



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

Ted Wheeler, Mayor
Rebecca Esau, Director
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www.portlandoregon.gov/bds

Date: October 3, 2019
To: Interested Person
From: Morgan Steele, Land Use Services
503.823.7731 / Morgan.Steele@portlandoregon.gov

NOTICE OF A TYPE Ix 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 19-134376 EN

GENERAL INFORMATION

Applicant: Stephen Brown
5500 SW Menefee Drive | Portland, OR 97239
503.803.8059 | steveb@investnw.com

Owners: William A Berg & Kathleen T Kiely
5520 SW Menefee Drive | Portland, OR 97239
Bettina G Chew
P O Box 19009 | Portland, OR 97219-0009

Site Address: Behind and below 5350, 5400, 5500, 5510, & 5520 SW Menefee Drive

Legal Description: TL 2300 0.31 ACRES, SECTION 16 1S 1E; TL 2200 0.21 ACRES, SECTION 16 1S 1E

Tax Account No.: R991160860, R991160900

State ID No.: 1S1E16AD 02300, 1S1E16AD 02200

Quarter Section: 3528

Neighborhood: Hillsdale, contact at contact@hna-pdx.com.

Business District: None

District Coalition: Southwest Neighborhoods Inc., contact Sylvia Bogert at 503-823-4592.

Plan District: None

Other Designations: Southwest Hills Resource Protection Plan – Resource Site #114; Landslide Hazard Area; Wildfire Hazard Area

Zoning: *Base Zone:* Residential 7,000 (R7)
Overlay Zones: Environmental Conservation (c), Design (d)

Case Type: EN – Environmental Review

Procedure: Type Ix, an administrative decision with appeal to the Oregon Land Use Board of Appeals (LUBA).

Proposal:

Resource Enhancement Proposal. The applicant and owners are proposing to remove nuisance species and nine big leaf maple resprouts that have grown from the stumps of trees cut in the 1980s and have been determined by an arborist to be structurally weakened by decay and unhealthy growth habits. In addition, four big leaf maples will be girdled or topped and retained for use as habitat trees. All branches and limbs 12 inches or greater in diameter from the removed trees will be placed onsite to provide habitat and add to organic material to the soil. Two of the existing resprouts are proposed for retention. Once nuisance species and the nine resprouts have been removed, the owners propose to replant with native Western Red Cedar, Douglas fir, vine maple, and a variety of native shrubs and groundcovers. A sterile seed mix will be used to stabilize the slope and prevent erosion while the native plantings establish. Manually watering of the plantings is proposed during the first season. All work is to be done manually, with hand-held equipment.

The entire project area is within the Environmental Conservation overlay zone. Because there is work in an Environmental Zone, certain standards must be met to allow work to occur by right. In this case, the applicant is proposing native tree removal as part of a resource enhancement project (33.430.170.C.3); therefore, Environmental Review is required.

Relevant Approval Criteria:

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

- **Section 33.430.250.B – Resource Enhancement Projects**

ANALYSIS

Site and Vicinity: The project site is an approximately 0.31-acre forested area located behind and below single-dwelling residences in SW Portland near the intersection of SW Menefee Drive and SW Westwood Drive. The forested area is currently densely vegetated with a combination of big leaf maple resprouts and invasive species such as English hawthorn, English holly, English ivy, and Himalayan blackberry. The English ivy covers most of the ground and has climbed the majority of the maple trees, structurally weakening them. Surrounding development to the north and west consists mainly of single-dwelling residences while south and east of the subject site continues on as upland forested area.

Zoning: The zoning designation on the site includes Residential 7,000 (R7) base zone, with Environmental Conservation (c) and Design (d) overlay zones (see zoning on Exhibit B).

The Residential 7,000 Base Zone is intended to foster the development of single-dwelling residences on lots having a minimum area of 4,200 square feet. Newly created lots must have a maximum density of 1 lot per 7,000 square feet of site area. The regulations of this zone do not apply to this proposal and are not 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 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 Environmental Review is to ensure compliance with the regulations of the Environmental Conservation overlay zone.

