



**City of Portland, Oregon**  
**Bureau of Development Services**  
**Land Use Services**

1900 SW 4th Avenue, Suite 5000  
Portland, Oregon 97201  
503-823-7300  
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[www.portlandonline.com/bds](http://www.portlandonline.com/bds)

**NOTICE OF A PUBLIC HEARING BEFORE  
THE CITY COUNCIL ON AN APPEAL OF THE  
PORTLAND LAND USE HEARINGS OFFICER**

**CASE FILE:** LU 10-194818 CU AD (Recology at SE 101<sup>st</sup> Ave)  
**WHEN:** Wednesday, July 13, 2011, 3:15 PM  
**WHERE:** COUNCIL CHAMBERS, 1221 SW FOURTH AVE

**Date:** May 27, 2011  
**To:** Interested Person  
**From:** Sheila Frugoli, Senior Planner, Land Use Services, 503-823-7817

A public hearing will be held to consider an appeal of the Hearings Officer's decision to approve a Conditional Use Review to establish a Waste-Related use that accepts and processes food waste that is blended with yard debris, within a fully enclosed building and Approval of an Adjustment to waive the Waste-Related location and access requirements (Section 33.254.030) to allow access onto the facility from a private driveway (vacated SE 100<sup>th</sup> Avenue). The Hearings Officer decision of approval with conditions has been appealed by Cottonwood Capital Property Management LLC, Frank Fleck and Gary Gossett, represented by Thomas Rask, attorney.

At the hearing, City Council will consider the appeal. You are invited to testify at the hearing. This will be an evidentiary hearing, one in which new evidence can be submitted to the City Council. For a general explanation of the City Council hearing process please refer to the last page of this notice.

**GENERAL INFORMATION**

**File No.:** LU 10-194818 CU AD (HO 4110004)

**Appellants**  
**Representative:** Thomas Rask  
Kell Alterman & Runstein LLP  
520 SW Yamhill Street, #600  
Portland OR 97204

**Applicant's**  
**Representatives:** Michael Robinson, Attorney  
Perkins Coie LLP  
1120 NW Couch Street, 10th Floor  
Portland, OR 97209-4128

Steve Gramm, Engineering Consultant  
PBS Environmental  
1310 Main Street  
Vancouver, WA 98660

**Applicant:** Dave Dutra  
Recology Oregon Material Recovery, Inc.  
4044 N Suttle Road  
Portland, OR 97217

Recology Oregon Material Recovery, Inc.  
50 California Street 24th Floor  
San Francisco, CA 94111

**Owner:** Kevin Loftus  
Jameson Partners LLC  
2495 NW Nicolai Street  
Portland, OR 97210

**Hearings Officer:** Gregory J. Frank

**Bureau of Development Services (BDS) Staff Representative:** Sheila Frugoli

**Site Address:** 6400 SE 101<sup>st</sup> Avenue

**Legal Description:** BLOCK 4 INC PT VAC STS LOT 1-10 LAND & IMPS SEE R624825 (R022400261) MACH & EQUIP, AMBOY; BLOCK 11 TL 6500 SPLIT MAP R215713 (R551002240), MCKINLEY PK; BLOCK 11&12 TL 5100 SPLIT MAP R215712 (R551002230), MCKINLEY PK; TL 100 70.21 ACRES LAND & IMPS SEE R606684 (R992222591) MACH & EQUIP SPLIT MAP R336871 (R992222590), SECTION 21 1S 2E; TL 3200 19.55 ACRES, SECTION 22 1S 2E; TL 100 7.58 ACRES SPLIT MAP R336673 (R992211480), SECTION 22 1S 2E, SECTION 21 1S 2E, TL 400 6.21 ACRES

**Tax Account No.:** R022400260, R551002230, R551002240, R992211480, R992221570, R992222590, R992211990

**State ID No.:** 1S2E21AA 02100, 1S2E16DD 06500, 1S2E15CC 05100, 1S2E21A 00100, 1S2E22BB 03200, 1S2E22BC 00100, 1S2E21A 00400

**Quarter Section:** 3740

**Neighborhood:** Lents

**District Neighborhood Coalition:** East Portland Neighborhood Office

**Plan District:** Johnson Creek Basin

**Zoning:** IH, Heavy Industrial and the EG, General Employment zones; c, Environmental Conservation, p, Environmental Protection and ,b, Buffer Overlay zones.

