



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

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Date: March 30, 2022
To: Interested Person
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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 21-007289 EN

GENERAL INFORMATION

Applicant/Owner: Tim Taylor *for Adamson Holdings, LLC*
6312 SW Capitol Hwy #133 | Portland, OR 97239

Representative: Danelle Isenhart | *Isenhart Consulting, LLC*
PO Box 2364 | Beaverton, OR 97075
(503) 880-4979 | danelle@isenhartconsulting.com

Site Address: 2644 SW FAIRMOUNT BLVD

Legal Description: LOT 20, WINTERWOOD
Tax Account No.: R922700770 (R310585)
State ID No.: 1S1E08AD 03200
Quarter Section: 3326

Neighborhood: Southwest Hills Residential League, contact at contact@swhrl.org.
Business District: NONE
District Coalition: Neighbors West/Northwest, contact Mark Sieber at 503-823-4212
Plan District: NONE
Other Designations: Site #113, Marquam Hill Ravine ([Southwest Hills Resource Protection Plan \(1992\)](#))

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

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

PROPOSAL:

The applicant proposes to construct a single-dwelling residence on the property, accessed from SW Fairmount Boulevard by a structural driveway and walkway. The house is proposed with an approximately 2.25-foot setback from the front property line to allow relatively level vehicular access from the street and to minimize impacts to resources on the site. Stormwater

from the dwelling is proposed to be treated by a storm planter at the east side (rear) of the dwelling. Outfall from this planter is proposed to connect to the open drainage channel on the property, south of the proposed house. This drainageway connects to a larger natural drainage channel in the publicly owned parcel east of and below the site. Also on the publicly owned site below the subject site is a section of the Marquam Trail. As part of the proposal, the applicant has included installation of a split-rail fence at the rear of the property, just uphill and beyond the public trail to provide a visual delineation between the public trail and their private property.

The applicant has proposed mitigation plantings for the temporary disturbance associated with the sewer connection to public line east of and below the site and the stormwater pipe and outfall. Mitigation plantings for permanent disturbance are also proposed where the removal of nuisance species will occur on approximately 1,734 square feet of the site. Combined, the proposed mitigation plantings include 202 native shrubs and 597 native groundcovers, as well as seeding of bare areas with a native seed mix.

Eight trees are proposed for removal as part of the project. Four are in the right-of-way, of which one is a nuisance species. Four are on the site, of which, according to the project arborist, two are dying and one is dead. A 46.2-inch diameter Douglas fir is the one healthy tree on the site proposed for removal and it is in the center of the proposed footprint of the house.

Proposed mitigation for tree removal includes the planting of eight native trees and 88 native shrubs. The proposed mitigation does not meet the replacement ratio(s) listed under Standard 33.430.140.J.1.a and Table 430-3. Therefore, Environmental Review is required.

Standard 33.430.180.A limits the number of outfalls on a site to one. Since there is already a public outfall on the site, the proposed outfall for the house will add a second one and the standard will not be met. Therefore, Environmental Review is required.

Standard 33.430.140.H allows temporary disturbance up to ten feet beyond the building. The applicant proposed temporary disturbance 15 feet beyond the rear of building to accommodate five feet of permanent disturbance around the stormwater planter and covered porch above it. As such, the standard is not met, and Environmental Review is required.

As described above, not all applicable development standards can be met. Therefore, a Type II Environmental Review is required.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are:

- **33.430.250.A** Public safety facilities, rights-of-way, driveways, walkways, outfalls, utilities, land divisions, Property Line Adjustments, Planned Developments, and Planned Unit Developments.
- **33.430.250.E** Other Development in the Environmental Conservation zone or within the Transition Area only.

ANALYSIS

Site and Vicinity: The site is a 10,487 square foot steeply-sloping lot in the West Hills, about 400 feet east and downslope of Council Crest Park. It is heavily wooded, with almost complete canopy coverage, in concert with the right-of-way, Open Space, and undeveloped lots in the vicinity. Adding to the resources in the vicinity, there are three identified creeks within 500 feet of the subject site, with one running along and just beyond the rear (eastern) property line. Adjacent to the creek and the property is a section of the Marquam Trail, a seven-mile trail

section of the larger 40-mile Loop trail system, which starts at Willamette Park, passes over Council Crest, and connects with the Wildwood Trail in Washington Park.

Zoning in the area is a mixture of Open Space (OS) and medium (R7) and lower density (R10) single dwelling zones. Development in the vicinity is limited to single-dwelling homes and, due to the steep slopes, most are located close to the paved right-of-way; there are no sidewalks along SW Fairmount Boulevard in the vicinity of the subject site.

