



April 16, 2021

**VIA ELECTRONIC MAIL:** LMAnderson@cityofsalem.net

Honorable Mayor and City Council Members  
c/o Lisa Anderson-Ogilvie  
Planning Administrator  
City of Salem Community Development Department  
555 Liberty St SE, RM 305  
Salem, OR 97301

RE: Annexation ANXC-730 (2527 and 2547 Robins Lane SE)  
Our File No: 10991-29588

Dear Honorable Mayor and City Council Members:

I represent BC Salem Property LLC, an Oregon limited liability company (the "**Applicant**"), which is the owner of the real property identified as Tax Lot 201 of 083W13 (6200 Block of Brentwood Drive SE) and Tax Lots 2200 and 2300 of 083W24B (2527 and 2547 Robins Lane SE) (collectively the "**Subject Property**"). The total area of the Subject Property is about 41.62 acres in size, and it is zoned Marion County UT (Urban Transition).

We believe we have satisfied the criteria for an annexation and respectfully request you to approve the application subject to the conditions of approval offered by the Applicant. This letter is intended to formally propose the conditions of approval and address certain concerns and arguments raised in the record.

#### **Proposed Conditions of Approval**

- A. Prior to submittal of any application for a land use approval, limited land use approval, or permit for developing the Subject Property, Applicant shall enter into an agreement with the City of Salem acknowledging and agreeing that the City of Salem will not record a final plat for any partition, subdivision, or planned unit development on or before June 1, 2023.

Park Place, Suite 200  
250 Church Street SE  
Salem, Oregon 97301

Post Office Box 470  
Salem, Oregon 97308

tel 503.399.1070  
fax 503.371.2927

[www.sglaw.com](http://www.sglaw.com)

- B. Any future development of the Subject Property shall require compliance with SRC 808.050 and SRC 808.55 tree planting requirements; however, the minimum diameter of the trees to be planted shall be increased from a 1.5-inch caliper to a 2-inch caliper standard and replacement tree diversity shall be increased by planting not less than five species authorized in the City's Tree and Vegetation Technical Manual.
- C. Prior to recordation of a final plat for any partition, subdivision, or planned unit development, applicant shall grant to the City of Salem's Tree Canopy Preservation Fund \$15,000.

The record contains substantial evidence demonstrating compliance with the criteria under SRC 260.060(C), as modified by OSR 222.127. The land use designation will remain Developing Residential, and the zoning will convert to Agricultural Residential in accordance with the City's policies and regulations. No comprehensive plan map amendment or zone change is requested. The proposed annexation is in the best interest of the City and is a necessary part of the local and state land use system. The proposed conditions of approval further support the approval of the proposed annexation.

Applicant wants to address concerns expressed into the record regarding conformance with Chapter 808 of the City's Unified Development Code ("**Tree Ordinance**"). Beginning in April of 2018 and concluding in June of 2018, Applicant completed a logging operation on the western portion of the Subject Property. This harvest was permitted under state law, and a copy of the Department of Forestry permit is attached thereto as **Exhibit A**. Individuals have asserted this harvest was illegal or unlawful. That is an incorrect and unfounded accusation. The harvest was duly permitted. There were no past enforcement actions nor are there any current enforcement actions by any government agency. City staff and the Applicant are in an agreement that there has been no violation of the Tree Ordinance.

City staff interpret the Salem Revised Code (SRC) 808.030(a)(2)(I) to prohibit the Subject Property from being "partitioned, subdivided, developed as a planned unit development, \*\*\* for a period of five years following the completion of the timber harvest." At the time of the timber harvest, Applicant was unaware of this interpretation. Applicant was aware of the Tree Ordinance; however, Applicant understood it differently than City legal and planning staff. Comments from individuals opposing the proposed annexation suggest that Applicant was a bad actor or was otherwise unreasonable. These comments are unfair and inaccurate. Applicant's harvest was not an unusual action and was lawfully permitted.

Applicant's understanding was that the City's Tree Ordinance did not apply to the Subject Property as it was outside of the City's limits, *and* the City would not apply the ordinance retroactively to the Applicant's harvest. Applicant's interpretation is reasonable given that staff and the Applicant agree that the Tree Ordinance (like the noise ordinance or other generally applicable regulations) do not apply outside of the City limits. The key difference in analysis is that staff interpret the Tree Ordinance to require them to look back to the previous five years and apply the five-year waiting period in SRC 808.030(a)(2)(I) whether or not the property was in the City or not at the time of the harvest.

Applicant's interpretation of the Tree Ordinance is reasonable. SRC 808.030(a)(2)(I) enumerates certain exceptions to the tree permitting process. Applicant correctly concluded that no City permit was needed during the harvest because the Tree Ordinance did not apply. Applicant further concluded the conditions

to the exception in SRC 808.030(a)(2)(I) did not apply either. While Applicant disagreed with staff's interpretation of the Tree Ordinance, Applicant has agreed to wait the five-year period. Accordingly, Applicant has proposed the Condition of Approval A above.

Applicant desires to avoid any future misunderstandings as to applying SRC 808.030(a)(2)(I) and the Tree Ordinance. Staff and Applicant concur that SRC 808.030(a)(2)(I) prohibition against partitions, subdivision, and planned unit developments for five years is satisfied by the Condition of Approval A, which requires Applicant to wait the full five years from the completion of the harvest before recordation of the final plat. Assertions that the Applicant should be prohibited from submitting any land use applications or seeking tentative approval contradicts the language of the code and is unreasonably punitive.

