



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

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Date: March 11, 2019
To: Interested Person
From: Morgan Steele, Land Use Services
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**NOTICE OF A REVISED 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.

This revised decision supersedes the decision for this case issued October 19, 2017. Revisions* to this decision include:

1. The removal of two additional native trees over six inches diameter breast height (dbh) from within the Environmental Conservation overly zone.
2. Mitigation for removal of additional trees through payment of a revegetation fee.

*For ease of reference, any revision to the original decision will be contained within a text box.

CASE FILE NUMBER: LU 17-227712 EN

GENERAL INFORMATION

Applicant: Cameron Glasgow
Portland Bureau of Transportation
1120 SW 5th Avenue, #800
Portland, OR 97204
503-823-9726
cameron.glasgow@portlandoregon.gov

Owners: Portland Bureau of Transportation
1120 SW 5th Avenue, #800
Portland, OR 97204
503-823-5185

Portland Bureau of Fire and Rescue
55 SW Ash Street
Portland, OR 97204

Portland Parks and Recreation
1120 SW 5th Avenue, #1302
Portland, OR 97204

Site Address: [SE 122nd Avenue and SE Brookside Drive](#) (over Johnson Creek)
(6739 SE 122nd Ave)

Legal Description: TL 2300 0.76 ACRES, SECTION 23 1S 2E; TL 2200 0.15 ACRES, SECTION 23 1S 2E; TL 900 4.15 ACRES, SECTION 23 1S 2E
Tax Account No.: R992230490, R992231050, R992231910
State ID No.: 1S2E23BB 02300, 1S2E23BB 02200, 1S2E23BB 00900
Quarter Section: 3743

Neighborhood: Pleasant Valley, contact Steve Montgomery at foxtrotlove@hotmail.com.
Business District: None
District Coalition: East Portland Neighborhood Office, contact Victor Salinas at (503) 823-6694.
Plan District: Johnson Creek Basin – South
Other Designations: 100-Year Floodplain; Floodway; *Johnson Creek Basin Protection Plan* – Resource Site 18, Leach Garden/Canyon.

Zoning: *Base Zone:* Open Space (OS)
Overlay Zones: Environmental Conservation (c), Environmental Protection (p)

Case Type: EN – Environmental Review
Procedure: Type II, an administrative decision with appeal to the Hearings Officer.

Proposal:

The applicant proposes to replace the damaged bridge on SE 122nd Avenue that crosses Johnson Creek in southeast Portland. The bridge was structurally compromised by the historic winter storms of 2015 and closed to motor vehicles shortly thereafter. Due to the bridge closure, there is a required detour in place of over one mile for several hundred residents. The detour also impacts emergency services and school bus routes. Replacement of the bridge is paramount to the operation and mobility of the Pleasant Valley Neighborhood, as well as the operation of the Leach Botanical Garden given the reliance on the bridge as the primary access to the park.

The applicant proposes to replace the existing 108-foot steel and concrete bridge with a 120-foot single span, concrete structure. Additionally, the bridge will be widened from 32 feet to 40 feet to meet Americans with Disabilities Act (ADA) accessibility requirements and American Association of State Highway and Transportation Officials (AASHTO) turning radius requirements to prevent head-on vehicular collisions and improve pedestrian sight lines. The current bridge does not meet ADA requirements or turning radius standards. This expansion will require the removal of three trees (totaling 74” diameter at breast height). Mitigation for potential impacts will consist of planting 262 groundcover species, 114 shrubs, and 10 trees within temporary disturbance areas upon project completion.

The majority of the work will occur within the existing rights-of-way controlled by the Portland Bureau of Transportation (PBOT) and is therefore exempt from environmental regulations by 33.537.040.C [*Johnson Creek Plan District*] *Items Exempt from Environmental Regulations*. However, silt fence installation, concrete form work, and contractor staging is proposed to occur on private property outside of the existing rights-of-way, to the east and west of SE 122nd Avenue. This portion of the project site is in the Environmental Conservation (c) and Environmental Protection (p) overlay zones outside of the existing rights-of-way. Because the proposed work will exceed the maximum disturbance allowed within the resource area and will not be set back at least 5 feet from the resource area of an Environmental Protection zone, the proposal cannot meet the environmental development standards of 33.430.140.D.1 and E; therefore, environmental review of the proposed project is required.

