

OPPOSE APPEAL

APPEAL OF EAST COLUMBIA NEIGHBORHOOD ASSN.

49-LOT SUBDIVISION AT 9801 NE 13TH AVE LU-09-134484 LDS EN AD

IF YOU WISH TO SPEAK TO CITY COUNCIL, PRINT YOUR NAME, ADDRESS, AND EMAIL.

NAME (print)	ADDRESS AND ZIP CODE	Email
✓ Theanne Kopald	9801 NE 13 th Ave. ^{PDX} 97211	circlesub@yahoo.com
Marybeth Kincaid	2030 NE Blue Heron Dr. ^{PDX} 97211	janasm86@msn.com
MARY CLIFFORD	7150 NE FALOMA ROAD	kerriclifford@hotmail.com
✓ Chet Antonson	22311 BRICKSON RD	chet@grouppacwest.com

SUPPORT APPEAL

APPEAL OF EAST COLUMBIA NEIGHBORHOOD ASSN.

49-LOT SUBDIVISION AT 9801 NE 13TH AVE LU-09-134484 LDS EN AD

IF YOU WISH TO SPEAK TO CITY COUNCIL, **PRINT** YOUR NAME, ADDRESS, AND EMAIL.

NAME (print)

ADDRESS AND ZIP CODE

Email

✓ Maryhelen Kincaid	2030 NE Blue Heron Dr. 97211	jamasu88@msn.com
✓ GARY CLIFFORD	1150 NE PALOMA ROAD 97211	kerrdifford@hotmail.com
Chet Antonson	22311 ERICKSON Rd 97701	ChET@groupPACWEST.com
✓ Cathy Humble	1036 NE Meadow Dr. 97211	cathy.humbler@gmail.com
✓ Simone Goldfeder	2975 SW Upper Dr 97201	sgoldfedere.comcast.net

Moore-Love, Karla

From: Bonny McKnight [bonnymck@comcast.net]
Sent: Thursday, February 18, 2010 11:45 AM
To: Moore-Love, Karla
Subject: Testimony for Today's East Columbian NA Land Use Appeal - Agenda Item 250 - 2:00 Council Hearing

Attachments: 21810 Council Testimony.pdf; ATT00001..txt



21810 Council ATT00001..txt
Testimony.pdf (2.. (247 B)

Karla

Please include this in the record for today's hearing. I assume you will provide it to Council today.

Thank you.

Bonny McKnight
1617 NE 140th
Portland, OR 97230

February 18, 2010

Testimony to City Council
Bonny McKnight
Agenda Item 250

Mayor Adams and Members of the Council

I wish to support the appeal by the East Columbia Neighborhood Association (ECNA) of LU 09-134484 LDS EN AD, address: 9801 NE 13th.

I agree with the issues already explained by ECNA but do want to note some further concerns with the Goal 5 and METRO Title 13 requirements for areas such as the one being considered for development.

As noted in an October, 2008 article from the McClatchy News Service, about questions raised in the Puget Sound area of Washington, FEMA and the Federal government are being pressed to look at whether current construction allowed in flood plain areas jeopardizes habitat and to what extent.

The article states:

“At the heart of the issue is the National Flood Insurance Program, which for 40 years has regulated river corridor development but paid scant attention to endangered species.

That could change.

The “jeopardy opinion” from the National Marine Fisheries Service in Seattle, coupled with an injunction blocking development in Florida that threatens the habitat of the endangered Key Deer, might force major changes in the federal insurance program.

The fisheries service even suggested a temporary moratorium on building in flood plains surrounding Puget Sound. The timeout would allow the Federal Emergency Management Agency, which administers the flood insurance program, to sort out with state and local jurisdictions what if any new building restrictions may be required.”

The State of Oregon is currently doing that “sorting out” but to the best of my knowledge has not begun that work in the City of Portland. At the same time, cities across the state are beginning to more fully define Goal 5 requirements and how they should be met. The City of Portland will be integrating some of that work, in all likelihood, as the Portland Plan process goes forward.

Before a development such as the one proposed here is allowed to go forward, it is important that adequate review of these new activities takes place and is reflected in the decision the Council makes.

