



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

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STAFF REPORT AND RECOMMENDATION TO THE HEARINGS OFFICER

CASE FILE: LU 19-192268 CU
(PC # 19-124871)
REVIEW BY: Hearings Officer
WHEN: October 30, 2019 at 9:00am
WHERE: 1900 SW Fourth Ave., Suite 3000
Portland, OR 97201

It is important to submit all evidence to the Hearings Officer. The City Council will not accept additional evidence if there is an appeal of this proposal.

BUREAU OF DEVELOPMENT SERVICES STAFF: ANDREW GULIZIA / ANDREW.GULIZIA@PORTLANDOREGON.GOV

GENERAL INFORMATION

Applicant's Representative: Chris Hagerman
The Bookin Group LLC
1140 SW 11th Ave., Ste. 500
Portland, OR 97205

Applicant: Cynthia Haruyama
Portland Japanese Garden
611 SW Kingston Ave.
Portland, OR 97205

Property Owner: Kingston House:
Japanese Garden Foundation of Oregon
PO Box 3847
Portland, OR 97208

Washington Park tax lots containing Japanese Garden lease area:
City of Portland
1120 SW 5th Ave. #609
Portland, OR 97204

Site Address: Kingston House:
369 SW Kingston Ave.

Washington Park tax lots containing Japanese Garden lease area:
400 WI/ SW Kingston Ave.
611 SW Kingston Ave.

Legal Description: BLOCK 11 LOT 18&26 TL 5800, ARLINGTON HTS & RPLT; TL 200 4.22 ACRES, SECTION 32 1N 1E; TL 200 21.12 ACRES, SECTION 05 1S 1E
Tax Account No.: R037503150, R941321360, R991050840

State ID No.: 1N1E32DD 05800, 1N1E32 00200, 1S1E05 00200
Quarter Section: 3026
Neighborhood: Arlington Heights, contact Kathy Goeddel at president@arlingtonheightspdx.org
District Coalition: Neighbors West/Northwest, contact Mark Sieber at 503-823-4212

Zoning: Kingston House:
 R7c – Single-Dwelling Residential 7,000 with a portion of the site in the Environmental Conservation (“c”) overlay

Washington Park tax lots containing Japanese Garden lease area:
 OS/OSc/OScs/OSp – Open Space with portions of the site in the Environmental Conservation (“c”), Scenic (“s”), and Environmental Protection (“p”) overlays

Case Type: CU – Conditional Use Review
Procedure: Type III, with a public hearing before the Hearings Officer. The decision of the Hearings Officer can be appealed to City Council.

Proposal: In 2009, a Type III Conditional Use Review approval added the property at 369 SW Kingston Ave. to the Portland Japanese Garden’s Conditional Use site so the house on this property (the “Kingston House”) could be used as administrative offices for the Japanese Garden (LU 09-143061 CU AD). Condition of approval D from LU 09-143061 CU AD limited the use of the Kingston House as administrative offices for 10 years. The applicant requests Type III Conditional Use Review approval to amend condition of approval D and extend the use of the Kingston House as administrative offices for the Japanese Garden for another 10 years. The applicant is not proposing any alterations to the existing house or grounds.

Approval Criteria: To be approved, this proposal must comply with the approval criteria of Title 33, Portland Zoning Code. The applicable approval criteria are in Zoning Code Section 33.815.105.A-E.

The City’s 2035 Comprehensive Plan has been appealed. Because Zoning Code Section 33.815.105.A-E is considered an “unacknowledged land use regulation” while the appeal is pending, this proposal must also comply with applicable Statewide Planning Goals.

ANALYSIS

Site and Vicinity: The Portland Japanese Garden is located in the northwest portion of Washington Park. Washington Park is a large city park with sloping topography, forest land, trails, and regional attractions such as the Oregon Zoo and the International Rose Test Garden, in addition to the Japanese Garden.

The property containing the Kingston House is a 9,400-square-foot lot on SW Kingston Ave. owned by the Japanese Garden Foundation of Oregon. The Japanese Garden portion of Washington Park is just south of the property, and the Washington Park tennis courts are across SW Kingston Ave. The Kingston House is about 2,200 square feet (including the finished basement) and was built in 1925 as a residence.

Except for Washington Park to the south, neighboring properties around the Kingston House are developed with single-dwelling houses. Most homes in the area were built in the early 20th century, and the neighborhood is characterized by large lots and mature trees.

Zoning: The Kingston House property is designated with the R7 single-dwelling residential zone (Exhibit B). Single-dwelling residential zones are intended to preserve land for housing and to

promote housing opportunities for individual households. The development standards work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities.

The remainder of the site is in Washington Park and is designated with the OS (Open Space) zone (Exhibit B). The OS zone is intended to preserve open areas for outdoor recreation and scenic quality, to preserve the capacity and water quality of the stormwater drainage system, to protect sensitive or fragile environmental areas, to provide pedestrian and bicycle transportation connections, and to protect trees and the urban forest.

Portions of the site are also designated with the Environmental Conservation (“c”) and Environmental Protection (“p”) overlay zones (Exhibit B). The “c” overlay is intended to conserve important environmental features and resources while still allowing compatible development. New development and exterior modifications to existing development in the “c” overlay must meet environmental standards or are subject to environmental review. The “p” overlay provides the highest level of protection to the most important resources and functional values. Development in the “p” overlay is approved only in unusual circumstances through environmental review. No development activities that would impact the “c” or “p” overlay zones are proposed.

Portions of the OS-zoned part of the site are also in the Scenic (“s”) overlay zone (Exhibit B). The “s” overlay zone establishes additional landscaping and screening standards to preserve and enhance identified scenic resources. The Kingston House property is not in the “s” overlay.

Land Use Review History: Below are the prior land use reviews for the subject site:

- LU 14-122172 CU EN: 2015 approval of a Conditional Use Review and Environmental Review for various improvements to the Japanese Garden. No changes to the use or development on the Kingston House property were approved in LU 14-122172 CU EN.
- LU 09-143061 CU AD: 2009 Conditional Use Review approval to add the Kingston House property to the Japanese Garden’s Conditional Use site and to use the house for Japanese Garden administrative offices for 10 years. Adjustments were approved for the building setback and landscape screening requirements for institutional uses in the R7 zone.

The approval of LU 09-143061 CU AD was subject to the following conditions (Exhibit G-4):

- A. As part of the building permit application submittal, the following development-related conditions (B through D) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 09-143061 CU AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."*

This condition of approval has no relevance to the current proposal because no building permit is needed to continue the administrative office use in the Kingston House. The final inspection for a building permit to apply commercial building code requirements to the Kingston House was approved in 2015 (building permit 14-159254 CO).

- B. The regular hours of operation for the House for administrative office use is weekdays from 7 a.m. to 7 p.m., with occasional/infrequent weekend and additional hours allowed.*

As discussed in the approval criteria findings below, staff recommends continuing this condition of approval.

- C. *Group use of the Subject Site and House are limited to staff meetings of up to 12 people, which shall occur on weekdays and conclude by 9:30 p.m.*

As discussed in the approval criteria findings below, staff recommends continuing this condition of approval, with an additional condition to clarify the maximum occupancy for the house at any one time is 12, including regular staff and meeting attendees.

- D. *The Conditional Use approval of this request shall sunset (terminate) ten years after the date of the approval. At the ten year sunset date of this approval, if the applicant wants to apply for a Conditional Use Review for continued administrative office use of the House and Subject Site, that application shall be processed via the Type III procedure.*

The subject of the current Type III Conditional Use Review is the applicant's request to allow the Kingston House to be used as administrative offices for another 10 years. The applicant's request is evaluated in the approval criteria findings below.

Condition of approval D states that a continuation of the administrative office use beyond the originally-approved 10-year period can be requested through a Type III application. Zoning Code Section 33.730.140.A also allows the applicant to request changes to conditions of approval through a Type III Conditional Use Review and states that the approval criteria in the current Zoning Code apply.

