



# CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

## Hearings Office

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## DECISION OF THE HEARINGS OFFICER ON APPEAL OF ADMINISTRATIVE DECISION

### I. GENERAL INFORMATION

**File No.:** LU 10-100336 LDP AD (HO 4110012)

**Applicant:** Robert Evenson  
1530 SW Skyline Boulevard  
Portland, OR 97221

**Property Owners:** Linda M. and John S. Andrews  
1205 SW Myrtle Drive  
Portland, OR 97201

**Appellant:** Robert Evenson  
6249 SW Canyon Court  
Portland, OR 97221

**Hearings Officer:** Kenneth D. Helm

**Bureau of Development Services (BDS) Staff Representative:** Kate Green

**Site Address:** 1205 SW Myrtle Drive

**Legal Description:** LOT 31-34 TL 1700 CARDINELL HTS

**Tax Account No.:** R135402060

**State ID No.:** 1S1E04DC 01700

**Quarter Section:** 3228

**Neighborhood:** Southwest Hills Residential League (SWHRL)

**District Neighborhood Coalition:** Southwest Neighborhoods Inc.

**Zoning:** Single Dwelling Residential 10,000 (R10)

**Other Designations:** Potential Landslide Hazard, 20% Slopes

**Land Use Review:** Type IIx, Land Division-Partition (LDP)  
Adjustment Review (AD)

**BDS Administrative Decision:** Denial

**Public Hearing:** The hearing was opened at 1:32 p.m. on May 11, 2011, in the 3<sup>rd</sup> floor hearing room, 1900 SW 4<sup>th</sup> Avenue, Portland, Oregon, and was closed at 3:37 p.m. The record was held open until 4:30 p.m. on May 18, 2011 for new written evidence, until 4:30 p.m. on May 25, 2011 for all rebuttal (no new evidence), and until 4:30 p.m. on June 1, 2011 for applicant/appellant final rebuttal. The record closed on June 1, 2011.

**Testified at the Hearing:**

Kate Green, BDS Staff Representative  
Robert Evenson, 6249 SW Canyon Court, Portland, OR 97221  
Dan Boultinghouse, WH Pacific, 9755 SW Barnes Road, Portland, OR 97225  
Nancy Seton, 2020 SW Edgewood Road, Portland, OR (SWHRL Land Use Chair)  
Kris Mitchell, 1215 SW Myrtle Drive, Portland, OR 97201  
Christine Farrington, 1119 SW Myrtle Drive, Portland, OR  
Stephen Himes, Bureau of Environmental Services (BES)  
George Helm, BDS, Site Development

**Proposal:** The Applicant proposes a Land Division-Partition to divide an approximately 28,000 (30,334\*) square foot 'lot of record' into two parcels. The property owner also owns an adjacent 1,350 (1,389\*) square foot 'lot remnant' (Lot 35 TL 2400 CARDINELL HTS), but has not elected to include that as part of the land division site. *\*The numbers shown in the parenthesis are those identified by the surveyor; the others are those noted in the Multnomah County property records.*

An existing house, garage, driveway, and landscaped yard are to be retained on proposed Parcel 1, which is to be approximately 22,534 square feet. Proposed Parcel 2 is to be approximately 7,800 square feet.

The subject site has frontages on SW Myrtle Drive, SW Myrtle Court, and SW Rivington Drive. Access to the existing house is via a driveway from SW Myrtle Drive. The house, garage, and driveway are located on a relatively flat area of the site, while the balance of the property is densely vegetated and slopes steeply downhill to SW Myrtle Court and SW Rivington Drive. A seep and wetland are located in the northwest portion of the site.

The Applicant proposes to remove all the trees on Parcel 2; direct the seep into a subsurface pipe; place fill in the ravine and wetland; and construct a new single-dwelling residence where the seep and wetland are presently located.

The Applicant also requests an Adjustment to allow proposed Parcel 1 to be approximately 22,534 square feet in area, which exceeds the maximum lot area (17,000 square feet) allowed in the R10 zone.

This partition proposal is reviewed through a Type IIX procedure because: (1) the site is in a residential zone; (2) two or three lots are proposed; (3) the site is located within a Potential Landslide Hazard Area; and (4) a concurrent review (Adjustment) is requested (see 33.660.110).

For purposes of State Law, this land division is considered a partition. To partition land is to divide an area or tract of land into two or three parcels within a calendar year (See ORS 92.010). ORS 92.010 defines "parcel" as a single unit of land created by a partition of land. The Applicant's proposal is to create two units of land (2 parcels). Therefore this land division is considered a partition.

**RELEVANT APPROVAL CRITERIA:** In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are:

- **Section 33.660.120, Approval Criteria for Land Divisions in Open Space and Residential Zones, and**
- **Section 33.805.040, Approval Criteria for Adjustments.**

#### **SUMMARY OF APPEAL:**

Applicant appeals an Administrative Decision (Exhibit H.2); hereafter the Applicant and Appellant shall collectively be referred to as "Applicant/Appellant." Mr. Robert Evenson, Applicant/Appellant's representative, submitted an appeal (Exhibit H.2) of a BDS NOTICE OF A TYPE IIX DECISION (Exhibit H.2). Applicant/Appellant, in his "Appellant's Statement" dated April 15, 2011, set forth several issues which were not identified as claims of error in the staff report, but generalized arguments for viewing the proposal as an "exception" to the criteria in Section 33.640. The issues raised are as follows:

"The existing seep and drainageway currently runs into the combined City Storm Water piped system at the Right-of-Way. Our plan is to extend the piped system onto our property, and run this storm water through a 10 inch diameter pipe directly from the seep source."

"We also propose using a storm water through planter for the site water quality and quantity water coming off the future roof and driveway. This would also drain into the same piped City Storm Water System at the bottom of our site in keeping with City Storm Water Management policies and regulations"

"We looked at several building locations for this site and the proposed development. In evaluating these alternatives it was determined that the proposed location for a future residence is the safest location within our proposed lot for a new home."

"Section A.3-9 of the City of Portland Storm Water Management Manual states, 'BES may allow drainageways to be moved, modified, or piped to protect public health and safety, in compliance with Title 24 and 33 regulations.' We believe that the proposed

location for the residence puts this development within this section of the code.”

“The proposed location of the future residence places the residence much below the elevation of our concerned neighbors along Myrtle Drive. By placing the residence off of Myrtle Court below, the new residence is screened by existing and new landscaping on all sides, and doesn’t block any views, which is a major concern of some neighbors.”

“We believe the existing seep is a minor natural resource but its location constrains the site based on its location. The seep extends onto the property approximately 68 linear feet and is 8-12 inches wide, but is located in the flattest portion of the property, limiting the safe and reasonable possibilities for developing this site.”

“Another way of looking at this request is to consider that we are merely extending the city pipe that currently captures the seep.”

“There are certainly other site concerns that need to be met and that have been outlined by City staff. Those concerns and issues can and will be resolved at the next phase of development, when detailed information is typically provided and reviewed.”

At the May 11, 2011 public hearing, Applicant/Appellant refined the appeal issues in part through a document entitled “Summary of Relevant Background Information” and “Summary of Relevant Neighborhood Concerns” (Exhibit H.4). The relevant refinements to Applicant/Appellant’s appeal issues are summarized as follows:

1. The Applicant/Appellant’s civil, geotechnical, geological and wetlands consultants support placing the 65 feet of drainageway into a pipe that connects to the existing catch basin.
2. The BDS and BES decisions to deny the application were primarily based on application of the City’s policy related to seeps and drainageways, not on the scientific information presented in the application.
3. The seep on the subject property is only 6-8 inches wide and is a result of prior development and fill activities above the subject property.
4. The proposed building site is in the flattest part of the subject property and will minimally interfere with neighbors’ views.
5. The structural engineering of the site pursuant to the proposal will eliminate the risks associated with landslides.
6. Some of the existing trees will be retained, but others have been poorly cared for and should be eliminated in favor of newer, healthier trees.

