate: 1 tree, 1 shrub, and 5 groundcover plants for every 50 square feet of planting area.
 - Plants must be native and selected from the *Portland Plant List*. A minimum of 3 different tree species, 5 different shrub species; and 5 different groundcover species must be provided in each remediation area.
 - All nuisance plant removal and plant installation work must be conducted with hand-held equipment.
 - All remediation trees and shrubs shall be marked in the field by a tag attached to the top of the plant for easy identification by the City Inspector. All tape shall be a contrasting color that is easily seen and identified.
- B. The land owner shall maintain the required planting for two years to ensure survival and replacement. The land owner is responsible for the ongoing survival of the required plantings during and beyond the designated 2-year monitoring period. At the end of the 2-year maintenance and monitoring period, the land owner shall obtain a second (final) Zoning Permit for a final inspection of the remediation plantings for the purpose of ensuring the required plantings remain. The permit must be finalized no later than 2 years from the final inspection of the initial installation of the remediation plantings. Any required plantings that have not survived must be replaced.

Approval of Environmental Review subject to final PBOT approval of the right-of-way, final BES approval of stormwater and sewer, and City Forester approval (in consultation with the City Engineer) of removal of the 54-in tree, all in substantial conformance with the disturbance area proposed by Applicant and reflected in the Construction Management Plan in Exhibit H-107o(3).

A. BDS

1. With recording of the final plat, the Applicant shall record a restrictive covenant against Lots 4 through 8 obligating the lot owners to maintain the native trees on Lots 3 through 8 between the disturbance line depicted on the plans and the western boundary line of each lot. The HOA shall have the responsibility of enforcing said restriction.
2. Environmental Resource Tracts A and C shall be noted on the plat as "Resource Tract A" and "Resource Tract C." A note must also be provided on the plat indicating that the tract will be commonly owned and maintained by the owners of Lots 3 through 23 or a Homeowner's Association or the City or a Non-profit Organization.

A recording block for each of the legal documents such as Maintenance Agreement(s), acknowledgement of special land use conditions, or Declarations of Covenants, Conditions, and Restrictions (CC&Rs) as required by Conditions E below. The recording block(s) shall, at a minimum, include language **substantially similar to the following example: "A Declaration of Maintenance Agreement for (name of feature) has been recorded as document no. _____ Multnomah County Deed Records."**

B. BES

1. Secure approval of BES pursuant to PZC 33.652.020 by responding to PWP redline corrections dated 10/26/17 regarding required neighborhood stormwater facility in Tract A and the related all in substantial conformance with the disturbance area proposed by Applicant and reflected in the Construction Management Plan in Exhibit H-107o(3).
2. The final plat must include easements over new City of Portland sanitary and stormwater infrastructure that is located on private property. The easements will need to be granted to the City of Portland over the relevant improvements with appropriate width and to the satisfaction of BES;
3. The final plat must include existing City of Portland easements;
4. Prior to final plat approval, the applicant must complete the following related to the construction of public sewers and stormwater facilities to the satisfaction of BES: Approved engineering plans through the Public Works Permit process, provide a financial guarantee, provide a signed permit document and pay all outstanding fees.
5. Prior to final plat approval, the applicant must confirm the impact that the proposed improvements will have on the sanitary sewer connections for existing development addressed as 11 and 17 SW Taylors Ferry Rd. Depending on the impacts, the applicant may be required to make improvements to the connections to maintain sufficient sewer service to those residences to the satisfaction of BES, up to and including constructing new public sewers and sewer connections, prior to final plat approval.

C. PBOT

1. As a condition of final plat approval, the applicant shall dedicate the necessary rights-of-way within its ownership and construct street improvements to the current City standards per the requirements of the City Engineer.
2. As a condition of final plat approval, a bond and contract ensuring the street improvements will be completed.
3. Prior to final plat approval the applicant shall trim down the understory and branches over the

ROW at the west side of the intersection of SW 2nd Avenue and SW Taylors Ferry Road for improved sight distance.

4. Prior to final plat approval, the applicant shall construct a flat concrete pad per TriMet standards at the bus stop at SW 2nd Avenue and SW Taylors Ferry Road, or relocate the bus stop to a new intersection of SW Hume and SW Taylors Ferry Road with approval from TriMet. If the new bus stop is located at the intersection of SW Hume and SW Taylors Ferry, it may be constructed at the same time as the applicant's required sidewalk improvements.

D. Site Development

1. Prior to obtaining a construction permit for development in the floodway, the applicant shall submit a "no rise" analysis for the stormwater outfall depicted on Sheet 2.0 if it is within the 15 foot floodway. The analysis must be stamped by a professional engineer licensed in the State of Oregon demonstrating that the development will not increase the 100 year floodplain elevations. The analysis must be reviewed and approved by the Engineering/Modeling group of BES Asset Systems Management. 2. At the time of Site Development Permitting the applicant shall address the comments on page 3 of the Site Development Section Revised Land Use Review Response dated November 3, 2017.
2. Applicant shall submit preliminary retaining wall design calculations and typical cross sections to Site Development to verify the proposed limits of disturbance are adequate in substantial conformance with the disturbance area proposed by Applicant and reflected in the Construction Management Plan in Exhibit H-107o(3).

E. Required Legal Documents

1. The Applicants shall execute a Maintenance Agreement for the tracts described in Condition A.3 above. The agreement shall assign common, undivided ownership of Resource Tract A and Resource Tract C to the owners of Lots 3 through 23 or a Homeowner's Association or the City or a Non-profit Organization and include provisions assigning maintenance responsibilities for the tracts and any shared facilities within that area. The Maintenance Agreement must be reviewed by the City Attorney and the Bureau of Development Services, and approved as to form, prior to final plat approval.
2. The Applicants shall execute an Acknowledgement of Special Land Use conditions, requiring residential development on Lots 3 through 8 to comply with Condition A.2. The acknowledgement shall be recorded with Multnomah County, and referenced on the final plat.
3. The Applicants shall submit a Performance Guarantee, meeting the requirements of PCC 33.700.050, for (1) installation of mitigation plantings at the site and (2) two years of monitoring and maintenance (as specified in Condition) to the Bureau of Development Services. The Performance Guarantee must be accompanied by a contract approved by the

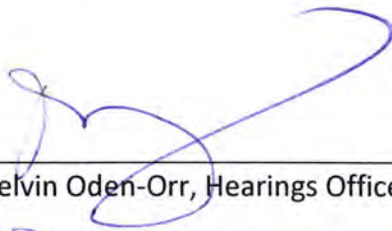
City Attorney.

