

**Oregon Department of Environmental Quality
LAND USE COMPATIBILITY STATEMENT (LUCS)**

p. 1 of 2

SECTION 1 - TO BE COMPLETED BY APPLICANT

1A. Applicant Name: City of Roses Disposal & Recycling	1B. Project Name: COR Transfer Station
Contact Name: Alando Simpson	Physical Address: 4530 NE 138th Ave
Mailing Address: PO Box 301427	City, State, Zip: Portland, OR 97230
City, State, Zip: Portland, OR 97294	Tax Lot #: 1N2E23D -00100
Telephone: 503-285-9940	Township: 1N Range: 2E Section: 23D
Tax Account #: R318510	Latitude: 45.555232
	Longitude: -122.516216

1C. Describe the project, include the type of development, business, or facility and services or products provided (attach additional information if necessary):

Processing, Recycling and Transfer of Putrescible Waste and Construction & Demolition Debris. COR is planning to move operations to newly proposed location in order to accommodate and sustain current and future growth. COR is the leading Material Recovery Facility in terms of recycling rates in the Portland Metro Region. There has been continuous demand for recycling services for Sustainable, Green Built & LEED type of Construction projects which our current facility simply does not have adequate space for and we feel that this is the necessary move and addition that is needed in order to serve this regions aspirations to recycle more waste and support more innovative uses. Furthermore, COR will work to achieve many public benefits the Metro Regional Government has identified as part of its Regional Solid Waste Plan. These public benefits address a variety of goals and targets the region has aspired to achieve through the solid waste system in this region. This LUCS submittal is a modification to allow a waste related activity to take place on this site. The site will add into the operations a municipal solid waste transfer component to assist in the regions transfer system of waste streams that are more difficult to recycle.

1D. Check the type of DEQ permit(s) or approval(s) being applied for at this time.

- | | |
|---|--|
| <input type="checkbox"/> Air Quality Notice of Construction | <input type="checkbox"/> Pollution Control Bond Request |
| <input type="checkbox"/> Air Contaminant Discharge Permit (<i>excludes portable facility permits</i>) | <input type="checkbox"/> Hazardous Waste Treatment, Storage, or Disposal Permit |
| <input type="checkbox"/> Air Quality Title V Permit | <input type="checkbox"/> Clean Water State Revolving Fund Loan Request |
| <input type="checkbox"/> Air Quality Indirect Source Permit | <input type="checkbox"/> Wastewater/Sewer Construction Plan/Specifications (<i>includes review of plan changes that require use of new land</i>) |
| <input type="checkbox"/> Parking/Traffic Circulation Plan | <input type="checkbox"/> Water Quality NPDES Individual Permit |
| <input type="checkbox"/> Solid Waste Land Disposal Site Permit | <input type="checkbox"/> Water Quality WPCF Individual Permit (<i>for onsite construction-installation permits use the DEQ Onsite LUCS form</i>) |
| <input type="checkbox"/> Solid Waste Treatment Facility Permit | <input type="checkbox"/> Water Quality NPDES Stormwater General Permit (<i>1200-A, 1200-C, 1200-CA, 1200-COLS, and 1200-Z</i>) |
| <input type="checkbox"/> Solid Waste Composting Facility Permit (<i>includes Anaerobic Digester</i>) | <input type="checkbox"/> Water Quality General Permit (<i>all general permits, except 600, 700-PM, 1700-A, and 1700-B when they are mobile.</i>) |
| <input type="checkbox"/> Conversion Technology Facility Permit | <input type="checkbox"/> Water Quality 401 Certification for federal permit or license |
| <input type="checkbox"/> Solid Waste Letter Authorization Permit | |
| <input type="checkbox"/> Solid Waste Material Recovery Facility Permit | |
| <input type="checkbox"/> Solid Waste Energy Recovery Facility Permit | |
| <input checked="" type="checkbox"/> Solid Waste Transfer Station Permit | |
| <input type="checkbox"/> Waste Tire Storage Site Permit | |

1E. This application is for: ☐ Permit Renewal ☐ New Permit ☒ Permit Modification ☐ Other:

SECTION 2 - TO BE COMPLETED BY CITY OR COUNTY PLANNING OFFICIAL

Instructions: Written findings of fact for all local decisions are required; written findings from previous actions are acceptable. For uses allowed outright by the acknowledged comprehensive plan, DEQ will accept written findings in the form of a reference to the specific plan policies, criteria, or standards that were relied upon in rendering the decision with an indication of why the decision is justified based on the plan policies, criteria, or standards.

2A. The project proposal is located: ☒ Inside city limits ☐ Inside UGB ☐ Outside UGB

2B. Name of the city or county that has land use jurisdiction (the legal entity responsible for land use decisions for the subject property or land use): Portland OK

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SECTION 2 - TO BE COMPLETED BY CITY OR COUNTY PLANNING OFFICIAL

Applicant Name: City of Roses Disposal & Recycling **Project Name:** COR Transfer Station

2C. Is the activity allowed under Measure 49 (2007)? ☐ No, Measure 49 is not applicable ☐ Yes; if yes, then check one:

☐ Express; approved by DLCD order #:

☐ Conditional; approved by DLCD order #:

☐ Vested; approved by local government decision or court judgment docket or order #:

2D. Is the activity a composting facility?

☒ No

☐ Yes; Senate Bill 462 (2013) notification requirements have been met.

2E. Is the activity or use compatible with your acknowledged comprehensive plan as required by OAR 660-031?

Please complete this form to address the activity or use for which the applicant is seeking approval (see 1.C on the previous page). If the activity or use is to occur in multiple phases, please ensure that your approval addresses the phases described in 1.C. For example, if the applicant's project is described in 1.C as a subdivision and the LUCS indicates that only clearing and grading are allowed outright but does not indicate whether the subdivision is approved, DEQ will delay permit issuance until approval for the subdivision is obtained from the local planning official.

☐ The activity or use is specifically exempt by the acknowledged comprehensive plan; explain:

☐ YES, the activity or use is pre-existing nonconforming use allowed outright by (provide reference for local ordinance):

☐ YES, the activity or use is allowed outright by (provide reference for local ordinance):

☒ YES, the activity or use received preliminary approval that includes requirements to fully comply with local requirements; findings are attached.

☐ YES, the activity or use is allowed; findings are attached.

☐ NO, see 2.C above, activity or use allowed under Measure 49; findings are attached.

☐ NO, (complete below or attach findings for noncompliance and identify requirements the applicant must comply with before compatibility can be determined):

Relevant specific plan policies, criteria, or standards:

Provide the reasons for the decision:

Additional comments (attach additional information as needed):

Planning Official Signature: 

Title: City Planner

Print Name: Suzan Persner

Telephone #: 563-833-5304

Date: 10/19/2018

If necessary, depending upon city/county agreement on jurisdiction outside city limits but within UGB:

Planning Official Signature:

Title:

Print Name:

Telephone #:

Date:



Portland City Auditor

Hearings Office

1900 SW 4th Avenue, Room 3100, Portland, OR 97201
www.portlandoregon.gov/hearings

phone: 503.823.7307
fax: 503.823.4347



DECISION OF THE HEARINGS OFFICER

I. GENERAL INFORMATION

File Number: LU 17-282278 CU AD
Hearings Office 4180015

Applicant: Alando Simpson
City Of Roses Disposal & Recycling
PO Box 301427
Portland, OR 97294

Representative: Kristina Gifford
Herrera Environmental Consultants Inc
1001 SE Water Ave #290
Portland OR 97214

Hearings Officer: Gregory Frank

Bureau of Development Services (BDS) Representative: Don Kienholz

Site Address: 4530 NE 138TH AVE

Legal Description: TL 100 11.72 ACRES SPLIT LEVY R318534 R94223-0840, SECTION 23 1N 2E;
TL 101 1.58 ACRES SPLIT LEVY R318510 R94223-0400 SECTION 23 1N 2E

Tax Account No.: R942230400, R942230840

State ID No.: 1N2E23D 00100, 1N2E23D 00101

Quarter Section: 2644,2645

Neighborhood: Argay

Business District: Columbia Corridor Association, Parkrose Business Association

District Coalition: East Portland Neighborhood Office

Plan District: Columbia South Shore - Southern Industrial

Zoning: IG2hsx — General Industrial 2 with Aircraft Landing ("h"), Scenic Resource ("s") and Portland International Airport Noise Impact ("x") overlay zones.

Land Use Review: Type III, CU AD - Conditional Use Review and Adjustment Review

BDS Staff Recommendation to the Hearings Officer: Approval with conditions.

Public Hearing: The hearing was opened at 1:30 p.m. on August 8, 2018 in the third floor hearing room, 1900 SW 4th Avenue, Portland, Oregon, and was closed at 2:15 p.m. The hearing was continued to August 27, 2018, and began at 8:59 a.m. and closed at 11:29 a.m. The record was held open until 4:00 p.m. on September 4, 2018 for new written evidence, and until 4:00 p.m. on September 11, 2018 for Applicant's rebuttal with no new evidence. The record was closed on September 11, 2018 at 4:01 p.m.

Testified at the Hearing on August 8, 2018:

Don Kienholz
Kristina Gifford
Alando Simpson

Testified at the Hearing on August 27, 2018:

Don Kienholz
Kristina Gifford
Alando Simpson
Chris Dwinger
Henry Spang
Bret Born
Jenny Lee
Martha Thomas
Will Abeles

Proposal:

Applicant is seeking to establish a waste-related transfer station, at 4530 NE 138TH AVE (further described above – hereafter the "Subject Property") that will accept municipal solid waste (including garbage, organics and putrescible waste) and dry waste from construction sites and commercial businesses. Non-commercial self-haul will not be accepted. Waste-related materials will be dropped off, sorted and processed indoors. Operations related to wood waste and woody yard debris will be ground up outside and processed to biomass. Garbage, organics and putrescible waste will generally be hauled off of the Subject Property daily with the exception that if a small amount of these materials remains at the end of the work day they will be retained indoors in a covered container and not be present on the Subject Property for more than 24-hours. Recyclable materials will be prepared for recycling and delivered to end users while non-recyclables and waste will be hauled off-site daily for disposal at a regional landfill. Hazardous waste or large appliances will not be accepted. Some salvaged construction materials may

Establishing a waste-related use in an industrial zone requires a Type III Conditional Use.

Waste-related uses are subject to the waste-related use development standards in 33.254.080, which includes a 100-foot setback from all property lines as well as a fence and landscaping within that setback that is equivalent to the L3 landscape standard. Because the proposed waste-related use will be established in existing buildings on the Subject Property that are less than 100-feet from the property lines and the Subject Property has development constraints such as a railroad easement for a spur off the main line and a Multnomah County Drainage District levee running the entire length of the eastern property line, Applicant requested Adjustments to:

Reduce the 100-foot setback:

- Down to 10-feet along the south property line;
- Down to 38-feet from the west property line; and
- Down to 40-feet from the eastern property line.

Modify the required landscaping within the reduced setback by:

- Having just a fence and a high L3 hedge along the southern property line from just outside the toe of the levee to the railroad spur;
- Waiving the vegetation along the west property line; and
- Providing L1 landscaping along the east property line as follows: Beginning at the southeast corner, a distance of approximately 300-feet; waive the landscaping along the next 200-feet; providing L1 landscaping in the stormwater swale.

The City placed a Scenic ('s') overlay on the Subject Property running the length of the east property line. The overlay is for a Scenic Corridor that had a future trail identified as running along the top of the levee for the entire length of the east property line. The development standards for the 's' overlay for scenic corridors requires L1 landscaping in the entire identified corridor. The Applicant is seeking an Adjustment to:

- Waive the entire 's' landscaping requirement.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33, Portland Zoning Code. The applicable approval criteria are Portland Zoning Code section 33.815.220 – Mining and Waste-Related Uses and 33.805.040 – Adjustments.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. This application was submitted on December 12, 2017 and determined to be complete on June 8, 2018. Because the application was submitted prior to the May 24, 2018 effective date of the newly adopted 2035 Comprehensive Plan and accompanying code and zone updates, the application is reviewed under the code and zones in place prior to May 24, 2018.

II. ANALYSIS

Site and Vicinity: The Subject Property is comprised of two tax lots covering a total of 12.54-acres of land in an industrial area in the Argay neighborhood in outer northeast Portland. The topography of the Subject Property is generally flat, with the exception of a large berm at the eastern boundary of the Subject Property that is a federally-maintained flood control levee structure. Another berm supporting railroad tracks is immediately to the south. There are several trees with groundcover along the levee in the southeast corner, and ground cover along, but not on, the south (levee) portion of the Subject Property. The extreme northern part of the Subject Property is also vegetated with native and weedy species of trees, shrubs, and groundcover, and slopes down slightly toward the north. The majority of the Subject Property is occupied by buildings and paved or graveled areas.

