

**IN THE CITY COUNCIL OF THE
CITY OF
PORTLAND OREGON**

**IN THE MATTER OF AN APPLICATION)
BY HOWARD BRANDWEIN AND GERI)
GEBLIN, FOR A TYPE III LAND DIVISION) LU 09-134484 LDS EN AD
WITH CONCURRENT ENVIRONMENTAL)
REVIEW AND ADJUSTMENTS AT 9801)
NE 13TH AVE)**

FINDINGS AND CONCLUSIONS

**ADOPTED BY THE CITY COUNCIL ON
MARCH 3, 2010**

**(APPROVAL of a TYPE III LAND DIVISION WITH CONCURRENT ENVIRONMENTAL
REVIEW AND ADJUSTMENTS)**

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NE 13TH AVE)

FINDINGS AND CONCLUSIONS

The findings and conclusions of the City Council in this matter are set forth below.

I. GENERAL INFORMATION

File No.: LU 09-134484 LDS EN AD (HO 4090025)

Applicants: Howard J. Brandwein and Jeri Geblin
945 Waterbury Lane
Ventura, CA 93001-3843

Applicants' Representative: Mimi Doukas
Cardno / WRG
5415 SW Westgate Drive
Portland, OR 97221

Hearings Officer: Gregory J. Frank

BDS Staff Representative: Rachel Whiteside / Shawn Burgett

Site Address: 9801 NE 13TH AVE

Legal Description: TL 200 22.28 ACRES, SECTION 02 1N 1E

Tax Account No.: R941020310

State ID No.: 1N1E02C00200

Quarter Section: 2031

Neighborhood: East Columbia NA

Business District: Columbia Corridor Association

District Coalition: North Portland Neighborhood Services

Plan District: None

Zoning: R10 c,h – Single Dwelling Residential 10,000 with Environmental Conservation and an Aircraft Landing Overlay zones.

Other Designations: East Columbia Neighborhood N.R.M.P. and 100-year floodplain

Land Use Review: Type III, LDS EN AD – Land Division (Subdivision), Environmental Review and Adjustment Review

II. INTRODUCTION AND PROCEDURAL HISTORY

Proposal: The applicants propose to subdivide the 23.5-acre site into 49 lots for single-family development, public streets, Recreation Tract for the use of residents, large Open Space Tract and a Wetland Preservation Tract.

In preparation for this proposal, the applicants have secured approval from the Division of State Lands (“DSL”) to fill and grade the site so that some of the existing wetlands will be filled and others enhanced. There are three existing wetlands on this site – Wetland A: in the west with 6.4 acres, Wetland B: in the center with .82 acres, and Wetland C: at eastern end of site with .86 acres. Wetlands B and C, totaling 1.7 acres, will be filled. The mitigation for this work will restore 2.6 acres of historic wetlands and enhance another 1.5 of wetland area. The restored and enhanced wetlands, along with preservation of Wetland A, will all be preserved in a 12.53-acre non-development Open Space Tract in the western half of the site. Also, as a result of this work, the ground levels in the area proposed for future development will be modified in such a way that all of the proposed lots will be outside of the flood plain.

The applicants requested two Adjustments as part of this proposal. The first is to reduce the size of the required recreation area (Portland City Code (“PCC”) 33.634) so that it is 10 percent of the area proposed for development rather than 10 percent of the total site. This would result in a 1.11-acre Recreation Tract. The applicants have proposed an information and viewing kiosk along the eastern side of the Open Space and Wetland Tracts to provide additional passive recreational amenities for the residents. The second Adjustment is to waive the requirement for a tract (PCC 33.640) over an existing wetland area (Wetlands B and C described above) that has been approved for fill by DSL and to allow grading in Tract B to all for the wetland enhancement for the fill. Wetlands to be enhanced will be placed in a 12.53 acre Open Space Tract west of the proposed development.

The proposal includes a Tree Preservation Plan meeting Options 2 and 3 in PCC Chapter 33.630. Sanitary sewer and water main line extensions are proposed in the new public streets to serve the lots. Stormwater for the new homes will be directed to flow-through planters and then to the street system. Stormwater from the public street improvements will be managed via street-side swales with an outfall and disposal to the drainage ditch along the southern boundary of this site.

This southern drainage ditch is within the Environmental Conservation Overlay zone and the proposed stormwater outfall facility will go into the Environmental Conservation zone. This outfall does not meet the environmental standards for land divisions in PCC Section 33.430.160, therefore a Type II Environmental Review is required for the outfall.

This land division proposal is reviewed through a Type III procedure because: (1) the proposal requires a concurrent Environmental Review; and (2) more than ten dwelling units are proposed (see PCC 33.660.110). For purposes of State Law, this land division is considered a subdivision. To subdivide land is to divide an area or tract of land into four or more lots within a calendar year (See ORS 92.010).

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33, Portland City Code. The applicable approval criteria are:

- **33.660.120 – Approval Criteria for Land Divisions in Open Space and Residential Zones**
- **33.430.250.A.1 & A.3 – Approval Criteria for outfalls and land divisions in the Environmental Overlay Zones.**
- **33.805.040 – Approval Criteria for Adjustments**

Procedural History:

1. The Bureau of Development Services issued a Staff Report and Recommendation of Approval, on November 13, 2009.
2. Hearings Officer's Decision. The first hearing was opened at 1:30 p.m. on November 23, 2009 in the 3rd floor hearing room, 1900 SW 4th Avenue, Portland OR, and was closed at 3:01 p.m. A continued hearing was opened at 10:00 a.m. on November 30, 2009 in the 3rd floor hearing room, 1900 SW 4th Avenue, Portland OR, and was closed at 11:39 a.m. The record was held open until 4:30 p.m. on December 9, 2009 for new evidence and held open until 4:30 p.m. on December 16, 2009 for the applicants' final argument. The record was closed at 4:30 p.m. on December 16, 2009.

Testified at the November 23, 2009 Hearing:

Rachel Whiteside, BDS Staff Representative
 Mimi Doukas, Cardno/WRG, 5415 SW Westgate Drive, Portland, OR 97221
 Maryhelen Kincaid, East Columbia Neighborhood Association Representative, 2030
 NE Blue Heron Drive, Portland, OR 97211
 Shawn Burgett, BDS Staff Representative
 Brian Luzader, 910 NE Southshore Road, Portland, OR 97211
 Howard Brandwein M.D., 945 Waterbury Lane, Ventura, CA 93001
 Gary Clifford, 1150 NE Faloma Road, Portland, OR 97211
 Cathy Humble, 1036 NE Meadow, Portland, OR 97211
 Richard Towle, 544 NE Southshore Road, Portland, OR 97211
 Barbara Kerr, 1150 NE Faloma Road, Portland, OR 97211

Testified at the November 30, 2009 Hearing:

Rachel Whiteside, BDS Staff Representative
 Shawn Burgett, BDS Staff Representative
 Matt Lewis, Cardno/WRG, 5415 SW Westgate Drive, Suite 100, Portland, OR 97221
 Mimi Doukas, Cardno/WRG, 5415 SW Westgate Drive, Suite 100, Portland, OR 97221
 Cathy Humble, 1036 NE Meadow, Portland, OR 97211
 Gary Clifford, 1150 NE Faloma Road, Portland, OR 97211
 Barbara Kerr, 1150 NE Faloma Road, Portland, OR 97211
 Maryhelen Kincaid, East Columbia Neighborhood Association Representative, 2030
 NE Blue Heron Drive, Portland, OR 97211

The Hearings Officer approved the proposed 49-lot land division, environmental review and adjustments in a decision mailed on December 31, 2009.

An appeal period was provided until January 14, 2010.

3. Appellant. The East Columbia Neighborhood Association submitted an appeal of the decision of the Hearings Officer on January 14, 2010. The appeal included the following points of objection: procedural challenges, flood hazards, special construction considerations, construction traffic impacts, stormwater management, environmental

review, and special evaluation by a professional.

4. City Council Consideration and Decision. On February 18, 2010 at approximately 3:30 P.M., the City Council held an on-the-record hearing on the appeal at which time the appellant and opponents (the applicant) were given an opportunity to present arguments in support of and opposing the appeal. After deliberating, the Council took a tentative vote to deny the appeal, uphold the Hearings Officer's decision to approve the project, and modify the Hearings Officer's decision in part. The Council adopted findings and took a final vote to deny the appeal and uphold the Hearings Officer's decision as modified on March 3, 2010.

III. ANALYSIS

Site and Vicinity: The site is currently developed with a single-family home, large barn and several accessory structures, located on the eastern portion of the site. There are two driveway access points to the site from NE 13th Avenue, one on the northern end of the frontage and one on the southern end. There are at least three ponds on the property, two of which are located in the eastern portion of the property, near the frontage on NE 13th Avenue. There is a drainage channel operated by the Peninsula Drainage District No.2 that runs along the southern boundary of the site. In general, the eastern ¼ of the site has a number of trees and ornamental landscaping, along with the existing structures. The western ¾ of the site, is largely open field with groups of trees and brush. Large areas of the site are within the 100-year floodplain and National Wetland Inventory according to City GIS mapping. The applicants did not provide an existing conditions plan, wetland delineation or floodplain delineation with this application.

The surrounding area to the north and south is developed with single-family homes. Across NE 13th to the east is vacant property owned by the Columbia Edgewater Golf Course, which is located to the north. West of the site there are industrial uses accessed by NE 6th Avenue.

Zoning:

The site is currently zoned R10 (Low Density Single Dwelling Residential). This zone is a single-dwelling zone, which are intended to preserve land for housing and to promote housing opportunities for individual households. This zone implements the Comprehensive Plan policies and designations for single-dwelling housing. The proposed R10 zone allows a maximum density of 1 unit per 10,000 square feet of site area.

A small portion of the site along the southern boundary where the drainage channel is located is within the Environmental Conservation "c" Overlay zone. The "c" Overlay zone is intended to conserve important environmental features and resources while still allowing compatible development. New development must meet environmental standards or will be subject to Environmental Review.

This site is within the area of the East Columbia Neighborhood Natural Resource Management Plan (NRMP), which inventories environmental resources and provides guidance on mitigation. The NRMP identifies this site as the "Rovang" site. The wetlands on this site were given the lowest ranking among those inventoried in the study area. With the exception of the area within the Environmental zone described above, there are no City zoning regulations that require protection of the wetlands on the site.

The entire site is within the Aircraft Landing ("h") Overlay zone, which provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures and vegetation. The allowed height limit for buildings and vegetation on the site per the "h" overlay is 180 feet above the lowest base point at

Portland International Airport. The airport low base point is at an elevation of 18.3 feet. Therefore, the topographical elevation of the site PLUS the proposed building cannot exceed 198.3 feet. The highest ground elevation on the site is approximately 17 feet. Therefore, buildings and vegetation on the site cannot exceed 181.3 feet in height. On this site, however, the proposed base zone (R10) height limit of 30 feet is more restrictive than the 'h' Overlay allows and cannot be exceeded without a future Adjustment Review.

Land Use History: City records indicate that prior land use reviews include:

- **ZC 6358 (90-024614):** Initiation of City zoning for annexed area.
- **LU 02-128180 CU MS ZC PU AD:** Applicant withdrew a Zone Map Amendment from RF to R10, Conditional Use Master Plan to develop continuing care retirement community on 28-acre site, Planned Unit Development, and Adjustment to increase maximum allowable building height.
- **LU 07-140167 ZP:** Approval of Zoning Map Amendment to change the zoning of the site from RF to R10 in conformance with the Comprehensive Plan designation
- **LU 07-143290 EN:** Approval of an Environmental Review for wetland benches along the drainageway on the southern border of site.

Agency Review: A “Request for Response” was mailed August 17, 2009. Several Bureaus and agencies have responded to this proposal. Exhibits E contain additional details. The comments are addressed under the appropriate criteria for review of the proposal.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on November 6, 2009. A neighborhood representative noted that the notice of hearing was not timely sent. The original hearing, in this case, was held on November 23, 2009. The Hearings Officer, at the request of BDS staff and Neighborhood Association, continued the hearing. The Hearings Officer determined that any additional week (second hearing on November 30, 2009) would provide sufficient opportunity for concerned persons to participate in the hearing process. In addition, at the request of Ms. Kincaid, a property owner in the vicinity of the subject site, the record was kept open for the submission of additional written testimony until 4:30 p.m. on December 9, 2009 (9 days). At the City Council appeal hearing on February 18, 2010 and in response to questions by the Council, the Neighborhood Association was unable to identify additional evidence that would have been submitted had the Association been given additional time. The Council determined that the Neighborhood Association had been given sufficient opportunity to submit evidence and raise all arguments to the proposal within the additional time granted by the Hearings Officer.

IV. ZONING CODE APPROVAL CRITERIA AND FINDINGS

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.

The relevant criteria are found in PCC Section **33.660.120 [A-L], Approval Criteria for Land Divisions in Open Space and Residential Zones**. 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 applicability of each criterion.

Criterion	Code Chapter	Topic	Applicability Findings
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Criterion	Code Chapter	Topic	Applicability Findings
A	33.610	Lots	Applicable - See findings below
B	33.630	Trees	Applicable - See findings below.
C	33.631	Flood Hazard Area	Applicable - See findings below.
D	33.632	Potential Landslide Hazard Area	Not applicable - The site is not within the potential landslide hazard area.
E	33.633	Phased Land Division or Staged Final Plat	Not applicable - A phased land division or staged final plat has not been proposed.
F	33.634	Recreation Area	Applicable - See findings below.
G	33.635 .100	Clearing and Grading	Applicable - See findings below.
G	33.635 .200	Land Suitability	Applicable - See findings below.
H	33.636	Tracts and Easements	Applicable - See findings below.
I	33.639	Solar Access	Applicable - See findings below.
J	33.640	Streams, Springs, and Seeps	Applicable - See findings below.
K	33.641	Transportation Impacts	Applicable - See findings below
L	33.651 - 33.654	Services and Utilities	Applicable - See findings below

Applicable Approval Criteria are:

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

Findings: PCC Chapter 33.610 contains the density and lot standards applicable in the RF through R5 zones. These density and lot dimension standards ensure that lots are consistent with the desired character of each zone while allowing lots to vary in size and shape provided the planned intensity of each zone is respected.

Density Standards

Density standards match housing density with the availability of services and with the carrying capacity of the land in order to promote efficient use of land, and maximize the benefits to the public from investment in infrastructure and services. These standards promote development opportunities for housing and promote urban densities in less developed areas. Maximum densities ensure that the number of lots created does not exceed the intensity planned for the area, given the base zone, Overlay zone, and Plan District regulations. Minimum densities ensure that enough dwelling units can be developed to accommodate the projected need for housing allocated to the City of Portland.

The method used to calculate density depends on whether a street is created as part of the land division, and whether the site is subject to certain environmental constraints.

In this case, a street is proposed or required and the site is within the Environmental zone, and flood hazard area. Therefore, the maximum and minimum density for this site is as follows:

23.5 acres = 1,023,660 square feet

Minimum = 1,023,660 square feet – 535,788 square feet in Environmental zone & Flood Hazard Area * .68 ÷ 10,000 square feet = 33.17 (which rounds down to a minimum of 33 lots, per PCC 33.930.020.A). However, PCC 33.640.200.D.4 waives minimum density when there is a stream, spring, or seep preservation tract.

