



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

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**Date:** January 18, 2022  
**To:** Interested Person  
**From:** Timothy Novak, Land Use Services  
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## **NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD**

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

### **CASE FILE NUMBER: LU 21-078921 EN**

#### **GENERAL INFORMATION**

**Applicant:** Chris Lastomirsky | Bureau of Environmental Services  
1120 SW 5th Avenue, Room 1000 | Portland, OR 97204  
503.823.5489 | [chris.lastomirsky@portlandoregon.gov](mailto:chris.lastomirsky@portlandoregon.gov)

**Owner/Agent:** Portland Parks & Recreation | Attn: Tonya Booker  
1120 SW 5th Avenue, Suite 1302 | Portland, OR 97204

**Representative:** Steve Miller | Emerio Design  
6445 SW Fallbrook Place, Suite 100 | Beaverton, OR 97008

**Site Address:** 3601 NW Cornell Road (Lower Macleay Park)

**Legal Description:** BLOCK 18 LOT 2-7&10-12, WILLAMETTE HTS ADD; BLOCK 19 LOT 1-4 E 1/2 OF LOT 6, WILLAMETTE HTS ADD; TL 100 19.25 ACRES, SECTION 32 1N 1E

**Tax Account No.:** R913402470, R913402610, R941320430  
**State ID No.:** 1N1E29DC 02800, 1N1E29DC 06700, 1N1E32B 00100  
**Quarter Section:** 2825, 2925, 2826

**Neighborhood:** Forest Park, contact Jerry Grossnickle at [landuse@forestparkneighbors.org](mailto:landuse@forestparkneighbors.org)

**Business District:** None  
**District Coalition:** Neighbors West/Northwest, contact Mark Sieber at 503-823-4212

**Plan District:** Northwest Hills - Balch Creek

**Other Designations:** *Forest Park Natural Resources Management Plan; Balch Creek Watershed Protection Plan – Site 73; Wildfire Hazard Area; Landslide Hazard Area*

**Zoning:** *Base Zone: Open Space (OS)*

*Overlay Zones:* Environmental Conservation (c), Environmental Protection (p), Future Urban (f), Scenic Resource (s)

**Case Type:** EN – Environmental Review  
**Procedure:** Type II, an administrative decision with appeal to the Hearings Officer.

**Proposal:**

This proposal serves as a request to amend approved case file #LU 19-212073 EN (Exhibit G.4) for the work associated with replacement of the Balch Creek Trash Rack system. The request is for the removal 13 trees and the additional temporary disturbance associated with the tree removal; the approved EN review didn't propose any tree removal.

After the approval of LU 19-212703 EN, during the earlier stages of the construction phase of the project, the project contractor notified BES that constructing some of the components of the trash rack system would require the removal of 13 trees leaning into and overhanging the creek in order to be able to maneuver and stage the drill-rig, which would otherwise get caught up in the branches and trunks of the trees needing to be removed. The project, as previously approved, was designed to limit the extent of disturbance as much as possible and did not anticipate the large size of equipment needed to carry out the work.

This request is retroactive. 33.430.080.B allows for temporary exemptions to the provisions of the Environmental Overlay zones chapter for emergency procedures necessary for the protection of life, health, safety, or property. BES argued, and LUS staff concurred, that "Without the trash rack system in place large woody debris, rocks, and other debris could cause a catastrophic failure in the 84" storm pipe that conveys Balch Creek to the Willamette River." This failure could result in flooding of the streets, neighborhoods, and industrial lands east and downslope of the culvert, as happened in December 1955, according to an Oregonian article the applicant submitted within their Geotech Report.

The project location is within the City's Environmental Protection overlay zone, within the Forest Park Natural Resource Management Plan (Forest Park NRMP) area. The Forest Park NRMP includes a list of anticipated projects that require more further detailed evaluation before they can be approved (see page 216 of the NRMP). Retrofit of the trash rack and associated structures is identified as Project PI-6S (Lower Macleay trailhead and park facilities) and is considered a "minor amendment" in the NRMP, requiring approval through a Type II Environmental Review.

This amendment to the prior land use review is required because the original approval did not include any tree removal in its analysis or mitigation and further evaluation of the amended project for conformance with the approval criteria is needed.

**Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria for this proposal are in the Forest Park Natural Resources Management Plan and in 33.563 Northwest Hills Plan District:

- **Approval Criteria for Minor Amendments (Chapter 8, Forest Park NRMP)**
- **Northwest Hills Plan District- Balch Creek Subdistrict (33.563.120)**

## ANALYSIS

**Site and Vicinity:** The site is located at the Lower Macleay Entrance to Forest Park. The entrance lies within a large gulch, meaning that there are steep upward slopes on both sides of the park. The site is the downslope end of Balch Creek, one of the largest and most notable year-round creeks in Forest Park and home to a resident population of native Cutthroat trout. It is at the location of this project that Balch Creek ends its above-ground life and enters into a large culvert, where it continues underground for over a mile to a stormwater outfall where it merges with the Willamette River and ultimately makes its way to the Pacific Ocean.

Zoning in the surrounding area is residential, with single-family homes and neighborhoods at the top of the gulch on both sides of the park and some multi-dwelling development north of the park, where the slopes of the gulch gradually soften and blend into the surrounding topography.

**Zoning:** The zoning designation on the site includes Open Space (OS) base zone with Environmental Conservation (c), Environmental Protection (p), Scenic Resource (s), and Future Urban (f) overlay zones (see zoning on Exhibit B).

The Open Space base zone is intended to preserve public and private open and natural areas to provide opportunities for outdoor recreation and a contrast to the built environment, preserve scenic qualities and the capacity and water quality of the stormwater drainage system, and to protect sensitive or fragile environmental areas. No new uses are proposed within the OS zone and the provisions of the zone do not apply to the proposal. The OS zone regulations are therefore not 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.

The Scenic Resource overlay zone is intended to protect Portland's significant scenic resources. The purposes of the Scenic Resource zone, to enhance the city's appearance and protect scenic views, are achieved by establishing height limits, establishing landscaping and screening requirements, and requiring preservation of identified scenic resources.

The Future Urban overlay zone limits development in future urban areas. Future urban areas are, (1) all areas beyond the Metropolitan Service District's Urban Growth Boundary (UGB), and (2) areas within the UGB to which the extension of full urban services would not be cost effective or would cause unacceptable harm to the environment. The Future Urban overlay zone limits development by prohibiting the creation of new lots with a total area of less than 20 acres. No development subject to the regulations of this overlay is proposed; therefore, these regulations are not specifically addressed in this review.

**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 area is mapped within the *Balch Creek Watershed Protection Plan* as Site 73. The site is considered of very high significance. There is more water per unit area on this site than any other site in the watershed. Site 73 contains about two acres of park lawn and one acre of forest. The stream, forest, and lawn provide recreational, scenic, educational and open space resources.

The stream provides very high fishery habitat values, but these values are diminished by a vertical section of concrete which restricts passage of fish to the upper stream spawning beds. Trapped fish provide educational value, but are lost from the population because they are periodically flushed into a storm sewer that does not support aquatic life. Wildlife values on this site would not be considered high, except for the fact that this site is close enough to provide water for animals using better forest cover on adjacent, dryer sites. Educational, scenic and open space resources are all high. Balch Creek is also worthy of scenic corridor status. Rare species include a native isolated population of cutthroat trout, western wahoo shrubs, and dawn redwoods.

**Land Use History:** City records indicate multiple reviews within Forest Park, including LU 16-239343 EN, which included bridge work in Resource Site 74, upstream from the project area. As noted in the proposal description above, this review is retroactive and intended to amend LU 19-212703 EN, under which the primary body of review for the Balch Creek Trash Rack upgrade occurred. This review addresses trees that had to be removed for the project, but whose removal was not anticipated in the original review.

**Agency Review:** A “Notice of Proposal in Your Neighborhood” was mailed **November 17, 2021**. Several Bureaus provided responses. None expressed objections or requested conditions of approval. See the “E” Exhibits for the complete responses.

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on November 17, 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

### 33.430.060 Where These Regulations Apply

These regulations apply to all environmental zones, except those in the Columbia South Shore Plan District that are south of NE Marine Drive, those in the Cascade Station/Portland International Center Plan District, City-owned land within the **Forest Park Natural Resources Management Plan area**, and the Peninsula Drainage District No. 1 Natural Resources Management Plan area. See also Section 33.430.030, *Relationship to Other Environmental Regulations*.