## **HEARINGS OFFICER'S OVERVIEW OF APPEAL ISSUES AND RELEVANT APPROVAL CRITERIA:**

At the May 11, 2011 hearing, BDS Staff Representative Kate Green gave a PowerPoint presentation explaining the proposal and summarizing the Administrative Decision. She identified the following sections of Title 33 as not being met by the application: 33.612, 33.630, 33.632, 33.635.100, 33.635.200, 33.636, 33.639, 33.640, and 33.651-654. She stated particularly that the Applicant/Appellant did not provide a geotechnical report that adequately evaluated the entire "site." She said the PCC defines the "site" as the entire lot of record proposed to be divided. Instead, she stated that the Geological Hazards Evaluation report submitted by the Applicant/Appellant only addressed the triangular portion of the subject property which was proposed for the new home site. She also testified that the Applicant/Appellant had not substantiated how the seep on the subject property could be correctly treated as an exception to the provisions of 33.640 because the seep is currently in a natural state in a ravine traversing the portion of the subject property that the Applicant/Appellant was proposing to fill.

At the public hearing, Mr. Evenson testified that the drainageway where the seep is located is the best location for a new home site. He disagreed with staff's position that the geotechnical report and associated reports in the record were insufficient to address the 33.640. His testimony closely followed the Summary of Appeal discussed above.

Three members of the public testified in opposition to the application. Their relevant testimony is discussed below. There were two arguments made by participants which are not relevant to this appeal. One participant asserted that the land division and resulting home site would negatively impact neighbors' home values. Potential decrease in adjacent property values is not an applicable criterion, and therefore, such testimony is not relevant. Another participant testified that the Applicant/Appellant had not interacted with the neighbors on the proposed project. This testimony is not relevant to an applicable code criterion. Another comment suggested that the proposed land division would violate the federal Clean Water Act. The Clean Water Act itself is not a criterion for approval. Other City code provisions address compliance with any applicable provisions of that act as it is enforced through state and local regulations. Similarly, the Applicant/Appellant argued that in general, the proposed land division supported the City's recent reduction in minimum lot size from 10,000 square feet to 6,000 square feet. To the extent the Applicant/Appellant's statement is correct, it is not relevant because the code provisions related to the R-10 zone that were in place when the application was deemed complete are the only applicable provisions. Those requirements are discussed below.

## **II. ANALYSIS**

**Site and Vicinity:** According to the Applicant/Appellant's surveyor, the subject site is approximately 30,334 square feet in area. There is a narrow, 28-foot wide and 100-foot long pole-like section where a driveway connection to SW Myrtle is located, and the balance of the site consists of a large somewhat irregularly shaped area that has frontage along SW Myrtle Court and SW Rivington Drive. A 4,000 square foot, multi-story residence and a detached garage are located near the center, and the southeast half of the site is on a relatively flat plateau. To the east and north of the house, the site slopes down steeply (18 to 30 percent) to SW Rivington Drive.

The flatter areas on the west and south side of the residence are developed with driveway and parking areas and landscaping. A flat area on the east side of the house is also developed with a paved patio and landscaping. The steeper areas to north and east are separated from the residence by a wood retaining wall, and this area is vegetated with deciduous and evergreen trees and a mixed understory.

As noted in two reports provided by the Applicant (Geologic Hazards Evaluation, and Delineation of Wetlands and Other Waters), several seeps, springs, and a wetland are located on the property. One of the seeps and the wetland are located near the west lot line and northwest corner of the site. This seep is bordered by a variety of predominately deciduous trees.

The site is situated in a residential area typified by steep hilly terrain, with large (10,000 to 20,000 square feet or more) lots situated along winding roads. The nearby homes are generally 3,000 to 5,000 square feet in size. Governor's Park is approximately 200 feet to the west of the site. The I-405 freeway is located approximately 800 feet to the northeast of the site.

#### **Infrastructure:**

**Streets** – The site has approximately 30 feet of frontage on SW Myrtle Drive. There is one driveway entering the site from SW Myrtle Drive that serves the existing house. The site also has approximately 80 feet of frontage on SW Myrtle Court, and about 210 feet of frontage on SW Rivington Drive. At this location, each of these streets is classified as a Local Service Street in the Transportation System Plan. SW Rivington is classified as a City Bikeway.

These streets are developed with 24-foot wide paved roadways and curbs, but no sidewalks are provided along any of the frontages.

The nearest TriMet transit service is approximately 1,500 feet to the east of the site and approximately 1,400 feet to the west.

**Water Service** – There is an existing 6-inch diameter water main in SW Rivington Drive, and the existing house is served by a one-inch metered service from this main. There is also an 8-inch diameter water main in SW Myrtle Court.

**Sanitary Service** - There is an existing 8-inch diameter concrete public combined gravity sewer located in SW Rivington Drive that can serve the sanitary disposal needs of this project (BES project #1856).

According to sewer branch permit #64343 (dated September 8, 1952), the existing house is served by a lateral 44 feet north of manhole ABU461 in SW Rivington Drive near the southeast corner of the subject site.

**Zoning:** The site is located in the **Single Dwelling Residential 10,000 (R10)** zone. The single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households.

**Land Use History:** City records indicate no prior land use reviews for this site.

**Agency Review:** Several bureaus have responded to this proposal and relevant comments are addressed under the applicable approval criteria. Please see "E" Exhibits for details.

**Neighborhood Review:** A *Notice of Proposal in Your Neighborhood* was mailed on March 4, 2010. Seven written responses have been received from the Neighborhood Association or notified property owners in response to the proposal. The concerns noted in the letter include:

- Neighborhood Contact requirements
- landslide hazards and steep slopes
- clearing and tree removal
- seeps, springs, wetlands and drainage issues
- congestion and conflicts on the narrow roads
- covenants, conditions, and restrictions (CC&Rs)

The Applicant submitted the required documentation to demonstrate the Neighborhood Contact requirements were met (Exhibit G.2).

Tree preservation, landslide hazards, and seeps, springs and wetland are addressed in the findings below for Criterion B, Criterion D, and Criterion J. Transportation issues are addressed in the findings for Criteria K and L. Drainage or stormwater management issues are also addressed in the findings for Criterion L.

With regard to CC&Rs that may apply to the site, generally, the City does not have a role in the application of covenants, unless the covenants were applied through a City-regulated process, such as through a prior City approved land division. One letter indicates these requirements originated as part of the 1949 Cardinell Heights subdivision and deed restrictions. However, no specific details or documentation of the Cardinell Heights' requirements or covenants were provided, and none were found in City records. City land division regulations became effective in 1979.

## **ZONING CODE APPROVAL CRITERIA**

This proposal includes a **Land Division Review** and an **Adjustment Review**. In order to be approved, the proposal must comply with the approval criteria for both reviews, as outlined below:

Section A: Land Division Review	33.610.120
Section B: Adjustment Review	33.805.040

This proposal includes a request for a Land Division and an Adjustment. The Land Division approval criteria are addressed in Section A, and the Adjustment approval criteria are addressed in Section B, below.

## **SECTION A: LAND DIVISION REVIEW**

### **APPROVAL CRITERIA FOR LAND DIVISIONS IN OPEN SPACE AND RESIDENTIAL ZONES**

**33.660.120** The Preliminary Plan for a land division will be approved if the review body finds that the applicant has shown that all of the following approval criteria have been met.

Due to the specific location of this site, and the nature of the proposal, some of the criteria are not applicable. The following table summarizes the criteria that are not applicable. Applicable criteria are addressed below the table.

Criterion	Code Chapter/Section and Topic	Findings: Not applicable because:
C	33.631 - Flood Hazard Area	The site is not within the flood hazard area.
E	33.633 - Phased Land Division or Staged Final Plat	A phased land division or staged final plat has not been proposed.
F	33.634 - Recreation Area	The proposed density is less than 40 units.
L	33.654.110.B.2 - Dead end streets	No dead end streets are proposed.
	33.654.110.B.3 - Pedestrian connections in the I zones	The site is not located within an I zone.
	33.654.110.B.4 - Alleys in all zones	No alleys are proposed or required.
	33.654.120.C.3.c - Turnarounds	No turnarounds are proposed or required.
	33.654.120.D - Common Greens	No common greens are proposed or required.
	33.654.120.E - Pedestrian Connections	No pedestrian connections proposed or required.
	33.654.120.F - Alleys	No alleys are proposed or required.
	33.654.120.G - Shared Courts	No shared courts are proposed or required.
	33.654.130.D - Partial rights-of-way	No partial public streets are proposed or required.