- a. Performance Guarantee for the estimated cost of installation of plantings. If the Applicants or subsequent owners of the site do not install any required plantings as required by a condition of approval, the City shall use the performance guarantee to install required plantings. The Bureau of Development Services will return/release unused portions of the required performance guarantee allocated to installation of plantings to the Applicants, only after Bureau of Development Services Inspectors determine that all required plantings have been completed and invasive species have been removed within 10 feet of all required native plantings.
- b. Performance Guarantee for estimated costs of monitoring and maintenance. If the Applicants or subsequent owners of the site do not monitor and maintain the plantings, as required by Condition D below, the City shall use the performance guarantee to monitor and maintain the required plantings. The Bureau of Development Services will return/release portions of the required performance guarantee allocated for each year of the two-year monitoring period to the Applicants only after the Bureau of Development Services has approved the annual monitoring report (including replacement of dead plants).

F. Other Requirements

1. Applicants shall satisfy the requirements of the Mitigation Plan (Exhibit H-100b) and, in addition:
 - a. Prior to installing required mitigation plantings, non-native invasive plants shall be removed from all areas within 10 feet of mitigation plantings, using handheld equipment.
 - b. All mitigation and remediation shrubs and trees shall be marked in the field by a tag attached to the top of the plant for easy identification by the City Inspector. All tape shall be a contrasting color that is easily seen and identified.
 - c. 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.

Applicants shall have a registered landscape architect, a registered landscape contractor, or the designer of record certify that all the required mitigation plantings were installed as required. After installation, the Applicants shall submit a Landscape Certification Form to this effect, signed by the registered landscape professional. The signed Landscape Certification Form shall be submitted to the Site Development Section of the Bureau of Development Services, confirming that all required mitigation plantings have been installed in accordance with these conditions of approval.



Melvin Oden-Orr, Hearings Officer
December 29, 2017

Date

Application Determined Complete:	January 30, 2017
Report to Hearings Officer:	October 6, 2017
Decision Mailed:	December 29, 2017
Last Date to Appeal:	4:30 p.m., January 12, 2018
Effective Date (if no appeal):	January 16, 2018

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

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

Appeal of the decision. ANY APPEAL OF THE HEARINGS OFFICER'S DECISION MUST BE FILED AT 1900 SW 4TH AVENUE, PORTLAND, OREGON 97201. Appeals can be filed at the 5th floor reception desk, Monday through Friday between 8:00 a.m. and 4:30 p.m. **An appeal fee of \$5,000.00 will be charged (one-half of the application fee for this case, up to a maximum of \$5,000.00).** Information and assistance in filing an appeal can be obtained from the Bureau of Development Services at the Development Services Center.

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

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

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

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 decisions.

If the preliminary land division approval also contains approval of other land use decisions (examples include adjustments, conditional uses, and environmental reviews), these other approvals will be recorded with the Multnomah County Recorder.

- *Unless appealed*, the final decision will be recorded by the Bureau of Development Services, 14 days after the City's final decision is issued.

The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder.

For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of concurrent approvals.

The following approvals were necessary for the land division to be approved: Environmental Review, Environmental Modifications. This/these approval(s) expires 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.

EXHIBITS
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Initial Submittal, August 3, 2016
 - 2. Revised Submittal (responses to completeness review), received January 30, 2017
 - 3. Amended Submittal, received August 28, 2017
 - a. Revised narrative
 - b. Additional neighborhood contact information (an addition to Appendix B)
 - c. Stormwater Memo from Emerio Design (an addition to Appendix F)
 - d. Memo from Brad Hupy at GEO Northwest Consultants, Inc., dated July 17, 2017 (an addition to Appendix G)
 - e. Technical Memorandum from Lancaster Engineering, dated August 15, 2017 (an addition to Appendix H)
 - f. Traffic Impact Study from Lancaster Engineering, dated August 11, 2017 (an addition to Appendix H)
 - g. Memo from Juniper at Schott & Associates, dated July 18, 2017 (an addition to Appendix I)
 - h. Memo from property owners, dated August 7, 2017 (an addition to Appendix I)
 - i. Updated Alternative 4 to replace the outdated Alternative 4 that is currently in Appendix I
 - j. Exhibit 1A which is the Alternate Option for Storm and Sanitary Sewer
 - k. Revised Plan Set Sheets 1-25 (this set will replace the current planning set)
 - l. Response Matrix to Kate Green's March 14, 2017 comments with an email from Chris Lastomirsky with BES attached as part of the response
 - m. Response Matrix to Jason Butler-Brown's March 17, 2017 comments
 - n. Response Matrix to Dawn Krantz's comments with emails from Terry Wentz at the Water Bureau addressing fire flow
 - o. Response Matrix to Benjamin Kersens' March 20, 2017 comments
 - 4. Timeline Extensions (received January 30, 2017; March 30, 2017; July 14, 2017)
 - 5. March 9, 2017 GEO Consultants Northwest, *Macadam Ridge Subdivision, Site Conditions Following February 2017 Rainfall Events.*
- B. Zoning Map
- C. Plans and Drawings
 - 1. Cover Sheet
 - 2. Aerial Photo with Project Overlay
 - 3. Existing Conditions
 - 4. Preliminary Site Plan
 - 5. Street Cross Sections
 - 6. Preliminary Subdivision Plat
 - 7. Preliminary Grading Plan
 - 8. Preliminary Composite Utility Plan
 - 9. Preliminary Landscape Planting Plan

10. Preliminary Landscape Planting Plan
11. Planting Notes and Details
12. Existing Conditions
13. Proposed Development Site Plan
14. Proposed Construction Management Site Plan
15. Tree Removal and Preservation Plan
16. Tree Removal and Preservation Plan
17. Tree Removal and Preservation Plan
18. Tree Removal and Preservation Plan
19. Street A
20. SW Hume Street
21. SW Hume Street
22. SW Taylors Ferry Road
23. SW Ruby Terrace
24. Lines SS-A & SD-01
25. Lines SS-C & SD-03
26. Alternate Storm and Sanitary Plan
27. Alternative Development Plans
 - a. Alternative 1
 - b. Alternative 2
 - c. Alternative 3
 - d. Alternative 4 (Applicants' Preferred Alternative)
- D. Notification information
 1. Request for response
 2. Posting letter sent to applicant
 3. Notice to be posted
 4. Applicant's statement certifying posting
 5. Mailing list
 6. Mailed notice
- E. Agency Responses
 1. Bureau of Environmental Services (March 20, 2017; October 4, 2017)
 2. Portland Transportation (March 24, 2017; October 4, 2017)
 3. Water Bureau
 4. Fire Bureau (August 25, 2016; October 3, 2017)
 5. Site Development (March 17, 2017; October 4, 2017)
 6. Urban Forestry
 7. TriMet
 8. Life Safety
- F. Letters
 1. Barbara Griffith, February 15, 2017, supports proposal
 2. Jennifer Edeline, February 22, 2017, supports proposal
 3. Robert N Griffith, February 22, 2017, supports proposal