Maximum = 1,023,660 square feet * .85 ÷ 10,000 square feet = 87.01 (which rounds down to a maximum of 87 lots, per PCC 33.930.020.B)

The applicants are proposing 49 lots. The density standards are therefore met.

Lot Dimensions

The lot dimension standards ensure that: (1) each lot has enough room for a reasonably-sized house and garage; (2) lots are of a size and shape that development on each lot can meet the development standards of the Zoning Code; (3) lots are not too large relative to the planned density; (4) each lot has room for at least a small, private outdoor area; (5) lots are compatible with existing lots; (6) lots are wide enough to allow development to orient toward the street; (7) lots do not narrow to an unbuildable width close to the street; (8) each lot has adequate access from the street; (9) each lot has access for utilities and services; and (10) lots are not landlocked.

The dimensions of the proposed lots as compared to the required lot dimension standards is shown in the following table (this information is found in Table 610-2 of the Zoning Code):

	R10 Zone Requirement	Proposal
Minimum Lot Area	6,000 sq. ft.	Lots range from 6,023 to 8,314 square feet in size.
Maximum Lot Area	17,000 sq. ft.	
Minimum Lot Width*	50 ft.	Narrowest lot is 50 feet wide.
Minimum Lot Depth	60 ft.	Least deep lot is over 68 feet deep.
Minimum Front Lot Line	30 ft.	Lot with shortest front lot line has 43.2 feet of frontage.

* Width is measured at the minimum front building setback line

The findings above describe how the applicable lot standards are met. This criterion is therefore met.

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

Findings: The regulations of PCC Chapter 33.630 preserve trees and mitigate for the loss of trees. The appellant argued that the tree preservation standards do not consider loss of canopy and the effect on stormwater runoff. On the contrary, the Council finds the tree preservation standards for a land division site were specifically developed to:

- Preserve trees when it is feasible to preserve trees and still meet the other regulations of this Title;
- Reduce erosion, siltation, and flooding;
- Filter stormwater and reduce stormwater runoff;

- Stabilize slopes; and
- Retain options for property owners to preserve trees and vegetation at the time of development. (PCC 33.630.010)

The applicants have submitted an arborist report that inventories the trees within the land division site, evaluates their condition and specifies root protection zones (Exhibit A.2). Some trees have been exempted by the arborist because they are either too small, unhealthy, a nuisance species, located partially off the property or located within 10 feet of an existing structure to remain on the property or partially within the Environmental zone. See the Tree Inventory in Exhibits C.7 and C.8.

The total non-exempt tree diameter on the site is 8,854 inches. The applicants propose to preserve 257 trees, including three of the four significant trees on site. This comprises 2,662 inches of diameter, or 30.07 percent of the total non-exempt tree diameter. This proposal complies with Option 2 of the tree preservation standards, which requires at least 50 percent of the significant trees on the site and at least 30 percent of the total tree diameter on the site to be preserved or Option 3, which requires at least 75 percent of the significant trees on the site and at least 25 percent of the total tree diameter on the site to be preserved; The applicants have provided a Tree Preservation Plan showing the preserved trees and the required root protection zones (Exhibits C.7 and C.8). See also Exhibits H.6 and H.13).

Lot 45 has tree 449 located on it, while Lot 16 has trees 583, 584 and 585. (Exhibit C.8) Council finds that the applicant has adequately documented that the tree preservation standards have been met. So long as a Condition (D.1) is imposed, this approval criterion can be met.

C. Flood Hazard Area. If any portion of the site is within the flood hazard area, the approval criteria of Chapter 33.631, Sites in Flood Hazard Areas, must be met.
33.631.100 Flood Hazard Area Approval Criteria

- A. RF through R2.5 zones. The following criteria must be met in the RF through R2.5 zones:**
- 1. Where possible, all lots must be outside of the flood hazard area; and**
 - 2. Where it is not possible to have all lots outside of the flood hazard area, all proposed building areas must be outside of the flood hazard area.**
- C. In all zones. The following criteria must be met in all zones:**
- 1. Services proposed in the flood hazard area must be located and built to minimize or eliminate flood damage to the services; and**
 - 2. The floodway must be entirely within a flood hazard tract unless river-dependent land-uses and development are proposed on the site.**

Findings: Portions of this site are within the Flood Hazard Area. The approval criteria in the RF through R2.5 zones state that where possible, all lots must be located outside of the Flood Hazard Area. Where it is not possible to have all lots outside of the Flood Hazard Area, all proposed building areas must be outside of the Flood Hazard Area. In addition, services in the Flood Hazard Area must be located and built to minimize or eliminate flood damage to the services, and the floodway must be entirely within a Flood Hazard Tract.

Portions of the site are located within the 100-year FEMA floodplain. A Conditional Letter of Map Revision (CLOMR) has been requested to be issued by FEMA to place fill in the flood area to bring the finished floor elevation of the proposed lots to one foot above the established base flood elevation of nine feet. The applicants have proposed a

Compensatory Wetlands Mitigation Plan to the DSL (See Exhibits A.1, E.8 and H.13). The applicants have proposed that the fill volumes on the site will be balanced, per FEMA and City requirements, by the wetland enhancement project in proposed Tract B.

Although the finished floor elevations of future homes will be built above the base flood elevation, some of the proposed utilities serving these homes will be below the nine-foot base flood elevation. These services will be constructed to minimize flood damage. Water services will be provided in water-tight facilities to prevent flood damage and sanitary sewer manhole lids will be designed to prevent any potential flood waters from entering. Finally, the stormwater system will be designed with a backflow preventer.

On appeal, the East Columbia Neighborhood Association questioned why PCC 24.50.010 and 24.50.060 had not been applied. BDS staff testified that the Zoning Code does not require an application to address PCC 24.50 as part of their land use review. Only those code sections listed in Title 33 as the applicable approval criteria related to flood hazards, found in this section, are addressed through the land use decision. City Council agreed with staff testimony and found that the relevant criteria, which do not include PCC 24.50.010 and 24.50 had been adequately addressed.

The site work proposed in the Compensatory Wetlands Mitigation Plan must be complete and the Final Letter of Map Revision removing the floodplain designation from the site must be issued by FEMA prior to final plat approval. (See Condition C.2). Utilities must be designed and constructed to minimize flood damage. (See Condition C). With these conditions of approval, this criterion is met.

F. Required Recreation Area. If 40 or more lots or dwelling units are proposed, the standards and approval criteria of Chapter 33.634, Required Recreation Areas, must be met.

33.634.200 Required Recreation Area Standards. The following standards must be met:

- A. Size. At least 10 percent of the total site area of the land division site must be devoted to recreation area.**
- B. RF-R2 zones. In the RF-R2 zones, the recreation area must be in one or more recreation area tracts. Recreation area tracts must meet the requirements of Subsection D., below.**
- C. R1-IR zones. In the R1-IR zones, the recreation area may be in one or more recreation area tracts, in a roof-top garden, or in floor area improved for the purpose of passive or active recreation. Recreation area tracts must meet the requirements of Subsection D., below.**
- D. Recreation area tracts. Recreation area tracts required by this chapter must meet the following standards:**
 - 1. Size. Each tract must be at least 100 feet wide by 100 feet deep;**
 - 2. Location. No more than 50 percent of each recreation area tract may be in an Environmental Overlay Zone or in a flood hazard area;**
 - 3. Accessibility. Each recreation area tract must have at least 30 feet of street frontage;**
 - 4. Ownership. The tracts must be owned in common by all of the owners of the land division site, owned by a Homeowners' Association, or owned by a public agency; and**
 - 5. Improvements. The applicant must submit a surety and construction timing agreement prior to final plat approval. The construction timing agreement will specify the installation schedule of all improvements.**

Findings: The entire site size is 23.5 acres, although approximately 12.54 acres are proposed to be set aside in a tract for wetland preservation. The Wetland Preservation Tract will not include pedestrian access in order to protect the area for native wildlife species and safeguard the habitat area from disturbance from trash, off-leash dogs, the dumping of yard debris, and other impacts that lead to the spread of invasive species or degradation of the resource. Because there will be no access to this area, and because portions of it are in the Flood Hazard Area, it cannot be used to meet the recreation area requirement. The applicants, therefore, have requested an Adjustment to base the size of the required recreation area on the area proposed to be developed (10.94 acres). The findings for the Adjustment approval are found later in this decision.

The proposed 1.11-acre park meets all of the remaining standards. The park will be placed in a tract to be owned and maintained by the Homeowners Association. The proposed Recreation Tract measures approximately 155 feet by 330 feet and has street frontage on three sides. As addressed previously in this decision, the applicants have a CLOMR based on fill to remove the flood plain designation for the portion of the site to be subdivided, including the Recreation Tract. The Recreation Tract does not include any area within an Environmental Overlay Zone.

With a condition of approval that the applicants submit a surety and construction timing agreement prior to final plat approval (See Condition C.9) and approval of the Adjustment for the size of the tract, these standards are met.

33.634.300 Required Recreation Area Approval Criteria. All of the following approval criteria must be met:

- A. Location. Each recreation area must be located on a part of the site that can be reasonably developed for recreational use;**
- B. Accessibility. Each recreation area must be reasonably accessible to all those who will live on the land division site; and**
- C. Improvements. Each recreation area must be improved in order to meet the recreational needs of those who will live on the land division site. Provision for both active and passive recreation must be included. Where there is more than one recreation area, not all areas must be improved for both active and passive recreation. Recreation areas may include improvements such as children's play equipment, picnic areas, open lawn, benches, paved walkways or trails, gardens, or organized sport fields or courts. Surety may be required which specifies the timing of recreation area improvements. The recreation area improvements should be installed before any of the dwelling units on the site have received final inspection.**

Findings: The proposed Recreation Tract is centrally located within the proposed subdivision and is generally flat, allowing for easy development for recreation uses. The Recreation Tract can be easily accessed by all residents via the public streets on three sides. The location allows visibility and many points of access to the recreation amenities provided.

The plan for the Recreation Tract includes provisions for both passive and active recreation. This includes open lawn area, play equipment area and paved walkways. A minimum of two benches for seating will be provided where appropriate. The concept plan for the Recreation Tract is shown on the Proposed Planting Plan (Exhibit C.9). The applicants will also be required to show at least three play structure amenities within the play equipment area proposed on the Site development permit for construction of the Recreation Tract prior to final plat approval. A performance guarantee will be required prior to final plat for 125 percent the estimated construction cost of the Recreational Tract and the amenities within the tract.

With a condition that the Recreation Tract improvements are in substantial conformance with Exhibit C.9 along with the additional amenities described above prior to final inspection of any of the dwelling units within the subdivision (Condition D.3a), this criteria is met.

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

The approval criteria of Chapter 33.635 are found in two groups – clearing and grading, and land suitability.

33.635.100 – Clearing and Grading

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

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

Grading of the site will occur to create home sites with an elevation above the established 6.9 foot base flood elevation. The balanced cut and fill requirements, new public streets, and associated utilities that are proposed as part of the land division will require extensive grading on the site prior to final plat approval. The applicants have submitted a Preliminary Clearing and Grading Plan (Exhibits C.5 and C.6) that depicts the proposed work, including existing and proposed elevation contours, soil stockpile areas, undisturbed areas consistent with the root protection zones of trees to be preserved, per the applicants' Tree Preservation Plan, and the overall limits of disturbed area.

The proposed clearing and grading shown on Exhibits C.5 and C.6 represents the minimum amount of change to the existing contours and drainage patterns of the site necessary to provide for buildable home sites and public streets. The contour changes proposed should not increase runoff because existing stormwater flows into the MCDD controlled ditch at the south edge of the site and will continue to flow there after development. Stormwater runoff from the new street and lots will be appropriately managed by flow-through planter boxes and street-side swales with outfall to the MCDD ditch to assure that the runoff will not adversely impact adjacent properties (see detailed discussion of stormwater management later in this decision).

The limits of disturbance shown on the applicants' plan includes grading of the street areas, the lots, and the Wetland Restoration Area to allow the applicants to conduct the majority of the clearing and grading on the site at one time. This will help manage erosion and sedimentation concerns, assure that the necessary tree protection measures

are in place before the grading begins and limit the disturbance on the adjacent properties.

The Clearing and Grading Plan indicates areas of topsoil storage and general stockpiling that are located directly adjacent to the new right-of-way, and outside of the root protection zones of the trees on the site to be preserved. The erosion control measures shown on the grading plan must be installed prior to starting the grading work. Site Development noted that the project area meets the criteria specified in City Code 10.30.030 as a Special Site with additional requirements for erosion, sediment and pollution control. An erosion control plan prepared by a Certified Professional in Erosion and Sediment Control (CPESC) or State of Oregon registered professional engineer may be required at the time of building permit review, and special inspections by the CPESC or P.E. may be required if construction activities will take place during wet weather months. A bullet has been added to Condition C.2 requiring that the Site Development Permit for clearing and grading comply with erosion control requirements.

Future building pads on the lots, as depicted on the grading plan, will be elevated to the floor protection elevation of one foot above the base flood elevation (7.9 feet or higher). Further, Site Development recommended a condition of approval requiring a continuous channel at a maximum of 5' (NAVD 1988) to be located in Tract B between the north and south wetlands to allow free passage of flood waters. Site Development indicated that if a channel could not be delineated at existing grades, then a channel may be needed to be graded in place. Site Development recommended that construction limits should be modified, as needed, to accommodate grading for the channel. Site Development recommended that such condition be added as a bullet point to Condition C.2. The Hearings Officer found this request to be appropriate and reasonable.

As shown above, the Preliminary Clearing and Grading Plan meets the approval criteria. As discussed later in this decision, the Site Development Section of the Bureau of Development Services requires that the applicants apply for a Site Development Permit for mass grading and utility construction in the new public street right-of-way. The permit application must include a Final Clearing and Grading Plan, that must be consistent with the Preliminary Clearing and Grading Plan approved with the land division. With a condition of approval that the applicants' Final Clearing and Grading Plan is consistent with the Preliminary Clearing and Grading Plan and the findings above, this criterion is met (Condition C.3).

33.635.200 – Land Suitability

Where 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 applicants have proposed to remove the existing buildings (Exhibit C.12) and redevelop the site. Removal of any structure that exceeds 200 square feet in area requires a permit. In order to ensure that the new lots are suitable for development, a permit must be obtained and finalized for demolition of all structures on the site prior to final plat approval. Several demolition permits have been issued, but have not been finalized, and do not appear to include mandatory decommissioning inspections. Therefore, approval of separate decommissioning permits will be required to decommission existing septic tanks, cesspools, drywells, or other on-site sewage disposal systems or subsurface stormwater infiltration facilities prior to final plat approval (Condition C.2).

With these conditions, the new lots can be considered suitable for development, and this criterion is met.

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

33.636.100 Requirements for Tracts and Easements

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

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

Findings: The following tracts are proposed or required:

Name/Purpose	Size	Future Ownership
Tract A: Recreation Area	48,628 square feet	Homeowners Association
Tract B: Wetland Conservation	545,934 square feet	Homeowners Association
Tract C: Stormwater	1,350 square feet	Homeowners Association
Tract D (Residual property, no designated purpose)	2,107 square feet	Homeowners Association or current property owner or possible sale to adjacent owner to the south
Tract E: Open Space for viewing Kiosk	To be determined at final plat	Homeowners Association

With a condition that the proposed tracts be owned as identified above (See Condition B), this criterion can be met.