During bridge construction, two trees (Western red cedars, 12” and 24” dbh), not approved for removal through the original Land Use Review (17-227712 EN), were significantly compromised and needed to be removed for safety reasons. Since the land use review process has been completed and an Approved decision issued on October 19, 2017, the additional tree removal is being reviewed retroactively through this Revised Decision. Due to the densely vegetated nature of the project site, mitigation for the removal of the additional trees could not take place onsite, thus

the proposal cannot meet the Environmental Development Standards of 33.430.140.J.1.a, .K, and .M, triggering the need for a Revised Decision.

Relevant Approval Criteria:

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

- **Section 33.430.250.E – Other development in the Environmental Conservation zone.**
- **Section 33.430.250.F – Other development in the Environmental Protection zone.**

ANALYSIS

Site and Vicinity: The project site is located almost entirely within the rights-of-way of SE 122nd Avenue in southeast Portland. The applicant is proposing to replace a 32-foot wide, 108-foot long bridge over Johnson Creek with a 40-foot wide, 120-foot long single-span bridge. Johnson Creek is a major tributary to the Willamette River and is one of the few remaining free-flowing creeks within Portland city limits.

In the project vicinity, Johnson Creek flows in a steep valley with relatively intact forested riparian canopy. The southern bank of Johnson Creek is comprised of exposed bedrock for approximately five feet up the steep bank. The right bank downstream of the SE 122nd Avenue Bridge is composed of a floodplain terrace followed by a steep slope that rises up to SE 122nd Avenue. Surrounding development consists of Leach Botanical Garden to the north, east, and west, and single-family residences to the south.

Although there is one identified wetland within the overall project area (northeast corner), the project area subject to this environmental review is limited to the silt fence installation and concrete form work east of the right-of-way and contractor staging west of the right-of-way on private property. This area is proposed to be limited to 1,765 square feet of temporary disturbance area, outside of the right-of-way. The contractor staging area is located on existing asphalt and will not create disturbance, temporary or otherwise.

Zoning: The zoning designation on the site includes the Open Space (OS) base zone, with Environmental Conservation (c), and Environmental Protection (p) overlay zones. The site is also located within the Johnson Creek Basin Plan District (see zoning on Exhibit B).

The Open Space base zone is intended to preserve public and private open and natural areas to provide opportunities for outdoor recreation and a contrast to the built environment, preserve scenic qualities and the capacity and water quality of the stormwater drainage system, and to protect sensitive or fragile environmental areas. The provisions of the zone do not apply to the proposal; the OS zone regulations are therefore not addressed through this Environmental Review.

The Johnson Creek Basin Plan District provides for the safe, orderly and efficient development of lands which are subject to a number of physical constraints, including significant natural resources, steep and hazardous slopes, flood plains, wetlands, and the lack of streets, sewers and water services. The regulations of this Plan District are addressed through 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 be sensitive to the site's protected resources. They protect the most important environmental features and resources while allowing environmentally sensitive urban development where resources are less sensitive. The purpose of this land use review is to ensure 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 project site is mapped within the *Johnson Creek Basin Protection Plan* as Site #18, Leach Garden/Canyon. The plan includes the following description of Site #18: The entire site, as well as surrounding area, is zoned and developed in single family residential or recreation (Leach Botanical Garden) use. The canyon provides a secluded, forested setting which is taken advantage of in the botanical garden development.

Significant resource values on the project site include water, storm drainage, fish and wildlife habitat, scenic, aesthetic, heritage, flood storage, pollution and nutrient retention and removal, sediment trapping, recreation, and education. The plan notes forest overstory remains in the area, but the riparian understory has been largely replaced with residential Garden, reducing the quality and amount of habitat area.