Three buildings exist on the Subject Property. The main building is a single-story industrial warehouse-type building of approximately 90,000 square feet located at the center of the Subject Property that the majority of waste-related uses will take place in. A two-story office building approximately 8000-square feet in size is located between the main building and NE Sandy Boulevard. A maintenance or shop building is located just north of the main building and occupies approximately 3500 square feet on one level.

The area south of the main building and around the office is paved with asphalt. North of the main building is a mix of packed gravel and hard surface dirt. The Subject Property is enclosed on three sides with chain link fencing. Multnomah County Drainage District No 1 regulations prohibit fencing or deep-rooted landscaping along the levee on the eastern side of the Subject Property.

A railroad right-of-way borders the Subject Property to the south, with NE Sandy Boulevard, a Major City Traffic Street, located south of the rail right-of-way. Northeast Sandy Boulevard consists of two travel lanes and shoulders on each side through this area without curbs or sidewalks along this frontage. Access to the Subject Property is not available from NE Sandy Boulevard. The Subject Property has access to Northeast 138th Avenue via an approximately 720-foot long by 50-foot wide panhandle. A spur from the railroad tracks runs onto the Subject Property, continues north along the Subject Property's western property line, and terminates at a neighboring property just north of the Subject Property. The City of Portland Comprehensive Plan had designated an easement for a future trail for pedestrian and bicycle access on the levee as part of the 40 Mile Loop but has since removed the proposed trail from the Subject Property and realigned it, according to Portland Parks and Recreation (Exhibits G.7, G.8 and H.17).

The Subject Property is located in an industrial sanctuary, and is surrounded by industrial land uses. The entire land area around and including the Subject Property was part of unincorporated Multnomah County until July 1984, when it was annexed into the City of Portland. Land uses adjacent to the Subject Property can be described as follows (not including panhandle):

North: The property to the north is a large industrial parcel occupied by a structural steel fabricator. The property to the north is also used to store the steel outdoors. A natural area

with open water and owned by the City of Portland is just north of the steel fabricator property.

West: The property to the west is occupied by a heavy equipment service and sales company. The property to the west is also used for outdoor storage of the scissor lifts, backhoes, and other heavy equipment.

South: Immediately south is a railroad trunk line track with a spur on the Subject Property as described earlier. The tracks are in the center of a 100-foot wide Union Pacific right-of-way, between the Subject Property and NE Sandy Boulevard. To the south of NE Sandy is a large apartment complex with small commercial uses to the southwest.

East: The properties to the east are visually obscured by the 20-foot-high Multnomah County Drainage District levee. Opposite the levee are a towing and auto storage business, a vacant parcel to be used by the Bureau of Environmental Services for stormwater detention and treatment, and a large commercial laundry.

To the west of the Subject Property panhandle, on the west side of NE 138th, are vacant lots and two non-conforming use residential structures (the residences are approximately 100 to 170 feet south of the panhandle entrance to the subject Property).

A larger "Impact area" for the proposed development may be defined as an area 600-feet from the property lines (not including the panhandle), a distance 200-feet further than notice of the hearing is sent for property owners and residents. Within that impact area are approximately 12 properties.

The vast majority of properties within the area are within the City-designated industrial sanctuary. Within the 600-foot distance are some properties south of SE Sandy Blvd. The properties to the south include two large apartment complexes and the back yards of approximately three single-family dwellings. In the Industrial Sanctuary, there is a mix of developed and undeveloped properties within this area; three parcels close to the Subject Property are vacant and owned by the City of Portland. Some of the land in this impact area is protected by environmental zoning due to open channels and wetlands associated with the Columbia Slough, and areas established as mitigation for wetland filling nearby.

The panhandle portion of the Subject property, which is used for access to the main portion of the Subject Property, is connected to NE 138th Avenue and is within 600-feet of a self-storage complex, an electrical contracting company, six vacant parcels, a large parcel with a drive-through smoke shop and two single-family dwellings on industrially zoned lots.

Northeast Sandy Boulevard acts as a boundary between residential and industrial uses. South of NE Sandy Boulevard is multi-dwelling development as noted above. The main office on the Subject Property, the closest building to the residential structures, is approximately 250-feet to the nearest structure on the residentially zoned property. Separating the two uses are, in order: a

parking area, a berm at the front of the Subject Property, a frequently-used railroad line on the berm, and a state highway (NE Sandy Boulevard).

Zoning: IG2 – General Industrial zones are one of the three zones that implement the Comprehensive Plan's Industrial Sanctuary map designation. The zone provides areas where most industrial uses may locate, while other uses are restricted to prevent potential conflicts and to preserve land for industry. Development standards for each zone are intended to allow new development that is similar in character to existing development. The intent is to promote viable and attractive industrial areas. IG2-zoned areas generally have larger lots and an irregular or large block pattern. The area is not intensely developed, with sites having medium and low building coverage and buildings that are usually set back from the street.

Aircraft Landing Zone – The Aircraft Landing zone is shown on the Official Zoning Maps with a letter "h" map symbol. The zone provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures, vegetation, and construction equipment.

Scenic Resource Zone – The Scenic Resource zone is shown on the Official Zoning Maps with a letter "s" map symbol. The Scenic Resource Overlay Zone is intended to:

- Protect Portland's significant scenic resources as identified in the Scenic Resources Protection Plan;
- Enhance Portland's appearance to make it a better place to live and work;
- Create attractive entrance ways to Portland and its districts;
- Improve Portland's economic vitality by enhancing the City's attractiveness to its citizens and to visitors;
- Implement Portland's Comprehensive Plan's scenic resource policies and objectives.

The Scenic Resource zone's purposes are achieved by establishing height limits within view corridors to protect significant views and by establishing additional landscaping and screening standards to preserve and enhance identified scenic resources. Further information on the specific scenic resource that is being protected at this location is included in response to the Adjustment request, discussed later on in this decision.

Land Use History: City records indicate that one prior land use reviews are associated with the Subject Property:

LU 02-137433 CU AD – Approval of expansion of an existing recycling facility to include waste related uses and a transfer station. The proposal included construction of a new 35,000 square foot building, paving and other various improvements. Approval of Adjustments to waive the Scenic ('s') landscaping requirement and Adjustment to reduce waste-related use setback standards below 100-feet for the proposed waste-related use.

Agency Review: A "Request for Response" was mailed June 19, 2018. The following Bureaus responded:

- Bureau of Environmental Services ("BES") reviewed the proposal and stated "Staff finds the Applicant's proposed stormwater management plan acceptable for the purposes of reviewing the conditional use application against the stormwater management manual." (Exhibit E.1);
- The Portland Bureau of Transportation ("PBOT") reviewed the application and stated both PBOT and the Oregon Department of Transportation found the proposed Conditional use request satisfied all applicable transportation-related approval criteria and additional requirements (Exhibits E.2 and E.3);
- The Fire Bureau pointed out fire code requirements applicable to the proposal at the time of building permit review and raised no objection to the required land use reviews (Exhibit E.4);
- The Police Bureau stated they can provide adequate public safety services and have adequate access to the Subject Property (Exhibit E.5);
- The Site Development Section of BDS ("Site Development") responded with information on what would be required for new development and raised no objection to the requested land use reviews (Exhibit E.6);
- The Urban Forestry Division of Portland Parks & Recreation responded with no concerns (Exhibit E.7);
- The Life Safety Review Section of BDS provided general comments for building permits and raised no objection to the requested land use reviews (Exhibit E.8);
- The Oregon Department of Transportation ("ODOT") responded with their findings that the proposed use would have no significant impacts to state highway facilities and raised no objections (Exhibit E.9);
- The Port of Portland responded that they had conferred with FAA guidelines and consulted with Port staff and believe that the proposal will cause no problems regarding wildlife being attracted to the Subject Property and impacting the flight paths of the airport. The Port requested a condition of approval be added prohibiting a change in use on the property that introduces outdoor storage or transfer of putrescible waste (Exhibit E.10). This concern will be addressed in the Conditional Use review approval criteria and conditions of approval; and
- The Water Bureau responded with no concerns to the requested land use reviews (Exhibit E.11).

Neighborhood Review. Chris Dwinger, Harry Spang, Brett Born, Will Abeles, Martha Thomas and Jenny Lee testified in opposition to the Applicant's proposal at one or both of the public hearings (August 8, 2018 and August 27, 2018). In addition, documents were submitted either at one of the hearings or during the open-record period expressing opposition to Applicant's proposal (Exhibits H.3, H.13, H.14 and H.16). Issues raised by opponents of Applicant's proposal included, but not limited to, problems that may be created by Applicant's proposed use upon the stormwater and transportation systems (Exhibits H.3., H.14 and H.16). Opponents also expressed concerns dust control (from truck traffic entering/exiting the Subject Property and a biomass "wood recycling"), Applicant's proposed setbacks and adjustment/modification requests, overnight storage of garbage and odor control. The Hearings Officer addresses opposition concerns related to relevant approval criteria below.

ZONING CODE APPROVAL CRITERIA

33.815.010 Conditional Uses

Certain uses are conditional uses instead of being allowed outright, although they may have beneficial effects and serve important public interests. They are subject to the conditional use regulations because they may, but do not necessarily, have significant adverse effects on the environment, overburden public services, change the desired character of an area, or create major nuisances. A review of these uses is necessary due to the potential individual or cumulative impacts they may have on the surrounding area or neighborhood. The conditional use review provides an opportunity to allow the use when there are minimal impacts, to allow the use but impose mitigation measures to address identified concerns, or to deny the use if the concerns cannot be resolved.

Finding: The Conditional Use review provides a process to evaluate a use, determine the existence and/or extent of impacts, and determine if the impacts are, or can be made (through mitigation) acceptable. Approval criteria for the proposed waste recovery/recycling facility are contained in 33.815.220, Mining and Waste-Related Uses. The proposed activity is classified as a Waste-Related Use in the zoning code that is, in part, defined as:

33.920 Descriptions of the Use Categories:

33.920.340 Waste-Related

- A. Characteristics.** Waste-Related uses are characterized by uses that receive solid or liquid wastes from others for disposal on the site or for transfer to another location, uses which (sic) collect sanitary wastes, or uses that manufacture or produce goods or energy from the biological decomposition of organic material. Waste-Related uses also include uses which receive hazardous wastes from others and which are subject to the regulations of OAR 340.100-110, Hazardous Waste Management.

...

- C. Examples.** Examples include sanitary landfills, limited use landfills, waste composting, energy recovery plants, sewer treatment plants, portable sanitary collection equipment storage and pumping, and hazardous-waste-collection sites.

Finding: The Conditional Use category of Mining and Waste-Related Uses is very broad, requiring equally broad approval criteria to ensure that adverse impacts are minimized, if necessary, through mitigation. Although each approval criterion must be met. The manner in which this is done varies from use to use and depends on the activity itself and its impacts, location, existing conditions, and physical constraints.

The current proposal is for a transfer station/waste recovery/recycling use on the Subject Property that already has existing buildings and parking/ maneuvering areas. Waste-related operations, including unloading and sorting, would take place indoors, where odors, noise, and other impacts normally associated with this type of operation would be contained. Outdoor activities for the waste-related use are limited to transport to and from the Subject Property, parking or storing trucks and containers, and outdoor storage not considered processing of waste products (33.254.040.B). Applicant has also proposed grinding wood debris into hog-fuel/bio mass. This use (grinding wood products) is considered Manufacturing and Production. The storage of bound recyclable material is considered Industrial Service. Both uses are allowed, even outside, as a matter of right inside the IG2 zoning category. This proposal is considerably different than other Mining and Waste-Related uses described in the code above that, by their very nature, involve outdoor activities, major permanent site alterations (excavation or fill), or odors and noise that cannot be easily contained or controlled.

33.815.220 Mining and Waste Related

These approval criteria allow these uses in locations where their large size and potential nuisance and environmental impacts will not harm surrounding land uses. The approval criteria are as follows:

- A. There are adequate nearby lands available for the development of more intense industrial uses;**

Finding: The Subject Property is located in a large industrial area of northeast Portland, within the Columbia South Shore Plan District. This area is defined as the area bounded by NE Sandy Boulevard, NE 138th Avenue, NE Airport Way, and the eastern boundary of the Subject Property at 14330 NE Whitaker Way. In the area of the Subject Property, there are four vacant or underdeveloped industrially zoned properties that could be available at some point for future development of more intense industrial uses: 4600 N. 138th, 4998 NE 138th, the property immediately north of 14330 N. Whitaker Way, and the property immediately north of 14333 N Whitaker Way. Additionally, the City's Industrial Lands Atlas (www.portlandoregon.gov/bps/47561), has identified several vacant or underutilized properties in Portland's industrial sanctuary that are available for more intensive industrial uses. These lots are located north and northeast of the Subject Property but within 700 feet.

