



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

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**Date:** December 5, 2019  
**To:** Interested Person  
**From:** Morgan Steele, Land Use Services  
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## **NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD**

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

### **CASE FILE NUMBER: LU 18-183423 ENM**

#### **GENERAL INFORMATION**

**Applicants:** Chuck Gregory & Haley Smith | AKS Engineering & Forestry, LLC.  
12965 SW Herman Road, Suite 100 | Tualatin, OR 97062  
Phone: 503-653-6151 | [chuckg@aks-eng.com](mailto:chuckg@aks-eng.com) | [smithh@aks-eng.com](mailto:smithh@aks-eng.com)

**Owners:** Josh & Laura Veentjer  
4188 SW Greenleaf Drive | Portland, OR 97221  
Phone: 503-201-1309

**Site Address:** No Situs: SW Greenleaf Drive & SW Humphrey Boulevard

**Legal Description:** BLOCK 9 LOT 4&7 EXC PT IN ST LOT 8, GREEN HILLS; BLOCK 9 LOT 5&6, GREEN HILLS

**Tax Account No.:** R340301820, R340301840

**State ID No.:** 1S1E08BA 00700, 1S1E08BA 00701

**Quarter Section:** 3325

**Neighborhood:** Southwest Hills Residential League, contact at [contact@swhrl.org](mailto:contact@swhrl.org).

**Business District:** None

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

**Plan District:** None

**Other Designations:** Resource Site 124 – *Fanno Creek and Tributaries Conservation Plan*;  
Landslide Hazard Area; Wildfire Hazard Area

**Zoning:** *Base Zone:* Residential 10,000 (R10)  
*Overlay Zones:* Environmental Protection (p), Environmental Conservation (c)

**Case Type:** ENM – Environmental Review with Modification

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

**Proposal:**

The applicant proposes to construct a new single-family residence on their forested, undeveloped property in Southwest Portland at the intersection of SW Greenleaf Drive and SW Greenleaf Court (an unimproved street). The property stretches north to SW Humphrey Boulevard. Although, the applicant is proposing a stormwater outfall pipe that will discharge in the existing ditch along SW Humphrey Boulevard, the rest of the proposed work will occur directly adjacent to the unimproved SW Greenleaf Court, with access from SW Greenleaf Drive.

The applicant is proposing a three-story single-dwelling home designed for the site that slopes steeply from SW Greenleaf Drive. The proposed home will be constructed within the 25-foot transition area as much as possible but will also require approximately 2,342 square feet of permanent disturbance within the resource area of the Environmental Conservation (c) overlay zone. In addition, the applicant proposes to remove 19 native trees, totaling 508 inches diameter breast height (dbh), from the Environmental Conservation overlay zone. To mitigate for the removal of these trees, the applicant proposes to plant 60 trees, 1,225 shrubs, and 2,198 groundcovers. Temporary disturbance areas will be replanted with native shrubs and a 13,764 square-foot nuisance plant removal area will be replanted with native plants.

The proposed development will also require much of the driveway to be placed within the public right-of-way of SW Greenleaf Drive. This driveway placement is a result of the site's steep topography and is necessary to provide access to the previously undeveloped site. This proposed encroachment into public right-of-way requires approval from the Portland Bureau of Transportation (PBOT) through the Encroachment Permit process. The applicant has applied for and received approval of an Encroachment Permit from PBOT.

Furthermore, the Zoning Code allows certain development standards to be modified through Environmental Review if it can be demonstrated that the modification results in greater protection of environmental resources identified on the site. Therefore, in order to reduce permanent disturbance within the Environmental Zone, the applicant is proposing to modify the base zone standards to increase building height. Due to the steep topography of the site in addition to the Zoning Code height calculation, the maximum building height for this site is elevation 977.0 feet. This elevation is below the street grade (SW Greenleaf Drive); therefore, the applicant is requesting a 19-foot modification to allow the building height to extend above street grade to elevation 996.0 feet.

Although the entire property is within both the Environmental Conservation and Environmental Protection overlay zones, the applicant is proposing work only within the Environmental Conservation overlay zone. Because there is work within an Environmental Zone, certain standards must be met to allow work to occur by right. In this case, the applicant is proposing disturbance that exceeds the maximum allowed (33.430.140.A) and tree removal in excess of the standards (33.430.140.J). For these reasons, 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 criteria are:

- **[Section 33.430.250.E](#). Other development in the Environmental Conservation zone or within the Transition Area only**
- **Section 33.430.280 Modifications that will better meet Environmental Review requirements**

**ANALYSIS**

**Site and Vicinity:** The project site is a forested, undeveloped property situated on the northeast corner of the intersection of SW Greenleaf Drive and SW Greenleaf Court. SW Greenleaf Court is an unimproved local road and SW Greenleaf Drive is a paved, but narrow, local street. The northern portion of the project site is bordered by SW Humphrey Road, which is a busy collector road with no sidewalks or shoulders.

The site is currently vegetated with an upland mixed deciduous-coniferous forest dominated by bigleaf maple (*Acer macrophyllum*) and Douglas fir (*Pseudotsuga menziesii*). Tree canopy covers more than 50% of the site. The shrub layer is dominated by vine maple (*Acer circinatum*) and English holly (*Ilex aquifolium*). The understory includes pineland swordfern (*Polystichum munitum*) and English ivy (*Hedera helix*). The English ivy is climbing on approximately 50% of the trees.