Impact Analysis and Mitigation Plan: The following discusses development alternatives that were considered by the applicant. The following additionally describes the proposed construction management plan, mitigation, and monitoring proposal.

Development Alternatives:

Alternative #1 – No Build

No action would be taken with this alternative. The existing deficient bridge would remain in place and closed to the public. Advantages to this alternative would be no cost and no disturbance to the project area. Disadvantages would be the one-mile detour would remain in place and the entrance to Leach Botanical Garden would remain impacted. This alternative would not achieve the project objectives.

Alternative #2 – Alternative Bridge Location

Other locations were explored as part of the design process; however, other locations would result in greater environmental impacts to less disturbed portions of Johnson Creek and its riparian zone. It would also likely require the relocation of some residents. This alternative would also not achieve the project objectives.

Alternative #3 – Replace Existing Bridge (Preferred Alternative)

This alternative focuses on replacing the deficient bridge in the same location with slightly increased coverage to bring the bridge into conformance with ADA and AASHTO regulations. This alternative would restore access to local residents and open up main access to the Leach Botanical Garden. Furthermore, the proposed bridge consists of one, single-span, eliminating any structural fill within the 100-year floodplain, eliminating impacts to environmental functions and values.

Construction Management Plan: The proposed bridge is designed to span the creek which will improve the functions and values of the project area by eliminating piers and buttresses in Johnson Creek. However, removal of the existing bridge and its support structures will require in-water work in the Environmental Protection zone. All in-water work will be performed in the Oregon Department of Fish and Wildlife's (ODFW) published in-water work periods for Johnson Creek (July 15 – August 31). In order to limit impacts and to protect water quality and aquatic life during bridge demolition, temporary isolation of the work areas will be provided in accordance with the National Marine Fisheries Service (NMFS) Programmatic Federal-aid Highway Program Biological Opinion. Although the work isolation plan will be designed by the construction contractor's engineer or hydrologist, it is anticipated that the system will consist of sandbags or an appropriately sized pipe (or a combination thereof). Settlement tanks for dewatering operations may be used if specified by the work isolation plan engineer. After dewatering has started, it is anticipated that the contractor will access the work area to remove the existing bridge elements and to construct the riprap revetment. The adjacent wetland will be protected with orange exclusion fencing during the length of the project and Best Management Practices (BMPs) such as silt fence will be employed to limit releases of sediment into Johnson Creek.

Due to site constraints, and as discussed with the Urban Forestry Tree Inspector, orange plastic mesh fencing will be installed to protect trees to remain in or near the work area as shown on

Exhibit C.4 Construction Management and Tree Protection Plan. The protection fencing will not be moved or removed during the course of construction.

All disturbed non-planted areas will be seeded for erosion control post-construction with a seed mix that contains approved species from the *Portland Plant List*.

Unavoidable Impacts: In total, the selected alternative requires the removal of three trees larger than six inches diameter breast height (dbh), work within five feet of the resource area of an Environmental Protection zone, and 1,765 square feet of temporary disturbance outside the right-of-way.

While every effort was taken to avoid impacts to trees designated to be left undisturbed, two trees were unduly impacted by construction activities and determined by the City Forester to be unsafe, facilitating the need for their removal.

Mitigation & Monitoring Plan: When construction activities are completed, the temporary disturbance areas will be revegetated; the number of trees to be planted is 10 versus the removal of 3 trees. An additional 114 shrubs and 262 groundcovers are proposed to be installed along with native seed mix. Plantings of native riparian vegetation will provide long-term bank stabilization and other riparian functions such as stream shading and cover. Areas disturbed by construction of the new bridge will be replanted with native vegetation appropriate to Johnson Creek floodplain and riparian zone; plantings will stabilize soils in addition to providing habitat functions for local wildlife.