- E. *Applicant and Arlington Heights Neighborhood Association (AHNA) entered into a Good Neighbor Agreement (GNA) (Exhibit H-9). The obligation to implement the GNA is solely upon the applicant, any successor in interest to the applicant and AHNA and the City has no obligation to implement the GNA. However, non-compliance with the GNA is subject to enforcement by the City.*

The City Attorney's Office and BDS' Code Compliance Section have advised staff that Good Neighbor Agreements are private agreements to which the City is not a signatory, and that City enforcement of Good Neighbor Agreements is problematic, particularly when some of the provisions of the agreement are not clearly related to the Zoning Code approval criteria. The Good Neighbor Agreement between the Portland Japanese Garden and the Arlington Heights Neighborhood Association is still in effect, as it was signed by both parties and "shall remain in effect at any time that the Kingston House is used for non-residential purposes" (Exhibit G-5, page 4). However, with the current review, rather than referring to the Good Neighbor Agreement in the conditions of approval, staff recommends new conditions of approval to explicitly require compliance with the elements of the Good Neighbor Agreement that are related to the approval criteria. These conditions of approval are discussed in the approval criteria findings below.

Agency Review: A "Request for Response" was sent to City agencies September 23, 2019. The following Bureaus responded:

- The Bureau of Environmental Services (BES) evaluated the approval criterion related to sanitary waste and stormwater disposal. The response is referenced in the findings for Zoning Code Section 33.815.105.D.3, below. (Exhibit E-1)
- The Portland Bureau of Transportation (PBOT) evaluated the approval criteria related to the transportation system. The response is referenced in the findings for Zoning Code Section 33.815.105.D.1-2, below. (Exhibit E-2)
- The Water Bureau responded with no concerns. (Exhibit E-3)

- The Fire Bureau responded with no concerns. (Exhibit E-4)
- The Police Bureau stated that police services are adequate for the proposed use. (Exhibit E-5)
- The Site Development Review Section of BDS responded with no concerns. (Exhibit E-6)
- The Life Safety Review Section of BDS responded with no concerns. (Exhibit E-7)
- The Urban Forestry Division of Portland Parks and Recreation responded with no concerns. (Exhibit E-8)

Neighborhood Review: Signs notifying the public of the application were posted on September 30, 2019 (Exhibit D-3) and a “Notice of Public Hearing” was mailed to neighbors on October 7, 2019 (Exhibit D-4). As of the date of this report, staff has received four written responses from the public.

The first response was from a neighbor in support of the proposal (Exhibit F-1). This neighbor stated the Japanese Garden’s use of the Kingston House did not appear to create negative impacts on the neighborhood.

Two responses were received from a neighbor with concerns about the proposal (Exhibits F-2 and F-3). This neighbor made the following points:

- A 10-year time limit for office use was the basis of the Hearings Officer’s approval of LU 09-143061 CU AD.
- New office space for the Japanese Garden was recently constructed within Washington Park.
- The Kingston House property is under separate ownership from the Japanese Garden lease area in Washington Park and is separated from the Japanese Garden by fencing. Therefore, under the Zoning Code definition of “site,” the Kingston House property should not be considered part of the Japanese Garden site.
- Office use is not an allowed or conditional use in the R7 zone.
- The Japanese Garden has not complied with conditions of approval from LU 14-122172 CU EN.

The last response was from the Arlington Heights Neighborhood Association (Exhibit F-4). The Neighborhood Association does not support 10 more years of office use at the Kingston House but supports a 2-year extension conditioned on an updated Good Neighbor Agreement and a 10-person limit for administrative staff. The Neighborhood Association made the following points in support of their position:

- Growing visitation to the Japanese Garden has caused livability issues for the neighborhood, including traffic and parking problems, invasive lighting and noise, and safety issues. Several neighbors have moved from SW Kingston Ave. because of these issues.
- The Neighborhood Association supported LU 09-143061 CU AD only after being explicitly told by the Japanese Garden that their use of the Kingston House would be temporary.
- Under the Zoning Code definition of “site,” the subject site is the Kingston House property only. The zoning map included with the public notice is misleading.
- Office use is a commercial use, not an institutional use, and is not allowed in the R7 zone.
- All other uses in the surrounding R7 zone are residential, and a 10-year time limit for office use was the basis of the Hearings Officer’s approval of LU 09-143061 CU AD. Increasing the 10-year time period for office use would impact the intensity and scale of the use and the residential appearance and function of the area.
- The current application mentions 12 administrative staff in the Kingston House, but the original agreement with the Neighborhood Association was for 7-10 staff.

- The Kingston House is one of only three houses on the west side of SW Kingston Ave., and the office use has created a dead zone at the end of the street, with no “eyes on the street” in the evenings and on weekends to deter crime.
- The construction management plan from LU 14-122172 CU EN was not effective and the Japanese Garden did not abide by it.
- The Good Neighbor Agreement referenced in LU 09-143061 CU AD included a clear 10-year time limit for office use at the Kingston House.
- The Good Neighbor Agreement requires the Japanese Garden to meet with the Neighborhood Association at least once a year, but they have only done so once.
- The Good Neighbor Agreement requires staff and visitors to the Kingston House not to park on SW Kingston Ave. The Japanese Garden has only recently been enforcing this requirement.
- The Japanese Garden has not continuously complied with Good Neighbor Agreement requirements to implement a security plan for the Kingston House and to provide neighbors with contact names and telephone numbers for after-hours security issues.

Staff response: Although a 10-year time limit for office use was imposed in LU 09-143061 CU AD, the possibility of an extension request was anticipated in the land use decision (Exhibit G-4, pages 9-10) and the Good Neighbor Agreement referred to in the land use decision (Exhibit G-5, page 2). Even if this were not the case, Zoning Code Section 33.730.140.A would allow the applicant to request changes to conditions of approval through Conditional Use Review.

The Conditional Use approval criteria in Zoning Code Section 33.815.105 do not require the applicant to demonstrate a need for the administrative office space in order to request it through Conditional Use Review. Therefore, the availability of office space within the Japanese Garden’s lease area in Washington Park is not relevant to this review.

The approval criteria for the applicant’s request are evaluated below, including for the intensity and scale of the use, the residential appearance and function of the area, and safety. Staff’s review of the approval criteria was limited to the specific request under consideration in this review: the use of the Kingston House for Japanese Garden offices for another 10 years. As detailed later in this report, staff finds the approval criteria for the applicant’s proposal can be met with conditions of approval.

The Portland Japanese Garden is a Parks and Open Areas use as described in Zoning Code Section 33.920.460. Parks and Open Areas use is listed under the Institutional Use category in Zoning Code Chapter 33.920. As a Parks and Open Areas use with accessory parking areas, the Japanese Garden is a Conditional Use under the OS zoning which applies to the garden’s lease area in Washington Park (Zoning Code Section 33.100.100.B.2). LU 09-143061 CU AD approved an expansion of the Japanese Garden’s Conditional Use site to include the R7-zoned Kingston House property. Parks and Open Areas uses that have accessory parking are also Conditional Uses in the R7 zone, per Zoning Code Section 33.110.100.B.2.

Office use as a *primary use* is prohibited in the R7 zone, per Zoning Code Table 110-1. However, based on the indicators in Zoning Code Section 33.920.030.A, the office use that was approved for the Kingston House is an *accessory use* to the Japanese Garden’s primary Parks and Open Areas use. Accessory uses are allowed under the same regulations as the primary use, per Zoning Code Section 33.920.030.C. Although Zoning Code Section 33.920.460.B does not list office use as an example of an accessory use for Parks and Open Areas, this does not mean an institution in Parks and Open Areas use is prohibited from having administrative office space as an accessory use. Zoning Code Section 33.920.030.C states that “common accessory uses are listed as *examples* with the categories” (emphasis added). The list of accessory uses in Zoning Code Section 33.920.460.B is not necessarily exhaustive.