**Land Use Review:** Type III, CU AD, Conditional Use Review and Adjustment Review

**BDS Staff Recommendation to Hearings Officer:** Approval with conditions

**Public Hearing:** The hearing was opened at 9:59 a.m. on April 6, 2011, in the 3<sup>rd</sup> floor hearing room, 1900 SW 4<sup>th</sup> Avenue, Portland, Oregon, and was closed at 11:37 a.m. The record was held open until 4:30 pm on April 7, 2011 for new written evidence, and until 4:30 pm on April 14, 2011 for Applicant's rebuttal. The Applicant requested that the record be closed effective April 11, 2011 (Exhibit H-16). The Hearings Officer closed the record on April 14, 2011.

**Testified at the Hearing:**

Sheila Frugoli, BDS Staff Representative

Michael Robinson, 1120 NW Couch Street, 10th floor, Portland, OR 97209

Dave Dutra, 6161 SW 61st Avenue, Portland, OR 97210

Kevin Loftus, Jameson Partners LLC, 2495 NW Nicolai, Portland, OR 97210

Frank Fleck, 7507 SE 105th Avenue, Portland, OR 97266

**Proposal:** Applicant proposes to accept mixed yard debris/food waste at a 6.2 acres lease area (the "Subject Property") within an approximately 100 acres site (the "Site") for recycling. Currently landscape materials and wood debris, as well as building materials and other dry, non-perishable materials, are accepted at the Subject Property for recycling. The mixed yard debris/food waste will be delivered to the Subject Property via garbage collection trucks; approximately 35 trucks per day. Blended food waste and landscape material will also be accepted from private self-haulers and the general public.

The mixed yard debris/food waste material will be unloaded inside the existing large industrial building. Inside the building, the material will be sorted and mixed with yard and other wood waste materials that are currently accepted at the Subject Property. The compostable material will be loaded onto semi-trucks, estimated at approximately 10 per day, for shipment to an off-site composting facility. The mixed yard debris/food waste will be stored inside the building for no more than a 48-hour period before it is hauled to another site.

Applicant intends to install a biofilter aeration system to control odors inside the building. Also inside the building, Applicant proposes to install a drain system to collect and contain liquids (leachate) from the food waste materials. The leachate will be transported off-site. The facility will also include a 3,000 square foot exterior area for retail sales of exterior landscape-type materials such as compost, soil, mulch and gravel. The facility will operate 7 a.m. to 5 p.m., Monday through Friday, and 8 a.m. to 5 p.m. on Saturday. No new exterior improvements or alterations are proposed at the Subject Property.

An Adjustment is requested to waive the requirement that vehicle access to the Site and Subject Property be provided from a designated Major City Traffic Street. Access to the facility is from SE Foster onto a private street, vacated SE 100<sup>th</sup> Avenue. A Type III Conditional Use Review is required because food waste recycling is classified as a Waste-Related use. An Adjustment Review is needed to vary from an applicable development standard.

**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:

- 33.815.220, A-I, Conditional Use Review for Waste-Related use
- 33.805.040, A-F, Adjustment Review

**REVIEW BODY DECISION**

**Approval** of a Conditional Use to establish a Waste-Related use that accepts and processes food waste that is blended with yard debris, within a fully-enclosed building, as described in Exhibits A.1 through A.6, and

**Approval** of an Adjustment to waive the Waste-Related location and access requirements (Section 33.254.030) to allow access onto the facility from a private driveway (vacated SE 100<sup>th</sup> Avenue), subject to the following conditions:

- A. As part of the building permit (10-188549 CO) application submittal, the following development-related conditions (B through D) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 10-

194818 CU AD." All requirements must be graphically represented on the required plans and must be labeled "REQUIRED."

- B. Two signs, which identify the food waste recycling operation, must be installed on entrance gates to the facility. The signs must include 24-hour emergency contact information.
- C. An aeration and biofilter system must be installed to negate food waste odors.
- D. An internal drain and containment system must be installed to collect the liquid waste (leachate) inside the food waste processing building. The leachate must be taken to an off-site location for disposal.
- E. All public information, including Internet and marketing information, must include a directional map that identifies the Recology facility within the larger 100-acre industrial site and identifies the site's entrance at SE 101<sup>st</sup> and SE Foster Boulevard.
- F. Recology (or any successor in interest) trucks and any associated businesses, including commercial haulers, must be instructed to use only the SE Foster and SE 101<sup>st</sup> Avenue access; access to/from the Subject Property via SE Knapp shall not be permitted (excepting for emergency response vehicles).
- G. Recology (or any successor in interest) must document all nuisance complaints that are received, including but not limited to: litter, noise, odors, dust, traffic and vectors. For every nuisance complaint received, the facility will record, in a complaint log, the following information:
  - The nature of the complaint; and
  - The date and time the complaint was received; and
  - The name, address and telephone number (if provided) of the person or persons making the complaint; and
  - The Recology (or any successor in interest) employee who received the complaint; and
  - Any actions taken by Recology (or any successor in interest) employee(s) to resolve the complaint.