Please support the appeal until an evaluation of these Federal actions can be provided.



Shaping the Future

5415 SW Westgate Drive
Suite 100
Portland, Oregon 97221
USA

Phone (503) 419-2500
Fax (503) 419-2600

www.cardnowrg.com

February 18, 2010

City of Portland, City Council
Council Clerk Office
1121 SW 4th Avenue, Rm. 140
Portland, Oregon 97201

Re: Brandwein Meadows (Casefiles LU09-134484 LDS EN AD)
Applicant's response to Appeal from Neighborhood Association

Dear Mayor Adams and members of the City Council,

Cardno WRG represents Dr. Howard Brandwein on the Brandwein Meadows land use applications (Casefiles LU09-134484 LDS EN AD). This letter is written to provide additional arguments in response to the appeal filed by the East Columbia Neighborhood Association on January 14, 2010.

Procedural Challenges:

Chapter 33.730 of the Planning and Zoning Code requires that notice of a public hearing be sent to select parties, including recognized Neighborhood Associations, 20 days prior to the public hearing. In this case, notice was sent by the City on November 6th for a hearing on November 23rd, giving the association three fewer days notice than required by code. In response to this procedural error, the City held a second hearing on November 30th which was open to submittal of new testimony. The hearing on November 30th gave interested parties 24 days from the date of the original notice to prepare responses. The Hearings Officer also allowed additional time for the submittal of written testimony at the close of the public hearing which permitted the appellants nine days for testimony, instead of the statutory seven days.

Flood Hazards (PCC 24.50.010 and 24.50.060)

Title 24 of the City of Portland Code and Charter addresses building regulations with Section 24.50 addressing standards for development and construction in Flood Hazard areas. The provisions of Title 24 apply to "the construction, alteration, moving, demolition, repair, and use of any building, structure or land, and to any land clearing or grading within the City", therefore these standards are applicable to review of building, grading and site development permits, not land use applications. The Appellants also quote the purpose statement of the code, which is not a criterion for any type of review.



Land Divisions and Planned Development in Flood Hazard Zones are subject to the standards of Chapter 33.631 in regards to Flood Hazard criteria. Portions of the site are currently located within the Flood Hazard zone, and the applicable standards of Chapter 33.631 have been addressed by the applicant and by Staff, and concurred with by the Hearings Officer. In compliance with the standards of this chapter, the applicant, Staff, and the Hearings Officer have provided findings stating that a Conditional Letter of Map Revision (CLOMR-F) has been issued by FEMA to place fill in the flood area, bringing the finished floor elevation of the proposed homes to at least one foot above the established base flood elevation. The site work must be complete before FEMA will issue a Final Letter of Map Revision removing the flood plain designation from the property. Per the Conditions of Approval, FEMA must issue the Final Letter of Map Revision prior to final plat approval. The 100-year floodplain elevation is established by FEMA based on historic data and regional watershed modeling. The geotechnical report provided by the Applicant was not used to determine the floodplain level, so it is not a relevant document relative to the Floodplain fill application.

Special Construction Considerations (PCC 10.30.030 B3)

The standards of Title 10 – Erosion provides standards for development and construction related activities in order to control the creation and management of sediment and to prevent the occurrence of erosion at the source during construction. This review is administered by the Bureau of Development Services for all ground-disturbing activities; the standards of this section will be reviewed with subsequent grading and site development permit applications.

Land use review for Land Divisions in Residential Zones is subject to the applicable approval criteria in Section 33.635.100 – Clearing and Grading. The applicant, Staff, and the Hearings Officer have all provided findings showing compliance with the applicable criteria based on the Preliminary Clearing and Grading Plan in the application submittal. A final clearing and grading construction plan, consistent with the preliminary plan submitted for the proposed land division, will be submitted to the Bureau of Development Services with the application for a Site Development Permit for mass grading and utility construction where the provisions of Title 10 will be applied during review.

Traffic Impacts (PCC 33.641)

The applicant has provided testimony during the initial public hearing that estimated the construction truck traffic on NE 13th Avenue to be approximately 20 trips per hour over an eight hour day. These trips are below the 37 peak morning and 49 peak afternoon trips estimated for build-out of the proposed subdivision. The Hearings officer found that there would be no significant negative impacts during the cut and fill operations.