The Design overlay zone promotes the conservation and enhancement of areas of the City with special historic, architectural or cultural value. New development and exterior modifications to existing development must meet the Community Design Standards (Chapter 33.218) or are subject to design review. The regulations of this zone do not apply to this proposal and are not addressed through this Environmental Review.

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 *Southwest Hills Resource Protection Plan* as Resource Site #114, Terwilliger Parkway, Central. Significant resources within Resource Site #114 and specific to the subject site include wildlife habitat, forest, groundwater recharge, and scenic.

Impact Analysis and Mitigation Plan: The following describes the proposed construction management plan, unavoidable impacts, and mitigation proposal.

Construction Management Plan: Only minimal, temporary disturbance is anticipated as a result of this project. Trees will be felled, and invasive species removed, using only hand-held equipment. Silt fencing will be placed on the downslope perimeter of the project area to prevent soil from leaving the site. A sterile, fast-growing seed mix will be applied to any bare soil in addition to native groundcovers, shrubs, and trees.

Unavoidable Impacts: While the project is intended to enhance environmental resources on the site, some temporary impacts are anticipated. The resource enhancement proposal will require the removal of nine trees and the girdling/topping of four trees within the Environmental Conservation overlay zone; however, all trees will be removed outside the primary bird nesting window (February 15th through July 31st) to avoid impacts to nesting birds.

Mitigation Plan: To begin establishment of a mixed deciduous/coniferous forest, the applicant proposes to plant 7 Douglas fir, 2 Western red cedar, 9 vine maple, 9 Indian plum, 18 Oregon grape, and 18 sword ferns. The mitigation plants will be watered throughout the first growing season as necessary to aid in establishment.

Land Use History: City records indicate there are no relevant prior land use reviews for this site.

Agency Review: A Notice of Proposal in your Neighborhood was mailed on **July 16, 2019**. The following Bureaus have responded with no issues or concerns about the proposal:

- Bureau of Environmental Services
- PBOT
- Fire Bureau
- Urban Forestry
- Life Safety

The Site Development Section of BDS responded with the following comment. Please see Exhibit E.4 for additional details.

A clearing permit is required and shall be issued in accordance with Section 24.10.070 for clearing activities in environmental zones. Removal of trees six-inches and larger in diameter shall be reviewed with the clearing permits as part of the Tree Plan review pursuant to Title 11. When removing 5 or more trees on a site with an average slope of at least 20 percent, applicants shall provide a geotechnical engineering report that assesses the stability of the site after tree felling and root grubbing operations. The report can be limited to qualitative assessment of the proposed condition, if deemed appropriate by the engineer. Any recommendations from the geotechnical engineer for erosion control or slope instability risk reduction should be incorporated into the permit application submittal.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on **July 16, 2019**. 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

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.

B. Resource Enhancement Projects. In resource areas of environmental zones, resource enhancement projects will be approved if the applicant's impact evaluation demonstrates that all the following are met:

1. There will be no loss of total resource area;

Findings: There will be no loss of total resource area as all disturbance is temporary, and care was taken to select trees for removal and replanting that will result in a robust and diverse canopy. Temporarily disturbed areas that result from invasive species removal will be planted with native trees, shrubs, and ground covers.

Considering there will be no loss of total resource area for this resource enhancement proposal, *this criterion is met.*

2. There will be no significant detrimental impact on any resources and functional values; and

Findings: All project impacts on existing resources and functional values will be temporary and the overall project approach has been designed to minimize the project construction footprint within the Environmental Zone. No equipment besides hand tools will be used to remove trees and invasive species and all wood material over 12 inches that is felled will be left onsite as habitat and organic material.