**Applicable Approval Criteria are:**

**A. Lots.** The standards and approval criteria of Chapters 33.605 through 33.612 must be met.

**Findings:** Applicant/Appellant did not contest the validity of the applicable approval criterion (33.610). The Hearings Officer adopts the following which are the findings from the BDS staff decision (Exhibit H.2).

In the R10 zone, the maximum density is one unit per 10,000 square feet. Using the site area identified by the surveyor, 30,334 square feet, a maximum of three units could be allowed. There is no minimum required density since the site has a Potential Landslide Hazard designation. The Applicant is proposing two parcels, so the proposed density is within the allowed standards.

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

	Minimum Lot Area (square feet)	Maximum Lot Area (square feet)	Minimum Lot Width* (feet)	Minimum Depth (feet)	Minimum Front Lot Line (feet)
<b>R10 Zone</b>	6,000	17,000	50	60	30
Parcel 1 (existing house)	22,534 An Adjustment to the maximum lot area has been requested (see findings in Section B, below).		130	120	142



	Minimum Lot Area (square feet)	Maximum Lot Area (square feet)	Minimum Lot Width* (feet)	Minimum Depth (feet)	Minimum Front Lot Line (feet)
<b>R10 Zone</b>	6,000	17,000	50	60	30
Parcel 2	7,800		100	70	130

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

#### Through Lots

Parcel 1 is currently a through-lot, and, as proposed, it would continue to be configured as a through-lot. Through lots are allowed only where both front lot lines are on Local Service Streets. SW Myrtle Drive and SW Rivington Drive are both local service streets, therefore Parcel 1 is allowed. The minimum front lot line and minimum width standards apply to one frontage of the through lot. In this case, the width standards could be met on the SW Rivington Drive frontage.

The findings above show that the applicable density standards are met. However, since the proposal does not meet the Adjustment approval criteria to allow the proposed maximum lot area, the lot area dimensions are not met. As such, this criterion is not met.

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

**Findings:** The Applicant/Appellant does not contest the applicability of PCC 33.630. However, Applicant/Appellant appears to contest staff's findings for this criterion. Applicant/Appellant submitted evidence from his landscape architect which stated that the trees on proposed Parcel 2 outside the proposed building envelope are not healthy specimens. According to the landscape architect, the trees have been topped in the past and many of them presently have decay. For that reason, the Applicant/Appellant proposes starting over with new healthy trees (Exhibit H.4). In the Applicant/Appellant's final comment, dated May 17, 2011, he reiterates that all trees outside the proposed building footprint will be retained, but only if they are healthy (Exhibit H.18).

BDS staff made the following findings with respect to PCC 33.630:

"The applicant provided a Tree Preservation Plan, prepared by Huntington & Kiest, Landscape Architects, dated December 15, 2009 (Exhibit A.2), which includes an inventory of the trees within the land division site, evaluates their condition, and specifies root protection zones. The report notes that some trees have not been identified in the report, including those within 10 feet of an existing structure to remain on the property; located partially off the property; listed as a nuisance or prohibited species; or less than 6-inches in diameter and not listed as a significant tree in Table 630-1 per 33.630.

The landscape architect notes the total number of non-exempt trees is 59 and their total diameter is 777 inches. The applicant proposes to preserve 23 trees, which comprise 292 inches of diameter, or 37 percent of the total non-exempt tree diameter.

Technically, this proposal complies with Option 1 of the tree preservation standards, which requires at least 35 percent of the total tree diameter on the site to be preserved.

However, since the proposed tree preservation plan is based on a lot layout and building location that have not been shown to be feasible (see findings for Criterion D and Criterion J, below), and the applicant has not provided a tract around the seep (see findings for Criterion J) near the west lot line, which is where many of the trees are located on proposed Parcel 2, the tree preservation plan is inherently deficient.

Without providing a feasible lot layout and building location, the applicant cannot provide a meaningful tree report that sufficiently addresses the tree preservation requirements to satisfy this criterion. As such, this criterion is not met."

Several participants at the May 11, 2011 hearing opposed removing the existing trees on the subject property. See also Exhibit H.7.

PCC 33.630.200(B) requires in relevant part that "[t]rees that will be preserved on individual lots must be permanently preserved through a tree preservation plan, as specified in Section 33.248.065, Tree Preservation Plans." PCC 33.248.065(B)(2) states that a tree preservation plan must include a site plan that shows all trees to be preserved.

The Hearings Officer agrees with BDS staff's conclusion that the Applicant/Appellant's Tree Preservation Plan cannot comply with PCC 33.630.200(B) for two reasons. First, as explained in more detail below, the record does not contain sufficient information to determine whether the identified seeps and springs on at least part of proposed Parcel 2 must be preserved in an identified tract consistent with PCC 33.640.200. Second, the record does not demonstrate that the proposed home site can meet the Landslide Hazard Area requirements of PCC 33.632. For that reason, the record is insufficient to show with certainty where potential building envelopes can be located, which in turn makes uncertain whether and in what locations the existing trees will be preserved.

This criterion is not met.

**D. Potential Landslide Hazard Area. If any portion of the site is in a Potential Landslide Hazard Area, the approval criteria of Chapter 33.632, Sites in Potential Landslide Hazard Areas, must be met.**

**Findings:** The Applicant/Appellant does not contest the applicability of PCC 33.632. Applicant/Appellant takes the position that the Geological Hazard Evaluation is sufficient to show that the entire subject property is stable and can accommodate the proposed home site if properly engineered. He further argues that any further geotechnical engineering that must occur can be accomplished during development review rather than at the time of land division.

BDS staff made the following findings:

"The applicant submitted a Geologic Hazards Evaluation, prepared by Professional Services Industries (PSI), dated December 7, 2009 (Exhibit A.3), which includes an evaluation of the applicant's proposal to create two lots, and construct a two-story

residence. The report also refers to the applicant's proposal to reroute a drainageway through a flow through planter, and grade the site for an engineered retaining wall to allow a deck and driveway for the new residence.

The Geologic Hazards Evaluation describes regional geologic conditions, site geology, and a LIDAR mapping review; and it indicates a site reconnaissance was conducted on August 15, 2009. The summary of the reconnaissance refers to a triangular shaped site that slopes to the north with slope inclinations of 18 to 30 degrees. The report describes that the site is vegetated with 6 to 20 inch diameter deciduous and evergreen trees, and a mixed understory. Based on this description, and the lack of any mention of the existing house, garage, and paved areas, it appears the evaluation was limited to the area within proposed Parcel 2.

The report refers to a north flowing drainageway, near the west lot line, with water emerging from an approximately 12-inch diameter hole. The report notes the location of the hole corresponds to city records for a stormwater outfall, based on a map found on portlandmaps.com, but no such map or other supporting information is provided.

The report further notes a minor seep from basalt rock exposures near the north eastern side of the site, a spring with minor flow from a rock exposure near the northeastern property corner, and another seep from the natural silt near the northwest property corner, and indicates these features are shown on Figure 3. Figure 3 shows the general configuration of proposed Parcel 2, and includes a reference to the existing house, but no other information or details about Parcel 1 is included. Adjacent sites and sites directly across the street were also not addressed.

This localized area of review also seems to be the case in the Delineation of Wetlands and Other Waters, prepared by WH Pacific, and dated January 17, 2011 (Exhibit A.4). The Delineation of Wetlands and Other Waters identifies the seep and wetland along the west lot line, but does not provide information about any of the other seep and spring features noted in the Geologic Hazards Evaluation. The Delineation of Wetlands and Other Waters does mention an additional spring and unvegetated channel, but provides no other details about these features or where they are located on the site. Further, the Delineation of Wetlands and Other Waters reports no sign of a stormwater outfall at the top of the seep, as indicated in the Geologic Hazards Evaluation; and, instead, concluded that a spring is the source of the channel that runs down the hillside. In any event, the applicant's plans do not show the full extent of all of the water features noted in these two reports.

In the Conclusions and Recommendations of the Geologic Hazards Evaluation, the authors opine that the site is stable with respect to deep seated landslides, and is suitable for development. However, the report goes on to indicate the presence of exposed water in the drainageway on the west side of the site, and related soft silt soil below the proposed residence are key geologic and geotechnical issues to be incorporated during the civil engineering design. The report further notes that after determining the nature of the specific subsurface conditions, appropriate geotechnical recommendations can be provided. The report indicates these factors, which are

crucial in making a thorough assessment of the landslide hazards on the site and evaluating what bearing those factors may have on the configuration of the lots and the location of the proposed development, and potential impacts to neighboring lands, were not evaluated in the submitted report. Similarly, the Geologic Hazards Evaluation does not address alternative building locations or development options.