4. Bob Griffith, February 23, 2017, supports proposal
5. Fred L Shelton, February 26, 2017, supports proposal
6. Lisa Gomez, February 26, 2017, supports proposal
7. Jessica Coleman, February 27, 2017, supports proposal
8. Jaclyn Griffith, February 28, 2017, supports proposal
9. Sean Edeline, February 28, 2017, supports proposal
10. Jim Diamond/Collins View Neighborhood Association, March 3, 2017, cites concerns about transportation, environmental and neighborhood character impacts
11. Robert Lennox/South Burlingame Neighborhood Association, March 3, 2017, notes concerns about traffic, environmental and geotechnical impacts
12. Laurie Wall, September 22, 2017, requests to be added to mailing list

G. Other

1. Original LUR Application
2. Letter to applicant re: incomplete application
3. DSL Wetland Notification
4. Applicant Correspondence

H. Received in the Hearings Office

1. Staff Report - Green, Kate
2. 10/7/17 letter - Zumwalt, Lorraine
3. 10/10/17 letter - James, Alex
4. Fax Letter - Shorr, Sarah
5. 10/11/17 letter (2 pages) - Lidberg, Steve and Carol
6. Letter dated 10/8/17 (2 pages) - Holderness, John
7. Letter dated 10/10/17 - Holderness, Mary L.
8. Letter dated 10/8/17 - Goodwin, Jules
9. Fax Letter dated 10/13/17 - Dryden, Seth
10. Letter dated 10/13/17 - Andrews, Michael
11. Request to be added to mailing list - Porto, Carol
12. Request to be added to mailing list - Baranow, Michael
13. Letter dated 10/16/17 - Baranow, Michael
14. Request to be added to mailing list - Pearson, Sam
15. Letter - Dennis, Patricia
16. Letter dated 10/13/17 - Andrews, Michael
17. Letter dated 10/16/17 - Jones II, John & Garrison Hullinger
18. Letter w/ fax duplicate - Brown, Robert H.
19. Request to be added to mailing list - Lacka David
20. Letter dated 10/15/17 w/ 2 duplicates - Read, Maryellen
21. Letter dated 10/14/017 w/ fax duplicate - Dames, Hillary and George
22. Letter dated 10/15/17 w/ fax duplicate - Zumwalt, Lorraine
23. Letter dated 10/16/17 w/ fax duplicate - Carleton, James E.
24. Letter dated 10/12/17 w/ fax duplicate - Porto, Carol
25. Letter dated 10/10/17 - James, Alex

26. Letter dated 10/13/17 w/ fax duplicate - Pearson, L.A.
27. Letter dated 10/14/17 w/ fax duplicate - Lennox, Robert
28. Letter dated 10/14/17 w/ fax duplicate - Lennox, Robert
29. Letter dated 10/9/17 - Meier, Linda
30. Letter with 2 attachments - Meier, Linda
31. Letter dated 10/15/17 - Peterson, Krista
32. Letter dated 10/15/17 - Kauffman and Dominey
33. Letter dated 10/15/17 w/ fax duplicate - Greenough, Lynn
34. Letter dated 10/16/17 - Carleton, James E.
35. Letter dated 10/14/17 w/ fax duplicate - Greenough, Chuck
36. Letter dated 10/15/17 w/ fax duplicate - Friedman, Jan E.
37. Request to be added to mailing list - Andrews, Michael
38. Letter dated 10/16/17 - Lennox, Michelle
39. Zoning Map - yellow highlighted area - Andrews, Michael
40. 10/14/17 GEO Consultants Northwest Memo to Stephen Griffith - Koback, Chris
41. Letter - Wooldridge, Kent F.
42. Letter dated 10/14/17 - Koeleman, Fredericus
43. Fax Letter dated 10/##/17 - Enestvedt, C. Kristian
44. Sign Up To Testify In Favor Of List 10/16/17 - Hearings Office
45. Sign Up To Testify In Opposition To List 10/16/17 - Hearings Office
46. Record Closing Information - Hearings Office
47. Letter dated 10/11/17 - Grorud, Christian
48. Letter dated 10/11/17 - Leno, James & Diane Victoria
49. 10/20/17 letter (3 pages) - Koback, Chris
50. Memo to Hearings Officer dated 10/25/17 - Green, Kate
51. Environmental Review - Koback, Chris
52. Example - Decision of the Hearings Officer (LU 07-132746 LDS ENM AD (4070071)) - Koback, Chris
 - a. Example - Decision of the Hearings Officer (LU 09-116765 LDS EN M (4100007)) - Koback, Chris
53. Memorandum Public Works Conceptual Approval with Macadam Ridge Subdivision Site Plans attached - Koback, Chris
54. Memorandum Transportation Impacts - Koback, Chris
55. Fire Code Appeal Form - Koback, Chris
56. Excerpt from recent decision (LU 11-173927 EN GW) 4110032- Koback, Chris
57. Macadam Ridge Type III Land Division - Comment for Record With Attachments 1-8 - Meier, Linda
58. Envelope with Letter from Kent Wooldridge, Letter between Sandoval and Leupp, and Letters and 13 Color Photographs - Wooldridge, Kent F.
59. Letter dated 10/29/17 - Lennox, Robert
60. Letter dated 10/25/17 - Lennox, Robert
61. Letter dated 10/29/17 - read as testimony 10/30/17 - Griffith, Stephen