Since the trash rack and associated development is located on city-owned land within the Forest Park Natural Resources Management Plan (NRMP) area, as well as the Northwest Hills Plan District, the proposal must meet the following approval criteria for minor amendments contained in Chapter 8 of the Forest Park NRMP, as well as the additional approval criteria of the Northwest Hills Plan District:

#### **Forest Park Natural Resources Management Plan (NRMP). Chapter 8. Minor Amendments.**

##### **A. There is a demonstrated need for the proposal;**

**Findings:** This request is for the removal of 13 trees, of those one is a dead 22-inch snag and 12 are live, native trees with a total, combined diameter at breast height (dbh) of 136-inches.

As noted in the original EN review for the trash rack that this review is amending, the project as a whole is vital in order to ensure that the trash rack continues to serve its function to keep the culvert functional, thereby avoiding potential failure and downstream flooding, while also improving its longevity, the ease of maintaining it, and improving public safety in the areas of the park adjacent to it.

The reason for this request is that it was revealed during the initial phases of rebuilding the trash rack system that the equipment being utilized for the work by the contractor was much larger than previously anticipated by BES staff and that in accessing work areas and conducting some of the work, there were trees that had to be removed.

Because the work had already begun and the previous rack system was already demolished at the time the need for tree removal was identified to continue operations, in combination with the in-water work window and other logistical and time constraints in play, it was not possible to postpone the project and search for alternative equipment and construction methods that could avoid the tree removal. As noted above, and as described in detail in Section 3.0 (Project Need and Description) of the applicant’s narrative (Exhibit A.3.a), the trash rack is a critical

element in ensuring continued operation of the culvert to avoid potential flooding of downstream properties and to ensure the public safety and enjoyment of Forest Park's Lower Macleay Trail and the surrounding area. As such, the need for the proposal was clear and unequivocal. Not removing the proposed trees would delay or prevent the construction of this critical infrastructure.

As such, *this criterion is met.*

**B. The proposed action is consistent with the Forest Park Natural Resources Management Plan Goals and Strategies.**

**Findings:** The Forest Park NRMP, in Chapter 6, presents plan goals and strategies for the continued management of Forest Park. There are two Conservation Goals, two Recreation and Education Goals, and ten Management Plan Strategies. This project meets the Forest Park NRMP's two Conservation Goals;

1. *Protect Forest Park's native plant and animal communities, its soil and its water resources while managing the forest ecosystem in order to grow a self-sustaining ancient forest for the enjoyment and benefit of future generations.*
2. *Design management and restoration efforts to:*
  - a. *Maintain and enhance regional biodiversity*
  - b. *Provide wildlife habitat and migration opportunities*
  - c. *Improve water quality and aquatic habitat*
  - d. *Repair damaged and fragmented natural systems.*

As noted in the original EN approval of the trash rack replacement (Exhibit G.4), by repairing and replacing deteriorating or failed elements of the trash rack system, this project intends to ensure that the trash rack continues to prevent clogging of the culvert and the flooding of the area and beyond that would inevitably occur with a significant precipitation event without it. The project therefore protects soil and water resources from erosion and adjacent recreational resources and sites to the east from flood damage.

While this amendment to the original proposal will impact native trees, in the larger context of potential impacts that could result from delaying the work in order to identify alternative construction methods and techniques that wouldn't require tree removal, the current request is less impactful. Furthermore, the mitigation proposed in this amended proposal restores and enhances an additional 3,892 square feet of the hillside above the project area. The area is currently suffering from a predominance of invasive Himalayan blackberry and Clematis. The mitigation will see the removal of these invasives and the planting of native shrubs and trees to enhance the project area's biodiversity, improve habitat for native species, and create a healthier and more contiguous cover of native species on the hillside.