The project site is surrounded by residential development. The developed lots adjacent to the project site are zoned R10. The local streets surrounding the project site provide internal circulation within the neighborhood. The development pattern neighboring the project site is multi-story footprints built close to the streets, due to the steep topography of the area.

**Zoning:** The R10 base zone is intended to foster the development of single-dwelling residences on lots having a minimum area of 6,000 square feet. Newly created lots must have a maximum density of 1 lot per 10,000 square feet of site area. The regulations of this zone are not specifically addressed through this Environmental Review but will be addressed at the time of building permit review.

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

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

The project site is mapped within the *Fanno Creek and Tributaries Conservation Plan* as Resource Site #124. The identified resources within Resource Site #124 specific to this project site include pollution control, wildlife habitat, and scenery.

**Impact Analysis and Mitigation Plan:** A full description of the proposal was provided on page two of this report. The following discusses development alternatives that were considered by the applicant. The following additionally describes the proposed construction management plan and mitigation proposal.

#### **Development Alternatives:**

##### Alternative #1:

Alternative 1 explored locating the residence in the northwestern edge of Tax Lot 701. This placement would require the removal of approximately 27 native trees, partial removal of the neighbor's laurel hedge, greater amount of ground disturbance than the Preferred Alternative, and additional site impact for construction access. This alternative would also be more exposed to the adjacent neighbors to the west and both parties would experience less privacy. Therefore, this alternative is not the Preferred Alternative.

##### Alternative #2:

Alternative 2 proposes access from SW Humphrey Boulevard instead of SW Greenleaf Drive. However, access is too steep for a driveway as the initial slope is 85 percent. In addition, access from SW Humphrey Boulevard provides unsafe pedestrian access for the proposed residence as well as very limited sight distance for the driveway to access the street. The northern portion of the project site also contains many larger diameter Douglas fir trees and groundcover predominantly of native pineland sword fern. The alternative would require the removal of approximately 30 native trees. For these reasons, driveway access and building placement from SW Humphrey Boulevard would be undesirable. Therefore, this alternative is not the Preferred Alternative.

Alternative #3:

Alternative 3 is the original site plan submitted for this Environmental Review in July 2018 before the project reduced the building footprint to what is currently proposed. The design results in a total of 3,480 square feet of permanent disturbance to the property for project construction. This alternative would require the removal of 23 native trees. Due to building footprint and necessary driveway encroachment, this alternative does not minimize permanent impacts to the Environmental Zone. Therefore, this alternative is not the Preferred Alternative.

Alternative #4 – Preferred Alternative:

The Preferred Alternative reduces the permanent impacts compared to Alternatives 1 to 3. This alternative is the proposed development design in the revised Environmental Review application submitted in December 2018 (LU 18-183423 EN). The proposed alternative consists of a three-story residence to reduce the permanent building disturbance footprint. The design has reduced the permanent disturbance to the resource area of the Environmental Conservation overlay zone to approximately 2,342 square feet. The preferred driveway has been shortened with added retaining walls to reduce the overall disturbance. The Preferred Alternative will remove 19 native trees. This design was selected due to its reduced permanent impact to natural resources onsite and its reduced area of impervious surface, while still maintaining a reasonable amount of development. Therefore, the proposed development site plan is the Preferred Alternative.

**Construction Management Plan:** The Construction Management Plan for the project is shown on Exhibit C.3. The following components of the Construction Management Plan protect against erosion and prevent the transport of sediments off-site. The following measures also ensures the disturbance will be localized, preventing impacts to the portions of the Environmental Zone that are to remain undisturbed:

- ❖ Silt fence will be placed along and downslope of the disturbance areas, ensuring soil is kept onsite.
- ❖ The Construction entrances (ingress/egress) will be delineated prior to construction and will be maintained for the duration of the project.
- ❖ Exposed cut and fill areas will be stabilized using seeding and native plantings.

**Unavoidable Impacts:** The applicant is proposing to disturb a total of 6,527 square feet of the Environmental Zone (resource area and transition area) for the construction of all elements of the proposal. Of these 6,527 square feet, 2,342 square feet will be permanently disturbed within the resource area of the Environmental Conservation overlay zone. In conjunction with the anticipated disturbance, the applicant also proposes to remove 19 native trees from within the Environmental Conservation overlay zone (both transition and resource area) that will be replaced as shown on the Mitigation Plan, described below. Additional unavoidable impacts will include the loss of vegetative cover in the disturbance areas, increased impervious surfaces, and an increase in the potential for surface runoff and erosion.

**Proposed Mitigation:** As shown on Exhibit C.4, Mitigation Site Plan, the applicant proposes to mitigate the tree removal and permanent and temporary disturbance areas by planting 39 bigleaf maple, 18 Douglas fir, 3 red alder, 1,225 shrubs, and 2,198 groundcovers throughout the entirety of the site. In addition to replanting all temporary disturbance areas within the resource area with a diverse selection of native plants, the applicant proposes to remove nuisance plants from 13,764 square feet of site area. The proposed plantings consist of native species found on the *Portland Plant List*.