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

Findings: As stated in PCC Section 33.636.100 of the Zoning Code, a Maintenance Agreement(s) will be required describing maintenance responsibilities for the tracts described above and facilities within those areas. Future maintenance of the wetlands and recreational tracts generated significant opposition testimony. (See, for example, Exhibits H.22 and oral testimony at the public hearings by Humble and Kerr). BDS staff provided a written response (Exhibit H.13) and applicants provided a written response (Exhibit H.16). Both BDS staff and applicants noted that in addition to City Code provisions regarding "maintenance" and "guarantees", DSL requires a bond for all of the wetland work; if the wetland work is not completed by the applicants, the work will be completed under the terms of the bond. DSL also mandates a 5-year maintenance obligation for all wetland work. (See Exhibit H.16). The Hearings Officer also notes that

City bonds are required for all public work, including public streets, sewer systems and water lines. The Hearings Officer acknowledges that the City Code may provide less than satisfactory assurances of long-term future maintenance of the wetlands and recreational tracts. However, the Hearings Officer is obligated to review this application under the relevant approval criteria.

The Hearings Officer finds, with a condition of approval regarding the recording of the relevant Maintenance Agreement(s) this approval criterion can be met. The Hearings Officer finds that this criterion can be met with the condition that a Maintenance Agreement(s) is prepared and recorded with the final plat. In addition, the plat must reference the recorded Maintenance Agreement(s) with a recording block for each agreement, substantially similar to the following example:

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

With the conditions of approval discussed above, this criterion is 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.

The solar access criteria are applied to proposed lots based on the orientation of the streets, as described below.

33.639.100, Solar Access Approval Criteria

On streets that are within 30 degrees of a true east-west axis, the narrowest lots should be interior lots on the south side of the street and corner lots on the north side of the street.

On streets that are within 30 degrees of a true north-south axis, the widest lots should be interior lots on the east or west side of the street.

Findings: 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.

In this case, the site fronts on NE 13th Avenue, which is a north-south street, and will include creation of NE 14th and 15th Avenues, also north-south streets. The proposal also includes creation of two new east-west public streets. To comply with the solar access criteria, the following must be met:

- Lot 2 is an interior lot on the west side of the street. Lot 2 should be wider than Lots 1 and 3.
- Lot 9 is a corner lot on the north side of the street. Lot 9 should be narrower than Lots 5-8.
- Lot 45 is an interior lot on the west side of the street. Lot 45 should be wider than Lots 44 and 46.
- Lot 48 is an interior lot on the east side of the street. Lot 48 should be wider than Lots 47 and 49.

With a condition of approval for Lots 2, 9, 45, and 48 to comply as noted above (Condition B.9), this criterion is met.

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

33.640.200 Stream, Spring, and Seep Standards

A. Preservation in a tract. Streams, springs, and seeps must be preserved in a tract as follows:

- 1. The edges of the tract must be at least 15 feet from the edges of the stream, spring, or seep. The edges of a seep or spring are determined through a wetland delineation, performed by an environmental scientist, and approved by BDS. If one or more wetland characteristics are absent from the resource, the delineation will be based on the wetland characteristics present. The edges of a stream are defined as the top-of-bank. Where the edge of the stream, spring, or seep is less than 15 feet from the edge of the site, the tract boundary will be located along the edge of the site;**
- 2. Existing structures within the area described in Paragraph A.1 may be excluded from the tract;**
- 3. Exception. Where the tract required by Paragraph A.1 would preclude compliance with the front lot line requirements of Chapters 33.610 through .615, the stream, seep, or stream may be in an easement that meets the other requirements of Paragraph A.1.**

B. Development allowed in the tract or easement. The following development, improvements, and activities are allowed in the tract or easement:

- 1. Disturbance associated with discharging stormwater to the stream channel, if BES has determined that the site's storm water cannot discharge to a storm sewer and BDS has determined that on-site infiltration is not an option;**
- 2. Removal of non-native invasive species with hand held equipment;**
- 3. Planting of native vegetation listed on the Portland Plant List when planted with hand held equipment;**
- 4. Erosion control measures allowed by Title 10 of Portland City Code;**
- 5. Construction of required driveway connections or required connections to services when there is no practicable alternative to locating the driveways or service connections within the tract or easement; and**
- 6. Maintenance and repair of existing utilities, services, and driveways;**

C. When tract or easement may be crossed by a right-of-way. Public or private rights of way may cross the seep, spring, or stream tract or easement if the following approval criteria are met:

- 1. There is no reasonable alternative location for the right-of-way;**
- 2. The applicant has demonstrated that it is possible to construct street improvements within the right-of-way that will meet all of the following:**
 - a. The street improvements will not impede the flow of the stream, spring, or seep;**
 - b. The street improvements will impact the slope, width, and depth of the stream channel, spring, or seep to the minimum extent practicable; and**
 - c. The street improvements will not impede fish passage in a stream, spring, or seep has been identified by the Oregon Department of Fish and Wildlife as fish-bearing.**

Findings: In this case, the applicants' Existing Conditions Plan (Exhibit C.12) indicates the presence of three wetlands on the site. Wetland A is the largest of the three wetland

features at 6.4 acres and is located on the western portion of the site. Wetland B, measuring 0.82 acres, is located central to the property and Wetland C, measuring 0.86 acres, is located on the east end of the site between the existing house and NE 13th Avenue.

The applicants provided a Compensatory Wetland Mitigation Plan (Exhibit A.2) which has been reviewed and received preliminary approval by the DSL and Army Corps of Engineers (See Exhibits H.13 and H.16). As part of this plan, Wetlands B and C will be filled and are not proposed to be set aside in a tract, as required by this Code section. Instead, mitigation approved as part of the Compensatory Wetland Mitigation Plan will restore 2.6 acres of historic wetlands and enhance 1.5 acres of existing wetland. This mitigation will be provided on the western end of the site within the proposed 12.53 acre Tract B. An Adjustment to the standards of PCC 33.640.200.A and B has been requested and findings for the approval are found later in this decision.

The tract must be identified on the final plat for the land division as "Tract B: Open Space (wetland protection reserve)." A Maintenance Agreement must be executed for Tract B, that outlines the restrictions on activities within the tract per the standards of PCC 33.640.200.B above (see discussion under "tracts and easements" elsewhere in this decision). No rights-of-way or street tract is proposed to cross the Wetland Tract, so the standards of PCC 33.640.200.C do not apply to this proposal.

An opponent suggested that a stream exists upon the subject site that was not taken into consideration by the applicants. (Exhibit H.22). The Hearings Officer finds that the "stream" referenced by the opponent in Exhibit H.22 (see attachment to H.22 - Portland Maps Natural Resources - Streams and Drainageway Detail) is not specifically designated a "stream", but is better referenced as part of the wetlands drainage area. The Hearings Officer reviewed Exhibit A.2, tab H, Appendix A (Brandwein Meadows Compensatory Wetland Mitigation Plan) and noted by the opponent as a "stream" is included in the wetlands designation (see Exhibit A.2, tab H, Appendix A, map EX 2.0). The Hearings Officer, for the purposes of this decision, finds there is no unidentified stream on the subject site.

With the conditions of approval for naming (Condition B), a Maintenance Agreement(s) (Condition C.8), and final approval of the DSL permit be provided prior to final plat approval (Condition C.2), and the adjustment to not place Wetlands B and C in a tract and allow grading for the wetland enhancement in Tract B, this criterion is met.

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

The relevant approval criteria of Chapter 33.641 are found in the two paragraphs below.

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

33.641.030. The applicant may meet the criterion in Section 33.641.020, above, by including mitigation measures as part of the land division proposal. Mitigation measures must be acceptable to the City Engineer and may include providing transportation demand management measures, an access management plan, constructing streets or bicycle, pedestrian, or transit

facilities on or off the site or other capital improvement projects such as traffic calming devices.

Findings: The regulations of PCC Chapter 33.641 allow the traffic impacts caused by dividing and then developing land to be identified, evaluated, and mitigated for if necessary. Small land divisions involving only a few dwelling units may not require a formal transportation impact study, while it might be required for larger projects (Title 17 includes technical standards describing when a more formal study is required). In this case, a Transportation Study was submitted by the applicants (Exhibit A.2).

The site has approximately 408 feet of frontage on NE 13th Avenue. Northeast 13th Avenue is classified as a City Bikeway and Local Service Street for all modes in the Transportation Element of the Comprehensive Plan. TriMet provides transit service approximately .75 miles from the site on NE 6th Drive via bus 16. Parking is currently not allowed on NE 13th Avenue. There are two driveways entering the site that provides access to off-street parking for the existing house.

Northeast 13th Avenue is improved with a paved roadway, and a gravel shoulder on both sides. There are no curbs, planter strips, or sidewalks. In reviewing this land division, the Portland Bureau of Transportation (PBOT) relies on accepted civil and traffic engineering standards and specifications to determine if existing street improvements for motor vehicles, pedestrians and bicyclists can safely and efficiently serve the proposed new development. In this case, PBOT has determined that curb and sidewalk improvements must be made in order to ensure that safe pedestrian travel is possible within the proposed development. To accommodate these improvements, as well as an associated stormwater facility discussed later in this decision, additional right-of-way may have to be dedicated along the frontage of the site depending on the location of the public stormwater facilities required, since stormwater facilities must be located a minimum of 2 ft. away from the existing water main. With those improvements, the new public streets proposed within the site that are connected to NE 13th Avenue can be safely served by this existing street without having any significant impact on the level-of-service provided.

In addition to the existing street frontage, new public streets are proposed within the land division site, providing access to Lots 1 through 49. The streets are anticipated to serve the vehicle traffic, pedestrians and bicyclists accessing these lots, as well as additional lots to the north in the future.

As mentioned above, the applicants provided a Traffic Impact Study (Exhibit A.2), prepared by Lancaster Engineering, which examined this site based on the development potential proposed. Lancaster's report examined the transportation impacts on the existing infrastructure if the site was developed with 49 lots as proposed. The transportation study stated "Sight distance is adequate in both directions at the proposed site access locations on NE 13th Avenue. Examination of the crash history and geometry of the area streets and intersections revealed no significant safety hazards." No safety concerns were identified, and no safety mitigation is proposed (Exhibit A.2). The transportation study concluded, "The two access intersections on NE 13th Avenue are projected to operate acceptably upon completion of the proposed development. No mitigation is recommended" (Exhibit A.3).

In addition, PBOT has determined that the proposed street width and improvements are sufficient to serve these expected users (see further discussion in the Right-of-Way approval criteria below). The applicants must provide plans and financial assurances for the construction of this street prior to final plat approval. In addition the right-of-way

dedication necessary to accommodate the new public street must be shown on the final plat.

Concerns were expressed by opponents to the application that access to public transportation should be provided more directly than proposed by the applicants. (See, for example Exhibit H.22 and refer to oral testimony at public hearing by Kerr). The applicants noted that providing access to public transportation, to the west (NE 6th Drive – bus line #16th), was problematic. The Hearings Officer concurs with the applicants and BDS staff in concluding that providing pedestrian access to the south (area is already developed) or west (through the proposed wetland tract and another property) is not practicable.

Concerns were expressed, by opponents (Clifford and Kerr) during oral testimony at the hearing before the Hearings Officer on November 30, 2009 and by the appellant at the Council hearing on February 18, 2010, that the applicants did not take into consideration “dump truck” traffic associated with the construction operations proposed at the subject site. During the open record period the applicants provided a response (Exhibit H.25) to these concerns. This response was also summarized during Council testimony.

The applicants estimated that “an excavator will move approximately 1,500 bank yards per day. Trucks with 24 cubic yard trailers will be used to transport the fill material, which will therefore require approximately 80 to 90 truck loads per day. Over an eight or ten hour day, this would require approximately 20 trips per hour. These trips are well below the 37 peak morning and 49 peak afternoon trips estimated for build-out of the proposed subdivision.”

City Council found the applicant’s response to be persuasive and credible. The Council finds no significant negative traffic impacts will result during the “cut and fill” operations proposed by the applicants.

This criterion is met, with the condition that curb and sidewalk improvements are made, and the required right-of-way dedication is shown on the Final Plat. With the conditions of approval described above, this criterion is met.

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

Findings: PCC Chapters 33.651 through 33.654 address water service standards, sanitary sewer disposal standards, stormwater management, utilities and rights-of-way.

- The **water standards of 33.651** have been verified. New water main(s) will have to be installed to serve the proposed development. The applicants may design and construct the new water mains, but at the applicants’ expense, the Water Bureau will have to: 1) review and approve the water system plans; 2) inspect the installation; and 3) make the connection to the existing main(s). The current Water Bureau practice for sizing mains in residential zoning in minimum 6-inch diameter in through streets. Based on the development plans, it is assumed that NE 15th Avenue, south of Street 2, will remain a dead end, and NE 14th Avenue, north of Street 1 may potentially be extended in the future.

Based on these assumptions the Portland Water Bureau requests the following sizes of water mains to be installed: a 6-inch main in Street 1 from the intersection with NE 13th Avenue west to 15th Avenue, a 6-inch main in NE 15th Avenue between Street 1 and Street 2, a 4-inch main in NE 15th Avenue, south of Street 2 to the dead end, a 6-inch main in Street 2 from NE 15th Avenue to 13th Avenue, a 6-inch main in NE 14th Avenue between Street 1 and Street 2, and a 6-

inch main in NE 14th Avenue north of Street 1. In order to meet the standards of PCC 33.651 and the technical requirements of Title 21, appropriate plans and assurances must be provided to the [water agency] prior to final plat approval. See Exhibit E-3 for more details.

- The **sanitary sewer standards of PCC 33.652** have been verified. There is an existing 10" CSP public sanitary sewer located in NE 13th Ave. Each lot must be shown to have a means of access and individual connection to a public sanitary sewer, as approved by the Bureau of Environmental Services (BES). In order to provide sanitary sewer to the proposed lots, new public sanitary sewer must be extended into the site from the NE 13th Ave. sewer at the applicants' expense. A Public Works Permit will be required for such work. The revised plans (Exhibit C.4) show that a sanitary sewer system can be designed to serve the proposed lot configuration, therefore, BES does not object to preliminary approval. Prior to final plat approval, the applicants must meet BES requirements for the Public Works Permit. See Exhibit E.1 for more details.
- The **technical standards of PCC Chapter 33.653 related to stormwater management** have been verified. The findings below for the Stormwater Management Approval Criteria of 33.653.020 incorporate a discussion of how the technical standards have been satisfied by the applicants' stormwater proposal.

33.653.020 Stormwater Management Approval Criteria

- A. If a stormwater tract is proposed or required, an adequate amount of land and an appropriate location must be designated on the Preliminary Plan; and**
- B. The application must show that a stormwater management system can be designed that will provide adequate capacity for the expected amount of stormwater.**

Findings: A stormwater tract (Tract C) is proposed.