The definition of “site” in Zoning Code Chapter 33.910 states that “if a proposed development includes more than one ownership, then all the ownerships are included as the site.” Since the Kingston House property abuts the Japanese Garden portion of Washington Park, and since LU 09-143061 CU AD added the Kingston House property to the Japanese Garden’s Conditional Use site for an accessory use, staff considers the Kingston House property and the Japanese Garden area of the park as a single development and “site” for zoning purposes, even though the land is under different ownership.

The land use decision for LU 14-122172 CU EN acknowledged the Kingston House property as part of the Japanese Garden’s Conditional Use site, but no changes to the use or development on the Kingston House property were included in the LU 14-122172 CU EN decision. Therefore, staff finds LU 14-122172 CU EN is not relevant to the current Conditional Use request for office use in the Kingston House. However, BDS’ Code Compliance Section investigates complaints about violations to conditions of approval from land use reviews, and neighbors can contact Code Compliance at (503) 823-CODE. Code Compliance is currently reviewing a complaint related to conditions of approval from LU 14-122172 CU EN for mitigation plantings within Washington Park. There are no complaints currently under review for conditions of approval from LU 09-143061 CU AD or for the Kingston House property.

In LU 09-143061 CU AD, the Hearings Officer found the Conditional Use approval criteria were met with the Good Neighbor Agreement in Exhibit G-5. Since the currently proposed use for the Kingston House is the same as the use approved in LU 09-143061 CU AD, staff does not find a requirement for a revised Good Neighbor Agreement to be necessary for the approval criteria to be met. The existing Good Neighbor Agreement remains in effect, and staff recommends conditions of approval with this review to explicitly require compliance with elements of the Good Neighbor Agreement that relate to the Conditional Use approval criteria. BDS’ Code Compliance Section would investigate complaints about violations to these conditions of approval. If repeated violations are substantiated, the Conditional Use approval could be revoked, pursuant to Zoning Code Section 33.700.040.

The office use described in the LU 09-143061 CU AD decision was for “approximately 7 to 10” regular office staff (Exhibit G-4, pages 2, 6, and 15). In the current application, the applicant refers to 12 regular office staff (Exhibit A-1, page II-1). Staff finds that 12 staff is not necessarily more than one might expect from an upper limit of “approximately” 10. However, staff recommends a condition of approval to clearly limit the maximum occupancy of the Kingston House to 12 people at any one time. (The conditions of approval from LU 09-143061 CU AD only limited the number of *meeting attendees* to 12.)

ZONING CODE APPROVAL CRITERIA

Conditional Use Review

33.815.105 Institutional and Other Uses in R Zones

These approval criteria apply to all conditional uses in R zones except those specifically listed in sections below. The approval criteria allow institutions and other non-Household Living uses in a residential zone that maintain or do not significantly conflict with the appearance and function of residential areas. The approval criteria are:

- A. Proportion of Household Living uses.** The overall residential appearance and function of the area will not be significantly lessened due to the increased proportion of uses not in the Household Living category in the residential area. Consideration includes the proposal by itself and in combination with other uses in the area not in the Household Living category and is specifically based on:

1. The number, size, and location of other uses not in the Household Living category in the residential area; and
2. The intensity and scale of the proposed use and of existing Household Living uses and other uses.

Findings: For purposes of this approval criterion, staff considers the “residential area” to be residentially-zoned lots within 600 feet of the subject site. The OS-zoned lots in Washington Park are excluded. This corresponds to the “residential area” considered for approval criterion A in LU 09-143061 CU AD (Exhibit G-4, page 5).

The Kingston House property is the only developed lot in this residential area that is currently used for a non-Household Living (non-residential) use, so the proportion of non-Household Living uses in the residential area is small. Also, since no exterior alterations to the Kingston House or grounds are proposed, the property would continue to have a residential appearance.

The applicant is requesting Conditional Use Review approval for the Kingston House to be used as Japanese Garden offices for another 10 years. However, the applicant is not proposing any expansion in the intensity or scale of the use (Exhibit A-1, page III-1), which was limited by conditions of approval from LU 09-143061 CU AD. Condition of approval B from LU 09-143061 CU AD limited the regular hours of operation to 7 a.m. to 7 p.m. weekdays, with occasional/infrequent weekend and additional hours allowed. Condition of approval C from LU 09-14061 CU AD required staff meetings to be limited to 12 people, to be held on weekdays only, and to conclude by 9:30 p.m. To ensure the intensity and scale of the use does not increase beyond the scope of the applicant’s proposal, staff recommends conditions of approval to continue these requirements from LU 09-143061 CU AD.

In LU 09-143061 CU AD, the Hearings Officer found that approval criterion A was met for the applicant’s proposal, which included a 10-year time limit for the office use, but that the criterion would not necessarily be met if the Kingston House would not revert to residential use in the future (Exhibit G-4, pages 6-8). The Hearings Officer’s findings did not specify why a permanent Conditional Use might not have met the approval criterion, but in any case, the current proposal is comparable to the proposal approved in LU 09-143061 CU AD. After the 10-year period proposed by the applicant for this review, the Kingston House would either have to revert to residential use or the Japanese Garden would have to apply for another Type III Conditional Use Review. In any future Conditional Use Review, any change in the proportion of Household Living uses in the residential area or in the proposed intensity or scale of the accessory office use could be considered.

In Exhibit F-4, the Arlington Heights Neighborhood Association mentioned an apparent discrepancy between the LU 09-143061 CU AD findings, which mentioned “approximately 7 to 10” regular office staff (Exhibit G-4, pages 2, 6, and 15) and the current application, in which the applicant refers to 12 regular office staff (Exhibit A-1, page II-1). Staff finds that 12 staff is not necessarily more than one might expect from an upper limit of “approximately” 10. However, to ensure the intensity and scale of the use remains as proposed by the applicant and as intended by the LU 09-143061 CU AD decision, staff recommends a condition of approval to limit the maximum occupancy of the house at any one time to 12. In the LU 09-143061 CU AD decision, the decision language and conditions of approval only limited the number of *meeting attendees* to 12, not the number of regular office staff.

With the conditions of approval mentioned above, staff finds the proposal would not significantly lessen the overall residential appearance and function of the residential area, and that approval criterion A is met.

B. Physical compatibility.

1. The proposal will preserve any City-designated scenic resources; and

Findings: City-designated scenic resources are identified on the official zoning maps with a lower case “s,” representing the Scenic overlay zone. The Kingston House property is not in the “s” overlay zone. While it is near an “s” overlay zone to the south and east (Exhibit B), no exterior alterations are proposed, so scenic resources will not be affected by the applicant’s proposal. Therefore, staff finds criterion B.1 is met.

2. The proposal will be compatible with adjacent residential developments based on characteristics such as the site size, building scale and style, setbacks, tree preservation, and landscaping; or
3. The proposal will mitigate differences in appearance or scale through such means as setbacks, screening, landscaping, tree preservation, and other design features.

Findings: The Kingston House was built in 1925 as a residence and still has the exterior appearance of a home rather than an office. The lot size (9,400 square feet), building scale and style, building setbacks, on-site parking, and landscaping are all typical for the established residential neighborhood adjacent to the site. The mature trees in the front yard largely obscure the view of the Kingston House from the street.

The applicant’s request is only to continue using the house as administrative offices for the Portland Japanese Garden, and no exterior alterations to the house or property are proposed (Exhibit A-1, page I-1).

The Good Neighbor Agreement between the Portland Japanese Garden and the Arlington Heights Neighborhood Association further supports a compatible, residential appearance for the Kingston House. The Good Neighbor Agreement prohibits signage on the Kingston House property (with exceptions for address identification and small signs or stickers near the front door) and prohibits changes to the exterior of the house that would make the house look like something other than a private residence (Exhibit G-5, pages 3-4).

For these reasons, and with conditions of approval to require compliance with the aspects of the Good Neighbor Agreement mentioned above, staff finds the proposal is physically compatible with the adjacent residential area, and that approval criterion B.2 is met. (Since B.2 is found to be met, B.3 does not need to be addressed.)