Stormwater Management (PCC 33.660 or 33.653)

Chapter 33.660 lists all of the review criteria relevant to a Land Division application in an Open Space or Residential Zone, which appears to be an incorrect code citation. Section 33.653.020 provides standards specific for approval of a 'Stormwater Management System' referenced by the appellant. The applicant has provided evidence documenting that the proposed stormwater system is in compliance with the City's Stormwater Management Manual, as required. The Bureau of Development Services noted in their review that no stormwater will be infiltrated onsite because the water table is too high to allow for onsite disposal, which was also an assumption in the Applicant's storm water analysis. Trees do not factor into a run-off calculation; it is only a measurement of how much water enters the ground surface during the course of a rain event.

The methodology used by the Applicant for calculating post-development run-off followed the requirements of the City of Portland Stormwater Management Manual and the Sewer and Drainage Design Manual. Both the Bureau of Environmental Services and the Multnomah county Drainage District support the stormwater disposal plan proposed by the Applicant.

Environmental Review and Definitions (PCC 33.430.010 and 33.910)

The standards of Chapter 33.430 apply where an environmental overlay zone is applied to a property. The currently adopted zoning maps note that the Multnomah County drainageway along the southern boundary of the property is located in the "c" – Environmental Conservation Overlay Zone. The proposed stormwater outfall if located within this environmental zone and the approval criteria of Chapter 33.430 have been addressed by the applicant. The East Columbia Neighborhood Association Natural Resource Plan is the currently adopted inventory and supplemental natural resource plan for the area. The provisions of this plan and have been addressed by the applicant and all relevant standards for an Environmental Review have been met for the impacts of the proposed stormwater outfall within the Environmental Conservation Zone. This finding has been provided by the Applicant, Staff, and the Hearings Officer.

A land use application must be reviewed by the adopted maps and criteria in place at the time of submittal. The documents referenced by the Appellants are not adopted and not applicable.

Special Evaluation by a Professional (PCC 33.430.270)

"33.430.270 Special Evaluation by a Professional

A professional consultant may be hired to evaluate proposals and make recommendations if the Director of BDS finds that outside expertise is needed due to exceptional circumstances. The professional will have expertise in the specific resource or functional value or in the potential adverse impacts on the resource or functional value. A fee for these services will be charged to the applicant in addition to the application fee."

The appellants have requested a Special Evaluation by a Professional based on the 'environmental sensitivity' of the site. This code section is provided to allow the Planning Director to hire outside consultants to review documentation that is outside the expertise of the Bureau. The Applicant has provided all required reports and analysis to meet the burden of



proof for the applicable approval criteria. These reports include a Wetland Delineation, a Stormwater Analysis, a Transportation Analysis, an Arborist Report, and a Geotechnical Report, in addition to the preliminary engineering plans for the proposed subdivision. All studies and reports have been prepared by licensed and credentialed professional experts. The City of Portland currently has well qualified staff to review these studies and reports, therefore no outside support or review is required or necessary.

We believe that all applicable code criteria have been addressed with supporting data and findings to support approval of the Brandwein Meadows applications.

Sincerely,

A handwritten signature in blue ink, appearing to read "M. Doukas", is written over the word "Sincerely,".

Mimi Doukas, AICP, RLA
Principal, Director of Land Use Planning
Cardno WRG

cc: Dr Howard Brandwein
Joe Voboril, Tonkon Torp, LLP

Moore-Love, Karla

From: Maryhelen Kincaid [jamasu88@msn.com]
Sent: Monday, February 15, 2010 4:24 PM
To: Moore-Love, Karla
Cc: Adams, Mayor; Commissioner Fritz; Commissioner Saltzman; Commissioner Fish; Leonard, Randy; Bizeau, Tom; Ruiz, Amy; Whiteside, Rachel; Burgett, Shawn; Grumm, Matt; Kovatch, Ty; betsy.ames@ci.portland.or.us
Subject: Testimony for LUR 09-134484 East Columbia neighborhood appeal
Attachments: appeal_testimony_LU 09-134484_ECNA.doc

Attached is testimony to be submitted on behalf of the East Columbia Neighborhood for the land use appeal being heard before City Council on Feb 18th.

