



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

Dan Ryan, Commissioner  
Rebecca Esau, Director  
Phone: (503) 823-7300  
Fax: (503) 823-5630  
TTY: (503) 823-6868  
[www.portland.gov/bds](http://www.portland.gov/bds)

**Date:** October 15, 2021  
**To:** Interested Person  
**From:** Timothy Novak, Land Use Services  
503-823-5395 / [Timothy.Novak@portlandoregon.gov](mailto:Timothy.Novak@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 20-207239 EV**

#### **GENERAL INFORMATION**

**Applicant/Owner:** Jeffrey Pawlowski (*Co-owned with Rebecca Pawlowski*)  
9629 SW 18th Pl | Portland, OR 97219

**Applicant's Attorney:** Christopher Koback | *Hathaway Larson LLP*  
1331 NW Lovejoy St #950 | Portland, OR 97209

**Site Address:** 9629 SW 18TH PL

**Legal Description:** LOT 5-7 TL 4200, MAPLECREST ANX  
**Tax Account No.:** R534001170  
**State ID No.:** 1S1E28BD 04200  
**Quarter Section:** 3927

**Neighborhood:** Marshall Park, contact Mike Charles at [marshallparkna@yahoo.com](mailto:marshallparkna@yahoo.com)  
**Business District:** None  
**District Coalition:** In care of Office of Community and Civic Life, contact Shuk Arifdjanov at [shuk.arifdjanov@portlandoregon.gov](mailto:shuk.arifdjanov@portlandoregon.gov).

**Plan District:** None  
**Other Designations:** Resource Site #120, *Southwest Hills Resource Protection Plan (1992)*  
**Zoning:** Single-Dwelling Residential 20,000 (R20)  
Environmental Conservation overlay zone (c)  
Environmental Protection overlay zone (p)

**Case Type:** Environmental Violation (EV) Review  
**Procedure:** Type II, an administrative decision with appeal to the Hearings Officer.

**Proposal:**

*\*Please note that staff uses both “remediation” and “mitigation” to describe the planting plan, nuisance removal, and site restoration and enhancement work. “Remediation” is defined in the zoning code as applying specifically to work remedying a violation, while “mitigation” applies generally to all work to rectify, repair, or compensate for impacts that result from other actions. Because this proposal includes a combination of both remediation efforts and mitigation efforts, staff will utilize both these words interchangeably throughout the findings, while recognizing that much of the work includes elements of both.*

The applicant requests an amendment to LU 15-175067 EN, the 2015 Environmental Review that approved construction of the house and related development on the site. LU 15-175067 EN established specific limits of disturbance and required mitigation plantings. Since that approval, a Zoning Permit to verify the installation of the mitigation plantings was issued, but never received final approval. In addition, a hot tub landing, a walkway to the landing, and a section of split-rail fence have been installed beyond the limits of disturbance approved in the 2015 decision. The purpose of this proposal is to come into compliance with the mitigation planting requirements of LU 15-175067 EN and to modify the limits of disturbance approved in 2015 to accommodate the hot tub area, the path to it, and the split rail cedar fence. The additional disturbance area is entirely within the backyard of the property as well as the resource area of the environmental conservation “c” overlay zone. The proposal is also intended to address unpermitted clearing and planting of non-native plants in the “c” overlay that occurred in association with recent landscaping work at the site.

The original proposal stated the request was for approximately 135 square feet of additional disturbance area. Since then, more measurements were taken and the amount of permanent disturbance within the resource area of the “c” overlay is in fact 396 square feet. The mitigation plan detailed below accounts for all 396 square feet.

To mitigate for the new disturbance area and to bring the property into compliance with the approved planting plan from LU 15-175067 EN, the applicant proposed planting 8 native trees, 24 native shrubs, and seeding with a native grass mix. This is in addition to the plantings that were installed at the site in the Spring of 2020, including 3 ornamental trees, 48 native shrubs, and 67 native groundcovers. All existing non-native grasses within the “c” overlay on the site will be removed. The applicant is proposing to reseed those areas with native grasses.