While the resource enhancement project does require the removal of native trees, the functional values of these trees is currently degraded due to the canopy structure of the resprouts and the invasive species inhibiting most of them. Therefore, removing these trees and replacing them with diverse, native plantings coupled with extensive invasive species removal will mean the resource enhancement project will not have significant detrimental impacts on resources and functional values.

Therefore, considering impacts will be temporary and insignificant, and offset by the planting of native vegetation to encourage a healthier, more diverse forest system, *this criterion is met.*

3. There will be a significant improvement of at least one functional value.

Findings: The current condition of the forested area is heavily degraded. Much of the site is densely covered in invasive species such as English ivy and Himalayan blackberry with the ivy climbing most of the trees (see Exhibit A.4 for site photos). The native trees that are present are majority resprouts of big leaf maples that were cut in the 1980s. The resprouts appear to be structurally degraded due in part to the invasion of English ivy and their current canopy structure is preventing light from reaching the forest floor. Removing the degraded big leaf maple resprouts and replacing them with the proposed mitigation plantings will ensure the establishment of a native and diverse forested area which will improve wildlife habitat, water filtration functions of the soil, and encourage the growth of native plants found in the vicinity such as trillium, wild ginger, deer fern, and oxalis, all of which are currently being inhibited by the current site conditions.

Based on the improvement of numerous functional values, *this criterion is 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

The applicant proposes a resource enhancement project within a forested area that is situated behind and below single-dwelling residences. All the construction activities will occur within the boundary of a delineated work area, which will localize impacts and protect other natural resources in the vicinity. Subject to conditions related to construction management and on-going maintenance activities, the project is expected to result in improved upland habitat within the project area. Therefore, the proposed resource enhancement project should be approved subject to conditions listed below.

ADMINISTRATIVE DECISION

Approval of an Environmental Review for:

- Removal of nine native trees; and
- Girdle or topping of four native trees

all within the Environmental Conservation overlay zone, and in substantial conformance with **Exhibits C.2 through C.5**, as approved by the City of Portland Bureau of Development Services and signed and dated on **September 30, 2019**. Approval is subject to the following conditions:

- A. A BDS Site Development Permit (clearing) is required for this project.** The Conditions of Approval listed below, shall be noted on appropriate plan sheets submitted for permits. Plans shall include the following statement, ***“Any field changes shall be in substantial conformance with approved LU 19-134376 EN Exhibits C.2 through C.5.”***
- B.** All tree and vegetation removal and planting must be conducted using hand-held equipment only.
- C.** The Site Development Permit review shall include inspection of a mitigation plan for invasive species removal and planting of 9 trees, 36 shrubs, and 18 groundcovers in substantial conformance with Exhibits C.4 and C.5. 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 substituted with conifers.
1. Permit plans shall show the general location of the trees, shrubs, and groundcovers required by this condition to be planted in the mitigation area. The plans shall include a planting table listing the species, quantity, spacing and sizes of plants to be planted.
 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. 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.
 5. After installing the required mitigation plantings, the applicant shall request inspection of mitigation plantings and final the Zoning Permit.
- D. 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

applicant 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 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 September 30, 2019**
By authority of the Director of the Bureau of Development Services

Decision mailed: October 3, 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 March 18, 2019, and was determined to be complete on July 1, 2019.

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 March 18, 2019.

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 did not waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on: October 29, 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.

This decision, and any conditions associated with it, is final. It may be appealed to the Oregon Land Use Board of Appeals (LUBA), within 21 days of the date the decision is mailed, as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that a petitioner at LUBA must have submitted written testimony during the comment period for this land use review. Contact LUBA at 775 Summer St NE Suite 330, Salem, OR 97301-1283 or phone 1-503-373-1265 for further 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.