I was told I could submit this testimony in writing ahead of time so it would be on record.

Thank you,

Maryhelen Kincaid, chair
Land Use Committee, East Columbia

Hotmail: Free, trusted and rich email service. [Get it now.](#)

Mayor Adams and City Council members,

This written testimony is submitted on behalf of the East Columbia Neighborhood Association (ECNA) in support of our appeal of LU 09-134484 LDS EN AD, address: 9801 NE 13th.

In March 2008 there was a land use appeal hearing for a zone change from open space to R10 for this property and much discussion centered on the environmentally sensitive nature of the property. At that hearing Council asked BDS staff why there wasn't more environmental overlay protection - environmental conservation or preservation zoning - on the land, and the staff answer was "it must have been missed." We all have the obligation to protect this property - let's not miss the opportunity this time.

It is the City's responsibility to protect wetlands and land identified as significantly valuable natural habitat. The State's Goal 5 and Metro's Title 13 have put forth mandates for protecting significant natural habitat and the City has lagged behind in meeting those mandates in the protection of natural areas. Additionally FEMA is reviewing regulations regarding building in flood plains and the issuance of flood insurance (FIRM). Since there have not been any official permits issued for this property by DSL, DEQ or the Army Corps of Engineers to meet City requirements for building in a flood plain it is questionable that a land division approval can be granted. In following testimony you will read that ECNA requests the City review the statement of need of the applicant in the DSL permit request, appoint a special reviewer to examine the applicant's reports on stormwater and evaluate the tree inventory and preservation plan as the City relied on reports done by the landowner's consultants (some in 2007) and there were no independent studies done. The City should also review this property using its own Natural Resources Inventory and Metro's Title 13 assessment.

To begin with there was a procedural error by the City. Proper procedure for notification of the hearing was not followed and notice of this error was brought to the City's attention by the neighborhood. Notice was mailed Nov. 6th (Friday) for a Nov 23rd hearing. The neighborhood was not given the required "at least 20 days" as stated in city code. The neighborhood notified the City of the error on November 18th, and a decision was made by BDS in consultation with the hearings officer to hold the hearing on Nov. 23rd as previously scheduled to accommodate the landowner's travel plans. A second hearing was scheduled for a week later (Nov.30th) which was the Monday after Thanksgiving. This did not allow a full week of preparation due to the previous week's Thanksgiving holiday. The neighborhood was told there was no procedure to follow if the proper timeline for the notice of hearing was not met. The applicant had been granted hearing date extensions prior to this hearing, but the neighborhood's request for a resending of the notice and rescheduling of the hearing was not granted. With such short notice and no legal counsel the neighborhood believed BDS staff and hearings officer that this was an acceptable (legal) solution and conceded to the terms for a second hearing on Nov.30th. Not having the "at least 20 days" notice, having to prepare testimony during a holiday week - 3 days prior to Thanksgiving (of which city staff was accessible for only 3 days instead of 5) and not having any immediate recourse the neighborhood was at a clear disadvantage. We have not been able to determine if there has been any other cases such as this and if there is precedent.

The neighborhood disagrees with several of the hearing officer's findings. They are listed below:

1. Portland City Code 24.50.010 and 24.50.060 Flood Hazards. This criteria was not considered in the BDS staff review but is applicable, of concern and should have been a criteria. These specific code references were cited by City staff in the Revised Land Use Review from Site Development, dated November 20, 2009 in the bureau's response to this Land Use Review. The applicant should have to prove that they have met the criteria of 24.50.010: *The purpose of this Chapter is to protect the public health, safety, and welfare by restricting or prohibiting uses which are dangerous to health, safety, or property in times of flood or which cause increased flood heights or velocities.* The hearing officer described neighbors testimony of

