



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

Ted Wheeler, Mayor  
 Rebecca Esau, Director  
 Phone: (503) 823-7300  
 Fax: (503) 823-5630  
 TTY: (503) 823-6868  
[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**Date:** October 1, 2018  
**To:** Interested Person  
**From:** Morgan Steele, Land Use Services  
 503-823-7731 / [Morgan.Steele@portlandoregon.gov](mailto:Morgan.Steele@portlandoregon.gov)

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

The Bureau of Development Services has approved 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 17-224916 EV**

**GENERAL INFORMATION**

**Applicant:** Patrick Donovan | Portland General Electric  
 3700 SE 17th Avenue | Portland, OR 97202  
 503/314-3884 | [patrick.donovan@pgn.com](mailto:patrick.donovan@pgn.com)

**Owner (3131):** Shanin Andrew & David Creech  
 3131 SW Fairmount Boulevard | Portland, OR 97239

**Owner (3135):** Stephen M. Andersen  
 PO Box 5003 | Portland, OR 97208

**Site Address:** 3131 & 3135 SW FAIRMOUNT BOULEVARD

**Legal Description:** LOT 3 TL 2400, HESSLER HILLS; BLOCK 2 TL 2500, SLAVINS ADD & PLAT 2

**Tax Account No.:** R380800070, R774300280

**State ID No.:** 1S1E16BA 02400, 1S1E16BA 02500

**Quarter Section:** 3527

**Neighborhood:** Hillsdale, contact Glenn Bridger at [gbridger@teleport.com](mailto:gbridger@teleport.com).  
**District Coalition:** Southwest Neighborhoods Inc., contact Sylvia Bogert at 503-823-4592.

**Plan District:** None

**Other Designations:** *Southwest Hills Resource Protection Plan* – Site No. 114, Terwilliger Parkway, Central; Landslide Hazard Area

**Zoning:** *Base Zone:* Residential 10,000 (R10)  
*Overlay Zones:* Environmental Conservation (c), Scenic Resource (s)

**Case Type:** EV – Environmental Violation

**Procedure:** Type II, an administrative decision with appeal to the Hearings Officer.

**Proposal:**

The applicant proposes to correct environmental zoning violations that occurred when 15 native trees, totaling approximately 135 inches diameter at breast height (dbh), were topped within the Environmental Conservation overlay zone on the subject sites. The tree removal activities in the Environmental Conservation overlay zone were conducted without the City's required Environmental Review.

To compensate for lost resources and to correct the violation to the Environmental Zones chapter (33.430), the applicant proposes a remediation area located along the northeastern portion of the properties. Proposed mitigation within the remediation area consists of planting 20 trees, 20 shrubs, and 75 herbaceous groundcovers. The proposed vegetation more specifically includes:

## Trees:

- 5 Douglas' hawthorn (*Crataegus douglasii*)
- 5 Suxsдорf's hawthorn (*Crataegus gaylussacia*)
- 5 Bitter cherry (*Prunus emarginata*)
- 5 Pacific dogwood (*Cornus nutallii*)

## Shrubs:

- 6 Redosier dogwood (*Cornus sericea*)
- 5 Red currant (*Ribes sanguineum*)
- 4 Chokecherry (*Prunus virginiana*)
- 3 Vine maple (*Acer circinatum*)
- 2 Western serviceberry (*Amelanchier alnifolia*)

## Groundcover:

- 75 Sword fern (*Polystichum munitum*)

The violation site lies within the 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, because native trees (non-exempt) were cut in the Environmental Conservation overlay zone without authorization, an environmental violation was incurred on the sites. This Environmental Violation Review is required to determine the impacts caused by the activity and the actions that must be taken to remediate the unauthorized tree removal from the resource area of the Environmental Zone.