The completed bridge will have increased public and environmental benefits in comparison to the existing damaged bridge and therefore no adverse impacts will result. The highest function and value of the area comes from the water quality in the creek, the aquatic habitat, and the native vegetation along the banks. The project will both protect and enhance these resources by utilizing existing disturbed areas for construction staging and access, revegetating areas of temporary disturbance, spanning the ordinary high water, and protecting water quality during construction. The new bridge will be safer than the existing bridge that currently presents a hazard to public safety.

To confirm survival of the required plantings for the initial establishment period, the applicant will be required to have the plantings inspected upon planting and again, two years after plantings are installed.

Due to dense vegetation located throughout the project site, it was determined by the applicant's revegetation specialist there were no additional suitable planting areas left onsite to mitigate for the removal of the two additional trees. Therefore, in addition to the mitigation approved through the original Land Use Review, the applicant proposes to pay a revegetation fee (*Option 4*, Table 430-2) to mitigate for the additional tree removal.

Land Use History: City records indicate that prior land use reviews include the following:

Land use history includes multiple reviews for the adjacent parking lot and Leach Botanical Garden; these reviews have no affect on the current land use review.

LUR 96-013968 EN: Project included the stabilization and repair of stream banks damaged in the 1996 floods. Project did not qualify for NRCS funding; BES withdrew the application.

LUR 17-227712 EN: Approval of an Environmental Review for temporary disturbance, including Best Management Practice (BMP) installation and concrete form work; outside the right-of-way; and the removal of three native trees all within the Environmental Conservation and Environmental Protection overlay zone.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed on September 7, 2017. The following Bureaus have responded with no issues or concerns:

- Life Safety
- PBOT
- Water Bureau
- Fire Bureau
- Bureau of Parks-Forestry Division
- Oregon Department of State Lands

The Bureau of Environmental Services responded with the following comment:

This is a City of Portland Bureau of Transportation (PBOT) project. PBOT is coordinating with BES to ensure that the standards of the City of Portland's Stormwater Management Manual and Sewer and Drainage Facilities Design Manual, along with the principles of Title 10 (Erosion and Sediment Control Regulations) are met. Please see Exhibit E-1 for additional details.

The Bureau of Development Services – Site Development Section responded with the following comment:

Site Development takes no exceptions to the approval of this land use case and does not request any conditions of approval. Please see Exhibit E-2 for additional details.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on September 7, 2017. 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 Approval Criteria for Environmental Review

An environmental review application will be approved if the review body finds that the applicant has shown that all the applicable approval criteria are met. When environmental review is required because a proposal does not meet one or more of the development standards of Section 33.430.140 through .190, then the approval criteria will only be applied to the aspect of the proposal that does not meet the development standard or standards.

Findings: The approval criteria which apply to the proposed work outside of the ROW for the replacement bridge are found in Sections 33.430.250.E and .F. The applicant has provided findings for these approval criteria and BDS Land Use Services staff have revised these findings or added conditions, where necessary to meet the approval criteria.

33.430.250.E. Other development in the Environmental Conservation zone or within the Transition Area only. In Environmental Conservation zones or for development within the Transition Area only, the applicant's impact evaluation must demonstrate that all the following are met:

33.430.250.F. Other development in the Environmental Protection zone. In Environmental Protection zone, the applicant's impact evaluation must demonstrate that all the following are met:

E.1 Proposed development minimizes the loss of resources and functional values, consistent with allowing those uses generally permitted or allowed in the base zone without a land use review;

Findings: This criterion applies to the installation of BMPs, concrete form work, and contractor staging located partially within the resource area of the Environmental Conservation overlay zone and outside of the public ROW. The purpose of this criterion is to recognize that some form of development is allowed, consistent with the base zone standards. Impacts of the proposed development are measured relative to the impacts associated with the development normally allowed by the base zone; in this case, the public rights-of-way are governed by Title 17, thus the base zone standards do not apply.