*This project meets the Forest Park NRMP's two conservation goals.*

This project also meets the NRMP's Recreation & Education Goals:

1. *Protect and enhance the value of Forest Park as a regionally-significant recreational resource – a place that can accommodate recreational and educational use at appropriate seasons of the year without environmental damage.*
2. *Enhance the value of Forest Park as a regionally-significant education resource - an urban laboratory for environmental research and resource enhancement and restoration.*

The findings in the original EN review (Exhibit G.4) evaluating the trash rack replacement for consistency with these goals continue to be valid with this amendment to include some tree removal. As noted then,

*By repairing or replacing the failed elements of the trash rack system, the project will improve safety at this popular site, as the pedestrian trail is being supported along the project site by a number of the retaining walls that the PBOT structural report found to be in need of replacing. In addition, the project includes construction of an alternative multi-use path that will allow continued use of the Lower Macleay Trail during routine and unscheduled maintenance of the trash rack system. While the proposal doesn't directly affect the status of the park as an educational resource, ensuring continued, year-round use of the Lower Macleay Trail and conducting remediation to improve soil stability and enhance the native composition and biodiversity of the vegetation in the park and on the slope above and east of the trash rack system provides indirect opportunities to observe the benefits of such enhancement and restoration work and could be used explicitly for that purpose in the future.*

*This project meets the Forest Park NRMP's two Recreation and Education goals.*

Of the 10 strategies identified in the *Forest Park Natural Resource Management Plan* that were designed to help reach the aforementioned goals, staff finds that 3 of the strategies apply to the project, and are met, as follows (the other 7 strategies listed in the NRMP are not directly applicable to this project, though the applicant, in their narrative, does address each strategy individually and provide a valid rationale for how their project meets it);

NRMP Strategy (1) - Protection of natural resources through the implementation of a Sustainable Resources Program.

- Enhance and Restore Resources – Restore areas of the park that have deteriorated by removing intrusive, damaging or hazardous trails, roads, utilities and other facilities (e.g., a failing trash rack). – This project prevents deterioration of surrounding resources by maintaining an important piece of infrastructure required to avoid flooding. Furthermore, the proposed mitigation and plantings in the stormwater facilities enhances the site's vegetative health and biodiversity.

NRMP Strategy (4) – Manage Recreation to Protect Natural Resources.

- Provide appropriate recreation use for people of all abilities & expand and develop appropriate facilities – The trail enhancement that is part of this project, as viable, will be American Disabilities Act (ADA) compliant as will the small expansion to provide an alternative access to the trailhead when maintenance of the trash rack system is occurring. As detailed throughout this report, these small enhancements are being done in a manner that avoids negative impacts and protects the site's natural resources.

NRMP Strategy (6) – Improve Public Access.

- American Disabilities Act (ADA) Facilities – The proposed hardscape and multi-use path(s) will be designed to meet ADA standards.
- Trailheads. Provide safe and easy access to park recreation facilities – As noted above, the project improves the safety of this busy access point to Forest Park by replacing retaining walls that are retaining the main artery through the park to the Lower Macleay Trail. The alternative path to allow access to the trail during maintenance of the trash rack system further improves access in accordance with this strategy.

Again, the evaluation in the original EN Review (Exhibit G.4) for the trash rack continues to be valid and accurately assess the project, including with the amendment for tree removal, for consistency with these strategies.

Therefore, of those that apply, the project is consistent with the Forest Park NRMP's stated goals and strategies. This criterion is met.

**C. Alternative locations and design modifications were evaluated to show that the proposal has the least significant detrimental environmental impact of the practicable alternatives.**

**Findings:** As indicated above and as described by the applicant in their request for a temporary exemption to allow emergency removal of the trees prior to completion of this review (Exhibit G.1), delay of the project at the point that the need to remove trees was identified, was not practicable because the trash rack system had already undergone deconstruction and demolition by that time, thus exposing the site and downhill properties to the risk of flood damage in the event of a major precipitation event. As further explained in the alternatives analysis provided in the applicant's narrative:

*Alternative access was reviewed (A-B and C See image [in narrative]). The bank at "A" is steep and could not be safely navigated by the large drill rig. Additionally, a higher level of impact to clear the bank of existing vegetation would be required along with impacts to the creek bed from machinery traveling upstream ("B") to the work area. Access using "C" is also not viable for the same reasons. Accompanying equipment includes box for spoils, excavator and dump truck. The drill-rig requires room to swing the boom so that spoils in the auger can be placed into the dump box. All of these components need to be setup in a linear fashion with the drill-rig being stationary.*

