

**Moore-Love, Karla**

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**From:** Kim Spiehler <kspiehler@batemanseidel.com>  
**Sent:** Monday, February 05, 2018 1:19 PM  
**To:** Moore-Love, Karla  
**Cc:** Rees, Linly; Green, Kate; Williams, Sean; Carrie Richter  
**Subject:** Macadam Ridge - LU 16-213734 LDS EN M EV  
**Attachments:** Ltr to Mayor Wheeler et al re Appeal of Macadam Ridge Development.pdf

Good afternoon,

Please find correspondence from Carrie Richter regarding the above, attached.

Kind regards,  
Kim

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February 5, 2018

Via Email to Council Clerk Karla Moore-Love  
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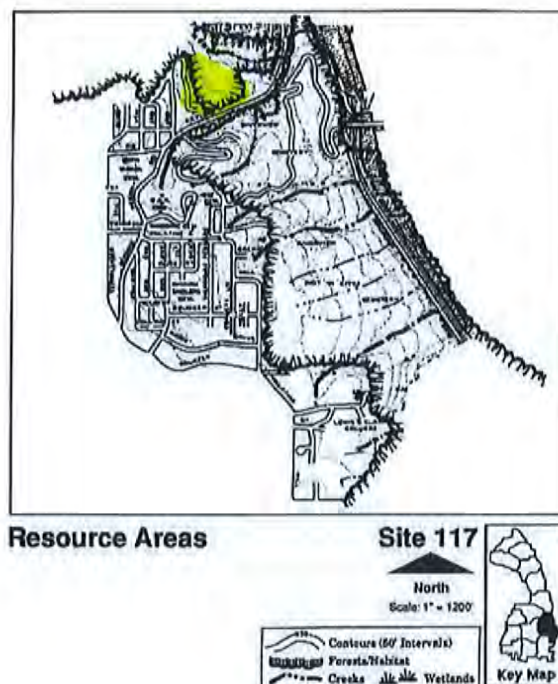
Mayor Wheeler and Portland City Council  
1221 SW 4th Ave., Rm 340  
Portland, OR 97204

Re: Appeal of Macadam Ridge Development  
LU 16-213734 LDS EN M EV

Dear Honorable Mayor and City Commissioners:

This firm represents the Appellant South Burlingame Neighborhood Association ("SBNA"), a collective group of approximately 784 residents, comprising about 1700 people, living on lands to the west of the proposed development. The SBNA opposes this development because it will cut a 4.6-acre hole in the middle of a high-quality forest upland designated for protection, significantly increasing the landslide risk to not only the nearby residents, but to the wildlife, as well. This development proposes little in the way of habitat mitigation for the upland forest creatures that call this area home.

The subject 14-acre property represents a significantly diverse natural area within the City. Its steep slopes have kept it intact, secluded and protected from recreation uses, as well as urban development, for years, allowing wildlife and natural landscape to flourish. The City acknowledged these natural benefits when it imposed substantial environmental constraints that were fully vetted and approved in the Southwest Hills Resource Protection Plan (SWHRPP). See attached. The SWHRPP explains that the property "drops vertically to the Willamette River" and contains a "deep ravine" through which the Stephens and Ruby Creeks flow. The EP / EC area does not encumber only the riparian resources, but includes upland forest areas as well.



The SWHRPP has mapped these upland forest habitats as significant for their “mid-seral second growth stage” forest cover explains that “over 60 bird and 30 mammal species have known proclivities for the vegetation type found at the site, both in terms of breeding and feeding activities.” SWHRPP p 140. The SWHRPP goes on to explain that: “The site soils are prone to slide and slumps when saturated. At particular risk are the steep, sloped ravines. Erosion caused by the failure of these slopes would negatively impact the habitat and water quality.”

Notwithstanding that the City’s duly adopted and acknowledged plans designating this area for resource protection, the Hearings Officer approved a traditional, 21-lot cookie-cutter-styled single-family home subdivision right in the middle of this pristine natural area. The lots are regularly shaped. The layout is traditional, containing relatively uniformly sized 5,000 to 7,924 square foot lots placed along a straight road and terminating around a cul-de-sac. This is a design that one would expect to be laid out on flat, vacant farmland that is easy to put to urban use but the subject property is steep, heavily forested, and anything but easy.

The detrimental impacts to the upland forest environment resulting from this development that were identified by city staff and participants are significant. They include clearcutting 4.57 acres including the removal of 524 trees, some up to 54” dbh (tree diameter at breast height – the standard method for measuring trees), removing 18,000 cubic yards of soil and placing an additional 26,080 cubic yards of fill. Emerio Plan Set, Environmental Review, Development Site Plan, Sheet P6.1 and P6.2, Sheets 13 and 14 of 25 and Schott: Memo Regarding LU 16-

21374, dated July 18, 2017. The effect will be cutting a 300 foot by 600 foot swath through the middle of an entirely natural, high-functioning ecosystem. The purpose of environmental regulation is to “encourage flexibility and innovation in site planning” to ensure that development is “sensitive to the site’s protected resources.” Portland Zoning Code 33.430.010. There is nothing “innovative” about the proposed lot layout, the provision of utilities or services.

The significant environmental impacts and other infrastructure shortcomings in this application were not noted solely by the neighborhood or other opponents. Rather city staff at five of the seven bureaus who commented on this application identified deficiencies that would prevent its approval. These shortcomings were so significant that the applicant proposed a major modification to its development on the day of the hearing, requiring that the Hearings Officer re-open the record to allow parties sufficient time to respond. To the extent that City Staff had the opportunity to review and comment on those revisions, City staff’s concerns were not resolved.

For the reasons explained in greater detail below, the Hearings Officer failed to adequately protect this area, granted a modification that did not provide greater protection to the natural resources, and erred by not requiring the type of robust mitigation required before development within an Environmental Resource Zone can be allowed. In addition, the landslide analysis was incomplete and the transportation system is inadequate to safely protect pedestrians. This application must be denied.

### **Background Facts**

Although the background facts are largely irrelevant to the issues raised in this appeal, a bit of background explanation will assist the Council in understanding the arguments presented here as well as other testimony that may be submitted. All of the facts contained in this letter are found in the record.

In the fall of 2016, the applicant filed the subject application seeking approval for a 23-lot subdivision in largely the same location as approved. The very earliest comments from staff, set out in the incompleteness notice identified shortcomings in the application. In late January, 2017, the applicant submitted materials in response to the incompleteness notice and without further communication with staff, asked that it be deemed complete, starting the 120-day decision-making clock running.

The first hearing before the City’s Hearings Officer took place on October 16, 2017. At that hearing, the applicant proposed substantial modifications to its proposal including a reduction in the number of lots to 21, added retaining walls, and altered the overall site disturbance area, particularly with regard to the sewer and storm water outfall within Stephens Creek. Based on concerns about whether changes to the proposal required a new application, the hearing was continued subject to a 14-day open record period. On October, 30, 2017, the Hearings Officer held a continued hearing and at the conclusion of that hearing left the record open for additional

evidence until November 13, 2017. In response to a request from the Appellant, the record was reopened on November 20, 2017 until December 7, 2017. This appeal followed.