**Land Use History:**

- ❖ LU 02-008219 EN M (LUR 02-00007): Environmental Review with Modification for a single-dwelling unit with an attached breezeway and garage, in addition to a modification for a reduction in the side yard setback to 3 feet from 10 feet. The application was approved by staff and appealed to the Hearings Officer. The Hearings Officer upheld the Environmental

Review approval and denied the Modification. No permit was submitted for the proposal and the approval ultimately expired.

Prior Land Use cases have no effect on the current proposal.

**Agency Review:** A “Notice of Proposal in Your Neighborhood” was mailed **August 6, 2018**. A “Notice of Revised Proposal in Your Neighborhood” was mailed **March 26, 2019**, and a second revised noticed was mailed **October 31, 2019**. The following Bureaus have responded with no issues or concerns:

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

The Bureau of Environmental Services responded with the following comment. Please see Exhibit E.1 for additional details.

*The revised site plans show a smaller house and driveway footprint. The submitted Simplified Approach stormwater report includes sizing for the proposed lined stormwater facility located at the rear of the house. The size of the proposed stormwater planter is consistent with the size required per the Simplified Approach stormwater report. The proposed stormwater facility will meet pollution reduction and flow control requirements per the SWMM.*

*Based on this additional information, BES has determined that sufficient information has been provided to demonstrate a feasible stormwater management plan for this project within the proposed disturbance area. BES has no further objections to approval of the environmental review application.*

*BES has no recommended conditions of approval.*

The Bureau of Transportation responded with the following comment. Please see Exhibit E.2 for additional details.

*PBOT has no objection to the Environmental Review Request.*

*\*Note: As condition of the Building Permit for proposed development:*

- 1. Payment into LTIC...; and execute waivers of remonstrance for storm and street improvements;*
- 2. Dedication of four feet of SW Humphrey for right-of-way be completed; and*
- 3. Verification the plans submitted are identical to those approved in the Encroachment permit.*

These requirements will apply at the time of building permit application.

**Neighborhood Review:** A “Notice of Proposal in Your Neighborhood” was mailed on **August 6, 2018**. A “Notice of Revised Proposal in Your Neighborhood” was mailed **March 26, 2019**, and a second revised noticed was mailed **October 31, 2019**. A total of twelve written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal and revised proposal. The details of the August 6, 2018 and October 31, 2019, responses are not summarized here and can be found in Exhibit F. The March 26, 2019, responses have been abridged for brevity below; however, the full responses can be found in Exhibit F.

**1. Joel & Sandra Seres, Neighbor, April 3, 2019:** The Seres’ expressed support of the proposed development and have spoken directly with the owner, who responded adequately to their concerns. The Seres’ live adjacent to the proposed development and urged the City to approve the proposal.

- 2. Michael Bernstein, Neighbor, April 4, 2019:** Neighbor Bernstein expressed concerns on a number of issues which include 1) the use of narrow Greenleaf Drive for construction work and the use of vacated right-of-way for driveway access; 2) the removal of trees and the effect on slope stability; 3) placement of the driveway in public right-of-way; 4) vague language regarding mitigation; 5) the number of proposed trees for mitigation; and 6) size and maintenance of proposed mitigation plantings.
- 3. Joseph Voboril on behalf of Michael & Rosalie Baskin, Neighbor, April 12, 2019:** Joseph Voboril expressed two main concerns on behalf of neighbors Michael & Rosalie Baskin. These concerns are: 1) The proposed development is taking place on an extremely steep lot and will exceed both the disturbance area and tree removal standards (33.430.140.A and .J, respectively); they are also concerned about the effects of additional stormwater created by development. 2) The proposed driveway situated in SW Greenleaf Drive would narrow the public right-of-way, making ingress and egress of fire/safety equipment more difficult. The location of the driveway so close to SW Greenleaf Court is also of concern for safety access if the right-of-way is not vacated.
- 4. Southwest Hills Residential League (Nancy Seton), April 16, 2019:** Nancy Seton on behalf of the Southwest Hills Residential League (SWHRL) requests that driveway construction consider first responder access, traffic, and pedestrian safety; that a 10-foot buffer be established between equipment staging and the neighboring properties laurel hedge; and that the applicant share home construction plans with the neighborhood. Nancy Seton also requested thorough oversight and consideration be given to the proposed tree removal and subsequent mitigation.
- 5. Robert Moody, Neighbor, April 16, 2019:** Robert Moody, neighbor to the south, requested a 10-foot buffer between equipment staging and his laurel hedge. He also requests that the final driveway design not restrict street access for first responders and that adequate measures are taken to ensure the safety of pedestrian and neighborhood traffic.

**Applicant's Response:** This letter is in response to comments received on April 22, 2019, from adjacent landowners Dr. Joel L. and Sandra Lamer Seres, Robert Moody, Michael Bernstein, Joseph S. Voboril, JD (on behalf of Michael and Rosalie Baskin), and the Southwest Hills Residential League for the Environmental Review application LU 18-183423 EN. The public comments were regarding the revised site plan submitted in December 2018. The revised site plan decreases the amount of permanent disturbance in the Environmental Conservation Zone (c-zone) by 33% and decreases the number of native trees for removal from 23 to 19.