There are also smaller and vacant industrially zoned lots across NW 138th from the panhandle part of the Subject Property that could be developed for industrial use.

The proposal is for a waste-related use in existing structures on a parcel that is already developed for industrial use and was previously approved for a waste-related use in 2002 with Land Use Case 02-137433 CU AD. Currently, a recycling operation is sited on the Subject Property, operated by the Applicant for the proposed Waste-Related use in this case. No new or vacant parcels will be developed as a result of this proposal and there are still four vacant parcels zoned IG2 in the immediate vicinity. Furthermore, this approval criterion encompasses all Waste-Related uses in addition to Mining uses that by their very nature take land out of inventory for any other use due to the extraction of land and area, such as is the case for a landfill or mining excavation operation. The proposed use does not include a landfill on the Subject Property that would render the area difficult for future development. Instead, the Subject Property could easily be reused by a non-Waste-Related use should the proposed waste-related use cease operation on the Subject Property.

Because of the facts above, the Hearings Officer finds that Applicant's proposal has no impact on the land supply in the area available for the developing more intense industrial uses. The proposed use stays within the existing ownership boundaries, and therefore will not reduce the availability of industrial land in the area. The Hearings Officer finds this approval criterion is met.

B. The proposed use will not significantly alter the overall industrial character of the area, based on the existing proportion and type of industrial uses;

Finding: The industrial area around the Subject Property is characterized by large warehouse style buildings with office areas on large lots. Nearby properties tend to have a significant amount of gravel areas, as well as paved or asphalted areas, used for storage of wrecked cars, heavy equipment or manufactured steel. Heavy trucks are located on a of the majority of the industrial properties, either as storage or bringing or taking loads to/from the sites. Real property north of the Subject Property is used for steel fabrication and has a significant amount of exterior storage for their products. Particular business operations in the immediate vicinity of the Subject Property include:

- Heavy equipment sales and servicing (Altec, Forklift Services of Oregon);
- Structural steel fabrication (Supreme Steel); and
- Towing and automobile storage (Speed's Towing).
- Commercial laundry (UniFirst Uniform Service)

The waste processing activities, including the storage of waste material, would take place exclusively inside the large existing industrial buildings, and trucks serving the facility would use a paved vehicle access that connects to NE 138th. The Subject Property has large existing gravel areas but a condition of approval will prohibit the gravel areas from being used by the waste-related use. Applicant's proposal would not perceptibly alter the existing industrial character of the Subject Property, and the proposed use is similar to other industrial uses in

the area. Based upon the above, the Hearings Officer finds the proposal would not significantly alter the industrial character of the area. The Hearings Officer finds this approval criterion is met.

C. There will be no significant health or safety risk to nearby uses;

Finding: The Subject Property is within the Columbia South Shore and there are regulations in place regarding wellhead protection for the City's secondary domestic water source. Requirements of the BES Stormwater Management Manual must be met, and additional permits from the Water Bureau or BES may be necessary for the proposed development.

Jenny Lee ("Lee"), a property owner in the general area, testified that additional truck traffic created by Applicant's proposed use would create a safety risk for residents living south of Sandy Boulevard. Lee also stated that approval of Applicant's proposal would increase crime in the area (Exhibit H.3). The Hearings Officer finds Lee's truck traffic is better addressed in approval criteria related to transportation matters. The Hearings Officer finds that Lee provided no substantial evidence in the record to support her claim that crime would increase if Applicant's proposal is approved.

Will Abeles and Bret Born ("Abeles/Born") argued (Exhibit H.16) that transportation matters related to safety. The Hearings Officer finds the Abeles/Born transportation safety issues are relevant to the transportation approval criteria.

Chris Dwinger ("Dwinger"), on behalf of Altec Industries (neighboring property), expressed concerns about the "current operation...creating a significant amount of airborne dust that is migrating beyond the boundaries of the subject property" (Exhibit H.13). Specifically, Dwinger's concerns related to the "wood grinding" or "biomass" activities at the Subject Property. As noted above, "breaking down wood debris into biomass/hogfuel is Manufacturing and Production under 33.920.320, and is allowed outright in the IG2 zone" (Exhibit H.15). The Hearings Officer notes that the Applicant has not requested, in this case, approval of wood debris/biomass activity on the Subject Property. The Hearings Officer finds the current wood grinding activity on the Subject Property is allowed by right under the IG2 zone and is not a matter to be approved/disapproved in this case.

A number of waste recovery/recycling procedures would protect the health and safety of nearby uses. First, all proposed waste-related activities and storage of waste materials would occur indoors in enclosed structures. Applicant has stated in their revised narrative that garbage (organic and putrescible waste) will generally not be stored on the Subject Property overnight and that on the occasions where such material is onsite overnight it will be removed within 24-hours and stored in a covered container entirely within the enclosed facility. A condition of approval is appropriate to assure Applicant limits the presence of organic and putrescible waste on the Subject Property. Applicant also proposed a misting odor-neutralizing system to minimize odors emitted from the building where waste-related activities take place will have an odor-control/neutralizing mist system (Exhibit H.12).

The procedures noted above will reduce the potential for impacts on the surrounding area. The loading and unloading of materials from trucks and trailers will occur directly inside and sorted without exposure to the exterior of the building. Material handling areas would be hard-surfaced, and appropriate containers will be provided for different categories of materials and sorted indoors. Stormwater collected from the property would be detained and treated according to City standards and requirements. Applicant submitted a nuisance mitigation plan that includes litter, dust, mud, pest, and vector control as part of the application (in the applicant's Operation Plan, Exhibit A.3) to comply with 33.254.220.G and 33.262 Off-Site Impacts. A protocol for handling unacceptable wastes (such as hazardous waste) is part of this proposal. Safety precautions for a variety of potential incidents, including spill and emergency response procedures, are also proposed for the use in the Applicant's Operations Plan (Exhibit A.3).

Traffic safety is discussed under criterion 33.815.220.F.2 below.

Based on the materials submitted, the Hearings Officer finds the proposed waste-related use poses no significant health or safety risk to nearby uses. The Hearings Officer finds this approval criterion is met.

D. There will not be significant detrimental environmental impacts to any nearby environmentally sensitive areas;

Finding: The Subject Property is not within a City designated environmental overlay zone. The closest environmental zone, shown on the City's zoning maps with a 'p' or a 'c', protects the Columbia Slough and is approximately 580-feet from the northern property line of the Subject Property and more than 1,000-feet from the closest building to be utilized for the waste-related use. Applicant proposed to pave all vehicle areas to reduce dust and prevent liquids infiltrating into the ground. While there are gravel areas that will remain on the Subject Property, a condition of approval will prohibit all waste-related activities from taking place on the graveled areas. The Hearings Officer finds that with the large distances between the waste-related activities, all waste-related activities taking place indoors and newly paved vehicle areas, the use will not have any significant detrimental environmental impacts to any nearby environmentally sensitive areas. The Hearings Officer finds this approval criterion is met.

E. The proposed use adequately addresses potential nuisance-related impacts such as litter;

Findings: Since waste-processing activities, including the storage of waste materials, would take place exclusively inside enclosed buildings, and waste materials would enter and leave the building in sealed containers, no litter issues are expected. Applicant submitted a detailed off-site impacts and nuisance mitigation plan within their Operation Plan (Exhibit A.3). The requirements in Zoning Code Chapter 33.262 (Off-Site Impacts) protect neighboring properties in the R and C zones from noise, odor, vibration, or glare impacts. Nothing about

the waste-processing activities inside the building would cause unusual noise, vibration, or glare impacts. Applicant's plan also includes specific measures for vector control.

Dwinger and Harry Spang ("Spang") testified that litter, trash, vector and odors can be expected to occur on and around the Subject Property as a result of trucks entering and leaving the Subject Property carrying waste materials. Applicant's Operation Plan addresses litter, vector and trash concerns. Applicant's Operation Plan addresses Applicant's proposed odor control system, inside the building where waste-related activities occur, addresses the odor issue. The Hearings Officer finds that with a condition of approval that Applicant's off-site impacts and nuisance mitigation plan contained in Exhibit A.3 is continually implemented and enforced, this approval criterion is met.

F. Public services.

1. The proposed use is in conformance with the street designations shown in the Transportation Element of the Comprehensive Plan;

Finding: Applicant submitted a professionally prepared traffic impact analysis (Exhibit A.7 – the "TIS"). PBOT reviewed the TIS and applications materials and submitted the following responses (Exhibit E.2):

"The subject site has minimal frontage along NE 138th Ave which is classified as a Neighborhood Collector, Local Service street (Transit mode), City Bikeway, Local Service street (Pedestrian mode), Freight District street, Major Emergency street and a Community Corridor in the City's Transportation System Plan. Waste-related uses on the subject site have been ongoing since at least 2002 when the City approved a prior Conditional Use request (02-137433 CU AD). A similar use is currently proposed to continue to operate at the subject site, therefore there will be no change in use. PBOT therefore suggests that with respect to the above referenced transportation-related approval criterion found in sub-section D.1, that there will be no meaningful impact or conflict:

The street designations (classifications) identified in the Transportation System Plan for the abutting NE 138th Ave will not be consequently affected by the continuation of a waste-related use on the same site."

The Hearings Officer finds that despite a Waste-Related use not having been in continuous operation on the site since 2002 Applicant's proposed use is very similar in character and impacts. From a transportation perspective the characteristics of the proposed waste-related use and recycling use are virtually the same as the prior use. The Hearings Officer finds PBOT's conclusion, as stated above, remains valid. The Hearings Officer finds, based upon Exhibits A.4 and E.2, that the proposed use is in conformance with the street designations shown in the Transportation Element of the Comprehensive Plan.

2. Transportation system:

- a. The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include safety, street capacity, level of service, connectivity, transit availability, availability of pedestrian and bicycle networks, on-street parking impacts, access restrictions, neighborhood impacts, impacts on pedestrian, bicycle, and transit circulation. Evaluation factors may be balanced; a finding of failure in one or more factors may be acceptable if the failure is not a result of the proposed development, and any additional impacts on the system from the proposed development are mitigated;

Finding: Applicant provided the TIS which addressed the uses proposed by Applicant. Applicant's traffic engineer utilized performance standards established by the PBOT and ODOT Analysis and Procedure Manual guidelines. PBOT reviewed the TIS and application materials to determine the proposal's impacts on the public right-of-way, traffic impacts and conformance with adopted policies, street designations, Title 33, Title 17 and for potential impacts on transportation services (Exhibit E.2). PBOT stated, in Exhibit E.2, the following:

"To adequately address this approval criterion and associated evaluation factors, the applicant submitted a professionally prepared Traffic Impact Study (TIS). The TIS, containing industry standard and acceptable data collection, references, analyses, assumptions and methodologies relative to each evaluation factor concluded that the proposed project will not have any adverse impacts to the transportation system and that the system is capable of supporting the proposed use in addition to the existing uses in the area. In general:

- *Area studied intersections will continue to operate pursuant to City established performance measures.*
- *Connectivity is not typically addressed in relation to industrially-zoned sites due to the nature of activities of the expected uses/operations on industrial properties. Uses such as that proposed, are not conducive to introducing connection opportunities for vehicles, pedestrians or bicyclists. There are some existing sidewalks throughout the broader area, including along NE 138th Ave as well as recognized bicycle facilities (Portland Bike/Walk Map) along NE 138th Ave and NE Whitaker (shared roadways) and along NE Sandy (striped bike lane). Connectivity in relation to these modes of travel will not be adversely impacted by the proposed project.*
- *The proposed expansion of the waste-related use on the site will not have any impacts to transit availability or availability of pedestrian and bicycle networks. Circulation of these modes will also not be influenced by this project.*

- *The requested Conditional Use will not have any impacts to on-street parking – the site has minimal frontage along NE 138th Ave and the primary vehicle areas of the subject site are greater than 700-ft away from the street. Adequate area for vehicle storage/parking on-site, will be available. It is not expected that any vehicles associated with the proposed use, including those of employees, will need to be parked along the abutting NE 138th Ave. Notwithstanding that there is no on-street parking expected to be necessary in association with the proposed use, parking is currently allowed on both sides of NE 138th Ave and there appears to be an abundance of on-street parking opportunities for uses along this street."*

Originally, the proposal was unclear on the amount of parking that would be provided as part of the conditional use. Based on the TIS and the submitted site plan, BDS staff proposed a condition of approval requiring a minimum of five parking spaces and a maximum of 10. Applicant provided an updated proposal requesting a range of six to 30 parking spaces. BDS Staff contacted PBOT for their evaluation on the proposal and PBOT indicated the TIS as drafted would support allowing up to 30 employees and parking spaces on the Subject Property (Exhibit H.8). While the site plan only shows six spaces, BDS staff, in consultation with PBOT, determined the minimum number of parking spaces for the conditional use is five spaces and the maximum is 30. The Hearings Officer reviewed Exhibit A.7, Exhibit E.2 and Exhibit A.8 and agrees that a condition of approval requiring a minimum of five spaces and a maximum number of spaces of 30 is reasonable and legally supportable.