prior flooding and evacuations as "anecdotal". One letter of testimony submitted at the hearing is from Allan Orr, former Portland Police Commander and now Tigard's Chief of Police, who was responsible for the closing of NE Marine Dr. in 1996 because of flooding in East Columbia. Other letters citing flooding effects and evacuation during the 1996 flood as well as heavy rainfall events since that time are in testimony. These are firsthand accounts and should be seriously considered. There are historical documented references to flooding in 1996, the site is predominantly in a 100 year flood zone, geotechnical reports done by the applicant's own consultants indicate a need for special considerations due to flooding hazards, so there is scientific evidence to apply to this code and it should be considered as criteria and not merely considered "anecdotal." The hearing officer was in error finding that this code did not apply as it was documented in the staff report as a standard for approval. Additionally the geotechnical report was done during a dry month (June) and not a wet month. ECNA requests testing and a report be done of the soil saturation during a wet month to meet this criteria. There should be proof provided that the proposed building will not cause increased flood heights or velocities on surrounding properties.

2. Portland City Code: 10.30.030 B3 Special construction considerations. The applicant's geotechnical report recommended special consideration for site prep and earth work, yet BDS did not list that as a criteria and it should have been. The hearing officer found it not applicable. The applicant submitted a report by expert technical consultants in support of the proposal and these experts recommended "special construction considerations" to be reviewed by city inspections. Because this report was submitted as support of the proposal and it suggests special considerations, ECNA believes this code is relevant and criteria should have to be met.
3. Portland City Code 33.641 "...traffic impacts caused by dividing and then developing land to be identified..." The applicant's site and grading plan will create approximately 8,000 dump truck loads of fill. The impact of 8,000 dump truck loads of fill on NE 13th, a street designated as "No Trucks" was not considered or addressed and is not included in any transportation study. NE 13th is built over a main drainage way system for the neighborhood, any damage could cause impacts to the drainage system. 20-30 truckloads a day could impact traffic flow in the neighborhood as NE 13th is a major N/S streets. The City relied on a traffic study done in 2007 and it did not include traffic impacts due to construction. The 2007 study also did not include the possible impacts of construction traffic in relation to the proposed changes to the Marine Dr interchange and the CRC (I-5 bridge) project. The traffic study was done by the applicant's consultant. At the time PBOT concurred with the report, the neighborhood disagreed with findings of "no impact" but did not hire an independent consultant to do a study. Since the study did not include all possible impacts this criteria has not been met. An up to date, relevant traffic study should be required that reflects construction impacts as well as the possible impacts related to the Marine Dr interchange and CRC.
4. Portland City Code 33.660 Stormwater Management. There was no consideration in either the tree preservation standards or the geotechnical report for loss of tree canopy, and the affect on stormwater treatment and increased runoff. Approximately 70% of the trees on the property are slated to be removed. 85% of the open space will be covered with impervious surfaces. Staff has stated the applicant meets the tree preservation code but there is no consideration or calculations for loss of tree canopy and the ensuing affect on the neighboring properties that border the property. The loss of this tree canopy (less water hitting the ground) and the loss of water absorption and retention through the root systems is of grave concern because of flooding possibilities. Over 300 of the trees slated for removal are Lombardy poplars, with an average diameter at breast height (DBH) of 20", over 30 Weeping willows several with DBH of over 40" – and while they are not listed as "significant" they are large trees known to absorb large amounts of water. In a normal year it is estimated by the City's Urban Forestry Commission that a 30ft deciduous tree can intercept approximately 3,000 gallons of water in a normal water year. In non-scientific calculations that is about

70,000 gallons of water that would not be absorbed by the Lombardy poplars alone. There are 450 other mature trees proposed to be removed. In all, approximately 750 trees will be removed. The applicant can state that over 200 ~~will be~~ preserved but only 5 trees will be preserved in the proposed development area where the majority of trees are being removed and the remainder of "preserved" trees are in an existing wetland area on the west end of the property, not proposed for development. There are no aerial photographs or calculations of tree canopy as required in 33.630.100 (D) Tree Preservation Standards. The neighborhood believes BDS staff should have requested a stormwater report that included the impacts of tree canopy loss to determine the possible detrimental effects and identified tree canopy loss. The hearing officer erred in finding that this criteria was met because the calculations were not made for loss of tree canopy.