During the review process, the applicant’s consultant and Bureau of Environmental Services (BES) staff identified a conflict between the original, approved landscape plan and BES planting restrictions within public sewer easements: plantings with a mature height greater than 4.0 feet are prohibited. In addition, because of the extent of the existing tree canopy, staff determined that resources and functional values will be better served by reducing the overall number of large trees required to be planted and replacing them with more mid-canopy tree and arborescent shrub species. As will be detailed below, the applicant has reviewed and assented to the use of a revised planting plan that will amend and replace the one approved under LU 15-175067 EN to meet BES restrictions and better suit the ecological needs of the site. The applicant, through his attorney, has assented to staff’s revisions to their mitigation and remediation plan (see Exhibit G.4). The revised planting plan reduces the number of trees from 19 large conifers to a total of 15 specimens from a minimum of three mid and lower-story tree and arborescent shrub species (max 1/3 of the specimens from the latter category). It also provides the opportunity to include a more diverse seed mix palette to acknowledge the drier upslope and wetter downslope soils on the site, as well as to provide additional food sources (i.e., wildflowers) for native pollinators.

During a site visit, staff discovered that exterior lighting had been installed as part of the larger landscape project that installed the improvements cited in the violation. The lighting was in the resource area, beyond the approved and proposed limits of disturbance; at least some of the lighting was directed to shine upward. The lighting expands the disturbance area and doesn’t meet standard 33.430.140.R either, which limits the spacing, intensity, and direction of lighting. Staff informed the applicant that staff would not support including the retention of the lighting in his request. As such, the applicant has agreed to remove the lighting as part of the remediation for the violation.

As noted above, the project area is within the City's Environmental Conservation "c" overlay zone. Certain standards must be met to allow the work to occur by right. If the standards are not met, an Environmental Review is required. In this case, the applicant is proposing to retain disturbance on a site that already exceeds the maximum allowed under 33.430.140.D.2. Per 33.430.405.A, corrections to violations that propose to retain unapproved and unpermitted development where the proposal does not meet the applicable standards in 33.430.140 must be approved through Environmental Review. For this reason, Environmental (Violation) 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:

- **33.430.250.E** – Other development in the Environmental Conservation zone or within the Transition Area only
- **33.430.250.G** – Corrections to Violations

## ANALYSIS

**Site and Vicinity:** The site is located south of Taylors Ferry Road and east of Interstate 5 in southwest Portland. It is at the southeast corner of a small pocket of developed area that is surrounded by forests adjacent to Marshall Park. Most of the other properties in this small subdivision are developed with single dwellings on large lots and most still contain large trees that were once part of the larger forest surrounding the development. Several properties include development within the environmental conservation resource area. The area north of the subdivision is fully developed with single dwellings. The forested areas of Marshall Park dominate the area to the east, south and west of the site.

The site is developed with a single-family home, attached garage, a large retaining wall at the top of the property between the house and SW 18<sup>th</sup> Pl, and various pedestrian and outdoor living amenities that are concentrated around and up close to the house. The tree canopy is full over most of the site. The majority of the site's trees are deciduous and range in size from 6 inches in diameter to 42 inches. There is a maintained grass and shrub area in its northeast corner that melds seamlessly with the neighboring property to the west. The site has a fairly steep and continuous slope down to the south, towards Tryon Creek which crosses the bottom southeast corner of the site and forms a horseshoe at the property before entering a culvert that carries it under the adjacent roadway towards the east and into Marshall Park.

**Zoning:** The zoning on the site includes a single-dwelling 'R20' base zone designation, with Environmental Conservation "c" and Protection "p" zone overlays (see zoning on Exhibit B).

The R20 base zone is intended to foster the development of single-dwelling residences on lots having a minimum area of 12,000 square feet. Newly created lots must have a minimum density of 1 lot per 20,000 square feet of site area.

Environmental Overlay Zones ("c" & "p") 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 be sensitive to the site's protected resources. They protect the most important environmental features and resources while allowing environmentally sensitive urban development where resources are less sensitive. 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.

This site is located in Resource Site No. 120, the Marshall Park/Capitol Hill area located in the [Southwest Hills Resource Protection Plan](#). This area is known for its wildlife habitat and undeveloped forest areas. It contains approximately 2.5 miles of open waterway and year-round stream flows. Tryon Creek and its tributaries are home to spawning salmon and steelhead. The canyon is a natural drainage basin formed by the west slope of the Palatine Hill, Tryon Creek, and the hills northwest of Mt. Sylvania.