**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.G Corrections to Violations**

**ANALYSIS**

**Sites and Vicinity:** The subject site, two properties directly adjacent to one another, is located in southwest Portland along SW Fairmount Boulevard. The .5 and 1.6-acre sites slope steeply downhill from the eastern property lines to SW Fairmount Boulevard. The existing single-family residences are located on the western portion of the lots and are accessed through an extension of SW Fairmount Boulevard. The eastern portion of the lots, and the scene of the violation, is currently well vegetated with a mix of native and invasive species. Surrounding development includes mostly single-family residences on larger lots.

**Zoning:** The zoning designation on the site includes Residential 10,000 (R10) base zone with Environmental Conservation (c) and Scenic Resource (s) overlay zones.

The R10 zone is intended to foster the development of single-dwelling residences on lots having a minimum area of 52,000 square feet. Newly created lots must have a minimum density of 1 lot per

87,120 square feet of site area. The proposal changes no uses on the site and the R10 base zone regulations do not apply and are not addressed by this review.

The Scenic overlay zone is intended to protect Portland's significant scenic resources. The purposes of the Scenic Resource zone, to enhance the city's appearance and protect scenic views, are achieved by establishing height limits, establishing landscaping and screening requirements, and requiring preservation of identified scenic resources. The regulations of this zone apply to this proposal and are considered as part of this Environmental Review.

Environmental overlay zones protect environmental resources and functional values that have been identified by the City as providing benefits to the public. The environmental regulations encourage flexibility and innovation in site planning and provide for development that is carefully designed to preserve the site's protected resources. They protect the most important environmental features and resources while allowing environmentally sensitive urban development where resources are less significant. The purpose of this land use review is to bring the site back into compliance with the regulations of the environmental zones.

**Environmental Resources:** The application of the environmental overlay zones is based on detailed studies that have been carried out within separate areas throughout the City. Environmental resources and functional values present in environmental zones are described in environmental inventory reports for these respective study areas.

The subject site is mapped within the *Southwest Hills Resource Protection Plan* as Resource Site No. 114, Terwilliger Parkway, Central. The plan includes the following description of Site No. 114: *This 455-acre site contains the greatest amount of potentially developable land in the study area. The western half or about 200 acres of Site 114 is unsewered, representing the largest unsewered area in the study area and a constraint to development. These undeveloped hillsides have primarily a mixed coniferous/deciduous forest cover. This site has three additional unique features: portions of the Terwilliger Parkway, the Oregon Health Sciences University (OHSU), and the 40-Mile Loop Trail. The middle section or about 1.2 miles of the three-mile long Terwilliger Parkway is located in Site 114.*

Significant resources and functional values on the subject site include wildlife habitat, forest, groundwater recharge, scenic, and open space. Habitat classifications present at the sites consist of upland coniferous and broadleaf deciduous forests.

**Land Use History:** No relevant land use history exists for the subject site.

**Agency Review:** A "Notice of Proposal in Your Neighborhood" was mailed on September 4, 2018. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services
- Fire Bureau
- Site Development Section of BDS
- Life Safety
- Urban Forestry

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on September 4, 2018. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

## ZONING CODE APPROVAL CRITERIA

**33.430.250.G – Corrections to violations. For corrections to violations of this Chapter the application must meet all applicable approval criteria stated in subsections A through F above, and paragraphs 1, 2.b and 2.c, below. If these criteria cannot be met, then the applicant's remediation plan must demonstrate that all of the following are met:**

**Findings:** The approval criteria which would have been applied to Environmental Review of the topping of trees within the Environmental Zone include those found in Section 33.430.250.E.

Since the applicant did not provide responses to any of the criteria in Section E, all the criteria under Section G must be met.

**G.1. The remediation is done in the same area as the violation; and**

**Findings:** As shown in Exhibits C.1 and C.2, remediation will occur on the same site as the environmental violation. In fact, the remediation area is within and adjacent to the violation area.