As noted in the response from BDS-Site Development, the division which makes determinations regarding soil stability, the Geologic Hazards Evaluation indicates additional subsurface investigation will be needed to determine appropriate geotechnical engineering recommendations for site development. BDS-Site Development further notes that the proposed drainageway relocation has been presented in concept only, and no engineering details have been provided. BDS-Site Development also notes that as shown on the project plans, a shoring wall design would be needed to install the flow through planter and retaining wall at the rear of the proposed house. Though BDS-Site Development previously requested an addendum to the LHS to address this issue, no new information has been provided.

Yet, the applicant's narrative states the proposed lot and new development have been placed on the flattest and safest part of the entire site, although the slope cross-sections provided on the Proposed Land Division Plan (Exhibit C.2) address the area only within proposed Parcel 2, and not across the entire site. Additionally, the applicant has noted that the flat areas on the plateau adjacent to the existing house are not suitable for development, since new development in that area would not meet the property owners' preference for privacy.

The applicant also provided an Alternative House Location Plan (Exhibit C.6), which shows a house crossing over the proposed property lines, near the top of the slope on Parcel 2. However, the applicant then discounts this layout, since it *still requires the seep and drainageway to be disturbed or relocated*, and does not meet the property owners' *requirements for privacy and separation*. The Geologic Hazards Evaluation does not address this or any other alternative concept.

Given the limited scope of the Geologic Hazards Evaluation, and the deficiencies noted by BDS-Site Development, the applicant has not demonstrated that the lot layout and location for the proposed house and associated utilities have been configured to reasonably limit the risk of a landslide on the site and adjacent properties. Nor has the applicant provided sufficient geotechnical rationale for or evaluation of the proposed realignment of the drainageway or fill of the wetland. Further, notwithstanding the owners' preference, privacy is not an evaluation factor for this criterion. Based on these factors, this criterion is not met."

At the May 11, 2011 hearing, George Helm, BDS staff, testified that the Geologic Hazards Evaluation was limited to the triangular area that corresponds with proposed Parcel 2. He stated that the report did not contain a discussion of the existing home, alternative locations for the proposed new home site or discussion of alternate locations for a building envelope on the subject property. BDS staff Kate Green testified at the hearing that the term "site" as used in PCC 33.632 means the entire subject property and the lots that are proposed to be divided out of that larger property. She also noted that

PCC 33.730.060(D)(1)(g) specifies the level of detail required of a geotechnical report for the purposes of PCC 33.632, and that the Applicant/Appellant's report did not meet that standard.

In pertinent part, PCC 33.632.100 requires, "[t]he following approval criterion must be met: Locate the lots, buildings, services and utilities on the safest part of the site so that the risk of a landslide affecting the site, adjacent sites, and sites directly across a street or alley from the site, is reasonably limited." PCC 33.910.030 defines "site" for the purposes of land divisions as "the lots, lots of record, or tracts proposed to be divided, or reconfigured." The definition also includes some exceptions that do not apply in this instance.

The Hearings Officer reviewed the Applicant/Appellant's Geologic Hazards Evaluation, dated December 7, 2010 (Exhibit A.3) and a subsequent revision dated February 11, 2010. Both documents limit review to the triangular portion of the subject property that is represented by proposed Parcel 2. In fact, the "site sketch" at Figure 3 of Exhibit A.3 shows that only proposed Parcel 2 is being evaluated. The Hearings Officer finds that PCC 33.632.100 requires a Landslide Hazard Study that encompasses the entire subject property, consistent with the definition of "site" in PCC 33.910.030. The study submitted by Applicant/Appellant does not meet that standard, and no other evidence in the record has been identified that can remedy the insufficient scope of the Applicant/Appellant's Geologic Hazards Evaluation.

This criterion is not met.

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

**33.635.100 - Clearing and Grading Approval Criteria**

**Findings:** Applicant/Appellant did not contest the validity of the applicable approval criterion (33.635). Applicant/Appellant argued in his appeal document and at the hearing that the proposed home site on Parcel 2 is the best location, in part, because it limits impacts to neighbor's views and would allow access from Myrtle Court at a lower elevation on the subject property.

BDS staff made the following findings:

"The regulations of Chapter 33.635 ensure that the proposed clearing and grading is reasonable given the infrastructure needs, site conditions, tree preservation requirements, and that the impacts of erosion and sedimentation will be limited to help protect water quality and aquatic habitat.

In this case, there are over 59 trees and a delineated seep and wetland on the property. It also has steep grades (over 18 to 30%) and is located in the Potential Landslide Hazard area. Therefore, the clearing and grading associated with preparation of the lots must occur in a way that will limit erosion concerns and assure that the waterways and trees to be preserved will not be disturbed.

The application materials do not provide a rationale for clearing all 36 trees from Parcel 2, other than to note that some of trees have been topped and are unsightly, but

no specific details about which trees have been topped are noted in the tree report from the Landscape Architect.

As noted in the responses from BDS-Site Development and BES, the applicant proposes significant grading on the north portion of proposed Parcel 2, in order to re-route an existing drainage channel into a culvert and fill the existing channel, which is where many of the trees on Parcel 2 are located. The feasibility of this fill and grading is not supported in the documentation provided by the applicant; nor is it consistent with the approval criteria for landslide hazards, as noted in the findings for Criterion D, above; or with the regulations that apply to streams, seeps, and springs, as addressed in the findings for Criterion J, below.

Instead of orienting development on the flatter portions of the property, for instance, nearer to the existing house, where clearing and grading may be able to be more localized, the proposal calls for extensive clearing and grading and the installation of fill on Parcel 2, which will significantly alter existing contours and drainage patterns on the site.

Only a conceptual boundary for the grading for the seep, wetland, and placement of fill is shown on the proposed Grading and Erosion Control Plan (Exhibit C.4). Zoning Code Section 33.730.060.D requires proposed contours to be shown. Furthermore, without complete details about the extent of grading on the site, it is not possible to verify if the grading will occur outside of the root zone of the trees that are proposed to be protected, or if stormwater could be effectively managed from each parcel.

As such, the applicant has not demonstrated that existing contours and drainage patterns of the site have been left intact, where practical; or that the clearing or grading has been limited to only those areas necessary for development. Therefore, this criterion is not met."

At least one of the participants at the May 11, 2011 hearing testified that the existing natural contours of the subject property will not be preserved if the land division is approved as proposed. The testimony objected to allowing development on the steepest portion of proposed Parcel 2. See also Exhibit H.7.

PCC 33.635.100(A) requires that "[e]xisting contours and drainage patterns of the site must be left intact wherever practicable. Where alteration to existing drainage patterns is proposed, it must not adversely impact adjacent properties by significantly increasing volume of runoff or erosion." This criterion does not allow an applicant to significantly change the existing contours and drainage patterns of a site for the purpose of maintaining neighbors' views. PCC 33.910.030 defines "practicable" as "[c]apable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes." Therefore, PCC 33.635.100(A) requires the existing contours to be retained as much as possible so long as the project costs and engineering are not unrealistically prohibitive.

The Hearings Officer agrees with BDS staff's findings that the record does not demonstrate that the Applicant/Appellant considered locating the proposed home site on flatter areas of the subject

property or has shown that such locations are not practicable. In addition, consistent with the Hearings Officer's findings on Criterion J below for PCC 33.640, the Applicant/Appellant cannot comply with PCC 33.635.100(A) without first determining whether some or all of the seeps and springs on the subject property will need to be preserved in tracts that must remain undisturbed.

For these reasons, this criterion is not met.

### **33.635.200 – Land Suitability**

**Finding:** Applicant/Appellant did not contest the validity of the applicable approval criterion (33.635). The Applicant/Appellant did not address this criterion directly in the appeal document or in testimony at the hearing. However, the application and Applicant/Appellant's testimony generally assert that the subject property is suitable for a land division and that the resulting Parcel 2 will be suitable for a home site.

BDS staff made the following findings:

"The site is currently in residential use, and there is no record of any other use in the past. However, as noted in Criterion D above, the site has a potential landslide hazard designation, and the applicant has not demonstrated that the property can be developed in accordance with the landslide hazard regulations.