**The Hearings Officer Failed to Require a Subdivision Design that Had the Least Amount of Impact on Environmental Resources**

Portland Zoning Code (ZC) 33.430.017 provides that the purpose of the EC zone is to “conserve important resources and functional values in areas where the resources and functional values can be protected while allowing environmentally sensitive urban development.” Where development is proposed within an EC zone that cannot meet the “development review” standards, which no party disputes are not met in this case, Environmental Review is required. ZC 33.430.220. The purpose for Environmental Review is to:

“A. Prevent harm to identified resources and functional values, compensate for unavoidable harm, and ensure the success of mitigation and the enhancement activities.

C. Provide flexibility in unusual situations. The review provides for consideration of alternative designs for development that have the least impact on protected resources in the environmental conservation zone and more exacting control over development in the environmental protection zone.”

As pointed out above, the functional values identified for protection are set forth in the SWHRPP including the following:

“The representative forest cover is in its mid-seral second growth stage, with a 70 percent deciduous and 30 percent coniferous composition. Red Alder and bitter cherry are common associates of the maple. Several unusually large specimens of pacific dogwood and cascara are present...The site soils are prone to slides and slumps when saturated. At particular risk are the steep, sloped ravines. Erosion caused by the failure of these slopes would negatively impact the habitat and water quality.” p 139 and attached.

After setting out these objectives, the SWHRPP concludes that the upland forest portion of the subject property, the area subject to disturbance, should be protected by imposition of the environmental conservation (EC) overlay zone. The plan provides that: “[t]he EC zone allows development after review so long as impacts on resources are controlled and mitigated.” *Id.* at 144. The Hearings Officer erred by failing to protect the upland forest and to mitigate where the impacts could not be controlled.

The applicant summarized the three significant resources in this area as “Stephens Creek, Ruby Creek and a forested area in the northern section” and claimed that development is not proposed

in these areas. The only reason cited by the applicant for concluding that the northern one-third of the site was more significant than the forested areas on the rest of the site is that the trees in this area “provide shading keeping stream temperatures low in Stephens Creek.” Schott & Associates Jan. 2017 Report, p 1. This rationale has nothing to do with the environmental benefit realized by preservation of the upland forest for the protection of wildlife that is clearly identified as an objective in the SWHRPP.

This applicant’s conclusion is vastly divergent from the adopted SWHRPP narrative determining that the area to be subsumed by this development is worthy of protection. The SWHRPP map identifies the location of the upland forest in the area proposed for development and does not give any indication that these forested uplands were to be given less significance than the adjacent riparian resources, in terms of habitat character or significance. It was error for the Hearings Officer to accept the applicant’s assertions as such. The impacts on the upland forests were not controlled or reduced in the first instance because the applicant, in turn the Hearings Officer, placed little to no value on them. This is a violation of ZC 33.430.B.1 and the overall obligation to limit the disturbance area.<sup>1</sup> This error requires that the application be denied.

#### The Impact and Alternative Analysis was Defective

In order to determine if the proposed development will have the lowest detrimental impact on environmental resources, ZC 33.430.B. requires that the applicant submit an “impact evaluation” which includes, in relevant part:

- (1) Evaluation of alternative locations, design modifications, or alternative methods for development to determine which options reduce the significant detrimental impacts on the identified resources and functional values of the site; and

The criteria for granting the EC review request requires a finding that:

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. ZC 33.430.250.A.1.a. (*Emphasis added*).

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<sup>1</sup> Because the applicant failed to demonstrate compliance with the Environmental Review approval criteria, the applicant similarly failed to comply with the Tree Preservation requirements of ZC 33.630.200.C.4, which requires the maximum amount of protection for environmental resources and the retention of trees as well.

A related criterion relating to land divisions requires a finding that:

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.*  
ZC 33.430.250.A.4.c. (*Emphasis added*).

Through compliance with these provisions, the City achieves the SWHRPP-identified objective of allowing “development after review so long as impacts on resources are controlled and mitigated”. *Id.* at 144. The reason why the alternatives must be “significantly different” is so that the City has an opportunity to make an informed choice selecting the alternative has the least impact considering not only different lot configurations but also a variety of house designs and infrastructure and housing construction methods. The regulation requires the consideration of all “practicable” alternatives including the consideration of “alternative housing types,” a “reduction in the number of proposed lots,” “alternative infrastructure” designs and home construction methods.

The applicant’s alternative analysis consisted of 11 alternatives, of which the Hearings Officer acknowledged that only five were developed to any usable degree. Even the more detailed alternatives include nothing more than a calculation of the number of lots and the percentage of ground disturbance. Only one of the alternatives considered a housing configuration other than a single family residential development - an 8 single family lots and 42 duplex proposal. Although the disturbance area for this multi-unit proposal is not provided, visually it appears to be the most land-intensive alternative. None of the alternatives considered a disturbance area that did not include the subject 4-acre development site. All of them included access provided primarily by a single road in approximately the same location terminating around the edge of the Stephens Creek riparian corridor. The range in the overall site disturbance varied between 29.5% to 59.3%. The minimum number of units was never below 21, as currently proposed.

No analysis was provided about which alternative retained the most trees, the biggest trees or the highest quality upland resources. None of the alternatives analyzed multi-family options that could have a disturbance area of less than 29.5% of the property (or protected a greater number of trees). No large lot alternatives were provided that could similarly reduce the disturbance area. No alternative infrastructure designs or innovative construction solutions were identified. For example, presumably there are construction methods that could reduce the risk of landslide but those alternatives were never considered. No design alternatives were considered to protect

identified significant natural resources, such a 54-inch Douglas fir tree that will be eliminated as part of this proposal.<sup>2</sup>

During the proceeding before the Hearings Officer, an SBNA representative proposed an alternative design that included moving the subdivision further to the west, placing the house-location disturbance area within the transition area, where development is supposed to locate rather than the EC zone, as encouraged by the ZC and Plan. ZC 33.430.050.<sup>3</sup> The benefit of this approach is that would expand the boundaries of the existing urbanized area leaving the remaining natural area connected, rather than carving a hole through its middle. The applicant summarily rejected this alternative for a number of reasons and the Hearings Officer never considered it.

Before responding to the applicant's dismissal of this alternative, whether shifting the development further west or not will result in the development will reduce the overall impact, this is an example of an alternative that was not considered. It is an alternative that require only a slight shift in infrastructure design, something ZC 33.430.250.A.4.c requires. These types of slight alterations in the lot layout, the number of lots, the size of the lots,<sup>4</sup> or the types of construction were never considered by the applicant.

The applicant rejected this alternative because the opponents failed to explain how this alternative would better protect the natural resources. Yet, it is the applicant and not an opponent that bears the burden of this obligation. ZC 33.800.060. It is the applicant that has unfettered

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<sup>2</sup> The applicant's consultant explained that the challenge of preserving this tree as follows:

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. Ex H-1000d, pages 2-3.

Not extending SW Hume Street was never considered as an alternative.

<sup>3</sup> ZC 33.430.050 provides, in relevant part:  
Subareas of Environmental Zones

Environmental overlay zones contain resource areas and transition areas. Resource areas contain significant resources and functional values. Transition areas surround the resource areas. Resources and functional values within transition areas are not significant, but they provide a buffer for the significant resources and functional values within the resource area. The transition area is measured as the first 25 feet inward from an environmental zone boundary. The remaining area is the resource area.