The City of Portland requires that stormwater from development be cleaned and disposed of in a manner that meets the requirements of the City's Stormwater Management Manual. In order to meet this approval criterion, land division proposals must demonstrate an approved method of cleaning (water quality treatment), detention (delayed release), and an approved disposal point.

The Stormwater Management Manual contains a hierarchy of acceptable methods of stormwater treatment and disposal. The hierarchy requires that applicants first explore the use of methods that have a lower potential impact on groundwater, such as on-site surface infiltration swales and infiltration planters. If these methods are not feasible on a site, applicants may move lower on the hierarchy, to methods that inject water deeper into the ground through mechanical devices such as drywells or sumps, or carry it off of the site into storm sewers, drainageways, or other approved disposal points.

In addition to determining appropriate treatment and disposal methods by working through the hierarchy in the Stormwater Management Manual, stormwater facilities must be sized, through engineering calculations, to accommodate the expected amounts of stormwater. In some cases, sizing a stormwater facility necessitates testing the infiltration rate of the soil at the site.

The applicants have proposed the following stormwater management methods (Exhibits A.2 and C.3), and the Bureaus have responded as follows (Exhibits E.1 and E.5):

- **Public Street Improvements:** As a condition of this land use approval, PBOT is requiring the applicants to improve the frontage of the site along NE 13th Avenue to City standards, with curbs and sidewalks (discussed earlier in this decision). Due to the high ground water at the site, on site stormwater infiltration is not available at this location. Therefore, all stormwater will be directed off site. Stormwater from the new impervious areas along NE 13th Avenue will be directed into a new pipe along NE 13th Avenue that will convey runoff past the newly improved frontage in NE 13th Avenue to an approved stormwater outfall within a ditch culvert system located along NE 13th Avenue. To accommodate this stormwater facility within the public right-of-way, a dedication may be required along the frontage of the site, and if required, must be provided on the final plat.

In addition, PBOT is requiring new public streets within the land division site to serve the 49 proposed lots. A four-foot wide planter strip is proposed between the curb and the new sidewalk. The applicants are proposing to treat runoff from the new impervious surfaces in the public streets through the use of vegetated swales located within the bump outs within in the new public streets. The stormwater will then be directed via a series of catch basins and storm lines to an outfall located within Tract C that will convey the stormwater into the Multnomah County Drainage District Channel that is located at the southern edge of the property. The disturbance proposed within Tract C required an approved Environmental Review (discussed later in this decision) in order to allow disturbance within the area proposed for Tract C. The Multnomah County Drainage District has provided feedback (Exhibit E.9) stating that the channel has the capacity available to accommodate the stormwater outfall from the proposed subdivision.

BES has confirmed that the proposed stormwater management plan is of a size and proposed design that is adequate to provide for the quantity of water generated from the new impervious areas. BES requires a Public Works Permit for the construction of such a system. The applicants must provide engineered designs and financial guarantees of performance prior to final plat approval (Condition C.4).

- **Lots 1-49:** Stormwater from these lots will be directed to individual private water quality facilities (flow-through planters) that will treat the water and direct the water into storm lines and catch bases within the public rights-of-way that will take the water to the outfall located in Tract C (disturbance in Tract C addressed in Environmental Review section of this decision). Each of these lots has sufficient area for a stormwater facility that can be adequately sized and located to meet setback standards, and accommodate water from a reasonably-sized home. Site Development has indicated conceptual approval of the flow-through planters.
- **Drainageway on Lots 4-9:** The drainage channel shown on the north side of Lots 4-9, which will continue to convey runoff from the back of Lots 4-9 as well as adjacent lots to the north, is currently shown with a 10' public easement over it. As the drainageway itself will not be a public facility, the public easement should be removed prior to final plat approval. Instead, the City's drainage reserve Code would apply (PCC Chapter 17.38.021, *Protection of Drainageway Areas*), and a drainage reserve should be placed over the drainageway. Drainage reserves act as no-build areas – not easements – and are intended to protect flow conveyance in both natural and manmade surface channels. Drainage reserves are typically delineated either 15 feet from the centerline of the channel on both sides, or 15 feet from top of bank if BES determines the 30-foot width does not fully protect larger drainageways. The

applicants may refer to Appendix A.3 of the SWMM, which contains the City’s Private Drainage Reserve Administrative Rules. It appears that in this instance 15’ is adequate, and that the conceptual building envelopes are at least 15 feet from the drainage channel on most of the affected lots, though prior to final plat approval the applicants should provide BES with a supplemental plan that shows the drainage reserve and the limits of conceptual buildings. At the time of future building permit, BES will require a notice of condition be recorded against the property deeds of the affected lots to inform future property owners of the drainage reserve. A condition of approval will ensure that homes are setback from this area (See Condition D.2).

A question was raised, in testimony in opposition (See, for example, Exhibit H.22 and refer to the oral testimony at the hearing by Kerr), about stormwater from the proposed development. The appellants specifically requested that a measurement for soil saturation be completed during a wet month (See, for example, Exhibit I.1). Applicants’ representative provided testimony at both the Hearings Officer and Council hearings that all stormwater would be treated consistent with BES requirements (See, for example, Exhibit H.22 and refer to the oral testimony of applicants’ representative Lewis). BDS staff, in Exhibit H.13, indicated that all stormwater would be collected onsite, cleaned out in flow-through planters (either on private property or in the public right-of-way) and sent to storm lines in the public street that will take the water to the Multnomah County drainage ditch at the southern edge of the site. BDS noted that no stormwater would be infiltrated onsite to the existing soil or new soil added to the eastern end of the site from the western end of the site through the grading process. BDS stated that the water table was too high in this location to allow for onsite disposal. Both BES and the Multnomah County Drainage District, it is noted (Exhibit H.13), support offsite disposal through one outfall to the managed ditch along the southern property line. (See also Exhibits E.1, E.9 and E.10). Because stormwater will not be infiltrated onsite, City Council found the additional reports requested by the appellants to be unnecessary.

With the conditions of approval described above, the stormwater management criteria are met. As shown by the findings above, the Services and Utilities criteria are met.

Right-of-Way Approval Criteria

PCC Chapter 33.654 contains standards and approval criteria for rights-of-way. Due to the location of this site, and the type of street that is proposed, some of the criteria are not applicable. The following table summarizes the applicability of each criterion.

Code Section	Topic	Applicability Findings
33.654.110.B.1	Through streets and pedestrian connections	Applicable - See findings below
33.654.110.B.2	Dead end streets	Applicable - See findings below.
33.654.110.B.3	Pedestrian connections in the I zones	Not applicable - The site is not located within an I zone.
33.654.110.B.4	Alleys in all zones	Not applicable – No alleys are proposed or required.
33.654.120.C.1	Width of the street right-of-way	Applicable - See findings below.
33.654.120.C.3.c	Turnarounds	Applicable - See findings below.
33.654.120.D	Common Greens	Not applicable – No common greens are proposed or required.

Code Section	Topic	Applicability Findings
33.654.120.E	Pedestrian Connections	Not applicable – There are no pedestrian connections proposed or required.
33.654.120.F	Alleys	Not applicable – No alleys are proposed or required.
33.654.120.G	Shared Courts	Not applicable – No shared courts are proposed or required.
33.654.130.A	Utilities	Applicable - See findings below.
33.654.130.B	Extension of existing public dead-end streets and pedestrian connections	Not applicable – There are no existing public dead-end street or pedestrian connections adjacent to the site.
33.654.130.C	Future extension of proposed dead-end streets and pedestrian connections	Applicable - See findings below.
33.654.130.D	Partial rights-of-way	Not applicable – No partial public streets are proposed or required.

Applicable Approval Criteria are:

33.654.110.B.1 Approval criterion for through streets and pedestrian connections in OS, R, C, and E Zones. In OS, R, C, and E zones, through streets and pedestrian connections are required where appropriate and practicable, taking the following into consideration:

- Through streets should generally be provided no more than 530 feet apart, and pedestrian connections should generally be provided no more than 330 feet apart. Through street and pedestrian connections should generally be at least 200 feet apart;**
- b. Where the street pattern in the area immediately surrounding the site meets the spacing of subparagraph a., above, the existing street pattern should be extended onto the site;**
 - c. Characteristics of the site, adjacent sites, and vicinity, such as: (1) Terrain; (2) Whether adjacent sites may be further divided; (3) The location of existing streets and pedestrian connections; (4) Whether narrow frontages will constrain creation of a through street or pedestrian connection; (5) Whether environmental overlay zones interrupt the expected path of a through street or pedestrian connection; and (6) Whether existing dwelling units on- or off-site obstruct the expected path of a through street or pedestrian connection. Alternative locations or designs of rights-of-way should be considered that avoid existing dwelling units. However, provision of through streets or pedestrian connections should take precedence over protection of existing dwelling units where the surrounding transportation system will be significantly affected if a new through street or pedestrian connection is not created;**
 - d. Master street plans for the area identified in Goal 11B of the Comprehensive Plan;**
 - e. Pedestrian connections should take the most direct route practicable. Users should be able to see the ending of the connection from the entrance point, if possible.**

Findings: The site is located between NE 6th Drive and NE 13th Avenue which both run north/south, and have a distance between them of approximately 2,500 feet. There is no other north/south through-street between these two streets. In addition, the site is located between NE Southshore Road and NE Meadow Drive, the nearest east-west running streets. Northeast Meadow Drive is a dead-end, so the nearest east-west through street to the south of the site is NE Gertz Road. There is approximately 1,900 ft between NE South Shore Road and NE Gertz Road. There are no other east/west through-streets between these two streets. If the distance between these existing streets is evaluated against the optimum spacing requirement of 530 feet, one can conclude that there should be an east-west and a north-south through-street provided in the vicinity of the site. PBOT has required two east-west streets (labeled NE Street 1 Rd and NE Street 2 Rd. on site plans) along with two north-south streets (NE 15th and NE 14th Avenues) approximately 420 ft. apart within this proposal. Northeast 14th Avenue is a north-south street that dead-ends adjacent to Lots 43 and 9 that can be extended north in the future to NE South Shore Road.

The site contains sufficient width to allow the creation of a public east-west or north-south through- street. However, the properties surrounding the site to the west and south are not in an area where a new through-street could be installed. The western half of the site that would be necessary to connect NE 13th Avenue to NE 6th Drive has wetlands located on it, and is being placed into a 545,934 sq. ft. tract (Tract B) in order to protect the wetlands, therefore, the extension of an east-west through-street within the site is not feasible. The properties located to the south of the site where a north/south street would need to be installed are already developed, and are separated from this site by a Multnomah County Drainage District channel. The location of the channel would seriously restrict the further extension of a street from the site towards the south. The proposal did however require the applicants to extend the public street towards the north, so if the properties north of this site are ever subdivided, a north-south street would be extended from this site to NE South Shore Rd. Although the optimum spacing criteria would indicate the need for an east-west and north-south through-street or pedestrian connection at this site, there is no practicable opportunity to provide them in this land division.

The site is within the Portland Master Street Plan for the Northeast District. No "through" public streets are shown within this plan at this site. Therefore, the proposal is consistent with the Portland Master Street Plan for the Northeast District.

One opponent raised questions regarding the proposed north-south street connection between Lots 43 and 9. PCC Section 33.654.110b.1. recommends through-streets should generally be provided no more than 530 feet apart. The proposed north-south connection between Lots 43 and 9 will be approximately 450 feet from NE 13th Avenue. This connection is required due to the development potential of the properties located directly north, between the subject site and NE South Shore Road. The properties in this area are primarily zoned R10 (one unit per 10,000 sq.ft.) or have a Comprehensive Plan designation of R10 and could be redeveloped at that density. Based on the average size of the properties to the north, BDS staff estimated that an additional 14 lots could be created between the subject site and NE South Shore Road if maximum density is pursued in the future (Exhibit H.13). If development is proposed in this area, it is likely that the dead-end street proposed between Lots 43 and 9 will be extended north to serve any new lots proposed in order for street connectivity requirements to be met in the future. The Hearings Officer finds it necessary and appropriate to include, in this proposal, the north-south connection between Lots 43 and 9.

The only new "through" pedestrian connections included in the proposal are new sidewalks required on all of the new public streets proposed within the site along with

new sidewalks along NE 13th Avenue. The Hearings Officer finds that it is not practicable to extend pedestrian connections to the south (currently developed) or west (extension through wetland tract and through an arboretum). The new sidewalks are a straight-line connection on which users will be able to see the ending of the pedestrian route from the entrance.

For the reasons described above, this criterion is met.

33.654.110.B.2 Approval criterion for dead-end streets in OS, R, C, and E zones. In OS, R, C, and E zones, dead-end streets may be provided where through streets are not required. Dead-end streets should generally not exceed 200 feet in length, and should generally not serve more than 18 dwelling units. Public dead-end streets should generally be at least 200 feet apart.

Findings: The proposal includes new public dead-end streets (NE 15th and NE 14th Avenues), which will be located in the new public right-of-way. As discussed under the findings for through- streets above, a new public east-west or north-south through-street is not required for this proposal. However, the dead-end street proposed between Lots 43 and 9 along NE 14th Avenue is configured so it can be extended north in the future. This dead-end street will serve two dwelling units and is approximately 100 feet in length from the frontage along NE Street 1 Rd. to the property boundary to the north. The dead-end street located at the end of NE 15th Avenue will serve only two dwelling units and each is approximately 80 feet in length from the frontage along NE Street 2 Rd. to the center of the radius turn-around. This criterion is met.

33.654.120.C.1 Approval criterion for width of the right-of-way. The width of the local street right-of-way must be sufficient to accommodate expected users, taking into consideration the characteristics of the site and vicinity, such as the existing street and pedestrian system improvements, existing structures, and natural features.

Findings: Several new public streets will serve the lots in the land division. The streets are proposed to be 46 feet wide (Exhibit C.2) to provide room for the construction of a 26-foot wide paved roadway that allows two travel lanes, parking on both sides, two six-inch curbs, a four-foot wide planter strip and a five-foot wide sidewalk. The applicants are proposing to treat runoff from the new impervious surfaces in the public streets through the use of vegetated swales located within the bump outs within in the new public streets. The applicants have proposed a 46-foot wide right-of-way dedication that corresponds to these improvements. PBOT indicated in their response, that these improvements and dedication width are acceptable. This criterion is met.

33.654.120.C.3.c. Approval criterion for turnarounds. The turnaround must:

- **Be of a size to accommodate expected users, taking into consideration the characteristics of the site such as existing structures, natural features, the length of the street, and the number of housing units served by the street;**
- **Minimize paved area;**
- **Provide adequate area for safe vehicular movement; and**
- **Provide adequate area for safe and convenient movement by bicyclists and pedestrians traveling on the street or traveling from the street to a pedestrian connection.**

Findings: A radius turn-around is proposed at the terminus of NE 15th Avenue, while no turnaround has been proposed or required at the dead-end proposed between Lots 43

and 9 along NE 14th Avenue, as this street is being configured so it can be extended north in the future. The configuration of the turnaround has been reviewed by PBOT and the Portland Fire Bureau. PBOT and the Fire Bureau have indicated that the size and configuration of the turnarounds are adequate to provide safe vehicular and bicycle movement for the new lots that will use new public streets. A sidewalk is required along both sides of the new public streets that extends all the way around the turnaround on NE 15th Avenue and continues to end of the street along NE 14th Avenue. The proposed sidewalk permits future extension of sidewalks to the north. The sidewalks required will provide for safe and convenient pedestrian access along the new public streets and from the interior of the land division to the new sidewalk required along the frontage of site at NE 13th Avenue. The proposed street tract has been sized to provide adequate room for the turnaround. This criterion is met.