Additionally, there are several seeps and springs on the site, as noted in reports provided by the applicant (Exhibits A.3 and A.4). However, the applicant has not provided a delineation of all of these features on the proposed plans; nor has the applicant adequately addressed what bearing the proposed filling and alterations to one of the seeps and a wetland area may have on the development potential of the proposed parcels.

Without information that sufficiently addresses these issues, the applicant has not demonstrated that the proposed parcel configuration is feasible or that the property is suitable for the proposed development. Accordingly, this criterion is not met."

At least one participant at the May 11, 2011 hearing testified that the steeper slopes of the subject property appear to be sliding downhill, and that the proposed home site is a very unlikely place to attempt to locate a home.

PCC 33.635.200 states, "[w]here geologic conditions or historic uses of the site indicate a hazard may exist, the applicant must show that the proposed land division will result in lots that are suitable for development. The applicant may be required to make specific improvements in order to make the lots suitable for their intended uses and the provision of services and utilities."

The Hearings Officer finds that the record does not demonstrate that proposed Parcel 2 will be suitable for development for the same reasons stated by BDS staff above. In particular, because the application fails to show compliance with Criterion D (PCC 33.632), Criterion G (PCC 33.635.100) and Criterion J (PCC 33.640), it is not possible to show that the proposal complies with PCC 33.635.200.

This criterion is not met.

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

**Findings:** Applicant/Appellant did not contest the validity of the applicable approval criterion (33.636). The Hearings Officer adopts the following findings from the BDS staff decision (Exhibit H.2)

As noted in the findings for Criterion J, below, the seeps, springs, and wetland on the site must be located within a tract(s). Additionally, as noted in the response from BDS Site Development, an easement may be needed to provide stormwater disposal for Parcel 1 over Parcel 2, if the required permits and upgrades cannot be obtained to reconnect the existing stormwater catch basin to the public combination sewer system.

The Applicant has not designated the required tract(s) or ownership thereof; nor has the Applicant demonstrated that the stormwater disposal for Parcel 1 is feasible and will not require an easement on Parcel 2. Therefore, the Applicant has not demonstrated how these requirements will be met. As such, this criterion is not met.

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

**Findings:** Applicant/Appellant did not contest the validity of the applicable approval criterion (33.639) or the Administrative Decision findings related to this criterion. The Hearings Officer adopts the following which are the findings from the BDS staff decision (Exhibit H.2).

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

The Applicant/Appellant states the solar access requirements do not apply, as the requirements for tree preservation would preclude any possibility for solar access.

Yet, as noted above, the proposed lot layout has not been shown to be feasible. As such, the Applicant/Appellant has not demonstrated that the tree preservation requirements can be satisfied. Furthermore, without a practicable lot layout, the Applicant/Appellant's conclusion that the tree preservation plan would preclude solar access is unsubstantiated. Based on these factors, this criterion is not met.

**J. Streams, springs, and seeps. The approval criteria of Chapter 33.640, Streams, Springs, and Seeps, must be met;**

**Findings:** The Applicant/Appellant does not contest the applicability of PCC 33.640. However, he argues that one seep in particular, the seep and associated 65-foot channel located in an existing ravine, are "minor" and therefore, should be treated as an exception to the requirements of PCC 33.640 (Exhibits H.2 and H.18).

In relevant part, BDS staff made the following findings with respect to PCC 33.640:



“As noted in the findings for Criterion D, above, the Geologic Hazards Report and the Delineation of Wetlands and Other Waters submitted with the application indicate the presence of seeps, springs, and wetlands on the site. This criterion requires the applicant to preserve these features within a tract(s) meeting the standards of 33.640.200.A, which calls for the edges of the tract to be at least 15 feet from the edges of the stream, spring, or seep. This criterion also calls for the tract(s) to be identified on the final plat for the land division as "Tract \*: Open Space (seep or spring protection reserve)". In addition, a maintenance agreement must be executed for the tract(s), per the standards of 33.640.200.B. In this case, since no rights-of-way or street tract is proposed to cross the seeps, springs, or wetland, the standards of 33.640.200.C do not apply.

As noted previously, the Existing Conditions Plan (Exhibit C.1) and Proposed Land Division Plan (Exhibit C.2) show the location of the seep and wetland identified near the west lot line and northwest corner of the site, but these plans does not include the delineated location and boundaries of all the identified seeps and springs; nor has a tract(s) been provided for any of these waterway features. Instead the applicant proposes to reroute the one seep shown on the plans, and fill the ravine and an adjacent wetland and construct a new residence in that location.”

The Hearings Officer finds that there is no dispute as a matter of fact that several potential seeps and springs may exist within proposed Parcel 2. There also appears to be no dispute that a ravine exists of approximately 65 feet between the seep identified in the northwest corner of proposed Parcel 2 and the piped catch basin near the intersection of Rivington Drive and Myrtle Court which is depicted in the Applicant/Appellant's application material "Figure 6-Map of Wetlands & Waters." The focus of the appeal is on this ravine, the potential seep at its head and its termination in the catch basin, and for that reason, the analysis below will consider those facts. However, the record shows that other potential seeps and springs exist on the subject property, and for those areas the record is not complete enough to demonstrate that PCC 33.640 does not apply to those seeps and springs.

The Applicant/Appellant argues that the seep depicted in Figure 6 should not trigger the requirements of PCC 33.640 and that in this instance, the Hearings Officer can treat the seep as an "exception" to that provision because it is minor and insignificant. The Hearings Officer finds that the provisions of PCC 33.640 do not allow "streams, seeps and springs" to be excluded from protection because they are perceived to be "minor" or insignificant. The applicable language of PCC 33.640.200(A) requires that "streams, springs, and seeps must be preserved in a tract." That language is mandatory. So long as water that is flowing out from the ground meets the definitions in the code for "stream," "seep," or "spring" the protective requirements of PCC 33.640(A) may apply. Although Applicant/Appellant does not argue that the seep in question does not meet these definitions, the request to consider the potential seep as minor or insignificant is sufficient argument to warrant a consideration of whether the seep depicted in Figure 6 meets the applicable PCC definitions to bring it within the regulatory framework of PCC 33.640.

PCC 33.910.030 defines a "seep or spring" as "[t]he point where an aquifer intersects with the ground surface and discharges water into a stream channel that flows into a wetland or other water body." The terms "aquifer" and "stream channel" need further definition to understand whether PCC 33.640 applies to the seep in question.

The term "aquifer" is not specifically defined in the PCC and as such its meaning is controlled by PCC 33.910.010 which states that "[w]ords used in the zoning code have their normal dictionary meaning unless they are listed in 33.910.030 below." Webster's Third New International Dictionary defines "aquifer" as "a water-bearing bed or stratum of permeable rock, sand or gravel capable of yielding considerable of water to wells or springs." The Applicant/Appellant's Geological Hazard Evaluation states that water emerges "from an approximately 12 inch diameter hole in the silty hillside soil" on proposed Parcel 2. That constitutes sufficient evidence that an aquifer, even though that aquifer may have sources connected with prior development uphill from the subject property, is present and intersects at the ground surface.

PCC 33.910.030 defines "stream channel" as "[a]n area which demonstrates evidence of the passage of water. The depression between the banks worn by the regular and usual flow of the water. The channel need not contain water year-round. This definition does not include irrigation ditches, canals, storm or surface water runoff devices, or other entirely artificial watercourses." The record shows that the ravine between the potential seep and the catch basin does "demonstrate evidence of the passage of water" and, therefore, it constitutes a "stream channel."

The final component of the seep or spring definition is that the stream channel must convey water to a "wetland or other water body." On this issue, the record shows that water travelling down the ravine is conveyed to a catch basin that goes into the City's Storm Water System. Figure 6 does not show the ravine terminating into the nearby wetland, and Applicant/Appellant testified at the hearing that the ravine and wetland are not connected. The remaining question is whether the catch basin can be considered a "water body." PCC 33.901.030 defines "water bodies" as "[p]ermanently or temporarily flooded lands which may lie below the deepwater boundary of wetlands. Water depth is such that water, and not the air, is the principal medium in which prevalent organisms live, whether or not they are attached to the bottom. The bottom may sometimes be considered nonsoil or the water may be too deep or otherwise unable to support emergent vegetation. Water bodies include rivers, streams, creeks, sloughs, drainageways, lakes, and ponds." The subject catch basin does not meet this definition. The only possible linkage could be that the catch basin might constitute a "drainageway." However, PCC 33.910.030 defines "drainageway" as "[a]n open linear depression, whether constructed or natural, which functions for the collection and drainage of surface water. It may be permanently or temporarily inundated." The catch basin is not an "open linear depression."