It should be noted that any parking above and beyond the six shown on the Subject Property site plan has not been evaluated against Portland Zoning Code section 33.266 and will be required to be reviewed by Planning and Zoning as part of a zoning permit or building permit to ensure all required parking standards, including internal and perimeter landscaping, are satisfied.

PBOT, in Exhibit E.2, also stated:

- "The site is currently accessed from NE 138th Ave and site access will not change in relation to the proposed Conditional Use request. This street is appropriately classified street to provide such access. There is no reason to restrict access along the site's NE 138th Ave frontage. ODOT provided a response that reflected previous direction that access to the abutting rail right-of-way (south of the subject site) should be restricted to avoid conflicts with rail movement. There is a fence that is apparently located separating the site from the rail line that will be retained (and will not allow for cross access).

- Impacts related to intersection operations and on-street parking supply are typically attributed as neighborhood impacts. As mentioned above, area intersections will continue to operate within acceptable performance levels and there is no anticipated on-street parking impact in relation to the proposed Conditional Use. Accordingly, there will be no transportation-related neighborhood impacts."

The Hearings Officer finds, based upon review of Exhibits A.7 and E.2, that there is no mitigation necessary as a result of this proposed project since as noted above. The Hearings Officer finds this approval criterion is satisfied.

- b. Measures proportional to the impacts of the proposed use are proposed to mitigate on- and off-site transportation impacts. Measures may include transportation improvements to on-site circulation, public street dedication and improvement, private street improvements, intersection improvements, signal or other traffic management improvements, additional transportation and parking demand management actions, street crossing improvements, improvements to the local pedestrian and bicycle networks, and transit improvements.

Finding: PBOT, in Exhibit E.2, stated:

"As noted in the previous section, the applicant has demonstrated to PBOT's satisfaction that there will be no transportation-related impacts associated with the proposed Conditional Use. Accordingly, there are no mitigation measures necessary."

The PBOT engineer noted that vegetation on the Subject Property near the entrance off of NE 138th is overgrown and encroaching into the public right-of-way, creating potential visibility problems. To address this BDS staff proposed a condition of approval requiring the owner to remove the vegetation from the right-of-way (Exhibit E.3). The Hearings Officer finds with the recommended condition of approval this criterion is met.

- c. Transportation improvements adjacent to the development and in the vicinity needed to support the development are available or will be made available when the development is complete or, if the development is phased, will be available as each phase of the development is completed.

Findings: PBOT, in Exhibit E.2, stated:

"As noted above, there is no need for any typical mitigation, as in intersection operation improvements, since it has been determined that the project will not result in any transportation-related impacts. The Subject Property has no

frontage along any abutting streets other than an approximate 45-ft wide driveway along NE 138th Ave. There are sidewalks north and south of this access driveway, but they are adjacent to different properties. Aside from potentially improving the driveway/curb cut to current City standards, there will be no additional r.o.w. improvements triggered by the proposed project.

The applicant has demonstrated to PBOT's satisfaction that "the transportation system is capable of supporting the proposed use in addition to the existing uses in the area".

The Hearings Officer concurs with the PBOT comments quoted above. The Hearings Officer finds this approval criterion is met.

3. **Public services for water supply, police and fire protection are capable of serving the proposed use, and proposed sanitary waste disposal and stormwater disposal systems are acceptable to the Bureau of Environmental Services.**

Finding: The Water Bureau, Police Bureau, and Fire Bureau have all provided comments noting that there are adequate services for each respective bureau (Exhibit E.11, E.5 and E.4). BES also provided comment (Exhibit E.1) stating they found the Applicant's stormwater management plan acceptable.

Erin Kuhlmeier ("Kuhlmeier"), on behalf of Supreme Steel ("Supreme"), an adjacent property owner, provided written comments related to stormwater issues that could potentially occur if Applicant's proposal would be approved without further conditions (Exhibit H.14). Dwinger and Spang offered testimony suggesting Applicant's proposal would create stormwater problems.

Kuhlmeier stated, in Exhibit H.14, that:

"Stormwater runoff from the COR [Subject Property] site has the potential to impact the Supreme Steel site in two ways: sheet flow from the COR site access road discharging north to the Supreme Steel site and stormwater discharge from the COR site to a private culvert running beneath the Supreme Steel site."

Kuhlmeier expanded on the above-quoted argument in Exhibit H.14.

Kristina Gifford ("Gifford"), on behalf of Applicant, responded to the Kuhlmeier comments as follows:

"Comment #1 expresses concern that stormwater runoff from the site could affect the Supreme Steel site through sheet flow from the applicant's access driveway and/or through discharge to a private, 36-inch culvert that runs beneath the Supreme Steel site. However, Mary Larkin, civil engineer with Herrera Environmental Consultants, Inc. prepared the following response:

The stormwater discharge from the site [Subject Property] is via an 18-inch pipe, which is not directly connected to the 36-inch culvert described by Supreme Steel.

The treated discharge is to an existing drainage ditch and natural area (with likely groundwater flows) within the Multnomah County Drainage District easement. Runoff from that ditch enters the described 36-inch culvert more than 300 feet to the west of the discharge and should be considered by Supreme as 'offsite flow.' It is Supreme's responsibility to monitor its stormwater runoff prior to comingling with offsite or groundwater flows that may be entering the 36-inch culvert. Additionally, the applicant's site (excepting the levee and northern vegetated portion) is already almost entirely covered by impervious surfaces. The new driveway (already permitted) will have minimal impact on the amount of runoff occurring from the property. What runoff that will occur is captured and treated with the existing stormwater swale, and BES has approved the proposed stormwater design."

At the August 27, 2018 Hearing, the Hearings Officer requested additional information regarding stormwater and the bioswale. BDS staff, in Exhibit H.15, responded to the request as follows:

"The applicant submitted a stormwater report from Herrera dated October 27, 2017, which is included in the record as Exhibit A.4. The Bureau of Environmental Services (BES) reviewed the submitted stormwater report and included their comments and recommendations in Exhibit E.1. BES notes in their written comments that the stormwater report did evaluate the new pavement for the driveway, and that the report sufficiently demonstrates this additional impervious surface will not impact the ability of the existing stormwater management system on the site to meet the City's Stormwater Management Manual. BES notes that the stormwater report identifies runoff from the development will drain to the existing unlined swale that was previously permitted under City permit 16-142423 DR. Stormwater runoff to this swale, which meets pollution reduction requirements, will then be discharged off-site to a drainage ditch north of the property. In responding to Conditional Use Approval Criterion 33.815.220.F.3, BES found that the applicant's stormwater management plan was acceptable, and proposed no conditions of approval."

The Hearings Officer finds that Applicant's stormwater study (Exhibit A.4) was approved by BES as meeting all relevant regulations. The Hearings Officer finds that any stormwater created by the pavement of the accessway was considered by Applicant's stormwater consultant and BES and found to meet all relevant regulations. For the purposes of this decision the Hearings Officer finds Kuhlmeier's statement that stormwater from the Subject Property does not flow directly to the 36-inch culvert. The Hearings Officer finds, based upon the Gifford and Mary Larkin comments quoted above, the BES review (Exhibit E.1) and Applicant's stormwater study (Exhibit A.4) that stormwater from the Subject Property passes through the drainage swale, out an 18-inch pipe to a drainage ditch/natural area and then into the 36-inch culvert. The Hearings Officer also finds, based upon Gifford and Mary Larkin comments in Exhibit H.17, that stormwater from the Subject Property travels approximately three-hundred feet before entering the 36-inch culvert.

The Hearings Officer, based upon the evidence in the record, finds that this approval criterion is met.

G. The proposal complies with the regulations of Chapter 33.254, Mining and Waste-Related Uses;

Finding: Each of the applicable regulations of Zoning Code Chapter 33.254 are either met or would be met with if the Adjustment Review discussed later in this decision. Specific findings are below following each standard or group of standards.

33.254.020 Limitations

- A. Accessory uses. Concrete batching, asphalt mixing, rock crushing, or clay bulking in connection with a Mining use are prohibited except in IH and IG zones.**
- B. Hazardous wastes. The disposal of hazardous wastes, as defined by OAR 340.100 to 340.110, is prohibited.**

Findings: No concrete batching, asphalt mixing, rock crushing, or clay bulking is proposed. Point #5 of the Applicant's Operations Plan (Exhibit A.3) notes that hazardous wastes are prohibited at the Subject Property. In the event some hazardous waste is inadvertently included amongst other waste and not identified until it's on the tipping floor, Applicant's operations plan (Exhibit A.3) contains procedures to deal with the waste. A condition of approval is recommended to prohibit the disposal of hazardous wastes. With the condition of approval, the Hearings Officer finds these approval criteria are met.

33.254.030 Location and Vehicle Access

Uses must be located so that vehicle access is restricted to Major City Traffic Streets or to streets in Freight Districts, as designated in the Transportation Element of the Comprehensive Plan.

Findings: PBOT provided the following comments in Exhibit E.2:

"The site has minimal frontage along NE 138th Ave. This street is classified in the Transportation Element of the Comprehensive Plan (Transportation System Plan) as a Freight District street. Vehicle access will be taken directly from a classified Freight District street as identified in this requirement. Further, it is expected that vehicles associated with the proposed use will also utilize NE Sandy to access the subject site. NE Sandy is classified as a Major City Traffic street and a Major Truck street. Vehicles may also access the subject site from the north, utilizing another highly classified roadway, NE Airport Way. This street is classified as a District Collector and a Priority Truck street – classifications expected to accommodate truck movements."

It should be noted that while PBOT reviewed the proposal for potential access onto NE Sandy, the access from the Subject Property to NE Sandy has been closed and gated with fencing approved by the railroad (Exhibit A.5) so will not be used. The Hearings Officer finds this approval criterion is met.

33.254.040 Operations

- A. On-site queueing. The site layout must include adequate areas to accommodate the peak number of vehicles expected to come to the site at any one time.**

Findings: PBOT reviewed the application with respect to on-site queueing and submitted the following response (Exhibit E.2):

"The proposed waste-related use on the site includes a lengthy access driveway from NE 138th Ave as well as a 30-ft wide paved driveway that will be extended to the operations building and beyond, paved circulation areas as well as parking areas. Given the significant length of the paved areas on the site (at least 1,500-ft), there will be adequate areas on the site to accommodate the peak number of vehicles expected to be at the site at any one time."

Based on this response from PBOT, the Hearings Officer finds that the on-site queueing regulation is met. The Hearings Officer finds this approval criterion is met.

- B. Processing of waste products. In the case of Waste-Related uses other than landfills and composting operations, all activities relating to the receiving, sorting, processing, storage, transfer, and shipping of wastes must take place entirely within enclosed structures. The transfer of waste products from one vehicle or container to another vehicle or container and the cleaning of such vehicles or containers must be done within a containment area designed to ensure that waste materials will be confined so as to not enter the groundwater or any water body.**

Finding: The entire waste-related operation will take place in an enclosed structure, including unloading, sorting, and loading. Any stored waste products will be within the existing buildings awaiting transfer. Washing of vehicles will take place in a designated area within the existing building. A condition of approval will require these all to be within enclosed structures. Based upon the evidence in the record the Hearings Officer finds this approval criterion is met.

- C. Liquid waste pretreatment. The use, if other than a sewage treatment facility, must provide pretreatment of any liquids being discharged into the City's**

stormwater or sanitary disposal system. The pretreatment must meet the standards of the Bureau of Environmental Services.

Finding: The entire waste-related use will take place in an enclosed structure, ensuring residual waste will not be exposed to rain. Applicant has plans in place to store wash water in sumped catch basins that are not connected to storm or sanitary sewers. Outside vendors will pump the stormwater when catch basins are half full and taken to a wastewater disposal site. Based upon the evidence in the record the Hearings Officer finds this approval criterion is met.

D. Posted information. A sign must be posted near the entrance to the site, stating the telephone number(s) where a representative of the use may be reached at all times.

Findings: Applicant stated the required signage will be posted upon approval of this application. To ensure compliance, a condition of approval for the required sign is recommended. With the described condition of approval, the Hearings Officer finds this approval criterion is met.

33.254.050 Traffic Impact Study

A traffic impact study must be submitted for the proposed use. As part of the study, measures must be proposed for mitigating traffic impacts resulting from vehicles going to and from the site. The study must also include a plan and mechanisms to ensure that traffic, especially trucks, travel primarily on truck streets or Major City Traffic Streets when near the site. The traffic study must include information on proposed access points, hours of operation, types of vehicles, and number of trips.

