



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

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Date: October 8, 2021
To: Interested Person
From: Kate Green, Land Use Services
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NOTICE OF A TYPE Ix DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has **approved** a proposal in your neighborhood. The mailed copy of this document is only a summary of the decision.

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

CASE FILE NUMBER: LU 21-054913 EN

GENERAL INFORMATION

Owner/Applicant: City of Portland, Bureau of Transportation
1120 SW 5th Avenue, Suite 1300
Portland OR 97204
Contact: John Wilson, john.wilson@portlandoregon.gov, 503-823-8357

Site Address: City-owned property and rights-of-way near SW Capitol Highway and SW Berth Boulevard (Red Electric Trail)

Legal Description: BLOCK 7 N OF CAPITOL HWY LOT 6 LOT 7, BERTHA; BLOCK 7 LOT 5&8-10 TL 4200, BERTHA; BLOCK 7 LOT 4&5&8&9 TL 4201, BERTHA

Tax Account No.: R074301070, R074301120, R074301124

State ID No.: 1S1E16CC 04100, 1S1E16CC 04200, 1S1E16CC 04201

Quarter Section: 3627

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

Business District: Hillsdale Bus. & Professional, contact Mike Roach by fax at 503-246-8311.

District Coalition: In care of Office of Community and Civic Life, contact Shuk Arifdjanov at shuk.arifdjanov@portlandoregon.gov.

Zoning: Commercial/Mixed Use 2 [CM2 (MU-U)]
Multi-Dwelling Residential (RM2 and RM1)
Single-Dwelling Residential (R2.5)
Environmental Conservation (c)
Design (d)
Centers Main Street (m)

Plan District: Hillsdale

Other Designations: landslide hazard area, stream, wetland, Resource Site 125 – *Fanno Creek and Tributaries Conservation Plan*

Case Type: Environmental Review (EN)

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

Proposal: The applicant proposes to modify the construction access and methods and the requirement to create snags from several declining trees, as approved in the Red Electric Trail improvements case LU 18-113365 EN. Descriptions of the changes have been clarified from those noted in the initial notice, as outlined below:

- The proposed new construction access is between an existing gravel area and the primary trail construction area, rather than directly from SW Capitol Highway (see Exhibit C.1). The applicant notes the proposed access area is predominately covered in ivy, which will be removed, and the area is to be restored with native vegetation.
- An alternative method of constructing the pilings for the bridge over Fanno Creek, by way of a temporary bridge, will also result in some minor modifications to the construction limits approved in the prior land use case.
- The prior land use approval called for 7 hazardous trees to be pruned to form snags for habitat. The applicant now proposes to protect and leave the trees as-is to decompose naturally.

A portion of the proposed access and the noted changes to the construction limits and tree treatment are within the Environmental Conservation (c) overlay, and an **Environmental Review** is triggered to evaluate these changes to the prior approval.

Relevant Approval Criteria: In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are: **33.430.250.C-Public Recreational Facilities**.

FACTS

Site and Vicinity: The project site consists of a combination of undeveloped right-of-way and City-owned parcels, bordered directly on three sides by developed highways, including SW Beaverton Hillsdale Highway and SW Capitol Highway. One of the properties includes an existing gravel lot leased to a neighboring business to the south. The surrounding area is a mixture of developed commercial and multi-family residential properties. From both SW Beaverton Hillsdale Highway and SW Capitol Highway, the project site slopes steeply down into the ravine that contains the headwaters of Fanno Creek and two wetland areas.

Environmental Resources: The project site is mapped within the Fanno Creek and Tributaries Conservation Plan as Site #125. Resources and functional values on the project site include forested habitat and riparian areas and wetlands associated with the headwaters area of Fanno Creek.

Zoning: The zoning designations on the project site include:

The **Commercial/Mixed Use 2 (CM2)** zone, which is a medium-scale zone intended for sites in a variety of centers, along corridors, and in other mixed use areas that have frequent transit service.

The **Residential Multi-Dwelling 1 (RM1)** zone, which is a low-scale multi-dwelling zone that is generally applied in locations intended to provide a transition in scale to single-dwelling residential areas, such as the edges of mixed-use centers and civic corridors, and along or near neighborhood corridors.

The **Residential Multi-Dwelling 2 (RM2)** zone, which is a medium-scale multi-dwelling zone that is generally applied in and around a variety of centers and corridors that are well-served by transit.