**Land Use History:** City records indicate that prior land use reviews include the following:

- LU 15-175067 EN – Approval of an Environmental Review for the construction of a single-dwelling house and associated facilities. *The current review amends the approved planting plan and disturbance area limits of this decision.*

**Agency Review:** A “Notice of Proposal in Your Neighborhood” was mailed **March 1, 2021**. The full responses are found in the ‘E’ Exhibits. The following Bureaus have responded with no issues or concerns:

- Urban Forestry Division - Parks & Recreation Bureau.
- Life Safety Plan Review Section – Bureau of Development Services.

The Bureau of Environmental Services identified two concerns that the applicant has since addressed:

1. Within the public sewer easement, plantings shall be shallow rooted and less than four feet in height when fully established.
2. There is a 30-foot wide drainage reserve that runs along the east property line. BES takes no exception to mitigation plantings in the reserve.

The Site Development Section of BDS responded with a request that permanent erosion control measures be required as a condition of approval.

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on March 1, 2021. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

## ZONING CODE APPROVAL CRITERIA

### 33.430.250 Approval Criteria for Environmental Violation Review

An environmental violation 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 which apply to the expansion of the disturbance area and to the amended planting plan are found in Section 33.430.250.E and G. 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.

**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 of the following are met:

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;

**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:** As noted above, the total additional impacts resulting from the new split rail fence, pathways, and improvements associated with the hot tub patio are limited to roughly 396 square feet of new disturbance area and occurred without the removal of any trees. As noted in the applicant's narrative (Exhibit A.1), the findings from LU 15-175067 EN detail that the placement of the house, in relation to other alternatives, minimized disturbance area and tree removal within the site's resource area. The current proposal continues to utilize this strategy by placing the pathways along both side yards close to the house where at least in part, the approved disturbance area within 5 feet of the house is utilized. The pathway from the hot tub patio along the west side of the house appears to meet the exemption requirements for trails (33.430.080.D.10) and while not exempt within the larger context of the totality of improvements, this demonstrates a clear effort to utilize alternative construction techniques that minimize detrimental impacts to resources and functional values at the site. The hot tub patio as well, was located as close to the existing disturbance area as possible and meets Standard 33.430.140.C.1 by being located at least 50 feet away from Tryon Creek. As well, the patio appears sized to allow for the hot tub, a three-foot wide access around sides and back of it, and little more. Reducing it further in size would result in constricted access that would result in potentially unsafe conditions for people entering and exiting the tub. Finally, the split rail fence that has been installed significantly minimizes obstruction of wildlife passage compared to other alternative fence types. Based on staff's site visit there is no evidence that anything other than hand-held tools were used to construct the improvements and the trees nearest the improvements show no apparent evidence of detrimental impacts inflicted as a result of the construction methods utilized.

Pathways that provide access around a residence, fences to delineate property boundaries, and modestly-sized patios for the enjoyment of one's property are all improvements associated with uses permitted or allowed in the City of Portland's single-dwelling zones and, as demonstrated above, the improvements under review were located and constructed in a manner that minimized impacts, particularly compared to alternative designs and approaches.

As such, *these criteria are met.*

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

**Findings:** Because this is a retroactive review of unpermitted, existing development, staff must rely on circumstantial and photographic evidence to determine whether this criterion is met. As noted above, staff found no evidence at the site that anything other than hand-held tools were used to construct the improvements and the trees nearest the improvements show no apparent evidence of detrimental impacts to resources such as trees and stormwater infiltration (no evidence of significant soil compaction) inflicted as a result of the construction methods utilized. In addition, the mitigation plan will provide permanent erosion control and increase the resources and functional values of the portions of the site designated to be left undisturbed.

Combined, staff's observations at the site and the proposed mitigation measures lead to a conclusion that detrimental impacts on resources and functional values outside the immediate project area were and will be avoided at the conclusion of the project.

Therefore, *this criterion is met.*

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

**Findings:** As noted under the "Proposal" section of these findings, the applicant has assented to staff's revisions to the submitted mitigation and remediation plan (see Exhibit G.4). The

revised mitigation planting plan is modeled after the approved mitigation plan from LU 15-175067 EN but has been adapted to acknowledge BES requirements and current site conditions. Specifically, the 2015 plan proposed planting species in the Public Sewer Easement that runs along the rear of the property that have a mature height of 4 feet and greater, which is contrary to BES restrictions that were not addressed in the 2015 decision. Furthermore, as previously noted, canopy coverage on the site outside of the building footprint and vehicle area in the front yard approaches 90% and greater. The proposed mitigation plan better suits the ecological needs of the site by diversifying the canopy type and species composition.