62. Letter dated 10/29/17 - read as testimony - Griffith, Barbara J.
63. Letter read as testimony 10/30/17 - Griffith, Anna
64. Letter dated 10/30/17 read as testimony - Griffith, Robert
65. Letter to Hearings Officer - Baranow, Michael
66. Letter to City Planners dated 10/30/17 - Baranow, Michael
67. Letter read as testimony dated 10/29/17 - Andrews, Michael
68. Letter read as testimony dated 10/30/17 - Friedman, Jan E.
69. Written notes based on testimony 10/31/17 - Greenouh, Lynn
70. Letter dated 10/29/17 with map - Lidberg, Steve and Carol
71. Email from Brian Lee to Lennox and Shaver dated 10/13/17 - Lennox, Robert
72. Letter read as testimony - Dennis, Patricia
73. Letter dated 10/27/17 read as testimony - Peterson, Krista
74. Letter dated 10/28/17 read as testimony - Lennox, Michelle
75. Testify In Favor Of List - Hearings Office
76. Testify In Opposition To List - Hearings Office
77. Written request for continuance - Koback, Chris
78. Record Closing Information - Hearings Office
79. Macadam Ridge "PC" CD - Hiller-Webb, Shannon
 - a. Macadam Ridge "Mac" CD - Hiller-Webb, Shannon
 - b. Macadam Ridge "Mac" CD - Hiller-Webb, Shannon
80. Letter in Opposition dated 10/15/17 (fax) - Read, Maryellen
81. Letter in Opposition (fax) - Delsoldato, Jason & Emily
82. Letter in Opposition dated 10/12/17 (fax) - Meiners, Dennis & Leslie Lee
83. Memo with attachments - Baranow, Michael
 - a. Offs - Baranow, Michael
 - b. Ons - Baranow, Michael
84. Fax Letter dated 10/30/17 - Priest, Amanda
85. Fax Letter dated 10/30/17 - Peterson, Anthony
86. Fax Letter dated 11/3/17 - McCuaig, Carolyn
87. Fax Letter with attachments dated 11/5/17 (with duplicate letter) - Houck, Ann
88. Fax letter dated 10/30/17 - Enestvedt, Brintha
89. Fax "Due Process Objection" Letter from Lennox as President and Friedman as Neighbor dated 11/5/17 - South Burlingame Neighborhood Assoc.
90. Fax Letter dated 10/30/17 - Erickson, Sam
91. Fax Letter dated 10/30/17 - Erickson, Lily
92. Letter dated 11/5/17 - Carpenter, Stan
93. Letter with attachment dated 11/5/17 - Koenig, Julie
94. Updated materials provided by the Applicant - Williams, Sean
95. Letter (7 pages) dated 11/5/17 with Attachments 1-4 (1 page each) Attachment 5 (2 pages), Attachments 6-7 (1 page each) Attachment 8 (45 pages) - Meier, Linda
96. Fax Letter dated 11/6/17 (with duplicate) - Zumwalt, Roger
97. Fax Letter dated 10/29/17 - Hiller-Webb, Shannon

98. Fax Letter dated 11/6/17 - Zumwalt, Lorraine
99. Letter dated 11/6/17 - Baranow, Michael
 - a. Letter dated 11/6/17 - Baranow, Michael
 - b. Letter dated 11/6/17 with attached Dissertation and Thesis dated 3/13/2013 (90 pages) - Baranow, Michael
100. Letter dated 11/6/17 (5 pages) - Koback, Chris
 - a. Site Maps (2) - Koback, Chris
 - b. Schott & Associates 11/3/17 MEMO (11 pages) - Koback, Chris
 - c. Preliminary Environmental Review site map P62 - Koback, Chris
 - d. Teragan & Associates 11/5/17 Letter with attachments (4 pages) - Koback, Chris
 - e. Memorandum in Response to aerial video (7 pages) - Koback, Chris
 - f. Technical Memorandum dated 11/5/17 - Koback, Chris
101. Letter dated 10/29/17 - Hiller-Webb, Shannon
102. Documents forwarded from Shannon Hiller-Webb - Williams, Sean
103. Faxed documents from Shannon Hiller Webb - Williams, Sean
104. 11/13/17 letter from Robert Lennox/South Burlingame NA - Hiller-Webb, Shannon
105. 11/13/17 letter with attachments - Koback, Chris
 - a. Construction Management Plan - Koback, Chris
 - b. Construction Management Plan - Koback, Chris
 - c. Preliminary Land Division Submittal Plans (18 pages) - Koback, Chris
 - d. 11/2/17 Technical Memorandum from Eric Evans/Emerio Design - Koback, Chris
 - e. Preliminary Site Plan - Koback, Chris
 - f. Macadam Ridge Subdivision Plans (16 pages) - Koback, Chris
 - g. 11/5/17 Technical Memorandum from Geo Consultants Northwest - Koback, Chris
 - h. 11/8/17 Memo from Schott & Associates with tables (4 pages) - Koback, Chris
 - i. 11/9/17 letter to Joel Smith/Urban Forestry from Stephen Griffith - Koback, Chris
 - j. 11/12/17 letter from Stephen Griffith with attachment - Koback, Chris
 - k. E-mails (2 pages) - Koback, Chris
 - l. Staff Report and Recommendation in LU 16-273162 LDS (2 pages) - Koback, Chris
 - m. 11/9/17 Letter from Nate Takara/Fire Marshal - Koback, Chris
106. 11/14/17 letter - Koback, Chris
107. Power Point printout - BDS Planner's File
 - a. Staff Report (Duplicate) - BDS Planner's File
 - b. Handwritten notation from Edythe Leupp - BDS Planner's File
 - c. Email from Lennox to Green dated 10/6/17 - BDS Planner's File
 - d. Email from Griffith to Green & Williams dated 10/16/17 with attachments - BDS Planner's File
 - e. Email from Howard to Green with Wetland Land Use Notification Response attached - BDS Planner's File
 - f. Opposition Email from Vesey to Green dated 10/15/17 - BDS Planner's File
 - g. Opposition Email from Liskear to Green dated 10/15/17 - BDS Planner's File

- h. 10/12/17 Macadam Ridge Project Management Plan for ruby Creek Stormwater Outfall Project and Ruby Creek Sanitary Sewer re-route and connection (with duplicate) - BDS Planner's File
- i. Memorandum dated 10/16/17 to HO from Koback (2 pages w/ duplicate) - BDS Planner's File
- j. Letter dated 10/26/17 from MEI Group to Griffith (2 pages w/ duplicate) - BDS Planner's File
- k. 10/12/16 Macadam Ridge Management Plan for Ruby Creek Stormwater (2 pages w/ duplicate) - BDS Planner's File
- l. Memorandum to HO from Mobley, Lancaster Engineering dated 10/16/17 (6 pages) - BDS Planner's File
- m. Memo Staff Report and Recommendations dated 10/26/17 by Schott & Associates (11 pages w/ duplicate) - BDS Planner's File
- n. Hand Delivery 10/25/17 - From Koback to Green & Williams (30 pages w/ 2 duplicate) - BDS Planner's File
- o. 10/26/17 From Koback to Green & Williams, Site plans (duplicate plans attached) - BDS Planner's File
 - (1) Preliminary Site Plan 4 of 25 (P 2.0) - BDS Planner's File **(8 ½ x 11" attached)**
 - (2) Preliminary Plat 6 of 25 (P 3.0) - BDS Planner's File **(8 ½ x 11" attached)**
 - (3) Preliminary Environmental Review 14 of 25 (P 6.2) - BDS Planner's File **(8 ½ x 11" attached)**
 - (4) Preliminary Tree Removal and Preservation Plan 15 of 25 (P 7.0) - BDS Planner's File **(8 ½ x 11" attached)**
 - (5) Preliminary Tree Removal and Preservation Plan 16 of 25 (P7.1) - BDS Planner's File **(8 ½ x 11" attached)**
 - (6) Preliminary Tree Removal and Preservation Plan 18 of 25 (P 7.3) - BDS Planner's File **(8 ½ x 11" attached)**
- p. Letter dated 10/27/16 from Koback to Green & Williams (no attachments) - BDS Planner's File
- q. Letter to Hearings Officer from Green & Williams - BDS Planner's File
- r. Email from Lennox to Williams & Green 10/27/17 - BDS Planner's File
- s. Email from Baranow to Green & Williams with TriMet letter attached - BDS Planner's File
- t. Letter dated 10/20/17 From Koback to Hearings Office - BDS Planner's File
- u. 10/19/17 Land Use Response Addendum from BES to Green - BDS Planner's File
- v. Email from Lennox to Williams 10/18/17 - BDS Planner's File
- w. Email from Baranow to Williams dated 10/17/17 - BDS Planner's File
- x. Email from Griffith to Williams dated 10/17/17 - BDS Planner's File
- y. Email from Lennox to Williams dated 10/16/17 - BDS Planner's File
- z. Email from Griffith to Williams dated 10/16/17 - BDS Planner's File
- aa. Email from Butler-Brown to Williams with attachments dated 10/16/17 (6 pages) - BDS Planner's File
- bb. Preliminary Site Maps 14, 16, 4, 6, 14, 15, 18 (8.5 x 14) - BDS Planner's File
- cc. Type III Planner's File (31 pages total) - BDS Planner's File