The proposed development aims to remove a structurally deficient bridge, existing bridge piers, and abutments from the creek and install a single-span bridge, improving the functional values of fish and wildlife habitat. Bridge replacement activities will require BMP installation and concrete form work to be performed outside of the right-of-way and within five feet of the resource area of an Environmental Protection zone. However, there will be no loss of resource area; all disturbances outside of the new bridge footprint will be temporary. Disturbance areas will be planted with native grass seed as temporary erosion control followed by planting 10 native trees, 114 native shrubs, and 262 groundcovers as mitigation for development impacts and as permanent erosion control. All disturbed areas will be monitored for two years until plants are established.

There will be no significant detrimental impact on resources and functional values; development will not encroach into the undisturbed areas. The adjacent areas will be fenced off with construction fencing prior to construction. Because the adjacent undisturbed area is public open space, the work will not encourage future development into adjacent undisturbed areas.

Downstream impacts such as increased sedimentation and turbidity will be avoided. During construction, the applicant will place silt fence at the edge of disturbance areas per the Erosion Control Plan, Exhibit C.6. This will catch any temporary erosion caused by construction activities and prevent sediment from moving off-site and/or downstream.

Considering the foregoing, *this criterion is met.*

F.1 All sites within the Portland city limits, in which the proposed use or development is possible, are also in the resource areas of Environmental Protection zones;

Findings: The bridge failure occurred partially within the Environmental Protection zone. It is not possible to repair the SE 122nd Avenue Bridge over Johnson Creek anywhere but where the bridge has failed. Any other bridge location would also be located within the Environmental Protection zone as its purpose would also be to provide access over Johnson Creek.

Considering all other sites within the Portland city limits in relation to the proposed use/development would also create disturbance within the Environmental Protection zone, *this criterion is met.*

F.3 There is a public need for the proposed use or development;

Findings: As described in the Proposal Summary on Page 2 of this report, the purpose of the proposal is to fulfill a public need for access to both private residences and Leach Botanical Garden. The bridge was structurally compromised by the historic winter storms of 2015 and closed to motor vehicles shortly thereafter. Due to the bridge closure, there is a required detour in place of over one mile for several hundred residents. The detour also impacts emergency services and school bus routes. Replacement of the bridge is paramount to the operation and mobility of the Pleasant Valley Neighborhood as well as the operation of the Leach Botanical Garden given the reliance on the bridge as the primary access to the park.

Based on the public need for the proposed replacement bridge, *this criterion is met.*

F.4 The public benefits of the proposed use or development outweigh all significant detrimental impacts;

Findings: The public benefits of this project include renewed access to properties for local residents along with access to the Leach Botanical Garden. Additional public benefits include improved safety by bringing the bridge into conformance with ADA and AASHTO regulations. Environmental benefits include the removal of in-water piers and buttresses, creating a more fish-friendly habitat. Detrimental impacts are relatively minor and will result in the removal of 3 trees and 1,765 square feet of temporary disturbance outside of the right-of-way.

Considering the positive public benefits gained from a functioning bridge which meets both ADA and AASHTO regulations and that the impacts, both temporary and permanent, are minimal, *this criterion is met.*

E.2 Proposed development locations, designs, and construction methods are less detrimental to identified resources and functional values than other practicable and significantly different alternatives;

F.2 Of these sites, development on the proposed site would have the least significant detrimental environmental impact;

Findings: These criteria require the applicant to demonstrate that alternatives were considered during the design process, and that there are no practicable alternatives that would be less detrimental to the identified resources and functional values. The applicant provided an alternatives analysis which can be found in Exhibit A.2 and is summarized in this report on Pages 3 and 4.

The applicant demonstrates that while the BMP installation and concrete form work creates disturbance in the Environmental Conservation and Environmental Protection overlay zones, the impact of leaving conditions as-is, would contribute more to long-term degradation of the resources and their functional values by leaving the piers and buttresses of the existing bridge in Johnson Creek. In addition, the alternative considered that would install a new bridge elsewhere in the vicinity at an alternate location would create unnecessary disturbance to resource areas that are not currently disturbed and/or developed. Furthermore, the applicant demonstrates that they have considered different approaches to the proposed work, but found that the proposed methods present the least temporary disturbance by reducing the extent to which people and equipment must enter the resource area.