<sup>4</sup> Of the 21 lots, nine of this are between 6,076 and 7,924 square feet, which exceeds the minimum lot area for the R10 zone. Reducing the lot sizes to meet the minimum lot size would be another alternative that could have reduced the detrimental impacts.



access and the ability to evaluate the impact various alternatives will have on resources. The neighborhood could not be expected to evaluate all of the impacts, including tree removal, utility and drainage impacts from that alternative. Suggesting that the opponents should bear this obligation is particularly onerous given that the applicant would not allow access onto the property and intimidated opponent-hired experts as they were in the process of reviewing the proposal with a threat of litigation.

The Hearings Officer erred by failing to require that the applicant produce “significantly different alternatives.” Rather, the applicant determined how many lots were necessary to provide a certain return on investment and then set to identifying alternatives that were easily rejected because they had a greater disturbance area. Even giving the applicant the benefit of the doubt - that the alternatives analysis was not an exercise in reverse engineering to obtain a result - the applicant’s alternative analysis focused solely on a quantitative area subject to disturbance or 29.5%. A “significantly different” alternatives analysis would focus on the quality and character of the impact as well as its overall quantity. This error was only magnified by the applicant’s failure to give proper significance to the upland forest area in the first instance. This error requires that the application be denied.

### **All Significant Detrimental Impacts were Not Mitigated**

ZC 430.250.A.1.c requires the provision of a mitigation plan which “demonstrates that all significant detrimental impacts on resources and functional values will be compensated for.” As pointed out above, the Hearings Officer failed to give proper significance to the functional value of the upland forest which, in turn, resulted in the failure to require that “all detrimental impacts” to this forest are mitigated. In fact, the Hearings Officer made no findings that the mitigation was sufficient to compensate for detrimental impacts caused by the overall disturbance limits in the first instance.<sup>5</sup>

Rather, what the Hearings Officer focuses on is staff’s concern about lack of clarity in the disturbance area, making it impossible to determine if the mitigation is sufficient.

ZC 33.430.110.B requires the provision of “clear limitations on disturbance within resource areas.” ZC 33.430.240.A sets forth the Environmental Review permit application requirements including identification of the “the permanent disturbance area.” ZD 33.430.240.A.2.b. Without knowing the limits of the disturbance area, it would be impossible to determine how much mitigation is required.

Staff’s concerns about the location of the disturbance limits had to do with the location and extent of work near Ruby Creek including a rockery retaining wall, the stormwater outfall and

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<sup>5</sup> The Hearings Officer’s opinion does include a summary of the mitigation proposed to offset the additional disturbance caused by installation of the proposed stormwater / sewer outfall on pages 26-27 but this is a far cry from satisfying the ZC 430.250.A.1.c requirement that “all significant detrimental impacts” be mitigated.

sewer activities. Further, transportation, fire life safety, and urban forestry staff raised concerns that identifying design solutions to satisfy other requirements would have the effect of altering the disturbance limits. For example, urban forestry staff had concerns over whether the loss of a 54-inch Douglas fir tree that may have to be removed as a result of this development could require project redesign and, in turn, require greater mitigation. The Hearings Officer's findings on this point quote from the applicant's materials that reference a construction plan identifying disturbance limits and with that, implicitly conclude that the concern over the limit of the disturbance area were resolved. These findings are defective because they fail to explain how mitigation will be accomplished.

It appears that rather than analyzing the scope of mitigation, given the "settled" disturbance area, the Hearings Officer resolved these issues by imposing a series of conditions of approval deferring Environmental Review compliance:

"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-inch tree, all in substantial conformance with the disturbance area proposed by Applicant and reflected in the Construction Management Plan in Exhibit H-108o(3)."

Condition B(1) and D(2) similarly defer evaluation of the stormwater facility and retaining wall design within designated open space areas to staff review so long as they are "in substantial conformance with the disturbance area proposed." The defect with these conditions is that they differ a discretionary review, whether the proposed solution is in substantial conformance with the disturbance area, to a subsequent proceeding where the public will not have an opportunity to respond. *Gould v. Deschutes County*, 216 Or. App. 150, 162-163 (2007). Determining whether the revisions to the disturbance area is critical when ZC33.430.110.B require "clear limitations" and complete mitigation rather than "substantial conformance."

The written testimony submitted by the applicant's legal counsel quotes a state law, ORS 197.552 for the proposition that if a proposal can satisfy the relevant approval criteria with conditions, a local government must approve it with conditions. What the applicant's legal counsel fails to explain is that this statute only applies in the context of a declared or a *de facto* moratorium, circumstances that are not in issue in this case. *Reeder v. Multnomah County*, 59 Or LUBA 240, 254-55 (2009). This is just another example of the undo pressure that the applicant placed on the Hearings Officer to achieve its desired result, explained in greater detail below.

The Hearings Officer's decision makes no mention of the need to mitigate for the adverse impacts resulting from the increased risk of landslides. This failure requires that the application be denied.

### **A Modification to allow for a Reduction in the Side Yard Setback for Lots 3 - 8 was Not Justified**

Where an applicant cannot comply with the minimum lot area or building setback areas, an environmental modification is required. A modification is allowed under ZC 33.430.280 only upon a finding 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.”

The Hearings Officer allowed a reduction in the side setback for the homes located on lots 3 through 8 from the required 10 feet to 5 feet. City staff did not support this modification request because the lots met the standard R10 required lot width and lot area requirements and as a result, reducing the side setback will not better protect the environmental resources and functional values. The applicant responded by explaining that overall, Alternative 4A would have smallest disturbance footprint and therefore, the modification “is appropriate to account for the limitations the applicant placed on the development.” Hearings Officer’s Decision p 41. The problem with this response is that this development, including the reduction of the side setback, will not result in greater protection of the natural resources, as the modification standard requires. Rather, reducing the side setback will allow the development of larger homes, increasing the impervious surfaces and providing less open area that could potentially be hospitable to wildlife.

Further, the Hearings Officer quotes passages from the applicant’s environmental consultant suggesting that the consultant considered the impact that “this modification will have on the functions and values.” The quoted passages that follow relate solely to the preservation of existing trees in the rear yards subject to a restrictive covenant.<sup>6</sup> These additional protection measure in the rear yards of lots 3 through 8 have no bearing on allowing the proposed houses to extend into the side yard setback.

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<sup>6</sup> Notwithstanding the Hearings Officer conclusion that the protection of the trees in the rear yards of lots 3 – 8 would justify a reduction in the side yard setback, the condition that the Hearings Officer imposed to ensure this result provides:

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 in the plans and the western boundary of each lot. The HOA shall have responsibility for enforcing said restriction. Hearings Officer’s decision p 80, condition A.1.

It is unclear how recording a covenant against Lots 4 through 8 is going to protect Lot 3, as required by the findings. Moreover, ZC 33.430.160(c) requires that the preservation of natural areas as deemed appropriate to satisfy the Environmental Review requirements must be reserved in a tract, rather than subject to a private development restriction.

The Hearings Officer concludes by stating that the reduced side setback “because the proposed lots are comparable in size to those nearby properties in the R5 zone.” As a factual matter, the Hearings Officer erred in finding that R5 zoned properties sufficiently nearby to justify this compatibility finding. All of the land proposed for development abuts land that is zoned R10. Finding compatibility based on R5 zoning is factually incorrect. Moreover, this compatibility finding does not make up for the natural resource protection obligation. This error requires that the application be denied.

### **The Risk of Landslide was Not Adequately Evaluated**

ZC 33.632 requires that the “lots, buildings, services and utilities” subject to development 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 other words, the Hearings Officer had to find that the proposed development “reasonably limits the risk of landslide.” As pointed out above, the applicant made significant changes to the proposal during the last days before the record closed and as a result, the Landside Hazard Study prepared when the application was filed did not reflect the final revisions. Staff pointed out that the new plan showed:

“a rockery retaining wall along the property liens 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.” Ex H-94, pages 2-3.