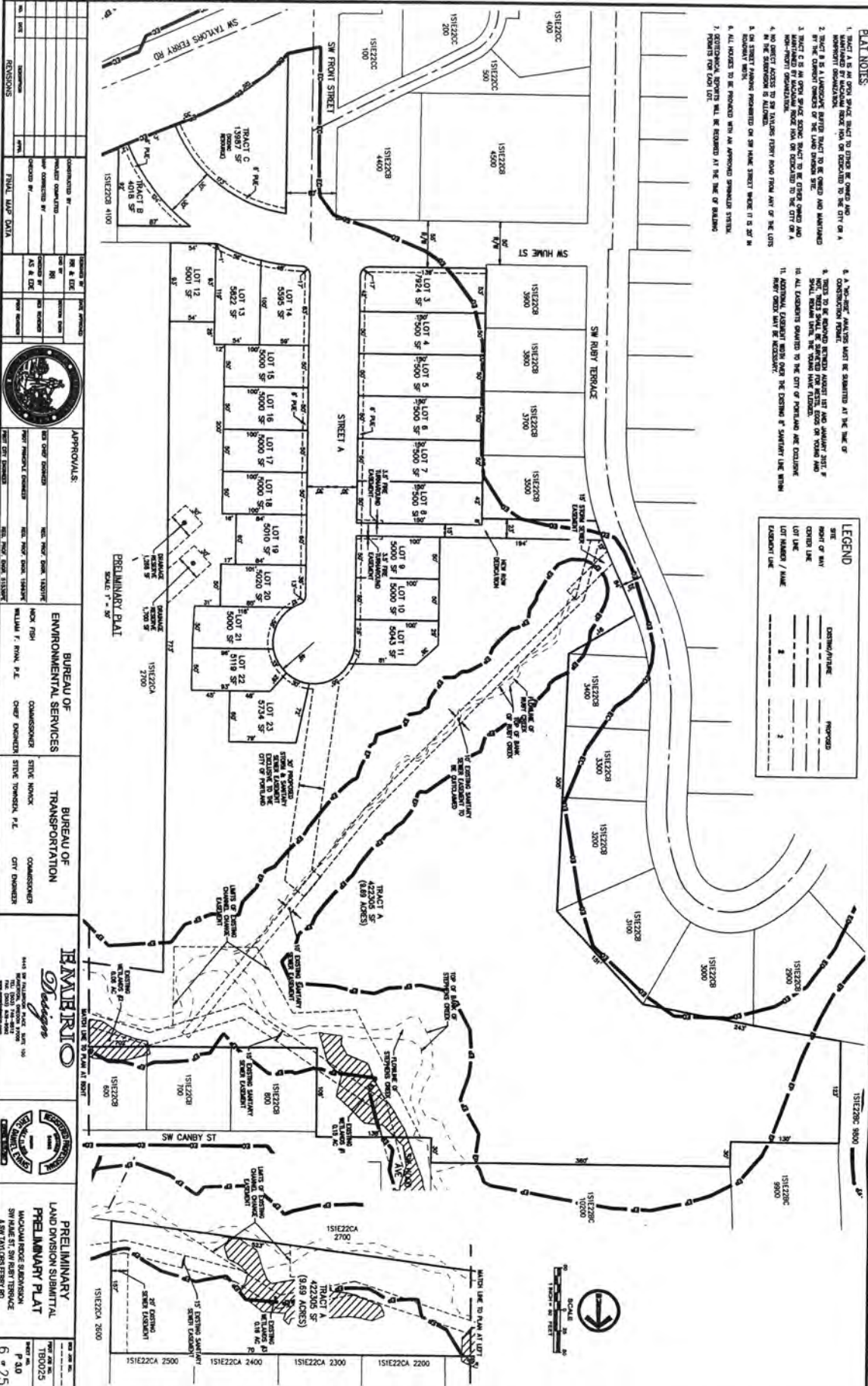
- 108. Interim Order Mailing List - Hearings Office
- 109. Returned Mail to Emerio Design - Hearings Office
- 110. Returned Mail to David Lacka - Hearings Office
- 111. Returned Mail to Theodore Norton - Hearings Office
- 112. 11/27/17 letter (2 pages) - Koback, Chris
- 113. 11/30/17 letter (2 pages) - Linn, Lorie
- 114. 11/30/17 letter (2 pages) - Preisler, Vanessa
- 115. 12/5/17 letter - Sanders, Kathy and Richard
- 116. Returned Mail (Interim Order) to Jim Diamond - Hearings Office
- 117. 11/30/17 letter (2 pages) - Hamilton, Rose Marie
- 118. 12/6/17 letter - Vesey, Robin
- 119. 12/6/17 letter - Liskear, Jack
- 120. 12/14/17 Final Written Argument (14 pages) - Koback, Chris

PLAT NOTES

1. TRACT A IS AN OPEN SPACE TRACT TO BE OPENED TO THE CITY AND MAINTAINED BY LOCAL TAXPAYER FOR THE CITY ON A PERMANENT BASIS.
2. TRACT B IS A LARGER TRACT TO BE OPENED AND MAINTAINED BY THE CURRENT OWNERS OF THE LAND DIVISION SITE.
3. TRACT C IS AN OPEN SPACE TRACT TO BE OPENED TO THE CITY AND MAINTAINED BY LOCAL TAXPAYER FOR THE CITY ON A PERMANENT BASIS.
4. NO ACCESS TO THE TRACTS FROM ROAD FROM ANY OF THE LOTS IN THE SUBDIVISION IS ALLOWED.
5. NO STREET FRONTAGE PROVIDED ON SW HOME STREET WHERE IT IS 30' WIDE.
6. ALL HOUSES TO BE PROVIDED WITH AN APPROVED SEWERAGE SYSTEM.
7. PERMANENT RIGHTS WILL BE REQUIRED AT THE TIME OF BUILDING PERMITS FOR LOT 10.