Based on the above analysis, the seep, ravine and catch basin depicted in Applicant/Appellant's "Figure 6-Map of Wetlands & Waters" is not a "seep or spring" as defined by the PCC. Therefore, it is not subject to the requirements of PCC 33.640 and need not be preserved in a tract under PCC 33.640.200(A). However, as noted earlier, the Applicant/Appellant's own application materials indicate that other seeps or springs exist on the subject property, and there is insufficient information for the Hearings Officer to determine whether those seeps or springs may fall under the requirements of PCC 33.640. As to those potential seeps and springs, this criterion is not met.

- K. Transportation impacts. The approval criteria of Chapter 33.641, Transportation Impacts, must be met; and,**
- L. Services and utilities. The regulations and criteria of Chapters 33.651 through 33.654, which address services and utilities, must be met.**

**Findings:** Applicant/Appellant did not contest the validity of the applicable approval criterion (33.641 and 33.651-654). The Applicant/Appellant did not raise objections to BDS staff's findings on these criteria. The Hearings Officer adopts the following, which are the findings from the BDS staff decision (Exhibit H.2).

The regulations of Chapter 33.641 allow the traffic impacts caused by dividing and then developing land to be identified, evaluated, and mitigated for if necessary. Chapters 33.651 through 33.654 address water service standards, sanitary sewer disposal standards, stormwater management, utilities and rights-of-way. The criteria and standards are met as shown in the following table:

<b>33.651 Water Service standard</b> -See Exhibit E.3 for detailed bureau comments.
The water standards of 33.651 have been verified. Water is available to serve the proposed development from the 6-inch water main in SW Rivington. Parcel 1 has an existing water service from this main. Water is available to serve Parcel 2 from the water main in SW Rivington or from an 8-inch diameter water main in SW Myrtle Court.
<b>33.652 Sanitary Sewer Disposal Service standards</b> -See Exhibit E.1 for detailed comments.
The sanitary sewer standards of 33.652 have been verified. There is an existing 8-inch concrete, public, combined gravity sewer located in SW Rivington Drive that can serve the sanitary disposal needs of this project (BES project #1856).
According to sewer branch permit #64343 dated 9/8/1952, the existing house is served by a lateral 44 feet north of manhole ABU461 in SW Rivington Drive near the southeast corner of the subject site.
<b>33.653.020 and .030 Stormwater Management criteria and standards</b> -See Exhibits E.1 and E.5
No stormwater tract is proposed or required, so Criterion A is not applicable. Based on the responses from BES and BDS Site Development, Criterion B is not met since insufficient information has been provided to show the stormwater management system can be designed to provide adequate capacity for the expected amount of stormwater.
The Applicant has proposed the following stormwater management methods: <b>Parcel 2:</b> Stormwater from this parcel is proposed to be directed into a flow-through planter that will remove pollutants and suspended solids. The water is proposed to drain from the planters to the existing combination sewer in SW Rivington. However, BES notes the flow control requirements have not been adequately addressed. Furthermore, BES cites the proposal to reroute the seep in the location of the proposed development and flow-through planter is not consistent with the Streams, Springs, and Seeps requirements of Title 33; nor is it consistent with Title 17, specifically Section 17.38.030, Protection of Drainageway Areas.
<b>Parcel 1 (with the existing house):</b> The existing house has downspouts that drain into underground pipes. BES has noted City plumbing permit #34134 (9/5/1952) depicts a catch basin approximately where the catch basin currently exists on Parcel 1. The permit indicates that at one time the catch basin was connected to the house's plumbing system, which discharges to the public sewer in SW Rivington. The Applicant has described and shown on the utility plan that the existing catch basin was redirected in recent years to outfall to the top of the slope above the proposed residence on Parcel 2.

To accommodate the land division, the Applicant proposes to reconnect the catch basin to the public sewer system. BES noted that because the catch basin was historically connected to the combined sewer, re-connecting this system to the existing plumbing for Parcel 1 will not constitute a "new connection" as defined by the SWMM, and therefore flow control and pollution reduction requirements will not apply to the runoff collected by the catch basin.

BES further noted that the Applicant would need to demonstrate that the catch basin system has been re-routed to remain on Parcel 1, with appropriate permits obtained and finalized, prior to final plat approval. However, as noted in the response from BDS Site Development, only a conceptual design for re-routing the existing system was provided, and an engineered design is required to determine correct pipes sizes and to ensure any needed backflow devices are provided; otherwise, an easement across Parcel 2 may be required if the catch basin line cannot be rerouted as shown in the conceptual plan.

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

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

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

Generally, through streets should be provided no more than 530 feet apart and at least 200 feet apart. In this case, the Portland Bureau of Transportation (PBOT) finds this property frontage is located where SW Myrtle and SW Rivington have several sharp horizontal and vertical curves which do not provide a tangent property line or a direct line-of-sight access for additional connectivity. Additionally, the property is located at a very steep location with the topography being perpendicular to the direction a new connection would be required. It also appears that the adjacent property would be required to partition in a similar manner as the subject property (which is not anticipated at this time) in order to complete any connection. Requiring additional connectivity at this location does not appear to be practical or feasible and would provide minimal (if any) benefit at this location. Therefore, PBOT is not requesting additional connectivity at this time, so Criterion 33.654.110.B.1 is met.

There are no dead end streets or pedestrian connections abutting the site, so Criterion 33.654.130.B and C are not applicable.

**33.641 – Transportation Impacts – 33.641.020 and 33.641.030**

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

**33.654.130.D Partial Rights of way**

As outlined in the response from PBOT:

Based on the available information, the estimated increase in daily trips is less than 10 total trips per day with the majority of trips occurring during non peak hours, as provided by the Institute of Transportation Engineers – Trip Generation Manual (8<sup>th</sup> Edition). Additionally, consideration is also given to the likely division of the anticipated increase of <10 total trips per day being factored by two possible route directions to and from this location. In consideration of the limited increase in anticipated traffic generated from this proposal, and the availability of alternative routes for vehicle access to and from the subject site, it is reasonably anticipated by PBOT staff (including registered traffic engineers) that this minimal increase to the existing transportation system facilities and capacity will not create a significant impact. A Transportation Study is not required at this time.

As further outlined in their response, PBOT finds it does not appear practical or feasible to require standard or substandard pedestrian improvements. Additional considerations include: there are

no other sidewalks in the general area, the subject site's topography is steeper than other locations, the slope extends well into the current right-of-way and slope stability may be compromised or a structural retaining wall would likely be required (possibly raising development proportionality issues) in order to provide minimal benefit at an isolated location. Other considerations which make the development of a meaningful pedestrian corridor in the general area unlikely includes: minimal future development is anticipated in the general area at this time, the location/relocation of existing utility poles and fire hydrant, existing retaining walls and steep slopes at/near the back of curb in the general area, creation of additional slope stability issues in the general area.

Based on these considerations, PBOT has approved a Design Exception Alternative and determined if the street is to be improved, it would be more appropriate to complete the improvements as one LID project. Therefore, the Applicant will be required to sign street and storm sewer waivers of remonstrance (for participation in future street and storm sewer improvements) prior to final plat approval. With the conditions of approval described above, this criterion is met.

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

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

## **SECTION B: ADJUSTMENT REVIEW**

### **APPROVAL CRITERIA FOR ADJUSTMENTS**

#### **33.805.040 Approval Criteria**

**Findings:** The Applicant/Appellant did not appeal the BDS staff decision with regard to the Adjustment criteria in PCC 33.805.040. The Hearings Officer adopts the following which are the findings from the BDS staff decision on PCC 33.805.040(A-F). (Exhibit H.2).

**A.** Granting the adjustment will equally or better meet the purpose of the regulation to be modified;

**Findings:** The Applicant/Appellant requests an Adjustment to allow Parcel 1 to be 22,534 square feet, which would exceed the 17,000 square foot maximum lot area allowed in the R10 zone.