A record of all complaints and action taken must be maintained at the facility for a minimum of one (1) year. Annually, a copy of the complaint log must be delivered by mail to the Lents Neighborhood Association Chairperson (per Office of Neighborhood Involvement website information) and the East Portland Neighborhood Office. Access, so long as 24-hour advance notice is given, shall be provided at the Subject Property by Recology (or any successor in interest) to the Bureau of Development Services for the purposes of reviewing the complaint log.

- H. Organics containing food waste shall be removed from the Subject Property and Site within forty-eight (48) hours of delivery to the Subject Property.

### **APPEAL**

The Hearings Officer's decision of approval with conditions has been appealed by Cottonwood Capital Property Management LLC, Frank Fleck and Gary Gossett, represented by Thomas Rask, attorney. The appellants are challenging the Hearings Officer's decision that all of the approval criteria have not been met. See the attached statement. In summary, the appellants contend:

- The applicant did not provide technical or expert evidence to show that odors will be effectively contained and managed and that the facility would not attract vectors and

generate significant noise, dust, and air pollution. The nuisance/mitigation plan is not supported by technical or expert evidence;

- The application did not include any technical design documents or analysis as to the feasibility or effectiveness of the proposed containment system and there is no evidence that the leachate will be treated effectively. No information is provided that shows that stormwater runoff or leachate will not enter Johnson Creek;
- The submitted traffic study appears flawed;
- The applicant has not documented that the project will have no impacts to environmentally sensitive areas; and
- The applicant does not show that the public benefits outweigh the public costs.

**Review of the case file:** The Hearings Officer's decision and all evidence on this case are now available for review at the Bureau of Development Services, 1900 SW 4<sup>th</sup> Avenue, # 5000, Portland OR 97201. Copies of the information in the file can be obtained for a fee equal to the City's cost for providing those copies. I can provide some of the information over the phone.

**We are seeking your comments on this proposal.** The hearing will be held before the City Council. To comment, you may write a letter in advance, or testify at the hearing. In your comments, you should address the approval criteria, as stated above. Please refer to the file number when seeking information or submitting testimony. Written comments **must be received by the end of the hearing** and should include the case file number and the name and address of the submitter. It must be given to the Council Clerk, in person, or mailed to 1221 SW Fourth Avenue, Room 140, Portland, OR 97204. A description of the City Council Hearing process is attached.

If you choose to provide testimony by electronic mail, please direct it to the Council Clerk ([kmoore-love@ci.portland.or.us](mailto:kmoore-love@ci.portland.or.us)). Due to legal and practical reasons, City Council members cannot accept electronic mail on cases under consideration by the Council. Any electronic mail on this matter must be received no less than one hour prior to the time and date of the scheduled public hearing. The Council Clerk will ensure that all City Council members receive copies of your communication.

City Council's decision is final. Any further appeal must be filed with the Oregon Land Use Board of Appeals (LUBA). Failure to raise an issue in a hearing, in person or by letter, by the close of the record or at the final hearing on the case or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes an appeal to LUBA on that issue. Also, if you do not provide enough detailed information to the City Council, they may not be able to respond to the issue you are trying to raise. For more information, call the Auditor's Office at (503) 823-4086.

