



Hearings Office

City of Portland

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DECISION OF THE HEARINGS OFFICER ON APPEAL OF ADMINISTRATIVE DECISION

I. GENERAL INFORMATION

File Number: LU 19-184214 EN (Hearings Office 4200008)

Applicant(s): Jarek Hunger
225 NE Hyde Circle, Hillsboro, OR 97124

Owners: Jarek Hunger & Laurence Oliver
225 NE Hyde Circle, Hillsboro, OR 97124

Representative: Adam Zucker, Zucker Engineering & Design
4014 SE Ankeny Street, Portland, OR 97214

Hearings Officer: Kathryn Beaumont

Bureau of Development Services (BDS) Staff Representative: Morgan Steele

Site Address: No Situs: Vacant lots north of 4406 SW Buddington Street

Legal Description: BLOCK 55 LOT 29-31, WEST PORTLAND PK; BLOCK 55 LOT 32-34,
WEST PORTLAND PK

Tax Account No.: R894610890, R894610900

State ID No.: 1S1E32BC 07700, 1S1E32BC 07701

Quarter Section: 4125

Neighborhood: West Portland Park, contact at contact-wpp@swni.org.

Business District: None

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

Plan District: None

Other Designations: Southwest Hills Resource Protection Plan – Resource Site #121;
Landslide Hazard Area; Wildfire Hazard Area

Zoning: Base Zone: Residential 7,000 (R7)
Overlay Zone: Environmental Conservation

Land Use Review: Type II, Environmental Review

BDS Administrative Decision: Approval

Public Hearing: The hearing was opened at 9:01 a.m., on June 10, 2020. The hearing was held by Zoom Video Conferencing in the third floor hearing room, 1900 SW 4th Avenue, Portland, Oregon, and was closed at 11:46 a.m. At the conclusion of the hearing, the Applicant requested to hold the record open for an additional period of time. The record was held open for the submission of additional evidence until 4:00 p.m. on June 17, 2020, for rebuttal to this new evidence until 4:00 p.m. on June 24, 2020, and until 4:00 p.m. on July 1, 2020 for the Applicant's final written argument. The record was closed at 4:00 p.m. on July 1, 2020.

Testified at the Hearing:

Morgan Steele
Emma Kohlsmith
Jarek Hunger
Adam Zucker
Jeffrey Kleinman
David Gorman
Debbie Guthrie
Paul Kisling
Dennis Quinn
Irene Quinn
Jarek Oliver

II. ANALYSIS

A. Proposal and Site. The Bureau of Development Services Administrative Decision (BDS Decision) (Exhibit H.2), pages 2-3, describes the proposed development subject to environmental review and the site as follows:

"The applicant proposes to construct two new single-dwelling residences on two separate vacant lots (east lot and west lot) in SW Portland east of the intersection of SW Buddington Street and SW 45th Avenue. The site is currently heavily vegetated with a 15-foot deep drainageway that originates immediately west of the site, continues east, and bisects the front of the properties before continuing off-site to the east. The lots

front SW Buddington Street, a partially improved dead-end local service street that terminates at the western portion of the Loll Wildwood Area.

To obtain access to the site, the applicant is proposing to install a 41-foot long, 117" x 79" arch culvert within the drainageway. The bottom of the culvert will be buried approximately five feet deep and streambed materials placed as substrate. The culvert will allow for driveway access into the site for both residences in addition to providing an area for utilities to cross the drainageway allowing necessary services (water, sewer, gas, etc.) to reach the residences. The slopes of the driveway, over the culvert, will be constructed at a 1:1 slope utilizing a soil reinforced fill to allow for revegetation of the slopes upon project completion.

The proposed dwelling units and associated development will require approximately 4,047 square feet of permanent disturbance on the east lot and 4,017 square feet of permanent disturbance on the west lot within the resource area of the Environmental Conservation overlay zone. In addition, the applicant proposes to remove 18 native trees (9 from west lot and 9 from east lot), from the resource area of the Environmental Conservation overlay zone. To mitigate for the removal of trees and permanent impacts to the resource area as well as restoring temporary disturbance areas, the applicant proposes to plant 27 trees, 1,526 shrubs, and 4,223 groundcovers throughout the entirety of the site. Additionally, invasive species will be removed from all planting areas."

* * * * *

" **Site and Vicinity:** The subject sites are in SW Portland east of the intersection of SW Buddington Street and SW 45th Avenue. The lots front SW Buddington Street, a partially improved dead-end local service street that terminates at the western portion of the Loll Wildwood Area. The site is heavily vegetated with a mostly native overstory and a heavily invasive understory. A 15-foot deep drainageway originates immediately west of the site, continues east, and bisects the front of the properties before continuing off-site to the east. Surrounding development includes Loll Wildwood Natural Area to the east and single-family residential to the north, south, and west."

The BDS Decision also summarizes at page 2 which of the environmental zone's development standards the Applicant's proposal exceeds, triggering environmental review:

"The entirety of both lots are located within the resource area of 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), disturbance within 30 feet of a waterbody (33.430.140.C), and setbacks that exceed the

maximum allowed (33.430.140.0), on both lots. For these reasons, Environmental Review is required."

B. Relevant Approval Criteria. The BDS Decision identifies and addresses the relevant approval criteria for environmental review found in PCC 33.430.250.A and E. In that decision, BDS makes thorough and affirmative findings that explain how the Applicant's proposal satisfies all of the relevant approval criteria and recommends conditions of approval. In testimony presented at the public hearing, the Applicant accepted those findings and conditions and expressed agreement with the BDS Decision, including the recommended conditions of approval.

In this appeal of the BDS Decision, the Appellant and opponents raised multiple issues in written and oral testimony submitted to the Hearings Officer. One issue is new and focuses on several environmental zone development standards requiring disturbance areas to be setback from wetlands and/or water bodies. I address this issue in the findings below and conclude BDS did not err in determining the correct setback standard is PCC 33.430.140.C.3.

The Appellant and opponents also challenge whether the Applicant has demonstrated compliance with the environmental review criteria. Specifically, they question the Applicant's alternatives analysis; conclusions regarding slope stability and potential erosion impacts of the culvert and driveway; and the adequacy of mitigation for the development impacts on native plants and wildlife. Based on my review of the evidence in the record, I agree with BDS that the Applicant has provided substantial and credible evidence to show the proposed development satisfies the applicable approval criteria. I adopt and incorporate the BDS Decision's findings at pages 3-14 addressing the approval criteria in PCC 33.430.250.A.1, A.3, and E as part of this decision and supplement the BDS Decision with the findings below.

1. Preliminary Issue

A new issue in this appeal is which of the development standards for disturbance area setbacks contained in PCC 33.430.140.C applies to the Applicant's proposal. A "disturbance area" is the area on a site where all temporary or permanent alterations to soil or vegetation from development occur. (PCC 33.910.030) BDS and the Applicant applied the standard in PCC 33.430.140. C.3, which generally requires the disturbance area to be set back 30 feet from the centerline of "any identified water bodies within a conservation zone." (Exhibits A.2, A.3, H-2) The Appellant contends this is wrong and the correct standard is PCC 33.430.140.C.1, which requires a disturbance area to be set back at least 50 feet from the edge of "any identified wetland."

This issue raises both code interpretation and evidentiary questions. The code question is whether the on-site channel is an "identified wetland" or an "identified water body" for purposes of determining which setback standard applies. The starting point for answering this question is the zoning code's definition of relevant terms in PCC 33.930.010. An "identified" wetland or water body is one that is "identified in the resource inventory or maps

as being significant and in need of protection." To paraphrase the code's lengthy definition, a wetland is an area that is inundated or saturated by water often enough or long enough that it typically supports mainly vegetation adapted to live in saturated soil conditions. The code's list of illustrative examples includes "swamps, marshes, bogs, and similar areas." A "water body" is land that is permanently or temporarily flooded and has sufficient depth that water, and not air, is the principal medium in which organisms live. Listed examples include "creeks***[and] drainageways." A "drainageway" is a built or natural channel or depression that collects and conveys water at any time. (PCC 33.910.030) According to these code definitions and listed examples, a drainageway is a kind of water body; a wetland is not.

The Appellant's evidentiary argument relies primarily on the written and oral testimony of Dennis Gorman, a water resource and ecological engineer, to support his view that there are wetlands on and adjacent to the site. Mr. Gorman's testimony describes his observations based on four soil test pits he dug on property adjacent to the site. Based on his assessment of the soils, vegetation, and likely hydrology, he opined it is probable that there are wetlands adjacent to the northern, southern, and eastern boundaries of the site that extend onto the site. Accordingly, he argues that any disturbance area or development on the Applicant's site must be set back at least 50 feet from the edge of all of these wetlands, as PCC 33.430.140.C.1 requires. He contends the Applicant failed to consider or comply with this standard and the request for environmental review must be denied.

BDS, BES, and the Applicant identified the on-site channel as a 15-foot "drainageway" that begins to the west of the site, travels across it, and continues on to the east. (A-13, E-1, H-2) While neighbors and Mr. Gorman referred to it as Arnold Creek or Arnold Creek headwaters, BDS, BES, and the Applicant clarified that this seasonal drainageway is or becomes Oswego Creek, which is a tributary of Arnold Creek (Exhibits A-13, E-1, H-2)) To support his position that there is no wetland on the site, the Applicant submitted the Oregon Department of State Lands' (DSL) analysis of its own testing of the site for the presence of a wetland. (Exhibit A-9) This later analysis supplements DSL's initial comments on the proposed development. (Exhibit E-7) Unlike Mr. Gorman, a DSL representative dug two soil test pits on the Applicant's site. Based on an evaluation of those soil samples, DSL concluded the drainageway is not a wetland. (Exhibit A-13) The Applicant's engineer, Adam Zucker, concurred. BDS staff also testified that she visited the site three different times and did not see evidence of wetland vegetation or hydrology, two of the three indicia of a wetland (soils being the third).