The site is currently dominated by large trees, specifically Douglas fir and Bigleaf maple. Rather than increasing the number of the large trees and upper canopy coverage, which is already very high, the revised mitigation plan will better serve to improve and enhance resources and functional values on the site by adding a canopy type that the site currently lacks. The mitigation plan reduces the number of trees required in the 2015 decision (19 large native conifers) to a total of 15 specimens from a minimum of three mid and lower story tree and arborescent shrub species (max 1/3 of the specimens from the latter category). Doing so not only increases canopy type and species diversity, but it also recognizes mature canopy and root zone needs and minimizes over-crowding and competition to facilitate healthy form and root structure. By choosing a broader range of tree and arborescent shrub species, habitat and food sources for wildlife will be diversified and increased. In addition, the applicant is retaining the 3 Hogan's Western Red cedar cultivars planted in Spring 2020, bringing the total planting to 18 trees.

48 native shrub species were planted in Spring 2020 that will supplement the shrub species that will be added to the site in a fashion similar in species and distribution to the approved 2015 plan, with an additional 33 species and an increase in total plantings of 9 to account for the 396 sf increase in disturbance area (as prescribed by 33.430.140.D.2.b). Shrubs chosen include Oregon grape, Indian plum, snowberry, Pacific ninebark, and birchleaf spirea.

Groundcover proposed by the applicant is a native upland grass seed mix for shade. In reviewing the species included in the mix (see page 25 of 25, Exhibit A.5), staff noted that some of the species are less well adapted to the moist conditions that the lower portion of the site adjacent to the creek and the eastern portions along the open seasonal channel experience outside of the drier months. Additionally, none of the species are flowering species that can provide food (i.e. wildflowers) for native pollinators. As such, a condition will be imposed stating that the number and type of seed mixes used to establish groundcover at the site be expanded to suit the varied conditions and needs at the site. Groundcovers shall be seeded throughout the east side yard and back yard at a density sufficient to achieve 100% coverage within one year in order to ensure that permanent erosion measures are in place to protect Tryon Creek and its resident fish populations from sedimentation. Of those seeded areas, at least 25% shall be seeded with mixes that contain flowering plants so that these areas will not only provide habitat for native invertebrates, but food, as well.

Prior to installation of the trees, shrubs, and groundcovers detailed above, the applicant proposes to remove the non-native turf grass that the lower portion of the back yard was seeded with in 2020. Staff adds to the list of non-native vegetation to be removed the English laurel, a listed nuisance species, that is growing the back yard. The applicant has already removed invasive English ivy from the site, excepting where it grows on the far side of the creek. Staff considered requiring the removal of the invasive ivy on the portion of the site that is on the far side of the creek but recognizes that it is contiguous with a larger city-owned site that is deeply infested with the plant. Removal of ivy on the site would do little to alleviate the larger infestation in the adjacent open space and thus does not seem warranted in relation to the opportunities and benefits that will come with the mitigation plantings. The open channel along the east property line is also heavily infested with English ivy, but as it is within the public right-of-way and not on the site, it is outside the purview of this review.

By implementing the mitigation plan described above and in Exhibits C.1 & C.2, the detrimental impacts on resources and functional values resulting from the original removal of three trees during the construction of the house and from the expansion of the disturbance

area for the hot tub patio, walkways, and split-rail fence, will be compensated for, since the site will ultimately better support a broader range of habitat types and food sources available to wildlife.

With conditions to ensure a diversity of wildlife cover and food sources, *this criterion can be met.*

**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

**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 will be conducted on the same site as the development under review, and the applicant is the owner of the property, including the mitigation area.

Therefore, *these criteria are met.*

**G. Corrections to violations.** For corrections to violations of this Chapter the application must meet all applicable approval criteria stated in subsections A through F above, and paragraphs 1, 2.b and 2.c, below.

**1.** The remediation is done in the same area as the violation;

**Findings:** The applicant is requesting an amendment to the limits of disturbance approved under LU 15-175067 EN to allow for the retention of the improvements that are the subject of the violation.