LEGEND

DATE/TITLE	PROPOSED
DATE OF ANY	---
CONTRACT LINE	---
LOT NUMBER / NAME	---
CONTRACT LINE	---



NO.	REVISIONS	DATE	BY	DESCRIPTION

DESIGNED BY	CHECKED BY	DATE

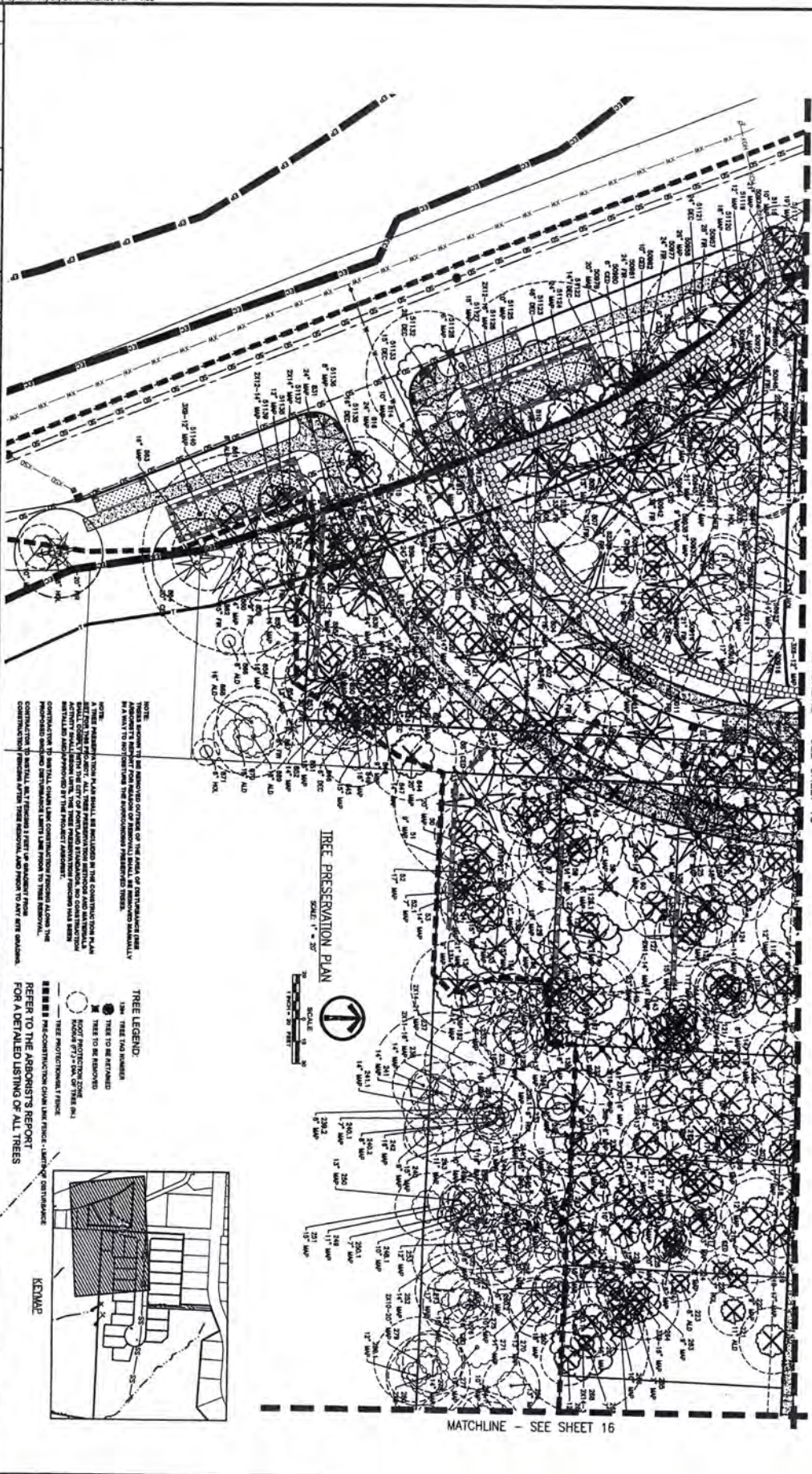
APPROVALS	DATE

BUREAU OF ENVIRONMENTAL SERVICES	BUREAU OF TRANSPORTATION
COMMISSIONER STEVE DUNNICK	COMMISSIONER CITY ENGINEER

EMERIO
LAND DIVISION SUBMITTAL PRELIMINARY PLAT

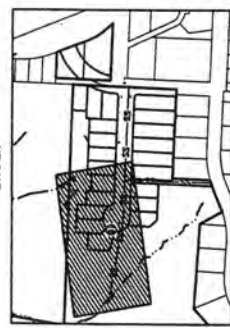
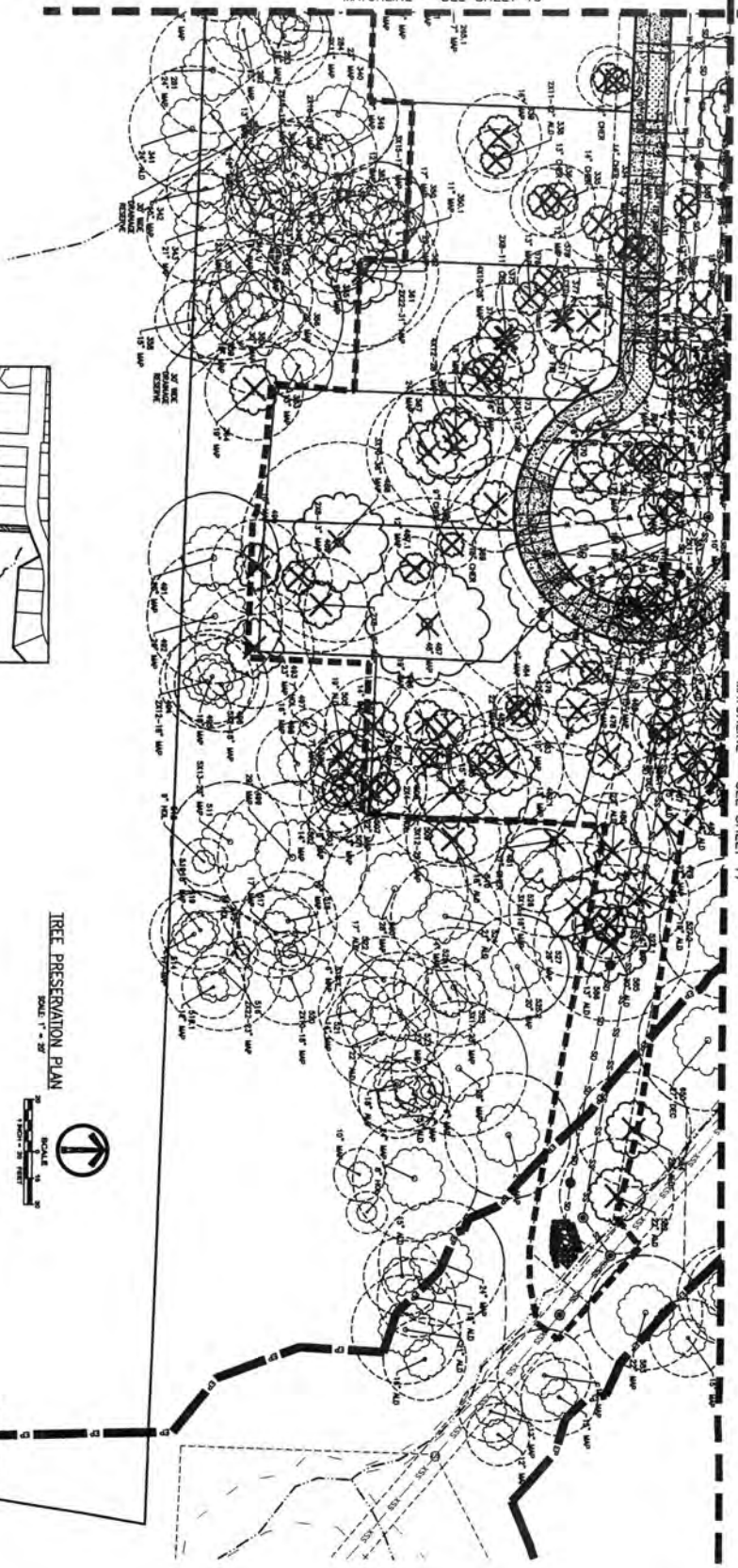
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LAND DIVISION SUBMITTAL PRELIMINARY PLAT

REVISIONS NO. DATE DESCRIPTION 1 10/26/17 FINAL MAP DATA		PROJECT NO. 17041K340 DRAWING NO. 17041K340-015		DATE 10/26/17 TIME 10:27:58 AM	
APPROVALS: PREPARED BY: [Signature] CHECKED BY: [Signature] DATE: 10/26/17		ENVIRONMENTAL SERVICES COMMISSIONER: STEVE HONCK CHIEF ENGINEER: STEVE DOWNS, P.E.		TRANSPORTATION COMMISSIONER: STEVE HONCK CHIEF ENGINEER: STEVE DOWNS, P.E.	
EMERIO 1445 NE ALABAMA STREET, SUITE 100 PORTLAND, OREGON 97232 TEL: 503.281.1111 WWW.EMERIO.COM		PRELIMINARY LAND DIVISION SUBMITTAL AND PRESERVATION PLAN 15" x 25"		CITY OF PORTLAND HEARINGS OFFICE Exhibit # H-1070(4) Case # 4170027 Bureau Case # 16-213734 LDS	