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 3, 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 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:

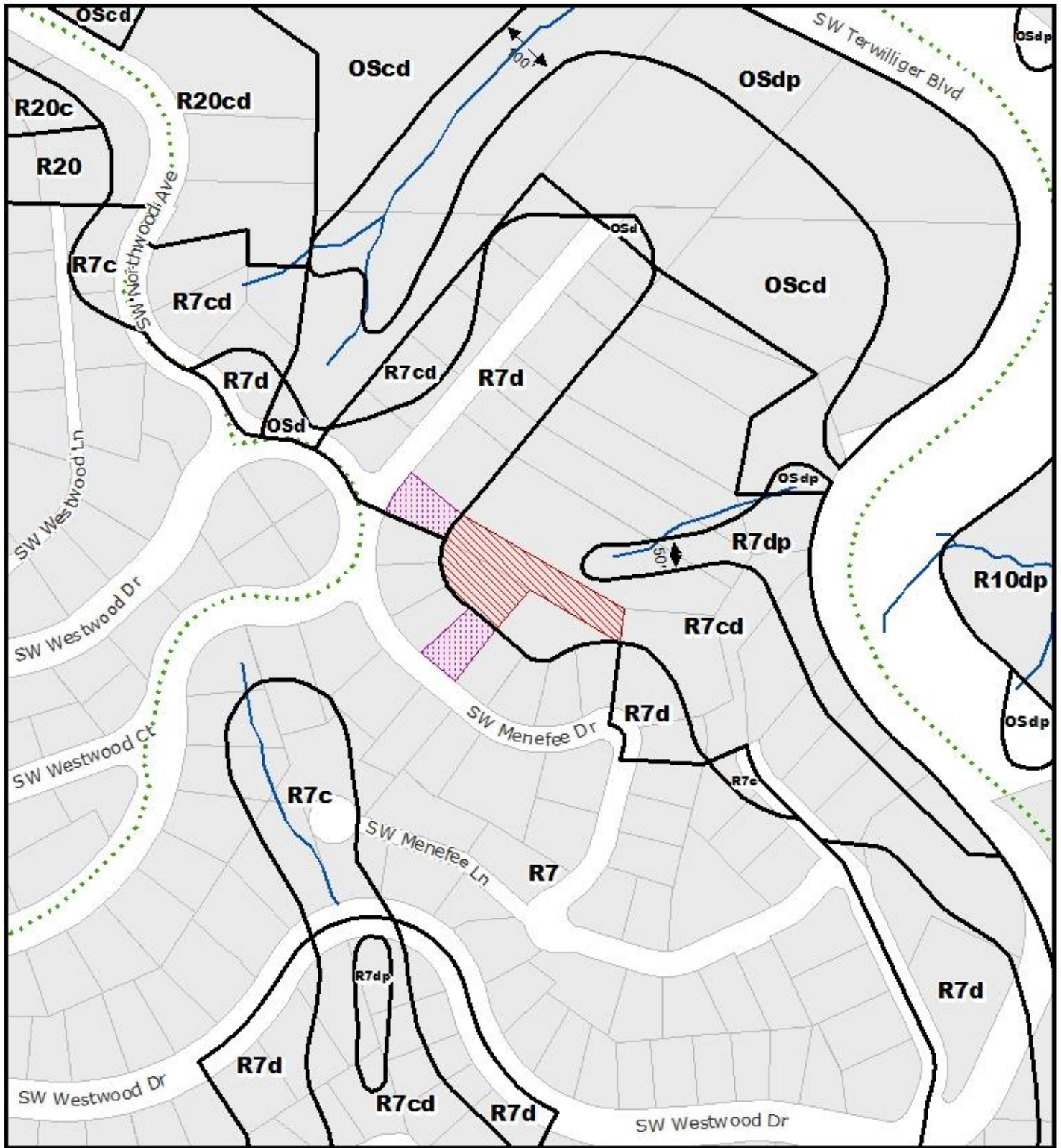
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code for the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Original Narrative & Site Plans, March 2019
 - 2. Revised Narrative & Site Plans, July 2019
 - 3. Revised Narrative, September 2019
 - 4. Arborist Report, June 2019
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Existing Conditions
 - 2. Proposed Development (attached)
 - 3. Construction Management
 - 4. Mitigation (attached)
 - 5. Nuisance Species Removal
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation
 - 3. Fire Bureau
 - 4. Site Development Review Section of BDS
 - 5. Bureau of Parks, Forestry Division
 - 6. Life Safety
- F. Correspondence: None
- G. Other:
 - 1. Original LU Application
 - 2. Incomplete Letter
 - 3. Memo Regarding Outstanding Items