The remediation for the violation is incorporated into the mitigation plan described above and while not in the exact same area as the improvements that triggered the violation, it is adjacent to it and will serve to enhance the same resources and functional values that have been lost because of the additional improvements.

As such, *this criterion is met.*

**2.** The remediation plan demonstrates that after its implementation there will be:

- a. No permanent loss of any type of resource or functional value;
- b. A significant improvement of a least one functional value; and
- c. There will be minimal loss of resources and functional values during remediation until the full remediation program is established.

**Findings:** The applicant is meeting the applicable approval criteria in subsections A – F, above and therefore, per 33.430.250.G, criterion 2.a is not applicable. The resources at Site #120 are described in the Southwest Hills Protection Plan (The Plan) and includes wildlife habitat. Per The Plan, the three principal components of the Wildlife Habitat Assessment are water, food, and cover, and the quality and quantity of their functional values determine the site's Wildlife Habitat Score (WHS). While Resource Site #120 has the highest WHS of all the site covered within The Plan (86 out of a range of 50 to 86), the subject site doesn't currently reflect this high score. Specifically, the functional values of the subject site's food and cover for wildlife is relatively quite low, with little cover in the range from mid-canopy down to near soil, with large trees and non-native grasses dominating the landscape of the back yard. Associated with the lack of cover is a lack of native plantings that provide food for native wildlife.

The proposed mitigation plan creates a significant improvement in the functional value of both cover and food wildlife habitat resources. It does so by establishing a variety of native

plantings that will grow to provide food and cover at the ground level up to the mid-canopy level, providing new habitat opportunities for native invertebrates, birds, amphibians, and small mammals. Specific examples include flowering native groundcover seed mix, being required as a condition of approval, which will provide food for pollinators. Native groundcovers more generally provide cover for insects and other invertebrates that are in turn a food source for many birds and amphibians, which are likely to inhabit portions of the site's riparian area at and adjacent to Tryon Creek. Indian plum, Oregon grape, snowberry, Western crabapple, common chokecherry, cascara, bitter cherry, and Suksdorf's hawthorne, all tree and shrub species on the plant list of the approved mitigation plan, are all listed in the *Portland Plant List* as food sources for native bird species, and in some cases for small and large mammal species too (See Exhibit G.6). Adding these plantings to the subject site will provide a significant improvement to functional value of the subject site's wildlife food resource. To ensure that any changes to the planting plan are consistent with this finding, staff recommends a condition of approval that requires that of the tree and shrub species chosen, whether listed or replacements, at least half shall be listed in the *Portland Plant List* as native species that are used as food by wildlife. As noted elsewhere in this decision, a condition requiring flowering groundcovers for pollinators shall also be included.

As part of the Zoning Permit that will be required as a condition of approval to document and inspect the implementation of the approved remediation/mitigation plan, the applicant shall be required to provide a list of tools and equipment that will be used to complete the work. If any of the equipment is other than hand-held, the applicant will be responsible for providing a tree protection plan demonstrating how the existing trees are being protected from damage to and compaction of the root protection zone. In addition, erosion control measures will be detailed in the application and plans demonstrating how Tryon Creek will be protected from erosion and sedimentation while the remediation and mitigation plan is implemented and while groundcover plants become established for permanent erosion control. By protecting existing trees and by preventing erosion into Tryon Creek, there will be minimal loss of resources and functional values during remediation and mitigation until the full remediation program is established.

With the noted conditions, *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 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.

One development standard needs to be addressed as part of this review. Specifically, as part of the remediation plan, the applicant shall remove all lighting from the resource area outside the approved disturbance areas and any exterior lighting that remains within the newly approved disturbance area shall meet 33.430.140.R. To demonstrate this, the applicant shall be required as a condition of approval to include specifications and location of all exterior lighting in the newly approved disturbance area in the Zoning Permit application and plans that are required to document this mitigation and remediation project.

## **CONCLUSIONS**

The applicant requests to amend LU 15-175067 EN to allow for the retention of improvements made beyond the original limits of disturbance and to revise the approved mitigation plan to better suit the site and enhance the functional value of identified resources. The improvements, which are the focus of a violation case, include a hot tub patio, walkways from the patio that go around both sides of the house, and a split rail fence along the west side property line. Staff finds that the applicant's proposed mitigation and remediation plan, modified by conditions of approval, minimizes impacts to and loss of resources and functional

values at the site and, in fact improves and enhances overall wildlife habitat and specifically food and cover resources for native species at the site.