C. Livability. The proposal will not have significant adverse impacts on the livability of nearby residential zoned lands due to:

1. Noise, glare from lights, late-night operations, odors, and litter; and
2. Privacy and safety issues.

Findings: The applicant’s proposal is to continue the existing use of the Kingston House as administrative offices for the Portland Japanese Garden for another 10 years. Under the conditions of approval discussed above for approval criterion A, the regular office hours would be limited to weekdays from 7 a.m. to 7 p.m., and meetings must be held on weekdays and conclude by 9:30 p.m. No late-night operations are allowed under these conditions of approval, and nothing about office use inside the house is likely to generate significant livability impacts related to noise, glare, odors, litter, or privacy. Nothing in the record suggests that such impacts have occurred during the last 10 years of administrative office use.

With regards to safety, the Police and Fire Bureaus reviewed the proposal and raised no concerns about the adequacy of police and fire services or potential safety impacts from the office use (Exhibits E-5 and E-4, respectively). The Arlington Heights Neighborhood Association raised a concern that the office use creates a dead zone with no “eyes on the street” in the evenings and on weekends to deter crime (Exhibit F-4). While residential use of the house seems likely to generate more “eyes on the street,” if the Conditional Use Review is denied, there is no guarantee the desired “eyes on the street” effect would occur. The house could be occupied by any size of household, including a household of one, and there is no way to know how often the new residents would be home. Furthermore, views between the home and the street are largely obscured by tree canopy.

The Good Neighbor Agreement between the Portland Japanese Garden and the Arlington Heights Neighborhood Association requires the Japanese Garden to provide the Neighborhood Association with contact information for after-hours security concerns, and to promptly respond to security issues (Exhibit G-5, page 3). Since this requirement promotes safety, staff recommends a condition of approval to require compliance with this aspect of the Good Neighbor Agreement.

After the 10-year period proposed by the applicant for this review, the Kingston House would either have to revert to residential use or the Japanese Garden would have to apply for another Type III Conditional Use Review. In any future Conditional Use Review, any change in circumstances around safety or other livability impacts could be considered. For the current application, with the condition of approval mentioned above, staff finds the proposal is unlikely to cause significant, adverse livability impacts on nearby residences in terms of noise, glare, late-night operations, odors, litter, privacy, or safety. Staff finds approval criterion C is met.

D. Public services.

1. The proposal is supportive of the street designations of the Transportation Element of the Comprehensive Plan;
2. Transportation system:
 - a. The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include safety, street capacity, level of service, connectivity, transit availability, availability of pedestrian and bicycle networks, on-street parking impacts, access restrictions, neighborhood impacts, impacts on pedestrian, bicycle, and transit circulation. Evaluation factors may be balanced; a finding of failure in one or more factors may be acceptable if the failure is not a result of the proposed development, and any additional impacts on the system from the proposed development are mitigated;
 - b. Measures proportional to the impacts of the proposed use are proposed to mitigate on- and off-site transportation impacts. Measures may include transportation improvements to on-site circulation, public street dedication and improvement, private street improvements, intersection improvements, signal or other traffic management improvements, additional transportation and parking demand management actions, street crossing improvements, improvements to the local pedestrian and bicycle networks, and transit improvements;
 - c. Transportation improvements adjacent to the development and in the vicinity needed to support the development are available or will be made available when the development is complete or, if the development is phased, will be available as each phase of the development is completed;

Findings: PBOT reviewed the proposal and submitted the following response to approval criteria D.1 and D.2 (Exhibit E-2):

PBOT staff has reviewed the transportation assessment prepared by Kittelson & Associates, dated August 12, 2019 [Exhibit A-4], and concurs with their findings that the transportation system is capable of supporting the proposed use in addition to existing uses in the area.

...

Consistency with the Street Designations

Each modal designation is addressed, based on the Portland 2035: Transportation System Plan, dated May 2018 and adopted by Ordinance numbers 187832, 188177, and 188957 (the Transportation Element of the Portland Comprehensive Plan). This document will be referred to as the Portland TSP.

Pedestrian

Map C2 on page 116, indicates that SW Kingston Avenue is designated as a City Walkway. Text on page 74 describes the intent of City Walkways:

“... to provide safe, convenient, and attractive pedestrian access to activities along major streets and to recreation and institutions; provide connections between neighborhoods; and provide access to transit.”

Land uses anticipated along City Walkways include “... areas with dense zoning, commercial areas, and major destinations.”

Findings: Proposed use of the Kingston House has an institutional purpose and pedestrian activity to such uses are anticipated and promoted on City Walkways. The area does have multiple major destinations that include Washington Park, The Japanese Garden, and several other venues within the park. The site is equipped with sidewalk facilities along the frontage that extend to Washington Park to the south and to the intersection of Kingston Avenue with Fairview Boulevard (and beyond) to the north. Facilities and proposed uses are consistent with the Portland TSP.

Bicycle

Map C2 on page 134, indicates that SW Kingston Avenue is designated as a City Bikeway. Text on page 76 describes the intent of City Bikeways:

“... to establish direct and convenient bicycle access to significant destinations, to provide convenient access to Major City Bikeways and to provide coverage within three city blocks of any given point.”

City Bikeways are to support 2040 land use types and residential neighborhoods.

Finding: The area is a combination of residential neighborhoods and regional park, venues, and open spaces (2040 land use types). Kingston Avenue is a 24-foot wide street that provides bicyclists with shared-use facilities only. On-street parking is prohibited on both sides of Kingston Avenue for the segment that includes the site access, from the entrance to Washington Park to the intersection with SW Fairview Boulevard. No posted speed limit is displayed on the segment from the Washington Park entrance to the intersection with SW Tichner Drive. All public streets connecting directly to Kingston Avenue also provide only shared-use bicycle facilities. Employees, guests, and visitors of the Kingston House have access to these facilities from a standard residential driveway. Use of the driveway for access to the facility is consistent with intentions for the City Bikeway (direct and convenient bicycle access). Facilities and proposed uses are consistent with the Portland TSP.

Transit

Map C2 on page 152, indicates that SW Kingston Avenue is designated as a Transit Access Street. Text on pages 81-82 describes the intent of Transit Access Streets:

“... facilitate movement of transit vehicles connecting town centers, neighborhood centers, and industrial and employment areas with other destinations and other transit service.” Land uses anticipated along Transit Access Streets include pedestrian- and transit-oriented development in commercial, institutional, and mixed-use areas. Transit access should include pedestrian and bicycle facilities that are safe and convenient with accessible crossings and bus stop locations roughly every one-quarter mile.

TriMet Route 63 (Washington Park/Arlington Heights) has a bus stop on SW Kingston Avenue at the Japanese Garden entrance (approximately 470 south of the Kingston House) and a stop on SW Fairview Boulevard (approximately 345 feet north of the Kingston House). The latter is also a stop location for TriMet Route 83 (not listed on the TriMet website). Both bus stops are equipped with a blue post, route number, and route information

Findings: The Kingston House is well within the roughly one-quarter mile distance desired for transit service on a Transit Access Street. The proposed use is among those anticipated to be served by a Transit Access Street. The bus stop street crossing at The Japanese Garden has accessibility features. Facilities and proposed uses are consistent with the Portland TSP.

Freight

SW Kingston Avenue has no freight designation within the Portland TSP.

Findings: This criterion does not apply.

Street

Map C2 on page 188, indicates that SW Kingston Avenue is designated as a Local Street within the Portland TSP. Text on page 98 describes the intent of Local Streets:

“... to complement planned land uses and reduce dependence on arterials for local circulation.”

Land uses anticipated along Local Streets “are multimodal, but not intended for trucks (other than local deliveries)”. The street design includes “frequent street connections, sidewalks, on-street parking, stormwater facilities, and planting of street trees and ground covers (where planting strips are included).”

Findings: The proposed use retains an existing street connection and includes sidewalk, stormwater facilities, and planting of street trees and ground cover at the back of curb. Facilities and proposed uses are consistent with the Portland TSP.

Emergency Response

Map C2 on page 206, indicates that SW Kingston Avenue is designated as a Minor Emergency Response Street within the Portland TSP. Text on page 100 describes the intent of Minor Emergency Response Streets:

“... to serve primarily the shorter legs of emergency response trips.”