MATCHLINE - SEE SHEET 15

MATCHLINE - SEE SHEET 17



TREE PRESERVATION PLAN

SCALE: 1" = 20'



NOTE: THE PRESERVATION PLAN SHALL BE SUBJECT TO THE CONSTRUCTION PLAN REVIEW AND APPROVAL BY THE CITY OF PORTLAND ENVIRONMENTAL AND COMMUNITY DEVELOPMENT DEPARTMENT. THE PRESERVATION PLAN SHALL BE SUBJECT TO THE CITY OF PORTLAND ENVIRONMENTAL AND COMMUNITY DEVELOPMENT DEPARTMENT REVIEW AND APPROVAL BY THE PRESIDENT APPROVED. CONTRACTOR TO INSTALL CONCRETE CURB AND GUTTER ALONG THE PROPOSED DRIVEWAY LIMIT LINE FROM TO THE REMOVAL. CONTRACTOR TO INSTALL AND MAINTAIN A 1' WIDE CURB AND GUTTER FROM CONSTRUCTION PERIOD AFTER TREE REMOVAL AND PRIOR TO ANY SITE GRADING.

NOTE: TREES SHOWN TO BE REMOVED BY THE CITY OF PORTLAND ENVIRONMENTAL AND COMMUNITY DEVELOPMENT DEPARTMENT SHALL BE REMOVED MANUALLY. CONTRACTOR TO INSTALL CONCRETE CURB AND GUTTER ALONG THE PROPOSED DRIVEWAY LIMIT LINE FROM TO THE REMOVAL. CONTRACTOR TO INSTALL AND MAINTAIN A 1' WIDE CURB AND GUTTER FROM CONSTRUCTION PERIOD AFTER TREE REMOVAL AND PRIOR TO ANY SITE GRADING.