The purpose of this lot dimension regulations are as follows:

#### **33.610.200 Lot Dimension Regulations**

**A. Purpose.** The lot dimension regulations ensure that:

- Each lot has enough room for a reasonably-sized house and garage;
- Lots are of a size and shape that development on each lot can meet the development standards of the zoning code;
- Lots are not so large that they seem to be able to be further divided to exceed the maximum allowed density of the site in the future;
- Each lot has room for at least a small, private outdoor area;

- Lots are compatible with existing lots;
- Lots are wide enough to allow development to orient toward the street;
- Lots don't narrow to an unbuildable width close to the street
- Each lot has adequate access from the street;
- Each lot has access for utilities and services; and
- Lots are not landlocked.

As noted in the findings for the land division, the Applicant/Appellant has not demonstrated that the proposed lot layout is feasible, so evaluating a larger lot size for Parcel 1 cannot be considered outside of this context. Given this, the Applicant/Appellant has not demonstrated how Parcel 1 will satisfy the purpose of the lot dimension regulations. As such, this criterion is not met.

**B.** If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in a C, E, or I zone, the proposal will be consistent with the desired character of the area; and

**Findings:** Many of the nearby lots are around 20,000 square feet in area, which is larger than the maximum lot area currently allowed in the R10 zone. As such, the proposed size of Parcel 1 is not expected to detract from the appearance of the surrounding residential area, which, as noted in the Site and Vicinity section above, consists of lots and houses of comparable size.

However, as noted in the land division findings above, the proposed lot layout has not been demonstrated to be feasible relative to the landslide hazard; tree preservation; seep, spring, and wetland; land suitability; tracts; and utility criteria. As such, the proposed configuration of Parcel 1 is not feasible; and, thereby, as proposed, it would detract from the livability of the residential area. As such, this criterion is not met.

**C.** If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and

**Findings:** Only one Adjustment is requested. This criterion is not applicable.

**D.** City-designated scenic resources and historic resources are preserved; and

**Findings:** City-designated resources are shown on the zoning map by the 's' overlay; historic resources are designated by a large dot. There are no such resources present on the site. Therefore, this criterion is not applicable.

**E.** Any impacts resulting from the adjustment are mitigated to the extent practical; and

**Findings:** The configuration of Parcel 1 is contingent upon the overall layout of the proposed land division, which, as noted above, has not been demonstrated to be feasible. As such, the proposal could have impacts related to landslide hazards; seeps, springs, and wetlands; trees, and utilities. No mitigating measures have been presented to address these potential impacts, so this criterion is not met.

F. If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

**Findings:** The site is not within an environmental zone, which is designated on the zoning map by either a "c" or "p" overlay. Therefore, this criterion is not applicable.

### III. CONCLUSIONS

BDS Staff found that this application for a land division and Adjustment did not satisfy a number of applicable criteria. BDS staff's overall conclusion was that "[f]undamentally, the applicant has not provided sufficient information to demonstrate that the lots and future development have been configured to assure the risk of landslide hazards to the site and adjacent lands has been reasonably limited. As such, the proposed lot layout and building location that have not been shown to be feasible. Therefore, the related materials regarding tree preservation; clearing and grading; seeps, springs, and wetlands; tracts; and utilities are inherently deficient as well."

The Hearings Officer generally concurs with the reasons for BDS staff's denial of the application. With respect to PCC 33.640, which controls the identification and preservation of seeps and springs, the Hearings Officer found that the seep, ravine and catch basin that traverses the southwest portion of proposed Parcel 2 does not meet the code definition of a "seep or spring" primarily because the water emerging from the seep does not flow into a wetland or water body. That seep need not be preserved in a tract pursuant to PCC 33.640.200(A). Nevertheless, other seeps and springs have been identified on the subject property which may meet the code definition of "seep or spring." The record does not contain sufficient evidence for BDS staff or the Hearings Officer to determine that PCC 33.640 does not apply to those seeps or springs.

As outlined in PCC 33.800.060, the burden of proof is on the applicant to show that the approval criteria are met. The burden is not on the City or other parties to show that the criteria have not been met. The Applicant has not met this burden, and therefore, the proposal must be denied.

### IV. DECISION

The Applicant/Appellant did not prevail in this appeal. The Administrative Decision is Affirmed.

*Kenneth D. Helm*

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Kenneth D. Helm, Hearings Officer

*June 14, 2011*

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Date

**Application Determined Complete:** July 1, 2010  
**Report to Hearings Officer:** April 29, 2011  
**Decision Mailed:** June 15, 2011  
**Last Date to Appeal:** July 6, 2011

**Appealing this decision.** The Hearings Officer's decision is final and takes effect on the day the notice of decision is mailed. The decision may not be appealed to City Council, but may be appealed to the Oregon Land Use Board of Appeals (LUBA), as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that:

- an appellant before LUBA must have presented testimony (orally or in writing) as part of the local hearing before the Hearing's Officer; and
- a notice of intent to appeal be filed with LUBA within 21 days after the Hearings Officer's decision becomes final.

Please contact LUBA at 1-503-373-1265 for further information on filing an appeal.



**EXHIBITS**  
**NOT ATTACHED UNLESS INDICATED**

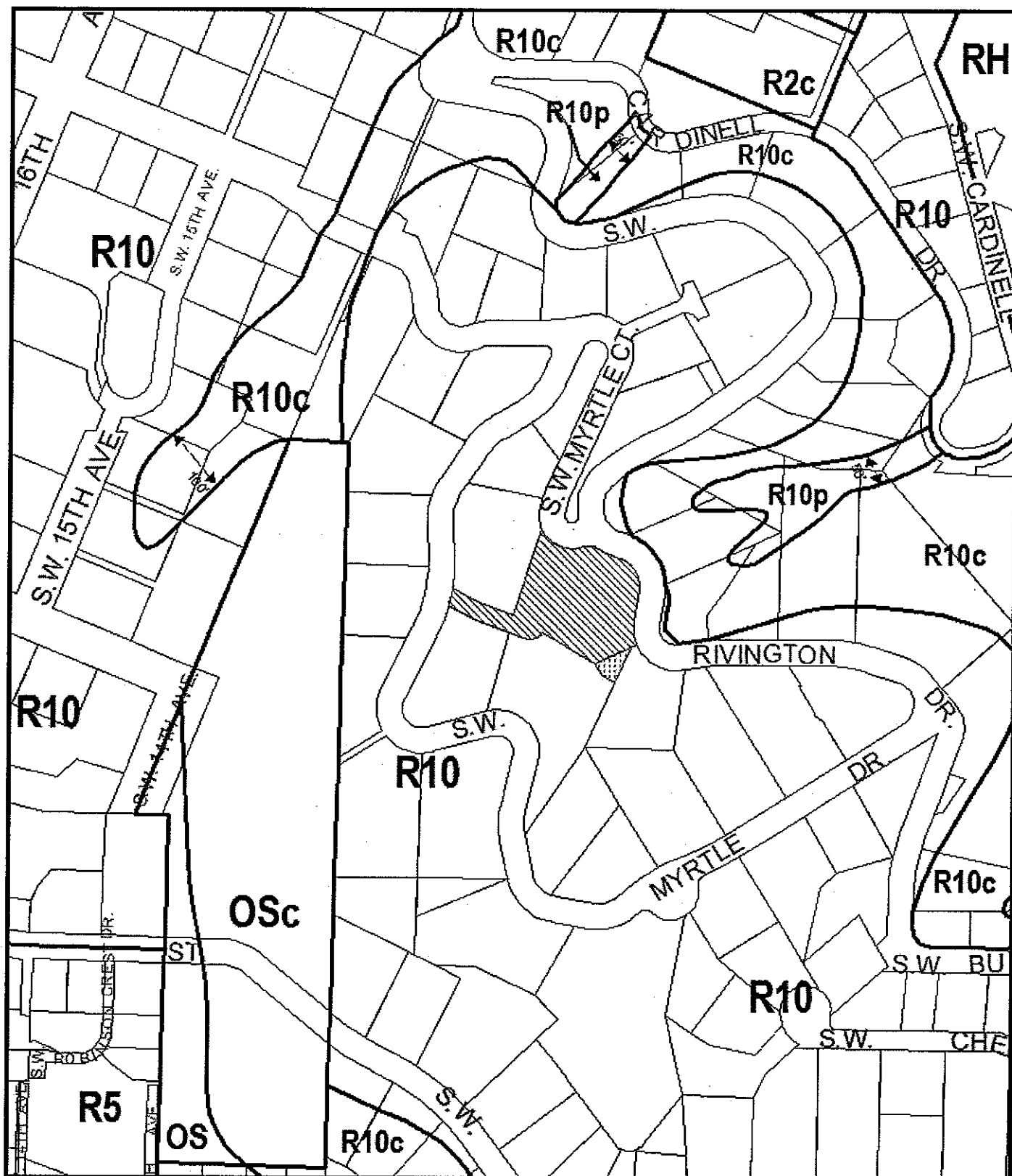
- A. Applicant's Statement, Initial Submittal, January 5, 2010
  - 1. Applicant's Supplemental Narrative, April 5, 2010
    - a. Additional Revised Narrative, February 23, 2011
  - 2. Tree Preservation Plan
    - a. Supplemental Information re: Tree Preservation Plan
  - 3. Geological Hazards Evaluation
  - 4. Delineation of Wetlands and Other Waters
  - 5. Stormwater Management Report
- B. Zoning Map (**attached**)
- C. Plans/Drawings
  - 1. Existing Conditions Plan/Site Survey with Wetland Notations
  - 2. Proposed Land Division Plan (**reduced copy attached**)
  - 3. Proposed Site Improvements Plan/Utility Plan
  - 4. Preliminary Clearing and Grading Plan
  - 5. Tree Preservation Plan
  - 6. Alternate House Locations Plan
  - 7. Existing Neighborhood Development Plan
  - 8. Original Plan Set
- D. Notification information
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses
  - 1. BES
  - 2. PBOT
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. BDS Site Development
  - 6. Urban Forestry
  - 7. BDS Life Safety
- F. Correspondence
  - 1. Allan Pike, March 7, 2011, concerns about landslide hazards; drainage; and clearing
  - 2. Dr. D.A. Service, March 8, 2011, concerns about landslide hazards and clearing
  - 3. Simone Goldfeder, SWHRL Neighborhood, March 9, 2011, concerns about Neighborhood Contact requirements; seeps, springs, wetlands; steep slopes; landslide hazards; and clearing
  - 4. Kris and Gregor Mitchell, letter dated March 11, 2011 and email dated March 17, 2011, concerns about streams, seeps, and springs, tree preservation, and lot dimensions
  - 5. Mine Boyd and Donald Welch, March 12, 2011, concerns about congestion and conflicts on narrow roads; views; tree removal and erosion; and CC&Rs
  - 6. Nancy Seaton, SWHRL Neighborhood Land Use Chair, April 2, 2011, concerns about application of restrictions from 1949 land division; tree removal; landslide hazards; clearing; seeps and wetlands; stormwater management; right of way improvements; Adjustment request; viable alternatives; completeness of application
  - 7. Andrew York, April 4, 2011; concerns about springs, wetlands, and drainage; landslides; tree removal; views; and wetland review