This is the default street classification. Only higher-order facilities receive an elevated emergency designation. The street provides access to individual properties and traffic slowing devices are allowed.

Findings: The proposed use retains an existing street connection and site frontage that supports emergency response to and through the area, similar to any other residential site in the vicinity. Facilities and proposed uses are consistent with the Portland TSP.

Traffic

Map C2 on page 224, indicates that SW Kingston Avenue is designated as a Local Service Traffic Street within the Portland TSP. Text on page 105 describes the intent of Local Service Traffic Streets:

“... to distribute local traffic and provide access to local residences or commercial uses.” This is the default traffic classification. Only higher-order facilities receive an elevated traffic designation. The street provides slow vehicle operating speeds, discourages auto-oriented land uses, connects “neighborhoods, provides local circulation, and provides access to nearby centers, corridors, station areas, and main streets.”

Hourly traffic volumes on SW Kingston Avenue were measured over a four-day period beginning on Thursday, July 11, 2019 and ending at midnight on Sunday, July 14, 2019. The highest measured weekday volume was 2,563 motor vehicles on Friday, July 12th and the highest measured weekend volume was 2,645 on Saturday July 13th. The average daily volume for the four days was 2,513 motor vehicles.

The morning peak hour consistently occurred at 11:00 AM across all four days (averaging 245 vehicles) with the highest weekday being 242 vehicles on Friday, July 12th and the highest weekend day being 265 vehicles on Saturday, July 13th. The PM peak hour fluctuated between noon and 3:00 PM across the four days (averaging 262 vehicles at 2:00 PM) with the highest weekday being 266 vehicles at 2:00 PM on Friday, July 12th and the highest weekend day being 311 vehicles at 2:00 PM on Sunday, July 14th. The site driveway to the Kingston House was counted between the hours of 6:00 AM and 9:00 PM, at 5-minute increments on Thursday, July 11, 2019 to better understand the typical weekday vehicle trip-making patterns of the Kingston House. A total of four (4) vehicles were counted entering or leaving the driveway during this 15-hour period. One entered in the morning (10:15 AM) and one in the afternoon (1:10 PM) and two vehicles exited the driveway in the afternoon (at 4:10 PM and 5:30 PM).

Pedestrian activity across the driveway was also measured for the same 15-hour period on Thursday, July 11, 2019. A total of four (4) pedestrians were observed to cross the driveway during this period.

Traffic speeds on SW Kingston Avenue were measured during the same four-day period from July 11 to July 14, 2019. The 85th-percentile speed was found to be 16 miles per hour and the average speed was determined to be 9 miles per hour.

Findings: Traffic patterns and speeds in the immediate site vicinity are consistent with the designation of Local Service Traffic Street. The existing use was found to have four (4) motor vehicle driveway trips during a 15-hour period on a typical weekday during hours of driveway usage. Hours outside of those collected do not experience vehicular traffic at the driveway. If the 15-hour data were extrapolated to a 24-hour period, the result would indicate an estimate of 6.4 motor vehicle trips. The ITE Trip Generation, 10th Edition, would estimate 9.44 vehicle trips to a single-family detached home in an urban/suburban area. Data indicates that the proposed use generates traffic volumes at the site driveway that are fewer than that of a single-family home and thus consistent with the Portland TSP.

The traffic volume data is included as an attachment to the transportation assessment.

Safety

No new motor vehicle trips are anticipated as part of the proposed use. Further, no changes to the building access are proposed. For these reasons, no safety-related impacts are anticipated, and no historical crash data review is necessary. The 85th-percentile speeds on SW Kingston Avenue, near the site driveway are reasonably low at 16 miles per hour. The low speed and low volume of motor vehicle traffic on SW Kingston Avenue is conducive to bicycle activity, even though it is a shared-use facility.

Pedestrians are buffered from the motor vehicle traffic by a planter strip between the sidewalk and the paved street.

Finding: The proposed use will have no measurable effect on safety conditions in the vicinity.

City of Portland Transportation Capacity Implications (Street Capacity/ Level of Service)
The City of Portland Administrative Rule TRN 10.27 - Administrative Rules for Traffic Capacity Analysis in Land Use Review Cases provides standards for traffic impact studies required in the course of land use review or development. A summary of TRN 10.27.3 is provided below.

10.27.3. An amendment or other land use application that requires analysis of traffic capacity and allows development that either (1) may cause a transportation facility to perform below the standards established in sections 1 and 2, or (2) adds vehicle trips to a facility that is already performing below the standards established in sections 1 and 2 may be approved if:

a. Development resulting from the amendment or other land use application will mitigate the impacts of the amendment or other land use application in a manner that avoids further degradation to the performance of the facility by the time of development through one or more of the following:

(i) the development is limited to result in no net increase in vehicle trips over what is allowed by the existing zoning; OR

(ii) one or more combination of transportation improvements or measures are imposed to mitigate the transportation impacts of the amendment or other land use application in a manner that avoids further degradation to the performance of the facility by the time of any development.

Finding: The conditional use application is to continue the existing use in the R7 zoning with no increase to existing transportation demands. With no changes in demand anticipated as part of the conditional use, the requirements of TRN 10.27.3 are satisfied.

Connectivity

Finding: The site has direct connection to pedestrian, bicycle, transit, and motor vehicle facilities. No connectivity changes are proposed as part of the conditional use application. As such, this criterion is met.

Transit Availability

The nearest transit service is provided by Tri-Met Route 63 – Washington Park/Arlington Heights, with northbound stops on SW Kingston Avenue (approximately 470 feet from the site) and bi-directional stops on SW Fairview Boulevard near SW Kingston Avenue (approximately 345 feet from the site). Route 63 provides service at headways of 61-80 minutes, Monday through Friday.

Finding: With no new trips associated with continuation of the proposed use, no impacts to transit service are anticipated. As such, this criterion is met.

Availability of Bicycle and Pedestrian Networks

Shared-use bicycle facilities are present along the site frontage and seamlessly connect via additional shared-use facilities to various off-street shared-use paths and on-street striped bike lanes that link the Arlington Heights neighborhood to the greater Portland region. A continuous sidewalk is present along the site frontage that connects into

Washington Park, the immediately adjacent Arlington Heights neighborhood, the regional trail system, and the greater Portland region.

Finding: With no new trips associated with continuation of the proposed use, no impacts to bicycle and pedestrian service are anticipated. As such, this criterion is met.

On-Street Parking Impacts

On-street parking is prohibited along SW Kingston Avenue from 10 AM to 5 PM all days. The evenings and early mor[ning] measured driveway activity of the existing use is found to be lower than a typical single-family detached home in an urban/suburban setting.

Finding: With no new trips associated with continuation of the proposed use, no new parking demand is anticipated. As such, this criterion is met.

[BDS staff note: The applicant proposes for employees and visitors to the Kingston House to not use on-street parking on SW Kingston Ave. outside of Washington Park, consistent with the Good Neighbor Agreement between the Portland Japanese Garden and the Arlington Heights Neighborhood Association (Exhibit A-1, pages II-1 and IV-10 and Exhibit G-5, page 3). Employees and visitors can park in the Kingston House garage, on the Kingston House driveway (up to two vehicles at a time), or in Washington Park (Exhibit A-1, page II-1 and Exhibit G-5, page 3). Since this aspect of the proposal will preserve more on-street parking for neighbors, staff recommends a condition of approval to require this aspect of the proposal to be maintained.]

Access Restrictions

Finding: No new access restrictions are included as part of the conditional use. As such, this criterion is met.

Neighborhood Impacts

Finding: With no new access, no change in use, and no net new trips there are no new neighborhood impacts to consider. As such, this criterion is met.

Impacts on the Pedestrian Circulation

Finding: No changes to pedestrian demand or the pedestrian circulation system are anticipated. As such, this criterion is met.

Impacts on the Bicycle Circulation

Finding: No changes to bicycle demand or the bicycle circulation system are anticipated. As such, this criterion is met.