Utility Location, Extension of Streets, Partial Rights-of-Way

33.654.130 Additional Approval Criteria for Rights-of-Way

- A. Utilities. Utilities must be located within rights-of-way or utility easements that are adjacent to rights-of-way to the maximum extent practicable. Utility easements up to 15 feet in width may be required adjacent to rights-of-way.**

Findings: Utilities are defined in the Zoning Code as telephone, cable, natural gas, electric, and telecommunication facilities. Any easements that may be needed for private utilities that cannot be accommodated within the proposed 46-foot width of the right-of-way 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.

- C. Future extension of proposed dead-end streets and pedestrian connections. Where the land division site is adjacent to sites that may be divided under current zoning, dead-end streets and pedestrian connections must be extended to the boundary of the site as needed to provide future access to the adjacent sites. The following factors are considered when determining if there is a need to make provisions for future access to adjacent sites. A need may exist if:**
- 1. The site is within a block that does not comply with the spacing standards or adopted street plan of the Transportation Element of the Comprehensive Plan; or**
 - 2. The full development potential of adjacent sites within the block will not be realized unless a more complete street system is provided to improve access to those sites.**

Findings: The properties to the north of the site appear to have potential to further divide, under current zoning, and they are not currently developed in a manner that would preclude the extension of a street from the site. The proposed street will terminate at a location on the northern site boundary that will allow it to be further extended to serve those properties if they further develop in the future. This criterion is met.

ADJUSTMENT

APPROVAL CRITERIA FOR AN ADJUSTMENT

33.805.010 Purpose of Adjustments

The regulations of the Zoning Code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply citywide, but because of the

City's diversity, some sites are difficult to develop in compliance with the regulations. The Adjustment Review process provides a mechanism by which the regulations in the Zoning Code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the Zoning Code's regulations would preclude all use of a site. Adjustment Reviews provide flexibility for unusual situations and to allow for alternative ways to meet the purposes of the Code, while allowing the Zoning Code to continue to provide certainty and rapid processing for land use applications.

Request: The applicants have requested two Adjustments as part of this proposal. The first is to reduce the size of the required recreation area (PCC 33.634) so that it is 10 percent of the area proposed for development, rather than 10 percent of the total site. This would result in a 1.11-acre Recreation Tract. The applicants have proposed an information and viewing kiosk along the eastern side of the Open Space and Wetland Tract to provide additional passive recreational amenities for the residents. The second Adjustment is to waive the requirement for a tract (PCC 33.640) over an existing wetland area (Wetlands B and C described above) that has been approved for fill by DSL, and to allow grading in Tract B to accommodate the wetland enhancement required for the fill of Wetlands B and C. Wetlands to be enhanced will be placed in a 12.53 acre Open Space Tract west of the proposed development.

33.805.040 Adjustment Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. stated below have been met.

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

Findings:

Recreation area: The applicants have requested an adjustment to PCC Section 33.634.100 – Required Recreation Area Standards, subsection PCC 33.634.200.A which states that at least 10 percent of the land division site must be devoted to recreation area. The entire site area is 23.5 acres, the proposed Recreation Tract is approximately 1.11 acres.

The required recreation area regulations serve several purposes, described as follows:

PCC 33.634.010 - Purpose

Providing area for recreation ensures that the recreational needs of those who live on the site will be accommodated. Large land divisions - those that will create a minimum of 40 new dwellings-create a neighborhood that is big enough to warrant a recreation area that is accessible to all in the new community. Creating the space for recreation at the time of the land division is the most efficient way to ensure that the space is created. The land division process provides the opportunity to design the recreation area so that it relates to the lot and street pattern of the land division.

The entire site size is 23.5 acres, although approximately 12.53 acres (53% of total site area) is proposed to be set aside in a tract (Tract B) for wetland preservation. The Wetland Preservation Tract will not include pedestrian access in order to protect the area for native wildlife species and safeguard the habitat area from disturbance of trash, off-leash dogs, the dumping of yard debris, and other impacts that lead to the spread of invasive species or degradation of the resource. The applicants have proposed a pedestrian path and viewing station between Lots 36 and 37 to an area that overlooks the

wetland for recreational enjoyment of the neighborhood residents. Because there will be no access within this area it cannot be used to meet the technical recreation area requirement. Therefore, the applicants have requested an Adjustment to base the size of the required recreation area on the area proposed to be subdivided, or 10.94 acres.

The proposed 1.11-acre park is proposed, by the applicants, to meet all of the remaining standards. The proposed Recreation Tract measures approximately 155 feet by 330 feet and has street frontage on three sides. Since the proposed Recreation Tract is approximately 10% of the 10.94 acres being subdivided, it meets the purpose of PCC 33.634.010, while also complying with other City standards including minimum density, circulation and lot dimensions.

Opponents have raised objections to this requested adjustment. (See, for example, Exhibit H.24). It appears, to the Hearings Officer, that opponents raised two objections to the granting of the reduction in size of the recreational area adjustment: (1) granting this adjustment will permit the applicants to create more lots, and (2) the granting of this adjustment will not equally or better meet the purpose section (PCC 33.634.010).

The Hearings Officer finds the opponents first objection (will permit more lots) not to be relevant to this approval criteria. However, the Hearings Officer finds that the second objection (does not meet purpose statement) is relevant and must be addressed in this decision.

The Hearings officer finds that PCC 33.634.010 is the purpose statement for the section to be adjusted and it sets forth a number of aspirational goals. The first goal is to assure that a development proposal will address the recreational needs of those who live on the site. In this case a 1.11 acre park, with recreational equipment, will be provided to the residents of the lots in the subject development. Also, this proposal includes the creation of a Wetland Preservation Tract, with a viewing location. The wetland area provides passive recreation activities for the lots in the development. The Hearings Officer finds that even if the adjustment to reduce the size of the "active" recreational area is granted the purpose section (PCC 33.634.010) is equally or better met, in part, because of the creation of the "passive" recreational amenity of a wetland viewing area.

The Hearings Officer finds that the 1.11 acres Recreation Tract proposed is large enough to accommodate the anticipated recreation activities. The Recreation Tract is 10% of the developable area on the site, in addition to the 12.53 acres that is being set aside for Tract B and the preservation of the wetlands. Subject to mitigation conditions discussed below the Hearings Officer finds that this criterion is met.

Wetlands: The second Adjustment is to waive the requirement for a tract (PCC 33.640) over an existing wetland area (Wetlands B and C described previously in this decision) that has been approved for fill by the DSL. Wetlands to be enhanced will be placed in a 12.53 acre Open Space Tract west of the proposed development and the grading occurring in the tract is also subject to this adjustment request.

In this case, the applicants' Existing Conditions Plan (Exhibit C.12) indicates the presence of three wetlands on the site. Wetland A is the largest of the three wetland features at 6.4 acres and is located on the western portion of the site. Wetland B, measuring 0.82 acres, is located central to the property and Wetland C, measuring 0.86 acres, is located on the east end of the site between the existing house and NE 13th Avenue.

The applicants provided a Compensatory Wetland Mitigation Plan (Exhibit A.2) which has received preliminary approval by DSL and the Army Corps of Engineers. (See discussion

in Exhibits H.13, H.16 and H.25). As part of this plan, Wetlands B and C will be filled and are not proposed to be set aside in a tract, as required by this Code section. Instead, mitigation approved as part of the Compensatory Wetland Mitigation Plan will restore 2.6 acres of historic wetlands and enhance 1.5 acres of existing wetland. This mitigation will be provided on the western end of the site within the proposed 12.53 acre Tract B. Since the applicants were granted permission to fill Wetlands B and C prior to applying for this subdivision, the Hearings Officer finds that it makes sense to allow the wetland to be filled as part of this proposal, denying this adjustment would just delay the project so the applicants could fill in Wetlands B and C prior to applying for this land division and avoid meeting this standard. The Hearings Officer finds that this criterion is 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:

Recreation Area adjustment: The proposal is in a Residential zone. The requested reduction in the percentage of total site area devoted to recreation area will not have a discernable impact on the livability or appearance of the neighborhood. To the contrary, the proposed location and dimension of the Recreation Tract will be surrounded by public street on three sides and have direct access from 20 lots within the land division. The proposed size of the Recreation Tract provides adequate room for residents in the subdivision. In addition, the 12.53 acres being placed into a tract for wetland preservation cannot be developed in the future and it will also be visually accessible (passive recreation) for the residential area. The Hearings Officer finds that based on the amount of residential development proposed, Tract A will provide the necessary percentage of recreation area (1.11 acres) in correlation with the amount of area that is developable (10.94 acres).

Wetland adjustment: The request to allow the applicants to not meet Zoning Code Section 33.640 and fill in Wetlands B and C opposed to placing these wetlands in a tract does impact the appearance of the residential area; there will be less open space. However, the Hearings Officer finds that the applicants are still proposing to protect 11 acres for wetland preservation in Tract B. The Hearings Officer also takes note that the applicants are in the final stages of receipt of permission from the DSL to fill in Wetlands B and C, while improving Wetland A. The Hearings Officer notes that even if the City were to deny this adjustment request, the applicants could do the work proposed independently through DSL and not have to meet the standard of PCC 33.640 in regard to placing Wetlands B and C into tracts. The Hearings Officer finds that the livability and appearance of this residential area will be improved if the applicants are able to do the fill work in the wetlands after gaining preliminary approval for this subdivision, so there is no large gap in timing between filling Wetlands B and C and construction of the subdivision proposed, thus enhancing the livability and appearance of the residential area this site is located in.

The Hearings Officer finds that these adjustments will not significantly detract from the livability or appearance of the land division. This criterion is 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: Two adjustments are requested. The cumulative effects of the adjustments are consistent with the overall purpose of the Residential zone this site is located in. The

Recreation Area adjustment allows the applicants to place a large portion of the site into Tract B to preserve wetland, while still allowing minimum density to be met on the remainder of the site with appropriately sized lot dimensions. The visual access to the Wetland Tract will provide passive recreation. The adjustment to allow Wetlands B and C to be filled, along with the enhancement of Wetland A, will allow the applicants to protect the largest wetland on the site. Granting the wetland adjustment will also allow the applicants to utilize a large portion of the site for residential development. The Hearings Officer finds that granting the adjustment meets the purpose of the R10 zoning designation. Therefore, the Hearings Officer finds that this criterion is met.

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

Findings: There are no City-designated scenic resources or historic resources on or near this site that need to be preserved. Therefore, this criterion is not applicable.

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

Findings: BDS staff expressed concerns that the proposed mitigation relate to the ability of residents in the subdivision to gain a passive connection and appreciation of the Wetland Tract proposed, without allowing residents to enter the actual wetlands since it will be off limits to active recreational activities in order to protect the wetlands within Tract A. Since the Recreation Tract (Tract A) will be based on the size of the developable area on the site, not the site as a whole, the applicants have proposed to allow an additional recreational activity through a passive connection to the Wetland Tract for residents of the subdivision. As mitigation, the applicants have proposed an information and viewing kiosk along the eastern side of the Open Space and Wetland Tract to provide additional passive recreational amenities for the residents (Exhibit C.2).

In order to safeguard the habitat and minimize impacts to the Wetland Tract (including the proposed mitigation area), the Hearings Officer finds that there should be little to no pedestrian interference. Pedestrian intrusion into the wetland disturbs wildlife and impacts vegetation. Wetlands often fall victim to garbage dumping, litter, off-leash dog disturbance, and yard-debris disposal, all of which degrade the resource. Therefore, the proposed wetland viewing station would best protect the resource if it were surrounded by a physical barrier, such as a split-rail fence and educational signage informing visitors of potential impacts from human disturbances. As a condition of approval, the pathway and viewing kiosk between Lots 36 and 37 must be placed in a separate Open Space Tract located at least 15 ft. from the edge of the wetland. The size of Tract B may be reduced accordingly.

In addition, the Hearings Officer finds that the applicants should be required to create a Recreation Tract to serve as an attractive amenity for the residents of this land division. In order to function as a recreation amenity for the residents of the land division, the Hearings Officer finds that the mitigation efforts, in addition to the inclusion of children's play equipment, benches and pathways (Exhibit C.9) must be installed and guaranteed by the developer based on Zoning Code Section 33.634.300.C. As mitigation, the applicants should be required to include improvements to the Recreation Tract, including choosing at least three of following amenities to be constructed within the tract: picnic areas, additional benches, horseshoes, drinking fountain, and sports field or basketball court. Subject to a condition that three of these features are included in the design presented for BDS approval and bonding before final plat, this criterion is met.

The Hearings Officer finds that the Wetland Adjustment mitigation, approved as part of the Compensatory Wetland Mitigation Plan, will be required as part of this mitigation

plan. This mitigation will restore 2.6 acres of historic wetlands and enhance 1.5 acres of existing wetland. This mitigation will be provided on the western end of the site within the proposed 12.53 acre Tract B and must be shown on the Site Development permit required prior to final plat approval.

With the condition that the mitigation requirements discussed above are shown on the applicants' Site development permit at the time of final plat, this criterion can be 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 partially located within an Environmental zone, although the areas affected by the adjustment requests are not within the Environmental zone. The proposed encroachment into the Environmental zone for the stormwater outfall is covered under the Environmental Review findings earlier in this decision. This criterion is met.

APPROVAL CRITERIA FOR ENVIRONMENTAL REVIEW

33.430.250 Approval Criteria

An environmental review application will be approved if the review body finds that the applicant has shown that all of the applicable approval criteria are met. When environmental review is required because a proposal does not meet one or more of the development standards of Section 33.430.140 through .170, then the approval criteria will only be applied to the aspect of the proposal that does not meet the development standard or standards.

Findings: The approval criteria which apply to the proposed new subdivision are found in PCC Section 33.430.250.A. The applicants have provided findings for these approval criteria and BDS Land Use Services staff have revised these findings or added conditions, where necessary, to meet the approval criteria.

On appeal, the appellants argued that the City is out of compliance with Metro Title 13 which would require a more comprehensive review of the site. Previous submissions into the record (Exhibit H.9 and H.13) document the ordinance adopted by City Council in June 2009 complying with Metro Title 13. This ordinance was adopted after this land use application was submitted to the City. BDS staff testified that Title 13 is only applied to specific review types and that the requested land division, environmental review, and adjustments are outside the scope of when Title 13 is applied. City Council found there is not a nexus for applying Metro Title 13 to this proposal.

