

Steven L. Pfeiffer  
SPfeiffer@perkinscoie.com  
D. +1.503.727.2261  
F. +1.503.346.2261

July 26, 2016

**VIA EMAIL (PSC@PORTLANDOREGON.GOV)**

Ms. Katherine Schultz, Chair  
Planning and Sustainability Commission  
City of Portland  
1900 SW Fourth Avenue, Suite 7100  
Portland, OR 97201-5380

**Re: Miscellaneous Zoning Amendments Project (Proposed Draft, June 2016)  
Joseph W. Angel's Request to Include Amendment to PCC 33.563.410 and  
Remove the Future Urban (f) Overlay Zone**

Dear Chair Shultz and Members of the Commission:

This office represents Joseph W. Angel with regard to his property located at 5100 NW Skyline Road (the "Property") within the Northwest Hills Plan District. For over six years we have worked with the City to find a solution to long-standing regulatory uncertainty surrounding this specific Property, and believe that the Miscellaneous Zoning Amendments Project is the appropriate code amendment tool. Mr. Angel requests:

1. Amend PCC 33.563.410 so that "Rural Lands Outside of the Urban Services Boundary" that are divided may be served by septic systems and private water sources; and
2. Remove the future urban (f) overlay from the Property.

**Requested Amendment to PCC 33.563.410**

The Property is one of relatively few properties within the City's boundaries but outside of the Urban Growth Boundary ("UGB"). The 2035 Comprehensive Plan characterizes the Property as "Rural Lands Outside of the Urban Services Boundary." See Figure 8-1. Urban, Urbanizable, and Rural Lands, attached.

The code requires all land divisions in the Northwest Hills Plan District to be served by public sewer, but state law prohibits the extension of public sewer outside of the UGB. *Compare* PCC 33.563.410 and Goal 11. This discord between regulations can be resolved by allowing

Ms. Katherine Schultz, Chair  
Planning and Sustainability Commission  
City of Portland  
July 26, 2016  
Page 2

properties within the City limits but outside of the UGB to be served by septic systems and private water sources.

The following amendment to an existing regulation in the Northwest Hills Plan District solves the issue (deletion in ~~strike through~~, additions underlined):

**"33.563.410 Land Divisions and Planned Developments**

The following regulations apply to land divisions that will create four or more lots and to all Planned Developments within the Skyline subdistrict. Adjustments are prohibited.

\* \* \* \* \*

**B. Additional requirements for approval.** In order to be approved, proposed land divisions and Planned Developments must meet the following requirements:

1. Public sewer and water service must be available to ~~the sites~~ located within the Urban Growth Boundary; and"

The requested amendment is consistent with many elements of the 2035 Comprehensive Plan, including (emphasis added):

**Policies -- Service provision and urbanization**

The policies in this section support the maintenance of an urban services boundary to coordinate planning and provision of public facilities. These policies also identify which urban facilities and services are and will be provided by the City of Portland within this boundary. This section supports Statewide Planning Goal 11 — Public Facilities.

The Portland Comprehensive Plan addresses three distinct types of land: rural, urbanizable, and urban. Some rural land is within the City Limits, having been annexed prior to establishment of the Regional Urban Growth Boundary. This land must maintain its rural character, and public facilities and services in this area should be planned accordingly. Urbanizable land is beyond the City Limits, within the Regional Urban Growth Boundary and within the City's Urban Services Boundary. Urbanizable land will eventually be annexed to the City of Portland, and full urban services may then be extended. Urban land is within the City Limits, the Regional Urban Growth Boundary, and the City's Urban Services Boundary.

**Policy 8.2 Rural, urbanizable, and urban public facility needs.** Recognize the different public facility needs in rural, urbanizable and urban land as defined by the Regional Urban Growth Boundary, the City Urban Services Boundary, and the City Boundaries of Municipal Incorporation. See *Figure 8-1 — Urban, Urbanizable, and Rural Lands.*

**Policy 8.19 Rural service delivery.** Provide the public facilities and services identified in Policy 8.3 in rural areas only at levels necessary to support designated rural residential land uses and protect public health and safety. Prohibit sanitary sewer extensions into rural land and limit other urban services.

