



**City of Portland, Oregon**  
**Bureau of Development Services**  
**Land Use Services**  
FROM CONCEPT TO CONSTRUCTION

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**Date:** May 19, 2017  
**To:** Interested Person  
**From:** Stacey Castleberry, Land Use Services  
503-823-7586 / [Stacey.Castleberry@portlandoregon.gov](mailto:Stacey.Castleberry@portlandoregon.gov)

## **NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD**

The Bureau of Development Services has denied a proposal in your neighborhood. The mailed copy of this document is only a summary of the decision.

The reasons for the decision are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

### **CASE FILE NUMBER: LU 16-173207 EN**

#### **GENERAL INFORMATION**

**Applicant:** Danelle Isenhart  
Isenhart Consulting, LLC  
PO Box 2364  
Beaverton OR 97075  
**Tel:** (503) 880-4979  
e-mail: [danelle@isenhartconsulting.com](mailto:danelle@isenhartconsulting.com)

**Owners:** Nathan Klauer & Megann Hartung  
2282 NW 168th PL  
Beaverton, OR 97006-8063

**Party of Interest:** Zac Horton  
Faster Permits  
14334 NW Eagleridge LN  
Portland, OR 97229

**Site Address:** 3222 SW Palatine Street  
**Legal Description:** LOT 9&10 TL 800, FOREST BROOKS  
**Tax Account No.:** R291400410  
**State ID No.:** 1S1E32AC 00800  
**Quarter Section:** 4126  
**Neighborhood:** Arnold Creek, contact Liz Marantz at 503-823-4592.  
**Business District:** None  
**District Coalition:** Southwest Neighborhoods Inc., contact Sylvia Bogert at 503-823-4592.  
**Plan District:** None  
**Other Designations:** Steep slopes (+25 percent); Regulatory Landslide Hazard; *SW Hills Resource Protection Plan Site 121*

**Zoning:** Residential 20,000 (R20) with the Environmental Conservation (c) overlay  
**Case Type:** Environmental Review (EN)  
**Procedure:** Type II, an administrative decision with appeal to the Hearings Officer.

**Proposal:** The applicant proposes a new single-family detached residence on this vacant lot on SW Palatine Street. Additionally, the applicant requests modification of the Environmental Conservation overlay zone boundary.

Proposed Residential Development: The applicant proposes to construct a 2,057 square-foot house, with a 725 square-foot driveway and a 600 square-foot paved patio. The proposal encroaches 1,601 square feet within the resource area of the Environmental Conservation overlay zone, as it is currently mapped, and will cover the 838 square-foot wetland delineated on the site. Four big leaf maple trees will be removed, two with diameters of 18 and 24 inches are to be removed from the resource area.

The applicant requests Environmental Review because the proposed development disturbance area within the resource area exceeds that allowed by the environmental development standards, and is closer than the required 50-foot buffer to an existing wetland. The site is in the R20 base zone so the maximum allowed disturbance is 5,000 square feet minus the area of the site outside of the resource area. The area outside of the resource area on the site is 6,704 square feet (including the 25-foot transition area). The applicant proposes 1,601 square feet of disturbance within the resource area. In addition, the existing wetland is approximately 45 feet south of the front property line. The applicant proposes to construct the new residence within the delineated wetland.

The proposed development would remove the existing delineated wetland on the site, and create a wetland area farther south on the site. Wetland removal/fill permits would be applied for from the Oregon Department of State Lands (DSL) and the U.S. Army Corps of Engineers (Corps). Wetland mitigation proposed by the applicant would include creating a new 1,257 square-foot wetland in the south portion of the site. The groundwater seeps at the upslope edge of the existing wetland would be captured in a pipe and rerouted underground to provide hydrology to the created wetland area.

Stormwater from the house is proposed to be treated in a 4-foot wide by 45-foot long stormwater planter adjacent to the east side of the house in the resource area. There are no streams on the site for discharge. Therefore, the applicant proposes to discharge treated stormwater via a 4-inch underground ABS pipe that will transport it approximately 66 feet to the southeast property corner where it will cross onto neighboring Lot 12 to the east through a storm sewer easement, and then discharge into a stream that crosses the southeast corner of Lot 12. Lot 12 is currently vacant, and the applicant has obtained and recorded a storm sewer easement and maintenance agreement with the owners of Lot 12. The applicant intends that the stormwater pipe will meet the development standards for stormwater outfalls in environmental zones listed in Zoning Code section 33.430.180.