This response addresses concerns of impacts to the c-zone overlay. The project will avoid temporary and permanent impacts to the onsite Environmental Protection Zone (p-zone). Most trees proposed for removal are covered in invasive English ivy. Six of the trees to be removed were deemed hazardous by an ISA certified arborist. Dead and hazardous trees to be removed will be replaced with native species that will be cared for and provide future erosion stability and habitat diversity. The understory is dominated by invasive and non-native vegetation species. Approximately 13,764 square feet of nuisance plants will be removed from the project site and replaced with native vegetation which will provide better slope stabilization, unlike the English ivy currently dominant on-site. Invasive English ivy has a shallow root system that is easy to pull up and does not provide adequate soil retention and erosion prevention on steep slopes. English ivy can also cover native trees onsite and eventually kill them. The quantity of plants for replacement are in ratio to the amount of permanent disturbance on-site. The quantity of mitigation plantings was reduced in ratio with the reduced amount of permanent project disturbance to not overcrowd the new vegetation and to increase the rate of survivability. Plantings are appropriately sized for the space and place and are on the approved Portland Plant List by the City of Portland (City).

Existing hazardous trees and invasive species do not provide slope stability. Removing 19 trees and replacing them with 60 native trees will provide better long-term soil retention and erosion control. Safety of the site and new construction are at the highest priority for this project and vegetation removal will be mitigated for with the goal of site safety and vegetation retention. The neighboring laurel hedges east and west of the project site will be avoided and protected from construction

staging. The project meets downstream capacity and stormwater requirements as reviewed and approved by the City of Portland's Bureau of Environmental Services (BES).

The mitigation plantings will require assessments after initial planting at 6 months and 1 year. Per the Mitigation Plan, plantings will be regularly manually watered during the first growing season and will be watered as needed from thereafter to ensure survival. Maintenance and survivability are at the responsibility of the homeowner. Two years of mitigation monitoring is recommended with a mitigation report submitted to the City to ensure the mitigation conditions have been met.

Public comments have voiced concern about the road access and safety. The project has shortened the driveway in the new site plan to reduce overall encroachment into the c-zone. Placing the driveway in the right-of-way (ROW) meets the goals and recommendations of the City by virtue of their process. The project design allows for a two-car garage and adequate space for two off-site parking spaces, which meets City requirements. The PBOT sight distance analysis for the project has been reviewed and approved by the City. The project has received approval from PBOT on an encroachment permit.

Alternative proposals and previous submittals were not the best fit for the site, the applicant, or the adjacent neighbors. The proposed site plan requires 2,342 square feet of permanent impact to the c-zone and approximately 88% of the property will not be disturbed.

## **ZONING CODE APPROVAL CRITERIA**

### **33.430.250 Approval Criteria for Environmental Review**

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

**Findings:** The approval criteria applicable to the proposed development include those found in Section 33.430.250.E. The applicant has provided findings for these approval criteria and BDS Land Use Services staff revised these findings or added conditions, where necessary to meet the approval criteria.

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

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

**Findings:** The purpose of this criterion is to recognize that some form of development is allowed, consistent with the base zone standards. Impacts of the proposed development are measured relative to the impacts associated with the development normally allowed by the base zone; in this case, the R10 base zone would allow 7,301 square feet of the project site to be covered by buildings, according to Table 110-3 of the Zoning Code.

The building footprint of the proposed house will result in approximately 2,770 square feet of building coverage, which is well below what would be allowed without the Environmental Conservation overlay zoning. In addition, the house has been situated as close to existing development (public right-of-way) and away from the Environmental Protection overlay zone to the extent feasible to minimize impacts to onsite resources. This, in concert with the reduced area to be covered by permanent disturbance, is expected to minimize impacts on the identified resources and functional values.

The proposed development will result in the loss of 2,342 square feet of Resource Area of the Environmental Conservation overlay zone and the other unavoidable impacts described above (page 4). The overall impacts of the project have been shown to be minimized to the extent practicable and consistent with allowing those uses generally permitted or allowed in the base zone without a land use review.

*Therefore, this criterion is met.*

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

**Findings:** This criterion requires the applicant to demonstrate alternatives were considered during the design process, and that there are no practicable alternatives that would be less detrimental to the identified resources and functional values located onsite. According to the *Fanno Creek Tributaries Conservation Plan* this site is mapped as Resource Site #124. The identified resources within Resource Site #124 specific to this project site include pollution control, wildlife habitat, and scenery.

The applicant provided an alternatives analysis that can be found in the application case file in Exhibit A.3 and is summarized in this report on pages 3 and 4. The applicant has shown that their proposal has been designed to efficiently use the minimum space necessary and maximize livable space on the smallest footprint possible given the site conditions. The proposal pushes the house as close to the existing right-of-way and away from the Environmental Protection overlay zone as practical and focuses on minimizing both permanent and temporary disturbance.

The applicant explored three alternatives other than the preferred alternative. Alternatives 1 and 3 were determined to be too impactful to resources and thus were rejected. Alternative 2 was deemed impracticable due to access and sight distance issues with the existing right-of-way and therefore was also rejected. For the preferred alternative, the applicant altered the design and location of the residence resulting in lesser impacts to the Environmental Zone while increasing safety for site ingress and egress.

While the preferred alternative requires permanent disturbance and tree removal within the Resource Area of the Environmental Conservation overlay zone, it also allows for the mitigation and restoration of a large portion of the site within the Environmental Zone outside of development. As shown on Exhibit C.4 and noted in the applicant's narrative (Exhibit A.3), 2,545 square feet of temporary disturbance area and 13,764 square feet of invasive species removal will be restored by planting native vegetation. The Preferred Alternative not only satisfies the project purpose, it minimizes impact, to the greatest extent practicable, to identified resources and functional values.