Zoning: The zoning on the site includes a single-dwelling Residential 10,000 (R10) base zone designation, with Environmental Conservation (c) and Environmental Protection (p) overlay zones (see zoning on Exhibit B).

The R10 base zone is intended to foster the development of single-dwelling residences on lots having a minimum area of 6,000 square feet. The maximum density for lots in the R10 is 1 lot per 10,000 square feet of site area. The development standards of the base zone are generally met by the proposal and will be verified at the time of permit review.

Environmental Overlay Zones protect environmental resources and functional values that have been identified by the City as providing benefits to the public. The environmental regulations encourage flexibility and innovation in site planning and provide for development that is carefully designed to 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.

The project site is mapped within the *Southwest Hills Resource Protection Plan* [The Plan] as Resource Site #113, Marquam Hill Ravine. According to the description of the site in the plan,

The forest is a mid-aged coniferous forest (60 to 100 years old) with climax species present and intermittent creeks flowing through it. This site has about two dozen seasonal creeks that are tributaries of three watersheds. The creeks are associated with ravines that have 40 to 60 percent side-slopes. The ravines and waterways provide an important source of water for the plants and animals of the area. Generally, a higher quality of habitat exists along the creeks as a result of the diversity in plant species supported by the creek.

The forested areas are well represented throughout the site ranging from 80 percent canopy closure in the vicinity of Marquam Gulch to 60 percent closure near SW Fairmont and Mt. Adams Streets. Climax species of hemlock, cedar and grand fir are well established in the east side of the site. The herbal, shrub and tree layers are well defined by each having a 70-80 percent canopy closure. Each layer has good diversity of species indicating a healthy forest community. However, non-indigenous plants such as ivy and blackberries have invaded the area.

The Plan indicates a Wildlife Habitat Score of 76, relatively high habitat quality, with cover and food being the functional values with the highest scores.

Significant resources within Resource Site #113 are listed as: Wildlife habitat, groundwater recharge, scenic, recreation, perennial and seasonal creeks, and forested wetlands.

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

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **November 24, 2021**. Multiple Bureaus and Sections within BDS provided responses, including:

- Bureau of Environmental Services
- Portland Bureau of Transportation
- Water Bureau
- Fire Bureau
- Site Development Section of BDS
- Life Safety Section of BDS
- Bureau of Parks-Forestry Division

The full responses from each reviewer can be found under the “E” Exhibits of this decision.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on November 24, 2021. One written response to the proposal was received from a notified property owner.

The neighbor’s full comments are found under Exhibit F.1. A summary of their concerns follows, with staff’s response and/or the applicant’s response in italics after each concern:

1. Proposed tree planting for mitigation is less than the standard. Will mitigation be required for trees removed in the right-of-way?

Response: As articulated in the applicant’s response to the neighbors’ concerns (Exhibit A.9), because the site already has nearly complete canopy coverage from large trees, planting more large trees will have less positive benefit to the site’s resources and functional values than diversifying the mid and lower level canopy structure and composition, which is what the mitigation planting plan proposes. See the findings for criteria A.1.c and E.4 for a more thorough analysis of the rationale. Regarding trees proposed for removal that are located within the public right-of-way, 33.430.175 Standards for Right-of-Way improvements doesn’t require replacement tree plantings under Standard D. Since the applicant is meeting that standard, the removal itself doesn’t require mitigation plantings; improvements to the right-of-way that may be required at the time of development (e.g., street trees) may include plantings; per 33.430.175.C, those plantings must be native plantings from the Portland Plant List.

2. Adding more water from a second outfall on such a steep site raises safety concerns downslope.

Response: As part of this review, both the Bureau of Environmental Services (BES) and Site Development have required the project’s Geotechnical Engineer to provide an analysis of potential impacts to slope stability and to the integrity of the existing drainageway that both outfalls dispose into. The project Geotechnical Engineer’s reports have been reviewed and determined to be sufficient to demonstrate that the proposal can meet the erosion control requirements of City Code Title 10 Erosion and Sediment Control Regulations and Portland City Code Chapter 24.70 Clearing, Grading, and Retaining Walls, which includes provisions addressing safety and stability of soils and the prevention of damage to adjacent properties from deposition or erosion resulting from adding or removing soils from a site (cut and fill). As such, staff finds that any additional measures that may need to be taken to protect neighboring properties from being negatively impacted by the proposal can and will be addressed during the building permit review stage at which time detailed designs must be submitted, reviewed, and approved, further demonstrating that the additional flow to the drainageway and slope from a second outfall will continue to meet all City Code requirements, including those for slope stability and erosion control.

3. The extent of the temporary disturbance area behind the house is greater than allowed by standard and should be reduced.