The applicant proposes to mitigate impacts by removing nuisance species from the site, and planting of native trees shrubs and groundcovers. The applicant also proposes to create a mitigation wetland of 1,257 square feet, by piping water from the high point of the existing wetland, 40 feet south to the sloping area along the east property line, where the created wetland is to be situated.

Request for Modification of C-zone Boundary: The northwest corner of the property is mapped outside the Environmental Conservation overlay zone boundary; however, it is the applicant's opinion that a Modification of the Environmental Conservation overlay zone boundary is warranted based on existing site conditions. The northwest corner of the property contains a number of native trees, and it contains three Douglas fir trees with diameters of 36, 46 and 55 inches. The applicant requests a Modification of the Environmental Conservation overlay zone boundary to extend the conservation zone to the west and north property boundaries.

The majority of the site is within the City's Environmental Conservation overlay zone. Certain standards must be met to allow the work to occur by right. If the standards are not met, an Environmental Review is required. In this case, the proposed house and associated development do not meet standard 33.430.140.A – maximum disturbance area in the resource area; and standard 33.430.140 C which requires a 50-foot setback from wetlands. Standards

33.430.140 A and J are not met by the proposal; therefore, the work must be approved through an Environmental Review.

In addition, the proposal to Modify the Environmental Conservation overlay zone boundary requires approval through Environmental Review.

**Relevant Approval Criteria:**

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

**33.430.250 E** – Other development in the Environmental Conservation zone or within the Transition Area only.

**33.430.250 D** – Modification of Environmental Zone Boundary

## CONCLUSIONS

The applicant proposes to construct a new single dwelling residence, that, together with the proposed driveway and patio, covers 3,382 square feet. The residence will be constructed within the Environmental Conservation overlay zone, on the 22,380 square foot lot. An emergent wetland, originating from a perennial spring centered within the site, has been identified and delineated 45 feet away from the front property line at its closest point. The proposed house and patio would be constructed within the wetland, and result in its removal. The applicant has described several alternatives, but has not demonstrated that an alternative that avoids construction within the wetland could not be proposed. With 45 feet between the wetland and the front property line, it appears that a residence could be constructed with a reduced front setback, to the north of the delineated wetland. The applicant has therefore not demonstrated that the proposal has the least impact of other significantly different and practicable alternatives.

Further the applicant's proposed construction management plan does not address the significant construction impacts associated with, not only piping the spring-water 40 feet to the south, but grading the mitigation wetland area sufficiently to create wetland hydrology capable of supporting wetland vegetation. There is no construction management plan provided for this concept, and it has not been demonstrated that impacts to resources designated to be left undisturbed will be avoided.

Lastly, a specific wetland mitigation plan, detailing how wetland hydrology could be maintained on a steeply sloping hillside (27 percent slope) has not been provided. No plan or explanation of how wetland vegetation could be supported in an area dominated by non-wetland species has been provided. No plan or report has been provided documenting that a created wetland would be successful on this site. Therefore, there is no evidence presented in the record that the loss of the existing emergent wetland would be mitigated.

The applicant also requested a modification of the Environmental Conservation overlay zone boundary. The applicant failed to provide a detailed site specific environmental study that showed the proposed environmental conservation zone line relocation accurately reflects the location of the significant resources, as identified in the relevant Environmental Study Report.

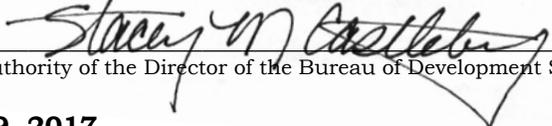
Therefore, the approval criteria for developing a single dwelling residence in the Environmental Conservation overlay zone, and for modification of environmental zone boundaries are not met, and this proposal cannot be approved.