*This criterion is met.*

**G.2. The remediation plan demonstrates that after its implementation there will be:**

**a. No permanent loss of any type of resource or functional value;**

**Findings:** This criterion requires development or activities in violation of the Portland Zoning Code environmental regulations to be removed and/or the area to be returned to a natural state. It further requires restoration of resources and functional values that formerly existed in the violation area.

The property is located within Resource Site No. 114, Terwilliger Parkway, Central of the *Southwest Hills Resource Protection Plan*. As part of that plan, the natural resource features and functions were documented. In the Plan, the natural resource features and functions identified, specific to this site, include wildlife habitat, forest, scenic, and groundwater recharge.

The violation area is located within the Environmental Conservation and Scenic Resource overlay zones in the northeastern portion of the sites. Impacts to the resources and functional values onsite due to the unauthorized topping of 15 trees, include loss of wildlife habitat, forest canopy, and a reduction in scenic values as observed from SW Fairmount Boulevard.

The proposed remediation plan will increase the site's tree canopy and add approximately 5,000 square feet of restored coniferous/deciduous upland forest habitat. Controlling nuisance plant species will significantly improve the health and longevity of the existing trees along with the proposed mitigation plantings. The proposed native tree and shrub plantings will improve habitat diversity, the quality of the availability of wildlife food resources, and cover.

As remediation for the violation, the mitigation plan proposes planting 20 trees, 20 shrubs, and 75 groundcovers all identified as native species in the *Portland Plant List*. The proposed plantings will create a forested upland replacing the forest and scenic resources affected as a result of the violation and as such, there will be no permanent loss of any type of resources or functional values.

Based on the foregoing, *this criterion is met.*

**b. A significant improvement of a least one functional value; and**

**Findings:** This criterion requires a remediation plan that not only compensates for the detrimental impact of the unpermitted work, but also leads to significant improvement of at least one functional value. This improvement is measured against the resource values that existed around the violation area prior to the violation. Essentially, with a correction to a violation, the end result must be an improvement to a resource or functional values present before the violation, rather than simply compensating for the functional values lost due to the violation.

The applicant's remediation plan will replant and enhance approximately 5,000 square feet of the Environmental Zone on the subject properties. Installation of densely planted native landscaping areas, including trees, shrubs, and ground covers that produce barriers, cover, seeds, and flowers favored by native birds, wildlife and pollinators will create backyard habitat improving multiple functional values including wildlife habitat. Further, native plants will help to stabilize the soil, reduce the need for irrigation, and promote stormwater infiltration.

With conditions for the installation and maintenance of the required plantings, this criterion is met.

**c. There will be minimal loss of resources and functional values during remediation until the full remediation program is established.**

**Findings:** This criterion requires the applicant to protect remaining resources during construction through effective construction management; to install remediation plantings in a timely manner; and to verify the establishment of the full remediation plan following the maintenance period.

To demonstrate that the full remediation plan becomes established in a timely manner, the applicant must verify success of the remediation plan approved in this review. To document the success of the required plantings, the applicant will be required to conduct maintenance in the form of watering, invasive species removal, and replacement of dying plants, as well as to obtain a Zoning Permit for inspection of the required plantings following a 2-year establishment period.

With the conditions to obtain a Zoning Permit, and for maintenance of required plantings; loss of resource functions and values will be minimized during remediation, and *this criterion can be met.*

## **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.

## **CONCLUSIONS**

Through this Environmental Review, the applicant requests approval of remediation for a Zoning Code violation (tree topping) which occurred within the Environmental Conservation overlay zone. The proposed remediation will improve wildlife habitat values associated with the vegetative over and above the functional value of the vegetation at the time of the violation. Planting and invasive species removal will be done by hand to minimize the risk of further impacts to the Environmental Zone.

Overall, the applicant's proposal to restore vegetation meets the criteria for remediation of violations and should be approved subject to the following conditions listed below.