**If you have a disability and need accommodations, please call 503-823-4085 (TDD: 503-823-6868). Persons requiring a sign language interpreter must call at least 48 hours in advance.**

Attachments

1. Zoning Map
2. Site plan
3. Proposed Interior building improvements
4. Appeal Statement
5. City Council Appeal Process











# City of Portland, Oregon - Bureau of Development Services

1900 SW Fourth Avenue • Portland, Oregon 97201 • 503-823-7526 • www.portlandonline.com/bds



## Type III Decision Appeal Form

LU Number: 10-194818

### FOR INTAKE, STAFF USE ONLY

Date/Time Received 5/12/11 9:41 AM ☒ Action Attached  
 Received By JM H Fee Amount 5,077-  
 Appeal Deadline Date 4:30 5/12/11 ☒ Fee Waived  
☒ Entered in Appeal Log Bill # 3233227  
☒ Notice to Auditor ☒ [Y] [N] Unincorporated MC  
☒ Notice to Dev. Review

**APPLICANT: Complete all sections below that apply to the proposal. Please print legibly.**

**The appeal must be filed by the deadline listed in the Decision**

Development Site Recology Facility at SE 101st Avenue  
 Address or Location  
 Date 5/12/2011 Land Use Number LU10-194818CU AD  
 Appellant's Name Cottonwood Capital Property Management, LLC, Frank Fleck, Gary Gossett  
c/o Kell, Alterman & Runstein LLP  
 Street Address 520 SW Yamhill St., Ste. 600

City Portland State OR Zip Code 97204  
 Day Phone (503) 222-3531 FAX (503) 227-2980 email msharp@kelrun.com

Appellant's Interest in the case (applicant, neighbor, etc.) Neighbors, interested parties

**Appellant's Statement** Please describe how the proposal meets or does not meet approval criteria, or how the City erred procedurally. The statement must address specific approval criteria or procedures and include the appropriate code citation(s)

See attached Exhibit "B"

Appellant's Signature See attached Exhibit "A"

To file this appeal, take the following to the Development Services Center

Thomas R. Rask  
 Attorney for Appellants

- ☐ This completed appeal form
- ☐ A copy of the Type III Decision being appealed
- ☐ An appeal fee as follows:
  - ☐ Appeal fee as stated in the Decision, payable to City of Portland
  - ☐ Fee waiver for ONI Recognized Organizations approved
  - ☐ Fee waiver for low income individual approved (attach letter from Director)
  - ☐ Fee waiver for Unincorporated Multnomah County recognized organizations is signed and

CASE NO. EXHIBIT H.1

The Portland City Council will hold a hearing on this appeal. The land use review applicant, those who testified and everyone who received notice of the initial hearing will receive notice of the appeal hearing date

The appeal must be filed by the deadline listed in the Decision. To ensure the appeal is received within this deadline, the appeal should be filed in the Development Services Center at 1900 SW 4th Ave, 1st Floor, Suite 1500, Portland, Oregon, between 8:00 a.m. and 3:00 p.m. on Tuesday through Friday. On Mondays, and between 3:00 - 4:30 p.m. on Tuesday through Friday, the form(s) must be submitted at the Reception Desk on the 5th Floor.

Information about the appeal hearing procedure and fee waivers is on the back of this form.

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**Exhibit B to Appeal  
Appellant's Statement  
LU 10-194818 CU AD (HO 4110004)**

Appellant respectfully appeals the Decision of the Hearings Officer, dated April 27, 2011 and attached hereto as Exhibit C, ("Decision") in case number LU-10-194818 CU AD (HO 4110004). The Decision grants applicant a Conditional Use Permit ("CUP") to expand an existing Material Recovery Facility ("MRF") from a dry, non-putrescible recycling center to a Waste-Related MRF, allowing the acceptance of food waste and yard debris for transfer to composting facilities ("Project"). The proposed expansion will result in an additional 110 daily truck trips to the site, and will more than double the amount of waste presently received daily at the site (from 200 tons per day to 450 tons per day).

The expansion of the MRF to allow for Waste-Related uses requires Conditional Use Approval, because Waste-Related uses may "have significant adverse effects on the environment", "overburden public services" and "create major nuisances" (Title 33, City of Portland Planning and Zoning Code section 33.815.010). Appellant hereby challenges the Project as follows under the following sections of the City of Portland Planning and Zoning Code ("PCC"). Appellant advances that as all of the criteria for the Project CUP have not been met, that the Decision to grant the Project CUP should be overturned. (PCC 33.815.080)(Applicant must show all of the approval criteria for the CUP).