## ADMINISTRATIVE DECISION

Approval of 396 square feet of additional disturbance area for a hot tub patio, walkways from the patio that go around both sides of the house, and a split rail fence along the west side property line, as well as revisions to the approved mitigation plan of LU 15-175067 EN as described above, per the approved plans, Exhibits C.1 & C.2, as approved by the City of Portland Bureau of Development Services and subject to the following conditions:

**A. A BDS Zoning Permit is required for inspection of required remediation and mitigation work.** The Conditions of Approval listed below, shall be noted on the appropriate plan sheets submitted for permit. Plans shall include the following statement, *"Any field changes shall be in substantial conformance with approved LU 20-207239 EV Exhibits C.1 & C.2"*

1. Permit plans shall show:
  - a. The general location of the trees, shrubs, and ground covers required by these conditions to be planted in the mitigation areas and labeled as "new required landscaping". The plans shall include a planting table listing the species, quantity, spacing and sizes of plants to be planted.
  - b. The location of existing vegetation, including trees, shrubs, and groundcovers.
  - c. The location of existing improvements to remain and existing improvements to be removed (i.e. landscape lighting outside the approved limits of disturbance.
  - d. The applicant shall indicate on the plans selection of either tagging plants for identification or accompanying the BDS inspector for an on-site inspection.
  - e. Temporary Erosion Control measures in compliance with Title 10 shall be installed to prevent erosion into Tryon Creek between removal of existing groundcover and the establishment of native groundcovers required by these conditions.
2. The applicant shall provide with the zoning permit application a list of tools and equipment to be used for removing the turf (See Condition B.1, below). If removal requires other than hand-held tools, the applicant shall also provide a tree protection plan showing how existing trees will be protected during the removal of the turf.

**B. Mitigation and Remediation Work to be permitted under the Zoning Permit required by Condition A shall include the following:**

1. Removal of all non-native groundcover (turf) from the rear yard.
  - a. Prior to removal of existing groundcover, the applicant shall provide temporary erosion control to prevent erosion and sedimentation in Tryon Creek;
2. Removal of one English laurel from the rear yard;
3. Planting of the following native species in substantial conformance with Exhibits C.1 & C.2:
  - Trees and Arborescent Shrubs: 15 specimens from a minimum of 3 different species of tree and arborescent shrubs suited to the site; species shall be planted in clusters of 3 and distributed throughout the resource area. No more than 2 of the selected species shall be classified as arborescent shrubs. (See Exhibit C.2 for a suggested

species list and tree planting plan.)

- Shrubs: 33 specimens from a minimum of 5 different species of native shrub, planted in clusters of 3.
- Groundcover: Seeding of native groundcover throughout the mitigation and remediation site, including the rear and east side yards. The seed mixes shall be shade tolerant and varied to include:
  - Riparian and lowland species for the downslope portion of the subject site, nearest to the creek;
  - Upland species for the drier, upslope portions of the site;
  - At least 25% of the area to be seeded shall be seeded with flowering species that provide food for native pollinators.
- a. Plant substitutions may be made, but shall be selected from the Portland Plant List and shall be substantially equivalent in size to the original plant.
- b. At least half of the tree and shrub species planted shall be listed in the Portland Plant List as native species that are used as food by wildlife (Section 3.17).
- c. Plantings within the public sewer easement shall be shallow rooted and less than 4 feet in height when fully established.
- d. Plantings shall be installed between October 1 and March 31 (the planting season).
- e. In addition to the requirements of Conditions B.1.b. & 2, above, prior to installing required mitigation and remediation plantings, non-native & invasive plants shall be removed from all areas on the site within 10 feet of mitigation plantings.
- f. After installing the required mitigation plantings, the applicant shall request inspection of the mitigation and remediation plantings and final the BDS Zoning Permit.
- g. All mitigation shrubs and trees shall be marked in the field by a tag attached to the top of the plant for easy identification by the City Inspector; or the applicant shall arrange to accompany the BDS inspector to the site to locate mitigation plantings for inspection. If tape is used it shall be a contrasting color that is easily seen and identified.