## **ADMINISTRATIVE DECISION**

**Approval** of an Environmental Violation Review to correct unauthorized tree topping within the Environmental Conservation overlay zone and in substantial conformance with Exhibit C.2, as approved by the City of Portland Bureau of Development Services on **September 26, 2018**. Approval is subject to the following conditions:

**A. A BDS Zoning Permit is required for inspection and approval of required mitigation plantings. The permit must be finalized by March 31, 2019.**

The applicant shall obtain a BDS Zoning Permit for approval and inspection of a mitigation plan for a total of 20 trees, 20 shrubs, and 75 native groundcover plants, in substantial conformance with Exhibit C.2, Mitigation Plan. Any plant substitutions shall be selected from the *Portland Plant List* and shall be substantially equivalent in size to the original plant; conifers must be replaced with conifers and deciduous with deciduous.

1. Permit plans shall show the general location of the trees, shrubs, and groundcovers required by this decision. The applicant shall arrange to accompany the BDS inspector to the site to locate mitigation plantings for inspection.


2. Plantings shall be installed by March 31, 2019.
3. Prior to installing required mitigation plantings, non-native invasive plants shall be removed from all areas within 10 feet of mitigation plantings, using handheld equipment.
4. After installing the required mitigation plantings, the applicant shall request inspection of mitigation plantings and final the BDS Zoning Permit.
5. All remediation shrubs and trees shall be marked in the field by a tag attached to the top of the plant for easy identification by the City Inspector. If tape is used it shall be a contrasting color that is easily seen and identified.

**B. The applicant shall maintain the required plantings** to ensure survival and replacement. The applicant is responsible for ongoing survival of required plantings during and beyond the designated two-year monitoring period. After the 2-year initial establishment period, the landowner shall:

1. Obtain a Zoning Permit for a final inspection at the end of the 2-year maintenance and monitoring period. The applicant shall arrange to accompany the BDS inspector to the site to locate mitigation plantings for inspection. The permit must be finalized no later than 2 years from the final inspection for the installation of mitigation planting, for the purpose of ensuring that the required plantings remain. Any required plantings that have not survived must be replaced.
2. All required plantings shall be continuously maintained in a healthy manner with no more than 15% cover by invasive species. **Required plants that die shall be replaced in kind.**

**C.** Failure to comply with any of these conditions may result in the City's reconsideration of this land use approval pursuant to Portland Zoning Code Section 33.700.040 and /or enforcement of these conditions in any manner authorized by law.

**Staff Planner: Morgan Steele**

**Decision rendered by:**  **on September 26, 2018**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: October 1, 2018**

**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 August 16, 2017, and was determined to be complete on February 7, 2018.

*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 August 16, 2017.

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 waived the 120-day review period, as stated with Exhibit A.4. Unless further extended by the applicant, **the 120 days will expire on: February 7, 2019.**

**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 October 15, 2018**, at 1900 SW Fourth Avenue. 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 will be recorded with the Multnomah County Recorder.

- *Unless appealed*, the final decision will be recorded after **October 15, 2018**, by the Bureau of Development Services.

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.