I find persuasive and credible the Applicant's testimony and evidence, supported by BDS, BES, and DSL, that there is a water body (drainageway) present on the site and not a wetland. I have considered Mr. Gorman's criticism of DSL's evaluation, in which he finds fault with the location and time of year DSL dug the test pits on the Applicant's property. However, DSL's evaluation is the only expert evidence in the record that is based on actual on-site testing. At best, the Appellant has raised the possibility that this drainageway might be a wetland and there might be wetlands adjacent to the Applicant's site that extend across the property boundaries. His opinion based on off-site testing is insufficient to outweigh DSL's conclusion

that its on-site testing did not reveal the presence of a wetland and the absence of any more formal determination by any city or state agency or other expert that a wetland exists on the site.

More to the point, there is no evidence in the record that there is an "identified wetland" on or adjacent to the site as that term is used in PCC 33.430.140.C.1 and defined in the zoning code. To be an identified wetland, a wetland must be identified in the City's natural resource inventory or maps. The BDS Decision states that the relevant inventory, the *Southwest Hills Resource Protection Plan (SHRPP)*, includes the Applicant's site in Resource Site #121 - Arnold Creek Headwaters. As summarized in the BDS Decision, creeks, but not wetlands, are among the natural resources described in Site #121. (Exhibit H-2) The Applicant also notes that "[a]ccording to the City's resource inventory and wetland mapping database, no wetland resources are identified on or adjacent to our property." (Exhibit H-____21) Absent any evidence of an identified wetland on or adjacent to the Applicant's site, I conclude BDS correctly determined the 50-foot setback standard for identified wetlands in PCC 33.430.140.C.1 is not applicable.

The intermittent drainage across the property, Oswego Creek, is more appropriately characterized as an identified water body. Accordingly, I find BDS and the Applicant correctly determined that the 30-foot disturbance area setback from the centerline of a waterbody in PCC 33.430.140.C.3 is the applicable setback standard. Since the Applicant's proposal does not meet this standard, Environmental Review is required for the Applicant's development.

2. Alternatives Analysis (PCC 33.430.250.A.1.a., 33.430.250.A.3.c)

The proposed development exceeds the limits on disturbance area, setbacks from the centerline of a water body, and maximum front or street setbacks permitted on each lot. Specifically, placing a culvert in and driveway over the drainageway, building a new single family home on each lot, and removing accompanying trees and vegetation as part of this development are the activities that fail to meet these environmental zone standards. For environmental review to be approved, the relevant approval criteria require the Applicant to show that less environmentally harmful alternatives to the proposed development have been considered. Specifically, the Applicant must compare his development proposal with "other practicable and significantly different alternatives" (PCC 33.430.250.A.1.a, E.2)¹ and show that his proposal has the least significant detrimental impact to identified resources and functional values.

¹ PCC 33.430.250.A.3.c uses similar wording and requires analysis of "other practicable alternatives."

The language and context for this approval criterion are relevant for several reasons. First, it uses the word "practicable," which the code defines to mean "capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes." (PCC 33.910.030) As BDS staff and the Applicant stated, the Applicant's project purpose is to build what is permitted outright by the applicable R7 zoning: a single family residence on each of the two lots that comprise the site. (Exhibit A-13) That is, in considering the positive and negative environmental effects of the Applicant's proposal and other possible alternatives, the realistic cost, technological, and logistical impacts of all alternatives is part of the practicability equation. Second, the Applicant's site has a "c" (conservation) overlay, rather than a "p" (protection) overlay. The "c" overlay is not a no-build zone. Rather, as BDS Staff testified, it anticipates that development is possible. This overlay's purpose is to achieve a balance by allowing "environmentally sensitive urban development" while conserving "important resources and functional values" in areas where they can be protected. (PCC 33.430.017)

The BDS Decision at pages 3-5 and 9-10 identifies five alternatives to the Applicant's preferred development alternative and explains why each of the five is impracticable and/or will have a greater impact on environmental resources and values than the Applicant's proposal. Using the labels in the BDS Decision as a shorthand, these alternatives are: #1 Two separate driveways; #2 Culvert Crossing; #3 Bridge Crossing; #4 Bottomless Culvert; #5 Retaining Walls; and #6 Preferred Alternative. The Preferred Alternative includes a small home on each lot, a shared driveway built over a partially buried culvert, removal of nuisance vegetation and some trees, and replanting the site with replacement trees and native vegetation.

The Applicant and BDS addressed each of these alternatives and considered their greater or lesser impact on vegetation, trees, habitat, soil erosion, and water quality. In many cases, construction of Alternatives #1 - #5 would require encroaching into PBOT-owned right-of-way, or more significant excavation and concrete pouring that would have a greater negative effect on bank stability and result in more potential erosion than the Applicant's proposal. One alternative failed to meet City staff's recommendations for an open-bottom, natural-bed structure to preserve aquatic habitat. BDS staff noted that the Applicant modified its proposal to address some neighbor concerns by moving the proposed houses closer to the common boundary line between the lots. This enables the Applicant to preserve a group of seven trees on the western lot and a significant sized tree on the eastern lot, and reduce the culvert length. The Applicant also states that it will help "provide a wider buffer between the proposed disturbance area and the Loll Wildwood Natural Area and the mature 27-inch Douglas fir located in the northeast corner of the site." (Exhibit A-13)

In their written and oral testimony, the Appellant and neighbors suggested additional alternatives and faulted the Applicant and BDS for failing to consider them. These additional alternatives are: #7 Sell the site to the City for inclusion in the Loll Wildwood Natural Area; #8 Build only one house close to SW Buddington; #9 Build only one house in the NE corner with a bridge or culvert across the drainage channel; #10 Build two houses with a bridge instead of

a culvert close to SW Buddington; and #11 Build two houses with a bridge instead of a culvert and move them closer together on the site.

During the open record period, the Applicant submitted a response that examined each of these alternatives and explained why they are inconsistent with the code language and fail to satisfy the approval criteria. (Exhibit H-19). He asserts that Alternatives #7 - #9 are not practicable because they are inconsistent with his project purpose, which is to build one home on each lot as the code permits. I agree. He also argues that Alternatives #10 and #11, both of which call for building a bridge across the channel, are essentially the same as Alternative #3 and were rejected by BDS. As BDS and the Applicant's Alternatives Analysis explained, these alternatives would require building or placing bridge abutments on potentially unstable bank material and would leave the sanitary sewer pipe under the bridge more exposed and vulnerable to damage. A bridge would also require PBOT review and permitting and there is no certainty it could be approved. With respect to Alternative #11, the Applicant and BDS also noted that the Applicant modified his original proposal to move the homes on each lot closer together, which will allow additional trees to be preserved and reduce the temporary disturbance area.

The Appellant and neighbors made clear their understandable concern about the prospect of new construction on what has been a vacant site for many years. Their concerns focused on the loss of vegetation, the potential for increased erosion and loss of water quality, potential effects on Arnold Creek, and potential harm to birds and other wildlife. While many asserted Alternatives #7 - #11 would limit these potential negative impacts on resource functions and values, their description of the potential environmental harms and benefits was very general at best and, in the case of Alternatives #7 - #9, the options they listed are not practicable. I find the Applicant's and BDS's analysis of Alternatives #1 - #11 more persuasive and compelling than that of the Appellant and opponents because it applies the evidence to the code criteria in a way that gives meaning to the words used there. Accordingly, I agree with the BDS Decision and conclude the Applicant has satisfied the environmental review criteria stated in PCC 33.430.250A.1.a., A.3.c and E.2.

3. Slopes and Culvert

Concerns about the stability of the driveway slopes over the culvert were addressed in the BDS Decision and were raised again in oral and written testimony submitted to the Hearings Officer. The Applicant proposes to partially bury (countersink) the culvert in the drainageway and build a driveway over it with slopes of 1:1. These slopes will be built with a soil reinforced fill to replace what BDS characterizes as the unstable fill and construction debris that currently exists. The Applicant describes this design as follows:

"The driveway embankment slope will incorporate a geogrid reinforced soil slope whose final design will be overseen by the projects geotechnical engineer. This engineered slope provides two environmental benefits.

Firstly, it enables the construction of a steeper slope which in turn reduces the overall footprint of the driveway embankment and culvert length. Secondly, the geogrids will help stabilize the fill slope and allow for the creation of "baskets" that enable the placement of planting soil along the face of the embankment. These "baskets" allow for the stable placement of planting soil that can be utilized for the establishment of vegetation along this slope instead of riprap. Additional erosion control measures can be added as deemed necessary as part of the final engineered design of this fill embankment." (Exhibit A-13)

In support of this approach, the Applicant submitted a Geotechnical Report (Exhibit A-4), Stormwater Report (Exhibit A-5), Channel Encroachment Report (Exhibit A-6), Construction Management Site Plan (Exhibit C.5), Mitigation Site Plan (Exhibit C.6), and Planting Plan (Exhibit C. 7) to demonstrate this design will be stable, minimize erosion, replace and enhance vegetation, and preserve water quality. BES reviewed this proposal and concluded it satisfied all stormwater management and other BES requirements, and would not negatively affect aquatic habitat in the channel. (Exhibit E.1)

The Appellant and neighbors argue the proposed 1:1 slopes will not be stable and should be reduced to less steep 3:1 slopes. The Appellant's expert, Mr. Gorman, asserted that while engineered 1:1 slopes are acceptable in a built environment, 3:1 slopes are more typical and better for establishing vegetation in a "c" zone like the Applicant's site. He acknowledged that installing a 3:1 slope would increase the wetland impacts and trigger DSL and Army Corps of Engineers permitting requirements. Another neighbor asserted a 1:1 slope will be at a high risk of erosion from winter storms because it will take several growing seasons for vegetation to become established on these slopes. As a result, he concluded the proposed slope is likely to fail.