The City's Stormwater Management Manual (section 2, page 9) states that a step to be taken in designing a stormwater management plan is to develop preliminary calculations that estimate how much stormwater will be created and how it will be handled. ECNA saw no indication of this calculation in the applicant's stormwater management report. Multnomah County Drainage District has stated that they have capacity to handle a flood event and one of the overflow resources in case of a flood event would be ponds located east of the property in Blue Heron Meadows. These ponds were created as mitigation for that development. There are no reports or studies of the capacity of these ponds the size of which have decreased considerably (approximately half) due to vegetative growth since they were created in 1999.

The City is putting considerable effort and staff time into the creation of protections and regulations regarding trees, the protection of our urban forest, and has focused efforts on the benefits of preserving urban trees as a part of protecting our watershed. It seems counterproductive to support the removal of established mature trees in a significant natural habitat and flood plain, then replace them with impervious surfaces and immature trees that would be ineffective in a flood or heavy rainfall event or handling stormwater runoff. The proposed tree replacement plan proposes to plant 185 2" caliper trees, with a maturity point of 15-20 years at best. While it was not a scientific study, neighbors counted 37 trees over 11" DBH listed in the applicant's tree inventory that are listed as significant species in City Code 33.630.100 but are not listed as significant in the tree inventory done by the applicant. The applicant listed 5 trees as significant and proposes to protect 126" DBH – of which one tree is a willow 52"DBH. Other sizable willows listed in the inventory are not slated for protection. There is over 8,854" of inventoried DBH, and it is stated that 2,662" is proposed to be preserved but of that amount 80% is in the existing wetland area not slated for development and 370" is made up of 2" caliper trees. That leaves only 173" preserved DBH I the proposed development area.

This criteria was not met because calculations for tree canopy loss was not done and there was no measurement for soil saturation during a wet month. Additionally the neighborhood believes the tree preservation code was interpreted incorrectly.

ECNA requests that a there be a review of the interpretation of the acceptance of the tree preservation plan, a study be done to measure the amount of stormwater runoff increase as a result of the removal of significant trees and tree canopy, that a study of soil saturation and groundwater storage capacity be done during a wet month and that a determination be made of the capacity of offsite storage resources that might be used in the case of a flood event.

5. Portland City Code 33.430.010 and 33.910 Environmental Review and Definitions. Significant Detrimental Impact as stated in the code is: "An impact that affects the natural environment to the point where existing ecological systems are disrupted or destroyed. It is an impact that results in the loss of vegetation, land, water, food, cover, or nesting sites. These elements are considered vital or important for the continued use of the area by wildlife, fish, and plants, or the enjoyment of the area's scenic qualities."

In the staff report for this land use review staff stated there would be no "significant detrimental impact" and based their evaluation of the value of the area on references to the East Columbia Natural Resources Management Plan (ECNRMP) which is 20 years old,

outdated, and not reflective of current conditions. In past hearings the ECNRMP has been referred to by City staff as "aspirational" and "having no teeth" but in this land use case for some reason it was used as a tool to evaluate the current natural value of the property, even using the name of the 1992 previous owner. BDS staff should have used current information easily available to them from the City's own Fall 2009 Natural Resources Inventory and Metro's Title 13 assessment. The BDS references from the ECNRMP are not in agreement with the Fall 2009 Natural Resources Inventory (NRI) done by City BES staff or the Metro Title 13 assessment done for the area. Both these recent assessments rate almost the entire site (as well as adjacent areas) as highly significant and as special habitat area (SHA) that should be protected. A list of wildlife in the area is in the Natural Resources Inventory done by BES staff, as well as an urban fauna report done by the Audubon Society. Both list significant habitat of migratory waterfowl, common wildlife species and species that are either protected or in danger, specifically the Western painted turtle and a migratory bat species that has been identified in neighboring golf courses.

While using this definition "significant detrimental impact" the BDS staff did not use valid criteria and as such it biased the natural habitat value of the property.

ECNA requests that the evaluation of the site be determined by current and relevant data and the natural habitat value and the ensuing criteria for development be based on that determination.