TREE LEGEND:
 1. TREE TO BE MAINTAINED
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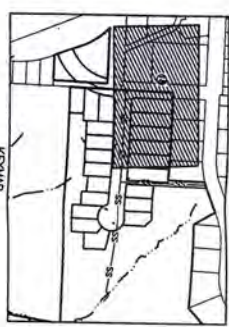
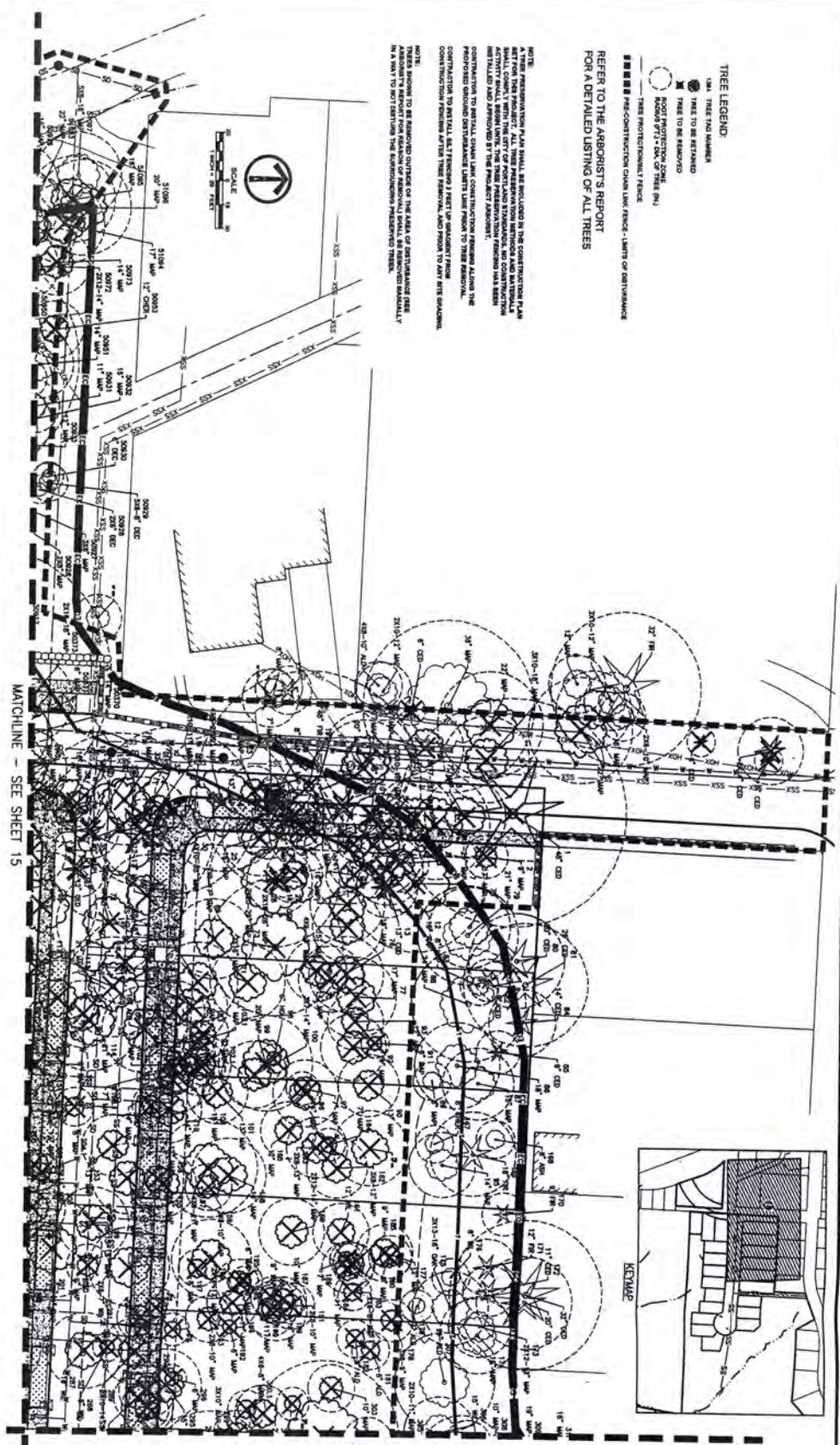
REVISIONS NO. DATE BY DESCRIPTION 1 10/25/2017 JLD PRELIMINARY PLAN		DESIGNED BY: JLD CHECKED BY: JLD DATE: 10/25/2017		DRAWN BY: JLD CHECKED BY: JLD DATE: 10/25/2017	
APPROVALS: CITY OF PORTLAND ENVIRONMENTAL SERVICES TRANSPORTATION		BUREAU OF ENVIRONMENTAL SERVICES COMMISSIONER: STEVE MONICK CHIEF ENGINEER: STEVE THOMPSON, P.E.		BUREAU OF TRANSPORTATION COMMISSIONER: COTY DUNNICK	
PRELIMINARY LAND DIVISION SUBMITTAL TREE REMOVAL AND PRESERVATION PLAN WASHINGTON STATE DEPARTMENT OF AGRICULTURE AND FORESTRY 800 N. MILWAUKEE STREET SPokane, WA 99201		JEMALBERTO 444 N. BROADWAY SUITE 200 PORTLAND, OR 97208 TEL: 503.228.8888 WWW.JEMALBERTO.COM		CITY OF PORTLAND ENVIRONMENTAL SERVICES 1200 NE OREGON STREET PORTLAND, OR 97232 TEL: 503.944.3000 WWW.CITYOFPORTLAND.ORG	
SHEET NO. 16 OF 25		PROJECT NO. TB0025		DATE: 10/25/2017	

TREE LEGEND:

- 1. TREE TAG NUMBER
- 2. TREE TO BE MAINTAINED
- 3. TREE TO BE REMOVED
- 4. ROOT PROTECTION ZONE
- 5. PRE-CONSTRUCTION CHAIN LINK FENCE - LIMITS OF DISTURBANCE

REFER TO THE ARBORIST'S REPORT FOR A DETAILED LISTING OF ALL TREES

NOTE:
 THE TREE PRESERVATION PLAN SHALL BE INCLUDED IN THE CONSTRUCTION PLAN AND SHALL BE REVIEWED BY THE CITY OF PORTLAND ENVIRONMENTAL AND TRANSPORTATION DEPARTMENT AND APPROVED BY THE PROJECT ARCHITECT BEFORE CONSTRUCTION TO INITIAL CHAIN LINK CONSTRUCTION FENCING ALONG THE PROPOSED CHAIN LINK FENCING LIMITS FROM TREE REMOVAL. CONTRACTOR TO INITIAL AND FENCING 2 FEET UP AND DOWN FROM TREE REMOVAL. CONTRACTOR TO REMOVE OUTSIDE OF THE AREA OF DISTURBANCE TREE TAGS TO BE REMOVED OUTSIDE OF THE AREA OF DISTURBANCE. IN A WAY TO NOT DISTURB THE REMAINING TREES.



NO.	DATE	REVISIONS	DESIGNED BY	CHECKED BY	IN CHARGE	APPROVALS:	BUREAU OF ENVIRONMENTAL SERVICES	BUREAU OF TRANSPORTATION	EMERIO	PRELIMINARY LAND DIVISION SUBMITTAL AND TREE REMOVAL AND PRESERVATION PLAN	DATE OF SUBMITTAL
1						DESIGNED BY: [Name]	COMMISSIONER: [Name]	COMMISSIONER: [Name]	1400 S. BROADWAY, SUITE 100 PORTLAND, OREGON 97201 TEL: 503.281.1100 WWW.EMERIODSIGN.COM	NOV 15 2017	
2						CHECKED BY: [Name]	CHIEF ENGINEER: [Name]	CHIEF ENGINEER: [Name]			
3						IN CHARGE: [Name]					

CITY OF PORTLAND
 HEARINGS OFFICE
 Exhibit #H-1070(6)
 Case # 4170027
 Bureau Case # 16-213734 LDS