Although staff acknowledged that this rockery wall was located within the updated disturbance area limits, staff’s concerns about the landslide risk remained:

“Site Development<sup>7</sup> would prefer that the [Landslide Hazard Study] 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. This analysis must demonstrate adequate factors of safety under static and earthquake loading. *Id. (Emphasis added).*”

The Hearings Officer did not include any obligation to provide a “rigorous slope stability analysis” as a condition of this approval. The conditions make no mention of revising or revisiting the landslide hazard analysis in the first instance. There is no evidence in the record evaluating what effect the final changes to the development, including the construction of an

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<sup>7</sup> Site Development is the division of Development Services that makes determinations regarding soil stability.

additional retaining wall within the slope will have on the landslide risk. Further, adopting a condition as recommended by staff would improperly defer a finding of compliance on a discretionary review criteria to a subsequent determination when the public would have no opportunity to evaluate the proposal for compliance. For these reasons, this application should be denied.

### **The Transportation System is Incapable of Safely Supporting the Proposal**

Regarding transportation impacts, an applicant must establish that the system is “capable of safely supporting the proposed development in addition to the existing uses in the area” including “the availability of transit service and facilities and connections to transit...and safety for all modes. ZC 33.641.020. The nearest bus stops to the proposed development are on either side of SW Taylors Ferry Road taking passengers in both directions. There are no sidewalks, lighted or otherwise designated crosswalks on SW Taylors Ferry Road and these existing stops lack any level or separated waiting areas. In order to address this deficiency, the applicant agreed to install sidewalks on the north side of SW Taylors Ferry Road in the area abutting the development and a level cement platform for the stop on the north side of SW Taylors Ferry. Nothing in the way of off-site mitigation measures were proposed.

Portland Bureau of Transportation (“PBOT”) staff continually maintained that the area lacked adequate pedestrian facilities on Taylors Ferry Road to safely provide transit service to the residents of this new development. Taylors Ferry Road is identified as a City Walkway and it provides a direct connection to SW Macadam, containing shops and services available to the residents of this new development. The applicant objected to the obligation to provide additional sidewalks or improvements along SW Taylors Ferry because the applicant’s proposal did not create the dangerous conditions for pedestrians and that alternative routes would be available. The applicant objects to any suggestion that it might install sidewalks along the length of SW Taylors Ferry because that obligation would not be roughly proportional to the impacts from the development.

There are numerous problems with this approach. First, no party disputes that SW Taylors Ferry is unsafe for pedestrians. A resident of this development who gets off the Number 43 bus travelling east at the SW Taylors Ferry stop must cross SW Taylors Ferry to reach the sidewalks as well as this new development on the north side when all parties agree that SW Taylors Ferry is subject to heavy vehicular traffic and not safe for pedestrians. Failure to provide a means for transit riders to safely cross SW Taylors Ferry compromises the safety for all modes obligation in the first instance.

Second, the transportation system must be capable of supporting the development, no matter what condition it is in when the applicant finds it. It may be that the installation of sidewalks or bike lanes along SW Taylors Ferry is greater than the impacts caused by the development, but the solution to that problem is to impose an exaction that is proportionate. The Hearings Officer

erred in this case by not requiring the applicant to directly contribute to the solution, even if it is not the entire solution.

The City Council should reject any suggestion that historical pedestrian use of this road is any indicator of its future use. As the Council is well-aware, the need for sidewalks is a “chicken and egg” problem – the pedestrians will never come so long as there are no sidewalks and there will never be sidewalks until there are pedestrians. This development will add 21 family-sized homes whose closest access to retail shops and services is going to be travelling along SW Taylors Ferry Road. The City should not support vehicular travel for these future residents along the few blocks to the grocery store rather than taking steps to encourage safe pedestrian connections.

Finally, it is important to remember that the applicant owns the frontage along a long stretch of SW Taylors Ferry, much of which is included within the 14 acres that is the subject of this application. A requirement to provide a sidewalk, or simply dedicate the land necessary to accommodate a sidewalk, would be an entirely on-site improvement, subject to much lower rough proportionality obligations. For this reason, this application should be denied.

### **Opportunities for Professionals and the Public to Evaluate this Proposal were Impaired**

The quasi-judicial hearing process is structured to encourage the identification of issues early in the review process, allowing the applicant an opportunity to respond to the issues as part of the completeness review, and then a sufficient amount of time before the decision is made for city staff and the public to review the proposal to determine if it meets the criteria. However, several events suggest that the applicant worked to try to circumvent a complete and comprehensive vetting of its proposals.

For example, one of the applicant’s representatives attended a neighborhood organization meeting, shortly after notice of the proposal was issued. During this meeting, the neighborhood retained environmental / engineering consultant presented some of his most preliminary findings based on a limited review of that record. Hearing these findings, the applicant’s representative contacted the representative from the consulting engineering firm indicating that the consultant misrepresented the project and threatened the firm with a lawsuit for libel and slander, should the firm complete this work. Finding the risk resulting from a lawsuit, even if unfounded, significantly higher than the possible fee recovery, the consulting engineer withdrew from providing further assistance. Given what were perceived as legitimate threats, it is not surprising that the Appellant found it difficult to obtain further experts to review this request.

As pointed out above, staff from five of the seven city bureaus recommended denial of this application throughout the process. To remedy this situation, the applicant continued to try to bandage over omissions, filing a 500 plus page packet of materials, on October 16, 2017, leaving a total of less than a month and a half for the various city bureau staff to review and, given the hearing limitations, compile comprehensive evaluation of the proposal. This amount of time was

shortened by a period of time when the record was closed to new evidence and compromised by the final open record period falling squarely over the Thanksgiving break. Given these challenges it is not surprising that city staff failed to comment on the final revisions.

Finally, there is the issue of how the applicant used the actions or non-actions of staff to influence an approval. First, the applicant's responses throughout this process were to criticize city staff for a lack of timeliness in their review and comment of materials. The first 4 pages of the applicant's final argument sets out a timeline focusing on city staff's failure completely review revisions to the proposal on the applicant's timeline.

Yet, at the same time (and in that same final statement), the applicant claims that it is entitled to approval merely because it did everything that was requested by staff. If the city staff was so incompetent or incomplete in their review, how could compliance with staff's recommendations be sufficient to achieve compliance with the zoning code requirements? The answer is that they do not. Rather, the approval standards require compliance with certain criteria. In this case, these criteria are highly discretionary – meaning that determining what the standard requires is subject to a great deal of interpretive discretion. City staff is not the decision-maker and therefore, what they believe a standard requires, may not be what the Hearings Officer or ultimately, the City Council believes is required. Therefore, it was incorrect for the Hearings Officer to approve this application based solely on conclusion that the applicant responded to staff's concerns overall.

It is the applicant that bears the burden of proof to establish that the criteria are satisfied based on an interpretation of the standards that is supported by the Zoning Code. Staff role is to identify areas where the criteria fall short, based on their interpretation of what the code requires, and then, in some situations, make recommendations or conditions of approval necessary to achieve compliance. Finally, this approach assumed a dialogue between only two relevant parties – the applicant and the City staff. It places no significance on the argument and evidence presented by adjacent property owners and neighborhood associations, who often are as familiar with the regulatory requirements as well as the surrounding facts.