The proposed subdivision can meet the land division standards within PCC Section 33.430.160 with the exception of the proposed stormwater outfall. The outfall does not meet the following development standards:

- 33.430.160.D – disturbance within the resource area of the environmental conservation zone
- 33.430.160.H – stormwater facilities are not created within 50 feet of an identified wetland or water body

A. Public safety facilities, roads, driveways, walkways, outfalls, utilities, land divisions, Property Line Adjustments, Planned Developments and Planned Unit Developments. Within the resource areas of environmental zones, the applicant's impact evaluation must demonstrate that all of the general criteria in Paragraph A.1 and the applicable specific criteria of Paragraphs A.2, 3, or 4, below, have been met:

1. **General criteria for public safety facilities, roads, driveways, walkways, outfalls, utilities, land divisions, Property Line Adjustments, Planned Developments and Planned Unit Developments;**
 - a. **Proposed development locations, designs, and construction methods have the least significant detrimental impact to identified resources and functional values of other practicable and significantly different alternatives including alternatives outside the resource area of the environmental zone;**
 - b. **There will be no significant detrimental impact on resources and functional values in areas designated to be left undisturbed;**
3. **Roads, driveways, walkways, outfalls, and utilities;**
 - a. **The location, design, and construction method of any outfall or utility proposed within the resource area of an environmental protection zone has the least significant detrimental impact to the identified resources and functional values of other practicable alternatives including alternatives outside the resource area of the environmental protection zone;**
 - b. **There will be no significant detrimental impact on water bodies for the migration, rearing, feeding, or spawning of fish; and**
 - c. **Water bodies are crossed only when there are no practicable alternatives with fewer significant detrimental impacts.**
4. **Land divisions, Property Line Adjustments, Planned Developments and Planned Unit Developments:**
 - a. **Proposed uses and development must be outside the resource area of the Environmental Protection zone except as provided under Paragraph A.3 above. Other resource areas of Environmental Protection zones must be in environmental resource tracts;**
 - b. **There are no practicable arrangements for the proposed lots, tracts, roads, or parcels within the same site, that would allow for the provision of significantly more of the building sites, vehicular access, utility service areas, and other development on lands outside resource areas of a conservation zone; and**
 - c. **Development, including building sites, vehicular access and utilities, within the resource area of a conservation zone must have the least amount of detrimental impact on identified resources and functional values as is practicable. Significantly different but practicable development alternatives, including alternative housing types or a reduction in the number of proposed or required units or lots, may be required if the alternative will have less impact on the identified resources and functional values than the proposed development.**

Findings: These criteria require the applicants to demonstrate that alternatives were considered during the design process, that there are no practicable alternatives that would be less detrimental to the identified resources and functional values, and requires the protection of resources outside of the proposed disturbance area from impacts related to the proposal, such as damage to vegetation, erosion of soils off the site, and downstream impacts to water quality and fish habitat from increased stormwater runoff and erosion off the site. (See Portland Zoning Code Section 33.910 for definitions of the term *significant detrimental impact*).

The project site is mapped as part of the *Columbia Corridor Industrial/Environmental Mapping Project* as Site #44. The site is also within the boundaries of the East Columbia Neighborhood Natural Resources Management Plan (East Columbia NRMP). Natural resources and functional values identified by the City of Portland for Resource Site 44 are drainage functions including fish habitat, drainage, flood storage, de-synchronization, erosion control, sediment trapping, and pollution and nutrient retention and removal.

The Wildlife Habitat Assessment (WHA) score for Resource Site 44 is 42 (highest in Columbia Corridor is 106). The site contains wetlands and drainageways with some riparian species although the Resource Site is heavily overgrown with non-native species. The Multnomah County Drainage District (MCDD) currently uses the north side of the drainageway as access for channel maintenance and so no woody riparian vegetation is present within the Conservation zone.

On appeal, the appellants argued that the City erred by not considering more recent natural resource inventories. BDS staff testified that the regulations found in Chapter 33.430, Environmental Zones, only applies to areas mapped with a “c” or “p” on the Official Zoning Maps. Staff also testified that the additional inventories referenced by the appellant have not been adopted by City Council at this time. Therefore, despite their more complete assessment of the area, they may not be considered under these approval criteria. Council agreed with staff that only adopted inventories and codes could legally be applied to this proposal.

Of the natural resources and functional values identified by the City for Resource Site 44, few are present or functioning at a high level on the applicants' property. Many of the drainageway functions are present within the water course with drainage, flood storage, de-synchronization, erosion control, sediment trapping, and pollution and nutrient retention and removal present to varying degrees. The drainageway is narrow and shallow and has little emergent or riparian vegetation. Lawns and gardens are common right to the edge of the water on the south bank. The north bank is dominated by a host of non-native and aggressive Eurasian pasture species—as is typical where MCDD routinely conducts channel maintenance.

The general quality of wildlife habitat in and near the proposed disturbance area on the site is very low. There are no trees within the Resource Area. The site is dominated by invasive non-native species, plant diversity is low, and structural habitat elements are lacking. The Conservation zone consists of open water and pasture grass. The non-native trees to the north that form a hedge are either within the Transition Area or outside of the Conservation zone.

Location and Design: The applicants provided a detailed alternatives analysis and a Compensatory Wetland Mitigation Plan that can be found in the application case file in Exhibit A.1.

On-site infiltration of stormwater was determined not feasible for this site due to the shallow water table. Working through the hierarchy in the Stormwater Management Manual, the site is eligible to meet Category 3, off-site discharge to the MCDD drainage channel at the southern boundary of the property. The applicants have examined three alternatives for citing and constructing the outfall necessary to serve the new streets and lots (Exhibit A.1):

- Alternative 1 reviewed use of multiple release points to the drainage channel. This would allow greater flexibility in the design of the storm system, including more conservative pipe slopes and less overall piping. However, multiple outfall locations increase the potential for erosion and channel degradation.
- Alternative 2 reviewed alternative locations for a single outfall. The proposed location was chosen as it is a convenient direct connection to the channel from the on-site stormwater collection system. Since the canal has similar conditions along the length of the south boundary of the proposed subdivision, the most significant environmental consideration in determining the location of the proposed outfall was to

- reduce the amount of necessary excavation and embankment. The proposed location is central to the site to accommodate minimal fill at the far ends of the storm system.
- The entirety of the drainage channel adjacent to the site is within the Environmental Conservation zone, therefore *it is not possible* to have an outfall outside of the Environmental zone.

Construction Methods:

The proposed stormwater outfall will be constructed along with the wetland benching project approved through LU 07-143290 EN. Construction activities will take place on the landward side of the drainage way and all earth work is anticipated to take place during dry weather conditions. All equipment staging, stockpiling and storage will take place outside of the Environmental Overlay zone. Construction will also be coordinated with MCDD to ensure low water levels in the existing channel so as to avoid water sedimentation and erosion potential. New channel excavation will be completed and stabilized to the extent practical before making the connection to the receiving canal.

With conditions ensuring that permit plans are substantially in conformance with the construction management plan C.10 and the approval in LU 07-143290 EN (attached as Exhibit C.13), these criteria are met.

A.1.c. The mitigation plan demonstrates that all significant detrimental impacts on resources and functional values will be compensated for;

A.1.d. Mitigation will occur within the same watershed as the proposed use or development and within the Portland city limits except when the purpose of the mitigation could be better provided elsewhere; and

A.1.e. The applicant owns the mitigation site; possesses a legal instrument that is approved by the City (such as an easement or deed restriction) sufficient to carry out and ensure the success of the mitigation program; or can demonstrate legal authority to acquire property through eminent domain.

Findings: These criteria require the applicants to assess unavoidable impacts and propose mitigation that is proportional to the impacts, as well as sufficient in character and quantity to replace all lost resource functions and values.

The proposal will result in roughly 215 square feet of permanent impact from the outfall dissipater pad in the resource area of the Environmental Conservation zone. Temporary impact of 440 square feet is necessary for construction of the outfall.

The greatest impacts from the proposal will be the temporary loss of groundcover and the potential for increases in peak runoffs directed to the offsite drainage. Clearing of vegetation and exposing bare soils can cause erosion that degrades water quality. Increased peak flows increase erosion, bank undercutting, sediment transport, and flooding. However, the possibility of these impacts is mitigated by coordinating the outfall construction with the wetland benching project along the north channel bank. Permanent impacts are minimized by the use of rip-rap rock sections, energy dissipating check dams, permanent live staking, and geometric channel design.

A wetland benching project was approved through LU 07-143290 EN for the entire length of the MCDD drainage channel. This project consists of pulling back the north bank of the drainage way to form a wetland bench. The bench will be re-vegetated with extensive emergent wetland plantings. Completion of the wetland creation project will take place in concert with development of the proposed subdivision, including the proposed stormwater

outfall. For this reason, it was determined that no additional mitigation was necessary for the minimal amount of disturbance associated with the outfall construction.

Monitoring and Maintenance:

The Zoning Code requires that shrubs and trees to be planted will survive until maturity. Monitoring and maintenance of the plantings for a period of five years will ensure survival during the most critical period of establishment of new plantings. One hundred percent of the planted trees must survive the five-year monitoring period, or be replaced. Maintaining shrub and groundcover survival so that 80 percent of the planted areas are covered by native vegetation will ensure a healthy understory is established. Documentation of these monitoring and maintenance practices should be included in an annual monitoring report for a period of five years to demonstrate success of the mitigation plan. These monitoring requirements were conditioned as part of LU 07-143290 EN and remain in effect.

The applicants own the mitigation site currently. A Homeowners' Association or the owners of each lot will ultimately own in common the wetland tract and be responsible for mitigation plantings. Therefore, with a condition of approval that the Site Development permit for construction of the stormwater outfall also include the wetland benching approved under LU 07-143290 EN and attached at Exhibit C.13, these criteria can be met.

DEVELOPMENT STANDARDS

General Information about Development Standards and Approval Criteria. The Zoning Code contains two types of regulations: Development standards and Approval criteria.

Approval criteria, such as those listed earlier in this decision, are administered through a land use review process. Approval criteria are regulations where the decision-maker must exercise discretion to determine if the regulation is met. Public notice is provided and public comments received that address the approval criteria are addressed in the decision.

Development Standards: Development standards are clear and objective regulations (for example: building setbacks; number of required parking spaces; and maximum floor area). Compliance with development standards is reviewed as part of the administrative permitting process and are not considered to be discretionary reviews. Development standards that are not relevant to the land division review, have not been addressed in the review, but will have to be met at the time that each of the proposed lots is developed.

Standards that apply to the land division. In this case, there are several Zoning Code standards that apply to the proposed land division. The standards of PCC Section 33.430.160 Standards for Land Divisions and Planned Developments apply to the proposal. If the proposal is approved, conditions should be included for requirements that apply at the time of final plat and at the time of development.

- Resource areas outside designated disturbance areas must be placed entirely within Environmental Resource Tracts. The tracts must be owned in common by all of the owners of the land division site, by a Homeowners' Association, by a public agency, or by a non-profit organization (PCC 33.430.160.E).
- All vegetation planted in a resource area is native and listed on the Portland Plant List. Plants listed on the Portland Nuisance Plant List or Prohibited Plant List are prohibited (PCC 33.430.140.L)

- The minimum front, street, or garage setbacks of the base zone may be reduced to any distance between the base zone minimum and zero (PCC 33.430.140.M).
- Fences are allowed only within the disturbance area (lots) (PCC 33.430.140.O).
- Exterior lights must be spaced at least 25 feet apart in the resource area. Incandescent lights exceeding 200 watts (or other light types exceeding the brightness of a 200-watt incandescent light) must be placed so they do not shine directly into resource areas (PCC 33.430.140.Q).

OTHER TECHNICAL REQUIREMENTS

Technical decisions have been made as part of this review process. These decisions have been made based on other City Titles, adopted technical manuals, and the technical expertise of appropriate service agencies. These related technical decisions are not considered land use actions. If future technical decisions result in changes that bring the project out of conformance with this land use decision, a new land use review may be required. The following is a summary of technical service standards applicable to this preliminary partition proposal.

Bureau	Code Authority	Topic	Contact Information
Water Works	Title 21	Water availability	503-823-7404 http://www.water.ci.portland.or.us/
Environmental Services	Title 17; 2002 Stormwater Manual	Sewer availability Stormwater Management	503-823-7740 http://www.bes.ci.portland.or.us/
Fire Bureau	Title 31 Policy B-1	Emergency Access	503-823-3700 http://www.fire.ci.portland.or.us/
Transportation	Title 17, Transportation System Plan	Design of public street	503-823-5185 http://www.trans.ci.portland.or.us/
Development Services	Titles 24 -27, Admin Rules for Private Rights of Way	Building Code, Erosion Control, Flood plain, Site Development & Private Streets	503-823-7300 http://www.bds.ci.portland.or.us.

As authorized in PCC Section 33.800.070 of the Zoning Code conditions of approval related to these technical standards have been included in the Administrative Decision on this proposal.

- The applicants must meet the requirements of the Fire Bureau in regards to fire hydrant spacing. Fire hydrant systems shall comply with the Fire Code. Where a portion of the facility or building hereafter constructed or moved into that is Group R-3 or Group U within the jurisdiction is more than 600 feet from a hydrant on a fire apparatus access road, as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains shall be provided where required by the Fire Marshal. Where a fire hydrant is located on a fire apparatus access road, the minimum road width shall be 26 feet. No parking will be allowed adjacent to fire hydrants for a distance of 10 feet in either direction of the fire hydrant. These requirements are based on the technical standards of Title 31 and Fire Bureau Policy B-1.

- The applicants must meet the requirements of Urban Forestry for street tree planting in the planter strips proposed. This requirement is based on the standards of Title 20.

V. CONCLUSIONS

The applicants proposed a 49-lot subdivision as shown on the Preliminary Plan (Exhibit C.1). Appellants of the application expressed concerns regarding a procedural error, flood hazards, erosion control requirements, construction traffic impacts, loss of tree canopy and the affects on stormwater management, applicable environmental criteria, and regional compliance.

This case involved many technical approval criteria. For example, in this case, applicants provided detailed stormwater and engineering reports. Appellants countered the applicants' technical conclusions by requesting review by additional independent bodies. The Council found the technical reports submitted by applicants' consultants to be credible and the review of these documents by City staff to be sufficient.

Appellants argued that various Code sections not addressed in the BDS staff report should have been considered in this decision. (Exhibit H.24 and I.1). Council found that Portland City Code 24.50.060, PCC 10.30.030 B.3, and Metro Title 13 are not relevant approval criteria in this case.

City Council concluded that the relevant standards and approval criteria have been met, or can be met with conditions. City Council concluded that with conditions of approval that address these requirements this proposal can be approved.

VI. DECISION

It is the decision of Council to deny the appeal by East Columbia Neighborhood Association and uphold the approval of the Hearings Officer for:

Approval of Environmental Review for a stormwater outfall associated with the proposed 49-lot subdivision.

Approval of an Adjustment to reduce the size of the required recreation area (PCC 33.634) so that it is 10 percent of the area proposed for development rather than 10 percent of the total site.

Approval of an Adjustment to waive the requirement for a tract (PCC 33.640) over an existing wetland area (Wetlands B and C described above) that has been approved for fill by DSL and to allow grading in Tract B to accommodate the grading activities associated with the wetland enhancement.

Approval of a Preliminary Plan for a 49-lot subdivision, that will result in 49 standard lots, new public streets, a common Recreation Tract and Wetland Protection Reserve as illustrated with Exhibit C.1, subject to the following conditions:

A. Supplemental Plan. Three copies of an additional supplemental plan shall be submitted with the final plat survey. That plan must portray how the conditions of approval listed below are met. In addition, the supplemental plan must show the surveyed location of the following:

- Any buildings or accessory structures on the site at the time of the final plat application;

- Any driveways and off-street vehicle parking areas on the site at the time of the final plat application;
- The proposed general location of drainage reserve on Lots 4-9, along with future building footprints and stormwater facilities for each of the vacant lots.
- Any other information specifically noted in the conditions listed below.