Response: The temporary disturbance area is proposed at 5-feet wide around the full extent of the permanent disturbance area. The reason that the temporary disturbance is proposed at a

distance of 15 feet between the building and the outer edge of the permanent disturbance area is because the applicant would like to maintain a five-foot setback of the outer edge of the back deck and the permanent disturbance area in order to have space to be able to perform maintenance on the raised deck. Since the deck is an attached accessory structure and not part of the building, it is not included in the calculation for allowing temporary disturbance at a distance relative to the building. Staff takes no exception to the request because it doesn't impact/increase tree removal and the area will be replanted. Furthermore, as noted below the project would still be below the maximum disturbance area allowance of Standard 33.430.140.A if they instead proposed the additional temporary disturbance area not meeting Standard H as permanent disturbance area, which would mean the area would not have to be planted at all, making the proposed approach less impactful than a permitted alternative. See findings below for additional details.

4. The request to allow for a split-rail fence along the southern end of the property is inconsistent with the character of the neighborhood and will diminish the natural aesthetic of the adjacent nature trail.

Response: Standard 33.430.140.P allows fences within approved disturbance area. The applicant has provided plans showing that even with the additional permanent disturbance area to accommodate the fence, the project will continue to limit permanent disturbance area to that allowed by Standard 33.430.140.A. The location of the fence will have to meet Standard 33.430.140.E, which requires a five-foot setback from the resource area of an environmental protection zone, portions of which are located on the property near the rear property line. Split-rail fencing is commonly placed by the Parks Bureau in open spaces to clearly delineate between areas where visitors are and aren't allowed. They allow for the passage of wildlife and are made of raw, untreated wood, minimizing impacts on resources and functional values. As a condition of approval, the installation of the fencing shall be done using only hand-held tools to further minimize impacts. See the findings for approval criteria A.1.c and E.4 for more detail.

ZONING CODE APPROVAL CRITERIA

33.430.250 Approval Criteria for Environmental Review

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

Findings: The approval criteria applicable to the proposed development are found in Sections 33.430.250.A & E. Section 33.430.250.A contains the criteria for the driveway and right-of-way improvements, as well as those for the outfall. Section 33.430.250.E contains the criteria for all development within the site other than the outfall. The applicant has provided findings for these approval criteria. BDS Land Use Services staff has referenced and when needed updated or revised these findings or added conditions as necessary to meet the approval criteria.

In many instances, the approval criteria in Section A and in Section E are nearly or actually identical. In these cases, staff may write one set of findings that address the criterion from both sections. All findings will be preceded by which criterion or criteria they are addressing.

33.430.250.A. Public safety facilities, rights-of-way, driveways, walkways, outfalls, utilities, land divisions, Property Line Adjustments, Planned Developments, and Planned Unit Developments. Within the resource areas of environmental zones, the applicant's impact evaluation must demonstrate that all of the general criteria in Paragraph A.1 and the applicable specific criteria of Paragraphs A.2, 3, or 4, below, have been met:

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

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

Findings: The purpose of this criterion is to recognize that some form of development is allowed, consistent with the base zone standards. Impacts of the proposed development are measured relative to the impacts associated with the development normally allowed by the base zone; in this case, the R10 base zone would allow 3,073 square feet of the project site to be covered by roofed structures and uncovered horizontal structures over 6 feet above grade (building coverage), according to Table 110-4 of the Zoning Code.

The building coverage of the proposed house and raised back deck will be approximately 1,791 square feet of building coverage, which is well below what would be allowed at the site without the Environmental Conservation overlay zoning.

Further, it is important to address the additional temporary disturbance that is being approved around the back deck as part of this land use review. Standard 33.430.140.H acknowledges that construction activities sometimes require more room around a building than the permanent disturbance area would allow, however the standard does not allow that same temporary disturbance around structures attached to the house, such as the stormwater planter and raised deck at the rear of the house. Because of the steep topography of the site, the applicant has indicated that a consistent 10-foot clearance/disturbance area around all structures is needed to ensure adequate space for safe and reasonable construction activities to occur. As such, they have increased the permanent disturbance area to provide a 5-foot buffer around the stormwater planter and proposed an additional 5 feet of temporary disturbance beyond it. Though not meeting the standard, the additional temporary disturbance created is only about 260 square feet.

The maximum disturbance area allowed by standard (33.430.140.A) in the R10 zone is 5,000 square feet. The total proposed permanent disturbance on the site is 2,627 square feet (*it is worth noting here that disturbance in the right-of-way that is associated with the driveway is subject to Standard 33.430.175.B and is calculated separately from the disturbance allowed on-site under 33.430.140.A*). In other words, the applicant could have proposed the additional temporary disturbance that is not meeting standard H as permanent disturbance and still be in compliance with Standard A. By instead proposing it as temporary disturbance that will be replanted, the applicant is minimizing the loss of resources and functional values on the site with this plan. The increase in temporary disturbance beyond the allowance provided in Standard H is not resulting in an increase in tree removal.