BDS and the Applicant's engineer state that as designed, the 1:1 slopes enable the culvert to be shorter, reduce the depth and width of any necessary excavation, and can be stabilized with the basket design to allow new vegetation to grow. The Applicant's geotechnical engineer also responded to the opponents' arguments, stating that the geotechnical report's recommendations are followed the slopes should be stable. He noted that "slopes of up to 1H:1V constructed of rock fill are usually stable and steeper slopes can be achieved with geotextile or wire-reinforced fill. So the driveway as proposed is consistent with the geotechnical report." (Exhibit A-13; A-12) In his rebuttal, the Applicant pointed out that the relevant federal agencies (Army Corps of Engineers and National Oceanic and Atmospheric Administration) reviewed the proposed design and concluded it is consistent with the applicable design criteria and construction practices that might affect water quality and habitat. (Exhibit H-19).

After considering and weighing the evidence in the record, I agree with BDS that the Applicant has submitted credible and substantial evidence to demonstrate the proposed

driveway and culvert slope construction can occur and be maintained in a way to minimize erosion, vegetation loss, bank instability, and other detrimental impacts. The BDS Decision states that "[e]xposed cut and fill areas will be stabilized [during construction] using temporary seeding and mulching or other appropriate measures" and "[s]lopes receiving temporary or permanent seeding will have the surface roughened to improve seed bedding and reduce run-off velocities." It includes conditions of approval that require the Applicant to maintain all new required plantings for at least two years, which will help foster slope stability. Before obtaining permits, the Applicant will have to satisfy the City's reviewers that the detailed construction plans are consistent with the geotechnical report and the City's geotechnical requirements.

For these reasons, I accept and incorporate the BDS report's findings at pages 3-14 as supplemented here and agree the Applicant's proposal satisfies the approval criteria in PCC 33.430.250.A.1, A.3, and E.1 - 5.

4. Impact on Animal and Wildlife Habitat

Opponents raised concerns that removing trees and vegetation from this long-vacant site to accommodate the proposed new development will destroy native vegetation that provides habitat for many species of birds (owls, woodpeckers, thrushes, flickers, raptors, and songbirds), animals (rabbits, squirrels, skunks, opossums, raccoons, and deer), and salamanders. (Quinn, Mansfield, Guthrie) Several neighbors testified about observing the presence of various birds and mammals over the years, and about their efforts to provide habitat-friendly plantings on their properties. They acknowledged that much of the site is covered with blackberries, but asserted there is native vegetation growing beneath the blackberries. Additionally, they testified that there are also significant sized trees on the site, including one to be removed that is home to a sapsucker nest.

As the BDS Decision states at page 3, the habitat and resource types the SHRPP identifies for Resource Site #121 are generally present on the Applicant's site. These include wildlife habitat and fisheries as well as forest. The oversized, countersunk, arch pipe culvert the Applicant proposes to place in the drainage area underneath the driveway will, in BDS's view, provide better ecological benefits than other alternatives proposed because it will provide a more natural channel habitat and minimize the impacts to aquatic habitat. BES agreed. (Exhibit E-1; Kohlsmith testimony) BDS also notes that Oswego Creek supports cutthroat trout, although but this site is sufficiently high in the watershed that their presence is unlikely. (Exhibit H-2, pages 11-12)

While development will necessarily change the current vacant, vegetated nature of the site, the Applicant argues his proposal will substantially mitigate for the unavoidable impacts of development. The homes proposed are small and the total lot coverage is well below the maximum the code permits on this site. The Applicant also revised the development proposal

during the review process to preserve seven alders in the northwest portion of the site, reduce the amount of disturbance areas on the site, create better buffers between the Loll Wildwood Natural Area, and preserve a large Douglas fir in the northeastern corner of the site. (Exhibits A.3, A.13) In the Applicant's and BDS's view, these steps allow more of the site to remain vegetated than it would be under other development alternatives.

Currently, approximately 85% of the vegetation onsite consists of invasive and nuisance plants. (Exhibit A-13) These will be removed and disturbed areas will be replanted with native trees and shrubs. The Applicant explains that the planting plan "has been developed to support the wildlife habitat*** of a *conifer topping forest hardwood* forest described in the Southwest Hills Resource Protection Plan." (Exhibit A-13) In fact, the Applicant notes, he will plant more trees and shrubs than the code requires, which will ultimately improve the overall habitat conditions on the site. The site will be managed for nuisance plants and, consistent with the conditions of approval in the BDS Decision, the Applicant will be required to monitor the new plantings for at least two years and replace any that fail. (Exhibit A.1) In the Applicant's and BDS's view, all of these mitigation measures will help ensure the disturbance to habitat and wildlife is compensated for, as the environmental review approval criteria require.

I understand that the Applicant's proposed development will change the nature of this long-time vegetated site and, in the view of some neighbors who testified, this change is significant and unwelcome. Many neighbors expressed a deep appreciation for and investment in the natural resources in this area, which have become more fragmented over time as development has occurred. However, the environmental review approval criteria do not require that proposed development must have no detrimental impact on identified resources functions and values. Rather, the criteria require the Applicant to show the development's significant detrimental impacts on these resources, if any, are less detrimental than other considered alternatives and can be minimized and compensated for. Based on the evidence in the record, I find the Applicant has presented credible and substantial evidence to show that the resource impacts of developing this site as proposed have been minimized, are less detrimental than other development alternatives considered, and will be adequately compensated for and addressed by the proposal as required by PCC 33.430.250.A.1, A.3, and E.

III. CONCLUSIONS

Based on the affirmative findings and conditions of approval at pages 3 - 14 of the BDS Decision, I conclude the Applicant's application for environmental review satisfies the environmental review approval criteria in PCC 33.430.250.A.1, A.3, and E. I adopt and incorporate as my own these affirmative findings in the BDS Decision, dated March 25, 2020, and attached to this decision, as supplemented with the findings above.

IV. DECISION

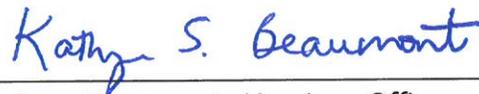
Denial the appeal of Dennis Quinn from the BDS Decision dated March 25, 2020; and

Approval of an Environmental Review for:

- 4,047 square feet of permanent disturbance and 912 square feet of temporary disturbance on the east Lot;
- 4,017 square feet of permanent disturbance and 531 square feet of temporary disturbance on the west Lot;
- Removal of 9 trees on the east lot and 9 trees on the west lot;
- Installation of one 41-foot long, 117" x 79" arch culvert;
- Installation of a 15-foot wide driveway for access to both the east and west Lots;
- 54-foot setback for east lot and 65-foot setback for west lot; and
- Disturbance within 30 feet of waterbody on both east and west lots

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 **March 18, 2020**.

Approval is subject to Conditions of Approval A through E stated on pages 13-14 of the BDS Decision.



Kathryn Beaumont, Hearings Officer
July 17, 2020

Application Determined Complete:	October 21, 2019
Staff Decision to Hearings Officer:	May 29, 2020
Decision Mailed:	July 17, 2020
Last Date to Appeal:	August 7, 2020

Conditions of Approval. 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. The Hearings Officer's decision is final and takes effect on the day the notice of decision is mailed. The decision may not be appealed to City Council, but may be appealed to the Oregon Land Use Board of Appeals (LUBA), as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that:

- an appellant before LUBA must have presented testimony (orally or in writing) as part of the local hearing before the Hearing's Officer; and
- a notice of intent to appeal be filed with LUBA within 21 days after the Hearings Officer's decision becomes final.

Please contact LUBA at 1-503-373-1265 for further information on filing an appeal.

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 the last day to appeal 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. If approved, this 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 3 years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

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

Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- All conditions imposed here.

- All applicable development standards, unless specifically exempted as part of this land use review.
- All requirements of the building code.
- 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 Narrative & Site Plans, June 2019
 - 2. Revised Narrative & Site Plans, October 2019
 - 3. Final Narrative & Alternatives Analysis Memo, January 2020 & March 2020
 - 4. Arborist Report, August 2019
 - 5. Stormwater Report, June 2019 & December 2019
 - 6. Channel Encroachment Submittal, October 2019
 - 7. Plumbing Code Appeal Approval
 - 8. Geotechnical Report, August 2018
 - 9. ODSL Wetland Determination Report, 2019
 - 10. Corrugated Metal Pipe Design Guide
 - 11. Response to Site Development Review Comments, December 2019
 - 12. Applicant's Response to Incomplete Items, October 2019
 - 13. Applicant's Response to Notice Comments, January 2020
 - 14. Extension to the 120-Day Review Period
- B. Zoning Map
- C. Plans/Drawings
 - 1. Existing Conditions Site Plan
 - 2. Proposed Development Site Plan
 - 3. Tree Removal & Preservation Site Plan
 - 4. Culvert Section & Profile
 - 5. Construction Management Site Plan
 - 6. Mitigation Site Plan
 - 7. Planting Details
- D. Notification information
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation
 - 3. Life Safety
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Bureau of Parks, Forestry Division
 - 7. Oregon Department of State Lands
- F. Correspondence
 - 1. Debbie Guthrie, Neighbor, November 4, 2019
 - 2. Stephanie & David Brown, Neighbor, November 12, 2019
 - 3. Carol Bishop, Neighbor, November 12, 2019
 - 4. Dennis & Irene Quinn, Neighbor, November 13, 2019