For the reasons stated above, *this criterion is met.*

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

**Findings:** These approval criteria require the protection of resources outside of the proposed disturbance area from impacts related to the proposal, such as damage to vegetation, erosion of soils off the site, and downstream impacts to water quality and fish habitat from increased stormwater runoff and erosion off the site.

The Construction Management Plan is described on pages 3 and 4 of this report and shown graphically on Exhibit C.3. The Construction Management Plan will be effective because it provides realistic limits to disturbance while containing the necessary elements (e.g. sediment fencing, gravel construction entrance, tree protection fencing) to effectively protect resources and functional values outside of designated disturbance areas. It is apparent that the applicant has carefully thought through the potential impacts of construction activities on the property; for example, to avoid unnecessary impacts to trees and the resource area, the stormwater outfall pipe will be

installed using hand-operated equipment, eliminating unnecessary impacts that would otherwise be created by heavy equipment.

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

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

**Findings:** This criterion requires the applicant to assess unavoidable impacts and propose mitigation that is proportional to the impacts, as well as sufficient in character and quantity to replace lost resource functions and values. The proposed Mitigation Plan is described on page 4 of this report. It will offset 6,527 square feet of temporary and permanent disturbance area and mitigate the removal of 19 trees from the Environmental Zone by planting a total of 60 trees, 1,225 shrubs, and 2,198 groundcovers in addition to removing invasive species from 13,764 square feet of the subject site.

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

- Mitigation plantings will be installed in temporary disturbance areas in addition to throughout most of the site outside of extreme steep slope areas.
- The mitigation plantings will increase species diversity to improve wildlife habitat in areas that have minimal native vegetation.
- Invasive species will be removed from approximately 13,764 square feet of area throughout the site, including cutting from existing native trees.

Further, the proposed Mitigation Plan will be installed and maintained under the regulations outlined in Section 33.248.040.A-D (Landscaping and Screening). To confirm installation of the required plantings, the applicant will be required to have the plantings inspected upon installation. Then, to confirm maintenance of the required plantings for the initial establishment period, the applicant will be required to have the plantings inspected two years after plantings are installed.

With conditions to ensure that plantings required for this Environmental Review are installed, maintained, and inspected, *this criterion can be met.*

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

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

**Findings:** Mitigation for significant detrimental impacts will be conducted on the same site as the proposed development; the applicant owns the proposed onsite mitigation area.

*These criteria are met.*

**33.430.280 Modifications That Will Better Meet Environmental Review Requirements**

**The review body may consider modifications for lot dimension standards or site-related development standards as part of the environmental review process. The review body may not consider modifications to standards for which adjustments are prohibited. Modifications are done as part of the environmental review process and are not required to go through the adjustment process. Adjustments to use-related development standards (such as floor-area ratios, intensity of use, size of the use, number of units, or concentration of uses) are subject to the adjustment process of Chapter 33.805. In order to approve these modifications, the review body must find that the development will result in greater protection of the resources and functional values identified on the site and will, on balance, be consistent with the**

**purpose of the applicable regulations. For modifications to lot dimension standards, the review body must also find that the development will not significantly detract from the livability or appearance of the area.**

**Findings:** The applicant requests a Modification to increase the maximum allowed height of the single-dwelling residence. While the applicant is proposing only one-story to be placed above street grade, the modification is needed due to the average street grade of the site and measuring maximum building height on steep slopes per 33.110.215.D.1. The proposal is to modify base zone building height from the maximum elevation of 977.0 feet to 996.0 feet or in other words a modification of 19 feet.

The first portion of the modification approval criterion requires that the modification result in greater protection of resources and functional values. An increase in the maximum height limit on the lot allows for a smaller footprint, resulting in less permanent impact area. Due to the steep topography of the site, and the maximum building height coinciding with the grade of the street, to meet the maximum height requirement, the residence would need to be pushed back further into the site to allow for access. Therefore, to reduce disturbance to the Environmental Zone, the applicant proposes to place the house as near the road as practical, thereby exceeding the maximum height limit of the base zone.

In addition to the modification resulting in better protection of resources and functional values at the site, the proposal must also on balance, be consistent with the purpose of the applicable regulations.

The purposes of height standards (33.110.215) are:

- They promote a reasonable building scale and relationship of one residence to another;
- They promote options for privacy for neighboring properties; and
- They reflect the general building scale and placement of houses in the city's neighborhoods.

The proposed single-dwelling residence will be of a similar scale and footprint to other homes in the neighborhood. The design will not detract from the appearance of the area and will be of similar scale as the neighboring home to the northwest (4175 SW Greenleaf Drive). Furthermore, the single-story visible from street grade is not only consistent with the building scale of houses in the immediate surrounding neighborhood but in the city's neighborhoods as well.

As assessed from the street, the single-dwelling residence will essentially be a single-story home. Since only one story will be above street grade, privacy for neighboring homes will not be affected. With the height modification, the home will not stand over adjacent homes and privacy will be maintained between neighbors.