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



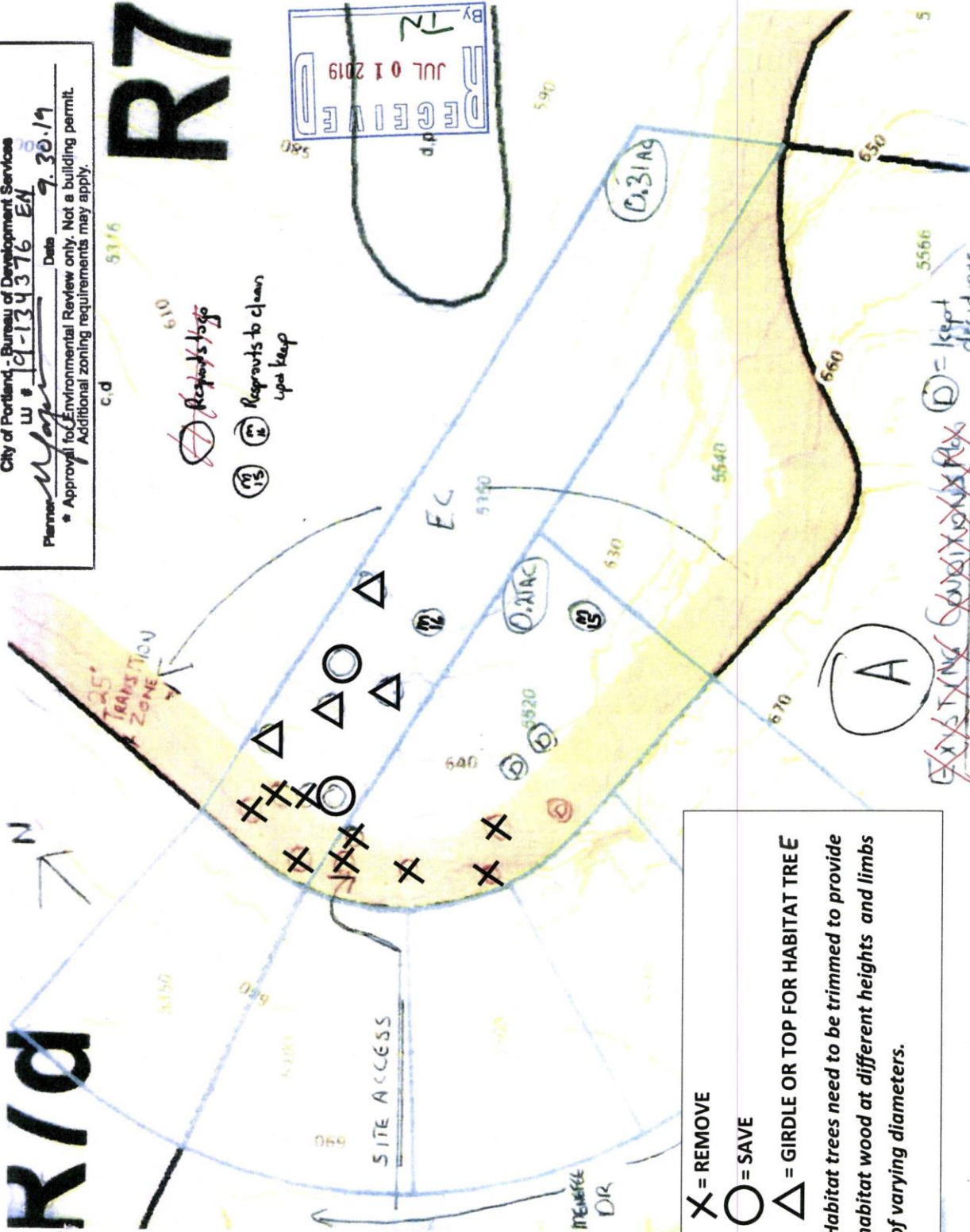
-  Site
-  Also Owned Parcels
-  Stream
-  Recreational Trails