Findings: Applicant submitted a traffic impact study (Exhibit A.7) which was reviewed for conformance with this and other regulations by PBOT. The Hearings Officer finds this approval criterion is met.

33.254.060 Nuisance Mitigation Plan

The applicant must submit a mitigation plan that addresses potential nuisance impacts which might be created by the proposed use. The plan must include the following components:

- A. Off-site impacts.** The plan must document that the use will comply with the off-site impact standards stated in Chapter 33.262;
- B. Litter.** For Waste-Related uses, the plan must address litter generated on the site and litter along roadways leading to the use that is generated by vehicles coming to the site. The plan must also address illegally dumped waste products near the site. The plan must provide for regular litter

removal. The plan must also include means to limit litter from vehicles coming to site; and

- C. Dust, mud, and vector control. The plan must provide mechanisms to limit impacts from dust, mud, and disease carrying organisms such as rats and mosquitoes.

Findings: Opponents raised concerns about litter, dust and vector control in the event that Applicant's proposal was approved as recommended by BDS staff. Dwinger raised dust issues related to the current and proposed wood grinding/biomass/hog fuel operation at the Subject Property. As noted above, the wood grinding/biomass/hog fuel activity at the Subject Property is an allowed use in the IG2 zone. Further, Applicant is not, in this case, requesting approval of the wood grinding/biomass/hog fuel activity. Dwinger and Lee argued that truck traffic leading to the waste-related use would cause dust (Exhibits H.3 and H.13).

Applicant responded to the dust concerns in Exhibit H.17. Gifford stated, in Exhibit H.17 the following related to dust:

"Since most waste recovery operations will take place inside an enclosed facility, most dust and litter will be limited and controlled. Also, any of the operations which will take place outdoors (such as grinding) the use of Best Management Practices will be installed in order to minimize the generation of different types of dust and litter."

Gifford, in Exhibit H.17, listed Best Management Practices to be used at the Subject Property including sweeping, watering routine inspections. Applicant submitted an off-site impacts and nuisance mitigation plan under Point #8 of the Operations Plan (Exhibit E.3). The plan calls for twice-daily sweeping by a sweeper truck, watering and routine inspections (twice daily) of the perimeter of the Subject Property by two to three staff as well as misting with a Ecosorb 606 Broad Spectrum Odor Neutralizer, or similar machinery/technology, to help control dust. In addition, Applicant states in their narrative that City of Roses trucks are covered and are equipped with automatic tarping systems. Outside haulers are required to cover their loads. Applicant did note in their narrative that some recyclables would be stored outside (such as plastic recycling bales and cardboard bales) but with all waste-related uses, including storage, required to take place in an enclosed building, a condition of approval will prohibit exterior storage.

The Hearings Officer finds Applicant's Operation Plan complies with the off-site impacts requirements in Zoning Code Chapter 33.262 to protect neighboring properties from noise, vibration, or glare impacts. Nothing about the waste-processing activities inside the existing building would cause unusual noise, vibration, or glare impacts to residents of the apartment complexes south of NE Sandy Blvd that are approximately 300-feet or more from the building proposed to

house the waste-related use. Between the waste-related use and the apartments are the railroad right-of-way and NE Sandy Blvd.

Odor is not expected to be an issue as the all waste related activities will take place in a building, a Ecosorb 606 Broad Spectrum Odor Neutralizer, or equally effective machinery/technology, will be installed to ensure odor neutralization and materials which generate odors, such as garbage, organics or putrescibles, are not to be kept on the Subject Property over-night. Other odor causing materials, such as septage, sewer, compost and wastes such as dead animals are not accepted per Applicant's Operations Plan and narrative.

Since waste-processing activities would occur inside the existing building and trucks would carry waste materials to and from the building in sealed containers, no litter issues are expected.

No dust or mud issues are expected, since the waste processing activities would occur indoors and since trucks would access the building using a paved vehicle area.

Opponents did express concerns about the control of rodents (testimony of Dwinger, Spang, Born and Lee). Opponents stated that the handling of garbage, organics or putrescibles can be expected to bring in and/or attract rodents. To control rodents and vectors, Applicant states that the facility will operate on a 'first in, first out' procedure to prevent the accumulation of materials that could provide habitat or sustenance for rodents/vectors. Loading doors would be kept closed and materials would be processed in a timely manner. The tip floor and processing equipment would be washed as necessary to prevent vector attraction, and electrical discharge insect-control devices would be installed in the tip floor area. In addition, Applicant agreed to contract with an exterminator to provide periodic evaluations and vector control services as needed.

The Hearings Officer finds that with conditions of approval requiring the implementation of the off-site impacts and nuisance mitigation plan, the requirements of this approval criterion are met.

33.254.070 Reclamation Plan for Landfills

The applicant for a landfill use in the Waste-Related use category must submit a reclamation plan. The Bureau of Environmental Services and BDS will provide a technical review of the plan. Mining uses are subject to State requirements for reclamation plans.

A. Contents of the reclamation plan. The reclamation plan must include the following:

- 1. Phasing and schedule of work to be conducted;**
- 2. Phasing and schedule of reclamation to be conducted;**

3. **Materials to be used in the reclamation;**
 4. **The effect of the reclamation on surface and subsurface drainage patterns;**
 5. **Plans for future use of the land; and**
 6. **A discussion of how the proposed reclamation plan is consistent with the future potential uses of the land, according to the zoning and the Comprehensive Plan designation.**
- B. Performance guarantee.** The review body as part of the conditional use review may require the applicant to post a bond or other security with the City to ensure the completion of the reclamation plan. The security must comply with the regulations for performance guarantees stated in 33.700.050.

Findings: Since no landfill is proposed, the Hearings Officer finds the regulations in Zoning Code Section 33.254.070 are not applicable.

33.254.080 Setbacks, Landscaping, and Screening

Waste-Related uses are subject to the following setback, landscaping, and screening requirements. Mining uses are subject to State requirements for setbacks, landscaping, and screening.

- A. Setback distance.** Waste-Related uses must be set back 100 feet from all property and street lot lines that abut C, E, or I zones. A 200 foot setback is required along all property and street lot lines that abut OS or R zones.
- B. Landscaping and screening requirements.** The setback must be landscaped to at least the L1 standard. A fence at least 6 feet high must be provided on the interior side of the setback. The fence must be screened by a high hedge meeting the L3 standard. The landscaping standards are stated in Chapter 33.248, Landscaping and Screening. In addition, gates with fencing at least 6 feet high must be provided across all entrances. The property owner must maintain the fencing and gates in good repair.

Findings: Applicant requested Adjustments to the setback, landscaping, and fencing requirements in Zoning Code Section 33.254.080. As discussed later in this decision, the Hearings Officer finds the approval criteria for the proposed Adjustments are met and recommends approval of the Adjustments. With approval of the proposed Adjustments, the Hearings Officer finds these approval criteria can be satisfied.

33.254.090 Activities in Required Setbacks

Extraction, movement, or stockpiling of mineral and aggregate resources or the disposal or storage of waste products within a required setback is prohibited. The tops and toes of cut and fill slopes must remain outside the required

setback. Structures, exterior storage, and parking areas for trucks or equipment are not allowed within the required setbacks. Required setbacks includes all setbacks approved by the State for Mining uses.

Findings: No extraction, movement, or stockpiling of mineral or aggregate resources is proposed and no waste disposal or grading is proposed on the Subject Property. As discussed in the previous section, Applicant requested an Adjustment reduce the depth of the setback requirements and staff recommends approval of the Adjustment Review. With approval of the Adjustment Review, there would be no structures, parking, or storage within the reduced setbacks, and Zoning Code Section 33.254.090 would be satisfied. The Hearings Officer finds this approval criterion can be met.

33.254.100 Underground Utilities

All underground lines and conduits on a mining or landfill site and within 50 feet of the site must be protected from damage from the use. This includes storm and sanitary sewers, and water, gas, and electric lines

Findings: Since the proposal is not for a mining or landfill use, the Hearings Officer finds the regulations in Zoning Code Section 33.254.100 are not applicable.

- H. There is a reclamation or redevelopment plan which will ensure that the site will be suitable for an allowed use when the mining or landfill use is finished; and**

Finding: Because the proposal does not include mining or a landfill use, the Hearings Officer finds this approval criterion is not applicable.

- I. Public benefits of the use outweigh any impacts that cannot be mitigated.**

Finding: Due to the location of the use in Portland's Industrial Sanctuary and distance from natural resources and residential areas, the Hearings Officer identified no adverse impacts that need to be mitigated for. As such, the Hearings Officer finds this approval criterion is met.

33.805 Adjustment Review

33.805.010 Purpose

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, 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. They also 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.

33.805.040 Approval Criteria

Adjustment requests will be approved if the applicant has demonstrated that approval criteria A through F, below, have been met.

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

The eastern portion of the Subject Property is currently within the City's Scenic ('s') Overlay zone. Applicant is proposing a waste-related use. Both the Scenic overlay and waste-related use code sections require vegetative screening.

Applicant requests the following Adjustments:

Within the 's' overlay zone for a Scenic Corridor:

- Waive the 's' landscaping requirement.

Reduce the 100-foot waste-related setback:

- Down to 10-feet along the south property line;
- Down to 38-feet from the west property line; and
- Down to 40-feet from the eastern property line.

Modify the required landscaping by:

- Having just a fence and a high hedge along the southern property line from just outside the toe of the levee to the railroad spur;
- Waiving the vegetation along the west property line; and
- Providing L1 landscaping along in the stormwater swale and require no additional landscaping south of the stormwater swale. Maintaining the vegetation along in the southeast and along the property line unless the Multnomah County Drainage District requires its removal.

The purpose of the Scenic Overlay is found in 33.480.010 Purpose:

The Scenic Resource zone is intended to:

- Protect Portland's significant scenic resources that provide benefits to the public as identified by the City in the Scenic Resources Protection Plan (1991) and the Central City Scenic Resources Protection Plan (2017);
- Enhance the appearance of Portland to make it a better place to live and work;
- Create attractive entrance ways to Portland and its districts;

- Improve Portland's economic vitality by enhancing the City's attractiveness to its citizens and to visitors; and
- Implement the scenic resource policies, goals, and objectives of Portland's Comprehensive Plan.

The purposes of the Scenic Resource zone are achieved by establishing height limits within view corridors to protect significant views and by establishing additional landscaping and screening standards to preserve and enhance identified scenic resources.

Born testified and submitted written comments regarding the Scenic overlay (Exhibit H.16). Born stated, in Exhibit H.16, that

"the applicant is encroaching on what the city has historically protected i.e., the environmental zones, the scenic resource protection plan and the scenic overlay zones throughout our beautiful city. With that being said, the intention of the scenic resource overlay zone is to: improve Portland's economic vitality by enhancing the city's attractiveness to its citizens and visitors, create attractive entranceways to Portland and its districts, enhance Portland's appearance to make it a better (safer) place to live and work."

The Scenic overlay was placed on this property to protect and enhance views along an identified corridor known as the "cross-dike" that was identified for a future pedestrian trail along the top of the levee on the Subject Property during the City's 1989 Goal 5 Scenic Views, Sites and Drives Inventory (Exhibit G.5). It is identified in the Scenic Views, Sites, and Drives Inventory as SD 20-10, and described is as:

"The cross-dike is a north-south embankment that provides flood protection from the Columbia River. Currently the route is better hiked than driven because of its unpaved surface and because vehicles are occasionally chained out. The drive offers views of Mt. Hood to the east and of Mt. St. Helens to the north. There are also views of some of the sloughs and natural areas in the Columbia South Shore District. It measures less than one mile in length and extends from NE Marine Drive on the north to NE Sandy Boulevard on the south. The cross-dike is designated as a portion of the 40-mile Loop, but is not currently improved to trail standards."

The views that were identified as needing enhancement and protection were of Mt. Hood and the Cascade Range, both east of the Subject Property and away from the proposed use. The trail was never established due to private ownership of the dike in this area, as well as the railroad right-of-way preventing the trail from connecting to NE Sandy Blvd (Exhibit G.7). The updated Comprehensive Plan recently adopted by the City of Portland in May of this year relocated the trail alignment to an east-west corridor north of the Subject Property (Exhibit G.7). As a result, the L1 landscaping standard for the scenic overlay along the eastern edge of the Subject Property is no longer needed or required. Because of this, the purpose for requiring the landscaping no longer exists.

As noted earlier, Applicant requested an Adjustment to the waste-related use development standards in 33.254.080:

- Reduction down to 10-feet along the south property line;
- Reduction down to 38-feet from the west property line; and
- Reduction down to 40-feet from the eastern property line.