The **Residential 2500** (R2.5) zone is one of six single-dwelling zones, which are intended to preserve land for housing and to provide housing opportunities for individual households.

Parks and Open Space uses are allowed outright in all these zones; though some accessory facilities, such parking areas, require a conditional use review in residential zone.

The **Environmental Conservation** (c) overlay zone is applied wherever the City determines that significant resources and functional values are present. The environmental regulations encourage flexibility and innovation in site planning and provide for development that is carefully designed to be sensitive to the site's protected resources.

The **Design** (d) overlay zone ensures that Portland is both a city designed for people and a city in harmony with nature. Right-of-way improvements that meet the City Engineer's standards are exempt from the design overlay (33.420.041.C and 33.420.045.A.9).

The **Centers Main Street** (m) overlay encourages a mix of commercial, residential and employment uses on the key main streets within town centers and neighborhood centers identified in the Comprehensive Plan.

The **Hillsdale Plan District** aims to promote compatibility between existing and new residential and commercial development and support the Hillsdale Town Center.

Land Use History: City records indicate the following prior land use review was conducted for this site:

- **LU13-234507 EN:** Approval of an Environmental Review for the replacement of the existing 12-inch stormwater pipe in SW Beaverton-Hillsdale Highway and SW 21st Avenue with a new 18-inch diameter pipe; and construction of a new rip rap outfall energy dissipation pad at the south end of the new pipe, into Fanno Creek.
- **LU 18-113365 EN:** Approval of an Environmental Review for construction of a public trail, including a steel girder bridge, removal of 20 trees and creation of 7 snags, subject to conditions. *The applicant proposes to modify several of the conditions of this case in the pending review.*

Agency Review: The following Bureaus have responded with no issues or concerns about the proposal:

- Fire Bureau
- Life Safety Review Section of BDS
- Bureau of Environmental Services

Urban Forestry provided the following comments: *Urban Forestry does not object to approval of the proposed development subject to the following conditions:*

- *Tree #228 should move forward with the original plan to turn it into a snag.*

Site Development responded as follows: *Site Development staff have no concerns regarding the proposed modifications to the project access. The proposed public trail is located in unimproved public right-of-way and City owned property. The City's building code allows for building permits and fees for work on private property to be waived whenever the work appears on plans and specifications approved by the City Engineer or BES Chief Engineer. It is the sponsor bureau's responsibility to review the drawings and supporting documents for conformance with the applicable development codes and standards of practice. Please refer to the site development land use response for land use case 18-113365 for more information.*

Neighborhood Review: A *Notice of Proposal in Your Neighborhood* was mailed on **July 27, 2021**. No written responses have been received.

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 of the applicable approval criteria are met. When environmental review is required because a proposal does not meet one or more of the development standards of Section 33.430.140 through .190, then the approval criteria will only be applied to the aspect of the proposal that does not meet the development standard or standards.

Findings: The approval criteria which apply to the proposed new public recreational trail segment are found in Section 33.430.250.C. The applicant has provided findings for these approval criteria and BDS Land Use Services staff have revised these findings or added conditions, where necessary to meet the approval criteria.

C. Public recreational facilities. In resource areas of environmental zones, public recreational trails, rest points, public viewing areas, and interpretive facilities will be approved if the applicant's impact evaluation demonstrates that all of the following are met:

- 1. Proposed development locations, designs, and construction methods are less detrimental to identified resources and functional values than other practicable and significantly different alternatives;**
- 2. The public benefits of the proposal outweigh all significant detrimental impacts;**
- 3. Areas disturbed during construction, that do not contain permanent development, will be restored with native vegetation that is similar to the vegetation existing on the site and found on the *Portland Plant List*; and**
- 4. There will be no significant detrimental impact on resources and functional values in areas designated to be left undisturbed.**

Findings: In the prior land use decision, the trail and bridge alignments, and associated construction areas and mitigation measures were found to satisfy these criteria, since the applicant's preferred alternative was determined to have the fewest impacts; provide a public benefit as an essential link to the Red Electric Trail corridor; and would avoid or restore environmental resources.

The applicant now wishes to modify the following elements of the prior decision through this review:

Temporary Construction Access: In addition to the temporary construction access approved in the prior decision, the applicant wishes to include an additional temporary accessway between an existing gravel area and the balance of the construction area. A small portion (65 square feet) of this route is within the environmental transition area and the balance is outside of the environmental zones. The applicant indicates the nuisance vegetation within the area of the accessway will be replaced with native vegetation to repair and enhance the habitat values of the site.