Although the proposed development will result in the permanent loss of 2,627 square feet of Environmental Zone and the temporary disturbance of an additional 754 square feet total, as will be further described below, the unavoidable impacts of the project have been shown to be minimized to the extent practicable and consistent with allowing those uses generally permitted or allowed in the base zone without a land use review.

Therefore, this criterion is met.

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

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

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

Findings: These criteria require the applicant to demonstrate alternatives were considered during the design process, and that there are no practicable alternatives that would be less detrimental to the identified resources and functional values located on-site. As noted above, this site is mapped as Inventory Site 113, Marquam Hill Ravine in the *Southwest Hills Resource Protection Plan (1992)* with identified resources and functional values are listed as wildlife habitat, groundwater recharge, scenic, recreation, perennial and seasonal creeks, and forested wetlands.

On the subject site, the forest canopy and vegetation provide wildlife habitat, while the drainage way that the outfall is proposed to empty into serves as a seasonal creek and contributes to species diversity and groundwater recharge further downstream, where reduced slopes allow surface water opportunities to infiltrate below the surface and contribute to recharging groundwater supplies that are essential to encounters with reduced slopes allow infiltration.

To reiterate, the aspects of this project that are subject to these approval criteria are the stormwater outfall, the alternative planting ratio for tree removal, and the additional temporary disturbance area behind the stormwater planter and raised deck at the rear of the property.

The alternatives to the proposed stormwater outfall that the applicant explored are not well laid out in their narrative. Nonetheless, based on staff's experience with previous reviews, there are two other alternative methods of managing stormwater for the project, one is to infiltrate on site and the other is to capture the stormwater in storage tanks and pump it into available stormwater facilities in the right-of-way. The site is in the regulatory landslide hazard area, an area where steep slopes are susceptible to landslides, particularly during and after significant precipitation events. As noted in Site Development's response, "Due to long term slope stability concerns commonly associated with infiltration facilities constructed on terrain of this type, BDS-Site Development does not support stormwater management via on-site infiltration structures (i.e. BDS Site Development does not recommend Level-1 Stormwater Management, SWMM, Section 1.3.4)." (Exhibit E.5). As such on-site infiltration is not practicable. The second alternative, storing it in storage tanks on the site and then pumping it to the stormwater facilities in the street would require installing large tanks that could further impact disturbance areas and would be for naught, since stormwater from the adjacent right-of-way is not captured by a storm sewer, but is rather routed to the existing outfall on the site and the same drainageway that the proposed outfall will route water to.

Regarding alternatives to the additional temporary disturbance area behind the house, the other practicable alternative that the applicant could have chosen would be to identify the area as permanent disturbance, which as detailed above, would be allowed while still falling within the allowed maximum disturbance limits set forth in standard 33.430.140.A. This alternative would have allowed for improvements in that area rather than the replanting that will occur under the preferred alternative. The project arborist has detailed steps to be taken to ensure that the nearest tree to the additional temporary disturbance remains protected during construction. Because the preferred alternative provides more native plantings on the site and doesn't increase tree removal, it is the least impactful of the two alternatives.

The third development standard not being met is 33.430.140.J.1.a, which requires trees six-inches and greater in diameter proposed for removal to be replaced at the ratios listed in Table 430-3:

Table 430-3 Tree Replacement in Environmental Overlay Zone		
Size of tree to be removed (inches in diameter)	Option A (no. of native trees to be planted)	Option B (combination of native trees and shrubs)
At least 6 and up to 12	2	not applicable
More than 12 and up to 20	3	1 tree and 3 shrubs
More than 20 and up to 25	5	3 trees and 6 shrubs
More than 25 and up to 30	7	5 trees and 9 shrubs
More than 30	10	7 trees and 12 shrubs

There are two alternatives that will be addressed in these findings related to mitigation and replacement plantings for trees removed. One is the preferred alternative, which is the one proposed in the mitigation and planting plan, the other alternative is to meet the standard and replacement table ratios.

Based on aerial imagery of the site from 2021 (Exhibit G.4) and the tree inventory listed and shown in the arborist report (Exhibit A.6.c), the site is dominated by large diameter Douglas fir and big leaf maple, with canopy coverage at over 90%. Since tree removal on-site is limited, according to the project arborist's inventory (Exhibit A.5.b, pg 1) to three dead or dying and one healthy tree located in the middle of the proposed building footprint, the majority of the canopy on site and all of it in areas not to be disturbed will be retained. If the applicant were to propose a mitigation planting plan that meets the replacement ratios listed in Table 430-3, a minimum of 25 trees or 16 trees and 40 shrubs would be required. While the site has and will continue to have nearly fully closed upper canopy conditions, as can be seen in the photographs that staff took during a site visit, the site lacks good mid and lower canopy development and diversity, which is important for high quality habitat resources for wildlife, such as shelter, cover, and food.