The development standards in 33.254.080.B effectively require the L3 landscape standard along the perimeter of the proposed waste-related use. Due to the location of the existing buildings, vehicle areas on the Subject Property and the levee, the landscape requirements can't be satisfied, particularly along the southern property line where the Subject Property is entirely developed with structures, vehicle area, and railroad right-of-way and easements. Applicant proposed a tall L3 hedge and 6-foot fence along the southern property line from the toe of the dike to the railroad spur easement. Applicant proposed to install a fence on Jersey barriers along the toe of the dike on the east side of the property from the southeast corner to the vegetated stormwater swale in the northeast (Exhibit C.1). The fence must be on jersey barriers because the Multnomah County Drainage District will not allow vegetation or structures on or in the levee due to structural integrity issues. A fence will be placed with footings in ground on the western side of the vegetated stormwater swale and together with the vegetation will satisfy the L1 standard. A 6-foot tall fence will separate the waste related use from the vegetated northern portion of the Subject Property and run from the stormwater swale, along the access road to the property line on the west side of the property. The northern portion of the Subject Property, identified in Exhibit C.1, will be restored to the L1 standard. There is no need for landscaping along the west property line because all waste-related activities will occur in enclosed buildings and therefore the Subject Property, as viewed from industrial uses to the west, will appear no different than any other industrial use allowed in the IG2 zone.

The Hearings Officer appreciates Born's testimony and concern related to the Scenic overlay zone. However, the Hearings Officer finds that the existing Comprehensive Plan has eliminated the scenic overlay zone on the eastern portion of the property (along the levee) and therefore denying Applicant's request for an adjustment would be effectively in conflict with the current Comprehensive Plan.

The purposes of the development standards for waste-related uses being Adjusted are stated in Zoning Code Section 33.254.010:

These regulations:

- ***Reduce the impacts and nuisances resulting from mining and waste-related uses on surrounding land uses (emphasis added);***
- **Reduce the transportation impacts from these uses;**
- **Ensure that land used for these purposes is restored so that it may be reused; and**
- **Provide security measures so that these land uses are not a safety hazard to other land uses or to nearby residents.**

It should be noted that the purpose of the setbacks and landscaping standards are intended mainly for mining and land fill uses where due to the exterior and uncovered nature of the uses, adverse impacts are more significant. External use adjacent to mining and landfill activity are generally more susceptible to odor emanating, vector issues, unsightly conditions and noise issues. Of the listed purpose statements, only the first one is relevant to the requested Adjustments: *"Reduce the impacts and nuisances resulting from mining and waste-related uses on surrounding land uses."*

Unlike mining or landfill uses, which occur outdoors, are visually unappealing and generate significant noise, no nuisances or negative impacts on surrounding land uses are expected from the proposed waste-related use because:

- Waste processing activities would take place inside an existing enclosed building; and
- litter, odor, noise and glare issues are adequately addressed through the operations, mitigation plan and proposed Broad Spectrum Odor Neutralizer (Exhibit A.3); and
- the proposed use has no impacts on the industrial character of the existing surrounding uses such as steel fabrication, heavy equipment sales and auto-towing and wrecking; and
- the only residentially zoned properties with household living in the area are properties to the south that are at least 300-feet away, separated by a railroad right-of-way and a 150-foot wide street right-of-way for a state highway. Nothing north of NE Sandy Blvd is residentially zoned.

To bolster the proposal, Applicant proposed a solid line of juniper shrubs (which grow up to 15-feet in height) along the southern property line from the eastern point to the railroad spur which will soften the visuals of the use from properties located south of NE Sandy Boulevard. Additionally, the railroad right-of-way sits atop a raised earthen berm that will provide visual screening as well as a physical barrier to intercept sound waves.

The Hearings Officer takes note that the Subject Property has significant amounts of existing landscaping, as seen in Exhibit C.1. Further, the Hearings Officer notes that the most sensitive view shed is from the south and the apartment complexes across the railroad right-of-way and NE Sandy Blvd. With Applicant's proposed planting of a solid screen of tall growing shrubs along the southern property line will improve the view to the north from the apartments. The southeastern area of the Subject Property, near the levee, has a landscaped area that encompasses approximately 13,500 square feet; a stormwater swale that includes approximately 15,500 square feet of landscaping; and an approximately 89,000-square foot, or 2-acres, area along the north property line that is natural and will meet the L1 vegetation standards. A condition of approval will require the tall shrub screen along the southern property line, the northern area and stormwater swale to be landscaped to at least the L1 standard and the southeast portion of the Subject Property to maintain the existing vegetation unless the drainage district requires its removal for the stability of the levee.

Based upon the above evidence the Hearings Officer finds that the proposed Adjustments equally meet the purposes of the regulations. The Hearings Officer finds this approval 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 an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

Findings: The Subject Property is zoned IG2, an Industrial zone. Therefore, the Applicant must demonstrate that the proposal would be consistent with the classifications of the adjacent streets and the desired character of the area.

Street classifications

The Subject Property has approximately 45-feet of frontage along one street right-of-way: NE 138th Ave. While it appears on maps the Subject Property abuts NE Sandy Blvd the railroad right-of-way sits between the Subject Property and the street. The classifications for NE 138th were identified by PBOT in the findings for Public Services under the Conditional Use approval criteria and are as follows:

	Traffic	Transit	Bikeway	Pedestrianway	Freight
NE 138th.	Neighborhood Collector	Local Service Street	City Bikeway	Local Service Street	Freight District

The Hearings Officer finds that since the proposed Adjustments relate only to waste-related setbacks and landscaping, and not to the type, size or scope of the proposed use, approval of the Adjustments would not result in any changes to traffic levels or demand for transit, bike, pedestrian, or freight facilities. The Hearings Officer finds the proposal is consistent with the adjacent street classifications and that this aspect of the approval criterion is met.

Desired character of area

The "desired character" of an area is defined in Zoning Code Chapter 33.910 as the preferred or envisioned character based on the character statement of the zone and any adopted area plans. The Subject Property is zoned IG2, has a Scenic ('s') overlay and is within the boundaries of the Columbia South Shore Plan District.

Scenic Overlay Zone

The Scenic Resource zone is intended to:

- Protect Portland's significant scenic resources that provide benefits to the public as identified by the City in the Scenic Resources Protection Plan (1991) and the Central City Scenic Resources Protection Plan (2017);
- Enhance the appearance of Portland to make it a better place to live and work;

- Create attractive entrance ways to Portland and its districts;
- Improve Portland's economic vitality by enhancing the City's attractiveness to its citizens and to visitors; and
- Implement the scenic resource policies, goals, and objectives of Portland's Comprehensive Plan.

The purposes of the Scenic Resource zone are achieved by establishing height limits within view corridors to protect significant views and by establishing additional landscaping and screening standards to preserve and enhance identified scenic resources.

The purpose of the 's' overlay on the Subject Property is to enhance and protect views of Mt. Hood and the Cascade Range as seen from a trail once proposed for the top of the dike. The current Comprehensive Plan no removed the trail from the levee. The purpose of the scenic overlay, views from a trail on the levee, can no longer be met because there is no trail currently proposed or mapped. The Hearings Officer finds that the 's' overlay is no longer relevant to the Subject Property and since the proposed use will not alter the buildings on the Subject Property, the Hearings Officer finds the proposal is consistent with the 's' overlay.

IG2 Zone

The character statement for the IG2 zone in Section 33.140.030.C reads:

'General Industrial. The General Industrial zones are two of the three zones that implement the Industrial Sanctuary map designation of the Comprehensive Plan. The zones provide areas where most industrial uses may locate, while other uses are restricted to prevent potential conflicts and to preserve land for industry. The development standards for each zone are intended to allow new development which is similar in character to existing development. The intent is to promote viable and attractive industrial areas.

2. **General Industrial 2. IG2 areas generally have larger lots and an irregular or large block pattern. The area is less developed, with sites having medium and low building coverages and buildings which are usually set back from the street.'**

The proposed Adjustments would allow a new waste-related use to locate on the Subject Property and use the existing buildings and vehicle areas already established by a previous waste-related use. While the existing setbacks, fencing, and landscaping do not meet the standards of Zoning Code Section 33.254.080, the Subject Property is located in the Industrial Sanctuary with similar industrialized characteristics. The waste-related use will take place entirely indoors but heavy trucks will come and go to the Subject Property. Adjacent uses have exterior heavy equipment storage and exterior work activities, steel fabrication, and industrial laundry services taking place which are more intensive than the proposed use since it operates entirely indoors. The proposed use is approximately 1,500 feet from NE 138th

and approximately 150-feet from NE Sandy. The Subject Property contains over 2-acres of vegetated and landscaped areas, which exceeds the typical IG2 development pattern. The Hearings Officer finds that nothing about the proposed Adjustments would make the development inconsistent with the IG2 characteristics.

Columbia South Shore Plan District

The envisioned character of the Columbia South Shore Plan District is an industrial employment center that is intended to attract a diversity of employment opportunities. The regulations of the district are to provide environmental protection and maintain capacity of the area infrastructure to accommodate future development.

The Hearings Officer finds that the adjustments requested to the setback and landscaping standards for waste-related uses in 33.254.080 will not impact the area's infrastructure as all relevant City Bureaus have provided responses that the proposal will not impact their facilities and/or there is adequate capacity for the use. Because the proposed use is not a landfill or mine, the land can be used for other uses if and when the proposed use relocates or ceases operation. The establishment of this waste-related use will not preclude future redevelopment.

Summary

The Hearings Officer finds that the proposed Adjustments are consistent with the street classifications and with the desired character of the area. The Hearings Officer finds this approval 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: Applicant proposed two Adjustments:

- To reduce the minimum waste-related setback below 100-feet, and
- to modify the landscaping requirements for waste-related uses.

The purpose of the IG2 zone is to provide land "where most industrial uses may locate, while other uses are restricted to prevent potential conflicts and to preserve land for industry" (Zoning Code Section 33.140.030.C). Waste-related uses listed under the "Industrial Use" category in Zoning Code Chapter 33.920 and establishment of a waste-related use will not preclude future redevelopment as a landfill or mine would, so the location of the waste-related use on the IG2-zoned Subject Property is consistent with the purpose of the IG2 zone. The Hearings Officer finds that the cumulative effect of the Adjustments does not make the proposal less consistent with this purpose. The Hearings Officer finds this approval criterion is met.

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

Findings: The Hearings Officer incorporates, as additional findings for this approval criterion, the findings for PCC 33.805.010 A.

City-designated scenic resources are identified on the official zoning maps with a lower case "s," and historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. The eastern portion of the property, centered on the Cross-Dike, of the Subject Property is within the 's' overlay. There are no historic resources mapped on the Subject Property.

The 's' overlay placed on the Subject Property was to protect views of Mt. Hood and the Cascade Range as seen from a trail originally proposed for the top of the dike. The trail was never constructed due to that segment of the dike being in private ownership and also because even if it had been established, it would have dead-ended at the railroad tracks south of the Subject Property adjacent to NE Sandy Blvd. The City's updated 2035 Comp Plan removed the trail route from the dike and relocated it to a parcel owned by the City north of the Subject Property. The Hearings Officer finds that the scenic resource the 's' overlay was intended to protect no longer exist. The Hearings Officer finds this approval criterion is met.

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

Findings: As discussed in findings throughout this decision, waste materials would be delivered from closed truck trailers directly into the existing building, where all waste processing activities would take place. There would be no waste materials visible outside the building or outside the trucks serving the Subject Property. Therefore, the larger setbacks and more formal landscaping plan that would be required without the Adjustments would not prevent any negative impacts. Since no negative impacts are identified which would require mitigation, the Hearings Officer finds this criterion is not applicable.

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: Environmental zones are designated on City zoning maps with a 'c' or 'p'. The City's zoning maps do not designate any areas on the Subject Property as within a 'c' or 'p' overlay zone. The Hearings Officer finds this criterion is not applicable.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all requirements of Title 11 can

be met, and that all development standards of Title 33 can be met or have received an Adjustment or Modification via a land use review, prior to the approval of a building or zoning permit.

III. CONCLUSION

The proposed Conditional Use is to establish a waste-related use on the Subject Property where an existing recycling operation is located in the IG2 Zone. Proposed activity on the Subject Property includes sorting and processing of recycled materials, including glass, paper, newspaper, cardboard, plastic, and metal as well as a transfer station for garbage, organics and putrescible waste. The waste-related activities will take place inside an existing structure that was built in the mid-1960s and occupies approximately 90,000 square feet. A separate building for office space is south of the main facility and occupies approximately 8,000 square feet on two levels. A shop, or maintenance shed, occupies 3,500 square feet just north of the main building. A new paved access road on the Subject Property would facilitate the movement of trucks and vehicles visiting the Subject Property.