*Smaller machinery was discussed as well. The contractor has already procured the equipment required to perform the work. Other machines powerful enough to drill the required piles may be available but would come at a significant cost to the project and availability is questionable. Moreover, even smaller equipment would still be unlikely to access the work area without significant impacts as discussed above. Placing the equipment at the location shown is the most viable option to minimize environmental impacts while providing access to the work area.*

Because of the timing associated with when tree removal became an identified need, combined with the alternatives described by the applicant in their narrative, the approach taken and requested for approval in this review was found to have the least significant impact to onsite resources than other practicable alternatives.

*This criterion is met.*

**D. A construction management plan and a mitigation plan will minimize impacts on resources and restore adjacent disturbed areas.**

**Findings:** This criterion requires the applicant to assess unavoidable impacts and how their proposal minimizes these impacts, as well as to propose mitigation that will restore disturbed areas.

The original EN Review (Exhibit G.4) evaluated and approved construction management that continues to apply. Temporary and permanent ground disturbance areas have not changed since the tree removal was focused on and limited to the above-ground portions of the trees that would have otherwise impeded the use of the equipment, particularly the overhead parts of the equipment, like the boom. In addition, the amended mitigation plan (Exhibits A.3.c and A.5) show that impacts on the resource will be minimized and disturbed areas will be restored and revegetated. The unavoidable impacts resulting from the tree removal will be mitigated through restoration in the vicinity of the project area, including the removal of invasive species

and the planting of native vegetation. The updated plan calls for 350 native shrubs and 150 native trees. Staff inquired with the BES Revegetation Crew about the rationale for the numbers and received a detailed response, see Exhibit A.5 for the complete response.

Additionally, the proposed Mitigation Plan will be installed and maintained under the regulations outlined in Section 33.248.040.A-D (Landscaping and Screening). As with the previous approval, a two-year monitoring plan will be required and will ensure survival of at least 50% of proposed mitigation plantings. The rationale for allowing up to 50% die-off is due to the notable amount of existing native shrubs and trees in the mitigation area (See Exhibit A.5). The mitigation plan intentionally overplants in expectation of natural die-off and in lieu of irrigating the plantings.

To confirm the successful establishment of at least 50% of the required plantings for the initial establishment period, the applicant will be required to have the plantings inspected, by applying for a Zoning Permit two years after they are installed. As necessary, they will be required to replant at a rate of 2:1 (two replacement plantings for every one plant that needs to be replaced) to achieve the desired long-term survival rate. No more than 15% of the mitigation area can be covered by invasive clematis or blackberry.

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

**33.563.120 Balch Creek Subdistrict – Additional Approval Criterion.**

**In addition to the applicable approval criteria of Section 33.430.250, an environmental review will be approved if the review body finds that the location, quantity, and quality of forest and contiguous cover will be sufficient to provide habitat for deer and elk and to provide for the passage of deer and elk between Forest Park and Pittock Acres Park.**

**Findings:** The proposed trash rack retrofit and associated development will not change the location, quantity, or quality of forest and contiguous cover in Forest Park. The trees removed are a minimal part of the overall forest canopy at and adjacent to the project area and mitigation plantings will ensure that the location, quantity, and quality of forest cover at the project location will continue to provide habitat in accordance with this criterion.

*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. Permission to work beyond timeframe of the prohibition on exposed soils listed in 33.563.100.A was granted by BDS in order for the emergency work to be completed without delay (Exhibit G.5). As of the date of this decision, the primary in-water trash rack components are complete. The remaining work to construct and plant the required stormwater facilities, reconstruct the pedestrian trail, and regrade and replant the park to bring it back to a usable state is estimated to be completed sometime between the end of February and the end of March, 2022.

## **CONCLUSIONS**

This request is for retroactive approval of and mitigation for the removal of 13 trees in the immediate vicinity of the work area to replace the Balch Creek Trash Rack and its associated

elements. As demonstrated in the findings above and in the applicant's submittal materials, all of the applicable approval criteria are met or can be met with conditions of approval. Therefore, the request should be approved.