## ADMINISTRATIVE DECISION

**Denial** of an Environmental Review for:

- Construction of a single dwelling residence within a delineated wetland in the Environmental Conservation overlay zone, as depicted on Exhibit C.7, C.8, and C.9, in the LU 16-16173207 EN application case file; and
- the proposed Environmental Zone Boundary Modification depicted on Exhibit C.11.

**Staff Planner: Stacey Castleberry**

**Decision rendered by:**  **on May 17, 2017**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: May 19, 2017**

**About this Decision.** This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

**Procedural Information.** The application for this land use review was submitted on May 16, 2016, and was determined to be complete on August 5, 2016.

*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. Therefore, this application was reviewed against the Zoning Code in effect on May 16, 2016.

*ORS 227.178* states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case the applicant requested that the 120-day review period be extended to its full extent (an additional 245 days), as stated with Exhibit (Exhibit A.2). **The 120 days will expire on: August 5, 2017.**

**Some of the information contained in this report was provided by the applicant.**

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

**Conditions of Approval.** If approved, 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.

**Appealing this decision.** This decision may be appealed to the Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on June 2, 2017** at 1900 SW Fourth Ave. Appeals can be filed at the 5<sup>th</sup> floor reception desk of 1900 SW 4<sup>th</sup> Avenue Monday through Friday between 8:00 am and 4:30 pm. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617,

to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at [www.portlandonline.com](http://www.portlandonline.com).

**Attending the hearing.** If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Hearings Officer an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

**Recording the final decision.**

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- *Unless appealed*, The final decision may be recorded on or after **June 5, 2017 – (the day following the last day to appeal)**.
  - A building or zoning permit will be issued only after the final decision is recorded.
- The applicant, builder, or a representative may record the final decision as follows:
- **By Mail:** Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
  - **In Person:** Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034  
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.