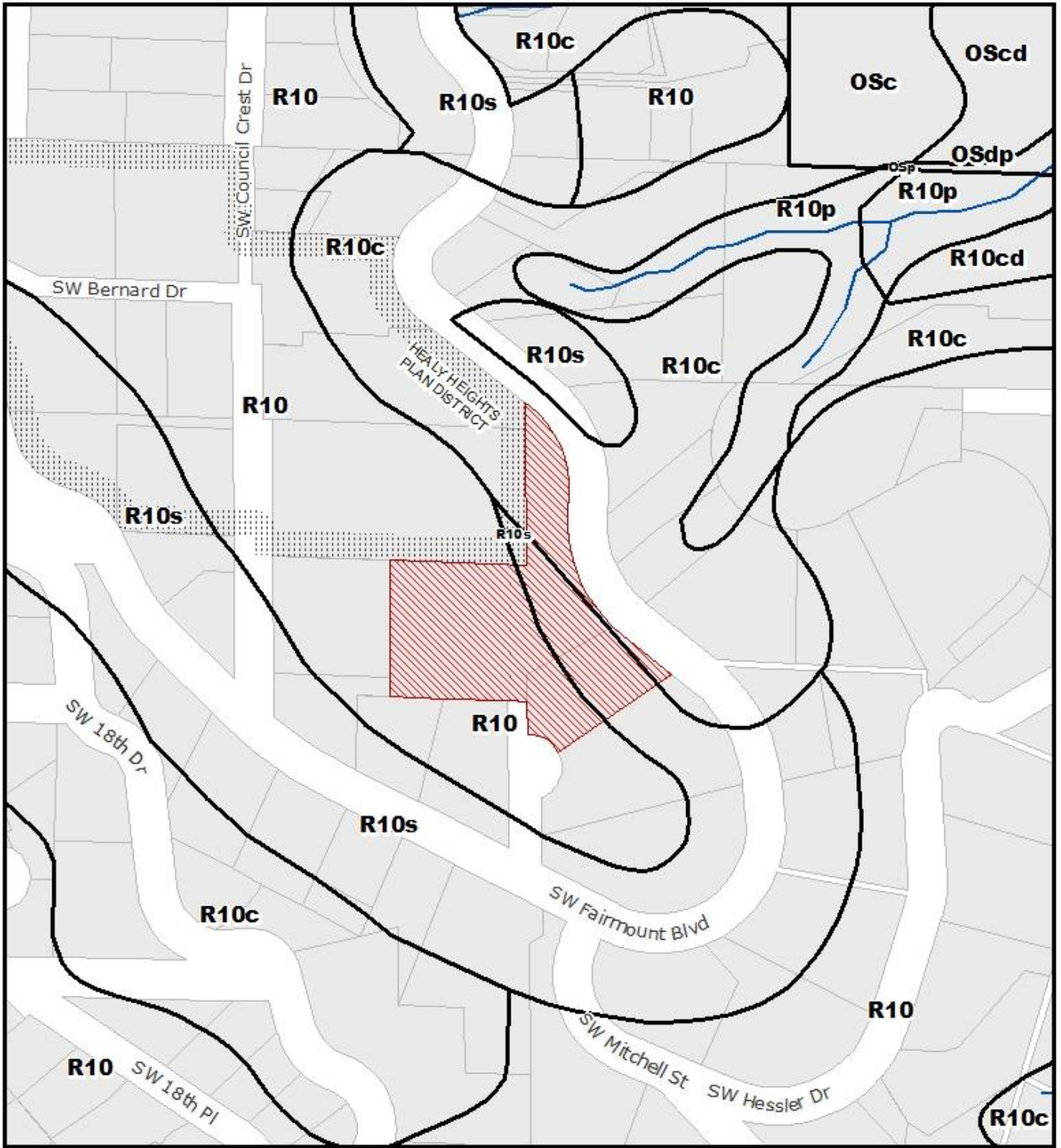
## **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  1. Applicant's Narrative and Site Plans, August 2017
  2. Revised Narrative, August 2018
  3. Applicant's Request to Deem Complete, February 2018
  4. Extensions to the 120-Day Timeline
- B. Zoning Map (attached)
- C. Plans/Drawings:
  1. Existing Conditions
  2. Mitigation Plan (attached)
- D. Notification information:
  1. Mailing list
  2. Mailed notice
- E. Agency Responses:
  1. Bureau of Environmental Services
  2. Fire Bureau
  3. Site Development Review Section of BDS
  4. Life Safety
  5. Urban Forestry
- F. Correspondence: None Received
- 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**  NORTH

 Site  
 Stream

File No.	LU 17-224916 EV
1/4 Section	3527
Scale	1 inch = 200 feet
State ID	1S1E16BA 2500
Exhibit	B Sep 05, 2017