Considering multiple alternatives in location, design, and construction methods were considered and the option with the least significant detrimental environmental impact was chosen, *this criterion is met.*

E.3 There will be no significant detrimental impact on resources and functional values in areas designated to be left undisturbed;

F.5 There will be no significant detrimental impact on resources and functional values in areas designated to be left undisturbed;

Findings: This criterion requires the protection of resources outside the proposed disturbance area from impacts related to the proposal, such as damage to native vegetation, erosion of soils off the site, and downstream impacts to water quality and fish habitat from increased stormwater runoff and erosion off the site.

The Construction Management Plan (CMP) contains plans for erosion control and construction management activities that include installing silt fence around the perimeters of all construction disturbance areas to keep soils from migrating off-site into the creek. In addition, orange plastic exclusion fencing must be installed in the northeastern corner, outside of the wetland boundary to ensure that construction equipment and workers do not trespass into the wetland area. Trees to be preserved in the vicinity of the construction area must also be protected by orange plastic fencing placed around their required root protection zones.

To ensure that the erosion control and resource protection fencing are installed correctly and that resources to be preserved on the site will be adequately protected, conditions are necessary to require installation of the erosion control and resource protection fences prior to any soil disturbance on the site. Erosion control fencing must be placed around all disturbance areas and exclusion fencing must be placed outside the wetland boundary. With these conditions, *this criterion will be met.*

E.4 The mitigation plan demonstrates that all significant detrimental impacts on resources and functional values will be compensated for;

F.6 The mitigation plan demonstrates that all significant detrimental impacts on resources and functional values will be compensated for;

Findings: As discussed on Page 4 of this report, unavoidable impacts will include the removal of 3 trees, totaling 74 inches dbh, and temporary and permanent disturbance within the resource areas of the Environmental Conservation and Environmental Protection overlay zones. This criterion requires the applicant to assess unavoidable impacts and propose mitigation that is proportional to the impacts, as well as sufficient in character and quantity to replace lost resource functions and values. The proposed mitigation plan is described on Pages 4 and 5 of this report. It will offset 1,765 square feet of temporary disturbance area and mitigate the removal of 3 trees.

Additional impacts to resources occurred when two native trees (36" dbh total) were impacted during construction activities, necessitating their removal. Due to the dense vegetation currently existing onsite, in addition to plantings required as part of the original decision, no other planting areas could be found to mitigate for the additional tree removal on the project site. As such, the applicant has proposed to pay a revegetation fee that will contribute to City planting project calculated by the Bureau of Environmental Services' (BES) Watershed Group. The fee ensures impacts to resources will be mitigated within the same watershed (Johnson Creek) as the project and within City limits, thereby compensating for unforeseen impacts of the additional tree removal. The calculation method for the appropriate fee can be found in Table 430-2, *Option 4*. The removal of the two additional trees (12" and 24" inch dbh) would have required planting a minimum of seven trees per 33.430.140.M, Table 430-3; therefore, the revegetation fee shall compensate for a minimum of seven trees or 350 square feet of planting area.

The mitigation plan will compensate for impacts at the site for the following reasons:

- The mitigation area (approximately 3,045 square feet) is almost twice the area of temporary disturbance outside the right-of-way.
- All temporary disturbance areas will be seeded and planted with native vegetation.
- The mitigation plantings will include diverse native species which will provide robust wildlife habitat.
- The plantings will provide assistance with pollution and nutrient retention and removal, sediment trapping and erosion control.

To confirm survival of the required plantings for the initial establishment period, the applicant will be required to have the plantings inspected upon planting and again, two years after plantings are installed.