File No.	LU 19-134376 EN
1/4 Section	3528
Scale	1 inch = 200 feet
State ID	1S1E16AD 1100
Exhibit	B Mar 20, 2019

City of Portland - Bureau of Development Services
 LU # 19-134376 EN
 Planner: *M. J. [unclear]* Date: 9.30.19
 * Approval for Environmental Review only. Not a building permit.
 Additional zoning requirements may apply.

R7

R7



By: [unclear]
 JUL 01 2019
 [unclear]

Reprints to clean up keep

X = REMOVE
O = SAVE
△ = GIRDLE OR TOP FOR HABITAT TREE
 Habitat trees need to be trimmed to provide habitat wood at different heights and limbs of varying diameters.

~~XXXXXX~~
 see B1 below
 D = kept deciduous

CASE NO 19-134376 EN
 EXHIBIT C-2

Proposed Development Plan
 mds

R7D

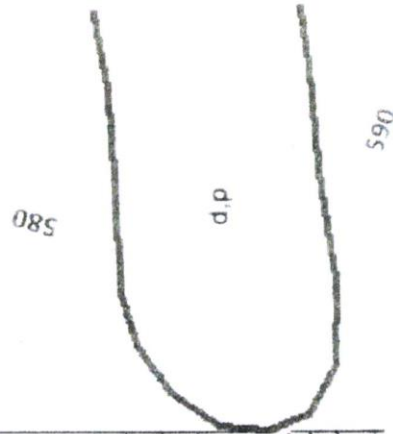
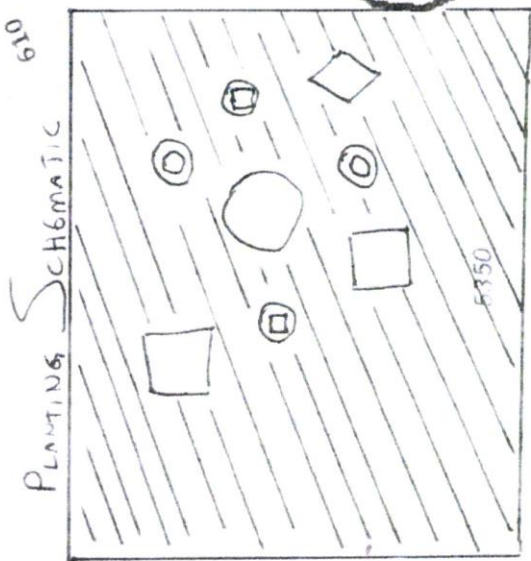
R7

City of Portland - Bureau of Development Services
 LU # 19-134376 EA
 Planner Wof Date 9.30.19
 * Approval for Environmental Review only. Not a building permit.
 Additional zoning requirements may apply.

Key:

- new doug fir or cedary → 9 total
- VINE MAPLE → 9 total
- INDIAN PLUM → 9 total
- OREGON GRAPE → 18 total
- SWAMP FERN → 18 total
- Regreen + Woodlands Mix

9 trees
 36 shrubs
 18 groundcovers



585

640

5520

630

5540

670

5520

1/20

B.1
 Proposed Development Plan
 Planting Schematic

5566 CASE NO. 19-134376 EA
 EXHIBIT C.4

650

660