It is always more challenging for neighborhood groups to generate the same level of reliable and probative expert testimony responding to highly discretionary and difficult to ascertain environmental issues. The most fundamental reason for this is that neighborhood groups do not have the same access to the property that a property owner does. As a result, the City must rely heavily on city staff, who are qualified to review all of the studies and provide an independent evaluation of whether the evidence is sufficient. In this case, not only were the neighborhood association's efforts actively thwarted, the final day submission of a revised application ensured that staff's review would be compromised as well.

**Conclusion**

The applicant has an obligation to preserve the natural resources, including the upland forest, as they were identified for protection in the City's adopted and implemented in the SWHRPP. The applicant failed to present a series of "significantly different" options to establish that the proposed development represented the "least amount of impact." Notwithstanding this failure, the applicant had an obligation to mitigate "all detrimental impacts" including not just a replacement of the trees with additional trees or understory, but the impacts to the wildlife from the increased landslide risk as well. The applicant failed to design a proposal that will safely support pedestrian movement off this property. Rather than take a sober look at these rigorous criteria designing a development that was compatible and could coexist within the forest, the applicant chose to pressure all of the reviewers to date into accepting a generic, traditional, single-family subdivision. Resist this pressure and deny this application for failure to comply with the requirements put in place to protect these critical and significant natural areas.

Very truly yours,



Carrie A. Richter

CAR:kms

Attachment

cc: Linly Rees via email  
Kate Green via email  
Sean Williams via email





# SOUTHWEST HILLS RESOURCE PROTECTION PLAN

INVENTORY, ANALYSIS AND REGULATIONS  
for the  
PROTECTION OF  
WETLANDS, WATER BODIES,  
FISH AND WILDLIFE HABITATS,  
OPEN SPACE AND NATURAL AREAS

---

Adopted by City Council January 23, 1992  
Effective January 23, 1992

Ordinance No. 165002

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Bureau of Planning  
Portland, Oregon  
May 1992



**SITE SIZE:** 320 acres

**BOUNDARIES:** Nevada St., north; Capitol Hwy., west; SW 25th, 19th, Capitol Hill Rd., east; Marigold and Dolph Ct., south

**NEIGHBORHOOD:** Multnomah

**INVENTORY DATE:** May 6, 1986

**HABITAT CLASSIFICATION:**

- Upland Coniferous/Broadleaf Deciduous Forest
- Riverine, Intermittent Streambed

**TYPES OF RESOURCES:**

Groundwater recharge, wetlands, intermittent creek, forest, open space, wildlife habitat, education and scenic.

**SITE LOCATION & DESCRIPTION:**

This 320-acre site is a broad, gently-sloping draw. It is the south-facing portion a low-lying area that occurs between Mt. Sylvania and its associated hills on the south, and the West Hills including Council Crest on the north. The only significant remaining natural areas are 1) a water collection area where four drainages converge, and 2) a wetland north of Marigold Street. The site is nearly fully developed. The natural area lies between two streets with single family homes and a street system that wraps around it. The wetlands is between Marigold and Dolph Court, from 30th to 35th Avenues.

**RESOURCE QUALITY & QUALITY:**

There are two significant natural areas within Site 118. They are between two and four acres in area and form part of a 320-acre drainage basin. The remainder of the creek has been piped until it passes under Interstate 5. From I-5, the creek re-emerges as an open system again and joins with Falling Creek which is the drainage off of the hills north of Mt. Sylvania. Site 118 creek and Falling Creek are part of Tryon Creek's 4,477-acre drainage basin.

This relatively small creek, wetlands and pond system provides storm drainage, sediment trapping and forms an enclave for resident wildlife. Typha willow and salamanders live here. The creek banks have native ash and non-native willow trees. Blackberry, willow and grass species form the understory. The riparian vegetation along the waterway forms an urban edge and gives a sense of place. The water provides potential recreation for the children of the area. These environmental qualities contribute to the

Site No. 117: Stephens Ck/River View Cem. Maps: 3828-30, 3928-30, 4028-30

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**SITE SIZE:** 554 acres

**LOCATION:** Canby St., north; Terwilliger Blvd., west; Macadam Ave., east;  
Palatine Hill Road and Comus Street, south

**NEIGHBORHOODS:** Collins View, South Burlingame

**INVENTORY DATE:** June 7, 1991

**HABITAT CLASSIFICATION:**

- Upland Coniferous/Broadleaf Deciduous Forest
- Riverine, Upper Perennial
- Palustrine, Forested Wetland

**TYPES OF RESOURCES:**

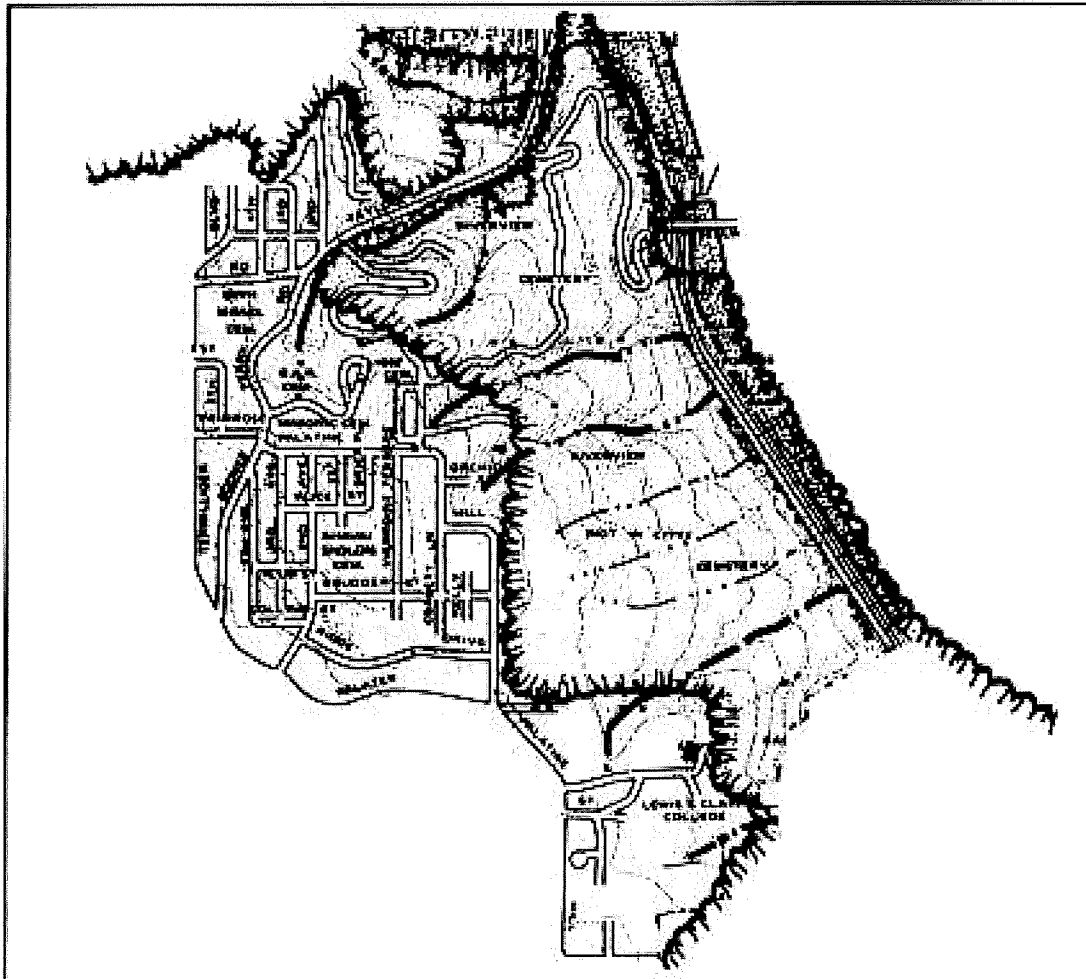
Perennial creek, groundwater, scenic, open space, wildlife habitat and corridor, forest, education and historic.