With conditions to ensure the appropriate revegetation fee is received, that the minimum number of replacement trees are planted on the site, and that plantings required for this Environmental Review are maintained and inspected, *this criterion can be met.*

E.5 Mitigation will occur within the same watershed as the proposed use or development and within the Portland city limits except when the purpose of the mitigation could be better provided elsewhere; and

F.7 Mitigation will occur within the same watershed as the proposed use or development and within the Portland city limits except when the purpose of the mitigation could be better provided elsewhere; and

E.6 The applicant owns the mitigation site; possesses a legal instrument that is approved by the City (such as an easement or deed restriction) sufficient to carry out and ensure the success of the mitigation program; or can demonstrate legal authority to acquire property through eminent domain.

F.8 The applicant owns the mitigation site; possesses a legal instrument that is approved by the City (such as an easement or deed restriction) sufficient to carry out and ensure the success of the mitigation program; or can demonstrate legal authority to acquire property through eminent domain.

Findings: Mitigation for significant detrimental impacts will be conducted on the same site and within the same watershed as the proposed use or development, and the applicant owns the proposed on-site mitigation area.

Mitigation for additional tree impacts through the revegetation fee will take place within the same watershed as the proposed development and within Portland City limits in accordance with Table 430-2. The fee is collected by BDS and is administered by the BES. The fees collected will be used for revegetation projects on public or private property. BES will either own the mitigation site or possess a legal instrument sufficient to carry out and ensure success of the mitigation plantings.

Considering the foregoing, *these criteria are met.*

DEVELOPMENT STANDARDS

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

OTHER TECHNICAL REQUIREMENTS

Technical decisions have been made as part of this review process, based on other City Titles, as administered by other City service agencies. These related technical decisions are not considered land use actions. If future technical decisions result in changes that bring the project out of conformance with this land use decision, a new land use review may be required. The following is a summary of technical requirements applicable to this proposal. This list is not final and is subject to change when final permit plans are provided for City review.

Bureau	Code Authority and Topic	Contact Information
Environmental Services	Title 17; 2014 Stormwater Manual	503-823-7740 www.portlandonline.com/bes
Transportation	Title 17 - Transportation System Plan	503-823-5185 www.portlandonline.com/transportation
Development Services	Title 24 - Building Code, Flood Plain, Site Development; Title 10 - Erosion and Sediment Control	503-823-7300 www.portlandonline.com/bds
Urban Forestry	Title 11 - Trees	503-823-8733 http://www.portlandoregon.gov/trees/

CONCLUSIONS

The applicant proposes to replace one structurally deficient bridge which spans Johnson Creek in SE Portland. All the construction activities will occur within the boundary of a delineated work area which will localize impacts and protect other natural resources. Subject to conditions related to construction management and on-going maintenance activities, the project is expected to result in improved public access for residents along with visitors to Leach Botanical Garden.

The applicants and the above findings have shown that the proposal meets the applicable approval criteria with conditions. Therefore, this proposal should be approved, subject to the following conditions.

ADMINISTRATIVE DECISION

Approval of an Environmental Review for:

- Temporary disturbance, including BMP installation and concrete form work; outside the right-of-way; and
- Removal of five native trees over 6" dbh

all within the Environmental Conservation and Environmental Protection overlay zones, and in substantial conformance with Exhibits C.2 through C.9, as approved by the City of Portland Bureau of Development Services on **March 6, 2019**. Approval is subject to the following conditions:

A. A BDS Zoning Permit is required for inspection of required mitigation plantings. The Conditions of Approval listed below, shall be noted on appropriate plan sheets submitted for zoning permits and City Engineer approved construction plans. Plans shall include the following statement, **"Any field changes shall be in substantial conformance with approved LU 17-227712 EN Exhibits C.2 through C.9."**

B. Temporary, 4-foot high, construction fencing shall be placed along the Limits of Construction Disturbance for the approved development, as depicted on **Exhibits C.4 and C.5**.