**C. The landowner shall monitor the required plantings** for two years to ensure survival and replacement as described below. In addition to the plantings required under Condition B.3, monitoring shall include those plants that were installed at the site in the Spring of 2020, including 3 Hogan's Western red cedar trees, 48 native shrubs, and 67 native groundcovers, which are included in the total mitigation counts. The landowner is responsible for ongoing survival of required plantings beyond the designated two-year monitoring period. The landowner shall:

Submit two annual monitoring and maintenance reports for review and approval to the Land Use Services Division of the Bureau of Development Services containing the monitoring information described below. Submit the first report within 12 months following the final inspection approval of the initial Zoning Permit required under Condition A. Submit a second report 12 months following the date of the first monitoring report.

**Monitoring reports shall contain the following information:**

A count of the number of planted trees that have died. One replacement tree must be planted for each dead tree (replacement must occur within one planting season). If at the end of a two-year monitoring period the two trees planted downstream of the landing have not survived, the applicant shall relocate two replacement trees to the adjacent planting area in the yard above top of bank that is just north (landward) of the landing.

Specify plant replacement location. The second monitoring report shall specify if the alternative planting location was utilized due to inability to establish plants in the preferred planting location.

The percent coverage of native shrubs and ground covers. If less than 80 percent of the mitigation planting area is covered with native shrubs or groundcovers at the time of the annual count, additional shrubs and groundcovers shall be planted to reach 80 percent cover of shrubs and 100 percent cover of groundcovers (replacement must occur within one planting season).

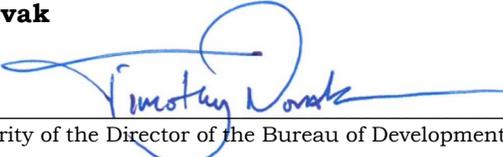
A list of replacement plants that were installed.

Photographs of the mitigation area and a site plan, in conformance with approved Exhibits C.1 and C.2, Mitigation Plan, showing the location and direction of photos.

An estimate of percent cover of invasive species (e.g. English ivy, Himalayan blackberry) within 10 feet of all plantings. Invasive species must not exceed 15 percent cover during the monitoring period.

- D.** 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: Timothy Novak**

**Decision rendered by:**  **on October 12, 2021**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: October 15, 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 October 20, 2020, and was determined to be complete on February 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 October 20, 2020.

*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 an additional 240 days (Exhibit A.7). Unless further extended by the applicant, **the 120 days will expire on: February 18, 2022.**

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

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

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

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

**Appealing this decision.** This decision may be appealed to the Hearings Officer, 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 October 29, 2021. The completed appeal application form must be emailed to [LandUseIntake@portlandoregon.gov](mailto:LandUseIntake@portlandoregon.gov) and to the planner listed on the first page of this decision.** If you do not have access to e-mail, please telephone the planner listed on the front page of this notice about submitting the appeal application. **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 Office of Community and Civic Life 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 this file, please contact the planner listed on the front of this notice. The planner can email you documents from the file. A fee would be required for all requests for paper copies of file documents. Additional information about the City of Portland, and city bureaus is available online at <https://www.portland.gov>. A digital copy of the Portland Zoning Code is available online at <https://www.portlandoregon.gov/zoningcode>.

**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 **October 29, 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.

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 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.

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).

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  1. Applicant Narrative
  2. Site Plan
  3. Supplemental Narrative & Mitigation Plan, January 2021
  4. Mitigation Plan, February 2021
  5. Response and Mitigation Plan, May 2021
  6. Revised Disturbance Area Calculations, September 2021
  7. 120-Day Extension Requests
- B. Zoning Map (attached)
- C. Plans/Drawings:
  1. Final Mitigation Plan (attached)
  2. Tree Planting Plan (attached)
- D. Notification information:
  1. Mailing list
  2. Mailed notice
- E. Agency Responses:
  1. Bureau of Environmental Services
  2. Fire Bureau
  3. Site Development Review Section of BDS
  4. Bureau of Parks, Forestry Division
  5. Life Safety Review Section of BDS
- F. Correspondence: NONE
- G. Other:
  1. Original LUR Application
  2. Incomplete Letter #1
  3. Incomplete Letter #2
  4. Final Mitigation Plan & Correspondence
  5. Example Tree Planting Plan
  6. Portland Plant List, Section 3.17 – Native Plants Used as Food by Wildlife

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