Originally, the applicant's planting plan met Standard 33.430.140.J. In staff's second incomplete letter (Exhibit G.3), staff recommended an alternative plan based on the following, "[based on extent of canopy coverage] there may not be much available light coming through the existing canopy to support the growth of the proposed plantings [large trees]. If this is indeed the case according to your arborist and/or Landscape Architect, then improving the health of the lower canopy and understory through further invasives removal and native shrub and groundcover plantings would provide more ecological benefit to the site."

What the applicant has proposed as an alternative to the ratios provided in Standard 33.430.140.J is 8 native trees and 88 shrubs, which while notably lower in trees, is more than double the number of shrubs. Of the trees, 4 are Western dogwood (*Cornus nuttallii*), a mid-canopy tree that does well in the shade of conifers, according to the *Portland Plant List* (pg 3.2-1). The shrubs on the list of species proposed as mitigation for tree removal vary in mature height from 2 feet (*Berberis nervosa*) up to 25 feet (*Acer circinatum*). All but one of the proposed species are listed in the *Portland Plant List* as plants that provide food for wildlife.

As previously noted, the upper canopy at the site is nearly closed and as a result, planting large numbers of trees would most likely be followed by high mortality rates of those new plantings due to a lack of available sunlight. Therefore, as an alternative, the ratios provided in Standard 33.430.140.J would likely result in a net loss of resources. On the other hand, the preferred alternative, detailed in the applicant's planting plan (Exhibit C.4), as outlined above provides an alternative better tailored to the site and improving the diversity and quality of the resources on it.

As shown above, for each element of the project that is not meeting a development standard, the applicant has proposed the least detrimentally impactful or most qualitatively enhancing of the significantly different alternatives identified. To ensure that plantings proposed to mitigate for tree removal are consistent with the qualities noted above, a condition of approval shall be included in this decision requiring that changes to plant selections shall be substantially similar in mature

height to those on the approved list and shall also be listed and rated in the *Portland Plant List* as being species that are used as food by wildlife and shall have a comparable number of species they provide food for.

With the above noted condition, *these criteria can be met.*

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

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

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

The Construction Management Plan (Exhibit C.1), in combination with the arborist report (Exhibit A.6.c), together outline how impacts from the project, including those elements subject to these approval criteria, will be limited to the approved temporary and permanent disturbance areas. The Construction Management Plan will be effective because it provides realistic limits to disturbance while containing the necessary elements (e.g., sediment fencing and tree protection fencing) to effectively protect resources and functional values outside of designated disturbance areas. It is apparent that the applicant's team and particularly the project arborist have carefully thought through the potential impacts of construction activities on the property. Per the arborist report, the tree protection fencing in accordance with 11.60.030 is to be installed in the locations shown on the Tree Protection Plan (pg 6 of Exhibit A.6.c) prior to any construction-related activities and is to be posted with the name and contact information of the project arborist. *It should be noted that some of the tree protection fencing is proposed beyond the limits of disturbance. Instead, tree protection fencing shall be placed at the edge of the limits of disturbance.* In addition, the arborist report specifies the following recommendations for the construction of the foundation:

1. All excavation (trenching) work will be done with hand tools, airspade, or with equipment suspended by crane to protect the soil from compacting, sloughing, and the trees from other forms of mechanical damage.
2. Soil removed during excavation may be lifted out via crane or spread on site to a depth no greater than 2-inches.
3. Roots 1" and larger should be left unharmed crossing the trench and preserved until such time as all roots that require pruning for form building are exposed.
4. Only a certified arborist shall prune roots 1-inch and greater in accordance with best management practices. Roots smaller than 1-inch that may be cut in the process of digging.
5. During the time that the foundation is being dug the arborist shall make weekly visits to the site to inspect trenches as they are dug and submit recommendations as they arise. The arborist shall catalog, with photos, any root 2-inches diameter and greater that is pruned.

The following recommendation are for the work to install utilities:

1. Where trenching is required for utility installation trenches shall be dug by hand and/or airspade.
2. Roots 1-inch diameter and greater shall be left intact and pipes run underneath the existing roots. If it is necessary to cut roots to achieve the required slope for a given pipe the project arborist shall observe and catalog roots before pruning; only a certified arborist may cut roots 1-inch diameter and greater.

3. Where the outfall channel is to be reinforced with rip rap any excavation shall be done by hand and roots preserved within the channel and rip rap installed around them.