The proposed modifications allow for the minimization of physical impact on the ecological values of the subject site. Considering the characteristics of surrounding development and the physical constraints of the subject site, the proposed dwelling unit is, on balance, consistent with the purposes of the height regulations, *and 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 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 to construct a new single-dwelling residence, stormwater outfall pipe, driveway, and associated development within the Environmental Zone. The applicant considered alternative locations and designs to determine that the proposed house design/placement and driveway location were practicable and would minimize impacts to the resource area of the

Environmental Zone. Further, mitigation has been proposed sufficient in characteristic to mitigate for both temporary and permanent disturbance. The applicant and the above findings have shown that the proposal meets the applicable approval criteria with conditions. Therefore, this proposal should be approved, subject to the conditions described below.

## ADMINISTRATIVE DECISION

**Approval** of an Environmental Review for:

- Construction of a single-family residence and associated development;
- Installation of a stormwater outfall pipe;
- 6,527 square feet of permanent and temporary disturbance; and
- Removal of 19 native trees

**Approval** of an Environmental Modification Review for:

- Increase to maximum allowed building height from elevation 977.0' to elevation 996.0' (19 feet) all within the Environmental Conservation overlay zone, and in substantial conformance with Exhibits C.2 through C.6, as approved and signed by the City of Portland Bureau of Development Services on **December 3, 2019**. Approval is subject to the following conditions:

- A. A BDS Zoning Permit is required for inspection of required mitigation plantings, and a separate BDS construction permit may be required for development.** The Conditions of Approval listed below, shall be noted on appropriate plan sheets submitted for permits (building, Zoning, grading, Site Development, erosion control, etc.). Plans shall include the following statement, ***"Any field changes shall be in substantial conformance with approved LU 18-183423 EN Exhibits C.2 through C.6."***

**Building Permits [or Construction Permits] shall not be issued until a BDS Zoning Permit is issued.**

**Building Permits shall not be finalized until the BDS Zoning Permit for inspection of mitigation plantings required in Condition C below is finalized.**

- B.** All measures provided for sediment control, including sediment fencing, shall be placed inside of the approved "Limits of Construction Disturbance," as defined on Exhibit C.3, Construction Management Plan.
1. All measures provided for sediment control, including sediment fencing, shall be placed inside of the approved "Limits of Construction Disturbance," as defined on Exhibit C.3, Construction Management Plan.
  2. No mechanized construction vehicles are permitted outside of the approved "Limits of Construction Disturbance" delineated by the temporary construction or tree protection fence. All planting work, invasive vegetation removal, and other work to be done outside the Limits of Construction Disturbance, shall be conducted using hand held equipment.
  3. Trees shall be protected according to tree protection measures provided in Title 11 Tree Code, Chapter [11.60.030 Tree Protection Specifications](#), or using 4-foot high, orange construction fence, and as specifically depicted on Exhibit C.3, Construction Management Plan.
- C.** The applicant shall obtain a BDS Zoning Permit for approval and inspection of a Mitigation Plan for removal of 13,764 square feet of invasive species and planting a total of 60 trees, 1,225 shrubs, and 2,198 groundcovers in substantial conformance with Exhibit C.4, Mitigation Plan. Any plant substitutions shall be selected from the *Portland Plant List* and shall be substantially equivalent in size to the original plant. Conifers must be substituted with conifers.
1. Permit plans shall show:

- a. The general location of the trees, shrubs and ground covers required by this condition to be planted in the mitigation area and labeled as “new required landscaping.” The plans shall include a “typical,” scalable planting layout for each planting zone, and shall illustrate a naturalistic arrangement of plants and should 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 the Environmental Zone, using handheld equipment.
4. If plantings are installed prior to completion of construction, a temporary bright orange, 4-foot high construction fence shall be placed to protect plantings from construction activities.
5. All mitigation 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.
6. After installing the required mitigation plantings, the applicant shall request inspection of mitigation plantings and final the BDS Zoning Permit.

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

1. Obtain a Zoning Permit for a final inspection at the end of the 2-year maintenance and monitoring period. The applicant shall arrange to accompany the BDS inspector to the site to locate mitigation plantings for inspection. The permit must be finalized no later than 2 years from the final inspection for the installation of mitigation planting, to ensure 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 December 3, 2019**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: December 5, 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 June 7, 2018, and was determined to be complete on July 27, 2018.

*Zoning Code Section 33.700.080* states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore, this application was reviewed against the Zoning Code in effect on June 7, 2018.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant completely waived the 120-day review period, as stated within Exhibit A.10. **The 120-day timeline does not apply.**

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

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

**Conditions of Approval.** If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term “applicant” includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

**Appealing this decision.** This decision may be appealed to the Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on December 19, 2019**, at 1900 SW Fourth Ave. Appeals can be filed at the 5<sup>th</sup> floor reception desk of 1900 SW 4<sup>th</sup> Avenue Monday through Friday between 8:00 am and 4:30 pm. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at [www.portlandonline.com](http://www.portlandonline.com).

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

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

**Recording the final decision.**

If this Land Use Review is approved the final decision will be recorded with the Multnomah County Recorder.