Adjustments to the Waste-Related setback and landscaping are proposed to allow continued use of the existing buildings and the Subject Property in a manner consistent with the IG2 zone. This will result in a level of landscaping and setback of operations that is less than the code requires. Two factors play a role in the consideration of approval or denial of the Adjustments. First, the 100-foot setback and landscaping requirements were intended for mining and landfill operations due to the uses taking place almost exclusively outside, which has a significantly larger impact on surrounding uses, both visually and audibly. Second, due to the existing layout of structures and improvements, there is little that can be done for operations in and around the existing buildings that would allow conformance to setbacks and screening on the west, south and east sides.

The subject currently has a zoning designation of scenic overlay ('s') on the eastern edge. City Council recently updated the Comprehensive Plan and removed the scenic overlay at that location. The Hearings Officer determined that strict application of landscaping requirements, as set forth in the scenic overlay zone, would be contrary to the recently enacted Comprehensive Plan.

The Hearings Officer found that the application meets all relevant approval criteria with the imposition of conditions noted in the findings above.

IV. DECISION

Approval of a Conditional Use review for a waste-related use in an Industrial zone;

Approval of an Adjustment to 33.254.080.A (Setbacks for Waste-Related Uses) to reduce the 100-foot setback:

- Reduction down to 10-feet along the south property line; and

- Reduction down to 38-feet from the west property line; and
- Reduction down to 40-feet from the eastern property line.

Approval of an Adjustment to 33.254.080.B Landscaping and Screening for Waste-Related Uses) to modify the required landscaping within the reduced setback by:

- Having just a fence and a high hedge along the southern property line from just outside the toe of the levee to the railroad spur; and
- waiving the vegetation along the west property line; and
- providing L1 landscaping along in the stormwater swale and require no additional landscaping south of the stormwater swale. Maintaining the vegetation along in the southeast and along the property line unless the Multnomah County Drainage District requires its removal.

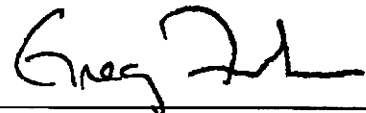
Approval of an Adjustment to the Scenic Overlay landscaping standards by

- Waiving the landscaping standards in 33.480.040.B.2.e along the eastern property line.

Per the approved Site Plan, Exhibit C.1, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B through K) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 17-282278 CU AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. Prior to beginning operations of the waste-related use, the Applicant or subsequent owner shall have a sign posted at driveway entrance and outside of the public right-of-way off of NE 138th identifying the phone number where a representative can be reached during business hours or a voicemail left during non-business hours.
- C. Prior to beginning operations of the waste-related use, the Applicant or subsequent owner shall remove the overgrown vegetation from the right-of-way at the access entrance off of NE 138th and shall maintain clear views of sight for vehicles entering and leaving the Subject Property.
- D. Waste-related materials and those designated to be sent to a landfill are prohibited from being stored outdoors and must be kept indoors until transfer off of the Subject Property. Biomass/hog fuel manufactured from ground-up wood is not considered a waste-related use byproduct.
- E. Garbage, organic materials and putrescibles shall not be stored on the Subject Property for more than 24-hours. Any such materials stored at the Subject Property must be less than one truckload (25 cubic yards) and be stored inside a covered container entirely within the closed facility/building.

- F. All transfers of waste material from one vehicle or container to another and any cleaning of containers must be done inside the building.
- G. The off-site impacts and nuisance mitigation plan and the operations plan (Exhibit A.3) and Best Management Practices (related to sweeping, watering and routine inspections per Exhibit H.17, pages 1 and 2) must be continually implemented and enforced and shall be made available to the City and any neighbor or neighborhood association making a request for the document.
- H. Any activities associated with waste-related uses are prohibited from occurring on the graveled areas of the Subject Property.
- I. The minimum number of parking spaces for the waste-related use is five; the maximum number of parking spaces is 30. Any increase to the parking above the 5 spaces located on the Subject Property site plan C.1 may require additional parking area landscaping and shall be reviewed through a zoning permit or in association with a building permit.
- J. An odor-control and neutralizing mist system, the Ecosorb 606 Broad Spectrum Odor Neutralizer, shall be installed to limit odors from emanating from any location on the Subject Property to adjacent properties, as per the odor standard in PCC 33.262.070. An alternative system may be substituted for the Ecosorb system if a licensed engineer certifies in writing to the City that the alternative system is equivalent to, or exceeds, the odor neutralizing effect of the Ecosorb system. The final systems shall be developed, reviewed and monitored by the operator of the facility on an ongoing basis. Metro, the City of Portland, and the State of Oregon may also monitor odor levels generated from the Subject Property. The odor neutralizing system shall be installed before any organic or putrescible materials are delivered to the Subject Property.
- K. Vegetation in the landscaped stormwater swale along the eastern property line of the Subject Property, identified in Exhibit C.1, will be maintained to the L1 standard. Landscaping in the southeast portion of the Subject Property shall be maintained to their current condition unless the Multnomah County Drainage District requires its removal for levee stability or maintenance. The landscaped area along the northern property line of the Subject Property, as identified in Exhibit C.1, shall be restored and maintained to the L1 standard.



Greg Frank, Hearings Officer

September 27, 2018

Date

Application Determined Complete:	June 8, 2018
Report to Hearings Officer:	July 27, 2018
Revised Report to Hearings Officer:	August 23, 2018
Decision Mailed:	September 27, 2018
Last Date to Appeal:	4:30 p.m., October 11, 2018
Effective Date (if no appeal):	October 12, 108

Conditions of Approval. This project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

Appeal of the decision. ANY APPEAL OF THE HEARINGS OFFICER'S DECISION MUST BE FILED AT 1900 SW 4TH AVENUE, PORTLAND, OR 97201. Appeals can be filed at the 5th floor reception desk of 1900 SW 4th Avenue, Monday through Friday between 8:00 am and 4:30 pm. An appeal fee of \$5,000.00 will be charged (one-half of the application fee for this case, up to a maximum of \$5,000). Information and assistance in filing an appeal can be obtained from the Bureau of Development Services at the Development Services Center.

Who can appeal: You may appeal the decision only if you wrote a letter which is received before the close of the record on hearing or if you testified at the hearing, or if you are the property owner or applicant. If you or anyone else appeals the decision of the Hearings Officer, City Council will hold an evidentiary hearing, one in which new evidence can be submitted to them. Upon submission of their application, the applicant for this land use review chose to waive the 120-day time frame in which the City must render a decision. This additional time allows for any appeal of this proposal to be held as an evidentiary hearing.

Appeal Fee Waivers: Neighborhood associations recognized by the Office of Neighborhood Involvement may qualify for a waiver of the appeal fee provided that the association has standing to appeal. The appeal must contain the signature of the Chair person or other person authorized by the association, confirming the vote to appeal was done in accordance with the organization's bylaws.

Neighborhood associations, who wish to qualify for a fee waiver, must complete the Type III Appeal Fee Waiver Request for Organizations Form and submit it prior to the appeal deadline. The Type III Appeal Fee Waiver Request for Organizations Form contains instructions on how to apply for a fee waiver, including the required vote to appeal.

Recording the final decision. If this Land Use Review is approved the final decision will be recorded with the Multnomah County Recorder.

The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder.

For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

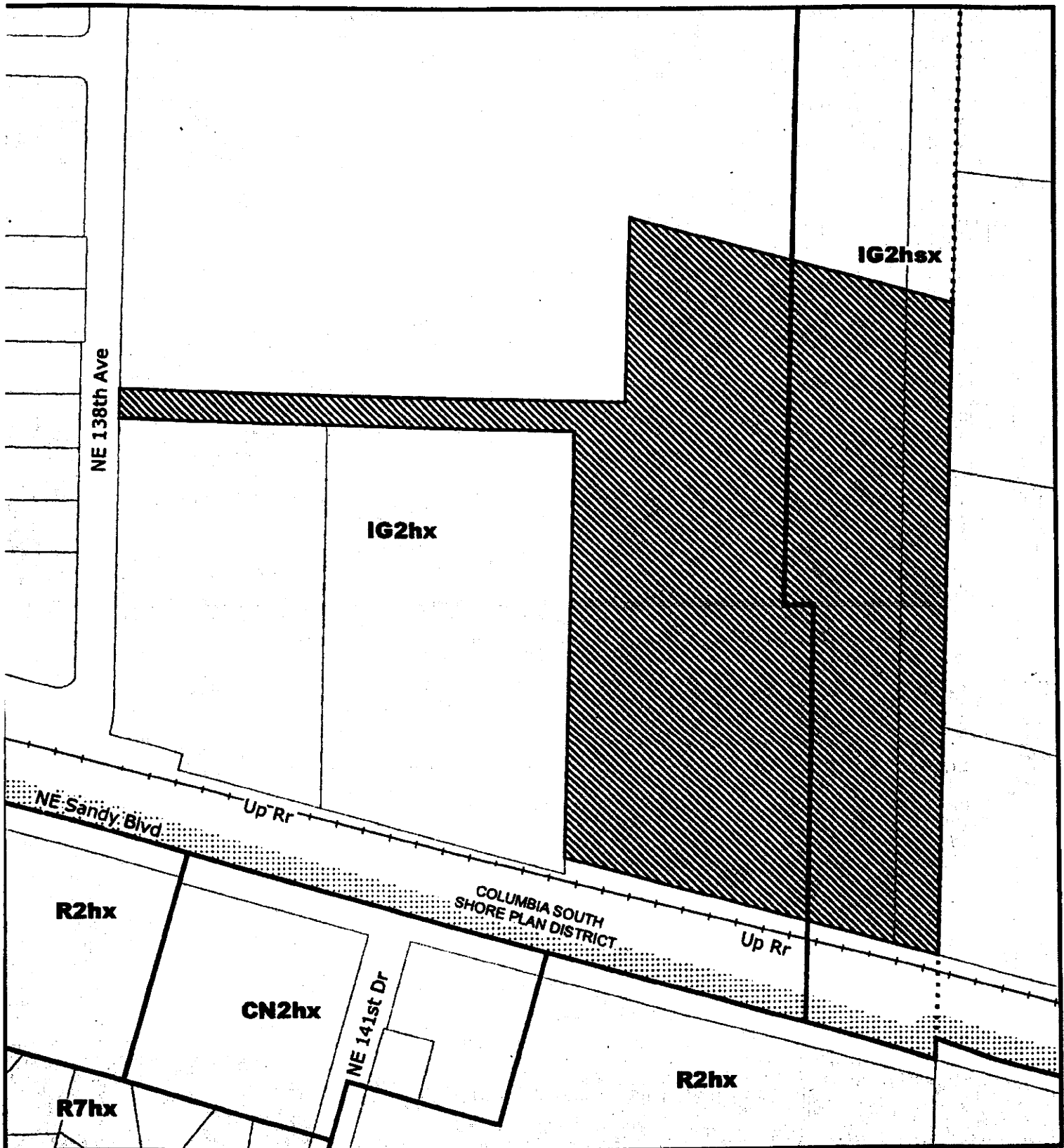
Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS
NOT ATTACHED UNLESS INDICATED

- A. Applicant's MATERIALS:
 - 1. December 17, 2017 Narrative
 - 2. Applicant's Copy of Pre-Application Notes
 - 3. Applicant's Waste-Related Use Operations Plan Which Includes Nuisance/Mitigation Plan
 - 4. Stormwater Report
 - 5. Fence Types Approved by ODOT
 - 6. Contaminated Media Management Plan Approved By DEQ
 - 7. Transportation Impact Study
 - 8. Miscellaneous Appendixes
 - 9. December 17, 2017 Existing Site Plan
 - 10. December 17, 2017 Proposed Site Plan
 - 11. April 11, 2018 Updated Narrative
 - 12. April 11, 2018 Updated Existing Conditions Site Plan
 - 13. April 11, 2018 Updated Proposed Site Plan
 - 14. May 23, 2018 Updated Existing Conditions Site Plan
 - 15. Applicant's Extension to the 120-Day Statutory Clock, Submitted December 27, 2017
- B. Zoning Map (attached)
- C. Plans & Drawings:
 - 1. Site Plan (attached)
- D. Notification Information:
 - 1. Request for Response
 - 2. Posting Letter to Applicant and 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. Email from PBOT Traffic Engineer Informing Applicant of Condition of Approval
 - 4. Fire Bureau
 - 5. Police Bureau
 - 6. Site Development Review Section of Bureau of Development Services
 - 7. Bureau of Parks, Forestry Division
 - 8. Life Safety
 - 9. Oregon Department of Transportation
 - 10. Port of Portland
 - 11. Water Bureau
- F. Letters: None.
- G. Other:
 - 1. Original LUR Application