## ADMINISTRATIVE DECISION

Approval of Environmental Review to retroactively approve:

- Removal of 13 native trees; and
- Mitigation of an additional 2,904 square feet on the slope above the creek, including removal of invasive species and the planting of 150 native trees and 350 native shrubs within the overall 11,217 square foot combined mitigation area from this approval and the original approval under LU 19- 212703 EN

All in association with the repair and replacement of the Balch Creek Trash Rack and associated elements and in substantial conformance with Exhibits C.1 through C.9. Approval is subject to the following conditions, which supersede conditions A, D.1 through D.5, and E.1 through E.2 of LU 19-212703 EN.

- A. The applicant shall submit for a revision to 21-066068 ZP (or equivalent) to reflect the updated mitigation area and planting plan (Exhibit C.9).** The Conditions of Approval listed below, shall be noted on the plan sheets submitted for the revision. Plans shall include the following statement, ***"Any field changes shall be in substantial conformance with approved LU 19-212703 EN and Exhibits C.1 through C.9 of LU 21-078921 EN."***
- B.** The Revised BDS Zoning Permit shall be for approval and inspection of a mitigation planting plan for a total of 150 native trees and 350 native shrubs on approximately 11,217 square feet of the hillside east of the project area, in substantial conformance with Exhibit C.9. Any plant substitutions shall be selected from the *Portland Plant List*, and shall be substantially equivalent in size and type to the original plant.
1. Permit plans shall show:
    - a. The location of the trees and shrubs required by this condition to be planted in the mitigation area and labeled as "new required landscaping". The plans shall be to scale, and shall illustrate a naturalistic arrangement of plants and should include the location, species, quantity and size 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 clematis and blackberry, shall be removed from all areas within 10 feet of mitigation plantings, using handheld equipment.
  4. After installing the required mitigation plantings, the applicant shall request inspection of mitigation plantings and final the BDS Zoning Permit.
  5. All mitigation and remediation 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 project location 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 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 project location 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 land owner in a healthy manner, with no more than 15% cover by invasive clematis or blackberry.
3. Dead plantings are required to be replaced once mortality rates exceed 50%. Shrubs shall be replaced with shrubs and trees with trees.

**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.

**E.** All Conditions of Approval of LU 19-212703 EN remain effective unless explicitly amended by this approval.

**Staff Planner: Timothy Novak**

**Decision rendered by:**  **on January 12, 2022**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: January 18, 2022**

**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 August 19, 2021, and was determined to be complete on November 10, 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 August 19, 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 30 days, as stated with Exhibit G.5. Unless further extended by the applicant, **the 120 days will expire on: April 9, 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 February 1, 2022. 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 **February 1, 2022** 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 Submittal Package
  - a. Narrative
  - b. Plan Set
  - c. PBOT Structural Report
  - d. Wetland Delineation Report
  - e. Summary Notes, EA 18-267307
  - f. Basis of Design Memorandum
  - g. Mitigation Memo
  - h. Revegetation Plan
  - i. Mitigation Plan
  - j. Alternatives Analysis Plan
2. Submittals, Revision 1
  - a. Narrative
  - b. Plan Set
3. Submittals, Revision 2
  - a. Narrative
  - b. Plan Set
  - c. Mitigation Plan
  - d. Tree Protection Memo
4. 120-day Extension Request Form
5. Addendum to Mitigation Plan

#### B. Zoning Map (attached)

#### C. Plans/Drawings:

1. Cover Sheet – Vicinity Map, Sheet Index, General Notes
2. Existing Conditions and Demolition Plan
3. Permitting Site Plan (attached)
4. Planting and Park Mitigation Plan
5. Disturbance Areas Plan
6. Erosion Control Plan
7. Tree Inventory Map
8. Tree Inventory Table
9. Mitigation Planting Plan (attached)

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
7. Life Safety Review Section of BDS

F. Correspondence: NONE

G. Other:

1. Correspondence confirming tree removal qualifies for Exemption 33.430.080.B
2. Original LUR Application
3. Incomplete Letter
4. Findings and Decision - LU 19-212703 EN
5. BDS approval to work beyond limits stated in 33.563.100.A (E-mail chain)

**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).**