4. All utilities and rip rap that are located inside of the fenced tree protection zone will be dug with hand tools under arborist supervision to direct activity so as to minimize negative impacts.

Finally, the arborist recommends post-construction mitigation: *“This is likely to include but may not be limited to dry season irrigation, site mulching, root zone improvement, and/or growth regulator treatment. It is essential that mitigation occur on schedule. The provided contract shall follow any sale of the property occurring within the recommended mitigation period.”*

The mitigation plan, including nuisance species removal and the planting of native species, will result in some limited ground disturbance, but this work will be required to be conducted by hand. In addition, the removal of extensive English ivy in addition to diverse native plantings is expected to improve the resources and functional values of this site following the completion of the proposal.

With conditions requiring that the arborist’s recommendations be followed, that tree protection fencing be placed within and at the limits of disturbance, that all mitigation work be done using only hand-held equipment, and that erosion control be installed in conformance with applicable City Code, *these criteria can be met.*

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

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

Findings: This criterion requires the applicant to assess unavoidable impacts and propose mitigation that is proportional to the impacts, as well as sufficient in character and quantity to replace lost resource functions and values. The proposed Mitigation Plan includes the following:

1. Nuisance species removal and replacement plantings installed within the area of the removal in conformance with 33.430.140.L;

2. Replanting of temporary disturbance areas associated with rip-rap at the stormwater outfall, trenching to the outfall, and sewer line installation in conformance with standards 33.430.150.D, 33.430.180.F, and 33.430.180.I.

3. Planting of 8 native trees and 88 native shrubs as replacement for the four on-site trees proposed for removal.

4. The replanting of the 149 square feet of permanent disturbance area needed to install the fence with native groundcovers, including sword fern, wild ginger, and sorrel. *The permanent disturbance area of the fence is included in the applicant’s calculation of total permanent disturbance area, which meets the allowance in Standard 33.430.140.A.*

As noted in the consolidated findings for A.1.a and E.2, above, the alternative ratios of replacement plantings for trees proposed for removal provides more enhancement to the quality and diversity of the site’s resources and functional values than meeting Standard 33.430.140.H would. By diversifying the canopy types on the site and by planting species that are known to provide food for a variety of native bird and mammal species, the proposed mitigation plan will better compensate for all significant detrimental impacts resulting from the development of the proposed, allowed use.

Furthermore, the loss of resources and functional values, especially those associated with wildlife habitat, will be further compensated for by the removal of English ivy not only from the area required by 33.430.140.L, but also from within ten feet of all proposed mitigation plantings, consistent with 33.248.090.D.

The above mitigation measures will offset the disturbance area of the project, particularly the additional temporary disturbance needed to install the second outfall and to allow sufficient space at the rear of the house for construction activities to occur reasonably and safely. The alternative mitigation plantings will improve canopy diversity wildlife habitat on the site and compensate for the removal of 4 native trees (1 healthy, 3 dead or dying) better than would meeting Standard 33.430.140.H.

Finally, in addition to planting 88 shrubs and 8 trees to mitigate for tree removal and 149 groundcovers in the disturbance area for the split-rail fence, the applicant is also proposing to plant 205 shrubs and 607 groundcover plants as part of replanting the disturbance areas associated with meeting the standards for utility line installation and nuisance species removal. Total plantings proposed equals: 8 native trees, 293 native shrubs, and 756 groundcovers (607 plus 149 for the fence).

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

- Mitigation plantings will be installed in temporary disturbance areas in addition to throughout the majority of the site.
- The mitigation plantings will increase species diversity to improve wildlife habitat in areas that have minimal native vegetation.
- The plantings will aid with pollution and nutrient retention and removal, sediment trapping and erosion control.
- Invasive species will be removed from the majority subject site.

To confirm installation of the required plantings, the applicant will be required to have the plantings inspected upon installation. Then, to confirm maintenance of the required plantings for the initial establishment period, the applicant will be required to have the plantings inspected two years after plantings are installed.

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

A.1.d. Mitigation will occur within the same watershed as the proposed use or development and within the Portland city limits except when the purpose of the mitigation could be better provided elsewhere; and

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

A.1.e. The applicant owns the mitigation site; possesses a legal instrument that is approved by the City (such as an easement or deed restriction) sufficient to carry out and ensure the success of the mitigation program; or can demonstrate legal authority to acquire property through eminent domain.

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

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

These criteria are met.