2. Receipt of Payment
 3. January 10, 2018 Incomplete Letter
 4. Email from Applicant Documenting Amount of Existing Landscaping
 5. 1989 Scenic Views, Sites, and Drives Inventory Identifying the Cross-Dike Scenic Corridor and Views to Protect Scenic Views, Sites, and Drives Inventory
 6. SD-10 Cross-Dike Description From
 7. Email from Emily Roth, Senior City Planner with Portland Parks and Recreation noting the Recreational Trail Intended to be Located on Cross-Dike was Removed From Trails Program and Accompanying Map
 8. Email from Shannon Buono, Senior City Planner with Bureau of Planning and Sustainability Noting the Updated Comprehensive Plan 2035 removed the Portion of the Trail Identified for the Dike on the Subject Site
 9. Copy of Land Use Approval for Case LU 02-137433 CU AD
- H. Received in the Hearings Office:
1. Hearing Notice - Kienholz, Don
 2. Staff Report - Kienholz, Don
 3. Fax Letter received 8/7/18 -Lee, Jenny
 4. Staff Report and Recommendation To The Hearings Officer - Kienholz, Don
 5. Record closing Information - Hearings Office
 6. Staff Report and Recommendation to the Hearings Officer - Kienholz, Don
 7. Amendments To Application for Conditional Use by City of Roses - Kienholz, Don
 8. Email from De Freitas to Kienholz dated 8/22/18 - Kienholz, Don
 9. Power Point Presentation Printout - Kienholz, Don
 10. Record Closing Information - Hearings Office
 11. 8/29/18 letter (3 pages) - Gifford, Kristina
 12. OMI Industries Naturally Effective Odor Control (10 pages) - Gifford, Kristina
 13. Cover pages with Letter dated 8/31/18 to Hearings Officer from Dwinger, photographs attached (26 pages) - Dwinger, Chris
 14. 9/4/18 Technical Memorandum (6 pages) - Kuhlmeier, Erin
 15. 9/4/18 Memorandum (4 pages) - Kienholz, Don
 16. Letter (3 pages) - Abeles, Will
 17. 9/11/18 letter (3 pages) - Gifford, Kristina



ZONING



THIS SITE LIES WITHIN THE:
COLUMBIA SOUTH SHORE PLAN DISTRICT
SOUTHERN INDUSTRIAL SUBDISTRICT

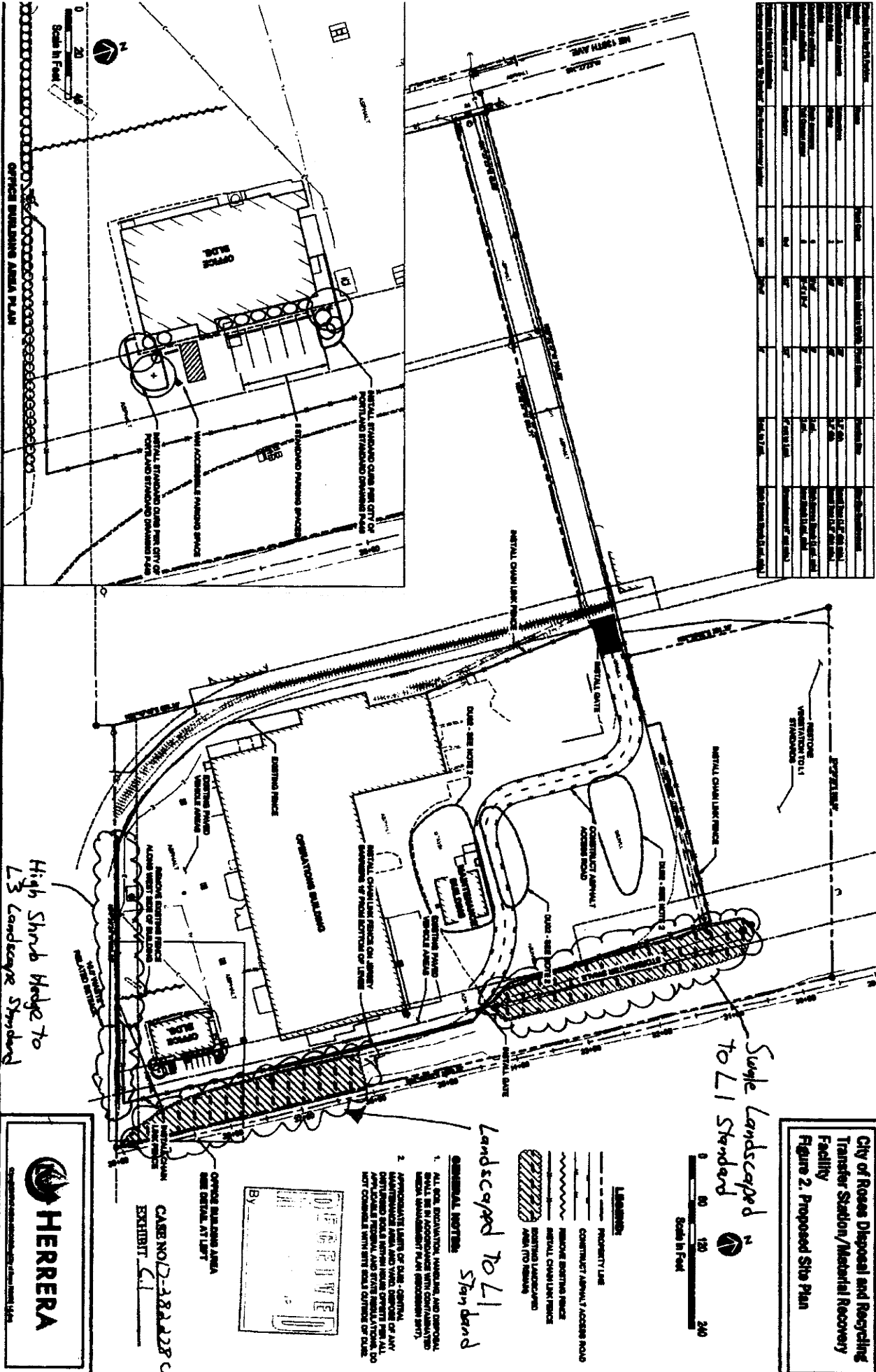


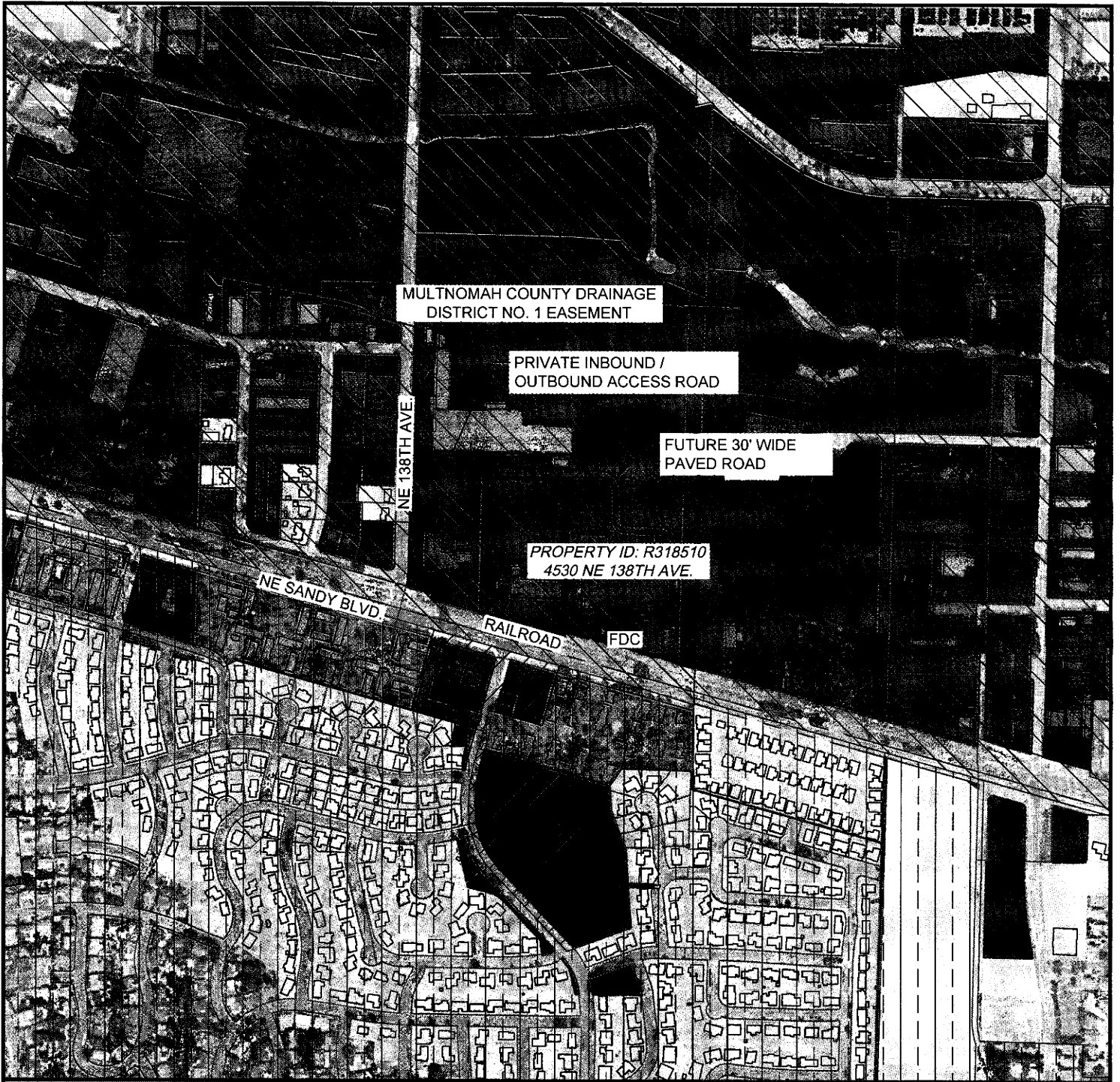
..... Recreational Trails

CASE NO. 17-282278 CU AD
EXHIBIT 13.1

File No.	<u>LU 17-282278 CU AD</u>
1/4 Section	<u>2645</u>
Scale	<u>1 inch = 200 feet</u>
State ID	<u>1N2E23D 100</u>
Exhibit	<u>B</u> <u>Dec 18, 2017</u>

Project Name/Location	Year	Area (Acres)	Volume (CY)	Weight (Tons)	Notes
Transfer Station	1998	1.0	10,000	1,000	Transfer Station
Transfer Station	1999	1.0	10,000	1,000	Transfer Station
Transfer Station	2000	1.0	10,000	1,000	Transfer Station
Transfer Station	2001	1.0	10,000	1,000	Transfer Station
Transfer Station	2002	1.0	10,000	1,000	Transfer Station
Transfer Station	2003	1.0	10,000	1,000	Transfer Station
Transfer Station	2004	1.0	10,000	1,000	Transfer Station
Transfer Station	2005	1.0	10,000	1,000	Transfer Station
Transfer Station	2006	1.0	10,000	1,000	Transfer Station
Transfer Station	2007	1.0	10,000	1,000	Transfer Station
Transfer Station	2008	1.0	10,000	1,000	Transfer Station
Transfer Station	2009	1.0	10,000	1,000	Transfer Station
Transfer Station	2010	1.0	10,000	1,000	Transfer Station
Transfer Station	2011	1.0	10,000	1,000	Transfer Station
Transfer Station	2012	1.0	10,000	1,000	Transfer Station
Transfer Station	2013	1.0	10,000	1,000	Transfer Station
Transfer Station	2014	1.0	10,000	1,000	Transfer Station
Transfer Station	2015	1.0	10,000	1,000	Transfer Station
Transfer Station	2016	1.0	10,000	1,000	Transfer Station
Transfer Station	2017	1.0	10,000	1,000	Transfer Station
Transfer Station	2018	1.0	10,000	1,000	Transfer Station
Transfer Station	2019	1.0	10,000	1,000	Transfer Station
Transfer Station	2020	1.0	10,000	1,000	Transfer Station

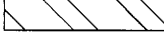

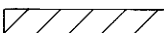





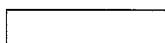




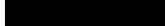
Legend

--- PROJECT BOUNDARY

Zoning

 GENERAL INDUSTRIAL
 RESIDENTIAL
 COMMERCIAL
 OPEN SPACE

Land Use

 AGRICULTURAL (AGR)
 COMMERCIAL (COM)
 MANUFACTURING (MFR)
 RURAL (RUR)
 SINGLE FAMILY RESIDENTIAL (SFR)
 VACANT (VAC)

CITY OF ROSES DISPOSAL AND RECYCLING TRANSFER STATION/ MATERIAL RECOVERY FACILITY EXHIBIT 1 - EXISTING CONDITIONS