- *Unless appealed*, the final decision will be recorded after **December 19, 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 of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

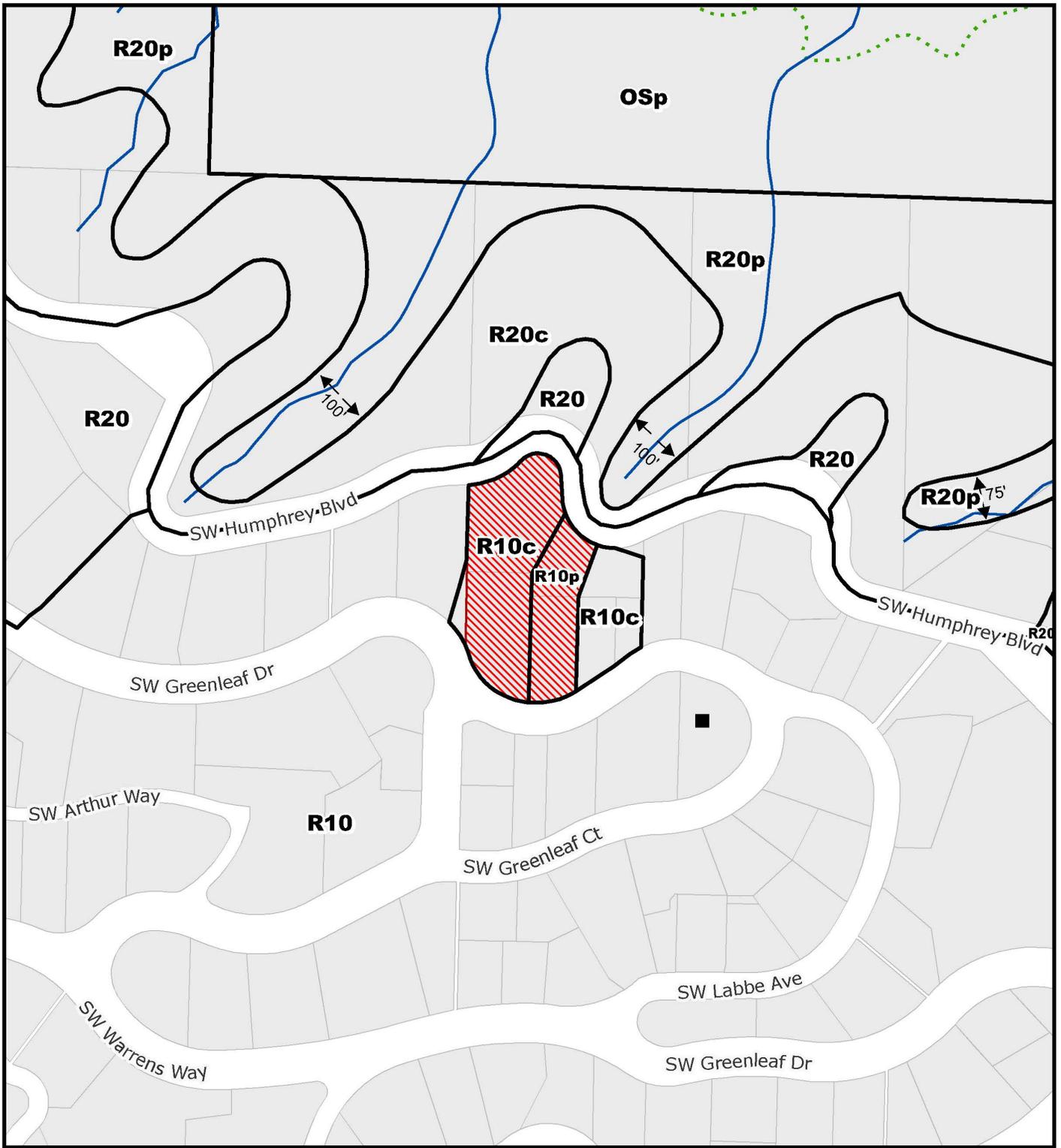
## EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  1. Original Site Plan and Narrative, June 2018
  2. Revised Site Plan and Narrative, July 2018
  3. Revised Narrative & Alternatives Analysis Memo, December 2018 & April 2019
  4. Final Narrative & Supplemental Site Plans, October 2019
  5. Statutory Warranty Deed
  6. Geotechnical Report, October 2017
  7. Downstream Capacity Analysis, July 2018
  8. Stormwater Memo & Simplified Approach Form, December 2018
  9. Tree Plan, May 2018
  10. Extension of 120-Day Review Period & ORS 227.178 Waiver
  11. Applicant's Response to Neighbor Comments, December 2018 & April 2019
- B. Zoning Map (attached)
- C. Plans/Drawings:
  1. ENV 1 Existing Conditions Site Plan
  2. ENV 2 Proposed Development Site Plan
  3. ENV 3 Construction Management Site plan (attached)
  4. ENV 4 Mitigation & Remediation Site Plan (attached)
  5. Building Elevation
  6. Building Elevation & Average Street Grade Diagram (attached)
  7. Site Section
- D. Notification information:
  1. Mailing list
  2. Mailed notice
  3. Mailing list for revised notice
  4. Mailed revised notice
  5. Mailing list for second revised notice