5. William Mansfield & Melissa Sheppard, Neighbor, November 13, 2019
 6. Robert & Denise Chiavarini, November 14, 2019
 7. Paul Kisling, Neighbor, November 14, 2019
- G. Other
1. Original LU Application
 2. Incomplete Letter
 3. ODSL Wetland Land Use Notification
- H. Received in the Hearings Office
1. Notice of Appeal Hearing Steele, Morgan
 2. Appeal Submittal Steele, Morgan
 3. Administrative Decision (**attached**) Steele, Morgan
 4. Planner PowerPoint Steele, Morgan
 5. Letter - Kleinman, Jeffrey L.
 6. Memo from Ecological Engineering, LLC Kleinman, Jeffrey L.
 7. Quinn's hearings comments Quinn, Dennis
 8. Kisling earlier comments sent previously as an F exhibit Kisling, Paul
 9. NOAA Fisheries Approval Hunger, Jarek
 10. Memo from planner Steele, Morgan
 11. Response Comments Stevenson, Chris
 12. Response comments Kisling, Paul
 13. New evidence from Jarek Hunger Hunger, Jarek
 14. Letter from Dennis Quinn Kleinman, Jeffrey L.
 15. Comments from Irene Quinn Quinn, Dennis
 16. Response to Comments from Debbie Guthrie
 17. Response to New Evidence Kisling, Paul
 18. Response to New evidence Gorman, David
 19. Applicant Rebuttal Hunger, Jarek
 20. Dennis Quinn Comments Kleinman, Jeffrey L.
 21. Applicant final rebuttal Hunger, Jarek



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

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

Date: March 25, 2020
To: Interested Person
From: Morgan Steele, Land Use Services
 503-823-7731 / Morgan.Steele@portlandoregon.gov

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

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

CASE FILE NUMBER: LU 19-184214 EN

GENERAL INFORMATION

Applicant: Jarek Hunger
 225 NE Hyde Circle | Hillsboro, OR 97124
 503.709.0434 | jrhunger@gmail.com

Owners: Jarek Hunger & Laurence Oliver
 225 NE Hyde Circle | Hillsboro, OR 97124

Representative: Adam Zucker | Zucker Engineering & Design
 4014 SE Ankeny Street | Portland, OR 97214

Site Address: No Situs: Vacant lots north of 4406 SW Buddington Street

Legal Description: BLOCK 55 LOT 29-31, WEST PORTLAND PK; BLOCK 55 LOT 32-34, WEST PORTLAND PK

Tax Account No.: R894610890, R894610900

State ID No.: 1S1E32BC 07700, 1S1E32BC 07701

Quarter Section: 4125

Neighborhood: West Portland Park, contact at contact-wpp@swni.org.

Business District: None

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

Plan District: None

Other Designations: *Southwest Hills Resource Protection Plan* – Resource Site #121; Landslide Hazard Area; Wildfire Hazard Area

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

Case Type: EN – Environmental Review

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

Proposal:

The applicant proposes to construct two new single-dwelling residences on two separate vacant lots (east lot and west lot) in SW Portland east of the intersection of SW Buddington Street and SW 45th Avenue. The site is currently heavily vegetated with a 15-foot deep drainageway that originates immediately west of the site, continues east, and bisects the front of the properties before continuing off-site to the east. The lots front SW Buddington Street, a partially improved dead-end local service street that terminates at the western portion of the Loll Wildwood Area.

To obtain access to the site, the applicant is proposing to install a 41-foot long, 117" x 79" arch culvert within the drainageway. The bottom of the culvert will be buried approximately five feet deep and streambed materials placed as substrate. The culvert will allow for driveway access into the site for both residences in addition to providing an area for utilities to cross the drainageway allowing necessary services (water, sewer, gas, etc.) to reach the residences. The slopes of the driveway, over the culvert, will be constructed at a 1:1 slope utilizing a soil reinforced fill to allow for revegetation of the slopes upon project completion.

The proposed dwelling units and associated development will require approximately 4,047 square feet of permanent disturbance on the east lot and 4,017 square feet of permanent disturbance on the west lot within the resource area of the Environmental Conservation overlay zone. In addition, the applicant proposes to remove 18 native trees (9 from west lot and 9 from east lot), from the resource area of the Environmental Conservation overlay zone. To mitigate for the removal of trees and permanent impacts to the resource area as well as restoring temporary disturbance areas, the applicant proposes to plant 27 trees, 1,526 shrubs, and 4,223 groundcovers throughout the entirety of the site. Additionally, invasive species will be removed from all planting areas.

The entirety of both lots are located within the resource area of 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), disturbance within 30 feet of a waterbody (33.430.140.C), and setbacks that exceed the maximum allowed (33.430.140.0), on both lots. 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.A – Driveways**
- ❖ **Section 33.430.250.E – Other development in the Environmental Conservation zone or within the Transition Area only**

ANALYSIS

Site and Vicinity: The subject sites are in SW Portland east of the intersection of SW Buddington Street and SW 45th Avenue. The lots front SW Buddington Street, a partially improved dead-end local service street that terminates at the western portion of the Loll Wildwood Area. The site is heavily vegetated with a mostly native overstory and a heavily invasive understory. A 15-foot deep drainageway originates immediately west of the site, continues east, and bisects the front of the properties before continuing off-site to the east. Surrounding development includes Loll Wildwood Natural Area to the east and single-family residential to the north, south, and west.

Zoning: The zoning designation on the site includes Residential 7,000 (R7) base zone with Environmental Conservation (c) overlay zone.

The Residential 7,000 base zone is intended to foster the development of single-dwelling residences on lots having a minimum area of 4,200 square feet. Newly created lots must have a maximum density of 1 lot per 7,000 square feet of site area. The R7 development standards are generally met by this proposal or will be addressed at the time of permit review and are not specifically addressed through this Environmental Review.

Environmental overlay zones protect environmental resources and functional values that have been identified by the City as providing benefits to the public. The environmental regulations encourage flexibility and innovation in site planning and provide for development that is carefully designed to preserve the site's protected resources. They protect the most important environmental features and resources while allowing environmentally sensitive urban development where resources are less significant. The purpose of this 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 Resource Site #121 – Arnold Creek Headwaters in the *Southwest Hills Resource Protection Plan* (1991).

Natural resources typically observed within the project vicinity as detailed in the *Southwest Hills Resource Protection Plan*, Resource Site 121 – Arnold Creek Headwaters, include the following:

Habitat Classification: Upland coniferous/broadleaf deciduous forest/ riverine, upper perennial.

Resource Types: Groundwater recharge, perennial creek, open space, forest, wildlife habitat, fisheries, recreation, and scenic resources.

Habitat Rating: 65 (the habitat rating range for all sites is 50 to 86).

Generally, the habitat classifications and resources called out above are reflected on the subject sites.

Planner Note: This Environmental Review is for the development of two separate vacant lots. Therefore, each lot is reviewed on its own against the standards. The information provided herein, concerning the proposal, has been combined where appropriate (e.g. Construction Management) and has been separated when necessary (e.g. Impact Evaluation). Ultimately, any standard not met for each individual lot will be reviewed against the applicable approval criteria below.

Impact Analysis and Mitigation Plan: A full description of the proposal was provided on page 2 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 – Two Separate Driveways

Alternative 1 considered developing each of two 7,500 square foot lots with separate driveway accesses. The Preferred Alternative currently has a single 15-foot wide shared driveway approach that is centered on the common lot line. Alternative 1 considered two 12-foot wide driveways. The applicant estimated that this approach could have slightly reduced the total disturbance area from 10,089 square feet (5,322 east lot and 4,767 west lot, for the original “preferred alternative”) to an estimated disturbance area of 9,500 square feet (4,595 east lot and 4,548 west lot) but would almost double the total length of the culverted drainageway from 41 feet to 75 feet. This alternative may have been able to preserve Trees 18, 22, 23, and 29 (47 inches total DBH) but would have caused the removal of Trees 10, 11, 12, 16, and 17 (75 inches total DBH) and would have a significant impact to the root protection zone (RPZ) of Tree 15 (47-inch Douglas Fir), one of the most significant trees on the site.

Based on impacts to resources, Alternative 1 was not chosen, and the applicant decided to leverage the position of owning both lots to create a single shared driveway.

Alternative #2 – Culvert Crossing

The original design approach submitted for the Early Assistance meeting included a 24-inch diameter culvert. While this pipe would have the capacity to address the current drainageway hydrology (See Exhibit A.6, Channel Encroachment Submittal), this structure did not address City of Portland staff recommendations for use of an open bottom/natural-bed structure to minimize impacts to the aquatic habitat. Thus, Alternative 2 was rejected.

Alternative #3 – Bridge Crossing

Alternative 3 explored the feasibility of constructing a prefabricated bridge to span the drainageway. Several complications were identified with this design approach including:

- ❖ The existing bank material is comprised of unknown fill and construction debris which poses challenges to the abutment design and poses the risk of unseen impacts during construction.
- ❖ Due to the location and width of the drainageway, the location of the southern abutment would be located within the Portland Bureau of Transportation (PBOT) right-of-way and would need to be coordinated with and permitted through PBOT, if allowed. Additionally, location of the proposed abutment may need to be a designed to meet future roadway needs.
- ❖ The driveway crossing for this site also serves as the utility service corridor for the two lots. The slope of the proposed driveway access is lower on the northern side of the bridge which would require the sanitary sewer pipe to hang further below the bridge as it drains towards the sewer main in the roadway, leaving the pipe more exposed to potential harm.

Ultimately, Alternative 3 was not selected because of the uncertainty of being able to permit the bridge abutment within the right-of-way and because the exposed sewer utilities underneath the bridge structure were deemed to be vulnerable to damage, potentially contaminating the drainage below.

Alternative #4 – Bottomless Culvert

Alternative 4 explored using a bottomless, 3-sided culvert. A bottomless culvert requires footings similar to the bridge design. This alternative was not selected because of challenges and uncertainty associated with excavating and pouring a concrete footing as described in Alternative 3. While a bottomless structure, *may* disturb less of the existing channel than a countersunk culvert, the footings for a bottomless structure would require a deeper and wider excavation than a countersunk culvert with a similar width. On this site, a deeper and wider excavation may pose a greater impact to the existing trees being preserved on the site. Functionally, the preferred alternative design that consists of an oversized, embedded pipe arch with a natural-bed stream crossing provides a comparable channel habitat as a bottomless structure.