Applicant intends to comply with the Tree Ordinance and exceed the requirements. Applicant's proposal follows the text, purpose and policy of the Tree Ordinance and will cause no partition, subdivision, or planned unit development for five years from completion of the harvest.

Thank you for your time and consideration. As I stated above, we respectfully request you to approve the proposal as conditioned.

Sincerely,

A handwritten signature in blue ink that reads "Alan Sores". The signature is fluid and cursive, with the first name "Alan" and last name "Sores" clearly distinguishable.

ALAN M. SOREM  
asorem@sglaw.com  
Voice Message #303

AMS: jsn  
cc: Dan Atchison, City Attorney  
Client  
Mark Grenz, MultiTech Engineering  
4849-5667-9653, v. 5



## NOTIFICATION OF OPERATIONS/PERMIT TO OPERATE POWER-DRIVEN MACHINERY (NOAP)

Notification Number:

2018-582-03308

Operation Name:

salem



### This NOAP includes the following for the lands described in the NOAP:

- The notifier has given notice to the State Forester that an operation will be conducted.
- The Oregon Department of Forestry or local Forest Protective Association has issued a permit to use fire or operate power-driven machinery.
- The notifier has given notice to the State Forester and the Department of Revenue of the intent to harvest timber.

**Person Submitting the NOAP:** Coby Rieger

**Date NOAP Submitted:** February 23, 2018

**Report Generated:** August 26, 2018

### 15-Day Waiting Period

You must wait at least 15 days after successful submittal of this NOAP before starting the activities in the NOAP (see OAR 629-605-0150(1)). You may ask the Stewardship Forester to waive this 15-day waiting period, **but you must wait the full 15 days unless the Stewardship Forester notifies you that you may start sooner.**

### Oregon Department of Forestry Contact Info

Santiam  
22965 North Fork Rd SE  
Lyons, Oregon 97358  
Phone: (503) 859-2151  
Stewardship Forester: Marc DesJardin  
Email: marc.desjardin@oregon.gov

### Operator's Fire Emergency Contact

Contact Name: Coby Rieger  
Phone: (503) 812-7120

### Landowner(s)

HSF Development LLC  
HSF Development LLC  
3425 Boone Road SE  
Salem, Oregon 97317  
(503) 373-3154

### Notice to Landowner(s)

Reforestation may be required after timber harvesting. The Oregon Department of Forestry may conduct on-site inspections for compliance with forest practice and fire protection laws. Land use conversion to non-forest use is subject to other state and local regulations, which may affect use or development of a site.

### Timber Owner

HSF Development LLC  
HSF Development LLC  
3425 Boone Road SE  
Salem, Oregon 97317  
(503) 373-3154

### Notice to Timber Owner

If timber is harvested, the party owning the timber at the point it is first measured is responsible for payment of Oregon timber taxes.

### Written Plans

A Written Plan (in addition to this NOAP) is required before starting activities near the Resources listed under Site Conditions or Units below unless waived in Technical Note #10 Statutory Written Plan Waiver (available [here](#) or at the local Oregon Department of Forestry office). The Stewardship Forester may notify you of other resources or Written Plan requirements. Written Plans have a waiting period separate from the NOAP waiting period. For more information, contact the Stewardship Forester or see [OAR 629-605-0170](#).



**Formal Comments from Oregon Department of Forestry**

Marc DesJardin on 2/23/2018

There are no identified protected resources within the notified area of operation. Operation may begin after the 15 day waiting period.

**Notices**

**Permission from Landowner and Timber Owner Required:** Submitting this notification does *not* give permission to enter someone's land or remove forest products. Anyone doing so must first obtain permission from the landowner and timber owner.

**Pesticide Use:** Pesticide users must follow all pesticide product label requirements, including any that prohibit applications near or into streams or other water bodies! Pesticide users must be sure the label that comes with the pesticide product allows the planned use! Contact the Oregon Department of Agriculture [here](#) or at 503-986-4635 for information on allowed uses of pesticide products.

**Operations Near Utility Lines:** If you are conducting timber harvesting or road construction within 100 feet of overhead utility lines contact the local utility in accordance with ORS 757.805 - Oregon's Overhead Safety Act and OAR 437-007-0230 - Power Line Safeguards. Identification tags are located on each pole.

Call the Oregon Utility Notification Center at 811 at least 2 business days before starting timber harvesting, road construction, or any other activities involving excavation that may affect an underground utility line. The Center will coordinate with the appropriate utility companies to locate underground utility lines that may be affected by your activities.

**Using Water for Pesticides or Slash Burning:** If you plan to use on-site water (water from a stream, for example) to mix pesticides or for slash burning, you must provide a copy of this NOAP to the local offices of the Oregon Water Resources Department and the Oregon Department of Fish and Wildlife (see ORS 537.141).

**NOAP Changes:** The notifier must inform the Oregon Department of Forestry of any changes in a NOAP before the activity takes place. A new NOAP may be required.

**Subscribers:** There may be subscribers to this Notification, please see Notification Summary page within the e-Notification system or contact ODF for more details.

**Unit 1 of 1: salem**

27.1 acres Marion County(s)

T8S R3W Sec24,T8S R3W  
Sec23

Regulated Use Area: WV-1

**Operator:**Coby Rieger  
Rieger Logging LLC  
8595 Bewley Creek Road  
Tillamook, Oregon 97141  
(503) 842-7887**Activity:** Clearcut/Overstory Removal**Start:** 3/7/2018**End:** 12/31/2018**Method(s):** Ground**Quantity:** 450.00 MBF**Unit Map: salem**