6. Mailed second revised notice
- E. Agency Responses: **Please note responses may include multiple addendums**
  1. Bureau of Environmental Services
  2. Portland Bureau of Transportation
  3. Water Bureau
  4. Fire Bureau
  5. Site Development Review Section of BDS
  6. Life Safety
  7. Bureau of Parks, Forestry Division
- F. Correspondence:
  1. Joseph S. Voboril representing Michael & Rosalie Baskin, August 23, 2018
  2. Michael Bernstein, August 25, 2018
  3. Robert Moody, August 27, 2018
  4. Southwest Hills Residential League (Nancy Seton), August 27, 2018
  5. Joel & Sandra Seres, April 3, 2019
  6. Michael Bernstein, April 4, 2019
  7. Joseph S. Voboril representing Michael & Rosalie Baskin, April 12, 2019
  8. Southwest Hills Residential League (Nancy Seton), April 16, 2019
  9. Robert Moody, April 16, 2019
  10. Joel & Sandra Seres, November 14, 2019
  11. Michael Bernstein & Tina-Marie Baskin, November 19, 2019
  12. Michael & Rose Baskin, November 19, 2019
- G. Other:
  1. Original LU Application
  2. Incomplete Letter

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



# ZONING

↑  
NORTH

-  Site
-  Stream
-  Historic Landmark
-  Recreational Trails

File No.	LU 18-183423 ENM
1/4 Section	3325
Scale	1 inch = 200 feet
State ID	1S1E08BA 701
Exhibit	B Dec 03, 2019

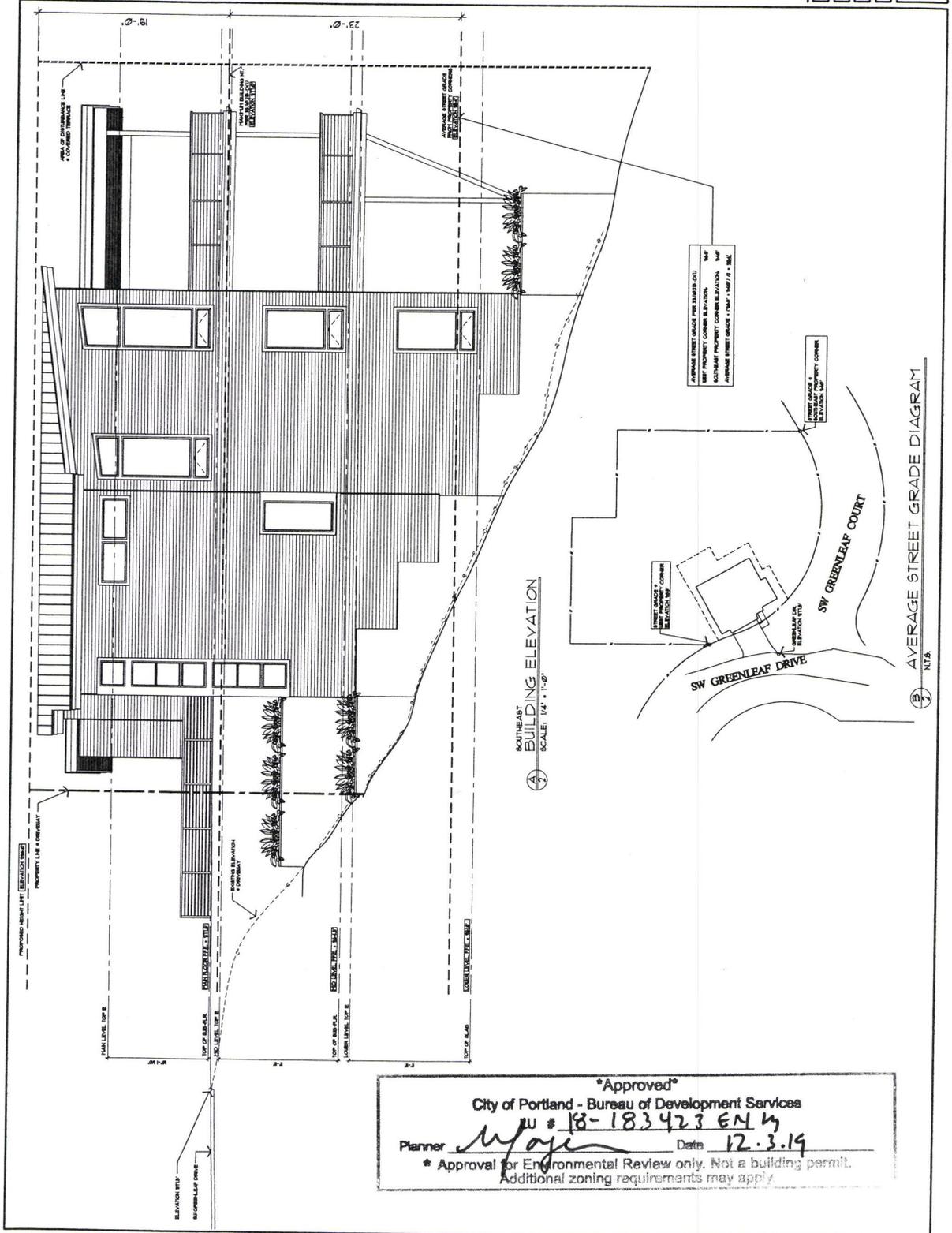




CONCEPTUAL PLAN FOR:  
611 GREENLEAF DR  
PORTLAND, OR

NOT FOR CONSTRUCTION

REVISED	
DATED	10/18/19
DRAWN BY	BTM
CHECKED	
ELEVATIONS	
	2



\*Approved\*  
City of Portland - Bureau of Development Services  
Planner Wojcik Date 12.3.19  
\* Approval for Environmental Review only. Not a building permit.  
Additional zoning requirements may apply.

CASE NO 18-183423 EN M  
EXHIBIT C.6