Alternative #5 – Retaining Walls

Several public comments suggested the need for retaining wall structures along the driveway fill embankment and in the vicinity of the stormwater facilities. Revisions to the preferred alternative design discussed below consolidates the number of and provides a better location for the stormwater facilities; locating them further away from the top of the existing bank, reducing the concern for a retaining wall.

The applicant explored the use of retaining walls and determined that it was not feasible to incorporate retaining walls into proposed driveway embankment nor would they necessarily result in a lesser overall impact to site for the following reasons:

- ❖ The uncertainty associated with the suitability of the underlying soil material that would be supporting the wall footings. This uncertainty could lead to larger than anticipated earthwork impacts encountered during construction.
- ❖ A portion of the retaining wall may need to be permitted and constructed within PBOT's right-of-way, if even allowed.
- ❖ Deeper and wider excavations than the preferred alternative would be necessary for the wall footing construction. These larger excavations may pose a greater impact to the roots

of existing trees being preserved on this site, particularly the large fir and alder trees located in the southwest quadrant of the roadway crossing.

For these reasons, Alternative 5 was rejected.

Alternative #6 – Preferred Alternative:

The Preferred Alternative includes a custom designed, two-story home with a footprint of 1,020 square feet on the eastern lot and one-story modular home with a footprint of 1,260 square feet on the western lot. Both lots will share a common 15-foot wide driveway on top of a 41-foot long 117-inch by 79-inch arch pipe culvert crossing. The proposed culvert will be countersunk to mimic a natural channel bottom and wide enough to span the active channel width of eight to nine feet to provide better ecological benefits. The length of this culvert crossing was reduced by six feet previous submittal by adding a curb for safety and steeping the fill slopes to 1:1 by incorporating a soil reinforced fill section. This fill section will also allow the slope to be vegetated with herbaceous plant material, providing. Furthermore, the proposed revegetation plan (Exhibit C.6) has been developed to address previous impacts to the site and proposes a comprehensive plan to remove invasive material and replant the entire site with native vegetation.

The applicant further refined the preferred design alternative based on initial feedback and comments received from the City staff as well as public comments from neighbors. This feedback helped prioritize competing impacts to the resources and address design adjustments that were identified in these comments.

Refinements to the Preferred Alternative, include shifting the development of both lots towards the common, center lot line. While this approach requires the removal of the mature 18-inch cottonwood tree (tree 28) located in the center of the project site and the nearby 8-inch cascara (tree 26) in the eastern lot, this alternative is able to protect the row of seven alder trees along the north western property line as well as provide a wider buffer between the proposed disturbance area and the Loll Wildwood Natural Area and the mature 27-inch Douglas fir (tree 20) located in the northeast corner of the site.

This refinement to the Preferred Alternative also allows for the consolidation of stormwater facilities (three instead of four facilities) and reduces the amount of fill and excavation within proximity of the existing top of bank. It also has a similar permanent disturbance area to the initial Preferred Alternative (8,064 square feet compared to 8,072 square feet) and a little more than 500 square feet less of temporary disturbance area (1,425 square feet compared to 2,017 square feet). The total number trees requiring removal is also reduced from 23 to 18.

Construction Management Plan: The adjacent roadway is separated from developable portions of the site by the 15-foot deep drainageway, and requires a culvert crossing before equipment access and additional site development can occur. During the culvert construction, stream diversion/isolation measures will be incorporated, as necessary. These measures will include an upstream diversion dam comprised of plastic and sandbags, downstream sediment fence and sandbags, a bypass pump and/or sump pump, and dewatering bag for sediment control.

Erosion and sediment control measures will be installed prior to any ground disturbing activities at the site, to control erosion and minimize sediment entry into existing drainage feature. The proposed erosion and sediment control measures include the use of straw wattles combined with sediment fence downslope of ground disturbing activities. Construction entrances (ingress/egress) will be installed prior to construction and maintained for the duration of the project. Exposed cut and fill areas will be stabilized using temporary seeding and mulching or other appropriate measures. Slopes receiving temporary or permanent seeding will have the surface roughened to improve seed bedding and reduce run-off velocities.

Based on the recommendations of the Arborist Report, orange construction fencing combined with silt fence will be installed around the trees not being removed on this site. These trees will be demarcated in the field with flagging indicating that the trees will not be cut. Limbing prior to

construction and any root cutting (over 2 inches in diameter) will be performed/overseen by an ISA Certified Arborist.

Utility trenching for both the eastern and western lots will be constructed simultaneously during the construction of the culvert/driveway access, but the applicant intends to phase the build out of the structures beginning with the western lot. During the construction of the western lot, some equipment and materials will be stored within the building footprint of the eastern lot as shown in Exhibit C.3. Tree protection and erosion and control measures will be installed to protect construction impacts to areas to be left undisturbed.

Unavoidable Impacts:

East Lot: The applicant is proposing to disturb a total of 4,959 square feet of the Environmental Zone for the construction of all elements of the proposal. Of these 4,959 square feet, 4,047 square feet will be permanently disturbed, while the remaining 912 square feet will be temporarily disturbed. In conjunction with the proposed disturbance, the applicant also proposes to remove nine trees (119 inches DBH) from within the Environmental Conservation overlay zone that will be replaced as shown on the Mitigation Plan (Exhibit C.6) and 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.

West Lot: The applicant is proposing to disturb a total of 4,548 square feet of the Environmental Zone for the construction of all elements of the proposal. Of these 4,548 square feet, 4,017 square feet will be permanently disturbed, while the remaining 513 square feet will be temporarily disturbed. In conjunction with the proposed disturbance, the applicant also proposes to remove nine trees (123 inches DBH) from within the Environmental Conservation overlay zone that will be replaced as shown on the Mitigation Plan (Exhibit C.6) and 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 described in the applicant's narrative (Exhibit A.3) and as shown on Exhibit C.6, Mitigation Site Plan, the applicant proposes to provide replacement for tree removal, removal of invasive species, replanting of temporary disturbance areas, and mitigation for both permanent and temporary impacts to resources by planting 27 trees, 1,526 shrubs and 4,223 groundcovers throughout the entirety of the site. The applicant's mitigation plan proposes to replant all temporary disturbance areas within the resource area with a diverse selection of native shrubs in addition to removing nuisance plants throughout the entirety of the subject site. The proposed plantings consist of native species found on the *Portland Plant List*.

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

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **October 25, 2019**. The following Bureaus have responded with no issues or concerns:

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

Life Safety responded with the following comment. Please see Exhibit E.3 for additional details.

A separate Building Permit is required for the work proposed and the proposal must be designed to meet all applicable building codes and ordinances. An easement may be required for the shared driveway and may be approved by the Administrative Building Code Appeal Board.

The Site Development Review Section of BDS responded with the following comment. Please see Exhibit E.5 for additional details.

Site Development does not object to the proposed residential development of two adjoining lots with a shared driveway and utility services. Conditions of Approval:

- 1. An application for a Site Development permit must be submitted for construction of the shared driveway and associated utility/drainage improvements.*
- 2. Recorded easements, including maintenance and operations agreements, for the shared driveway and driveway culvert will be required prior to final inspection approval of the Site Development permit.*
- 3. The shared driveway must be substantially complete and suitable for construction access prior to issuance of permits for residential construction.*

Planner Note: Site Development Conditions of Approval have been incorporated into the Conditions of Approval for this land use decision.

Oregon Department of State Lands responded with the following comment. Please see Exhibit E.7 for additional details.

No wetlands were found onsite. The waterway is intermittent and subject to DSL jurisdiction. A permit will be required for removal or fill impacts that are 50 cubic yards or greater. Based on the submitted plans for the driveway, the volume of fill below Ordinary High Water appears to be under the 50 cubic yard threshold. The applicant should ensure that the proposed culvert and associated fill does not raise the height of water within the ditch above the current level.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on October 25, 2019. Seven written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal. Since multiple responses were received that concerned similar issues, and for the sake of brevity, those issues have been abridged and batched as laid out below. Neighborhood comments can be found in their entirety in Exhibits F.1 through F.7. Similarly, the applicant has provided responses to neighborhood comments which can be found in their entirety in Exhibit A.13.

1. Exceedance of the disturbance area limits.

Applicant Response: The sizes being proposed for the two houses are similar or smaller than most in the neighborhood. The need for a culvert/driveway is what is driving the increased disturbance area. This is the least disturbance option available which still allows for the construction of a house. The construction of a shared driveway significantly reduces disturbance compared to the alternative of developing only one lot a time which would ultimately require two culvert crossings.

2. Tree Removal.

Applicant Response: All trees (dead and alive) removed from the site will be mitigated with the required number and size of trees and shrubs. No fir trees are being proposed for removal. The revised Preferred Alternative will increase the distance between the “temporary disturbance area” and the 27-inch DBH Douglas fir tree located in the northeast corner of the site and reduce impacts to its root protection zone (RPZ).

Further, after working the idea through with a concerned neighbor, the applicant revised the site layout for the Preferred Alternative, which includes preserving the seven Alder trees located along the north western corner of the lot.

3. A slope ratio of 1:3 should be used, not 1:1.

Applicant Response: The driveway embankment slope will incorporate a geogrid reinforced soil slope. This engineered slope provides two environmental benefits. Firstly, it enables the construction of a steeper fill slope which in turn reduces the overall footprint of the driveway embankment and culvert length. Secondly, the geogrid will create “baskets” that enable the placement of planting soil along the face of the embankment that allows for the establishment of vegetation along this slope instead of riprap.

4. Driveways, parking, and construction activities will cause polluting runoff. Additional runoff from development will have negative downstream effects on erosion.