- Odors. Applicant's only evidence related to odors is oral testimony by applicant itself that odors will not be significant because all waste will be contained inside a building equipped with an "aerated floor and negative air system," that odors will be scrubbed with a wood chip containing "biofilter" and that all wastes will be removed from the site within 48 hours. Applicant does not present any technical or expert evidence as to the design of the aerated floor, the negative air system and/or the biofilter or any evidence that this type of system will contain and/or manage odors effectively. Additionally, Applicant presents no discussion as to the mitigation measures that will be implemented in the event that odors are significant and/or waste is held on site for more than 48 hours. Thus, Applicant fails to present evidence necessary to meet odor related criteria. (PCC 33.815.220 C; D, E; 33.262.070).
- Vectors. Applicant presents no technical or expert evidence to show that the Project will not attract vectors, such as rats and mosquitoes. Rather, Applicant merely states that because the waste will be off-loaded inside a building, which has "roll-up" doors that can be closed, vectors will be prevented from entering in the first instance and that a fully enclosed space will allow employees to monitor and manage

pests. Applicant fails to submit any technical or other credible evidence that the Project will not attract vectors, disease carrying or otherwise, and/or that the Project design will prevent vectors. Applicant thus fails to meet the criteria related to vectors. (PCC 33.815.220 C, D, E).

- Noise. Applicant presents no technical or expert evidence to show that the Project will not generate increased or significant noise. Applicant merely states that because the sound of garbage truck off-loading and other distribution activities will be conducted at least 200 feet from adjacent sites and during business hours (7 a.m. – 5 p.m.) that noise will not differ from or exceed other noise in the area. This statement lacks credible evidence and thus Applicant thus fails to meet the criteria related to noise. Applicant also fails to show how the Project will meet and satisfy the Oregon Department of Environmental Quality's noise regulations and/or the City's noise standards, set forth in Title 18 "Noise Control". (PCC 33.815.220 C, D, E; PCC 33.262.050).
- Dust/Air Pollution. Applicant presents no technical or expert evidence to show that the Project will not generate dust or other air pollution. Applicant relies on the fact that the Project site is paved to conclude that there will be no dust or air pollution attributed to the Project. This statement lacks credible evidence and Applicant thus fails to meet this criteria. (PCC 33.815.220 C, D, E).
- Stormwater/Water Pollution. Applicant presents no technical or expert evidence to show that the Project will not generate stormwater and/or contribute to water pollution. Applicant proposes that stormwater from impervious surfaces and leachate run off drain/flow to numerous existing catch basins and eventually either flow through a biofilter and or drain into a detention pond, ultimately returning to the City water system. Applicant does not provide any technical design documents or analysis as to the feasibility or effectiveness of this containment/filter system and thus there is no evidence that stormwater and/or leachate will be treated effectively. Additionally, Applicant fails to establish through expert or technical evidence that stormwater and/or leachate will not, in fact, runoff into Johnson Creek. Moreover, as noted by the City's Environmental Services Department by letter dated March 9, 2011, the Project may require a modification to the existing NPDES Permit. As such, the Project may be considered a "New Source" generator as defined in 40 C.F.R. Section 122.2 triggering site specific environmental review required by the National Environmental Policy Act of 1969 ("NEPA"), 33 U.S.C. 4321 et seq. (PCC 33.815.220 C, D, E; PCC 33.254.040 C).

- **Traffic Impacts and Safety.** The Waste-Related use proposed will generate 110 additional trips per day. Applicant concludes, based upon a traffic study conducted by Kittleson & Associates, that because peak traffic hours generated by the Project do not occur at the peak hours of bicycle/pedestrian uses of Springwater Trail, which bisects the site, and peak hours at the intersection of SE Foster Road and SE 101<sup>st</sup> Avenue, that there are no traffic impacts or safety concerns related to the Project. However, the traffic study appears flawed, as Manual Counts for "peak hours" of traffic were only taken on two occasions, September 14, 2010 and September 15, 2010. Kittleson concluded, based upon this limited study of the area that peak hours are from 10:00 a.m. – 2:00 p.m. along SE 101<sup>st</sup> Avenue, and 3:30 p.m. – 5:30 p.m. for Springwater Trail. This finding, coupled with a historical crash history report for SE Foster Road and SE 101<sup>st</sup> Avenue, Kittleson concluded that the existing transportation facilities are sufficient to facilitate any increase in traffic and that there will be no adverse impacts to the Springwater corridor. A finding of no significant traffic impacts and safety concerns is not warranted by this limited study and as such the study is flawed and the criteria not met. (PCC 33.815.220 C, D, E, F; PCC 33.254.040 A; PCC 33.254.050; PCC 33.805.040 A, E).
- **Impacts to Environmentally Sensitive Areas.** Environmentally sensitive areas, designated with the Environmental Conversation or Environmental Protection overlay zone, run through the site and abut the site to the South and East (Decision, p. 12). The Hearings Officer found that there were no environmental impacts based upon the finding of no significant impacts related to the nuisance impacts in PCC 33.815.220 C (odors, vectors, noise dust/air pollution, stormwater, see above). Because these findings are flawed in the first instance, the finding of no impact in this section is flawed as well. Moreover, Applicant provided no technical or expert evidence to support Applicant's contention that there are no environmental impacts associated with the Project and as such this criteria is not met. (PCC 33.815.220 D; PCC 33.805.040 F).
- **Nuisance/Mitigation Plan.** Applicant has not submitted a mitigation plan that addresses potential nuisance impacts which might be created by the proposed use. The plan must address noise, vibration, odors, dust, mud and vectors. Applicant's plan, which is set forth in Applicant's Findings of Fact and Conclusions of Law in two (2) small paragraphs, is simply to offload all Waste inside the existing building, to inspect the road for waste generated by vehicles traveling to the Project site, post signs prohibiting littering and manage incoming organic food waste by ensuring that they are generally removed from the site within 24-48 hours of delivery. This plan is not supported by