G. Other

1. Original LU Application
2. Neighborhood Notification Letters
3. Site History Research
4. Letter to Applicant re: incomplete application
5. 120-day waiver
6. Emails to/from Applicant and property owner
7. Property deed records
8. 2009 Aerial photo-City of Portland GIS
9. Request for Completeness Review

H. Received in the Hearings Office

1. Hearing Notice - Green, Kate
2. Appeal and Staff Decision - Green, Kate
3. Letter dated May 11, 2011 - Andrews, J. Scott
4. Summary of Relevant Background Information and Summary of Relevant Neighborhood Concerns - Evenson, Robert
5. Relationship of Proposed House to Existing Adjacent Neighbors - Evenson, Robert
6. Business Card - Boultinghouse, Dan
7. 5/11/11 Testimony - Seton, Nancy
8. 5/11/11 e-mail from Christine Farrington - Mitchell, Kris
9. 5/11/11 letter from Kris and Gregor Mitchell - Mitchell, Kris
10. 5/20/10 e-mail - Evenson, Robert
11. Summary of Relevant Background Information and Summary of Relevant Neighborhood Concerns - Evenson, Robert
12. Existing Conditions - Evenson, Robert
13. Relationship of Proposed House to Existing Adjacent Neighbors - Evenson, Robert
14. Existing Neighborhood Development - Evenson, Robert
15. Views - Evenson, Robert
16. PowerPoint presentation printout - Green, Kate
17. 5/13/11 Memo from Stephen Himes - Himes, Stephen
18. 5/17/11 Letter - Evenson, Robert
  - a. Record Closing Information copy - Evenson, Robert



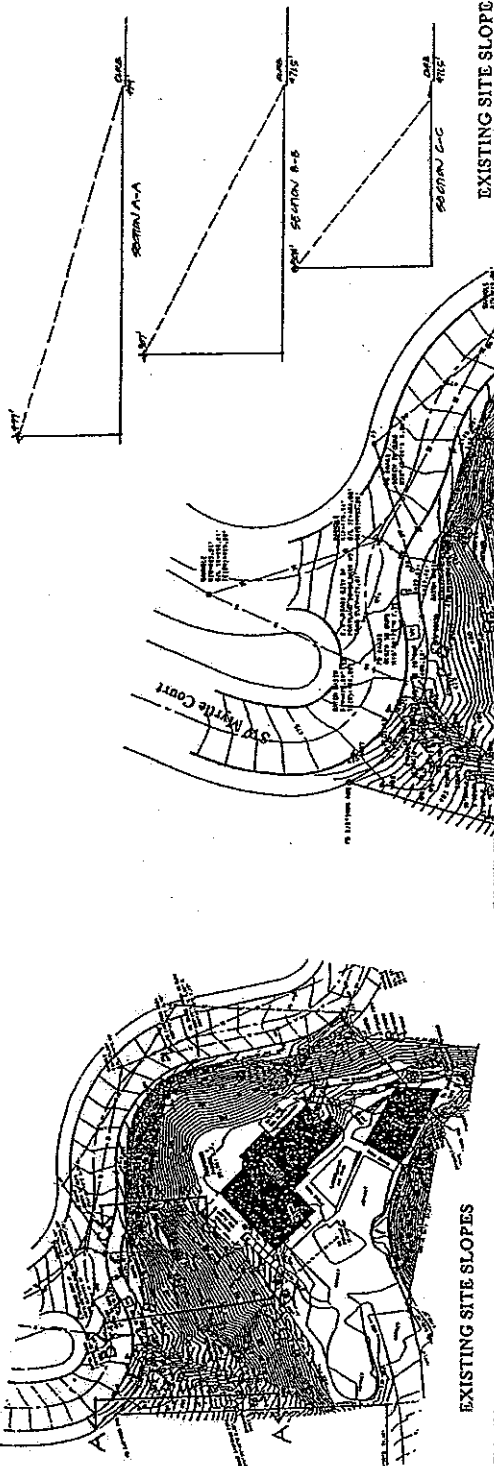
# ZONING

 Site  
 Also Owned



File No. LU 10-100336 LDP  
 1/4 Section 3228  
 Scale 1 inch = 200 feet  
 State\_Id 1S1E04DC 1700  
 Exhibit B (Jan 05,2010)

IN LOT 31-38 "CARROLL HEIGHTS"  
IN THE BE 1/4 OF SEC. 4, T. 15, N. 14, W. 11,  
CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON  
SCALE: 1"=20' MAY 28, 1908



## EXISTING SITE SLOPES

## EXISTING SITE SLOPES

CASE NO. 10-100336  
EXHIBIT C.2

# PROPOSED LAND DIVISION PLAN

- Create new lot, Parcel 1 = 22,534 SF with existing residence reduced from 30,334 SF, thereby closer to current code compliance.
- Parcel 1 fronts on SW Myrtle Drive
- Create new lot, Parcel 2 = 7,800 SF
- Parcel 2 fronts on SW Myrtle Court / Rivington Drive.

LU 10-100336

18 NOV 1964

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2014-01-01	5	5	5	5	5
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2014-01-01	65	65	6		

**C** CASH/HERTEL  
SURVIVORS INC.  
1120 E.W. 124TH AVE.  
CLATSOP, OREGON 97008  
(503) 844-3179

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

1102/02/8 - 834243  
OREGON  
JAN 17 1981  
11-7-11

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