Applicant Response: Runoff from the driveway and parking areas will be routed into a rain garden located on the eastern lot. This rain garden has been sized in accordance with the City's current Stormwater Management Manual to treat the runoff from all the impervious area from the driveway, parking areas, and proposed residential structure (eastern lot only). Further, construction activities include an erosion and sediment control plan per the requirements of the City.

Stormwater runoff from the impervious elements of the site will be routed into rain gardens designed to the City's standards. Overflow from the rain gardens will enter Oswego Creek through bio engineered outfalls that reduce flow velocities and potential erosion (see detail on Exhibit C.2). Stormwater rain gardens help to reduce the peak runoff rate by detaining runoff and providing the opportunity for evapotranspiration.

5. Disturbance area may be greater than what is shown.

Applicant Response: We believe that the temporary disturbances areas indicated on the plans are adequate to address the proposed crossing. The revised Preferred Alternative minimizes earthwork associated with construction of the proposed rain gardens.

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 Section 33.430.250.A and 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. The criteria and findings for Subsections A and E are combined where they are similar.

33.430.250 A. Public safety facilities, rights-of-way, driveways, walkways, outfalls, utilities, land divisions, Property Line Adjustments, Planned Developments, and Planned Unit Developments. Within the resource areas of environmental zones, the applicant's impact evaluation must demonstrate that all of the general criteria in Paragraph A.1 and the applicable specific criteria of Paragraphs A.2, 3, or 4, below, have been met: Note that since this activity is not a Public Safety Facility, Land Division, Planned Development, or Planned Unit Development and does not require a Property Line Adjustment, the criteria in Sections 33.430.250.A.2 and A.4 do not apply and are not included.

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 Residential 7,000 base zone would allow 2,625 square feet of the project site to be

covered by buildings for both the east and west lot, according to Table 110-4 of the Zoning Code. It should also be noted that both lots are zoned Residential 7,000 (R7). The R7 base zone is a single-dwelling zone and household living a use allowed by right.

The building footprint of the proposed dwelling units will result in 1,260 square feet of building coverage for the west lot and 1,020 square feet of building coverage for the east lot, which is well below what would be allowed without the Environmental Conservation overlay zoning. However, due to the large drainageway located between the right-of-way and the developable portions of the lots, the dwelling units are proposed to be placed 65 feet (west lot) and 54 feet (east lot) from the front lot line, contributing to an exceedance of the maximum allowable setback and disturbance standards (33.430.140.A and .O) for both lots.

However, the applicant has proposed a shared access for both lots that reduces the overall impact to native trees. The proposal also locates the dwelling-units as close to the center lot line as practical while still maintaining a safe turnaround for vehicles, not only to reduce impacts to trees, but to also lessen the total amount of permanent disturbance area. This in concert with the proposed mitigation plantings is expected to minimize impacts to identified resources and functional values.

Although the proposed development on the east and west lots will result in the loss of 4,047 square feet and 4,017 square feet of Environmental Zone, respectively, and other unavoidable impacts described above (page 6), 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.

A.1. General criteria for public safety facilities, rights-of-way, driveways, walkways, outfalls, utilities, land divisions, Property Line Adjustments, Planned Developments, and Planned Unit Developments;

A.1.a. Proposed development locations, designs, and construction methods have the least significant detrimental impact to identified resources and functional values of other practicable and significantly different alternatives including alternatives outside the resource area of the environmental zone;

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 *Southwest Hills Resource Protection Plan* this site is mapped as Inventory Site 121, Arnold Creek Headwaters; identified resources on the project site are groundwater recharge, perennial creek, open space, forest, wildlife habitat, fisheries, recreation, and scenic resources.

The applicant provided an alternatives analysis (Exhibit A.3) that is summarized in this report on pages 3 to 5. The applicant explored five alternatives other than the Preferred Alternative. Alternatives 1, 2, and 4 were determined to be too impactful to resources, specifically trees and the drainageway, and thus were rejected. Alternative 3 was deemed impracticable due to placement of a bridge abutment within public right-of-way and potentially impactful due to the exposed sewer line over the drainageway and therefore was also rejected. Alternative 5 was rejected based on impacts to trees and the uncertainty of the existing unconsolidated soils, potentially requiring larger than anticipated earthwork. For the preferred alternative (Alternative 6), the applicant altered the location of the dwelling-units and minimized the size of the driveway and culvert, decreasing impacts to the Environmental Zone while still accomplishing the project purpose of single-family household living for both lots.

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.6 and noted in the applicant's narrative (Exhibit A.3), 9,159 square feet of site area will be restored by planting native vegetation and removing invasive species throughout the entirety of the site. 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, *these criteria are met.*

A.1.b. There will be no significant detrimental impact on resources and functional values in areas designated to be left undisturbed;

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 5 and 6 of this report and shown on Exhibit C.5. The Construction Management Plan will be effective because it provides realistic limits to disturbance while containing the necessary elements (e.g. sediment fencing, drainageway dewatering, tree protection fencing) to effectively protect resources and functional values outside of designated disturbance areas. Further, upon construction completion, the applicant's onsite stormwater will be managed in conformance with City of Portland Stormwater Management Manual standards, preventing impacts to the drainageway and to water resources downstream.

While the Construction Management Plan includes orange construction fencing as well as sediment fencing, it does not include all disturbance areas. To ensure all soils are kept onsite and mechanized equipment stays within the approved disturbance limits, sediment fencing in addition to orange construction fencing will be required to be installed at the limits of disturbance (sediment fencing inside orange construction fencing). Further, all fencing shall be installed prior to the commencement of construction and no mechanized equipment will be allowed outside of the designated disturbance areas.

With conditions for handheld equipment only outside of the designated disturbance areas, and for orange construction fencing and sediment fencing to be installed at the approved limits of disturbance, *these criteria can be met by the proposal.*

A.1.c. The mitigation plan demonstrates that all significant detrimental impacts on resources and functional values will be compensated for;

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 6 of this report. It will offset 4,047 square feet of permanent disturbance area on the east lot and 4,017 square feet of permanent disturbance area on the west lot and mitigate the removal of 18 native trees.

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 the majority of the site, covering over 9,000 square feet.
- ❖ The mitigation plantings will increase species diversity to improve wildlife habitat in areas that have minimal native vegetation.
- ❖ The plantings will aid with pollution and nutrient retention and removal, sediment trapping and erosion control.
- ❖ Invasive species will be removed from all planting areas.

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, *these criteria can be met.*

A.1.d. 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.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

A.1.e. 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.

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.

A.3. Rights-of-way, driveways, walkways, outfalls, and utilities;

A.3.a. The location, design, and construction method of any outfall or utility proposed within the resource area of an environmental protection zone has the least significant detrimental impact to the identified resources and functional values of other practicable alternatives including alternatives outside the resource area of the environmental protection zone;

Findings: No outfalls or utilities are proposed within the resource area of an Environmental Protection overlay zone; *this criterion does not apply.*

A.3.b. There will be no significant detrimental impact on water bodies for the migration, rearing, feeding, or spawning of fish; and

Findings: Oswego Creek originates just east of the subject site. Oregon Department of Fish and Wildlife (ODFW) has indicated, in correspondence with staff, that this creek does support

Cutthroat trout. ODFW also indicated that the section of creek located on the subject site is unlikely to support fish due to its location so high in the watershed.

The proposed project will incorporate stormwater management and treatment facilities designed according to the City's Stormwater Management Manual and will implement erosion and sediment control measures during construction that will prevent significant detrimental impacts to the onsite drainageway and downstream waterbodies.

Therefore, the proposed project will not have significant detrimental impact on water bodies that support the migration, rearing, feeding, or spawning of fish. Furthermore, to the extent that approval criterion A.1.b. "There will be no significant detrimental impact on resources and functional values in areas designated to be left undisturbed," is met, *this criterion is also met.*

A.3.c. Water bodies are crossed only when there are no practicable alternatives with fewer significant detrimental impacts.

Findings: The existing drainageway presently runs the length of the property and separates the right-of-way from the developable portions of the two lots. The subject site is surrounded by private property to the west and north and Loll Wildwood Area to the east. There are no practicable alternatives to access or provide utilities to the two lots without crossing or filling in the drainageway. *This criterion is met.*

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all requirements of Title 11 can be met, and that all development standards of Title 33 can be met or have received an Adjustment or Modification via a land use review, prior to the approval of a building or zoning permit.

CONCLUSIONS

The applicant proposes to develop two adjacent vacant lots with dwelling units, driveway access, and associated utilities. The applicant considered alternative locations and designs to determine that the proposed dwelling units' placement and driveway location and design were practicable and would minimize impacts to the resource area of the Environmental Zone. Although it was unavoidable to cross the existing onsite drainageway, the applicant proposes extensive mitigation plantings, as well as invasive species removal to mitigate for impacts to resources and functional values. 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 following conditions.