Impacts to Transit Circulation

Finding: No changes to transit demand or the transit circulation system are anticipated. As such, this criterion is met.

Additional Information

The Garden compensates their employees for bus passes, as a means of supporting the use of non-auto commute options and to be good stewards of the environment.

CONCLUSION

Approval of The Japanese Garden Office Conditional Use Permit is not expected to have measurable impact on the surrounding transportation system. All transportation-related criteria related to this application appear to be met.

Based on these findings from PBOT, and with the condition of approval mentioned above, staff finds approval criteria D.1 and D.2 are met.

3. Public services for water supply, police and fire protection are capable of serving the proposed use, and proposed sanitary waste disposal and stormwater disposal systems are acceptable to the Bureau of Environmental Services.

Findings: The applicant plans to maintain the site's existing water service (Exhibit A-1, page IV-12), and the Water Bureau reviewed the proposal and responded with no concerns (Exhibit E-3). The Police Bureau reviewed the proposal and stated that police can adequately serve the proposed use (Exhibit E-5). The Fire Bureau reviewed the proposal and responded with no concerns (Exhibit E-4), indicating that adequate fire protection can be provided. BES found the site has adequate sanitary waste disposal with its existing sewer connection, and that stormwater requirements are met because no 500-square-foot or larger increase in impervious surface area is proposed (Exhibit E-1).

For these reasons, staff finds approval criterion D.3 is met.

- E. Area plans.** The proposal is consistent with any area plans adopted by the City Council as part of the Comprehensive Plan, such as neighborhood or community plans.

Findings: The site is not within the boundaries of any area plans adopted by the City Council as part of the Comprehensive Plan. Therefore, this approval criterion is not applicable.

Oregon Statewide Planning Goals

Goal 1: Citizen Involvement

Goal 1 calls for "the opportunity for citizens to be involved in all phases of the planning process." It requires each city and county to have a citizen involvement program containing six components specified in the goal. It also requires local governments to have a Committee for Citizen Involvement to monitor and encourage public participation in planning.

Findings: The City of Portland maintains an extensive citizen involvement program which complies with all relevant aspects of Goal 1, including specific requirements in Zoning Code Chapter 33.730 for public notice of land use review applications. For this application, a written notice seeking comments on the proposal was mailed to property owners and tenants within 400 feet of the site and to recognized organizations in which the site is located and recognized organizations within 1,000 feet of the site. In addition, the public has the opportunity to testify at the public hearing for the application. The public notice requirements for this application have been met, and nothing about this proposal affects the City's ongoing compliance with Goal 1. Therefore, the proposal is consistent with this goal.

Goal 2: Land Use Planning

Goal 2 outlines the basic procedures of Oregon's statewide planning program. It states that land use decisions are to be made in accordance with a comprehensive plan, and that suitable "implementation ordinances" to put the plan's policies into effect must be adopted. It requires that plans be based on "factual information", that local plans and ordinances be coordinated with those of other jurisdictions and agencies, and that plans be reviewed periodically and amended as needed. Goal 2 also contains standards for taking exceptions to statewide goals. An exception may be taken when a statewide goal cannot or should not be applied to a particular area or situation.

Findings: Compliance with Goal 2 is achieved, in part, through the City's comprehensive planning process and land use regulations. For quasi-judicial proposals, Goal 2 requires that the decision be supported by an adequate factual base, which means it must be supported by substantial evidence in the record. The proposal complies with the applicable regulations, as supported by substantial evidence in the record. As a result, the proposal meets Goal 2.

Goal 3: Agricultural Lands

Goal 3 defines “agricultural lands,” and requires counties to inventory such lands and to “preserve and maintain” them through farm zoning. Details on the uses allowed in farm zones are found in ORS Chapter 215 and in Oregon Administrative Rules, Chapter 660, Division 33.

Goal 4: Forest Lands

This goal defines forest lands and requires counties to inventory them and adopt policies and ordinances that will “conserve forest lands for forest uses.”

Findings: In 1991, as part of Ordinance No. 164517, the City of Portland took an exception to the agriculture and forestry goals in the manner authorized by state law and Goal 2. Since this review does not change any of the facts or analyses upon which the exception was based, the exception is still valid, and Goals 3 and 4 do not apply.

Goal 5: Open Spaces, Scenic and Historic Areas and Natural Resources

Goal 5 relates to the protection of natural and cultural resources. It establishes a process for inventorying the quality, quantity, and location of 12 categories of natural resources. Additionally, Goal 5 encourages but does not require local governments to maintain inventories of historic resources, open spaces, and scenic views and sites.

Findings: The City complies with Goal 5 by identifying and protecting natural, scenic, and historic resources in the City’s Zoning Map and Zoning Code. Natural and scenic resources are identified by the Environmental Conservation (“c”), Environmental Protection (“p”), and Scenic (“s”) overlay zones on the Zoning Map. The Zoning Code imposes special restrictions on development activities within these overlay zones. Historic resources are identified on the Zoning Map either with landmark designations for individual sites or as Historic Districts or Conservation Districts. Portions of the subject site are in the Environmental Conservation (“c”), Environmental Protection (“p”), and Scenic (“s”) overlay zones. However, this proposal does not include any physical development, so there is no effect on the regulations of these overlay zones. Also, no new uses are proposed on OS-zoned property. Therefore, staff finds the proposal is consistent with Goal 5.

Goal 6: Air, Water and Land Resources Quality

Goal 6 requires local comprehensive plans and implementing measures to be consistent with state and federal regulations on matters such as groundwater pollution.

Findings: Compliance with Goal 6 is achieved through the implementation of development regulations such as the City’s Stormwater Management Manual at the time of building permit review, and through the City’s continued compliance with Oregon Department of Environmental Quality (DEQ) requirements for cities. The proposal complies with stormwater management requirements, as explained earlier in this report. Therefore, the proposal is consistent with Goal 6.

Goal 7: Areas Subject to Natural Disasters and Hazards

Goal 7 requires that jurisdictions adopt development restrictions or safeguards to protect people and property from natural hazards. Under Goal 7, natural hazards include floods, landslides, earthquakes, tsunamis, coastal erosion, and wildfires. Goal 7 requires that local governments adopt inventories, policies, and implementing measures to reduce risks from natural hazards to people and property.

Findings: The City complies with Goal 7 by mapping natural hazard areas such as floodplains and potential landslide areas, which can be found in the City’s MapWorks geographic information system. The City imposes additional requirements for development in those areas through a variety of regulations in the Zoning Code, such as through special plan districts or land division regulations. The subject site is within a mapped landslide hazard area, as is

much of Portland's west side. Since no new development is proposed with this application, the proposal does not increase risks from natural hazards. Therefore, the proposal is consistent with Goal 7.

Goal 8: Recreation Needs

Goal 8 calls for each community to evaluate its areas and facilities for recreation and develop plans to deal with the projected demand for them. It also sets forth detailed standards for expediting siting of destination resorts.

Findings: The City maintains compliance with Goal 8 through its comprehensive planning process, which includes long-range planning for parks and recreation facilities. Since nothing about this proposal would undermine planning for future parks and recreation facilities, the proposal is consistent with Goal 8.

Goal 9: Economy of the State

Goal 9 calls for diversification and improvement of the economy. Goal 9 requires communities to inventory commercial and industrial lands, project future needs for such lands, and plan and zone enough land to meet those needs.

Findings: Land needs for a variety of industrial and commercial uses are identified in the adopted and acknowledged Economic Opportunity Analysis (EOA) (Ordinance 187831). The EOA analyzed adequate growth capacity for a diverse range of employment uses by distinguishing several geographies and conducting a buildable land inventory and capacity analysis in each. In response to the EOA, the City adopted policies and regulations to ensure an adequate supply of sites of suitable size, type, location and service levels in compliance with Goal 9. The City must consider the EOA and Buildable Lands Inventory when updating the City's Zoning Map and Zoning Code. Because this proposal does not change the supply of industrial or commercial land in the City, the proposal is consistent with Goal 9.