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

A.3.a. The location, design, and construction method of any outfall or utility proposed within the resource area of an environmental protection zone has the least significant

detrimental impact to the identified resources and functional values of other practicable alternatives including alternatives outside the resource area of the environmental protection zone;

Findings: The outfall subject to this approval criterion is not proposed within the resource area of an Environmental Protection overlay zone; *this criterion does not apply.*

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

Findings: Water bodies within or near the development area are limited to the drainageway that the existing public and proposed private outfalls empty into. That drainageway connects into a larger stream below the site. The proposed construction management measures are expected to prevent sediment or erosion during construction and the mitigation plan and rip-rap plantings will further prevent erosion and sedimentation. In addition, all stormwater from new impervious surfaces will be treated via a stormwater management system consistent with the City's Stormwater Management Manual before being discharged onsite. Furthermore, to the extent that approval criterion A.1.b. "There will be no significant detrimental impact on resources and functional values in areas designated to be left undisturbed," is met, *this criterion is also met.*

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

Findings: No water bodies will be crossed by the proposed development. *This criterion does not apply.*

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 applicant's materials demonstrate, with one exception, that only three applicable development standards in Chapter 33.430 are not being met, all of which have been subject to this review. The one exception is that the plans show the wooden, split-rail fencing following the rear property line, part of which crosses into the resource area of the "p" overlay. Per 33.430.140.B, disturbance area must be set back at least 5 feet from the resource area of any Environmental protection ("p") zone. Since this review did not evaluate or approve of the fencing not meeting this standard, if and when the applicant proposes to install the fencing, either at the time of building or at a later date by zoning permit, the applicant must revise the plans to show the proposed fencing located at least five feet away from the "p" overlay.

The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 are or continue to be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

The applicant proposes to construct a new single-dwelling residence on a site completely within the resource area of the Environmental Conservation overlay. As part of that project, the applicant proposes three elements that do not meet applicable development standards in 33.430:

1. A private, second outfall on the site;
2. Replacement of four trees to be removed using a plant palette that emphasizes mid and lower canopy tree and shrub species; and

3. Additional temporary disturbance around the stormwater planter and raised deck at the rear of the house.

The applicant's submittal materials and the above findings show that these elements of the proposal meet the applicable approval criteria with conditions. Therefore, this proposal should be approved, subject to conditions.

ADMINISTRATIVE DECISION

Approval of a second stormwater outfall on the site, an alternative replacement regime for removal of trees, and additional temporary disturbance at the rear of the development, per the approved site plans, Exhibits C.1 through C.4, signed and dated March 28, 2022, subject to the following conditions:

- A. A BDS Zoning Permit is required for inspection of required mitigation plantings and a separate BDS building permit will be required for house construction.** The Conditions of Approval listed below, shall be noted on appropriate plan sheets submitted for permits (building, Zoning, grading, Site Development, erosion control, etc.). Plans shall include the following statement, ***"Any field changes shall be in substantial conformance with approved LU 21-007289 EN Exhibits C.1 through C.4."***

Building Permits shall not be issued until a BDS Zoning Permit is issued.

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

- B.** Tree protection fencing shall be placed along the limits of disturbance, as shown on Exhibit C.1 Construction Management Plan, prior to initiation of any construction activities in order to separate approved construction areas from areas to remain undisturbed. No tree protection fencing is required along the limits of disturbance for the split-rail fence.
1. All measures provided for sediment control, including sediment fencing, shall be placed inside of the approved "Limits of Construction Disturbance," as shown on Exhibit C.1, Construction Management Plan.
 2. No mechanized construction vehicles are permitted outside of the approved "Limits of Construction Disturbance" delineated by the temporary construction fence. All planting work, invasive vegetation removal, and other work to be done outside the Limits of Construction Disturbance for the house and within the limits of disturbance for the stormwater outfall, sewer lateral, and fence shall be conducted using hand-held equipment.
 3. Trees shall be protected according to tree protection measures provided in Title 11 Tree Code, Chapter [11.60.030 Tree Protection Specifications](#), or as specifically recommended by the arborist, except that in no case shall tree protection fencing be placed outside the limits of disturbance.

The following tree protection conditions apply to ground disturbance associated with excavation and trenching of the foundation:

- a. All excavation (trenching) work will be done with hand tools, airspade, or with equipment suspended by crane to protect the soil from compacting, sloughing, and the trees from other forms of mechanical damage.
- b. Soil removed during excavation of the foundation may be lifted out via crane or spread on site to a depth no greater than 2-inches.
- c. Roots 1-inch and larger should be left unharmed crossing the trench and preserved until such time as all roots that require pruning for the foundation are exposed.

- d. Only a certified arborist shall prune roots 1-inch and greater in accordance with best management practices. Roots smaller than 1-inch that may be cut in the process of digging.
- e. During the time that the foundation is being dug the arborist shall make weekly visits to the site to inspect trenches as they are dug and submit recommendations as they arise. The arborist shall catalog, with photos, any root 2-inches diameter and greater that is pruned.