### **Requested Removal of Future Urban (f) Overlay**

Because the Property is not designated as an Urban Reserve, it is unlikely to be included in the Urban Growth Boundary (“UGB”) in the next fifty years, if ever. Therefore, the future urban (f) overlay zone should be removed from the Property.

### **Background**

The history of the circumstances involving the Property provides useful context for these requests. The Property consists of 48 contiguous acres comprised of five parcels in single ownership located entirely within the City of Portland, with only a limited portion of the Property located within the UGB. Starting in 1965, the City of Portland began providing water service to the Property, replacing well water as the source of water to the Property. In 1971, the Property was annexed to the City of Portland at the request of the City based, in large part, upon the City's commitment to provide additional City services. At the time, we understand the Property was designated to accommodate residential densities of 4.5 units per gross acre, or 10,000 square foot lots, and such zoning remained in place until 1977.

At the time Mr. Angel purchased the Property in 1978, the applicable zone map designation was Farm/Forest, which allows a minimum lot size of two (2) acres. In 1981, a new Natural Resources (NR) overlay zone was adopted by the City, which required a 20 acre minimum lot size. The NR overlay zone applied to the part of the Property located outside of the UGB. In 1991, an exception to Statewide Planning Goal 4 was taken for four of the five lots to allow continuation of the 2 acre residential zoning of the Property through the Northwest Hills Natural Areas Protection Plan, which also applied the Environmental overlay zone designation to limited portions of the Property. Also in 1991, the City of Portland required that all NR zoned land be changed to a future urban (f) overlay zone. It is worth noting that the future urban overlay zone has the sole effect of increasing the minimum lot size applicable to the Property under the acknowledged comprehensive plan and zoning designations from 2 acres to 20, thereby reducing

Ms. Katherine Schultz, Chair  
Planning and Sustainability Commission  
City of Portland  
July 26, 2016  
Page 4

the number of available lots from approximately 24 to 2 notwithstanding the base zone density allowance and availability of City water. The stated basis for this mapping was to retain the potential for future urbanization of the property through inclusion within the Urban Growth Boundary.

Metro included the Property within its Urban Reserve areas designated to be future locations for UGB expansion in 1997. In 2002, Metro voted to include all of the Property within the UGB and the Land Conservation and Development Commission ("LCDC") affirmed Metro's decision; but in 2005, the Court of Appeals remanded Metro's decision for reasons wholly unrelated to the Property. Since Metro declined to respond to the Court's ruling through readoption of the amendment, the Property has yet to be addressed again by Metro. Thus, the bulk of the Property remains outside of the UGB notwithstanding the earlier policy choice of Metro and LCDC. Further, the Property is not included as an Urban Reserve area, so it is unlikely to be included in the UGB for decades, if ever. Obviously, this fact further underscores the inappropriateness today of the (f) overlay designation.

In order to reconcile the Property's regulatory history and resolve the regulatory uncertainty surrounding the property, Mr. Angel requests that the future urban (f) overlay zone be removed from the Property because it is highly unlikely that the Property will be included within the UGB.

Following the removal of the future urban overlay, Mr. Angel intends to apply for a land division or planned development establishing the specific development plan for the Property, consistent with the existing RF base zone designation. In addition, Mr. Angel has worked over the years with Metro to undertake a land trade or acquisition to facilitate improvements to the Saltzman Road frontage and enhance this key access portal to Forest Park. Further, previously the Portland Parks Bureau was interested in acquiring a portion of the Property as a neighborhood park. However, it is necessary to resolve the final development scenario of the Property through this Miscellaneous Zoning Amendment Project and subsequent land division prior to incorporating proposed acquisitions by Metro and the Parks Bureau.

Ms. Katherine Schultz, Chair  
Planning and Sustainability Commission  
City of Portland  
July 26, 2016  
Page 5

Thank you for your consideration of these requests.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Steven L. Pfeiffer".

Steven L. Pfeiffer

SLP:crl  
Enclosure

cc: Mr. Joseph W. Angel (with enc.) (via email)

Figure 8-1. Urban, Urbanizable, and Rural Lands