1. No mechanized construction vehicles are permitted outside of the approved "Limits of Construction Disturbance" delineated by the temporary construction fence. All planting work, invasive vegetation removal, and other work to be done outside the Limits of Construction Disturbance, shall be conducted using hand held equipment.
2. Exclusion fencing shall be placed along the boundary of the existing wetland for the duration of construction.

C. The applicant shall obtain a BDS Zoning Permit for approval and inspection of a mitigation plan for a total of 10 trees, 114 shrubs, and 262 native ground covers, in substantial conformance with Exhibit C.8 Landscaping Plan. Any plant substitutions shall be selected from the *Portland Plant List* and shall be substantially equivalent in size to the original plant. **The applicant shall also pay a revegetation fee for a minimum of seven trees or 350 square feet of planting area in accordance with Option 4 of Table 430-2 for the removal of two additional trees not approved as part of the original decision.**

1. Permit plans shall show:
 - a. The location of the trees, shrubs and ground covers required by this condition to be planted in the mitigation area and labeled as "new required landscaping." The plans shall be to scale and shall illustrate a naturalistic arrangement of plants and should include the location, species, quantity and size of plants to be planted.
 - b. The applicant shall indicate on the plans selection of either tagging plants for identification or accompanying the BDS inspector for an on-site inspection.
 - c. All species in the erosion control seed mix shall be approved species from the *Portland Plant List*.
2. Plantings shall be installed between October 1 and March 31 (the planting season).
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. If plantings are installed prior to completion of construction, a temporary bright orange, 4-foot high construction fence shall be placed to protect plantings from construction activities.
5. After installing the required mitigation plantings, the applicant shall request inspection of mitigation plantings and final the BDS Zoning Permit.
6. All mitigation and 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; or the applicant shall arrange to accompany the BDS inspector to the site to locate mitigation plantings for inspection. If tape is used it shall be a contrasting color that is easily seen and identified.

D. The land owner shall maintain the required plantings to ensure survival and replacement. The land owner 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 landscaping shall be continuously maintained, by the land owner in a healthy manner, with no more than 15% cover by invasive species. Required plants that die shall be replaced in kind.

E. 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 March 6, 2019**

By authority of the Director of the Bureau of Development Services

Decision mailed: March 11, 2019

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 22, 2017, and was determined to be complete on September 5, 2017.

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 22, 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 completely waived the 120-day review period, as stated within Exhibit A.5. **The 120-day timeline does not apply.**

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 March 25, 2019**, at 1900 SW Fourth Ave. 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 \$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.

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 **March 25, 2019**, 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.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

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 Plans, August 2017
 - 2. Applicant's Revised Narrative, September 2017
 - 3. Applicant's response to Incomplete Letter
 - 4. Urban Forestry Permit & Tree Inventory
 - 5. 120-Day Extension Form & Waiver
 - 6. Additional Tree Removal Memo, July 27, 2018
 - 7. Revised Decision Request Memo, February 15, 2019
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Existing Conditions Site Plan
 - 2. Proposed Development Site Plan
 - 3. Construction Management Site Plan
 - 4. Construction Management & Tree Protection Plan
 - 5. Construction Management Balanced Cut and Fill Calculations within 100-Year Floodplain
 - 6. Erosion Control Plan
 - 7. Mitigation / Remediation Site Plan
 - 8. Landscaping Plan
 - 9. Additional Tree Removal Site Plan (Attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
 - 3. Decision Mailing List
 - 4. Mailed Decision Notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Site Development Review Section of BDS
 - 1. Life Safety
 - 3. Portland Bureau of Transportation
 - 4. Water Bureau
 - 5. Fire Bureau
 - 6. Bureau of Parks, Forestry Division
 - 7. Oregon Department of State Lands
- F. Correspondence: None Received
- G. Other:
 - 1. Original LU Application
 - 2. Incomplete Letter
 - 3. Wetland Land Use Notification Form, Oregon Department of State Lands

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).