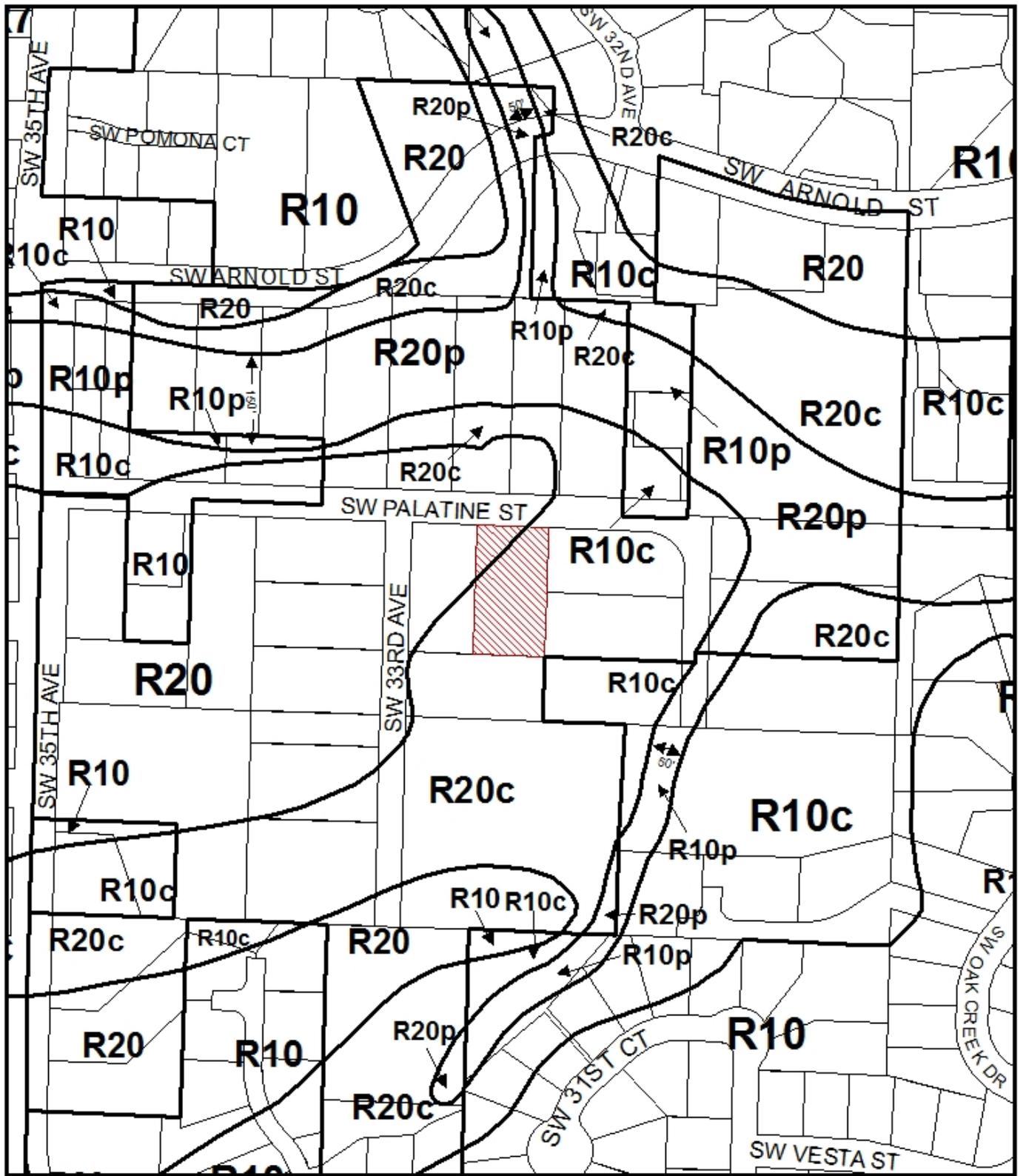
**Applying for your permits.** A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- 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 Statements & Reports
  - 1. Applicant Narrative (May 12, 2016)
  - 2. 120-day waiver
  - 3. Applicant's revised narrative (July 11, 2016)
  - 4. Tree Plan
  - 4. a. Applicant response to incomplete letter
  - 5. Geotechnical Evaluation (Northwest Geo Consultants)
  - 6. Applicant response to staff questions
  - 7. Stormwater Simplified Approach form
  - 8. Applicant's alternate site plan 20160617
  - 9. Recorded private storm sewer easement
  - 10. Environmental Review (Isenhart Consulting, LLC)
  - 11. Environmental Review (Wetland Solutions Northwest)
  - 12. Wetland Delineation Report
  - 13. Applicant's Responses to Neighborhood letters
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1.-5. Superseded Site Plan
  - 6. April 17, 2017 Existing Conditions
  - 7. April 17, 2017 Proposed Development
  - 8. April 17, 2017 Construction Management
  - 9. April 17, 2017 "Remediation Management" (Mitigation)
  - 10. April 17, 2017 Alternate Site Plan 4
  - 11. April 17, 2017 "R20 Conservation Zone Adjustment" (Proposed Environmental Zone Boundary Modification)
  - 12. April 17, 2017 Existing Conditions plan with large shaded area.
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
  - 3. Mail list for Revised notice
  - 4. Revised Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Water Bureau
  - 3. Portland Fire Prevention Division
  - 4. BDS Site Development Section
  - 5. Life Safety Plans Examiner Section of BDS
  - 6. Oregon Department of State Lands
  - 7. Approvability Analysis BDS LUS
- F. Correspondence:
  - 1. Carl Axelsen, August 13, 2016
  - 2. Elizabeth Marantz, Arnold Creek Land use Chair, August 19, 2016
  - 3. Dustin Day, August 26, 2016
  - 4. Richard Marantz, August 30, 2016
  - 5. Elizabeth Marantz, Land Use Chair, Arnold Creek Neighborhood Association, August 31, 2016
  - 6. Dusty Day, March 24, 2017
  - 7. Elizabeth Marantz, Land Use Chair, Arnold Creek Neighborhood Association, April 29, 2017
- G. Other:
  - 1. Original LU Application
  - 2. Incomplete Letter

**The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).**



# ZONING

 Site



File No. LU 16-173207 EN  
 1/4 Section 4126  
 Scale 1 inch = 200 feet  
 State Id 1S1E32AC 800  
 Exhibit B (May 17, 2016)