**SITE DESCRIPTION:**

This site is the northern portion of a broad, massive ridge that is about two miles long, includes Palatine Hill and extends south to Lake Oswego. The ridge is about 1,500 feet wide, 550 feet high and consists of a series of ravines. About half of the site is in a natural condition. The west slope forms the east face of the Tryon Creek Canyon and the east side drops vertically to the Willamette River and Macadam Avenue. Stephens Creek flows through the northern part of this site in a deep ravine that separates Fulton Park and Burlingame neighborhoods. The major land uses include River View Cemetery, Lewis and Clark College and low density residential.

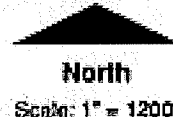
**RESOURCE QUALITY AND QUANTITY:**

The representative forest cover is in its mid-seral second growth stage, with a 70 percent deciduous and 30 percent coniferous composition. Red alder and bitter cherry are common associates of the maple. Several unusually large specimens of pacific dogwood and cascara are present. Understory shrub species include serviceberry, thimbleberry, Indian plum, wild rose and snowberry that provide wildlife food and cover. However, the non-native Himalayan blackberry is a dominant understory plant. Blackberry plus English ivy, clematis, morning glory, English laurel, English holly and European hawthorn are suppressing the growth of native flora. The site soils are prone to slides and slumps when saturated. At particular risk are the steep, sloped ravines. Erosion caused by the failure of these slopes would negatively impact the habitat and water quality.

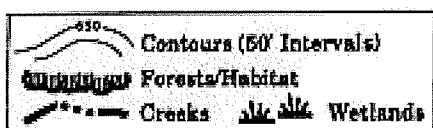
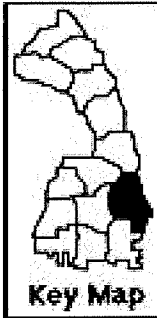


**Resource Areas**

**Site 117**



Scale: 1" = 1200'



**Southwest Hills**  
**Resource Protection Plan**

September 1991 • Bureau of Planning • City of Portland, Oregon

to be located in less sensitive areas of the property. An environmental review process for the entire cemetery should be done as part of a Conditional Use Master Plan thus reducing costs associated with multiple reviews, and providing the cemetery with certainty regarding where future development will be allowed. Preserving existing native vegetation, particularly along stream corridors, during cemetery expansion would reduce potential costs for landscaping and erosion control and would reduce costs associated with site clearing and grading. Preserving established vegetation can also enhance the attractiveness of the cemetery for future clients.

River View Cemetery is preparing an updated draft master plan which shows three proposed stream crossings in areas proposed for an Environmental Protection (EP) designation. Unique operational needs including the desire to loop internal access roads to allow for orderly burial processions, the need for intensive maintenance, traffic impacts on surrounding residential areas, and steep terrain may require the crossing of some of these streams. The proposed changes to Section 33.430.340.D. make it possible for these stream crossings to occur, subject to more detailed environmental review and mitigation.

Social Consequences: Scenic values along Macadam Boulevard would be preserved. Enforcement of the *Macadam Plan District* and *Design Guidelines* would aid in preserving these values. Preserving vegetation separating the cemetery and residential and commercial areas would serve to screen these uses from each other. Quality of life considerations which include scenic and aesthetic views would be protected and maintained for the neighborhood's benefit.

Preserving the vegetation and trees on the cemetery would also preserve the use of the grounds as neighborhood open space. Resource protection would allow the cemetery to expand while protecting the scenic values of the trees and vegetation which contribute to the neighborhood's character.

Environmental Consequences: The seasonal creeks and significant coniferous and deciduous forest stands would be protected, as would their functional and habitat values. Wildlife habitat on and around the cemetery site would be preserved. The resource site's value as groundwater recharge area would also be preserved.

Energy Consequences: Clustering development would save energy by reducing the distance for services and infrastructure to access individual properties, reducing utility usage and using common walls. Prohibiting development could result in development occurring elsewhere, such as outside established cities. Consequently, the distance covered and the energy needed to provide public services and facilities to properties would increase.

**River View Forest - Potential and Observed Amphibians, Reptiles, Mammals and Birds**

<b>Common Name</b>	<b>Scientific Name</b>	<b>Observed /Known River View Species</b>	<b>Potential Species Not Documented on Site**</b>	<b>OCS Special Status Species (Ecoregion CR9 and WV3)</b>	<b>Johnson and Oneil - Wetland and Riparian Wildlife "Close" Assoc.</b>	<b>City of Portland TEES Special Status Species</b>
<b>Amphibians</b>						
Coastal (Pacific) giant salamander	<i>Dicamptodon tenebrosus</i>		X	X	X	
Dunn's salamander	<i>Plethodon dunnii</i>	X				
Ensatina	<i>Ensatina eschscholtzii</i>				X	
Long-toed salamander	<i>Ambystoma macrodactylum</i>				X	
NorthWestern salamander	<i>Ambystoma gracile</i>				X	
Pacific treefrog	<i>Pseudacris regilla</i>				X	
Red-legged frog	<i>Rana aurora</i>		X	X	X	X (also a Willamette Basin Priority Species)
Rough-skinned newt	<i>Taricha granulosa</i>	X				
Western red-backed salamander	<i>Plethodon vehiculum</i>	X				
<b>Reptiles</b>						
Common garter snake	<i>Thamnophis sirtalis</i>				X	
NorthWestern garter snake	<i>Thamnophis ordinoides</i>					
<b>Mammals</b>						
Big brown bat	<i>Eptesicus fuscus</i>					
Black-tailed deer	<i>Odocoileus hemionus</i>	X				
Brush rabbit	<i>Sylvilagus bachmani</i>					
Bushy-tailed woodrat	<i>Neotoma cinerea</i>					
California myotis	<i>Myotis californicus</i>					X
Coast mole	<i>Scapanus orarius</i>					
Common raccoon	<i>Procyon lotor</i>					
Coyote	<i>Canis latrans</i>	X				
Creeping vole	<i>Microtus oregoni</i>					
Deer mouse	<i>Peromyscus maniculatus</i>				X	
Douglas' squirrel	<i>Tamiasciurus douglasii</i>	X				
Eastern fox squirrel	<i>Sciurus niger</i>					
Hoary bat	<i>Lasiurus cinereus</i>		X	X		X
House mouse	<i>Mus musculus</i>					
Little brown myotis	<i>Myotis lucifugus</i>					
Long-tailed vole	<i>Microtus longicaudus</i>				X	
Long-tailed weasel	<i>Mustela frenata</i>					
Mountain beaver	<i>Aplodontia rufa</i>	X			X	
Northern flying squirrel	<i>Glaucomys sabrinus</i>		X			