6. Portland City Code 33.430.270 Special Evaluation by a Professional. The hearings officer did not address the neighborhood request, nor even comment on this request that was submitted at the hearing. This site is a fragile, sensitive area with a unique character, unmatched in other City neighborhoods. There is considerable documentation of its natural habitat value both in the City's own Natural Resources Inventory and Metro's Title 13 assessment. Since the hearings officer did not even address this request and given the high value natural habitat assessment by concurrent government agencies, documented current flooding occurrences, past history of flooding, the exceptionally complicated components of this case and the technical nature, ECNA requests that Council instruct BDS to engage an independent panel or third party to evaluate the geotechnical data, review landowner's consultant reports on tree plans, applicant's conclusions on preliminary stormwater plans including a study of effects of loss of tree canopy, preliminary drainage plans that contains more than "conceptual plans" and validate that this development as proposed presents no danger of flooding to the adjacent neighbors properties, or neighborhood infrastructure.

Issues with State and Federal permits

The complexities for the development of this property involve Federal, State, Regional and City governments many of which are intertwined in rulings and approvals. These interdependencies and determinations of responsibility have been confusing to not only the neighborhood but City staff as well.

In one critical example, the City requires an applicant to obtain a DSL cut and fill permit for the filling of wetlands before approving building on the land. In a conversation with staff from DSL it was learned that DSL can only evaluate the wetlands being requested to be filled, not the overall value of the wetlands to the property or habitat. The state bases its decision on the applicant's statement of need in the cut and fill permit application and relies on the City to evaluate the statement of need and value of property. The state must rely on the City's support or disapproval of the applicant's stated need in the DSL application to obtain a cut and fill permit to fill wetlands for development. In this case DSL issued a preliminary approval in 2007 for the filling of the wetlands based on the City's recognition and support of the applicant's statement on the DSL permit application. The applicant (and the City concurred) that there was a significant need for, and shortage of, available residential housing, thus the need to obtain a cut and fill permit to fill in wetlands. The applicant has never paid the fee for the DSL permit, it has never

been issued – thus does not exist, and the statements made in the application 3 years ago are not relevant or valid today.

The City can, and should, find that the DSL application is no longer relevant and valid based on a need for residential development and would not support that as a reason for a cut and fill permit to fill wetlands. There is not a current critical need for residential development as was stated in the 2007 application to DSL for a City required permit to fill two wetlands.

Many properties in the neighborhood have been on the market for over a year, and surrounding residential developments have been abandoned and stalled. One property that was granted final plat approval for 10 residential lots in late 2007 has been on the market for over 2 years.

In related permits for this property, a DEQ 401C permit has not been issued because of similar circumstances and it is needed for ACE/FEMA determination.

It is the Council's responsibility to decide if the best use of this property is to fill in 2 wetlands, build 49 houses in a flood plain, part of property being in the noise and height overlay zone for aircraft from PDX, and ignore the current scientific evaluation of City and Metro staff that this property is a significant natural habitat, wildlife corridor and in need of protection.

The City has embarked on a rewrite of the Comprehensive Plan because of a mandate by the state to be in compliance with state land use goals. In June 2009 Metro accepted a two year extension agreement so that the City could continue its work to be in compliance with Title 13. At that time this property should have been identified by BDS (it was an active case) as in need of special consideration and should not have "slipped through the cracks." This property would be protected under both the current state goals for wetlands protection and Metro's Title 13 guidelines. Because the City has not met the land use protection goals of the state and Metro, this property is in jeopardy. It is in need of protection and it is your responsibility to provide that protection.

You will hear testimony about proposals by the neighborhood to find funding to purchase this property and create a nature preserve offering a myriad of opportunities for studying urban wetland habitats, wildlife corridors and other sustainable and environmental educational opportunities. There are a variety of stakeholders interested in participating in such a proposal. The proposal is in need of your support. By ruling that there were critical judgment errors in this land use ruling, and that a special evaluation by an independent reviewer is warranted, it will make it possible for efforts to move forward in a positive manner.

Thank you for your time in reviewing this testimony,

East Columbia Neighborhood Association
Maryhelen Kincaid, Land Use Chair