B. The final plat must show the following:

1. The applicants shall meet the street dedication requirements of the City Engineer for NE 13th Ave. along with the new public streets within the site. The required right-of-way dedication must be shown on the final plat, along with any additional dedication needed to accommodate stormwater management facilities in NE 13th Ave.
2. Tract A shall be noted on the plat as "Tract A: (Common Recreation Area). A note must also be provided on the plat indicating that the tract will commonly owned and maintained by the owners of Lots 1 through 49.
3. Tract B shall be noted on the plat as "Tract B: (Wetland Protection Reserve). A note must also be provided on the plat indicating that the tract will commonly owned and maintained by the owners of Lots 1 through 49.
4. Tract C shall be noted on the plat as "Tract C: (Stormwater Management Tract). A note must also be provided on the plat indicating that the tract will commonly owned and maintained by the owners of Lots 1 through 49.
5. Tract D shall be noted on the plat as "Tract D: (Common Open Space). A note must also be provided on the plat indicating that the tract will commonly owned and maintained by the owners of Lots 1 through 49 or by any other individual or group allowed under Code section 33.636.100.A.
6. The pathway and viewing kiosk between Lots 36 and 37 must be placed in a separate Open Space Tract located at least 15 ft. from the edge of the wetland. The size of Tract B may be reduced accordingly.
7. A recording block for each of the legal documents such as Maintenance Agreement(s), acknowledgement of special land use conditions, or Declarations of Covenants, Conditions, and Restrictions (CC&Rs) as required by Condition C.8 below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: "A Declaration of Maintenance Agreement for (name of feature) has been recorded as document no. _____, Multnomah County Deed Records."
8. Prior to final plat approval, the 10' public easement over the drainageway at the north property line near NE 13th Ave. must be removed, and the applicants must submit a revised plan showing: the location of the drainageway at the northeastern portion of the property, the required drainage reserve, and conceptual building footprints located outside the drainage reserve.
9. Prior to final plat approval, based on the standards of Zoning Code Section 33.639.100 (Solar access), the following changes must occur:
 - Lot 2 should be wider than Lots 1 and 3.
 - Lot 9 should be narrower than Lots 5-8.
 - Lot 45 should be wider than Lots 44 and 46.
 - Lot 48 should be wider than Lots 47 and 49.

C. The following must occur prior to Final Plat approval:**Streets**

1. The applicants shall meet the requirements of the City Engineer for right-of-way improvements along the frontage of NE 13th Ave. and the new public streets that will access the site as shown in Exhibit C-1. The applicants shall provide plans and financial assurances to the satisfaction of the Bureau of Transportation Engineering and Development Review, and the Bureau of Environmental Services for required street frontage improvements.
2. The applicants shall submit an application and have finalized a Site Development Permit for mass grading and utility construction for the new public street and related site development improvements. Street design plans must be prepared by, or under the direction of, an Oregon licensed civil engineer. The Site development permit should also include:
 - Mitigation approved as part of the Compensatory Wetland Mitigation Plan will restore 2.6 acres of historic wetlands and enhance 1.5 acres of existing wetland. This mitigation will be provided on the western end of the site within the proposed 12.53 acre Tract B
 - Construction of the stormwater outfall, which must also include the wetland benching approved under LU 07-143290 EN
 - Written proof of Completion of the Compensatory Wetland Mitigation Plan from DSL and receipt of the final Conditional Letter of Map Revision (CLOMR) application through FEMA must be submitted and approved by BDS prior to final plat approval
 - All grading work must be completed consistent with the Compensatory Wetland Mitigation Plan and CLOMR prior to final plat approval.
 - A continuous channel at a maximum elevation of 5' (NAVD 1988) is to be located in Tract B between the north and south wetlands to allow free passage of flood waters. If a channel cannot be delineated at existing grades, a channel may need to be graded in place. The construction limits should be modified as needed to accommodate grading for the channel.
 - Final approval of decommissioning permits for the existing on-site sewage disposal systems and any drywells shall be required prior to final plat approval, or final approval of demolition permits (or permits to move the structures) for removal of the existing structures that include all required decommissioning shall be required prior to final plat approval.
 - Demonstrate compliance with all applicable erosion control requirements.
3. The applicants shall provide a Clearing and Grading Plan with the Site Development permit required for the mass grading described in Condition C-2. The Clearing and Grading Plan must substantially conform to the Preliminary Clearing and Grading Plan approved with this decision (Exhibits C.5 and C.6) including grading within Tract B and on Lots 16, 17, 44 and 45 where protected trees are located.

Utilities

4. The applicants shall meet the requirements of the Bureau of Environmental Services (BES) for sanitary and stormwater improvement into the new public right-of-way. The public sewer extension requires a Public Works Permit, which must be initiated prior to final plat approval. In addition, the applicants must provide engineered designs,

and performance guarantees for the sewer extension to BES prior to final plat approval.

5. Final approval of decommissioning permits for the existing on-site sewage disposal systems and any drywells shall be required prior to final plat approval, or final approval of demolition permits (or permits to move the structures) for removal of the existing structures that include all required decommissioning inspections shall be required prior to final plat approval.
6. The applicants shall meet the requirements of the Water Bureau for providing plans and financial assurances for the water main extension into the new public rights-of-way.
7. The applicants shall meet the requirements of the Fire Bureau. Fire hydrant systems shall comply with the Fire Code. Where a portion of the facility or building hereafter constructed or moved into that is Group R-3 or Group U within the jurisdiction is more than 600 feet from a hydrant on a fire apparatus access road, as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains shall be provided where required by the Fire Marshal.

Required Legal Documents

8. The applicants shall execute a Maintenance Agreements for Tracts A, B and C, D and the Open Space Tract required for the viewing kiosk, as described in Conditions B.2-B.6 above. The agreement shall assign common, undivided ownership of the tracts to the owners of Lots 1-49 (or owners allowed under Code Section 33.636.100 A.) and include provisions assigning maintenance responsibilities for the tract and any shared facilities within that area. The Maintenance Agreement must be reviewed by the City Attorney and the Bureau of Development Services, and approved as to form, prior to final plat approval.
9. The applicants shall submit a Performance Guarantee and construction timing agreement specifying the installation schedule of improvements, as approved by the Bureau of Development Services, for 125 percent of the estimated construction cost for the recreational tract and viewing Kiosk and associated improvements in conformance with exhibit C.9, meeting the requirements of PCC Section 33.700.050. The Performance Guarantee must be accompanied by a contract approved by the City Attorney.
10. Prior to final plat approval, the applicants will be required to apply for a zoning permit for installation and construction of mitigation approved as part of the Adjustment Reviews including viewing kiosk along the eastern side of the Wetland Tract. The viewing station must be surrounded by a physical barrier, such as a split-rail fence and educational signage informing visitors of potential impacts from human disturbances and recreational amenities within Tract A in substantial conformance with Exhibit C.9, including at least two benches, three types of playground amenities within the pay equipment area and at least three types of additional amenities required for mitigation described in the adjustment review. The zoning permit must be final prior to the final of permits for residential development as specified in Condition D.3 below.

D. The following conditions are applicable to site preparation and the development of individual lots:

1. Development on Lots 16, 17, 44 and 45 shall be in conformance with the Tree Preservation Plan (Exhibits C.7 and C.8) and the applicants' arborist report (Exhibit A.2). Specifically, trees numbered 549, 583, 584 and 585 located on Lots 16 and 45 (with RPZ's that encroach onto adjacent Lots 17 and 44) are required to be preserved, with the root protection zones indicated on Exhibit C.8. Encroachment into the specified root protection zones may only occur under the supervision of a certified arborist. Planning and Zoning approval of development in the root protection zones is subject to receipt of a report from an arborist, explaining that the arborist has approved of the specified methods of construction, and that the activities will be performed under his supervision. The report from an arborist and any revisions to permit plans reflecting new root protection zones must be submitted and approved by Planning and Zoning prior to any working occurring in the root protection zone. If work is conducted in the RPZ and Planning & Zoning approval is not obtained before the work begins and the tree subsequently falls, it may result in a violation.
2. The minimum rear building setback for Lots 4-9 shall be 15 feet to assure that adequate space is available to accommodate a drainage reserve that can comply with the requirements of the Stormwater Management Manual.
3. Development on lots and tracts shall be in conformance with the following:
 - a. Recreation area improvements and viewing kiosk must be installed prior to final inspection of any dwelling units in the subdivision. The zoning permit applied for in association with these improvements must be final.
 - b. All vegetation planted in a resource area is native and listed on the Portland Plant List. Plants listed on the Portland Nuisance Plant List or Prohibited Plant List are prohibited.
 - c. The minimum front, street, or garage setbacks of the base zone may be reduced to any distance between the base zone minimum and zero.
 - d. Fences are allowed only within lots (not within Tract B: Wetland Protection Reserve).
 - e. Exterior lights must be spaced at least 25 feet apart. Incandescent lights exceeding 200 watts (or other light types exceeding the brightness of a 200-watt incandescent light) must be placed so they do not shine directly into resource areas. This condition applies to lots that abut any environmental zoning on the site.
4. At the time of building permit review for the affected lots, a Notice of Condition must be recorded against the property deeds identifying the presence of a drainage reserve per Appendix A.3 of the *Stormwater Management Manual*.

VII. APPEAL INFORMATION

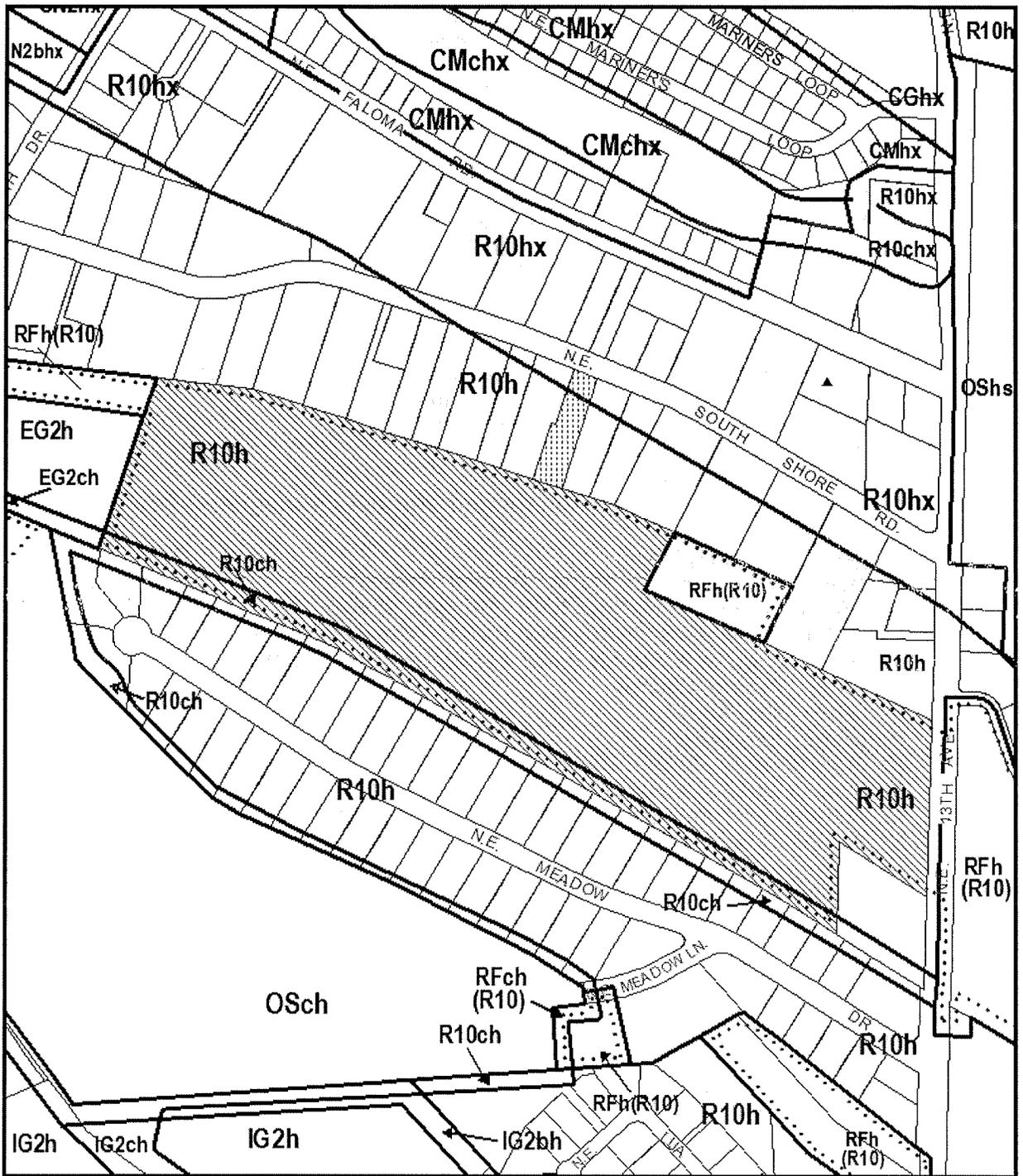
Appeals to the Land Use Board of Appeals (LUBA)

This is the City's final decision on this matter. It may be appealed to the Oregon Land Use Board of Appeals (LUBA), within 21 days of the date of the decision, as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that a petitioner at LUBA must have submitted written testimony during the comment period or this land use review. You may call LUBA at 1 (503) 373-1265 for further information on filing an appeal.