House finch	<i>Carpodacus mexicanus</i>	X				
House sparrow	<i>Passer domesticus</i>					
House wren	<i>Troglodytes aedon</i>					X
Hutton's vireo	<i>Vireo huttoni</i>	X				X
Lesser goldfinch	<i>Carduelis psaltria</i>	X		X	X	
MacGillivray's warbler	<i>Oporornis tolmiei</i>					
Merlin	<i>Falco columbarius</i>					X
Northern flicker	<i>Colaptes auratus</i>	X				
Northern saw-whet owl	<i>Aegolius acadicus</i>	X				
Olive-sided flycatcher	<i>Contopus cooperi</i>	X		X		X
Orange-crowned warbler	<i>Vermivora celeta</i>	X				X
Osprey	<i>Pandion haliaetus</i>					
Pacific-slope flycatcher	<i>Empidonax difficilis</i>	X		X		X
Peregrine falcon (nest near Cemetery)	<i>Falco peregrinus</i>	X		X		X
Pileated woodpecker (evidence of pileated cavities)	<i>Dryocopus pileatus</i>	X				X
Pine siskin	<i>Carduelis pinus</i>	X				
Purple finch	<i>Carpodacus purpureus</i>	X		X	X	
Pygmy owl	<i>Glaucidium gnoma</i>	X				
Red Crossbill	<i>Loxia curvirostra</i>	X				
Red-breasted nuthatch	<i>Sitta canadensis</i>	X				
Red-breasted sapsucker	<i>Sphyrapicus ruber</i>					
Red-tailed hawk	<i>Buteo jamaicensis</i>					
Rock pigeon	<i>Columba livia</i>	X				
Ruby-crowned kinglet	<i>Regulus calendula</i>	X				
Rufous hummingbird	<i>Selasphorus rufus</i>					X
Sharp-shinned hawk	<i>Accipiter striatus</i>	X				
Song sparrow	<i>Melospiza melodia</i>	X				
Spotted towhee	<i>Pipilo maculatus</i>	X				
Steller's jay	<i>Cyanocitta stelleri</i>	X				
Swainson's thrush	<i>Catharus ustulatus</i>	X				X
Townsend's warbler	<i>Dendroica townsendi</i>		X			
Varied thrush	<i>Lxoreus naevius</i>	X				X
Vaux's swift	<i>Chaetura vauxi</i>		X			X
Violet-green swallow	<i>Tachycineta thalassina</i>					
Warbling vireo	<i>Vireo gilvus</i>			X	X	
Western screech-owl	<i>Otus kennicottii</i>		X	X	X	
Western scrub-jay	<i>Aphelocoma californica</i>	X				
Western tanager	<i>Piranga ludoviciana</i>					
Western wood-pewee	<i>Contopus sordidulus</i>	X				X
White-crowned sparrow	<i>Zonotrichia leucophrys</i>					
Wilson's warbler	<i>Wilsonia pusilla</i>		X		X	X
Winter wren	<i>Troglodytes troglodytes</i>	X				X
Yellow-rumped warbler	<i>Dendroica coronata</i>	X		X	X	

Wildlife species appear on this list based on habitat associations or observations. Species / Habitat associations developed for River View property by Northwest Habitat Institute (NWHI) 2009. \*\*Potential species presence are based on habitat associations present at RVNA and species known to occur in similar habitats within the Portland area. Wildlife observers Dave Helzer, Shannah Anderson, Mary Bushman, Claire Puchy, Judy Simon, and Robert Lockett.

## Moore-Love, Karla

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**From:** Robert Lennox <robertlennox.pdx@gmail.com>  
**Sent:** Wednesday, February 07, 2018 10:29 AM  
**To:** Moore-Love, Karla  
**Subject:** Fwd: South Burlingame Neighborhood Association - Letter Re Macadam Ridge CASE FILE #LU 16-213734 Inbox  
**Attachments:** SBNA Letter of Record to Council for Appeal.pdf

Hi Karla,

Carrie asked me to forward this to you to insure it is in the record. See you in a few hours.

Robert Lennox

----- Forwarded message -----

**From:** **Robert Lennox** <robertlennox.pdx@gmail.com>  
**Date:** Wed, Feb 7, 2018 at 9:45 AM  
**Subject:** South Burlingame Neighborhood Association - Letter Re Macadam Ridge CASE FILE #LU 16-213734 Inbox  
**To:** "[mayorwheeler@portlandoregon.gov](mailto:mayorwheeler@portlandoregon.gov)" <[mayorwheeler@portlandoregon.gov](mailto:mayorwheeler@portlandoregon.gov)>, Commissioner Nick Fish <[NickFish@portlandoregon.gov](mailto:NickFish@portlandoregon.gov)>, Commissioner Dan Saltzman <[dan@portlandoregon.gov](mailto:dan@portlandoregon.gov)>, Commissioner Amanda Fritz <[amanda@portlandoregon.gov](mailto:amanda@portlandoregon.gov)>, Commissioner Eudaly <[chloe@portlandoregon.gov](mailto:chloe@portlandoregon.gov)>, cctestimony <[cctestimony@portlandoregon.gov](mailto:cctestimony@portlandoregon.gov)>  
**Cc:** Carrie Richter <[crichter@batemanseidel.com](mailto:crichter@batemanseidel.com)>

Dear Mayor Wheeler and Commissioners Eudaly, Fish, Fritz, and Saltzman:

Under Special Committee our Association has prepare a letter in response the the appeal we have before you today. We look forward to the opportunity to give oral testimony regarding the deficiencies of the decision to approve this land division.

Thank you in advance for your thoughtful consideration on this matter.

Sincerely,

Robert Lennox

President

South Burlingame Neighborhood Association





For Hearing on February 7, 2018

Portland City Council  
1221 SW 4th Avenue, Room 140  
Portland, Oregon 97204  
Karla.Moore-Love@portlandoregon.gov

Re: CASE FILE #LU 16-213734  
BDS Case File: LU16-213734LDS EN M EV  
Opposition to Mr. Oden-Orr's Approval of Macadam Ridge Development Application  
South Burlingame Neighborhood Association

Dear Mayor Wheeler and Commissioners:

Over the past four years, the South Burlingame Neighborhood Association (SBNA) has been reviewing, commenting, and now appealing this land use application. SBNA is not opposed to development, but we are convinced the proposed application has not met the code requirements, as outlined in our appeal.

SBNA has secured an attorney to represent our interests in the proceedings, but we feel it is important to reiterate what we have put into record, and to make an attempt to express the reasons we believe the Hearing Officer, Melvin Oden-Orr, erred in his decision to approve this application.

In the first application, the developer proposed a dense Planned Use development. It consisted of a combination of sub-five-thousand-square-foot lots, mixed with twenty-five-hundred-square-foot multi-family duplex lots. The applicant tried to use the codes related to environmental zoned properties to affect this property adversely. For reasons not stated, the application was withdrawn. We believe it was due to technical problems with the application.

The developer regrouped, narrowed their focus to a smaller set of properties, and reapplied. This is the application currently before Council. We believe, along with four of the City of Portland bureaus, that this application is flawed, especially in relation to the environmental review and subsequent mitigation. We believe the applicant failed to begin the evaluation with an honest application of the code to 1) identify the functional values of the environmental zones that this land development will impact, and 2) mitigate for these impacts.