Modified Construction Methods: Instead of constructing a temporary access road directly to the creek to install the bridge pilings, a temporary bridge is proposed to reduce disturbances near the waterway. This will result in some minor shifting of the construction limits approved in the prior land use case. Overall, there will be a slight reduction in the disturbance area, so this alternative construction method is expected to provide increased protection to the environmental resources and will continue to confine the work area to protect trees and the stream corridor.

Snags: Instead of pruning 7 trees to make them into snags, as approved in the prior land use decision, the applicant requested those 7 trees be allowed to decay naturally, as-is. During the review, the applicant conferred with Urban Forestry and amended the request to match the Urban Foresters recommendation, which calls for only 1 tree (Tree #228, 14-inch Alder) to be pruned into a snag with the others to be left as-is. Pruning Tree #228 will remove some hazardous limbs, and otherwise allow that tree and the others to continue to contribute to the dynamic ecosystem functions along the streamside.

With conditions for the installation and maintenance of mitigation plantings within the temporary construction access and the minor changes to the construction limits to allow for an alternate construction method and treatment of the decaying trees, the additional anticipated impacts will be mitigated, and will outweigh the improved mobility benefits provided by the overall trail facility. Accordingly, these criteria will be 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 development standards of Title 11 can be met, and those 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. Trees specifically approved for removal by the land use review are exempt from Title 11 Section 11.50.040 Tree Preservation Standards (11.50.040 B.5).

CONCLUSIONS

The requested changes to the construction access and methods and snag treatment for several trees are expected to result in very minor additional impacts to the environmental resources on the site, which will be tempered with conditions to repair and replant the temporary disturbance areas and to prune one declining native tree into a snag to minimize hazards and contribute to the habitat of the site; and will accommodate the construction of an integral section of The Red Electric Trail.

The minor changes approved through this review will work in concert with the balance of the prior conditions to mitigate the construction impacts. Overall, the improvements to safe and active mobility in Southwest Portland project will outweigh these minor modifications to the construction access and methods and tree alterations.

Accordingly, the approval criteria will be met and the proposal should be approved.

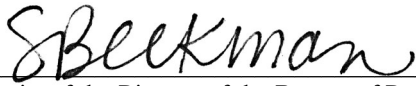
ADMINISTRATIVE DECISION

Approval of an Environmental Review for amendments to LU 18-113365 EN for the following:

Minor changes to the construction limits, methods, mitigation areas, and tree snag requirements within the Environmental Conservation overlay zone, and in substantial conformance with Exhibits C.1, C.2 and C.3, as approved by the City of Portland Bureau of Development Services on October 6, 2021. Approval is subject to the conditions outlined below. Except as modified by this review, all other conditions of LU 18-113365 EN remain in effect:

- A. All pending permits associated with work approved per LU 21-054913 EN shall be revised to reflect the modifications to the construction limits, methods, and mitigation planting areas shown in the approved plans. Plans shall include the following statement, *"Any field changes shall be in substantial conformance with approved LU 21-054913 EN Exhibits C.1 through C.3."*
- B. One tree (Tree #228, 14-inch Alder) shall be pruned into a snag to the satisfaction of Urban Forestry.

Staff Planner: Kate Green

Decision rendered by:  **on October 6, 2021**

By authority of the Director of the Bureau of Development Services

Decision mailed October 8, 2021

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 8, 2021 and was determined to be complete on July 23, 2021.

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 8, 2021.

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 requested that the 120-day review period be extended (Exhibit A.3). Unless further extended by the applicant, **the 120 days will expire on: December 11, 2021.**

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

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

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

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

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

Recording the final decision.

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

- *Unless appealed*, the final decision will be recorded after **October 8, 2021** 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 for the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 1. Initial Submittal
 2. Amended Submittal
 3. Timeline Extension
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Site/Construction Management Plan (attached)
 2. Tree Plan (attached)
 3. Planting Plan (attached)
 4. Temporary Work Bridge Elevation/Section
- D. Notification information:
 1. Mailing list
 2. Mailed notice
- E. Agency Responses:
 1. Bureau of Environmental Services
 2. Bureau of Transportation Engineering and Development Review
 3. Water Bureau
 4. Fire Bureau
 5. Site Development Review Section of BDS
 6. Bureau of Parks, Forestry Division
- F. Correspondence: (none received)
- G. Other:
 1. Original LU Application
 2. Correspondence to/from applicant

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).