EXHIBITS
NOT ATTACHED UNLESS INDICATED

- A. Applicants' Statement
 - 1. Original Narrative
 - 2. Revised Narrative, received August 10, 2009
 - 3. Memo in Response to Incomplete Letter, received August 10, 2009
 - 4. Extension of the 120-day Timeline, received August 18, 2009
 - 5. Request to Reschedule Hearing & Extension of the 120-day Clock, received Oct. 10, 2009
 - 6. Datum Correction Memo, received October 26, 2009
- B. Zoning Map **(attached)**
- C. Plans & Drawings
 - 1. Site Plan **(attached)**
 - 2. Proposed Improvement Plan
 - 3. Stormwater Management Plan
 - 4. Sanitary Sewer and Water Service Plan
 - 5. Grading Plan for western half of site
 - 6. Grading Plan for eastern half of site
 - 7. Tree Preservation Map, split into western and eastern half's of site **(2 pages) (attached)**
 - 8. Tree Preservation Table documenting protected trees **(2 pages) (attached)**
 - 9. Planting Plan **(attached)**
 - 10. Construction Plan **(attached)**
 - 11. Topographic survey (3 pages)
 - 12. Existing conditions (2 pages)
 - 13. Environmental Review information
- D. Notification information
 - 1. Request for response
 - 2. Posting letter sent to applicant
 - 3. Notice to be posted
 - 4. Applicant's statement certifying posting
 - 5. Mailing list
 - 6. Mailed notice
- E. Agency Responses
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of Bureau of Development Services
 - 6. Bureau of Parks, Forestry Division
 - 7. Life Safety Review Section of Bureau of Development Services
 - 8. DSL Wetlands Program
 - 9. Peninsula Drainage District No. 2 (via Multnomah County Drainage District)
 - 10. Addendum to Bureau of Environmental Services Response, dated November 6, 2009
- F. Letters: No received
- G. Other
 - 1. Original LUR Application
 - 2. Site History Research
 - 3. Pre-Application Conference Notes for 08-166488 EA
 - 4. Incomplete Letter Sent, June 30, 2009
- H. Received in the Hearings Office

1. Request to reschedule - Whiteside, Rachel
 2. Hearing notice - Whiteside, Rachel
 3. Staff report (received 11/13/09) - Whiteside, Rachel
 4. Staff report (received 11/23/09) - Poelwijk, Yvonne
 5. Powerpoint - Burgett, Shawn
 6. Memo dated 11/23/09 - Burgett, Shawn
 7. Report from Helm to Burgett dated 11/20/09 - Burgett, Shawn
 8. Copies of Certificates from BES to Applicants (5 pages) - Doukas, Mimi
 9. Letter dated 11/23/09 to Hearings Officer w/attachments - Clifford, Gary
 - 9a. Metro printout (6 pgs) - Clifford, Gary
 - 9b. Metro Title 13 printout (1 pg) - Clifford, Gary
 - 9c. Copy of un-titled Ordinance (2 pgs) - Clifford, Gary
 - 9d. 'Ordinance No. 05-1077C - Exhibit A' (5 pgs) - Clifford, Gary
 - 9e. 'Exhibit F - A Summary of How Portland's Existing Environmental Overlay Zones - Clifford, Gary
 - 9f. 'Exhibit G', 'Metro Title 13' (2 pgs) - Clifford, Gary
 - 9g. Letter to Mayor Sam Adams from Michael Jordan at Metro - Clifford, Gary
 - 9h. Portland Maps Permit Case Report - Clifford, Gary
 - 9i. Portland Maps Permit Case Report - Clifford, Gary
 10. Letter - Humble, Cathy
 11. Letter w/attachment - Kerr, Barbara
 - 11a. 'East Columbia Neighborhood Natural Resources Management Plan' - Kerr, Barbara
 12. Letter - Luzader, Brian
 13. Memo to HO dated 11/30/09 - Burgett, Shawn
 14. Additional PowerPoint from BDS - Burgett, Shawn
 15. Documents labeled "Photos from ECNA" - Burgett, Shawn
 16. Letter (3 pgs) to Whiteside dated 11/30/09 - Doukas, Mimi
 17. Letter - Poletto, Claudia
 18. Letter - Orr, Alan F.
 19. Letter - Orr, Lauri
 20. Copy of email - Xavier, Marie
 21. Copy of email - Person, Ronald & Kathleen
 22. Testimony w/attached photos & Portland Map - Kincaid, Maryhelen
 23. Testimony from Kincaid (2 pgs) - Kincaid, Maryhelen
 24. Written testimony - Kincaid, Maryhelen
 25. Applicants' response to December 9, 2009 - Doukas, Mimi
- I. Appeal
1. Appeal Submittal
 2. Appeal Fee Waiver
 3. Appealed Decision
 4. Notice of Appeal
 5. NOA Mailing list
 6. Extension of the 120-day Timeline, dated 1/21/10
 7. Council Packet Memo
 8. East Columbia Neighborhood Association emailed testimony, received 2/15/10
 9. Staff Powerpoint, received 2/18/10
 10. Written testimony from Mimi Doukas, applicant's representative, received 2/18/10

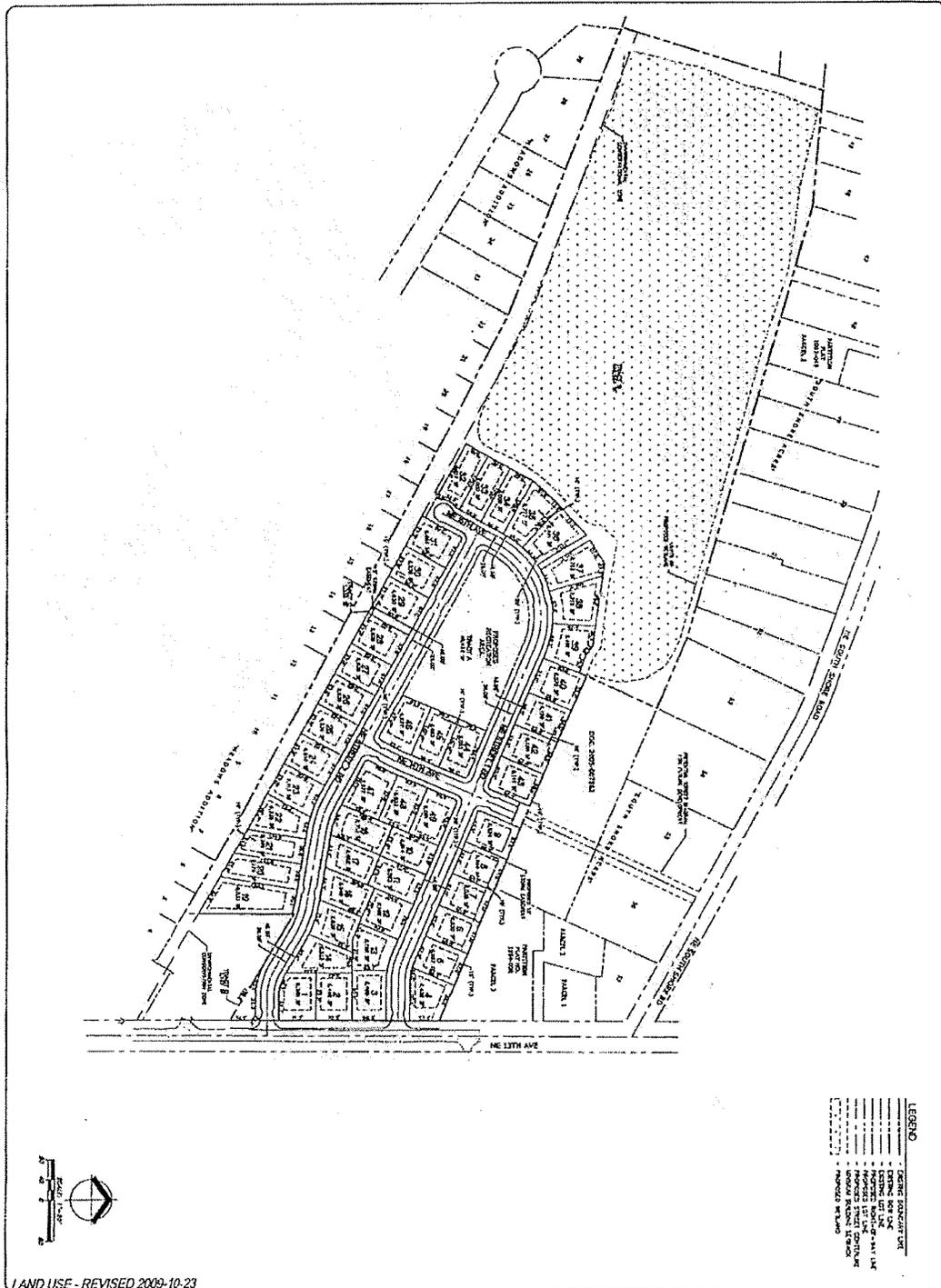


ZONING

- Site
- Also Owned



File No.	LU 09-134484 LDS,EN,AD
1/4 Section	2031
Scale	1 inch = 300 feet
State_Id	1N1E02C 200
Exhibit	B (Jun 10,2009)



LAND USE - REVISED 2009-10-23

PRELIMINARY
PLAT PLAN
P1.0

DATE	2009-10-23
BY	W. BRANDWEIN
FOR	HOWARD BRANDWEIN DEVELOPMENT
PROJECT	BRANDWEIN MEADOWS
SCALE	AS SHOWN
DATE	2009-10-23
BY	W. BRANDWEIN
FOR	HOWARD BRANDWEIN DEVELOPMENT
PROJECT	BRANDWEIN MEADOWS
SCALE	AS SHOWN

PRELIMINARY PLAT PLAN
BRANDWEIN MEADOWS
 A HOWARD BRANDWEIN DEVELOPMENT
 PORTLAND, OREGON

Cardno
WRG

PORTLAND
 4000 SW 10TH AVENUE, SUITE 100
 PORTLAND, OREGON 97205
 PHONE: 503.251.1000 FAX: 503.251.1001
 WWW.CARDNOWRG.COM

CASE NO. 09-134484 LDS EN AD
 EXHIBIT C.1

Tree ID	Species	DBH (in)	Height (ft)	Health	Notes	Tree ID	Species	DBH (in)	Height (ft)	Health	Notes	Tree ID	Species	DBH (in)	Height (ft)	Health	Notes
1	W	12	15	1		101	W	18	25	2		201	W	24	35	3	
2	W	14	18	1		102	W	20	30	2		202	W	26	40	3	
3	W	16	20	1		103	W	22	35	2		203	W	28	45	3	
4	W	18	22	1		104	W	24	40	2		204	W	30	50	3	
5	W	20	25	1		105	W	26	45	2		205	W	32	55	3	
6	W	22	28	1		106	W	28	50	2		206	W	34	60	3	
7	W	24	30	1		107	W	30	55	2		207	W	36	65	3	
8	W	26	32	1		108	W	32	60	2		208	W	38	70	3	
9	W	28	35	1		109	W	34	65	2		209	W	40	75	3	
10	W	30	38	1		110	W	36	70	2		210	W	42	80	3	
11	W	32	40	1		111	W	38	75	2		211	W	44	85	3	
12	W	34	42	1		112	W	40	80	2		212	W	46	90	3	
13	W	36	45	1		113	W	42	85	2		213	W	48	95	3	
14	W	38	48	1		114	W	44	90	2		214	W	50	100	3	
15	W	40	50	1		115	W	46	95	2		215	W	52	105	3	
16	W	42	52	1		116	W	48	100	2		216	W	54	110	3	
17	W	44	55	1		117	W	50	105	2		217	W	56	115	3	
18	W	46	58	1		118	W	52	110	2		218	W	58	120	3	
19	W	48	60	1		119	W	54	115	2		219	W	60	125	3	
20	W	50	62	1		120	W	56	120	2		220	W	62	130	3	
21	W	52	65	1		121	W	58	125	2		221	W	64	135	3	
22	W	54	68	1		122	W	60	130	2		222	W	66	140	3	
23	W	56	70	1		123	W	62	135	2		223	W	68	145	3	
24	W	58	72	1		124	W	64	140	2		224	W	70	150	3	
25	W	60	75	1		125	W	66	145	2		225	W	72	155	3	
26	W	62	78	1		126	W	68	150	2		226	W	74	160	3	
27	W	64	80	1		127	W	70	155	2		227	W	76	165	3	
28	W	66	82	1		128	W	72	160	2		228	W	78	170	3	
29	W	68	85	1		129	W	74	165	2		229	W	80	175	3	
30	W	70	88	1		130	W	76	170	2		230	W	82	180	3	
31	W	72	90	1		131	W	78	175	2		231	W	84	185	3	
32	W	74	92	1		132	W	80	180	2		232	W	86	190	3	
33	W	76	95	1		133	W	82	185	2		233	W	88	195	3	
34	W	78	98	1		134	W	84	190	2		234	W	90	200	3	
35	W	80	100	1		135	W	86	195	2		235	W	92	205	3	
36	W	82	102	1		136	W	88	200	2		236	W	94	210	3	
37	W	84	105	1		137	W	90	205	2		237	W	96	215	3	
38	W	86	108	1		138	W	92	210	2		238	W	98	220	3	
39	W	88	110	1		139	W	94	215	2		239	W	100	225	3	
40	W	90	112	1		140	W	96	220	2		240	W	102	230	3	
41	W	92	115	1		141	W	98	225	2		241	W	104	235	3	
42	W	94	118	1		142	W	100	230	2		242	W	106	240	3	
43	W	96	120	1		143	W	102	235	2		243	W	108	245	3	
44	W	98	122	1		144	W	104	240	2		244	W	110	250	3	
45	W	100	125	1		145	W	106	245	2		245	W	112	255	3	
46	W	102	128	1		146	W	108	250	2		246	W	114	260	3	
47	W	104	130	1		147	W	110	255	2		247	W	116	265	3	
48	W	106	132	1		148	W	112	260	2		248	W	118	270	3	
49	W	108	135	1		149	W	114	265	2		249	W	120	275	3	
50	W	110	138	1		150	W	116	270	2		250	W	122	280	3	
51	W	112	140	1		151	W	118	275	2		251	W	124	285	3	
52	W	114	142	1		152	W	120	280	2		252	W	126	290	3	
53	W	116	145	1		153	W	122	285	2		253	W	128	295	3	
54	W	118	148	1		154	W	124	290	2		254	W	130	300	3	
55	W	120	150	1		155	W	126	295	2		255	W	132	305	3	
56	W	122	152	1		156	W	128	300	2		256	W	134	310	3	
57	W	124	155	1		157	W	130	305	2		257	W	136	315	3	
58	W	126	158	1		158	W	132	310	2		258	W	138	320	3	
59	W	128	160	1		159	W	134	315	2		259	W	140	325	3	
60	W	130	162	1		160	W	136	320	2		260	W	142	330	3	
61	W	132	165	1		161	W	138	325	2		261	W	144	335	3	
62	W	134	168	1		162	W	140	330	2		262	W	146	340	3	
63	W	136	170	1		163	W	142	335	2		263	W	148	345	3	
64	W	138	172	1		164	W	144	340	2		264	W	150	350	3	
65	W	140	175	1		165	W	146	345	2		265	W	152	355	3	
66	W	142	178	1		166	W	148	350	2		266	W	154	360	3	
67	W	144	180	1		167	W	150	355	2		267	W	156	365	3	
68	W	146	182	1		168	W	152	360	2		268	W	158	370	3	
69	W	148	185	1		169	W	154	365	2		269	W	160	375	3	
70	W	150	188	1		170	W	156	370	2		270	W	162	380	3	
71	W	152	190	1		171	W	158	375	2		271	W	164	385	3	
72	W	154	192	1		172	W	160	380	2		272	W	166	390	3	
73	W	156	195	1		173	W	162	385	2		273	W	168	395	3	
74	W	158	198	1		174	W	164	390	2		274	W	170	400	3	
75	W	160	200	1		175	W	166	395	2		275	W	172	405	3	
76	W	162	202	1		176	W	168	400	2		276	W	174	410	3	
77	W	164	205	1		177	W	170	405	2		277	W	176	415	3	
78	W	166	208	1		178	W	172	410	2		278	W	178	420	3	
79	W	168	210	1		179	W	174	415	2		279	W	180	425	3	
80	W	170	212	1		180	W	176	420	2		280	W	182	430	3	
81	W	172	215	1		181	W	178	425	2		281	W	184	435	3	
82	W	174	218	1		182	W	180	430	2		282	W	186	440	3	
83	W	176	220	1		183	W	182	435	2		283	W	188	445	3	
84	W	178	222	1		184	W	184	440	2		284	W	190	450	3	
85	W	180	225	1		185	W	186	445	2		285	W	192	455	3	
86	W	182	228	1													