ADMINISTRATIVE DECISION

Approval of an Environmental Review for:

- 4,047 square feet of permanent disturbance and 912 square feet of temporary disturbance on the east Lot;
- 4,017 square feet of permanent disturbance and 531 square feet of temporary disturbance on the west Lot;
- Removal of 9 trees on the east lot and 9 trees on the west lot;
- Installation of one 41-foot long, 117" x 79" arch culvert;
- Installation of a 15-foot wide driveway for access to both the east and west Lots;
- 54-foot setback for east lot and 65-foot setback for west lot; and
- Disturbance within 30 feet of waterbody on both east and west lots

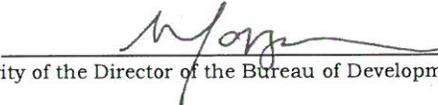
all within the Environmental Conservation overlay zone, and in substantial conformance with Exhibits C.2 through C.6, as approved and signed by the City of Portland Bureau of Development Services on **March 18, 2020**. Approval is subject to the following conditions:

- A. A BDS Site Development Permit is required for this project.** 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 19-184214 EN Exhibits C.2 through C.6."**
1. An application for a Site Development permit must be submitted for construction of the shared driveway and associated utility/drainage improvements.
 2. Recorded easements, including maintenance and operations agreements, for the shared driveway and driveway culvert will be required prior to final inspection approval of the Site Development permit.
 3. The shared driveway must be substantially complete and suitable for construction access prior to issuance of permits for residential construction.
- B.** Temporary construction fencing shall be installed according to tree protection measures in Title 11 Tree Code, chapter 11.60. Further, the temporary construction fencing and sediment fencing shall be placed along the Limits of Disturbance for the approved development, as depicted on Exhibit C.5, Construction Management Plan.
1. All measures provided for sediment control, including sediment fencing, shall be placed inside of the approved "Limits of Construction Disturbance," delineated by the temporary construction fence.
 2. No mechanized construction vehicles are permitted outside of the approved "Limits of Construction Disturbance" delineated by the temporary construction fence. All planting work, invasive vegetation removal, and other work to be done outside the Limits of Construction Disturbance, shall be conducted using handheld equipment.
- C.** The Site Development Permit review shall include inspection of a mitigation plan for a total of 27 trees, 1,526 shrubs, and 4,223 ground covers, in substantial conformance with Exhibit C.6, Mitigation/Revegetation Plan. Any plant substitutions shall be selected from the *Portland Plant List* and shall be substantially equivalent in size to the original plant. Conifers must be replaced with conifers.
1. Permit plans shall show:
 - a. Permit plans shall show 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.
 - b. The applicant shall indicate on the plans selection of either tagging plants for identification or accompanying the BDS inspector for an on-site inspection.
 2. Plantings shall be installed between October 1 and March 31 (the planting season).
 3. Prior to installing required mitigation plantings, non-native invasive plants shall be removed from all areas within 10 feet of mitigation plantings, using handheld equipment.
 4. If plantings are installed prior to completion of construction, a temporary orange, 4-foot high construction fence shall be placed to protect plantings from construction activities.
 5. All mitigation and restoration 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 Site Development Permit.
- D. The landowner shall maintain the required plantings** to ensure survival and replacement.

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

1. Obtain a Zoning Permit for a final inspection at the end of the 2-year maintenance and monitoring period. The applicant shall arrange to accompany the BDS inspector to the site to locate mitigation plantings for inspection. The permit must be finalized no later than 2 years from the final inspection for the installation of mitigation planting, for the purpose of ensuring that the required plantings remain. Any required plantings that have not survived must be replaced.
 2. All required landscaping shall be continuously maintained, by the landowner in a healthy manner, with no more than 15% cover by invasive species. Required plants that die shall be replaced in kind.
- E.** Failure to comply with any of these conditions may result in the City's reconsideration of this land use approval pursuant to Portland Zoning Code Section 33.700.040 and /or enforcement of these conditions in any manner authorized by law.

Staff Planner: Morgan Steele

Decision rendered by:  **on March 18, 2020**
By authority of the Director of the Bureau of Development Services

Decision mailed: March 25, 2020

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 26, 2019, and was determined to be complete on October 21, 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 June 26, 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 waived the 120-day review period, as stated in Exhibit A.14. Unless further extended by the applicant, **the 120 days will expire on: October 20, 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 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. Appealing this decision. This decision may be appealed, and if appealed a hearing will be held. The appeal application form can be accessed at <https://www.portlandoregon.gov/bds/45477>. Appeals must be received by 4:30 PM on April 8, 2020. **Towards promoting social distancing to combat COVID-19, the completed appeal application form must be emailed to the planner listed on the first page of this decision and to BDSLUSTeamTech@portlandoregon.gov.** An appeal fee of \$250 will be charged. Once the completed appeal application form is received, Bureau of Development Services staff will contact you regarding paying the appeal fee. The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations for the appeal of Type II and IIX decisions on property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. Please contact the planner listed on the front page of this decision for assistance in filing the appeal and information on fee waivers. Please see the appeal form for additional information.

If you are interested in viewing information in the file, please contact the planner listed on the front of this decision. The planner can provide some information over the phone. Please note that due to COVID-19 and accessibility to files, only digital copies of material in the file are available for viewing. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.portlandonline.com.

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

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

Recording the final decision.

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

- *Unless appealed*, the final decision will be recorded after **April 8, 2020** by the Bureau of Development Services.

The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder.

For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land

use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

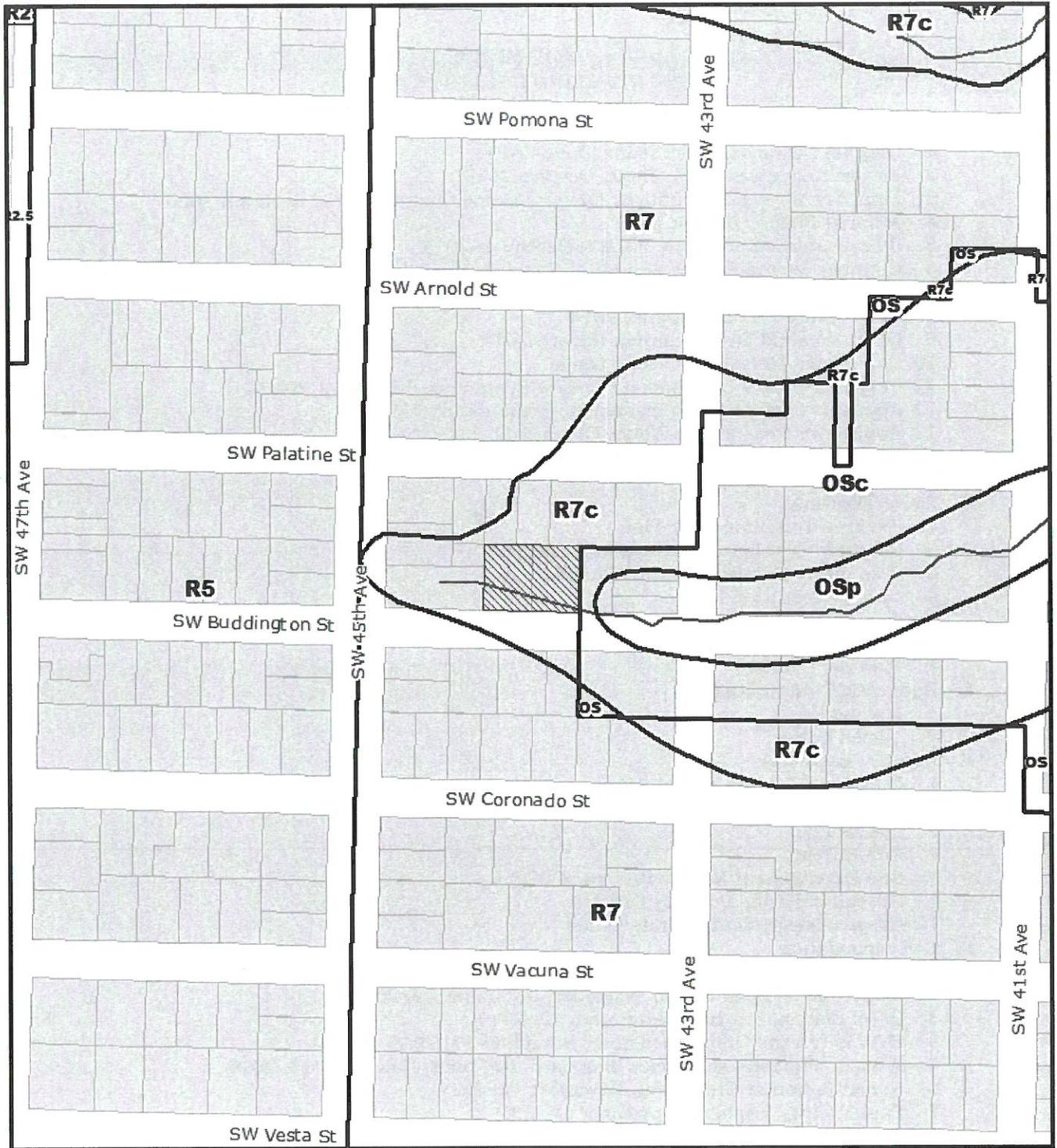
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Original Narrative & Site Plans, June 2019
 - 2. Revised Narrative & Site Plans, October 2019
 - 3. Final Narrative & Alternatives Analysis Memo, January 2020 & March 2020
 - 4. Arborist Report, August 2019
 - 5. Stormwater Report, June 2019 & December 2019
 - 6. Channel Encroachment Submittal, October 2019
 - 7. Plumbing Code Appeal Approval
 - 8. Geotechnical Report, August 2018
 - 9. ODSL Wetland Determination Report, 2019
 - 10. Corrugated Metal Pipe Design Guide
 - 11. Response to Site Development Review Comments, December 2019
 - 12. Applicant's Response to Incomplete Items, October 2019
 - 13. Applicant's Response to Notice Comments, January 2020
 - 14. Extension to the 120-Day Review Period
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Existing Conditions Site Plan
 - 2. Proposed Development Site Plan (attached)
 - 3. Tree Removal & Preservation Site Plan
 - 4. Culvert Section & Profile
 - 5. Construction Management Site Plan
 - 6. Mitigation Site Plan (attached)
 - 7. Planting Details
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation
 - 3. Life Safety
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Bureau of Parks, Forestry Division
 - 7. Oregon Department of State Lands
- F. Correspondence:
 - 1. Debbie Guthrie, Neighbor, November 4, 2019
 - 2. Stephanie & David Brown, Neighbor, November 12, 2019
 - 3. Carol Bishop, Neighbor, November 12, 2019
 - 4. Dennis & Irene Quinn, Neighbor, November 13, 2019
 - 5. William Mansfield & Melissa Sheppard, Neighbor, November 13, 2019
 - 6. Robert & Denise Chiavarini, November 14, 2019
 - 7. Paul Kisling, Neighbor, November 14, 2019
- G. Other:
 - 1. Original LU Application
 - 2. Incomplete Letter
 - 3. ODSL Wetland Land Use Notification

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

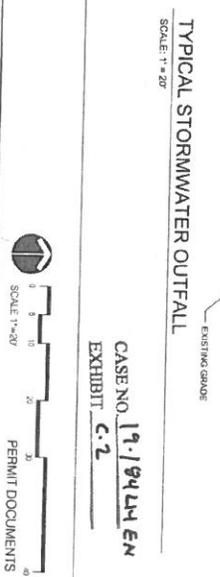
File No.	LU 19-184214 EN
1/4 Section	4125
Scale	1 inch = 200 feet
State ID	1S1E32BC 7700
Exhibit	B Jul 01, 2019

1 PROPOSED DEVELOPMENT SITE PLAN
 SCALE: 1" = 20'

NOT FOR CONSTRUCTION



City of Portland, Bureau of Development Services
 Plan No. **19-19444-EN** Date **3.18.2020**
 Approval
 *Approval for Environmental Review only. Not a building permit.
 Additional zoning requirements may apply.