Again, SBNA is not opposed to development of this property, but we are very concerned that the developer has not followed the code with respect to the items identified in this appeal. The principal one is the application of the environmental review and the subsequent mitigation. We are also very concerned about a related topic to the environmental review, the known landslide hazard which

encompasses the vast majority of the proposed lots. Finally, we are concerned that the applicant is shrugging off their responsibility to ensure pedestrian safety on Taylors Ferry Road, especially with regard to access to transit.

#### **Alternate Impact Analysis and Limits of Disturbance**

(33.420.250.A.1.a and 33.430.250.A.4.a)

One of the main points of the appeal, where the Hearing Officer erred in his decision, is the alternate analysis required under PCC 33.420.250.A.1.a, which states “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.” (emphasis added). The applicant submitted four alternatives with analysis for review in their application<sup>1</sup>. The Staff Report details them clearly: “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 the other practicable alternatives or how it creates the fewest detrimental impacts as compared to other alternatives.” The Staff Report continues to describe other holistic differences, similarities, etc., but the key here is what is self-evident: the applicant picked their preferred alternative, then preceded to produce other comparatives to make their preferred alternative the best of the group.

In contrast to this, the code directs having different housing types or other creative methods to have the least detrimental impacts. The Southwest Hills Resource Protection Plan (SHRPP), which is one of the guiding policy documents for the environmental zones, includes cluster homes and other housing options for solutions to impacts to the Environmental Zones. It suggests making lots larger, as well as smaller, to analyze impacts to the identified resources. None of these types of solutions were included in the applicant’s options, not the 4 in their application, nor the new preferred alternative 4A, nor the other 11 that were mysteriously conjured up when their attorney realized this was a serious error that needed to be addressed to produce an approvable application.

Which brings us to the second error related to PCC.420.250.A.1.a, the identified resources. Again, referring to SHRPP, Chapter 5 - AREAWIDE INVENTORY OF NATURAL RESOURCES, under Resource Functions and Values reads, in its entirety, “The Southwest Hills forest protects and conserves important resources such as watersheds and soils. Forest vegetation moderates the effects of winds and storms, stabilizes and enriches the soil, and slows runoff from precipitation, thereby minimizing erosion and allowing the forest floor to filter out sediments and nutrients as the water soaks down into groundwater reserves or passes into streams. By decreasing runoff and increasing groundwater infiltration, the forest protects downstream neighborhoods from flooding. Also, by stabilizing the soil and reducing runoff and erosion, **the forest protects the community from landslides and other land hazards.**” (emphasis added). If you continue under the Summary section of Chapter 5 on pages 51 and 52 of the SHRPP, you’ll find the following, “The balanced relationship between the area’s geologic formations, soils and groundwater features is protected by the extensive canopy cover and root system of the forest which shelters and stabilizes the hillside slopes. **Activities which disturb this fragile relationship can substantially degrade resource values by causing landslides, flooding, erosion and sedimentation.**” (emphasis added).

The area in consideration for impact is an upland forest. The most significant trees in this upland forest are along the southerly portion of the site. There are some very large fir trees. The Urban Forestry identified one tree in the Scenic Corridor next to Taylors Ferry as significant. The applicant's attorney has argued that the Urban Forestry's request to save one 54" fir tree came too late in the design process, but again, the applicant has tried to push off onto the city his responsibilities under the code to first identify these resources. The applicant's environmental specialist makes no claim for any resource value that his client doesn't identify to support his argument. This is one of many specific examples in which the applicant twisted the code to try to build the densest land division possible over a landslide, destroying the upland forest, thus destroying significant environmental resources. This is the underlying reason that four of the six reviewing city bureaus recommended denial of the application.

SBNA contends that the Hearing Officer failed to recognize the site's full resources by discounting the functional values related to this known landslide, as we outlined in our letter, the forest that helps mitigate the landslide risk, or even the value of many significant trees in the southerly portion of the site adjacent to Taylors Ferry road in the Scenic Corridor.

This brings us to the preferred alternative, Alternative 4A. Since the options selected for the analysis failed to account for the site's resources, especially the upland forest over a known landslide and the significant fir trees in the scenic corridor, the preferred alternative is the best of the worst. This is not acceptable. The Hearing Officer erred in his decision to approve this application, because the applicant failed to demonstrate to a burden of proof to identify the known resources and prepare a practicable set of alternatives, including varied housing densities, varied housing types, and innovative solutions. Without this first step, there is no way to ensure that a plan with the least impacts has been presented for approval, as required by 33.430.250.A.4.a.

SBNA also submitted in its rebuttal a scenario to show that the applicants' assertion that if you move the road to the west, the cul-de-sac and lots will, to paraphrase, fall off the hill and impact more of the environment. What we showed is that with an innovation of a curve, you can move the road adjacent to Lots 3-8 to the west and still leave the cul-de-sac and lots in the same location. Basically, that the applicants have erred by not proposing a plan with the least detrimental impacts. Our goal with this was not to suggest that they apply this option, but to show that they are reluctant to apply any innovation that might save the identified resources, especially if it reduces their profit. Again, this is not consistent with the intent of the environmental codes stated. Mr. Oden-Orr failed to even acknowledge this point, even though the applicant spent a considerable amount of energy in his final argument rebutting our assertion.

### **Mitigation and Remediation**

(33.430.240.B.3)

Since the overall impact area is not identified because of the flawed analysis, the area of disturbance is uncertain, making the evaluation of the mitigation a guess at best. This was repeatedly stated in the staff reports, and repeatedly ignored. Even with the recommendation of denial for BES in all of their memos, primarily from the lack of details on the final disturbance areas, the applicant proceeded to submit the same approaches without an honest effort to resolve the underlying issues. SBNA and staff stated in submitted evidence that the amount of data submitted in the last hours was too voluminous for a thorough review.

**Modification of the Setbacks from 10 feet to 5 feet**

(33.430.280)

The Hearing Officer erred in his decision to allow the reduction from 10 feet to 5 feet under PCC 33.430.280. The Staff Report summarized this correctly. There was no environmental reason why this reduction would allow for better protection of the environmental resources. The reason given was basically that they are trying to cluster the homes closer together to avoid affecting areas to the north. If the case is about avoiding impacts, the lots and road could be moved westerly and increase the size of the environmental protection tract to the east. Then a reduction of the side yard setback might be warranted. But the reason is simply to build larger houses, which is not a valid reason for a modification based on environmental protection. Without a clear and direct reason that this modification would decrease the impacts to the environment, Mr. Oden-Orr was mistaken in this decision to approve this application.

**Safety for All Modes**

(33.641.020 and 33.641.030)

This is a very simple concept. The applicant has proposed a development next to a dangerous street that offers no direct access to the transit on the adjacent street. During the hearing, under ongoing open-record periods, the applicant contacted Trimet and negotiated the location of a transit stop for the westbound buses on Taylors Ferry Road. This plan was never communicated other than an email by Trimet, agreeing to the one stop and devoid of any significant details. Furthermore, it does not account for the fact that there is no plan for an eastbound stop or for access to cross the three-lane road of cars traveling at the regulated speed of 40 mph—which means that are actually traveling much faster. Mr. Oden-Orr failed to account for the safety of the pedestrians crossing Taylors Ferry, nor did he require any provisions for improvements for their safe crossing.

**Due Process Error**

A letter has been sent to Council regarding our due process violations from Jan E. Freidman and with South Burlingame Neighborhood Association. Please consider her letter with full consideration and support from South Burlingame Neighborhood Association.

Sincerely,



Robert Lennox  
South Burlingame Neighborhood Association