technical or expert evidence that the plan is feasible or effective and is based upon flawed conclusions. This, this criteria is not met. (PCC 33.254.060).

- Public Benefit/Impacts. Applicant fails to show that the public benefit of the Project outweighs any potential impacts associated with the Project. Applicant does not provide any technical or expert evidence in this regard. Rather, Applicant merely discusses that the Project's nuisance related impacts are nonexistence and/or mitigated and that the City can make this finding. However, as discussed above, Applicant's nuisance and traffic impacts analysis are flawed and thus the impacts may outweigh the public benefit. Applicant also does not consider that there is enough capacity and existing waste transfer stations and thus the Project is not necessary in the first instance. Other waste transfer stations that are capable of receiving the subject waste materials and providing the subject services relating to the Project include, among others, Waste Management Troutdale; Pride Recycling Sherwood, Metro South Oregon city, Republic Services Wilsonville, Waste Management Forest Grove, Waste Connections Vancouver, Washington, and Metro Central Portland. (PCC 33.815 I).

**GENERAL EXPLANATION OF CITY COUNCIL APPEAL HEARING PROCESS FOR  
EVIDENTIARY/DE NOVO APPEALS**

**1. SUBMISSION OF TESTIMONY**

- a. Testimony may be submitted in writing to the Council Clerk, 1221 SW Fourth Avenue, Room 140, Portland, Oregon 97204. Written comments must be received by the time of the hearing and should include the case file number.
- b. Testimony may be submitted orally (see below).

**2. HEARINGS PROCESS**

- a. The order of appearance and time allotments is generally as follows:

Staff Report	10 minutes
Appellant	10 minutes
Supporters of Appellant	3 minutes each
Principal Opponent of the Appeal	15 minutes
Other Opponents of the Appeal	3 minutes each
Appellant Rebuttal	5 minutes
Council Discussion	

- b. The applicant has the burden of proof to show that each and every element of the approval criteria can be satisfied. If the applicant is opposing the Hearings Officer's recommendation, the applicant may also argue the criteria are being incorrectly interpreted, the wrong approval criteria are being applied or additional approval criteria should be applied.
- c. In order to prevail, the opponents of the application must persuade the City Council to find that the applicant has not carried the burden of proof to show that the evidence submitted in support of the application demonstrates that each and every element of the approval criteria is satisfied. The opponents may wish to argue the criteria are being incorrectly applied, the wrong criteria are being applied or additional approval criteria should be applied.
- d. The failure to address an issue with sufficient specificity to afford the decision maker and the parties an opportunity to respond to the issue precludes an appeal to the Land Use Board of Appeals (LUBA) on that issue.

**3. OTHER INFORMATION**

- a. Prior to the hearing, the case file and the Hearings Officer decision are available for review, by appointment, at the Bureau of Development Services, 1900 SW 4<sup>th</sup> Avenue, Portland, OR 97201. Call 503-823-7300 to make an appoint to review the file.

**If you have a disability and need accommodations, please call 823-4085 (TDD: 823-6868). Persons requiring a sign language interpreter must call at least 48 hours in advance.**

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PORTLAND OR 97204

LU 10-194818 HO  
TO BE SENT 5/23/2011  
26 LABELS 27