CASE NO. **19-19444-EN**
 EXHIBIT **C-2**

TYPE II LAND USE APPLICATION ENVIRONMENTAL REVIEW
 PROPOSED DEVELOPMENT SITE PLAN
 Project Elements & Setbacks

C1.0
 DATE: 1/10/2020

- SHEET LEGEND**
- STORMWATER TREATMENT (425 SQ. FT.)
 - ASPHALT PAVING (1,944 SQ. FT.)
 - 4-INCH STORM DRAIN PIPE
 - 4-INCH SANITARY SEWER PIPE
 - 3/4" WATER SERVICE PIPE
 - POWER CONDUIT
 - GAS PIPE
 - SEWER CLEANOUT / STORM DRAIN
 - STORMWATER OUTFALL
 - WATER METER INSTALLED BY CITY CREWS
 - GULLY / DRAINAGE RESERVE CENTERLINE
 - 5-FOOT PROPERTY LINE SETBACK
 - 30-FOOT DRAINAGE OFFSET
 - PERMANENT DISTURBANCE (6,539 SQ. FT. TOTAL)
 EAST LOT - 4,017 SQ. FT.
 WEST LOT - 2,522 SQ. FT.
 - TEMPORARY DISTURBANCE (1,443 SQ. FT. TOTAL)
 EAST LOT - 312 SQ. FT.
 WEST LOT - 1,131 SQ. FT.
- REFER TO SHEET C-1 FOR TREE REMOVED AND PRESERVED

**HUNGER PROPERTY
 RESIDENTIAL DEVELOPMENT**

SW BUDDINGTON STREET
 PORTLAND, OR 97219

ZUCKER
 engineering & design

4014 SE Ankeny Street • Portland, Oregon 97214
 ph: 503-958-3473 • adam@zuckerengineering.com

PLANT LEGEND

Existing Tree	COMMON NAME	PLANTING NOTES	TOTAL QTY
+			

TREE REPLACEMENT PLANTINGS (Detail 1, 6, 7 & 8, Sheet L2)

Acer macrophyllum	Royal Maple	#5 cont., space as shown	4
Alnus rubra	Red Alder	#5 cont., space as shown	5
Populus tremuloides	Quaking Aspen	#6 cont., space as shown	11
Pseudotsuga menziesii	Douglas Fir	5 to 6 cont., space as shown	7

NUISANCE SPECIES REMOVAL PLANTINGS

Nuisance Species Removal Area - 4703 sf

NUISANCE SPECIES	REPLACEMENT PLANTING	PLANTING NOTES	TOTAL QTY
SHRUBS (Detail 4 & 5, Sheet L2)	Vine Maple	#1 cont., per sample pit	94
Acer circinnatum	California Hazelnut	#1 cont., per sample pit	94
Corylus cornuta ssp. californica	Oregon Oaks	4" pots, 7 per 50 sf	658

DISTURBANCE AREA PLANTINGS

Temporary & Permanent Disturbance Area - 3006 sf

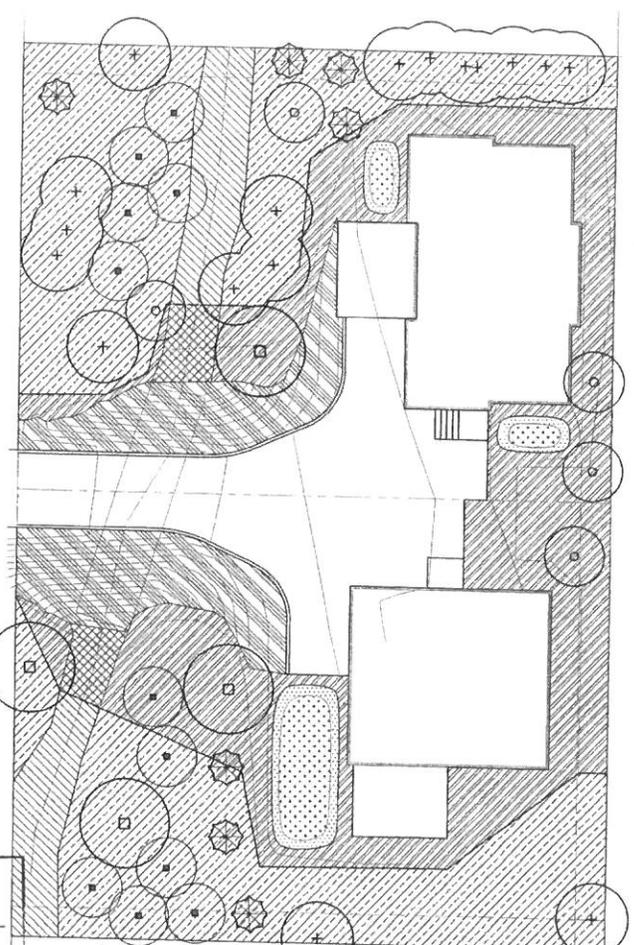
NUISANCE SPECIES	REPLACEMENT PLANTING	PLANTING NOTES	TOTAL QTY
SHRUBS (Detail 4 & 5, Sheet L2)	Common Snowberry	#1 cont., space as shown	301
Symphoricarpos albus	Sisal	#1 cont., space as shown	601
Gaultheria station	Oregon Oaks	4" pots, 8 per 10 sf	2405

Temporary & Permanent Disturbance / Drainage Channel Area - 214 sf

NUISANCE SPECIES	REPLACEMENT PLANTING	PLANTING NOTES	TOTAL QTY
SHRUBS (Detail 4 & 5, Sheet L2)	Douglas Spruce	#1 cont., 3 per 10 sf	64
Spiraea douglasii	Sloagh Sedge	4" pots, 8 per 10 sf	171

- CONTRACTOR SHALL PROVIDE TOPSOIL, SOIL AMENDMENTS AND MULCH PER DETAILS.
- ALL PLANTS SHALL BE INSTALLED IN ACCORDANCE WITH THE DETAILS AND SPECIFICATIONS PROVIDED AS PART OF THE CONSTRUCTION DOCUMENT PACKAGE.
- QUANTITIES ARE LISTED FOR THE CONTRACTORS CONVENIENCE ONLY. ALL COUNTS MUST BE VERIFIED BY THE CONTRACTOR. IN THE CASE OF A DISCREPANCY BETWEEN THE LEGEND AND THE PLAN, PLANTS INDICATED ON THE PLAN SHALL SUPERCEDE QUANTITIES LISTED IN THE LEGEND.
- INVASIVE SPECIES WILL BE REMOVED FROM THE ENTIRETY OF THE SITE AS PER PCC 33.430.140.

CASE NO. 19-18724 EN
EXHIBIT C6



OTHER PLANTINGS

Drainage Channel Area - 719 sf	HERBACEOUS PLANTS (Detail 2 & 3, Sheet L2)	Sloagh Sedge	#1 cont., 24" o.c.	208
Stormwater Facility Zone A - 255 sf	HERBACEOUS PLANTS (Detail 2 & 3, Sheet L2)	Spreading Rush	#1 cont., 80 per 100 sf	204
Stormwater Facility Zone B - 169 sf	SHRUBS (Detail 4 & 5, Sheet L2)	Dual Oregon Grape	#2 cont., 7 per 100 sf	12
Melania nervosa	GROUNDCOVERS (Detail 2 & 3, Sheet L2)	Creeping Oregon Grape	#1 cont., 70 per 100 sf	118
Slope Restoration Area - 1236 sf	SHRUBS (Detail 4 & 5, Sheet L2)	Common Snowberry	#1 cont., space as shown	124
Symphoricarpos albus	Sisal	#1 cont., space as shown	248	
Gaultheria station	Oregon Oaks	4" pots, 8 per 10 sf	989	

Proposed Plantings & Mitigation Summary

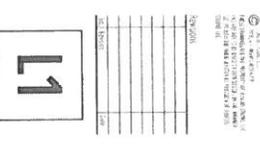
Planting	Quantity	Mitigation	Quantity
Permanent Disturbance Area Plantings	2,511 sf	Plantings	605
Stratals	2,383	Ground Cover	2,512
Trees	2		25

Approved
City of Portland - Bureau of Development Services
19-18724 EN
Date: 7-18-2020
mgo

SHEET DESCRIPTION:
REVEGETATION / MITIGATION PLAN

SUBMITTAL:
DEVELOPMENT REVIEW

PROJECT:
**SW BUDDINGTON ST
PORTLAND, OR**



DATE	DESCRIPTION
7/13/20	ISSUED FOR PERMITS
7/13/20	ISSUED FOR PERMITS