Goal 10: Housing

Goal 10 requires local governments to plan for and accommodate needed housing types. The Goal also requires cities to inventory buildable residential lands, project future needs for such lands, and plan and zone enough buildable land to meet those needs. It also prohibits local plans from discriminating against needed housing types.

Findings: The City complies with Goal 10 through its adopted and acknowledged inventory of buildable residential land (Ordinance 187831), which demonstrates that the City has zoned and designated land for an adequate supply of housing. For needed housing, the Zoning Code includes clear and objective standards. This site was approved for 10 years of administrative office use rather than residential use in LU 09-143061 CU AD, and the current proposal would extend the office use for another 10 years. However, the office use rights would expire after 10 years unless another Conditional Use Review request were reviewed and approved. This proposal does not permanently remove the Kingston House from the City's housing supply. Therefore, staff finds the proposal is consistent with Goal 10.

Goal 11: Public Facilities and Services

Goal 11 calls for efficient planning of public services such as sewers, water, law enforcement, and fire protection. The goal's central concept is that public services should be planned in accordance with a community's needs and capacities rather than be forced to respond to development as it occurs.

Findings: The City of Portland maintains an adopted and acknowledged public facilities plan to comply with Goal 11. The public facilities plan is implemented by the City's public services bureaus, and these bureaus review development applications for adequacy of public services. Where existing public services are not adequate for a proposed development, the applicant is

required to extend public services at their own expense in a way that conforms to the public facilities plan. Existing public services are adequate for this proposal, as explained earlier in this report. Therefore, the proposal is consistent with Goal 11.

Goal 12: Transportation

Goal 12 seeks to encourage “safe, convenient and economic transportation systems.” Among other things, Goal 12 requires that transportation plans consider all modes of transportation and be based on inventory of transportation needs.

Findings: The City of Portland maintains a Transportation System Plan (TSP) to comply with Goal 12, adopted by Ordinances 187832, 188177 and 188957. The City’s TSP aims to “make it more convenient for people to walk, bicycle, use transit, use automobile travel more efficiently, and drive less to meet their daily needs.” As discussed earlier in this report, PBOT finds the Conditional Use proposal will not negatively impact the City’s transportation system and the goals of the TSP. Therefore, the proposal is consistent with Goal 12.

Goal 13: Energy

Goal 13 seeks to conserve energy and declares that “land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principles.”

Findings: With respect to energy use from transportation, as identified above in response to Goal 12, the City maintains a TSP that aims to “make it more convenient for people to walk, bicycle, use transit, use automobile travel more efficiently, and drive less to meet their daily needs.” This is intended to promote energy conservation related to transportation. Additionally, at the time of building permit review and inspection, the City implements energy efficiency requirements for structures, as required by the current building code. No new structures are proposed in this application, and PBOT finds the Conditional Use proposal will not negatively impact the City’s transportation system and the goals of the TSP. Therefore, the proposal is consistent with Goal 13.

Goal 14: Urbanization

This goal requires cities to estimate future growth and needs for land and then plan and zone enough land to meet those needs. It calls for each city to establish an “urban growth boundary” (UGB) to “identify and separate urbanizable land from rural land.” It specifies seven factors that must be considered in drawing up a UGB. It also lists four criteria to be applied when undeveloped land within a UGB is to be converted to urban uses.

Findings: In the Portland region, most of the functions required by Goal 14 are administered by the Metro regional government rather than by individual cities. The desired development pattern for the region is articulated in Metro’s Regional 2040 Growth Concept, which emphasizes denser development in designated centers and corridors. The Regional 2040 Growth Concept is carried out by Metro’s Urban Growth Management Functional Plan, and the City of Portland is required to conform its zoning regulations to this functional plan. This land use review proposal does not change the UGB surrounding the Portland region and does not affect the Portland Zoning Code’s compliance with Metro’s Urban Growth Management Functional Plan. Therefore, Goal 14 is not applicable.

Goal 15: Willamette Greenway

Goal 15 sets forth procedures for administering the 300 miles of greenway that protects the Willamette River.

Findings: The City of Portland complies with Goal 15 by applying Greenway overlay zones which impose special requirements on development activities near the Willamette River. The subject site for this review is not within a Greenway overlay zone near the Willamette River, so

Goal 15 does not apply.

Goal 16: Estuarine Resources

This goal requires local governments to classify Oregon's 22 major estuaries in four categories: natural, conservation, shallow-draft development, and deep-draft development. It then describes types of land uses and activities that are permissible in those "management units."

Goal 17: Coastal Shorelands

This goal defines a planning area bounded by the ocean beaches on the west and the coast highway (State Route 101) on the east. It specifies how certain types of land and resources there are to be managed: major marshes, for example, are to be protected. Sites best suited for unique coastal land uses (port facilities, for example) are reserved for "water-dependent" or "water-related" uses.

Goal 18: Beaches and Dunes

Goal 18 sets planning standards for development on various types of dunes. It prohibits residential development on beaches and active foredunes but allows some other types of development if they meet key criteria. The goal also deals with dune grading, groundwater drawdown in dunal aquifers, and the breaching of foredunes.

Goal 19: Ocean Resources

Goal 19 aims "to conserve the long-term values, benefits, and natural resources of the nearshore ocean and the continental shelf." It deals with matters such as dumping of dredge spoils and discharging of waste products into the open sea. Goal 19's main requirements are for state agencies rather than cities and counties.

Findings: Since Portland is not within Oregon's coastal zone, Goals 16-19 do not apply.

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 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 use of the Kingston House as administrative offices for the Portland Japanese Garden for 10 more years would not significantly lessen the residential appearance and function of the adjacent residential area. Since no changes to the house or grounds are proposed, the property would remain physically compatible with neighboring residential properties. The proposal would not cause significant, adverse livability impacts on the neighboring residential area, and the transportation system and other public services are adequate to support the proposed use.

Staff finds that each of the applicable approval criteria are met or can be met with conditions of approval. Therefore, staff recommends approval of the proposal with the conditions of approval listed below.

TENTATIVE STAFF RECOMMENDATION

(May be revised upon receipt of new information at any time prior to the Hearings Officer decision)

Approval of a Conditional Use Review for the Kingston House (369 SW Kingston Ave.) to be used as accessory administrative offices for the Portland Japanese Garden for 10 years. This approval

supersedes the approval and conditions of approval from LU 09-143061 CU AD. The approval of the current Conditional Use Review is subject to the following conditions:

- A. The Conditional Use approval for the Kingston House to be used as accessory administrative offices shall sunset (terminate) 10 years after the effective date of the LU 19-192268 CU approval. At the 10-year sunset date of this approval, a new Type III Conditional Use Review shall be required for any proposal to continue the accessory administrative office use of the Kingston House.
- B. The regular hours of operation for administrative office use shall be limited to weekdays from 7 a.m. to 7 p.m., with occasional/infrequent weekend and additional hours allowed.
- C. Meetings held in the Kingston House shall be limited to 12 people, shall occur only on weekdays, and shall conclude by 9:30 p.m.
- D. The maximum occupancy of the Kingston House shall be limited to 12 people at any one time, including regular office staff and meeting attendees.
- E. The exterior of the Kingston House shall not be changed in a manner that would make the house look like something other than a private residence.
- F. No signs on the Kingston House property are allowed except for:
 - Identification of the house address in the general manner in which the address is now identified; and
 - Signs or stickers on or near the front door that are not large enough to be readable from the street, and which comply with Title 32 (Signs and Related Regulations).
- G. The Portland Japanese Garden shall keep representatives of the Arlington Heights Neighborhood Association continuously informed of a current contact name and telephone number for after-hours security concerns related to the Kingston House. The Portland Japanese Garden shall respond promptly to any security issues.
- H. The Portland Japanese Garden shall instruct employees and visitors to the Kingston House not to utilize on-street parking on SW Kingston Ave. outside of Washington Park. Employees and visitors must park in the Kingston House garage, on the Kingston House Driveway (no more than two vehicles at a time), or within Washington Park.