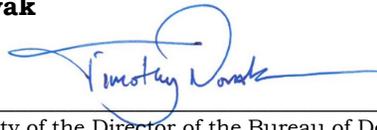
The following recommendation are for the work to install utilities:

- f. Where trenching is required for utility installation trenches shall be dug by hand and/or airspade.
 - g. Roots 1-inch diameter and greater shall be left intact and pipes run underneath the existing roots. If it is necessary to cut roots to achieve the required slope for a given pipe the project arborist shall observe and catalog roots before pruning; only a certified arborist may cut roots 1-inch diameter and greater.
 - h. Where the outfall channel is to be reinforced with rip rap any excavation shall be done by hand and roots preserved within the channel and rip rap installed around them.
4. Prior to issuance of the building permit, the applicant shall submit a signed contract with a certified arborist for post-construction mitigation work. The contract shall be written so that it goes with the land to ensure that mitigation continues on schedule as needed, regardless of a change in ownership.
- C.** The applicant shall obtain a BDS Zoning Permit for approval and inspection of a Mitigation Plan for removal of invasive species and planting a total of 8 trees, 293 shrubs, and 607 groundcovers in substantial conformance with Exhibit C.4 Mitigation Plan. Any plant substitutions shall be selected from the *Portland Plant List* and shall be substantially equivalent in size to the original plant. Conifers must be substituted with conifers. Plants that provide food for wildlife shall be replaced with plants identified as providing the same.
- D.** Installation of the wooden split-rail fence shall be reviewed and permitted via a Zoning Permit, either with the mitigation plan identified in Condition C or under a separate permit at a later date. The location of the fence shall be altered from that shown on the approved plans sufficient to comply with 33.430.140.B. The disturbance area shall be replanted with 149 native groundcovers after the fence is installed (Exhibit C.4).
- E.** The land owner shall monitor the required plantings for two years to ensure survival and replacement as described below. The land owner is responsible for ongoing survival of required plantings beyond the designated two-year monitoring period.
- 1. Prior to issuance of the BDS Zoning Permit, the applicant must submit and pay fees for review of the Landscape Monitoring Reports required below.
 - 2. After installation and inspection of the initial mitigation plantings, the land owner must submit 2 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 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. 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).

- b. 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 (replacement must occur within one planting season).
- c. A list of replacement plants that were installed.
- d. Photographs of the mitigation area and a site plan, in conformance with approved Exhibit C.4, Mitigation Plan, showing the location and direction of photos.
- e. An estimate of percent cover of invasive species (e.g. English ivy, Himalayan blackberry, reed canarygrass, teasel, clematis) within 10 feet of all plantings. Invasive species must not exceed 15 percent cover during the monitoring period.

F. 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 March 28, 2022**

By authority of the Director of the Bureau of Development Services

Decision mailed: March 30, 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 January 25, 2021, and was determined to be complete on August 20, 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 January 25, 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 a total of 210 days (Exhibits A.3, 4, 7, 8 & 10). Unless further extended by the applicant, **the 120 days will expire on: June 15, 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 April 13, 2021. The completed appeal application form must be emailed to 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 **April 13, 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 (01/25/2021)
 - a. Narrative
 - b. Drawings
 - c. Arborist Report
 - d. Geotech Report
 - e. Operating Agreement of Adamson Holdings, LLC
 2. Response to Incomplete Letter (07/06/2021)
 - a. Narrative, rev1
 - b. Drawings
 - c. Arborist Report, rev1
 - d. Sight distance analysis
 3. 120-Day Extension Request #1
 4. 120-Day Extension Request #2
 5. Response to 2nd Incomplete Letter (11/15/2021)
 - a. Drawings
 - b. Arborist Report, rev2
 - c. Mitigation Plan Narrative
 6. Follow-up Response (11/30/2021)
 - a. Narrative, rev2
 - b. Drawings
 - c. Arborist Report, rev3
 7. 120-Day Extension Request #3
 8. 120-Day Extension Request #4
 9. Response to Neighbor & IA comments (01/31/2022)
 - a. Drawing (Erosion Control Plan)
 - b. Geotech Report, rev1
 10. 120-Day Extension Request #5
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Construction Management Plan (attached)
 2. Outfall Plan
 3. Disturbance Areas Plan
 4. Mitigation 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. Life Safety Review Section of BDS
 7. Bureau of Parks, Forestry Division
- F. Correspondence:
1. Mock, Mandy & Jason mandy.j.mock@intel.com
- G. Other:
1. Original LUR Application
 2. Incomplete Letter #1
 3. Incomplete Letter #2
 4. Aerial Imagery of site, 2021

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).