Procedural Information. The application for this land use review was submitted on July 12, 2019 and was determined to be complete on September 18, 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 July 12, 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 period. Unless further extended by the applicant, **the 120 days will expire on January 16, 2020.**

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 recommendation 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 report is not a decision. The Hearings Officer will make the decision on this case. This report is a recommendation to the Hearings Officer by the Bureau of Development Services. The Hearings Officer may adopt, modify, or reject this recommendation. The Hearings Officer will make a decision about this proposal within 17 days of the close of the record. Your comments to the Hearings Officer can be mailed c/o the Hearings Officer, 1900 SW Fourth Ave., Suite 3100, Portland, OR 97201 or faxed to 503-823-4347.

You will receive mailed notice of the decision if you write a letter received before the hearing or testify at the hearing, or if you are the property owner or applicant. This Staff Report will be posted on-line at <https://www.portlandoregon.gov/bds/35625>. Land use reviews are listed by the District Coalition shown at the beginning of this document. You may review the file on this case at the Development Services Building at 1900 SW 4th Ave., Suite 5000, Portland, OR 97201.

Appeal of the decision. The decision of the Hearings Officer may be appealed to the City Council, who will hold a public hearing. If you or anyone else appeals the decision of the Hearings Officer, only evidence previously presented to the Hearings Officer will be considered by the City Council.

Who can appeal: You may appeal the decision only if you write a letter which is received before the close of the record for the hearing, if you testify at the hearing, or if you are the property owner/applicant. Appeals must be filed within 14 days of the decision. **Appeals must be filed within 14 days of the decision. An appeal fee of \$2,500 will be charged (one-half of the BDS application fee).**

Appeal Fee Waivers: Neighborhood associations recognized by the Office of Community and Civic Life may qualify for a waiver of the appeal fee provided that the association has standing to appeal. The appeal must contain the signature of the Chair person or other person authorized by the association, confirming the vote to appeal was done in accordance with the organization’s bylaws.

Neighborhood associations, who wish to qualify for a fee waiver, must complete the Type III Appeal Fee Waiver Request for Organizations Form and submit it prior to the appeal deadline. The Type III Appeal Fee Waiver Request for Organizations Form contains instructions on how to apply for a fee waiver, including the required vote to appeal.

Recording the final decision. If this land use review is approved, the final decision will be recorded with the Multnomah County Recorder. The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder. For further information on 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 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.

Planner's Name: Andrew Gulizia

Date: October 18, 2019

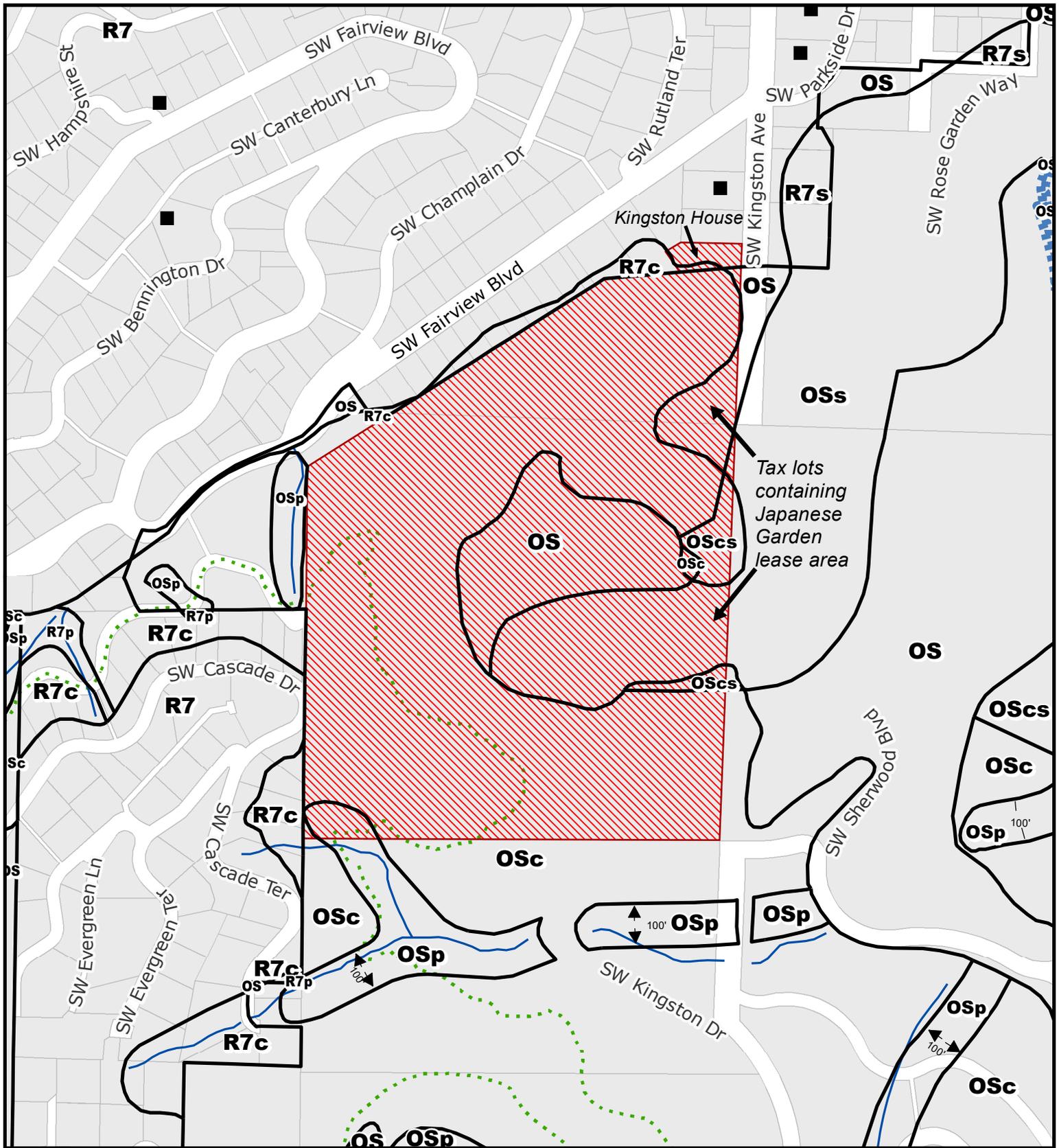
EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement:
 1. Applicant's narrative
 2. Memo from applicant, dated September 18, 2019
 3. Applicant's responses to statewide planning goals
 4. Transportation study
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Site plan/utility plan
- D. Notification Information:
 1. Request for Response, dated September 23, 2019
 2. Posting letter sent to applicant, dated September 24, 2019
 3. Applicant's statement certifying posting, dated September 30, 2019
 4. Mailed Notice of Public Hearing, dated October 7, 2019
 5. Mailing list for Notice of Public Hearing
- E. Agency Responses:
 1. Bureau of Environmental Services
 2. Portland Bureau of Transportation
 3. Water Bureau
 4. Fire Bureau
 5. Police Bureau

6. Site Development Review Section of BDS
 7. Life Safety Review Section of BDS
 8. Bureau of Parks and Recreation, Urban Forestry Division
- F. Correspondence:
1. E-mail from F. Gordon Allen, dated October 2, 2019
 2. E-mail from Hilary Mackenzie, dated October 10, 2019
 3. E-mail from Hilary Mackenzie, dated October 12, 2019
 4. E-mail and letter from Kathy Goeddel representing the Arlington Heights Neighborhood Association, dated October 13, 2019
- G. Other:
1. Land use application form and receipt
 2. Incompleteness determination letter, dated July 30, 2019
 3. PBOT completeness review memo, dated January 30, 2019
 4. LU 09-143061 CU AD decision
 5. Good Neighbor Agreement referenced in LU 09-143061 CU AD condition of approval E
- H. Hearing exhibits

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
-  Stream
-  Historic Landmark
-  Recreational Trails

File No.	LU 19-192268 CU
1/4 Section	3026
Scale	1 inch = 300 feet
State ID	1N1E32DD 5800
Exhibit	B Jul 15, 2019